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WIPO GENERAL ASSEMBLY

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REPORT ON THE PROGRESS OF THE STANDING COMMITTEE ON THE LAW OF
PATENTS IN RESPECT OF THE DRAFT SUBSTANTIVE PATENT LAW TREATY AND
CONSIDERATION OF A NEW WORK PLAN FOR 2007

Document prepared by the Secretariat

1. At its thirty-second (17th ordinary) session from September 26 to October 5, 2005, the General Assembly of the World Intellectual Property Organization (WIPO) discussed matters concerning the establishment of a new work plan for the Standing Committee on the Law of Patents (SCP) in respect of the draft Substantive Patent Law Treaty (SPLT) and adopted the following statement:

“(i) An informal open forum would be held in Geneva in the first quarter of 2006 on all issues that have been raised in the draft of the SPLT or that Member States wish to include in the draft SPLT. The forum will be of a duration of three days. The various issues will be discussed with contributions from speakers reflecting a balance of geographical representation and perspectives, and technical expertise. Member States may submit proposals for issues and speakers for the forum until November 15, 2005. The Chair of the WIPO General Assembly will conduct consultations on the draft program with all interested Member States. The Director General will publish the final program in January 2006.

“(ii) A three-day informal session of the SCP will be held soon after in Geneva to agree on a work program for the SCP, taking into account the discussions of the open

forum. WIPO will, in the measure possible, provide financial assistance to facilitate the participation of developing countries.

“(iii) An ordinary session of the SCP will be held for a duration of five days to commence work on the work program of the SCP agreed at the informal session of the SCP.

“(iv) The WIPO General Assembly in September 2006 will consider the progress made with a view to determining a work plan for the following year.”¹

2. Following the above statement, an Open Forum on the draft SPLT was held from March 1 to 3, 2006, at the International Conference Center Geneva (CICG) subsequent to consultations with all interested Member States on the program of and the speakers for the Open Forum. The Open Forum was attended by 324 participants including 34 speakers, representatives of 66 Member States, two Observer States, 10 intergovernmental organizations and 21 non-governmental organizations, as well as 87 individual participants from 30 countries. The program of the Open Forum, presentations and speakers' biographies are available on WIPO's website at:

http://www.wipo.int/meetings/2006/scp_of_ge_06/en/scp_of_ge_06_inf1.html.

3. Further, pursuant to item (ii) of the WIPO General Assembly statement referred to in paragraph 1 above, an informal session of the SCP was convened from April 10 to 12, 2006, in Geneva. Discussions focused on the future work program of the SCP. Many delegations referred to, and expressed appreciation for, the constructive and wide-ranging discussions at the Open Forum on the draft SPLT. While delegations acknowledged the importance of all the issues raised, some delegations considered that it was necessary to agree on a limited work plan for the SCP, in which the scope of the discussions would be confined to the definitions of prior art, grace period, novelty, and inventive step. Other delegations opposed this approach as failing to take adequate account of the concerns of all Member States, and suggested the following nine issues to be included in the work program of the SCP: (i) development and policy space for flexibilities; (ii) exclusions from patentability; (iii) exceptions to patent rights; (iv) anti-competitive practices; (v) disclosure of origin, prior informed consent and benefit-sharing; (vi) effective mechanisms to challenge the validity of patents; (vii) sufficiency of disclosure; (viii) transfer of technology; and (ix) alternative models to promote innovation.

4. Several contributions sought to bridge these differences. For example, proposals were made to group the different issues into clusters, such as: (i) issues relating to the pre-grant procedure; (ii) specific technical issues versus issues concerning flexibility and policy space; or (iii) issues sufficiently mature to form part of some kind of agreement. Several delegations further suggested a multi-track approach to address the various issues, while some other delegations were of the view that all issues should be discussed on an equal footing.

5. While many delegations indicated some flexibility, the frank and open discussions revealed that some of the key differences could not be resolved at this moment. Member States emphasized support for the continuation of the work of the SCP, but concluded that it was premature to establish a work program for the SCP, and decided to refer the matter to the WIPO General Assembly in September 2006.

¹ WIPO document WO/GA/32/13.

6. *The WIPO General Assembly is invited to take note of the information contained in this document and to establish a work plan for the SCP in 2007, in accordance with item (iv) of the statement referred to in paragraph 1, above.*

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