

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT
 ss. 31–32 *Patents Act, No. 57 of 1978* ss. 31–32

- (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) or (b) 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;

[Sub-para. (i) substituted by s. 1 (a) of Act No. 67 of 1983.]

- (ii)

[Sub-para. (ii) deleted by s. 1 (b) of Act No. 67 of 1983.]

- (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- (a) the previous application had been withdrawn, abandoned or refused without having been open to public inspection;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(3) An application which has been withdrawn, abandoned or refused shall not after the lodging of a subsequent application relating to the same subject-matter, be capable of supporting a claim for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 equivalent to an application duly made in any one of those convention countries; or

[Para. (a) substituted by s. 1 of Act No. 44 of 1986.]

- (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 specification within the period specified in subparagraph (i) of subsection (1), the application shall lapse.

[Sub-s. (5) substituted by s. 2 of Act No. 14 of 1979.]

32. Contents of specification.—(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.

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- (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 specification 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 (date of commencement to be proclaimed).

33. Priority dates.—(1) (a) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim.

(b) The priority date of any matter contained in a complete specification shall be the same as that of the claim with the earliest priority date in which that matter has been included: Provided that the priority date of any matter contained in a supplementary disclosure in terms of section 51 (8), shall be the date of the application for the amendment concerned.

[Sub-s. (1) substituted by s. 2 (a) of Act No. 67 of 1983.]

(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)

[Sub-s. (4) deleted by s. 2 (b) of Act No. 67 of 1983.]

(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.

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34. Examinations of applications and specifications.—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.

35. Procedure if result of examination of application is adverse to applicant.—(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.

36. Power to refuse applications in particular cases.—(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.

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

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

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- (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.

39. Manner of obtaining and effect of patent of addition.—(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) (a) 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 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.

(b) The prescribed renewal fees which would have been payable in respect of the patent for the main invention shall, as from the date on which a patent becomes an independent patent in terms of paragraph (a), be payable in respect of the last-mentioned patent.

[Sub-s. (4) substituted by s. 3 of Act No. 67 of 1983.]

(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.

40. Lapsing of applications.—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:

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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.

41. Disposal of specifications in lapsed applications.—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.

42. Notice and publication of acceptance of complete specification.—(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.

43. Inspection by public.—(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 the acceptance of an application which claims priority in terms of section 31 (1) (c) is not published in terms of section 42 within 18 months from the earliest priority date claimed from the relevant application in a convention country, it shall be open to public inspection as provided in subsection (1).

[Sub-s. (3) substituted by s. 4 of Act No. 67 of 1983.]

CHAPTER VI

GRANT, DURATION AND EFFECT OF PATENTS

44. Granting and sealing of patent.—(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.

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45. Effect of patent.—(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.

46. Duration of patent.—(1) The duration of a patent shall be 20 years from the date of application therefor, subject to the payment of the prescribed renewal fees by the patentee concerned or an agent.

[Sub-s. (1) substituted by s. 5 of Act No. 67 of 1983.]

(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.

47. Restoration of lapsed patent.—(1) Where a patent has lapsed owing to non-payment of 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.

[Sub-s. (1) substituted by s. 6 of Act No. 67 of 1983.]

(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.

48. Rights of patentee of restored patent.—(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