

**20<sup>th</sup> Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, February 14 to 22, 2012 in Geneva**

**Report by Konrad Becker, Chairman Q166**

The 20<sup>th</sup> session of the Intergovernmental Committee (IGC) on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (GRTKF) was held from February 14 to 22, 2012 at the WIPO headquarters in Geneva. For the first time the duration of the session exceeded one week, lasting from Tuesday to Wednesday of the following week and including working sessions on Saturday. Based on experience from the 19<sup>th</sup> session and in response to the mandate of the General Assembly of October 2011 there were good reasons to expect that meaningful text-based negotiations could be started.

The meeting was preceded by a forum of indigenous communities, which continued with a panel session during the first official IGC meeting on Tuesday. Further information sessions were planned during lunch time or in the evening on almost every day of the conference, with presentations from different representatives of indigenous peoples and from non-governmental organisations. AIPPI distributed its summary report of the questionnaire 2010 on “requirement of indicating in patent applications the source or country of origin of genetic resources and traditional knowledge involved in the making of the invention“ prepared by Q94 and Q166. This document found wide interest.

The Director General of WIPO, Francis Gurry, opened the session. Ambassador Wayne McCook from Jamaica was elected as the new chairman, and he was chairing the meetings in a focused way. No opening statements were foreseen, and the discussions immediately dealt with procedural matters. A group of three facilitators were designated with the task to prepare a consolidated paper taking into account all proposals and combine them into a single text. The plenary meetings were then supposed to deal with this consolidated text showing different options and bracketing, and to shorten it as far as possible.

It was obvious from the set-up of the procedure that the decisive work would be done by the facilitators in preparing or updating the consolidated document, with input from government delegations and the respective country groups having made written proposals in the process leading to this session. Observers were more or less excluded, and could only gain

information and provide input through government delegations. This finally led to the formal withdrawal of the “international indigenous forum”, which complained that their proposals were not adequately taken into account, and that they did not have a chance to influence the outcome of the text.

The final text was labelled “work in progress and without prejudice to the positions of the participants”. It takes reasonable notice of the definitions and principles of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their Utilization to the Convention of Biological Diversity, and of the International Treaty on Plant Genetic Resources for Food and Agriculture, trying to avoid duplication and contradiction.

The final text mirrors the deep divide between the negotiation positions of the IGC member states. Apart from the fact that the final document is without prejudice to the outcome, i.e. binding text or non-binding guideline of a general nature, the most debated points were whether there should be indeed a disclosure requirement for genetic resources and associated traditional knowledge in patent applications or not, the kind of required disclosure (source or country of origin, prior informed consent, proof of agreement on benefit sharing), facts that trigger the disclosure requirement (genetic resources and associated traditional knowledge, or also “derivatives”), whether there should be a prohibition of patenting life forms, or whether the document should only relate to procedures preventing patents from being granted erroneously because they are not new or inventive, just to name the most relevant differences. A continuous tension concerning ownership of genetic resources between states, indigenous peoples and local communities was also apparent.

Documents of the 20<sup>th</sup> session of the IGC on GRTKF may be found under: [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=25008](http://www.wipo.int/meetings/en/details.jsp?meeting_id=25008). The final text prepared during the conference is available on the website under the title "Consolidated Document Relating to Intellectual Property and Genetic Resources".

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