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(IPC UNION)

COMMITTEE OF EXPERTS

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DEVELOPMENT OF CLASSIFICATION TOOLS FOR TRADITIONAL KNOWLEDGE

Document prepared by the Secretariat

1. At its thirty-second session, held in February 2003, the IPC Committee of Experts considered a report of the Task Force on Classification of Traditional Knowledge which had been established at the thirtieth session of the Committee. The Committee instructed the Task Force to continue its work (see document IPC/CE/32/12, paragraphs 83 to 91).
2. The Annex to this document contains a report of the Task Force on Classification of Traditional Knowledge on the work carried out in the year 2003.
3. *The Committee of Experts is invited to take note of the report submitted by the Task Force.*

[Annex follows]

ANNEX

WIPO TASK FORCE ON CLASSIFICATION OF TRADITIONAL KNOWLEDGE

Report prepared by the International Bureau

INTRODUCTION

1. At its thirty-second session, held in February 2003, the Committee of Experts of the IPC Union considered the report of the Task Force on Classification of Traditional Knowledge, which described the work carried out by the Task Force in the year 2002. The Committee noted that the Task Force, as instructed by the Committee, had prepared a revision request with a revision proposal relating to the creation of the new main group A61K 36/00 for medicinal preparations containing plants and had submitted it to the IPC Revision Working Group for consideration. The Working Group, at its eighth session, agreed to include the proposal in the IPC revision program as a new revision project C 425 (see document IPC/WG/8/8, paragraphs 8 to 11).
2. The Committee also confirmed its instruction to the IPC Revision Working Group to complete the revision project relating to traditional medicine classification on time and make the results available in the next edition of the IPC. The Committee agreed with the suggestion of the Task Force that a more detailed revision could be carried out at a later stage, in the course of the next IPC revision period.
3. The Committee finally instructed the Task Force to continue its work on further development of classification tools for traditional knowledge and to investigate possible patent classification aspects relating to components of biodiversity and folklore and requested the Task Force to consider how the future revised IPC could be linked to traditional knowledge resources classifications which may be developed in various countries, and how to best organize access to traditional knowledge documentation which was in public domain, including hyperlinking the IPC to traditional knowledge databases.

WORK CARRIED OUT BY THE TASK FORCE

4. According to the instruction of the Committee of Experts, the established work program of the Task Force included the following actions:
 - survey of patent classification aspects relating to components of biodiversity and folklore;
 - consideration of how the future revised IPC could be linked to the traditional knowledge resources classification (TKRC) developed in India and elaboration of proposals on hyperlinking of the IPC to TKRC and on the IPC-TKRC concordance;

- consideration of how to best organize access to traditional knowledge documentation in public domain, including hyperlinking the IPC to traditional knowledge databases and elaboration of an initial proposal;
- preparation of the Task Force report to the Committee of Experts.

5. In submitting their proposals and comments, the Task Force members were directed by the list of actions with respective deadlines, which were indicated in the work program. The present report summarizes the work carried out by the Task Force so far.

6. All Task Force members took active part in the discussion of the proposed classification scheme for traditional medicine, which was included into the IPC revision program as a new revision project C 425 and submitted their comments with regard to the list of questions compiled by the IPC Revision Working Group at its eighth session. The United States of America prepared a rapporteur report based on the comments submitted for the discussion during the ninth session of the Working Group.

7. The Working Group, at its ninth session, approved the new main group A61K 36/00 and its subgroups based on the initial proposal, subject to some minor questions, on which the Task Force members and other offices were invited to comment, in order to provide for the completion of the project until the publication of the next edition of the IPC.

8. At its tenth session, held from November 24 to December 5, 2003, the Working Group approved the revision proposal, with some amendments, taking into account all the comments submitted by the Task Force members and other offices, and questions raised by the Working Group at its previous session. It should be noted that the English and French version of this revision would be ready to submit to the Committee of Experts for final adoption at its thirty-fourth session.

9. As has been instructed by the Committee of Experts and has been indicated in the work program, the International Bureau carried out a survey of patent classification aspects relating to components of biodiversity and folklore, which provides a general overview of how the current IPC relates to, and covers, the components of biodiversity and traditional cultural expressions (see Appendix I to this Annex). It was indicated in the survey that the Task Force could use this survey as a basis when considering its work on further development of classification tools for traditional knowledge and other relevant areas.

10. Furthermore, the International Bureau, in accordance with the instruction given by the Committee of Experts, as well as the task indicated in the work program, also carried out another survey on considerations of how to best organize access to traditional knowledge documentation which was in the public domain, and on the ongoing activities in WIPO relating to traditional knowledge databases (see Appendix II to this Annex). It should be noted that this survey could be used as a background document for the Task Force future discussion of the subject, taking into account conclusions to be made by the Meeting of International Authorities under the PCT (PCT/MIA) and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) on this matter in their future work.

11. As has been agreed by the Committee of Experts and indicated in the Task Force work program, further work of the Task Force could be directed to the consideration of how the future revised IPC could be linked to traditional knowledge resources, and how to best organize access to traditional knowledge documentation which is in public domain.

[Appendices follow]

APPENDIX I

SURVEY OF POSSIBLE PATENT CLASSIFICATION ASPECTS RELATING TO COMPONENTS OF BIODIVERSITY AND TRADITIONAL CULTURAL EXPRESSIONS (EXPRESSIONS OF FOLKLORE)

prepared by the International Bureau

Introduction

At its thirty-second session, the Committee of Experts noted, with appreciation, the work that had been done by the Task Force on Classification of Traditional Knowledge and instructed the Task Force to continue its work on further development of classification tools for traditional knowledge and to investigate possible patent classification aspects relating to components of biodiversity and folklore¹ (see document IPC/CE/32/12, paragraph 91).

The Task Force established its work program for 2003 and requested the International Bureau to carry out a survey on possible patent classification aspects relating to components of biodiversity and traditional cultural expressions (TCEs).

Relevant Definitions

It should be noted that one of the first steps towards the final target is to find out the content or substance of the relevant terms, i.e., the worldwide used official definitions for these terms, which could be considered as a basis of the survey.

1. Biodiversity

Biological diversity - or biodiversity - is the term given to the variety of life on Earth and the natural patterns it forms. The biodiversity we see today is the fruit of billions of years of evolution, shaped by natural processes and, increasingly, by the influence of humans. This diversity is often understood in terms of the wide variety of plants, animals and microorganisms.

Biodiversity also includes genetic differences within each species, for example, between varieties of crops and breeds of livestock. Chromosomes, genes, and DNA-the building blocks of life-determine the uniqueness of each individual and each species. Yet another aspect of biodiversity is the variety of ecosystems such as those that occur in deserts, forests, wetlands, mountains, lakes, rivers and agricultural landscapes. In each ecosystem, living creatures, including humans, form a community, interacting with one another and with the air, water and soil around them.

¹ The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has recently used the term “traditional cultural expressions” as a synonym of “expressions of folklore.”

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According to Article 2 of CBD (Convention of Biological Diversity), upon which most of national laws are based: “Biological diversity” means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems (with exclusion of human diversities).

It is also indicated in the same Article that “Biotechnology” means any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use.

2. Traditional cultural expressions (TCEs) (synonymous with “expressions of folklore”)

UNESCO defines TCEs as follows (see document WIPO/GRTKF/IC/3/10):

- Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by the other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts.

In the working document WIPO/GRTKF/IC/5/3 for the discussion at the fifth session of the IGC, it was indicated that: “traditional cultural expressions (TCEs) could be used synonymously with expressions of folklore and generally in line with existing national *sui generis* laws on folklore and the UNESCO-WIPO model provisions, to mean tangible or intangible works or productions, and forms or expressions of traditional knowledge and traditional cultural heritage, which have the characteristics of a traditional heritage associated with a community. This reflects the way in which protection may be given to an expression as such, and not only to the content.” While not constituting a definition as such, a working description of traditional cultural expressions may be defined as:

productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community of [name of country] or by individuals reflecting the traditional artistic expectations of such a community, in particular:

- (a) verbal expressions, such as folk tales, folk poetry and riddles, signs, symbols and indications;
- (b) musical expressions, such as folk songs and instrumental music;
- (c) expressions by actions, such as folk dances, plays and artistic forms or rituals; whether or not reduced to a material form; and
- (d) tangible expressions, such as:

- (i) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, basket weaving, needlework, textiles, carpets, costumes;
- (ii) crafts;
- (iii) musical instruments;
- (iv) architectural forms.”

Classes and Subclasses in the Current IPC Which Cover the Relevant Subject Matter Relating to Biodiversity and TCEs

1. Biodiversity

Based on the definition above regarding biodiversity, it is obvious that the current IPC covers a considerable part of subject matter not only in the field of biodiversity itself, but also in the field of biodiversity-related biotechnology. The most biodiversity-related and biotechnology-related sections and subclasses in the IPC are listed below as examples, taking account of recent IPC revisions in the relevant fields:

SECTION A — HUMAN NECESSITIES

- A01 AGRICULTURE; FORESTRY; ANIMAL HUSBANDRY; HUNTING TRAPPING; FISHING
- A01C PLANTING; SOWING; FERTILISING
- A01G HORTICULTURE; CULTIVATION OF VEGETABLES, FLOWERS, RICE, FRUIT, VINES, HOPS, OR SEAWEED; FORESTRY; WATERING
- A01H NEW PLANTS OR PROCESSES FOR OBTAINING THEM; PLANT REPRODUCTION BY TISSUE CULTURE TECHNIQUES
- A01K ANIMAL HUSBANDRY; CARE OF BIRDS, FISHES, INSECTS; FISHING; REARING OR BREEDING ANIMALS, NOT OTHERWISE PROVIDED FOR; NEW BREEDS OF ANIMALS
- A01N PRESERVATION OF BODIES OF HUMANS OR ANIMALS OR PLANTS OR PARTS THEREOF; BIOCIDES, e.g. AS DISINFECTANTS, AS PESTICIDES, AS HERBICIDES; PEST REPELLANTS OR ATTRACTANTS; PLANT GROWTH REGULATORS
- A61 MEDICAL OR VETERINARY SCIENCE; HYGIENE

A61K PREPARATIONS FOR MEDICAL, DENTAL, OR TOILET PURPOSES

In addition to the existing groups in this subclass, the newly created main group under A61K in the field of traditional medicine, approved by the IPC Revision Working Group at its ninth session, covers a considerable variety of materials from algae, lichens, fungi, or plants, or derivatives thereof, namely:

A61K 36/00 Medicinal preparations of undetermined constitution containing material from algae, lichens, fungi or plants, or derivatives thereof, e.g. traditional herbal medicines

SECTION B — PERFORMING OPERATIONS; TRANSPORTING

B09 DISPOSAL OF SOLID WASTE; RECLAMATION OF CONTAMINATED SOIL

SECTION C — CHEMISTRY; METALLURGY

C05 FERTILISERS; MANUFACTURE THEREOF

C07 ORGANIC CHEMISTRY

C12 BIOCHEMISTRY; BEER; SPIRITS; WINE; VINEGAR; MICROBIOLOGY;
ENZYMولوجY; MUTATION OR GENETIC ENGINEERING

C12N MICRO-ORGANISMS OR ENZYMES; COMPOSITIONS THEREOF;
PROPAGATING, PRESERVING, OR MAINTAINING MICRO-ORGANISMS;
MUTATION OR GENETIC ENGINEERING; CULTURE MEDIA

2. TCEs

Since the IPC was intended to be used as a tool for classifying and searching patent documents, which contain technology-oriented subject matter, it should be considered less linked to the concept of TCEs than the copyright and trademark areas, which are more culture-oriented areas. However, it has been noted that the current IPC does cover some aspects relating to TCEs found in the list of examples under the category of tangible expressions in the IGC definition above. The following list is an example of TCEs-related IPC subclasses when the subject matter concerned is treated from the technical point of view.

SECTION A — HUMAN NECESSITIES

- A41 WEARING APPAREL
- A42 HEADWEAR
- A43 FOOTWEAR
- A44 HABERDASHERY; JEWELLERY
- A47 FURNITURE; DOMESTIC ARTICLES OR APPLIANCES; COFFEE MILLS;
SPICE MILLS; SUCTION CLEANERS IN GENERAL

SECTION B — PERFORMING OPERATIONS; TRANSPORTING

- B44 DECORATIVE ARTS

SECTION D — TEXTILES; PAPER

- D03 WEAVING
- D04 BRAIDING; LACE-MAKING; KNITTING; TRIMMINGS;
NON-WOVEN FABRICS
- D05 SEWING; EMBROIDERING; TUFTING
- D06 TREATMENT OF TEXTILES OR THE LIKE; LAUNDERING; FLEXIBLE
MATERIALS NOT OTHERWISE PROVIDED FOR

SECTION E — FIXED CONSTRUCTIONS

- E04 BUILDING
- E06 DOORS, WINDOWS, SHUTTERS, OR ROLLER BLINDS, IN
GENERAL; LADDERS

SECTION G — PHYSICS

- G10 MUSICAL INSTRUMENTS; ACOUSTICS

Conclusions

The main purpose of this survey is to provide a general picture of how the current IPC links to the components of biodiversity and traditional cultural expressions. The Task Force could use this survey as a basis when considering its work on further development of classification tools for traditional knowledge and other relevant areas.

[Appendix II follows]

APPENDIX II

SURVEY ON THE ONGOING ACTIVITIES IN WIPO RELATING TO TRADITIONAL KNOWLEDGE DATABASES AND CONSIDERATIONS OF HOW TO BEST ORGANIZE ACCESS TO TRADITIONAL KNOWLEDGE DOCUMENTATION IN THE PUBLIC DOMAIN

prepared by the International Bureau

Introduction

At its thirty-second session, the Committee of Experts noted, with appreciation, the work that had been done by the Task Force on Classification of Traditional Knowledge and instructed the Task Force to continue its work on further development of classification tools for traditional knowledge and on how to best organize access to traditional knowledge documentation which was in the public domain, including hyperlinking the IPC to traditional knowledge databases (see document IPC/CE/32/12, paragraph 91).

The Task Force established its work program for 2003 and requested the International Bureau to elaborate an initial proposal on how to best organize access to traditional knowledge documentation which was in the public domain, including hyperlinking the IPC to traditional knowledge databases, taking account of the work done by the PCT/MIA (Meeting of International Authorities Under the PCT) and the IGC (Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore).

Review of Ongoing Activities relating to Traditional Knowledge Documentation and Databases at WIPO

In addition to the revision work which is taking place within the framework of the Special Union for the International Patent Classification (IPC Union) regarding development of classification tools for traditional knowledge, several efforts are underway within WIPO to attempt to create a better interface between the patent system and traditional knowledge systems. One such effort is taking place in the work of the IGC, which, during its discussions, has proposed a number of practical measures to facilitate access to traditional knowledge documentation and traditional knowledge databases, namely:

- the preparation of inventories of periodicals containing TK subject matter and of on-line databases containing TK material, i.e., the “Non-Exhaustive Inventory of Traditional Knowledge-Related Periodicals” and the “Non-Exhaustive Inventory of Traditional Knowledge-Related Databases,” as resources for those seeking ways of strengthening patent examination of TK-related subject matter by ensuring that relevant prior art is taken into account;

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- the making of a proposal, to be considered by the International Searching Authorities, that certain of these periodicals be incorporated, as non-patent literature, into the minimum documentation list under the Patent Cooperation Treaty (PCT) thus increasing the degree to which international search and examination of patent applications would take account of TK subject matter;
- the establishment of a portal of on-line databases, featuring both patent and non-patent TK documentation with a view to studying how these tools could be used by examiners when assessing the novelty and inventiveness of patent claims;
- adoption of technical standards for databases and registries of TK and genetic resources, which includes a data specification for such compilations (i.e., an agreed set of minimum data fields). These technical standards are intended to facilitate and standardize the use of databases and registries for both defensive and positive protection purposes;
- development of a “Toolkit for Intellectual Property Management when Documenting TK and Associated Genetic Resources,” which will include a section on the management of IP-aspects of databases consisting of documentation data about disclosed and/or undisclosed TK. The IGC has adopted an outline of the Toolkit and approved an Introductory Chapter of the Toolkit. It is expected that the first complete draft of the Toolkit will be available in early 2004.

A second effort is being carried out in the work of the PCT/MIA, which developed a set of criteria to be used as the basis of selection of the most appropriate periodicals and databases from the “Non-Exhaustive Inventory of Traditional Knowledge-Related Periodicals” and the “Non-Exhaustive Inventory of Traditional Knowledge-Related Databases” produced by the IGC. On the basis of these criteria the PCT/MIA produced ranked lists of the periodicals and databases. The PCT/MIA concluded that the periodicals and databases indicated in the lists should be further studied in the light of their accessibility, facilities for electronic searching, and technical and geographical coverage taking into account the comments and further suggestions made during its ninth session.

The view was expressed by some of the International Authorities, that the provision to examiners of access to databases relating to traditional knowledge, for example, through the framework of an IPDL, would in general yield more satisfactory results than consultation of periodicals, although the mandatory use of such databases in the examination process was not envisaged (see document PCT/MIA/9/6, paragraph 129).

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The PCT/MIA has also requested the International Bureau to undertake not only a study of the composition of the PCT minimum documentation with regard to traditional knowledge but also a broader review with the aim of proposing more efficient ways to access non-patent literature. For more details, see document PCT/MIA/9/6, paragraphs 124 to 131.

Conclusions

Since it has been reiterated by the PCT/MIA and IGC that it would be more efficient to integrate the traditional knowledge-related documentation that was already disclosed and available to the public into searchable prior art, in particular into classified, searchable sources of non-patent literature, and also since the current IPC and recent IPC revisions cover a considerable part of subject matter in traditional knowledge-related areas, as indicated in the survey prepared by the International Bureau (Survey of possible patent classification aspects relating to components of biodiversity and folklore), it is believed that the IPC could become the most efficient classification tool not only for the TK-related patent literature, but also for the non-patent literature. This will, in the future, facilitate accessibility of traditional knowledge documentation and databases.

Regarding the best organization of access to traditional knowledge documentation in the public domain, further discussions are still needed within the framework of the IGC and the PCT/MIA with respect to the following points:

- (i) clarifying the purpose and the implications of documentation of TK and the inclusion of TK into databases, as some of the IGC members expressed concern that when TK is documented and then published, the rights and interests of TK holders may be weakened or prejudiced;
- (ii) how to provide for the use of TK-related databases of a different character, e.g. databases which contained information about IP rights covering/concerning TK subject matter (granted under conventional or *sui generis* IP systems), databases established to preserve TK to be subject to strictly limited access based on customary protocols, databases which may be entitled to distinct *sui generis* protection (either of the database itself or of its individual elements), and databases that facilitate access for patent examiners to TK already in the public domain;
- (iii) terms and modalities, including terms of non-disclosure agreement, for making TK databases available to patent examiners for the purpose of prior art searches (see document PCT/MIA/9/2, part II); and
- (iv) whether it should be made obligatory for patent examiners to use databases relating to traditional knowledge for search in the examination process.

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Further conclusions on the above-mentioned points will be made by PCT/MIA and the IGC in their future work and those conclusions could then be taken into account by the Task Force when considering how to best organize access to traditional knowledge documentation in the public domain, including the hyperlinking of the IPC to traditional knowledge databases.

[End of Annex and of document]