

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain uneven numbered pages as the other language is printed on even numbered pages.



STAATSKOERANT

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GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1326.

6 Julie 1988

No. 1326.

6 July 1988

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

—o. 76 van 1988: Wysigingswet op Patente, 1988.

No. 76 of 1988: Patents Amendment Act, 1988.

PATENTS AMENDMENT ACT, 1988

Act No. 76, 1988

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Patents Act, 1978, so as to adapt the designation of the Minister concerned; to further regulate the granting of compulsory licences; to make further provision in connection with the proceedings which may be instituted by a plaintiff for infringement of his patent; and to further regulate the procedure for an appeal against the decision of a commissioner of patents; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 23 June 1988.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 57 of 1978

1. Section 2 of the Patents Act, 1978 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "Minister" of the following definition:

"Minister" means the Minister of Economic Affairs and Technology;"

Amendment of section 56 of Act 57 of 1978

2. Section 56 of the principal Act is hereby amended—

10 (a) by the insertion after subsection (1) of the following subsection:

"(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."; and

15 (b) by the insertion after subsection (7) of the following subsection:

"(7A) The commissioner may order that a licence granted in terms of this section shall be deemed to have been granted on the date on which the application has been received by the registrar."

Amendment of section 65 of Act 57 of 1978

3. Section 65 of the principal Act is hereby amended—

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

"(3) A plaintiff in proceedings for infringement shall be entitled to relief by way of—

(a) an interdict;

25 (b) delivery up of [anything involving infringement] any infringing product or any article or product of which the infringing product forms an inseparable part; and

(c) damages."

PATENTS AMENDMENT ACT, 1988

Act No. 76, 1988

- (b) by the substitution for subsection (5) of the following subsection:
5 “(5) The plaintiff in any such proceedings shall, before he institutes the proceedings, give notice thereof to every licensee under the patent in question whose name is recorded in the register, and any such licensee shall be entitled to intervene as a co-plaintiff **[and to recover any damages he may have suffered as a result of the infringement]**.”; and
- (c) by the addition of the following subsection:
10 “(6) Damages contemplated in subsection (3) (c) may be calculated on the basis of the amount of a reasonable royalty which would have been payable by a licensee or sublicensee in respect of the patent concerned.”.

Amendment of section 76 of Act 57 of 1978, as amended by section 4 of Act 44 of 1986

4. Section 76 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
15 “(1) Save as is otherwise provided in this Act, any party to proceedings before the commissioner may appeal **[from]** against any order or decision of the commissioner pursuant to such proceedings **[to the provincial division of the Supreme Court of South Africa having jurisdiction to hear appeals in the area wherein the order or decision was given and thereafter to the Appellate Division of the Supreme Court]**.”;
- 20 (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:
 “(a) Every appeal **[to a provincial division of the Supreme Court]** shall be noted and prosecuted in the manner prescribed by law for appeals **[to the provincial division]** against a civil order or decision of a single judge **[of such division]**, and sections 20 and 21 of the Supreme Court Act, 1959 (Act No. 59 of 1959), shall apply *mutatis mutandis* **[save that special leave to appeal to such division shall not be necessary and that the period within which such appeal shall be noted shall be three months after the date of the order or decision appealed against; Provided that the provincial division concerned may, on application and on good cause shown, allow such extension of time for noting the appeal as may be necessary]**.”; and
- 25 (c) by the deletion of subsections (3), (4) and (5).
30

Short title

- 35 5. This Act shall be called the Patents Amendment Act, 1988.