

Committee on Development and Intellectual Property (CDIP)

Sixteenth Session
Geneva, November 9 to 13, 2015

REPORT ON THE UPDATE OF THE DATABASE ON FLEXIBILITIES

prepared by the Secretariat

1. At its fifteenth session, the Committee on Development and Intellectual Property (CDIP) requested the Secretariat to update the database on flexibilities, and to report back on it to the next session of the Committee.
2. Accordingly, the Annex to this document provides an update on the Database available on the webpage on Flexibilities in the Intellectual Property System, at:
<http://www.wipo.int/ip-development/en/agenda/flexibilities/>.
3. *The CDIP is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

UPDATE OF THE DATABASE ON FLEXIBILITIES

BACKGROUND

At its sixth session, the Committee on Development and Intellectual Property (CDIP) agreed to establish a webpage dedicated to flexibilities in the intellectual property (IP) system, containing:

- (i) A roadmap providing guidance on WIPO's work on flexibilities in the substantive sectors and Committees;
- (ii) A database containing provisions on national legislation related to flexibilities in the IP system, as well as information on national experiences and case studies in implementing flexibilities at the national level;
- (iii) Links to literature and resources on flexibilities produced by the Secretariat and WIPO-commissioned experts, and links to resources on flexibilities produced by other relevant international organizations;
- (iv) Materials and output from WIPO seminars, workshops and technical assistance activities dealing with the flexibilities.

At its eighth session, the Secretariat presented to the Committee the test version of the database. It included information on Patent Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels, contained in Document CDIP/5/4 Rev. This information was related to the following five flexibilities:

- Compulsory Licenses and Government use
- Exhaustion of rights
- Regulatory Review Exemption
- Research Exemption
- Exclusions from Utility Model protection

At its ninth session, the Secretariat presented the Work Program on Flexibilities in the IP System – New elements proposed, contained in Document CDIP/9/1, in response to the request made by Member States at the eight session of the CDIP. The Committee discussed the document and agreed, *inter alia*, to include in the database, information submitted by Member States on their practical experiences in the implementation of flexibilities.

At the tenth session of the CDIP, the Committee discussed Further Steps in the Work Program on Flexibilities in the IP System, contained in Document CDIP/10/10. The Secretariat sought guidance on the content of the database. A consensus was reached on the following type of information to be included in the database:

- Links to court cases, academic articles and case studies submitted by Member States;
- Material written or commissioned by WIPO in the course of its regular technical assistance activities; and
- Documents and presentations from WIPO seminars conducted in the course of its regular technical assistance activities.

ESTABLISHMENT OF THE DATABASE

The flexibilities database was made available online in June 2013, giving access to Member States to a “*non-exhaustive list of flexibilities in use, namely, compulsory licenses and government use; exhaustion of rights; research exemption; regulatory review exception.*”

In addition, the Secretariat made available on the webpage of flexibilities, the material written or commissioned by WIPO in the course of its regular technical assistance activities, including seminars' material.

UPDATE AND CURRENT SITUATION

As requested by the CDIP at its fifteenth session, the Flexibilities database has been updated to include the:

- I. 954 new provisions of law drawn from Documents on Patent Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels, contained in CDIP/7/3 Add., CDIP/13/10 Rev, and CDIP/15/6. This information was related to the following nine flexibilities:
 - Transition periods
 - Patentability of substances existing in nature
 - Disclosure related flexibilities
 - Substantive examination
 - Ex-officio IP office control of anti-competitive clauses in licensing agreements
 - The scope of the exclusion from patentability of plants
 - The patentability or exclusion from patentability of software-related inventions
 - The flexibility whether to apply criminal sanctions in patent enforcement
 - Measures related to national security (so-called “security exception”)
- II. Tables on categories of different provisions on specific flexibilities contained in the above mentioned documents.

Currently, the database contains 1371 provisions on national IP legislation related to flexibilities from 202 selected jurisdictions. It enables users performing searches on fourteen types of flexibilities, namely:

1. Compulsory Licenses and Government use
2. Exhaustion of rights
3. Regulatory Review Exemption
4. Research Exemption
5. Exclusions from Utility Model protection
6. Transition periods
7. Patentability of substances existing in nature
8. Disclosure related flexibilities
9. Substantive examination
10. Ex-officio IP office control of anti-competitive clauses in licensing agreements
11. The scope of the exclusion from patentability of plants
12. The patentability or exclusion from patentability of software-related inventions
13. The flexibility whether to apply criminal sanctions in patent enforcement
14. Measures related to national security (so-called “security exception”).

Furthermore, users may also browse through the tables on categories of different provisions on the aforesaid flexibilities.

USAGE STATISTICS PRIOR TO THE UPDATE

It is worth noting that since its establishment on June 2013 until the stage prior to its update, on June 2015, 77 page viewers visited the flexibilities database, 43 of which were unique or first-time page viewers. The bounce rate of the visitors was 50%, which means that half of the viewers left the database webpage without consulting any other content under it. The exit rate was 19.48%. This percentage represents the number of viewers who left the database webpage after viewing it, without implying that they have not visited before other webpages under the same website.

[End of Annex and of document]