

**Diplomatic Conference to Conclude an International Legal Instrument
Relating to Intellectual Property, Genetic Resources and Traditional
Knowledge Associated with Genetic Resources**

Geneva, May 13 to 24, 2024

**WIPO TREATY ON INTELLECTUAL PROPERTY, GENETIC RESOURCES AND
ASSOCIATED TRADITIONAL KNOWLEDGE**

adopted by the Diplomatic Conference

The Parties to this Treaty,

Desiring the promotion of the efficacy, transparency and quality of the patent system in relation to genetic resources and traditional knowledge associated with genetic resources,

Emphasizing the importance of patent offices having access to appropriate information on genetic resources and traditional knowledge associated with genetic resources to prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and traditional knowledge associated with genetic resources,

Recognizing the potential role of the patent system in contributing to the protection of genetic resources and traditional knowledge associated with genetic resources,

Recognizing that an international disclosure requirement related to genetic resources and traditional knowledge associated with genetic resources in patent applications contributes to legal certainty and consistency and, therefore, has benefits for the patent system and for providers and users of such resources and knowledge,

Recognizing that this Treaty and other international instruments related to genetic resources and traditional knowledge associated with genetic resources should be mutually supportive,

Recognizing and reaffirming the role that the intellectual property system plays in promoting innovation, transfer and dissemination of knowledge and economic development, to the mutual advantage of providers and users of genetic resources and traditional knowledge associated with genetic resources,

Acknowledging the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and commitment to achieving the ends set forth therein, and

Affirming that best efforts should be made to include Indigenous Peoples and local communities, as applicable, in implementing this Treaty,

Have agreed as follows:

ARTICLE 1 OBJECTIVES

The objectives of this Treaty are to:

- (a) enhance the efficacy, transparency and quality of the patent system with regard to genetic resources and traditional knowledge associated with genetic resources, and
- (b) prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and traditional knowledge associated with genetic resources.

ARTICLE 2 LIST OF TERMS

For the purposes of this Treaty:

“Applicant” means the person whom the records of the Office show, pursuant to the applicable law, as the person who is applying for the granting of a patent, or as another person who is filing or prosecuting the application.

“Application” means an application for granting of a patent.

“Contracting Party” means any State or intergovernmental organization party to this Treaty.

“Country of origin of genetic resources” means the country which possesses those genetic resources in *in situ* conditions.

“Based on” means that the genetic resources and/or traditional knowledge associated with genetic resources must have been necessary for the claimed invention, and that the claimed invention must depend on the specific properties of the genetic resources and/or on the traditional knowledge associated with genetic resources.

“Genetic material” means any material of plant, animal, microbial or other origin containing functional units of heredity.

“Genetic resources”¹ are genetic material of actual or potential value.

“In situ conditions” means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.

“Office” means the authority of a Contracting Party entrusted with the granting of patents.

“PCT” refers to the Patent Cooperation Treaty, 1970.

“Source of genetic resources” refers to any source from which the applicant has obtained the genetic resources, such as a research center, gene bank, Indigenous Peoples and local communities, the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), or any other *ex situ* collection or depository of genetic resources.

“Source of traditional knowledge associated with genetic resources” means any source from which the applicant has obtained the traditional knowledge associated with genetic resources, such as scientific literature, publicly accessible databases, patent applications and patent publications.

¹ The definition of “genetic resources” is, in line with the manner in which the term is understood in the context of the Convention on Biological Diversity, not intended to include “human genetic resources”.

ARTICLE 3 DISCLOSURE REQUIREMENT

3.1 Where the claimed invention in a patent application is based on genetic resources, each Contracting Party shall require applicants to disclose:

- (a) the country of origin of the genetic resources², or,
- (b) in cases where the information in Article 3.1(a) is not known to the applicant, or where Article 3.1(a) does not apply, the source of the genetic resources.

3.2 Where the claimed invention in a patent application is based on traditional knowledge associated with genetic resources, each Contracting Party shall require applicants to disclose:

- (a) the Indigenous Peoples or local community, as applicable³, who provided the traditional knowledge associated with genetic resources, or,
- (b) in cases where the information in Article 3.2(a) is not known to the applicant, or where Article 3.2(a) does not apply, the source of the traditional knowledge associated with genetic resources.

3.3 In cases where none of the information in Articles 3.1 and/or 3.2 is known to the applicant, each Contracting Party shall require the applicant to make a declaration to that effect, affirming that the content of the declaration is true and correct to the best knowledge of the applicant.

3.4 Contracting Parties shall provide guidance to patent applicants on how to meet the disclosure requirement as well as an opportunity for patent applicants to rectify a failure to include the minimum information referred to in Articles 3.1 and 3.2 or correct any disclosures that are erroneous or incorrect.

3.5 Contracting Parties shall not place an obligation on Offices to verify the authenticity of the disclosure.

3.6 Each Contracting Party shall make the information disclosed available in accordance with patent procedures, without prejudice to the protection of confidential information.

ARTICLE 4 NON-RETROACTIVITY

A Contracting Party shall not impose the obligations of this Treaty in relation to patent applications which have been filed prior to the entry into force of this Treaty with regard to that Contracting Party, without prejudice to existing national laws on disclosure that apply to such patent applications.

² Agreed Statement: In cases where there is more than one country of origin, the applicant shall disclose the country of origin from which the genetic resources were actually obtained.

³ Agreed Statement: It is understood that the term "as applicable" in Article 3.2(a) shall not be interpreted as providing flexibility to the Contracting Parties to not require applicants to disclose the information required in Article 3.2(a). For greater certainty, Article 3.2(a) will be implemented without having any effect on the scope of the disclosure requirement in Article 3.

ARTICLE 5 SANCTIONS AND REMEDIES

5.1 Each Contracting Party shall put in place appropriate, effective and proportionate legal, administrative, and/or policy measures to address a failure to provide the information required in Article 3 of this Treaty.

5.2 Subject to Article 5.2(*bis*), each Contracting Party shall provide an opportunity to rectify a failure to disclose the information required in Article 3 before implementing sanctions or directing remedies.

5.2(*bis*) A Contracting Party may exclude from the opportunity to rectify under Article 5.2 cases where there has been fraudulent conduct or intent as prescribed by national law.

5.3 Subject to Article 5.4, no Contracting Party shall revoke, invalidate, or render unenforceable the conferred patent rights solely on the basis of an applicant's failure to disclose the information specified in Article 3 of this Treaty.

5.4 Each Contracting Party may provide for post grant sanctions or remedies where there has been fraudulent intent in regard to the disclosure requirement in Article 3 of this Treaty, in accordance with its national law.

ARTICLE 6 INFORMATION SYSTEMS

6.1 Contracting Parties may establish information systems (such as databases) of genetic resources and traditional knowledge associated with genetic resources, in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders, taking into account their national circumstances.

6.2 Contracting Parties should, with appropriate safeguards developed in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders, make such information systems accessible to Offices for the purposes of search and examination of patent applications. Such access to the information systems may be subject to authorization, where applicable, by the Contracting Parties establishing the information systems.

6.3 In regard to such information systems, the Assembly of the Contracting Parties may establish one or more technical working groups to address any matters relating to the information systems, such as accessibility to Offices with appropriate safeguards.

ARTICLE 7 RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS

This Treaty shall be implemented in a mutually supportive manner with other international agreements relevant to this Treaty.^{4 5}

ARTICLE 8 REVIEW

The Contracting Parties commit to a review of the scope and contents of this Treaty, addressing issues such as the possible extension of the disclosure requirement in Article 3 to other areas of intellectual property and to derivatives and addressing other issues arising from new and emerging technologies that are relevant for the application of this Treaty, four years after the entry into force of this Treaty.

ARTICLE 9 GENERAL PRINCIPLES ON IMPLEMENTATION

9.1 Contracting Parties undertake to adopt the measures necessary to ensure the application of this Treaty.

9.2 Nothing shall prevent Contracting Parties from determining the appropriate method of implementing the provisions of this Treaty within their own legal systems and practices.

ARTICLE 10 ASSEMBLY

10.1 The Contracting Parties shall have an Assembly:

- (a) Each Contracting Party shall be represented in the Assembly by one delegate who may be assisted by alternate delegates, advisors and experts.
- (b) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask the International Bureau of WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.

⁴ Agreed Statement: The Contracting Parties request the Assembly of the International Patent Cooperation Union to consider the need for amendments to the Regulations under the PCT and/or the Administrative Instructions thereunder with a view towards providing an opportunity for applicants who file an international application under the PCT designating a PCT Contracting State which, under its applicable national law, requires the disclosure of genetic resources and traditional knowledge associated with genetic resources, to comply with any formality requirements related to such disclosure requirement either upon filing of the international application, with effect for all such Contracting States, or subsequently, upon entry into the national phase before an Office of any such Contracting State.

⁵ Nothing in this Treaty shall derogate from or modify any other international agreement.

- (c) The Assembly shall encourage the effective participation of representatives from Indigenous Peoples and local communities as accredited observers. The Assembly will invite Contracting Parties to consider financial arrangements for participation of Indigenous Peoples and local communities.

10.2 The Assembly:

- (a) Shall deal with all matters concerning the maintenance and development of this Treaty as well as its application and operation;
- (b) Shall perform the function allocated to it under Article 12.2 in respect of the admission of certain intergovernmental organizations to become party to this Treaty;
- (c) Shall conduct the review referred to in Article 8;
- (d) Shall decide the convocation of a Diplomatic Conference for the revision of this Treaty as referred to in Article 14, including as a result of the review referred to in Article 8, and shall give the necessary instructions to the Director General of WIPO for the preparation of any such Diplomatic Conference;
- (e) May establish technical working groups as it deems appropriate;
- (f) May adopt amendments to the present Article, excluding 10.1, 10.2(c), 10.2(d), 10.2(f) and 10.3, and to Article 11; and
- (g) Shall perform such other functions as are appropriate to implementing the provisions of this Treaty, including promoting cooperation among Contracting Parties and requesting the International Bureau to extend existing mechanisms to support technical assistance and capacity building for developing countries.

10.3 The Assembly shall endeavor to take its decisions by consensus. Where a decision cannot be reached by consensus, the matter at issue shall be decided by vote. In such a case:

- (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name; and
- (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States that are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and *vice versa*.

10.4 The Assembly shall meet upon convocation by the Director General of WIPO and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of WIPO.

10.5 The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

ARTICLE 11 INTERNATIONAL BUREAU

11.1 The International Bureau of WIPO shall perform the administrative tasks concerning this Treaty. In particular, the International Bureau shall prepare the meetings and provide the secretariat for the Assembly and for such technical working groups as may be established by the Assembly.

11.2 The Director General of WIPO and any staff member designated by the Director General shall participate, without the right to vote, in all meetings of the Assembly and any such technical working groups established by the Assembly. The Director General, or a staff member designated by the Director General, shall be *ex officio* Secretary of such a body.

11.3 The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for any Diplomatic Conferences. The Director General of WIPO and persons designated by the Director General shall take part, without the right to vote, in the discussions at such Conferences.

ARTICLE 12 ELIGIBILITY TO BECOME A PARTY

12.1 Any Member State of WIPO may become party to this Treaty.

12.2 The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.

12.3 Without prejudice to Article 12.2, the European Union may sign, ratify or accede to this Treaty. In that case, the European Union shall, at the time of signature, ratification or accession, make the declaration referred to in Article 12.2.

ARTICLE 13 RATIFICATION AND ACCESSION

13.1 Any State or intergovernmental organization referred to in Article 12 may deposit with the Director General of WIPO:

- (a) an instrument of ratification if it has signed this Treaty; or
- (b) an instrument of accession, if it has not signed this Treaty.

13.2 The effective date of the deposit of an instrument of ratification or accession shall be the date on which that instrument is deposited with the depositary.

ARTICLE 14 REVISION

This Treaty may only be revised by a Diplomatic Conference, in accordance with the Vienna Convention on the Law of Treaties. The convocation of any such Diplomatic Conference shall be decided by the Assembly.

ARTICLE 15 AMENDMENT OF ARTICLES 10 AND 11

15.1 Articles 10 and 11 of this Treaty may be amended by the Assembly, as provided in Article 10.2(f).

15.2 Proposals for the amendment of the Articles referred to in Article 15.1 may be initiated by any of the Contracting Parties or by the Director General of WIPO. Such proposals shall be communicated by the Director General of WIPO to the Contracting Parties at least six months in advance of their consideration by the Assembly.

15.3 Adoption of any amendment to the Articles referred to in Article 15.1 shall require three-fourths of the votes cast.

15.4 Any such amendment shall enter into force one month after written notifications of acceptance by the Contracting Parties, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the Contracting Parties at the time the Assembly adopted the amendment. Any amendment thus accepted shall bind all of the Contracting Parties at the time the amendment enters into force, or which become Contracting Parties thereof at a subsequent date.

ARTICLE 16 SIGNATURE

This Treaty shall be open for signature at the Diplomatic Conference in Geneva and thereafter at the headquarters of WIPO by any eligible party for one year after its adoption.

ARTICLE 17 ENTRY INTO FORCE

This Treaty shall enter into force three months after 15 eligible parties referred to in Article 12 have deposited their instruments of ratification or accession.

ARTICLE 18
EFFECTIVE DATE TO BECOME A PARTY

This Treaty shall bind:

- (a) The 15 eligible parties referred to in Article 17, from the date on which this Treaty entered into force; and
- (b) Each other eligible party referred to in Article 12, from the expiration of three months from the date on which it has deposited its instrument of ratification or accession with the Director General of WIPO.

ARTICLE 19
DENUNCIATION

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification. It shall not affect the application of this Treaty to any patent application pending and any patent in force in respect of the denouncing Contracting Party at the time of the coming into effect of the denunciation.

ARTICLE 20
RESERVATIONS

No reservations to this Treaty shall be permitted.

ARTICLE 21
LANGUAGES

21.1 This Treaty shall be signed in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic.

21.2 An official text in any language other than those referred to in Article 21.1 shall be established by the Director General of WIPO, after consultation with all the interested parties, in such other languages as the Assembly may designate. For the purposes of this paragraph, "interested party" means any Contracting Party whose official language, or one of whose official languages, is concerned.

ARTICLE 22
DEPOSITARY

The Director General of WIPO is the depositary of this Treaty.

Done at

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