

INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE

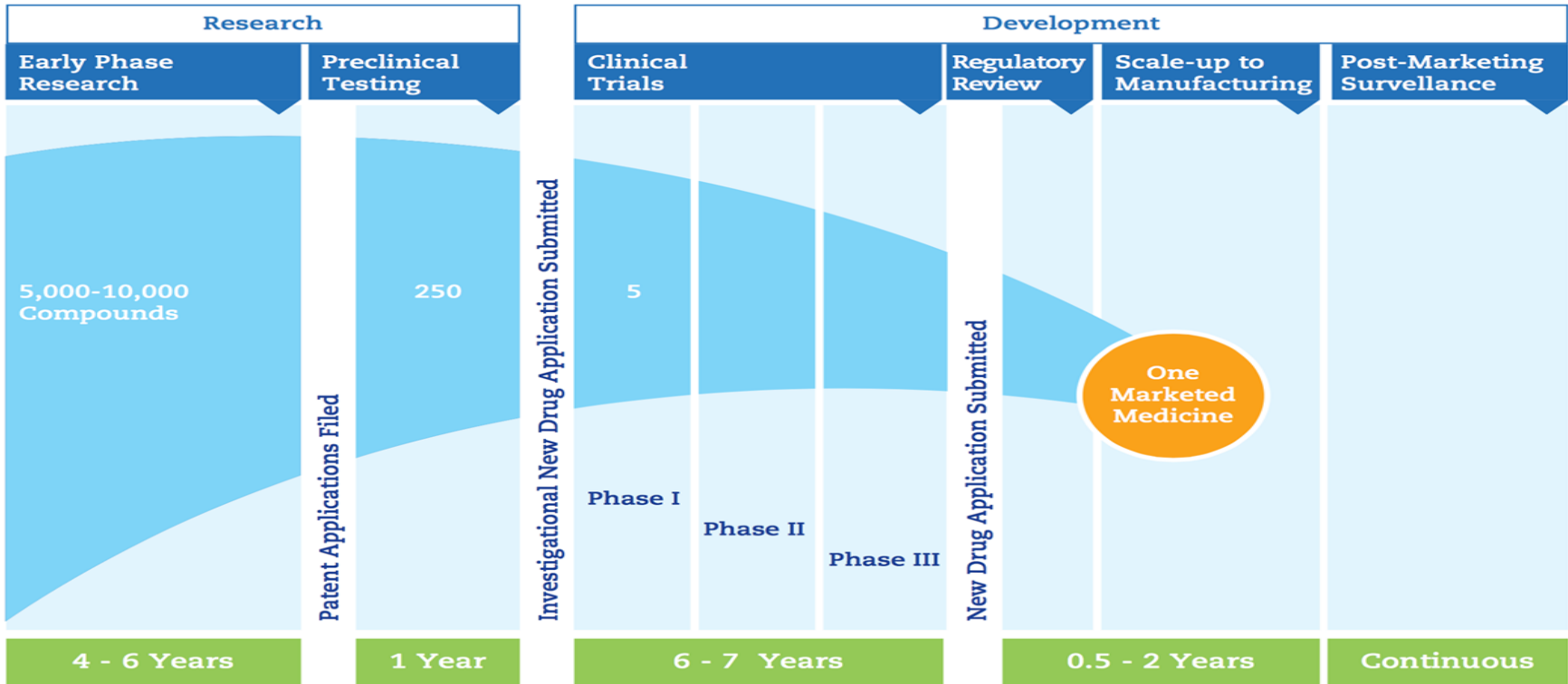
**Perspectives on and Experiences with a “Tiered Approach” to the
Protection of Traditional Knowledge - Scope of Protection and
Exceptions and Limitations**

24 November 2016 | Geneva

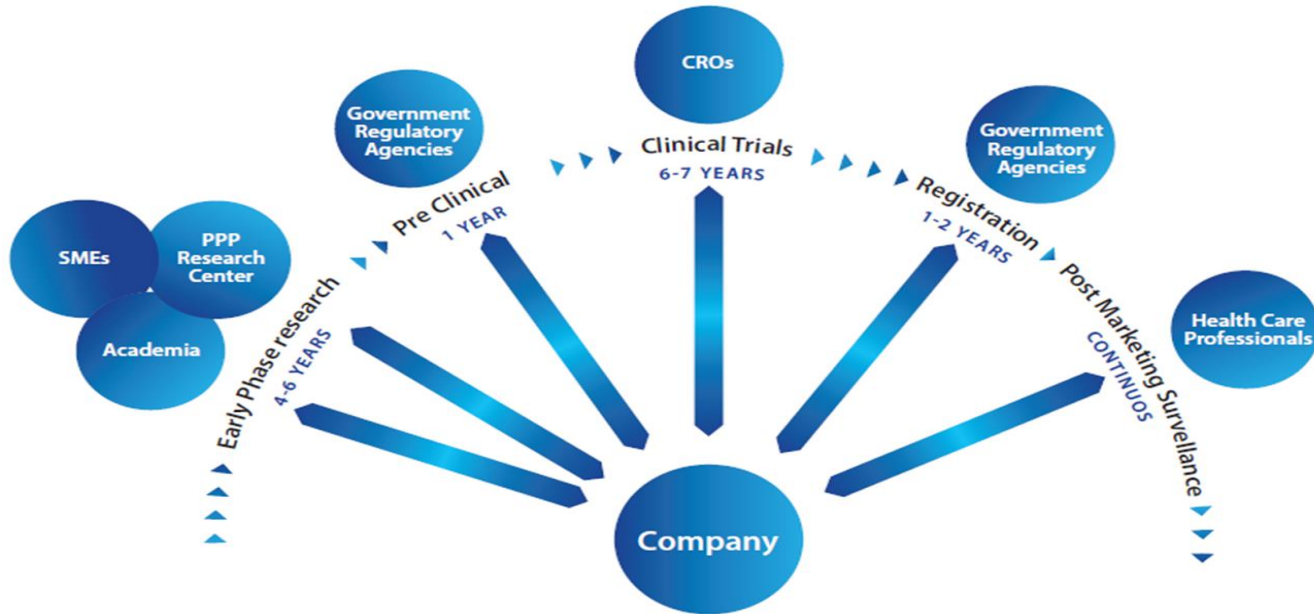
SUBJECTS FOR DISCUSSION

- **Pharmaceutical Research and Development**
 - The Role of Intellectual Property
- **Traditional Knowledge (TK) – A Balanced Approach**
 - Scope of Protection
 - Exceptions
 - Limitations
- **Conclusions**

BIOPHARMACEUTICAL RESEARCH AND DEVELOPMENT



PART OF AN INNOVATION ECOSYSTEM



[http://www.ifpma.org/wp-content/uploads/2016/01/IFPMA New Frontiers Biopharma Innovation 2012 Web.pdf](http://www.ifpma.org/wp-content/uploads/2016/01/IFPMA_New_Frontiers_Biopharma_Innovation_2012_Web.pdf)

KEY ASPECTS OF IP RIGHTS FOR TECHNOLOGY

- **Finite Term of Protection**
 - Then it enters the public domain, for the good of society
- **Limited Territorial Scope**
 - Cannot be protected in all countries automatically
- **Exceptions Exist to the Rights Conferred**
- **Demonstrated Proof of Entitlement**
- **Grounds for Challenge to the IP Right**
 - Failure to meet established criteria is grounds for revocation
- **Notice to the Public**



CONTRAST TO PROPOSED PROTECTIONS FOR TK

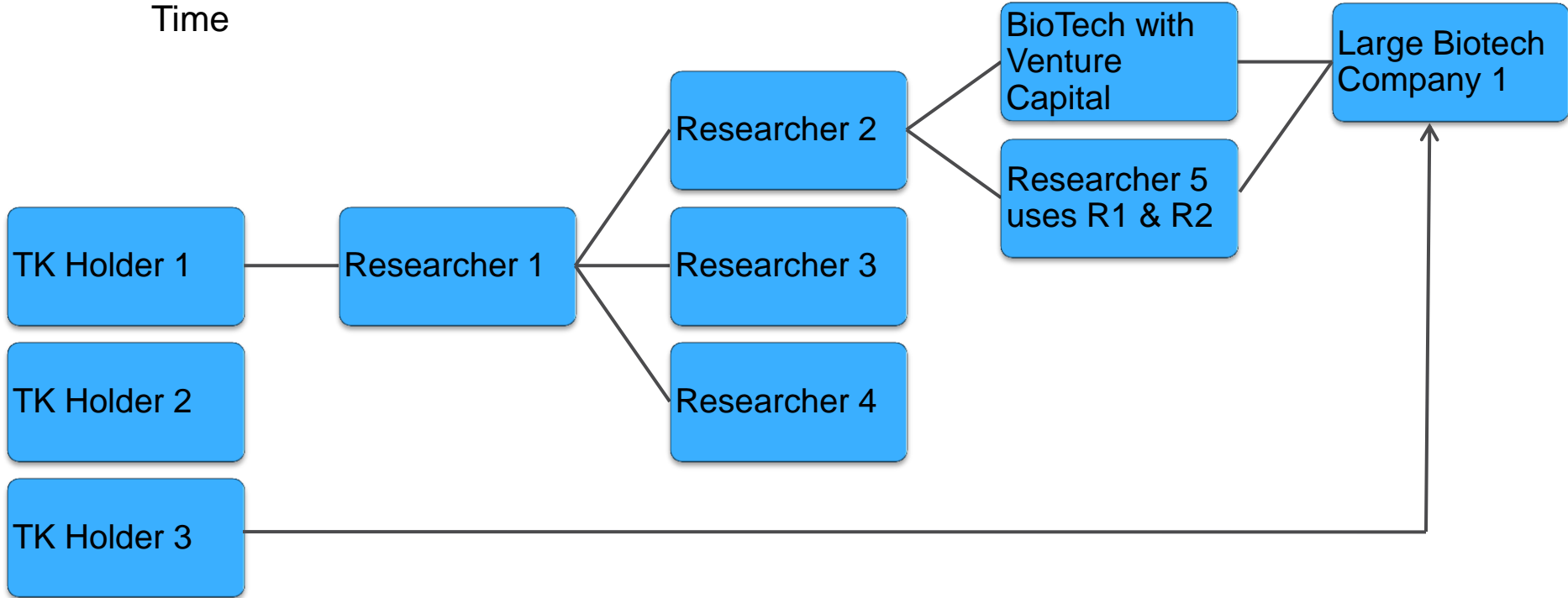
- **Infinite Term of Protection**
- **Automatic Worldwide Protection**
- **Unlimited Rights Conferred**
 - Proposed TK rights would allow refusal of any use (research, publication, teaching)
- **No Clear Proof of Entitlement**
 - Possibility of multiple owners who all have a right to seek legal remedy
- **Unclear (*ex post facto*) Grounds for Challenge**
- **Lack of Notice to the Public**
 - Proposals to reclaim TK that has already fallen into the public domain

BALANCING NEEDS OF TK HOLDERS WITH NEEDS OF SOCIETY

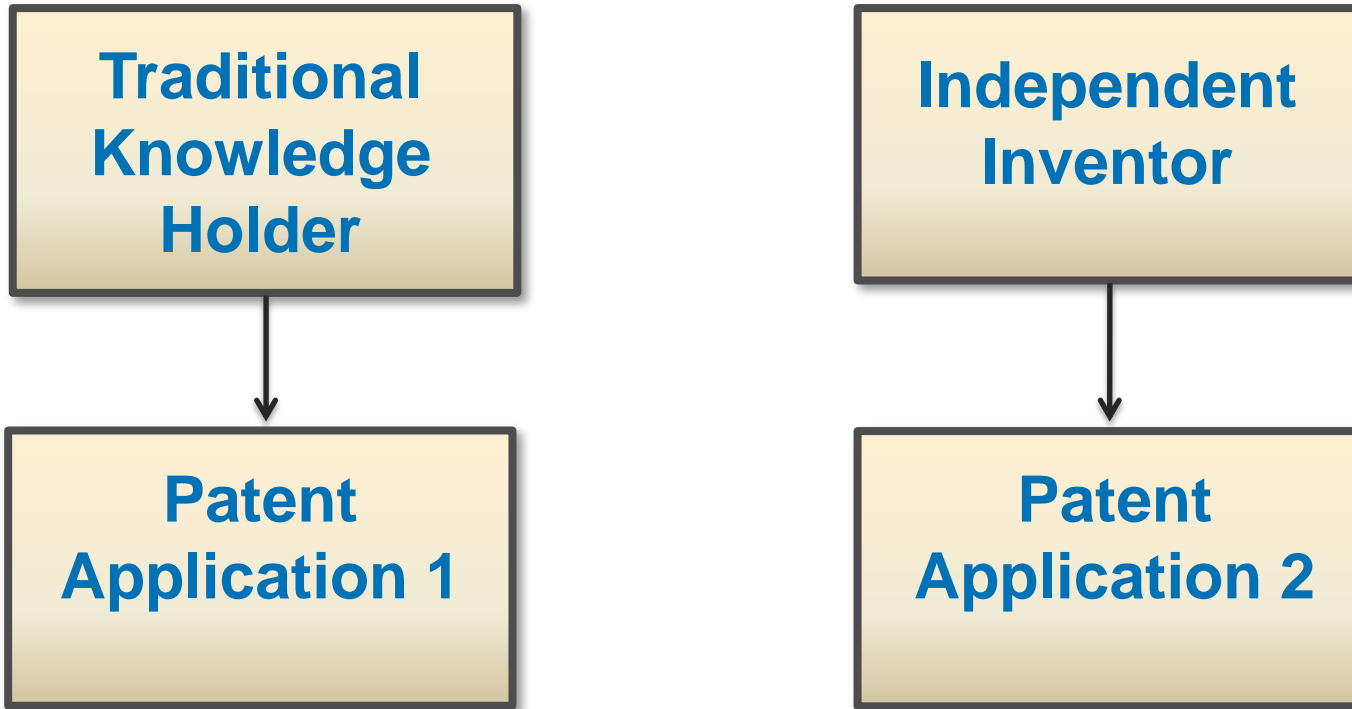
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- **Where Protection is Strong, the Term of Protection is Finite**
 - **Where Protection is Strong, the Territorial Reach of Protection is Limited**
 - Patents can be enforced against any commercial infringement, but only for 20 years from filing date, and only in countries where patent was granted
 - **Where Term of Protection is Long, the Form of Protection is Limited**
 - Trademark protection can be extended indefinitely, but must be registered, used, and limited to the symbol/word, not the underlying goods
 - **Where Territorial Scope of Protection is Extensive, the Form of Protection is Limited**
 - Copyrights extend to all Berne Convention countries, but protection is limited to the form, not the underlying ideas or facts

TK IN THE PUBLIC DOMAIN?

Time

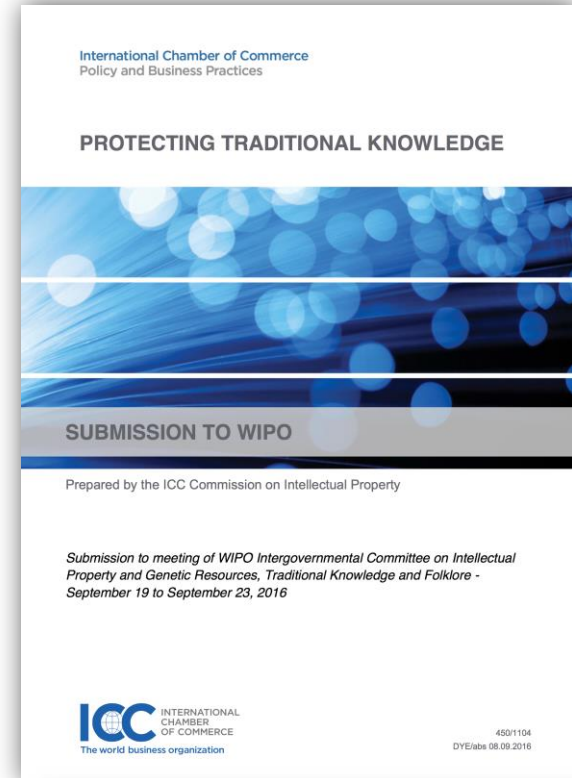


INDEPENDENT INVENTION



FOR MORE INFORMATION

<http://www.iccwbo.org/Advocacy-Codes-and-Rules/Document-centre/2016/ICC-Paper-on-Protecting-Traditional-Knowledge/>



CONCLUSIONS

- **Protection of TK must result in legal certainty for both holders and potential users**
- **As with all other forms of IP, must balance the desired level of protection with the needs of society**
 - TK that has fallen into the public domain must remain public
 - Independent invention must be respected and allowed to proceed
 - Claims of TK misappropriation must be supported by tangible evidence

THANK YOU!

QUESTIONS?

Manisha A. Desai, Ph.D.
Eli Lilly and Company
www.lilly.com