

Meeting of International Authorities under the Patent Cooperation Treaty (PCT)

**Twenty-Fifth Session
Madrid, February 21 to 23, 2018**

**PCT MINIMUM DOCUMENTATION: INCLUSION OF INDIAN TRADITIONAL
KNOWLEDGE DIGITAL LIBRARY**

Document prepared by the Indian Patent Office

ABOUT THE INDIAN TRADITIONAL KNOWLEDGE DIGITAL LIBRARY (TKDL)

1. The Indian Traditional Knowledge Digital Library (TKDL), a digital documentation, the first of its kind, created by the Government of India, of the Indian traditional knowledge relating to Ayurveda, Unani, Siddha and Yoga, in five international languages (English, German, French, Japanese and Spanish) is currently subscribed for patent search by the major patent offices across the world. The TKDL acts as a bridge between the documented traditional knowledge (prior-art) existing in local languages (Hindi, Sanskrit, Arabic, Persian, Urdu etc.) and the patent examiners. TKDL uses an innovative classification system i.e. Traditional Knowledge Resource Classification (TKRC) which led to addition of a new main group in the International Patent Classification (IPC), i.e. A61K 36/00, with 207 subgroups covering different categories of plants. The TKDL provides information on traditional knowledge existing in India, in languages and format understandable to examiners at international patent offices, so as to prevent the grant of wrong patents.

PROPOSAL BY INDIA FOR INCLUSION OF TKDL IN THE PCT MINIMUM DOCUMENTATION

2. At its twenty-second session, the Meeting of International Authorities (MIA) supported in principle a proposal (document PCT/MIA/22/8) by the Indian Patent Office to add the Indian Traditional Knowledge Digital Library (TKDL) to the PCT minimum documentation. Some Authorities had raised concerns regarding certain clauses of the TKDL Access Agreement (Annex II to PCT/MIA/22/8). The discussions are summarized in paragraphs 66 to 69 of the Summary by the Chair of the session (document PCT/MIA/22/22).

3. During the twenty-third session of MIA held in January 2016, the Government of India indicated that it was willing to revise the Access Agreement to address legitimate concerns in the draft access agreement. The Government of India further proposed (document PCT/MIA/23/10) that the Meeting approve the addition of the Indian TKDL to the PCT minimum documentation, subject to the terms of the Access Agreement being suitably modified after due consultation. The discussions at this session are set out in paragraphs 64 to 85 of the Summary by the Chair (document PCT/MIA/23/14). The Indian Patent Office was invited to present a Revised Access Agreement along with a working document setting out its proposals with regard to the inclusion of the Indian TKDL in the PCT minimum documentation, taking into account the discussions in the MIA, the PCT Minimum Documentation Task Force and the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

REVISED TKDL ACCESS AGREEMENT AND WORKING DOCUMENT

4. India has now revised the TKDL Access Agreement, as set out in Annex I to this document. The major changes in the Access Agreement are as follows:

- assuring uninterrupted access to TKDL except for reasons beyond the control of the Provider (CSIR) like *force majeure* and stipulating the condition for termination as material breach by either party;
- removal of the clause that mandates quarterly reports on usage of TKDL citations by patent offices;
- clarifying further that the relevant contents of TKDL could be communicated to all parties involved in the patent grant procedure; and
- increasing the period of subscription from three to five years with facility for auto-renewal.

5. The Indian Patent Office has also prepared a detailed working document (set out in Annex II to this document) for consideration by the PCT Minimum Documentation Task Force while establishing criteria for inclusion of items in the PCT Minimum Documentation. The Working Document and the Revised Access Agreement address the concerns on certain clauses of the Access Agreement raised by some Authorities during the twenty-second and twenty-third sessions of the MIA. The clauses in the TKDL Access Agreement are similar to the clauses of agreements of publishers of other items of non-patent literature already included in the PCT minimum documentation. As a valuable and substantial collection of data relating to traditional knowledge, the addition of TKDL to the PCT minimum documentation would certainly enhance the quality of international work products. Since an outcome from the PCT Minimum Documentation Task Force for establishing criteria could be delayed, the Indian Patent Office requests all Authorities to consider formal inclusion of the Indian TKDL in the PCT minimum documentation pending study by the Task Force.

6. *The Meeting is invited to:*

- (i) *consider the revised Traditional Knowledge Digital Library (TKDL) Access Agreement, set out in Annex I to this document;*

(ii) note the contents of the working document for the PCT Minimum Documentation Task Force, set out in Annex II to this document; and

(iii) agree that the Indian Traditional Knowledge Digital Library be added to the PCT minimum documentation.

[Annexes follow]

**Traditional Knowledge Digital Library
(TKDL)
Access Agreement**

This Agreement is made on this _____ day of _____ 20---- between Council of Scientific & Industrial Research, a Society registered under the Societies Registration Act XXI of 1860 having its registered office at Anusandhan Bhawan, 2 Rafi Marg, New Delhi – 110 001 [hereinafter called the “Provider”].

And the _____, which is an Office concerned with Patent Search & Examination having its registered office at _____, hereinafter called the “User”. (hereinafter collectively called ‘parties’ or ‘either party’)

Whereas Traditional Knowledge Digital Library (TKDL) has been jointly developed by Council of Scientific & Industrial Research (called CSIR) and Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (called AYUSH), Government of India and is a proprietary and original database.

Whereas CSIR which is the provider of TKDL, is the sole owner of the TKDL proprietary and original database and is the implementing agency of TKDL on behalf of Government of India.

Whereas TKDL is a database in five international languages (English, French, German, Spanish and Japanese), which converts Indian Traditional Knowledge (Ayurveda, Unani, Siddha, Yoga, etc.) from existing *prior art*, traditional knowledge formulations or know-how available in Hindi, Sanskrit, Arabic, Persian, Urdu, Tamil, etc. to five international languages.

Whereas TKDL contains images of Ayurveda, Unani and Siddha formulations and Yoga practices with an objective to protect Indian Traditional Knowledge already available in public domain.

Whereas TKDL is a bridge between ancient texts in Hindi, Sanskrit, Arabic, Persian, Urdu, Tamil, etc. (existing *Prior Art*) and Patent Examiner at a global level and provides information on modern as well as local names in a language and format understandable to Patent Examiners.

Whereas the Government of India has duly authorized the Provider to execute this Agreement.

And Whereas the User has expressed its interest to get access to TKDL for the purpose of all phases of the patent grant procedure.

Now therefore, this Agreement witnesses as follows:-

1. The Provider hereby grants to the User full access to the TKDL database for a period of 5 years as from signature of this Agreement by both parties for the purposes of patent grant procedures by the User
2. It is hereby agreed and declared between the parties that aforesaid access is on a non-exclusive basis and is subject to the following conditions:-

(a) Responsibilities of the Provider

- (I) The Provider shall make all reasonable efforts to ensure uninterrupted online access and continuous availability of TKDL to authorized users in accordance with this agreement except in cases beyond the control of the Provider or any force majeure.
- (II) The Provider shall provide training to the User to use TKDL tools for search and examination as and when needed; the cost, if any, of such training has to be borne by the User.
- (III) The Provider shall render online assistance in using TKDL for search and examination, as and when needed by the User.
- (IV) The Provider shall remain free to grant access of TKDL to any other parties, including other patent offices, on a non-exclusive basis.

(b) Responsibilities and Obligations of the User

- (I) The User shall use TKDL information only for the purposes of the patent grant procedure in all its phases including the inspection of files and for no other purpose.
- (II) The User shall, whenever required, deliver only that information from TKDL contents which is relevant for the purposes of citation in patent grant procedure in all phases including opposition proceedings, to the patent applicant(s) or any other person who is party to such proceedings. The User may, whenever required, deliver only, such relevant information from TKDL contents to other patent offices under any agreement between the User and such offices to share the cited documents of a patent application. Except as mentioned above, the User undertakes to preserve confidentiality of the entire contents of TKDL.
- (III) Survival of obligations for maintaining the confidentiality of TKDL shall remain even after the termination of this Agreement.

2. Periodic Review

The Parties may review the status on access to TKDL as and when required for identifying impediments and issues that may need corrective action.

3. User Access Details:

Access details shall be provided by the User as follows as Annex to this Agreement

IP Address based access

IP Address Details: (e.g., **145.64.*.***)

4. Renewal

This Agreement shall be renewed further automatically for periods of 5 years each, on completion of the Agreement period, provided the Agreement is not terminated under clause 11 of this agreement.

5. Severability

If any covenant or provision of this Agreement is determined to be void or unenforceable in whole or part, then such void or unenforceable provision shall be deleted from this Agreement and shall not affect or impair the enforceability or validity of any other provision of this Agreement or any part thereof.

6. Modification

Any provision of this Agreement can be modified only with the express consent of both parties in writing signed and acknowledged by both parties thereof.

7. Supersession

This Agreement represents the entire understanding between the parties and supersedes all other express or implied agreements between the parties in this regard.

8. Waiver

No delay, indulgence or failure to act by either party regarding any particular default or omission of the other party shall affect or impair any rights or remedies regarding that or any subsequent default or omission unless it is waived in writing.

9. Settlement of disputes

Any dispute, which may arise in connection with the implementation, interpretation or application of this Agreement, will be settled amicably between the Parties through mutual consultations.

10. Disclaimer

- (i) The Parties reserve all rights as regards their confidential information and no rights or obligations other than those expressly written herein are granted or implied by this Agreement.
- (ii) The information contained in TKDL has been compiled on best effort basis; the Provider of the database shall therefore not be held responsible for any inadvertent error in the content of TKDL.
- (iii) Nothing in this Agreement shall affect the rights and obligations relating to any prior art, traditional knowledge formulations or know how which are not listed in the TKDL since it does not claim to be exhaustive in its coverage.

11. Termination

- (i) Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and fails to cure such material breach, provided that the non-breaching party shall give written notice of its intention to terminate and shall allow the breaching party 15 days after receipt of such notice to remedy the breach.
- (ii) Notwithstanding anything in paragraph (i) above, failure of either party to discharge any obligation or perform as per the terms or conditions of this Agreement as a result of conditions beyond its control such as but not limited to, war, strikes, fires, floods, government restrictions, acts of terrorism, public health emergencies, power failure or damages to or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

12. Execution Authority

The persons whose signatures appear below certify that they are authorized to enter into this Agreement on behalf of the party for whom they sign.

User	Provider
For -----(name of user)	For -----(name of Provider)
Signature _____.	Signature _____.
Name of signatory:	Name of signatory:
Designation:	Designation:
<i>In presence of witness</i>	<i>In presence of witness</i>
<i>Signature</i> -----	<i>Signature</i> -----
1.	1.
<i>Signature</i> -----	<i>Signature</i> -----
2.	2.

[Annex II follows]

Working document on inclusion of Indian Traditional Knowledge Digital Library in the PCT Minimum Documentation

- **Presented by the Indian Patent Office to the PCT Minimum Documentation Task Force.**

This document sets out proposals from the Indian Patent Office with regard to the inclusion of the Indian Traditional Knowledge Digital Library into the PCT minimum documentation, taking into account previous discussions in the Meeting of International Authorities, the Task Force on PCT Minimum Documentation and the WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

1. About Traditional Knowledge Digital Library (TKDL)

TKDL is a digital documentation, created by the Government of India, of the Indian traditional knowledge related to Ayurveda, Unani, Siddha and Yoga, in five international languages which are English, German, French, Japanese and Spanish. It provides information on traditional knowledge existing in the country, in languages and format understood by patent examiners at Patent Offices across the globe, so as to prevent the grant of wrong patents. TKDL thus, acts as a bridge between the traditional knowledge information existing in local languages and the patent examiners.

Traditional Knowledge Digital Library (TKDL) is an initiative of India to prevent misappropriation of country's traditional medicinal knowledge on which healthcare needs and livelihood of millions of people in India are dependent. Its genesis dates back to the Indian effort on revocation of a patent on wound healing properties of turmeric at the USPTO. It was estimated by TKDL expert group that there was high probability that wrong patents concerning Indian systems of medicine were being granted every year at international level, mainly due to the fact that India's traditional medicinal knowledge which exists in local languages such as Sanskrit, Hindi, Arabic, Urdu, Tamil etc. is neither accessible nor comprehensible for patent examiners at the international patent offices.

2. Format and contents of the Traditional Knowledge Digital Library

The TKDL is available in two versions:

(a) A public search facility available at <http://tkdl.res.in> shows the general scope of the system, allowing advanced Boolean search of a limited, representative database of 1200 traditional medicinal formulations, using keywords, IPC codes, more detailed (TKRC) codes, titles, bibliographic information or disease names. The results are shown as a summary of the matching formulations in the chosen one of the five interface languages (English, French, German, Japanese and Spanish).

(b) A full search facility is open to patent Offices under a TKDL (Non-disclosure) Access Agreement, (Annex I). This offers access to the full database, at present consisting of 0.297 million traditional medicinal formulations, including scanned images of relevant prior-art existing in the original traditional literature. The full search facility is available through a dedicated web

interface with access controlled by IP address(es) notified by each Office in its access agreement.

3. Classification Systems of TKDL – TKRC and the IPC

A presentation on Traditional Knowledge Resource Classification (TKRC) of TKDL to the International Patent Classification (IPC) Union led to the creation of a WIPO-TK Task Force, consisting of the United States Patent and Trademark Office (USPTO), the European Patent Office (EPO), the Japan Patent Office (JPO), the State Intellectual Property Office of China (SIPO) and the Indian Patent Office (IPO), the aim of which was to enhance the subgroups in IPC for classifying the TK related subject matter and to consider the linking of the TKRC with the IPC. In February 2002, a Committee of Experts recommended the inclusion of approximately 200 subgroups on TK against the existing one subgroup on medical plants, and linking of the TKRC to the IPC and thus, a new main group was included in the IPC, i.e. A61K 36/00, with 207 subgroups covering different categories of plants, as shown below:

S.NO	IPC Codes	IPC Categories	No. of Subgroups in IPC
1.	Algae	A61K 36/02 to 36/05	4
2.	Fungi & Lichens	A61K 36/06 to 36/09	10
3.	Bryophyta	A61K 36/10	1
4.	Pteridophytes	A61K 36/11 to 36/126	3
5.	Gynosperms	A61K 36/13 to 36/17	5
6.	Angiosperms	A61K 36/18	1
7.	Dicotyledons	A61K 36/185 to 36/87	148
8.	Monocotyledons	A61K 36/88 to 36/9068	35
Total number of Subgroups			207

The TKRC has evolved to include 27,000 subgroups against a single subgroup that was available in earlier version of the IPC, related to medicinal plants, minerals, animals, resources, effects and diseases, methods of preparations, mode of administration, etc. It enables retrieval of data similar to IPC and is available in five International languages, namely, English, French, German, Spanish and Japanese.

4. Status of transcription of traditional medicinal formulations

The TKDL project so far has a total of **2,97,183** formulations that have been transcribed and the database represents the contents of 34 million A4-sized pages of original documents. The present status of transcription of the traditional medicine formulations in the Traditional Knowledge Digital Library is given in the following table:

Discipline	No of texts (including volumes) used for transcription	Transcribed
Ayurveda	75 books	97,337
Unani	10 books	175,150
Siddha	50 books	23,016
Yoga	15 books	1,680
Total	150 books	2,97,183

TKDL is based on books of Indian Systems of Medicine, which are available in open domain and can be sourced by any individual/organization at national/international level. TKDL acts as a bridge between these books (Prior-art) and International patent examiners. It is the TKDL technology which has created a unique mechanism for a Sanskrit verse to be read in languages like German, Japanese, English, Spanish and French by an examiner at any International Patent Office on the computer screen.

5. Access to the TKDL database to international patent offices

Access to the TKDL database is available to the major international patent offices including the European Patent Office (EPO), the United States Patent and Trademark Office (USPTO), the German Patent and Trademark Office, the United Kingdom Intellectual Property Office, the Japan Patent Office, the IP Australia, the National Institute of Industrial Property of Chile, the Indian Patent Office and the Canadian Intellectual Property Office. The access to the TKDL database is provided under a TKDL Access Agreement, permitting use of data only to the extent necessary for patent search and examination. Once included in the PCT Minimum Documentation, access will be provided to all International Searching and Preliminary Examining Authorities from the effective date of incorporation of the TKDL in the PCT minimum documentation, after signing of TKDL Access Agreement individually by each of the offices.

As per the terms and conditions of the Access agreement, examiners of patent office can utilize TKDL for search and examination purposes without revealing the contents of TKDL to any third party unless it is necessary for the purpose of citation. TKDL Access Agreement has in-built safeguards on non-disclosure to protect India's interest against any possible misuse.

TKDL is maintained and offered for subscription to various patent offices by the Council of Scientific and Industrial Research (CSIR), of Ministry of Science and Technology, Government India.

The citation of TKDL references as prior art by the following patent offices have led to significant strides towards achieving the goal of preventing misappropriation of Indian Traditional Knowledge. These actions were possible in few weeks of time and without any cost, whereas Agricultural and Processed Food Products Export Development Authority (APEDA), India, spent 1 million USD towards legal fees only, for invalidation of few claims of a single wrong patent on Basmati at USPTO.

S.No	Patent Office	No. of Cases
1.	European Patent Office (EPO)	130
2.	United States Patent and Trademark Office (USPTO)	25
3.	Controller General of Patents Designs and Trademarks (CGPDTM)	20
4.	Canadian Intellectual Property Office (CIPO)	37
5.	IP Australia (AIPO)	4
6.	United Kingdom Patent & Trademark Office (UKPTO)	3
	Total	219

6. PCT Minimum Documentation

The Patent Cooperation Treaty, the international patent system administered by the World Intellectual Property Organization (WIPO) provides the applicants from member countries, a facility for filing a single international application for grant of a patent in more than 150 countries of the world. It also has the additional benefits of an International Search Report (ISR), and an International Preliminary Examination Report (IPER) before entering the national phase in each individual country. The ISR and IPER are established according to high internationally regulated standards, by one of the 22 Patent Offices of the world that have been specially appointed by WIPO to carry out international search and examination. For the purpose of establishing such reports, the ISA/IPEA shall endeavor to discover as much relevant prior art by consulting the PCT Minimum Documentation, which is a large collection of patent and non patent literature, specified by the WIPO. The collection includes patent literature from different patent offices across the world and around 200 journals relating to different fields of technology. Though the PCT Minimum Documentation has few journals relating to traditional knowledge, it does not include any database relating to traditional knowledge.

7. Proposal to include TKDL in PCT Minimum Documentation

During the 22nd Meeting of International Authorities under the PCT, held in 2015, India presented a proposal to include TKDL as part of the PCT Minimum Documentation. TKDL is the first TK database being proposed to be included in the PCT Minimum Documentation.

Several Authorities expressed concerns about certain provisions contained in the draft access agreement, notably in relation to the confidentiality and non-disclosure requirements, the necessity to monitor and report statistics on the use of citations from the TKDL, and the implications for an International Searching Authority losing access to the full PCT minimum documentation if the access agreement to the TKDL was terminated under the termination provisions of the draft agreement. The European Patent Office emphasized the importance for Authorities to be able to load the data from the TKDL into its own IT systems. The USPTO stated that if added to the PCT minimum documentation, the TKDL should have the same level of access as other collections in the PCT minimum documentation and should be equally available to the applicant.

8. Follow up during MIA 2016

The matter was discussed again during the 23rd Meeting of International Authorities held in 2016 and the relevant part of the Summary is reproduced below:

“(B) ADDITION OF INDIAN TRADITIONAL KNOWLEDGE DIGITAL LIBRARY

64. Discussions were based on document PCT/MIA/23/10 and a presentation given by the Indian Patent Office as set out in paragraphs 65 to 71.

65. The Indian Patent Office recalled the discussions at the 2015 session of the Meeting, at which concerns had been raised with regard to certain provisions in the draft access agreement, notably in relation to the confidentiality and non-disclosure requirements, the necessity to monitor and report statistics on the use of citations from the TKDL, and the proposed termination provisions and possible implications for an International Searching Authority losing access to the full PCT minimum documentation if the access agreement to the TKDL was terminated under the termination provisions of the draft agreement.

66. With regard to the necessity to monitor and report statistics, upon consideration, the Indian Patent Office no longer wished to maintain such reporting requirement and would modify the draft access agreement accordingly.

67. With regard to the proposed termination provisions and possible implications for an International Searching Authority losing access to the full PCT minimum documentation if the access agreement to the TKDL was terminated under the termination provisions of the draft agreement, it was the view of the Indian Patent Office that those provisions and implications were similar, if not identical, to those applied in respect of non-patent literature where an Authority lost access to such non-patent literature, for example, due to the non-payment of

subscription fees. In the view of the Indian Patent Office, the agreements with publishers contained termination clauses that either party could give notice to the other party and the access could be terminated.

68. With regard to the proposed confidentiality and non-disclosure requirements set out in the draft access agreement, the Indian Patent Office recalled that the Meeting, at its tenth session, had decided, as requested by the PCT Committee for Technical Cooperation, to consider, inter alia, the inclusion in the PCT minimum documentation of traditional knowledge periodicals and databases (document PCT/MIA/10/4). Notably, Annex I to that document listed specific criteria for the addition to the PCT minimum documentation of traditional knowledge periodicals, which had later formed the basis for the addition of 13 of such periodicals to the PCT minimum documentation. Annex II to document PCT/MIA/10/4 provided certain basic criteria of availability that were taken into consideration.

69. At its twelfth session, the Meeting had considered the issue of PCT minimum documentation based on document PCT/MIA/12/6. Annex III of this document contained an initial proposal from the Task Force leader, which listed some criteria for patent literature as well as for periodicals of non-patent literature. Regarding traditional knowledge databases, no criteria were suggested, which was treated under specialized databases. There was therefore a need to develop criteria for the inclusion of databases, including traditional knowledge databases, in the PCT minimum documentation. Unfortunately, work on that latter task had, however, never been taken up by the Task Force and remained outstanding.

70. The Indian Patent Office further stated that discussions on the issue of traditional knowledge databases had further taken place in WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, in the context of its text based negotiations with the objective of reaching an agreement on a text or texts of an international legal instrument which will ensure the effective protection of traditional knowledge, traditional cultural expressions and genetic resources. Document WIPO/GRTKF/IC/28/5 set out specific draft provisions dealing with the issue of confidentiality of traditional knowledge databases, including, in draft Article 3bis, provisions setting out that Intellectual Property Offices of Member States should ensure that information held in traditional knowledge databases was maintained in confidence, except where the information was cited as prior art during the examination of a patent application. It was recognized, though, that discussions in the IGC continued and that the draft provisions referred to above had not yet been agreed.

71. The Indian Patent Office observed that the TK database was considered a specialized database for which criteria for selection were not yet established and pointed out that the criteria for periodicals could not be applied in the same manner for TK databases. The Indian Patent Office therefore stated that its request for the inclusion of the Indian TKDL, and notably the provisions of its proposed draft access agreement, should be reconsidered against this background and the additional information provided. Since an outcome from the PCT minimum documentation Task Force could be delayed, the Indian Patent Office requested all Authorities

to consider provisional inclusion of the Indian TKDL in the PCT minimum documentation pending study by the Task Force.”

9. Decisions taken by MIA 2016

The Meeting invited the PCT Minimum Documentation Task Force, as a matter of urgency, to recommence its discussions on the addition of databases, including traditional knowledge databases, to the PCT minimum documentation.

The Meeting invited the Indian Patent Office to submit a detailed working document to the Task Force, including a revised draft of the access agreement, setting out its proposals with regard to the inclusion of the Indian TKDL into the PCT minimum documentation, taking into account previous discussions in the Meeting, the Task Force and the IGC, as well as the discussions held at the 23rd session of the Meeting.

The Meeting invited the International Bureau, also in its role as the Task Force leader (after MIA 2017, the USPTO), to closely work with the Indian Patent Office in the coming months with a view to moving the issue forward, where appropriate by means of informal consultations and written communications, such as PCT Circulars, to ensure proper preparation of the discussions at the next session of the Meeting in 2017.

10. Progress during 24th session of MIA and the tenth session of the PCT Working Group

The relevant paragraphs of the Summary of MIA 2017 are as follows:

“The European Patent Office underlined the need to revise the definition of the PCT minimum documentation for two main reasons. First, the definition needed to take account of digitization of documents that were previously held as paper collections. Second, there might be less need to have documents or abstracts available in English since machine translation tools were readily available to understand the contents, where needed. The European Patent Office defined four objectives in line with the initial mandate and thanked the United States Patent and Trademark Office for offering to lead the fourth objective in the Task Force relating to non-patent literature and prior art databases, including those in the area of traditional knowledge. The European Patent Office looked forward to a successful conclusion of the task in 2019 in line with the proposed timetable.

Authorities stressed the importance of defining the criteria for inclusion in the PCT minimum documentation in a suitable way for the digital age, and thanked the European Patent Office for leading the Task Force and the United States Patent and Trademark Office for leading the objective relating to non-patent literature and prior art databases.

The Indian Patent Office looked forward to participating in the discussions on the Task Force electronic forum, particularly reviewing the criteria for including non-patent literature to take account of the variety of sources and formats of information beyond science and technology periodicals. The Indian Patent Office referred to active discussions taking place in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore on the protection of traditional knowledge and indicated that it intended

to share a revised draft of the access agreement with the Task Force, setting out proposals with regard to the inclusion of the Indian Traditional Knowledge Digital Library in the PCT minimum documentation.”

The relevant paragraph of the Summary of PCT Working Group 2017 is as follows:

“The Delegation of India stated that the purpose of including non-patent literature in the PCT minimum documentation was to ensure a comprehensive search. Criteria for inclusion needed to take into account the usefulness of the information, ease of searching, and the source and format beyond standard journal articles. Following agreement in principle by the Meeting of International Authorities to add the Indian Traditional Knowledge Digital Library (TKDL) to the PCT minimum documentation, the Government of India was currently revising the terms and conditions in the access agreement to the TKDL. The Indian Patent Office looked forward to sharing the agreement further with International Authorities after this revision had been completed.”

11. Points for consideration

The Indian Patent Office presents the following points for consideration of International Authorities regarding the inclusion of TKDL in the PCT Minimum Documentation.

	<u>Concerns raised by International Authorities and included in Summary of MIA 2016</u>	<u>Comments by India at MIA 2016/ further remarks</u>
<u>11.1</u>	Several Authorities stated that they looked forward to receiving a revised proposed draft access agreement, taking into account the modifications to the proposed monitoring and reporting requirements, as well as their intention to possibly reconsidering the issue of the termination clauses in light of the additional information provided by the Indian Patent Office.	With regard to the necessity to monitor and report statistics, the Indian Patent Office had conveyed during MIA 2016 that such reporting requirements would be done away with and the Access Agreement (Annex I) has been modified accordingly.
<u>11.2</u>	The European Patent Office stated that, as a principle, it believed that the PCT minimum documentation should cover the broadest documentation possible. For that reason, it was of the opinion that, before any effort was made to include non-patent collections in the PCT minimum documentation, priority should be given to the patent documentation itself. It noted that at present, Indian patent publications were not part of the PCT minimum documentation. It was therefore of the view that priority should be given on	The patent and non-patent literature parts of the PCT Minimum Documentation have equal significance and importance as per Rule 34(1)(b) of the Regulations under the PCT defining PCT Minimum Documentation. There are many items of non-patent literature published from different Member States whose patent documents are not yet part of PCT Minimum Documentation. The Indian Patent Office is eager to get the Indian Patent data included in PCT Minimum Documentation and look forward to the

	<p>the inclusion of Indian patent information into the PCT minimum documentation.</p>	<p>outcome of the discussions led by the Task Force which is also looking into this topic.</p> <p>Therefore the Indian Patent Office is of the view that a question of fixing priority between patent and non-patent literature does not arise and may not be considered as a pre-condition for inclusion of TKDL in the PCT Minimum Documentation.</p>
<p>11.3</p>	<p>For the European Patent Office, the facilitation of the TKDL use practically meant that it had to become possible to integrate the TKDL data bulk into the Office's internal search systems. Today, the access to the TKDL was possible only via an external separate TKDL website. From a practical view, the PCT minimum documentation had to be accessible and searchable by standard tools accessible by examiners at the respective International Searching Authorities.</p>	<p>The criteria adopted to include different items of periodicals in the PCT Minimum Documentation did not include any criterion regarding the possibility of integration of bulk data into patent offices' internal search systems. It was rather the significance of the technical content that was the main consideration. Digital Rights Management has been fully left to the publishers of data for all items of periodicals included in the PCT Minimum Documentation. The Indian Patent Office has experienced the difficulty of negotiating with different Publishers as there is no uniform format for data, subscription rates and conditions for transfer of raw data. While providing Application Programming Interface (API) to integrate TKDL to any search system can be considered, this may not be a criterion to include a database in the PCT Minimum Documentation.</p>
<p>11.4</p>	<p>The European Patent Office stated that it followed that it would accept to include the TKDL in the PCT minimum documentation only at the condition that TKDL content was made available to International Searching Authorities to be loaded into their internal databases and could thus be incorporated in the standard search tools available at the respective International Searching Authorities. Search in PCT minimum documentation could not be conducted using multiple non-uniform user interfaces. It followed that the access agreement had to be modified accordingly. For example, a provision dedicated to that aspect could be added under the "Responsibilities of CSIR (Provider)", after item (i).</p>	<p>Annex I of PCT/MIA/10/4 lays down the criteria for selection of TK periodicals which led to inclusion of 13 TK periodicals in the PCT Minimum Documentation. MIA agreed that the criteria shown below should be used in the selection of appropriate periodicals to be added to the PCT minimum documentation list:</p> <ol style="list-style-type: none"> 1. sufficient description of technical content so as to qualify as prior art, including ability to ascertain prior art date; 2. practicable access to periodicals, including their availability in electronic form; 3. availability of an English text of

		<p>articles or, at least, of English language abstracts;</p> <ol style="list-style-type: none">4. the range of fields of technology covered by periodicals;5. geographical context of periodicals; and6. access conditions applicable to periodicals, including cost and text search ability.” <p>No such criterion that the content shall be made available to International Searching Authorities to be loaded into their internal databases was considered for existing items of non-patent literature part of PCT Minimum Documentation. This may not be a criterion for inclusion in PCT Minimum Documentation at the first place.</p> <p>During the 22nd MIA held in 2015, the Indian Patent Office had presented a paper on non-patent literature to get the different publishers of non-patent literature (NPL) to agree to make NPL data available in a particular format for inclusion in the PCT minimum documentation. The responses to this paper included in Summary of MIA 2015 are as follows:</p> <p>NON PATENT LITERATURE UNDER THE PCT MINIMUM DOCUMENTATION</p> <p>“70. Discussions were based on document PCT/MIA/22/18 and a presentation given by the Indian Patent Office.</p> <p>71. All Authorities which took the floor on the matter expressed the view that it would appear very difficult to get the more than 30 different publishers of non-patent literature (NPL) to agree to make NPL data available in a particular format for inclusion in the PCT minimum documentation. This would incur additional costs to the publishers and would bring very little, if any, benefit to them. The European Patent Office had experience of these difficulties from its efforts to obtain data</p>
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		<p>from NPL publishers in an ST.36 like format for inclusion in the EPO's EPOQUE system.</p> <p>Several Authorities further questioned whether it would be desirable to exclude useful documents from the PCT minimum documentation simply because publishers were not willing to provide such documents in a particular format. “</p> <p>Also every International Authority is not desirous of loading the non-patent literature data on to their internal servers. For instance, when the same paper was first presented by the Indian Patent Office to the 7th session of PCT Working Group, the response by JPO was as follows:</p> <p>“14. The Delegation of Japan believed that there was great merit in using commercial databases for conducting prior art searches of non-patent literature designated as PCT minimum documentation. Therefore, the Delegation was not able to commit itself to storing any non patent literature from the PCT minimum documentation on the Japan Patent Office in-house databases. The Delegation was, however, always interested in procuring non patent literature documents and working to improve search efficiency and was interested in being informed of future discussions on this subject.”</p> <p>This may be true for many other International Authorities as well.</p> <p>Loading full data on to the user's server may not be preferred by every database owner. In case of paid databases, the cost for loading raw data would be high for individual patent offices.</p>
<p>11.5</p>	<p>The European Patent Office considered that the obligations of the User (Office) mentioned under paragraphs 2(i) and (ii) of the access agreement should be amended in order to include further rights which were required by the activities of patent</p>	<p>The obligations of the user as per the revised Access Agreement of TKDL (Annex I) includes the following:</p> <p>“The User shall, whenever required, deliver only that information from TKDL contents which is relevant for the purposes of citation</p>

	<p>Offices. Indeed, the license should include the right for the European Patent Office (licensee) and for authorized users:</p> <p>(a) to access, download, print, store, process and include in internal documents and files of the licensee selected items of licensed material in connection with the patenting procedure;</p> <p>(b) to supply the patent applicants and their representatives as well as other patent authorities and parties in the course of the patenting procedure with evidentiary copies (print or electronic) of selected items of Licensed Material;</p> <p>(c) to provide access to third parties to selected items of the licensed material in connection with file inspection; and</p> <p>(d) to provide selected items of licensed material to other patent authorities in connection with the patenting procedure. Any electronic file deliverable to a non-subscriber should be in the form of a non-reworkable PDF or equivalent. The licensee should notify external parties that copyrighted texts may not be copied or used in other electronic or printed publications or redistributed without the express permission of the copyright holder.</p>	<p>in patent grant procedure in all phases including opposition proceedings, to the patent applicant(s) or any other person who is party to such proceedings. The User may, whenever required, deliver only, such relevant information from TKDL contents to other patent offices under any agreement between the User and such offices to share the cited documents of a patent application. Except as mentioned above, the User undertakes to preserve confidentiality of the entire contents of TKDL.”</p>
<p>11.6</p>	<p>The United States Patent and Trademark Office stated further that, in view of the access agreement set forth in the document, it was concerned that the non-disclosure and confidentiality requirements proposed by India as a condition to granting access to the TKDL would make it very burdensome or impossible for some Offices to utilize that resource. In its view, since it was mandatory for Authorities to have access to the PCT minimum</p>	<p>As per the TKDL Agreement, “The User shall, whenever required, deliver only that information from TKDL contents which is relevant for the purposes of citation in patent grant procedure in all phases including opposition proceedings, to the patent applicant(s) or any other person who is party to such proceedings. The User may, whenever required, deliver only, such relevant information from TKDL contents to other patent offices under any agreement</p>

<p>documentation, all the collections forming part of the PCT minimum documentation should be equally available to the Authorities and to the parties involved in international search and preliminary examination. As a matter of principle, it believed that prior art which could be used by an Authority in a search report and written opinion should be available also to the applicants and their representatives, to enable them to make an informed decision on pursuing their rights.</p> <p>The United States Patent and Trademark Office expressed the view that PCT Rules 36.1 and 63.1 required that Authorities had access to the PCT minimum documentation. It asked the Secretariat to elaborate on the effect on an Office's status as an Authority should it fail to comply with one or more of the non-disclosure provisions and lose access to the TKDL, should the TKDL become part of the PCT minimum documentation.</p> <p>In concluding, the United States Patent and Trademark Offices stated that it believed that important benefits could be gained by the International Authorities by accessing and fully utilizing the information contained in the TKDL database. However, it did not believe it was proper to limit such access by restrictive confidentiality and non-disclosure requirements. Fundamentally, it was required to ensure that the TKDL, like all other collections included in the PCT minimum documentation, was accessible by all the parties involved in international search and preliminary examination.</p>	<p>between the User and such offices to share the cited documents of a patent application. Except as mentioned above, the User undertakes to preserve confidentiality of the entire contents of TKDL.”</p> <p>Thus the access conditions of TKDL do not impose any burdensome conditions that hamper the patenting process. Disclosure for all legitimate purposes is permitted by the Agreement. It is well within the rights of the proprietor of database to restrict disclosure for reasons beyond the legitimate purposes for which it is subscribed.</p> <p>The conditions of non-disclosure stipulated in the TKDL Agreement are identical to the conditions, which are part of the standard practice, followed by proprietors of databases. Similar clauses exist in Agreements with other Publishers of non-patent literature.</p> <p>As clarified by the Indian Patent Office during the presentation in MIA 2016, with regard to the proposed termination provisions and possible implications for an International Searching Authority losing access to the full PCT minimum documentation if the access agreement to the TKDL was terminated under the termination provisions of the draft agreement, those provisions and implications were similar, if not identical, to those applied in respect of non-patent literature where an Authority lost access to such non-patent literature, for example, due to the non-payment of subscription fees. In the view of the Indian Patent Office, the agreements with publishers contained termination clauses that both party could give notice to the other party and the access could be terminated. The clause relating to termination as per the revised Access Agreement (Annex I) is as follows:</p>
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	<p>Termination</p> <p>(i) Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and fails to cure such material breach, provided that the non-breaching party shall give written notice of its intention to terminate and shall allow the breaching party 15 days after receipt of such notice to remedy the breach.</p> <p>(ii) Notwithstanding anything in paragraph (i) above, failure of either party to discharge any obligation or perform as per the terms or conditions of this Agreement as a result of conditions beyond its control such as but not limited to, war, strikes, fires, floods, government restrictions, acts of terrorism, public health emergencies, power failure or damages to or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.</p> <p>Even though the criteria for selection of items of non-patent literature include some access conditions also, there is no standard access agreement approved for the purpose of subscription by the Patent Offices. Each Publisher is free to use its own Agreement and there is no restriction to enter into different forms of Agreement with different conditions for any two International Authorities.</p> <p>The TKDL is offered for subscription only to Patent Offices for the purpose of defensive protection. This is to protect traditional medicinal knowledge on which livelihood of millions of people is dependent. In India, it takes care of the healthcare needs of a</p>
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		considerable percentage of the population. There needs to be different criteria for inclusion of databases, especially TK databases. The discussions at the Inter-Governmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC) also forms support for special criteria for inclusion in the PCT Minimum Documentation. Special attention is drawn to the draft legal text on TK (WIPO/GRTKF/IC/34/5) being discussed at the IGC.
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A comparison between the clauses of the Revised TKDL Agreement and the model Agreements by few Publishers has been made in Annex A to this document.

12. Way Forward

As per the TKDL Agreement, disclosure for all legitimate purposes is permitted. The conditions in TKDL Access Agreement are identical to those imposed by other Publishers of non patent literature. The Access Agreement has been revised to further clarify the rights of users. As per the revised Agreement, the necessity to monitor and report statistics regarding usage has been removed.

The subscription is currently offered only to Patent Offices for the purpose of defensive protection due to the special nature of TK data as it needs to be protected from misappropriation for the benefit of the indigenous peoples and local communities who are dependent on it. TKDL is based on books of Indian Systems of Medicine, which are available in open domain and can be sourced by any individual/organization at national/international level. TKDL acts as a bridge between these books (Prior-art) and patent examiners.

The usefulness of TKDL in prior art search, to ensure grant of valid patents, being well appreciated by all the International Authorities, the inclusion of TKDL into the PCT Minimum Documentation may be considered in the light of the observations made in this document and the revised Access Agreement of TKDL.

End of document

Annex A to the Working document on inclusion of Indian Traditional Knowledge Digital Library in the PCT Minimum Documentation, presented by the Indian Patent Office to the PCT Minimum Documentation Task Force.

1. Comparison of TKDL Agreement with the Agreement of M/s Wiley

Clause of TKDL Agreement	Corresponding clause in Agreement of M/s Wiley (http://onlinelibrary.wiley.com/licenseAgreement)
<p style="text-align: center;">Traditional Knowledge Digital Library (TKDL) Access Agreement</p> <p>This Agreement is made on this _____ day of _____ 20---- between Council of Scientific & Industrial Research, a Society registered under the Societies Registration Act XXI of 1860 having its registered office at Anusandhan Bhawan, 2 Rafi Marg, New Delhi – 110 001 [hereinafter called the “Provider”].</p> <p>And the _____, which is an Office concerned with Patent Search & Examination having its registered office at _____ _____, hereinafter called the “User”. (hereinafter collectively called ‘parties’ or ‘either party’)</p> <p>Whereas Traditional Knowledge Digital Library (TKDL) has been jointly developed by Council of Scientific & Industrial Research (called CSIR) and Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (called AYUSH), Government of India and is a proprietary and original database.</p> <p>Whereas CSIR which is the provider of TKDL, is the sole owner of the TKDL proprietary and original database and is the implementing agency of TKDL on behalf of Government of India.</p> <p>Whereas TKDL is a database in five</p>	<p>License Agreement</p> <p>This License (the “License” and/or “Agreement”) is valid for the twelve (12) month period in which the license is accepted and sets forth the terms and conditions under which Wiley Subscription Services, Inc. (“Wiley”), a Delaware corporation, will provide the Licensee as defined below with access to the Electronic Product or Products subscribed to by the Licensee via Wiley Online Library.</p> <p>1. DEFINITIONS The following terms shall be deemed to have the meaning as set forth below:</p> <p>1. Wiley Online Library - The online service (or any successor thereto) available from Wiley or its affiliates on the Worldwide Web including all products, services and features offered via the service. Certain products and services under this License may be delivered from other platforms. The terms and conditions hereof are equally applicable to those products and services.</p> <p>2. Licensee - The customer named in the account activation process, which has authorized the acceptance of this License, and the completion of the online account activation process, provides access to Wiley Online Library via its Secure Network for its Authorized Users as defined below, and is responsible for payments and implementation of the License.</p> <p>Electronic Products(s) - The electronic (online) editions of Wiley’s Journals and other Electronic Products and the content of such Journals and Products such as tables of content, abstracts, full text and illustrations as well as any additional electronic content not included in the print versions of the Journals and Product.</p>

international languages (English, French, German, Spanish and Japanese), which converts Indian Traditional Knowledge (Ayurveda, Unani, Siddha, Yoga, etc.) from existing *prior art*, traditional knowledge formulations or know-how available in Hindi, Sanskrit, Arabic, Persian, Urdu, Tamil, etc. to five international languages.

Whereas TKDL contains images of Ayurveda, Unani and Siddha formulations and Yoga practices with an objective to protect Indian Traditional Knowledge already available in public domain.

Whereas TKDL is a bridge between ancient texts in Sanskrit, Arabic, Persian, Urdu, Tamil, Hindi etc. (existing *Prior Art*) and Patent Examiner at a global level and provides information on modern as well as local names in a language and format understandable to Patent Examiners.

Whereas the Government of India has duly authorized the Provider to execute this Agreement.

And Whereas the User has expressed its interest to get access to TKDL for the purpose of all phases of the patent grant procedure.

Now therefore, this Agreement witnesses as follows:-

3. The Provider hereby grants to the User full access to the TKDL database for a period of 5 years as from signature of this Agreement by both parties for the purposes of patent grant procedures by the User
4. It is hereby agreed and declared between the parties that aforesaid access is on a non-exclusive basis and is

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<p>party to such proceedings. The User may, whenever required, deliver only, such relevant information from TKDL contents to other patent offices under any agreement between the User and such offices to share the cited documents of a patent application. Except as mentioned above, the User undertakes to preserve confidentiality of the entire contents of TKDL.</p> <p>(VI) Survival of obligations for maintaining the confidentiality of TKDL shall remain even after the termination of this Agreement.</p> <p>2. Periodic Review</p> <p>The Parties may review the status on access to TKDL as and when required for identifying impediments and issues that may need corrective action.</p> <p>3. User Access Details:</p> <p>Access details shall be provided by the User as follows as Annex to this Agreement</p> <p>IP Address based access</p> <p>IP Address Details: (e.g.,145.64.*.*)</p> <p>4. Renewal</p> <p>This Agreement shall be renewed further automatically for periods of 5 years each, on completion of the Agreement period, provided the Agreement is not terminated under clause 11 of this agreement.</p> <p>5. Severability</p> <p>If any covenant or provision of this Agreement is determined to be void or unenforceable in whole or part, then such void or unenforceable</p>	<p>My Profile Page, which will allow them to create data files and links to articles, chapters and entries of interest in the Licensed Electronic Products, and search criteria, which may be reused by them. In order to do so, the Authorized User will have to select and register a user name and password, which the Authorized User must keep confidential and not disclose to or share with anyone else. The Licensee and its Authorized Users may create links to Wiley Online Library from their Online Public Access Catalog (OPAC) records, library catalogs, link resolvers, locally hosted databases or library web pages, provided those links are operated by the Licensee on a Secure Network, do not result in access to licensed content by anyone other than Authorized Users and are not used in connection with any paid or commercial service or for any other commercial use whatsoever. Authorized Users may search, view, and browse Licensed Electronic Products using the interface provided by Wiley. Automated searching, robotic searching and decompilation are strictly prohibited. Except as provided in Paragraph C(1) above, Authorized Users may not copy, distribute, transmit or otherwise reproduce, sell, or resell material from Electronic Products; store such material in any form or medium in a retrieval system; or transmit such material, directly or indirectly, for use in any paid service such as document delivery or list serve, or for use by any information brokerage or for systematic distribution, whether or not for commercial or non-profit use, or for a fee or free of charge.</p> <p>3. The Licensee and its Authorized Users may not remove, obscure or modify any copyright or proprietary notices, author attribution or any disclaimer as they appear on Wiley Online Library. Authorized Users may not integrate material from the Electronic Products with other material or otherwise create derivative works in any medium. However, brief quotations for purposes of comment, criticism or similar scholarly purposes are not prohibited herein. Authorized Users may not do anything to restrict or inhibit any other Authorized User's access to or use of Wiley Online Library and the Licensed Electronic Products.</p>
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<p>(ii) The information contained in TKDL has been compiled on best effort basis; the Provider of the database shall therefore not be held responsible for any inadvertent error in the content of TKDL.</p> <p>(iii) Nothing in this Agreement shall affect the rights and obligations relating to any prior art, traditional knowledge formulations or know how which are not listed in the TKDL since it does not claim to be exhaustive in its coverage.</p>	<p>Practice or conform to the then-prevailing industry standard about the use of the Licensed Electronic Products by the Licensee's Authorized Users, consistent with applicable privacy laws and confidentiality requirements.</p> <p>2. The Licensee will:</p> <ol style="list-style-type: none">1. take all reasonable measures to inform Authorized Users of the Terms and Conditions of Use governing access to Wiley Online Library and to emphasize to such Authorized Users the need to comply with whatever restrictions on access, use, reproduction and transmission are included therein;2. make access available to Authorized Users only through the Licensee's Secure Network and from valid IP addresses; undertake reasonable measures within its control to prevent access to and improper use of the Licensed Electronic Products and Wiley Online Library by unauthorized persons; and take responsibility for terminating any unauthorized access of which it has actual notice or knowledge; provide Wiley with information about the Licensee's IP addresses which can be used by Wiley to authenticate Authorized Users. The Licensee represents that all such IP addresses shall be limited to the Licensee's Secure Network. The Licensee shall be responsible for ensuring that all IP addresses
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<p>12. Execution Authority</p> <p>The persons whose signatures appear below certify that they are</p>	

authorized to enter into this Agreement on behalf of the party for whom they sign.

User
For -----(name of user)
Signature _____.
Name of signatory:
Designation:
<i>In presence of witness</i>
Signature -----
1.
Signature -----
2.

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Notwithstanding subparagraph G.3 above, either party's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, governmental restrictions, acts of terrorism, public health emergencies, power failures, or damage to or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

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	<p>1. Wiley represents and warrants that it has the right and authority to make Wiley Online Library available to the Licensee and its Authorized Users under this License.</p> <p>2. Wiley Online Library may provide Authorized Users with links to third-party websites. Where such links exist, Wiley disclaims all responsibility and liability for the content of such third-party websites. Authorized Users assume sole responsibility for the accessing of third-party websites and the use of any content on such websites.</p> <p>3. Except for the warranties provided by Wiley in paragraph H.1 above,</p> <p>1. WILEY ONLINE LIBRARY AND THE ELECTRONIC PRODUCTS AND ALL MATERIALS CONTAINED THEREIN ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF TITLE, OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE;</p> <p>2. THE USE OF THE ELECTRONIC PRODUCTS, WILEY ONLINE LIBRARY AND ALL MATERIALS CONTAINED THEREIN IS AT THE AUTHORIZED USER'S OWN RISK;</p> <p>3. ACCESS TO WILEY ONLINE LIBRARY AND THE ELECTRONIC PRODUCTS MAY BE INTERRUPTED AND MAY NOT BE ERROR FREE; AND NEITHER WILEY NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, OR DELIVERING WILEY ONLINE LIBRARY, THE ELECTRONIC PRODUCTS OR THE MATERIALS CONTAINED IN WILEY ONLINE LIBRARY, SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF THE AUTHORIZED USER'S USE OF OR INABILITY TO USE WILEY ONLINE LIBRARY, THE ELECTRONIC PRODUCTS AND ALL MATERIALS CONTAINED THEREIN.</p> <p>GENERAL PROVISIONS</p> <p>1. Wiley may assign this Agreement to its successors, subsidiaries or assigns. This Agreement may not be assigned by the Licensee, except with the prior written consent of Wiley.</p> <p>2. This Agreement shall be construed and interpreted pursuant to the internal laws of the State</p>
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of New York applicable to contracts wholly entered into and performed in the State of New York. Any legal action, suit or proceeding arising out of or relating to this Agreement or the breach thereof shall be instituted in a court of competent jurisdiction in New York County in the State of New York and each party hereby consents and submits to the personal jurisdiction of such court, waives any objection to venue in such court and consents to the service of process by registered or certified mail, return receipt requested, at the last known address of such party. If you have a legal problem with contracting under New York law, please contact our Contracts Department.

3. In the event of a material breach of the terms and conditions of this Agreement by either party, the non breaching party shall be entitled, in addition to any other remedies available pursuant to this Agreement or at law, to equitable, including injunctive, relief. This Agreement constitutes the complete understanding of the parties and supersedes all prior understandings between the parties with respect to the subject matter of this Agreement. No modification, amendment or waiver of any provisions shall be valid unless in writing and executed by the parties. Any waiver in one or more instances by either of the parties of any breach by the other of any terms or provisions contained in this Agreement shall not be considered a waiver of any succeeding or preceding breach. In the event that any clause of this Agreement is determined to be void or unenforceable, the remainder of the Agreement shall survive.

2. Comparison of TKDL Agreement with the Agreement of M/s Elsevier

<p>Clause of TKDL Agreement</p>	<p>Elsevier (https://www.elsevier.com/_data/assets/pdf_file/0012/79977/sample_elsevier_bv_subscription_agreement-academic-government_022514.pdf)</p>
<p style="text-align: center;">Traditional Knowledge Digital Library (TKDL) Access Agreement</p> <p>This Agreement is made on this _____ day of _____ 20---- between Council of Scientific & Industrial Research, a Society registered under the Societies Registration Act XXI of 1860 having its registered office at Anusandhan Bhawan, 2 Rafi Marg, New Delhi – 110 001 [hereinafter called the “Provider”].</p> <p>And the _____, which is an Office concerned with Patent Search & Examination having its registered office at _____, hereinafter called the “User”. (hereinafter collectively called ‘parties’ or ‘either party’)</p> <p>Whereas Traditional Knowledge Digital Library (TKDL) has been jointly developed by Council of Scientific & Industrial Research (called CSIR) and Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (called AYUSH), Government of India and is a proprietary and original database.</p> <p>Whereas CSIR which is the provider of TKDL, is the sole owner of the TKDL proprietary and original database and is the implementing agency of TKDL on behalf of Government of India.</p> <p>Whereas TKDL is a database in five international languages (English, French, German, Spanish and Japanese), which</p>	<p>ELSEVIER SUBSCRIPTION AGREEMENT</p> <p>This agreement (“Agreement”) is entered into as of 25 February 2014 by and between University of Science, One University Place, New York, NY 00000, USA (the “Subscriber”), and Elsevier B.V., Radarweg 29, 1043 NX Amsterdam, The Netherlands (“Elsevier”).</p> <p>The parties hereto agree as follows:</p> <p>SECTION 1. SUBSCRIPTION.</p> <p>1.1 Subscribed Products. Elsevier hereby grants to the Subscriber the non-exclusive, non-transferable right to access and use the products and services identified in Schedule 1 (“Subscribed Products”) and provide the Subscribed Products to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.</p> <p>1.2 Authorized Users/Sites. Authorized Users are the full-time and part-time students, faculty, staff and researchers of the Subscriber and individuals who are independent contractors or are employed by independent contractors of the Subscriber affiliated with the Subscriber’s locations listed on Schedule 2 (the “Sites”) and individuals using computer terminals within the library facilities at the Sites permitted by the Subscriber to access the Subscribed Products for purposes of personal research, education or other non-corporate use (“Walk-in Users”).</p> <p>1.3 Authorized Uses. Each Authorized User may:</p> <ul style="list-style-type: none"> • access, search, browse and view the Subscribed Products; • print, download and store a reasonable portion of individual items from the Subscribed Products for the exclusive use of such Authorized User; • incorporate links to the Subscribed Products

converts Indian Traditional Knowledge (Ayurveda, Unani, Siddha, Yoga, etc.) from existing *prior art*, traditional knowledge formulations or know-how available in Hindi, Sanskrit, Arabic, Persian, Urdu, Tamil, etc. to five international languages.

Whereas TKDL contains images of Ayurveda, Unani and Siddha formulations and Yoga practices with an objective to protect Indian Traditional Knowledge already available in public domain.

Whereas TKDL is a bridge between ancient texts in Sanskrit, Arabic, Persian, Urdu, Tamil, Hindi etc. (existing *Prior Art*) and Patent Examiner at a global level and provides information on modern as well as local names in a language and format understandable to Patent Examiners.

Whereas the Government of India has duly authorized the Provider to execute this Agreement.

And Whereas the User has expressed its interest to get access to TKDL for the purpose of all phases of the patent grant procedure.

Now therefore, this Agreement witnesses as follows:-

5. The Provider hereby grants to the User full access to the TKDL database for a period of 5 years as from signature of this Agreement by both parties for the purposes of patent grant procedures by the User
6. It is hereby agreed and declared between the parties that aforesaid access is on a non-exclusive basis and is subject to the following conditions:-

on the Subscriber's intranet and internet websites and in electronic coursepacks, reserves and course management systems and instructor websites, provided that the appearance of such links and/or statements accompanying such links will be changed as reasonably requested by Elsevier;

- provide print or electronic copies of individual items from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use; and
- store individual journal articles from the Subscribed Products in the private library of a social networking site for the Authorized User's own personal use only;
- share individual journal articles from the Subscribed Products with third party colleagues individually for their scholarly or research use; and
- share individual journal articles from the Subscribed Products with a limited number of third party colleagues as part of an invitation only working group on a social networking site for personal, scholarly or research use that works with publishers to provide anonymized usage information; and

access, search, browse, view, print, make electronic copies and store for the exclusive use of such Authorized User or, if the Authorized User is a librarian/information specialist, for the exclusive use of another Authorized User certain journal articles and book chapters from the ScienceDirect®

online service that are not subscribed to as part of the Subscribed Products, with each twenty-four (24) hour access period for a selected article or chapter, a "Transaction."

The Subscriber may:

- deliver journal articles from Subscribed Titles (as defined herein) and, if any, book chapters from the Subscribed Products to fulfill requests as part of the practice commonly

<p>(a) Responsibilities of the Provider</p> <p>(IX) The Provider shall make all reasonable efforts to ensure uninterrupted online access and continuous availability of TKDL to authorized users in accordance with this agreement except in cases beyond the control of the Provider or any force majeure.</p> <p>(X) The Provider shall provide training to the User to use TKDL tools for search and examination as and when needed; the cost, if any, of such training has to be borne by the User.</p> <p>(XI) The Provider shall render online assistance in using TKDL for search and examination, as and when needed by the User.</p> <p>(XII) The Provider shall remain free to grant access of TKDL to any other parties, including other patent offices, on a non-exclusive basis.</p> <p>(b) Responsibilities and Obligations of the User</p> <p>(VII) The User shall use TKDL information only for the purposes of the patent grant procedure in all its phases including the inspection of files and for no other purpose.</p> <p>(VIII) The User shall, whenever required, deliver only that information from TKDL contents which is relevant for the purposes of citation in patent grant procedure in all phases including opposition proceedings, to the patent applicant(s) or any other person who is</p>	<p>known as “interlibrary loan” from non-commercial libraries located within the United States, provided that the Subscriber’s staff reviews the requests and fulfills the requests in compliance with Section 108 of the U.S. Copyright Law (17 U.S.C. § 108) and the Guidelines for the Proviso of Subsection 108(g)(2) (Final Report of the National Commission on New Technological Uses of Copyrighted Works, 1978).</p> <p>The Subscriber may:</p> <ul style="list-style-type: none">• access the text and data mining service online via an API at http://www.developers.elsevier.com to continuously and automatically extract and index and/or process information from the Subscribed Products to which the Subscriber separately subscribes and load and integrate the results (the “TDM Output”) on the Subscriber’s text-mining system for access and use by Authorized Users; and• distribute the TDM Output externally, which may include a few lines of query-dependent text of individual full text articles or book chapters which will be up to a maximum length of 200 characters surrounding and including the text entity matched (“Snippets”) or bibliographic metadata. Where Snippets and/or bibliographic metadata are distributed, they should be accompanied by a DOI link that points back to the individual full text article or book chapter. Further the TDM Output should include a Creative Commons proprietary notice in the following form: <i>“© Some rights reserved. This work is distributed under the terms of the CC-BY-NC Attribution-NonCommercial 4.0, which permits non-commercial use, distribution, and reproduction in any medium, provided the original author and source are credited.”</i> Text and data mining services online may be accessed by vendors or other third parties retained by the Subscriber only with the express written permission of Elsevier and for the index and/or process information purposes of the Subscriber. <p>1.4 Restrictions on Use of Subscribed Products. Except as expressly stated in this Agreement or otherwise permitted in writing by Elsevier, the Subscriber and its Authorized Users may not:</p>
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<p>party to such proceedings. The User may, whenever required, deliver only, such relevant information from TKDL contents to other patent offices under any agreement between the User and such offices to share the cited documents of a patent application. Except as mentioned above, the User undertakes to preserve confidentiality of the entire contents of TKDL.</p> <p>(IX) Survival of obligations for maintaining the confidentiality of TKDL shall remain even after the termination of this Agreement.</p> <p>2. Periodic Review</p> <p>The Parties may review the status on access to TKDL as and when required for identifying impediments and issues that may need corrective action.</p> <p>3. User Access Details:</p> <p>Access details shall be provided by the User as follows as Annex to this Agreement</p> <p>IP Address based access</p> <p>IP Address Details: (e.g.,145.64.*.*)</p> <p>4. Renewal</p> <p>This Agreement shall be renewed further automatically for periods of 5 years each, on completion of the Agreement period, provided the Agreement is not terminated under clause 11 of this agreement.</p> <p>5. Severability</p> <p>If any covenant or provision of this Agreement is determined to be void or unenforceable in whole or part, then such void or unenforceable</p>	<p><input type="checkbox"/> abridge, modify, translate or create any derivative work based on the Subscribed Products, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;</p> <ul style="list-style-type: none">• remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Products;• use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Subscribed Products;• substantially or systematically reproduce, retain or redistribute the Subscribed Products; or• post individual items from the Subscribed Products on social networking sites. <p>Authorized Users who are individuals who are independent contractors or are employed by independent contractors may use the Subscribed Products only for the purposes of the contracted research work for the Subscriber.</p> <p>1.5 Intellectual Property Ownership.</p> <p>The Subscriber acknowledges that all right, title and interest in and to the Subscribed Products remain with Elsevier and its suppliers, except as expressly set forth in this Agreement, and that the unauthorized redistribution of the Subscribed Products could materially and irreparably harm Elsevier and its suppliers.</p> <p>Notwithstanding anything to the contrary contained in this Agreement, more extensive usage terms might be permitted for open access content in the Subscribed Products as identified in the individual journal article as stated in the applicable user (e.g. CC) license.</p> <p>SECTION 2. ELSEVIER PERFORMANCE OBLIGATIONS.</p> <p>2.1 Access to Subscribed Products.</p> <p>Elsevier will make the Subscribed Products accessible to the Subscriber and its Authorized Users from the internet address set forth on Schedule 1 or as may be otherwise set forth herein.</p>
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provision shall be deleted from this Agreement and shall not affect or impair the enforceability or validity of any other provision of this Agreement or any part thereof.

6. Modification

Any provision of this Agreement can be modified only with the express consent of both parties in writing signed and acknowledged by both parties thereof.

7. Supersession

This Agreement represents the entire understanding between the parties and supersedes all other express or implied agreements between the parties in this regard.

8. Waiver

No delay, indulgence or failure to act by either party regarding any particular default or omission of the other party shall affect or impair any rights or remedies regarding that or any subsequent default or omission unless it is waived in writing.

9. Settlement of disputes

Any dispute, which may arise in connection with the implementation, interpretation or application of this Agreement, will be settled amicably between the Parties through mutual consultations.

10. Disclaimer

- (i) The Parties reserve all rights as regards their confidential information and no rights or obligations other than those expressly written herein are granted or implied by this Agreement.

2.2 Quality of Service.

Elsevier will use reasonable efforts to provide the Subscribed Products with a quality of service consistent with industry standards, specifically, to provide continuous service with an average of 98% up-time per year, with the 2% down-time including scheduled maintenance and repairs performed at a time to minimize inconvenience to the Subscriber and its Authorized Users, and to restore service as soon as possible in the event of an interruption or suspension of service.

2.3 Withdrawal of Content.

Elsevier reserves the right to withdraw from the Subscribed Products content that it no longer retains the right to provide or that it has reasonable grounds to believe is unlawful, harmful, false or infringing.

2.4 Usage Data Reports.

Elsevier will make usage data reports on the Subscriber's usage activity accessible online on a monthly basis to the librarians/administrators employed by the Subscriber for internal use only. Such reports may be accessed by vendors or other third parties retained by the Subscriber only with the express written permission of Elsevier and for the purpose of usage analysis of the Subscriber.

SECTION 3. SUBSCRIBER PERFORMANCE OBLIGATIONS.

3.1 Authentication.

Access to the Subscribed Products will be authenticated by the use of Internet Protocol ("IP") address(es) and/or usernames and passwords and/or a delegated authentication mechanism requiring at least two different credentials, as identified on Schedule 2. Distribution of usernames, passwords, credentials or otherwise providing remote access to the Subscribed Products by Authorized Users who are Walk-in Users is not permitted.

3.2 Protection from Unauthorized Access and Use.

The Subscriber will use reasonable efforts to:

- limit access to and use of the Subscribed Products to Authorized Users and notify all Authorized Users of the usage restrictions set forth in this Agreement and that they must comply with such restrictions;
- issue any passwords or credentials used to access the Subscribed Products only to Authorized Users, not divulge any passwords

<p>(ii) The information contained in TKDL has been compiled on best effort basis; the Provider of the database shall therefore not be held responsible for any inadvertent error in the content of TKDL.</p> <p>(iii) Nothing in this Agreement shall affect the rights and obligations relating to any prior art, traditional knowledge formulations or know how which are not listed in the TKDL since it does not claim to be exhaustive in its coverage.</p>	<p>or credentials to any third party, and notify all Authorized Users not to divulge any passwords or credentials to any third party; and</p> <ul style="list-style-type: none">• promptly upon becoming aware of any unauthorized use of the Subscribed Products, inform Elsevier and take appropriate steps to end such activity and to prevent any recurrence. <p>In the event of any unauthorized use of the Subscribed Products, Elsevier may suspend the access and/or require that the Subscriber suspend the access from where the unauthorized use occurred upon notice to the Subscriber. The Subscriber will not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the unauthorized use did not result from the Subscriber's own negligence or willful misconduct and that the Subscriber did not permit such unauthorized use to continue after having actual notice thereof.</p>
<p>11. Termination</p> <p>(i) Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and fails to cure such material breach, provided that the non-breaching party shall give written notice of its intention to terminate and shall allow the breaching party 15 days after receipt of such notice to remedy the breach.</p> <p>(ii) Notwithstanding anything in paragraph (i) above, failure of either party to discharge any obligation or perform as per the terms or conditions of this Agreement as a result of conditions beyond its control such as but not limited to, war, strikes, fires, floods, government restrictions, acts of terrorism, public health emergencies, power failure or damages to or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.</p>	<p>SECTION 4. FEES AND PAYMENT TERMS. The Subscriber will pay to Elsevier the fees set forth in Schedule 1 (the "Fees") within thirty (30) days of date of invoice. Late payments will be subject to interest charges of 1% per month on the unpaid balance. The Fees will be exclusive of any sales, use, value added, withholding or similar tax and the Subscriber will be liable for any such taxes in addition to the Fees.</p> <p>SECTION 5. TERM. <i>5.1 Term.</i> The term of this Agreement will commence on 01 January 2014 and continue until 31 December 2014. <i>5.2 Renewal.</i> This Agreement will be automatically renewed for successive one-year terms, subject to appropriate adjustments to Schedule 1, unless either party gives notice to the other by 1 August prior to the end of the then current term that it does not intend to renew.</p>
<p>12. Execution Authority</p> <p>The persons whose signatures appear below certify that they are</p>	<p>SECTION 6. ELSEVIER WARRANTIES AND INDEMNITIES. <i>6.1 Warranties.</i> Elsevier warrants that use of the Subscribed Products in accordance with the terms and conditions herein will not infringe the intellectual property rights of any third party.</p>

<p>authorized to enter into this Agreement on behalf of the party for whom they sign.</p>	<p>6.2 Indemnities. Elsevier will indemnify, defend and hold harmless the Subscriber and its Authorized Users from and against any loss, damage, costs, liability and expenses (including reasonable attorneys' fees) arising from or out of any third-party action or claim that use of the Subscribed Products in accordance with the terms and conditions herein infringes the intellectual property rights of such third party. If any such action or claim is made, the Subscriber will promptly notify and reasonably cooperate with Elsevier. This indemnity obligation will survive the termination of this Agreement.</p> <p>6.3 Disclaimer. EXCEPT FOR THE EXPRESS WARRANTIES AND INDEMNITIES STATED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE SUBSCRIBED PRODUCTS ARE PROVIDED "AS IS" AND ELSEVIER AND ITS SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE SUBSCRIBED PRODUCTS AND ANY OTHER DATA, DOCUMENTATION OR MATERIALS PROVIDED IN CONNECTION WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY ERRORS, INACCURACIES, OMISSIONS, OR DEFECTS CONTAINED THEREIN, AND ANY IMPLIED OR EXPRESS WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.</p> <p>6.4 Limitation of Liability. Except for the express warranties and indemnities stated herein and to the extent permitted by applicable law, in no event will Elsevier or its suppliers be liable for any indirect, incidental, special, consequential or punitive damages including, but not limited to, loss of data, business interruption or loss of profits, arising out of or in connection with this Agreement, or will the liability of Elsevier and its suppliers to the Subscriber exceed a sum equal to the Fees paid by the Subscriber hereunder during the twelve (12) month period immediately preceding the date on which the claim arose, even if Elsevier or any supplier has been advised of the possibility of such liability or damages.</p>
<p style="text-align: center;">User</p>	
<p>For -----(name of user)</p>	
<p>Signature _____.</p>	
<p>Name of signatory:</p>	
<p>Designation:</p>	
<p><i>In presence of witness</i></p>	
<p>Signature -----</p>	
<p>1.</p>	
<p>Signature -----</p>	
<p>2.</p>	

SECTION 7. GENERAL.

7.1 Force Majeure.

Neither party's delay or failure to perform any provision of this Agreement as a result of circumstances beyond its control (including, but not limited to, war, strikes, fires, floods, power failures, telecommunications or Internet failures or damage to or destruction of any network facilities or servers) will be deemed a breach of this Agreement.

7.2 Severability.

The invalidity or unenforceability of any provision of this Agreement will not affect any other provisions of this Agreement.

7.3 Entire Agreement.

This Agreement contains the entire understanding and agreement of the parties and replaces and supersedes any and all prior and contemporaneous agreements, communications, proposals and purchase orders, written or oral, between the parties with respect to the subject matter contained herein.

7.4 Modification.

No modification, amendment or waiver of any provision of this Agreement will be valid unless in writing and signed by the parties.

7.5 Assignment.

The Subscriber will not assign, transfer or license any of its rights or obligations under this Agreement unless it obtains the prior written consent of Elsevier, which consent will not unreasonably be withheld.

7.6 Privacy.

Elsevier will not, without the prior written consent of the Subscriber, transfer any personal information of any Authorized Users to any non-affiliated third party or use it for any purpose other than as described in this Agreement and in the online privacy policy for the relevant online service.

7.7 Notices.

All notices given pursuant to this Agreement will be in writing and delivered to the party to whom such notice is directed at the address specified below or the electronic mail address as such party will have designated by notice hereunder.

If to Elsevier: Elsevier B.V. c/o Regional Sales Office, Elsevier Inc., 360 Park Avenue South, New York, NY 10010-1710, USA.

If to the Subscriber: University of Science, One University Place, New York, NY 00000, USA.

	<p><i>7.8 Confidentiality.</i> The Subscriber and its employees, officers, directors and agents will maintain as confidential and not disclose to any non-affiliated third party without Elsevier's prior written consent or except as required by law the financial terms and commercial conditions of this Agreement.</p> <p><i>7.9 Execution.</i> This Agreement and any amendment thereto may be executed in counterparts, and signatures exchanged by facsimile or other electronic means are effective to the same extent as original signatures.</p> <p>IN WITNESS WHEREOF, the parties have executed this Agreement by their respective, duly authorized representatives as of the date first above written. UNIVERSITY OF SCIENCE (Subscriber)</p> <hr/> <p>Name: Title: ELSEVIER B.V. (Elsevier)</p>
	<p>SECTION 1. SUBSCRIPTION.</p> <p>1.1 Subscribed Products. Elsevier hereby grants to the Subscriber the non-exclusive, non-transferable right to access and use the products and services identified in Schedule 1 ("Subscribed Products") and provide the Subscribed Products to its Authorized Users (as defined herein) subject to the terms and conditions of this Agreement.</p> <p>1.2 Authorized Users/Sites. Authorized Users are the full-time and part-time students, faculty, staff and researchers of the Subscriber and individuals who are independent contractors or are employed by independent contractors of the Subscriber affiliated with the Subscriber's locations listed on Schedule 2 (the "Sites") and individuals using computer terminals within the library facilities at the Sites permitted by the Subscriber to access the Subscribed Products for purposes of personal research, education or other non-corporate use ("Walk-in Users").</p> <p>1.3 Authorized Uses. Each Authorized User may:</p> <ul style="list-style-type: none">♣ access, search, browse and view the Subscribed

	<p>Products;</p> <ul style="list-style-type: none">♣ print, download and store a reasonable portion of individual items from the Subscribed Products for the exclusive use of such Authorized User;♣ incorporate links to the Subscribed Products on the Subscriber's intranet and internet websites and in electronic coursepacks, reserves and course management systems and instructor websites, provided that the appearance of such links and/or statements accompanying such links will be changed as reasonably requested by Elsevier;♣ provide print or electronic copies of individual items from the Subscribed Products to other Authorized Users and to third-party colleagues for their scholarly or research use; and♣ store individual journal articles from the Subscribed Products in the private library of a social networking site for the Authorized User's own personal use only;♣ share individual journal articles from the Subscribed Products with third party colleagues individually for their scholarly or research use; and ♣ share individual journal articles from the Subscribed Products with a limited number of third party colleagues as part of an invitation only working group on a social networking site for personal, scholarly or research use that works with publishers to provide anonymized usage information; and♣ access, search, browse, view, print, make electronic copies and store for the exclusive use of such Authorized User or, if the Authorized User is a librarian/information specialist, for the exclusive use of another Authorized User certain journal articles and book chapters from the ScienceDirect® online service that are not subscribed to as part of the Subscribed Products, with each twenty-four (24) hour access period for a selected article or chapter, a "Transaction." The Subscriber may:<ul style="list-style-type: none">♣ deliver journal articles from Subscribed Titles (as defined herein) and, if any, book chapters from the Subscribed Products to fulfill requests as part of the practice commonly known as "interlibrary loan" from non-commercial libraries located within the United States, provided that the Subscriber's staff reviews the requests and fulfills the requests in compliance with Section 108 of the U.S. Copyright Law (17 U.S.C. § 108) and the Guidelines for the Proviso of Subsection 108(g)(2) (Final Report of the National Commission on New Technological Uses of
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Copyrighted Works, 1978). The Subscriber may:

- ♣ access the text and data mining service online via an API at <http://www.developers.elsevier.com> to continuously and automatically extract and index and/or process information from the Subscribed Products to which the Subscriber separately subscribes and load and integrate the results (the “TDM Output”) on the Subscriber’s text-mining system for access and use by Authorized Users; and
- ♣ distribute the TDM Output externally, which may include a few lines of query-dependent text of individual full text articles or book chapters which will be up to a maximum length of 200 characters surrounding and including the text entity matched (“Snippets”) or bibliographic metadata. Where Snippets and/or bibliographic metadata are distributed, they should be accompanied by a DOI link that points back to the individual full text article or book chapter. Further the TDM Output should include a Creative Commons proprietary notice in the following form: “© Some rights reserved. This work is distributed under the terms of the CC-BY-NC Attribution-NonCommercial 4.0, which permits non-commercial use, distribution, and reproduction in any medium, provided the original author and source are credited.” Text and data mining services online may be accessed by vendors or other third parties retained by the Subscriber only with the express written permission of Elsevier and for the index and/or process information purposes of the Subscriber.

1.4 Restrictions on Use of Subscribed Products. Except as expressly stated in this Agreement or otherwise permitted in writing by Elsevier, the Subscriber and its Authorized Users may not:

- ♣ abridge, modify, translate or create any derivative work based on the Subscribed Products, except to the extent necessary to make them perceptible on a computer screen to Authorized Users;
- ♣ remove, obscure or modify in any way any copyright notices, other notices or disclaimers as they appear in the Subscribed Products;
- ♣ use any robots, spiders, crawlers or other automated downloading programs, algorithms or devices to continuously and automatically search, scrape, extract, deep link, index or disrupt the working of the Subscribed Products;
- ♣ substantially or systematically reproduce, retain or redistribute the Subscribed Products; or

	<p>♣ post individual items from the Subscribed Products on social networking sites. 3 Authorized Users who are individuals who are independent contractors or are employed by independent contractors may use the Subscribed Products only for the purposes of the contracted research work for the Subscriber.</p>
	<p>In the event of any unauthorized use of the Subscribed Products, Elsevier may suspend the access and/or require that the Subscriber suspend the access from where the unauthorized use occurred upon notice to the Subscriber. The Subscriber will not be liable for unauthorized use of the Subscribed Products by any Authorized Users provided that the unauthorized use did not result from the Subscriber's own negligence or willful misconduct and that the Subscriber did not permit such unauthorized use to continue after having actual notice thereof.</p> <p>SECTION 5. TERM. 5.1 Term. The term of this Agreement will commence on 01 January 2014 and continue until 31 December 2014. 5.2 Renewal. This Agreement will be automatically renewed for successive one-year terms, subject to appropriate adjustments to Schedule 1, unless either party gives notice to the other by 1 August prior to the end of the then current term that it does not intend to renew.</p>

3. Comparison of TKDL Agreement with the Agreement of M/s American Chemical Society

<p>Clause of TKDL Agreement</p>	<p>STN by American Chemical Society (http://www.cas.org/legal/stn-gvp-license-agreement)</p>
<p style="text-align: center;">Traditional Knowledge Digital Library (TKDL) Access Agreement</p> <p>This Agreement is made on this _____ day of _____ 20---- between Council of Scientific & Industrial Research, a Society registered under the Societies Registration Act XXI of 1860 having its registered office at Anusandhan Bhawan, 2 Rafi Marg, New Delhi – 110 001 [hereinafter called the “Provider”].</p> <p>And the _____, which is an Office concerned with Patent Search & Examination having its registered office at _____, hereinafter called the “User”. (hereinafter collectively called ‘parties’ or ‘either party’)</p> <p>Whereas Traditional Knowledge Digital Library (TKDL) has been jointly developed by Council of Scientific & Industrial Research (called CSIR) and Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homeopathy (called AYUSH), Government of India and is a proprietary and original database.</p> <p>Whereas CSIR which is the provider of TKDL, is the sole owner of the TKDL proprietary and original database and is the implementing agency of TKDL on behalf of Government of India.</p> <p>Whereas TKDL is a database in five international languages (English, French, German, Spanish and Japanese), which converts Indian Traditional Knowledge (Ayurveda, Unani, Siddha,</p>	<p>STN GLOBAL VALUE PRICING LICENSE AGREEMENT</p> <p>This STN® Global Value Pricing License Agreement (the “Agreement”) is entered into by and between CUSTOMER and The American Chemical Society through its Chemical Abstracts Service division (“CAS”) as operator of the STN® International STN Service Center (“STN”).</p> <p>THE PARTIES, INTENDING TO BE LEGALLY BOUND, AGREE AS FOLLOWS:</p> <p>1. PURPOSE OF AGREEMENT.</p> <p>This Agreement covers financial and related arrangements for CUSTOMER's use of all STN files, features and services available during the term of this Agreement, with exceptions as listed herein.</p> <p>2. TERM AND TERMINATION.</p> <p>The initial Term of this License shall be as set forth in the Order. Neither party may terminate this Agreement for the sake of convenience.</p> <p>In the event of a breach of this Agreement by CUSTOMER, CAS may provide notice of such breach. Upon receipt of such notice, CUSTOMER will cure such breach within 30 days. If CUSTOMER fails to cure the breach within the 30-day period, CAS may terminate this Agreement immediately, and CUSTOMER is responsible for all payments as set forth in this Agreement. CAS may temporarily suspend access to one or more login IDs during the breach period.</p> <p>3. LICENSE FEES.</p> <p>License Fees and invoicing for CUSTOMER's</p>

Yoga, etc.) from existing *prior art*, traditional knowledge formulations or know-how available in Hindi, Sanskrit, Arabic, Persian, Urdu, Tamil, etc. to five international languages.

Whereas TKDL contains images of Ayurveda, Unani and Siddha formulations and Yoga practices with an objective to protect Indian Traditional Knowledge already available in public domain.

Whereas TKDL is a bridge between ancient texts in Sanskrit, Arabic, Persian, Urdu, Tamil, Hindi etc. (existing *Prior Art*) and Patent Examiner at a global level and provides information on modern as well as local names in a language and format understandable to Patent Examiners.

Whereas the Government of India has duly authorized the Provider to execute this Agreement.

And Whereas the User has expressed its interest to get access to TKDL for the purpose of all phases of the patent grant procedure.

Now therefore, this Agreement witnesses as follows:-

7. The Provider hereby grants to the User full access to the TKDL database for a period of 5 years as from signature of this Agreement by both parties for the purposes of patent grant procedures by the User
8. It is hereby agreed and declared between the parties that aforesaid access is on a non-exclusive basis and is subject to the following conditions:-

(a) Responsibilities of the Provider

- (XIII) The Provider shall make all reasonable efforts to ensure uninterrupted online access and continuous availability of TKDL to authorized users in accordance with this

initial Term are set forth in CUSTOMER's Order.

CUSTOMER may not change the type of currency during the term of this Agreement. CUSTOMER will pay all invoices according to the STN invoice terms and must be paid via the following methods: check (drawn on a USA bank or branch of a USA bank), wire transfer, Automated Clearinghouse (ACH) transfer, or Electronic Data Transfer (EDT) in formats CTX or CTPNACHA. CUSTOMER shall be responsible for any applicable taxes under this Agreement.

4. FINANCIAL TERMS AND ELIGIBLE SITES.

CUSTOMER is entitled to receive unlimited use of all Files and Features, except those specifically excluded in Paragraph 7, for use at CUSTOMER sites identified in the Order.

Global Value Pricing is dependent on CUSTOMER maintaining current or previous subscription levels to certain databases if applicable, as well as information provided by CUSTOMER during Global Value Pricing discussions. If subscriptions are cancelled during the life of this contract or key usage parameters discussed with CUSTOMER change, CAS and CUSTOMER agree to timely renegotiate this contract in good faith.

All searching under this Agreement shall be for the exclusive benefit of CUSTOMER Eligible Sites identified in the Order. CUSTOMER shall not perform any searching under this Agreement for the benefit of any other CUSTOMER Eligible Site.

For purposes of this Agreement, a CUSTOMER Eligible Site must be in the control of CUSTOMER and greater than 50% owned by CUSTOMER. Further, CUSTOMER agrees and warrants that all applicable CUSTOMER Eligible Sites are greater than 50% owned by CUSTOMER. Should a change in ownership occur at an Eligible Site in which CUSTOMER no longer controls or owns greater than 50% of the Eligible Site, CUSTOMER will notify CAS in

<p>agreement except in cases beyond the control of the Provider or any force majeure.</p> <p>(XIV) The Provider shall provide training to the User to use TKDL tools for search and examination as and when needed; the cost, if any, of such training has to be borne by the User.</p> <p>(XV) The Provider shall render online assistance in using TKDL for search and examination, as and when needed by the User.</p> <p>(XVI) The Provider shall remain free to grant access of TKDL to any other parties, including other patent offices, on a non-exclusive basis.</p>	<p>writing within 30 days of the change in ownership. Regardless of notification to CAS by CUSTOMER, the Eligible Site will automatically become ineligible for the pricing benefits provided under this Agreement, and will be subject to a separate price assessment that covers the period beginning with the time of change in ownership.</p>																					
<p>(b) Responsibilities and Obligations of the User</p>	<p>5. PRICE ASSESSMENT, CONDITIONS AND CURRENCY.</p> <p>The price for use of STN under this Agreement is based on historical usage and an assessment of future usage as known and agreed between the Parties at the time of the assessment. If assessed parameters change during the term of this Agreement leading to a significant increase of usage, CUSTOMER is obliged to inform CAS immediately. Such parameters include, but are not limited to, the intention to transfer usage from other commercial vendors or products, the addition of sites, mergers and acquisitions. A possible re-assessment of the price will be carried out in good faith.</p>																					
<p>(X) The User shall use TKDL information only for the purposes of the patent grant procedure in all its phases including the inspection of files and for no other purpose.</p>	<p>6. INCLUDED FILES AND FEATURES.</p> <p>This Agreement covers the use of all STN Files and Features subject to availability, except for those excluded in Paragraph 7. Any new File and/or Features added to STN during the term of this Agreement will be covered by this Agreement, with exceptions at the discretion of CAS.</p>																					
<p>(XI) The User shall, whenever required, deliver only that information from TKDL contents which is relevant for the purposes of citation in patent grant procedure in all phases including opposition proceedings, to the patent applicant(s) or any other person who is party to such proceedings. The User may, whenever required, deliver only, such relevant information from TKDL contents to other patent offices under any agreement between the User and such offices to share the cited documents of a patent application. Except as mentioned above, the User undertakes to preserve confidentiality of the entire contents of</p>	<p>7. EXCLUDED FILES AND FEATURES.</p> <p>Unless otherwise set forth in the Order, the following Files and Features are not covered by the Agreement and will be billed separately to CUSTOMER:</p> <table border="0"> <tr> <td>PatentPak®</td> <td></td> <td></td> </tr> <tr> <td>Science</td> <td>IP® Labor</td> <td>Charges</td> </tr> <tr> <td>FIZ</td> <td></td> <td>AutoDoc</td> </tr> <tr> <td>Single</td> <td>Article</td> <td>Sales</td> </tr> <tr> <td>STN AnaVist™</td> <td>CAplus</td> <td>Download Document</td> </tr> <tr> <td>Feature</td> <td></td> <td></td> </tr> <tr> <td>Clarivate Analytics</td> <td>Derwent</td> <td>Markush Resource</td> </tr> </table>	PatentPak®			Science	IP® Labor	Charges	FIZ		AutoDoc	Single	Article	Sales	STN AnaVist™	CAplus	Download Document	Feature			Clarivate Analytics	Derwent	Markush Resource
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<p>TKDL.</p> <p>(XII) Survival of obligations for maintaining the confidentiality of TKDL shall remain even after the termination of this Agreement.</p> <p>2. Periodic Review</p> <p>The Parties may review the status on access to TKDL as and when required for identifying impediments and issues that may need corrective action.</p> <p>3. User Access Details:</p> <p>Access details shall be provided by the User as follows as Annex to this Agreement</p> <p>IP Address based access</p> <p>IP Address Details: (e.g., 145.64.*.*)</p> <p>4. Renewal</p> <p>This Agreement shall be renewed further automatically for periods of 5 years each, on completion of the Agreement period, provided the Agreement is not terminated under clause 11 of this agreement.</p> <p>5. Severability</p> <p>If any covenant or provision of this Agreement is determined to be void or unenforceable in whole or part, then such void or unenforceable provision shall be deleted from this Agreement and shall not affect or impair the enforceability or validity of any other provision of this Agreement or any part thereof.</p> <p>6. Modification</p> <p>Any provision of this Agreement can be modified only with the express consent of both parties in writing signed and acknowledged by both</p>	<p>8. KEY CONTACT.</p> <p>CUSTOMER agrees to provide CAS with the name, address, telephone and telefax numbers, and email address for a key contact, and to notify CAS of any changes in this information during the term of this Agreement. A key contact is defined as a named User at an Eligible Site designated by Licensee as the administrative point of contact.</p> <p>9. USE OF DATA.</p> <p>Inclusion of All Files in an STN Global Value Pricing Agreement is designed for existing STN Users and/or new users, and encourages Users to make full use of STN. The Agreement includes reasonable training and addition of new searchers as well.</p> <p>All use of data including archiving and redistributing search results from Files on STN under this Agreement is either governed by the CAS Information Use Policies, the STN Information Keep & Share Program, Clarivate Analytics (UK) Limited Databases Terms of Agreement, or other database specific terms and conditions depending on the databases used (www.stn.org). All aforementioned usage restrictions and guidelines are part of this Agreement and CUSTOMER accepts these usage terms. Usage restrictions and guidelines concerning use of databases are subject to change by the database content provider and are published online.</p> <p>10. EXCLUSIVE USE BY CONTRACTORS AND SEARCH SERVICES.</p> <p>CUSTOMER may provide access to STN under this Agreement to a Contractor/Search Service for searching purposes contingent upon the following:</p> <ul style="list-style-type: none">a) All searching on STN shall be for the exclusive benefit of CUSTOMER;b) CUSTOMER agrees to assume all legal and financial responsibility for the Contractor/Search Service's use and searching of the Files;
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parties thereof.

7. Supersession

This Agreement represents the entire understanding between the parties and supersedes all other express or implied agreements between the parties in this regard.

8. Waiver

No delay, indulgence or failure to act by either party regarding any particular default or omission of the other party shall affect or impair any rights or remedies regarding that or any subsequent default or omission unless it is waived in writing.

9. Settlement of disputes

Any dispute, which may arise in connection with the implementation, interpretation or application of this Agreement, will be settled amicably between the Parties through mutual consultations.

10. Disclaimer

- (i) The Parties reserve all rights as regards their confidential information and no rights or obligations other than those expressly written herein are granted or implied by this Agreement.
- (ii) The information contained in TKDL has been compiled on best effort basis; the Provider of the database shall therefore not be held responsible for any inadvertent error in the content of TKDL.
- (iii) Nothing in this Agreement shall affect the rights and obligations relating to any prior art, traditional knowledge formulations or know how which are not listed in the TKDL

c) CUSTOMER will request a unique login ID from CAS for a Contractor/Search Service and provide CAS with the name of such Contractor/Search Service;

d) CAS reserves the right to review and reject any Contractor/Search Service;

e) Each Contractor/Search Service will be provided with a unique STN login ID by CUSTOMER to be used by the Contractor/Search Service (CUSTOMER will notify CAS when a specific STN login ID is no longer needed for the Contractor/Search Service);

f) CUSTOMER will monitor usage by each Contractor/Search Service to ensure Contractor/Search Service is in compliance with the terms of this Agreement; and

g) Any use by the Contractor/Search Service that is found to be in violation of the Agreement terms will be deemed to be outside of this Agreement, and will be separately invoiced to CUSTOMER.

11. COOPERATION OF PARTIES.

CAS will monitor the searching and downloading activity performed under this Agreement. In the event of any extraordinary usage, CUSTOMER agrees to provide assistance in identifying the individual(s) causing such extraordinary usage, and if necessary, cooperate with CAS to reach a mutually agreeable solution.

12. CONFIDENTIALITY.

Each party will keep the terms of this Agreement and the Order confidential, with the exception that it may confer with legal counsel or other legal advisor on its terms and except as required by law in the reasonable opinion of each party's respective legal counsel. CUSTOMER accepts liability for the compliance of its included subsidiaries with this provision.

13. NON-ASSIGNMENT.

This Agreement may not be assigned, sub-

since it does not claim to be exhaustive in its coverage.

11. Termination

- (i) Either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement and fails to cure such material breach, provided that the non-breaching party shall give written notice of its intention to terminate and shall allow the breaching party 15 days after receipt of such notice to remedy the breach.
- (ii) Notwithstanding anything in paragraph (i) above, failure of either party to discharge any obligation or perform as per the terms or conditions of this Agreement as a result of conditions beyond its control such as but not limited to, war, strikes, fires, floods, government restrictions, acts of terrorism, public health emergencies, power failure or damages to or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

12. Execution Authority

The persons whose signatures appear below certify that they are authorized to enter into this Agreement on behalf of the party for whom they sign.

User	Provider
For ----- ------(name of user)	For ----- --(name of Provider)
Signature -	Signature

licensed or otherwise transferred to any third party.

14. GOVERNING LAW.

The courts of the District of Columbia of the United States of America will have jurisdiction with respect to any disagreements or conflicts resulting from this Agreement. Additionally, the validity, construction and performance of this Agreement and the legal relations between the parties to this Agreement will be governed by and construed in accordance with the laws of the District of Columbia.

15. NOTICES.

Any notice(s) given under the Agreement may be sent by electronic mail, facsimile, or by certified mail to the party's last known address.

16. ENTIRE AGREEMENT.

This Agreement, the Order, and the applicable individual agreements that CUSTOMER has entered into with CAS or FIZ Karlsruhe – Leibniz-Institut für Informationsinfrastruktur GmbH ("FIZ Karlsruhe") related to STN, are the entire understanding between the parties concerning the subject matter hereof, and supersede all prior representations and agreements, oral or written, related to purpose of this Agreement (§1), and may not be modified unless in writing signed by authorized individuals of both parties. A fully executed copy of CUSTOMER's Order shall have the same legal effect as an original.

Any conflict between the Order and this Agreement shall be resolved in favor of the Order. Any conflict between the terms of this Agreement and the terms of any such applicable individual agreements presently in place upon the signing of this Agreement for the included Files will be resolved in favor of this Agreement. All other terms and conditions of the applicable agreements presently in place for included Files will remain in place, even upon the expiration or termination of this Agreement, unless otherwise terminated pursuant to the terms of any of the individual agreements. If

<p>Name of signatory: _____</p> <p>Designation: _____</p> <p><i>In presence of witness</i></p> <p>Signature ----- -----</p> <p>1.</p> <p>Signature ----- -----</p> <p>2.</p>	<p>Name of signatory: _____</p> <p>Designation: _____</p> <p><i>In presence of witness</i></p> <p>Signature ----- -----</p> <p>1.</p> <p>Signature ----- -----</p> <p>2.</p>	<p>CUSTOMER uses a purchase order in conjunction with ordering or paying for its STN Global Value Pricing access, the parties agree that the terms of the purchase order will in no way modify, add to, or delete this Agreement. ANY DISCREPANCY BETWEEN CUSTOMER'S PURCHASE ORDER(S) AND THIS AGREEMENT WILL BE RESOLVED IN FAVOR OF THIS AGREEMENT.</p> <p>17. IMPOSSIBILITY OF PERFORMANCE.</p> <p>To the extent that either party may be precluded by a force majeure event, authority of laws, strikes, lockouts, casualties or other causes beyond its control from performance hereunder, such non-performance will be excused to the extent that it results from such causes and will not give rise to any claims for damages by the other party.</p> <p>18. AUTHORITY.</p> <p>The representative of CUSTOMER signing the Order represents that he or she has the full and complete authority to bind CUSTOMER and all its included subsidiaries to the terms of the Order and this Agreement.</p> <p>19. THIRD PARTY BENEFICIARY.</p> <p>CUSTOMER acknowledges that STN is a service operated by The American Chemical Society through its Chemical Abstracts Service division and FIZ Karlsruhe. CUSTOMER further acknowledges that FIZ Karlsruhe is entitled to all rights of a third party beneficiary under this Agreement, including, but not limited to, enforcing the terms and conditions provided, and benefiting from the remedies provided herein.</p> <p>Last Updated: March 14, 2017</p>
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