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KANTOOR VAN DIE STAATSPRESIDENT

No. 1326. 6 Julie 1988

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

No. 76 van 1988: Wysigingswet op Patente, 1988.

STATE PRESIDENT'S OFFICE

No. 1326. 6 July 1988

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

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

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die Wet op Patente, 1978, ten einde die benaming van die betrokke Minister aan te pas; die verlening van verpligte lisensies verder te reël; verdere voorsiening te maak in verband met die geding wat deur 'n eiser ingestel kan word weens inbreuk op sy patent; en die prosedure vir 'n appèl teen die beslissing van 'n kommissaris van patente verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 23 Junie 1988.)

DAAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 2 van Wet 57 van 1978

1. Artikel 2 van die Wet op Patente, 1978 (hieronder die Hoofwet genoem), word hierby gewysig deur die omskrywing van "Minister" deur die volgende omskrywing te vervang:

"'Minister' die Minister van Ekonomiese Sake en Tegnologie;".

Wysiging van artikel 56 van Wet 57 van 1978

2. Artikel 56 van die Hoofwet word hierby gewysig—

(a) deur na subartikel (1) die volgende subartikel in te voeg:

"(1A) Hangende die finale beslissing oor 'n aansoek om 'n verpligte lisensie word die aansoeker, behalwe onder spesiale omstandighede, nie by interdik verbied om inbreuk op die patent te maak nie."; en

(b) deur na subartikel (7) die volgende subartikel in te voeg:

"(7A) Die kommissaris kan beveel dat 'n lisensie wat ingevolge hierdie artikel verleen word, geag word verleen te wees op die datum waarop die aansoek deur die registrateur ontvang is.".

Wysiging van artikel 65 van Wet 57 van 1978

3. Artikel 65 van die Hoofwet word hierby gewysig—

(a) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) 'n Eiser in 'n geding weens inbreuk is geregtig op regshulp by wyse van—

(a) 'n interdik;

(b) oorgawe van **[enigiets wat inbreuk inhou]** enige inbreukmakende produk of enige artikel of produk waarvan die inbreukmakende produk 'n onlosmaaklike deel uitmaak; en

(c) skadevergoeding.";

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—

(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

(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—

(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;

(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.";

(b) deur subartikel (5) deur die volgende subartikel te vervang:

"(5) Die eiser in so 'n geding moet, voordat hy die geding instel, aan elke lisensiehouer kragtens die betrokke patent wie se naam in die register aangeteken is, daarvan kennis gee, en so 'n lisensiehouer is geregtig om as mede-eiser toe te tree **[en skadevergoeding weens verlies wat hy as gevolg van die inbreuk gely het, te verhaal]**."; en

(c) deur die volgende subartikel by te voeg:

"(6) Skadevergoeding beoog in subartikel (3) *(c)* kan bereken word op die basis van die bedrag van 'n redelike tantième wat deur 'n lisensiehouer of sublisensiehouer ten opsigte van die betrokke patent betaalbaar sou gewees het.".

Wysiging van artikel 76 van Wet 57 van 1978, soos gewysig deur artikel 4 van Wet 44 van 1986

4. Artikel 76 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Behalwe vir sover in hierdie Wet anders bepaal word, kan enige party by verrigtinge voor die kommissaris teen 'n bevel of beslissing van die kommissaris ingevolge daardie verrigtinge appelleer **[na die provinsiale afdeling van die Hooggeregshof van Suid-Afrika wat regsbevoegdheid het om appèlle te verhoor in die gebied waarin die bevel of beslissing gegee is en daarna na die Appèlafdeling van die Hooggeregshof]**.";

(b) deur paragraaf *(a)* van subartikel (2) deur die volgende paragraaf te vervang:

"*(a)* Elke appèl **[na 'n provinsiale afdeling van die Hooggeregshof]** word aangeteken en voortgesit op die wyse by wet voorgeskryf vir appèlle **[na die provinsiale afdeling]** teen 'n siviele bevel of beslissing van 'n enkele regter **[van daardie afdeling]**, en artikels 20 en 21 van die Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), is *mutatis mutandis* van toepassing **[behalwe dat spesiale verlof om na so 'n afdeling te appelleer nie nodig sal wees nie en die tydperk waarin so 'n appèl aangeteken moet word, drie maande na die datum van die bevel of beslissing waarteen geappelleer word, is: Met dien verstande dat die betrokke provinsiale afdeling op aansoek en by bewys van 'n gegronde rede, die verlenging van tyd vir die aanteken van die appèl kan toestaan wat nodig is]**."; en

(c) deur subartikels (3), (4) en (5) te skrap.

Kort titel

5. Hierdie Wet heet die Wysigingswet op Patente, 1988.

(b) by the substitution for subsection (5) of the following subsection:

"(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:

"(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:

"(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]**.";

(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

(c) by the deletion of subsections (3), (4) and (5).

Short title

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

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