

Patent Cooperation Treaty (PCT) Working Group

Eighteenth Session
Geneva, February 18 to 20, 2025

WIPO TREATY ON INTELLECTUAL PROPERTY, GENETIC RESOURCES AND ASSOCIATED TRADITIONAL KNOWLEDGE

Document prepared by the International Bureau

SUMMARY

1. In May 2024, WIPO Member States adopted, by consensus, the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge (“the Treaty”). A footnote to Article 7 of the Treaty specifically relates to the Patent Cooperation Treaty (PCT).

THE TREATY

2. Following more than 20 years of discussions in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, a Diplomatic Conference was held from May 13 to 24, 2024, culminating in the adoption of the Treaty (document GRATK/DC/7).¹

3. The Treaty aims to enhance the efficacy, transparency and quality of the patent system with regard to genetic resources and traditional knowledge associated with genetic resources (hereinafter referred to as “associated TK”), and prevent patents from being granted erroneously for inventions that are not novel or inventive with regard to genetic resources and associated TK.

4. The Treaty establishes a mandatory patent disclosure requirement – this requires patent applicants to disclose the country of origin of the genetic resources and/or the Indigenous Peoples or local community providing the associated TK, if the claimed inventions are “based on” genetic resources and/or associated TK. If such information is unknown, the source of the

¹ See <https://www.wipo.int/en/web/traditional-knowledge/wipo-treaty-on-ip-gr-and-associated-tk>

genetic resources or associated TK should be disclosed. If none of the above information is known, the patent applicant would be required to so declare. Patent offices should provide certain guidance, though they would have no obligation to verify the authenticity of the disclosure.

5. A failure to disclose the required information would be subject to appropriate, effective, and proportionate measures. The Treaty also addresses opportunities for rectification of failures to disclose and errors in pre-grant and post-grant situations. Where there has been fraudulent intent in regard to the disclosure requirement, post-grant sanctions or remedies may be provided for. Fraud aside, no Party to the Treaty should revoke, invalidate, or render unenforceable a patent solely on the basis of an applicant's failure to disclose the required information.

6. Subject to existing national laws on disclosure, the Treaty includes a non-retroactivity clause, i.e. no obligations of the Treaty should be imposed in relation to patent applications filed prior to the entry into force of this Treaty.

7. The Parties may establish information systems (such as databases) of genetic resources and associated TK, in consultation, where applicable, with Indigenous Peoples and local communities, and other stakeholders, taking into account their national circumstances. The information systems should be accessible to patent offices for the search and examination of patent applications. One or more technical working groups may be established by the Assembly of Contracting Parties to the Treaty to address any relevant matters, such as accessibility to patent offices.

8. The Treaty provides an in-built review of the Treaty to allow certain issues to be reviewed four years after it enters into force. These issues include the possible extension of the disclosure requirement to other areas of intellectual property and to derivatives, and other issues arising from new and emerging technologies that would be relevant to the application of the Treaty.

9. The Treaty addresses other matters and includes administrative provisions. The above is an informal summary only, and Member States are invited to consult the formal Treaty text as a whole.²

RELATIONSHIP WITH THE PCT

10. Article 7 of the Treaty ("Relationship with Other International Agreements") includes a footnote containing an Agreed Statement as follows:

"Agreed Statement: The Contracting Parties request the Assembly of the International Patent Cooperation Union to consider the need for amendments to the Regulations under the PCT and/or the Administrative Instructions thereunder with a view towards providing an opportunity for applicants who file an international application under the PCT designating a PCT Contracting State which, under its applicable national law, requires the disclosure of genetic resources and traditional knowledge associated with genetic resources, to comply with any formality requirements related to such disclosure requirement either upon filing of the international application, with effect for all such Contracting States, or subsequently, upon entry into the national phase before an Office of any such Contracting State."

² Available here: https://www.wipo.int/edocs/mdocs/tk/en/gratk_dc/gratk_dc_7.pdf

11. Should PCT members wish to consider amending the PCT Regulations pursuant to this Agreed Statement, they may wish to request the International Bureau to provide drafts of the amendments required for consideration by the Working Group at its next session.

ENTRY INTO FORCE

12. To date, the Treaty has been signed by 39 countries and ratified by one (the Republic of Malawi). It will come into force three months after 15 eligible parties have deposited their instruments of ratification or accession.

13. The Working Group is invited to note the content of this document and consider making the request referred to in paragraph 11.

[End of document]