

United States of America

Q159

**The need and possible means of implementing
the Convention on Biodiversity into Patent Laws**

A) The National Situation

1. *Is the Rio Convention:*

- signed by your country?

Yes. Initially, the United States refused to sign the Convention, principally because of concerns that it contained broad, ambiguous language that could be construed to compromise intellectual property rights and require compulsory licensing of biotechnological inventions. However, on June 4, 1993, the last day that the Convention was open for signing, it was signed on behalf of the United States. Upon signing, the U.S. Ambassador to the U.N. issued an interpretative statement explaining the United States' understanding of the intellectual property provisions of the Convention.

- ratified by your country?

No. The President sent the Convention to the Senate for ratification, along with the interpretive statement referenced in the preceding paragraph, but the Senate has not ratified it.

2. *Is, in your opinion, the Rio Convention already applicable in your country?*

No. The Convention has not been ratified, nor has any implementing legislation been enacted. The United States has comprehensive environmental laws and regulations, and many aspects of the Convention are applicable through these laws and regulations and through executive orders.

3. *If the Rio Convention is not yet directly applicable in your country and if its application would require specific legislation, does said legislation already exist? In the negative, are there plans or actual debates for such legislation in your country?*

As noted in response to the preceding question, numerous laws, regulations and executive orders exist which are designed to protect the environment and preserve biodiversity, e.g., through laws protecting endangered species and wetlands laws. Sensitive habitats are protected through regulations and executive orders. However, no legislation implementing the Convention has been enacted, and no such legislation has been debated or even proposed.

4. *Apart from the Rio Convention or possible legislation for its enforcement, does there exist specific national legislation regulating the access to natural resources (genetic) of the country, the export provisions of such resources, the sharing of the results of their use or the transfer of technologies using them? If such legislation exists, does it contain different provisions, in particular more extensive ones, than those of the Rio Convention? Especially, does the access to genetic resources require the prior consent of the owner of said resources?*

The answer to Question No. 4 requires distinguishing between access to natural genetic resources on private lands and those on public lands. We are aware of no national legislation (outside of eminent domain powers of governmental authorities) that would compel an owner of private property to permit access to and taking of natural resources on the property. Nor are we aware of legislation that would require a private land owner to export genetic resources found on the land or to share technology or information derived from such resources. In the United States, a private owner of land also owns that which is attached to or produced by the land. Legislation mandating that a private land owner provide access to natural genetic resources on such land would

