

**American Intellectual Property Law Association (AIPLA) Statement**  
**WIPO 40th Session of the Intergovernmental Committee on Intellectual Property and**  
**Genetic Resources, Traditional Knowledge (GR/TK) and Folklore (IGC)**  
**June 17 to June 21, 2019 (Geneva, Switzerland)**

To assess the potential impact of an international binding legal framework to protect indigenous resources, including GR and TK, that would establish disclosure requirements, the AIPLA's Biotechnology Committee ("Committee") sent a targeted request to subcommittees focusing on IP issues for genetic resources and plants, asking those members to report on their experience with disclosure requirements. In response to this inquiry, the Committee received only a few responses, which were limited to summaries of disclosure laws in each respondent's respective jurisdiction. Next, the Committee made a targeted inquiry to Swiss practitioners and the Swiss Patent Office to learn more about experience with Swiss disclosure requirements. Based on the results of the Swiss inquiry, the Committee determined that *no practical impact* of the Swiss disclosure rules had come to the attention of either the Swiss Patent Office or Swiss patent attorneys, at least in part because those requirements are easily circumvented since they do not apply to European patent applications which are then validated in Switzerland. Those results were previously reported at the 2018 IGC meeting.

To follow up on its previous inquiries, and in an attempt to address possible shortcomings of targeted inquiries, the Committee conducted a survey in July of 2018. Because the Committee believed that the previous low response rate to the targeted inquiry may have been due to fear of repercussion by practitioners in jurisdictions with disclosure requirements, the Committee designed an online, anonymous survey. Also, in order to obtain a greater number of responses, the survey was directed not only at the Committee and the AIPLA membership at large, but also at various international organizations that deal with intellectual property in the broadest sense and/or are active in the biotechnology space. For example, the online survey was forwarded to several non-governmental organizations representing innovative parties and their legal representatives who the Committee assumed would be likely to have sought patents for

inventions related to GR/TK.<sup>1</sup> Although the survey was widely distributed, it was not designed, conducted, tracked, or analyzed by a professional survey company, and thus was unscientific.

The response rate of those who received a survey link to the survey is unknown, and most who chose to respond to the survey had no actual experience with GR/TK laws. As the topic is clearly international, the make-up of the respondents to the Survey also was broadly international, covering respondents from five continents. Some respondents reported negative experiences with disclosure rules, citing effects on research or intellectual property ranging from an increased paperwork burden to companies turning away from entire areas of research in jurisdictions with disclosure rules.

Certain design flaws in the survey became apparent while analyzing the survey results. For example, the format of the survey was not designed to track whether the respondents who are in private practice would have knowledge of the impact of GR/TK laws on their clients' research and development decisions, or whether some potential survey respondents chose not to respond out of fear of governmental reprisal despite the anonymous format of the survey. Finally, some of the respondents contradicted themselves, an indication that some of the questions were probably unclear. All of this suggests the need to formulate a more precise survey, and to circulate it to a wider set of stakeholders who may have greater knowledge of the impact of disclosure requirements on research and development decisions, before the Committee can make any conclusive determination regarding the potential impact of worldwide disclosure requirements.

Accordingly, in order to more accurately assess the potential impact of worldwide disclosure requirements, the Committee plans to consult with a polling professional and

---

<sup>1</sup> The survey was announced to AIPLA membership on May, 29, 2018 and was circulated to the following associations during the earlier part of June, 2018: International Association for the Protection of Intellectual Property (AIPPI); Inter-American Association of Intellectual Property (ASIPI); Biotechnology Innovation Organization (BIO); BuisnessEurope (BE); European Federation of Pharmaceutical Industries and Association (EFPIA); IP Federation; International Federation of Intellectual Property Attorneys (FICPI); International Federation of Pharmaceutical Manufacturers & Associations (IFPMA); INTERPAT; Intellectual Property Institute of Canada(IPIC); The Institute of Patent and Trade Mark Attorneys of Australia (IPTA); Japan Intellectual Property Association (JIPA); Korean Intellectual Property Association (KINPA); Pharmaceutical Research and Manufacturers of America (PhRMA); The South African Institute of Intellectual Property Law (SAIIPL); and The New Zealand Institute of Patent Attorneys (NZIPA).

to coordinate with other organizations representing intellectual property practitioners and owners.