

Paper No. 1

CDIP/5 (E)  
12/03/2010

NON-PAPER ON THE PROJECT ON INTELLECTUAL PROPERTY AND  
TECHNOLOGY TRANSFER “COMMON CHALLENGES – BUILDING SOLUTIONS”  
(DOCUMENT CDIP/4/7)

*prepared by the Secretariat*

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## BACKGROUND

1. At its fourth session, held from November 16 to 20, 2009, the Committee on Development and Intellectual Property (CDIP), took the following decision:

“The Committee also discussed the Project on Intellectual Property and Technology Transfer: Common Challenges - Building Solutions contained in document CDIP/4/7, and decided that discussions on that document would continue at the fifth session of the CDIP. A group of “like-minded delegations” would submit a document containing comments on the implementation of the relevant recommendations before the end of 2009. Other Member States would be invited to respond to that document until January 31, 2010. The Secretariat would then prepare a non-paper for discussions at the fifth session of the CDIP.”

2. The present document constitutes the non-paper implementing the said decision. The paragraphs under each country or group of countries represent excerpts of the submissions by the respective country or group of countries.

3. In view of the various comments received, the suggested approach for structuring the document is to organize it into three parts, and to include in the Annex the full text of all comments received. The three parts are:

- I. Proposals with a substantial amount of common ground;
- II. Proposals where a common solution may be developed;
- III. Diverging proposals.

## I. PROPOSALS WITH A SUBSTANTIAL AMOUNT OF COMMON GROUND

4. The following categories of suggestions presented by Member States appear to express, at least to a large extent, consensus.

(a) Definition of Technology Transfer (Paragraph 5)<sup>1</sup>

*Like-minded developing countries*

5. An important initial point to consider as we strive to implement the DA Recommendations above is to look at what is meant by the term “Transfer of Technology,” and what is its definition. In this regard, there have been previous attempts at defining the term, and there is a need to review these attempts towards establishing agreement on its contours. The Draft International Code of Conduct on the Transfer of Technology (1985 version) provides a good starting point.

*Australia*

6. Australia supports further discussion of the definition of technology transfer. While the Draft International Code of Conduct on the Transfer of Technology provides one reference point, the full range of definitions should be considered. A definition would also assist in categorizing work on technology transfer in different WIPO Committees. However, discussions on definitions should not dominate the project at the expense of recommendations for practical actions to increase and accelerate transfer of technology to developing countries.

*Principality of Monaco*

7. The Principality of Monaco shares the view presented in the document submitted by Egypt according to which common ground should be reached first on the definition of the expression “technology transfer”, in as much as this definition focuses on aspects of intellectual property.

*United Kingdom*

8. An attempt to define the term ‘transfer of technology’, proposed by the Egyptians, would help to better delineate the scope of the project. The UK view however is that such a definition in a WIPO project should be limited to one which reflects what is meant by technology transfer in relation to IP.

*United States of America*

9. We agree with Egypt and the Group of Like-Minded Developing Countries (“Egypt”) that the project should be guided by a clear understanding of what is meant by the term “technology transfer.” In our view, the definition of technology transfer contained in the preliminary study on technology transfer commissioned by the Standing Committee on Patents (SCP/14/4) would provide a workable operational definition of the term that could be used in the project under consideration in CDIP. The SCP study notes that, when used in the

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<sup>1</sup> The paragraph numbers in the subtitles refer to the paragraph numbers contained in the submission by Egypt on behalf of a Group of Like-Minded Developing Countries.

context of intellectual property, “the transfer of technology is a series of processes for sharing ideas, knowledge, technology and skills with another individual or institution (e.g., a company, a university or a governmental body) and of acquisition by the other of such ideas, knowledge, technologies and skills.” (SCP/14/4, para. 16).

(b) Clarification of the Term ‘New Platform for Technology Transfer’ (Paragraph 15)

*Like-minded developing countries*

10. What is meant by a “New Platform for Technology Transfer and IP Collaboration?” The term is vague and not clear as to what it would imply.

*Principality of Monaco*

11. The Principality of Monaco would like more information on the scope of the concept “new platform for technology transfer and intellectual property collaboration”, particularly as concerns the role and operation of this platform.

*United Kingdom*

12. Clarification is needed of what is meant in CDIP/4/7 by a ‘New Platform for Technology Transfer’. The term is vague and unspecific. What objective does the Secretariat consider it will achieve?

(c) Additional Ideas on the Project (Paragraph 19)

*Like-minded developing countries*

13. Substantive ideas for the project, and in addition to the specific comments in the next section, should include:

- (iii)<sup>2</sup> Look at alternatives for R&D efforts and support to innovation aside from the currently existing patent system. This was taken up before by the World Health Organization in its Commission on Intellectual Property Rights, Innovation and Public Health, and could be used as a model for a similar exercise by WIPO.
- (iv) What are possible open source models and what is their contribution to technology transfer (see DA Rec. 36).

*Syrian Arab Republic*

14. We would like to support the substantive ideas for the project, which include: (iii) look at alternatives for R&D efforts and support to innovation aside from the patent system.

*United States of America*

15. The third and fourth substantive ideas in the Egyptian Proposal seem to encompass studies on complementary incentivizing models: one study would examine alternatives to R&D efforts and the support to innovation aside from the currently existing patent system; the

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<sup>2</sup> Item numbering used in the corresponding paragraph of the original document.

other would study the contribution of open source models to technology transfer. While these are important topics, we note that only one Development Agenda recommendation (No. 36) addresses non-IP incentivizing models, and it calls on Member States “to exchange experiences on open collaborative projects such as the Human Genome Project as well as on IP models.”

## II. PROPOSALS WHERE A COMMON SOLUTION MAY BE DEVELOPED

16. The following categories of suggestions presented by Member States appear to be of a nature to allow the elaboration of common approaches, as they contain some common ground or point to a similar direction or outcome.

### (a) Definition of Technology Transfer (Paragraph 6)

#### *Like-minded developing countries*

17. This definition should include market mechanisms such as commercial transactions in trade, FDI, licensing and joint R&D arrangements. It should also include legitimate informal, non-market channels such as imitation through product inspection, reverse engineering, software decompilation, and simple trial and error. Finally, a third component of this definition should include efforts exerted by intergovernmental organizations (IGOs), development assistance agencies, and non-governmental organizations (NGOs). Similarly, the definition should encompass technology transfer that occurs through the study of available information, including patent disclosure provided sufficient information is made available for engineers to understand the technologies.

#### *United States of America*

18. The Egyptian Proposal (page 10) suggests using the SCP study to inform CDIP’s work on IP and technology transfer, and we recommend following that counsel.<sup>3</sup> Additionally, we believe that the definition of technology transfer in the SCP study largely encompasses the lengthier list specified in the Egyptian Proposal.

### (b) International IP Standards Pertaining to Technology Transfer (Paragraph 9)

#### *Like-minded developing countries*

19. International IP Standards Pertaining to Technology Transfer: a more dynamic approach to transfer and dissemination of technology, for the benefit of developing and least developed countries, should take advantage of the flexibilities of the international regime to the full and incorporate, among others, appropriate policies with respect to:

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<sup>3</sup> *United States of America*: We also note that the definition of “technology transfer” contained in the Egyptian Proposal (para. 6) would be incomplete because it includes imitation, reverse engineering, software decompilation and other means of obtaining technology, but without reference to the legitimate interests of rights holders. The consent of a rightful owner may be required for such acts under the national laws of some countries.

- (i) protection criteria (e.g. patentability);
- (ii) duration of rights beyond a reasonable time to justify rewarding innovation and creativity;
- (iii) exceptions to exclusive rights;
- (iv) use of public tools (e.g. disclosure and working requirements, compulsory licensing, open source software);
- (v) system of protection relevant to national circumstances;
- (vi) administrative and procedural aspects;
- (vii) monitoring of anti-competitive behavior and other forms of abuse of rights.

#### *Australia*

20. Australia notes that this paragraph appears to refer to the TRIPS Agreement “flexibilities” but we would welcome clarification on this point. In Australia’s view, the scope of TRIPS flexibilities is a matter for the TRIPS Council. We do not consider that WIPO has a role in normative consideration of the TRIPS flexibilities in WIPO. WIPO’s role should be limited to advising on the use of those flexibilities rather than determining their scope and application. In relation to technology transfer, and as proposed by the Secretariat, this would involve advising factually on how these flexibilities are used by members.

#### *Principality of Monaco*

21. The Principality of Monaco believes this project should take into consideration and complement the work of other WIPO committees which also deal with technology transfer, particularly to avoid any overlap.

#### *United Kingdom*

22. The Standing Committee for Patents (SCP) has considered a preliminary study on Technology Transfer (SCP/14/4) which is a broad overview of the literature in this area. It would be important to consider how this work and the CDIP technology transfer project could complement rather than overlap each other. In the SCP a like-minded group (including Egypt, India, South Africa) has requested a follow-up study focusing on the negative impact of patents in technology transfer. Our view is that any study commissioned should be balanced and consider both the positive and negatives impacts of IP on technology transfer.

#### *United States of America*

23. Under the first set of issues identified in the Egyptian Proposal — International IP Standards, including patentability, exceptions to exclusive rights, disclosure requirements, compulsory licenses, and anti-competitive practices (Egyptian Proposal, para. 9) — we note that these issues are being studied or proposed to be studied by the Standing Committee on Patents (SCP). We believe that CDIP should coordinate with the SCP so as to avoid duplication and divergent approaches. Coordination with other committees should not, however, preclude CDIP from using the work of those committees in pursuit of its mandate. In our view, such synergies should be encouraged. The discussion of coordination mechanisms at the next session of CDIP should help clarify how CDIP should discharge its responsibilities as one among many WIPO committees.

(c) Literature Review (Paragraph 17)

*Like-minded developing countries*

24. The project needs to start with a literature review of existing work and efforts done in the field of technology transfer, particularly by other international organizations, such as UNCTAD, UNEP, UNIDO, WHO, WTO among others. It should consider the history of multilateralism on the subject. This literature review should be pre-defined with the list of issues sought to be addressed (see particularly DA Recs. 30 and 40). These points were explicitly raised at the Open Forum on the DA projects hosted by WIPO on 13 and 14 October 2009. The comments raised during this Open Forum should be reflected in this project.

*Australia*

25. Australia supports an objective, evidence based analysis of technology transfer through the project. Australia believes that identification and definition of possible problems in achieving effective technology transfer at the outset is consistent with an objective approach. However limiting studies to focus on obstacles is likely to produce a less balanced, and ultimately less useful, outcome than a study that investigates the issue objectively based on evidence available.

*United Kingdom*

26. With regard to the research proposals in CDIP/4/7 (2.1.2), we welcome more work in this area and the scope of the proposals looks right to us. We agree with the Egyptian Proposal that these should take into account a review of the literature already available in order to avoid duplication of effort. In addition the studies and research should aim to be sensitive from the outset to the possibility that different solutions may be needed not only for countries at different levels of development, but also for different sectors. We have found in gathering evidence on technology transfer in relation to IP and climate change that different issues are likely to arise in different technological sectors.

*United States of America*

27. We welcome the suggestion in the Egyptian Proposal (para. 17) to conduct a literature review of existing work in the field of technology transfer, particularly by other organizations. We would, however, appreciate clarification on the suggestion that any literature review should be “pre-defined with the list of issues to be addressed” and that the comments made during the Open Forum on the Development Agenda by WIPO on 13-14 October 2009 should be reflected in this project. It would be helpful to know what “list of issues” and specific comments are being referenced here.

(d) Additional Ideas for the Project (Paragraph 19)

*Like-minded developing countries*

28. Substantive ideas for the project, and in addition to the specific comments in the next section, should include:

(i) Setting up of a database that specifically targets R&D technology transfer possibilities from developed countries.

(ii) Review of the patent landscaping reports being prepared under the Project on “Developing Tools for Access to Patent Information” (CDIP/4/6), with a view to identifying the possibilities of international transfer of technology in these areas. Similar analysis of patent landscaping, from the viewpoint of technology transfer, in the areas of food and agriculture should also be undertaken.

(v)<sup>4</sup> Consider the TRIPS Agreement, and how technology transfer has not been achieved under it. There should be a discussion and analysis of what WIPO can do in this regard.

(vi) How can developing countries address the problem of Brain Drain?

#### *Syrian Arab Republic*

29. We would like to support the substantive ideas for the project, which include: (i) setting up a database that specifically targets R&D technology transfer possibilities to developing countries; (ii) review patent landscaping reports being prepared under the Project on “Developing Tools for Access to Patent Information” (CDIP/4/6), with a view to identifying the possibilities of technology transfer.

#### *United States of America*

30. The first two [ideas] would require (i) establishing a database that specifically targets R&D technology transfer possibilities from developed countries and (ii) reviewing the patent landscaping reports prepared under another CDIP project with a view to identifying possibilities of international transfer of technology in these areas. While these ideas appear to fit within the scope of the existing project and may have merit, we would need to have additional details on these proposed activities, including their cost implications, in order to make an informed judgment as to whether they should be included in the current project. For example, with respect to the database proposal under (i), how would it differ from the IP Development Matchmaking Database (IP-DMD) being developed under DA recommendation 9 (CDIP/4/2, Annex IV), or could the two activities be combined? (v) For the fifth idea, which proposes a discussion and analysis of how technology transfer has not been achieved under the TRIPS Agreement, we believe that WIPO should avoid duplicating the efforts of the WTO TRIPS Council in monitoring compliance with Member State obligations under Article 66.2. See comments under para. 11 above. If the focus of the study were changed from “how technology transfer has not been achieved under the TRIPS Agreement” to “how the TRIPS Agreement can be better utilized for promoting technology transfer in developing and least-developed countries,” this might be a useful addition to the research agenda for this project. (vi) The sixth and last substantive idea in the Egyptian Proposal is how developing countries can address the problem of Brain Drain. One Development Agenda recommendation (No. 39) specifically addresses the issue, and requests WIPO, “within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make [sic] recommendations.” The United States would welcome studies by WIPO in collaboration with other relevant international organizations that would shed light on the causes of brain drain (including the possibility that an ineffective IPR system

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<sup>4</sup> Item numbering used in the corresponding paragraph of the original document.

may have causal effects), but we note that this topic might benefit from a separate project document commensurate with the importance of the subject.

(e) Composition of the High-Level Expert Forum (Page 7)

*Like-minded developing countries*

31. Who will decide on the composition of the experts? It should be up to the Member States to decide on the proposals and composition of the experts.

*Syrian Arab Republic*

32. We would like to support the proposal that recommendations of the High-Level Expert Forum be incorporated into WIPO's programs. Such Forum must therefore be balanced and its composition should be decided by Member States.

*United Kingdom*

33. With regards membership of the high-level forum, we agree with the Egyptian proposal that there is a need for transparency. Member states should broadly agree what its composition and role should be, as this will be important for ensuring the engagement of all parties throughout the project. However, we recognize the need to strike a balance between involvement and micro-management which would compromise the project's progress.

(f) Study on Extent to which Article 66.2 of TRIPS has been Fulfilled (Page 8)

*Like-minded developing countries*

34. Prepare a study for discussion on the extent to which Article 66.2 has been fulfilled. Article 66.2 pertains to "Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base."

*United States of America*

35. Another study recommended in the Egyptian Proposal (page 9) would examine the extent to which Article 66.2 of TRIPS has been fulfilled. Article 66.2 of TRIPS reaches beyond WIPO's mandate into the area of business, trade, financial and other incentives. The WTO TRIPS Council has responsibility for monitoring technology transfer incentives provided to LDCs by developed countries under Art. 66.2 of the TRIPS Agreement. Developed Members have an obligation to provide regular updates to the Council on the fulfillment of their obligations under Art. 66.2. We believe that WIPO should avoid undertaking responsibilities that fall within the express jurisdiction of other international organizations. To the extent the proposed study would focus instead on how the TRIPS Agreement can be better utilized for promoting technology transfer in developing and least-developed countries (see below), we would support such a study.

(g) Study on R&D Policies Found in the Public and Private Sector of Developed Countries  
(Page 9)

*Like-minded developing countries*

36. Conduct a study of R&D policies found in the public and private sector of developed countries and analyze its impact on enhancing R&D capacity in developing countries. The study should be conducted with a view to identifying policies that increase cost for developing country institutions to conduct R&D, hamper R&D in developing countries and that leads to misappropriation of biological resources of developing countries.

*United States of America*

37. A third study recommended in the Egyptian Proposal (page 10) would analyze the R&D policies found in the public and private sectors of developed countries and their impact on enhancing R&D capacity in developing countries. We would support a balanced study on R&D policies and their impact on technology transfer but note that such a study should be closely coordinated with a research project proposed in CDIP/4/7 under section 2.1.2(b) (a study on existing IPR-related policies that exist in various countries to promote technology transfer, including the use of flexibilities in international IP agreements) and section 2.1.2(c) (case studies on cooperation between R&D institutions in developed and developing countries).

### III. DIVERGING PROPOSALS

38. The following proposals presented by Member States appear to reflect a substantial degree of divergence.

(a) Technology Transfer Supportive IP-Related Policies by Developed Countries  
(Paragraph 10)

*Like-minded developing countries*

39. Technology-Transfer Supportive IP-Related Policies by Developed Countries: with a view to promoting transfer and dissemination of technology, among other related objectives, WIPO should contribute to a debate with other relevant international organizations, as appropriate, on such initiatives as an undertaking by developed countries to provide:

(i) technical and financial assistance for improving the ability of countries to absorb technology;

(ii) fiscal benefits to firms transferring technologies to developing countries of the same type often available in developed countries for firms that transfer technologies to nationally less developed regions;

(iii) same tax advantages for R&D performed abroad as for R&D done at home. For example, to meet the terms of Article 66.2 of TRIPS, there might be somewhat greater advantages offered for R&D performed in LDCs and other developing countries;

(iv) fiscal incentives to encourage enterprises to train scientific, engineering and management graduates from developing countries, with a view to their knowledge being used for development of technology in their country of origin;

(v) public resources, such as those from the National Science Foundation or National Institutes for Health in the United States, could be used to support research into the technology development and technology transfer needs of developing countries;

(vi) grant programs could be established for research into technologies that would be of greatest productivity for the purpose of meeting priority social needs of developing countries. Technologies developed under such programs could be made publicly available, specially those funded through public resources;

(vii) grant programs could be devised that offer support to proposals that meaningfully involve research teams in developing countries, in partnership with research groups in donor countries;

(viii) universities should be encouraged to recruit and train students from developing countries in science, technology, and management. Incentives for setting up degree programs through distance learning or even foreign establishments may be particularly effective;

(ix) special trust funds for the training of scientific and technical personnel, for facilitating the transfer of technologies that are particularly sensitive for the provision of public goods, and for encouraging research in developing countries.

#### *United Kingdom*

40. Whilst we agree with a number of the comments in the Egyptian proposal, as described above, there are some elements that cause us concern: We consider that a number of the proposals appear to pre-empt the outcomes of the project. There are specific proposals, eg in points 10, 11 and 19 that are worthy of discussion but are not based on any analysis or evidence. Many of them have significant cost implications. They might be the right things to do, but there might equally be others that have not been out forward which are more effective. This will not be clear until the initial economic work is done.

#### *United States of America*

41. With respect to the second set of recommendations identified in the Egyptian Proposal —“Technology Transfer Supportive IP-related Policies by Developed Countries” (para. 10) — the United States notes that it is already heavily engaged in encouraging its research and scientific institutions to cooperate with R&D institutions in developing countries through its Science and Technology Agreements administered by the U.S. Department of State, and through R&D agreements with the U.S. Department of Energy, the National Institutes of Health, and other agencies. U.S. government agencies, such as the U.S. Department of State, the U.S. Agency for International Development, and many others, also work to promote and support public-private partnerships that transfer technology, and provide financial and investment assistance for technology-related private sector projects in developing countries.

(b) Multilateral Supportive Measures: Adoption of Commitments like those Contained in Article 66.2 of the TRIPS Agreement (Paragraph 11 (i))

#### *Like-minded developing countries*

42. Multilateral Supportive Measures: at the multilateral level, the following initiatives could be considered: Adoption of commitments like those contained in Article 66.2 of the TRIPS Agreement, expanded to benefit other developing countries.

*Australia*

43. Australia is aware of the concerns of some Members concerning the implementation of TRIPS Article 66.2, however, we do not consider the statement that technology transfer has not been achieved under the TRIPS Agreement to be accurate. In Australia's view, the effectiveness, or otherwise, of the implementation of Article 66.2 is a matter for the TRIPS Council. We would not support consideration of the implementation of Article 66.2 in WIPO.

*United Kingdom*

44. The Egyptian proposal 11.1 refers to introducing commitments similar to TRIPS 66.2, including for countries not accessioned to WTO. We take the view that rather than superseding TRIPs in this respect it would be better to encourage members to realize their TRIPS commitments.

(c) Multilateral Supportive Measures: Establishment of a Special Fee through the PCT (Paragraph 11 (ii))

*Like-minded developing countries*

45. The establishment of a special fee on applications through the Patent Cooperation Treaty, the revenues of which would be earmarked for the promotion of research and development (R&D) activities in LDCs and other developing countries.

*Principality of Monaco*

46. The Principality of Monaco does not consider the idea appropriate, as proposed in the document submitted by Egypt, to establish a special fee for applications filed under the Patent Cooperation Treaty (PCT). The PCT already provides substantial funding for the implementation of the WIPO Development Agenda.

*Syrian Arab Republic*

47. In addition, we would like to support the proposal for the establishment of a special fee on applications under the Patent Cooperation Treaty (PCT), the revenues of which would be earmarked for the promotion of research and development (R&D) activities in LDCs and other developing countries.

*United Kingdom*

48. The proposal to charge additional fees for PCT applications (point 11.2) is not appropriate given that these fees already fund much of the development agenda (we understand up to 75%) and is not something we can support. Whilst one of the aims of the PCT is to foster and accelerate the economic development of developing countries through increasing the efficiency of their legal systems for the protection of inventions, the intention is that this would be done by providing easy access to information on technological advancements, rather than by increasing fees to fund specific projects.

*United States of America*

49. Under the third set of recommendations — Multilateral Support Measures (para. 11) — the Egyptian Proposal suggests establishing a special fee on PCT applications, with the resulting revenues to be used for the promotion of R&D activities in developing and least-developed countries. PCT fees are already used to fund much of what WIPO does, and an increase in fees would be contrary to the recent direction WIPO has been taking, which is to decrease fees to encourage greater use of the PCT to protect and disseminate new technologies.

(d) Renaming of the Project (Paragraph 12)

*Like-minded developing countries*

50. The project should be renamed as “Access to Knowledge & Technology.” This is proposed as a means to capture the essence of the technology transfer exercise.

*Syrian Arab Republic*

51. We also agree that the project should be named “Access to Knowledge & Technology”.

*United States of America*

52. The current title of the project – “Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” – appears to capture both the letter and spirit of the Development Agenda recommendations on which the project is based. Those recommendations focus on the “IP-related” aspects of technology transfer (Rec. Nos. 25 and 26). Renaming the project “Access to Knowledge and Technology” (Egyptian Proposal, para. 12) would not, in our view, adequately reflect these recommendations because it makes no reference to intellectual property as it relates to technology transfer.

(e) Working Document on IP Related Policies and Initiatives (Paragraph 14)

*Like-minded developing countries*

53. In principle the ideas are positive, but there is a need to emphasize that the approach should be guided by the different levels of development, and avoid falling into the trap of a 'one-size fits all' approach. It must be acknowledged that IP could play a role supportive of technology transfer, but it could also be hindering it. What is important to note is that there is also a proposal that recommendations of the high level expert forum be incorporated into WIPO's programs. The high level expert forum must therefore be balanced and its composition should be decided by the Member States. Prior to embarking on ambitious projects as outlined in the proposed project document, it is first important for countries to define their thinking with regard to technology transfer. Secretariat should prepare a working document on IP related policies and initiatives that are necessary to promote technology transfer. This working document should then be discussed in CDIP for the Member States to determine the next steps.

*Colombia*

54. We do not agree with the statements such as that included at the beginning of page five of the reference document, in which it is suggested that intellectual property may obstruct technology transfer; in view of the above, it is relevant to highlight that intellectual property provides a system of incentives which promotes creativity and the generation of technology, and without intellectual property there are no stimuli for technological progress and hence technology transfer. Finally, we wish to refer to the document of the National Economic and Social Policy Council (CONPES) 3533 “FOUNDATIONS OF A PLAN OF ACTION FOR ALIGNING THE INTELLECTUAL PROPERTY SYSTEM WITH NATIONAL COMPETITIVENESS AND PRODUCTIVITY 2008-2010”, which states the following: “STRATEGY 4: EFFECTIVE APPLICATION OF IP RIGHTS. The aim of this strategy is to achieve appropriate enforcement of intellectual property rules, which is essential for both national and foreign investment and technology transfer, and to ensure respect for economic rights of creators by stimulating creativity”.

*United States of America*

55. The United States believes that in-depth study, fact-gathering and evaluation should precede the formulation of any policy recommendations. The Egyptian Proposal’s recommendation that the Secretariat prepare a working document on IP-related policies and initiatives that are necessary to promote technology transfer (Egyptian Proposal, para. 14) is a sound suggestion, but any document should be based on the research studies proposed in Section 2.1.2 of the project and the views of other stakeholders that will be compiled through the web-based WIPO forums (Sec. 2.1.3). The current proposal (Section 3.2.6) already appears to contemplate such a procedure, although additional clarification from the Secretariat would be desirable.

(f) Project Approach (Paragraph 16)

*Like-minded developing countries*

56. There are no action-oriented results in the project. While it is a good basis for a long-term approach, it fails to take into account the need for concrete steps to start initiating technology transfer to developing countries.

*Australia*

57. Australia supports a clear outline of the project along with both quantitative and qualitative performance indicators to indicate success. It is important that all CDIP projects, including the thematic projects, include appropriate evaluation mechanisms and make use of the accepted internal evaluation procedures. However, Australia considers that identification of “action oriented results”, prior to broad and balanced consideration of the issues, would be premature. The high level expert forum is a good opportunity to develop “action oriented results”.

*United Kingdom*

58. The current proposed outcome, to feed back the findings of the project into WIPO programmes, also needs further definition and should be more ambitious given the 1.7CHF budget allocated to the project. We agree with the Egyptian proposal that the outcome should be more action-oriented.

*United States of America*

59. The original proposal appears to be an appropriately focused response to the emphasis found in the agreed recommendations to “initiate discussions” (Rec. 19) and to “explore” (Recs. 25 and 28) IP-related policies that promote technology transfer as a prelude to the development of any substantive recommendations. The Egyptian Proposal raises a host of issues that may be worthy of discussion, but in our view it would not be practical to examine all of them in one project. We believe that a more sensible approach would be to focus on — and give priority to — certain key elements involved in IP-related technology transfer (i.e., those set forth in CDIP/4/7) and then expand the list of topics in later projects based upon the lessons learned in the initial project.

(g) Regional Consultations (Paragraph 20)

*Like-minded developing countries*

60. On the Implementation Timeline of the Project, the sequence of events for the project seems to be counter-intuitive. Regional consultations need to be at the very beginning of the project, in order to identify needs, and not at the end.

*United Kingdom*

61. Whilst holding regional consultations at the start, rather than at the end of the project (Egyptian Proposal, point 20) might seem intuitively right in order to fully engage all parties there is a significant risk that this will slow down the process. It should be accepted that member states will represent the interests of their regions in the project forum.

(h) Study on Measures available in the TRIPS Agreement (Page 8)

*Like-minded developing countries*

62. Prepare a paper (that is objective and well referenced) for discussion on measures available in the TRIPS Agreement for developing countries to promote transfer and dissemination of technology with a particular focus on patentability criteria, limitations and exceptions to patent rights, compulsory licenses and government use authorizations, anti-competitive provisions, pre-and post grant oppositions, application of Article 44.2 of the TRIPS Agreement, transitional period for LDCs etc.

*United States of America*

63. The Egyptian Proposal (pp. 8-9) suggests undertaking a number of additional studies. One suggestion is a paper on measures available in the TRIPS Agreement for developing countries to promote transfer and dissemination of technology with a particular focus on patentability criteria, limitations and exceptions to patent rights, compulsory licenses and government use authorizations, anti-competitive provisions, pre-and post grant oppositions, application of Article 44.2 of the TRIPS Agreement, transitional period for LDCs etc. We note that the general proposed topic is already included in the original project's proposed study on "the use of flexibilities in international IP agreements" to promote technology transfer (Section 2.1.2(b)); other particular topics, such as patentability criteria, limitations and exceptions, etc., are being considered or are being proposed to be considered in the SCP. We therefore favor conducting the study proposed in the original project (Section 2.1.2(b)).

(i) Overall Assessment of the "Project on Intellectual Property and Technology Transfer" (CDIP/4/7)

*Mexico*

64. As regards the observations made in items II. Analysis of the Relevant Development Agenda Recommendations and Technology Transfer and III. General Comments and Questions on the Proposed Project, we consider that most of these questions have already been included in the "Project on Intellectual Property and Technology Transfer", as presented by the Secretariat in Document CDIP/4/7. Therefore, its inclusion in the Document would serve only to restrict the scope thereof. Finally, it should be taken into account that the "current Project on Intellectual Property and Technology Transfer" is presented as an initial step toward the conduct of studies, consultations and fora relating to the subject of technology transfer for the purpose of dealing with Recommendations Nos. 19, 25, 26 and 28 of the Development Agenda, and which, once implemented, will allow the Organization to have available studies on the current status of the topic, the needs of Member States and the specific actions to be taken in each case, translated into specific projects at the national level and into the normal program of activities carried out by WIPO in the field of innovation and technology transfer. The subject of Technology Transfer is one of the essential aspects of the Development Agenda, for which reason we consider it important to begin with the implementation of the "Project on Intellectual Property and Technology Transfer", included in Document CDIP/4/7, in the most timely and appropriate manner for all Member States.

*Principality of Monaco*

65. Lastly, and in general, the Principality of Monaco considers it is not appropriate, at this stage, to prejudice the outcomes of the various phases of the project. The document presenting the project should establish the various planned steps by indicating what the expected outcomes are for each of the steps and the ultimate goal which they are designed to achieve. Any suggestions on the resources required to promote technology transfer should be expressed and discussed during the various phases of the project, but not in the document outlining the project.

*United Kingdom*

66. We fully support the proposed project on IP and Technology Transfer. Technology transfer is an increasingly important topic in the context of current issues, such as climate change where diffusion of technologies will be vital if we are to meet our mitigation targets. This project has the potential to significantly inform the debate and to shape the way forward in resolving these difficult issues. Overall CDIP/4/7 is a good starting point however a tighter definition of the scope of the project will be important, in particular to ensure that the project does not go beyond WIPO's mandate. It is unclear what the Secretariat considers the scope will be. Is the aim to find solutions within the IP system or to consider broader incentives outside it? The Egyptian proposal broadens the scope to technology transfer in general, as well as funding mechanisms for technical assistance, particularly under point 10 referring to IP-related policies. We acknowledge that the project will need to take account of the broader issues, but are concerned that the Egyptian proposal takes it beyond WIPO's mandate.

*United States of America*

67. The United States believes that a well-designed intellectual property system is an essential tool in economic development and the transfer of technology. Subject to the modifications suggested below, we therefore support the "Project on Intellectual Property and Technology Transfer" (CDIP/4/7) as a good point of departure for initiating a range of activities designed to identify IP-related policies and practices that can be used to promote the transfer and dissemination of technology to developing and least-developed countries.

[Annexes follows]

ANNEX I

Reçu par OMPI

04 JAN. 2010

Received by WIPO



**Permanent Mission of the Arab Republic of Egypt  
to the United Nations Office and other International Organizations in Geneva**

CHAN. 2009.294

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other International Organizations in Geneva presents its compliments to the International Bureau of the World Intellectual Property Organization (WIPO), and has the honor to refer to the discussions held during the fourth session of the WIPO Committee on Development and Intellectual Property (CDIP), held in Geneva during the period 16-20 November, 2009, where during the consideration of document CDIP/4/7 concerning the Project on "Intellectual Property and Technology Transfer: Common Challenges - Building Solutions," the Committee agreed, as reflected in paragraph 8 of the Summary by the Chair, that discussions on that document would continue at the fifth session of the CDIP, and that a group of like-minded countries would submit a document containing comments on the implementation of the relevant recommendations before the end of 2009.

In this regard, the Permanent Mission of Egypt has the honor to enclose herewith the document containing the comments by this group of like-minded developing countries comprising the African Group, the Arab Group, Brazil and India.

The Permanent Mission of the Arab Republic of Egypt avails itself of this opportunity to renew to the International Bureau of the World Intellectual Property Organization (WIPO) the assurances of its highest consideration.



**International Bureau of the World Intellectual Property Organization,  
Geneva,  
Switzerland.**

31 December 2009

**Comments by a Group of Like-Minded Developing Countries<sup>5</sup>  
Project on Intellectual Property and Technology Transfer:  
Common Challenges - Building Solutions (CDIP/4/7)**

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I) Thematic Project Approach:

1. The Thematic Project Approach to Implementing the Recommendations of the WIPO Development Agenda was proposed by the WIPO Secretariat during the third session of the Committee on Development and Intellectual Property (CDIP) (27 April – 1 May, 2009). The general proposal for this approach can be found in WIPO Document CDIP/3/INF/1. Following discussion of this approach by Member States (paragraphs 212 to 270 of the Report of the third session of CDIP, in WIPO Document CDIP/3/9 Prov.2), the Chair of CDIP proposed elements that will constitute the approach to discussions on thematic projects. These elements were approved by consensus, and were included in paragraph 8 of the Chair's Summary in Document CDIP/3/9 Prov.2, and are reproduced hereunder:

*“Under Agenda Item 7, the Committee agreed to proceed on the basis of the following guidelines:*

- (i) each recommendation would be discussed first in order to agree on the activities for implementation;*
  - (ii) recommendations that dealt with similar or identical activities would be brought under one theme, where possible; and*
  - (iii) implementation would be structured in the form of projects and other activities, as appropriate, with the understanding that additional activities may be proposed.”*
2. As such, CDIP agreed that the basis for discussions on the proposed thematic projects will be the Development Agenda (DA) Recommendations that are included under them.

II) Analysis of the Relevant DA Recommendations and Technology Transfer:

3. The WIPO Secretariat produced, in Document CDIP/4/7, the proposed thematic project entitled “Intellectual Property and Technology Transfer: Common Challenges - Building Solutions.” This project pertains to DA Recommendations 19, 25, 26, and 28.

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<sup>5</sup> These comments are presented by the African Group, the Arab Group, Brazil, and India. They represent, without prejudice to individual country or group positions, the view of a group of like-minded developing countries on the project presented in Document CDIP/4/7. This submission is made pursuant to the decision of the fourth session of the WIPO Committee on Development and Intellectual Property (16-20 November, 2009), as reflected in paragraph 8 of the Summary by the Chair.

4. In addition to these four DA Recommendations, other relevant Recommendations to the theme of technology transfer can also include Recommendations 17, 22, 23, 27, 29 and 31.
5. An important initial point to consider as we strive to implement the DA Recommendations above is to look at what is meant by the term “Transfer of Technology,” and what is its definition. In this regard, there have been previous attempts at defining the term, and there is a need to review these attempts towards establishing agreement on its contours. The Draft International Code of Conduct on the Transfer of Technology (1985 version) provides a good starting point.
6. This definition should include market mechanisms such as commercial transactions in trade, FDI, licensing and joint R&D arrangements. It should also include legitimate informal, non-market channels such as imitation through product inspection, reverse engineering, software decompilation, and simple trial and error. Finally, a third component of this definition should include efforts exerted by intergovernmental organizations (IGOs), development assistance agencies, and non-governmental organizations (NGOs). Similarly, the definition should encompass technology transfer that occurs through the study of available information, including patent disclosure provided sufficient information is made available for engineers to understand the technologies.
7. The consideration of the issue of technology transfer should be guided by relevant international legal provisions on the issue, namely:

*TRIPS Article 7: The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.*

*and,*

*WIPO-UN Agreement Article 1: The United Nations recognizes the World Intellectual Property Organization (hereinafter called the " Organization ") as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, inter alia, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development....*
8. In addition to these two important international legal provisions, three specific sets of issues need to be considered when discussing technology transfer, namely: international IP standards pertaining to technology transfer; technology transfer supportive IP-related policies by developed countries; and multilateral supportive measures.
9. International IP Standards Pertaining to Technology Transfer: a more dynamic approach to transfer and dissemination of technology, for the benefit of developing and least developed countries, should take advantage of the flexibilities of the international regime to the full and incorporate, among others, appropriate policies with respect to:
  - (i) protection criteria (e.g. patentability);
  - (ii) duration of rights beyond a reasonable time to justify rewarding innovation and creativity;
  - (iii) exceptions to exclusive rights;
  - (iv) use of public tools (e.g. disclosure and working requirements, compulsory licensing, open source software);
  - (v) system of protection relevant to national circumstances;

- (vi) administrative and procedural aspects;
  - (vii) monitoring of anti-competitive behavior and other forms of abuse of rights.
10. Technology-Transfer Supportive IP-Related Policies by Developed Countries: with a view to promoting transfer and dissemination of technology, among other related objectives, WIPO should contribute to a debate with other relevant international organizations, as appropriate, on such initiatives as an undertaking by developed countries to provide:
- (i) technical and financial assistance for improving the ability of countries to absorb technology;
  - (ii) fiscal benefits to firms transferring technologies to developing countries of the same type often available in developed countries for firms that transfer technologies to nationally less developed regions;
  - (iii) same tax advantages for R&D performed abroad as for R&D done at home. For example, to meet the terms of Article 66.2 of TRIPS, there might be somewhat greater advantages offered for R&D performed in LDCs and other developing countries;
  - (iv) fiscal incentives to encourage enterprises to train scientific, engineering and management graduates from developing countries, with a view to their knowledge being used for development of technology in their country of origin;
  - (v) public resources, such as those from the National Science Foundation or National Institutes for Health in the United States, could be used to support research into the technology development and technology transfer needs of developing countries;
  - (vi) grant programs could be established for research into technologies that would be of greatest productivity for the purpose of meeting priority social needs of developing countries. Technologies developed under such programs could be made publicly available, specially those funded through public resources;
  - (vii) grant programs could be devised that offer support to proposals that meaningfully involve research teams in developing countries, in partnership with research groups in donor countries;
  - (viii) Universities should be encouraged to recruit and train students from developing countries in science, technology, and management. Incentives for setting up degree programs through distance learning or even foreign establishments may be particularly effective;
  - (ix) Special trust funds for the training of scientific and technical personnel, for facilitating the transfer of technologies that are particularly sensitive for the provision of public goods, and for encouraging research in developing countries.
11. Multilateral Supportive Measures: at the multilateral level, the following initiatives could be considered:
- (i) Adoption of commitments like those contained in Article 66.2 of the TRIPS Agreement, expanded to benefit other developing countries;
  - (ii) the establishment of a special fee on applications through the Patent Cooperation Treaty, the revenues of which would be earmarked for the promotion of research and development (R&D) activities in LDCs and other developing countries;
  - (iii) the establishment of an intermediary conduit to reduce the asymmetric information problem in private transactions between technology buyers and sellers, for knowledge about successful technology-acquisition programs that have been undertaken by national and sub-national governments in the past. It could serve a useful role in encouraging collaboration and information sharing

among member governments. Such program could involve, for example, detailed information about past policies and effective partnerships between agencies and domestic firms in acquiring technologies and the terms involved, such as royalty rates and contract clauses that resulted in actual local absorption. They could also describe the most effective roles for public research facilities and universities in facilitating technology transfer. Once enough information of this type has been compiled and studied, it could attempt to develop a model technology transfer contract for different sectors that could serve as a guideline for technology transfer and would represent the legitimate interests of both buyers and sellers;<sup>6</sup>

### III) General Comments and Questions on the Proposed Project:

12. The project should be renamed as “Access to Knowledge & Technology.” This is proposed as a means to capture the essence of the technology transfer exercise.
13. The focus of the project should be on the needs of DCs and LDCs, and obstacles to achieving technology transfer. There is a need for concrete definition of problems.
14. In principle the ideas are positive, but there is a need to emphasize that the approach should be guided by the different levels of development, and avoid falling into the trap of a 'one-size fits all' approach. It must be acknowledged that IP could play a role supportive of technology transfer, but it could also be hindering it. What is important to note is that there is also a proposal that recommendations of the high level expert forum be incorporated into WIPO's programs. The high level expert forum must therefore be balanced and its composition should be decided by the Member States. Prior to embarking on ambitious projects as outlined in the proposed project document, it is first important for countries to define their thinking with regard to technology transfer. Secretariat should prepare a working document on IP related policies and initiatives that are necessary to promote technology transfer. This working document should then be discussed in CDIP for the Member States to determine the next steps.
15. What is meant by a “New Platform for Technology Transfer and IP Collaboration?” The term is vague and not clear as to what it would imply.
16. There are no action-oriented results in the project. While it is a good basis for a long-term approach, it fails to take into account the need for concrete steps to start initiating technology transfer to developing countries.
17. The project needs to start with a literature review of existing work and efforts done in the field of technology transfer, particularly by other international organizations, such as UNCTAD, UNEP, UNIDO, WHO, WTO among others. It should consider the history of multilateralism on the subject. This literature review should be pre-defined with the list of issues sought to be addressed (*see particularly DA Recs. 30 and 40*). These points were explicitly raised at the Open Forum on the DA projects hosted by WIPO on 13 and 14 October 2009. The comments raised during this Open Forum should be reflected in this project.
18. While technology transfer is viewed principally in the patent domain, yet the area of copyright and other categories of IPRs should not be overlooked, including the contribution from relevant Programs of WIPO.

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<sup>6</sup> WIPO should consider its previous work in this regard, including work it has done on model contracts for technology transfer.

19. Substantive ideas for the project, and in addition to the specific comments in the next section, should include:
- (i) Setting up of a database that specifically targets R&D technology transfer possibilities from developed countries.
  - (ii) Review of the patent landscaping reports being prepared under the Project on “Developing Tools for Access to Patent Information” (CDIP/4/6), with a view to identifying the possibilities of international transfer of technology in these areas. Similar analysis of patent landscaping, from the viewpoint of technology transfer, in the areas of food and agriculture should also be undertaken.
  - (iii) Look at alternatives for R&D efforts and support to innovation aside from the currently existing patent system. This was taken up before by the World Health Organization in its Commission on Intellectual Property Rights, Innovation and Public Health, and could be used as a model for a similar exercise by WIPO.
  - (iv) What are possible open source models and what is their contribution to technology transfer (see DA Rec. 36).
  - (v) Consider the TRIPS Agreement, and how technology transfer has not been achieved under it. There should be a discussion and analysis of what WIPO can do in this regard.
  - (vi) How can developing countries address the problem of Brain Drain?
20. On the Implementation Timeline of the Project, the sequence of events for the project seems to be counter-intuitive. Regional consultations need to be at the very beginning of the project, in order to identify needs, and not at the end.
21. WIPO had a proposal to establish Technology and Innovation Support Centers (TISCs), which was referred to in the Program and Budget 2010-11. How will it fit into this project?
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IV) Specific Comments on the Proposed Project:

Brief Description of Project:		<u>Comments</u>
	<p>The project will include a range of activities that will explore possible initiatives and IP-related policies for promoting technology transfer, particularly for the benefit of developing countries. It will consist of five progressive phases towards developing a new platform for Technology Transfer and IP Collaboration, namely: (i) the organization of a High Level International Expert Forum on “Technology Transfer and IP: Common Challenges - Building Solutions” to analyze the needs in the area of technology transfer and propose a New Platform for Technology Transfer and IP Collaboration; (ii) the elaboration of a number of analytic studies, including economic studies and case studies on international technology transfer, that will provide inputs for the High-Level Expert Forum; (iii) the creation of a Web Forum on “Technology Transfer and IP: Common Challenges - Building Solutions”; (iv) five Regional Technology Transfer Consultation meetings; and (v) the incorporation of any adopted set of recommendations resulting from the above activities into WIPO programs.</p>	<ul style="list-style-type: none"> <li>• The objective is not only to promote technology transfer, it must also look at means to disseminate and facilitate access to technology for development.</li> <li>• What is the purpose of the creation of a platform?</li> <li>• More clarification of the High Level International Expert Forum? What is the aim of the High Level Forum? Is it to develop policies? How will developed countries apply these aspects to ensure technology transfer? Linkages with work already undertaken in other international organizations. Must be complementary not duplicative. Relevant international organizations should be represented in this High Level Forum.</li> <li>• How and who will be commissioned to conduct these studies?</li> <li>• Peer reviews should be foreseen for case studies.</li> </ul>

2. PROJECT DESCRIPTION	<u>COMMENTS</u>
2.1. Introduction to the Issue/Concern	
<p>Concerns about the access to and transfer of knowledge and technology between different actors on the national (university - private sector - industry) and the regional/international levels is becoming increasingly important, not only because creativity and innovation are crucial for competitiveness and economic growth in the knowledge based economy, but also because they may be part of the solution in some of the issues raised by complex contemporary problems and needs, for example, in the field of climate change or in the attempts to reduce the knowledge and technology gap between countries.</p> <p>The WIPO Project will consist of the following five components:</p> <ol style="list-style-type: none"> <li>1. Organization of a High-level Expert Forum to initiate discussions on how, within WIPO's mandate, to further facilitate access to knowledge and technology for developing countries and LDCs, including in emerging areas, <del>such as climate change</del>, as well as other areas of special interest for developing countries, taking into account recommendations 19, 25, 26 and 28. The Forum would provide a framework for an open dialogue among independent experts from both developed and developing countries knowledgeable in public and private sector technology transfer. In addition to the specific areas indicated in recommendations 19, 25, 26 and 28, the experts may identify further issues related to improving technology transfer and to propose potential solutions. The objective would be to obtain high-level expert recommendations as a basis for the creation of a "New Platform for Technology Transfer and IP Collaboration".</li> </ol>	<ul style="list-style-type: none"> <li>• Who will decide on the composition of the experts? It should be up to the Member States to decide on the proposals and composition of the experts.</li> <li>• Climate change is not the only area of interest. The technology transfer needs of DCs and LDCs involve many more sectors, so there should not be a focus on any one sector.</li> <li>• What does "High-level" mean?</li> <li>• It would be good to focus the subject of the forum specifically on "IP and technology transfer," and not to leave it too broad.</li> <li>• Participation should be open to all, with mechanisms put in place to ensure that wider voices are taken on board when recommendations are being formulated.</li> <li>• Is this high-level forum idea really necessary, would it not just add an additional layer of work? A sort of distancing the work or outsourcing the work??</li> </ul>

2. The High-level Expert Forum will benefit from a series of inputs that will contribute to, and provide substantive backing to their deliberations, including, in particular:

(a) a series of economic studies on IP and International Technology Transfer. These studies would focus on areas that have received less attention in the available economic literature and on identifying possible obstacles and suggesting possible ways in which technology transfer could be enhanced;

(b) a study that will provide information on existing intellectual property right (IPR)-related policies and initiatives that exist in various countries to promote technology transfer to developing countries, including the use of flexibilities in international IP agreements;

(c) a series of case studies of cooperation and exchange between R&D institutions in developed countries and R&D institutions in developing countries;

(d) a study on Favorable Incentive Policies for businesses to become partners in technology transfer processes at the national and international level; and

- The High-level Expert Forum should also benefit from consultations with Member States.
- What are the TORs of these studies? Member States must be consulted in drawing them up.
- Efforts need to be made to ensure that the studies are not redundant with existing studies on technology transfer.
- Benefits and disadvantages must be highlighted. Challenges faced by developing countries should be the focus, and not just a simple inventory of what “various countries” are doing on technology transfer. Focus on concrete and practical policies and initiatives.

**The following additional papers/studies should be undertaken:**

- Prepare a paper (that is objective and well referenced) for discussion on measures available in the TRIPS Agreement for developing countries to promote transfer and dissemination of technology with a particular focus on patentability criteria, limitations and exceptions to patent rights, compulsory licenses and government use authorizations, anti-competitive provisions, pre-and post grant oppositions, application of Article 44.2 of the TRIPS Agreement, transitional period for LDCs etc.
- Prepare a study for discussion on the extent to which Article 66.2 has been fulfilled. Article 66.2 pertains to “Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.”
- Conduct a study of R&D policies found in the public and private sector of developed countries and analyze its impact on enhancing R&D capacity in developing countries. The study should be

(e) an analysis of transfer of technologies issues relating to emerging issues.

3. The third component of this project will aim at incorporating all stakeholders, including policy makers, academia, private sector and NGOs in the Member States in the debate and further development of the issue, by setting up web-based WIPO Forums on “Technology Transfer and IP: Common Challenges - Building Solutions” and on the “New Platform for Technology Transfer and IP Collaboration”.

4. The project will also include the organization of five Regional Technology Transfer Consultation Meetings, including some for

conducted with a view to identifying policies that increase cost for developing country institutions to conduct R&D, hamper R&D in developing countries and that leads to misappropriation of biological resources of developing countries.

- Make use/reference to the study currently under preparation as requested by the Standing Committee on the Law of Patents (SCP) on technology transfer, and which is to be presented and discussed in the next SCP session.
- Request specific studies on technology transfer needs in certain specific regions or sub-regions.
- This should encompass not only emerging issues, but more importantly, issues of traditional concern to DCs and LDCs.
- The risk is that this web-based forum might not be able to capture all views on the topic, especially those from DCs and LDCs. There is a need for precise national and regional discussions, not a virtual web-based discussion. The web forum could be used however to solicit comments on commissioned papers from the public at large, in the format of an uploaded pdf file and blog.
- A possible improvement on the web-forum proposal is to create virtual mailboxes where any interested party can upload their studies or recommendations on possible ways to achieve technology transfer.
- Inter-regional roundtables should also be included in national and regional Consultation Meetings.

<p>developed countries, in order to discuss the “New Platform” with regional policy makers, academia and private sector.</p> <p>5. Strengthening the existing activities within WIPO, which foster access to knowledge and technology for developing countries and LDCs, and their local creativity and innovation, by incorporating elements of the “New Platform”.</p>	<ul style="list-style-type: none"> <li>• Why only “strengthening” existing activities. Why not initiate new activities? Also, what are existing activities within WIPO?</li> <li>• It is a Member State Body that will approve the “incorporation of the elements.”</li> </ul>
<p>2.2. Objectives</p>	
<p>The objectives of this project are framed by recommendations 19, 25, 26 and 28. In particular, the project will aim to explore initiatives and IP-related policies to enhance international technology transfer, particularly for the benefit of developing countries.</p> <p>Target beneficiaries include: government officials and policy-makers, universities and research institutions, industry; patent professionals and technology managers.</p>	<ul style="list-style-type: none"> <li>• Ensure that Government Officials on various areas, not only IP experts, are invited.</li> </ul>
<p>2.3. Delivery Strategy</p>	
<ul style="list-style-type: none"> <li>— Preparation of a project paper including a detailed description of the above-mentioned components;</li> <li>— Studies, case studies and papers described above to be commissioned to experts or elaborated by the Secretariat, as appropriate;</li> <li>— Elaboration of a concept paper on building solutions as the basis for discussion at the High Level International Expert Forum;</li> <li>— Creation of a Web Forum on “Technology Transfer and IP: Common Challenges - Building Solutions” within the framework of the</li> </ul>	<ul style="list-style-type: none"> <li>• The delivery strategy must involve consultations with Member States on how to proceed and continue with the project at its various stages.</li> <li>• The delivery strategy should foresee peer reviews.</li> </ul>

portal on Innovation and Technology Transfer Support Structure for National Institutions to be established in the context of the project for Recommendation 10;

— Preparation and provision of materials, modules, teaching tools and other instruments resulting from recommendations adopted at the Expert Meeting, and inclusion of such results into the global WIPO capacity building framework. This may include contents and concrete country projects related to the design and development of the necessary infrastructure for IP asset management in relation to technology transfer;

— Organization of regional consultations on the “New Platform for Technology Transfer and IP Collaboration”; and

— Any new activities or initiatives required for Member States’ adoption and implementation of the New Platform would be outside of the scope of this project and may be integrated into WIPO’s regular program activities on innovation and technology transfer.

Potential risks include ensuring that the project appropriately addresses the issue in different contexts, in particular, bearing in mind the different levels of development. In order to mitigate this risk, consultations with different stakeholders throughout project delivery will be essential.

- These regional consultations should precede the adoption of the “New Platform...”

- Who are the “stakeholders” referred to here?

3. REVIEW AND EVALUATION		<u>COMMENTS</u>
3.1. Project Review Schedule		
<p>1. Monitoring reports, a first in six-months and a second in 18-months after the initial report, will indicate whether outputs and targets have been reached and what progress has been made towards the achievement of the project objectives; and</p> <p>2. A final self-evaluation report will be established at the end of the project, evaluating the degree of the achievement of the project and best ways of the inclusion of such results into the global WIPO capacity building framework.</p>		
<p>3.2. Project Self-Evaluation  <i>In addition to the project self-evaluation, an independent evaluation may also be undertaken for the project</i></p>		<ul style="list-style-type: none"> <li>• These need to be re-evaluated. It should be recalled that comments from the Open Ended Forum organized by WIPO in October 2009 highlighted the need for external, non-biased evaluation.</li> </ul>
<u>Project Outputs</u>	<u>Indicators of Successful Completion (Output Indicators)</u>	<ul style="list-style-type: none"> <li>• Successful completion could only be measured at the national and regional level where there are clear examples of technology transfer.</li> </ul>
1. Project paper	Draft document ready within three months from approval of the project.	
2. Studies, case studies and analyses	Completion of the studies and analyses within the established timeframe and the standards required by the terms of reference (TORs).	

3. Web Forum established and used	<ul style="list-style-type: none"> <li>— Web Forum operational within nine months;</li> <li>— Number of web forum users and qualitative feedback from web forum users; and</li> <li>— Compilation and analysis of public opinion discussions posted on the Web Forum.</li> </ul>	
4. Organization of High-level Expert Forum	<ul style="list-style-type: none"> <li>— High-level attendance to the Forum;</li> <li>— Positive feedback from participants on concept paper and studies; and</li> <li>— Forum results in adoption of a New Platform on Technology Transfer and IP.</li> </ul>	<ul style="list-style-type: none"> <li>• Member States consultations.</li> </ul>
5. Organization of Regional Technology Transfer Consultation Meetings	Feedback on consultations by participants	<ul style="list-style-type: none"> <li>• Member States consultations.</li> <li>• Identification of regions – particularly areas which greater need for tech transfer.</li> </ul>
6. Strengthened existing activities within WIPO, which foster access to knowledge and technology	Incorporation of any adopted set of recommendations resulting from the activities of the Project into the WIPO programs.	

<u>Project Objective(s)</u>	<u>Indicator(s) of Success in Achieving Project Objective (Outcome Indicators)</u>	<u>Comments</u>
Exploration, enhanced understanding and consensus on possible IP initiatives or policies to enhance technology transfer, particularly for the benefit of developing countries	Adoption of the New Platform by Member States and feedback from the Committee on the extent to which understanding of the issues have been enhanced and project objective has been met	<ul style="list-style-type: none"> <li>• This seems to include a normative element. If such, then this must be guided by DA Rec. 22.</li> </ul>

[Annex II follows]

ANNEX II

MEXICO (Comments received February 17, 2010)

We welcome the observations made by the “group of like-minded countries” relating to the project contained in Document CDIP/4/7. In this regard, the following should be emphasized:

1. As regards the observations made in items *II. Analysis of the Relevant Development Agenda Recommendations and Technology Transfer* and *III. General Comments and Questions on the Proposed Project*, we consider that most of these questions have already been included in the “Project on Intellectual Property and Technology Transfer”, as presented by the Secretariat in Document CDIP/4/7. Therefore, its inclusion in the Document would serve only to restrict the scope thereof.
2. In relation to Item *IV. Specific Comments on the Proposed Project*, we consider that those questions should be answered by the Secretariat during the preparation of the informal document, to which reference is made in the Report of the Fourth Session of the CDIP, so that the responses are included therein for subsequent consideration by the Member States during the Fifth Session of the CDIP.
3. Finally, it should be taken into account that the “current Project on Intellectual Property and Technology Transfer” is presented as an initial step toward the conduct of studies, consultations and fora relating to the subject of technology transfer for the purpose of dealing with Recommendations Nos. 19, 25, 26 and 28 of the Development Agenda, and which, once implemented, will allow the Organization to have available studies on the current status of the topic, the needs of Member States and the specific actions to be taken in each case, translated into specific projects at the national level and into the normal program of activities carried out by WIPO in the field of innovation and technology transfer.

I should not omit to mention that for this Institute, the subject of Technology Transfer is one of the essential aspects of the Development Agenda, for which reason we consider it important to begin with the implementation of the “Project on Intellectual Property and Technology Transfer”, included in Document CDIP/4/7, in the most timely and appropriate manner for all Member States.

COLOMBIA (Comments received February 18, 2010)

We consider that it is valid for developing countries to seek greater commitment from developed countries regarding technology transfer, although we believe that the initiatives designed to achieve that aim cannot impair intellectual property rights.

Technology transfer cannot be promoted as a condition for the exercise of intellectual property rights or for the validity of registrations. The balance between intellectual property

rights and public interests in general should fall within the mechanisms which the intellectual property system provides, including the flexibilities enshrined in international treaties.

We do not agree with the statements such as that included at the beginning of page five of the reference document, in which it is suggested that intellectual property may obstruct technology transfer; in view of the above, it is relevant to highlight that intellectual property provides a system of incentives which promotes creativity and the generation of technology, and without intellectual property there are no stimuli for technological progress and hence technology transfer.

Finally, we wish to refer to the document of the National Economic and Social Policy Council (CONPES) 3533 “FOUNDATIONS OF A PLAN OF ACTION FOR ALIGNING THE INTELLECTUAL PROPERTY SYSTEM WITH NATIONAL COMPETITIVENESS AND PRODUCTIVITY 2008-2010”, which states the following:

“STRATEGY 4: EFFECTIVE APPLICATION OF IP RIGHTS. The aim of this strategy is to achieve appropriate enforcement of intellectual property rules, which is essential for both national and foreign investment and technology transfer, and to ensure respect for economic rights of creators by stimulating creativity”.

#### SYRIAN ARAB REPUBLIC (Comments received February 18, 2010)

Reference is made to the Circular submitted by the Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other International Organizations in Geneva, on “Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” (Document CDIP/4/7), and to the agreement reached by the Committee on Development and Intellectual Property (CDIP), as reflected in paragraph 8 of the Summary by the Chair, that discussions on that document would continue at the Fifth Session of the CDIP, and that a group of like-minded countries would submit a document containing comments on the implementation of the relevant recommendations before the end of 2009.

In this regard, the Syrian Arab Republic has the honor to present the following comments on the aforementioned Circular.

Following consideration of the four-tiered Project presented by Egypt on Arab technology transfer, we are pleased to support such project as it outlines actions required for developing countries and least developed countries (LDCs), particularly in connection with Article 7 of the TRIPS Agreement which stipulates that “The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”

In addition, we would like to support the proposal for the establishment of a special fee on applications under the Patent Cooperation Treaty (PCT), the revenues of which would be earmarked for the promotion of research and development (R&D) activities in LDCs and other developing countries; as well as the establishment of an intermediary conduit to reduce the asymmetric information problem in private transactions between technology buyers and sellers.

We also agree that the project should be named “Access to Knowledge & Technology”, and focused on the needs of DCs and LDCs and obstacles to achieving technology transfer. There is also a need for concrete definition of problems. We would like to support the proposal that recommendations of the High-Level Expert Forum be incorporated into WIPO’s programs. Such Forum must therefore be balanced and its composition should be decided by Member States.

We would like to support the substantive ideas for the project, which include:

(i) setting up a database that specifically targets R&D technology transfer possibilities to developing countries;

(ii) review patent landscaping reports being prepared under the Project on “Developing Tools for Access to Patent Information” (CDIP/4/6), with a view to identifying the possibilities of technology transfer;

(iii) look at alternatives for R&D efforts and support to innovation aside from the patent system.

Finally, we fully support the Specific Comments on the Proposed Project and the proposed phases (Section IV).

UNITED KINGDOM (Comments received February 22, 2010)

The UK hereby submits its comments on document CDIP/4/7 and its response to the paper submitted by the Permanent Mission of the Arab Republic of Egypt on behalf of a Group of Like-Minded Developing Countries, the ‘Egyptian Proposal’.

1. We fully support the proposed project on IP and Technology Transfer. Technology transfer is an increasingly important topic in the context of current issues, such as climate change where diffusion of technologies will be vital if we are to meet our mitigation targets. This project has the potential to significantly inform the debate and to shape the way forward in resolving these difficult issues.
2. Overall CDIP/4/7 is a good starting point however a tighter definition of the scope of the project will be important, in particular to ensure that the project does not go beyond WIPO’s mandate. It is unclear what the Secretariat considers the scope will be. Is the aim to find solutions within the IP system or to consider broader incentives outside it? The Egyptian proposal broadens the scope to technology transfer in general, as well as funding mechanisms for technical assistance, particularly under point 10 referring to IP-related policies. We acknowledge that the project will need to take account of the broader issues, but are concerned that the Egyptian proposal takes it beyond WIPO’s mandate.
3. An attempt to define the term ‘transfer of technology’, proposed by the Egyptians, would help to better delineate the scope of the project. The UK view however is that such a definition in a WIPO project should be limited to one which reflects what is meant by technology transfer in relation to IP.

4. Clarification is needed of what is meant in CDIP/4/7 by a 'New Platform for Technology Transfer'. The term is vague and unspecific. What objective does the Secretariat consider it will achieve?
5. The current proposed outcome, to feed back the findings of the project into WIPO programmes, also needs further definition and should be more ambitious given the 1.7CHF budget allocated to the project. We agree with the Egyptian proposal that the outcome should be more action-oriented.
6. Project expenditure should be closely monitored and reported.
7. With regards membership of the high-level forum, we agree with the Egyptian proposal that there is a need for transparency. Member states should broadly agree what its composition and role should be, as this will be important for ensuring the engagement of all parties throughout the project. However, we recognize the need to strike a balance between involvement and micro-management which would compromise the project's progress.
8. Whilst holding regional consultations at the start, rather than at the end of the project (Egyptian Proposal, point 20) might seem intuitively right in order to fully engage all parties there is a significant risk that this will slow down the process. It should be accepted that member states will represent the interests of their regions in the project forum.
9. With regard to the research proposals in CDIP/4/7 (2.1.2), we welcome more work in this area and the scope of the proposals looks right to us. We agree with the Egyptian Proposal that these should take into account a review of the literature already available in order to avoid duplication of effort. In addition the studies and research should aim to be sensitive from the outset to the possibility that different solutions may be needed not only for countries at different levels of development, but also for different sectors. We have found in gathering evidence on technology transfer in relation to IP and climate change that different issues are likely to arise in different technological sectors.
10. The Standing Committee for Patents (SCP) has considered a preliminary study on Technology Transfer (SCP/14/4) which is a broad overview of the literature in this area. It would be important to consider how this work and the CDIP technology transfer project could complement rather than overlap each other. In the SCP a like-minded group (including Egypt, India, South Africa) has requested a follow-up study focusing on the negative impact of patents in technology transfer. Our view is that any study commissioned should be balanced and consider both the positive and negatives impacts of IP on technology transfer.
11. Whilst we agree with a number of the comments in the Egyptian proposal, as described above, there are some elements that cause us concern:
  - a. We consider that a number of the proposals appear to pre-empt the outcomes of the project. There are specific proposals, eg in points 10, 11 and 19 that are worthy of discussion but are not based on any analysis or evidence. Many of them

have significant cost implications. They might be the right things to do, but there might equally be others that have not been out forward which are more effective. This will not be clear until the initial economic work is done;

- b. The Egyptian proposal 11.1 refers to introducing commitments similar to TRIPS 66.2, including for countries not accessioned to WTO. We take the view that rather than superseding TRIPS in this respect it would be better to encourage members to realize their TRIPS commitments;
- c. The proposal to charge additional fees for PCT applications (point 11.2) is not appropriate given that these fees already fund much of the development agenda (we understand up to 75%) and is not something we can support. Whilst one of the aims of the PCT is to foster and accelerate the economic development of developing countries through increasing the efficiency of their legal systems for the protection of inventions, the intention is that this would be done by providing easy access to information on technological advancements, rather than by increasing fees to fund specific projects.

#### AUSTRALIA (Comments received March 1, 2010)

Australia supports analysis of intellectual property and technology transfer in WIPO through the proposed project. Australia thanks the Group of Like-minded Countries for its comments and makes the following observations. We look forward to further discussion in the CDIP.

#### Definitions (paragraphs 5 and 6)

Australia supports further discussion of the definition of technology transfer. While the Draft International Code of Conduct on the Transfer of Technology provides one reference point, the full range of definitions should be considered. A definition would also assist in categorizing work on technology transfer in different WIPO Committees. However, discussions on definitions should not dominate the project at the expense of recommendations for practical actions to increase and accelerate transfer of technology to developing countries.

#### Guidance as to issues considered (paragraphs 8 – 13)

Australia supports an objective, evidence based analysis of technology transfer through the project. Australia believes that identification and definition of possible problems in achieving effective technology transfer at the outset is consistent with an objective approach. However limiting studies to focus on obstacles is likely to produce a less balanced, and ultimately less useful, outcome than a study that investigates the issue objectively based on evidence available.

#### Flexibilities in international regime (paragraph 9)

Australia notes that this paragraph appears to refer to the TRIPS Agreement “flexibilities” but we would welcome clarification on this point. In Australia’s view, the scope of TRIPS flexibilities is a matter for the TRIPS Council. We do not consider that WIPO has a role in normative consideration of the TRIPS flexibilities in WIPO. WIPO’s role should be limited to advising on the use of those flexibilities rather than determining their scope and application. In relation to technology transfer, and as proposed by the Secretariat, this would involve advising factually on how these flexibilities are used by members.

Action Oriented Results (paragraph 16)

Australia supports a clear outline of the project along with both quantitative and qualitative performance indicators to indicate success. It is important that all CDIP projects, including the thematic projects, include appropriate evaluation mechanisms and make use of the accepted internal evaluation procedures. However, Australia considers that identification of “action oriented results”, prior to broad and balanced consideration of the issues, would be premature. The high level expert forum is a good opportunity to develop “action oriented results”.

Substantive ideas for the project (paragraph 19)

Australia is aware of the concerns of some Members concerning the implementation of TRIPS Article 66.2, however, we do not consider the statement that technology transfer has not been achieved under the TRIPS Agreement to be accurate. In Australia’s view, the effectiveness, or otherwise, of the implementation of Article 66.2 is a matter for the TRIPS Council. We would not support consideration of the implementation of Article 66.2 in WIPO.

PRINCIPALITY OF MONACO (Comments received on March 1, 2010)

The Principality of Monaco would like to thank the Secretariat for document CDIP/4/7, which is a good basis for discussion, as well as Egypt for the document submitted on behalf of a group of like-minded delegations with a view to improving the proposed project. Technology transfer is a very important issue, particularly in the context of current global challenges such as climate change. This is why Monaco also wishes to contribute to strengthening this project, by submitting the following comments and observations:

- (1) The Principality of Monaco believes that it is necessary to deepen and narrow the overall aim of the project so as to ensure that it does not go beyond WIPO’s mandate and focuses on issues of intellectual property linked to technology transfer. Technology transfer is a relatively broad concept which does not only refer to aspects of intellectual property. In this respect, discussions are ongoing in various fora on issues directly or indirectly linked to technology transfer and it is not desirable that WIPO’s efforts encroach on what is being done elsewhere, on aspects other than those falling within WIPO’s remit;
- (2) The Principality of Monaco shares the view presented in the document submitted by Egypt according to which common ground should be reached first on the definition of the expression “technology transfer”, in as much as this definition focuses on aspects of intellectual property;
- (3) The Principality of Monaco would like more information on the scope of the concept “new platform for technology transfer and intellectual property collaboration”, particularly as concerns the role and operation of this platform;
- (4) The Principality of Monaco would also like the Secretariat to provide further details as to the “High-Level International Expert Forum” as provided for in document CDIP/4/7: what is meant by “high-level”? How will participants be chosen? What are the expected outcomes?

- (5) The Principality of Monaco is of the opinion that document CDIP/4/7 should contain a table specifying overall expected spending for implementing this project;
- (6) The Principality of Monaco believes this project should take into consideration and complement the work of other WIPO committees which also deal with technology transfer, particularly to avoid any overlap;
- (7) The Principality of Monaco does not consider the idea appropriate, as proposed in the document submitted by Egypt, to establish a special fee for applications filed under the Patent Cooperation Treaty (PCT). The PCT already provides substantial funding for the implementation of the WIPO Development Agenda ;
- (8) Lastly, and in general, the Principality of Monaco considers it is not appropriate, at this stage, to prejudice the outcomes of the various phases of the project. The document presenting the project should establish the various planned steps by indicating what the expected outcomes are for each of the steps and the ultimate goal which they are designed to achieve. Any suggestions on the resources required to promote technology transfer should be expressed and discussed during the various phases of the project, but not in the document outlining the project.

UNITED STATES OF AMERICA (Comments received on March 2, 2010)

Comments of the United States of America on “Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” (CDIP/4/7) and In Response to the Comments by a Group of Like-Minded Developing Countries Submitted by the Permanent Mission of the Arab Republic of Egypt

1. The United States believes that a well-designed intellectual property system is an essential tool in economic development and the transfer of technology. Subject to the modifications suggested below, we therefore support the “Project on Intellectual Property and Technology Transfer” (CDIP/4/7) as a good point of departure for initiating a range of activities designed to identify IP-related policies and practices that can be used to promote the transfer and dissemination of technology to developing and least-developed countries.
2. We appreciate the Comments by a Group of Like-Minded Developing Countries Submitted by the Permanent Mission of the Arab Republic of Egypt (“Egyptian Proposal”). The comments raise a number of important and challenging questions and concerns regarding the design, scope, and objectives of the original project document (CDIP/4/7). We offer the following initial observations on both the original proposal and the Egyptian Proposal.<sup>7</sup>
3. The original proposal appears to be an appropriately focused response to the emphasis found in the agreed recommendations to “*initiate* discussions” (Rec. 19) and to “*explore*”

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<sup>7</sup> We have also reviewed CDIP/4/14, which summarizes comments made by Member States on CDIP/4/7 at the last meeting of the committee. The substantive comments made by the Group of Like-Minded Developing Countries at that meeting appear to be reflected in the Egyptian Proposal. We have accordingly focused our attention on the Egyptian Proposal (in addition to the original proposal).

(Recs. 25 and 28) IP-related policies that promote technology transfer as a prelude to the development of any substantive recommendations. The Egyptian Proposal raises a host of issues that may be worthy of discussion, but in our view it would not be practical to examine all of them in one project. We believe that a more sensible approach would be to focus on — and give priority to — certain key elements involved in IP-related technology transfer (*i.e.*, those set forth in CDIP/4/7) and then expand the list of topics in later projects based upon the lessons learned in the initial project.

4. We agree with Egypt and the Group of Like-Minded Developing Countries (“Egypt”) that the project should be guided by a clear understanding of what is meant by the term “technology transfer.” In our view, the definition of technology transfer contained in the preliminary study on technology transfer commissioned by the Standing Committee on Patents (SCP/14/4) would provide a workable operational definition of the term that could be used in the project under consideration in CDIP. The SCP study notes that, when used in the context of intellectual property, “the transfer of technology is a series of processes for sharing ideas, knowledge, technology and skills with another individual or institution (*e.g.*, a company, a university or a governmental body) and of acquisition by the other of such ideas, knowledge, technologies and skills.” (SCP/14/4, para. 16). The Egyptian Proposal (page 10) suggests using the SCP study to inform CDIP’s work on IP and technology transfer, and we recommend following that counsel.<sup>8</sup> Additionally, we believe that the definition of technology transfer in the SCP study largely encompasses the lengthier list specified in the Egyptian Proposal.

5. The Egyptian Proposal suggests three specific sets of issues to be considered when discussing technology transfer (paras. 8-11): international IP standards pertaining to technology transfer, technology transfer supportive IP-related policies by developed countries, and multilateral supportive measures. This suggestion raises important matters that are worthy of discussion, but it also raises the issue of duplication of work between WIPO committees.

6. Under the first set of issues identified in the Egyptian Proposal — International IP Standards, including patentability, exceptions to exclusive rights, disclosure requirements, compulsory licenses, and anti-competitive practices (Egyptian Proposal, para. 9) — we note that these issues are being studied or proposed to be studied by the Standing Committee on Patents (SCP). We believe that CDIP should coordinate with the SCP so as to avoid duplication and divergent approaches. Coordination with other committees should not, however, preclude CDIP from using the work of those committees in pursuit of its mandate. In our view, such synergies should be encouraged. The discussion of coordination mechanisms at the next session of CDIP should help clarify how CDIP should discharge its responsibilities as one among many WIPO committees.

7. With respect to the second set of recommendations identified in the Egyptian Proposal - Technology Transfer Supportive IP-related Policies by Developed Countries” (para. 10) - the United States notes that it is already heavily engaged in encouraging its research and scientific

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<sup>8</sup> We also note that the definition of “technology transfer” contained in the Egyptian Proposal (para. 6) would be incomplete because it includes imitation, reverse engineering, software decompilation and other means of obtaining technology, but without reference to the legitimate interests of rights holders. The consent of a rightful owner may be required for such acts under the national laws of some countries.

institutions to cooperate with R&D institutions in developing countries through its Science and Technology Agreements administered by the U.S. Department of State, and through R&D agreements with the U.S. Department of Energy, the National Institutes of Health, and other agencies. U.S. government agencies, such as the U.S. Department of State, the U.S. Agency for International Development, and many others, also work to promote and support public-private partnerships that transfer technology, and provide financial and investment assistance for technology-related private sector projects in developing countries.

8. Under the third set of recommendations — Multilateral Support Measures (para. 11) — the Egyptian Proposal suggests establishing a special fee on PCT applications, with the resulting revenues to be used for the promotion of R&D activities in developing and least-developed countries. PCT fees are already used to fund much of what WIPO does, and an increase in fees would be contrary to the recent direction WIPO has been taking, which is to decrease fees to encourage greater use of the PCT to protect and disseminate new technologies.

9. We welcome the suggestion in the Egyptian Proposal (para. 17) to conduct a literature review of existing work in the field of technology transfer, particularly by other organizations. We would, however, appreciate clarification on the suggestion that any literature review should be “pre-defined with the list of issues to be addressed” and that the comments made during the Open Forum on the Development Agenda by WIPO on 13-14 October 2009 should be reflected in this project. It would be helpful to know what “list of issues” and specific comments are being referenced here.

10. The Egyptian Proposal (pp. 8-9) suggests undertaking a number of additional studies. One suggestion is a paper on measures available in the TRIPS Agreement for developing countries to promote transfer and dissemination of technology with a particular focus on patentability criteria, limitations and exceptions to patent rights, compulsory licenses and government use authorizations, anti-competitive provisions, pre-and post grant oppositions, application of Article 44.2 of the TRIPS Agreement, transitional period for LDCs *etc.* We note that the general proposed topic is already included in the original project’s proposed study on “the use of flexibilities in international IP agreements” to promote technology transfer (Section 2.1.2(b)); other particular topics, such as patentability criteria, limitations and exceptions, *etc.*, are being considered or are being proposed to be considered in the SCP. We therefore favor conducting the study proposed in the original project (Section 2.1.2(b)).

11. Another study recommended in the Egyptian Proposal (page 9) would examine the extent to which Article 66.2 of TRIPS has been fulfilled. Article 66.2 of TRIPS reaches beyond WIPO’s mandate into the area of business, trade, financial and other incentives. The WTO TRIPS Council has responsibility for monitoring technology transfer incentives provided to LDCs by developed countries under Art. 66.2 of the TRIPS Agreement. Developed Members have an obligation to provide regular updates to the Council on the fulfillment of their obligations under Art. 66.2. We believe that WIPO should avoid undertaking responsibilities that fall within the express jurisdiction of other international organizations. To the extent the proposed study would focus instead on how the TRIPS Agreement can be better utilized for promoting technology transfer in developing and least-developed countries (see below), we would support such a study.

12. A third study recommended in the Egyptian Proposal (page 10) would analyze the R&D policies found in the public and private sectors of developed countries and their impact on enhancing R&D capacity in developing countries. We would support a balanced study on R&D policies and their impact on technology transfer but note that such a study should be closely coordinated with a research project proposed in CDIP/4/7 under section 2.1.2(b) (a study on existing IPR-related policies that exist in various countries to promote technology transfer, including the use of flexibilities in international IP agreements) and section 2.1.2(c) (case studies on cooperation between R&D institutions in developed and developing countries).

13. The Egyptian Proposal also recommends six additional ideas for the project (para. 19):

- The first two would require (i) establishing a database that specifically targets R&D technology transfer possibilities from developed countries and (ii) reviewing the patent landscaping reports prepared under another CDIP project with a view to identifying possibilities of international transfer of technology in these areas. While these ideas appear to fit within the scope of the existing project and may have merit, we would need to have additional details on these proposed activities, including their cost implications, in order to make an informed judgment as to whether they should be included in the current project. For example, with respect to the database proposal under (i), how would it differ from the IP Development Matchmaking Database (IP-DMD) being developed under DA recommendation 9 (CDIP/4/2, Annex IV), or could the two activities be combined?
- The third and fourth substantive ideas in the Egyptian Proposal seem to encompass studies on complementary incentivizing models: one study would examine alternatives to R&D efforts and the support to innovation aside from the currently existing patent system; the other would study the contribution of open source models to technology transfer. While these are important topics, we note that only one Development Agenda recommendation (No. 36) addresses non-IP incentivizing models, and it calls on Member States “to exchange experiences on open collaborative projects such as the Human Genome Project as well as on IP models.”
- For the fifth idea, which proposes a discussion and analysis of how technology transfer has not been achieved under the TRIPS Agreement, we believe that WIPO should avoid duplicating the efforts of the WTO TRIPS Council in monitoring compliance with Member State obligations under Article 66.2. *See* comments under para. 11 above. If the focus of the study were changed from “how technology transfer has not been achieved under the TRIPS Agreement” to “how the TRIPS Agreement can be better utilized for promoting technology transfer in developing and least-developed countries,” this might be a useful addition to the research agenda for this project.
- The sixth and last substantive idea in the Egyptian Proposal is how developing countries can address the problem of Brain Drain. One Development Agenda recommendation (No. 39) specifically addresses the issue, and requests WIPO, “within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make [sic] recommendations.”  
The United States would welcome studies by WIPO in collaboration with other

relevant international organizations that would shed light on the causes of brain drain (including the possibility that an ineffective IPR system may have causal effects), but we note that this topic might benefit from a separate project document commensurate with the importance of the subject.

14. The current title of the project – “Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” – appears to capture both the letter and spirit of the Development Agenda recommendations on which the project is based. Those recommendations focus on the “IP-related” aspects of technology transfer (Rec. Nos. 25 and 26). Renaming the project “Access to Knowledge and Technology” (Egyptian Proposal, para. 12) would not, in our view, adequately reflect these recommendations because it makes no reference to intellectual property as it relates to technology transfer.

15. The United States believes that in-depth study, fact-gathering and evaluation should precede the formulation of any policy recommendations. The Egyptian Proposal’s recommendation that the Secretariat prepare a working document on IP-related policies and initiatives that are necessary to promote technology transfer (Egyptian Proposal, para. 14) is a sound suggestion, but any document should be based on the research studies proposed in Section 2.1.2 of the project and the views of other stakeholders that will be compiled through the web-based WIPO forums (Sec. 2.1.3). The current proposal (Section 3.2.6) already appears to contemplate such a procedure, although additional clarification from the Secretariat would be desirable.

16. The United States would like to associate itself with the comments submitted by the United Kingdom regarding CDIP/4/7 and the Egyptian Proposal.

[End of Annex II and of document]