

Standing Committee on the Law of Patents

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ADDENDUM TO THE REPORT ON THE INTERNATIONAL PATENT SYSTEM

Document prepared by the Secretariat

1. In a communication dated June 10, 2012, the International Bureau received additional comments from the Delegation of Argentina regarding the Report on the International Patent System, which should be included in Annex III of document SCP/12/3 Rev.2.
2. The comments are annexed to the present document.

[Annex follows]

COMMENTS ON THE REPORT ON THE INTERNATIONAL PATENT SYSTEM RECEIVED FROM MEMBERS AND OBSERVERS OF THE SCP

(received from Argentina)

Document SCP/12/3 Rev.2 is a wide-ranging report on the main elements and complex issues involved in the international patent system. The Annex summarizes the national practices of around one hundred countries and constitutes a valuable contribution to future discussions.

The Report “attempts to cover the different needs and interests of all Member States” (p. 2) and, in that regard, it is clear that an effort has been made to reflect the various points of view, in particular with regard to public policy proposals. However, certain areas warrant more in-depth and more detailed study in order to improve understanding of the patent system and its implications in terms of development.

In Chapter II on “Economic Rationale for Patents and Different Interests and Needs in the International Patent System” (pp. 8-22) it is claimed that a positive relationship exists between intellectual property rights (IPRs) and foreign direct investment (FDI) (paragraph 46). Argentina does not see this claim as being a conclusive one. Indeed, studies have been carried out which suggest that the various means through which IPRs affect FDI are both subtle and complex. Given that complexity, few definitive conclusions can be drawn, at least in terms of theoretical debate. The features of IPRs are one of a number of variables that determine the attraction of FDI. FDI is influenced by the cost of various factors, the size of markets, commercial costs and other local advantages. Countries that strengthen their IPR regimes do not necessarily experience a sudden boost in inflows of FDI. Therefore, it cannot be claimed that there is a direct and positive relationship (“Intellectual Property and Development”, Carsten Fink and Keith Maskus, pp. 7-8, 60).

Similarly, the Report states that “...stronger IPR protection can lead to higher trade flows between countries” and that “...stronger patent laws in developing countries have a positive impact on bilateral trade” (paragraph 45). On the contrary, economic analysis suggests that the overall effect of intellectual property protection on levels of bilateral trade flows is ambiguous. There are a number of difficulties involved in linking static and dynamic issues to a policy of increased protection.

A large part of the chapter on economic rationale focuses on worldwide trends in terms of patent application filings. In Argentina’s opinion, the Report assumes the existence of what is known as the “technology ladder”, or a growing international technology market. In reality, only a small number of countries take part in such a market. In paragraph 60 of the Report, it is stated that “...the majority of the studies have focused on developed countries. The effect of a stronger patent system on stimulating innovation, especially in developing countries, is open to debate.”

With regard to the benefits arising from the disclosure of patent information (pp. 22-29), Argentina is in favor of a debate on the dissemination of patent information within the framework proposed in Recommendation 8 of the WIPO Development Agenda.

As to Chapter VI on substantive issues, the Report would appear to reject national patent examinations, hinting indirectly that they can constitute an obstacle to the system.

With regard to obstacles to the effectiveness of patents as incentives to innovation (pp. 78-84), Argentina believes that the patent system suffers from other shortcomings that warrant an exhaustive study, such as the rise in the number of legal disputes and restrictive competition measures brought on by poor quality patents.

Finally, we urge the Secretariat to ensure that, in the future, reports address the matter of the implications of the international patent system from the point of view of public policy, in particular with regard to issues such as health, biodiversity and technology transfer, among others. Increased research in that area would lead to improvements in terms of the various aspects of the patent system and would contribute to understanding regarding the role played by the system in developing countries.

[End of Annex and of document]