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## STANDING COMMITTEE ON THE LAW OF PATENTS

Twelfth Session  
Geneva, June 23 to 27, 2008

### REPORT

*adopted by the Standing Committee*

#### INTRODUCTION

1. The Standing Committee on the Law of Patents (“the Committee” or “the SCP”) held its twelfth session in Geneva from June 23 to 26, 2008.
2. The following States members of WIPO and/or the Paris Union were represented at the meeting: Albania, Algeria, Argentina, Australia, Austria, Barbados, Belgium, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d’Ivoire, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Greece, Guatemala, Guinea-Bissau, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Italy, Jamaica, Japan, Kuwait, Latvia, Lesotho, Lithuania, Luxembourg, Malaysia, Mexico, Moldova, Morocco, New Zealand, Nigeria, Norway, Oman, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Serbia, Sierra Leone, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Ukraine, United Kingdom, United States of America, Uruguay and Uzbekistan (86).
3. Representatives of the African Union (AU), the Eurasian Patent Office (EAPO), the European Commission (EC), the European Patent Office (EPO), Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC), South Centre (SC) and the World Trade Organization (WTO) took part in the meeting in an observer capacity (7).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: Asian Patent Attorneys Association (APAA), Centre for International Industrial Property Studies (CEIPI), Chartered Institute of Patent Attorneys (CIPA), Fridtjof Nansen Institute (FNI), German Association for Industrial Property and Copyright Law (GRUR), Institute of Professional Representatives before the European Patent Office (EPI), Intellectual Property Owners Association (IPO), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association for the Protection of Industrial Property (AIPPI), International Bar Association (IBA), International Centre for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Federation of Pharmaceutical Manufacturers Association (IFPMA), Japan Patent Attorneys Association (JPAA), Knowledge Ecology International, Inc. (KEI) and Third World Network (TWN) (17).
5. The list of participants is contained in the Annex to this report.
6. The following documents prepared by the International Bureau had been submitted to the SCP prior to the session: “Draft Agenda” (SCP/12/1 Prov.), “Accreditation of Observers” (SCP/12/2) and “Report on the International Patent System” (SCP/12/3 (in French) and SCP/12/3 Rev. (in English and Spanish)).
7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions reflecting all the observations made.

## GENERAL DISCUSSION

### Agenda Item 1: Opening of the Session

8. The twelfth session of the SCP was opened, on behalf of the Director General, by Mr. Francis Gurry, Deputy Director General, who welcomed the participants. Mr. Philippe Baechtold (WIPO) acted as Secretary.

### Agenda Item 2: Election of a Chair and Two Vice-Chairs

9. The Standing Committee unanimously elected Mr. Maximiliano Santa Cruz (Chile) as Chair and Mrs. Bucura Ionescu (Romania) and Mr. Yin Xintian (China) as Vice-Chairs.

### Agenda Item 3: Adoption of the Agenda

10. The draft agenda was adopted as proposed in document SCP/12/1 Prov.

### Agenda Item 4: Accreditation of Observers

11. The SCP approved the accreditation of the Institute for Trade Standards and Sustainable Development, Inc. (ITSSD) as *ad hoc* observer (document SCP/12/2).

Agenda Item 5: Adoption of the Draft Report of the Eleventh Session

12. The Committee adopted the draft report of its eleventh session (document SCP/11/6 Prov.2) as proposed.

Agenda Item 6: Report on the International Patent System

13. The discussions were based on documents SCP/12/3 (in French) and SCP/12/3 Rev. (in English and Spanish).

14. The Chair noted that document SCP/12/3 should become the basis of the future work program of the SCP, and suggested that, in terms of the procedure to review the document, delegations start with general statements and comments on the document, followed by suggestions and comments on specific parts of the document, for example, section by section or paragraph by paragraph. The Chair said that such interventions might lead the Committee to identify specific issues of common interest. The Chair invited the delegations to express their views regarding his proposal on the procedural issues.

15. The Delegation of Brazil stated that it was important to realize that the SCP's recent past had been characterized by a couple of years of absence of consensus with respect to substantive patent law harmonization based on a reduced list of items. Recalling that the table of contents of document SCP/12/3 reflected a consensus of the SCP, the Delegation considered that the document constituted a new starting point of the Committee, although there was no consensus on the contents of the document for each of the issues. The Delegation supported a gradual approach to deal with the document, which contained a number of extremely complex issues and noted that it was not in a position, at this meeting, to produce detailed comments on all of those issues. As one of the guidelines for delegations to feel more at ease with commenting certain parts of the document, the Delegation suggested that the Committee should not attempt, during the course of this session, to achieve any agreement on contents or any conclusions on the contents of the document, but that the Committee should have a substance-driven discussion on the basis of the document with the view towards progressive development of a new consensus on a work program for the SCP. In this course of action, the Delegation favored an open and inclusive approach, which did not attempt upfront to produce specific negotiating commitments with respect to any kind of treaties. The Delegation preferred a process by which the discussion on substance drove forward the work of the Committee. The Delegation also considered that the case had to be made in substantive terms through open-ended discussion as to whether and why the Committee needed to move forward on harmonization of intellectual property laws, and in which direction and with respect to which particular features of the system. The Delegation, therefore, did not support this time any effort to pre-select certain issues or to narrow down the focus during the first appreciation of the document and in-between sessions in the capitals involving relevant competent national authorities in the debate. The Delegation was of the view that the issues should be further discussed and analyzed with additional inquiries as a result of questions and doubts that might arise during the course of the debate. Therefore, the Delegation was in favor of maintaining the document on the table, keeping the table of contents structured as it was. The Delegation further suggested that, in order to strengthen the credibility of the exercise, the channels for comments on document SCP/12/3 be opened not only to Member States, but also to academics, non-governmental organizations (NGOs), private enterprises and all stakeholders. If the document could be maintained as a public document to which all different segments of society having a stake in any changes to the

IP system could produce their own opinion and comments and contribute to the debate, the Delegation was of the view that the validity of the efforts being undertaken in the Committee would be enhanced. The Delegation considered it important to keep the document open in an ongoing debate so that the Committee could make more progress and advance with greater clarity as to the advantages, or the risks, that it might encounter. Finally, as regards Annex II of document SCP/12/3, which contained a matrix comparing provisions of different national patent laws with respect to a list of seven issues, the Delegation hoped that Annex II did not point to a new listing of issues to be negotiated at the end of the meeting. The Delegation felt that at least two issues of great importance, namely transfer of technology and anti-competitive practices, as well as certain issues in connection with digital technologies, for example, the treatment of standards as they applied to information technology, were not included in Annex II, and suggested that those additional issues, and possibly other issues in the “Report on the International Patent System” (hereinafter referred to as “the Report”) be integrated into Annex II with the analysis of different national provisions, as a way to expand the study for future consideration of SCP members.

16. The Delegation of Algeria, speaking on behalf of the African Group, highlighted the importance of the SCP to the African Group. The Delegation stated that the African Group had always expressed their wish to see the Committee working on the basis of a balanced agenda which reflected the interests of developing and developed countries in an equal manner. The Delegation noted that document SCP/12/3 needed to be examined in a substantial and thorough manner so that the Committee could first identify the issues with respect to which there were possibilities of convergence and also where the Secretariat and the Member States might need to do more work and prepare more studies. In its view, such a process would help the Member States’ decision-making process. The Delegation considered that, during this session, the Committee should have general discussions on the document as a whole, since the issues contained in the document were interlinked, making it very difficult to discuss each issue without touching the others. Although the nature of the recommendation had to be decided, the Delegation was of the view that the Committee had to make recommendations to the General Assembly on how the SCP would continue its work.

17. The Delegation of the United States of America, speaking on behalf of Group B, welcomed document SCP/12/3. The Delegation said that the comprehensive and detailed Report demonstrated the numerous complex technical and legal issues that were involved in the law of patents in the critical role that the patent system played in stimulating innovation, investment, technology transfer, reduction of transaction costs and information dissemination. In its view, the Report provoked a further analysis of the needs and interests of Member States in the area of patent law. As demonstrated in Annex II to the Report, the Delegation observed that patent law varied widely around the world. Group B believed that the Committee had an excellent opportunity to advance mutual understanding of national experiences in this important field. In this regard, Group B was looking forward to working together to identify technical issues arising from different legal frameworks. Group B hoped that this would provide a better basis for assessing the advantage of moving forward towards a global patent system. The Delegation stated that identifying the future work of the SCP was a priority of Group B Member States, and that it intended to provide some ideas during the course of the session on possible topics for future discussions. Group B hoped that a detailed and sensible work program for the SCP could be proposed during this session and intended to support that effort. Group B was pleased that a concrete work program had been agreed on the Development Agenda at the WIPO General Assembly in 2007: the General Assembly established a new Committee on Development and Intellectual Property (CDIP) to oversee the implementation of the 45 agreed proposals for the WIPO Development Agenda. The

Delegation stated that the flexibility and spirit of cooperation demonstrated by all members in achieving that result applied well to the SCP. Group B hoped that the same spirit would continue this week as it sought to achieve consensus on a concrete work program for the SCP, focusing on the technical, legal and practical aspects of patent law, particularly those areas that could lead to greater economic benefits. The Delegation stated that patent law harmonization was of importance to Group B members because of the expected benefits. Noting that most patent offices around the world faced increasing patent application filings and growing backlogs, and were finding that hiring additional patent examiners alone would not address the problem, the Delegation was of the view that harmonized patent laws would greatly facilitate the sharing of search and examination results among patent offices and help reduce workload and hence improve productivity for third parties. The Delegation expressed Group B's willingness to share its ideas regarding a practical work program for the SCP and to constructively engage in the discussions.

18. The Delegation of India appreciated the comprehensive, informative and exhaustive document which facilitated clarity of ideas on the issues and would enable the Committee to have discussions on the relevant topics. Endorsing the views expressed by the Delegation of Brazil as far as the discussion on document SCP/12/3 was concerned, while it appreciated and acknowledged the quest of the developed world to harmonize the patent regime, the Delegation urged consideration of the harmonization of the expeditions of the developing world on their concerns. The Delegation welcomed the opportunity to discuss and analyze the issues and to appreciate and to understand each of those concerns, and if possible, to explore possibilities of a road map for further discussion to arrive at some win-win situation. The Delegation called for holding discussions with an open mind in order to mutually understand concerns and expectations. The Delegation found the document informative, although it did not necessarily agree with all the conclusions it had reached. The Delegation observed that it was a good opportunity to discuss the issues in an open, constructive and cooperative manner.

19. The Delegation of El Salvador expressed its government's satisfaction with the reactivation of the SCP which would be useful not only for the issues to be discussed, but also, in particular, for its national intellectual property Office. The Delegation thanked Ambassador Manalo, who had promoted the reinitiation of this Committee. Although the Delegation believed that the document was substantive and valuable, it wished to include compulsory licensing in the document, which was an important issue for its government.

20. The Delegation of Pakistan commented on the procedural aspect of how the Committee should approach the document and how it should proceed. The Delegation noted that it was a rich document which flagged concerns of many groups, and that many of the key issues were objectively reflected in the Report, whereas others needed more clarification. Although the Delegation would have preferred more time for reflection on the Report, in its view, what was required now was an intense discussion on the document. The Delegation observed that the Report was a good starting point for the discussion in the Committee. The Delegation supported the Chair's initial proposal concerning the procedure for the discussion.

21. The Delegation of China noted that, although it was familiar with all the problems and the progress made during the past SCP meetings, the objective of this particular meeting was not clear to it. The Delegation found document SCP/12/3, in particular, its Annex summing up the national practices of over 100 countries, very valuable. The Delegation said that it had translated the whole document into Chinese and asked the Secretariat whether the publication of the Chinese translation might raise any copyright question. On the question of the procedure of the discussion, the Delegation was of the view that, since certain parts of the

document, for example, Annex II, Chapter III (Technology Disclosure Through the Patent System) and Chapter V (The Current Multilateral Framework) were the objective reflection of the *status quo* of the current situation, there was very little need for discussion relating to those parts. The Delegation wondered whether the SCP should put an emphasis on Chapter VI (Patent Systems and Existing Forms of Cooperation) for discussion and exploration at this session. As regards Chapter IV (Technology Diffusion and the Patent System), the Delegation noted that it involved a number of delicate substantive issues, such as standards and collaborative research projects. As regards Chapter VIII that contained some analysis of the problems existing in the patent system, and Chapter IX, that included some public policy objectives, such as health issues and ethics, the Delegation predicted that there would be a wide range of differences of opinion in those areas in which a number of academic articles had already been published. The Delegation thus sought clarification as to what were the objectives and final goals of the discussion on document SCP/12/3. The Delegation added that the seventh issue in Annex II, i.e., exceptions and limitations, was found only in the Annex, but not in the main text of the document, even if it was a very important issue.

22. The Chair suggested that the most appropriate way to proceed was to invite general comments on the whole document, to identify issues of convergence, and then to decide on how to treat the document. The Chair expressed his understanding that neither the document nor the Annexes were exhaustive, and that they were open for additions and suggestions.

23. The Secretariat noted that one of the objectives of this session would be to find out in which respect the document in its coverage, for example, or in its treatment of any particular issue, might be ameliorated in the future. The Secretariat confirmed the Chair's statement that, while it was for the SCP to decide what exactly it wished to achieve, the original purpose of document SCP/12/3 was to assist the Committee in constructing a work program, that is, to form the basis of discussion upon which the SCP could build and identify a work program for the future. Therefore, the Secretariat considered it useful to identify, in an inclusive manner, the issues of convergence not necessarily as to substance, but as to convergence of interests for the discussion of those issues in the future. The Secretariat further stated that it would also be useful to know what further input, either from Member States in making proposals or providing data, or from the Secretariat, would be helpful with respect to any issue on which there was a convergence of interests for further exploration in the future.

24. The Delegation of Slovenia, speaking on behalf of the European Community and its 27 Member States, welcomed the convening of the SCP. The Delegation considered that it was important to continue the work of the SCP and to establish a clearly defined future work program so that the Committee would deliver results. Since the last informal session of the SCP in April 2006, the Delegation noted important achievements and developments in WIPO and, in particular, on the WIPO Development Agenda. WIPO had adopted the budget, there was an ongoing agreed transition towards a new Director General, and the WIPO General Assembly had established the CDIP in 2007. The Delegation was convinced that the cooperative spirit that had made those achievements possible would continue to guide the work of the SCP and would enable the Committee to resume the discussion on the future harmonization of patent law. Finally, the Delegation expressed the European Community's continued belief that the development of an international patent system which promoted innovation and growth would deliver greater benefits with the commitment of all SCP members. The Delegation looked forward to working in unison to identify the common ground on which consensus could be reached.

25. The Delegation of Ecuador considered that document SCP/12/3 was a very good basic document that enabled the Committee to restart its negotiation. The Delegation was of the view that it was fundamental to include the WIPO Agenda for Development in the document and that the debate should be broad and not necessarily a technical exercise in the light of a possible harmonization of the patent system. It stated that the Committee must consider the needs and the interests of all Member States in the process.

26. The Delegation of Romania, speaking on behalf of the Regional Group of Central European and Baltic States, expressed its confidence to the Chair that he would take the opportunity for opening avenues in a field where much had been explored, but that there was still much to be achieved. Noting that technological development was an important facet of developing countries and its needs be stimulated to as many solutions as possible, the Delegation observed that the international patent system had been conceived so as to contribute to attaining this goal and had proven to be a functional instrument for more than one century already. The Delegation, however, said that one should not believe that a system designed to promote innovation would escape innovation and improvement, especially, where there were so many challenges. The Delegation believed that the duty rested with the members of the Committee, both at the national and the international levels. With regard to the latter, the Delegation considered that the framework of the SCP and the expertise of WIPO's Secretariat were elements to be taken advantage of. In its view, the Report prepared by the Secretariat upon the request of Member States reflected in a clear and comprehensive, though not exhaustive manner, the problems that currently stood to be addressed by the Committee. Regarding the objectives of this session, the Delegation expressed its hope for a productive debate which would help setting the agenda for the next session and move the Committee forward. The Delegation considered that both the interest of harmonization of national patent laws and the concerns expressed in the Development Agenda process could be addressed in this forum in a way to benefit all countries and users of the patent system alike. The Delegation expressed its willingness to work with the other regional groups for selecting topics that could be addressed on the occasion of the next SCP meeting and for identifying the best manner to proceed. As to the work program, the Delegation believed that Member States should be given the opportunity to provide general comments on the Report and that, based on such comments, useful conclusions could be drawn at a later stage.

27. In light of the interventions made by the Delegations of Slovenia on behalf of the European Community and its 27 Member States and the United States of America on behalf of Group B, the Delegation of Brazil wished to clarify the suggestion implied in those interventions concerning cross-negotiation between different processes, or between different Committees, in WIPO. In its view, there has been a reference to the agreement on the Development Agenda concerning 45 recommendations, suggesting that, in exchange for that positive outcome, countries should be constructive and produce an equally positive outcome in the SCP. Other cross-negotiations of this kind had been explored in the past with the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). However, the Delegation believed that, in order to achieve a constructive and consensus-based outcome, discussions had to produce an inner balance that was within the patent discussion itself. If those discussions did not lead to an outcome that in itself was balanced from the perspectives of North and South and, from the perspectives of the private and public sectors, it would be difficult to make the case that this was a positive development for the full membership of WIPO and all its users and stakeholders, as well as for the patent system in general. The Delegation stressed that it was fundamental to be able to strike an inner balance in the work program and in the outcome of the discussions, studies and deliberations.

28. The Delegation of Iran supported the ideas stated by the Delegations of Brazil, India and Pakistan, particularly on the method of work and open discussion on the Report. The Delegation hoped that the discussion would not be limited to the Report, but that the members could bring out more ideas and initiatives during the discussion. The Delegation sought more clarity on the Report.

29. The Delegation of the Russian Federation noted that document SCP/12/3 contained excellent material not only for the work of the Committee, but also to enhance the Committee's qualifications. The Delegation said that the document would help the Committee to organize discussions in a systematic and constructive way, whatever method the Committee might adopt. As the Delegation of Brazil and other delegations, the Delegation was of the view that the Committee should focus on an in-depth, frank and open discussion. The Delegation stressed the importance of discussing issues which would reduce the workload related to legal protection. In its view, if the Committee could resolve this issue, it would help the patent systems both in developed and developing countries. The Delegation expressed its readiness to participate in the discussion of the document whatever method of work would be adopted, and said that it did not object including in the document, any additional issues which might be of interest to individual delegations. The Delegation, however, believed that priority should be given to those issues which would result in less work being expended for providing legal protection and in reducing the time period for providing legal protection.

30. The Delegation of Mexico said that reopening the SCP after two years of suspension was already a great step towards finding new answers to the needs and interests with respect to the international patent system. Welcoming the Report and commending the Secretariat for a comprehensive and useful document, the Delegation saw great challenges with which the current international patent system was faced, and considered that the SCP had a great responsibility to ensure that it would move forward. The Delegation was convinced that, with the leadership of the Chair and the cooperation and participation of all delegations, the Committee would be able to obtain results that would provide the necessary guidance for the future work of the Committee. It hoped that re-opening the discussions marked a new stage in the discussions of the Committee. The Delegation was aware of the divergence of a number of different points of view among Member States, and the impact the development of patent law had on the economic and social sphere of countries. The Delegation suggested that, in order to have an order on the work of the Committee, discussion follow the table of contents of document SCP/12/3, which contained all the issues that needed to be covered by the SCP. The Delegation expressed its commitment and readiness to cooperate with the Chair and all the other delegations to ensure a successful work.

31. The Delegation of Costa Rica expressed its appreciation for document SCP/12/3, which contained a broad document and had many different perspectives linked with patent related issues. As regards the procedure for the discussion, the Delegation fully supported the Chair's proposal. The Delegation added its voice to the other delegations which did not wish to find conclusions at the current meeting, but rather, the Delegation wished that the Committee would come up with a dialogue mechanism on the reinitiated process. Being aware of the fact that the SCP went through a long period during which the discussion was limited on patent issues, the Delegation was of the view that the current phase sought to strengthen the dialogue on new issues with a view to finding common elements.



32. The Delegation of Japan noted that, given that it was the first formal SCP meeting since 2005, there had been various developments regarding patents during the past three years. Therefore, the Delegation considered it meaningful for the SCP to discuss with a fresh mindset on a wide variety of issues relating to patents. The Delegation was pleased to take part in this session in which it hoped there would be fruitful discussions. The Delegation fully associated itself with the position stated by the Delegation of the United States of America on behalf of Group B, and believed that it was important to acknowledge the so-called intellectual creation cycle as an essential tool for attaining self-sustaining economic development and industry competitiveness in any country, developing or developed. The Delegation explained that the intellectual creation cycle was a positive cycle consisting of a stage of innovation followed by a stage of its protection as intellectual property rights, and a stage of gain of protection which could be used as capital for the next stage of innovation. The Delegation was of the view that the patent system was a basic intellectual property infrastructure for protecting innovation, and also a tool for attracting direct investment and technology transfer from foreign countries. Considering the world economy and the growing interdependence of countries, the Delegation observed that patent applicants wished to acquire secure and equivalent patent rights in various countries in a fast, easy and inexpensive way. In its view, the interdependency had caused the rapid growth of patent filings in both developed and developing countries, and resulted in duplicative filings in those countries. In order to address this rapid increase in global filings and increased demands of applicants, the Delegation considered that improving the global IP infrastructure, which included various elements ranging from legal aspects to information technology as described in document SCP/12/3, were urgent tasks. The Delegation hoped that the discussions at the SCP would contribute to achieve a better global intellectual property infrastructure which was beneficial to all Member States as well as the users of the intellectual property system. The Delegation expressed its willingness to be engaged in discussions in a constructive manner with the view to achieve a fruitful conclusion.

33. The Delegation of Peru commended the Secretariat for document SCP/12/3, which was comprehensive and touched all the topics under discussion not only within the SCP but also in other fora. The Delegation, however, wondered how the Committee should proceed to advance its work. Since the document reflected the *status quo* of the discussions, the Delegation could not see how the document might help the SCP to discuss those matters in a way that was different from the way the Committee had tackled them before. While acknowledging the idea of facilitating the handling of the cost and the handling of the applications in the various national offices, the Delegation was interested in striking a balance with other issues, such as health, genetic resources and traditional knowledge, so that those issues could be involved in the work of the Committee which sought to harmonize protection in a more balanced way. The Delegation stressed that the Committee needed to examine the issues and include new options in the light of what had happened after the Committee's work had been interrupted. The Delegation emphasized that the Committee should make progress on the issues listed above with greater openness in order to see whether discussions could take place on the harmonization of patent laws. The Delegation added its voice to those delegations which had spoken about their commitment to support the work of the Secretariat and the work of the Chair so that the delegations could find solutions that would enable the Committee to reflect the interests of all the stakeholders.

34. The Delegation of Tunisia, supporting the Delegation of Algeria speaking on behalf of the African Group and the Delegation of Brazil, was of the view that it was wise to move forward with caution. The Delegation said that, although harmonization of patent laws was a goal which all were aiming to reach, the Committee needed to be very cautious as it moved

towards that goal and that there must be a balance between the interests of all delegations. The Delegation stated that the document gave priority to the four issues linked to inventive step, novelty and prior art to the detriment of flexibility and transfer of technology and similar issues, and that Chapter X of the document (Development Related Concerns) required further work in light of the priorities put forward by developing countries, the genuine concern to achieve economic growth and the most recent developments of the WIPO Development Agenda. The Delegation supported the proposal made by the Delegation of Brazil concerning open consultations with various stakeholders.

35. The Delegation of Chile believed that document SCP/12/3 contained a sufficient number of issues which provided a very good starting point for discussions that should take place in the SCP on the international patent system. The Delegation made references to a number of issues which could be further explored in more depth, possibly in another document. The Delegation was against closing the debate or the way in which those issues should be tackled. Rather than limiting the number of issues, the Delegation wished to open the discussion to extended issues that could be of mutual benefit to all the Member States of WIPO. The Delegation raised three aspects which were important for the understanding of the system and the future development of the system, as well as for the future development of the work program of the SCP, and suggested that the Committee examine all those three issues in-depth in the future. First, supporting the Delegation of Brazil, the Delegation stressed the importance of the issue of anti-competitive practices by stating that the Committee should explore the issue in greater depth not only with regard to the national legislation, but also with regard to the practices or the jurisprudence of the case law of Member States on the implementation of anti-competitive rules involving patents. Since the legislation could be too general in nature and did not provide enough information as to how in practice those rules were applied, the Delegation sought more case-by-case studies on anti-competitive practices. In view of the importance for all the members of the Organization, the Delegation was of the view that it would be useful for the Committee to know in greater detail what differences existed and what the implications were of the various national resolution mechanisms and judicial systems. As regards Chapter VI(c) of document SCP/12/13 (Opposition), the Delegation considered that a more detailed description and clarification as to the benefits of different opposition systems were needed. For example, the experience of some countries could be very useful in order to enable Member States to assess and further explore the benefits of the various opposition systems. The Delegation fully agreed with the description in Chapter III with regard to the benefits of the dissemination of patent information. The Delegation, however, observed that other forms of valuable and important information that stemmed from the patent system, in particular, information contained in contractual licenses, was not fully covered by the Report. In its view, although the information contained in such contractual licenses was not disseminated for strategic business reasons, such information was important to understand the patent system in general and also its implications with regard to competition and the functioning of the market.

36. The Delegation of Egypt stated that document SCP/12/3 was a starting point to enable the SCP to deal with all the issues on the table. Supporting the statement made by the Delegation of Algeria on behalf of the African Group and, endorsing some other statements, especially those from the Delegations of Brazil and Tunisia, the Delegation emphasized the importance of striking the right balance when studying the subjects linked to patent law and stated that all stakeholders must participate in the discussion.

37. The Delegation of Oman noted that, as the Sultanate of Oman had promulgated new industrial property laws in May 2008, information in Annex II of document SCP/12/3 needed to be updated.

38. The Delegation of Switzerland shared the Chair's view that the Committee should structure the discussion according to the main topics of the Report and find issues where there was a convergence of interests in spending more time and work on these issues. Therefore, in its view, there was a need for selecting certain issues, as talking about everything at the same time was talking about nothing. The Delegation further stated that, when selecting the issues, the discussions ongoing in other fora should also be taken into account in order to avoid repeating the same discussions in all fora at the same time.

39. The Secretariat announced that the English and Spanish versions of document SCP/12/3 had been reprinted as Rev. versions, which contained no change in substance, but mistakes regarding paragraph numbers were corrected. Referring to the intervention made by the Delegation of Oman concerning Annex II of document SCP/12/3, the Secretariat requested the delegations to send to the Secretariat any updated information on their respective national laws so that it could update the Annex in the future.

40. The Delegation of Moldova, supporting the Delegation of Slovenia speaking on behalf of the European Community and its 27 Member States, emphasized that a clear work program for the future needed to be established on the basis of document SCP/12/3. As the Committee would not have enough time to discuss the entire document in detail, the Delegation suggested that the Committee focus on chapters containing contentious issues which were necessary to be looked at for the establishment of the future work program, taking into account the needs of applicants, inventors and patent holders. The Delegation was of the view that those stakeholders were expecting reliable patents to be granted as soon as possible and with fees as low as possible. The Delegation further stated that a clear and effective system for the protection and transfer of rights was necessary, and that harmonization of legislations would be supported by wide sectors of society only if those conditions were met. The Delegation expressed its concern about adding more elements to the document in view of the limited time available in this session to develop a clear work program for the future.

41. The Delegation of Slovenia, speaking on behalf of the European Community and its 27 Member States, noted that the Report tackled many broad issues influencing the existing patent system in a comprehensive fashion. The Delegation, however, was convinced that concrete conclusions, including substantive proposals for future direction, needed to be formulated. The Delegation considered that the international patent system could be improved in some key aspects that should be part of the work of the SCP. The Delegation, therefore, called the attention of all SCP members to the importance of defining the future work of the SCP. The European Community believed that the future work of the SCP should focus on those aspects of harmonization which would lead to greater economic benefits. The Delegation stated that, in particular, problems raised in Chapter V(g) and VI of the Report, which were currently not addressed by any WIPO body, should be addressed in the future work program of the SCP.

42. The Delegation of Uruguay noted that the Report provided a list of pending issues for the future work of the Committee, which went far beyond the work already accomplished by the Committee. The Delegation observed that, currently, the international patent system encountered many challenges, and that was why the SCP had faced many difficulties which had prevented it from achieving an agreement on harmonization. The Delegation considered

that the Committee should look at how the problems were presented in the document, as it might direct the Committee towards the right path to follow in the future. The Delegation was of the view that the SCP was the most appropriate forum for in-depth consideration of problems inherent to the international patent system. The Delegation considered that, while many differences among various countries had to be taken into account, the development and public policy dimensions had to be emphasized also. The Delegation suggested that the Committee make a link between protection of intellectual property and rules for competition, focus on the in-depth study of those problems and look at the economic aspect of the international patent system. In its view, the SCP was the appropriate forum to commission more empirical studies. Without such studies, the Committee might encounter further problems, namely, the development and public policy aspects of the international patent system would be ignored and might come up in other fora which would not be competent to deal with those issues. The Delegation fully endorsed the statements made by other delegations, which suggested that the work of the Committee should be as comprehensive as possible. The Delegation reiterated that the SCP should consider all of the problems inherent to the international patent system and the various situations to which it applied.

43. The Delegation of the United States of America supported the statement of Group B. The Delegation noted that the Report highlighted numerous legal and technical issues that warranted further study. The Delegation believed that substantive patent law harmonization played an important role, and that there was a growing necessity to help both applicants and patent offices. According to the Delegation, the lack of substantive harmonization was a serious problem especially for small and medium-sized enterprises (SMEs), which faced widely varying laws around the world that raised complexity of obtaining patents in multiple countries. The Delegation believed that patent law harmonization would provide a system that was fairer, simpler, and more effective and efficient in providing protection. The Delegation expressed its hope that, eventually, progress could be made on substantive patent law harmonization out of necessity, if nothing else, for more work sharing among IP offices, and believed that that subject should remain on the agenda of the SCP. The Delegation was of the view that in the near term, the SCP might consider examining how Member States could benefit from an increased understanding to use search and examination reports from other offices. As stated by the Delegation of the Russian Federation, the Delegation wished to tackle issues that would reduce workload and burdens on offices. The Delegation therefore suggested that the International Bureau look at options for making search and examination reports available to offices and that the issue of client-attorney privilege be studied. In its view, both topics could bring benefits to all Member States.

44. The Representative of AIPPI expressed hope that the SCP would make progress in the difficult exercise of harmonization, which it had favored from the beginning. However, the Representative considered that harmonization should not be an end in itself, and that it should serve the general interest, i.e., the interest of patent holders as well as of the public. The Representative also stated that it should avoid repetitive tasks within various offices and avoid long waiting periods to obtain a right, since waiting four or five years before knowing whether a patent would be granted or not was advantageous neither to applicants nor to the public. In its view, harmonization would also result in reduced costs, which would make the system more affordable to universities and SMEs. The AIPPI favored a balance to be reached because of its membership that included representatives of industrialized and developing countries. The Representative explained that, currently, AIPPI was focusing on certain subjects mentioned earlier by some delegations, especially, the impact on public health of the patent system which was one of the main items of the Boston agenda. The Representative

stated that the AIPPI would do all it could to assist the discussions and the achievement of international harmonization within a reasonable period of time.

45. The Representative of GRUR noted that document SCP/12/3 provided a comprehensive picture of the history of patent protection, the relevant policy considerations for its development and the actual state in the discussions on its advantages, problems and weaknesses from all possible points of view and from the perspective of all Member States and various stakeholders, be they positive or negative. As regards the methodology of the discussion, the Representative supported the view expressed by the Delegation of Brazil, which stressed that the discussion should be comprehensive, taking into account the interests of all Member States, as well as the involvement of private stakeholders and civil society at large. The Representative also supported the statement made by the Delegation of China that the work program of the Committee should not be established as if the Committee was an academic institution, having no direct influence on the political decisions of countries. In its view, discussions in the SCP made sense only if they were placed in the context of a true political deliberation with the view to find resolutions to the problems with which the system was confronted at present. With respect to the contents of the document, the Representative noted that the Committee should have an interest in avoiding duplication of work. Taking into account the actual discussions at the World Trade Organization (WTO), the World Health Organization, the Convention on Biological Diversity (CBD) and the IGC, as well as in the Patent Cooperation Treaty (PCT) organs, the Representative firmly believed that the items contained in Chapter VI, with the exception of search and examination and quality management, should be discussed and should be prioritized on the agenda of the SCP. As regards quality management, the Representative considered that the PCT Working Group had turned out to be a helpful forum for quality issues. The Representative further suggested that the questions referring to transfer of technology and the licensing of patents and, from Chapter IX, the problems of ethical consideration connected with the development in the field of biotechnology, be put on the agenda. The Representative firmly believed that what had been possible for the Standing Committee on the Law of Trademarks (SCT) and the Standing Committee on Copyright and Related Rights (SCCR), namely to establish a working agenda, should also be possible for the SCP.

46. The Representative of the Third World Network noted that more than ten years had passed since the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) had come into being, harmonizing minimum IP standards for all WTO members. According to the Representative, the TRIPS Agreement removed much policy space that countries had enjoyed, particularly the space that had been available to the now industrialized developed countries when they were in the process of industrializing, for example, allowing the exemptions of patents in some sensitive sectors such as pharmaceuticals, chemical products, etc. Instead, the Representative found that the TRIPS Agreement imposed a range of obligations to many developing countries which were not in a position to know them. In its view, following the obligations to implement the TRIPS Agreement, many developing countries found themselves having to deal with problems such as: high prices and limited access to medicines; farmers having difficulties accessing seeds and other input for agriculture due to patents; manufacturers having to pay very high royalties to access technology due to patents; limited prospects of developing a production base through reverse engineering; the problem of misappropriation of genetic resources and associated traditional knowledge, etc. The Representative stated that, among civil societies, there was a broad feeling that the minimum standards under the TRIPS Agreement were already too high for most developing countries. A World Bank paper estimated that the TRIPS Agreement would result in a loss of approximately 60 billion dollars a year for

developing countries due to patent rents from developing countries to developed countries, since, as it could also be seen from the data in the Report, a large majority of the patent holders were from developed countries. The Representative was of the view that lessons should be learned from those experiences of harmonization. The Representative recalled that during the discussions held at the WIPO Open Forum in 2006, many speakers had spoken out against proposals for a treaty that would harmonize national patent policies based on developed countries norms, as they would have adverse effects on developing countries that were at a lower level of economic development. Noting the adoption of the WIPO Development Agenda at the 2007 General Assembly and its intention to mainstream development in all WIPO activities, the Representative called on the SCP to take a holistic approach that placed the development perspective and the development need and public interest at the full front of discussion.

47. On the Report, the Representative considered that, while it discussed many features of the patent system, it could do more to capture the intense debate of the functions and effects of the patent system, including the criticisms on the adoption of higher patent standards. Noting that there were presently many challenges to the current patent system posed by many public interest groups in developing and developed countries, and by policy makers in developing countries, the Representative was of the view that the Report did not treat the reasons for those challenges in an adequate manner. The Representative, however, acknowledged that the Report did show that the issues were many, complex and interlinked, and there were diverse and contrasting interests among stakeholders and countries. The Representative, therefore, found it useful to have an in-depth discussion on the Report by inviting comments from all WIPO members and civil society groups.

48. The Representative of KEI said that document SCP/12/3 was very useful when considering the work program for the SCP, and stated that such work should involve three levels of engagement: first, gathering information and evidence on national practices, including better data on the relationship between patent policies, practices and outcomes; second, analysis of challenges facing the global patent system, including economic analysis; and third, norm-setting. In its view, the focus should be on areas of pressing concern and emerging issues, and should include consideration of the newest ideas for innovation in the patent system. The Representative listed the following issues among the pressing concerns and emerging issues: (a) medical innovation and access (I+A), including implementation of the Doha Declaration on TRIPS and Public Health and the new World Health Organization (WHO) Global Strategy on Public Health and Innovation; (b) addressing the problems of low patent quality, leading to costly litigation and anti-competitive practices and dragging on innovation; (c) challenges of managing patents on standards; and (d) the relationship between the patent system and climate change. With regard to the issue of standards, the Representative proposed that the following issues be considered: (a) whether the current system of providing constructive notice regarding patent status to standards-making bodies was working well in a global economy; (b) whether or not WIPO can play a potential role by providing global disclosures of proposed standards; and (c) whether future norm-setting activities might include an instrument on patents and standards that would address both the issue of disclosure and remedies to non-disclosure, not only for members of standards-making organizations, but extending to third parties as well. As regards the issue of innovation and access to medical technologies, the Representative suggested WIPO to start gathering information on: (a) the implementation of paragraph 7 of the Doha Declaration on TRIPS and Public Health with respect to patents in least developed countries; (b) the use of compulsory licensing in both developed and developing economies; (c) the extent to which countries use exhaustion of rights to allow parallel trade in medicines; (d) the methods of implementing

Paragraph 6 of the Doha Declaration; and (e) the use of Article 44 of the TRIPS Agreement to allow uses of patents on medical technologies.

49. The Representative of the EPO was of the view that document SCP/12/3 was an excellent outcome of a stock-taking exercise, making the Committee fully aware of the main elements and the complex issues within the framework of the international patent system. The Representative associated itself with the statement made by the Delegations of Slovenia on behalf of the European Community and its 27 Member States, and the United States of America on behalf of Group B, and reiterated its commitment to the harmonization exercise within the framework of the SCP.

50. The Representative of the EAPO noted that document SCP/12/3 was a good basis for making progress in the discussion of the subjects before the Committee. As regards the procedure and the methodology to be followed, the Representative stated that the Committee should first decide whether it was to harmonize the standards and norms of patent law or whether it was to create a comprehensive treaty that would tackle problems concerning innovative activities, systems of protection and economic and socio-political factors. If the Committee were prepared to harmonize patent laws, in its view, only then could the Committee use document SCP/12/3 in the following manner: first, the SCP would define those provisions which did not generate disagreement and concentrate its attention on the harmonization of those norms; at the same time, the Committee should also identify a set of problems where it had failed to reach consensus and establish the reasons of such failure; moreover, in the course of discussion, the Committee should examine what other issues could impact the development of the patent system, whether at the national or international level. The Representative considered it important to discuss issues relating to questions of harmonizing the rights and limitations of such rights, and suggested that separate agreements concerning those provisions could be adopted so that the Committee would make progress by stages or in individual phases with a view to resolve the whole set of issues. Then, in its view, the Committee would only need to find a form of adopting those agreements.

51. The Representative of the IPO welcomed the resumption of the discussions at the SCP. The Representative, supporting the statements made by the Delegations Japan, Slovenia on behalf of the European Community and its 27 Member States and the United States of America on behalf of Group B, was in support of an improved IP infrastructure to facilitate the acquisition of quality patents from multiple jurisdictions of equivalent scope at a reasonable cost. The Representative believed that such an improved system would benefit both the innovators and the general public through the provision of new innovation. The Representative strongly supported efforts to harmonize patent laws in order to address those concerns through the selection or adoption of the best practices among the various countries. He stated that consideration of those issues as described in Chapter VI of the Report were most important, and that the background document would lead the Committee in its effort to harmonize patent laws.

52. The Delegation of Pakistan observed that there were various ways to look at the global patent debate: one way was to look at the efficiency of patent offices in terms of harmonization; another way was the relationship between policy space and development; and the third way was to look at the impact that the current patent system had on health and innovative capacity. For instance, with respect to health issues, the Delegation wondered whether WIPO was supposed to just create patent landscapes or pilot landscapes, or should it be in the realm of the debate. The Delegation was of the view that WIPO should be taking the lead on such issues, and if those issues were not addressed in totality within the Organization,

then discussions on those issues might be taken up in other organizations, NGOs, civil societies or academic institutions. Therefore, the Delegation stated that the Committee needed to address all the issues in totality, from a developing country's point of view, with the aim of finding solutions to them. The Delegation stressed the importance of debating all the issues rigorously, in particular, impacts on policy space and innovation as well as the costs and benefits for developing countries. The Delegation, therefore, reiterated its wish to discuss all the issues, probably chapter by chapter in the Report, so that the Committee would have a comprehensive picture of what issues were at stake.

53. The Delegation of Serbia said that document SCP/12/3 might have caused certain concerns to the majority, realizing the complexity of the matters that were dealt with when seen for the first time. Referring to the statement made by the Representative of the EAPO, the Delegation also wondered whether the aim of the SCP was to prepare a treaty that would help the harmonization of substantive patent laws, or should the Committee deal with patents on a global way in all their complexity. Depending on the decision on those two questions, the Delegation considered that the manner of the work of the Committee would have to be different. If the SCP were to prepare a substantive patent law treaty, then the Delegation believed that it should concentrate on the substantive matters that were needed to grant the patent. If the Committee were dealing with the global patent system and patents in its complexity, in its view, it would take more time than it was envisioned, and the Committee might enter into a field of other international organizations in which the SCP did not have a mandate. The Delegation did not assume that the Committee was prepared to go beyond the level of harmonization established by the TRIPS Agreement. If the Committee were to discuss the document paragraph by paragraph, the Delegation considered that the session would have to last longer and eventually, no process could be made due to too many approaches on too many different issues. Therefore, the Delegation asked the Committee to consider and decide its exact mandate.

54. The Delegation of Congo supported the views expressed by the Delegation of Algeria on behalf of the African Group. The Delegation stated that the understanding on the direction of the future patent system would help the Committee to set up a certain balance which would facilitate harmonization, and that the SCP would then take all the necessary steps in order to listen to the actors other than the patent holders. The Delegation considered that the Committee should identify issues where there was a convergence of views on the one hand, and on the other hand, it should also deal with those points where there was still no convergence.

55. Noting that some had made proposals as regards the procedures to be followed, and others have commented on the document, the Chair invited the delegations to make additional or specific remarks on the document.

56. The Delegation of Nigeria supported the views stated by the Delegation of Algeria on behalf of the African Group. As regards document SCP/12/3, the Delegation found that, although it was excellent, there were many issues that were quite appealing but also complex, and in its view, the document gave too much emphasis to the international harmonization of patent laws. The Delegation stated that harmonization was against the interest of developing countries, because of the lack of capacity and awareness in developing countries. The Delegation considered that harmonization at this stage would remove the possibility to acquire knowledge and capacity, except where such harmonization took into account all basic issues lacking especially in the developing world. The Delegation stressed that matters that concerned the developing world were development policy, exclusions from patentability,



exceptions to patent rights, anti-competitive practices, transfer of technology and alternative models to innovation. The Delegation believed that the Committee should have inputs from all relevant interested parties on the document, to enable the Secretariat to revise the text so that the document would be balanced and more ideas would be reflected.

57. The Delegation of Brazil pointed out that, as regards Chapter VI, issues concerning genetic resources and CBD were covered by the patent legislation in its country, i.e., they were issues within the patent system. Further, it requested the Delegation of the United States of America to share more information on the idea of a database of search and examination reports.

58. The Delegation of China stated that the Committee's general goal was that the patent laws of all countries could be harmonized through the Committee's work. However, the Delegation further stated that the question in respect of which aspects harmonization should be achieved might be the most important question in the meeting. Patent laws contained provisions concerning, for example, granting rights, enforcement, limitations and exceptions and compulsory licenses, which were all very important. The Delegation considered that the question as to whether all of those issues should be harmonized or not needed to be settled by the Committee. The Delegation further noted that the question as to the role of WIPO also needed to be answered. In its view, in the past, the question might be very simple, because WIPO was the only organization within the United Nations system which dealt with intellectual property. However, according to the Delegation, since the time when WTO was set up and the TRIPS Agreement, which was the most efficient and most wide in scope concerning intellectual property, was adopted in 1995, WIPO's work had changed. The Delegation wondered whether issues such as enforcement, compulsory licensing and competition aspects in patent laws should be settled in WTO and whether WIPO was no longer suitable for dealing with those questions or coordinating on those issues. The Delegation observed that nothing prevented WIPO from dealing with those issues. Further, the Delegation wondered, from a practical point of view, whether another name should be given to the Substantive Patent Law Treaty (SPLT). The Delegation was of the view that it was not realistic to deal with all the important principles on the issue of patent laws, before and after grant. The Delegation considered that the document was a very good basis for discussion and that the current session of the SCP was a good opportunity for participants to decide what should be its limited goal. The Delegation believed that the subject chosen should reflect the interest of the developed countries and the views of the developing countries, which should be included into the provisions. The Delegation stressed the importance of a balance, and reiterated that the concerns of developing countries, for instance, the issue of the source of genetic resources, should be integrated.

59. The Delegation of the United States of America, supporting the Delegation of Switzerland, stated that the Committee should avoid duplication of efforts, in particular, with other WIPO bodies, for example, the IGC that had discussed issues relating to intellectual property, traditional knowledge, genetic resources and folklore. In recalling the mandate from the 2007 WIPO General Assembly in establishing the CDIP, the Delegation noted that the new Committee might recommend to the SCP to work on some of the issues, such as technology transfer, competition, opening collaborative models, etc. The Delegation, however, did not support short-circuiting the CDIP process by taking up its topics in the SCP before they were even considered in the CDIP. The Delegation believed that the SCP should be able to agree on the future work on patent law related topics, such as prior art-related issues, databases or others. In response to a question by the Delegation of Brazil, the Delegation explained that the idea of the database was built on paragraphs 83 and 84 of

document SCP/12/3. The Delegation found that information very useful, and wished the International Bureau, if possible, to expand its explanation of existing databases and make proposals with regard to potential new services. The Delegation considered that a database that would include national and regional search and examination results could facilitate examination in both developed and developing countries.

60. The Representative of ICTSD noted the efforts made through the Report to reflect a diversity of opinions and views on a number of important issues relating to the patent system, in particular, in relation to public policy objectives. Noting that the Report pointed to a number of areas where further research was needed, the Representative said that ICTSD had been working for nearly ten years towards promoting a sustainable development perspective in the trade and IP system, in particular, evidence-based research in the area of IP and patents in relation to issues such as public health, biodiversity and transfer of technology. The Representative, therefore, looked forward to further contributing to addressing the research gaps that had been mentioned as well as other issues of relevance to the discussion.

61. The Delegation of India stated that it considered the intellectual property regime as an instrument for economic development. The Delegation wondered whether flexibility and harmony could exist together and whether an instrument which promoted harmonization and yet retained flexibility could be considered. The Delegation mentioned that it was preferable not to concentrate on any pre-conceived notion or idea and to explore a clearer, constructive and innovative thinking to deal with the contentious and difficult issues which had impeded progress for a very long time. The Delegation wondered whether a harmonized instrument was the only way of promoting the perceived efficiencies that harmony would produce, or whether the objectives could be promoted without such instrument, through the modality of WIPO, by sharing of databases and available transnational information in a user-friendly manner. The Delegation agreed that a list of issues for further exploration was needed. The Delegation said that it could suggest one or two topics, for instance, the disclosure issue which had been of prime concern to the developing world. On this subject, although some delegations might raise the issue of jurisdiction of one committee or another, the Delegation wondered whether such concern could also be applicable to prior art, since it might exist in a subject matter which was the jurisdiction of another committee. The Delegation also referred to the norm-setting cluster of the Development Agenda, according to which any future instrument to be considered should promote flexibility and economic development and not restrict or constrain the flexibility or the space available to developing countries. Any future instrument would have to be considered in that light so that it would be compatible with the guidelines accepted by the WIPO General Assembly, which should be a guideline for the Organization. The Delegation stated the need to consider the possibility of formulating an instrument where flexibility and harmony could exist together, wherein the objectives could be achieved without constraining the space available to the developing countries for their economic development. The Delegation also wondered how to deal with health issues and affordable medicines, which had been gaining global attention. The Delegation stated that if ten topics for further in-depth discussion were listed, that might be an acceptable modality, although it might not cover the entire track but it could be considered as an instrument of progress. The Delegation affirmed that it was participating with a fully open mind and that it could endorse one or two of the issues suggested.

62. The Delegation of Serbia referred to some important issues stated by the Delegations of China, India and the United States of America, although those issues could not be taken all together at the same time. The Delegation observed that if the mandate of the Committee was to harmonize patent laws in order to promote economic efficiency and to help both the patent

holders and the users of the system, in order to achieve that goal, some basic issues would have to be agreed upon and a rational approach be chosen based on the fact that a patent right was an economic and private right. For example, in order to use search results of other offices, it was necessary to agree that those results were based upon the same concept which each office accepted, i.e., each office accepted the same concept of the basic conditions for patentability, such as novelty, prior art, disclosure of the invention and industrial applicability. The Delegation expressed its opinion that those issues would have to be discussed and agreed by all Committee members.

63. The Delegation of Brazil stated that the Committee had a very rich document before it, which merited proposing a broad discussion. It thought that most Delegations had not thoroughly analyzed the document and should have the opportunity to discuss it more at length. The Delegation stated that the document should remain on the table for further discussion so that delegations would have the opportunity of making specific and concrete observations. Simultaneously, time could be reserved to discuss more at length a list of selected items so that the interests of developing and developed countries could be taken into account in a balanced manner.

64. The Chair assured the Committee that the document would be open for consideration and additional comments, and emphasized that whatever work program the Committee would agree upon must be balanced, taking on board the interests of users, right holders and developed and developing countries. He affirmed that, although the document was truly long and probably most of the topics had already been discussed in other bodies of WIPO or even in other international organizations, it was too early to exclude any of the topics at the current session of the SCP. He expressed the opinion that overlapping and duplication must be avoided, but that the Committee should try to keep all the topics on the table. The fact that the 45 topics had been accepted under the WIPO Development Agenda did not preclude those topics from being considered in other committees. The Chair said that the Committee should perhaps have a list of three or four main topics which the Secretariat could focus on, without excluding the other topics, but delegations would still be allowed to raise new or other topics at future sessions of the SCP.

65. The Chair observed that he had identified eight or nine salient points, but that there was a list of some 17 topics to consider, with possibly more to be added. Once the SCP had identified all the various points of interest, an attempt should be made to draw up a shorter, more reasonable list which the Secretariat could work on for the next meeting. At the next meeting, it would thus be possible to first discuss document SCP/12/3, which would include comments received from the delegations, and secondly to work on the basis of the new documents prepared by the Secretariat based on the list of specific points. Thirdly, countries would be able to come back to the various points on the longer list which were not covered exhaustively. By that time, the Committee would have already identified two or three main thrusts for its work based on substantive comments. The Chair considered that work on the substance and consideration of some other points would be continued and that the work program of the Committee had to be based on in-depth discussions. This would enable the Committee to work more specifically on the work program.

66. The Delegation of the United Kingdom associated itself with the statements made by the Delegations of Slovenia on behalf of the European Community and its Member States and the United States of America on behalf of Group B. Referring to the statement made by the Delegation of China on the role of WIPO, the Delegation listed four main functions in no particular order. First was norm-setting to a treaty development with optional membership,

i.e., no country was obliged to sign up to specific treaties by virtue of the membership of WIPO. The Delegation considered that such an optional feature had a very valuable benefit in the WIPO process. A second function was to provide information and technical systems on IP in general and where specifically requested. A third function, and a very important one as far as economic benefit was concerned, was operating the international filing systems under the PCT, the Madrid and the Hague Agreements and developing those systems and sharing common practices. A fourth function, which had been a new function of WIPO, was shaping the debate on intellectual property in relation to other subjects, such as intellectual property and health, intellectual property and technology transfer, and intellectual property and competition. Those debates were much wider than the intellectual property community which had traditionally been rather self-contained in the past. The current document SCP/12/3 covered all of those aspects and it might be needed to try to treat them in slightly different ways. The Delegation emphasized that a primary concern for it was the functioning of the intellectual property system worldwide. Offices were seeing backlogs of work building up at a faster rate than that of applications coming in and ways would have to be found of dealing with that by streamlining processes, reducing duplication of work and agreeing quality standards so that work could be recognized eventually between offices. Harmonization was one aspect of that to achieve convergence of work processes. But the problem was urgent and worrying and one needed to move fast. The Delegation stated that a wider issue was that of a broader debate on intellectual property and how it impacts on other areas of policy, such as health, technology transfer, climate change and competition. Those debates had been seen starting in other organizations and fora. The Delegation observed that although the WIPO Secretariat could not be expected to cover all of those by itself, particularly non-IP matters which had impacts on, for example, technological capacity or the competition law frameworks and practices in different countries, WIPO should be in a position to shape debates on those matters. The Delegation stated that a formal Standing Committee might not be the best forum, and suggested organizing conferences on specific issues involving other interested organizations and a wide range of participants. On the question of stakeholder consultation mentioned by several delegations, the Delegation was of the view that all delegations were responsible to consult their national stakeholders and to take their views into account, although it was not always easy. The Committee did not operate behind closed doors, as there were many ways of sharing the views of different groups including through being observers. Noting that there were many people in developed and developing countries who were not currently engaged in the IP system, the Delegation suggested that the Committee consider ways of improving that situation.

67. The Chair agreed that WIPO had an important role to play in many areas such as health, climate change and food security, and that it could not stand on the sidelines when those issues were discussed. The Chair observed that the SCP might not be the most appropriate forum to discuss all of those issues directly, and suggested that WIPO organize symposia or conferences wherein those other issues and some essential topics mentioned in the document could be discussed. The Chair observed that, as some delegations had stated, some topics in the document which involved various stakeholders had never been raised in, or were quite new to, the Committee.

68. In view of absence of further comments, the Chair proposed to compile a non-exhaustive list of topics which would include the points raised by the delegations, and which could be used to give a clear idea of a number of topics on which the Secretariat could work on. The Chair stated that the Committee was not obliged to submit recommendations to the General Assembly.

69. The Secretariat confirmed that, from its point of view, the objective of the meeting was to set the work program and that the Chair had given a methodology on how to proceed. It was the understanding of the Secretariat that the Committee, at that stage, did not wish to close off anything and that all options were open on the basis of the Chair's non-exhaustive list which would give an idea of the preliminary views of delegations on items that were of interest for them for the future work program. The non-exhaustive list would also be useful to find a convergence of opinions on a limited number of topics that could be explored in much greater detail for the next meeting. The Secretariat was interested in hearing the opinions of delegations on what might be the special topics within the non-exhaustive list that would be taken forward. The Secretariat observed, in response to the Delegation of the United Kingdom, that in relation to the items regarding the intersection of intellectual property policy, particularly in the area of patent policy, and other areas of public policy notably health, competition, technology transfer, climate change and food security, it had always been open to the Committee to make the suggestion that one part of the future work program might be a conference on one or more of those topics.

70. The Delegation of Costa Rica stated that document SCP/12/3 enabled the Committee to identify some of the details which needed discussion in further depth. The Delegation had a few comments specifically on Chapter II (Economic Rationale for Patents). The Delegation stated that the document was very clear and precise but when the Committee had a new version of it, it should refer more to developing countries in general and the countries of Latin America in particular. The document had been studied in detail in the capital and the Delegation had been told that not enough information and figures were available for developing countries, and that its capital was working to provide more information on that subject. About the relationship between foreign direct investment (FDI) and the international patent system, the Delegation did not support paragraph 22, since the hypothesis needed further detailed work to reach any justified conclusion, supported by evidence. The Delegation, however, expressed its satisfaction with the description in paragraph 40, referring to the importance of avoiding overlapping and duplication when it came to investment in research and development (R&D), and stated that WIPO had an important role to play in it.

71. The Delegation of Serbia expressed its support for the statement made by the Delegation of the United Kingdom. It reiterated that, although document SCP/12/3 included a number of issues which were certainly very important, the Delegation was of the opinion that it was not exactly the subject matter of patent laws, and especially the SCP. The Delegation stated that a better way to discuss certain issues would be to organize symposia or conferences than to have them on the agenda of the SCP. The Delegation observed that although the SCT covered three topics, namely, trademarks, industrial designs and geographical indications, geographical indications were very seldom treated at the SCT. However, WIPO had been organizing worldwide symposia on geographical indications every two years. If the SCP was going to discuss some issues which were inherently in the mandate of some other international institutions, some of them being also specialized agencies of the United Nations (UN), for example the Food and Agriculture Organization of the United Nations (FAO) or the WHO, the Delegation was of the view that the Committee would have a problem not only regarding duplication of work but also with respect to its mandate. Therefore, the Delegation believed that discussions on those issues should be taken up in coordination with those organizations. The Delegation reiterated its full and complete cooperation in future negotiations regarding the SCP, especially harmonization of the substantive patent law. Further, the Delegation requested a correction in Annex II with respect to the name of its State.

72. The Delegation of Brazil stated that, with regard to the procedure, the delegations needed to keep in mind that they were trying to agree on a new and fresh start for the Committee and should try to follow a progressive, gradual and incremental approach with the objective to achieve a work program. The Delegation observed that by going back to the same controversial issues that were the reasons that the Committee had not met for the previous two years, the same mistakes might be repeated. The Delegation considered that the hardest questions as to having or not having harmonization or trying to limit or to exclude *a priori* issues related to public interest, and to try to outline precisely which issues should or should not be discussed, might not prove realistic. Referring to the intervention of the Delegation of the United Kingdom, it stated its belief that there was an intersection between patent issues and issues related to public interest, such as health and others, which were within the competence of the SCP. As regards the list of issues, the Delegation agreed that the list should be balanced, be as comprehensive as possible and include topics of interest to both developing and developed countries. The Delegation preferred the word “preliminary” instead of “limited” when referring to the selected topics and suggested that Member States should be encouraged to submit written comments on the document.

73. The Delegation of China observed that the document contained a comprehensive and broad scope of issues relating to patents and that it was difficult for Member States to present specific comments on all of the issues. The Delegation considered that the document contained two categories of issues. The first category covered legal issues, where the Committee might establish some provisions concerning rights and obligations similar to all the other laws. The second category comprised national policies for the promotion of the development of countries. The Delegation observed that, from the point of view of harmonization, what could be coordinated internationally were the legal but not the policy issues. In its view, it was impossible, in the Committee, to undertake international coordination in terms of national policies, since each country had its own considerations in that respect. The Delegation therefore suggested that every delegation and representative of intergovernmental and non-governmental organizations put forward a proposal on what they thought were the top five questions to be discussed. The Delegation believed that such approach would cover all the issues of wide concern and could set up a good basis for the Committee’s future discussions.

74. The Delegation of Ecuador wished that the work done by the IGC on biological diversity and traditional knowledge be reflected in Chapter IX(b), and thus a clear-cut link between the work done in the SCP and the work accomplished in the intergovernmental body be created.

75. The Delegation of Switzerland supported the formulation of a non-exhaustive list of issues that could work as a pool of topics which would serve as the basis to set priorities for discussions and also to settle the question as to which body was best suited to tackle the issues. The list of topics should be open as long as there was no overlap with some discussions that were already taking place in other bodies of WIPO. The Delegation stated that it was very wise and necessary to select a certain number of issues for the next SCP meeting that were manageable and that could be addressed now. The Delegation proposed two topics of interest relating to the access to, and the use of, patent information that could be addressed in the near future, namely, first the topic proposed earlier by the Delegation of the United States of America on the development of a patent database, and secondly, sharing the results of some studies made within the European Union, especially in the United Kingdom, regarding research exemption. The Delegation believed that those two topics met not only the interests of developed countries but also those of developing countries, since they tended to

improve access to patents and information, and to show what best use could be made of the available knowledge and how that could be implemented at the national level. In the case of the research exemption, the Delegation further noted that WIPO might be able to set some examples for rules or best practices in that field.

76. The Delegation of Algeria, speaking on behalf of the African Group, stated that the method proposed would help to find ways to move forward and to come up with some conclusions at the end of the meeting. It shared some of the views expressed by the Delegation of China regarding some difficulties in dealing with the Report. From its point of view and the point of view of its Group, document SCP/12/3 was very important as it contained very useful information, and delegations should be aware that the Committee was coming from a deadlock. The Delegation stated that the Report dealt with some issues which were important for its Group, such as the issue of economic rationale for patents and the different needs in the international patent system. It further emphasized that the Report highlighted the idea that there was no “one size fits all” in the patent system so as to provide similar sets of incentives for, for example, all industries as well as the contextual importance of the Development Agenda. As to the disclosure of technology in the patent system, the Delegation considered it a very important issue for developing countries. The Delegation stated that another very important topic addressed in the Report was flexibilities, and asked whether the current international system gave a frame for developing countries to create a basis for innovation, or whether those flexibilities existing in the TRIPS Agreement and other agreements were limited or even not used by developing countries. The Delegation supported the Chair’s approach to establish a list of issues that could be addressed during the current and future meetings. The Delegation observed that, in order for the Secretariat to provide full information that was needed on the different issues, feedback from Member States could be given to the Secretariat on those issues that needed more information.

77. The Delegation of Bulgaria supported the idea to set up a list of issues which could be discussed and used as a basis for the future work of the Committee, and wished to eventually put the meeting back into the objective and mandate of the Committee. Considering that the law of patents was a business tool, the Delegation was of the view that businesses would use this tool only if the law or international regulations facilitated business. The Delegation further recalled that the Committee was preparing a tool which encouraged businesses and creative people to better innovate and apply that innovation in their businesses. The Delegation concurred with the Delegation of China that the Committee could not deal with policy issues on behalf of Member States, while it could exchange opinions or give recommendations on policy issues on behalf of Member States. In view of the new developments in the digital environment, in its view, if the patent system was made more transparent, and easy to understand and to apply to business, it would be used by businesses and would contribute to development not only in terms of pure trade, but also in transfer of technologies. The Delegation therefore supported the proposal made earlier by the Delegation of the United Kingdom to have a pragmatic approach. With respect to the list of issues, the Delegation was of the view that the Committee should consider three elements: first, issues that concerned the system itself and how the international environment could facilitate and reduce the workload in patent offices. People could not be stopped from inventing and applying for patents, but the system could be made easier to process such applications. The second point was how easier and more transparent tools and more uniform rules for business could be provided when one wished to protect one’s achievement in different countries and sometimes had to comply with administrative regulations which did not promote, but rather hinder business. The Delegation recalled that, in United Nations Conference on Trade and Development (UNCTAD), there had been successful work carried out on reducing technical

trade barriers that might hamper protection of innovations and creativity. The third point was to provide a tool to Member States according to their needs, so that they could promote or redirect certain activities in the field of innovation and development of technology. The Delegation stated that neither the SCP nor WIPO could transfer technology or oblige anybody to use patent information, but the SCP had to provide the tools that business would use and appreciate.

78. The Representative of the EAPO supported the Chair's proposal to provide a list of limited topics to be discussed by the SCP and stated that a selection of topics could be carried out on the basis of the following principle: there were some purely patent-related issues, such as challenges to the patent system, challenges to the global patent system and the patent system of individual States which needed harmonization as stated earlier by the Delegation of Bulgaria. However, an infinite number of topics also affected the patent system, such as problems related to health, agriculture, food, climate change, water supply, irrigation, the environment, artificial intellect, etc. The Representative suggested that all of those issues be very cautiously included in the list of topics to be discussed by the SCP and be considered within a single topic which could be called "the possibility of limiting patent monopoly and harmonization and unification of issues pertaining to such limitation". Comments and proposals stated earlier by the delegations of developing countries pertained to the question as to whether it was possible to limit patent monopoly in the interest of given groups of States, communities and separate sectors of society. In his view, the issue could be taken in a separate group, which would enable the Committee to provide a clear decision as to which issues were to be considered by the SCP itself and which issues could be entrusted to a separate body either within or even outside of WIPO.

79. The Delegation of Colombia stated that the document took stock of the patent system and needs in specific conditions for all the different countries. It set out also the economic basis, the role of innovation and the legal situation which pertained to the functioning of the patent system. However, the Delegation pointed out that the criterion of industrial applicability was not described in the Report although problems existed due to the different application of that criterion, and suggested that it be added in the Report. The Delegation stated that it would be useful to have further details in the Report on shortcomings in the patent system, both in developed and developing countries, and that there was a need to come back to more specific issues, such as competition legislation, disclosure and benefit-sharing, effective mechanisms to invalidate a patent, transfer of technology and other methods of promoting innovation. Referring to paragraph 3 of the Report, which stated that "inconclusive empirical evidence on the role of the patent system to encourage research and development and technology transfer makes it difficult to draw any clear-cut conclusion about the effectiveness of the patent system for economic development", the Delegation considered that the SCP had to tackle the issues of transfer of technology and research and development for promotion of innovation. The Delegation also stressed the importance of the description in paragraph 81, which stated that "the decreasing cost of information technologies has enabled the free public sector database services to develop rapidly and to provide more powerful search functionalities for users". The Delegation further stated that its objective was to strengthen the work of WIPO through constructive proposals for the specific work program for the Committee that reflected the interests of all Member States.

80. The Delegation of Japan observed that, under the current changing environment, it was hard to get the right picture of how the IP system faced daily operation and how it worked in a global perspective. Therefore, in its view, it would be useful to look at the system as a whole, objectively and empirically, because of growing global interdependency among offices.



According to the Delegation, the issue of one office was not anymore the issue for such office alone, but also related to other offices and the whole global patent infrastructure. Therefore, the Delegation considered it important to enhance collaboration and cooperation. It observed that, in Japan, in a serious situation with a backlog of nearly 800,000 applications, every effort had been made to address the situation through measures including hiring more examiners and adopting advanced information technology. The Delegation noted that the document provided a useful sketch of the backlog situation in other countries. The Delegation further noted that the empirical data described in the document was useful, for example, figure 5 showing a strong correlation between investment and patent filings, and observed that such empirical analysis would be important also for policy discussion.

81. The Representative of the EPO stated that the exchange of views on document SCP/12/3 was of great value in illustrating the various issues inherent or related to the international patent system and was therefore very supportive of the process. Although he was concerned about duplication of work currently underway in other bodies, the Representative echoed the view that it was essential to clearly pinpoint the issues of interest to all delegations, and hoped that consensus would eventually emerge on the basis of the non-exhaustive list of topics to be prepared. From the perspective of the Representative and in line with the statement made by the Delegations of Japan and the United Kingdom, there was great merit in addressing the challenges facing the global patent system and, in particular, exploring measures towards enhanced access to, and use of, patent information which he regarded as a tool with the potential to streamline the overall functioning of the patent system, tackle growing backlogs, and offer benefits to all IP offices and applicants.

82. Referring to Chapter II of the document, the Delegation of Nigeria stated that the Report did acknowledge that there was inconclusive empirical evidence on the role of patents to the effect that it encouraged R&D and transfer of technology. The Delegation was of the view that, although there was a certain gain that could be accrued from harmonization of patent laws, according to the data available, it would favor more developed countries. In 2006, 141,369 PCT filings originated from 18 countries, mostly developed countries, that accounted for 94% of total PCT filings. The Delegation observed that PCT filings could not come from developing countries due to the lack of technology and capacity. Although a few developing countries, such as China and the Republic of Korea, had improved their technological capacity, the Delegation considered that that could not be used to generalize, and that it was very difficult to conclude that the patent system could encourage R&D and transfer of technology. In its view, there were other things that would have to be put in place before it was possible to begin to talk about harmonization. Therefore, the Delegation stated that, among others, the issues of the capacity for financial resources and of the capacity for absorbing technology would have to be dealt with. Noting that paragraph 22 pointed out the important changes in the patent system that were taking place across the world to strengthen or harmonize patent laws, the Delegation observed that it did not reflect the criticisms concerning the negative effects of adopting higher standards in developing countries.

83. The Representative of KEI, referring to Chapter IV(b), reiterated its position with regard to the issue of standards and patents. The Representative stated that, with respect to Chapter VI on patent quality, WIPO should also consider gathering statistics and creating a database of challenges to patent validity so that it would be easier for residents of one country to learn about a patent validity dispute in another country. The Representative further suggested that WIPO consider the variety of measures being promoted to introduce approaches to patent rights that focused on remuneration rights rather than exclusive rights,

drawing upon researches on innovation and inducement prizes, liability rules for patents on standards and the recent eBay decision in the United States of America.

84. The Delegation of Singapore stated that there was benefit in establishing a list of preliminary and non-exhaustive issues. The Delegation observed that, since there were issues that could be researched and studied beyond document SCP/12/3, the Committee would have to decide what information was needed and whom to assist in getting that information. The Delegation considered that, for issues that the SCP determined to have enough information on, the next step would be to identify relevant bodies or players for further work. The Delegation found such process important, since the clarity of the role of the SCP would determine the future actions or specifics to the work program. As regards specifics of the work program, in its view, the SCP should realize that the different issues would require many different approaches as one size did not fit all. The Delegation noted that there were issues that were more policy based, issues that were more legally based and issues that had more operational elements. The Delegation considered that those different types of issues would determine the SCP's function due to their interplay: for example, the SCP would work closely with the PCT Units on operational matters; and the interplay with policy issues, such as health and food policies, meant that the SCP would have to work with other UN agencies. The Delegation further noted that the work program could explore more information, guidelines, best practices, platforms or symposia where information could be shared and exchanged. Where there were more legal-based issues, the Delegation considered that the differences of views and positions could be discussed in view of coming towards a common position and possibly in the future, norm-setting. The Delegation stated that, in discussing the issues, the SCP had to take progressive and measured steps and to understand that, while attempting to progress on all the issues, the first step for each issue would likely to be different: some issues on which delegations already had the necessary information might be discussed, while other issues might require getting evidence and empirical data, or conducting research and studies. Eventually, the proposals that would emerge could well lead, on the one hand, to norm-setting in the future, and on the other hand, to guidelines, best practices, symposia for information exchange, capability building programs or technical assistance activities.

85. Following the above discussion, the Chair introduced a list of issues that reflected the interventions made by the delegations, in the order of appearance in document SCP/12/3, as follows:

- Economic impact of the patent system;
- Transfer of technology;
- Competition policy and anti-competitive practices;
- Dissemination of patent information (including the registration of licenses);
- Standards and patents;
- Alternative models for innovation;
- Harmonization of basic notions of substantive patentability requirements (e.g. prior art, novelty, inventive step, industrial applicability, disclosure);
- Disclosure of inventions;
- Database on search and examination reports;
- Opposition system;
- Exceptions from patentable subject matter;
- Limitations to the rights;
- Research exemption;
- Compulsory licenses;

- Client-attorney privilege;
- Patents and health (including exhaustion, the Doha Declaration and other WTO instruments, patent landscaping);
- Relationship between the patent system and the CBD (Genetic resources/Traditional knowledge/disclosure of origin); and
- Relation of patents with other public policy issues.

86. The Chair stated that this was a non-exhaustive list with no order of priority, and explained that the rationale behind was to identify a limited number of issues which could be worked upon and developed by the Secretariat for the next meeting. At the next meeting, first, the aim was to discuss document SCP/12/3, which was still on the table. All the issues contained therein were subject to discussion. Second, the SCP would consider the documents to be developed by the Secretariat on a limited number of issues. Third, the SCP could also touch upon those issues which it had not selected or which were not on the list, possibly with the idea that the Secretariat would work on another sub-list of issues for a later meeting. Fourth, members and observers could send written comments on document SCP/12/3, which could be incorporated into an Annex or footnotes to the document. Members might also indicate their views on the future work in those written comments.

87. The Delegation of Nigeria observed that the list missed the issues of policy development and policy space for flexibility, which were particularly important for most developing countries. Referring to “harmonization of basic notions of substantive patentability requirements”, the Delegation stated that there was no need to use the word “harmonization” since the direction of the debate should not be prejudged before discussing the patentability criteria. The Delegation observed further that the wording “effective mechanisms to challenge the validity of patents” should be used instead of the narrower notion of “opposition system” and that it would be important to add the topic of “patents and agriculture”.

88. In response to the observation made by the Delegation of Nigeria, the Chair stated that the issue of policy development and policy space were cross-cutting issues that should be considered in connection with each item on the list. As regards the topic of “patents and agriculture”, he observed that that topic corresponded to the last issue on the list. He added that WIPO could organize a conference on the relation of patents and other areas of public policy including food security, agriculture, climate change, public health, as stated by the Delegation of the United Kingdom.

89. The Delegation of Pakistan stated that, as regards the harmonization of basic notions, the impact of harmonization *vis-à-vis* policy space in developing countries should be studied. Concerning patents and health, the Delegation sought information on the impact of data exclusivity on developing countries based on empirical evidence. Further, the Delegation observed that standards and patents on the one hand, and competition policy and anti-competitive practices on the other hand were linked, since IP issues and standardization were increasingly seen to be contentious as they might lead to anti-competitive situations.

90. The Delegation of Brazil stated that the Chair’s suggestion of presenting the list of issues was a very good way to move forward on the understanding that it was a non-exhaustive list also guided by the principle of the balance of interests of developing and developed countries. It observed that it would favor including the discussion on competition policy and anti-competitive practices, transfer of technology and standards and patents and that those would be the three it would prefer to be discussed at the next meeting, without

prejudice to any other items that might be suggested in the future. The Delegation stated that, on the item which bundled together prior art, novelty, inventive step and industrial applicability, the idea of grouping was a good way of starting the discussion again as it brought to the Delegation's mind the opposition between the four issues and the nine issues. It finally noted that the discussion of the document and the list process would fit into the work of formulating a work program.

91. The Delegation of Chile stated that, regarding the translation of the text "standards and patents" into Spanish, the meaning of "normas" in Spanish was broader than that of "standards" in English. In response to the intervention made by the Delegation of Nigeria, the Delegation observed that, although it did not disagree with the proposal to use terminology such as "more effective systems for challenging patents", a pre-grant opposition system was not necessarily geared exclusively to challenging the validity of the patents.

92. The Chair suggested "normas técnicas y patentes" as the Spanish translation of "standards and patents".

93. The Delegation of Egypt expressed its concern about the way the item, "relation of patents with other public policy issues", was drafted. While the current wording implied that public policy issues were exogenous to the concept of a patent, the Delegation believed that there were more inherent links between public policy and patents. With regard to the intervention made by the Delegation of Pakistan, the Delegation observed that the issue of protection of undisclosed information, in some countries referred to as data exclusivity, was not a patent issue, since undisclosed information was treated in areas or in a department other than the patent office, and even in international agreements, it was not classified as a patent issue. Therefore, while the Delegation appreciated that there were links between pharmaceutical patents particularly and the issue of the protection of undisclosed information, it did not consider that as an issue to be discussed in the Committee.

94. The Delegation of the United States of America believed that duplication of resources, both within WIPO and those of its Member States, by taking up issues that had been considered in other WIPO bodies, had to be avoided. In addition to resources and efficiency, in its view, it was imperative to follow the mandate of the General Assembly in committing the new Committee, the CDIP, to first consider the 45 agreed proposals for the WIPO Development Agenda and make recommendations concerning their implementation. The Delegation stated that it was premature to consider several items on the list of issues for the SCP until the CDIP considered them or without some caveat concerning the General Assembly's mandate. Those issues included transfer of technology, competition policy and anti-competitive practices, standards and patents, alternative models for innovation, limitations to the rights and compulsory licenses, which were taken up under flexibilities. The Delegation observed that Development Agenda proposals numbers 7, 17, 18, 19, 23, 25, 27, 28, 29, 31, 32, 35, 36 and 40 addressed those issues. Further, with regard to three of the other topics, namely, the economic impact of the patent system, patents and health, and the relationship of patents with other public policy issues, the Delegation sought clarification as to what the SCP could constructively do with those topics. In its view, they were so broad as to not even be remotely near any stage of norm-setting. The Delegation thus pointed out that the suggestion to consider a symposium or a forum could be useful to exchange views on those issues.

95. The Delegation of India observed that the list of issues was not exhaustive, but did fairly well cover the crucial issues. The Delegation however stated that some of those issues

needed to be dealt with in a most sensitive and careful manner, particularly those which could have an impact on the legal and policy framework of Member States. The Delegation emphasized that flexibilities available to Member States in framing their work and developing policies and strategies needed to be respected and should form the basis of all future deliberations.

96. The Delegation of Bolivia stated that, while patent issues must be dealt with from a technical operative point of view, it was not possible to omit the discussion of all the cross-cutting aspects of the international patent system, such as health, climate change, food sovereignty and biodiversity, and genetic resources. The Delegation supported the position of the Delegation of Nigeria and the proposal to hold conferences relating to food sovereignty, climate change and access to medicines. The Delegation stated that, while it would communicate its concrete views on document SCP/12/3 with respect to biodiversity, traditional knowledge and genetic resources at a later stage, it could not agree with one of the scenarios on page 93 (in the Spanish version of the Report) on patentability and that it was important to incorporate the study on the non-patentability of life. In that respect, it considered that the relationship between the CBD and traditional knowledge, genetic resources and disclosure of origin was not sufficiently covered in the document.

97. The Delegation of Ecuador stated that the non-exhaustive list of issues was very useful, and supported the Delegation of Bolivia with respect to the matter of non-patentability of life.

98. The Delegation of Bulgaria stated that the list of issues would facilitate the future work of the Committee, namely, to establish a work program. It further stated that the list contained a number of issues which were clearly suited for a conference or general public debate, for example, the economic impact of the patent system, transfer of technology, competition policy and anti-competitive practices, the relationship between the patent system and genetic resources and traditional knowledge or the relation of patents with other public policy issues, where the Committee would be limited in its composition to discuss them in depth. Therefore, the Delegation considered that those issues be discussed either in conferences or in seminars where academic persons should be invited. Following such conferences, in its view, there would be a much broader understanding as to whether and to what extent WIPO could influence policy making in those issues. The Delegation observed that there were, however, other issues where the Committee could make contributions to the development of the patent system. The Delegation was of the view that the term “harmonization” was not the best word, but it reflected a common understanding of some basic notions. The Delegation explained that, if there was a common understanding on novelty, there was no problem of comparing novelty in one patent office with novelty in another patent office. If prior art was based on a common understanding, there would be no conflicts among one prior art and another prior art established among offices. As even two examiners could have different opinions on the prior art of the same invention, the Delegation believed that a common understanding was very important. On disclosure of inventions, opposition systems, and other issues which were technical and legal issues, the Secretariat could provide, for the next meeting, a short description of what was at stake and what were the various positions. The Delegation observed that the studies prepared by the Secretariat could be used by the SCP as a basis of discussing what would be the best way forward. The Delegation reminded the Committee that issues such as basic notions of substantive patentability, disclosure of inventions, database on search examination reports, opposition systems, exceptions from patentable subject matters, limitations to the rights, research exemption, compulsory licenses and client-attorney privilege were technical/legal issues for which certain, yet diverse, provisions existed in national laws. The Delegation

however considered that the Secretariat could study the different opinions existing on each of the issues. The Committee could discuss and eventually find a common understanding on issues which were the same in theory in different countries but handled differently in their legal systems.

99. The Delegation of Switzerland expressed concern about several comments on individual topics contained on the list that anticipated the outcome of the discussions that yet had to take place. It warned the Committee of starting to diverge in opinion by already interpreting the issues in the list. Disregarding those interpretations, the Delegation could accept the list of issues with a clear understanding that the list was not yet the work program for the SCP, but rather a pool of topics that could be considered in the future. As suggested by the Chair, the SCP would have to structure the work program at the next meeting and it would have to consider how the topics could be best addressed. When doing so, the Delegation reiterated that, in view of avoiding the duplication of work, the Committee should also be aware of ongoing discussions in other bodies within and outside WIPO. The Delegation stated that it would support the Chair's suggestion not to enter into a drafting exercise regarding document SCP/12/3 and that the idea of footnotes could be discussed further. It supported the suggestion to concentrate on around three topics that would form the basis of preparation for the next meeting. The Delegation observed that the topics proposed by the Delegation of Brazil were not suited for that purpose, since they were far too broad, and they raised the issue of duplication of discussions. Further, the Delegation expressed doubts as to whether they could be addressed in the short time available. The Delegation reiterated that a valuable point to start with in the discussion were the topics of access to patent information and use of patent knowledge. Therefore, the Delegation proposed to discuss sufficient disclosure, the database on search and examination reports that would enhance the access to patent information, and research exemption.

100. The Delegation of Serbia associated itself with the statement made by the Delegation of Bulgaria. It reiterated that, while it was not against the list of issues as topics for discussion in WIPO or in any other institutions, it could not fully agree with certain items to be discussed and eventually decided upon in the Committee, because, in its opinion, those topics were not connected with patent law in its proper sense. The Delegation observed that there were too many issues which were too broad and regulated by some other international institutions and some other international legislation. The Delegation would be pleased if the SCP could agree on the list of topics for discussion, but not as the work program for the Committee, because the questions as to what the SCP could do and what it could decide upon those issues would remain open. In its view, there were certain issues which went beyond the mandate of the SCP, as well as beyond the mandate of WIPO.

101. The Delegation of Canada associated itself with the concern raised by the Delegation of Switzerland with respect to the status of the items on the list. The Delegation expressed its understanding that the list constituted a pool of issues that could be possibly discussed at a future meeting when the SCP would discuss the work program, but it was not the work program for the SCP. The Delegation also supported the comments made by the Delegation of the United States of America and other delegations with respect to the items on the list. While the list did contain issues that were both relevant to developed and developing countries, the Delegation considered it important, as a general principle, not to impede upon the mandate of other WIPO committees, not to duplicate the efforts in terms of having an efficient utilization of the resources and to focus the efforts on issues of practical or technical matters which would assist IP offices in dealing with the backlog of applications. The

Delegation thus supported the suggestions concerning disclosure and databases as issues for further consideration.

102. The Delegation of Tunisia stated that the mandate given to the Secretariat to prepare a document that took into account the WIPO Development Agenda process showed the direct link that existed between the work of the SCP and that of the CDIP. It clarified that the 45 issues discussed in the CDIP were not mere proposals, but actual recommendations adopted by the General Assembly that were waiting to be implemented, and that the General Assembly had asked other WIPO organs and committees, such as the SCP, to work in light of the CDIP recommendations with the view of implementing them. Therefore, in its view, the Committee should take into consideration elements such as the economic impact of the patent system, public health and environment.

103. The Delegation of Brazil clarified that it had been approaching the work of listing issues in a flexible manner not willing to prejudge whether that was going to be the basis of the work program of the SCP or not. The Delegation was of the view that engaging in a discussion as to whether certain topics did or did not belong to the list was not the best way of proceeding.

104. The Representative of GRUR sought clarification on the duplication of a general notion and an individual point in the list. For instance, the notion of disclosure appeared both under the harmonization of basic notions and under a separate item. A similar duplication was observed with respect to the limitation to the rights conferred by a patent, research exemption and compulsory licenses. Although the Representative had expressed earlier his interest in discussing the issues of transfer of technology and licensing agreements, after listening to the intervention of the Delegation of the United States of America, the Representative was of the view that he did not have a clear picture of the CDIP, and clarified that duplication of work should be avoided. The Representative supported a study on opposition systems that included pre-grant and post-grant opposition proceedings, as well as the re-examination proceedings before the United States Patent and Trademark Office. The Delegation further stated that the Committee should also consider a special study on opposition proceedings prepared under the SCT. As far as the client-attorney privilege was concerned, he observed that, since the privilege went beyond the scope of patent litigation, i.e., it was also a matter for all types of litigation, concentrating the discussion in the context of patent litigation was too narrow in its scope.

105. The Delegation of the United States of America stated that the proposals it favored most were the basic notions of substantive patentability, as had been mentioned by Group B, and also disclosure of inventions, a database of search and examination reports as well as some studies on the client-attorney privilege. To avoid duplication of work, it would not support the item on the relationship between the patent system and the CBD, as that was being handled by the IGC. With regard to the statement made by the Delegation of Tunisia, it confirmed that the 45 items were no longer proposals, but 45 agreements which resulted from three years of intensive negotiations, and that delegations had agreed as well on a procedure that led to the establishment of a new Committee to oversee the implementation of the Development Agenda.

106. The Representative of AIPPI reminded the SCP that, towards the end of May 2008, a conference on the client-attorney privilege had been organized by WIPO in cooperation with AIPPI, and that almost all the materials required to be able to tackle that issue was already available. The Representative therefore suggested that a working group specifically dedicated to the client-attorney privilege, which would report to the SCP, be created. In his view, that

would allow the Committee to make progress on at least one of those issues to the extent that all the elements required were already at hand.

107. The Representative of KEI supported the inclusion of the issue of patents and standards on the list of issues for discussion at the SCP. According to the Representative, the Report highlighted that tension could arise between patents and standards where the implementation of a standard called for the use of technology covered by one or more patents. The Representative observed that current competition and legal remedies might not be enough to solve the inherent tensions that routinely arose in the realm of patents and standards. He noted that issues concerning standards were increasingly global concerns involving goods and services that moved in international trade across borders. The Representative was of the view that one issue that was very important concerned the disclosure and non-disclosure of patents relevant to the implementation of a proposed standard, since goods moved in international trade, the systems for such disclosure could not be based upon the laws of a single country, and there was a strong rationale for global norm-setting in that area. The Representative suggested that the SCP needed to gather information and evidence regarding national practices in terms of obligation to disclose patents on proposed standards and to invite innovative businesses to share their views on the adequacy of the current system of managing such disclosures. According to the Representative, many businesses believed that the current system for disclosure that did not extend outside the membership of standards-setting bodies was inadequate. The Representative further suggested that the SCP also consider other measures beyond disclosure, and noted that the proposed treaty on access to knowledge included several sections relevant to standards and patents. The Representative observed that the issues of standards were increasingly important for vast areas of the modern economy, including information, computer and telecommunications technology and services, as well as many other areas such as certain energy, environmental and transportation technologies.

108. The Chair observed that, in view of the interventions made by the delegations, the list of issues did reflect the interests of the members. He reiterated that the list was not exhaustive, and was not the work program of the SCP, but simply a list of issues which had been raised and which could be discussed in the future. Further, the Chair asked delegations not to exclude any issues from the table at this stage. Recalling that many delegations had highlighted the relationship between the SCP, the CDIP and the IGC, the Chair, speaking as the Delegation of Chile, observed that the fact that 45 recommendations had been discussed under the CDIP neither implied that those issues could not be discussed in other committees, nor meant that other developmental issues could not be raised in other committees. His Delegation was of the view that the CDIP should not become the only Committee that was dealing with developmental issues. The Chair stressed the importance of building trust once again in the current session of the SCP and working on some issues without excluding the others.

109. After some consultations, the Chair proposed a reduced and balanced list of four issues on which the Secretariat would prepare four documents for the next session of the SCP. Those issues were: (i) "Information on Patents" or "Patent Information", which would include *inter alia* "Dissemination of Patent Information" and "Database on Search and Examination Reports" in the non-exhaustive list; (ii) "Exceptions and Limitations", which would include "Exceptions from Patentable Subject Matter" and "Limitations to the Rights", "Research Exemption" and "Compulsory Licenses" in the non-exhaustive list; (iii) "Patents and Standards"; and (iv) "Client-Attorney Privilege". The Chair explained that an agreement on those four issues did not imply any order of priority among those issues or that the other issues on the list were off the table. The Chair clarified that, at the next session, members



would have the right to go back to document SCP/12/3, would be able to send comments on that document which would be incorporated into an Annex or footnotes to that document, would also be able to send suggestions as to what the final work program of the SCP should be, and would discuss the four documents mentioned above. The Chair further explained that, at the next session, members and observers would be able to touch upon the other issues listed in the non-exhaustive list of issues and could even add other issues, and that the SCP might decide for the Secretariat to prepare another document on another issue on, or to be added on, the list. Furthermore, the Chair suggested that in the framework of the work program, WIPO organize a conference on patents and their relationship with other areas of public policy, inviting other international organizations, such as WHO, FAO, WTO, the Organisation for Economic Cooperation and Development (OECD), etc. The Chair observed that the value of such process would be that the SCP would work towards a definitive work program, following a number of different channels that would fuel its discussions on a number of different fronts.

110. The Delegation of Algeria, speaking on behalf of the African Group, stated that it agreed to the proposal presented by the Chair. As the SCP came from a deadlock, the Delegation welcomed the long list that reflected all the interests and the concerns of all delegations. It agreed to keep the list open on the table. The Delegation also agreed to keep document SCP/12/3 on the table for further examination. As regards the discussion on the four issues identified, the Delegation stated its understanding that all the elements which were interlinked with those issues could be examined. Further, the Delegation observed that, when preparing the four documents, the Secretariat should take into account, or have special attention to, the impact of those issues on public policy objectives and development concerns. The African Group also agreed that those issues should be dealt with without any prioritization of the different elements.

111. The Delegation of Pakistan reiterated its suggestion that the issues of standards and patents and anti-competitive practices should be studied together. The Delegation gave the following reasons for that suggestion: within the context of standardization, where a patent holder disclosed a particular patent relating to a standard only after the event of standardization, and then sued for infringement, such act potentially created anti-competitive situations; second, the norms governing the obligation of patent owners in the standard-setting process were still relatively weak. Terms like reasonable and non-discriminatory (RAND) or fair, reasonable and non-discriminatory (FRAND) were not operational at the level of actual licensing, and might lead to royalty seeking by patent holders at the disadvantage of developing country manufacturers and consumers. The Delegation was of the view that in the absence of a coherent set of norms governing patents and standards, the current system did not provide adequate remedy, and that developing country manufacturers could be subjected to anti-competitive situations. The Delegation therefore suggested that the SCP study the issue of standards on patents in relation to anti-competitive practices.

112. The Delegation of Pakistan also referred to document SCP/12/3, and observed that there were some very important issues, particularly in relation to objectives and principles of the TRIPS Agreement under Articles 7 and 8 with special references to developing countries. The Report provided valuable information on different aspects of the patent system, in particular, data for appraisal of the status of certain aspects of TRIPS implementation. In that connection, Annex II of the Report was indicative of the kind of freedom Member States had in view of their socio-economic and political environments. That allowed them to make use of the flexibilities that the TRIPS Agreement provided in its present form. The economic rationale provided in the Report on empirical and theoretical basis showed how the instrument

of patents might be helpful for economic development through innovative activities and public disclosure of technical information. However, the data presented in the Report was in relation to merely the developed countries. The Delegation observed that although some developing countries, such as China, India and Brazil, were also included, they were those countries which had steadily developed due to their size, strong political power and sustainable economic policies. The situation of most developing countries was quite different, in that they had a poor industrial base. It was therefore important that the data on that subject was obtained in relation to the developing countries more specifically. As far as Pakistan was concerned, it had taken strong measures to implement the TRIPS Agreement in an integrated manner by establishing a full fledged organization directly under the Cabinet Division and Prime Minister. However, the situation regarding transfer of technology in the country and its economic development had not changed so far in view of the TRIPS implementation. The number of patent filings showed insignificant increase. Similarly, in the case of FDI, high investment had been received, but it was only in those sectors other than manufacturing, such as communication, construction, trade, financial business and oil and gas, and no transfer of technology had taken place. The Delegation observed that information regarding diffusion of technology in the developing countries remained wanting. The Report also brought out that available empirical evidence on patent strength and innovation relationship made it difficult to conclude about the effectiveness of patents to encourage R&D. In view of that, there was a need to develop data particularly from developing countries for an assessment of patent strength and innovation. The Report also dealt, in a non-exhaustive manner, with the key elements of the patent system which provided a useful contribution to the knowledge on patents. The development dimensions had also been properly highlighted from the point of view of both developed and developing countries. The Delegation observed that the case for harmonizing patent laws had been strongly advocated. In relation to harmonization, it was important to bring out that ever since the industrialized countries had developed sufficient capacity and capability for innovation and a strong industrial base, the patent system had been strengthened in their own countries. Efforts had also continued to harmonize patent laws at the international level but had failed until the TRIPS Agreement was agreed as a package of the WTO Agreement. That had brought a significant degree of harmonization in the patent system at the global level. The developing countries reluctantly had agreed to it only with the promise and expectation of encouragement of local innovation and transfer of technology, increase in FDI and concession in other areas, such as agriculture and textile. Unfortunately, that had not happened so far. On the contrary, experiences in Africa had shown that the TRIPS implementation had serious implications on access to medicine and thus on health. Regarding access to medicine, the World Development Report 2006 wrote that inventors in developed countries should make legally binding commitment to their own government not to enforce patent rights in certain pharmaceutical markets. That was a very important recommendation, but it needed to be implemented at the appropriate level. WIPO could develop modalities in consultation with the Member States. In that context, it would not be out of place to consider the guard of the patent in case of pharmaceutical for processes, only granting an exemption to products, as had been the practice in many countries before the TRIPS Agreement. The World Health Assembly in its 29<sup>th</sup> session urged Member States to encourage trade agreements to take into account flexibilities contained in the TRIPS Agreement. Free use of those flexibilities had also been strongly recommended by the Doha Declaration in 2001. The World Health Assembly also had requested the Director General to continue to monitor from a public health perspective in consultation as appropriate with other international organizations, the impact of IP rights and other issues on development and access to health care products. The Commission on IPR had dealt with that issue in a detailed manner. WIPO could play an important role in such an exercise. It was fully recognized that the mandate of the SCP

included progressive development of the law and harmonization of the patent system. WIPO also recognized that the Committee had to deal with clusters of interlocking issues. It was thus necessary that Member States were given more effective mechanism for searching priorities and continuity of inter-related ongoing work. Harmony was good, yet that could only be achieved when all keys of harmonization were at a level-playing field. Unfortunately, that stage had not yet been reached in the developing countries. That was because there was a vast disparity among countries, which was evident from the comparison of global trade and its economic and health scenarios. For example, global trade had increased from 6 billion dollars in 2001 to about 14 billion dollars in 2007. But that increase had taken place primarily in the industrialized countries. Pakistan, the world's 25<sup>th</sup> largest economy constituted only 0.1% of the world trade. Similarly, out of the total global GDP, about three-fourths of it was coming only from the trilateral group, the United States of America, the European Union and Japan. A major component of it was industry and services with a negligible part of agriculture. Likewise, the top ten economies were responsible for 90% of the world GDP whereas the rest of the world with about 80% of the population comprised the rest of 10%. Due to that vast disparity in global trade, the developing world was faced with major problems of poverty, equity and disease giving a dismal picture. Currently, more than a billion people lived on income of less than \$1 a day and another 2.5 billion on less than \$2 a day. Thus about two-thirds of the world population lived in conditions of abject poverty, 40% of which was living in South Asia. In contrast, about 400 richest people in one industrialized country had a combined wealth greater than the combined wealth of 58 poor countries which were home of more than a billion people. Income in equality of different countries had been growing in part due to stewed terms of trade between the rich and the poor. Poor countries also find it extremely difficult to export products of their small industry due to money constraints. As such, their share in export of technology-based products was negligible and in most cases less than one percent. They primarily sold raw materials to the industrialized countries. In the field of health, infectious diseases, such as HIV/AIDS, respiratory infection, malaria and tuberculosis killed over 10 million people each year. Of those, 90% were from the developing countries leading the causes of illness and death of four-fifths of the world population in Africa, Asia and South American region. Those diseases were poverty related, in fact two-thirds of the world population had no access to medicine they barely need. In South Asia, nearly 240 million people were at the risk of dying before the age of 40. That region also accounted for one-third of the global death of children under five. Such a disparity and distortion amongst the rich and the poor was to be seen in the historical perspective briefly brought out as follows. Since the industrial revolution, the value of commercialization had dominated the societies which had radically changed the characteristics in the human existence. Today, more than half of the top 100 economies actually consisted of transnational corporations (TNCs). According to an estimate, 500 TNCs were controlling two-thirds of the world trade. That result was that the benefit of modern technology which emerged from R&D activities were available to only few, due to the requirement of huge funds and high expertise. As seen from above, there was no level playing field to have substantive harmonized rules which could otherwise affect trade and economic development particularly to the developing countries. Nevertheless, it was fully recognized that presently TNCs were a valuable source of technology and expertise in management that was badly needed in developing countries for the material welfare. That could be achieved only if social and humanitarian implication of globalization and policies at the global level, and an effort was made for development with equity. The TRIPS Agreement laid down its objectives and principles with the same goal. It should therefore be examined whether and to which degree that goal had been achieved. It was therefore recommended that, apart from the implementation of the recommendations of the World Development Report, the WHO stated that a situational analysis be carried out in view of the objectives and principles of the TRIPS Agreement to find out as to how far

transfer of technology and innovation had been achieved in the developing countries, in particular, and the health objective had been met. Today's world was imperfect with two blocks: rich and poor with their own specificities. Yet today, due to better communication and atmosphere of mutual understanding and trust, the mutual ability to affect others for the better had an immense scope now seen in the history of mankind. Collective welfare was an ideal that distinguished man from animal. Thus, once human welfare was identified, ethics formed the basis of the collective action. It was based on the notion that, fundamentally, the basic needs of all individuals were more or less the same. Therefore, a thorough look at the problem from both sides helped increasing a balanced understanding of conflicting opinions and, in so doing, enlarging the existing concern, which was the welfare of all and of our future development for the global good. The Delegation therefore urged the SCP to give considerable thoughts to those submissions.

113. The Delegation of China stated that, while the four issues suggested by the Chair were new issues for the SCP, since they were very important issues in the patent system, it did not oppose discussion on those issues. The Delegation also observed that, on the other hand, it believed that it would be rather difficult making a headway on any of those four issues due to a number of difficulties involved. The Delegation also sought clarification on the goal for choosing those four issues for discussion at the next session and on the expected result to be reached through the discussion. The Delegation stated that it could imagine three possible scenarios: the first was that countries would present their specific practices within the framework of those four issues and their respective opinions and wishes, which would be the exchange of information in a rather academic way; the second scenario was that the SCP would have the goal to harmonize the countries' practices in the areas of those four issues. In that case, the SCP's work would lead to an instrument with a binding force, such as a treaty; and the third scenario could be between the two above-mentioned scenarios, i.e., the SCP had the aim to harmonize the practices, but its feasibility would be known as it carried out the discussion, and depending on the discussion, the SCP might need to give up the harmonization. Thus, the Delegation sought clarification on which of the three above-mentioned scenarios was foreseen, noting that it should report back to its capital regarding the future work and should prepare for future meetings.

114. The Delegation of Brazil supported the Chair's proposal. It considered that the Committee should stick to a progressive and incremental approach. The Delegation stated its understanding that document SCP/12/3, as well as all the elements referred to in that document, remained on the table. Regarding the idea of holding a conference on the linkage between patents and public policy issues, the Delegation believed that there was merit in that proposal, as many public policy issues, such as health, food safety, environment and climate change, were intrinsically related to patents. The Delegation was of the view that such conference should be held in the context of the work program for the Committee. As regards the four issues suggested by the Chair, the Delegation made the following observations: Concerning patent information, the Delegation believed that the Secretariat, when elaborating on that issue, should bear in mind the particular interest that developing countries had on the issue of dissemination of patent information. SMEs in developing countries should be able to access, and take full benefit from, patent information for developing their own products and it should be explored in the context of how to create useful business strategies in developing countries. Concerning exceptions and limitations, the Delegation believed that it would give the Committee an opportunity to discuss a very important range of topics, such as research exemption, compulsory licenses, etc. As regards patents and standards, the Delegation suggested that the importance of open and non-proprietary standards need to be in mind. In its view, open standards had a specific role to play in fostering interoperability, promoting

collaborative innovation and enhancing access to knowledge. Concerning the issue of the client-attorney privilege, the Delegation expressed its willingness to discuss, and to increase its understanding of, that topic. The Delegation reiterated that, for the next session, Member States, non-governmental organizations and the civil society should be encouraged to present their written contributions, which should be incorporated in the document for the next session.

115. The Delegation of Slovenia, speaking on behalf of the European Community and its 27 Member States, believed that the non-exhaustive list could be used as a tool to facilitate the discussion on the possible work of the SCP in the future. Further, the Delegation reiterated the European Community's full commitment to the continuation of the work in the framework of the SCP to advance common understanding. The Delegation appreciated the Chair's proposal to establish a list of four issues for the next session and to entrust the Secretariat with the task of drafting four documents on each of those items. The European Community supported the Chair's proposal with the understanding that the list of issues was not the definitive work program of the SCP, that other issues could be added later, and that the choice of four items in the Chair's proposal did not imply any priority. The European Community also supported the suggestion for organizing a conference on patent system in relation to public policy issues.

116. The Delegation of Romania, speaking on behalf of the Regional Group of Central European and Baltic States, expressed its readiness to get along with the Chair's proposal, both in respect of the four issues and of the conference to be organized on the relationship of patents with other public policy issues. The Delegation believed that a reduced number of topics would help the Committee to examine the issues in greater depth and to achieve a constructive outcome. The Delegation also took note of the Chair's additional comments that the list of 18 issues would remain open for further suggestions and that the Committee would have a preliminary debate on the four issues based on the documents to be prepared by the Secretariat.

117. The Delegation of the United States of America, speaking on behalf of Group B, associated itself fully with all aspects contained in the statement made by the Delegation of Slovenia, on behalf of the European Community and its 27 Member States. The Delegation looked forward to continuing the work in the framework of the SCP and welcomed the four separate documents that the Secretariat would prepare for the next meeting in an effort to advance common understanding in the SCP.

118. The Delegation of El Salvador stated that the roadmap prepared by the Chair would be very useful to guide the Committee's work. The Delegation noted that, in particular, the four issues identified were extremely important and also reflected the expectation of the Delegation. The Delegation considered that the issue of the client-attorney privilege was very important to the daily practice, and that the document prepared by the Secretariat should include specific elements such as problems encountered in Member States.

119. The Delegation of Tunisia expressed its willingness to contribute in the endeavor to improve and strengthen the patent system, and associated itself with the Delegation of Algeria, on behalf of the African Group. The Delegation adhered to the Chair's initiative with the understanding that, first, the original list of issues stayed on the table for future examination; second, the four selected issues were preliminary and had no priority over all other issues; third, all other topics in the original list were relevant to the Committee; and fourth, the Committee would soon select other new topics for discussion after exhausting

examination of the four issues already selected. The Delegation further noted that the objective or the reasons behind such selection needed to be defined and clarified.

120. The Delegation of Bolivia supported the initiative put forward to work on the four initial issues, with the understanding that the list remained open and that, in the future, the Committee would work on all the issues that were of interest to all the countries. The Delegation further supported the initiative to hold a conference in the future which would involve the study of patent rights and public policy issues, with the understanding that it did not exclude the possibility of those issues being dealt with in the framework of the Committee. With regard to the four issues proposed, the Delegation associated itself with the statement made by the Delegation of Brazil, in particular, with regard to exceptions, and expressed its concern on the non-patentability of life.

121. The Delegation of the Russian Federation supported the proposal made by the Chair, noting that it was balanced, reasonable and took into account the interest of all the participants at the session. The Delegation also supported the idea of a conference, and asked the Chair to take into consideration the proposal made by the Delegation of China.

122. The Delegation of India, supporting the Chair's initiative of short-listing four issues, stated that deliberations on those four issues would mark a step forward in the work of the SCP. The Delegation also welcomed the proposal to organize a conference in order to facilitate the process.

123. The Chair clarified that the objectives of the exercise, namely, to move forward along a number of tracks including the preparation of documents on four issues for preliminary discussion, was to develop the work program of the SCP. The Chair, therefore, considered that the work being done, and to be done, were merely building blocks, so that different paths would lead the Committee to the objective, namely, the development of a work program. The Chair also expressed his confidence in the quality of the Secretariat's work on those four documents, which would take into account the interests of all, including the interests of developed countries, developing countries and of rightholders and users, and incorporate the issues that had come from the floor. The Chair further noted that such work would also take into account the relevant cross-cutting issues. In his view, however, the Secretariat would need to take into account the fact that, when those other issues were dealt with, there were specific issues that could be dealt with at a later stage. The Chair acknowledged that all delegations had accepted that some of the issues were important for the others, and that all delegations were ready to put aside, for the moment, issues which were considered to be very important for them. The Chair thanked the delegations for making concessions, and hoped that this represented a new phase for the Committee.

## CONCLUSION OF THE MEETING

### Agenda Item 7: Future Work

124. In view of the discussions above, the following was decided:

(a) The Committee agreed that document SCP/12/3 would remain open for further discussion at the next session of the SCP and be open for written comments to the WIPO Secretariat until the end of October 2008, which would reflect those comments in footnotes or annexes to document SCP/12/3;

(b) The Committee decided that the non-exhaustive list of issues identified during this session would remain open for further elaboration and discussion at the next session of the SCP;

(c) The Committee asked the WIPO Secretariat to establish, for the next session of the SCP, preliminary studies on four issues. These four issues, which are not to be considered prioritized over the other issues contained on the list referred to in paragraph 85, are the following:

- Dissemination of patent information (*inter alia* the issue of a database on search and examination reports);
- Exceptions from patentable subject matter and limitations to the rights, *inter alia* research exemption and compulsory licenses;
- Patents and standards;
- Client-attorney privilege;

(d) The Committee suggested that, in the framework of the SCP and, where relevant, also with other WIPO bodies, the Director General consider including in the revised Program and Budget for 2009, provision for a Conference on issues relating to the implications, including public policy implications, of patents on certain areas of public policy, such as health, the environment, climate change or food security;

(e) The Committee decided that the members of the SCP could submit suggestions on the future work program of the SCP to the Secretariat.

125. The International Bureau informed the SCP that its thirteenth session was tentatively scheduled to be held during the first quarter of 2009, in Geneva.

#### Agenda Item 8: Summary by the Chair

126. During the discussion on the Summary by the Chair (document SCP/12/4), there were discussions, in particular, as to whether the conference on patents and public policies should be organized in the context of the work of the SCP or in the context of the work of the SCP and other WIPO bodies. Further, the Delegation of Bolivia suggested that the issue of non-patentability of life be specifically included as an area of public policy to be dealt with by the conference.

127. The Secretariat observed that the purpose of a conference on patents and public policies was two-fold. The first was to show that WIPO was open to engage in a dialogue with, in particular, other international organizations concerning the relationship between its sphere of competence in intellectual property and their spheres of competence. The Secretariat affirmed that it would seek to engage all of those other international organizations, many of which had very important intellectual property processes underway so that a good program of cooperation in the future could be built. The second purpose was to show that WIPO understood the importance of those issues and was open to their discussion. The Secretariat observed that there had been discussions in WIPO for several years as to whether the issue of genetic resources should be discussed within the context of the IGC where it was being discussed, or within the context of the SCP. The Secretariat was of the view that the SCP would not solve that question by discussing whether the conference should be held in the

framework of the SCP or of any other bodies. The Secretariat considered such a question a procedural point which had no impact on the substantive position of the delegations in relation to those matters. It pointed out that the important thing was not to try to resolve that by way of drafting the Summary by the Chair, but to go forward with the substantive propositions, taking the opportunity for the Organization to open up to other public policy processes. Concerning the intervention of the Delegation of Bolivia, acknowledging the importance of that issue to the Delegation, the Secretariat noted that such issue was at the level of specificity which was far greater detailed than any other areas of public policies specified in the text. The Secretariat reminded the Delegation that the public policy implications of the relationship between patents and the environment, which was a very broad issue, were already mentioned in the Summary by the Chair. The Secretariat also noted that it would cooperate with the Secretariat of the CBD and FAO on that matter.

128. After some discussion, the Committee agreed that the words “in the framework of the SCP and, where relevant, also with other WIPO bodies” should be added after the words “suggested that” in paragraph 8(d) of document SCP/12/4.

129. The Summary by the Chair was noted, and was agreed by all with certain amendments which were included in the final version (document SCP/12/4 Rev.).

130. The SCP further noted that the official record of the session would be contained in the report of the session. The report would reflect all the interventions made during the meeting, and would be adopted in accordance with the procedure agreed by the SCP at its fourth session (see document SCP/4/6, paragraph 11), which provided for the members of the SCP to comment on the draft report made available on the SCP Electronic Forum. The Committee would then be invited to adopt the draft report, including the comments received, at its following session.

#### Agenda Item 9: Closing of the Session

131. The Chair closed the session.

*132. The SCP unanimously adopted this report, during its thirteenth session, on March 23, 2009.*

[Annex follows]



ANNEX

LISTE DES PARTICIPANTS/LIST OF PARTICIPANTS

I. ÉTATS MEMBRES/MEMBER STATES

(dans l'ordre alphabétique des noms français des États)  
(in the alphabetical order of the names in French of the States)

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