

# Intellectual Property, Traditional Knowledge, Traditional Cultural Expression and Genetic Resources

Samoa Practical Workshop  
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LAWYERS & CONSULTANTS



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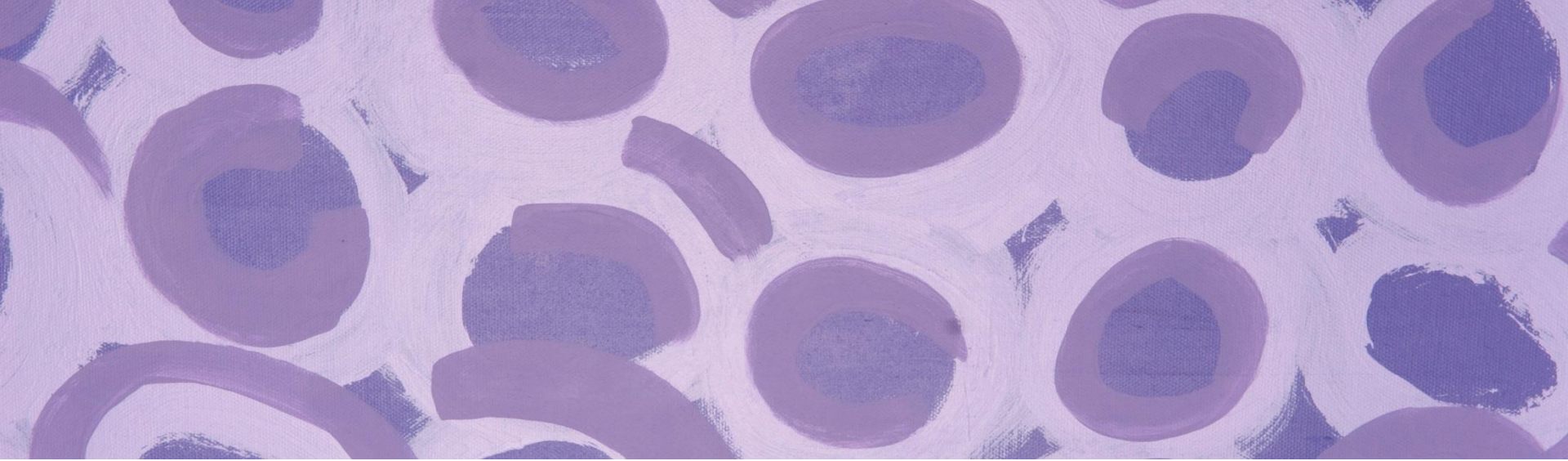
Intellectual Property

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Traditional Cultural Expression, Traditional Knowledge and Genetic Resources

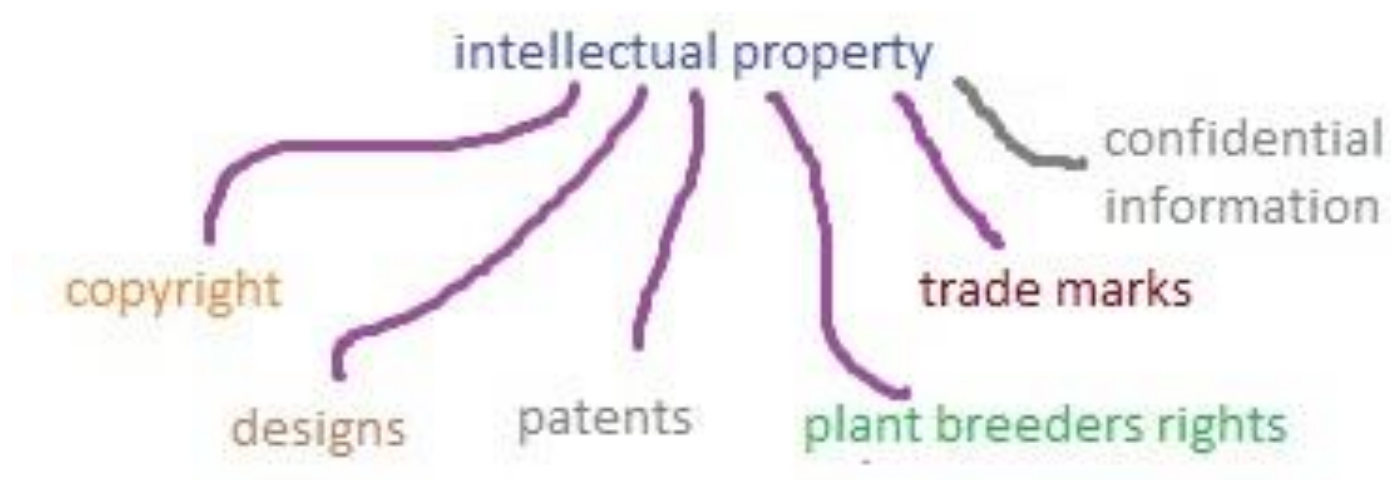
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IP laws and Traditional Cultural Expression and Traditional Knowledge



# Intellectual Property

# Intellectual Property



**Intellectual property** protects products of the mind

- economic rights
- - limited in time.



# Copyright

- Protects :
  - ❖ original works (literary, artistic, dramatic, musical)
  - ❖ other subject matter (films, sound recordings)
- Material form requirement
- Automatic – no registration required
- Lasts for life of the creator PLUS 70 years (works)
- Skill, labour and effort creates new works
- First owned by the creator or creators
- Moral rights
- Can be licensed and assigned.



# Copyright

- Art, sculptures, works of artistic craftsmanship
- books
- films
- music
- sound recordings
- newspapers
- magazines
- databases
- media broadcasts
- computer programs



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# Designs

- Features of shape, configuration, pattern or ornamentation which give a product a unique appearance, and must be new and distinctive
- Industrial design application – look and feel
- Registration is required for protection
- Lasts for 10 years





# Trade Marks

A sign used to distinguish goods or services in the course of providing goods and services

A sign includes distinctive words, letters, names, brands, logos, shape, colour and scent.



# Geographical Indications

A sign used on goods that have a specific geographical origin and possess qualities or a reputation due to that place of origin.



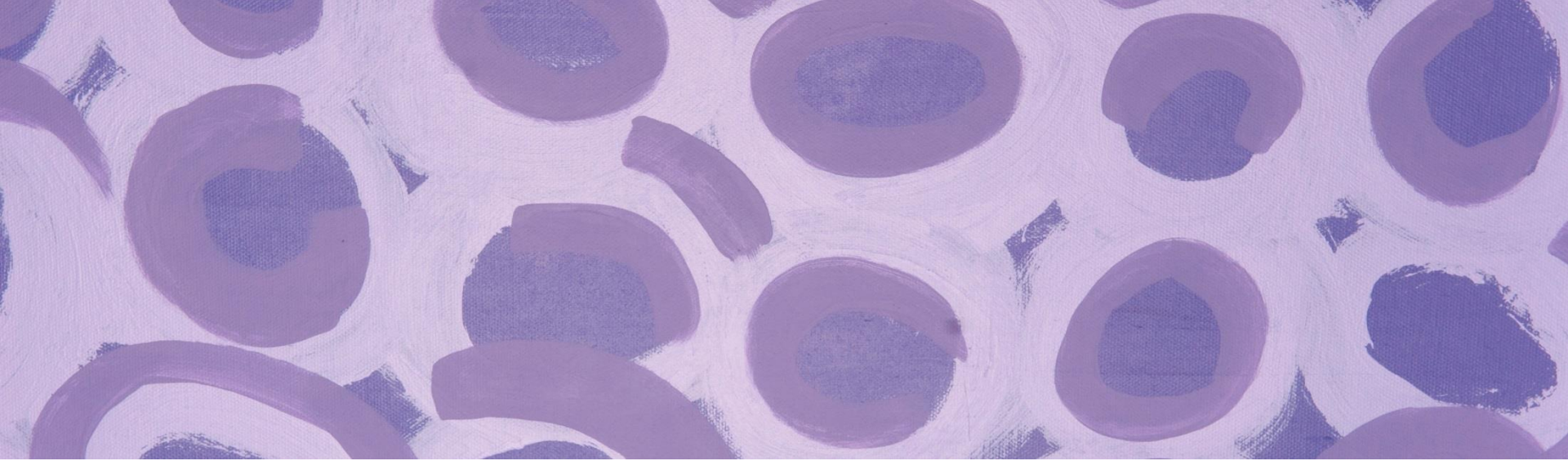
# Patents

- Inventions
- Novelty and inventive step requirements for protection
- Prior art
- Details must be disclosed in specifications
- High costs
- Lasts for 20 years and then in public domain



# Confidential information (Trade Secrets)

- Can be used to protect information from being released where:
  - There is a relationship of confidence
  - Information remains secret
  - Using or releasing the information would cause damage
- Has been used to stop publication of tribal secrets (*Foster v Mountford*).



# 2

## **Traditional Cultural Expression, Traditional Knowledge and Genetic Resources**



# Traditional Cultural Expression

- the forms in which traditional culture is expressed;
- form part of the identity and heritage of a traditional or indigenous community;
- are passed down from generation to generation.



# Traditional Cultural Expression



# Traditional Knowledge (TK)

- know how, skills, innovations or practices;
- that are passed between generations;
- in a traditional context; and
- that form part of the traditional lifestyle of indigenous and local communities who act as their guardian or custodian.





# Traditional Knowledge



# Genetic Resources

- biological materials that:
  - contain genetic information of value; and
  - are capable of reproducing or being reproduced.



# Genetic Resources



# Shared Systems in Indigenous Cultures

- Communal ownership
- Origins in place and people
- Responsibility for culture
- Customary law obligations
- Guarding integrity
- Transmission of culture (passing on culture to the next generations)



# TK and TCE misappropriation

Indigenous people are concerned that their TK and TCEs are being copied and adapted by others.

The IP system doesn't stop this.

Indigenous people want protection to make sure that the intellectual innovation and creativity embodied in TK or TCEs are not wrongly used.



**What are some examples of TK, TCE  
and Genetic Resources  
misappropriation from your  
country?**



# Appropriating Samoan Pe'a



# TK, Genetic Resources and Patents

Mary Kay Cosmetics  
Patents over compound  
containing Kakadu Plum  
patented for wrinkle  
cream.

Kakadu Plum or Gubbinge  
(Terminalia ferdinandiana)  
used by Aboriginal people  
for generations for  
nutrition and healing.

Source: Australian Native Foods Limited website:  
[www.anfil.org.au](http://www.anfil.org.au)





# **What rights do Indigenous people want to their TK, TCE and Genetic Resources?**



# Declaration on the Rights of Indigenous Peoples

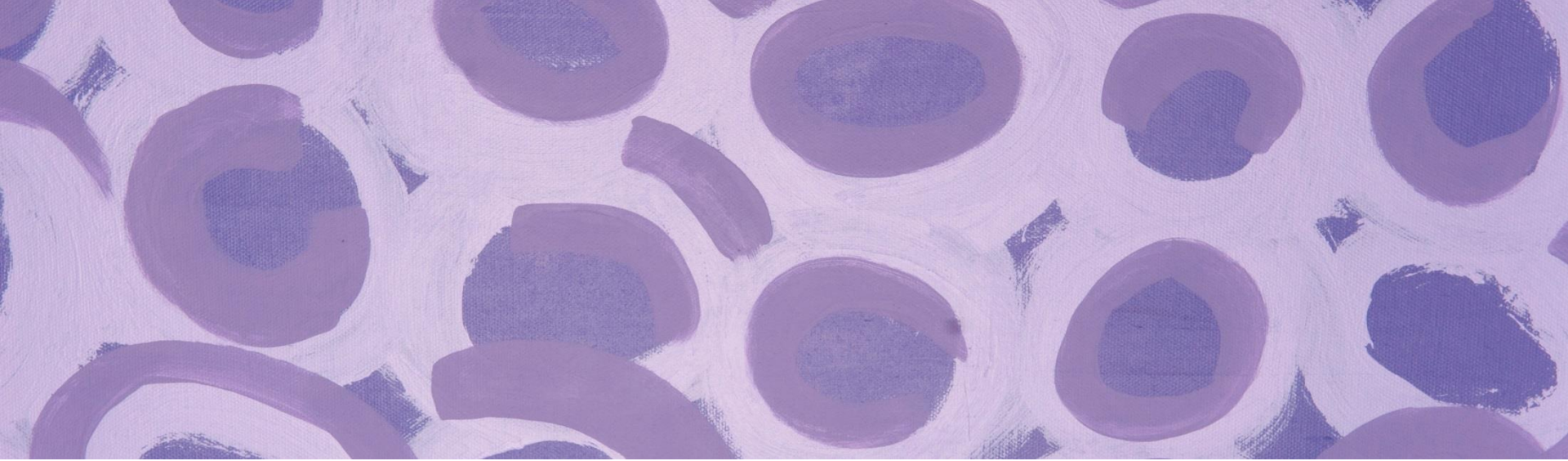
## Article 31(1):

*Indigenous peoples have the right to maintain, control, protect and develop their **cultural heritage, traditional knowledge and traditional cultural expressions**, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*

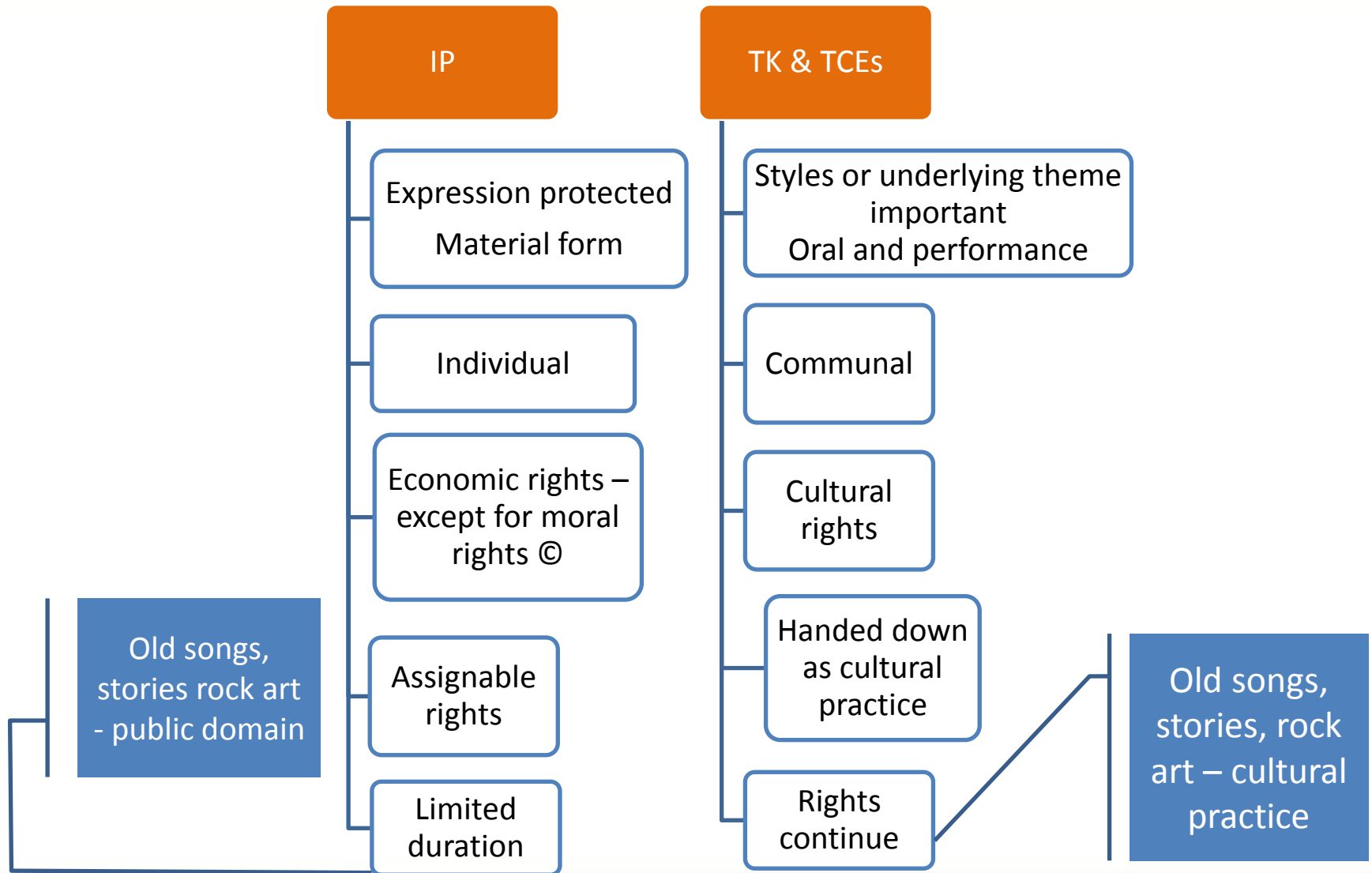


# What rights do Indigenous people want?

- Prevent or authorize use
- Stop inappropriate or derogatory use in commercialization by others
- Acknowledgement and attribution
- Respect customary obligations eg: respect sacred material
- Benefit sharing for third party uses



# Intellectual Property and TCE and TK





# Wandjina Rock Art



# ***Milpurrurru v Indofurn***



# Litigation and communal copyright

## Case study: Bulun Bulun v R & T Textiles





# **Design Registration**

## **Sitting with my Sisters furniture**



# Trade marks and TCEs



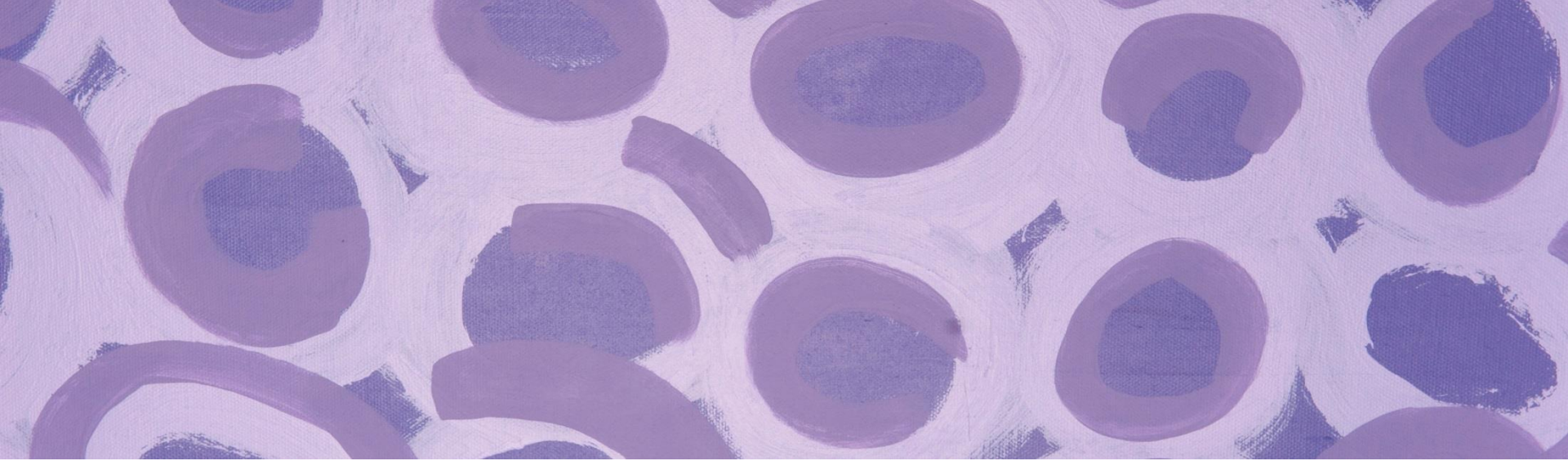
# Mudjala plant patent Jarlmadangah Burru and Griffith University

Patent claims over the isolated nine triterpene saponins and a single triterpene aglycone from the tree's bark, **for use as an analgesic.**



# Confidential information (Trade Secrets)

- Has been used to stop publication of tribal secrets (*Foster v Mountford*).



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## Concluding comments



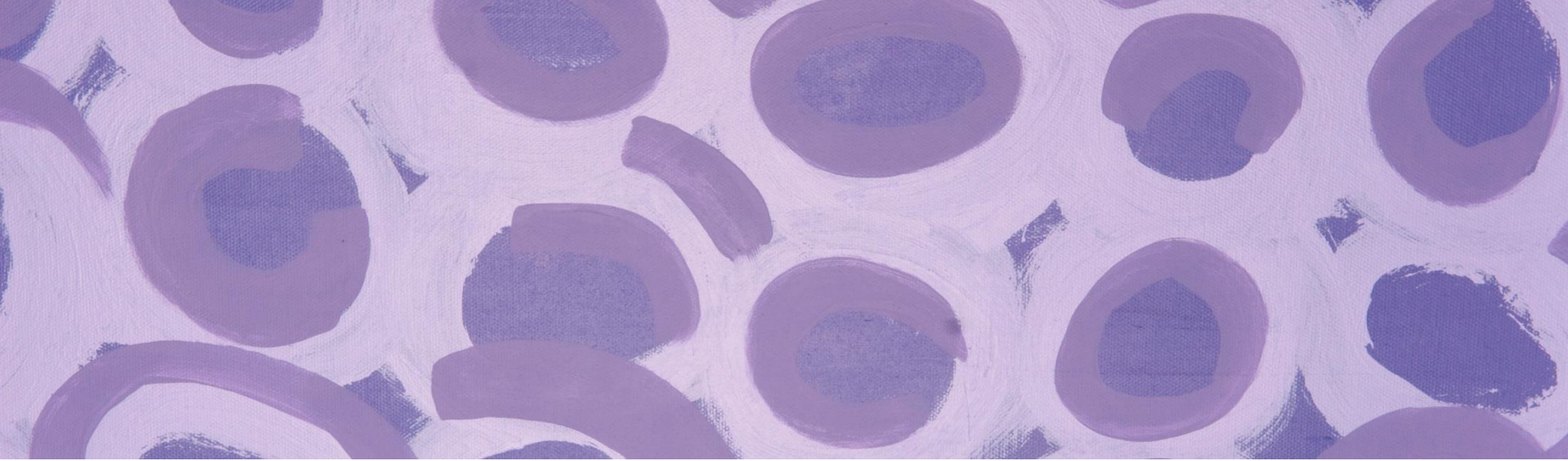
## Options for protection include:

- Using IP tools – patents, trade marks (including Geographical indications), copyright, designs and confidential information
- Using other laws – heritage and trade practices
- admin measures - database and registers
- Customary law and protocols
- Sui generis laws
- Access and benefit sharing agreements



Inter-Government Committee on Intellectual Property and Genetic Resources,  
**Traditional Cultural Expressions** and **Traditional Knowledge**.

<http://www.wipo.int/tk/en/>



## **The story of Bolo**



# Hypothetical

## Bolo scenario – Part 1

1. Albert, an Indigenous knowledge holder, who according to customary laws, holds traditional knowledge about the Bolo plant handed down by the Gadja clan.
2. Albert is asked take part in a university research project. He takes Betty the researcher on country and tells her traditional knowledge of the Bolo plant, as contained in stories, art and dance. Betty records Albert talking about the plant including Gadja clan traditional stories. She films Albert collecting and preparing medicine. She takes a sample of the plant away.
3. Betty writes her thesis and gives it to the university. The other materials, she keeps at her office.
4. Betty then publishes her thesis as a book with Sandy Bay Press.

# Hypothetical

## Bolo scenario – Part 2

5. Betty gets a job at VITA, a commercial research company. The VITA team do research on the Bolo plant and identify a compound that is good for reducing face wrinkles. A patent is applied for by VITA.
6. VITA licenses the rights to commercialise Bolo to VERA, a beauty crème manufacturer. VERA trade mark the language name 'Bolo' for beauty products.
7. Albert, who is also an artist, was commissioned by Gallery Goanna to do a painting of the Bolo plant.
8. VITA get permission from Gallery Goanna to use Albert's art as a logo.

# Hypothetical

## Bolo scenario – Part 3

9. Betty dies and her niece, Sally, inherits Betty's property by will. This includes the field notes, photographs, recordings and films. Sally donates the materials to the Oxhead Library.
10. The Oxhead Library digitises the materials, puts it into a database, which is searchable on the internet.
11. Cecil, a filmmaker, views the film and wants to use the footage for his new documentary about the Humi plant from the Ardama region. He couldn't find any footage of Ardama people talking about the Humi plant but used the film of Albert on country, showing how to collect and prepare the Bolo plant could be used with a voice over about the Humi.

# Hypothetical Bolo scenario – Part 4

12. Albert dies, and his son, Conrad doesn't know about the recordings or the film. He doesn't know about the painting (which was recently auctioned at Northerly's for \$1.5 million. He doesn't know about Betty, Sally, VITA or VERA.
13. Conrad doesn't know the traditional knowledge of the Bolo plant because Albert died before passing on the knowledge . Now, Conrad wants to look after country.



# Thank you for your participation

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