

Amendment of section 14 of Act 195 of 1993

70. Section 14 of the Designs Act, 1993, is hereby amended—
- (a) by the substitution for the proviso to subsection (2) of the following proviso:
 - “Provided that in the case of the release date thereof being the earlier, the design shall not be deemed to be new if an application for the registration of such design has not been lodged—
 - (a) in the case of an integrated circuit topography, a mask work or a series of mask works, within two years; or
 - (b) in the case of any other design, within six months, of such release date.”; and
 - (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
 - “(b) all matter contained in an application—
 - (i) for the registration of a design in the Republic; or
 - (ii) [of an application] in a convention country for the registration of a design which has subsequently been registered in the Republic in accordance with the provisions of section 44, of which the date of application in the Republic or convention country, as the case may be, is earlier than the date of application or the release date contemplated in subsection (2).”

Amendment of section 15 of Act 195 of 1993

71. Section 15 of the Designs Act, 1993, is hereby amended by the addition of the following subsection:
- “(5) Where an application for the registration of a design has been made or a design has been registered and a further application is made by the same applicant to register the design or a part thereof in the same or the other Part of the register and in the same class or in one or more other classes, such further application shall not be invalidated on the ground that the design—
- (a) in the case of—
 - (i) an aesthetic design, is not new and original;
 - (ii) a functional design, is not new and is commonplace in the art in question, by reason only that the design forms the subject of such previous application or registration; or
 - (b) was previously made available to the public by reason only that the design has been applied to articles within the class in which such previous application or registration was lodged.”

Substitution of section 18 of Act 195 of 1993

72. The following section is hereby substituted for section 18 of the Designs Act, 1993:
- “Certificate of registration
18. As soon as practicable after the registration of a design under section 15(1) the registrar shall—
- (a) issue a notification of registration to the applicant; and
 - (b) cause to be published in the journal in the prescribed form a notice of such registration and, upon such publication, issue a certificate of registration to the registered proprietor.”

Amendment of section 20 of Act 195 of 1993

73. Section 20 of the Designs Act, 1993, is hereby amended by the addition of the following subsection:

“(3) Notwithstanding subsection (1), the rights of the registered proprietor of a registered design in the form of an integrated circuit topography shall not be infringed by a person who—

(a) makes an article embodying the registered design or a design not substantially different from the registered design, for private purposes or for the sole purpose of evaluation, analysis, research or teaching; 5

(b) imports or disposes of an integrated circuit embodying the registered design which has been unlawfully produced or an article incorporating such an integrated circuit and proves that at the time of acquiring the integrated circuit or article he or she was not aware and had no reasonable grounds of becoming aware that the integrated circuit or article embodied a registered design which had been unlawfully produced: Provided that when the person receives sufficient notice that the registered design was unlawfully produced, the person may dispose of any stock of such integrated circuits or articles but shall be liable to pay to the registered proprietor a sum calculated on the basis of a reasonable royalty which would have been payable by a licensee or sub-licensee in respect of the registered design concerned.”. 10 15

Amendment of section 21 of Act 195 of 1993

74. Section 21 of the Designs Act, 1993, is hereby amended by the addition of the following subsection: 20

“(14) If the registered design in respect of which an application is made under subsection (1) for the granting of a compulsory licence is an integrated circuit topography, a mask work or a series of mask works—

(a) subsections (2)(b), (5), (6), (11) and (12) shall not apply; 25

(b) the court shall consider that application on its merits in deciding whether or not to grant a licence as provided for in subsection (4);

(c) a licence granted under subsection (4) upon that application shall include a provision that, subject to adequate protection of the legitimate interests of the licensee, the licence shall, on application by the registered proprietor of the registered design, be terminated if the circumstances which led to its grant cease to exist and, in the opinion of the court, are unlikely to recur; and 30

(d) a licence granted under subsection (4) upon that application shall be non-exclusive and shall not be transferable except to a person to whom the business or part of the business in connection with which the rights under the licence were exercised has been transferred.”. 35

Amendment of section 23 of Act 195 of 1993

75. Section 23 of the Designs Act, 1993, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where, after the commencement of this Act, the registration of a design has lapsed owing to non-payment of any prescribed renewal fee within the prescribed period or the extended period referred to in section 22(2), the registered proprietor may in the prescribed manner and on payment of the prescribed fee, apply to the registrar for the restoration of such registration.”. 40

Amendment of section 26 of Act 195 of 1993

76. Section 26 of the Designs Act, 1993, is hereby amended by the substitution for subsections (4) and (5) of the following subsections, respectively: 45

“(4) If a correction is requested and it appears to the registrar that the correction would materially alter the scope of the document to which the request relates and the document is open for public inspection, the registrar may require notice of the

request to be published in the journal and to be served upon such persons as he or she may deem necessary.

(5) If the registrar has not required such notice [has not been] to be so published and served or, if it had been so published and served and there is no opposition to such a correction, the registrar may decide the matter or, in the latter case, refer it to the court, which shall decide it as it may deem fit.”. 5

Amendment of section 27 of Act 195 of 1993

77. Section 27 of the Designs Act, 1993, is hereby amended—

(a) by the substitution for paragraph (a) of subsection (3) of the following paragraph: 10

“(a) [Any] If the registration of a design to be amended is open for public inspection, any person may oppose the application for amendment of the registration of the design within the prescribed time and in the prescribed manner.”; and

(b) by the substitution for subsection (6) of the following subsection: 15

“(6) No amendment of—

(a) an application for the registration of a design, or a registration of a design, shall be allowed if—

(i) the effect of the amendment would be to introduce new matter or matter not in substance disclosed in the application for the registration of a design or the registration of the design before amendment; or 20

(ii) registration of a design as amended would include any matter not fairly based on matter disclosed in the document before amendment; 25

(b) a registration of a design shall be allowed if—

(i) the effect would be to alter a registration in terms of the repealed Act from a Part A to a Part F registration; or

(ii) the scope of the registration after amendment would be wider than that before amendment.”. 30

Amendment of section 35 of Act 195 of 1993

78. Section 35(3) of the Designs Act, 1993, is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) in lieu of damages, at the option of the plaintiff, an amount calculated on the basis of a reasonable royalty which would have been payable by [the] a licensee or sub-licensee in respect of the registered design concerned.” 35

Amendment of section 44 of Act 195 of 1993

79. Section 44(1) of the Designs Act, 1993, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“An application for registration of a design [or similar right] in respect of which protection has been applied for in a convention country, by way of an application for registration of a design or similar right, may be made in accordance with the provisions of this Act by the person by whom the application for protection in the convention country was made or his or her [personal representative or] cessionary: Provided that no application shall be made by virtue of this section after the expiry of six months from the date of the application for protection in a convention country or, where more than one such application for protection has been made, from the date of the first application: Provided further that if after the filing of the first application for protection in a convention country in respect of any design or similar right, a subsequent application is filed in that country in respect of the same design or similar right, such subsequent application shall be regarded as the first application in that country in respect of that design or similar right, if at the time of filing thereof—” 40

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Short title and commencement

80. (1) This Act shall be called the Intellectual Property Laws Amendment Act, 1997, and shall, subject to subsections (2) and (3), come into operation on the date when this Act is first published in the *Gazette* as a law.

(2) Sections 1 to 18 shall come into operation on a date determined by the President 5
by proclamation in the *Gazette*.

(3) Sections 26, 27(c), 38 and 47 shall come into operation on a date determined by the President by proclamation in the *Gazette*.
