



Companies and Intellectual
Property Commission

a member of **the dti** group

DESIGNS PROTECTION IN SOUTH AFRICA

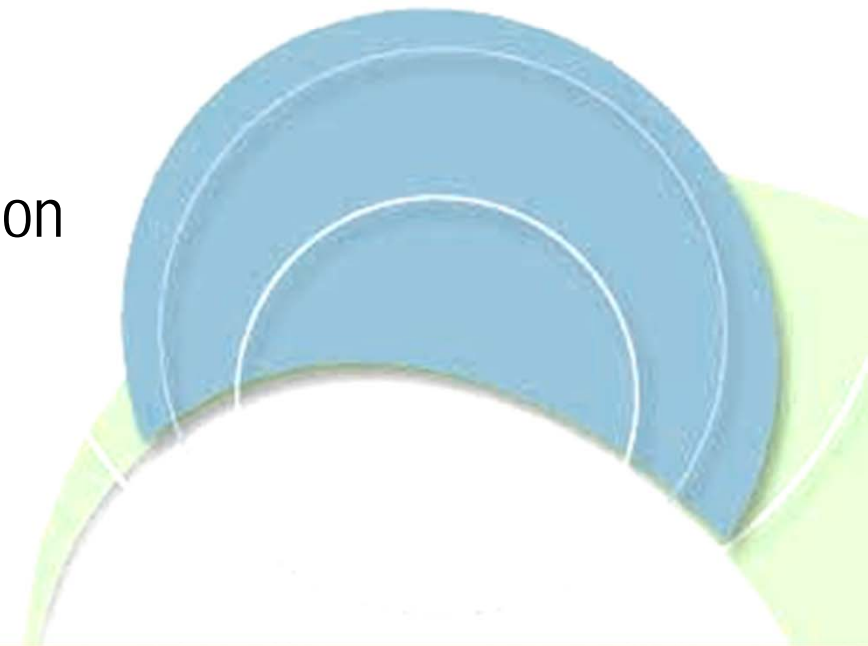
International Conference

“Industrial Designs: Past, Present and Future”

Devoted to the 150th Anniversary of the First Russian Design Law

24 April 2014

Moscow, Russian Federation

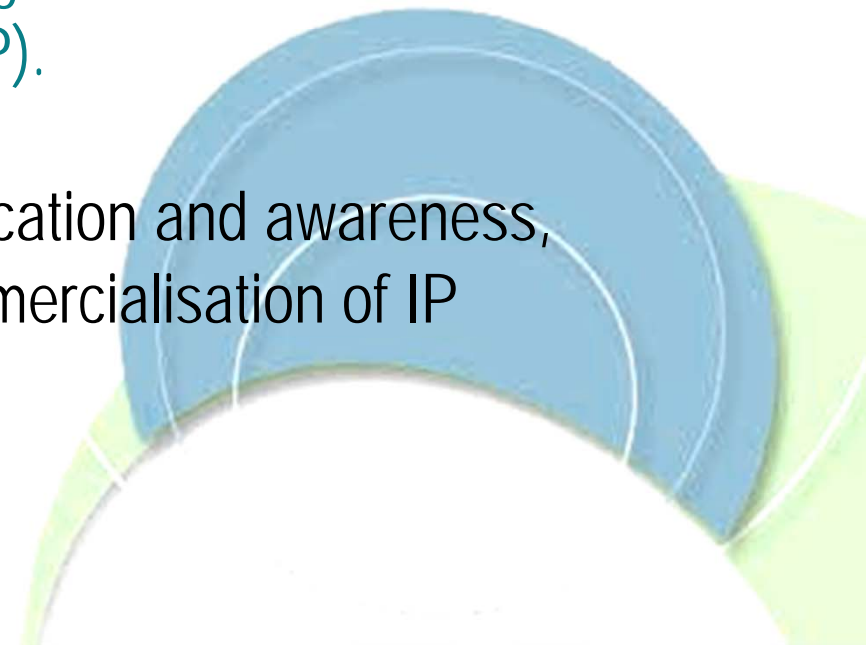


About Companies and Intellectual Property Commission (CIPC)

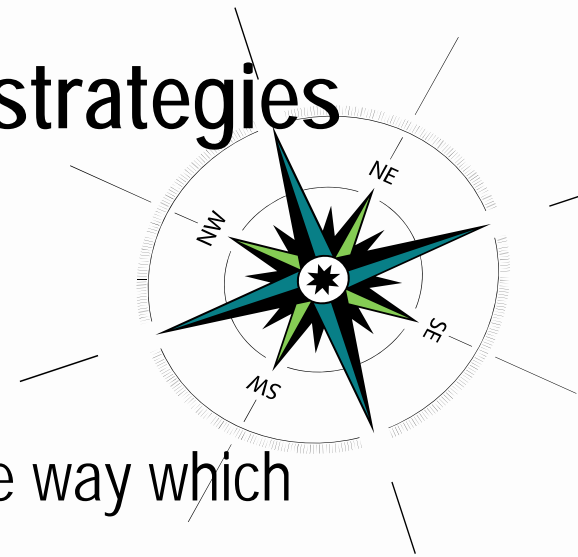


Companies and Intellectual
Property Commission
a member of the dti group

- Section 185 (1) of the Companies Act 71 of 2008 establishes the CIPC as a juristic person to function as an organ of state within the public administration, but as an institution outside the public service.
- CIPC amalgamated the Companies and Intellectual Property Registration Office (CIPRO) and the Office of Companies and Intellectual Property Enforcement (OCIPE).
- CIPC acts independently with a focus on the registration and maintenance of corporate entities and intellectual property (IP).
- As part of its functions, CIPC also includes education and awareness, promotion of innovation and creativity and commercialisation of IP
- CIPC opened its doors on 1 May 2011.



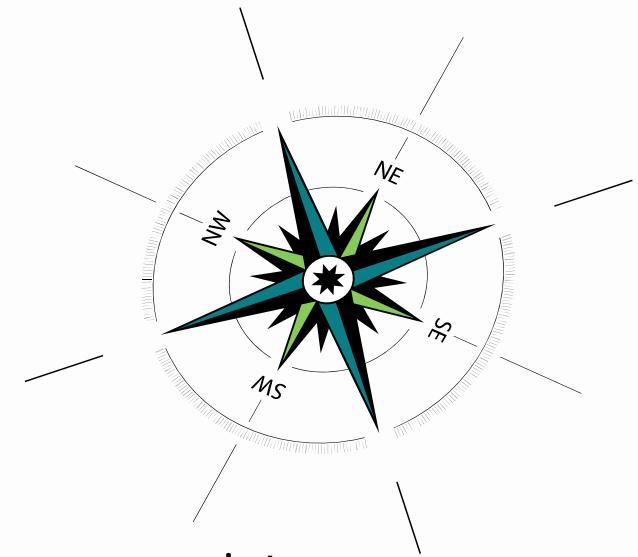
Key issues in the government policies and strategies relevant to CIPC



- Employment creation and economic growth in a sustainable way which encourages broad-based economic participation
- Emphasis on cooperatives as a vehicle for employment creation in marginalised areas
- Need for commercialisation of the SA intellectual property
- The need to develop SA's competitiveness
- Potential of Indigenous knowledge (IK) and the need for its production and commercialisation



Top priorities for CIPC



- Increase the ease of doing business
- Increasing the reliability and integrity of information on our registers
- Promoting good governance and credible business conduct that respect the right of shareholders and IP rights holders
- Enhancing our role in promoting SA innovation, creativity and commercialization of IP rights
- Increasing accessibility and relevance of our services



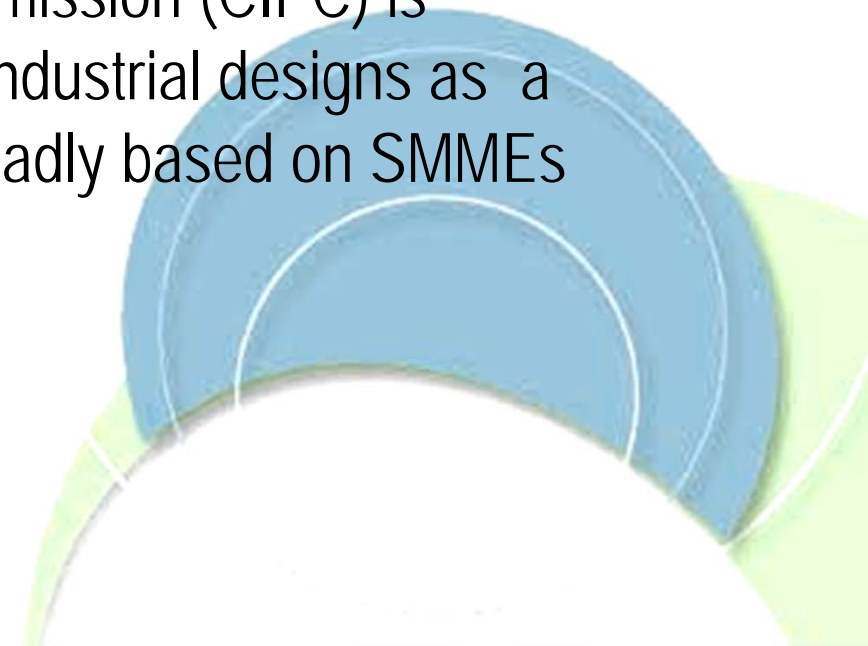
Introduction



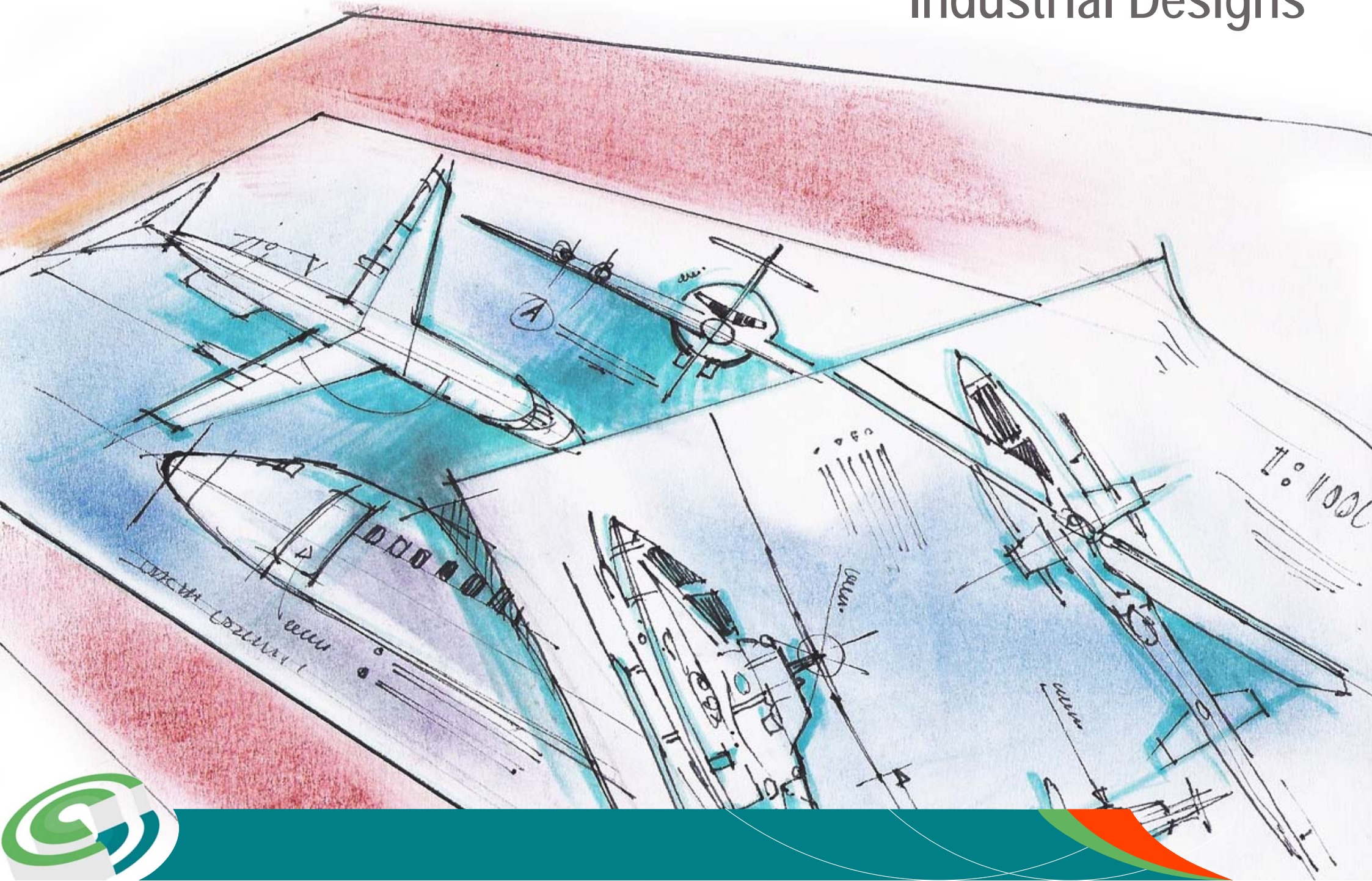
Companies and Intellectual
Property Commission

a member of **the dti** group

- Innovation and intellectual property are key concepts for the 21st century and major factors for economic development
- Industrial Designs are one of the important elements of the innovation system that contribute to both innovation and brand building
- the Companies and Intellectual Property Commission (CIPC) is mandated *inter alia* to register and promote industrial designs as a key tool for development of local industry broadly based on SMMEs



Industrial Designs



Legislative Framework : Registration of Designs

DOMESTIC:

- Companies Act 71 of 2008
- Designs Act 1993 (the Act) and Regulations thereof
- Intellectual Property Laws Amendment Act 2013

INTERNATIONAL AGREEMENTS & MEMBERSHIP

- Paris Convention (Industrial property), since December 1947
- WIPO Convention, since March 1975
- TRIPS Agreement – member and signatory since January 1995
- Considering accession to the Hague Agreement



Designs Office & Designs Litigation

- Head of the Patent Office: **Registrar of Designs: CIPC Commissioner** in terms of the Companies Act 71 of 2008
- Court of first instance: **Commissioner of Patents:** A designated Judge from the High Court of South Africa
- The Registrar of Patents acts as Registrar of the Commissioner of Patents and his Taxing Master
- South African Legal System: **A Hybrid System based on:** Roman-Dutch Law, English Law, Common Law, Customary Law and Indigenous Law
- ***Stare decisis applies:*** the decisions of the higher courts are binding
- To institute legal proceedings before the Commissioner of Patents (e.g. for revocation, infringement, opposition to amendment or restoration of a patent) court processes must be lodged with **CIPC**

Designs Registration

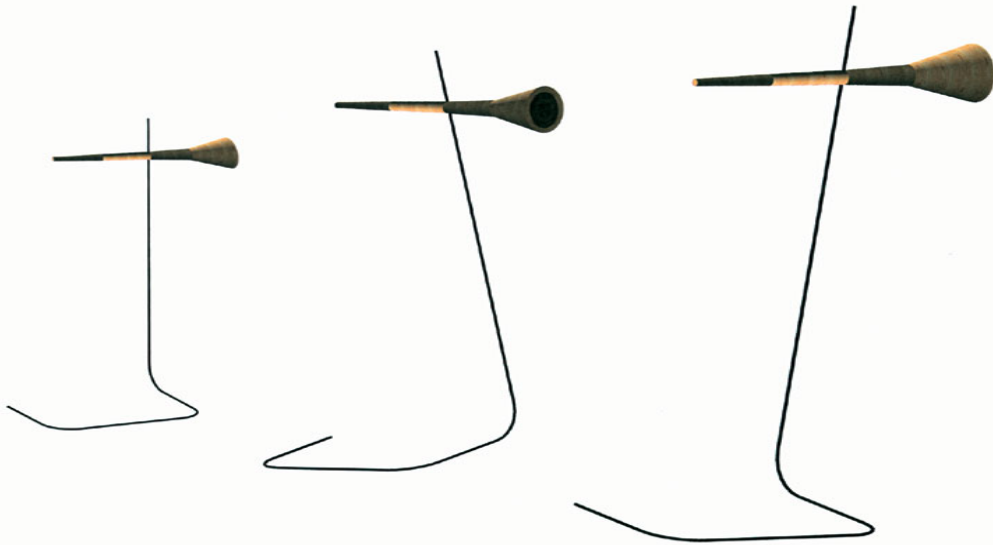
- The registration of designs in South Africa is governed by the Designs Act of 1993 and the Regulations thereof
 - Due to the small amount of the design applications filed per annum (about 2000), the Design Office consists only of one section that performs all the steps of the registration procedure
 - The designs are granted upon compliance with the formal requirements in terms of the Designs Act and Regulations
 - Official filing fee R240 (\$24) – sliding scale fees to be implemented later this year with preferential fees for SMMEs
- 

What is a Design?

- ❑ A design registration affords protection specifically directed at the shape and appearance of an industrial article as depicted in the representation as lodged
- ❑ A design is the shape, form, patterns, ornamentation or configuration of a product or an article.

- ❑ There are two types of designs that can be registered in South Africa:
 - **Aesthetic Design**
 - Has to be new and original
 - Beauty is in its shape, configuration or ornamentation
 - Must be able to be produced by an industrial process
 - **Functional Design**
 - Has to be new and not commonplace
 - Where the shape or configuration is necessitated by the function
 - Must be able to be produced by an industrial process

South African Industrial Designs



The 'C4' wood and perspex chair.
(c) Christopher de Beer 2006



The 'C3' lightweight concrete or wood chair.
(c) Christopher de Beer 2006

Design Indaba Expo 2010

Design Indaba Expo 2010: Khumbulani Craft has signed an exclusive production contract with the internationally renowned BarberOsgerby



The woven stools currently are being made by five groups in northern KwaZulu-Natal, additional weavers are being skilled to increase capacity for the production of this very popular high-end product.

Design Indaba Expo 2014

"Africa is Sharp!" is one of the five themes of the "Africa is Now" exhibition at the Design Indaba Expo 2014.

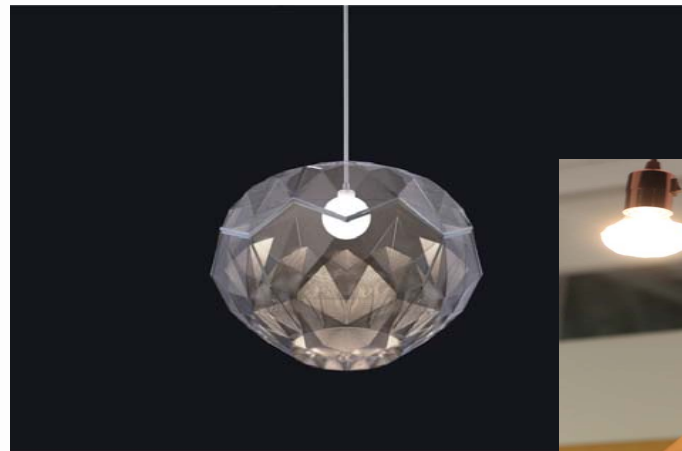


Espresso Veloce by Arte Meccanica, Paolo Mastrogiuseppe, South Africa



Spaghetti bowls by Marjorie Wallace, Matupo Pottery, Zimbabwe

The Ukumba lamp was inspired by the shape of the traditional Zulu "Ukhamba" clay pot



The Ukhamba lamp grew out of Ari Geva's and Sian Eliot's love for woven metallic mesh, the pooling of their experience and knowledge and their desire to create an iconic South African light.



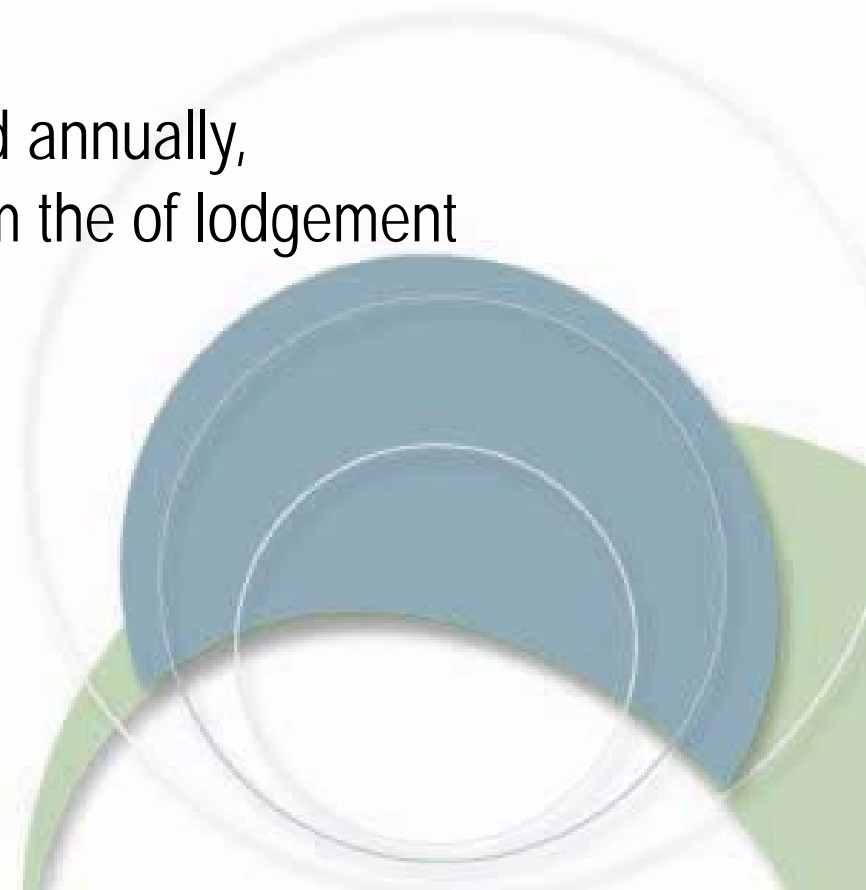
MO armchair by Cheick Diallo, Diallo Design, Mali.

Aspects of Designs Registration in South Africa

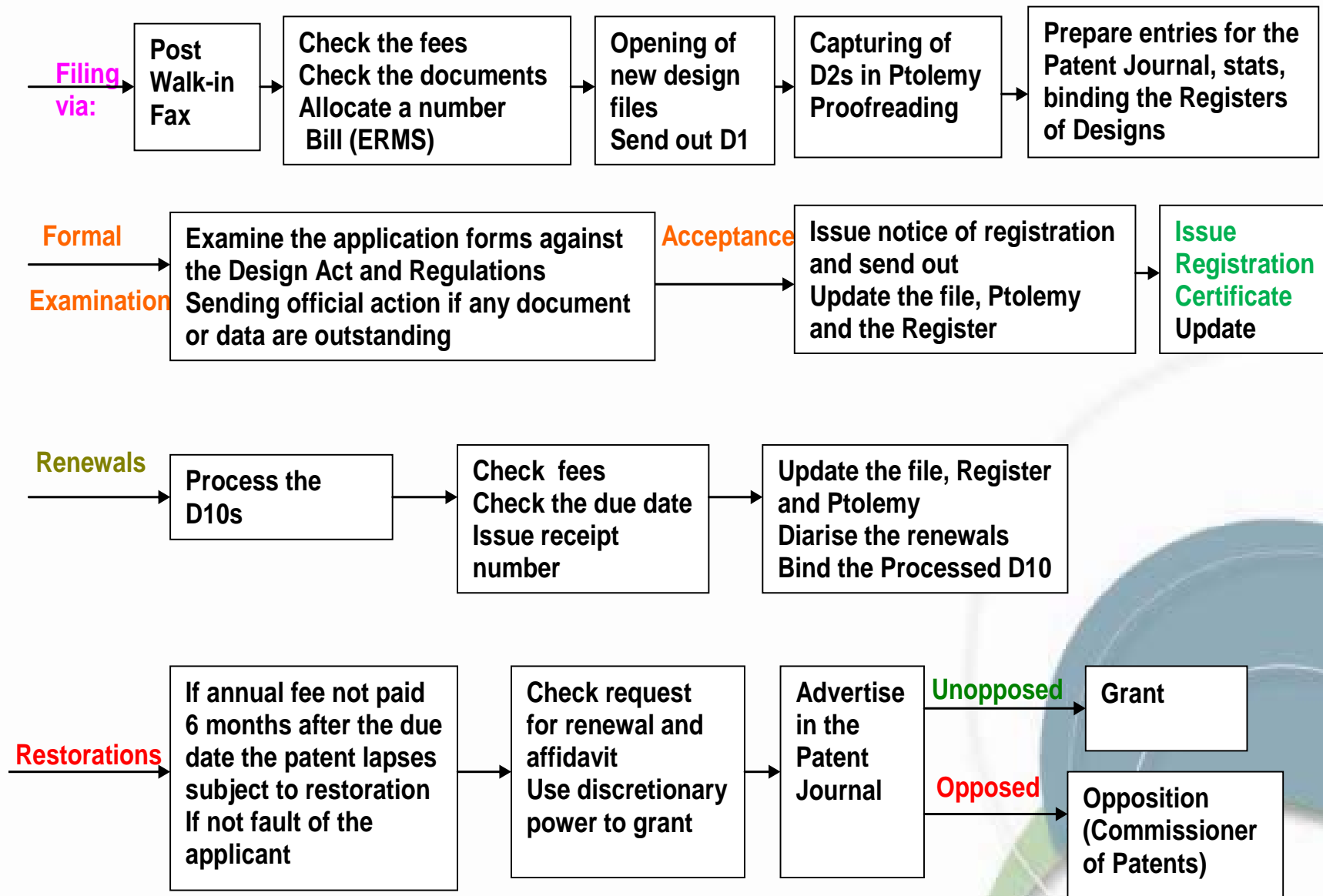
- Design registration = civil right belonging to design holder; enforced by the holder through civil court proceedings
 - All designs are recorded in the National Design Register divided in:
 - ✓ Part A for aesthetic designs and
 - ✓ Part F for functional designs
 - Functional design include integrated circuit topography, a mask work and series of mask works
 - The exclusion concerning non-registrability of designs for spare parts applies solely to functional designs and not to aesthetic designs
- 

Lifespan of a Design

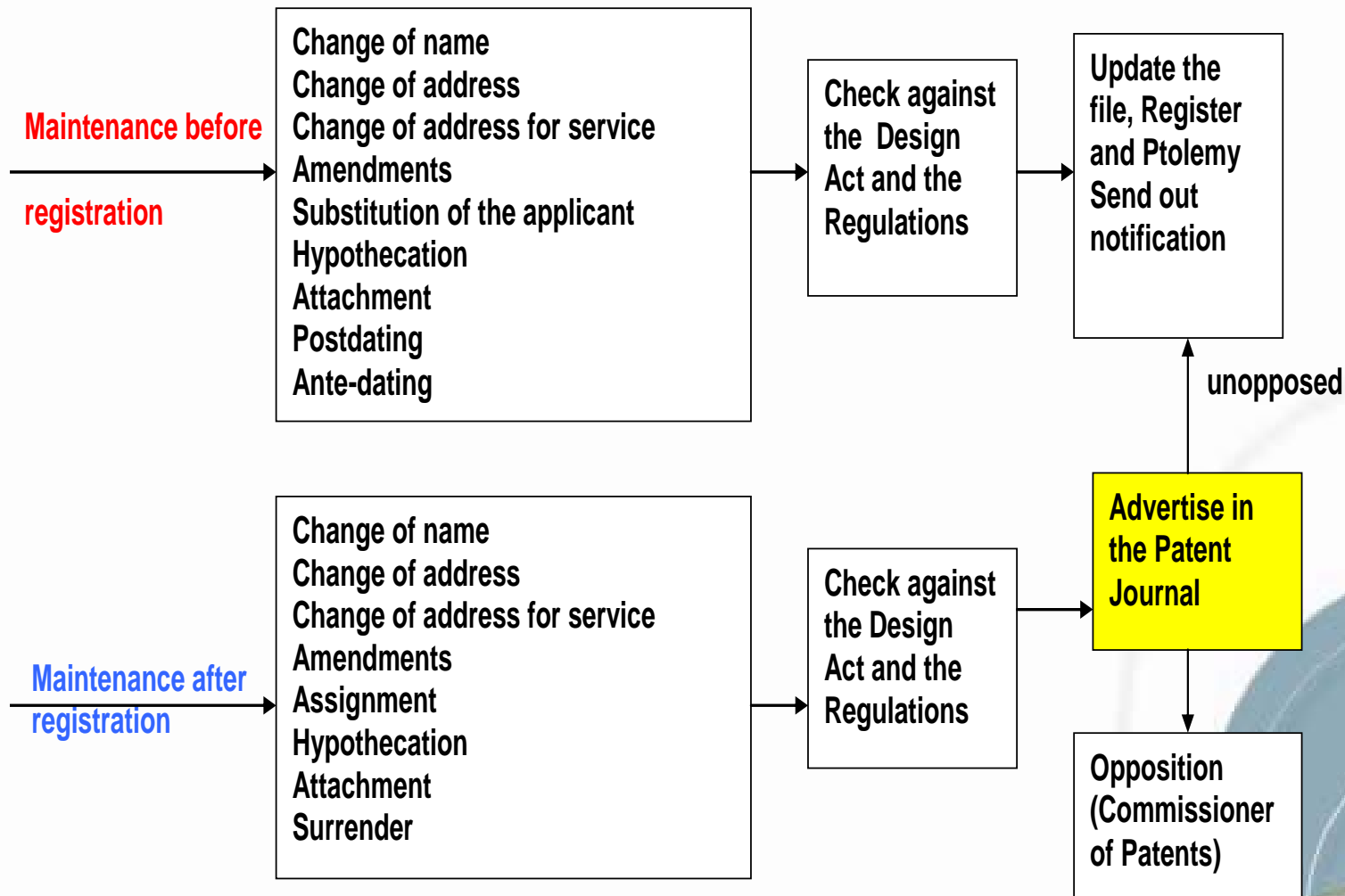
- Protection is afforded to aesthetic designs for a one period of 15 years, and to functional designs for one period of 10 years
- The registration of designs has to be renewed annually, before the expiration of the third year as from the of lodgement
- No further renewals are possible



Designs Registration Procedure



Designs Registration Procedure ...




Designs Trends and Challenges

- Local applications: 40 % average for the last 3 years
- Industrial Designs Protection & benefits awareness amongst SMMEs: low
- Commercialization of local industrial designs: low

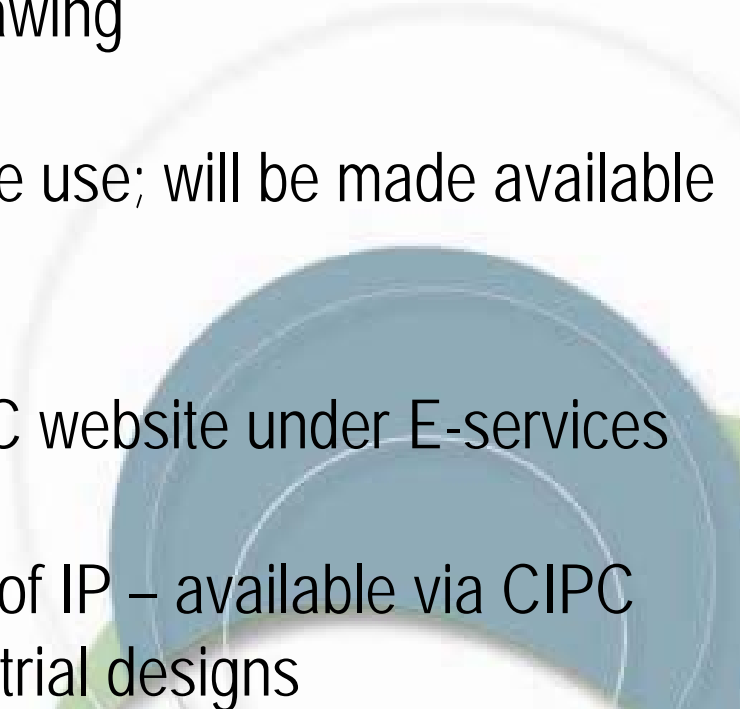
TRENDS IN NEW DESIGN APPLICATIONS	
(PER CALENDAR YEAR)	
2004	1,809
2005	1,748
2006	1,927
2007	2,314
2008	2,029
2009	1,904
2010	1,707
2011	2,085
2012	2,374
2013	2,248

Action Plan to promote the innovation and economic participation through industrial designs


In order to increase the number of local filings especially filed by SMMEs we envisage the implementation of the following measures:

- Targeted Awareness Campaigns
 - Development of education and awareness series on designs protection on our website
 - Expand the scope of the CIPC IP Trade Portal to cover industrial designs to facilitate the commercialization thereof
 - Engage with collaborative practices on national and international level
- 

Level of Digitization of The Designs Office

- **Electronic Patent Journal** : A monthly edition containing information on the different stages of the registration procedure for all IP Domains; includes information on designs application filed and registered designs. An industrial design is deemed to be registered as from the date of publication of the Notice of Registration in the Patent Journal. The Notice of Registration contain an abstract and a drawing
 - **Electronic Register for Designs** – only for office use; will be made available to the public later this year
 - **E-filing facility for Designs** – available via CIPC website under E-services
 - **IP Trade Portal** to facilitate commercialization of IP – available via CIPC website, not yet expanded to cover the industrial designs
- 

CIPC IP Trade Portal : Launched on 18 November 2013

- The aim of the trade portal is to promote commercialization of IP rights by establishing a forum where the entrepreneurs, inventors and innovators can meet and exchange ideas, buy and sell IP rights;
 - It is expected to stimulate the competitiveness of the local industry and attract investments;
 - The portal will be enhanced with intermediate services offering such as IP Evaluation Tool developed by the Danish Patent and Trade Marks Office
 - The Portal is also linked to the TIA-CICP joint initiative Technopreneur's Portal targeting innovators and inventors with technological potential.
- 

What's new?

Intellectual Property Law Amendment 2013 aimed to:

- To ensure that the wealth of knowledge held by the indigenous people of South Africa be recognized, preserved, protected and promoted and made accessible to the public
- To recognize the indigenous knowledge as a valuable economic asset and create a legal dispensation for commercial exploitation in a manner that will benefit the country and will ensure that fair financial benefits will be received by the indigenous communities and persons
- In so far that indigenous knowledge includes works, terms, expressions and designs, which are outcome of the creative ability of the human mind and in that context has aspects which constitute types of intellectual property, the intellectual property laws of the country may be used to protect those types of indigenous knowledge

What's new?...

- Traditional design includes an indigenous design and a derivative indigenous design
 - ✓ an indigenous design is a functional or aesthetic design created by an indigenous community currently or historically and is regarded as part of the heritage of the community
 - ✓ a derivative indigenous design is a functional or aesthetic design substantive part of which was derived from indigenous cultural expressions or knowledge
 - Part T is to be created into the Designs Register where aesthetic and functional designs will be recorded
 - The indigenous designs are protected in perpetuity
 - The derivative indigenous aesthetic designs are protected for 15 years and the derivative indigenous functional designs are protected for 10 years
- 

What's new?...

- After determination of the traditional character , **the derivative indigenous designs** will be dealt with as ordinary designs except for the requirement of the applicant to make a disclosure of the relevant indigenous cultural expression or knowledge and obtain the following documents before the office can proceed to granting:
 - ✓ **Prior Informed Consent** from the relevant authority or indigenous community
 - ✓ **A Benefit Sharing Agreement** between the applicant and the relevant authority or indigenous community



Traditional Designs



Wine bag is atypically narrow and long bag with thin handle. It is made of pandan grass comes in colors like: natural, green, brown & yellow. Basically, the product name implies its purpose.



THANK YOU !

EZdravkova@cipc.co.za

A decorative graphic in the bottom right corner consisting of several overlapping circles. The circles are in shades of blue and green, with some being semi-transparent, creating a layered effect.