

[English translation by WIPO]

Feedback from SIPO, China
October 17, 2012

China is of the view that the SCP serves as an important platform for countries around the world to discuss the development of patent systems, promote international cooperation and provide guidance. In the past five years, the SCP prepared and improved the report on the world's patent systems, drafted an open-ended list of questions for future discussions, discussed preliminary research report on issues related to patent systems, and set up a special work program on exceptions and limitations to patent rights. It also fully discussed working on the issues of quality of patents and patents and health in the future. The SCP has provided a good platform for member states to exchange information and share views and experience.

China believes that the three major topics that are currently under discussion in the SCP, namely exceptions and limitations to patent rights, quality of patents and patents and health, are of great significance in patent systems.

Exceptions and limitations to patent rights is an important content in patent systems and a major component in the establishment of a balanced patent system. In particular, in the context of the global community currently facing a variety of challenges such as development, public health, the environment and food safety, it is of utmost importance to carry out intensive studies on exceptions and limitations to patent rights.

It is essential to enhance quality of patents so as to give full play to the functions of patent systems. The meaning of quality of patents covers a wide range of issues and is closely linked to a country's innovation ability, development level and policy objectives. Strengthening the capacity of national offices and their quality management level serves as an important guarantee for the improvement of quality of patents. Discussions and exchanges on quality of patents between countries are useful in deepening the understanding of the issue, and better quality of patents also actively promotes and stimulates innovation.

The primary goal of a patent system is to motivate innovation, whilst ultimately it aims at bringing benefits to society as a whole. Human life and health is the most fundamental welfare of humanity. A balanced patent system should both stimulate research and development of new drugs and make contribution to patients having access to drugs. The SCP could carry out work in this regard and look at the relationship between patent systems and public health in a comprehensive and objective manner in order to provide useful guidance to its members.

On future work that is to be carried out by the SCP, China proposes to build on what is being done and make it move forward in a proactive and steady manner. The committee should carry out in-depth research on exceptions and limitations to patent rights, and share information and experience on the issues of quality of patents and patents and health.

1. Exceptions and Limitations to Patent Rights

China joins the other member states in recognizing that exceptions and limitations to patent rights is an important aspect of patent systems, and it is important to undertake further comprehensive studies on this issue. The feedbacks from member states have provided a wealth of information which is representative and to certain extent fully reflects legislations and practices by different countries in the area of exceptions and limitations to patent rights. The collection and compilation of country feedbacks by the secretariat laid a solid foundation for future work. On the next step of work, China suggests the following:

- (1) Based on the feedbacks to the questionnaire that were received from member states earlier, the SCP secretariat should make analysis on the following issues with regard to exceptions and limitations to patent rights: objectives, targets, terms, scope, development trajectory, their impact on the economy, the effectiveness of implementation for policy objectives and existing problems. When dealing with policies and measures taken by a country, the analysis should take into account the country's stage of development.

China proposes to divide the ten topics under exceptions and limitations to patent rights into two groups for two rounds of study. The topics for the first study may include, for example, action that could be taken in order to obtain administrative permits; use for the purpose of scientific research or experiment; compulsory licensing/government use; use with farmers and/or breeders; and prior use.

- (2) Sharing case studies among member states. Member states can provide cases that are either typical or have major impacts on a voluntary basis so as to share experience with other member states.
- (3) A seminar could be organized at the SCP sessions dedicated to presenting findings of the analysis carried out by the secretariat and sharing experience through the discussion of existing cases.

2. Quality of Patents

China is always of the view that it is essential to enhance quality of patents so as to give full play to the functions of patent systems. At the previous sessions of the SCP, member states have had full discussions on this issue. All have come to realize that the fact different countries having different understandings of the definition of quality of patents was closely linked to the differences between member states in their development levels, socioeconomic conditions and policy objectives. China suggests the SCP continue to gather the understandings of quality of patents from member states to allow for the interaction of their ideas and insights so as to enrich the meaning of quality of patents.

China believes that strengthening the capacity of national offices serves as an important guarantee for the improvement of quality of patents. We suggest for the next phase member states exchange information and discuss on the content of office capacity building, including, for example the use of information technology (IT) facilities such as patent database and patent search and examination tools, technical assistance provided to developing countries (including personnel training), and the development of quality management and control system within a patent office. Member states could learn from each other and continuously carry forward their own capacity building activities.

Following the above analysis, we propose the future work plan as follows:

- (1) The secretariat continues to gather the understandings of quality of patents from member states with the aim to interacting ideas and insights and sharing experience;
- (2) We suggest national offices hold discussions on IT facilities related issues such as patent database and patent search and examination tools, carry out information exchanges and experience sharing on quality management and control, and exchange information on personnel (e.g. examiners) training.
- (3) Questionnaire on quality of patents should be further refined to allow for full sharing of information and experience as well as facilitate the improvement of quality of patents.

3. Patents and Health

It is the view of China that a balanced patent system plays an important role in addressing the issue of public health. Carrying out work in this regard will help us further understand the relationship between patents and health and facilitate resolving the issue of public health.

China proposes to set up an external expert panel to examine the relationship between patent systems and public health in a comprehensive and objective manner and provide useful guidance to member states.

In addition, some member states have done a great deal of work and accumulated much experience in exploiting the intellectual property (IP) system in the area of public health, particularly on the issue of flexibilities in patent systems. We propose to include case studies and discussions under this topic.

Therefore, we make the following suggestions:

- (1) Setting up an external panel to carry out comprehensive study on the relationship between patent systems and public health;
- (2) Given that some member states have done a great deal of work and accumulated much experience in exploiting flexibilities in the patent system in the area of public health, the secretariat is suggested gather information on related cases and practices; and
- (3) A seminar could be organized at the SCP sessions dedicated to presenting research findings of the external panel and sharing experience through the discussion of existing cases.

In conclusion, China is of the view that the SCP should carry out balanced and effective work on the above topics and share information and experience so as to achieve common development. China is willing to maintain an open attitude in cooperating with other WIPO member states and take a holistic approach to the protection of IP in order to achieve mutual inclusiveness, common development and a balanced patent system.