

Standing Committee on the Law of Patents

Nineteenth Session
Geneva, February 25 to 28, 2013

PROPOSAL BY THE DELEGATION OF BRAZIL REGARDING EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS

Document prepared by the Secretariat

1. The Annex to this document contains a proposal submitted by the Delegation of Brazil concerning exceptions and limitations to patent rights, for consideration under item 5 of the draft agenda.

2. *The members of the Standing Committee on the Law of Patents (SCP) are invited to consider the contents of the Annex.*

[Annex follows]

PROPOSAL OF BRAZIL ON EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS

BACKGROUND

1. At the 12th session of the SCP, held in June 2008, Members asked the Secretariat to elaborate a preliminary study on the issue of exclusions from patentable subject matter and exceptions and limitations to patent rights.¹ Valuable information is provided in this preliminary study, such as the rationale behind exceptions and limitations in order to attain public policy objectives.
2. At the next session of the Committee, held in March 2009, Members further agreed that the Secretariat should commission external experts a study on exclusions, exceptions and limitations, focused on, but not limited to, issues suggested by Members, such as public health, education, research and experimentation and patentability of life forms, including from a public policy, socio-economic development perspective, bearing in mind the level of economic development. The study², published during the 15th session of the SCP (October 2010), provides a wide array of information useful for policymakers with the purport of calibrating their patent system with exclusions, exceptions and limitations in line with their industrial policies.
3. Taking into account the interest expressed by other Delegations in the course of such discussions, Brazil tabled in the 14th session of the SCP a proposal³ of a work program on exceptions and limitations to patent rights divided in three phases:
 - (i) an exchange of detailed information on all provisions of exceptions and limitations in national or regional legislation, as well as on the experience of implementation of such provisions, including jurisprudence. The first phase should also address why and how countries use – or how they understand the possibility of using – the limitations and exceptions provided in their legislation;
 - (ii) an investigation of what exceptions or limitations are effective to address development concerns and what are the conditions for their implementation. It is also important to evaluate how national institutional capacities affect the use of exceptions and limitations; and
 - (iii) the elaboration of an exceptions and limitations manual, in a non-exhaustive manner, to serve as a reference for WIPO Members.
4. Following the circulation of the document, Brazil received widespread support, thus attesting the importance attached by Members to the subject. In the next session, Members agreed on a questionnaire regarding the subject.
5. No less than 72 Member States have replied to the questionnaire by the Secretariat and shared their experience on exceptions and limitations to patent rights, expressing differing views on the subject-matter. The compilation made by the Secretariat⁴ organizes the answers in a systematic and logical way, making it easier to study the vast amount of data now available to us.

¹ Document SCP/12//4 Rev.

² Document SCP/15/3.

³ Document SCP/14/7.

⁴ Document SCP/18/3.

6. Having concluded this stage of information gathering, it is now time to move to the next phase of the program proposed by Brazil in 2010. Up to this moment, it has been an individual work of delegations. Now, there can be more integration and interaction among Member States.

7. Paragraph 26 of document SCP/14/7 states that the second phase shall investigate what exceptions and limitations are effective to address development concerns and what are the conditions for their implementation. It is also important to evaluate how national institutional capacities affect the use of exceptions and limitations.

8. With that in mind, below are elements Brazil deems fit to be included in the second stage, without prejudice to suggestions from other Members.

PROPOSAL

9. Brazil proposes two elements that are closely interlinked.

10. The first element is to ask the Secretariat to prepare an analysis of Exceptions and Limitations which are most commonly used by Member States in each of the 10 clusters of the questionnaire. This document should take into account public policy objectives and society needs as a whole, including, inter alia, development needs, public health goals and competition. It should also consider the obstacles Member States found when implementing such E&Ls.

11. The second element is a one-day seminar to be held at the next session of the SCP. The seminar would have three segments, as follows:

- (a) A presentation, by the Secretariat, of the findings of the above-mentioned analysis;
- (b) A presentation by the Chief Economist plus two experts from different backgrounds on, inter alia, the effectiveness of exceptions and limitations when addressing developing concerns and how national capacities affect the use of exceptions and limitations; and
- (c) Presentations by Member States of case studies on implementation of E&L. This segment would be an opportunity for Member States to share their experience, focusing on the conditions for the implementation of E&L, the actual difficulties they have faced, and the solutions to overcome those difficulties. Brazil volunteers to make a presentation and share its experience in this field.

12. The outcome of the analysis by the Secretariat and of the discussions of the Seminar would become additional material for the continuation of the work program included in document SCP/14/7.

[End of Annex and of document]