

**WIPO Regional Seminar on Intellectual Property (IP) and Traditional Knowledge (TK),  
Genetic Resources (GRs) and Traditional Cultural Expressions (TCEs)  
Bangkok, Thailand -December 16 and 17, 2009**

***The WIPO Intergovernmental Committee (IGC):  
Latest Developments  
&  
Perspectives on Future Work and Way Forward***

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# *Inter Governmental Committee*

- Established in Oct 2000
- Mandate renewed in Sept 2009
- Text based negotiation with an objective of reaching agreement on a text of an International Legal Instrument(s) to ensure effective protection of GRs , TK & TCE
- Use WIPO's working documents including WIPO/GRTKF/IC/9/4, WIPO/GRTKF/IC/9/5 and WIPO/GRTKF/IC/11/8A
- Definitive work Programme

# *IGC's Concrete Outcomes*

- Legal & Policy Analysis including the Gap Analysis
- Draft text for negotiations
  - WIPO/GRTKF/IC/9/4,
  - WIPO/GRTKF/IC/9/5
  - WIPO/GRTKF/IC/11/8A
- Tool kit on documentation update is due
- Technical standards on setting up of TK Databases and Registries
- Examination guidelines for TK based patent applications
- Enhancement of IPC (200 subgroups) on medicinal plants.
- Enhancing PCT minimum list for TK based Scientific / Technical journals

# *IGC & India*

- ▶ Enhancement in IPC subgroups on medicinal plant from 1 to 200 & linking TKRC (25000 subgroups) to IPC, Recognition of TK by IPC & contribution to Quality Patent Search.
- ▶ Inclusion of 2 of CSIR Scientific Journals i.e. Indian Journal of Traditional Knowledge & Medicinal and Aromatic plants Abstracts
- Contribution in establishing standard WIPO/GRTKF/IC/4/14 on setting up of databases & registries on Traditional Knowledge & Biological Genetic Resources
- Awareness Building on TKDL
  - Presentation in plenary of IGC-2002 & 2004
  - Presentation in committee of Experts IPC-2001,2003



# *Elements of TK Protection*

- Protection against misappropriation
  - Positive protection for Wealth Creation
  - Eligibility and Beneficiaries of Protection
  - Fair and Equitable Benefit Sharing
  - Prior Informed Consent
  - Duration of Protection
  - Administration & Enforcement
  - International and Regional Protection
- ▶ Key Concepts & Issues

## *Methodology Adopted by CBD on Consensus Building*

- ABS Business & Science Dialogue organized at Jakarta 2-3, Dec,2009
- Opportunity for Industry & Scientific Community to present and exchange their needs for IR
- Create interaction among negotiators (In personal Capacity) and Industry & Science Community

# *Developments at CBD*

- International Regime on ABS
  - General Agreement on the need of IR
  - IP Issues are not targeted
  - Several issues in text to be resolved
- Key objectives of ABS
  - Access
  - Sharing of Benefits
  - Misappropriation
  - Compliance
- Facilitate/ Regulate/Transparent / Appropriate Access
- Biological/Genetic
- Derivatives/Products
- Misappropriation/Misuse



# *International Regime on Access and Benefit Sharing and outstanding issues for Consensus Building*

- Mutually Agreed terms
- ABS Compliance including tackling Misappropriation
- Implications of definition of terms and scope under consideration of IR
- Accounting for the need of non-commercial research in the IR
- Accounting for the need of different business and research sectors involved in the commercial utilization of GRs in IR

# *Shared Objectives among Developed & Developing Countries*

- Equitable Benefit Sharing for use of TK and/or GR
- Eliminate misappropriation of TK/GR
- Eliminate issuance of wrong patents
- Facilitate Access



# *Area which need Consensus Building*

- International Instruments on protection are not dependent on definitions
- Definitions are necessary on TK, TCE, GR & Misappropriation

## **Authorised Access**

- Integral to Patent System (PIC, indication of source of origin, evidence of benefit sharing)
- National Systems outside the Patent System
  - National Laws
    - Permits/Visas for collection
    - Contracts
    - IP Laws (Trade Secret, Trade Mark)
    - Unfair Competition Law
    - Mutually Agreed Terms

**Cont...**



# *Area which need Consensus Building*

- Commercial/Non Commercial Research
  - No separate Treatment
  - Differentiate
- Equitable Benefit Sharing
  - Indication of origin PIC & Evidence to be part of disclosure requirement of TK/GR based patent applications
  - Through Contracts between User(s) & Provider(s)
  - Invalidate patents for wrong inadequate disclosure
  - Deal it outside the patent system

Cont...

# *Area which need Consensus Building*

- Mechanism to eliminate misappropriation
  - International Instrument
  - National Laws
  - Eliminate Past, Present & Future misappropriation
  - Can not deal with past misappropriation
  - TKDL and International Instrument
  - TKDL acceptable
  - Solution within the patent system
  - Solution outside the patent system.

Cont...



# *Area which need Consensus Building*

## *Role of IGC- Developing & Developed*

- Negotiate text and establish international instrument(s) to ensure the effective protection of TK, TCE & GR
- Share Best Practices, Draft Model Laws, Support other Capacity Building Measures





**THANK YOU**



## *TK Protection*

### ■ **Defensive**

- Prevent Misappropriation, unauthorized use, derogatory / offensive use failure to acknowledge source

### ■ **Positive**

- Wealth creation, Economic Development unwanted use by others

# **Issues needing fundamental corrections**

- **Lack of identification of owner(s)/ Custodian(s)**
- **Lack of workable mechanism on the inter community/ region ownership**
- **Time period for protection**
- **Unstructured nature of TCE/TK**
- **Originality & Fixation**



# Traditional Vs Contemporary

- **Traditional:** relates to pre-existing underlying cultural heritage & traditional knowledge & culture available in public domain therefore in eligible for protection.







## Traditional Vs Contemporary

- **Contemporary:** relates to contemporary knowledge, literature & artistic productions created by current Generation of Society based upon or derived from pre-existing cultural heritage & traditional knowledge & culture



# Public Domain Vs Publicly Available



**Public domain** refers to the element of IP that are ineligible for private ownership and the contents of which are available for use by any member of public. Public domain in IP also does not recognise the private domain established by customary and indigenous laws.

**Publicly available information on internet or elsewhere does not have similar restriction.**





# Stages of Formal Acceptance of Traditional Knowledge Classifications

**Feb 2001**

India drives agenda on inclusion of traditional knowledge at International Patent Classification Union

Medical or Veterinary Science; Hygiene

**Task force of five nations constituted by WIPO**

Preparation of International, Dental or Toilet Purposes

**Feb 2002**

Task force recommends creation of subclass in A61 linking Traditional Knowledge Resource Classification developed by India with International Patent Classification

Extracts of Animal, Plant or Micro-Organism

Materials from Plants

# Stages of Formal Acceptance of Traditional Knowledge Classifications



**Feb 2003**

**International Patent Classification Union adopted 200 subgroups for publication by July, 2005**

Sub  
Groups

**Accords formal recognition and acceptance of Traditional Knowledge as a distinct discipline at international level**

**Oct 2004**

**Deliberations on IPC-TKRC Concordance list of the new main group A61K 36/00**



# Country-wise Periodicals included in PCT Minimum



S. No.	Country	No. of NPL	S. No.	Country	No. of NPL
1.	USA	85	7.	India	2
2.	UK	20	8.	France	2
3.	Germany	15	9.	Switzerland	2
4.	Russia	6	10	Denmark	1
5.	Japan	5	11	Czech	1
6.	Netherlands	3	12	Italy	1
			13	Croatia	1
<b>TOTAL</b>					<b>144</b>