



**the dti**

Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

**IP POLICY, LEGAL AND REGULATORY  
ASPECTS OF INNOVATION BASED GROWTH**

**SIMPHIWE NCWANA**  
**01 March 2010**



**the dti**

Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

**Contents**

1. BACKGROUND
2. POLICY FORMULATION
3. IMPLEMENTATION OF NATIONAL IP POLICY
4. STRATEGIES ON IMPLEMENTATION
5. LEVERAGING IP TO PROMOTE INNOVATION
6. ACHIEVING DEVELOPMENTAL OBJECTIVE
7. CONCLUSION



## Background

- Intellectual Property (IP) forms part of innovation but innovation is broader than the IP regime.
- Both public and private sectors are somehow involved in “IP – Innovation” in areas such as Agriculture, Bio-technology, Health, Climate Change, Technology, etc.
- Major forms of IP are Patents, Designs, Trade Marks and Copyrights.
- Patents form the bulk of technology, but that should not be confused with innovation.
- It is difficult to drive “IP-innovation” without national policy and strategies



## Discussion

### **“IP-INNOVATION” POLICIES**

- It is agreed that IP is heavily influenced by internal norms such as those of the WTO/WIPO. However it is possible to craft national policies informed by these international approaches.
- The Trade Related Aspects of Intellectual Property Rights (TRIPS) allows national policy framework to deal with technology , health, agriculture .climate change, etc. National imperatives are recognized under this dispensation.

## Discussion

- TRIPS articles 6, 7, 8 30/31 and 66.2 can assist countries to formulate national IP innovation policies.
- Member states are given discretion to deal with innovation, addressing national needs, e.g. compulsory licensing, technology, health and competition issues (Articles 40+ 8(2) )
- Member states should be cautious not to renounce the above guidance from TRIPS by signing bilateral trade agreements that may demand that the “discretionary powers” in policy making are negated.

## Discussion

- Experience has shown that the mandatory duty imposed on developed member states of the WTO under TRIPS have done little, if any, in transferring technology to LDC's - Article 66.2
- WIPO Development Agenda features also dictate how member states should couch issues of innovation, taking into account development issues such as technology, competition, SMME's and IP.
- Member states should start to implement these broad objectives from the perspective of IP innovation .
- However it seems as if proper “reconciliation” will not be possible between the WIPO Development Agenda features and the Roadmap on the Patent harmonization.



## Discussion

- In passing , if the “Roadmap” wins its day, discretionary powers for member states to formulate IP innovation talking to national issues may not be possible.
- Guidelines /regulations for “IP-innovation” ,e.g. on technology transfer must be developed both in public/private sectors. In this regard South African passed a legislation on Publicly Financed Research and Development in order to give guidance on IP innovation in the public/private partnerships. This may be equated to the Bayh-Dole Act of the United States.
- “IP-innovation” should also be encouraged in cultural industries and indigenous technologies.



## Implementation

- The above sets a tone and it can be done within the framework of “IP- innovation”.
- “IP-innovation” legislation and strategies need to be in place.
- Awareness and education on the policy, legislation and strategies should be developed and implemented.

### **STRATEGIES ON IMPLEMENTATION**

- IP innovation legislation should be in place .
- Stakeholder buy-in should be addressed
- National policy imperatives should be harmonised with IP innovation policies without contradicting international obligations
- Awareness and education should be addressed
- Capacity building (Human resources, finance, time, institutions, training)



## Achieving Developmental Objectives

- TRIPS/WIPO approaches as discussed above may make the countries to achieve national developmental objectives . However, if the advices given above are not followed it would be difficult to achieve national developmental objectives.

### CHALLENGES

- Lack of policies , legislation, regulations
- Lack of awareness and education programmes
- Capacity constraints
- Lack of Co-operation between member states and the private sector



## Conclusion

- There is a need to develop IP- Innovation that should satisfy all member states of WIPO – This is a balancing act



the dti

Department:  
Trade and Industry  
REPUBLIC OF SOUTH AFRICA

END

THANK YOU