

PATENTS ACT 2021
(ACT NO. 37 OF 2021)

SECTIONS

PART 1—PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Objectives
4. Meaning of novel
5. Meaning of inventive step
6. Meaning of prior art base
7. Disclosure to be disregarded in certain circumstances
8. Meaning of useful
9. Computer programs
10. Act binds the State

PART 2—PATENTABLE INVENTIONS AND PATENT RIGHTS

Division 1—Patentable inventions

11. Patent may be granted for patentable inventions only
12. Patentable inventions
13. Inventions contrary to public order or morality not patentable inventions
14. Other exclusions

Division 2—Patent

15. Nature of patent
16. Exclusive rights given by patent
17. Extent, effect and form of patent
18. Term of patent
19. Extension of period for paying renewal fees

Division 3—Patent ownership

20. Who may be granted patent
21. Power of patentee to deal with patent
22. Co-ownership of patent
23. Rights of buyers from co-owners of patent
24. Power of Commissioner to give directions to co-owners
25. Miscellaneous provisions concerning directions
26. Inventions made during and after employment
27. Employment Relations Tribunal or Commissioner may apportion benefit of invention and of patent
28. Review of Commissioner's decision

PART 3—PROCESS FOR OBTAINING GRANT OF PATENT AND OTHER
MATTERS

Division 1—Patent applications

- 29. Right to apply for patent
- 30. Application requirements
- 31. Commissioner may post-date application or specification
- 32. Divisional applications
- 33. Applicant must pay maintenance fee

Division 2—Specifications

- 34. Complete and provisional specifications
- 35. Filing of complete specification after provisional specification has been filed
- 36. Contents of provisional specification
- 37. Contents of complete specification
- 38. Amendment of complete specification before acceptance
- 39. Supply of drawings

Division 3—Convention applications

- 40. Convention applicants may make convention applications
- 41. How convention applications are made and dealt with
- 42. Withdrawn, abandoned or refused basic applications
- 43. Basic applications for 2 or more cognate inventions

Division 4—Priority dates

- 44. Priority date of claims of complete specification
- 45. Priority date if complete specification filed for single application
- 46. Priority date if complete specification filed for 2 or more applications
- 47. Priority date for convention applications
- 48. Rules that apply if 2 or more priority dates apply or other rules do not apply
- 49. Priority date in case of lack of entitlement in respect of another patent application

Division 5—Examination

- 50. Request for examination
- 51. Examination
- 52. Commissioner may refuse to proceed with application or require application or specification to be amended
- 53. Applicants must act by deadline if deadline set by Commissioner
- 54. Application treated as abandoned if applicant fails to act within set deadline
- 55. Commissioner must examine amended specification
- 56. Duty to inform Commissioner of search results

Division 6—Acceptance and publication

- 57. Time for putting application in order for acceptance
- 58. Time may be extended if appeal pending or possible
- 59. Notice of entitlement must be filed before acceptance
- 60. Acceptance of complete specification
- 61. Applicant may request Commissioner to postpone acceptance
- 62. Publication in case of applications
- 63. Publication in case of divisional applications made as provided for in section 32
- 64. Documents open to public inspection
- 65. Certain documents not to be published
- 66. Effect of publication of complete specification
- 67. Court must consider whether it would be reasonable to expect that patent would be granted

Division 7—Amendment of specifications after acceptance

- 68. General rules concerning amendments of specifications after acceptance
- 69. Amendment must be published in Gazette
- 70. Amendment of specification with leave of Commissioner
- 71. Request for leave to amend must be published in Gazette
- 72. Opposition to proposed amendment
- 73. Provisions concerning amendments with leave of Commissioner do not apply in certain circumstances
- 74. Amendment of specification with leave of court

Division 8—Assertions by third parties, opposition, and re-examinations

- 75. Assertions by third parties on novelty and inventive step
- 76. Commissioner must consider and deal with notice in prescribed manner
- 77. Opposition to grant of patent
- 78. Hearing and decision by Commissioner
- 79. Re-examination before patent is granted
- 80. Re-examination after patent is granted
- 81. Relationship between re-examination and other proceedings
- 82. Report on re-examination
- 83. Refusal to grant patent: re-examination before grant
- 84. Revocation of patent: re-examination after grant
- 85. Person who requests re-examination has no right to participate further in re-examination proceeding

Division 9—Grant of patent

- 86. When patent must be granted
- 87. Validity of patent not guaranteed
- 88. Patent date

- 89. Patent granted for one invention only
- 90. Amendment of patent granted to deceased person or to body corporate that has been liquidated or wound up
- 91. Patents of addition
- 92. Commissioner may revoke patent for improvement or modification and grant patent of addition
- 93. Restrictions on granting of patents of addition
- 94. Term of patent of addition
- 95. Renewal fees for patents of addition
- 96. Provisions concerning inventive step requirement and validity in connection with patents of addition

Division 10—Revocation and surrender of patents

- 97. Revocation of patent
- 98. Provisions concerning applications for revocation made to Commissioner
- 99. Grounds for revoking patent
- 100. Court may also revoke patent if patentee, without reasonable cause, refuses request of Government department to exploit invention
- 101. Surrender of patent

Division 11—Restoration of lapsed patents and restoration of patent applications

- 102. Restoration of lapsed patents
- 103. Request must describe circumstances that led to failure to pay renewal fee
- 104. Persons who may make request for restoration of patent
- 105. When request for restoration of patent may be made
- 106. Commissioner must give person who made request reasonable opportunity to be heard if not satisfied that *prima facie* case has been made out for restoration
- 107. Commissioner to publish request in Gazette
- 108. Notice of opposition and reasonable opportunity to be heard
- 109. Order to be made on payment of unpaid fees
- 110. Request for restoration of void or abandoned patent applications
- 111. When request for restoration of void or abandoned patent applications may be made
- 112. Notice of opposition
- 113. Commissioner to determine matter

Division 12—Miscellaneous provisions

- 114. Persons claiming under assignment or agreement or by operation of law
- 115. Death of applicant
- 116. Disputes between interested parties
- 117. Directions in relation to inventions concerning defence
- 118. Commissioner must give notice to Minister responsible for defence

- 119. Minister responsible for defence must consider whether publication would be prejudicial to defence of Fiji
- 120. Commissioner must revoke directions on receipt of notice from Minister responsible for defence
- 121. Acceptance of complete specification while directions in force
- 122. Maintenance fees and renewal fees not payable while directions in force
- 123. Offence to fail to comply with directions
- 124. Liability of directors and managers if body corporate commits offence

PART 4—INFRINGEMENT, OTHER PATENT PROCEEDINGS, AND MATTERS AFFECTING PATENT OWNERSHIP

Division 1—Infringement proceedings

- 125. Infringement by doing anything patentee has exclusive right to do
- 126. Infringement by supplying means to infringe to another person
- 127. Presumption that product produced by infringing process
- 128. No infringement for experimental use
- 129. No infringement by use in or from foreign vessels, aircraft or vehicles
- 130. No infringement for use to produce information required by law
- 131. No infringement for prior use of invention
- 132. Defendant may counterclaim for revocation of patent
- 133. Who may bring infringement proceeding
- 134. When proceeding may be brought
- 135. Right to bring infringement proceeding if registrable assignment or licence has occurred
- 136. Proceeding brought by exclusive licensee
- 137. Types of relief available for infringement
- 138. Court must not award damages or account of profits if innocent infringement
- 139. Court must refuse damages or account of profits for infringement before amendment to accepted specification
- 140. Court may refuse damages or account of profits if renewal fees not paid
- 141. Limits on damages and accounts of profits do not affect power to grant injunction
- 142. Court may grant relief for partially valid patent
- 143. Court may grant costs for subsequent proceeding if validity of specifications contested

Division 2—Declarations of non-infringement

- 144. Application for declaration of non-infringement
- 145. Proceeding for declaration of non-infringement
- 146. Costs in declaration of non-infringement
- 147. Validity of patent not at issue in proceeding for, and not affected by, declaration of non-infringement