

PATENTS EXAMINATION BOARD

PRACTICAL LEGAL PROBLEMS

EXAMINATION: JUNE/JULY 2026

PAPER 2

EXAMINERS: A LEWIS
T BALL

MODERATOR: J WHITTAKER

DURATION: READING TIME – 30 MINUTES
EXAMINATION TIME – 3 HOURS
TOTAL: 3 HOURS 30 MINUTES

NOTES TO CANDIDATES:

1. Attached to the paper are copies of the following documents:
 - (i) A copy of the Patents Act No. 57 of 1978;
 - (ii) A copy of the Patent Regulations 1978; and
 - (iii) A copy of the Uniform Rules of the High Court under the Superior Courts Act 10 of 2013 (Rules 6, 14, 17, 18, 19, 21, 22, 23, 24, 25, 30, 35, 36, 37 and 63).
2. Each candidate is also allowed access to (1) one dictionary during the exam.
3. This paper comprises 4 pages in total, made up of Questions 1 to 5 (100 marks).
4. Where appropriate, reference should be made to case law.

QUESTION 1:

(25 marks)

You receive the following letter from your client:

“Dear Patent Attorney

We are the owner of South African Patent No. 2018/1234.

The patent was filed on our behalf by our previous patent attorneys, SA Patent Services, on 1 March 2018. The patent was subsequently accepted and granted and we paid the renewal fees for several years, the last payment being in February 2023.

In early 2024 our company experienced serious cash flow issues and almost went into business rescue because of late payments by one of our biggest creditors. At that stage and in order to curb expenses we tried to cut all costs where we could and decided to also defer the payment of the 2024 annual renewal fee for this patent. At the time we understood from SA Patent Services that we could belatedly pay the renewal fee together with a small late payment penalty for every month that the renewal payment was late. We were not aware of any deadline by when the payment had to be made.

In about September 2025 when our cash flow situation had slightly improved we again contacted SA Patent Services to renew the patent.

At that stage and, to our great surprise, SA Patent Services informed us that the patent had apparently “lapsed” and that the reinstatement costs were significantly more than the expected renewal and penalty fees. The estimated costs at that time were simply beyond our means and although we wanted the patent to continue we could not afford the costs at the time.

Over the last few months we have tried to save enough funds to afford the process. Also demand for our products has increased over the last few months. Our finances have improved and we are now in the position to pay the additional costs to have the patent reinstated.

Can you please assist in this regard?

*Mr Joe Soap
Managing Director
ABC Products (Pty) Ltd"*

You investigate the status of the patent and ascertain that it did indeed lapse in 2024.

Advise your client fully on a possible course of action regarding the above query.

QUESTION 2: **(20 marks)**

Draft an affidavit for filing in support of a restoration application based on the above facts. You may omit the closing section relating to the authentication by the Commissioner of Oaths.

QUESTION 3: **(20 marks)**

You receive the following letter from Flug Meisters GmbH, Frankfurt, Germany:

"Dear Sirs,

We are considering entering into an agreement with the University of Johannesburg in terms of which they will conduct research and development in regard to Unmanned Arial Vehicles which will be funded by us. Our attitude is that we own what we pay for and we will want assignment of all intellectual property resulting from the contract.

I have been informed by a colleague that there are problems with IP cross border transactions in South Africa, in particular with universities, that are not a problem in most other countries.

If this is the case can you please give us a summary of the relevant law and an indication of any issues that would be particularly problematic.

*Yours sincerely
A Schmidt
Legal Advisor*

Flug Meisters GmbH

Advise your client of any additional regulatory requirements or legislation that may be relevant in assignment of the IP rights.

QUESTION 4:

(25 marks)

You receive the below correspondence from your client. Advise your client accordingly.

"I refer to our consultation last week regarding the new provisional patent application which we intend to file for the new chicken feed product which our employee and research head Mr Andy Smit developed over the last two years.

Mr Smit resigned today with immediate effect and apparently intends to enter into competition with us in the chicken feed business. The only provision in his employment contract regarding intellectual property is in clause 14 which reads as follows:

"The employee undertakes to transfer all inventions and designs made by him to the employer."

Unfortunately, there is no restraint of trade provision in his employment contract.

We have also now learnt that Mr Smit has applied for a South African provisional patent in his own name for the chicken feed and unbeknown to us has disclosed the chicken feed formulation last week at a Farmers' Day in Pietermaritzburg!

What can we do to secure our rights in the chicken feed invention and prevent Mr Smit from using our chicken feed in competition against us?"

QUESTION 5:

(10 marks)

Your client advises you that their biggest customer has received a Letter of Demand from a competitor ABC Products (Pty) Ltd. In the letter ABC Products makes claims that your client's product infringes ABC Products' ZA patent. The ZA patent is clearly identified in the letter.

The customer is not interested in getting involved in any patent disputes and is in the process of cancelling all pending and future orders from your client. They will in future only order from ABC Products.

Your client is very concerned and requires your advice on what it can do to address the situation. Please advise on options available to your client and provide practical advice to your client.