

WIPO Information Sharing Session on Regional,
National, and Community Experiences Regarding
the Use of Intellectual Property as a Tool to Protect
TK and TCEs

6 March 2026

Topics

1. Introduction IP as a tool for protection of TK/TCEs
2. Recent cases appropriation of TK / TCE
3. Case study Indigenous-led collaboration: Kakadu beverage

1. Introduction: IP as a tool for protection of TK/TCEs

1. Introduction IP as a Tool for protection of TK / TCEs

- Most Intellectual Property Rights protect:
 - an intellectual creation by one or more persons (e.g. work, invention, design)
 - that meet certain substantive requirements (e.g. novel, original, 'free creative choices' that reflect the imprint of the author's personality')
 - and is limited in time
- **Collective rights** may be useful for protection of certain forms of TK / TCEs, e.g.
 - Collective trademarks
 - distinguish goods and services of members of an association
 - Geographic Indications
 - protect the link between a product and its geographic origin, which often encompasses traditional production methods, local know-how, and cultural heritage

1. Introduction IP as a Tool for protection of TK / TCEs

Since 1 December 2025: EU Regulation 2023/2411, GI for crafts and industrial products

- Registered geographical indications are protected against several forms of infringement:
 - **Direct or indirect commercial use** for products not covered by the registration, where such products are comparable or where the use exploits, weakens, dilutes, or harms the reputation of the protected GI
 - **Misuse, imitation, or evocation** of the protected name, even if the true origin is indicated or even if it is translated or accompanied by expressions like "type," "method," "imitation," or similar terms
 - **False or misleading indications** about origin, nature, or essential qualities of the product on packaging, advertising materials, documents, or online interfaces
 - **Other practices** that may mislead consumers about the true origin of the product
- Protection extends to: domain names, goods entering the EU customs territory (without being released into free circulation), and goods sold via distance selling, including e-commerce

1. Introduction IP as a Tool for protection of TK / TCEs

CJEU C-490/19, 17.12.2020 (PDO 'Morbier')

- Scope of protection not limited to prohibiting use of the registered name:
"any other practice liable to mislead the consumer as to the true origin of the product"
- Test is whether an average European consumer - reasonably well informed and observant - would be **misled**, considering all relevant factors
- Courts to assess whether that element constitutes a **baseline characteristic** which is **particularly distinctive of that product** so that its reproduction may, in conjunction with all the relevant factors in the case at hand, lead the consumer to believe that the product containing that reproduction is a product covered by that registered name
- Court of Appeal Paris, judgement 18 November 2022:
 - infringement injunction
 - damage and cost award



1. Introduction IP as a Tool for protection of TK / TCEs

- IP rights as a tool for protection
 - “Negative right”; right to prohibit the use without permission
 - Function in innovation ecosystem: economic basis for innovation
- Role of IP differs
 - depending on the nature of the product, industry and context
 - Assess pathway from idea to commercialization
 - No ‘one size fits all’

2. Recent cases

2. Recent cases: EPO patent opposition Quassia Amara

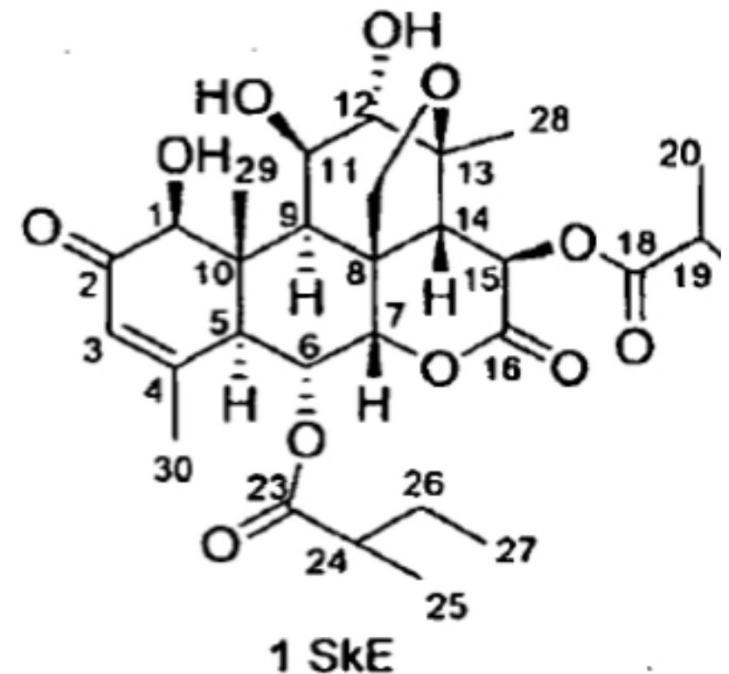
EPO Board of Appeal decision T2510/18, 31 May 2024

- Patent holder: Research Institute for Development (FR)
- Opponent: Danielle Mitterand Foundation, France Libertés
- Patent EP 2 443126, priority date 18 June 2009
- Patent relating to molecule Simalikalactone E that can be isolated from the plant Quassia Amara
- Plant used as traditional medicine against malaria and fever in parts of the Amazon and Central America



2. Recent cases: EPO patent opposition Quassia Amara

- Opposition ground: public order or morality
 - Unethical research practices: use of Indigenous knowledge without consent and benefit sharing
 - Ground only applies to inventions whose commercial exploitation would be contrary to public order or morality, not how the invention is obtained
 - Use in treatment serves a significant public health purpose
- No lack of novelty or inventive step
- Opposition has been rejected, but patent had already been withdrawn



2. Recent cases: appropriation in fashion industry (2025)

- Accusations of appropriation; no acknowledgement or compensation to artisans and crafts

Case	Description	Outcome
Reformation (April 2025)	Blouse and skirt set similar to 2000s-Bollywood-era lehenga	Accusations on social media; 'inspired'
H&M (2025)	Camisole and trouser similar to shalwar kameez (tunic paired with trousers)	Accusations on social media;
Dior (June 2025)	Gold and ivory houndstooth coat, crafted with mukaish work, a centuries-old metal embroidery technique from northern India	Publicly criticized
Prada (June 2025)	Toe-braided sandal similar to the Kolhapuri chappal, a handcrafted leather shoe made in India	Accusations on social media; acknowledgement 'inspired'; Court case filed in India (GI), but claims rejected
Adidas (August 2025)	"Oaxaca Slip-On" is very similar to traditional Indigenous footwear 'huaraches'	Accused by Mexican authorities, press conference; apologies

2. Recent cases: Adidas (August 2025)

- Adidas was accused by the Mexican authorities of copying traditional Mexican handicraft

“Oaxaca Slip-On” is very similar to traditional Indigenous footwear ‘huaraches’, cultural heritage of Zapotec Indigenous communities in Oaxaca, town of Villa Hidalgo de Yalálag

BBC press release: “Mexico's President Claudia Sheinbaum told a press conference:

"Big companies often take products, ideas and designs from Indigenous communities.”

"We are looking at the legal part to be able to support them.”



Source: Image presented at the Mexican president's morning press conference, website BBC press release 10 August 2025, Reuters

2. Recent cases: Adidas (August 2025)

- Designer statement:
 - "I am deeply sorry that the shoe was appropriated in this design and not developed in direct and meaningful partnership with the Oaxacan community"
 - Intended "to honor the powerful cultural and artistic spirit of Oaxaca and its creative communities - a place whose beauty and resistance have inspired me"
- Adidas statement:
 - Recognizes and values the cultural richness of Mexico's Indigenous communities and the meaning of their artisanal heritage.
 - "The 'Oaxaca Slip-On' was inspired by a design from Oaxaca, rooted in the tradition of Villa Hidalgo Yalálag. We offer a public apology and reaffirm our commitment to collaborate with Yalálag in a respectful dialogue that honors their cultural legacy"

2. Recent cases: different dynamics; main challenges

- Different types of disputes
 - Biopiracy cases (TK)
 - Appropriation in fashion and merchandise (TK / TCEs)
- Different motives of infringers
 - Unintentional
 - Counterfeit or piracy
- Increased awareness: Nagoya Protocol, WIPO Treaty, ESG / reputational risk
- Challenges enforcement:
 - Technical developments (AI, online infringement)
 - Illegal practices (infringing products offered via social media and shipped directly to consumer, unfair commercial practices, breach of regulations, fraudulent practices)
 - Lack of awareness on cultural significance (both authors/designers/inventors and consumers)

3. Case study: Kakadu beverage

3. Case Study: Kakadu plum beverage

- Collaboration between Indigenous Enterprise Group and ARC Training Centre for Uniquely Australian Foods, led by the University of Queensland
- Indigenous-led from idea to commercialization
 - Objective: decrease sugar consumption in Indigenous populations by developing a healthier alternative to sweet drinks
- Project described in detail in the article: 'From Traditional Knowledge to market: A pathway for ethical commercialization of Indigenous food products', Cartwright et al (2026) Plants People Planet, DOI: 10.1002/ppp3.70168



Photograph by Jessica Cartwright, 15 October 2022

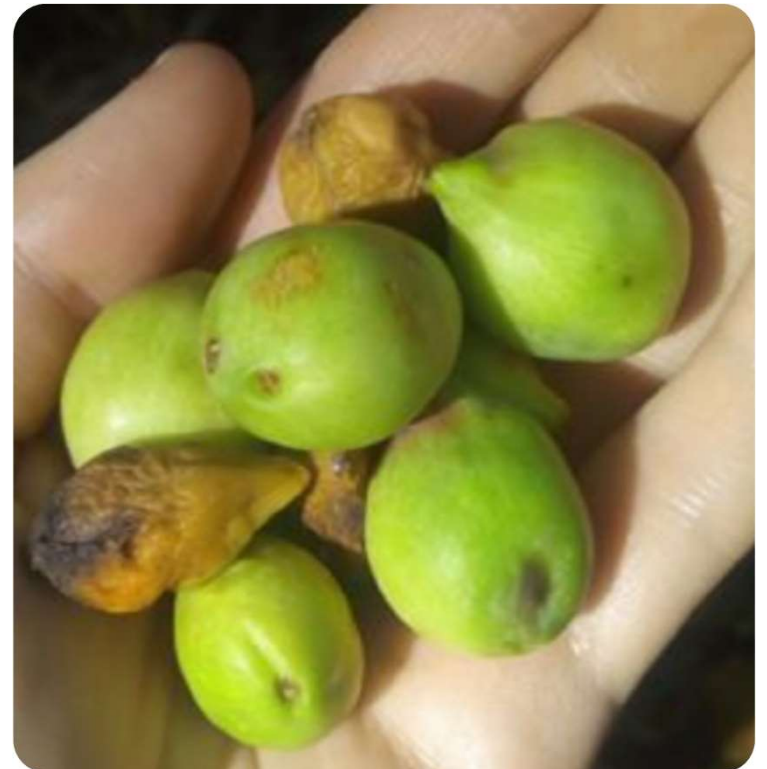
3. Case Study: Kakadu plum beverage

ABS arrangement

- Free prior informed consent obtained; permits for plant material collection in research
- Common approach:
 - Research institute requests access to TK to be used as raw data in investigation
 - Challenging for researchers due to complex legal ABS landscape
 - Bi-lateral ABS relation
 - Discussion regarding beneficiary / competition between communities
- Here different: Indigenous stakeholders actively participated in every step of the research, reflected in project governance

3. Case Study: Kakadu plum beverage

- Why Kakadu fruit?
 - Highest vitamin C content of any edible plant
 - Sourced from businesses operated by Indigenous partners in the Northern Territory and Western Australia
 - Important driving factor: connection to Country (Indigenous people's relationship between lands and waters); plant naturally grows on the traditional homelands of several members of the Indigenous Enterprise Group

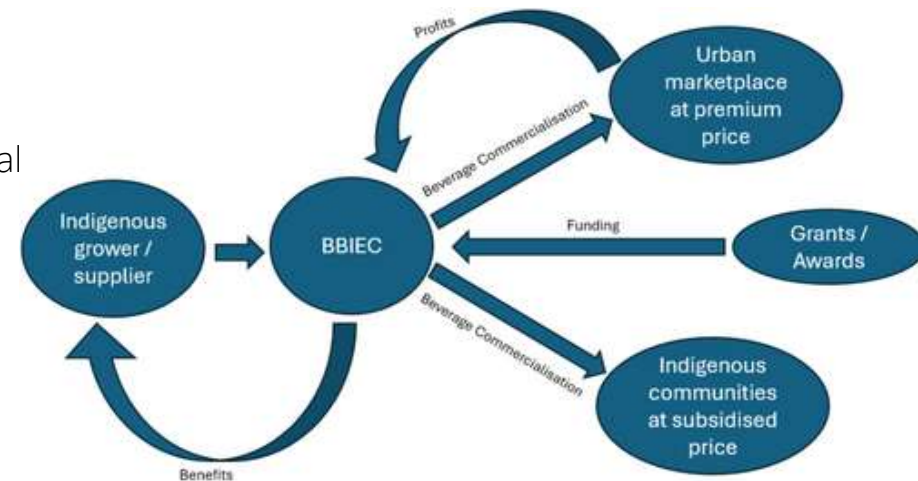


Kakadu plum fruits gathered from the ground near Darwin (photograph by Jocelyn Bosse) (from 'From traditional knowledge to market: A pathway for ethical commercialisation of Indigenous food products', Plants People Planet, 18 December 2025)

3. Case Study: Kakadu plum beverage

IP arrangements

- Usual IP model: IP rights vest in research institute /private party or co-owned and benefits are shared in the form of royalty payments
- Here different:
 - University of Queensland transferred full ownership of the IP relating to the prototype beverage to Bushtukka and Botanical Indigenous Enterprise Cooperative (BBIEC)
 - 100% Indigenous owned vehicle for commercializing the beverage
 - Cultural knowledge used in development of the beverage retained by Indigenous people
- Intention to use dual funding model
 - Fund scalable manufacturing
 - Supply beverage to Indigenous community at a subsidised price



Concluding remarks

- IP protection as a tool for TK/TCEs: no one size fits all
- Important to create awareness and educate authors, designers and inventors and consumers
- Collaboration can contribute to actual realization of benefits