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*Patents Act, No. 57 of 1978* ss. 21–22

- (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.

(Date of commencement 17 May, 1978.)

**22. Privileges of attorneys.**—(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.

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**23. Removal of name of patent agent or patent attorney from register and suspension from practising as a patent attorney or patent agent.**—(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

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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.

**24. Persons entitled to practise as patent agents and patent attorneys.**—(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 powers 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

**25. Patentable inventions.**—(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)).

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(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.

**26. Prior knowledge or publication of invention excused in certain circumstances.**—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.

**27. Who may apply for a patent.**—(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.

**28. Disputes as to rights in or to inventions or patents.**—(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.

**29. Joint ownership of applications.**—(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.

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(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.

30. **Form of application for a patent.**—(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.

31. **Claiming priority.**—(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;