

PC Science, Technology & Innovation

Briefing on the current state and future of SA Intellectual Property (IP) landscape 2 June 2026

Presenter: Ambassador Mlumbi-Peter
Deputy Director-General: Trade Branch



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Department
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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the dtic Customer Contact Centre: 0861 843 384

the dtic Website: www.thedtic.gov.za



Outline of Presentation

- Background
- Objectives of the IP Policy
- Strategic trust of the IP Policy
- Key reforms proposed in the IP Policy
- Patent Bill objectives
- Patents Bill main proposals
- Innovation and Patents
- Designs Amendment Bill
- Implementation

Background

- In Aug 2017 a draft IP Policy (Phase I) was gazetted for public comment
- In May 2018 Cabinet approved the IP Policy Phase 1
- IP Policy recommended major substantive patent reform
- Draft Patents Bill and Designs Amendment Bill (DAB) implement the IP Policy recommendations

Objectives of the IP Policy

- Engender the ethos of the Constitution
- Align IP regime to NDP and industrial policy
- Intra-governmental coordination on IP
- Balance between owner and user interests
- Stimulate innovation
- Develop key industries and balance with the public interest
- Foster investment and technology diffusion
- Promote public health
- Comply with international obligations - especially human rights

Strategic Thrust of the IP Policy

- Advances a coordinated and balanced approach to IP providing effective protection of IP rights (IPRs) and responds to SA's innovation and development dynamics.
- Engenders the ethos of the Constitution and reflects the country's industrial policy and development objectives.
- Is aligned to the country's objectives of promoting local manufacturing and competitiveness, leveraging the country's resources and heritage, encouraging innovation, and recognises the role of IP in advancing the country's ambition of moving towards a knowledge economy.
- Proposed phased approach to reform.

Phased approach to IP Policy

- **IP – Public Health**

- Local manufacture.
- SSE.
- Patentability criteria.
- Parallel importation.
- Compulsory licenses.
- IP & Competition law.

- **International Commitments:**

- Engagement at international forums.
- Treaties.
- GI Protocol to the EPA.

In-built agenda

- Medium term issues:
 - Agriculture; Biotechnology;
 - Environment;
 - Informal sector;
 - Branding SA goods and services;
 - IPRs and the Government;
 - Policymaking in the International Arena; IPR Awareness & Capacity Building; Enforcement.
- These are key areas that require further in-depth study. This will be approached in accordance with international best practices such as WIPO methodologies and informed by domestic priorities.

Key reforms proposed in IP Policy

- SSE - promotes public interests and ensures that patent system promotes innovation.
- Advocates for the use of policy tools in accordance with international best practise.
- Leveraging TRIPS flexibilities to ensure balance between protection of IP and public health, local manufacture, R&D, innovation, food security, environment, transfer of technology and broader socio-economic objectives through among others; parallel imports, voluntary licenses.
- Preserves policy space for use of policy tools such as compulsory licensing system, parallel imports and voluntary licenses to among others increase affordability of medicines.

Key reforms proposed in IP Policy

- Promote economic empowerment through, among others, the implementation of the “utility model”.



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Patents Bill Objectives

The Bill's objectives include:

- Repeal and replace the Patents Act, 1978 (Act No. 57 of 1978);
- Implement the recommendations of the IP Policy;
- Promote public health;
- Enhance legal certainty;
- Stimulate innovation;
- Contribute to South Africa's broader development objectives;
and
- Improve inclusivity of the patent system.

Patents Bill Main Proposals

- Incorporates TRIPS Flexibilities and brings SA patent law in line with international best practice and improves accessibility of the patent system:
- Introduces SSE at the CIPC to ensure that patents are granted only when they meet the standard of genuine innovation
- Introduces a pre-grant third party observation process to assist the evaluation of patent applications
- Provides for the implementation of a post-grant patent opposition process when CIPC has established requisite capacity



Patents Bill Main Proposals

- Parallel importation of essential medicines or products necessary to respond to a state of disaster in terms of Disaster Management Act (No. 57 of 2002):
 - There is a conflict between Medicines and Related Substances Act and Patents Act (1965) as Amended
 - Draft Patents Bill clarifies that parallel importation of products on essential medicines list or needed to deal with state of emergency does not violate Patent law
 - Allows importation of cheaper drugs from abroad
- Brings SA's compulsory licensing and government use provisions in line with the TRIPS Agreement and international best practice:
 - International intellectual property law allows for government to grant a third party to produce a product under a license

Patents Bill Main Proposals

- South Africa’s legislation is more cumbersome than required – High Court litigation required - the Patents Bill remedies this in line with international patent law
- Streamlined compulsory licensing process kicks in when a state of disaster is called in terms of Disaster Management Act (2002)
- Introduction of utility models (sometimes called “second tier” or “petty” patents) to protect and encourage local incremental innovation.
- Provides a fee reduction for SMMEs.
- Reform of the patent profession in line with international best practice to reduce barriers to entry and allow broader participation from previously disadvantaged individuals.

Patents and innovation – the role of substantive search and examination

- Patent system conceived to provide incentives for new technologies that can drive economic development.
- Provides right to exclude others (at least 20 years) from making, using, offering for sale, selling, and importing
- Monopoly rents to holders to incentivise innovation and compensate for costs incurred in research and development
- The Agreement on Trade Related Aspects of Intellectual Property Rights provides criteria to assess if a product or process should get patent protection.
- To assess if patent criteria are met, substantive search and examination is necessary
- South Africa does not conduct substantive search and examination (depository system)
- Lack of substantive search and examination means has costs - Lack of genuine innovation and ever greening

Designs Amendment Bill

- Amends the Designs Act to align with the Patents Bill. This is necessary since patents and designs law and practice are inter-connected
- Provides a fee reduction for SMMEs
- Amends the Designs Act to align with the Protection, Promotion, Development and Management of Indigenous Knowledge Act (No. 6 of 2019) to enhance inter-departmental efforts to protect indigenous knowledge from misappropriation
- Incorporates the recommendations of the IP Policy and deletes obsolete provisions, substitute old terminology

Implementation

- At the CIPC, work on the process for the implementation of the amendments to the patent system proposed, especially SSE, is well underway, including:
 - Recruitment and training patent examiners
 - Development of supportive ICT infrastructure for implementation
 - Ongoing collaboration with the EPO and WIPO
- Two workshops on the proposed Patent Bill and Design Amendment Bill were held in Pretoria and Cape Town in collaboration with WIPO. IP Practitioners, academics and representatives of some foreign governments attended the workshops.
- The two bills are in the process of being published for public comments.

Thank you



Acronyms

CIPC	Companies & Intellectual Property Commission
DAB	Designs Amendment Bill
EPO	European Patent Office
IK	Indigenous knowledge
IP	Intellectual Property
IPR	Intellectual Property Right
MoU	Memorandum of Understanding
NDP	National Development Plan
SSE	Substantive Search and Examination of patents
TRIPS	Agreement on Trade Related Aspects of Intellectual Property Rights
UN	United Nations