

Amendment of section 1 of Act 11 of 1967

19. Section 1(1) of the Performers' Protection Act, 1967, is hereby amended—

- (a) by the deletion of the definitions of "broadcasting" and "Corporation";
- (b) by the insertion before the definition of "literary and artistic works" of the following definitions:

"broadcast", when used as a noun, means a telecommunication service of transmissions consisting of sounds, images, signs or signals which—

(a) takes place by means of electromagnetic waves of frequencies of lower than 3 000 GHz transmitted in space without an artificial conductor; and

(b) is intended for reception by the public or sections of the public, and, when used as a verb, shall be construed accordingly;

'broadcaster' means a person who undertakes a broadcast;

'fixation' includes storage of—

(a) sounds or images or both sounds and images; or

(b) data or signals representing sounds or images or both sounds and images;"; and

- (c) by the substitution for the definition of "rebroadcasting" of the following definition:

" 'rebroadcasting' means the simultaneous broadcasting by one [broad-casting organization] broadcaster of the broadcast of another [broad-casting organization] broadcaster, and 'rebroadcast' has a corresponding meaning;".

Substitution of section 4 of Act 11 of 1967

20. The following section is hereby substituted for section 4 of the Performers' Protection Act, 1967:

"Extension of protection of performers' rights to performances in certain countries

4. The protection granted to performers by this Act shall [subject to such limitations as may hereinafter be prescribed] be extended automatically to performers in respect of their performances—

- (a) taking place;
- (b) broadcast without a fixation; or
- (c) first fixed,

in a country which [being a party to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, by law grants in its territory similar rights to performers in respect of their performances in the Republic] is a member of the World Trade Organization.".

Substitution of section 7 of Act 11 of 1967

21. The following section is hereby substituted for section 7 of the Performers' Protection Act, 1967:

"Term of protection

7. The prohibition against the use of a performance [without the consent of the performer] as provided for in section 5, shall commence upon the day when the performance first took place or, if incorporated in a phonogram, when it was first fixed on such phonogram, and shall continue for a period of [twenty] 50 years calculated from the end of the calendar year in which the performance took place or was incorporated in a phonogram, as the case may be."

Amendment of section 8 of Act 11 of 1967

22. Section 8 of the Performers' Protection Act, 1967, is hereby amended—

- (a) by the deletion of subsection (1);
(b) by the substitution for paragraph (a) of subsection (3) of the following paragraph:

“(a) [The Corporation] A broadcaster may make by means of [its] his or her own facilities a fixation of a performance and reproductions of such fixation without the consent required by section 5, provided that, unless otherwise stipulated—

- (i) the fixation and the reproductions thereof are used solely in the broadcasts made by the [Corporation] broadcaster;
(ii) the fixation and any reproductions thereof, if they are not of an exceptional documentary character, are destroyed before the end of the period of six months commencing on the day on which the fixation was first made; and
(iii) the [Corporation] broadcaster pays to the performer, whose performance is so used, in respect of each use of the fixation or of any reproduction thereof, an equitable remuneration, which, in the absence of agreement, shall be determined in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965), or alternatively, at the option of the performer, by the Copyright Tribunal established by the Copyright Act, [1965 (Act No. 63 of 1965)] 1978 (Act No. 98 of 1978).”;

- (c) by the deletion of subsection (4).

Amendment of section 9 of Act 11 of 1967

23. Section 9(1) of the Performers' Protection Act, 1967, is hereby amended by the substitution for paragraphs (i), (ii) and (iii) of the following paragraphs, respectively:

- “(i) in the case of a contravention referred to in paragraph (a), to a fine [not exceeding fifty rand] or to imprisonment for a period not exceeding three months, and the court convicting him or her may in addition, on the application of the performer whose rights have been infringed, and without proof of any damages, order him or her to pay to the performer as damages such amount, not exceeding [one hundred rand] the amount determined by the Minister from time to time by notice in the Gazette, as may in the circumstances of the case appear to it to be reasonable;
(ii) in the case of a contravention of paragraph (b), to a fine not exceeding [ten rand] the amount determined by the Minister, in consultation with the Minister of Justice, from time to time by notice in the Gazette in respect of each fixation or reproduction; and
(iii) in the case of a contravention of paragraph (c), to a fine [not exceeding one hundred rand] or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.”.

Amendment of section 10 of Act 11 of 1967

24. Section 10 of the Performers' Protection Act, 1967, is hereby amended by the substitution for paragraph (a) of the following paragraph:

- “(a) an amount not exceeding [one hundred rand] the amount determined by the Minister from time to time by notice in the Gazette, and such court may, without proof of any damages and in addition to the costs of the action, award as damages such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or”.

Amendment of section 14 of Act 11 of 1967

25. Section 14 of the Performers' Protection Act, 1967, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) This Act shall [not] apply to performances which took place before the commencement of this Act as it applies in relation to performances which take place thereafter.”.

Amendment of section 1 of Act 57 of 1978

26. Section 1 of the Patents Act, 1978, is hereby amended—
- (a) by the deletion of the expression "16"; and
 - (b) by the insertion after the words "CHAPTER V Applications for Patents (sections 25 to 43)" of the following words: 5
 "CHAPTER VA International Applications under the Patent Cooperation Treaty (sections 43A to 43F)."

Amendment of section 2 of Act 57 of 1978, as amended by section 1 of Act 76 of 1988

27. Section 2 of the Patents Act, 1978, is hereby amended—
- (a) by the substitution for the definition of "convention country" of the following definition: 10
 " 'convention country', in relation to any provision of this Act, means any country, including any group of countries and any territory for whose international relations another country is responsible, which the President has with a view to the fulfilment of any treaty, convention, arrangement or engagement, by proclamation in the Gazette declared to be a convention country for the purposes of such provision; and the expressions 'convention aircraft', 'convention land vehicle' and 'convention vessel' have corresponding meanings;" 15
 - (b) by the substitution for the definition of "patent" of the following definition: 20
 " 'patent' means [letters] a certificate in the prescribed form to the effect that a patent for an invention has been granted in the Republic;"
 - (c) by the insertion after the definition of "patent" of the following definition: 25
 " 'Patent Cooperation Treaty' means the Patent Cooperation Treaty of 19 June 1970 as amended from time to time and as acceded to by the Republic and as in force in the Republic;"
 - (d) by the deletion of the definition of "priority date".

Amendment of section 3 of Act 57 of 1978, as amended by section 1 of Act 14 of 1979

28. Section 3(1) of the Patents Act, 1978, is hereby amended by the substitution for paragraph (d) of the following paragraph: 30
 "(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, and provided further that, as from 1 January 1979, no renewal fees shall be payable in respect of such an extended period."

Repeal of section 11 of Act 57 of 1978 35

29. Section 11 of the Patents Act, 1978, is hereby repealed.

Amendment of section 24 of Act 57 of 1978

30. Section 24 of the Patents Act, 1978, is hereby amended—
- (a) by the substitution for subsection (7) of the following subsection: 40
 "(7) The registrar or the South African Institute of Intellectual Property Law shall have right to apply to the commissioner for an interdict and other appropriate relief against any person contravening any provision of this section;" and
 - (b) by the addition of the following subsection: 45
 "(9) Any communication made by or to a patent agent in his or her capacity as such shall be privileged from disclosure in legal proceedings in the same manner as is any communication made by or to an attorney in his or her capacity as such."

Amendment of section 25 of Act 57 of 1978

31. Section 25 of the Patents Act, 1978, is hereby amended—

- (a) by the substitution for subsection (5) of the following subsection:
“(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.”; 5
- (b) by the substitution for subsection (7) of the following subsection:
“(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 was lodged at the patent office and became open to public inspection on or after the priority date of [any claim to that] the relevant invention, if— 10
(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] invention.”; 15
- (c) by the substitution for subsection (9) of the following subsection:
“(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.”; and 20 25
- (d) by the substitution for subsection (10) of the following subsection:
“(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)).” 30

Substitution of section 26 of Act 57 of 1978

32. The following section is hereby substituted for section 26 of the Patents Act, 1978:

“Prior knowledge or publication of invention excused in certain circumstances 35

26. 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 or her predecessor in title proves that such knowledge was acquired or such disclosure or use was made without his or her knowledge or consent, and that the knowledge acquired or the matter disclosed or used was derived or obtained from him or her, and, if he or she learnt of the disclosure, use or knowledge before the priority date of the [claim in question] invention, that he or she applied for and obtained protection for his or her invention with all reasonable diligence after learning of the disclosure, use or knowledge; or 40 45
- (b) as a result of the invention being worked in the Republic by way of