



23 September 2016

Mr. Francis Gurry, Director General
World Intellectual Property Organization
34, chemin des Colombettes
1211 Geneva 20
Switzerland
Via email: scp.forum@wipo.int

Re: Practical Experiences with “Exceptions and Limitations” for Patents

Dear Director General Gurry:

Intellectual Property Owners Association (IPO) submits the following in response to the request for comments on IPO’s “practical experiences... on the effectiveness of, and challenges associated to, exceptions and limitations to patent rights, in particular in addressing development issues,” per the decision of the Standing Committee on the Law of Patents (SCP), at its twenty-fourth session (document SCP/24/5, paragraph 17).

IPO is an international trade association representing companies and individuals in all industries and fields of technology who own, or are interested in, intellectual property rights. IPO’s membership includes about 200 companies and more than 12,000 individuals who are involved in the association either through their companies or as inventor, author, law firm, or attorney members. IPO membership spans 50 countries.

IPO advocates for effective and affordable worldwide IP ownership rights and offers a wide array of services, including supporting member interests relating to legislative and international issues; analyzing current intellectual property issues; providing information and educational services; and disseminating information to the general public on the importance of intellectual property rights.

IPO members are actively engaged in developing solutions to address a wide range of development needs, such as creating technology to improve access to healthcare, clean water, food, and energy. We appreciate this opportunity to comment on our practical experiences with “exceptions and limitations” to patents. Our comments also address the impact of such policies on the ability to develop and deliver these critical advances to the public, around the globe.

IPO members expend significant resources and take on considerable risk when developing a new technology, whether we are innovating anew or tailoring solutions to meet local needs. Intellectual property and patents, in particular, facilitate investments in such developments by providing the potential to recoup investment costs on successful technologies. This benefit of IP rights in fostering the development of new technologies, has been well documented.

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What might be less appreciated is that IP rights enable the exchange of practical details necessary to deploy and refine innovations. These vital interactions between technology developers, their suppliers, and other partners can accelerate the introduction of technology to more people and places. Essentially such collaborations help innovators move faster by allowing them to leverage expertise in many forms, including by gaining local insights, which help identify the most fruitful approaches to solve a given challenge.

Without a supportive policy framework in place, however, revealing or implementing the knowledge gained from innovative efforts can erode their investment value. There are compelling reasons to share information with those who can contribute to an innovator's success. If the result of information exchange, however, puts others in a position to use those developments without co-investing or otherwise participating, that would deter rather than encourage innovation. This is the main reason why the existence of robust local patent systems are essential; they underpin necessary and mutually beneficial collaborations by providing tangible reassurance that cooperation will not end up jeopardizing innovators' investments. For example, strong patent systems allow innovators to better leverage global supply chains.


Yet patent protection can only provide this support if patents are reliably obtainable and enforceable in local jurisdictions. The transfer of knowledge only works if innovators feel secure that patent rights will function as intended. Policies that encourage the weakening of patent rights create increased uncertainty. The use of exceptions and limitations to patent rights, for example exempting certain areas of technology from patent protection or imposing compulsory licensing, can impair innovators' desire and ability to collaborate with partners. These policies hinder the exchange of information and discourage investment and development, even if they are seldom implemented, and can leave countries without their much needed innovations.

Exceptions and limitations to patent rights can also negatively impact the Small and Medium-sized Enterprises (SMEs) otherwise poised to become an engine of economic growth for many countries. Many of these entities need partners to scale their solutions. When faced with uncertain patent protection in their country, however, SMEs can struggle to attract investors or partners.

Discussions within the Standing Committee on Patents appear to indicate that at least some Member States view exceptions and limitations as a preferred policy to gain access to technology. We are concerned that this policy actually makes it more difficult for innovators to share what knowledge with potential partners globally and to scale solutions for widespread deployment. Therefore, we suggest policymakers consider that exceptions and limitations are a tool of last resort.

We thank you for permitting IPO to provide comments and would welcome any further dialogue or opportunity to provide additional information to assist your preparation for the meeting of the Standing Committee on Patents in Geneva in December.

Sincerely,



Mark W. Lauroesch
Executive Director