

Diplomatic Conference on Genetic Resources and Associated Traditional Knowledge

May 2024



Explainer

What: A final-stage conference where WIPO countries will work to finalize two decades of discussions and forge agreement on an international legal instrument – a treaty, convention or other document - relating to intellectual property, genetic resources, and associated traditional knowledge.

Member States reached consensus in July 2022 to move their negotiations to the next level, determining that a Diplomatic Conference should be held in 2024 and that a "Basic Proposal" would serve as the basis for negotiations.

When: May 13 to 24, 2024

Where: WIPO Headquarters in Geneva, Switzerland.

Who: The negotiators will be official delegates of WIPO's 193 Member States. Discussions are actively supported by the participation of a wide array of observers, including Indigenous Peoples as well as local communities, non-governmental organizations, intergovernmental organizations, and industry representatives.

The “Basic Proposal” Core Elements

Patent disclosure requirement

Disclosing inventions in detail is a core principle of patent law. Inventors have to explain their invention in sufficient detail so that someone with the same level of knowledge can reproduce the invention. Furthermore, prior art must generally be disclosed to assist patent examiners in assessing whether the invention is truly novel and non-obvious.

In the context of genetic resources and associated traditional knowledge, the Basic Proposal describes an additional disclosure requirement that would require patent applicants to disclose information on the genetic resources and associated traditional knowledge if the claimed invention is “materially/directly based” on them. The disclosure would comprise the country of origin of the genetic resources and/or the Indigenous Peoples or local community that provided the associated traditional knowledge.

If such information is unknown, the source of the genetic resources or associated traditional knowledge should be disclosed. If none of the above information is known, the patent applicant should declare so.

Some 35 regional organizations and countries already have a requirement along these lines in their regional and national laws.

Patent offices would provide certain guidance on how to meet the disclosure requirement and an opportunity to fix a failure to include the minimum information or correct any inaccurate or incorrect disclosures. However, they would have no obligation to verify the authenticity of the disclosure.

Information systems

The Basic Proposal also provides for the voluntary establishment of information systems, such as databases of genetic resources and their associated traditional knowledge, in consultation with Indigenous Peoples and local communities where applicable.

Genetic resources databases can compile and reference a wide range of information and materials, including, for example, information about genetic resources, associated traditional knowledge, known uses of genetic resources, and relevant scientific compilations.

Such systems should be accessible to IP offices for search and examination purposes, with appropriate safeguards developed with Indigenous Peoples and local communities where applicable.

Other elements of the Basic Proposal

The Basic Proposal comprises a Preamble and 23 articles, including a description of the objectives, a definition of the terms used, the disclosure requirement, exceptions and limitations, provisions on information systems, and provisions on the exclusion of retroactivity and on sanctions and remedies. The draft text also contains provisions on the relationship with other international agreements, a future review, and so-called 'final and administrative clauses'.

The full text of the Basic Proposal and an informal summary of it are available at www.wipo.int/edocs/mdocs/traditional_knowledge/en/gratraditional_knowledge_dc/gratraditional_knowledge_dc_3.pdf and www.wipo.int/export/sites/www/diplomatic-conferences/en/docs/executive-summary-basic-proposal.pdf

Background

The Diplomatic Conference marks the last step in negotiations to conclude a part of the work conducted by the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) established in 2000. Since its inception, the IGC has been working on the relationship between intellectual property, traditional knowledge, traditional cultural expressions and genetic resources.

Genetic resources

Genetic resources are contained in, for example, medicinal plants, agricultural crops, and animal breeds. Some genetic resources are linked to traditional knowledge and traditional practices through their use and conservation by Indigenous Peoples and local communities, often over generations.

Formally, genetic resources are defined in the Convention on Biological Diversity (CBD) as genetic material of actual or potential value. The CBD further defines genetic material as any material of plant, animal, microbial, or other origin containing functional units of heredity. The Basic Proposal incorporates these definitions.

Genetic resources themselves, as encountered in nature, cannot be directly protected as IP because they are not creations of the human mind. However, inventions based on or developed using genetic resources (and associated traditional knowledge) may be eligible for protection through the patent system.

Intellectual property issues

One of the IP issues related to genetic resources discussed in the WIPO IGC is the prevention of the erroneous granting of patents for inventions that have been developed using genetic resources and associated traditional knowledge but do not fulfill patentability requirements such as novelty and inventiveness.

Preventing erroneous patents is referred to as a form of 'defensive protection'. Some countries have adopted policies, mechanisms, and measures aimed at the defensive protection of genetic resources, such as databases and other information systems, to help patent examiners find relevant prior art.

Several regional organizations and countries, seeking to avoid the erroneous granting of patents, have also established new disclosure requirements as part of their patent filing and examination process. There are, however, no common international standards to harmonize such provisions, and countries are therefore taking a wide range of approaches for such measures.

One of the core elements of the potential treaty is a mandatory disclosure requirement in patent applications for inventions based on genetic resources and associated traditional knowledge under certain conditions. The new requirement would apply to patent applications filed in those countries, or with those intergovernmental organizations, that become party to the new treaty.

The Diplomatic Conference: procedure and practical arrangements

The Rules of Procedure of the Diplomatic Conference govern who can take part in the Diplomatic Conference, how it will run, and how decisions will be taken. The Rules of Procedure will be adopted at the commencement of the Conference.

Practical arrangements related to participation in the Diplomatic Conference are available at: www.wipo.int/diplomatic-conferences/en/genetic-resources/index.html

This is an informal note intended as a basic introduction to the upcoming Diplomatic Conference. Formal documentation is available at the links below.

Diplomatic Conference on Intellectual Property and Genetic Resources in 2024 www.wipo.int/diplomatic-conferences/en/genetic-resources/index.html

Key Questions on Patent Disclosure Requirements for Genetic Resources and Traditional Knowledge, www.wipo.int/publications/en/details.jsp?id=4498

The WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), www.wipo.int/traditional_knowledge/en/igc

A series of Background Briefs prepared by WIPO on various topics, www.wipo.int/publications/en/series/index.jsp?id=144

More WIPO resources are available at www.wipo.int/traditional_knowledge/en/global_reference.html