

The Intangible Economy



Transcript



Search in video

0:00 We had seen that intellectual property rights manifest on tangible things and that fact

0:19 that they are regarded as intangible rights over tangible things or physical things.

0:24 Now, let us look at another aspect which has recently come up.

0:30 This is the Intangible Economy.

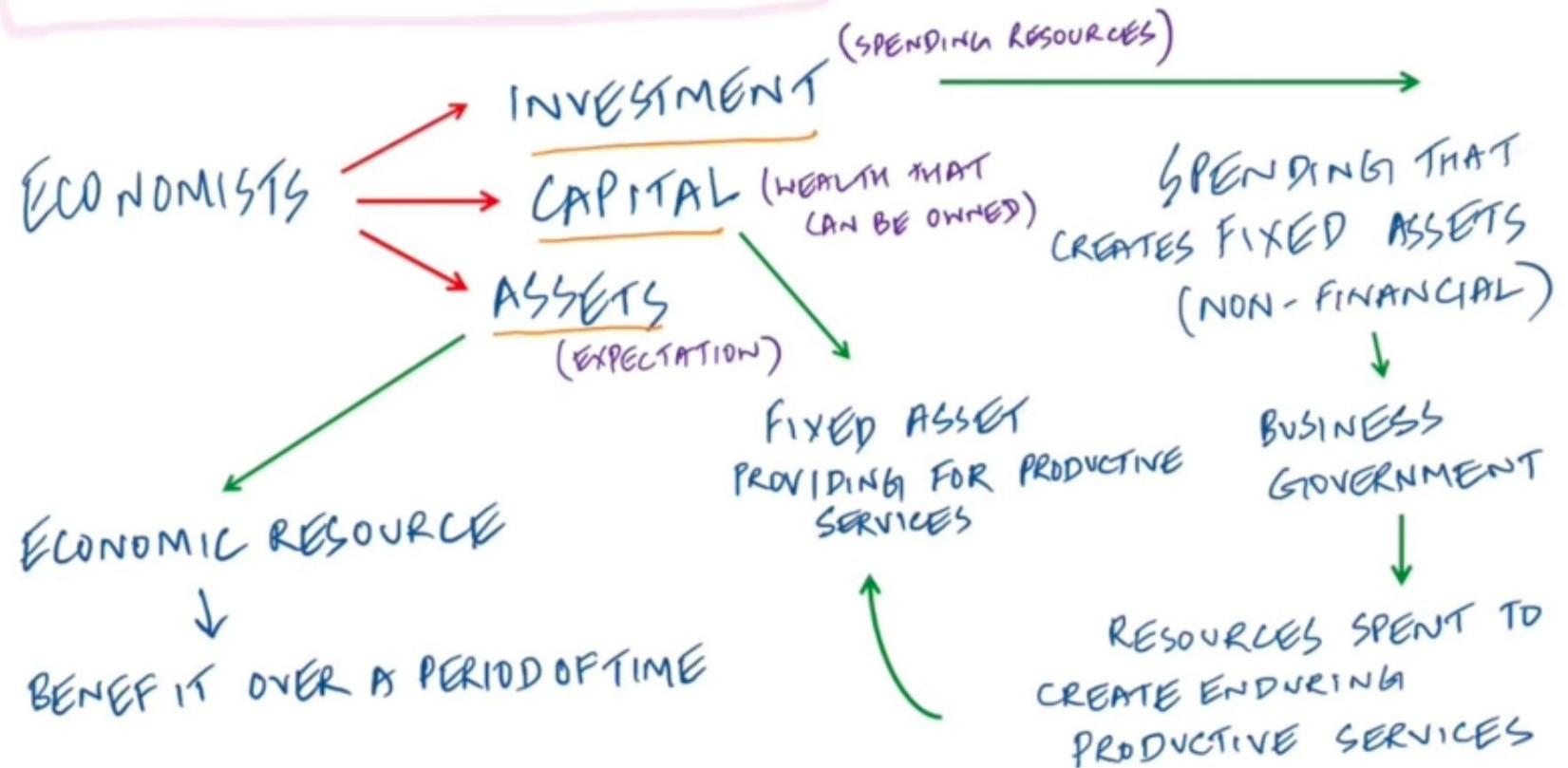
0:32 Now, scholars are in agreement that there is something called the intangible economy

0:38 that has come up and we need to see because when we are talking about intellectual property

0:44 rights, we are essentially talking about intangible rights.

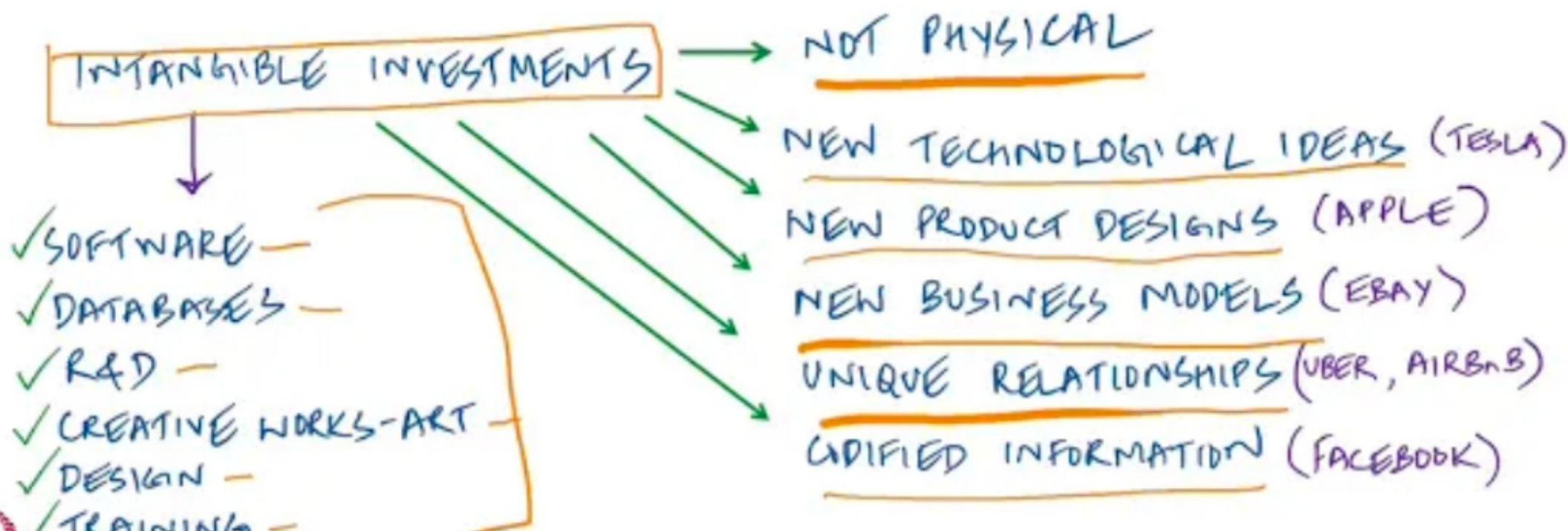


THE RISE OF THE INTANGIBLE ECONOMY

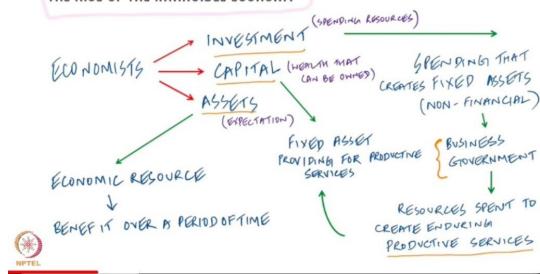


INTANGIBLE INVESTMENTS

SHORT-TERM EXPENDITURE → LONG-TERM GAINS



THE RISE OF THE INTANGIBLE ECONOMY



← Transcript ⋮ X

Search in video

2:24 For instance, investment, capital and assets are the things that drive an economy.

2:32 Now, when we are talking about investments, we are looking at the spending resources,

2:39 the resources that are being spent.

2:41 Investment is an important thing to understand because if we understand investment in intangible

2:49 assets, then we can come up with an argument as to whether we have an intangible economy

2:55 at all in the first place.

2:57 If we come to a conclusion that yes there is investment that goes into the creation

3:03 of intangible assets and intangible assets can itself be regarded as an investment, then

3:10 we will be able to look at this argument in greater detail and see how intellectual property

3:18 rights can operate in an intangible economy, but first let us look at investment in through

3:25 the eyes of the economists.

3:28 Now, investment refers to the spending that creates fixed assets.

3:33 Now, we are talking about non-financial assets.

3:36 We are not talking about shares or bonds; we are just talking about the fixed assets

3:41 that are non-financial.

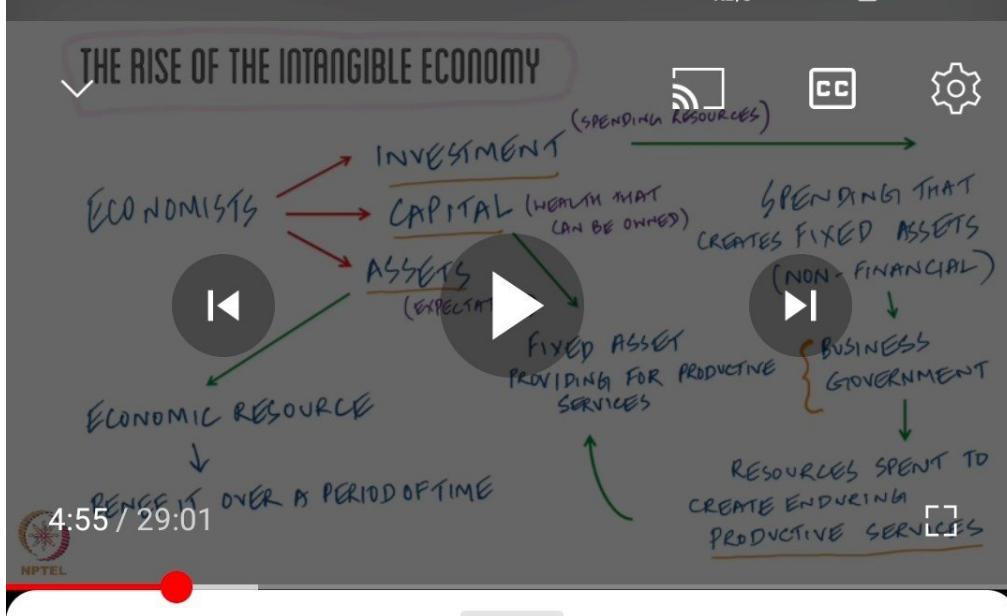
3:42 Now, this spending could also come from businesses and governments.

3:47 Now, they could also make this come up with the spending and the resources spent are towards

3:55 creating enduring productive services.

3:58 Now, production as you all know has an important thing that the economy considers.

4:04 In fact, GDP is nothing, but a measure of productivity of the country.



Transcript



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4:34 So, we understand investment as a resource spent to create enduring productive services.

4:42 Capital is something we all know as wealth that can be owned by people.

4:48 Capital can be considered as a fixed asset providing for productive services.

4:53 So, investment into the productive services can be by way of capital.

4:59 So, capital can be the fixed asset that actually creates these productive services.

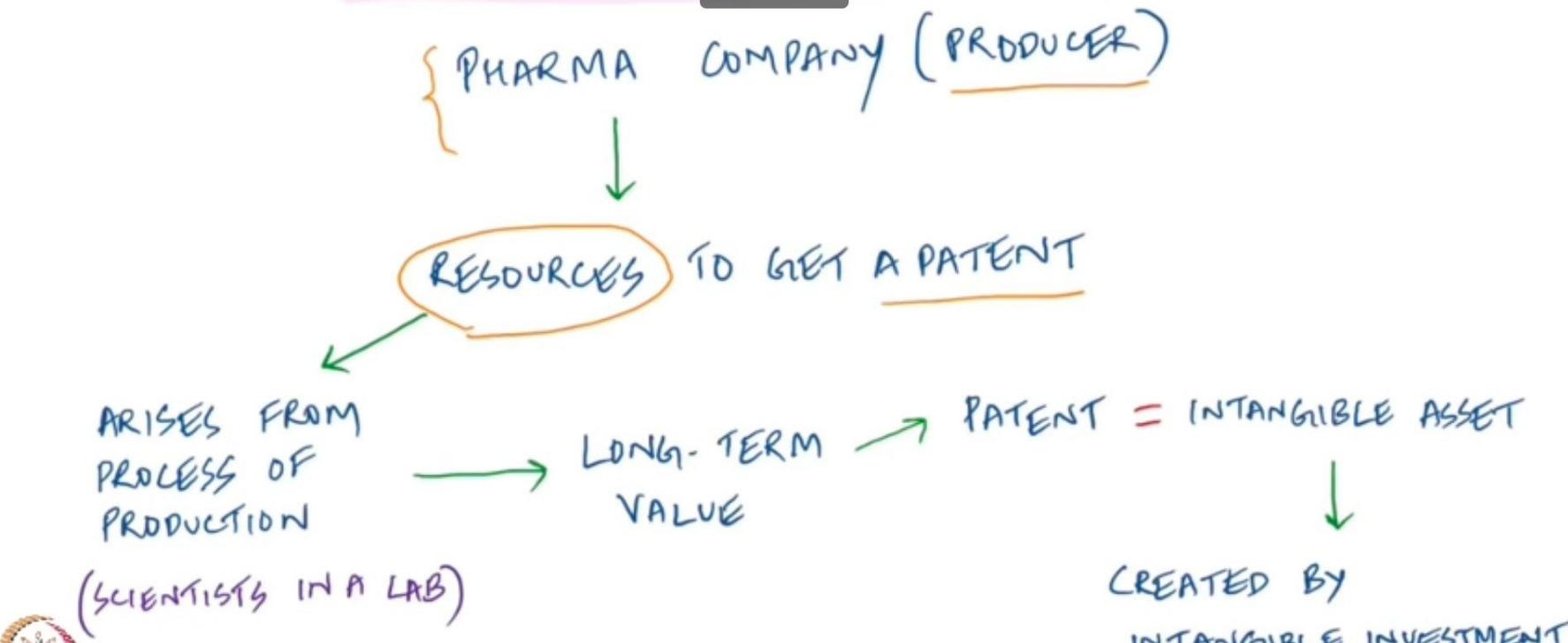
5:04 Now, capital in the traditional understanding we can understand capital as wealth.

5:10 So, the fixed assets providing for productive services is what can be called

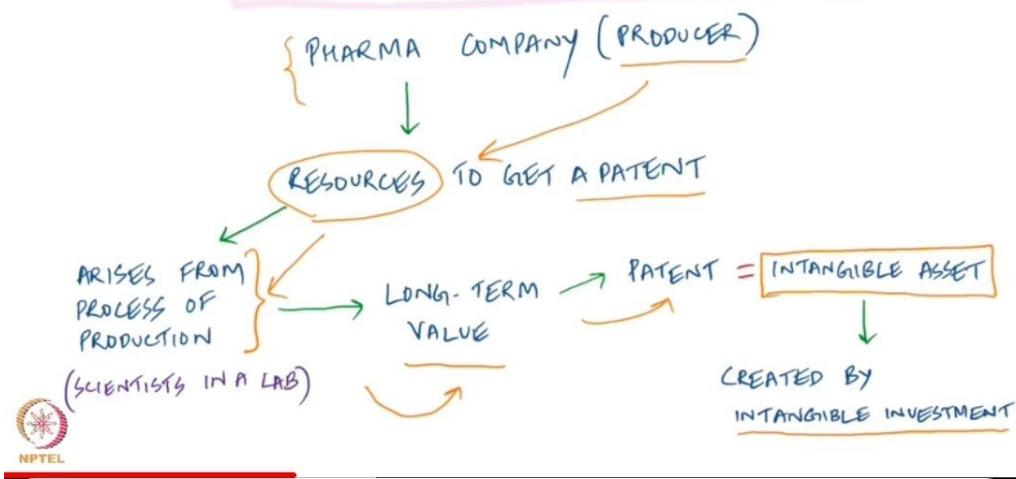
5:19 as capital.

PATENT FOR A DRUG - INVESTMENT

Original



PATENT FOR A DRUG - INVESTMENT



Transcript



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7:15

We saw that there is an expectation of value, only then we consider something to be an asset.

7:21

So, in the case of a patent, there is certainly long term value because if a patent is granted

7:27

regardless of which country grants that patent,
the patent tends to live for 20 years from

7:33

the date of application.

7:35

So, the patent has a value so, we consider this process, the producer investing resources

7:44

on something that arises from a process of production which has got long term value in

7:50

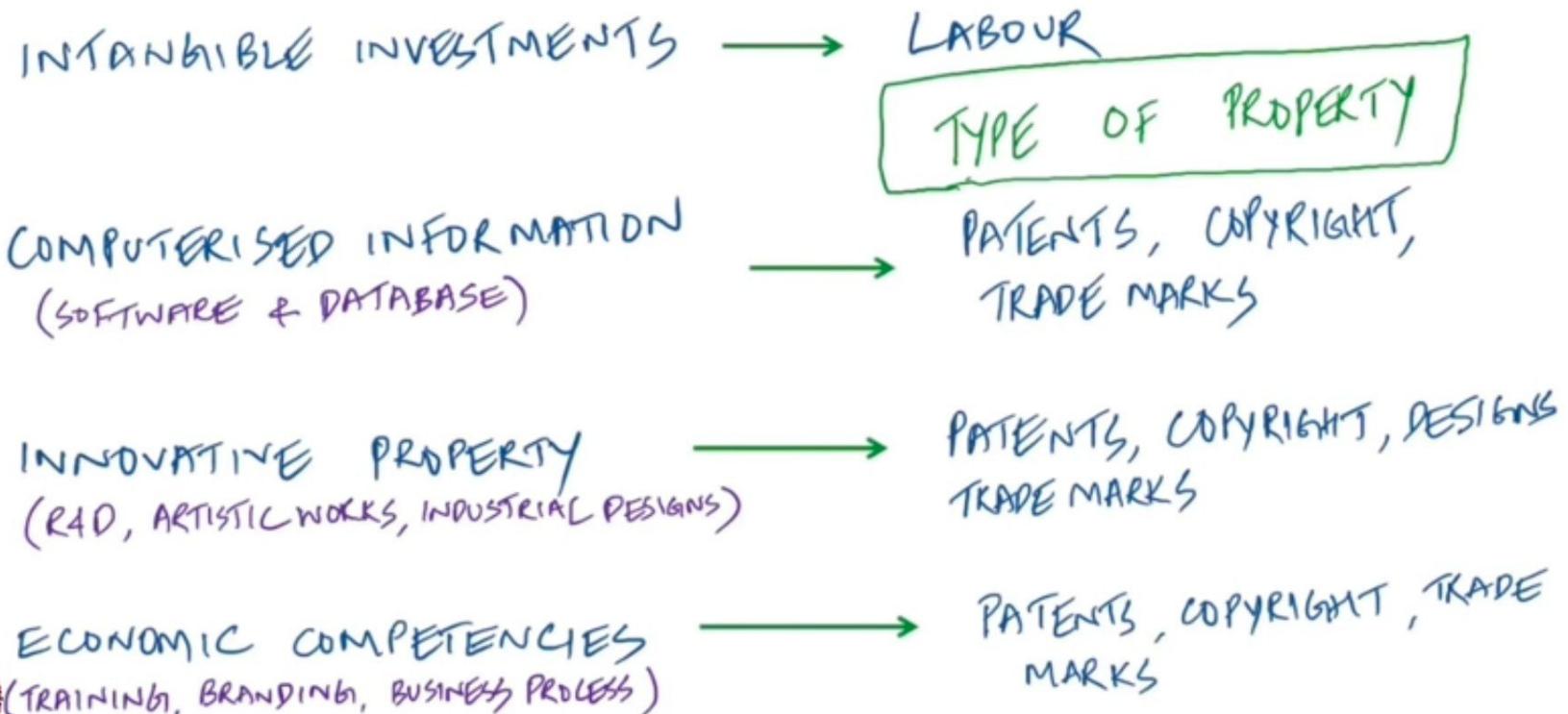
the creation of a patent.

7:52

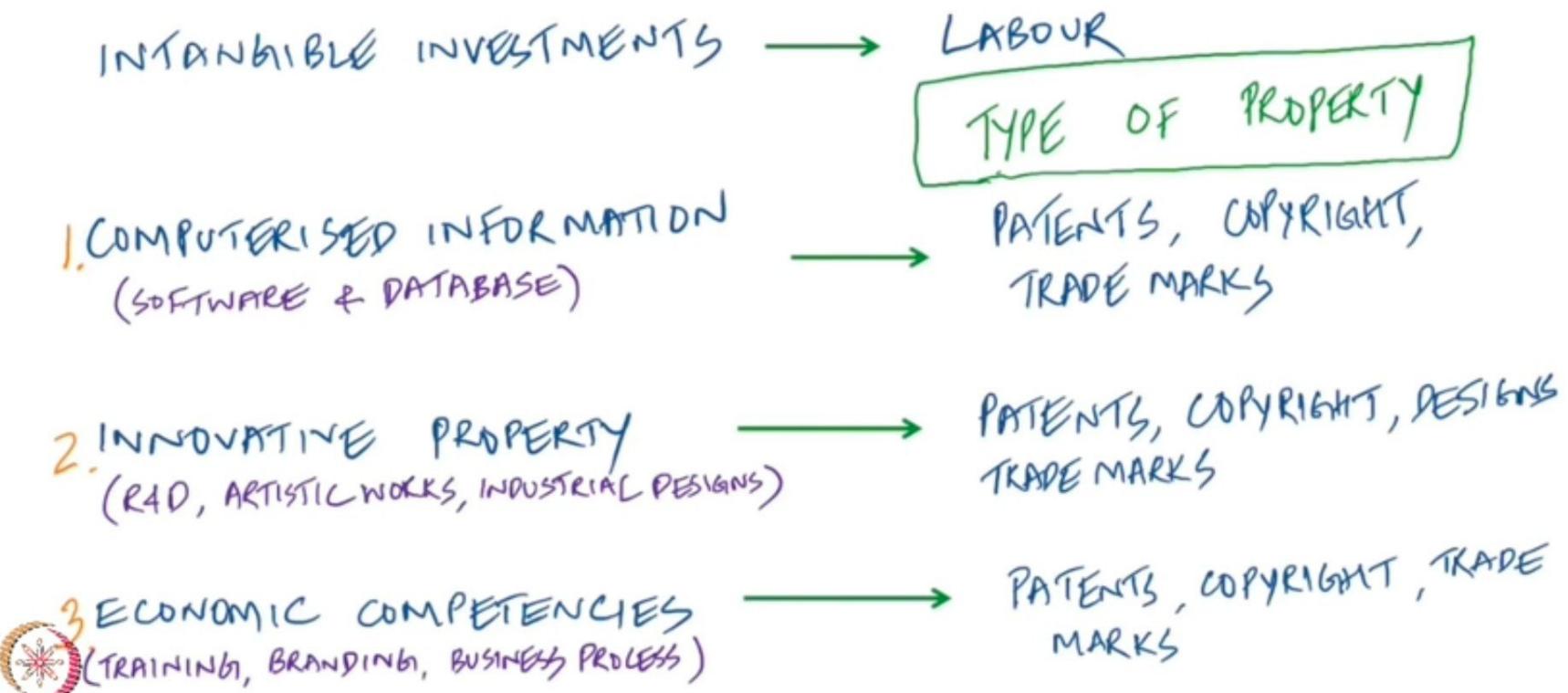
A patent is an intangible asset.



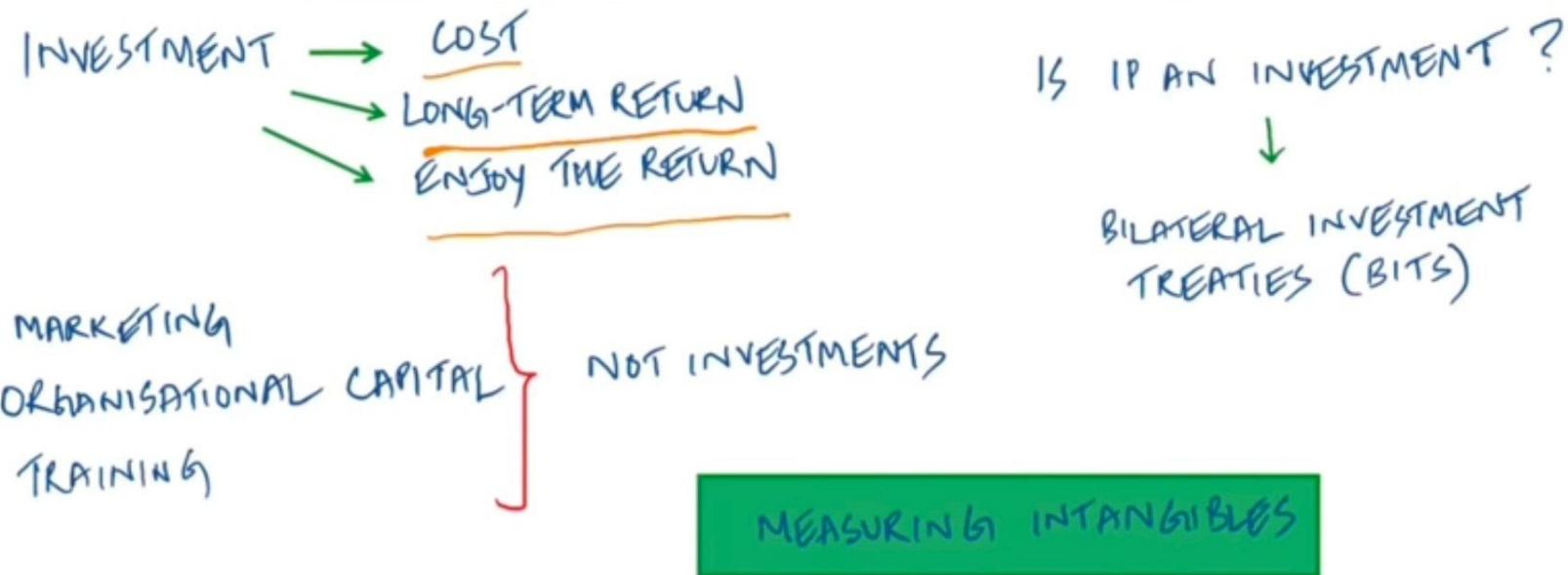
TYPES OF INTANGIBLE INVESTMENTS

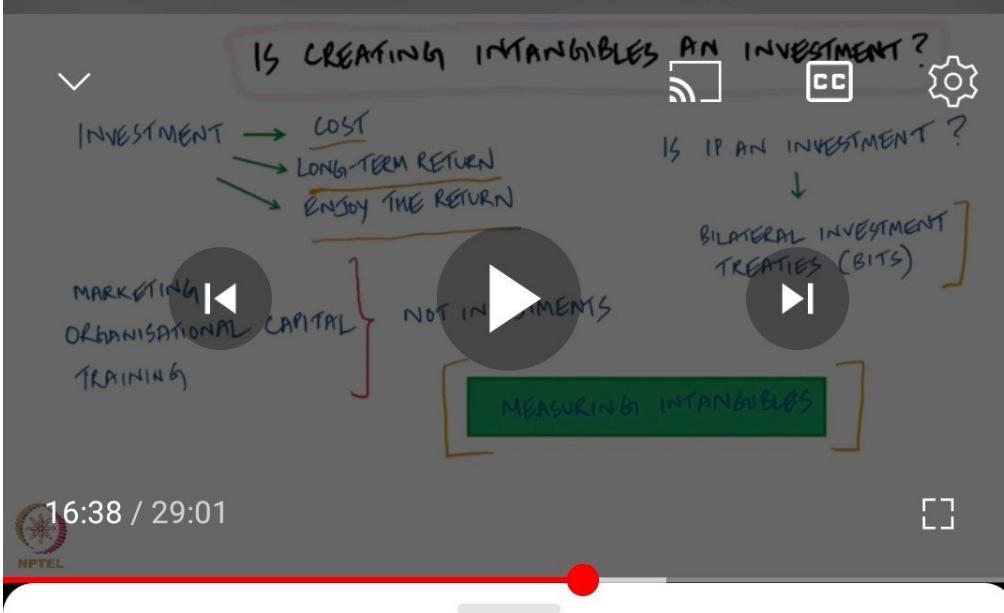


TYPES OF INTANGIBLE INVESTMENTS



IS CREATING INTANGIBLES AN INVESTMENT?





Transcript



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16:30 Now, if you are able to measure intangibles which would also tell us that you are able

16:37 to measure the value of intellectual property because intellectual property is a type of

16:43 an intangible.

16:44 Now, if we are able to measure the value of intellectual property, then we can attribute

16:49 value to intellectual property itself though intellectual property valuation is a branch

16:55 that is growing.

16:57 Measuring intangibles; so, how do we measure intangibles?

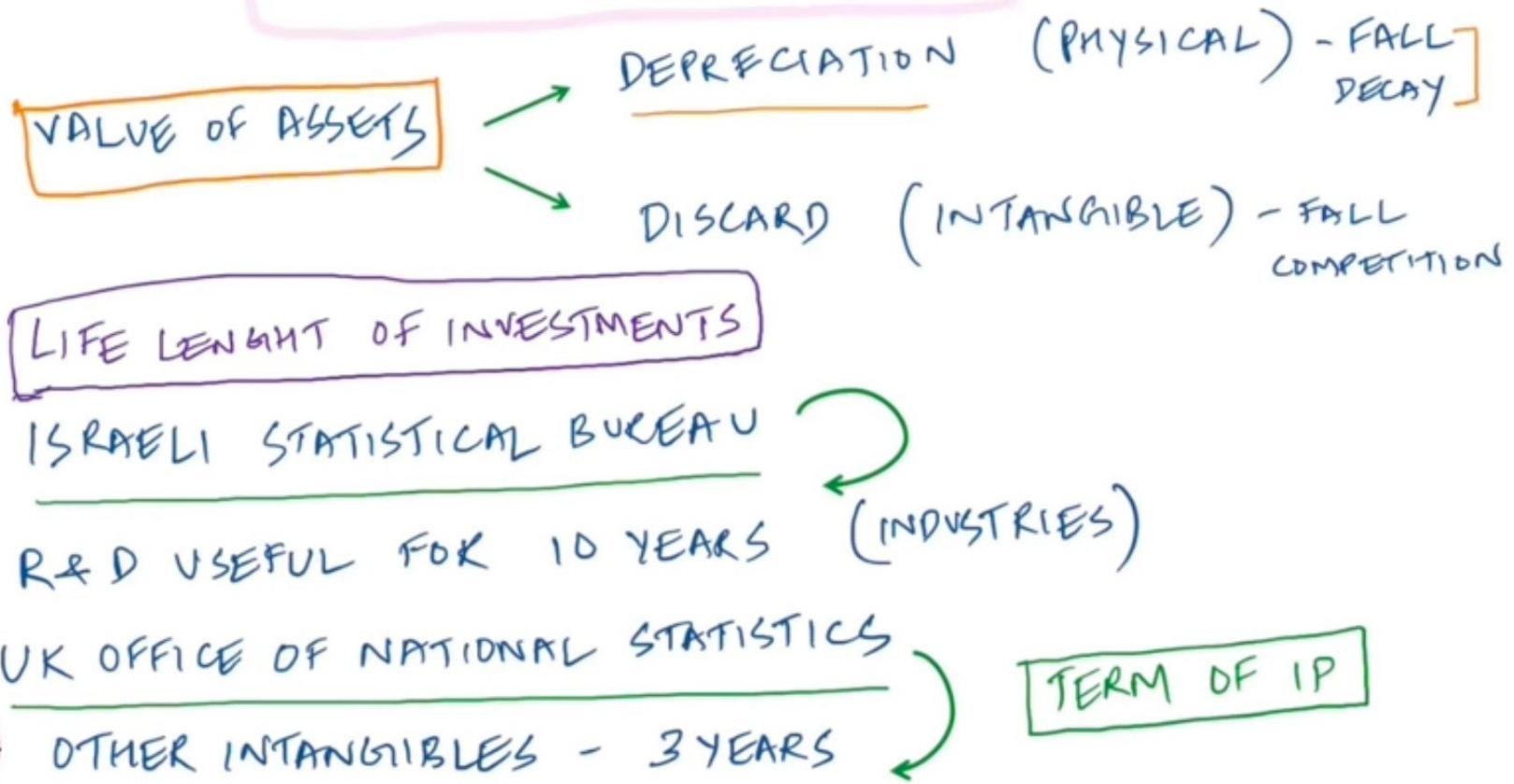
17:01 Now, there are some difficulties in measuring intangibles because they could be an intangible



MEASURING INTANGIBLES

1. WHERE NO INVESTMENT IS INVOLVED - SPILLOVERS
2. NO COMPARABLE MARKET PRICE - COST
 - 2.1 BLOCKBUSTERS - COST OF SOVLDI
 - 2.2 HOW TIME IS SPENT
 - 2.3 PUBLIC SECTOR INVESTS IN INTANGIBLES
SPENDING ON IPO - GDP
3. IP VALUATION - HOW TO VALUE ASSET CREATED BY INVESTMENT

MEASURING INTANGIBLES



Book**CAPITALISM WITHOUT CAPITAL (2018)****THE RISE OF THE The Intangible Economy****By****JONATHAN HASKEL & STIAN WESTLAKE****Transcript****Search in video**

23:23 So, this just tells you that though some studies tell us that the life length of an investment

23:32 is between 3 and 10 years, we find that the products that come out of these investments

23:37 are able to enjoy much longer protection, that is what we call the term of intellectual

23:43 property, the time during which intellectual property rights offer an exclusivity to the

23:50 creator.

23:51 Now, all this is taken from the capitalism without capital which is a recent book, The

23:57 Rise of the Intangible Economy.

23:59 Now, let us look at the cost of Gilead.



THE COST OF GILEAD'S SOVALDI (HEP-C)



www.sovaldi.com/about-sovaldi/what-is-sovaldi



IMPORTANT SAFETY INFORMATION | IMPORTANT FACTS | FOR HEALTHCARE PROFESSIONALS

[ABOUT SOVALDI](#)

[SAFETY INFORMATION](#)

[SAVINGS](#)

[Learn about another treatment for genotypes 1 and 4 >](#)

[Learn about another treatment for genotypes 2 and 3 >](#)

What is SOVALDI?

SOVALDI is a prescription medicine used with other antiviral medicines to treat adults with chronic (lasting a long time) hepatitis C (Hep C) with or without cirrhosis (compensated). In those with Hep C genotype (GT) 1 or 4 infection, SOVALDI is used in combination with peginterferon alfa and ribavirin. In those with GT 2 or 3 infection, SOVALDI is used in combination with ribavirin. It is not known if SOVALDI is safe and effective in adults who have had a liver transplant.

With SOVALDI, there's hope that you can take the next step and put Hep C behind you.

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FOUR TRAITS OF INTANGIBILITY

1. SCALABILITY
2. SUNKENNESS
3. SPILLOVERS
4. SYNERGIES



Transcript



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0:49 Intangibles: when we talk about intangibles, we are talking about ideas, commercial relationships

0:58 and know-how ideas can be protected.

1:00 The expression of ideas can be protected by the copyright regime, know-how: when it is

1:05 translated onto a product which involves a technology that can be protected by patents.

1:12 Commercial relationships are largely protected by the law with regard to confidential information

1:16 or what we also call trade secrets.

1:19 That is largely the contractual regime.

1:21 You can have a contract with a person with whom you are disclosing relationships,

1:27 Commercial relationships or commercially sensitive information and bind that person through a

1:32 non-disclosure agreement in such a way that a trade secret is protected.

1:38 Now, let us look at the four traits of intangibility.

INTANGIBLES

IDEAS

KNOW-HOW

COMMERCIAL RELATIONSHIPS

FOUR TRAITS OF INTANGIBILITY

1. SCALABILITY
2. SUNKENNESS
3. SPILLOVERS
4. SYNERGIES



Transcript



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1:48 The intangible asset is scalable.

1:51 The second, trait is sunkeness.

1:54 The intangible asset is created by cost that is sunk in the sense that you will be hard

2:00 to recover those costs.

2:02 The third, trait is spillover: spillover in the sense that when an intangible asset is

2:08 created apart from the person who created the asset, others get benefit too.

2:14 And fourth, trait of intangibility is that it can cause synergies having one intangible

2:21 asset and another asset together can cause synergy which would normally not be the case

2:22 if the assets are used separately



1. SCALABILITY

NO LIMIT ON CAPACITY - "NON-RIVAL" - KNOWLEDGE GOOD
INDUSTRIAL APPLICATION (PATENTS)

Ex. 1: SHARING A BOOK / PIECE OF CAKE

Ex. 2: PEOPLE IN A ROOM

Ex. 3: NPTEL CLASSES

PHYSICAL ASSETS HAVE
PHYSICAL LIMITATIONS



NETWORK EFFECTS

1. SCALABILITY

NO LIMIT ON CAPACITY - "NON-RIVAL" - KNOWLEDGE GOOD

INDUSTRIAL APPLICATION (PATENTS)

Ex. 1: SHARING A BOOK /PIECE OF CAKE

Ex 2: PEOPLE IN A ROOM

PHYSICAL ASSETS HAVE PHYSICAL LIMITATIONS

Ex.3: NPTEL CLASSES



NETWORK EFFECTS

WHATSAPP



Transcript



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3:45 Now, knowledge goods and non-rival goods tell

us that there are certain goods that are non-rival

3:52 in nature especially for this is true for intangible goods.

3:56 Rival goods are goods which can be used by only one person or a group of people.

4:01 When a group of people, consume a goods, it is simply not made available for others.

4:07 For instance, a piece of a cake.

4:10 A piece of a cake can be shared by a finite number of people.

4:15 There are limitations to what you can do with a piece of a cake.

4:20 A book on the other hand can also be read



2. SUNKENNESS

COST OF CREATION OF THE FIRST COPY - IRRECOVERABLE COST

- MICROSOFT WINDOWS/VISTA - LAND, BUILDING, FACTORY
- GILEAD'S SOVALDI - \$11 BILLION

R&D
TEAMS
TOOLS

HARD TO RECOVER



3. SPILLOVERS

BENEFIT MAY ACCRUE TO OTHERS - "NON-EXCLUDABLE"
IMITATION AND COPYING - 'iPhone' - smart phone category

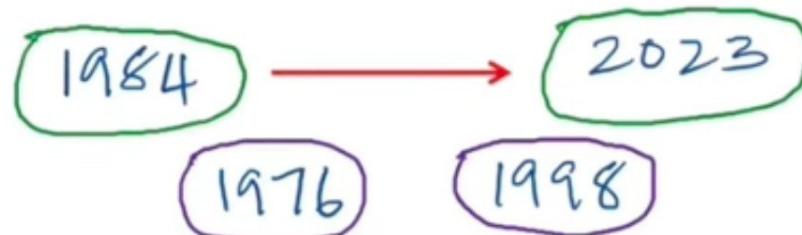
OWNER MAY NOT REAP ALL THE REWARDS

SOLUTION: GOVERNMENT FUNDING (US: 30% R&D)



DISNEY - MICKEY MOUSE

TERM OF IP



4. SYNERGIES

VALUE IN INTANGIBLES INCREASES WHEN COMBINED

APPLE - SOFTWARE, HARDWARE + SUPPLY CHAIN

COCA-COLA - BRAND, FORMULA + DISTRIBUTION

INNOVATION - WHAT HAPPENS WHEN IDEAS COME TOGETHER

SMART PHONE - UBER, AIRBNB

OUTCOME

1. UNCERTAINTY

ABSENCE OF MARKETS FOR INTANGIBLES

INTANGIBLE INVESTMENTS

2. CONTESTEDNESS

DISPUTES ON IP



OUTCOME

1. UNCERTAINTY

INTANGIBLE INVESTMENTS

ABSENCE OF MARKETS FOR INTANGIBLES

2. CONTESTEDNESS

DISPUTES ON IP



Transcript



Search in video

23:21 Now, what is the outcome of these four things?

23:25 So, the outcome of these four traits of intangibility is that one, it causes uncertainty and two,

23:35 it causes contestedness, uncertainty because there is intangibles by the nature.

23:44 We saw that because of the sunkeness and because of the spillover that intangibles

23:51 create it is hard to ascertain and derive the value of an intangible.

23:57 Now, Coca Cola may be able to value its brand at a very high price.

24:01 They simply may not be anybody to buy the brand because of its valuation, because of

24:07 the uncertainty that goes into the valuation





POLICY CHALLENGES IN AN INTANGIBLE ECONOMY

5 PRIORITIES GOVERNMENTS NEED TO ADDRESS



POLICYMAKERS NEED TO UNDERSTAND:

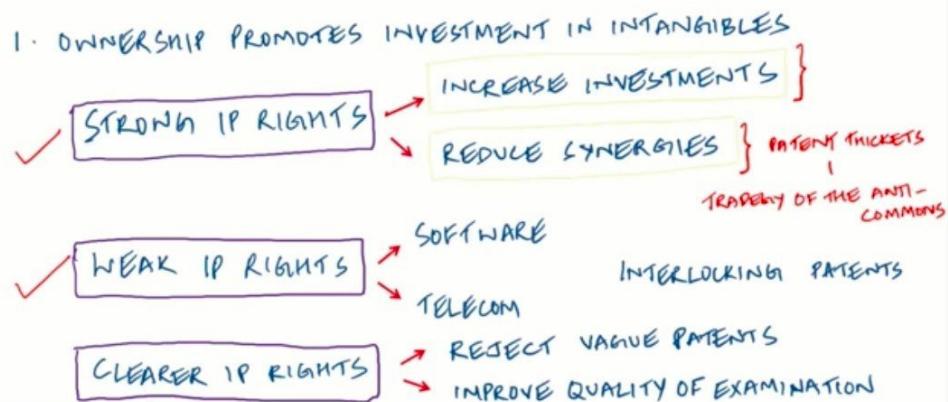
1. CONTESTED - IP RULES & NORMS (LAW)
2. SYNERGIES - IDEAS TO COME TOGETHER
3. SUNKENNESS - INVESTMENT IN INTANGIBLES
4. SPILLOVERS - PUBLIC INVESTMENT IN INTANGIBLES LIKE BASIC RESEARCH
5. INEQUALITIES - ACCESS TO PATENTED MEDICINES

1. CONTESTED

1. OWNERSHIP PROMOTES INVESTMENT IN INTANGIBLES



I. CONTESTED



Transcript



3:00 Now, the strong intellectual property rights, it is expected that once you have a strong

3:06 regime, it would increase investments.

3:09 And it would also as a consequence increase in investment would also mean it would reduce

3:16 synergies in the sense that too much of private rights would lead to a situation, where the

3:23 entity is that whole private rights do not cooperate.

3:27 Now, this is a problem what is called in literature as the problem of the patent tickets.

3:36 Now, this is also described in literature as the tragedy of the anti-commons.

3:46 The tragedy of the anti-commons tells us that too much of private ownership may lead to

3:51 a situation where the private owners will

I - CONTESTED



Transcript



Search in video

7:16 The other group which advocates for weak intellectual property rights largely look at the software

7:26 industry and the telecom industry where there are quite a lot of interlocking patterns,

7:31 and say that in these technologies for the technology to grow.

7:36 There has to be a weaker standard of intellectual property right.

7:40 That is the reason why some countries do not offer patent protection for software.

7:46 And similarly for telecoms.

7:48 Telecoms lastly are set by standards and in the telecom sector you have standard essential



1. CONTESTED



Transcript



Search in video

9:41 So, intellectual property disputes arise largely because of the fact that the boundaries are

9:48 not clear.

9:49 They could also arise, because of the granting organization say the patent office did not

9:56 do a good job while examining those applications.

10:00 That is another reason why you can have intellectual property disputes.

10:03 One, inherently the patent was not capable of defining the borders of the intellectual

10:09 property right or when the patent got granted, the examination that went into it was not

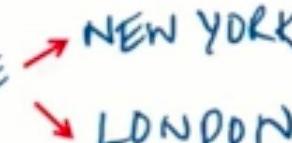
10:15 rigorous.

10:16 Now, we will look at a study towards the end of this of this week's course which pertains

10:24 to the Novartis standard.

10:26 We will look at the Novartis case, then we will look at what the standard that was set

2. SYNERGIES

1. CO-CREATING IP
2. CONDITIONS FOR KNOWLEDGE TO SPREAD & MIX
3. EASE OF BUSINESS - START & RUN
4. LET PEOPLE CONGREGATE  NEW YORK
LONDON

PERISCOPE APP



3. SUNKENESS

1. DESIGN OF FINANCIAL MARKETS
2. TAX BREAKS
3. BORROWING ON IP - BETTER IP VALUATION
INTANGIBLE BACKED LOANS
4. EQUITY INVESTMENTS

4. SPILLOVERS

1. PUBLIC INVESTMENTS - R&D
 2. FUNDING BY BIG FIRMS - GOOGLE, FACEBOOK
 3. POLICY - STARTUPS (PATENTS)
INVESTMENT - UK GOVT - IN RESEARCH IN UNIVERSITIES
- PUBLIC PROCUREMENT
TRAINING + EDUCATION
NPTEL
- INCREASED NATIONAL PRODUCTIVITY
HASKEL ET. AL.
2015
- 20%



5. INEQUALITY

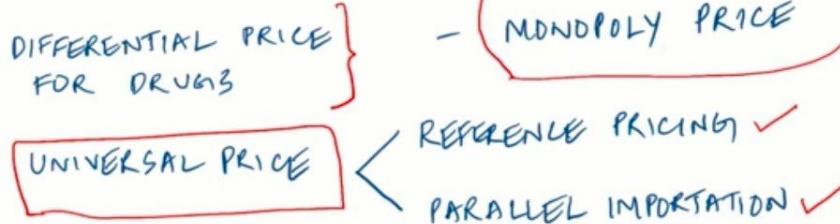
1. PATENTS + ACCESS TO MEDICINES

DIFFERENTIAL PRICE FOR DRUGS - MONOPOLY PRICE

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graph LR; A[UNIVERSAL PRICE] --> B[REFERENCE PRICING]; A --> C[PARALLEL IMPORTATION]
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5. INEQUALITY

1. PATENTS & ACCESS TO MEDICINES



Transcript



Search in video

19:19 Now, the reason for pharmaceutical companies involving in setting a universal price is

19:26 that they fear that they could be a reference pricing.

19:30 Reference pricing pertains to price that is set by one government could be used as a reference

19:37 by another government to bargain with the pharmaceutical companies.

19:40 So, they do not want different prices to be used as a point for bargaining and bringing

19:46 down the prices.

19:47 So, they cite reference pricing as one of the reasons why they follow a universal price,



5. INEQUALITY

1. PATENTS & ACCESS TO MEDICINES

DIFFERENTIAL PRICE
FOR DRUGS

- MONOPOLY PRICE

UNIVERSAL PRICE

REFERENCE PRICING

PARALLEL IMPORTATION



Transcript



Search in video

19:30 Reference pricing pertains to price that is set by one government could be used as a reference

19:37 by another government to bargain with the pharmaceutical companies.

19:40 So, they do not want different prices to be used as a point for bargaining and bringing

19:46 down the prices.

19:47 So, they cite reference pricing as one of the reasons why they follow a universal price,

19:52 a price across all the countries.

19:55 The second fear that promotes pharmaceutical companies for towards a universal price is

20:02 the fear of parallel importation.

20:05 Pharmaceutical companies fear that if the drugs are priced differently across borders,

20:10 the drugs may move from the market where it is cheaply priced into the market, where it

20:16 is priced at a higher rate
Now, this could have some element of truth,

Civil Appeal Nos. 2706-2716 of 2013

Patents—Claim for patent for beta crystalline form of Imatinib Mesylate—The beta form gave some beneficial properties like more beneficial flow properties, better thermodynamic stability and lower hygroscopicity than alpha form—Novartis made application for EMR (Exclusive Marketing Rights) on March 27, 2002 and was granted in Nov 10, 2003—Five pre-grant oppositions filed before the application was taken up for prosecution—Patent rejected on four grounds: anticipation, non-obviousness, not an invention under section 3(d) and wrongful priority—IPAB dismissed the appeal on June 26, 2009 and reversed all the findings of the Controller except the one on section 3(d)—Novartis did not appeal to the Supreme Court for the writ petitions challenging the constitutional vires of section 3(d)—Only the appeal over the substantive merit of the case from the IPAB was continued—Held, any attempt to challenge

Novartis AG v. Union of India
THE SUPREME COURT OF INDIA, NEW DELHI
(Justice Aftab Alam, Justice Ranjana Prakash Desai): Decision dated 01 April 2013



Civil Appeal Nos. 2706-2716 of 2013

explanation (para 192)—Beta crystalline form of Imatinib Mesylate fails in both the tests of invention and patentability as provided in section 2(1)(j) and (ja) and section 3(d) respectively—Appeal by Novartis fails, dismissed with cost.

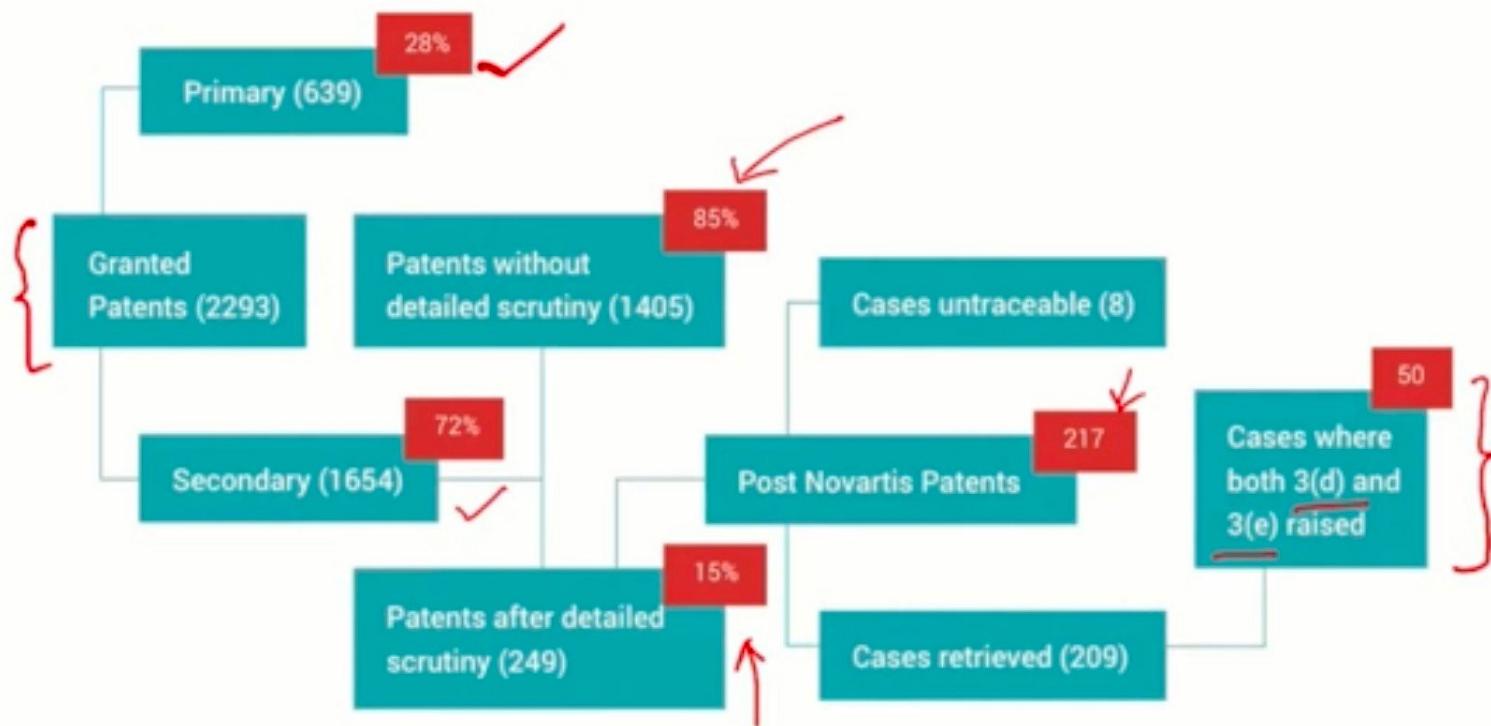
The Supreme Court has laid down certain principles to overcome the objections under section 3(d). These principles were established by the Court while upholding the IPO's decision rejecting Novartis' patent application for the cancer drug Imatinib Mesylate.³³

These principles can be listed out from the Supreme Court decision as follows:

1. Identifying the new form of the known substance and its pharmacological properties such as efficacy (Paras. 157; 160; 161);
2. Comparing the pharmacological properties of the known substance with the new form of the known substance (Para. 163);
3. Providing comparative material on enhanced efficacy in the patent application or by affidavits (Para. 171);
4. Excluding physico-chemical properties like "more beneficial flow properties", "better thermodynamic stability", and "lower hygroscopicity" for considering therapeutic efficacy (Paras. 173, 187);
5. In the case of medicines, the test of efficacy can only be therapeutic efficacy which should be judged strictly and narrowly (Para. 180);
6. The applicant has to specifically claim and establish by research data correlating bioavailability to enhanced therapeutic efficacy (Para. 189);
7. For patents involving new forms of known substances in chemicals and pharmaceuticals, the test of enhanced efficacy should be proved in addition to the fact that the patent application is an "invention" and involves an "inventive step" (Para. 192)

THE NOVARTIS STANDARD

Roadmap to our Report



“Startup”

New Definition under the Patents (Amendment) Rules, 2017



- (ii) after clause (fa), the following clause shall be inserted, namely:-
- '(fb) "Startup" means an entity, where-
- (i) more than five years have not lapsed from the date of its incorporation or registration;
 - (ii) the turnover for any of the financial years, out of the aforementioned five years, did not exceed rupees twenty-five crores; and
 - (iii) it is working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property;

Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered as a startup.

Provided further that the mere act of developing-

- a. products or services or processes which do not have potential for commercialisation, or
 - b. undifferentiated products or services or processes, or
 - c. products or services or processes with no or limited incremental value for customers or workflow,
- would not be covered under this definition.

Explanation 1.- An entity shall cease to be a startup on completion of five years from the date of its incorporation/ or registration or if its turnover for any previous year exceeds rupees twenty-five crores.

Explanation 2.- Entity means a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm registered under section 59 of the Partnership Act, 1932 or a limited liability partnership under the Limited Liability Partnership Act, 2002.

Explanation 3.- The term "Turnover" shall have the same meaning as defined in the Companies Act, 2013 (18 of 2013).

Explanation 4.- An entity is considered to be working towards innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialise a new product or service or process, or a significantly improved existing product or service or process that will create or add value for customers or workflow.

Explanation 5.- The reference rates of foreign currency of the Reserve Bank of India shall prevail.'

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Industrial Policy and Promotion)

NOTIFICATION

New Delhi, the 1st December, 2017

G.S.R. 1472(E).—In exercise of the powers conferred by section 159 of the Patents Act, 1970 (39 of 1970), the Central Government hereby makes the following rules further to amend the Patents Rules, 2003, namely:—

1. (1) These rules may be called the Patents (Amendment) Rules, 2017.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In Sub rule(b) under rule 2 of the Patents Rules, 2003 (hereinafter referred to as the principal rules) the definition of Startup is substituted as,—
 - (i) "Startup" means
 - (a) an entity in India recognised as a startup by the competent authority under Startup India initiative.
 - (b) In case of a foreign entity, an entity fulfilling the criteria for turnover and period of incorporation/registration as per Startup India Initiative and submitting declaration to that effect.

Explanation: In calculating the turnover, reference rates of foreign currency of Reserve Bank of India shall prevail.

[F. No. 14(03)/2014-IPR-III-Vol.II]

RAJIV AGGARWAL, Jt. Secy.

Note: The Principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii) vide S.O. 493(E), dated the 2nd May, 2003 and subsequently amended vide notification number:—

- (i) S.O. 1418(E), dated the 28th December, 2004;
- (ii) S.O. 637(E), dated the 5th May, 2006;
- (iii) S.O. 2296(E), dated the 25th September, 2012;
- (iv) S.O. 1029(E), dated the 23rd April, 2013;

NOTIFICATION

New Delhi, the 11th April, 2018

G.S.R. 364(E).—This notification is being issued in supersession of Gazette Notification No. G.S.R. 501(E) dated May 23, 2017.

Definitions

1. In this notification,—

(a) An entity shall be considered as a Startup:

- i. Upto a period of seven years from the date of incorporation/registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India. In the case of Startups in the biotechnology sector, the period shall be upto ten years from the date of its incorporation/ registration.
- ii. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded Rs. 25 crore
- iii. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

Explanation-

An entity shall cease to be a Startup on completion of seven years from the date of its incorporation/ registration or if its turnover for any previous year exceeds Rupees 25 crore. In respect of Startups in the biotechnology sector, an entity shall cease to be a Startup on completion of ten years from the date of its incorporation/ registration or if its turnover for any previous year exceeds Rs. 25 crore.

(b) "Act" means the Income-tax Act,1961;

