Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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DEPARTMENT OF THE PRIME MINISTER

No. 956. 17 May 1978.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 57 of 1978: Patents Act, 1978.

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 956. 17 Mei 1978.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 57 van 1978: Wet op Patente, 1978.

GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with solid line indicate insertions in existing enactments.

ACT

To provide for the registration and granting of letters patent for inventions and for matters connected therewith.

(English text signed by the State President.)
(Assented to 26 April 1978.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

INTRODUCTORY

Division of Act into Chapters.

1. This Act is divided into 16 Chapters which relate to the following matters respectively:—

CHAPTER	I	Administration (sections 5 to 9).
CHAPTER	II	The Register of Patents and the Patent Journal (sections 10 to 14).
CHAPTER	III	Powers and Duties of Registrar and Commissioner (sections 15 to 19).
CHAPTER	IV	Patent Agents and Patent Attorneys (sections 20 to 24).
CHAPTER	V	Applications for Patents (sections 25 to 43).
CHAPTER	VI	Grant, Duration and Effect of Patents (sections 44 to 49).
CHAPTER	VII	Corrections and Amendments (sections 50 to 52).
CHAPTER	VIII	Licences (sections 53 to 58).
CHAPTER	IX	Assignment, Attachment and Hypothecation of Patents and Applications for Patents (sections 59 and 60).
CHAPTER	X	Revocation of Patents (sections 61 to 64).
CHAPTER	XI	Infringement (sections 65 to 71).
CHAPTER	XII	Evidence (sections 72 to 74).
CHAPTER	XIII	Appeals to Commissioner and the Court (sections 75 to 77).
CHAPTER	XIV	Acquisition of Rights to Inventions and Patents by the State (sections 78 to 80).
CHAPTER	XV	Offences and Penalties (sections 81 to 85).
CHAPTER	XVI	Miscellaneous (sections 86 to 96).

Definitions.

2. In this Act, unless the context otherwise indicates—

(i) "agent" means, except in section 56 (2) *(e)*, a patent agent or a patent attorney mentioned in section 20 or an attorney mentioned in section 22; (iii)

(ii) "applicant" includes the legal representative of a deceased applicant or of an applicant who is a person under legal disability; (i)

(iii) "application in a convention country" means—

(a) any application for a patent lodged in a convention country;

(b) any application for a utility model lodged in a convention country; or

(c) any application for an inventor's certificate lodged in a convention country in which applicants have the right to apply, at their option, either for a patent or for an inventor's certificate in respect of the invention in question; (ii)

(iv) "commissioner" means a commissioner of patents designated in terms of section 8; (x)

(v) "convention application" means an application for a patent made in the Republic which claims priority from a relevant application in a convention country; (xi)

(vi) "convention country", in relation to any provision of this Act, means a country, including any colony, protectorate or territory subject to the authority or under the suzerainty of another country, or any territory over which a mandate or trusteeship is exercised, which is a member of a convention for the purpose of such provision and to which the Republic is a party and which the registrar has advertised in the journal, or any country, including any colony, protectorate or territory subject to the authority or under the suzerainty of any other country, or any territory over which a mandate or trusteeship is exercised, which the State President has with a view to the fulfilment of any treaty, arrangement or engagement to which the Republic is a party, by proclamation in the *Gazette* declared to be a convention country for the purpose of such provision; and the expressions "convention aircraft", "convention land vehicle" and "convention vessel" have corresponding meanings; (xii)

(vii) "court", in relation to any matter, means the division of the Supreme Court of South Africa having jurisdiction in respect of that matter; (viii)

(viii) "date of application", in relation to an application for a patent, means the date referred to in section 30 (5); (iv)

(ix) "invention" means an invention for which a patent may be granted under section 25; (xxii)

(x) "journal" means the patent journal to be published in terms of section 14; (ix)

(xi) "law society" means a law society referred to in section 2 of the Law Societies' Act, 1975 (Act No. 41 of 1975), except The Law Society of South West Africa; (xvii)

(xii) "Minister" means the Minister of Economic Affairs; (xiii)

(xiii) "patent" means letters patent for an invention granted in the Republic; (xiv)

(xiv) "patented article" means any article in respect of which a patent has been granted and is for the time being in force; (vi)

(xv) "patentee" means the person whose name is for the time being entered in the register as the name of the grantee or proprietor of a patent; (xv)

(xvi) "patent office" means the patent office established in terms of section 5; (xvi)

(xvii) "prescribed" means prescribed by regulation; (xxiii)

(xviii) "priority date", in relation to any claim of a complete specification accompanying an application for a patent, means the date specified in section 33 as the date from which such claim shall have effect; (xxiv)

(xix) "register" means the register to be kept at the patent office in terms of section 10; (xviii)

(xx) "registrar" means the registrar of patents appointed in terms of section 7; (xix)

(xxi) "regulation" means any regulation made under this Act; (xx)

(xxii) "specification" means a provisional or a complete specification, as the circumstances may require, mentioned in section 32 (1); (xxi)

(xxiii) "the repealed law" means the Patents Act, 1952 (Act No. 37 of 1952); (v)

(xxiv) "this Act" includes the regulations. (vii)

Application of Act.

3. (1) The provisions of this Act shall apply in respect of all patents, whether granted before or after the date of commencement of this Act: Provided that a patent granted on an application made before such commencement shall—

(a) not be revoked except upon any ground on which it could have been revoked in terms of the repealed law;

(b) not be subject to the provisions of section 44 (4) of this Act;

(c) unless it is revoked in terms of paragraph *(a)*, expire on the date on which it would in terms of the repealed law have expired if that law had not been repealed; and

(d) be subject to the provisions of section 39 of the repealed law.

(2) All applications and proceedings commenced under the repealed law shall be dealt with in accordance with the provisions of that law.

State bound by patent.

4. A patent shall in all respects have the like effect against the State as it has against a person: Provided that a Minister of State may use an invention for public purposes on such conditions as may be agreed upon with the patentee, or in default of agreement on such conditions as are determined by the commissioner on application by or on behalf of such Minister and after hearing the patentee.

CHAPTER I

ADMINISTRATION

Establishment of patent office.

5. (1) There shall be established in Pretoria an office to be called the patent office.

(2) The patent office established in terms of section 3 (1) of the repealed law shall be deemed to have been established in terms of this section.

Seal of patent office.

6. There shall be a seal of the patent office and the impression of the seal shall be judicially noticed.

Registrar of patents.

7. (1) The Minister shall, subject to the laws governing the public service, appoint a registrar of patents who shall exercise the powers and perform the duties conferred or imposed upon the registrar by this Act and who shall, subject to the directions of the Minister, have the chief control of the patent office.

(2) The registrar of patents appointed in terms of section 5 (1) *(a)* of the repealed law shall be deemed to have been appointed registrar of patents in terms of this section.

(3) Any power conferred or duty imposed on the registrar by this Act may be exercised or performed by the registrar personally or by an officer in the public service acting under a delegation from or under the control or direction of the registrar.

Designation of commissioner of patents.

8. The Judge President of the Transvaal Provincial Division of the Supreme Court of South Africa shall from time to time designate one or more judges or acting judges of that Division as commissioner or commissioners of patents to exercise the powers and perform the duties conferred or imposed upon the commissioner by this Act.

Agents only to act in matters in terms of this Act.

9. Subject to the provisions of sections 19 (3) and 22—

(a) a party to any matter or proceedings in terms of this Act, other than proceedings in any division of the Supreme Court of South Africa, may be represented therein only

by an agent and, in the case of proceedings in a provincial division or the Appellate Division of the Supreme Court, shall observe the ordinary procedure applicable to such proceedings; and

(b) no complete specification shall be accepted in terms of section 34 and no application for an amendment of a complete specification shall be allowed unless it has been signed by an agent.

CHAPTER II

THE REGISTER OF PATENTS AND THE PATENT JOURNAL

Register of patents.

10. (1) There shall be kept at the patent office a register in which shall be entered—

(a) the names and addresses of applicants for and grantees of patents and of the inventors of the relevant inventions and the classification of such patents according to subject-matter; and

(b) such other particulars as may be prescribed.

(2) Copies of all deeds, agreements, licences and other documents affecting any patent or application for a patent, which are required to be recorded in the register, shall be supplied to the registrar in the prescribed manner for filing in the patent office.

(3) The registrar shall maintain at the patent office such indices in relation to particulars entered in the register in terms of subsection (1) as may be prescribed.

(4) The register kept in terms of section 6 (1) of the repealed law shall be incorporated with and form part of the register to be kept under this section, and all copies of deeds, agreements, licences and other documents supplied to the registrar of patents in terms of section 6 (2) of the repealed law shall be deemed to have been supplied to the registrar in terms of subsection (2) of this section.

Trusts not registrable.

11. No notice of any trust, expressed, implied or constructive, shall be entered in the register or be receivable by the registrar.

Inspection of register.

12. (1) Subject to the provisions of this Act, the register or any document lodged at the patent office shall, on payment of the prescribed fees, be open to inspection by the public during the prescribed hours.

(2) The right of inspection conferred by subsection (1) shall not include the right to make copies of or take extracts from the register or any document referred to in that subsection by mechanical means: Provided that the registrar may, where owing to circumstances beyond his control copies of any document required in terms of section 13 cannot be furnished without undue delay, permit any person to make such copies by mechanical means.

Registrar to furnish information from register on request.

13. The registrar shall, on the request of any person and on payment of the prescribed fee, furnish copies of any documents lodged at the patent office and open to public inspection, or particulars from the register, or furnish a certificate in respect thereof.

Patent Journal.

14. The registrar shall arrange for the periodical publication of a patent journal which shall contain such details of the contents of all complete specifications accepted as may be required to indicate

the nature and purpose of the relevant inventions, and any other matter which the registrar may consider desirable, or which shall be published therein in terms of this Act.

CHAPTER III

POWERS AND DUTIES OF REGISTRAR AND COMMISSIONER

Powers of registrar.

15. (1) The registrar may, for the purposes of this Act—

(a) receive evidence and determine whether and to what extent it shall be given by affidavit or *viva voce* upon oath;

(b) award costs against any party in any proceedings before him; and

(c) tax costs so awarded according to the prescribed tariff:

Provided that such award and taxation shall be subject to review by the commissioner.

(2) The payment of any costs so awarded and taxed and, if reviewed, as so reviewed, may be enforced in the same manner as if they were costs awarded by a judge of the Transvaal Provincial Division of the Supreme Court of South Africa in civil proceedings.

Exercise of discretionary power by registrar and commissioner.

16. (1) Whenever any discretionary power is conferred by this Act upon the registrar or the commissioner, he shall not exercise that power adversely to an applicant or an objector or other person who according to the register appears to be an interested party, without (if so required by the applicant or objector or other interested party within a time fixed by the registrar or the commissioner, as the case may be) giving that applicant or objector or interested party an opportunity of being heard.

(2) Whenever by this Act any time is specified within which any act or thing is to be done, the registrar or the commissioner, as the case may be, may, save where it is otherwise expressly provided, extend the time either before or after its expiry.

General powers of commissioner.

17. (1) Generally the commissioner shall in connection with any proceedings before him have all such powers and jurisdiction as a single judge has in a civil action before a provincial division of the Supreme Court of South Africa having jurisdiction at the place where the proceedings before the commissioner are held, including the appellate power referred to in section 75.

(2) *(a)* The commissioner may also order that any party to proceedings before him shall furnish security to the satisfaction of the commissioner in respect of any costs which may be awarded against such party in those proceedings, and may refuse, until such security has been furnished, to permit such proceedings to be continued.

(b) The commissioner may have regard to the prospects of success or the *bona fides* of any such party in considering whether such security should be furnished.

(3) Any costs awarded by the commissioner shall be taxed by the registrar according to the prescribed tariff and any such taxation shall be subject to review by the commissioner, and payment of such costs as so taxed or, if reviewed, as so reviewed, may be enforced in the same manner as if they were costs allowed by the Transvaal Provincial Division of the Supreme Court of South Africa in civil proceedings.

Proceedings before commissioner.

18. (1) Save as is otherwise provided in this Act, no tribunal other than the commissioner shall have jurisdiction in the first instance to hear and decide any proceedings, other than criminal proceedings, relating to any matter under this Act.

(2) Any proceedings which in terms of this Act are to be heard and decided by the commissioner shall be heard and decided by him at such place in Pretoria as may be designated by the registrar: Provided that if it be made to appear to him that the proceedings may be more conveniently or fitly heard and decided in another place, the commissioner may hear and decide the proceedings in such other place.

(3) If, during the hearing of any proceedings before the commissioner, any person wilfully interrupts the proceedings or wilfully insults the commissioner or any person attending at such hearing, or otherwise misbehaves himself at the hearing, the commissioner may make an order committing that person to imprisonment for a period not exceeding one month or order that person to pay a fine not exceeding R100 or in default of payment thereof to be imprisoned for a period not exceeding one month.

Procedure in connection with proceedings before commissioner to be in accordance with Supreme Court procedure.

19. (1) Save as is otherwise provided in this Act, the procedure in connection with any proceedings before the commissioner shall, as far as practicable, be in accordance with the law governing procedure in civil cases in the Transvaal Provincial Division of the Supreme Court of South Africa, and in default thereof and where no relevant provision is made in this Act, the commissioner shall act in such manner and on such principles as he may deem best fitted to do substantial justice and to give effect to and carry out the objects and provisions of this Act.

(2) Subject to the provisions of section 17 (3), any decision or order of the commissioner, including any order as to costs, shall have the same effect and shall for all purposes be deemed to be a decision or order of the Transvaal Provincial Division of the Supreme Court.

(3) A party to any proceedings before the commissioner may appear in person or be represented thereat by an advocate or an agent.

CHAPTER IV

PATENT AGENTS AND PATENT ATTORNEYS

Qualifications and registration of patent agents and patent attorneys.

20. (1) At any time within five years of the date of commencement of this Act, any person residing in the Republic may on passing the prescribed examination and on paying to the registrar the prescribed fee, be registered by him as a patent agent.

(2) Any person registered or deemed to be registered as a patent agent under the repealed law at the commencement of this Act, shall be deemed to have been registered as a patent agent under this Act, and any person entitled at the commencement of this Act to be so registered, shall be entitled to be so registered under this Act.

(3) Any person entitled to practise as an attorney in the Republic may, on passing the prescribed examination and on paying the prescribed fee to the registrar, be registered by him as a patent attorney.

(4) Any person registered or deemed to be registered as a patent agent under this Act and entitled to practise as an attorney may, on application and without the payment of any fee, be registered by the registrar as a patent attorney.

Patent Examination Board.

21. (1) There is hereby established a board to be called the Patent Examination Board.

(2) The board shall consist of—

(a) the registrar of patents or his nominee, as the Minister may determine, who shall be chairman;

(b) at least one person nominated by the law societies and appointed by the Minister;

(c) at least one full-time lecturer in law at a university, who shall be appointed by the Minister;

(d) at least two persons nominated by the South African Institute of Patent Agents and appointed by the Minister; and

(e) such other persons as the Minister may appoint.

(3) *(a)* The board may—

(i) prescribe the syllabuses of instruction for the prescribed examination mentioned in section 20;

(ii) prescribe the minimum qualifications required from candidates for admission to such prescribed examination;

(iii) prescribe the period of academic and practical instruction that any such candidate shall undergo;

(iv) grant exemptions to such candidates in respect of all or any of the prescribed courses of instruction by virtue of examinations passed in connection with such courses and set by any body recognized by the board;

(v) grant recognition as the prescribed examination mentioned in section 20, to any examination conducted by a university;

(vi) in co-operation with any body or person, arrange for the training, instruction or testing of candidates mentioned in subparagraph (ii);

(vii) make disciplinary rules regarding the behaviour, training and instruction of such candidates, and provide for the enforcement thereof;

(viii) appoint such examiners and moderators as it may consider necessary; and

(ix) do anything else that in its opinion is necessary or convenient for giving effect to the provisions of this section,

and the board shall—

(aa) conduct the prescribed examination mentioned in section 20; and

(bb) issue certificates to persons who have passed that prescribed examination.

(b) Any matter prescribed by the board under paragraph *(a)* shall be published by it in the journal.

(4) The Minister may with the concurrence of the Minister of Finance determine—

(a) the fees payable by candidates for the examination mentioned in section 20;

(b) the fees payable to examiners and moderators; and

(c) the remuneration and allowances payable to members of the board.

Privileges of attorneys.

22. (1) Any person entitled to practise as an attorney shall, during a period of five years as from the date of commencement of this Act or such further period not exceeding five years as the registrar, on application made to him in the prescribed manner within the first-mentioned period of five years, after consultation with the law society of which such person is a member and the South African Institute of Patent Agents may, in his discretion, allow, have such rights of representing a party to any matter or proceedings under this Act, as such a person had under the repealed law of representing a party to any corresponding matter or proceedings under the repealed law.

(2) After the expiry of the said period, any such person shall have no such right, unless he is registered as a patent agent or patent attorney under section 20 of this Act.

Removal of name of patent agent or patent attorney from register and suspension from practising as a patent attorney or patent agent.

23. (1) *(a)* The name of any person registered or deemed to be registered as a patent agent or patent attorney under section 20 may, after notice as prescribed to the South African Institute of Patent Agents and the law society concerned, if any, which shall be entitled to be heard, be removed, at his own request, by the registrar from the register of patent agents or patent attorneys.

(b) The name of any person registered or deemed to be registered as a patent agent or patent attorney under section 20 may, on the application of—

(i) the registrar, after notice as prescribed to the South African Institute of Patent Agents and the law society concerned, if any, which shall be entitled to be heard; or

(ii) the South African Institute of Patent Agents, after notice as prescribed to the law society concerned, if any, which shall be entitled to be heard,

be removed by the court from the register of patent agents or patent attorneys by reason of such conduct as the court may consider sufficient to justify such removal.

(2) The name of a person registered as a patent attorney under section 20 shall be removed from the register of patent attorneys by the registrar if and as long as his name is removed from the roll of attorneys.

(3) A person registered as a patent attorney under section 20 shall be deemed to be suspended from practising as patent attorney if and as long as he is suspended from practising as an attorney.

(4) The court may on the application of—

(a) the registrar, after notice as prescribed to the South African Institute of Patent Agents and the law society concerned, if any, which shall be entitled to be heard; or

(b) the South African Institute of Patent Agents, after notice as prescribed to the law society concerned, if any, which shall be entitled to be heard,

suspend for a specified period any person registered or deemed to be registered as a patent agent or patent attorney under section 20, from practising as a patent agent or patent attorney, if the court is satisfied that such person is not a fit and proper person to continue to practise as a patent agent or patent attorney, as the case may be.

(5) If in any proceedings in terms of subsection (1) *(b)* or (4) the court is satisfied that the relevant conduct of the patent agent or patent attorney concerned does not justify the removal of his name from the register of patent agents or patent attorneys or his suspension from practice, the court may reprimand him or order him to pay a fine not exceeding R1 000.

(6) Subject to the provisions of subsection (2), on application to the court for the restoration to the register of patent agents or patent attorneys of any name which has been removed therefrom, and after notice as prescribed to the registrar, the South African Institute of Patent Agents and the law society, concerned, if any, who and which shall be entitled to be heard, such name may be restored to such register on such conditions as the court may determine.

(7) The registrar of the court which issues any order under this section, shall transmit a copy of that order to the registrar, who shall publish it in the journal.

(8) The registrar, in making any application in terms of this section, shall at least one month prior to the date of such application submit to the South African Institute of Patent Agents and to the law society concerned, if any, a copy of such application together with copies of all documents referred to therein or connected therewith, and the South African Institute of Patent Agents in making such application shall likewise submit to the law society concerned, if any, such copy and copies.

Persons entitled to practise as patent agents and patent attorneys.

24. (1) Subject to the provisions of section 22, no person shall—

(a) practise as a patent agent or a patent attorney unless he is registered as such under section 20; or

(b) in any manner hold himself out as a patent agent or patent attorney or use any words or any name, title or description indicating, or calculated to lead persons to

infer, that he is a patent agent or patent attorney or is recognized as such by law, unless—

(i) he is registered as a patent agent or patent attorney under section 20; or

(ii) he practises as an attorney in partnership with a person who is registered as a patent attorney under section 20.

(2) Nothing in this Act contained shall be construed as preventing any practising attorney from instructing and corresponding with an agent, for and on behalf of any other person, in regard to any matter or proceedings under this Act, provided such attorney acts merely as an intermediary between such person and such agent and otherwise does nothing which only an agent may do under this Act.

(3) Notwithstanding anything to the contrary contained in this Act, a patent agent mentioned in section 20 and in the employment of a person who is not an agent, may represent that person or any person designated by that person in any matter or proceedings under this Act.

(4) Any person whose name has been removed from the register of patent agents or patent attorneys or who has been suspended from practising as a patent agent or patent attorney, shall not while his name is so removed or while he is so suspended, practise as a patent agent or patent attorney by himself or in partnership or association with any other person, and shall not, except with the written consent of the registrar after notice to the South African Institute of Patent Agents as prescribed, be employed in any capacity connected with the profession of a patent agent or patent attorney.

(5) Except with the written consent of the registrar, after notice to the South African Institute of Patent Agents as prescribed, no agent shall knowingly employ in any capacity whatsoever any person whose name has been removed from the register of patent agents or patent attorneys or who has been suspended from practising as a patent agent or patent attorney, while such person's name is so removed or such person is so suspended.

(6) Any person who contravenes any provision of this section shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months.

(7) Nothing in this section shall derogate from the power of the registrar or the South African Institute of Patent Agents to apply to the commissioner for an interdict against any person contravening any provision of this section.

(8) Any person who practises as a patent attorney shall be deemed, for the purposes of any law relating to attorneys, to be practising as an attorney.

CHAPTER V

APPLICATIONS FOR PATENTS

Patentable inventions.

25. (1) A patent may, subject to the provisions of this section, be granted for any new invention which involves an inventive step and which is capable of being used or applied in trade or industry or agriculture.

(2) Anything which consists of—

(a) a discovery;

(b) a scientific theory;

(c) a mathematical method;

(d) a literary, dramatic, musical or artistic work or any other aesthetic creation;

(e) a scheme, rule or method for performing a mental act, playing a game or doing business;

(f) a program for a computer; or

(g) the presentation of information,

shall not be an invention for the purposes of this Act.

(3) The provisions of subsection (2) shall prevent, only to the extent to which a patent or an application for a patent relates to that thing as such, anything from being treated as an invention for the purposes of this Act.

(4) A patent shall not be granted—

(a) for an invention the publication or exploitation of which would be generally expected to encourage offensive or immoral behaviour; or

(b) for any variety of animal or plant or any essentially biological process for the production of animals or plants, not being a micro-biological process or the product of such a process.

(5) An invention shall be deemed to be new if it does not form part of the state of the art immediately before the priority date of any claim to that invention.

(6) The state of the art shall comprise all matter (whether a product, a process, information about either, or anything else) which has been made available to the public (whether in the Republic or elsewhere) by written or oral description, by use or in any other way.

(7) The state of the art shall also comprise matter contained in an application, open to public inspection, for a patent, notwithstanding that that application became open to public inspection on or after the priority date of any claim to that invention, if—

(a) that matter was contained in that application both as lodged and as open to public inspection; and

(b) the priority date of that matter is earlier than that of the relevant claim.

(8) An invention used secretly and on a commercial scale within the Republic shall also be deemed to form part of the state of the art for the purposes of subsection (5).

(9) In the case of an invention consisting of a substance or composition for use in a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body, the fact that the substance or composition forms part of the state of the art immediately before the priority date of any claim to the invention shall not prevent a patent being granted for the invention if the use of the substance or composition in any such method does not form part of the state of the art at that date.

(10) Subject to the provisions of section 39 (6), an invention shall be deemed to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms, immediately before the priority date of any claim to the invention, part of the state of the art by virtue only of subsection (6) (and disregarding subsections (7) and (8)).

(11) An invention of a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body shall be deemed not to be capable of being used or applied in trade or industry or agriculture.

(12) Subsection (11) shall not prevent a product consisting of a substance or composition being deemed to be capable of being used or applied in trade or industry or agriculture merely because it is invented for use in any such method.

Prior knowledge or publication of invention excused in certain circumstances.

26. A patent shall not be invalid by reason only of the fact that the invention in respect of which the patent was granted or any part thereof was disclosed, used or known prior to the priority date of a claim to the invention—

(a) if the patentee or his predecessor in title proves that such knowledge was acquired or such disclosure or use was made without his knowledge or consent, and that the

knowledge acquired or the matter disclosed or used was derived or obtained from him, and, if he learnt of the disclosure, use or knowledge before the priority date of the claim in question, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the disclosure, use or knowledge; or

(b) as a result of the invention being worked in the Republic by way of reasonable technical trial or experiment by the applicant or patentee or the predecessor in title of the applicant or patentee.

Who may apply for a patent.

27. (1) An application for a patent in respect of an invention may be made by the inventor or by any other person acquiring from him the right to apply or by both such inventor and such other person.

(2) In the absence of an agreement to the contrary, joint inventors may apply for a patent in equal undivided shares.

Disputes as to rights in or to inventions or patents.

28. (1) Where a dispute arises between persons as to their rights to obtain a patent for or to make, use, exercise or dispose of an invention, or as to the right to or title in a patent, any such party may apply to the commissioner to decide the matter in dispute, and the commissioner shall decide the matter in dispute.

(2) If the commissioner is satisfied that a person, not being obliged thereto, is unable or unwilling to exercise his right to participate in an application for a patent, the commissioner may order that person to execute an assignment, in order that the application may be made without such participation: Provided that where it appears to the commissioner to be just and equitable, he may order the payment of compensation to the non-participating person.

(3) In any order declaring that a person has a right to the exclusion of any other person to apply for a patent, the commissioner may direct that such other person execute any deed of assignment that may be required and that such deed of assignment extend to countries outside the Republic.

Joint ownership of applications.

29. (1) Subject to the provisions of subsection (2), joint applicants for a patent shall in default of an agreement to the contrary have equal undivided shares in the application and none of them may without the consent of the other joint applicant or applicants deal in any way with the application: Provided that if any proceedings are required to save the application from becoming abandoned, any applicant may institute such proceedings on behalf of himself and any other joint applicant.

(2) *(a)* If any dispute arises between joint applicants as to their respective rights in and to an application for a patent or as to the manner in which the application is to be proceeded with or the manner in which they shall deal with the application or exploit the invention, any such joint applicant may apply to the commissioner to decide the matter in dispute.

(b) Unless the commissioner otherwise directs, such applicant shall be liable for all costs and expenses incurred in respect of proceedings in terms of paragraph *(a)*.

(3) If the commissioner is satisfied that a joint applicant, not being obliged thereto, is unable or unwilling to proceed as joint applicant, the commissioner may order that he assign his rights to any joint applicant able and willing so to proceed: Provided that where it appears to the commissioner to be just and equitable, he may order the payment of compensation to the assignor.

(4) In any proceedings in terms of subsection (2) *(a)* the commissioner shall, unless it appears to him that there are good reasons to the contrary, resolve the dispute in a manner which will lead to the preservation of the application and the grant of a patent.

Form of application for a patent.

30. (1) An application for a patent shall be made in the prescribed manner and on payment of the prescribed fee and shall be accompanied by a provisional specification or by a complete specification.

(2) Every such application shall contain an address for service in the Republic to which all notices and communications may be sent, and every applicant for a patent shall, before the acceptance of his application, lodge with the registrar a declaration in the prescribed form.

(3) An address for service furnished in terms of section 9 (2) of the repealed law, shall be deemed to have been furnished in terms of subsection (2) of this section.

(4) Any person other than the inventor making or joining in an application for a patent shall in the prescribed manner furnish such proof of his title or authority to apply for a patent as may be prescribed.

(5) An application shall, save as is otherwise provided in this Act, date from the day when it is lodged at the patent office.

(6) *(a)* An application shall not be denied a lodging date on formal grounds only in that it does not comply with the requirements of subsection (1), provided it is accompanied by—

(i) the prescribed fee;

(ii) the prescribed application form signed either by the applicant or his agent;

(iii) one copy of the specification in one of the official languages of the Republic or in an official language of any convention country; and

(iv) one copy of the drawings, if any, notwithstanding that they are not in the prescribed form.

(b) The provisions of paragraph *(a)* (iii) and (iv) shall be deemed to have been complied with, in the case of a convention application, by the inclusion in the prescribed form of the number, date and title of such application, if the specification and drawings, if any, are lodged within 14 days of the date on which the application was lodged.

(c) Any specification not in an official language of the Republic shall be replaced within three months of the date of lodging by a translation in one of such official languages, certified to the satisfaction of the registrar.

(7) An application may be amended within two months from the date on which it has been lodged, in order to claim priority.

Claiming priority.

31. (1) An application accompanied by a complete specification may claim priority from—

(a) the date of the lodging of a prior application relating to the same subject-matter, accompanied by a provisional specification;

(b) the date of the lodging of a prior application relating to the same subject-matter, accompanied by a complete specification and claiming no priority; or

(c) the date of an application in a convention country relating to the same subject-matter,

provided—

(i) in the case of an application claiming priority in terms of paragraph *(a)* the prior application was lodged not earlier than one year before or, on payment of the prescribed fee, not earlier than 15 months before, the date of the application claiming priority;

(ii) in the case of an application claiming priority in terms of paragraph *(b)* the prior application was lodged not earlier than one year before the date of the application claiming priority;

(iii) in the case of an application claiming priority in terms of paragraph *(c)* the application in the convention country was lodged not earlier than one year before the convention application and was the first application in any convention country in respect of the relevant invention; and

(iv) the applicant in the application claiming priority is the proprietor of the prior application referred to in paragraph *(a)* or *(b)* and, where priority is claimed in terms of paragraph *(c)* the person claiming that priority is also the applicant in the convention country or the right to claim priority in the Republic has become vested in him.

(2) Where, after the lodging of the first application in a convention country in respect of any invention, a subsequent application is lodged in that country in respect of the same invention, such subsequent application shall be deemed to be the first application in that country in respect of that invention if, at the time of the lodging thereof—

(a) the previous application had been withdrawn, abandoned or refused without having been open to public inspection;

(b) no priority rights have been claimed on the strength of such previous application; and

(c) no rights are outstanding in the convention country in question in connection with such previous application.

(3) An application which has been withdrawn, abandoned or refused shall not after the lodging of a subsequent application relating to the same subject-matter, be capable of supporting a claim for priority rights under this section unless any rights are outstanding in the Republic or in any convention country in connection with the first-mentioned application.

(4) Where a person has applied for protection for any invention by an application which—

(a) in accordance with the terms of a treaty subsisting between any two or more convention countries, is an application duly made in any one of those convention countries; or

(b) in accordance with the law of any convention country is equivalent to an application made in that convention country,

he shall for the purposes of this section be deemed to have applied in a convention country.

(5) If no priority is claimed from an application accompanied by a provisional application within the period specified in subparagraph (i) of subsection (1), the application shall lapse.

Contents of specification.

32. (1) Every specification shall indicate whether it is a provisional or a complete specification, and shall commence with a title sufficiently indicating the subject-matter of the relevant invention.

(2) A provisional specification shall fairly describe the invention.

(3) A complete specification shall—

(a) have an abstract as prescribed;

(b) fully describe, ascertain and, where necessary, illustrate or exemplify the invention and the manner in which it is to be performed;

(c) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the patent office; and

(d) end with a claim or claims defining the invention for which protection is claimed.

(4) The claim or claims of a complete specification shall relate to a single invention, shall be clear, and shall be fairly based on the matter disclosed in the specification.

(5) Drawings and illustrations, if any, shall be as prescribed.

(6) If a complete specfication claims as an invention a microbiological process or a product thereof, samples of any micro-organism in question which is not available to the public shall before the acceptance of the application be dealt with in the prescribed manner.

Priority dates.

33. (1) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim and a patent shall not be invalidated, by virtue of the provisions of section 61 (1) *(c)*, by events which have taken place on or after that priority date.

(2) Where a claim in an application claiming priority from a single application, whether it be another application or an application in a convention country, is fairly based on the matter disclosed in the specification of that other application or on the matter disclosed in the application in a convention country, the priority date of that claim shall be the date of that other application or the application in the convention country.

(3) Where a claim in an application claiming priority from two or more applications, or applications in convention countries, or both, is fairly based on the matter disclosed in one of the specifications of those applications or fairly based on the matter of one of the applications in a convention country, the priority date of that claim shall be the date of that other application or that application in a convention country.

(4) Where a claim in an application ante-dated in terms of section 37, is fairly based on the matter disclosed in the application first mentioned in that section, the priority date of that claim shall be the date to which the application has been ante-dated.

(5) In any case where a claim is not fairly based on any other application or any application in a convention country or where an application claims no priority, the date of the claim shall be the date on which the application was lodged at the patent office.

(6) Any claim may have one or more priority dates.

(7) Until the contrary is proved, every claim in a complete specification shall have the earliest priority date claimed in the relevant application.

(8) In any proceedings relating to the validity of a patent the priority date referred to in subsection (7) may be placed in issue.

(9) In determining whether a claim is fairly based on the matter of the specification of another application or on the matter disclosed in an application in a convention country, regard shall be had to the disclosures contained in the whole of the documents put forward at the same time as and in support of that other application or the application in a convention country.

Examinations of applications and specifications.

34. The registrar shall examine in the prescribed manner every application for a patent and every complete specification accompanying such application or lodged at the patent office in pursuance of such application and if it complies with the requirements of this Act, he shall accept it.

Procedure if result of examination of application is adverse to applicant.

35. (1) If the result of an examination in connection with an application for a patent, or in connection with the specification which accompanied that application, is adverse to the applicant, the registrar may refuse to accept the application or require the application or the specification which accompanied it to be amended in such manner as may be necessary.

(2) If in the case of a convention application the prescribed documents do not accompany the application or are not furnished within the prescribed period, the registrar may deal with the application as an ordinary application.

Power to refuse applications in particular cases.

36. (1) If in the case of any application it appears to the registrar—

(a) that the application is frivolous on the ground that it claims as an invention anything obviously contrary to well established natural laws; or

(b) that the use of the invention to which the application relates would be generally expected to encourage offensive or immoral behaviour,

he shall refuse the application.

(2) If it appears to the registrar that any invention in respect of which an application for a patent is made might be used in any manner contrary to law, he may refuse the application unless the specification is amended by the addition of such disclaimer in respect of that invention, or such other reference to the illegality thereof, as the registrar may think fit.

Procedure in case of amendment of application or lodging of fresh application.

37. Where at any time after an application has been lodged at the patent office and before it is accepted, a fresh application is made in the prescribed manner by the same applicant in respect of part of the matter disclosed in the first-mentioned application, the registrar may, on application made to him in the prescribed manner before that application is accepted, direct that such fresh application be ante-dated to a date not earlier than the date on which the first-mentioned application was so lodged.

Circumstances in which complete specifications may be changed to provisional specifications, and post-dating of applications.

38. (1) Where an application for a patent (not being an application mentioned in section 31 (1) *(c)*) is accompanied by a specification purporting to be a complete specification, the registrar may, if the applicant so requests in the prescribed manner at any time before the acceptance of the specification but not later than 12 months from the date on which the application was lodged at the patent office, direct that it be treated for the purposes of this Act as a provisional specification and deal with the application accordingly.

(2) At any time after an application has been lodged at the patent office, and before acceptance of the complete specification, the registrar may, at the request of the applicant, made in the prescribed manner, direct that the application be post-dated to such date as may be specified in the request: Provided that—

(a) no application shall be post-dated under this subsection to a date later than six months from the date on which it was actually so lodged or would, but for this subsection, be deemed to have been so lodged;

(b) an application claiming priority shall not be post-dated under this subsection to a date later than the last date on which, under the provisions of this Act, the application could have been lodged; and

(c) no application shall be post-dated if priority has been claimed on the basis of that application by the applicant or his successors or predecessors in title in the Republic or elsewhere in a subsequent application for a patent which leaves any rights outstanding.

Manner of obtaining and effect of patent of addition.

39. (1) Where a patent for an invention (hereinafter referred to as the main invention) has been applied for or granted, and the applicant or the patentee applies in the prescribed manner for a further patent in respect of any addition to, improvement in or modification of the invention described or claimed in the complete specification of the main invention, he may be granted a patent of addition.

(2) The period for which such patent of addition shall be granted, shall be so much of the period of the patent for the main invention as is unexpired, and no fees shall be payable for the renewal of such patent of addition.

(3) Where an invention consisting of an addition to or improvement in or modification of a main invention is the subject of an independent patent, and the patentee in respect of the independent patent, being also the patentee in respect of the main invention, so requests, the registrar may revoke the independent patent and grant a patent of addition in respect of the addition, improvement or modification, having the same date of application as the independent patent so revoked, and having effect from the date as from which that patent had effect.

(4) Where the patent for the main invention is surrendered, revoked, refused or abandoned, the patent of addition shall, unless the commissioner or the registrar otherwise directs, become an independent patent and the fees payable in respect of such independent patent and the times for the payment thereof shall be determined according to the date on which the patent of addition in respect of the invention which is the subject of such independent patent was granted, but the normal term of such independent patent shall not extend beyond the date on which the patent for the main invention would have expired if it had not been surrendered, revoked, refused or abandoned.

(5) An application for a patent of addition shall not be accepted before the acceptance of the application for the patent for the main invention: Provided that where no patent is granted for the main invention, the application for a patent of addition may be dealt with as an ordinary application for a patent.

(6) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for such a patent, and shall not be refused, nor shall any such patent be liable to be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to the main invention.

(7) A patent for a main invention and its patent of addition shall not be capable of assignment apart from one another.

Lapsing of applications.

40. If a complete specification is not accepted within 18 months from the date of an application, the application shall lapse unless—

(a) an appeal has been lodged in respect of the application;

(b) the time within which such appeal may be lodged has not expired; or

(c) the delay in accepting the specification was not due to any act or omission on the part of the applicant:

Provided that where an application is made for an extension of time for the acceptance of a complete specification, the registrar shall, on payment of the prescribed fee, grant an extension of time to the extent applied for, but not exceeding three months: Provided further that the registrar may, on good cause shown and on payment of the prescribed fee, grant a further extension of time.

Disposal of specifications in lapsed applications.

41. Where no priority has been claimed under section 31 (1) *(a)* from an application accompanied by a provisional specification and the application has lapsed, or an application and every application claiming priority from it has lapsed or has been abandoned or has been finally refused, the registrar shall at the request of the applicant made in the prescribed manner return to him any specification lodged in connection with the application: Provided that no document containing proof of payment shall be returned to the applicant.

Notice and publication of acceptance of complete specification.

42. (1) When a complete specification has been accepted, the registrar shall give written notice of that fact to the applicant.

(2) Such notice shall contain—

(a) the date of acceptance of the specification; and

(b) a statement that on publication by the applicant in the journal of the acceptance of the specification, the patent concerned shall be deemed to have been sealed and granted as from the date of such publication.

(3) Unless the acceptance is so published in the journal within the prescribed period or within such further period as the registrar may, on application to him and on good cause shown and on payment of the prescribed fee, allow, the application shall lapse.

Inspection by public.

43. (1) After the publication contemplated in section 42, or after being open for public inspection in terms of subsection (3) of this section, the patent and the application and all documents lodged in support thereof shall on payment of the prescribed fee be open to public inspection in the patent office.

(2) When an application which claims a priority date in terms of section 31 (1) is so open to public inspection, any other application from which it claims a priority date and any documents lodged in support of such an application shall simultaneously be open likewise to public inspection.

(3) If an application referred to in subsection (2) is not accepted within 18 months from the earliest priority date thereof in a convention country, it shall be open to public inspection as provided in subsection (1).

CHAPTER VI

GRANT, DURATION AND EFFECT OF PATENTS

Granting and sealing of patent.

44. (1) As soon as practicable after the publication contemplated in section 42, a patent in the form prescribed shall be granted to the applicant, and the registrar shall cause the patent to be sealed with the seal of the patent office, and such sealing shall be deemed to have been effected on the date of that publication.

(2) The date on which that sealing is so deemed to have been effected shall for the purposes of this Act be the date of the sealing of the patent.

(3) The patent shall have effect from the date of the publication mentioned in subsection (1).

(4) No proceedings for the infringement of a patent shall be instituted within a period of nine months from the date of the sealing thereof: Provided that the commissioner may, on good cause shown, grant leave to institute such proceedings at any time after the date of the sealing of the patent.

Effect of patent.

45. (1) The effect of a patent shall be to grant to the patentee in the Republic, subject to the provisions of this Act, for the duration of the patent, the right to exclude other persons from making, using, exercising or disposing of the invention, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention.

(2) The sale of a patented article by or on behalf of a patentee or his licensee shall, subject to other patent rights, give the purchaser the right to use and dispose of that article.

Duration of patent.

46. (1) The duration of a patent shall be 20 years from the date of application therefor, subject to payment of the prescribed renewal fees.

(2) A patent shall lapse at the end of the period prescribed for the payment of any prescribed renewal fee, if it is not paid within that period: Provided that the registrar may upon application and subject to the payment of such additional fee as may be prescribed, extend the period for payment of any such fee for a period not exceeding six months.

Restoration of lapsed patent.

47. (1) Where a patent has lapsed owing to the failure of the patentee to pay any prescribed renewal fee within the prescribed period or the extended period referred to in section 46 (2), the patentee may in the prescribed manner and on payment of the

prescribed fee, apply to the registrar for the restoration of the patent.

(2) If the registrar is satisfied that the omission was unintentional and that no undue delay has occurred in the making of the application, he shall advertise the application in the prescribed manner, and thereupon any person (hereinafter in this section referred to as the objector) may within such period as may be prescribed, give notice in the prescribed manner of opposition to the restoration of the patent.

(3) If there is no opposition to such restoration, the registrar may, subject to the provisions of subsection (5), issue an order restoring the patent, or dismiss the application.

(4) Where notice of opposition is given, the commissioner shall, after hearing the applicant and the objector, decide the matter and issue an order either restoring the patent or dismissing the application.

(5) Any order restoring the patent shall be subject to the payment of such prescribed fees as remain unpaid on the date of the order.

Rights of patentee of restored patent.

48. (1) A patentee of a patent restored in terms of section 47 shall not by virtue of the provisions of this Act institute any proceedings against or recover damages from any person who—

(a) infringed the patent after the lapse of a period of six months from the date on which the renewal fee was due and before the date on which the application for the restoration of the patent was advertised;

(b) used or disposed of any article made in the period referred to in paragraph *(a)*; or

(c) (i) during the period set out in paragraph *(a)* commenced using or exercising the invention to which the patent relates and who thereafter continues to use or exercise the invention; or

(ii) uses or disposes of any articles or products produced by the continued use or exercise referred to in subparagraph (i):

Provided that the exemption conferred by this subsection shall be limited to the particular person mentioned in paragraph *(c)* (i) or (ii), his executor, administrator, successor or assignee or acquirer, as the case may be.

(2) Where a patent has been restored under section 47, any person who, during the period referred to in subsection (1) *(a)* has expended any money, time or labour with a view to making, using, exercising or disposing of the invention, may apply in the prescribed manner to the commissioner for compensation in respect of the money, time and labour so expended.

(3) The commissioner may, after hearing the parties concerned, assess the amount of such compensation if in his opinion the application ought to be granted and determine the time within which such compensation shall be paid.

(4) Any amount assessed under subsection (3) shall not be recoverable as a debt or damages but, if it is not paid within the time determined by the commissioner, the patent shall lapse.

Joint ownership in patents.

49. (1) Where a patent is granted to two or more persons jointly, each of the joint patentees shall, in the absence of an agreement to the contrary, be entitled to an equal undivided share in the patent.

(2) Subject to the provisions of subsection (4), a joint patentee shall, in the absence of an agreement to the contrary and in the absence of consent of the joint patentee or patentees, not be entitled—

(a) to make, use, exercise or dispose of the patented invention;

(b) to grant a licence or to assign the whole or any part of his interest in the patent; or

(c) to take any steps or institute any proceedings relating to the patent:

Provided that he may pay any renewal fee that is payable without recourse to any other patentee, unless the commissioner directs otherwise in proceedings in terms of subsection (6).

(3) Where a patented article is disposed of by a joint patentee, the acquirer or any person claiming through him shall be entitled to deal with it in the same manner as if the article had been disposed of by the patentees jointly.

(4) Any joint patentee may institute proceedings for infringement and shall give notice thereof to every other joint patentee, and any such other patentee may intervene as co-plaintiff and recover any damages in respect of any damage he may have suffered as a result of the infringement.

(5) If in any proceedings under subsection (4) damages are awarded to a plaintiff, he shall be awarded damages as if he were the sole patentee, and the defendant shall not be obliged to compensate any other joint patentee in respect of the infringement in question.

(6) Where any dispute arises between joint patentees as to their respective rights in or to a patent, the institution of proceedings relating to the patent or the manner in which they should deal with the patent, any joint patentee may apply to the commissioner to decide the matter in dispute.

(7) If in considering any application under subsection (6) the commissioner is satisfied that a joint patentee, not being obliged thereto, is unable or unwilling to remain a patentee, the commissioner may order him to assign his rights to any other joint patentee able and willing so to remain: Provided that where it appears to the commissioner to be just and equitable, he may order the payment of compensation to such joint patentee who is so ordered to assign his rights.

(8) In considering any application under subsection (6) the commissioner shall, unless it appears to him that there are good reasons to the contrary, resolve the dispute in a manner which will lead to the preservation and exploitation of the patent.

CHAPTER VII

CORRECTIONS AND AMENDMENTS

Correction of clerical errors and amendment of documents.

50. (1) The registrar or the commissioner may authorize—

(a) the correction of any clerical error or error in translation in any patent, application for a patent or document lodged in pursuance of such an application, or in the register;

(b) the amendment otherwise of any document for the amending of which no express provision is made in this Act.

(2) A correction may be made in pursuance of this section, either upon a request in writing accompanied by the prescribed fee or without such a request.

(3) Where it is proposed to make a correction otherwise than upon such a request, the registrar shall give notice of the proposed correction to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity of being heard before the correction is made.

(4) Where a request is made for any such correction and it appears to the registrar that the correction would materially alter the scope of the document to which the request relates, the registrar may require notice of the request to be advertised in the journal and to be served upon such persons as he may consider necessary.

(5) If such notice has not been so advertised and served or if it has been so advertised and there is no opposition to such correction, the registrar may decide the matter or refer it to the commissioner, who shall decide it as he may deem fit.

(6) Where such notice has been so advertised and served, any person may oppose the request mentioned in subsection (2) within the prescribed time and in the prescribed manner, and thereupon the matter shall be dealt with by the commissioner as he may deem fit.

Amendment of specification.

51. (1) An applicant for a patent or a patentee may at any time apply in the prescribed manner to the registrar for the amendment of either the relevant provisional specification or the relevant complete specification, and shall in making such application, set out the nature of the proposed amendment and furnish his full reasons therefor.

(2) An application for the amendment of a specification that is open to public inspection shall, except in the case of an application so open in terms of section 43 (3), be advertised in the prescribed manner.

(3) *(a)* Any person may oppose such application for amendment within the prescribed time and in the prescribed manner.

(b) Such opposition to such application for amendment shall be dealt with by the commissioner in the prescribed manner, and the commissioner shall determine whether and on what conditions, if any, the amendment ought to be allowed.

(4) Where a specification concerned is not open to public inspection or there is no opposition in terms of subsection (3) *(a)*, the registrar may determine whether and on which conditions, if any, the amendment ought to be allowed.

(5) An amendment of a provisional specification shall be allowed if it is by way of correction, including correction of an obvious mistake, and no amendment of a provisional specification shall be allowed if it would introduce new matter or matter not in substance disclosed in the specification sought to be amended.

(6) No amendment of a complete specification, whether before or after it becomes open to public inspection, shall be allowed if—

(a) the effect of the amendment would be to introduce new matter or matter not in substance disclosed in the specification before amendment; or

(b) the specification as amended would include any claim not fairly based on matter disclosed in the specification before amendment.

(7) No amendment of a complete specification after it has become open to public inspection shall be allowed if the specification as amended would include any claim not wholly within the scope of a claim included in the specification before amendment.

(8) Where an amendment may not be allowed by reason of the prohibition imposed by subsection (6) *(a)*, but it describes matter which may fairly be associated with the matter described in the specification as framed and which cannot form the subject-matter of a patent of addition and the application for the patent is not yet open to public inspection, the new matter may be introduced by way of a supplementary disclosure attached to the specification and dated with the date on which the application for amendment is made: Provided that in determining the validity of the patent under this Act, regard shall be had to the date of the supplementary disclosure.

(9) Where any proceedings relating to the application for a patent or a patent are pending in any court, an application for the amendment of a relevant specification shall be made to that court, which may deal with such application as it thinks fit but subject to the provisions of subsections (5), (6) and (7), or may stay such pending proceedings and remit such application to be dealt with in accordance with subsections (2) to (8).

(10) Any amendment of a specification made in conflict with the provisions of this section, other than an amendment allowed by the commissioner or a court, may be set aside by the commissioner at any time on application made to him.

Rectification of register.

52. The registrar may order the register to be rectified by the making, amendment or deletion of any entry therein, and such order may be made either on a request in the prescribed manner or without such request: Provided that where the registrar intends to make an order otherwise than upon a request, he shall give notice of his intention to do so to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give such patentee or applicant or other person an opportunity of being heard before making the order.

CHAPTER VIII

LICENCES

Licences of right.

53. (1) At any time after the date of the sealing of a patent, the patentee may apply to the registrar for the patent to be endorsed with the words "licences of right" and where such an application is made the registrar shall, if satisfied that the patentee is not precluded by contract from granting licences under the patent, cause the patent to be endorsed accordingly.

(2) Where a patent has been endorsed under this section—

(a) any person shall at any time thereafter be entitled as of right to a licence under the patent upon such conditions as may, in default of agreement, be decided by the commissioner on the application of the patentee or the person requiring the licence;

(b) the commissioner may, on the application of the holder of any licence granted under the patent before the endorsement, order such licence to be replaced by a licence to be granted by virtue of the endorsement on conditions to be decided by the commissioner;

(c) No interdict shall, in proceedings for infringement of the patent (otherwise than by the importation of goods) be granted against the defendant if he undertakes to take a licence upon conditions to be decided by the commissioner, and the amount, if any, recoverable from the defendant by way of damages shall in such case not exceed double the amount which would have been payable by him as licensee if such a licence had been granted before the earliest infringement;

(d) the renewal fee payable in respect of the patent after the date of the endorsement shall be one half of the renewal fee which would have been payable if the patent had not been so endorsed.

(3) The licensee under a licence granted by virtue of the endorsement of a patent in terms of this section may (unless in the case of a licence whereof the conditions are decided by agreement, the licence otherwise expressly provides) call upon the patentee to institute proceedings in respect of any infringement of the patent, and if the patentee fails to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as if he were patentee, joining the patentee as a defendant.

(4) A patentee so joined as a defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(5) An application for the endorsement of a patent in terms of this section shall contain a statement, to be verified in such manner as may be prescribed, that the patentee is not precluded by

contract from granting licences under the patent, and the registrar may require from the applicant such further evidence as he may think necessary.

(6) An application under this section for the endorsement of a patent of addition shall be dealt with as an application for the endorsement of the patent for the main invention also, and an application made under this section for the endorsement of a patent in respect of which a patent of addition is in force, shall be dealt with as an application for the endorsement of the patent of addition also, and where a patent of addition is granted in respect of a patent already endorsed under this section, the patent of addition shall also be so endorsed.

(7) Every endorsement of a patent in terms of this section shall be recorded in the register and shall be advertised in the journal and in such other manner as the registrar may direct, to bring the endorsement to the notice of interested persons.

Cancellation of endorsement on patent.

54. (1) At any time after a patent has been endorsed in terms of section 53, the patentee may apply to the registrar for the cancellation of the endorsement.

(2) Where such an application is made and the balance paid of all renewal fees which would have been payable if the patent had not been endorsed, the registrar may, if he is satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the cancellation, cancel the endorsement.

(3) Within the prescribed period after a patent has been endorsed in terms of section 53, any person who claims that the patentee is, and was at the time of the endorsement, precluded by a contract in which the claimant is interested from granting licences under the patent, may apply to the registrar for cancellation of the endorsement.

(4) Where the registrar is satisfied, on an application under subsection (3), that the patentee is and was precluded as aforesaid, he shall cancel the endorsement, and thereupon the patentee shall pay to the registrar, within such period as may be prescribed, a sum equal to the balance of all renewal fees which would have been payable if the patent had not been endorsed and, if that sum is not paid within that period, the patent shall lapse at the expiry of that period.

(5) An application for the cancellation of the endorsement of a patent of addition shall be dealt with as an application for the cancellation of the endorsement of the patent for the main invention also, and an application for the cancellation of the endorsement of a patent in respect of which a patent of addition is in force shall be dealt with as an application for the cancellation of the endorsement of the patent of addition also.

(6) Where the endorsement of a patent is cancelled under this section, the rights and liabilities of the patentee shall thereafter be the same as if the endorsement had not been made.

Compulsory licences in respect of dependent patents.

55. Where the working of a patent (hereinafter referred to as a dependent patent) without infringement of a prior patent is dependent upon the obtaining of a licence under that prior patent, the proprietor of the dependent patent may, if agreement cannot be reached as to such licence with the proprietor of the prior patent, apply to the commissioner for a licence under the prior patent, and the commissioner may grant such a licence on such conditions as he may impose, but including a condition that such licence shall be used only for the purpose of permitting the dependent patent to be worked and for no other purpose.

Compulsory licence in case of abuse of patent rights.

56. (1) Any interested person who can show that the rights in a patent are being abused may apply to the registrar in the prescribed manner for a compulsory licence under the patent.

(2) The rights in a patent shall be deemed to be abused if—

(a) the patented invention is not being worked in the Republic on a commercial scale or to an adequate extent, after the expiry of a period of four years subsequent to the date of the application for the patent or three years subsequent to the date on which that patent was sealed, whichever period last expires, and there is in the opinion of the commissioner no satisfactory reason for such non-working;

(b) the working of the invention in the Republic on a commercial scale or to an adequate extent is being prevented or hindered by the importation of the patented article;

(c) the demand for the patented article in the Republic is not being met to an adequate extent and on reasonable terms;

(d) by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry or agriculture of the Republic or the trade of any person or class of persons trading in the Republic, or the establishment of any new trade or industry in the Republic, is being prejudiced, and it is in the public interest that a licence or licences should be granted; or

(e) the demand in the Republic for the patented article is being met by importation and the price charged by the patentee, his licensee or agent for the patented article is excessive in relation to the price charged therefor in countries where the patented article is manufactured by or under licence from the patentee or his predecessor or successor in title.

(3) The patentee or any other person appearing from the register to be interested in the patent may in the prescribed manner oppose the application.

(4) *(a)* The commissioner may order the grant to the applicant of a licence on such conditions as he may deem fit, including a condition precluding the licensee from importing into the Republic any patented articles.

(b) If the commissioner is of the opinion that an order directing the grant of a licence is not justified, he may refuse the application.

(5) If the only abuse found by the commissioner to have been established is that set out in subsection (2) *(a)*, any licence granted shall be non-exclusive but shall not be transferable except to a person to whom the business or the part of the business in connection with which the rights under the licence were exercised has been transferred.

(6) In all other cases the commissioner may grant an exclusive licence if, having regard to all the circumstances of the case, he considers it justified, and for that purpose he may revoke any existing licence on such conditions as he may deem fit.

(7) In determining the conditions on which any licence is granted the commissioner shall have regard to any relevant facts, including the risks to be undertaken by the licensee, the research and development undertaken by the patentee and the terms and conditions usually stipulated in licence agreements in respect of the subject-matter of the invention, between persons who voluntarily enter into such agreements.

(8) Any order of the commissioner under this section shall be made with a view to avoiding the abuse found by the commissioner to have been established.

(9) The commissioner may amend or revoke any licence granted under this section.

(10) Subject to the provisions of subsection (11) and to the conditions that may be attached to the licence, a licensee under this section shall have the same rights and obligations as any other licensee under a patent.

(11) An exclusive licensee under this section may, subject to the conditions attached to the licence, institute any proceedings which may be necessary to prevent infringement and to recover damages as a result of infringement, of the patent in question, as if he were the patentee: Provided that—

(a) the patentee concerned shall be cited as a party to such proceedings;

(b) the patentee may join in the proceedings either as co-plaintiff or as co-defendant; and

(c) the patentee shall not be liable for any costs in connection with such proceedings unless he enters an appearance and takes part in those proceedings.

(12) Notwithstanding the provisions of subsection (11), a patentee whose patent is the subject of an exclusive licence in terms of this section may institute any proceedings which may be necessary to prevent infringement and to recover damages as a result of infringement, of the patent in question: Provided that—

(a) the exclusive licensee shall be cited as a party to such proceedings;

(b) the exclusive licensee may join in the proceedings either as co-plaintiff or as co-defendant; and

(c) the exclusive licensee shall not be liable for any costs in connection with such proceedings unless he enters an appearance and takes part in those proceedings.

(13) *(a)* The commissioner may, when ordering the grant of a licence under subsection (4) *(a)*, award costs against the applicant or patentee concerned or any person opposing the relevant application.

(b) In so awarding costs, the commissioner shall *inter alia* have regard to—

(i) the nature and extent of the abuse found by him to have been established; and

(ii) whether the application for a licence under this section might have been avoided by the grant, by the patentee concerned to the applicant, of a voluntary licence on reasonable terms.

(14) For the purposes of this section the expression "patented article" includes any composition of matter or any product of a patented process or method or any product produced by a patented machine.

Termination of contracts relating to licences.

57. (1) Any contract, in so far as it relates to a licence under a patent to make, use, exercise or dispose of a patented invention, shall terminate on the date on which the patent, under which the licence was granted, expires, is revoked or otherwise ceases to protect such invention: Provided that where the contract relates to licences under more than one patent, such part of the contract as relates to any particular licence shall terminate when the patent under which it was granted expires, is revoked or otherwise ceases to protect the invention concerned, and that the contract as a whole shall terminate when all the patents under which all such licences were granted and which were in force at the time when the contract became operative, expire, are revoked or otherwise cease to protect the relevant inventions.

(2) Nothing in this section shall affect any right to terminate a contract or a condition in a contract independently of this section.

Effect of licence.

58. In default of an agreement to the contrary—

(a) a licence to make a patented article shall carry with it the right to use or dispose of the patented article; and

(b) a licence to use or exercise a patented process shall carry with it the right to make, use or dispose of the product of the process.

CHAPTER IX

ASSIGNMENT, ATTACHMENT AND HYPOTHECATION OF PATENTS AND APPLICATIONS FOR PATENTS

Assignment and devolution of patents by operation of law.

59. (1) Subject to the provisions of section 39 (7), the rights vested in a patentee or an applicant for a patent shall be capable of assignment and of devolution by operation of law.

(2) Any condition in a contract of employment which—

(a) requires an employee to assign to his employer an invention made by him otherwise than within the course and scope of his employment; or

(b) restricts the right of an employee in an invention made by him more than one year after the termination of the contract of employment,

shall be null and void.

Assignment, attachment and hypothecation of patent or application for patent.

60. (1) *(a)* An applicant for a patent or a patentee may in writing assign his rights in an application or patent to any other person.

(b) Upon application in the prescribed manner and on payment of the prescribed fee to the registrar, such assignment shall be recorded in the register.

(c) Unless such assignment is so recorded it shall not be valid, except as between the parties thereto.

(2) A patent or an application for a patent may be attached by recording the warrant of execution or attachment order concerned in the register in the prescribed manner.

(3) Upon the discharge of any attachment, the person who caused such warrant or order to be entered in the register shall cause that entry to be deleted: Provided that any other interested person may apply to the registrar to cause such entry to be deleted.

(4) An attachment shall lapse on the expiry of a period of three years from the date of recording it in terms of subsection (2), unless it is renewed within that period.

(5) The hypothecation of a patent or an application for a patent may on application in the prescribed manner be entered in the register.

(6) After the entry of an attachment or hypothecation in terms of this section, the patentee or applicant for a patent shall not alienate or encumber the attached or hypothecated patent or application for a patent or grant any licences under such patent.

CHAPTER X

REVOCATION OF PATENTS

Grounds for application for revocation of patent.

61. (1) Any person may at any time apply in the prescribed manner for the revocation of a patent on any of the following grounds only, namely—

(a) that the patentee is not a person entitled under section 27 to apply for the patent;

(b) that the grant of the patent is in fraud of the rights of the applicant or of any person under or through whom he claims;

(c) that the invention concerned is not patentable under section 25;

(d) that the invention as illustrated or exemplified in the complete specification concerned cannot be performed or does not lead to results and advantages set out in the complete specification;

(e) that the complete specification concerned does not—

(i) fully describe, ascertain and, where necessary, illustrate or exemplify the invention and the manner in which it is to be performed; or

(ii) disclose, in the specification as accepted, the best method of performing the invention known to the applicant for the patent at the time when the specification was lodged at the patent office;

(f) that the claims of the complete specification concerned are not—

(i) clear; or

(ii) fairly based on the matter disclosed in the specification;

(g) that the prescribed declaration lodged in respect of the application for the patent contains a false statement or representation which is material and which the patentee knew to be false at the time when the declaration was made;

(h) that the application for the patent should have been refused in terms of section 36;

(i) that the complete specification claims as an invention a microbiological process or a product thereof and that the provisions of section 32 (6) have not been complied with.

(2) An application for revocation shall be served on the patentee and lodged with the registrar in the prescribed manner and shall thereafter be dealt with in the manner prescribed.

(3) The commissioner shall decide whether the patent shall be revoked or whether and, if so, subject to what amendments, if any, of the specification or claims thereof, the patent shall be upheld: Provided that the commissioner shall not allow any amendment which is in conflict with the provisions of section 51 (6) or (7): Provided further that the commissioner may in the exercise of his discretion as to costs take into consideration the conduct of the patentee in framing his specification and claims and permitting them to remain as so framed.

Patents comprising more than one invention.

62. A patent shall be granted for one invention only, but no person may in any proceedings object to a patent on the ground that it comprises more than one invention.

After revocation on ground of fraud inventor may obtain patent in certain circumstances.

63. Where a patent is revoked on the ground of fraud, or a patent fraudulently obtained has been surrendered and revoked, the commissioner may, on the application of the inventor of the relevant invention or his assignee or legal representative, made in accordance with the provisions of this Act, direct the grant to him of a patent for the whole or any part of the invention, bearing the same date as the patent so revoked.

Voluntary surrender of patent.

64. (1) A patentee may at any time, by giving notice in the prescribed manner to the registrar, offer to surrender his patent, and the registrar shall give notice of the offer to any person shown in the register to have an interest in the patent.

(2) Any interested person may within the time prescribed lodge in writing with the registrar an objection to the surrender of the patent.

(3) If no objection is so lodged or if any such objection is overruled by the commissioner after having given the patentee and the objector an opportunity to be heard, the patent shall be deemed to have been revoked as from the date of receipt by the registrar of the offer of surrender, and the registrar shall advertise the

revocation of the patent in the journal and make the necessary entries in the register.

(4) An offer to surrender a patent shall not be considered as long as any proceedings for infringement or revocation of that patent are pending before the commissioner or in any court, except by consent of the parties to such proceedings.

CHAPTER XI

INFRINGEMENT

Proceedings for infringement.

65. (1) Subject to the provisions of section 53 (3), proceedings for infringement of a patent may be instituted by the patentee or an exclusive licensee mentioned in section 56 (11).

(2) Proceedings for infringement shall be instituted and prosecuted in the manner prescribed.

(3) A plaintiff in proceedings for infringement shall be entitled to relief by way of an interdict, delivery up of anything involving infringement and damages.

(4) In any proceedings for infringement the defendant may counterclaim for the revocation of the patent and, by way of defence, rely upon any ground on which a patent may be revoked.

(5) The plaintiff in any such proceedings shall give notice thereof to every licensee under the patent in question whose name is recorded in the register, and any such licensee shall be entitled to intervene as a co-plaintiff and to recover any damages he may have suffered as a result of the infringement.

Restriction on recovery of damages for infringement.

66. (1) A patentee shall not be entitled to recover damages in respect of infringement of a patent from a defendant who proves that at the date of the infringement he was not aware, and had no reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent" or "patented" or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless such word or words are accompanied by the number of the patent: Provided that nothing in this section shall affect any proceedings for an interdict.

(2) Any person who represents that any invention is patented, without such representation disclosing the number of the patent concerned, and from whom the number of such patent has been requested in writing by registered post by any other person unaware of such number, may not recover from such other person damages, or obtain an interdict against him, in respect of any infringement of such patent by such other person, committed during the period commencing with the representation and terminating two months after the date on which such other person was notified in writing by the first-mentioned person of the number of the patent concerned.

(3) Any person who, having made a request referred to in subsection (2), expends during the period referred to in that subsection, any money, time or labour with a view to making, using, exercising or disposing of the invention, may apply in the manner prescribed to the commissioner for compensation in respect of the money, time or labour reasonably so expended, and the commissioner may issue such order as he may deem fit.

(4) If proceedings are instituted in respect of infringement of a patent, committed after the failure to pay any prescribed renewal fee within the prescribed period, and before any extension of the period for such payment, the commissioner may, if he thinks fit, refuse to award any damages in respect of the infringement.

(5) Where an amendment of a specification has been allowed under section 51, the commissioner may in his discretion refuse to award damages in respect of any acts of infringement committed before that amendment was so allowed and, in exercising his

discretion, the commissioner may take into consideration the conduct of the patentee in framing the specification and permitting it to remain in its unamended form.

Presumptions in relation to new substances.

67. (1) A claim in respect of a patent for a process or an apparatus for producing any product shall be construed as extending to such product when produced by the process or apparatus claimed.

(2) If the invention for which a patent is granted is a process for obtaining a new product, the same product produced by a person other than the proprietor of the patent or a licensee under that patent shall, unless the contrary is proved, be deemed, in any proceedings, to have been obtained by that process.

(3) In considering whether any person has discharged the onus imposed upon him by subsection (2), the commissioner shall not require him to disclose any secret process used by him in producing the product concerned, if it appears to the commissioner that it would be unreasonable to do so.

Relief for infringement of partially valid specification.

68. Where in any proceedings for infringement of a patent, the commissioner finds that any claim in the complete specification in respect of which infringement is alleged, is valid, but that any other claim therein is invalid, the following provisions shall, notwithstanding anything contained in section 66 (5), apply, namely—

(a) If a counterclaim for the revocation of the patent has been made in the proceedings on the ground of the invalidity of any claim in the specification, the commissioner may postpone the operation of any order issued thereon for such time as may be required to enable the patentee to effect any amendment of the specification pursuant to the conditions imposed by the commissioner, who may attach such other condition to any order to be issued on the counterclaim as he may deem fit; and

(b) when the specification has been amended in terms of paragraph *(a)*, the commissioner may, subject to such order as to costs as he may issue and as to the date from which damages shall be calculated, grant relief in respect of any claim which had, before the amendment, been found to be valid and infringed, and in exercising his discretion he may take into consideration the conduct of the patentee in inserting in the specification those claims which had been found, before amendment, to be invalid or permitting such claims to remain there.

Declaration as to non-infringement.

69. (1) A declaration that the use by any person of any process, or the making or use or sale by any person of any article, does not or would not constitute an infringement of a patent, may be made by the commissioner in proceedings between that person and the patentee or an exclusive licensee mentioned in section 56 (11), notwithstanding that no assertion to the contrary has been made by the patentee or licensee, if it is proved—

(a) that such person has applied in writing to the patentee or licensee for a written acknowledgement to the effect of the declaration claimed, and has furnished him with full particulars of the process or article in question; and

(b) that the patentee or licensee has failed to give such an acknowledgement.

(2) The costs of all parties to proceedings for a declaration instituted by virtue of this section shall be awarded in such manner as the commissioner may deem fit.

Remedy for groundless threats of infringement proceedings.

70. (1) Where any person, by circular, advertisement or otherwise, threatens any other person with proceedings for infringement of a patent, a person aggrieved thereby may, whether the person making the threats is or is not entitled to or

interested in a patent or an application for a patent, institute proceedings against him and obtain a declaration to the effect that such threats are unjustifiable and an interdict against the continuance of such threats, and may recover such damages, if any, as he has sustained thereby, unless the person making the threats proves that the acts in respect of which the proceedings are threatened, constitute or, if done, would constitute an infringement of a patent in respect of a claim in the specification which is not shown by the plaintiff to be invalid: Provided that a circular, advertisement or communication addressed to any person, which comprises only a notification of the existence of a particular patent upon which the proprietor relies for protecting his interests shall not, by itself, be deemed to be a threat of proceedings for infringement.

(2) The defendant in any such proceedings may apply by way of a counterclaim in the proceedings for any relief to which he would be entitled in separate proceedings in respect of any infringement by the plaintiff of the patent to which the threat relates.

Special provisions as to vessels, aircraft and land vehicles of convention countries.

71. (1) Subject to the provisions of this section, the rights of a patentee shall not be deemed to be infringed—

(a) by the use on board a convention vessel of the patented invention in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, if the vessel comes into the territorial waters of the Republic temporarily or accidentally only, and the invention is used exclusively for the actual needs of the vessel; or

(b) by the use of the patented invention in the construction or working of a convention aricraft or land vehicle or accessories thereof if the aircraft or vehicle comes into the Republic temporarily or accidentally only.

(2) For the purposes of this section, vessels and aircraft shall be deemed to be vessels and aircraft of the country in which they are registered, and land vehicles shall be deemed to be vehicles of the country within which the owners are ordinarily resident.

CHAPTER XII

EVIDENCE

Register to be evidence.

72. (1) The person appearing from the register to be the proprietor of or applicant for a patent shall, subject to any right appearing from the register to be vested in any other person, have power to deal with the patent or the application for a patent as the owner thereof.

(2) The provisions of subsection (1) shall not protect any person dealing with a proprietor or applicant as aforesaid otherwise than as a *bona fide* licensee, purchaser, hypothecary or judgment creditor and without notice of any fraud on the part of such proprietor or applicant.

(3) Except for the purposes of section 52, a document or instrument in respect of which no entry has been made in the register in terms of section 10, shall not be admitted in evidence in any proceedings in proof of the title to a patent or application for a patent or to any interest therein unless the commissioner or a court, on good cause shown, otherwise directs.

(4) Except for the purposes of section 52, no person who does not appear from the register as having an interest in a patent or an application for a patent, shall be allowed to prove such interest in any proceedings, unless the commissioner or the court on good cause shown otherwise directs.

(5) The register shall be *prima facie* evidence of any matter directed or authorized by this Act to be entered therein.

Certificates of registrar to be *prima facie* evidence.

73. (1) A certificate purporting to be signed by the registrar, to the effect that any entry authorized by this Act to be made, has or has not been made or that any other thing so authorized to be

done has or has not been done, shall be *prima facie* evidence of the matters specified in that certificate.

(2) A copy or an extract purporting to be a copy of an entry in the register or of a document kept at the patent office or an extract from the register or any such document, and purporting to be certified by the registrar and to be sealed with the seal of the patent office, shall be admitted in evidence before the commissioner and in all courts without further proof or production of the originals.

(3) If any document or book bears a date purporting to be the date on which it became available to the public, that date shall, unless the contrary is proved, be deemed to be the date on which it became so available.

Certification of validity.

74. (1) If in any proceedings the validity of any claim in a complete specification is in issue, the commissioner or the court, as the case may be, finding that claim to be valid, may certify to that effect.

(2) If in any subsequent proceedings the validity of that claim is unsuccessfully attacked by any party, that party shall, unless the commissioner or the court, as the case may be, otherwise directs, pay to the other party his full costs, charges and expenses as between patent agent or patent attorney or attorney and client so far as that claim is concerned.

CHAPTER XIII

APPEALS TO COMMISSIONER AND THE COURT

Appeal from registrar to commissioner.

75. An appeal shall lie from any decision of the registrar to the commissioner, who shall hear the parties, and the registrar if he desires to be heard, and the commissioner shall issue such order on the matter as he may deem fit.

Appeal from the commissioner to the court.

76. (1) Save as is otherwise provided in this Act, any party to proceedings before the commissioner may appeal from any order or decision of the commissioner pursuant to such proceedings to the provincial division of the Supreme Court of South Africa having jurisdiction to hear appeals in the area wherein the order or decision was given and thereafter to the Appellate Division of the Supreme Court.

(2) *(a)* Every appeal to a provincial division of the Supreme Court shall be noted and prosecuted in the manner prescribed by law for appeals to the provincial division against a civil order or decision of a single judge of such division, save that the period within which such appeal shall be noted shall be three months after the date of the order or decision appealed against. Provided that the provincial division concerned may, on application and on good cause shown, allow such extension of time for noting the appeal as may be necessary.

(b) The court may in relation to any such appeal—

(i) confirm, vary or set aside the order or decision appealed against, as justice may require;

(ii) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the commissioner with instructions in regard to the taking of further evidence or the setting out of further information;

(iii) take any other course which may lead to the just, speedy and as far as may be possible inexpensive settlement of the case; and

(iv) make such order as to costs as justice may require.

(3) Every appeal to the Appellate Division of the Supreme Court shall be noted and prosecuted in the manner prescribed by law for appeals to that Division in civil proceedings, save that no special leave to appeal to that Division shall be necessary and that the period within which such appeal shall be noted shall be three months after the date of the order or decision appealed against.

(4) The parties to proceedings before the commissioner shall be deemed to be parties to civil proceedings for the purposes of section 20 (3) of the Supreme Court Act, 1959 (Act No. 59 of 1959), and the Appellate Division of the Supreme Court shall have jurisdiction to hear and determine an appeal against an order or decision of the commissioner without any intermediate appeal having been first heard and determined by a provincial division of the said court, if the said parties lodge with the commissioner notice in writing of their consent.

(5) The period within which any such appeal shall be noted shall be three months after the date of the order or decision appealed against.

Agreement to accept commissioner's decision as final.

77. In any proceedings before the commissioner, the parties may agree in writing prior to the hearing thereof to submit the matter in dispute for final decision to the commissioner and may apply to him accordingly in the prescribed manner, and where there is such an agreement the order or decision of the commissioner shall be binding on the said parties and final and conclusive and shall not be subject to appeal.

CHAPTER XIV

ACQUISITION OF RIGHTS TO INVENTIONS AND PATENTS BY THE STATE

Acquisition of invention or patent by State.

78. The Minister may, on behalf of the State, acquire, on such terms and conditions as may be agreed upon, any invention or patent.

Assignment of certain patents to the State.

79. (1) The proprietor of an invention relating to any armaments as defined in section 1 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), shall, if called upon to do so by the Minister of Defence, assign the invention or the patent obtained or to be obtained for the invention to that Minister on behalf of the State.

(2) The assignment and any agreements therein contained shall be valid and effectual and may be enforced by appropriate proceedings in the name of the Minister of Defence.

(3) Where an invention has been so assigned, the Minister of Defence may, by notice in writing to the registrar, direct that the invention and the manner in which it is to be performed shall be kept secret.

(4) Every application, specification, amendment of specification or drawing received at the patent office relating to any invention in respect of which notice in terms of subsection (3) has been given, shall be sealed up by the registrar and the contents of such application, specification, drawing or other document shall not be divulged without the written permission of the Minister of Defence.

(5) The patent for any such invention may be made out in the name of the proprietor and sealed, but such patent shall be delivered to the Minister of Defence and not to such proprietor and shall be the property of the State, and no proceedings shall lie for the revocation of the patent.

(6) The communication of any such invention to the Minister of Defence or to any person authorized by him to inquire into the invention shall not, nor shall anything done for the purpose of the inquiry by such person, be deemed to be publication or use of the invention so as to prejudice the grant or validity of any patent for the invention.

(7) The Minister of Defence may by notice in writing to the registrar direct that any invention directed to be kept secret need no longer be kept secret, and thereupon the specification and drawings may be published.

(8) The said Minister shall pay to the proprietor of the invention or patent such reasonable compensation as may be agreed upon or as may, in default of agreement, be determined by arbitration or, if the parties so agree, by the commissioner.

Minister may require inventions to be kept secret in certain circumstances.

80. (1) If the Minister is of opinion that in the national interest an application, specification, drawing or other document relating to any invention should be kept secret, he may order the registrar to keep the invention secret and to notify the applicant accordingly, and if any Minister of State desires to acquire such invention on behalf of the State, the provisions of section 79 shall as far as applicable apply, and for that purpose the reference in section 79 to the Minister of Defence shall be deemed to be a reference to the said Minister of State.

(2) Whenever any order issued by the Minister under this section is withdrawn, any steps which were prior to the date of that order taken under this Act in connection with the application which was the subject of that order, and which were interrupted in consequence of that order, may be proceeded with as if the interruption had not occurred, and any period which may have elapsed between the date on which that order was lodged with the registrar and the date of withdrawal thereof shall not be taken into account in the computation of any period of time prescribed by or under this Act.

(3) If the proprietor of an invention has suffered loss or damage by reason of that invention having been kept secret in pursuance of an order under subsection (1), the Minister shall pay to him such reasonable compensation as may be agreed upon or as may, in default of agreement, be determined by arbitration or, if the parties so agree, by the commissioner.

CHAPTER XV

OFFENCES AND PENALTIES

Penalties for making false entries in the register, or making, producing or tendering false entries or copies.

81. Any person who—

(a) makes or causes to be made a false entry in the register;

(b) makes or causes to be made a writing falsely purporting to be a copy of an entry in the register; or

(c) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof,

knowing it to be false, shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Penalty for making false statements for the purpose of deceiving or influencing the commissioner, the registrar or an officer.

82. Any person who—

(a) for the purpose of deceiving the registrar or the commissioner or any officer in the administration of the provisions of this Act; or

(b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder,

makes a false statement or representation, knowing the same to be false, shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

Prohibition of trafficking in patents by officers or employees in patent office.

83. (1) Any officer or employee of the patent office who buys, sells, acquires or traffics in any invention or patent or any right under a patent, shall be guilty of an offence and on conviction liable to a fine not exceeding R500.

(2) Every purchase, sale or acquisition, and every assignment of any invention or patent, by or to any such officer or employee shall be null and void.

(3) Nothing in this section contained shall apply to the inventor or to any acquisition by bequest or devolution by operation of law.

Penalty for improper use of words "patent office".

84. Any person who uses on his place of business or on any document issued by him or otherwise the words "patent office" or any other words suggesting that his place of business is officially connected with or is the patent office, shall be guilty of an offence and on conviction liable to a fine not exceeding R100 or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

Penalty for falsely representing articles as patented.

85. (1) Any person who falsely represents that any article sold by him is a patented article, shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(2) If any person sells any article on which is stamped, engraved or impressed, or to which is otherwise applied the word "patent", "patented" or any other word expressing or implying that the article is patented or is the subject of a patent application, he shall be deemed for the purposes of this section to represent that the article is a patented article.

(3) The provisions of subsection (2) shall not apply to a person who sells articles in good faith in the ordinary course of trade provided, when called upon to do so, he discloses the identity of the person from whom he acquired the article in question.

(4) Any person who is of opinion that he is prejudiced by a representation referred to in subsection (1), may apply to the commissioner for an interdict against the continuation of that representation.

CHAPTER XVI

MISCELLANEOUS

Documents may be sent by post.

86. Any application, notice or document authorized or required in terms of this Act to be lodged, made or given at the patent office or to the registrar or any other person, may be delivered by hand or sent through the post.

Address for service.

87. (1) With every application, notice or other document authorized or required in terms of this Act to be lodged or given, the applicant or other person concerned shall furnish in the prescribed manner an address within the Republic as an address for service, which shall for the purposes of this Act be deemed to be the address of such applicant or other person, and all documents in relation to such application, notice or other document may be served by leaving them at or sending them to such address for service.

(2) Any address for service may be changed by notice in the prescribed manner.

Calculation of periods of time.

88. (1) Where any period of time is specified by this Act as running from the doing of any act, it shall be reckoned as commencing on the day next following the doing of that act.

(2) Whenever the last day on which, in terms of this Act, any act may or is required to be done or any document may or is required to be lodged, falls on a day on which the patent office is closed, that act may be done or that document may be lodged on the next following day on which the patent office is open for the transaction of business.

Condonation or correction of irregularities in procedure.

89. The registrar or the commissioner may authorize the condonation or correction of any irregularity in procedure in any proceedings before him, provided such condonation or correction is not detrimental to the interests of any person.

Certain conditions excluded from contracts.

90. (1) Any condition in a contract relating to the sale of a patented article or to a licence under a patent of which the effect will be—

(a) to prohibit or restrict the purchaser or licensee from purchasing or using any article or class of articles, whether patented or not, supplied or owned by any person other than the seller or licensor or his nominee;

(b) to prohibit or restrict the licensee from using any article or process not protected by the patent;

(c) to require the purchaser or licensee to acquire from the seller, licensor or his nominee any article or class of articles not protected by the patent;

(d) to require or induce the purchaser to observe a specified minimum resale price in respect of any article or class of articles protected by the patent; or

(e) to prohibit or restrict the making, using, exercising or disposing of the invention concerned in any country in which the invention is not patented,

shall be null and void.

(2) Nothing in this section shall—

(a) affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person; or

(b) affect any condition in a contract for the lease of or a licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article, other than ordinary articles of commerce, as may be required to put or keep it in repair.

Regulations.

91. The Minister may make regulations—

(a) with the concurrence of the Minister of Finance, prescribing the matters in respect of which fees shall be payable, and the tariff of such fees;

(b) prescribing the tariff of fees which shall be allowed on taxation in connection with proceedings before the registrar or the commissioner;

(c) prescribing the procedure in any proceedings before the registrar or the commissioner;

(d) prescribing the service of notices and other documents required in terms of this Act to be served in connection with proceedings before the registrar or the commissioner;

(e) providing for the conduct and administration of the patent office, including the keeping and preservation of any records in the patent office, the removal from such office and preservation in any other place of such records, and as to the circumstances in which any such records may be destroyed;

(f) prescribing the contents of any application, notice or form provided for in this Act;

(g) as to any other matter required or permitted by this Act to be prescribed by regulation; and

generally, as to any matter which he considers it necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

Amendment of section 16*bis* of Act 61 of 1955, as inserted by section 4 of Act 82 of 1959 and amended by section 4 of Act 43 of 1965 and section 24 of Act 71 of 1972.

92. Section 16*bis* of the Universities Act, 1955, is hereby amended by the deletion of paragraphs *(c)* and *(g)* of subsection (1).

Amendment of section 16*duodec* of Act 61 of 1955, as inserted by section 4 of Act 82 of 1959.

93. Section 16*duodec* of the Universities Act, 1955, is hereby amended—

(a) by the deletion of subparagraph (v) of paragraph *(a)* of subsection (1); and

(b) by the substitution for subparagraph (vi) of the said paragraph *(a)* of the following subparagraph:

"(vi) any other examination conducted by that university in lieu of any examination mentioned in subparagraph (i), (ii), (iii) or (iv) **[or (v)]**,".

Amendment of section 16*tredec* of Act 61 of 1955, as inserted by section 4 of Act 82 of 1959 and amended by section 3 of Act 46 of 1961.

94. Section 16*tredec* of the Universities Act, 1955, is hereby amended by the deletion of subsection (2).

Repeal of laws.

95. Subject to the provisions of sections 3, 5 (2), 7 (2), 10 (4), 20 (2), 22 (1) and 30 (3), the laws specified in the Schedule are hereby repealed to the extent set out in the third column of that Schedule.

Short title and commencement.

96. This Act shall be called the Patents Act, 1978, and shall come into operation on 1 January 1979, except section 21, which shall come into operation on promulgation of this Act, and except section 32 (6), which shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

Schedule

LAWS REPEALED

No. and year of law	Short title	Extent of repeal
Act No. 37 of 1952	Patents Act, 1952	The whole
Act No. 28 of 1953	Patents Amendment Act, 1953	The whole
Act No. 82 of 1959	Universities Amendment Act, 1959.....	Sections 14 and 15
Act No. 50 of 1960	Patents Amendment Act, 1960	The whole
Act No. 61 of 1963	Patents Amendment Act, 1963	The whole
Act No. 80 of 1964	General Law Amendment Act, 1964.....	Sections 16, 17, 18 and 19
Act No. 54 of 1967	Patents Amendment Act, 1967	The whole