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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.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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**

<p>(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</p>	10
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<p>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</p>	20
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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: 25

“(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.”

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(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.”

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

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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;”

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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*.

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