



RESOLUTION
EXCO/KR05/RES/2003
"Progress Towards Harmonisation"

FICPI, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the World, assembled at its Executive Committee held from 1 – 3 May 2005 in Seoul, passed the following Resolution:

Emphasising that FICPI has always supported and continues to support efforts towards the international harmonisation of substantive patent laws;

Conscious of the fact that the negotiations within WIPO's Standing Committee on the Law of Patents (SCP) towards completion of a Substantive Patent Law Treaty (SPLT) have become stalled;

Noting proposals made by various groups of member states of the SCP and NGOs to conclude an early agreement on the basis of a "reduced package" of measures comprising "prior art", "grace period", "novelty" and "inventive step", and **believing** that such an agreement would be to the benefit of all active and passive users of the patent system wherever they were situated;

Noting with approval recent initiatives to introduce a "first-to-file" system in the United States;

Noting the concerns raised by some member states during the negotiations on harmonisation regarding certain public policy issues, including the protection of genetic resources;

Recognising the proposal to establish a development agenda for WIPO for utilising the patent system to promote industrial development in developing and least developed countries;

Acknowledging the recommendations adopted at the end of the Casablanca Informal Consultations of 16 February 2005 **and supporting** initiatives taken by certain member states to address development issues separately from the reduced package;

FICPI urges the members of the SCP to work expeditiously towards the conclusion of an agreement on such harmonisation at least initially on the basis of such a reduced package of measures comprising:

- first-to-file;
- a twelve months' grace period recognising prior user rights in respect of any use of an invention begun before the priority date and without any declaration requirements;
- a definition of prior art that deems all information that has been accessed or was lawfully accessible before the priority date by any person not bound by an explicit or implicit obligation of confidentiality to be prior art, but excludes information for which there existed only a purely theoretical possibility of being accessed; and
- clear definitions of novelty and inventive step;

Urges the developing and least developed countries to appreciate that if progress is not made in the SCP then the governments of the Trilateral Patent Offices may independently enact the reduced package, and that they may lose the opportunity to pursue their interests and express their concerns in the harmonization process;

And reiterates that if any rules are adopted in relation to declaration of the origin of genetic resources



in or in connection with a patent application then such rules must:

- be clear, precise and non-onerous for the applicant;
- not be applicable retrospectively;
- give the applicant an opportunity to rectify any deficiencies; and
- be such that the consequence of any ultimate failure to meet such rules shall not, in the absence of fraudulent intent, be invalidation or unenforceability of the patent;

And if there is a requirement to share any benefit accruing from an invention then there must be an appropriate authority in the country from which the genetic resources were obtained that the applicant can contact to enter into negotiations.