CASE STUDY 45

Safeguarding and patenting a cheese-making process

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Disclaimer: the facts in this case study are entirely fictitious. Any resemblance with actual facts is mere coincidence.

#### **Facts:**

1. Historically, the Fan community in the country of Kassen and the Fan community in the neighbouring country of Masse have considered themselves as part of the same community although with the imposition of a border between them they have drifted apart in recent years. These two communities share the same traditional knowledge about making a special kind of cheese today. Both countries ratified the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and in both this method of cheese making was included in an inventory of ICH.
2. Cheese artisans from the Fan community in Kassen applied for a patent on a modified and improved method of making this kind of cheese, which they had invented themselves. The community believes the new method to be a significant improvement on their great tradition of cheese making, while maintaining the spirit of the tradition. The patent was granted in Kassen.
3. The Ministry of Culture in Masse worked with the cheese artisans from the Fan community in Masse to nominate the cheese-making tradition to the UNESCO Representative List of Intangible Cultural Heritage. Through official channels, they invited the fan community in Kassen to participate in the nomination process.
4. The fan community in Kassen refused to participate in the nomination because the nomination referred only to the traditional method and not to the new method.
5. When the element was inscribed on the Representative List, the media in Masse celebrated the granting of a ‘UNESCO patent’ on the traditional method of making cheese in Masse. The fan community in Kassen expressed their disappointment as they had wanted to patent their improved method in Masse.

#### **Questions for discussion:**

1. Why were the cheese artisans in Kassen able to get a patent on their improved method of making traditional cheese? (see below the conditions for patentability)
2. Would patenting the improved method help to safeguard the traditional way of making cheese (why, or why not)?
3. What other kinds of intellectual property protection could the cheese artisans seek? How would these help in safeguarding the ICH?
4. Can the nomination of the cheese-making tradition to the Representative List of the Convention go ahead without involving the Fan community in Kassen (and the relevant Ministry in Kassen)?
5. Could the modified method of making the traditional cheese, as developed in the neighbouring country, have been included in the description of the element in the nomination file? If it had been included, what factors would the Committee take into account when evaluating the compliance of the element with the criteria for inscription on the Representative List of the Convention (see Chapter 1 of the Convention’s Operational Directives)?
6. Does inscribing an ICH element on the Lists of the Convention confer a patent?
7. What intellectual property rights does inscription on the Lists of the Convention confer?

#### **Background Information:**

* Requirements for patentability:

Patents provide inventors exclusive rights over making, using, importing and distributing new inventions of products or processes in any field of technology, for 20 years. Three criteria have to be met for patent protection: novelty (inventions have to be new), inventiveness or non-obviousness (i.e. inventions cannot be obvious to a person with ordinary skill in the art) and utility (also known as industrial applicability, meaning inventions have to be useable for something, and not simply be a discovery or idea).

* Criteria for inscription on the Representative List: Refer to Chapter 1 para 2 of the Convention’s Operational Directives
* Definition of ‘Intangible Cultural Heritage’: Refer to Article 2 - Definitions of the Convention