Overview on Patent Reforms in South Africa

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East Meets West Conference: Vienna
National Development Plan (NDP), which sets out Government strategic goals, calls for greater emphasis on innovation, improved productivity, more intensive pursuit of a knowledge economy and better exploitation of comparative and competitive advantages.

IP may be an important policy instrument in promoting innovation, technology transfer, research and development (R&D), creative expression, consumer protection, industrial development and more broadly - economic growth.

South Africa requires a coordinated and balanced approach to IP that provides effective protection of IP rights (IPRs) and responds to South Africa’s unique innovation and development dynamics.
There are a number of government departments in South Africa that are in one way or the other responsible for the registration and maintenance of IP rights (Fragmented IP Landscape).

The IP Consultative Framework was approved by Cabinet in July 2016 as a basis for the development of the National IP Policy.

- Formation of an Inter-Ministerial Committee on IP.
- Broader consultation with both local and international stakeholders (WIPO, WHO, UNDP, RSA Law firms, industry, government departments).
- Phased approach to dealing with IP issues, i.e. short term and long term objectives.
The draft IP Policy (Phase 1) was approved by Cabinet on 3 August 2017; and published on 8 August 2017 for public consultation.

The IP Policy in its broadest sense looks to address the following short term issues where CIPC is intrinsically involved:

- Local manufacture and export in line with industrial policy,
- **Patents – substantive search and examination**, 
- Patent opposition,
- Patentability criteria,
- Disclosure requirements,
- Parallel importation,
- **Exceptions**,
- Compulsory licenses,
- IP & competition law.
Statistics for patent and design applications

South Africa receives on average nine thousand (9000) patent applications 2000 design applications a year.

- about 10% are local applications (first filings)
- about 75% are national phase or foreign applications (second filings)
- about 15% are patent applications originating from South Africa, filed abroad
Applications are examined as to **formalities** and **not substantively** to determine if the requirements for patentability have been met.

The introduction of the Substantive Search and Examination (SSE) system will **enhance the quality of patents granted** – validity and compliance with all the criteria for patentability.

There is provision for **opposition systems** to ensure that quality patents are granted by the Patent Office (Phased roll out depending on capacity).

- Third party observations
- Post grant oppositions
- Pre-grant oppositions
## Patent Examiners Recruited

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<tr>
<th>Examiner</th>
<th>Highest Qualification</th>
<th>Expertise</th>
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<tbody>
<tr>
<td>Anathi A. Njokweni</td>
<td>PhD</td>
<td>Plant Biotechnology</td>
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<tr>
<td>Bheki B. Zulu</td>
<td>MSc</td>
<td>Physics</td>
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<td>Charmain Gazide</td>
<td>Honours</td>
<td>Chemistry</td>
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<tr>
<td>Denise Le Noury</td>
<td>PhD</td>
<td>Biochemistry</td>
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<td>Enos Khameli</td>
<td>BTech</td>
<td>Electrical Engineering</td>
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<td>Gnineka Mbambisa</td>
<td>PhD</td>
<td>Chemistry</td>
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<td>Hastings H. Cele</td>
<td>PhD</td>
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<td>Keitumetse Potgieter</td>
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<td>Kerileng KM. Molapo</td>
<td>PhD</td>
<td>Chemistry</td>
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<td>Maanda Phosiwa</td>
<td>MSc</td>
<td>Molecular Biology/Biochemistry</td>
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<tr>
<td>Machele M. Mokgalong</td>
<td>Honours</td>
<td>Mining</td>
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<td>Masisange Mketsu</td>
<td>MSc</td>
<td>Biochemistry</td>
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<td>Mehluli Ncube</td>
<td>MSc</td>
<td>Physics</td>
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<tr>
<td>Morore Mphahlele</td>
<td>PhD</td>
<td>Medical Science</td>
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<td>Myda Visser</td>
<td>Honours</td>
<td>Information Technology</td>
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<td>Thandanani T. Cwele</td>
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<td>Thobeka Kente</td>
<td>PhD</td>
<td>Chemistry</td>
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Training of Examiners

→ Several IP offices (Austria, China, India, Japan, Russia, UK Patent office and USPTO) have assisted in the training of the examiners.

→ The examiners have also received training from WIPO, the South African Institute of Intellectual Property Law (SAIIPL) through the Patent Board Examination (PEB) and the Witwatersrand University.

→ CIPC has signed a MoU with the European Patent Office (EPO) as a strategic partner to provide training to its examiners on SSE.

→ EPO is regarded as one of the best patent offices in the world, and the development of our law follows English law, which make the EPO a suitable partner in the training of our examiners.

→ The training of our examiners commenced in September 2017, for a period of two years.
CIPC also views collaboration practices on national and international level as a strategic tool to advance our strategic objectives.

In pursuing our extended mandate, CIPC has thus entered into collaboration agreements with e.g. the National Intellectual Property Management Office (NIPMO) and the Technology Innovation Agency (TIA) whose mandates are along the innovation value chain.

At the international level, CIPC is working closely with WIPO, EPO, USPTO, JPO, and the BRICS IP Offices.

Our collaboration with the Department of Science of Technology on IKS.
Cooperation with the EPO on SSE of Patents (MoU signed Feb 2017)
Project launched and a “national task force” was established to oversee effective implementation of project.

Task Force members includes officials from CIPC, WIPO, the dti, Dept. Small Business Development, SEDA & Research Councils.

A study has been commissioned to identify strategies for effective exploitation & management of IP by Small and Medium-Sized Enterprises including Micro-Enterprises (SMMEs).
South Africa’s WIPO Summer school on IP and technology transfer

- WIPO; CIPC; NIPMO; Universities
- IP Professionals, Students, Researchers locally & internationally
IP Trade Portal

- CIPC IP TRADE PORTAL - launched by Minister Rob Davies on 18 NOVEMBER 2013
The aim of the trade portal is to promote commercialization of IP rights by establishing a forum where the entrepreneurs, inventors and innovators can meet and exchange ideas, buy and sell IP rights;
Benefits of the IP Trade Portal

→ A meeting place for industry, corporates, innovators and SMEs to trade.

→ A platform for innovators to create additional revenue through licensing, buying, selling or licensing IP rights.

→ A platform for industry and corporates to source innovative solutions.
Benefits of IP Trade Portal Cont.

→ Allows patent searches to be conducted through CIPC database.

→ Allows innovators to get an indicative score of their patented innovation through a tool developed by the Danish Patent Office.

→ Allows innovators to gauge the fair market value for the innovation through the tool and to inform further negotiations of selling, licensing of IP rights.
IP Trade Portal Challenges

→ The IP Trade Portal is under-utilized.

→ Lack of knowledge about the Portal.

→ Lack of industry of corporate participation.

→ Lack of coordination between industry and innovators.
Inventor Assistance Program


Idea: Pro bono program to make the IP system more accessible
Active role of Novartis and other corporate members

The First meeting at HQs May 2013
IAP at the Forum’s Davos’ meeting, January 2014
Launching of the 3 Pilots (April 2015 to February 2016)
Meeting in Washington to explore synergies (IAP and the US Program)
Launching October 17, 2016
Inventor Assistance Program

WIPO

→ Pairs a financially under resourced inventor with a pro bono patent attorney.

→ The inventor must meet the eligibility criteria.

→ Assist to obtain patent protection.
Inventor Assistance Program cont.

Inventors
- Help level the playing field for inventors
- Everybody has the opportunity to see their invention examined in the substance by the Patent Office

Society in General
- Exploiting opportunities offered by new inventions
- Technological progress

Patent Offices
- More possibilities of interaction with the patent applicant
- Less effort in processing well presented patent applications

Patent Attorneys
- Future opportunities of contracts
- Opportunity to acquire experience in very complex areas
The IAP is currently active in five countries:

→ Colombia
→ Morocco
→ The Philippines
→ Ecuador

Launched November 2017 in South Africa (4th country)
THANK YOU!!