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INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

**SECOND MEETING
WITH INTERNATIONAL ORGANIZATIONS****Geneva, October 15 and 16, 1985**

RESOLUTION RECEIVED FROM AIPPI

Document prepared by the Office of the Union

1. The designated representative of the International Association for the Protection of Industrial Property (AIPPI) to the second Meeting with International Organizations has sent to the Vice Secretary-General of UPOV, under cover of a letter dated October 2, 1985, the text of the Resolution concerning patent protection for biotechnological inventions which the Executive Committee of AIPPI adopted in May 1985, at its meeting in Rio de Janeiro.

2. That Resolution is reproduced in the Annex to this document.

[Annex follows]

**AIPPI** Rio 85QUESTION 82 - PATENT PROTECTION FOR BIOTECHNOLOGICAL INVENTIONSR E S O L U T I O N

After having considered the reports of the National Groups (Yearbook 1984/IV) and the Summary Report on Question 82 (Yearbook 1985/I)

AIPPI

notes that

- an inconsistency exists between the actual laws which are based upon the general principle that a living organism per se can not be the subject matter of a patent, and the State of science which nowadays makes it possible to describe and repeat procedures for the modification of a living organism
- patent protection for particular biotechnological inventions exists in most states
- processes involving the industrial use of living organisms are generally patentable
- micro-organisms per se and other biological materials, including plants, per se, are patentable in many states
- plants and even animals are also protectable in some states by special rights.

AIPPI

Recognises that the development of new techniques has made biotechnology of great economic importance and observes that, to encourage the development of these new techniques, there is a great desire to protect biotechnological inventions by patents and to harmonise the patent practices of different countries.



ASSOCIAÇÃO INTERNACIONAL PARA PROTEÇÃO DA PROPRIEDADE INDUSTRIAL

AIPPI Rio 85

QUESTION 82

AIPPI

Also recognises that the application of new techniques in biotechnology could give rise to serious moral or ethical problems, and considers that those problems should be primarily regulated by laws specifically dealing with these issues to which the patent laws of nearly all countries refer in excluding from patentability inventions contrary to morals or public order.

AIPPI

Is of the opinion that biotechnological inventions should be protected by the application of the existing principles of patent law and that the creation of a special body of law is not necessary. Accordingly subject matter in the field of biotechnology should be patentable if it meets the usual criteria for patentability.

In particular:

- there is no reason to consider an organism, be it a microorganism, plant or animal, as not being patentable subject matter merely because it is living or merely because its genes have not been modified,
- other biological material, e.g. plasmids, enzymes etc., should be considered patentable subject matter,
- a process for obtaining or using a living organism or other biological material, should be considered patentable subject matter,
- no reason exists to exclude from patent protection, biotechnological inventions relating to any particular field of industrial application, for example food, medicines or



ASSOCIAÇÃO INTERNACIONAL PARA PROTEÇÃO DA PROPRIEDADE INDUSTRIAL

AIPPI Rio 85

QUESTION 82

chemical products.

- although protection of plant varieties under laws conforming to the UPOV convention presents a valuable system of protection and should continue, it is essential that techniques newly applied and products obtained thereby in the field of the development of new plants, and capable of meeting the patentability requirements, should become generally eligible for patent protection, and therefore, prohibition of double protection should not be maintained or provided for.
- if a written description is sufficient to make the living organism, or other biological material, available to a person skilled in the art, then deposit should not be required, but nevertheless, deposit should always be considered as completing the requirement of sufficient disclosure particularly in relation to the repeatability of the invention, recognising that practical problems in relation to some organisms will have to be solved.
- since the release of deposited material could be abused, the conclusions of AIPPI at the congresses of San Francisco and Munich in relation to microorganisms,

namely that

- a) a microorganism should not be accessible to the public until an enforceable right exists,
- b) release should be for research only,
- c) the organism should not be passed on to third parties,
- d) the organism should not be exported from the country of release and
- e) in the event of a violation of the undertaking, the burden of proof should be upon the receiver of the organism,



ASSOCIAÇÃO INTERNACIONAL PARA PROTEÇÃO DA PROPRIEDADE INDUSTRIAL

AIPPI Rio 85

QUESTION 82

should be applicable to organisms, and other biological material, in general.

- no reason exists to limit the scope of protection of patents for biotechnological inventions.

AIPPI

Considers that the application of these principles and the harmonisation of patent practice along the lines of these principles will encourage the development of biotechnology and allow patent practice to develop in parallel with scientific advancement.

[End of Annex and of document]