Bioprospecting Sector from an IP angle and SAAFoST

By

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Intellectual Property

Human Capital

Intellectual Assets

- Non-Statutory IP
- Statutory IP
Intellectual Capital

Intellectual Property

Statutory
- Trade Marks
- Patents
- Designs
- Copyright

Non-statutory (common law)
- Trade Secrets
- Confidential Information

Human Capital
- Know-how
**Indigenous Knowledge**

- Plant identity, recipe
- Traditional to a group of indigenous people
- Independent economic value
- Includes Know How
- Often the knowledge is widespread
- Not registrable for now

**KNOW HOW**

- Factual knowledge
- Acquired through application
  - No precise or accurate description
- Gives acquirer advantage
CONFUSING TERMS

– KNOW HOW
  • “general knowledge, skill and experience”

– CONFIDENTIAL INFORMATION
  • Technical, business or marketing

– PROPRIETARY INFORMATION

– TRADITIONAL KNOWLEDGE
  • Knowledge in the public domain but linked to a particular biological resource and particular peoples
Patent Product/Technology

- Patent is only “sure” way to protect
- Limited life span of 20 years
- Traditional knowledge must be much older
- Good idea to write up traditional knowledge so know what it is!
- Eventually register as IKS
BABS Process

- Identify IBR and IKS
- Negotiate MTA and BSA
- Obtain permits
- Develop new products and THEN ONLY apply for Patent – patent invalid if not this sequence!
- BABS process delays patenting and new product development – risk!
BABS Process

• Royalties from Patent v BSA payments
• Income for community
• Products for everyone e.g. medicines, food ingredients (colour, flavour, preservatives)

• UNFORSEEN CONSEQUENCES
  – Delays lead to loss of interest in products
  – Delays lead to inability to obtain patents
Food, Flavours, Fragrances

Difficulty in Negotiationg MTA and BSA

- Delays lead to loss of interest in products

- Live in competitive world and most ingredients can be replaced from elsewhere or substituted

- Important to speed up process and have commercially viable outcomes
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