

# Intellectual Property and Scaling up Production and Distribution of RUF Products

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# What is IP?

- Intellectual property rights are rights given to persons over the creations of their minds (inventions, literary and artistic works, and symbols, names, images, and designs used in commerce). They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. (WTO/WIPO)



# Purpose of Intellectual Property?

- The social purpose is to provide protection for the results of investment in the development of new technology, thus giving the incentive and means to finance research and development activities.
- Facilitate the transfer of technology in the form of foreign direct investment, joint ventures and licensing.
- A specific purpose of patents is the dissemination of knowledge about the technology invented through the publication of patent applications



# IP and International Law

- Since the establishment of the WTO in 1995 all 153 WTO member states are obliged to provide IP protection compliant with the TRIPS Agreement.



# Types of Intellectual Property

- Industrial Property rights
  - **Patents (products and processes)**
  - Industrial designs and trade secrets
  - **Trademarks**
  - Geographical indications
- Copyrights and rights related to copyright



# Patentability Criteria

- The Invention:
  - has to be of **practical use**
  - must show an **inventive step** which could not be deduced by a person with average knowledge of the technical field. (non-obvious)
  - must show **novelty**, that is, some **new characteristic** which is not known in the **body of existing knowledge** in its technical field. This body of existing knowledge is called "**prior art**".
  - its subject matter must be accepted as "patentable" under law.



# What does a patent do?

- Patents provide the patent owner with the legal means to prevent others from making, using, or selling the new invention for a limited period of time (minimum 20 years), subject to a number of limitations and exceptions.
- Patent rights are usually enforced in a court, which, in most systems, holds the authority to stop patent infringement.
- Patents are national/regional - international patents do not exist



# A patent is not:

- a complete monopoly without remedies
- a permit for marketing (e.g. in the case of pharmaceutical product authorisation from the drug regulatory agency is required)
- An assurance of safety and efficacy nor a means to assure quality
- enforced by the police
- obligatory - you can apply for one but no inventor is obliged to do so.



# Patent Controversies

- The WTO “one size fits all” no longer allows differentiation between important goods such as food or medicines and other products.
- Patent monopolies can lead to high prices e.g. medicines
- Limit production and price competition
- Hamper local industrial development
- Hamper follow on research and development of new products



# IP and RUF

- Nutriset and Institut de Recherche pour le Développement (IRD) hold patents related to a paste based food product valid until at least 19 November 2018
- The scope of these patents covers not just Plumpy'nut per se but includes a wide range of food or nutritional supplement paste-based products
- Nutriset also holds the trademark “Plumpy'nut”



# Nutriset Patent

- Australia
- Canada
- Europe: BE (Belgium), DE (Germany), DK (Denmark), ES (Spain), FR (France), GB (United Kingdom), IE (Ireland), NL (Netherlands).
- USA
- Benin, Burkina Faso, Cameroon, Central Africa, Chad, Congo, Cote d'Ivoire, Equatorial Guinea, Gabon, Gambia, Ghana, Guinea, Guinea Bissau, Kenya, Lesotho, Malawi, Mali, Mauritania, Niger, Senegal, Sudan, Swaziland, Togo, Uganda, Zimbabwe



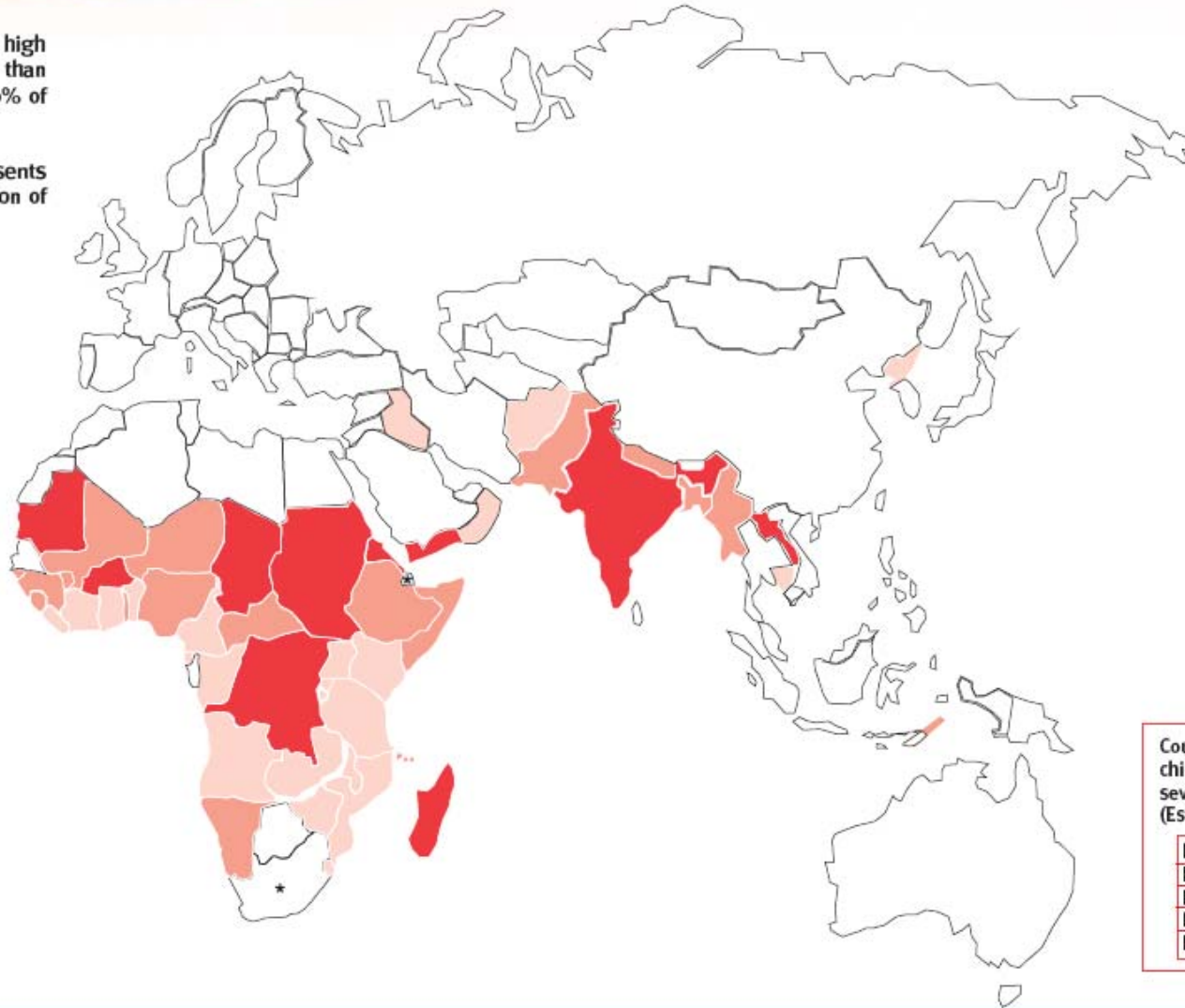
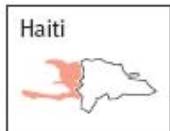
# Malnutrition Hotspots

The 50 shaded countries have a high under-five mortality rate (greater than 50 per 1,000) and greater than 30% of stunting<sup>3</sup> in under-fives.

The following legend represents wasting<sup>2</sup> in the under-five population of these countries.

- Countries with more than 15% acute malnutrition<sup>10</sup>
- Countries with more than 10% acute malnutrition<sup>11</sup>
- Countries with more than 4% acute malnutrition<sup>12</sup>

\* No data



Countries with the most children under-five with severe acute malnutrition. (Estimates in millions)

India	8.0
DRC	1.3
Pakistan	1.2
Nigeria	1.1
Ethiopia	0.6

# High mortality countries and patents

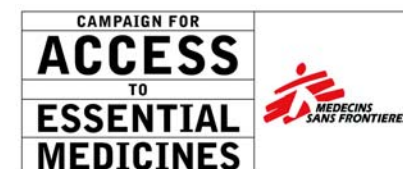
- 25 high mortality countries account for 2/3 of stunting (WHO) and for 3/4 severe wasting (WHO)

<b>India</b>	Sudan	Madagascar	Iraq	North Korea
<b>DRC</b>	Bangladesh	Kenya	Nepal	Guinea
<b>Pakistan</b>	Burkina F	Myanmar	Mali	Mozambique
<b>Nigeria</b>	Yemen	Chad	Ghana	Malawi
<b>Ethiopia</b>	Afghanistan	Niger	Uganda	Somalia

 = No patent

Sources: Population Reference Bureau 2007 World Population Data

WHO analyses of national nutritional surveys done 2001-2006



# What to do when the patent is a problem?

- Check the patent was actually granted in the country
- Is the patent valid? Have fees been paid?
- Can it be challenged? Did it meet the patentability criteria. (note: 50% of the patents challenged in court in the US are found to be invalid.)
- Obtain a voluntary license under reasonable terms from the patent holder
- Apply for a compulsory licensing at national authority
- Government use of the patent
- Infringe! Take the risk!



# Ethics of Patenting

- Should patenting of food products necessary to treat malnourished children be allowed at all?
  - No need for it - R&D takes place any way
  - R&D not financed through high prices
  - No one is in this business for profiteering
- Promote the public domain/public goods as the norm vs. patenting becoming the norm
- Agree on basic principle to keep RUF in the public domain

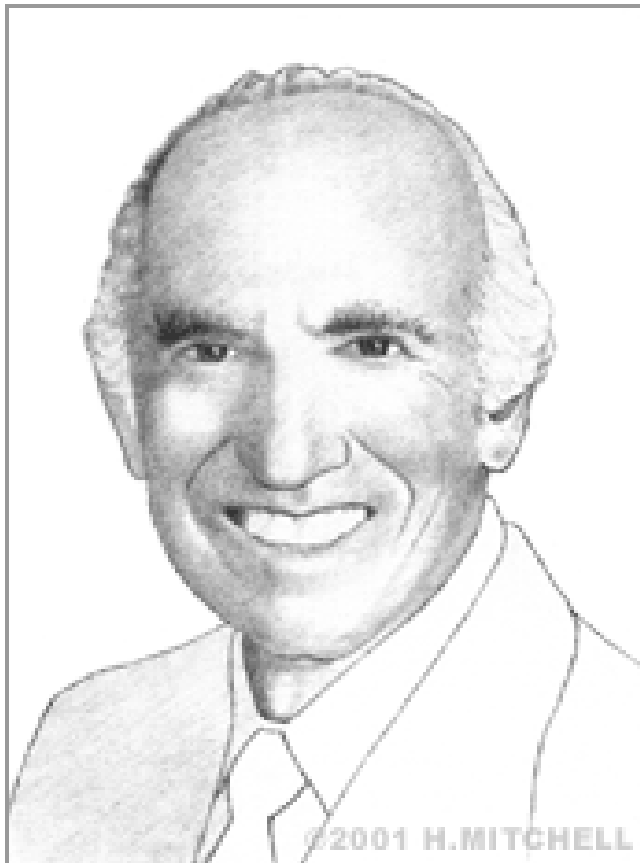


# Rome Principles

1. Voluntary patent license programme - non exclusive, none restrictive. Multiple patents ==> patent pool
2. Patent buy out - off set the cost of R&D
3. Create a new international entity (or collaboration) to support or engage in open R&D in nutritional products, sharing any resulting new or improved products with all.
4. A combination of the above



# Polio Vaccine A Global Public Good



*Salk: "Who owns my polio vaccine?  
The people! Could you patent the sun?"*

**RUF Should be  
Global Public Good**

