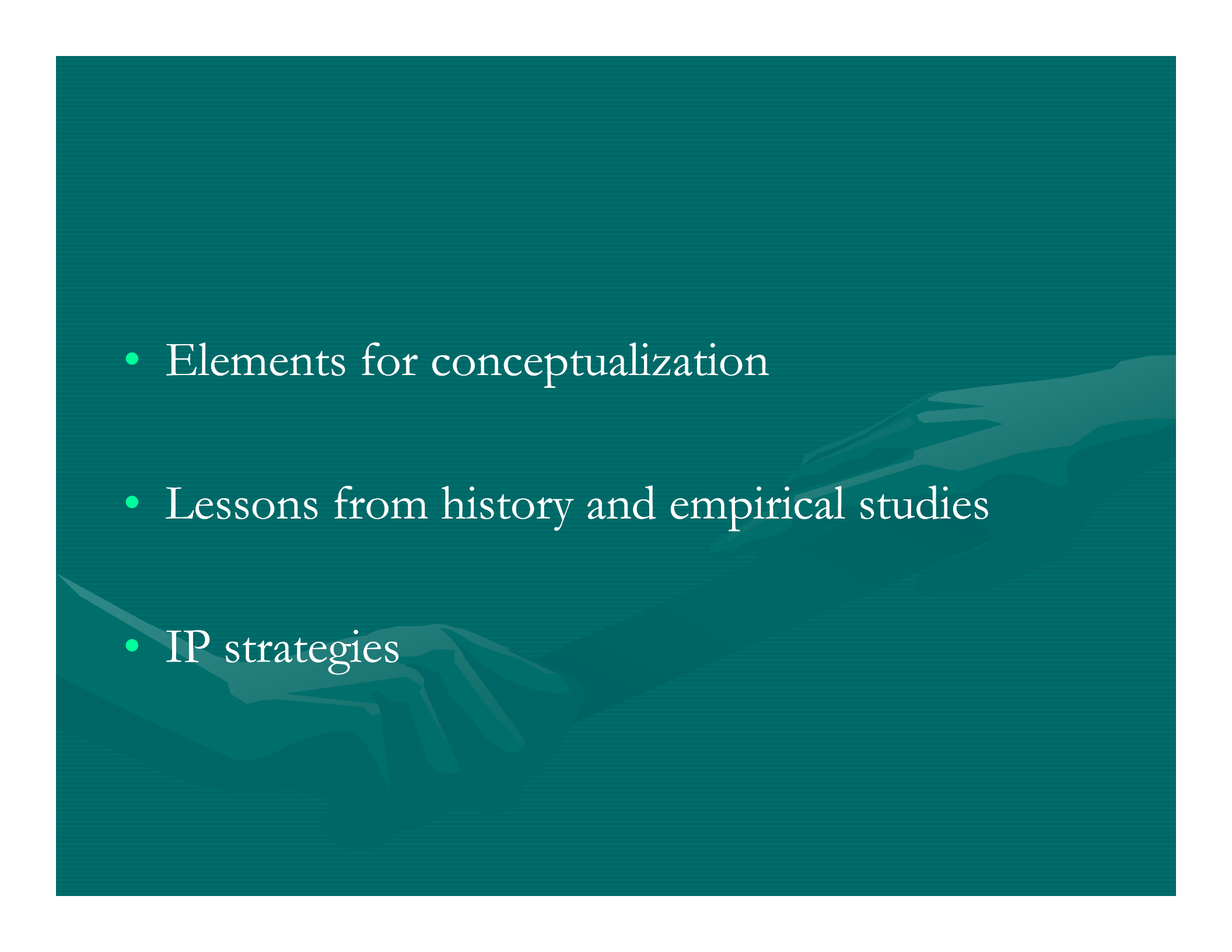


# Integrating Intellectual Property Rights (IPRs) and Development Policy

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Africa IP Forum

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- Elements for conceptualization
  - Lessons from history and empirical studies
  - IP strategies

# Oversimplified assumptions

- IP = innovation = development



# Innovation

- Use of knowledge, new or known, in production in a country or industry
- Radical, major, minor (incremental)
- Main locus: production firms

# THE SOURCES OF INNOVATION

- Journals, patent documents
- Competitors (reverse engineering, technology diffusion)
- Consultancy and engineering firms
- R&D institutions, universities
- Users
- Competitors through licensing
- New R&D

- IP mainly associated to one source of innovation, R&D
- Ambivalent role with regard to technology transfer

# Lessons from history: USA

“...When the United States was still a relatively young and developing country, for example, it refused to respect international intellectual property rights on the grounds that it was freely entitled to foreign works to further its social and economic development.”

U.S. Congress, Office of Technology Assessment, Intellectual Property Rights in an *Age of Electronics and Information*, OTA-CIT-302, Washington, DC: U.S. Government Printing Office, April 1986).



# IP & innovation

- Indeed, the historical evidence provides little or no support for the view that intellectual monopoly is an effective method of increasing innovation.
- M. Boldrin and D. Levine: *Against Intellectual Monopoly*, chapter 8, found at <http://levine.sscnet.ucla.edu/papers/ip.ch.8.m1004.pdf>, at 2. 2007.



# Lessons from history

- ...nations with patent systems were not more innovative than nations without patent systems. Similarly, nations with longer patent terms were no more innovative than nations with shorter patent terms.
- James Bessen and Michael Meurer (2008), Patent Failure: How Judges, Bureaucrats, and Lawyers Put Innovators at Risk, Princeton University Press, Princeton and Oxford.
- , p. 80.

# Empirical evidence: IP & development

- **Survey of 92 countries 1978-2002:**  
“National patent protection alone does not stimulate domestic innovation... However, domestic innovation accelerates in countries with higher levels of economic development, educational attainment, and economic freedom.
- Qian, Y. (2007) “Do Additional National Patent Laws Stimulate Domestic Innovation in a Global Patenting Environment: A Cross-Country Analysis of Pharmaceutical Patent Protection, 1978–2002”, Review of Economics and Statistics August 2007

# Empirical evidence: IP & development

- Survey of patent laws in over sixty countries: strengthening of patent rights resulted in an increase in filings from foreign applicants, with no effect on filings by local inventors.
- Lerner J 'Patent Protection and Innovation Over 150 Years' (2002)  
[http://www.epip.eu/papers/20030424/epip/papers/cd/papers\\_speakers/Lerner\\_Paper\\_EPIP\\_210403.pdf](http://www.epip.eu/papers/20030424/epip/papers/cd/papers_speakers/Lerner_Paper_EPIP_210403.pdf)

# Empirical evidence: IP & development

- Survey of seventy two countries:
- ‘to date, there is no robust empirical evidence that stronger patent rights indeed stimulate growth’ .
- Hu AGZ & Png IPL ‘Patent Rights and Economic Growth: Evidence from Cross-Country Panels of Manufacturing Industries’ (2010)

# Empirical evidence: IP & FDI

- South Africa has attracted far less FDI than other countries whose IPR system appears to offer potential foreign investors weaker protection.
- Kaplan D 'Intellectual Property Rights and Innovation in South Africa: A Framework' *The Economics of Intellectual Property in South Africa* (2009) WIPO.

# Patents & industrial innovation

- ‘...as economic studies have shown repeatedly, patents do not play a particularly important role in most fields of industrial innovation’
- *Scherer, F.M. (2009), Journal on Telecomm. & High Tech. L. Vol. 7*

# Industrialization stages

<p><b>Initiation stage</b> (mature technologies are incorporated through informal channels)</p>	<p>Little or no impact of IP on local innovation. IP may affect access to goods</p>
<p><b>Internalization stage</b> (“incremental” innovations derived from routine exploitation of existing technologies)</p>	<p>Little impact of IP on local innovation. IP may reduce technological diffusion and affect access to goods</p>
<p><b>Generation stage</b> (Some R&amp;D-intensive industries are established; coexistence of mature and advanced industries)</p>	<p>IP may help to consolidate local innovation strategies; problems of access remain for part of the population</p>

# Article 66.1 of the TRIPS Agreement

- 'In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement...'



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# R&D intensity

High > 4%	Aerospace, robotics, pharmaceuticals, scientific instruments, electrical machinery
Medium >1%	Chemistry, automobile, non-electrical machinery, rubber and plastics, non-ferrous metals
Low < 1%	Textiles, footwear and leather, food, beverage and tobacco, shipbuilding, petrol refineries, ferrous metals, paper and printing, wood and furniture

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- IP national strategies

# Romania National IP strategy

- Enhancement of the of the legislation in the field of IP
- Establishing a proper administrative infrastructure within the national institutions involved in ensuring the protection of IP.
- Development of specialized human resources in the field of IP.
- Achievement of a transparent cooperation between the institutions and organizations involved in ensuring the protection of IP.
- Raising awareness, and training the public in the IP field and IP rights importance.
- [http://www.osim.ro/strate\\_en.htm](http://www.osim.ro/strate_en.htm)

# South Centre's approach: integrating IP into national policies

-  
Manufacturing: type of industries, R&D intensity,  
sources of innovation

- E.g. local production of pharmaceuticals:  
patent examination to prevent  
'evergreening'

## South Centre's approach: integrating IP into national policies

- Agriculture: formal/informal production of seeds
- E.g. Promote innovation through farmers' adaptive selection and exchange of seeds

# Patents and industrial policy: the case of Japan

- Section 1, Patent Code:

“...to encourage inventions by promoting their protection and utilization *so as to contribute to the development of industry*”

# Australia: purpose of the Patents Act

- ... to provide an environment that promotes Australia's national interest and enhances the well-being of Australians by balancing the competing interests of patent rights holders, the users of technological knowledge, and Australian society as a whole.
- Advisory Council on Intellectual Property (2010)



# Objective of patent law

- ...the primary purpose of that law is not to create private fortunes, but is to promote the progress of science and the useful arts

*MOTION PICTURE PATENTS CO. V. UNIVERSAL FILM CO., 243 U. S. 502, 1917*

# IP in Africa

*Understanding the sectoral situation, national objectives*

- Keep the room to use different sources of innovation
- LDCs- extension of TRIPS exemption until 'graduation'
- Adapt IP to sectoral needs by using TRIPS flexibiities (exceptions, CLs, rigorous criteria to assess patentability)