

JAPAN

Response to Question 1 : In order to obtain patent rights under Japanese Patent Law, it is necessary to meet the requirements of patentability such as novelty and inventive step. The invention, which is almost the same as traditional knowledge, might not meet those requirements if the traditional knowledge has already been available to the public. Consequently, no exclusive rights are granted to the invention.

Therefore, traditional knowledge can be protected under the existing IP standards like patent law by preventing any exclusive rights on the traditional knowledge from being obtained by others.

Response to Question 2 : There is no specific (*sui generis*) law providing for IP protection of traditional knowledge in Japan.

Response to Question 26 : No .

Response to Question 27 : As replied in the answer 1, traditional knowledge can be protected under the existing IP standards like patent law by preventing any exclusive rights on the traditional knowledge from being obtained by others.

From the viewpoint that it is adequate for traditional knowledge to be protected in such a way, there seem no serious limitations in the application of patent law as far as the traditional knowledge has already been available to the public.

However, the following limitations can be pointed out if we are in a position that traditional knowledge holders should always be granted proper exclusive rights like patent rights, although we are not actually in that position.

Firstly, it is difficult to identify who holds the right of traditional knowledge. It is necessary to identify the individual inventors/applicants of traditional knowledge in order to grant patent rights while traditional knowledge is generally belonged to the community which is vaguely and broadly spread.

Secondly, traditional knowledge must meet the requirements of patentability like novelty and inventive step. As described in the answer 1, traditional knowledge cannot meet those requirements if the traditional knowledge has already been available to the public.

Nevertheless, the above limitations could be cleared if the traditional knowledge is belonged to apparently identified entities and meets the requirements of patentability.

Therefore, those limitations are not originated from TK itself, but from the existing IP system.