

# **BRIEFING ON THE INTELLECTUAL PROPERTY POLICY (PHASE I)**

## **PORTFOLIO COMMITTEE ON TRADE AND INDUSTRY**

**Ambassador X Carim, DDG  
Trade Policy, Negotiations and Cooperation  
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# Delegation

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# Acronyms

CIPC	Companies & Intellectual Property Commission
EPO	European Patent Office
IK	Indigenous knowledge
IP	Intellectual Property
IPR	Intellectual Property Right
IMCIP	Inter-Ministerial Committee on IP
MoU	Memorandum of Understanding
NDP	National Development Plan
SSE	Substantive Search and Examination
UN	United Nations
WIPO	World Intellectual Property Organisation

# Outline of Presentation

- Background
- Policy Objectives
- IMCIP
- Immediate issues
- Built-in Agenda
- Implementation



# Background

- In 2008 Cabinet mandated the DTI(C) to lead the development of a national IP Policy
- In 2013 a draft National IP Policy was approved by Cabinet
- In July 2016 Cabinet approved a Framework for enhanced consultations – both intra-governmental and with stakeholders
- In Aug 2016 this Consultative Framework was gazetted for public comment
- In Aug 2017 a draft IP Policy (Phase I) was gazetted for public comment
- In May 2018 Cabinet approved the IP Policy Phase 1

# Policy Objectives

The Policy Document provides a framework and set of guidelines for policy development and legislation on IP matters

It is premised on the ethos and direction provided for in the SA Constitution, notably, amongst others:

- The Bill of Rights
- Section 25 on expropriation that protects citizens against arbitrary deprivation of property (including IPRs)
- Section 27 which provides for the progressive realisation of the right to health



# Policy Objectives

Objectives include:

- Promoting public health
- Stimulating innovation
- Ensuring an appropriate balance between IP protection to encourage innovation and the dissemination of the benefits of innovation for society
- Balancing the rights of owners and users of IPR
- Fostering an environment that encourages investment and technology diffusion



# Policy Objectives

- Seek greater alignment between the IP regime, the NDP and industrial policy
- While IP protection encourages innovation, it recognises that an overly restrictive application may lead to monopoly/concentrated markets that deny new entrants to the market
- Striking an appropriate balance is essential
- Seeks to promote innovation, research and development and encourage technology transfer to broaden industrial participation and growth
- Seeks to protect creative industries and encourage development of the creative industry and enhance access

# Policy Objectives

- Strengthen Intra-Governmental coordination on IP matters
- Ensure national approaches and legislation are coordinated and aligned with approaches taken at bilateral, regional and international levels
- Ensure legislation is consistent with SA's international legal obligations and norms

# IMCIP

- Cabinet established the IMCIP in July 2016
- IMCIP seeks to enhance intra-governmental coordination on IP matters given its cross cutting nature
- IMCIP serves as the core drafting team for the policy, its development, and implementation
- IMCIP comprises 11 departments:
- DTIC, Health, International Relations/Cooperation; Education; Sci & Tech; Communications/Digital Technologies; Sports, Arts and Culture; Agriculture, Land Reform and Rural Development; Mineral Resources and Energy; and Environment, Forestry and Fisheries



# Immediate Issues (Phase I)

## On Public Health, the Policy:

- Encourages local manufacturing of medicines, devices and diagnostics including through appropriate patentability criteria and exceptions
- Provides for parallel importation to allow imports of more affordable medicines, as envisaged in the Medicines and Related Substances Act
- Seeks to ensure that compulsory licenses provisions are brought in line with international best practice, taking into account flexibilities in international legal obligations
- Provides for exceptions to patent protection for research and experimental purposes

# Immediate Issues (Phase I)

- Introduces a Substantive Search and Examination requirement process at the CIPC to ensure that patents are granted only when they meet the standard of genuine innovation
- Introduces an opposition process to assist the evaluation of patent applications
- Seeks to ensure patentability criteria meet the standard set in international law and reflect national development objectives
- Clarifies disclosure of information requirements for patent applications to ensure patents are not wrongfully granted

# Immediate Issues (Phase I)

- Recognizes and preserves the role of voluntary licenses in providing access to medicines in SA (SA is a beneficiary of the Medicines Patent Pool licenses)
- Recognizes the role of competition policy and legislation in facilitating access to medicines, and
- Recognizes the importance of cooperation amongst Competition Authorities around the world to develop guidelines on the interface of IP and competition



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# Immediate Issues (Phase I)

## International IP cooperation:

- Ensure coherence and consistency between SA's policy and legislation and approaches taken at multilateral, regional and bilateral levels
- Ensure SA's policy and legislation complies with SA's international legal obligations
- Fully take into account flexibilities provided under international law, and
- Recognize the diversity of actual practice in national jurisdictions, reflecting national imperatives and interests

# Built-in Agenda

The IMCIP has identified other focus areas for the medium term including, the interface between IP and:

- Localization/beneficiation objectives
- Agriculture; Biotechnology/Genetic Resources
- Environment/ Climate Change/ Green Technologies
- Support to informal inventors to protect IP they may develop
- Commercialization - Branding SA goods and services (Collective Marks, Certification Marks, Geographical Indications)



# Built-in Agenda

- Awareness and Capacity Building
- Monitoring and Evaluation
- Enforcement



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# Built-in Agenda

- When the IP Policy was developed, the Copyright Amendment Bill and legislation addressing Indigenous Knowledge were at advanced stages of development
- The IP Policy document indicates these areas should be subject to monitoring and evaluation to ensure alignment with the broader IP Policy objectives
- This is set in the Strategy Section of the IP Policy Phase 1, approved by Cabinet in 2018.

# Implementation

At the CIPC, work on the process for substantive search and examination is underway:

- Training patent examiners
- To develop supportive ICT infrastructure for implementation
- And in ongoing collaboration with the EPO and WIPO



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# Implementation

## Legislative reforms (**the dtic** and CIPC):

- Development of Patents Act: Draft Bill has been prepared and will be submitted to Cabinet for approval for public consultation
- Development of Designs Act: Draft Bill has been prepared and will be submitted to Cabinet together with Patents Bill
- Work on accession to Madrid Protocol is at an advanced stage
- Protocol provides for the protection of business brands in multiple jurisdictions (simple and cost effective)



# Thank you



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