

## DEPARTMENT OF SCIENCE AND TECHNOLOGY

NO. 1563

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## NATIONAL INTELLECTUAL PROPERTY MANAGEMENT OFFICE DISPUTE PANEL

**Rules of Procedure under the Regulations made in terms of section 17 of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008) (IPR Act)**

The National Intellectual Property Management Office (NIPMO) Dispute Panel has, in terms of regulation 7(7) of the Regulations made in terms of section 17 of the IPR Act (IPR Regulations), established its own Rules of Procedure set out in the Schedule.



**Dr Kerry Faul**

**Head: NIPMO**

## Schedule

### PREAMBLE

**WHEREAS** section 33(1) of the Constitution guarantees everyone a right to administrative action that is lawful, reasonable and procedurally fair;

**AND WHEREAS** regulation 7 of the IPR Regulations establishes the Dispute Panel for the purpose of hearing and determining all disputes relating to administrative decisions taken by NIPMO in terms of the IPR Act;

**AND WHEREAS** regulation 7 requires, amongst other things, that the Dispute Panel must apply the principles of fairness, justice and reasonableness when it makes its decisions on disputes referred to it;

**NOW** NIPMO publishes the following rules of procedure, as established by the Dispute Panel, to guide the Dispute Panel in:

- Hearing and determining disputes relating to the administrative decisions of NIPMO;
- Giving effect to all parties rights to lawful, reasonable and procedurally fair administration action;
- Reviewing arguments and evidence set forth by all parties to the dispute; and
- Issuing its rulings on each matter based on its own interpretation of the IPR Act and its Regulations.

## ARRANGEMENT OF RULES

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**PART A: APPLICATION OF RULES AND DEFINITIONS****1. Definitions**

- (1) Any word or expression to which a particular meaning has been assigned in the IPR Act and the IPR Regulations thereto shall bear the same meaning so assigned unless provided otherwise in sub-rule (2).

- (2) In these Rules, unless the context indicates otherwise –

**‘administrative decision of NIPMO’** means the decision taken by NIPMO in the exercise of any of its powers or performance of its duties in terms of the IPR Act or IPR Regulations, and in considering what constitutes an administrative decision of NIPMO, regard must always be had to the definition of *administrative action* and definition of *decision* in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (PAJA), or any subsequent amendments thereto;

**‘Affected Recipient’** means a recipient as defined in section 1 of the IPR Act who feels aggrieved by the administrative decision taken by NIPMO against the recipient in terms of the IPR Act or IPR Regulations;

**‘Chairperson’** means the Chairperson appointed by the Minister from other members of the Dispute Panel in terms of regulation 7(5) of the IPR Regulations;

**‘Constitution’** means the Constitution of the Republic of South Africa, 1996;

**‘days’** means the number of days reckoned in terms of section 4 of the Interpretation Act, 1957 (Act No. 33 of 1957) or any subsequent amendments thereto;

**‘Dispute’** means a disagreement between an Affected Recipient and NIPMO over an administrative decision taken by NIPMO during the performance of its functions or exercise of its powers in terms of the IPR Act;

**‘Dispute Hearing’** means a sitting of the Dispute Panel participants to hear arguments by the Parties and make a determination on the administrative decision in Dispute;

**‘Dispute Panel’** means the panel established by the Minister in terms of regulation 7(1) of the IPR Regulations to hear and determine Disputes relating to administrative decisions of NIPMO;

**‘Dispute Panel members’** means all individual persons who, together with the Chairperson, have been appointed by the Minister to serve on the Dispute Panel with a collective membership of at least 5 but not more than 20 members as contemplated in regulation 7(3) of the IPR Regulations and from whom the Chairperson may select a minimum of three (3) to sit on a particular matter in strict accordance with regulation 7(6) of the IPR Regulations;

**‘Dispute Panel participants’** means those Dispute Panel members that will be present at the Dispute Hearing;

**‘IPR Act’** means the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008) or any subsequent amendments thereto;

**‘IPR Regulations’** means the Regulations issued by GNR675GG 33433 of 2 August 2010, under section 17 of the IPR Act;

**‘Minister’** means the Minister responsible for the Department of Science and Technology;

**‘NIPMO’** means the National Intellectual Property Management Office established by section 8 of the IPR Act;

**‘Notice’** means the notice of appeal or review against the administrative decision of NIPMO on prescribed Form IP3, appropriately authorised and accompanied by supporting documentation;

**‘Parties’** means an Affected Recipient as an appellant or applicant in the appeal or review proceedings before the Dispute Panel and NIPMO as a respondent in the same proceedings; and

**‘these rules’** means these Dispute Panel Rules of Procedure and includes the prescribed Form IP3 annexed hereto for use by Affected Recipients when lodging, with the Dispute Panel, an appeal against or the review of the administrative decision of NIPMO.

## **2. Application of Rules**

- (1) These rules apply to the review or appeal proceedings instituted before the Dispute Panel by an Affected Recipient in connection with administrative decisions of NIPMO.



**PART B: ADMINISTRATIVE DECISIONS OF NIPMO****3. Type of administrative decisions of NIPMO**

The administrative issues that shall be dealt with by the Dispute Panel under these rules include:

- 3.1 Decision taken by NIPMO in the exercise of its discretion under section 4(3) of the IPR Act;
- 3.2 Failure by NIPMO to agree to an extended period for the recipient in terms of section 11(1)(g) of the IPR Act;
- 3.3 Decision taken by NIPMO in the exercise of its discretion under section 11(1)(h) of the IPR Act;
- 3.4 Approval not granted by NIPMO for the recipient to undertake an intellectual property transaction in terms of regulations 11(3), 12(3) and 12(7) of the IPR Act;
- 3.5 Decision taken by NIPMO in the exercise of its discretion under sections 14(4) and 14(5) and regulations 14(2) and 14(3) of the IPR Act;
- 3.6 Decision taken by NIPMO in the exercise of its discretion under regulation 15(6) of the IPR Act;
- 3.7 Decision taken by NIPMO in the exercise of its discretion under regulation 16(1)(f) of the IPR Act; or
- 3.8 Any other administrative decision that would qualify to be heard and determined by the Dispute Panel in terms of the IPR Act and Regulations.

**PART C: NIPMO DISPUTE PANEL PROCEDURES****4. Referral of a Dispute to the Dispute Panel**

4.1 A Notice of appeal or review against the administrative decision of NIPMO must be –

4.1.1 on prescribed Form IP3 as attached to the IPR Regulations;

4.1.2 accompanied by relevant supporting documentation (as referenced in paragraph 13);

4.1.3 signed and dated by the Affected Recipient or an authorised representative of the Affected Recipient;

4.1.4 filed within 14 days of the decision of NIPMO that is sought to be reviewed or appealed against; and

4.1.5 delivered by hand or by registered post and sent electronically to –

4.1.5.1 By hand:

**Secretariat: NIPMO Dispute Panel**

**Department of Science and Technology**

**DST Building (Building no 53) (CSIR South Gate Entrance)**

**Meiring Naude Road**

**Brummeria**

**Pretoria**

4.1.5.2 By registered post:

**Secretariat: NIPMO Dispute Panel**

**Department of Science and Technology**

**Private Bag X727**

**PRETORIA**

**0001**

4.1.5.3 Electronically:

**[dispute@nipmo.org.za](mailto:dispute@nipmo.org.za)**

4.2 In the event that the same appeal or review is brought by more than one Affected Recipient with different authorised representatives the –

4.2.1 Form IP3 must be signed by the recipient or authorised representative of the Affected Recipient whose name is listed on the form; and

4.2.2 remaining Affected Recipients or their authorised representatives must each confirm by way of an affidavit or written affirmation<sup>1</sup> that all declarations and statements of fact set out on the signed Form IP3 are true.

<sup>1</sup> A statement or proposition that is declared to be true. A solemn declaration accepted instead of a statement under oath.

## **5. Process before the Dispute Hearing**

### **5.1 Upon receipt of the Notice—**

- 5.1.1 Within 3 days, the Secretariat for the Dispute Panel must provide the –
  - 5.1.1.1 Affected Recipient with an electronic acknowledgement of receipt and provide the Affected Recipient with a list of all Dispute Panel members;
  - 5.1.1.2 Notice to NIPMO;
  - 5.1.1.3 Notice to the Chairperson of the Dispute Panel.
- 5.1.2 Within 5 days of receiving the Notice in terms of sub-rule (1)(a)(i), the Affected Recipient must inform the Secretariat whether any of the Dispute Panel members should be excluded from the Dispute Hearing and provide reasons for such exclusion; the Secretariat shall immediately send this list to the Chairperson of the Dispute Panel.
- 5.1.3 Within 5 days of receiving the Notice in terms of sub-rule (1)(a)(ii), NIPMO must—
  - 5.1.3.1 file its response to the Secretariat and copy the Affected Recipient;
  - 5.1.3.2 inform the Secretariat whether any of the Dispute Panel members should be excluded from the Dispute Hearing and provide reasons for such exclusion; the Secretariat shall immediately send this list to the Chairperson of the Dispute Panel.
- 5.1.4 Within 8 days the Chairperson must decide and confirm the selection of the Dispute Panel participants. In order to make this selection, the Chairperson may consult all Parties regarding the selection of the Dispute Panel members who shall hear the dispute and will, subject to regulation 7(6) of the IPR Act, take into account:
  - 5.1.4.1 that all Dispute Panel members may participate;
  - 5.1.4.2 whether a Dispute Panel member is, for any reason, unable to sit in a particular Dispute Hearing;
  - 5.1.4.3 a request for exclusion of a Dispute Panel Member in terms of rules (5)(1)(b) or 5(1)(c)(ii); and
  - 5.1.4.4 the expertise required to hear the dispute.
- 5.1.5 Within 5 days after the confirmed selection of Dispute Panel participants, and at least 30 days before the Dispute Hearing, the Secretariat must provide the Dispute Panel participants and the Parties with the Notice and NIPMO's response, appropriately paginated and in form requested (memory stick, courier, electronic mail).
- 5.1.6 Secretariat must bind the documents into a single pack and disseminate these together with the agenda to Dispute Panel participants and Parties no less than 7 days before the Dispute Hearing.



5.2 If the scheduled Dispute Hearing must be cancelled or postponed for any reason the Secretariat must–

5.2.1 be notified in writing of this at least 7 days before such hearing;

5.2.2 immediately extend the notification to the Chairperson, all Dispute Panel participants and Parties.

## **6. The Dispute Hearing**

6.1 The Chairperson shall preside over all sittings of the Dispute Panel unless the Chairperson is unavailable for an indeterminate period of time in which case the Chairperson will appoint an alternative from the Dispute Panel members to preside for the particular Dispute hearing.

6.2 Unless the IPR Act or any other relevant legislation precludes the Dispute Panel from doing so, the Dispute Panel may at its sitting –

6.2.1 give directions for the proper conduct of proceedings under these rules such as outlining the manner and procedure in which the hearing will unfold;

6.2.2 on good cause shown or when the public interest so dictates, shorten or extend any period prescribed in these rules for doing anything; or

6.2.3 extend any period prescribed in these rules for doing anything on the occurrence of one or more of the circumstances set out in rule 12 herein.

6.3 All hearings before the Dispute Panel will typically go through the following stages –

6.3.1 Introductory remarks and a brief description of the matter by the Chairperson;

6.3.2 Opening statements by both Parties, with the Affected Recipient presenting first, to provide Dispute Panel participants with a clear overview of each Party's case;

6.3.3 Each Party must –

6.3.3.1 present its detailed factual background to the Dispute;

6.3.3.2 state the issue that it seeks the Dispute Panel to decide on;

6.3.3.3 cite the relevant rule of law or other relevant authority that the Dispute Panel must have regard to/and or the facts/research that support the commercial argument of the Affected Recipient;

6.3.3.4 demonstrate the applicability of such rule of law or other relevant authority to the issue before the Dispute Panel; and

6.3.3.5 make a closing statement comprising of its summarised submissions;

6.3.4 After NIPMO has finished stating its case, the Affected Recipient will be afforded an opportunity to present a response; and

6.3.5 the Dispute Hearing will then be adjourned for the Dispute Panel to analyse and evaluate the matter.

6.4 The Dispute Panel may, at any time during the Dispute Hearing, direct the Parties to deliver any outstanding documents, exhibits or other evidence as it deems necessary to enable the parties to discharge their respective burdens of proof.

**7. Non-attendance by one of the parties at the hearing**

- 7.1 Where one party fails to attend the proceedings either in person or through an authorised representative, the hearing shall proceed in that party's absence unless –
- 7.1.1 there is a reason to believe that the party concerned did not receive the notice of hearing; or
- 7.1.2 it is established that although the party concerned received the notice of hearing, it informed the Secretariat in writing of a good and sufficient cause for its inability to attend.

**8. NIPMO Dispute Panel decisions and handling of information**

- 8.1 Within 30 days the presiding Chairperson will provide the decision of the Dispute Panel in writing, via the Secretariat, to the parties;
- 8.2 The decision of the Dispute Panel is final and subject only to appeal or review by a competent court at the instance of the aggrieved party;
- 8.3 Access to information concerning any document related to the review or appeal lodged with the Dispute Panel, including decisions and reasons for decision of the Dispute Panel, is subject to the relevant provisions of Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).
- 8.4 To the extent that the notices for review or appeal of NIPMO's decision lodged with the Dispute Panel in terms of regulation 5(8) of the IPR Regulations and any other incidental process may contain personal information of either party, all relevant provisions of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) shall apply.

**PART D: GENERAL****9. Condonation****9.1 The Dispute Panel –**

9.1.1 may refuse to accept any process filed outside the timelines prescribed in the IPR Regulations or in these rules; and

9.1.2 may, but is not obliged to, grant requests for condonation of late filing of any process.

**9.2 A request for condonation may be granted on good cause shown by the party requesting it: Provided that it is considered that such condonation will not lead to unnecessary delays or otherwise prejudice the public interest or unduly prejudice any other party concerned.**

**9.3 Any party requesting the condonation must therefore state –**

9.3.1 the degree of lateness;

9.3.2 the reasons for delay;

9.3.3 why it considers that the late filing concerned will not unnecessarily delay the resolution of the matter; and

9.3.4 why it considers that the late filing will not unduly prejudice the other party to the dispute or otherwise prejudice the public interest.

**10. Circumstances under which duration of Dispute Panel proceedings may be varied**

**10.1 The Dispute Panel may, in consultation with the Parties, extend any period prescribed in these rules for doing anything under one or both the following circumstances when the –**

10.1.1 period concerned falls on any day between 16 December of one year and 15 January of the following year;

10.1.2 Chairperson or the majority of other members of the Dispute Panel are, for any reason beyond their control, unavailable to guide the process of the Dispute Panel forward.

**11. Type of information to be submitted with or in response to FORM IP3**

**11.1 Every notice of appeal or review on prescribed Form IP3 must –**

11.1.1 as part of the level of detail required under the section titled “**NIPMO DECISION BEING APPEALED/REVIEW REQUESTED**”, be accompanied by –

11.1.1.1 a copy of the notice of intention to be heard previously lodged with NIPMO on Form IP2 together with all supporting documentation presented to NIPMO;

11.1.1.2 a copy of the correspondence by which NIPMO communicated the possible dates, times and place for hearing the recipient;

11.1.1.3 any available proof regarding the actual date when the hearing took place; and

11.1.1.4 a copy of NIPMO's decision leading up directly to the lodgement of the notice in Form IP3.

11.1.2 as part of the level of detail required under the section titled "**BASIS OF APPEAL/REVIEW**", be accompanied by:

11.1.2.1 a brief account of what happened and when it happened;

11.1.2.2 how this affects the Affected Recipient;

11.1.2.3 the basis and the process on which the Affected Recipient deems such decision to have been unfair;

11.1.2.4 the relief or remedy sought;

11.1.2.5 whether they will be represented throughout the Dispute Panel proceedings; and

11.1.2.6 the address of their representative for delivery of any future correspondence.

11.2 NIPMO's response must be filed by way of a written submission which provides –

11.2.1 information used to arrive at their decision; and

11.2.2 the process followed by NIPMO in arriving at its decision

## **12. Short title and commencement**

12.1 These rules are called NIPMO Dispute Panel Rules of Procedure, and shall come into operation on the date of publication by NIPMO.