

Russian Federation

Federal Service for Intellectual
Property, Patents and Trademarks
(Rospatent)

Comments on the Report on the international patent system

The Report on the International Patent System (SCP/12/3) was submitted by the Secretariat for the twelfth session of the Standing Committee on the Law of Patents (SCP), which was held from June 23 to 27, 2008. It demonstrates the numerous complex technical and legal issues that are involved in international patent system. The Report attempts to cover the different needs and interests of all Members States.

The Report, in particular its Annex, summing up the national practices of over 100 countries, is very valuable and is a good basis for further and more detailed discussion.

The Committee has a good opportunity to advance mutual understanding of national experiences in this important field.

The Report covers three broad issues:

- the economic rationale of the patent system and its role in innovation and technology dissemination,
- legal and organizational aspects relating to the patent system,
- issues that are particularly relevant to broader policy considerations and development concerns.

Many of the key issues are objectively reflected in the report whereas others need more clarification.

Chapter II “Economic Rationale for Patents and Different Interests and Needs in the International Patent System”

Chapter II provides some economic rationales for the patent system:

- economic rationale for patents system,
- disclosure of knowledge in public domain,
- technology transfer, commercialization and diffusion of knowledge,
- provides statistical evidence on the use of the national and international patent system.

Data presented in this Report shows that the usage rate of the patent system differs across countries.

The future work - to lead additional debate on the effectiveness of the patent system.

Chapter III “Technology Disclosure through the Patent System”

Para 64 of the Report notes that “The patent system plays a key role in the knowledge-based economy, not only in providing protection for the underlying inventions by encouraging investment, the availability of venture capital and making products marketable, but also in disseminating technical information and knowledge.

The Report discusses the role of patent information in business, in industrial policy, in economic development and current issues in patent information.

Future work in this area – to provide technical assistance for the digitization and dissemination of patent data of patent offices, in order to improve the accessibility of information nationally and internationally, to increase the accessibility of information in different languages (possibly, within the framework of another committee WIPO)

Chapter V - “The Current Multilateral Framework”

In Chapter V, the current international legal framework is briefly described from five different angles: framework principles, substantive norms, formalities, administrative cooperation and an international filing and processing system. International and regional treaties contribute to the development of the international patent system through the harmonization and simplification of patent laws.

A number of questions relating to the harmonization of national and regional patent laws had not been dealt in patent-related treaty of global reach and the SCP took the decision to undertake discussions in relation to the harmonization of certain substantive patent law requirements, with a view to finding solutions, in particular, to the problem of the significant cost of obtaining international patent protection, to facilitating cooperation among Patent Offices in respect of search and examination results in order to reduce the workload they face and to address the issue of quality of patents.

The set of general items to be covered by a draft Substantive Patent Law Treaty (SPLT) should include, according to the SCP issues of direct relevance for the grant of patents, including, in particular, provisions relating to the definitions of prior art, novelty, inventive step (non-obviousness) and industrial applicability, the sufficiency of disclosure of the invention in the application, and the structure and interpretation of the claims.

Chapter VI “Patent Systems and Existing Forms of Cooperation”

This Chapter focuses on some key elements of the patent system and describes how those elements are currently applied at the national level with a short explanation on existing cooperation mechanisms.

We believe, that would be useful to accompany the Report with thematic reviews covering experience of regulation of separate issues of a patent rights in the different countries.

Such reviews, in particular, could cover:

- Definitions of prior art (items 167)
 - Methodology of examination of novelty (items 167, 216) and inventive step (items 167, 217-220), industrial applicability (item 167),
 - The disclosure requirement of the invention in the application (items 225-228),
 - Structure and interpretation of items of the claims, the volume of the rights defined by the claims, relationship between the claims and the disclosure of the invention in the description, (items 167, 179,216),
 - A grace period (items 221-224),
 - Concept of the invention (that can be a subject of protection as the invention) (items 229-234),
 - Unity of invention (item 178),
 - Practice of application of the doctrine of equivalents (item 179),
 - Opposition procedure before and after grant of a patent (items 198-200),
- Other questions.

Reviews on abovementioned issues could be presented as annexes to the Report. Preparation by WIPO of such reviews would allow to the participants of WIPO to understand more clearly differences in approaches to regulation by that or other questions and, if necessary, to consider experience of other countries at perfection of national legislations.