"Quite clearly, it is not in the interests of developing countries to seek either a 'light' SPLT or a more comprehensive SPLT, since they have little to gain from a broader harmonization of substantive patent law," said Professor Carlos Correa, Director of the Centre for Interdisciplinary Studies on Industrial Property and Economics Law at the University of Buenos Aires.

Correa and Sisule Musungu, Acting Coordinator of the Programme on Innovation, Access to Knowledge and Intellectual Property at the Geneva-based South Centre, argue that harmonization will lead to a situation where the United States' definition of patent law is imposed on all countries. They have called for an assessment — governmental or independent — of the impact patent harmonization would have on developing countries.

Trilateral industry groups, meanwhile, are stepping up the pressure on WIPO to make progress towards harmonization. Phil Thorpe, Deputy Director of the United Kingdom Patent Office, warned that developing countries may lose influence in the debate if that debate moves outside WIPO, as some have suggested it should.

The trilateral proposal calls for discussions on four issues: the uses of a given innovation prior to patent application; possible patent protection when details about an invention have been disclosed before approval; how a product or an idea adds something new; and whether an innovation represents a step forward.

In addition, key developing countries have sought to include in these discussions talks on genetic resources, especially a requirement that the origin of the resources be disclosed in patent applications, and on protection of traditional knowledge (see story below).

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The impact of the proposed treaty on patent harmonization will depend on how it defines what may or may not be patented, or patentability, according to Professor Brook K. Baker of the Northeastern University School of Law. Baker said that developed countries with strong innovative pharmaceutical industries have increased the scope of what can be patented, broadening the definition of, for example, what is new. This has led to a "growing insistence on patents for new uses, new formulations, new combinations, and for minor, therapeutically *de minimus* changes in chemical structures," he said, referring to minimal changes that some argue should not be covered by separate patents at all.

Protecting traditional knowledge: the San and hoodia

The holders of traditional knowledge often face a dilemma. How can they benefit from their own traditional knowledge if they don't patent it?

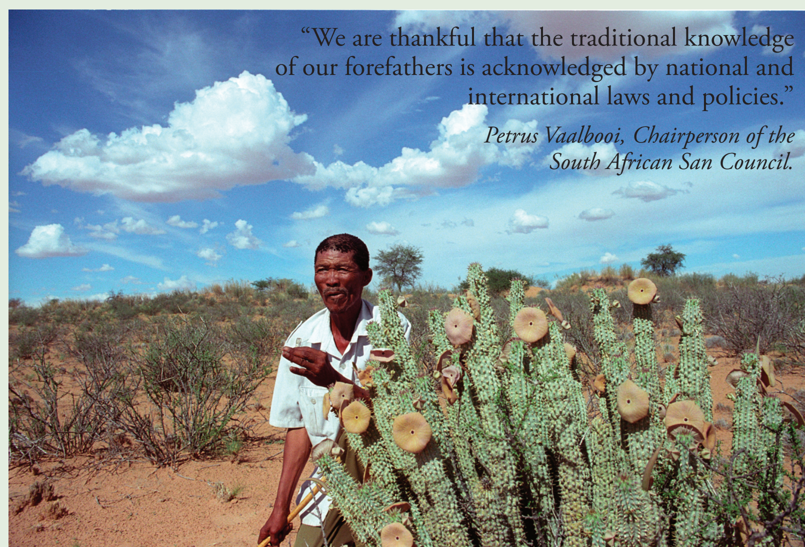
Intellectual property rights are often regarded as incompatible with traditional knowledge because patents are based on innovations or discoveries and held exclusively, while traditional knowledge is collectively owned and based on prior use.

In 2003, the San indigenous people (Bushmen) and South Africa's state research institute the Council for Scientific and Industrial Research (CSIR) reached an agreement to share any royalties from potential sales of drugs or other products derived from the hoodia plant, *Hoodia gordonii*, which has long been known to the San as an appetite suppressor.

It was one of the first agreements to give the holders of traditional knowledge a share of the potential profits of products derived from that knowledge. A few years earlier the plant's active ingredient had been patented by CSIR and licensed for further development to a British company which in turn sold additional licences to Pfizer and later to food multinational Unilever. The San also signed a profit-sharing agreement with the South African Hoodia Growers (Pty) Ltd in February 2006.

The appetite suppressant was to be commercialized into a food supplement and/or prescription medicine, with considerable financial potential, but so far no products have been launched under the profit-sharing agreement. Recently lawyers representing the San filed complaints to the governments of Switzerland and Germany about hoodia products produced outside the agreement that were being sold in those countries. They said these sales were in contravention of international agreements on biodiversity. In a letter sent in March 2006, they asked that the obligations of the Biodiversity Convention be honoured and that countries take steps to stop the sale of unauthorized hoodia products.

The San live in a region that cuts a swathe across Angola, Botswana, Namibia and South Africa. They are one of southern Africa's most marginalized groups.



Petrus Vaalbooi, Chairperson of the South African San Council, sampling a piece of a hoodia plant in the Brosdoring area in the San communal land of the Kalahari Desert in South Africa, 2004.