

PATENT EXAMINATION BOARD RULES

The Patent Examination Board, established in terms of section 21 of the Patents Act, 1978 (Act No 57 of 1978) has, in terms of section 21(3)(a) of the Act, made the following rules and prescribed the following syllabuses in regard to the prescribed examination referred to in section 20 of the Act.

DEFINITIONS

1. In these rules, unless the context indicates otherwise -
 - (i) “Board” means the Patent Examination Board established under section 21 of the Act;
 - (ii) “candidate” means a person who presents himself/herself to the Patent Examination Board with the intention of enrolling for or who has already enrolled for the Patent Examinations;
 - (iii) “Chairperson” means the Chairperson of the Board appointed in terms of section 21 (2)(a) of the Act;
 - (iv) “examination” means the prescribed examination referred to in section 20 of the Act;
 - (v) “journal” means the patent journal referred to in section 14 of the Act;
 - (vi) “office” means the patent office established under section 5(1) of the Act;
 - (vii) “the Act” means the Patents Act, 1978 (Act No. 57 of 1978); and
 - (viii) “the previous regulations” means the Patent Examination Regulations of 2012 published in the Patent Journal of March 2012 and as amended and published in the Patent Journal of July 2015, January 2016 and September 2022.

EXAMINATIONS

2. (a) The examination shall be held during or around mid-year, on such dates as the Chairperson may determine, and the Board may, in its discretion and having regard to, inter alia, the number of candidates, conduct the examinations in any one of three centres, namely, Cape Town, Durban and Pretoria, or such other centre as it

may determine; and

- (b) The examination dates shall be made known to the candidates enrolled for the examination, by written notification or by publication in the journal or on **the dtic** website.

CONDITIONS FOR ENROLMENT

- 3. Only candidates who qualify in terms of at least one of the following criteria shall be entitled to enrol for the examinations:
 - (a) a candidate in possession of a technical or scientific diploma or degree from a university or university of technology, involving at least a three-year course of study;
 - (b) a candidate in possession of any technical or scientific qualification, which in the opinion of the Board is sufficient to enable the candidate to meet the requirements of the patent examinations; or
 - (c) any candidate who has adequate practical experience in a technical or scientific field, which in the opinion of the Board, is sufficient to enable the candidate to meet the requirements of the patent examinations.
- 4.
 - (a) Every candidate shall, on or before the thirty-first (31) day of January of the year in which he/she proposes to sit for any examination, apply to the Board, on a form available from **the dtic** website or as otherwise prescribed on **the dtic** website, to be enrolled as a candidate;
 - (b) A candidate shall submit to the Board, on first enrolment, certified copies of his/her qualifications and an application for any exemption to which he/she may consider himself/herself entitled, stating his/her proposed course of study;
 - (c) A candidate may be exempted by the Board from interpretation of drawings in rule 10 on the basis of any engineering or other appropriate qualification or practical experience which, in the opinion of the Board, is sufficient to enable the candidate to read and interpret drawings; and

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- (d) Late entries may be approved by the Board on good cause shown.
5. A candidate who fails to pass or obtain an exemption from all of the subjects in Group 1 of rule 9 within a period of four calendar years after first enrolling for the examination shall not be allowed to enrol for any further examination of the Board except with the permission of the Board.
6. A candidate who fails to pass or obtain an exemption from all of the subjects in Group 2 of rule 9 within a period of four calendar years after first enrolling for any Group 2 subject shall not be allowed to enrol for any further examination of the Board except with the permission of the Board.
7. Except with the permission of the Board, no candidate shall be allowed to enrol for more than four subjects in any one year.
8. Except where the Board otherwise permits, a candidate shall have passed, or been exempted from all the subjects in Group 1 of rule 9 before the candidate may enrol for subjects (d), (e), (f) and (g) in rule 9.

SUBJECTS FOR EXAMINATION

9. The examination shall be conducted in the following subjects:

GROUP 1

- (a) Legal framework for the protection of intellectual property in South Africa, with a focus on trade marks, copyright, plant breeders' rights and international treaties relevant to patent law
- one four-hour paper;
- (b) SA patent law and practice
- one four-hour paper;

- (c) SA design law and practice
 - one four-hour paper.

GROUP 2

- (d) Selected international patent laws, systems, conventions and treaties
 - one four-hour paper;
- (e) The drafting of patent specifications
 - two four-hour papers;
- (f) Practical legal problems with regard to patents
 - two three-hour papers;
- (g) Patent attorney's practice
 - one four-hour paper; and
 - an oral.

INTERPRETATION OF DRAWINGS

10. (a) Candidates will be required to have a certain level of competence in interpretation of drawings. Candidates who are not exempt will be required to attend a one-day workshop run by the course convenor of this subject; and
- (b) There will be no formal written examination for interpretation of drawings. At the end of the one-day workshop, the convenor will test the level of competence of the candidate through a practical exercise. The course convenor may prescribe additional practical exercises for any candidate who is found, at the end of the one-day workshop, not to have the required level of competence. After the completion of such additional practical exercises, the candidate's ability can again be tested by the convenor.

INSTRUCTION

11. Course convenors will be appointed for each subject and will be responsible for:
- (a) Presenting a comprehensive overview of the subject content to candidates as determined by the Board; and
 - (b) Assisting candidates and providing guidance on an ad hoc basis.

APPOINTMENT OF COURSE CONVENORS, EXAMINERS AND MODERATORS

12. (a) The Board will call for nominations of course convenors, examiners and moderators by publishing a notice in the Government Gazette, the Patent Journal or other appropriate legal publications; and
- (b) The Board shall appoint for a period of three years, subject to annual review, a course convenor, an examiner and a moderator in respect of each of the subjects in Group 1 and Group 2 of rule 9 and the Chairperson shall advise course convenors, examiners and moderators of their appointment. Where appropriate, the course convenor and the examiner can be the same person.

SYLLABUSES FOR EXAMINATION

13. The syllabuses for the subjects set out in rule 9 shall be as follows:

GROUP 1 SUBJECTS

- (a) An introduction to the different forms of intellectual property, with a focus on South African law and practice relating to trade marks, copyright, plant breeders' rights, and selected international treaties relevant to patent law;
- (b) A study of the Patents Act 1978 (as amended) and the regulations promulgated thereunder. The following topics, together with selected case law that demonstrates the principles applicable, will be included:

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- (i) patentable inventions, novelty and obviousness;
 - (ii) administrative provisions;
 - (iii) the patent application and grant;
 - (iv) effect, duration and maintenance;
 - (v) grounds for revocation and infringement;
 - (vi) corrections and amendments; and
 - (vii) general (miscellaneous sections such as licences, assignments and secret inventions); and
- (c) A study of the Designs Act of 1993 (as amended) and the regulations promulgated thereunder. Reference might be made to the Designs Act of 1967. The following topics, together with selected case law that demonstrates the principles applicable, will be included:
- (i) what is a registered design?
 - (ii) novelty;
 - (iii) effect, duration and maintenance;
 - (iv) ownership;
 - (v) application procedures;
 - (vi) infringement, revocation and surrender; and
 - (vii) general (miscellaneous provisions such as licences and restoration).

GROUP 2 SUBJECTS

- (d) An introductory study of selected international patent laws, systems, conventions and treaties. The emphasis will be on a comparison of material provisions of these laws, systems, conventions and treaties with relevant provisions of the South African Patents Act. The following patent laws, systems, conventions and treaties are included:

the patent systems and the patent laws of foreign, regional and international jurisdictions including the United States of America, Australia, India, Japan, China, Canada, the European Patent Convention, Organisation Africaine de la Propriété Intellectuelle (OAPI), African Regional Intellectual Property Office (ARIPO), and the Patent Cooperation Treaty (PCT), in respect of patentable

subject matter, novelty requirements, applicants, filing requirements, prosecution, term and maintenance fees;

- (e) In the first paper, candidates will be provided with a description of two inventions and will be required to write an introduction identifying the difficulty of the prior art, and no more than ten claims for each invention. In the second paper, candidates will be required to draft a South African complete patent specification in respect of an invention described to them;
- (f) Candidates will be set practical legal problems on the interpretation of patent specifications, the infringement of patents, the amendment of patents, the validity of patents and the ownership of inventions, and will be required to draft appropriate pleadings and give opinions; and
- (g) Candidates will be examined on their competency to deal with questions of practice under the laws relating to patents in South Africa, for example, the granting of a patent, the revocation of patents, restoration, assignment and licensing (including compulsory licences), infringement of patents, the practice of the Court of the Commissioner of Patents, relevant High Court and Supreme Court of Appeal rules, and application of decided patent cases.

INTERNSHIPS

- 14. It is strongly recommended that each candidate serve an internship of between three to six months at a patent law firm or a period of three to six months at the Companies and Intellectual Property Commission (CIPC).

CONDUCT OF EXAMINATION

- 15. (a) The examiner(s) shall be responsible for setting the required examination paper(s) in the subject concerned, which shall be submitted to the moderator to be moderated. The examiner(s) shall also be responsible for marking the examination

scripts, and for allocating marks and symbols as provided in rule 16(a);

- (b) The moderator shall be responsible for evaluating the examination paper(s) when it is (they are) submitted to him or her in terms of paragraph (a) of this rule and for evaluating the marks and symbols awarded by the examiner(s) in respect of the examination scripts;
- (c) The examinations for the Group 1 subjects and for subjects (d) and (g) in Group 2 will be closed book examinations. The examination papers for Group 1 subjects will be structured to include questions that require one word/one sentence answers (one mark questions), short questions (5-10 marks) and essay-type questions (15-25 mark questions). The Board will satisfy itself that the examination paper is balanced and as far as possible tests the candidates' knowledge of a substantial part of the syllabus;
- (d) Candidates writing the two four-hour papers for subject (e) in rule 9 will be given two extra hours within which to complete each paper. The only materials that candidates will be entitled to bring into the examination venue are one or more dictionaries. For the purposes of marking, the second paper will be divided into two main sections:
 - (i) the claims, to which 50% of the marks will be allocated, and
 - (ii) the rest of the specification, to which the remaining 50% of the marks will be allocated.

In order to obtain a pass for this paper, candidates must obtain not less than 40% for each of these two sections;

- (e) In respect of subject (f) in rule 9, candidates will be provided with copies of the Supreme Court Act, the Uniform Rules of the High Court, and the Patents Act and regulations; and
- (f) Before the results of any examination are made final, they shall be approved by the Board.

16. (a) The pass mark in each subject shall be 50%.

The following symbols shall be used to reflect the marks awarded to a candidate in each subject:

A - 75% and over

B - 60-74%

C - 50-59%

F - 49% and under (unless a supplementary examination has been allowed)

S - Supplementary examination allowed;

- (b) If a candidate has failed an examination in a subject but has obtained at least 45 per cent in that subject, the Board may allow the candidate to sit for a supplementary examination in that subject;
- (c) If a candidate has enrolled for an examination in a particular subject but is prevented from sitting for it by reason of illness, the Board may upon being provided with an acceptable medical certificate, allow the candidate to sit for an aegrotat examination in that subject, but a supplementary examination will not be awarded if the aegrotat examination is failed;
- (d) A supplementary or aegrotat examination may at the discretion of the examiner(s) or moderator(s) be in the form of a written or an oral examination; and
- (e) Supplementary and aegrotat examinations shall be held at a time and place as soon as possible after the examination in respect of which the supplementary or aegrotat examination was allowed.

17. A candidate who has passed a subject or obtained an exemption from a subject shall retain credit for that subject for a period of five years or for such longer period as the Board may allow. In the event of a candidate not passing or being exempted from every subject provided for by rule 9 within such period of five years, the Board may, in its discretion, either extend such period or require the candidate to sit for one or more of the subjects again. In exercising its discretion in terms of this rule, the Board shall consider the general performance of the candidate, as well as changes in the relevant law, practice or syllabus, and any other circumstances, which it may consider relevant.

MISCONDUCT IN REGARD TO EXAMINATIONS

18. The Board may debar any candidate from writing any examination of the Board or from doing so in a particular year if, after hearing the candidate, the Board is of the opinion that such candidate has misbehaved during, or in connection with, any examination of the Board.

APPLICATION OF THESE RULES

19. These rules replace the previous regulations and shall apply to all candidates enrolling for the examination before or after the date of publication of these rules in the journal.