

**U.S. GOVERNMENT COMMENTS AND QUESTIONS REGARDING FIJI'S
PROPOSED TRADEMARKS BILL, PATENTS BILL, AND DESIGNS BILL**

February 11, 2021

General Comments

The United States appreciates the opportunity to provide comments and questions regarding Fiji's proposed bills on trademarks, patents, and designs. The United States looks forward to hearing the Government of Fiji's responses to our questions below and to continuing our discussions in the near future.

The United States has several comments and questions regarding the proposed Trademarks Bill, Patents Bill, and Designs Bill. The United States also encourages Fiji to accede to international intellectual property treaties, including the Singapore Treaty on the Law of Trademarks (Singapore Treaty) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol). The United States stands ready to provide additional information and training on these treaties, as well as on any of the comments listed below.

Specific Comments and Questions

PATENTS BILL 2020 (BILL NO. 46 OF 2020)

Article 9(1)

This article states that a "computer program is not an invention for the purposes of this Act." Can Fiji explain how this article is consistent with TRIPS Article 27.1, which requires that patents "shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application"?

Article 14(2)

This article states that "methods of doing business" are not patentable inventions. Can Fiji explain how this article is consistent with TRIPS Article 27.1, which requires that patents "shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application"?

Article 16(1)

This article states that the patentee has the exclusive rights, during the term of the patent, "to exploit the invention and to authorise another person to exploit the invention." The United States recommends revising this article to align with the text of TRIPS Article 28, which provides that a patent gives the patentee the right "to prevent third parties not having the owner's consent from

the acts of: making, using, offering for sale, selling, or importing for these purposes that product” or process.

Article 91

Can Fiji confirm that a “further patent for an improvement in, or modification of, the main invention” and “a patent of addition” under Article 91 must meet the requirements in Article 4 (meaning of novel), Article 5 (meaning of inventive step), Article 12 (patentable inventions), and has the term described in Article 18 (term of patent)? To ensure against double patenting, the United States suggests that subject matter sought to be patented must be sufficiently different from what has been used or described before that it may be said to be non-obvious to a person having ordinary skill in the area of technology related to the invention.

Articles 152-171

Can Fiji explain how it intends to comply with the procedural requirements of Article 31 of the TRIPS Agreement, including, but not limited to, Articles 31(h)-(j) of the TRIPS Agreement?

Article 154(1)(b)

This article states that a court may grant a compulsory license for export of pharmaceutical products to certain countries if the pharmaceutical product is “needed to address a serious public health problem” The United States suggests revising this article to align with the text of Article 31*bis* of the TRIPS Agreement and Article 1(b) of the Annex to the TRIPS Agreement, including defining the public health problem as a “national emergency or other circumstances of extreme urgency.”