

**POWER POINT PRESENTATION**  
**ON**  
***WORLD TRADE ORGANIZATION AND***  
***INTELLECTUAL PROPERTY RIGHTS***

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# UNIT -1

General Agreement on Tariffs and Trade

# GATT

# The Story So Far...

Globalization started blossoming in the 1890's. By the end of the 19<sup>th</sup> century, trade was very free.



# The Story So Far...



Globalization then began failing at the end of **World War I**, at the beginning of the 20<sup>th</sup> century.



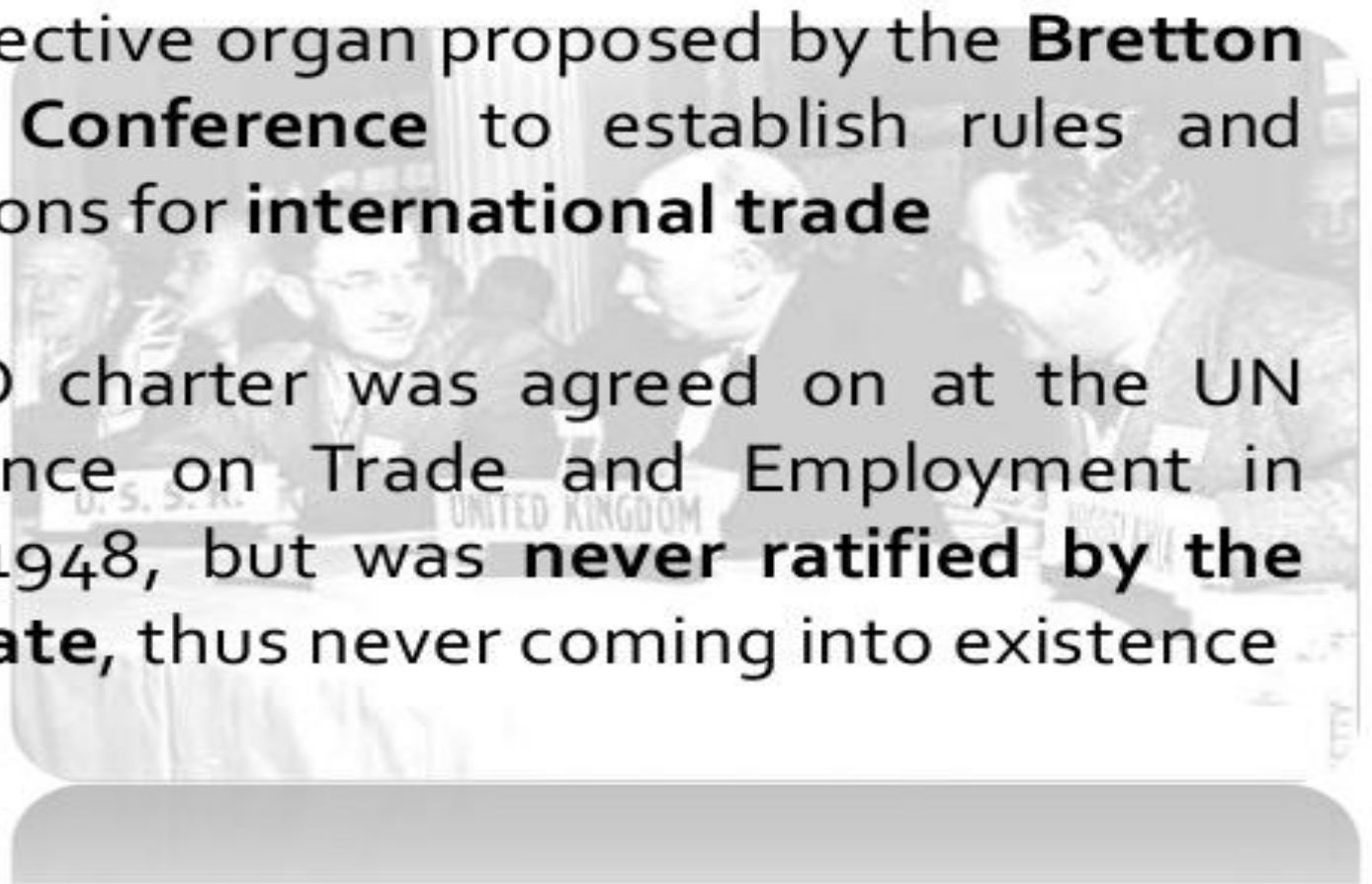
# The Story So Far...

Economic pressure pushed countries to impose trade barriers to divert national demand away from imports and toward domestically produced goods.



# International Trade Organization (ITO)

- A prospective organ proposed by the **Bretton Woods Conference** to establish rules and regulations for **international trade**
- The ITO charter was agreed on at the UN Conference on Trade and Employment in March 1948, but was **never ratified by the US Senate**, thus never coming into existence



# International Trade Organization (ITO)

Why was it not ratified?

- UN members countries were then too anxious to begin trade liberalization
- Much of its political support had evaporated
- US State and Treasury Departments were busy with US reciprocal trade agreements with individual countries
- The Cold War began, and the ITO became only of secondary interest to US politicians and bureaucrats



# General agreement on tariffs and trade

- A multilateral agreement regulating international trade
- Aims for substantial reduction of tariffs and other trade barriers, and the elimination of preferences, on a reciprocal and mutually advantageous basis
- Negotiated during the UN Conference on Trade and Employment, and was the outcome of the failure of negotiating governments

# General agreement on tariffs and trade

## HOW DID GATT SURVIVE?

- Back then, it was still seen as temporary
- It contained almost no constraining institutional arrangements



# GATT: ROUNDS

The GATT system, albeit successful (due to highly pragmatic leadership), was imperfect, and so a series of rounds of laborious process of item-by-item tariff negotiations were held.

# GATT: ROUNDS

1

## GENEVA

- April 1947
- Signing of GATT
- 45,000 tariff concessions affecting \$10 billion of trade

2

## ANNECY

- April 1949
- Around 5,000 counts of tariff reductions

3

## TORQUAY

- September 1950
- Around 8,700 tariff concessions, cutting 1948 tariff levels by 25%
- GATT was established as a governing world body

# GATT: ROUNDS

4

## GENEVA II

- January 1956
- \$2.5 billion in tariff reductions
- Admission of Japan

5

## DILLON

- September 1960
- \$4.9 billion in tariff reduction
- Creation of the European Economic Community (EEC)

GATT

# GATT: ROUNDS

6

## KENNEDY

- May 1964
- Adoption of Part IV of the GATT– absolute reciprocity to developed countries
- Reduction of \$40 billion in tariffs
- Adoption of an anti-dumping code

7

## TOKYO

- September 1973
- Reduction of more than \$300 billion in tariffs
- Control of the proliferation of non-tariff barriers and voluntary export restrictions

# GATT: ROUNDS

Failing manufacturing industries sought protection from international competition.

There followed a series of Congressional initiatives that were basically **protectionist**.

The Reagan Administration sought to **counter** this protectionist trend by calling for **a new round of global trade**.



# GATT: ROUNDS

## 8

### URUGUAY

- September 1986
- Extension into the areas of agricultural, textile and clothing, and service industries
- Protection of intellectual property rights
- Improved system of settling trade disputes
- World Trade Organization (WTO) was established to rule on claims of treaty violation

WTO replaced GATT as an international organization  
GATT still exists as the WTO's **umbrella treaty** for trade in goods

# GATT: ROUNDS

9

## DOHA

- November 2001
- **Current** trade-negotiation round of the *World Trade Organization*
- **Issues:** Agriculture  
Access to patented medicines  
Special and differential treatment  
Implementation issues

# Difference between GATT & WTO

## GATT

- 1) GATT was adhoc and provisional.
- 2) GATT has contracting parties.
- 3) GATT system allows existing domestic, legislation to continue even if it violated GATT agreement.
- 4) GATT was less powerful and dispute settlement mechanism was less efficient.

## WTO

- 1) WTO is permanent.
- 2) WTO has members.
- 3) WTO does not permit this.
- 4) WTO is more powerful and dispute settlement mechanism was more efficient.

# WTO (WORLD TRADE ORGANISATION)

Following the Uruguay round agreement GATT was converted from a provisional agreement into a formal international organisation called World Trade Organisation with effects from 1<sup>st</sup> Jan 1995, under the old system there were two GATTs:-

- 1) **GATT as an organisation.**
- 2) **GATT as an agreement.**

Under the new system, GATT the organisation ceased to exist with the establishment of WTO whereas GATT the agreement continued to exist in amended form.

## \* **FUNCTIONS OF WTO:-**

- 1) WTO shall facilitate the implementation, administration and operation of MTA (Multi-lateral trade agreement).
- 2) It shall provide the forum for negotiation among its members concerning their multi-lateral trade relationship.

cont....

- 3) It shall administered the understanding of rules and procedures governing the settlement of disputes.
- 4) WTO shall administered the trade review mechanism.
- 5) With a view to achieve great coherence in global economic policy making, the WTO shall co-operate with IMF and IBRD (International Bank For Reconstruction and Development).

#### \* **IMPORTANT FEATURES OF URUGUAY ROUND AGREEMENT**

##### **1) Liberalization of trade in manufactures:-**

- 1) Liberalization of trade and manufactured is achieved mostly by reduction of tariff and removing and steps non tariff barriers.
  - a) Tariff Barriers:-
    - # Expansion of tariff barriers.
    - # Reduction in tariff rates.
    - # Expansion of duty free access.



cont...

b) Non-Tariff Barriers:-

In the area of non-tariff barriers removal of VER (Voluntary Export Restraint) and MFA (Multi-Fibre agreement) are considered as land mark achievement.

2) **Liberalization of agricultural trade:-**

One of the important feature of uruguay round agreement was the inclusion of agricultural in MTN. The exclusion of agriculture from the previous round and its effective exemptions from the GATT discipline made agriculture a highly protected centre. In the developed countries the important aspects of uruguay round agreement on agriculture include:-

# Tariffication .

# Tariff Binding.

# Tariff cuts.

# Reduction in Subsidies.

=> Prohibited subsidy.

=> Actionable Subsidy.

=> Non-Actionable Subsidy.

# GATS

The general agreement on trade and service which extends multi-lateral rules and disciplines to services is regarded as the land mark achievement of uruguay round . The GATS defines, services as the supply of service from:-

- # The territory of one member into the territory of other member. (Transport)
- # In the territory of one member, to the service consumer of any other member.(Franchisee)
- # By a service supplier of one member through the commercial presence in the territory of any other member. (Tourism)
- # By a service supplier of one member through the presence of natural persons of a member, in the territory of any other member. (Foreign Consultant)

Among the most important obligation, is a most favoured nation obligation that essentially prevent countries from discriminating among foreign suppliers of services.

Another obligation is a transparency requirement according to which each member country will publish all its relevant laws and regulations, pertaining to services.

# TRIMS

Trade related investment measures refers to certain conditions or restrictions imposed by a government in respect of foreign investment of the country. The agreement on TRIMS provide that no contracting party shall apply any TRIM, which is in consistence with WTO, article.

Following TRIM are considered as in-consistence:-

- 1) **Local content requirements.**
- 2) **Trade balancing requirement.**
- 3) **Foreign exchange balancing requirements.**
- 4) **Domestic sale requirements**

# TRIPS

The Uruguay round agreement on TRIPS (trade related intellectual property) covers seven intellectual property:-

- 1) Copy Right.
- 2) Patents
  - =) Process.
  - =) Products.
- 3) Trade Marks.
- 4) Geographical Indicators.
- 5) Industrial Layouts
- 6) Integrated Circuits.
- 7) Undisclosed Information Including trade Secrets.

## Cont....

Intellectual property rights has been defined as information with commercial value. They have been characteristics as the composite of ideas, inventing and creative expression plus public willingness to bestow the status of the property on them and give their owners to exclude others from the use of protected subject matter.



# Difference between Indian patent act 1970 & Uruguay round agreement

## **INDIAN PATENT ACT**

- 1) Only the process patent in the field of food, drugs, and chemical substances was allowed.
- 2) Patent expiry period was 5-7 yrs in case of food, drugs, and chemical substances and for other products, it was 14 yrs.
- 3) Plants and animals including micro-organisms and biological processes for the production of plant and animals.
- 4) Non specific system exist to protect the rights of inventors of plant and seed varieties.

## **ROUND AGREEMENT**

- 1) Product patent is also food, drugs, and chemical substances as well as all other products.
- 2) Patent expiry period is 20 yrs.
- 3) Only plants , animals and biological processes are not patentable. Micro-organism, non-biological process are patentable.
- 4) Right of inventors of plant and seed varieties to be protected through special system.

# cont....

5) Process for treatment of human beings and animals not patentable.

6) There is ceiling on the royalty or fee that the patent holder can demand from license.

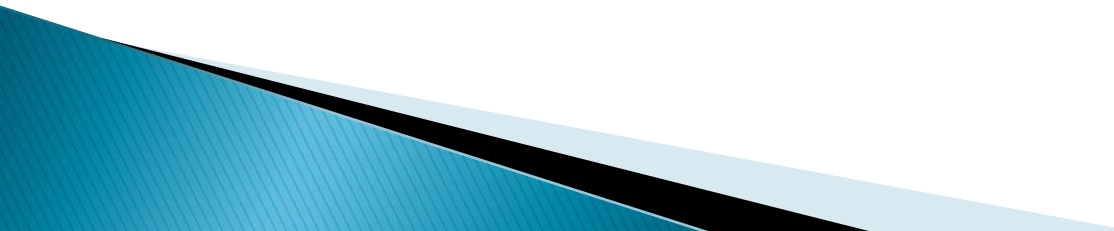
5) Process or method for treatment on human beings and animals are not patentable.

6) There can be no ceiling on the fee and royalty that can be charged from a license by a patent holder.

# International Technology Transfer

- ▶ Concepts
  - What is ITT?
  - What are its components?
- ▶ Market-mediated means of ITT
  - Trade in goods and services
  - Foreign direct investment
  - Technology licensing
  - Joint ventures

# International Technology Transfer

- ▶ Non-market channels of ITT
    - Imitation and reverse engineering
    - Labor turnover
    - Temporary migration of scientific and technical personnel
    - Reading patent applications
- 

# ITT and Spillovers

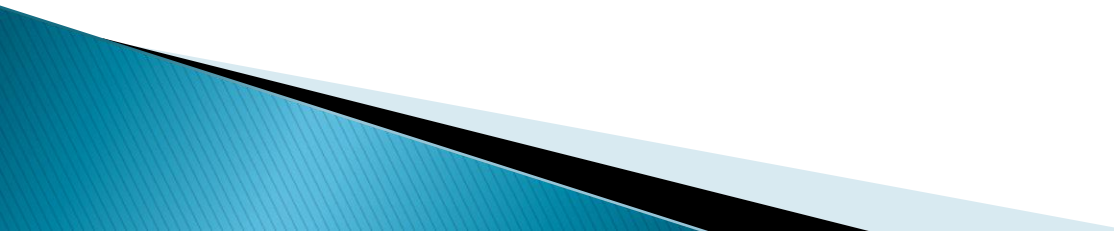
- ▶ Measuring spillover impacts
  - Positive evidence from imports and exports
  - Mixed evidence from horizontal FDI
  - Strong evidence of backward linkages
  - Few studies of spillovers from licensing
  - Issues regarding public domain ITT



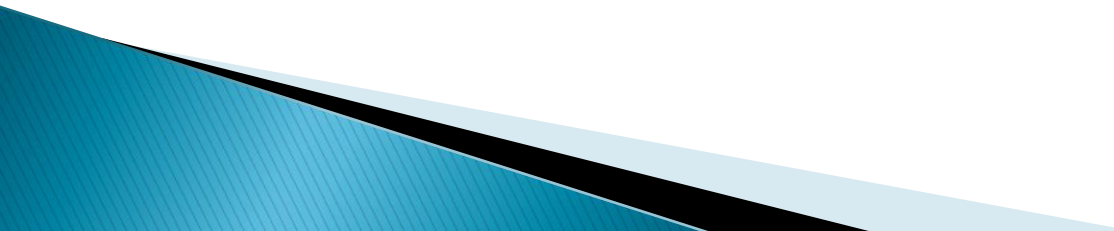
# The Role of IPRs

- ▶ Problems with technology markets
  - Ability to appropriate returns to investment
  - Information problems
  - Market power
  - Public goods questions

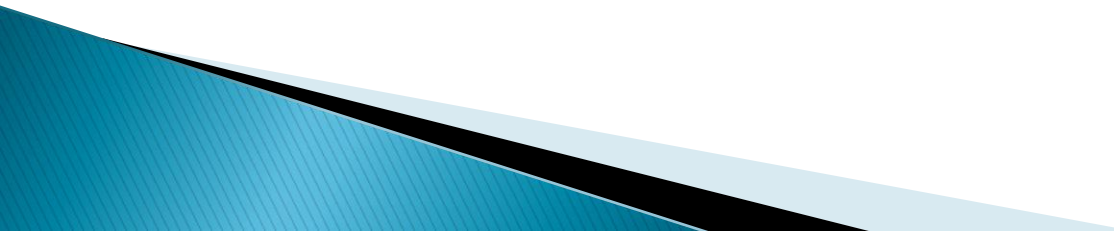
# The Role of IPRs

- ▶ Basic objectives of balanced IP protection
    - Promote innovation through exclusive rights
    - Public disclosure to expand knowledge stock
    - Support for markets in technology, including ITT
    - Support diffusion and incremental innovation
  - ▶ Can trade secrets contribute?
  - ▶ But IPRs raise their own problems
- 

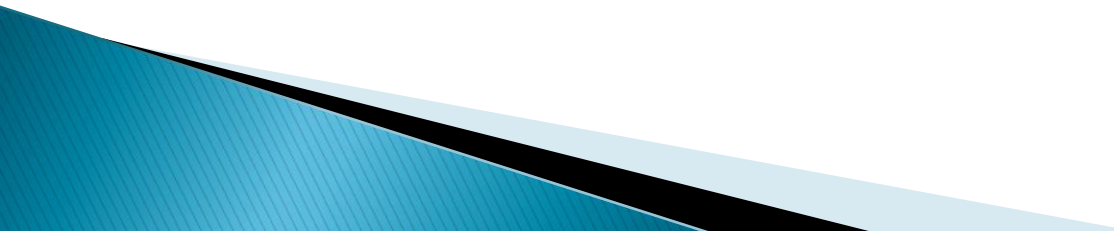
# Summary of Empirical Research

- ▶ Patent applications are an important conduit for learning among OECD
  - ▶ Patent rights may be expected to raise rents earned by inventors
  - ▶ A comment on the nature of empirical work in this area
  - ▶ Trade flows respond to patents among developing countries
- 

# Summary of Empirical Research

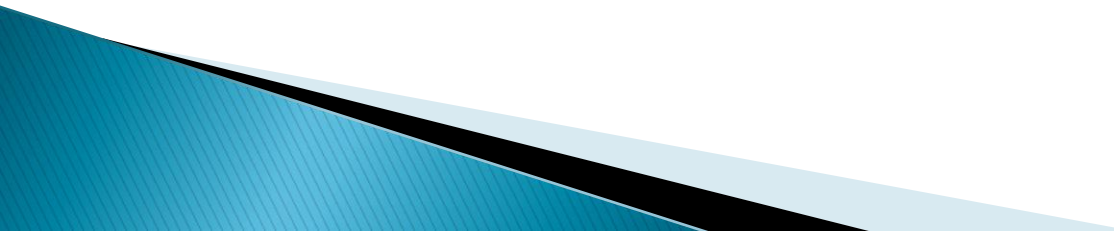
- ▶ Evidence on patents and FDI is mixed and there may be threshold effects
  - ▶ Licensing seems to respond positively to patents and there is an “externalization effect”
  - ▶ Sophistication of technologies transferred rises with IP protection
  - ▶ Not enough evidence on poorest countries
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# National Historical Experience

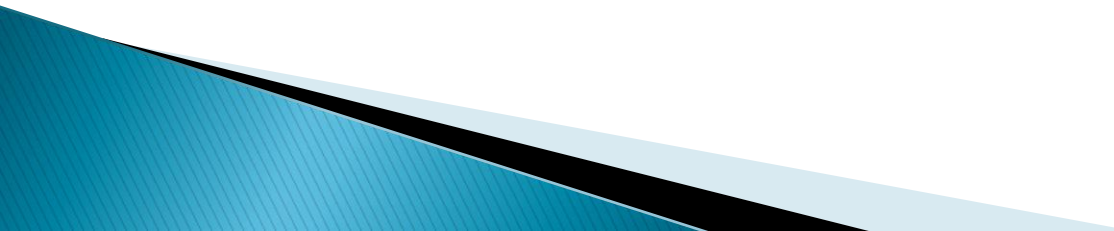
- ▶ Japanese history suggests importance of well-chosen IP standards and promotion of innovation and diffusion
  - ▶ Korean history indicates trajectory from imitating mature technologies to knowledge-driven innovation
  - ▶ Access to mature, stable technologies is important for poor countries
  - ▶ Impact of TRIPS?
- 



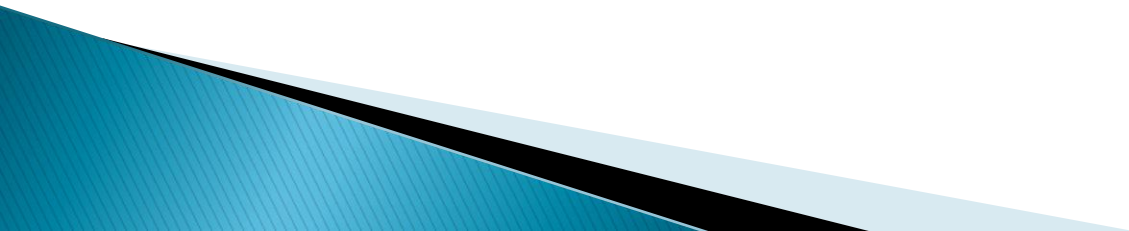
# Host-Country Policy Suggestions

- ▶ Remove barriers to entry in innovation
  - ▶ Adequate supply of engineering and management skills
  - ▶ Ensure competition in supplier industries for backward linkages
  - ▶ Promote adequate business environment
  - ▶ Reduce “technological distance”
  - ▶ IP standards to promote dynamic competition
- 

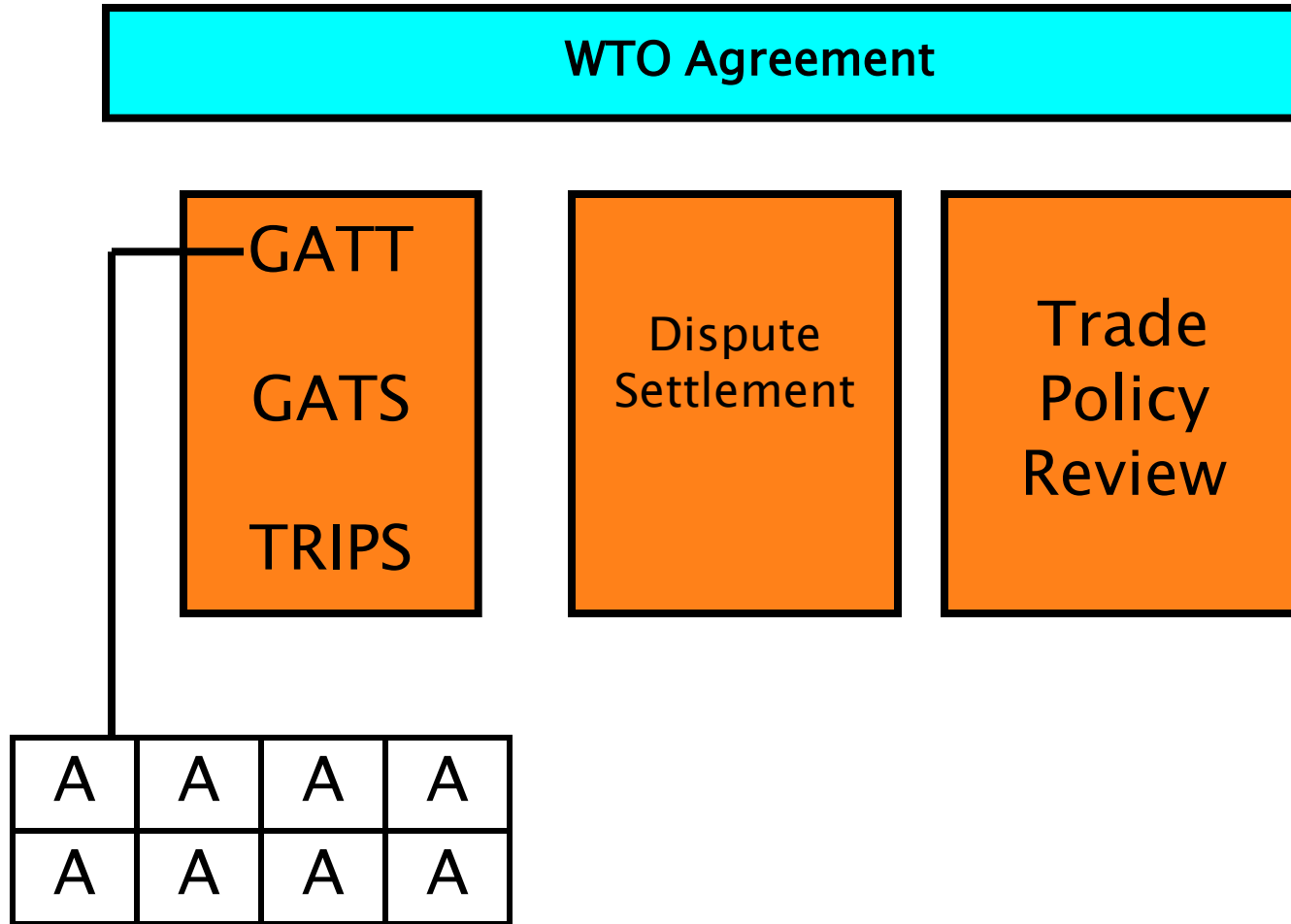
# A Comment on Article 66.2

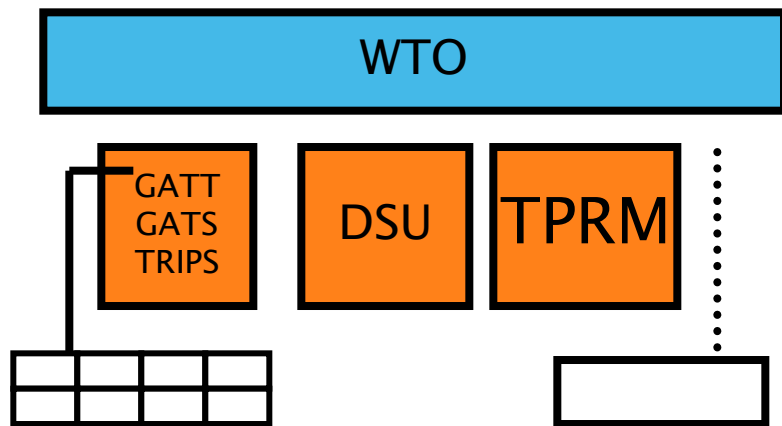
- ▶ Difficulty of forcing technology transfer
  - ▶ Scope for expanding 66.2
  - ▶ WTO can play a role in collaboration and sharing information
  - ▶ WTO can monitor and evaluate programs
  - ▶ Broader thinking needed
- 

# **Enforcing the Agreements: DISPUTE SETTLEMENT IN THE WTO**



# Structure of the WTO Agreement





- ▶ Agriculture
- ▶ Sanitary and Phytosanitary Measures
- ▶ Technical Barriers to Trade
- ▶ Trade-related Investment Measures
- ▶ Anti-Dumping
- ▶ Rules of Origin
- ▶ Valuation
- ▶ Import Licensing
- ▶ Subsidies and Countervailing Measures
- ▶ Safeguards



# Dispute Settlement under the GATT 1947

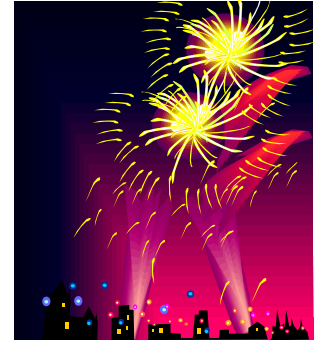
- ▶ Articles XXII and XXIII of GATT 1947
  - Very limited rules
  - Central concept was “nullification and impairment” of benefits flowing from the agreement
- ▶ Diplomatic character of dispute settlement:  
No judicial arm, rather all matters were within powers of GATT Contracting Parties
- ▶ “Evolved” practice under GATT 1947

# Dispute Settlement in the WTO: Aim

## ▶ **Dispute Settlement Understanding:**

- Mechanism aimed at securing compliance with the Covered Agreements (CA)
- Preserves the rights and obligations of Members under the CA (Art 3.2 DSU)

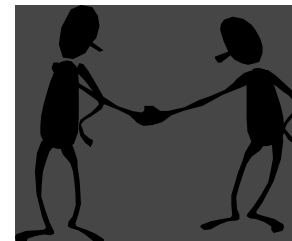
# New innovations of the DSU



- ▶ More detailed procedures for the various stages of dispute
- ▶ Appellate review of panel reports and surveillance of implementation by the DSB

# Dispute Settlement in the WTO: Objectives

- ▶ To secure a “positive solution” to the dispute.
- ▶ (Art. 3.7 DSU)
- ▶ Preferred outcome:
  - To reach a mutually agreed solution
- ▶ If not,
  - Panel Proceeding ....
  - [...and AB review.]
- ▶ And then,
  - Implementation, or ....
  - Retaliatory trade sanctions may be imposed



# Dispute Settlement in the WTO: Scope

- ▶ **An integrated system:**

- ▶ Applies to all the WTO multilateral agreements (Appendix 1)
- ▶ A single set of rules for all disputes (Art 23)
- ▶ Only a few special or additional rules in some CA (Appendix 2)





# Dispute Settlement in the WTO: Main Features

- ▶ compulsory jurisdiction
- ▶ detailed procedures and deadlines
- ▶ “complainant-driven”
- ▶ “quasi-judicial”
- ▶ “automaticity”

# Dispute Settlement in the WTO: Main characters

- ▶ Parties to the dispute: WTO Members only
- ▶ Dispute Settlement Body (all the Members)
- ▶ Panel ( 3 or 5 panelists)
- ▶ Appellate Body (7 persons)
- ▶ WTO & AB Secretariats

Consultation



Panel



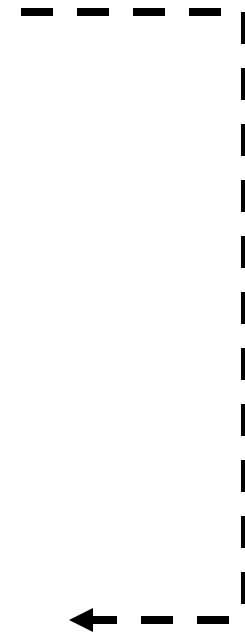
Appeal



Adoption



Implementation



*Good  
Offices,  
Conciliation,  
Mediation,  
Arbitration*

# Dispute Settlement in the WTO: Panels

- ▶ **Establishment of a panel: Automatic**



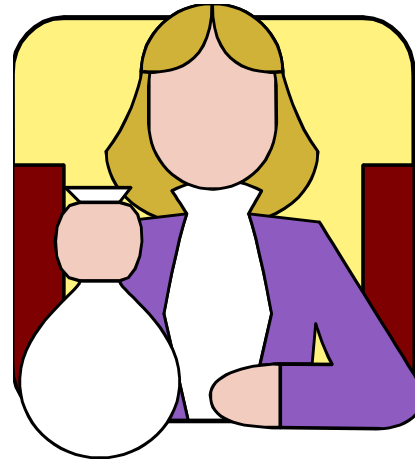
- ▶ **Composition**  
“well-qualified government and/or non-governmental individuals”



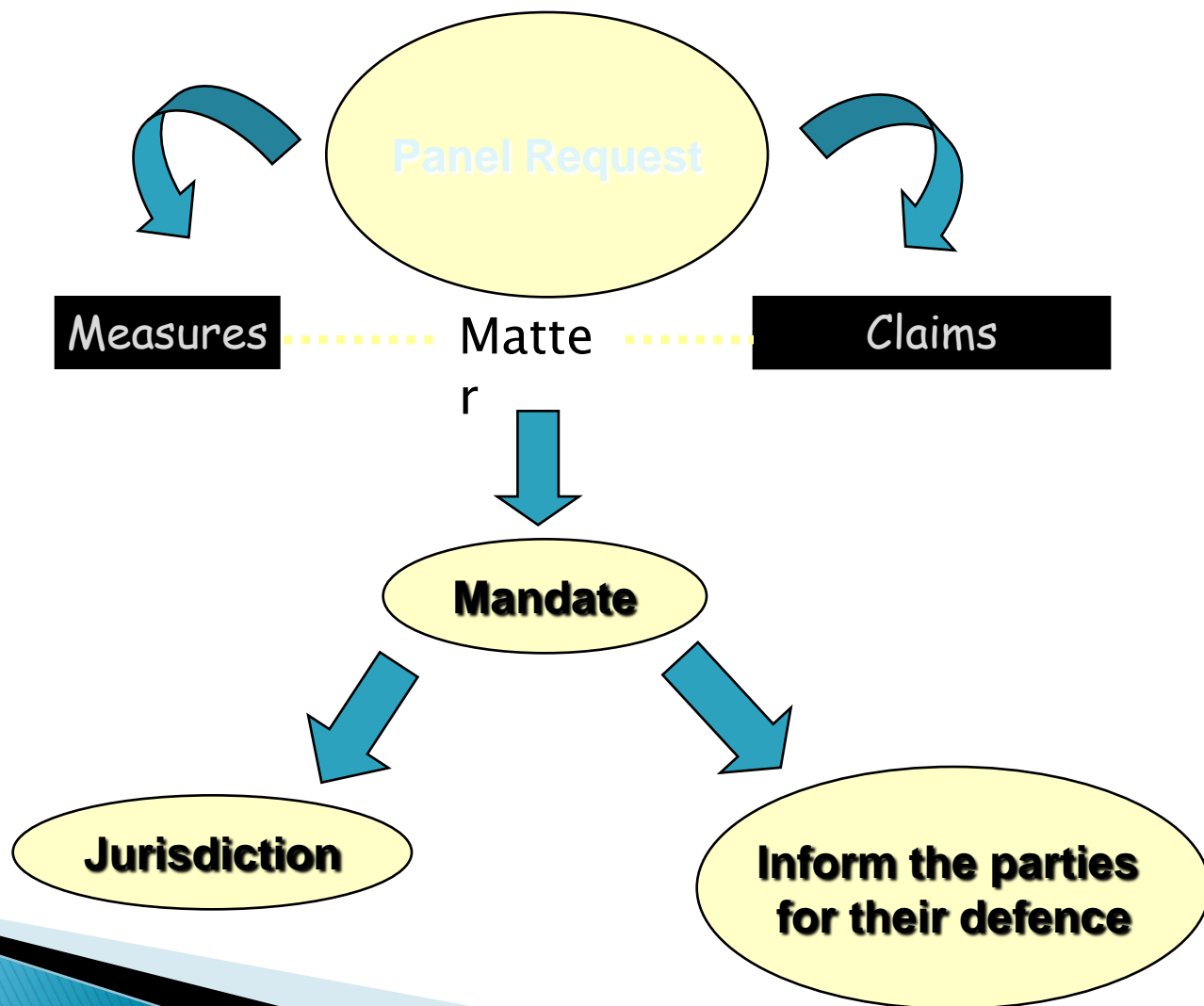
- ▶ **6 months or 9 months to issuance of final report**
- ▶ **Process confidential, report public**

# Dispute Settlement in the WTO: The “matter” in dispute

- ▶ The specific measures at issue
- ▶ The legal basis (claims)



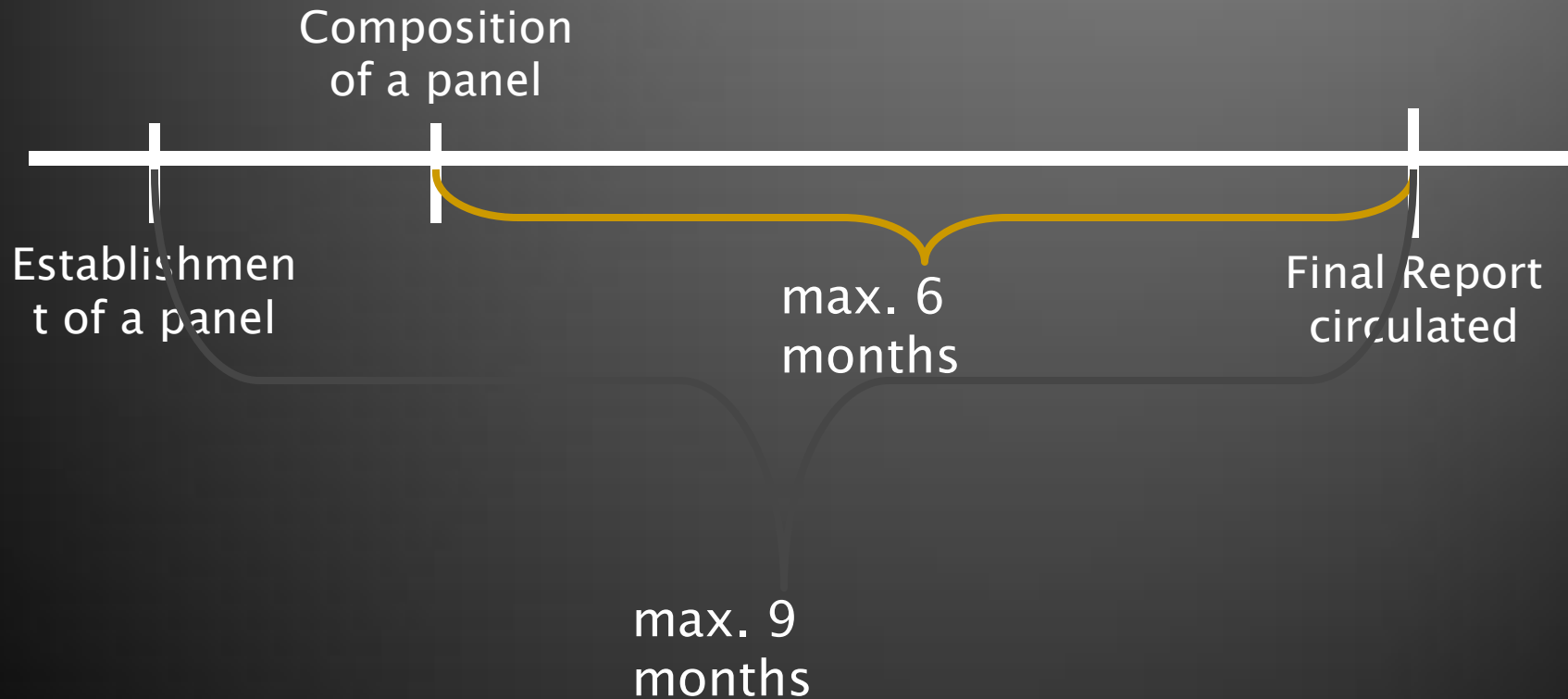
# Dispute Settlement in the WTO: *The Mandate*





# Dispute Settlement in the WTO:

## Panel Procedures: deadlines



# Dispute Settlement in the WTO: Adoption of Panel Reports

Art. 16 DSU

- ▶ Panel reports not considered for adoption until 20 days after circulation
- ▶ Adoption within 60 days of circulation, unless negative consensus....



... Except if  
appealed

# Dispute Settlement in the WTO: Appellate Review

- ▶ WTO dispute settlement system innovation
- ▶ Rules applicable to Appellate Review
  - *Dispute Settlement Understanding*  
(Article 17; Article 16.4; Articles 1, 3, 18 and 19)
  - *Working Procedures for Appellate Review*
  - *Rules of Conduct*

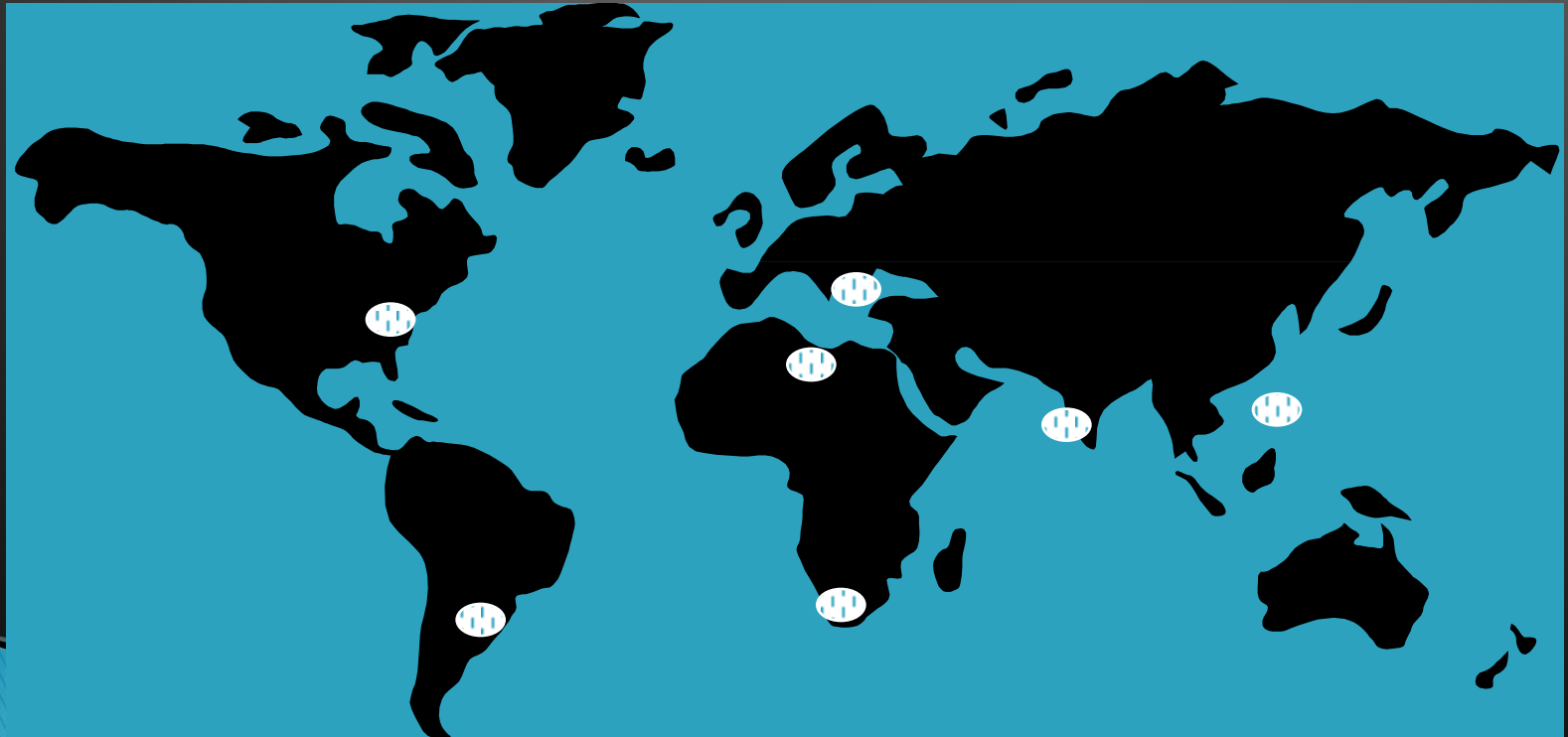
# **Dispute Settlement in the WTO:**

## **Appellate Body Members**

- ▶ **A standing body of 7 Members**
- ▶ **Appointment by DSB**
- ▶ **4-year term, renewable once**
- ▶ **Requirements**
  - authority and expertise in international trade law
  - “unaffiliated with any government”

# Dispute Settlement in the WTO: Appellate Body Members

“broadly representative of membership” – Art. 17.3 DSU



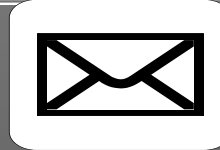
# Dispute Settlement in the WTO: Article 17 DSU

- ▶ WHAT? appeals limited to “issues of law and legal interpretations” developed by the panel, including “cross-appeals”
- ▶ WHO? appeal only open to parties to the dispute
- ▶ WHEN? Appeal must be commenced no later than 60 days after the Panel Report is circulated to Members; takes 60–90 days



# Dispute Settlement in the WTO: Appellate Procedure

- ▶ Notice of Appeal



- ▶ Written Submissions



- ▶ Oral Hearing



- ▶ Exchange of Views



- ▶ Circulation of the Report



60/90  
days



# Dispute Settlement in the WTO: Adoption by the DSB



- ▶ Adoption by the DSB of the Panel Report, as upheld, modified or reversed, by the Appellate Body Report
- ▶ Within 30 days circulation (60 days if no appeal)
- ▶ Negative consensus

# Dispute Settlement in the WTO: Implementation

- ▶ **What if it cannot be implemented immediately?**

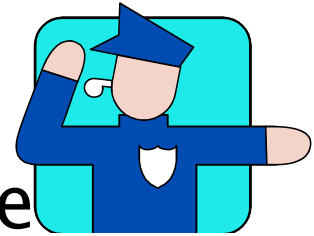
Determination of “**reasonable period of time**” for implementation (Guideline: 15 months)

- ▶ **Is it properly implemented?**

If there is disagreement, refer to compliance panel (original panel preferred) under Article 21.5

# Dispute Settlement in the WTO: Surveillance and Implementation

- ▶ **Surveillance by the DSB:** Status reports on implementation
- ▶ If Member fails to bring measure conformity within reasonable period of time, possibility of temporary measures : **compensation** or “**suspension of concessions**” (retaliation)



# Dispute Settlement in the WTO:

## Facts and Figures

▶ Requests for consultations:	363
▶ Mutually agreed solutions:	83
▶ Panels established:	148
▶ Panels composed:	129
▶ Panel reports:	110
▶ Appellate Body reports:	68
▶ Compliance panels:	23
▶ Appeals from compliance panels:	14
▶ Arbitrations on "retaliation" :	16
▶ Authorizations to "retaliate" :	7

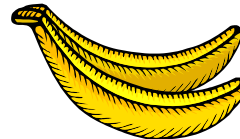
# Dispute Settlement in the WTO

## Selected Disputes in Progress

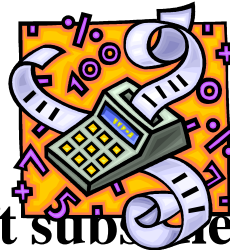
- ▶ Continued EC *Hormones* Dispute



- ▶ New *Bananas* dispute



- ▶ *Zeroing* disputes



- ▶ EC/US cases on aircraft subsidies





# Dispute Settlement in the WTO:

## The Doha Mandate

- ▶ **Doha Declaration**, paragraph 30:
  - “improvements and clarifications”
  - Original **May 2003** deadline, extended to **May 2004**, then **July 2004 Package**. Negotiations suspended second half 2006, then resumed.
- ▶ Continued negotiations outside the single undertaking, but on what basis and what timeframe?

# **Dispute Settlement in the WTO:**

## **Selected Issues in the Negotiations**

- ▶ **Streamlining procedures at consultation and panel stages**
- ▶ **“Transparency”**
- ▶ **Remand?**
- ▶ **Enhance Special & Differential treatment?**
- ▶ **Implementation**
  - **Sequencing**
  - **Remedies (compensation, retaliation)**

# **Dispute Settlement in the WTO**

## **Final Thoughts**

- ▶ **What changes needed and how extensive?**
- ▶ **Relationship dispute settlement/decision-making?**
- ▶ **Relationship dispute settlement/rule-making (negotiations)?**
- ▶ **Bottom line: system is being used and is working -  
- security and predictability**

# **WHO/EDM Technical Briefing Seminar**

## **27 September – 1 October 2004**

**TRIPS Agreement and Public Health**



# Structure of presentation

1. WHO and IPRs & access to medicines
2. What are patents?
3. TRIPS Agreement and the Doha Declaration
4. "TRIPS flexibilities" - what are they and how are they used?
5. The Paragraph 6 problem and the WTO August 30 Decision
6. Challenges

# WHO perspectives on IPRs and access to medicines

- ▶ Access to essential medicines is a human right
- ▶ Essential medicines are not simply another commodity
- ▶ Patent system is an incentive mechanism for research and development of new drugs
- ▶ Patents should be managed so as to protect interests of patent holder, as well as, safeguard public health principles
- ▶ WHO supports measures which improve access to medicines, including the use of TRIPS safeguards.



# WHO Mandate

Since 1999, WHA Resolutions have given broad mandate to WHO to:

- ▶ analyse, monitor and report on implications of globalization, IPRs/TRIPS, trade agreements for public health;
- ▶ Strengthen pharmaceutical policies and practices; and
- ▶ Assist in the implementation of TRIPS flexibilities and public health safeguards.

# What are Patents?

- ▶ Proprietary title
- ▶ Territoriality of patents – diversity and flexibility in national patent laws  $\Rightarrow$  no international patent
- ▶ Patentability criteria and exceptions
- ▶ Patent duration
- ▶ Patents granted by national Patent Offices
- ▶ Annual renewal, payment of fees to maintain patent

# Patents: The Rationale

- ▶ INFORMATION - dissemination of information and technical knowledge
- ▶ INVESTMENT – increased investment in R&D
- ▶ INNOVATION

*In exchange for --*

- MONOPOLY – a time-limited 'monopoly' and the ability to determine price
- ▶ MARKET – a negative right to prevent others from using, making, selling, marketing the product for a specified period

Global debate – is the patent system delivering?

# Pharmaceutical patents

- ▶ Patent protection is intended for protection of *inventions*, and not for medicines *per se*
- ▶ However, types of patents granted for pharmaceuticals are increasing. Often, there is more than one patent for each single medicine.
- ▶ So, not only are patents applied for in respect of:
  - specific molecules (product patents);
  - manufacturing methods (process patents); or
  - medical indications (e.g., effect of the molecule)BUT also for:
  - combinations of known products; e.g., a fixed dose combination
  - new salts of known substances
  - new uses for known products
  - variants of known manufacturing processes

**What is and should be the criteria for patentability?**



# Pre-TRIPS

- ▶ Intellectual property rights – a public policy tool
- ▶ Development of different approaches for different needs: technology transfer vs. protection of technological base; enhancing competition and access vs. protection of investment
- ▶ Patent issues treated differently in each country
  - Eligibility requirements, patentability criteria
  - Scope of protection – process and/or product patents
  - Exceptions and exemptions
  - Checks and balances vs. abuse of IPRs

# Patents and the TRIPS Agreement

- ▶ Minimum standards for patent protection
- ▶ Framework for national implementation but NOT a uniform international law or uniform legal requirements
- ▶ Patents to protect *inventions*, in all fields of technology
- ▶ Patentability criteria: novelty, inventive step, industrial application (TRIPS Art.27)
- ▶ Patents for products and processes
- ▶ Patent term – minimum of 20 years
- ▶ Patents and the promotion of public interest?

# TRIPS Agreement and Doha Declaration

- ▶ WTO Ministerial Conference, Nov.2001
- ▶ Patent and prices debate
- ▶ Clarification of TRIPS provisions
- ▶ Para 4: TRIPS "can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and in particular, to promote access to medicines for all"



# TRIPS and developing countries

Developing countries, when designing and implementing patent legislation, should follow this principle: *Strict standards of patentability and narrow scope of allowed claims*

This means:

- Limiting scope of patentable subject-matter
- Standards – strict requirements for patentability and breadth of patent commensurate with inventive contribution and disclosure made
- Facilitating competition – restricting ability of patentees to prohibit others from building on or designing around patented inventions
- Extensive safeguards to ensure patent rights are not exploited inappropriately

# TRIPS Agreement and Doha Declaration

TRIPS-consistent policy options for affordable medicines: use of public health safeguards affirmed in Doha Declaration

- Government use
- Compulsory licences
- Parallel importation
- Exceptions to patent rights (e.g., Bolar exception)

# Using the TRIPS flexibilities

- Straightforward, transparent and fast procedures
- Legislation that fully exploits the flexibility in TRIPS; e.g., for determining grounds for compulsory licensing and non-commercial use by government
- Clear, easy to apply, and transparent guidelines for setting royalty rates
- Appeal procedures that do not suspend execution of licence

# Public non-commercial (government) use

## Article 31 TRIPS

- "Public non-commercial use"
- Government right (govt. agency, dept. or contractor) to use patent in the public interest
- Fast-track approach to compulsory licences
- Compensation to patent holder
- State practice: US and UK legislation

# Public non-commercial (government) use

## United Kingdom

### Patents Act 1977, Section 55(1)

Notwithstanding anything in this Act, any government department or any person authorized by a government department may, for the services of the Crown and in accordance with this section, do any of the following acts in the United Kingdom in relation to a patented invention without the consent of the proprietor, that is to say-

- (a) where the invention is a product, may-
  - (i) make, use, import or keep the product, or sell or offer to sell it where to do so would be incidental or ancillary to making, using, importing or keeping it; or
  - (ii) in any event, sell or offer to sell it for foreign defence purposes or for the production or supply of specified drugs and medicines, or dispose or offer to dispose of it (otherwise than by selling it) for any purpose whatever;
- (b) where the invention is a process, may use it or do in relation to any product obtained directly by means of the process anything mentioned in paragraph (a) above;
- (c) without prejudice to the foregoing, where the invention or any product obtained directly by means of the invention is a specified drug or medicine, may sell or offer to sell the drug or medicine; ...

# Public, non-commercial (Government) use

## United States: 28 USC 1498 (1997)

*“(W)henever an invention described in and covered by a patent of the United States is used or manufactured by or for the United States without license of the owner thereof or lawful right to use or manufacture the same, the owner’s remedy shall be by action against the United States in the United States Court of Federal Claims for the recovery of his reasonable and entire compensation. Reasonable and entire compensation shall include the owner’s reasonable costs, including reasonable fees for expert witnesses and attorneys, in pursuing the action ...*

*For the purposes of this section, the use or manufacture of an invention described in and covered by a patent of the United States by a contractor, a subcontractor, or any person, firm or corporation for the Government and with the authorization or consent of the Government, shall be construed as use or manufacture for the United States”.*

# Exceptions to patent rights

## Article 30 TRIPS

- ▶ Specified and limited use of patent
- ▶ "Bolar" exception: use of patent prior to expiry for approval for generic product
- ▶ Others: research, experimental, production for export
- ▶ Automatically applicable if provided for in legislation – no further conditions



# Using TRIPS flexibilities

## Section 84 of Patents Act of 1983, amended as at 15 May 2002:

- (1) Notwithstanding anything containing in this Act–
- (a) Where there is national emergency or where the public interest, in particular, national security, nutrition, health or the development of other vital sectors of the national economy as determined by the Government, so requires; or
  - (b) Where a judicial or relevant authority has determined that the manner of exploitation by the owner of the patent or his licensee is anti-competitive,
- The Minister may decide that, even without the agreement of the owner of the patent, a Government agency, or a third person designated by the Minister may exploit a patented invention.

# Using TRIPS flexibilities

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- The Minister may decide that, even without the agreement of the owner of the patent, a Government agency, or a third person designated by the Minister may exploit a patented invention.

# New barriers to compulsory licensing?

- Inadequate or no changes to national laws
  - Security of waiver? Extension of deadline for amendment to TRIPS Agreement
- Data exclusivity
  - What are TRIPS requirements under Article 39.3?
  - Data exclusivity and TRIPS-plus provisions
- Bilateral and regional trade agreements
  - implications for public health and access to medicines

# TRIPS

- ▶ The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) is an international agreement administered by the World Trade Organization (WTO) that sets down minimum standards for many forms of intellectual property (IP) regulation
- ▶ It was negotiated at the end of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT) in 1994.

- 
- ▶ Specifically, TRIPS requires WTO members to provide copyright rights, covering content producers including performers, producers of sound recordings and broadcasting organizations; geographical indications, including appellations of origin; industrial designs; integrated circuit layout-designs; patents; new plant varieties; trademarks; trade dress; and undisclosed or confidential information. TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures.
- 



# The Requirements of TRIPS

- ▶ TRIPS requires member states to provide strong protection for intellectual property rights. For example, under TRIPS:
- ▶ Copyright terms must extend at least 20 years, unless based on the life of the author.
- ▶ Computer programs must be regarded as "literary works" under copyright law and receive the same terms of protection.
- ▶ Patents must be granted for "inventions" in all "fields of technology" provided they meet all other patentability requirements

# TRIMS

- ▶ The (TRIMs) are rules that apply to the domestic regulations a country applies to foreign investors, often as part of an industrial policy. The agreement was agreed upon by all members of the World Trade Organization. The agreement was concluded in 1994 and came into force in 1995
- ▶ .The WTO wasn't established at that time, it was its predecessor, the GATT (General Agreement on Trade and Tariffs. The WTO came about in 1994-1995.)



- 
- ▶ Policies such as local content requirements and trade balancing rules that have traditionally been used to both promote the interests of domestic industries and combat restrictive business practices are now banned.
  - ▶ In short, TRIMs are rules, which restrict preference of domestic firms and thereby enable international firms to operate more easily within foreign markets.
- 

# CONCLUSION .. We need to

- ▶ rebalance innovation incentives and the public interest
- ▶ realize that IPRs will not solve all problems,
- ▶ balance public and private rights at the international level
- ▶ promote coherence among different international agreements and FTAs
- ▶ expand civil society participation/consultations in national, regional and international rules setting processes on IPRs
- ▶ focus on implementation of WIPO Development Agenda, link with WTO negotiations
- ▶ implement flexibilities, let IPRs work for you!
- ▶ build on Disclosure of Origin Momentum
- ▶ avoid adopting new IPRs before implementing existing ones
- ▶ carry out cost-benefit analysis of GI extension and register

# **UNIT-2**

## **WIPO**

# WIPO (World Intellectual Property Organization)

- ❑ World Intellectual Property Organization is one of the specialized Agencies of the united nations
- ❑ WIPO was created in 1967 *“To Encourage creative activity, To promote the protection of intellectual property through out the world”*





- WIPO currently has 187 member states administrators 26 international treaties , and is headquartered in Geneva , Switzerland
- The current director general of WIPO is Francis Gurry
- WIPO became a specialized agency of the UN in 1974

- ▣ The agreement between UN and the WIPO notes in article One that WIPO is responsible

*“ For promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to developing countries in order to accelerate economic , Social and cultural development , subject to the competence and responsibilities of the UN and it's Organs , Particularly the UN conference on Trade and Development , the Un development program and the UN's Industrial development organization , as well as of the UN educational , Scientific and cultural organization and of other agencies with in the Un system ”*

- ▣ WIPO has significant financial resources independent of the contributions from its member states
- ▣ In December 2011 , WIPO published it's first world property report on the changing face of innovations , the first such report of the new office of the chief economist
- ▣ WIPO is also a co-publisher of the global innovation index



# Director Generals Of WIPO

- ❑ George Bodenhausen (1970–73)
- ❑ Arpad Bogsch (1973-97)
- ❑ Kamil Idris (1997-2008)
- ❑ Francis Gurry



# Intellectual Property

- ❑ Intellectual property rights are the legally recognized exclusive rights to creations of the mind. Under in law , owners are granted certain exclusive rights to variety of in tangible assets , such as musical , literary and artistic works .
- ❑ Common types of intellectual property includes copyright , trademarks patents , industrial design rights , traders' Jurisdiction and secrets

# Worlds Intellectual Property Day

- Date – 26<sup>th</sup> April
- Frequency – Annual
- Related to – Inventors Day , World Book & Copyright Day
- The Event was established by WIPO in 2000 to  
*“Rise awareness of how patent , Copyrights , Trademarks and designs Impact on daily life and to celebrate creativity and the contribution made by creators and innovators to the development of societies across the globe”*

## Services of WIPO

- WIPO Academy : Sign up for distance learning or face to face courses all year round , taught by people who know intellectual property
- WIPO Provide access to the world IP information – Search Technology & Brand related information in our global database
- WIPO Deliver Global services For Protecting IP
- WIPO shapes International IP rules for a changing Society



## **INFO NETWORK**

- WIPO has established WIPONET , a global info network
- The project seeks to link over 300 intellectual property offices in all WIPO member states . In addition to providing a means of secure communication among all connected parties , WIPONET Foundation for WIPO's Intellectual property services

# Explore WIPO

- ▣ IP SERVICES: Protecting IP & resolving disputes
- ▣ POLICY: Decision making & negotiating bodies IP and Other policy topics
- ▣ CO-OPERATION: Development global Co-operation

WIPO is the Global forum for intellectual property Services , policy information and co-operation

WIPO's Staff Share a common goal – An efficient and accessible IP system that provides benefits to all .





## PARIS CONVENTION

- The Paris Convention for the Protection of Industrial Property, signed in Paris, France, on March 20, 1883, was one of the first intellectual property treaties. It was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967, and it was amended in 1979.
- The Convention applies to industrial property in the widest sense, including patents, marks, industrial designs, utility models (a kind of “small patent” provided for by the laws of some countries), trade names (designations under which an industrial or commercial activity is carried on), geographical indications (indications of source and appellations of origin) and the repression of unfair competition

CONTD...

- **The principal features of the Paris Convention have been listed below:**
  - ❖ National treatment;
  - ❖ Right of priority ;
  - ❖ Independence of patents;
  - ❖ Parallel importation ;
  - ❖ Protection against false indications and unfair competition .
- The total number of Nation States party to the Convention are 173.



## CONTD...

➤ **Article 10-False Indications: *Seizure, on Importation, etc., of Goods Bearing False Indications as to their Source or the Identity of the Producer***

- (1) The provisions of the preceding Article shall apply in cases of direct or indirect use of a false indication of the source of the goods or the identity of the producer, manufacturer, or merchant.
- (2) Any producer, manufacturer, or merchant, whether a natural person or a legal entity, engaged in the production or manufacture of or trade in such goods and established either in the locality falsely indicated as the source, or in the region where such locality is situated, or in the country falsely indicated, or in the country where the false indication of source is used, shall in any case be deemed an interested party.

➤ **Article 10<sup>ter</sup>-Marks, Trade Names, False Indications, Unfair Competition: *Remedies, Right to Sue***

- (1) The countries of the Union undertake to assure to nationals of the other countries of the Union appropriate legal remedies effectively to repress all the acts referred to in [Articles 9, 10, and 10<sup>bis</sup>](#).
- (2) They undertake, further, to provide measures to permit federations and associations representing interested industrialists, producers, or merchants, provided that the existence of such federations and associations is not contrary to the laws of their countries, to take action in the courts or before the administrative authorities, with a view to the repression of the acts referred to in [Articles 9, 10, and 10<sup>bis</sup>](#), in so far as the law of the country in which protection is claimed allows such action by federations and associations of that country.





## MADRID AGREEMENT FOR THE REPRESSION OF FALSE OR DECEPTIVE INDICATIONS OF SOURCE ON GOODS (1891)

- The Agreement, concluded in 1891, was revised at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958, and at Stockholm in 1967.
- The Agreement is open to States party to the Paris Convention for the Protection of Industrial Property (1883).
- The total number of Nation States party to the to Agreement 35 parties.



## CONTD...

- According to the Agreement, all goods bearing a false or deceptive indication of source, by which one of the contracting States, or a place situated therein, is directly or indirectly indicated as being the country or place of origin, must be seized on importation, or such importation must be prohibited, or other actions and sanctions must be applied in connection with such importation.
- The Agreement provides for the cases and the manner in which seizure may be requested and effected. It prohibits the use, in connection with the sale or display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of the goods. It is reserved to the courts of each contracting State to decide what appellations (other than regional appellations concerning the source of products of the vine) do not, on account of their generic character, come within the scope of the Agreement. The Agreement does not provide for the establishment of a Union, any governing body or a budget.

## THE LISBON AGREEMENT FOR THE PROTECTION OF APPELLATIONS OF ORIGIN AND THEIR INTERNATIONAL REGISTRATION

- The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was a treaty of 31 October 1958.
- The Lisbon System was established in order to facilitate the international protection of AOs.
- An appellation of origin (AO) is a special kind of geographical indication. It generally consists of a geographical name or a traditional designation used on products which have a specific quality or characteristics that are essentially due to the geographical environment in which they are produced.





- The Lisbon system offers a means of obtaining protection for an AO in the contracting parties to the Lisbon Agreement through a single registration. Registrations are published in the official Bulletin “Appellations of Origin” and can be searched through the Lisbon Express database.
- Article 1(2) of the Lisbon Agreement lays down that, in order to qualify for registration at the International Bureau of WIPO, an “appellation of origin” must be “recognized” and “protected” in the “country of origin”. Article 2(1) elaborates on this by defining “appellation of origin” and Article 2(2) by defining “country of origin”.





## CONTD...

- On this basis, the condition that the appellation of origin must be “recognized” and “protected” in the country of origin means that the appellation of origin must be constituted by a geographical denomination that is protected in the country of origin as the denomination of a geographical area (country, region or locality) recognized as serving to designate a product that originates therein and meets certain qualifications. Such recognition of the denomination must be based on the reputation of the product and protection of the appellation of origin must have been formalized by means of legislative provisions, administrative provisions, a judicial decision or any form of registration. The manner in which recognition takes place is determined by the domestic legislation of the country of origin.



## ○ **Registration Procedure and Possibility of Refusal**

### **Application Procedure**

- When a geographical denomination is recognized in the country of origin as the denomination of a geographical area (country, region or locality) serving to designate a product that originates therein and meets certain qualifications, in accordance with the definition of Article 2(1) of the Lisbon Agreement, and is protected in that country as an appellation of origin so defined and recognized, it is possible to seek its registration with the International Bureau of WIPO.
- The application for registration has to be filed by the competent national authority of the country of origin. Registration is in the name of the natural persons or legal entities, public or private, having, according to their national legislation, the right to use the appellation in the country of origin. Apart from the name of the appellation and of the holder or holders of the right to use the appellation, the application must indicate the product to which the appellation applies, the area of production of the product and an indication of the legal basis for the protection in the country of origin.






- The application has to be filed in English, French or Spanish and be accompanied by the registration fee (500 Swiss francs). The International Bureau does not carry out a substantive examination of the application for registration, but it does undertake an examination as to form. If the application contains a defect of form, a period of three months is allowed for the defect to be remedied. If the application meets all the requirements as to form, the International Bureau records the appellation of origin in the International Register of Appellations of Origin and notifies the registration to the national authorities of the countries of the Lisbon Union. The registration is also published in the Bulletin Appellations of Origin.
- The international registration bears the date on which the international application was received by the International Bureau, except where such international application was missing any of the following particulars: the country of origin; the holders of the right to use the appellation of origin; the appellation of origin for which registration is sought, and the product to which the appellation applies. In this case, the international registration bears the date on which the last of the missing elements was received by the International Bureau.



## **Refusal Procedure**

- The competent authorities of the Member States that have received notice of the registration of an appellation of origin have the right to refuse to protect it in their territory. The declaration of refusal of protection has to meet two requirements:
    - (i) The first is a time requirement: the refusal has to be notified to the International Bureau within a period of one year from the date of receipt by that country of the notice of registration.
    - (ii) The second is a requirement regarding content: the declaration of refusal has to specify the grounds for refusal. For instance, a country may refuse to protect an appellation of origin because it considers that the appellation has already acquired a generic character in its territory in relation to the product to which it refers or because it considers that the geographical designation does not conform to the definition of an appellation of origin in the Lisbon Agreement or because the appellation would conflict with a trademark or other right already protected in the country concerned.
  - When the International Bureau receives a declaration of refusal within the prescribed period, it notifies it to the competent authority of the country of origin, enters it in the International Register and publishes it in the Bulletin. The competent authority of the country of origin communicates it in turn to the parties concerned, who may avail themselves of the same administrative and legal remedies against the refusal as nationals of the country that pronounced it.
- 



- Refusal can be based on any situation of fact or law. However, the grounds on the basis of which the country decides not to grant protection constitute a basis for possible discussions for the purpose of reaching an understanding. Such an understanding may result in the withdrawal of a refusal, in whole or in part. A procedure is available for the notification of such withdrawals and their recording in the International Register

### **Procedures in case no refusal is issued or if a refusal is withdrawn**

- A member country that does not refuse protection to an appellation of origin that was being used by a third party on its territory prior to the date of notification of the international registration has the option of allowing that third party a period not exceeding two years within which to terminate such use. In that case, the competent authority of the country in question has to inform the International Bureau accordingly within the three months following the expiry of the period of one year provided for the refusal of protection.
- Since January 1, 2010, a contracting country has the option to issue, instead of tacitly accepting the protection in its territory of a given appellation of origin registered under the Agreement, a statement of grant of protection. Such statements of grant of protection are not obligatory but can be issued either (a) where no declaration of refusal has been notified, or (b) following a refusal. In respect of statements as mentioned under (a), the date of the statement will be recorded in the International Register and, in respect of statements as mentioned under (b), the date on which protection was granted.



### **Procedures in case of invalidation**

- If no declaration of refusal is submitted but the effects of an international registration are, subsequently, invalidated in a contracting country and the invalidation is no longer subject to appeal, the competent authority of the country concerned is to notify the International Bureau accordingly. Following such a notification, the International Bureau enters the invalidation in the International Register and sends a copy of the notification to the competent authority of the country of origin.
- As regards the grounds for invalidation, reference is made to what has been said above in connection with the possibility for a contracting party to submit a declaration of refusal. However, as long as an appellation is protected in the country of origin, a member country that did not submit a declaration of refusal cannot deem that appellation to have become generic in its territory. This does not prevent, however, such an invalidation to be based on the fact that the appellation had already become generic prior to the date of international registration; another exception to this general rule may apply in case of acquiescence.

### **Cancellation and Amendment of Registration**

- The international registration of an appellation of origin may be cancelled at any time at the request of the competent authority of the country of origin.





- That authority may likewise renounce protection in one or more countries party to the Lisbon Agreement, either in the actual application for registration or in a request filed later.
- The competent authority of the country of origin may also request the entry in the International Register of one or more of the following:
  - (i) a change in the holder of the right to use the appellation of origin;
  - (ii) a modification to the names or addresses of the holders of the right to use the appellation of origin;
  - (iii) a modification to the limits of the area of production of the product to which the appellation of origin applies;
  - (iv) a modification relating to the titles and dates of legislative or administrative provisions or of court decisions recognizing protection in the country of origin;
  - (v) a modification relating to the country of origin that does not affect the area of production of the product to which the appellation of origin applies.





# TRIPs

## Scope

- (Art. 1);;Copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout designs of integrated circuits; undisclosed information.

- National treatment (Art. 3)

Requires all Members to treat nationals of other countries no less favourably than their own nationals on all matters concerning IPRs, subject to certain exceptions already provided in conventions/treaties related to IPRs.

- Most-favoured-nationtreatment (Art. 4)

Advantages, privileges granted by a Member to the nationals of any other country should be extended unconditionally to the nationals of all other Members.



- Exhaustion of intellectual property rights (Art. 6): For the purposes of dispute settlement, nothing in the Agreement shall be used to address the issue of exhaustion of IPRs, provided there is compliance with national treatment and most-favoured-nation treatment.

### **Basic objectives and principles**

- (Arts. 7 & 8): The protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology. They should also contribute to the mutual advantage of producers and users of technological knowledge, and in a manner conducive to social and economic welfare and to a balance of rights and obligations. The Agreement allows members to adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socioeconomic and technological development. At the same time, appropriate measures can be taken in order to prevent the abuse of IPRs or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.





# What is a Convention?

- An international agreement between states or nations, concerning finance, trade, or other matters considered less significant than those governed by a treaty (a negotiation between states to reach common ground and avoid disagreements, normally ratified by the lawmaking authority of the government)
- It results in general agreement about procedures or actions which will be taken on specific topics  
WIPO Copyright Treaty (WCT) - special agreement under the Berne Convention (protection of works and the rights of the authors in the digital environment)



# Berne Convention for the protection of Literary and Artistic works

- An international agreement governing copyright, which was first accepted in Berne, Switzerland, in 1886





# What is a Copyright?



- Form of intellectual property
- Copyright is a legal right created by the law of a country that grants the creator of an original work, exclusive rights to its use and distribution, usually for a limited time



# Why Copyright?

- Prevents copying and reproduction
- Copyright protects and rewards creative efforts which induces the workers to create more and motivates others to create
- Encourages dissemination of copyrighted work which is of public interest





# What can be Copyrighted?

- Books, brochures, newspapers
- Theatrical works
- Oral presentations
- Choreographic works
- Music (with or without words)
- Drawings, paintings, buildings and sculptures
- Designs and photographic works
- Computer programs



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Published by The Bobbs-Merrill Co., Inc.  
Indianapolis/New York  
Manufactured in the United States of America

Second Printing

Designed by Sheila Lynch

#### Library of Congress Cataloging in Publication Data

Rand, Ayn.  
Philosophy, who needs it.

Includes index.

I. Philosophy—Addresses, essays, lectures.

I. Title.  
B29.R25 100 82-4320  
ISBN 0-672-52725-1 AACR2









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ISBN-10: 1-25-906108-6

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## Register

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## Berne Convention contd.

**Berne Convention for the Protection of Literary and Artistic Works** of September 9, 1886, completed at PARIS on May 4, 1896, revised at BERLIN on November 13, 1908, completed at BERNE on March 20, 1914, and revised at ROME on June 2, 1928, at BRUSSELS on June 26, 1948, at STOCKHOLM on July 14, 1967, and at PARIS on July 24, 1971



# Key Features of Berne Convention

- **Inclusions of 'Literary and Artistic works'**
  1. Books, pamphlets, writings, lectures, addresses, sermons in scientific or artistic domain
  2. Dramatic, musical, choreographic works
  3. Musical compositions, with or without words
  4. Works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works
  5. Works of applied art: illustrations, maps, plans, sketches, 3D works of geography, topography, architecture





# Copyrightable works of art

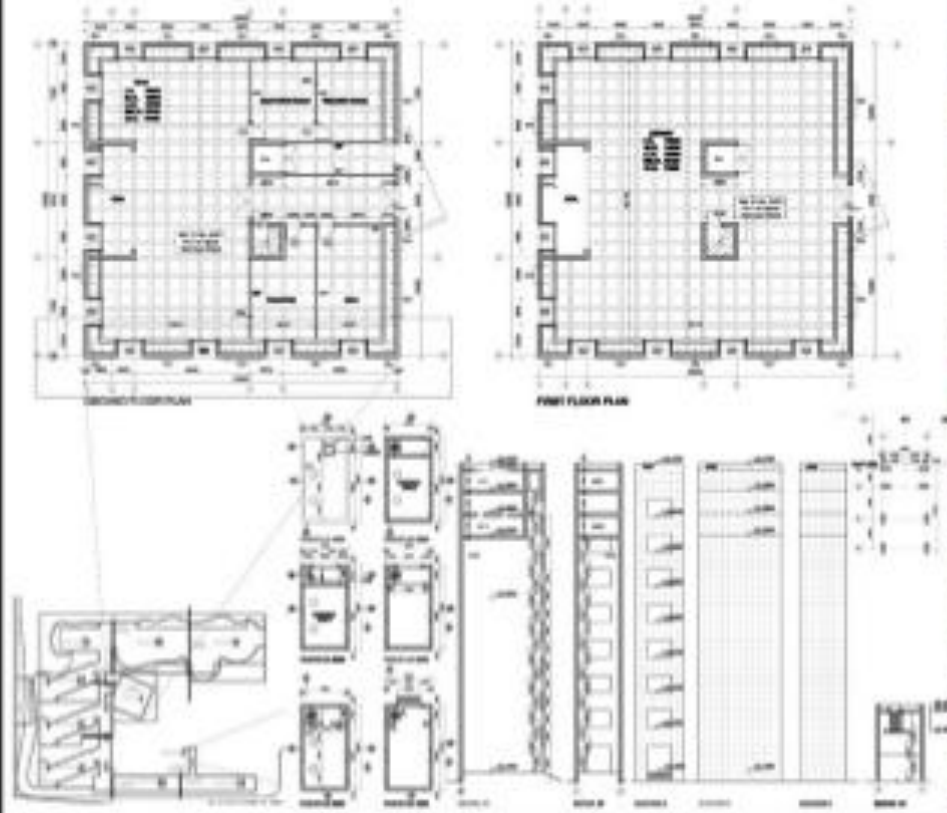
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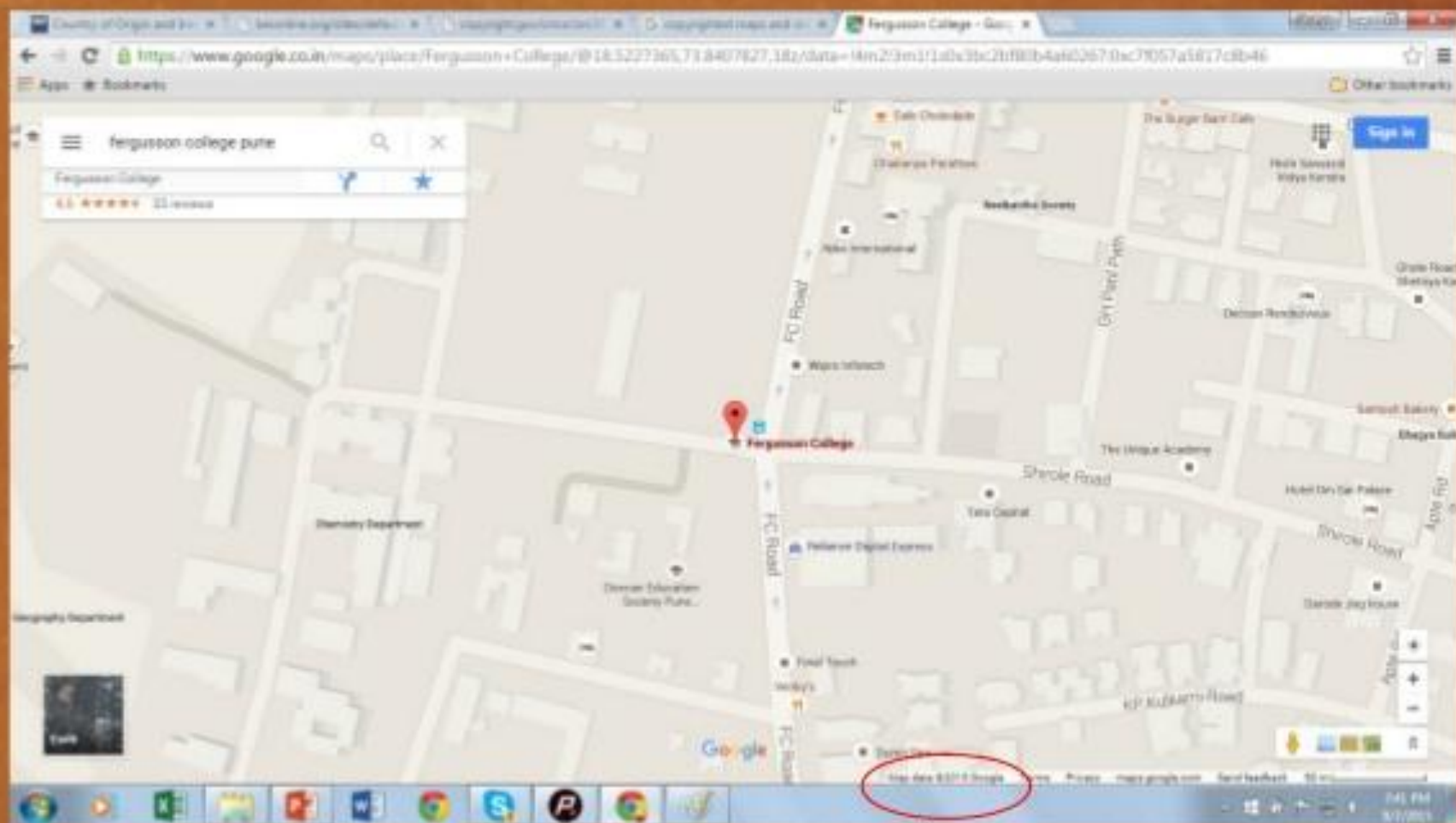
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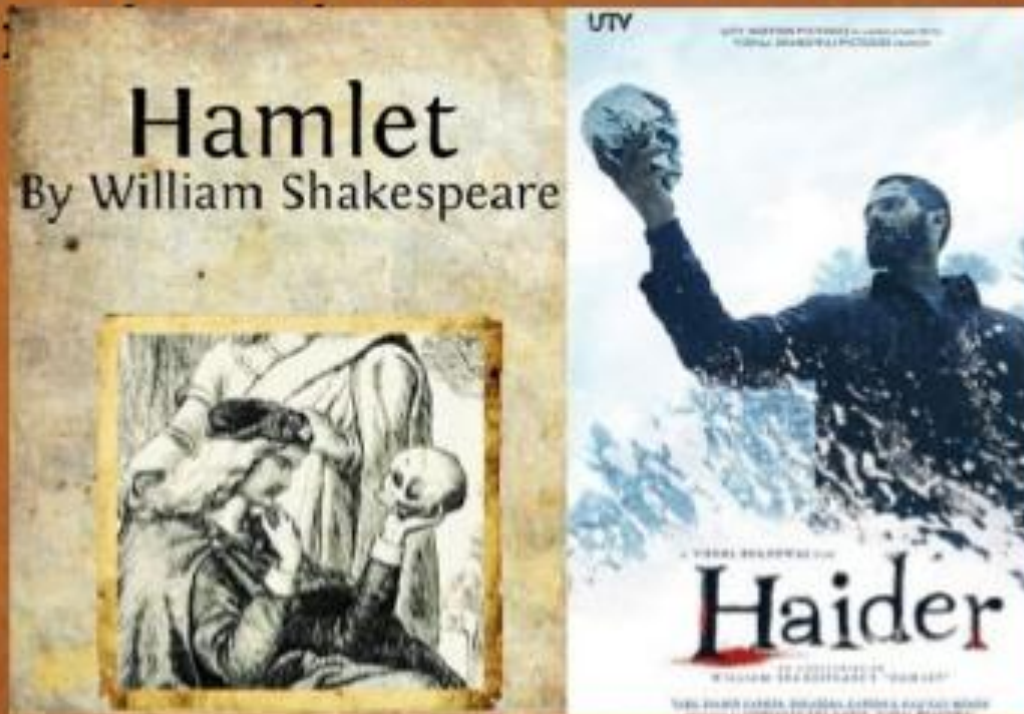
Map data copyright by  
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# Features contd.

- Translations, adaptations, arrangements of music and other alterations of a literary or artistic work shall be protected as original works without prejudice to the copyright in the origi



[www.scoopwhoop.com](http://www.scoopwhoop.com)





## Features contd.

- Collections of literary or artistic works such as encyclopedias and anthologies which, by reason of the selection and arrangement of their contents, constitute intellectual creations shall be protected as such, without prejudice to the copyright in each of the works forming part of such collections.
- The works shall enjoy protection in all countries of the Union. This protection shall operate for the benefit of the author and his successors in title.





# Features contd.

- The term of protection granted by this Convention shall be the life of the author and fifty years after his death.
- Authors of dramatic, dramatico-musical and musical works shall enjoy the exclusive right of authorizing:
  1. The public performance of their works, by any means or process
  2. The public communication by loudspeaker signs, sounds or images or any means of broadcasting the work
  3. The cinematographic adaptation and reproduction of these works, and their distribution





**"My film is loosely based upon a short story that I read. I've credited this in the film but I haven't purchased any adaptation rights. Do I need to?"**



- If the author has been dead for over 70 years, the copyright has probably expired though this varies from one country's laws to another. If the copyright has not expired, it is likely that the owner of the rights will try and assert their rights over your adaptation even if it is only 'loosely based' upon the short story.
- You should find out who owns the copyright and then take steps to purchase the adaptation rights.
- It may not be considered infringement if 'substantial part' of the original work hasn't been copied. However, sometimes, a part may be "substantial" even if only a little material is used. You should consider the similarities between the short story and your film.
- If you do not purchase the adaptation rights, you run the risk of being sued for infringement. You may incur legal fees, a severe financial penalty and/or criminal penalties if you lose.







The Hindi version of 24, starring Anil Kapoor, is the first adaptation of the US show - 24 and its India rights were acquired from Fox and producer Howard Gordon by Anil Kapoor Films

[www.firstpost.com](http://www.firstpost.com)





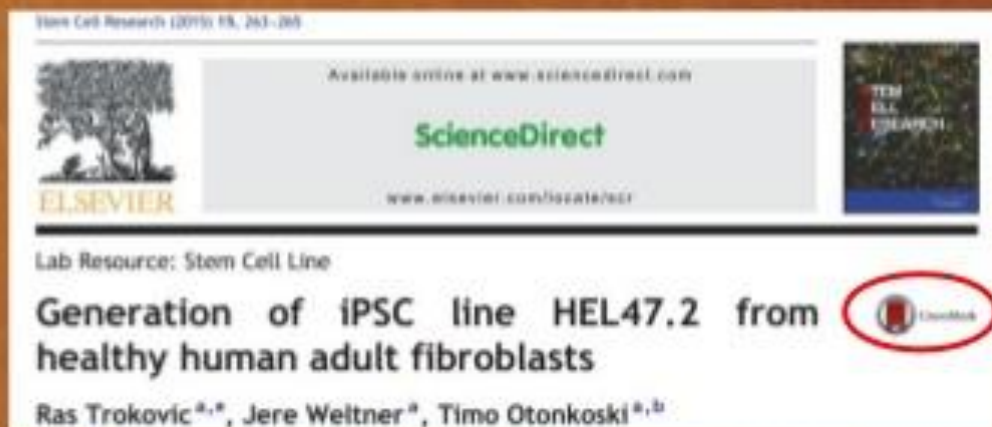
## Features contd.

- The Governments of the countries of the Union reserve the right to enter into special agreements among themselves, to grant to authors more extensive rights than those granted by the Convention, or contain other provisions not contrary to this Convention
- The Union shall have an Assembly consisting of all countries of the Union. The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisers, and experts



# Relevance of Berne Convention in Biotechnology

- Paper publication copyrights – Open access or subscription type



[www.elsevier.com](http://www.elsevier.com)

- Biotechnology manuals
- Sequences of DNA have yet to be widely recognized as eligible for copyright protection





The process of DNA sequencing does not involve any literary work. All sequences of DNA are composed of existing nucleotides, each of which is individually not new. There is no originality in the mere copying or compiling of gene or similar hybrid sequences.

vs

DNA sequence could be an original work since it would not have existed but for the toil and effort of its creators who had put in their skill and labor into the process of decoding and recoding the sequence.



# The Budapest Treaty



# Why a specific treaty ?

- ▶ Requirement of sufficient disclosure of the invention
- ▶ How to disclose a microorganism?
- ▶ Requirement of the deposit of the microorganism
- ▶ Usefulness of a single internationally recognized deposit

# What is a microorganism?

- ▶ Microorganisms are microscopic organisms (e.g., bacteria, fungi, viruses and yeasts) which are used in the production of food (e.g., yogurt, beer), pharmaceuticals (e.g. antibiotics) and other products (e.g., washing powder)
- ▶ Definition in Concise Oxford Dictionary: « an organism not visible to the naked eye, e.g., bacterium or virus »

# Disclosure requirement

- ▶ Patent law protection requires the disclosure of inventions, usually by the publication of a description
- ▶ The public may use the information for experimental purposes (depending on the national patent law) and, once the patent has lapsed, for commercial purposes

# Disclosure of a microorganism

- ▶ Where an invention involves the use of or concerns a new microorganism which is not yet publicly available and which cannot be fully disclosed in the description, it is necessary to deposit a sample of that microorganism with a culture collection



# Multiplicity of deposits

- ▶ Many national laws require the deposit of microorganisms
- ▶ Complex and costly procedures for distinct deposits in various countries
- ▶ Necessity of rationalization at international level

# The Budapest Treaty

- ▶ Proposal by the United Kingdom to the Executive Committee of the Paris Union that WIPO study the possibilities of international treaty on deposits of microorganisms
- ▶ Decision to establish a Committee of Experts
- ▶ The Committee held three sessions (in 1974, 1975 and 1976) and prepared a draft of a Treaty and Regulations to be submitted to a Diplomatic Conference

# Adoption and signature

- ▶ Diplomatic Conference, held in Budapest, April 14 to 28, 1977
- ▶ Adoption of the Treaty on April 28, 1977
- ▶ Signature by 18 States: AT, BG, CH, DE, DK, ES, FI, FR, HU, IT, LU, NL, NO, SE, SN, SU, UK, US

# Entry into force

- ▶ Ratification by Hungary, Bulgaria, the United States and France
- ▶ Entry into force on August 19, 1980, after the accession of Japan
- ▶ Today:
  - 80 Contracting States
  - 46 International Depositary Authorities (IDAs)



# Contracting States (1)

Albania, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Bosnia and Herzegovina, Brunei Darussalam, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cuba, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominican Republic, El Salvador, Estonia, Finland, France, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, India, Ireland, Israel, Italy, Japan, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxemburg, Mexico, Monaco, Montenegro,

# Contracting States (2)

Morocco, Netherlands, Nicaragua, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Trinidad and Tobago, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uzbekistan.

# Declarations of acceptance

have been deposited by the following intergovernmental industrial property organizations:

- European Patent Organisation (EPO)
- Eurasian Patent Organization (EAPO)
- African Regional Intellectual Property Organization (ARIPO)

# Principal characteristics of the Treaty

- ▶ All Contracting States recognize the deposit of a microorganism with any IDA
- ▶ Any deposit of a microorganism with an IDA shall be accepted for the purposes of patent procedure by the patent offices of the Contracting States and by any regional office who filed a declaration of acceptance



# International Depository Authority (1)

- ▶ A scientific institution
  - located on the territory of a Contracting State
  - accepting deposits of microorganisms
  - storage of microorganisms
  - furnishing samples of any deposited microorganism

# International Depositary Authority (2)

- ▶ Status acquired after acceptance of communication from the Contracting State to the Director General of WIPO  
(Art. 7)

# IDA World Map



# The subject matter of the deposit

- ▶ The Treaty does not define the term microorganism thus allowing a broad interpretation of the term
- ▶ It includes unicellular and multicellular organisms, bacteria, fungi, plant, animal and human cell cultures, murine embryos, plasmids, seeds, etc.
- ▶ Today, the term « biological material » is more commonly used

# Most widely accepted kinds of MO by IDAs

- ▶ non-pathogenic yeasts 34
- ▶ non-pathogenic bacteria 34
- ▶ non-pathogenic fungi 32



# Deposit procedure

- ▶ Mandatory acceptance of the microorganism by the IDA when requirements for deposit are met
- ▶ Delivery of a receipt
- ▶ Time limit for the deposit: depends on the national law, in general, the filing date of the patent application
- ▶ Storage during at least 30 years

# **Rule 11: Access to deposited biological material**

- ▶ Any interested industrial property office
- ▶ The depositor or third parties authorized by the depositor
- ▶ Any parties legally entitled under the applicable legislation, with the prescribed form and certified by the industrial property office

# Budapest Treaty Statistics 2015

- ▶ Overall Deposits 4.893  
(nearly doubled since 2005)
- ▶ Samples Furnished 2.673

# The Top 8 IDAs in Terms of Deposits in 2015

- ▶ CGMCC (CN) 1.645, CCTCC (CN) 1.055, ATCC (US) 653,
- ▶ KCTC (KR) 231, DSMZ (DE) 217, NCIMB (GB) 157,
- ▶ NRRL (US) 155, KCCM (KR) 145

# The Aggregate of Deposits since February 1981

▶ Overall Deposits:	96.906
■ ATCC	31.114
▶ CGMCC	11.977
▶ IPOD (JP)	10.201
▶ DSMZ	7.988
▶ CCTCC	7.872



# Advantages of the Budapest Treaty

- ▶ Simplification and cost reduction of patent procedures
- ▶ Prevention of certain risks in the field of biotechnology
- ▶ Promotion of R&D through access to deposited biological material
- ▶ Promotion of cooperation and exchange between IDAs

# Advantages of the Budapest Treaty

- ▶ The Contracting States
  - must recognize the deposit with any IDA
  - must give the assurances that the IDAs fulfill the requirements of the Treaty
  - are not obliged to establish an IDA on their own territory
  - do not have to pay any financial contribution to WIPO

# Documentation on the Treaty

- ▶ Budapest Treaty and its Regulations
- ▶ Guide to the Deposit of Microorganisms under the Budapest Treaty
- ▶ ([www.wipo.int/budapest](http://www.wipo.int/budapest))

# Where to get information?

Budapest Treaty Section

Patent Law Division

WIPO

Chemin des Colombettes, 34  
1211 Geneva 20 (Switzerland)

Ewald Glantschnig

Tel.: 00 41 22 338 84 80

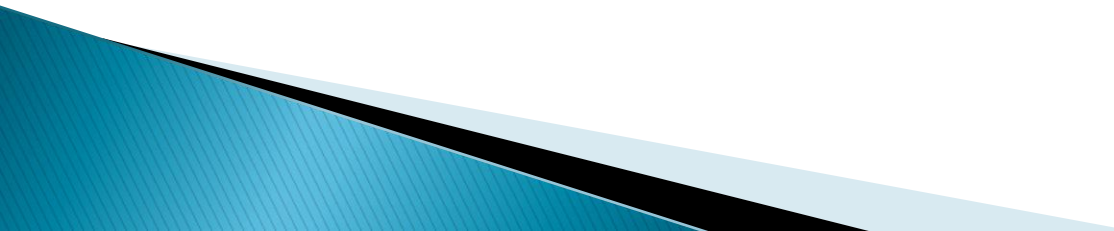
Fax: 00 41 22 338 88 30

E-mail: [ewald.glantschnig@wipo.int](mailto:ewald.glantschnig@wipo.int)


# The Madrid System



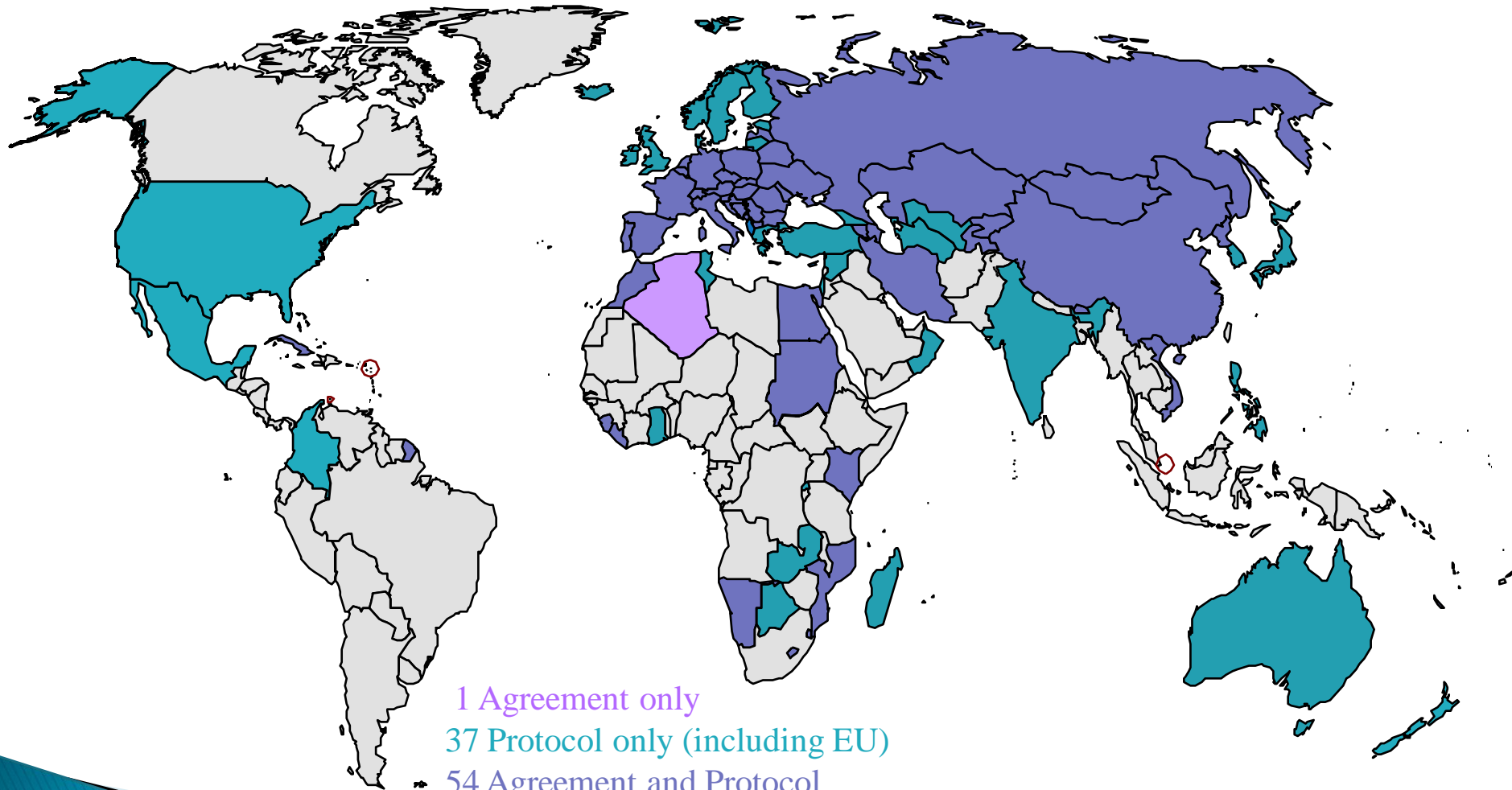
# Routes for Protecting a Trademark

- ▶ The national route: Filing trademark application with the Trademark Office of each country in which protection of the mark is sought
  - ▶ The regional route: Apply for protection in countries which are members of a regional trademarks registration system with effect in the territories of all Member States (ARIPO, Benelux Trademark Office, OHIM and OAPI)
  - ▶ The international route: The Madrid System
- 

# The Madrid System


- ▶ A centralized filing mechanism
  - ▶ A one-stop shop for trademark holders to obtain and maintain trademark protection in export markets
  - ▶ An option to the national route
  - ▶ A purely procedural treaty
  - ▶ The domestic legislations of the designated Contracting Parties set the conditions for protecting a trademark and determine the rights which result from protection
- 

# The Members of the Madrid System



1 Agreement only  
37 Protocol only (including EU)  
54 Agreement and Protocol  
92 Members

# Accessions

- ▶ Significant geographical expansion of the Madrid system
  - ▶ 2012: The Philippines, Colombia, New Zealand and Mexico
  - ▶ 2013: India, Rwanda and Tunisia (October 16, 2013)
  - ▶ Future accessions?
    - Latin American countries
    - ASEAN countries by 2015
    - Caribbean countries
    - African countries
- 

# Key Principles of the Madrid System

- ▶ Entitlement and Basic Mark:

In order to use the Madrid system, you need a connection with a Contracting Party (CP), like establishment, domicile or nationality, and a mark applied for or registered (basic mark) with that CP (Office of origin)

- ▶ One to Many Relationship:

File a single international application through the Office of origin for a single international registration (IR) in which one or more Contracting Parties (CP) are designated

- ▶ Renewal:

Every 10 years



# Key Principles of the Madrid System

- ▶ Fixed Time Limit for Refusal:

A CP will need to refuse protection within 12/18 months, otherwise the mark will be deemed protected

- ▶ “Bundle of Rights”:

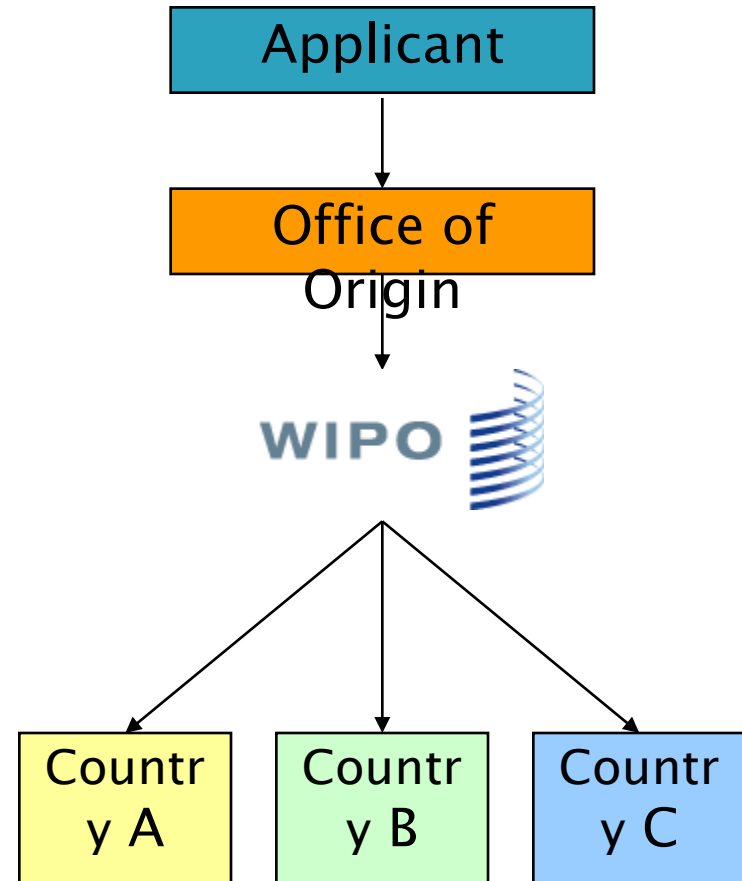
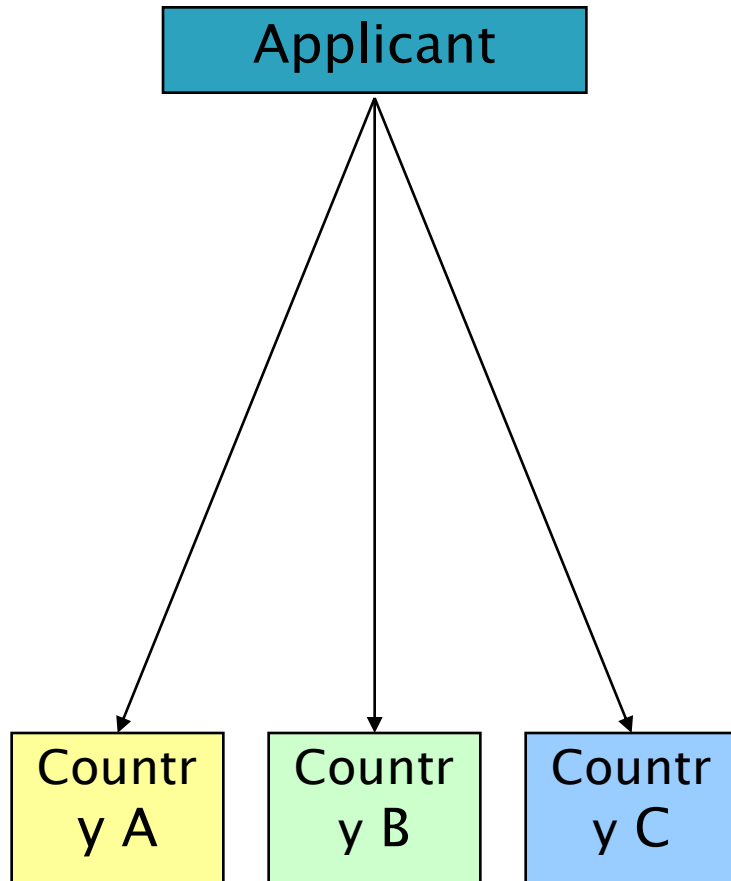
If no refusal is issued, the resulting IR has the effect of a grant of protection in each designated CP

- ▶ Extending the Geographical Protection:

Additional countries may later be included in the IR by subsequent designation



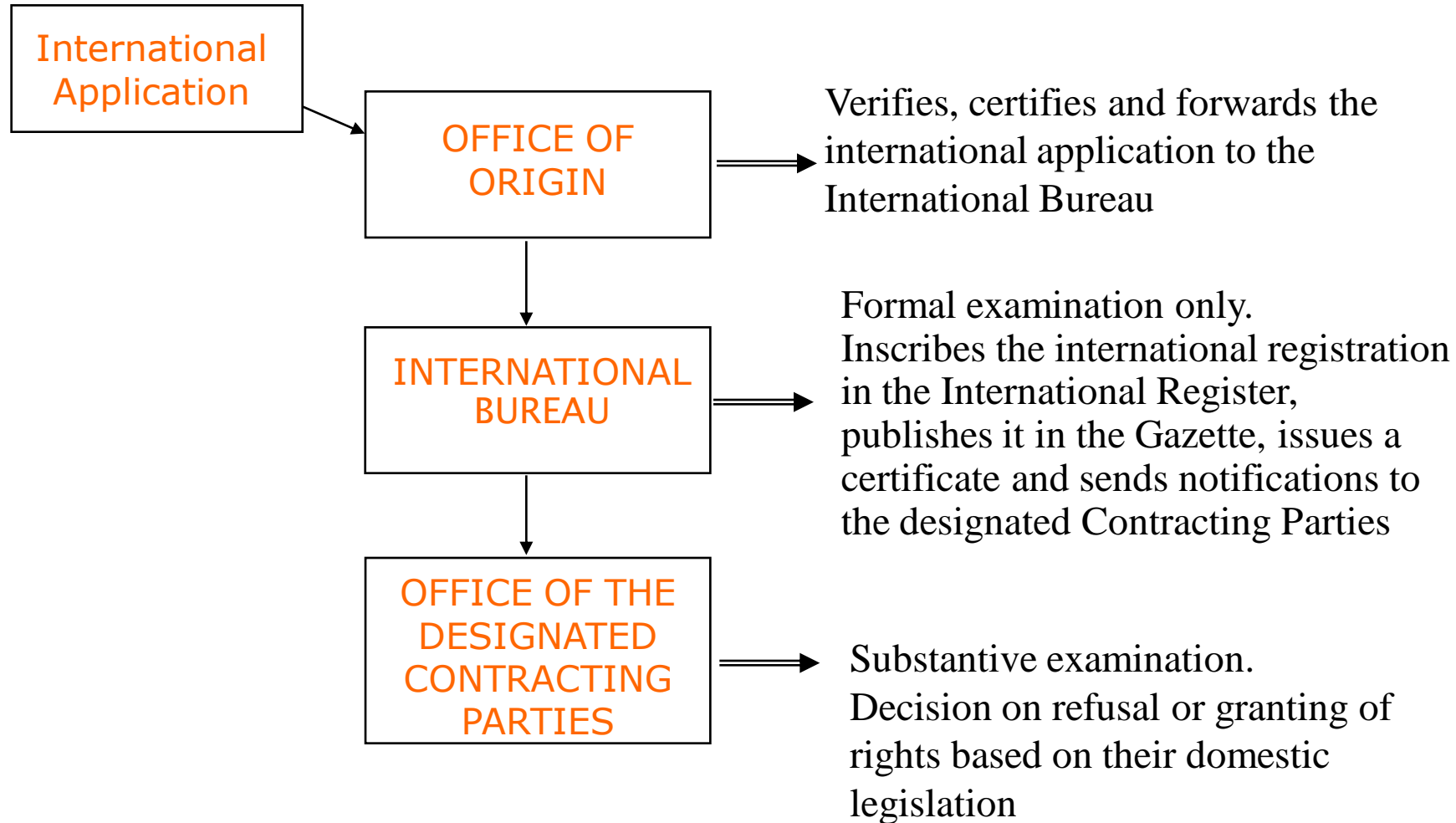
# Filing Options



# The National Route vs. the Madrid Route

- ▶ Many Offices for filing
  - ▶ Many application forms
  - ▶ Many languages
  - ▶ Many currencies
  - ▶ Many registrations
  - ▶ Many renewals
  - ▶ Many modifications
  - ▶ Foreign attorney needed from filing
- ▶ One Office for filing
  - ▶ One single application form
  - ▶ One language (E/F/S)
  - ▶ One currency (CHF)
  - ▶ One international registration
  - ▶ One renewal
  - ▶ One modification
  - ▶ Foreign attorney first needed in case of refusal

# International Registration Procedure



# Online Tools

- ▶ **Madrid Goods and Services Manager (MGS):** To use correct specifications of goods and services
- ▶ **Madrid Real-Time Status (MRS):** To inform of the status of an international application/registration
- ▶ **Madrid Portfolio Manager (MPM):** To allow the holders and representatives to view and modify their portfolio
- ▶ **Madrid Electronic Alerts (MEA):** To allow users to submit a list of IRs to monitor and to be informed by email when any of them change
- ▶ Accessible from


<http://www.wipo.int/madrid/en/services/>



# Benefits for Trademark Owners

- ▶ Simple and economical procedure
  - A single set of simple formalities
  - A single filing Office
  - Low registration fees
  - No need to pay foreign agents for filings
  - No need to pay translation of the paperwork into several languages
- ▶ Effective procedure
  - A single international application produces the same legal effect in various countries
  - A fixed deadline for the confirmation or refusal of the legal effects in each designated country

# Benefits for the Office and Government

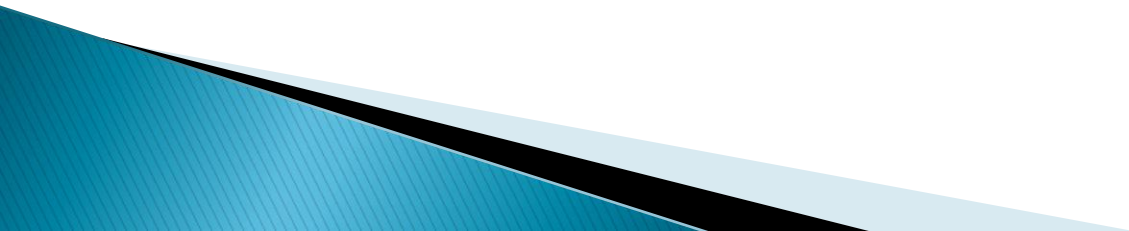
- ▶ The Contracting Parties can focus on substantive examination
  - ▶ The income through the Madrid system is relevant to the number of designations to the specific Contracting Party
  - ▶ The Madrid system has a positive effect on economic growth
  - ▶ It empowers SMEs
  - ▶ It promotes international trade by contributing to the opening of new markets and assisting in development of export
  - ▶ It creates a more favorable climate for foreign investment in the internal market
- 

# Benefits for Local Agents

- ▶ The Madrid Protocol is optional and it does not replace the direct filing route
- ▶ Applicants would need the services of local agents at filing stage or at post-registration stage
- ▶ Increased designations will create more business opportunities (substantive work), like searches, refusals, oppositions, request for cancellations, dispute settlements, license and assignments contracts, and enforcement
- ▶ Post-registration activity may compensate for any reduction in local filing activity

Expanding of services?

# The Hague System



# *WIPO Director General Francis Gurry:*

*“Design is one of the principal means of differentiating a range of mass produced household and consumer items, such as chairs and tables, for which the technological possibilities for development have been exhausted.”*

***DM/075065***

***« Chair »***

1.6



***DM/076022***

***« Chair »***

1.1



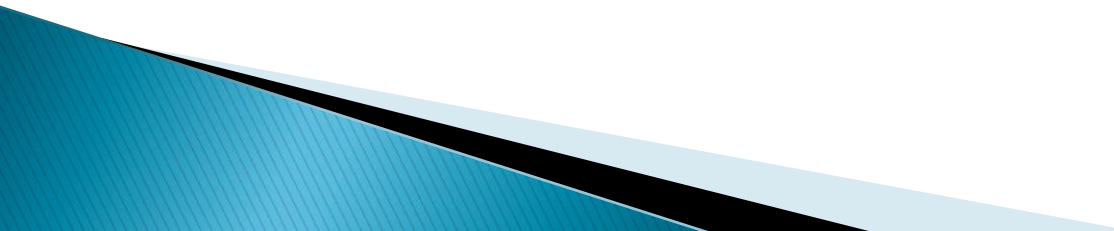


# In a Nutshell

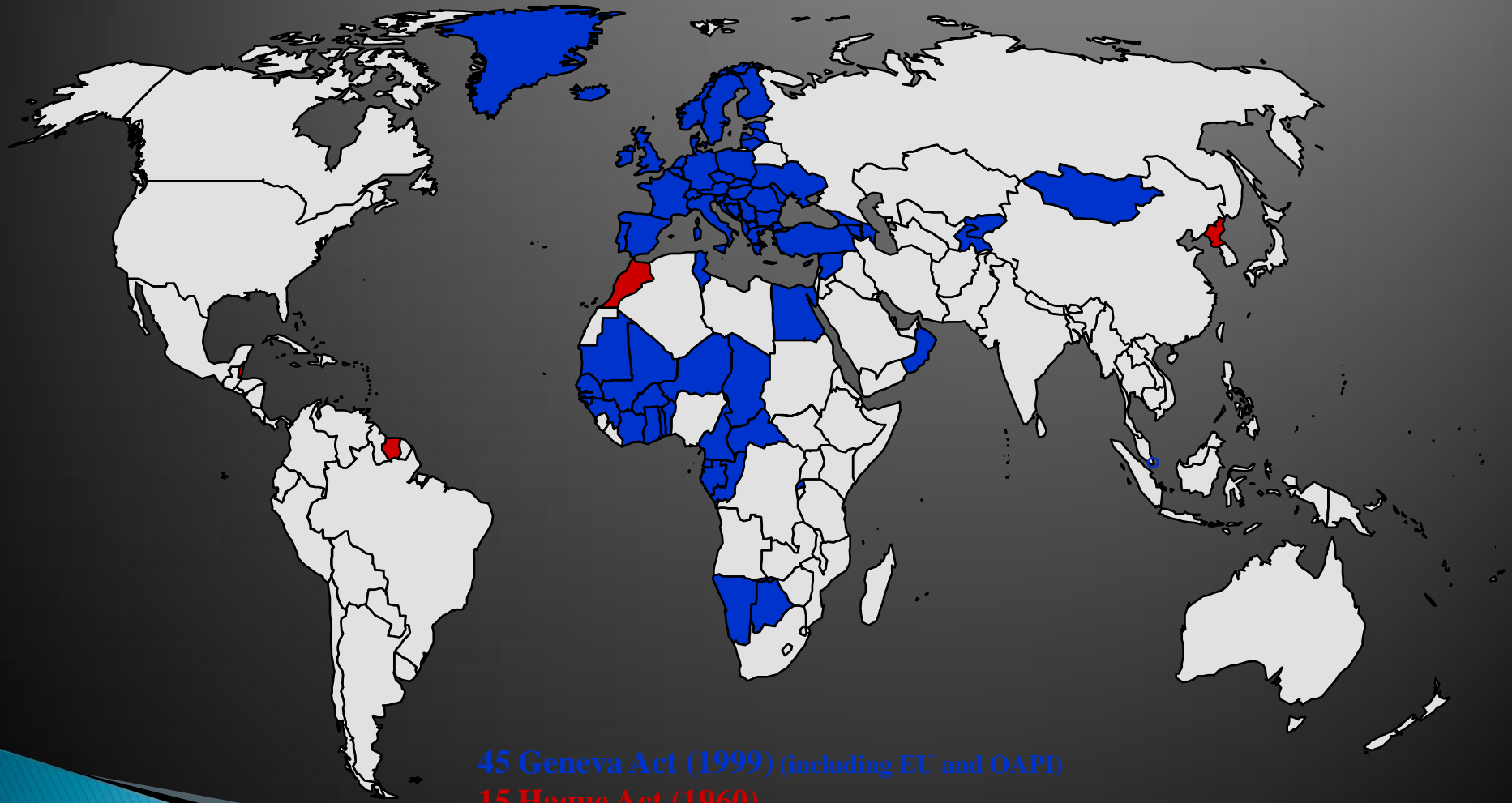


“The Hague Agreement provides creators and holders of designs with a simple, rapid and economical procedure to secure and maintain the protection of industrial designs, through a single international registration”

# The Hague System

- ▶ A centralized filing mechanism
  - ▶ A one-stop shop to obtain and maintain design protection in export markets
  - ▶ An option to the national route
  - ▶ A purely procedural treaty
  - ▶ The domestic legislations of the designated Contracting Parties set the conditions for protecting the design and determine the rights which result from protection
- 

# The Hague System



45 Geneva Act (1999) (including EU and OAPI)

15 Hague Act (1960)

---

60 Contracting Parties

# Accessions

- ▶ 2010: Germany, Norway, Azerbaijan
- ▶ 2011: Finland, Monaco, Rwanda
- ▶ 2012: Montenegro, Tajikistan, Tunisia
  
- ▶ Future accessions?
  - China, Japan, Republic of Korea and USA
  - Russian Federation and Belarus
  - ASEAN countries by 2015
  - Barbados and Trinidad & Tobago
  - Madagascar and Morocco

# Key Principles of the Hague System

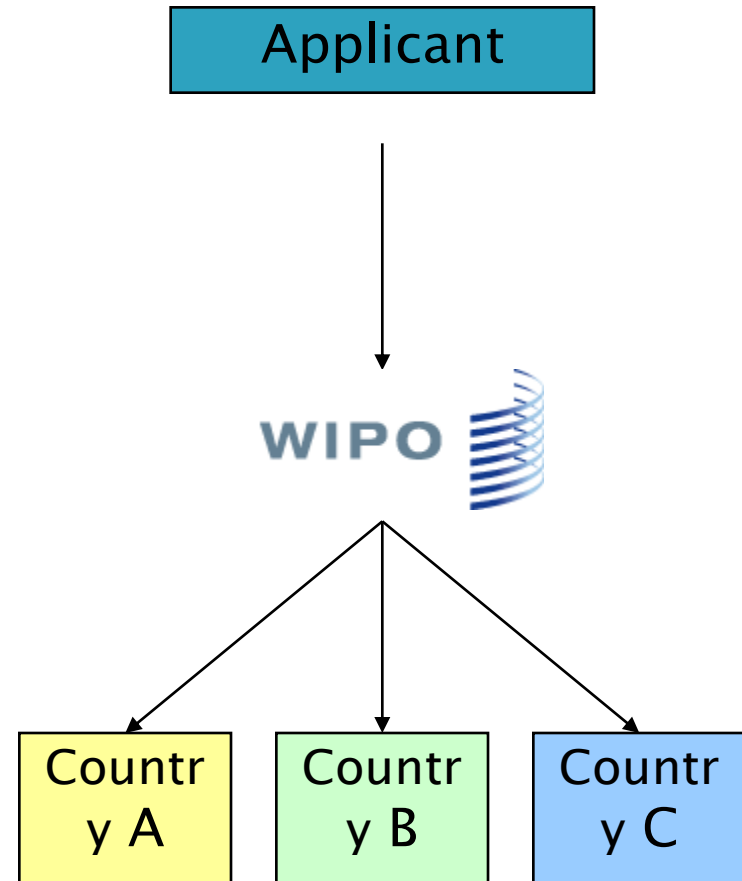
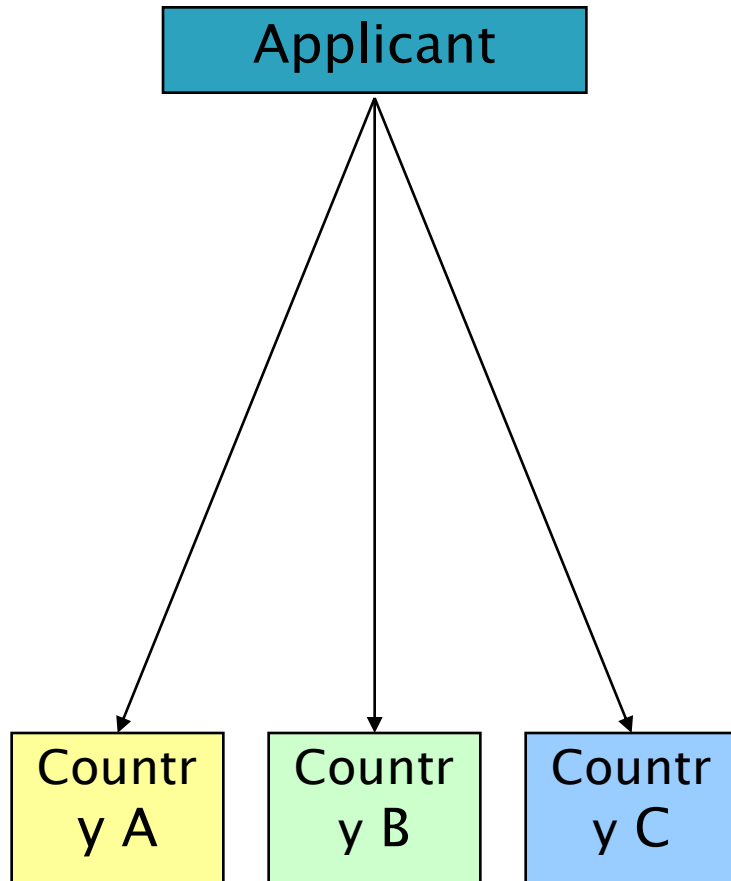
- ▶ Entitlement: In order to use the Hague system, you need a connection with a Contracting Party (CP), like establishment, domicile, nationality or habitual residence
- ▶ One to Many Relationship:  
File a single international application for a single international registration (IR) in which one or more Contracting Parties (CP) are designated (“self-designation“ is possible)
- ▶ Renewal:  
Duration: 5 years renewable. 15 years for the 1999 Act or possibly longer if allowed by designated CP



# Key Principles of the Hague System

- ▶ Possible deferment of up to 12 months:  
Counted from date of filing or priority date
- ▶ Fixed Time Limit for Refusal:  
Any refusal must be notified to the International Bureau within 6 or 12 months from the publication of the international registration on the WIPO website, otherwise the design will be deemed protected
- ▶ “Bundle of Rights”:  
If no refusal is issued, the resulting IR has the effect of a grant of protection in each designated CP

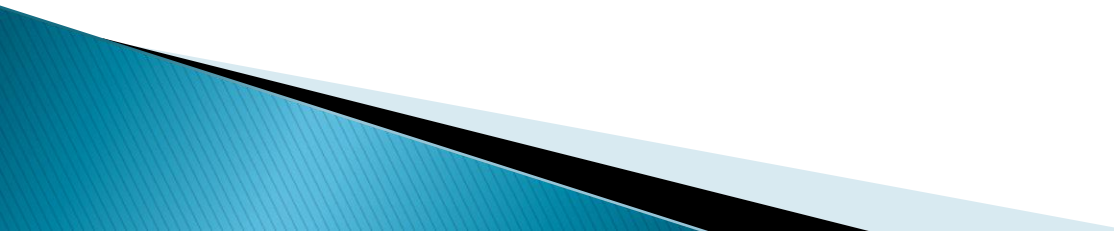
# Filing Options



# The National Route vs. the Hague Route

- ▶ Many Offices for filing
  - ▶ Many application forms
  - ▶ Many languages
  - ▶ Many currencies
  - ▶ Many registrations
  - ▶ Many renewals
  - ▶ Many modifications
  - ▶ Foreign attorney needed from filing
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  - ▶ One single application form
  - ▶ One language (E/F/S)
  - ▶ One currency (CHF)
  - ▶ One international registration
  - ▶ One renewal
  - ▶ One modification
  - ▶ Foreign attorney first needed in case of refusal

# The Registration Procedure

- ▶ Only formal examination in the International Bureau
    - Recording in the International Register
    - Publication in the *International Designs Bulletin*
    - Notification to designated CPs through the publication
  
  - ▶ Substantive examination by the designated Contracting Parties only
    - Refusal must be received in the International Bureau within a set time limit publication, 6 or 12 months
- 

# The Use of the Hague System in 2012

- ▶ 2,604 international applications filed (12,454 designs)
- ▶ 2,440 international registrations recorded (11,971 designs)
- ▶ Largest filers: Swatch AG, Daimler AG, Koninklijke Philips Electronics
- ▶ Approximately 26,284 international registrations in force, containing 110,158 designs
  - Equivalent to over 131,420 designations in force
  - Involving 8,029 holders
  - 80% SMEs?



# Top Filing Contracting Parties

Contracting Party of entitlement

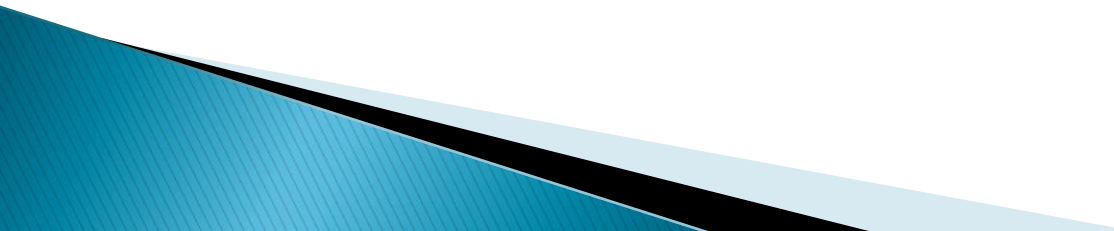
- ▶ 1. European Union (5168 designs, 41.5%)
- ▶ 2. Switzerland (2855 designs, 22.9%)
- ▶ 3. Germany (1630 designs, 13.1%)
- ▶ 4. France (1265 designs, 10.2%)
- ▶ 5. Turkey (278 designs, 2.2%)
- ▶ 6. Norway (186 designs, 1.5%)
- ▶ 7. Spain (101 designs, 0.8%)
- ▶ 8. Poland (86 designs, 0.7%)
- ▶ 9. Croatia (76 designs, 0.6%)
- ▶ 10. Liechtenstein (73 designs, 0.6%)

# Most Designated Contracting Parties


Number of designs recorded:

- ▶ 1. European Union (8961 designs, 74.9%)
- ▶ 2. Switzerland (8802 designs, 73.5%)
- ▶ 3. Turkey (5110 designs, 42.7%)
- ▶ 4. Ukraine (2853 designs, 23.8%)
- ▶ 5. Singapore (2531 designs, 21.1%)
- ▶ 6. Norway (2389 designs, 20%)
- ▶ 7. Croatia (2376 designs, 19.8%)
- ▶ 8. Morocco (1853 designs, 15.5%)
- ▶ 9. Liechtenstein (1499 designs, 12.5%)
- ▶ 10. Serbia (1494 designs, 12.5%)

# Latest Developments

- ▶ Weekly publication cycle since January 2012
  - ▶ Enhancement of the E-filing interface as from June, 2013
    - A WIPO User account
    - Facilitated downloading of reproductions
    - Automatic check and transformation of images
    - Integrated fee calculator
    - Payment of fees by credit card
- 

# Advantages

- ▶ The Hague System is cost-effective and efficient, thereby creating opportunities that would not otherwise exist for any enterprise with a limited legal budget
  - ▶ It is flexible affording right holders great flexibility in targeting national, regional or global markets for particular goods
  - ▶ The centralized acquisition and maintenance of industrial design rights by filing a single international application for a single international registration with effect in one or more designated Contracting Parties
- 

# UNIT-3

# PATENTS



# What is an Invention?

## Sec.2(1)(j)

**“Invention” means a new product or process involving an inventive step and capable of industrial application**

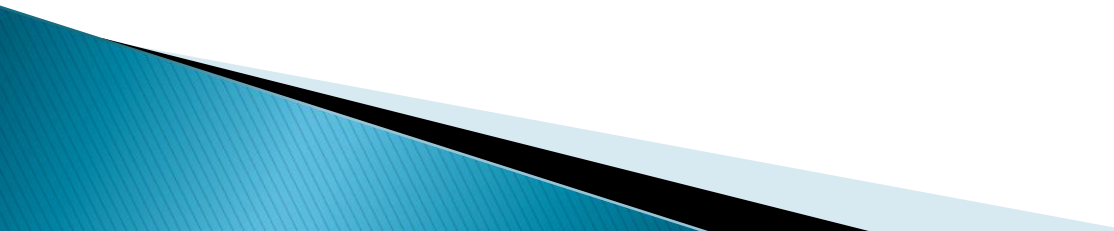
# Patentable subject matter

## Invention must

- ◆ relates to a **Process or Product** or both
- ◆ be new **(Novel)**
- ◆ involves an **inventive step**
- ◆ be Capable of **industrial application**
- ◆ not fall under **Section 3 and 4**

# **“NEW” MEANS**

## **Invention must not be**

- **Published in India or elsewhere**
  - **In prior public knowledge or prior public use with in India**
  - **Claimed before in any specification in India**
- 

# Section 3 exclusions

## Section 3(a)

- ▶ Frivolous inventions
- ▶ Inventions contrary to well established natural laws

### *Examples*

- Machine that gives more than 100% performance
- Perpetual machine

# Section 3 exclusions

## Section 3(b)

Commercial exploitation or primary use of inventions, which is

- **Contrary to**
  - public order or
  - Morality

### *Examples*

- Gambling machine,
- Device for house-breaking ,



# Section 3 exclusions

## Section 3(b)

Commercial exploitation or primary use of inventions , which

- **Causes serious Prejudice to**
  - health or
  - human, animal, plant life or
  - to the environment

### *Examples*

- Biological warfare material or device, weapons of mass destruction
- Terminator gene technology,
- Embryonic stem cell

# Checks and Balances

## Section 3(b)

Excludes patents on

- ▶ GMOs – exploitation of which could be contrary public order or morality or prejudicial to human, animal or plant life or health or to the environment

**Effect** : Only genetically modified micro-organisms (GMOs) which do not fall under section 3 (b) are patentable.

# Section 3 exclusions

## Section 3 ( c )

- ▶ Mere Discovery of a Scientific Principle or
- ▶ formulation of an Abstract Theory or
- ▶ discovery of any living thing or
- ▶ discovery of non-living substance occurring in nature

### *Examples*

- Newton's Laws
- Superconducting Phenomenon as such
- Property of certain material to withstand mechanical shock
- Discovery of micro-organism
- Discovery of natural gas or a mineral

# Checks and Balances

## Section 3(c)

Excludes patents on

- ▶ Naturally occurring Micro-organisms

### *Effect*

Genetically modified microorganisms (GMOs) are however, patentable.

# Section 3 exclusions

## Section 3 (d)

- The mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance



# Section 3 exclusions

## Section 3 (d) Explanation

For the purposes of this clause,

- ▶ salts, esters, ethers, polymorphs,
- ▶ metabolites, pure form, particle size,
- ▶ isomers, mixture of isomers,
- ▶ complexes, combinations and other derivatives of known substances

*shall be considered to be the same substance, unless they differ significantly in properties with regard to **efficacy**.*

## *Examples*

- Crystalline forms of known substance

# Checks and Balances

## Section 3 (d) Explanation

### *Effect*

Salts, esters, ethers, polymorphs, metabolite, pure forms, particle size, isomers, complexes, combinations and derivatives of a known substance with enhanced efficacy are patentable

# Section 3 exclusions

## Section 3 (d)

- Mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus, *unless such known process results in a new product or employs at least one new reactant.*

## *Examples*

- New use of Aspirin for heart ailments,
- Mere new uses of Neem

# Section 3 exclusions

## Section 3(e)

Substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance

### *Examples*

- Combiflam [Paracetamol (Antipyretic) + Brufen (analgesic)]
- Solution of sugar and color additives in water to form a soft drink

*However,*

*A mixture resulting into synergistic properties of mixture of ingredients however, may be patentable  
– Soap, Detergents, lubricants etc*

# Checks and Balances

## Section 3 ( e )

### *Effect*

- Substance obtained by mere admixture resulting only in the aggregation of the properties of the components thereof or
  - a process for producing such substance
- are not patentable**

### *However*

Synergistic formulations are patentable



# Section 3 exclusions

## Section 3 ( f )

Mere arrangement or re-arrangement or duplication of known devices, each functioning independently of one another in a known way

### *Examples*

- A Bucket fitted with torch,
- An Umbrella with fan
- A Clock and radio in a single cabinet
- A flour-mill provided with sieving

# Section 3 exclusions

## Section 3(h)

### Method of Agriculture or Horticulture

#### *Examples*

- Cultivation of algae ,
- Producing new form of a known plant,
- Preparation of an improved soil

#### *However,*

Agricultural Equipments are patentable

# Section 3 exclusions

## Section 3(i)

Any process for medicinal, surgical, curative, prophylactic, diagnostic, therapeutic or other treatment of human beings *OR* a similar treatment of animals to render them free of disease *OR* to increase their economic value or that of their products

## *Examples*

- Removal of cancer tumor
- Removal of dental plaque and carries
- Surgical processes
- Processes relating to therapy
- Method of vaccination,
- Blood transfusion

## *However,*

- Treatment performed on tissues or fluids permanently removed from the body
- Surgical, therapeutic or diagnostic Apparatus or instruments  
are patentable

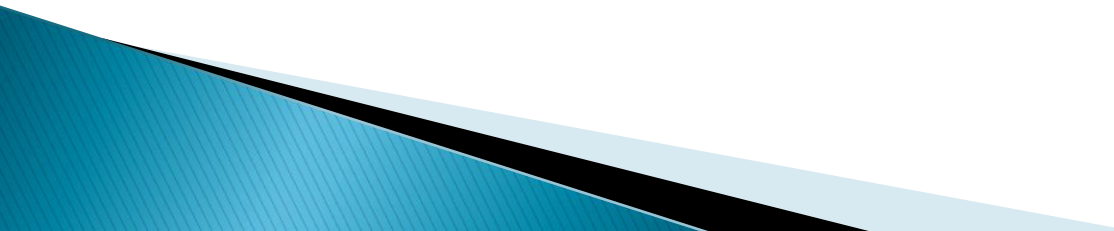
# Section 3 exclusions

## Section 3(j)

Plants & animals in whole or any part thereof other than micro-organisms, but including seeds, varieties and species and essentially biological process for production or propagation of plants & animals

# Section 3 exclusions

## Section 3(j)

- ▶ Plants & animals in whole
  - ▶ Parts of plants & animals
  - ▶ Seeds
  - ▶ Varieties & species
  - ▶ Essentially biological processes for propagation or production of the animals & plants
- 



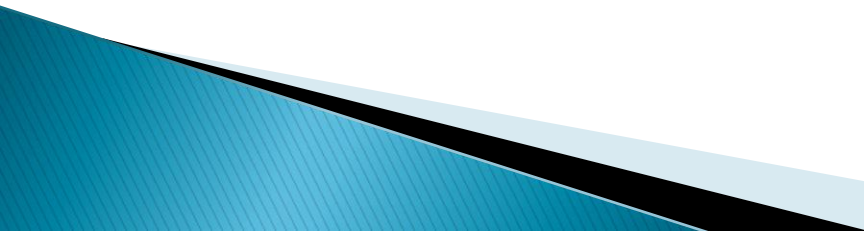
# Checks and Balances

## Section 3(j)

Excludes patents on

- ▶ Plants and animals in whole or any parts thereof, ..... including seeds, varieties and species and essentially biological processes for production or propagation of plants and animals

## *Examples*

- Clones and new varieties of plants
  - A process for production of plants or animals if it consists entirely of natural phenomena such as crossing or selection
  - Essentially biological Process
- 

# Section 3 exclusions

## Section 3(k)

- \* mathematical method or
- \* business method or
- \* algorithms or
- \* computer programme *per se*

### *Examples*

- *Computer program by itself or as a record on a carrier*

### *However*

- New calculating machine
- combination of hardware and software  
is patentable

# Section 3 exclusions

## Section 3(l)

A literary, dramatic, musical or artistic work or any other aesthetic creation including cinematographic work and television productions

**These subject-matters fall under the copyright protection**

# Section 3 exclusions

## Section 3(m)

A mere scheme or rule or method of performing mental act or method of playing game

### *Examples*

- ▶ Scheme for learning a language
- ▶ Method for solving a crossword puzzle,
- ▶ Method of learning a language
- ▶ Method of teaching /learning

### *However,*

- ▶ Novel apparatus for playing game or carrying out a scheme *is patentable*

# Section 3 exclusions

## Section 3 (n)

### Presentation of information

#### *Examples*

- Any manner or method of expressing information whether by
  - *spoken words*
  - *Visual display*
  - *symbols*
  - *diagrams*
- Information recorded on a carrier



# Section 3 exclusions

## Section 3 (o)

**Topography of integrated circuits.**

*Examples*

**Mask works - circuits layout**

# Section 3 exclusions

## Section 3 (p)

Inventions which are

Traditional Knowledge or an aggregation or duplication of known properties of traditionally known component or components

## *Examples*

Traditional Knowledge already in public domain  
– Wound healing property of Haldi

## *However,*

Any value-addition using Traditional Knowledge leading to a new process or product, which is novel with inventive step and industrial applicability,

■ Extraction of Azadirachtin from Neem  
can be *patented*

# Non Patentable inventions

## Section 4

Inventions falling within Section 20(1) of the Atomic Energy Act, 1962 are not patentable

### *Effect*

Inventions relating to compounds of Uranium, Beryllium, Thorium, Plutonium, Radium, Graphite, Lithium and more as notified by Central Govt. from time to time.

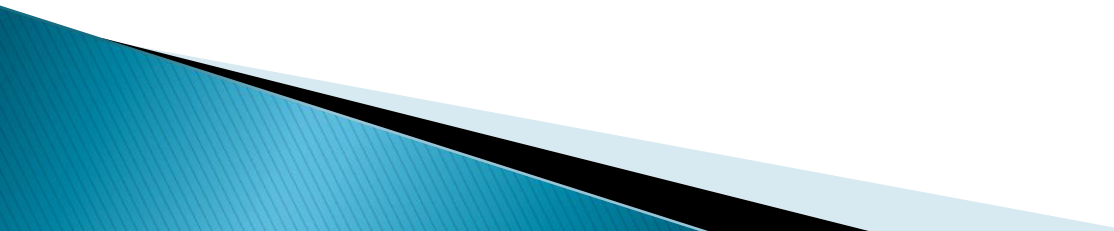
# Stages from filing to grant of a patent

# Obtaining a patent


- ▶ File an application for patent
  - With one of the patent offices based on territorial jurisdiction of the place of office or residence of the applicant /agent
  - Pay the required fee
- ▶ Information concerning application form and details of fee available at [www.ipindia.nic.in](http://www.ipindia.nic.in)
- ▶ Guidelines for applicants also available on this website



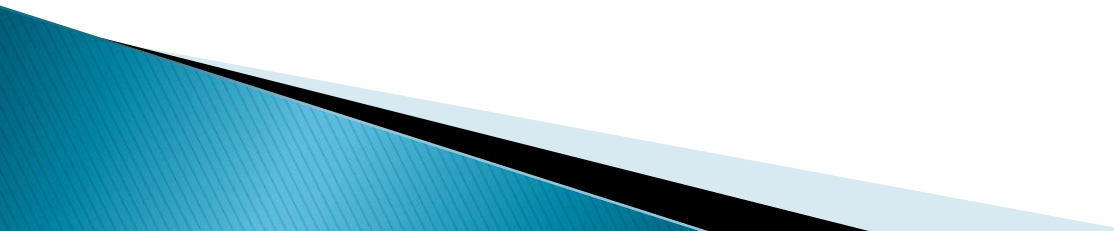
# Formality Check

- ▶ An Examiner checks the formal requirements before accepting the application and the fee – this is done immediately
  - ▶ Issue of application number and the cash receipt – this is done the same day
  - ▶ In case of receipt of application by post, cash receipt, application number is sent by post within 2–3 days
- 

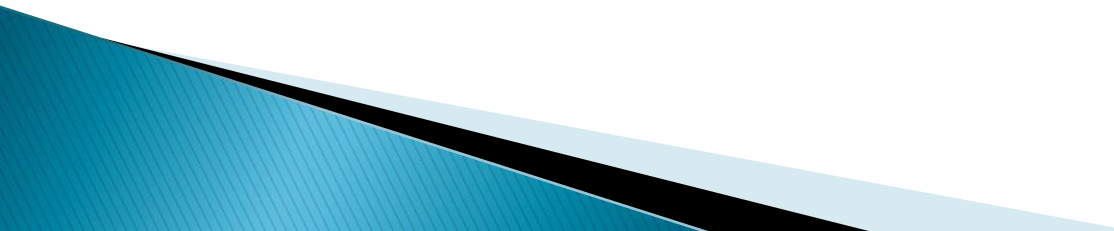
# Publication

- ▶ Application is kept secret for a period of 18 months from the date of filing
  - ▶ In 19<sup>th</sup> month, the application is published in the official journal – this journal is made available on the website weekly
  - ▶ Applicant has an option to get his application published before 18 months also
  - ▶ In that case, application is published within one month of the request
- 

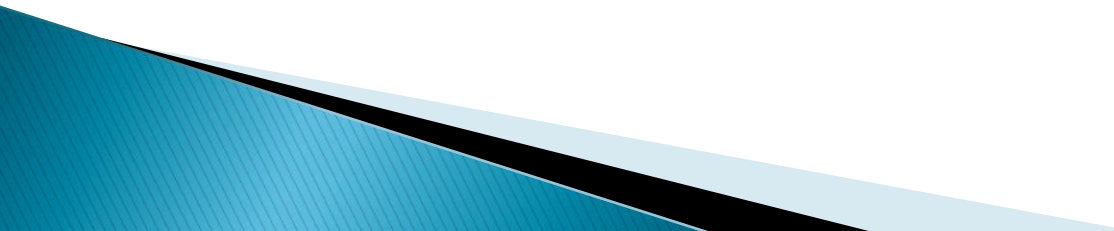
# Request for Examination

- ▶ Application is examined on request
  - ▶ Request for examination can be made either by the applicant or by a third party
  - ▶ A period of 48 months, from the date of filing, is available for making request for examination
- 

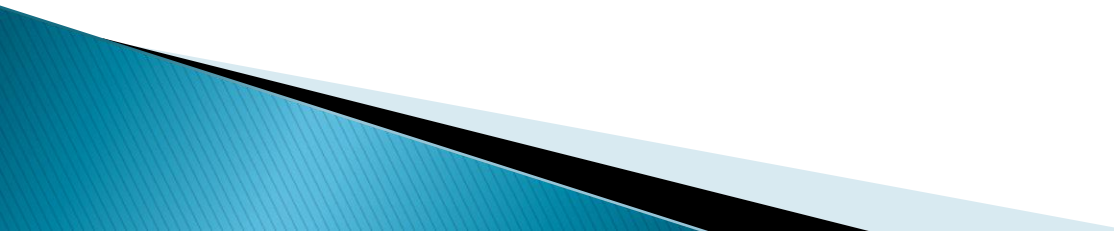
# Examination

- ▶ Application is sent to an Examiner within 1 month from the date of request for examination
  - ▶ Examiner undertakes examination w.r.t.
    - whether the claimed invention is not prohibited for grant of patent
    - whether the invention meets the criteria of patentability
- 

# Issue of FER

- ▶ A period of 1 to 3 months is available to Examiner to submit the report to the Controller
  - ▶ 1 month's time available to Controller to vet the Examiner's report
  - ▶ First Examination Report (FER) containing gist of the objections is issued within 6 months from the date of filing of request
- 

# Response from the Applicant

- ▶ 12 months' time, from the date of issue of FER, is available to the applicant to meet the objections
  - ▶ If objections are met, grant of patent is approved by the Controller – within a period of 1 month
- 

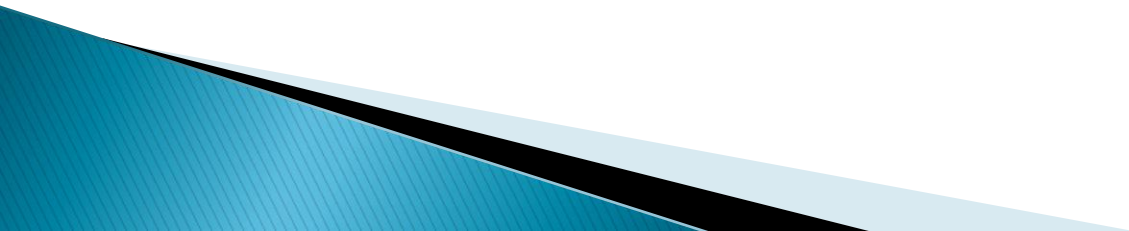


# Grant of a Patent

- ▶ A certificate of patent is issued within 7 days
- ▶ Grant of patent is published in the official journal

# UNIT-4

## GEOGRAPHICAL INDICATION





# Contents



- Geographical Indications (GI)
  - Types of GI
- Why GI needs to be protected?
  - Advantages of GI
- How are GIs Protected?
  - WIPO and GI
- GI in India and Italy



# What is Geographical Indication?

- ▶ A **geographical indication (GI)** is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region, or country)
- ▶ Examples: Basmati rice, Swiss watches etc

# Types of GI



- Protected designations of origin (PDO):
  - Characteristics resulting solely from the terrain and abilities of producers in the region of production with which they are associated. (require all stages of the food production process to be carried out in the area concerned)
  - “Huile d’olive de Nyons” and “Shetland lamb”



# Types of GI



## ▶ **Protected geographic indications (PGI):**

- Characteristic or reputation associating them with a given area, and at least one stage in the production process must be carried out in that area, while the raw materials used in production may come from another region
- “Arancia Rossa di Sicilia”





# **Why GI is to be protected ?**

- ▶ Denote quality and origin of products
- ▶ Good reputation for the product
- ▶ Preventing the product from generic products
- ▶ Protecting the domestic market from competitors



# Advantages of GI:



- ▶ Legal protection and preventing from unauthorized use
- ▶ Benefits for farmers and local producers
- ▶ Boost the rural development
- ▶ Reduces unfair practices of trade
- ▶ Preserving local culture and resources
- ▶ Provides complete information to consumers

# How are GIs protected?



- ▶ In accordance with international treaties and national laws under a wide range of concepts:
  - special laws for the protection of geographical indications or appellations of origin
  - trademark laws in the form of collective marks or certification marks
  - laws against unfair competition
  - consumer protection laws, or
  - specific laws or decrees that recognize individual geographical indications.

# WIPO and GI:



- ▶ International treaties: part or entire protection of geographical indications.
- ▶ **Providing General Standards of Protection:**
  - **Paris Convention:** (Article 10 and 10ter) False indications of the source of goods
  - **Madrid Agreement:** Repression of False or deceptive indication of source of goods.

# WIPO and GI:



## ► Governing Registration System for obtaining Protection:

- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
- Madrid Agreement Concerning the International Registration of Marks
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (which also provides for the international registration of certification marks)

# WIPO and GI:

- ▶ **The TRIPS Agreement** - (came into effect on 1 January 1995): addresses the international protection of GIs within the framework of the World Trade Organization (WTO)
  - Standards
  - Enforcement
  - Dispute Settlement
- ▶ Articles 22 to 24: definition - legal means - ex-officio invalidation - unfair competition - exceptions.





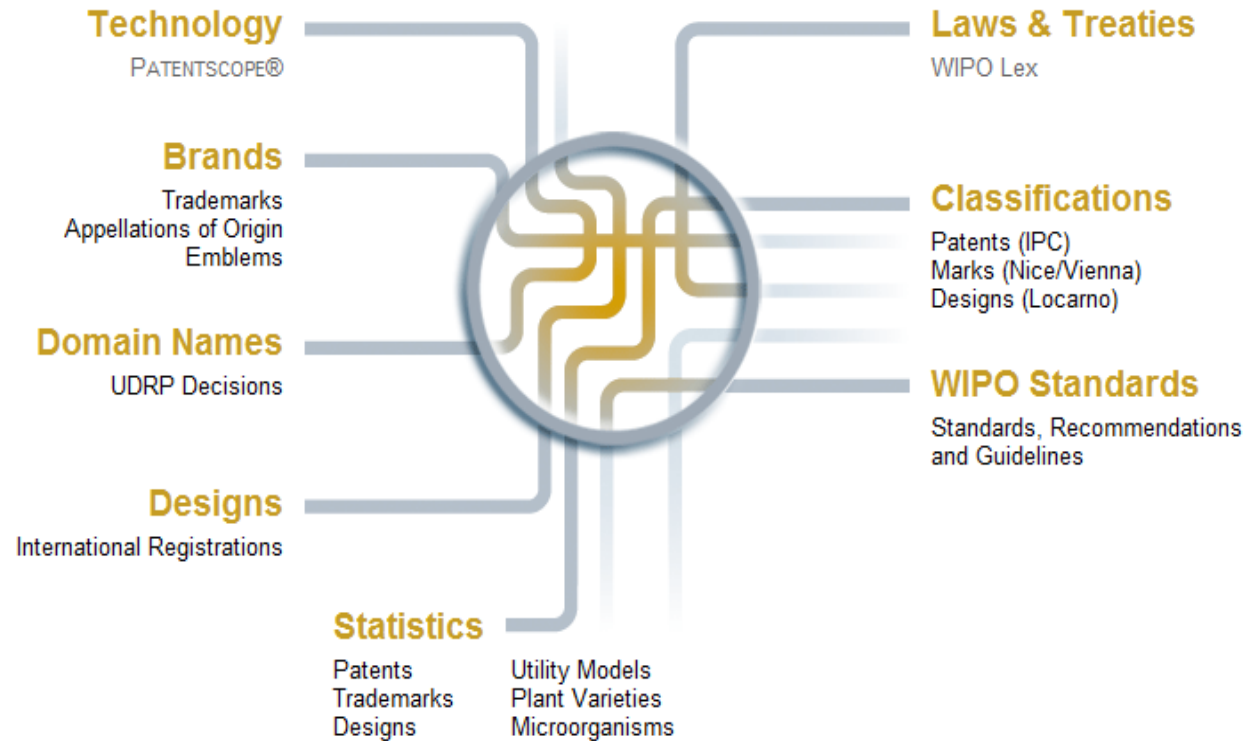
# WIPO and GI:



- ▶ Through the work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT).
- ▶ The WIPO international/worldwide Symposia, (held every two years).
- ▶ WIPO GOLD is a free public resource which provides a one-stop gateway to WIPO's global collections of searchable IP data.



# WIPO GOLD



# GI in India:



- ▶ In India the Geographical Indications of Goods (Registration and Protection) Act, 1999 came in force with effect from September 2003.
- ▶ **Section 2(e) of the Act defines a GI as :**  
*“geographical indication”, in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.”*

# Process of registration in India:

- ▶ Producers dealing with the following three categories of goods can apply:
  - Agricultural Goods includes the production, processing, trading or dealing
  - Natural Goods includes exploiting, trading or dealing
  - Handicrafts or Industrial goods include making, manufacturing, trading or dealing



# How to apply?

- ▶ The application must be filed at the Office of the GI Registry located in Chennai
  - Geographical Signification of the Indication
  - Class of goods;
  - Geographical Area;
  - Details of the appearance;
  - Particulars of the producers;
  - Affidavit deposing the Applicant's right to become the Registrant;



- ▶ The Registrar will have the Application examined.
- ▶ Published in the GI journal.
- ▶ Notice of Opposition within a maximum period of four months of publication in the Journal.
- ▶ If the Registrar accepts the Application then a certificate of registration issued.







प्ररूप O-2

बौद्धिक सम्पदा भारत

भारत सरकार  
GOVERNMENT OF INDIA

भौगोलिक उपदर्शन रजिस्ट्री  
Geographical Indication Registry

वस्तुओं का भौगोलिक उपदर्शन (रजिस्ट्रीकरण तथा संरक्षण) अधिनियम, 1999  
Geographical Indication of goods (Registration and Protection) Act, 1999

धारा 16 (1) के अधीन भौगोलिक उपदर्शन अथवा धारा 17 (3) (ई) के अधीन प्राधिकृत उपयोक्ता के रजिस्ट्रीकरण का प्रमाणपत्र  
Certificate of Registration of Geographical Indication under section 16 (1) or of authorised user under section 17(3)(e)

भौगोलिक उपदर्शन संख्या:  
Geographical Indication No.: 17

Certificate No. 40

प्राधिकृत उपयोक्ता संख्या  
Authorised user No.:

दिनांक  
Date: 25.11.2004

प्रमाणित किया जाता है कि भौगोलिक उपदर्शन (जिसकी समाकृति इसके साथ उपानुद्ध है) / प्राधिकृत उपयोक्ता  
नवारा चावल किसान समाज, करुकामनिकलम, चित्तूर कॉलेज पीओ,  
पालक्काड - 678 104, केरल, भारत

के नाम से 30 वर्ग में 17 संख्या के अधीन 25.11.2004 दिनांक को  
नवारा चावल  
की 30 के चावल

के लिए रजिस्टर में रजिस्ट्रीकृत किया गया है।

Certified that the Geographical Indication (of which a representation is annexed hereto)/ authorised user has been registered in the register in the name of Navara Rice Farmers Society, Karukamanikalam, Chittur College, Palaakkad-678104, Kerala State.

in class 30 under no.17 as of the date 25.11.2004  
in respect of NAVARA RICE  
Falling in class.30 Rice.

आज दिनांक माह 20 को चेन्नई में मेरे निदेश पर मुद्रांकित किया गया।

Sealed at my direction this 23 day of November 2007 at Chennai.

रजिस्ट्रार, भौगोलिक उपदर्शन  
Registrar of Geographical Indication.

# Darjeeling Tea



- ▶ Most coveted tea in the world.
- ▶ Darjeeling planters association formed in 1892.
- ▶ Achieved international status similar to champagne or scotch whisky.
- ▶ Darjeeling logo as well as the word are now registered as the certification trademarks of the board under Trademarks act of 1999.



# GI in Italy



- ▶ Mostly used in Agricultural and food processing sectors
- ▶ The Mozzarella di Bufala and Brunello Assosciations
- ▶ More geographic indications than any other EU country (21% of GI's in EU)
- ▶ More a question of culinary methods than geographically-tied agricultural production.



# ‘Abbacchio Romano’



- ▶ Sheep breed believed to originally come from Sardinia.
- ▶ "an age-old association with Rome's rural roots" and only lambs from approved farms can be used in the dish.
- ▶ The word abbacchio, believed to come from the dialect term 'bacchio' for the stick once used to stun animals before the slaughter, is only used in Rome and the Lazio region.



# Conclusion:

- ▶ Efforts to create more distinct laws and regulations.
- ▶ Joint work of all the bodies associated.
- ▶ Removal of ambiguity.
- ▶ More benefits to the customers and also to the producers.





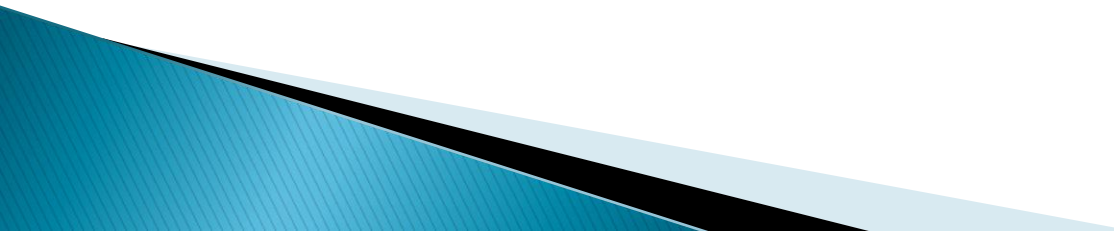




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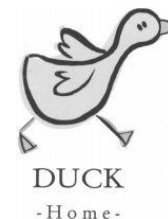
## Trademarks

# What is a Trademark?

- ▶ “A sign capable of distinguishing the goods or services produced or provided by one enterprise from those of other enterprises”
- 

Any Distinctive Words, Letters, Numerals,  
Pictures, Shapes, Colors, Logotypes, Labels

► Examples:



# Less Traditional Forms

- ▶ Single colors
- ▶ Three-dimensional signs (shapes of products or packaging)
- ▶ Audible signs (sounds)
- ▶ Olfactory signs (smells)
- ▶ Moving or Fluid Marks

# TRADE MARKS

A trade mark is essentially a way of differentiating the products of one business from those of another. It helps to identify the source of goods and services and can become a unique sign or symbol which is instantly recognisable.

A trade mark can be:

words:

**Mars**

shapes:



slogans:

*"I'm lovin' it"*

smells:



Darts smelling of beer  
Unicorn Products Ltd

colours:



Camping Gaz

logos:



letters:



jingles:

*Air on a G-string*  
Hamlet Cigars

numbers:



sounds:

A dog barking  
- Dulux



forms of packaging:



personal names:

*Cadbury's*

# Types of Trademarks

- ▶ Trade marks: to distinguish goods
- ▶ Service marks: to distinguish services
- ▶ Collective marks: to distinguish goods or services by members of an association
- ▶ Certification marks
- ▶ Well-known marks: benefit from stronger protection
- ▶ Tradename vs Trademark



# The Function of a Trademark

- ▶ Allows companies to differentiate their products
- ▶ Ensures consumers can distinguish between products and ultimately develop brand loyalty

# The Value of a Trademark

- ▶ A marketing tool
- ▶ Source of revenue through licensing
- ▶ Crucial component of franchising agreements
- ▶ May be useful for obtaining finance
- ▶ A valuable business asset

# Trademark Protection > Registration =

- ▶ Exclusive rights prevent others from marketing products under same or confusingly similar mark
- ▶ Secures investment in marketing effort
- ▶ Promotes customer loyalty/ reputation / image of company
- ▶ Provides coverage in relevant markets where business operates
- ▶ Registered marks may be licensed or basis franchising agreements

# Practical Aspects

- ▶ **Selecting a trademark**
- ▶ **Protecting a trademark through registration**
- ▶ **Using and maintaining a trademark**
- ▶ **Enforcing a trademark**

## What to avoid when selecting a Trademark

- ▶ Generic terms: CHAIR to sell chairs
- ▶ Descriptive terms: SWEET to sell chocolates
- ▶ Deceptive terms: “ORWOOLA” for 100% synthetic material
- ▶ Marks contrary to public order/morality
- ▶ Flags, armorial bearings, official hallmarks, emblems



# What to Remember when selecting Trademark?

- ▶ Inherently distinctive
  - Coined or fanciful words: “Kodak”
  - Arbitrary marks: “apple” for computers
  - Suggestive marks: SUNNY for heaters
- ▶ Easy to memorize and pronounce
- ▶ Fits product or image of the business
- ▶ Has no legal restrictions
  - Reasons for rejection
  - TM search > not identical or confusingly similar to existing TM
- ▶ Has a positive connotation
- ▶ Suitable for export markets
- ▶ Corresponding domain name available



# Protecting a TM through registration

- ▶ The applicant
  - Application form, contact details, graphic illustration of mark, description of goods, fees
- ▶ The trademark office
  - Formal examination
  - Substantive examination
  - Publication and opposition
  - Registration certificate valid for 10 years
  - Renewal

# Scope of Rights

- ▶ The exclusive right to use the mark
- ▶ The right to prevent others from using an identical or similar mark for identical or similar goods or services
- ▶ The right to prevent others from using an identical or similar mark for dissimilar goods or services

# Keep in Mind

- ▶ The time it takes to register a TM
- ▶ The costs associated with TM protection
- ▶ The need for a trademark search
- ▶ A trademark agent may be required
- ▶ Protecting at home and abroad
- ▶ Renewing your registration

# Protecting at Home and Abroad

- ▶ The national route
  - Each country where you seek protection
- ▶ The regional route
  - Countries members of a regional trademark system: African Regional Industrial Property Office; Benelux TM office; Office for Harmonization of the Internal Market of the EU; Organisation Africaine de la Propriété Intellectuelle
- ▶ The international route
  - The Madrid system administered by WIPO (over 70 member countries)

# Using a Trademark

- ▶ **Actively using a TM**
- ▶ **Using/maintaining a TM in marketing and advertising**
- ▶ **Using the mark on the internet**
- ▶ **Using the mark as a business asset**

# Actively using a Trademark

- ▶ Offering the goods or services
- ▶ Affixing the mark to the goods or their packaging
- ▶ Importing or exporting the goods under the mark
- ▶ Use on business papers or in advertising



# Using a Trademark in Advertising

- ▶ Use exactly as registered
- ▶ Protect TM from becoming generic
  - Set apart from surrounding text
  - Specify font, size, placement and colors
  - Use as an adjective not as noun or verb
  - Not plural, possessive or abbreviated form
  - Use a trademark notice in advertising and labeling ®
- ▶ Monitor authorized users of the mark
- ▶ Review portfolio of trademarks
- ▶ An evolving trademark

# Using a TM on the Internet

- ▶ **Use of TM on internet may raise controversial legal problems**
- ▶ **Conflict between trademarks and domain names(internet addresses) - cybersquatting**
- ▶ **WIPO procedure for domain name dispute (<http://arbiter.wipo.int.domains>)**

# Using a Trademark as a business asset

- ▶ **Licensing:** owner retains ownership and agrees to the use of the TM by other company in exchange for royalties > *licensing agreement* (business expansion/diversification)
- ▶ **Franchising:** licensing of a TM central to franchising agreement. The franchiser allows franchisee to use his way of doing business (TM, know-how, customer service, s/w, shop decoration. Etc)
- ▶ **Selling/assigning TM to another company** (merger & acquisitions/raising of cash)

# Enforcing Trademarks

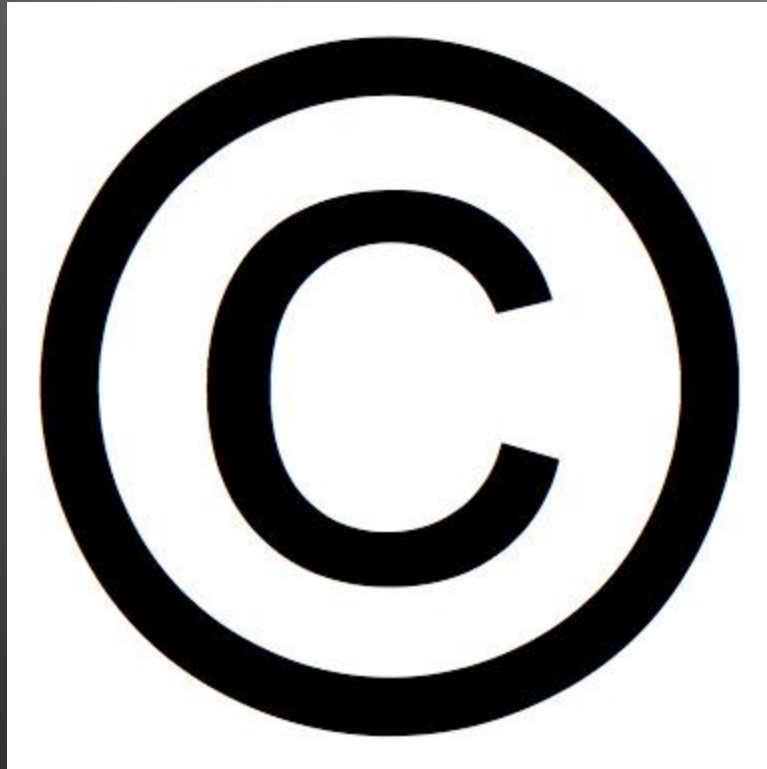
- ▶ Responsibility on TM owner to identify infringement and decide on measures
- ▶ “Cease and desist letter” to alleged infringer
- ▶ Search and seize order
- ▶ Cooperation with customs authorities to prevent counterfeit trademark goods
- ▶ Arbitration and mediation (preserve business relations)

# Copyrights

A project of  
the

*AIPIA*

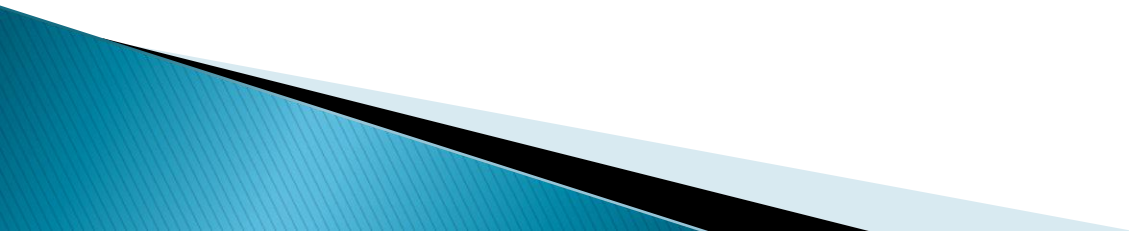
# Copyrights



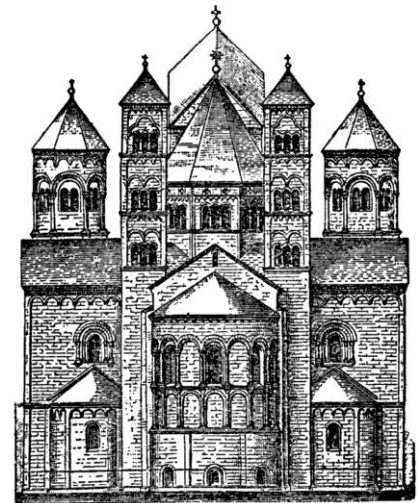


# What is a copyright?

A **copyright** is a form of protection given to authors or creators of original works.

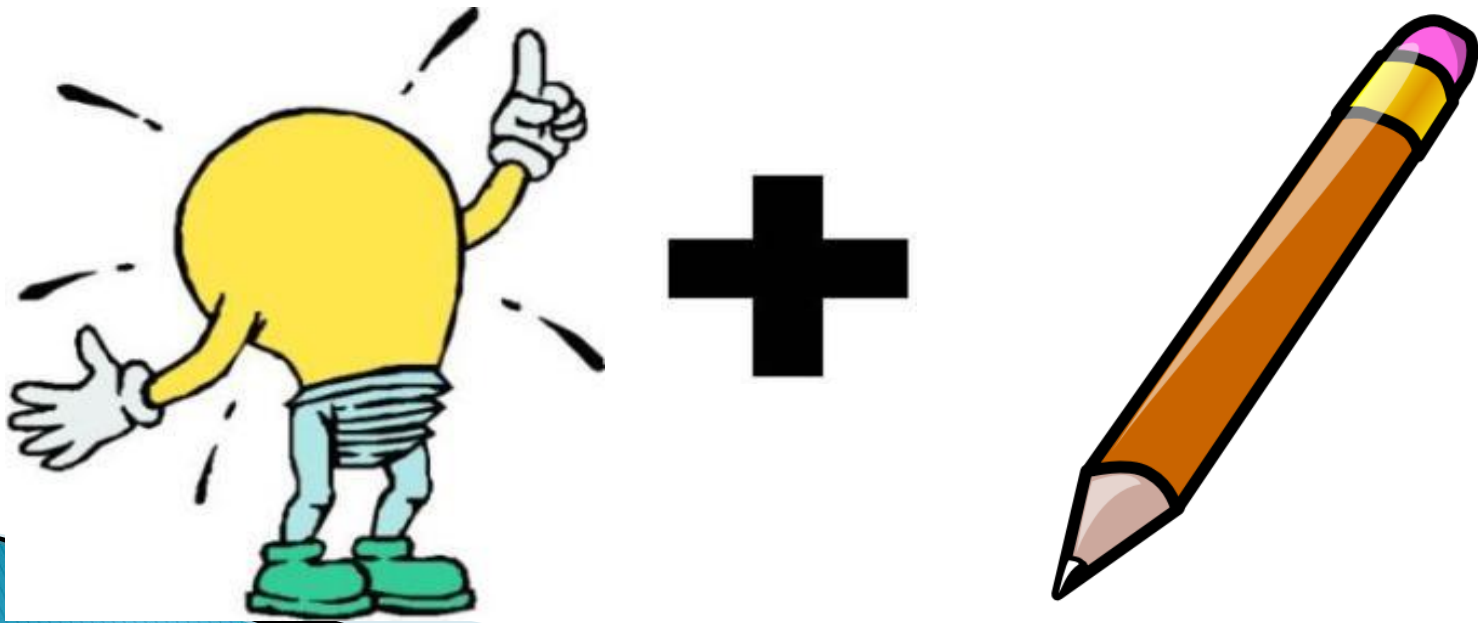


# What does a copyright protect?



# When is your work protected?

Your work is protected by a copyright as soon as it is created and fixed in a tangible form.



# What rights are granted with a copyright?

- ▶ Basically, a copyright entitles you as the author of the work to do the following or let others do the following:
  - Make copies of your work
  - Distribute copies of your work
  - Perform your work publicly
  - Display your work publicly
  - Make derivative works



# “Happy Birthday To You” Song

## Chili's Birthday Song

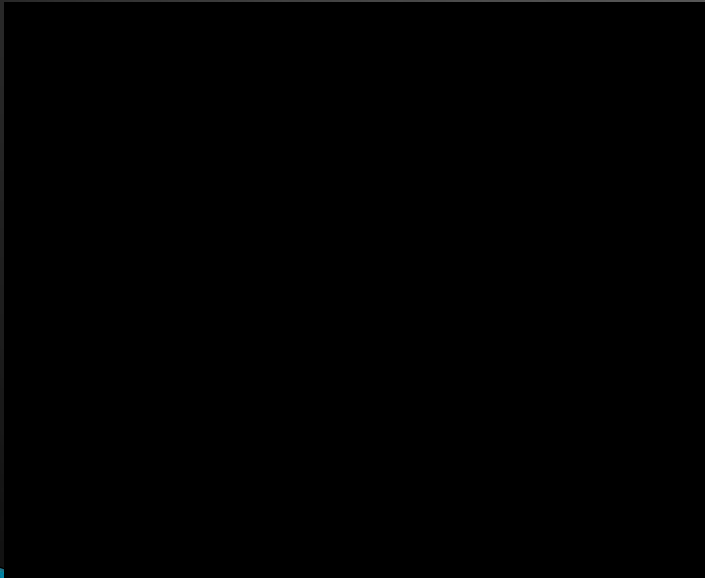
Happy happy birthday  
From the Chili's crew,  
We wish it was our  
birthday  
So we could party too.  
HEY!

I don't know what I been told...  
Someone here is getting old...  
I don't know but its been said...  
Look at his/her face its turning  
red...  
Sound off... happy...  
Sound off...birthday...  
Sound off... happy  
birthday...OKAY!

## TGI Friday's Birthday Song

# Sampling

“Right Round”  
Flo Rida – 2009



“You Spin Me Round  
(Like a Record)”  
Dead or Alive – 1984





# File Sharing Cases: LimeWire (2010) and Napster (2001)

- ▶ In both cases, the file sharing companies (i.e. LimeWire and Napster) were found to have enabled the sharing of files that were protected by copyrights
- ▶ Lesson: Pay for your music: It's not fair to the copyright holder if you don't



# Copyright Protection in the Music Industry

## ▶ Singers

- Record Labels



warner | music | group



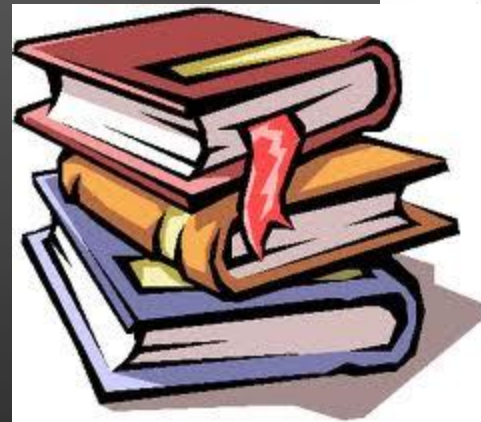
## ▶ Song Writers

- Broadcast Music, Inc. (BMI)
- The American Society of Composers, Authors and Publishers (ASCAP)



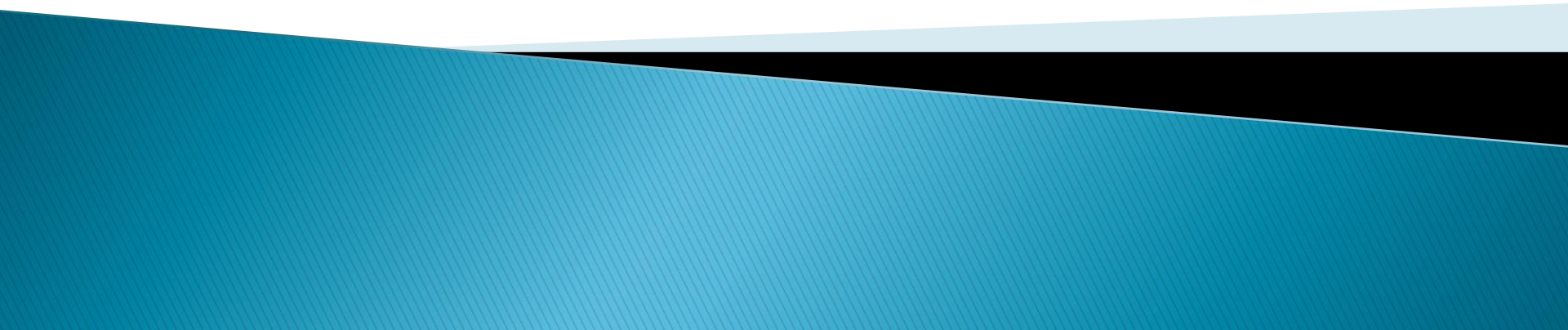
# Steps to Copyright

- ▶ Create
- ▶ Register Your Copyright
  - [www.copyright.gov](http://www.copyright.gov)
  - Can be done electronically
- ▶ Send the Package to the Copyright Office
  - May not be necessary if you register online



# COPYRIGHT

Elements (*Copyright Act 1968*)

- Creative
    - literary, dramatic, musical and artistic plus other works (later, sound recordings, films, radio/TV broadcasts etc)
  - In a material form (not just an idea or information)
  - Original
- 

# COPYRIGHT

*What is protected*

*Original works*

- literary,
- dramatic,
- musical
- artistic

*In subject matter other than works*

- Sound recordings
- Cinematograph films
- Television/sound broadcasts
- Published editions of works



# COPYRIGHT

## Copyright Holder Rights

### Economic

- Reproduce in material form
- Publish
- Perform/communicate to the public
- Make adaption
- Duration – generally 70 years of death of creator or if not published in creator lifetime, 70 years after made public

### Moral

- Right of attribution
- Right against false attribution of authorship
- Right of integrity of authorship
- Duration – author's lifetime



# COPYRIGHT

Copyright as a balance between public access to creative endeavour and reward to the creator for their work

What is not protected: Public Right of Access

- material that is out of copyright
- Fair dealing -
  - Research or study
  - Criticism or review
  - Parody or satire
  - News reporting
  - Professional advice
- 10% rule – single copy of chapter/publication
- computer exceptions
- Library/educational institution/government copying

# COPYRIGHT

Fair use (US): As a doctrine – in legislation – looks at:

- the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- the nature of the copyrighted work;
- the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- the effect of the use upon the potential market for or value of the copyrighted work.

# COPYRIGHT

## *Digital Content: Computer Programs*

*The Apple Case: Is the software a literary work (can be in readable form as source code) but their purpose is to control the execution of a machine – when converted into machine executable form*

*The Apple Case ((1968) 6 IPR 1 (HC judgment)*

*Of itself however, and regardless of how widely one construes the phrase, the arrangement (or series) of electrons or electrical charges in the silicon chip does not constitute a "literary work". It is not written. It is not in a comprehensible language. It cannot be read. It cannot even be seen. Nor is it designed or produced to be read or seen. It is, and was designed and produced to be, an attribute of a functioning part of an operating machine.*

# COPYRIGHT

*Computer Programs: Copyright Act 1968*

*computer program* means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result.

*literary work* includes:

- (a) a table, or compilation, expressed in words, figures or symbols; and
- (b) a computer program or compilation of computer programs.

*When is a computer program copied? – is it when it is reverse engineered and elements of the program used in the alleged copy?*

*Powerflex Services P/L v Data Access Corporation*



# COPYRIGHT

The Digital Agenda Act 2000

*(context: US Digital Millennium Copyright Act 1998 and  
WIPO Copyright Treaty)*

*Has the balance shifted from prohibition on unauthorised  
copying to unauthorised access?*

New right:

*to communicate to the public - make available online or  
electronically transmit (over a path or a combination of  
paths, provided over a material substance or otherwise) a  
work or other subject matter*

Make available online – public may access from a place  
and time individually chosen by the individual  
(could be one member of the public at a time – Telstra v  
APRA)

# COPYRIGHT

## Digital Agenda Act 2000 (cont'd)

*NB: Shift is to give copyright holders the decision on what is put online (and terms of access on line) – regardless of the purpose of individual access*

*Prohibition on circumvention service device/service (to get around technological access control) except for permitted purpose (fair dealing is not a permitted purpose)*

*Exception – browsing and caching(??)*





# COPYRIGHT

*Protection of Digital Content: Computer Games*  
*Galaxy Electronics v Sega [1997] FCA 403*

*Protection of computer generated moving  
images/sounds constitute a cinematograph film?*  
*(not a computer program)*

*Def cinematographic film – def includes visual  
images/sounds – aggregated images embodied  
in...*

# COPYRIGHT

## User Generated content

- What is it?
- Who is the author? Who is the owner?

*(noting it is estimated 70% of material on YouTube is made up of unauthorised copyright material)*

- *Is it direct infringement – reproduction/publication or more than a sample of content*
- *Was it fair use/fair dealing*
- *Was a substantial part of the work used*
- *For what purpose*

*Example: Mash-up presidential candidates repeating the word 'change' with the David Bowie song Changes*

# COPYRIGHT – Authorisation

*UNSW v Moorhouse [1975] HCA 26*

*Held that the University had ‘authorised’ (can mean sanction, approve, countenance) through s. 36(1)- the reproduction of copyright work- through provision of open shelves of books, copying machines (even with notices)*

*Telstra v APRA (Music on Hold) 146 ALR 649 (1997)*

Music played in 3 circumstances

- Music supplied by unknown person
- Music by Telecom service centre
- Music by special Telstra service

*Was held to be a broadcast*

*Was held to be a broadcast to the copyright owner’s public (even if each individual heard the music alone)*

# COPYRIGHT – Authorisation

## Section 36 Infringement by doing acts comprised in the copyright

(1) Subject to this Act, the copyright in a literary, dramatic, musical or artistic work is infringed by a person who, not being the owner of the copyright, and without the licence of the owner of the copyright, does in Australia, or authorizes the doing in Australia of, any act comprised in the copyright.

(2)(1A) In determining, for the purposes of subsection (1), whether or not a person has authorised the doing in Australia of any act comprised in the copyright in a work, without the licence of the owner of the copyright, the matters that must be taken into account include the following:

- (a) the extent (if any) of the person's power to prevent the of the act concerned
- (b) the nature of any relationship existing between the person and the person who did the act concerned:
- (c) whether the person took any reasonable steps to prevent the doing of the act, including whether the person complied with any relevant industry codes of practice.

**THANK YOU**