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RE: DRAFT ISSUES PAPER ON INTELLECTUAL PROPERTY POLICY AND ARTIFICIAL INTELLIGENCE

Dear Sirs,

In preparation of the Second Session of the WIPO Conversation on IP and Artificial Intelligence AI the WIPO Secretariat has issued a DRAFT ISSUES PAPER ON INTELLECTUAL PROPERTY POLICY AND ARTIFICIAL INTELLIGENCE and invited the interested parties to submit comments on the correct identification of issues and if there are any missing issues or questions to be discussed.

SIEMENS welcomes the approach to structure the discussion on the impact of artificial intelligence (AI) technologies on IP rights in two stages. It seems to us that this can approach can help to increase certainty that the relevant aspects of IP protection of AI get covered quite completely. There may be individual further questions that arise out of the discussions. We believe that discussions based on a resulting version of the issues paper will reveal many relevant issues.

We think that the draft issues paper is already a good starting point. Our analysis of the draft issues paper has only revealed some aspects that may need further clarification as suggested thereafter.

- A)** The draft issues paper has a strong focus on "autonomous" AI activities and seem to indicate that they are already here or just around the corner. It expresses for example
- i) *"However, it would now seem clear that inventions can be autonomously generated by AI"*¹
 - ii) *"Does the advent of inventions autonomously generated by AI applications call for a re-assessment of the relevance of the patent incentive to AI-generated inventions"*²
 - iii) *"AI applications are capable of producing literary and artistic works autonomously"*³

¹ Section 6

² Section 11

³ Section 12

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We would like to observe that the draft issues paper does not provide a definition of what is meant with

“autonomously generated by AI”

We think that this expression may refer to innovation that is initiated or triggered as well as designed by an AI without any human interaction or control. This may mean, that the AI identifies at a minimum, without any human interaction or control, both, the problem or malfunction and the features of the solution that constitutes the invention. It may further mean that this AI has to be created without any human interaction or control.

Such autonomous inventive activity seems to be limited to so-called strong AI. Experts for AI have stated repeatedly that strong AI is still decades if not centuries away.

In earlier discussions we did observe a tendency to differentiate between AI-assisted and AI-generated innovations. We expect that a similar distinction should be made in the WIPO Conversation.

Due to its global applicability and character, IP & AI are currently discussed in many different for a well distributed around the globe. As resources to contribute to such discussions are limited it is paramount to focus the WIPO Conversation on issues with high likelihood of actual practical relevance.

Based on these observations, we suggest

- 1) to start with a new first issue asking for a definition of “autonomously generated by AI”
- 2) to distinguish clearly between questions directed to autonomously AI-generated and AI-assisted innovations
- 3) to move the question under Issue 5 (ii) to the start of the issues paper and focus the WIPO Conversation, depending on provided responses, on those issues and questions that are widely considered as not too early.

B) In the introductory paragraph no. 5, the draft issue paper presents six issues for discussion

- (a) Patents
- (b) Copyright
- (c) Data
- (d) Designs
- (e) Technology Gap and Capacity Building
- (f) Accountability for IP Administrative Decisions

We suggest added a new seventh issue of AI impact to trade secrets to this list with at least the following questions in a separate section of the paper:

- (i) *How, if at all, does AI impact trade secret laws in the EU, US and other jurisdictions? For example, do the EU Trades Secrets Directive and the US Defend Trade Secrets Act (DTSA), 18 U.S.C. 1836 adequately provide for protection against the misappropriation of trade secrets for AI generated innovations, works, and data?*
- (ii) *Are there concerns regarding a company or individual from licensing an AI tool in the EU or US market and still being able to maintain reasonable measures for keeping an autonomously generated AI innovation, work or data a trade secret?*

C) Accordingly, we suggest presenting further trade secret related questions as applicable under other issues.

1) Issue 5 should be complemented as follows:

(iii) *What is the economic and public policy impact if considerations under one of the Issues 1 to 4 will lead to less inventions being patentable or to higher hurdles for the patentability of AI-related inventions?*

2) Issue 6 should be complemented as follows:

(iv) *What is the economic and public policy impact if laws / regulations prohibit an AI-generated work from being attributed copyright protection without a human contributor?*

D) Question (v) under Issue 4 currently reads as follows:

(v) *"Should the human expertise used to select data and to train the algorithm be required to be disclosed?"*

We observe that this question may be interpreted differently

i) *"Should the human that selected the data and trained the algorithm be required to be disclosed?"*

ii) *"Should the method used to select data and to train the algorithm be required to be disclosed?"*

iii) *"Should the data selected to train the algorithm be required to be disclosed?"*

The potential ambiguities should be resolved.

E) We suggest the following clarification of question (ii) under Issue 10:

(ii) *If new IP rights were to be considered for data, what types or aspects / qualities of data would be the subject of protection?*



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