

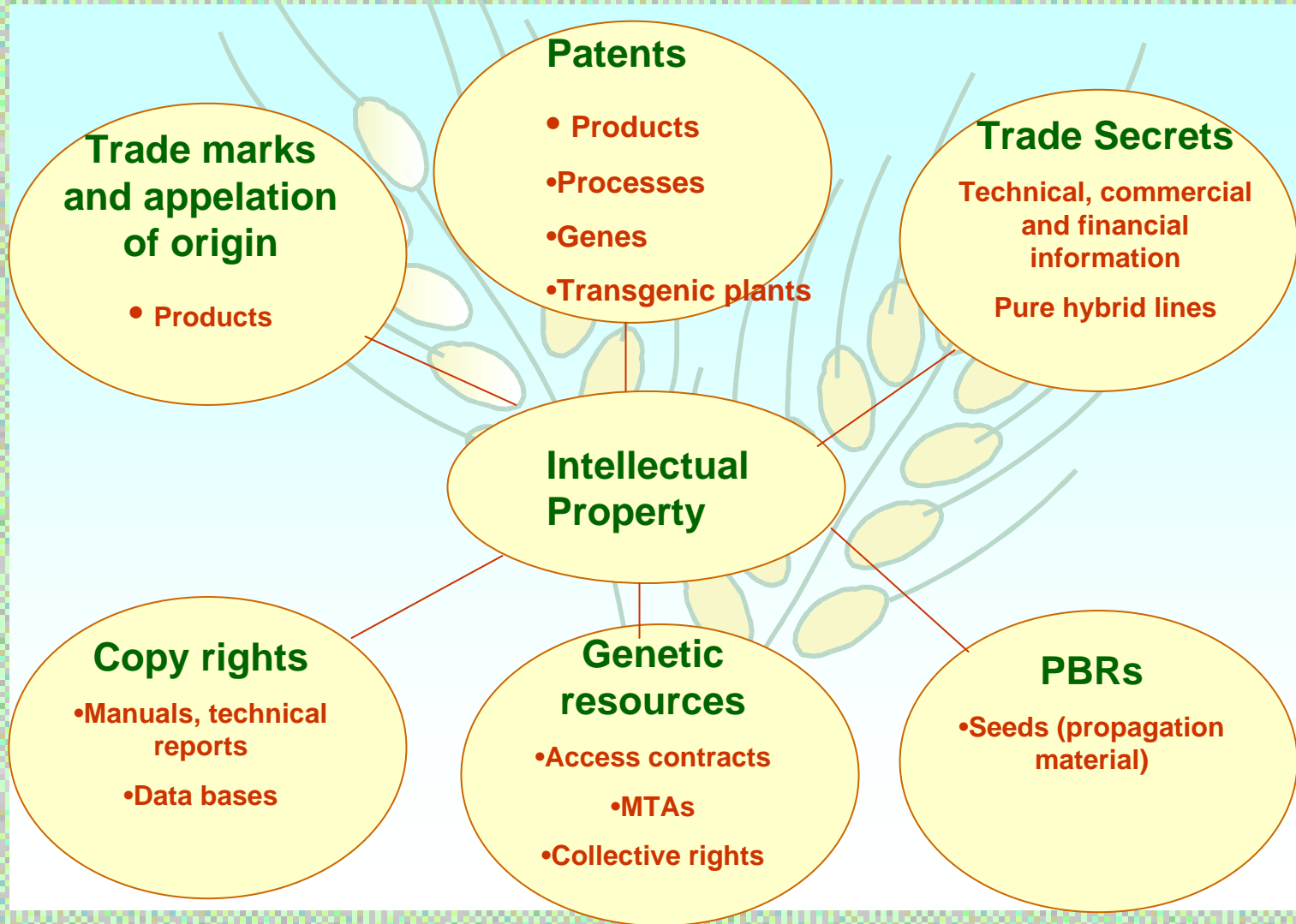
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# Propiedad intelectual y recursos genéticos: elementos bajo debate

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# IPR System



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# TRIPS and CBD: open debate

- the TRIPS Agreement, by requiring that certain genetic material be patentable or protected by *sui generis* plant variety rights and by not preventing the patenting of other genetic material, provides for the appropriation of such genetic resources by private parties in a way that is inconsistent with the sovereign rights of countries over their genetic resources as provided for in the CBD;
  - the TRIPS Agreement provides for the patenting or other intellectual property protection of genetic material without ensuring that the provisions of the CBD, including those relating to prior informed consent and benefit sharing, are respected.
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# Protection of secrets

- Undisclosed information is to be protected against unfair commercial practices (in the framework of article 10*bis* of the Paris Convention), if the information is secret, has commercial value and is subject to steps to keep it secret.
  - Undisclosed test data necessary for the approval of pharmaceutical and agrochemical products, which are the result of a significant effort, relating to new chemical entities must be protected against unfair commercial use and against disclosure by governments.
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# Patents and traditional knowledge: open questions

- one is in connection with the **definition of prior art** used to determine whether a claimed invention meets the novelty standard for patentability. In this connection, it has been said that some Members define novelty in a manner that does not recognize information available to the public through use or oral traditions outside their domestic jurisdictions. To ensure that traditional knowledge is not included in patent claims, the concept of novelty under the TRIPS Agreement must be interpreted to include prior publication and use anywhere in the world.
  - the second concerns the **adequacy of the information on prior art** available to patent examiners. It has been said that the instances of patents wrongly granted show that the prior art in the case of traditional knowledge originating in one country is not widely known or documented and available to patent offices all over the world. Often traditional knowledge exists only in oral form or, if documented, is available in languages that the patent authorities are not familiar with.
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# Contracts

- It has been suggested that the best way of addressing these concerns would be through systems based on bilateral contracts between holders of traditional knowledge and persons or companies wishing to access and use that knowledge. Such systems could be backed up by suitable national or local legislation;
  - But... a number of practical questions is still there
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# Some questions to be addressed

- With whom
  - What to do when different communities are involved
  - Terms of the agreement
  - Benefit sharing
  - Oversight mechanisms
  - The importance of a local partner
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# Thank you

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