

Identifying Information

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Paper Information

Title:	Patents, Disclosure of Information, & Biopiracy
Abstract:	<p>One of the core requirements of patentability is that patent applicants provide background and contextual information about their invention to the patent office. This disclosure is expected to allow a patent examiner to ensure that the application meets patentability standards. However, because of the information-asymmetry between expert patent applicants and generalist patent examiners, applicants can withhold useful information while still receiving the benefits of exclusive patent rights. While this is a problem in the patent system in general, the challenge is even worse in a subset of inventions. The information asymmetry is more pronounced in case of inventions that rely on the genetic resource or traditional knowledge (TK) of indigenous peoples and local communities in their research. A good example is the practice of using traditional medicinal knowledge as research leads to develop modern drugs. Aspirin is one of the drugs developed out of traditional practices. A core question in these situations is whether patent applicants that rely on TK to develop their invention are required to disclose such information to the patent examiner. Reports of multiple instances show that patent applicants usually withhold information about their reliance on TK in their inventive process. As a result, they may claim exclusive property rights over what source communities have been practicing for generations. In reaction to the lack of recognition of their contribution, source communities are adopting a protectionist trend by creating restrictions on access to their resources. This article argues that the introduction of an explicit requirement in U.S. patent law compelling patent applicants to disclose their use of TK can create an efficient patent system and sustainable relationships in the relevant industries. It provides two justifications for the amendment of U.S. patent law. First, the article makes a normative case for conceiving the disclosure of origin requirement as an information-forcing rule. Imposing an obligation to disclose the source of TK would elicit socially beneficial information about the validity and scope of a claimed application from the low-cost-providers—patent applicants—thereby creating a more efficient patent system. Second, the article argues that an explicit and enforceable disclosure requirement would reverse the inefficient and troubling protectionist trend by facilitating the tracking and enforcement of obligations that researchers may have in contracts with source communities or domestic laws of source countries. The requirement will create confidence in the patent system and encouraging source communities to facilitate access to TK. The article uses efficiency and social welfare perspectives in contrast to the equity and distributive justice justifications dominating the literature. The focus of this article on domestic U.S. law is another point of contrast to the focus of the literature on international law.</p>