



IPR in the context of ABS
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IPR

- What is IP and IPR?
 - intellectual creations, these creations are
 - not tangible.
 - Intellectual property rights (**IPRs**) refers to rights over the intangible property and provides for exclusive property rights.
 - Intangible assets include such assets as musical, literary, and artistic works; discoveries and inventions; and words, phrases, symbols, and designs.
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Types of IPR

- **Copyrights** (e.g. right of a novelist to sell copies of his or her novel)
 - **Trademarks** (e.g. Microsoft)
 - **Designs** (e.g. the Apple iPhone)
 - **Protection of undisclosed information** (e.g. Coca Cola's secret recipe)
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Types of IPR - Continued

- **Patents** (e.g. Thomas Edison's light bulb)
- **Geographical indications** (e.g. Champagne as a region for sparkling wine)
- **Plant Variety Protection/Plant Breeder's Rights** (e.g. Peppadew – a new variety of sweet pepper originally bred in South Africa)

IPR and ABS – Why?

- ❑ The TRIPS Agreement of the WTO guarantees patent protection for microorganisms as well as non-biological and microbiological processes.
- ❑ TRIPS does not require the patent application to disclose information about whether the PIC has been obtained from TK holders or resource owners, or to show that there is a benefit-sharing agreement in place.

Article 27(3)(b) of TRIPs


- ❑ As a whole, Article 27 of the TRIPS Agreement defines which inventions governments are ***obliged to make eligible*** for patenting and what they can exclude from patenting.
- ❑ Inventions that can be patented include both products and processes, and should generally cover all fields of technology.

Article 27(3)(b)

- ❑ Governments to exclude some kinds of inventions from patenting, i.e. plants, animals and “essentially” biological processes (but micro-organisms, and non-biological and microbiological processes have to be eligible for patents).
- ❑ Plant **varieties** have to be eligible for protection either through patent protection or a system created specifically for the purpose (“sui generis”), or a combination of the two



Patents


- ❑ Exclusive rights
 - ❑ control over the use
 - ❑ Development
 - ❑ financial benefits derived from a patented item.
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3 Criteria for Patentability

- ❑ **Novelty** - Novelty refers to the “newness” of an established invention (no prior art)
- ❑ **Non obviousness** -refers to the presence of an inventive step (the invention or innovation must not have been obvious at the time of its creation to anyone having “ordinary skill in the art.”



Patentability

- ❑ **Industrial application**-refers to the existence of a potential market for patented knowledge. To meet this requirement, a public desire for the patented material must exist or have the potential to exist
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Organisations dealing with IPR

☐ World Intellectual Property Organization (WIPO)

- ☐ Industrial designs
 - ☐ Scientific discoveries
 - ☐ Protection against unfair competition
 - ☐ Literary, artistic and scientific works
 - ☐ Inventions in all fields of human endeavour
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Organisations

- ❑ **World Trade Organization - TRIPS (WTO Agreements)**
 - ❑ **International Union for the Protection of New Varieties of Plants (UPOV)**
 - ❑ **African Regional Intellectual Property Organization (ARIPO)**
 - ❑ **African Intellectual Property Organization (OAPI)** - African Intellectual Property Organization, commonly branded by its French acronym (OAPI)
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Agreements

- ❑ **Patent Co-operation Treaty (PCT)** - Establishes an international patent filing system; allows a single international patent application to have legal standing in all countries signatory to PCT; open to States party to Paris Convention (1883).
- ❑ **Patent Law Treaty** - The Patent Law Treaty (PLT) is a patent law multilateral treaty concluded by 53 States and the European Patent Organisation.





Agreements

- ❑ **Substantive Patent Law Treaty** - The **Substantive Patent Law Treaty (SPLT)** is a patent law treaty aimed at harmonizing substantive points of patent law
- ❑ **Agreement on Trade-Related Aspects of Intellectual Property Rights**
 - Harare Protocol (ARIPO) (1982) - **East and Central Africa**
 - Bangui Agreement (OAPI) (1977) - **West Africa**




Study Case – Enola Bean

- ☐ What legally qualified the grant of the initial patent?
 - ☐ State the reasons for the eventual rejection of the patent in your own words?
 - ☐ Lessons learnt – what did your Group learn from the case?
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None of us is as
smart as all of us.
~Ken Blanchard





Thank you/Malebo!

