

Objectives and Principles

Objective 1: [Indigenous Peoples and Local Communities]/[Nations]

- O.1 Ensure those [patent owners/inventors/users/owners/all IP rights applicants] all users of the IP system [using] accessing of genetic resources [and their derivatives] and/or [any] associated traditional knowledge comply with requirements for prior informed consent and fair and equitable [[any] specific conditions for access, use] and benefit sharing [under national law]/[depending upon national legislation including customary laws and procedures of the communities. States should determine any requirement for prior informed consent and fair and equitable benefit sharing] and the provision of information about the country of origin or source of genetic resources.

Principles:

- P.1.1 Recognise the sovereign rights of States over their genetic resources [, their derivatives] and/or associated traditional knowledge and the rights of indigenous peoples and local communities over associated traditional knowledge [have the authority to determine access to genetic resources in their jurisdiction] in accordance with their national legislation.
- P.1.2 The states are sovereign to grant or to grant jointly with their indigenous peoples and local communities access to genetic resources and their derivatives in their respective jurisdictions.
- P.1.3 Ensure the respect for the principle of self determination of indigenous peoples and local communities and their rights over or to genetic resources.
- P.1.4 [[Subject to national legislation] and subject to the customary laws and protocols and procedures of indigenous local communities, persons accessing traditional knowledge associated with genetic resources from the knowledge holder and applying that knowledge in the development of an invention should obtain the prior approval and prior, free and informed consent from the [knowledge holder] legal representative or representatives of knowledge holders and seek their [involvement] full and effective participation] and reach an agreement on benefit sharing.
- P.1.5 Peoples partially or entirely under occupation have the right to enjoy their genetic resources [, derivatives] and associated traditional knowledge noting the United Nations' Declaration on the Rights of Indigenous Peoples.
- P.1.6 Persons using genetic resources in their inventions have a duty of good faith and candor to disclose in their patent application all background

information relating to the invention, including the country of origin or source of genetic resources.

Objective 2

- O.2.1 Prevent [patents] IP rights being granted [in error [and/or bad faith] [for inventions that are not novel or inventive or industrially applicable or not distinctive nor stable in light of]]/on genetic resources and/or associated or not or embodied traditional knowledge [and its derivatives] if such rights have been obtained illegally.
- O.2.2 [Prevent [patents] IP rights being granted where there is no prior free informed consent, no fair and equitable benefit sharing, and [disclosure] requirements on the genetic resources have not been met.]
- O.2.3 [Ensure that no patents on life and life forms are granted for genetic resources and associated traditional knowledge.]
- O.2.4 Increase transparency in access and benefit sharing.

Principles

- P.2.1 [[Patent] IP rights [applicants] owners should [not receive a monopoly] not be granted exclusive rights on inventions that are not new or inventive.]
- P.2.2 The [patent] IP system [should] shall provide [certainty] high degree of validity of rights for [legitimate users] indigenous peoples and local communities and providers of genetic resources and/or associated traditional knowledge and ensure the legitimate rights for the owners of the genetic resources and associated traditional knowledge after receiving the free, prior and informed consent from the free political institutions of the indigenous peoples and local communities [in the case of their exploitation].
- P.2.3 [The patent system must provide for a mandatory disclosure requirement ensuring that the IP Offices becomes a key check point for disclosure and monitoring the utilization of genetic resources and/or associated traditional knowledge and its derivatives in accordance with an international treaty pertaining to a legal standard recognizing the right to self determination of indigenous peoples [(in line with Article 17 of the CBD Nagoya Protocol)].]
- P.2.4 [[Administration and/or judicial authorities shall have the right to prevent (a) the further processing of an application or (b) the granting of a [patent] IP rights as well as (c) to revoke, [subject to Article 32 of the TRIPS Agreement] international judicial process accepted by indigenous peoples and local communities, or render unenforceable a [patent] IP rights when the applicant has either failed to comply with these objectives and principles or provided false or fraudulent information.] The remedies listed under (a), (b) and (c) above shall be applied without placing the relevant subject matter in the public domain.]
- P.2.5 The system should allow for prior informed consent of indigenous peoples and local communities to access traditional knowledge and genetic resources as well as their fair and equitable participation in the sharing of benefits.

Objective 3

- O.3.1 Ensure [patent] IP offices have available the information to ensure that [patent] IP offices are regulated by an internationally recognized standard to ensure that indigenous peoples and local communities maintain control and to have appropriate and available information on genetic resources [, their derivatives] and traditional knowledge associated with genetic resources [or their derivatives], needed to make proper and informed decisions on [patent] granting of IP rights.
- O.3.2 [The information should include measures to ensure that prior informed consent has been obtained through a mandatory disclosure requirement [and by an internationally agreed upon standard that indigenous peoples and local communities develop the] [an] internationally recognised certificate of compliance.]
- O.3.3 [Ensure that national IP offices do not grant patents on traditional knowledge and genetic resources.]

Principles:

- P.3.1 [Patent] IP offices must have regard to [all relevant pre-existing knowledge prior art when assessing the [patentability of an invention] for granting of IP rights] all pertinent information available in order to ensure that collective and IP rights for such resources remain in the hands of their legitimate and traditional owners.
- P.3.2 [Patent] IP [applicants] applications must indicate the background art relevant for [which, as far as known to the applicant, can be regarded as useful for the understanding], searching and examination of the invention or contact an agent or representative or a national IP office who would refer it to the regional office to ensure the invention is patentable.
- P.3.3 [There is a need to recognise that some holders of TK may not want their knowledge documented and the need to recognize the rights of indigenous peoples and local communities to genetic resources and traditional knowledge with a view guaranteeing legal certainty with regards to databases managed by states or other third parties that contain traditional knowledge and associated genetic resources.] The rights of the representatives of traditional knowledge holders to designate the procedure for non-disclosure of their traditional knowledge shall be recognized.
- P.3.4 The national authority is responsible for documenting and digitizing TK-related information. This responsibility shall be fully supported financially and through capacity building.
- P.3.5 The rights of some traditional knowledge holders not to have their knowledge documented must be recognized and that documentation should not be a requirement for protection.
- P.3.6 Persons seeking to access traditional knowledge associated with genetic resources in the establishment of an invention must obtain the prior informed consent for its use and base its use upon mutually agreed terms with the traditional knowledge holder.
- O. 3.7. The status of prior art would be determined by the indigenous peoples and local communities from whom the traditional knowledge is being accessed.

Objective 4

- O.4 Relationship with relevant international agreements and processes

Principles:

- P.4.1 Respect for and consistency with other international and regional instruments and processes.
- P.4.2 The work of the IGC should not prejudice the work pursued in other fora.
- P.4.3 Promotion of cooperation with relevant international and regional instruments and processes.

Objective 5

- O.5 [Maintain] Recognise and maintain the role of the IP system in promoting innovation and transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare while also contributing to the protection of traditional knowledge, genetic resources and traditional cultural expressions.

Principles:

- P.5.1. [Maintain] Recognise and maintain the role of the IP system in promoting innovation and in the protection of traditional knowledge, genetic resources and traditional cultural expressions and fair and equitable sharing of benefits arising from their use.
- P.5.2. Promote certainty and clarity of IP rights and obligations with respect to the protection of traditional knowledge, genetic resources and traditional cultural expressions and certainty and clarity for prior informed consent and fair and equitable benefit sharing.
- P.5.3. Protect creativity [and], reward investments and ensure prior informed consent and fair and equitable benefit sharing [made in developing a new invention].
- P.5.4. Promoting transparency and dissemination of information by disclosing country of origin and publishing and disclosing technical information related to new inventions, where appropriate and where publicly available, so as to enrich the total body of technical knowledge accessible to the public.