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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.

49. Joint ownership in patents.—(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

**50. Correction of clerical errors and amendment of documents.**—(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.

**51. Amendment of specification.**—(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 the acceptance of a specification concerned has not been published in terms of section 42 or there is no opposition in terms of subsection (3) (a) of this section, the registrar may determine whether and on which conditions, if any, the amendment ought to be allowed.

[Sub-s. (4) substituted by s. 7 (a) of Act No. 67 of 1983.]

(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 which becomes open to public inspection after the publication of the acceptance of the specification in terms of section 42, whether before or after it so 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.

[Sub-s. (6) amended by s. 7 (b) of Act No. 67 of 1983.]

(7) No amendment of a complete specification which has become open to public inspection after the publication of the acceptance of the specification in terms of section 42 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.

[Sub-s. (7) substituted by s. 7 (c) of Act No. 67 of 1983.]

(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 the acceptance of the specification concerned has not been published in terms of section 42, 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.

[Sub-s. (8) substituted by s. 3 (a) of Act No. 44 of 1986.]

(9) Where any proceedings relating to an application for a patent or a patent are pending in any court, an application for the amendment of the relevant specification shall be made to that court, which may deal with such application for amendment 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 for amendment to the registrar to be dealt with in accordance with subsections (2), (3) and (4).

[Sub-s. (9) substituted by s. 3 (b) of Act No. 44 of 1986.]

(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.

**52. Rectification of register.**—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

**53. Licences of right.**—(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;

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- (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.

**54. Cancellation of endorsement on patent.**—(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

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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.

**55. Compulsory licences in respect of dependent patents.**—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.

**56. Compulsory licence in case of abuse of patent rights.**—(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.

(1A) Pending the final determination of an application for a compulsory licence the applicant shall not, except under special circumstances, be prohibited by interdict from infringing the patent.

[Sub-s. (1A) inserted by s. 2 (a) of Act No. 76 of 1988.]

(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.