

INTELLECTUAL PROPERTY
PHILIPPINES

29 July 2011

DG FRANCIS GURRY
World Intellectual Property Organization
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1211 Geneva 20, Switzerland
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Dear *DG Gurry*:

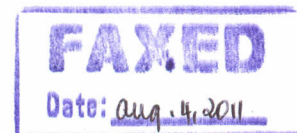
This refers to your communication dated 10 June 2011 requesting for our comments on SCP/16/2 (Report on the International Patent System: Revised Annex II of Document SCP/12/3 Rev.2).

In response to your request, we transmit our updates and comments on the above-mentioned SCP/16/2, as contained in the attached document.

Thank you.

Sincerely yours,


RICARDO B. BLANCAFLOR
Director General



8/11/11
9:40 a.m.

**COMMENTS OF THE INTELLECTUAL PROPERTY OFFICE OF THE PHILIPPINES (IPOP HL) ON
SCP/16/2 (Report on the International Patent System: Revised Annex II of document SCP/12/3 Rev. 2)**

ASPECTS OF NATIONAL PATENT LAW	SCP/16/2 ANNEX	COMMENTS
(1) Prior Art	<p>1. Everything made available to the public before the filing date (priority date).</p> <p>2. Contents of Philippines patent, utility model and industrial design applications with an earlier filing date (priority date).</p>	Correct.
(2) Novelty	The invention does not form part of a prior art. The prior art consists of everything made available to the public before the filing date (priority date), and the contents of Philippines patent, utility model and industrial design applications with an earlier filing date (priority date).	Correct.
(3) Inventive Step (Obviousness)	The invention is not obvious to a person skilled in the art having regard to the prior art. The prior art consists of everything made available to the public before the filing date (priority date), and the contents of Philippines patent, utility model and industrial design applications with an earlier filing date (priority date).	<p>Please revise to:</p> <p>The invention is not obvious to a person skilled in the art having regard to the prior art. The prior art consists of everything made available to the public before the filing date (priority date), and the contents of Philippines patent, utility model and industrial design applications with an earlier filing date (priority date).</p> <p><u>In the case of drugs and medicines, there is no inventive step if the invention results from the mere discovery of a new form or new property of a known substance which does not result in the enhancement of the known efficacy</u></p>

		<u>of that substance, or the mere discovery of any new property or new use for a known substance, or the mere use of a known process unless such known process results in a new product that employs at least one new reactant.</u>
(4) Grace Period	<p>Disclosure not to be taken into account in determining novelty if it occurred within one year before the filing date (priority date):</p> <ol style="list-style-type: none"> 1. by the inventor or his successor in title; 2. due to incorrect publication by an Office of a patent application filed by the inventor; 3. in an application filed, without the knowledge or consent of the inventor, by a person who obtained the information from the inventor; 4. by a person who obtained the information directly or indirectly from the inventor or his successor in title. 	Correct.
(5) Sufficiency of Disclosure	The application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.	Correct.
(6) Exclusions from Patentable Subject Matter	<ol style="list-style-type: none"> 1. Discoveries, scientific theories and mathematical methods. 2. Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers. 3. Therapeutic, surgical and diagnostic methods for treating 	<p>Please revise to:</p> <ol style="list-style-type: none"> 1. Discoveries, scientific theories and mathematical methods. <p><u>In the case of drugs and medicines, the mere discovery of a new form or new property of a known substance which does not result in the enhancement of the known efficacy</u></p>

	<p>humans or animals.</p> <p>4. Plant and animal varieties and essentially biological processes for their production, other than microbiological methods and products.</p> <p>5. Aesthetic creations.</p> <p>6. Inventions contrary to public order or morality.</p>	<p><u>of that substance, or the mere discovery of any new property or new use for a known substance, or the mere use of a known process unless such known process results in a new product that employs at least one new reactant. For the purpose of this clause, salts, esters, ethers, polymorphs, metabolites, pure form, particle size, isomers, mixtures of isomers, complexes, combinations, and other derivatives of a known substance shall be considered to be the same substance, unless they differ significantly in properties with regard to efficacy.</u></p> <p>2. Schemes, rules and methods of performing mental acts, playing games or doing business, and programs for computers.</p> <p>3. Therapeutic, surgical and diagnostic methods for treating humans or animals.</p> <p>4. Plant and animal varieties and essentially biological processes for their production, other than microbiological methods and products.</p> <p>5. Aesthetic creations.</p> <p>6. Inventions contrary to public order or morality.</p>
(7) Exceptions and Limitations of the Rights	<p>1. Use of products put on the market in the Philippines by, or with consent of, the product owner.</p> <p>2. Private non-commercial acts not prejudicial to the patent owner.</p> <p>3. Acts for the purpose of experiments.</p>	<p>Please revise to:</p> <p>1. Use of products put on the market in the Philippines by, or with consent of, the product owner.</p> <p><u>With regard to drugs and medicines, the limitation on patent rights shall apply after a drug or medicine has been</u></p>

	<p>4. Preparation of prescribed medicines in pharmacies or by medical professionals, and acts concerning those medicines.</p> <p>5. Certain uses concerning foreign aircraft, land vehicles or vessels which temporarily or accidentally enter national territory.</p> <p>6. Continued prior use by a person who, in good faith before the filing date (priority date), was using the invention for business purposes, or had made serious preparations for such purposes.</p> <p>7. Exploitation, authorized by the Government, by a Government agency or other person in the public interest (in particular national security, nutrition, health, or development of other sectors of the national economy), subject to remuneration.</p> <p>8. Exploitation authorized by the Government to counter anti-competitive practices subject to remuneration.</p> <p>9. Compulsory licenses.</p>	<p><u>introduced in the Philippines or anywhere else in the world by the patent owner, or by any party authorized to use the invention: Provided, further, That the right to import the drugs and medicines contemplated in this section shall be available to any government agency or any private third party.</u></p> <p>2. Private non-commercial acts not prejudicial to the patent owner.</p> <p>3. Acts for the purpose of experiments.</p> <p><u>4. In the case of drugs and medicines, where the act includes testing, using, making or selling the invention including any data related thereto, solely for purposes reasonably related to the development and submission of information and issuance of approvals by government regulatory agencies required under any law of the Philippines or of another country that regulates the manufacture, construction, use or sale of any product.</u></p> <p>5. Preparation of prescribed medicines in pharmacies or by medical professionals, and acts concerning those medicines.</p> <p>6. Certain uses concerning foreign aircraft, land vehicles or vessels which temporarily or accidentally enter national territory.</p> <p>7. Continued prior use by a person who, in good faith before the filing date (priority date), was using the invention for business purposes, or had made serious preparations for such purposes.</p>
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