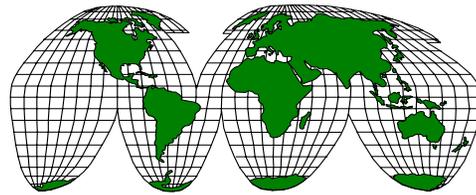


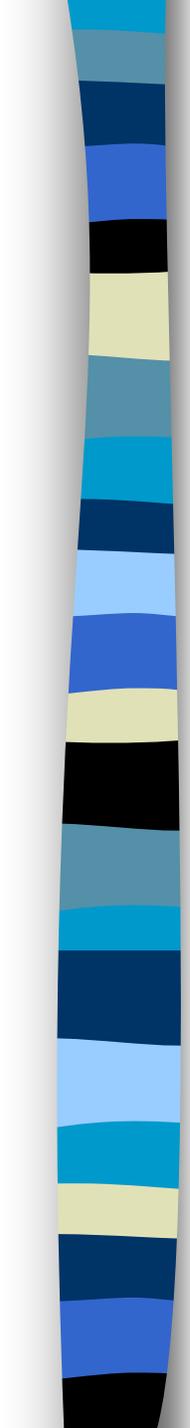
PATENTS AND TRIPS: AN OVERVIEW



**United States Patent and Trademark Office
Global Intellectual Property Academy
Patent, Trademark, and Copyright – Law and Policy
August 27-29, 2007**

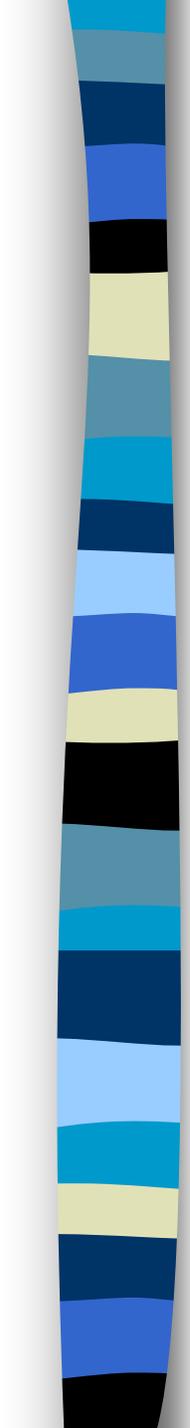


**Minna Moezie
IPR Attaché
U.S. Commercial Service
U.S. Embassy Cairo**



INTERNATIONAL STANDARDS FOR PROTECTING INTELLECTUAL PROPERTY

- World Trade Organization (WTO)
 - WTO is the successor to the General Agreement on Tariffs and Trade (GATT) established in the wake of the Second World War.
 - Created January 1995



HISTORICAL PERSPECTIVE

Goals of the Uruguay Round

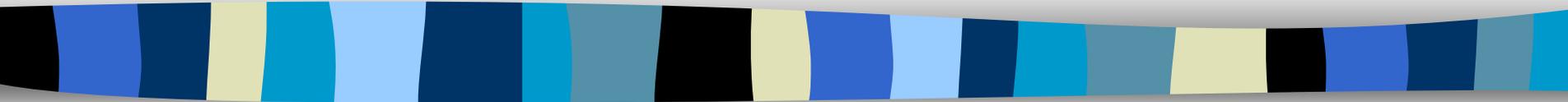
- 📄 Update existing international standards and rules
- 📄 Establish dispute settlement mechanism to resolve conflicts between States
- 📄 Provide detailed IP enforcement provisions
- 📄 Transparency requirement
- 📄 National treatment
- 📄 Most-favoured-nation treatment (MFN)

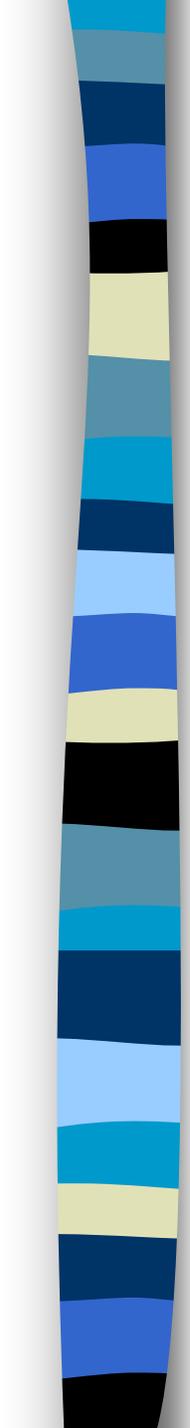
What is the Relationship between TRIPS and WTO?

The basic structure of the WTO agreements: how the six main areas fit together – the umbrella WTO Agreement, goods, services, intellectual property, disputes and trade policy reviews.

<i>Umbrella</i>	AGREEMENT ESTABLISHING WTO		
	Goods	Services	Intellectual property
<i>Basic principles</i>	GATT	GATS	TRIPS
<i>Additional details</i>	Other goods agreements and annexes	Services annexes	
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
<i>Dispute settlement</i>	DISPUTE SETTLEMENT		
<i>Transparency</i>	TRADE POLICY REVIEWS		

Protection of Industrial Designs

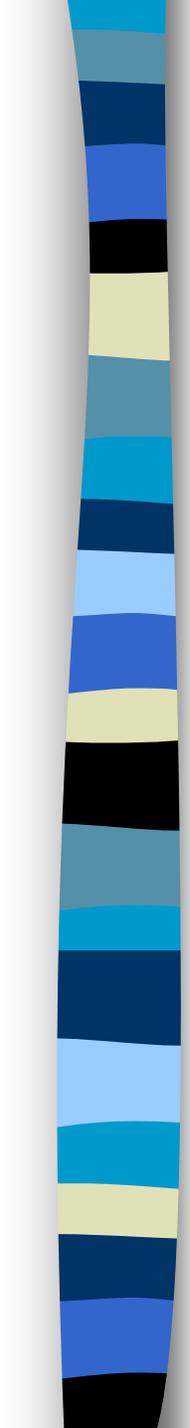




TRIPs Article 25 – Industrial Designs

Article 25—Requirements for Protection

- ◆ Requires that protection for any industrial design that is new or original, or that does not significantly differ from known designs or combinations of known design features.
 - ◆ Designs dictated essentially by technical or functional considerations need not be protected.
- ◆ Duration at least ten years.



Industrial Designs in the U.S.

35 U.S.C. 171 Patents for designs.

Whoever invents any **new, original, and ornamental design** for an article of manufacture may obtain a patent therefor, subject to the conditions and requirements of this title.

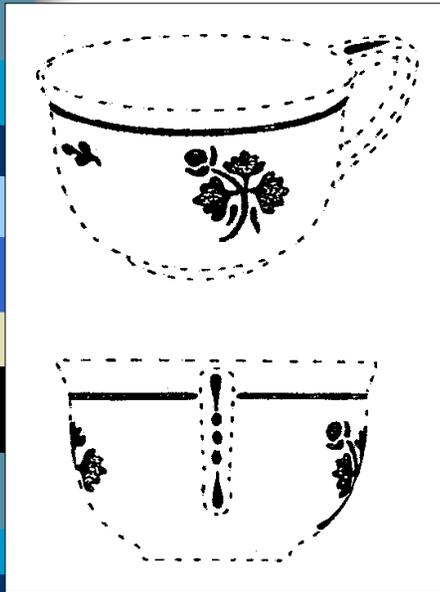
The provisions of this title relating to patents for inventions shall apply to patents for designs, except as otherwise provided.

Duration is 14 years.

INDUSTRIAL DESIGNS

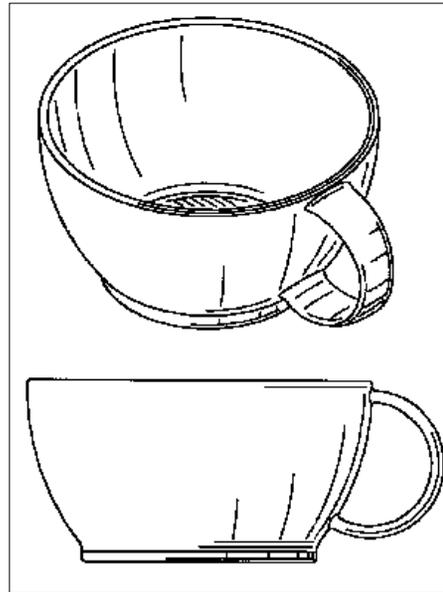
Design may consist in configuration or ornamentation or both.

In re Schnell, 8 USPQ 19 (CCPA 1931)



(1)

Surface
ornamentation
applied to
an article



(2)

Configuration
embodied in an
article



(3)

Configuration
and Surface
ornamentation for
an article

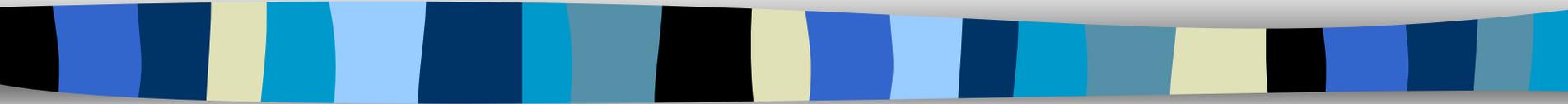
INDUSTRIAL DESIGNS

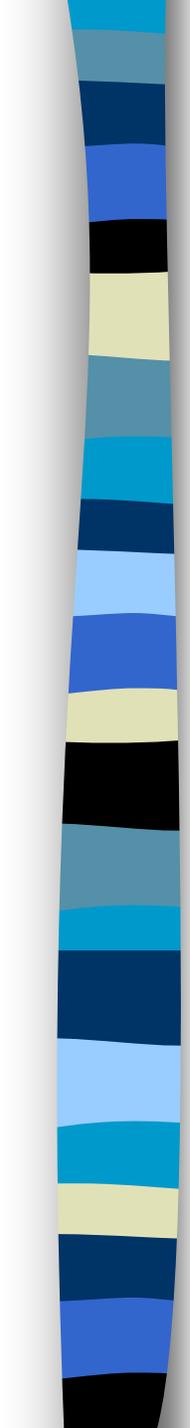
1.2



*Hague
Registration
DM/062882*

Protection of Inventions

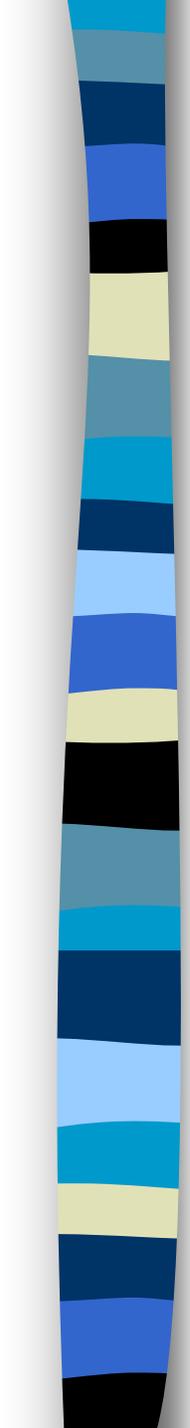




TRIPs Article 27 - Inventions

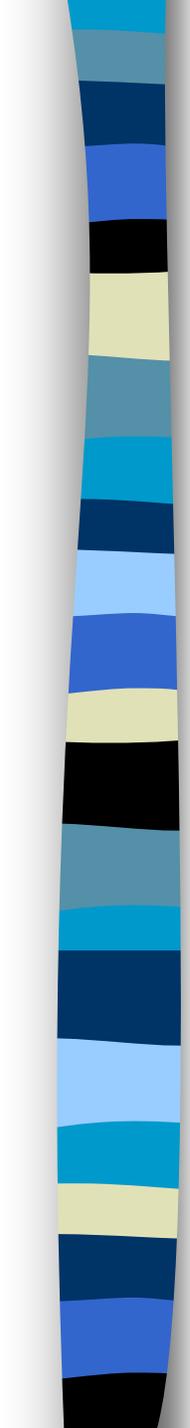
Article 27(1)--Patentable Subject Matter

- ◆ Requires that patents be available for any invention, whether products or processes, in all areas of technology provided that they are **new**, involve an **inventive step**, and are capable of **industrial application**.
- ◆ This general rule regarding eligibility for patentability is subject to specific exceptions set forth in paras. (2) & (3) of Article 27.



TRIPs Article 27 – Inventions in the U.S.

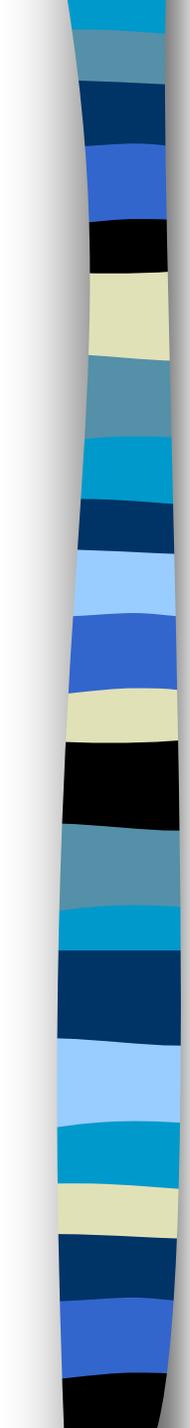
- ◆ Novelty is set forth in 35 USC 102
- ◆ Inventive step is the same as unobvious- see 35 USC 103
- ◆ Industrial application is essentially the same as our utility standard set forth in 35 USC 101



TRIPs Article 29 - CONDITIONS ON PATENT APPLICATIONS

Article 29(1) & (2)--Disclosure Requirement

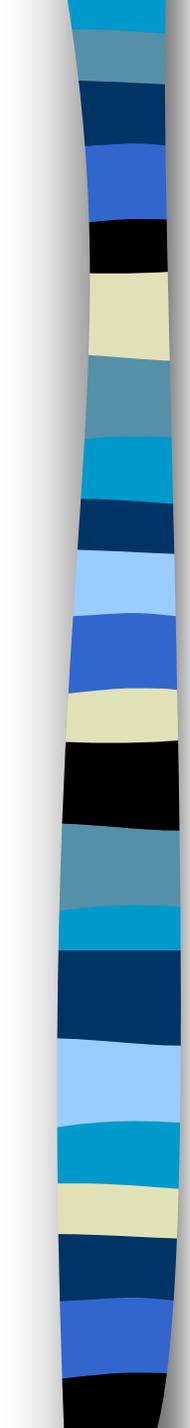
- ◆ Members shall require patent applications to
 1. disclose the invention in a sufficiently clear and complete fashion.
- ◆ Members may require patent applications to
 1. indicate the best mode and
 2. provide information concerning corresponding foreign applications and grants.



TRIPs Article 29 - Conditions On Patent Applications in the U.S.

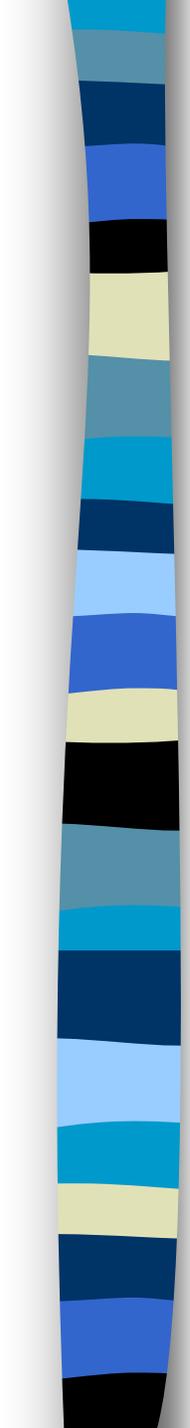
35 U.S.C. 112 Specification.

The specification shall contain a **written description** of the invention, and of the manner and **process of making and using** it, in such full, **clear, concise**, and exact terms as to **enable any person skilled in the art** to which it pertains, or with which it is most nearly connected, **to make and use** the same, and shall set forth the **best mode** contemplated by the inventor of carrying out his invention.



Contents of a U.S. Patent Application

- A complete application comprises:
 - (1) A specification as prescribed by 35 U.S.C. 112, including a claim or claims
 - (2) An oath or declaration
 - (3) Drawings, when necessary; and
 - (4) The prescribed filing fee, search fee, examination fee, and application size fee.
- Applicants are encouraged to file an information disclosure statement in nonprovisional applications.



TRIPs Article 27 - Inventions

PATENTABLE SUBJECT MATTER

Article 27(1)--Prohibition Against Discrimination

- ◆ Patents shall be available and patent rights enjoyable without discrimination as to:
 1. place of invention;
 2. field of technology; or
 3. whether products are imported or locally produced.

TRIPs Article 27 - without discrimination as to place of invention

Residence	2002	2003	2004	2005	2006
Angola	-	-	1	-	-
Kenya	3	7	18	10	4
Madagascar	1	-	-	-	-
Nigeria	3	5	2	-	-
South Africa	107	145	107	115	123
Tanzania	-	2	-	-	-
Trinidad & Tobago	2	2	-	-	3
Uganda	1	-	-	-	-
Zimbabwe	1	1	-	2	1



US005624120A

United States Patent [19] Frank-Opigo

[11] Patent Number: **5,624,120**
[45] Date of Patent: **Apr. 29, 1997**

[54] U.S. PRESIDENTIAL CAMPAIGN AND ELECTION GAME

[76] Inventor: **Emmanuel A. Frank-Opigo**, P.O. Box 550, Port Harcourt, Nigeria

[21] Appl. No.: **540,490**

[22] Filed: **Oct. 10, 1995**

[51] Int. Cl.⁶ **A63F 3/00**

[52] U.S. Cl. **273/279**

[58] Field of Search **273/242, 243, 273/248, 249, 257, 279**

[56] References Cited

U.S. PATENT DOCUMENTS

753,949	3/1904	Wing	273/279
1,616,216	2/1927	Dempsey	273/279
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3,368,816	2/1968	Milazzo et al.	273/257
3,512,779	5/1970	McGaughey	273/279
4,092,028	5/1978	Marse	273/257 X
4,299,390	11/1981	Delgado	273/257

FOREIGN PATENT DOCUMENTS

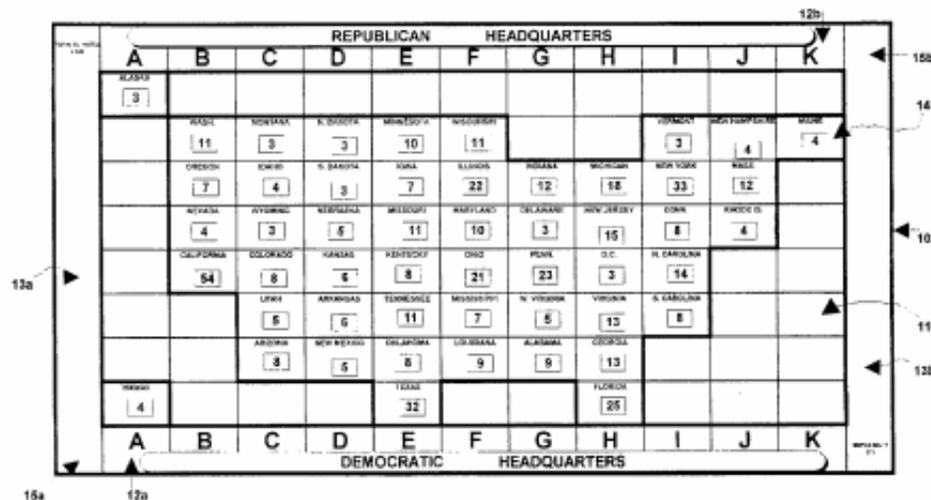
437091	6/1948	Italy	273/257
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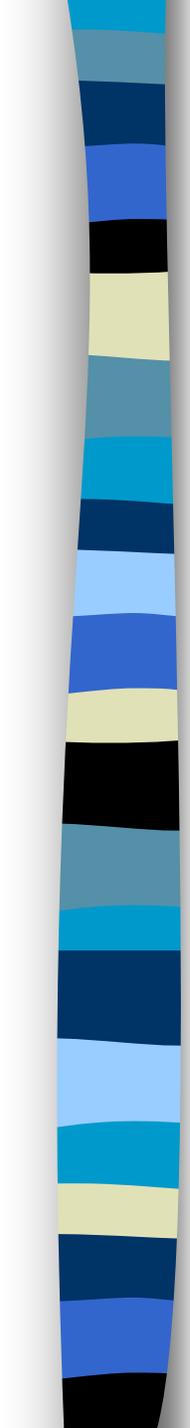
Primary Examiner—William E. Stoll

2 Claims, 3 Drawing Sheets

[57] ABSTRACT

The present invention entails a game and a game board apparatus. The game board apparatus comprises a game board, a pack of fifty-one playing cards and two normal six-sided dice. The game board is ruled into eighty-eight squares made up of eleven columns labelled A to K and eight rows within the confines of which fifty-one squares represent America's fifty states and the District of Columbia. The states, this term to include the District of Columbia whenever not specified, are so arranged that the boundaries approximate the map of the United States. On each of the fifty squares is written the name of the state and the state's electoral vote. The fifty-one cards have the same information as on the squares, but in addition also display the flag of the state, the letter indicating the state's location, that is any of the letters A through K, and the state's Trump Number, which is an indication of the relative ease with which that state can be won. The game is played by two persons designated the presidential candidates of the Democratic and Republican Parties. The game simulates the United States' presidential election system. Play involves contesting and contriving to win the Electoral College votes from three groups of states, namely, the locked states, the swing states and even sometimes the so-called lost states. The objective of the game is to be the first to win at least two hundred and seventy Electoral College votes.

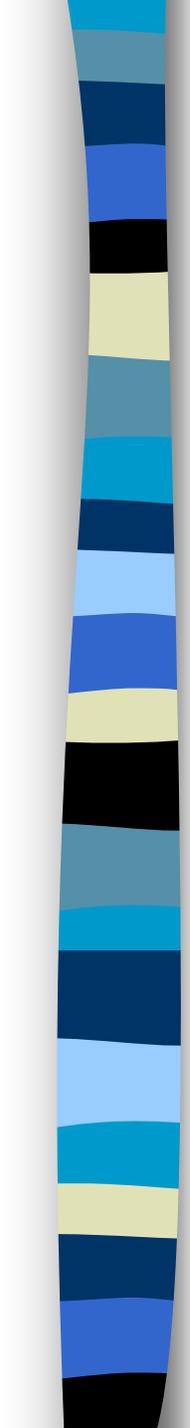




TRIPs Article 27 - PATENTABLE SUBJECT MATTER

Article 27(2)--Exclusions from Patentability

- ◆ Members may exclude from patentability inventions under the following conditions:
 1. the prevention is necessary to protect *ordre public* or morality, including protecting human, animal, or plant life and the environment; and
 2. exclusion is not made because exploitation is prohibited by law.



Article 27(3)--Exclusions from Patentability

In the U.S., “anything under the sun made by man” may be patented.

Some other countries have restrictions, what restrictions are you aware of, and what is the reason for the restriction?

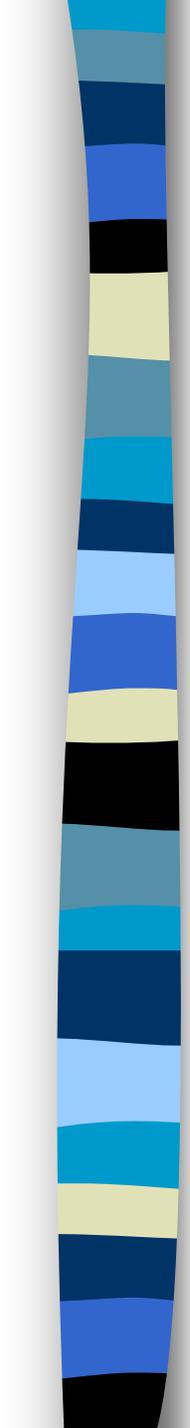
E.g., in Egypt, Industrial Design Patents may not include religious symbols or stamps or flags of Egypt or other countries.

TRIPs Article 27 - PATENTABLE SUBJECT MATTER

Article 27(3)--Plant Variety Protection

- ◆ Members must provide for the protection of plant varieties either by patents or by an effective *sui generis* system or any combination thereof.
- ◆ UPOV is an excellent example of a *sui generis* system. 60 countries are a member of UPOV.





Two Types Of Patent Protection Available In The U.S. for Plants

- Plant Patent- US Plant Patent Act of 1930 (35 USC 161)
- Utility Patent (35 USC 101)

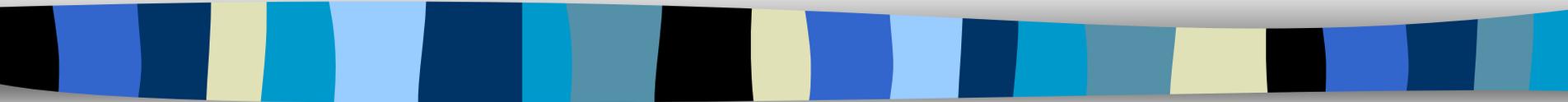
Utility vs Plant Patents

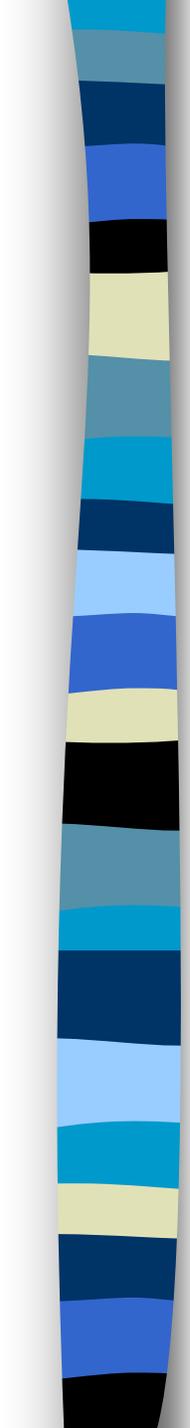
Requirement or Attribute	Utility Patent (35 U.S.C. 101)	Plant Patent (35 U.S.C. 161)
Generic claim or protection possible	Yes	No – patent covers a single plant and its clones
Method claims permitted	Yes	No
Claim structure controlled	No	Yes – one claim of prescribed format

Utility vs Plant Patents

Requirement or Attribute	Utility Patent (35 U.S.C. 101)	Plant Patent (35 U.S.C. 161)
Invention must be “enabled”	Yes	No
Deposit of biological material required	Frequently	No
Variety name required	No	Yes

Rights Conferred

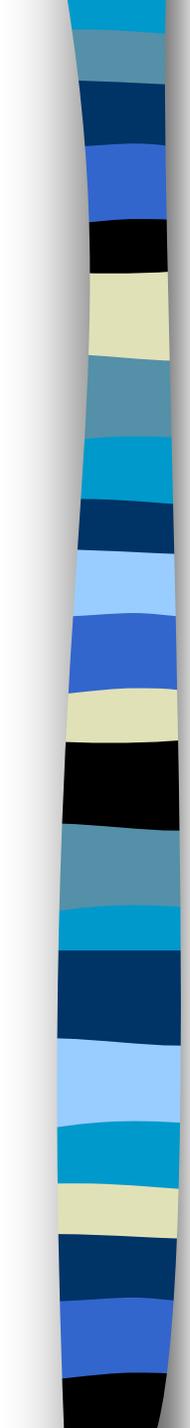




TRIPs Article 28 - RIGHTS CONFERRED

Article 28(1)--Exclusive Rights Conferred

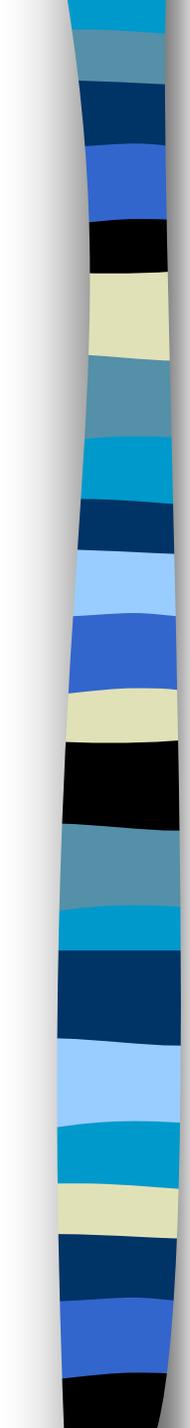
- ◆ Patents for products confer the right to prevent others from making, using, offering for sale, selling or importing for these purposes the patented product without the consent of the patent owner.
- ◆ Applies to process patents and protects at least the product obtained directly by the patented process.



TRIPs Article 28 - RIGHTS CONFERRED

Article 28(2)--Transfer of Patent Rights

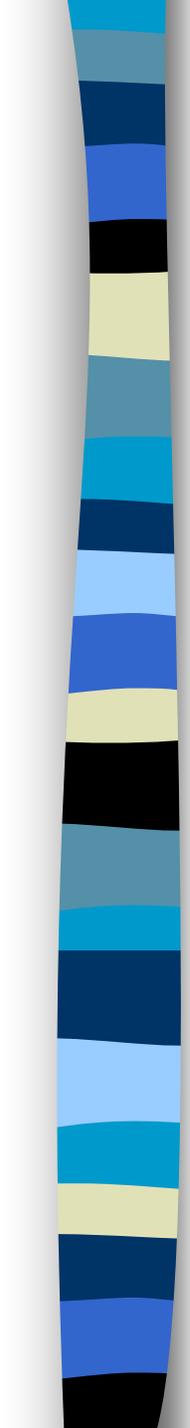
- ◆ Patent owners shall have the right to:
 1. assign the patent;
 2. transfer by succession; and
 3. conclude licensing contracts.



TRIPs Article 30 - EXCEPTIONS TO RIGHTS CONFERRED

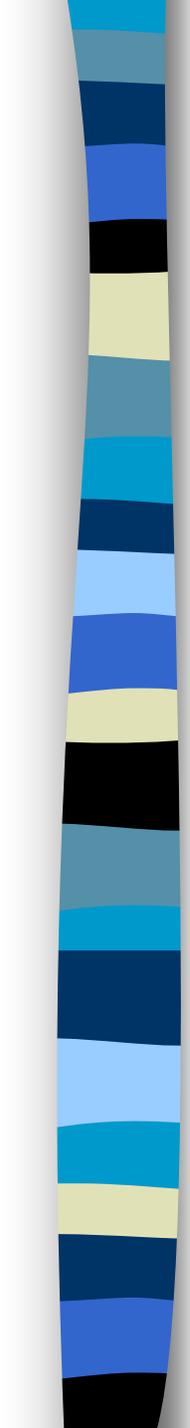
Article 30--Exceptions to Patent Rights

- ◆ Permits exceptions to the exclusive rights conferred by a patent provided that
 1. such exceptions do not unreasonably conflict with normal exploitation of the patent and
 2. do not unreasonably prejudice the legitimate interests of the patent owner, taking into account the legitimate interests of third parties.



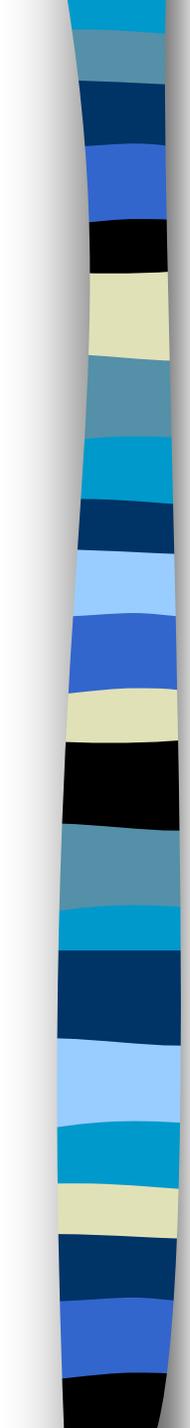
TRIPs Article 31 – UNAUTHORIZED USE

- ◆ Article 31 of the TRIPs Agreement sets forth conditions when nonvoluntary licenses (compulsory licenses) may be granted by a government.
- ◆ These conditions are safeguards to ensure that a patent owner's rights are not abrogated unjustifiably or unnecessarily.
- ◆ Members that grant compulsory licenses must comply with the terms and conditions for granting compulsory licenses as specified in paragraphs (a)-(l) of Article 31.



TRIPs Article 31 – CONDITIONS FOR GRANTING COMPULSORY LICENSES

1. Application must be considered individually.
2. **Must demonstrate reasonable efforts to obtain authorization from the patentee on reasonable terms. [May be waived in cases of national emergency & nonpublic commercial use.]**
3. Limited to authorized purposes.
4. Shall be nonexclusive & nonassignable.
5. **Primarily for the supply of the domestic market.**
6. Terminated if circumstances that led to issuance cease to exist and are unlikely to recur.
7. **Requires adequate remuneration.**
8. **All decisions relating to the unauthorized use shall be reviewable.**



TRIPs Article 32 - REVOCAATION/FORFEITURE

- ◆ Article 32 requires Members to provide an opportunity for judicial review of any decision to revoke or forfeit a patent.
- ◆ The term “judicial” implies that where the authority in question is not a court of law, it must follow the formal legal procedure of a court, such as opportunity to be heard.

TRIPs Article 32 - REVOCAATION/FORFEITURE



US00PP05751C1

(12) **REEXAMINATION CERTIFICATE** (4307th)

United States Patent
Miller

(10) **Number:** **US PP5,751 C1**
(45) **Certificate Issued:** **Apr. 17, 2001**

- (54) **BANISTERIOPSIS CAAPI (CV) 'DA VINE'**
(75) **Inventor:** Loren S. Miller, 1788 Oak Creek Dr.,
Apt. 407, Palo Alto, CA (US) 94303
(73) **Assignee:** Loren S. Miller, Palo Alto, CA (US)

Reexamination Request:
No. 90/005,307, Mar. 30, 1999

Reexamination Certificate for:
Patent No.: P.P. 5,751
Issued: Jun. 17, 1986
Appl. No.: 06/669,745
Filed: Nov. 7, 1984

Related U.S. Application Data

- (63) Continuation of application No. 06/266,114, filed on May
21, 1981, now abandoned.
(51) **Int. Cl.**⁷ A01H 5/00
(52) **U.S. Cl.** Plt./226
(58) **Field of Search** Plt./226, 395

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PUBLICATIONS

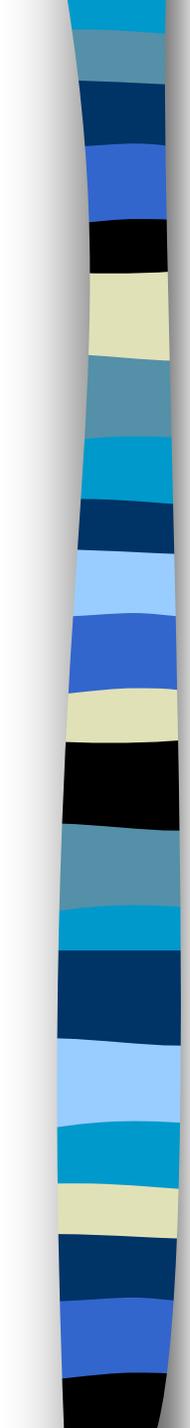
Plants of Cultivation: *Banisteriopsis caapi*, Accessioned
Specimen Sheet, The University of Michigan Herbarium
(mounted Jan. 5, 1981). [Exhibit No. 1].
Plants of Cultivation: *Banisteriopsis caapi*, Field Museum
of Natural History Herbarium Accession Sheet No. 1823910
(mounted Apr. 24, 1978). Exhibit No. 2.
Plants of Florida: *Banisteriopsis caapi*, Field Museum of
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Briggs, D. & S.M. Walters, *Plant Variation and Evolution*
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(1980). [Exhibit No. 15].
Stebbins, G. Ledyard, Jr., *Variation and Evolution in Plants*
72-6 (1950). [Exhibit No. 16].
Declaration by William R. Anderson, Director of the her-
barium at the University of Michigan. [Exhibit No. 17].
Declaration by Christine Niezgodka, Collections Manager of
the herbarium of the Field Museum in Chicago. [Exhibit No.
18].
Declaration by Antonio Jacanamijey, General Coordinator
for the Coordinating Body of Indigenous Organizations of
the Amazon Basin (COICA). [Exhibit No. 19].
Gates, Bronwen, *Banisteriopsis*, *Diplopterys* (Malpighi-
aceae) 1, 112-14, 117 (Flora Neotropica Monograph No. 30,
1982). [Exhibit No. 20].

Primary Examiner—Howard J. Locker

(57) **ABSTRACT**

A new and distinct *Banisteriopsis caapi* plant named 'Da
Vine' which is particularly characterized by the rose color of



TRIPs Article 33 - TERM OF PROTECTION

- ◆ Article 33 provides that the term of protection for a patent shall not end before the expiration of a period of twenty years counted from the filing date.
- ◆ Leaves open the possibility of patent term extensions in instances when circumstances warrant patent extension.

U.S. Patent Term Extension Certificate

PATENT NO. : 4,379,785
ISSUED : April 12, 1983
INVENTOR(S) : Rudi Weyer et al.
PATENT OWNER : Hoechst Atiengesellschaft

This is to certify that there has been presented to the

COMMISSIONER OF PATENTS AND TRADEMARKS

an application under 35 U.S.C. § 156 for an extension of the patent term. Since it appears that the requirements of the law have been met, this certificate extends the term of the patent for the period of

1,571 days

from December 17, 2000, the original expiration date of the patent, with all rights pertaining thereto as provided by 35 U.S.C. § 156(b).



I have caused the seal of the Patent and Trademark Office to be affixed this 5th day of September 1997.

Bruce A. Lehman

Bruce A. Lehman
Assistant Secretary of Commerce and

Commissioner of Patents and Trademarks

Image of Certificate Extension

TRIPs Article 34 - PROCESS PATENTS: BURDEN OF PROOF

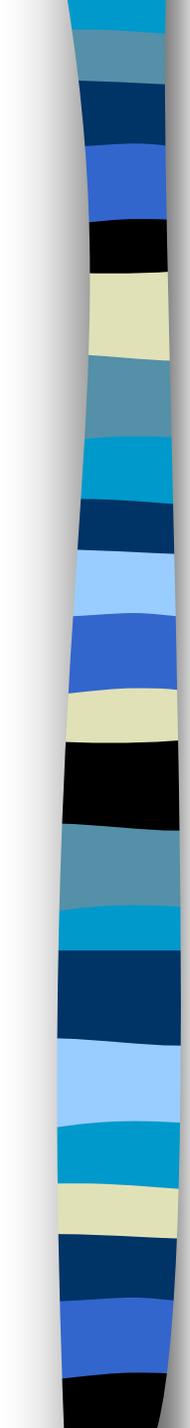


- ◆ Article 34 specifies situations in which the burden of proof lies with the alleged infringer. In such cases, the alleged infringer must prove that the process to obtain an identical product is different from the patented process.

TRIPs Article 34 - PROCESS PATENTS: BURDEN OF PROOF



- ◆ Presumption of infringement in at least one of the two specified circumstances is required:
 - (a) product obtained by patented process is new or
 - (b) substantial likelihood that the identical product was made with patented process.



Thank You!

QUESTIONS???

Contact: Minna Moezie
IPR Attaché
U.S. Commercial Service
U.S. Embassy- Cairo

Tel: +202 2797 2607

E-mail: Minna.Moezie@mail.doc.gov