

## CHAPTER 26:03

### PATENTS ACT

*Acts 26/1971, 39/1973 (ss. 39 and 52), 42/1976 (s. 15), 39/1979, 15/1981, 29/1981, 41/1983, 12/1986 (s. 13), 11/1991 (s. 17), 20/1994 (s. 7), 22/2001 (s. 4), 9/2002, 14/2002 (s. 40).*

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**AN ACT to consolidate and amend the law relating to patents; and to provide for matters incidental to or connected with the foregoing.**

[Date of commencement: 1st February, 1972.]

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Patents Act [*Chapter 26:03*].

#### **2 Interpretation**

(1) In this Act—

“applicant” includes a person in whose favour a direction has been given under section *eighteen* or his legal representative;

“appointed day” means the 1st February, 1972;

“article” includes any substance or material and any equipment, machinery or apparatus, whether affixed to land or not;

“assignee”, in relation to an invention, means—

- (a) a person who has derived his title to the invention for Zimbabwe directly or indirectly from the inventor thereof or from the latter's assignee; or
  - (b) the legal representative of a person referred to in paragraph (a);
- “Controller” means the Controller of Patents, Trade Marks and Industrial Designs appointed in terms of paragraph (a) of subsection (2) of section *three*;
- “Convention application” means an application made by a person referred to in subsection (2), as read with subsection (3), of section six;
- “Convention country” means a country or territory which the President has, in terms of section seventy-nine, declared to be a Convention country for the purposes of this Act;
- “Court” ....
- [Definition repealed by section 2 of Act 9 of 2002]
- “date of lodging”, in relation to any document lodged under this Act, means the date on which the document is lodged or, where it is deemed by virtue of any provision of this Act to have been lodged on any different date, the date on which it is deemed to have been lodged;
- [Definition amended by section 18 of Act 9 of 2002]
- “department of the State” means any—
- (a) department of the State; or
  - (b) statutory corporation or authority which is prescribed for the purposes of this definition;
- “effective date”, in relation to—
- (a) an application which has been ante-dated or post-dated under this Act, means the date to which that application has been so ante-dated or post-dated;
- [Paragraph amended by section 18 of Act 9 of 2002]
- (b) an application in a Convention country, means the date on which the application in respect of the relevant invention was made in the Convention country in question or is in terms of the laws of that country deemed to have been so made;
  - (c) any other application, means the date on which that application was lodged at the Patent Office;
- “examiner” means a person appointed in terms of paragraph (c) of subsection (2) of section *three* to be an examiner;
- “exclusive licence” means a licence from a patentee which confers on the licensee, or on the licensee and persons authorized by him to the exclusion of all other persons, including the patentee, any right in respect of the patented invention;
- “invention” means any new and useful art, whether producing a physical effect or not, process, machine, manufacture or composition of matter which is not obvious or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry and includes an alleged invention;
- “inventor” means the person who actually devised the invention and includes the legal representative of an inventor but does not include a person to whom an invention has been communicated, either from within or outside Zimbabwe;
- “Journal” means the Patent and Trade Marks Journal published in terms of section *ninety-five*;
- “legal representative” means—
- (a) the liquidator or receiver of a company;
  - (b) the representative recognized by law of any person who has died, become insolvent or bankrupt or assigned his estate, is an infant or a minor, is of unsound mind or is otherwise under a disability;
- “Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may from time to time assign the administration of this Act;
- “patent” means letters patent for an invention granted for Zimbabwe under section *twenty-one*;
- [Definition amended by section 18 of Act 9 of 2002]
- “patentee” means the person for the time being entered on the Register as grantee or proprietor of a patent;
- “patent agent” means a person who is registered or deemed to have been registered as such in terms of this Act;
- “patent of addition” means a patent granted under section *twenty-six*;
- [Definition amended by section 18 of Act 9 of 2002]
- “Patent Office” means the Patent Office established under section *three*;
- “patented article” means any article in respect of which a patent has been granted and is for the time being in force;
- “Patents Tribunal” ....
- [Definition repealed by section 2 of Act 9 of 2002]

“published” means made available to the public and, without prejudice to the generality of the foregoing provision, a document shall be deemed, for the purposes of this Act, to be published if it can be inspected as of right by members of the public, whether upon payment of a fee or otherwise;

“Register” means the Register of Patents kept at the Patent Office under section *five*;

“Register of Patent Agents” means the Register of Patent Agents kept under subsection (1) of section *sixty-four*;

“Registrar” means the Controller or a registrar of patents appointed in terms of paragraph (b) of subsection (2) of section *three*;

“repealed legislation” means the Patents Act, 1957 (No. 13 of 1957) or the Patents Act [*Chapter 222 of 1939*];

“specification” means a provisional or a complete specification, as the circumstances may require, referred to in section *nine*;

(2) Subject to sections *nineteen, forty, eighty* and *eighty-three*, an invention shall be deemed to be new for the purposes of this Act if on or before the effective date of the application for a patent in respect thereof the invention was not—

(a) known or used anywhere in Zimbabwe by anyone other than the applicant or his agent or the person or persons from or through whom such applicant has derived his right or title:

Provided that secret knowledge or secret user otherwise than on a commercial scale shall be disregarded; or

(b) worked anywhere in Zimbabwe otherwise than by way of reasonable technical trial or experiment by the applicant or any person or persons from or through whom such applicant has derived his right or title; or

(c) described in a patent specification available to public inspection in accordance with any repealed legislation or this Act; or

(d) described in writing or in any other way in any publication of which there was a copy anywhere in or outside Zimbabwe at the effective date of the application; or

(e) claimed in any complete specification for a patent which was lodged in accordance with any repealed legislation or this Act and which, though not available to public inspection at the effective date of the application, was deposited pursuant to an application for a patent which is, or will be, of prior date to the date of any patent which may be granted in respect of the said invention.

(3) A reference in this Act to the date of a patent shall be construed as a reference to the appropriate date specified in subsection (1) of section *twenty-three*.

## **2A Inventions for which patent may not be granted**

A patent shall not be granted under this Act for—

(a) diagnostic, therapeutic or surgical methods for the treatment of human beings or animals; or

(b) plants and animals, other than micro-organisms; or

(c) essentially biological processes for the production of plants or animals, other than microbiological processes.

[Section inserted by section 3 of Act 9 of 2002]

## **PART II**

### **ADMINISTRATION**

## **3 Patent Office, Controller, registrars of patents and other officers**

(1) There shall be established an office, to be called the Patent Office, for the registration of patents and other matters in terms of this Act.

(2) There shall be—

(a) an officer, to be styled the Controller of Patents, Trade Marks and Industrial Designs, who shall exercise general supervision and direction of the Patent Office; and

(b) one or more registrars of patents who shall, subject to the control of the Controller, have all the powers conferred by this Act upon the Registrar; and

(c) such examiners and other officers as the Minister considers necessary for the better carrying out of the provisions of this Act;

whose offices shall be public offices and form part of the Public Service.

(3) An examiner or other officer referred to in paragraph (b) of subsection (2) shall, if the Minister so directs, have the power to do any act or thing which may be lawfully done by a registrar of patents under this Act or any other enactment.

## **4 Seal**

There shall be a seal of the Patent Office and impressions thereof made for the purposes of this Act or the repealed legislation shall be judicially noticed.

## 5 Register of Patents

- (1) There shall be kept at the Patent Office a Register of Patents, in which shall be entered—
  - (a) particulars of patents in force, of assignments and transmissions of patents and of licences under patents; and
  - (b) notice of all matters which are required by or under this Act to be entered in the Register and of such other matters affecting the validity or proprietorship of patents as the Registrar thinks fit.

(2) All registers of patents established and kept under the repealed legislation shall, under arrangements made by the Controller with the approval of the Minister, be incorporated with and form part of the Register of Patents established under subsection (1), so, however, that such arrangements shall in no way be deemed to extend the term and effect of any patent registered in such registers beyond the term and effect provided in respect of such patent by this Act.

(3) Subject to this Act, the Register shall, at all convenient times, be open to inspection by the public and a certified copy, sealed with the seal of the Patent Office, of any entry in the Register shall be given on payment of the prescribed fee to any person requiring it.

(4) The Register shall be *prima facie* evidence of any matters required or authorized by or under this Act to be entered therein or which were required or authorized by or under the repealed legislation to be entered in a register of patents referred to in subsection (2).

(5) No notice of any trust, whether expressed, implied or constructive, shall be entered in the Register and the Registrar shall not be affected by any such notice.

## PART III

### APPLICATIONS GENERALLY

## 6 Persons entitled to make application

- (1) An application for a patent for an invention may be made by any of the following persons—
  - (a) a person claiming to be the inventor of the invention who owns the invention in respect of Zimbabwe; or
  - (b) an assignee;

and may be made by that person either alone or jointly with any other person.

(2) Without prejudice to subsection (1), an application for a patent for an invention in respect of which protection has been applied for in a Convention country may be made by the person by whom the application for protection was made or by the assignee of that person:

Provided that no application shall be made under this subsection after the expiration of twelve 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 such application.

- (3) An application for a patent may be made under subsection (1) or (2) by the legal representative of—
  - (a) a deceased person who, immediately before his death, was entitled to make such an application; or
  - (b) a person under disability who, had it not been for such disability, would himself have been entitled to make such application.

## 7 Form of application

- (1) An application for a patent shall—
  - (a) be made in the prescribed form; and
  - (b) be lodged at the Patent Office in the prescribed manner; and
  - (c) state an address for service in Zimbabwe to which all notices and communications may be sent; and
  - (d) in so far as they are not already stated for the purposes of paragraph (c), state the full postal, residential and business addresses of the applicant.

(2) An assignee or legal representative making or joining in an application shall furnish such proof of title or authority as the Registrar may require or as may be prescribed.

- (3) An application form shall—
  - (a) state that the applicant owns the invention in respect of Zimbabwe; and
  - (b) give the full name of the inventor; and
  - (c) where the inventor is not the applicant or one of the applicants, contain a declaration that the applicant believes him to be the inventor.

(4) A Convention application, in addition to the requirements set out in subsection (3), shall state—

- (a) the Convention country in which such application for protection was made; and
- (b) the number of such application; and
- (c) the effective date of such application; and
- (d) in which respect the applicant in the Convention country and in Zimbabwe qualifies.

## 8 Complete and provisional specifications

- (1) An application for a patent—

- (a) which is not a Convention application, shall be accompanied by either a complete specification or a provisional specification;
- (b) which is a Convention application, shall be accompanied by a complete specification.

(2) Subject to this section, where an application referred to in paragraph (a) of subsection (1) is accompanied by a provisional specification a complete specification shall be lodged within twelve months from the date that the application was lodged and if the complete specification is not so lodged the application shall be deemed to be abandoned:

Provided that the complete specification may be lodged at any time after the expiration of the twelve months but within fifteen months from the date the application was lodged if a request to that effect is made to the Registrar and the prescribed fee is paid on or before the date on which the complete specification is lodged.

(3) Where two or more applications accompanied by provisional specifications have been lodged in respect of matters which are cognate or of which one is a modification of another, a single complete specification may, subject to this section and section *nine*, be lodged in pursuance of those applications or, if more than one complete specification has been lodged, may, with the leave of the Registrar, be proceeded with in respect of those applications.

(4) Where applications for protection have been made in one or more Convention countries in respect of two or more matters which are cognate or of which one is a modification of another, a single Convention application may, subject to this section and section *nine*, be made in respect of those matters at any time within twelve months from the effective date of the earliest of the said applications for protection.

(5) In considering the validity of applications made in terms of subsection (3) or (4) and in determining other relevant matters under this Act the Registrar shall have regard to the effective dates of the applications or the Convention applications concerned relating to the several matters claimed in the specification, and the requirements of subsection (4) of section *seven* shall, in the case of any such application, apply separately to the applications for protection in respect of each of the said matters.

(6) Where an application for a patent, not being a Convention application, is accompanied by a specification purporting to be a complete specification, the Registrar may, if the applicant so requests at any time before the expiration of the period specified in subsection (2) and before the acceptance of the specification, direct that it shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

(7) Where a complete specification has been lodged in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under subsection (6) as a provisional specification, the Registrar may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of lodging of the complete specification.

## **9 Contents of specification**

(1) A specification shall—

- (a) indicate whether it is a provisional or a complete specification; and
- (b) commence with a title clearly indicating the subject to which the relevant invention relates; and
- (c) contain an abstract of not more than two hundred words and drawings, if any.

[Paragraph inserted by section 4 of Act 9 of 2002]

(2) A provisional specification shall fairly describe the invention.

(3) A complete specification shall—

- (a) fully describe the invention and the manner in which it is to be performed; and
- (b) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the Patent Office; and
- (c) end with a claim or claims defining the subject-matter for which protection is claimed.

(4) The claim or claims of a complete specification shall—

- (a) relate to a single invention; and
- (b) be clear and succinct; and
- (c) be fairly based on the matter disclosed in the specification.

(5) A specification may, and if so required by the Registrar shall, be accompanied by drawings and such drawings shall be deemed to be part of the specification:

Provided that if drawings which accompanied a provisional specification are sufficient for the purpose of a complete specification, it shall suffice if that complete specification refers to such drawings.

(6) Subject to subsections (1) to (5), a complete specification lodged at the Patent Office after a provisional specification or with a Convention application may include claims in respect of developments of or additions to the invention which was described in the provisional specification or, as the case may be, in respect of which application for protection was made in a Convention country, being developments of or additions in respect of which the applicant would be entitled to make a separate application for a patent:

Provided that an application shall, in so far as the complete specification contains claims in respect of any such developments or additions, be deemed to have been made on the date on which the complete specification was lodged at the Patent Office.

(7) Where a complete specification claims a new substance, the claims shall be construed as not extending to that substance when found in nature.

## **10 Effective date of claims of complete specification**

(1) A claim of a complete specification shall have effect from the date provided in this section in relation to that claim and a patent shall not be invalidated by reason only of the publication or use of the invention, so far as claimed in any claim of the complete specification, on or after the effective date of that claim or by the grant of another patent upon a specification claiming the same invention in a claim of the same or a later effective date.

(2) Where the complete specification is lodged in pursuance of a single application preceded by a provisional specification or by a specification which is treated by virtue of a direction under subsection (6) of section *eight* as a provisional specification, and the claim is fairly based on the matter disclosed in that specification, the effective date of that claim shall be the effective date of the application.

(3) Where the complete specification is lodged or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in subsection (2), and the claim is fairly based on the matter disclosed in one of those specifications, the effective date of that claim shall be the effective date of the application accompanied by that specification.

(4) Where the complete specification is lodged in pursuance of a Convention application, and the claim is fairly based on the matter disclosed in the application for protection in a Convention country or, if the Convention application is founded upon more than one such application for protection, in one of those applications, the effective date of that claim shall be the effective date of the relevant application for protection.

(5) Where, under subsections (1) to (4), any claim of a complete specification would, but for this subsection, have two or more effective dates, the effective date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which subsection (2), (3), (4) or (5) does not apply, the effective date of a claim shall be the date of lodging of the complete specification in Zimbabwe.

## **11 Examination of applications and specifications**

(1) An application for a patent, including any specification and other document accompanying such application or subsequently lodged within such time as may be prescribed at the Patent Office in pursuance of such application, shall be examined by an examiner for the purpose of ascertaining—

- (a) whether the application, specification and accompanying documents comply with the requirements of this Act, including whether any of the grounds of opposition specified in subsection (1) of section *seventeen* are applicable; and
- (b) in the case of a complete specification lodged after a provisional specification or of a Convention application, whether the matter claimed is substantially the same as that disclosed in the provisional specification or in the application lodged in the Convention country, as the case may be.

(2) An examination or investigation required by this Act shall not be deemed to warrant the validity of any patent and no liability shall be incurred by the State, the Minister, the Registrar or any examiner or other officer of the Patent Office by reason of or in connection with any such examination or investigation or report or other proceeding consequent thereon.

## **12 Ante-dating and post-dating of applications and specifications**

(1) At any time after an application has been lodged under this Act and before acceptance of the complete specification, the Registrar may, at the request of the applicant and upon payment of the prescribed fee, direct that the application shall be post-dated to such date as may be specified in the request:

Provided that—

- (i) no application shall be post-dated under this subsection to a date later than six months from the date on which it was actually lodged or would, but for this subsection, be deemed to have been so lodged;
- (ii) a Convention application shall not be post-dated under this subsection to a date later than the last date on which, under this Act, the application could have been made.

(2) Where an application or specification lodged under this Act is amended before acceptance of the complete specification, the Registrar may direct that the application or specification shall be post-dated to the date on which it is amended or, if it has been returned to the applicant, to the date on which it is again lodged under this Act.

(3) Where, at any time after an application or specification has been lodged at the Patent Office and before acceptance of the complete specification, a fresh application or specification is lodged in respect of any part of the subject-matter of the first-mentioned application or specification, the Registrar may direct that the fresh application or specification shall be ante-dated to a date not earlier than the date of lodging of the first-mentioned application or specification.

(4) An appeal shall lie from any decision of the Registrar under subsection (2) or (3).

### 13 Refusal of application in certain cases

- (1) Subject to subsection (2), if it appears to the Registrar in the case of any application for a patent that—
- (a) it is frivolous on the ground that it claims as an invention anything obviously contrary to well-established natural laws; or
  - (b) the patent applied for cannot be granted by virtue of section *two A*; or
- (b1) the use of the invention in respect of which the application is made would be generally expected—
- (i) to endanger public order or public safety; or
  - (ii) to encourage offensive, immoral or anti-social behaviour; or
  - (iii) to endanger human, animal or plant life or health; or
  - (iv) to promote serious prejudice to the environment;
- or
- (c) it claims as an invention a substance capable of being used as food or medicine which is a mixture of known ingredients possessing only the aggregate of the known properties of the ingredients or that it claims as an invention a process producing such a substance by mere admixture;

he may refuse the application.

[Subsection amended by section 5 of Act 9 of 2002]

(2) An application shall not be refused in terms of subsection (1) merely because exploitation of the invention concerned would be contrary to the law of Zimbabwe.

[Subsection substitute by section 5 of Act 9 of 2002]

(3) An appeal shall lie from any decision of the Registrar under subsection (1) or (2).

### 14 Powers of Registrar if specification or application defective

(1) If, in the case of a complete specification lodged in pursuance of an application for a patent, which application was accompanied by a provisional specification, the result of any examination made in terms of subsection (1) of section *eleven* is adverse to the applicant in regard to any matter referred to in that subsection or it is found that the invention described in the complete specification includes matter not included in the provisional specification, the Registrar may, subject to subsection (6) of section *nine*—

- (a) refuse to accept the complete specification until it has been amended to his satisfaction; or
- (b) with the consent of the applicant, cancel the provisional specification and direct that the application be post-dated to the date upon which the complete specification was lodged at the Patent Office; or
- (c) where the complete specification includes matter not included in the provisional specification—
  - (i) allow the application to be proceeded with in so far as the matter included both in the provisional and in the complete specification is concerned; and
  - (ii) allow an application for the additional matter included in the complete specification to be made and authorize the application for such additional matter, if lodged at the Patent Office within such period as he may determine, to be dated with the date on which the complete specification was lodged at the Patent Office.

(2) If in the case of a Convention application it is found that the matter claimed is not substantially the same as that claimed in the application made in the Convention country in question, the Registrar may, subject to subsection (6) of section *nine*—

- (a) refuse to accept the application until it has been amended to his satisfaction; or
- (b) with the consent of the applicant, treat the application as an application which is not a Convention application.

(3) If in the case of a Convention application it is found that the specification lodged in Zimbabwe includes matter not included in the specification lodged in the Convention country, the Registrar may—

- (a) allow the application to be proceeded with in so far as the matter included in both the Convention country and the Zimbabwe specifications is concerned; and
- (b) allow an application for the additional matter to be made and authorize such application, if lodged at the Patent Office within such period as he may determine, to be dated with the date on which the Zimbabwe specification was lodged at the Patent Office.

(4) An appeal shall lie from any decision of the Registrar under subsection (1), (2) or (3).

### 15 Lapsing of applications

(1) If a complete specification is not accepted within eighteen months from the date of lodging of the complete specification, the application to which that specification relates shall lapse unless—

- (a) an appeal has been lodged in respect of the application and has not been determined or abandoned; or
- (b) the time within which an appeal in respect of the application may be lodged has not expired; or
- (c) the delay in accepting the specification was not due to any neglect or default on the part of the applicant:

Provided that if, within twenty-one months from the date of the lodging of the complete specification, the applicant, by notice accompanied by the prescribed fee, so requires, the said period of eighteen months shall be

extended to such period, not exceeding twenty-one months from the date of the lodging of the complete specification, as may be specified in that notice.

(2) If, at the expiration of the period allowed under subsection (1), an appeal to the Tribunal is pending under any of this Act in respect of the application or, in the case of an application for a patent of addition, either in respect of that application or in respect of the application for the patent for the main invention, or the time within which such an appeal could be brought in accordance with Part X, apart from any future extension of time thereunder, has expired, then—

- (a) where such an appeal is pending or is brought within the time aforesaid or before the expiration of any extension of that time granted, in the case of the first extension, on an application made within that time or, in the case of a subsequent extension, on an application made before the expiration of the last previous extension, the said period shall be extended until such date as the Tribunal may determine;
- (b) where no such appeal is pending or is so brought, the said period shall continue until the end of the time aforesaid or, if any extension of that time is granted as aforesaid, until the expiration of the extension or the last extension so granted.

## **16 Acceptance and publication of complete specification and cancellation thereof**

(1) Subject to section *fifteen*, the complete specification may be accepted by the Registrar at any time after the applicant has complied with the requirements imposed upon him by this Act:

Provided that the applicant may give notice to the Registrar requesting him to postpone acceptance until such date, not being later than eighteen months from the date of lodging of the complete specification, as may be specified in the notice and the Registrar may postpone acceptance accordingly.

(2) Subject to subsection (5), on the acceptance of a complete specification the Registrar shall give notice to the applicant who shall, within the prescribed period or within such further period as the Registrar may allow, advertise in the Journal the fact that the specification has been accepted and, unless the acceptance of the specification is so advertised, the application shall lapse.

(3) Upon advertisement in terms of subsection (2) the application form, the specification and the other documents essential to obtain acceptance which were lodged in pursuance thereof shall be open to public inspection unless the acceptance of the complete specification has been cancelled in terms of subsection (5) before such advertisement.

(4) After the date of the publication in terms of subsection (2) of notice of acceptance of a complete specification and until the sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the publication of the notice unless the acceptance of the complete specification has been cancelled in terms of subsection (5) before that date.

(5) If so requested before the advertisement in the Journal in terms of subsection (2) of the acceptance of a specification, the Registrar may at any time prior to the publication of such advertisement cancel in the prescribed manner the acceptance of that complete specification and on such cancellation he shall—

- (a) make a note thereof in the Register; and
- (b) if the advertisement of the acceptance is subsequently published in the Journal, cause notice of the cancellation of the acceptance of the specification to be published in the Journal.

(6) The cancellation of the acceptance of a complete specification in terms of subsection (5) shall not preclude the Registrar from re-accepting that complete specification at a later date if at the time the applicant requested the cancellation he also gave notice to the Registrar such as is referred to in the proviso to subsection (1).

## **17 Opposition to grant of patent**

(1) Any person interested, including the State, may within three months from the date of the advertisement of the acceptance of a complete specification which has not been cancelled in terms of subsection (5) of section *sixteen* or within such further period as the Registrar, on application made to him within the said period of three months, may allow, or, with the consent of the applicant, at any time before the sealing of the patent, oppose the grant of a patent in accordance with this section by giving written notice to the registrar of the Tribunal of opposition to such grant on any of the following grounds and no others—

- (a) that the applicant is not a person entitled under section *six* to make the application;
- (b) that the application is in fraud of the rights of the person giving such notice or of any persons under or through whom he claims;
- (c) that the invention does not relate to an art, whether producing a physical effect or not, process, machine, manufacture or composition of matter which is capable of being applied in trade or industry;
- (d) subject to section *twenty-six*, that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;
- (e) that the invention, in so far as is claimed in any claim of the complete specification, is not useful;
- (f) that the complete specification does not fully describe and ascertain the invention and the manner in which it is to be performed;

- (g) that the claims of the complete specification do not sufficiently and clearly define the subject-matter for which protection is claimed;
  - (h) that the complete specification does not disclose the best method of performing the invention known to the applicant at the time when the specification was lodged at the Patent Office;
  - (i) that the application form or any other document filed in pursuance of the application contains a material misrepresentation;
  - (j) that the matter described or claimed in the complete specification is not the same as that described in the provisional specification, and—
    - (i) in so far as it is not described in the provisional specification, was not new at the date when the complete specification was lodged at the Patent Office; or
    - (ii) forms the subject of a pending application made in Zimbabwe for a patent the effective date of which is prior to the date on which the complete specification was lodged at the Patent Office;
  - (k) in the case of a Convention application, that the specification describes or claims matter other than that for which protection has been applied for in the Convention country and that such other matter either—
    - (i) forms the subject of an application for a patent in Zimbabwe which, if granted, would bear a date in the interval between the lodging of the application in the Convention country and the effective date of the application in Zimbabwe; or
    - (ii) is not an invention as defined in this Act;
  - (l) that the invention was not new at the effective date of the application;
  - (m) that the specification includes claims which, in terms of subsection (1) of section *thirteen*, should have been refused.
- (2) Any notice of opposition given under subsection (1) shall—
- (a) state the grounds on which the objector intends to oppose the grant of the patent; and
  - (b) be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds;
- and proof of service on the applicant concerned of a copy of such notice and of such statement shall be furnished to the registrar of the Tribunal.
- (3) A copy of any notice given under subsection (1) and of any statement which in terms of subsection (2) accompanies such notice shall be served by the objector on the applicant for the patent.
- (4) If the applicant wishes to contest the opposition, he shall, within such time as is prescribed or such further time as the registrar of the Tribunal may allow, lodge with him a counter-statement setting out particulars of the grounds upon which the opposition is to be contested.
- (5) A copy of any counter-statement in terms of subsection (4) lodged with the registrar of the Tribunal shall be served by the applicant on the objector concerned.
- (6) Particulars delivered in terms of this section may from time to time, with the leave of the registrar of the Tribunal, be amended.
- (7) No evidence shall be admitted in proof of any ground on which particulars have not been delivered in terms of this section, except by leave of the Tribunal.
- (8) After receiving a notice of opposition under subsection (1) and compliance with any other provisions of this section which are applicable the registrar of the Tribunal shall arrange for the matter to be heard by the Tribunal in the manner prescribed and the Tribunal may make such order therein as it considers just:
- Provided that if before the Tribunal hears the matter a request is made in terms of section *thirty-seven* for the amendment of the specification concerned, proceedings in connection with the notice of opposition shall be suspended until such time as the request for such amendment has been heard and determined after which the proceedings in connection with the notice of opposition may be—
- (a) continued, in which case such notice and any statement in connection therewith may be amended and the periods specified in this section extended to such extent as the registrar of the Tribunal may permit; or
  - (b) withdrawn, in which case the objector may apply to the Tribunal for an award in respect of the costs incurred by him in connection with the objection.
- (9) Upon being notified of the order of the Tribunal by the registrar thereof, the Registrar shall take such further action therein as may be necessary.
- (10) The registrar of the Tribunal shall inform the Registrar of any notice of opposition or counter-statement which is lodged with him in terms of this section and of any amendment of particulars which is permitted in terms of subsection (6).

## **18 Substitution of applicants**

(1) If the Registrar is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that, by virtue of any assignment or agreement made by the applicant or one of the applicants for a patent or by virtue of this Act or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of an applicant therein or to an undivided share of the patent or of that interest, the Regis-

trar may, subject to this section, direct that the application shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants, as the case may require.

(2) Subject to the provisions of subsection (4), no direction in terms of subsection (1) shall be given by virtue of any assignment or agreement for the assignment of the right to an invention which is made by one or two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) Subject to subsection (4), no direction in terms of subsection (1) shall be given by virtue of any assignment or agreement for the assignment of the right to an invention unless—

(a) the invention is identified therein—

(i) by reference to the number of the application for the patent; or

(ii) in such other manner as appears to the Registrar to be sufficient;

or

(b) there is produced to the Registrar an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made.

(4) Subsections (2) and (3) shall not preclude a direction in terms of subsection (1) being given where the rights of the claimant in respect of the invention have been finally established by a decision of the Tribunal or any court to which an appeal against such a decision has been brought.

(5) Where one or two or more joint applicants for a patent has died at any time before the patent has been granted, the Registrar, if satisfied of such decease—

(a) may alter the application by substituting the legal representative of such deceased applicant; and

(b) shall thereafter seal the application in the names of the surviving applicants and of such legal representative;

unless, upon a request in that behalf made by the survivor or survivors and with the consent of the legal representative, the Registrar directs that the application shall proceed and be sealed in the name of the survivor or survivors alone.

(6) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Registrar may, upon application made to him in the prescribed manner by any of the parties and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with or for both those purposes, as the case may require.

(7) An appeal shall lie from any decision of the Registrar under subsection (1), (2), (3), (5) or (6).

## **19 Prior knowledge or publication of invention excused in certain circumstances**

(1) A patent shall not be refused or held to be invalid by reason only of the fact that the invention in respect of which the patent is applied for or was granted or any part thereof was published, used or known prior to the effective date of the application if the applicant or the patentee, as the case may be, proves—

(a) that the knowledge was acquired or the publication or use was made without his knowledge or consent; and

(b) that the knowledge acquired or the matter published or used was derived or obtained from him; and

(c) if he learned of the disclosure, use or knowledge before the effective date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the disclosure:

Provided that the protection afforded by this subsection shall not extend to an applicant for a patent or a patentee who has or whose predecessors in title have commercially worked the invention in Zimbabwe, otherwise than for the purpose of reasonable technical trial thereof, prior to the effective date of the application.

(2) The exhibition at an industrial or international exhibition certified as such by the Minister of an invention or the publication subsequently of any description of the invention so exhibited by any person without the privity or consent of the inventor or the reading of a paper by the inventor before a learned society or the publication of such paper shall not prejudice the right of the inventor to apply for or obtain a patent in respect of the invention or the validity of any patent granted on the application if—

(a) the application for a patent is made not later than six months from the date of the opening of the exhibition or the reading or publication of that paper, as the case may be; and

(b) the inventor has, before exhibiting the invention or reading such paper or permitting such publication, given to the Registrar the prescribed notice of his intention to do so.

## **20 Provisions for secrecy of certain inventions**

(1) Where, before or after the appointed day, an application for a patent has been made in respect of an invention and it appears to the Registrar that the invention is one of a class notified to him by the competent authority as relevant for defence purposes, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information to any person or class of persons specified in the directions, and while such directions are in force the application may, subject to the

directions, proceed up to the acceptance of the complete specification but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(2) Where the Registrar gives any directions in terms of subsection (1), he shall give notice of the application and of the directions to the competent authority and thereupon the following provisions shall have effect, that is to say—

- (a) the competent authority shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of Zimbabwe and, unless a notice under paragraph (c) has previously been given by the competent authority to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for the patent and at least once in every subsequent year;
- (b) for the purposes of paragraph (a), the competent authority may, at any time after the complete specification has been accepted or, with the consent of the applicant, at any time before the complete specification has been accepted, inspect the application and any documents furnished to the Registrar in connection therewith;
- (c) if, upon consideration of the invention, at any time it appears to the competent authority that the publication of the invention would not, or would no longer, be prejudicial to the defence of Zimbabwe, the competent authority shall give notice to the Registrar to that effect;
- (d) on the receipt of any notice in terms of paragraph (c), the Registrar shall revoke the directions and may, subject to such conditions, if any, as he thinks fit, extend the time for doing anything required or authorized to be done by or under this Act in connection with the application, whether or not that time has previously expired.

(3) When directions have been given in terms of subsection (1), if any use of the invention is made during the continuance in force of such directions by or on behalf of or to the order of a department of the State, section *thirty-four* shall apply in relation to that use as if a patent had been granted for the invention.

(4) If an applicant for a patent has suffered loss or damage by reason of his invention having been kept secret in pursuance of directions in terms of subsection (1), the Minister, with the consent of the Minister responsible for finance, shall pay to him such reasonable compensation as is agreed upon or, in default of agreement, as may be determined by the Tribunal on a reference under subsection (1) of section *thirty-six*.

(5) Where a patent is granted in pursuance of an application in respect of which directions have been given in terms of subsection (1), no renewal fees shall be payable in respect of any period during which those directions were in force.

(6) If any person fails to comply with any direction given under this section he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(7) In this section—

“competent authority” means the Minister responsible for defence or any other Minister whom the President, by statutory instrument, designates as being the competent authority for the purposes of this section.

## PART IV

### GRANT, EFFECT AND TERM OF PATENT

#### **21 Grant and sealing of patent**

(1) Subject to the provisions of this Act relating to opposition and to any other power of the Registrar to refuse the grant, a patent sealed with the seal of the Patent Office shall, if the prescribed request is made within the time allowed under this section, be granted to the applicant or applicants within that time or as soon as may be thereafter, and the date on which the patent is sealed shall be entered in the Register.

(2) Subject to the provisions of this Act relating to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of six months from the date of the publication of the complete specification:

Provided that—

- (i) where at the expiration of the said six months any proceeding in relation to the application for the patent is pending in the High Court or before the Registrar or the Tribunal, the request may be made within the prescribed period after the final determination of that proceeding;
- (ii) where the applicant or one of the applicants has died before the expiration of the time within which under this subsection the request could otherwise be made, the request may be made at any time within twelve months after the date of the death or at such later time as the Registrar may allow.

(3) The period within which a request for the sealing of a patent may, in terms of subsection (2), be made may from time to time be extended by the Registrar to such longer period as may be specified in an application made to him in that behalf if the application is made and the prescribed fee paid within that longer period:

Provided that the first-mentioned period shall not be extended under this subsection by more than six months or such shorter period as may be prescribed.

(4) Where in any case—

- (a) the longest period for making a request for the sealing of a patent allowable in that case by or under subsection (1), (2) or (3) has been allowed; and
- (b) it is proved to the satisfaction of the Registrar that hardship would arise in connection with the prosecution by an applicant of an application for a patent in any country outside Zimbabwe unless that period was extended;

the period referred to in paragraph (a) may be extended from time to time by the Registrar to such longer periods as appear to him to be necessary in order to prevent that hardship arising if an application in that behalf is made to him and the prescribed fee is paid within the first-mentioned period or, in the case of a second or subsequent application under this subsection, within the period to which that period was extended on the last preceding application under this subsection.

(5) For the purposes of this section, a proceeding shall be considered—

- (a) to be pending, so long as the time for any appeal therein, apart from any future extension of that time, has not expired;
- (b) to be finally determined, when the time for any appeal therein, apart from any future extension of that time, has expired without the appeal being brought.

## 22 Amendment of patent granted to deceased applicant

Where, at any time after a patent has been sealed in pursuance of an application under this Act, the Registrar is satisfied that the person to whom the patent was granted has died or, in the case of a body corporate, had ceased to exist before the patent was sealed, he may amend the patent by substituting for the name of that person the name of the person entitled thereto according to law, and the patent shall have effect and shall be deemed always to have had effect accordingly.

[Section amended by section 18 of Act 9 of 2002]

## 23 Date of patent

(1) Subject to this Act, the date of a patent shall be—

- (a) in the case of a patent granted under this Act or the Patents Act, 1957 (No. 13 of 1957), the effective date of the application therefor;
- (b) in the case of a patent granted under the Patents Act [*Chapter 222 of 1939*] or the Patents (Transitional Provisions) Act, 1958 (No. 5 of 1958), the date of application therefor.

(2) The date of a patent referred to in paragraph (a) of subsection (1) shall be entered in the Register and in the patent.

## 24 Extent, effect and form of patent

(1) Subject to this Act, a patent shall have the same effect against the State as it has against a subject.

(2) A patent shall be in such form as may be prescribed.

(3) A patent shall be granted for one invention only but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

(4) The effect of a patent shall be to grant the patentee, subject to this Act and the conditions of the patent, full power, sole privilege and authority by himself, his agents and licensees during the term of the patent—

- (a) where the invention is a machine, manufacture or composition of matter—
  - (i) to make, use, offer for sale or sell that machine, manufacture or composition of matter within Zimbabwe; and
  - (ii) to import that machine, manufacture or composition of matter into Zimbabwe for the purpose of making it, using it, offering it for sale or selling it;
- (b) where the invention is an art or process—
  - (i) to use that art or process within Zimbabwe; and
  - (ii) to use, offer for sale or sell within Zimbabwe any manufacture or product obtained directly by that art or process; and
  - (iii) to import into Zimbabwe any manufacture or product obtained directly by that art or process;

in such manner as he thinks fit, so that he enjoys the whole profit and advantage accruing from the invention during the term of the patent.

[Subsection inserted by section 6 of Act 9 of 2002]

(5) The rights granted in subsection (4) shall not be construed as prohibiting any person from making, constructing, using or selling the patented invention solely for uses reasonably related to the development and submission of information required under any law that regulates the manufacturing, construction, use or sale of any product.

[Subsection inserted by section 6 of Act 9 of 2002]

(6) The rights granted in subsection (4) shall not have effect in relation to a product which has been put on the market in any country by the patent holder or by an authorised person..

[Subsection inserted by section 6 of Act 9 of 2002]

#### **24A Parallel importation of patented products etc.**

A patented product which has been put on the market in another country by a patentee may be imported into Zimbabwe, without the consent of the patentee, if the cost of importing such product is less than the cost of purchasing from the patentee.

[Section inserted by section 7 of Act 9 of 2002]

#### **24B Test batches of patented products**

(1) Test batches of a patented product may be produced without the consent of the patentee six months before the expiry of the patent:

Provided that the test batches shall not be put on the market before the expiry date of the patent.

(2) Where test batches of a patented product have been produced in terms of subsection (1), the term of the patent of the original product shall not be extended.

[Section inserted by section 7 of Act 9 of 2002]

#### **25 Term of patent**

Subject to this Act, the term of every patent shall be twenty years from the date on which the application for the patent was lodged at the Patent Office in terms of paragraph (b) of subsection (1) of section *seven*.

[Section substituted by section 8 of Act 9 of 2002]

#### **26 Patents of addition**

(1) Subject to this section, where an application for a patent is pending or a patent has been granted for an invention (hereinafter referred to as the main invention) and the applicant or patentee applies for a further patent in respect of any improvement in or modification of the main invention, the Registrar may, if the applicant so requests, grant a patent for the improvement or modification as a patent of addition.

(2) Subject to this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Registrar may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of lodging of the complete specification was the same as or later than the date of lodging of the complete specification in respect of the main invention.

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention and if the period within which, but for this provision, the sealing of a patent of addition could be made under section *twenty-one* expires before the period within which the sealing of the patent for the main invention may be so made, the sealing of the patent of addition may be made at any time within the last-mentioned period.

(5) A patent of addition shall remain in force for as long as the patent for the main invention remains in force, including any extension of the term thereof in terms of paragraph (d) of section *ninety-seven*, but no longer, and no fee shall be payable for the renewal of a patent of addition:

Provided that, where the patent for the main invention is revoked, the Registrar or the Tribunal, as the case may be, may order that the patent of addition shall become an independent patent in which case—

(a) the fees payable in respect of such independent patent and the times for the payment thereof shall be determined according to the date of the former patent of addition;

(b) the normal term of the independent patent shall not extend beyond the date on which the patent for the main invention would have expired if it had not been revoked.

(6) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for such a patent, and shall not be refused, nor shall any such patent be liable to be revoked or invalidated on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to the main invention, so, however, that the provisions of this subsection shall not apply to an independent patent referred to in the proviso to subsection (5).

(7) A patent for a main invention and its patent of addition shall not be capable of assignment apart from one another.

(8) An appeal shall lie from any decision of the Registrar under this section.

#### **27 Renewal of patents**

(1) Subject to subsection (2), every patent, shall lapse if the fees prescribed for its renewal are not paid within the prescribed times.

[Subsection amended by section 18 of Act 9 of 2002]

(2) The Registrar may, upon application by the patentee and subject to the payment of such additional fees as may be prescribed, extend the time for payment of a fee referred to in subsection (1) for a period not exceeding six months.

## **28 Restoration of lapsed patents**

(1) Where a patent has lapsed by reason of the failure to pay any renewal fee within the prescribed time or any extension in terms of subsection (2) of section *twenty-seven* of that time, the patentee may, within three years from the date on which the patent lapsed, apply in the prescribed manner to the Registrar for the restoration of the patent and any patent of addition:

Provided that where the patent was held by two or more persons jointly, the application may, with the leave of the Registrar, be made by one or more of those persons without joining the others.

(2) An application in terms of subsection (1) shall contain a statement, to be verified in such manner as may be prescribed, fully setting out the circumstances which led to the failure to pay the renewal fee.

(3) After receiving an application in terms of subsection (1) the Registrar—

- (a) may require from the applicant such further evidence as he considers necessary;
- (b) shall, if he considers it to be necessary or the applicant so requires, permit the applicant to be heard in connection with his application.

(4) If the Registrar is satisfied that *prima facie* the failure to pay the renewal fee was unintentional and there was no undue delay in making the application he shall direct the patentee to advertise the application in the Journal and any person may, within the prescribed period, give notice to the Registrar of opposition to the application on either or both of the following grounds—

- (a) that the failure to pay the renewal fee was not unintentional; or
- (b) that there has been undue delay in the making of the application.

(5) If, after publication of a notice in terms of subsection (4)—

- (a) notice of opposition is given within the prescribed period, the Registrar shall notify the applicant and shall give to him and to the person opposing the application an opportunity to be heard before he decides the case;
- (b) no notice of opposition is given within the prescribed period or, such notice having been given, the Registrar considers that the application should be granted, the Registrar shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, make an order restoring the patent and any patent of addition specified in the application:

Provided that the Registrar shall not make an order in terms of this paragraph unless he is satisfied that the failure to pay any renewal fee in connection with the patent was unintentional and that no undue delay has occurred in the making or prosecution of the application.

(6) An order in terms of subsection (5) restoring a patent—

- (a) may be made subject to such conditions as the Registrar thinks fit, including a condition requiring the registration in the Register of any matter in respect of which the provisions of this Act relating to entries in the Register have not been complied with; and
- (b) shall contain the provision specified in subsection (7) for the protection of persons who may have availed themselves of the subject-matter of the patent after a lapse of a period of six months from the date on which the renewal fee was due;

and if any condition imposed in terms of this subsection is not complied with by the patentee, the Registrar may, after giving to the patentee an opportunity to be heard, revoke the order and give such directions consequential on the revocation as he thinks fit.

(7) The provision referred to in paragraph (b) of subsection (6) shall be that the patentee shall not commence or prosecute any action or other proceedings or recover damages—

- (a) in respect of any infringement of the patent which has taken place after the lapse of the said period and before the date of the order;
- (b) in respect of any use of the subject-matter of the patent at any time after the date of the order by the employment of any means or composition of matter actually made within or imported into Zimbabwe or in respect of any process put into operation in Zimbabwe in infringement of the patent after the lapse of the said period and before the date of the order or in respect of the sale, purchase or use of any article which is the product of the use of the said means, composition of matter or process:

Provided that the employment of the said means, composition of matter or process shall be limited to the person by or for whom the said means, composition of matter or process was so made, imported or put into operation, his legal representative, his successors or assigns or his vendees, as the case may be;

- (c) in respect of the employment at any time after the date of the order of any further means, composition of matter or process, being a reproduction or improvement of the means, composition of matter or process

referred to in paragraph (b) or in respect of the sale, purchase or use of any article which is the product of the said further means, composition of matter or process:

Provided that the employment of the said further means, composition of matter or process shall be limited to a person entitled to use as specified in paragraph (b) the means, composition of matter or process specified in that paragraph.

(8) An appeal shall lie from any decision of the Registrar under this section.

## 29 Licences of right

(1) At any time after the sealing of a patent the patentee may apply to the Registrar for the patent to be registered as one in respect of which licences may be issued as of right:

Provided that no such application may be made in respect of an exclusive licence.

(2) Where an application has been made in terms of subsection (1), the Registrar shall notify the application to any person entered on the Register as being entitled to an interest in the patent and, if satisfied, after giving any such person an opportunity to be heard, that the patentee is not precluded by contract from granting licences under the patent, cause to be entered in the Register notice that licences in respect thereof may be issued as of right.

(3) Where an entry in the Register is made in terms of subsection (2) in respect of a patent—

- (a) any person shall, at any time thereafter, be entitled as of right to a licence under the patent upon such terms as may, in default of agreement and subject to subsection (4), be settled by the Registrar on the application of the patentee or the person requiring the licence;
- (b) the Registrar may, on the application of the holder of any licence granted under the patent before the entry in the Register, order the licence to be exchanged for a licence to be granted by virtue of the entry upon terms to be settled in terms of paragraph (a);
- (c) if in proceedings for infringement of the patent, otherwise than by the importation of goods, the defendant undertakes to take a licence upon terms to be settled by the Registrar in terms of paragraph (a), no interdict shall be granted against him, and the amount, if any, recoverable against him by way of damages shall not exceed double the amount which would have been payable by him as licensee if such a licence had been granted before the earliest infringement;
- (d) the renewal fees payable in respect of the patent after the date of the entry in the Register shall be one-half of the renewal fees which would be payable if the entry were not made.

(4) In settling the terms of the licence for the purposes of paragraph (a) or (b) of subsection (3), the Registrar shall—

- (a) take cognizance of section *thirty-two* with respect to a patent falling under that section; and
- (b) provide, *inter alia*, for the following matters—
  - (i) the period of the licence;
  - (ii) the terms of renewal, if any;
  - (iii) the amount of and method for payment of royalties;
  - (iv) arrangements for cancellation of the licence upon application made to him by the patentee after failure by the licensee to pay royalties or to observe any other conditions included in the licence by the Registrar, who is hereby authorized to include such conditions, so, however, that no such licence may be cancelled unless the licensee, after reasonable notice given to him by the patentee, has failed to observe such conditions.

(5) The licensee under any licence granted by virtue of an entry in the Register made in terms of this section shall, unless, in the case of a licence the terms of which are settled by agreement, the licence otherwise expressly provides, be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as if he were patentee, making the patentee a defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(6) An application for an entry in the Register made in terms of this section shall contain a statement, to be verified in such manner as may be prescribed, that the patentee is not precluded by contract from granting licences under the patent, and the Registrar may require from the applicant such further evidence as he may think necessary.

(7) An application for an entry in the Register made in terms of this section—

- (a) which relates to a patent of addition, shall be treated as an application in relation to the patent for the main invention also; or
- (b) which relates to a patent in respect of which a patent of addition is in force, shall be treated as an application in relation to the patent of addition also;

and where a patent of addition is granted in respect of a patent in respect of which an entry in terms of this section has already been made, an entry in respect of the patent of addition shall also be made:

Provided that no royalty shall be paid by a licensee in respect of such entry.

(8) An entry in the Register made in terms of this section shall be published in the Journal.

(9) An appeal shall lie from any decision of the Registrar under this section.

### **30 Cancellation of entry made in terms of section 29**

(1) Within such time as may be prescribed after an entry has been made in terms of section *twenty-nine* in respect of a patent, the patentee may apply to the Registrar for cancellation of the entry and, where such an application is made and the balance paid of all renewal fees which would have been payable if the entry had not been made, the Registrar may, if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application, cancel the entry accordingly.

(2) Within the prescribed period after an entry referred to in subsection (1) has been made, any person who claims that the patentee is, and was at the time the entry was made, precluded by a contract in which the claimant is interested from granting licences under the patent may apply to the Registrar for cancellation of the entry.

(3) Where the Registrar is satisfied, on application made under subsection (2), that the patentee is and was precluded as claimed in terms of subsection (2), he shall cancel the entry and thereupon the patentee shall be liable to pay, within such period as may be prescribed, a sum equal to the balance of all renewal fees which would have been payable if the entry had not been made, and if that sum is not paid within that period the patent shall cease to have effect at the expiration of that period.

(4) Where the entry made in respect of a patent is cancelled under this section, the rights and liabilities of the patentee with respect to it shall thereafter be the same as if the entry had not been made.

(5) An applicant shall advertise in the Journal any application made by him under this section and within the prescribed period after such advertisement—

(a) in the case of an application under subsection (1), any person interested; or

(b) in the case of an application under subsection (2), the patentee and additionally, or alternatively, any person interested;

may give notice to the Registrar of opposition to the cancellation.

(6) Where any notice of opposition is given in terms of subsection (5), the Registrar shall—

(a) fix a date for the hearing of the application; and

(b) advise in writing the parties of the date so fixed; and

(c) after giving the applicant and the opponent an opportunity to be heard, give such decision on the application as he may consider just.

(7) An application made under this section for the cancellation of—

(a) the entry made in respect of a patent of addition shall be treated as an application for the cancellation of the entry made in respect of the patent for the main invention also; or

(b) the entry made in respect of a patent in respect of which a patent of addition is in force shall be treated as an application for the cancellation of the entry made in respect of the patent of addition also.

(8) An appeal shall lie from any decision of the Registrar under this section.

### **30A Compulsory licence in respect of dependent patents**

Where the working of a patent (hereinafter referred to as a dependent patent) without infringement of a prior patent is dependent upon the obtaining of a licence under that prior patent, the proprietor of the dependent patent may, if agreement cannot be reached as to such licence with the proprietor of the prior patent, apply to the Registrar for a licence under the prior patent, and the Registrar may grant such a licence on such conditions as he may impose, including a condition that such licence shall be used only for the purpose of permitting the dependent patent to be worked and for no other purposes:

Provided that the Registrar shall not grant such a licence unless—

(a) the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed;

(b) the proprietor of the dependent patent granted the proprietor of the prior patent on reasonable terms a cross-licence to use the invention claims in the dependent patent;

(c) the use authorized in respect of the prior patent is not assignable except with the assignment of the dependent patent.

[Section inserted by section 9 of Act 9 of 2002]

### **31 Compulsory licence in case of abuse or insufficient use of patent rights**

(1) Subject to subsection (15), any person interested who can show that he has been unable to obtain a licence under a patent on reasonable terms may, within a period of six months from the initial request for a voluntary licence, apply to the Registrar in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public with respect to the invention in question have not been or will not be satisfied.

[Subsection amended by section 10 of Act 9 of 2002 and by section 18 of Act 9 of 2002]

(2) An application under subsection (1) shall—

- (a) set out fully the nature of the applicant's interest, the facts on which he bases his case and the relief he seeks; and
  - (b) be accompanied by an affidavit verifying the facts set out in the application.
- (3) If, after consideration of an application under subsection (1), the Registrar is satisfied that the applicant has a *bona fide* interest and that a *prima facie* case for relief has been made out, he shall direct the applicant—
- (a) to serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the Register to be interested in the patent; and
  - (b) to advertise the application in the Journal.
- (4) If the patentee or any other person wishes to oppose the grant of a licence under this section, he may, within the prescribed period or within such further period as the Registrar may on application allow, deliver to the Registrar a counter-statement, verified by affidavit, setting out fully the grounds on which the application is opposed, and shall at the same time serve upon the applicant copies of the counter-statement and of such affidavit.
- (5) When, in relation to an application or an opposition thereto, the provisions of subsections (1) to (4) have been complied with to the extent therein required, the Registrar shall consider the application and may—
- (a) order the grant of a licence to the applicant on such terms as the Registrar thinks fit, including a condition precluding the licensee from importing into Zimbabwe any patented articles;
  - (b) refuse to grant the licence.

[Subsection substituted by section 10 of Act 9 of 2002]

- (6) The reasonable requirements of the public referred to in subsection (1) shall be considered not to have been satisfied in any of the following circumstances—
- (a) if the patented invention, being an invention capable of being worked in Zimbabwe, is not being worked therein on a commercial scale and there is no satisfactory reason for such non-working:
 

Provided that, if an application for a compulsory licence is made on this ground and the Tribunal is of the opinion that the time which has elapsed since the sealing of the patent has by reason of the nature of the invention or for any other reason been insufficient to enable the invention to be worked within Zimbabwe on a commercial scale, the Tribunal may make an order adjourning the hearing of the application for such period as will in its opinion be sufficient for that purpose;
  - (b) if the working of the invention within Zimbabwe on a commercial scale is being prevented or hindered by the importation of the patented article by—
    - (i) the patentee or persons claiming under him; or
    - (ii) persons directly or indirectly purchasing from the patentee; or
    - (iii) persons against whom the patentee is not taking or has not taken proceedings for infringement;
  - (c) if the demand for the patented article in Zimbabwe is not being met to an adequate extent and on reasonable terms;
  - (d) if, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Zimbabwe or the trade of any person or class of persons trading in Zimbabwe or the establishment of any new trade or industry in Zimbabwe is being prejudiced, and it is in the public interest that a licence or licences should be granted;
  - (e) if any trade or industry in Zimbabwe or any person or class of persons engaged therein is being prejudiced by unfair conditions attached by the patentee, whether before or after the appointed day, to the purchase, hire, licence or use of the patented article or to the using or working of the patented process;
  - (f) if any condition, which under section *forty-four* is null and void as being in restraint of trade and contrary to public policy, has been inserted in any contract made in relation to the sale or lease of or any licence to use or work any article or process protected by the patent:

Provided that, for the purpose of determining whether there has been any abuse of the monopoly rights under a patent, due regard shall be had to the fact that patents are granted not only to encourage invention but also to secure that inventions shall so far as possible be worked on a commercial scale in Zimbabwe without undue delay.

(6a) In the event of a practice determined after judicial or administrative process to be anti-competitive, the requirements contained in subsection (1) that the interested person shows that he has been unable to obtain a licence shall not apply.

[Subsection inserted by section 10 of At 9 of 2002]

- (7) The Tribunal may order the grant to the applicant of a licence on such terms as it may think expedient, including a term precluding the licensee from importing into Zimbabwe any goods the importation whereof, by persons other than the patentee or persons claiming under him, would be an infringement of the patent.
- (8) The terms of a licence ordered to be granted under subsection (7) shall be so framed as—
- (a) to authorise the making, use or vend of the invention primarily to satisfy the market in Zimbabwe, except in the case of a determination of anti-competitive practices, in which case no such restriction shall apply; and
  - (b) to secure to the patentee the reasonable royalty compatible with the successful working of the invention within Zimbabwe on a commercial scale and at a reasonable profit; and

- (c) to be based on product-specific research and development costs, taking into account the domestic market share of the total world market:

Provided that paragraph (b) shall not be construed as to exclude the need to correct anti-competitive practices which may be taken into account in determining the amount of remuneration in such cases.

[Subsection substituted by section 10 of Act 9 of 2002]

(9) In addition to any other terms of a licence ordered to be granted under subsection (7), the licence shall be revocable at the discretion of the Tribunal if—

- (a) the circumstances that led to its grant cease to exist and are unlikely to recur; or  
(b) the licensee fails to—  
(i) work the invention within the time specified in the order; or  
(ii) expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within Zimbabwe; or  
(iii) pay the patentee the royalties payable in terms of the licence.

[Subsection substituted by section 10 of Act 9 of 2002]

(10) ....

[Subsection deleted by section 10 of Act 9 of 2002]

(11) In deciding to whom a licence is to be granted under subsection (7), the Tribunal shall, unless good reason is shown to the contrary, prefer an existing licensee to a person who, according to the Register, has no interest in the patent.

[Subsection deleted by section 10 of Act 9 of 2002]

(12)

[Subsection deleted by section 10 of Act 9 of 2002]

(13) A licensee under this section shall be entitled to call upon the patentee concerned to institute any proceedings which may be necessary to prevent infringement of the patent in question and shall in all other respects have the same rights as any other licensee, and if the patentee fails, within two months after being called upon by the licensee or within such further period as the Tribunal may allow, to institute any such proceedings, the licensee may himself institute such proceedings as if he were the patentee, making the patentee a defendant, but the patentee shall not be liable for any costs in connection with such proceedings unless he enters an appearance and takes part in those proceedings.

(14) The existence of a compulsory licence granted solely on the ground that an invention is not being worked in Zimbabwe on a commercial scale shall not preclude the grant of further licences, including compulsory licences, in respect of that invention, but the holder of any compulsory licence shall not be entitled to transfer that licence or grant a sub-licence thereunder except to a person to whom the business or the part of the business in connection with which the rights under the licence were exercised, has been transferred.

(15) No licence shall be granted in terms of this section or of section *thirty-two* while an entry in terms of section *twenty-nine* in respect of the relevant patent remains in the Register.

[Subsection deleted by section 10 of Act 9 of 2002]

(16) An appeal shall lie from any refusal of the Registrar to issue directions in terms of subsection (3).

(17) For the purposes of this section—

“patented article” includes any article made by a patented process.

### **32 Inventions relating to food or certain other commodities**

(1) Subject to subsection (15) of section *thirty-one* and without prejudice to the other foregoing provisions of this Act, where a patent is in force in respect of—

- (a) a substance capable of being used as food or medicine or in the production of food or medicine; or  
(b) a process for producing a substance referred to in paragraph (a); or  
(c) any invention capable of being used as or as part of a surgical or curative device or in protection of the environment;

[Paragraph amended by section 11 of Act 9 of 2002]

(d) any invention capable of substantially improving the technological, social and economic development of the country.

[Paragraph inserted by section 11 of Act 9 of 2002]

the Tribunal shall, on application made to it by any person interested, order the grant to the applicant of a licence under the patent on such terms as it thinks fit, unless it appears to the Tribunal that there are good reasons for refusing the application.

[Subsection amended by section 18 of Act 9 of 2002]

(1a) Subject to subsections (2) and (3), the terms of a licence under this section shall be so framed as—

- (a) to authorise the working of the invention primarily to satisfy the market in Zimbabwe, except in the case of a determination of anti-competitive practices, in which case no such restriction shall apply; and  
(b) to secure to the patentee the reasonable royalty compatible with the successful working of the invention within Zimbabwe on a commercial scale and at a reasonable profit.

[Subsection inserted by section 11 of Act 9 of 2002]

(2) In settling the terms of a licence under this section the Tribunal shall endeavour to secure that food, medicine and surgical and curative devices and environment protection devices and any invention referred to in paragraph (d) of subsection (1) shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

[Subsection amended by section 40 of Act 14 of 2002]

(3) A licence granted under this section shall entitle the licensee to make, use, exercise and vend the invention—

(a) as a food or medicine or for the purposes of the production of food or medicine; or

(b) as part of a surgical or curative or environment protection device or any invention referred to in paragraph (d) of subsection (1);

but for no other purposes.

[Subsection substituted by section 40 of Act 14 of 2002]

(4) In addition to any other terms of a licence under this section, the licence shall be revocable at the discretion of the Tribunal if—

(a) the circumstances that led to its grant cease to exist and are unlikely to recur; or

(b) the licensee fails to—

(i) work the invention within the time specified in the order; or

(ii) expend the amount specified in the licence as being the amount which he is able and willing to provide for the purpose of working the invention on a commercial scale within Zimbabwe; or

(iii) pay the patentee the royalties payable in terms of the licence.

[Subsection inserted by section 11 of Act 9 of 2002]

### 33 Supplementary provisions as to licences

An order under this Act for the grant of a licence shall, without prejudice to any other method of enforcement, have effect as if it were an agreement executed by the patentee and all other necessary parties granting a licence in accordance with the order.

### 34 Use of patented inventions for service of the State

(1) Notwithstanding anything in this Act, any department of the State or any person authorized in writing by the Minister may make, use or exercise any invention disclosed in any specification lodged at the Patent Office for the service of the State in accordance with this section.

(2) Any use of an invention made by virtue of subsection (1) shall be made upon such terms and conditions as may be agreed upon between the Minister and the patentee with the approval of the Minister responsible for finance or, in default of such agreement, as may be determined by the Tribunal on a reference under subsection (1) of section *thirty-six*

[Subsection substituted by section 12 of Act 9 of 2002]

(3) .....

[Subsection repealed by section 12 of Act 9 of 2002]

(4) The authority of the Minister in respect of an invention may be given under subsection (1)—

(a) either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done; and

(b) to any person, whether or not he is authorized directly or indirectly by the patentee to make, use, exercise or vend the invention.

(5) Where any use of an invention is made by or with the authority of the Minister under subsection (1), then, unless it appears to him that it would be contrary to the public interest so to do, the Minister shall notify the patentee as soon as practicable after the use is begun, and furnish him with such information as to the extent of the use as he may from time to time require.

(6) For the purposes of this section and sections *thirty-five* and *thirty-six*, any use of an invention for the supply to the government of a country outside Zimbabwe, in pursuance of any agreement or arrangement between the Government of Zimbabwe and the government of that country, of articles required for the defence of that country shall be deemed to be a use of the invention for the service of the State, and the power of a department of the State or a person authorized by the Minister under this section to make, use and exercise an invention shall include power—

(a) to sell such articles to the government of any country in pursuance of any such agreement or arrangement as aforesaid; and

(b) to sell to any person any articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made:

Provided that any such use as provided for herein shall be permitted to remedy a practice determined after judicial or administrative process to be anti-competitive.

[Proviso inserted by section 12 of Act 9 of 2002]

(7) The purchaser of any articles sold in the exercise of powers conferred by this section and any person claiming through him shall have power to deal with them in the same manner as if the patent were held on behalf of the President.

(8) Regulations in terms of section *ninety-six* may govern the rights of third parties in relation to any use of a patented invention, or an invention in respect of which an application for a patent is pending, made for the service of the State in terms of this section or section *thirty-five*.

### **35 Special provisions as to State use during emergency**

(1) During any period of emergency the powers exercisable in relation to an invention by a department of the State or a person authorized by the Minister under section *thirty-four* shall include power to make, use, exercise and vend the invention for any purpose which appears to the Minister necessary or expedient—

- (a) for the efficient prosecution of any war in which Zimbabwe may be engaged; or
- (b) for the maintenance of supplies and services essential to the life of the community; or
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community; or
- (d) for promoting the productivity of industry, commerce or agriculture; or
- (e) for fostering and directing exports and reducing imports or imports of any classes, from all or any countries and for redressing the balance of trade; or
- (f) generally, for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community; or
- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of Zimbabwe or any foreign country that is in grave distress as the result of war;

and any reference in that section or in section *thirty-six* to the service of the State shall be construed as including a reference to the purposes referred to in paragraphs (a) to (g).

(2) In subsection (1)—

“period of emergency” means any period beginning on such date as may be declared by the Minister, by statutory instrument, to be the commencement and ending on such date as may be so declared to be the termination of a period of emergency.

### **36 Reference of disputes as to State use**

(1) Any dispute as to—

- (a) the exercise by a department of the State or a person authorized by the Minister of the powers conferred by section *thirty-four*; or
- (b) the terms for the use of an invention for the service of the State thereunder; or
- (c) the compensation payable upon a reference to the Tribunal under subsection (4) of section *twenty*; or
- (d) the right of any person to receive any part of a payment determined in terms of paragraph (b) or (c);

may be referred to the Tribunal by any party to the dispute in such manner as may be prescribed.

(2) In any proceedings under this section to which a department of the State is a party, the Minister may—

- (a) if the patentee is a party to the proceedings, apply for revocation of the patent upon any ground upon which a patent may be revoked under section *forty-five*;
- (b) in any case, put in issue the validity of the patent without applying for its revocation.

(3) If in any proceedings under this section any question arises whether an invention has been recorded or tried as mentioned in section *thirty-four* or has been used by or on behalf of or to the order of a department of the State under subsection (3) of section *twenty*, and the disclosure of any document recording the invention or of any evidence at the trial or use thereof would, in the opinion of the Minister, be prejudicial to the public interest, the disclosure may be made confidentially to the legal practitioner, if any, appearing for the other party or to an independent expert agreed upon by the parties.

(4) In determining under this section any dispute between a department of the State and any person as to terms for the use of an invention for the service of the State, the Tribunal shall have regard to any benefit or compensation which that person or any person from whom he derives title may have received or may be entitled to receive, directly or indirectly, from any department of the State in respect of the invention in question.

## **PART V**

### **SPECIAL PROVISIONS RELATING TO SPECIFICATIONS, ANTICIPATION AND RIGHTS IN INVENTIONS**

### **37 Amendment of specification by Registrar**

(1) Subject to this section, an applicant for a patent or a patentee may at any time, by request in writing lodged at the Patent Office, seek leave to amend either his provisional or his complete specification including drawings forming part thereof, and shall in making any such request state the nature of the proposed amendment and the reasons therefor.

(2) Where there are joint applicants or patentees, a request in terms of subsection (1) shall be made by them jointly or by one or more of them with the written consent of the other or others, and in the case of disagreement

between them the Registrar may, if satisfied that one or more of them should be allowed to proceed alone and subject to such conditions as he may impose, permit the request to be made without the consent of the others:

Provided that all parties interested shall be notified by the applicant of the request and be entitled to be heard before any decision is given thereon.

(3) After the acceptance of a complete specification—

(a) no amendment thereof shall be effected except by way of disclaimer, correction or explanation; and

(b) no amendment thereof shall be allowed, except for the purpose of correcting an obvious mistake or a false statement which was made in the belief that it was true, the effect of which would be that—

(i) the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendment; or

(ii) any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(4) The request for an amendment of an accepted complete specification and its nature and the reasons therefor shall be advertised by the applicant in the Journal, and, at any time within three months of the advertisement or such further time as the Registrar, subject to such conditions as he may impose, may allow, any person may give notice at the Patent Office of opposition to the amendment.

(5) Notice of opposition in terms of subsection (4) shall be given in the prescribed manner to the Registrar and to the person making the request, and the Registrar shall hear the person making the request and the person who has given notice of opposition and determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) Where a complete specification has not been accepted, the Registrar shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(7) No request for amendment under this section shall be allowed if and so long as any proceedings are pending for infringement or revocation of the patent in question.

(8) An appeal shall lie from any decision of the Registrar made under this section.

### **38 Amendment of specification with leave of High Court or Tribunal**

In any action for infringement of a patent or any proceedings before the Tribunal for the revocation of a patent, the High Court or the Tribunal, as the case may be, may, subject to subsection (3) of section *thirty-seven*, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise as the High Court or the Tribunal may think fit, and, if in any such proceedings for revocation the Tribunal decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

### **39 Restrictions on recovery of damages in certain cases**

Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act after the publication of the specification, no damages shall be awarded in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment if the High Court or the Tribunal is satisfied that the specification as originally published was not framed in good faith and with reasonable skill and knowledge.

### **40 Savings for anticipation**

An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to a department of the State or to any person authorized by the Minister to investigate the invention or its merits or of anything done by any person whomsoever in consequence of such a communication for the purpose of the investigation.

### **41 Co-ownership of patents**

(1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to this section, where two or more persons are registered as patentees then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to make, use, exercise and vend the patented invention for his own benefit without accounting to the other or others.

(3) Subject to subsections (6), (7) and (8) and to any agreement for the time being in force, a licence under a patent shall not be granted and a share in a patent shall not be assigned except with the consent of all persons, other than the licensor or assignor, who are registered as patentees.

(4) Where a patented article is sold by one of two or more persons registered as patentees, the purchaser and any person claiming through him shall in respect of such article be entitled to deal with it in the same manner as if it had been sold by a sole patentee.

(5) Subject to this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents as they apply in relation to other incorporeal rights.

(6) Where two or more persons are registered as patentees, the Registrar may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent or the exercise of any right under subsections (1) to (5) in relation thereto as he thinks fit.

(7) If any person registered as patentee fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Registrar may, upon application made to him in the prescribed manner by any such other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(8) Before giving directions in pursuance of an application under subsection (6) or (7), the Registrar shall give an opportunity to be heard—

- (a) in the case of an application under subsection (6), to the other person or persons registered as patentees;
- (b) in the case of an application under subsection (7), to the person in default.

(9) An appeal shall lie from any decision of the Registrar under this section.

(10) No directions shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.

#### **42 Disputes as to inventions made by joint inventors**

(1) Where a dispute arises between two or more persons as to the rights of the parties in respect of an invention made by those persons jointly or in respect of any patent to be granted in respect thereof, the Registrar may, upon application made to him in the prescribed manner, and after giving to each of the parties an opportunity to be heard, determine the matter in dispute and make such orders for giving effect to his decision as he considers expedient.

(2) Upon an application made to him under subsection (1), the Registrar may, unless satisfied that one of the parties is entitled to the exclusion of the other or others to the benefit of the invention in respect of which the application is made, by order provide for the apportionment, between the parties or two or more of the parties, of the invention and of any patent to be granted in respect thereof in such manner as the Registrar considers just.

(3) A decision of the Registrar under this section shall have the same effect as between the parties and persons claiming under them as a decision of the Tribunal.

(4) An appeal shall lie from any decision of the Registrar under this section.

(5) Where it is claimed that an invention referred to in subsection (1) has been made jointly by two or more persons and that the interest of any such joint inventors has, by virtue of any assignment or agreement or by operation of law, been transferred to the claimant, the claimant shall be regarded, for the purposes of subsection (1), as though he were the joint inventor.

#### **43 Disputes as to inventions made by employees**

(1) Where a dispute arises between an employer and a person who is or was at the material time his employee as to the rights of the parties in respect of an invention made by the employee, either alone or jointly with other employees, or in respect of any patent granted or to be granted in respect thereof, the Registrar may, upon application made to him in the prescribed manner by either of the parties and after giving to each of them an opportunity to be heard, determine the matter in dispute and may make such orders for giving effect to his decision as he considers expedient.

(2) A decision of the Registrar under subsection (1) shall have the same effect as between the parties and persons claiming under them as a decision of the Tribunal.

(3) An appeal shall lie from any decision of the Registrar under subsection (1).

#### **44 Avoidance of certain restrictive conditions in contracts**

(1) Subject to subsection (2), it shall not be lawful in any contract made after the appointed day in relation to the sale or lease of or a licence to use or work any article or process protected by a patent to insert a condition the effect of which will be—

- (a) to prohibit or restrict the purchaser, lessee or licensee from using any article or class of articles, whether patented or not, or any patented process supplied or owned by any person other than the seller, lessor or licensor or his nominee; or
- (b) to require the purchaser, lessee or licensee to acquire from the seller, lessor or licensor or his nominee any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy.

(2) Subsection (1) shall not apply if—

- (a) the seller, lessor or licensor proves that at the time the contract was entered into the purchaser, lessee or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms without the conditions referred to in subsection (1); and
- (b) the contract entitles the purchaser, lessee or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment, if the Tribunal

so directs, of compensation for such relief, in the case of a purchase of such sum, or in case of a lease or licence of such rent or royalty, for the residue of the term of the contract, as may be fixed by the Tribunal.

(3) Any contract relating to the lease of or licence to use or work any patented article or patented process may, at any time after the patent or all the patents by which the article or process was protected in Zimbabwe at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the same or in any other contract, be determined by either party on giving three months' notice in writing to the other party.

(4) Nothing in this section shall—

- (a) affect any condition in a contract whereby any person is prohibited from selling any goods other than those of a particular person;
- (b) be construed as validating any contract which would, apart from this section, be invalid;
- (c) affect any right of determining a contract or condition in a contract exercisable independently of this section;
- (d) affect any condition in a contract for the lease of or a licence to use a patented article whereby the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as may be required to put or keep it in repair.

#### 45 Revocation of patents

(1) An application for the revocation of a patent may be made to the High Court or to the Tribunal by any person interested, including the State, upon any one or more of the grounds on which the grant of a patent might have been opposed, but, subject to the provisions of subsection (2), of proviso (ii) to paragraph (b) of subsection (7) of section *eighty* and of paragraph (b) of subsection (1) of section *eighty-three*, on no other grounds.

(2) Where an order for the granting of a licence under the patent has been made in pursuance of an application under section *thirty-one*, any person interested may, at any time after the expiration of two years from the date of that order, apply to the High Court or to the Tribunal for the revocation of the patent upon any of the grounds specified in subsection (6) of section *thirty-one* and, if upon such application the High Court or the Tribunal, as the case may be, is satisfied—

- (a) that any of the said grounds are established; and
- (b) that the purpose for which an order may be made in pursuance of an application under section *thirty-one* could not be achieved by the making of any further order under that section;

it may order the patent to be revoked.

(3) An application for the revocation of a patent shall state the grounds on which the applicant relies and shall be accompanied by a statement setting out particulars of the facts alleged in support of the said grounds, and a copy of the application and of the statement shall be served by the applicant on the patentee and proof of such service shall be furnished to the registrar of the Tribunal.

(4) If the patentee wishes to contest an application made in terms of subsection (1) or (2), he shall, within such time as may be prescribed or such further time as the High Court or the Tribunal, as the case may be, may allow, lodge with the registrar of the Tribunal a counter-statement setting out particulars of the grounds upon which the application is contested and deliver to the applicant a copy of that statement.

(5) Except by leave of the High Court or the Tribunal, as the case may be, no evidence shall be admitted in proof of any ground, particulars of which are not delivered in terms of subsection (3) or (4).

(6) Particulars delivered in terms of subsection (3) or (4) may from time to time be amended by leave of the High Court or the Tribunal, as the case may be.

(7) The High Court or the Tribunal, as the case may be, shall appoint a time for the hearing of an application in terms of subsection (1) or (2), and shall thereafter decide whether the patent shall be revoked or whether and, if so, subject to what amendments, if any, of the specification or claims thereof, the patent shall be upheld:

Provided that the High Court or the Tribunal, as the case may be—

- (a) shall not allow any amendment of the specification or claims of the patent if it is established to its satisfaction that the original complete specification and claims were not framed in good faith and with reasonable skill and knowledge; and
- (b) may, in the exercise of its discretion as to costs, take into consideration the conduct of the patentee in framing his original specification and claims and permitting them to remain as so framed.

(8) An order for the revocation of a patent under this section may be made so as to take effect either unconditionally or in the event of failure to comply, within such reasonable period as may be specified in the order, with such conditions as may be imposed by the order with a view to achieving the purposes for which an order may be made in pursuance of an application under section *thirty-one*, and the High Court or the Tribunal, as the case may be, may, on reasonable cause shown in any case, by subsequent order extend any period so specified.

(9) The registrar of the Tribunal shall inform the Registrar of any application or counter-statement which is lodged with him in terms of this section and of any amendment of particulars which is permitted in terms of subsection (6).

#### **46 Consequences of revocation on grounds of fraud**

(1) Where—

- (a) a patent is revoked on the ground of fraud; or
- (b) a patent fraudulently obtained has been surrendered and revoked; or
- (c) the grant of a patent has been refused under the provisions of paragraph (b) of subsection (1) of section *seventeen*;

the Tribunal may, on the application of the person entitled to the invention for Zimbabwe or his legal representative, made in accordance with this Act, direct the grant to him of a patent for the whole or any part of the invention, bearing the same date as the patent so revoked or as would have been borne by the patent which has been refused if the grant thereof had not been refused.

(2) Where, in proceedings before the Tribunal in connection with opposition to the grant of a patent, the Tribunal has found that the subject-matter was in part obtained from the objector and has required that the specification be amended by the exclusion of that part of the matter, the Tribunal may direct that, on the application of the inventor or any person claiming through or under him made in accordance with this Act within three months after the date of the direction or within such further period as the Tribunal may allow, a patent for that excluded part of the matter bearing the date of and having the same effective date as the opposed application be granted to the applicant concerned.

(3) No action shall be brought for any infringement of a patent committed—

- (a) in the case of a patent granted under subsection (1), before the date of sealing thereof; or
- (b) in the case of a patent granted under subsection (2), before the date of advertisement of acceptance of the complete specification lodged in pursuance of the application for such patent.

#### **47 Surrender of patents**

(1) A patentee may at any time, by notice given to the Registrar, offer to surrender his patent.

(2) Where an offer in terms of subsection (1) is made, the patentee shall advertise the offer in the Journal, and within the prescribed period after such advertisement any person interested may give notice to the Registrar of opposition to the surrender.

(3) Where any notice of opposition in terms of subsection (2) is duly given, the Registrar shall notify the patentee.

(4) If, after hearing the patentee and any opponent who is desirous of being heard, the Registrar is satisfied that the patent may properly be surrendered, he may accept the offer and by order revoke the patent and he shall give notice of any such revocation in the Journal:

Provided that if no notice of opposition has been duly given it shall not be necessary for the Registrar to hear the patentee.

(5) An appeal shall lie from any decision of the Registrar under this section.

#### **47A Interpretation in Part VI**

In this Part—

“Court”, in relation to proceedings for an infringement of a patent, means the Tribunal or the court in which the proceedings have been instituted.

[Section inserted by section 13 of Act 9 of 2002]

### **PART VI**

#### **INFRINGEMENTS**

#### **48 Procedure and conditions in action for infringement**

(1) An action for infringement of a patent may only be instituted by the patentee or the exclusive licensee.

(1a) An action for infringement of a patent may be instituted—

- (a) in the Tribunal; or
- (b) in the High Court; or
- (c) subject to the jurisdictional limits provided for in the Magistrates Court Act [*Chapter 7:10*], in a magistrates court.

[Subsection inserted by section 14 of Act 9 of 2002]

(2) Subject to any rules of court, the following provisions shall apply in connection with an action for infringement—

- (a) any ground upon which a patent may be revoked under this Act may be relied upon by way of defence;
- (b) the defendant may, by way of counter-claim in the action, apply for the revocation of the patent;

- (c) the plaintiff shall, with his statement of claim or declaration or on the order of the Court at any subsequent time, deliver full particulars of the infringement complained of;
- (d) the defendant shall, with his statement of defence or plea or on the order of the Court at any subsequent time, deliver particulars of any objections on which he relies in support thereof;
- (e) at the hearing no evidence shall, except by leave of the Court, be admitted of any infringement or on any objections of which particulars have not been so delivered in terms of paragraph (c) or (d);
- (f) the Court may allow the patentee to amend his specification, subject to such terms as to costs, advertisement or otherwise as it may impose and to the provisions of subsection (3) of section *thirty-seven*.

[Subsection amended by section 14 of Act 9 of 2002]

(3) In any action under this section where an exclusive licensee is the plaintiff, the patentee shall, unless he is joined as plaintiff in such action, be added as defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(4) If the patentee is the plaintiff in any action under this section, he shall give notice thereof to the exclusive licensee under the patent in question 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.

(5) No action under this section shall lie in respect of an infringement which took place before the publication referred to in subsection (2) of section *sixteen*.

(6) No action for infringement of a patent may be instituted more than three years after the date on which that patent has expired or lapsed.

(7) In an action for infringement of a patent the plaintiff shall be entitled to relief by way of interdict and damages and the Court may, on application, make such order for an interdict, damages, inspection or account and impose such terms and give such directions as it may deem fit:

Provided that in awarding damages the Court shall take into account any dilatory conduct on the part of the patentee or plaintiff in making the infringer aware of the patent.

(8) In an action for infringement of a patent in respect of an invention which relates to the protection of a new substance, any substance of the same chemical composition and constitution shall, in the absence of proof to the contrary, be deemed to have been produced by the patented process.

(9) If it is proved, in an action for infringement of a patent in respect of an invention which relates to the protection of an art or a process, that—

- (a) the defendant produced a product that is identical to that produced from the patented art or process; and
- (b) the patented art or process is new;

it shall be presumed, in the absence of proof to the contrary, that the defendant's article was produced from the patented art or process:

Provided that, in adducing proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

[Subsection inserted by section 14 of Act 9 of 2002]

#### **48A Anton Piller orders**

(1) If a person who has instituted or intends instituting an action for infringement of a patent satisfies the Court that, *prima facie*—

- (a) he has a cause of action against another person which he intends to pursue; and
- (b) the other person has in his possession documents or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and
- (c) there is a real and well-founded apprehension that the documents or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way;

the Court may make such order, commonly known as *Anton Piller* order, as it considers necessary or appropriate to secure the preservation of the documents or things as evidence.

(2) An order in terms of subsection (1) may be granted without notice to the person who is allegedly in possession of the documents or other things to which the order relates, and the Court may sit *in camera* for the purpose of hearing an application for such an order:

Provided that the Court shall not grant an order without such notice unless it is satisfied that there is a real possibility that the documents or things will be hidden, destroyed or rendered inaccessible if notice is given.

(3) An order in terms of subsection (1) may be granted on such conditions, including the giving of security by the applicant, as the Court may fix.

(4) This section shall not be taken to limit any power the Court may have under its ordinary jurisdiction to grant orders such as are referred to in this section.

[Section inserted by section 15 of Act 9 of 2002]

## **49 Relief for infringement of partially valid specification**

(1) Where, in any action for the infringement of a patent, the Court finds that any claim in the specification in respect of which the infringement is alleged is valid, but that any other claim thereunder is invalid, then, notwithstanding the provisions of section *forty-eight*, the following provisions shall apply—

- (a) unless the Court is satisfied that the invalid claim was not framed in good faith and with reasonable skill and knowledge, the Court shall, subject to its discretion as to costs and as to the date from which damages should be reckoned and to such terms as to amendment of the specification as it may deem desirable, grant relief in respect of any valid claim which is or has been infringed, without regard to the validity of any other claim in the specification, and in exercising such discretion the Court may take into consideration the conduct of the patentee in inserting the invalid claim in the specification or permitting that claim to remain there;
- (b) if the Court is satisfied that the invalid claim was not framed in good faith and with reasonable skill and knowledge, the Court shall not grant any relief by way of damages or costs, but may grant such other relief in respect of any valid claim which is or has been infringed as to it seems just and may impose such terms as to amendment of the specification as a condition of granting any such relief as it may deem desirable;
- (c) if a counter-claim for revocation of the patent has been made in the action on the ground of invalidity of any claim in the specification, the Court may postpone the operation of any order made thereon for such time as may be requisite to enable the patentee to effect any amendment of the specification pursuant to terms imposed by the Court and may attach such other conditions to any order to be made on the counter-claim as the Court may deem desirable.

## **50 Restrictions on recovery of damages for infringement**

(1) Where—

- (a) there has been a change of ownership of a patent, whether by virtue of assignment, transmission or operation of law; or
- (b) an exclusive licence has been granted in respect of a patent;

no damages for the infringement of the patent shall be recoverable by the new owner or the exclusive licensee, as the case may be, in respect of any infringement of that patent during the period from the date of the change of ownership or grant of exclusive licence, as the case may be, until the registration in terms of section *fifty-three* of that change of ownership or grant of exclusive licence, as the case may be, unless such registration was effected within six months of the change of ownership or grant of exclusive licence.

(2) If proceedings are taken in respect of infringement of a patent committed after the failure to pay any fee within the prescribed time and before any extension of time for such payment, the Court may, if it thinks fit, refuse to award any damages in respect of such infringement.

## **51 Remedy for groundless threats of infringement proceedings**

(1) Where any person, whether entitled to or interested in a patent or an application for a patent or not, by circulars, advertisements or otherwise threatens any other person with proceedings for infringement of a patent, any person aggrieved thereby may bring an action against him in the High Court in accordance with the rules of that court for any such relief as is mentioned in subsection (2).

[Subsection amended by section 18 of Act 9 of 2002]

(2) Unless, in any action brought in terms of subsection (1), the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute, an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief, that is to say—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an interdict against the continuance of the threats;
- (c) such damages, if any, as he has sustained thereby.

(3) For the avoidance of doubt, it is hereby declared that a mere notification of the existence of a patent shall not constitute a threat of proceedings within the meaning of subsection (1).

(4) The defendant in any action brought in terms of subsection (1) may apply, by way of counter-claim in the action, for any relief to which he would be entitled in a separate action in respect of any infringement by the plaintiff of the patent to which the threats relate.

## **52 Power of Court to make declaration as to non-infringement**

(1) A declaration that the use by any person of any process or the making or use or sale by any person of any article does not or would not constitute an infringement of a claim of a patent may be made by the Court in proceedings between that person and the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or licensee, if it is shown that—

- (a) the plaintiff has applied in writing to the patentee or licensee for a written acknowledgement to the effect of the declaration claimed and has furnished him with full particulars in writing of the process or article in question; and
- (b) the patentee or licensee has refused or neglected to give such an acknowledgement.

(2) In proceedings for a declaration brought by virtue of this section the Court shall make such order in respect of the costs of all parties to the proceedings as it deems fit:

Provided that a patentee or holder of an exclusive licence under the patent shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(3) The validity of a claim of the specification of a patent shall not be called in question in proceedings for a declaration brought by virtue of this section, and accordingly the making or refusal of such a declaration in the case of a patent shall not be deemed to imply that the patent is valid.

(4) Proceedings for a declaration may be brought in terms of this section at any time after the date of the notice of the acceptance of the complete specification in pursuance of an application for a patent, and references in this section to the patentee shall be construed accordingly:

Provided that this subsection shall not apply if the acceptance of the complete specification has been cancelled in terms of subsection (5) of section *sixteen*.

## PART VII

### ASSIGNMENTS AND CORRECTIONS

#### 53 Provisions as to assignments

(1) Subject to subsection (7) of section *twenty-six*, the rights granted to a patentee by a patent shall be capable of assignment and of devolution by operation of law and of being mortgaged and pledged.

(2) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as mortgagee, licensee or otherwise to any other interest in a patent, he may apply to the Registrar in the prescribed manner for the registration of his title as proprietor or co-proprietor or, as the case may be, of notice of his interest in the Register, and the Registrar shall, upon proof of such entitlement to his satisfaction, register such title or notice against the patent accordingly.

(3) Except for the purposes of an application to rectify the Register under the provisions of this Act, a document in respect of which no entry has been made in the Register under subsection (2) shall not be admitted in any proceedings as evidence of the title of any person to a patent or a share of or interest in a patent, unless the Tribunal or Court otherwise directs.

[Subsection amended by section 18 of Act 9 of 2002]

#### 54 Power of Registrar to authorize corrections

(1) The Registrar may authorize—

- (a) the correction of any clerical error or omission or error in translation in any patent, application for a patent or document lodged in pursuance of such an application or in the Register;
- (b) the amendment otherwise of any documents for the amending of which no express provision is made in this Act;
- (c) the condonation or correction of any irregularity in procedure in any proceedings before him, if such condonation or correction is not detrimental to the interests of any person.

(2) A correction may be made in terms of subsection (1) either upon a request in writing accompanied by the prescribed fee or without such a request.

(3) Where it is proposed to make a correction otherwise than upon a request in writing, the Registrar shall give notice of the proposal to the patentee or the applicant for the patent, as the case may be, and to any other person who appears to him to be concerned, and shall give any such person an opportunity to be heard before the correction is made.

(4) Where a request is made for the correction of a clerical error or omission referred to in subsection (1) and it appears to the Registrar that the correction would materially alter the scope of the document to which the request relates, the Registrar may require notice of the request to be advertised in the Journal and to be served upon such persons as he considers necessary.

(5) Any opposition to a request for a correction in terms of subsection (1) may be lodged and shall be dealt with by the Registrar in the manner prescribed.

(6) An appeal shall lie from any decision of the Registrar under this section.

#### 55 Rectification of Register

(1) The Tribunal may, on the application of any person aggrieved, order the Register to be rectified by the making of any entry therein or the variation or deletion of any entry therein.

(2) The Tribunal may determine any question which it may be necessary or expedient to decide in connection with the rectification of the Register.

(3) Notice of an application to the Tribunal in terms of subsection (1) shall be given in the prescribed manner to the Registrar and all interested parties, and the Registrar and all such parties shall be entitled to appear and be heard on the application.

(4) An order made by the Tribunal under this section shall be served on the Registrar in the prescribed manner and the Registrar shall, on the receipt of the notice, rectify the Register accordingly.

## PART VIII

### FUNCTIONS OF REGISTRAR IN RELATION TO CERTAIN EVIDENCE, DOCUMENTS AND POWERS OF REGISTRAR

#### **56 Evidence of certain entries and documents**

(1) A certificate purporting to be signed by the Registrar and certifying that any entry the making of which is or was at the time authorized by or under this Act has or has not been made or that any other thing which is or was at the time so authorized to be done has or has not been done shall be *prima facie* evidence of the matters so certified.

[Subsection amended by section 18 of Act 9 of 2002]

(2) A copy of an entry in the Register or of any document kept in the Patent Office or of any patent or an extract from the Register or any such document purporting to be certified by the Registrar and sealed with the seal of the Patent Office shall be admitted in evidence without further proof and without production of the original.

#### **57 Requests for information as to patent or patent application**

The Registrar shall, on request made to him in the prescribed manner by any person and on payment of the prescribed fee, furnish the person making the request with such information relating to any patent or application for a patent as may be specified in the request, being information in respect of any such matters as may be prescribed.

#### **58 Loss or destruction of patent**

Where the Registrar is satisfied that a patent has been lost or destroyed or cannot be produced, he may at any time cause a duplicate thereof to be sealed on payment of such fee as may be prescribed.

#### **59 Exercise of discretionary powers of Registrar**

(1) Without prejudice to any provisions of this Act requiring the Registrar to hear any party to proceedings thereunder or to give to any such party an opportunity to be heard, the Registrar shall give to any applicant for a patent or for amendment of a specification an opportunity to be heard before exercising adversely to the applicant any discretion vested in the Registrar by or under this Act.

(2) Subject to subsection (2) of section *seventy-six*, where by this Act any time is specified within which any act or thing is to be done, the Registrar may, save where it is expressly otherwise provided, extend the time, either before or after its expiration, if he is satisfied that the failure to comply with the provisions relating to such time has not been or will not be due to any neglect or default on the part of the person concerned.

#### **60 Proceedings before Registrar**

(1) Evidence in any proceedings before the Registrar under this Act shall be given by affidavit, so, however, that the Registrar may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence as aforesaid, and may allow any witness to be cross-examined on his affidavit or oral evidence.

(2) For the purposes of any proceedings before the Registrar under this Act, the Registrar shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act [*Chapter 10:07*], other than the powers to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 of that Act shall apply, *mutatis mutandis*, in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before him.

[Subsection amended by section 18 of Act 9 of 2002]

#### **61 Registrar may award costs**

(1) The Registrar may award costs against any party to any proceedings before him and in favour of any other party to those proceedings.

(2) If any party to proceedings before the Registrar is resident outside Zimbabwe or has no immovable property therein, the Registrar may, on the application of any other party to the proceedings, order that security to the satisfaction of the Registrar be lodged or given by the first-mentioned party in respect of any costs which may be awarded against him in those proceedings and may refuse, until such security has been lodged or given, to permit such proceedings to be continued.

(3) Unless otherwise agreed between the parties, any costs awarded in terms of subsection (1) shall be taxed by the Registrar in accordance with the provisions prescribed in respect of the awarding of costs in terms of subsection (1), and any such costs may be recovered by action in a court of competent jurisdiction.

(4) An appeal shall lie from any decision of the Registrar made under the provisions of this section.

## 62 Advertisements to be approved by Registrar

No advertisement or notice, other than a notice issued under the authority of the President or the Minister, shall be published by any person under this Act unless the Registrar has approved the form and contents of such advertisement or notice, and no advertisement or notice which has not been so approved shall have any force or effect for the purposes of this Act.

## PART IX

### PATENT AGENTS

## 63 Patent agents and their functions

(1) Subject to this Act, a patent agent may act as agent on behalf of any person in connection with any matter or proceeding before the Registrar under this Act and may draw and sign all documents and make all communications between an applicant and the Patent Office and may represent an applicant at all attendances before the Registrar.

(2) A patent agent shall not be guilty of an offence under the provisions of any enactment prohibiting the preparation for reward of certain documents by persons not legally qualified by reason only of the preparation or signature by him of any document relating to patents for use in the Patent Office or required in any proceedings under this Act before the Registrar or the Tribunal.

## 64 Qualification and registration of patent agents

(1) The Registrar shall—

- (a) keep a Register of Patent Agents in which the name of every person, immediately upon his being accepted for registration, shall be registered, showing against his name such particulars as the Registrar shall from time to time deem necessary; and
- (b) enter in such Register of Patent Agents all changes relating to registrations.

(2) Any person ordinarily resident in Zimbabwe who—

- (a) has served such period of articles as may be prescribed and has passed the prescribed qualifying examinations; or
- (b) has passed the prescribed qualifying examinations and produces proof that he is a member in good standing of The Chartered Institute of Patent Agents incorporated by Royal Charter on the 11th August, 1891; or
- (c) produces proof that he holds a qualification recognized by the Minister as being equivalent to the qualifications required for the purposes of paragraph (a) or (b);

may make application to the Registrar in the prescribed manner to be registered as a patent agent, and the Registrar shall arrange such registration if he is satisfied that there is no good reason why it should not be arranged and that the applicant is not a person whose name could be removed from the Register of Patent Agents under paragraph (b), (c) or (f) of subsection (1) of section *sixty-five*:

Provided that an officer in the Public Service who has been employed in the Patent Office shall not be registered as a patent agent or be permitted to practise as such until at least twelve months have expired since he ceased to be so employed.

(3) Any person who, immediately prior to the appointed day, was registered as a patent agent in terms of the Patents Act, 1957 (No. 13 of 1957) shall be deemed to have been registered as a patent agent under this Act.

(4) An appeal shall lie from any decision of the Registrar made under the provisions of subsection (2).

## 65 Removal of names from Register of Patent Agents

(1) The Registrar may remove from the Register of Patent Agents the name of any patent agent upon proof to his satisfaction that that patent agent—

- (a) has died; or
- (b) has become of unsound mind; or
- (c) has been adjudged insolvent under any enactment in force in Zimbabwe or has made an assignment to or composition with his creditors; or
- (d) has ceased to reside in Zimbabwe or has ceased to maintain a place of business therein; or
- (e) has applied for his name to be so removed; or
- (f) has, after being convicted in Zimbabwe or elsewhere of the crime of theft, fraud, forgery or uttering a forged document or perjury, been sentenced to serve a term of imprisonment without the option of a fine, whether such sentence is suspended or not, and has not received a free pardon; or
- (g) having been entitled to practise as a legal practitioner or to be registered as a patent agent, has ceased to be so entitled; or
- (h) having been entitled to practise as a legal practitioner or a patent agent, has ceased to practise as such.

(2) An appeal shall lie from any decision of the Registrar made under the provisions of subsection (1).

(3) Subject to this section and such procedure as may be prescribed, the Tribunal may order the Registrar to remove the name of any patent agent from the Register of Patent Agents or may suspend any patent agent from practising as such for such time as it thinks fit if it is satisfied, after due inquiry, that such person has been guilty—

- (a) of conduct discreditable to a patent agent; or
- (b) of a breach of any regulations prescribing the conduct of patent agents.

(4) No order shall be made by the Tribunal in terms of subsection (3) unless the patent agent concerned has been given notice of any allegations made against him and has had an opportunity to adduce evidence and to be heard.

(5) Any institute or other organization recognized by the Minister as being representative of the patent agents in Zimbabwe shall be entitled to be represented, to adduce evidence and to be heard by the Tribunal before it makes any order in terms of subsection (3).

(6) Where the name of any patent agent has been removed from the Register of Patent Agents under the provisions of subsection (1) or (2), his name shall not be restored to that Register except by direction of the Tribunal, which may further direct that such restoration shall be made either without fee or on payment of such fee, not exceeding the registration fee, as it may fix, and the Registrar shall restore the name accordingly.

## **66 Privileges of attorneys**

Every person entitled to practise as a legal practitioner in Zimbabwe may practise as a patent agent and perform the functions set out in section *sixty-three* without being registered as a patent agent, but no such person shall be entitled to be so registered except under the provisions of section *sixty-four*.

## **67 Entitlement to practise as patent agent and power of Controller to refuse to deal with certain agents**

(1) No person shall practise as a patent agent unless he is registered as such or is, by virtue of the provisions of section *sixty-six*, entitled so to practise.

(2) A person shall be deemed to practise as a patent agent if—

- (a) he performs any of the functions of a patent agent set out in section *sixty-three*; or
- (b) he carries on within Zimbabwe the business of applying for or obtaining for others patents in Zimbabwe or elsewhere.

(3) No person who is not a legal practitioner or registered as a patent agent shall describe himself as, or hold himself out to be, a patent agent or use any term implying such a meaning, nor shall such a person permit himself to be so described or held out.

(4) No person who is not a legal practitioner, whether or not he is registered as a patent agent, shall describe himself as, or hold himself out to be, a patent attorney or attorney for patents or use any term containing the word “attorney”, nor shall such a person permit himself to be so described or held out.

(5) The Controller may refuse to recognize as agent in respect of any business under this Act any person who, not being registered as a patent agent or entitled by virtue of the provisions of section *sixty-six* to practise as a patent agent, is, in the opinion of the Controller having regard to any other activities with which that person is primarily concerned, acting as a patent agent in applying for patents in Zimbabwe or elsewhere in the name or for the benefit of a person by whom he is employed.

(6) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## **68 Prohibition of certain acts of patent agents**

(1) No patent agent shall have an interest, whether as a partner or manager or otherwise, in more than one firm of patent agents in Zimbabwe.

(2) No patent agent shall practise under a name or title which includes the name of any person who is not or was not—

- (a) in his lifetime ordinarily resident in Zimbabwe; or
- (b) registered as a patent agent under the provisions of this Act.

[Paragraph amended by section 18 of Act 9 of 2002]

(3) No person shall practise as a patent agent if he is a party to—

- (a) a contract of partnership; or
- (b) an arrangement providing for the sharing or paying over of any professional fees;

relating to the business of a patent agent with any person who is prohibited from practising as a patent agent.

(4) Any person who contravenes this section shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## PART X

### APPEALS AND REFERENCES

[Part X substituted by section 16 of Act 9 of 2001]

#### 69 Appeals from Registrar

Where this Act provides for an appeal against a decision of the Registrar, the appeal shall be made to the Tribunal in accordance with this Part and the Intellectual Property Tribunal Act [*Chapter 26:06*].

#### 70 Time for appeals

(1) An appeal referred to in section *sixty-nine* shall be lodged with the Tribunal within three months after the appellant was notified of the decision or order against which the appeal is brought or within such further time as the Tribunal may for good cause allow.

(2) The powers of the Registrar as to extensions of time under subsection (2) of section *fifty-nine* shall not apply in relation to the time for bringing an appeal under subsection (1).

#### 71 Powers of Tribunal on appeal

Without derogation from section 8 of the Intellectual Property Tribunal Act [*Chapter 26:06*], in any appeal under this Act the Tribunal may—

- (a) confirm, set aside or vary the order or decision against which the appeal is brought;
- (b) exercise any of the powers which could have been exercised by the Registrar in the proceedings in connection with which the appeal is brought.

#### 72 References to Tribunal by Registrar

(1) If it appears to the Registrar that any matter to be decided by him under this Act involves a point of law or is of unusual importance or complexity, he may, after giving notice to the parties, refer the matter to the Tribunal for decision, and thereafter in relation to that matter he shall act in accordance with the decision of the Tribunal or any decision substituted therefor on appeal to the Supreme Court.

(2) Where a matter has been referred to the Tribunal in terms of subsection (1), the Registrar and the parties shall be entitled to be heard by and appear before the Tribunal before any decision is made in the matter.

#### 73 – 78....

[Sections 73 – 78 repealed by section 16 of Act 9 of 2002]

## PART XI

### INTERNATIONAL ARRANGEMENTS

#### 79 Convention countries

The President may, with a view to the fulfilment of the requirements of any treaty, convention, arrangement or engagement to which Zimbabwe is a party, by proclamation in a statutory instrument, declare any country or territory to be a Convention country for the purposes of this Act.

#### 80 Supplementary provisions as to Convention applications

(1) Subject to section *six*—

- (a) any person who has applied for protection for an invention in a Convention country or his legal representative or assignee, if the assignee is also so qualified, shall be entitled to a patent for his invention under this Act, in priority to other applicants if application therefor is made within twelve months after the effective date of the first application for protection in the first Convention country in which he made such application or where more than one such application for protection has been made, from the effective date of the first such application; and
- (b) the patent referred to in paragraph (a) shall have the same date as the effective date of the application in such Convention country but the term of the patent shall run from the date on which the complete specification is lodged at the Patent Office:

Provided that nothing in this subsection shall entitle the patentee to recover damages for infringements occurring prior to the date on which his complete specification is advertised as having been accepted in Zimbabwe.

(2) Where, after the lodging of the first application in the first Convention country in respect of any invention, a subsequent application is lodged in that country in respect of the same matter, such subsequent application shall be regarded as the first application in that country in respect of that invention if, at the time of the lodging thereof—

- (a) the previous application has been withdrawn, abandoned or refused without having been open to public inspection; and
- (b) no priority rights have been claimed by virtue of such previous application; and
- (c) no rights are outstanding in that Convention country in connection with such previous application.

(3) An application which has been withdrawn, abandoned or refused shall not, after the lodging of the subsequent application, be capable of supporting a claim for priority rights under this section.

(4) Where all the rights of each of two or more applicants referred to in subsection (1) who have made application for protection of inventions in any one or more Convention countries have become vested in the same person, those applications shall, for the purposes of subsection (4) of section *eight*, be deemed to have been made by the same applicant.

(5) Where an applicant referred to in subsection (1) has applied for protection for any invention by an application which, in accordance with the law of any Convention country, is equivalent to an application duly made in that Convention country, he shall be deemed, for the purposes of this section, to have applied in that Convention country.

(6) In determining, for the purposes of this Act, whether an invention described or claimed in a specification lodged in the Patent Office is the same as that for which protection has been applied for in a Convention country, regard shall be had to the disclosure contained in the whole of the documents put forward at the same time as and in support of the application in the Convention country, being documents of which copies have been lodged at the Patent Office within such time and in such manner as may be prescribed.

(7) A patent granted in Zimbabwe for an invention upon an application referred to in this section shall not be invalidated by reason only of—

- (a) the invention having been known or used or published in Zimbabwe or elsewhere on or after the effective date of the application in the Convention country in which application was first made; or
- (b) the granting in Zimbabwe, after the effective date of the application in the Convention country, of a patent to another person for the same invention:

Provided that—

- (i) the effective date of the patent of such other person shall not be prior to effective date in Zimbabwe of the Convention application;
- (ii) the Convention patentee shall be entitled to have the patent of such other person revoked upon due application under and compliance with the provisions of section *forty-five*.

(8) An application for a patent referred to in this section shall be made in the manner specified in section *seven*, save that the application shall be accompanied by a complete specification.

## **81 Special provisions as to vessels, aircraft and land vehicles**

(1) Where a vessel or aircraft registered in a Convention country or a land vehicle owned by a person ordinarily resident in such a country comes into Zimbabwe temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention—

- (a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or
- (b) in the construction or working of the aircraft or land vehicle or of the accessories thereof;

as the case may be.

(2) Subsection (1) shall not affect section 17 of the Aviation Act [*Chapter 13:03*].

## **82 Protocol on Patents and Industrial Designs**

(1) Subject to this section, the Protocol set out in the Schedule, which was contracted within the framework of the African Regional Industrial Property Organization, shall have the force of law within Zimbabwe.

(2) Any patent, in respect of which Zimbabwe is a designated State, granted to an applicant by the African Regional Industrial Property Organization in accordance with the provisions of the Protocol set out in the Schedule shall, *mutatis mutandis*, have the same effect in Zimbabwe as a patent granted under this Act subject to such exceptions, additions, adaptations and modifications as may be necessary to implement the Protocol.

(3) A patent granted under the Protocol set out in the Schedule, shall, *mutatis mutandis*, have such protection where applicable, as is afforded under this Act to a patent granted in fulfilment of any international agreement in respect of a Convention country under section 80.

### **82A Patent Co-operation Treaty**

(1) In this section—

“Treaty” means the Patent Co-operation Treaty signed at Washington on the 19th June, 1970.

(2) Words or expressions to which a meaning has been assigned in the Treaty shall bear the same meaning when used in this section.

(3) Subject to this section, the Treaty shall have the force of law within Zimbabwe.

(4) The Patent Office shall act as—

- (a) a receiving Office in respect of any international application filed with it by a resident or national of Zimbabwe; and
- (b) a designated Office in respect of any international application in which Zimbabwe is designated for the purposes of obtaining a patent under this Act; and

(c) an elected Office in respect of an international application in which Zimbabwe is designated, if the applicant elects Zimbabwe for the purposes of international preliminary examination under Chapter II of the Treaty.

(5) Subject to this section, an international application designating Zimbabwe shall be treated as an application for a patent which was lodged under this Act and has as its filing date the international filing date accorded it under the Treaty.

(6) An international application filed with the Patent Office as receiving Office shall be—

(a) filed in a language prescribed in regulations made under the Treaty; and

(b) accompanied by the fee prescribed in terms of section *ninety-six*.

(7) The Registrar, acting in his capacity as an officer of a designated Office or an elected Office, shall not begin processing an international application designating Zimbabwe before the time-limit referred to in subsection (8) has expired, unless the applicant complies with the requirements of that subsection and files at the Patent Office an express request for early processing.

(8) Before the expiry of the time-limit applicable under Article 22 or 39 of the Treaty or such later period as may be prescribed in regulations made under the Treaty, a person who has filed an international application designating Zimbabwe shall—

(a) pay the Registrar the fee prescribed in terms of section *ninety-six*; and

(b) lodge at the Patent Office a translation of the application into a language prescribed in regulations made under the Treaty, unless the application was filed in such a language or has been published under the Treaty as a translation into such a language;

and if the applicant fails to do so the application shall be deemed to have been withdrawn in terms of this Act.

(9) The Registrar shall deal with international applications in accordance with this Act, the Treaty and regulations made thereunder:

Provided that, in the event of inconsistency between this Act and the provisions of the Treaty or the regulations or administrative instructions made thereunder, the Treaty and those regulations and instructions shall prevail.

(10) The Minister shall cause a statutory instrument to be published in the *Gazette* setting out the provisions of the Treaty and any regulations made under the Treaty, and shall amend the statutory instrument whenever necessary to record any amendment of the Treaty or those regulations.

[Section inserted by section 17 of Act 9 of 2002]

### **83 Protection of inventions communicated under international agreements**

(1) Subject to this section, regulations in terms of section *ninety-five* may provide for securing that, where an invention has been communicated in accordance with an agreement or arrangement made between the Government of Zimbabwe and the government of any other country for the supply or mutual exchange of information or articles—

(a) an application for a patent for an invention so communicated made by a person, his legal representative or assignee, entitled under section six to make such application, shall not be prejudiced, and a patent granted on such an application shall not be invalidated by reason only that the invention has been communicated as aforesaid or that in consequence thereof—

(i) the invention has been published, made, used, exercised or vended; or

(ii) an application for a patent has been made by any other person or a patent has been granted on such an application;

(b) any application for a patent made in consequence of such a communication as aforesaid by a person who is not entitled so to do under section *six* may be refused and any patent granted on such an application may be revoked.

(2) Regulations referred to in subsection (1) may provide that the publication, making, use, exercise or vending of an invention or the making of any application for a patent in respect thereof shall, in such circumstances and subject to such conditions or exceptions as may be prescribed by the regulations, be presumed to have been in consequence of such a communication as is mentioned in that subsection.

(3) The powers of the Minister under this section, so far as they are exercisable for the benefit of persons from whom inventions have been communicated to the Government of Zimbabwe by the government of any other country, shall only be exercised if and to the extent that the Minister is satisfied that substantially equivalent provision has been or will be made under the law of that country for the benefit of persons whose inventions have been communicated by the Government of Zimbabwe to the government of that country.

(4) References in subsection (3) to the communication of an invention to or by the Government of Zimbabwe or the government of any other country shall be construed as including references to the communication of the invention by or to any person authorized in that behalf by the government in question.

## PART XII

### OFFENCES AND PENALTIES

#### 84 Falsification of certain documents

Any person who—

- (a) makes or causes to be made a false entry in the Register, knowing the entry to be false; or
- (b) makes or causes to be made, or produces or tenders or causes to be produced or tendered in evidence, any writing falsely purporting to be a copy of an entry in the Register, knowing the writing to be false;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

#### 85 Deceiving or influencing Registrar or other officer

(1) Any person who—

- (a) for the purpose of deceiving the Registrar, an examiner or any other officer of the Patent Office in the execution of this Act; or
- (b) for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder;

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001 and by section 18 of Act 9 of 2002]

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter thereunder and who, on becoming aware that such statement or representation was false, fails to advise the Registrar forthwith of such falsity, shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001 and by section 18 of Act 9 of 2002]

#### 86 Witness giving false evidence

Any person who, after having been sworn or having in lieu thereof made an affirmation or declaration, wilfully gives false evidence before the Registrar or the Tribunal concerning the subject-matter of the proceeding in question, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

#### 87 Prohibition on trafficking in patents by officers

(1) Any officer of the Patent Office who buys, sells, acquires or trafficks in any invention or patent or any right under a patent shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

(2) Every purchase, sale or acquisition and every assignment of any invention or patent by or to any officer of the Patent Office shall be null and void.

(3) Nothing in this section contained shall apply to the inventor or to any acquisition by bequest or devolution in law.

#### 88 Unauthorized claim of patent right

(1) If any person falsely and without reasonable cause, the proof whereof lies on him, represents that—

- (a) any article sold by him is a patented article; or
- (b) an application has been made for a patent in respect of any article sold by him;

he shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment

[Subsection as amended by section 4 of Act No. 22 of 2001]

(2) For the purposes of subsection (1), a person who sells an article having stamped, engraved or embossed thereon or otherwise applied thereto—

- (a) the word “patent” or “patented” or any Zimbabwe patent number or any other word expressing or implying that the article is patented, shall be deemed to represent that the article is a patented article;
- (b) the words “patent applied for” or “patent pending” or any other words expressing or implying that a patent has been applied for, shall be deemed to represent that an application has been made for a patent in respect of that article.

## **89 Unauthorized use of certain words**

If any person, other than a person appointed in terms of section *three*, uses on his place of business or on any document issued by him or otherwise the words “Patent Office” or any other words suggesting that his place of business is, or is officially connected with the Patent Office, he shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act No. 22 of 2001]

## **90...**

[Section repealed by section 4 of Act No. 22 of 2001]

## **PART XIII**

### **GENERAL**

## **91 Lodging and authentication of documents**

(1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Patent Office or to the Registrar or any other person, may be delivered by hand or sent by registered post.

(2) No authentication shall be required in respect of any document lodged in the Patent Office under the provisions of this Act and used in proceedings before the Registrar or the Patents

## **92 Expenses of administration**

All moneys necessary for the administration of this Act shall be paid out of moneys appropriated for the purpose by Act of Parliament.

## **93 Provisions as to fees**

(1) Where, under this Act, a fee is payable—

- (a) in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee has been paid; or
- (b) in respect of the doing of any act by any person other than the Registrar, the act shall be deemed not to have been done until the fee has been paid; or
- (c) in respect of the lodging of a document, the document shall be deemed not to have been lodged until the fee has been paid.

(2) All fees shall be paid at the Patent Office in such manner as the Registrar, with the approval of the Minister, may accept.

## **94 Saving for certain forfeitures**

Nothing in this Act shall affect the right of the State or of any person deriving title directly or indirectly from the State to sell or use articles forfeited to the State under the provisions of any enactment.

## **95 Patent and Trade Marks Journal**

(1) The Controller shall publish a journal, to be called the Patent and Trade Marks Journal, containing particulars of applications for patents and other proceedings or matters arising under this Act, together with such reports of cases and other relevant matters as the Minister may deem fit.

(2) The Controller shall make provision for selling copies of the Journal at such price and in such manner as the Minister may direct.

## **96 Power to make regulations**

(1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Regulations made by the Minister may provide for—

- (a) the form of applications for patents and of any specifications, drawings or other documents which may be lodged at the Patent Office, and the furnishing of copies of any such documents;
- (b) the procedure to be followed in connection with any application or request to the Registrar or any proceedings before him, and the authorizing of the rectification of irregularities of procedure;
- (c) the number of times any advertisement or notice which is required by this Act to be given in the Journal shall be so given;
- (d) the service of notices and other documents required to be served in connection with proceedings under this Act;
- (e) the qualifications for eligibility to enter into articles with a patent agent and matters relating to such articles or service thereunder;
- (f) examinations for the qualifications of patent agents in terms of this Act, the recognition for such purpose of qualifications obtained either in or outside Zimbabwe, and the fees to be paid in connection with the registration of patent agents;
- (g) the conduct of the business of the Patent Office;

- (g1) the provision of services by the Patent Office, including the provision of information regarding patents, and the fees and charges payable for such services;  
[Paragraph inserted by section 18 of Act 9 of 2002]
- (h) other fees payable under this Act and fees which may be charged in relation to the conduct of patent business by patent agents and legal practitioners performing the functions of patent agents;
- (i) authorizing the publication and the sale of copies of specifications, drawings and other documents in the Patent Office and of indexes to and abridgements of such documents;
- (j) the professional conduct of patent agents;
- (k) giving effect to any international treaty or agreement which relates to patents and to which Zimbabwe is a party.

[Paragraph inserted by section 18 of Act 9 of 2002]

97 ....

[Section repealed by section 19 of Act 9 of 2002]

## SCHEDULE (Section 82)

### PROTOCOL

*on Patents and Industrial Designs Within the Framework of the African Regional Industrial Property Organization (ARIPO)*

#### *Preamble*

The Contracting States of this Protocol:

*Having regard to* the Agreement on the Creation of an African Regional Industrial Property Organization (ARIPO), concluded in Lusaka (Zambia) on December 9, 1976, and in particular to its Article III(c), in accordance with which the objectives of the Organization include the establishment of such common services or organs as may be necessary or desirable for the co-ordination, harmonization and development of the industrial property activities affecting its members.

*Considering* the advantages to be gained by the pooling of resources in respect of industrial property administration:

Hereby agree as follows:

#### SECTION 1

##### *General*

The African Regional Industrial Property Organization (ARIPO) is empowered to grant patents and to register industrial designs and to administer such patents and industrial designs on behalf of the Contracting States in accordance with the provisions of this Protocol, through its Secretariat (hereinafter referred to as "the Office").

#### SECTION 2

##### *Filing and Transmittal of Applications*

(1) Applications for the grant of patents or the registration of industrial designs by the Office shall be filed by the authorized representative of the applicant or by the applicant with the industrial property office of a Contracting State. An applicant may be represented by an attorney, agent or legal practitioner who has the right to represent applicants before the industrial property office of the Contracting State with which the application is filed and, where the applicant's ordinary residence or principal place of business is outside the country, he shall be so represented.

(2) The industrial property office with which the application is filed shall, without delay, transmit that application to the Office.

#### SECTION 3

##### *Patents*

(1) A patent application shall—

- (i) identify the applicant;
  - (ii) contain, as prescribed, a description of the invention, a claim or claims, a drawing or drawings, where necessary, and an abstract;
  - (iii) designate the Contracting States for which the patent is requested to be granted;
  - (iv) be subject to the payment of the prescribed fees.
- (2) (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.
- (b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the pre-

scribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

- (c) The Office shall notify each designated State of the fact that a patent application has been filed which complies with the prescribed formal requirements.

(3) The Office shall undertake, or arrange for, the substantive examination of the patent application. If it finds that the invention claimed in the application does not comply with the requirements of patentability referred to in subsection (9), it shall refuse the application.

(4) Where under subsection (2) (b) or (3) the Office refuses the application, the applicant may, within the prescribed period, request the Office to reconsider the matter.

(5) If the Office decides to grant the patent, it shall notify the applicant and each designated State. Where the examination was based on a search report or an examination report, a copy of the same shall be attached to the said notification.

(6) Before the expiration of six months from the date of the notification referred to in subsection (5), a designated State may make a written communication to the Office that, if a patent is granted by the Office, that patent shall have no effect in its territory for the reason—

- (i) that the invention is not patentable in accordance the provisions of this Protocol; or
- (ii) that, because of the nature of the invention, a patent cannot be registered or granted or has no effect under the national law of that State.

(7) After the expiration of the said six months the Office shall grant the patent, which shall have effect in those designated States which have not made the communication referred to in subsection (6). The Office shall publish the patent granted.

(8) If the Office refuses the application notwithstanding a request for reconsideration under subsection (4), the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.

(9) Inventions for which patents are granted by the Office shall be new, shall involve an inventive step and shall be industrially applicable. An invention is new if it is not anticipated by prior art. Everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or by use or exhibition shall be considered prior art provided that such making available occurred before the date of filing of the application or, if priority is claimed, before the priority date validly claimed in respect thereof and further provided that a disclosure of the invention at an official or officially recognized exhibition shall not be taken into consideration if it occurred not more than six months before the date of filing of the application or, if priority is claimed, before the priority date validity claimed in respect thereof.

(10) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fee, part of which shall be distributed among the designated States concerned. The amount of the fee shall depend on the number of States in respect of which the application or patent is maintained. Provided it is maintained, a patent granted by the Office shall in each designated State have the same effect as a patent registered, granted or otherwise having effect under the applicable national law but not beyond the maximum duration provided for under the said law.

(11) A patent granted by the Office shall in each designated State be subject to provisions of the applicable national law on compulsory licenses, forfeiture or the use of patented inventions in the public interest.

#### SECTION 4

##### *Industrial Designs*

(1) An application for the registration of an industrial design filed shall—

- (i) identify the applicant;
- (ii) contain a reproduction of the industrial design;
- (iii) designate the Contracting States for which the registration is requested to have effect;
- (iv) be subject to the payment of the prescribed fees.

(2) (a) The Office shall examine whether the formal requirements for applications have been complied with and shall accord the appropriate filing date to the application.

(b) If the Office finds that the application does not comply with the formal requirements, it shall notify the applicant accordingly, inviting him to comply with the requirements within the prescribed period. If the applicant does not comply with the requirements within the said period, the Office shall refuse the application.

(c) The Office shall notify each designated State of the fact that an application for the registration of an industrial design has been filed which complies with the prescribed formal requirements.

(3) Before the expiration of six months from the date of the notification referred to in subsection (2) (c), each designated State may make a written communication to the Office that, if the industrial design is registered by the Office, that registration shall have no effect in its territory for the reason—

- (i) that the industrial design is not new;

- (ii) that, because of the nature of the industrial design, it cannot be registered or a registration has no effect under the national law of that State; or
  - (iii) that, in the case of a textile design, it is the subject of a special register.
- (4) After the expiration of the said six months, the Office shall effect the registration of the industrial design, which shall have effect in those designated States which have not made the communication referred to in subsection (3). The Office shall publish the registration.
- (5) If the Office refuses the application, the applicant may, within three months from being notified of such refusal, request that his application be treated, in any designated State, as an application according to the national law of that State.
- (6) On each anniversary of the filing of the application, the Office shall collect the prescribed annual maintenance fee, part of which shall be distributed among the designated States concerned. The amount of the fee shall depend on the number of States in respect of which the application or registration is maintained. Provided it is maintained, the registration of an industrial design effected by the Office shall in each designated State have the same effect as a registration effected or otherwise in force under the applicable national law but not beyond the maximum duration provided for under the said law.
- (7) An industrial design registered by the Office shall in each designated State be subject to the provisions of the applicable national law on compulsory licences or the use of registered industrial designs in the public interest.

#### SECTION 5

##### *Regulations*

- (1) The Administrative Council of ARIPO shall make Regulations for the implementation of this Protocol and may amend them, where necessary.
- (2) The Regulations shall in particular relate to—
- (i) any administrative requirements, matters of procedure, or any details necessary for the implementation of the provisions of this Protocol and any relevant international treaties;
  - (ii) the fees to be charged by the Office and the details of the distribution of part of those Contracting States.

#### SECTION 6

##### *Entry Into Force and Final Provisions*

- (1) (a) Any State which is a member of the Organization or any State to which membership of the Organization is open in accordance with Article IV (1) of the Agreement on the Creation of the African Regional Industrial Property Organization may become party to this Protocol by—
- (i) signature followed by the deposit of an instrument of ratification; or
  - (ii) deposit of an instrument of accession.
- (b) Instruments of ratification or accession shall be deposited with the Government of the Republic of Zimbabwe.
- (c) This Protocol shall enter into force three months after three States have deposited their instruments of ratification or accession.
- (d) Any State which is not party to this Protocol upon its entry into force under subsection (1) (c) of this Section shall become bound by this Protocol three months after the date on which such State deposits its instrument of ratification or accession.
- (2) (a) Ratification of, or accession to, this Protocol shall entail acceptance of the Agreement on the Creation of the African Regional Industrial Property Organization.
- (b) The deposit of an instrument of ratification of, or accession to, this Protocol by a State which is not a party to the Agreement referred to in paragraph (a) of this subsection shall have the effect that the said State shall become party to the said Agreement on the date on which it deposits its instrument of ratification of, or accession to, this Protocol.
- (3) (a) Any Contracting State may denounce this Protocol by notification addressed to the Government of the Republic of Zimbabwe.
- (b) Denunciation shall take effect six months after receipt of the said notification by the Government of the Republic of Zimbabwe. It shall not affect any patent application or application for the registration of an industrial design filed with the Office prior to the expiration of the said six-month period or any patent granted or registration of an industrial design affected upon such an application.
- (4) (a) This Protocol shall be signed in a single copy and shall be deposited with the Government of the Republic of Zimbabwe.
- (b) The Government of the Republic of Zimbabwe shall transmit certified copies of this Protocol to the Contracting States, other States members of the African Regional Industrial Property Organization, and the States to which membership of the Organization is open in accordance with Article IV (1) of the Agreement on the Creation of the African Regional Industrial Property Or-

ganization, the World Intellectual Property Organization and the United Nations Economic Commission for Africa.