

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**INTELLECTUAL PROPERTY
RIGHTS FROM PUBLICLY
FINANCED RESEARCH AND
DEVELOPMENT BILL**

[B 46—2008]

(As agreed to by the Portfolio Committee on Science and Technology (National Assembly))

[B 46A—2008]

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AMENDMENTS AGREED TO

INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED RESEARCH AND DEVELOPMENT BILL

[B 46—2008]

CLAUSE 1

1. On page 2, in line 9, to omit “arising” and to substitute “emanating”.
2. On page 2, in line 11, to omit “must be interpreted accordingly” and to substitute “shall have a corresponding meaning”.
3. On page 2, in line 16, to omit “or component established for the purposes of funding” and to substitute “that funds”.
4. On page 2, in line 25, after “foreign” to insert “intellectual property”.
5. On page 2, in line 25, to omit “copyright in” and to substitute “copyrighted works such as”.
6. On page 2, in line 29, after “property” to insert “in terms of this Act”.
7. On page 2, in line 29, after the first “of” to insert “obtaining statutory protection and”.
8. On page 2, in line 32, after “property” to insert “emanating from publicly financed research and development”.
9. On page 2, in line 33, after “rights” to insert “governed by this Act”.
10. On page 2, after line 34, to insert the following definition:

“ **‘nett revenues’** means the revenue less the expenses incurred for intellectual property protection and commercialisation of the intellectual property, as may be prescribed”.
11. On page 3, in line 4, after “using” to insert “any”.
12. On page 3 in line 4, to omit “for such purpose” and substitute “but excludes funds allocated for scholarships and bursaries”.
13. On page 3, from line 5, to omit the definition of “**‘recipient’**” and to substitute:

“ **‘recipient’** means any person, juristic or non-juristic, that undertakes research and development using funding from a funding agency and includes an institution”.
14. on page 3, in line 10, to omit “derived” and to substitute “emanating”.
15. On page 3, in line 12, to omit “commercialisation” and to substitute “other”.
16. On page 3, in line 14, after “donation” to insert and “**‘gross revenues’** shall have a corresponding meaning”.

CLAUSE 2

1. On page 3, in line 19, to omit “developed” and to substitute “emanating”.
2. On page 3, in line 20, after “is” to insert “identified, protected,”.
3. On page 3, in line 21, to omit “society” and to substitute “the people of the Republic”.
4. On page 3, after line 22, to insert new paragraph (a), (b) and (c):
 - “(a) a recipient of funding from a funding agency assesses, records and reports on the benefit for society of publicly financed research and development;
 - (b) a recipient protects intellectual property emanating from publicly financed research and development from appropriation and ensures that it is available to the people of the Republic;
 - (c) a recipient identifies commercialisation opportunities for intellectual property emanating from publicly financed research and development;”.

CLAUSE 3

1. On page 3, in line 34, to omit “arising” and to substitute “emanating”.

CLAUSE 4

1. On page 3, in line 43, to omit “arising” and to substitute “emanating”.
2. On page 4, in line 5, after “shall” to insert “subject to section 10”.

CLAUSE 5

1. On page 4, from line 8 up to and including line 40, to omit section 5 and to substitute:
 - “5. A recipient must—
 - (a) put in place mechanisms for the identification, protection, development, management of intellectual property, intellectual property transactions and, where applicable, the commercialisation of intellectual property and appropriate capacity-building relating thereto;
 - (b) provide effective and practical measures and procedures for the disclosure of intellectual property and ensure that intellectual property emanating from any publicly financed research and development is appropriately protected before results of such research and development are published or publicly disclosed by other means;
 - (c) ensure that personnel involved with the research and development make a disclosure to it within 90 days or such longer period as may be prescribed, of identification by such personnel of possible intellectual property and before the intellectual property is made public;
 - (d) assess the intellectual property to determine whether it merits statutory protection and, where appropriate, apply for and use best efforts to obtain statutory protection in its name;
 - (e) refer disclosures for which it elects not to retain ownership or not to obtain statutory protection to NIPMO within 30 days or such longer period as may be prescribed, of it making such an election;

- (f) in the case of an institution, manage revenues due to it from intellectual property transactions and the commercialisation thereof, including managing the benefit-sharing arrangements with intellectual property creators at the institution;
- (g) negotiate and enter into intellectual property transactions with third parties on intellectual property belonging to the recipient;
- (h) report to NIPMO twice a year and as provided for in this Act, on all matters pertaining to the intellectual property contemplated in this Act, including all intellectual property from which it elects to obtain statutory protection and the state of commercialisation thereof, in a manner stipulated by NIPMO.
- (i) provide NIPMO with full reasons in respect of any intellectual property that is not commercialised; and
- (j) in respect of an institution, put in place mechanisms to annually assess, record and report to NIPMO on the benefits for society of publicly financed research conducted in that institution.”

CLAUSE 7

1. On page 5, in line 12, to omit “arising” and to substitute “emanating”.

CLAUSE 9

2. On page 6, in line 1, to omit “provide” and to substitute “develop”.
3. On page 6, in line 2, to omit “managing” and to substitute “manage”.
4. On page 6, in line 8, after “Any” to insert “administrative”.

CLAUSE 10

1. On page 6, in line 13, after the first “property” to insert “in terms of this Act”.
2. On page 6, in line 14, to omit “provided that they are South African citizens or ordinarily resident in the Republic”.
3. On page 6, from line 16, to omit subsection (2) and to substitute:
 - “(2) Intellectual property creators at an institution and their heirs are entitled to the following benefit-sharing—
 - (a) at least 20 per cent of the revenues accruing to the institution from such intellectual property for the first one million rand of revenues, or such higher amount as the Minister may prescribe; and
 - (b) thereafter, at least 30 per cent of the nett revenues accruing to the institution from such intellectual property.”
4. On page 6, in line 19, to omit “portion of revenues” and to substitute “benefits”.
5. On page 6, in line 23, after “heirs” to omit “are” and to substitute “contemplated in subsection 2(a) must be”.

CLAUSE 13

1. On page 7, in line 40, after “NIPMO;” to insert “and”.
2. On page 7, in line 41, after “NIPMO” to omit “; and”.
3. On page 7, from line 42, to omit paragraph (c).

CLAUSE 15

1. On page 8, in line 18, to omit “a separate” and to substitute “an”.
2. On page 8, in line 21, to omit “in the Republic”.
3. On page 8, from line 25, to omit “relating to publicly financed research intellectual property”.
4. On page 8, in line 27, to omit “economic”.
5. On page 8, from line 28, to omit “generally acceptable accounting practices” and to substitute “international financial reporting standards”.
6. On page 8, after line 30, to insert a new subsection (5):

“(5) For the purposes of this section, private entity or organisation includes a private sector company, a public entity, an international research organisation, an educational institution or an international funding or donor organisation.”.

LONG TITLE

1. On page 2, in the first line to omit “derived” and to substitute “emanating”.

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