

WORLD TRADE ORGANIZATION

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ORGANIZACIÓN MUNDIAL DEL COMERCIO

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**Council for Trade Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND REGULATIONS
NOTIFIED UNDER ARTICLE 63.2 OF THE AGREEMENT**

South Africa

The present document reproduces the Patents Act, No. 57 of 1978¹, as notified by South Africa under Article 63.2 of the Agreement (see document IP/N/1/ZAF/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET REGLEMENTATIONS CONSACREES A LA
PROPRIETE INTELLECTUELLE NOTIFIEES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

Afrique du Sud

Le présent document contient le texte de la Loi n° 57 de 1978 sur les brevets¹, notifiée par l'Afrique du Sud au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/ZAF/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intelectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

Sudáfrica

En el presente documento se reproduce la Ley de Patentes, N° 57 de 1978¹, notificada por Sudáfrica en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/ZAF/1).

¹English only/anglais seulement/en inglés solamente.

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT

**PATENTS ACT
NO. 57 OF 1978**

[ASSENTED TO 26 APRIL, 1978]

[DATE OF COMMENCEMENT: 1 JANUARY, 1979]
(Unless otherwise indicated)

(English text signed by the State President)

as amended by

Patents Amendment Act, No. 14 of 1979
Patents Amendment Act, No. 67 of 1983
Patents Amendment Act, No. 44 of 1986
Patents Amendment Act, No. 76 of 1988

ACT

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

INTRODUCTORY

1. **Division of Act into Chapters.**—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).

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

“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;

“applicant” includes the legal representative of a deceased applicant or of an applicant who is a person under legal disability;

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“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;

“commissioner” means a commissioner of patents designated in terms of section 8;

“convention application” means an application for a patent made in the Republic which claims priority from a relevant application in a convention country;

“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;

“court”, in relation to any matter, means the division of the Supreme Court of South Africa having jurisdiction in respect of that matter;

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

“invention” means an invention for which a patent may be granted under section 25;

“journal” means the patent journal to be published in terms of section 14;

“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;

“Minister” means the Minister of Economic Affairs and Technology;
 [Definition of “Minister” substituted by s. 1 of Act No. 76 of 1988.]

“patent” means letters patent for an invention granted in the Republic;

“patented article” means any article in respect of which a patent has been granted and is for the time being in force;

“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;

“patent office” means the patent office established in terms of section 5;

“prescribed” means prescribed by regulation;

“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;

“register” means the register to be kept at the patent office in terms of section 10;

“registrar” means the registrar of patents appointed in terms of section 7;

“regulation” means any regulation made under this Act;

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

“the repealed law” means the Patents Act, 1952 (Act No. 37 of 1952);

“this Act” includes the regulations.

3. Application of Act.—(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, except that the term of any such patent shall not be extended for a period exceeding five years.

[Para. (d) substituted by s. 1 (1) of Act No. 14 of 1979.]

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

4. State bound by patent.—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

5. Establishment of patent office.—(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.

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

7. Registrar of patents.—(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.

8. Designation of commissioner of patents.—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.

9. Agents only to act in matters in terms of this Act.—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 REGISTRAR OF PATENTS AND THE PATENT JOURNAL

10. **Register of patents.**—(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.
11. **Trusts not registrable.**—No notice of any trust, expressed, implied or constructive, shall be entered in the register or be receivable by the registrar.
12. **Inspection of register.**—(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.
13. **Registrar to furnish information from register on request.**—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.
14. **Patent Journal.**—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

15. Powers of registrar.—(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.

16. Exercise of discretionary power by registrar and commissioner.—(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.

17. General powers of commissioner.—(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.

18. Proceedings before commissioner.—(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

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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.

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

20. Qualifications and registration of patent agents and patent attorneys.—(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.

21. Patent Examination Board.—(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;