

known to more than one group or it might not be possible to exactly trace the originator group.<sup>29</sup> WIPO has suggested several goals by which the TK community could benefit from their IP. The issue goes beyond monetary compensation, and includes the prevention of unauthorized exploitation and the protection of the moral rights of the innovators of the TK.<sup>30</sup> It is hoped that such a system would also stimulate innovation and creativity, which is a common element to the WIPO system and traditional IP rights.

## II. PATENT PROTECTION

Patent rights prevent others from selling, manufacturing, making, advertising or otherwise using an invention or idea over which an individual has a patent.<sup>31</sup> A patent does not confer a right to use the invention. A patent may be defined as a national grant of exclusive rights for a limited time for a new, useful invention. These rights are in general territorial so that an inventor wishing protection in a number of countries must obtain more than one patent.<sup>32</sup> Patents effectively convey rights that are comparable to real property rights.<sup>33</sup> While a land registry contains information about the nature and extent of property rights, a patent makes it clear to the public what rights exist within its scope. A patent must make clear what the patent holder will regard as an infringement and what remains in the public domain. Like tangible property, a patent may be legally transferred to another.<sup>34</sup> Attempts have been made to ensure that patent laws are applied with uniformity on an international level.<sup>35</sup> Some suggest that in the area of patents there is greater uniformity than in other areas of the law. In part, this is due to the colonial legacy of European powers, who share many common concepts.

The current international patent system can be traced to 18<sup>th</sup> century European philosophical movements. It was then that craft traditions, protected by collective guilds, grew increasingly appreciated as an individual creation. The lone genius, independent inventor, or creative rebel was extolled.<sup>36</sup> Some authors have suggested that the system of western science characterizes natural materials under the care of indigenous peoples as 'wild' or 'primitive.' Until recently, little attention was paid to informal (or unpublished) systems of knowledge. Many regarded TK as the freely available com-

29 See generally Graham Dutfield, *The Public and Private Domains: Intellectual Property Rights in Traditional Knowledge*, ELECTRONIC JOURNAL OF INTELLECTUAL PROPERTY RIGHTS (Mar 1999), available at <http://www.oiprc.ox.ac.uk?EJWP0399.html> (last visited Sept. 5, 2006).

30 See WIPO Report on Fact-Finding Missions on Intellectual Property and Traditional Knowledge 70 (1998-1999), <http://www.wipo.int/tk/en/tk/ffm/report/index.html> (last visited Sept. 8, 2006).

31 See RICHARD T. HOLZMAN, INFRINGEMENT OF THE UNITED STATES PATENT RIGHT: A GUIDE FOR EXECUTIVES AND ATTORNEYS 11 (1995).

32 PHILIP W. GRUBB, PATENTS FOR CHEMICALS, PHARMACEUTICALS AND BIOTECHNOLOGY: FUNDAMENTALS OF GLOBAL LAW, PRACTICE AND STRATEGY 3 (1999).

33 See J.W. HARRIS, PROPERTY AND JUSTICE 3 (1996).

34 See Bob Dematteis and Andy Gibbs, *Essentials of Patents* 21 (2003).

35 See MATTHIAS BRANDI-DOHRN, STEPHAN GRUBER AND IAN MUIR, *EUROPEAN PATENT LAW: LAW AND PROCEDURE UNDER THE EPC AND PCT*, 11 (1999).

36 See Angela R. Riley, *Recovering Collectivity: Group Rights to Intellectual Property in Indigenous Communities*, 18 CARDOZO ARTS & ENT. L.J. 179 (2000).