

Intellectual Property Consultative Framework - Consultative Instrument

**PORTFOLIO COMMITTEE ON
SCIENCE AND TECHNOLOGY**

17 August 2016

the dti and CIPC



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Outline

- Background
- Objectives
- Immediate Issues
- In-Built Agenda
- Substantive Search and Examination



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Background

- 2008 Cabinet mandate
- 2013 Draft National IP Policy
- 2015 revision
- New approach:
 - 3 pillars
 - Consultative instrument to facilitate

Objectives

- Engender the ethos of the Constitution.
- Align the country's IP regime to its NDP and industrial policy.
- Develop a co-ordinated intergovernmental approach to IP.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Objectives

- Strike a balance between the creators and users of IP.
- Stimulate innovation.
- Facilitate the development of key industries while striking a balance with the public interest.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Objectives

- Contribute to the attraction of foreign direct investment and technology transfer.
- Adopt a coordinated approach to IP in sub-regional, regional and international forums.
- Promote public health.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Strategy

- IP Policy eagerly awaited.
- Need to balance need for action with further research.
- Also need to align with initiatives underway.
- Divide issues into immediate term and in-built agenda.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Immediate issues

- Immediate domestic reform
 - Local manufacture
 - SSE
 - Patent opposition
 - Patentability criteria
 - Disclosure requirements
 - Parallel importation



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Immediate issues

- Immediate domestic reform
 - Exceptions
 - Voluntary licenses
 - Compulsory licenses
 - IP & Competition law
 - BRICS perspective



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Immediate issues

- International Commitments:
 - Engagement at international forums
 - Treaties
 - GI Protocol to the EPA
- IMC is key!



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

In-built Agenda

- Medium term ITO WIPO Methodologies:
 - IPRs in Agriculture
 - IPRs and Biotechnology/ Genetic Resources
 - IPRs and the Environment/ Climate Change/ Green Technologies
 - IPRs and the informal sector
 - Commercialization of IP



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

In-built Agenda

- Medium term ITO WIPO Methodologies:
 - 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



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

In-built Agenda

Monitoring and Evaluation:

- Copyright and related issues, including -
 - IP & creative industries
 - access to knowledge – libraries and archives/ disabled persons/ copyright
 - exceptions and limitations/ digital technologies
 - IPRs in the digital age
- Traditional knowledge (TK) / Indigenous Knowledge (IK)



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Continuous Consultations

- AMCHAM
- Civil society
- Swiss Embassy
- PTG
- IGOs – WTO, WIPO, UNCTAD, UNDP



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Way Forward

- Framework published on **the dti** website.
- Submit comments to ipframework@thedti.gov.za by 30/09/16.
- Continuous engagement including roundtables and workshops.
- Policy addressing immediate issues and framework for in-built agenda by 03/17.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

Substantive Search and Examination of Patents

- ❑ In order to fast-track the implementation of the substantive examination, CIPC appointed 20 Patent Searchers & Examiners at the beginning of 2016.

RECRUITMENT TO BE REPEATED EVERY 2 YEARS.

- ❑ A two year training program for the patent examiners has been developed and sourced with relevant service providers e.g. WIPO, Universities & other IP offices.
- ❑ The substantive examination of patents might be introduced gradually by implementing it for certain fields. The scope of those fields is broad enough & requires examiners qualified in **chemistry, biochemistry, biotechnology, electrical engineering, mechanical and mining engineering, as well as pharmaceuticals and information**

Comparative Table



PATENT SYSTEM	SUBSTANTIVE SEARCH	SUBSTANTIVE EXAMINATION	OPPOSITION PROCEDURES (PRE- / POST - GRANT)	COURT PROCEEDINGS AGAINST GRANT
FULL SEARCH AND EXAMINATION SYSTEM	<ul style="list-style-type: none"> The applicant should apply for a search and pay the search fee within certain period of time. Failing to do so may result in abandonment of the application The search must include the PCT minimum countries and the national patents (PCT Minimum countries hold 80% of all patents) 	Within certain period of time the applicant must request examination and pay the examination fee (DE, AU, JP, UK)	Most of the countries have provisions to oppose grant of a patent at the instance of the office outside of court (DE, UK, AU) excluding JP, MY	Appeal from the decision on opposition (DE); Application for revocation (AU); Invalidation (JP)
VALIDATION (RE-REGISTRATION) SYSTEM	The search done by recognized searching authority for the application in another country is validated	Foreign applicants must provide evidence of grant by one of several eligible offices; Examination of national application is outsourced.	Some countries do have other do not. SG does not have provisions for opposition but any person can apply for revocation before the registrar	Appeal from decision on opposition/Revocation/Invalidation/Cancellation
OUTSOURCING (SUB-CONTRACTING) SYSTEM	The office contracts with another entity to carry out the search on its behalf	The office contracts with another entity to carry out the examination procedure on its behalf (FR, SG)	Could be outsourced as well.	Appeal from decision on opposition/ Revocation/ Invalidation/Cancellation



Patent Searchers & Examiners recruited

	No. (%)
Females	9 (45)
Males	11 (55)
Educational levels	
BDegrees	1 (5)
BHons	2 (10)
Masters	6 (30)
PhD	11 (55)
Disciplines	
Chemistry	7 (35)
Biochemistry	3 (15)
Biotechnology & Molecular Biology	4 (20)
Physics	3 (15)
Mining	1 (5)
Electrical Engineering	1 (5)
Information systems	1 (5)



1st group of Patent examiners in-training



Standing from Left:

Morore Mphahlele, Hastings Cele, Matshawandile Tukulula, Maanda Phosiwa, Enos Khameli, Ncedile Madlanga, Mehluhi Ncube, Thandanani Cwele, Themba Tshabalala, Bheki Zulu, Masisange Mketsu

Seated from Left:

Thobeka Kente, Keitumetse Potgieter, Gnineka Mbambisa, Anathi Njokweni, Machele Mokgalong, Kerileng Molapo, Charmain Gazide, Denise Le Noury, Myda Visser



Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

2 year preparatory training

WIPO On-line training courses

- Basic:
 - DL Courses
 - Introduction to the Patent Cooperation Treaty
 - General Course on Intellectual property
 - Patent Exam. Board Exams
- Intermediate:
 - IP, TK and Traditional Cultural expressions
 - Patents
- Advanced:
 - Patent Information Search Strategies
 - Basics of Patent Drafting
 - IP Management

WIPO On-site training workshops

2 year preparatory training

Trainings offered by other IP offices:

- WIPO & Japan Patent Office (Feb 2016)
- BRICS HIPO - RosPatent, Russia (March 2016)
- BRICS HIPO – SIPO, China (May 2016)
- WIPO & Austrian Patent Office (June 2016)
- UK-IPO (August 2016 – UK Patent System)
- EPO - EPOQUE.NET (2017)

SA University training:

- General principles of the South African law
- Principles of patent law
- Principles and criteria for patentability
- Assessment of patentability, issuing of office actions

Databases:

- Espacenet (EPO), PatentScope (WIPO), J-PlatPat and Thomson Innovation



Plans going forward

Goal: Patent searchers completed their training by Dec 2017, and be ready for substantive search & examination in January 2018

- By the time the amendment to the relevant legislation is enacted, these searchers will have been trained and ready to start the examination.
- 3rd Round table stakeholder meeting planned
- Development of a patent examination guideline/manual

Thank you!



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA