

## **Standing Committee on the Law of Patents**

**Eighteenth Session**  
**Geneva, May 21 to 25, 2012**

### **QUESTIONNAIRE ON QUALITY OF PATENTS: PROPOSAL BY THE DELEGATIONS OF CANADA AND THE UNITED KINGDOM**

*Document prepared by the Secretariat*

1. The Annex to this document contains a proposal submitted by the Delegations of Canada and the United Kingdom in respect of a questionnaire on quality of patents, for consideration under item 7 of the draft agenda: Quality of Patents, including Opposition Systems.

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

[Annex follows]

## I. INTRODUCTION

1. At the 16<sup>th</sup> Session of the Standing Committee on the Law of Patents (SCP) the Delegations of Canada and the United Kingdom put forward a joint proposal for a work program on the Quality of Patents (SCP/16/5). Some Member States submitted proposals for work streams which might fall under this work program. Some Member States did not feel ready to commit to the work program and called for a definition of “Quality of Patents” and clarification of the scope of work proposed.
2. For the 17<sup>th</sup> Session of the SCP a revised proposal (SCP/17/8) was submitted. The revised proposal attempted to provide a broad definition which would encompass all the definitions of “Quality of Patents” Member States might use, and addressed other concerns raised at the 16<sup>th</sup> Session of the SCP. However, during the course of the 17<sup>th</sup> SCP it became clear that the attempt to clarify a definition for “Quality of Patents” and the scope for future work had not been successful.

## II. DEFINITION

3. The Delegations of Canada and the United Kingdom continue to believe that every member state has an interest in the quality of patents within its jurisdiction; however, it is clear that Member States have different definitions of what constitutes quality of patents. Rather than attempting to draft a common definition of quality of patents to which all Member States could agree, we believe it would be more beneficial to explore the various definitions Member States use within their national offices.

## III. SCOPE OF WORK

4. In proposing an agenda item on Quality of Patents it was never the aim of the Delegations of Canada or the United Kingdom to prescribe the work the committee should undertake, rather the aim was to set out a framework under which work streams suggested by Member States might fall. A number of the suggestions for work streams falling under the framework were submitted to the electronic forum, and raised orally during plenary sessions. It is our observation that nearly all of the suggestions for work streams had as their starting point an initial question or questions. We believe that by exploring the answers to these questions the scope of work might be made clearer.

## IV. QUESTIONNAIRE

5. To elicit the definitions and criteria Member States use to define quality of patents, and to help clarify the scope of for future work, it is proposed that Member States complete the attached questionnaire. The questionnaire is divided into three components corresponding to those of the proposals SCP/16/5 and SCP/17/8, namely:
  - a. Information access and exchange on quality of patents
  - b. Technical infrastructure development
  - c. Process improvement

The questions in the questionnaire are informed by those put forward in proposals, comments, and suggestions already submitted to the electronic forum, and raised during plenary sessions of the Committee.

6. We encourage Member States to complete this questionnaire.

**Questionnaire on Quality of Patents**

The answers to this questionnaire have been provided on behalf of:

Country: .....

Office: .....

Person to be contacted:

Name: .....

Title: .....

E-mail: .....

Telephone: .....

Facsimile: .....

**Section I: Information access and exchange on quality of patents:**

1. What definition/s of 'quality of patents' is used within your national jurisdiction?

2. Do you use criteria in your national jurisdiction to define quality of patents from an application perspective?  yes /  no

If so, what criteria?

a) Quality of the invention: Do you use criteria to ensure the invention is sufficiently inventive?  yes /  no

If so, what criteria are used (e.g. inventive step, or innovative step)?

b) Quality of drafting the patent application: Do you use criteria to ensure that the invention is clearly described in the application?  yes /  no

If so, what criteria are used?

3. Do you use in your national jurisdiction to define quality of patents from your IP office's perspective?  yes /  no

If so, what criteria?

a) Quality of search for the state of the art: Do you use criteria to ensure that an examiner has identified the closest prior art?  yes /  no

If so, what criteria are used?

b) Quality of analysis of search results: Do you use criteria to ensure that prior art is correctly evaluated in relation to the application?  yes /  no

If so, what criteria are used?

c) Quality of the application of legal provisions: Do you use criteria to ensure that the applicable legal provisions observed and applied appropriately?  yes /  no

If so, what criteria are used?

- d) Quality of cooperation of the applicant and the examiner: Do you use criteria to assess the level of contact between examiner and applicant?  yes /  no

If so, what criteria are used?

- e) Quality of legal provisions: Do you use criteria to ensure that the legal provisions understandable and available to all parties concerned?  yes /  no

If so, what criteria are used?

4. Do you use any other criteria in your national jurisdiction to define quality of patents?  yes /  no

If so, what criteria are used?

5. What specific national targets, if any, are used to define and ensure quality of national patents?
6. What specific IP office targets, if any, are used to define and ensure quality of national patents?

**Section II: Technical infrastructure development:**

7. Please describe the nature of the scientific/technical training IP office examiners receive in order to ensure the quality of patents granted?
8. Please describe the nature of the legal/ legal system training IP office examiners receive in order to ensure the quality of patents granted?
9. Please describe the nature of work done with users of the patent system to ensure that patents submitted to your national IP office are of a high quality?
10. What search tools and options (hardware and software) are available to an examiner to ensure the quality of patents granted?

**Section III: Process improvement:**

11. Within the national IP office, what specific metrics are used in evaluating the quality of national patents granted?
12. Within the national IP office, what specific metrics are used in evaluating the quality of the work of patent examiners?
13. Please describe what quality control mechanisms are employed within your national IP office to ensure the quality of patents granted and the quality of the work of patent examiners?
14. Please describe the quality management systems your IP office has in place to ensure quality of patents?
15. How does your national office use foreign search and examination work to ensure quality of patents?

16. What challenges does your national IP office face in the use of foreign search and examination work to ensure quality of patents?
17. How could potential obstacles for using foreign search and examination work be overcome?

[End of Annex and of document]