

发展与知识产权委员会 (CDIP)

第十二届会议

2013年11月18日至21日，日内瓦

专利与公有领域研究报告(第二部分)增编

秘书处编拟

1. “专利与公有领域项目”的项目文件(文件 CDIP/7/5 Rev.)要求, 将请成员国、民间社会和非政府组织对在本项目范围内进行、提交给 CDIP 第十二届会议的“专利与公有领域研究报告(第二部分)”发表评论意见, 并将把这些意见原文照录, 附在研究报告之后。
2. 根据上述要求, 本文件的附件中载有上述评论意见, 现作为“专利与公有领域研究报告(第二部分)增编”提供。

3. 请委员会注意本文件附件中所载的信息。

[后接附件]

附 件

成员国、民间社会和非政府组织 对“专利与公有领域研究报告(第二部分)”发表的评论意见

美利坚合众国

The Study on Patents and the Public Domain (II) clearly demonstrates that for over 100 years, the patent system has been a rich source of publicly available information. It has contributed tremendously to the creation of a rich and accessible public domain. The United States acknowledge the study's conclusion that the overall relationship between patents, innovation and a rich and freely accessible public domain is complex and nuanced. The study is useful in understanding the public domain and how various actors and factors affect the public domain.

第三世界网络

The theoretical premise of the study is that a rich and accessible public domain is a result of invention disclosures in patent documents. In other words, an increase in patenting will automatically result in an expansion of the public domain. The concept of the public domain includes works where IPRs are not applicable or enforced. The study does not take this into account and simply assumes that knowledge embodied in a patent disclosure contributes to the public domain. The concept of the “global patent arbitrage” referred to in Part I of the study is based on the premise that developing countries can effectively capitalize and use an invention which is in the public domain in its jurisdiction, and also develop improvements to the invention which can also be exported abroad. However, very few developing countries have the means or the necessary technological base or capacity to either successfully exploit the invention or to make those improvements. The lack of patents from developing countries in the developed world reaffirms this. Moreover, firms in developed countries strategically apply for patents in selected developing countries where innovative capacity exists. Thus, firms in developing countries with some innovative capability will be prevented from making use of the knowledge. In view of the above, the study should be revised and improved to particularly address the barriers to fostering a rich and accessible public domain that arise from the IP system. The study fails to address this element and draws a positive correlation between IP and the public domain, though the study admits in parts the existence of negative implications of certain enterprise practices. The revised study should address the following issues: (i) how the public domain could be explored in resource poor settings. Patent information in itself is not sufficient in this regard; and (ii) how patent flexibilities can be fully utilized to foster a rich and accessible public domain.

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