

ACT No. VI 1856.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 28th February 1856.)

AN ACT for granting exclusive privileges to Inventors.

WHEREAS it is expedient, for the encouragement of Inventors of new manufactures, that certain exclusive privileges in their inventions should be granted to them in India; It is enacted as follows:—

I. The inventor of any new manufacture may petition the Governor General of India in Council for leave to file a specification thereof. Every such petition shall be in writing in the form or to the effect mentioned in the Schedule hereunto annexed, and shall be signed by the petitioner, or, in case the petitioner shall be absent from India, by an authorized agent, and shall state the name, addition, and place of residence of the petitioner, and the nature of the invention.

II. Upon such petition, the Governor General of India in Council may make an order authorizing the petitioner to file a specification of the invention.

III. Before making such order, the Governor General of India in Council may refer the petition to any person or persons for enquiry and report, and such person or persons shall be entitled to a reasonable fee for such enquiry and report to be paid by the petitioner; the amount of such fee, in case of dispute, to be settled by a Judge of one of Her Majesty's Courts of Judicature in a summary manner.

IV. If,

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IV. If, within the space of six calendar months from the date of such order the petitioner cause a specification of his invention to be filed in manner hereinafter-mentioned, the petitioner, his executors, administrators, or assigns, shall be entitled to the sole and exclusive privilege of making, selling, and using the said invention in India, and of authorizing others so to do for the term of fourteen years from the time of filing such specification and for such further term, if any, not exceeding fourteen years from the expiration of the first fourteen years, as the Governor General of India in Council may think fit to direct, upon petition to be presented by such inventor, at any period not more than one year, and not less than six calendar months, before the expiration of the exclusive privilege hereby granted.

Petitioner entitled to exclusive privilege for 14 years from the time of filing specification.

Extension of term of exclusive privilege.

V. An order authorizing the filing of a specification, or for extending the term of such exclusive privilege as aforesaid, may be made subject to any such conditions and restrictions as the Governor General of India in Council may think expedient.

Order to file specification may be made subject to condition.

VI. Every specification of an invention filed under this Act, shall be in writing, and shall be signed by the petitioner, and shall particularly describe and ascertain the nature of the said invention and in what manner the same is to be performed.

Specification to be in writing and to describe the invention.

VII. Every petition for leave to file a specification and every specification filed under this Act shall be left with the Secretary to the Government of India in the Home Department, and every petition and specification shall be accompanied by a declaration in writing signed by the petitioner in the form or to the effect mentioned in the Schedule hereunto annexed, marked A and B respectively; and if the inventor be absent from India, the petition and specification shall also be accompanied by a declaration signed by the agent who shall present or file the same, to the effect that he verily believes that the declaration purporting to be the declaration of the inventor, was signed by him, and that the contents thereof

Petition and specification to be left with Secretary to Government.

Petition, &c., to be accompanied by declaration.

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XVII. A foreigner, whether resident abroad or not, may petition for leave to file a specification under this Act.

XVIII. An invention shall be deemed a new invention within the meaning of this Act, if it shall not, before the time of applying for leave to file the specification, have been publicly used in India or been made publicly known there by means of a printed publication. The public use or knowledge of an invention prior to the application for leave to file a specification, shall not be deemed a public use or knowledge within the meaning of this Section if the knowledge shall have been obtained surreptitiously or in fraud of the actual inventor or shall have been communicated to the public in fraud of the actual inventor or in breach of confidence. Provided the inventor shall, within six calendar months after the commencement of such public use, apply for leave to file his specification and shall not previously have acquiesced in such public use. Provided also, that the use of an invention in public by the actual inventor thereof, or by his servants or agents, or by any other person by his license in writing, shall not be deemed a public use thereof within the meaning of this Act.

An invention not publicly used or known in India before the application for leave to file a specification, to be deemed a new invention within this Act.

Knowledge of invention fraudulently acquired.

Proviso.

Public use by actual inventor.

XIX. If an actual inventor who, prior to the time of applying for leave to file a specification of an invention under this Act, shall have obtained Her Majesty's Letters Patent for the exclusive use of such invention, in any part of the United Kingdom, shall, within twelve calendar months from the passing of this Act, or within six calendar months from the date of such letters Patent, petition the Governor General of India in Council for leave to file a specification of such invention, the invention shall be deemed a new invention within the meaning of this Act, if it was not publicly known or used in India at the date of the petition for such Letters Patent, notwithstanding it may have been publicly known or used in India before the time

Actual inventor having obtained English Letters Patent to petition within 12 months from the passing of this Act, or within 6 months from the date of the Letters Patent.

Invention if not publicly known or used in India at the time of applying for such Letters Patent, to be deemed new.

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time of his petitioning, under this Act, for leave to file the specification ; and if the actual inventor shall obtain an exclusive privilege under this Act, in respect of such invention, any exclusive privilege previously obtained by an importer of such invention shall thereupon cease. Provided the petition for leave to file the specification shall state that such Letters Patent have been granted, and shall also state the date thereof and the term during which the same are to continue in force.

If actual inventor obtain an exclusive privilege, any privilege obtained by an importer shall cease.

What to be started in such petition.

XX. No exclusive privilege obtained under this Act shall entitle the owner of such privilege to exclude any person from using the invention, who, prior to the 7th day of July 1855, used the same in India.

Saving of rights of persons who used invention before 7th of July 1855.

XXI. An action may be maintained by an inventor against any person who, during the continuance of any exclusive privilege granted by this Act, shall, without the license of the said inventor, make, use, sell, or put in practice the said invention, or who shall counterfeit or imitate the same. Provided that no such action shall be maintained in any of the Courts of the East India Company other than the principal Court of original jurisdiction in civil cases within the local limits of whose jurisdiction the cause of action shall accrue or the defendant shall reside as a fixed inhabitant.

Action for infringement.

XXII. No such action shall be defended upon the ground of any defect or insufficiency of the specification of the invention, nor shall any such action be defended upon the ground of a misdescription of the invention in the petition ; nor upon the ground that the plaintiff was not the inventor, unless the defendant shall show that he is the actual inventor or derives title from him. Any such action may be defended upon the ground that the invention was not new, if the person making the defence, or some person through whom he claims, shall, before the date of the petition for leave to file the specification, have publicly or actually used in India the invention, or that part of it of which the infringement shall be proved ; but not otherwise.

Defect in specification or petition, or want of novelty in invention, &c., no defence to action for infringement.

The actual use of an invention in India before date of petition, a defence to such action.

XXIII. It

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XXIII. It shall be lawful for any person to apply by motion to any of Her Majesty's Courts of Judicature for a rule to show cause why the Court should not declare that an exclusive privilege in respect of an invention has not been acquired under the provisions of this Act by reason of all or any of the objections following (to be specified in the rule), that is to say—

Application to Supreme Courts to declare exclusive privilege not to have been acquired on following grounds—

Invention not new.

That the said invention was not, at the time of presenting the petition for leave to file the specification, a new invention, or

Petitioner not the inventor, &c.

That the petitioner was not the inventor thereof, and, in addition thereto, either that the applicant was the inventor or that the inventor has dedicated or made known the invention to the public or has acquiesced in the public use thereof, or

Invention not described in specification.

That the specification filed does not particularly describe and ascertain the nature of the invention or in what manner the same is to be performed, or

Fraud in petition or specification.

That the petitioner has fraudulently included in the petition or specification as part of his invention something which was not new or whereof he was not the inventor, or

False statement in petition.

That the petitioner has wilfully made a false statement in his petition, or

Fraudulent misdescription of part of invention in specification.

That some part of the invention, or the manner in which that part is to be performed as described in the said specification, is not thereby sufficiently described and ascertained, and that such defect or insufficiency was fraudulent, and is injurious to the public.

XXIV. Any person may, in like manner, apply to any of Her Majesty's Courts of Judicature for a rule to show cause why the Court should not declare that an exclusive privilege has not been acquired under the provisions of this Act in any part of the invention to be specified

Like application as to part of an invention.

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specified in the rule by reason of all or any of the objections following (to be specified in the rule), that is to say—

That such part of the invention was not new at the date of the petition for leave to file the specification.

That the petitioner was not the inventor of that part of the invention, and, in addition thereto, either that the applicant was the inventor of that part or that the inventor has dedicated or made known the same to the public or has acquiesced in the public use thereof, or

That that part of the invention, and the manner in which it is to be performed, is not sufficiently described and ascertained in the specification, and that such defect or insufficiency is injurious to the public.

XXV. It shall be lawful for the Advocate General of the East India Company at any of the Presidencies of Fort William in Bengal, Fort St. George, and Bombay, or any other person, by order of the Governor General in Council, to apply to any of the said Courts of Judicature for a rule calling upon the petitioner, his executors, administrators, or assigns, to show cause why the question of the breach of any special condition upon which the leave to file a specification has been granted, or any other question of fact on which the revocation of the exclusive privilege by the Governor General in Council under the power hereinbefore reserved may, in the judgment of the said Governor General in Council, depend, should not be tried in the form of an issue directed by the said Court; and if the rule be made absolute, the Court, unless the breach or other matter of fact be admitted, may thereupon direct such issue to be tried, and certify the result of such trial to the Governor General in Council. The costs of such trial, and also the costs of any proceedings in any of the said Courts of Judicature under the provisions of this Act, shall be in the discretion of the Court.

XXVI. Notice of any rule obtained or proceeding taken under either of the last three preceding Sections shall be served on all persons appearing to be proprietors or to have shares or interests in the exclusive privilege under the provisions of Section XXXIV of this Act, and it shall not be necessary to serve such notice on any other persons.

Application by Advocate General, on breach of special condition.

Service of proceedings on all persons interested.

XXVII. Any

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XXVII. Any of the said Courts of Judicature, if it think fit, may direct an issue for the trial, before the same Court or any other Court of Her Majesty or any principal Court of original jurisdiction in civil cases of the East India Company, of any question of fact arising upon an application under Section XXIII, XXIV or XXV of this Act, and such issue shall be tried accordingly, in a summary manner and, if the issue be directed to another Court, the finding shall be certified, by the Court before which the same was tried, to the Court directing the issue.

Supreme Court may direct issue for trial to other Courts.
New trial.
If the issue be directed to any of Her Majesty's Courts of Judicature, the Court by which the issue is tried may, before the finding is certified, direct a new trial of such issue according to the usual course and practice of such Court. If the issue be directed to a Court of the East India Company, the finding shall not be subject to appeal to any other Court of the said Company but the evidence taken upon the trial shall be recorded, and a copy thereof, certified by the Judge, shall be transmitted, together with any remarks he may think fit to make thereon, to the Court by which the issue was directed; and such Court may either act upon the decision of the Court which tried the issue, or direct a new trial if it shall appear necessary.

XXVIII. If it shall appear to any of the said Courts of Judicature at the hearing of any application under the provisions of Section XXIII or XXIV of this Act that, by reason of any of the objections therein mentioned, the said exclusive privilege in the invention or in any part thereof has not been acquired, the Court shall give judgment accordingly, and shall make such order as to the costs of and consequent upon the application as it may think just; and thereupon the petitioner, his executors, administrators, and assigns, shall, so long as the judgment continues in force, cease to be entitled to such exclusive privilege.

XXIX. If the Court, at the hearing of any such application as last aforesaid, shall think that the petitioner has, in the description of his invention in the petition or specification, included something which at the date of the petition was not new or whereof he was not the inventor, or that the specification is in any particular defective

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or insufficient, but that the error, defect, or insufficiency was not fraudulently intended, the Court may adjudge the said exclusive privilege to have been acquired and to be valid, save as to the part thereof affected by such error, defect, or insufficiency, or, if the Court shall think that the error, defect, or insufficiency can be amended without injury to the public, they may adjudge the exclusive privilege in the whole of the invention to be valid, and may, upon such terms as shall appear reasonable, order the specification to be amended in any of the said particulars; and thereupon the petitioner, his executors, administrators, or assigns, shall, within the time limited by the said Court for the purpose, file a specification amended according to such order.

XXX. An exclusive privilege shall not be defeated upon the ground that there is any misdescription of the invention in the petition, unless such misdescription was fraudulent.

Misdescription in the petition, if not fraudulent, not to defeat the privilege.

XXXI. Whenever it shall be adjudged by any of the said Courts of Judicature that an exclusive privilege as to the whole or any part of an invention has not been acquired, the said Secretary to the Government of India shall, upon the production of the judgment or order, cause an entry thereof to be made in the said book, hereinbefore directed to be kept, and shall cause a reference to such entry to be made in the margin of the entry of the specification contained in such book.

Entry in registry book of judgment, &c., declaring privilege not to have been acquired.

XXXII. If, upon proceedings instituted within two years from the date of a petition to file a specification, the actual inventor shall prove to the satisfaction of any of Her Majesty's Courts of Judicature or of the principal Court of the East India Company having jurisdiction in civil cases within the local limits of whose jurisdiction the defendant shall reside as a fixed inhabitant, that the petitioner was not the actual inventor and that, at the time of the petition, he knew or had good reason to believe that the knowledge of the invention was obtained by himself or by some other person surreptitiously or in fraud of the actual inventor, or by means of a communication made in confidence by the actual inventor to him or to any person through whom he derived such knowledge, the Court may compel the petitioner to assign to the actual inventor any exclusive privilege

In what case actual inventor entitled to assignment of an exclusive privilege fraudulently obtained.

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privilege obtained under this Act and to account for and pay over the profits thereof.

XXXIII. In any action for the infringement of such exclusive privilege, the plaintiff shall deliver with his plaint particulars of the breaches complained of in the said action, and the defendant, in pleading thereto, shall deliver with his pleas particulars of the grounds (if any) upon which he means to contend that the plaintiff is not entitled to an exclusive privilege in the invention. In like manner, upon any application to any of the said Courts of Judicature under Section XXIII, XXIV or XXV of this Act, the applicant shall deliver particulars of the objections on which he means to rely. At the trial of any such action or issue, no evidence shall be allowed to be given in support of any alleged infringement or of any objection impeaching the validity of such exclusive privilege which shall not be contained in the particulars delivered as aforesaid. If it be alleged that the invention was publicly known or used prior to the date of the petition for leave to file such specification, the places where and the manner in which the invention was so publicly known or used shall be stated in such particulars. Provided, always, that it shall be lawful for any Court in which the action or proceeding is pending, or in which the issue is tried, to allow the plaintiff or defendant respectively to amend the particulars delivered as aforesaid, upon such terms as shall seem fit.

XXXIV. A book shall be kept in the Office of the Secretary to the Government of India in the Home Department (such book to be open to inspection without fee) wherein every person filing a specification under this Act shall cause to be stated, under a number corresponding with the number of the specification, some place in India where service of any rule or proceedings for the purpose of cancelling or revoking his exclusive privilege may be made. All persons, partnerships, or Companies from time to time being proprietors of, or having shares or interests in, such exclusive privilege, shall cause to be entered in such book, under such number as aforesaid, their names, together with the name of some place for the service of such proceedings as aforesaid. All such rules and proceedings as aforesaid shall be deemed sufficiently served on any such person, partnership, or Company if a copy thereof be left at the place entered in such book, or (if any other place be substituted

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substituted for the same by entry in the said book) at the place last substituted, by delivering the same to any person resident at, or in charge of, such place; or, if there be no person resident at, or in charge of, such place, or if such place be not within the local limits of the jurisdiction of the Court, by causing such rule or proceeding to be sent by Post by a registered letter directed to such person, partnership, or Company at such place; and if any such person, partnership, or Company shall neglect to make or cause to be made such entry, then service of such rule or proceeding may be effected by affixing a copy thereof to some conspicuous part of the Court House or in such other manner as the Court may direct.

XXXV. Nothing herein contained shall abridge or affect the Prerogative of the Crown in relation to the granting or withholding the grant of any Letters Patent for inventions or otherwise, or affect or interfere with any Letters Patent for an invention heretofore granted or hereafter to be granted by the Crown.

Nothing in this Act to affect Prerogative of Crown.

XXXVI. Every petition for leave to file a specification under the provisions of this Act, or for the extension of the term of an exclusive privilege, shall be written or printed on stamped paper of the value of 100 rupees.

Stamp on petition.

XXXVII. In the construction of this Act, the following words and expressions shall have the meanings hereby assign to them, unless there be something in the subject or context repugnant to such construction:—

Interpretation.

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include females.

The word "invention" shall include an improvement.

The word "manufacture" shall be deemed to include any art, process, or manner of producing, preparing, or making an article, and also any article prepared or produced by manufacture.

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The word "inventor" when not used in conjunction with the word "actual," shall include the importer of an invention not publicly known or used in India.

The words "inventor" and "actual inventor" shall include the executors, administrators, or assigns of an inventor or actual inventor as the case may be.

The word "assigns" shall include grantees of the sole use or benefit in India of an invention, or of the sole use of an exclusive privilege for a limited time.

The word "India" shall mean the territories for the time being in the possession and under the Government of the East India Company.

The words "Governor General in Council" shall include the "President in Council."

The words "Secretary to the Government of India" shall include any Under-Secretary to the said Government.

FORM OF PETITION.

TO THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

The petition of (*here insert name, addition, and place of residence*) for leave to file a specification under Act No. VI of 1856.

SHEWETH,

That your petitioner is in possession of an invention for (*state the title of the invention,*) which invention he believes will be of public utility; that he is the inventor thereof (*or, as the case may be, the assignee or the executor or administrator of the inventor*); and that the same is not publicly known or used in India to the best of his knowledge and belief (*or, as the case may be, that he is the first importer into India of the said invention, and that the same is not publicly known or used in India*).

(*If Letters Patent have been obtained for the invention, state according to the requirements of Section XIX.*)

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The following is a description of the invention (*here describe it*).

Your petitioner therefore prays for leave to file a specification of the said invention pursuant to the provisions of Act No. VI of 1856.

And your petitioner, &c.

(Signed)

The _____ day of _____

FORMS OF DECLARATION.

A.

I (*here insert name, addition, and place of residence*) do solemnly and sincerely declare that I am in possession of an invention for (*state the title of the invention as in the petition*); that I believe the said invention will be of public utility; that I am the inventor thereof (*or, as the case may be, the assignee or executor or administrator of the inventor*), (*or that I am the first importer of the said invention into India*); and that the same is not publicly known or used in India to the best of my knowledge and belief; and that, to the best of my knowledge and belief, my said invention is truly described in my petition for leave to file a specification thereof.

The _____ day of _____

(Signed)

B.

I (*here insert name, addition, and place of residence*) do solemnly and sincerely declare that I am in possession of an invention for (*state the nature of the invention*), which invention I believe will be of public utility; that I am the inventor thereof (*or, as the case may be, the assignee or executor or administrator of the inventor*), (*or that I am the first importer of the said invention into India*), and that the same is not publicly known or used in India to the best of my knowledge and belief, and that, to the best of my belief, the instrument in writing under my hand hereunto annexed particularly describes and ascertains

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ascertains the nature of the said invention and in what manner the same is to be performed.

The _____ day of _____ (Signed)

_____ C.

I _____ of _____ do solemnly and sincerely declare that I have been appointed by the said _____ his agent for the purpose of _____, and I verily believe that the declaration purporting to be the declaration of the said _____ marked () was signed by him, and that the contents thereof are true.

The _____ day of _____ (Signed)