



Companies and Intellectual
Property Commission

a member of the dti group

IMPORTANT NOTIFICATION **Re: Patent Registrations**

Please note that:

In terms of Section 41 of the Nuclear Energy Act, 1999 (Act 46 of 1999), **patent applicants are required** to immediately notify the Minister of Energy, of any application for a patent in respect of an invention with regard to the production or use of nuclear energy, or production, processing or use of nuclear material or restricted matter lodged with the Registrar of Patents:

Section 41

- 41.** (1) Despite anything to the contrary in the Patents Act, 1978, or any other law, any person who, in terms of section 25 of that Act, lodges with the registrar of patents an application for a patent in respect of an invention with regard to the production or use of nuclear energy, or the production, processing or use of nuclear material or restricted matter, **must—**
- (a) immediately notify the Minister in writing of that application; and
 - (b) furnish the Minister with a copy of the specification relating to the invention; and
 - (c) provide the Minister with any other information regarding the invention that the Minister may require.
- (2) The Minister must treat all information furnished or provided in terms of subsection (1) as highly confidential, and it may not be disclosed or used except as provided in this section.
- (3) The registrar of patents must—
- (a) allow any person authorised thereto in writing by the Minister, to inspect any application for a patent mentioned in subsection (1) and any specification or other document accompanying or relevant to the application;
 - (b) **postpone acceptance of the application** for a period of three months as from the date on which it was submitted to the patents office, which period may be extended for a further three months at the written request of the Minister;
 - (c) at the written request of, and until otherwise directed by, the Minister, withhold acceptance or sealing of the application, keep its specification secret and notify the applicant to that effect.
- (4) The communication of an invention to the Minister in terms of subsection (1) or to such an authorised person, or anything done by that person in connection with the invention for the purposes of an inspection contemplated in subsection (3)(a), will not be regarded as publication or use of the invention that may prejudice the granting or validity of any patent for the invention.
- (5) If satisfied on reasonable grounds, from all the available information relevant to the invention, that the granting of a patent for the invention—
- (a) will be against the interests of the security of the Republic, the Minister, who must act in consultation with the Minister of Defence, must give the registrar of patents written notice thereof and in the notice direct that registrar to refuse the granting of the patent, and thereupon that registrar will—
 - (i) refuse to grant the patent;
 - (ii) in writing notify the applicant for the patent of the refusal; and
 - (iii) keep secret the specification and any other documents relating to the



- invention, as well as the manner in which it is to be performed or applied;
or
(b) will be contrary to the Republic's obligations in terms of the Nuclear Non-Proliferation Treaty or the Safeguards Agreement, or in terms of any other agreement of that kind between the Republic (including its national agency) and any other state or any international or multi-national nuclear agency or institution, the Minister must give the registrar of patents written notice thereof, and in the notice—
(i) direct that registrar to refuse the granting of the patent, whereupon that registrar must act in accordance with subparagraphs (i), (ii) and (iii) of paragraph (a); or
(ii) direct that the patent may only be granted on the condition that the claims in the specification of the invention must, with regard to the invention, contain the disclaimer mentioned in the direction; or
(c) will not have any of the consequences mentioned in paragraphs (a) and (b), the Minister (who must act in consultation with the Minister of Defence with regard to the consequence contemplated in paragraph (a)), must in writing inform the registrar of patents to that effect and withdraw any direction issued under subsection (3)(b) or (c).
(6) The Minister may not take any action in terms of subsection (5)(a) or (b) unless—
(a) the Minister, by written notice, has informed the applicant for a patent with regard to the invention concerned, of the proposed action and given the applicant sufficient opportunity to show cause why the proposed action should not be taken, and to make written or oral representations in that regard; and
(b) the Minister has duly considered the applicant's response and representations (if any).
(7) Upon the withdrawal of a direction issued under subsection (3)(b) or (c) (in this subsection called a suspending direction), or when a direction is issued under subsection (5)(b)(ii)—
(a) any steps in connection with the application for a patent taken in terms of the Patents Act, 1978, before the date on which a suspending direction was issued, may be continued as if they had not been interrupted by the suspending direction;
(b) any period that has lapsed after that date but before the date of withdrawal of the suspending direction or the date on which the direction mentioned in subsection (5)(b)(ii) was issued, as the case may be, will not be taken into account in calculating any period prescribed by or in terms of the Patents Act, 1978.
(8) A patent granted, contrary to the provisions of this section, with regard to an invention mentioned in subsection (1), will have no legal force or effect whatsoever.

REGISTRAR OF PATENTS

Ms Astrid Ludin

CIPC: Commissioner

13 February 2015