

SOUTH AFRICA
Patents Regulations

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1. Definitions

(1) In these regulations the expression 'the Act' means the Patents Act, 1978, and, unless the context otherwise indicates, an expression used in these regulations to which a meaning has been assigned in the Act shall bear the meaning so assigned and-

"access code" means the unique identification particulars, whether alphanumeric, biometric or otherwise, enabling the CIPRO system to identify a person;

"CIPRO" means the Companies and Intellectual Property Registration Office that constitutes a combined administrative office for the various registration offices established or deemed to be established under the Act, the Trade Marks Act, 1993 (Act 194 of 1993), the Designs Act, 1993 (Act 195 of 1993), the Registration of Copyright in Cinematograph Films Act, 1977 (Act 62 of 1977), the Close Corporations Act, 1984 (Act 69 of 1984), and the Companies Act, 1973 (Act 61 of 1973);

"CIPRO customer" means any person using electronic services and includes any person who has been allowed by the Registrar to use electronic services, who is legally entitled to act on behalf of a natural or juristic person, and who has thus been allowed to use or provide electronic services or to act as an intermediary in respect of electronic services;

"CIPRO portal" means the Internet website or other electronic portal forming part of the CIPRO system;

"CIPRO record retention system" means the system used by CIPRO to store records for subsequent access, whether in paper, microfilm, electronic or any other form;

"CIPRO system" means the computer system, including the CIPRO portal, through which CIPRO provides electronic services, irrespective of the medium or form of technology underlying or forming part of such services;

"electronic services" means the services provided or made available by CIPRO through the CIPRO system in terms of regulation 1A;

"inspect" includes obtaining access to a record via the CIPRO system;

"lodge" includes the creation of a record on the CIPRO system;

"office" means the patent office established under section 5(1) of the Act;

"operational requirements" means the requirements provided for in regulation 1A(2); and

"priority document" means a copy of the application and all relevant documents lodged with such application in a convention country certified by the authority with whom the application in the convention country was filed.

(2) These regulations shall apply to all patents and patent applications subject to the modifications set out in Chapter IA in respect of international applications designating the Republic.

1A. ELECTRONIC SERVICES

(1) The Registrar may direct by notice in the Gazette that any requirement under the Act or these regulations, including requirements in respect of information, records and payment, may or must be satisfied in electronic form, subject to the provisions of the operational requirements.

(2) The Registrar must publish operational requirements on the CIPRO portal setting out the requirements, processes and procedures in respect of all or certain electronic services, including-

- (a) registration procedures;
- (b) identification, authentication and verification;
- (c) form and format of records;
- (d) manner and form of payment;
- (e) information security requirements; and
- (f) record retention requirements.

(3) The operational requirements may be published in different forms over different parts of the CIPRO portal.

(4) Unless another form of electronic signature is specified in the operating requirements, any signature requirement under the Act or these regulations in respect of a record to be accessed from or lodged with CIPRO is satisfied by the CIPRO customer entering his access code on the CIPRO system and any record lodged after the CIPRO customer having entered the access code shall be deemed to have been duly signed by the person whose signature is required under the Act or these regulations for purposes of such record.

(5) Where any form under the Act or regulations makes provision for a signature and such form is deemed to be signed as provided for in subregulation (4), it shall not be necessary to have recorded on such form that it had been signed.

(6) Unless CIPRO receives prior written notification from the holder of an access code to disable such access code, CIPRO shall be entitled to accept that the person using electronic services is the person to whom the access code was issued or such person's duly authorized representative

acting within the scope of such person's authority.

(7) CIPRO may suspend or terminate electronic services at any time without incurring any liability for doing so: Provided that proper notice of such suspension or termination shall be given and that such suspension or termination will not effect existing rights of any person who has been using such electronic services.

CHAPTER I PROCEDURE IN THE PATENT OFFICE (regs 2 - 67)

2. Fees

The fees to be paid in terms of the Act shall be the fees specified in Schedule 1 to these regulations and shall be payable in such manner as the registrar may direct.

3. Forms

The forms referred to in these regulations are the forms contained in Schedule 2 hereto and such forms, whether in paper form or in any electronic form authorized by the registrar for electronic services, shall be used substantially in the manner prescribed for those cases to which they apply, but may be modified or amended with the approval of the registrar provided that such modifications or amendments shall not substantially affect their identity.

4. The register and indices

The registrar shall cause to be entered in the register the particulars called for in Form P2.

5.

The registrar shall maintain an alphabetical index of the names of all applicants for patents, inventors and patentees on the register and may also maintain an alphabetical index of the names of all assignees of patents or patent applications, registered licensees and hypothec holders on the register.

6.

The registrar shall maintain an index of all granted patents according to their classification.

7. Office hours

(1) The office will be open to the public from Mondays to Fridays from

08h00 to 15h00 except on the following days:

- (a) All days proclaimed public holidays in terms of any law; and
- (b) days which may from time to time be notified by placard posted in a conspicuous place at the office.

(2) Whenever the last day fixed by the Act or by these regulations for doing any such thing falls on a day when the office is not open to the public it shall be lawful to do any such thing on the day next following such excluded day, or days, if two or more of them occur consecutively.

8. Power of attorney

(1) Any agent appointed to act on behalf of any person shall file a power of attorney on Form P3.

(2) On termination of the authority of an agent referred to in subregulation (1) the person concerned may act on his own behalf or appoint any other agent to act for him. Such other agent shall file a power of attorney.

(3) The registration of an assignment shall not revoke a power of attorney previously given, unless the assignee files a power of attorney in terms of subregulation (2).

(4) An agent who withdraws from proceedings under the Act may do so on notice to the registrar.

(5) Upon withdrawal of an agent the provisions of subregulation (2) shall apply.

(6) Where any change is made in the authorisation of an agent referred to in subregulation (1) the principal shall, within one month of the date of such change or such further period as the registrar may allow, change his address for service in terms of section 87 of the Act by lodging Form P4.

9. Address for service

On all documents lodged in terms of the Act there shall be stated the address for service of the person by or on behalf of whom the document has been lodged.

10.

Any change of address for service shall be made by lodging Form P4.

11. Corrections or alterations

Except where specific provision is made for the use of special forms, any application or request to the registrar for the correction of an error in any document or for the alteration of any entry on a document or on the register shall be made on Form P4.

12. Documents

Subject to the provisions of section 30(6)(c) of the Act, all documents other than drawings, priority documents or a specification lodged in terms of section 30(6)(a)(iii) shall be in one of the official languages of the Republic.

13.

All documents shall be so presented as to permit of direct reproduction by photography, reprography or electronic means, as the case may be, in an unlimited number of copies. Where paper forms are used, all sheets shall be free of cracks, creases and folds. Only one side of a sheet shall be used, except where otherwise specified.

14.

All documents which are not photocopies of other documents shall be on A4 paper which shall be strong, pliable, smooth, matt and durable or in such electronic forms authorized by the registrar for electronic services. Each sheet shall be used with its short sides at the top and bottom (except where inappropriate in the case of drawings).

15.

Except for drawings, the minimum margins (which shall be kept completely blank) shall be as follows:

Top: 20 mm.

Left side: 25 mm.

Right side: 15mm.

Bottom: 10 mm.

16.

In all original typed documents the typing shall be 1 1/2 line spacing or double spacing. The capital letters used shall be not less than 2.1 mm high. All documents except drawings shall be in typescript or printed and shall be in dark, durable colour.

17.

Units of weight and measures shall be expressed in terms of the metric system. If a different system is used, such units shall also be expressed in terms of the metric system. Temperatures shall be expressed in degrees Celsius. If a different system is used, such temperatures shall also be expressed in degrees Celsius. For the other physical values, the units recognised in international practice shall be used. For mathematical formulae the symbols in general use, and for chemical formulae the symbols, atomic weights and molecular formulae in general use, shall be employed. In general, use should be made of technical terms, signs and symbols generally accepted in the field in question.

18.

If a formula or symbol is used in the specification a copy of such formula or symbol, prepared in the same manner as drawings, shall be filed if the registrar so directs.

19.

All documents, including drawings, shall be reasonably free from erasures and from alterations, overwritings and interlineations and shall, in any event, be legible.

20. Drawings

Drawings accompanying an application shall be on sheets of A4 size and the minimum margins shall be the same as those set out in regulation 15, except that below the top margin there shall be a space clear of any drawing matter to leave space for the name of the applicant, the application number and the numbering of the sheets and that at the bottom righthand corner there shall be a space within the margin and not occupied by drawing matter for the signature of the applicant or his agent. All references signs appearing on the drawing shall be simple and clear.

21.

Drawings shall be on strong, pliable, smooth, matt and durable drawing paper or on strong, pliable, smooth, matt and durable tracing cloth or in such electronic form as authorized by the registrar for electronic services and shall be executed without colouring in durable, black, sufficiently dense and dark, uniformly thick and well defined lines and strokes to permit of satisfactory reproduction.

22. Application for the grant of patents

(1) An application for a patent shall be made on Form P1 and shall be accompanied by the following documents:

(a) Form P1, in duplicate, one copy of which shall be returned to the applicant as proof of lodging;

(b) Form P2 in duplicate;

(c) a declaration and power of attorney on Form P3;

(d) where the applicant has acquired a right to apply from the inventor, an assignment or other proof, to the satisfaction of the registrar, of the right of the applicant to apply;

(e) a single copy of a provisional specification on Form P6 or two copies of a complete specification on Form P7;

(f) drawings, in the prescribed manner, if drawings are necessary to exemplify the invention; and

(g) an abstract on Form P8, in duplicate, if the application is accompanied by a complete specification.

(2) [*Subreg. (2) deleted by GN R250 of 26 February 1999*]

23.

A convention application, if not made by the applicant in the convention country, shall also contain an assignment or other proof, to the satisfaction of the registrar, of the applicant's right to claim priority.

24.

An application claiming priority under the Act from any prior application to the patent office shall contain a copy, in duplicate, on Form P2 of such prior application as well as the specification lodged in support of such prior application.

25.

In addition to the documents required under regulations 22 and 23, a convention application shall also contain a copy, certified to the satisfaction of the registrar, of the priority document. If any such document is in a language other than an official language of the Republic, the certified copy shall be accompanied by the translation thereof into one of the official languages, which translation shall be verified to the satisfaction of the registrar. Priority documents shall be lodged within six months of the lodging of the application or within such further period as the registrar may allow on request.

26.

After grant of a patent an updated copy of Form P2 shall accompany the letters patent.

27. Provisional specification

A provisional specification shall commence on Form P6 and be continued on a new page with a description of the invention and shall be signed at the end of the description by the applicant or his agent.

28. Complete specification

A complete specification shall commence on Form P7 and shall be signed at the end thereof by an agent.

28bis.

(1) A complete specification which claims as an invention a microbiological process or a product thereof shall, where no samples of the micro-organism in question are available to the public as required by section 32(6) of the Act, only to be deemed fully to describe, ascertain and disclose the invention in terms of section 32(3)(b) and (c) if before acceptance of the application-

(a) a culture of the micro-organism has been deposited in a culture collection recognised by the European Patent Office for the purpose of rule 28 of the implementing regulations to the convention on the granting of European Patents;

(b) the complete specification gives such relevant information as is available to the applicant on the characteristics of the micro-organism;

(c) the complete specification gives the date when the culture was deposited, the culture collection in which it was deposited and the file number of the deposit.

(2) Before an application for a patent referred to in regulation 28bis(1) can be accepted, the applicant must furnish proof to the satisfaction of the Registrar that samples of the micro-organism in question are available from such culture collection to the public in the Republic of South Africa.

28A. Microbiological processes and products

(1) If the complete specification accompanying an application claims as an invention a microbiological process or a product thereof and requires for the performance of the invention the use of a micro-organism which is not available to the public on the date of lodging the application

and which cannot be made or obtained on the basis of the description in the specification, the following provisions shall apply:

(a) Not later than the date of lodging the application, a culture of the microorganism shall be deposited with a depositary institution which has acquired the status of international depositary authority as provided for in the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure;

(b) subject to subregulation (2), the complete specification shall state the name, or a recognised abbreviation, of the international depositary authority with which the culture was deposited and the accession number given to the deposit by the international depositary authority; and

(c) the complete specification, as lodged, shall give such relevant information as is available to the applicant on the characteristics of the micro-organism.

(2) Where the information specified in subregulation (1)(b) is not contained in the complete specification as lodged, it may be added to the complete specification in accordance with section 50(1)(b) of the Act at any time before the date of publication in terms of section 42 of the Act or before coming open to public inspection in terms of section 43(3) of the Act, whichever is the earlier.

(3) The communication of the information provided for in subregulation (1) shall be considered as constituting the unreserved and irrevocable consent of the applicant to make the deposited culture available to the public in accordance with this regulation from the date contemplated in subregulation (2).

(4) A sample of the deposited culture shall be furnished to any person (hereinafter referred to as the 'requesting party') from the date contemplated in subregulation (2) provided that the requesting party makes a valid request therefor to the international depositary authority with which the culture is deposited.

(5) A request for the furnishing of a sample of the deposited culture shall be valid if it is lodged on Form P23 as set out in Schedule 2 and the Registrar has certified on that form that a patent or patent application referring to the deposit of the culture has been published in terms of section 42 of the Act or has come open to public inspection in terms of section 43(3) of the Act, as the case may be, and that the requesting party is entitled to the furnishing of a sample of the deposited culture.

(6) (a) The Registrar shall not make the certification referred to in subregulation (5) unless the Registrar has received a request on Form P24 as set out in Schedule 2.

(b) The request shall contain an undertaking from the requesting party vis-à-vis the patentee that the requesting party shall not make the deposited culture, or any culture derived therefrom, available to any third party until the patent application has been abandoned or has lapsed, or until the patent ceases to have effect by way of expiration, revocation, voluntary surrender, or lapsing without the possibility of renewal in accordance with section 46 of the Act, as the case may be.

(7) An undertaking given on Form P24 as set out in Schedule 2 in accordance with subregulation (6) shall not prevent the requesting party concerned from depositing with an international depositary authority a derived culture or the culture itself necessary for the purpose of complying with section 32(6) of the Act.

(8) For the purpose of subregulation (6) or (7), a derived culture shall be deemed to be any culture of the micro-organism which exhibits those characteristics of the deposited culture which are essential to the carrying out of the invention described in the complete specification in which reference is made to the deposited culture.

(9) Where the patentee is notified-

(a) by the international depositary authority with which the culture of the microorganism has been deposited that the depositary institution is unable, for any reason, to furnish samples of the culture; or

(b) in writing by a requesting party that the depositary institution with which the culture of the micro-organism has been deposited is unable, for any reason, to satisfy a valid request by the requesting party for the furnishing of a sample of the culture,

and, if a culture of the micro-organism has not been transferred to or deposited with another international depositary authority from which samples of the culture can be furnished, the patentee shall, within a period of six months from the date on which he was so notified-

(i) make a new deposit of a culture of the micro-organism with the international depositary authority with which the original deposit was made;

(ii) furnish to the international depositary authority with which the new deposit is made a statement alleging that the newly deposited culture is the same as that originally deposited; and

(iii) apply to substitute, in the complete specification of the patent, in accordance with section 50(1)(b) of the Act, the accession number given to the new deposit and, where applicable, the name of the international depositary authority with which the new deposit has been made.

(10) Where the patentee has been notified in terms of subregulation (9) by a requesting party, the patentee shall, within two months of complying with subregulation (9)(i) to (iii), inform the requesting party of the accession number of the new deposit and, where applicable, the name of the international depositary authority with which the new deposit has been made.

(11) On compliance with the provisions of subregulations (1) and (2) and, where applicable, subregulation (9), the complete specification shall be deemed fully to describe and ascertain the invention and the manner in which it is to be performed in so far as the relevant micro-organism is concerned.

29. Title

The title of an invention shall be as short and specific as possible and shall be descriptive of the nature of the invention claimed. Words such as 'improved', 'relating to' and the like shall not appear in the title.

30. Claims

Each category of claims (product, process, apparatus, use and the like) shall as far as practicable, be arranged in order of decreasing scope.

31. Abstract

The abstract on Form P8 shall be that of the technical disclosure contained in the complete specification, but shall not be used to interpret the scope of the claims. It shall be in narrative form and generally limited to a single paragraph of not more than 150 words. The form and phraseology of patent claims shall be avoided. Features mentioned in the abstract and illustrated in the drawing chosen therefor may be followed by the reference sign used in that drawing.

32. Drawings in a provisional specification

Drawings accompanying a provisional specification shall be capable of reproduction by photocopy or reprography.

33. Declaration

Form P3 shall be lodged within six months of the lodging of any application or within such further time as the registrar may on request allow.

34. Application for a patent of addition

An application in terms of section 39(1) for a patent of addition shall be made on Form P1 and shall be accompanied by a complete specification.

35.

A request for the revocation of an independent patent and the grant of a patent of addition in terms of section 39(3) shall be made on Form P4 and shall be accompanied by Form P1 and the letters patent of the independent patent.

36.

The complete specification of an application for a patent of addition shall set out the relationship between the invention described or claimed in it and that described or claimed in the complete specification of the main invention.

37. Application to amend, or to lodge a fresh application

(1) A fresh application under section 37 shall be made on Form P1 accompanied by a complete specification and a request for ante-dating on Form P4.

(2) An application under section 38(1) to change a complete specification to a provisional specification shall be made on Form P4.

(3) An application for the post-dating of an application referred to in section 38(2) shall be made on Form P4.

38. Late lodging of documents

A document which did not accompany an application in terms of regulation 22(1) shall be lodged on Form P5.

39. Requests and applications to the registrar

Unless otherwise provided, any request or application to the registrar shall be made on Form P4 in duplicate quoting the section of the Act or the regulation or both under which relief is sought and shall set out the relief claimed. The duplicate of the form shall be returned to the applicant or his agent.

40. Examination

Any application accompanied by a provisional specification shall be examined to ensure that the documents lodged are legible and capable of reproduction.

41.

The registrar shall examine the application accompanied by a complete specification in order to ensure that it complies with the prescribed formalities.

42.

The applicant shall remedy any defect or comply with any direction under regulation 18, 22(2), 40 or 41 within a period of three months or, subject to the provisions of section 40 of the Act, within such further period as the registrar may on request allow.

43.

If an applicant fails to comply with a direction under regulation 42 within the prescribed time or any extension thereof, the application may be treated as being abandoned and the applicant may request the return of the documents on Form P4, provided that such documents do not relate to documents which are open to public inspection in terms of section 43(3) of the Act.

44. Acceptance

As soon as the registrar is satisfied that an application accompanied by a complete specification complies with the requirements of the Act, and unless there has been a request to delay acceptance, he may accept the application and give written notice thereof which shall be accompanied by Form P8.

45.

Subject to the provisions of section 40 of the Act, an applicant may request the registrar to delay acceptance of the application to a date not later than 18 months from the date of application. If he desires that the acceptance be withdrawn he shall apply on Form P4.

46. Publication of acceptance

When notice of acceptance of an application has been given by the registrar, the applicant shall advertise the acceptance in the journal within three months of such acceptance or within such further time as the registrar may allow on request on Form P4.

46A. Particulars of search reports

(1) An application in terms of section 43(4)(a) for the patentee to supply the applicant with the prescribed particulars of any search report issued in another country shall be made on Form P4 in triplicate.

(2) The Registrar shall forward one copy of Form P4 to the patentee at the patentee's address for service and shall return a further copy to the applicant as receipt of the application.

(3) The prescribed particulars referred to in section 43(4)(a) shall be the full details required to identify all documents cited in a search report in respect of a patent application relating to the same subject matter lodged in another country.

(4) An application in terms of section 43(4)(c) shall be initiated by way of a notice of motion.

47. Sealing of a patent

A patent shall be sealed on the date of publication in the journal, in the form set out in Schedule 5 to these regulations or in such modified form as the registrar may direct.

48. Renewals

(1) If it is desired, at the date of sealing or at the expiration of the third year from the date referred to in section 46(1) of the Act, whichever is the latter, or at the expiration of any succeeding year during the term of the patent, to keep the patent in force, the renewal fees set out in item 8 of the Schedule 1 shall be paid by lodging Form P10 before the expiration of that year.

(2) All or any of the renewal fees may be paid in advance.

(3) A request for an extension of time to pay a renewal fee shall be made on Form P10, which should indicate the reason for the late payment of such fee.

49. Restoration

An application under section 47 of the Act for the restoration of a patent which has lapsed through non-payment of renewal fees shall be made by way of an ex parte application to the registrar in a form as near as possible to the form used for notice of motion proceedings.

50.

If the registrar is satisfied that a prima facie case has been made out, he shall advertise the application once in the journal.

51.

At any time within two months of date of the advertisement of the application any person may oppose the restoration of the patent in terms of Chapter III of these regulations.

52. Amendment of specifications

(1) An application to amend a provisional specification shall be made on Form P11.

(2) An application to amend a complete specification shall be made on Form P12 or P13, as the case may be, and a supplementary disclosure, if any, shall be made on Form P14.

53.

If the registrar is satisfied that an application on Form P13 is in compliance with the Act, he may direct the patentee to advertise the amendment once in the journal. An application so advertised may be opposed within two months of the date of such advertisement in terms of Chapter III of these regulations.

54. Opposition proceedings before the registrar

Any person who has been notified of a proposed action by the registrar and who opposes such action or who opposes any such action advertised in the journal in regard to a matter to be determined by the registrar shall do so within two months of dispatch of such notification to him or within two months from the date of the relevant advertisement in the journal.

55.

Such opposition shall be lodged on Form P15, which shall, if necessary, be accompanied by any documents to be relied upon and, if any other party is involved in the matter, copies of Form P15 and the documents shall be served upon him and proof of service furnished to the satisfaction of the registrar.

56.

Any person who may wish to become a party to the proceedings may, within

two months of the date of the notification or date of advertisement in the journal or within any such extended period as may be allowed by the registrar file a reply on Form P15, accompanied by the relevant documents. Form P15 and the relevant documents shall be served on the other party in the matter and proof of service furnished to the satisfaction of the registrar.

57.

When a reply has been filed or the period for filing thereof has expired and a reply has not been filed, the registrar may appoint a time and date for himself to determine the matter and notify the parties of the time and date thus appointed.

58. Title to and interest in inventions, patent applications and patents

An application for the recording of an assignment shall be made in duplicate on Form P16 accompanied by proof of title of such assignment.

59.

Any such application shall be made within six months of the event entitling the applicant to request a recording: Provided that the registrar may extend this time limit if so requested on Form P4, and on payment of the fee prescribed in item 4(r) of Schedule 1.

60.

A warrant or writ of execution or an attachment order in respect of a patent application or a patent shall be served at the address for service of the applicant or the patentee and a copy shall be lodged with the registrar on Form P16 for recording in the register.

61.

An entry of any attachment may be removed from the register on a request made to the registrar on Form P4.

62.

An application to record a licence against a patent shall be made on Form P16 within six months of the event entitling the recording of such licence, or within six months of the grant of the patent, if the licence agreement was before such grant: Provided that the registrar may extend this time limit on application on Form P4 and on payment of the fee prescribed in item 4(r) of Schedule 1.

63.

The recording of a licence may be cancelled on request to the registrar on Form P4 accompanied by proof, to the satisfaction of the registrar, that the licence has been cancelled or otherwise terminated.

64.

(1) The hypothecation of a patent application shall be recorded in the register on application on Form P16 accompanied by the deed of hypothecation.

(2) The application shall also be served on the applicant or the patentee, as the case may be, and any other person recorded in the patent, and proof of service shall be furnished to the satisfaction of the registrar.

65.

The recording of the hypothecation may be removed from the register on application to the registrar on Form P4, accompanied by such proof of the termination of the hypothecation as the registrar may require.

66. Endorsement or cancellation of endorsement on patent

An application for the endorsement or the cancellation of an endorsement of the words 'licences of right', in terms of sections 53 and 54 of the Act, shall be made on Form P4 within two months after the date giving rise to such endorsement or cancellation thereof.

67. Voluntary surrender of patent

An application for the surrender of a patent shall be made on Form P21.

CHAPTER IA PROCEDURE IN THE PATENT OFFICE IN RELATION TO INTERNATIONAL APPLICATIONS (regs 67A - 67I)

67A. International application lodged with the patent office as receiving office

For the purposes of section 43C(a), and subject to the provisions of rule 16bis of the regulations under the Patent Cooperation Treaty, the applicant shall pay to the patent office-

- (a) the transmittal fee specified in Schedule 1 to these regulations within one month of the date on which the international application was lodged; and
- (b) the international fee and the search fee specified in rules 15 and 16, respectively, of the regulations under the Patent Cooperation Treaty within the time limits specified therein.

67B. National phase entry form

(1) The national fee prescribed in section 43E(1)(a) shall be paid by the applicant on Form P25, in duplicate, one copy of which shall be returned by the Registrar to the applicant as proof of payment.

(2) The translation referred to in section 43E(1)(b) shall be lodged within six months of the date of lodgement of form P25.

(3) Within one month of complying with sections 43E(1)(a), the applicant shall lodge a form P2.

(4) Within six months of complying with section 43E(1)(a), or within such further time as the Registrar may on request allow, the applicant shall lodge a form P3.

67C. Entering national phase under Chapter I of the Patent Cooperation Treaty

Where the Republic has not, before the expiration of 19 months from the priority date referred to in article 2(xi) of the Patent Cooperation Treaty, been elected for the purposes of international preliminary examination-

(a) the time limit applicable under article 22 of the Patent Cooperation Treaty, as referred to in section 43E(1), shall be 31 months from the priority date;

(b) the contents of the translation referred to in section 43E(1)(b) shall include-

- (i) the description;

- (ii) the claims (if amended under article 19 of the Patent Cooperation Treaty, as so amended); and
- (iii) any textual matter on the drawings, if any.

67D. Entering national phase under Chapter II of the Patent Cooperation Treaty

Where the Republic has, before the expiration of 19 months from the priority date referred to in article 2(xi) of the Patent Cooperation Treaty, been elected for the purposes of international preliminary examination-

(a) the time limit applicable under article 39 of the Patent Cooperation Treaty, as referred to in section 43E(1), shall be 31 months from the priority date;

(b) the contents of the translation referred to in section 43E(1)(b) shall include-

(i) the description (if amended by any amendments annexed to the international preliminary examination report, as so amended);

(ii) the claims (if amended by any amendments annexed to that report, as so amended);

(iii) any textual matter on the drawings (if any and if amended by any amendments annexed to that report, as so amended).

67E. Missing translation of an amendment

(1) Where the applicant fails to file a translation of an amendment referred to in regulation 67C or 67D, the registrar shall request the applicant to furnish the missing translation within a time limit which shall be reasonable in the circumstances and which shall be fixed in the request.

(2) [Reg. 67E(2) deleted by GN R567 of 23 April 2003] [Reg. 67E inserted by GN R250 of 26 February 1999]

67F. Appointment of agent

Regulations 9 and 10 shall apply to section 43F(3)(a)(ii) and the prescribed time referred to in section 43F(3)(a)(ii) shall be six months calculated from the date on which the applicant complies with the requirements of section 43E(1), or such further period as the registrar may on request allow.

67G. Convention application

(1) Where the applicant has failed to comply with rule 17.1 of the regulations under the Patent Cooperation Treaty, the applicant shall lodge with the patent office a copy, certified to the satisfaction of the registrar,

of the priority document within six months of the applicant complying with section 43E(1) or within such further period as the registrar may on request allow.

(2) If the priority document is in a language other than English, a translation thereof into one of the official languages, verified to the satisfaction of the registrar, shall be lodged with the patent office within six months of the applicant complying with section 43E(1) or within such further period as the registrar may on request allow.

67H. Acceptance, publication and sealing

Subject to the provisions of section 40, when read with section 43F(3)(h), sections 42 and 44 and regulations 44 and 47 shall apply mutatis mutandis to the national phase of an international application.

67I. Renewals

(1) If a patent issues on an application filed in terms of section 43B three months or more before the expiration of 36 months from the international filing date, regulation 48 shall apply.

(2) If a patent issues on an application after the expiration of 36 months from the international filing date or less than three months prior to such expiration date, the patentee shall pay any renewal fees payable in terms of regulation 48(1) within six months of the date of publication in terms of section 42 or such further period as the registrar may, in terms of the proviso to section 46(2) and on compliance with regulation 48(3), allow. Thereafter regulation 48 shall apply.

CHAPTER II PATENT AGENTS AND PATENT ATTORNEYS (regs 68 - 75)

68.

There shall be kept at the office a register wherein shall be entered the full names, business addresses and dates of registration of all patent agents and patent attorneys.

69.

The register kept in terms of regulation 63 of the Patent Regulations, 1962, shall be deemed to form part of the register kept in terms of regulation 68.

70.

An application to be registered as a patent agent or a patent attorney shall be made on Form P17 and shall be accompanied by evidence, to the satisfaction of the registrar, that the applicant is entitled to be so registered.

71.

If the registrar is satisfied that the applicant is entitled to be registered, he shall enter his name on the register of patent agents and patent attorneys and issue a certificate to this effect.

72.

(1) A request for the removal from the register of the name of a patent agent or a patent attorney in terms of section 23(1)(a) of the Act shall be made on Form P18 and the applicant for removal shall provide proof to the satisfaction of the registrar that a copy of that form has been served on the South African Institute of Intellectual Property Law and on the law society concerned. If no objection is received from the Institute or the law society concerned within two weeks of the date of service of the copies on them, the registrar shall remove the name of the agent or attorney from the register.

(2) If the South African Institute of Intellectual Property Law or the law society concerned, as the case may be, gives notice of its intention to be heard, it shall serve notice, together with any documents on which it intends to rely at the hearing, on the person concerned and on the registrar.

(3) The registrar shall appoint a time and date for the hearing and advise all parties concerned accordingly.

73.

(1) An application by the registrar for the suspension from practice or the removal of the name of a person from the register of patent agents and patent attorneys in terms of sections 23(1)(b)(i) and 23(4)(a) of the Act shall be commenced by way of motion proceedings and copies of all relevant documents shall be served on the person concerned, the South African Institute of Intellectual Property Law and the law society concerned.

(2) An application by the South African Institute of Intellectual Property Law for the suspension from practice or the removal of the name of a person from the register of patent agents and patent attorneys in terms of sections 23(1)(b)(ii) and 23(4)(b) of the Act shall be made by way of motion proceedings and copies of all relevant documents shall be served on the registrar and the law society concerned.

(3) Thereafter, the procedure applicable shall be governed by the Uniform Rules of Court of the Supreme Court of South Africa, 1965.

74.

(1) A patent agent or patent attorney whose name has been removed from the register or suspended from practice in terms of section 23 of the Act and who wishes to be employed, in terms of section 24(4) of the Act, in any capacity connected with the profession of a patent agent or patent attorney shall lodge an application on Form P4, which application shall be accompanied by the prescribed fee and by evidence on affidavit of the circumstances of the case and of the present character and behaviour of the person seeking to be employed. Such application shall be served on the South African Institute of Intellectual Property Law and the proof of such service shall be lodged with the registrar. If no objection is received from the Institute within one month of the service upon it of the application, the registrar may decide the matter in the absence of the Institute.

(2) An agent who wishes to employ, in terms of section 24(5) of the Act, a patent agent or patent attorney whose name has been removed from the register or suspended from practice in terms of section 23 of the Act shall lodge an application on Form P4, which application shall be

accompanied by the prescribed fee and by evidence on affidavit of the circumstances of the case and of the present character and behaviour of the person he wishes to employ. Such application shall be served on the South African Institute of Intellectual Property Law and the proof of such service shall be lodged with the registrar. If no objection is received from the Institute within one month of the service upon it of the application, the registrar may decide the matter in the absence of the Institute.

75. Attorneys entitled to practise as patent agents

An attorney who wishes to continue, after 1 January 1984, to have rights of representation, in terms of section 22(1) of the Act, without having been registered as a patent attorney may apply to the registrar for an extension of such rights on Form P4. The application shall be accompanied by evidence on affidavit of his activities in the past five years in representing parties in matters or proceedings under the Act, and of his activities and preparation to become registered as a patent attorney, together with any other reasons for the extension of such rights. Proof of service of his application on the South African Institute of Intellectual Property Law and on the law society concerned shall be furnished to the registrar.

CHAPTER III THE COURT OF THE COMMISSIONER OF PATENTS (regs 76 - 105)

76.

Proceedings before the commissioner of patents may be initiated by way of-

- (a) a notice of appeal;
- (b) a notice of opposition;
- (c) an application for revocation;
- (d) an application for extension of term;
- (e) a notice of motion;
- (f) summons.

77.

When any proceeding referred to in regulation 76 is initiated the registrar shall act as the registrar of the court of the commissioner of patents and shall open a separate file for that proceeding.

78. Reasons of registrar

When any person objects to any order or decision of the registrar he may, within one month of the date of the registrar's order or decision or such further time as the registrar may allow, on Form P4 request the registrar to state in writing the grounds for his decision and the data used by him in arriving thereat. The date of such statement shall be deemed to be the date of the registrar's order or decision for the purpose of appeal.

79. Appeals to the commissioner

A notice of appeal shall be lodged with the registrar of the Court of the Commissioner of Patents and shall be served on the registrar and on any other party to the proceedings before the registrar, within two months of the statement referred to in regulation 78.

80.

Any notice of appeal shall be accompanied by a copy of the reasons of the registrar under regulation 78 and shall be in accordance with Rule 49(4) of the Uniform Rules of Court of the Supreme Court of South Africa, 1965.

81.

The procedure on appeal shall, as far is practicable, be in accordance with the provisions governing appeals to the full Court of a Provincial Division of the Supreme Court from a single judge thereof: Provided that

the record on appeal shall include the registrar's statement, documents (if any) containing data used by him and any other document which the appellant considers to be relevant. If the respondent considers any further document to be relevant, he may request the appellant to include such document in the record, and the appellant shall comply with such request.

82. Procedure on opposition

A notice of opposition in any matter in which opposition is allowed under the Act shall be made on Form P19 and shall be accompanied by a statement of particulars of the grounds on which the opposition is based and shall be duly filed and served.

83.

Within two months of the filing and service of the notice of opposition the applicant shall file and serve a counterstatement in the form of a plea. If such counterstatement is not lodged within the said period or within such further period as the registrar may allow the application shall be deemed to be abandoned and the opponent may apply to the commissioner for an order as to costs.

84.

Within two months of the lodging and service of the counterstatement the opponent shall file and serve his evidence in the form of an affidavit.

85.

Within two months of the filing and service of the opponent's evidence the applicant may file and serve answering evidence in the form of an affidavit.

86.

Within two months of the filing and service of the applicant's answering evidence the opponent may file and serve replying evidence, in the form of an affidavit, confined to matters strictly in reply.

87.

(a) No further evidence shall be filed by either party except by leave or direction of the commissioner.

(b) All evidence shall be by affidavit unless otherwise directed by the commissioner.

88.

Upon completion of the evidence the opponent or if he fails to do so within six weeks of such completion, the applicant may request a date for the hearing.

89. Application for revocation

An application for revocation shall be made on Form P20 and shall be accompanied by a statement of particulars of the grounds on which the application is based and shall be duly lodged and served.

90.

(1) Within two months of the lodging and service of the application for revocation the patentee shall lodge and serve a counterstatement in the form of a plea. If a plea is not lodged and served within two months of the application for revocation or within any extension of that period in terms of regulation 99, the patent shall be deemed to be revoked.

(2) Within two months of the lodging and service of the counterstatement the applicant shall file and serve his evidence in the form of an affidavit.

(3) Within two months of the filing and service of the applicant's evidence, the patentee may file and serve his answering evidence in the form of an affidavit.

91.

Within two months of the filing and service of the patentee's answering evidence the applicant may file and serve replying evidence, in the form of an affidavit, confined to matters strictly in reply.

92.

No further evidence shall be filed by either party except by leave or direction of the commissioner.

93.

All evidence shall be by affidavit unless otherwise directed by the commissioner.

94.

Upon completion of the evidence the applicant, or if he fails to do so within six weeks of such completion, the opponent may request a date for the hearing.

94A.

If, by consent of the parties to an application for revocation, the patentee offers to surrender his patent or if the patent is deemed to have been revoked in terms of regulation 90(1), the registrar, in deciding whether costs should be awarded to the applicant for revocation, shall consider whether the proceedings might have been avoided if the applicant had given reasonable notice to the patentee before the application was filed.

95. Notice of future proceedings

Any person may apply by lodging Form P22 in duplicate with the registrar for notice to be given to him of the taking of any action or proceedings in connection with a patent or patent application. As soon as possible after such action or proceeding is taken and, in the case of an application to make an entry, before such entry is made, the registrar shall give notice of such action or proceeding or entry to such person.

96. Application for compulsory licence

An application for a compulsory licence under section 55 or 56(1) of the Act shall be brought by way of notice of motion and shall be served on the patentee and any other person who appears from the registrar to have an interest in the patent.

97. Notice of motion

In the case of proceedings initiated by way of notice of motion a party resident or incorporated outside the Republic shall have one month from the date of service of such notice on him within which to lodge and serve his notice of intention to oppose.

98. Proceedings for infringement

(1) In any proceedings for infringement in which the plaintiff claims relief by way of damages or payment of an amount in lieu of damages, it shall be permissible for him to claim an enquiry as to the damages suffered by him as a result of the infringement and/or as to what is a reasonable royalty and payment of the amount found to be due to him.

(2) A plaintiff claiming an enquiry in terms of subregulation (1) hereof need not when so claiming specify in his pleadings the amount of the damages allegedly suffered by him or the manner in which such damages are computed.

(3) In the event of an enquiry in terms of subregulation (1) being ordered and the parties being unable to reach agreement as to the further pleadings

to be filed, discovery, inspection or other matters of procedure relating to the enquiry either or any party may make application to the commissioner for directions in regard thereto.

99. Time limits

Time limits specified may be extended by consent of the parties or, failing such consent, by the registrar on a request made to him.

100. Tariff of fees for proceedings before commissioner and registrar

The tariff of fees applicable to proceedings before the commissioner and the registrar shall be those applicable for the time being in a Provincial Division of the Supreme Court in terms of the Uniform Rules of Court of the Supreme Court of South Africa, 1965: Provided that-

(a) fees allowed to a patent agent or patent attorney may be allowed on the same scale as that allowed to junior counsel for work connected with appearances without counsel;

(b) in allowing a fee in respect of perusal and drafting of complex technical documents, the registrar shall be entitled to increase the fees, at his discretion, by a percentage related to the technical complexities of any matter.

BIBLIOGRAPHICAL DATA

101.

The numerical references used in patent documentation are set out in Schedule 3.

102.

The international abbreviation used to designate convention countries are set out in Schedule 4.

103.

On grant of a patent, a certificate will be issued in the form set out in Schedule 5.

104.

The regulations promulgated under Government Notices 2650 of 17 November 1952, R632 of 1963, R1594 of 1964, R849 of 1964, R2122 of 1967 and R1698 of 1977 are hereby repealed.

105.

These regulations shall be called the Patent Regulations, 1978, and shall come into operation on 1 January 1979.

Schedule 1 FEES

The following fees shall be paid in connection with applications, registrations and other matters under the Act. Such fees must in all cases be paid before or at the time of doing the matter in respect of which they are to be paid:

Item No.	Description	Corresponding forms	Fees R
1.	Application for a patent accompanied by a provisional specification in terms of section 30(1) [regulation 22(1)(a) and (e)]	1 and 6	60
2.	Application for a patent accompanied by a complete specification in terms section 30(1) [regulation 22(1)(a) and (e)]	1, 7 and 8	266
3.	Late claiming of priority in terms of proviso (i) of section 31(1), per month or part thereof (regulations 23 to 25)	1	50
4.	Request to Registrar:		
	(a) To inspect the register and documents in terms of section 12	4	4
	Plus copies supplied of documents or particulars of register in terms of section 13, per page	4	1
	(b) Application to extend privileges of attorney in terms of section 22 [regulation 75]	4	145
	(c) Application by a patent attorney who has been suspended or whose name has been from the register in terms of section 24(4) and (5) [regulation 74]	4	14
	(d) Application to claim priority in terms of section 30(7) [regulation 39]	4	550
	(e) Application to amend or to lodge a fresh application in terms of section 37 [regulation 37]	4	50
	(f) Change of complete specification into a provisional specification in terms of section 38(1) [regulation 37(2)]	4	50
	(g) Post-dating of application in terms of section 38(2) [regulation 37(3)]	4	50
	(h) Application for revocation of independent patent and granting of patent of addition as independent patent in terms of section 39(3) [regulation 35]	4	90
	(i) Application for extension of time of acceptance of a complete specification in terms of proviso to section 40 [regulations 42 and 45]:		
	(i) Up to end of 18 months	4	50
	(ii) Thereafter per month or part thereof (not exceeding three months)	4	50
	(iii) After 21 months (per month or part thereof)	4	145

	(j) Application for the return of lapsed application in terms of section 41 [regulation 43]	4	50
	(k) Application to extend period for publication of acceptance in terms of section 42(3) [regulation 46]	4	90
	Thereafter, per month or part thereof	4	50
	(l) Application for correction of clerical errors and amendment of documents in terms of section 50 [regulation 11]	4	90
	(m) Application to rectify register in terms of section 52	4	90
	(n) Endorsement or cancellation of endorsement in terms of section 53 and 54(1) and (3) [regulations 63 and 66]	4	90
	(o) Change of address for service in terms of section 87(2) [regulation 10]	4	20
	(p) Cancellation of notice of hypothecation in terms of section 60(3)	4	50
	(q) Reasons by Registrar [regulation 78]	4	245
	(r) Any other request not provided for	4	26
5.	Late lodgement of documents in terms of sections 30(6) and 32 [regulations 22, 31 and 38]	5 and 8	50
6.
7.	Application for the extension of the period for payment of renewal fees in terms of section 46(2) [regulation 48(3)]		
	(a) Thereafter, for each month or part thereof (not exceeding five)	10	90
	(b) On application to restore lapsed patent in terms of section 47(1) [regulation 49] Notice of Motion	50	
	(c) After restoration, payment of unpaid renewal fees in terms of section 47(5)	10	286
8.	Renewal fees in terms of section 46(1) [regulation 48(1)]:		
	(a)(i) Before expiration of the third year	10	130
	(ii) Before expiration of the fourth year	10	130
	(iii) Before expiration of the fifth year	10	130
	(iv) Before expiration of the sixth year	10	85
	(v) Before expiration of the seventh year	10	85
	(vi) Before expiration of the eighth year	10	100
	(vii) Before expiration of the ninth year	10	100
	(viii) Before expiration of the tenth year	10	120
	(ix) Before expiration of the eleventh year	10	120
	(x) Before expiration of the twelfth year	10	145
	(xi) Before expiration of the thirteenth year	10	145
	(xii) Before expiration of the fourteenth year	10	164
	(xiii) Before expiration of the fifteenth year	10	164

	(xiv) Before expiration of the sixteenth year	10	181
	(xv) Before expiration of the seventeenth year	10	181
	(xvi) Before expiration of the eighteenth year	10	206
	(xvii) Before expiration of the nineteenth year	10	206
	(b) On patents endorsed 'licences of right' in terms of section 53(2)(d) on the same basis as in (a) (per annum or part thereof)	10	50
9.	Application to amend a provisional specification in terms of section 5(1) [regulation 52(1)]	11	70
10.	Application to amend a complete specification before open to public inspection in terms of section 51(1) [regulation 52(2)]	12	70
11.	Application to amend a complete specification after open to public inspection in terms of section 51(1) [regulation 52(2) and (3)]	13	242
12.	Application to make a supplementary disclosure in a patent specification in terms of section 51(8)	14	50
13.	Opposition in proceedings before the Registrar [regulations 54, 55 and 56]	15	90
14.	Application to record a transaction affecting the rights in a patent application or patent (licences, assignments, hypothecation) in terms of sections 55, 56 and 60 [regulations 58 to 60, 62 and 64(1)]	16	70
	(a) For first application	16	70
	(b) For second and subsequent applications	16	26
15.	Application to be registered as a patent agent or a patent attorney in terms of section 20	17	206
16.	Request for removal from the register of the name of a patent agent or patent attorney in terms of section 23 [regulation 72]	18	90
17.	(a) Notice of opposition in terms of regulation 82	19	206
	(b) Application for revocation in terms of section 61 [regulation 89]	20	206
18.	Application for the voluntary surrender of a patent in terms of section 64(1) [regulation 67]	21	50
19.	Notice of future proceedings [regulation 95]	22	120
20.	To inspect any file, document or register	-	4
21.	Reprographic copies of documents, per page	-	1
22.	Certification of reprographic extracts from register or documents in terms of section 13 (per document)	-	25

23.	Request for a certificate from the registrar authorising the release of a sample from a depositary institution in terms of section 32(6) [regulation 28A(6)]	24	100
24.	Transmittal fee in terms of section 43C [regulation 67A(a)]		500
25.	International fees in terms of section 43D [regulation 67A(b)] [Item 25 substituted by GN 721 of 29 May 2003]		
26.	Search fee in terms of section 43D [regulation 67A(b)] [Item 26 substituted by GN 721 of 29 May 2003, by GN 963 of 2 July 2003 and by GenN 235 of 20 February 2004]		
	Basic Fee:		ZAR 3,580
	Supplement per sheet over 30		ZAR 80
	Designation Fee:		ZAR 780
	PCT-EASY reduction		ZAR 1,100
	Search fee		
	(i) European Patent Office (EPO)		EUR 945 = ZAR 8,760
	(ii) Australia Patent Office (AU)		AUD 1,000 = ZAR 4,700
	(iii) United States Patent and Trademark Office [Item inserted by GenN 235 of 20 February 2004]		USD 1,000 = ZAR 7,300
27.	Fee for priority document, if applicable		200
28.	National fee in terms of section 43E(1)(a) [regulation 67B]	P25	266

Schedule 2 FORMS (omitted)

Schedule 3 NUMERICAL REFERENCES USED ON PATENT DOCUMENTATION (omitted)

Schedule 4 INTERNATIONAL ABBREVIATIONS OF CONVENTION COUNTRIES AND
REGIONAL RECEIVING OFFICES (omitted)

Schedule 5 CERTIFICATE (omitted)