

**THE SOUTH AFRICAN INSTITUTE
OF INTELLECTUAL PROPERTY LAW**

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**DIE SUID-AFRIKAANSE INSTITUUT
VIR INTELLEKTUELE GOEDEREREG**

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CONFIRMATION

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14 September 1993

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Dear Dr Eloff

**MATTER FOR CONSIDERATION BY THE TECHNICAL COMMITTEE ON
CONSTITUTIONAL ISSUES**

This Institute is a body which represents the interests of legal practitioners specialising in the field of intellectual property Law. In practical terms we to some extent see ourselves in the role of being the custodians of intellectual property law in South Africa.

As you are no doubt aware intellectual property law is concerned with providing legal protection to the fruits of the human intellect. More particularly intellectual property law comprises the law of patents, designs, trade marks and copyright. All of these areas of the law give qualified monopolies to the creators of works of the intellect in the exploitation of their intellectual products. Intellectual property is a very important factor in international trade, more particularly in technology transfer and it plays an important role in attracting foreign investment. The importance of intellectual property and the role which it plays in commerce and industry as well as in the field of culture is summed up and illustrated by Article 1 s8 of the Constitution of the United States of America 'to promote the progress of science and useful arts, by securing for limited time to authors and inventors, the exclusive right to their respectful writing and discoveries'.

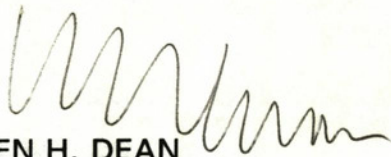
We conducted correspondence with the South African Law Commission in regard to the question of emulating the United States' Constitution and making provision in the new South African Constitution and/or Bill of Rights for proper protection of intellectual property in our country. The dialogue which we conducted with the South African Law Commission culminated in our reaching consensus with them that the most appropriate place for intellectual property to be dealt with would be in the proposed Bill of Rights. We made the proposal to the South African Law Commission that the following passage should be inserted in the Bill of Rights under the rubric "property" :

"Everyone has the right individually or jointly with others to be or to become the owner of intellectual property. Without derogating from the generality of the foregoing, everyone has the right to seek to have his invention protected by registration as a patent, the design of his industrial product protected by registration as a design and his trade mark applied to his goods or services in order to distinguish them protected by registration as a trade mark, and to have the facility of being eligible to have his literary, artistic and other works which are customarily the subjects of copyright protected by copyright in the manner and to the extent provided for in the Berne Convention of 1886, as amended from time to time."

I would be grateful if you would place this matter before the appropriate Technical Committee. If appropriate we would be happy to motivate our viewpoint to the Technical Committee. This is something about which we feel very strongly and we request that no adverse decision be taken without affording us an opportunity of debating the issue with the appropriate Committee.

We look forward to hearing from you at your early convenience.

Yours sincerely


OWEN H. DEAN
VICE-PRESIDENT