

Swiss Patent Law Reform: Calling Card for the Power of Innovation

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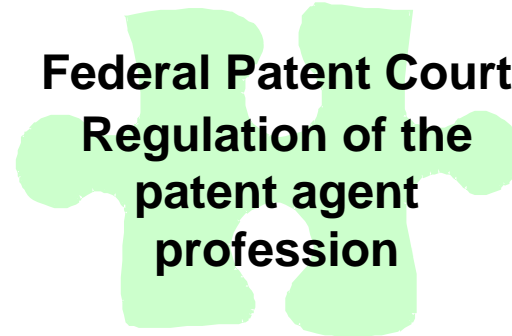
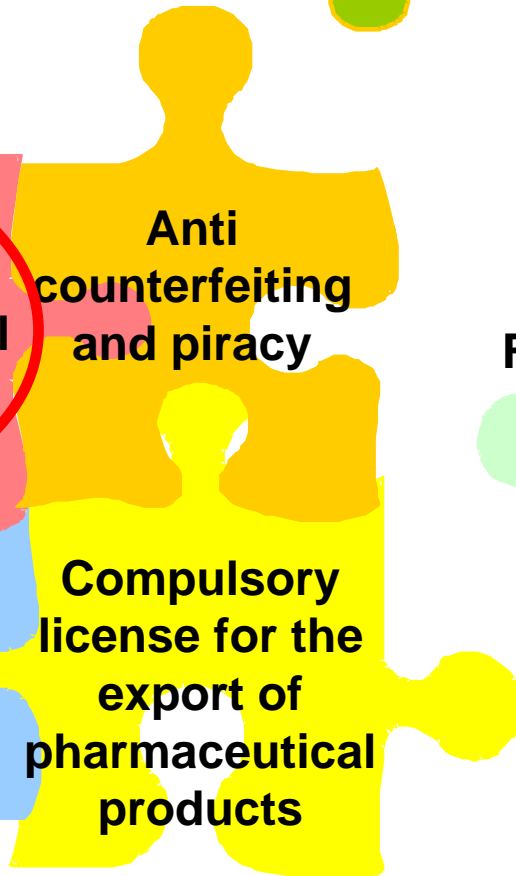
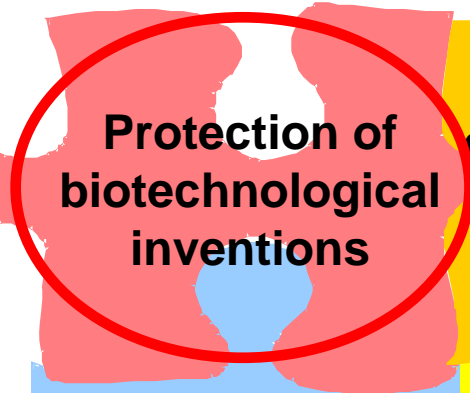
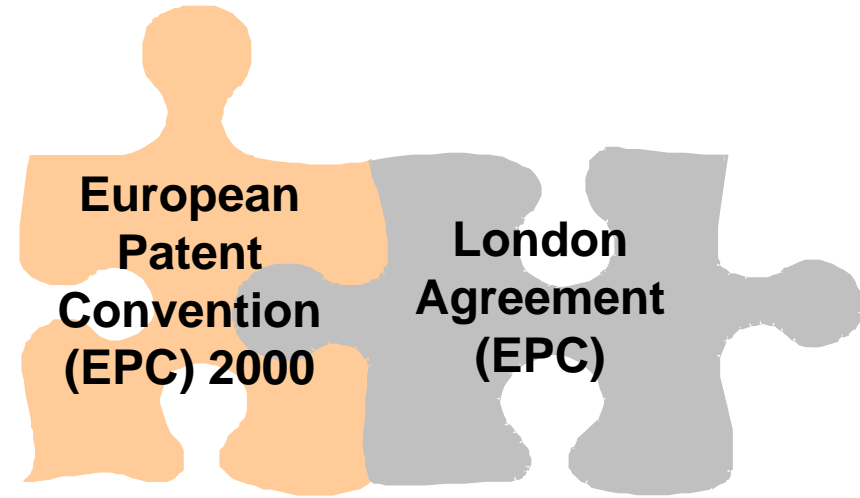
= the federal agency for administrative, legal, policy matters on the national and international level concerning IP in Switzerland

The quintessence of our mandate lies in providing domestic and foreign businesses with an appropriate, effective, dependable and easy to use protective system for intellectual property such that incentives are provided for the creation and optimal exploitation of intellectual economic and cultural goods in Switzerland.

<http://www.ige.ch/e/institut/i1.shtm>



Swiss patent law revision



The patent system at a crossroads !

„Considering the exclusive right to invention as given for the benefit of society, I know well the difficulty of drawing a line between the things which are worth to the public the embarrassment of an exclusive patent, and those which are not.“

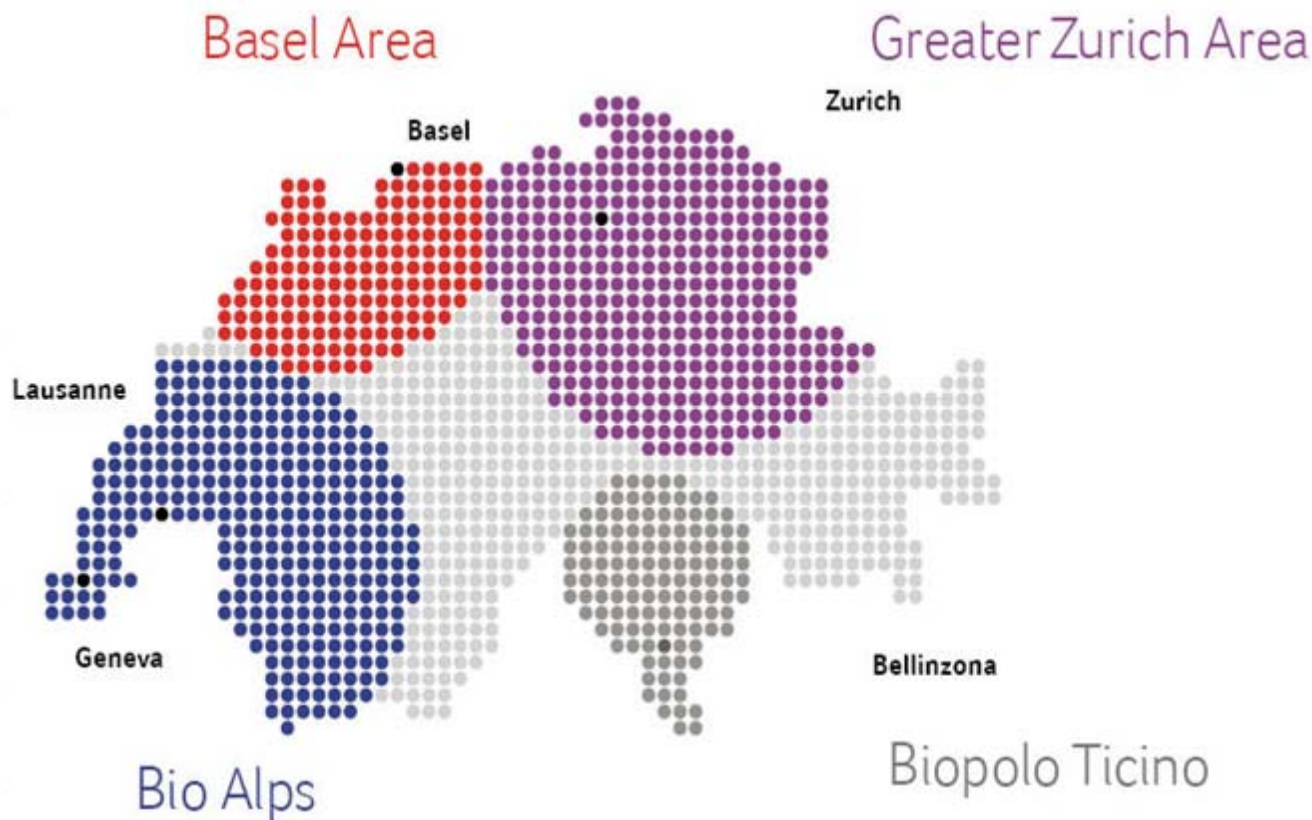
(Thomas Jefferson, 1813)

“As the value that society places on intellectual property has increased, that line has become murkier.“

(The Economist, 2004)



Research and patenting in biotech: The situation in Switzerland



(<http://www.ige.ch/E/jurinfo/documents/j10005e.pdf>)



Participation of the Stakeholders and Public Debate

- **Involved stakeholders:**
 - Pharmaceutical Industry
 - Biotech Association
 - Research
 - NGOs
 - National Ethic Committee
 - Farmers' Union
 - Technology Transfer Offices
 - Administration

- **Public Dialogue:**

- <http://www.science-et-cite.ch/archiv/themen/patente/dossier/broschuere/start/fr.html>



Les brevets biotechnologiques: une question controversée

Informations et opinions, rassemblées par la Fondation
Science et Cité

- **Un débat actuel**
- 1. Brevets: quoi, comment, pourquoi et dans quelles limites?
- 2. Brevets: avantages et désavantages
- 3. Brevets biotechnologiques – une exception?
- 4. Ressources génétiques et savoir traditionnel
- 5. Questions controversées et opinions
- 6. Situation dans d'autres pays

[Notions de A à Z](#) | [Liens](#) | [Impressum](#) | [Science et Cité](#)



Main policy issues with biotech patents

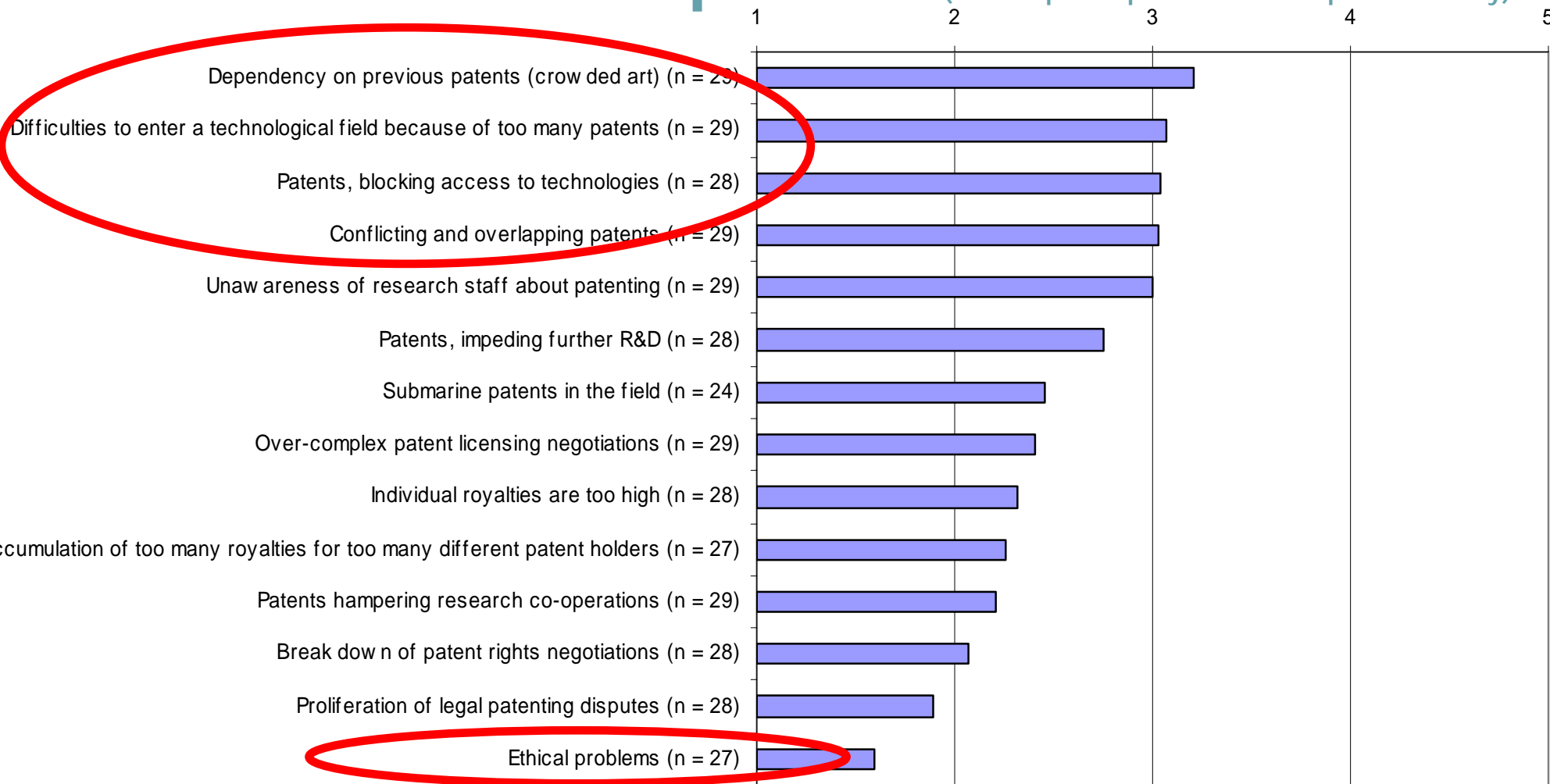
1. **Exclusion of patentability for reasons of ordre public and morality**
2. **Limitations of patent protection: Patenting of gene sequences**
3. **Limitation of upstream inventions:**
 - **Research / experimental use exemption**
 - **The issue of research tools**
4. **Abuse of dominant market positions: Patenting of diagnostic tests**



2. Limitations of patent protection



Problems with DNA patents (acc. to participants of CH empirical survey)

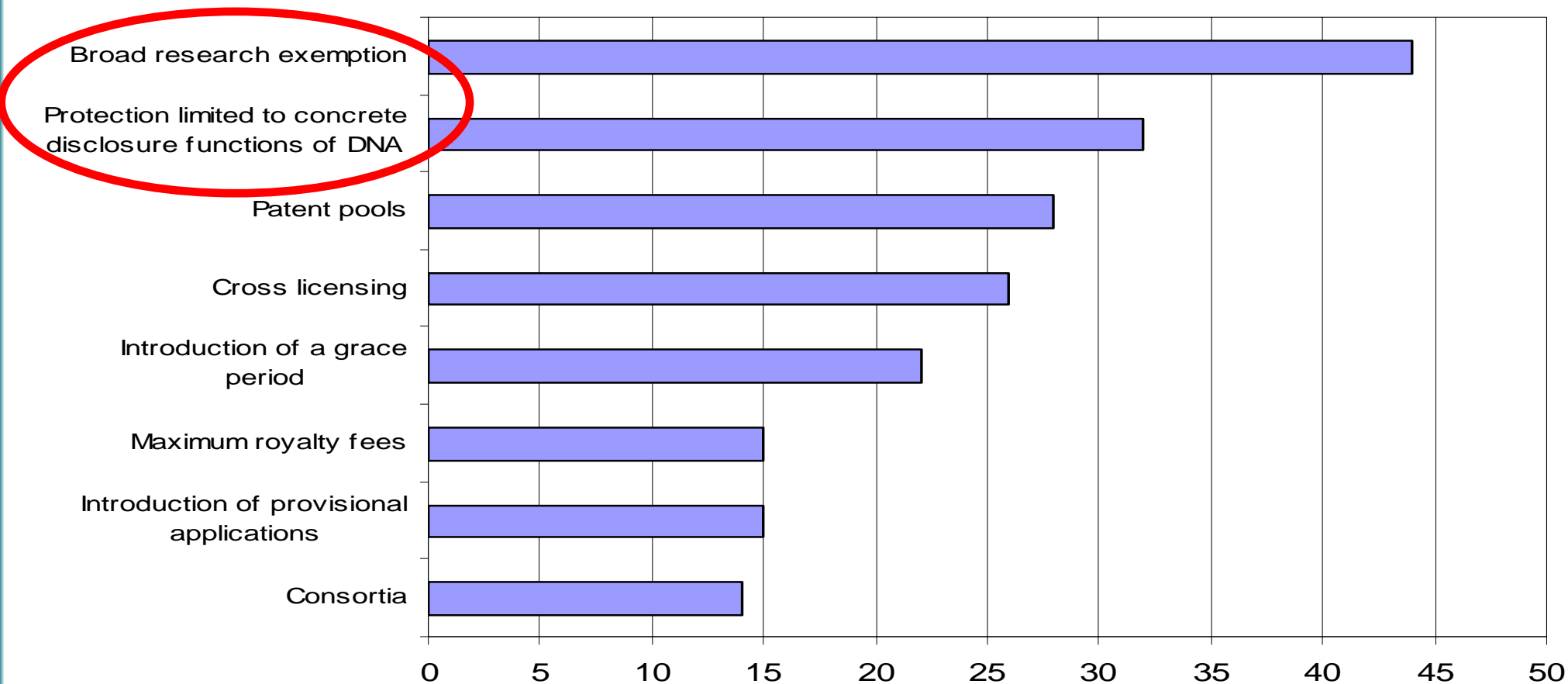


CH Survey: 8.2 Extent of Experience of Problems with DNA Patents, Fig. 34 (1=never, 5=very often)

(<http://www.ige.ch/E/jurinfo/documents/j10005e.pdf>)



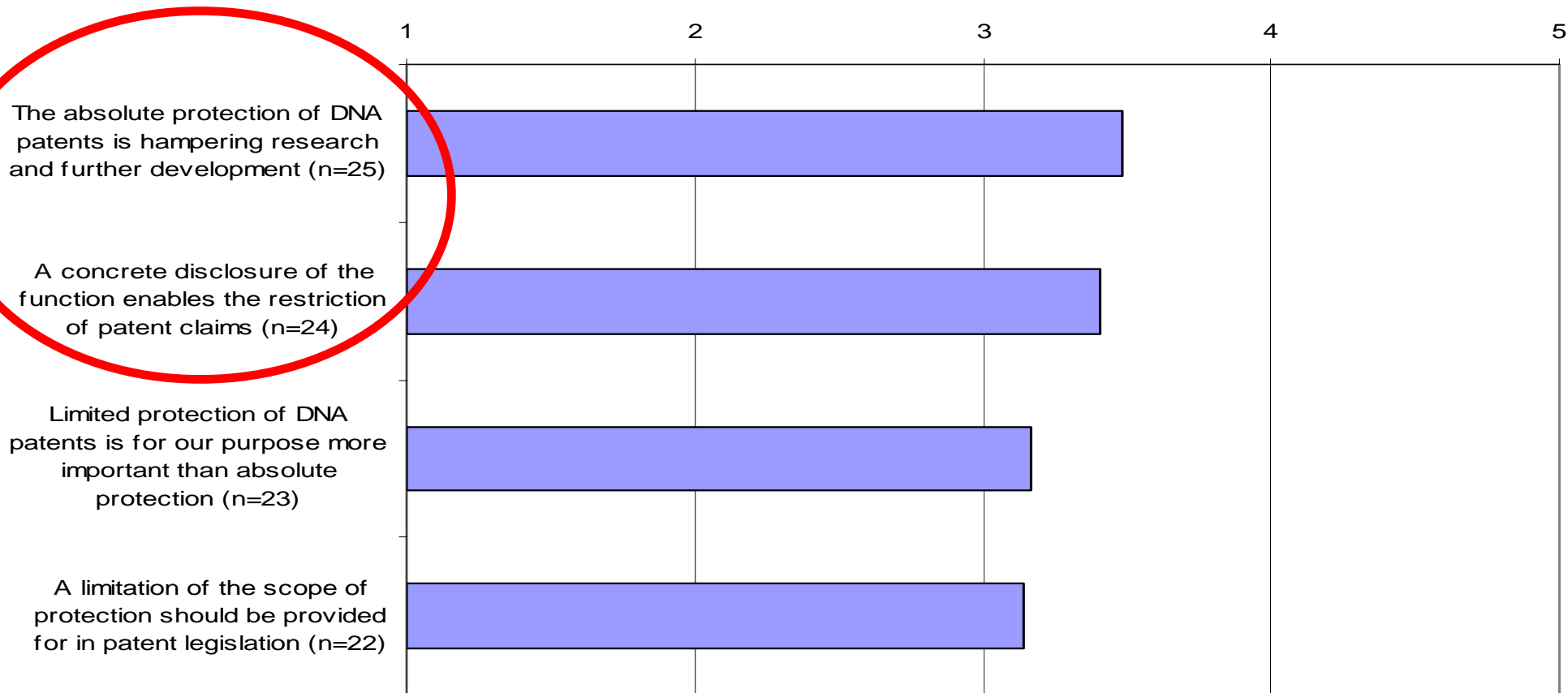
Possible remedies (acc. to participants of CH empirical survey)



CH Survey: 8.2 Remedies, Fig. 35 (named as many times as effectively to ...)
(<http://www.ige.ch/E/jurinfo/documents/j10005e.pdf>)



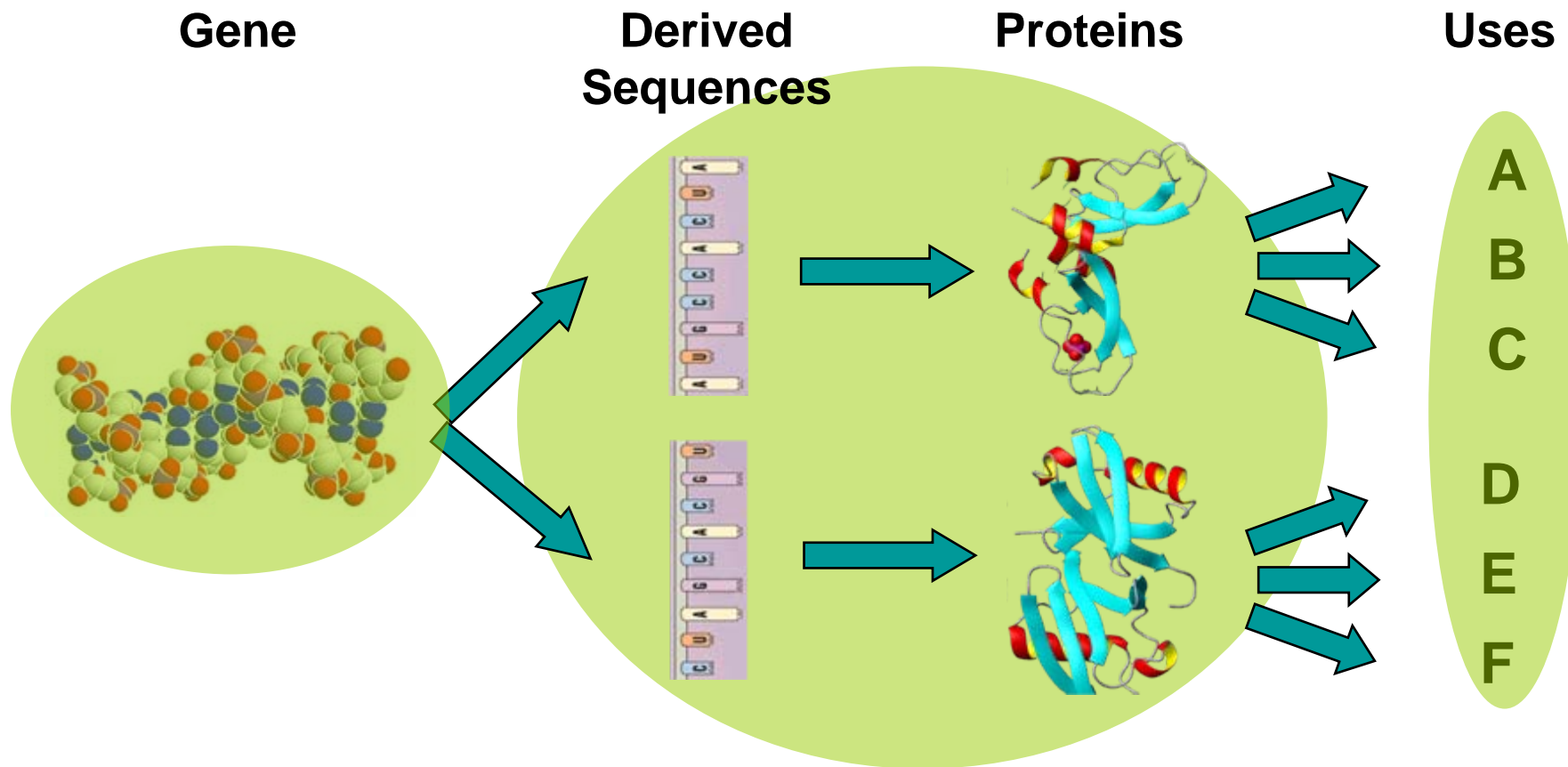
Assessment of a protection limited to the concrete disclosed functions of DNA?



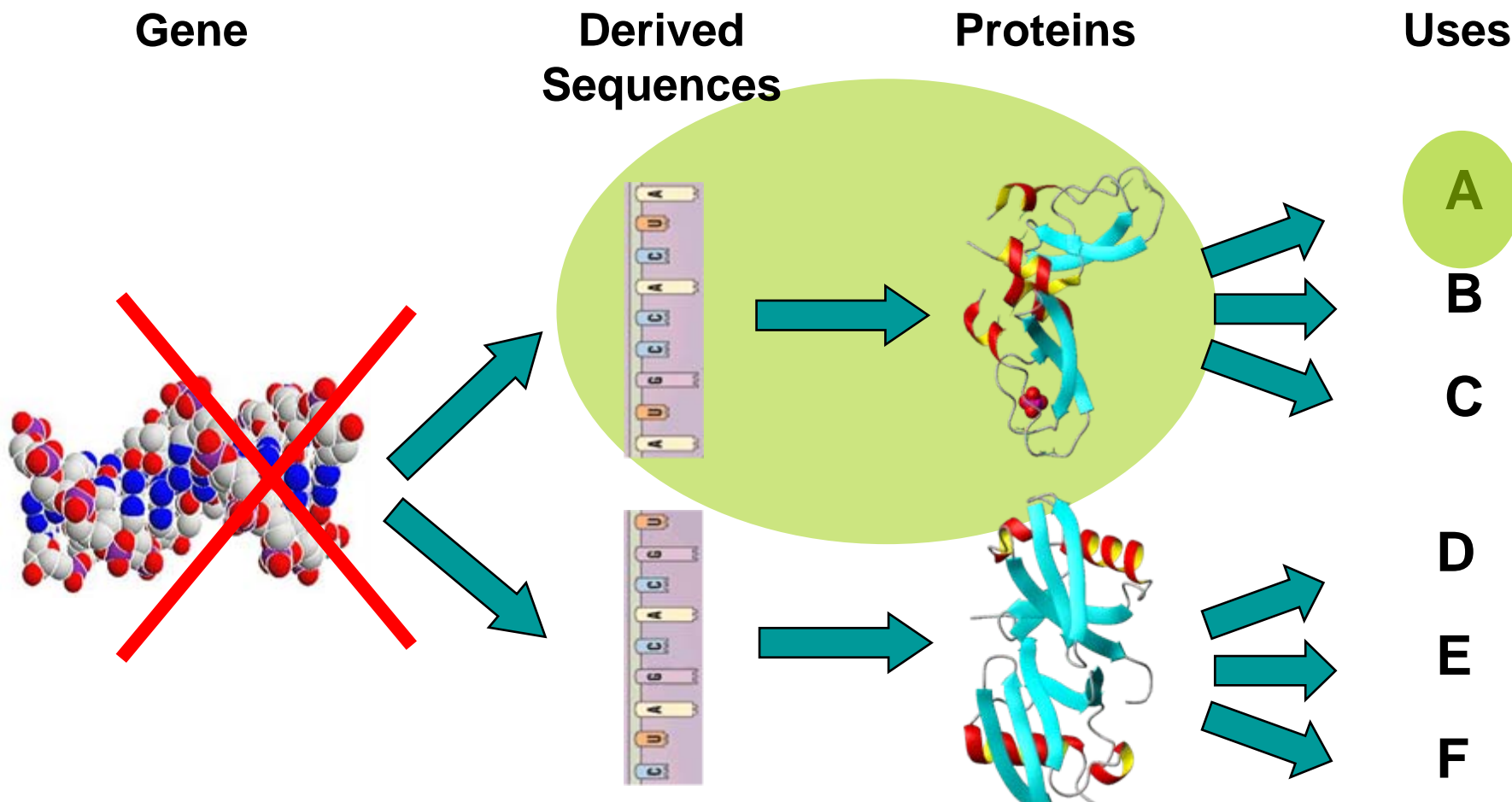
CH Survey: 8.2 Extent of Experience of Problems with DNA Patents, Fig. 39 (1=no agreement, 5=total agreement)
(<http://www.ige.ch/E/jurinfo/documents/j10005e.pdf>)



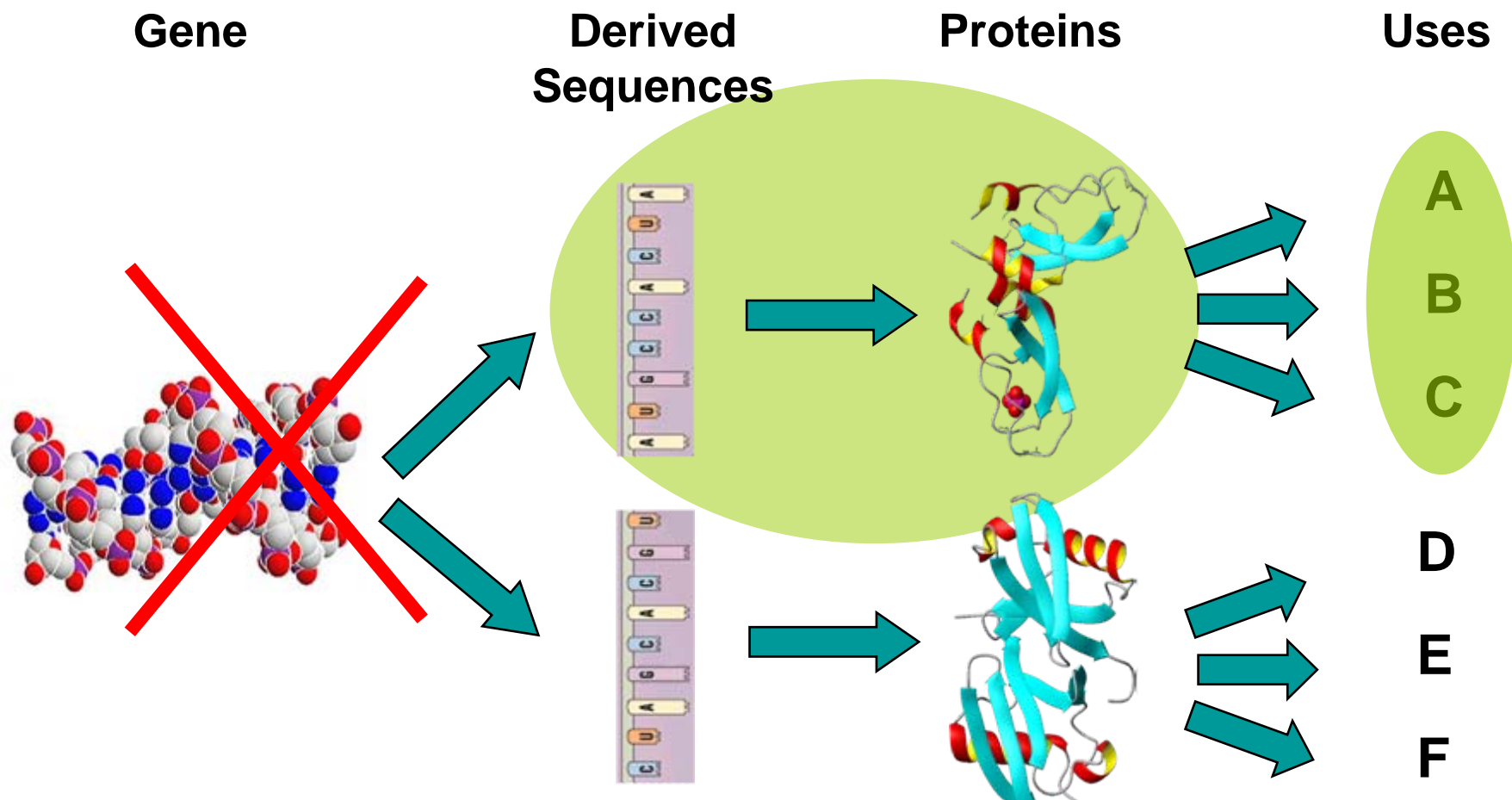
Absolute protection = correct reward for the patent owner ?



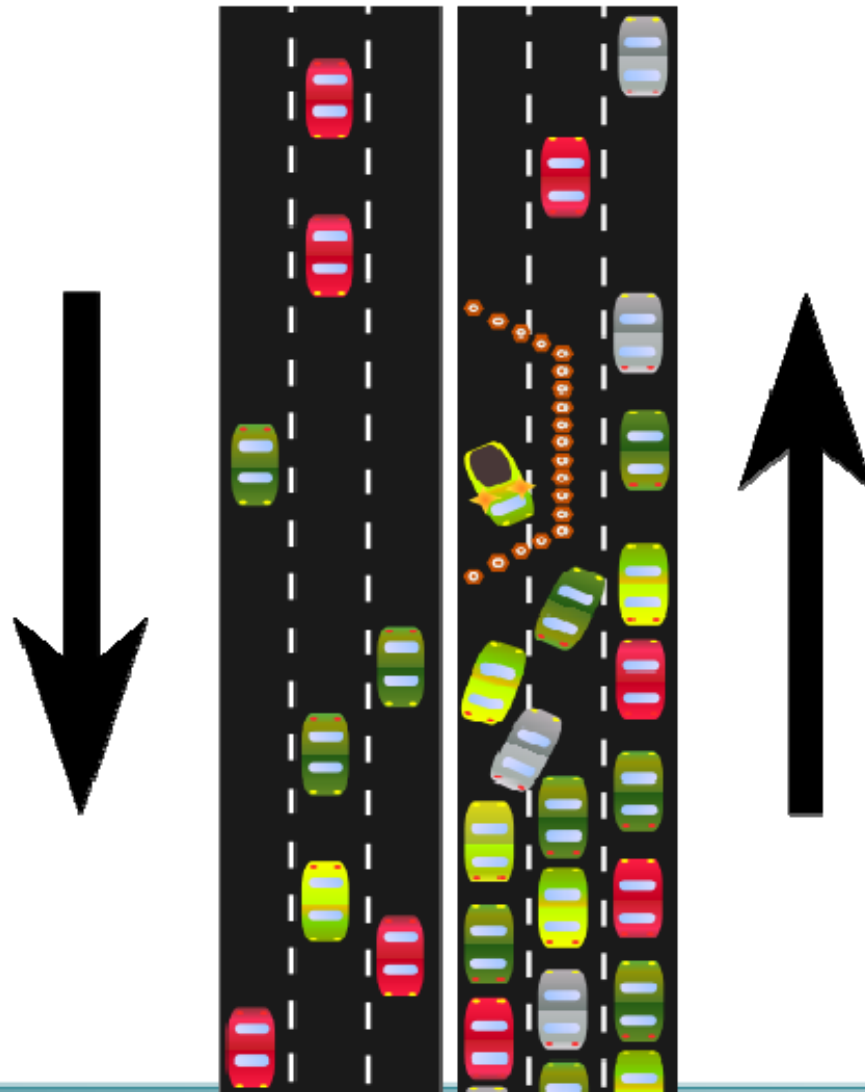
Purpose-limited product claims = better ?



Approach of the new Swiss Patent Law



3. Limitation of upstream inventions



The crux with the use of patented inventions for research purposes

Exceptions to patent protection

1. **Private non-commercial use** (Art. 9.1(a) Swiss Patent Act)
2. **Research/experimental use exemption** (Art. 9.1(b) Swiss Patent Act)
 - All research on / into a patented invention = **NO patent infringement / NO royalties** if aimed at gaining **new knowledge about subject matter of the invention**
 - Experiments that are conducted for the purpose of interfering with the marketing efforts of the patentee = **patent infringement**
3. **Use for teaching purposes at educational institutions** (Art. 9.1(d) Swiss Patent Act)
4. **Agreements which limit or exclude the exceptions are null and void** (Art. 9.2 Swiss Patent Act)



The crux with the use of patented inventions for research purposes

Regulatory review defence: «Bolar exemption»

(Art. 9.1(c) Swiss Patent Act)

- Use of invention to obtain the authorisation of a pharmaceutical product
= **NO patent infringement + NO royalties**
 - Clinical trials = possible
 - Production of specimens = possible

BUT

- Production of a new drug **only after patent expiration**
(= no stockpiling!)



The crux of research tools

Problem: No free use of «research tools»

Research with/using a patented invention = license needed

Solution: Access guaranteed through legal license

(Art. 40(b) Swiss Patent Act)

- limited to biotechnological inventions used as research tool
- limited to the use for research purposes (no commercial exploitation of the biotechnological research tool)
- non-exclusive license
- obligation to pay license fee
- if no agreement = fee fixed by a court → no «reach through» royalties



4. Abuse of dominant market positions



The crux with diagnostic testing

Problem: Access to reliable diagnostic methods may be hampered if

- disease caused by specific gene sequence or single nucleotide polymorphisms,
- diagnostic method based on the relevant nucleotide sequence patented

Solution: Compulsory licence (Art. 40(c) Swiss Patent Act) **in case of**

- Anticompetitive behavior = breach of antitrust law / abuse of dominant position / agreement restricting competition / abusive behaviour



Goal of the Reform: Balancing of Interests



For any further information ...

contact

- our website
- on IPR in general: <http://www.ige.ch/e/jurinfo/j1.shtm>
- on patent law: <http://www.ige.ch/e/jurinfo/j100.shtm>

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