

Press Release

For immediate release

29 October 2014



Media Contact: Mienke Steytler

Tel: 011-482-7221 ext. 2003

Email: mienke@sairr.org.za

The Patent Rights Grab

Having assumed 'custodianship' of mineral and water resources and re-opened the land claims process, the State is now seeking wide powers to take or bypass patent rights, says the IRR in a new issue of *@Liberty*, its policy bulletin, released today.

The Department of Trade and Industry (DTI) is intent on pushing ahead with controversial proposals to restrict intellectual property (IP) rights, including patent rights, as the department announced some ten days ago.

"Patents are a particularly important form of intellectual property because they protect inventions against copying, thus encouraging innovation and stimulating investment. This, in turn, quickens the growth rate and helps generate jobs," notes Anthea Jeffery, author of the IRR report.

"South Africa has a proud record on local inventions," adds Jeffery. "These range from Sasol's oil-from-coal technology, to Pratley Putty, the Kreepy Krauly swimming pool cleaner, the CAT scan (3-D X-rays to detect disease), the Tellurometer (vital to accurate mapping), the Cybertracker (important in tracking game), and the 'dolos' – a strangely-shaped concrete block for protecting harbour walls which has been copied around the world because it was never patented."

The DTI and health activists say the proposed new rules are essential to bring down the prices of anti-retrovirals (ARVs) and other medicines. But ARV prices are already sharply down in general, while the State's proposals could choke off the innovation needed to beat new diseases.

"In addition, if the DTI's aim is to reduce the cost of ARVs, why do its proposed changes extend way beyond the health sector?" asks Jeffery.

What the DTI mainly seeks, she says, is a vast increase in the scope for 'compulsory licences' over patented inventions. Such licences undermine patent rights by allowing patented inventions to be copied and sold without the patent holder's consent.

More...

South Africa's Patent Act already allows compulsory licences, but only in limited circumstances. It also says that the royalty payments made to a patent holder in return must take into account his costly R&D.

Adds Jeffery: "By contrast, the DTI's new rules may require the granting of compulsory licences after a fixed period (say, 60 days) of unsuccessful negotiations with the patent holder – and in return for royalties limited to roughly 3% of the cost of the copied products.

"The State may also be entitled to compulsory licences over all patented inventions without prior negotiations, while the royalties it pays will be similarly limited. Moreover, says the DTI, the Government won't have to pay any extra compensation to patent holders in these circumstances because there will be no 'direct expropriation' of their rights.

"Already, South Africa's economy is growing at only 1.4%, far below the 5.4% needed to generate new jobs. More than 8m people cannot find work. Among the youth, the unemployment rate stands at 65%.

"The DTI says the aim of its IP proposals is to help the poor, but the practical consequence of further undermining property rights is sure to be the opposite."

Ends
