

National Group: Turkish National Group

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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?

Answer: No (Contributed by the Turkish Patent Institute)

Answer: (Contributed by Mr. M. N. Aydın Deriş)

Decree Law No. 551 on Patents & Utility Models, in force since 27 June 1995, is silent on the subject of “biological/genetic resources and traditional knowledge” and does not provide any requirement for including such indications in patent applications.

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?

Answer : (Contributed by Mr. M. N. Aydın Deriş)

Turkey has ratified on 14 February 1997, the Convention on Biological Diversity (CBD) and has further ratified on 24 January 2004 the Protocol on Biosafety (CPB) as a supplementary agreement to CBD.

- 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?
- 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.**

Answer: No experience. (Contributed by the Turkish Patent Institute)

- 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.

Answer: (Contributed by the Turkish Patent Institute)

No statistical data is available. Only a few numbers of applications may contain source and/or country of origin of genetic resources and/or traditional knowledge in the specification of the patent application.

- 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.

Answer: Not available. (Contributed by the Turkish Patent Institute)

- 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.

Answer: (Contributed by the Turkish Patent Institute)

Draft law of patent and utility model contains the following provision relating to the source and/or country of origin of genetic resources and/or traditional knowledge in patent applications.

Article 96 - (1) If an invention is based on a genetic resource or a traditional knowledge, this source or origin of knowledge shall be disclosed in the patent application pursuant to the Regulations. Otherwise, a statement concerning that the source or origin is not known shall be deemed to be submitted.

www.tpe.gov.tr/dosyalar/taslaklar/Patent_Kanun_Taslagi.pdf (only in Turkish)

1-a) These regulations are found in the Draft Law of Patent and Utility Model

b) Article 96 of the Draft Law of Patent and Utility Model. If an invention is based on a genetic resource or a traditional knowledge, this source or origin of knowledge shall be disclosed in the patent application.

c) Source or origin of genetic resource or traditional knowledge is required in the patent application.

d) Applicable to biological/genetic resources or traditional knowledge obtained or obtainable from other countries and geographical areas

e) Not yet provided. However, these matters shall be regulated by the Implementing Regulations.

f) No.

g) For human genetic resources there are different provisions.

h) Traditional knowledge is defined as “The information composed from any mental activity that is not restricted by a specific technical field and ensuring its continuity from generation to generation in the traditional life,” in The Draft Law.

Traditional knowledge shall be disclosed whether it is connected to genetic/biological resources or in general

i) Yes, according Article 96, “..... this source or origin of knowledge shall be disclosed in the patent application pursuant to the Regulations. Otherwise, a statement concerning that the source or origin is not known shall be deemed to be submitted”. However the details shall be regulated by the Implementing Regulations.

j) No.

Answer: (Contributed by Mr. M. N. Aydın Deriş)

As to what will be the fate of this draft and when it is expected to come into force can not be guesstimated at this stage.

For further information and follow-up as to the progress of the draft the link to the web site of the Turkish Patent Institute is provided hereunder as of your request.

www.tpe.gov.tr

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:

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