

## GENERAL NOTICE

### NOTICE 227 OF 2004

#### DEPARTMENT OF TRADE AND INDUSTRY

#### PATENTS AMENDMENT BILL 2004

The abovementioned Bill is hereby published for comment.

Interested persons are invited to furnish written comment and representations on or before 18 March 2004:

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PRETORIA  
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### KENNISGEWING 227 VAN 2004

#### DEPARTEMENT VAN HANDEL EN NYWERHEID

#### WYSIGINGSWETSONTWERP OP PATENTE, 2004

Die bogenoemde wetsontwerp word hiermee vir kommentaar gepubliseer.

Belanghebbende persone word versoek om voor of op 18 Maart 2004 hul skriftelike kommentaar en versoë te verskaf aan:

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**EXPLANATORY MEMORANDUM**

Genetic and biological resources all over the world are being patented. The patenting of these resources happens without the knowledge of the states who have sovereignty over them and without the knowledge of indigenous peoples who might have contributed immensely towards the patent invention. In view of the aforementioned, the Patents Amendment Bill intends to empower the Registrar of Patents to:

- \* refuse the granting of patents based on biological or genetic materials if the origin of such materials is not disclosed.
- \* refuse the granting of patents based on indigenous knowledge, but there is no disclosure as to the origin of such indigenous knowledge.
- \* refuse the granting of patents based on indigenous knowledge, but there is no prior informed consent from the indigenous people possessing such knowledge.
- \* refuse the granting of patents based on indigenous knowledge, if co-ownership, control, use and benefit sharing arrangements are not in place.
- \* rescind the patent on own accord if it is later discovered that the aforementioned issues were not entertained or there was an element of misrepresentation or fraud on the part of the patentee.

The Patents Amendment Bill is in line with the application of the National Environmental Management Act, which incorporates the provisions of the Convention on Biological Diversity and the Bonn Guidelines regarding benefit sharing schemes.

## GENERAL EXPLANATORY NOTICE :

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

\_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.

**PATENTS AMENDMENT BILL**

To amend the Patents Act, 1978, so as to empower the Registrar of Patents to refuse the granting of patents based on biological or genetic materials if the origin of such materials is not disclosed or if indigenous knowledge has been used in the patent invention, but there is non-disclosure of such, or if indigenous knowledge has been used in the patent invention and there was no prior informed consent of the owner/holders of such knowledge, and to bring into line the Patents Act, 1978, with the application of the National Environmental Management Biodiversity Act which incorporates the provisions of the Convention on Biological Diversity and the Bonn Guidelines regarding benefit-sharing schemes in relation to genetic resources and traditional knowledge used in patent inventions, and to provide for matters connected therewith.

**Insertion of section 25A in Act 57 of 1978**

The following section is hereby inserted in the Patents Act, 1978, after section 25:

**"Non-disclosure or wrongful non-disclosure**

25(A)(1)        The Registrar of Patents shall treat non-disclosure or wrongful non-disclosure of origin of genetic or biological resource or knowledge in the patent application, and non-disclosure or wrongful non-disclosure of prior knowledge, traditional knowledge oral or otherwise, as grounds for rejection or revocation of the patent application:

25A(2) Patent applicants must disclose in their patent applications the origin of the biological or genetic material used in the invention:

25(A)(3) The Registrar shall deny to any person or applicant or corporation the right to obtain patent protection for any element of indigenous knowledge/heritage without adequate documentation of the prior and informed consent of traditional knowledge owners or holders for the sharing of ownership, control, use and benefits:

25(A)(4) Any interested persons, may institute a legal action with a view of rescinding the patent, based on the above-mentioned grounds.

**Short title**

This Bill is called the Patents Amendment Bill, 2004.