

CIPIH STUDIES WORKSHOP

MAY 30, 2005

THEME B : TRIPS

SESSION B1

THE PATENT SYSTEM : MAKING IT BETTER

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MAKING THE PATENT SYSTEM BETTER

AGENDA

- **STATING THE OBVIOUS**
- **THE RATIONALE BEHIND THE PATENT SYSTEM**
- **PATENT SYSTEMS**
- **DEVELOPMENT AND THE NEED FOR PROTECTION**
- **CONCLUSION**

MAKING THE PATENT SYSTEM BETTER

STATING THE OBVIOUS

- **THE PATENT SYSTEM HAS A PROVEN TRACK RECORD OF SUPPORTING INNOVATION AND ECONOMIC GROWTH**
- **THE PATENT SYSTEM HAS A LONG HISTORY: MOST NOTABLY OVER 200 YEARS IN THE WORLD'S LARGEST ECONOMY**

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- **THE RATIONALE BEHIND THE PATENT SYSTEM :**
 - **ENSURE SHARING AND DISSEMINATION OF STATE OF THE ART (THROUGH PUBLICATION)**
 - **ENSURE ADEQUATE REMUNERATION TO THE INVENTOR SHARING THE RESULTS FOR THE PUBLIC GOOD AND ENHANCING TECHNOLOGICAL DEVELOPMENT**
 - **PATENTS ARE GOOD INSTRUMENTS TO FACILITATE VOLUNTARY TECHNOLOGICAL TRANSFERS**

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- PATENT SYSTEMS ARE SECTOR NEUTRAL, i.e. ALL TECHNOLOGICAL AREAS ARE TREATED EQUALLY AND THUS NON-DISCRIMINATORY
- THE PATENT SYSTEM HAS NOT BEEN CONSTRUCTED TO GIVE INCENTIVES TO SPECIFIC FIELDS OF RESEARCH – WHATEVER THE DESERVING NEED OR GOOD CAUSE

MAKING THE PATENT SYSTEM BETTER

THE PATENT SYSTEM IS THEREFORE NOT THE PLACE TO PROVIDE INCENTIVES FOR RESEARCH INTO “NEGLECTED DISEASES” OR ANY OTHER WORTHWHILE CAUSE

ADDITIONAL INCENTIVES FOR SUPPORTING AND INCREASING RESEARCH INTO SPECIFIC AREAS SHOULD BE MADE THROUGH TAX SYSTEMS, SPECIFIC LEGAL SCHEMES, DIRECTED RESEARCH GRANTS AND PPPs.

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IT SHOULD BE NOTED THAT ALL ADDITIONAL INCENTIVES SUCH AS ORPHAN DRUG, PATENT TERM EXTENSIONS AND SPC's (DUE TO REGULATORY DELAYS) AND PAEDIATRIC EXCLUSIVITY ARE NOT WITHIN THE PATENT SYSTEM. THEY ARE IN ADDITION TOO.

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PATENT SYSTEMS

- **PATENT SYSTEMS ARE NATIONAL IN NATURE**
- **REGIONAL (EPC) AND INTERNATIONAL (PCT) PATENT SYSTEMS ARE STREAMLINING AND MAKING PATENT GRANT PROCEDURES MORE EFFICIENT BY POOLING RESOURCES BUT THE ENSUING PATENTS ARE NATIONAL**
- **THE PATENT COOPERATION SYSTEM HAS 124 MEMBER STATES**
- **THE COUNTRIES OUTSIDE THE SYSTEM ARE BOUND TO SUFFER LONG TERM (IN WHOSE INTEREST IS THIS?)**
- **DEVELOPING NATIONS CAN THUS IMPLEMENT GOOD PATENT SYSTEMS WITH EXAMINED PATENTS WITH THE HELP OF THE UN-SYSTEM**

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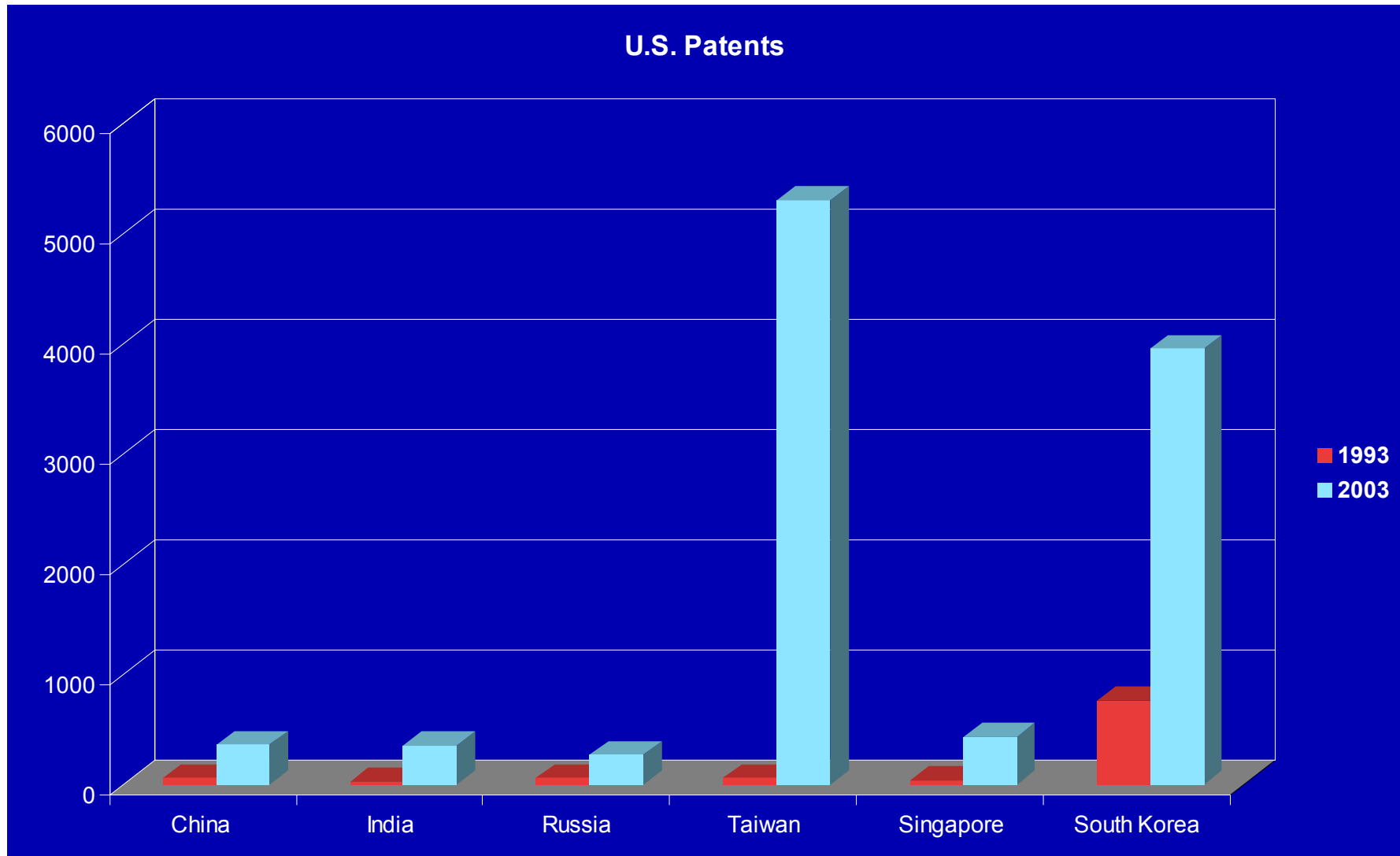
- **MOST PHARMA COMPANIES DO NOT FILE FOR PATENTS IN THE LDC's**
- **PATENTS ARE THEREFORE NOT DENYING OR HINDERING ACCESS TO DRUGS**
- **INDIAN GENERIC MANUFACTURERS COULD HAVE MANUFACTURED AND DISTRIBUTED IN AFRICA AND MANY ASIAN COUNTRIES PRODUCTS PATENTED IN INDUSTRIAL COUNTRIES. THIS DID NOT HAPPEN AND THE REASON WAS NOT THE PATENT SYSTEM**
- **THE DOHA DECLARATION COMPULSORY LICENSE SCHEME WILL NOT CREATE ONE SINGLE NEW OR IMPROVED DRUG FOR ANY DISEASE (NEGLECTED OR NOT)!**

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	China	India	Russia	Singapore	South Korea	Taiwan
U.S. patents 1993	60	30	62	39	764	62
U.S. patents 2003	366	354	268	438	3,952	5,300
R&D spending (% of GDP)	1.2	1	1.2	2.2	2.9	2.3
Science & engineering grads (1,000)	337	316	216	5.6	97	49

Source: BusinessWeek, Oct. 11, 2004

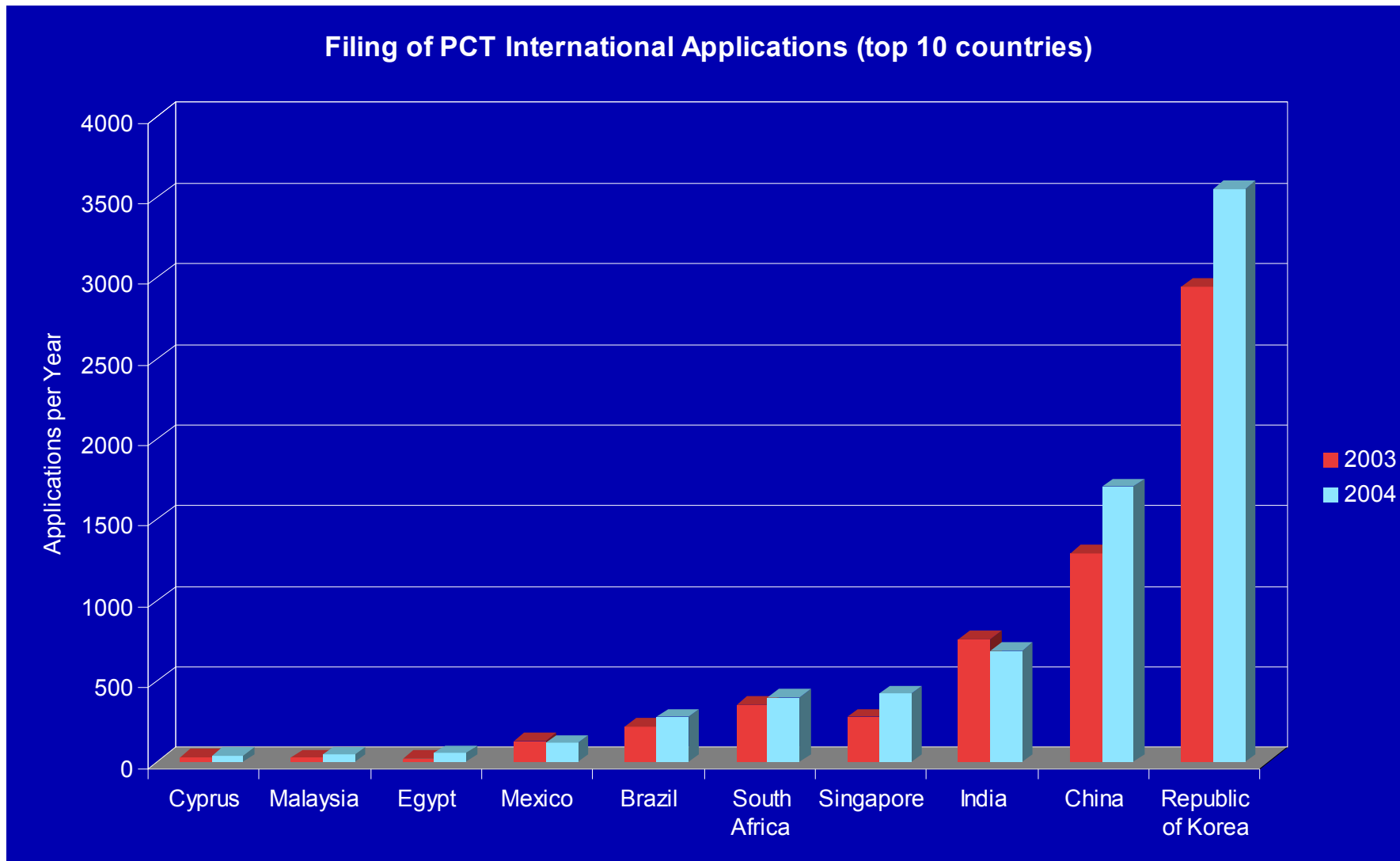
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Source: BusinessWeek, Oct. 11, 2004

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MAKING THE PATENT SYSTEM BETTER



Source: WIPO Statistics, PCT Statistical Indicators Report, March 2005

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DEVELOPMENT AND THE NEED FOR PROTECTION

- **INVESTMENTS IN EDUCATION AND RESEARCH & DEVELOPMENT CAN ONLY BE RECUPERATED BY ADEQUATE SECTION NEUTRAL PATENT SYSTEMS**
- **WHY DEPRIVE INDIA AND CHINA FROM BENEFITING FROM THEIR INVESTMENT INTO THEIR PEOPLE'S EDUCATION?**

MAKING THE PATENT SYSTEM BETTER

- **COMPULSORY LICENSES HAVE TO BE LIMITED TO NATIONAL EMERGENCIES IN ORDER NOT TO RUIN THE PATENT SYSTEM**
- **IF YOUR PATENTED INVENTION COULD ARBITRARILY BE TAKEN FROM YOU UNDER WIDE DISCRETIONARY RULES (e.g. COMPULSORY PATENT POOLS) NOBODY WOULD USE THE PATENT SYSTEMS AND THEREFORE SERIOUSLY HINDER THE DISSEMINATION OF RESEARCH RESULTS AND THE PROGRESS OF INNOVATION**

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CONCLUSION

- **PROTECT THE PATENT SYSTEMS FROM CONTRADICTORY DEMANDS, i.e. DISCRIMINATING INCENTIVE SCHEMES**
- **REGULATE INCENTIVES FOR “NEGLECTED DISEASES” RESEARCH OUTSIDE OF THE PATENT SYSTEM**
- **ENCOURAGE DEVELOPING COUNTRIES TO USE PCT TO CREATE NATIONAL PATENT SYSTEM, i.e. DON’T DEPRIVE DEVELOPING COUNTRIES OF THE USE OF A PROVEN SYSTEM FOR ECONOMIC GROWTH AND DEVELOPMENT**
- **UNDERSTAND THE NEED FOR INDIA AND CHINA TO PROTECT THEIR INVESTMENT**
- **UNDERSTAND THE DETRIMENTAL EFFECT OF COMPULSORY LICENSE SCHEMES TO PATENTING AND OPENNESS**