

# Intellectual property and patenting – guard it!

by McLean Sibanda, CEO, Innovation Hub

In today's knowledge-driven economy, the fruits of labour, scientific and otherwise, are intangible and essentially comprise intellectual property – creations of the mind and associated rights (IPRs). IPRs are a bundle of rights including patents, trademarks, design registrations, copyright, which are generally negative rights, providing the owner thereof with the exclusive right to prevent others from exploiting such intellectual property without their consent. Such consent is typically in the form of a licence. There is a relationship between the amount of R&D investment, intellectual property generation and innovation performance and economic growth and competitiveness. This is the reason why the Department of Science and Technology has been pushing for an increase of R&D spending to be higher than 1% of GDP. According to a recent Organisation for Economic Co-operation and Development review, Gauteng, the hub of innovation in South Africa, accounts for 52,2% of total national R&D expenditure, 1,45% of its GDP and 57% of patents.

In 2008, South Africa, passed legislation entitled "Intellectual Property Rights from Publicly Financed Research and Development Act, 2008" ("IPR Act"), which seeks to ensure that the fruits of publicly financed research and development are assessed for any intellectual property rights, and where there is indeed intellectual property, that such is appropriately protected and commercialised for the benefit of South Africa. The IPR Act applies to academics and other researchers at state owned research institutions, R&D conducted by private companies funded by public funding entities/programmes (e.g. TIA, NRF, Innovation Hub, SEDA and SPI). The protection may be in the form of trade secret protection, design registration, plant breeders' rights, copyright, or a patent. Copyright does not require formal application process but subsists in any work as soon as it has been reduced to a material embodiment, for example a computer program or a video. A patent protects an invention, following a formal application and registration process. For an invention to be patented, it must be new, non-obvious (inventive), and have utility. It is important that an inventor keeps his invention secret until such time as a decision to patent has been made. The decision to patent and which countries to obtain patent protection, is a commercial one. A patent enhances commercialisation prospects by increasing the idea's value – owing to the maximum of 20 years' monopoly a patent gives its owner in the country where it is obtained. Improvements, incremental or radical, that meet the above-mentioned requirements, can be subject to a separate new patent protection. A patent can be traded through licensing or assignment (full disposal of the rights). Intellectual property is territorial specie, in that its protection and enforcement are at a country level. Copyright protection is not necessarily territorially limited, but its enforcement happens at a country level under the copyright laws of the country where the violation of the copyright has taken place. Thus, beware of pirating software as the copyright owner resident in a foreign country may sue you for copyright infringement in the country in which you violate their copyright.

Intellectual property is like potential – of very little value unless commercialised! This is an important thrust of the IPR Act, to ensure that publicly-financed intellectual property does not gather dust but its commercialisation achieves public good objectives by facilitating the transfer of fruits of human ingenuity to the marketplace to contribute to social and economic growth.

How often have you heard someone say that their idea was stolen from them? Imagine an unfenced farm with valuable crops and livestock in a world with predators? Intellectual property and in particular patents, are to an inventor or business what a fence is to a farmer in a farm infested with predators. Guard it not, at your own peril.

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