

WIPO General Assembly

**Forty-First (21st Extraordinary) Session
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REPORTS ON OTHER WIPO COMMITTEES

prepared by the Secretariat

1. The present document contains information reports which are being submitted to the WIPO General Assembly in a consolidated document on the work of the following WIPO Committees: Standing Committee on the Law of Patents (SCP), Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), Committee on WIPO Standards (CWS) and Advisory Committee on Enforcement (ACE).

2. *The WIPO General Assembly is invited to take note of the information contained in this document.*

[Annexes follow]

I. REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

1. During the period under consideration, the Standing Committee on the Law of Patents (SCP) held two sessions, namely, the seventeenth session held from December 5 to 9, 2011, chaired by Mr. Albert Tramposch from the United States of America, and the eighteenth session held from May 21 to 25, 2012, chaired by Mr. Vittorio Ragonesi from Italy.

GENERAL ACTIVITIES

2. During these two sessions, the SCP discussed, *inter alia*, the following five topics: (i) exceptions and limitations to patent rights; (ii) quality of patents, including opposition systems; (iii) patents and health; (iv) the confidentiality of communications between clients and their patent advisors; and (v) transfer of technology.

3. The discussions on the topic “exceptions and limitations to the rights” were based on the responses to the questionnaire on exceptions and limitations to patent rights. In particular, a document providing an overview of the responses received (document SCP/18/3) was submitted by the Secretariat to the eighteenth session of the SCP. All the answers received were posted on the SCP electronic forum.

4. The SCP also discussed the proposal by Brazil on exceptions and limitations (document SCP/14/7). Some delegations supported its adoption and the commencement of its second phase. Other follow-up activities by the Committee, for example, case studies, were suggested by some delegations. Some delegations stated that exceptions and limitations could not be considered in isolation from the patentability criteria and exclusive patent rights.

5. Regarding the topic “quality of patents, including opposition systems”, the discussions were based on the following documents: (i) proposals by the Delegations of Canada and the United Kingdom (documents SCP/17/8 and SCP/18/9); (ii) a proposal by the Delegation of Denmark (document SCP/17/7); and (iii) a proposal by the Delegation of the United States of America (document SCP/17/10). While the above proposals were supported by some delegations, some other delegations requested clarifications on them, and raised concerns in respect of the lack of common understanding on the term “quality of patents”. Some other delegations did not accept working on the basis of those proposals.

6. In relation to opposition systems, the discussions were based on documents SCP/17/9 and SCP/18/4. The latter document includes information on administrative revocation and invalidation mechanisms, and other similar administrative procedures not addressed in document SCP/17/9. Some delegations provided additional information concerning their national laws and practices relating to this topic, and suggested follow-up activities to be carried out by the Committee.

7. Concerning the topic “patents and health”, some delegations supported the proposal submitted by the Delegation of South Africa on behalf of the African Group and the Development Agenda Group (DAG) (documents SCP/16/7 and 7 Corr.). Some delegations requested to initiate Element I of that proposal, while some other delegations did not support the proposal. Some other delegations supported the proposal made by the Delegation of the United States of America (document SCP/17/11). However, some delegations indicated that they did not accept working on the basis of that proposal. Some delegations stated that both proposals contained elements which deserved consideration.

8. With respect to both proposals, some delegations raised concerns about the duplicative nature of the proposed activities with the work undertaken by other WIPO fora, for example, the Committee on Development and Intellectual Property (CDIP) or other relevant intergovernmental organizations, such as the World Health Organization (WHO) and the World Trade Organization (WTO). In particular, some delegations stated that the Committee should wait for the completion of the Trilateral study “Promoting Access and Medical Innovation: Intersections between Public Health, Intellectual Property and Trade” conducted by WHO, WTO and WIPO before proceeding on that agenda item. In addition, some delegations were of the view that the appropriate place to carry out any work on that topic in WIPO should be the CDIP. However, some other delegations did not share those concerns and views, and were of the opinion that it was within the mandate of WIPO and the SCP to address the topic of patents and health.

9. In addition, the Secretariat as well as the Representatives of WHO and WTO presented recent activities of their respective organizations in relation to the topic “patents and health” at the seventeenth session of the SCP. Some delegations favored such briefings to be conducted also in future sessions of the SCP. Further, documents containing WIPO’s activities on patents and health (document SCP/17/4) and listing projects and activities on patents and health conducted in WIPO, WTO and WHO, including their status or outcome (document SCP/18/5), were prepared in order to assist the discussions in the Committee.

10. With respect to the topic “confidentiality of communications between clients and their patent advisors”, the discussions during the two sessions were based on documents SCP/17/5 and SCP/18/6 regarding cross-border aspects of confidentiality of communications between clients and patent advisors. Some delegations suggested the adoption of non-binding principles or minimum standards for possible remedies to solve the cross-border problems. However, some other delegations, while acknowledging the need of further discussions on that topic, opposed that proposal as they considered that the issue was a matter of national law. Some other delegations stated that the issue should be removed from the future agenda of the Committee.

11. As regards the topic “transfer of technology”, the discussions were based on a revised preliminary study on transfer of technology (document SCP/14/4 Rev.2) and document SCP/18/8 that expanded the preliminary study on the issues relating to patent-related incentives and impediments to transfer of technology through practical examples and experiences. Some delegations stated that document SCP/18/8 did not sufficiently address patent-related impediments to transfer of technology, and suggested that the Committee continue working on the practical aspects of transfer of technology, in particular, impediments the patent system constituted to transfer of technology. However, some delegations did not support to continue working only on patent-related impediments. In addition, some delegations raised concerns about the duplicative nature of the SCP activities on this subject with the work of the CDIP. In particular, those delegations suggested that the completion of the CDIP project on “Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” should precede any further activities on this topic to be undertaken by the SCP. Further, document SCP/18/7 describing WIPO’s activities on transfer of technology was also submitted to the Committee in order to assist discussions in the Committee.

12. In addition, preceding the seventeenth session of the SCP, a seminar entitled “Patents and Technology Transfer” was organized by the WIPO Chief Economist, which was generally welcomed by delegations.

13. The Committee agreed that the Report on the International Patent System (document SCP/12/3 Rev.2.) would remain on the agenda of the nineteenth session of the SCP, and the compilation of certain aspects of national/regional patent laws (document SCP/18/2) would be updated. In addition, the Committee agreed that the non-exhaustive list of issues would remain open for further elaboration and discussion at its next session.

14. Concerning its future work, failing agreement otherwise, the Committee agreed to carry on discussions at its next session on the basis of the agenda of its eighteenth session¹.

15. In addition, at its seventeenth session, the SCP adopted an amendment to its rules of procedure, and agreed that the working documents of the SCP would be prepared in the six official languages of the United Nations (UN) (Arabic, Chinese, English, French, Russian and Spanish) in accordance with the WIPO language policy. That amendment entered into force on January 1, 2012.

CONTRIBUTION OF THE SCP TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

16. Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, the following statements extracted from the preliminary draft report² of the eighteenth session of the SCP (document SCP/18/12 Prov1., paragraphs 190 to 212), are reproduced hereafter:

“190. The Secretariat informed the delegations that, in connection with agenda item 12, the following text had been agreed by the Committee at its sixteenth session, and was recorded in the Summary by the Chair as well as the Report of that session: “A number of Delegations made statements on the contribution of the SCP to the implementation of the respective development agenda recommendations. The Chair stated that all statements would be recorded in the report for the sixteenth session of the SCP, and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the development agenda coordination mechanism.”

“191. The Delegation of Algeria, speaking on behalf of the DAG, stated that it attached great importance to agenda item 12, and expressed its pleasure in noting that the Committee was taking stock of how it had so far contributed to the mainstreaming of the Development Agenda in its area of work in keeping with the decision of the General Assembly. The Delegation noted that the patent system was a key element in the intellectual property framework, which impacted directly on national socio-economic development and societal welfare. In its view, the fundamental premise of the patent system was that a country conferred an artificial and temporary monopoly to the inventor, in exchange for disclosing the invention to benefit the larger interests of society. The Delegation observed that there was a growing acknowledgement that the current IP system focused heavily on ensuring rights to IP title holders, without adequately ensuring that the other side of the trade-off was taking place as it should, consequently leading to the concern that the patent system was not working as it had been originally intended. The Delegation considered that if the IP system had to thrive and encourage innovation and growth – a goal that was shared and supported by all, that could only happen if its shortcomings were effectively addressed. While the Delegation noted with satisfaction that there had been a tentative initiation of discussions in the Committee on some of those aspects, it was of the view that the Committee should have a more open and frank discussion about some of the current deficiencies in the patent system and try to recover the essential balance that ought to be inherent in the patent system. In its opinion, that could only happen if there was a willingness and a commitment to improve the system, where needed, both for the benefit of Member States and for the future viability of the

¹ Except agenda items 2 and 12 in document SCP/18/1.

² In accordance with the procedure agreed by the SCP at its fourth session (see document SCP/4/6, paragraph 11), the preliminary draft report of the eighteenth session of the SCP has been made available on the SCP Electronic Forum to the members of the SCP to comment on it, prior to its submission to the nineteenth session.

system itself. To that end, the Delegation welcomed the discussions that had taken place during the previous sessions of the SCP on a wide range of issues, including exceptions and limitations to patent rights, anti-competitive practices, other models of innovation, etc. The Delegation considered that they had actually contributed to a more balanced and comprehensive approach taken on many complex aspects of the international patent system. The Delegation, however, expressed the opinion that the Committee must go beyond the theoretical debate and address the actual practices – what actually happened in the outside world on the issues that were the subject of intense debates outside of WIPO but had not yet been addressed in the context of the Committee. In its view, the Committee should not be afraid of discussing and better understanding how patents were used in the market, and how those uses promoted or hindered innovation, technological growth and development. The Delegation observed that it was only through such frank discussion Member States could expect to generate the collective will and actions needed to improve the system. The Delegation noted that the issue of patent quality was one such key issue to be addressed, if Member States sought an effective and credible international patent system. The Delegation, however, considered that the Committee should have a shared and common understanding of what was meant by ‘patent quality’ before it would proceed to discuss and finalize a work program in that regard. The Delegation further noted that another critical area was the issue of patents and health, which had seen animated discussions in the public realm and had led to many concrete actions in other organizations, such as the WTO and WHO. In its view, WIPO had been conspicuously silent and continued to do so. The Delegation expressed its hope that the delay by WIPO in the treatment of that issue would be filled by taking concrete and useful steps in the work program of the SCP, on the basis of the joint proposal of the DAG and the African Group. The Delegation explained that that proposal intended to develop a work program aimed at strengthening the capacities of Member States, especially developing countries and LDCs, to adopt a patent system that took full advantage of the flexibilities provided by the international system of patents in order to promote the priorities of public health policy. The Delegation considered that that proposal was broadly in line with Development Agenda recommendation 22 which stated that WIPO’s norm-setting activities should be supportive of the development goals agreed within the UN system, including those contained in the Millennium Declaration. Similarly, the Delegation was of the opinion that more tangible discussions were needed in the SCP on how patents could contribute to better addressing the key challenges facing humanity today - in areas such as food and energy security, environment, disaster management, climate change and education. The Delegation expressed its hope that in the days ahead, there would be open and constructive engagement on those important issues. In its view, the long prevalent and naïve assumption that providing patent holders with stronger rights would, by itself, foster innovation and attract investments had been rejected in the light of global economic realities and experiences. The Delegation observed that how countries could optimally calibrate the level of IPR protection using exceptions and limitations and other tools as well as flexibilities had so far been an academic discussion in the Committee. It considered that the establishment of an analysis on exceptions and limitations and how to use them as a step towards establishing a non-exhaustive manual on exceptions and limitations that would serve as reference to Member States, would allow WIPO to play its due role in assisting countries in evolving tailor-made IPR policies. The Delegation stated that, finally, and most importantly, the issue of transfer of technology was at the heart of the fundamental trade-off inherent in the patent system. The Delegation considered that an objective assessment of how the patent system had so far enabled or impeded technology transfer and identification of ways by which WIPO could help the patent system contribute to that goal, was at the heart of the work of the Committee. Noting that the SCP had not yet taken concrete actions in that regard, the Delegation stated that Development Agenda recommendation 25 (which called on WIPO to study the policies and initiatives related to the IP necessary to promote the transfer and dissemination of technology) required more effort by the SCP for its implementation. The Delegation

looked forward to translating those discussions into useful elements of the SCP's work program. In conclusion, the Delegation stated that the SCP had started an important and necessary discussion on various development-related aspects of the patent system, which had been hitherto not addressed, and welcomed that positive step. It also expressed the hope that many critical issues that had not yet been addressed in the Committee would become the subject of honest and constructive consideration, leading to their integration in a holistic, development-oriented and balanced work program for the SCP.

"192. The Delegation of Egypt, speaking on behalf of the African Group, shared the views expressed by the Delegation of Algeria on behalf of the DAG. The Delegation expressed its belief that it was their task, within the Committee as well as in other WIPO fora, to ensure the implementation and mainstreaming of the Development Agenda and to ensure coherence and coordination of the relevant activities within the respective mandates of WIPO bodies. The Delegation stated that, against that backdrop and in line with the decision made by the WIPO General Assembly to institutionalize the coordination mechanism of monitoring, reporting and assessing to the WIPO General Assembly by the other WIPO bodies, it had supported the inclusion of that agenda item. The Delegation expressed the opinion that not to include that agenda item as a standing item on the agenda of the SCP was inconsistent with the decision of the WIPO General Assembly, which was the mother body that governed the work of the SCP. The Delegation expressed its belief that it was necessary to assess how discussions within the Committee contributed to and were consistent with the relevant Development Agenda recommendations in order to ensure, in the international system, balance and equilibrium between IP holders and public interests at large. The Delegation observed that the relevant agenda items discussed until that moment reflected more or less specific recommendations of the Development Agenda. The Delegation noted that a cross-cutting recommendation would be the one to mandate WIPO, upon the request of Member States, to undertake studies and impact assessment studies and evaluation, which came under Cluster D of the Development Agenda and, specifically, its recommendation 35, providing for an impact assessment to evaluate the economic, social and cultural impact of the use of the intellectual property system. Considering that the SCP was the Committee specialized on patents, the Delegation was requesting such impact assessments in various areas. The Delegation specified that, in particular, such assessments related to the question of exceptions and limitations and how the exceptions and limitations presented in the existing international patent system helped development and the public policy consideration within the respective Member State as well how those countries could be assisted in incorporating and implementing exceptions and limitations in their national systems. The Delegation recalled that it was also within WIPO's mandate to provide the States with technical assistance, capacity building and advice in that area, taking into consideration its agreement of cooperation with the WTO in order to implement the TRIPS Agreement. In its view, that was in line with the proposal by the African Group and the DAG that had been put forward on patents and public health. The Delegation explained that the joint proposal concerned how the existing patent system impacted the public health considerations of States and how to assist States in raising their capacities, including the implementation and incorporation of flexibilities, in order to achieve their public health policy objectives or to face the national public health challenges. Furthermore, the Delegation pointed out that transfer of technology was another cross-cutting issue, and in the field of patents, they were requesting within the Committee, impact assessment studies in order to individuate what provided an incentive to and what constituted an obstacle to technology transfer. The Delegation, to conclude, stated that the development perspective had to be taken into account by the Committee, and that the African Group were focusing on impact assessment studies and its request for capacity building as a final goal in all of those areas in order for it to make use of the patent system for the favor of development.

“193. The Delegation of the United States of America, speaking on behalf of Group B, expressed its pleasure to contribute to the discussion on the SCP’s implementation of the respective Development Agenda recommendations. The Delegation believed that the five topics that formed the balanced work program had the potential to make a meaningful contribution to the Development Agenda recommendations. The Delegation, however, observed that, unfortunately, the Committee had made little progress with its work. The Delegation reiterated its position that agenda item 12 should not be a standing or permanent item. The Delegation considered that, unfortunately, at that stage, due to disagreement within the Committee, there had been little progress to report both respective implementation of the Development Agenda and more generally. It expressed the wish of Group B to progress in the SCP in line with the mandate of the Committee, which was to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning progressive international development of patent law, including the harmonization of national laws and procedures.

“194. The Delegation of South Africa aligned itself with the statements made by the Delegations of Egypt on behalf of the African Group and Algeria on behalf of the DAG. The Delegation expressed its concern and disappointment that the reporting of the SCP to the WIPO General Assembly about the implementation of the Development Agenda recommendations, which was inherent to its work, was subject to discussions and disclaimer by some Member States. The Delegation recalled that the WIPO General Assembly adopted a decision instructing relevant WIPO bodies to include, in their annual reports to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda recommendations. In its view, according to that decision, there should be a standing agenda item in every session of the Committee preceding the WIPO General Assembly. The Delegation recalled that the WIPO Development Agenda, including its coordination mechanism, was adopted by the WIPO General Assembly, the highest decision making body in WIPO. The Delegation therefore expressed its belief that it was fundamental for all Member States to demonstrate political will and adhere to the decision of the WIPO General Assembly. The Delegation highlighted the importance of a balanced intellectual property system which would take into account public policy issues and public interests. The Delegation observed that the Development Agenda provided for that balance should be pursued. It considered that the impact of the patent system on development, particularly on industrial development, could not be overemphasized. In its opinion, innovation could play a central role in addressing some of the key global challenges, such as health, food security and climate change, and the Delegation recognized the role the Committee could play in enhancing the understanding and adoption of a patent law suited to a Member State in respect to the different levels of development of the countries. In relation to the issue of enhancing the capacity to innovate, the Delegation was pleased that the Committee was undertaking work on patents and health, technology transfer, exceptions and limitations and opposition systems. The Delegation pointed out that those issues related to a number of Development Agenda recommendations related to flexibilities, transfer and dissemination of technology, access to knowledge, access to information, technical assistance and capacity building. The Delegation recognized the significant progress made by the Committee in addressing exceptions and limitations, opposition systems and transfer of technology, and appreciated all the activities undertaken by the Committee on the issues to that moment. The Delegation, however, expressed its belief that more work was still needed to be undertaken on those issues, especially in the area of transfer and dissemination of technology and flexibilities. The Delegation was of the opinion that more interactive engagement involving relevant stakeholders was desirable at that field of intellectual property. The Delegation considered that innovative and practical solutions to overcome technologies partialities were needed for the Committee to fulfill the Development Agenda recommendations, particularly those under Cluster C, as a means to ensure the long-term preservation of and continued access to information. Regarding

the topic of patents and health, the Delegation recalled that three sessions had been held since the joint proposal of the African Group and the DAG on patents and health had been formally submitted to the Committee. The Delegation explained that that proposal aimed to address challenges faced by developing countries in utilizing patent flexibilities. Contrary to the arguments that the SCP should not address that issue, the Delegation expressed its belief that the Committee was the appropriate place to address that issue. The Delegation encouraged the Committee to expedite its work and adopt a work program on patents and health. The Delegation expressed its appreciation for the interactive briefing and discussions on the trilateral cooperation between WIPO, the WHO and the WTO on matters of health. The Delegation proposed to the Committee to have a standing agenda item on the trilateral cooperation between WIPO, the WHO and the WTO on issues related to health in order to facilitate the implementation by the SCP of the Development Agenda recommendations, especially recommendation 40. To conclude, the Delegation expressed its hope that the Committee would continue to work on the basis of the balanced existing program to advance the development of the international patent system in a balanced manner for the benefit of all Member States, especially developing countries and LDCs, giving consideration to the Development Agenda recommendations.

“195. The Delegation of Brazil expressed its support to the statements made by the Delegations of Algeria on behalf of the DAG and Egypt on behalf of the African Group, as well as the statement made by the Delegation of South Africa. The Delegation stated that it attached great importance to the coordination mechanism of the Development Agenda approved in 2010. According to that decision, in its view, the SCP was one of the relevant bodies to report to the WIPO General Assembly and had proceeded accordingly in 2011. The Delegation therefore stated its understanding that such agenda item should be made permanent in order to implement correctly the decision of the WIPO General Assembly. The Delegation observed that the SCP had diversified its work program since the Development Agenda had been approved. The Delegation pointed out that the agendas of the sessions were not one sided and aimed at involving subjects of interest of all members. The Delegation expressed its belief that such balance was necessary to ensure that the Committee did not pursue in a single-minded way, the interest of ever higher level of protection of patent rights and harmonization, because that would leave aside development needs, while welcoming a one-size-fits-all approach. The Delegation considered that the adoption by the Committee of the work program put forward by Brazil in document SCP/14/7 regarding exceptions and limitations to patent rights would be in line with recommendation 17 of the Development Agenda which stated that WIPO’s activities should take into account the flexibilities contained in international intellectual property agreements. The Delegation noted that the discussions on quality of patents might relate to recommendations 8 and 10, if it would bring to light the need for providing access to patent databases and assistance to Member States to improve their national intellectual property institutional capacity through further development of their infrastructure, thus stimulating an efficiency which in turn played an important role in quality of patents. The Delegation pointed out that much was to be done in other areas. It considered that Cluster C on transfer of technology still demanded further work, since the obstacles and initiatives necessary to promote the transfer and dissemination of technology continued to be unclear to some Member States. Furthermore, the Delegation stated that recommendation 17 did not appear to be implemented within the subject of patents and health, which had among its goals to explore the flexibilities which were useful to improve the policies with regard to health. In its opinion, the adoption of the proposal by the African Group and the DAG was a good step towards such implementation. The Delegation expressed its hope to see the work of the Committee continuing with a balanced agenda that took into account the needs of all Member States, while supporting the goals of the Development Agenda.

“196. The Delegation of Denmark, on behalf of the European Union and its 27 Member States, recalled that the SCP, according to document SCP/1/2, page 2, paragraph 3, had been established to serve as a forum to discuss issues, facilitate coordination and provide guidance, concerning the progressive international development of patent law, including patent law harmonization. The Delegation pointed out that in fulfilling its mandate, the Committee could serve the well-functioning of the patent system and the promotion of innovation and technology transfer, and also contribute to the implementation of a number of recommendations of the Development Agenda. In its opinion, since relatively little progress had been made on the different items on the agenda of the Committee due to divergent views on how to move forward, it might be difficult to give a full picture at that stage of the implementation of the relevant Development Agenda recommendations. The Delegation, from a procedural perspective, underscored that in reporting to the WIPO General Assembly on its contribution to the implementation of the respective recommendations of the Development Agenda, the SCP should follow the modalities already agreed in the form of reporting. The Delegation expressed its belief that, according to the established WIPO practice, agenda item 12 should not be a permanent item on the agenda of the Committee. The Delegation pointed out that, when implementing a balanced work program of the SCP, the duplication of work with other WIPO Committees and other international organizations should be avoided.

“197. The Delegation of Egypt, speaking on behalf of the African Group, expressed its wish to react to some views expressed on the topic in order to make sure that the Committee was in line with the decision of the WIPO General Assembly. The Delegation considered that any step taken within the Committee should be a step forward. It pointed out that, when a study was proposed, it was in order to reach the final goals of the SCP, among which there was also the implementation of the recommendations of the Development Agenda relevant to the Committee. In its opinion, delegations should be working in line with the established mandate of the Committee, but keeping in mind that the Development Agenda, when it had been established through a long process of negotiations within WIPO, was meant to be a transcending issue. The Delegation therefore considered that whatever came from the Development Agenda into the Committee would be in line with the decision made by WIPO in its large and comprehensive constituency. It expressed its belief that the Development Agenda should be mainstreamed in all WIPO bodies and activities, and thus tailored to the original mandate of the SCP. The Delegation noted that when some delegations made some proposals, as the one advanced by the African Group, for example, they had kept in mind to achieve, or striving to achieve the goals of implementing the Development Agenda in line with the respective mandates of each WIPO body. The Delegation drew attention to the fact that the Committee should be reporting to the General Assembly on any kind of progress, and regretted that some delegations had the impression to have had no progress. The Delegation considered that the discussion in itself, whether achieving a consensus or not, would be a step forward, because it would allow delegations to discuss and explore the issues that were present on the non-exhaustive list of issues that should form the work program of the Committee. The Delegation considered that the issue should remain open for discussion in order to improve the international patent system not only for the purpose of making the patent system to be more efficient, but also making it operating well for the purpose of development.

“198. The Delegation of Hungary, speaking on behalf of the CEBS, supported the statement made by the Delegations of Denmark on behalf of the European Union and its 27 Member States and the United States of America on behalf of Group B. The Delegation pointed out that, within the work program concerning patent law and the international patent system, there should be a balance between the fulfillment of the SCP mandate to serve the well-functioning of the patent system, promotion of innovation and technology transfer, on the one hand, and the contribution to the implementation of a

number of recommendations of the Development Agenda, on the other hand. The Delegation observed that, looking at the discussions which had taken place within the Committee during the last sessions, the Committee was following WIPO's General Assembly decision in relation to development goals. The Delegation pointed out that the Committee's work program was still under deliberation, and therefore, the exact evaluation of its contribution to the Development Agenda could not be carried out at this stage.

"199. The Delegation of South Africa observed that some delegations had quoted the rules of procedure of the Committee. The Delegation recalled that in 2009, the Committee was coming from a hiatus because an agreement on the work program had not been reached. The Delegation noted that the non-exhaustive list should be the starting point. It drew the attention of the Committee to the fact that the Development Agenda had been adopted in 2007 and that the decision of the WIPO General Assembly concerning the implementation of the Development Agenda recommendations within other WIPO's bodies had been taken in 2010. Looking at the work that the Committee had undertaken, the Delegation was of the view that the SCP had done some substantial work, such as commissioning studies. The Delegation observed that, for example, the studies on transfer of technology and opposition systems provided a good overview. In its opinion, no agreement on an issue, such as quality of patents, did not mean that there was no progress in terms of realizing the Development Agenda recommendations. The Delegation stated that, looking at the five issues on the work program, it appreciated all the studies prepared by the Secretariat in the past years. The Delegation noted that the trilateral coordination between WIPO, the WHO and the WTO should also be taken into consideration. The Delegation observed positive outcomes during the last twelve months, and expressed its belief that when there was something positive, there was room for improvement. The Delegation stated that it was not sharing the view that there was no or slow progress in the Committee.

"200. The Delegation of Spain supported the statement made by the Delegation of Denmark on behalf of the European Union and its 27 Member States. The Delegation expressed its wish to contribute to striking a balance in relation to the Committee's contribution to the implementation of the WIPO Development Agenda. The Delegation was of the opinion that the discussion had been enriched through the consideration of the particular circumstances of the different Member States, and that the resulting approach was reasonably satisfactory. The Delegation observed that the agenda for the SCP sessions held since the last session of the Assemblies included matters such as exceptions and limitations, patents and health, transfer of technology, quality of patents. In its view, within a relatively short period of time, efforts had been made to include development aspects into the discussions on patents. The Delegation deemed that the SCP had been enriched by the consideration of a great number of aspects of the social and international reality. The Delegation expressed its regret that because of the lack of progress within the Committee caused by the failure to agree on how to move forward, at that moment, it was not able to provide a more detailed overview of the implementation of the Development Agenda within the Committee. The Delegation pointed out that such an intensive process had given rise to a number of questions to be addressed in the near future: for example, the distribution of tasks between committees in order to better use the resources of the organization and enable a smoother progress on substantive patent-related matters. Furthermore, the Delegation considered that the development perspective should not impede the discussions of the Committee on other issues, since the loss of the balance in the discussion might result in the Committee becoming an unnecessary replica of other committees.

"201. The Delegation of Venezuela (Bolivarian Republic of) supported the statement made by the Delegation of Algeria on behalf of the DAG. The Delegation stated that since the inclusion of the matter in the agenda was very important for them, it should be maintained

on the agenda. The Delegation considered that maintaining that item was in the mandate of the WIPO General Assembly, and supported by the coordination mechanism of the Development Agenda decided by the General Assembly. The Delegation was of the opinion that much still remained to be done in the area of patents, because in its view, patents were closely connected with mankind's challenges affecting not only developing, but also developed, countries. The Delegation expressed its belief that issues such as food security and climate change were important not only at present, but also for the future. Concerning climate change, the Delegation stated that the enterprises that were responsible for the current ecological disaster were the ones holding the patents that were able to provide the solution to that problem. It pointed out that the inclusion of the item in the agenda was of vital importance not only for developing countries, but also for developed countries, if the latter wished to look forward to the future. The Delegation expressed its belief that the Committee needed to continue its work with a mandate which implied obligations for all Member States.

"202. The Delegation of Djibouti supported and endorsed the statements made by the Delegations of Algeria on behalf of the DAG and Egypt on behalf of the African Group. The Delegation expressed its belief that the inclusion of the item in the agenda of the Committee was in line with the decision of the WIPO General Assembly which had called for the mainstreaming of the implementation of the Development Agenda in all WIPO bodies. The Delegation stressed the importance of the report by the SCP to the General Assembly, in view of its mandate given by the WIPO General Assembly. The Delegation, therefore, supported the retainment of the item on the agenda of the Committee.

"203. The Delegation of the United Republic of Tanzania supported the statements made by the Delegations of South Africa and Egypt on behalf of the African Group. The Delegation observed that although discussions were unavoidable within a larger group such as the SCP, the importance of the topics addressed in the Committee made delegations gather in the meeting room. The Delegation expressed its belief that the agenda item under consideration was crucial, and that the SCP could not avoid the item of the implementation of the Development Agenda for the impact it had on everyone. In its view, having a larger discussion and detailed information in order to reach a consensus on concrete actions were very important. The Delegation considered that the Committee had a complementary role to play in the implementation of the Development Agenda recommendations. It invited delegations to iron out the emerged impediments and obstacles through the discussion rather than depending on the actions of other bodies. In its view, there was no duplication of work. The Delegation supported the Committee to continue doing its work, considering other WIPO bodies complementary to, and not in contradiction with, the SCP.

"204. The Delegation of Indonesia supported the statements made by the Delegations of Egypt on behalf of the African Group and Algeria on behalf of the DAG in relation to the fact that the issue should remain a standing agenda item in the Committee. The Delegation observed that during the current session of the SCP, some problems that needed to be addressed in relation to patents and health had emerged. It expressed its belief that that item should remain in the agenda of the Committee.

"205. The Delegation of Ghana aligned itself with the statements made by the Delegations of Egypt on behalf of the African Group and Algeria on behalf of the DAG. The Delegation deemed the topic of the implementation of the Development Agenda crucial in relation to other topics discussed within the Committee. The Delegation expressed its belief that the issues raised by the above Groups presented some aspects related to the Development

Agenda, such as technical assistance and capacity building, linked to other aspects such as the quality of patents. For that reason, the Delegation expressed its opinion that it was important to keep those items on the agenda, together with the other topics that were being discussed within the Committee.

“206. The Delegation of Peru, in view of continuing to protect intellectual property rights, expressed its appreciation for the Secretariat’s effort in compiling information on important subjects such as exceptions and limitations, opposition systems, quality of patents and, above all, the effort to bring within the discussion of the Committee public health issues that were connected with patents. As the Delegation of Spain, the Delegation expressed its belief that those issues were very important, but that they presented many nuances with respect to the interests of governments of Member States. Furthermore, the Delegation observed how difficult it was to reach harmonized conclusions or results. The Delegation suggested that the Committee continue its efforts to keep those items, such as technology transfer and quality of patents, on the agenda of future meetings.

“207. The Delegation of El Salvador expressed its wish to deal with two topics, public health and transfer of technology, addressed in the Committee the previous day, given their involvement in Development Agenda issues and the importance the Delegation was attributing to them. The Delegation emphasized the importance of continuing discussion on public health as part of the work of the Committee. Noting that its statement was general and far from being exhaustive, the Delegation stated that Member States should adopt legal provisions that fully used the flexibilities available in the international patent system in order to resolve possible public health issues related to patents. The Delegation considered that Member States should have focused more on how those legal provisions could have been implemented in order to meet public health needs. The Delegation proposed to start exploring in a practical way what those real needs were in order to allow developing countries to use more frequently those flexibilities. The Delegation was of the opinion that attention should be drawn to the difficulties that developing countries were facing in the effective implementation, for instance lack of information, technical capacity or trade measures, in order to help those countries improve their systems. The Delegation expressed its belief that a positive experience to be taken into account was the one of Rwanda, which availed itself of the flexibility concerning a compulsory license to export pharmaceuticals produced under a compulsory license under the TRIPS Agreement. The Delegation noted that it was the first case that a WTO member used the system of compulsory licenses established by the decision of the General Council of August 30, 2003 to export pharmaceuticals to a requiring country. The Delegation, in particular, mentioned that Canada was the first country to notify the WTO its request for authorization to produce and export to Rwanda the generic version of a patented medicine. The Delegation thanked the African Group and the DAG for their proposal, and welcomed the submission of more contributions in order to intensify the work of the Committee. The Delegation considered that continuing the work of the SCP using studies on topics such as the obstacles that countries were facing in implementing flexibilities was very relevant to its country. In relation to item 10 of the agenda on technology transfer, the Delegation considered that topic very important and necessary to address dissemination of patented inventions as a first means of transferring technology in areas such as the pharmaceutical sector. The Delegation noted that since generic drugs were produced in El Salvador, it was interested in knowing how good manufacturing practices were applied and how the critical pharmaceutical production criteria in the production of pharmaceuticals required by WHO might be resolved. The Delegation stressed the importance of the work of the Committee in seeking to promote transfer of technology so that developing countries would be able to meet their main needs.

“208. The Delegation of India fully aligned itself with the statements made by the Delegations of Algeria on behalf of the DAG, Egypt on behalf of the African Group and South Africa. The Delegation considered that issues such as patents and public health, exceptions and limitations, transfer of technology and opposition systems were very important for all Member States. In its view, all the proposals submitted by the DAG, the African Group and South Africa should be carried forward. The Delegation expressed its belief that those issues were important not only for developing countries but for all Member States.

“209. The Delegation of Congo supported the statement made by the Delegation of Egypt on behalf of the African Group. The Delegation encouraged the Committee to handle all questions associated with development, notably, the issues of patents and health, technology transfer and opposition systems.

“210. The Delegation of Zambia supported the statement made by the Delegation of Egypt on behalf of the African Group. The Delegation stated that the decision of the General Assembly on the coordination mechanism was very clear with regard to the contributions to the implementation of the respective Development Agenda recommendations expected from relevant WIPO bodies, of which the SCP was one. In its opinion, the SCP had important contributions to make to the implementation of the Development Agenda, and should therefore have a firm position and present its agenda to facilitate the representation of its achievements.

“211. The Delegation of Iran (Islamic Republic of) stressed the importance of agreeing on the ways and modalities for reporting, and of making the coordination mechanism functional. In its view, that would be imperative in complying with the decision of the General Assembly and realizing the mandate of the CDIP. The Delegation considered that the SCP could play an important role in bringing balance to the IP system and mainstreaming of the Development Agenda in the work of all WIPO bodies. It noted that while one of the objectives of the patent system was to assist transfer of technology, the actual patent system did not work properly as was originally intended. Therefore, in its opinion, the Committee should analyse that aspect in its work. The Delegation further stated that the Committee should have an open discussion about all the issues in respect of global challenges, such as food security, climate change and health. It considered that those issues were of paramount importance for developing countries, and should be incorporated in the work program of the Committee. Furthermore, the Delegation stated that, at one point, the Committee should go beyond theoretical discussions and begin a norm-setting process in those areas in order to properly address the existing challenges. The Delegation observed that the patent system was the result of a long-term process, which was not fully perfect. In its opinion, Member States should utilize its advantages and try to solve its associated implications for the benefit of public policy.

“212. The Chair stated that all statements would be recorded in the report for the eighteenth session of the SCP and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.”

II. REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF TRADEMARKS, INDUSTRIAL DESIGNS AND GEOGRAPHICAL INDICATIONS (SCT)

17. During the period under consideration, the SCT held one session³, namely SCT/26 (October 24 to 28, 2011, and February 1 to 3, 2012). SCT/26 was chaired by Mr. Imre Gonda (Deputy Head, Trademark, Model and Design Department, Hungarian Intellectual Property Office). The report on the progress made by the SCT in its work is presented according to subject matter.

Trademarks

18. The SCT/26 discussed the modalities of an Information Meeting on the Role and Responsibility of Internet Intermediaries in the Field of Trademarks and agreed that such a meeting should be held back to back with the twenty-seventh session of the SCT (i.e., on September 17, 2012) and in accordance with the terms of reference presented in a non-paper prepared by the Chair and reproduced in Annex I of document SCT/26/8 document. In particular, the SCT agreed that the basic purpose of the information meeting is to provide information on the role and responsibility of Internet intermediaries in relation to the use of trademarks on the Internet. The meeting is not intended to constitute a forum for examining the issue, preparing proposals or making recommendations, decisions of any kind. The information meeting will not form part of a formal session of the SCT.

19. The Secretariat presented an update on trademark-related aspects of the expansion of the Domain Name System. In that respect, the SCT emphasized the need for the envisaged trademark rights protection mechanisms in the Internet Corporation for Assigned Names and Numbers (ICANN's) new generic top-level domains (gTLDs) Program to be effective, and expressed concern about ICANN processes which risk destabilizing the WIPO-initiated the Uniform Domain Name Dispute Resolution Policy (UDRP) as an existing, globally relied-upon mechanism. The SCT also requested the Secretariat to keep Member States informed on developments in the new Domain Name System.

20. Work on the protection of names of States against registration and use as trademarks was based on document SCT/25/4 and on a proposal for a work program submitted by the Delegations of Barbados and Jamaica and on a further proposal by the Delegation of Jamaica concerning specific terms of reference for the first phase of the former proposal. A number of delegations expressed support for the proposal of the Delegations of Barbados and Jamaica. Other delegations expressed the need for more information and time for reflection. The SCT invited interested members to communicate to the Secretariat cases and case studies relevant to the protection of names of States, as well as information on any nation branding scheme in which they have engaged, including problems encountered in their implementation. The Secretariat was requested to compile those communications in the form of a working document to be presented at the next session of the SCT. This working document should also provide information on nation branding available at WIPO.

Industrial Designs

21. Regarding the work of the SCT on industrial design law and practice, the SCT discussed all draft Articles and draft Rules contained in documents SCT/26/2 and 3 and requested the Secretariat to prepare revised working documents for consideration of the SCT at its twenty-seventh session, which should reflect all comments made at the present session and

³ SCT/27 – please refer to paragraph 23.

highlight the different proposals put forward by delegations by using square brackets, strikethrough, underlining or footnotes, as appropriate. As regards the work of the SCT on industrial design law and practice in relation to the WIPO Development Agenda Recommendations, the SCT considered an information document prepared by the Secretariat (document SCT/26/4). The Chair noted that a number of delegations considered that, while the document contained useful information, a study by the Secretariat with the involvement of the Chief Economist, on the impact of the draft Articles and draft Rules on Industrial Design Law and Practice (documents SCT/26/2 and 3) on developing countries was required. Other delegations declared that they would not oppose such study, provided that its scope was precisely defined and that it did not delay the work of the SCT. After informal discussions, the SCT agreed to request the Secretariat to prepare an analytical study, in accordance with the agreed terms of reference (document SCT/26/8, II).

Geographical Indications

22. During the period under consideration, the SCT did not address issues of substance concerning geographical indications.

23. The twenty-seventh session of the SCT is scheduled to take place from September 18 to 21, 2012. The draft Agenda for that session proposes items on industrial design law and practice (including the consideration of a study on the potential impact of the work of the SCT on industrial design law and practice), on trademark-related aspects of the expansion of the Domain Name System, on the protection of names of States against registration and use as trademarks and on International Non-proprietary Names for Pharmaceutical Substances (INNs). Moreover, an information meeting on the role and responsibility of Internet intermediaries in the field of trademarks is scheduled to take place on September 17, 2012. Because the preparation of the present document had to take place prior to those two meetings, their outcome cannot be reflected in the present document. A revised version of this document will be issued subsequently.

III. COMMITTEE ON WIPO STANDARDS (CWS)

24. During the period under consideration, the Committee on WIPO Standards (CWS) held the resumed first session, which had been suspended in October 2010, and the second session from April 30 to May 4, 2012. The meeting was chaired by Mr. Gunnar Lindbom (Swedish Patent and Registration Office). In accordance with the decisions by the WIPO General Assembly in 2010 and 2011, the language coverage for the second session was extended to all six official languages of the UN.

25. Following discussions on its pending adoption, the agenda of the first session of the CWS was unanimously adopted. Then, before opening the second session, the first session was closed without having reached an agreement on organizational matters and special rules of procedures. The report of the first session was adopted at the second session of the CWS.

26. The CWS opened the second session and, upon the election of the Chair and Vice-Chairs, adopted the agenda as proposed in document CWS/2/1 Prov. Some delegations stated that the adoption of the agenda was without prejudice the right of delegations to propose an agenda item on coordination mechanism in the agendas of the next sessions of the CWS.

ORGANIZATIONAL MATTERS AND SPECIAL RULES OF PROCEDURES

27. The proposal prepared by the Secretariat on organizational matters and special rules of procedures of the CWS was presented in document CWS/2/2. Following consultation with some Ambassadors, the Chair of the WIPO General Assemblies stated that:

“At an informal consultation held this morning at the ambassadorial level, it was agreed to propose through the Chair of the General Assemblies, to the Committee of WIPO Standards (CWS) the following:

The Committee adopts a draft agenda as initially proposed;

The Chair's summary records conclusions of the technical work done at the present session;

The Chair's summary also records differences of views expressed in regard to the coordination mechanism, the mainstreaming of the Development Agenda recommendations and expression thereof in the special rules of procedure;

Under the facilitation of the Chair of the WIPO General Assemblies, informal consultations on the coordination mechanism, the mainstreaming of the Development Agenda recommendations and expression thereof in the special rules of procedures will be conducted after the second session of CWS in order to reach an understanding preferably before the forthcoming autumn session of the General Assemblies.”

28. The CWS agreed to follow the suggestion made by the Chair of the General Assemblies. Some delegations made statements expressing different views concerning the issues mentioned above for the informal consultations. One view expressed the understanding that the recommendations of the Development Agenda (DA) should form an integral part of the work of the CWS, and the importance of coordination mechanism to mainstream the DA in all WIPO bodies. The other view expressed the understanding that the CWS should focus on developing WIPO standards and leave the other issues to the Secretariat as agreed on in the clarification of the CWS mandate by the General Assembly in 2011, and considered that the CWS should therefore fall outside of the coordination mechanism. It was noted that these statements should be reflected in the draft report of the second session of the CWS. Consequently, no agreement was reached on organizational matters and special rules of procedure. General Rules of Procedure of WIPO will apply to the CWS until an agreement can be reached on the CWS organizational matters and special rules of procedure.

GENERAL ACTIVITIES

29. Following discussions of the corresponding draft agenda items, the CWS approved the roadmap for the development of WIPO Standards dealing with XML (eXtensible Markup Language) and adopted the new WIPO Standard ST.96, entitled “Recommendation for the processing of industrial property information using XML” (along with its Annexes I to IV; two more Annexes are still pending). The CWS adopted the revision of WIPO Standard ST.67 on the electronic management of figurative elements of trademarks and the inclusion of certain entries related to trademark digital image formats and color management in the Glossary of Terms concerning Industrial Property Information and Documentation; the CWS assigned a new task to prepare a proposal on further standardization of trademark information to the Trademark Standards Task Force. The CWS agreed to create a task to prepare a revision of WIPO Standards ST.14 regarding some category codes used in search reports established for

patent applications and the identification of non-patent literature citations in patent documents; the CWS established a task force to handle the task. The CWS noted the results and agreed on the publication of a survey on the implementation and promotion of WIPO Standard ST.22, concerning the optical character recognition (OCR) of patent documents.

30. The CWS also noted progress reports by Task Force leaders about the preparation of a new WIPO standard on the presentation of nucleotide and amino acid sequence listings using XML, the revision of WIPO Standards ST.36 and ST.66, as well as about the inclusion, in databases, of information about the entry, and, where applicable, the non-entry, into the national (regional) phase of published PCT international applications. The International Bureau (IB) also presented a report on the development of WIPO Standards Administration Database (WIPOSTAD).

31. After considering the list of task, the CWS agreed on their final version for their incorporation in the CWS Work Program.

TECHNICAL ADVICE AND ASSISTANCE FOR CAPACITY BUILDING TO INDUSTRIAL PROPERTY OFFICES IN CONNECTION WITH THE MANDATE OF THE CWS

32. The CWS noted the report (see Annex II) providing information on highlights of activities of the IB, related to providing technical advice and assistance to capacity building to IPOs undertaken during the year 2011, as requested by the WIPO General Assembly at its 40th session held in October 2011.

IV. REPORT ON THE WORK OF THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

33. During the period under consideration, the Advisory Committee on Enforcement (ACE) held its seventh session from November 30 to December 1, 2011.

GENERAL ACTIVITIES

34. The seventh session of the ACE was chaired by Mr. Makiese Augusto, First Secretary, Economic Affairs, Permanent Mission of Angola, and attended by delegations from 55 Member States, a delegation from the European Union (EU) and representatives from four inter-governmental organizations and 15 non-governmental organizations.

35. As agreed by Member States at the sixth session of the ACE, the seventh session addressed the following work program:

“Developing on the substantive study contained in WIPO/ACE/5/6, analyze and discuss IPRs infringements in all its complexities by asking the Secretariat to undertake:

- (a) (...);
- (b) Identification of different types of infractions and motivations for IPR infringements, taking into account social, economic and technological variables and different levels of development;
- (c) Targeted studies with an aim to developing analytical methodologies that measure the social, economic and commercial impact of counterfeiting and piracy on societies taking into account the diversity of economic and social realities, as well as different stages of development;

- (d) Analysis of various efforts, alternate models and other possible options from a socio-economic welfare perspective to address the counterfeiting and piracy challenges".⁴

36. The work program was addressed on the basis of expert presentations.⁵ Under item 2 of the work program, the Committee heard a review of consumption decisions in the digital environment including with a view to the quality of existing data in this context; and a report focusing on reasons which fuel counterfeiting and piracy in African countries. The latter report, *inter alia*, identified factors such as poverty, inequality and insufficient right holder cooperation in enforcement and awareness-raising activities as elements fueling counterfeiting and piracy. The report also suggested strategies to effectively address counterfeiting and piracy, while taking into account the need to carefully balance IP enforcement issues with considerations of socio-economic development and public health. Under item 3 of the work program, a study reviewing available statistical information on counterfeiting and piracy, accompanied by recommendations to improve the quality and availability of relevant data; and an update on the work undertaken by the European Observatory on Counterfeiting and Piracy concerning the development of a methodology to measure the socio-economic impact of counterfeiting and piracy within the EU were presented. Subjects addressed under item 4 were an introduction to Corporate Social Responsibility (CSR) as a tool to conduct business in a way that contributes to the well-being of society; a presentation on a cooperation model introduced in France (known as *Charte Sirinelli*) between right holders and Internet platforms that seeks to improve the scope and efficiency of preventive measures against the trade of counterfeit goods over the Internet, keeping in mind the importance of legitimate e-commerce as a driver to economic growth; and an overview of the findings of a study on anti-competitive enforcement of Intellectual Property Rights (IPRs) (sham litigation), undertaken in the context of the DA Project DA_7_23_32_01 (IP and Competition Policy).⁶

37. The Committee took note of the presentation by the Secretariat on recent activities of WIPO in the field of Building Respect for IP, which include training, capacity building, legislative and policy advice, awareness-raising, international cooperation and information exchange.

38. With regard to the Committee's future work, the Committee took note of the proposals submitted by Group B, Russia, and Peru, respectively. It was agreed that all proposals referred to in paragraphs 3 and 4 of document WIPO/ACE/7/3 would serve as a basis for the discussion of the future work of the Committee at its eighth session. The Committee requested the Secretariat to prepare, for the eighth session of the ACE, an analysis of those proposals, including an assessment of the extent to which they have already been addressed.⁷ It concluded to continue, at its eighth session, the work program of the seventh session of the ACE (items 2, 3 and 4).⁸

CONTRIBUTION OF THE ACE TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

39. Under agenda item 8, the Chair invited views by Delegations on the contribution of the ACE to the implementation of the WIPO Development Agenda. Further to the 2010 WIPO General Assembly decision "to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the

⁴ Paragraph 12 of document WIPO/ACE/5/11, paragraph 13 of document WIPO/ACE/6/11.

⁵ Documents WIPO/ACE/7/4 - WIPO/ACE/7/8, WIPO/ACE/10 and WIPO/ACE/7/REF/IPEA.

⁶ Details of the discussions are reflected in paragraphs 7 to 13 of document WIPO/ACE/7/11 Prov.

⁷ Paragraph 19 of document WIPO/ACE/7/11 Prov.

⁸ Paragraph 20 of document WIPO/ACE/7/11 Prov.

respective Development Agenda Recommendations”, the following statements extracted from the draft Summary of the Chair of the seventh session of the ACE, (document WIPO/ACE/7/11 Prov., paragraphs 22 to 26) are reproduced hereafter.⁹

“22. The Delegation of South Africa underscored the importance of the implementation of the monitoring, assessing, discussing and reporting mechanism (Coordination Mechanism). The 2010 WIPO General Assemblies had approved that mechanism requiring all relevant WIPO bodies to report on their contribution towards the implementation of the Development Agenda Recommendations. If properly applied, the Coordination Mechanism would facilitate scrutinizing within the Organization cross-cutting issues and activities so as to avoid duplication. The ACE was dealing with cross-cutting issues addressed in other WIPO bodies. In that regard, it was prudent that an agreement had been reached on a standing agenda item on the contribution of the ACE to the implementation of the relevant Development Agenda Recommendations. The Delegation appreciated that the ACE would submit its second report to the WIPO General Assembly. The Delegation recalled the commitment to mainstream the Development Agenda across all WIPO activities, and welcomed that the activities of the ACE were primarily premised on Development Agenda Recommendation 45. The Committee’s mandate was Building Respect for IP which should be addressed through studies, demand-/country-driven technical assistance, activities aimed at raising awareness, and interactive activities to share experiences. The Delegation welcomed the Committee’s commitment to undertake studies aimed at Building Respect for IP with a view to unpacking the underlying causes and impacts of counterfeiting and piracy whilst taking into account the development dimension. At the same time, the Delegation indicated that there was room for improvement, especially on the quality of the studies undertaken. Document WIPO/ACE/7/2 entitled “Recent Activities of WIPO in the Field of Building Respect for IP” provided a good basis for assessing the contribution of the Committee to implementing the Development Agenda. From a cursory point of view, the legislative advice, training and awareness-raising assistance provided by the Secretariat as reported in paragraphs 4 and 5 of that document was consistent with Development Agenda Recommendations 13 and 14. However, there was a need to provide additional details on consumer motivations and attitudes in regard to counterfeiting and piracy as outlined in paragraph 6 of the document. Consumer motivations and attitudes were fundamental issues not only for developing countries but for all countries. Concerning international coordination and cooperation, the Delegation noted the importance of WIPO’s engagement with other Intergovernmental Organizations and other relevant stakeholders in the field of IP. Paragraph 6 of document WIPO/ACE/7/2 showed that WIPO included the development-oriented approach to Building Respect for IP in other forums and that this approach was fully reflected in collaborative efforts. The Delegation welcomed that statement and requested further substantiation by evidence. The Delegation further noted with interest some of the suggestions made at the Sixth Global Congress on Combating Counterfeiting and Piracy. Some participants of the Congress had recognized the importance of WIPO and had thus encouraged WIPO to work towards producing empirical studies on enforcement issues. That had been prompted by the realization that there was little empirical evidence-based data, especially statistical data, to assess the extent and impact of counterfeiting and piracy in various countries. Policy makers needed to consider available empirical evidence before addressing the challenges relating to counterfeiting and piracy. The Delegation valued suggestions concerning the need to address enforcement on the basis of a value chain of all agents involved, with due regard to the interface between competition and enforcement. Those were certainly issues that could be looked at by the Committee. The Congress could be further improved by widening the scope of participation by consumer organizations, civil society, and academia so as to broaden the dialogue and deepen the understanding in promoting respect for IP. While

⁹ Paragraphs 22 to 26 of document WIPO/ACE/7/11 Prov.

understanding that the Congress was organized in cooperation with various stakeholders, it was advisable for the Secretariat to consult Member States in the preparation for the Congress so that it would become an inclusive and transparent process. The Delegation supported activities aimed at exchanging information on Building Respect for IP. It was through the exchange of experiences among Member States that coordination could be fostered to this end. The Delegation concluded that there was a need for a balanced approach between enforcement and development in the work undertaken by the Committee in line with Recommendation 45 of the Development Agenda.

“23. The Delegation of Algeria, speaking on behalf of the Development Agenda Group (DAG), welcomed the adoption of agenda item 8 which referred to the contribution of the ACE to the implementation of the Development Agenda Recommendations. DAG recalled that Recommendation 45, which emphasizes the need to place the enforcement of IP rights in the broader context of the interests and concerns of development, would directly relate to the mandate and competence of the Committee. The principles contained in that Recommendation should guide the activities of WIPO in the field of enforcement. The Committee should reflect that approach in its activities and focus its program on the development dimension while ensuring that enforcement laws respected rights and obligations. DAG underscored that the thematic approach of the Committee was very useful because it offered Member States a framework to conduct discussions on various aspects of enforcement of IP rights. The debates that had been conducted confirmed the reality of a complex environment in this area. The various presentations reflected the fact that the Committee should understand the issue of enforcement in a holistic manner and no longer see it only from the perspective of right holders. Within that framework, DAG believed that the Committee made progress in implementing Recommendation 45. At the same time, DAG felt that further efforts were still needed to fully achieve implementation of Recommendation 45. On some important issues more work needed to be done. That included the contribution of IP rights to the transfer of technology, and the contribution of enforcement in the establishment of a strong network of SMEs in developing countries. Those questions deserved the Committee’s attention.

“24. The Delegation of Brazil welcomed the opportunity to comment on the Committee’s contribution to the implementation of the Development Agenda Recommendations, especially Recommendation 45. The Delegation stated that Recommendation 45 was directly related to the competences of the ACE. It defined WIPO’s approach to IP enforcement in the context of broader societal interests and especially development-oriented concerns. The principles contained in that Recommendation should orient WIPO’s activities regarding enforcement. The Delegation recalled that there was a reference to Article 7 of the TRIPS Agreement. The Delegation further noted that WIPO had been making progress in the implementation of Recommendation 45 since the adoption of the Development Agenda. The work program approved at the 5th session of the ACE was a milestone in that process. It provided various pertinent elements for discussion in future meetings that corresponded to different views and objectives of Member States on issues of enforcement. The results of the work program could be perceived in the documents submitted during the last and the present sessions of the ACE. They reflected WIPO’s efforts to develop an inclusive approach in its activities relating to Building Respect for IP. They took into account specific views and opinions on enforcement issues and were a good basis to promote a balanced discussion on Building Respect for IP. The Delegation hoped that the future sessions would promote such debate based on balanced documents. The Delegation further observed that despite these achievements there still was a long way to fully implement Recommendation 45. For example, the contribution of the protection and enforcement of IP rights to the transfer and dissemination of technology remained to be addressed. Improving and consolidating WIPO’s enforcement-related technical assistance would be a good way to move forward. As proposed by the DAG at the last session of the ACE, the Committee should evaluate

how WIPO had been promoting the concept of Building Respect for IP in its technical and legislative assistance activities. The Delegation concluded that WIPO, as a specialized agency of the UN, should be consolidated as the main forum to provide guidance in the cooperation on enforcement of IP rights, and that the work of the ACE could contribute to this end.

“25. The Delegation of Pakistan welcomed the opportunity to express its views on the contribution of the ACE to the implementation of the Development Agenda. The Delegation noted that the Development Agenda Recommendations, especially Recommendation 45, had a direct link with the work that the Committee was undertaking. In that context, the Committee needed to align its work with the Development Agenda Recommendations. The Delegation observed that over the past several years, there had been an increasing demand on developing countries to do more on IP enforcement. They were expected to enforce higher levels of IP rights, regardless of the socio-economic conditions and challenges. Moreover, trade and investment decisions were usually linked to stronger inputs of the TRIPS-plus enforcement criteria. That was accompanied by a very limited approach to combating infringement of IP rights in which, in essence, stricter laws and capacity building of enforcement agencies were seen as a primary means to ensure enforcement. Such an approach could temporarily reduce IP infringement levels, but could not address the challenge in a sustainable manner. A broader strategy would have to be followed to allow the establishment of conditions in which all countries would have a shared understanding of the socio-economic implications of enforcement measures and of the direct economic interests in taking such measures. In such an environment, countries’ trials to enforce IP rights would be derived from internal and external factors. The Delegation stressed that the present meeting needed to work towards identifying the key reasons behind IP rights infringement. That, keeping in view the different socio-economic conditions of the countries, would lead to understanding the issues of IP infringement in a better manner. The Delegation concluded that there were measures that needed to be taken in the interest of creating an enabling environment, and that it was looking forward to the work of the Committee in that direction.

“26. The Representative of the Third World Network observed that the Development Agenda should underpin and guide the work of the Committee, and welcomed the Committee’s work on statistical information relating to IP infringement as well as on understanding consumer behavior and motivations that lead to IP infringement. That work should be continued to address the issue of IP infringement more effectively. The Representative further referred to concerns relating to transparency, balance and WIPO’s partnerships with industry-related stakeholders, and stated that more could be done to fully implement and realize the spirit behind the Development Agenda.”

40. The eighth session of the ACE is scheduled to take place in Geneva, from December 17 to 18, 2012. As in previous sessions, discussions of the agreed work program will be supported by working documents and expert presentations.

[Annex II follows]



CWS/2/11
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REPORT ON THE PROVISION OF TECHNICAL ADVICE AND ASSISTANCE FOR CAPACITY BUILDING TO INDUSTRIAL PROPERTY OFFICES IN CONNECTION WITH THE MANDATE OF THE CWS

prepared by the Secretariat

1. This report aims to provide information to the CWS on highlights of activities of the International Bureau (IB) related to providing technical advice and assistance for capacity building to IP Offices (see paragraph 190 of document WO/GA/40/19) undertaken during the year 2011. A complete list of such activities is available under the Technical Assistance Database (www.wipo.int/tad).
2. The IP standards being implemented in various systems and tools, the following activities also implicitly cover dissemination of relevant IP standards information.

TECHNICAL ASSISTANCE FOR BUILDING INFRASTRUCTURE IN IP INSTITUTIONS

3. The objective of this program was to develop and strengthen national and regional IP institutions in accordance with the Development Agenda, through provision of modernization services, to enable them to participate in the global IP infrastructure and to maximize their benefits from the access and use of its collective resources.
4. The Program's assistance covered a comprehensive set of modernization services. These included: technical advice and guidance; needs assessment; simplification of business processes; provision of standard automation components customized to specific national requirements; establishment of national IP databases; extensive training of IP institutions staff and knowledge transfer to their technical focal points; progress monitoring and

post-deployment impact evaluations; and e-communication with WIPO Treaties. Training related activities accounted for 50% of the Program's work and were critical in achieving the desired results.

5. In the framework of this program 115 missions in IP Offices were undertaken in 2011, in 17 countries of the Asia and Pacific region, in 15 countries in the Latin America and the Caribbean, in 22 countries in Africa, in nine Arab countries and in 12 countries of the group of Certain Countries in Europe and Asia. In some Offices more than one mission were undertaken. For more information please consult the web site of WIPO's technical assistance program for Industrial Property Offices (http://www.wipo.int/global_ip/en/activities/technicalassistance/index.html).

NARROWING THE TECHNOLOGY KNOWLEDGE GAP AND IMPROVING ACCESS TO TECHNICAL KNOWLEDGE

6. In the framework of the recommendation 8 of the Development Agenda, narrowing the technology knowledge gap and improving access to technical knowledge, the following programs were active in 2011: Technology and Innovation Support Centers (TISCs), Access to Research for Development and Innovation (ARDI), Access to Specialized Patent Information (ASPI) and Patent Landscape Reports (PLRs).

7. The TISCs, or institutions offering similar services, are designed to provide innovators in developing countries with access to locally based, high quality technology information services and other related services. The IB promotes the establishment and development of TISCs under a related project being carried out in cooperation with national and regional industrial property offices within the framework of its Development Agenda.

8. To support the development of TISCs and raise awareness of intellectual property and technology information among local stakeholders, on-site training was provided in 2011 in 20 countries participating in the project (14 basic and 6 advanced training events). This brings the total number of established TISCs following basic training to 20 (6 were already established in 2010). A further 13 Service Level Agreements, providing the framework for activities to be carried out in establishing and developing TISCs, were concluded in 2011 (bringing the overall total to 29 countries). In 2011, 20 assessment missions combined with awareness-raising activities (half-day public seminars) were carried out prior to training and launching of newly-established TISCs. A regional conference was also held in Buenos Aires in March 2011, so as to promote the TISC project in Latin America countries interested in establishing and developing TISCs. For more information please consult the TISCs web site (www.wipo.int/tisc).

9. The ARDI program is coordinated by the IB together with its partners in the publishing industry with the aim to increase the availability of scientific and technical information in developing countries. By improving access to scholarly literature from diverse fields of science and technology, the ARDI program seeks to reinforce the capacity of developing countries to participate in the global knowledge economy and to support researchers in developing countries in creating and developing new solutions to technical challenges faced on a local and global level.

10. In July 2011, ARDI became a full partner and fourth program of the Research4Life (R4L) partnership, which includes WHO's HINARI program (biomedical and health journals), FAO's AGORA program (agriculture based journals), and UNEP's OARE program (environmental issues). It was also agreed in cooperation with its partners in the publishing community to extend within the ARDI program the number of countries eligible to receive free access to scientific and technical journals from 49 to 77 countries. During 2011, a further 150 scientific and technical journals were added to ARDI, bringing the total content to over 200 journals with a combined regular subscription value exceeding 500 000 US dollars per year. For more information please consult the ARDI web site (www.wipo.int/ardi).

11. The PLR project was based on the Development Agenda project DA_19_30_31 “Developing Tools for Access to Patent Information” described in document CDIP/4/6, adopted by the Committee on Development and Intellectual Property (CDIP).

12. The PLRs provide a comprehensive overview and analysis of the innovation and patenting activity in a specific technological field, globally or in a specific geographical area, based on a state of the art search of at least the PCT minimum documentation. They aim at research and analysis in areas of interest and needs of developing countries, such as public health, climate change, food and agriculture, energy etc. The results are presented and analyzed in a comprehensive manner and are visualized through graphs and statistics with the help of various analytical tools. The results and conclusions drawn can provide information on trends in a specific technological field or subsectors over time, the major players in the said area, the collaborations that take place, the geographical distribution of the patent protection sought, while the technologies identified can be grouped in various categories. They are useful tools for policy makers that can facilitate and optimize policy and investment decisions related to innovation, R&D, technology transfer, etc. Furthermore, these reports function as examples of access to and exploitation of patent information and how patent search strategies and methodologies should be tailored according to the particular subject matter and the challenges and limitations linked to each case.

13. A number of patent landscape reports have been prepared by the IB in cooperation with other intergovernmental organizations and non-governmental organizations, such as FAO, WHO, Medicines Patent Pool, AATF etc. These reports cover a range of subjects, such as desalination and use of alternative energies, solar cooking and cooling, antiretrovirals, plant salinity tolerance, vaccines etc. For more information on the project and access to the reports, please consult the dedicated website:

http://www.wipo.int/patentscope/en/programs/patent_landscapes/pl_ongoingwork.html

CAPACITY BUILDING OF IP OFFICERS AND EXAMINERS FOR UTILIZATION OF INTERNATIONAL TOOLS

14. Upon request, several training courses on the use of International Classifications for officials or examiners of IP Offices were conducted during 2011, namely for Iran and Pakistan (all Classifications), South Africa and Syria (Nice, Vienna and Locarno Classifications), Cambodia and Madagascar (Nice and Vienna Classifications), Qatar (Locarno and Vienna Classifications) and Jordan (Vienna Classification).

BETTER UNDERSTANDING OF IP STANDARDS

15. In order to increase awareness on IP Standards by developing countries, the IB has provided all the documents of the CWS on WIPO website and, in 2011, enhanced the navigation and search of WIPO Standards, created a special database called WIPOSTAD (see agenda item 14, and its site <http://wipo.int/wipostad/en/>). Moreover, to facilitate the participation by more countries in the preparation of a new or revised WIPO Standard, e-Forum was maintained by the IB. Finally, following the decision of the General Assembly in October 2011, the participation to the second session of the CWS of eight developing countries was funded by the International Bureau.

PATENT DATABASES

16. In order to increase dissemination of patent documentation of developing countries, the collections of the following developing countries were added in the patentscope database: Kenya (September 2011), Dominican Republic (April 2011), Chile, Ecuador, Honduras, Nicaragua and El Salvador (March 2011), Colombia, Costa Rica, Guatemala, Panama, Peru, Uruguay (January 2011).

17. The IB has been working together with the Spanish Patent and Trademark Office (OEPM), the European Patent Office (EPO), and industrial property offices in Latin America to promote the exchange of patent information and to set up and maintain an updated regional database containing the information on patents published in Latin American countries, under the LATIPAT project. The database is intended to provide access to the region's technological information contained in patents, and to serve as a common reference platform for the publication and consultation of Latin American patents. The level of participation of the countries is very high, from the 19 IP Offices in Latin American 16 of them are actively participating in the project and send their information regularly.

18. In this regard, under this project in 2011 the Seventh Expert Meeting was held in Rio de Janeiro from October 17 to 20, 2011, in order to continue the process of strengthening the capacities of IP Offices to provide their data, and the focus was placed on enhancing data quality and exchange of full text searchable patent documents to be included in LATIPAT, PATENTSCOPE and in INVENES platforms.

GLOBAL SYMPOSIUM OF IP AUTHORITIES

19. The purpose of the Global Symposium was to:

- provide heads of IP authorities, industry leaders and other stakeholders with an international forum in which to discuss how the present intellectual property infrastructure could be developed in a coherent way to support increasingly borderless activities for innovation within science and technology communities and industries;
- present WIPO's new vision and strategy for reinforcing and integrating different technical components for developing the global IP infrastructure;
- involve users of the IP system in the process and create stronger networks between IP authorities and industry/IP practitioners.

20. In the Symposium of 2011 seven speakers from developing countries were invited (Brazil, Kenya, Malawi, Morocco, Philippines, Republic of Korea and Uruguay). In addition 18 other delegations from developing countries were invited to participate on IB's expenses (Argentina, Barbados, China, Egypt, Ghana, Guatemala, Iran, Jordan, Lao PDR, Mauritius, Mozambique, Niger, Oman, Peru, Syria, Republic of Congo, Republic of Korea and Uganda).

21. The CWS is invited to take note of the 2011 activities of the International Bureau, related to providing technical advice and assistance for capacity building to IP Offices. This document will serve as a basis of the relevant report to be presented to the WIPO General Assembly to be held in October 2012, as requested at its 40th session held in October 2011 (see paragraph 190 of document WO/GA/40/19).

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