

Pertinent WIPO Treaties

(summary of presentation – part 3)

Relevance to GR managers

The World Intellectual Property Organization (WIPO) administers many conventions and treaties. Of these, the Paris Convention, the Berne Convention, the Budapest Treaty, the Lisbon Treaty, the Madrid Treaty and the Patent Cooperation Treaty (PCT) cover intellectual property laws/regulations related to plant material or information regarding plants in those countries that are members of these WIPO-administered treaties. Many countries use these treaties to guide or supplement national laws that implement TRIPs.

Conventions

1. **The Paris Convention** is the seminal treaty of WIPO. It allows someone of one country to obtain protection in other countries for their intellectual creations in the form of industrial property rights, known as inventions (patents), trademarks or industrial designs. The Paris Convention entered into force in 1884 with 14 member status. Now there are 169 countries that are members of the Paris Convention.
2. **The Berne Convention for the Protection of Literary and Artistic Works** (the Berne Convention) is a very popular international treaty that currently has 159 contracting states. Originally enacted in 1914 and amended over the years, this Treaty, together with the Paris Convention establishing WIPO, provides the basis of ‘national treatment’. One interpretation of ‘national treatment’ would only require that each member country give equal treatment to its own citizens and to foreigners with regard to the copyright protection granted to the originator or assignee of a work. In a practical sense, the Berne Convention results in copyright protection being automatically granted, in a Berne contracting state, to a work that is ‘fixed’ (a *work* being anything that is written, or recorded, in some format—print, electronic, sound/video recording, paint, etc.).

As most countries in the world are contracting states, this means that any time you write something (even handwritten notes), or record something, or post something on the internet, it is copyrighted. There is no need for a copyright symbol (©) for protection to be afforded. The only way for a work to have no copyright protection in a Berne Convention country is either (a) for the copyright period to have run past term (which can be a very long time—up to more than 75 years after the death of the author) or (b) for the owner to disavow the copyright and place the work in the public domain. Some IP professionals would regard Berne as redundant now that TRIPs has provisions dealing with copyright protection. However, there are some countries that are contracting parties to the Berne Convention but are not members of the WTO. Remember, there is no need to apply for the copyright protection in a Berne Convention country. Copyrighted material may also be registered with a country’s copyright office in order to receive governmental help with enforcement of the holder’s rights.

Treaties and agreements

1. The **Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedures** provides a means for patent applicants to ensure that their patent is 'enabled' under the 'written description' requirement of most national patent authorities. A patent must provide for anyone to be able to make the invention for which the patent rights are granted. Of course, for someone to make the invention in the country where a patent has been issued,¹ the user must obtain a license from the owner of the patent rights, unless the patent has expired.² This requirement, that a person be able to make the invention by reading and carrying out the methods described in the patent document, is 'enablement'. The words that describe how to make and use the patented invention are called the 'written description'. As you can imagine, it would be hard to read about growing a new plant variety and then be able to grow it. The solution to this problem is to have the patent applicant make a 'deposit' of a sample of seeds of the plant variety in a genebank. The Budapest Treaty contains the regulations for making such deposits and for qualifying a genebank as an international deposit authority (IDA) for the purposes of patent (material) deposits. Material can be deposited in an IDA in only one country, even though applications may be made (on the basis of this one deposit) for patent protection in any of the other contracting states. (This is usually done through the PCT; see discussion of the PCT, below.)
2. **The Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration** is an agreement that deals with appellations, where an 'appellation of origin' is a special kind of geographic indication, used on products that have a specific quality that is exclusively or essentially due to the *geographic environment* in which the products are produced. The concept of geographic indication encompasses appellations of origin. Some types of plant products may be protected with an appellation in some countries. Currently there are 23 countries that have implemented the Lisbon Agreement.
3. **The Madrid Agreement Concerning the International Registration of Marks** concerns intellectual property rights associated with trade/service marks. This agreement, as with the other treaties and agreements mentioned in this section, falls under the Paris Convention (see above). Adopted on April 14, 1891, this agreement facilitates protection of a trademark or service mark in several countries by means of a single international registration. Currently, there are 56 countries that have endorsed and enacted national legislation complying with this agreement.. The Agreement covers both trademarks and service marks.
4. **The Patent Cooperation Treaty (PCT)** is an agreement that standardizes the processes of patent application, application search and examination. It is administered by WIPO under the Paris Convention, with 124 contracting states at present. PCT filings are a convenient way for an inventor or assignee to file one application for search and examination. However, in order to complete the application process in a country, the PCT filing must be filed then, in a national (or regional) patent office for final examination, before a national patent can be granted. PCT filings must satisfy national regulations with regard to patentable subject matter, claim formulation, etc.

¹ In some countries, you must obtain permission (a license) not only to make, use or sell the invention covered by the patent rights, but also to import the material covered by the patent rights from another country.

² The time that patent rights cover can vary. Generally, it is 17 to 20 years from the time of filing the patent application or issuing the patent.