

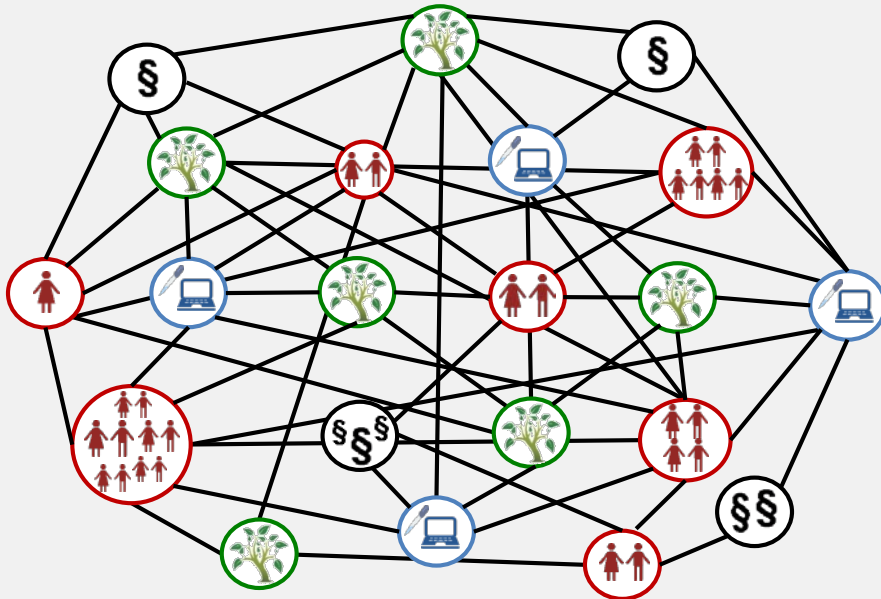
# Reflections on an International Patent Disclosure Requirement (PDR)

[WIPO/GRTKF/IC/41/12](#): An International Disclosure of Source Requirement for Genetic Resources and Associated Traditional Knowledge in Patent Applications – A Contribution to the Evidence-Based Approach

**Marco D'Alessandro**, Swiss Federal Institute of Intellectual Property, Bern

# Part I - Legal, Technological and Patent Landscape

1. The legal landscape related to GRs/ATK has evolved
2. Technologies and practices to use GRs/ATK have evolved
3. Enhanced patenting activity around the globe



## Implications for the IGC

WIPO standard for PDRs still useful, but:

- Focus on IP issues
- Applicable to GRs as defined in the CBD and to ATK
- Evidence-based

## Part II - Key Modalities of an International PDR

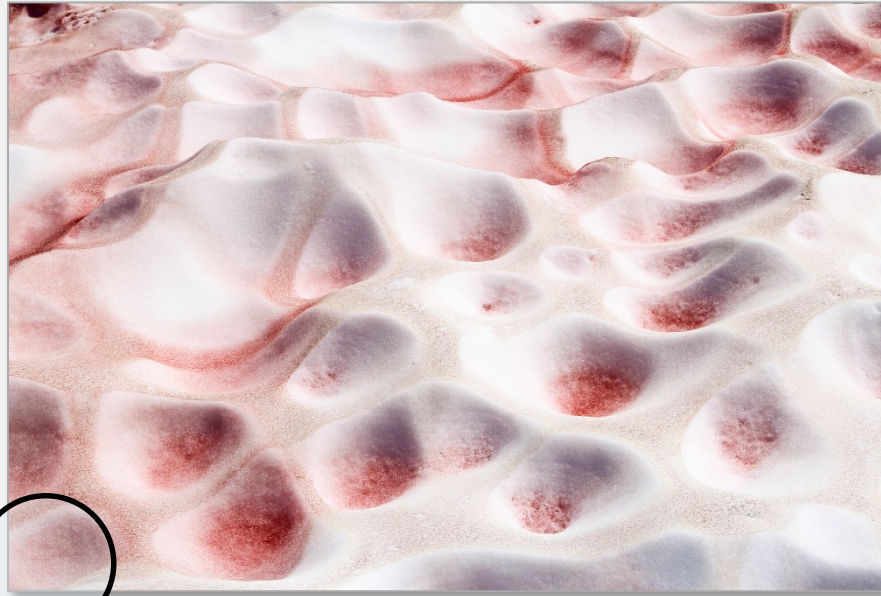


### Transparency measure for GRs/ATK :

- Mandatory
- Support innovations based on GRs/ATK
- Mutually supportive to other international agreements

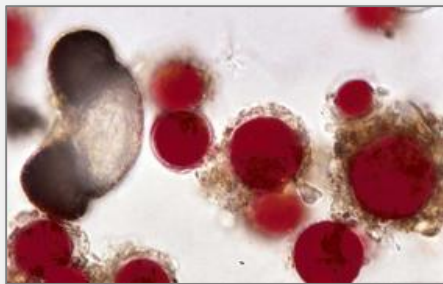
1. Content: Information to be disclosed:
  - Source of GRs/ATK
2. Trigger: Relationship between invention and subject matter:
  - Inventions directly based on GRs/ATK
  - Another trigger ?
3. Sanctions: Appropriate sanctions with a "maximum standard":
  - Neither revocation nor invalidation of established patent rights !

# National PDR Example

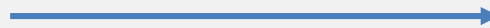


iStock.com/MichalRenee

SLF Davos



snow algae

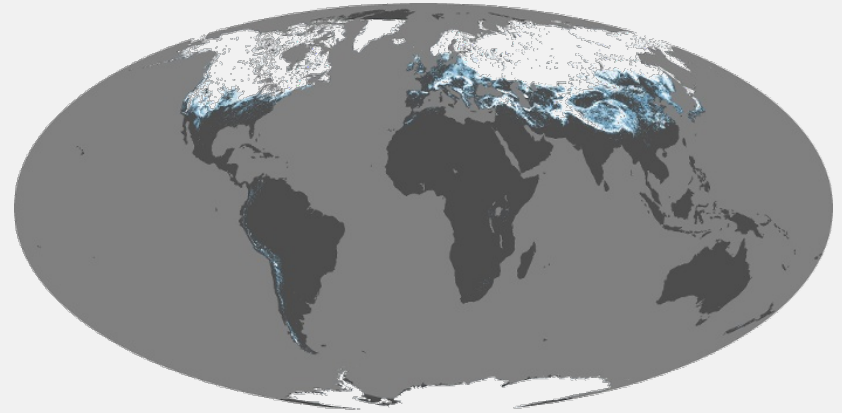


patent application for use  
against skin aging



# Why «Source»?

- Snow algae occur *in-situ* in all polar and alpine areas  
→ many countries of origin !
- Inventor  $\neq$  researcher collecting GR *in-situ*



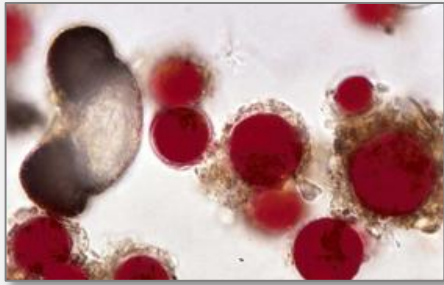
NASA world snow map, February 2019

## Possible approach for the IGC:

- If applicable and known to the patent applicant: Primary source, namely country of origin, where the algae were collected (e.g., Switzerland)
- If not known: Secondary source (e.g., algae culture collection)

# Why Need for Clear Trigger ?

SLF Davos



snow algae



yes

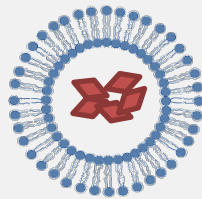
Disclosure



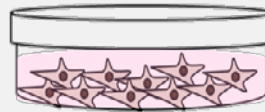
cultivation



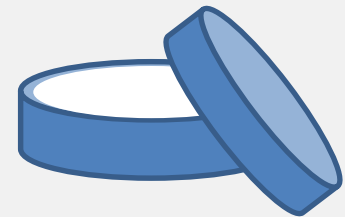
induction



extraction & stabilization



testing on cells, gene-expression, etc.



formulation

many genetic resources and derivatives involved



no



IGE | IPI

# Conclusions and Way Forward

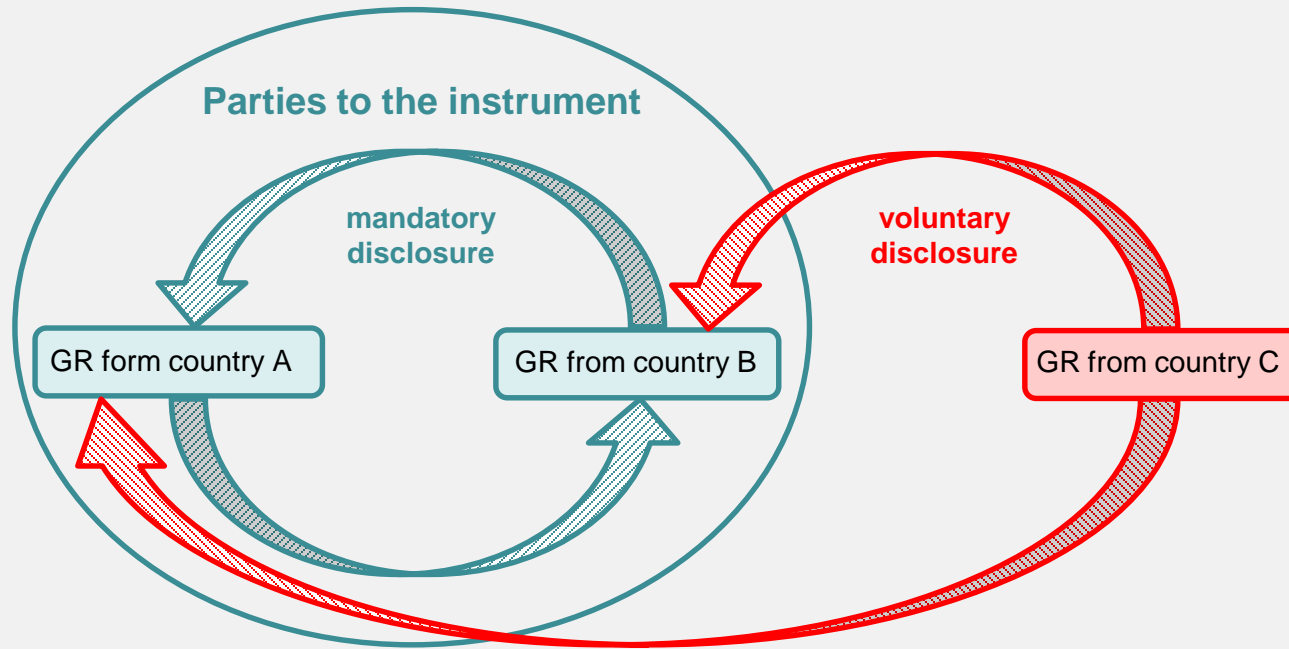
- An international PDR as a transparency measure about the source of GRs/ATK is feasible !
- Chair's Text on GRs and ATK is a good bases for further work:
  - Trigger and content → minor improvements needed !
  - Sanctions → maximum standard needs to be improved !
- Need for new ideas to make an international PDR more attractive to all ?



&



# A Reciprocity Clause ?

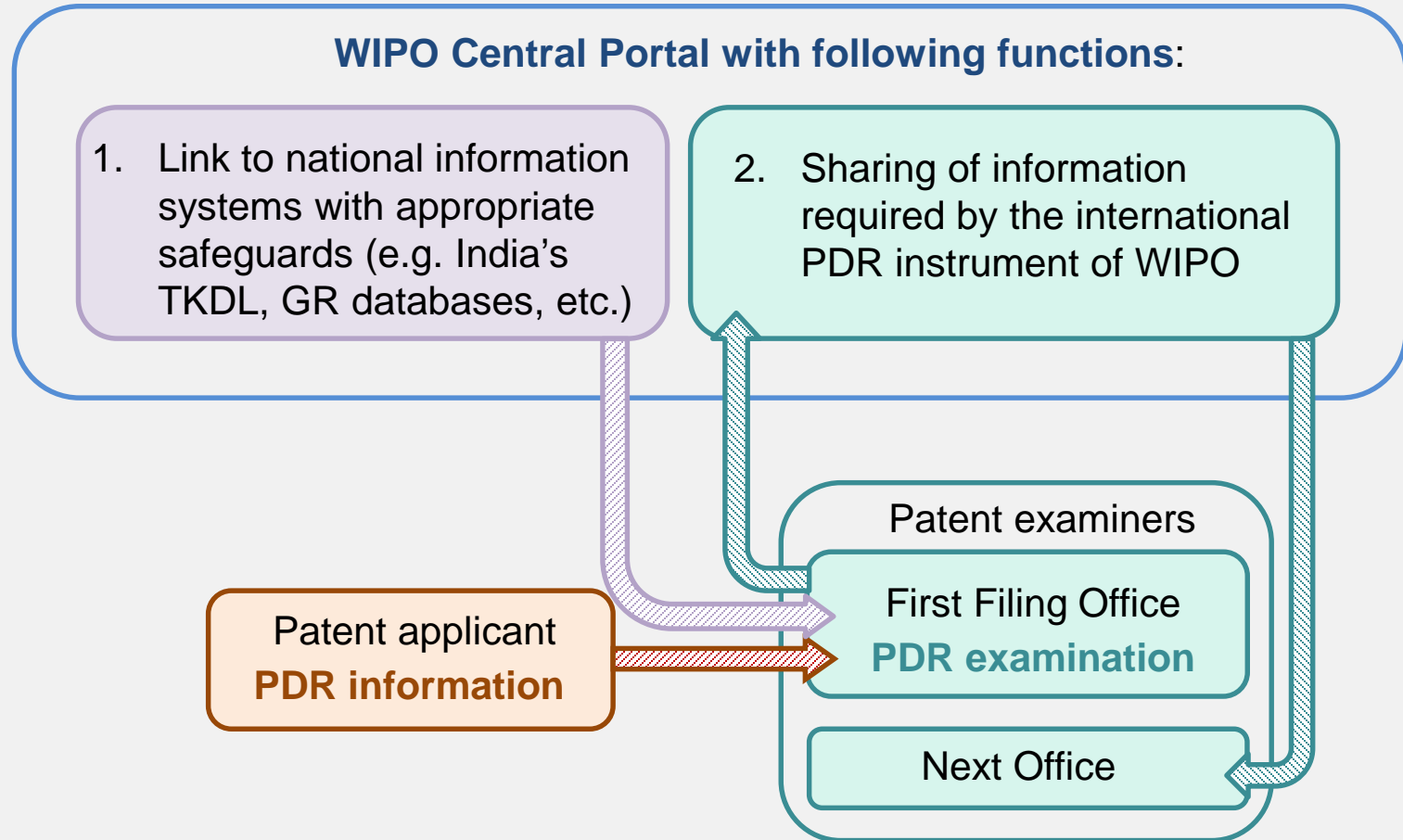


**Advantages**, if the PDR will only be mandatory for GRs/ATK obtained from countries that are Party to the new instrument:

- Incentive to ratify the new instrument
- Avoid so called "free rider" countries



# Link to an International Information System ?



**Advantages** of an international information sharing system:

- Reduced “implementation” burden of PDRs for patent offices and patent applicants

# Thank You for Your Attention

## Further information:

[WIPO/GRTKF/IC/41/12](#): An International Disclosure of Source Requirement for Genetic Resources and Associated Traditional Knowledge in Patent Applications – A Contribution to the Evidence-Based Approach