

Adams & Adams



PATENTS IN SOUTH AFRICA

21 MAY 2013



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Partner

FUNDAMENTALS OF PATENTS IN SOUTH AFRICA

- SOUTH AFRICAN PATENTS ACT No. 57 of 1978
 - Paris Convention
 - TRIPS (Trade Related Aspects of Intellectual Property Rights)
 - PCT (Patent Co-operation Treaty)



FUNDAMENTALS OF PATENTS IN SOUTH AFRICA

- In order to be patentable, an invention must:
 - be suitable subject matter
 - be **NEW**
 - be **INVENTIVE**
 - can be used or applied in trade or industry or agriculture



FUNDAMENTALS OF PATENTS IN SOUTH AFRICA

- Things which cannot be patentable in terms of the South African Patents Act:
 - discovery;
 - scientific theory;
 - mathematical method
 - literary, dramatic, musical or artistic work or any other artistic creation; a scheme rule or method for performing a mental act, playing a game or doing business;
 - a program for a computer;
 - presentation of information;
- **The above restrictions relate to the articles “AS SUCH” meaning that it is possible that inventions incorporating these items as features could still be patentable.**



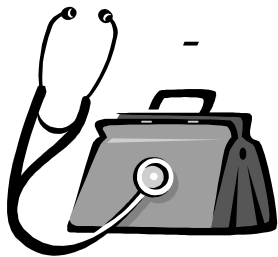
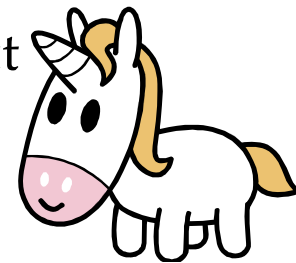
FUNDAMENTALS OF PATENTS IN SOUTH AFRICA

- Patents will not be granted for:

- inventions expected to encourage immoral or offensive behavior, used contrary to the law, nor for inventions contrary to well established natural laws – e.g., PERPETUAL MOTION DEVICES



- any variety of plant or animal or essentially biological process for the production of animals or plant (not being microbiological process or product of such as a process)



- inventions consisting of a method of treatment of the human or animal body by surgery or therapy or of diagnosis practised on the human or animal body

NOVELTY IN SOUTH AFRICA

- **NOVELTY**

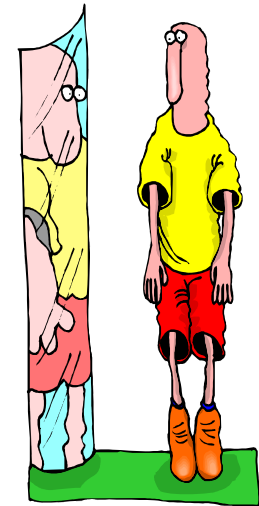
- An invention is deemed new if it does not form part of the state of the art immediately before the priority date of the application
- State of the art comprises all matter which has been made available to the public by written or oral description, by use or in any other way
- State of the art includes secret commercial use and matter contained in pending patent applications in South Africa
- Absolute Novelty
- Objective




INVENTIVENESS IN SOUTH AFRICA

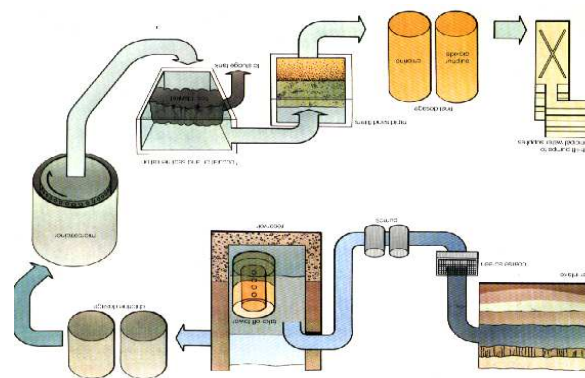
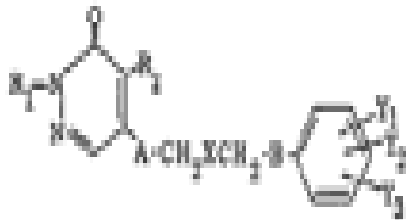
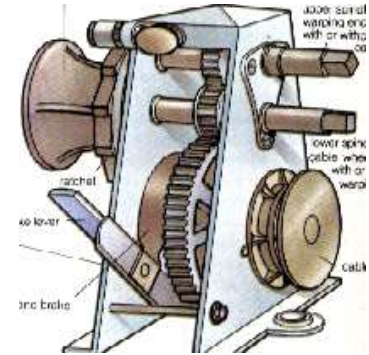
- **INVENTIVENESS**

- An invention must involve an inventive step
- South African Approach:
 - what is the inventive step said to be involved in the patent?
 - what was, at the priority date, the state of the art (as statutorily defined) relevant to that step?
 - in what respect does the step go beyond, or differ from, that state of the art?
 - having regard to such development or difference, would the taking of the step be obvious to the skilled man?



WHAT CAN BE PATENTED?

- An invention can be:
 - A new apparatus, system, an article, a machine
 - A new product (a process for manufacturing a product)
 - A new method or process , a chemical compound
 - A method of doing something
- 

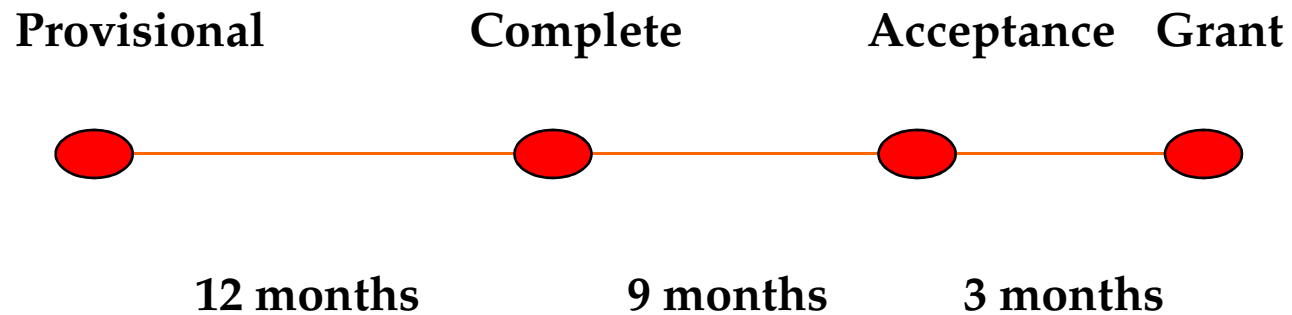


THE SOUTH AFRICAN PATENT OFFICE

- Pretoria
- Registrar of Patents
- Commissioner of Patents – High Court Judge (TPD)
- South African Patent Office does not examine a patent application substantively, merely for form
- Granted South African Patents may be revoked at any time after grant.



PATENT PROCEDURE IN SOUTH AFRICA



PATENT PROTECTION IN OTHER COUNTRIES

SA or USA Provisional

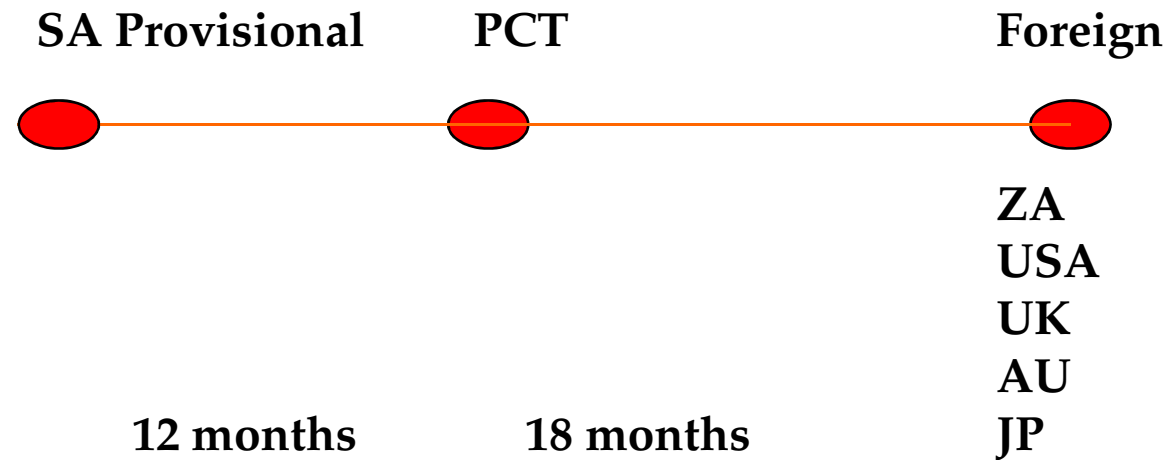
Foreign Applications



12 months

ZA
UK
AU
JP

PATENT COOPERATION TREATY (PCT) SYSTEM



EFFECT OF A GRANTED PATENT IN SOUTH AFRICA

- Right to exclude others from:
 - making;
 - using;
 - exercising;
 - disposing or offering to dispose of; or
 - importing
the invention.
- The term of a South African Patent is 20 YEARS from date of filing the complete patent (provided annual renewal fees are paid).



PATENT INFRINGEMENT

- High court procedure before the Commissioner of Patents
- Plaintiff may claim the following remedies:
 - an interdict;
 - delivery up of infringing articles or products;
 - damages;
 - costs



QUESTIONS?

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