

CONSTITUTION

THE SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW

DIE SUID-AFRIKAANSE INSTITUUT VAN INTELLEKTUELE GOEDEREREG

This Constitution was adopted at the 1975 Annual General Meeting of the Institute held on 26 November 1975, and is as amended at the Annual General Meetings of the Institute held on 17 November 1979, 8 November 1984, 24 November 1990, 28 November 1991, 27 November 1999, 15 November 2000, 12 November 2002, 11 November 2006 and November 2014.

THE SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW

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1 NAME

The name of the Institute is 'THE SOUTH AFRICAN INSTITUTE OF INTELLECTUAL PROPERTY LAW'.

2 INSTITUTE OFFICE

The office of the Institute shall be the same as that of the Administrative Officer for the time being or such other address as approved by Council and communicated to the members.

3 DEFINITIONS

3.1 The following words and phrases shall bear the meanings assigned to them unless the context of the Constitution indicates the contrary, namely:

- | | | |
|--------------------------------|---|--|
| Code of Conduct | - | means the Code of Conduct adopted in terms of Clause 23.1, as amended or replaced from time to time. |
| Council | - | means the Council of the Institute as constituted in accordance with this Constitution. |
| Examination Regulations | - | means the Examination Regulations adopted in terms of Clause 23.1, as amended or replaced from time to time. |
| Financial year | - | means the period specified in Clause 24. |
| Institute | - | means the South African Institute of Intellectual Property Law. |

- intellectual property** - means all matters commonly recognised as such including patents, designs, trade marks, copyright, or allied matters.
- members** - means the members of the Institute as reflected from time to time in the register of members maintained in terms of Clause 9, and "member" shall have a corresponding meaning.
- profession** - means the profession of a patent attorney, patent agent, trade mark practitioner, trade mark agent, an attorney or an advocate who practises in the field of intellectual property law.
- Regulations** - means all regulations affecting the Institute and its members made by Council or adopted by the Institute at a general meeting, and shall include the Code of Conduct and Examination Regulations.
- Republic** - means the Republic of South Africa.
- trade mark practitioner** - means an attorney or an advocate who has been recognised as a trade mark practitioner by the Institute or who passes the trade mark examinations prescribed in the Examination Regulations.

3.2 In the case of doubt as to the meaning of any clause of this Constitution, the interpretation of the Council shall be binding until such time as the Institute may otherwise determine at a general meeting.

4 OBJECTS

The objects of the Institute are:

- 4.1 To advance effective understanding, use and implementation of intellectual property law in the Republic and in so doing contribute to the awareness and development of intellectual property law and assist in setting standards for the profession.
- 4.2 To maintain a body that is representative of people involved in intellectual property law in the Republic.
- 4.3 To frame and establish Regulations and rulings for the observance of members in all matters pertaining to the profession and to promote and maintain high standards of ethics among its members.
- 4.4 To originate and promote amendments in the laws of the Republic relating to intellectual property and the administration thereof and to take steps to oppose legislation which is considered to be detrimental to the interests and development of the law relating to intellectual property or of the profession.
- 4.5 To disseminate information to the public in regard to intellectual property and the protection thereof.
- 4.6 To facilitate the acquisition of professional knowledge and information affecting the profession and to promote the interchange thereof among its members.
- 4.7 To facilitate mediators and arbitrators, and their training, in respect of IP disputes including but not limited to domain name ADR disputes in terms of the ECT Act and Regulations promulgated thereunder.
- 4.8 To collaborate and enter into reciprocal relations with similar institutes or bodies, whether in the Republic or in other countries.
- 4.9 To provide facilities for social interactions among its members.

- 4.10 To promote and maintain a standard of professional excellence in the field of intellectual property law and for this purpose:
- 4.10.1 to promote intellectual property law as an area of specialisation;
 - 4.10.2 to support and promote specialist training, examination and assessment in intellectual property law;
 - 4.10.3 to provide or acquire accreditation for training, examination and assessment in intellectual property law.
- 4.11 To do all such other acts or things which are conducive to the attainment of all or any of the above objects or are in the interests of its members or the profession.

5 INCOME, PROPERTY AND MONIES

- 5.1 The income, property and monies of the Institute from whatsoever source derived, shall be applied solely towards the promotion of the objects of the Institute as set forth in this Constitution and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise by way of profit to any member;
- 5.2 Nothing contained in Clause 5.1 shall preclude the payment to members of travel, subsistence or out of pocket expenses, allowances or other remuneration for services rendered by them to or on behalf of the Institute.

6 LIABILITY OF MEMBERS

The Institute shall be a body corporate (NFP), viz not for profit, having an existence independent of its members with perpetual succession and all its assets shall be registered or held in the name of the Institute. The members of the Institute shall not be liable to meet the debts, engagements or liabilities of the Institute, and the liability of members shall be limited to payment by them to the Institute of the entrance and subscription fees and *ad hoc* levies due by them.

7 CLASSES OF MEMBERS

The members of the Institute shall be divided into the following classes:

- 7.1 honorary members;
- 7.2 fellows;
- 7.3 associate members;
- 7.4 ordinary members; and
- 7.5 student members.

8 QUALIFICATIONS FOR MEMBERSHIP

Although the Institute does not and shall not attempt to control the qualifications required to practise in the field of intellectual property law, the Institute shall determine the examinations and qualifications required for different classes of membership within the Institute.

Every person, to be eligible for any class of membership, must be a person of good character and repute; possess adequate educational qualifications; be in all respects a fit and proper person to be admitted to membership, and must agree to adhere to the Code of Conduct, to the extent that it applies to him or her, and to abide by the Regulations and rulings issued by the Council from time to time.

In addition, the qualifications for membership in the different classes of membership, shall be as follows:

8.1 **Honorary Members**

Honorary membership may be conferred on any person, by unanimous vote at a Council meeting, who has, in the opinion of the Council, provided extraordinary services or has made extraordinary achievements for or in the name of the Institute or in the field of intellectual property law.

8.2 **Fellows**

A person approved by the Council who has -

- 8.2.1 a high standard of academic and practical experience;
 - 8.2.2 been admitted as an attorney, an advocate or a patent agent; and
 - 8.2.3 passed the examinations set by the Patent Examination Board in terms of the Patents Act, No. 57 of 1978 and the Patent Regulations (as amended) or the trade mark examinations prescribed in the Examination Regulations,
- is eligible to be elected as a fellow in terms of this Constitution.

8.3 **Associate Members**

A person approved by Council who is nominated by two fellows, not being partners, employers, employees or co-employees of that person, and who can establish to the satisfaction of the Council that he or she has reasonable knowledge of intellectual property law and that he or she;

- 8.3.1 has passed such of the examinations prescribed in the Examination Regulations for qualification as a trade mark practitioner as may be determined by the Council from time to time; or
 - 8.3.2 has passed the Group 1 examinations set by the Patent Examination Board in terms of the Patents Act No. 57 of 1978 and the Patent Regulations (as amended); or
 - 8.3.3 has academic, professional and/or practical experience in intellectual property law to the satisfaction of the Council,
- is eligible to be elected as an associate member in terms of this Constitution.

8.4 Ordinary Members

A person approved by Council who has an interest in intellectual property law, as contemplated in clause 4.1, but does not meet the requirements to be a fellow or an associate member is eligible to be elected as an ordinary member in terms of this Constitution.

8.5 Student Members

A person who has a matriculation certificate or exemption and who intends to enrol for examinations under the Patent Examination Board or the Trade Mark Practitioner's Examination Regulations for non-qualification purposes or for the purpose of becoming a fellow or an associate member, is eligible to be a student member.

A student member shall cease being a student member on being elected a fellow or an associate member or upon ceasing to be qualified to be a student member.

9 REGISTER OF MEMBERS

The Council shall keep a register of members in which are set out the names of members and their respective classes of membership together with particulars of their occupations and such other information as the Council may determine from time to time.

10 EFFECT OF CHANGE IN QUALIFICATIONS

A member shall be a member of the class of membership to which he or she was elected only so long as he or she retains the qualifications by virtue of which he or she was qualified to become a member of that class of membership.

11 ADMISSION AND TRANSFER OF MEMBERS

11.1 An application for membership of the Institute or for transfer from one class of membership to another shall be made to the Administrative Officer and shall contain such information as may be required by the Council and shall be accompanied by an undertaking by the applicant to

abide by the Regulations and rulings issued by the Council from time to time.

- 11.2 The Council may, in its discretion, accept or reject an application for membership or for transfer of membership and shall advise the applicant accordingly.
- 11.3 An applicant whose application has been approved by the Council shall, subject to payment of the prescribed entrance fee and subscription, be registered as a member in the register of members.

12 ENTRANCE FEE AND SUBSCRIPTION

- 12.1 An applicant for membership shall pay an entrance fee and each member of the Institute, other than an Honorary member, shall pay the annual subscription and *ad hoc* levies in accordance with the amounts specified by the Council from time to time.
- 12.2 An applicant for membership shall, upon election as a member, remit the prescribed entrance fee and subscription for the current year. If an applicant for membership is elected more than nine months after the beginning of any financial year, no subscription for that year shall be paid by the applicant.
- 12.3 Subscriptions shall become due and payable at the beginning of each financial year as determined by Council.
- 12.4 If any member is in default of payment of his or her subscription in any year and remains in default for 60 days after the date of registered notice from the Administrative Officer to this effect, such member's privileges of membership shall thereafter automatically be suspended until such payment be made. If any matter arises during the interval between such suspension and payment in respect of which such member would not but for such default have been entitled to seek the assistance of the Institute, such member shall, notwithstanding such payment, be in respect of such matter excluded from the privileges of membership unless the Council otherwise resolves.

- 12.5 The Council may terminate the membership of a member who, without cause, continues for an unreasonable time to be in default of payment of his or her subscription.

13 PRIVILEGES OF MEMBERSHIP

- 13.1 All members shall be entitled to receive notices of meetings, to take part in the proceedings of the Institute and to benefit from the activities of the Institute.
- 13.2 Only fellows and associate members shall have the right to vote on any matter at any general meeting.
- 13.3 Only fellows and associate members may be elected to Council.

14 CERTIFICATES

- 14.1 All certificates of membership ie. for fellows and associates, are the property of the Institute.
- 14.2 When the membership of a member is terminated pursuant to Clause 12.5 or 16, such former member shall return the relevant certificate of membership to the Administrative Officer and shall not thereafter in any way indicate that such former member is a member of the Institute.

15 TERMINATION OF MEMBERSHIP

- 15.1 A member may resign from the Institute by giving one month's notice in writing of his or her intention so to do, and upon the expiration of such notice he or she shall cease to be a member but shall remain liable for payment of arrears of subscription or other monies (if any) due to the Institute upon ceasing to be a member.

16 EXPULSION OR SUSPENSION OF MEMBERS

- 16.1 For good cause shown, the Council may terminate the membership of any member or may suspend any member from the exercise of any or

all rights and privileges of the Institute for such period as may be thought fit, or may impose such other sanction as it may, in its discretion, decide. Such good cause may arise from bringing the Institute into disrepute, a contravention of the Code of Conduct of the Institute, Regulations, rulings or decisions of Council, or otherwise.

16.2 For purposes of investigating a complaint by any person in regard to the conduct of a member, the Council shall appoint a disciplinary committee whose composition and terms of reference shall be determined by the Council.

16.3 (a) In the event of a complaint against a member, the Council shall refer the complaint to the disciplinary committee which shall determine in the first instance whether or not a *prima facie* complaint exists against the member.

(b) If the disciplinary committee is satisfied that a *prima facie* complaint does not exist, it will report to the Council accordingly.

(c) If a *prima facie* complaint does exist, it shall prepare a written complaint and submit this to the member, requesting a response within 10 (ten) days of receipt of such complaint.

(d) If the disciplinary committee determines that a disciplinary hearing is required, it shall advise the member accordingly, giving the member written notice to appear before the disciplinary committee within no less than 10 (ten) days after receipt of such notice. Such written notice shall specify the complaint and shall advise the member to arrange for legal representation at the hearing. If the member fails to advise the disciplinary committee within 5 (five) days of the hearing date that such member will have legal representation at the hearing, the disciplinary committee may, in its discretion and if required by the member, appoint legal representation for the member.

(e) The disciplinary committee and the member shall have the power to call any other member or person to the hearing. The disciplinary committee shall have the power to question the member concerned,

and any other member or person present at the hearing, on any aspect of the complaint. The member shall likewise have the power to question any other member or person present at the hearing.

(f) At the disciplinary hearing, the disciplinary committee shall read the complaint to the member, shall proceed to hear the complaint, and shall afford the member an opportunity of being heard.

(g) In the event of the relevant member failing to appear at the hearing, the disciplinary committee shall proceed to hear the complaint against that member *in absentia*.

(h) As soon as may be practicable after the disciplinary hearing, the disciplinary committee shall make its finding and recommendation and submit this to the Council. After consideration, the Council shall communicate the finding and recommendation to the member and such will be considered a ruling of the Council. Alternatively the Council shall remit the finding and recommendation to the disciplinary committee for reconsideration.

16.4 Members of the Institute, whose membership has been suspended or terminated in accordance with this clause, shall not be entitled to claim a refund of entrance fee or subscription paid in advance by them.

17 REINSTATEMENT OF MEMBERS

A person, whose membership of the Institute has been terminated or suspended in as hereinbefore provided, may apply for reinstatement of membership. The Council, upon receipt of such an application may in its discretion, readmit such person to membership upon such terms and conditions, including the payment of an entrance fee, as it may decide.

18 MANAGEMENT OF INSTITUTE BY COUNCIL

The affairs of the Institute shall be managed, conducted and administered by the Council acting under the powers conferred on it by this Constitution or by any mandate given to it by the members of the Institute at a general meeting.

19 COMPOSITION OF COUNCIL

- 19.1 The Council shall consist of at least nine (9) but no more than twelve (12) members.
- 19.2 The Council shall be elected at every annual general meeting from the body of fellows and associate members, provided that at least seven (7) Council members shall be fellows.
- 19.3 The Council shall consist of the following office bearers:
- President
 - Immediate Past President (whose election shall be automatic)
 - Vice-President
 - Administrative Officer
 - Treasurer

The President shall be elected at the annual general meeting where the Council of which he or she is a member, is elected. The President shall be a fellow. All other office bearers shall be elected at the first Council meeting.

- 19.4 A President shall not, except with the authority of a general meeting, serve as President for a longer period than two successive years.
- 19.5 Nominations for the President and elected Council members shall be made as provided for in Clause 28.

20 TERMINATION OF MEMBERSHIP OF COUNCIL

A Council member shall vacate office if such Council member:

- 20.1 ceases to be a fellow or associate member of the Institute;
- 20.2 is declared insolvent;
- 20.3 becomes of unsound mind;

20.4 is absent from three consecutive meetings of the Council without special leave of absence and is requested to resign by a resolution passed by a majority of the members of the Council present and voting at a meeting of the Council of which special notice shall have been given of intention to propose the resolution; or

20.5 by notice in writing to the Administrative Officer, resigns office.

21 MEETINGS OF COUNCIL

21.1 The Council shall meet as often as it may determine to be necessary.

21.2 Meetings of the Council shall be held at such place, and in such manner including tele-conferencing, as may be decided by the Council from time to time.

21.3 Minutes shall be kept of Council meetings and these shall be circulated to Council members and members of the Institute.

21.4 There shall be a quorum at meetings of the Council when there is personally present, a simple majority of the total number of Council members.

21.5 The President or, in his or her absence, the Vice-President or, in the absence of both, a Council member appointed by the Council members present at the meeting, shall preside as Chair at meetings of the Council and the Chair shall have a casting vote in addition to his or her deliberative vote.

22 POWERS OF COUNCIL

The Council shall have the power to do all things necessary to carry out and promote the objects of the Institute, except such matters as are required by this Constitution to be submitted to a general meeting of the Institute. Without limiting the powers and duties of the Council, these shall include the following:

22.1 To make, amend, vary or rescind the Regulations;

- 22.2 To frame and issue Regulations and rulings on any aspect affecting the profession and from time to time to amend or vary such Regulations and rulings;
- 22.3 To appoint committees from among its members or otherwise for such purpose and upon such terms as may be considered desirable and to delegate such powers thereof as may be necessary;
- 22.4 To summon, at any time, a general meeting of the Institute;
- 22.5 To suspend or terminate the membership of a member pursuant to Clauses 12.5 and 16 hereof;
- 22.6 To purchase and sell movable and immovable property and to invest any funds not immediately required by the Institute in such manner as it may decide;
- 22.7 To open banking or saving accounts in the name of the Institute and to resolve the manner of operation of such accounts;
- 22.8 To authorise any members to act on its behalf in the acquisition and alienation of property or in the investment of its funds;
- 22.9 To appoint any member to represent the Institute on any other body, which the Council considers necessary or expedient;
- 22.10 To make donations and grants to charities or other worthy causes and to make grants in aid and grant bursaries or scholarships to student members or persons associated or connected with the profession;
- 22.11 To arrange and promote lectures, seminars, discussion groups and other meetings for the dissemination of information of interest to the members;
- 22.12 To establish and maintain a library and a collection of models, designs and other articles of interest to the profession;
- 22.13 To arrange social and sporting functions for members;
- 22.14 To co-opt such fellow(s) or associate member(s) as it may decide;

- 22.15 To appoint a fellow or associate member to fill a vacancy on the Council. A person so appointed shall remain in office until the next ensuing annual general meeting but shall be eligible for re-election at that meeting;
- 22.16 To exercise all the rights, powers and privileges conferred upon the Institute by the Patents Act, 1978 (as amended) and by the Regulations made in terms of the Act; and without derogating from the generality of such rights, powers and privileges, to appoint one of the members of Council to accept service at a nominated address, of legal process, documents and notices on behalf of the Institute for this purpose, and also to prosecute any legal proceedings on behalf of the Institute in relation to those rights, powers and privileges;
- 22.17 To institute and conduct any legal or other proceedings brought by or against the Institute, and to authorise members of the Institute or other persons to act on its behalf in such proceedings.

23 REGULATIONS, RULINGS AND DECISIONS OF COUNCIL

- 23.1 The Institute, whether by a resolution of a general meeting or by a resolution of the Council, shall issue a Code of Conduct for those of the members who are in the profession and shall issue Examination Regulations for the qualification of patent attorneys and trade mark practitioners.
- 23.2 The Regulations, rulings and decisions issued by the Council shall be binding upon members and the Council shall have the power to lodge a complaint against a member for non-compliance with the aforementioned.
- 23.3 In the interpretation of the Regulations, rulings and decisions, the provisions of Clause 3.2 shall, *mutatis mutandis*, apply.

24 FINANCIAL YEAR OF THE INSTITUTE

The financial year of the Institute shall run from the 1st day of October in one year to the last day of September in the succeeding year, or such other period as Council may from time to time determine.

25 BOOKS OF ACCOUNT

Books of account of the affairs of the Institute shall be kept by the Council and such books, with all other papers and documents connected with or relating to the business or the affairs of the Institute, shall at all times be accessible to Council members, and a statement of the financial affairs of the Institute shall be prepared annually.

26 BANKING ACCOUNT

All monies paid to the Institute shall, as soon as possible after receipt, be deposited with a bank, savings account, or other financial institution as the Council may decide and shall be withdrawn therefrom from time to time as may be required. All cheques, electronic transfers or forms of withdrawal shall be signed or endorsed by such persons or person as may be authorised by the Council from time to time.

27 ANNUAL GENERAL MEETING

An annual general meeting of the Institute shall be held at such venue at such time as the Council may decide, in one of the last four months of the calendar year but not more than fifteen months after the preceding annual general meeting.

28 PROCEDURE PRIOR TO ANNUAL GENERAL MEETINGS

- 28.1 At least twenty one days before the date of the annual general meeting, the Administrative Officer shall give written notice to Council members and to members of the Institute, of the date, time and venue of the meeting.

28.2 In such notice the Administrative Officer shall call for nominations for persons to serve as President, and elected Council members and for any resolutions or any specific matter to be considered thereat.

28.3 Nominations for President and members to serve on the Council or notice of any resolution to be considered at the annual general meeting, may be made by any fellow or associate member. Particulars thereof shall be given, in writing, to the Administrative Officer fourteen days before the date of the annual general meeting.

28.4 Seven days before the date of the annual general meeting, the Administrative Officer shall send to Council members and to members of the Institute:

- the agenda for the meeting;
- the minutes of the previous annual general meeting and of any other general meetings of which the minutes have not already been confirmed at a general meeting;
- a copy of the Financial Statement for the past financial year;
- names of nominations for President, and other members for Council;

28.5 notice of any resolution which has been proposed for adoption thereat and/or any specific matter which has been proposed for consideration thereat.

29 BUSINESS TO BE TRANSACTED AT ANNUAL GENERAL MEETING

The business to be transacted at the annual general meeting shall be:

29.1 to confirm the minutes of the preceding annual general meeting and of any other general meeting (if not already confirmed at a general meeting) that may have been held since the preceding annual general meeting;

- 29.2 to receive and consider the report of the Council on the affairs of the Institute for the preceding year;
- 29.3 to receive and consider the Financial Statement for the past financial year;
- 29.4 to elect the President and members of the Council;
- 29.5 to consider any resolution or any specific matter of which notice has been given as herein before provided;
- 29.6 to deal with any matter of a general nature which may be raised at the general meeting which the Chair of the meeting may allow.

30 PROCEDURE AT ANNUAL GENERAL MEETING

- 30.1 The President or, in his or her absence, the Vice-President, shall preside as Chair at annual general meetings. In the absence of both, the members present and entitled to vote at the meeting, shall appoint a Chair.
- 30.2 There shall be deemed to be a quorum at the annual general meeting if there is personally, and/or by proxy in terms of Clause 30.5, present one-quarter of the members entitled to be present and entitled to vote thereat. If a quorum is not present within half an hour of the time for which the meeting has been called, the Chair shall declare the meeting adjourned to a date and time permitted by this constitution.
- 30.3 No resolution or specific matter of which notice has not been given in terms of Clause 28.4 hereof, shall be put to the vote at the annual general meeting, provided that it shall be competent for the Chair, in his or her discretion to allow any amendment of the wording of any resolution to be moved notwithstanding that notice has not been given of the intention to move such amendment.
- 30.4 The Administrative Officer shall take minutes of the proceedings of the annual general meetings and shall circulate these to Council members as soon as possible after the annual general meeting.

- 30.5 At any general meeting a member entitled to vote and unable to be present, on good cause shown, may be represented for voting purposes by a fellow or associate member provided a proxy signed by the absent member is filed with the Chair before any vote is cast under its authority. No fellow or associate member shall hold more than three proxies.
- 30.6 Save as is otherwise provided by this Constitution, all resolutions put to an annual general meeting shall be passed and shall be held valid and effectual if carried by a majority of votes cast by fellow and associate members present or represented at the meeting.
- 30.7 Voting at an annual general meeting shall be by show of hands unless a poll is demanded by a majority of the members present and entitled to vote. The Chair shall have a deliberative as well as a casting vote.
- 30.8 Save as is otherwise provided by this Constitution, or by a direction given at any prior annual general meeting or general meeting, the proceedings at the annual general meeting shall be conducted in such a manner as the Chair may determine.

31 PROCEDURE AT SPECIAL GENERAL MEETING

- 31.1 The Council may at any time convene a Special general meeting of the Institute and it shall do so upon receiving a requisition to that effect, signed by five fellow and/or associate members.
- 31.2 The Administrative Officer shall give twenty-one days written notice of a Special general meeting to members, of the date, time and place of the proposed meeting and of the business to be transacted thereat.
- 31.3 At all Special general meetings the provisions of Clause 30 shall, *mutatis mutandis*, apply, provided however, that if a quorum is not present, the provisions of Clause 30.2 shall apply only if the Special general meeting was convened by the Council. If a quorum is not present at a general meeting requisitioned by members, the meeting shall be dissolved.

32 NOTICES AND TIME LIMITS

- 32.1 All notices to be given to a member in terms of this Constitution, shall be given in writing to such member in accordance with the address (which may be an e-mail address) in the register of members, by the Administrative Officer.
- 32.2 Notices posted or sent by e-mail to the last known address of any member entitled to receive the same, shall constitute effective notice of anything required to be done under this Constitution.
- 32.3 The accidental omission to give notice to any member of a meeting, or the non-receipt of a notice of a meeting by any member, shall not invalidate such meeting or decisions taken thereat, provided there has been substantial compliance with the provisions of Clauses 28.1 or 31.2, as the case may be.
- 32.4 If a matter arises which Council decides to be of urgency requiring a Special general meeting, Council shall have a discretion to shorten the time limits and procedures for giving notice of a Special general meeting for dealing with such matter and of any resolution to be proposed for adoption thereof, on condition that if no quorum is present at the Special general meeting, those present at the meeting shall postpone the meeting to such date, time and place considered by the meeting appropriate given the circumstances, and those members present at such postponed meeting shall constitute a quorum, irrespective of their number and may transact the business of the Special general meeting. Council shall use its best endeavours within the time available to advise the members formally or informally of the date, time and place of the Special general meeting and, where applicable, of the postponed Special general meeting.
- 32.5 Whenever the circumstances of Clause 32.4 arise, members who are unable to attend the Special general meeting shall be entitled to convey their views on the matter to the Chair by fax, e-mail or telephone, and

the Chair shall have a duty to present these views to the meeting, where applicable, before a vote is taken.

33 AMENDMENT OF CONSTITUTION

Subject to clause 13, the Constitution shall not be repealed or amended except by a resolution passed at an annual general meeting or at a general meeting called for that purpose, which Resolution shall be passed by not less than two-thirds of the votes cast.

34 DISSOLUTION OF INSTITUTE

34.1 The Institute may not be dissolved, wound up, or placed in liquidation except by a resolution passed at a general meeting of the Institute called for that specific purpose, which resolution shall be passed by not less than two-thirds of the votes cast.

34.2 If at a general meeting of the Institute it is resolved that the Institute be dissolved or wound up or placed in liquidation, a liquidator shall be appointed at that meeting. If after payment of all debts and liabilities of the Institute, any property of whatsoever nature remain, the same shall be disposed of or transferred to a non-profit organisation having similar aims and objects.

35 INDEMNITY

35.1 Every member of the Council and of any committee acting on behalf of the Institute shall be entitled to recompense for any reasonable cost or expense incurred on behalf of the Institute in the execution of his or her office, except where such cost or expense is incurred by his or her own wilful act in default of his or her duty.

35.2 Neither the Institute nor any member thereof shall be liable for any loss or misfortune sustained by any Council member or Committee member referred to in Clause 35.1 where such loss or misfortune is not a concomitant part of such Council member's or Committee member's duty at the time the loss was sustained.

35.3 Subject to the responsibility of the Institute as set out in Clause 35.1 hereof, no member of the Institute shall be answerable for any act or default of any other member save insofar as complicity would, in law, render such member answerable.

[End of Document]

CODE OF CONDUCT

IN FORCE AS AT 11 NOVEMBER 2006

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

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

CODE OF CONDUCT

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CODE OF CONDUCT

1 PRELIMINARY

- 1.1 This Code sets out the rules of professional conduct applicable to members in the profession and that members in the profession are obliged to observe in the conduct of their practices. Accordingly all references in this Code to members shall mean members in the profession. All other terms defined in the Constitution of the Institute shall have the same meaning in this Code. Insofar as any earlier ruling is incompatible with this Code, this Code prevails.
- 1.2 All members shall comply with Rules and Regulations, as may be applicable to a member, of the Law Societies, Societies of Advocates, Bar Associations and similar professional bodies to which they belong. The Council of the Institute may, in its discretion, deal with a breach of any such Rules and Regulations as a breach of this Code or may refer the breach to the relevant body for attention.
- 1.3 In the case of a non-resident member, if there is any conflict between the standards of conduct set forth in this Code and the standard of professional conduct obtaining among reputable patent and trade mark attorneys/agents in his or her own country, compliance by the member with the standards obtaining in the member's own country but not with the standards prescribed herein shall not be deemed to be unprofessional conduct unless, after due investigation, Council, by a majority vote, finds that the conduct of the member reflects discredit on the Institute or its members.

2 DEFINITIONS

Words used in this Code shall have the meanings defined in the Constitution.

3 GENERAL GUIDE LINES

- 3.1 The Council has issued this Code for the guidance of members in their professional conduct, and it is emphasised that members are expected to act within the spirit as well as the letter of the Code.
- 3.2 Members in private practice must be independent and must be seen to exercise professional independence without being influenced by any other interests.
- 3.3 It is the duty of members to maintain high ethical standards in professional practice, to promote the interests of their clients and of the profession and to render a service to the public. Members should refrain from doing or sanctioning any act that is undignified or that is likely to bring discredit upon the Institute, upon the profession or upon any of its members.
- 3.4 Members shall not improperly use or disclose information obtained from or on behalf of any client or prospective client.
- 3.5 Members must give priority in their conduct to acting -
- 3.5.1 within the law,
- 3.5.2 in their clients' best interests, and
- 3.5.3 in the interests of the profession, in that order.
- 3.6 Members shall be accountable to the Council for the defaults of any of their partners, fellow directors and staff who are not members of the Institute so far as such acts and defaults relate to intellectual property.
- 3.7 Members of the Institute shall maintain the highest standards of professional conduct in:
- 3.7.1 Advertising; (See 4 below)
- 3.7.2 Conduct towards colleagues, the Institute, the profession, and clients; (See 5 below)

- 3.7.3 Conduct towards Officials; (See 6 below)
- 3.7.4 Conflict between clients' interests; (See 7 below)
- 3.7.5 Conflict with own interests. (See 8 below)

4 ADVERTISING

- 4.1 Members shall conform fully with the Rules of Law Societies and other regulatory bodies to which they belong in advertising and other activities calculated to attract business.
- 4.2 The letterheads and other documents used in the conduct of members' practices may reflect the names of partners and consultants (being previous partners of a member's practice) but shall not contain the name of any other person unless that person is in the full time employ of the practice and the function and position of that person in the practice is clearly and unambiguously stated in a manner that is in no way misleading.
- 4.3 Members shall not allow their names to be used, either directly or through a nominal partnership, by another practice that does not have a Patent Agent or Patent Attorney as a partner or in its employ and in such a way as to mislead others into thinking that the practice has a Patent Agent or Patent Attorney as a full time partner or in its employ.
- 4.4 Members shall not refer to or make use of any office held in the Institute in their letterheads or in any way in connection with their practices.
- 4.5 Student or Ordinary membership of the Institute shall not be reflected in a member's letterhead or in connection with a member's practice. Where a person is entitled to practise as a patent agent, trade mark agent, or attorney, the fact that the person is a student member shall not preclude that person's name from appearing on that person's firm's letterhead.
- 4.6 Members shall not directly or indirectly advertise, announce or publish offers to sell or to license or to negotiate the sale or licence of intellectual

property, whether as an agent or otherwise, except upon the *bona fide* instructions of a client.

- 4.7 Members shall not directly or indirectly solicit invitations to give addresses or write articles on behalf of the Institute without the Council's prior approval. The Council reserves the right to take such steps as it may deem necessary against members to prevent any abuse of this privilege.
- 4.8 Members giving or writing addresses and articles on behalf of the Institute, including radio and television broadcasts, may be identified only by name and office or status in the Institute.
- 4.9 Members shall not, with a view to attracting or inviting instructions use their status in or association with the Institute to enter into correspondence with listeners, viewers or readers of broadcasts or publications given or written by the member or other members.

5 CONDUCT TOWARDS COLLEAGUES, THE INSTITUTE, THE PROFESSION AND CLIENTS

- 5.1 Members shall extend courtesy to the public and to fellow practitioners and shall at all times refrain from doing or saying anything that is intended to undermine or that is to the detriment of other members.
- 5.2 Members shall practise on a strictly professional basis and shall refrain in correspondence or otherwise, from using abusive or derogatory language.
- 5.3 A member shall be entitled to accept an unsolicited mandate from a client even though he is aware that such client had previously been the client of another member but a member shall not knowingly take over a mandate from a client of another member without advising the other member.
- 5.4 When one member (the latter member) notifies another member (the former member) that a former client of the former member has instructed

the latter member that the client wishes to terminate the client's mandate to the former member and wishes the latter member to assume the mandate, the former member should accept the correctness of and act upon advice given by the latter member. If the former member has or justifiably feels that there are reasonable grounds on which to doubt the correctness of the information given by the latter member regarding the change in mandate, the former member may write to the client, informing the client of the advice received from the latter member and seeking confirmation and shall send to the latter member a copy of the letter to the client.

- 5.5 If a client changes a mandate from one member to another, the former member has a right to retain documents belonging to the client, over which the former member has a lien, until his or her fees and disbursements have been paid. In general, it is not desirable for the latter member to proceed with the mandate until the reasonable costs of the former member have been paid unless urgent matters require that the mandate should proceed without delay. In such cases, the latter member should obtain a sufficient deposit and give the former member an undertaking that the former member's fees and disbursements will be paid, if necessary, when their reasonableness has been established and should undertake to hold available for inspection by the former member and to return to the former member at a convenient time for the purposes of taxation or preparation of an account those documents that are required for such purposes. Having obtained such undertaking(s), the former member should hand over the client's documents to the latter member to enable the latter member to proceed with the mandate.
- 5.6 A member representing a party in any matter in regard to which another member has received instructions from another party (whether to institute, threaten, or defend proceedings, or otherwise) shall not deal with such other party knowing him or her to be a client of the other member except with the consent of the other member.

- 5.7 A member shall not knowingly make a material misrepresentation of facts to another member or to a client in any matter.
- 5.8 A member's conduct towards any recognised practitioner in Intellectual Property matters should be the same as that towards his or her fellow members.
- 5.9 Unprofessional or dishonourable or unworthy conduct on the part of a member shall include *inter alia* failure –
- (a) to answer or appropriately to deal with, within a reasonable time, any correspondence or other communication which reasonably requires a reply or other response; and
 - (b) to comply with a ruling or decision of the Council.
- 5.10 **Branch Offices**

No member shall have or retain any branch office purporting to provide the services of the profession unless the practice conducted there, when open, is at all times under the effective supervision of a person who, if he is not the member himself or a partner of that member, is an Attorney, Patent Attorney or Patent Agent employed by a fellow, provided that if Council is reasonably of the view that a branch office is not at any time under such effective supervision, Council may direct the first-mentioned member immediately to rectify the situation.

6 CONDUCT TOWARDS OFFICIALS AND PATENT OFFICE

- 6.1 A member shall at all times maintain high professional standards when dealing with Government Officials (e.g. with officials at the High Court, and the Patent and trade marks Offices, and other Government Departments).
- 6.2 A member shall not do anything which could place other members at any disadvantage through the first-mentioned member's personal relationship with any official.

- 6.3 A member shall not make improper use of or disclose information obtained from any official on behalf of a client or prospective client.

7 CONFLICT OF CLIENTS' INTERESTS

- 7.1 A member shall endeavour to avoid situations in which his or her duty to one client is in conflict with that to another client and, whenever any such conflict becomes apparent, the member shall take steps calculated to resolve it and to avoid prejudice to either client.
- 7.2 Once a member has acted for a client in any matter, the member should never act for an adversary in the same matter nor lend such adversary any aid, counsel, or assistance in that or any other matter (even if the member's relationship with his or her former client has terminated), if the member's former client could be prejudiced by the use of confidential or other information obtained from the former client. In this regard, the same matter shall mean the matter in which the particular dispute addressed or to be addressed is the same.
- 7.3 A member may represent both parties as a mediator in the initial stages of a possible dispute (whether in connection with an opposition, revocation, infringement proceedings or otherwise, including obtaining necessary extensions of time) provided that in so doing the member makes it clear to both parties that the member is representing them both and they consent thereto.
- 7.4 A member may grant or agree to the grant of initial extensions of time (whether the member is representing both parties or not) without the prior approval or express consent of the client in respect of whom the extension of time is requested.
- 7.5 A member may and should accept the instructions of a client to file an application which may lead to conflicting rights, under circumstances where the member considers that failure to do so may result in prejudice to such client.

8 CONFLICTS WITH OWN INTERESTS

- 8.1 A member shall not acquire or be associated with the acquisition of any intellectual property right, or substantial interest therein, in such circumstances as would be likely to give rise to a conflict between professional duty and self-interest.
- 8.2 A member shall not undertake work relating to an intellectual property right for a client if the member is the owner of an intellectual property right or of a substantial interest therein and if the circumstances are such as might give rise to a conflict between professional duty and self-interest, unless the member before undertaking the work fully discloses to the client his or her ownership or interest and obtains written consent.

9 COMPLAINTS AND GUIDANCE

- 9.1 A complaint regarding the conduct of a member shall be submitted to Council through the Administrative Officer in writing setting out full particulars of the complaint. Council will then decide whether or not to refer the matter to the disciplinary committee of the Institute.
- 9.2 Any member may ask Council for a ruling as to whether or not;
- 9.2.1 any conduct in which the member or the member's firm engages or proposes to engage, or
- 9.2.2 any publication which the member or the member's firm uses, publishes or proposes to use or publish complies with this Code and Council may rule thereon.

10 INFORMATION FOR AUDIT PURPOSES – CONTINGENT LIABILITIES

- 10.1 A member who receives a request to supply information for audit purposes regarding contingent liabilities (e.g. matters which may affect the financial position of a company, or matters which may relate to pending or threatened claims to litigation) shall not comply with such request unless the matter in respect of which the information is required is clearly and unequivocally identified.
- 10.2 When such request is made by an auditor on behalf of a client, and provided a contingent liability has been adequately identified in terms of sub-paragraph 1 above, the member may comply with such request but only if he is asked to confirm, as reasonable in his or her opinion, an amount which the client has suggested be provided in respect of such adequately identified contingent liability.
- 10.3 When supplying such information, the member shall qualify his or her report by stating that although care has been taken in preparing or checking the information, no guarantee can be given that the information is correct in all aspects.
- 10.4 The member shall add any further qualification which he or she considers appropriate (e.g. disclaimer of detailed knowledge).

[End of Document]

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

NB The Patent Examinations in these Examination Regulations will only come into effect when and if so decided by Council. Until then the examinations set by the Patent Examination Board in terms of the Patents Act No. 57 of 1978 and the Patent Regulations (as amended) will apply to people wanting to qualify as Patent Attorneys.

Group 1 subjects

1. SA Patent Law and Practice
2. SA Trade Mark Law and Practice
3. SA Copyright Law and Practice
4. SA Design Law and Practice
5. Comparative Study of Selected International Patent Law and Systems.

Group 2 subjects

1. Drafting of Patent Specifications
2. Practical Legal Problems
3. Patent Attorneys Practice (written and oral examinations)
4. Interpretation of Drawings (if required for the examination prescribed in terms of the patents Act)
5. Comparative Study of Selected International Trade Mark Laws and Systems (if required for the examination prescribed in terms of the patents Act)

With the exception of 4 and 5 (which will no longer form part of the Patent Examinations if the examination prescribed in terms of the Patents Act no longer serve as the Patent Examinations prescribed in these Examination Regulations), the Group 2 subjects will be practical subjects for which substantial practical experience will be necessary and will be set at a level that requires substantial practical expertise.

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

The examinations for the group 2 subjects are separate and a candidate will be required to achieve a pass mark of at least 50% for each subject. Such examinations may be attempted and passed in different years but not exceeding a total period of three years unless prior consent is obtained from Council on good cause shown.

In order to qualify for the Practical Trade Mark and Related Problems (oral) examination in Group 2, a candidate shall first have obtained a pass mark of at least 50% in both of the written examinations in Group 2.

6. 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
7. 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 – 60% to 74%; C – 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 medical certificate 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.

9. A supplementary examination 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 twice failed the same subject in Group A1 or B1 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 or B2 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 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.

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.

[End of Document]