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Department:
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

THE NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NO. 3605

Mr T S Mjadu (MK) to ask the Minister of Trade, Industry and Competition:

In view of the Republic currently operating a depositary patent system without substantive search and examination (SSE), which has led to costs including a lack of genuine innovation and ever greening (details furnished), what (a) specific increase in patent quality and/or reduction in evergreening has his department projected within the first five years of implementing SSE, (b) number of patent examiners have been recruited and trained to date and (c) is the target number needed to clear any backlog without delaying grants for genuine innovators? NW3715E

REPLY:

I have been advised by the CIPC as follows.

- (a) In relation to the increase in patent quality and reduction of evergreening, Substantive Search and Examination (SSE) of patents will:

Ensure granted patents meet international standards and alignment with global practice -

Patents will be assessed and granted based on the substantive patentability requirements of novelty, inventiveness and industrial applicability. This is in line with international best practice while taking cognisance of South Africa's socio- economic realities, also ensuring that South Africa meets its obligations under international law, and making full use of the TRIPS flexibilities.



Improve patent quality and credibility and prevention of unnecessary litigation -

Currently the validity of granted patents by the CIPC is only tested through litigation in the courts of law, which is very costly and time consuming. Substantively examining patent applications increase certainty in South African patents since the validity of patents would firstly be tested through the Substantive Search and Examination process, this will decrease the litigation as means of ascertaining validity.

Combat Evergreening and discharging of constitutional obligations -

In South Africa the practice of evergreening significantly impacts medicine affordability because of the use of the depository system. While medicines may be out of patents (patent expired) in other Jurisdictions, however due to evergreening in South Africa the same medicines remain under patent, thus delaying the introduction of generics in the market which leads to the high cost of medicines. The Substantive Search and Examination (SSE) of patents have the ability to combat 'evergreening' on patents. It is envisaged that the benefits will cascade to medical patients as the cost of medicines will decrease substantially through increased competition. Furthermore, the South African Government as a buyer of medicines at times protected by IP, would greatly benefit by being able to procure essential medicines in the public health system at lower prices. The Government will have the ability to deliver better public health services to more citizens, thereby better enabling it to discharge its constitutional obligations.

(b) Number of patent examiners have been recruited and trained to date -

The CIPC has gone to great lengths to capacitate a very able cohort of patent examiners' currently 36 appointed within the fields of Physics, Engineering & ICT; Chemistry and Biotechnology. Eleven (11) of the examiners have been appointed as of 2016 and 25 with effect from 2025 (majority of which are from the CIPC Examiner Internship program since 2019).

The examiners are all experts in their respective technical fields, with a significant number holding PhDs. In addition, the examiners have received theoretical and practical training from South African institutions, World Intellectual Property



Organization, and some of the world's most efficient patent offices such as Japanese Patent Organization, Egyptian Patent Organization, Swiss IP Office, European Patent Office, United Kingdom Patent Office, BRICS IP Office Forum and Denmark IP Office. Due to capacity constraints and resources, the CIPC is currently focusing on the indicated three streams for examination, these fields will however be progressively expanded, as the capacity of the state increases.

- (c) Target number of patent examiners needed to clear backlog without delaying grants
Currently there are no backlogs because of the depository systems since patents are granted based on meeting future requirements. However, to mitigate against future possible backlogs, the implementation of SSE will be in a phased approach in line with the current fields of examination (Physics, Engineering & ICT; Chemistry and Biotechnology). Furthermore, the potential backlogs would be mitigated by the fact that examination will be on request within 3 years from the date of filing (5 years from international date of filing).

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