



# **African Ministerial Conference 2015: Intellectual Property (IP) for an Emerging Africa**

## **SESSION II The Role of the Patent System**

Marco M. ALEMAN  
Acting Director, Patent Law Division, WIPO

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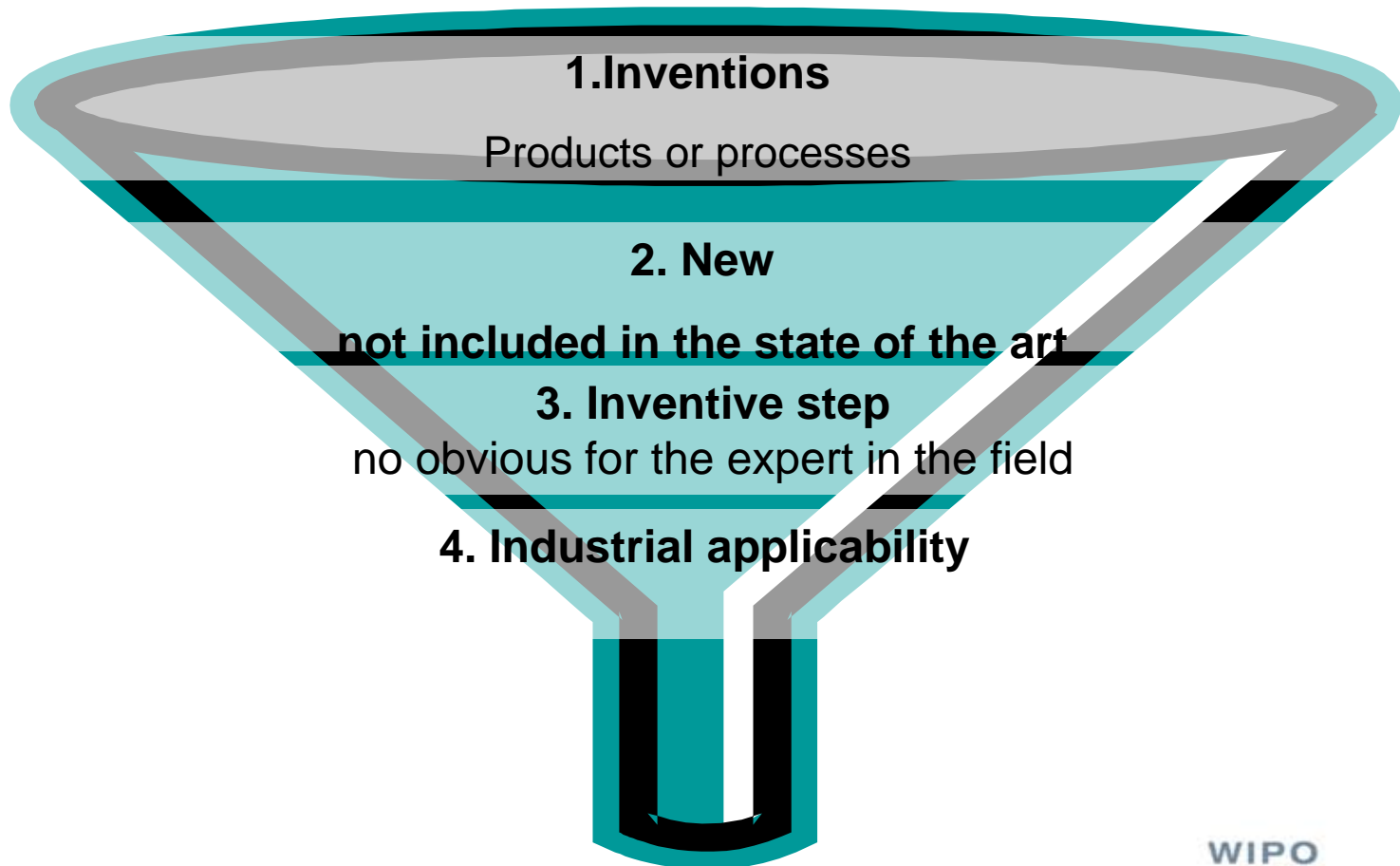
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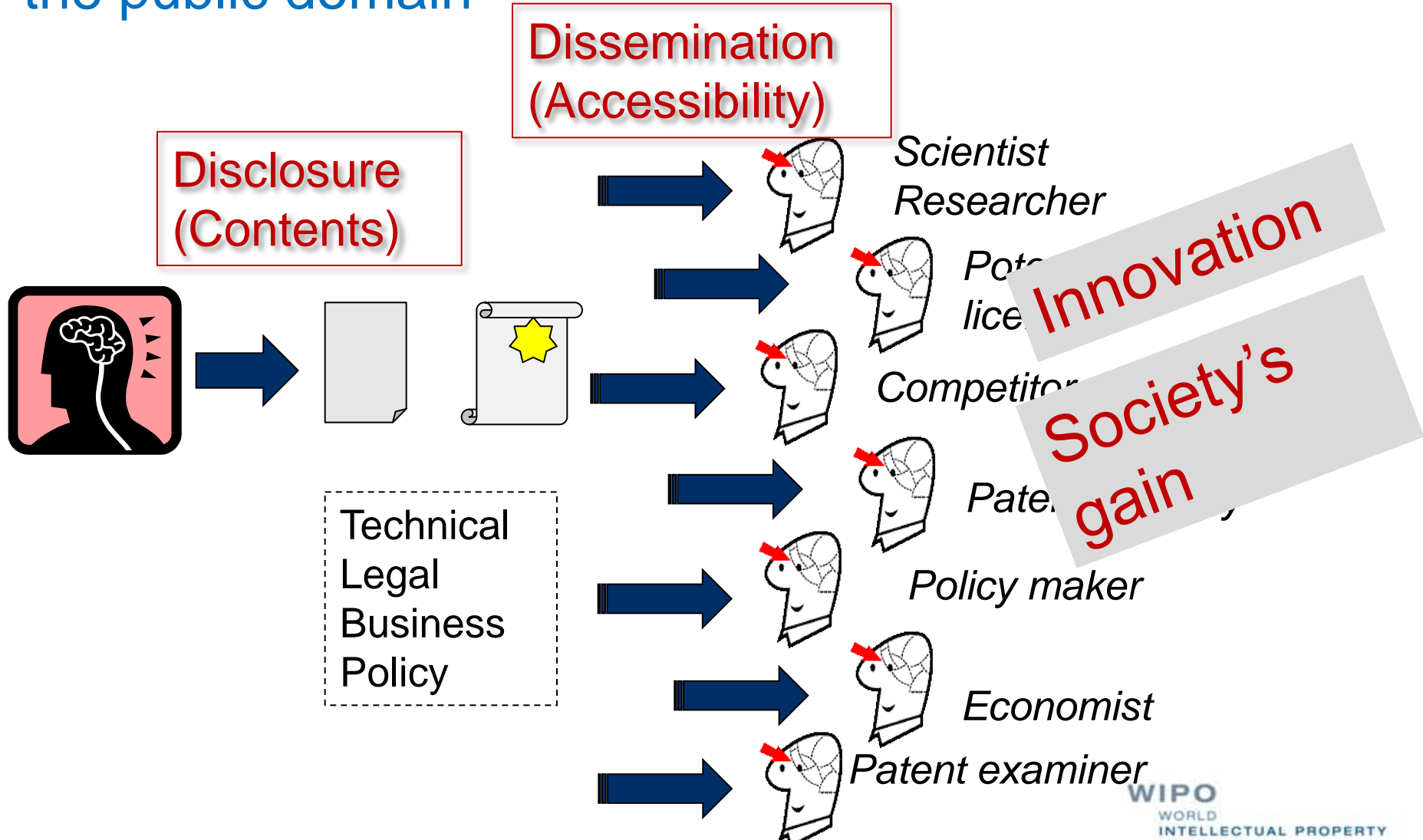
# The patent system

- The system, based on private rights, should effectively serve the public interest (both right holders and society) by contributing to innovation and diffusion of knowledge
- Features of the system to achieve these objectives
  - Granting **valid patents** after the invention has passed the test of objective standards (patentability criteria)
  - Disclosure of the invention to allow **diffusion of knowledge**
  - Granting **exclusive rights** to the inventor to promote innovation

# The patent system (Cont'd)...



“Around 95% of the patent applications that have been pursued since 1883 have fed the richness of the public domain”\*



\* James Conley et. al. "Study on Patents and the Public Domain (II)", 2013, WIPO

# Patents and Technology Diffusion

- The patent system is an important tool to facilitate technology diffusion, for this purposes “disclosure” is a prerequisite.

It does that mainly via

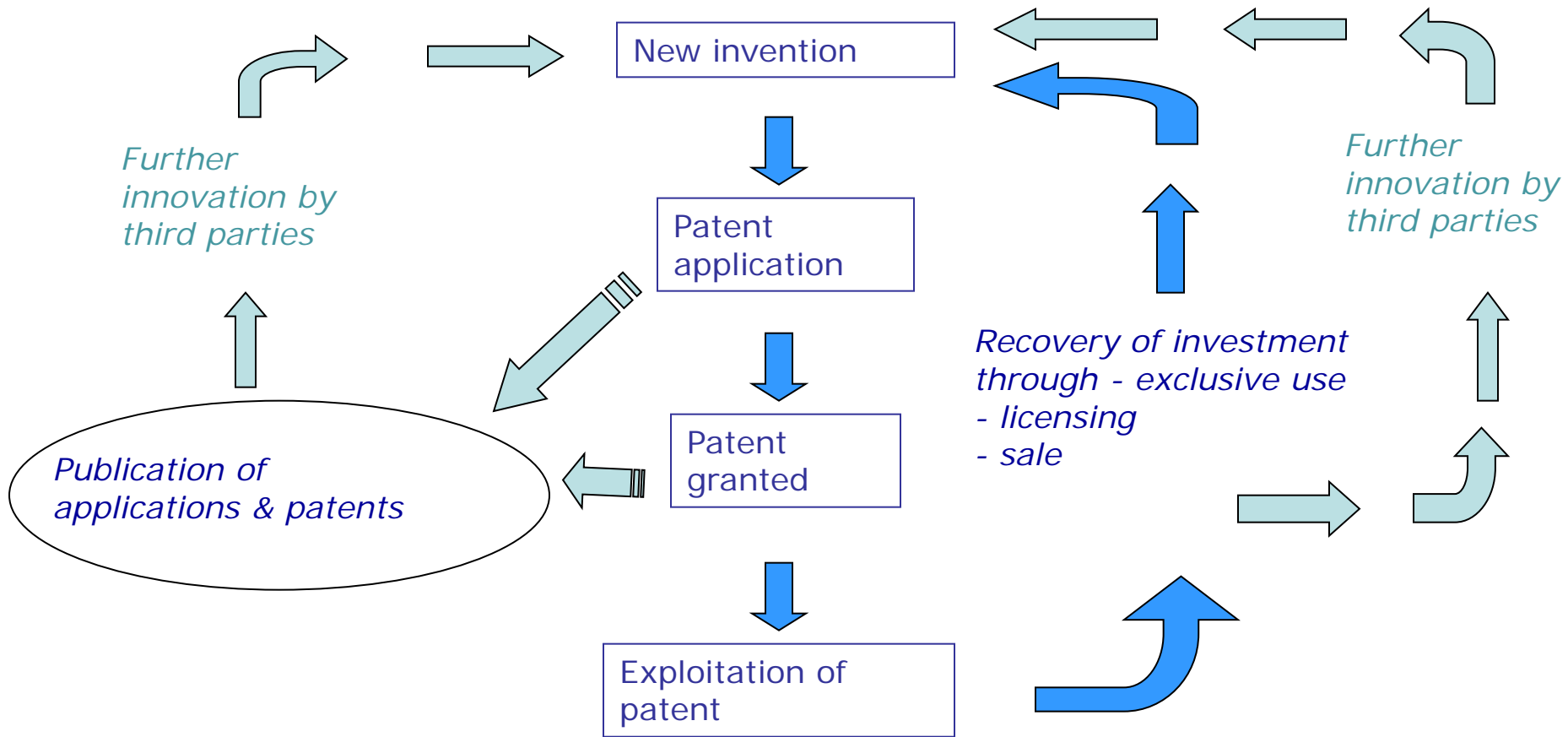
- **patent information**

- The patent system is a key tool to facilitate technology transfer (national and inter), for this purposes appropriation is a prerequisite.

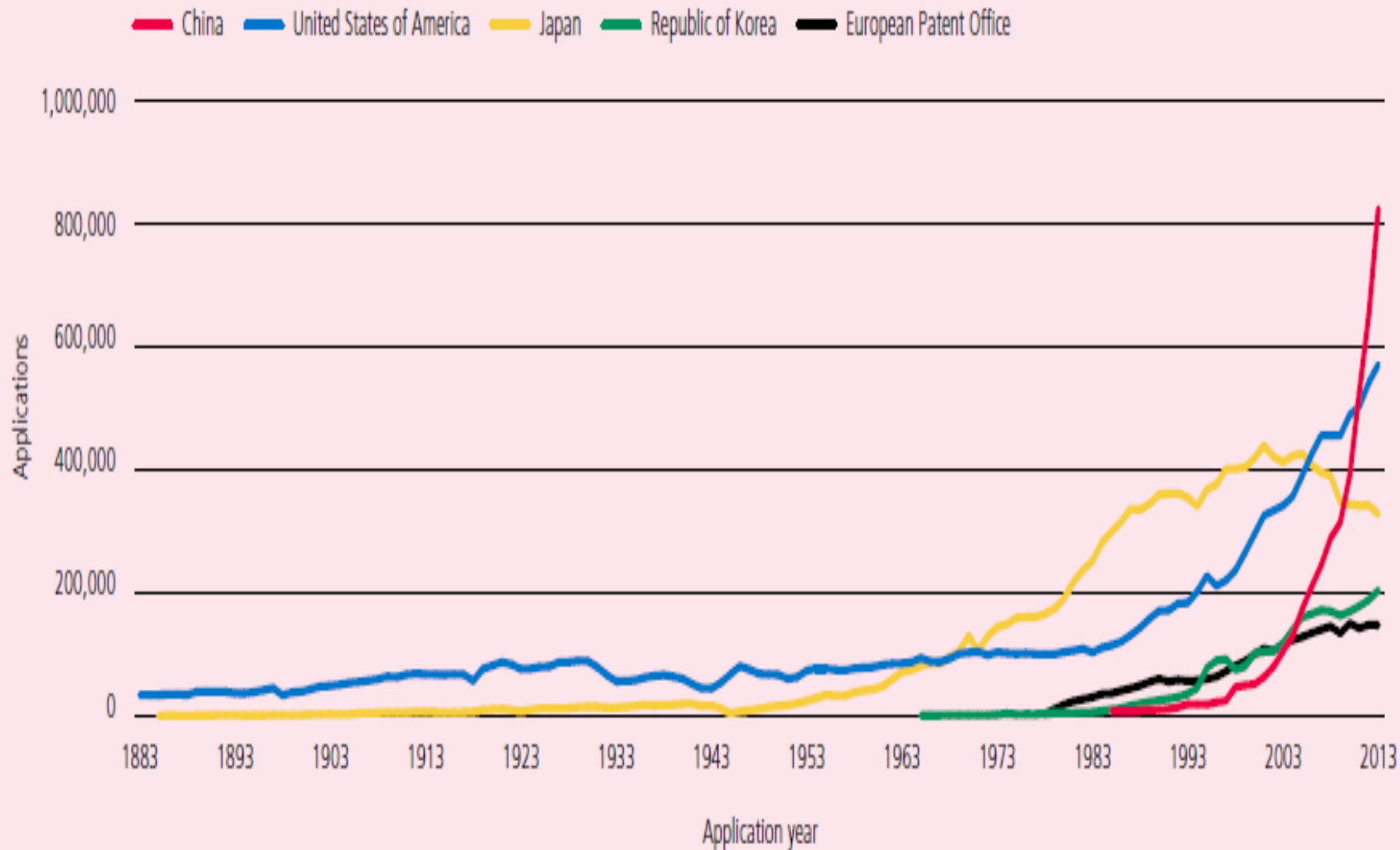
It does that mainly via

- From the right holder perspective by adopting **policies that define appropriation and exploitation** of inventions via patents
- **From the Government perspective facilitating patent prosecution**

# Innovation and commercialization



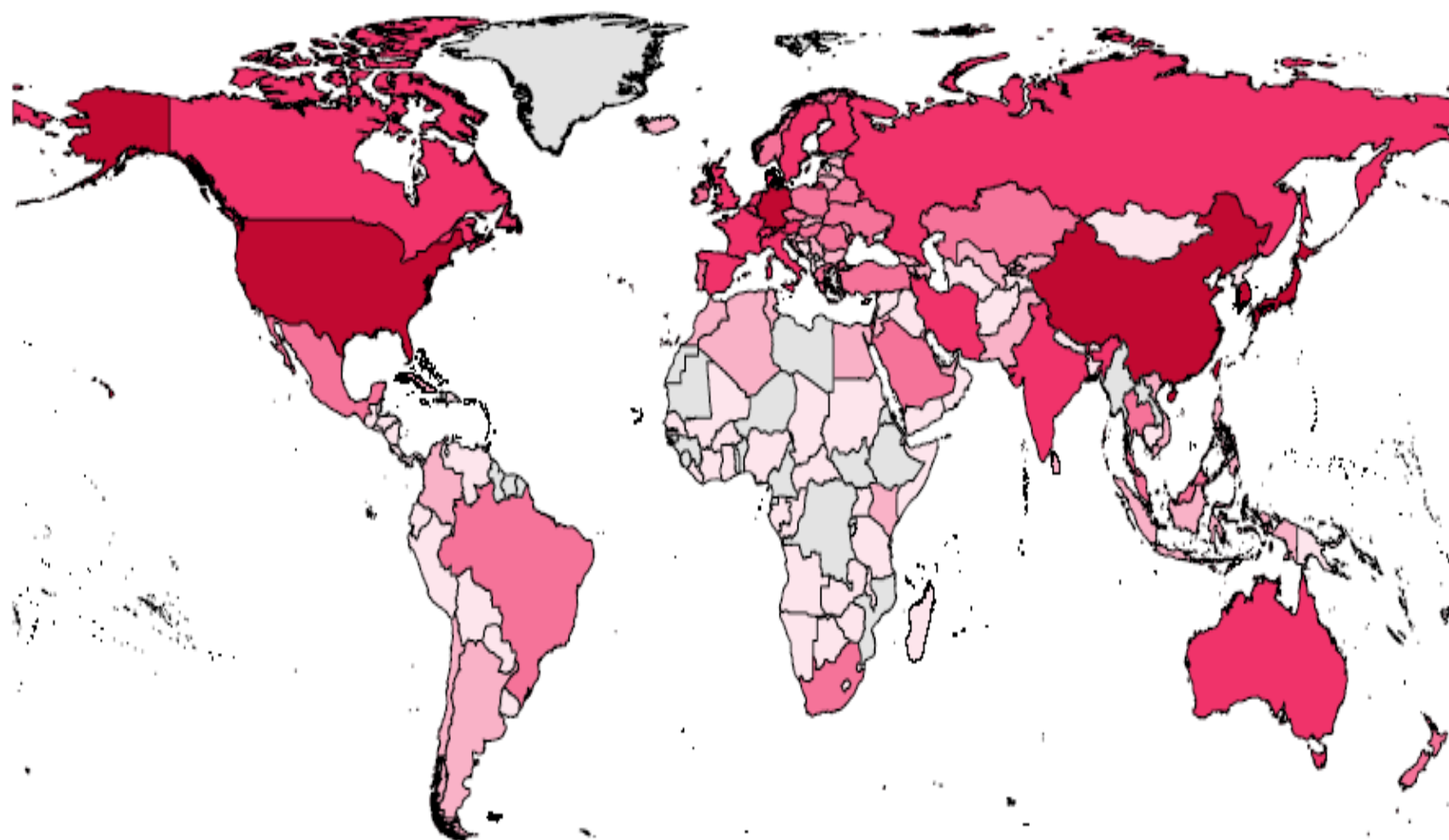
## Trend in patent applications for the top five offices





## Map 1. Equivalent patent applications by origin, 2013

1-99 100-999 1,000-9,999 10,000-99,999 100,000-799,999 No data



# The Global Innovation Index 2014

**Sub-Saharan Africa now accounts for almost 50% of countries with the status of “innovation learner” – more than any other region:**



# The international legal framework

## WIPO

Paris Convention, 176 MS (few substantive obligations);  
specialized agreements (Art. 19 Paris):

- PCT (1970, 148 CP); IPC (1971, 62 CP); Budapest Treaty (1977, 79 CP); PLT (2000, 36 CP)

## WTO

TRIPS Agreement

- Minimum standards; enforcement of IPRs; WTO dispute settlement procedures

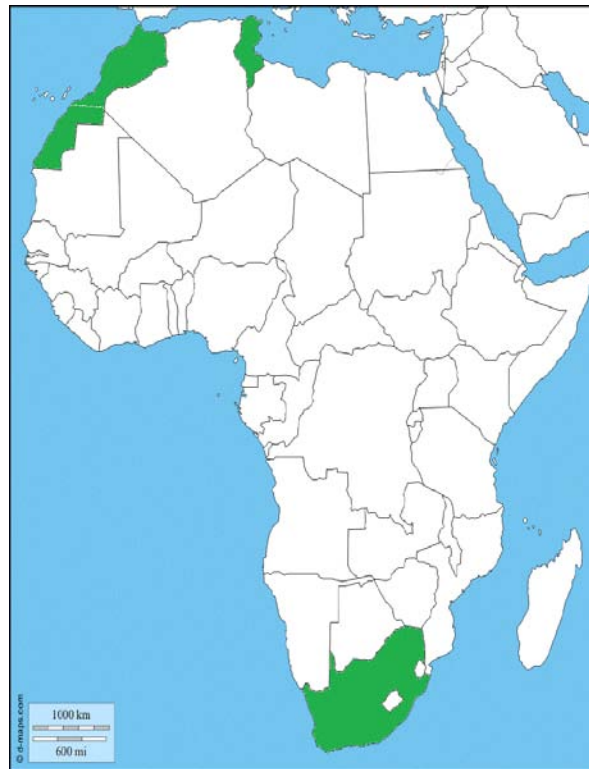
Regional agreements (e.g. EPO, EAPO, ARIPO, OAPI, GCC)

Preferential Trade Agreements (FTAs, EPAs)

**Paris Convention  
(1883)  
176 MSs**



**Budapest Treaty  
(1977)  
79 MSs**



**Patent Law Treaty  
(2000)  
36 MSs**



# Concept of flexibility

The term “flexibility” in TRIPS (paragraph 6 of the preamble and Article 66.1)

Carolyn Deere: “a range of rights, safeguards and options that WTO Members can exploit in their implementation of the TRIPS Agreement” *The Implementation Game*, Oxford University Press (2009), p.68.

Elena Ghanotakis: “ There were several flexibilities inherent in the TRIPS Agreement. All of those measures, consistent with the TRIPS Agreement, reduce prices and increase the affordability of medicines, without negatively affecting future R&D” ‘Access to Medicines for Developing Countries’, *Journal of World IP* (2004), vol . 7, issue 14.

The term “TRIPS flexibilities” means that there are different options through which treaty commitments can be transposed into national law, thus, national interests are accommodated and yet TRIPS provisions and principles are complied with.

# Some examples of flexibilities

- Exhaustion of rights
- Utility Models
- Exclusion from patentability of: Substances existing in nature; plants; and software
- Disclosure related Flexibilities
- Substantive examination
- Compulsory licenses and Government Use
- Research exemption
- Regulatory review (*Bolar*) exception

# TRIPS Agreement implementation.

## Art. 27 and some of its flexibilities



### Explicit obligation to give protection

- Inventions -whether products or processes- in all fields of technology.
- Micro-organisms



### Explicit permission to exclude from patent protection

- Plants and animals
- Diagnostic, therapeutic and surgical methods



### Implicit permission not to give protection

- Discoveries
- Substances existing in nature
- Incremental innovation

# WIPO work and discussions (CDIP)

## ■ Patent Related Flexibilities Documents in the framework of the CDIP

1) CDIP/5/4Rev

[http://www.wipo.int/edocs/mdocs/mdocs/en/cdip\\_5/cdip\\_5\\_4-main1.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_5/cdip_5_4-main1.pdf)

2) CDIP/7/3 and Add

[http://www.wipo.int/edocs/mdocs/mdocs/en/cdip\\_7/cdip\\_7\\_3-main1.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_7/cdip_7_3-main1.pdf)

3) CDIP 13

[http://www.wipo.int/edocs/mdocs/mdocs/en/cdip\\_13/cdip\\_13\\_10.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_13/cdip_13_10.pdf)

4) CDIP/15/6 and its annexes:

[http://www.wipo.int/edocs/mdocs/mdocs/en/cdip\\_15/cdip\\_15\\_6-main1.pdf](http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_15/cdip_15_6-main1.pdf)

## ■ Regional meetings

WIPO Seminar for certain Asian countries on the Effective Implementation and Use of Several Patent-Related Flexibilities, Bangkok, Thailand, February 15 to 17, 2011

[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=22602](http://www.wipo.int/meetings/en/details.jsp?meeting_id=22602)

WIPO Regional Seminar on the Implementation and Use of Several Patent-Related Flexibilities, February 6 to 8, 2012, Bogota, Colombia

[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=24982](http://www.wipo.int/meetings/en/details.jsp?meeting_id=24982)

Seminar for Certain African Countries on the Implementation and Use of Several Patent-related Flexibilities, January 29 to January 31, 2013, Durban, South Africa

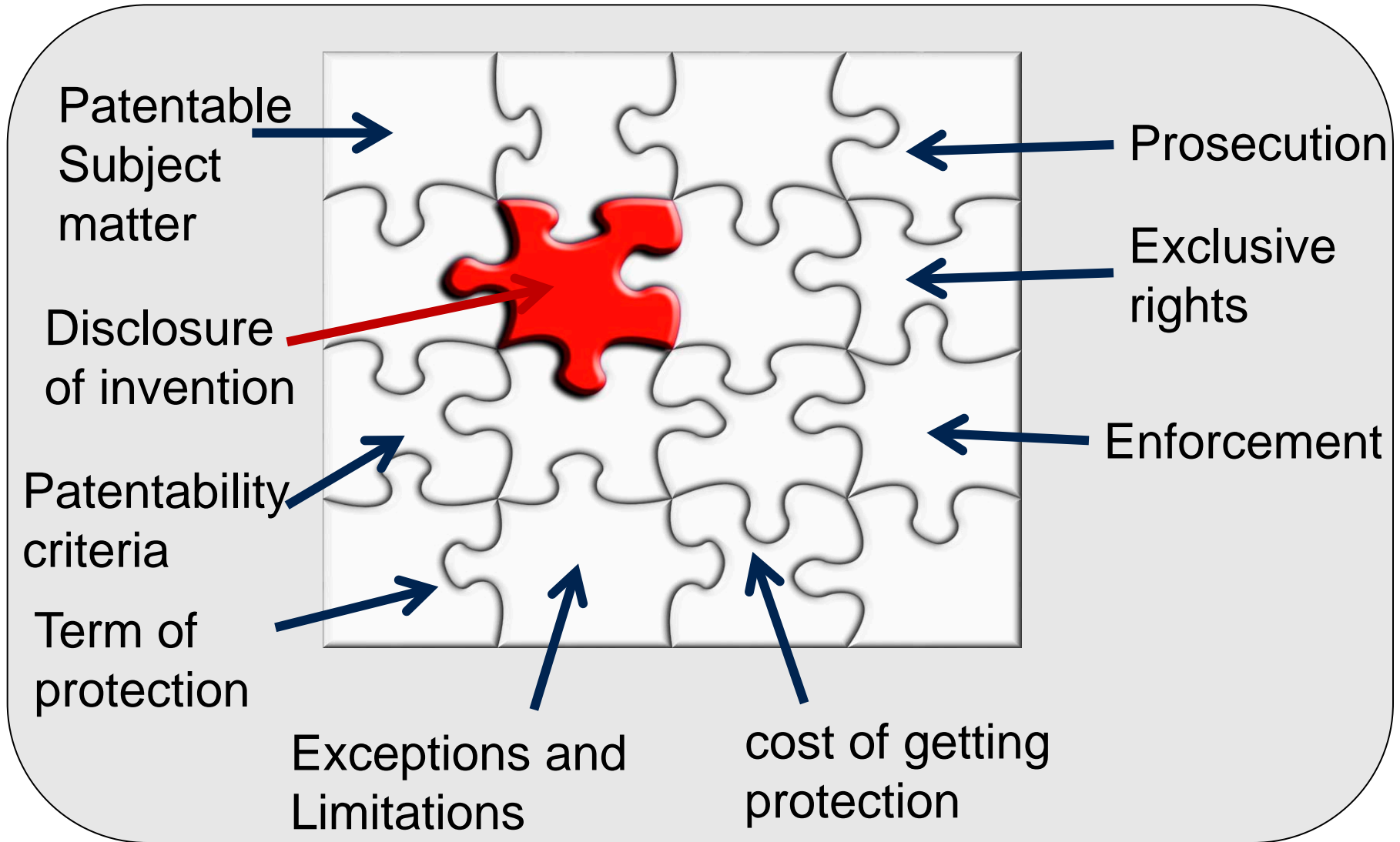
[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=27882](http://www.wipo.int/meetings/en/details.jsp?meeting_id=27882)



# Standing Committee of the Law on Patents SCP

- Report on the International Patent System (SCP/12/3 Rev.2)
- Certain aspects of national and regional patent laws  
[http://www.wipo.int/scp/en/annex\\_ii.html](http://www.wipo.int/scp/en/annex_ii.html)
- Preliminary studies on selected issues, including:
  - patents and standards (document SCP/13/2)
  - dissemination of patent information (SCP/13/5 and SCP/14/3)
- 2010: agreement on five issues for future work
  - (i) exceptions and limitations
  - (ii) quality of patents
  - (iii) patents and health
  - (iv) transfer of technology
  - (v) client-patent attorney privilege
- SCP/23: November, 2015

# Patent system



MANY THANKS !!!

[marco.aleman@wipo.int](mailto:marco.aleman@wipo.int)