

CHAPTER 26:08

INTELLECTUAL PROPERTY TRIBUNAL ACT

*Act 5/2001, 22/2001 (s. 4), 32/2004 (s. 6).*

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**AN ACT to provide for the establishment, functions and powers of the Intellectual Property Tribunal and to provide for matters connected therewith or incidental thereto.**

[Date of commencement: 10th September, 2010]

PART I

PRELIMINARY

**1 Short title and date of commencement**

- (1) This Act may be cited as the Intellectual Property Tribunal Act [*Chapter 26:08*].
- (2) This Act shall come into operation on a date to be fixed by the President by statutory instrument.

**2 Interpretation**

In this Act—

“appropriate enactment” means—

- (a) the Industrial Designs Act [*Chapter 26:02*], in relation to any matter before the Tribunal or Supreme Court in terms of that Act;
- (b) the Patents Act [*Chapter 26:03*], in relation to any matter before the Tribunal or the Supreme Court in terms of that Act;
- (c) the Trade Marks Act [*Chapter 26:04*], in relation to any matter before the Tribunal or the Supreme Court in terms of that Act;
- (d) the Copyright and Neighbouring Rights Act [*Chapter 26:05*], in relation to any matter before the Tribunal or the Supreme Court in terms of that Act;
- (e) the Geographical Indications Act [*Chapter 26:06*], in relation to any matter before the Tribunal or the Supreme Court in terms of that Act;
- (f) the Integrated Circuit Layout-Designs Act [*Chapter 26:07*], in relation to any matter before the Tribunal or the Supreme Court in terms of that Act;

“assessor” means an assessor appointed in terms of section *six*;

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

“President of the Tribunal” means a President of the Tribunal appointed in terms of section *four*;

“Registrar” means the Registrar of the Tribunal referred to in section *fourteen*;

“Tribunal” means the Intellectual Property Tribunal established by section *three*.

PART II

ESTABLISHMENT AND COMPOSITION OF INTELLECTUAL PROPERTY TRIBUNAL

**3 Establishment and nature of Intellectual Property Tribunal**

(1) There is hereby established a tribunal, to be known as the Intellectual Property Tribunal, for the purpose of hearing and determining references, applications, appeals and other matters in terms of the Industrial Designs Act [*Chapter 26:02*], the Patents Act [*Chapter 26:03*], the Trade Marks Act [*Chapter 26:04*], the Copyright and Neighbouring Rights Act [*Chapter 26:05*], the Geographical Indications Act [*Chapter 26:06*] or the Integrated Circuit Layout-Designs Act [*Chapter 26:07*].

(2) The Tribunal shall be a court of record.

**4 Presidents of Tribunal**

The Chief Justice shall appoint one or more judges of the High Court to be President or Presidents, as the case may be, of the Tribunal.

[Section substituted by section 6 of Act 32 of 2004.]

**5 Composition of Tribunal**

The Tribunal’s jurisdiction may be exercised by a President of the Tribunal sitting alone or with one or more assessors appointed in terms of section *six*.

[Section substituted by section 6 of Act 32 of 2004.]

**6 Assessors**

(1) Subject to this section, a President or Presidents of the Tribunal may appoint two persons from the appropriate list of persons referred to in subsection (2) to assist as assessors in determining any matter that is required to be determined in any case before the Tribunal.

(2) With the approval of the Chief Justice, the Senior President of the Tribunal shall draw up a list of the names of not fewer than ten persons who have knowledge or experience in intellectual property issues to act as assessors and who are otherwise suitable for appointment as such.

(3) The Presidents of the Tribunal may—

- (a) draw up different lists in terms of subsection (2) for different classes of cases;
- (b) with the approval of the Chief Justice, amend any list drawn up in terms of subsection (2).

(4) Before an assessor enters upon his duties for the first time, he shall take an oath before a President of the Tribunal that he will faithfully perform his duties as a member of the Tribunal.

(5) An assessor appointed in terms of subsection (1) shall act in an advisory capacity only and shall not be entitled to a vote in the decision of the Tribunal.

(6) An assessor who is not a person in the full-time employment of the State shall be paid such remuneration and allowances as the Minister, with the consent of the Minister responsible for finance, may fix.

### PART III

#### JURISDICTION AND POWERS OF TRIBUNAL

#### **7 Jurisdiction of Tribunal**

(1) Subject to this Act and the appropriate enactment, the Tribunal shall have jurisdiction to hear and determine—

- (a) any reference, application, appeal or other matter in terms of the Industrial Designs Act [*Chapter 26:02*], the Patents Act [*Chapter 26:03*], the Trade Marks Act [*Chapter 26:04*], the Copyright and Neighbouring Rights Act [*Chapter 26:05*], the Geographical Indications Act [*Chapter 26:06*] or the Integrated Circuit Layout-Designs Act [*Chapter 26:07*]; and
- (b) any matter that is brought before it as an additional or alternative claim in a matter referred to in paragraph (a) and arises out of substantially the same cause of action or conduct; and
- (c) any matter that arises incidentally out of a matter referred to in paragraph (a).

(2) The Tribunal shall have no jurisdiction to try any criminal case.

#### **8 Powers of Tribunal**

(1) In determining the matters referred to in section *seven*, the Tribunal may exercise—

- (a) subject to this Act and the appropriate enactment, all the powers that the High Court may exercise in a civil case; and
- (b) any additional power conferred upon the Tribunal by or under an Act referred to in paragraph (a) of subsection (1) of section *seven*.

(2) Without derogation from the generality of subsection (1), the Tribunal shall have the same power as the High Court to make orders—

- (a) requiring any party to give security for costs;
- (b) for the purpose of securing the attendance of any person before it;
- (c) for the discovery or production of any document;
- (d) for the investigation and punishment of any contempt;
- (e) for the enforcement of its orders, whether by way of execution, attachment or otherwise.

(3) Subject to the appropriate enactment, the Tribunal may—

- (a) in an appeal or review, confirm, vary, reverse or set aside the decision, order or action concerned or refer the matter back to the person or authority concerned for further consideration; or
- (b) in any matter, make such determination or order as may be provided for in the appropriate enactment.

#### **9 Costs**

(1) Except as otherwise provided in the appropriate enactment, the Tribunal may make such order as to costs as it considers just.

(2) The costs in connection with any proceedings before the Tribunal shall be payable in accordance with—

- (a) such scale of costs as may be prescribed in rules made in terms of section *twelve*; or
- (b) where there is no scale such as is referred to in paragraph (a), the scale of costs for the time being in use in the High Court in civil cases.

(3) Any costs awarded in terms of subsection (1) shall be liable to be taxed by the Registrar, and any such taxation shall be subject to review by the President of the Tribunal at the instance of any interested party.

### PART IV

#### PROCEDURE AND EVIDENCE

#### **10 Proceedings to be in public**

Subject to subsection (12) of section 18 of the Constitution and except as provided in rules made in terms of section *twelve*, the proceedings of the Tribunal shall be conducted in public.

#### **11 Representation of parties**

(1) At any hearing before the Tribunal, any party may appear in person or be represented by a legal practitioner.

(2) In any matter in which—

- (a) the Controller of Patents, Trade Marks and Industrial Designs referred to in section 3 of the Patents Act [*Chapter 26:03*]; or

- (b) the Controller of Copyright referred to in section 89 of the Copyright and Neighbouring Rights Act [Chapter 26:05];
- is required or permitted to appear before the Tribunal, he may appear in person or be represented by—
- (i) a registrar or other officer employed in his office; or
  - (ii) a legal practitioner.

**12 Procedure of Tribunal: power to make rules**

- (1) Subject to this section, the Presidents of the Tribunal may make rules for the Tribunal providing for—
- (a) the practice, procedure and rules of evidence to be followed, including the determination of any preliminary point in any proceedings;
  - (b) the service of notices and other documents required for the purpose of any proceedings;
  - (c) security for costs to be given by parties who reside outside Zimbabwe;
  - (d) forms to be used for the purpose of any proceedings;
  - (e) fees to be paid in respect of—
    - (i) the making of any reference or application or the noting of any appeal to the Tribunal; and
    - (ii) the service and examination of documents and the doing of any other thing by the Registrar or any officer of the Tribunal in connection with any proceedings;
  - (f) a tariff of fees which may be charged by legal practitioners in respect of any matter relating to the Tribunal;
  - (g) fees and allowances payable to assessors;
  - (h) allowances and other payments to witnesses summoned to give evidence or to produce any book or document in any proceedings;
  - (i) the condonation of non-compliance with the rules;
  - (j) any other matter whatsoever which the President or Presidents consider should be provided for in rules in order to ensure or facilitate the proper dispatch and conduct of the Tribunal's business.
- (2) In any matter not covered by rules made in terms of subsection (1) or by any other enactment—
- (a) the rules relating to practice and procedure in the High Court in civil cases shall apply, where appropriate; or
  - (b) if the rules referred to in paragraph (a) cannot be applied appropriately, the Tribunal shall act in such manner and on such principles as it considers best fitted to do substantial justice and to effect and carry out the objects and provisions of this Act and the appropriate Act, and for that purpose may give the parties to the proceedings instructions on the course to be pursued.
- (3) Rules in terms of subsection (1) shall not have effect until they have been approved by the Chief Justice and the Minister and published in a statutory instrument.

**13 Evidence**

Subject to the appropriate enactment and any rules made in terms of section *twelve*, in any proceedings before it the Tribunal may accept evidence by affidavit or take oral evidence and allow any witness to be cross-examined on his affidavit or oral evidence.

**PART V**

**REGISTRAR OF TRIBUNAL AND RECORD OF PROCEEDINGS**

**14 Registrar of Tribunal and other officers**

- (1) There shall be a Registrar of the Tribunal and such deputy registrars and other officers as may be necessary, whose offices shall be public offices and form part of the Public Service.
- (2) The Registrar shall perform such functions as may be assigned to him by or under this Act or any other enactment.

**15 Record of proceedings of Tribunal**

- (1) Subject to rules made in terms of section *twelve*, a record of the proceedings of the Tribunal shall be kept and filed in the office of the Registrar.
- (2) Subject to subsection (12) of section 18 of the Constitution and any other enactment, the record kept in terms of subsection (1) shall be accessible to the public and copies thereof may be obtained upon the same conditions and upon payment of the same fees as if they were civil records of the High Court.

**PART VI**

**APEALS**

**16 Appeal to Supreme Court from decision of Tribunal**

- (1) Subject to subsection (2) and the appropriate enactment, any person who is dissatisfied with any decision of the Tribunal may lodge an appeal with the Supreme Court within three months following the Tribunal's announcement of the decision.

- (2) Except as otherwise provided in the appropriate enactment, no appeal shall lie from—
- (a) any order of the Tribunal made with the consent of the parties;
  - (b) an order as to costs only or an interlocutory order or an interlocutory judgment without the leave of the Tribunal or a President of the Tribunal or, if such leave has been refused, without the leave of a judge of the Supreme Court.

### **17 Powers of Supreme Court on appeal**

Except as otherwise provided in the appropriate enactment, in any appeal in terms of subsection (1) of section *sixteen*, the Supreme Court may—

- (a) exercise its powers in terms of the Supreme Court Act [*Chapter 7:13*] or take any other course which may lead to the just, speedy and, as far as possible, inexpensive settlement of the matter;
- (b) make such order as to costs as it considers just.

## **PART VII**

### **GENERAL**

### **18 Times and places of sitting of Tribunal**

The Tribunal shall sit at such times and in such places as the President of the Tribunal may appoint.

### **19 Evidence of decisions of Tribunal**

In any proceedings before a court, a copy of an order of the Tribunal, certified by the Registrar, shall be admissible on its production by any person and shall be sufficient proof of the order unless the contrary is proved.

### **20 Witness failing to attend Tribunal or to be sworn or give evidence**

(1) If any person who has been subpoenaed to give evidence before the Tribunal or to produce any book or document to the Tribunal—

- (a) fails without just cause to attend or to remain in attendance until duly excused by the Tribunal from further attendance; or
- (b) without just cause, refuses to be sworn as a witness; or
- (c) having been sworn, refuses without just cause—
  - (i) to answer fully and satisfactorily any question lawfully put to him; or
  - (ii) to produce the book or document;

as the case may be, he shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(2) Subsection (1) shall not be construed as limiting the Tribunal's power under section *eight* to deal summarily with any contempt.

### **21 Witness giving false evidence**

Any witness who, after having been sworn, makes a false statement of fact material to any question under consideration by the Tribunal, knowing the statement to be false or not having reasonable grounds for believing it to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001]

### **22 Transitional provisions**

(1) In this section—

“appropriate Act” means—

- (a) the Industrial Designs Act [*Chapter 26:02*]; or
- (b) the Patents Act [*Chapter 26:03*]; or
- (c) the Trade Marks Act [*Chapter 26:04*];

“fixed date” means the date fixed in terms of subsection (2) of section *one* as the date of commencement of this Act;

“Patents Tribunal” means the Patents Tribunal established by section 70 of the Patents Act [*Chapter 26:03*].

(2) Every person who, immediately before the fixed date, held office as—

- (a) President of the Patents Tribunal; or
- (b) registrar or officer of the Patents Tribunal;

shall hold office on and after that date as President of the Tribunal, Registrar or other officer, as the case may be, in all respects as if he had been appointed in terms of section *four* or *fourteen*.

(3) Any rules which, immediately before the fixed date, regulated appeals and references to and other matters before the Patents Tribunal in terms of an appropriate Act shall continue in force on and after the fixed date as if they had been made in terms of section *twelve* to govern similar appeals and references to and other matters before the Tribunal in terms of any Act referred to in subsection (1) of section *three*.

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(4) Any appeal, review, reference or other matter which was lodged with the Patents Tribunal in terms of an appropriate Act and, immediately before the fixed date, was pending before the Patents Tribunal shall be continued before the Tribunal on and after the fixed date in terms of the appropriate Act concerned and this Act.

(5) Any appeal which was filed with the Supreme Court against a decision of the Patents Tribunal in terms of an appropriate Act and which, immediately before the fixed date, had not been finally determined shall be determined on and after the fixed date as if it were an appeal against a decision of the Tribunal in terms of Part VI.