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An ABS Commons?

ESRC Centre for Economic and Social
Aspects of Genomics (Cesagen)

The ABS Labyrinth

- ABS over-emphasises potential value at the expense of actual values in a political economy of promise;
- Finding the middle ground - ABS commons licenses as a possible solution;
- Reciprocity and enabling choices for providers in making knowledge and resources available in conditions of sufficient certainty for their rights;
- A way through can be found by recognising common principles in diverse customary law systems and linking through community protocols to licenses using modern ICT tools.

Customary Laws & Reciprocity

- Customary law links to reciprocity - that is the obligation to reciprocate in exchange relationships. Three main types focusing on types of relationships:
 - Generalized (i.e. close family - delayed, non-equivalent);
 - Balanced (direct/time limited and equivalent);
 - Negative (attempt to get something for nothing);
- Reciprocity is a spectrum - customary law elaborates on possibilities across that spectrum in multiple ways (*hau* example). How might obligations to reciprocate be promoted in ABS and for what constructive purposes?

Commons/Open Source Licenses

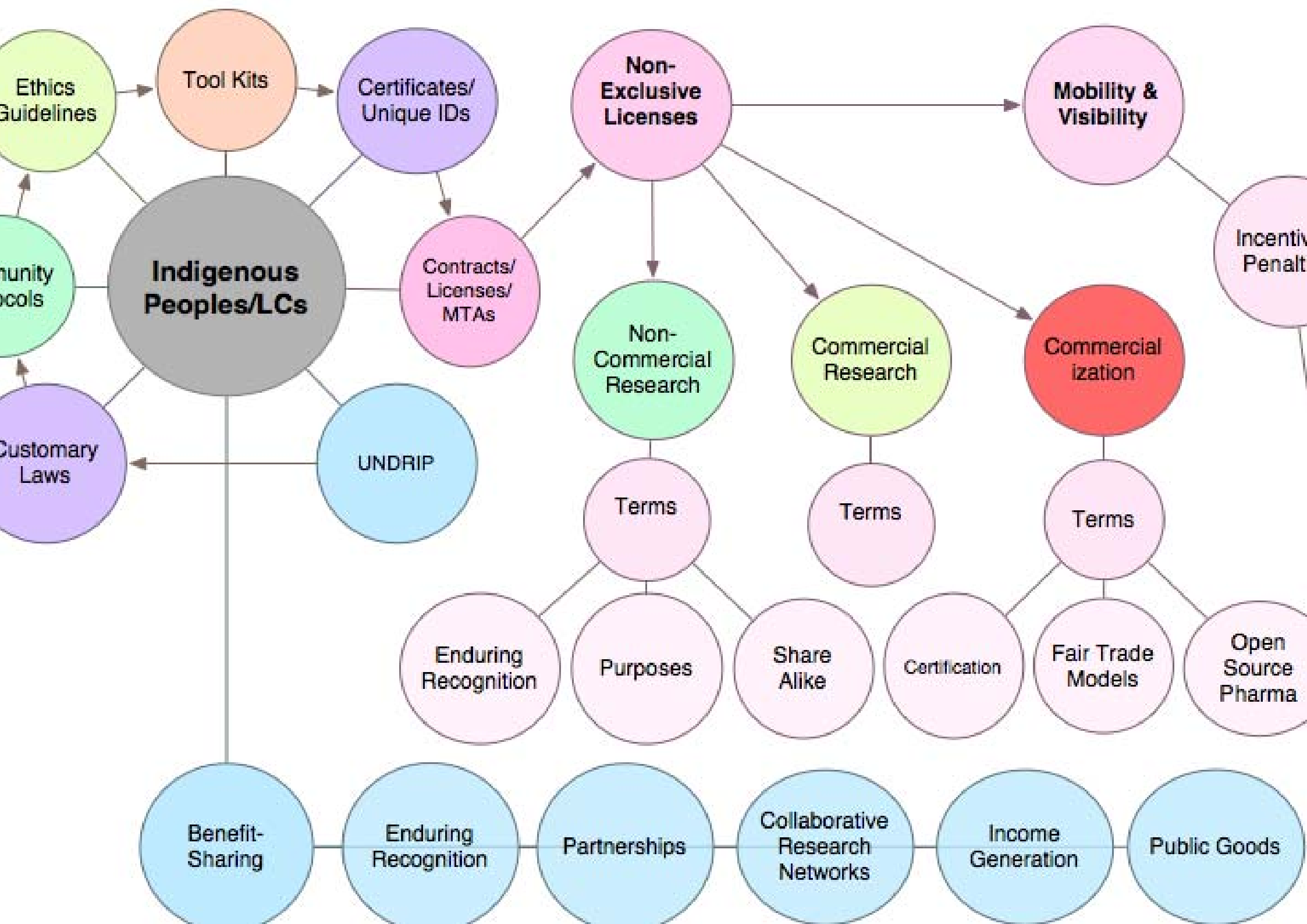
- Originate with Free Open Source Software Movement (FOSS) and the creation of the General Public Licence in the 1980s;
- Objective of GPL was to create a protected commons for source code through exploitation of copyright as “copyleft” to prevent source code entering into public domain and privatization (appropriation);
- Copyleft a “reciprocal” license requiring users to make derivatives/software including the source code available on exactly the same terms;
- Open source focuses on choices for providers and pragmatic business models (Open Source definition licenses);

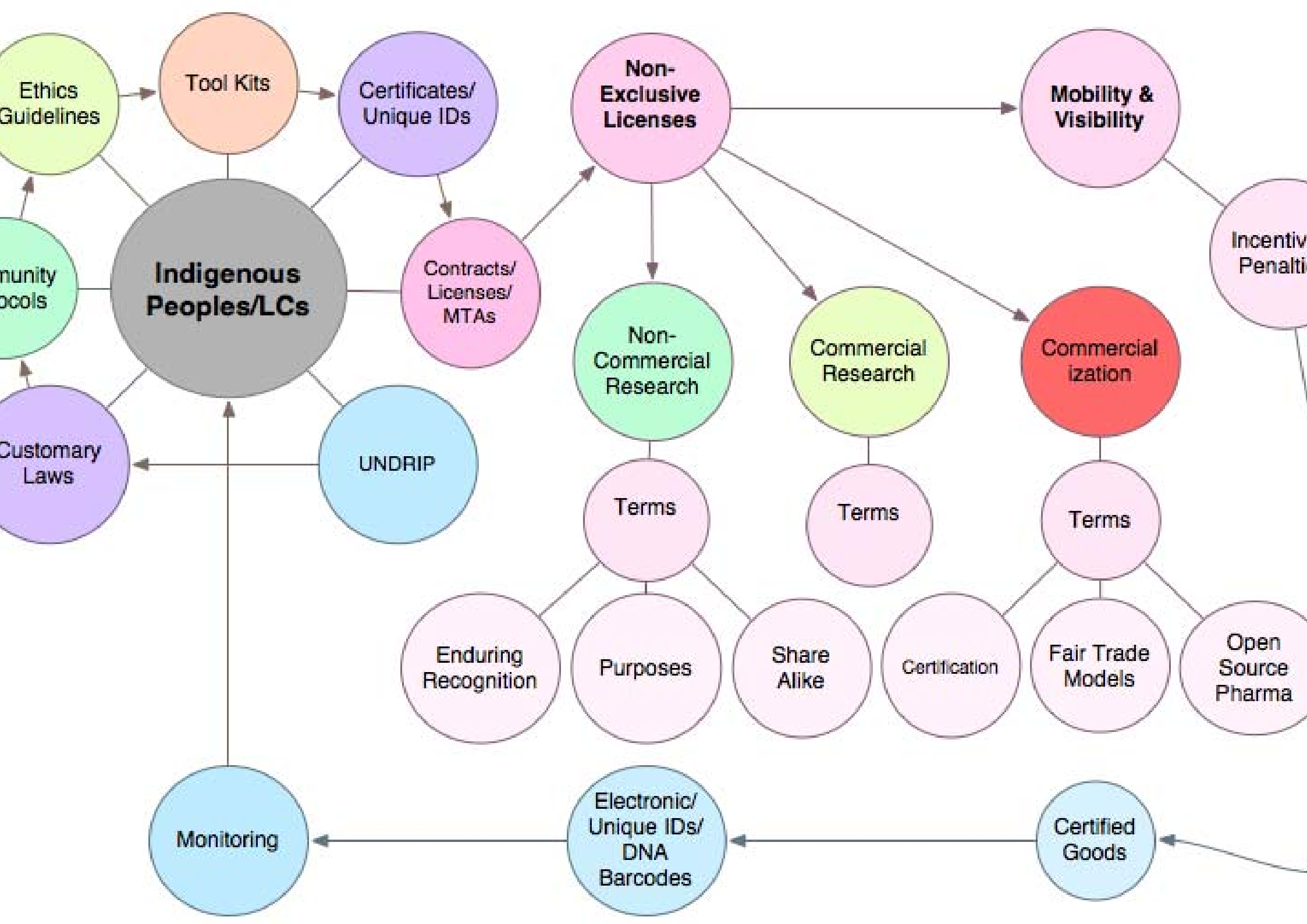
ABS License Options

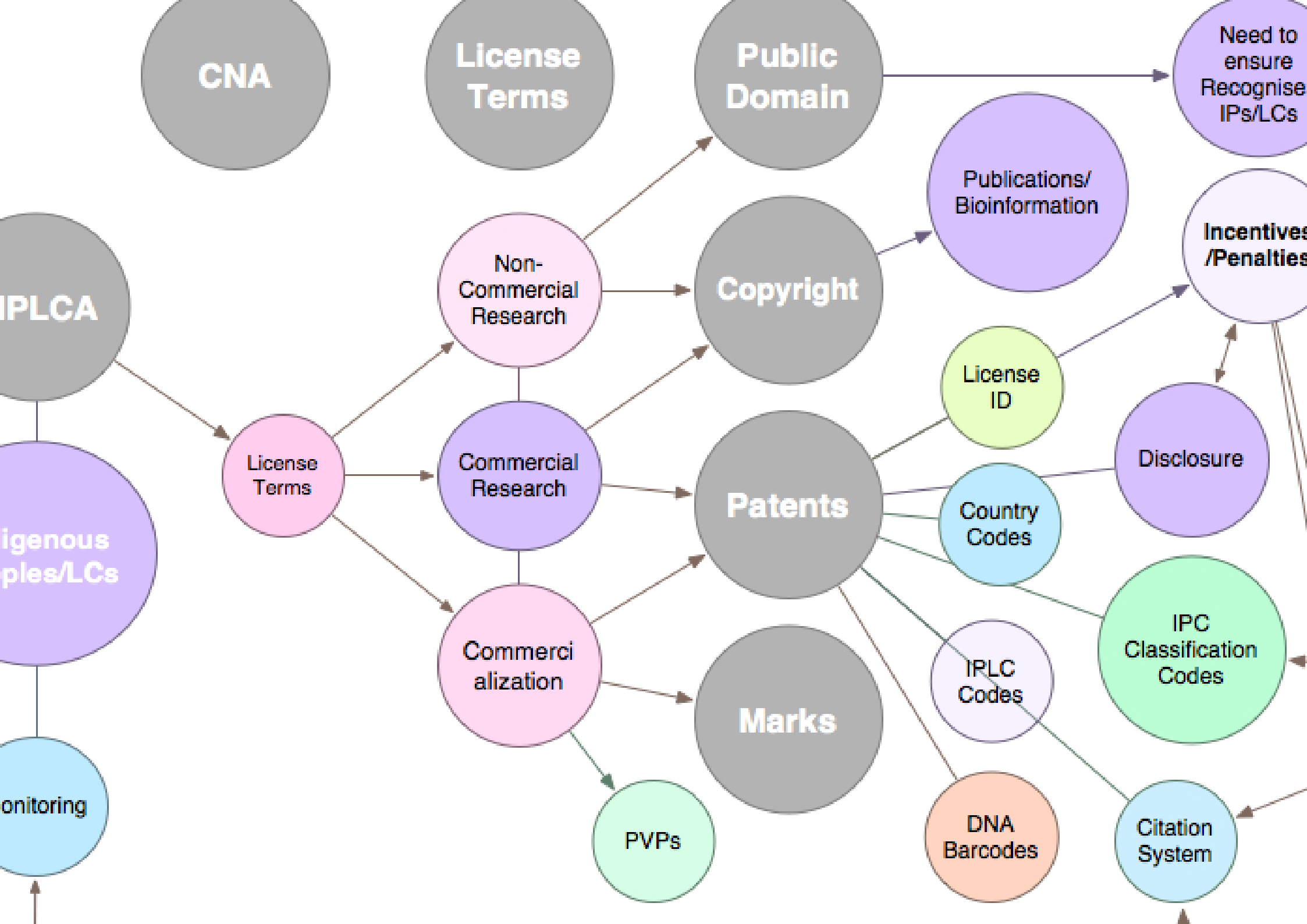
- Three categories of utilization of genetic resources and TK in the existing ABS text (Section: III.C.1.c option 2)
 - Research and development not aiming at commercialization (non-commercial research);
 - Research and development aiming at commercialization (commercial research);
 - Commercialization (i.e. products);
- These could form the basis for 'ABS commons' licenses (imposed into III.A.5 and re-elaborate to cross link with compliance III.C.1.c option 2).

Key Issues

- Linking from customary laws to community protocols to licensing - **What happens when knowledge and resources go mobile?**
- 1. Requirement for enduring recognition of contributions over time;
- 2. Modular license choices - terms and conditions under which knowledge and resources are provided;
- 3. Visibility to the wider intellectual property regime (i.e. patents, PVPs etc.);
- 4. Link to compliance and monitoring using ICT for a trusted system;







Monitoring & Compliance

1. Biopiracy is a key concern in ABS;
2. The patent system is a global information system using standardised classification/codes;
3. It would be possible to make licenses visible using coding and classification systems = ABS indicators;

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AGENT IMPROVING PERIPHERAL BLOOD FLOW

Bibliographic data | Description | Claims | Mosaics | Original document | INPADOC legal status

Publication number: WO2005094860 **Also published as:**
JP2005281272 (A)

Publication date: 2005-10-13

Inventor: YOSHIDA YUJI (JP); KISO YOSHINOBU (JP); MATSUMOTO YUTA (JP)

Applicant: SUNTORY LTD (JP); YOSHIDA YUJI (JP); KISO YOSHINOBU (JP); MATSUMOTO YUTA (JP)

Classification:

- international: **A61K36/18; A23G3/00; A23L1/30; A23L2/02; A61P9/00; C12G3/04; A61K36/18; A23G3/00; A23L1/30; A23L2/02; A61P9/00; C12G3/00; (IPC1-7): A61K35/78; A23G3/00; A23L1/30; A23L2/02; A61K7/00; A61P9/00; C12G3/04**
- european: A23L1/30B; A61K36/31; C12G3/04

Application number: WO2005JP06325 20050331

Priority number(s): JP20040101735 20040331

[View INPADOC patent family](#)

Cited documents:

- BR9900721
- BR9901909
- JP2004000171
- JP2002515401
- JP2002020246
- JP2000334044
- WO0051548
- XP002998116

[less <<](#)

Abstract of WO2005094860

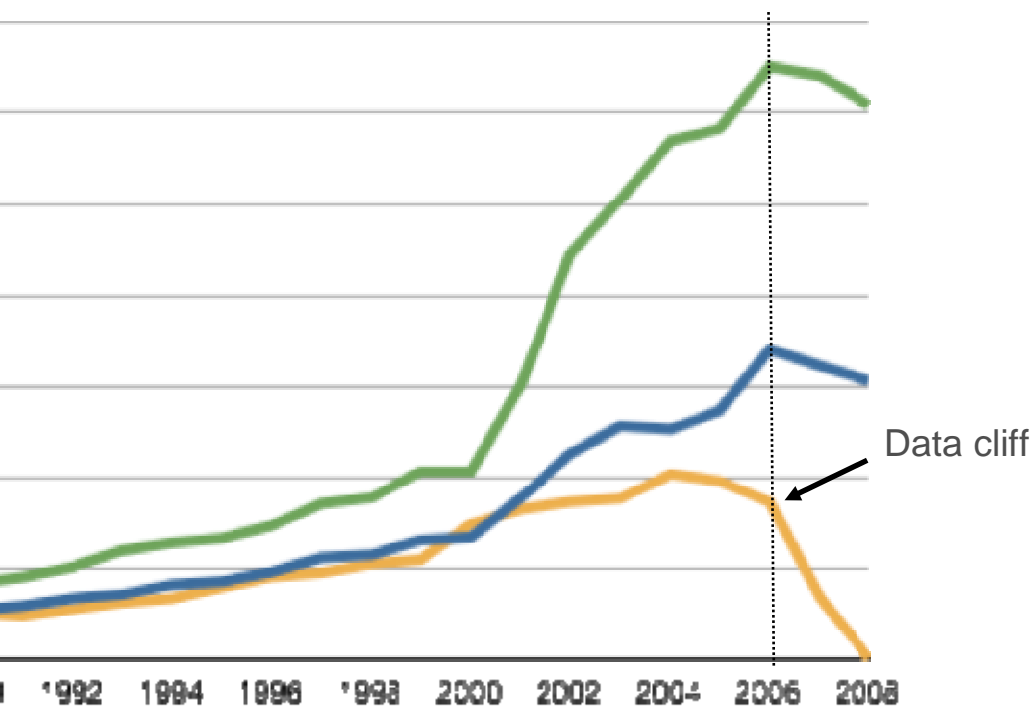
It is intended to provide an efficacious agent for improving symptoms caused by peripheral blood flow disorders (circulatory disorders accompanying peripheral blood flow disorders (cold, chap, etc.)) and has no side effect. More specifically speaking, an agent for improving peripheral blood flow which contains, as the active ingredient, an extract of a plant belonging to the genus Lepidium, still specifically, an agent for improving peripheral blood flow which contains, as the active ingredient, an extract of maca (*Lepidium meyenii* Walp); and foods, drinks, cosmetics or drugs containing the agent for improving peripheral blood flow.

Data supplied from the **esp@cenet** database - Worldwide

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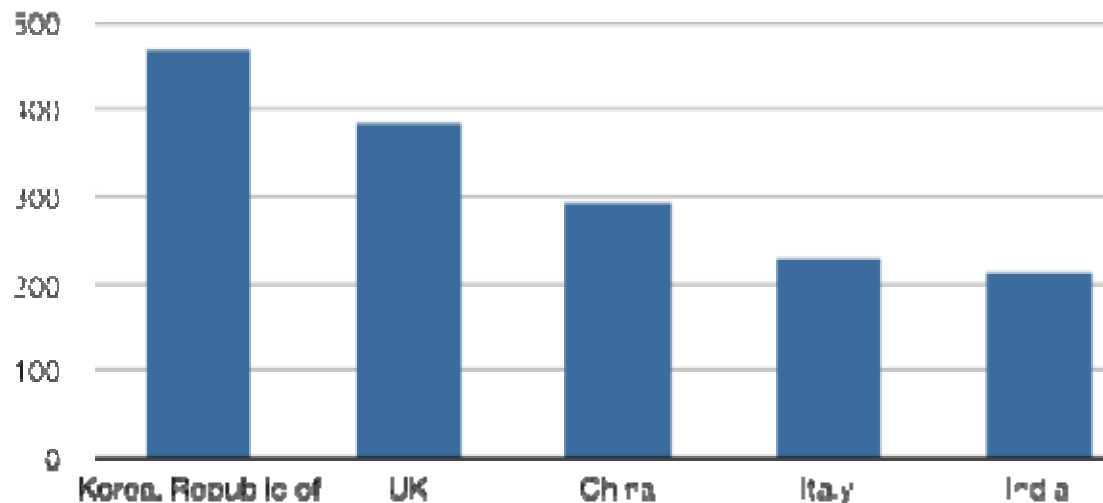
Lepidium meyenii or “maca”, an aphrodisiac from Peru with patent applications in Japan, the US and World Wide (PCT)

Based Traditional/Herbal Medicines (A61K35/78, A61K36)

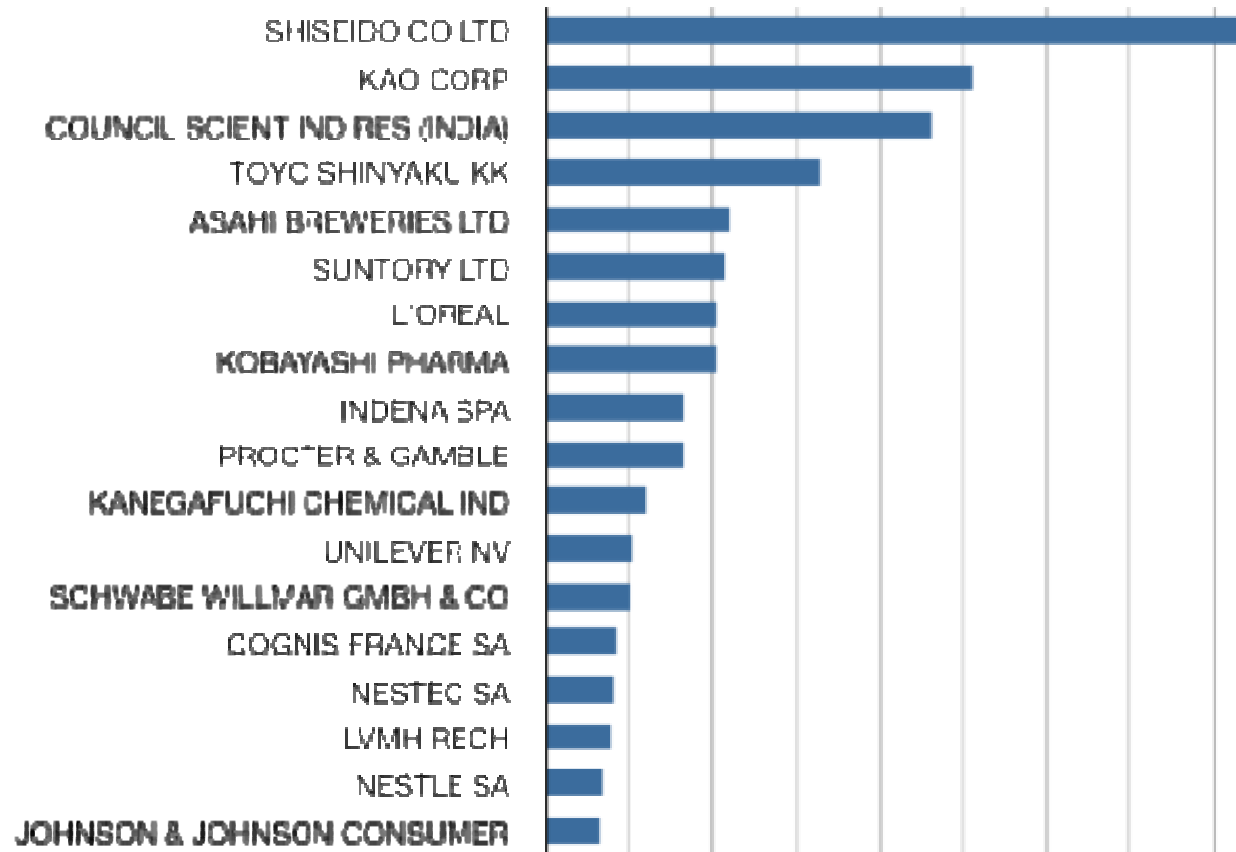


Main Trends (39,154) — Patent Family (58,766)
 First Filings (21,895)

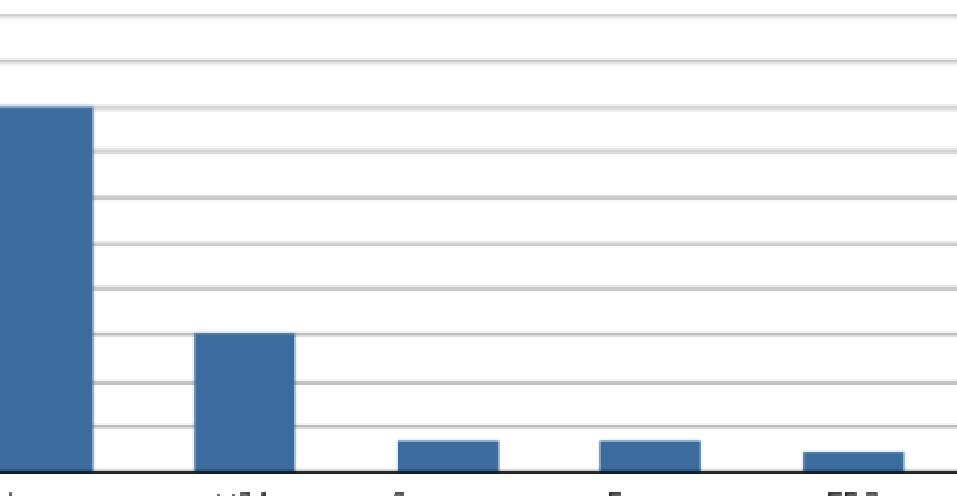
Priority Countries (Filing Country)

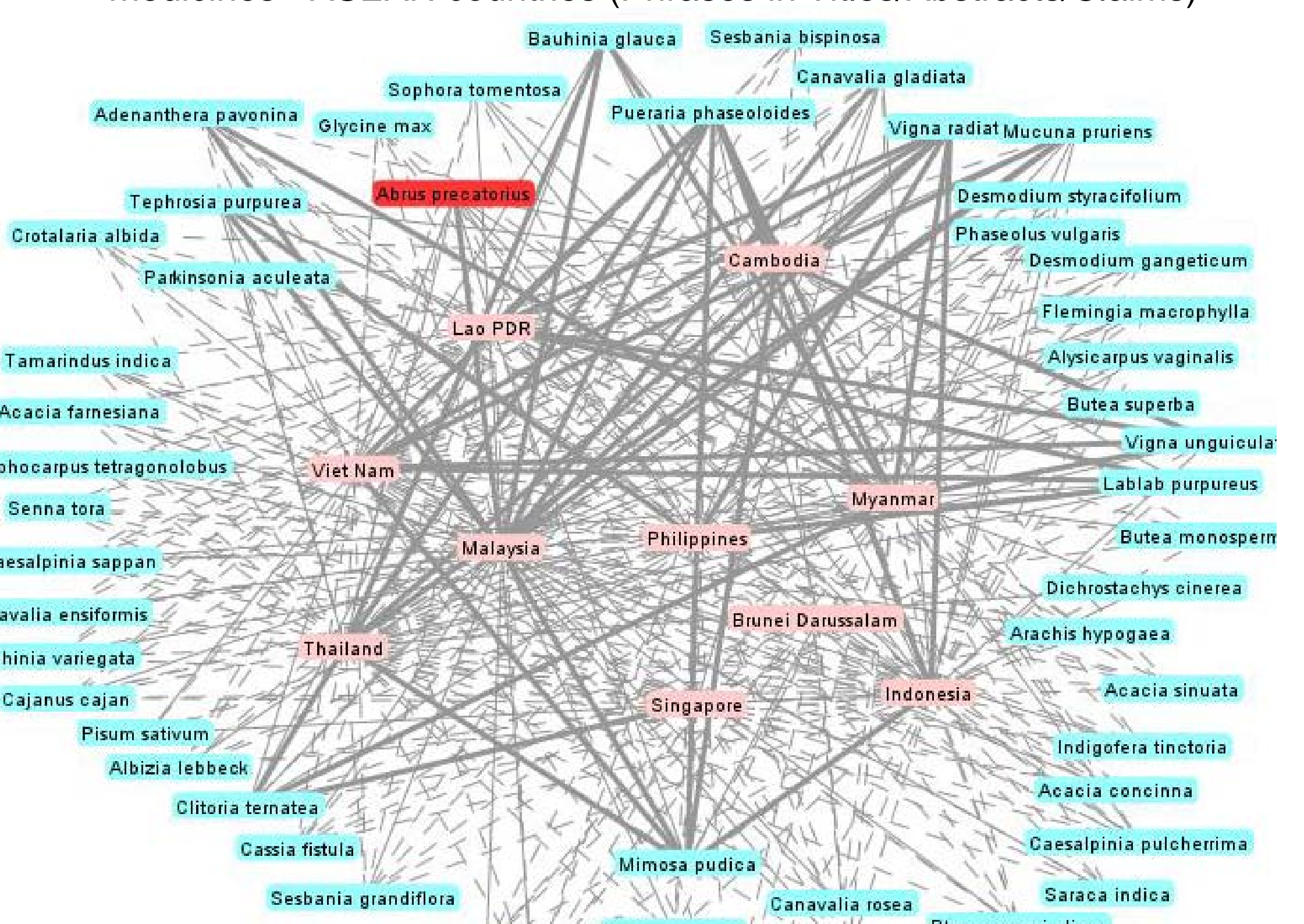


Top Patent Assignees (Patent Cooperation)



Priority Countries (Filing Country)



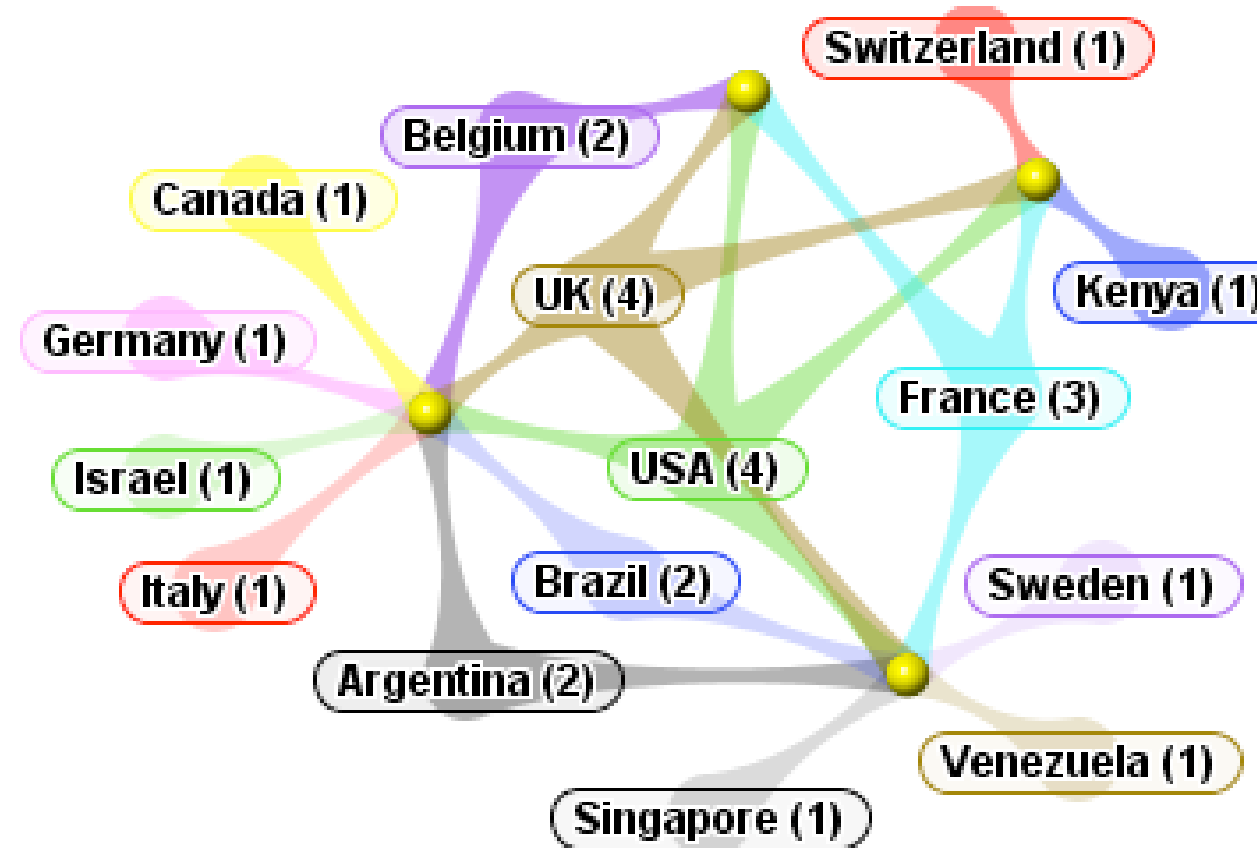


Beyond Flawed ABS Economics?

In 2005 the genomes of four neglected diseases were sequenced;

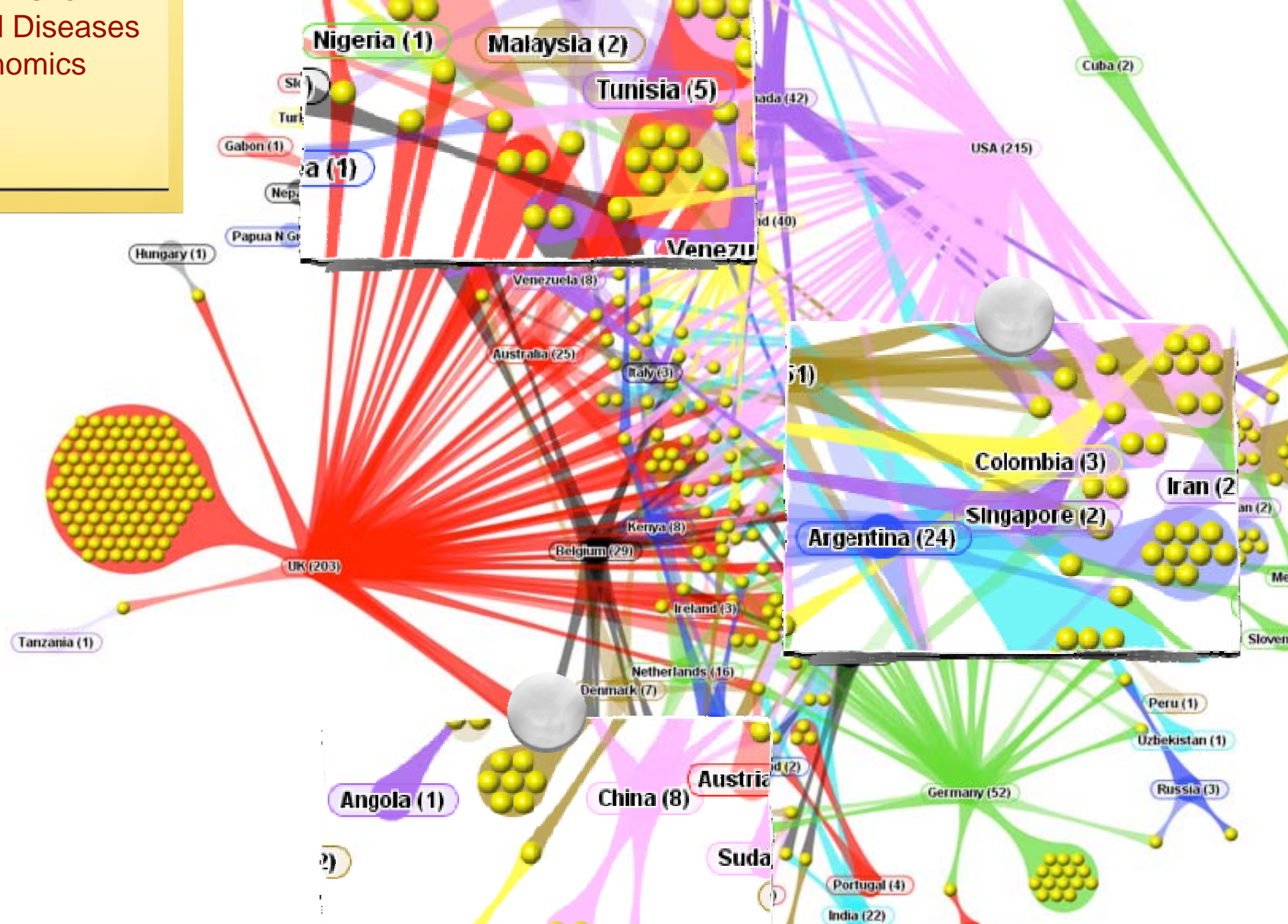
1. *Trypanosoma brucei* (Sleeping sickness)
2. *Trypanosoma cruzi* (Chagas disease)
3. *Leishmania major* (Leishmaniasis)
4. *Theileria annulata* (Cattle parasite)

Cross-Country Collaboration in Genome Sequencing



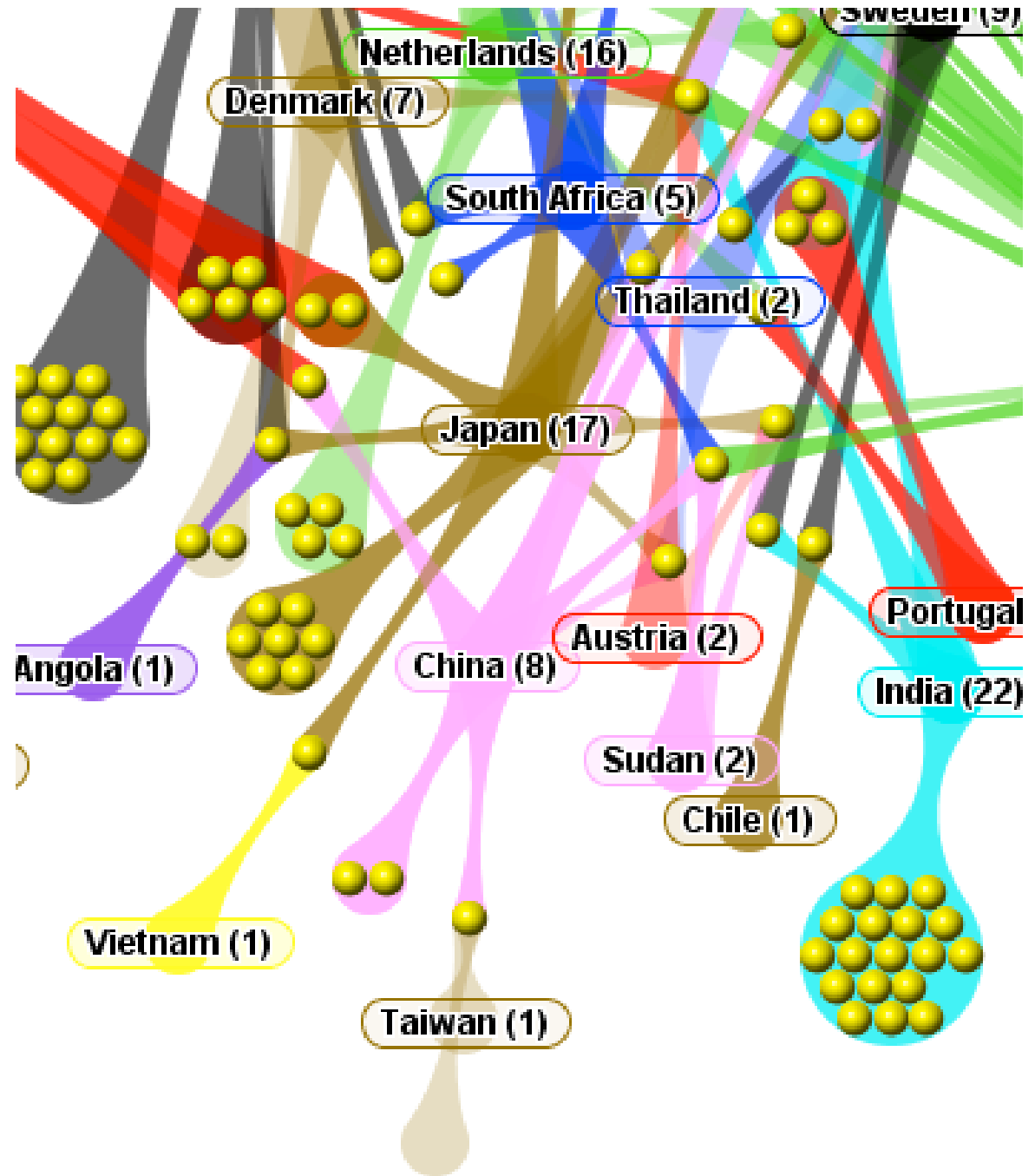
Source: Web of Science. Aduna cluster map in Vantage Point Analytics Software

Emerging Diseases Epidemiology



Promoting Collaborations

1. Rather than “Green gold” it will make greater economic sense to focus on diseases with high burden rates or key issues such as adaptation to climate change;
2. How might such collaborations be fostered under the ABS regime?

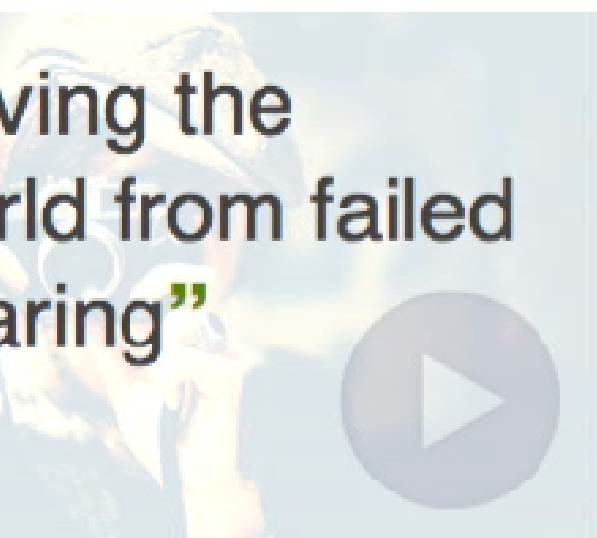


Source: Web of Science Citation Data

Components

- References to licences could be inserted in relevant parts of the text (i.e. customary laws, community protocols and licenses);
- Elaboration of technology transfer and research sections to reflect three categories of utilization and include IPLCs;
- Links to compliance (certificate and monitoring);
- Links to access (facilitated through advanced acceptance of a non-commercial licence);
- Radically reduced transaction costs and access through online tools – but need to adapt tools to purpose and address challenges.

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Science Commons Materials Transfer Agreements (MTAs) are contracts that govern the transfer of tangible research materials from one research institution (the provider) to another (the recipient). They are most commonly employed in the transfer of "unique research resources" such as cell lines, monoclonal antibodies, reagents, animal models, growth factors, combinatorial chemistry and DNA libraries, clones and cloning tools (such as PCR), methods, laboratory equipment and machines. Non-biological and synthetic materials, such as certain nano-materials, chemical reagents, and chemical substrates may be shared under MTAs as well.

Provider Information

Provider: ?

Provider URL: ?

Provider Address: ?

Material Information

Description: ?

Material URL: ?

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You can include information about the offers on your web page; just copy and paste the HTML below into your page. The HTML includes machine-readable metadata which software can discover and aggregate.

Preview:

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Provider Information

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Welcome; this wizard will walk you through the offer configuration process.

What type of agreement are you offering?

- UBMTA
- Simple Letter Agreement
- Science Commons MTA
- Custom Agreement

Cancel

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Material Information

Description

Material

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...aggregate.

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Provider Information

Provider: ?

Provider URL: ?

Provider Address: ?

Material Information

Description: ?

Material URL: ?

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Science Commons MTA offer

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```
<div xmlns:cc="http://creativecommons.org/ns#"
xmlns:sc="http://sciencecommons.org/ns#"
xmlns:dc="http://purl.org/dc/elements/1.1/">
<div class="sc:Material"
about="http://mta.sciencecommons.org/material/view/86">Th
e material <a
href="http://mta.sciencecommons.org/material/view/86">Spec
ies plant material</a> is available from <a rel="sc:provider"
href="http://www.genomicsnetwork.ac.uk/cesagen/">organis
ation/community</a> under the following offers:<br/>
```

Preview:

The material [Species plant material](#) is available from [organisation/community](#) under the following offers:

- [Science Commons MTA](#).

The offer is available to nonProfit institutions
Offer is limited to use with disease Dengue

You are free to:

- Use the materials for research that you supervise
- Allow others under your supervision to use the materials
- Publish the results of your research

Under the following conditions:



Your use of the materials is restricted by fields of use.
Limited to Dengue



You may not use the materials for clinical purposes.



You may not use the materials in connection with the sale of a product or service.



You may not transfer or distribute the materials.

Commons Material Transfer Agreement

le for sc-df agreement.

Commons Material Transfer Agreement

1.0)

CREATIVE COMMONS CORPORATION IS NOT A LAW FIRM AND DOES NOT PROVIDE LEGAL SERVICES. DISTRIBUTION OF THIS

Introduction

ience Commons Material Transfer Agreement and any attachment that references it (collectively, the "Agreement")

reement may be released in multiple versions. Only the version expressly referenced by the parties shall

Definitions

ized terms used in this Agreement have the meaning defined below. Plural and singular forms may be used in

al Use" means use in humans to treat or diagnose any disease or condition, including, but not limited to,

cial Use" means selling or offering for sale: (i) a product that contains the Materials, (ii) a service that

igator" means the principal investigator employed by Recipient who is responsible for controlling and supervising

als" means tangible materials that are transferred subject to the Agreement, as may be more specifically defined

cation" means a change to the Materials resulting in novel properties or a combination of the Materials with

er" means the Party that provided the Materials.

ent" means the Party that received the Materials.

ch Use" means experimental activities directed to discovery or development, but excluding any Commercial Use

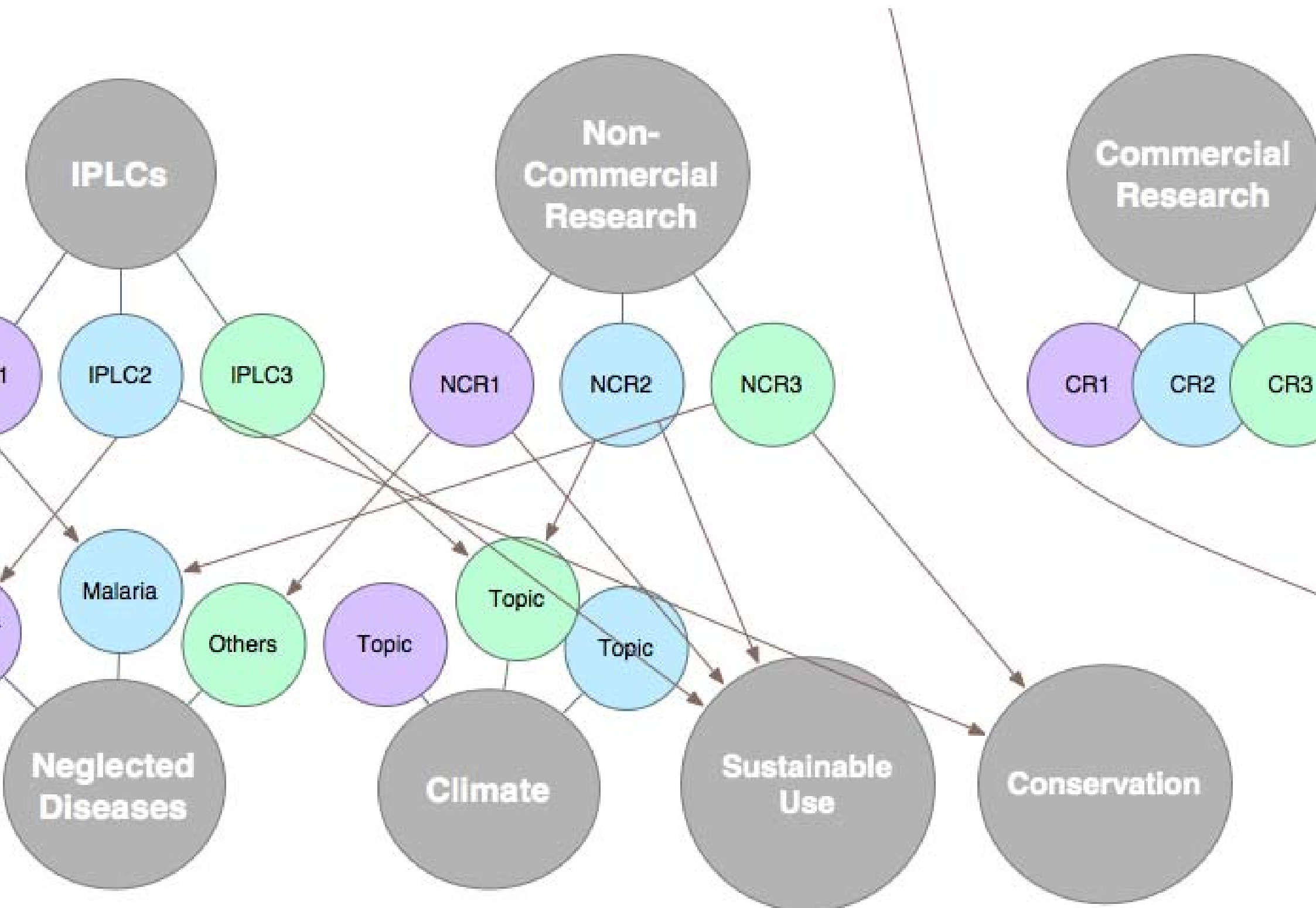
Up" means to produce substantial additional quantities of the Materials.

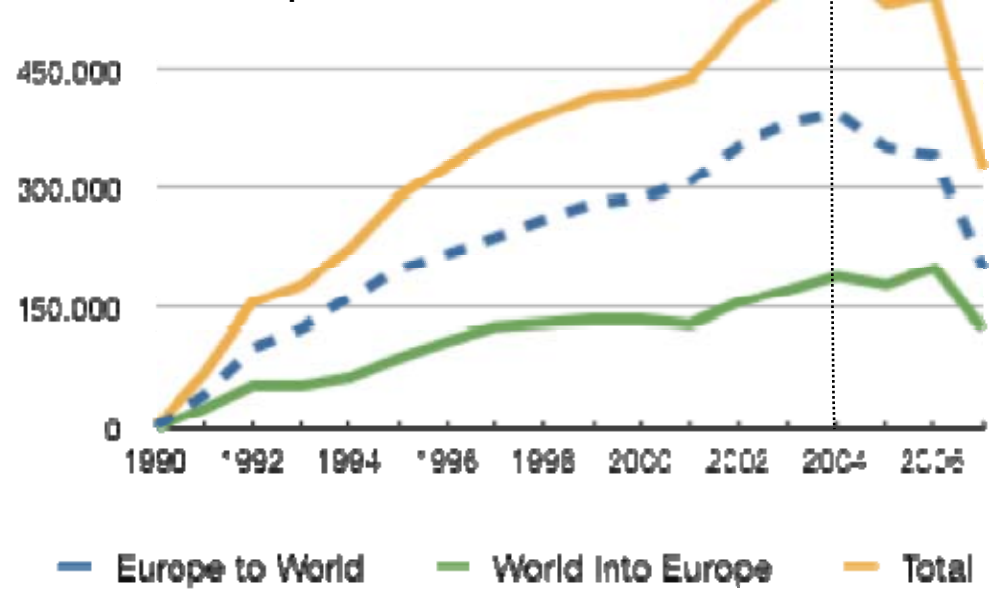
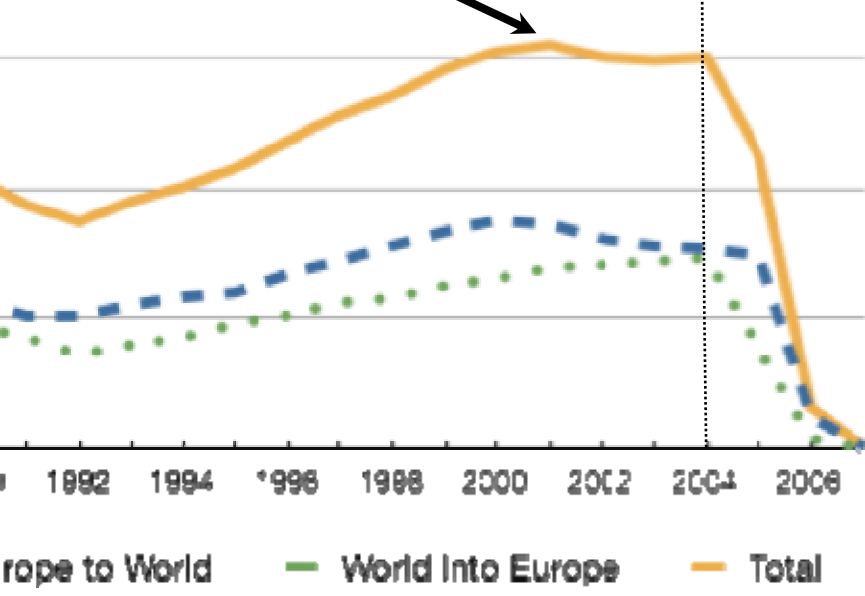
Commons Licenses & ABS

- The proposal is to insert a “placeholder” paragraph to allow the exploration and further development of ABS commons licenses and certification (for products) following the adoption of the regime not before;
- Re-elaboration of the research and technology transfer sections in A to link to C (model clauses) and monitoring/indicators;
- Pilot projects to test the approach i.e. TK commons in a coalition of the willing including legal specialists;
- An opt in commons system to operationalise and simplify the complex provisions of emerging regime and give indigenous peoples and local communities choices;

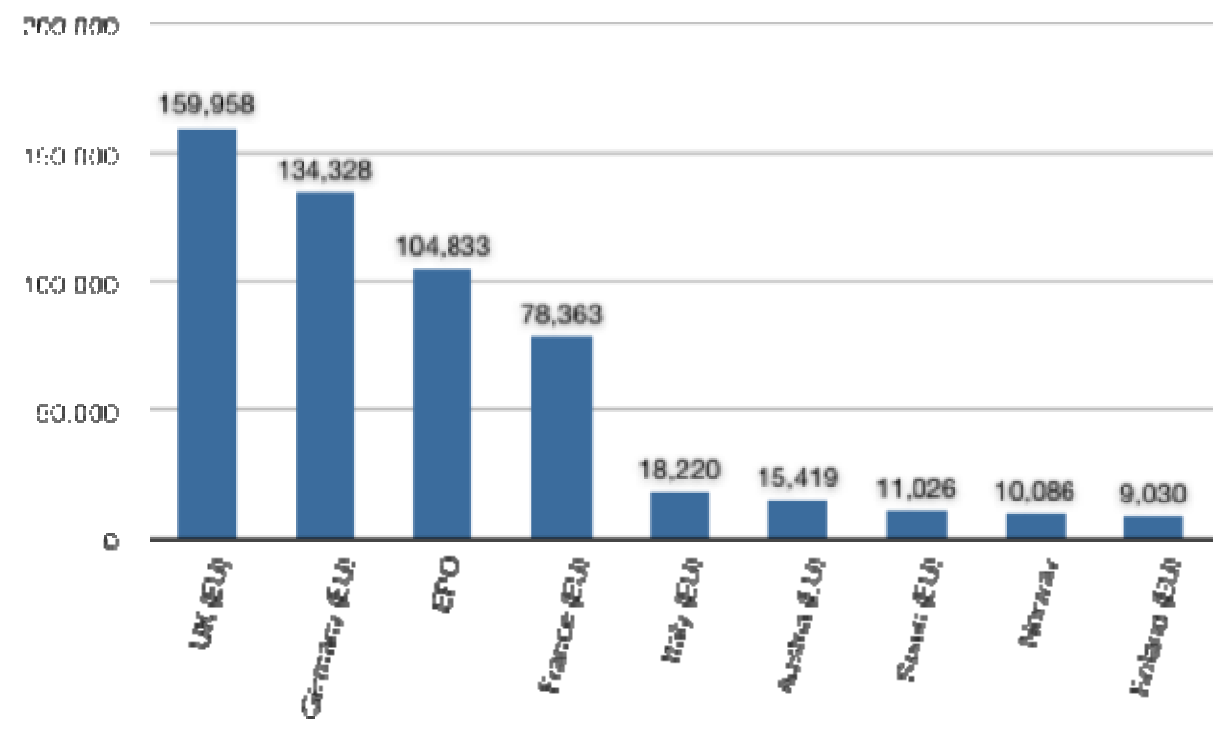
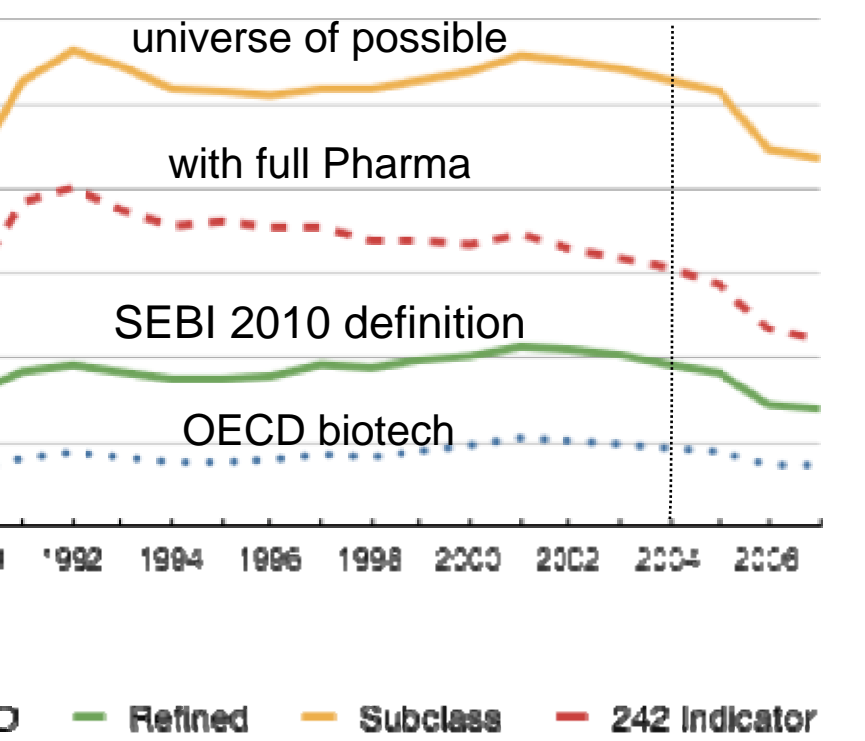
Background

- Oldham, P (2009) An Access and Benefit-Sharing Commons? The role of commons/open source licenses in the international regime.
UNEP/CBD/WG-ABS/8/INF/3
- Submission to ABS8: ESRC Centre for Economic and Social Aspects of Genomics (Cesagen)
- Patent Indicators Work:
- Oldham & Hall (2009) A European Patent Indicator for Access to Genetic Resources and Benefit-Sharing. Report to European Environment Agency
EEA/BSS/08/012
- Oldham (2007) Biodiversity and the Patent System: Towards International Indicators. UNEP/CBD/WG-ABS/5/INF/6





Comparisons as a Share of Overall European Activity



Main European portfolios 1990-2007

