

PATENT EXAMINATION BOARD

SOUTH AFRICAN PATENT LAW AND PRACTICE – GROUP 1(B)

23 JUNE 2026

Examiner: M Vatta

Moderator: T Mashabela

Time: 09:00 to 13:00

Total marks: 180

This examination consists of 7 pages (including this cover page).

Instructions and notes:

1. Answer all questions (15 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.
6. Where a question calls for advice to a client, frame your answer as though you are the client's patent attorney.

QUESTION 1

Provide a brief explanation of what a patent is and discuss the nature of the right conferred by a patent with reference to sections 45(1) and (2) of the Act. (8 marks)

QUESTION 2

With reference to section 25(1) of the Act, set out the extrinsic requirements (the legal standards) that an invention must meet to be patentable. (6 marks)

QUESTION 3

- 3.1 In terms of section 25(2) of the Act, list the things that shall not be an invention for the purposes of the Act. (7 marks)
- 3.2 How are these exclusions qualified by section 25(3) of the Act? Give a practical example. (4 marks)
- 3.3 In addition to section 25(2), further exclusions from patentability are provided in sections 25(4) and 25(11) of the Act. Set out the substance of these provisions. (8 marks)

QUESTION 4

Your client, Dr Amara Ndlovu, is a scientist and she has developed a novel biodegradable polymer coating that significantly extends the shelf life of fresh produce. The coating is derived from an extract of an indigenous South African plant. Dr Ndlovu approaches you for advice.

- 4.1 Dr Ndlovu filed a patent application accompanied by a complete specification five months ago. She has since made a significant improvement to her formulation - an additional compound that enhances the coating's UV resistance. She now wishes to protect this improvement. Advise Dr Ndlovu on her available options in terms of the Act. (8 marks)

- 4.2 Given that the invention is derived from an indigenous biological resource, what additional requirement must be complied with in terms of section 30(3A) of the Act before acceptance of the application? (4 marks)
- 4.3 The Registrar has accepted the complete specification and issued a notice of acceptance. What must Dr Ndlovu do to ensure that the patent proceeds to grant, and within what period? (2 marks)

QUESTION 5

With reference to sections 25(5), 25(6), 25(7) and 25(8) of the Act, explain in detail what constitutes "the state of the art" for the purposes of evaluating whether an invention is new. (12 marks)

QUESTION 6

- 6.1 Referring to case law, set out the test applied by the courts for assessing the novelty of an invention. State whether it is possible to mosaic prior art documents when assessing novelty. (6 marks)
- 6.2 Referring to case law, set out the test applied by the courts for assessing the inventive step of an invention. State whether it is possible to mosaic prior art documents when assessing inventive step. (6 marks)

QUESTION 7

You receive an e-mail from a foreign associate:

"Dear Colleagues

Our client, a European pharmaceutical company, wishes to enter the national phase of a PCT patent application in South Africa. The international application includes the following claims:

Claim 1: A method of treating rheumatoid arthritis in a human patient, comprising administering a therapeutically effective amount of Compound Z.

Claim 2: Use of Compound Z for the manufacture of a medicament for the treatment of rheumatoid arthritis.

Please advise on the acceptability of each claim under South African patent law."

Write a response to the foreign associate explaining the acceptability of each claim in South African law, citing the relevant statutory provisions and any applicable case law. (10 marks)

QUESTION 8

Your client has a granted South African patent and wishes to amend the claims of the complete specification to narrow their scope in view of prior art cited in a corresponding European application. The acceptance of the South African patent application has already been published in the Patent Journal. Advise your client on the requirements and procedure for amending the specification, referring to the relevant sections of the Act and Regulations. (8 marks)

QUESTION 9

You act on behalf of AquaPure Technologies (Pty) Ltd, a South African start-up that has developed a novel water purification membrane. The company is the patentee of South African Patent No. 2022/06789. The client instructs you that it has discovered a competitor, CleanFlow (Pty) Ltd, manufacturing and selling a water purification membrane that the client believes infringes its patent.

9.1 Set out the steps you would follow in determining whether CleanFlow's membrane infringes the patent. Refer to the relevant case law regarding the determination of infringement. (5 marks)

9.2 What relief may the patentee seek in proceedings for infringement? (5 marks)

- 9.3 CleanFlow claims that it did not intend to infringe the patent. Advise whether ignorance constitutes a valid defence to an infringement action. (1 mark)
- 9.4 Section 44(4) of the Act imposes a restriction on instituting infringement proceedings within a certain period after the sealing of the patent. Explain this restriction and how it may be overcome. (3 marks)

QUESTION 10

Your client, GreenBuild Solutions (Pty) Ltd, has received a strongly worded letter from EcoBrick Holdings (Pty) Ltd, the patentee of South African Patent No. 2019/04567. The letter demands that GreenBuild immediately cease the manufacture and sale of one of its construction products, failing which EcoBrick "will institute immediate legal proceedings for patent infringement". The letter was also sent to two of GreenBuild's major customers.

GreenBuild is confident that its product does not infringe the patent and wishes to take legal action against EcoBrick for the threat.

- 10.1 With reference to section 70 of the Act, what relief is available to a person who receives an unjustified threat of infringement proceedings? (5 marks)
- 10.2 What defence is available to the person making the threat, and what burden rests on that person? (3 marks)
- 10.3 In terms of the proviso to section 70(1), when will a communication not be deemed to be a threat of proceedings? (2 marks)

QUESTION 11

The Act provides for an exhaustive list of grounds on which a patent may be revoked. With reference to section 61 of the Act, list and briefly explain six of these grounds. (12 marks)

QUESTION 12

Any interested person may seek to obtain a compulsory licence to an invention which is the subject of a patent where there is an abuse of rights.

12.1 Referring to section 56 of the Act, set out the conditions under which the rights in a patent shall be deemed to be abused. (10 marks)

12.2 Discuss three restrictions or conditions that are imposed on a compulsory licence granted under section 56. (6 marks)

QUESTION 13

Discuss, compare and contrast the findings and reasoning of the court in the following two cases:

- *University of Pretoria v Registrar of Patents 2011 BIP 41 (CP)*
- *Mu Mecanicos Unidos S.A.S. v The Registrar of Patents [2023] ZAGPPHC 761*

In your answer, explain the respective approaches of the two courts to the interpretation of the Registrar's discretionary power in terms of section 16(2) of the Act, with particular reference to section 42(3) of the Act. (10 marks)

QUESTION 14

Section 90 of the Act prohibits a patentee from attempting to secure rights contractually which fall outside the rights granted by a patent.

14.1 Set out any four conditions in a contract relating to the sale of a patented article or to a licence under a patent that shall be null and void in terms of section 90(1) of the Act. (8 marks)

14.2 What exceptions to the above are preserved by section 90(2)? (3 marks)

QUESTION 15

South African Patent No. 2025/06999 (ZA 2025/06999) was filed on 21 August 2025, accepted on 24 March 2026, and proceeded to grant on 27 May 2026. The patent claims

priority from South African Provisional Patent Application No. 2024/03456 (ZA 2024/03456) filed on 11 April 2025.

South African Patent No. 2025/11165 (ZA 2025/11165) was filed as a national phase patent application on 23 December 2025 from a PCT patent application with an international filing date of 11 March 2025. The patent claims priority from Chinese Patent Application No. 202510200053.6 filed on 24 February 2025. ZA 2025/11165 was accepted on 20 January 2026 and proceeded to grant on 25 March 2026.

Answer the following questions by providing the dates in full where relevant:

- 15.1 When will the first renewal fee be due on each patent? (2 marks)
- 15.2 When are the third renewal fees due on each patent? (2 marks)
- 15.3 Are extensions of time available for paying renewal fees? If so, state the period of extension available. (2 marks)
- 15.4 If all renewal fees are paid on time, when will each patent expire? (2 marks)
- 15.5 What was the final deadline, including possible extensions of time, for filing a complete patent application from the provisional patent application ZA 2024/03456? (2 marks)
- 15.6 Would your answer to 15.5 differ if the priority application had been filed in the United Kingdom instead of South Africa? If so, provide the final deadline. (4 marks)
- 15.7 What was the deadline for filing the national phase patent application for the PCT application? Provide the deadline both with and without any extensions of time. (4 marks)