

Standing Committee on the Law of Patents

Twenty-Eighth Session
Geneva, July 9 to 12, 2018

PROPOSAL BY THE DELEGATIONS OF THE CZECH REPUBLIC, KENYA, MEXICO,
SINGAPORE AND THE UNITED KINGDOM

Document prepared by the Secretariat

1. The Annex to this document contains a proposal submitted by the Delegations of the Czech Republic, Kenya, Mexico, Singapore and the United Kingdom to pursue work on quality of patents and the patent grant process, for consideration under item 6 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]

PROPOSAL TO PURSUE WORK ON QUALITY OF PATENTS AND THE PATENT
GRANT PROCESS FROM THE CZECH REPUBLIC, KENYA, MEXICO,
SINGAPORE AND THE UNITED KINGDOM

Introduction

1. The work of the SCP on “quality of patents” is of great importance. High quality patents are crucial to ensuring that the patent system can properly perform its role in incentivising innovation, rewarding new developments, facilitating the transfer of knowledge and promoting access to new technologies.
2. Document SCP/27/4 Rev. presents a compilation of responses from Member States on how they understand the term “quality of patents”. Although no single definition is identified, SCP/27/4 REV suggests that two main concepts arise from the responses:
 - a. The quality of the patent itself (e.g. compliance with patentability criteria such as inventive step).
 - b. The patent grant process within IP offices (as this provides the mechanism for grant of high quality patents).
3. Both concepts work together to ensure the patent system can achieve its policy aims. The responses in SCP/27/4 Rev. also highlight a wide range of factors which influence patent quality, such as the wider judicial system, availability of revocation mechanisms, access to work of other offices and the market and economic value of granted patents.
4. SCP/27/4 Rev. provides the Committee with a useful understanding of the many factors which make up patent “quality”. As a result we propose that the Committee is now in a position to discuss these factors in more detail. We propose that, as one of the main concepts identified in SCP/27/4/ Rev., it would be particularly beneficial for the Committee to discuss the patent grant process within IP offices under the heading of “quality of patents”.
5. The SCP provides an exceptional forum for national offices to share experiences and best practice and to learn from others. Pursuing work in the SCP on office processes which lead to the grant of high-quality patents would therefore enable the exchange of valuable knowledge and ideas. This could help improve the quality of granted patents and would therefore be beneficial to Member States, patent holders, third parties, and society more widely.

Proposal

6. It is proposed that the Committee explore the different approaches used by national and regional offices to ensure the quality of the patent grant process with a particular focus on search, examination and formalities procedures. The Committee’s discussions should cover topics such as:
 - a. Mechanisms for ensuring the quality of the patent grant process.
 - b. Options for resolving issues identified by these mechanisms (e.g. training, guidance).

7. It is proposed that in order to explore the topics listed above the Committee should undertake the following activities:
 - a. A sharing session to be held on approaches used by delegations to ensure the quality of the patent grant process within IP offices, including any challenges faced and how they have been overcome.
 - b. A study on approaches to the quality of the patent grant process to be undertaken by the Secretariat based on the responses to the questionnaire on the term “quality of patents”, sharing session, and any further information provided by Member States including relevant aspects of national legislation.
8. The outcomes of the above activities may inform additional work the Committee may wish to undertake, for example if particular topics arise which would benefit from further discussion. Alternatively, the Committee may wish to continue this work by looking at further aspects of the patent grant process, such as classification or publication.
9. We propose that delegations be invited to participate in the sharing session at SCP/29.
10. This proposal is intended to complement, not replace, other topics and proposals being pursued under Quality of Patents.

[End of Annex and of document]