science & innovation
Department:
Science and Innovation
REPUBLIC OF SOUTH AFRICA

NIPMO
NATIONAL INTELLECTUAL PROPERTY MANAGEMENT OFFICE
An initiative of the Department of Science and Innovation

NIPMO annual newsletter

2023/24

WELCOME

We had an eventful 2022/23 financial year and share some of our achievements in this publication.

We are further happy to announce that the NIPMO team grew with two new trainees Mr Sphesihle Thusini assisting the Advisory and Support Directorate and Mr Lehlohonolo Mmushi assisting the Regulatory and Compliance Directorate. We welcome them to the NIPMO family and wish them all the best for the next two years.

The NIPMO team of 14 individuals is committed to serve the OTT community and implement the IPR Act efficiently and effectively. We want to encourage all to contact us with any queries or questions.

We look forward to an exciting 2023/24 financial year!

IN THIS EDITION…

Get to know our NIPMO people

The ladies that are the backbone of the NIPMO team

In every organisation, big or small, there is a group of people that is often described as the backbone of a company. Administrative professionals are much more than office assistants as they are event planners, project managers and at the front line of the day to day business tasks ensuring the smooth running of an office.

The team that keeps the NIPMO office afloat comprises Ms Naomi Aphane and Ms Hlamalani Khoza.

Ms **Naomi Aphane** joined NIPMO in May 2014 as a Senior Administrative Assistant for the Office of the Head of NIPMO. She holds a National Diploma in Management Assistant from Tshwane South College.

Naomi is eager to learn and has completed various training opportunities such as General course on Intellectual Property (WIPO), Intellectual Property, Traditional Knowledge and Traditional Cultural Expressions (WIPO), Communicative Grammar, Presentation and Communication Skills, as well as Protection of Personal Information Act (POPIA) Workshop to enable her to excel in her job.

She is always willing to assist colleagues from other NIPMO directorates and external stakeholders. The NIPMO colleagues fondly refer to her as the "IT lady and jack of all trades" wherever administrative challenges are experienced within NIPMO. Naomi is truly an invaluable part of the NIPMO family.

In her personal time, Ms Aphane spends time with family and friends and travels to explore the world.

In her own words, "*I am grateful to be part of the NIPMO family and appreciate the opportunities given to me.*"

Ms **Hlamalani Khoza** is the shared Senior secretary for the Regulatory and Compliance and Advisory and Support directorates. She joined NIPMO in 2016 after the completion of her internship at the Ministry of Science and Innovation. She holds a Bachelor of Technology in Public Management from Tshwane University of Technology and is currently doing her Post graduate diploma in Public Management with University of Pretoria.

Hlamalani has also ensured that she is informed about the intellectual property and technology transfer space. She completed, amongst others, WIPO's Advanced courses on trademarks, industrial designs, geographical indications and IP management. She further attended the 2017 WIPO Summer School and is now part of the organising team of the Summer School.

Hlamalani is keen to assist where she is needed. This eagerness has given her the opportunity to learn new skills and gain a better understanding of how NIPMO and the entire technology transfer environment operate as a whole.

This mother of two kids enjoys being a team player and contributing to the success of the organisation. Hlamalani is often tasked to organise internal events from birthdays to baby showers and excels in bringing everyone together.

She describes NIPMO as a "*welcoming environment with supportive colleagues, which makes completing any tasks a pleasure*".

Our NIPMO people…

Mr **Thabang Jase**, has been appointed as the Director: Advisory and Support in May 2022. His responsibilities include managing OTT Support Fund applications and agreements; capacitating stakeholders through training programs on intellectual property (IP) and technology transfer; stakeholder management between NIPMO and its partners; management of advocacy and awareness sessions on IP (*IP Wise™)* and much more.

Thabang literally opened the doors of newly established NIPMO when he joined the DSI on 2 January 2011. He joined as Deputy Director: Technology Transfer Specialist after spending his previous professional years as amongst others Manager: Community Development at Ndlovu Care Group Mpumalanga; Operations Specialist: SEDA Free State; Project Leader: Business Development - CSIR Foodtek division, and Provincial Project Leader at the Initiative for Economic Empowerment.

TJ, as he is popularly known within NIPMO, is proud to have seen the organisation grow from its infancy to what it is today; he calls it his "*second home"* as he recounts and cherishes the best memories and tough moments over years. His fondest memories were conceptualising and implementing the first ever *IP Wise*™ sessions at the Universities of Venda, Limpopo, Fort Hare and Walter Sisulu in 2011.

Thabang is a member of Licensing Executives Society (LES) and Southern African Research and Information Management Association (SARIMA) and loves interacting with people on IP advocacy and providing assistance with regards to IP Management and Funding.

This family man loves football and is a staunch supporter of Orlando Pirates FC and Liverpool FC.

Mr **Sphesihle Thusini** (second from the left) joined NIPMO on 3 January 2023 as a graduate trainee in the Advisory and Support directorate.

He was announced as the second runner up on 22 February 2023 in the 51st annual Budget Speech Competition that seeks to develop future economic leaders for growth of South Africa. The prize was handed over by Minister of Finance, Mr Enoch Gondwana, Old Mutual CEO Mr Iain Williamson, and Nedbank CEO Mr Mike Brown.

Sphesihle conducted comprehensive research looking at the state of infrastructure in all sectors of the economy and noted that the development of new, and the improvement of existing, infrastructure is central to the development of any economy.

The empirical analysis indicates that investment in infrastructure positively affects the economic growth in South Africa. However, there are three immediate challenges identified i) a bigger share of borrowed money needs to be redirected to capital spending, ii) monopolised sectors need to be open for competition which will allow continued improvement by competitors, and iii) high levels of corruption as reported by different investigative bodies remain an impediment.

He graduated from the University of Zululand with an Honours in Economics and will be graduating in May 2023 with a Masters in Economics from North West University.

Welcome to the NIPMO family, Sphe!

The Promise and Progress of South African University spin-out operations

*By **Thomas Schmidt,** Senior Associate, KischIP*

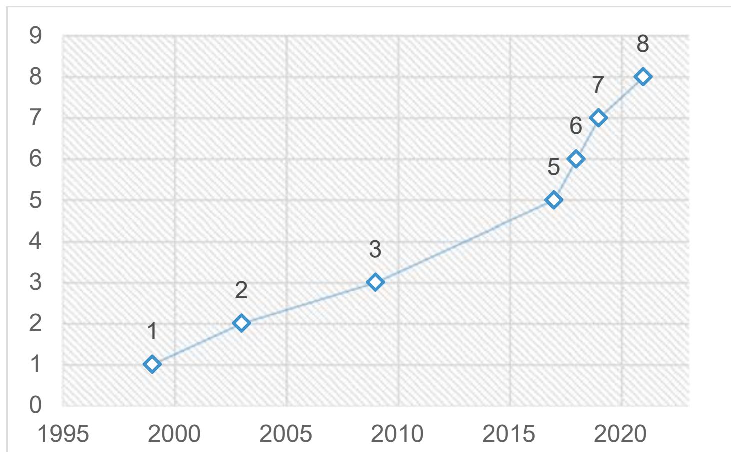
The promise of third-stream income is an enticing lure
The promise of third-stream income is an enticing lure for South African universities buffeted by the twin pressures of increased demands and diminished government funding. Here the popular idea of an entrepreneurial university effectively self-funding through the judicious use of licences and spin-outs of its own technology appears to loom large in the imagination of managers and administrators, as it promises to provide a solution to this conundrum. However, our own research has shown that, in our view, the specific structure adopted by a given university has less impact on its ability to produce successful spin-out companies than other commonplace metrics of academic and research success: size, financial resources, research output and, particularly, the registration of new IP.

Here we should note at the outset that our investigations have considered only publicly-available documentation and policies, and have centred primarily around patent IP. Given the relatively small numbers involved (of universities, patent families and spin-outs), we are also not able to draw out testable statistical conclusions. We nonetheless believe that the trends we have been able to observe offer useful insights to practitioners in the technology transfer space.

Before beginning such an analysis, a categorisation of university spin-out structures may be of use in setting the stage. All the major South African universities that we are aware of presently have Technology Transfer Offices (TTOs). However, some universities have opted to retain spin-out functions wholly within their TTO, while others have also established separate companies to perform this function. Some spin-out companies, in turn, function essentially as extensions of the TTO, while others are intended to be structurally and operationally independent.

Our first finding is that the idea of an independent spin-out concern with a broader remit (i.e. one going beyond spin-out and into direct management of IP), appears to be something of a chimera, with universities cited as examples of this category actually having limited-remit spinouts, non-existent patent portfolios, or spin-out structures that only nominally exist (i.e. are not registered, have no presence beyond a name, or are defunct). The use of spin-out structures as holding companies for university IP rights, although also much discussed, appears to be another chimera.

Another finding is that the number of dedicated companies set up by universities in order to manage spin-out has increased over time, with a sharp increase from around 2017.



This relatively recent genesis is somewhat puzzling to contemplate, as it does not appear to be linked to performance in any meaningful way. For instance, the two largest universities in terms of patent output (Stellenbosch University and the University of Cape Town) are also the largest in terms of number of successful spin-out companies (both publicly listing 30). Moreover, neither has, to our knowledge, a separate spin-out structure divorced from their TTO. The next two largest universities in terms of live patent families (the University of Pretoria and Tshwane University of Technology) both make use of dedicated spin-out structures, but do not appear to publicly list any relevant successful spin-outs at all.

Category	Total number of active patent families	Total number of spin-out companies
No separate spin-out structure	378	68
Separate spin-out structure as extension of TTO	61	21
Separate independent spin-out structure	224	-

For the present, then, it appears that the dynamics of successful spin-out formation have more to do with building a strong IP portfolio to act as a basis for new companies, rather than the structure that is intended to nurture them. Nevertheless, there appears to be a strong internal drive within universities to introduce new spin-out structures regardless of past or present performance.

Time will tell if the phenomenon of independent spin-out companies can change the underlying dynamics of spin-out formation and the acquisition of third-stream income, but until then our view is that engagement with researchers and robust IP portfolio generation should remain the principal concern for universities looking for success in this domain.

Big win for SMME at the NSTF-South32 Awards

*By **Lindiwe Mashimbye**, Deputy Director, NIPMO*

Thermtron Scientific CC Sponsor and Manager: Dr Jacobus (Kokkie) Swanepoel was named the winner in the NIPMO-sponsored "*Innovation through an SMME*" category at the 2021/22 NSTF-South32 Awards for the establishment of Thermtron Scientific CC which over the course of the past ten years played a significant role as the facilitator in the National System Of Innovation, generating revenue and opportunities in the process industry.

Thermtron Scientific CC specialises in implementation of technologies including bio-fuels, bio-energy, minerals beneficiation and nuclear. It is a consulting company for companies in South Africa and globally. Projects are identified, incubated and developed through all the stages of development, from the idea phase to commercially viable projects, and in other instances, spin out companies are formed.

In the past decade, this SMME has executed projects such as isotope enrichment, small nuclear reactors, bio-ethanol and rare earth beneficiation. Furthermore, this company has incubated different businesses that split out as South African companies that complied with the BEEE guidelines, examples include Swayana which is currently finalising a project for the production of bio-ethanol from waste gases and Rare Earth Refiners which was incubated and a semi-commercial demonstration plant was built using SA patented technologies.

Since 2019, NIPMO has partnered with NSTF to become a sponsor in the Category: "*Innovation through an SMME*" as part of the drive to incentivise intellectual property creators to convert their research and development outputs into products, processes and services.

The 2021/22 NSTF-South32 Awards ceremony with the theme: *Basic Sciences for sustainable development* was held in Johannesburg and Cape Town as well as an on-line broadcast via youtube on 21 July 2022. Thermtron Scientific CC Sponsor and Manager, Dr Jacobus Swanepoel received the "*Innovation through an SMME*" award from the Deputy Minister of Higher Education, Science and Innovation, Mr Buti Manamela, accompanied by the DSI Acting DDG Dr Rebecca Maserumule.

The nominations processes and evaluation criteria for all the categories can be obtained from the NSTF website at http://www.nstf.org.za.

The Unified European Patent Court launches soon - Are you ready?

*By **Danie Pienaar**, Partner, Spoor & Fisher*

On 1 June 2023, the Unitary Patent and Unitary Patent Court (UPC) will come into force in Europe, bringing in automatic shared jurisdiction over European patents in many EU member states. Companies which have European patents which are currently in force need to prepare for the change, by reviewing their European patent portfolios.

By way of background, the UPC is an international, centralised court which has been established by certain European Union Member States of the European Patent Convention, in order to deal with patent infringement and revocation for:

i. European patents which have already been validated in those specific European Union Member States; and
ii. European patent applications which will in future be granted and validated as so-called "Unitary Patents" (UP).

At present, the European Union Member States which have already ratified the Unified Patent Court Agreement (UPCA) are: **Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Portugal, Slovenia** and **Sweden** (hereinafter referred to as the "Ratified European Union Member States"). There are also 7 European Union Member States which have signed the UPCA but have not yet ratified it, namely **Cyprus (CY), Czech Republic (CZ), Greece (GR), Hungary (HU), Ireland (IE), Romania (RO)** and **Slovakia (SK)**.

Once the UPC comes into effect, the UPC will **automatically** have shared jurisdiction over European patents which fall under the scenario, where there are European patents which have already been validated in one or more of the Ratified European Union Member States. In other words, patent enforcement or revocation can then take place either before the UPC or before one or more of the national courts.

One of the main advantages of the UPC is that patent enforcement can be significantly simplified when dealing with enforcement across various Ratified European Union Member States. It can result in a significant cost saving, since it would not be necessary to institute separate actions in each of the national courts (i.e. just before the UPC).

A disadvantage of the UPC is that it provides a central point of revocation. In other words, if a European patent is revoked before the UPC, then the patent would be revoked automatically in respect of all the Ratified European Union Member States. The UPC is also still untested at present.

It is possible for European patents which fall under scenario (i) to **"opt-out"** of the jurisdiction of the UPC, by submitting an opt-out request. By filing an opt-out request, one would essentially be selecting not to fall under the jurisdiction of the UPC and, as a result, patent litigation and enforcement would need to take place before the national court of each of the Ratified European Union Member States (as is currently the case).

The opt-out option is currently available and will continue to be available till the end of a so-called "transitional period" which ends 7 years after the UPC comes into effect (the transitional period could later be extended).

It is important to bear in mind that an opt-out request can only be made if no action has yet been instituted before the UPC. Therefore, although it is possible to delay the filing of an opt-out request for a number of years, it does come at a risk. It should also be remembered that it will be possible to **withdraw** an opt-out later, in order to restore the shared jurisdiction of the UPC and the national courts. This can only be done once. So, once an opt-out has been withdrawn, it will not be possible to opt-out again. It will also not be possible to withdraw an opt-out if an action has already been instituted in one of the national courts.

In light of the above, it is important for companies which have European patents which are currently in force, to review their European patent portfolio during the next few months, in order to determine whether they wish to opt-out of the UPC's jurisdiction for some or all of their relevant European patents, prior to the UPC coming into force on 1 June 2023.

NIPMO IP Fund review process and lessons learnt

By **Mantwa Tshabalala**, *Deputy Director, NIPMO*

The object of the IPR Act is to ensure that IP emanating from publicly financed R&D is identified, protected, utilised and commercialised for the benefit of the people of the Republic. In order to achieve this, the Act mandates the implementation of an IP Fund to assist with the protection and maintenance of IP costs incurred by institutions.

The IP Fund is in the form of a rebate for cost incurred during a review period, typically from 1 April to 31 March, and has been operational for over a decade. Institutions submit IP Fund applications to NIPMO by a date communicated by NIPMO. **The due date for this year is 30 June 2023.**

Upon receiving the IP Fund applications, the first step of the review process is an internal NIPMO review of the applications for compliance with the current IP Fund Guideline. The most common errors found during this internal review are:

- non-reporting of disclosures (IP7 Forms) therefore no IP7 number associated with claims;
- incorrect IP7 number (NIPMO reference number) associated with claim – in other words subject matter was previously reported to NIPMO but the incorrect NIPMO ref number was listed against the claim;
- status updates of previously reported disclosures (IP7 Forms) not done or incomplete;
- VAT amounts not subtracted from the claim amounts;
- ownership portion of other parties' share not deducted;
- IP not in the name of institution and/or OTT;
- claims not related to protection and maintenance of IP (i.e outside of IP Fund scope); and
- claims and/or associated payment of claims outside the review period.

The internal NIPMO review is repeated by a second (or third) NIPMO colleague to verify findings before proceeding to the next step.

The second step of the review process is to inform institutions of discrepancies found and affording institutions an opportunity to respond to the findings by providing supporting documentation. A summary of findings for each institution is then compiled, stating the NIPMO discrepancies found and responses/ supporting documentation received.

External adjudication of applications is the third step in the review process. The committee, with representatives from various units within the Department of Science and Innovation including Legal, Finance, and others convene to go through the summary of findings and make further comments and/or recommendations. The summary of findings for each institution is analysed and discussed in depth to ensure that they do not only meet the IP Fund Guideline but all other policies that governs DSI including the PFMA Act. The committee also practices leniency where a matter arises for the first time and the NIPMO Guideline does not provide clear direction. In some cases, the committee would recommend NIPMO to go back to institutions to attend to further queries before making a final recommendation.

The fourth and final step in the process is to present the adjudication recommendations to DSI Exco for approval and ultimately payment of the approved rebates.

The entire process on average takes 6 months from application to payment of rebate, pending response time provided by institutions and availability of the committee members.

As a result of the process followed, new lessons are learnt every year. For the 2022 review – the following lessons are most noteworthy:

- IP transactions and what is being claimed must be clearly indicated on the invoice to avoid further queries;
- where IP transactions are foreign payments, the adjustments concerning difference in currency rate must be indicated on proof of payment and/or spreadsheet submitted to NIPMO;
- the IP Fund, only applies to cost incurred. In terms of the IP Fund Guideline the term "incurred" refers to transaction that was paid within the relevant review period. If the claims are paid outside the review period, it is not eligible for a rebate in terms of the IP Fund.
- IP application and registration numbers are indicated on invoices. NIPMO will not accept responses from institutions stating that they were unaware of these updated IP numbers and therefore could not have updated IP7 disclosure forms. If payment of these invoices where authorised, it is assumed that the institutions have knowledge of the updated IP numbers and can update IP7 forms prior to submitting an IP Fund application.

Over the past decade of NIPMO found an average discrepancy rate of 7.5% with each year improving.

NIPMO will host lunch time workshops on the linkage between the IP Fund and IP7 reporting on 11 and 17 April 2023. See you there!

IP Policies and compliance with the IPR Act

*By **Naomi Ngoasheng**, Deputy Director, NIPMO*

The Intellectual Property Rights from Publicly Financed Research and Development Act (IPR Act) makes provision that each institution must have an IP Policy to provide a framework on how IP should be managed. The IP Policy of an institution assists in, amongst others, resolving conflicts when it comes to ownership of IP created and encourages innovation and creativity by acknowledging and rewarding those involved in the creation of the IP.

NIPMO reviews each institution's IP Policy to ensure its compliant with the IPR Act. When reviewing these IP policies, NIPMO has the obligation to approve specific clauses. One of these clauses is the requirement by the IPR Act for all publicly funded institutions to benefit share with its IP creators a portion of revenue generated from the commercialisation of their IP. With regards to the second South African National Survey of Intellectual Property and Technology Transfer at Publicly Funded Research Institutions, it was noted that 84.6% of Higher Education Institutions and 91% of Schedule 1 institutions (typically Science Councils) reported that they have an IP policy which regulate benefit-sharing with IP creators in place, and it appears to be adequate/effective.

On average, NIPMO receives and reviews about 6 to 8 new/amended/updated IP policies per year.

Apart from institutional IP Policies, NIPMO further assisted 13 other organisations outside the IPR Act by making inputs into their IP Policies of which 4 of them were from the SADC region.

Over the years, NIPMO have received various requests for guidance or best practices when drafting an IP policy. As a result, NIPMO drafted Guideline 8.1 of 2021 entitled "Intellectual Property Policy: An Easy Guide" which draws from the World Intellectual Property Organization (WIPO) IP policy template and contextualises it to South Africa's legislation.

NIPMO wishes all institutions all the best in drafting new and/or making amendments of its IP Policies and implementing them to ensure compliance with the IPR Act and making efforts in taking IP assets to the market.

The interplay between Intellectual Property and ChatGPT

*By **Bernard Dippenaar,** Senior Associate, ENSAfrica*

ChatGPT is an Artificial Intelligence model which has been trained to interact with a user in a conversational way whereby the user can input simple instructions, pose questions, or even ask for the model to create code to achieve a desired result or perform a specific task.

A further application of the model is that it can write simple or detailed articles on nearly every conceivable topic. One can only imagine how this can simplify tasks. As the ChatGPT model is trained through assimilating millions of documents, data and information created by various users, the issue of intellectual property rights comes to the fore.

Intellectual Property refers to creations of the mind, including various instruments such as patents, trade marks, registered designs and copyright, as well as common law rights such as the right to protection of confidential information including trade secrets. Typically, intellectual property rights give their owners exclusive rights to use and profit from their creations.

So, who owns the intellectual property when the model utilises the creative works of various users?

Is it the user who provides an input into the model, or is it OpenAI being the owner of the ChatGPT model? To complicate things even further, what happens if a user inputs confidential information into the model or creates original works using the model? There are presently no clear answers to these questions. It is, however, clear that lawmakers and legal experts have to look critically at these challenges and update existing frameworks, legislation, and the like to account for rapid developments in technology such as ChatGPT.

Failing to acknowledge these developments can only result in widespread confusion and frustration by users who use the platform and those users who find out that their creative works have been used to train the model.

This is evident by several ongoing legal cases against generative artificial intelligence models. One such case involves a class action motion against Microsoft, GitHub and OpenAI, accusing them of copyright infringement through their regurgitation of licensed code. Stability AI is another company which is being sued for generating AI-generated art where the model has been trained by using the creative works of millions of artists. Similarly, stock image provider Getty Images is suing Stability AI for its use of millions of images on its site.

It is clear that the debate surrounding intellectual property rights and artificial intelligence tools poses several legal challenges. As such, users of such tools are strongly advised to seek legal counsel whenever they have concerns regarding the application or use of outputs obtained from such tools. Likewise, developers of such tools should seek legal advice regarding the use or application of third-party inputs when developing these tools. A short consultation or opinion obtained from a legal professional can easily avoid a costly court case.

Fashion never goes out of style – then why not protect it?

*By **Thapelo Mmotong**, Partner, Adams & Adams*

Adams & Adams

Fashion trends come and go, but for designers who take their creative work seriously, protecting the intellectual property (IP) rights in a design ensures long-lasting value.

Unfortunately, entrepreneurs in the fashion industry often need more awareness of the benefits of obtaining registered design protection for their creative IP. Most usually, such individuals tend to turn to legal advice only when they face copying of their unregistered IP, which may be too late for preventative measures to be taken.

Some prominent footwear and clothes manufacturers are aware of the pitfalls of not obtaining design protection and have taken significant leaps and strides in securing design protection for several of their creative designs. For example, some well-known South African and international sneaker and haute couture clothing brands know all too well of the financial losses associated with not obtaining protection for their creative IP and have, from time to time, had to rely on registered design rights to draw a line in the sand against infringers.

Design requirements – but what are they? Any design that has been applied to an article of manufacture can qualify for design protection provided that, in the case of an aesthetic design, the design is novel and original, and in the case of a functional design, the design is novel and not commonplace.

The rights afforded to a holder of design rights include the right to monopolise the market in a particular territory in respect of the registered design. The monopolisation of the market essentially means that the owner of the registered design would be able to exclude others, for a period of between 10 and 15 years, from making, using, selling, offering to dispose of, disposing of or importing any article included in a class in which the design is registered and embodying the registered design or a design not substantially different from the registered design.

Apart from these rights being capable of being used offensively and defensively in the country in which design protection has been registered, they can create substantial value for a business – which would ultimately indicate to potential investors the seriousness of a business's strategy in safeguarding design rights and creating a barrier to entry into the market.

Where else can the design be filed – are the limitations or grace periods for filing? Since most IP rights are territorial, corresponding design applications will need to be filed in other territories within six months from the filing date of the South African design application. There are some exceptions to this rule. For example, suppose a product is released to the public prior to filing a design application. In that case, design protection may still be sought in some countries/territories if this is done within a grace period of six/twelve months of the product's release date to the public, depending on the laws of the countries concerned.

Unfortunately, some countries/regions do not offer such grace periods. Therefore, it is advisable for anyone considering obtaining design protection to check which countries provide grace periods to avoid losing on obtaining design rights in important jurisdictions or, more preferably, to seek design protection before releasing their design to the public.

Take notes or get left behind!

Judging from how prominent footwear and clothing brands are intuitively and purposefully approaching IP protection of their creative efforts, entrepreneurs in the fashion industry are encouraged to take notes from leaders in the fashion industry to avoid being left out behind and/or scrambling to get a decent share of the fashion market.

Commercialisation trend snapshot for 2021/22

*By **Sphesihle Thusini and Lungelwa Kula**, NIPMO*

The objective of the IPR Act is to ensure the efficient and effective use of the IP emanating from publicly financed research and development (R&D) for the benefit of the people of South Africa. This entails putting systems in place to ensure the identification, protection, utilisation and commercialisation of IP from publicly financed R&D.

Since its establishment in 2011, NIPMO has been focusing on assisting with the establishment of skills development within Offices of Technology Transfer (OTTs) at institutions (higher education institutions and Schedule 1 institutions) as provided for by Section 6 of the IPR Act.

In response to its legislative mandate to "*attend to all aspects of intellectual property transaction and the commercialisation of the intellectual property*" [Section 7(2)] NIPMO, in 2019, recognised the need to support more activities relating to the commercialisation of IP and has since committed **over R14 million** for these activities.

The successful commercialisation of IP can translate to several economic benefits for South Africa, including job creation, economic growth and social benefits depending on the type of product or service developed.

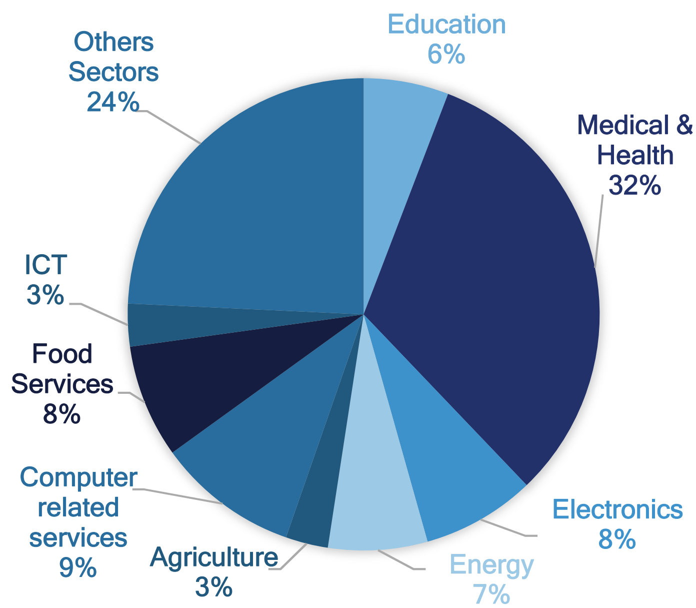
As part of OTT Support Fund requirements, NIPMO receives comprehensive bi-annual/annual reports on active agreements from OTTs. These reports cover all activities within the OTTs and specifically its commercialisation endeavors.

For the 2021/22 financial year, NIPMO analysed reports received from 16 institutions. Of the 16 institutions, 9 (or 56%) concluded an IP license or were in discussions to conclude such in 2021/22.

It should be noted that one University of Technology in particular excelled in concluding licenses and entering into discussion of further licenses. Furthermore, 2 of the 16 institutions reported that they established spin-out/start-up companies.

Figure 1 below breaks down sectors covered by IP that is being commercialised through concluded licenses by the 16 institutions. Topping the list is the medical and health sector from the OTT reports and it can be deduced that this is attributed to new research done in response to COVID-19 that includes medical devices, pharmaceutical and personal protective equipment. Other sectors include but are not limited to aviation, environment, marine, mining and manufacturing.

Figure 1: Sectors on commercialisation activities in 2021/22



NIPMO is pleased with the current progress made by the OTTs; the hard work and dedication of the staff at these offices is beginning to yield positive results for South Africa.

However, we acknowledge that more work is still required to ensure that the innovative ideas are successfully utilised and commercialised. As the implementing office of the IPR Act, NIPMO will continue to provide all necessary support to the OTTs and the National System of Innovation where appropriate.

South Africa's R&D tax incentive may benefit companies working with TTOs

By **Rory Moore**, Associate, Von Seidels

Small and Medium Enterprises (SMEs) and other companies working with institutions may be interested in South Africa's tax incentive for research and development (R&D). The incentive, which is implemented under section 11D of the Income Tax Act, provides a deduction of 150% in respect of (non-publicly funded) expenditure on eligible scientific or technological R&D activities undertaken by companies in South Africa. At the current South African corporate tax rate of 27%, the incentive provides a saving of 13.5 cents per rand spent on eligible R&D.

Institutions and their Technology Transfer Offices (TTOs) may therefore benefit by alerting associated companies to the existence of the incentive. For example, the incentive may encourage associated companies to contribute funds towards R&D activities of a collaborative project. It may also benefit start-up companies that have been spun off from institutional research programmes, in the short term, provided such companies are profitable.

The R&D expenditure must relate to "scientific or technological research and development" as defined by section 11D(1) of the Income Tax Act. The purpose of the R&D must be to discover non-obvious scientific or technological knowledge or to create or develop an invention, a functional design, a computer program, knowledge essential to the use of such invention, functional design, computer program or knowledge, or making a significant and innovative improvement to any invention, functional design, computer program or knowledge for particular purposes[1]. The incentive is also available for R&D related to generic medicines and clinical trials, as well as for certain software development. The R&D should involve systematic investigative or systematic experimental activities with an aim of resolving scientific or technological uncertainty. Such uncertainty may, for example, exist when knowledge of whether something is scientifically possible or technologically feasible, or how to achieve it in practice, is not readily available or deducible by a person skilled in the relevant field.

The definition of R&D, however, excludes routine testing, analysis, collection of information, quality control, internal business processes unless those internal business processes are mainly intended for sale or for granting the use or right of use or permission to use thereof to persons who are not connected persons in relation to the person carrying on that research and development, market research, market testing or sales promotion, social science research, oil and gas or mineral exploration or prospecting (although technology for this field is covered), financial instruments or products, and the creation or enhancement of trade marks or goodwill.

The R&D activities must be conducted within South Africa. Also, the applicant for the incentive must be recognized as a company under the Income Tax Act and must be tax resident in South Africa (or must be a foreign entity meeting the definition of permanent establishment).

Currently it is not possible to claim the incentive for historical costs, i.e., it is only future R&D expenditure that can qualify. Pre-approval is therefore required to benefit from the incentive. It is advisable to start the application process about 4-6 months before the R&D work is expected to start, to make sure that there is enough time to gather the various details needed to compile a good application for the incentive.

[1] Please refer to section 11D(1) for detailed requirements of the purposes.

The most successful applications for the incentive typically satisfy the following criteria:

- they illustrate how the R&D will resolve a scientific or technological uncertainty;
- they clearly explain where the uncertainty lies;
- they define the problem to be solved;
- they define the existing state of the art;
- they distinguish the anticipated future developments from the state of the art;
- they provide evidence of systematic investigation or experiments, as opposed to standard design;
- they show that the resolution of the uncertainty would not be readily deducible by skilled engineer, technician or programmer;
- they provide specific not general commercial or marketing answers; and
- they give technical explanations.

The process of applying for the R&D tax incentive has recently been streamlined and an online portal is available at https://www.dst.gov.za/rdtax/.

TISC programme update

By **Lungelwa Kula**, *Deputy Director, NIPMO*

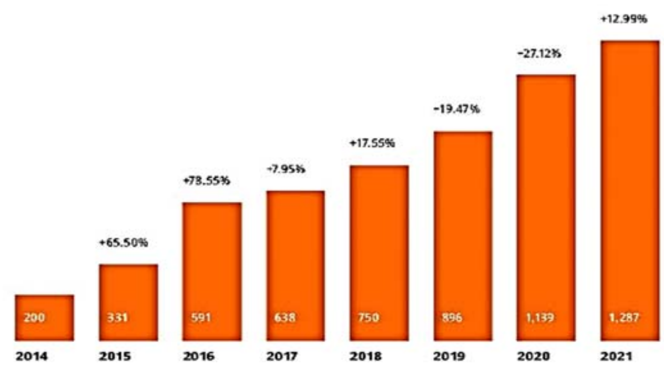
The World Intellectual Property Organization (WIPO) partnered with various countries to implement the Technology and Innovation Support Center (TISC) programme.

In South Africa WIPO partnered with NIPMO and the Companies and Intellectual Property Commission to be focal points for the implementation of this programme. NIPMO has since entered into Memoranda of Agreements (MoAs) with various institutions and organisations interested to be part of the TISC programme referred to as TISC Host Institutions.

The aim of the TISC programme is to offer innovators from developing countries access to high quality technology databases, trainings on IP and commercialisation and access to IP experts who are part of the TISC network to assist the innovators to best protect and exploit their IP and IP rights.

According to TISC 2021 report termed "*Accompanying local innovators on the journey from research to product*", it's noted that from 2016 the largest support provided by these TISC host institutions has been access to "*patent, scientific and technical databases*" through providing training services on these databases. It is evident that the stakeholders supported by the TISC programme find the support on databases useful for their organisations. The report interestingly notes that the least support provided by TISC host institutions has been *"Analytics-patent landscape reports and related services*" over the period 2016 to 2021.

The graph below illustrates the increase in the number of TISC host institutions that have joined the programme, increasing from 200 in 2014 to over 1200 in 2021.



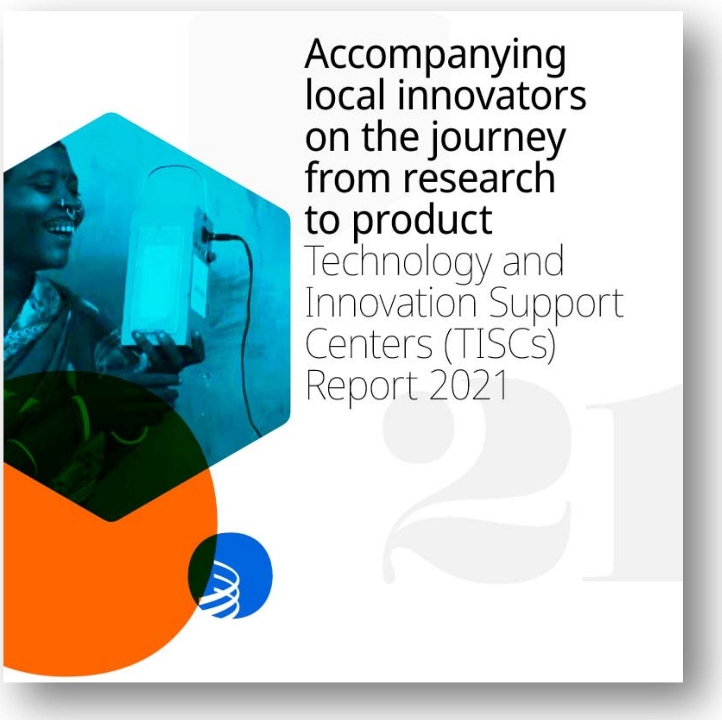
South Africa currently has 18 TISC host institutions comprising of 4 incubators, 4 Small, Medium, Micro Enterprises (SMMEs), 2 Science Councils and 8 Higher Education Institutions. The current TISC host institutions are currently gaining access to the exciting patent search tools such as the WIPO PATENTSCOPE, engagements with IP experts in the TISC network as well as various trainings on IP and commercialisation. In the TISC 2021 report South Africa is considered amongst the top 10 countries that are actively utilising the e-TISC platform.

In February 2023 South Africa hosted the most recent TISC workshop on Patents, Trade marks and Design Tools search in the country to ensure that innovators are informed and supported in matters relating to IP. This included 67 active participants for the duration of the training. The participants represented different professions ranging from lawyers, innovators to government officials.

The South African TISC focal points are also looking forward to other partnerships in the National System of Innovation (NSI) to provide cross-cutting support to innovators.

An Expression of Interest Form to become a TISC host was shared on the NIPMO LinkedIn page:https://www.linkedin.com/company/national-intellectual-property-management-office-nipmo-/mycompany/ and circulated amongst various stakeholders. If you are a registered company interested in becoming a TISC host, kindly ensure to attach your company registration certificate when submitting the Expression of Interest Form or contact the NIPMO offices for more information.

Please visit the WIPO website to download the full TISC 21 report.



Don't forget these NIPMO deadlines…

IP7 status and commercialisation reports

Contact person: Naomi Ngoasheng

April submission: The KIM System will be open for submission **until 30 April 2023** for the period 1 October 2022 to 31 March 2023; AND October submission: The KIM System will be open from 1 May 2023 to **31 October 2023** for submission for the period 1 April 2023 to 30 September 2023.

OTT Support Fund applications

Contact persons: Thabang Jase and Lungelwa Kula

The KIM system will be open for applications from **15 April to 15 May 2023.** No applications will be accepted after 15 May 2023

IP Fund Applications

Contact persons: Paballo Masite and Mantwa Tshabalala

Hard Copies of the IP Fund application will be accepted **until 30 June 2023**. Please email a soft copy of the IPF1 form (PDF and excel version) to NIPMO. No applications will be accepted after 30 June 2023

NIPMO Calendar of events

April 2023	
11 & 17 April	**Lunch webinar**: IP7/IP Fund info session (online)
15 April	OTT Support Fund applications open
26 April	World IP day celebration: Women and IP
30 April	**Deadline**: IP7 submissions

May 2023	
Entire month	World IP day celebrations: Women and IP
15 May	**Deadline**: OTT Support Fund applications

June 2023	
12 - 15 June	**Workshop**: WIPO-NIPMO Executive Programme (Gauteng)
TBC	**Deadline**: Registration for WIPO distance learning courses (TISC)
30 June	**Deadline**: IP Fund applications

July 2023	
24 Jul – 4 Aug	**Workshop**: WIPO-NIPMO workshop on IP innovation policy (KZN)
TBC	**Event**: NSTF awards – SMME Innovation– *NIPMO sponsor category*

August 2023	
24 Jul – 4 Aug	**Workshop**: WIPO-NIPMO workshop on IP innovation policy (KZN)
1 – 4 Aug	National Science Week launch event

September 2023	
TBC	DHET innovation outputs submission *(DHET to confirm exact date)*

October 2023	
19 Oct	One Day SARIMA Symposium (Gauteng) **The 3C event - Connect, Collaborate, Celebrate**
TBC	**Workshop**: NIPMO/CIPC/SWISS SME Commercialisation workshop (Western Cape)
31 Oct	**Deadline**: IP7 submissions

November 2023	
20 Nov – 1 Dec	**Workshop**: WIPO SA Summer School on IP and TT (University of Limpopo)
TBC	**GAP awards** – NIPMO sponsor category

December 2023	
20 Nov – 1 Dec	**Workshop:** WIPO SA Summer School on IP and TT (University of Limpopo)

January 2024	
	No events planned

February 2024	
TBC	**Workshop**: TISC workshop (Eastern Cape)

March 2024	
TBC	**Deadline**: Registration for WIPO distance learning courses

WIPO/NIPMO courses in more detail…

June 2023: WIPO Distance Learning (DL) Courses

Contact person/s: Lungelwa Kula or Nodumo Maluleke

Enroll for the WIPO Academy Distance Learning (DL) courses. These courses are offered under the framework of cooperation between WIPO and Technology and Innovation Support Centres (TISCs) aiming at enhancing the knowledge and skills in IP related topics

Registration for available online courses end of June 2023. NIPMO correspondence will be sent to all for registration.

June 2023: WIPO-NIPMO Executive Program

Contact person/s: Thabang Jase, Hlamalani Khoza or Naomi Aphane

The program is offered by WIPO and NIPMO for the benefit of different actors from the private sector, including entrepreneurs, small and medium-sized enterprises (SMEs), and innovators from developing and least developed countries and countries with economies in transition. It aims to equip the stakeholders with practical skills enabling them to efficiently use IP in the course of their businesses.

This workshop will be held in hybrid format (Gauteng and online) from 12 to 15 June 2023.

For more information, please email executiveprog.southafrica@wipo.int. Registration on the WIPO website should be active shortly.

July/ Aug 2023: WIPO-NIPMO Workshop on IP Innovation Policy

Contact person/s: Thabang Jase, Nodumo Maluleke or Naomi Aphane

This training course is offered by WIPO and NIPMO for the benefit of developing countries to enhance the skills and knowledge of officials who deal with innovation policies and IP strategies to enable their effective formulation and management.

This workshop will be held virtually from Monday, 24 July 2023 to 28 July 2023 and in person in Durban from 31 July to 4 August 2023.

Registration is free!! Applications are open until 28 May 2023.

Please register on WIPO website at: https://welc.wipo.int/acc/index.jsf?page=pdpCatalog.xhtml&cc=WIPO-NIPMO&lang=en&#plus_WIPO-NIPMO

Nov/ Dec 2023: WIPO Summer School on IP and TT

Contact person/s: Hlamalani Khoza or Thabang Jase

The WIPO Summer School on IP and Transfer of Technology organised by NIPMO and CIPC and will be hosted in a hybrid format from 20 November 2023 to 1 December 2023 at the University of Limpopo.

Registration is free!! Applications are open until 27 April 2023.

Please register on WIPO website at: https://welc.wipo.int/acc/index.jsf?page=wssCatalog.xhtml&cc=WSSZA2023&lang=en&#plus_WSSZA2023

Feb 2023: WIPO-TISC workshop

Contact person/s: Lungelwa Kula or Nodumo Maluleke

The TISC workshop is scheduled for February 2024 in the Eastern Cape Province.

More details on registration to follow.

NIPMO documents

Guideline	Title
Guideline 1.3 of 2019 *updated - latest publication dated March 2019*	Interpretation of the scope of the IPR Act: "Setting the scene"
Guideline 2.8 of 2021 *updated - latest publication dated March 2021*	Intellectual Property Fund
Guideline 3.5 of 2019 *updated - latest publication dated March 2019*	Intellectual Property Creator Incentives
Guideline 4.2 of 2019 *updated - latest publication dated October 2019*	Intellectual Property Ownership
Guideline 5.2 of 2021 *updated - latest publication in September 2021*	Full Cost
Guideline 6.1 of 2019 *Drafting underway of updated document*	Intellectual Property Enforcement Fund
NEW! Guideline 7.3 of 2023 *updated - latest publication in March 2023*	Office of Technology Transfer Support Fund
Guideline 8.1 of 2021 *published in March 2021*	IP Policy: An Easy Guide

Practice note	Title
Practice Note 1 of 2012 *published in December 2012*	Practice Note to Guideline 1 of 2012
Practice Note 2.1 of 2017 *published in March 2017*	Dispute Resolution Procedures
Practice Note 3.1 of 2017	***replaced by Guideline 5***
Practice Note 4.2 of 2021 *updated - latest publication dated April 2021*	Referral of intellectual property to NIPMO on an IP1 form
Practice Note 5.2 of 2021 *updated - latest publication dated March 2021*	Intellectual property status and commercialisation reports reported to NIPMO on an IP7 form

Interpretation Note	Title
Interpretation Note 1 *published in November 2014*	NIPMO general compliance requirements
Interpretation Note 2 *updated and latest publication dated April 2022*	IP transaction approval
Interpretation Note 3	Reporting obligations of an assignee ***Currently withdrawn***
Interpretation Note 4 *published in July 2015*	THRIP Funded Research
Interpretation Note 5 *published in July 2015*	Specific ownership scenarios
Interpretation Note 6 *published in March 2016*	State Rights to IP Developed from Publicly Financed Research and Development
Interpretation Note 7 *updated - latest publication dated September 2018*	Are data IP in terms of the IPR Act?
Interpretation Note 8 *published in April 2018*	Government department funded IP and the interface with the IPR Act
Interpretation Note 9 *published in April 2018*	IP ownership with respect to Technology Innovation Agency (TIA) funding programmes
Interpretation Note 10 *published in October 2018*	When does the IPR Act apply?
Interpretation Note 11 *published in January 2019*	State-Owned Enterprises and the interface with the IPR Act
Interpretation Note 12 *published on 7 November 2019*	Procedure for the Review of Non-Commercialised IP at Institutions
Interpretation Note 13 *published in August 2019*	Everything you need to know about Full Cost
Interpretation Note 14 *published in July 2022*	Clarifying Open Science, Open Innovation and Open Source…

Please send a request for a copy of any NIPMO documents to: Naomi Aphane and Hlamalani Khoza

NIPMO contact list

Name	Designation	Mobile No	Email
Office of the Head of NIPMO *Responsible for* *i) Any NIPMO related queries (legal and/or administrative), ii) NIPMO Advisory Board and iii) IP and TT Survey*			
Jetane Charsley	Head: NIPMO	0833577901	Jetane.charsley@nipmo.org.za
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Advisory and Support Directorate *Directorate is responsible for* *i) OTT Support Fund (new and existing agreements), ii) NIPMO/WIPO courses, training and events, and iii) KIM update of OTT personnel*			
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Vacant	*Deputy Director: Capacity Development and TT*		
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Sphesihle Thusini	Trainee: Advisory & Support	0744776255	Sphesihle.Thusini@nipmo.org.za
Regulatory and Compliance Directorate *Directorate is responsible for* *i) All legislative form approvals (IP1 to IP9 Forms), ii) Any IPR Act related queries/Amendment of IPR Act and iii) KIM system queries (if service provider cant assist)*			
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Hlamalani Khoza	Shared Senior Secretary	0826053719	hlamalani.khoza@nipmo.org.za
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Vacant	*ASD: Legal*		
Vacant	*Senior Admin Officer: Disclosure Analyst*		
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Funds and Incentive Management Directorate *Directorate is responsible for* *i) IP Fund, ii) OTT Support Fund (new and existing agreements) and iii) Incentive Management (Awards and DHET subsidy*)			
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