

**PATENT EXAMINATION BOARD  
&  
SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW**

**SOUTH AFRICAN PATENT LAW AND PRACTICE - GROUP 1(b)  
SUPPLEMENTARY/AEGROTAT EXAMINATION**

**31 OCTOBER 2025**

Examiner: M Vatta

Moderator: T Mashabela

Time: 09:00 to 13:00

Total marks: 165

This examination consists of 5 pages (including this cover page).

Instructions and notes:

1. Answer all questions (14 in total).
2. Write neatly and legibly.
3. All references to the Act are references to the South African Patents Act, No. 57 of 1978, as amended.
4. All references to the Regulations are references to the South African Patent Regulations, 1978, as amended.
5. Wherever possible, your answers should refer to the relevant case law, sections of the Act and/or Regulations, the content of the section and/or regulation should be set out and only then should you make a conclusion.

### **QUESTION 1**

Discuss the purpose and underlying principles of the South African patent system, including the nature of the rights conferred by a patent and its economic significance. (10 marks)

### **QUESTION 2**

Explain the intrinsic and extrinsic requirements for patentability under South African law. Refer to the relevant statutory provisions and briefly distinguish between novelty and inventive step. (16 marks)

### **QUESTION 3**

You receive the following e-mail from a foreign associate:

*“Our client, an Indian pharmaceutical company, wishes to file a South African national phase application claiming a method of treatment for hypertension. Please advise whether such claims are permissible”.*

Draft your response to the client with reference to the relevant section(s) of the Act and case law. (10 marks)

### **QUESTION 4**

Explain what constitutes the “state of the art” for the purposes of assessing novelty and inventive step under section 25 of the Act. (8 marks)

### **QUESTION 5**

Your client filed a patent application eight months ago. They have since developed improvements to the invention and now wish to file a new application. Advise fully on the available options to protect the improvements under sections 31, 38 and 51(8) of the Act, and their provisions. (12 marks)

## **QUESTION 6**

Your client's South African patent application has recently been accepted and published in the Patent Journal. The client wishes to amend the claims to overcome prior art cited in another jurisdiction. Advise your client on the procedures and requirements for amendment both before and after grant. (12 marks)

## **QUESTION 7**

7.1 Who is entitled to apply for a patent? (2 marks)

7.2 What restrictions apply to joint patentees? (3 marks)

7.3 Discuss the remedies and provisions available under section 49 of the Act in the event of a dispute as to ownership. (4 marks)

7.4 Explain the formal requirements for assignment of patent rights to be effective against third parties. (3 marks)

7.5 What rights does each patentee have in respect of profits from a jointly owned patent? (2 marks)

## **QUESTION 8**

8.1 Your client, a global technology company, informs you that their patent has lapsed due to non-payment of renewal fees. Advise your client on the process and requirements for restoration under section 47 of the Act, including timelines and possible outcomes. (10 marks)

8.2 Discuss the limitations imposed on a patentee of a restored patent in terms of section 48. (9 marks)

## **QUESTION 9**

9.1 Explain the types of relief available to a patentee in infringement proceedings. (5 marks)

9.2 Discuss, with reference to case law, the test for determining infringement. (4 marks)

9.3 Under what circumstances will certain acts not amount to infringement in terms of section 69A of the Act? (4 marks)

9.4 What are the consequences of unjustified threats of infringement proceedings? (3 marks)

## **QUESTION 10**

List and briefly explain the grounds upon which a patent may be revoked. Indicate whether these grounds are exhaustive and justify your answer. (16 marks)

## **QUESTION 11**

Any interested party may apply for a compulsory licence under certain circumstances. Explain when a patent is deemed to be abused, who may bring the application, and what restrictions apply to the grant of such a licence. (10 marks)

## **QUESTION 12**

12.1 When does the official file for a South African patent application become open to public inspection in each of the following cases:

- (a) where the application claims priority from a convention application;
- (b) where it claims priority from a South African provisional patent application;
- (c) where there is no claim to priority;
- (d) where it is a national phase application claiming foreign priority. (4 marks)

12.2 Calculate the following in respect of a patent filed on 10 March 2020 and granted on 15 June 2021. The patent claims priority to an earlier filed application, dated 25 August 2019.

- (a) first renewal fee due date;
- (b) third renewal fee due date;
- (d) expiry date of the patent.

(3 marks)

### **QUESTION 13**

In terms of section 90 of the Act, certain conditions in licence agreements are deemed null and void. Identify these conditions and explain the policy rationale for each. (10 marks)

### **QUESTION 14**

In terms of section 80 of the Act, the Minister of Trade and Industry (formerly the Minister of Economic Affairs and Technology) has the authority to order the registrar of patents to keep inventions secret in certain circumstances.

14.1 List three of the circumstances. (3 marks)

14.2 Discuss the remedy available to the proprietor of an invention if they have suffered loss or damage by reason of the invention being kept secret. (2 marks)