

**National Group** : INDONESIA

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**Date** : April 1, 2010

## **Questionnaire February 2010**

**Special Committees Q 94 – WTO/TRIPS and Q166 – Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore**

**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 biological/genetic resources and traditional knowledge must be indicated in patent applications for inventions based on such biological/genetic resources or traditional knowledge?***

There are no regulations found in Indonesian Patent Law no. 14 Year 2001, in general IP laws, or in legislation implementing the Convention on Biological Diversity (which has been ratified under Indonesian Law no. 5 Year 1994 concerning the Ratification of United Nations Convention on Biological Diversity), concerning a legal requirement to indicate the source and/or country of origin of biological/genetic resources and traditional knowledge in patent applications for inventions based on such biological/genetic resources or traditional knowledge.

In accordance to Folklore, general IP laws i.e. Indonesian Law no. 16 Year 2002 concerning Copyright, on Article 10 stipulates that for publishing or reproducing a Copyright for folklores and works of popular culture, any person who is not the citizen of Indonesia shall, firstly, seek permission from the institution related to the matter.

Concerning "Access to and Transfer of Technology", and "Access and Benefit Sharing", in terms of technology of Granted Patent and IP Rights, in legislation implementing the Convention on Biological Diversity (i.e. Indonesian Law no. 5/1994 concerning the Ratification of United Nations Convention on Biological Diversity), they are stipulated under Articles 8 (j), 16 (2), 16 (3), 16 (5), 17(2), 18 (4).

In addition of ratifying the Convention on Biodiversity, on 2004 Indonesia has ratified the Cartagena Protocol i.e. under Indonesian Law no. 21/2001 concerning Protocol on Biosafety to Convention on Biodiversity. Moreover, our country has a Regulation stipulating concerning Biosafety of Genetically Engineered Product under Indonesian Government Regulation no. 21 Year 2005.

***If yes, please quote the corresponding text from the law or regulations and reply to the following questions, if applicable:***

***a) Are these regulations found in patent law, general IP laws or in legislation implementing the Convention on Biological Diversity?***

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***b) What "triggers" the disclosure requirement, i.e. how close must the relationship of the invention to the biological/genetic resource be to require disclosure?***

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***c) Is it clear what the concept of "source" or "country of origin" or "country providing the resource", and "based on genetic resource/traditional knowledge" or "derived from biological resource and associated traditional knowledge" means and what information must be included in the patent application?***

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**d) Is the disclosure requirement limited to biological/genetic resources or traditional knowledge of your country only or is it applicable also to biological/genetic resources or traditional knowledge obtained or obtainable from other countries and geographical areas?**

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**e) Are there ways to complement, correct or amend the corresponding text in the patent application after filing?**

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**f) Is disclosure of “prior informed consent” and/or agreements on “fair and equitable benefit-sharing” required?**

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**g) Are human genetic resources treated differently or the same way as animal or plant genetic resources falling under the CBD?**

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**h) Is traditional knowledge properly defined, and is the source of traditional knowledge to be indicated only if it is connected to genetic/biological resources (e.g. falling under the CBD) or in general?**

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**i) Are sanctions foreseen for non-compliance (e.g. patent invalidation, revocation or lack of enforceability, patent transfer to the owner of the resource, fines, criminal sanctions etc.)?**

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**j) Does the law/regulation indicate that access to a genetic/biological resource would not mandate a disclosure in the patent application, if such access had occurred prior to a particular date, e.g. prior to the date of entry into force of the CBD?**

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**2) Please indicate your experience with the application of the legal requirement as listed under 1) when filing and prosecuting patent applications in your country.**

*N/A (Not Applicable)*

**3) Please give statistical data on the number of applications mentioning source and/or country of origin of genetic resources and/or traditional knowledge, following the legal requirement as listed under 1) in your country. If such data are not available, please give an estimate of the number of such applications.**

*N/A (Not Applicable)*

**4) Please indicate whether administrative or judicial decisions on the application of the legal requirement as listed under 1) are available. If yes, please provide the text of such decisions.**

*N/A (Not Applicable)*

**5) If there is no legal requirement of indicating the source and/or country of origin of genetic resources and/or traditional knowledge in patent applications for inventions based on such genetic resources or traditional knowledge in your country: Do you know of any project of law in your country dealing with the topic? If yes please provide the corresponding text and review it for the questions a) to i) as under 1). Please include also links to websites which would allow us to follow the progress on these projects of law.**

As we have mentioned above, there is no provision available in our country concerning legal requirement that the source and/or country of origin of biological/genetic resources and traditional knowledge must be indicated in patent applications for inventions based on such biological/genetic resources or traditional knowledge.

However, there have been several workshop and International Seminars been conducted in Indonesia which discussed this issue whether there should be a legal requirement to formally indicate the source and/or country of origin of biological/genetic resources and traditional knowledge in patent applications for inventions based on such biological/genetic resources or traditional knowledge in order to protect our traditional knowledge, which held by ASEAN WGIPC discussing the genetic resources, traditional knowledge and expression of folklore. On November 2009, this issue has been submitted by the IPR practitioners and IPR Experts during the Event of Socialization of the Draft of Revision of Indonesian Patent Law no. 14/2001 held by Directorate General of IPR, in order to incorporate such legal requirement provision into the Draft of Revision of Indonesian Patent Law no. 14/2001, especially under

Article 29 concerning the Novelty Requirement of such draft, for the obligation to indicate the Disclosure of Origin and Evidence of Prior Informed Consent in the process of filing a patent application, whether at the time of Substantive Examination, or as a part of the examination of novelty requirement, wherein it should be completed with document which later on it could be categorized as a non patent literature.

Concerning a project of law, since 2008, there is a project of law in our country related with the topic above i.e. a Draft of Law concerning the Intellectual Property Protection and Use/Development for Traditional Knowledge and Traditional Culture Expressions/Folklore .

### **Procedure**

It would be most helpful if the National Groups would fill out the Questionnaire and send in their answers to the General Secretariat of AIPPI by **12 March 2010** to:

[f.martin@aippi.org](mailto:f.martin@aippi.org)

Please use a separate sheet for indicating your answers or include the answer in the present text at the end of each question.

For inquiries, please contact any of the chairs of Q94 and Q166:

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