



**El futuro
es de todos**

**Gobierno
de Colombia**



Industria y Comercio
SUPERINTENDENCIA

SEMINAR ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES

Disclosure Requirements relating to Genetic
Resources and Associated Traditional Knowledge

Colombian Experience

María José Lamus
Superintendent Delegate for Industrial Property

Law 165/1994 Adoption of the Convention on Biological Diversity

Decision 391/1996 Andean Community Common Regime on Access to Genetic Resources

Decision 486/2000 Andean Community Common Provisions on Industrial Property

Resolution 1348/2014 Ministry of Environment and Sustainable Development Activities that configure access to genetic resources and derived products (Modif. By Resolution 1352/2017)

Decision 391



Some definitions provided by Decision 391:

Genetic Resources: all biological material that contains genetic information of value or of real or potential use

Derived product: a molecule, a combination or mixture of natural molecules, including crude extracts of live or dead organisms of biological origin that come from the metabolism of living beings

Country of Origin of the Genetic Resource: country that possesses genetic resources in *in situ* conditions including those which, having been in *in situ* conditions, are now in *ex situ* conditions

Decision 391

2° Complementary Provision. The Member Countries shall **not acknowledge rights, including intellectual property rights**, over genetic resources, derived products or synthesized products and associated intangible components, that were obtained or developed **through an access activity that does not comply with the provisions of this Decision.**

Art. 50, 3° Complementary Provision. Competent National Authority and IP National Offices shall set up **systems for exchanging information** about the authorized access contracts and intellectual property rights granted

Art 7. The Member Countries, in keeping with this Decision and their complementary national legislation, recognize and value the rights and the authority of the native, Afro-American and local communities to decide about their Know-How, innovations and traditional practices associated with genetic resources and their derived products

3° Complementary Provision. IP Offices shall require the applicant to give the registration number of the access contract and supply a copy of it as a **prerequisite for granting the respective right**



Decision 486

Art 3. Member countries shall ensure that the protection conferred on the various forms of industrial property shall be granted in such a way as to safeguard and **respect their biological and genetic heritage and also the traditional knowledge of their indigenous Afro-American or local communities**. By virtue of the foregoing, the grant of patents relating to inventions developed on the basis of material derived from that heritage or knowledge shall be subject to that material having been acquired in accordance with international, community and national legal provisions.

Member countries shall recognize the right and competence of indigenous AfroAmerican or local communities to decide on matters pertaining to their collective knowledge.

The provisions of this Decision shall apply and be interpreted in such a way that they do **not contravene those laid down in Decision 391** in its currently amended form.

2° Complementary Provision- Decision 391

The Member Countries shall not acknowledge rights, including intellectual property rights, over genetic resources, by-products or synthesized products and associated intangible components, that were obtained or developed through an access activity that does not comply with the provisions of this Decision.

Art 15. The following shall **not be considered inventions**:

b. the entirety or part of living beings as encountered in nature, natural biological processes, biological material existing in nature or which may be isolated, including the genome or germ plasm of any natural living being;

Decision 486

3° Complementary Provision- Decision 391. IP Offices shall require the applicant to give the registration **number of the access contract and supply a copy of it.**

Art 26 h). The application for a patent shall contain a copy of the **access contract** when the products or processes have been obtained or developed from genetic resources or derived products from member countries

Art 26 i). The application for a patent shall contain a copy of the **document accrediting the licensing or the authorization of the use of the traditional knowledge** of the indigenous, Afro-American or local communities of member countries when the products or processes have been obtained or developed from such knowledge

Art 39. If the application does not meet the conditions specified in Articles 26 and 27, it shall be considered **abandoned**

Decision 486

Art 75. IP Office shall decree the absolute **nullity** of a patent at any time, either *ex officio* or at the request of any person, when (...)

g) a copy of the access contract has not been filed

or

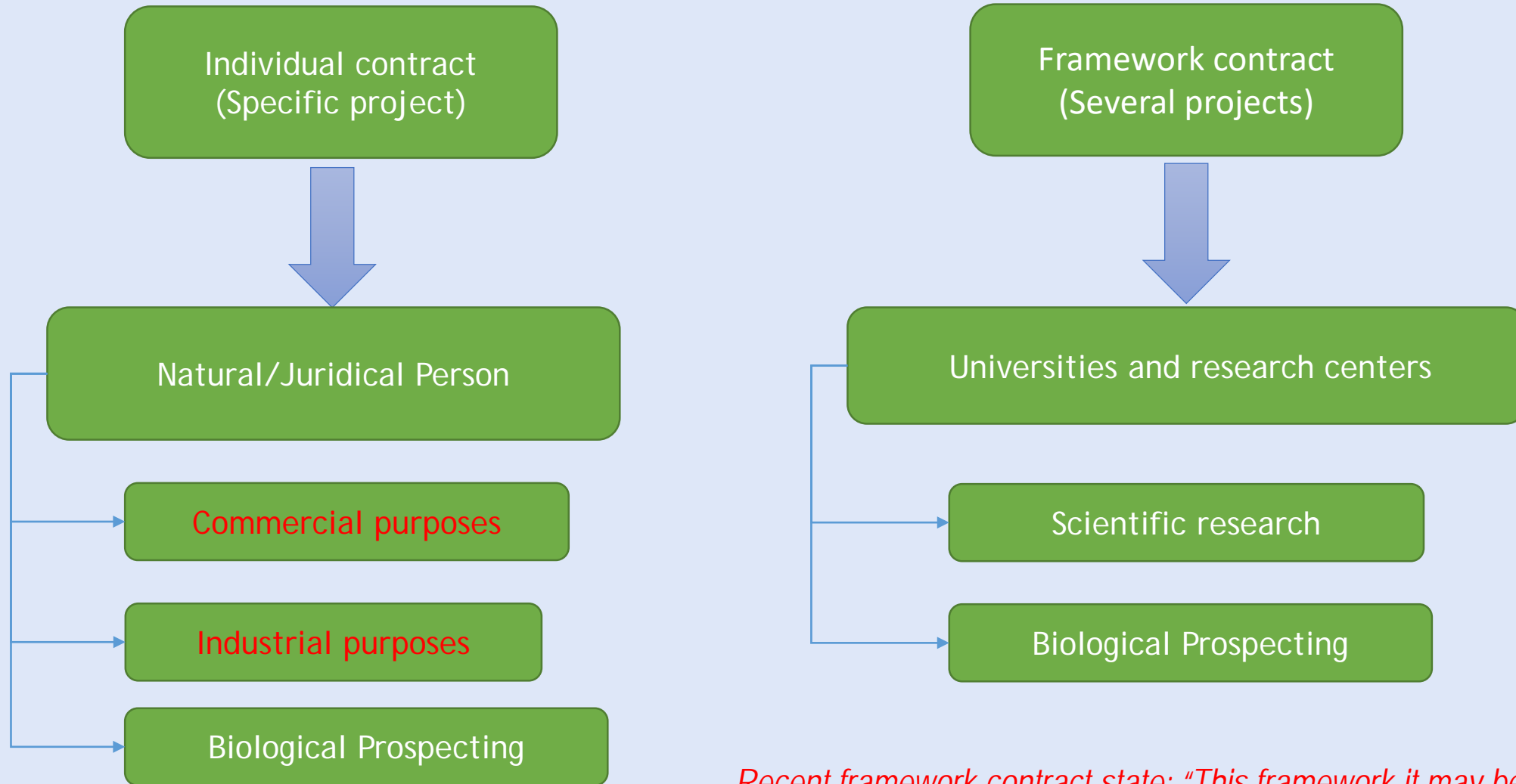
h) a copy of the document evidencing the licensing or authorization of the use of traditional knowledge of the indigenous Afro-American or local communities of the member countries has not been filed

2° Complementary Provision- Decision 391

The Member Countries shall not acknowledge rights, including intellectual property rights, over genetic resources, by-products or synthesized products and associated intangible components, that were obtained or developed through an access activity that does not comply with the provisions of this Decision.

Furthermore, the Member Country affected may request **nullification and bring such actions** as are appropriate in countries that have conferred rights or granted protective title

Types of access contract

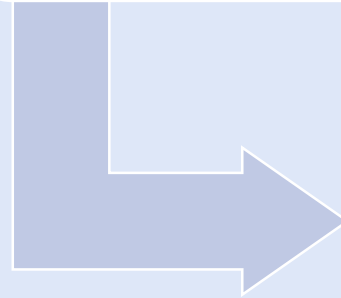


Recent framework contract state: "This framework it may be used to meet the requirement set forth in Decision 486, Article 26 literal h.

Practical issues

Process for obtaining of the access contract in the Ministry of Environment and Sustainable Development between 90 to 120 working days.

Filing application date



Form requeriment

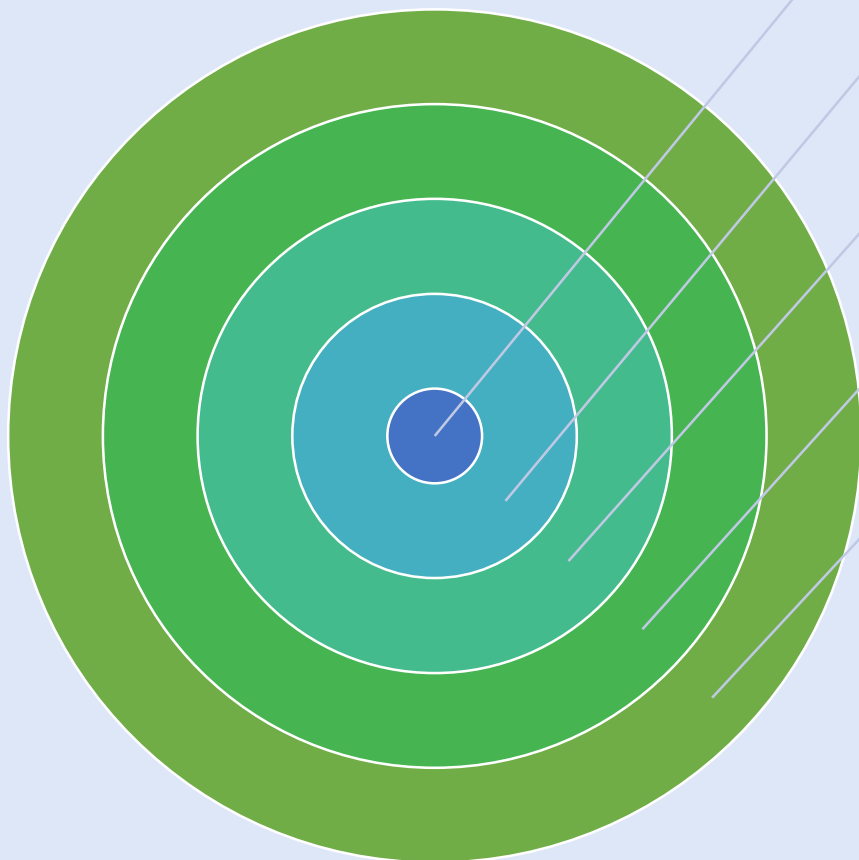
- 30 days counted from filing date

Deadline to file the Access Contract

- 2 months from oficial action.
- Extendible by 2 months.

Maximum 5 months to file the Access contract before IP Office.

Problems with the identification of applications which must file the access contract



Lack of GRs origin disclosure in patent description. It does not constitute a lack of sufficiency.

Incomplete taxonomic identification or use of common names

Lack of lists or official databases relative to GRs from CAN countries

Confusion about activities that constitute access.

Usually, the applicant does not know that the access contract is a mandatory requirement to obtain a patent.

In Colombia, it is not mandatory to disclose the geographical origin

Art 32. Decision 486

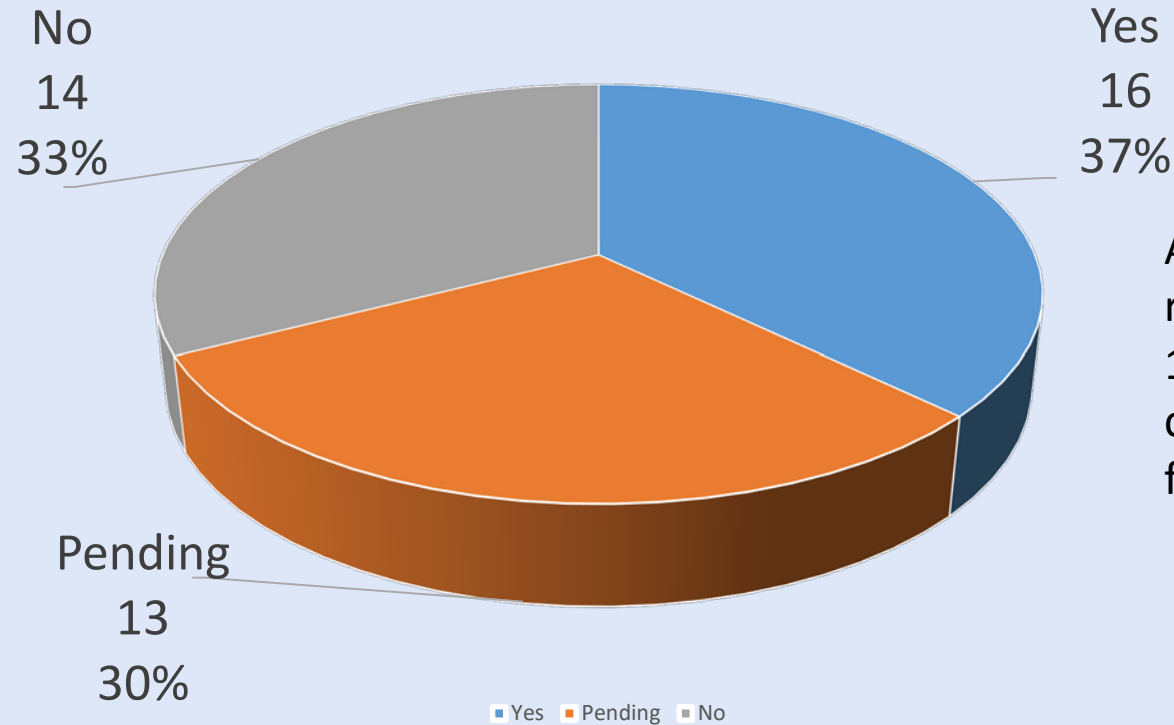
No member country shall impose requirements of form on the patent application that are additional to or different from those provided for in this Decision.

Practical Experiences

Between 2011-2020 there have been made 56 requirements related with GRs and derived products.

43 applications must file the access contract:

Access Contract Compliance



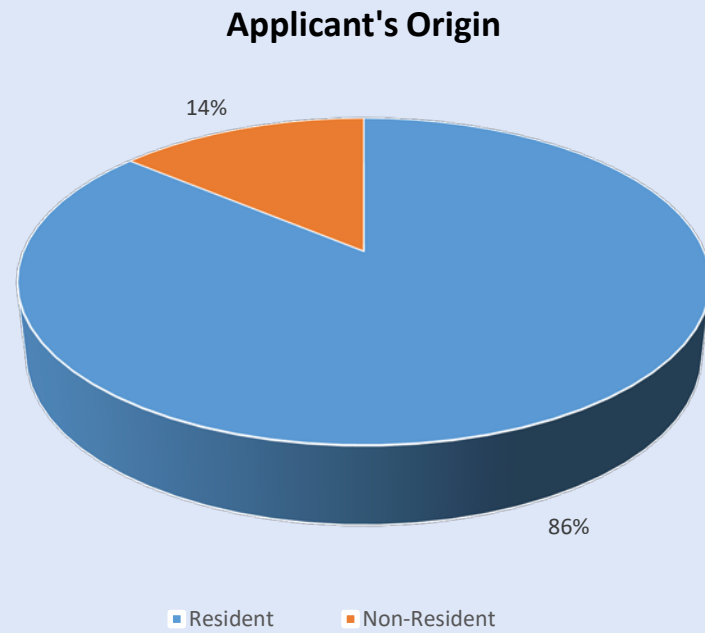
14 applications didn't comply with the requirement and were: abandoned (10)* or denied (4)**

All are universities and research institutes. 13 has been individual contracts and 3 has been frameworks contracts.

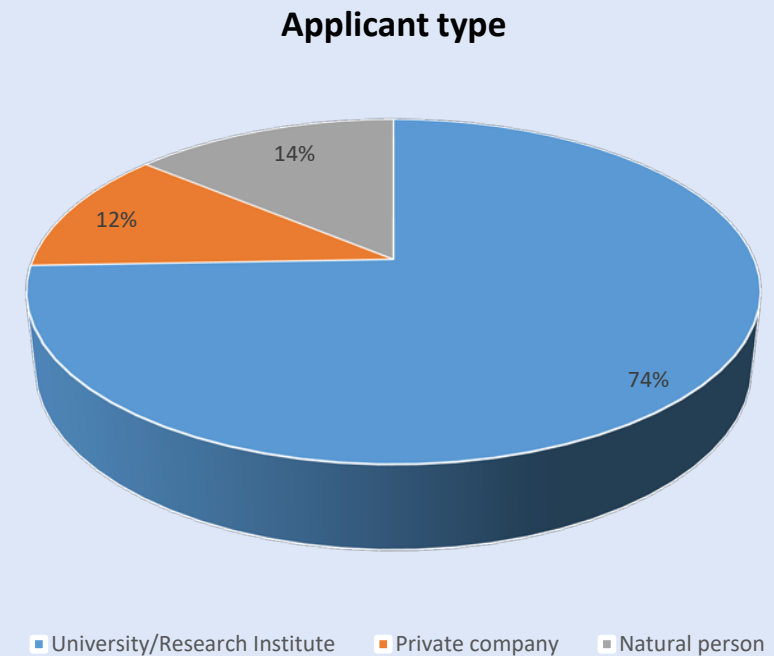
*After formal examination, **After substantive examination

Practical Experiences

Most applications were submitted by residents (86%).



Most inventions belong to the technical field of Chemistry (97%). And the major applicants are Universities or Research Institutes:



Curious data

The most common GRs is *Lippia origanoides* (Common name: OREGANO)

Usually, the inventions refer to extraction processes, antioxidant compositions, feed supplements and fungicide compositions

One request uses Peruvian genetic resources, and another is derived from Ecuadorian resources.

Seven applications were submitted by non-resident applicants



El progreso
es de todos

Mincomercio



Industria y Comercio
SUPERINTENDENCIA