



Position on Disclosure of Origin in Intellectual Property Protection Applications

(Bangalore, June 2003)

It has been suggested that Intellectual Property applicants, when filing applications concerned with biological resources, should assist the objectives of the Convention on Biological Diversity (CBD) by:

- disclosing the origin of these resources
- providing evidence of Prior Informed Consent that such resources have been accessed in accordance with the provisions of the CBD.

1. Disclosure of the origin of the genetic resource

ISF believes that if origin has the meaning of “country of origin” in the sense of the CBD, the disclosure of origin would be impractical and very often not possible. Indeed, it is extremely difficult and in most cases impossible to trace the origin of a biological resource. Moreover, it is also very difficult to determine when and where biological materials, in the form received, have developed these distinctive properties.

ISF proposes to solve this problem by providing information on the “source” of the biological material, i.e. that the applicant should be obliged to say where he/she obtained the material from. Normally he/she knows and is allowed to indicate this with possible exceptions:

- In the breeding community, one reason why the source could not be known is that the biological material comes from the breeder’s nursery and that there is no record of the original source.
- Sometimes the biological resource has been received in the frame of a confidential contract and the disclosure of the origin would be a breach of that contract.

If the applicant does not know the “source” of the material, or is not allowed to disclose it by contractual agreement, he/she may reasonably be asked to explain why not.

The disclosure of the “source”, in the meaning as summarized in the following paragraph, should be an administrative requirement only and thus, the failure to disclose, except in the case of proved fraudulent intention, could not invalidate the title of protection. (The disclosure of the source would not be a protectability criterion).

In summary, ISF could accept the disclosure of the “source” of the biological material, in the sense of where the material has been obtained from, when it is known, and if it is not a breach of a contract.

2. Providing evidence of Prior Informed Consent that such resources have been accessed in accordance with the provisions of the CBD

ISF expects its members to respect fully the laws of all countries in which they operate. However, the CBD is being implemented by different countries at different rates and in different ways.

Most countries have neither put in place a requirement for PIC with appropriate mechanisms for obtaining it, nor stated definitively that they will not require it. Demanding evidence of consent to access in these countries imposes the Intellectual Property protection applicant a condition that cannot be fulfilled.

Furthermore, most biological inventions are made with biological material to which the inventor has legitimate access without any prior access agreement.

For these reasons, ISF cannot accept any universal requirement to demonstrate Prior Informed Consent in Intellectual Property protection applications.



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