

TozziniFreire.
ADVOGADOS

Intellectual Property & Environmental.

Newsletter

Special Edition | 2024

This is an informative newsletter
produced by the **Intellectual Property & Environmental**
practices of TozziniFreire Advogados.



Access to Biodiversity and Traditional Knowledge and new WIPO treaty

For more than 25 years, several countries have discussed a treaty to include disclosure as a mandatory requirement in patent applications when the invention is based on access to the genetic resources (GR) and associated traditional knowledge (ATK) of a specific country. Internationally, the subject is known by the acronym ABS – Access and Benefit Sharing.

After long and complex discussions to reach a consensual solution, 176 countries approved, on May 24, 2024, the new and historic Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, at the Diplomatic Conference of the World Intellectual Property Organization (WIPO) in

Geneva, Switzerland, which was chaired by Brazilian ambassador Guilherme Patriota.

Information from the Ministry of Foreign Affairs and the Ministry of Environment and Climate Change about the Conference and the Treaty itself shows the importance of the Brazilian delegation's work in the preparatory process and during the negotiation. It is also relevant to recognize the mobilization and collaboration between the Ministries, including the Ministry of Indigenous Populations, and bodies such as the Brazilian Patent and Trademark Office (BPTO).

In summary, according to the new treaty, patent application holders whose inventions are

based on access to GR and/or ATK must inform the local patent office: **(i)** the country(ies) of origin of the GR, **(ii)** the indigenous population(s) or traditional communities that provided the ATK, and **(iii)** when the information listed in the first two items is not known or applicable, the source of the GR and/or ATK.

The new treaty is a first, but important, step towards the protection of GR and ATK and search for transparency in the patent system. Practices that violate these rights are often referred to as “biopiracy,” but we emphasize that this term is not explicitly present in the Brazilian legislation.

Aspects such as the application of sanctions, implementation guidelines, creation of a database and procedures for submitting information still need to be regulated by member states. Another ongoing discussion involves the so-called Digital Sequences Information (DSI), since a lot of genetic information is sequenced in databases.

Brazil signed the document at the Conference, but this still needs to be ratified. The treaty will enter into force three months after 15 member states file their respective instruments of ratification or agreement to the treaty. There is a mechanism for revising the treaty four years after it comes into force.

Implementation in Brazil will be simplified, as the country has had specific ABS legislation since 2001, with an express provision that the granting of intellectual property rights, when based on access to GR and/or ATK, has as a prerequisite compliance with this legislation. In addition, the BPTO, motivated by the legislation mentioned above, included years ago, in its forms, a specific item requiring the patent applicant to present, when applicable, proof of registration or authorization of access to the GR and/or ATK. Since November 6, 2017, in view of the Biodiversity Law (Federal Law No. 13,123/2015), the Brazilian [National System for the Management of Genetic Heritage and Associated Traditional Knowledge \(SisGen\)](#) has been the official database for all registrations and access authorizations.

Several concepts and terms contained in the texts of international documents, such as the Nagoya Protocol¹, were used in the treaty. Discussions on the new treaty will also take place at the next Conference of the Parties (COP 16) to the Convention on Biological Diversity (CBD) in Cali, Colombia, from October 21 to November 1. Our law firm will be represented by partner Bianca Antacli from the Environmental area.

Our Intellectual Property and Environmental teams may answer any questions on this subject.

¹ The Nagoya Protocol was finally internalized into Brazilian legislation by Federal Decree No. 11,865 of December 27, 2023. This protocol, within the framework of the CBD, created an international regime to promote and ensure the fair and equitable sharing of benefits arising from the use of genetic resources and traditional knowledge. Discussions on its implementation are also taking place.



Partners responsible for the newsletter

👤 Stephanie Consonni de Schryver

👤 Bianca Bilton Signorini Antacii

Contributed to this newsletter

Julia Parizotto Menzel

Julie Lissa Kagawa

Marina Celani Chnee