

Committee on Development and Intellectual Property (CDIP)

Seventeenth Session
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MECHANISM FOR UPDATING THE DATABASE ON FLEXIBILITIES

prepared by the Secretariat

1. At its sixteenth session, the Committee on Development and Intellectual Property (CDIP) requested the Secretariat to propose a mechanism that would allow a periodic updating of the Database on Flexibilities in the Intellectual Property (IP) System, taking into account the comments made by the Member States.
2. Accordingly, the Annex to this document proposes possible options for updating the said Database.
3. *The CDIP is invited to consider the information contained in the Annex to this document.*

[Annex follows]

I. BACKGROUND

1. The Database on Flexibilities in the IP System (hereinafter, the “Database”) was published in June 2013, as agreed by the Committee at its sixth session: <http://www.wipo.int/ip-development/en/agenda/flexibilities/search.jsp>. It included a list of flexibilities contained in Document CDIP/5/4 Rev. entitled *Patent Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels*, namely:

- (a) Compulsory Licenses and Government use;
- (b) Exhaustion of rights;
- (c) Regulatory Review Exemption;
- (d) Research Exemption; and
- (e) Exclusions from Utility Model protection.

2. Following a request by the CDIP at its fifteenth session, the Secretariat updated the Database to include new provisions of law drawn from Documents CDIP/7/3 Add., CDIP/13/10 Rev. and CDIP/15/6. on Patent Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels, dealing with the following nine flexibilities:

- (f) Transition periods;
- (g) Patentability of substances existing in nature;
- (h) Disclosure related flexibilities;
- (i) Substantive examination;
- (j) Ex-officio IP office control of anti-competitive clauses in licensing agreements;
- (k) The scope of the exclusion from patentability of plants;
- (l) The patentability or exclusion from patentability of software-related inventions;
- (m) The flexibility whether to apply criminal sanctions in patent enforcement; and
- (n) Measures related to national security (so-called “security exception”).

3. In addition, tables on categories of different provisions on specific flexibilities contained in the above-mentioned documents were also added to the Database.

4. At the sixteenth session of the CDIP, a Report on the Update of the Database on Flexibilities contained in Document CDIP/16/15 was discussed. The Report, *inter alia*, highlighted the current content of the Database, comprising 1,371 provisions from 202 selected jurisdictions on the fourteen flexibilities previously listed. The Committee requested the Secretariat to propose at its next session, a mechanism that would allow a periodic updating of the Database, taking into account the comments made by the Member States.

5. As the periodicity of updates on the provisions in national laws to be included in the Database cannot be assessed at this time, it will be important to ensure that the mechanism to update the Database does not result in a non-optimal use of human and financial resources by

the Organization. Accordingly, the following two options are considered as light but sealable mechanisms which seek to respond to the needs of the Member States.

II. MECHANISM FOR UPDATING THE DATABASE ON FLEXIBILITIES

Option I

6. Member States provide the Secretariat, through an official communication, with the updates concerning their national provisions related to the flexibilities included in the Database.
7. The update notified is immediately included in the Database in a new field named "Updates by Member States". The field clearly states that the provisions have not been examined by the Secretariat to verify their conformity with the flexibility under reference.
8. The Database therefore displays the existing provisions in national IP laws whose sources are the documents in the field of flexibilities discussed in the CDIP¹, and, in a separate field, the updates notified by Member States.
9. The Secretariat submits an annual report to the CDIP on the updates added to the Database.

Option II

10. Member States provide the Secretariat, through an official communication, with updates concerning their national provisions related to the flexibilities included in the Database.
11. The update(s) notified by Member States could refer to:
 - (i) a modification of one or several articles already included in the Database; and
 - (ii) a previously non-existing article(s) newly adopted in their national law pertaining to the flexibilities contained in the Database.
12. An examination is undertaken by the Secretariat to determine whether the update is in conformity with the scope and criteria agreed by the Committee while discussing the specific flexibilities.
13. Provided that the update(s) are in conformity with the scope and criteria underlined in the subparagraph 12, the Secretariat proceeds with the publication of the updated provision in the Database within a period of six months.
14. In case the update(s) are not in conformity with the aforesaid scope and criteria, the Secretariat communicates to the respective Member State the reasons for not updating the Database.
15. The Secretariat submits an annual report to the CDIP on the updates added to the Database.

¹ As mentioned above, the Database currently includes provisions drawn from the Documents on Patent Related Flexibilities in the Multilateral Legal Framework and their Legislative Implementation at the National and Regional Levels CDIP/5/4, CDIP/7/3 Add., CDIP/13/10 Rev, and CDIP/15/6.

16. It might be noted that the updates will be only introduced into the Database and the current source documents and any other relevant documents will remain unchanged.

17. Irrespective of the Committee's decision on the options listed above, the human and financial resources devoted to this work might require a review, in the event where the number of updates is higher than the Secretariat current capacity to absorb this work.

[End of Annex and of the document]