

REPUBLIC OF SOUTH AFRICA

PATENTS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 22249 of 24 April 2001) (The English text is the
official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 24—2001]

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GENERAL EXPLANATORY NOTE:

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

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Patents Act, 1978, so as to extend the right of a party to any proceedings before the Commissioner to be represented thereat by an attorney who has been granted the right of appearance in the High Court in terms of the Right of Appearance in Courts Act, 1995; and to provide for matters connected therewith.

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

Amendment of section 19 of Act 57 of 1978

1. Section 19 of the Patents Act, 1978, is hereby amended by the substitution for subsection (3) of the following subsection: 5

“(3) A party to any proceedings before the Commissioner may appear in person or be represented thereat by—

(a) an advocate; **[or]**

(b) an agent; or

(c) an attorney who has been granted the right of appearance in the High Court in terms of section 4 of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995).” 10

Short title

2. This Act is called the Patents Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE PATENTS AMENDMENT BILL, 2001

1. In terms of section 19(3) of the Patents Act, 1978 (Act No. 57 of 1978) (“the Act”), a party to proceedings before the commissioner of patents may appear in person or be represented thereat by an advocate or an agent. In terms of the Act an agent is a patent agent or a patent attorney who has passed a prescribed examination and is registered as such with the Registrar of Patents. An attorney who has been granted the right of appearance in the High Court in terms of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), however, may not represent a party to proceedings before the commissioner of patents. The Right of Appearance in Courts Act, 1995, was enacted to grant attorneys the right of appearance in the High Courts of South Africa. Appearance before High Courts of South Africa is no longer exclusively reserved for advocates.

2. The Law Society of South Africa made representations to the Minister of Trade and Industry, requesting that the aforementioned anomaly in the Act be addressed. In order to give effect to these representations, an amendment to section 19 of the Act is proposed.

3. CONSULTATION

- * Black Lawyers Association.
- * National Association of Democratic Lawyers.
- * South African Institute of Intellectual Property Law.
- * The South African Law Society.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Trade and Industry are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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