

WIPO



WIPO/GRTKF/IC/6/11

ORIGINAL: English

DATE: March 5, 2004

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE

Sixth Session
Geneva, March 15 to 19, 2004

**CERTAIN DECISIONS OF THE SEVENTH MEETING OF THE CONFERENCE OF THE
PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY CONCERNING
ACCESS TO GENETIC RESOURCES AND BENEFIT-SHARING**

Memorandum of the Director General

I. SUMMARY

1. The seventh meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) took place in Kuala Lumpur, Malaysia, from February 9 to 20, 2004. The COP adopted 33 decisions, several of which touch upon intellectual property-aspects related to biological diversity. Several decisions invite WIPO to cooperate with the CBD and the Executive Secretary of the CBD on certain intellectual property-related issues pertaining to the implementation of the Convention. All the relevant decisions of the seventh meeting of the COP will be transmitted to WIPO by the Secretariat of the CBD in due course. In view of the particular relevance to the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (“the Intergovernmental Committee”) at its sixth session, this document provides an update on an invitation contained in Decision VII/19, which takes note of work previously done by the Intergovernmental Committee and which invites WIPO to undertake further work on disclosure requirements in patent applications for genetic resources and traditional knowledge related to the inventions claimed in those applications.

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II. BACKGROUND REGARDING CBD WORK ON GENETIC RESOURCES AND DISCLOSURE REQUIREMENTS IN PATENT APPLICATIONS

2. The objectives of the CBD are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources. Article 16.5 of the CBD states that “Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to national legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives.” To this effect, the COP, since its second meeting, has addressed certain intellectual property-related issues pertaining to the implementation of the Convention.¹ Since 2002 these are being addressed in cooperation with WIPO in the context of the Memorandum of Understanding between the Secretariat of the CBD and WIPO and ongoing coordination between WIPO and the Secretariat of the CBD.

3. One of the intellectual property-related issues that have been addressed by the subsidiary processes of the CBD and the COP is the disclosure requirements in applications for intellectual property rights relevant to genetic resources and associated traditional knowledge. At its sixth meeting the COP invited WIPO to prepare a technical study on certain aspects related to this issue. The technical study was developed by the Intergovernmental Committee during its fourth, fifth and sixth meetings and was adopted by the WIPO General Assembly in September 2003. Document WIPO/GRTKF/IC/6/9 reports on the transmission of the technical study to the COP as well as subsequent developments which took place prior to the seventh meeting of the COP.

4. The COP, at its seventh meeting, considered the technical study and adopted a decision on access and benefit-sharing, that

*“Noting with appreciation the Technical Study on Disclosure Requirements Concerning Genetic Resources and Traditional Knowledge prepared by World Intellectual Property Organization at the request of the Conference of the Parties in decision VI/24 C and considering the contents of the Technical Study to be helpful in the consideration of intellectual property-related aspects of user measures.”*²

[...]

“7. Requests the Ad hoc Open-ended Working Group on Access and Benefit-Sharing to identify issues related to the disclosure of origin of genetic resources and associated traditional knowledge in applications for intellectual property rights, including those raised by a proposed international certificate of origin/source/legal provenance, and transmit the results of this examination to the World Intellectual Property Organization and other relevant forums.

¹ See, for instance, Decisions II/12, III/15, IV/8, IV/9, IV/15, V/16, V/26, VI/10, VI/24 and VI/28.

² See Decision VII/19, preambular paragraph 10.

“8. *Invites* the World Intellectual Property Organization to examine, and where appropriate address, taking into account the need to ensure that this work is supportive of and does not run counter to the objectives of the Convention on Biological Diversity, issues regarding the interrelation of access to genetic resources and disclosure requirements in intellectual property rights applications, including, *inter alia*:

- (a) Options for model provisions on proposed disclosure requirements;
- (b) Practical options for intellectual property rights application procedures with regard to the triggers of disclosure requirements;
- (c) Options for incentive measures for applicants;
- (d) Identification of the implications for the functioning of disclosure requirements in various World Intellectual Property Organization-administered treaties;
- (e) Intellectual property-related issues raised by proposed international certificate of origin/source/legal provenance;

and regularly provide reports to the Convention on Biological Diversity on its work, in particular on actions or steps proposed to address the above issues, in order for the Convention on Biological Diversity to provide additional information to the World Intellectual Property Organization for its consideration in the spirit of mutual supportiveness;

“9. *Invites* the United Nations Conference on Trade and Development and other relevant international organisations to examine the issues in, and related to, the matters specified in paragraphs 7 and 8 in a manner supportive of the objectives of the Convention on Biological Diversity and prepare a report for submission to the on-going process of the work of the Convention on Biological Diversity on access and benefit sharing.”³

5. Besides Decision VII/19 there are several other decisions of the COP which address intellectual property-related issues that arise in the implementation of the Convention and that refer to WIPO and its activities. The CBD Secretariat will transmit all decisions related to WIPO once they are published. It is expected that the full range of relevant decisions of the COP will be transmitted by the CBD Secretariat to the Intergovernmental Committee prior to the sixth session and that the CBD Secretariat will brief the Committee on relevant outcomes of the seventh meeting of the COP.

6. *The Intergovernmental Committee is invited to note the invitation addressed to WIPO by the COP, and to take account of that invitation in the context of item 7 of the draft agenda.*

[End of document]

³ See Decision VII/19, paragraphs 7 to 9.