

Committee on Development and Intellectual Property (CDIP)

Seventh Session
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PROJECT ON PATENTS AND THE PUBLIC DOMAIN

Document prepared by the Secretariat

1. At the fifth session of the Committee on Development and Intellectual Property (CDIP), held from April 26 to 30, 2010, in relation to the Project on Intellectual Property and the Public Domain (document CDIP/4/3 Rev.), it was decided that the Secretariat would prepare a project proposal which would, *inter alia*, address the following three elements concerning patents and the public domain: (1) the important role of a rich and accessible public domain; (2) the impact of certain enterprise practices in the field of patents on the public domain; and (3) possible norm-setting activities at WIPO on the public domain. The Secretariat therefore submitted a project proposal at the sixth session of the CDIP held from November 22 to 26, 2010 (document CDIP/6/5). The Committee discussed that document and requested the Secretariat to submit a revised project document for its seventh session.

2. The Annex to this document contains the said revised project proposal, as requested.

3. *The CDIP is invited to consider and approve the Annex to this document.*

[Annex follows]

DEVELOPMENT AGENDA RECOMMENDATIONS 16 AND 20

PROJECT DOCUMENT

1. SUMMARY	
<u>Project Code</u>	DA_16_20_02
<u>Title</u>	Patents and the Public Domain
<u>Development Agenda Recommendations</u>	<p><i>Recommendation 16:</i> Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.</p> <p><i>Recommendation 20:</i> To promote norm-setting activities related to IP that support a robust public domain in WIPO's Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying subject matters that have fallen into the public domain within their respective jurisdictions.</p>
<u>Brief Description of Project</u>	<p>This project examines and explores the following elements relating to patents and the public domain: (1) the important role of a rich and accessible public domain; and (2) the impact of certain enterprise practices in the field of patents on the public domain. It will supplement the findings of the Study on Patents and the Public Domain which has been undertaken under Project DA_16_20_01, and will take a next step towards further implementation of Recommendations 16 and 20.</p>
<u>Implementing Program</u>	Program 1
<u>Links to other related Program(s)/ DA Project(s)</u>	<p>Programs 8, 9,10 and 16</p> <p>Project on Intellectual Property and the Public Domain (DA_16_20_01)</p>
<u>Links to Expected Results in the Program and Budget</u>	<p>Greater awareness of the legal principles and practices, of the patent system, including the flexibilities existing in the system, and enhanced understanding and further clarification of current and emerging issues that arise in relation to patent-related matters (Program 1).</p>
<u>Project Duration:</u>	15 months
<u>Project Budget</u>	Non-personnel costs: 50,000 Swiss francs

2. PROJECT DESCRIPTION

2.1. Introduction

With a view to addressing the challenges raised under Recommendations 16 and 20, as decided at the fourth session of the CDIP, a Study on Patents and the Public Domain that focuses on patents and the role of patent information in the identification, access and use of public domain materials has been undertaken under Project DA_16_20_01 (document CDIP/4/3 Rev.). That study examines the patent system and its relationship to a rich and accessible public domain at the macro level: for example, how does the patent system, in general and as a whole, interplay with the preservation of the public domain?

The present companion project proposes to study the effect of the patent system in the context of the public domain at the micro level, i.e., how do individual actors of the patent system actually behave in making choices over using, or not using, exclusive patent rights, and how those behaviors affect the public domain.

In the recent past, sophisticated patent portfolios and patent strategies have been developed by enterprises to support their business strategies and goals. For instance, so-called non-practicing entities obtain patents on technology they develop (e.g., academic research institutions) but commercialize their inventions through others, or purchase patents from others who have developed the inventions. Their business model is to solicit royalty payments through licenses from companies that make or use products or services incorporating technologies covered by the patents in question. In other cases, some enterprises donate patents for royalty-free use by anyone, and place them in a searchable on-line database. Further examples of enterprise practices that might affect the public domain include the practice of patenting incremental improvements over an earlier more basic invention. With a view to addressing the issues raised under Recommendations 16 and 20, understanding how certain uses of patents by enterprises affect the preservation of the public domain should be useful for deepening the analysis on the complex relationship between the patent system and the public domain.

2.2. Objectives

The overall project objective is established by Recommendations 16 and 20 of the WIPO Development Agenda. Building upon the findings of the Study on Patents and the Public Domain being undertaken under Project DA_16_20_01, this project will further the analysis of the relationship between the patent system and the public domain. In particular, the project will enhance understanding of the impact of certain enterprise practices in the field of patents on the public domain and the important role of a rich and accessible public domain. In addition, the project explores the possibility of considering the issues relating to patents and the public domain within norm-setting activities that support a robust public domain.

2.3. Delivery Strategy

In order to achieve the objectives indicated above, the project would consist of a micro level study on patents and the public domain, which will analyze, in particular, the impact of certain enterprise practices in the field of patents on the public domain and the important role of a rich and accessible public domain. Topics proposed to be studied include the following:

- (i) Non-practicing entities;
- (ii) Patenting incremental improvements;
- (iii) Patent donations;
- (iv) Defensive protection through the publication of patent applications;
- (v) Placing patents into the public domain; and
- (vi) And combinations thereof.

The study will include case studies and empirical analysis which may be based on, for example, literature surveys. Such analysis should take into account the specific legal, social and business environment in which business activities are conducted by enterprises, including legal mechanisms that exist under current law (e.g., antitrust law, rules of civil procedure) to curb questionable practices. In analyzing such practices, the study should also address relevant national policy frameworks in which the business in question is conducted. The study will be conducted in a balanced, neutral manner that reflects a broad spectrum of views.

It is proposed that the micro level study be undertaken once the Study on Patent and the Public Domain under Project DA_16_20_01 is finalized (first quarter of 2011), in order to avoid duplication or gaps with respect to the contents of two studies.

The findings and conclusions of the study will be reported to a future session of CDIP.

Comments from the Member States, civil society and NGOs on the completed study will be solicited and appended to the study in original languages.

3. REVIEW AND EVALUATION

3.1. Project Review Schedule

A mid-term review will be undertaken after nine months by reviewing the progress of the study within the established timeframe and in compliance with the terms of reference (TORs). It will form the basis for reporting on progress to the CDIP.

A final self-evaluation report will describe the key project outputs and offer a final assessment of the project's achievements.

3.2. Project Self-Evaluation

In addition to the project self-evaluation, an independent evaluation may also be undertaken for the project.

<u>Project Outputs</u>	<u>Indicators of Successful Completion</u> (Output Indicators)
Micro level study on patents and the public domain	Completion of the study within the established timeframe and in compliance with the terms of reference (TORs) for presentation to the CDIP; and Feedback from Member States on the study when presented to the CDIP.

<u>Project Objective(s)</u>	<u>Indicator(s) of Success in Achieving Project Objective</u> (Outcome Indicators)
Enhanced understanding of the impact of certain enterprise practices in the field of patents on the public domain and the important role of a rich and accessible public domain	Feedback by Member States on the extent to which the outputs have met their concerns.

4. IMPLEMENTATION TIMELINE

ACTIVITY	QUARTERS					
	2012				2013	
	1 st	2 nd	3 rd	4 th	1 st	2 nd
Study on Additional Elements Relating to Patents and the Public Domain	X	X	X	X	X	
REVIEW SCHEDULE						X

5. BUDGET (non-personnel resources)

Table 1 – Project Budget by Cost Category and Year

<u>Cost Category</u>	<u>Budget (Swiss Francs)</u>		
	<i>2012</i>	<i>2013</i>	<i>Total</i>
<i>Travel and Fellowships</i>			
Staff Missions			
Third-party Travel			
Fellowships			
<i>Contractual Services</i>			
Conferences			
Experts' Honoraria			
Publishing			
Others (SSAs)	40,000	10,000	50,000
<i>Equipment and Supplies</i>			
Equipment			
Supplies and Materials			
TOTAL	40,000	10,000	50,000

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