3C

PFIIenrico060
PM

Madame Chair, distinguished Chief of the Permanent Forum, members of the Secretariat and of the Forum, eminent guests and participants, ladies and gentlemen,

I first of all would like to congratulate you on your appointment as Chair.
I would like furthermore to thank the Chief of the Permanent Forum, Ms Chandra Roy-Henriksen, the Secretariat and all the organisers of this 10th session of the UNPFII for having given the European Patent Office the opportunity and the honour to contribute to the discussion by intervening today.

The aim of this intervention is to briefly explain what the EPO is and what measures has the EPO taken and intends to take to deal with the many important issues that arise when searching and examining patent applications related to Traditional Knowledge and Genetic Resources.

The European Patent Office does not represent a single state, and is not represented in the international fora by any given single state. The EPO is the centralised patent granting agency for Europe and comprises 38 member States. The EPO is lead by its President, who is elected by the governing body of the EPO, the Administrative Council (AC). The AC comprises representatives of each member state, each state having one vote.

The role of the EPO is to examine European patent applications ensuring that high quality patents are granted for inventions meeting the requirements set out in the European Patent Convention, which is the legal treaty laying the basis of the organisation and the procedure of the EPO, as well as the requirements to be met for an invention to be patented.

The EPO goal is to serve the public interest by granting high quality patents. It also promotes the diffusion of the information concerning patent-related issues

The EPO strives to achieve these goals in its daily work and in all its activities.

The commitment to high quality patents all the more applies to socially and politically sensitive fields, such as the assessment of patentability of Traditional Knowledge (TK) and/or Genetic Resources (GR)-related inventions. In sensitive fields, it does not matter how many applications may have been correctly allowed to proceed to grant: even a single one that turns up to have been unduly granted (i.e. where relevant documents have been missed or not properly taken into account) is potentially dangerous. It can create mistrust and a negative perception of the patent system in general and of the EPO as the involved granting authority in particular.

This must be avoided, also because patent rights could represent one of the opportunities for TKH to obtain those benefits which, as clearly stipulated in the Convention on Biodiversity and the Nagoya Protocol, they are entitled to.

In this context, let me again underline the importance of information, which is also the main weapon in the fight against the so-called bio-piracy!

This is why we at the EPO consider it very important to closely follow the discussions at the international level on GR and TK, such as the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

The EPO actively pursues, in close cooperation with TK holders (TKH), the acquisition of relevant material to include in our databases. The information that TK holders possess, if made accessible to the EPO, plays an essential role in further lowering the risk that the EPO may grant a patent to someone who has not the right to it.

How and at which stage of the procedure can this info arrive at and be used by the EPO?
The EPO examiners have access to a huge documentation, including a number of well known databases such as Biosis, Medline, Chemical Abstracts which cover many TK-related journals. In the last few years the EPO has also signed agreements that allow its examiners to have access various TK databases, such as to the Indian information sources and databases "Indian Journal of Traditional Knowledge", "Medicinal and Aromatic Plants Abstracts", and Traditional Knowledge Digital Library, or to the Chinese Patent Database "Traditional Chinese Medicine".
The EPO is of course interested in gaining access to any further database of this kind and would also be ready to discuss this topic with any country and institution wishing to set up or improve such a DB.

As I have already said, making the information available to the EPO at the outset, independently of the existence of a specific patent application, is the EPO's main and preferred approach.
However, please note that all patent applications filed with the EPO are published 18 months after the earliest priority date, so that everybody is informed and can monitor their progress via the online EPO Register. Information relevant to the examination of the application may then be forwarded to the EPO at any stage up to grant as third party's observations. These must be in writing and to be useful must clearly refer to documentation available prior to the filing/priority date of the application. They are free of charge.
In the field of TK related applications, a number of these observations have been and are being filed by referring to abstracts from the TKDL DB.
I am happy to be able to say that usually the documents provided with these Third Parties' Observations are not more relevant than those already available to the examiners.
However, in a few cases (the most recent of which has occurred two weeks ago in my directorate) they have allowed us to refuse a patent application on the basis of the newly cited documents.
Having avoided an unjustified grant also makes us very happy, as our first duty is towards society and this is only served if we only grant valid patents! As you see, cooperation between EPO and TKH is a win-win situation!
There is also the possibility for any person to file an opposition against a granted European patent. In this case the opponent(s) may file new documents or new evidence. This may in some cases allow the revocation of an unduly granted patent (which however at the time of grant complied with all the patentability requirements and only in view of the new documents filed by the opponents becomes an "unduly" granted patent).
This is what happened for instance last year in January with the revocation of a patent concerning plants belonging to Pelargonium species. The opponents had referred to various possible grounds for revocation (e.g. because the invention went against morality). In view of the applicable provisions of the European Patent Convention, it was however only on the basis of a newly cited document that the examiners making up the division in charge of that opposition, including a legally qualified one, could come to the decision of revoking that patent. Again, information is the key concept!

What are we doing at the EPO to further decrease the risk of unwarranted grants in the TK field?
We have set up a system to monitor all TK applications for which Third Party's Observations have been filed and all TK-related patents which undergo opposition; we have set up a working group on TK to i.a. ensure that the files are treated in an harmonised way; we are organising training sessions to make all examiners that can be confronted with TK files aware of how and which DB should always be searched in those cases. Last but not least we are working on improving the accessibility of the TK Databases already available and we want to find new relevant ones, in the framework of a coordinated project involving varioud EPO departments.
To conclude, I would like to emphasise that the EPO is aware of how sensitive TK-related issues are, given that they often concern basic values of indigenous peoples and is aware of its responsibilities towards society. It has taken and will take any possible and appropriate measure to ensure, with the cooperation of TKH, that the search and the examination of TK-related applications are carried out in the most competent, updated and harmonised way so as to ensure that, within the framework of the present and any future EPC provisions, the rights of TKH are fully respected.

Thank you for your kind attention.

Enrico Luzzatto
Director, EPO

NB The views presented in this intervention do not necessarily represent official views of the EPO