

Fix the Patent Law

March for Medicines Memorandum

Pretoria, 24th October 2017

On Tuesday 24th October activists and people living with cancer, HIV, tuberculosis, took to the streets in support of the Department of Trade and Industry's (DTI) efforts to reform patent law. This was in support for the government's draft policy on intellectual property, which includes many important safeguards to protect public health. The government has taken seriously its constitutional obligation to achieve the progressive realisation of the right to health.

The march was done to submit our comprehensive comments on the draft IP policy. We welcome the government's commitments to advance Constitutional rights and developmental goals and to do so urgently. The government must build on this commitment and deliver meaningful reform. In short:

1. The DTI should develop strict patentability criteria to restrict undeserved, frivolous and secondary patenting that undermines the growth of its local pharmaceutical industry;
2. A substantive examination system must be urgently implemented to limit the granting of poor quality patents;
3. South Africa should also adopt broad grounds and standing for patent oppositions, and introduce both pre- and post-grant opposition procedures;
4. Transparency around patents must increase, and information on patent applications, prior art and patent status must be available publicly; and
5. Compulsory licensing procedures should be simplified, accessible, and expeditious.

Demands

Calling on South Africa to reform its patent laws to address the issues that impede access to medicines for years. The granting of poor quality patents through a free-for-all system has led to medicines being priced out of reach for many. The Fix Patent Law Coalition therefore demands that:

- The DTI build on its draft policy and pursues all available reforms to the patent system that will increase access to medicines; and
- The DTI finalises the policy with urgency, with no further delays in publishing draft bills thereafter

We marched because we know that delays are not measured in days, but in lives and comrades lost. We cannot wait any longer.

DTI is held a 2 day workshop where discussions and debates are centred around this issue. A meeting was held with stakeholders 25th -27th October for those involved in IP reform which included civil society, all relevant government departments, industry, lawyers, academics and other IP experts . The meeting was to discuss the policy and debate certain issues, feedback to the DTI on the policy. It was part of the consultative process of developing the policy.

The Next Steps

This week the South African Government will be meeting with US trade negotiators. We hope the US Government does not stand in the way of South Africa's public health reforms.

In a recent report Cancer Alliance/FTPL Cancer Patent Barriers report, we found that only seven of 24 cancer drugs were available in the public health system, which serves 80 percent of the population. 10 medicines unavailable in the public sector – likely due to their cost – were available in India for less than half the price offered to the South African private sector. These different prices reflect differences in patent law. India, unlike South Africa, has a robust framework that promotes generic competition.

The South African government is merely taking common sense steps to strike the right balance between public health and intellectual property, as permitted by international law, and recommended by a recent United Nations high-level panel on access to medicines.