

Ghana
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INTRODUCTION

Most Patent Laws, as they relate to biodiversity, prohibit the granting of patents in respect of plants and animal varieties or essentially biological processes for the production of plants or animals other than microbiological processes and their products. Patents cannot be issued for inventions, the publication or exploitation of which would be contrary to public order or morality. Furthermore, the issue of ownership of plant varieties under the existing plant protection laws do not protect wild varieties, which constitute the primary source of medicinal plants and food crops.

Another pertinent issue is whether the formal system of intellectual property rights, based on modern conceptual and legislative frameworks can create mechanisms that will protect the traditional, collective body of knowledge that has become commercially useful at the global level. This is in view of the fact that there is currently no legal protection for the TK/GR and innovations of local communities and farmers as envisaged by Article 8j of the CBD.

With respect to the Ghana Patent Law, Section 5(5) of the Law provide for the disclosure of origin in a limited manner. Patents, which claim the use of biological source materials, in some cases indicate the country of origin of the plant and its traditional uses in the description of the specification, especially where the information is necessary to carry out the invention. Such disclosures are usually made for the genetic resources that are not common in nature and are exotic. In the case of well-known and widespread genetic resources, the applicants decide whether to disclose the origin of the genetic resources in patent applications

It is within this vein that the following responses are provided;

- i. Options for model provisions on proposed disclosure requirements
There are generally about 3 options available on the proposed disclosure requirements. These are
 - Mandatory requirements for disclosure of origin and legal access (this takes into account prior informed consent and mutually agreed terms)
 - Disclosure requirements without legal consequences in cases of non-compliance
 - Stand alone disclosure requirements linked to public law – Access legislation etc.

Most developing countries prefer the 1st option. What has not been clarified is whether to make the disclosure mandatory as a formality in the patent procedure or as substantive patentability criterion.

- ii. Practical options for intellectual property rights applications procedures with regard to the triggers of disclosure requirements.

The need to establish a trigger for the application of disclosure requirements should be based on the relationship between the invention and the GR/TK. If the invention is essentially derived from the GR/TK, then it should trigger the application of disclosure requirement. This should be made independent of whether the material used is well known (Public domain) or not (undisclosed information).

- iii Options for incentive measures for applicants
 - ✓ Refusal for non-compliance with disclosure requirements should not be applied
 - ✓ Provide additional incentives

- iv Identification of the implications for the functioning of disclosure requirements in various WIPO-Administered Treaties.
 - Paris Convention Art 2 (national treatment)
 - Attribution of ownership
 - Disclosure requirements will need to account for multiplicity of sources
 - Extent of obligation could place undue burden on the applicant to disclose the origin of all genetic resources and TK used in the invention- Reasonable effort may be necessary
 - Establishment of disclosure requirements minimum standards??
 - Enforcement mechanisms required to deal with GR/TK of multicultural nature and those that cut across national boundaries

- v. Intellectual property-related issues raised by a proposed international certification of origin/source/legal provenance.

Elements stated in iv above may be applicable