

Report Q166

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 Paiva 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.

Sources of information are primarily 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.

The Special Committee did not meet since the Congress in Boston in 2008, but exchanged documents and opinions by e-mail.

As in the past five years, the most prominent point from the topics of Q166 is the question whether the source and/or country of origin of Genetic Resources (GR) and Traditional Knowledge (TK) should be indicated in patent applications relying or building on GR or TK, and incidental questions of prior informed consent (PIC) and access and benefit sharing (ABS).

The conclusion of the WTO Doha round is still open. Indication of source in patent application does not have formal negotiation status in the Doha round, but a request to that effect has been the subject of a joint paper from Brazil, India, the EU and Switzerland in July 2008. The request is supported by a substantial number of developing countries. An amendment of TRIPS requiring applicants to indicate source information on genetic resources and traditional knowledge might be considered by the negotiators in order to balance concessions made by developing countries in other fields of trade, i.e. agriculture and non-agriculture market access, and must also be seen in the context of the position of European Union with respect to protection of geographical indications other than wine and spirits.

AIPPI Q166 was represented by Maria Carmen de Souza Brito at the 14th session of the IGC on GRTKF, 29th June to 3rd July 2009, and by the chairman at the 13th session of the IGC on GRTKF, 13th to 17th October 2008, and the 3rd session of the Committee on Development and Intellectual Property, CDIP/3, 27th April to 1st May 2009, at the WIPO headquarters in Geneva.

The 14th session of the IGC on GRTKF showed once more that no substantial change of positions of the leading countries in questions of GRTKF had occurred. The African group, supported by other developing countries and representatives of indigenous people, insisted on a new mandate for the 2010/2011 biennium requiring the IGC to develop one or several binding international instruments covering Traditional Cultural Expressions / Expressions of Folklore, Traditional Knowledge and Genetic Resources, to start with text-based negotiations within clear timeframes, and to recommend a date for a diplomatic conference. The corresponding proposal did not find sufficient support, and the conference ended with failure, i.e. without an agreed statement on future work. It is now up to the General Assembly of WIPO (22nd September to 1st October 2009) to renew the existing mandate of the IGC for a further period, to give it an amended mandate, or to end the activities in the IGC on GRTKF and perhaps transfer the responsibility for the topic to other WIPO committees. A 15th session of the IGC on GRTKF is scheduled shortly before the expiry of the mandate of the 2008/2009 biennium in December of this year.

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.

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.