

Intellectual Property: Substantive Search and Examination of Patents

**INTELLECTUAL PROPERTY AFRICA
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Trade and Industry
REPUBLIC OF SOUTH AFRICA



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PURPOSE

- **To share views on how South African Patent System can Migrate from Depository System to Substantive Search and Examination System**



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RATIONALE

- **Reflection on the Depository System as against the Examination System**
- **The following should be taken into account:**
 - **the benefits from each system such as accessibility and cutting of costs**
 - **User-friendly**
 - **Job creation**
 - **Validity of a patent**
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POLICY OBJECTIVE

- To provide a legal framework for a system that is reliable and benefit owners, users and the country as a whole



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LEGAL OPTIONS

Depository System that concentrates on formalities

Examination System that is involved on Resources:

- People
- Time
- Finance
- Areas of Strength
- Markets, etc.



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Background

- **South Africa uses one of the two system of granting patent, namely the Depository System**
- **A need has arisen to reflect on the system if it is still viable**
- **There is a need to benchmark with other jurisdictions, in particular with similar economies**
- **International benchmarking should also be conducted in order to inform policy positions**



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WIPO Dispensation

- **Patent Cooperation Treaty (PCT)**
 - SA designated Search and Examination Authorities such as the EPO and United States. SA has a final authority (sovereignty) whether or not to grant the patent, but for Depositary system
 - Confirmed with WIPO Director General recently that Depositary and Examination Systems can cohabit in one office and country
 - Patent Reform (Road map)- although this is no longer in the agenda, it is worth discussing it here. Sovereignty can be compromised in this regard



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EPO

- EPO is a Search and Examination Authority for SA for PCT matters. Sovereignty guaranteed, but for Depositary System shortcomings
- EPO proposed Validation of Patents concepts. Sovereignty compromised



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Need for SA Examination System

- SA is strong in the area of patents in the following classes:
 - Organic chemistry, engineering (mining), petroleum and biodiversity (plants). This may suggest that SA should incrementally establish examination capabilities. Due to this the draft IP Policy suggests cohabitation of Depositary/Examination Systems.



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Capacity Building

- **Coordination of Science points that SA is strong in can lead to possibility of starting with Examination**
- **Joint venturing with EPO and other similar offices can encourage technology know-how. Agreements for recognition as search authorities with various countries can be entered into.**



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Conclusion

- **Starting point is to have both two systems and building capacities incrementally for Examination purposes. Joint ventures can be entered into with offices that are well established in this regard.**



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THANK YOU



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