

Belize
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INTRODUCTION

The present communication from Belize contains proposals regarding the options for model provisions on proposed disclosure requirements, practical options for intellectual property rights application procedures with regard to the triggers of disclosure requirements, and options for incentive measures for applicants.

PROPOSALS REGARDING THE OPTIONS FOR MODEL PROVISIONS ON PROPOSED DISCLOSURE REQUIREMENTS

Belize holds the view that there is a need for *sui generis* intellectual property protection at the international and national level for traditional knowledge. Protection of traditional knowledge must not require any formalities or registration. The rights conferred by traditional knowledge must include the right to prevent the unauthorized commercial reproduction, imitation and use of traditional knowledge.

The model *sui generis* provisions must cover the licensing of traditional knowledge. There has been a proliferation of bioprospecting contracts between researchers and communities that own traditional knowledge or genetic resources. Good examples of such bioprospecting contracts can be found in the INBio-Sacro, INBio-CRUSA-Eli Lilly (Bio-Xplore) and INBio-EARTH (Chagas) bioprospecting contracts in Costa Rica. The provisions must provide for the filing of such licences with the Registrar, the recordal of such licences in the Register and the publication of such licences in the Gazette. In the absence of any contrary provision in the licence contract, a licensee may not extend, to another person, the authorization conferred on him or her, nor may the licensee assign or mortgage such licence.

The model provisions must include clauses relating to the fair and equitable sharing of benefits including profit sharing, royalty payments, access to and transfer of technologies, the granting of free licenses to the community, and the development of local human resources. Also, the model provisions must outline enforcement measures that are expeditious and preventive, and constitute a deterrent to further infringements. Such enforcement measures must cover civil judicial procedures, provisional measures, border measures, and criminal procedures. However, such enforcement measures must not create barriers to free trade and must meet the basic principles of due process.

Also, Belize proposes that related provisions must be included in a wide array of intellectual property legislation such as patents and plant variety legislation. Patent applicants must be required to disclose the source and geographical origin of the biological material in their specifications and to demonstrate that they have secured prior informed consent to use the material. The traditional knowledge of indigenous communities should qualify as prior art that is capable of anticipating an invention that is

claimed in a specification. The traditional knowledge holder must also be treated as a person 'skilled in the art' in order to determine the obviousness of an invention.

Such model patent law provisions must also cover the area of opposition and revocation. Belize proposes that an invention should be refused or revoked if the invention is anticipated by traditional knowledge or if the complete specification does not disclose or wrongly mentions the source of the biological material used for the invention.

Similar provisions must be included in the model provisions for plant varieties legislation.

PRACTICAL OPTIONS FOR INTELLECTUAL PROPERTY RIGHTS APPLICATION PROCEDURES WITH REGARD TO THE TRIGGERS OF DISCLOSURE REQUIREMENTS

Belize is of the view that the most effective way of triggering the disclosure requirement will be to require industrial property offices to conduct searches for 'traditional prior art'. However, this requirement will never be effective unless certain practical steps are taken. Firstly, technically uniform digital databases will have to be created of existing traditional knowledge. Secondly, such documentation must be recognized for national and international prior art searches. This entails the incorporation of such data in international classification systems such as the International Patent Classification (IPC), and the recruiting of traditional knowledge experts by International Search Authorities (ISA).

OPTIONS FOR INCENTIVE MEASURES FOR APPLICANTS

Belize proposes that fee reductions should be instituted at national patent offices and under the Patent Cooperation Treaty (PCT) system in order to encourage applicants to disclose the origins of the genetic material that is contained in their complete specifications. Nevertheless, Belize is of the view that the most effective incentive measure for applicants will be the 'negative incentive' invoked by the threat of revocation of a patent that was granted based on the non-disclosure or misleading disclosure of the source of the origins of the genetic material that is contained in the complete specification.