

IMPORTANT INFORMATION: READ NOW

DEPARTMENT OF MERCANTILE LAW

ESSENTIAL PATENT LAW

IPSP033

Tutorial Letter 101/4/2017

**SCHEME OF WORK, STUDY RESOURCES AND
ASSIGNMENTS**

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1 A WORD OF WELCOME

We are pleased to welcome you to this module and hope that you will find it both interesting and rewarding. We will do our best to make your study of this module successful. You will be well on your way to success if you start studying early in the semester and resolve to do the assignments properly.

This tutorial letter contains important information about this module. We urge you to read it carefully and to keep it at hand when working through the study material, preparing the assignments, preparing for the examination and addressing questions to your lecturers.

In this tutorial letter, you will find the assignments for the semester and instructions on the preparation and submission of the assignments.

This tutorial letter also includes certain general and administrative information about this module. Please study this section of the tutorial letter carefully.

Right from the start we would like to point out that **you must read all the correspondence** you receive during the semester **immediately and carefully**, as it always contains important and, sometimes, urgent information.

We hope that you will enjoy this module and wish you all the best!

2 TUITION RATIONALE

Essential Patent Law (IPSP033) is one of the first four modules offered as part of a joint intellectual property programme by the University of South Africa and the WIPO Worldwide Academy. The focus of this module is on the special circumstances prevailing in developing countries. This module will approach the subject-matter against the background of international conventions and the obligations they impose on developing countries. It will then be demonstrated, using South African law as an example, how these obligations have been discharged. You will be expected to examine the law of your own countries to determine how these obligations have been discharged, or how they should be discharged.

Students who have completed the DL101 module and have registered for the WIPO/UNISA Specialisation Programme in Intellectual Property Law for the first time should note that this is an advanced module dealing with the finer detail and more complicated aspects of the topic. This module will therefore require a far greater effort on your part than did the DL101 module as well as an independent, responsible and critical approach.

The purpose of this module is to equip you with the basic knowledge and skills to apply the legal principles pertaining to Patent Law within the structure and functioning of the legal systems of developing countries.

You will not be able to rely solely on the lecture notes. Indeed, it will be essential to supplement these by having recourse to the relevant statutes and decisions of the courts, and also by consulting the prescribed materials.

After studying this module, completing the activities and critically evaluating your own responses, you should be able to use your knowledge of the general principles of the law of patents in everyday situations, understand the basic structure and functioning of patent law, engage with selected legal texts pertaining to patent law, pass on knowledge obtained through your studies to members of organisations or bodies involved in the practice and regulation of

the patent system.

3 COMMUNICATION WITH YOUR LECTURERS

The lecturers responsible for this module are as follows:

Lecturer's name:	Prof CJ Visser
Building and office number:	Cas van Vuuren Building 6-144
E-mail address:	vissecj@unisa.ac.za
Telephone number:	012 429-8452 (+27 12) 429-8452 (international calls)

Lecturer's name:	Mr RM Shay
Building and office number:	Cas van Vuuren Building 4-095
E-mail address:	shayrm@unisa.ac.za
Telephone number:	012 429-4267 (+27 12) 429-4267 (international calls)

Letters should be sent to:

The Module leader (IPSP033)
Centre for Business Law
PO Box 392
UNISA 0003
SOUTH AFRICA

PLEASE NOTE:

1. Lecturers should be contacted regarding course content only.
2. Letters to lecturers may not be enclosed with or inserted into assignments.

4 COMMUNICATION WITH THE UNIVERSITY ADMINISTRATION

Students must address all queries on administrative matters to:

Administrator:	Ms P Mofokeng
Building and office number:	Cas van Vuuren Building 6-157
E-mail address:	cbuslaw@unisa.ac.za
Telephone number:	012 429-8774 (+27 12) 429-8774 (international calls)
Fax number:	(+27 12) 429-8206 / 2094

Letters should be sent to:

The Administrator
Centre for Business Law
UNISA
PO Box 392
UNISA 0003
SOUTH AFRICA

5 STUDY MATERIAL

5.1 Tutorial material

The tutorial material for Essential Patent Law consists of the following:

- A study guide
- Tutorial letters
- Cases
- Legislation and international instruments

5.2 Prescribed textbook(s)

There is no prescribed textbook for this module. This means that you do not have to buy any books for this module. **You need only your study guide, cases, legislation and international instruments and the tutorial letters.**

5.3 Resources

5.3.1 Recommended books

There are no recommended books for this module.

5.3.2 Additional books

There are no additional books you should read for this module.

5.3.3 Prescribed cases

Copies of the prescribed cases have been uploaded as additional resources on *myUnisa*.

For the purposes of assignments and examinations, a thorough knowledge of these cases is essential! You should bear in mind that the other cases discussed in your study guide are important and should not be ignored. They must be studied as they appear in your study guide.

List of prescribed cases

Frank & Hirsch (Pty) Ltd v Rodi Wienenberger Aktiengesellschaft 1960 (3) SA 747 (A)

Gentiruco AG v Firestone (SA) (Pty) Ltd 1972 (1) SA 589 (A)

Levin v Number Plates and Signs 1942 CPD 412

Raubenheimer and another v Kreepy Krauly (Pty) Ltd and another 1987 (2) SA 650 (A)

Stauffer Chemical Co and another v Safsan Marketing and Distributioni Co (Pty) Ltd and others 1987 (2) SA 331 (A)

Syntheta (Pty) Ltd (formerly Delta Scientific (Pty) Ltd) v Jansses Pharmaceutica NV and another 1999 (1) SA 85 (SCA)

5.3.4 Legislation

We will provide you with extracts from legislation and international instruments.

6 HOW THE ASSIGNMENT SYSTEM WORKS

6.1 Assignments and learning

Assignments are seen as part of the learning material for this module. As you do the assignments, study the reading texts, consult other resources or do research, you are actively engaged in learning.

6.2 General remarks

You must submit your assignments electronically via *myUnisa*. Assignments may **not** be submitted by fax or e-mail. For detailed information and requirements as far as assignments are concerned contact assign@unisa.ac.za.

To submit an assignment **via *myUnisa***

- Go to *myUnisa*.
- Log in with your student number and password.
- Select the module.
- Click on assignments in the left-hand menu.
- Click on the assignment number you want to submit.
- Follow the instructions on the screen.

6.3 Commentaries and feedback on assignments

Commentaries on the assignments will be sent to all students registered for this module in a follow-up tutorial letter, and not only to those students who submitted the assignments. The tutorial letter number will be 201, 202, etc.

As soon as you have received the commentaries, please check your answers. The assignments and the commentaries on these assignments constitute an important part of your learning and should help you to be better prepared for the examination.

6.4 Submission dates

Please note that, to facilitate submission, we have arranged that both assignments may be submitted by the same closing date. You must however submit the two assignments SEPARATELY.

The closing dates for the submission of the assignments are:

- ... for the **first semester**

Assignment 01: 20 March 2017

Assignment 02: 24 April 2017

- ... for the **second semester**

Assignment 01: 21 August 2017

Assignment 02: 22 September 2017

6.5 Purpose of the assignment

The assignment is an extremely important part of the module. In the assignment you must prove your ability to deal with the subject-matter. The purpose of assignments is fourfold:

- to assist you to work through the study material
- to teach you the necessary reading and writing skills
- to teach you to make a synthesis from various sources; to gather material and present it in a logical, ordered fashion and with convincing arguments (merely copying the study material is not acceptable)
- pre-examination assessment: this is the only opportunity before you write the examination for us to assess your ability to answer examination-style question.

6.6 General approach to essay-type assignments

In order to answer your assignments satisfactorily, you must work through the prescribed study material carefully. The following basic guidelines can be of help:

- Students normally complain that they cannot rewrite the **study material in their own words**. However, there are three easy steps to accomplish this:
 - **Study** the relevant study material until you understand it. While you are reading the particular section or chapter, make notes or lists of the key words and concepts.
 - Put away your study material and try to **summarise** that particular study unit in your own words by **using your notes** and list of key words.
 - Use the study material to **finalise** your summary with **references to case law** and other relevant authority.
- You are expected to consult cases and legislation when answering an assignment, and to then cite these materials as authority in your answer. **Do not refer to sources you have not personally consulted.**
Quotations from case law and other sources must be kept to a minimum. All quotations must be **accurate** and **acknowledged** fully.
- Although students may work together when preparing assignments, each student must write and submit his or her own individual assignment. In other words, each student must submit his or her own work. It is unacceptable for students to submit identical assignments on the basis that they worked together. Similarly, it is unacceptable for students to copy anything from the Internet or from any other source without acknowledgement and to pass it off as their own work. **That will amount to plagiarism and all students concerned will be given a zero grade.** Furthermore, these students may be subjected to disciplinary proceedings of the University.
- **Names of cases and Latin expressions** must either be underlined or typed in italics.
- **Neatness** is a prerequisite. **Plan** your answers in advance.
- We restrict the length of assignment answers to teach you to write concise and logical legal arguments. It is very easy to write long, rambling answers but such answers do not earn good marks. You must learn to summarise your study material so that you can answer a question in a factually correct, concise and logical manner. This will also teach you to give similar answers in an examination.

- Please ensure that your name and address, student number, module and module code, and assignment number are written clearly on the assignment cover. This information must be correct.
- Remember that your assignment must have precisely the same number as that given in this tutorial letter.
- It is wise to **make a copy of the assignment** before submitting it, in case your assignment gets lost in the post or electronic submission fails.

7 HOW THE EXAMINATION SYSTEM WORKS

7.1 Examination admission

All students who submit the compulsory assignment 01 in time (before or on the date of submission) will be admitted to the examination regardless of the mark obtained for the assignment. Students who do not submit the compulsory assignment before or on the due date, will not receive admission to write the examination. The mark obtained for the compulsory assignment will count towards your final mark.

Submission of assignment 02 is not compulsory in the sense that it will not grant you admission to the examination. However, the mark obtained for this assignment will count towards your final mark.

The marks obtained for the assignments will --- provided you obtain an examination mark of at least 40% --- count up to 20% of your final mark. You need to obtain a subminimum of at least 40% in the examination before your year mark will be taken into account. This means that a student who has obtained at least 40% in the examination and who has a good year mark will have a great advantage above another student who has no year mark or a poor year mark. You need to obtain a final mark of 50% (combined examination mark and year mark) to pass this module.

7.2 Examination period

This module is a semester module. This means that if you are registered for the first semester you will write the examination in May/June 2017. If you are registered for the second semester you will write the examination in October/November 2017.

Please ensure that you will be available during these periods as no deferments or extensions will be permitted. If you fail to write an examination you will forfeit your fees.

Should the examination dates for two or more of your modules fall on the same day, you must contact the Administrator immediately so that special arrangements can be made for the submission of your answers.

7.3 Examination paper

At the end of the semester you will write **one paper** on Essential Patent Law. The paper counts 100 marks. This will be a 'take home' examination: you will be given the examination paper to answer at home, and then return it to us by fax or e-mail.

For this reason you should make sure that the Administrator always has your current fax number and e-mail address.

8 ASSIGNMENTS

PLEASE NOTE!!! PLEASE NOTE!!!

1. **Make sure that you submit your assignments before or on the closing date. No extensions will be granted for the submission of assignments.**
2. The marks that you obtain for the assignments will form part of your year mark and may count towards your final mark if you obtain a subminimum of 40% in the examination.
3. We **restrict the length of your assignment answers**. Your answers should, therefore, be concise and logical. This will also teach you to be brief and to the point in the examination.
4. **The detailed commentary on each assignment** will be sent to you in a tutorial letter so that you can check your answers by using the commentaries. **Remember**, the assignments and the commentaries on these assignments constitute an important part of your study material for the examination.

ASSIGNMENTS FOR SEMESTER 1

ASSIGNMENT 01: COMPULSORY

CLOSING DATE: 20 March 2017

UNIQUE NUMBER: 848311

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

Mr Picture Perfect is a freelance photographer. He also develops his own films. While developing a film, he accidentally stumbles on a new combination of chemicals usually used for the development of films. The new combination makes the picture quality infinitely clearer and brighter. Very excited, Mr Picture Perfect tells his assistant about this new combination (formula).

- 1 Discuss whether the formula qualifies as an invention for purposes of patent protection.
- 2 Discuss whether the formula meets the novelty requirement.
- 3 Discuss whether the formula meets the inventiveness requirement.

ASSIGNMENT 02**CLOSING DATE: 24 APRIL 2017****UNIQUE NUMBER: 745023**

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

Mr Picture Perfect is a freelance photographer. He has modified his camera to be able to take digital pictures. Unfortunately the original camera itself still enjoys patent protection. Advise Mr Picture Perfect on whether he will be able to obtain a licence from the patentee of the camera to enable him (Mr Picture Perfect) to patent his modification without infringing the existing patent.

ASSIGNMENTS FOR SEMESTER 2**ASSIGNMENT 01: COMPULSORY****CLOSING DATE: 21 August 2017****UNIQUE NUMBER: 721244**

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.

I know that plagiarism is wrong.

I confirm that this assignment is my own work.

I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.

I have not directly copied without acknowledgement anything from the Internet or from any other source.

I have indicated every quotation and citation in a footnote or bracket linked to that quotation.

I have not allowed anyone else to copy my work and to pass it off as their own work.

I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.

I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.

I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

In order to conserve nature and to prevent pollution, the South African government promulgates

an Act to prohibit the use of leaded petrol in motor vehicles. Dr Genius realizes that it will prevent many vehicle owners from using their vehicles since so many vehicles on South African roads use only leaded petrol. He then develops a device that can be inserted into a leaded petrol engine to convert it to an engine that can also use unleaded petrol.

- 1 Discuss whether the device qualifies as an invention for purposes of patent protection.
- 2 Discuss whether the device meets the novelty requirement.
- 3 Discuss whether the device meets the inventiveness requirement.

ASSIGNMENT 02

CLOSING DATE: 22 SEPTEMBER 2017

UNIQUE NUMBER: 690905

Your answers to the assignment questions should **not** exceed two typed pages. Your answer to the assignment must be accompanied by the following declaration. Assignments submitted without this declaration will be returned unmarked.

Declaration

I know that plagiarism is to use someone else's work and pass it off as my own.
 I know that plagiarism is wrong.
 I confirm that this assignment is my own work.
 I have acknowledged in the bibliography accompanying the assignment all the sources that I have used.
 I have not directly copied without acknowledgement anything from the Internet or from any other source.
 I have indicated every quotation and citation in a footnote or bracket linked to that quotation.
 I have not allowed anyone else to copy my work and to pass it off as their own work.
 I understand that if any unacknowledged copying whatsoever appears in my assignment I will receive zero per cent for the assignment.
 I am aware of the UNISA policy on plagiarism and understand that disciplinary proceedings can be instituted against me by UNISA if I contravene this policy.
 I indicate my understanding and acceptance of this declaration by entering my name hereunder:

Name:

QUESTION

In order to conserve nature and to prevent pollution, the South African government promulgates an Act to prohibit the use of leaded petrol in motor vehicles. Dr Genius realizes that it will prevent many vehicle owners from using their vehicles since so many vehicles on South African roads use only leaded petrol. He then develops a device that can be inserted into a leaded petrol engine to convert it to an engine that can also use unleaded petrol.

Dr De Ville, a rival researcher, starts to manufacture and market a similar device shortly after Dr Genius's device was launched. Assume that Dr Genius has patented the device. Advise Dr Genius whether Dr De Ville is infringing his patent rights. Refer in your advice to all the relevant acts of infringement as well as the tests that courts use to establish infringement.

We hope that you will enjoy this module and we wish you success with your studies.

Kind regards

PROFESSOR CJ VISSER
MR RM SHAY