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# Licensing Intellectual Property Rights

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# Outline

- n Importance of technology for economic growth and national development
- n Licensing, an important means of technology transfer and the relevance of intellectual property in its facilitation
- n Negotiating a licensing agreement

# Economic Growth

- n Traditionally, economic winners were those who had natural resources.
  - u Scarce=assumption of finite growth. Resources down population up. Growth up!
- n Today, “new economy” crystallized by knowledge goods, knowledge workers and globalization - 1950 knowledge component in manufactured goods 20%, 1990s 70%
- n Technology is key to competitiveness and essential for human progress

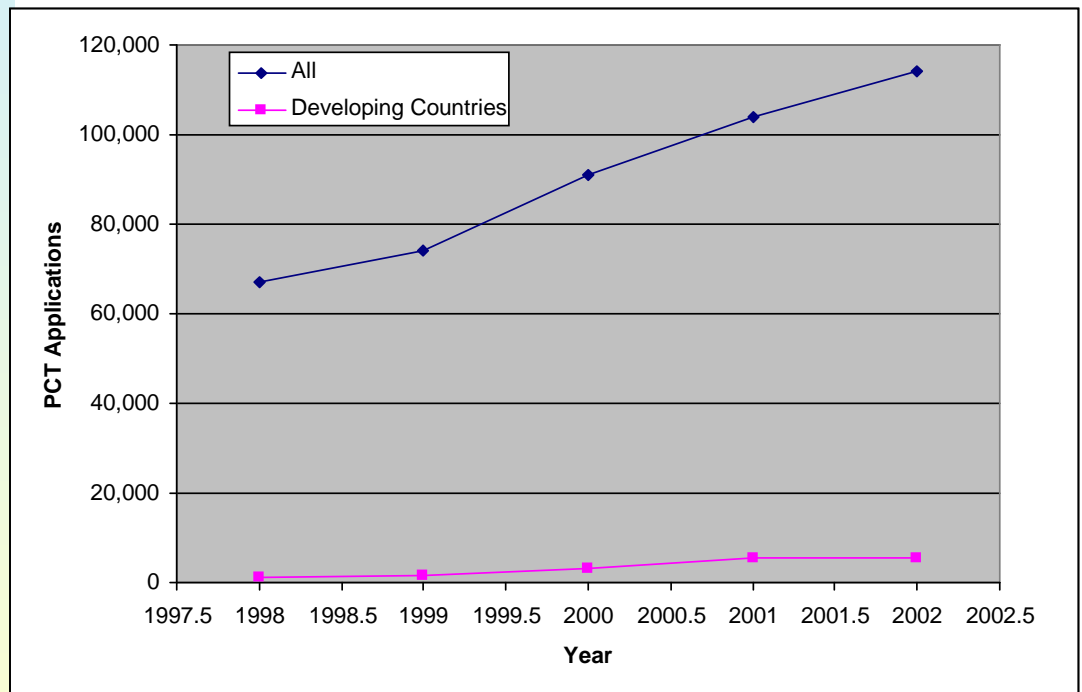
# New Economy

- n those that regenerate “old economy” products with better technology, design and marketing
- n new industries
  - u that create knowledge (biotechnology)
  - u those that manage and distribute knowledge (digital technology, the Internet, and information and communication technologies)

# Globalization

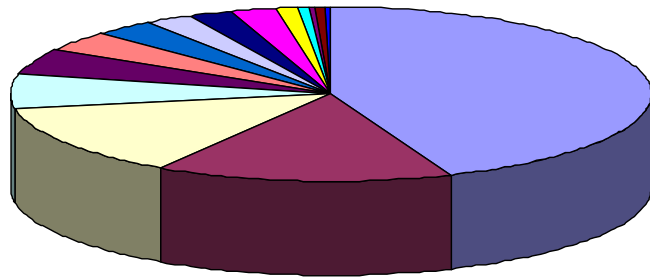
- n “New Economy” flourishing in an economy
  - u that is globalized, competition not confined to national boundaries
  - u that is web based, a global marketing and information tool

# Growth in patenting




# Holders of patents

## PCT Applications in 2002



United States of America	Germany	Japan
United Kingdom	France	Netherlands
Sweden	Republic of Korea	Switzerland and Liechtenstein
Canada	China	India
South Africa	Singapore	Brazil
Mexico	Colombia	Philippines
Cuba		



n USA, Germany, Japan, UK and France account for 85% of patent applications filed under the PCT

n Developing countries (mainly ROK, China, India, South Africa, Singapore, Brazil and Mexico) account for 5%



# Technology Gap

- n More resources devoted to R&D in developed countries than in developing countries resulting in more innovation in developed countries
  - u In 1998, 29 OECD countries spent \$520b on R&D (more than the combined economic output of the worlds 30 poorest countries)

# Bridging Technology Gap


- n Policies must be put in place (not necessarily to develop cutting edge technologies)
  - u to attract technology
  - u facilitate diffusion and
  - u build local capacity.

# Technology Transfer

- n Technology transferred through a variety of ways; movement of employees, technical literature, media, sale, export (import) of goods, FDI and licensing

# Licensing

- n Licensing is when an owner of an intangible asset, such as a technology protected by a patent, transfers the right to use that asset to another, for a price, while retaining ownership of that asset.
- n **Note** - if the technology is not protected by an IPR, licensing is not necessary



n As the essence of licensing is to transfer the knowledge so that someone else could effectively use it, it is, of all the possible ways of entering a market, the most effective means of technology transfer for building local capacity and maximizing diffusion

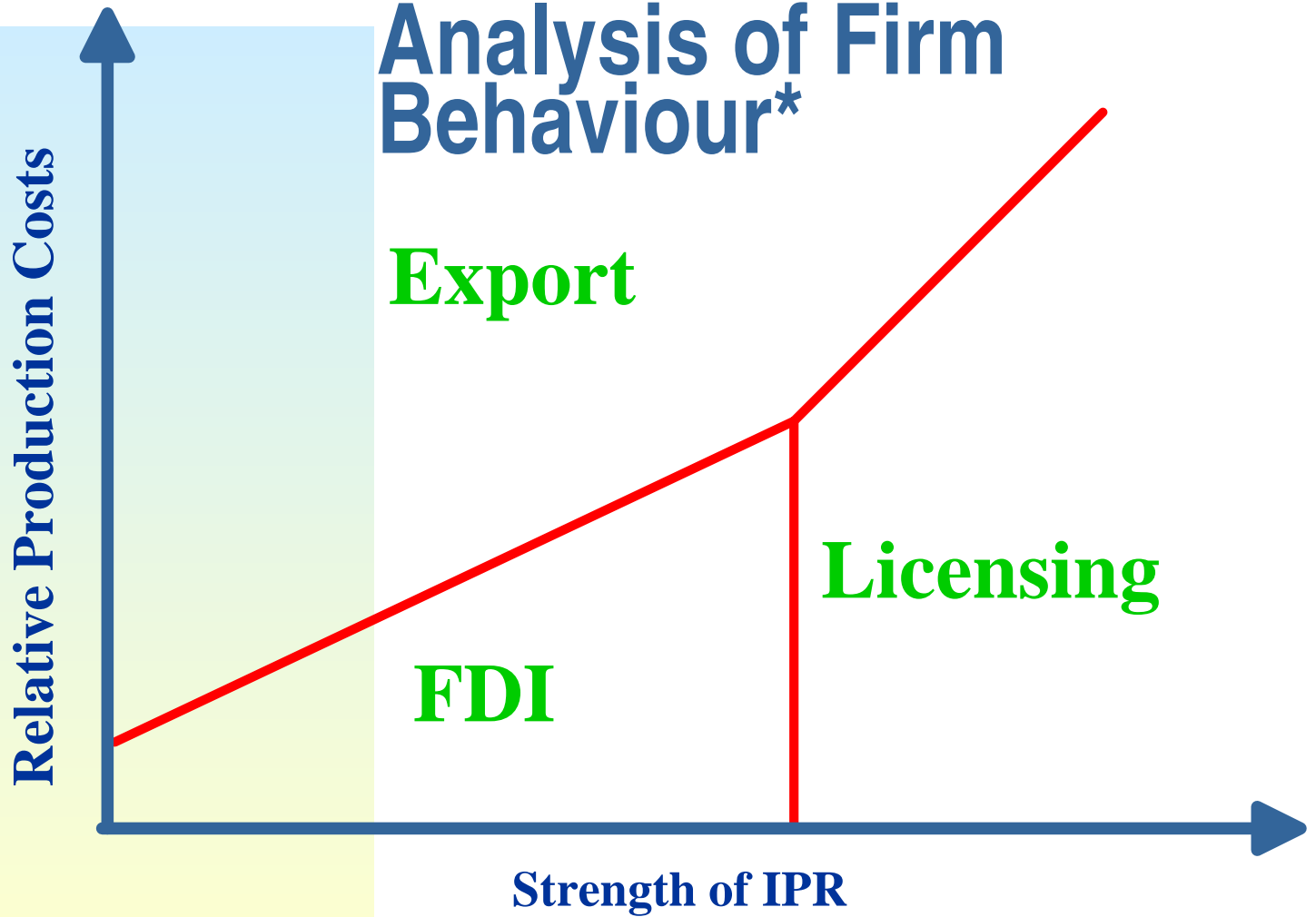
# Encouraging licensing - role of IP

- n Studies show that the relevance of IP on the investment decision increase depending on whether the investment is in:
  - u distribution outlets,
  - u rudimentary production and assembly facilities,
  - u in manufacture of components or complete products or
  - u in R&D facilities.

n Studies show that the relevance of IP also depends on the kind of industry

- u industries whose technologies have cost a lot to produce but are easy to imitate are reluctant to transfer the technology. Discrete and complex industries
- u prefer to engage in export or manufacturing within the company as through a FDI than licensing

# Analysis of Firm Behaviour\*



Nicholson, FTC



- n Weak IPR encourage FDI (risk of dissipation) and strong IPR encourage licensing (confidence of security of technology)
- n An efficient IP system builds confidence to attract investment with high knowledge component
- n It also creates an inventive and innovative culture locally - absorption, adaptation and innovation

# Advantages of Licensing

## n For the Licensor

- u Marketing
- u Expand manufacturing
- u Earn revenue
- u Access to markets
- u Stick licensing

## n For the Licensee

- u Ahead of competition
- u Despite lack of R&D, access to new technologies
- u Knowledge transfer
- u Possibilities of creating innovative products

# Negotiation

n you don't get the deal you deserve  
but you get the deal you negotiate

# Preparation

- n Do your homework regarding the technology (patent information an important source)
- n its legal status, its production and marketing information and the value that may be placed on it. Check on alternatives to the technology -
- n Analyze your strengths
- n Prepare summary of key issues to be discussed (Heads of Agreement)

# Heads of Agreement

- n Parties
- n Subject matter, extent and territory
- n Improvements
- n Financial
  - F Lump sum
  - F Royalties
  - F Annual Minimum Royalty

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- n Best efforts
  - n Who is responsible for suing infringers
  - n Dispute settlement
  - n Period

# Guidelines in Negotiating

- n Aim for win win outcome
- n Establish maximum (best) and minimum (worst) position
- n Generate variables or alternatives
  - u trade variables that are cheap for you but expensive for the other
- n Never give unless you get

# Manual on negotiating Technology Licenses

- n Consists of material tested in three workshops
- n Focus of workshops mock negotiations of real life case studies by teams of licensors and licensees
- n Discusses basic issues of licensing
- n Provides sample clauses and agreements and case studies for training of trainers