

No. R. 1226

14 December 2007

**GENERAL EXPLANATORY NOTICE**

[ ] Words in bold type in square brackets indicate omissions from existing regulations

— Words underlined with solid line indicate insertions in existing regulations

**PATENT REGULATIONS AMENDMENT, 2007**

The Minister of Trade and Industry has, with the concurrence of the Minister of Finance in respect of matters prescribing the payment of fees, under section 91 of the Patents Act, 1978 (Act 57 of 1978), further amended the Patent Regulations, 1978, published under Government Notice R.2470 of 15 December 1978, as set out in the main Schedule below.

**MAIN SCHEDULE****Amendment of regulation 22 of the Patent Regulations, 1978**

1. Regulation 22(1) is hereby amended by the insertion of the following paragraph:

“(eA) a statement in terms of section 30(3A) on Form P.26, if the application is accompanied by a complete specification;”.

**Insertion of new regulation 33A in the Patent Regulations, 1978**

2. The following new regulation is inserted after regulation 33:

**“44A.(1) Form P.26 shall be lodged within six months of the lodging of an application accompanied by a complete specification, or within such further time as the registrar may on request allow.**

**(2) Where the Form P.26 contains a statement that the invention for which protection is claimed is based on or derived from an indigenous biological resource, a genetic resource, or traditional knowledge or use, the applicant shall, before acceptance of the application furnish the registrar with proof of his or her title or authority to make use of the indigenous biological resource, the genetic resource, or the traditional knowledge or use, by lodging with the registrar one or more of the following:**

**(a) a copy of the permit issued in terms of Chapter 7 of the National Environmental Management: Biodiversity Act, 2004;**

**(b) if applicable, proof that prior consent had been obtained as contemplated in section 82(2)(a) or 82(3)(a) of the National Environmental Management: Biodiversity Act, 2004;**

**(c) if applicable, proof of a material transfer agreement as contemplated in section 82(2)(b)(i) of the National Environmental Management: Biodiversity Act, 2004;**

**(d) if applicable, proof of a benefit-sharing agreement as contemplated in section 82(2)(b)(ii) or 82(3)(b) of the National Environmental Management: Biodiversity Act, 2004;**

**(e) if applicable, proof of co-ownership of the invention for which protection is claimed;**

**(f) any other proof to the satisfaction of the registrar.**

- (3) Any delay which occurs in the lodgment of a document as contemplated in subregulation (2) and which is not due to any act or omission on the part of the applicant shall be deemed to be a delay as contemplated in section 40(c).

**Amendment of regulation 67B of the Patent Regulations, 1978**

3. Regulation 67B is hereby amended by the insertion of the following subregulation:

“(5) Within six months of complying with section 43E(1)(a), or within such further time as the registrar may on request allow, an applicant shall lodge a statement in terms of section 30(3A) on Form P.26.”

**Amendment of Schedule 2 of the Patent Regulations, 1978**

4. Schedule 2 is hereby amended by the addition of a new Form P.26 as set out in the Annexure.
5. These amendments to the Regulations shall come into operation on a date to be declared by the Minister.

REPUBLIC OF SOUTH AFRICA  
PATENTS ACT, 1978  
**STATEMENT ON THE USE OF  
INDIGENOUS BIOLOGICAL RESOURCE, GENETIC RESOURCE  
TRADITIONAL KNOWLEDGE OR USE**  
(Section 30(3A) – Regulations 22(1), 67B(4))

FORM P.26

Patent application No.			Lodging date		Applicant's or agent's reference
21	01		22		

Full name(s) of applicant(s)		
71		

Earliest priority claimed	Country		Number	Date
	33		31	32

**NOTE:** The country must be indicated by its International Abbreviation – see schedule 4 of the Regulations

Title of invention		
54		

\* I/We

hereby declare that:-

1. I/we am/are the applicant(s) mentioned above;
- \*\* 2. I/we have been authorised by the applicant(s) to make this declaration and have knowledge of the facts herein stated in the capacity of the applicant(s);
- \*\*\* 3. the invention for which protection is claimed
  - (a) is based on or is derived from an indigenous biological resource or a genetic resource;
  - OR
  - (b) is not based on or is not derived from an indigenous biological resource or a genetic resource;
- \*\*\* 4. the invention for which protection is claimed
  - (a) is based on or derived from traditional knowledge or use; OR
  - (b) is not based on or is not derived from traditional knowledge or use.
- \*\*\* 5. where the invention for which protection is claimed is based on or derived from traditional knowledge or use, such invention
  - (a) is co-owned by the owners of the traditional knowledge or use, OR
  - (b) is not co-owned by the owners of the traditional knowledge or use

SIGNED THIS                      DAY OF                      20

\_\_\_\_\_  
Company Name:  
Full Names of Signatory:  
Capacity:

(no legalisation necessary)

- \* In the case of application in the name of a company, partnership or firm, give full names of signatory/signatories, delete paragraph 1, and enter capacity of each signatory in paragraph 2.  
\*\* If the applicant is a natural person, delete paragraph 2  
\*\*\* Delete (a) or (b), whichever is not applicable