

Standing Committee on the Law of Patents

Eighteenth Session
Geneva, May 21 to 25, 2012

SUMMARY BY THE CHAIR

AGENDA ITEM 1: OPENING OF THE SESSION

1. The eighteenth 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. Vittorio Ragonesi (Italy) as Chair and Mrs. Sarah Norkor Anku (Ghana) and Mr. Simon Seow (Singapore) as Vice-Chairs.

AGENDA ITEM 3: ADOPTION OF THE REVISED DRAFT AGENDA

3. The SCP adopted the revised draft agenda (document SCP/18/1 Prov.2) with the addition of a new item 12: Contribution of the SCP to the implementation of the respective Development Agenda Recommendations (see document SCP/18/1).

AGENDA ITEM 4: ADOPTION OF THE DRAFT REPORT OF THE SEVENTEENTH SESSION

4. The Committee adopted the draft report of its seventeenth session (document SCP/17/13 Prov.2) as proposed.

AGENDA ITEM 5: ACCREDITATION OF OBSERVERS

5. The SCP approved the accreditation of the Drugs for Neglected Diseases *initiative* (DNDi) as *ad hoc* observer (document SCP/18/10).

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/18/2.
7. The SCP agreed that this agenda item would remain on the agenda of the next session of the SCP. The above documents 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 and SCP/18/3.
9. Many delegations stated that document SCP/18/3 provided a useful overview of the responses to the Questionnaire on exceptions and limitations to patent rights, and encouraged further submission of answers to the questionnaire by Member States.
10. Some delegations supported the adoption of the proposal by Brazil (document SCP/14/7) and the commencement of the second phase of that proposal. However, it was not adopted by the Committee. In addition, other follow-up activities by the Committee, for example, case studies, were suggested by some delegations. Some delegations stated that exceptions and limitations could not be considered in isolation from the patentability criteria and exclusive patent rights.

AGENDA ITEM 8: QUALITY OF PATENTS, INCLUDING OPPOSITION SYSTEMS

11. The discussions were based on documents SCP/17/7, 8, 10 and SCP/18/INF/2, SCP/18/INF/2 Add., SCP/18/4 and 9.
12. Proposals submitted by the Delegations of Canada and the United Kingdom (document SCP/18/9), by the Delegation of Denmark (document SCP/17/7) and by the Delegation of the United States of America (document SCP/17/10) were supported by some delegations. Some other delegations requested clarifications on those proposals, and raised concerns in respect of the lack of common understanding on the term "quality of patents". Some other delegations did not accept working on the basis of those proposals and requested clarifications on them. Some other delegations also presented their views on the issue of quality of patents.
13. In relation to opposition systems and other administrative revocation and invalidation mechanisms (document SCP/18/4), some delegations provided additional information. Some delegations suggested follow-up activities to be carried out by the Committee.

AGENDA ITEM 9: PATENTS AND HEALTH

14. The discussions were based on documents SCP/16/7, SCP/16/7 Corr., SCP/17/11, SCP/18/INF/3, SCP/18/INF/3 Add. and SCP/18/5.

15. Some delegations supported the proposal submitted by the Delegation of South Africa on behalf of the African Group and the Development Agenda Group (documents SCP/16/7 and 7 Corr.). Some delegations requested to initiate Element I of that proposal, while some other delegations did not support that proposal. Some other delegations supported the proposal made by the Delegation of the United States of America (document SCP/17/11). However, some delegations indicated that they did not accept working on the basis of that proposal. Some delegations stated that both proposals contained elements which deserved consideration. Some delegations, however, stated that the Committee should wait for the completion of the Trilateral study "Promoting Access and Medical Innovation: Intersections between Public Health, Intellectual Property and Trade" conducted by the World Health Organization (WHO), the World Trade Organization (WTO) and WIPO before proceeding on this agenda item. Some delegations emphasized that WIPO should continue working on that issue without waiting for the results of any other processes.

16. With respect to both proposals, some delegations raised concerns about the duplicative nature of the proposed activities with the work undertaken by other WIPO fora or other relevant intergovernmental organizations, such as the WHO and WTO. Some delegations stated that due to its strong link to development issues, the appropriate place to carry out any additional non-duplicative work on that topic in WIPO should be the CDIP. Some other delegations indicated that it was within the mandate of WIPO and the SCP to address that topic, and that that would not constitute any duplication with any other processes within or outside of WIPO.

AGENDA ITEM 10: CONFIDENTIALITY OF COMMUNICATIONS BETWEEN CLIENTS AND THEIR PATENT ADVISORS

17. The discussions were based on document SCP/18/6.

18. While some delegations suggested the adoption of non-binding principles or minimum standards for possible remedies to solve the cross-border problems, some other delegations opposed that proposal. Some delegations emphasized that this issue was a matter of national law, and that the topic should be removed from the future agenda of the Committee. However, some other delegations suggested that the cross-border issues be further studied.

AGENDA ITEM 11: TRANSFER OF TECHNOLOGY

19. The discussions were based on documents SCP/18/7 and 8.

20. Some delegations stated that document SCP/18/8 did not sufficiently address patent-related impediments to transfer of technology through practical examples and experiences in the context of the expansion of the preliminary study (document SCP/14/4 Rev.), and suggested that the Committee continue working on the practical aspects of transfer of technology, in particular, impediments the patent system constituted to transfer of technology. Some delegations did not support continue working only on patent-related impediments. Some delegations raised concerns about the duplicative nature of the SCP activities on this subject with the work of the CDIP.

AGENDA ITEM 12: CONTRIBUTION OF THE SCP TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

21. 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 eighteenth 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. Some delegations requested that that issue be a standing agenda item, while some other delegations stated that that item should not be a standing agenda item.

AGENDA ITEM 13: FUTURE WORK

22. The non-exhaustive list of issues will remain open for further elaboration and discussion at the next session of the SCP.

23. Failing agreement otherwise, following a proposal by the Chair, the Committee agreed to carry on discussions at its next session on the basis of the agenda of its eighteenth session, except agenda items 2 and 12 in document SCP/18/1. Member States may submit proposals on the work of the Committee prior to its next session.

24. The Secretariat informed the SCP that its nineteenth session would be held from November 26 to 30, 2012, in Geneva.

25. 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.

26. The SCP noted the contents of this summary by the Chair.

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