

Resource persons to provide support to develop intangible assets in Universities and Non-State Higher Education Institutions

Interested resource persons will be able to get an idea about the scope of the work based on this document. The contracts for resource persons will be developed once the resource person is identified and after further discussions regarding the current situation and support required to fill the gap.

Instructions to the resource persons (items a and b)

1. *Under each category the resource persons will develop IP guides.*
2. *The guides should be written in simple English language, user friendly and a non-specialist in IP should be able to understand.*
3. *Practical examples, case studies, examples of claims can be incorporated where relevant.*
4. *The guides should be well presented, should use illustrations, diagrams, examples where relevant. Appropriate use of colours to attract the user is important. These guides can help patent examiners as well when providing feedback on claims.*
5. *The submitted documents will be reviewed by AHEAD & NIPO. Resource person may be requested to attend a discussion to further develop the guide. Thereafter the document will be uploaded to AHEAD & NIPO websites.*
6. *The length of the guide would be preferably 10 -20 pages unless a prior agreement is obtained for a different number.*
7. *The developed material should be in-line with the IP Act of Sri Lanka as such, it is expected the resource persons have sound knowledge in IP laws in Sri Lanka.*

a) Software related inventions

In Sri Lanka Intellectual Property Act No. 36 of 2003 does not define computer programs as non-patentable subject matter and defines as a protectable work under copyright. Software related inventions can be expressed as a “process” or a “product” (apparatus) or additionally as a “program” that specifies multiple functions performed by a computer. Software related inventions that having a technical character can be considered as patentable subject matter. As an example, European Patent Office provides a guideline for examiners explaining acceptable claim formats for computer programs/computer implemented inventions providing examples. While considering this area as an important field of technology, there is a need of preparing a guideline for applicants to file patent applications for software related inventions and some instructions on copyright protection for the information of the software developers as software is protected under copyright as per the provisions of the IP Act No. 36 of 2003.

b) Methods for the treatment of the human or animal body

Section 62 (3) (d) of the IP Act defines that methods for the treatment of the human or animal body by surgery or therapy, and diagnostic methods practiced on the human or animal body as non-patentable subject matter: Provided however, any product used in any such method shall be patentable. But there are no clear guidelines to understand the acceptable claim formats for Sri Lanka. As an example, European Patent Office provides a clear guideline for examiners providing

acceptable claim formats. There is a need of a clear document that provides clear guidelines on patentable claim formats when evaluating patent applications by the examiners as well as for reference of patent applicants, especially for PCT national phase entry applications.

The areas, which are not included in the IP Act.

Instructions to the resource persons (item c)

The resource person is expected to follow up with the Ministry responsible to the subject of Agriculture, and Department of Agriculture, and with collaborative efforts to identify the progress made and constraints faced in implementing the proposed "Protection of New Plant Varieties Act".

The resource person shall also identify any existing gaps of proposed "Protection of New Plant Varieties Act" and shall propose regulations to effective implementation the act.

In addition to the above, with the recommendation from the sub-committee appointed to oversee the above task, the resource person will prepare a IP guide as in items a and b above.

c) Protection for new plant varieties

Though Intellectual Property Act No. 36 of 2003 has no provision to protect new plant varieties, an Act for protection of new plant varieties in Sri Lanka has been developed in 2001. In the said draft DG NIPO and DG Department of Agriculture have been named as two authorities who will share the responsibility in ascertaining novelty of the variety, registering the same and maintain of Plant Variety Registry. In or around 2013 the then Ministry of Economic Affairs directed Ministry of Agriculture to take over this assignment in proposing Plant Varieties Protection (PVP) Act.

Some proactive work has been done by the Department of Agriculture at present and the resource person is expected to work with all parties to get the act materialized.

Instructions to the resource persons (item d)

- 1. The resource person shall discuss with the Biodiversity Secretariat about the current status of the National Policy and Strategies on Traditional Knowledge (TK) to find out possible collaborative activities with them to protect TK and Traditional Cultural Expressions (TCE) in Sri Lanka.*
- 2. The resource person shall study proposed legal framework for the protection of Traditional Knowledge in Sri Lanka (2009) to find out existing gaps.*
- 3. The resource person shall propose a Sui-generis system to protect TK and TCE in Sri Lanka.*
- 4. The resource person should prepare a guide and the guide should be written in simple English language, user friendly and a non-specialist in IP should be able to understand. Practical examples, case studies, examples of claims can be incorporated where relevant.*

5. *The guides should be well presented, should use illustrations, diagrams, examples where relevant. Appropriate use of colours to attract the user is important. These guides can help patent examiners as well when providing feedback on claims.*
6. *The submitted documents will be reviewed by national expert committee on traditional knowledge, NIPO & AHEAD. Resource person may be requested to attend a discussion to further develop the guide. Thereafter the document will be uploaded to Ministry of Environment & AHEAD & NIPO websites.*
7. *The length of the guide would be preferably 10 -20 pages unless a prior agreement is obtained for a different number.*
8. *The developed material should be in-line with the National policy developed as such, it is expected the resource persons have sound knowledge in the policy document.*

d) Protection for Traditional Knowledge and Cultural Expressions

The proposed legal framework for the protection of Traditional Knowledge in Sri Lanka (2009) was not finalized due to the proposed National Policy and Strategies on Traditional Knowledge and Practices prepared by Biodiversity Secretariat of Ministry of Environment (started in 2003).

Later, Ministry of Industry and Commerce took the leadership in promoting draft National Policy on Traditional Knowledge (TK) and Traditional Culture Expression prepared by a Senior State Counsel (2017) which was also not finalized.

National policy on traditional knowledge and practices and strategies was finalized by the Ministry of Environment and Wildlife resources, biodiversity secretariat in 2020. Public comments were also obtained. Ministry will take the initiative to obtain cabinet approval.

Instructions to the resource persons (item e)

1. *The resource person shall conduct a study on issues of possible GI applicants (Tea, Cinnamon, Spices etc.) in Sri Lanka.*
2. *The resource person shall analyze the issues of possible GI applicants and provide recommendations to the Government/ NIPO in opening a registry for GI in Sri Lanka.*
3. *In addition to the above, with the recommendation from NIPO, the resource person will prepare a IP guide as in items a and b above.*

e) Registration and Protection of Geographical Indications (GI) in Sri Lanka

NIPO is current working in this area and approval has been received to proceed with the proposed amendment on GI. The resource person should analyze the issues and concerns from the GI applicants'. (Eg. In most countries GI applicant should be a producer group whereas in Sri Lanka Government owned entities might become the applicant representing all groups. Hence these possibilities need to be researched and analyzed)

Instructions to the resource persons (items f and g)

1. *Under each category the resource persons will develop guides indicating how these concepts can be used in development.*
2. *The guides should be written in simple English language, user friendly and a non specialist should be able to understand.*
3. *Practical examples, case studies, can be incorporated where relevant.*
4. *The guides should be well presented, should use illustrations, diagrams, examples where relevant. Appropriate use of colours to attract the user is important.*
5. *The submitted documents will be reviewed by AHEAD. Resource person may be requested to attend a discussion to further develop the guide. Thereafter the document will be uploaded to AHEAD website.*
6. *The length of the guide would be less than 20 pages unless a prior agreement is obtained*
7. *The developed material should be in-line with laws of Sri Lanka. It is expected the resource persons have sound knowledge in these areas.*

f) Creative Commons for design projects

Creative Commons (CC) licenses are commonly used for design projects. A wide variety of CC licenses is available based on four basic parts. Those parts can be enacted individually or in combination. How these licenses can be used in design work and development should be illustrated in the guide. The guide should be useful for the researchers working on creative arts.

g) Free and open source software licensing

Proponents of open source software believes that open collaboration will help to evolve software via the contribution from many users. Use of open source software in research, development and commercialization should be illustrated in the guide with suitable examples. As open source software is not managed by commercial entities the issues one can face can also be included.

Once the development is made whether the product can be patented under the laws of Sri Lanka should be illustrated. The resource person must work closely with the resource person working on item a) of the list.