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gLAWcal
Comment #326

**DEFINING DISCOVERY AND IN-
VENTION**

Based on

**Jianqiang Nie “The Relationship between the
TRIPs Agreement and the Convention on Biolog-
ical Diversity (CBD): Intellectual Property and
Genetic Resources, Traditional Knowledge and
Folk Protection from a Chinese Perspective”**



A gLAWcal comment on Jianqiang Nie “The Relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD): Intellectual Property and Genetic Resources, Traditional Knowledge and Folk Protection from a Chinese Perspective” in Paolo Davide Farah and Elena Cima (Eds.) **China’s Influence on Non-Trade Concerns in International Economic Law**

An important distinction throughout patent law practices is the differentiation between what is considered a “discovery” and what is considered an “invention”. In biotech research it is often that discovering something is the first step in inventing a use for that discovery. Quite often a discovery cannot be patented as the creator was not a single individual but a cascade of evolutionary consequences. But from the industries’ standpoint this a very clear two-step process and should be afforded some protections that other industries do not need because discovery is not requisite to invent. A reminder that often the regulation of patents issued in the biotech field is limited by the morality of the research

being conducted, there are different ways in which each WTO-member nation may consider the particularities of the research being conducted. This offers a difficult playing field for the researchers that may be able to conduct certain research in one nation but not another. It can produce an environment in which biotech companies shop around their skilled workforce to nations with more relaxed regulations in the areas of ambiguous moral standing. This is an opportunity for the WTO to require uniform regulation on biotech research, ensuring that there is not a race-to-the-bottom on what acceptable research is. There will always be differences in regulations of discoveries and inventions, but there can be exception made for this industry. This could be a bargaining opportunity to exchange the discovery/invention distinction for uniform international regulation on best practices for the boundaries of biotech research.

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The gLAWcal comments are insight and short analytical pieces written by the gLAWcal team. The gLAWcal comments are based on, and inspired by, the books and chapters published within one of the [gLAWcal book series](#) published by Routledge Publishing (New York/London).

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OUR MISSION

To collaborate with Government, Civil society and business community to balance the excess of globalization with Non Trade Concerns.

OUR GOALS

To influence policymakers, to raise awareness over Non Trade Concerns, to encourage stakeholder participation, and to disseminate gLAWcal's publication results.



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