



Companies and Intellectual
Property Commission
a member of **the dtic** group

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COMPANIES AND INTELLECTUAL PROPERTY COMMISSION (CIPC) SUBSTANTIVE SEARCH AND EXAMINATION (SSE) EXPERIENTIAL LEARNING PROGRAMME (ELP)

1. INTRODUCTION AND BACKGROUND

On 23 May 2018, Cabinet approved the Intellectual Property (IP) Policy of South Africa (Phase 1) (IP Policy), which seeks to provide a national IP system that is cognisant of other national priorities of government and to provide a co-ordinated approach on IP matters by government departments and other organs of state. The IP Policy advances a phased approach to implementing structural and legislative reforms of the IP landscape in South Africa. One of the key policy instruments introduced by the IP Policy is the introduction of Substantive Search and Examination (SSE) of patent applications in South Africa, to be implemented through Companies and Intellectual Property Commission (CIPC). Under the SSE system, CIPC will examine patent applications to determine whether they meet the formal and substantive patentability requirements.

2. PREPARATION FOR IMPLEMENTATION OF SSE

Training of patent examiners

In 2016, CIPC recruited twenty (20) patent examiners who were trained on the substantive search and examination of patent applications. The patent examiners underwent two years of training program with a number of local and international organizations. CIPC engaged several IP offices to assist in the training of the examiners. The patent examiners also received training from the World Intellectual Property Organization (WIPO), the South African Institute of Intellectual Property Law (SAIPL) through the Patent Board Examination (PEB) and the Witwatersrand University during the initial two-year period.

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A Reinforced Cooperation Agreement was entered into between the CIPC and the European Patent Office (EPO) in 2018 to train patent examiners on substantive search and examination. The training programme was delivered in a structured manner using a training curriculum and framework designed specifically for CIPC patent examiners, based on EPO and international best practices. Furthermore, the EPO appointed experienced examiners as coaches/mentors to train the CIPC patent examiners on specific areas of patent examination and to ensure quality work outputs. Recognising that the implementation of SSE requires increased capacity, CIPC further recruited 29 interns who underwent a two-year practical training program on patent examination through the EPO as well.

The CIPC examiners are divided according to three technical fields. Namely, Engineering, Chemistry and Biotechnology. The training on substantive search and examination applied to both first and second filings. The formal training on substantive search and examination was completed in June 2021.

The next step of the training envisaged the experiential learning component as an informal trial period. During this informal trial period, substantive search and examination of patent applications will be carried out, work products will be sent to patent attorneys who will review and respond to the findings. The Experiential Training Programme (ELP) will be based on the current Patents Act 57 of 1978 and is meant to be a training exercise in preparation for the implementation of Substantive Search and Examination. The reports produced under the ELP will be legally non-binding. The non-official reports will therefore not form part of the documents in the official application files.

Participation and co-operation in the ELP by IP Law Firms will put to test the examiners' acquired skills and competencies to determine the patentability of a national patent applications. A briefing session was held on 26 January 2022 between CIPC representatives, IP Law Firms and EPO mentors and coaches to discuss the commencement of the ELP.

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