

UEBT Principles on Patents and Biodiversity

Background

The use of patents in relation to biodiversity creates risks as well as opportunities. Patents can be useful tools to promote innovation and investment in biodiversity-based products, generating benefits to be shared along the supply chain. At the same time, there are concerns that patent practices are undermining the rights of countries and communities over their biodiversity and traditional knowledge.

Article 16 of the Convention on Biological Diversity (CBD) calls for intellectual property rights to be “supportive of and do not run counter” the objectives of the Convention. In the context of the Ethical BioTrade standard, patent practices must also recognize, support and complement the implementation of requirements linked to the conservation and sustainable use of biodiversity, as well as the equitable sharing of resulting benefits.

UEBT, the CBD and benefit sharing

The Union for Ethical BioTrade (UEBT) is a non-profit association that promotes the “Sourcing with Respect” of ingredients that come from native biodiversity. Members commit to gradually ensuring that their policies and practices comply with the Ethical BioTrade standard, which builds on the objectives of the Convention on Biological Diversity (CBD). In particular, the Ethical BioTrade standard requires that the use of biodiversity and traditional knowledge be based on prior informed consent and lead to the equitable sharing of benefits along the supply chain.

Objective

The objective of the “UEBT Principles on Patents and Biodiversity” is to support UEBT members towards understanding and addressing the link between patents and UEBT membership obligations on fair and equitable sharing of benefits. For UEBT members using patents in relation to biodiversity-based products and processes, these Principles also aim to provide guidance on the design and implementation of patent and biodiversity policies that will recognize and advance relevant Ethical BioTrade and CBD provisions.

Principles

General principles

- 1) UEBT and its members recognize the national sovereignty of States over their biological resources, which include genetic resources, as well as the principles of prior informed consent and fair and equitable benefit sharing established in the CBD.
- 2) UEBT and its members acknowledge that, if patent protection is sought for biodiversity-based products and processes, these patents should be sought, exploited and enforced in a manner that is supportive to the objectives of the CBD and the Ethical BioTrade standard.

Patents and biodiversity

- 3) UEBT members should work to enhance their awareness and understanding of the links between patent protection on biodiversity-based products and processes and the ethical sourcing of biodiversity, particularly in relation to fair and equitable benefit sharing.
- 4) UEBT members should identify and address any negative impact that patent protection sought by them or by others along their supply chains could have on the ethical sourcing of biodiversity, as defined by the UEBT membership obligations.
- 5) Contracts, agreements and other mutually agreed terms used by UEBT members to obtain or provide access to biodiversity should include provisions regarding potential applications for and exploitation of patent protection.

Policies on patents and biodiversity

- 6) UEBT members seeking or exploiting patent protection in relation to biodiversity-based

products and processes developed by the organization should adopt patent and biodiversity policies aiming to ensure that these patent practices support the objectives and provisions of the Ethical BioTrade standard and the CBD.

- 7) In particular, UEBT members, through their patent and biodiversity policies, should:
- a) Explain the general rationale for seeking patent protection for biodiversity-based products or processes developed by the organization.
 - b) Describe the approach taken by the organization in drafting applications for patent protection, and the manner in which this approach recognizes and supports the objectives of the CBD and the Ethical BioTrade standard, including by
 - i) Limiting as far as possible the scope of claims in any patent application for biodiversity-based products or processes.
 - (1) Patent claims should cover only inventions that are clearly distinguishable from related biological resources and associated traditional knowledge.
 - (2) The scope of patent claims should be limited to the specific discoveries resulting from research conducted by the organization.
 - (3) Patent claims should be strictly focused on the products or processes the organization intends to supply the market with.
 - (4) Claims should not restrict continuing traditional uses or further research and development related to the biological resources or traditional knowledge.
 - ii) Defining elements that must be contained in the description of the invention.
 - (1) Patent applications for inventions based on biodiversity should disclose the country of origin of the biological resources.
 - (2) Patent applications for inventions based on biodiversity should provide information on any traditional knowledge related to the invention or the biological resource on which it is based.
 - c) Explain the approach of the organization to the exploitation of patents and how such exploitation is considered in contracts, agreements and practices on fair and equitable benefit sharing.
 - d) Encourage consideration of innovative approaches to addressing the links between patents, intellectual property protection and biodiversity in order to enhance the recognition and practical application of the objectives and provisions of the Ethical BioTrade standard and the CBD.
- 8) Patent and biodiversity policies should establish procedures to respond to any serious and information-backed queries on the patent practices of the organization.

UEBT procedure for addressing claims of alleged biopiracy

UEBT members must also take into account the requirements of PRO30 – Procedure for addressing claims of conduct inconsistent with ethical sourcing practices. This procedure outlines the response required from UEBT and its Members to claims of conduct contrary to ethical sourcing practices, including claims of alleged biopiracy. The objective is ensuring prompt and adequate measures are taken regarding any allegations of biopiracy, thus asserting legitimate practices and addressing any problems. As part of the procedure, for example, a UEBT member accused of biopiracy must notify the UEBT Secretariat within three days of learning of the allegations. The UEBT member must then prepare a brief written statement, and later a full report addressing the allegations.

Analysis of ongoing practices

- 9) Upon adoption of policies on patents and biodiversity, UEBT members should indicate how their patent portfolio will be reviewed in light of these new stipulations.