

OPPOSITION SYSTEMS

SCP/14/5

STANDING COMMITTEE ON THE LAW OF PATENTS

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Encouraging creativity and innovation



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Table of contents

EXECUTIVE SUMMARY

I. INTRODUCTION

II. OVERVIEW OF OPPOSITION SYSTEMS

III. RATIONALE AND OBJECTIVES

IV. INTERNATIONAL LEGAL FRAMEWORK

V. EXAMPLES OF OPPOSITION PROCEDURES

VI. RELATED MECHANISMS

(a) Re-examination Systems

(b) Submission of Information by Third Parties



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II. OVERVIEW OF OPPOSITION SYSTEMS

- Opposition procedures (*inter partes*):
 - Pre-grant
 - Post-grant
- Appeal



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III. RATIONAL AND OBJECTIVES

Opposition system:

- is an additional administrative review that prevents the grant of invalid patents through the participation of third parties to the review process
- increases the credibility of granted patents
- allows early rectification of invalid patents



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III. RATIONAL AND OBJECTIVES

Other issues:

- Advantages of the opposition system
- Opposition system and public domain
- Costs of the opposition system:
 - Delay of the grant of patents (pre-grant)
 - Uncertainty in enforceability of patents (post-grant)



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IV. INTERNATIONAL LEGAL FRAMEWORK

- TRIPS Agreement (Art. 41.2, 41.3, 62.2, 62.4, 62.5)
- Patent Law Treaty (Art. 10(1), 10(2), 11, 12)



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V. EXAMPLES OF OPPOSITION PROCEDURES

- National opposition procedures differ in:
 - pre-grant or post-grant opposition;
 - entitlement to file an opposition;
 - period for filing an opposition;
 - grounds for an opposition;
 - *inter partes* procedural requirements; and
 - appeal against the final decision (competent authority, time limit to file an appeal etc.).



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VI. RELATED MECHANISMS

- Re-examination systems
 - (i) Re-examination under 35 U.S.C. §302 to §307
 - (ii) Inter partes Re-examination
- Submission of information by third parties
 - (i) Rational and objectives
 - (ii) National/Regional laws



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Thank You



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