

reasonable technical trial or experiment by the applicant or patentee or the predecessor in title of the applicant or patentee.”.

Amendment of section 30 of Act 57 of 1978

33. Section 30(6) of the Patents Act, 1978, is hereby amended by the substitution for paragraph (b) of the following paragraph: 5

“(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] the relevant application in the convention country from which such convention application claims priority and the name of the convention country, if the specification and drawings, if any, are lodged within 14 days of the date on which the application was lodged.”. 10

Amendment of section 31 of Act 57 of 1978, as amended by section 2 of Act 14 of 1979, section 1 of Act 67 of 1983 and section 1 of Act 44 of 1986

34. Section 31(1) of the Patents Act, 1978, is hereby amended by the substitution for paragraph (iv) of the following paragraph: 15

“(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 of the application in the convention country referred to in paragraph (c), or the applicant has acquired the right to claim priority in the Republic [has become vested in him].”. 20

Substitution of section 33 of Act 57 of 1978, as amended by section 2 of Act 67 of 1983

35. The following section is hereby substituted for section 33 of the Patents Act, 1978: 25

“Priority dates

33.(1) For the purposes of this Act, the priority date of an invention to which an application for a patent relates, and also that of any matter contained in any such application, whether or not such matter is the same as the invention, shall, except as otherwise provided in this Act, be the date of the lodging of the application. 30

(2) Where priority is claimed in an application in terms of section 31(1) from one or more prior applications, or one or more prior applications in a convention country or countries, or both, and the invention claimed in the application is fairly based on matter disclosed in one or more of the prior applications, the priority date of the invention shall be the date of lodging of the earliest of the prior applications in which that matter was disclosed in so far as it is fairly based on such earliest application. 35

(3) Any invention claimed in an application may have one or more priority dates. 40

(4) Until the contrary is proved, the priority date of an invention shall be the earliest priority date claimed in an application.

(5) In determining whether an invention claimed in an application is fairly based on the matter disclosed in a prior application or a prior application in a convention country, regard shall be had to the disclosures contained in all documents lodged at the same time as and in support of that prior application or prior application in a convention country. 45

(6) The priority date of new matter introduced by way of a supplementary disclosure in terms of section 51(8) shall be the date of lodging of the supplementary disclosure.”. 50

Amendment of section 37 of Act 57 of 1978

36. Section 37 of the Patents Act, 1978, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) A patent granted on such fresh application shall not be revoked or invalidated on the ground only that the invention claimed in such fresh application is not new having regard to the matter disclosed in the first-mentioned application.” 5

Amendment of section 43 of Act 57 of 1978, as amended by section 4 of Act 67 of 1983

37. Section 43 of the Patents Act, 1978, is hereby amended by the addition of the following subsection: 10

“(4)(a) After the expiry of five years following the date of application for a patent, any person may apply to the registrar for the patentee to supply the applicant with the prescribed particulars of any search report issued in another country in respect of an application for a patent relating to the same subject-matter which has been lodged in that country. 15

(b) On receipt of the application, the registrar shall forward a copy thereof to the patentee at the patentee’s address for service.

(c) If the patentee fails to comply with the application within three months of receipt of the copy of the application at the patentee’s address for service, the applicant may apply to the commissioner for an order requiring compliance with the application. 20

(d) Upon an application for compliance, the commissioner may order such compliance and, if the order is not complied with, the commissioner may make the further order that he or she thinks fit.” 25

Insertion of Chapter VA in Act 57 of 1978

38. The following Chapter is hereby inserted after Chapter V of the Patents Act, 1978:

**“CHAPTER VA
INTERNATIONAL APPLICATIONS UNDER THE
PATENT COOPERATION TREATY** 30

Interpretation

43A. In this Chapter, unless the context otherwise indicates, any word or expression defined in the Patent Cooperation Treaty shall have the same meaning as in that Treaty.

Effect of international application designating Republic 35

43B. Subject to this Chapter, an international application designating the Republic shall be deemed to be an application for a patent lodged at the patent office in terms of this Act.

Patent office as receiving, designated and elected Office

43C. The patent office shall be— 40

- (a) the receiving Office in respect of an international application lodged at it by a person who is a resident or national of the Republic;
- (b) the designated Office in respect of an international application designating the Republic;
- (c) the elected Office, if an applicant in an international application designating the Republic elects the Republic for the purposes of an international preliminary examination under Chapter II of the Patent Cooperation Treaty. 45

National processing

43D. The patent office as designated Office or elected Office shall not commence processing of an international application designating or electing the Republic before the expiration of the period referred to in section 43E(1) except where the applicant complies with that section and lodges with the patent office a written request for early commencement of such processing.

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Commencement of national phase

43E.(1) Before the expiration of the applicable period contemplated in Article 22 or 39 of the Patent Cooperation Treaty or of such further period as may be prescribed by regulation under this Act, the applicant in respect of an international application designating or electing the Republic shall—
(a) pay the prescribed national fee to the patent office; and
(b) if the international application has not been lodged or published in terms of the Patent Cooperation Treaty in English, lodge at the patent office a translation of the international application, containing the prescribed contents, in an official language of the Republic.

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(2) If the applicant does not comply with subsection (1) within the period referred to in that subsection or the further period that the registrar allows, the international application concerned shall be deemed to have been abandoned for the purposes of this Act.

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Administration

43F. (1) When processing an international application, the patent office shall, subject to subsections (2) and (3), apply the Patent Cooperation Treaty, the regulations made thereunder and the administrative instructions issued under those regulations, and the other provisions of this Act.

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(2) When processing an international application, the Patent Cooperation Treaty, the regulations made thereunder and the administrative instructions issued under those regulations shall prevail in the event of any conflict with this Act.

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(3) When processing an international application designating the Republic—

(a) (i) section 9(b) shall not apply; and
(ii) the applicant shall be represented by an agent who shall be appointed within the prescribed time;

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(b) section 10 shall apply only if the applicant complies with section 43E(1) and the applicant who so complies shall, for the purposes of section 10, be deemed to be the applicant in respect of the international application;

(c) section 16(2) shall apply in relation to time limits specified in terms of the Patent Cooperation Treaty, the regulations made thereunder and the administrative instructions issued under those regulations unless otherwise provided therein;

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(d) (i) section 30(1), (5), (6) and (7) shall not apply; and
(ii) the international application shall date from, and the date of application of the international application shall be, the international filing date accorded in terms of the Patent Cooperation Treaty;

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(e) (i) the description, claims, drawings (if any) and abstract referred to in Article 3(2) of the Patent Cooperation Treaty shall be deemed to be a complete specification; and

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(ii) section 32(5) shall not apply;

(f) if—

(i) the international application is a convention application;

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- (ii) the applicant has complied with Rule 17.1 of the regulations made under the Patent Cooperation Treaty; and
 - (iii) the priority document referred to in the said Rule 17.1 is a prescribed document for the purposes of section 35(2), the applicant shall be deemed to have furnished a copy of the priority document within the prescribed period referred to in section 35(2):
- (g) section 38 shall not apply;
- (h) for the purposes of section 40, the period of 18 months from the date of the application shall be a period of 12 months from the date on which the applicant complies with section 43E(1);
- (i) section 43(3) shall not apply but, when the applicant has complied with section 43E(1) and the application has been published in terms of Article 21 of the Patent Cooperation Treaty, the application shall be open to public inspection as provided in section 43(1);
- (j) section 43(4) shall not apply;
- (k) any correction or rectification of any document made in terms of the regulations made under the Patent Cooperation Treaty shall be deemed to be a correction or amendment made in terms of section 50;
- (l) (i) if an application for amendment of the international application is made before the acceptance of the international application, the application for amendment shall not be advertised as contemplated in section 51(2);
- (ii) if—
- (aa) the applicant has not elected the Republic for the purposes of an international preliminary examination under Chapter II of the Patent Cooperation Treaty before the expiration of 19 months from the priority date as defined in Article 2(xi) of that Treaty and the applicant has complied with section 43E(1), any amendment made in terms of Article 19 of that Treaty; and
 - (bb) the applicant has elected the Republic for the purposes of an international preliminary examination under Chapter II of that Treaty before the expiration of 19 months from the priority date as defined in Article 2(xi) of the Patent Cooperation Treaty and the applicant has complied with section 43E(1), any amendment annexed to the international preliminary examination report,
- shall be deemed to have been made in terms of section 51 but may be set aside in terms of subsection (10) thereof.”

Amendment of section 44 of Act 57 of 1978 40

39. Section 44 of the Patents Act, 1978, is hereby amended by the substitution in the Afrikaans text for subsection (3) of the following subsection:

“(3) Die patent geld vanaf die datum van die publikasie in subartikel [(2)] (1) vermeld.”.

Amendment of section 45 of Act 57 of 1978 45

40. Section 45 of the Patents Act, 1978, is hereby amended by the substitution for subsection (1) of the following subsection:

“(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 or offering to dispose of, or importing the invention, so that he or she shall have and enjoy the whole profit and advantage accruing by reason of the invention.”