

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — PATENTS, DESIGNS AND COPYRIGHT
 ss. 72-76 *Patents Act, No. 57 of 1978* ss. 72-76

(2) The provisions of sub-section (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.

73. Certificates of registrar to be *prima facie* evidence.—(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.

74. Certification of validity.—(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

75. Appeal from registrar to commissioner.—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.

76. Appeal from the commissioner to the court.—(1) Save as is otherwise provided in this Act, any party to proceedings before the commissioner may appeal against any order or decision of the commissioner pursuant to such proceedings.

[Sub-s. (1) substituted by s. 4 (a) of Act No. 76 of 1988.]

(2) (a) Every appeal shall be noted and prosecuted in the manner prescribed by law for appeals against a civil order or decision of a single judge, and sections 20 and 21 of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply *mutatis mutandis*.

[Para. (a) substituted by s. 4 of Act No. 44 of 1986 and by s. 4 (b) of Act No. 76 of 1988.]

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- (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) to (5) inclusive

[Sub-ss. (3) to (5) inclusive deleted by s. 4 (c) of Act No. 76 of 1988.]

77. **Agreement to accept commissioner's decision as final.**—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

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

79. **Assignment of certain patents to the State.**—(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.

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(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.

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

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

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

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

84. Penalty for improper use of words “patent office”.—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.

85. Penalties for certain false representations.—(1) Any person who—

- (a) falsely represents that any article is a patented article; or
- (b) represents that any article is the subject of a patent application, knowing that no such application has been made or that an application made in respect thereof has been refused or withdrawn or has lapsed,

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 disposes of 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 to which any marking is applied in any manner expressing or implying that the article is patented, 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 disposes of 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 the opinion that he is prejudiced by a representation referred to in subsection (1) (a) or (b), may apply to the commissioner for an interdict against the continuation of that representation.

[S. 85 substituted by s. 8 of Act No. 67 of 1983.]

CHAPTER XVI

MISCELLANEOUS

86. Documents may be sent by post.—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.

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87. Address for service.—(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.

88. Calculation of periods of time.—(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.

89. Condonation or correction of irregularities in procedure.—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.

90. Certain conditions excluded from contracts.—(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.

91. Regulations.—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;

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- (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.

92. Amends section 16*bis* (1) of the Universities Act, No. 61 of 1955, by deleting paragraphs (c) and (g)—see title EDUCATION.

93. Amends section 16*duodec* (1) (a) of the Universities Act, No. 61 of 1955, as follows:—paragraph (a) deletes subparagraph (v); and paragraph (v) substitutes subparagraph (vi)—see title EDUCATION.

94. Amends section 16*tredec* of the Universities Act, No. 61 of 1955, by deleting subsection (2)—see title EDUCATION.

95. Repeal of laws.—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.

96. Short title and commencement.—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