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**IPAustralia**

PATENTS - TRADE MARKS - DESIGNS

SUPPLEMENTARY  
SUBMISSION NO. 39Secretary: *Sarah Hnatiuk***RECEIVED**

27 JUL 2001

HOUSE OF REPRESENTATIVES  
STANDING COMMITTEE ON  
PRIMARY INDUSTRIES AND  
REGIONAL SERVICES

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In reply please quote C2001/00285

Mr Ian Dundas  
Committee Secretary  
House of Representatives Standing Committee on Primary Industries and Regional Services  
Parliament House  
CANBERRA ACT 2600

Fax: 02 6277 4424

Dear Mr Dundas

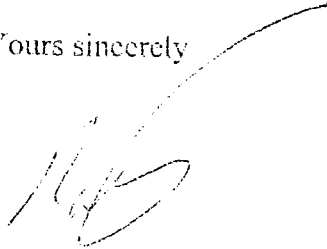
**INQUIRY INTO DEVELOPMENT OF HIGH TECHNOLOGY INDUSTRIES BASED  
ON BIOPROSPECTING AND BIOPROCESSING**

I refer to your facsimile of 5 June 2001 in which you requested some further information in relation to protecting the intellectual property of indigenous people.

Please find attached some information on the work that the World Intellectual Property Organization (WIPO) Intergovernmental Committee is doing in this area.

However, please note that as discussed between Ms Sarah Hnatiuk and Ms Jessica Wyers, this particular WIPO committee has only met once. Therefore while the committee has identified some concerns in relation to protection of traditional knowledge, it has not yet progressed to the stage of developing possible solutions.

Yours sincerely



Rick Gould  
Deputy Director General  
Corporate Strategy

26 July 2001

**INQUIRY INTO DEVELOPMENT OF HIGH TECHNOLOGY INDUSTRIES  
BASED ON BIOPROSPECTING AND BIOPROCESSING  
FURTHER INFORMATION**

The House of Representatives Standing Committee on Primary Industries and Regional Services (the Committee) is carrying out an inquiry into bioprospecting to which IP Australia has made a submission.

The Committee's attention has been drawn to the lack of protection for the traditional knowledge of Australia's indigenous people, for example, their knowledge of the medicinal properties of plants. The Committee understands that this issue is being considered by IP Australia in the context of an investigation into this matter by the World Intellectual Property Organization (WIPO).

The Committee has asked for a brief description of the concerns that IP Australia and WIPO have identified in relation to protecting the intellectual property (IP) rights of indigenous people, and possible solutions to address these concerns.

The WIPO Intergovernmental Committee (IGC) on *Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* constitutes a forum in which discussions can proceed among Member States on three primary themes, namely IP issues that arise in the context of:

- (i) access to genetic resources and benefit-sharing;
- (ii) protection of traditional knowledge, whether or not associated with those resources; and
- (iii) the protection of expressions of folklore.

Although these three themes cover a very broad range of issues, WIPO recognised that the themes are interrelated, and none can be addressed effectively without considering aspects of the others.

In the context of IP issues relating to traditional knowledge, two concerns have been articulated by Member States:

- the availability of IP protection for traditional knowledge holders. That is, that traditional knowledge holders should be able to protect their knowledge; and
- the acquisition by parties other than the traditional knowledge holders of IP rights over traditional knowledge-based creations and innovations. That is, that parties other than traditional knowledge holders should not be able to protect unmodified traditional knowledge. This concern is based on cases where third parties have acquired IP rights, such as patents, over traditional knowledge elements without acknowledgement of or authorisation from the traditional knowledge holders.

The first meeting of the IGC was held from 30 April to 3 May 2001. (The working documents of the session are available on WIPO's website at <http://www.wipo.int/globalissues/igc/documents/index.html>.)

At the meeting Member States expressed support for a work program intended to advance discussion on the three themes, comprising, amongst others, in respect of traditional knowledge, the following items:

- the identification of those components of traditional knowledge that might be protected by IP and the compilation of empirical information on the extent to which the existing IP system is sufficient in addressing this form of knowledge;
- the preparation of information on the status of traditional knowledge as prior art<sup>1</sup>, including on the establishment of traditional knowledge in digital libraries.

WIPO has already undertaken a number of projects looking at various aspects of traditional knowledge protection. These projects have included work in Australia.

In 1998 and 1999, WIPO undertook a series of nine Fact-Finding Missions (FFMs) to collect information on the IP needs and expectations of holders of traditional knowledge. The full results of the FFMs have been published by WIPO in a report entitled *Intellectual Property Needs and Expectations of Traditional Knowledge Holders: WIPO Report on Fact-finding Missions on Intellectual Property and Traditional Knowledge (1998-1999)*. WIPO officials visited Australia as part of the South Pacific FFM and had discussions with officials from a number of government agencies as well as indigenous people and their representatives.

IP Australia has also assisted WIPO in a recent series of case studies of how Australian traditional knowledge holders are using the existing IP system. From these studies, WIPO has found that although there are at present no clear, specific international IP standards for protecting such knowledge, there are a growing number of instances where individuals and organisations are resorting to existing patent, trade mark or copyright systems to protect their knowledge.

IP Australia will conduct market research in 2001-2002 which will specifically address the needs of the indigenous community in their access to and use of the IP system. The results of this research will be used in the development of public education and awareness products and programs to ensure that they are appropriately structured and targeted.

WIPO's continuing work on traditional knowledge includes the following:

- the development of information materials on options under the existing IP system for the protection of traditional knowledge;
- practical information and training workshops on IP and genetic resources, traditional knowledge and folklore;
- IP information, training and standards for the documentation of traditional knowledge;

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<sup>1</sup> "prior art" is the information that a patent application is compared against to determine whether the invention is novel and inventive. The existence of traditional knowledge that may deprive an invention of its novelty or inventiveness generally is not readily available to the examiners. Therefore WIPO is looking at possible options for establishing a database to record this information and thereby make it available to patent examiners.

- practical studies of actual examples in which traditional knowledge protection has been sought under the IP system;
- feasibility studies on the applicability of customary laws to traditional knowledge; and
- a pilot project on collective acquisition, management and enforcement of IP rights in traditional knowledge.

As the IGC has only had a single meeting, and, given the complexities of the issues being considered, at this stage the IGC has not progressed to the development of possible solutions to the concerns raised.