

National Group: Ukraine

Standing Committee on TRIPS

Standing Committee on IP and Genetic Resources / Traditional Knowledge

Questionnaire on the requirement of indicating the source and/or country of origin of genetic resources and traditional knowledge in patent applications

Questions:

1. Is there a legal requirement in your country that the source and/or country of origin of GRTK must be indicated in patent applications for inventions based on GRTK (*Disclosure Requirement*)?

There are no any legal requirements in our country that the source and/or country of origin of GRTK must be indicated in patent applications for inventions based on GRTK (Disclosure Requirement).

Actually the Convention on Biological Diversity (CBD) was ratified by Ukraine on November 29, 1994, and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) was signed on behalf of Ukraine on January 30, 2012.

Since a couple of delegated legislation was adopted for the purpose of providing the fulfillment of the above mentioned international treaties, namely the Regulation of the Ukrainian Government On the Concept of Biodiversity Conservation of Ukraine on May 12, 1997, as well as the Order of the Ukrainian Government On Approval of the Concept of National Biodiversity Conservation Program for 2005-2025 on September 22, 2004. However, both acts have no provisions related to the patent applications involving biological/genetic resources and traditional knowledge (GRTK).

2. Please indicate your experience with the application of the Disclosure Requirement when filing and prosecuting patent applications in your country.

Due to the lack of Disclosure Requirement in the Ukrainian legislative there is no national experience with the applications with the Disclosure Requirement during filing and prosecuting procedure related to patent applications in our country.

3. Please give statistical data on the number of patent applications mentioning source and/or country of origin of GRTK in your country. Is there a specific section of the patent register listing patents and patent applications comprising information on source or country of origin of GRTK? If such data are not available, please give an estimate of the number of such patents and patent applications and indicate the basis of the estimate.

No reliable statistical data have been reported.

4. Please indicate whether administrative or judicial decisions on the application of the Disclosure Requirements is available. If yes, please provide a concise summary (or a link to an on-line version) of such decisions.

No such decisions have been reported.

5. Please provide an estimate per patent application of the additional (a) time and (b) cost in legal fees associated with compliance with the Disclosure Requirement in your country.

There is not provided under the current Ukrainian laws the particular provisions as to the additional cost (official fees) and time with compliance with the Disclosure Requirement.

6. Please provide an estimate of the additional time and cost as described in question 5) associated with compliance with any foreign Disclosure Requirement.

There is no additional cost and time for patenting with compliance with any foreign Disclosure Requirement.

7. Has the Disclosure Requirement had an impact on patent valuation (either increasing or decreasing the perceived value of a patent) in your country?

It is difficult to identify an impact of the Disclosure Requirement on patent valuation due to the lack of Disclosure Requirement in our country.

8. Has the Disclosure Requirement had any effect on R&D activities in your country, e.g., a change in the number of patent applications for inventions in biological technology fields, or an increase or decrease of such activities using biological materials such as plants, animals and microorganisms, etc. from either your country or other countries due to the ease or difficulty of obtaining PIC or MAT ("mutually agreed terms")?

The question is not relevant.

9. Are you aware of any benefits or disadvantages, including for third parties, of the Disclosure Requirement in your country? For example, has the Disclosure Requirement improved patent examination, or led to the sharing of financial or other benefits?

The question is not relevant.

10. As a source country or country of origin, does your country have any legal system and/or administrative authorities or agency to provide any type of certificate to provide proof of the source and/or country of origin of GRTK? If yes, which ministry or authority is responsible? Please include also links to websites which would allow accessing information and contacting the responsible local authorities.

No special administrative authorities or agencies are operated in Ukraine as to providing any type of certificate to provide proof of the source and/or country of origin of GRTK.

11. The following questions relate specifically to the Nagoya Protocol.

- a) If your country has not (yet) implemented the Nagoya Protocol, please indicate this.
- b) The Nagoya protocol stipulates ABS ("access and benefit sharing"). In your country, is there any impact on intellectual property protection and/or enforcement if ABS is not satisfied?
- c) The Nagoya Protocol also stipulates PIC ("prior informed consent"). In your country, is there any impact on intellectual property protection and/or enforcement if there is any failure or defect in PIC?

- d) The Nagoya Protocol also stipulates MAT ("mutually agreed terms"). In your country, is there any impact on intellectual property protection and/or enforcement if there is any failure or defect in MAT?

As it was mentioned above the Nagoya Protocol was signed on behalf of Ukraine on January 30, 2012. However, our country has not been implemented the Nagoya Protocol in our national laws yet. Therefore, there is no any practice of its fulfillment yet.

12. Academic research often involves GRTK. Are there any special regulations and/or measures for academics and/or academic institutions such as universities to protect and promote the protection and development of GRTK?

There are a lot of scientists who dedicate their scientific researches to the issue of GRTK. Please see the short list of the scientific works related to biological diversity on the following web-site <http://www.nbu.gov.ua/node/257>.

A huge number of different non-governmental voluntary organizations also protect and promote the protection and development of GRTK. One of them is Science Center of Environmental Monitoring and Biodiversity of Metropolis of the National Academy of Sciences of Ukraine. Science Center is developing scientific bases and practical measures for the protection, preservation and restoration of biodiversity of plant communities and faunistic complexes within the metropolis as an example of Kiev.

13. "Traditional medicine" may fall within GRTK. Information relating to traditional medicine is generally not found in the literature or in other written form in the public domain. Does your country permit patent or any other form of intellectual property protection in relation to traditional medicine? If yes, does your country have any specific legislation or examination practice for the protection of traditional medicine? Please include links to websites dealing with these practices or legislation, if appropriate.

Our country permits patents for protection of traditional medicine if it meets the criteria of patentability defined by the current Ukrainian laws for inventions or utility models. However, our country does not have any specific legislation or examination practice for the protection of traditional medicine.

14. Have there been any authoritative studies in your country on the impact of the Nagoya Protocol? If yes, please provide author(s), title, and information where such studies can be found.

No information has been found as to the authoritative studies in our country on the impact of the Nagoya Protocol.