STATEMENT

IPO Opening Statement at WIPO Diplomatic Conference on Genetic Resources and Associated Traditional Knowledge

This statement is made on behalf of the Intellectual Property Owners Association (IPO), an international trade association whose diverse membership includes over 125 companies and spans over 30 countries.

Dear Mr. Chairman,

IPO is an international trade association representing a “big tent” of diverse companies, law firms, service providers and individuals in all industries and fields of technology that own, or are interested in, intellectual property rights. Part of IPO’s mission is to promote predictable legal and IP systems, which provide the certainty and stability that our members and all innovators need to invest in innovative research and development to address society’s greatest challenges.

With respect to the Draft International Legal Instrument currently under discussion, while IPO supports the general Objectives stated in Draft Article 1, IPO struggles to see how the patent disclosure requirement contemplated by this instrument would advance those Objectives. IPO is, rather, concerned that the proposed disclosure requirement would have the opposite effect, creating substantial uncertainty that would discourage our members and other innovators from investing in the development of genetic resources, and in related areas of innovation affected by the instrument.

If, despite these concerns, a disclosure requirement is ultimately implemented through this legal instrument, IPO believes that certain changes to the proposed provisions of the draft text are critical in order to minimize the instrument’s harm to the IP system—a system on which all of society depends to advance innovation, creativity and human progress.

- First, IPO believes that any disclosure requirement should include the right of patent applicants to rectify any mistakes both pre- and post-grant, and should further clarify that failure to disclose is not a ground for invalidity, unenforceability or the transfer of patent rights.

- Second, given the complexity—and in many cases, the impossibility—of identifying the origin of genetic resources that may have been collected or accessed in the past, as well as settled expectations under the preceding rule of law, the instrument should be non-retroactive in that it should only apply to inventions directly based on genetic resources collected after the agreement’s entry-into-force.

- Third, the instrument should be limited in scope to apply only to patents that explicitly recite a specific property of a genetic resource in one or more of the patent’s claim limitations. Consistent with other relevant legal instruments, it should also explicitly
exclude human genetic resources, human pathogens, traditional knowledge (which is more properly addressed in other ongoing IGC discussions), and digital sequence information (the inclusion of which would be premature, since other UN forums are still in the process of collecting views on the matter). If traditional knowledge is nevertheless included, it should at least explicitly exclude all knowledge that is publicly or readily available to one of ordinary skill in the art.

- Fourth, the instrument should clarify several proposed definitions in the draft text that are overbroad or unclear, including at least 1) “country of origin,” whose proposed in situ-based definition would lead to situations where more than one country could claim to be the origin of a genetic resource, without regard to where the resource actually originated; and 2) “[materially/directly] based on,” whose present definition provides little practical guidance to innovators, patent offices or examiners. IPO proposes that the instrument be clarified to apply only to patents that explicitly recite a property of a genetic resource in a patent claim.

- Fifth, this instrument should include a clause that it will be implemented in such a manner as to be consistent with other pre-existing international agreements, including TRIPS.

- Last, any Review under Article 9 should not be limited to contracting parties, as the potential outcome is likely to affect innovation ecosystems involving non-contracting parties.

IPO thanks the Chair for the opportunity to share our perspectives. We look forward to working constructively with the Delegations on a way forward that addresses these concerns.