



Intellectual Property and Health and Environment Policy in Developing Economies - Setting the Policy Context

IP and Green Technology

V. Lakshmikumaran, Managing Partner



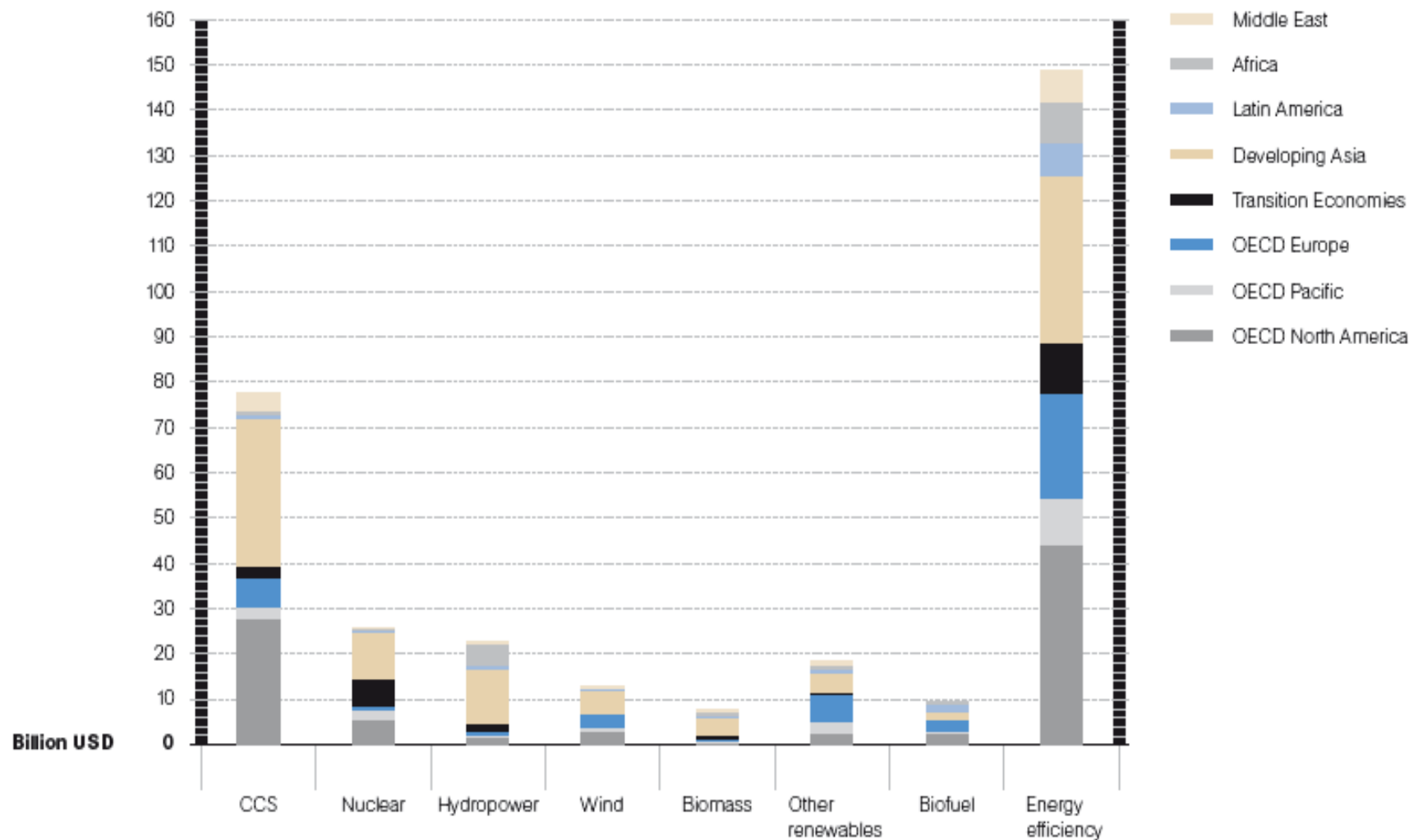
IP and Green Technology

- IP (patents) generally thought of as enriching society through technological progress
- Controversy surrounding IP blocking access to necessary technology (e.g. Medicines);
- System attempts to provide in-built flexibilities (e.g. Doha Declaration & Compulsory Licenses)



Figure IV-16.

Annual additional investment by technology and by region under the mitigation scenario in 2030





IP and Green Technology

Required Investment

- *USD 200-210 Bn! (to maintain Green House Gas levels at current level)*
- Diversified investment in multiple areas of technology

Govt. Investment in energy R&D?

- **USD 9.5 Bn in 2005 (60% from US, JP)**
- Only 12% of that on energy efficiency and renewables
- *Private R&D spending discouraged since fossil fuels are subsidized to double or triple the total government spending on energy R&D.*

SO?

- *Mitigation not possible without tech. development and transfer*
- *Pvt. Invst. and PPP is also critical*

IP and Green Technology

“But man has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only.....Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. **We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.**”

(Adam Smith, Wealth of Nations)





IP and Green Technology

- IP incentivizes pvt. Investment
- Innovation – build upon cumulated knowledge
 - ✧ W/O an active IP system, companies would revert more towards corporate secrecy
 - ✧ Would adversely affect pace of innovation
 - ✧ May more fundamentally affect tech. transfer (less likely to be transferred to developing countries)





IP - Issues of Tech. Transfer

- By incentivizing tech. development through IP.....
.....does it create problems for tech. transfer / dissemination?
- Policy makers need to understand that **creating tech. / innovation** and **enabling tech. transfer** are **distinct points**
 - ✎ Govts. cannot adversely affect innovation in order to enable tech. transfer
 - ✎ w/o tech. development – there is nothing to transfer



Figure VI-25. Economic and market barriers to technology transfer

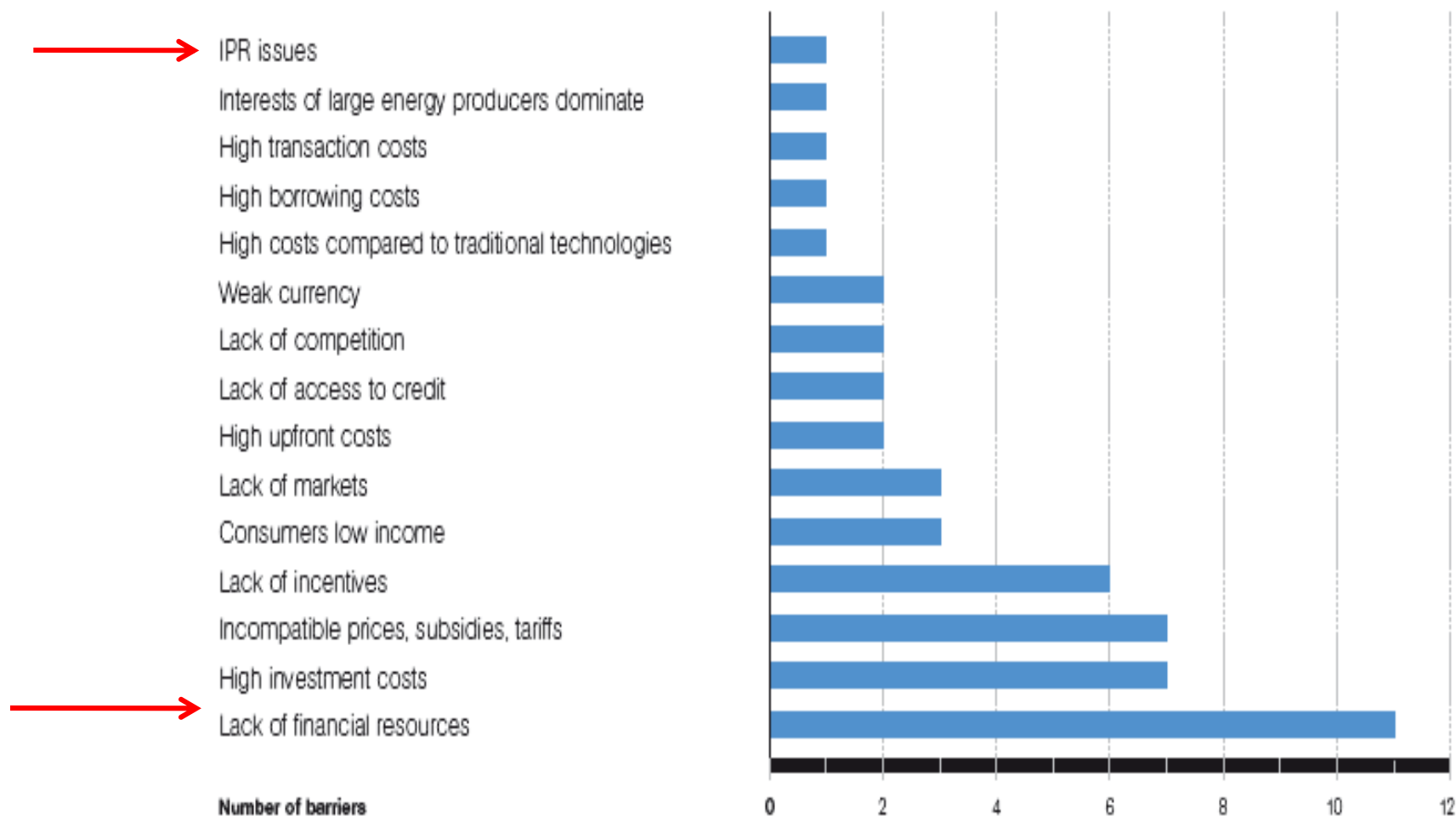
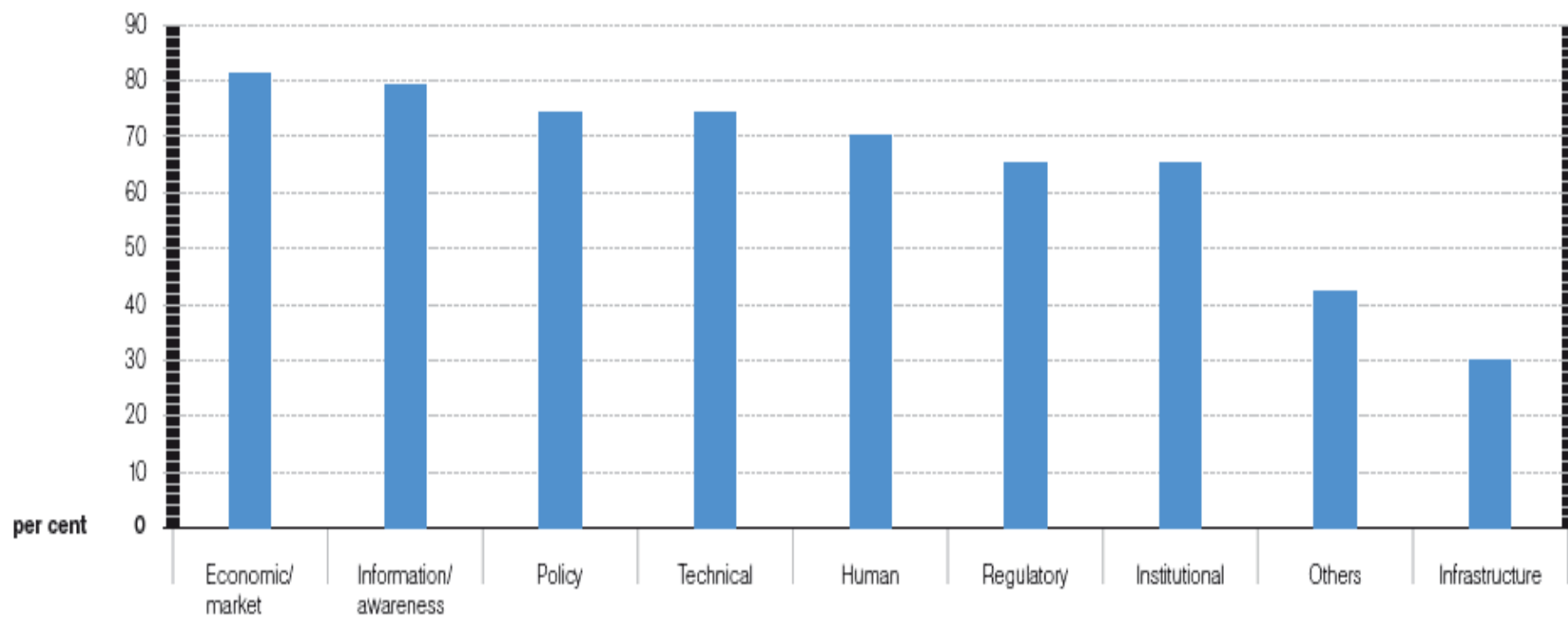


Figure VI-24.

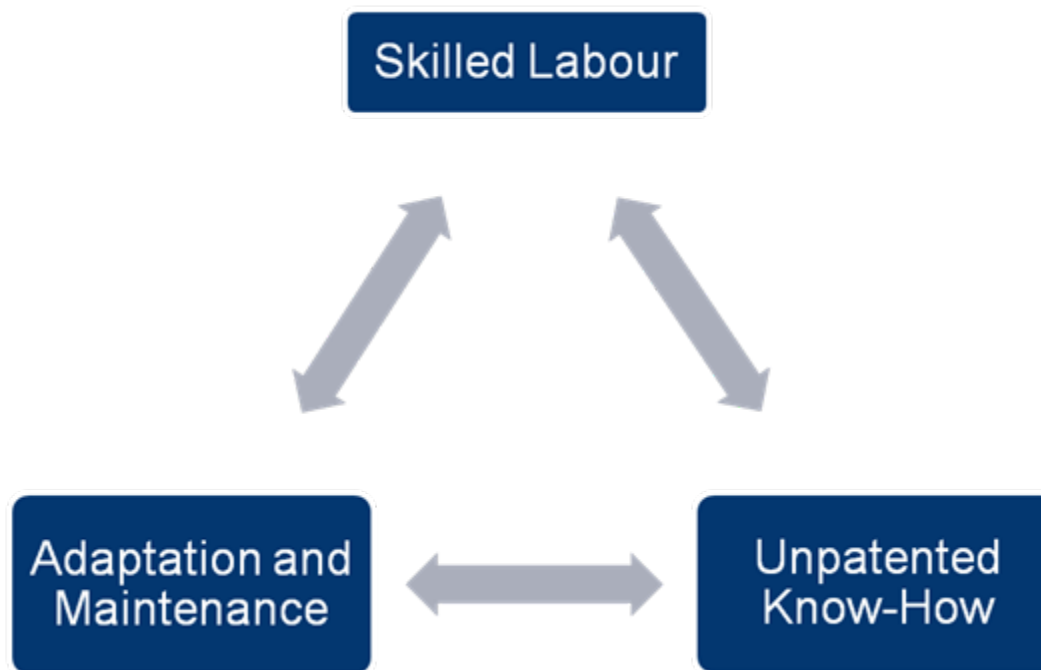
Barriers to technology transfer identified by Parties



- Factors other than IPR play a more significant role in creating barriers –
 - ❧ Financial constraints and access to funds, particularly in developing economies
 - ❧ Information asymmetries
 - ❧ Human Resources and Infrastructure



- Importantly, implementing tech. transfer may require skilled labour (to adapt and maintain under local conditions), access to unpatented know-how



- An major issue is Information Asymmetry –
 - ✧ Green technology is fragmented - multiple players in multiple areas of technology
 - ✧ Implementing a given project may require licenses to multiple patents

- Who owns what?
- What is patented and what is not?



- Need to start and implement “global exchange forum”
 - ✧ EPO new class of patents (Y02) relating to green tech.— a step forward
 - ✧ Facilitating assistance in understanding what is needed for local adaptation (know-how access).
 - ✧ Follow approach of standardization bodies – technology pools and FRAND obligations





- Licensing (tech. transfer) –
 - ✧ Mandating royalty-free licensing would only reduce reliance on patents
 - ✧ Govt. subsidies (including tax credits) to enable local firms to absorb tech. transfer – this would require a re-assessment on certain obligation international trade law / WTO system
 - ✧ Equally important – infrastructure, enforcement and awareness programs



Discussion

Lakshmi Kumaran
& Sridharan

A T T O R N E Y S



About Us



New Delhi • Mumbai • Bengaluru • Chennai • Hyderabad • Ahmedabad • Pune

Lakshmi Kumaran & Sridharan

Lakshmi Kumaran & Sridharan (L&S) is an Indian law firm specializing in the areas of International Trade, Taxation, Intellectual Property and Corporate law.

Founded by V. Lakshmi Kumaran and V. Sridharan in 1985, the firm has eight offices across India in New Delhi, Mumbai, Chennai, Bengaluru, Hyderabad, Pune and Ahmedabad.

The firm is well-known for its high ethical standards, quality work and transparency in all business dealings. It supports its clients by providing litigation, dispute resolution and advisory services and compliance reviews across each of its divisions of Tax, International Trade, Intellectual Property and Corporate.

For more information, visit us at <http://www.lslaw.in>



Contact Details

New Delhi

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone - +91-11-4129 9811
E-mail - lsdel@lakshmisri.com

Bangalore

505-508, 5th Floor,
Brigade Plaza (North)
71/1, Subedar Chetram Road,
Anand Rao Circle
Bangalore - 560 009
Phone - +91-80-4171 7777
E-mail - lsblr@lakshmisri.com

Mumbai

401-404, Kakad Chamber
132, Dr. Annie Besant Road
Worli, Mumbai - 400 018
Phone - +91-22-2491 4382
E-mail - lsbm@lakshmisri.com

Hyderabad

Hastigiri, 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone - +91-11-4129 9811
E-mail - lshyd@lakshmisri.com

Ahmedabad

B-334, SAKAR-VIII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad - 380 009001
Phone - +91-79-4001 4500
E-mail - lsahd@lakshmisri.com

Chennai

2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone - +91-44-4396 1600
E-mail - lsmds@lakshmisri.com

Pune

Ebony Meeting Room
1st Floor, Apartment Section
Hyatt Regency
Weikfield IT Park, Nagar Road
Pune - 411 014, Maharashtra
Phone - +91-20-6641 1234
E-mail - lspune@lakshmisri.com

Thank you

For more information visit <http://www.lslaw.in>