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PROGRAMME 2: TRADE BRANCH

Induction for the Portfolio Committee on
Trade, Industry and Competition of the
7th Parliament

Intellectual Property (IP) Policy



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Content of the presentation

- IP Policy – Phase I
- Patent Bill
- Design Amendment Bill



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South Africa's IP Policy

- The Intellectual Property Policy of South Africa – Phase I was approved by Cabinet in 2018 and published.
- The IP Policy – Phase 1 advances a coordinated and balanced approach to IP providing effective protection of IP rights (IPRs) and responds to SA's innovation and development dynamics.
- The IP Policy – Phase 1 engenders the ethos of the Constitution and reflects the country's industrial policy and development objectives.
- The IP Policy – Phase 1 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.
- The IP Policy sets forth a phased approach to IP policy development:
 - Immediate Issues
 - Built-in Agenda

South Africa's IP Policy – Key Reforms Proposed

- Substantive Search and Examination (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 and ensures better preparedness for future pandemics.

South Africa's IP Policy – Key Reforms cont.

- Preserve the scope of researchers to advance the state of knowledge through the use of exceptions for research and experimental activities.
- Promote regional cooperation and integration on IP.
- Promote economic empowerment through, among others, the implementation of the “utility model” to support the registration of patents by resident SMMEs, historically disadvantaged individuals, and companies who are operating in the informal sector.
- A coordinated approach to creating awareness about IP among South Africans, so as to protect nationally-owned IP that is related to indigenous resources, traditional innovation and traditional knowledge.

South Africa's IP Policy – Immediate Issues

- IP and public health
 - Local manufacture; Substantive Search and Examination; Patent opposition; Patentability criteria; Disclosure requirements; Parallel importation; Exceptions; Voluntary licenses; Compulsory licenses; IP & Competition law
- International IP cooperation:
 - Multilateral:
 - World Trade Organization, World Intellectual Property Organization, Convention on Biological Diversity, BRICS and World Health Organization
 - Regional and bilateral:
 - Consistency with objectives
 - African regional institutions and AfCFTA

South Africa's IP Policy – Built-in Agenda

- Medium term (Phase II):
 - IPRs in Agriculture;
 - IPRs and Biotechnology/ Genetic Resources;
 - IPRs and the Environment/ Climate Change/ Green Technologies;
 - IPRs and the informal sector;
 - Commercialization of IP; Branding SA goods and services (Collective Marks, Certification Marks, Geographical Indications);
 - IPRs and the Government; Policymaking in the International Arena;
 - IPR Awareness & Capacity Building;
 - Enforcement

Patents Bill

- The IP Policy – Phase I recommends major update and reforms to SA's patent legislation to bring it in line with new developments and international best practice
- IP Policy among others recommends amending the Patents Act to better align with Section 27 of the Constitution; the NDP call for a knowledge economy through promoting innovation; and industrial development
- Patents Bill and Designs Amendment Bill will implement the IP Policy recommendations
- A draft Patents Bill has been prepared and will be published for public comment once approved

Patent Bill cont.

The Draft Patents Bill:

- Repeal and replace the Patents Act (Act No. 57 of 1978)
- Address 3 broad policy areas by:
 - Introducing Substantial Search and Examination (SSE) for the grant of patents, enhancing legal certainty and encouraging innovation
 - Aligning SA patents legislation with TRIPS agreement, notably provisions for access to essential medicines (compulsory licensing and parallel import)
 - Contributing to SA's broader development objectives by making the patent system more accessible to SA citizens
- Updates SA legislation on compulsory licenses (CL) and brings it in line with TRIPS Agreement
- CL are issued by governments for production of a patented product without authorisation of the patent holder to address among others a national emergency (production of essential medicines during a health crisis, including pandemics for example)

Patent Bill cont.

- Bill provides for measures to make IP more inclusive for small business and previously disadvantaged citizens
- “Patent agents” rather than only patent attorneys only can assist applicants to register patents
- As part of outreach the Bill expands services offered by CIPC to assist applicants e.g. full prior search and preliminary advice to applicants
- Introduces “utility model patents” (sometimes called “second tier” patents) to protect and encourage local incremental innovation – Germany, South Korea and China have used utility models to foster local innovation.
- There are 150 million patents or applications – of these 85% are not patented in African countries – these can be freely used, further developed by local industry and protected by utility models e.g. Green technologies

Designs Amendment Bill

- Introduction of the Utility Model under the draft Patent Bill requires consequential amendments to the Designs Act because functional designs will be rendered superfluous by the introduction of utility models
- The draft Design Amendment Bill further aim to align the Act to the Protection, Promotion, Development and Management of Indigenous Knowledge Act (IKA)
- Design Amendment Bill require applicants for design protection e.g. for a pattern or ornamentation, to disclose whether the design incorporates indigenous cultural expressions. If yes, must demonstrate access and benefit sharing with indigenous community in line with IKA requirements
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THANK YOU



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