Vol. 486 Cape Town, Kaapstad, 9 December Desember 2005 No. 28319

THE PRESIDENCY

No. 1203 9 December 2005

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

No. 20 of 2005: Patents Amendment Act, 2005.

DIE PRESIDENSIE

No. 1203 9 Desember 2005

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 20 van 2005: Wysigingswet op Patente, 2005.

GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)
(Assented to 7 December 2005.)

ACT

To amend the Patents Act, 1978, so as to insert certain definitions; and to require an applicant for a patent to furnish information relating to any role played by an indigenous biological resource, a genetic resource or traditional knowledge or use in an invention; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 57 of 1978, as amended by section 1 of Act 76 of 1988, section 1 of Act 49 of 1996 and section 27 of Act 38 of 1997

1. Section 2 of the Patents Act, 1978 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of "date of application" of the following definitions:

"'**genetic resource**' means—

(a) any indigenous genetic material; or

(b) the genetic potential or characteristics of any indigenous species;

'**indigenous biological resource**' means an indigenous biological resource as defined in section 1 of the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004);"; and

(b) by the insertion after the definition of "this Act" of the following definitions:

"'**traditional knowledge**' means the knowledge that an indigenous community has regarding the use of an indigenous biological resource or a genetic resource;

'**traditional use**' means the way in which or the purpose for which an indigenous community has used an indigenous biological resource or a genetic resource.".

Amendment of section 30 of Act 57 of 1978, as amended by section 33 of Act 38 of 1997

2. Section 30 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsections:

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 7 Desember 2005.)

WET

Tot wysiging van die Wet op Patente, 1978, ten einde bepaalde woordomskrywings in te voeg; en om van 'n aansoeker om 'n patent te vereis om inligting te verskaf met betrekking tot enige rol vervul deur 'n inheemse biologiese hulpbron, 'n genetiese hulpbron of tradisionele kennis of gebruik in 'n uitvinding; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 2 van Wet 57 van 1978, soos gewysig deur artikel 1 van Wet 76 van 1988, artikel 1 van Wet 49 van 1996 en artikel 27 van Wet 38 van 1997

1. Artikel 2 van die Wet op Patente, 1978 (hierna die Hoofwet genoem), word hierby gewysig—

(a) deur die volgende omskrywing na die omskrywing van "die herroepe wet" in te voeg:

"**'genetiese hulpbron'**—

(a) enige inheemse genetiese materiaal; of

(b) die genetiese potensiaal of eienskappe van enige inheemse spesie;";

(b) deur die volgende omskrywing na die omskrywing van "hof" in te voeg:

"**'inheemse biologiese hulpbron'** 'n inheemse biologiese hulpbron (indigenous biological resource) soos omskryf in artikel 1 van die "National Environmental Management: Biodiversity Act, 2004" (Wet No. 10 van 2004);"; en

(c) deur die volgende omskrywings na die omskrywing van "spesifikasie" in te voeg:

"'**tradisionele gebruik**' die wyse waarop of die doeleindes waarvoor 'n inheemse gemeenskap 'n inheemse biologiese hulpbron of 'n genetiese hulpbron gebruik het;

"'**tradisionele kennis**' die kennis waaroor 'n inheemse gemeenskap met betrekking tot die gebruik van 'n inheemse biologiese hulpbron of 'n genetiese hulpbron beskik.".

Wysiging van artikel 30 van Wet 57 van 1978, soos gewysig deur artikel 33 van Wet 38 van 1997

2. Artikel 30 van die Hoofwet word hierby gewysig deur die volgende subartikels na subartikel (3) in te voeg:

"(3A) Every applicant who lodges an application for a patent accompanied by a complete specification shall, before acceptance of the application, lodge with the registrar a statement in the prescribed manner stating whether or not the invention for which protection is claimed is based on or derived from an indigenous biological resource, genetic resource, or traditional knowledge or use.

(3B) The registrar shall call upon the applicant to furnish proof in the prescribed manner as to his or her title or authority to make use of the indigenous biological resource, genetic resource, or of the traditional knowledge or use if an applicant lodges a statement that acknowledges that the invention for which protection is claimed is based on or derived from an indigenous biological resource, genetic resource, or traditional knowledge or use.".

Amendment of section 61 of Act 57 of 1978, as amended by section 12 of Act 58 of 2002

3. Section 61 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(g)* of the following paragraph:

"*(g)* that the prescribed declaration lodged in respect of the application for the patent or the statement lodged in terms of section 30(3A) contains a false statement or representation which is material and which the patentee knew or ought reasonably to have known to be false at the time when **the [declaration]** statement or representation was made;".

Short title and commencement

4. This Act is called the Patents Amendment Act, 2005, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

"(3A) Elke aansoeker wat 'n aansoek indien om 'n patent wat vergesel gaan van 'n omvattende spesifikasie moet, voor ontvangs van die aansoek, 'n verklaring in die voorgeskrewe vorm by die registrateur indien wat verklaar of die uitvinding waarvoor beskerming geeis word gebaseer is op of ontleen is aan 'n inheemse biologiese hulpbron, genetiese hulpbron, of tradisionele kennis of gebruik.

(3B) Die registrateur moet die aansoeker versoek om op die voorgeskrewe wyse bewys te verskaf van sy of haar titel of magtiging om gebruik te maak van die inheemse biologiese hulpbron, genetiese hulpbron, of van die tradisionele kennis of gebruik indien die aansoeker 'n verklaring indien wat erken dat die uitvinding waarvoor beskerming geeis word gebaseer is op of ontleen is aan 'n inheemse biologiese hulpbron, genetiese hulpbron, of tradisionele kennis of gebruik.".

Wysiging van artikel 61 van Wet 57 van 1978, soos gewysig deur artikel 12 van Wet 58 van 2002

3. Artikel 61 van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf *(g)* deur die volgende paragraaf te vervang:

"*(g)* dat die voorgeskrewe verklaring wat ten opsigte van die aansoek om die patent ingedien is of die verklaring wat ingevolge artikel 30(3A) ingedien is 'n vals verklaring of voorstelling bevat wat van wesenlike belang is en wat die patenthouer ten tyde van die doen van die verklaring of voorstelling geweet het of redelikerwys moes geweet het vals was;".

Kort titel en inwerkingtreding

4. Hierdie Wet heet die Wysigingswet op Patente, 2005, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.