

Standing Committee on the Law of Patents

Sixteenth Session
Geneva, May 16 to 20, 2011

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the session

1. The sixteenth session of the Standing Committee on the Law of Patents (SCP) was opened by Mr. James Pooley, 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

2. The SCP unanimously elected, for one year, Mr. Albert Tramposch (United States of America) as Chair and Mrs. Dong Cheng (China) as Vice-Chair.

Agenda Item 3: Adoption of the revised draft agenda

3. The SCP adopted the revised draft agenda (document SCP/16/1 Prov.1) as proposed, with the following amendment in agenda item 12:

“12. Contribution of the SCP to the implementation of the respective Development Agenda Recommendations.”

Agenda Item 4: Accreditation of Observers

4. The SCP approved the accreditation of the Medicines Patent Pool as *ad hoc* observer (document SCP/16/6).

Agenda Item 5: Adoption of the draft report of the fifteenth session

5. The Committee adopted the draft report of its fifteenth session (document SCP/15/6 Prov.1) as proposed, with amendments received from the Delegations of Australia and Egypt.

Agenda Item 6: Report on the international patent system

6. The discussions were based on documents SCP/12/3 Rev.2, SCP/12/3 Rev.2 Add. and SCP/16/2.
7. The SCP agreed that document SCP/12/3 Rev.2 and SCP/12/3 Rev.2 Add. would remain open for further discussion at the next session of the SCP. Document SCP/16/2 will be updated based on the comments received from Member States.

Agenda Item 7: Exceptions and Limitations to Patent Rights

8. The discussions were based on documents SCP/14/7, SCP/16/INF/2 and SCP/16/3. As regards the draft questionnaire on exceptions and limitations to patent rights (document SCP/16/3), based on the comments and suggestions received from Member States, the Secretariat submitted a revised draft questionnaire (document SCP/16/3 Rev.) to the SCP for further consideration.
9. After some discussions, the SCP agreed that:
 - (a) This topic will remain on the agenda of the 17th session of the SCP.
 - (b) The Secretariat will invite Member States to submit written answers to the questionnaire (document SCP/16/3 Rev.) as amended and adopted at this session, by September 30, 2011. The questionnaire will contain a footnote in relation to the second part of Question 1 clarifying that that question does not imply an exhaustive treatment of the issue of exclusions from patentable subject matter. The Committee will discuss, at the next session, possible future steps, such as requesting the Secretariat to prepare an analysis of the answers, and some Member States expressed the wish to also discuss preparing of another questionnaire specifically addressing exclusions.
 - (c) The Secretariat will post the answers received on the SCP electronic forum, and will compile them in a document to be submitted to the next session of the SCP.

Agenda Item 8: Quality of Patents, including Opposition Systems

10. The discussions were based on documents SCP/14/5 and SCP/16/5. Some delegations supported the proposal in respect of a work program on quality of patents, submitted by the Delegations of Canada and the United Kingdom (document SCP/16/5), while some other delegations requested clarifications on the contents of the proposal. Some delegations also presented their views on the issue of quality of patents. Some delegations shared information concerning the quality management systems existing in their patent offices.
11. With respect to the preliminary study on opposition systems (document SCP/14/5), some delegations requested further elaboration of the preliminary study.

12. After some discussions, the SCP agreed that:
 - (a) This topic will remain on the agenda of the 17th session of the SCP. Discussions will be based on the proposal by the Delegations of Canada and the United Kingdom (document SCP/16/5) to be further revised by those delegations, and other comments/proposals presented by Member States.
 - (b) Observers are invited to submit their comments in as many working languages of the Committee as possible.
 - (c) The Secretariat will revise the preliminary study on opposition systems (document SCP/14/5), taking into account the comments made, and any additional information to be submitted, by Member States.

Agenda Item 9: Patents and Health

13. A proposal was submitted by the Delegation of South Africa on behalf of the African Group and the Development Agenda Group (document SCP/16/7). Some delegations supported the proposal, while some other delegations stated that they would need more time to consider the proposal.
14. Upon request by some Member States, the Secretariat as well as the Representatives of the World Health Organization (WHO) and the World Trade Organization (WTO) presented their work being carried out in relation to this agenda item.
15. After some discussions, the SCP agreed that:
 - (a) This topic will remain on the agenda of the 17th session of the SCP. Discussions will be based on the proposal submitted by the Delegation of South Africa on behalf of the African Group and the Development Agenda Group (document SCP/16/7), and other comments/proposals presented by Member States.
 - (b) Observers are invited to submit their comments in as many working languages of the Committee as possible.
 - (c) The Secretariat will prepare, for the 17th session of the SCP, a document describing WIPO activities on patents and health, including the relevant cooperation activities with other international organizations.

Agenda Item 10: Client-Patent Advisor Privilege

16. The discussions were based on document SCP/16/4 Rev. Some delegations requested further exploration of this topic. However, a number of delegations expressed concerns and difficulties in pursuing this topic at the international level.
17. After some discussion, the SCP agreed that:
 - (a) This topic will remain on the agenda of the 17th session of the SCP.
 - (b) Some delegations stated that this issue was a matter of national law. Recognizing the differences in national law and procedure, the Chair stated that the Committee felt that there was no consensus on international norm setting or a set of common principles at this stage.

- (c) The Secretariat is requested to gather information about national and regional practices and present it, without any recommendations or conclusions, to the next session of the SCP for exchange of views among Member States. This information should include, *inter alia*, information on:
- national laws and rules dealing with cross-border aspects of confidentiality of communications between clients and patent advisors;
 - problems in relation to cross-border aspects of confidentiality of communications between clients and patent advisors; and
 - remedies that are available in countries and regions to solve the problems that remain at the national, bilateral, plurilateral and regional levels.

Agenda Item 11: Transfer of Technology

18. The discussions were based on document SCP/14/4 Rev. Some delegations reiterated that the Secretariat should further revise the preliminary study (document SCP/14/4 Rev.) on the basis of the comments received by Member States. Various proposals and ideas were presented by a number of delegations. Some delegations raised concerns about duplication of work with the CDIP.
19. After some discussion, the SCP agreed that:
- (a) This topic will remain on the agenda of the 17th session of the SCP.
 - (b) The Secretariat will revise the preliminary study (document SCP/14/4 Rev.), based on Member States' inputs reflecting comments of delegations at the sessions of the SCP and addressing in greater detail, the discussion on impediments and elaborating further on incentives to technology transfer, for submission to the next session of the SCP.
 - (c) The Secretariat will invite the WIPO Chief Economist to organize a seminar on patents and transfer of technology on the margins of the next session of the SCP, along the lines discussed at the 16th session of the SCP, and to publish the presentations and summary of the discussions on WIPO's website "Economics of IP" by the end of the second day of the next session of the SCP.
 - (d) The Secretariat will assist Member States in facilitating the complementary and non-duplicative nature of the work undertaken by the SCP and CDIP on the issue of transfer of technology.

Agenda Item 12: Contribution of the SCP to the implementation of the respective Development Agenda Recommendations

20. A number of delegations made statements on the contribution of the SCP to the implementation of the respective Development Agenda Recommendations. The Chair stated that all statements would be recorded in the report for the sixteenth session of the SCP and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

Agenda Item 13: Future work

21. The non-exhaustive list of issues will remain open for further elaboration and discussion at the next session of the SCP.
22. The future work of the SCP will be carried out as agreed above.
23. The Secretariat informed the SCP that its seventeenth session was tentatively scheduled to be held from December 5 to 9, 2011, in Geneva.
24. The SCP noted that the present document was a summary established under the responsibility of the Chair and that the official record 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.

25. *The SCP noted the contents of this summary by the Chair.*

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