

“Where did you get your biological material?”

A number of countries have introduced a requirement into their patent laws that states that the "origin" or "source" of all biological or genetic material referred to in that patent application must be identified in the patent application. This requirement is likely to be introduced soon on an international level.

Why is this requirement being introduced?

Under the Convention on Biological Diversity (CBD), countries which are rich in natural biological resources have been given the rights to control access to those resources and a right to share in the benefit of any exploitation of those resources. The way that these rights are being implemented is to require Applicants for patents to disclose - in their patent applications - where they obtained any biological or genetic material that is referred to in their patent applications. The country where the biological or genetic material was obtained will then be able to see whether any of their biological/genetic resources have been used and whether prior permission for that use was obtained; and to seek appropriate benefits from the Applicant for the patent.

Whilst this requirement was originally designed to cover acts such as the exploitation of plant material from Brazilian rainforests by large pharmaceutical companies, it has much wider implications. There are also a number of significant issues which have yet to be resolved regarding the implementation of these provisions.

Origin or source?

Should the Applicant for the patent be required to identify the "source" of the biological material (for example, a banana bought in Tesco's) or the "origin" of this material (for example a plantation in the West Indies)?

Penalty for non-compliance

Should the patent application be refused if the origin/source is not given in the patent application, or should the Applicant be fined? Any sanction which results in the loss of patent protection would not be of benefit to the patent Applicant (who would receive no patent rights) or to the country of origin/source (since if the patent Applicant receives no patent, then there will be no profits from which the country could take a share).

What happens to the information regarding the origin/source?

Should this information merely be published with the patent application and the country of origin/source be required to monitor all such patent applications? Or should a separate Declaration be filed by the Applicant which is sent directly to the country in question?

Further advice

If you would like any further advice please contact us at Dehns using the details overleaf.





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