

Second Regional Coordination Workshop: BioTrade and ABS in the Mekong Region

Disclosure in the IP System in Viet Nam

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Disclosure of Origin in Viet Nam's Laws and Regulations



Circular 01/2007/TT-BKHCHN

23.11. Additional provisions applicable to applications for registration of inventions concerning genetic resource or traditional knowledge

Apart from the general requirements for invention registration applications specified at Points 23.1 thru 23.7 of this Circular, an application for registration of an invention concerning genetic resource or traditional knowledge must also contain documents explaining the origin of the genetic resource and/or traditional knowledge accessed by the inventor or the applicant, if the invention is directly based on that genetic resource and/or traditional knowledge. If the inventor or the applicant cannot identify the origin of the genetic resource and/or traditional knowledge, he/she shall so declare and bear responsibility for the truthfulness of his/her declaration.

Decree 59/2017/ND-CP

Article 14. Change of intent; transfer of genetic resources to a third party; and registration for intellectual property rights for innovative results based on using genetic resources.

3. Registration for intellectual property rights over creation resulting from the utilization of genetic resources and its derivatives must state clearly the source and origin of accessed genetic resources, and comply with Clause 2, Article 22 of this Decree.

Article 23. Sharing of non-monetary benefits

3. The source and geographical origin of the accessed genetic resources shall be clearly stated when announcing any results of the scientific research or when applying for intellectual property rights over any creation resulted from using such genetic resources

No Disclosure of Origin for New Plant Varieties



Problem: No Enforcement Mechanism for
Disclosure, No Disclosure for PVP



Recommendations:

1. Eliminate option to plead ignorance of origin for patent applications – amend regulation
2. Allow agencies to specify level of disclosure required for patents and PVP in regulations, as part of the formalities for submitting applications – amend IP Law
3. Allow specifically for the invalidation of patents and PVPs where evidence is provided to the authorities managing the respective IP systems that disclosure was not complied with – amend IP law

Possibility to go further...

Provider of GR/ATK could be treated as co-inventor and given automatic right to register patent or new plant variety if new invention is directly based on GR/ATK.

Issues:

1. Possible deterrent effect on R&D for bio-products from Viet Nam
2. How does this fit within the benefit sharing options envisaged under Nagoya Protocol?

Thank You



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