

NO. 107 OF 1996: INTELLECTUAL PROPERTY LAWS RATIONALISATION ACT, 1996.

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

ACT

To provide for the integration of intellectual property rights subsisting in Bophuthatswana, Transkei, Venda and Ciskei into the national system; to extend the South African intellectual property rights legislation throughout the Republic; to repeal certain other intellectual property laws; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 12 November 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

PART 1

Introduction and definitions

Scheme of Act

1. This Act is divided into seven parts which relate to the following matters, respectively:

Part 1-Introduction and definitions

Part 2-General application

Part 3-Patents

Part 4-Registered designs

Part 5-Trademarks

Part 6-Copyright

Part 7-General

Definitions

2. In this Act, unless the context otherwise indicates-

"Bophuthatswana" means the former Republic of Bophuthatswana as constituted on 26 April 1994;

"Bophuthatswana Act" in Part 3 means the Patents Act, 1952 (Act No. 37 of 1952), in Part 4 means the Designs Act, 1967 (Act No. 57 of 1967), in Part 5 means the Trade Marks Act, 1963 (Act No. 62 of 1963), and in Part 6 means the Copyright Act, 1965 (Act No. 63 of 1965), all as effective in Bophuthatswana, and

"Bophuthatswana Acts" means all those Acts, collectively;

"Ciskei" means the former Republic of Ciskei as constituted on 26 April 1994;

"Ciskei Act" in Part 6 means the Copyright Act, 1978 (Act No. 98 of 1978), as effective in Ciskei;

"Designs Office" means the designs office as contemplated in the Designs Act, 1993 (Act No. 195 of 1993);

"Patent Office" means the patent office as contemplated in the Patents Act, 1978 (Act No. 57 of 1978);

"Registrar of Designs" means the registrar of designs appointed in terms of the Designs Act, 1993 (Act No. 195 of 1993);

"Registrar of Patents" means the registrar of patents appointed in terms of the Patents Act, 1978 (Act No. 57 of 1978);

"Registrar of Trade Marks" means the registrar of trade marks appointed in terms of the Trade Marks Act, 1993 (Act No. 194 of 1993);

"Register of Designs" in Part 4 means the register of designs kept under the Bophuthatswana Act, the Transkei Act or the Venda Act, as the case may be, and

"records" pertaining to those registers has a corresponding meaning;

"Register of Patents" in Part 3 means the register of patents kept under the Bophuthatswana Act, the Transkei Act or the Venda Act, as the case may be, and

"records" pertaining to those registers has a corresponding meaning;

"Register of Trade Marks" in Part 5 means the register of trade marks kept under the Bophuthatswana Act, the Transkei Act or the Venda Act, as the case may be, and

"records" pertaining to those registers has a corresponding meaning;

"Republic" means the Republic of South Africa as constituted on 27 April 1994;

"South African Act" in Part 3 means the Patents Act, 1978 (Act No. 57 of 1978), in Part 4 means the Designs Act, 1993 (Act No. 195 of 1993), in Part 5 means the Trade Marks Act, 1993 (Act No. 194 of 1993), and in Part 6 means the Copyright Act, 1978 (Act No. 98 of 1978), and "South African Acts" means all those Acts, collectively;

"Territorial Acts" means the Bophuthatswana Acts, Ciskei Acts, Transkei Acts and Venda Acts collectively;

"Trade Marks Office" means the trade marks office contemplated in the Trade Marks Act, 1993 (Act No. 194 of 1993);

"Transkei" means the former Republic of Transkei as constituted on 26 April 1994;

"Transkei Act" in Part 3 means the Patents Act, 1952 (Act No. 37 of 1952), in Part 4 means the Designs Act, 1967 (Act No. 57 of 1967), in Part 5 means the Trade Marks Act, 1963 (Act No. 62 of 1963), and in Part 6 means the Copyright Act, 1965 (Act No. 63 of 1965), all as effective in Transkei, and "Transkei Acts" means all those Acts, collectively;

"Venda" means the former Republic of Venda as constituted on 26 April 1994;

"Venda Act" in Part 3 means the Patents Act, 1978 (Act No. 57 of 1978), in Part 4 means the Designs Act, 1967 (Act No. 57 of 1967), in Part 5 means the Trade Marks Act, 1963 (Act No. 62 of 1963), and in Part 6 means the Copyright Act, 1978 (Act No. 98 of 1978), all as effective in Venda, and "Venda Acts" means all those Acts, collectively.

Reference to Act

3. Reference to any Act referred to in this Act shall be deemed to include all amendments to that Act and all notices, directives, rules and regulations issued under that Act.

PART 2

General application

Application of South African Acts

4. Subject to the provisions of Parts 3, 4, 5 and 6 of this Act, the South African Acts shall apply throughout the Republic.

PART 3

Patents

Application of South African Patents Act

5. (1) Subject to the provisions of this section, the South African Act shall apply to all patents registered or deemed to be registered under the Bophuthatswana Act, the Transkei Act and the Venda Act.

(2) Subject to subsection (5), the validity of a patent entered on the Register of Patent and the duration of such a patent shall be determined in accordance with the laws applying to the application for registration of that patent as at the date of that application-

(3) Subject to subsection (5), the repeal of the laws by section 16 does not affect any

applications or proceedings commenced under the Bophuthatswana Act, the Transkei Act or the Venda Act and any such applications or proceedings shall be continued with and concluded in accordance with the provisions of the respective laws as if such laws had not been repealed, provided that-

(a) the Registrar of Patents shall perform the functions and duties of the registrars appointed under those Acts; and

(b) any notice and other communication required to be inserted or published in a patent journal or other official publications may be inserted or published in the South African Patent Journal.

(4) A patent registered under the South African Act shall not apply to the geographical areas of Bophuthatswana, Transkei or Venda for so long as and to the extent that a valid registered patent right for the same invention continues to subsist in any such geographical area, but shall extend to each such geographical area if and when such valid right no longer subsists.

(5)(a) A proprietor of a patent registered in Bophuthatswana, Transkei or Venda, respectively, may, within one year after the coming into force of this Act, notify the Registrar of Patents in writing that he or she wishes his or her patent right to extend to the whole of the national territory of the Republic, subject to paragraph (b).

(b) Once such a notification has been made such patent right shall continue to apply only to the geographical areas of Bophuthatswana, Transkei or Venda, as the case may be, for as long as and to the extent that a valid registered patent for the same invention subsists in terms of the South African Act, but, subject to paragraph (a), such patent right shall extend to the whole of the national territory if and when such right in terms of the South African Act does not exist.

(6) Any lawful use by any person of an invention commenced prior to 27 April 1994 in the geographical area of Bophuthatswana, Transkei or Venda shall not become unlawful by virtue of this Act, provided that use is not extended outside the geographical area concerned.

Patent Registers and Records

6. The Registers of Patents and records shall be transferred to and kept in the office of the Registrar of Patents.

Identification of patents

7. All patents registered and all patent applications filed in terms of the Bophuthatswana Act, Transkei Act and Venda Act shall be identified by the suffixes "(BT)", "(TR)" and "(VE)", respectively.

PART 4

Registered designs

Application of South African Designs Act

8. (1) Subject to the provisions of this section, the South African Act shall apply to designs registered or deemed to be registered under the Bophuthatswana Act, the Transkei Act or the Venda Act.

(2) Subject to subsection (5), the validity of a design registration entered on the Register of Designs and the duration of such a design registration shall be determined in accordance with the laws applying to the application for registration of that design as at the date of that application.

(3) Subject to subsection (5), the repeal of the laws by section 16 does not affect any proceedings or applications commenced under the Bophuthatswana Act, the Transkei Act or the Venda Act, and any such proceedings or applications shall be continued with and concluded as if the laws had not been repealed, provided that-

(a) the Registrar of Designs shall perform the functions and duties of the registrars appointed under those Acts; and

(b) any notice and other communication required to be inserted or published in a patent journal or other official publications shall be inserted or published in the South African Patent Journal.

(4) A design registered under the South African Act shall not apply to the geographical areas of Bophuthatswana, Transkei or Venda for so long as and to the extent that a valid registered design right for the same design continues to subsist in any such geographical area, but shall extend to each such geographical area if and when such valid right no longer subsists.

(5)(a) A proprietor of a design registered in Bophuthatswana, Transkei or Venda, respectively, may, within one year after the coming into force of this Act, notify the Registrar of Designs in writing that he or she wishes his or her design right to extend to the whole of the national territory of the Republic, subject to paragraph (b).

(b) Once such a notification has been made such design right shall continue to apply only to the geographical areas of Bophuthatswana, Transkei or Venda, as the case may be, for as long as and to the extent that a valid registered design for the same right subsists in terms of the South African Act, but, subject to paragraph (a), such design right shall extend to the whole of the national territory if and when such right in terms of the South African Act does not exist.

(6) Any lawful use by any person of a design commenced prior to 27 April 1994 in the geographical area of Bophuthatswana, Transkei or Venda shall not become unlawful by virtue of this Act, provided that the use is not extended outside the geographical area concerned.

Design registers and records

9. The Registers of Designs and records shall be transferred to and kept in the office of the Registrar of Designs.

Identification of designs

10. All designs registered and all design applications filed in terms of the Bophuthatswana Act, Transkei Act and Venda Act shall be identified by the suffixes "(BT)", "(TR)" and "(VE)", respectively.

PART 5

Trade marks

Application of South African Trade Marks Act

11. (1) Subject to the provisions of this section, the South African Act shall apply to all trade marks registered or deemed to be registered under the Bophuthatswana Act, the Transkei Act and the Venda Act.

(2) Subject to subsection (5), the validity of the original entry of a trade mark on the Register of Trade Marks shall be determined in accordance with the laws applying to the application for registration of that trade mark as at the date of that application.

(3) Subject to subsection (5), the repeal of laws by section 16 does not affect any applications or proceedings commenced under the Bophuthatswana Act, the Transkei Act or the Venda Act and any such applications or proceedings shall be continued with and concluded in every respect as if those laws had not been repealed, provided that-

(a) the Registrar of Trade Marks shall carry out the functions and duties of the registrars appointed under those Acts; and

(b) any notices and other communications required to be inserted or published in a patent journal or other official publications may be inserted or published in the South African Patent Journal.

(4) A trade mark registered under the South African Act shall not apply to the geographical area of Bophuthatswana, Transkei or Venda for so long as and to the extent that a valid registered trade mark right for the same trade mark continues to subsist in any such geographical area, but shall extend to each such geographical area if and when such valid right no longer subsists.

(5)(a) A proprietor of a trade mark registered in Bophuthatswana, Transkei or Venda, respectively, may, within one year after the coming into force of this Act, notify the Registrar of Trade Marks in writing that he or she wishes his or her trade mark to extend to the whole of the national territory of the Republic, subject to paragraph (b).

(b) Once such a notification has been made such a trade mark shall continue to apply only to the geographical areas of Bophuthatswana, Transkei or Venda, as the case may be, for

as long as and to the extent that a valid registered trade mark right for the same trade mark subsists in terms of the South African Act, but, subject to paragraph (a), such trade mark right shall extend to the whole of the national territory if and when such right in terms of the South African Act does not exist.

(6) Any lawful use by any person of a trade mark commenced prior to 27 April 1994 in the geographical area of Bophuthatswana, Transkei or Venda shall not become unlawful merely by virtue of this Act having been passed, provided that the use is not extended outside the geographical area concerned.

Trade mark registers and records

12. The Registers of Trade Marks and records shall be transferred to and kept in the office of the Registrar of Trade Marks.

Identification of trade marks

13. All trade marks registered and all trade mark applications filed in terms of the Bophuthatswana Act, Transkei Act and Venda Act shall be identified by the suffixes "(BT)", "(TR)" and "(VE)", respectively.

14. Reference to "section 53 of the repealed Act" in section 70(2) of the South African Act shall be deemed also to be a reference to section 53 of the Bophuthatswana Act, Transkei Act and Venda Act.

PART 6

Copyright

Application of South African Copyright Act

15. (1) The South African Act shall apply to any work-

(a) made by-

(i) any individual who at a material time was a citizen of or was domiciled or resident in Bophuthatswana, Transkei, Venda or Ciskei;

(ii) any juristic person which at a material time was organised or existing under the laws of Bophuthatswana, Transkei, Venda or Ciskei-, or

(b) which-

(i) being a literary, musical or artistic work or a sound recording, was first published in Bophuthatswana, Transkei, Venda or Ciskei;

(ii) being a broadcast, was made in Bophuthatswana, Transkei, Venda or Ciskei;

(iii) being a programme-carrying signal, was emitted to a satellite from a place in

Bophuthatswana, Transkei, Venda or Ciskei;

(iv) being a cinematograph film, was first published or made in Bophuthatswana, Transkei, Venda or Ciskei;

(v) being a published edition, was first published or made in Bophuthatswana, Transkei, Venda or Ciskei;

(vi) being a computer program, was first published or made in Bophuthatswana, Transkei, Venda or Ciskei.

(2) Any reference to South Africa or the Republic in sections 3 and 4 of the South African Act shall be deemed also to be a reference to Bophuthatswana, Transkei, Venda and Ciskei.

(3) The repeal of laws by section 16 does not affect any proceedings commenced under the Bophuthatswana Act, the Transkei Act, the Venda Act or the Ciskei Act, and such proceedings shall be continued with and concluded in every respect as if the laws had not been repealed.

PART 7

General

Repeal of Acts

16. The laws mentioned in the Schedule are hereby repealed.

Extension of terms

17. Any act required to be performed within a specified time in any of the Territorial Acts in respect of any proceedings relating to a patent, registered design or trade mark or in respect of any application therefor may be performed within that period of time or within six months calculated from the date on which this Act comes into operation, whichever is the later: Provided that these provisions shall not extend the due date for the payment of a renewal fee under any Territorial Act.

Short title and commencement

18. This Act shall be called the *Intellectual Property Laws Rationalisation Act, 1996*, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

SCHEDULE

Number and year of law - Short title:

1. Bophuthatswana

Act No. 37 of 1952 Patents Act, 1952

Act No. 62 of 1963 Trade Marks Act, 1963

Act No. 63 of 1965 Copyright Act, 1965

Act No. 57 of 1967 Designs Act, 1967

2. Transkei

Act No. 37 of 1952 Patents Act, 1952

Act No. 62 of 1963 Trade Marks Act, 1963

Act No. 63 of 1965 Copyright Act, 1965

Act No. 57 of 1967 Designs Act, 1967

3. Venda

Act No. 62 of 1963 Trade Marks Act, 1963

Act No. 57 of 1967 Designs Act, 1967

Act No. 57 of 1978 Patents Act, 1978

Act No. 98 of 1978 Copyright Act, 1978

4. Ciskei

Act No. 98 of 1978 Copyright Act, 1978