

PATENT EXAMINATION BOARD

SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW

SOUTH AFRICAN DESIGN LAW AND PRACTICE 2025 – GROUP 1(c)

Paper 1 of 1

26 June 2025

Examiner: J Fiandeiro

Moderator: Adv O Salmon

Time: 4 Hours (240 minutes)

Total marks: 100

This paper consists of 8 pages (including this cover page)

Instructions:

This is a **closed-book examination**. No study or reference material is allowed into the examination venue.

- Answer all the questions.
- Write legibly. Answers that cannot be read will not be awarded marks.
- All other answers must be answered using full sentences.

QUESTION 1

With reference to other registrable forms of IP, namely patents and trade marks, what are the advantages and disadvantages of a registered design? (6)

QUESTION 2

Provide definitions of:

- 2.1. A functional design (3)
- 2.2. An aesthetic design (3)
- 2.3. A set of articles (3)
- 2.4. A traditional design (3)

QUESTION 3

What is meant by an “article” and what are the four features of an “article” that a registered design aims to protect? Please briefly explain what each of these four features mean. (6)

QUESTION 4

With reference to section 14 of the South African Designs Act, what are the novelty requirements for an aesthetic design application and for a functional design application? (6)

QUESTION 5

What is the effect of a registered design? (6)

QUESTION 6

In each of the scenarios below, please provide the renewal dates and the expiry dates:

- 6.1. South African Aesthetic Registered Design no. A2023/09526 for a US client. The application was filed on 18 November 2023, and claimed priority from US 29/558,425 which was filed on 20 May 2023. This design was registered on 21 April 2024, and the notice of registration was published in the Patent Journal on 27 June 2024. (3)
- 6.2. South African Functional Registered Design no. F2024/02846 for a South African client. The application was filed on 18 April 2024, was registered on 17 November 2024, and the notice of registration was published in the Patent Journal on 29 January 2025. (3)

- 6.2.1. How do these dates differ if the article covered by F2024/02846 claims a release date of 5 January 2024? (3)

QUESTION 7

You receive the following query from a client:

“I have devised a new range of clothes pegs, as shown below.



My pegs will initially be available in 3 different colours. These pegs are largely based on the traditional wooden clothes pegs shown below, but I have modified the arms. In particular, the end of each arm, where a user grips the clothes peg, includes gripping ridges to improve gripping, and the other end has a recess which I think looks nice. I have conducted extensive searching, and have not found any pegs that look even remotely similar to mine.



However, to be honest, funds are a bit tight at the moment, but I would like to protect my pegs as best possible. Also, is it possible to protect the 3 colours I will be using (and other colours down the line)? Finally, I am thinking of making a plastic version of the traditional wooden clothes pegs; it will look exactly the same, but will simply be made out of plastic. Can I protect this peg as well?”

Please advise your client fully, with reference to case law.

How would your advice differ if your client has an investor, who has set aside significant funds for design applications? **(10)**

QUESTION 8

You receive the following query from a client:

"I was paging through a few recent Patent Journals, and I came across the following 2 registered designs. Both designs appear to cover the same article. Why are there 2 separate design registrations? **(4)**

21: A2024/00604 22: 2024-06-20 23:
43: 2025-01-06
52: Class 12. 24: Part A
71: FERRARI S.P.A.
33: IB 31: 142158 32: 2023-12-22
54: Car
57: The design relates to a car. The features of the
design are those of shape and/or configuration
and/or pattern and/or ornamentation.



FRONT PERSPECTIVE VIEW

21: A2024/00605 22: 2024-06-20 23:

43: 2025-01-06

52: Class 21. 24: Part A

71: FERRARI S.P.A.

33: IB 31: 142149 32: 2023-12-22

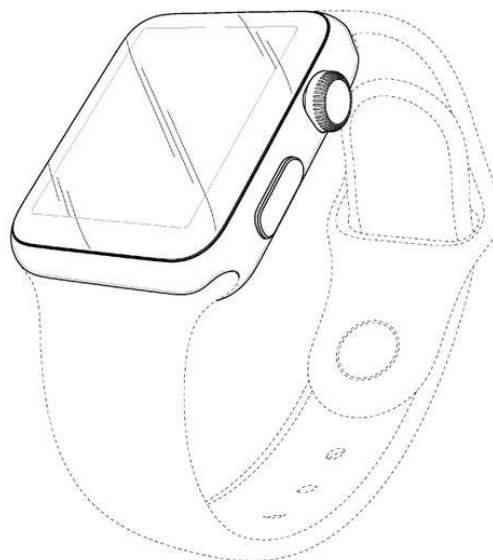
54: Toy Car

57: The design relates to a toy car. The features of the design are those of shape and/or configuration and/or pattern and/or ornamentation.



FRONT PERSPECTIVE VIEW

I also noticed several designs with dotted out sections, such as the one shown below. What is the purpose of dotting out portions of a design? (3)



QUESTION 9

There are several exclusions listed in the Designs Act. These include:

No feature of an article in so far as it is necessitated solely by the function which the article is intended to perform ... shall afford the registered proprietor of an aesthetic design any rights in terms of this Act in respect of such feature.

and

In the case of an article which is in the nature of a spare part for a machine, vehicle or equipment, no feature of pattern, shape or configuration of such article shall afford the registered proprietor of a functional design applied to anyone of the articles in question, any rights in terms of this Act in respect of such features.

Pick one of the above exclusions and discuss in detail, with reference to case law. (10)

QUESTION 10

In an application for a registered design, several statements may be included, namely an explanatory statement, a definitive statement and a statement of features (also known as publication particulars). What is the purpose of each of these statements and which of these statements are optional? (4)

QUESTION 11

Consider the amendments shown below to definitive statements. Deletions are shown by struck-through text, and additions are shown by underlined text.

- 11.1. The features of the design for which protection is claimed are those of the shape ~~and/or~~ and configuration ~~and/or~~ and pattern ~~and/or~~ and ornamentation of a container, substantially as illustrated in the accompanying representations.
- 11.2. The features of the design for which protection is claimed are those of the shape ~~and~~ or configuration ~~and~~ or pattern ~~and~~ or ornamentation of a container, substantially as illustrated in the accompanying representations.
- 11.3. The features of the design for which protection is claimed are those of the shape and/or configuration and/or pattern and/or ornamentation of a ~~container~~ crate, substantially as illustrated in the accompanying representations.
- 11.4. The features of the design for which protection is claimed are those of the shape and/or configuration and/or pattern and/or ornamentation of a chair, substantially as illustrated in the accompanying representations. ~~Arms marked "A" in the representations do not form part of the design and are disclaimed.~~

- 11.5. The features of the design for which protection is claimed are those of the shape and/or configuration and/or pattern and/or ornamentation of a chair, substantially as illustrated in the accompanying representations. Arms marked "A" in the representations do not form part of the design and are disclaimed.

Which of the above amendments are allowable in respect of a registered design? **(3)**

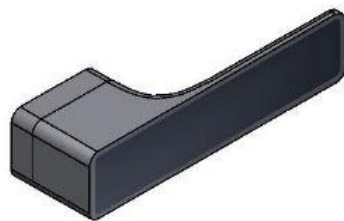
QUESTION 12

The Designs Act provides that, where a design registration has lapsed owing to non-payment of renewal fees, application may be made for its restoration in the prescribed manner.

- 12.1. State and briefly explain or exemplify the criteria that must be satisfied to be eligible for restoration? **(4)**
- 12.2. Briefly explain what the prescribed manner is in which the application for restoration must be made. **(2)**

QUESTION 13

Your new client, Sigma Design Studios (Pty) Ltd, is the owner of South African registered design number A2020/01537 entitled DOOR HANDLE. Your client has been making and selling furniture accessories for over 20 years. Drawings of the registered design are shown in Figure 1 below.



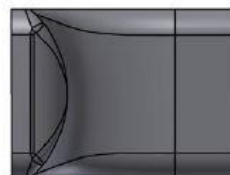
1



2



3



4

Figure 1: Registered design

Your client has recently become aware of the product shown in Figure 2 below, which is being advertised for sale by a local competitor. This product is also being sold by several large local retailers, some of whom are longstanding customers of your client. Your client is considering taking legal action against the local competitor and/or the large local retailers.

**Figure 2 (potentially infringing article)**

As a first step, you inspect the designs register and determine that A2020/01537 is currently in force. In addition, the definite statement of this design reads as follows:

The features of the design for which protection is claimed are those of the shape and/or configuration and/or pattern and/or ornamentation of a door handle substantially as shown in the accompanying representations.

A prior art search also reveals the prior art door handle shown in Figure 3, which was in the public domain one year before the filing date of A2020/01537.

**Figure 3: Closest prior art**

In light of these facts, advise your client as to whether, in your opinion, the Figure 2 product infringes A2020/01537, and whether they can take action against the local competitor and/or the local retailers. (15)

TOTAL: 100