

National Group: GREEK GROUP

Contributors: Helen Papaconstantinou, Mr. Lymberis, Mr. Kilimiris

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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? 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?
- 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?
- 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?

- 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?
- e) Are there ways to complement, correct or amend the corresponding text in the patent application after filing?
- f) Is disclosure of “prior informed consent” and/or agreements on “fair and equitable benefit-sharing” required?
- g) Are human genetic resources treated differently or the same way as animal or plant genetic resources falling under the CBD?
- 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?
- 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.)?
- 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?

Greece has implemented Dir. 98/44 EC on the legal protection of biotechnological inventions by Presidential Decree 321/2001. However, whether the term “genetic resources” falls within the scope of this legislation is not clear, since we have no definition in our legislation as to what constitute “genetic resources”. Accordingly, there is no legal requirement in Greece that the source and/or country of origin of biological genetic resources and traditional knowledge must be indicated in patent applications based on such biological/genetic resources.

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.

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.

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.

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.

We are not aware of any such project. The Greek Group is, nevertheless, of the opinion that the source and/or country of origin of generic resources should be indicated in patent applications based on such genetic resources. As it appears, Members agree to amend the TRIPS Agreement to include a mandatory requirement for the above-mentioned disclosure, for which a definition will be agreed in patent applications.

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

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:

Q166:

Konrad Becker

Q94:

Ivan Hjertman

Aeschenvorstadt 24, Postfach 318
CH-4010 Basel, Switzerland
Tel +41 61 279 95 99
Fax +41 61 279 95 96
mail@beckerpatent.ch

Kölnagatan 24
SE 120 64 Stockholm, Sweden
Tel +46 8 510 105 27
Mobile +46 70 268 31 40
ivan.hjertman@ipinterface.se

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