

# **SOUTH AFRICAN PATENT LAW AND PRACTICE**

## **SUPPLEMENTARY EXAMINATION PAPER - NOVEMBER 2015**

(PAPER SET UNDER THE AUSPICES OF  
THE SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW AND  
THE PATENT EXAMINATION BOARD)

### EXAMINER:

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### MODERATOR:

Gavin Kotze

### NOTES TO CANDIDATES:

1. There is no choice of questions to be answered. All questions should be answered.
2. The paper consists of a total of 4 pages and a total of 13 questions.
3. The duration of the exam is 4 hours.
4. Total marks of the exam is 140 marks
5. All references to the Act are references to the South African Patents Act, No 57 of 1978.
6. Wherever possible, your answers should refer to the relevant sections of the Act, the content of the section should be set out and only then should a conclusion be reached.
7. Write neatly and legibly.

**QUESTION 1 [21 MARKS]**

1.1 Referring to section 25(2), mention the things which are not an invention in terms of the Act. How are these exclusions countered by section 25(3)?

(9 marks)

1.2 You consult with a new client on the possible protection of an invention in South Africa through the filing of a patent application. The client advises you that there has been some prior use of the invention. Advise the client fully on:

- (i) what type of use may be excused in terms of the Act; and
  - (ii) the type of use that would be deemed novelty destroying.
- Refer to the Act.

(12 marks)

**QUESTION 2 [12 MARKS]**

Your client's patent application is to be granted soon. There may be a need to amend the claims of the patent application. In terms of section 51, advise your client on whether to amend the patent application prior or after grant.

(12 Marks)

**QUESTION 3 [12 MARKS]**

Your client has made some changes to his invention after an application for a patent accompanied by a complete patent specification has already been filed. Explain the options available to your client under sections 39 and 51(8) respectively, for the case where:

- (i) the application is still pending; and
- (ii) has already proceeded to grant.

Comment on any exceptions in so far as rights or obligations are concerned.

(12 marks)

**QUESTION 4 [8 MARKS]**

4.1 The correction of which errors may the registrar or the commissioner of patents authorise in terms of section 50 of the Act?

(3 marks)

4.2 When is an applicant for amendment of a patent obliged to apply to court for the amendment and what may the court do on receipt of an application for amendment?

(4 marks)

4.3 When may the commissioner of patents not set aside an amendment made in conflict with the provisions of section 51 of the Act?

(1 mark)

**QUESTION 5 [21 MARKS]**

5.1 List the grounds of revocation. Give a very brief explanation where a ground refers to another section. \*The other sections need not be discussed at length, only give an overview of what the other section relates to.

(19 marks)

- 5.2 Who may bring an application for revocation and when may such an application be brought? (2 marks)

**QUESTION 6 [14 MARKS]**

- 6.1 For what kind of relief is a plaintiff in proceedings for infringement entitled? (6 marks)

- 6.2 In certain circumstances, a patentee will not be entitled to the relief in proceedings for infringement. Discuss these restrictions, relevant periods concerned, and rights of a potential infringer in terms of section 66. (8 marks)

**QUESTION 7 [2 MARKS]**

- In deciding to restore a patent, the registrar has to be satisfied that certain requirements have been met. What are these requirements. (2 marks)

**QUESTION 8 [6 MARKS]**

- Your client has applied for a patent, the working of which would result in the infringement of a prior patent. Your client is intending to obtain a compulsory licence. In terms of section 55, what should your client prove. (6 marks)

**QUESTION 9 [12 MARKS]**

South African patent application no. 2004/01234 (ZA 2004/1234) was filed on 13 February 2004, accepted on 8 January 2005 and proceeded to grant on 26 March 2005. The patent claims priority from South African provisional patent application 2003/01544 (ZA 2003/01544) filed on 5 March 2003.

South African patent application no. 2005/07765 (ZA 2005/07765) was filed as a national phase application on 17 July 2005. ZA 2005/07765 was based on a PCT patent application with a filing date of 18 February 2004. The PCT patent application claimed priority from US provisional patent application no. 60/073,255 which was filed on 22 February 2003. ZA 2005/07765 was accepted on 24 April 2006 and proceeded to grant on 26 June 2006.

In respect of (1) ZA 2004/01234 and (2) ZA 2005/07765

- 9.1 When is/was the first renewal fee due? (2 marks)
- 9.2 Are extensions available in terms of the renewal fees? (1 mark)
- 9.3 If all the renewal fees are paid, when will the terms of the patents expire? (2 marks)

9.4(a) What was the final deadline for filing a complete patent application from ZA 2003/01544?  
(1 mark)

9.4(b) Would your answer have differed if the priority application was filed in another convention country?  
(1 mark)

9.5 What was the deadline, including any extensions, for filing the national phase patent application based on the PCT patent application?  
(1 mark)

9.6 The inventions disclosed in ZA 2004/01234 and ZA 2005/07765 relate to exactly the same invention. Which patent would be valid against the other in terms of novelty requirements? First set out the relevant section in the Act and then provide your answer.  
(4 marks)

**QUESTION 10 [7 MARKS]**

Your client expresses an interest in filing a PCT application. Advise your client on the advantages and disadvantages of doing so.  
(7 marks)

**QUESTION 11 [10 MARKS]**

Section 90 of the Act nullifies certain conditions in contracts relating to the sale of patented articles or to licences under patents. Elaborate on these nullified conditions.  
(10 marks)

**QUESTION 12 [5 MARKS]**

12.1 What signed documents that are not signed by a patent attorney must be filed with an application for a patent?  
(2 marks)

12.2 Once a complete patent application is accepted what needs to happen?  
(2 marks)

12.3 What is the opposition period for a patent application?  
(1 mark)

**QUESTION 13 [10 MARKS]**

Your client is the holder of a patent and discussed with you the option of sending letters to all his competitors to make them aware of his patent. Other patents of your client have in the past been infringed by some of these competitors, and for this reason your client is adamant that strongly worded letters should be sent to all his competitors. In terms of section 70 of the Act, advise your client.  
(10 marks)