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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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WIPO GENERAL ASSEMBLY

Thirty-Second (17th Ordinary) Session Geneva, September 26 to October 5, 2005

MATTERS CONCERNING THE STANDING COMMITTEE ON THE LAW OF PATENTS

Document prepared by the Secretariat

1. The Standing Committee on the Law of Patents (SCP) held its eleventh session on June 1 and 2, 2005. Discussions focussed on the future work program of the SCP and were based on documents SCP/11/3 (Future Work Program for the Standing Committee on the Law of Patents) and SCP/11/4 (Statement Received from Brazil).
2. While Delegations recognized the importance of the work of the SCP and emphasized that the work on patent law harmonization should be progressed taking into account the interests of all parties, the Committee did not reach a conclusion on its future work program. No dates for future sessions of the SCP were set.
3. The Summary by the Chair of the above session is attached as an Annex to this document.
4. *The WIPO General Assembly is invited to take note of the information contained in this document and its Annex and to give directions for the future work program of the Standing Committee on the Law of Patents.*

[Annex follows]

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SCP/11/5

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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STANDING COMMITTEE ON THE LAW OF PATENTS

Eleventh Session
Geneva, June 1 and 2, 2005

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

1. The eleventh session of the Standing Committee on the Law of Patents (SCP) was opened, on behalf of the Director General, by Mr. Francis Gurry, Deputy Director General, who welcomed the participants. Mr. Philippe Baechtold (WIPO) acted as Secretary.

Agenda Item 2: Election of a Chair and Two Vice-Chairs

2. The SCP unanimously elected Mr. Boris Simonov (Russian Federation) as Chair and Mr. Yin Xintian (China) and Mr. Usman Sarki (Nigeria) as Vice-Chairs.

Agenda Item 3: Adoption of the Agenda

3. The SCP adopted the revised draft agenda as proposed in document SCP/11/1 Rev.
4. The Delegation of Argentina, speaking on behalf of the “Friends of Development”, proposed that the Summary by the Chair be agreed by all. The SCP agreed to this proposal.

Agenda Item 4: Accreditation of Intergovernmental and/or Non-Governmental Organizations

5. The SCP approved the accreditation of the Centre for the Management of Intellectual Property in Health Research and Development (MIHR), the Consumer Project on Technology (CPTech), Consumers International (CI), The Fridtjof Nansen Institute (FNI), Generic Pharmaceutical Association of the United States (GPhA) and the Mexican National Association of Pharmaceutical Manufacturers (ANAFAM) as *ad hoc* observers (documents SCP/11/2 and 2 Add.).

Agenda Item 5: Adoption of the Draft Report of the Tenth Session

6. The draft report of the tenth session (document SCP/10/11 Prov.2) was adopted with one amendment proposed by the Delegation of China.

Agenda Item 6: Work Program for the Standing Committee on the Law of Patents

7. Discussions on the future work program for the SCP were held based on documents SCP/11/3 and 4.
8. The Secretariat introduced document SCP/11/3.
9. The Delegation of Argentina, speaking on behalf of the “Friends of Development”, introduced document SCP/11/4. The Delegation called for a balanced and inclusive approach to discussions on the Substantive Patent Law Treaty (SPLT). In this regard, it stressed the importance that issues of interest to all parties to the discussions should be dealt with on an equal footing. All delegations should be allowed to make proposals on any matters of interest to them. The Delegation recalled, in particular, that a balanced and inclusive SPLT should include, *inter alia*, clauses on public interest flexibilities, transfer of technology, curbing of anticompetitive practices and biodiversity (disclosure of origin). Many delegations expressed reservations with respect to the procedure and outcome of the informal consultations held in Casablanca. Several developing country delegations, including the Delegations of Chile, Colombia and India, opposed the approach of the Casablanca consultations and supported the views set out in document SCP/11/4.

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10. The Delegation of Italy, speaking on behalf of Group B, stated that it firmly believed that harmonization would benefit all stakeholders, including civil society, right holders, and intellectual property offices. Concerning the proposed work program contained in document SCP/11/3, the Delegation thought that it represented an effective way of structuring and progressing the work of this Committee and of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). It said that Group B believed that that proposal represented a balanced work plan which addressed the interests of all Member States. It further stated that Group B looked forward to advancing this work program both in this Committee and in the other relevant bodies of this Organization. The Delegations of Luxembourg, speaking on behalf of the European Community and its Member States, Morocco, the Republic of Korea and Sudan supported the views expressed by the Delegation of Italy.

11. The Delegation of Sudan emphasized that the building of consensus should be observed.

12. The Delegation of Singapore, speaking on behalf of the Association of Southeast Asian Nations (ASEAN) countries, stated that the close interface between the SCP and the IGC in addressing both the definition of prior art, grace period, novelty and inventive step, and the sufficiency of disclosure and genetic resources in a timely and accelerated manner remained a key to the efforts of the SCP, and that it supported the creation of a balanced and equitable international patent system that struck a balance between the interests of users and right holders and those of consumers and society at large.

13. The Delegation of China stated that the issue relating to the disclosure of the origin of genetic resources in patent applications should be addressed in the SCP.

14. Several proposals were made with a view to bridge the existing divergences. The Delegation of Switzerland suggested an approach under which six issues (prior art, grace period, novelty, inventive step, sufficiency of disclosure and genetic resources) would be considered in parallel in the SCP (prior art, grace period, novelty and inventive step) and in the IGC (sufficiency of disclosure and genetic resources) and would, if and when agreement was reached on them, be submitted together to a Diplomatic Conference. Several delegations underlined the usefulness of that proposal while several other delegations opposed it. The Delegation of Brazil stressed that, in its view, the comprehensive proposal from the "Friends of Development" took on board the positions of all countries, while being open to discussing a work plan that would seek to organize all issues of the draft SPLT as a whole into a manageable and effective program. The Delegation of the United States of America stated that, in its view, the previous model of discussion, as suggested in the communication SCP/11/4, of discussing the previous entire treaty document with additional proposals was unmanageable, inefficient and unworkable and did not provide a viable manner in which to proceed.

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15. The Delegation of Pakistan proposed that, before embarking on any negotiations in accordance with any of the previous paragraphs, a comprehensive study be carried out jointly with UNCTAD to examine the various implications of the draft SPLT for countries at different levels of development with the view to taking an informed decision on the negotiating approach to be pursued. Some delegations supported this proposal while some other delegations opposed it.
16. Delegations recognized the importance of the work of the SCP and emphasized that the work on patent law harmonization should be progressed taking into account the interest of all parties.
17. The Representatives of the Eurasian Patent Organization (EAPO) and the European Patent Office (EPO) supported the recommendations of the informal consultations held in Casablanca on February 16, 2005.
18. A number of non-governmental organizations participated in the discussions. Their views are fully reflected in the report.
19. The Delegation of Venezuela wished it to be stated expressly that there was no consensus to progress with the SPLT negotiations.
20. The SCP noted the present summary, which was agreed by all, and further noted that the official record would be contained in the report of the session. The report would reflect all the interventions made during the meeting, and would be adopted in accordance with the procedure agreed by the SCP at its fourth session (see document SCP/4/6, paragraph 11), which provided for the members of the SCP to comment on the draft report made available on the SCP Electronic Forum. The Committee would then be invited to adopt the draft report, including the comments received, at its following session.

[End of Annex and of document]