

AIPPI Special Committee Q166

Annual report of Special Committee Q166 prepared for the
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Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

by Konrad BECKER

Names and Functions of Committee Members

Chairman	Konrad BECKER	Switzerland
Co-Chairwoman	Marlies ALLAN	Nigeria
Secretary	Andrew Bruce MASSIE	Australia
Members	Yong CHENG	China
	Maria Carmen DE SOUZA BRITO	Brazil
	Gabriela Paíva HANTKE	Chile
	Daisy MACHYTKA-FRANK	Hungary
Responsible Reporter	Thierry CALAME	Switzerland

Special Committee Q166 has the task of following developments concerning Genetic Resources, Traditional Knowledge and Folklore (GRTKF) in relation to Intellectual Property.

The Special Committee did not meet since the Executive Committee meeting in Buenos Aires 2009, but exchanged documents and opinions by e-mail.

Sources of information are usually WIPO (Intergovernmental Conferences on GRTKF and documents prepared by the WIPO secretariat for the conference, but also sessions of the Committee on Development and Intellectual Property CDIP, the PCT and other WIPO legal instruments and conferences), WTO/TRIPS (TRIPS Council documents and personal meetings with members of the TRIPS secretariat), the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA), and the Conference of the Parties of the Convention on Biological Diversity (CBD) concerning the same topic.

As decided at the meeting of the Executive Committee in Buenos Aires October 2009, Q166 and Q94 together had the task of updating and expanding the answers to the questionnaire originally sent out in 2006. Both inside and outside AIPPI there is a considerable interest in receiving updated information from as many countries as possible about legal provisions concerning the requirement of indicating the source or country of origin of genetic resources and traditional knowledge connected with it in patent applications using such genetic resources or traditional knowledge, receiving information on bills and legal projects in this field, and collecting statistical data on the use and application of these legal provisions, consequences of non-compliance with such provisions, and administrative decisions and judicial procedures concerning the provisions.

The reason for collecting updated information in early 2010 was the (at that time perceived) imminent conclusion of the Doha round and indications that special disclosure obligations in patent application involving genetic resources could enter the negotiations for the conclusion

of the Doha round at the last minutes as a *quid pro quo* for other subjects of the negotiation. This prediction proved to be wrong, and at the present time no activity can be perceived going into this direction.

The collection of answers from the national groups of AIPPI, however, proved to be valuable for obtaining an overview of the special disclosure requirements, and also showed that experience with such new legal provisions is only slowly accumulating.

A summary of the answers in text and in table format and the original questionnaire and answers of the 34 national groups responding are published on the aippi.org website.

AIPPI Q166 was represented by Maria Carmen de Souza Brito at the 16th session of the IGC on GRTKF, May 3 to 7, 2010. No committee member was able to follow the 15th session of the IGC in December 2009. The report from the 16th session of the IGC can be found on the website aippi.org.

Whereas in the past it seemed to be almost impossible to make some progress, the 15th and 16th sessions brought substantial breakthroughs, based on the renewed mandate from the General Assembly end of September 2009, and the willingness of the leading negotiators to make substantial progress.

Based on a proposal of the African group, supported by other developing countries and representatives of indigenous people, a text-based negotiation was started, although no decision was taken as to whether such text should be developed into a binding international instrument (or several international instruments) or would only be used for demonstrating possible venues for harmonisation.

At the 16th session the decision was taken to intensify the text-based discussions, making use of intersessional working group meetings. The first such meeting focussing on Traditional Cultural Expressions and Expressions of Folklore took place July 19 to 23, 2010, in Geneva. Intergovernmental organisations such as AIPPI are allowed to participate in the working group intersessional meetings, but AIPPI was not represented due to lack of time of committee members and lack of specific interest in Traditional Cultural Expressions, which is not one of central themes for AIPPI.

The 17th session of the IGC on GRTKF is planned for December 6 to 10, 2010.

Some of the work of the WIPO Committee of Development and Intellectual Property (CDIP) is also related to the topics of Q166, but the focus is mainly on other aspects of IP questions of developing countries. No direct implications are to be expected on IP and Genetic Resources, Traditional Knowledge and Folklore. The 5th meeting of CDIP took place in April of 2010, and the 6th meeting is planned for the last week of November.

At present no deadlines in the work of Q166 are open. The resolution taken at the Congress in Gothenburg 2006 concerning source disclosure in patent applications is still more or less up to date and important in the light of the WTO discussions in the frame of the Doha round. The answers to the questionnaire are evaluated and digested, and will only need punctual updates and complementation from countries which did not (yet) respond to the questionnaire.

A presentation of the results of the questionnaire is planned in one of the plenary sessions of the Paris Congress to make them more widely known to the AIPPI members.

September 9, 2010
Konrad Becker, Chair Q166