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Intellectual Property Guide South Africa 2016





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Introduction to Intellectual Property

Intellectual property (IP) describes a range of tools that can define and protect new and innovative creations. This could be an invention, a product name, a logo, a novel, a musical theme tune or the design of a product. The law recognises various rights that you can establish over your creations. These are referred to as IP rights.

The following categories of IP rights are recognised in South Africa:

- patents
- registered designs
- trade marks, trade names and domain names
- copyright
- confidential information, trade secrets and know-how
- other special categories of rights, such as plant breeders' rights

IP rights may either be registered or unregistered. Unregistered rights exist on creation of the IP. Whereas registered rights must be applied for, from the relevant authority.

IP is an important tool in business. So it is useful to protect and manage your IP to create value. This factsheet explains the different types of IP recognised in South Africa. It will also consider the ways in which you can establish and manage IP rights.

Relevant South African intellectual property laws

There are many laws relevant to IP protection in South Africa. The most important of these are:

- the Trade Marks Act
- the Copyright Act
- the Patents Act
- the Designs Act
- the Plant Breeders' Rights Act

This legislation, along with common law and decided case law, defines the rights given to you as an owner of IP.

International conventions and treaties on intellectual property

South Africa has signed a number of international conventions. These have helped to harmonise the South African IP laws with those in the United Kingdom (UK).

South Africa is a signatory to the following key treaties, conventions and international organisations:

- **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**

This establishes minimum thresholds for IP protection for members of the World Trade Organisation.

- **Berne convention**

This provides automatic minimum copyright protection for literary and artistic works. This is regardless of the country of origin of the author or the work.

- **Paris convention**

This provides protection of a number of different types of IP, including patents, designs and trade marks. It gives the right to claim priority in South Africa from an application originating elsewhere. It also lays out certain minimum rights to be afforded to IP holders.

- **Patent Cooperation Treaty (PCT)**

This allows applicants to simultaneously file an application in multiple countries, including South Africa.

- **International Convention for the Protection of New Varieties of Plants (UPOV Convention)**

This provides the protection of Plant Breeder's Rights. It also allows the right to claim priority from an application originating elsewhere in the world, including the UK.

PROTECTING YOUR BRANDING: TRADE MARKS

What is a trade mark?

Trade marks can be words or other marks, such as logos. These are what you use to distinguish your goods or services from those of other manufacturers and suppliers.

A mark must be capable of visual representation. It could be a name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container, and even a sound. Alternatively it could be any combination of these, provided it can be visually represented.

Besides the traditional form of the trade mark applied to goods, it is possible for you to register trade marks for a service in South Africa. For example, the name and logo of a hotel.

Trade marks may be registered for a period of ten years. After this the registration can be renewed for subsequent ten year periods, in perpetuity.

Is it necessary for you to register a trade mark?

Common law trade marks, which have acquired a goodwill or reputation through use, have a limited form of protection under South African common law. However, registration of a trade mark provides you as an owner with many advantages, including:

- allowing you to stop others from using or registering another trade mark for the same or similar goods or services if it would likely deceive or cause confusion, without first proving you have used the trade mark
- allowing you to object to another's unauthorised use of the trade mark or a similar mark if your registered mark is well known in South Africa and the use would be likely to take unfair advantage of, or be detrimental to, the distinctive character or repute of your registered mark
- giving notice to all interested parties of the rights claimed by you throughout the country
- enduring indefinitely, subject to use and the payment of renewal fees every ten years
- allowing you to rely on trade mark registration to prevent competitors using the mark. The registration does away with the need to prove that the mark has a reputation, which is the case with a common law trade mark

What trade marks can you register?

It is a requirement for registration that a trade mark must be “capable of distinguishing” either intrinsically or due to its prior use. For example, an invented word such as KODAK or XEROX, or an invented logo, is immediately distinctive. Whereas terms such as EXCELLENT or BEST are not.

Selecting your trade mark

You should bear in mind that the more descriptive the mark is of your goods or services, the less likely it will be to distinguish them from those of others. Before applying, you should perform a trade mark search to confirm that it will not infringe an already registered mark.

The trade mark registration procedure in South Africa

To start the process, you must file a trade mark application together with payment of a fee. The application will be examined and you will receive a report. This will indicate whether, and under what conditions, your mark may be registered. Once the relevant authority is satisfied that a trade mark can proceed to registration, it will issue acceptance of the application. Then you, usually through your trade mark attorneys, arrange for the acceptance to be advertised in the Patent Journal. After advertisement, the application is open to opposition by interested parties for three months.

If a party believes it has grounds for opposing, an extension of that period is usually arranged. Before filing a formal notice of opposition, an attempt is generally made to find a basis for coexistence of both trade marks, or for the application or the objection to be withdrawn. At the expiry of the three month period, or any extension period, a Certificate of Registration is issued.

Filing a trade mark in South Africa from the UK

The international registration of trade marks through the Madrid system is an effective and relatively inexpensive way to secure trade mark protection in a number of countries. This is through a single application with a centralised office. However as at 2016, South Africa is not part of this system. Thus, you cannot obtain registration of a trade mark in South Africa using this route and must apply directly to the South African authority.

Proper use of your trade mark

You must use your trade mark for it to remain on the trade mark register. Your registered trade mark may be removed from the register if it is not used for a continuous period of five years.

If a trade mark is not used properly or is used either deceptively or becomes generic for the goods or services, all rights in the trade mark can be lost.

Company names

You can also register company names and trading names as defensive company names. The registration of defensive company names prevents others from incorporating a company under a name that is confusingly similar to your trade mark, regardless of the type of goods or services. This can avoid confusion in the market place and is usually done in conjunction with registering a trade mark.

Domain names

Domain names are valuable corporate assets and identifiers. With the expansion of the internet and e-commerce it is important for trade mark owners to protect their trade marks online by registering domain names. Being the owner of a registered trade mark does not automatically entitle you to a specific domain name. You should therefore register your related domain name via an accredited registrar. The primary domain name space used by South African companies is the .co.za space. A list of registrars accredited by the .za central registry (ZACR) is available at <https://registry.net.za/accredited/>.

PROTECTING YOUR COPYRIGHT

What is copyright?

Copyright is a form of IP protection that protects written, dramatic or artistic works. It prevents works being copied or used without the authorisation of the copyright owner.

You do not need to register copyright in South Africa, it exists automatically. The only form of copyright that you can register in South Africa is that in cinematograph films.

What type of content enjoys copyright protection?

To be eligible for copyright, the subject matter must be a “work” as provided for by the Copyright Act. These are limited to:

- literary works (e.g. novels, poems, tables and manuals)
- artistic works (e.g. photographs, paintings and drawings)
- musical works (e.g. music reduced to writing or musical notations in a physical form, e.g. a record or a tape)
- sound recordings (e.g. a compact disc or tape on which sounds are embodied)
- cinematograph films
- broadcasts (e.g. radio and television)
- programme-carrying signals (e.g. a signal being emitted passing through a satellite)
- published editions (e.g. a particular typed arrangement of a literary or musical work)
- computer programs

What are the requirements for copyright protection?

The first requirement for copyright to exist is that the subject-matter must be a “work” as defined above. Secondly, your work must be original. This means that it was not copied from another source. Instead you, as an author, invested your own time, money, effort, skill, knowledge and endeavours to create the work.

Thirdly, your work must be in a material form and there must be a physical or tangible product. Thus, your work cannot be a thought or idea, but must have been created and then “fixed” in some manner. For example, by writing the content down, recording, filming or capturing it electronically.

Finally, as an author of the work you must be a “qualified person”. A qualified person is:

- a person who is a South African citizen, a person living or resident in South Africa, or a company with a registered place of business within South Africa
- a person living or resident in a country which is a member of the Berne Convention, or a company with a registered place of business within a country which is a member of the Berne Convention, such as the UK.

What is the duration of your copyright?

The duration of copyright is a generous one. The exact duration of copyright depends on the type of work concerned, but is generally at least fifty years from the moment of a certain event. For literary, musical and artistic works, copyright lasts for a period of fifty years after the death of the author. In other cases, such as cinematograph films and computer programs, copyright expires fifty years from the end of the year in which the work became publicly available or published. If the work is not publicly available or published, then the copyright will expire fifty years after creation.

Who owns the copyright?

Generally, the person who creates a work, i.e. the author, owns the copyright. However, there are certain exceptions to this general rule. For example, if you create the work during the course and scope of your employment. In this case, your employer will own the copyright of that work. A person who commissions the taking of a photograph, the painting or drawing of a portrait, the making of a sound recording or the making of a film owns the copyright of that work. In all other instances, the ownership of copyright must be transferred by means of a written document.

Registering copyright in cinematograph films

Normal copyright principles apply to cinematograph films. Additionally you can choose to register these with the Companies and Intellectual Property Commission. This can assist in infringement proceedings by showing proof of film rights and establishing you are the copyright owner.

PROTECTING YOUR IDEA: PATENTS

What is a patent?

A patent protects an invention and allows the owner the right to prevent others from exploiting the invention for a fixed period of time.

What is an invention?

An invention may be a process, a method, a machine, a device, a new material, a chemical compound or chemical composition. In South Africa, in order to be patentable an invention must meet the following three criteria:

- your invention must be new, in that it is not previously known anywhere in the world
- your invention must not be an obvious variation on known technology
- your invention must be capable of application in trade, industry or agriculture

Assuming that your invention meets all these criteria it may be patentable but there are some exceptions. Exclusions include discoveries, theories, mathematical methods, artistic works. Schemes or rules for performing mental acts, playing games or doing business are also excluded

The patenting process in South Africa

There are three routes you may use to secure patent rights in South Africa:

- file the complete application in South Africa, without filing earlier (priority) patent applications
- file a provisional (priority) application to establish a “priority date”. This may be either in South Africa or another country that is a member of the Paris convention. The complete application then must be filed in South Africa within twelve months of the provisional application
- entering the national phase in South Africa from a PCT application

Patent prosecution

The South African Patent Office only reviews patent applications filed in South Africa to ensure that they meet the necessary formalities. It does not complete a full examination. As such, once the formalities are complied with, the application will be accepted. This typically takes place 18 months from the date of filing but this period can be extended on request. Once accepted, the application usually proceeds to grant within three months. It is then advertised (published) in the Patent Journal.

South Africa does not substantively examine patent applications. Therefore it is comparatively inexpensive to file a patent application. However, the onus will be on you as the applicant to ensure your patent application is valid and complies with all the requirements of South African law when it proceeds to grant. South Africa is considering introducing the substantive examination of patent applications but this is not yet in force.

What rights does your patent give you?

Once you secure a South African patent you have a monopoly for 20 years from filing. This is subject to the payment of annual renewal fees. The monopoly allows you to prevent others from:

- making the invention
- using and exercising the invention
- selling, licensing and leasing the invention
- importing the invention in South Africa.

It is important to note that your patent is limited to the countries in which it is granted. There is no such thing as a worldwide patent and to obtain patent protection in South Africa you must file an application in South Africa via one of the routes mentioned above.

PROTECTING YOUR DESIGN: REGISTERED DESIGNS

What is a registered design?

Registered designs protect the outward appearance of an object. They protect the way an object looks. A registered design allows you, as the owner of the design, to control the way in which the design is used. This includes the right to charge royalties for the use of the design and the ability to prevent competitors from using the design, or from copies of the design entering the market.

South African law differentiates between two different types of design registrations, namely:

- aesthetic designs
- functional designs

What is the difference between an aesthetic and a functional design?

In South Africa, protection is available for both aesthetic and functional design features. Generally speaking, aesthetic designs relate purely to the appearance of an article. Functional designs relate to features of design that are necessary due to the function of the article. For example, the shape of a perfume bottle would ordinarily be registered as an aesthetic design. This is because, although it performs the function of holding a liquid, its features are ordinarily judged based on visual appeal. A functional design would apply to a flat-top screw, because its appearance is determined by the function it has to perform. One exception to this is spare parts for machines, which are not registrable as functional designs.

Requirements for a design to be registrable

To be acceptable, the design must be new. In deciding this, it is not only compared with designs that are available in South Africa but with all known designs in the world. Similar to copyright works, an aesthetic design must be original and not be a copy of an existing design. Functional designs must not be “commonplace”. The intention here is to exclude everyday and obvious variations of known designs.

In South Africa you may still obtain design registration after the design is disclosed. However you must apply within six months of the design being released. Release includes publishing the design or selling products that incorporate the design.

How long will your registered design remain in force?

An aesthetic design registration remains in force for fifteen years while a functional design remains in force for ten years. Throughout the life of a registered design, you must pay renewal fees to keep it on the register.

Design applications from the UK

As with patents, separate design applications must be filed in each country where you need design protection. The Hague Agreement, allows you to file for registration of a design in a number of countries using a single application. Unfortunately, South Africa is not a party to this international agreement. Instead you will have to file directly in South Africa if you wish to obtain registered design rights here. You can, however, claim priority from a design application filed in another country. This is provided you file the South African design application within six months of the foreign application.

PROTECTING YOUR PLANT VARIETY: PLANT BREEDERS' RIGHTS

What is a plant breeder's right?

New varieties of plants produced by biological processes cannot be protected by a patent. However, such new varieties can be protected by a plant breeder's right. Examples of new varieties that may be protected include ornamental flowers, agricultural crops, herbs, vines and trees. As a signatory to the 1978 UPOV convention, South Africa extends rights to breeders in other signatory countries.

What are the requirements for obtaining a plant breeder's right?

To qualify for protection, a variety of plant must be new, distinct, uniform and stable.

- To be "new", before filing an application the plant material of the variety must not have been sold or given away for profit:
 - in South Africa for more than one year
 - in the UK or another Convention/agreement country, in the case of vines and trees, for more than six years
 - in the UK or a Convention/agreement country, in the case of other plant varieties, for more than four years
- To be "distinct", the variety must be able to be clearly distinguished from another variety of the same kind of plant.
- To be "uniform", the variety must have the uniform characteristics of the variety in question, subject to the normal variation that exists in the variety.
- To be "stable", the characteristics of the variety must remain unchanged after repeated propagation.

Who may apply for a plant breeder's right?

A plant breeder's right must be applied for by the breeder. This is the person who bred or discovered and developed the variety, or their employer.

The application process

You must submit an application for a plant breeder's right, a Technical Questionnaire and proof of the applicant's right to apply to the South African Department of Agriculture. The Technical Questionnaire provides a detailed description of the new characteristics of the variety. Plant material must also be submitted or made available for testing. The Department of Agriculture then examines the application. Providing they are satisfied that the variety complies with the requirements and that the plant material is as described in the Technical Questionnaire, the right is granted. The examination of slow-growing plants such as trees may take a number of years.

How long does a plant breeder's right last?

The duration of a plant breeder's right, from the date of grant, is:

- twenty-five years, in the case of vines and trees
- twenty years, in all other cases

An annual renewal fee is payable before 31 January of each year during the term of the plant breeder's right.

CONFIDENTIAL INFORMATION AND COMMERCIAL CONSIDERATIONS

In certain circumstances, obtaining a patent may not be the best means of protecting the invention. A patent application requires full disclosure of the invention, this is later published. Therefore to preserve a competitive edge, it might be better to keep the technology secret.

Know-how can be a valuable asset. This could be information which is not generally known or available that provides a competitive advantage to the person who knows it. Examples include the architecture and design of software, algorithms, formulae, business contacts, confidential business information, marketing strategies or pipeline products.

You should take steps to preserve the confidentiality of know-how. This can include restricting access to the know-how, obtaining confidentiality and non-use agreements from third parties to whom the know-how is disclosed, and limiting disclosure by key personnel that possess the know-how once they leave your employment.

Collaborative agreements

If you intend to collaborate with a South African partner you should clearly outline each party's right to use the other's IP. You should also define the ownership of any resulting IP and how any benefits from the commercialisation of the IP will be shared. You can do this by signing a contract that covers all these aspects. You should note the provisions of the Intellectual Property Rights from Publicly Financed Research and Development Act 58 of 2008 ("IPR Act") when collaborating with a South African public research institution. For example a university or science council, or indeed any publicly funded entity. With this Act, public institutions which conduct research and/or development with public resources will own the resulting IP, regardless of what might have been agreed between the parties. If research and/or development undertaken by the public research institution is funded by a private entity on a full cost basis, the IP created will fall outside the scope of the IPR Act. Full costs are calculated in accordance with international financial reporting standards, having regard to the institution's financial policies.

Commercialising your intellectual property in South Africa

You can lever your IP in South Africa in a variety of ways. For example, you could exclude competing products or services from the market by enforcing your IP rights against others. You could generate licence revenue by charging others royalties to use your IP. You could also use your IP as leverage when negotiating a collaborative arrangement or faced with an infringement suit. IP in South Africa can also be swapped for equity/shares in a joint venture or to secure a loan or raise capital.

Licensing of intellectual property in South Africa can take many forms. These include franchising, endorsement, publishing, syndication of television programmes, film production and software commercialisation.

When licensing IP, a licensee's right under a registered form of IP may be recorded in the relevant register. There are advantages to recording a licence. For example, if the licence is not recorded in the register, the licence agreement will not generally be allowed as evidence in any legal suit. Thus the licensee cannot easily claim relief from an infringer. In trade mark licensing, use of the trade mark by a registered user is deemed to be allowed by the trade mark owner and the recordal of the licence as confirmation of consent to such use.

NB: South African residents are subject to exchange control legislation which regulates the movement of capital into and out of the country. This legislation applies to commercial arrangements involving IP. Exchange control legislation instructs that regulatory approval must be obtained before any rights to IP, whether registered or unregistered, are assigned, surrendered or transferred to a person who is not resident in South Africa.

Furthermore, the payment of licence royalties by a South African resident to a foreigner in respect of a licence under IP owned by a foreigner will also require regulatory approval. Where a licence agreement entitles a South African licensee to manufacture products or use a protected method in South Africa, the Department of Trade and Industry (DTI) must act as an adviser to the transaction and the person requiring exchange control approval must submit an application to the DTI for consideration. The DTI has published guidelines indicating the licensing terms in respect of which approval is likely to be granted.

HOW CAN I PROTECT MYSELF AGAINST INFRINGEMENT OF MY INTELLECTUAL PROPERTY RIGHTS?

Once you have protected your IP you may wonder how you enforce your rights. An IP professional can give you legal advice on a dispute, or act on your behalf. The following avenues of enforcement are generally available in South Africa:

Trade mark infringement

If you have registered your trade mark or have a well-known trade mark, you may initiate civil law trade mark infringement proceedings against counterfeiters. This will enable you to request a ban restraining the infringement, damages, surrender of the offending goods, costs of suit and/or various other forms of relief.

The Counterfeit Goods Act

The Counterfeit Goods Act aims to combat the trade in counterfeit goods. This enables owners of certain forms of IP, namely trade marks, copyright and prohibited marks under the Merchandise Marks Act, to take action against the counterfeiting of products. The Act is intended to provide adequate and practicable protection against trading in counterfeit goods. This is for the benefit of those lawfully engaged as manufacturers and producers of goods, as well as consumers.

Copyright infringement

In the case of infringement of your copyright you can institute civil law infringement proceedings. Under certain circumstances, copyright infringement can be a criminal offence and criminal charges can be laid against the infringer. These charges will be pursued by the South African Police Services and the National Prosecuting Authority. Criminal copyright infringement can give rise to severe penalties being imposed.

Patent/design infringement

Under the Patents Act and the Designs Act, you can institute civil proceedings for infringement. These proceedings enable you, as a patent or registered design owner, to claim relief in the form of an interdict, surrender of the infringing goods or goods which include the infringing product or made using a patented process, damages or a reasonable royalty in lieu of damages, and costs of suit.

Plant breeders' rights infringement

The Plant Breeders' Rights Act also allows for civil proceeding against infringers of a plant breeder's right. If infringement is proved, the owner of a Plant Breeders' Right may claim damages, or without proving damages, recover compensation of up to R10 000.00. In addition a court may make an order in respect of the custody, surrender or disposal of any book, document, plant, propagating material, product, substance or other article.

Alternative dispute resolution (ADR)

As an alternative to litigation, you may wish to consider alternative dispute resolution. Different avenues of ADR are available to an IP right owner, including mediation and arbitration. ADR may be preferable to you if you wish to obtain a speedy resolution to an infringement matter. It may also prove more cost-effective than conventional litigation in some cases and is confidential.

What if your intellectual property rights are being infringed?

Under South African law you may not threaten someone with infringement proceedings relating to patents or registered designs. If you believe someone is infringing your IP rights, you should notify them of the existence of your IP only, and seek expert advice.

Effective strategies to minimise risk of infringement

Infringement proceedings are costly and time-consuming. It is always useful to make sure you are aware of the IP of others and do not infringe it. It is also advisable for you to try and make others aware of your IP.

Trade marks

It is advisable to conduct a trade mark availability search before applying for your trade mark. This helps to confirm the availability of the mark for registration, and to ensure that it will not infringe an existing registered mark.

It is also possible to make use of a watching service with a law firm, which monitors company names and trade marks advertised for acceptance. This allows you to be aware of, and if you wish, to oppose registration of similar marks.

Patents and registered designs

As South Africa does not examine patents and designs, you should carry out searches to check your proposed patent or design is new. It may also be useful to apply for a patent or design in a country which does examine patent and design applications. This will provide you with a fair degree of confidence that your patent or registered design is valid.

It is also advisable to mark your product with the official patent number and/or registered design number. This is so infringers cannot claim they were not aware of the existence of the patent and/or registered design.

GLOSSARY AND USEFUL INFORMATION

Other sources of information

There are also many other sources of information that can be accessed free of charge. You may find the following websites useful:

- Companies and Intellectual Property Commission (www.cipc.co.za)
- World Intellectual Property Organisation (www.wipo.org)
- United States Patent and Trademark Office (www.uspto.gov)
- The European Patent Organisation (www.european-patent-office.org)
- International Trademark Association (www.inta.org)

Key intellectual property organisations and their interaction with various laws

- Department of Agriculture, Forestry and Fisheries (DAFF): Governmental department responsible for agriculture, forestry and fisheries; administers plant breeders' rights
- Department of Trade and Industry (DTI): Governmental department responsible for trade and industry; houses the Companies and Intellectual Property Commission
- Companies and Intellectual Property Commission (CIPC): An agency of the DTI; administers the trade mark registry and patent and design offices as well as registration of defensive company names and cinematograph films

Glossary of Terms

Acceptance – confirmation by the relevant IP authority that the IP rights will be granted. This is usually after advertisement of acceptance.

Advertisement – the publication of acceptance, or other action requiring publication, in the Patent Journal.

Aesthetic design – a design applied to an article, whether for the pattern or the shape or the configuration or the ornamentation, or combination of these. The design having features which appeal to and are judged solely by the eye.

Arbitration – a private judicial hearing, with an outcome that binds the parties, and puts an end to the dispute between them.

Berne Convention – an international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886 [South Africa is a member].

Capital – financial assets or the financial value of assets, such as cash, used or available for a purpose.

Case law – law established by the outcome of previous cases/judgements.

Civil law – the law dealing with disputes between private parties, or negligent acts that cause harm to others.

Collaborative agreement – an agreement that sets up the terms and conditions of collaboration between two or more parties.

Commercialisation – managing or exploiting a product, service and/or associated IP in a way designed to make a profit.

Common law – law that is derived from custom and prior judgement, that is, not legislation.

Confidential information – information shared with a limited number of people with the aim of furthering a specific purpose.

Copyright – a set of exclusive rights granted by law to an author for their original work.

Costs of suit – reimbursement of an innocent party for the expenses of infringement proceedings (or other legal proceedings).

Counterfeit goods – imitation goods produced without the authority of the owner of any IP right.

Criminal law – the law dealing with acts of intentional harm to individuals/property but which, in a larger sense, are offences against us all i.e. crimes.

Damages – the sum of money the law imposes for a breach of some duty or violation of some right, such as IP rights.

Defensive company name – company names which are registered with the aim of preventing a trade marks from being included in a new company name.

Domain name – an unique identifier which acts as an address to locate a company or organisation's website on the Internet.

Examination – careful inspection of the substance of a patent specification, trade mark application, registered design application, plant breeder's right application to determine whether it meets the requirements for granting of IP rights.

Full/complete patent application - a patent application with complete specification. This must sufficiently describe, ascertain and, where necessary, illustrate or exemplify the invention and the manner in which it is to be performed. This should be in enough detail for the invention to be performed by a skilled person.

Functional design – a design applied to an article, whether for the pattern or the shape or the configuration, or combination of these. The design, having features which are determined by the function it performs.

Hague Agreement – an international agreement governing the international registration of industrial designs [South Africa is not a member].

Infringement - violating an owner's exclusive rights to IP assets by committing a prohibited act in respect of that asset.

Infringement proceedings – legal action against a person violating IP rights.

Intellectual property – products of human creativity which can have intangible commercial value.

Interdict – a court order that may be sought in order to enforce a right, such as stopping an act of infringement with respect to IP rights.

Know-how – knowledge which is not readily available and possessed by an individual or company, which provides the individual or company with a competitive edge.

Legislation – law which has been enacted by parliament.

License – a legal contract between two parties, known as the licensor and the licensee, in which the licensor grants the licensee the right to produce and sell goods, apply a brand name or trade mark, or use patented technology owned by the licensor, in exchange for payment.

Madrid system – a system which makes it possible to protect a trade mark in a large number of countries by obtaining an international registration that has effect in each of the designated contracting parties [South Africa is not a member].

Mark - any sign capable of being represented graphically, including a device, name, signature, word, letter, numeral, shape, configuration, pattern, ornamentation, colour or container for goods or any combination of these.

Mediation – a non-binding process whereby a mediator assists parties in a dispute to reach a consensus.

Non-disclosure agreement – a contract through which parties agree not to disclose information covered by the agreement.

Official action – a decision of the relevant IP authority detailing the decision regarding that IP right and reasoning.

Opposition – opposing against any action of the IP right owner or the relevant authority, as prescribed by relevant legislation.

Patent – a set of exclusive rights granted by the state to an inventor (or someone he has transferred rights to) for a limited period of time. This is in exchange for detailed public disclosure of an invention.

Patent journal – a journal in which IP applications, registrations, and ancillary applications are published.

PCT application – a patent application filed in accordance with the Patent Co-operation Treaty.

Plant breeder's right – a set of exclusive rights granted by the state for new plant varieties.

Prior art – technology or similar inventions that predate the invention which is the subject of a patent application.

Priority date – the date of lodging of the first application, whether it is a provisional patent application or other prior application for a registered design, patent or plant breeder's right, in which the subject matter of the later application was disclosed.

Priority patent application – a patent application from which a later application claims priority.

Provisional patent application – a patent application and specification which fairly describes the invention. It must be completed by filing a later application such as a full patent application or PCT application, otherwise it will lapse after 12 months.

Registered design – a set of exclusive rights granted by the state on the outward appearance of an object.

Royalties – a payment made by one party to another that owns a particular asset for the right to ongoing use of that asset. This is usually calculated as a percentage of revenue or profit.

Security – something (e.g. IP rights) pledged as a guarantee of the fulfilment of an undertaking or the repayment of a loan, to be forfeited in case of failure to meet the agreed terms.

Trade mark – a mark used to distinguish goods and services of the owner from goods and services of others.

Trade secret – confidential information which provides an enterprise with a competitive edge.

UPOV convention – an agreement which establishes the International Union for the Protection of New Varieties of Plants (UPOV). This is an independent intergovernmental organisation governing IP rights for new plant varieties.



Concept House
Cardiff Road
Newport
NP10 8QQ

Tel: 0300 300 2000
Fax: 01633 817 777

www.gov.uk/ipo

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