

**PAPER D: KNOWLEDGE OF PATENT LAW AND PATENT PRACTICE IN SINGAPORE**  
**10 December 2020, Thursday**  
**1330 – 1730 hrs**

Maximum Time: 4 Hours (includes reading time)

Maximum Marks: 100



**INSTRUCTIONS TO CANDIDATES**

1. This Question Paper consists of 11 pages, including this cover page.
2. Type your answers in English. Answers in any other language will not be marked.
3. You are given one hard copy of the Question Paper. The soft copy of the Question Paper is also provided in the given laptop.
4. Only answers typed or indicated in the Answer Script template provided by the Examination Secretariat will be considered. Candidates should not change the given format of the Answer Script or type in the margin.
5. The information provided in the Question Paper may be obtained from actual situations or modified therefrom for the purpose of this examination.
6. For the purpose of the examination, you are to assume that the dates mentioned in the questions are not excluded days. Where relevant, you are advised to include in your answer script the supporting references, for example, the Patents Act, the Patents Rules or the Patent Cooperation Treaty (PCT) provisions.
7. The documents provided in this Question Paper are:
  - a. Cover Page (1 page);
  - b. Question 1 (2 pages);
  - c. Question 2 (2 pages);
  - d. Question 3 (2 pages);
  - e. Question 4 (2 pages); and
  - f. Question 5 (2 page).

**END**

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**Question 1**

Early this year in January, a severe coronavirus pandemic swept across many countries around the world. Many companies and research institutions globally are racing to develop a new vaccine to protect against the coronavirus and prevent the coronavirus from spreading.

5

Company X, a large biotechnology company, started developing a vaccine early in February. This vaccine is currently being tested in phase 3 clinical trials in different locations around the world including Singapore. The company is hoping to be able to launch the vaccine in Singapore by early next year. The company has also filed a patent application at IPOS with product claims that broadly cover the vaccine. The patent application has not yet been published.

10

Company Y, a small biotechnology company, also started to develop a slightly different version of the vaccine in March, which is now being tested in phase 1 clinical trials with the hope of launching the vaccine in Singapore by the middle of next year. Company Y is also in talks with distributors to supply the vaccine to clinics and hospitals around Singapore when the vaccine is ready.

15

In an attempt to stop Company Y from developing its vaccine, Company X sends a letter to Company Y to tell Company Y that it has infringed its patent by testing the vaccine and talking to distributors. The letter warns that Company X will sue Company Y for infringement if Company Y does not stop all activities.

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- a) Discuss the considerations of Company Y taking Court action against Company X for sending the letter, and possible relief.

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**(6 marks)**

- b) What application can Company X make to IPOS now to maximise any potential claim of damages for infringement in the future? Are there any conditions to the application?

30

**(4 marks)**

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- 5 c) It is early 2021. Both Company X and Y's vaccines have successfully cleared clinical trials. Company X's patent is now granted with the same product claims that cover Company Y's vaccine. Meanwhile, Company Y has started selling its vaccine to clinics and hospitals in Singapore. What proceedings can Company X take against Company Y before the Court? Will Company X be entitled to any remedies?

**(3 marks)**

- 10 d) Following from (c) above, Company Y wishes to continue selling its vaccine without trying to design around Company X's patent. Can Company Y take any pre-emptive action in relation to Company X's patent to avoid proceedings by Company X?

**(2 marks)**

- 15 e) Company X manages to stop Company Y from selling its vaccine in Singapore. Company X soon finds that it is unable to keep up with the overwhelming demand for its vaccine in Singapore. Clinics and hospitals, for example, find it difficult to obtain a stable/sufficient supply of the vaccine. Meanwhile, potential competitors are unable to develop a similar vaccine due to Company X's patent. What can a public agency do under the Patents Act to address the above situation in Singapore?

**(5 marks)**

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**Question 2**

[Details of forms and fees (if any) are required to be discussed for this Question]

Sam contacted you on 1 July 2020 to enquire about filing a Singapore patent application. He explained that he was a tour guide, but due to the COVID-19 situation in Singapore and the “Circuit Breaker”, he had lost his job and became unemployed. However, with his engineering knowledge from his college days, he came up with an innovative 3-ply medical grade face mask made from recycled plastic bags. He spoke about it and showed some documents, which were in Chinese and which he prepared, to a potential business partner (“Company X” – a medical device manufacturing company in Singapore) that morning. The potential business partner asked him whether he has patent protection for his new face mask, which was why he contacted you. He was very keen to seek patent protection and instructed you to proceed with filing a Singapore patent application so as to secure a filing date that day. He informed you that due to some technical issues with his electronic banking account, he is only able to pay you the following week. In view of the urgency, you agreed to file the Singapore patent application on 1 July 2020. However, after the call, you recall that your company’s policy requires a deposit for all official fees.

- a) How would you as a patent agent file a bare Singapore patent application via IP2SG, in practice, to secure a filing date on 1 July 2020 without violating your company’s policy, and what information would you need from Sam

**(3 marks)**

- b) On 15 July 2020, Sam together with his colleague, James (a representative from Company X), contacted you. Sam explained that Company X has hired him to be the head of production for the new face mask. James said that Company X was in the final stage of a tendering process with the Authority to supply the new face masks to all Singaporean households. One of the tender requirements was that Company X owns the patent rights to the new face mask. Since Sam is now an employee of Company X, they believe that Company X now owns the invention and are now contacting you on behalf of Company X to:

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i enquire whether there was anything outstanding in the Singapore patent application leading up to the preliminary examination stage; and

5 ii file a new Singapore patent application for the same invention (i.e. the new face mask) in the name of Company X without changing its priority date.

10 You were informed by Sam that, before he was hired by Company X, he had shown the same documents to Company Y on 2 July 2020 (*note: while the grace period was discussed, Sam and James are not in favour of utilising any grace period*). Advise Sam and James accordingly in relation to the two matters above.

**(10 marks)**

15 c) On 1 Sep 2020, James contacted you to file a new Singapore patent application for a new medical grade hand gloves. The new Singapore patent application was filed on 15 Sep 2020, naming Company X as the applicant and Sam as the inventor. On 21 Sep 2020, James contacted you to say that a colleague Alice also contributed to developing the medical grade hand gloves as a second inventor, and he forgot to inform you earlier. James would like to find out if anything should be done for the Singapore patent application filed on 15 Sep 2020. Advise James with a comparison of possible options and provide a recommendation.

20

**(7 Marks)**

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**Question 3**

Alfred, a Singaporean, is the founder and CEO of a company, ALF Limited (ALF), incorporated in New Zealand. ALF designs, makes and sells large tents for use in farms offering farm stays, and has no commercial interest in the Singapore market now and in future. Alfred approached you to seek some advice.

Alfred resides in Singapore, and he is the key person monitoring the patent portfolio for ALF. He would like to file an international patent application in Singapore for a new tent he solely invented in Singapore, which will be ALF's new product. This would be the first patent application for the invention. If possible, Alfred would like to own patent rights. However, he has to answer to other directors, all based in New Zealand, whom have invested a lot in ALF. Therefore, he would like to know all the options before discussing with the other directors about patent ownership.

- a) Please state all the options in respect of (i) ownership of the patent rights and (ii) the RO to be selected, if a Singapore patent agent is appointed.

**(6 marks)**

- b) After discussion, Alfred and ALF have agreed that ultimately ALF will own patent rights in all PCT member countries.

- (i) Please recommend one of the options stated in (a) above to Alfred.  
(ii) Please state the reasons for your recommendation under (a)(ii) (i.e. the RO).  
(iii) Please state what should be done under the recommended option in (b)(i) for the international patent application.

**(4 marks)**

Subsequently, you drafted an English patent specification and an international patent application was eventually filed. Soon after filing, a notification to correct a defect in the drawings was issued by the Receiving Office (RO). Specifically, the defect is in Fig. 1. Fig. 1 is deemed to be not executed in durable black colour and the lines are not uniformly thick and well defined. You reported the notification to Alfred soon after its issuance. After several reminders, Alfred provided a revised Fig. 1 to you 3 months later, asked you to file it, and said he had done his best to revise it. Within the said 3 months, no further notification was received

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from the RO. You take the view that the revised Fig. 1 still does not have sufficiently durable black colour but it is not bad to the extent that it will affect publication.

c) On the defect in the drawings, advise Alfred on the following:

- 5
- (i) issues relating to the timeline to respond;
  - (ii) procedure to address the defect;
  - (iii) what the RO will decide on after receiving a response to correct the defect; and
  - (iv) the likely decision of the RO after the revised Fig. 1 is filed.

**(7 marks)**

10

Due to the poor economic outlook, ALF's new product was never launched and the invention was never disclosed to the public. 11 months after the filing date of the international patent application, Alfred told you that although the plans to launch his invention were shelved, he would like to cover novel and inventive features that were not disclosed in the patent specification as originally filed. ALF is currently undecided on whether to continue the international patent application. As the invention targets the low-end market, even if ALF decides to proceed with national phase in various countries, ALF might not want to file in any developed countries. He is unsure how long ALF will take to decide as this will depend on the economy. ALF is not interested in pursuing applications in any non-PCT member states.

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- d) With regard to Alfred's request to include new features, state your recommended patent filing options. You are not required to provide reasons for the recommendations and you are not required to provide citations to the Act/Rules/Treaty in your answer.

**(3 marks)**

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**Question 4**

[Details of fees and forms are not required to be discussed for this Question]

Daisy has a company that owns a patent portfolio of 2 Singapore patents and 1 Singapore patent application. Over the years, she has been managing her company's patent portfolio. In need of a long break, Daisy took a sabbatical since 21 February 2019 and asked her cousin, Donald, to help manage her patent portfolio and keep it alive during her absence. Daisy resumed work today and found out that Donald had been pre-occupied with his pet duck and had left her company's patent portfolio unattended. Today is 23 November 2020. Worried that deadlines may have been missed, and as she does not have time to attend to this, she contacted you today to seek your advice on the following:

a) After conducting some checks, you note that:

- Singapore Patent 1 ("SGP1") was granted on 23 February 2019 and no renewal fee has been paid. SGP1 has a filing date of 22 May 2015 and a priority date of 23 May 2014.
- Singapore Patent 2 ("SGP2") was due for renewal on 23 May 2020.

Daisy would like to keep SGP1 and SGP2 in force. Please advise Daisy what actions need to be taken and by when.

**(10 marks)**

- b) You asked Daisy for the full set of files and you discovered an email from Daisy to Donald on 21 February 2019 to not incur any costs on the patent portfolio during her absence due to a financial crisis. However, in view of a windfall during her sabbatical, she has decided today to attend to all fees due and to maintain the patents at all costs.

How would your advice to Daisy in (a) above change and why.

**(2 marks)**

- c) The Singapore patent application ("SGPA1") relates to a new duck feeding device. A timely request for search and examination has been filed at IPOS. A week after filing the request, Donald informed Daisy of a brochure (dated today) by a competitor which



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discloses a similar feeding device in detail. Daisy realised that the brochure described a feature of her feeding device that was mentioned in but not claimed in SGPA1 as filed. She also realised that her duck feeding device can be used to feed guinea pigs but only the suitability for ducks was mentioned in SGPA1 as filed.

5

Daisy would now like to: (i) cover the feature which has not been claimed; and (ii) specify that her duck feeding device can also be used to feed guinea pigs. Please advise Daisy.

**(5 marks)**

- 10 d) SGPA1 was published in Singapore about 18 months after its filing. Anxious to stay ahead of her competitor and to give weight to her company, Daisy published marketing materials stating that IPOS has published and granted SGPA1, and her product is now patented. She also stated in the materials that her company is officially connected to the Registry of Patents.

15

What issues may arise from Daisy's conduct in the above scenario?

**(3 marks)**

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**Question 5**

It is 3 December 2020, 5.45pm. You have an overnight flight to catch at 9pm and before leaving office, you check your emails and receive the following email in your inbox:

5       “ Dear Sir / Madam,

Thank you for sending the Examination Report and Notice of Intention to Refuse an Application, dated 3 October 2020.

10       I am Mr. Plet. I have taken over from Mr. Tito as Bee-Z-Bee Pty Ltd Intellectual Property manager. I was an IP manager back in 2003 and as such I have some experience in patent prosecution.

15       I see in the Examination Report that some of the claims are considered not inventive. Please proceed as follows:

1. Delete claims considered not inventive; and
2. Pay the Grant Fee.

20       Thank you and let me know if you have any concerns or questions.

Yours faithfully,  
Mr. Plet”

You check the file and note the application details as follows:

- 25
- Singapore patent application no. 10201700888Y
  - Applicant: Company Bee-Z-Bee Pty Ltd
  - Priority date: 3 February 2016
  - Date of filing: 3 February 2017
  - Examination route: Search and Examination by IPOS

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Please draft a reply to Mr. Plet on issues he should consider at this stage. You are not required to advise Mr. Plet on the Patents Forms or Fees to be filed. In particular, please address:

- a) Can the grant fees be paid? Please provide reasons to your answer.

5

**(2 marks)**

- b) What are the options that Mr. Plet may take to further prosecute the patent? Please provide deadline(s), if any.

**(8 marks)**

10

You have provided Mr. Plet with your recommendations above. One week later, Mr. Plet replied that he believes it is possible to switch track and proceed to obtain grant of the Singapore patent by relying on the grant of a corresponding European patent.

- 15 c) Please advise Mr. Plet on the viability of his request. Please provide reasons.

**(4 marks)**

20 In a different Singapore patent application (Singapore patent application no. 11201600999X), a Notice of Eligibility of Grant and an Examination Report were issued. Your client has instructed you to proceed to pay the grant fee. In your preparation, you notice (i) the claims were not numbered sequentially and (ii) the description has multiple typographical mistakes.

- d) Please provide all options to rectify the errors observed in (i) and (ii) above.

**(6 marks)**

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**END OF PAPER**