

**DEPARTMENT OF TRADE AND INDUSTRY PATENT EXAMINATION BOARD**

**SUPPLEMENTARY EXAMINATION 2020**

**Group 1 Subject (a)**

**Legal Framework for the Protection of Intellectual Property in South Africa**

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Moderator: S. Clelland

Time: 4 hours

Marks: 100

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Instructions:

1. Answer all four questions.
2. Please note that the four questions carry equal mark values; accordingly, equal time should be devoted to the questions.
3. The term "TRIPS Agreement" or "TRIPS" refers to the Agreement on Trade-Related Aspects of Intellectual Property Rights of the World Trade Organization (WTO).

**QUESTION 1: TRADE MARKS ACT, NO. 194 OF 1993 (the “Act”)**

- 1.1 How is “trade mark” defined in the Act? **(6)**
- 1.2 Name two mechanisms provided in the Act to allow similar trade marks to be registered in respect of the same goods/services, as well as the relevant section for each of these two mechanisms. **(4)**
- 1.3 What does section 12 provide in the case of an application made for registration of a trade mark which consists of, or includes, the name or representation of a person? **(4)**
- 1.4 When a trade mark registration has been infringed, list the various forms of relief that the High Court may order and grant to the proprietor in terms of section 34 of the Act. **(4)**
- 1.5 On what grounds can a trade mark registration be removed from the register of trade marks in terms of section 27 of the Act? **(3)**
- 1.6 What provision does the Act make in section 38 for a person who is licensed by the proprietor of a registered trade mark to use the proprietor’s trade mark? **(4)**

**[25 marks]**

**QUESTION 2: COPYRIGHT ACT, NO. 98 OF 1978 (the “Act”)**

- 2.1 Copyright in artistic works vests the exclusive right to do or to authorize the doing of a number of acts in the Republic. Name four. (4)
- 2.2 What is the definition of “published edition” in terms of the Act? (2)
- 2.3 Authorship plays an important role in copyright law. In terms of the Act, who is the author of the following works:
- 2.3.1 cinematograph film;
  - 2.3.2 musical work;
  - 2.3.3 photograph;
  - 2.3.4 published edition;
  - 2.3.5 programme-carrying signal? (5)
- 2.4 What is the definition of “signal” in terms of the Act? (2)
- 2.5 Name two circumstances under which copyright in a literary or musical work will not be infringed. (4)
- 2.6 In terms of the Act, what is the term of copyright in respect of the following works:
- 2.6.1 sound recording;
  - 2.6.2 literary work;
  - 2.6.3 artistic work;
  - 2.6.4 published edition;
  - 2.6.5 cinematograph film? (5)
- 2.7 Under what circumstances will a work not be eligible for copyright protection? (3)

**[25 marks]**

**QUESTION 3: PLANT BREEDERS' RIGHTS ACT, NO. 15 OF 1976 (the "Act")**

- 3.1 Name the International Convention of Plant Breeders' Rights that South Africa is a member of, and to which agreement of this Convention South Africa is currently a signatory. **(2)**
- 3.2 One of the basic requirements for obtaining a Plant Breeders' right for a variety of plant in South Africa is that the variety is "new". Discuss the provisions of Section 2 of the South African Plant Breeders' Rights Act in respect of "new". **(4)**
- 3.3 The three other basic requirements for obtaining a Plant Breeders' right for a variety are that the variety is Distinct, Uniform and Stable. Provide a short explanation for each of these requirements. **(6)**
- 3.4 From an infringement point of view, name three of the effects of a Plant Breeders' Right in terms of Section 23 of the Plant Breeders' Rights Act. **(3)**
- 3.5 What needs to be submitted to the Registrar of Plant Breeders' Rights when lodging an application for a Plant Breeder's Right in South Africa? Assume that the breeder has assigned his/her rights in the variety to a successor in title. **(4)**
- 3.6 What is the duration of a Plant Breeder's Right in terms of Section 21 of the Plant Breeders' Rights Act? **(3)**
- 3.7 After a Plant Breeders' Right application is filed in South Africa, what is the deadline for making plant material to the Registrar available for testing purposes? **(1)**
- 3.8 What is the time-limit for a third party to oppose a Plant Breeders' Right application? **(2)**

**[25 marks]**

#### **QUESTION 4: INTERNATIONAL AGREEMENTS, CONVENTIONS AND TREATIES**

4.1 Name four international treaties/conventions to which South Africa has already acceded.

**(4)**

4.2 Name three international treaties/conventions pertaining to intellectual property, to which **South Africa has not yet acceded and has not implemented.**

**(3)**

4.3 Indicate whether the following statements are true or false:

- (a) A licensee of intellectual property has the same rights as the owner of the intellectual property
- (b) The World Trade Organisation (WTO) is a United Nations organisation
- (c) WTO is the body responsible for promoting and administering international treaties and conventions in the area of intellectual property
- (d) Prior to the Copyright Amendment Act no. 125 of 1992, computer programs were protected as a literary work eligible for copyright.
- (e) The DOHA Declaration is a declaration that nothing in the TRIPS Agreement is to be used to address the issue of exhaustion of IP rights for purposes of dispute settlement.

**(5)**

4.4 Member countries of the TRIPS Agreement are required to provide protection for geographical indications, by affording interested parties the right to prevent the use of geographical indications of origin which would mislead the public, or which would constitute unfair competition.

Explain what is meant by a geographical indicator and how this is different from a generic description of the region of origin of goods.

**(2)**

4.5 The TRIPS Agreement is based on three key principles. What are these 3 principles?

**(3)**

- 4.6 (a) Explain how the Doha Declaration came about?
- (b) Describe 2 important directives on the interpretation and implementation of the TRIPS provisions that resulted from the Doha Declaration.

**(3)**

- 4.7 (a) Explain the principle of “exhaustion of rights” and specifically when a patentee’s rights will be exhausted.
- (b) Explain provisions of the TRIPS Agreement on the issue of exhaustion of rights.

**(2)**

- 4.8 The principles of “national treatment” and “most-favoured-nation” treatment (Articles 3 and 4) of TRIPS are aimed at international harmonisation of laws for the protection and enforcement of intellectual property rights.

Name another convention that implements the same principles, to enable a South African copyright proprietor to enforce his copyright against infringement in other member states.

**(1)**

- 4.9 Article 30 of TRIPS provides that members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

Explain how the so-called Bolar provision in our Patents Act (s69(A)) restricts the rights of a patentee in this way.

**(2)**

**[25 marks]**