

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



**REPUBLIC OF SOUTH AFRICA**

# **GOVERNMENT GAZETTE**

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## **STAATSKOERANT**

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**OFFICE OF THE PRIME MINISTER**

**KANTOOR VAN DIE EERSTE MINISTER**

No. 1164.

1 June 1983

No. 1164.

1 Junie 1983

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

No. 67 of 1983: Patents Amendment Act, 1983.

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

No. 67 van 1983: Wysigingswet op Patente, 1983.

Act No. 67, 1983

PATENTS AMENDMENT ACT, 1983

**GENERAL EXPLANATORY NOTE:**

- [** Words in bold type in square brackets indicate omissions from existing enactments.
- ]** Words underlined with solid line indicate insertions in existing enactments.

**ACT**

To amend the Patents Act, 1978, so as to make other provision in respect of claims for priority and priority dates in the case of certain applications for patents; to further regulate the payment of certain fees in the case of patents of addition becoming independent patents; to make further provision relating to inspection by the public of certain applications for patents; to further regulate the payment of renewal fees for patents; to further regulate the amendment of specifications; and to extend the provisions relating to offences; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)  
(Assented to 20 May 1983.)

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

Amendment of section 31 of Act 57 of 1978, as amended by section 2 of Act 14 of 1979.

1. Section 31 of the Patents Act, 1978 (hereinafter referred to as the principal Act), is hereby amended—
- (a) by the substitution for subparagraph (i) of subsection (1) of the following subparagraph:
- “(i) in the case of an application claiming priority in terms of paragraph (a) or (b) the prior application was lodged not earlier than one year before or, on payment of the prescribed fee, not earlier than 15 months before, the date of the application claiming priority;” and
- (b) by the deletion of subparagraph (ii) of subsection (1).

Amendment of section 33 of Act 57 of 1978.

2. Section 33 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) (a) Every claim of a complete specification shall have effect from the date prescribed by this section in relation to that claim [and a patent shall not be invalidated, by virtue of the provisions of section 61 (1) (c), by events which have taken place on or after that priority date].
- (b) The priority date of any matter contained in a complete specification shall be the same as that of the claim with the earliest priority date in which that matter has been included: Provided that the priority date of any matter contained in a supplementary disclosure in terms of section 51 (8), shall be the date of the application for the amendment concerned.”; and
- (b) by the deletion of subsection (4).

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Amendment of  
section 39 of  
Act 57 of 1978.

3. Section 39 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) (a) Where the patent for the main invention is surrendered, revoked, refused or abandoned, the patent of addition shall, unless the commissioner or the registrar otherwise directs, become an independent patent and the fees payable in respect of such independent patent and the times for the payment thereof shall be determined according to the date on which the patent of addition in respect of the invention which is the subject of such independent patent was granted, but the normal term of such independent patent shall not extend beyond the date on which the patent for the main invention would have expired if it had not been surrendered, revoked, refused or abandoned.
- (b) The prescribed renewal fees which would have been payable in respect of the patent for the main invention shall, as from the date on which a patent becomes an independent patent in terms of paragraph (a), be payable in respect of the last-mentioned patent.”

Amendment of  
section 43 of  
Act 57 of 1978.

4. Section 43 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) If the acceptance of an application [referred to in subsection 2] which claims priority in terms of section 31 (1) (c) is not [accepted] published in terms of section 42 within 18 months from the earliest priority date [thereof] claimed from the relevant application in a convention country, it shall be open to public inspection as provided in subsection (1).”

Amendment of  
section 46 of  
Act 57 of 1978.

5. Section 46 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The duration of a patent shall be 20 years from the date of application therefor, subject to the payment of the prescribed renewal fees by the patentee concerned or an agent.”

Amendment of  
section 47 of  
Act 57 of 1978.

6. Section 47 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Where a patent has lapsed owing to the failure of the patentee to pay non-payment of any prescribed renewal fee within the prescribed period or the extended period referred to in section 46 (2), the patentee may in the prescribed manner and on payment of the prescribed fee, apply to the registrar for the restoration of the patent.”

Amendment of  
section 51 of  
Act 57 of 1978.

7. Section 51 of the principal Act is hereby amended—

- (a) by the substitution for subsection (4) of the following subsection:

“(4) Where the acceptance of a specification concerned [is not open to public inspection] has not been published in terms of section 42 or there is no opposition in terms of subsection (3) (a) of this section, the registrar may determine whether and on which conditions, if any, the amendment ought to be allowed.”;

- (b) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“No amendment of a complete specification which becomes open to public inspection after the publication of the acceptance of the specification in terms of section 42, whether before or after it so becomes open to public inspection, shall be allowed if—; and

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(c) by the substitution for subsection (7) of the following subsection:

“(7) No amendment of a complete specification **[after it]** which has become open to public inspection after the publication of the acceptance of the specification in terms of section 42 shall be allowed if the specification as amended would include any claim not wholly within the scope of a claim included in the specification before amendment.”

Substitution of section 85 of Act 57 of 1978.

8. The following section is hereby substituted for section 85 of the principal Act:

“Penalties for certain false representations.

85. (1) Any person who—

(a) falsely represents that any article **[sold by him]** is a patented article; or

(b) represents that any article is the subject of a patent application, knowing that no such application has been made or that an application made in respect thereof has been refused or withdrawn or has lapsed,

shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

(2) If any person **[sells]** disposes of any article on which is stamped, engraved or impressed or to which is otherwise applied the word ‘patent’, ‘patented’ or any other word expressing or implying that the article is patented **[or is the subject of a patent application]**, or to which any marking is applied in any manner expressing or implying that the article is patented, he shall be deemed for the purposes of this section to represent that the article is a patented article.

(3) The provisions of subsection (2) shall not apply to a person who **[sells]** disposes of articles in good faith in the ordinary course of trade provided, when called upon to do so, he discloses the identity of the person from whom he acquired the article in question.

(4) Any person who is of the opinion that he is prejudiced by a representation referred to in subsection (1) (a) or (b), may apply to the commissioner for an interdict against the continuation of that representation.”

Short title.

9. This Act shall be called the Patents Amendment Act, 1983.