

Disclosure of Origin Requirements

What is bioprospecting?

"Bioprospecting" is where more economically developed countries travel to less developed countries with high biodiversity, and seek natural source materials from which to develop drugs and other inventions. In the early 1990s this issue became a political talking point. Those less developed countries perceived an injustice because the profits from those inventions were not passed on to them.

To address bioprospecting, the World Intellectual Property Organisation (WIPO), in conjunction with the Convention on Biological Diversity (CBD), proposed a mandatory requirement to disclose, in relevant patent applications, the source of genetic resources used in the invention. The source countries would have the right to some share of the profit from the invention.

The ultimate intentions of the requirement are for the patent system to protect biodiversity and to promote equitable sharing of profits from genetic resources. For some time, international patent bodies have been negotiating a law to enforce the requirement.

What stage have we reached?

Currently the parties are in stalemate, with no significant developments in the last few years. There are many hurdles still to overcome.

However, some key points have been agreed:

- "genetic resources" is to be defined very broadly, to include "any material, of plant, or animal, or any other origin containing functional units of heredity".
- Patent applicants need only have to disclose the origin if this is known. If it is not they must disclose the direct source of the sample, such as a botanical garden.

The applicants are also likely to have to show they were authorised by a relevant national body to access the resource before they obtained it. However, the parties have yet to agree exactly who the relevant national bodies will be, and what constitutes such authorisation.

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Many questions still remain to be answered - for example how closely must the invention be related to the resource for the requirement to apply?

Do any countries already have disclosure requirements?

Currently, most countries do not have any disclosure of origin requirements.

Those that do are: The Andean Community (Bolivia, Columbia, Ecuador, Peru), Belgium, Brazil, China, Costa Rica, Denmark, Egypt, India, Norway, South Africa and Sweden.

The laws in these countries differ significantly. Penalties for non-compliance range from none, through invalidation of the patent/application, to fines and imprisonment.

This is not likely to change if WIPO introduces international legislation. If that happens, applicants will likely need to comply with WIPO's disclosure requirements upon filing their application. However, each country will be able to impose its own rules on access to resources and any sanctions for not complying with those rules or the disclosure requirements.

If you would like any information on the specific disclosure requirements of any of these countries, we can provide it.

Will there be developments soon?

Several important decisions across the world reflect the increasing political importance of biotechnology patenting. We believe that disclosure of origin requirements will remain on the political agenda and that international legislation is on the horizon. We will continue to monitor the situation and inform you of any important developments.