



5 October 2020

To: Minister Patel,

Per email:

ministry@economic.gov.za

TMasoga@thedti.gov.za

MEbrahim@thedti.gov.za

Dear Minister Patel,

Re: Status of the draft legislation implementing the Intellectual Property Policy

1. The above refers.
2. Fix the Patent Laws (FTPL) is a coalition of civil society organisations and patient groups, who work on a wide range of diseases, and campaign for improved access to medicines. FTPL advocates for reforms to South Africa's patent laws in order to prioritise public health and ensure that everyone in South Africa has access to medical innovations and to the benefits of scientific progress, a right enshrined in section 27 of the Constitution and in international human rights law. To this end, FTPL played a significant role in the development and finalisation of South Africa's Policy on Intellectual Property: Phase 1 (IP Policy). Details of our research, submissions and advocacy in this regard can be found at <https://www.fixthepatentlaws.org/>.

Website: www.fixthepatentlaws.org

Twitter: [@FixPatentLaw](https://twitter.com/FixPatentLaw)

Fix the Patent Laws is a joint coalition of the Treatment Action Campaign (TAC), Doctors Without Borders (MSF), SECTION27, Cape Mental Health (CMH), Diabetes SA, Epilepsy SA, Health GAP, Marie Stopes South Africa, the Stop Stock Outs Project (SSP), the Schizophrenia and Bipolar Disorders Alliance (SABDA), the South African Depression and Anxiety Group (SADAG), the South African Federation of Mental Health (SAFMH), the South African Non-Communicable Diseases Alliance (SANCD Alliance) and the Cancer Alliance including Advocates for Breast Cancer; amaBele Project Flamingo, Ari's Cancer Foundation, Breast Course 4 Nurses (BCN), Breast Health Foundation (BHF), Cancer Association of South Africa (CANSAs), Cancer Heroes, CanSir, CanSurvive Cancer Support (CanSurvive), Care for Cancer Foundation, Childhood Cancer Foundation of South Africa (CHOC), Gladiators of Hope, Hospice Palliative Care Association (HPCA), Lymphoedema Association of South Africa (LAOSA), Look Good Feel Better (LGFB), Love Your Nuts (LYN), Men's Foundation, National Council Against Smoking, National Oncology Nursing Society of SA (NONSAs), Pancreatic Cancer Network of SA (PanCan), People Living With Cancer (PLWC), the Pink Parasol Project, Pink Trees for Pauline (Pink Trees), Pocket Cancer Support, Rainbows and Smiles, Reach for Recovery (R4R), South African Oncology Social Workers' Forum (SAOSWF), The Sunflower Fund (TSF), VREDE Foundation for Young People with Cancer (Vrede Foundation) and Wings of Hope (WoH).

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3. The IP Policy, adopted by cabinet in May 2018, makes important commitments to reform the country's patent laws to prioritise the constitutionally guaranteed right of access to healthcare services. It paves the way for a new, progressive intellectual property regime in South Africa, almost two decades after the signing of the Doha Declaration on Public Health — a critical international agreement confirming countries' right to incorporate pro-public health safeguards in their laws.
4. Under our present patent system, there is no substantive examination of patent applications to ensure that they meet the rigorous criteria for the grant of a patent. This allows pharmaceutical companies to potentially obtain unworthy initial patents and multiple patents on the same medicine thereafter by making small changes, even when such changes are obvious and lack inventiveness. This multiple-patenting strategy, commonly known as 'patent evergreening', results in extending patent monopolies beyond the 20 years required by the WTO trade and intellectual property rules, and blocks the early entry of generic competitors who can expand sources of supply and bring more affordable products to market.
5. Such abuses of patents have restricted, and continue to restrict, access to medicines for millions of people suffering from TB, cancer, hepatitis and mental health conditions —and will most likely also threaten access to any future COVID-19 related health technologies. Whilst a vaccine and/or cure for COVID-19 are yet to be developed, we are concerned that many of the medicines and health technologies required to address the pandemic are either already patented or will soon be, making them unaffordable to many who will need them.
6. Despite being adopted by Cabinet in May 2018, Bills to give effect to the IP Policy have not yet been published for public comment. We understand that the Department is in the process of finalising a draft Bill to amend the Patents Act in line with the IP Policy. We write to enquire on the progress regarding the finalisation of the Bill and to urge you to ensure that this law reform is prioritised by the Department.
7. We further request a meeting to discuss the above matters.

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8. We look forward to hearing from you no later than 20 October 2020.

Sincerely,

Tendai Mafuma

Fix the Patent Laws