PATENT EXAMINATION BOARD

SELECTED INTERNATIONAL PATENT LAWS, SYSTEMS, CONVENTIONS AND TREATIES – GROUP 2(d)

28 JUNE 2024

09h00 – 13h00

Examiner: R.M.P. Moore

Moderator: K.C. Truter

Time: **4 Hours**

Total marks: **200**

This paper consists of **5** pages

(including this cover page and an answer sheet for Question 1)

Instructions:

- Answer **all** questions.
- Write legibly.

Question 1 Refer to the Answer Sheet appended to the end of this question paper. Complete Tables 1A and 1B by inserting one of the given symbols into each empty table cell. An example row is given for South Africa. Remember to detach your completed Answer Sheet from the question paper and enclose it in your answer book.	**(20)**
Question 2 2.1 In terms of 35 USC 101, what subject matter is eligible for patenting in the United States? (6) 2.2 List the three judicial exceptions to patent eligibility in the United States and explain under which limited circumstance these exceptions may still qualify as eligible subject matter. (4)	**(10)**
Question 3 Discuss the information filing requirement in the United States (US). Mention the type of information which must be disclosed and by whom it must be disclosed. Set out the requirements for the Information Disclosure Statement (IDS), including the details which it must disclose, any documents which must accompany it, and the time limit for its submission.	**(12)**
Question 4 Set the following out fully in their current form: - **35 USC 102(a)** including both of its subsections**;** and - **35 USC 102(b)** with subsection **(1)** only.	**(27)**
Question 5 Which of the following four categories of subject matter are eligible for patenting in Japan (JP) and which are not?: • Methods of treatment • Plant & animal varieties • Computer programs • A new use of a known foodstuff	**(4)**
Question 6 Discuss the conditions for extending the patent term in China (CN) as compensation for long grant procedures.	**(6)**
Question 7 Discuss the process of substantive patent examination in China (CN). Include information on the request for examination and possible deferral of examination, communications which may	

be received from the patent office (CNIPA), statutory time limits (taking account of the recent law change relating to the 15-day delivery period), possibilities for appeal, the position relating to opposition, and the deadline for filing divisional applications.	**(21)**
Question 8 On 1 July 2024 you enter the national phase in India (IN) of a PCT application that you filed on behalf of your client. The IN application has an earliest priority date (epd) of 1 January 2022. Your client consults with you and asks you to explain the main aspects of the prosecution and possible opposition procedures in India. Your explanation must take into account the law changes which became effective on 15 March 2024. Include a discussion of the revised requirements and timelines for submitting Form 3 statements disclosing the particulars of corresponding applications filed outside India in terms of Section 8(1) of the Indian Patents Act.	**(22)**
Question 9 9.1 What is patentable and what is not patentable in a standard Australian (AU) patent? It is not necessary to discuss extrinsic legal requirements such as novelty, inventive step, or industrial applicability. (7) 9.2 When must examination of an Australian convention application be requested? (5)	**(12)**
Question 10 10.1 You have filed and are prosecuting an application for a patent under the European Patent Convention (EPC) at the European Patent Office (EPO) on behalf of your client. Assuming that you have successfully addressed all outstanding objections and rejections raised in a recent official action, your client now requires your advice on future steps to be expected and undertaken and their deadlines, until the patent that will be granted is validated in each of Great Britain (GB), Spain (ES) and the Netherlands (NL). (17) 10.2 What is the deadline for requesting a Unitary Patent from the European Patent Office after publication of the grant in the European Patent Bulletin? (1) 10.3 What are the requirements for translation when requesting a Unitary Patent? (6) 10.4 What development relating to the 10-day mailing (delivery) period for calculating the date of receipt of EPO notifications became effective from 1 November 2023? (1)	**(25)**

Question 11 11.1 Which regional African system provides for a single (supranational) patent that automatically covers all the member countries? (1) 11.2 Name two regional systems which do not result in a single patent automatically covering all the member states but where designation is required. (2)	**(3)**
Question 12 Discuss the benefits and advantages of filing an international application under the Patent Cooperation Treaty (PCT) instead of filing direct national or regional patent applications.	**(25)**
Question 13 Your client is the applicant of a South African provisional patent application having a priority date of 31 August 2023. Your client wants protection in the following countries only, Malawi, Mozambique, Namibia, Uganda, Zambia and Zimbabwe. Due to time and cost considerations, your client does not want to file a PCT application or national applications in the countries concerned. Advise your client on another reliable and cost-effective approach to obtain protection in the above countries. Do not deal with the filing requirements but explain to your client the procedure from filing until publication and grant. Assume one official action will issue and that it will be overcome by you and your client.	**(12)**
Question 14 What law change relating to patent examination did the *Organisation Africaine de la Propriété Intellectuelle* (OAPI) introduce in 2023?	**(1)**

APPROVED BY ME:

Rory M.P. Moore: Examiner

18 June 2024

APPROVED BY ME:

K. Colin Truter: Moderator

18 June 2024

N.B. See next page for ANSWER SHEET for Question 1

ANSWER SHEET

For Question 1

Insert one of the given symbols into each empty table cell of Tables 1A and 1B below. An example row is given for South Africa.

N.B. *Detach your completed sheet from the Question Paper and enclose it in your answer book.*

TABLE 1A

Insert one of the following symbols into each empty cell of Table 1A in your answer paper:

- **Y** Yes
- **N** No
- ▲ Encouraged "wherever appropriate"

Patent Office	Multiple Dependent (MD) Claims			Two-Part Claim Form Required?	Reference Numerals Required in Claims?	Omnibus Claims Allowed?	1-Year Novelty Grace Period Allowed?
	MD claims allowed?	MD-MD claims allowed? *	Fee Multiplier? **				
South Africa	**Y**	**Y**	**N**	**N**	**N**	**Y**	**N**
China							
EPO * **							
Japan							
USA							

* **MD-MD** means a multiple dependent claim which is dependent on another multiple dependent claim

** **Fee Multiplier** means an additional fee payable for each additional higher-ranking claim mentioned in a multiple dependent claim

*** **EPO** means the European Patent Office (14)

TABLE 1B

Insert one of the following symbols into each empty cell of Table 1B in your answer paper:

- **Y** Yes
- **N** No
- ▲ Depends on the national law of each country

Patent Office	Can you designate this Patent Office in a PCT patent application?	Is Absolute Novelty Required?	Does this Patent Office provide a <u>supranational</u> Patent?	Are "Methods of Treatment" patentable at this Patent Office?
ARIPO				
EPO				
OAPI				

(6)