

COMMENTS RECEIVED BY WIPO ON THE COMMENTS OF A GROUP OF  
LIKE-MINDED COUNTRIES ON THE PROJECT ON INTELLECTUAL PROPERTY  
AND TECHNOLOGY TRANSFER: COMMON CHALLENGES – BUILDING  
SOLUTIONS (CDIP/4/7)

1. The During the Fourth Session of the Committee on Development and Intellectual Property (CDIP), held from November 16 to 20, 2009, the Committee discussed the Project on Intellectual Property and Technology Transfer: Common Challenges - Building Solutions contained in document CDIP/4/7, and decided that:  
  
“Discussions on that document would continue at the fifth session of the CDIP. A group of “like-minded delegations” would submit a document containing comments on the implementation of the relevant recommendations before the end of 2009. Other Member States would be invited to respond to that document until January 31, 2010. The Secretariat would then prepare a non-paper for discussions at the fifth session of the CDIP.”
2. The Permanent Mission of the Arab Republic of Egypt, on behalf of a group of like-minded delegations, by a communication dated September 31, 2009, submitted a document containing the comments on this project by the said group.
3. The Director General of the World Intellectual Property Organization (WIPO) transmitted the above-mentioned comments to the Minister for Foreign Affairs of all WIPO Member States by a communication dated January 27, 2010, requesting them to communicate their comments in writing to the Secretariat by February 15, 2010.
4. In view of the slight delay in transmitting the proposal to the Member States, the Secretariat, via an email sent on February 23, 2010, informed the Regional Coordinators that comments on the proposal could be sent to WIPO until the end of February 2010, and requested them to share this information with the members of their respective regional groups.
5. Annexed to this document are the comments received by the Secretariat and reproduced in a chronological order. Comments received in other languages have been translated by the Secretariat into the language of this document.

[Annex follows]

## ANNEX

### MEXICO (Comments received February 17, 2010)

We welcome the observations made by the “group of like-minded countries” relating to the project contained in Document CDIP/4/7. In this regard, the following should be emphasized:

1. As regards the observations made in items *II. Analysis of the Relevant Development Agenda Recommendations and Technology Transfer* and *III. General Comments and Questions on the Proposed Project*, we consider that most of these questions have already been included in the “Project on Intellectual Property and Technology Transfer”, as presented by the Secretariat in Document CDIP/4/7. Therefore, its inclusion in the Document would serve only to restrict the scope thereof.
2. In relation to Item *IV. Specific Comments on the Proposed Project*, we consider that those questions should be answered by the Secretariat during the preparation of the informal document, to which reference is made in the Report of the Fourth Session of the CDIP, so that the responses are included therein for subsequent consideration by the Member States during the Fifth Session of the CDIP.
3. Finally, it should be taken into account that the “current Project on Intellectual Property and Technology Transfer” is presented as an initial step toward the conduct of studies, consultations and fora relating to the subject of technology transfer for the purpose of dealing with Recommendations Nos. 19, 25, 26 and 28 of the Development Agenda, and which, once implemented, will allow the Organization to have available studies on the current status of the topic, the needs of Member States and the specific actions to be taken in each case, translated into specific projects at the national level and into the normal program of activities carried out by WIPO in the field of innovation and technology transfer.

I should not omit to mention that for this Institute, the subject of Technology Transfer is one of the essential aspects of the Development Agenda, for which reason we consider it important to begin with the implementation of the “Project on Intellectual Property and Technology Transfer”, included in Document CDIP/4/7, in the most timely and appropriate manner for all Member States.

COLOMBIA (Comments received February 18, 2010)

We consider that it is valid for developing countries to seek greater commitment from developed countries regarding technology transfer, although we believe that the initiatives designed to achieve that aim cannot impair intellectual property rights.

Technology transfer cannot be promoted as a condition for the exercise of intellectual property rights or for the validity of registrations. The balance between intellectual property rights and public interests in general should fall within the mechanisms which the intellectual property system provides, including the flexibilities enshrined in international treaties.

We do not agree with the statements such as that included at the beginning of page five of the reference document, in which it is suggested that intellectual property may obstruct technology transfer; in view of the above, it is relevant to highlight that intellectual property provides a system of incentives which promotes creativity and the generation of technology, and without intellectual property there are no stimuli for technological progress and hence technology transfer.

Finally, we wish to refer to the document of the National Economic and Social Policy Council (CONPES) 3533 “FOUNDATIONS OF A PLAN OF ACTION FOR ALIGNING THE INTELLECTUAL PROPERTY SYSTEM WITH NATIONAL COMPETITIVENESS AND PRODUCTIVITY 2008-2010”, which states the following:

“STRATEGY 4: EFFECTIVE APPLICATION OF IP RIGHTS. The aim of this strategy is to achieve appropriate enforcement of intellectual property rules, which is essential for both national and foreign investment and technology transfer, and to ensure respect for economic rights of creators by stimulating creativity”.

SYRIAN ARAB REPUBLIC (Comments received February 18, 2010)

Reference is made to the Circular submitted by the Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other International Organizations in Geneva, on “Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” (Document CDIP/4/7), and to the agreement reached by the Committee on Development and Intellectual Property (CDIP), as reflected in paragraph 8 of the Summary by the Chair, that discussions on that document would continue at the Fifth Session of the CDIP, and that a group of like-minded countries would submit a document containing comments on the implementation of the relevant recommendations before the end of 2009. In this regard, the Syrian Arab Republic has the honor to present the following comments on the aforementioned Circular.

Following consideration of the four-tiered Project presented by Egypt on Arab technology transfer, we are pleased to support such project as it outlines actions required for developing countries and least developed countries (LDCs), particularly in connection with Article 7 of the TRIPS Agreement which stipulates that “The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of

technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.”

In addition, we would like to support the proposal for the establishment of a special fee on applications under the Patent Cooperation Treaty (PCT), the revenues of which would be earmarked for the promotion of research and development (R&D) activities in LDCs and other developing countries; as well as the establishment of an intermediary conduit to reduce the asymmetric information problem in private transactions between technology buyers and sellers.

We also agree that the project should be named “Access to Knowledge & Technology”, and focused on the needs of DCs and LDCs and obstacles to achieving technology transfer. There is also a need for concrete definition of problems. We would like to support the proposal that recommendations of the High-Level Expert Forum be incorporated into WIPO’s programs. Such Forum must therefore be balanced and its composition should be decided by Member States.

We would like to support the substantive ideas for the project, which include:

- (i) setting up a database that specifically targets R&D technology transfer possibilities to developing countries;
- (ii) review patent landscaping reports being prepared under the Project on “Developing Tools for Access to Patent Information” (CDIP/4/6), with a view to identifying the possibilities of technology transfer;
- (iii) look at alternatives for R&D efforts and support to innovation aside from the patent system.

Finally, we fully support the Specific Comments on the Proposed Project and the proposed phases (Section IV).

UNITED KINGDOM (Comments received February 22, 2010)

The UK hereby submits its comments on document CDIP/4/7 and its response to the paper submitted by the Permanent Mission of the Arab Republic of Egypt on behalf of a Group of Like-Minded Developing Countries, the ‘Egyptian Proposal’.

1. We fully support the proposed project on IP and Technology Transfer. Technology transfer is an increasingly important topic in the context of current issues, such as climate change where diffusion of technologies will be vital if we are to meet our mitigation targets. This project has the potential to significantly inform the debate and to shape the way forward in resolving these difficult issues.
2. Overall CDIP/4/7 is a good starting point however a tighter definition of the scope of the project will be important, in particular to ensure that the project does not go beyond WIPO’s mandate. It is unclear what the Secretariat considers the scope will be. Is the aim to find solutions within the IP system or to consider broader incentives outside it? The Egyptian proposal broadens the scope to technology transfer in general, as well as funding

mechanisms for technical assistance, particularly under point 10 referring to IP-related policies. We acknowledge that the project will need to take account of the broader issues, but are concerned that the Egyptian proposal takes it beyond WIPO's mandate.

3. An attempt to define the term 'transfer of technology', proposed by the Egyptians, would help to better delineate the scope of the project. The UK view however is that such a definition in a WIPO project should be limited to one which reflects what is meant by technology transfer in relation to IP.
4. Clarification is needed of what is meant in CDIP/4/7 by a 'New Platform for Technology Transfer'. The term is vague and unspecific. What objective does the Secretariat consider it will achieve?
5. The current proposed outcome, to feed back the findings of the project into WIPO programmes, also needs further definition and should be more ambitious given the 1.7CHF budget allocated to the project. We agree with the Egyptian proposal that the outcome should be more action-oriented.
6. Project expenditure should be closely monitored and reported.
7. With regards membership of the high-level forum, we agree with the Egyptian proposal that there is a need for transparency. Member states should broadly agree what its composition and role should be, as this will be important for ensuring the engagement of all parties throughout the project. However, we recognize the need to strike a balance between involvement and micro-management which would compromise the project's progress.
8. Whilst holding regional consultations at the start, rather than at the end of the project (Egyptian Proposal, point 20) might seem intuitively right in order to fully engage all parties there is a significant risk that this will slow down the process. It should be accepted that member states will represent the interests of their regions in the project forum.
9. With regard to the research proposals in CDIP/4/7 (2.1.2), we welcome more work in this area and the scope of the proposals looks right to us. We agree with the Egyptian Proposal that these should take into account a review of the literature already available in order to avoid duplication of effort. In addition the studies and research should aim to be sensitive from the outset to the possibility that different solutions may be needed not only for countries at different levels of development, but also for different sectors. We have found in gathering evidence on technology transfer in relation to IP and climate change that different issues are likely to arise in different technological sectors.
10. The Standing Committee for Patents (SCP) has considered a preliminary study on Technology Transfer (SCP/14/4) which is a broad overview of the literature in this area. It would be important to consider how this work and the CDIP technology transfer project could complement rather than overlap each other. In the SCP a like-minded group (including Egypt, India, South Africa) has requested a follow-up study focusing on the negative impact of patents in technology transfer. Our view is that any study commissioned should be balanced and consider both the positive and negatives impacts of IP on technology transfer.

11. Whilst we agree with a number of the comments in the Egyptian proposal, as described above, there are some elements that cause us concern:
- a. We consider that a number of the proposals appear to pre-empt the outcomes of the project. There are specific proposals, eg in points 10, 11 and 19 that are worthy of discussion but are not based on any analysis or evidence. Many of them have significant cost implications. They might be the right things to do, but there might equally be others that have not been put forward which are more effective. This will not be clear until the initial economic work is done;
  - b. The Egyptian proposal 11.1 refers to introducing commitments similar to TRIPS 66.2, including for countries not accessioned to WTO. We take the view that rather than superseding TRIPs in this respect it would be better to encourage members to realize their TRIPS commitments;
  - c. The proposal to charge additional fees for PCT applications (point 11.2) is not appropriate given that these fees already fund much of the development agenda (we understand up to 75%) and is not something we can support. Whilst one of the aims of the PCT is to foster and accelerate the economic development of developing countries through increasing the efficiency of their legal systems for the protection of inventions, the intention is that this would be done by providing easy access to information on technological advancements, rather than by increasing fees to fund specific projects.

#### AUSTRALIA (Comments received March 1, 2010)

Australia supports analysis of intellectual property and technology transfer in WIPO through the proposed project. Australia thanks the Group of Like-minded Countries for its comments and makes the following observations. We look forward to further discussion in the CDIP.

#### Definitions (paragraphs 5 and 6)

Australia supports further discussion of the definition of technology transfer. While the Draft International Code of Conduct on the Transfer of Technology provides one reference point, the full range of definitions should be considered. A definition would also assist in categorizing work on technology transfer in different WIPO Committees. However, discussions on definitions should not dominate the project at the expense of recommendations for practical actions to increase and accelerate transfer of technology to developing countries.

#### Guidance as to issues considered (paragraphs 8 – 13)

Australia supports an objective, evidence based analysis of technology transfer through the project. Australia believes that identification and definition of possible problems in achieving effective technology transfer at the outset is consistent with an objective approach. However limiting studies to focus on obstacles is likely to produce a less balanced, and ultimately less useful, outcome than a study that investigates the issue objectively based on evidence available.

#### Flexibilities in international regime (paragraph 9)

Australia notes that this paragraph appears to refer to the TRIPS Agreement “flexibilities” but we would welcome clarification on this point. In Australia’s view, the scope of TRIPS flexibilities is a matter for the TRIPS Council. We do not consider that WIPO has a role in normative consideration of the TRIPS flexibilities in WIPO. WIPO’s role should be limited to advising on the use of those flexibilities rather than determining their scope and application. In relation to technology transfer, and as proposed by the Secretariat, this would involve advising factually on how these flexibilities are used by members.

Action Oriented Results (paragraph 16)

Australia supports a clear outline of the project along with both quantitative and qualitative performance indicators to indicate success. It is important that all CDIP projects, including the thematic projects, include appropriate evaluation mechanisms and make use of the accepted internal evaluation procedures. However, Australia considers that identification of “action oriented results”, prior to broad and balanced consideration of the issues, would be premature. The high level expert forum is a good opportunity to develop “action oriented results”.

Substantive ideas for the project (paragraph 19)

Australia is aware of the concerns of some Members concerning the implementation of TRIPS Article 66.2, however, we do not consider the statement that technology transfer has not been achieved under the TRIPS Agreement to be accurate. In Australia’s view, the effectiveness, or otherwise, of the implementation of Article 66.2 is a matter for the TRIPS Council. We would not support consideration of the implementation of Article 66.2 in WIPO.

PRINCIPALITY OF MONACO (Comments received on March 1, 2010)

The Principality of Monaco would like to thank the Secretariat for document CDIP/4/7, which is a good basis for discussion, as well as Egypt for the document submitted on behalf of a group of like-minded delegations with a view to improving the proposed project. Technology transfer is a very important issue, particularly in the context of current global challenges such as climate change. This is why Monaco also wishes to contribute to strengthening this project, by submitting the following comments and observations:

- (1) The Principality of Monaco believes that it is necessary to deepen and narrow the overall aim of the project so as to ensure that it does not go beyond WIPO’s mandate and focuses on issues of intellectual property linked to technology transfer. Technology transfer is a relatively broad concept which does not only refer to aspects of intellectual property. In this respect, discussions are ongoing in various fora on issues directly or indirectly linked to technology transfer and it is not desirable that WIPO’s efforts encroach on what is being done elsewhere, on aspects other than those falling within WIPO’s remit;
- (2) The Principality of Monaco shares the view presented in the document submitted by Egypt according to which common ground should be reached first on the definition of the expression “technology transfer”, in as much as this definition focuses on aspects of intellectual property;
- (3) The Principality of Monaco would like more information on the scope of the concept “new platform for technology transfer and intellectual property collaboration”, particularly as concerns the role and operation of this platform;

- (4) The Principality of Monaco would also like the Secretariat to provide further details as to the “High-Level International Expert Forum” as provided for in document CDIP/4/7: what is meant by “high-level”? How will participants be chosen? What are the expected outcomes?
- (5) The Principality of Monaco is of the opinion that document CDIP/4/7 should contain a table specifying overall expected spending for implementing this project;
- (6) The Principality of Monaco believes this project should take into consideration and complement the work of other WIPO committees which also deal with technology transfer, particularly to avoid any overlap;
- (7) The Principality of Monaco does not consider the idea appropriate, as proposed in the document submitted by Egypt, to establish a special fee for applications filed under the Patent Cooperation Treaty (PCT). The PCT already provides substantial funding for the implementation of the WIPO Development Agenda ;
- (8) Lastly, and in general, the Principality of Monaco considers it is not appropriate, at this stage, to prejudice the outcomes of the various phases of the project. The document presenting the project should establish the various planned steps by indicating what the expected outcomes are for each of the steps and the ultimate goal which they are designed to achieve. Any suggestions on the resources required to promote technology transfer should be expressed and discussed during the various phases of the project, but not in the document outlining the project.

UNITED STATES OF AMERICA (Comments received on March 2, 2010)

Comments of the United States of America on “Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” (CDIP/4/7) and In Response to the Comments by a Group of Like-Minded Developing Countries Submitted by the Permanent Mission of the Arab Republic of Egypt

1. The United States believes that a well-designed intellectual property system is an essential tool in economic development and the transfer of technology. Subject to the modifications suggested below, we therefore support the “Project on Intellectual Property and Technology Transfer” (CDIP/4/7) as a good point of departure for initiating a range of activities designed to identify IP-related policies and practices that can be used to promote the transfer and dissemination of technology to developing and least-developed countries.
2. We appreciate the Comments by a Group of Like-Minded Developing Countries Submitted by the Permanent Mission of the Arab Republic of Egypt (“Egyptian Proposal”). The comments raise a number of important and challenging questions and concerns regarding the design, scope, and objectives of the original project document (CDIP/4/7). We offer the following initial observations on both the original proposal and the Egyptian Proposal.<sup>1</sup>

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<sup>1</sup> We have also reviewed CDIP/4/14, which summarizes comments made by Member States on CDIP/4/7 at the last meeting of the committee. The substantive comments made by the Group of Like-Minded Developing Countries at that meeting appear to be reflected in the Egyptian



3. The original proposal appears to be an appropriately focused response to the emphasis found in the agreed recommendations to “*initiate* discussions” (Rec. 19) and to “*explore*” (Recs. 25 and 28) IP-related policies that promote technology transfer as a prelude to the development of any substantive recommendations. The Egyptian Proposal raises a host of issues that may be worthy of discussion, but in our view it would not be practical to examine all of them in one project. We believe that a more sensible approach would be to focus on — and give priority to — certain key elements involved in IP-related technology transfer (*i.e.*, those set forth in CDIP/4/7) and then expand the list of topics in later projects based upon the lessons learned in the initial project.

4. We agree with Egypt and the Group of Like-Minded Developing Countries (“Egypt”) that the project should be guided by a clear understanding of what is meant by the term “technology transfer.” In our view, the definition of technology transfer contained in the preliminary study on technology transfer commissioned by the Standing Committee on Patents (SCP/14/4) would provide a workable operational definition of the term that could be used in the project under consideration in CDIP. The SCP study notes that, when used in the context of intellectual property, “the transfer of technology is a series of processes for sharing ideas, knowledge, technology and skills with another individual or institution (*e.g.*, a company, a university or a governmental body) and of acquisition by the other of such ideas, knowledge, technologies and skills.” (SCP/14/4, para. 16). The Egyptian Proposal (page 10) suggests using the SCP study to inform CDIP’s work on IP and technology transfer, and we recommend following that counsel.<sup>2</sup> Additionally, we believe that the definition of technology transfer in the SCP study largely encompasses the lengthier list specified in the Egyptian Proposal.

5. The Egyptian Proposal suggests three specific sets of issues to be considered when discussing technology transfer (paras. 8-11): international IP standards pertaining to technology transfer, technology transfer supportive IP-related policies by developed countries, and multilateral supportive measures. This suggestion raises important matters that are worthy of discussion, but it also raises the issue of duplication of work between WIPO committees.

6. Under the first set of issues identified in the Egyptian Proposal — International IP Standards, including patentability, exceptions to exclusive rights, disclosure requirements, compulsory licenses, and anti-competitive practices (Egyptian Proposal, para. 9) — we note that these issues are being studied or proposed to be studied by the Standing Committee on Patents (SCP). We believe that CDIP should coordinate with the SCP so as to avoid duplication and divergent approaches. Coordination with other committees should not, however, preclude CDIP from using the work of those committees in pursuit of its mandate. In our view, such synergies should be encouraged. The discussion of coordination mechanisms at the next session of CDIP should help clarify how CDIP should discharge its responsibilities as one among many WIPO committees.

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Proposal. We have accordingly focused our attention on the Egyptian Proposal (in addition to the original proposal).

<sup>2</sup> We also note that the definition of “technology transfer” contained in the Egyptian Proposal (para. 6) would be incomplete because it includes imitation, reverse engineering, software decompilation and other means of obtaining technology, but without reference to the legitimate interests of rights holders. The consent of a rightful owner may be required for such acts under the national laws of some countries.

7. With respect to the second set of recommendations identified in the Egyptian Proposal - Technology Transfer Supportive IP-related Policies by Developed Countries” (para. 10) - the United States notes that it is already heavily engaged in encouraging its research and scientific institutions to cooperate with R&D institutions in developing countries through its Science and Technology Agreements administered by the U.S. Department of State, and through R&D agreements with the U.S. Department of Energy, the National Institutes of Health, and other agencies. U.S. government agencies, such as the U.S. Department of State, the U.S. Agency for International Development, and many others, also work to promote and support public-private partnerships that transfer technology, and provide financial and investment assistance for technology-related private sector projects in developing countries.

8. Under the third set of recommendations — Multilateral Support Measures (para. 11) — the Egyptian Proposal suggests establishing a special fee on PCT applications, with the resulting revenues to be used for the promotion of R&D activities in developing and least-developed countries. PCT fees are already used to fund much of what WIPO does, and an increase in fees would be contrary to the recent direction WIPO has been taking, which is to decrease fees to encourage greater use of the PCT to protect and disseminate new technologies.

9. We welcome the suggestion in the Egyptian Proposal (para. 17) to conduct a literature review of existing work in the field of technology transfer, particularly by other organizations. We would, however, appreciate clarification on the suggestion that any literature review should be “pre-defined with the list of issues to be addressed” and that the comments made during the Open Forum on the Development Agenda by WIPO on 13-14 October 2009 should be reflected in this project. It would be helpful to know what “list of issues” and specific comments are being referenced here.

10. The Egyptian Proposal (pp. 8-9) suggests undertaking a number of additional studies. One suggestion is a paper on measures available in the TRIPS Agreement for developing countries to promote transfer and dissemination of technology with a particular focus on patentability criteria, limitations and exceptions to patent rights, compulsory licenses and government use authorizations, anti-competitive provisions, pre-and post grant oppositions, application of Article 44.2 of the TRIPS Agreement, transitional period for LDCs *etc.* We note that the general proposed topic is already included in the original project’s proposed study on “the use of flexibilities in international IP agreements” to promote technology transfer (Section 2.1.2(b)); other particular topics, such as patentability criteria, limitations and exceptions, etc., are being considered or are being proposed to be considered in the SCP. We therefore favor conducting the study proposed in the original project (Section 2.1.2(b)).

11. Another study recommended in the Egyptian Proposal (page 9) would examine the extent to which Article 66.2 of TRIPS has been fulfilled. Article 66.2 of TRIPS reaches beyond WIPO’s mandate into the area of business, trade, financial and other incentives. The WTO TRIPS Council has responsibility for monitoring technology transfer incentives provided to LDCs by developed countries under Art. 66.2 of the TRIPS Agreement. Developed Members have an obligation to provide regular updates to the Council on the fulfillment of their obligations under Art. 66.2. We believe that WIPO should avoid undertaking responsibilities that fall within the express jurisdiction of other international organizations. To the extent the proposed study would focus instead on how the TRIPS Agreement can be better utilized for promoting technology transfer in developing and least-developed countries (see below), we would support such a study.

12. A third study recommended in the Egyptian Proposal (page 10) would analyze the R&D policies found in the public and private sectors of developed countries and their impact on enhancing R&D capacity in developing countries. We would support a balanced study on R&D policies and their impact on technology transfer but note that such a study should be closely coordinated with a research project proposed in CDIP/4/7 under section 2.1.2(b) (a study on existing IPR-related policies that exist in various countries to promote technology transfer, including the use of flexibilities in international IP agreements) and section 2.1.2(c) (case studies on cooperation between R&D institutions in developed and developing countries).

13. The Egyptian Proposal also recommends six additional ideas for the project (para. 19):

- The first two would require (i) establishing a database that specifically targets R&D technology transfer possibilities from developed countries and (ii) reviewing the patent landscaping reports prepared under another CDIP project with a view to identifying possibilities of international transfer of technology in these areas. While these ideas appear to fit within the scope of the existing project and may have merit, we would need to have additional details on these proposed activities, including their cost implications, in order to make an informed judgment as to whether they should be included in the current project. For example, with respect to the database proposal under (i), how would it differ from the IP Development Matchmaking Database (IP-DMD) being developed under DA recommendation 9 (CDIP/4/2, Annex IV), or could the two activities be combined?
- The third and fourth substantive ideas in the Egyptian Proposal seem to encompass studies on complementary incentivizing models: one study would examine alternatives to R&D efforts and the support to innovation aside from the currently existing patent system; the other would study the contribution of open source models to technology transfer. While these are important topics, we note that only one Development Agenda recommendation (No. 36) addresses non-IP incentivizing models, and it calls on Member States “to exchange experiences on open collaborative projects such as the Human Genome Project as well as on IP models.”
- For the fifth idea, which proposes a discussion and analysis of how technology transfer has not been achieved under the TRIPS Agreement, we believe that WIPO should avoid duplicating the efforts of the WTO TRIPS Council in monitoring compliance with Member State obligations under Article 66.2. *See* comments under para. 11 above. If the focus of the study were changed from “how technology transfer has not been achieved under the TRIPS Agreement” to “how the TRIPS Agreement can be better utilized for promoting technology transfer in developing and least-developed countries,” this might be a useful addition to the research agenda for this project.
- The sixth and last substantive idea in the Egyptian Proposal is how developing countries can address the problem of Brain Drain. One Development Agenda recommendation (No. 39) specifically addresses the issue, and requests WIPO, “within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make [sic] recommendations.” The United States would welcome studies by WIPO in collaboration with other relevant international organizations that would shed light on the causes of brain drain (including the possibility that an ineffective IPR system may have causal effects), but

we note that this topic might benefit from a separate project document commensurate with the importance of the subject.

14. The current title of the project – “Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions” – appears to capture both the letter and spirit of the Development Agenda recommendations on which the project is based. Those recommendations focus on the “IP-related” aspects of technology transfer (Rec. Nos. 25 and 26). Renaming the project “Access to Knowledge and Technology” (Egyptian Proposal, para. 12) would not, in our view, adequately reflect these recommendations because it makes no reference to intellectual property as it relates to technology transfer.

15. The United States believes that in-depth study, fact-gathering and evaluation should precede the formulation of any policy recommendations. The Egyptian Proposal’s recommendation that the Secretariat prepare a working document on IP-related policies and initiatives that are necessary to promote technology transfer (Egyptian Proposal, para. 14) is a sound suggestion, but any document should be based on the research studies proposed in Section 2.1.2 of the project and the views of other stakeholders that will be compiled through the web-based WIPO forums (Sec. 2.1.3). The current proposal (Section 3.2.6) already appears to contemplate such a procedure, although additional clarification from the Secretariat would be desirable.

16. The United States would like to associate itself with the comments submitted by the United Kingdom regarding CDIP/4/7 and the Egyptian Proposal.

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