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TRADITIONAL CULTURAL EXPRESSIONS: DEFENSIVE PROTECTION MEASURES
RELATED TO THE INDUSTRIAL PROPERTY CLASSIFICATION TOOLS

Document prepared by the Secretariat

1. The main working document on traditional cultural expressions/expressions of folklore (TCEs) prepared for the sixth session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the Committee) addresses, in an integrated and complementary way, both 'positive' and 'defensive' measures for the protection of TCEs (see document WIPO/GRTKF/IC/6/3).
2. This present document reports briefly on certain developments that took place after the completion of document WIPO/GRTKF/IC/6/3, namely recent discussions concerning the possible use of patent classification tools to facilitate the searching of patent documents covering TCEs that are relevant to claimed inventions. Use of such classification tools could assist in including patent documents relevant to TCEs within searchable 'prior art', thereby reducing the likelihood of patents being granted over or in respect of TCEs that have already been disclosed.
3. More specifically, a Task Force on Classification of Traditional Knowledge, established by a Committee of Experts of the Special Union for the International Patent Classification, has, as requested by the Committee of Experts, prepared a report which contains a survey on 'possible classification aspects relating to . . . traditional cultural expressions'. This report was discussed at a meeting of the Committee of Experts which took place from February 23 27, 2004.¹

¹ See http://www.wipo.int/classifications/en/ipc/ipc_ce/34/index.htm

4. The International Patent Classification (IPC) is based on an international multilateral treaty administered by WIPO. This treaty is called the Strasbourg Agreement Concerning the International Patent Classification, which was concluded in 1971 and entered into force in 1975. On March 1, 2004, 54 States were party to the Strasbourg Agreement. However, the industrial property offices of more than 100 States, four regional offices and the International Bureau of WIPO under the Patent Cooperation Treaty (PCT) actually use the IPC. The classification is indispensable for the retrieval of patent documents in the search for 'prior art', in order to verify the novelty and evaluate the inventive step of patent applications. Such retrieval is needed by patent-issuing authorities, potential inventors, research and development units, and others concerned with the application or development of technology.²

5. The Committee of Experts of the IPC is responsible for the revision of the IPC. A new edition of the IPC is expected to come into force on January 1, 2006 (it was initially expected to come into force a year earlier but for technical reasons the coming into force has been postponed).³ The revised IPC will contain an extended classification scheme for traditional medicinal knowledge, as has been discussed for some time in the Committee of Experts and the Intergovernmental Committee. See further document WIPO/GRTKF/IC/6/8 which reports on the substantial progress made in this respect, as well as on other related and complementary activities aimed at the defensive protection of TK. It is recalled, however, that 'TK' for purposes of the work of the Intergovernmental Committee, the IPC's Committee of Experts and other WIPO bodies refers only to technical and scientific knowledge formations, such as medicinal knowledge, to which the patent system in particular is of direct and most extensive relevance.

6. In so far as TCEs are concerned, the survey, which appears as an appendix to the report of the Task Force,⁴ provides a general overview of how the current IPC relates to and covers components of TCEs. As the report shows, several existing sub-classes of the IPC could cover certain tangible TCEs, such as jewellery, furniture, weaving, decorative arts, lace-making and musical instruments. The Task Force concluded in its report that it could use this overview "as a basis when considering its work on further development of classification tools for traditional knowledge and other relevant areas".

7. At its meeting that took place from February 23 to 27, 2004, the Committee of Experts agreed with these conclusions of the Task Force and instructed it to "continue its work on further development of classification tools for traditional knowledge and other relevant areas ..."⁵, "other relevant areas" being TCEs for example.

8. Earlier documents on TCEs prepared for the Intergovernmental Committee had alluded to these and development of industrial property classification tools as a possible contribution to the defensive protection of TCEs (see for example WIPO/GRTKF/IC/4/3 paras. 164 to 167 and WIPO/GRTKF/IC/5/3, paras. 269 to 272). These passages referred mainly to the possible updating and expansion of the existing international classification system for industrial designs⁶ in view of the particular relevance of industrial design protection for TCEs.

² See generally <http://www.wipo.int/classifications/en/>

³ See draft report of Committee of Experts Meeting IPC/CE/34/10 Prov., paras. 36 to 47.

⁴ Available as WIPO document IPC/CE/34/8.

⁵ Ibid., para. 55.

⁶ The Locarno Agreement Establishing an International Classification for Industrial Designs, 1979.

9. This document reports only briefly on these recent developments. Subject to comments by the Committee, possible use and development of industrial property classification tools for purposes of the defensive protection of TCEs that might be covered by applications for inventions, industrial designs or other forms of industrial property will be integrated into and addressed in future work on TCEs that the Committee may approve on the basis of main working document WIPO/GRTKF/IC/6/3.

10. The Committee is invited take note of and comment on this document.

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