



Cooperation for Protection of Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions under the BRICS IPR Cooperation

The growing economic significance of genetic resources and traditional knowledge for the world, particularly for developing countries, has been generally recognized by the World Health Organization (WHO), World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). However, patents based on existing traditional knowledge are being granted. In more recent years, many patent applications could be identified where protection was being sought for knowledge that existed in codified traditional knowledge systems. The problem is graver because the knowledge about the use of genetic resources and traditional knowledge are predominantly non-codified and are community-held, thus exacerbating the problem of misappropriation of genetic resources and traditional knowledge.

In the absence of a regime that seeks mandatory disclosure of source or origin of the biological resource, and evidence of prior informed consent and benefit sharing from patent applicants, it is very difficult to establish that a particular invention for which the patent is sought is in fact based on existing knowledge. The issue of misappropriation of the genetic resources and the traditional knowledge is a matter of concern for all countries, in particular for developing countries.

The BRICS Members had adopted the BRICS IPR Cooperation Mechanism (IPRCM) in 2016 which aimed at creating opportunities for the exchange of ideas among the BRICS countries. In 2018, the BRICS Trade Ministers endorsed the development of the BRICS IPR Guidebook, which would serve as a practical guide for IP owners and users in BRICS countries and had also endorsed the IPRCM Action Plan which encapsulated specific practical activities, emphasizing the importance of



strengthening mutual cooperation for streamlining patentability of genetic resources and protection of traditional knowledge and traditional cultures.

With a view to promote better understanding and to enable discussion and enhance cooperation on various aspects of the subject in international fora, the BRICS countries adopt the proposed declaration:

BRICS declaration

We, the BRICS Countries convened virtually to contribute to strengthening our mutual cooperation for IP protection under the BRICS IPR cooperation, in particular for protection of genetic resources, traditional knowledge and traditional cultural expressions. Conscious of the growing economic significance of genetic resources and traditional knowledge for the world particularly for the BRICS countries, we express our concerns that patents are being sought for knowledge that existed in traditional knowledge systems, or are based on the use of genetic resources

We recall that protection of genetic resources and traditional knowledge is a long-standing issue for the BRICS countries. We note that there is no multilateral or a plurilateral agreement that addresses mandatory disclosure of source or origin of the resource and the disclosure of the evidence of prior informed consent and access and benefit sharing. Negotiations on the subject are, nevertheless, ongoing in certain inter-governmental organizations. Unfortunately, there has been no substantive progress in these negotiations. Still, there is a need for an international legal regime that makes the patent office or relevant authority the check point to monitor misappropriation.

With a view to promote better understanding and to enable discussion and enhance cooperation on various aspects of the subject in international fora, we have decided to take the following action:



- to exchange policies and information on legislations, if any, on protection of genetic resource, traditional knowledge and traditional cultural expressions in BRICS countries;
- to exchange information on the best practices followed in our respective countries where patent applications indicate genetic resource, traditional knowledge or traditional cultural expressions as being the prior art and identify best practices across member countries;
- to exchange relevant information in order to promote understanding regarding compliance with access and benefit sharing provisions in domestic legislations across BRICS member countries;
- to undertake joint research for preparing a compendium of biopiracy cases that have occurred in respect of the genetic resource, traditional knowledge, and traditional cultural expressions of BRICS countries, on the basis of substantive/complete exchange of policies and information;
- to undertake joint research on possible ways to address misappropriation of genetic resource, traditional knowledge, and traditional cultural expressions of BRICS countries on the basis of substantive/complete exchange of policies and information; and
- to enable discussion and enhance cooperation on the subject in WIPO in the Intergovernmental Committee on IP and Genetic Resources and Traditional Knowledge and the WTO with a view to advance discussions or negotiations in the relevant fora.
