

# Give intellectual property protection that it deserves

**S**OUTH Africa's shift to a knowledge-based economy begs the question whether or not our patent and related intellectual property protection system encourages innovation.

Some argue that the expense of patenting is a barrier for new inventors while the cumbersome and complex process often proves too much for the aspiring entrepreneur. Others cite lawyers' "enormous" fees, their old-boys culture, and turf protection as impediments.

Today, real commercial value lies not in hard capital, but in intellectual capital. It is traded, or commercialised, as intellectual property, which involves patents' trademarks, copyright, trade secrets, and designs. Each form of protection has its place with specific applications and implications.

Microsoft, Google, Mark Shuttleworth et al, did not make their money through patenting. They made it through the commercialisation of their intellectual property portfolio. A patent itself is of limited value until commercialised through manufacturing, licensing or securitisation, or when it is used for keeping competitors at bay.

SA's understanding of intellectual property commercialisation is limited.

When SA was a closed economy, there was less need for protecting intellectual property. Competitors were controlled through regulation or embargoes. But now we can trade on the international market only if we transform our intellectual property into a tradable commodity.

To register a patent in SA is not expensive — the Innovation Hub in Pretoria offers free patent advice on

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When registering a foreign patent, someone needs to file the patent at their local patent office. International business, whether patenting or exporting bananas, is an expensive process; UK lawyers do not get paid in rands.

Litigation expenses incurred in defending intellectual property rights against infringers are also upheld as further proof of a cartel enriching itself. What critics fail to realise is that the outcome of such legal actions often results in substantial licensing revenues, far outweighing the litigation costs, and can create new industries. This benefits both licensee and licensor. Licensing is the preferred business model for commercialising intellectual property. It affords access to the technology we need to develop our economy. The most secure way of licensing is through a registered right such as a patent.

Because we do not understand the strategic value of intellectual property, we fail to recover our investments in such protection. We buy expensive equipment and splash out on corporate image but will not spend on intellectual property. Why? Because the assumed value of such tangibles is easier to grasp than the intangible benefits accrued from intellectual property management. If we understood the value of intellectual property, this expenditure would be standard to business plans and would not be addressed only once things get ugly.

The legal profession in SA is often blamed for the wrongs of our patent system. However, it is not up

to them to stimulate innovation or streamline the process of taking new thoughts to market; but they do play an important part in the overall value chain. The policies, regulatory practices and legal framework are set by government.

Lawyers can influence thinking around these issues, but they have to work with what they get. In the US, intellectual property lawyers are usually assisted by professionals who focus on the commercial and often non-law related aspects of intellectual property. Such expertise exists in SA in a very small way.

The current focus on innovation presents vast opportunities. Re-introducing the profession of patent agent and not having only intellectual property attorneys, will bring new blood into the industry and broadening access to such skills and advice.

The solution lies not in forcing existing practitioners to accept unprofitable business. Nor should the whole innovation community look to lawyers to change the system.

The answer to the original question is that the patent and related intellectual property protection system is not the problem. SA needs to grow its understanding of the strategic role and value of intellectual property in bringing new innovations to market, and should expedite the entry of commercial practitioners. Once this happens, the demand for such services across the entire spectrum will increase and the patent system will benefit small and large. Innovation will flourish.

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Technology Top 100,  
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