FICCI INTERNATIONAL CONFERENCE ON TRADITIONAL KNOWLEDGE

Perspectives on the WIPO Intergovernmental Committee Of the United States

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Overview

• We all provide and use genetic resources and traditional knowledge
• Shared objectives
  – Access and equitable benefit sharing
  – Eliminate misappropriation
  – Eliminate Invalid patents
• How can we best achieve objectives?
• Need to preserve, maintain and respect
• Conclusion
We all Provide and Use Genetic Resources and TK
The United States Provides for Access to Genetic Resources by a variety of national, state, local and private entities.

Two National entities:
- U.S. National Plant Germplasm System
- U.S. National Park System Access Regime
U. S. National Plant Germplasm System (NPGS)

• One of the largest national genebank systems.
• More than 460,000 samples of more than 11,300 plant species.
• Large collections of the major staples important to U. S. and world agriculture.

• Large holdings of crops without major collections at international agricultural research centers, e.g., cotton, soybean, various horticultural and “specialty” crops.
NPGS

- Distribution: NPGS annually distributes an average of about 120,000 samples to researchers worldwide.
- An average of about 25% are distributed internationally.
- Current 6:1 ratio of NPGS accessions annually distributed internationally vs. annually collected internationally.
- Samples are distributed free-of-charge and without restriction.
National Park Service (NPS)
The NPS has significant biodiversity: 10,000 hot springs, geysers, mud pots & fumaroles
Greatest concentration and diversity of terrestrial thermal habitats on Earth . . .
The Research Community . . .

Approximately 50-75 research permits issued annually at Yellowstone for microbial research projects . . .
IGC: Shared Objectives
Shared Objectives

• Objectives shared among all Members:
  – Provide Authorized Access While Assuring Conservation of Biodiversity
  – Equitable benefit sharing for use of traditional knowledge and/or genetic resources (TK/GR)
  – Eliminate Erroneously Issued Patents
  – Eliminate Misappropriation of TK/GR
But to have a Common Understanding of Objectives, a Definition of Terms is Needed

- Definitions are needed for:
  - “traditional cultural expressions”
  - “traditional knowledge”
  - “genetic resources”
  - “misappropriation”

- Meaning of Misappropriation is being addressed at WTO
How Can we Best Address Shared Objectives?
How can we best achieve objectives?

**Objective: Authorized Access**

- Establish effective national systems separate from patent laws
  - National laws
    - Permits/Visas for collections
    - Contracts
    - IP Laws (e.g. trade secret, copyright, trademark system)
    - Unfair Competition Laws
How can we best achieve objectives?

Objective: Authorized Access (continued)

• National Laws:
  – Provide point of contact (e.g. government and indigenous reps., when appropriate)
  – May provide conditions for research
• May require use of contracts for collecting
• May provide civil and/or criminal penalties for misappropriation
• Role of IGC- Share Best Practices, Draft Model Laws, Support Other Capacity Building
How can we best achieve objectives?

**Objective: Equitable Benefit Sharing**

- Contracts may provide for benefit sharing
  - Monetary or nonmonetary benefits
- May contain regular reporting requirements
  - At regular intervals, as to uses
  - Reporting of any inventions derived from the GR or TK
  - Reporting any filed patent applications derived from the GR or TK
- May include “choice of law” provisions
How can we best achieve objectives?

Objective: Eliminate misappropriation and/or improper collection and use of TK and GR

- Need enforcement of national laws
- Cannot undo earlier misappropriation
- The United States has tools to enforce laws of other jurisdictions
  - For example, under the Lacey Act, foreign laws protecting wildlife, fish, and plants can be enforced by making it a separate offense to take, possess, transport, or sell wildlife, fish and plants that have been taken in violation of those laws.
How can we best achieve objectives?

Objective: Eliminate misappropriation and/or improper collection and use of TK and GR (continued)

- The IGC should consider how enforcement of foreign laws could help eliminate misappropriation.
- The solution should be outside of the Patent System
How can we best achieve objectives?

Objective: Eliminate Invalid Patents

- The IGC has an important role to play in providing encouraging WIPO to provide resources, and in providing guidance, to IP Offices to eliminate invalid patents.
  - Advocate Use of databases
  - Better classification of prior art related to TK-GR (IPC)
  - Encourage Submission of information material to patentability
    - By applicants
    - By third parties
  - Encourage Post-grant correction or opposition, such as re-examination procedures
  - Encourage Use of Supplemental International Search in Patent Cooperation Treaty Applications
Need to Preserve, Promote and Respect
The United States is a provider of Traditional Cultural Expressions and Traditional Knowledge
Conclusion

• More work is needed to define misappropriation, traditional cultural expressions, genetic resources and traditional knowledge

• Shared objectives include access and benefit sharing, as well as reducing misappropriation and invalid patents, need to have a meaningful discussion as to what they mean

• We can achieve these objectives