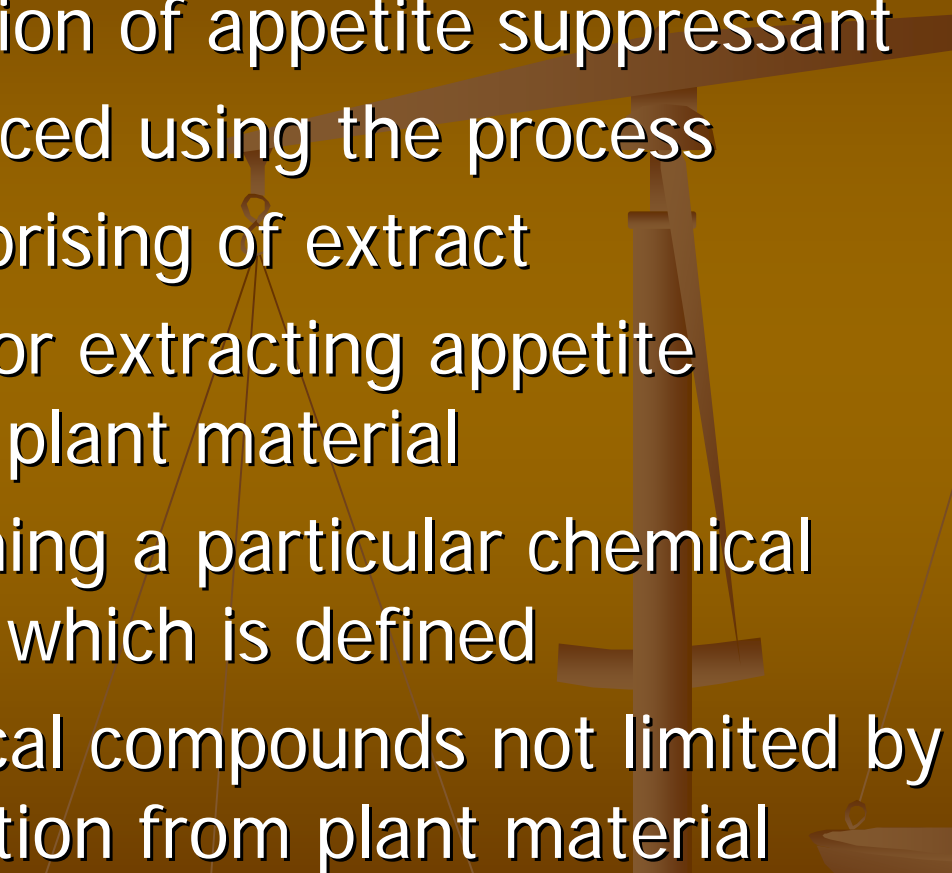




THE SAN-CSIR ABS AGREEMENT

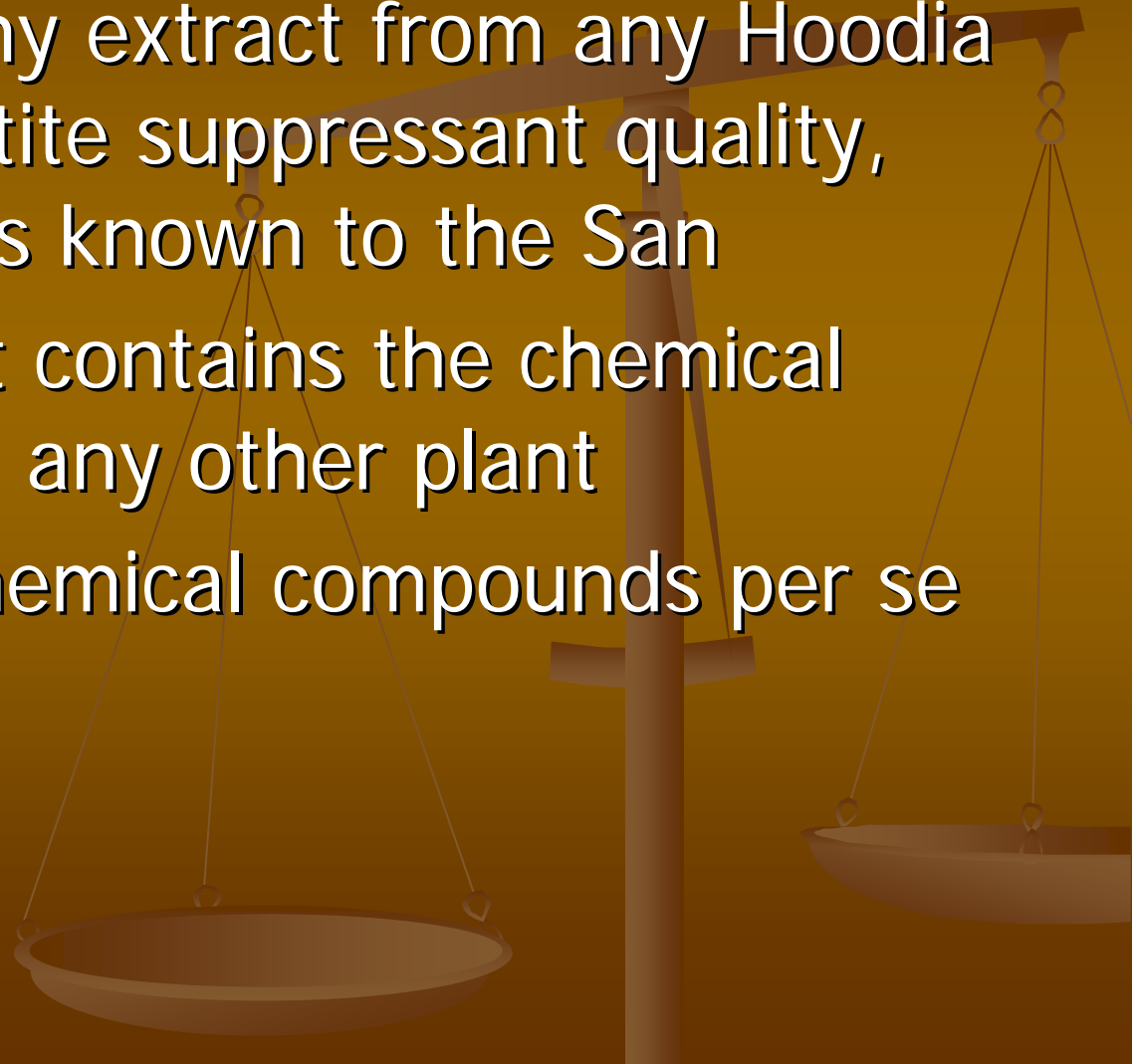
LESSONS FOR THE FUTURE

The Hoodia Patent

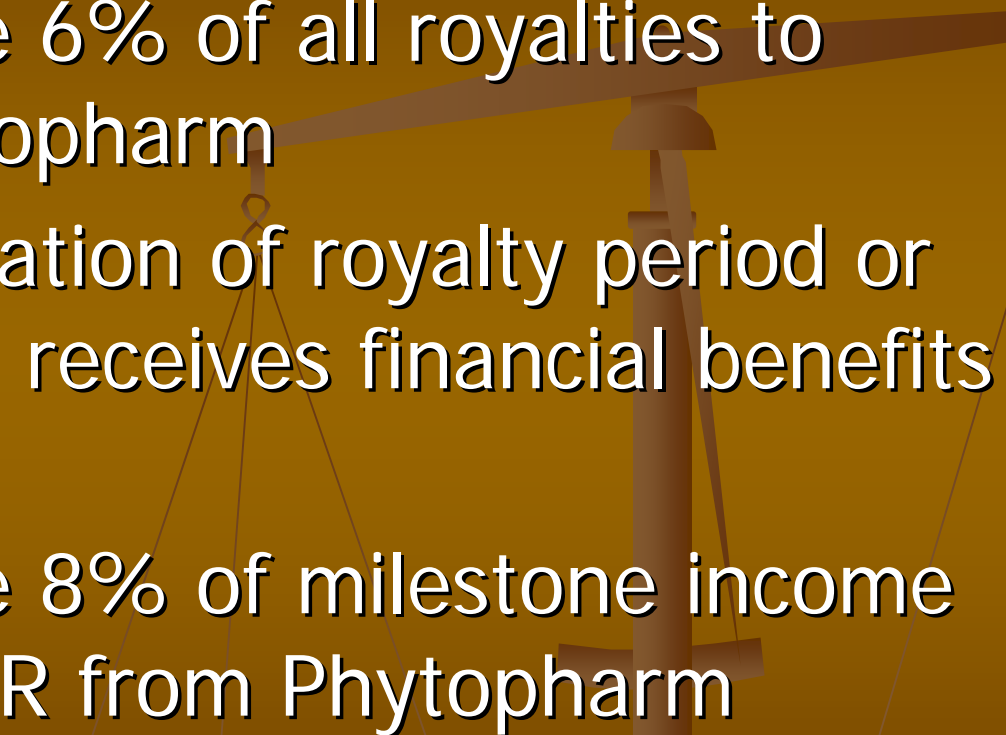
- Process of extraction of appetite suppressant
 - The extract produced using the process
 - Composition comprising of extract
 - Other processes for extracting appetite suppressant from plant material
 - An extract containing a particular chemical compound (p-57) which is defined
 - A group of chemical compounds not limited by function or derivation from plant material
- 

Scope of patent

- Scope covers any extract from any Hoodia plant with appetite suppressant quality, not just varieties known to the San
- Any extract that contains the chemical compound from any other plant
- The group of chemical compounds per se



Monetary aspects of the ABS agreement

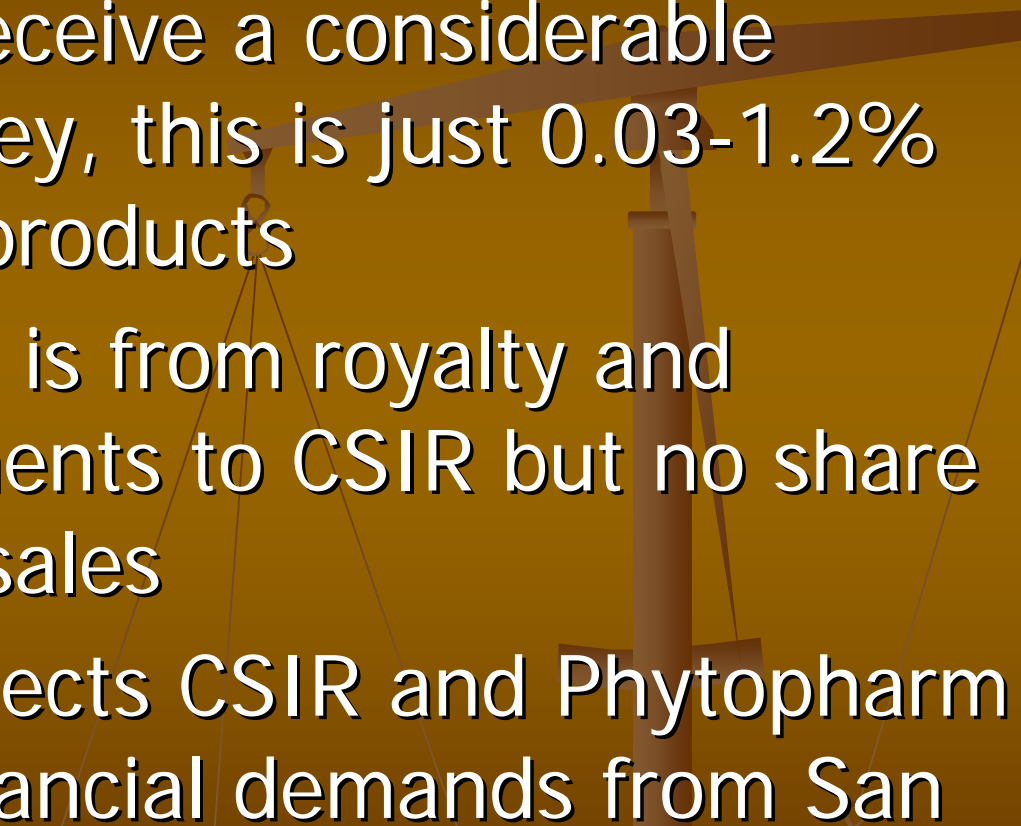
- The San receive 6% of all royalties to CSIR from Phytopharm
 - This for the duration of royalty period or as long as CSIR receives financial benefits from sales
 - The San receive 8% of milestone income received by CSIR from Phytopharm
- 

Non-monetary aspects

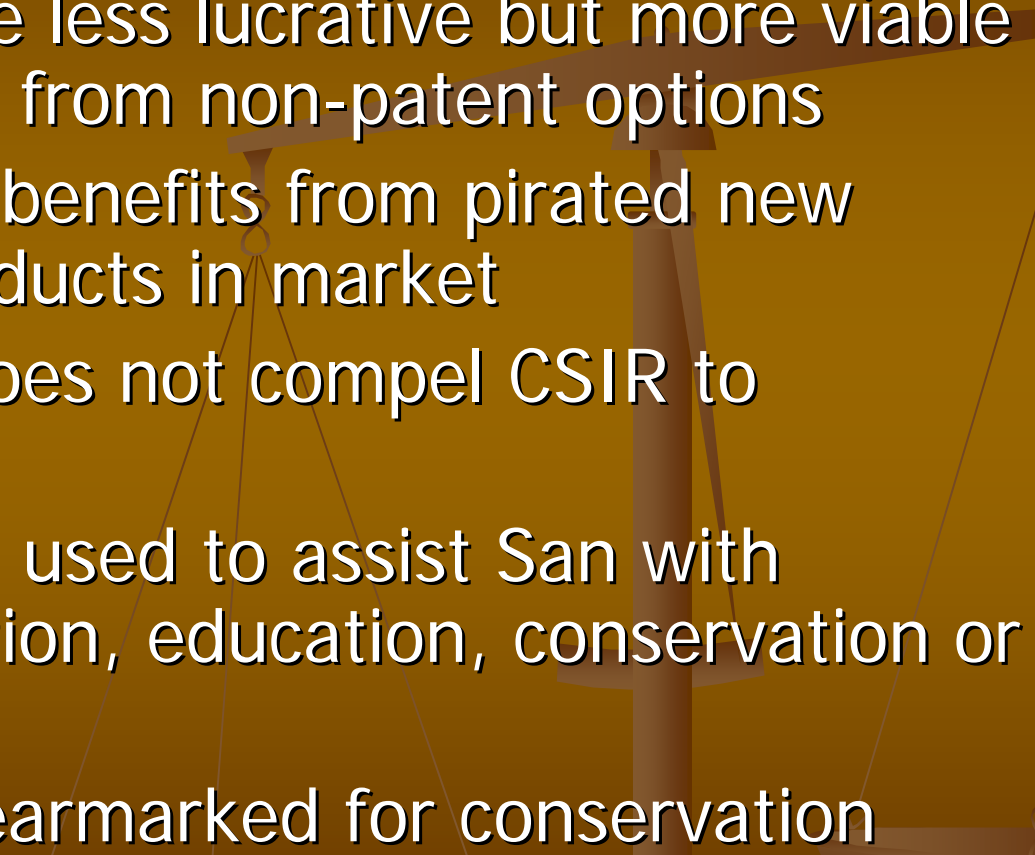


- Provision 4- Any IP arising from traditional indigenous knowledge of use of Hoodia and related to CSIR belongs to CSIR
- The San Council has no right to claim co-ownership of patents
- Provision 6- Warranties and Indemnity: San will not enter into competing agreement with third parties
- San will not contest CSIR patent

Critique- Monetary Aspects

- Although San receive a considerable amount of money, this is just 0.03-1.2% of net sales of products
 - Money received is from royalty and milestone payments to CSIR but no share of profits from sales
 - Agreement protects CSIR and Phytopharm from further financial demands from San
- 

Critique- Non-monetary aspects:

- San cannot pursue less lucrative but more viable commercialization from non-patent options
 - Cannot claim any benefits from pirated new Hoodia based products in market
 - ABS agreement does not compel CSIR to prevent piracy
 - CSIR royalties not used to assist San with training in cultivation, education, conservation or capacity building
 - CSIR money not earmarked for conservation
- 

Lessons for the future:

- Benefits need to be jointly identified by provider and user
- Providers need to be aware of market variables that affect benefits
- Full disclosure by user of future use
- Providers need to be informed about probability and market value of future commercial product
- Parties should be matched in legal and negotiating skills
- Benefits should be shared throughout process and with all stakeholders
- Environmental costs should be factored since bioprospecting can have a negative impact on biodiversity
- Recently the San entered into an ABS agreement with the Hoodia Growers Association in SA for a share of profits of Hoodia plant sales. But the ABS agreement with CSIR prevents them asking for a share of profits from sale of Hoodia products

Recommendations

- Non patenting of life will still allow commercialization. E.g. Kani-Jeevni lower financial returns, but less risky
- Co-ownership of patent- need for pre-grant opposition, compulsory disclosure
- Sui generis systems that are informed by the principles of traditional culture within which traditional knowledge is located
- Database of traditional knowledge recording oral traditions to prevent patenting in countries that don't recognise non-documented prior art
- Need to harmonize laws- Biodiversity Act, patent act, export/import legislation, regional harmonization between countries

Acknowledgements

- The San community
- Rachel Wynberg, Biowatch, SA, for analysis of the ABS agreement aiding this presentation
- Roger Chennells, Lawyer for the San People

