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Standing Committee on the Law of Patents

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Geneva, October 16 to 20, 2023

SPECIAL RULES OF PROCEDURE OF THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

Document prepared by the Secretariat

INTRODUCTION

1. The Assemblies of the Member States of WIPO, in a decision taken at their sixty-third series of meetings held in Geneva from July 14 to 22, 2022, amended the General Rules of Procedure of the World Intellectual Property Organization (WIPO) (General Rules of Procedure)¹ with respect to, *inter alia*, the electoral cycle of officers in WIPO bodies. The amendment, in principle, aligned the electoral cycle of officers of all WIPO bodies with that of the WIPO General Assembly, whereby the officers' terms of office begins following the final meeting of the session during which they were elected. The rationale for harmonizing the electoral cycle of officers was explained in document A/63/5 Rev. as follows:²

- By starting their term immediately after the closure of the session during which the officers were elected, they have the necessary time to efficiently and effectively prepare the subsequent session that they will preside, which may involve highly technical issues;

¹ Available at: https://www.wipo.int/policy/en/rules_of_procedure.html. The General Rules of Procedures were further amended by the Assemblies of the WIPO, at their sixty-fourth series of meetings held in Geneva from July 6 to 14, 2023. However, the provisions relevant to the electoral cycle of officers are not affected by the amendments adopted in 2023.

² See document A/63/5 Rev., paragraphs 5 to 8.

- The additional preparation time also facilitates consensus-building by providing additional time for any necessary consultations; and
- One consistent electoral cycle makes the governance structure of WIPO more coherent.

2. In accordance with Rules 1(1) and 45(2) of the General Rules of Procedure, the General Rules of Procedure shall apply to, *inter alia*, the Standing Committee on the Law of Patents (SCP), subject to modification by its own special rules of procedure as agreed by the Committee³. Therefore, the said amendment to the General Rules of Procedure has a direct impact on the election of the Chair and Vice-Chairs of the SCP.

3. Taking into account the principles laid down in the amended General Rules of Procedure and the needs of the SCP as a technical committee in the field of patent law, the present document proposes minor alterations to the existing Special Rules of Procedure of the SCP (SCP Special RoP) applied to the election of officers in the SCP. The first proposal concerns an amendment of the SCP Special RoP, and the second one relates to a one-time transitional arrangement for the officers to be elected during the thirty-fifth session of the SCP.

CURRENT GENERAL RULES OF PROCEDURES

4. Rule 9 of the General Rules of Procedure reads:

“Rule 9: Officers

(1) In the first meeting of each ordinary session, each body shall elect a Chair and two Vice-Chairs.

(2) Officers’ terms of office shall begin following the final meeting of the session during which they were elected. Officers shall remain in office until terms of office of newly elected officers begin.

(3) The outgoing Chair and Vice-Chairs shall not be immediately eligible for re-election to the office which they have held.”

5. The definition of the term “body” in Rule 2 of the General Rules of Procedure explicitly includes the SCP. Therefore, unless otherwise modified by the SCP Special RoP, Rule 9 applies to election of the Chair and Vice Chairs of the SCP.

6. In relation to Rule 9(1), in general, international agreements that establish the respective “body” stipulate the frequency of “ordinary sessions”, i.e., the frequency of election of officers. For example, ordinary sessions of the WIPO General Assembly and of the Assembly of the Paris Union are held every second calendar year, in accordance with the Convention Establishing the World Intellectual Property Organization (WIPO Convention) and the Paris Convention for the Protection of Industrial Property (Paris Convention), respectively.⁴ However, the SCP does not have any distinction between “ordinary” and “extraordinary” sessions.

³ The Special Rules of Procedure of the SCP are available at: <https://www.wipo.int/policy/en/special-rules-of-procedure-wipo-standing-committees.html#scp>.

⁴ See Article 6(4)(a) of the WIPO Convention and Article 13(7)(a) of the Paris Convention.

CURRENT SPECIAL RULES OF PROCEDURES OF THE SCP

7. The SCP Special RoP were initially adopted by the Committee in its first session, first part, and amended at its second and seventeenth sessions. They regulate, *inter alia*, the term and re-election of the Chair and two Vice-Chairs in the following manner:

- (i) *the SCP elects the Chair and the two Vice-Chairs for one year; and*
- (ii) *the outgoing Chair and Vice-Chairs shall be immediately eligible for re-election to the offices which they have held.*

It should be highlighted that while the General Rules of Procedures use meeting “sessions” as a reference point for the length of the term and election of officers, the current SCP Special RoP provide the term and election cycle based on a “year”.

8. Until recently, two SCP sessions were usually held within a calendar year. When adopting the above SCP Special RoP regarding the term of officers and their immediate eligibility for re-election, the Committee acknowledged the need for the greatest possible continuity in the work of officers of the SCP.⁵

ISSUES: ELECTION CYCLE AND THE LENGTH OF THE TERM OF OFFICERS

9. The General Rules of Procedure, with the modification by the current SCP Special RoP, result in the election cycle of SCP officers and their terms of office as follows:

- The terms of office shall begin following the final meeting of the session during which the officers were elected.
- They are elected for one year.

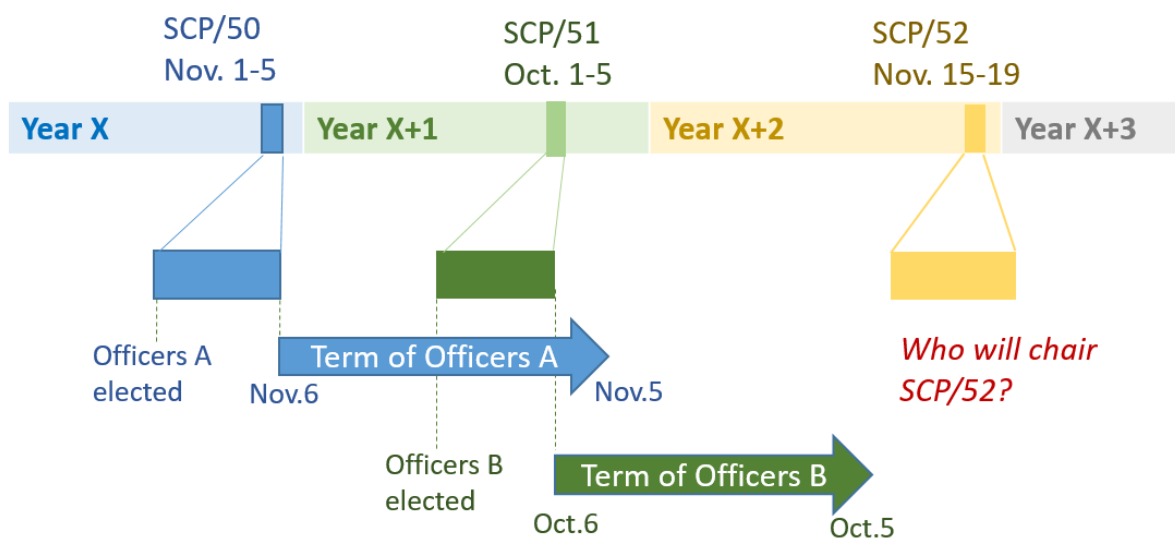
This procedure, however, could cause a situation where two sets of officers would be in the office concurrently, or there are no officers to preside the subsequent session of the SCP, as explained below.

10. The unintended consequences may arise from the fact that SCP sessions may take place on different dates every year. For example, if the reference point were to remain “one year”, the officers’ term could expire before the session for which they were elected actually takes place, since the officers will only begin their terms of office *following* the final meeting of the session during which they were elected. This would be the case if the SCP session that follows the one in which the officers were elected takes place more than one year after the closing of the session during which the election was held. Such a situation is not merely a theoretical concern as shown by the scheduling for the thirty-fifth session (October 16 to 20, 2023), which takes place more than one year after the closing of the thirty-fourth session held from September 26 to 30, 2022.

11. To illustrate the issues, Figure 1 shows a hypothetical case of SCP/50, SCP/51 and SCP/52. There is less than one year between SCP/50 and SCP/51, while SCP/52 is held more than one year after the closure of SCP/51. The officers’ terms of office begin immediately after the closing of the SCP session during which they were elected, and they serve for a one-year period. In this scenario, it is observed that the terms of officers A and officers B overlap during a certain period after SCP/51, and that the one-year term of officers B expires before SCP/52 for which they were elected to serve.

⁵ See documents SCP/2/2, paragraph 4, and SCP/2/13, paragraph 9.

FIGURE 1; HYPOTHETICAL SCENARIO THAT MAY ARISE BY THE CURRENT SCP SPECIAL RoP (TERM OF OFFICERS = ONE YEAR):



PROPOSED MODIFICATION TO THE SPECIAL RULES OF PROCEDURES OF THE SCP

12. In order to avoid potential inconveniences illustrated above, it is suggested that the “sessions” of the SCP be used as a reference point for the length of the term of officers, instead of “years”. Specifically, it is proposed that the SCP Special RoP be amended in a manner that the term length of SCP officers be changed from “one year” to “two consecutive sessions”. Since an ordinary session of the General Assembly is held every second calendar year, the term of two sessions proposed for the SCP officers is on par with the General Assembly and some other bodies.

13. With respect to the eligibility for re-election to the offices, it is proposed that the Committee maintains the current SCP Special RoP, taking into account the technical nature of the Committee and continuity in the work of officers of the SCP.

14. Consequently, the amended provisions relating to officers in the SCP Special RoP would read as follows (the proposed additions and deletions are indicated in underlines and strikethroughs, respectively):

(i) *the SCP elects the Chair and the two Vice-Chairs for two consecutive sessions~~one year~~; and*

(ii) *the outgoing Chair and Vice-Chairs shall be immediately eligible for re-election to the offices which they have held.*

15. It is suggested that the amendment proposed in paragraph 14 enter into force immediately and therefore apply to the mandate of officers elected at the thirty-fifth session of the SCP.

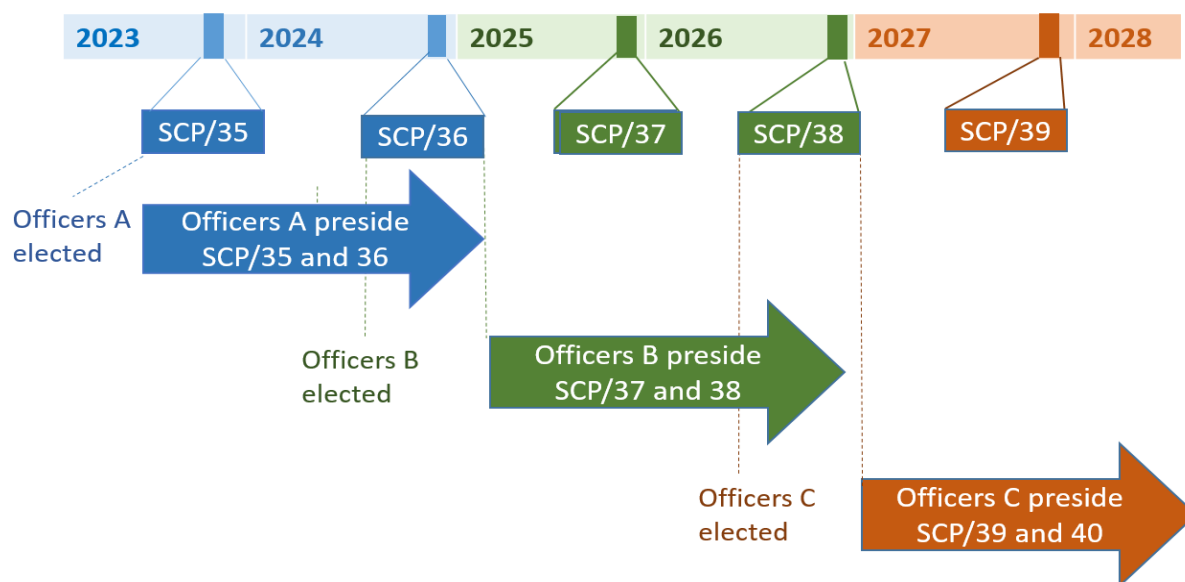
TRANSITIONAL ARRANGEMENT FOR THE ELECTION OF OFFICERS

16. In addition, there is a need to agree on a one-time transitional arrangement for the election of officers during the thirty-fifth session of the SCP in order to bridge the otherwise existing gap between the election of new officers at the beginning of the thirty-fifth session and the start of their terms only immediately after that session.

17. It is thus proposed that the officers to be elected during the thirty-fifth session of the SCP will preside over the thirty-fifth and thirty-sixth sessions of the SCP (two sessions). The next election of officers will be held during the thirty-sixth session of the SCP. The terms of these officers will start immediately after the closure of the thirty-sixth session, and they will preside over the thirty-seventh and thirty-eighth sessions of the SCP (two sessions), which is in line with the proposed amendment to the SCP Special RoP. The subsequent election will be held every two sessions, i.e., at the thirty-eighth, fortieth etc. sessions of the SCP.

18. In summary, Figure 2 illustrates the proposed electoral cycle of officers of the SCP, with the suggested one-time transitional arrangement.

FIGURE 2: PROPOSED ELECTORAL CYCLE OF SCP OFFICERS BY AMENDING THE SCP SPECIAL RoP AND WITH TRANSITIONAL ARRANGEMENT:



19. *The members of the SCP are invited to take a decision:*

(i) *to adopt the amended provisions of the Special Rules of Procedure of the SCP as referred to in paragraph 14, and the arrangement regarding their entry into force in paragraph 15, above; and*

(ii) *to agree on a transitional arrangement as referred to in paragraph 17.*

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