

EXAMINATION REGULATIONS

IN FORCE AS AT 11 NOVEMBER 2006

**THE SOUTH AFRICAN INSTITUTE OF
INTELLECTUAL PROPERTY LAW**

**DIE SUID-AFRIKAANSE INSTITUUT VAN
INTELLEKTUELE GOEDEREREG**

EXAMINATION REGULATIONS

The Institute has made the following regulations and prescribed the following syllabuses for its examinations referred to in clause 8.3.1 of the Constitution:-

Definitions:

1. In these regulations, unless the context otherwise indicates:
 - (i) "Council" means the Council of the South African Institute of Intellectual Property Law as defined in the Constitution;
 - (ii) "Administrative Officer" means the Administrative Officer of the South African Institute of Intellectual Property Law;

Time of Examinations:

2. (a) The examinations shall be held once a year in or about June or at such other time as the Administrative Officer may determine.
 - (b) The examination dates shall be made known to candidates enrolled for the examinations.

Enrolment for Examinations

3. To be allowed to enrol for the examinations, a candidate shall be a fellow, associate member or student member of the Institute.
 - (a) be in possession of a matriculation exemption.
4. (a) Every candidate shall, on or before the last day of January of the year in which the candidate proposes to sit for any examination, apply to the Council, on a form to be obtained from the Administrative Officer, to be enrolled as a candidate.

- (b) A candidate shall submit to the Council, on first enrolment, proof of academic qualifications, an application for any exemption such candidate may be entitled to and the proposed course of study.
- (c) Late entries, in terms of regulation 4(a), may be approved by the Council on good cause shown, provided such are received by the Administrative Officer by no later than 15 February of that year.

Subjects for Examination

- 5. The examinations shall be conducted in the following subjects:

A. Trade Mark Examinations:

Group 1 subjects:

- (1) S A Trade Mark Law and Practice
- (2) S A Patent Law and Practice
- (3) S A Copyright Law and Practice
- (4) S A Design Law and Practice
- (5) Comparative Study of Selected International Trade Mark Laws and Systems.

Group 2 subjects:

- (1) Trade Mark Law and Formalities (written)
- (2) Trade Mark Litigation and Related matters (written)
- (3) Practical Trade Mark and Related Problems (oral)

B Patent Examinations

The Patent Examinations will be governed in all respects by the Patent Examination Board in terms of the Patents Act No. 57 of 1978 and the Patent Regulations (as amended).

6. With the exception of oral examinations, all examinations shall be of at least 3 hours duration.

Pass Requirements:

7. In order to enrol for the subjects in Group A2, a candidate shall have passed or have been exempted from the subjects in Group A1; provided that Council may, after taking into account any other examination results of a candidate who has passed, or been exempted from, all but one of the Group 1 subjects, permit the candidate to enrol for the Group A2 subjects. Other than in exceptional circumstances, Council shall not permit a candidate to enrol for Group A2 subjects if the candidate has not yet passed or been exempted from subject A1 and subject A5
8. The pass mark in each subject shall be 50 percent. The marks awarded to a candidate in each subject shall be expressed by the following symbols:

A – 75% and above;
B – 6070% to 74%;
C – 5060% to 5969%;
D – 50% to 59%;
F – 49% and lower;
S – supplementary or aegrotat or compassionate examination awarded.
- 8.1 If a candidate has obtained at least 45 percent in a subject in any one year, the Council may, after taking into account any other examination

results of the candidate, allow the candidate to sit for a supplementary examination in that subject, provided that the Council shall not, except in the case of candidates who have been hindered in their studies by circumstances beyond their control, allow a supplementary examination in more than one subject.

- 8.2 If a candidate is prevented from sitting an examination in a subject by reason of illness, or other circumstances beyond the candidate's control, the Council may, upon being furnished with an "acceptable" (as considered by Council in applicable circumstances) medical certificate, and letter from the Employer, or on good cause shown and after taking into account any other examination results of the candidate, allow the candidate to sit an aegrotat or compassionate examination, as the case may be, in that subject. Council and/or the Education Committee have a discretion to request further information and/or evidence regarding the illness.
9. Supplementary, aegrotat or compassionate examinations may be in writing or oral at the discretion of the Council.
10. Supplementary examinations, and any aegrotat or compassionate examination that may be approved by Council, shall be held at a time and place determined by the Administrative Officer.
11. Should the Council or the Institute in general meeting decide that the examinations in one or more of the subjects prescribed in terms of the Patents Act no longer meet the standards of expertise required by the Institute to justify admission as a fellow, a pass in the examinations prescribed in Group B in regulation 5 shall apply.
12. The Group 1 Patent Examinations and Group 1 Trade Mark Examinations shall be of a standard consistent with one another.

Syllabuses

13. The syllabuses for the subjects set out in regulation 5 shall be as prescribed in Schedule 1.
14. Except with the permission of the Council, a candidate who has failed three times in three separate years the same subject in Group A1 of regulation 5 (excluding supplementary and aegrotat and compassionate examinations) shall not be allowed to enrol for any examination of the Institute.
15. Except with the permission of the Council, a candidate who has three times failed the same subject in Group A2 of regulation 5 (excluding supplementary examinations) shall not be allowed to enrol for any examination of the Institute.
16. A candidate who has passed a subject or obtained an exemption from a subject shall retain credit for that subject for at least five years or such longer period as the Council may allow; provided that, if the candidate does not qualify within the period of five years, the Council may, in view of the performance of the candidate or changes in the law and practice or any other circumstances which it may consider relevant, require the candidate to write that subject again.

Misconduct

17. The Council may, after hearing a candidate in terms of Clause 16 of the Constitution, and if the Council is of the opinion that the candidate has misbehaved during or in connection with any examination of the Patent Examination Board or of the Institute, nullify the result of such examination and/or debar or suspend such candidate from writing an examination in any subject, or take any other action including action of the kind contemplated in Clause 16 of the Constitution.

Certificate

18. The Council may, in its discretion, issue a Certificate in recognition of passing this examination and may recall such certificate at its discretion in terms of Clause 16 of the Constitution.

Fee

19. A fee determined annually by Council shall be payable on application in respect of each examination to be written, each supplementary and aegrotat and compassionate examination, and each exemption requested. The additional fee payable for each supplementary, aegrotat and compassionate examination may be charged at a higher cost than the initial exam, and may include a refundable deposit portion in that fee.

SCHEDULE 1

The syllabus prescribed in regulation 14 for the subjects prescribed in sub-regulation 5 of regulation 10.5 shall be as follows:

- (a) The Patents Act, 1952, (only to the extent necessary to assist the relevancy of court decisions under this Act) and the Patents Act, 1978; and relevant Court decisions;
- (b) The Trade Marks Act, 1963 and the Trade Marks Act, 1993; and relevant Court decisions;
- (c) The Copyright Act, 1916; the Copyright Act, 1965; the Copyright Act, 1978; the Registration of Copyright in Cinematograph Films Act, 1977; the Performers Protection Act, 1967; and relevant Court decisions;
- (d) The Designs Act, 1967, (only to the extent necessary to assist the relevancy of court decisions under this Act) and the Designs Act, 1993, and a study of the relationship with the Copyright Acts referred to in paragraph (c); and relevant Court decisions;
- (e) A study of various foreign trade mark systems, including international registration under the Madrid Agreement and Protocol, the CTM system, the ARIPO and OAPI systems, and the laws of the United States of America, the United Kingdom, the Federal Republic of Germany, France, Italy, the Benelux countries, and Japan;
- (f) Candidates will be tested on their competence to deal with questions of practice in relation to the laws and including the aspects set out below and will be set practical legal problems in relation thereto;

- (i) Filing and prosecution of trade marks including registrability, proprietorship, registration procedure, responding to official actions, section 14 applications, conditions of acceptance, and the like; and relevant Court decisions;
- (ii) Registered and permitted users, licensing, assignment, hypothecation, certification marks, collective marks, traditional knowledge and traditional cultural expressions, and geographical indications, including the drafting of relevant agreements, statements of case and other supporting documents; and relevant Court decisions;
- (iii) General knowledge of trade mark law and practice in Botswana, Lesotho, Swaziland and Namibia, and the Intellectual Property Laws Rationalisation Act of 1996.
- (iv) Honest concurrent user rights, determination of rights, oppositions, rectification and expungement proceedings, including grounds and procedures; drafting of relevant pleadings and affidavits in relation thereto; applicable Courts and tribunals; appeals; and relevant Court decisions.
- (v) Infringement, passing-off and unlawful competition; relevant High Court procedures and rules; drafting of pleadings and affidavits; authentication and legalisation of documents; applicable Courts and tribunals; appeals; and relevant Court decisions.
- (vi) Practical aspects of Copyright Law and the registration of copyright in cinematograph films; the interrelationship of Copyright Law with other fields of intellectual property law; and relevant Court decisions.
- (vii) Practical aspects of Design Law and its interrelationship with other fields of intellectual property law; and relevant Court decisions.

(viii) Other relevant statutes including procedures and Court decisions in respect of:-

- (1) The Companies Act of 2008 (as amended) (Sections 11 & 12, 45, 160 & 193 to 195) including company name objections (grounds and procedures); the Directive of the Registrar of Companies on undesirable names; and defensive company names;
- (2) The Close Corporation Act of 1984 (as amended) (Sections 18 to 23) including objections to close corporation names;
- (3) The Consumer Protection Act of 2008 (Sections 24, 25, 41 & 79 to 81);
- (4) The Merchandise Marks Act of 1941 (as amended) with particular reference to Sections 14 & 15;
- (5) The Heraldry Act of 1962 (as amended);
- (6) The Counterfeit Goods Act of 1997 (as amended);
- (7) The ASA Advertising Code of Practice and the ASA Sponsorship Code; and
- (8) The Electronic Communications and Transactions Act of 2002 (Section 79) and the Alternative Dispute Resolution Regulations (dated 26 November 2006) relating to .za Domain Name Disputes; and decisions issued thereunder – see the SAIPL website for these decisions.