

Patents Act 1972

CONSOLIDATED ACTS OF SAMOA 2008

PATENTS ACT 1972

Arrangement of Provisions

TITLE

1. Short title
 2. Interpretation
 3. Administration of Act
 4. Exclusive right to invention
 5. No entitlement in certain cases
 6. Application for patents
 7. Provisional certificates
 8. Issue of letters patent
 9. Overseas patents may be registered in Samoa
 10. Duration of rights under patents originally granted overseas
 11. Legal proceedings
 12. Assignments and transmissions
 13. Unauthorised claim of patent rights
 14. New Zealand patent holders
 15. Regulations
- Schedules

THE PATENTS ACT 1972

1972 No. 22

AN ACT to make better provision for the issue of letters patent for inventions.

(19 December 1972)

(Commencement date: 19 December 1972)

1. Short title - This Act may be cited as the [Patents Act 1972](#).

2. Interpretation - In this Act:

"**Invention**" means any manner of new manufacture and any new method of application of known processes and the improvement or control of known processes.

"Inventor" includes the heirs, executors, administrators, successors, or assigns of an inventor.

"Minister" means the Minister responsible for Justice.

"Ministry" means the Ministry of Justice and Courts Administration.

"Registrar" means the Registrar of Patents who shall be the Registrar for the time being of the Supreme Court at Apia, and who shall keep a Register recording all applications for patents, and grants of patent rights.

("Registrar"): The Registrar of Patents is also Registrar of Designs; see [section 2](#) of the [Industrial Designs Act 1972](#).)

3. Administration of Act

(1) This Act shall be administered by the Ministry, subject to the control of the Minister.

(2) All receipts under this Act shall be paid into and all expenditure shall be paid out of the Public Account and, as the case may be, shall be credited or debited to such fund or account as may from time to time be prescribed by the Minister of Finance.

4. Exclusive right to invention

(1) Every inventor shall be entitled under the conditions and restrictions hereinafter enacted to the sole exclusive right of and in his or her invention.

(2) The right and privilege granted to inventors shall be conferred by letters patent signed by the Registrar and sealed with the seal of the Supreme Court in the form contained in the First Schedule whereby the inventor shall be entitled to the sole and exclusive privilege of using, selling, or making his or her said invention in Samoa, and of authorising others to do so, for a term of 16 years from the date of issue of the letters patent.

5. No entitlement in certain cases

No person shall be entitled to letters patent:

- (a) If the invention is of no utility; or
- (b) If the invention at the time of filing the application was not a new invention; or
- (c) If the applicant is not the true and first inventor of it or an assignee deriving title from the true and first inventor of it; or
- (d) If the application or any specification contains a willfully false statement; or
- (e) If the application does not:
 - (i) Particularly describe the invention and the method by which it is to be performed; and
 - (ii) Disclose the best method of performing the invention which is known to the applicant or his or her assignor; and
 - (iii) End with a claim or claims defining the scope of the invention claimed which must relate to a single invention, must be clear and succinct, and must be fairly based on the matter disclosed in the specification.

(The disclosure of any information pursuant to [section 21\(3\)](#) of the [Food and Drugs Act 1967](#) does not prejudice any application subsequently made for a patent; see [section 21\(4\)](#) of that Act.)

6. Application for patents

(1) Every person desirous of obtaining letters patent under this Act shall file in the Supreme Court an application in the form contained in the Second Schedule signed by him or her or his or her agent or attorney setting forth the residence of the inventor and

the title of the invention. To the application shall be annexed a specification (or instrument in writing) particularly describing and ascertaining the nature of the said invention and the manner in which the same is to be produced or performed, and with such specification or instrument in writing shall be filed the drawings necessary to elucidate the same, and such application and all documents and drawings accompanying the same shall be in duplicate.

(2) The Registrar shall cause to be filed every application and specification with accompanying drawings (if any) explaining the nature of any invention and also any certificate granted by the Attorney-General and every letters patent issued and a memorandum of any order relating to it.

(3) Such records shall be open to the inspection of all persons at any reasonable hour upon the payment of a fee and any person may have a copy of any document recorded on payment of the reasonable cost for the copy.

(4) Copies of any documents so recorded certified as correct by the Registrar shall be received in evidence in any Court of law in Samoa.

(5) A specification may be amended on application to the Attorney-General and an amended specification shall, except as to suits and proceedings pending at the date of amendment, have the same effect as though it had been the specification originally filed:

PROVIDED THAT no extension or enlargement of the duration of any exclusive privilege before acquired shall be effected by such amendment.

7. Provisional certificates

(1) When any applicant has filed an application for letters patent the Registrar shall refer the same to the Attorney-General with one of the duplicates of the specification and all other accompanying documents and drawings, and the Attorney-General shall, if he or she deems the invention as prima facie entitled to protection, issue a certificate to that

effect as in the form contained in the Third Schedule, and the inventor shall, subject to the provisions of this Act be protected for a period of 12 months in like manner as by letters patent:

PROVIDED NEVERTHELESS THAT it shall be competent to the Attorney-General to extend the period of such protection pending the decision as to any opposition made to the granting of any letters patent as to the Attorney-General shall seem necessary.

(2) There shall be no right of appeal against the refusal of the Attorney-General to issue a certificate under this section.

8. Issue of letters patent

(1) Within 3 months of the issue of the certificate of the Attorney-General the applicant for letters patent shall give notice in the form contained in the Fourth Schedule in 2 successive issues of the Savali and, if no notice of opposition to the application for letters patent be sent to the Attorney-General within 3 months of the date of publication of the first of such notices, the Attorney-General shall report such fact to the Registrar and the Registrar shall, within 3 months from the date of such report, cause letters patent to be issued with such reservations, provisos and conditions as may be deemed fit.

(2) Any person desiring to oppose such application shall, within 3 months of the date of the first notice of the application for letters patent provided for in the preceding subsection hereof give notice in writing of his or her opposition to such application and of the grounds thereof to the Attorney-General who shall, after hearing the parties to and against such application and such witnesses as he or she may deem necessary, decide the same and intimate his or her decision to the Registrar, and the Registrar shall within 3 months from the date of such intimation, if the same be favorable to the person holding a provisional certificate, direct the issue of letters patent to such person with such reservations, provisos and conditions as may be meet.

(3) There shall be no right of appeal against a decision of the Attorney-General made

under subsection (2).

9. Overseas patents may be registered in Samoa

(1) Any person being the grantee of a patent in any overseas country or any person deriving valid right and title from such grantee by assignment, transmission or other operation of law may apply to the Registrar within 2 years from the date of issue of the patent overseas to have such patent registered in Samoa:

PROVIDED THAT, in relation to a patent issued overseas prior to the commencement of this Act, this section shall have effect with the substitution of the date of commencement of this Act for the date of issue of the patent overseas.

(2) Every application under subsection (1) shall be accompanied by a certified copy of the specification or specifications, including drawings, if any, of the overseas patent and a certificate of the issuing authority giving full particulars of the issue of the patent on such specification or specifications.

(3) Upon such application being received together with the documents mentioned in subsection (2), the Registrar, on being satisfied that the application appears to be in order and not being aware of any legal impediment thereto, may issue a certificate of registration in the form contained in the Fifth Schedule which shall confer on the applicant such privileges and rights subject to all conditions established by the law of Samoa as though the patent had been issued in Samoa.

(4) In the case of 2 or more applicants applying for registration of overseas patents which conflict in any or all of their particulars the application first received shall be entitled to priority.

(5) No overseas patent shall be registered where the particulars thereof conflict with any patent previously issued or registered in Samoa under this Act.

(6) If any patent be erroneously registered where the particulars thereof conflict with any patent previously issued or registered in Samoa under this Act it shall be void.

10. Duration of rights under patents originally granted overseas

(1) Where letters patent are granted or a certificate of registration is issued in Samoa in respect of an invention for which a patent or like privilege has previously been granted in an overseas country all rights and privileges obtained in Samoa shall cease and determine immediately upon the expiration or other determination of such patent or like privilege granted in such overseas country.

(2) No letters patent or other privilege shall be of any validity if granted or issued in respect of any invention for which any patent or privilege shall have been obtained in any overseas country and which shall be obtained in Samoa after the expiration of the term for which such patent or privilege was granted or was in force.

(3) It shall be a special condition of registration that any change of status of an overseas patent or privilege referred to in this and the preceding section hereof shall forthwith be notified to the Registrar who shall thereupon enter the same in the Register.

11. Legal proceedings

(1) The Supreme Court shall have full jurisdiction to hear and determine any proceedings for infringement or otherwise relating to patents in Samoa.

(2) The Supreme Court shall have power, on the application of the Attorney-General or any interested person to annul or revoke any letters patent or certificate of registration in any case where the Court is satisfied that:

(a) Such letters patent or certificate of registration are prejudicial to the public interest; or

(b) The special conditions on which the same were granted have not been observed; or

(c) For any of the grounds contained in [section 5](#) such letters patent or certificate of registration ought not to have been granted; or

(d) In the case of a certificate of registration, on any of the grounds upon which the overseas patent might be revoked under the law for the time being in force in the country wherein such patent was granted.

12. Assignments and transmissions

Where a person becomes entitled by assignment, transmission or other operation of law to the privileges and rights conferred by a certificate of registration or to any interest therein he or she may make application in the prescribed manner to the Registrar for the entry on the Register of such assignment, transmission or other instrument affecting the title or giving an interest therein.

13. Unauthorized claim of patent rights

(1) Every person who falsely represents that he or she or another person is the patentee of an invention or that he or she or another person has applied for a patent for an invention commits an offence and shall be liable on summary conviction to a fine not exceeding 10 penalty units.

(2) Every person who falsely represents that an article sold by him or her is patented in Samoa or is the subject of an application for a patent in Samoa commits an offence and shall be liable on summary conviction to a fine not exceeding 3 penalty units.

(3) For the purposes of this section:

(a) A person shall be deemed to represent that an article is patented in Samoa if there is stamped, engraved, or impressed on, or otherwise applied to the article the word "patent" or "patented", the words "provisional patent", or some other word or words expressing or implying that a patent for the article has been obtained in Samoa; and

(b) A person shall be deemed to represent that an article is the subject of an application for a patent in Samoa if there are stamped, engraved, or impressed on or otherwise applied to the article the words "patent applied for" or "patent pending" or some other word or words implying that an application for a patent for the article has been made in Samoa.

14. New Zealand patent holders

- (1) Any person being the grantee of a patent in New Zealand issued before the commencement of this Act shall be entitled to absolute priority over all other applicants for patent rights provided that he or she applies for registration of it under [section 9](#) within one year of the commencement of this Act, anything elsewhere in this Act to the contrary notwithstanding.

- (2) Any patent issued in New Zealand prior to the commencement of this Act whereof an application under [section 9](#) is filed within one year of the commencement of this Act shall be in force in Samoa from the date it was in force in New Zealand.

- (3) Any patent issued in New Zealand prior to the commencement of this Act whereof no application under [section 9](#) is filed within one year of the commencement of this Act shall not be in force in Samoa.

15. Regulations

The Head of State, acting on the advice of Cabinet, may from time to time make regulations not inconsistent with this Act for any purpose for which regulations are required or contemplated by this Act, and for giving full effect to the provisions of this Act including the regulating of all procedure under this Act and for prescribing the fees to be paid in respect of all proceedings under this Act:

PROVIDED THAT unless and until regulations shall be made adding to, amending or altering the fees specified in the Sixth Schedule the fees specified therein shall be payable to the Registrar for the several matters referred to in the said Schedule.

SCHEDULES

FIRST SCHEDULE

Section 4

THE INDEPENDENT STATE OF SAMOA LETTERS PATENT

**TO ALL TO WHOM THESE PRESENTS SHALL COME,
GREETING**

WHEREAS pursuant to the [Patents Act 1972](#) an application has been made for a patent of an invention for (more particularly described in the specification relating to the application):

AND WHEREAS of (hereinafter with his, her or their heirs, executors, administrators, successors and assigns or any of them called "the patentee") is entitled to be registered as the proprietor of the patent hereinafter granted:

NOW THEREFORE, by these letters patent the patentee is hereby granted full power and sole licence privilege and authority, by himself or herself his or her agents, or licencees, and no others, SUBJECT to the provisions of any statute or regulation for the time being in force, to make, use, exercise and vend the said invention within Samoa during a term of 16 years from the date hereunder written and to enjoy the whole profit and advantage from time to time accruing by reason of the said invention during the said term:

AND any person who shall make use of or in any way imitate the said invention without the consent, licence or agreement of the patentee shall be answerable to the patentee according to law for his or her damages thereby occasioned.

IN WITNESS WHEREOF these presents have been signed and sealed the
day of 20

.....

Registrar of Patents

[Supreme Court Seal]

SECOND SCHEDULE

Section 6

APPLICATION FOR PATENT

1. I of DO HEREBY APPLY for Letters Patent
in respect of an invention
.....
(State title of invention)
2. I have furnished with this application the necessary specifications or instruments
particularly describing the nature of the said invention.
3. I am the true and first inventor of the said invention which I believe will be of great
public utility.
4. The invention is not in use by any other person or persons to the best of my
knowledge and belief.
5. The instrument hereunto annexed particularly describes and ascertains the nature of
the invention and the manner in which the same is to be performed.

DATED at this day of 20

(Signed)

.....

Applicant (or, Agent or

Attorney for Applicant)

Witness:

THIRD SCHEDULE

Section 7

I, Attorney-General for Samoa, do hereby certify as follows:

1. Thathas applied for Letters Patent in respect of an invention entitled
2. That the said application together with a specification or instrument describing the nature of the said invention have been laid before me.
3. That having duly considered the same I consider and certify that the applicant is prima facie entitled to protection on account of his said invention provided that the application be duly advertised in accordance with the [Patents Act 1972](#) and that the applicant do otherwise comply with the provisions of the Act.

GIVEN under my hand this day of 20

.....

Attorney-General

FOURTH SCHEDULE

[Section 8](#)

IN THE MATTER of an application ofof for Letters Patent for Notice is hereby given that an application has been made for the issue of Letters Patent herein under the provisions of the [Patents Act 1972](#). Any person desirous of opposing such application is required to give notice of such opposition and of the grounds thereof to the Attorney-General within 3 months of the date of the first publication of this notice.

.....

Applicant

FIFTH SCHEDULE

[Section 9](#)

THE INDEPENDENT STATE OF SAMOA

In the Matter of the Patents Act 1972

Certificate of Registration

I, Registrar of Patents for Samoa, hereby certify as follows:

1.	That of being the grantee or otherwise entitled to a certain patent issued in on the day of 20 in respect of a certain invention called has applied pursuant to the <u>Patents Act 1972</u> to have such patent registered in Samoa.
2.	. That having considered the application, and it appearing to be in order, and not being aware of any legal impediment thereto, I have this day at Apia duly registered the said patent in the Register of Patents of Samoa.
3.	That this certificate of registration shall confer on the applicant such privileges and rights (subject to all conditions as to the duration thereof and otherwise as are established by the law of Samoa) as though the patent had been issued in Samoa.

Given under my hand this day of 20

.....

Registrar of Patents

[Supreme Court Seal]

SIXTH SCHEDULE

Section 15

On filing application and specification for patent or registration of overseas patent	\$ 180.00
Fee to the Attorney-General for provisional certificate of protection	450.00
On obtaining letters patent	225.00
On lodging objections	90.00

Every search and inspection	27.00
Registration of assignments of letters of patent	135.00
Certificate of registration issued under section 9	225.00
Copy of extract of documents and drawings	Reasonable cost fixed by Registrar
On filing application and specification for registration of a New Zealand patent issued prior to 1 January 1962 and for certificate of registration thereon issued under section 9 in lieu of the filing and certificate fees above	\$ 45.00
On filing application and specification for registration of a New Zealand patent issued prior to the commencement of this Act and subsequent to 1 January 1962 and for certificate of registration thereon issued under section 9 in lieu of the filing and certificate fees above	225.00

REVISION NOTES 1997

The [Patents Act 1972](#) appearing in this reprint comprised that Act as it appears in the 1977 reprint together with a new Sixth Schedule incorporating a revised set of fees, as contained in the Schedule to the Omnibus Charges and Fees Amendment Act 1986.

REVISION NOTES 2008

This law has been generally edited as provided for by [section 5](#) of the [Revision and Publication of Laws Act 2008](#). The following general revisions have been made –

- (a) References to Western Samoa have been amended to Samoa in accordance with an amendment to the Constitution of Samoa in 1997.
- (b) The fines have been amended and are stated as penalty units as provided for by the *Fines (Review and Amendment) Act 1998*.
- (c) All references to the male gender have been made gender neutral.
- (d) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (e) Amendments have been made to up-date references to offices, officers and statutes.
- (f) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

The following amendments have been made to specific sections of the Act to incorporate amendments made by Act of Parliament passed since the publication of the *Western Samoa Statutes Reprint 1978-1996* –

The fees in the Schedule were amended by the Miscellaneous Fees Amendment Act 1998 (No. 16).

Revised and consolidated by Graham Bruce Powell

Under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

REVISION NOTES 2008 No. 2

This law has been generally edited as provided for by [section 5](#) of the [Revision and Publication of Laws Act 2008](#). The following general revision has been made – the commencement date has been noted and added after the date of assent.

Revised under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel).

**The [Patents Act 1972](#) is administered
in the Ministry of Justice and Courts Administration.**