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PART B

S1

THE PATENTS ACT, 2018

(Act No. 19 of 2018)



I ASSENT

MSWATI III
King of Eswatini

28th June, 2018

AN ACT
ENTITLED

AN ACT to provide for the registration of patentable inventions; the procedure for applying for a patent; the establishment of a Patent office and a register of patents; the registration of patent agents; to repeal and replace the Patents, Utility Models and Industrial Designs Act, 1997 and the Patents, Designs and Trademarks Act, 1936 and to provide for matters incidental thereto.

ENACTED by the King and Parliament of Eswatini.

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PART I
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Patents Act, 2018.

(2) This Act shall come into operation on a date to be appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“applicant” includes a person in whose favour a direction is given under section 24 or the legal representative of that person;

“article” includes any substance or material and any equipment, machinery or apparatus, whether affixed to land or not;

“assignee”, in relation to an invention, means—

- (a) a person who derives title to the invention for Eswatini directly or indirectly from the inventor or from the inventor’s assignee; or
- (b) the legal representative of a person referred to in paragraph (a);

“Convention application” means an application made by a person referred to in section 10;

“Convention country” means a country or territory which the Minister has, in terms of section 83, declared to be a Convention country for the purposes of this Act;

“date of lodging”, in relation to any document lodged under this Act, means the date on which the document is lodged or, where it is deemed by virtue of any provision of this Act to have been lodged on a different date, the date on which it is deemed to have been lodged;

“department of the Government” means any—

- (a) department of the Government; or
- (b) statutory corporation or authority which is prescribed for the purposes of this definition;

“effective date”, in relation to—

- (a) an application which has been ante-dated or post-dated under this Act, means the date to which that application has been so ante-dated or post-dated;

(b) an application in a Convention country, means the date on which the application in respect of the relevant invention was made in the Convention country in question or is under the laws of that country deemed to have been so made;

(c) any other application, means the date on which that application was lodged at the Patent Office;

“examine” means any examination conducted under section 17 or any examination pertaining to the substantive merits of a patent application by ARIPO;

“examiner” means a person appointed under section 7 to be an examiner;

“exclusive licence” means a licence from a patentee which confers on the licensee, or on the licensee and persons authorized by the licensee to the exclusion of all other persons, including the patentee, any right in respect of the patented invention;

“Harare Protocol” means the Protocol on Patents and Industrial Designs within the framework of the African Regional Intellectual Property Organization, herein referred to as “ARIPO”;

“interested person” means any person acting in the interests of that person or on behalf of another person, or as a member of, or in the interests, a group or class of persons, or acting in the public interest, or an association acting in the interests of its members;

“invention” means any new and useful art, whether producing a physical effect or not, process, machine, manufacture or composition of matter which is not obvious or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry and includes an alleged invention;

“inventor” means the person who actually devised the invention and includes the legal representative of an inventor but does not include a person to whom an invention has been communicated, either from within or outside Eswatini;

“legal representative” means—

(a) the liquidator or receiver of a company;

(b) the representative recognized by law of any person who has died, become insolvent or bankrupt or assigned the estate, is an infant or a minor, is of unsound mind or is otherwise under a disability;

“Medical Products” means medicines and medical devices as interpreted in the Medicines and Related Substances Control Act;

“Minister” means the Minister responsible for patents or any other Minister to whom the King may from time to time assign the administration of this Act;

“patent” means a certificate granted for an invention under section 27;

“patentee” means the person entered on the Register as grantee or proprietor of a patent;

“patent agent” means a person who is registered or deemed to have been registered as a patent agent under this Act;

“patent of addition” means a patent granted under section 34;

“Patent Office” means the Patent Office established under section 7;

“patented article” means any article in respect of which a patent has been granted and is still in force;

“Patent Co-operation Treaty” (PCT) means the Patent Co-operation Treaty of June 19, 1970 and any amendments thereof to which the Government of Eswatini is or becomes a party;

“priority date” means the date of the earlier application that serves as the basis for the right of priority provided for in the Paris Convention;

“public health emergency” means any public health crisis requiring emergency responses and declared as such by and competent authority;

“published” means made available to the public and, without prejudice to the generality of the foregoing provision, a document shall be deemed, for the purposes of this Act, to be published if it can be inspected as of right by members of the public, whether upon payment of a fee or otherwise;

“Register” means the Register of Patents kept at the Patent Office under section 9;

“Register of Patent Agents” means the Register of Patent Agents kept under section 74;

“Registrar” means the Registrar of patents appointed under section 7;

“repealed legislation” means the Patents Act, 1936 and the Patents, Utility Models and Industrial Designs Act, 1997;

“specification” means a provisional or a complete specification, as the circumstances may require, referred to in section 15; and

“Tribunal” means the Eswatini Intellectual Property Tribunal established by the Eswatini Intellectual Property Tribunal Act.

PART II PATENTS

Patentable inventions

3. (1) An invention shall be patentable if it is new, involves an inventive step and is capable of industrial application.

(2) An invention shall be deemed to be new for the purposes of this Act if on or before the effective date of the application for a patent for that invention, it was not—

(a) known or used anywhere in Eswatini by anyone other than the applicant or the agent of the applicant, or the person or persons from or through whom the applicant derived right or title;

(b) used anywhere in Eswatini otherwise than by way of reasonable technical trial or experiment by the applicant or any person or persons from or through whom that

applicant derived right or title;

- (c) described in a patent specification available for public inspection in accordance with any repealed legislation or this Act;
- (d) described in writing or in any other way in any publication of which there was a copy anywhere in or outside Eswatini at the effective date of the application; or
- (e) claimed in any complete specification for a patent which was lodged in accordance with any repealed legislation or this Act and which, though not available to public inspection at the effective date of the application, was deposited pursuant to an application for a patent which is, or will be, of prior date to the date of any patent which may be granted in respect of the said invention.

(3) A patent shall not be granted in respect of a product or process which is obvious to a person skilled in the art.

(4) In the case of medicine, a patent may be granted only for new chemical entities, and a mere new form of a known substance which does not result in the enhancement of the known efficacy of that substance shall not be patentable, nor shall a new use or method of uses of a known pharmaceutical, nor shall a patent be granted for the method of use or use for therapeutic purposes of a known pharmaceutical product.

(5) A patent shall be granted in respect of an invention capable of being manufactured or otherwise industrially used.

(6) The Registrar may exclude certain inventions from patentability in order to protect public order or morality, including protecting human, animal or plant life or health or to avoid serious prejudice to the environment and that exclusion shall not be made merely because the exploitation is prohibited by law.

Right to patent, naming of inventor

4. (1) The right to a patent shall belong to an inventor.

(2) If two or more persons have jointly made an invention, the right to the patent shall belong to them jointly.

(3) If and to the extent to which two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date and leads to the grant of a patent shall have the right to the patent.

(4) The right to a patent may be assigned, or may be transferred by succession.

(5) Where an invention is made in execution of an employment contract, the right to the patent shall belong, in the absence of contractual provisions to the contrary, to the employer.

(6) The inventor shall be named as the inventor in the patent, unless, in a special written and signed declaration addressed to the Registrar, the inventor indicates the wish not to be named.

Rights conferred

5. (1) A patent shall confer on its owner the following exclusive rights—
- (a) where the subject matter of the patent is a product, to prevent third parties not having the consent of the owner from making, using, offering for sale, selling or importing the product;
 - (b) where the subject matter of the patent is a process, to prevent third parties not having the consent of the owner from using the process and from using, offering for sale, selling, or importing for these purposes a product obtained directly by that process.
- (2) An owner of a patent shall have a right to assign or transfer by succession the patent and to conclude licensing contracts.
- (3) It shall not be an infringement to use a patented invention without the authorization of the patent holder in any of the following circumstances—
- (a) if, prior to the use, the proposed user made an effort to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time;
 - (b) in a case of national emergency or other circumstances of extreme urgency, in which case the right holder shall be informed as soon as is reasonably practicable in the circumstances;
 - (c) where the Government or a contractor uses the patent for public non-commercial use;
 - (d) to carry out any acts related to experimental use on the patented invention, whether for scientific or commercial purposes, if the latter purpose does not unreasonably conflict with a normal exploitation of the patent and that it does not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interest of third parties;
 - (e) to use the patented invention for teaching purposes; or
 - (f) using the patented invention in relation to the preparation for individual cases, in a pharmacy or by a medical doctor of a medicine in accordance with a medical prescription.
- (4) The right holder of a patent shall be promptly informed where the Government or contractor wants to use a patent for public non-commercial use.
- (5) The Minister may prescribe regulations allowing the use of a patent without the authorization of a right holder to remedy an anti-competitive practice.
- (6) Where the Minister prescribes regulations under subsection (5)—
- (a) authorization of that use shall be considered on individual merits;

- (b) the scope and duration of the use shall be limited to the purpose for which it was authorized;
- (c) the use shall be non-exclusive;
- (d) the use shall be non-assignable;
- (e) the use shall be predominantly for the supply of the domestic market; and
- (f) authorization for use shall be liable to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur.

(7) The right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization.

(8) Where the authorization to permit the use of a patent cannot be exploited without infringing another patent, the following shall apply—

- (a) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
- (b) the owner of the first patent shall be entitled to a cross licence on reasonable terms to use the invention claimed in the second patent; and
- (c) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

Matters excluded from patent protection

6. A patent shall not be granted under this Act for—

- (a) diagnostic, therapeutic or surgical methods for the treatment of human beings or animals;
- (b) plants and animals, other than micro-organisms; or
- (c) essentially biological processes for the production of plants or animals, other than non-biological and microbiological processes.

PART III
ADMINISTRATION

Patent Office, Registrar and other officers

7. (1) There shall be established an office, to be called the Patent Office, for the registration of patents and performing other functions under this Act.

(2) There shall be—

- (a) an officer, to be called the Registrar of Patents, who shall exercise general supervision and direction of the Patent Office; and

- (b) one or more assistant registrars of patents who shall, subject to the control of the Registrar, have all the powers conferred by this Act upon the Registrar;
- (c) examiners, assistant examiners and other officers that the Minister may consider necessary for the better carrying out of the provisions of this Act,

whose offices shall be public offices and form part of the Public Service.

(3) An examiner, assistant examiner or other officer referred to in subsection (2) (b) shall, if the Minister so directs, have the power to do any act or thing which may be lawfully done by a Registrar of patents under this Act or any other enactment.

Seal

8. There shall be an official seal of the Patent Office of a design approved by the Minister.

Register of Patents

9. (1) There shall be kept at the Patent Office a Register of patents, in which shall be entered—

- (a) particulars of patents in force, of assignments and transmissions of patents and of licences under patents; and
- (b) notice of all matters which are required under this Act to be entered in the Register and of any other matters affecting the validity or proprietorship of patents as the Registrar considers fit.

(2) All registers of patents established and kept under the repealed legislation shall, under arrangements made by the Registrar, with the approval of the Minister, be incorporated with and form part of the Register of patents established under subsection (1).

(3) The arrangement in subsection (2) shall not be considered to extend the term and effect of any patent registered in the Register beyond the term and effect provided in respect of that patent by this Act.

(4) Subject to this Act, the Register shall, at all convenient times, be open to inspection by the public and a certified copy, sealed with the seal of the Patent Office, of any entry in the Register shall be given on payment of the prescribed fee to any person requiring it.

(5) The Register shall be evidence of any matters required or authorized under this Act to be entered in the Register or which were required or authorized under the repealed legislation to be entered in a Register of patents.

PART IV APPLICATION FOR PATENTS

Persons entitled to make an application

10. (1) An application for a patent for an invention may be made by a person claiming to be the inventor of the invention who owns the invention in respect of Swaziland or an assignee, and may be made by that person either alone or jointly with any other person.

(2) Without prejudice to subsection (1), an application for a patent for an invention in respect of which protection has been applied for in a Convention country may be made by the person by whom the application for protection was made or by the assignee of that person.

(3) An application shall not be made under subsection (2) after the expiration of a period of twelve months from the date of the application for protection in a Convention country or, where more than one application for protection has been made, from the date of the first application.

(4) An application for a patent may be made by the legal representative of a deceased person who, immediately before the death of that person, was entitled to make that application or the legal representative of a person under disability who, had it not been for that disability, would have been entitled to make that application.

Application for a patent

11. (1) An application for a patent for an invention may be made by a person claiming to be the inventor of the invention who owns the invention in respect of Swaziland or an assignee, and may be made by that person either alone or jointly with any other person.

(2) An application for a patent may be made by the legal representative of a deceased person who, immediately before his death, was entitled to make that application or the legal representative of a person under disability who, had it not been for that disability, would personally have been entitled to make that application.

(3) An application for a patent which is a convention application shall be accompanied by either a complete specification or a provisional specification;

(4) Where an application is accompanied by a provisional specification, a complete specification shall be lodged within twelve months from the date that the application was lodged and if the complete specification is not so lodged the application shall be deemed to be abandoned.

Form of application

12. (1) An application for a patent shall—

- (a) be made in the prescribed form;
- (b) be lodged at the Patent Office in the prescribed manner; and
- (c) state an address for service in Eswatini to which all notices and communications may be sent, including the full postal, residential and business addresses of the applicant.

(2) An assignee or legal representative making or joining in an application shall furnish proof of title or authority as the Registrar may require or as may be prescribed.

(3) An application form shall—

- (a) state that an applicant owns the invention in respect of Eswatini;
- (b) give the full name of the inventor; and

(c) where the inventor is not the applicant or one of the applicants, contain a declaration that the applicant believes the inventor to be the inventor.

(4) A convention application, in addition to the requirements set out in subsection (3), shall state—

(a) the Convention country in which application for protection was made;

(b) the number of applications;

(c) the effective date of the application; and

(d) how the applicant qualifies in the Convention country and in Eswatini.

Conditions on patent applications

13. (1) An applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

(2) The applicant shall indicate in the application the best mode known to the inventor for carrying out the invention at the filing date, or where priority is claimed, at the priority date of application.

(3) The Registrar may require an applicant for a patent to provide information concerning the corresponding foreign applications and grants of the applicant.

Complete and provisional specifications

14. (1) An application for a patent which is—

(a) not a Convention application, shall be accompanied by either a complete specification or a provisional specification;

(b) a Convention application, shall be accompanied by a complete specification.

(2) Subject to this section, where an application referred to in subsection (1) (a) is accompanied by a provisional specification, a complete specification shall be lodged within twelve months from the date that the application was lodged and if the complete specification is not so lodged the application shall be considered to be abandoned.

(3) The complete specification may be lodged at any time after the expiration of the period of twelve months but within fifteen months from the date the application was lodged if a request to that effect is made to the Registrar and the prescribed fee is paid on or before the date on which the complete specification is lodged.

(4) Where two or more applications accompanied by provisional specifications are lodged in respect of matters which are cognate or of which one is a modification of another, a single complete specification may, subject to this section and section 15, be lodged in pursuance of those applications or, if more than one complete specification has been lodged, may, with the leave of the Registrar, be proceeded with in respect of those applications.

(5) Where applications for protection are made in one or more Convention countries in respect of two or more matters which are cognate or of which one is a modification of another,

a single Convention application may, subject to this section and section 15, be made in respect of those matters at any time within twelve months from the effective date of the earliest of the said applications for protection.

(6) In considering the validity of applications made under subsection (4) or (5) and in determining other relevant matters under this Act, the Registrar shall have regard to the effective dates of the applications or the Convention applications concerned relating to the several matters claimed in the specification, and the requirements of section 12 (4) shall, in the case of that application, apply separately to the applications for protection in respect of each of the said matters.

(7) Where an application for a patent, not being a Convention application, is accompanied by a specification purporting to be a complete specification, the Registrar may, if the applicant so requests, at any time before the expiration of the period specified in subsection (2) and before the acceptance of the specification, direct that it shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

(8) Where a complete specification is lodged in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under subsection (6) as a provisional specification, the Registrar may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of lodging of the complete specification.

Contents of specification

15. (1) A specification shall—

- (a) indicate whether it is a provisional or a complete specification;
- (b) commence with a title clearly indicating the subject to which the relevant invention relates; and
- (c) contain an abstract of not more than two hundred words and drawings, if any.

(2) A provisional specification shall fairly describe the invention.

(3) A complete specification shall—

- (a) contain an abstract, as prescribed;
- (b) fully describe the invention and the manner in which it is to be performed;
- (c) disclose the best method of performing the invention known to the applicant at the time when the specification is lodged at the Patent office; and
- (d) end with a claim or claims defining the subject matter for which protection is claimed.

(4) The claim or claims of a complete specification shall—

- (a) relate to a single invention;
- (b) be clear and succinct;

- (c) be fairly based on the matter disclosed in the specification; and
- (d) disclose the invention in a manner sufficiently clear and complete for the invention to be evaluated and carried out by a person having ordinary skill in the art and shall, in particular, indicate the best mode known to the applicant for carrying out the invention at the filing date or, where priority is claimed, at the priority date of the application.

(5) A specification may, and if so required by the Registrar shall, be accompanied by drawings and the drawings shall be considered to be part of the specification.

Effective date of claims of complete specification

16. (1) A claim of a complete specification shall have effect from the date provided in this section in relation to that claim and a patent shall not be invalidated by reason only of the publication or use of the invention, so far as claimed in any claim of the complete specification, on or after the effective date of that claim or by the grant of another patent upon a specification claiming the same invention in a claim of the same or later effective date.

(2) Where the complete specification is lodged in pursuance of a single application preceded by a provisional specification and the claim is fairly based on the matter disclosed in that specification, the effective date of that claim shall be the effective date of the application.

(3) Where the complete specification is lodged or proceeded with in pursuance of two or more applications accompanied by specifications that are mentioned in subsection (2), and the claim is fairly based on the matter disclosed in one of those specifications, the effective date of that claim shall be the effective date of the application accompanied by that specification.

(4) Where the complete specification is lodged in pursuance of a Convention application, and the claim is fairly based on the matter disclosed in the application for protection in a Convention country or, if the Convention application is founded upon more than one such application for protection, in one of those applications, the effective date of that claim shall be the effective date of the relevant application for protection.

(5) Where under subsections (1) to (4), any claim of a complete specification would, but for this subsection have two or more effective dates, the effective date of that claim shall be the effective date of the relevant application for protection.

(6) In any case to which subsections (2), (3), (4) or (5) does not apply, the effective date of a claim shall be the date of lodging of the complete specification in Eswatini.

Examination of applications and specifications

17. (1) An application for a patent, including any specification and other document accompanying that application or subsequently lodged within the time that may be prescribed at the Patent Office for that application, shall be examined by an examiner for the purpose of ascertaining—

- (a) whether the application, specification and accompanying documents comply with the requirements of this Act, including whether any grounds of opposition filed are applicable;

- (b) in the case of a complete specification lodged after a provisional specification or of a Convention application, whether the matter claimed is substantially the same as that disclosed in the provisional specification or in the application lodged in the Convention country, as the case may be; and
- (c) in the case of a specification lodged with the ARIPO Office, whether the application complies with the requirements for patentability after a substantive examination of the merits of the invention.

(2) If the examiner or the ARIPO Office, as the case may be, is so satisfied, they shall accept the application.

(3) An examination or investigation required by this Act shall not be deemed to warrant the validity of any patent and no liability shall be incurred by the Government, the Minister or the Registrar or any examiner or other officer of the Patent office by reason of or in connection with that examination or investigation or report or other proceeding consequent thereon.

Ante-dating and postdating of applications and specifications

18. (1) An applicant may, at any time after lodging an application with the Registrar and paying the prescribed fee, before acceptance of the complete specification, request that the application be post-dated to a date that the applicant may specify.

(2) The Registrar may not post-date an application referred to in subsection (1) to a date that is later than six months from the date on which it was lodged.

(3) Where an application or specification is amended before acceptance of the complete specification, the Registrar may direct that the application or specification be post-dated to the date on which it was amended or, if it was returned to the applicant, to the date on which the applicant again lodges the application.

(4) Where at any time after an application or specification is lodged at the Patent office and before acceptance of the complete specification, a fresh application or specification is lodged in respect of any part of the subject matter of the first mentioned application or specification, the Registrar may direct that the fresh application or specification be ante-dated to a date not earlier than the date of lodging of the first mentioned application or specification.

Refusal of application in certain cases

19. (1) Subject to subsection (2), if it appears to the Registrar in the case of any application for a patent that—

- (a) it is frivolous on the ground that it claims as an invention anything obviously contrary to well established natural laws;
- (b) the patent applied for cannot be granted by virtue of section 4;
- (c) the use of the invention in respect of which the application is made would—
 - (i) endanger public order or public safety;
 - (ii) encourage offensive, immoral or anti-social behaviour;

- (iii) endanger human, animal or plant life or health; or
- (iv) promote serious harm to the environment; or
- (d) claims as an invention—
 - (i) a substance capable of being used as food or medicine and which is a mixture of known ingredients possessing only the aggregate of the known properties of the ingredients; or
 - (ii) a process producing the substance mentioned in subparagraph (i) by mere mixture;

the Registrar may refuse the application.

(2) An application shall not be refused under subsection (1) merely because exploitation is prohibited by law.

Powers of Registrar if specification or application defective

20. (1) Where an applicant, in pursuance of an application for a patent, lodges a complete specification accompanied by a provisional specification and the Registrar, after examination discovers that the invention described in the complete specification includes matter not included in the provisional specification, the Registrar may—

- (a) refuse to accept the complete specification until it is amended; or
- (b) with the consent of the applicant, cancel the provisional specification and direct that the application be post-dated to the date upon which the complete specification is lodged at the Patent Office; or
- (c) where the complete specification includes matter not included in the provisional specification—
 - (i) allow the application to be processed in so far as the matter included both in the provisional and in the complete specification is concerned; and
 - (ii) allow an application for the additional matter included in the complete specification to be made and authorize the application for that additional matter, if lodged at the Patent Office within the period that the Registrar may determine, to be dated with the date on which the complete specification is lodged at the Patent Office.

(2) If in the case of a Convention application it is found that the matter claimed is not substantially the same as that claimed in the application made in the Convention country in question, the Registrar may—

- (a) refuse to accept the application until it has been amended; or
- (b) with the consent of the applicant, treat the application as an application which is not a Convention application.

(3) If in the case of a Convention application, it is found that the specification lodged in Eswatini includes matter not included in the specification lodged in the Convention country,

the Registrar may—

- (a) allow the application to be proceeded with in so far as the matter included in both the Convention country and the Eswatini specifications are concerned; and
- (b) allow an application for the additional matter to be made and authorize the application, if lodged at the Patent Office within the period that the Registrar may determine, to be dated with the date on which the Swaziland specification was lodged at the Patent Office.

Lapsing of applications

21. (1) If a complete specification is not accepted within eighteen months from the date of lodging, the application to which that specification relates shall lapse unless—

- (a) an appeal has been lodged in respect of the application and has not been determined or abandoned;
- (b) the time within which an appeal in respect of the application may be lodged has not expired; or
- (c) the delay in accepting the specification was not due to any negligence or default on the part of the applicant.

(2) The applicant may within twenty-one months from the date of the lodging of the complete specification, by notice accompanied with the prescribed fee, request the extension of the period of eighteen months to a period not exceeding twenty-one months from the date of the lodging of the complete specification, that may be specified in that notice.

(3) If, at the expiration of the period allowed under subsection (1), an appeal to the Tribunal is pending under any provision of this Act in respect of the application or, in the case of an application for a patent of addition, either in respect of that application or in respect of the application for the patent for the main invention, or the time within which that appeal could be brought in accordance with Part XI, apart from any future extension of time, has expired, then—

- (a) where that appeal is pending or is brought within the time mentioned or before the expiration of any extension of that time granted, in the case of the first extension, on an application made within that time or, in the case of a subsequent extension, on an application made before the expiration of the last previous extension, the period shall be extended until a date that the Tribunal may determine;
- (b) where no appeal is pending or is brought, the period shall continue until the end of the mentioned time or, if any extension of that time is granted, until the expiration of the extension or the last extension so granted.

Acceptance, publication and cancellation of complete specification

22. (1) Subject to section 21, a complete specification may be accepted by the Registrar at any time after the applicant has complied with the requirements imposed by this Act.

(2) The applicant may give notice to the Registrar requesting the Registrar to postpone acceptance until a date, not being later than eighteen months from the date of lodging of the complete specification, that may be specified in the notice and the Registrar may postpone the

acceptance accordingly.

(3) Subject to subsection (6), the Registrar shall, on the acceptance of a complete specification, give notice to the applicant who shall, within the prescribed period or within a further period that the Registrar may allow, advertise in the Gazette the fact that the specification has been accepted and, unless the acceptance of the specification is so advertised, the application shall lapse.

(4) The advertisement in the Gazette shall state that the application form, the specification and the other documents essential to obtain acceptance which were lodged in pursuance of the application shall be open to public inspection.

(5) Subsection (4) shall not apply if the acceptance of the complete specification is cancelled before the advertisement.

(6) After the date of the publication of a notice of acceptance of a complete specification and until the sealing of a patent in respect of that notice, the applicant shall have similar privileges and rights as if a patent for the invention had been sealed on the date of the publication of the notice, unless the acceptance of the complete specification is cancelled before that date.

(7) If so requested before the advertisement in the Gazette of the acceptance of a specification, the Registrar may at any time prior to the publication of that advertisement cancel, in the prescribed manner, the acceptance of that complete specification and on that cancellation the Registrar shall—

- (a) make a note in the Register; and
- (b) if the advertisement of the acceptance is subsequently published in the Gazette, cause notice of the cancellation of the acceptance of the specification to be published in the Gazette.

(8) The cancellation of the acceptance of a complete specification under subsection (6) shall not preclude the Registrar from re-accepting that complete specification at a later date if at the time the applicant requested the cancellation the applicant also gave notice to the Registrar under subsection (2).

Opposition to granting of patent

23. (1) Any person, including the Government, may, within three months from the date of the advertisement of the acceptance of a complete specification which has not been cancelled or within a further period that the Registrar, on application made within a period of three months, may allow, or, with the consent of the applicant, at any time before the sealing of the patent, oppose the grant of a patent in accordance with this section by giving written notice of opposition to that grant to the registrar of the Tribunal on any of the following grounds—

- (a) that the applicant is not a person entitled under section 10 to make the application;
- (b) that the application is a fraud;
- (c) that the invention does not relate to an art, whether producing a physical effect or not, process, machine, manufacture or composition of matter which is capable of being applied in trade or industry;

- (d) subject to section 34, that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;
 - (e) that the invention, in so far as is claimed in any claim of the complete specification, is not useful;
 - (f) that the complete specification does not fully describe and ascertain the invention and the manner in which it is to be performed;
 - (g) that the claims of the complete specification do not sufficiently and clearly define the subject-matter for which protection is claimed;
 - (h) that the complete specification does not disclose the best method of performing the invention known to the applicant at the time when the specification was lodged at the Patent Office;
 - (i) that the application form or any other document filed in pursuance of the application contains a material misrepresentation;
 - (j) that the matter described or claimed in the complete specification is not the same as that described in the provisional specification, and—
 - (i) in so far as it is not described in the provisional specification, was not new at the date when the complete specification was lodged at the Patent Office; or
 - (ii) forms the subject of a pending application made in Swaziland for a patent the effective date of which is prior to the date on which the complete specification was lodged at the Patent Office;
 - (k) in the case of a Convention application, that the specification describes or claims matter other than that for which protection has been applied for in the Convention country and that such other matter either—
 - (i) forms the subject of an application for a patent in Swaziland which, if granted, would bear a date in the interval between the lodging of the application in the Convention country and the effective date of the application in Swaziland; or
 - (ii) is not an invention as defined in this Act;
 - (l) that the invention was not new at the effective date of the application;
 - (m) that the specification includes claims which, under section 19 (1), should have been refused;
 - (n) that the grant of a patent is likely to restrict access to medical and other products necessary to properly respond to a public health emergency.
- (2) Any notice of opposition given under subsection (1) shall—
- (a) state the grounds on which the objector intends to oppose the grant of the patent;

(b) be accompanied by a statement setting out particulars of the facts alleged in support of the grounds; and

(c) contain proof of service on the applicant concerned of a copy of the notice.

(3) A statement confirming proof of service of the documents on the applicant shall be furnished to the Registrar of the Tribunal.

(4) A copy of any notice given under subsection (1) and of any statement which in terms of subsection (2) accompanies that notice shall be served by the objector on the applicant for the patent.

(5) If the applicant wishes to contest the opposition, the applicant shall, within the prescribed time or any longer time that the registrar of the Tribunal may allow, lodge with the registrar a counter-statement setting out particulars of the grounds upon which the opposition is to be contested.

(6) A copy of any counter-statement lodged with the registrar of the Tribunal shall be served by the applicant on the objector concerned.

(7) Particulars delivered under this section may be amended with the leave of the registrar of the Tribunal.

(8) Evidence shall not be admitted in proof of any ground on which particulars have not been delivered under this section, except by leave of the Tribunal.

(9) After receiving a notice of opposition under subsection (1) and compliance with any other provision of this section which is applicable, the registrar of the Tribunal shall arrange for the matter to be heard by the Tribunal in the prescribed manner and the Tribunal may make an order it considers just.

(10) If before the Tribunal hears the matter, a request is made under section 46 for the amendment of the specification concerned, proceedings in connection with the notice of opposition shall be suspended until the time when the request for the amendment is heard and determined after which the proceedings in connection with the notice of opposition may be—

(a) continued, in which case the notice and any statement in connection with it may be amended and the periods specified in this section extended to the extent that the registrar of the Tribunal may permit; or

(b) withdrawn, in which case the objector may apply to the Tribunal for an award in respect of the costs incurred in connection with the objection.

(11) Upon being notified of the order of the Tribunal by the registrar, the Registrar shall take any further action that may be necessary.

(12) The registrar of the Tribunal shall inform the Registrar of any notice of opposition or counter-statement which is lodged under this section and of any amendment of particulars which is permitted under subsection (7).

Post-grant opposition

24. (1) Any interested person may, not later than one year after publication, give notice of opposition to the Registrar on any grounds, including that—

- (a) the patentee wrongfully obtained the invention;
- (b) the invention was published before the priority date of the claim;
- (c) the invention is obvious and does not involve any inventive step; or
- (d) the complete specification does not fully describe the invention or the method of performance.

(2) Upon receipt of an opposition under subsection (1), the Registrar shall notify the patentee and make a decision, after hearing both written and oral submissions, and where in the event that the Registrar dismisses the opposition after hearing the submissions, the Registrar shall furnish the reasons for that decision, in writing.

(3) Section 23 (2) to (11) shall also apply to this section.

Substitution of applicants

25. (1) If the Registrar is satisfied, on a claim made in the prescribed manner, at any time before a patent is granted, that, by virtue of any assignment or agreement made by the applicant or one of the applicants for a patent or by virtue of this Act or by operation of law, the claimant would, if the patent were then granted, be entitled to the patent or to the interest of an applicant in the patent or to an undivided share of the patent or of that interest, the Registrar may, subject to this section, direct that the application proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants, as the case may require.

(2) Subject to subsection (4), no direction under subsection (1) shall be given by virtue of any assignment or agreement for the assignment of the right to an invention which is made by one or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) Subject to subsection (4), no direction under subsection (1) shall be given by virtue of any assignment or agreement for the assignment of the right to an invention unless—

- (a) the invention is identified by reference to the number of the application for the patent or in any other manner which appears sufficient to the Registrar; or
- (b) there is produced to the Registrar an acknowledgement by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made.

(4) Subsections (2) and (3) shall not preclude a direction under subsection (1) from being given, where the rights of the claimant in respect of the invention have been finally established by a decision of the Tribunal or any court to which an appeal against that decision has been brought.

(5) Where one or more joint applicants for a patent die before the patent is granted, the Registrar, upon confirmation of that death—

- (a) may alter the application by substituting with the legal representative of the deceased applicant; and
- (b) shall seal the application in the names of the surviving applicants and of the legal representative of the deceased applicant;

unless, upon a request made by the survivor or survivors and with the consent of the legal representative of the deceased, the Registrar directs that the application proceeds and be sealed in the name of the survivor or survivors alone.

(6) If any dispute arises between joint applicants for a patent on the manner that the application should be proceeded with, the Registrar may, upon application made to the Registrar in the prescribed manner by any of the parties and after giving all parties concerned an opportunity to be heard, give directions that the Registrar considers fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with or for both those purposes, as the case may require.

Prior knowledge or publication of invention excused in certain circumstances

26 (1) A patent shall not be refused or held to be invalid by reason only of the fact that the invention in respect of which the patent is applied for or was granted or any part of it was published, used or known prior to the effective date of the application if the applicant or the patentee proves—

- (a) that the knowledge was acquired or the publication or use was made without the knowledge or consent of the patentee; and
- (b) that the knowledge acquired or the matter published or used was derived or obtained from the patent; and
- (c) had the applicant or patentee learned of the disclosure, use or knowledge before the effective date of the application for the patent, the applicant or patentee would have applied for and obtained protection for the invention with all reasonable diligence after learning of the disclosure.

(2) The protection afforded by this subsection shall not extend to an applicant for a patent or a patentee who has or whose predecessors in title have commercially worked the invention in Swaziland, otherwise than for the purpose of reasonable technical trial, prior to the effective date of the application.

(3) The exhibition at an industrial or international exhibition of an invention or the subsequent publication of any description of the exhibited invention by any person without the consent of the inventor or the reading of a paper by the inventor before a learned society or the publication of the paper shall not prejudice the right of the inventor to apply for or obtain a patent in respect of the invention or the validity of any patent granted on the application if—

- (a) the application for a patent is made not later than six months from the date of the opening of the exhibition or the reading or publication of that paper, as the case may be; and
- (b) the inventor has, before exhibiting the invention or reading the paper or permitting the publication, given to the Registrar the prescribed notice of intention to do so.

Provisions for secrecy of certain inventions

27. (1) In this section—

“competent authority” means the Minister responsible for defence or any other Minister whom the King designates as being the competent authority for the purposes of this section.

(2) Where an application for a patent is made in respect of an invention and it appears to the Registrar that the invention is one of a class notified to the Registrar by the competent authority as relevant for defence purposes, the Registrar may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of that information to any person or class of persons specified in the directions.

(3) While directions issued under subsection (2) are in force, the application may, subject to those directions, proceed up to the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(4) Where the Registrar gives any directions under subsection (2), the Registrar shall give notice of the application and of the directions to the competent authority and—

- (a) the competent authority shall, upon receipt of the notice, consider whether the publication of the invention would be prejudicial to the defence of Eswatini and, unless a notice under paragraph (c) has previously been given by the competent authority to the Registrar, shall reconsider that question before the expiration of nine months from the date of lodging of the application for the patent and at least once in every subsequent year;
- (b) for the purposes of paragraph (a), the competent authority may, at any time after the complete specification has been accepted or, with the consent of the applicant, at any time before the complete specification has been accepted, inspect the application and any documents furnished to the Registrar in connection with the matter;
- (c) if, upon consideration of the invention, at any time it appears to the competent authority that the publication of the invention would not, or would no longer be prejudicial to the defence of Eswatini, the competent authority shall give notice to the Registrar to that effect;
- (d) on the receipt of any notice under paragraph (c), the Registrar shall revoke the directions and may, subject to any conditions, extend the time for doing anything required or authorized to be done under this Act in connection with the application, whether or not that time has previously expired.

(5) When directions have been given under subsection (2), if any use of the invention is made during the continuance in force of the directions by or on behalf of or to the order of a department of the Government, section 43 shall apply in relation to that use as if a patent had been granted for the invention.

(6) If an applicant for a patent has suffered loss or damage by reason of an invention being kept secret in pursuance of directions issued under subsection (1), the Minister, with the consent of the Minister responsible for finance, shall pay to the applicant reasonable compensation as is agreed upon or, in default of agreement, as may be determined by the Tribunal on a reference

under section 45(1).

(7) Where a patent is granted in pursuance of an application in respect of which directions have been given under subsection (1), no renewal fees shall be payable in respect of any period during which those directions are in force.

(8) A person who fails to comply with any direction given under this section commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand Emalangeneni or to imprisonment for a period not exceeding four years or to both, unless the person can satisfy the court that the disclosure was in the public interest.

PART V

GRANT, EFFECT AND TERM OF PATENT

Grant and sealing of patent

28. (1) Subject to the provisions of this Act relating to opposition and any other power of the Registrar to refuse to grant a patent, a patent sealed with the seal of the Patent Office shall, if the prescribed request is made within the time allowed under this section, be granted to the applicant or applicants within that time or as soon as is reasonably possible in the circumstances, and the date on which the patent is sealed shall be entered in the Register.

(2) Subject to the provisions of this Act relating to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of six months from the date of the publication of the complete specification.

(3) Where any proceedings in relation to the application are pending before the Registrar or the Tribunal, the request for the sealing of the patent may only be made within the prescribed period after the final determination of the proceedings.

(4) Where the applicant or one of the applicants dies before the expiration of the time within which the request would have been made, the request may be made at any time within twelve months after the date of the death or at a later date that the Registrar may allow.

(5) The period within which a request for the sealing of a patent may be made may be extended by the Registrar to a longer period that may be specified in an application made in that behalf, if the application is made and the prescribed fee paid within that longer period.

(6) The extension to the period referred to in subsection (5) shall not exceed six months.

(7) Where in any case—

- (a) the allowable longest period for making a request for the sealing of a patent has been allowed; and
- (b) it is proved to the satisfaction of the Registrar that hardship would arise in connection with the prosecution by an applicant of an application for a patent in any country outside Eswatini unless that period was extended;

the period referred to in paragraph (a) may be extended by the Registrar to a longer period that appears to the Registrar to be necessary in order to prevent that hardship arising, if an application is made and the prescribed fee is paid within the first-mentioned period or, in the case of a second or subsequent application under this subsection, within the period to which that

period was extended on the last preceding application under this subsection.

- (8) For the purposes of this section, a proceeding shall be considered—
- (a) to be pending, so long as the time for any appeal, apart from any future extension of that time, has not expired; and
 - (b) to be finally determined, when the time for any appeal, apart from any future extension of that time, has expired without the appeal being brought.

Amendment of patent granted to deceased applicant

29 Where, at any time after a patent has been sealed, the applicant dies or, in the case of a body corporate, ceases to exist before the patent is sealed, the Registrar may amend the patent by substituting the name of the deceased person or body corporate with the name of the person entitled according to law, and the patent shall have effect and shall be considered to have always had effect accordingly.

Date of patent

30. (1) Subject to this Act, the effective date of a patent granted under this Act or the repealed Act shall be the date of the application for the patent.

(2) The date of a patent referred to in subsection (1) shall be entered in the Register and in the patent.

Extent, effect and form of patent

31. (1) Subject to this Act, a patent shall have the same effect against the Government as it has against a subject.

(2) A patent shall be in the prescribed form.

(3) A patent shall be granted for one invention only but it shall not be competent for any person in an action or other proceeding to make any objection to a patent on the ground that it has been granted for more than one invention.

(4) The effect of a patent shall be to grant the patentee, subject to this Act and the conditions of the patent, full power, sole privilege and authority for the patentee, the agents and licensees of the patentee during the term of the patent—

- (a) where the invention is a machine, manufacture or composition of matter—
 - (i) to make, use, offer for sale or sell that machine, manufacture or composition of matter within Eswatini; and
 - (ii) to import that machine, manufacture or composition of matter into Eswatini for the purpose of making it, using it, offering it for sale or selling it;
- (b) where the invention is an art or process—
 - (i) to use that art or process within Eswatini;

- (ii) to use, offer for sale or sell within Eswatini any manufacture or product obtained directly by that art or process; and
- (iii) to import into Eswatini any manufacture or product obtained directly by that art or process,

in a manner that the patentee considers fit, so that the patentee enjoys the whole profit and advantage accruing from the invention during the term of the patent.

(5) The rights granted in subsection (4) shall not be construed as prohibiting any person from making, constructing, producing, using or selling, offering to dispose of, disposing of, importing or exporting, the patented invention solely for uses reasonably related to the development and submission of information required under any law that regulates the manufacturing, producing, construction, use or sale of any product.

Parallel importation of patented products under patent

32. The rights granted in subsection 31(4) shall not have effect in relation to a product which has been put on the market in any other country or region by the patent holder or by an authorized person.

Patented products and processes for market approval

33. A patented product or process done on a non-commercial scale with the purpose of gaining market approval or authorization that are performed six months before the expiry of the patent shall not be construed as infringement of the patent.

Term of patent

34. Subject to this Act, the term of every patent shall be twenty years from the date on which the application for the patent is lodged at the Patent Office under section 12(1).

Patents of addition

35. (1) Subject to this section, where an application for a patent is pending or a patent has been granted for an invention (hereinafter referred to as the main invention) and the applicant or patentee applies for a further patent in respect of any improvement in or modification of the main invention, the Registrar may, if the applicant so requests and upon payment of the prescribed fee, grant a patent for the improvement or modification as a patent of addition.

(2) Subject to this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention, the Registrar may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of lodging of the complete specification was the same as or later than the date of lodging of the complete specification in respect of the main invention.

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention and if the period within which, but for this provision, the sealing of a patent of addition could be made under section 27 expires before the period within which the sealing of the patent for the main invention may be so made, the sealing of the patent of addition may be made at any time within the last-mentioned period.

(5) A patent of addition shall remain in force for as long as the patent for the main invention remains in force, including during any extension of the term, but not longer, and no fee shall be payable for the renewal of a patent of addition.

(6) Where the patent for the main invention is revoked, the Registrar or the Tribunal may order that the patent of addition shall become an independent patent in which case—

- (a) the fees payable in respect of the independent patent and the times for the payment shall be determined according to the date of the former patent of addition;
- (b) the normal term of the independent patent shall not extend beyond the date on which the patent for the main invention would have expired if it had not been revoked.

(7) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for that patent, and shall not be refused, nor shall that patent be liable to be revoked or invalidated on the ground that the invention claimed in the complete specification does not involve any inventive step, having regard to the main invention.

(8) Subsection (7) shall not apply to an independent patent referred to in subsection (6).

(9) A patent for a main invention and its patent of addition shall not be capable of assignment apart from one another.

Renewal of patents

36. (1) Subject to subsection (2), every patent shall lapse if the prescribed renewal fees are not paid within the prescribed time.

(2) The Registrar may, upon application by the patentee and subject to the payment of any additional fees that may be prescribed, extend the time for payment of the fee referred to in subsection (1) for a period not exceeding six months.

Restoration of lapsed patents

37. (1) Where a patent has lapsed by reason of failure to pay a renewal fee within the prescribed time or within any extension granted under section 35 (2) the patentee may, within three years from the date on which the patent lapsed, apply in the prescribed manner to the Registrar for the restoration of the patent and any patent of addition.

(2) Where the patent was held by two or more persons jointly, the application may, with the leave of the Registrar, be made by one or more of those persons without joining the others.

(3) An application under subsection (1) shall contain a statement, to be verified in the prescribed manner, fully setting out the circumstances which led to the failure to pay the renewal fee.

(4) After receiving the application, the Registrar—

- (a) may request the applicant to provide any further evidence that may be considered necessary;
- (b) shall, if it is necessary or the applicant so requires, allow the applicant to be heard in connection with the application.

(5) If the Registrar is satisfied that the failure to pay the renewal fee was unintentional and there was no undue delay in making the application, the Registrar shall direct the patentee to advertise the application in a newspaper that circulates daily and any person may, within the prescribed period, give notice to the Registrar of opposition to the application on either or both of the following grounds—

- (a) that the failure to pay the renewal fee was intentional; or
- (b) that there was undue delay in making the application.

(6) If, after publication of a notice under subsection (5), and—

- (a) a notice of opposition is given within the prescribed period, the Registrar shall notify the applicant and give the applicant and the person opposing the application an opportunity to be heard before the Registrar decides the case;
- (b) no notice of opposition is received within the prescribed period or, that notice having been received, the Registrar considers that the application should be granted, the Registrar shall, upon payment of any unpaid renewal fee and any additional fee that may be prescribed, make an order restoring the patent and any patent of addition specified in the application.

(7) The Registrar shall not make an order unless the Registrar is satisfied that the failure to pay any renewal fee in connection with the patent was not intentional and that no undue delay occurred in the making or prosecution of the application.

(8) An order under subsection (6) restoring a patent—

- (a) may be made subject to any conditions that the Registrar considers necessary, including a condition requiring the registration in the Register of any matter in respect of which the provisions of this Act relating to entries in the Register have not been complied with; and
- (b) shall contain the provision specified in subsection (9) for the protection of persons who may have availed themselves of the subject matter of the patent after a lapse of a period of six months from the date on which the renewal fee was due;

and, if any condition imposed under this subsection is not complied with by the patentee, the Registrar may, after giving the patentee an opportunity to be heard, revoke the order and give any directions consequential on the revocation as the Registrar considers necessary.

(9) The patentee shall not commence or prosecute any action or other proceedings or recover damages—

- (a) in respect of any infringement of the patent which took place after the lapse of the said period and before the date of the order;
- (b) in respect of any use of the subject matter of the patent at any time after the date of the order, by the employment of any means or composition of matter actually made within or imported into Swaziland or in respect of any process put into operation in Swaziland in infringement of the patent after the lapse of the said period and before the date of the order or in respect of the sale, purchase or use of any article which is the product of the use of the said means, composition of matter or process;
- (c) in respect of the employment at any time after the date of the order of any further means, composition of matter or process, being a reproduction or improvement of the means, composition of matter or process referred to in paragraph (b) or in respect of the sale, purchase or use of any article which is the product of the said further means, composition of matter or process.

Licences of right

38. (1) At any time after the sealing of a patent, the patentee may apply to the Registrar for the patent to be endorsed with the term "licences of right".

(2) Where an application is made under subsection (1), the Registrar shall notify any person entered on the Register as being entitled to an interest in the patent, of the application and, if satisfied, and after giving that person an opportunity to be heard, and verifying that the patentee is not precluded by contract from granting licences under the patent, cause the Register to be endorsed accordingly.

- (3) Where an entry in the Register is made under subsection (2) in respect of a patent—
 - (a) any person shall, at any time after that, be entitled as of right to a licence under the patent upon any terms that may, in default of agreement and subject to subsection (4), be set out by the Registrar on the application of the patentee or the person requiring the licence;
 - (b) the Registrar may, on the application of the holder of any licence granted under the patent before the entry in the Register, order the licence to be exchanged for a licence to be granted by virtue of the entry upon terms to be set out under paragraph (a);
 - (c) if in proceedings for infringement of the patent, otherwise than by the importation of goods, the defendant undertakes to take a licence upon terms to be determined by the Registrar under paragraph (a), no interdict shall be granted against the defendant, and the amount, if any, recoverable against the defendant by way of damages shall not exceed double the amount which would have been payable by the defendant as licensee if a licence had been granted before the earliest infringement;
 - (d) the renewal fees payable in respect of the patent after the date of entry in the Register shall be one half of the renewal fees which would be payable if the entry was not made.

(4) In settling the terms of the licence for the purposes of subsection (3) (a) or (b), the Registrar shall—

- (a) take cognizance of section 41 with respect to a patent falling under that section; and
- (b) provide for the following matters—
 - (i) the period of the licence;
 - (ii) the conditions of renewal, if any;
 - (iii) the amount of and method for payment of royalties;
 - (iv) arrangements for cancellation of the licence upon application made to the Registrar by the patentee after failure by the licensee to pay royalties or to observe any other conditions included in the licence by the Registrar.

(5) The licensee under any licence granted by virtue of an entry in the Register made under this section shall, unless if the licence otherwise expressly provides, be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent, and if the patentee refuses or neglects to do so within two months after being called upon to do so, the licensee may institute proceedings for the infringement in the own name of the licensee as if the licensee were the patentee, making the patentee a defendant.

(6) A patentee added as defendant under subsection (5) shall not be liable for any costs unless the patentee enters an appearance to defend and takes part in the proceedings.

(7) An application for an entry in the Register made under this section shall contain a statement, to be verified in the prescribed manner, that the patentee is not precluded by contract from granting licences under the patent, and the Registrar may require from the applicant any further evidence that the Registrar may consider necessary.

(8) An application for an entry in the Register made under this section which relates to a patent—

- (a) of addition, shall be treated as an application in relation to the patent for the main invention also; or
- (b) in respect of which a patent of addition is in force, shall be treated as an application in relation to the patent of addition also;

and where a patent of addition is granted in respect of a patent to which an entry under this section has already been made, an entry in respect of the patent of addition shall also be made and no royalty shall be paid by a licensee in respect of that entry.

(8) An entry in the Register made under this section shall be published in the Gazette.

Cancellation of entry made under section 37

39. (1) Within the time that may be prescribed after an entry has been made under section 38 in respect of a patent, the patentee may apply to the Registrar for cancellation of the entry and, where such an application is made and the balance of all renewal fees which would have been payable if the entry had not been made paid, the Registrar may, if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application, cancel the entry accordingly.

(2) Within the prescribed period after an entry referred to in subsection (1) has been made, any person who claims that the patentee is, and was at the time the entry was made, precluded by a contract in which the claimant is interested from granting licences under the patent, may apply to the Registrar for cancellation of the entry.

(3) Where the Registrar is satisfied, on application made under subsection (2) that the patentee is and was precluded as claimed in that subsection, the Registrar shall cancel the entry and the patentee shall be liable to pay, within the prescribed period, a sum equal to the balance of all renewal fees which would have been payable if the entry had not been made, and if that sum is not paid within that period, the patent shall cease to have effect at the expiration of that period.

(4) Where the entry made in respect of a patent is cancelled under this section, the rights and liabilities of the patentee with respect to it shall after that be the same as if the entry had not been made.

(5) An applicant shall advertise in a newspaper circulating daily, any application made by the applicant under this section and, within the prescribed period after that advertisement—

- (a) in the case of an application under subsection (1), any person interested; or
- (b) in the case of an application under subsection (2), the patentee and additionally, or alternatively, any person interested;

may give notice to the Registrar of opposition to the cancellation.

(6) Where a notice of opposition is given under subsection (5), the Registrar shall—

- (a) fix a date for the hearing of the application;
- (b) advise the parties, in writing, of the date so fixed; and
- (c) after giving the applicant and the defendant an opportunity to be heard, make a decision on the application that the Registrar may consider just.

(7) An application made under this section for the cancellation of—

- (a) the entry made in respect of a patent of addition shall be treated as an application for the cancellation of the entry made in respect of the patent for the main invention also; or
- (b) the entry made in respect of a patent in which a patent of addition is in force shall be treated as an application for the cancellation of the entry made in respect of the patent of addition also.

Compulsory licence in respect of dependent patents

40. (1) Where the working of a patent (hereinafter referred to as a dependent patent) without infringement of a prior patent is dependent upon the obtaining of a licence under that prior patent, the proprietor of the dependent patent may, if agreement cannot be reached as to that licence with the proprietor of the prior patent, apply to the Registrar for a licence under the prior patent, and the Registrar may grant that licence on any conditions that the Registrar may impose, including a condition that the licence shall be used only for the purpose of permitting the dependent patent to be worked and for no other purposes.

- (2) The Registrar shall not grant a licence under subsection (1) unless—
- (a) the invention claimed in the dependent patent involves an important technical advance of considerable economic significance in relation to the invention claimed;
 - (b) the proprietor of the dependent patent granted the proprietor of the prior patent on reasonable terms a cross-licence to use the invention claimed in the dependent patent; and
 - (c) the use authorized in respect of the prior patent is not assignable except with the assignment of the dependent patent.

Compulsory licence in case of abuse or insufficient use of patent rights

41. (1) Subject to subsection (14), any interested person who has been unable to obtain a licence under a patent on reasonable terms may, within a period of six months from the initial request for a voluntary licence, apply to the Registrar in the prescribed manner for a compulsory licence on the ground that the reasonable requirements of the public with respect to the invention in question have not been or will not be satisfied.

- (2) An application under subsection (1) shall—
- (a) set out fully the nature of the applicant's interest, the facts on which the case is based and the relief sought; and
 - (b) be accompanied by an affidavit confirming the facts set out in the application.

(3) If, after consideration of the application, the Registrar is satisfied that the applicant has a genuine interest and that a *prima facie* case for relief has been made, the Registrar shall direct the applicant—

- (a) to serve copies of the application and of the relevant affidavit upon the patentee and upon any other person appearing from the Register to be interested in the patent; and
- (b) to advertise the application in the in a newspaper that circulates daily.

(4) If the patentee or any other person wishes to oppose the granting of a licence under this section, they may, within the prescribed period or within any further period that the Registrar may, on application, allow, deliver to the Registrar a counter-statement, confirmed by affidavit, fully setting out the grounds on which the application is opposed, and shall at the same time serve upon the applicant copies of the counter-statement and of the affidavit.

(5) When, in relation to an application or an opposition to an application, the provisions of subsections (1) to (4) have been complied with to the extent required in those provisions, the Registrar shall consider the application and may—

- (a) order the granting of a licence to the applicant on terms that the Registrar considers fit; or
- (b) refuse to grant the licence.

(6) The reasonable requirements of the public referred to in subsection (1) shall be considered not to have been satisfied in any of the following circumstances—

- (a) if the patented invention, being an invention capable of being worked in Eswatini, is not being worked in Eswatini on a commercial scale and there is no satisfactory reason for that non-working;
- (b) if the working of the invention within Eswatini on a commercial scale is being prevented or hindered by the importation of the patented article by—
 - (i) the patentee or persons claiming under the patentee; or
 - (ii) persons directly or indirectly purchasing from the patentee; or
 - (iii) persons against whom the patentee is not taking or has not taken any action for infringement;
- (c) if the demand for the patented article in Eswatini is not being met to an adequate extent and on reasonable terms;
- (d) if, by reason of the refusal of the patentee to grant a licence or licences upon reasonable terms, the trade or industry of Eswatini or the trade of any person or class of persons trading in Eswatini or the establishment of any new trade or industry in Eswatini is being prejudiced, and it is in the public interest that a licence or licences should be granted;
- (e) if any trade or industry in Eswatini or any person or class of persons engaged in that trade is being prejudiced by unfair conditions attached by the patentee to the purchase, hire, licence or use of the patented article or to the using or working of the patented process; or
- (f) if any condition, which under section 53 is null and void as being in restraint of trade and contrary to public policy, has been inserted in any contract made in relation to the sale or lease of or any licence to use or work any article or process protected by the patent;
- (g) if the patentee engages in conduct;
- (h) if, in the case of medical products, the price charged by the patentee or licensee for the patented article results in, or is likely to result in, the restriction of access to the medical product in the prevention and treatment of any illness; or
- (i) if in the case of medical products, the price charged by the patentee or licensee for the patented article is excessive in relation to a generic equivalent available outside Swaziland.

(7) In the case of a public health emergency, any interested person who can show that the exercise of the patent rights are having the effect of restricting access to medical products to deal with the emergency may apply to the Registrar, in the prescribed manner, for a compulsory licence under the patent.

(8) The patentee or any other person appearing on the Register to be interested in the patent may, in the prescribed manner, oppose the application.

(9) The Registrar shall consider the application on its merits and grant the application for a licence under conditions that the Registrar considers fit, including the imposition of a nominal royalty and permission to export the goods produced under licence to countries where the goods are not patented or where a licence was issued authorizing the importation of the goods.

(10) If the Registrar is of the opinion that an order directing the grant of a licence is not justified, the application may be refused.

(11) Any licence issued under this subsection shall be non-exclusive and non-transferable and may be amended, varied, revoked or terminated as the Registrar considers fit, taking into account all relevant consideration.

(12) In the case of the supply of medical products to countries which have limited or lack capacity to manufacture, any interested person may apply to the Registrar for a licence to manufacture, sell and or export the product to any eligible country under the WTO General Council decision of 2003, after receiving a request for specified quantities of a specific product and the requisite assurances stipulated in that decision.

(13) In the event of a practice determined after judicial or administrative process to be anti-competitive, the requirements contained in subsection (1) that the interested person shows that that person has been unable to obtain a licence shall not apply.

(14) The Tribunal may order the granting to the applicant of a licence on terms that it may consider expedient, including a term precluding the licensee from importing into Eswatini any goods the importation of which, by persons other than the patentee or persons claiming under the patentee, would be an infringement of the patent.

(15) The terms of a licence ordered to be granted under subsection (8) shall be framed so as to—

- (a) authorise the making, use or vending of the invention primarily to satisfy the market in Eswatini, except in the case of a determination of anti-competitive practices, in which case no such restriction shall apply; and
- (b) secure to the patentee the reasonable royalty compatible with the successful working of the invention within Swaziland on a commercial scale and at a reasonable profit; and

(16) In addition to any other terms of a licence ordered to be granted under subsection (8), the licence shall be revocable at the discretion of the Tribunal if—

- (a) the circumstances that led to its granting cease to exist and are unlikely to recur; or
- (b) the licensee fails to pay the patentee the royalties payable under the licence.

(17) A licensee under this section shall be entitled to call upon the patentee concerned to institute any proceedings which may be necessary to prevent infringement of the patent and shall in all other respects have the same rights as any other licensee, and if the patentee fails, within two months after being called upon by the licensee or within any further period that the Tribunal may allow, to institute any proceedings, the licensee may institute the proceedings as

if the licensee were the patentee, making the patentee a defendant, and the patentee shall not be liable for any costs in connection with the proceedings unless the patentee enters an appearance to defend and takes part in the proceedings.

(18) The existence of a compulsory licence granted solely on the ground that an invention is not being worked in Eswatini on a commercial scale shall not preclude the grant of further licences, including compulsory licences, in respect of that invention, but the holder of any compulsory licence shall not be entitled to transfer that licence or grant a sub-licence except to a person to whom the business or the part of the business in connection with which the rights under the licence were exercised, has been transferred.

(19) A licence shall not be granted under this section or section 41 while an entry under section 37 in respect of the relevant patent remains in the Register.

(20) An appeal shall lie from any refusal of the Registrar to issue directions under subsection (3) or any decision made under subsection (5).

(21) For the purposes of this section—

“patented article” includes any article made by a patented process.

Inventions relating to food or certain other commodities

42. (1) Where a patent is in force in respect of—

- (a) a substance capable of being used as food or medicine or in the production of food or medicine;
- (b) a process for producing a substance referred to in paragraph (a);
- (c) any invention capable of being used as or as part of a surgical or curative device or in protection of the environment; or
- (d) any invention capable of substantially improving the technological, social and economic development of the country; the Tribunal shall, on application made to it by any interested person, order the applicant to be granted a licence under the patent on terms that it considers fit, unless it appears to the Tribunal that there are good reasons for refusing the application.

(2) Subject to subsections (3) and (4), the terms of a licence under this section shall be framed so as to—

- (a) authorise the working of the invention primarily to satisfy the market in Eswatini, except in the case of a determination of anti-competitive practices, in which case such a restriction shall not apply; and
- (b) to secure to the patentee the adequate royalties in the circumstances of each case, taking into account the economic value of the licence.

(3) In settling the terms of a licence under this section, the Tribunal shall try to ensure that food, medicine, surgical and curative devices and environment protection devices and any invention referred to in subsection (1) (d) shall be available to the public at the lowest prices consistent with the patentees deriving a reasonable advantage from their patent rights.

(4) A licence granted under this section shall entitle the licensee to make, use, exercise and vend the invention only—

- (a) as a food or medicine or for the purposes of the production of food or medicine; or
- (b) as part of a surgical or curative or environment protection device or any invention referred to in subsection (1)(d).

(5) In addition to any other terms of a licence under this section, the licence shall be revocable at the discretion of the Tribunal if—

- (a) the circumstances that led to its grant cease to exist and are unlikely to recur; or
- (b) the licensee fails to—
 - (i) work the invention within the time specified in the order;
 - (ii) expend the amount specified in the licence as being the amount which the licensee is able and willing to provide for the purpose of working the invention on a commercial scale within Swaziland; or
 - (iii) pay the patentee the royalties payable under the licence.

Supplementary provisions as to licences

43. An order made under this Act for the granting of a licence shall, without prejudice to any other method of enforcement, have effect as if it were an agreement executed by the patentee and all other necessary parties granting a licence in accordance with the order.

Use of patented inventions for service of the Government

44. (1) Notwithstanding anything in this Act, any department of the Government or any person authorized in writing by the Minister may make, use or exercise any invention disclosed in any specification lodged at the Patent Office for the service of the Government in accordance with this section.

(2) Any use of an invention made by virtue of subsection (1) shall be made upon terms and conditions agreed upon between the Minister and the patentee, with the approval of the Minister responsible for finance or, in the absence of such agreement, as may be determined by the Tribunal on a reference made under section 45 (1).

(3) The authority of the Minister in respect of an invention may be given under subsection (1)—

- (a) either before or after the patent is granted and either before or after the acts in respect of which the authority is given are done; and
- (b) to any person, whether or not the person is authorized directly or indirectly by the patentee to make, use, exercise or vend the invention.

(4) Where any use of an invention is made with the authority of the Minister, unless it appears to the Minister that it would be contrary to public interest to do so, the Minister shall notify the patentee as soon as practicable after the use has started, and furnish the patentee with

information the patentee may require on the extent of the use.

(5) For the purposes of this section and sections 44 and 45, any use of an invention for the supply to the government of a country outside Eswatini, in pursuance of an agreement or arrangement between the Government of Eswatini and the government of that country, of articles required for the defence of that country, shall be considered to be a use of the invention for the service of the Government, and the power of a department of the Government or a person authorized by the Minister under this section to make, use and exercise an invention shall include power to—

- (a) sell the mentioned articles to the government of another country in pursuance of an agreement or arrangement; and
- (b) sell to another person articles made in the exercise of the powers conferred by this section which are no longer required for the purpose for which they were made.

(6) The purchaser of any articles sold in the exercise of powers conferred by this section and any person claiming through that purchaser shall have power to deal with them in the same manner as if the patent were held on behalf of the Government.

(7) Regulations made under this Act may govern the rights of third parties in relation to the use of a patented invention, or an invention in which an application for a patent is pending, made for the service of the Government under this section or section 45.

Special provisions for Government use during emergency

45. (1) During a period of emergency, the powers exercisable in relation to an invention by a department of the Government or a person authorized by the Minister under section 44 shall include power to make, use, exercise and vend the invention for any purpose which appears to the Minister necessary or expedient—

- (a) for the efficient prosecution of any war in which Eswatini may be engaged;
- (b) for the maintenance of supplies and services essential to the life of the community;
- (c) for securing a sufficiency of supplies and services essential to the well-being of the community;
- (d) for promoting the productivity of industry, commerce or agriculture;
- (e) for fostering and directing exports and reducing imports of any classes, from all or any countries and for redressing the balance of trade;
- (f) generally, for ensuring that the whole resources of the community are available for use, and are used, in a manner best calculated to serve the interests of the community;
or
- (g) for assisting the relief of suffering and the restoration and distribution of essential supplies and services in any part of Eswatini or any foreign country that is in grave distress as a result of war;

and any reference in that section or in section 46 to the service of the Government shall be construed as including a reference to the purposes referred to in paragraphs (a) to (g).

(2) In subsection (1)–

“period of emergency” means any period beginning on a date declared by the Minister, by statutory instrument, to be the commencement and ending on a date declared to be the termination of the period of emergency.

(3) In a public health emergency, the Minister for health, after consultation with the Minister, may use a patented medical product for public non-commercial use in order to address public health needs without the consent of the patent holder.

Reference of disputes pertaining to Government use

46. (1) Any dispute regarding–

- (a) the exercise by a department of the Government or a person authorized by the Minister, of the powers conferred by section 44;
- (b) the terms for the use of an invention for the service of the Government;
- (c) the compensation payable upon a reference to the Tribunal under section 27 (4); or
- (d) the right of any person to receive any part of a payment determined under paragraph (b) or (c);

may be referred to the Tribunal in the prescribed manner by any party to the dispute.

(2) In any proceedings under this section to which a department of the Government is a party, the Minister may–

- (a) if the patentee is a party to the proceedings, apply for revocation of the patent upon any ground upon which a patent may be revoked under section 55;
- (b) in any case, put in issue the validity of the patent without applying for its revocation.

(3) If in any proceedings under this section any question arises whether an invention was recorded or tried or was used by or on behalf of or to the order of a department of the Government and the disclosure of any document recording the invention or any evidence at the trial of the use of the invention would, in the opinion of the Minister, be prejudicial to public interest, the disclosure may be made confidentially to the legal practitioner, if any, appearing for the other party or to an independent expert agreed upon by the parties.

(4) In determining any dispute between a department of the Government and any person on the terms for the use of an invention for the service of the Government, the Tribunal shall have regard to any benefit or compensation which that person or any person from whom that person derives title may have received or may be entitled to receive, directly or indirectly, from any department of the Government in respect of the invention in question.

PART VI
SPECIAL PROVISIONS RELATING TO SPECIFICATIONS, ANTICIPATION
AND RIGHTS IN INVENTIONS

Amendment of specification by Registrar

47. (1) Subject to this section, an applicant for a patent or a patentee may at any time, by request in writing lodged at the Patent Office, seek leave to amend the provisional or complete specification, including any drawings, and shall in making the request state the nature of the proposed amendment and the reasons for the amendment.

(2) Where there are joint applicants or patentees, a request under subsection (1) shall be made by them jointly or by one or more of them with the written consent of the other or others, and in the case of disagreement between them, the Registrar may, if satisfied that one or more of them should be allowed to proceed alone and subject to any conditions the Registrar may impose, permit the request to be made without the consent of the others.

(3) Where an applicant decides to proceed alone with a request under subsection (1), the applicant shall notify all interested parties of the request and the interested parties shall be entitled to be heard before any decision is given.

(4) After the acceptance of a complete specification, no amendment shall be—

- (a) effected except by way of disclaimer, correction or explanation; and
- (b) allowed, except for the purpose of correcting an obvious mistake or a false statement which was made in the belief that it was true, the effect of which would be that—
 - (i) the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendment; or
 - (ii) any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(5) The request for an amendment of an accepted complete specification and its nature and the reasons shall be advertised by the applicant in a newspaper that circulates daily, and, at any time within three months of the advertisement or any further time that the Registrar, subject to any conditions the Registrar may impose, allow any person to give notice of opposition to the amendment at the Patent Office.

(6) A notice of opposition under subsection (5) shall be given in the prescribed manner, to the Registrar and to the person making the request, and the Registrar shall hear the person making the request and the person who has given notice of opposition and determine whether and subject to what conditions, if any, the amendment should be allowed.

(7) Where a complete specification has not been accepted, the Registrar shall determine whether and subject to what conditions, if any, the amendment should be allowed.

(8) A request for amendment under this section shall not be allowed if and so long there are any proceedings pending for infringement or revocation of the patent in question.

Amendment of specification with leave of the Tribunal

48. In any action for infringement of a patent or any proceedings before the Tribunal for the revocation of a patent, the Tribunal may, subject to section 46 (3), allow the patentee to amend the complete specification in a manner and subject to terms relating to costs, advertisement or otherwise as the Tribunal may consider fit, and, if in the proceedings for revocation the Tribunal decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

Restrictions on recovery of damages in certain cases

49. Where an amendment of a specification by way of disclaimer, correction or explanation is allowed under this Act after the publication of the specification, damages shall not be awarded in any proceedings in respect of the use of the invention before the date of the decision allowing the amendment if the Tribunal is satisfied that the specification as originally published was not framed in good faith and with reasonable skill and knowledge.

Savings for anticipation

50. An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to a department of the Government or to any person authorized by the Minister to investigate the invention or its merits or of anything done by any person whomsoever in consequence of that communication for the purpose of the investigation.

Co-ownership of patents

51. (1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to this section, where two or more persons are registered as patentees then, unless an agreement to the contrary is in force, each of those persons shall be entitled, through themselves or their agents, to make, use, exercise and vend the patented invention for their own benefit without accounting to the other or others.

(3) Subject to subsections (6), (7) and (8) and to any agreement in force, a licence under a patent shall not be granted and a share in a patent shall not be assigned except with the consent of all persons, other than the licensor or assignor, who are registered as patentees.

(4) Where a patented article is sold by one of two or more persons registered as patentees, the purchaser and any person claiming through the purchaser shall, in respect of that article, be entitled to deal with it in the same manner as if it had been sold by a sole patentee.

(5) Subject to this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents as they apply in relation to other incorporeal rights.

(6) Where two or more persons are registered as patentees, the Registrar may, upon application made in the prescribed manner by any of those persons, give any directions in accordance with the application as to the sale or lease of the patent or any interest in the patent, the grant of licences under the patent or the exercise of any right under subsections (1) to (5) in relation to the patent as the Registrar considers fit.

(7) If any person registered as patentee fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Registrar may, upon application made in the prescribed manner by any other person, give directions empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(8) Before giving directions in pursuance of an application under subsection (6) or (7), the Registrar shall give an opportunity to be heard—

- (a) in the case of an application under subsection (6), to the other person or persons registered as patentees;
- (b) in the case of an application under subsection (7), to the person in default.

(9) Directions shall not be given under this section that affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations.

Disputes on inventions made by joint inventors

52. (1) Where a dispute arises between two or more persons regarding the rights of the parties in respect of an invention made by those persons jointly or in respect of any patent to be granted in respect of the invention, the Registrar may, upon application in the prescribed manner, and after giving each of the parties an opportunity to be heard, determine the matter in dispute and make orders for giving the decision effect.

(2) Upon an application made under subsection (1), the Registrar may, unless satisfied that one of the parties is entitled to the exclusion of the other or others to the benefit of the invention in respect of which the application is made, by order provide for the apportionment, between the parties or two or more of the parties, of the invention and of any patent to be granted in respect of the invention in a manner that the Registrar considers just.

(3) A decision of the Registrar under this section shall have the same effect between the parties and persons claiming under them as a decision of the Tribunal.

(4) Where it is claimed that an invention referred to in subsection (1) has been made jointly by two or more persons and that the interest of the joint inventors has, by virtue of any assignment or agreement or by operation of law, been transferred to the claimant, the claimant shall be regarded, for the purposes of subsection (1), as though the claimant was the joint inventor.

Disputes on inventions made by employees

53. (1) Where a dispute arises between an employer and a person who is or was at the material time an employee regarding the rights of the parties in respect of an invention made by the employee, either alone or jointly with other employees, or in respect of any patent granted or to be granted in respect of the invention, the Registrar may, upon application made in the prescribed manner by either of the parties and after giving each of them an opportunity to be heard, determine the matter in dispute and make orders for giving effect to a decision that the Registrar considers expedient.

(2) A decision of the Registrar under subsection (1) shall have the same effect between the parties and persons claiming under them as a decision of the Tribunal.

Avoidance of certain restrictive conditions in contracts

54. (1) Subject to subsection (2), it shall not be lawful in any contract made in relation to the sale or lease of a licence to use or work any article or process protected by a patent to insert a condition that will—

- (a) prohibit or restrict the purchaser, lessee or licensee from using any article or class of articles, whether patented or not, or any patented process supplied or owned by any person other than the seller, lessor or licensor or the nominee of the seller, lessor or licensee; or
- (b) require the purchaser, lessee or licensee to acquire from the seller, lessor or licensor or the nominee of the seller, lessor or licensee, any article or class of articles not protected by the patent;

and any such condition shall be null and void as being in restraint of trade and contrary to public policy.

(2) Subsection (1) shall not apply if—

- (a) the seller, lessor or licensor proves that at the time the contract was entered into, the purchaser, lessee or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms without the conditions referred to in subsection (1); and
- (b) the contract entitles the purchaser, lessee or licensee to relieve themselves of liability to observe any such condition on giving the other party three months' notice in writing and on payment, if the Tribunal so directs, of compensation for such relief, in the case of a purchase of such sum, or in case of a lease or licence of such rent or royalty, for the residue of the term of the contract, as may be fixed by the Tribunal.

(3) Any contract relating to the lease of or licence to use or work any patented article or patented process may, at any time after the patent or all the patents by which the article or process was protected in Eswatini at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything to the contrary in the same or in any other contract, be determined by either party on giving three months' notice in writing to the other party.

(4) Nothing in this section shall—

- (a) affect any condition in a contract whereby any person is prohibited from selling any goods other than those of a particular person;
- (b) be construed as validating any contract which would, apart from this section, be invalid;
- (c) affect any right of determining a contract or condition in a contract exercisable independently of this section;
- (d) affect any condition in a contract for the lease of or a licence to use a patented article whereby the lessor or licensor reserves the right to supply new parts of the patented article that may be required to put or keep it in repair.

Revocation of patents

55. (1) An application for the revocation of a patent may be made to the Tribunal by any person interested, including the Government, upon any one or more of the grounds on which the grant of a patent might have been opposed, but, subject to the provisions of section 89.

(2) Where an order for the granting of a licence under the patent is made in pursuance of an application under section 41, any interested person may, at any time after the expiration of two years from the date of that order, apply to the Tribunal for the revocation of the patent upon any of the grounds specified in section 41 (6) or any other ground that the Tribunal may consider fit and, if upon that application the Tribunal is satisfied—

- (a) that any of the grounds are established; and
- (b) that the purpose for which an order may be made in pursuance of an application under section 41 could not be achieved by the making of any further order under that section,

it may order the patent to be revoked.

(3) An application for the revocation of a patent shall state the grounds on which the applicant relies and shall be accompanied by a statement setting out particulars of the facts alleged in support of the grounds, and a copy of the application and of the statement shall be served by the applicant on the patentee and proof of the service shall be furnished to the registrar of the Tribunal.

(4) A patentee may contest an application made under subsection (1) or (2) within the prescribed time or any further time that the Tribunal may allow and lodge with the registrar of the Tribunal a counter-statement setting out particulars of the grounds upon which the application is contested and deliver to the applicant a copy of that statement.

(5) Except with the leave of the Tribunal evidence shall not be admitted in proof of any ground, if particulars of that evidence are not delivered under subsection (3) or (4).

(6) Particulars delivered under subsection (3) or (4) may from time to time be amended by leave of the Tribunal.

(7) The Tribunal shall appoint a time for the hearing of an application under subsection (1) or (2), and shall decide whether the patent should be revoked or whether and, if so, subject to what amendments, if any, of the specification or claims of the patent should be upheld.

(8) The Tribunal—

- (a) shall not allow any amendment of the specification or claims of the patent if it is established that the original complete specification and claims were not framed in good faith and with reasonable skill and knowledge; and
- (b) may, in the exercise of its discretion as to costs, take into consideration the conduct of the patentee in framing the original specification and claims and permitting them to remain so framed.

(9) An order for the revocation of a patent under this section may be made so as to take effect either unconditionally or in the event of failure to comply, within a reasonable period

that may be specified in the order, with any conditions imposed by the order with a view to achieving the purposes for which an order may be made in pursuance of an application under section 41, and the Tribunal may, on reasonable cause shown in any case, by subsequent order extend any period so specified.

(10) The registrar of the Tribunal shall inform the Registrar of any application or counter-statement which is lodged under this section and of any amendment of particulars which is permitted under subsection (6).

Consequences of revocation on grounds of fraud

56. (1) Where—

- (a) a patent is revoked on the ground of fraud; or
- (b) a patent fraudulently obtained is surrendered and revoked; or
- (c) the grant of a patent is refused under section 23(1)(b);

the Tribunal may, on the application of the person entitled to the invention for Eswatini or the legal representative of that person, made in accordance with this Act, direct that the person be granted a patent for the whole or any part of the invention, bearing the same date as the revoked patent or as would have been borne by the patent which was refused if it was not refused.

(2) Where, in proceedings before the Tribunal in connection with opposition to the grant of a patent, the Tribunal finds that the subject-matter was in part obtained from the objector and has required that the specification be amended by the exclusion of that part of the matter, the Tribunal may direct that, on the application of the inventor or any person claiming through or under the inventor made in accordance with this Act within three months after the date of the direction or within any further period that the Tribunal may allow, a patent for that excluded part of the matter bearing the date of and having the same effective date as the opposed application be granted to the applicant concerned.

(3) Action shall not be brought for any infringement of a patent committed—

- (a) in the case of a patent granted under subsection (1), before the date of sealing of the patent; or
- (b) in the case of a patent granted under subsection (2), before the date of advertisement of acceptance of the complete specification lodged in pursuance of the application for that patent.

Surrender of patents

57. (1) A patentee may at any time, by notice given to the Registrar, offer to surrender a patent.

(2) Where an offer under subsection (1) is made, the patentee shall advertise the offer in a newspaper that circulates daily, and within the prescribed period after that advertisement, any interested person may give notice of opposition to the surrender to the Registrar.

(3) Where any notice of opposition under subsection (2) is duly given, the Registrar shall notify the patentee.

(4) If, after hearing the patentee and any opponent who desires to be heard, the Registrar is satisfied that the patent may properly be surrendered, the Registrar may accept the offer and by order, revoke the patent and the Registrar shall give notice of that revocation in the Gazette.

(5) It shall not be necessary for the Registrar to hear the patentee if notice of opposition is not duly given.

PART VII **INFRINGEMENTS**

Procedure and conditions in action for infringement

58. (1) An action for infringement of a patent may only be instituted by the patentee or the exclusive licensee.

(2) An action for infringement of a patent may be instituted in the Tribunal.

(3) Subject to any rules of court, the following provisions shall apply in connection with an action for infringement—

- (a) any ground upon which a patent may be revoked under this Act may be relied upon by way of defence;
- (b) the defendant may, by way of counter-claim in the action, apply for the revocation of the patent;
- (c) the plaintiff shall, in the statement of claim or declaration or on the order of the Tribunal at any subsequent time, deliver full particulars of the infringement complained of;
- (d) the defendant shall, in the statement of defence or plea or on the order of the Tribunal at any subsequent time, deliver particulars of any objections on which the defendant relies in support of;
- (e) at the hearing evidence shall not, except by leave of the Tribunal, be admitted of any infringement or on any objections of which particulars have not been delivered under paragraph (c) or (d);
- (f) the Tribunal may allow the patentee to amend the specification, subject to such terms as to costs, advertisement or otherwise as it may impose and to the provisions of section 47 (3).

(4) In any action under this section where an exclusive licensee is the plaintiff, the patentee shall, unless the patentee is joined as plaintiff in that action, be added as defendant.

(5) A patentee added as defendant shall not be liable for any costs unless the patentee enters an appearance to defend and takes part in the proceedings.

(6) If the patentee is the plaintiff in any action under this section, the patentee shall give notice to the exclusive licensee under the patent in question and that licensee shall be entitled to intervene as a co-plaintiff and to recover any damages suffered as a result of the infringement.

(7) Action under this section shall not lie in respect of an infringement which took place before the publication referred to in section 22(2).

(8) Action for infringement of a patent may not be instituted more than three years after the date on which that patent expired or lapsed.

(9) In an action for infringement of a patent, the plaintiff shall be entitled to relief by way of interdict and damages and the Tribunal may, on application, make an order for an interdict, damages, inspection or account and impose any terms and give any directions that it may consider fit.

(10) In awarding damages the Court shall take into account any dilatory conduct on the part of the patentee or plaintiff in making the infringer aware of the patent.

(11) In an action for infringement of a patent in respect of an invention which relates to the protection of a new substance, any substance of the same chemical composition and constitution shall, in the absence of proof to the contrary, be considered to have been produced by the patented process.

(12) If it is proved, in an action for infringement of a patent in respect of an invention which relates to the protection of an art or a process, that the—

- (a) defendant produced a product that is identical to that produced from the patented art or process; and
- (b) patented art or process is new;

it shall be presumed, in the absence of proof to the contrary, that the defendant's article was produced from the patented art or process.

(13) In adducing proof to the contrary, the legitimate interests of the defendant in protecting manufacturing and business secrets shall be taken into account.

Anton Piller orders

59. (1) If a person who has instituted or intends instituting an action for infringement of a patent satisfies the Tribunal that—

- (a) the person has a cause of action against another person which the person intends to pursue;
- (b) the other person has in the possession of that person, documents or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and
- (c) there is a real and well-founded fear that the documents or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way;

the Tribunal may make an order, commonly known as *Anton Piller* order, that it considers necessary or appropriate to secure the preservation of the documents or things as evidence.

(2) An order under subsection (1) may be granted without notice to the person who is allegedly in possession of the documents or other things to which the order relates, and the Tribunal may sit *in camera* for the purpose of hearing an application for that order.

(3) The Tribunal shall not grant an order without notice unless it is satisfied that there is a real possibility that the documents or things will be hidden, destroyed or rendered inaccessible if notice is given.

(4) An order under subsection (1) may be granted on any conditions, including the giving of security by the applicant that the Tribunal may fix.

(5) This section shall not be taken to limit any power the Tribunal may have under its ordinary jurisdiction to grant orders such as are referred to in this section.

Relief for infringement of partially valid specification

60. (1) Where, in any action for the infringement of a patent, the Tribunal finds that any claim in the specification in respect of which the infringement is alleged is valid, but that any other claim is invalid, then, notwithstanding the provisions of section 58, the following provisions shall apply—

- (a) unless the Tribunal is satisfied that the invalid claim was not framed in good faith and with reasonable skill and knowledge, the Tribunal shall, subject to its discretion as to costs and as to the date from which damages should be reckoned and to any terms as to amendment of the specification as it may consider desirable, grant relief in respect of any valid claim which is or has been infringed, without regard to the validity of any other claim in the specification, and in exercising that discretion the Tribunal may take into consideration the conduct of the patentee in inserting the invalid claim in the specification or permitting that claim to remain there;
- (b) if the Tribunal is satisfied that the invalid claim was not framed in good faith and with reasonable skill and knowledge, the Tribunal shall not grant any relief by way of damages or costs, but may grant other relief in respect of any valid claim which is or has been infringed which the Tribunal considers just and may impose the amendment of the specification as a condition of granting any relief that it may deem desirable;
- (c) if a counter-claim for revocation of the patent has been made in the action on the ground of invalidity of any claim in the specification, the Tribunal may postpone the operation of any order made on the specification for any requisite time so as to enable the patentee to effect any amendment of the specification pursuant to terms imposed by the Tribunal and may attach any other conditions to any order to be made on the counter-claim that the Tribunal may consider desirable.

Restrictions on recovery of damages for infringement

61. (1) Where—

- (a) there is a change of ownership of a patent, whether by virtue of assignment, transmission or operation of law; or
- (b) an exclusive licence is granted in respect of a patent;

damages for the infringement of the patent shall not be recoverable by the new owner or the exclusive licensee in respect of any infringement of that patent during the period from the date of the change of ownership or grant of exclusive licence until the registration under section 64, of that change of ownership or grant of exclusive licence unless that registration is effected within six months of the change of ownership or grant of the exclusive licence.

(2) The Tribunal may refuse to award any damages in respect of an infringement where proceedings are done in respect of infringement of a patent committed after the failure to pay any fee within the prescribed time and before any extension of time for payment.

Remedy for groundless threats of infringement proceedings

62. (1) Where any person, whether entitled to or interested in a patent or an application for a patent or not, by circular, advertisement or otherwise, threatens any other person with proceedings for infringement of a patent, the aggrieved person may bring an action against that person in Tribunal for any relief provided in subsection (2).

(2) Unless, in any action brought under subsection (1), the defendant proves that the acts in respect of which proceedings were threatened constitute or, if done, would constitute an infringement of a patent or of rights arising from the publication of a complete specification in respect of a claim of the specification not shown by the plaintiff to be invalid, the plaintiff shall be entitled to the following relief—

- (a) a declaration to the effect that the threats are unjustifiable;
- (b) an interdict against the continuance of the threats; or
- (c) any sustained damages.

(3) For the avoidance of doubt, it is hereby declared that a mere notification of the existence of a patent shall not constitute a threat of proceedings within the meaning of subsection (1).

(4) The defendant in any action brought under subsection (1) may apply, by way of counter-claim in the action, for any relief to which the defendant would be entitled in a separate action in respect of any infringement by the plaintiff of the patent to which the threats relate.

Power of Tribunal to make declaration as to non-infringement

63. (1) A declaration that the use by any person of any process or the making or use or sale by any person of any article does not or would not constitute an infringement of a claim of a patent may be made by the Tribunal in proceedings between that person and the patentee or the holder of an exclusive licence under the patent, notwithstanding that no assertion to the contrary has been made by the patentee or licensee, if it is shown that—

- (a) the plaintiff applied in writing to the patentee or licensee for a written acknowledgement to the effect of the declaration claimed and furnished full particulars in writing of the process or article in question; and
- (b) the patentee or licensee refused or neglected to give that acknowledgement.

(2) In proceedings for a declaration brought by virtue of this section the Tribunal shall make an order in respect of the costs of all parties to the proceedings as it considers fit.

(3) A patentee or holder of an exclusive licence under the patent shall not be liable for any costs unless if the patentee or holder of an exclusive licence enters an appearance to defend and takes part in the proceedings.

(4) The validity of a claim of the specification of a patent shall not be called in question in proceedings for a declaration brought by virtue of this section, and accordingly the making or refusal of that declaration in the case of a patent shall not be considered to imply that the patent is valid.

(5) Proceedings for a declaration may be brought under this section at any time after the date of the notice of the acceptance of the complete specification in pursuance of an application for a patent, and references in this section to the patentee shall be construed accordingly.

(6) Subsection (5) shall not apply if the acceptance of the complete specification was cancelled under section 22(5).

PART VIII

ASSIGNMENTS AND CORRECTIONS

Provisions as to assignments

64. (1) Subject to section 35(7), the rights granted to a patentee by a patent shall be capable of assignment and of devolution by operation of law and of being mortgaged and pledged.

(2) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as mortgagee, licensee or otherwise to any other interest in a patent, the person may apply to the Registrar in the prescribed manner for the registration of title as proprietor or co-proprietor or of notice of interest in the Register, and the Registrar shall, upon proving that entitlement, register that title or notice against the patent accordingly.

(3) Except for the purposes of an application to rectify the Register under the provisions of this Act, a document in respect of which no entry has been made in the Register under subsection (2) shall not be admitted in any proceedings as evidence of the title of any person to a patent or a share of or interest in a patent, unless the Tribunal otherwise directs.

Power of Registrar to authorize corrections

65. (1) The Registrar may authorize—

- (a) the correction of any clerical error or omission or error in translation in any patent, application for a patent or document lodged in pursuance of an application or in the Register;
- (b) the amending of any documents for which there is no express provision made in this Act for their amending;
- (c) the condonation or correction of any irregularity in procedure in any proceedings before the Registrar if that condonation or correction is not detrimental to the interests of any person.

(2) A correction may be made under subsection (1) either upon a request, in writing, accompanied by the prescribed fee or without that request.

(3) Where it is proposed to make a correction otherwise than upon a request in writing, the Registrar shall give notice of the proposal to the patentee or the applicant for the patent and to any other person who appears to be interested, and shall give that person an opportunity to be heard before the correction is made.

(4) Where a request is made for the correction of a clerical error or omission referred to in subsection (1) and it appears to the Registrar that the correction would materially alter the scope of the document to which the request relates, the Registrar may require notice of the request to be advertised in a newspaper that circulates daily and to be served upon any persons that the Registrar considers necessary.

(5) Any opposition to a request for a correction under subsection (1) may be lodged and shall be dealt with by the Registrar in the prescribed manner.

Rectification of Register

66. (1) The Tribunal may, on the application of any aggrieved person, order the Register to be rectified by the making of any entry or the variation or deletion of any entry.

(2) The Tribunal may determine any question necessary or expedient to be decided in connection with the rectification of the Register.

(3) Notice of an application to the Tribunal under subsection (1) shall be given in the prescribed manner to the Registrar and all interested parties, and the Registrar and all the interested parties shall be entitled to appear and be heard on the application.

(4) An order made by the Tribunal under this section shall be served on the Registrar in the prescribed manner and the Registrar shall, on receipt of the notice, rectify the Register accordingly.

PART IX

FUNCTIONS OF REGISTRAR IN RELATION TO CERTAIN EVIDENCE, DOCUMENTS AND POWERS OF REGISTRAR

Evidence of certain entries and documents

67. (1) A certificate purporting to be signed by the Registrar and certifying that an entry which is or was at the time authorized by or under this Act to be made, has or has not been made or that any other thing which is or was at the time authorized to be done has or has not been done, shall be prima facie evidence of the matters so certified.

(2) A copy of an entry in the Register or of any document kept in the Patent Office or of any patent or an extract from the Register or any such document purporting to be certified by the Registrar and sealed with the seal of the Patent Office shall be admitted in evidence without further proof and without production of the original.

Requests for information on patents or patent applications

68. The Registrar shall, on request made in the prescribed manner by any person and on payment of the prescribed fee, furnish the person making the request with any information relating to any patent or application for a patent as specified in the request, being information in respect of any matters that may be prescribed.

Loss or destruction of patent

69. Where the Registrar is satisfied that a patent has been lost or destroyed or cannot be produced, the Registrar may at any time cause a duplicate of the patent to be sealed on payment of the prescribed fee.

Exercise of discretionary powers of Registrar

70. (1) Without prejudice to any provisions of this Act requiring the Registrar to hear any party to proceedings or to give that party an opportunity to be heard, the Registrar shall give to any applicant for a patent or for amendment of a specification, an opportunity to be heard before adversely exercising to the applicant any discretion vested in the Registrar under this Act.

(2) Where by this Act any time is specified within which any act or thing is to be done, the Registrar may, save where it is expressly otherwise provided, extend the time, either before or after its expiration, if the Registrar is satisfied that the failure to comply with the provisions relating to that time has not been or will not be due to any neglect or default on the part of the person concerned.

Proceedings before Registrar

71. (1) Evidence in any proceedings before the Registrar under this Act shall be given by affidavit, though the Registrar may, if the Registrar considers it fit in any particular case, take oral evidence on oath in lieu of or in addition to the evidence, and may allow any witness to be cross-examined on that affidavit or oral evidence.

(2) For the purposes of any proceedings before the Registrar under this Act, the Registrar shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act, 1963, other than the powers to order a person to be detained in custody, and sections 11 to 16 of that Act shall apply in relation to the hearing and determination of any matter before the Registrar under this Act and to any person summoned to give evidence or giving evidence before the Registrar.

Registrar may award costs

72. (1) The Registrar may award costs against any party to any proceedings before the Registrar and in favour of any other party to those proceedings.

(2) If any party to proceedings before the Registrar is resident outside Eswatini or has no immovable property in Eswatini, the Registrar may, on the application of any other party to the proceedings, order that security to the satisfaction of the Registrar be lodged or given by the first-mentioned party in respect of any costs which may be awarded against that party in those proceedings and may refuse, until that security has been lodged or given, to permit the proceedings to be continued.

(3) Unless otherwise agreed between the parties, any costs awarded under subsection (1) shall be taxed by the Registrar in accordance with the provisions prescribed in respect of the awarding of costs in that subsection and the costs may be recovered by action in a court of competent jurisdiction.

Advertisements to be approved by Registrar

73. An advertisement or notice, other than a notice issued under the authority of the Minister, shall not be published by any person under this Act unless the Registrar has approved the form and contents of that advertisement or notice, and no advertisement or notice which has not been approved by the Registrar shall have any force or effect for the purposes of this Act.

PART X
PATENT AGENTS

Patent agents and their functions

74. (1) Subject to this Act, a patent agent may act as agent on behalf of any person in connection with any matter or proceeding before the Registrar under this Act and may draw and sign all documents and make all communication between an applicant and the Patent Office and may represent an applicant at all attendances before the Registrar.

(2) A patent agent shall not be guilty of an offence under the provisions of any enactment prohibiting the preparation for reward of certain documents by persons not legally qualified by reason only of the preparation or signature by the agent of any document relating to patents for use in the Patent Office or required in any proceedings under this Act before the Registrar or the Tribunal.

Qualification and registration of patent agents

75. (1) The Registrar shall—

- (a) keep a Register of patent agents in which the name of every person, immediately upon being accepted for registration, shall be registered, showing against the name any particulars that the Registrar may consider necessary; and
- (b) enter in the register of patent agents all changes relating to registrations.

(2) Any person ordinarily resident in Eswatini who—

- (a) has served the prescribed period of articles and has passed the prescribed qualifying examinations; or
- (b) has passed the prescribed qualifying examinations and produces proof that the person is a member in good standing of The Chartered Institute of Patent Agents incorporated by Royal Charter on the 11th August, 1891; or
- (c) produces proof that the person holds a qualification recognized by the Minister as being equivalent to the qualifications required for the purposes of paragraph (a) or (b);
- (d) holds a science or technical degree and has passed the qualifying examination or holds a science or technical degree and also holds a postgraduate degree in intellectual property law or study of patents;

may apply to the Registrar, in the prescribed manner, to be registered as a patent agent, and the Registrar shall arrange the registration if the Registrar is satisfied that the person qualifies to be registered as a patent agent.

(3) Registration as a patent agent under subsection (2) shall be valid for a period of five years and may be renewed upon the patent agent satisfying the conditions set out in that subsection.

(4) An officer in the Public Service who has been employed in the Patent Office shall not be registered as a patent agent or be permitted to practice as a patent agent until a period of at least six months has expired since that person ceased to be so employed.

(5) A person shall practice as a patent agent and perform the functions set out in section 74 only if the person qualifies to be registered as a patent agent under that section.

Removal of names from Register of Patent Agents

76. (1) The Registrar may remove from the register of patent agents the name of any patent agent upon proof that that patent agent—

- (a) has died; or
- (b) has become of unsound mind; or
- (c) has been adjudged insolvent under any law in force in Eswatini or has made an assignment to or composition with the creditors of that agent; or
- (d) has ceased to reside in Eswatini or has ceased to maintain a place of business in Eswatini; or
- (e) has applied for the name of that agent to be removed; or
- (f) has, after being convicted in Eswatini or elsewhere of the crime of theft, fraud, forgery or uttering a forged document or perjury, been sentenced to serve a term of imprisonment without the option of a fine, whether the sentence is suspended or not; or
- (g) having been entitled to be registered as a patent agent, has ceased to be so entitled; or
- (h) having been entitled to practice as a patent agent, has ceased to practice as such.

(2) Subject to this section and to any prescribed procedure, the Tribunal may order the Registrar to remove the name of any patent agent from the register of patent agents or may suspend any patent agent from practicing as a patent agent for a time that it considers fit if it is satisfied, after due enquiry, that that person is guilty—

- (a) of conduct discreditable to a patent agent; or
- (b) of a breach of any regulations prescribing the conduct of patent agents.

(3) The Tribunal shall not make an order under subsection (2) unless the patent agent concerned is given notice of the allegations made and given an opportunity to adduce evidence and to be heard.

(4) Any institute or other organization recognized by the Minister as being representative of the patent agent in Eswatini shall be entitled to be represented, to adduce evidence and to

be heard by the Tribunal before it makes any order under subsection (3).

(5) Where the name of any patent agent is removed from the register of patent agents under subsection (1) or (2), the name shall not be restored on that register except by direction of the Tribunal, which may further direct that the restoration be made either without fee or on payment of a fee, not exceeding the registration fee, as it may fix, and the Registrar shall restore the name accordingly.

Entitlement to practice as patent agent and power of Registrar to refuse to deal with certain agents

77. (1) A person shall not practice as a patent agent unless that person is registered as a patent agent.

(2) A person shall be considered to practice as a patent agent if the person—

- (a) performs any of the functions of a patent agent set out in section 73; or
- (b) carries on within Eswatini the business of applying for or obtaining for others patents in Eswatini or elsewhere.

(3) A person who is not registered as a patent agent shall not refer or pretend to be a patent agent or use any term implying that meaning, nor shall that person other people to refer to or describe that person as a patent agent.

(4) The Registrar may refuse to recognize as agent in respect of any business under this Act a person who is not registered as a patent agent in Eswatini.

(5) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand Emalangenani or to imprisonment for a period not exceeding four years or to both.

Prohibition of certain acts of patent agents

78. (1) A patent agent shall not have an interest, whether as a partner or manager or otherwise, in more than one firm of patent agents in Eswatini.

(2) A patent agent shall not practice under a name or title which includes the name of any person who is not or was not—

- (a) in the lifetime of that person, ordinarily resident in Swaziland; or
- (b) registered as a patent agent under this Act.

(3) A person shall not practice as a patent agent if that person is a party to—

- (a) a contract of partnership; or
- (b) an arrangement providing for the sharing or paying over of any professional fees,

relating to the business of a patent agent with any person who is prohibited from practicing as a patent agent.

(4) A person who contravenes this section commits an offence, and is liable, on conviction, to a fine not exceeding twenty-five thousand Emalangenzi or to imprisonment for a period not exceeding five years or to both.

PART XI **APPEALS AND REFERENCES**

Appeals from Registrar

79. Where this Act provides for an appeal against a decision of the Registrar, the appeal shall be made to the Tribunal in accordance with this Part and the Eswatini Intellectual Property Tribunal Act.

Time for appeals

80. (1) An appeal referred to in section 79 shall be lodged with the Tribunal within three months after the appellant was notified of the decision or order against which the appeal is brought or within any further time that the Tribunal may, on good cause shown, allow.

(2) The powers of the Registrar regarding extensions of time under section 70(2) shall not apply in relation to the time for bringing an appeal under subsection (1).

Powers of Tribunal on appeal

81. Without derogation from the Eswatini Intellectual Property Tribunal Act, in any appeal under this Act, the Tribunal may—

- (a) confirm, set aside or vary the order or decision against which the appeal is brought;
- (b) exercise any of the powers which could have been exercised by the Registrar in the proceedings in connection with which the appeal is brought.

References to Tribunal by Registrar

82. (1) If it appears to the Registrar that any matter to be decided by the Registrar under this Act involves a point of law or is of unusual importance or complexity, the Registrar may, after giving notice to the parties, refer the matter to the Tribunal for decision, and shall, after that, act in accordance with the decision of the Tribunal or any decision substituted on appeal to the Supreme Court.

(2) Where a matter has been referred to the Tribunal under subsection (1), the Registrar and the parties shall have a right to be heard by and appear before the Tribunal before any decision is made in the matter.

PART XII **INTERNATIONAL ARRANGEMENTS**

Convention countries

83. The Minister may, with a view to the fulfillment of the requirements of any treaty, convention, arrangement or engagement to which Eswatini is a party, by notice in the Gazette, declares any country or territory to be a Convention country for the purposes of this Act.

Supplementary provisions as to Convention applications

84. (1) Subject to section 10–

- (a) any person who has applied for protection for an invention in a Convention country or the legal representative or assignee of that person, if the assignee is also so qualified, shall be entitled to a patent for that person’s invention under this Act, in priority to other applicants if the application is made within 12 months after the effective date of the first application for protection in the first Convention country in which that person made the application or where more than one application for protection was made, from the effective date of the first application; and
- (b) the patent referred to in paragraph (a) shall have the same date as the effective date of the application in the Convention country but the term of the patent shall run from the date on which the complete specification is lodged at the Patent Office.

(2) Nothing in subsection (2) shall entitle the patentee to recover damages for infringements that occur prior to the date on which the complete specification is advertised as having been accepted in Eswatini.

(3) Where, after the lodging of the first application in the first Convention country in respect of any invention, a subsequent application is lodged in that country in respect of the same matter, the subsequent application shall be regarded as the first application in that country in respect of that invention if, at the time of the lodging–

- (a) the previous application was withdrawn, abandoned or refused without having been open to public inspection; and
- (b) no priority rights were claimed by virtue of the previous application; and
- (c) no rights are outstanding in that Convention country in connection with the previous application.

(4) An application that was withdrawn, abandoned or refused shall not, after the lodging of the subsequent application, be capable of supporting a claim for priority rights under this section.

(5) Where all the rights of each of two or more applicants referred to in subsection (1) who have applied for the protection of inventions in one or more Convention countries become vested in the same person, the applications shall, for the purposes of section 14 (4), be deemed to have been made by the same applicant.

(6) Where an applicant referred to in subsection (1) applies for the protection of any invention by an application which, in accordance with the law of any Convention country, is equivalent to an application duly made in that Convention country, the applicant shall be considered, for the purposes of this section, to have applied in that Convention country.

(7) In determining, for the purposes of this Act, whether an invention described or claimed in a specification lodged in the Patent Office is the same as that for which protection has been applied for in a Convention country, regard shall be made to the disclosure contained in the documents lodged in the Patent Office, in the prescribed time and manner, at the same time as and in support of the application in the Convention country.

(8) A patent granted in Eswatini for an invention upon an application referred to in this section shall not be invalidated by reason only of—

- (a) the invention having been known or used or published in Eswatini or elsewhere on or after the effective date of the application in the Convention country in which application was first made; or
- (b) the granting in Eswatini, after the effective date of the application in the Convention country, of a patent to another person for the same invention:

(9) The effective date of the patent of the person referred to in subsection (8) shall not be prior to the effective date in Eswatini of the Convention application and the Convention patentee shall be entitled to have the patent of that other person revoked upon due application under and compliance with section 54.

(10) An application for a patent referred to in this section shall be made in the manner specified in section 12, save that the application shall be accompanied by a complete specification.

Special provisions as to vessels, aircraft and land vehicles

85. (1) Where a vessel or aircraft registered in a Convention country or a land vehicle owned by a person ordinarily resident in that country comes into Eswatini temporarily or accidentally, the rights conferred by a patent for an invention shall not be considered to be infringed by the use of the invention—

- (a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories, so far as the invention is used on board the vessel and for its actual needs only; or
- (b) in the construction or operation of the aircraft or land vehicle or of its accessories.

Protocol on Patents and Industrial Designs

86. (1) Subject to this section, the Harare Protocol (hereinafter called “the Protocol”), which was contracted within the framework of the African Regional Intellectual Property Organization, shall have the force of law within Eswatini.

(2) Any patent, in respect of which Eswatini is a designated State, granted to an applicant by the African Regional Intellectual Property Organization in accordance with the provisions of the Protocol shall have the same effect in Eswatini as a patent granted under this Act subject to any exceptions, additions, adaptations and modifications that may be necessary to implement the Protocol.

(3) A patent granted under the Protocol shall have such protection where applicable, as is afforded under this Act to a patent granted in fulfillment of any international agreement in respect of a Convention country under section 84.

Patent Co-operation Treaty

87. (1) In this section—

“Treaty” means the Patent Co-operation Treaty signed at Washington on the 19th June, 1970.

(2) Words or expressions to which a meaning has been assigned in the Treaty shall bear the same meaning when used in this section.

(3) Subject to this section, the Treaty shall have the force of law within Eswatini.

(4) The Patent Office shall act as—

- (a) a receiving office in respect of any international application filed with it by a resident or national of Eswatini; and
- (b) a designated office in respect of any international application in which Eswatini is designated for the purposes of obtaining a patent under this Act; and
- (c) an elected office in respect of an international application in which Eswatini is designated, if the applicant elects Eswatini for the purposes of international preliminary examination under Chapter II of the Treaty.

(5) Subject to this section, an international application designating Eswatini shall be treated as an application for a patent which was lodged under this Act and shall have as its filing date the international filing date accorded it under the Treaty.

(6) An international application filed with the Patent Office as the receiving office shall be—

- (a) filed in a language prescribed in regulations made under the Treaty; and
- (b) accompanied by the fee prescribed in under section 100.

(7) The Registrar, acting in the capacity of the Registrar as an officer of a designated office or an elected office, shall not begin processing an international application designating Eswatini before the time-limit referred to in subsection (8) has expired, unless the applicant complies with the requirements of that subsection and files at the Patent Office an express request for early processing.

(8) Before the expiry of the time-limit applicable under Article 22 or 39 of the Treaty or any later period that may be prescribed in regulations made under the Treaty, a person who has filed an international application designating Eswatini shall—

- (a) pay to the Registrar the fee prescribed under section 100; and
- (b) lodge at the Patent Office a translation of the application into a language prescribed in regulations made under the Treaty,

unless the application was filed in that language or was published under the Treaty as a translation into that language and, if the applicant fails to do so, the application shall be considered to have been withdrawn under this Act.

(9) The Registrar shall deal with international applications in accordance with this Act, the Treaty and regulations made under the Treaty.

(10) In the event of inconsistency between this Act and the provisions of the Treaty or the regulations or administrative instructions made under the Treaty, the Treaty and those regulations and instructions shall prevail.

(11) The Minister shall cause a statutory instrument to be published in the Gazette setting out the provisions of the Treaty and any regulations made under the Treaty, and shall amend the statutory instrument whenever necessary to record any amendment of the Treaty or those regulations.

Protection of inventions communicated under international agreements

88. (1) Subject to this section, regulations made under section 99 may provide for securing that, where an invention was communicated in accordance with an agreement or arrangement made between the Government of Eswatini and the government of any other country for the supply or mutual exchange of information or Articles—

- (a) an application for a patent for an invention so communicated made by a person, the legal representative or assignee of that person, entitled under section 10 to make that application, shall not be prejudiced, and a patent granted on that application shall not be invalidated by reason only that the invention was communicated as mentioned or that in consequence of that—
 - (i) the invention was published, made, used, exercised or vended; or
 - (ii) an application for a patent was made by any other person or a patent was granted on that application;
- (b) any application for a patent made in consequence of that communication as mentioned by a person who is not entitled to do so under section 10 may be refused and any patent granted on that application may be revoked.

(2) Regulations referred to in subsection (1) may provide that the publication, making, use, exercise or vending of an invention or the making of any application for a patent shall, in those circumstances and subject to any conditions or exceptions that may be prescribed by the regulations, be presumed to have been in consequence of the communication that is mentioned in that subsection.

(3) The powers of the Minister under this section, so far as they are exercisable for the benefit of persons from whom inventions have been communicated to the Government of Eswatini by the government of any other country, shall only be exercised if and to the extent that the Minister is satisfied that substantially equivalent provision has been or will be made under the law of that country for the benefit of persons whose inventions have been communicated by the Government of Eswatini to the government of that country.

(4) References in subsection (3) to the communication of an invention to or by the Government of Eswatini or the government of any other country shall be construed as including references to the communication of the invention by or to any person authorized in that behalf by the government in question.

PART XIII
OFFENCES AND PENALTIES

Falsification of certain documents

89. Any person who—

- (a) makes or causes to be made a false entry in the Register, knowing the entry to be false; or

- (b) makes or causes to be made, or produces or tenders or causes to be produced or tendered in evidence, any writing falsely purporting to be a copy of an entry in the Register, knowing the writing to be false;

commits of an offence and is liable, on conviction, to a fine not exceeding fifty thousand Emalangeni or to imprisonment for a period not exceeding ten years or to both.

Deceiving or influencing the Registrar or other officer

90. (1) Any person who, for the purpose of—

- (a) deceiving the Registrar, an examiner or any other officer of the Patent Office in the execution of this Act; or
- (b) procuring or influencing the doing or omission of anything in relation to this Act or any matter under this Act;

makes or submits a false statement or representation, whether orally or in writing, knowing the same to be false, commits an offence and is liable, on conviction, to a fine not exceeding fifty thousand Emalangeni or to imprisonment for a period not exceeding ten years or to both.

(2) Any person who, having innocently made a false statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act or any matter under this Act and who, on becoming aware that that statement or representation was false, fails to immediately advise the Registrar of that falsity, commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangeni or to imprisonment for a period not exceeding two years or to both.

Witness giving false evidence

91. Any person who, after having been sworn or having made an affirmation or declaration, willfully gives false evidence before the Registrar or the Tribunal concerning the subject-matter of the proceedings in question, knowing that evidence to be false or not knowing or believing it to be true, commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand Emalangeni or to imprisonment for a period not exceeding four years or to both.

Prohibition on trafficking in patents by officers

92. (1) Any officer of the Patent Office who buys, sells, acquires or traffics in any invention or patent or any right under a patent commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand Emalangeni or to imprisonment for a period not exceeding four years or to both.

(2) Every purchase, sale or acquisition and every assignment of any invention or patent by or to any officer of the Patent Office shall be null and void.

(3) Nothing contained in this section shall apply to the inventor or to any acquisition by bequest or devolution in law.

Unauthorized claim of patent right

93. (1) If any person falsely and without reasonable cause, represents that—

- (a) any article sold by that person is a patented article; or
- (b) an application was made for a patent in respect of any article sold by that person;

the person commits an offence and is liable, on conviction, to a fine not exceeding twenty five thousand Emalangenani or to imprisonment for a period not exceeding five years or to both.

(2) For the purposes of subsection (1), a person who sells an article after stamping, engraving or embossing on the article—

- (a) the word “patent” or “patented” or any Eswatini patent number or any other word expressing or implying that the article is patented, shall be considered to represent that the article is a patented article; or
- (b) the words “patent applied for” or “patent pending” or any other words expressing or implying that a patent was applied for, shall be considered to represent that an application was made for a patent in respect of that article.

Unauthorized use of certain words

94. If any person, other than a person appointed under section 7, uses on the place of business of that person or on any document issued by that person or otherwise the words “Patent Office” or any other words suggesting that the place of business is, or is officially connected with the Patent Office, that person commits an offence and is liable, on conviction, to a fine not exceeding thirty thousand Emalangenani or to imprisonment for a period not exceeding six years or to both.

PART XIV GENERAL

Lodging and authentication of documents

95. (1) Any application, notice or document authorized or required under this Act to be lodged, made or given at the Patent Office or to the Registrar or any other person, may be delivered by hand or sent by registered post.

(2) Authentication shall not be required in respect of any document lodged in the Patent Office under the provisions of this Act and used in proceedings before the Registrar or the Tribunal.

Expenses of administration

96. All moneys necessary for the administration of this Act shall be paid out of moneys appropriated for the purpose from the Consolidated Fund.

Provisions as to fees

97. (1) Where, under this Act, a fee is payable—

- (a) in respect of the performance of any act by the Registrar, the Registrar shall not perform that act until the fee is paid; or

- (b) in respect of the doing of any act by any person other than the Registrar, the act shall be considered not to be done until the fee is paid; or
- (c) in respect of the lodging of a document, the document shall be considered not to be lodged until the fee is paid.

(2) All fees shall be paid at the Patent Office in a manner that the Registrar, with the approval of the Minister, may accept.

Saving for certain forfeitures

98. Nothing in this Act shall affect the right of the Government or of any person deriving title directly or indirectly from the Government to sell or use articles forfeited to the Government under the provisions of any enactment.

Patent and Trade Marks Journal

99. (1) The Registrar shall publish a journal, to be called the Patent and Trade Marks Journal, containing particulars of applications for patents and other proceedings or matters arising under this Act, together with any reports of cases and other relevant matters as the Minister may consider fit.

(2) The Registrar shall make provision for selling copies of the Journal at a price and in a manner as the Minister may direct.

Regulations

100. (1) The Minister may make regulations prescribing anything which under this Act is to be prescribed and generally for the better carrying out of the objects and purposes of this Act or to give force or effect to its provisions or for its better administration.

(2) Regulations made by the Minister may provide for—

- (a) the form of applications for patents and of any specifications, drawings or other documents which may be lodged at the Patent Office, and the furnishing of copies of the documents;
- (b) the procedure to be followed in connection with any application or request to the Registrar or any proceedings before the Registrar, and the authorizing of the rectification of irregularities of procedure;
- (c) the number of times any advertisement or notice which is required by this Act to be given in the Gazette shall be so given;
- (d) the service of notices and other documents required to be served in connection with proceedings under this Act;
- (e) the qualifications for eligibility to serve articles under a patent agent and matters relating to the articles or service under the patent agent;
- (f) examinations for qualifying as a patent agents under this Act, the recognition of qualifications obtained either in or outside Eswatini, and the fees to be paid in connection with the registration of patent agents;

- (g) the conduct of the business of the Patent Office;
- (h) the provision of services by the Patent Office, including the provision of information regarding patents, and the fees and charges payable for the services;
- (i) other fees payable under this Act and fees which may be charged in relation to the conduct of patent business by patent agents and legal practitioners performing the functions of patent agents;
- (j) authorizing the publication and the sale of copies of specifications, drawings and other documents in the Patent Office and of indexes to and abridgements of the documents;
- (k) the professional conduct of patent agents; and
- (l) giving effect to any international treaty or agreement which relates to patents and to which Eswatini is a party.

Repeals and transitional provisions

101. (1) The Patents, Utility Models and Industrial Designs Act, 1997 and the Patents, Designs and Trademarks Act, 1936 are repealed.

(2) Any patent or licence granted under the Patents, Designs and Trademarks Act, 1936 shall, subject to any modifications and amendments, be deemed to have been granted under this Act and shall continue to have the same effect under the appropriate provisions of this Act.