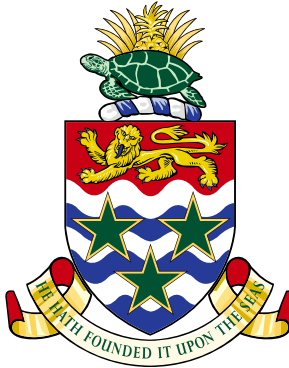


## **CAYMAN ISLANDS**



# **PATENTS LAW**

**(2018 Revision)**

**Supplement No. 6 published with Extraordinary Gazette No. 24 of 23rd March, 2018.**

## PUBLISHING DETAILS

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Law 30 of 2011 consolidated with Laws 30 of 2016 and the Patent Publication Fees Order, 2017

Revised under the authority of the *Law Revision Law (1999 Revision)*.

Originally enacted —

Law 30 of 2011-18th November, 2011

Law 30 of 2016-24th October, 2016

Consolidated and revised this 28th day of February, 2018.



## CAYMAN ISLANDS



## PATENTS LAW

(2018 Revision)

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**CAYMAN ISLANDS****PATENTS LAW****(2018 Revision)****Short title**

1. This Law may be cited as the *Patents Law (2018 Revision)*.

**Interpretation**

2. (1) In this Law —

“**extension**”, with respect to a patent right held in the United Kingdom, means the extension of such right to the Cayman Islands;

“**owner**”, with respect to a patent right, includes a part owner and relates to ownership or proprietorship acquired directly or by assignment or otherwise and currently recognised in the United Kingdom;

“**patent**” means a current and effective grant in the United Kingdom of a monopoly in respect of an invention;

“**public officer**” has the meaning assigned to that expression under section 124 of Schedule 2 to the *Cayman Islands Constitution Order, 2009 [S.I. 2009/1379]*;

“**recording**” means the making of an entry in the register maintained by the Registry;

“**registered agent**” means a person whose name is entered on the register of agents maintained by the Registrar pursuant to section 5(d);

“**Registrar**” means the Registrar of Patents continued under section 4;  
“**Registry**” means the Registry of Patents continued under section 3; “**repealed Law**” means *Patents and Trade Marks Law (2010 Revision)*; and

“**right**” with respect to a patent means a right currently held in the United Kingdom derived from a grant or registration thereof as the case may be according to the law there from time to time governing patents.

- (2) For the purposes of this Law —
- (a) a patent granted under the Convention on the Grant of European Patents designating the United Kingdom, and which under the law of the United Kingdom is treated as if it were a patent granted under such law; or
  - (b) a patent granted under the Community Patent Convention, shall be deemed to be a patent granted in the United Kingdom.

### **Continuation of Registry**

3. The Registry shall continue in being subject to this Law.

### **Continuation of Registrar and staff**

4. The Registry shall be supervised by the Registrar who shall be a public officer and who shall be assisted by such other public officers as may be necessary for the proper functioning of the Registry.

### **Duties of Registrar**

5. The duties of the Registrar include —
- (a) supervision of the Registry and its staff;
  - (b) receipt of applications for recording patent rights under this Law and the acceptance or rejection of such applications;
  - (c) collection of appropriate fees payable upon applications, recordings and searches and accounting therefor to the general revenue of the Islands; and
  - (d) maintenance of a register of persons who may act as registered agents in the Islands and who are recognised as such pursuant to section 6.

### **Requirement for registered agent**

6. (1) Subject to section 19, only a registered agent may transact business with the Registry under this Law.
- (2) Subject to subsection (3), a person legally and ordinarily resident in the Islands desirous of being recognised as a registered agent shall apply in writing to the Registrar and the Registrar shall determine the application in accordance with the regulations made under section 20.
- (3) An application under subsection (2) shall be accompanied by the processing fee specified in the Schedule.



- (4) A registered agent shall pay the registered agent annual fee specified in the Schedule.
- (5) The owner of a patent recorded at the Registry as at the date of commencement of this Law, shall appoint a registered agent upon —
  - (a) the next dealing with the Registry in relation to such patent; or
  - (b) the payment of the next annual fee specified in section 12.
- (6) For the purpose of this section, legal and ordinary residence shall be determined in accordance with the *Immigration Law (2015 Revision)*.

### **Recording of patents Schedule**

7. The owner of a patent right may by the duly authorised registered agent, on payment of the fees specified in the Schedule, apply to the Registrar to have such right extended to the Islands, and the Registrar on being satisfied that such application is in order shall record the extension of such right accordingly.

### **Mode of recording rights**

8. The recording of an extension to the Islands of a right in or to a patent shall be effected by an entry in the records of the Registry showing such particulars as may be prescribed.

### **Effect of recording a patent**

9. The effect of the recording of an extension to the Islands of a right in or to a patent is to afford in the Islands to the owner of the right so recorded all the equivalent rights and remedies available to the owner in respect of such patent in the United Kingdom.

### **Repealed**

10. *Repealed by section 12 of the Patent and Trade Marks (Amendment) Law, 2016 [Law 30 of 2016].*

### **Period of validity and certificate of good standing**

11. (1) The protection and rights in the Islands conferred by section 9 shall date from the time such right arose in the United Kingdom and continue in force so long as the protection and rights remain in force in the United Kingdom except that no action for infringement of such right shall be entertained in the Islands in respect of any use of such protection or right prior to the time of the recording thereof in the Islands.
- (2) Subject to subsection (3), the Registrar may, where a request is made by a registered agent, issue a certificate of good standing to evidence that a patent has been recorded on the register and that all applicable annual fees and penalties have been paid.

- (3) A request under subsection (2) shall be accompanied by the fee specified in the Schedule.

### **Annual fee**

- 12.** (1) The owner of a patent recorded in the Registry shall, by his duly authorised registered agent, in January of each year, after the year of the initial recording, pay to the revenues of the Islands the annual fee specified in the Schedule.
- (2) A default in the payment of the annual fee specified in the Schedule by 31st March causes the rights protected by the recorded entry to be in abeyance as against the person in default from the relevant 1st April until the annual fee and penalty fee specified in the Schedule have been paid.

### **Changes**

- 13.** (1) If the particulars of the grant or registration of a right recorded in the Registry are modified or changed in the United Kingdom or the European Community or there is a change of the registered agent, the owner thereof by the duly authorised registered agent shall notify the Registrar with full particulars and tender the fee specified in the Schedule for recording of a change of particulars and the Registrar shall record particulars of such change in the records of the Registry.
- (2) Notwithstanding subsection (1), a default in notification of a modification or change in the United Kingdom or European Community particulars referred to in subsection (1) within two months shall, until such notification is made, have the effect of causing the rights protected by the recorded entry to be in abeyance as against the person in default in respect of the period of default, such period being deemed to be from the date the change was recorded in the United Kingdom or the European Community until the date of the notification thereof to the Registrar with tender of the fee specified in the Schedule.

### **Renewal of patent Schedule**

- 14.** (1) A patent currently recorded in the Islands may, on the application of the registered agent and payment of the fees specified in the Schedule, be renewed at any time if the rights have been renewed in the United Kingdom, all applicable annual fees and penalties have been paid and any change in the particulars since the initial recording of the extension have been recorded in the Islands.
- (2) If an application for renewal is filed more than two months after the expiry date recorded in the Islands a penalty fee shall be payable as specified in the Schedule.





**Abandonment of patent**

- 15.** (1) The owner of a patent recorded in the Registry shall, by the duly authorised registered agent, notify the Registrar that a patent has been abandoned whereupon the rights protected by the recorded entry shall be held in abeyance and the Registrar shall record the patent as inactive.
- (2) The obligation to pay an annual fee pursuant to section 12 shall be suspended while the patent is inactive.
- (3) A registered agent may apply to re-activate a patent that has been abandoned under subsection (1) upon payment of the reactivation fee specified in the Schedule and the payment of the annual fees specified in the Schedule for the period the patent was suspended.

**Assertion of patent infringement in bad faith**

- 15A.**(1) A person shall not make an assertion of patent infringement in bad faith in respect of an extension recorded under section 9 of this Law.
- (2) The Court shall not recognise or enforce a foreign judgment or give effect to an estoppel based on a foreign judgment insofar as the claim is based on an assertion of patent infringement made in bad faith.
- (3) A person who is aggrieved by acts carried out contrary to subsection (1) may bring an action in the Grand Court or may counterclaim in any action brought to purportedly to enforce rights conferred by a patent or an extension on the grounds that a person has made an assertion of patent infringement in bad faith.
- (4) The Court may award to a plaintiff who is successful in an action or counterclaim under subsection (3) one or more of the following remedies —
- (a) equitable relief; and
  - (b) damages, including aggravated and exemplary damages.

**Cancellation of record**

- 16.** (1) Default in the payment of the annual fees and penalties for more than twelve months renders the record of a patent liable to cancellation by the Registrar.
- (2) The resignation of a registered agent with respect to a patent shall cause the record of such patent to be cancelled unless the owner of such patent appoints a new registered agent within sixty days of the Registrar being notified of the registered agent's resignation.
- (3) The owner of a patent whose record in the Islands has been cancelled under subsection (1) or (2) may reapply for recording again as though it were being recorded for the first time in accordance with section 9.
- (4) No liability shall attach for any act performed or thing done by the Registrar under this section.

### Publication in Gazette

17. All recordings and cancellations of recordings made in the Registry (other than the recording of the expiry or abandonment of a patent or the appointment of a registered agent in respect of any patent) shall be published in the Gazette and such publication shall be *prima facie* evidence of the recordings and cancellations.

### Jurisdiction of Grand Court

18. The Grand Court shall have jurisdiction in all matters affecting the rights and remedies in the Islands of the owner of a right in or to a patent conferred by section 9.

### Searches

19. On payment of the fees specified in the Schedule, any member of the public may cause the Registrar to make search in the Registry for particulars of any recording contained in the Registry and the Registrar shall cause such search to be made and shall supply the applicant with the particulars for which the application has been made.

### Regulations

20. The Cabinet may make regulations prescribing all matters that are required or permitted under this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law and, in particular, regulations —
- (a) prescribing the forms and procedures for the conduct of business with the Registry;
  - (b) respecting assertions of patent infringement which are made in bad faith including —
    - (i) prohibiting such assertions;
    - (ii) the bringing of actions in the Grand Court by persons aggrieved by such assertions; and
    - (iii) the award by the Grand Court of equitable relief and damages to persons aggrieved by such assertions; and
  - (c) respecting applications for recognition as registered agents including —
    - (i) any qualification to being recognised as such; and
    - (ii) the payment of fees by applicants; or
    - (iii) the exemption from applying to be recognised as a registered agent where the applicant is a recognised registered agent for patents or design rights.

### Repeal of Patents and Trade Marks Law 2010 Revision

21. The *Patents and Trade Marks Law (2010 Revision)* is repealed.



**Amendment of Schedule**

**22.** The Cabinet may by Order amend the Schedule.

**Savings, transitional and consequential provisions**

- 23.** (1) Every application for recording of a patent under section 7 or other matter under the repealed Law that has not been wholly dealt with by the Registry when this Law comes into force shall be taken to be an application made under this Law, and this Law shall apply accordingly.
- (2) Except as otherwise expressly provided in this Law every civil matter and proceeding commenced in any court under the repealed Law and pending or in progress immediately before this Law comes into force may be continued, completed and enforced under this Law.
- (3) All proceedings in respect of offences committed against the repealed Law prior to the coming into force of this Law may be commenced or continued as if this Law had not come into force.
- (4) Where any period of time specified in the repealed Law is current at the coming into force of this Law, and there is a corresponding provision in this Law, this Law shall have the effect as if that corresponding provision had been in force when that period began to run.
- (5) *Repealed by section 25(b) of the Patent and Trade Marks (Amendment) Law, 2016 [Law 30 of 2016].*
- (6) *Repealed by section 25(b) of the Patent and Trade Marks (Amendment) Law, 2016 [Law 30 of 2016].*
- (7) *Repealed by section 25(b) of the Patent and Trade Marks (Amendment) Law, 2016 [Law 30 of 2016].*
- (8) *Repealed by section 25(b) of the Patent and Trade Marks (Amendment) Law, 2016 [Law 30 of 2016].*



## SCHEDULE

(Sections 6, 7, 11, 12, 13, 14, 15, 19 and 22)

### FEES

Item	Particulars	Fee
<b>Part 1-Patents</b>		
1.	Application fee for extension of patent rights to the Islands	\$200
2.	Annual fee for patent	\$200
3.	Late payment of patent annual fee (for each year of default)	\$100
4.	Application fee to record a change of particulars of a patent right recorded in the Registry including recording a change of registered agent.	\$150
5.	Application fee to record renewal of a patent right recorded in the Registry	\$200
6.	Penalty for late filing of a renewal	\$100
7.	Reactivation patent fee for an abandoned patent	\$150
8.	Fee for publication of a document required to be published by the Registrar in the Gazette in support of any registration, appeal, proceeding or other matter relating to a patent	\$50
<b>Part 2-General</b>		
1.	Search fee	\$50
2.	Non-refundable processing fee accompanying an application to be recognised by the Registrar as a registered agent	\$75
3.	Registered agent annual fee: number of registered patents as at 31st December	Under 10: \$200 10-99: \$500 100-249: \$1,000 250-499: \$1,500 500+: \$2,000
4.	Issue of a Certificate of Good Standing in relation to a patent.	\$100



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**Kim Bullings**  
*Clerk of the Cabinet*

