

BRIEFING ON THE INTELLECTUAL PROPERTY POLICY (PHASE I)

PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY

**Ambassador X Carim, DDG
Trade Policy, Negotiations and Cooperation
03 November 2020**



the dtic

Department
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

the dtic - together, growing the economy

the dtic Customer Contact Centre: 0861 843 384

the dtic Website: www.thedtic.gov.za



Delegation

Ambassador Xavier Carim

Deputy Director General

Trade Policy, Negotiations and Cooperation Branch

the dtic

Tel: 012 394 3064

Email: Xcarim@thedtic.gov.za

Acronyms

CIPC	Companies & Intellectual Property Commission
EPO	European Patent Office
IK	Indigenous knowledge
IP	Intellectual Property
IPR	Intellectual Property Right
IMCIP	Inter-Ministerial Committee on IP
MoU	Memorandum of Understanding
NDP	National Development Plan
SSE	Substantive Search and Examination
UN	United Nations
WIPO	World Intellectual Property Organisation

Outline of Presentation

- Background
- Policy Objectives
- IMCIP
- Immediate issues
- Built-in Agenda
- Implementation



Background

- In 2008 Cabinet mandated the DTI(C) to lead the development of a national IP Policy
- In 2013 a draft National IP Policy was approved by Cabinet
- In July 2016 Cabinet approved a Framework for enhanced consultations – both intra-governmental and with stakeholders
- In Aug 2016 this Consultative Framework was gazetted for public comment
- In Aug 2017 a draft IP Policy (Phase I) was gazetted for public comment
- In May 2018 Cabinet approved the IP Policy Phase 1

Policy Objectives

The Policy Document provides a framework and set of guidelines for policy development and legislation on IP matters

It is premised on the ethos and direction provided for in the SA Constitution, notably, amongst others:

- The Bill of Rights
- Section 25 on expropriation that protects citizens against arbitrary deprivation of property (including IPRs)
- Section 27 which provides for the progressive realisation of the right to health

Policy Objectives

Objectives include:

- Promoting public health
- Stimulating innovation
- Ensuring an appropriate balance between IP protection to encourage innovation and the dissemination of the benefits of innovation for society
- Balancing the rights of owners and users of IPR
- Fostering an environment that encourages investment and technology diffusion

Policy Objectives

- Seek greater alignment between the IP regime, the NDP and industrial policy
- While IP protection encourages innovation, it recognises that an overly restrictive application may lead to monopoly/concentrated markets that deny new entrants to the market
- Striking an appropriate balance is essential
- Seeks to promote innovation, research and development and encourage technology transfer to broaden industrial participation and growth
- Seeks to protect creative industries and encourage development of the creative industry and enhance access

Policy Objectives

- Strengthen Intra-Governmental coordination on IP matters
- Ensure national approaches and legislation are coordinated and aligned with approaches taken at bilateral, regional and international levels
- Ensure legislation is consistent with SA's international legal obligations and norms

IMCIP

- Cabinet established the IMCIP in July 2016
- IMCIP seeks to enhance intra-governmental coordination on IP matters given its cross cutting nature
- IMCIP serves as the core drafting team for the policy, its development, and implementation
- IMCIP comprises 11 departments:
- DTIC, Health, International Relations/Cooperation; Education; Sci & Tech; Communications/Digital Technologies; Sports, Arts and Culture; Agriculture, Land Reform and Rural Development; Mineral Resources and Energy; and Environment, Forestry and Fisheries

Immediate Issues (Phase I)

On Public Health, the Policy:

- Encourages local manufacturing of medicines, devices and diagnostics including through appropriate patentability criteria and exceptions
- Provides for parallel importation to allow imports of more affordable medicines, as envisaged in the Medicines and Related Substances Act
- Seeks to ensure that compulsory licenses provisions are brought in line with international best practice, taking into account flexibilities in international legal obligations
- Provides for exceptions to patent protection for research and experimental purposes

Immediate Issues (Phase I)

- Introduces a Substantive Search and Examination requirement process at the CIPC to ensure that patents are granted only when they meet the standard of genuine innovation
- Introduces an opposition process to assist the evaluation of patent applications
- Seeks to ensure patentability criteria meet the standard set in international law and reflect national development objectives
- Clarifies disclosure of information requirements for patent applications to ensure patents are not wrongfully granted

Immediate Issues (Phase I)

- Recognizes and preserves the role of voluntary licenses in providing access to medicines in SA (SA is a beneficiary of the Medicines Patent Pool licenses)
- Recognizes the role of competition policy and legislation in facilitating access to medicines, and
- Recognizes the importance of cooperation amongst Competition Authorities around the world to develop guidelines on the interface of IP and competition

Immediate Issues (Phase I)

International IP cooperation:

- Ensure coherence and consistency between SA's policy and legislation and approaches taken at multilateral, regional and bilateral levels
- Ensure SA's policy and legislation complies with SA's international legal obligations
- Fully take into account flexibilities provided under international law, and
- Recognize the diversity of actual practice in national jurisdictions, reflecting national imperatives and interests

Built-in Agenda

The IMCIP has identified other focus areas for the medium term including, the interface between IP and:

- Localization/beneficiation objectives
- Agriculture; Biotechnology/Genetic Resources
- Environment/ Climate Change/ Green Technologies
- Support to informal inventors to protect IP they may develop
- Commercialization - Branding SA goods and services (Collective Marks, Certification Marks, Geographical Indications)

Built-in Agenda

- Awareness and Capacity Building
- Monitoring and Evaluation
- Enforcement



Built-in Agenda

- When the IP Policy was developed, the Copyright Amendment Bill and legislation addressing Indigenous Knowledge were at advanced stages of development
- The IP Policy document indicates these areas should be subject to monitoring and evaluation to ensure alignment with the broader IP Policy objectives
- This is set in the Strategy Section of the IP Policy Phase 1, approved by Cabinet in 2018.

Implementation

At the CIPC, work on the process for substantive search and examination is underway:

- Training patent examiners
- To develop supportive ICT infrastructure for implementation
- And in ongoing collaboration with the EPO and WIPO

Implementation

Legislative reforms (**the dtic** and CIPC):

- Development of Patents Act: Draft Bill has been prepared and will be submitted to Cabinet for approval for public consultation
- Development of Designs Act: Draft Bill has been prepared and will be submitted to Cabinet together with Patents Bill
- Work on accession to Madrid Protocol is at an advanced stage
- Protocol provides for the protection of business brands in multiple jurisdictions (simple and cost effective)

Thank you

