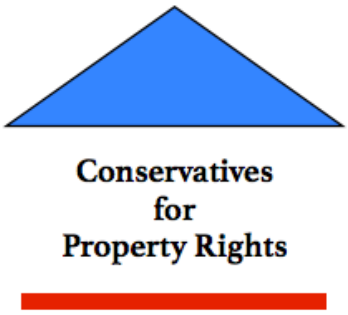

January 12, 2024

U.S. Patent and Trademark Office
600 Dulany Street
P.O. Box 1450
Alexandria, VA 22313

RE: Request for Information Related to WIPO IGC Negotiations on Genetic Resources and Associated Traditional Knowledge, 88 Fed. Reg. 13003 (Oct. 24, 2023)

To whom it may concern:

I am writing in my capacity as Executive Director of Conservatives for Property Rights (CPR) to provide comment on WIPO IGC Negotiations on Genetic Resources and Associated Traditional Knowledge (Docket No.: PTO-C-2023-0019). CPR is a coalition of public policy organizations concerned with preserving and protecting private property rights, and we have long advocated for policies that bolster U.S. industrial competitiveness and technological innovation. As such, we believe our public policies must provide for clear, secure, reliable, and enforceable property rights – including intellectual property rights (IP).

The United States' decades of economic and technological leadership is partly due to our historically strong patent system, and we are concerned that the IGC's proposed mandatory patent disclosure requirements (PDR) on genetic resources (GR) would weaken IP rights by requiring a patent applicant to disclose the source or origin of traditional knowledge and genetic resources used in an invention.

Mandatory PDRs, as written in the IGC draft text, will increase the cost and burden of innovation and force innovators to limit the scope of their discoveries to domestic genetic material. U.S. inventors will lose access to the full breadth of what our planet has to offer for scientific and medical breakthroughs. A slower, less predictable, and more expensive patent application process will follow, discouraging U.S. ingenuity and quashing productive economic activity. The USPTO delegation to the WIPO diplomatic conference must reject these proposals and encourage our allies to do the same.

We comment further below by answering select questions from the "Questions for Comment."

Q2. How would you characterize the level of difficulty in complying with the aforementioned patent disclosure requirement?

A2. Patent applicants already face an arduous process, even in the United States, which has one of the strongest and most consistent patent systems in the world. A successful patent application requires a robust investment of time, money, and human capital resources with no guarantee of success. Mandatory PDRs will only add to the required investment by innovative companies – if these companies can comply at all. In some cases, the origin of GRs used in an innovative product may not be known or traceable. As inventors and regulators alike face these new difficulties, we are concerned that less innovation will result in the United States and worldwide.

Q4. Please identify any type of patent disclosure requirement, in the context of Genetic Resources and Traditional Knowledge, you believe is necessary and any benefits or detriments stemming from a patent disclosure requirement.

A4. In our view, no additional patent disclosure requirement is necessary. We are concerned about detrimental effects stemming from a mandatory PDR. This new, nebulous, and arduous requirement will especially burden smaller patent applicants who may not have the legal and other resources needed to meet the PDR. For those inventors who do manage to mount the investment needed to meet a PDR, they will face a longer window for a patent decision and potential recoupment of their investment. Delayed applications have a direct impact on an inventor's ability to commercialize his or her invention; in fact, a USPTO study found that for each additional year of delay after a "first-action" patent decision, companies' sales and growth decreased.

If inventors are required to disclose the origin of GR that may only be available in one country, for example, PDRs become instruments of blackmail, easily allowing that country to hike the price out of inventors' hands. Delayed approval and price increases will affect access to inventions worldwide.

Q9. Where a claimed invention is based on genetic resources, please identify the appropriate range of subject matter of genetic resources that should be within the scope of a disclosure requirement.

A9. GRs should not be subject to disclosure requirements, regardless of subject matter. Innovators will be forced to wade through a new, nebulous, and unpredictable thicket of paperwork in order to potentially have their patent approved — and every day lost to this exercise reduces the chances that an inventor will see his or her idea commercialized and his or her investment recouped.

Patent agencies across the world have fared no better under such requirements. A study by KIPO, the Korean counterpart to USPTO, found that disclosure submissions were inconsistent and required KIPO to conduct significant additional work. In Brazil and

India, patent examination of applications subject to PDRs increased by two to four years, adding to already significant backlogs in these countries.

Q12. Please describe your views on what a patent applicant should be compelled to disclose in a patent application, in the context of a patent disclosure requirement.

A12. No disclosure requirement should apply, for the reasons detailed above.

The application of mandatory PDRs will lead to a profound reduction of innovation by adding significant costs to inventors and new challenges to the patent offices trying to ensure compliance.

Thank you for considering these comments.

James Edwards
Founder and Executive Director
Conservatives for Property Rights