

INDUSTRIAL PROPERTY (AMENDMENT) ACT, 1997

No. 19



of 1997

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. Amendment of section 2 of Act No. 14 of 1996
3. Amendment of section 9 of the Act
4. Amendment of section 13 of the Act
5. Amendment of section 22 of the Act
6. Amendment of section 24 of the Act
7. Amendment of section 25 of the Act
8. Amendment of section 35 of the Act
9. Amendment of section 63 of the Act
10. Repeal of section 80 of the Act
11. Amendment of section 81 of the Act

An Act to amend the Industrial Property Act (No. 14 of 1996)

Date of Assent: 4th November, 1997.

Date commencement: By Notice.

ENACTED by the Parliament of Botswana.

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| <p>1. This Act may be cited as the Industrial Property (Amendment) Act, 1997.</p> <p>2. The Industrial Property Act (No. 14 of 1996) (hereinafter referred to as "the Act") is amended in section 2 thereof by substituting, for the definition of the word "ARIPO" which appears therein, the following new definition —</p> <p>“ “ARIPO” means the African Regional Industrial Property Organization;”.</p> <p>3. Section 9 of the Act is amended in subsection (1) thereof by —</p> <p>(a) substituting, for paragraph (f) thereof, the following new paragraph —</p> <p>“(f) diagnostic, therapeutic and surgical methods for the treatment of humans and animals; ” and</p> <p>(b) by repealing paragraph (g) thereof.</p> <p>4. The Act is amended by substituting, for section 13 thereof, the following new section —</p> <p>“Application for a patent</p> <p>13. (1) Every application for a patent shall be filed with the Registrar and shall contain a request, a description, one or more claims, drawings (where required by the Registrar</p> | <p>Short title</p> <p>Amendment of section 2 of Act No. 14 of 1996</p> <p>Amendment of section 9 of the Act</p> <p>Amendment of section 13 of the Act</p> |
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in terms of subsection (5)) and an abstract in the prescribed form, and shall be accompanied by such fee as may be prescribed.

(2) (a) The request shall contain a petition that a patent be granted, the name of and other prescribed information concerning the applicant, the inventor and the agent, if any, and the title of the invention.

(b) Where the applicant is not the inventor, the request shall be accompanied by a statement justifying the applicant's right to the patent.

(3) The description shall disclose the invention in a manner which is sufficiently clear and complete to permit a person having ordinary skill in the art to carry out the invention, and shall indicate at least one mode known to the applicant in which the invention can be performed.

(4) (a) The claim or claims shall define the matter for which protection is sought, and the description and any drawings filed may be used to interpret such claim or claims.

(b) The claims shall be clear and concise and shall be fully supported by the description.

(5) The Registrar may require an applicant to file drawings where these are necessary for the understanding of the invention.

(6) The abstract shall not be taken into account for the purpose of interpreting the scope of the protection; it shall merely serve as technical information.

(7) An applicant may, at any time before the patent is granted, withdraw his application."

Amendment
of section
22 of the Act

5. Section 22 of the Act is amended by substituting, therefor, the following new section —

"Examination
of applications

22 (1) After according a filing date, the Registrar shall examine whether the application complies with the requirements of section 13 (1) and (2) and the regulations pertaining thereto, and with those requirements of this Act and the regulations which are designated by the regulations as formal requirements for the purposes of this Act, and whether the information requested under section 20, if any, has been provided.

(2) Where the Registrar is of the opinion that the application complies with the requirements indicated in subsection (1), he shall cause the application to be examined to determine whether the claimed subject matter constitutes an invention in terms of section 2 and whether the requirements of sections 8, 9, 13 (3), 13 (4), 13 (5) and 15, and the regulations pertaining thereto have been satisfied.

- (3) The Minister may, by regulations, prescribe the categories of inventions in respect of which an examination under this section shall not cover the requirements of novelty and inventive step."
6. Section 24 of the Act is amended by substituting, for subsection (3) (a) (ii) thereof, the following new subsection —
- Amendment
of section
24 of the Act
- “(ii) the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the air space, territory or waters of Botswana.”.
7. Section 25 of the Act is amended by inserting therein, immediately after subsection (5) thereof, the following new subsection —
- Amendment
of section
25 of the Act
- “(6) (a) In any proceedings for infringement, other than criminal proceedings, where the subject matter of the patent is a process for obtaining a product, the burden of establishing that the product was not made by the process shall rest on the defendant if —
- (i) the product is new, or
- (ii) a substantial likelihood exists that the product was made by the process and the owner of the patent has been unable, through reasonable efforts, to determine the process used.
- (b) In requiring the production of evidence, the court shall take into account the legitimate interests of the defendant in not disclosing his manufacturing secrets.”
8. Section 35 of the Act is amended by substituting, for the words “section 22(2) which appear in subsection (2) thereof, the words “section 22(3)”.
- Amendment
of section
35 of the Act
9. Section 63 of the Act is amended by substituting, for the words “A person” which appear in subsection (1) thereof, the words “Any interested person”.
- Amendment
of section
63 of the Act
10. Section 80 of the Act is hereby repealed.
- Repeal of
section 80 of
the Act
11. Section 81 of the Act is amended —
- Amendment
of section
81 of the Act
- (a) by inserting, immediately after subsection (2) thereof, the following new subsection —
- “(3A) For the purposes of the payment of annual maintenance fees for patents and patent applications, and of renewal fees for registered industrial designs under subsection (2) hereof, the reference to “the filing date” in sections 27 (2) and 49 (1) respectively, shall be construed as being a reference to the date of registration in Botswana.”; and
- (b) by substituting, for subsection (4) thereof, the following new subsection —
- “(4) A person who, on the coming into entry of this Act —
- (a) is the owner of a patent granted in the United Kingdom or the Republic of South Africa or has filed an application for the grant of a patent in the United Kingdom or the Republic of South Africa; or

(b) is the owner of an industrial design registered in the United Kingdom or the Republic of South Africa has filed an application for registration of an industrial design in the United Kingdom or the Republic of South Africa may, within 20 months of the entry into force of this Act, file an application for the grant of a patent for the same invention or for the registration of the same industrial design under this Act and such application shall be accorded the filing date or priority date accorded to the application, grant or registration in the United Kingdom or the Republic of South Africa."

PASSED by the National Assembly this 14th day of August, 1997.

C.T. MOMPEI,
Clerk of the National Assembly.