

Standing Committee on the Law of Patents

Nineteenth Session
Geneva, February 25 to 28, 2013

SUMMARY BY THE CHAIR

AGENDA ITEM 1: OPENING OF THE SESSION

1. The nineteenth session of the Standing Committee on the Law of Patents (SCP) was opened by Mr. Francis Gurry, Director General, who welcomed the participants. Mr. Philippe Baechtold (WIPO) acted as Secretary.

AGENDA ITEM 2: ADOPTION OF THE DRAFT AGENDA

2. The SCP adopted the draft agenda (document SCP/19/1 Prov.) with the addition of a new agenda item 10: Contribution of the SCP to the implementation of the respective Development Agenda Recommendations (see document SCP/19/1), on the understanding that it was not a standing agenda item.

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE EIGHTEENTH SESSION

3. The Committee adopted the draft report of its eighteenth session (document SCP/18/12 Prov.2) as proposed.

AGENDA ITEM 4: REPORT ON THE INTERNATIONAL PATENT SYSTEM

4. Discussions were based on documents SCP/12/3 Rev.2, SCP/12/3 Rev.2 Add., SCP/19/2 and 3.

5. The SCP agreed that the information concerning certain aspects of national/regional patent laws [http://www.wipo.int/scp/en/annex_ii.html] would be updated based on the comments received from Member States.

AGENDA ITEM 5: EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS

6. Discussions were based on documents SCP/14/7, SCP/18/3 and SCP/19/6.

7. Some delegations supported the proposal of the Delegation of Brazil contained in document SCP/19/6. Some delegations, however, requested clarifications on certain parts of the proposal, and stated that exceptions and limitations could not be considered in isolation from the patentability criteria.

AGENDA ITEM 6: QUALITY OF PATENTS, INCLUDING OPPOSITION SYSTEMS

8. Discussions were based on documents SCP/17/7, 8, 10 and SCP/18/INF/2, SCP/18/INF/2 Add., SCP/18/4, SCP/18/9, SCP/19/4 and SCP/19/5.

9. Proposals submitted by the Delegations of Canada and the United Kingdom (document SCP/18/9), the Delegation of Denmark (document SCP/17/7), the Delegation of the United States of America (documents SCP/17/10 and SCP/19/4) and by the Delegation of Spain (document SCP/19/5) were supported by some delegations. Some other delegations supported certain elements contained in the above proposals. Some other delegations stated that a common understanding on the definition of the term “quality of patents” was necessary in order to take further steps on this issue. Some delegations highlighted the importance of the requirement of sufficiency of disclosure for the quality of patents. Further, some delegations reiterated that any future work on the quality of patents should not lead to harmonization of substantive patent law.

10. The Committee took note of the proposal from the Delegation of the United States of America (document SCP/19/4) and the proposal from the Delegation of Spain (document SCP/19/5), and agreed that they would be added to the working documents listed in the agenda of the next session of the SCP.

11. On the topic of opposition systems and other administrative revocation and invalidation mechanisms (document SCP/18/4), some delegations suggested a compilation of information on the above mechanisms as a possible follow-up activity.

AGENDA ITEM 7: PATENTS AND HEALTH

12. 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.

13. Upon request by the Committee, the Secretariats of WIPO, the WHO and the WTO made a common presentation on a publication entitled “Promoting Access to Medical Technologies and Innovation: Intersections between Public Health, Intellectual Property and Trade”, (hereinafter referred to as the “Trilateral Study”). The presentation was followed by a question and answer session.

14. 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 other delegations supported the proposal made by the Delegation of the United States of America (document SCP/17/11).

15. With respect to both proposals, some delegations raised concerns about the duplicative nature of the proposed activities with other work undertaken in other WIPO fora, such as the Committee on Development and Intellectual Property (CDIP), or by other relevant intergovernmental organizations, such as the WHO and the WTO. Some other delegations stated that, as a United Nations agency, WIPO and the SCP had the mandate to address the topic of patents and public health, and that the proposal submitted by the Delegation of South Africa on behalf of the African Group and the Development Agenda Group would not constitute any duplication with any other processes within or outside of WIPO. The proponents of both proposals indicated that, while appreciating the comprehensive and factual information contained in the Trilateral Study, the SCP could contribute to the debate by building on certain aspects not dealt with in the Study.

16. Concerning the sharing session on countries' use of health-related patent flexibilities to be organized during the next session of the SCP, the Committee shared the understanding that the Secretariat would prepare a summary document of that event during that same session of the SCP.

AGENDA ITEM 8: CONFIDENTIALITY OF COMMUNICATIONS BETWEEN CLIENTS AND THEIR PATENT ADVISORS

17. Discussions were based on document SCP/18/6.

18. Some delegations suggested the elaboration of non-binding minimum standards on possible remedies to solve cross-border issues, which could be used as a voluntary guide by national authorities. Some other delegations opposed that proposal, emphasizing that this issue was a matter of national civil procedural law and law on evidence.

AGENDA ITEM 9: TRANSFER OF TECHNOLOGY

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

20. Some delegations suggested that the Committee continue working on the practical aspects of transfer of technology by adding more examples in document SCP/18/8, in particular, practical examples addressing patent-related impediments to transfer of technology. Some delegations stated that they were not in favor of launching new activities on transfer of technology in the SCP before the completion of the CDIP project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions. Some delegations, however, emphasized the different nature of the activities proposed in the SCP and the CDIP project.

AGENDA ITEM 10: CONTRIBUTION OF THE SCP TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS

21. Following a suggestion by the Chair, the Committee agreed that delegations who wished to make statements on the contribution of the SCP to the implementation of the respective Development Agenda Recommendations would submit them in writing to the Secretariat. The Chair stated that all statements would be recorded in the report of the nineteenth 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 11: 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. Without prejudice to the mandate of the SCP, the Committee agreed that its work for the next session be confined to fact-finding and not lead to harmonization at this stage, and would be carried out as follows:

(a) Exceptions and Limitations to Patent Rights

- (i) The Secretariat will prepare a document, based on input received from Member States, on how the following five exceptions and limitations are implemented in Member States, without evaluating the effectiveness of those exceptions and limitations: private and/or non-commercial use; experimental use and/or scientific research; preparation of medicines; prior use; use of articles on foreign vessels, aircrafts and land vehicles. The document should also cover practical challenges encountered by Member States in implementing them.
- (ii) A 1/2 day seminar as proposed in document SCP/19/6 will be organized during SCP/20 on the above five exceptions or limitations.
- (iii) The Secretariat will prepare, for SCP/21, a document, based on input received from Member States, on how the remaining exceptions and limitations contained in document SCP/18/3 are implemented in Member States, without evaluating the effectiveness of those exceptions and limitations: acts for obtaining regulatory approval from authorities; exhaustion of patent rights; compulsory licensing and/or government use; exceptions and limitations relating to farmers' and/or breeders' use of patented inventions. A 1/2 day seminar as proposed in document SCP/19/6 will be organized during SCP/21 on the remaining exceptions and limitations as referred to above.

(b) Quality of Patents, including Opposition Systems

Compilation, based on information received from Member States, of work-sharing programs among patent offices and use of external information for search and examination

(c) Patents and Health

Organize during SCP/20 a sharing session on countries' use of health-related patent flexibilities.

(d) Confidentiality of communications between clients and their patent advisors

- (i) The Secretariat will prepare, for the next session of the SCP, a document compiling laws and practices on, and summarizing information on experiences relating to, the issue of confidentiality of communications between clients and their patent advisors received from Member States.

- (ii) The Secretariat will, at the next session of the SCP, make a presentation, followed by discussion, on the issue of confidentiality of communications between clients and their patent advisors.
- (e) Transfer of Technology
- (i) The Secretariat will revise document SCP/18/8 by adding further practical examples and experiences on patent-related incentives and impediments to transfer of technology on the basis of inputs received from members and observers of the SCP, taking into account the dimension of absorptive capacity in technology transfer.

24. The Secretariat informed the SCP that its twentieth session would tentatively be held during the week of December 9, 2013 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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