

File your own Design Toolkit

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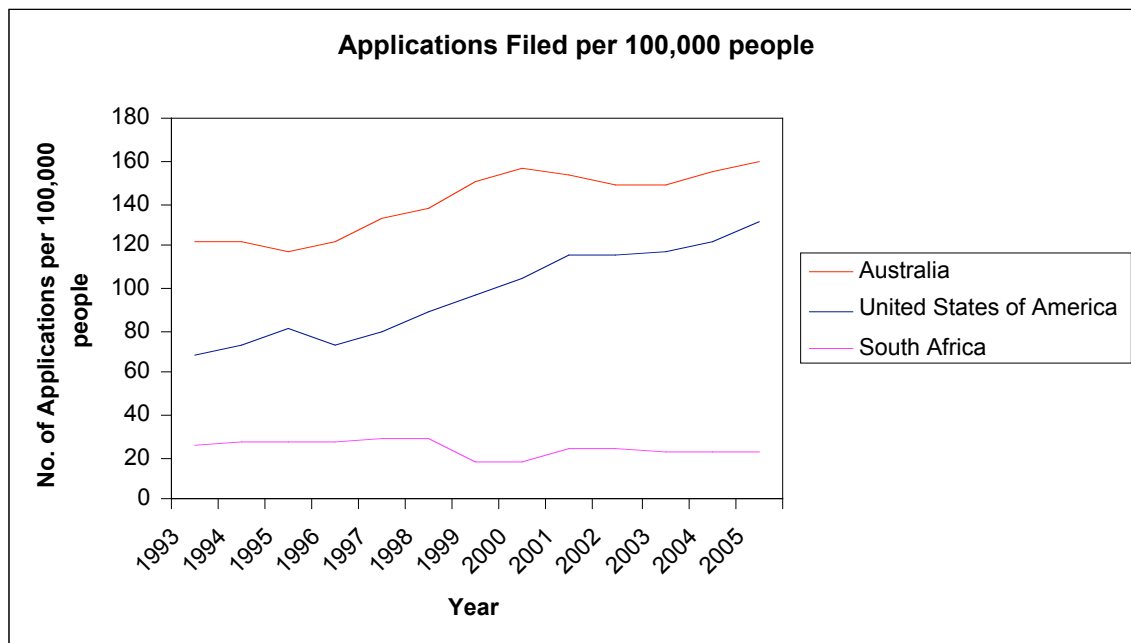
2011

Opening the door to Intellectual Property

Kreepy Krauly, Pratlley's Putty, the Cat Scan, the first successful heart transplant, the Rooivalk attack helicopter and Sasol's leading coal and gas-to-liquid technology are just a few of many inventions born and developed in South Africa. If these inventions are proof of South Africa's ability to innovate, why is it that the South African wheel of innovation is gradually losing momentum?

If we compare the patent records of Australia, the US and South Africa it is clear that patent filings internationally follow an increasing trend, whereas South African patent filings are on the decline, with filings reducing by 24% from a recorded high in '98 and low in 2000.

Some may argue that this is due to stagnation of our creativity and skills. However, the number and quality of inventions receiving SABS design awards appears to contradict this. Could it not be that our patenting costs are too high and that the average inventor lacks access to our patenting system?



Graph 1: Patent applications filed per 100,000 people in Australia, United States and South Africa during the period 1993 to 2005.

We believe so, and if correct, a reduction in patenting costs should increase the number of South African patent filings, resulting in a higher number of commercially successful products, which in turn would increase our competitiveness and stimulate our economy.

www.ideanav.com (an affiliate of Sibanda & Zantwijk Patent Attorneys) aims to empower inventors by providing tools that navigate ideas to successful products.

Drafting and filing your own design application for R240

As an alternative to filing design applications through a patent attorney at a cost of between R3,850 (IdeaNav charge) and R10,000 (depending on the firm selected), you can protect the appearance (i.e. pattern, shape, configuration and/or ornamentation) of your article by drafting and filing your own design application at the South African Designs Office at a cost of R240.

To prepare a design application you merely have to: determine the class in which your article falls; decide whether the application is for an aesthetic or functional design; prepare a set of drawings / photographs; and complete the prescribed forms.

Aesthetic designs protect those features of your article which appeal to and are judged solely by the eye (e.g. jewellery), whereas functional designs protect those features that are necessitated by the function the article is to perform (e.g. a flat-top screw). Functional designs may however not be filed for spare parts, being articles that are expected to be replaced during the life of the machine, vehicle or equipment as a result of ordinary wear and tear.

A set of articles can be protected in a single application, provided that each article in the set has the same general character and are ordinarily on sale together or intended to be used together (e.g. cutlery, set of tools, tea set, etc). The registration protects the set as well as each individual article forming part of the set.

The scope of protection of your design is defined by the definitive statement. The (optional) explanatory statement focuses on specific aspects of the design and may be used to explain the function and the method or principle of construction of the article. These statements may include reference numerals to identify particular features of the article represented in the drawings / photographs.

Immaterial features of the design may be “disclaimed” by illustrating these features in broken lines. However, this may only be done where the features disclaimed are capable of being manufactured separately. For example, where a metal hammer head can be attached to wooden handles of various shapes, the handle can be drawn in broken lines.

To prepare the application: complete forms D1, D2, D3, D6 and D8 (all except form D3 in duplicate) in block letters and black ink; attach two copies of the preferred drawing / photograph for publication to form D8; and enclose four copies of the drawings / photographs (on A4 pages and signed at the end of each page). Copies of these forms are available at www.ideanav.com.

Deliver the application to the South African Designs Office (DTI campus, Block F, 77 Meintjies Street, Sunnyside, Pretoria), pay the cashier R240 in cash to stamp the documentation and submit the application. Applications may be submitted up to 6 months following public disclosure.

On registration, a brief statement of features that describes the design (±100 words) and the preferred drawing / photograph (typically a perspective view) will be published in the Patent Journal. Following publication, your aesthetic and functional design registrations will provide protection against others making, importing, using or disposing of articles within the same class that embody your design or a design not substantially different, for periods of 15 and 10 years, respectively.

DESIGN GUIDE

AESTHETIC OR FUNCTIONAL DESIGN?

Aesthetic designs: protect those features of an article that appeal to and are judged solely by the eye (e.g. jewellery)

Functional designs: protect those features that are necessitated by the function the product is to perform (e.g. a flat-top screw)

Notes:

- Spare parts are excluded from functional designs.
- Separate aesthetic and functional designs may be filed for the same article.
- A design application may be filed within 6 months following disclosure to the public.
- Term of protection: 15yr (Aesth.); 10yr (func.)

CLASSIFICATION

Ensure that you classify the design correctly. Useful links are available at www.ideanav.com. Refer only to the main class, e.g. class 9 for containers.

Where more than one class is relevant, file separate applications for each class.

DEFINITIVE STATEMENT

This statement defines the scope of protection afforded by the design. Example:

*Protection is claimed for the features of shape, pattern, configuration and/or ornamentation **[delete whichever is not applicable]** of a **[identify the article]**, substantially as shown in the accompanying representations.*

Note:

- When filing an application for a set of articles, the definitive statement must be amended as follows:

*Protection is claimed for the features of shape, pattern, configuration and/or ornamentation of a **set of**, substantially as shown in the accompanying representations.*

EXPLANATORY STATEMENT

This statement is optional. It is used to focus the eye on specific aspects of the design, and may be used to explain the function and the method or principle of construction of the article.

In practice, one identifies features on the drawings with arrows associated with letters/numbers, which features are referred to and discussed in the explanatory statement. One should include explanatory statements where the design is generally similar to prior art with the exception of subtle, but important differences.

BRIEF STATEMENT OF FEATURES

This statement has no legal significance. It is merely used for publication purposes. Example:

*The design relates to a **[identify the article]**. The features of the design are those of pattern, shape, configuration and/or ornamentation **[delete whichever is not applicable]**.*

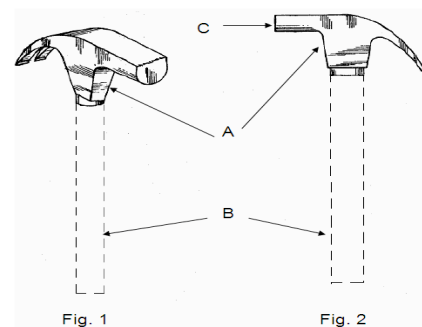
REPRESENTATIONS

Prepare drawings or photographs (on A4 paper) showing all necessary views. The bottom of each page must be signed.

Immaterial features of the design may be “disclaimed” by illustrating these features in broken lines. However, this may only be done where the features disclaimed are capable of being manufactured separately.

Select a perspective view for publication.

PRACTICAL EXAMPLE – A HAMMER



Article: Hammer

Aesthetic or Functional: Aesthetic

(although this is a functional object, the “new features” for which protection is claimed are not dictated by its function, they have that shape due to their eye-appeal. However, if the hammer is designed to stand on its head, the flat top may be dictated by its function and a functional design should also be filed)

Class: 8

Definitive statement: Protection is claimed for the features of shape and/or configuration of a hammer, substantially as shown in the accompanying representations, irrespective of the shape of the handle “B”.

Explanatory statement: The head “A” of the hammer comprises a striking portion “C” of substantially constant cross-section and a flat top.

Description of features: The design relates to a hammer. The features of the design are those of shape and/or configuration.