

'Balancing the IP protection and flexibilities to encourage innovation and increase benefits in technology transfer'.

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Outline

- IP to promote innovation
- Problems with Patent
- IP Flexibilities in technology transfer to promote development

Why it is important to focus on patents?

- Patent promotes start-up innovation by providing a profit incentive to bring innovative ideas to market.
- Innovation in agriculture to increase productivity and to reduce costs.
- In developing countries – Government/public driven.
- New techniques required to increase economic competitiveness.

Patent

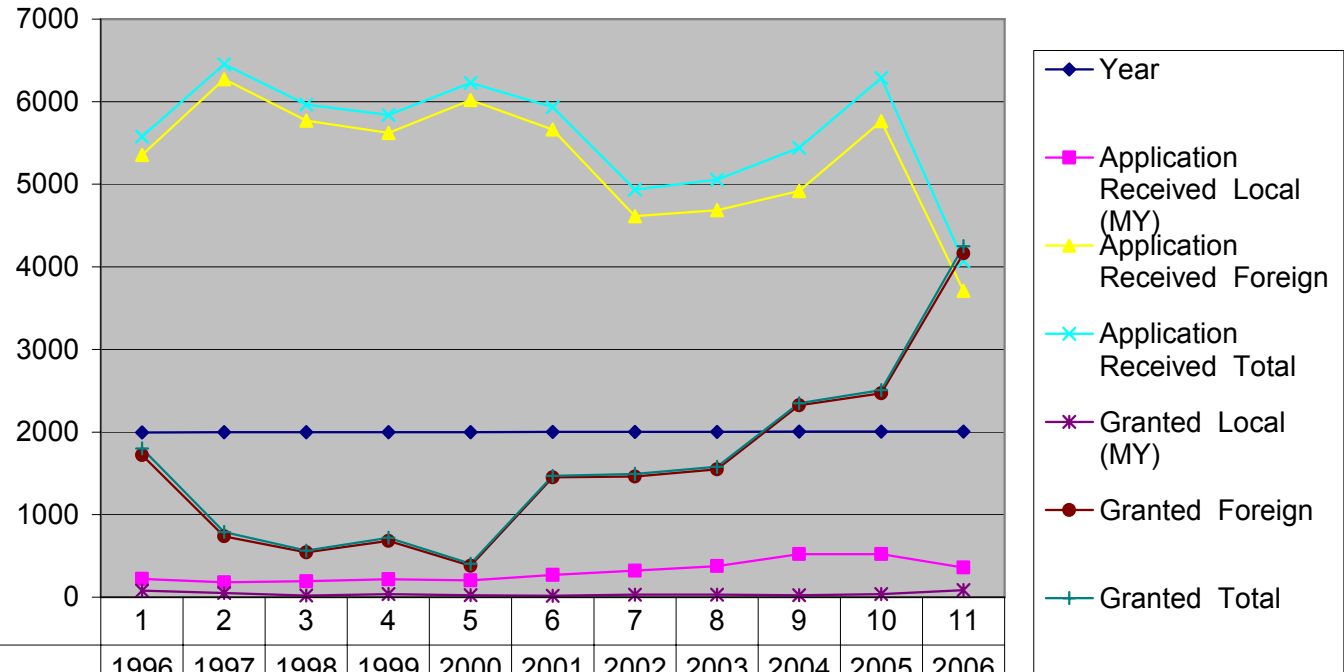
- TRIPs – should be applicable to all technologies
- Invention must be new, involves inventive steps and industrially applicable
- 20 years protection from date of application subject to payment of annual fees

Problems with Patents

- Technology transferor:
 - may own patents of the technology and impose licence fees
 - may not allow improvement of the patented technology
 - may want to own patents on improved products/processes made by the transferees
- Public institutions are more interested in patents than promoting technology to the public
- Low number of indigenous patents in developing countries

Malaysian Patent Statistics

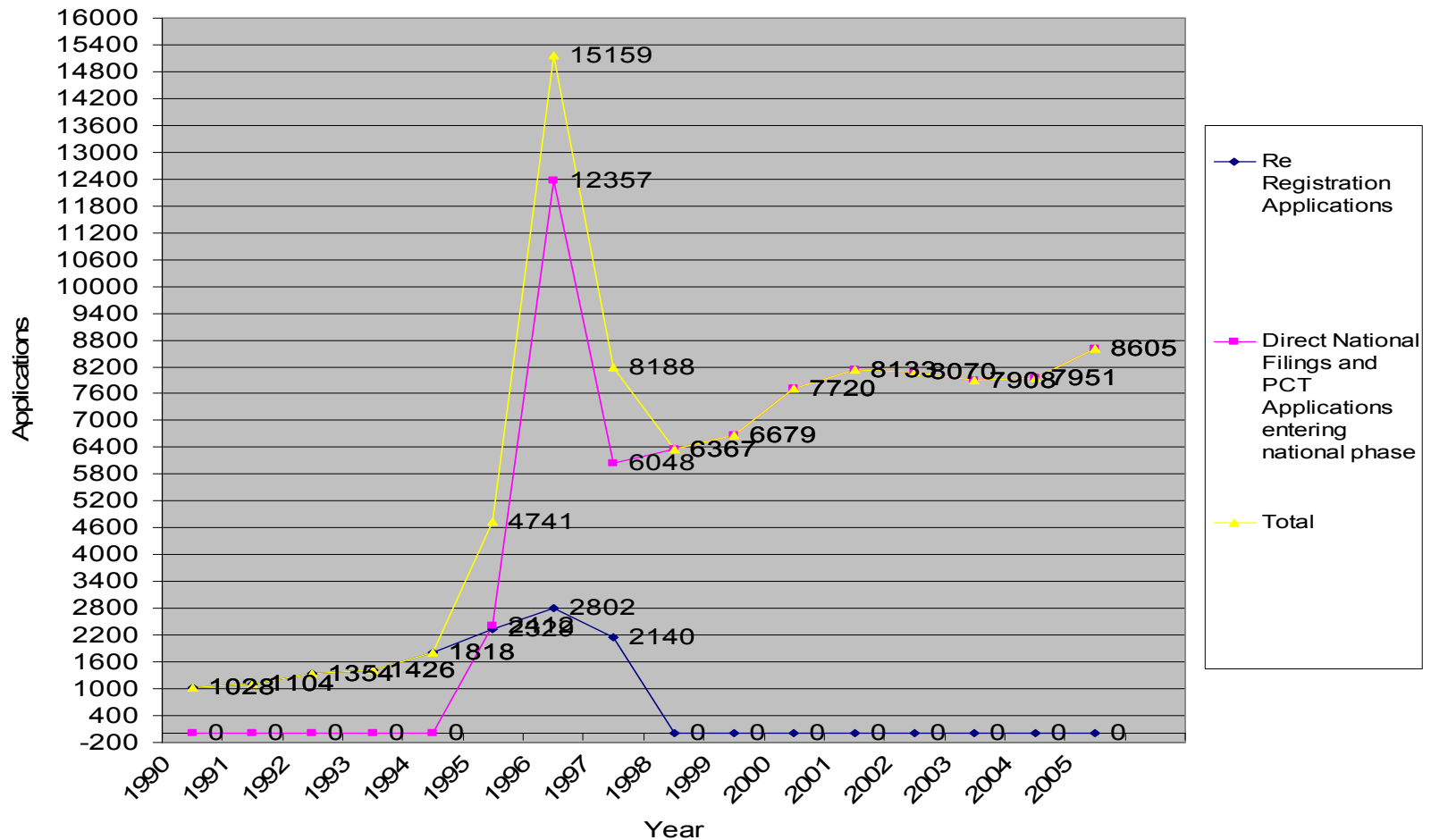
Patent applications received and granted in Malaysia 1996-2006



◆ Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
■ Application Received Local (MY)	221	179	193	218	206	271	322	376	522	522	361
▲ Application Received Foreign	5,354	6,273	5,770	5,621	6,021	5,663	4,615	4,686	4,920	5,764	3,710
✦ Application Received Total	5,575	6,452	5,963	5,839	6,227	5,934	4,937	5,056	5,442	6,286	4,071
✱ Granted Local (MY)	79	52	21	39	24	18	32	31	24	37	87
● Granted Foreign	1,722	737	545	682	381	1,452	1,460	1,547	2,323	2,471	4,162
✚ Granted Total	1,801	789	566	721	405	1,470	1,492	1,578	2,347	2,508	4,249

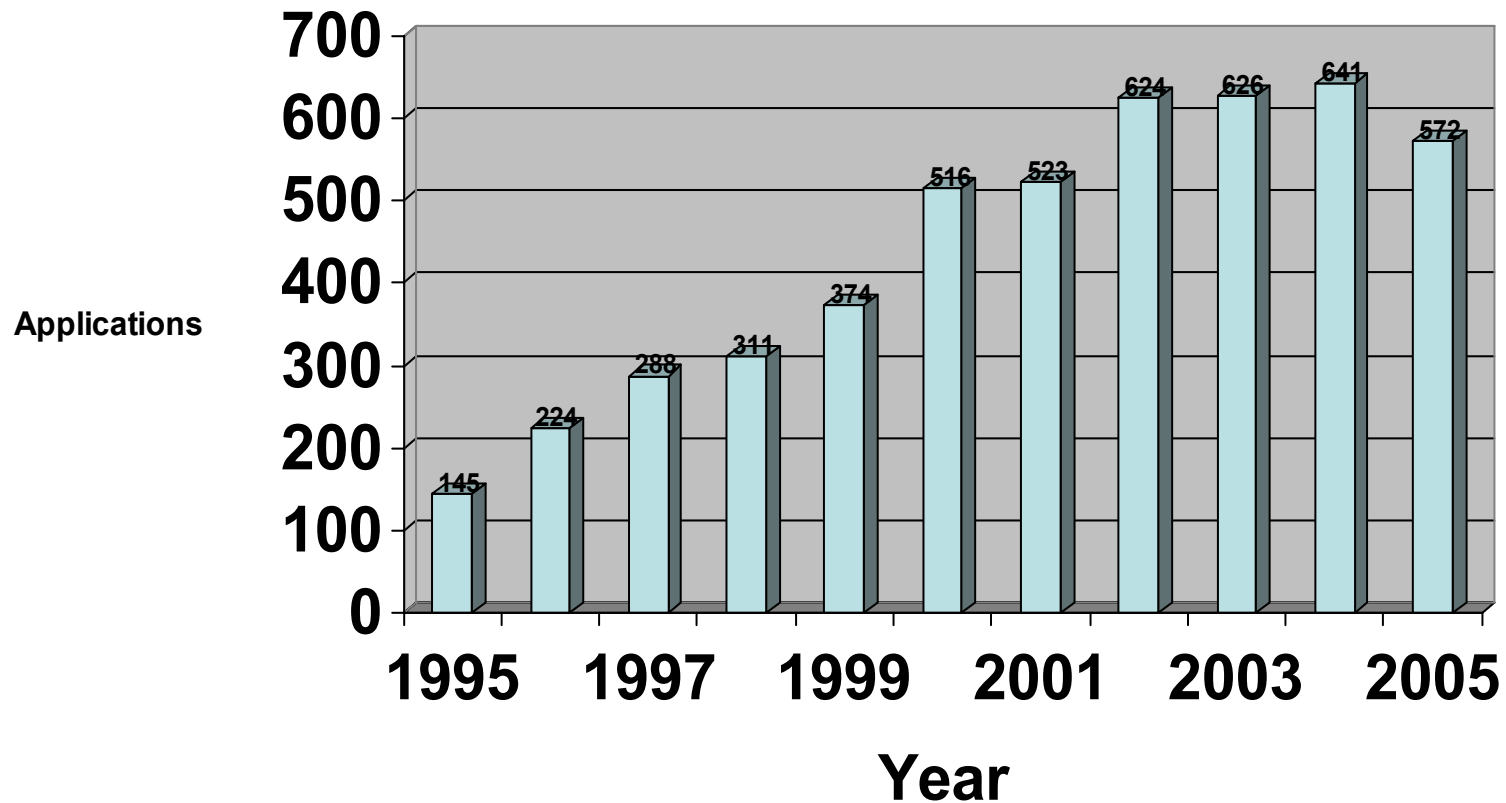
Singapore

Patent Applications in Singapore 1990-2005



Singapore Local Application

Singapore Local Patent Application



TRIPs Agreement and flexibilities

- *Article 30.*
- *Members can provide exceptions to the exclusive rights conferred by a patent, provided that such exceptions:*
 - *do not unreasonably conflict with a normal exploitation of the patent*
 - *do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.*

Why need research exemptions

- Research tools make up a large proportion of the patents awarded.
- Can increase competition in countries where it is interpreted liberally.
- Increase capacity and capability in developing countries.

Canada – Patent Protection of Pharmaceutical Product

- *Canadian Patent Act, Section 55.2(1) (Regulatory) and 55(2) (Stockpiling).*
- *Three separate, cumulative criteria to qualify for an exception:*
 - *(a) the exception must be ‘limited’;*
 - *(b) the exception must not ‘unreasonably conflict with normal exploitation of the patent’; and*
 - *(c) the exception must not ‘unreasonable prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.’*

Canada Patent case

- *Panel - “It is often argued that this exception is based on the notion that a **key public policy purpose underlying patent laws is to facilitate the dissemination and advancement of technical knowledge**”*

Selected Research exemptions provisions in developing countries

Criteria	Example of countries
activities conducted for experimental research	India [article 47(3)], Philippines (Art.72(3),
activities conducted for scientific research	Malaysia [article 37(1)]
experimental and scientific research	People's Republic of China states [article 62],
activities conducted for technological research	Brazil

Conclusions

- Developing countries to proactively encourage research by using research exemptions provisions in patent laws
- Proper use of patent research exemptions would encourage local innovations leading to sustainability
- Public research institutions should balance the need to patent with the need to disseminate knowledge to the community

Thank You.

From:

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