

WIPO



ACE/IP/1/2

ORIGINAL: English

DATE: August 18, 2000

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

ADVISORY COMMITTEE ON ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS

First Session
Geneva, October 19 and 20, 2000

ORGANIZATIONAL MATTERS AND FUTURE WORK
TO BE CONSIDERED BY THE ADVISORY COMMITTEE
ON ENFORCEMENT OF INDUSTRIAL PROPERTY RIGHTS

Memorandum prepared by the International Bureau

I. Introduction

1. The Program and Budget for the 2000-2001 Biennium (document A/34/2–WO/PBC/1/2; approval reported in document A/34/16, paragraph 144), provided for the establishment of an “Advisory Committee on Enforcement of Industrial Property Rights” (ACE/IP). Specifically, the text of Sub-program 09.3, “Protection of Industrial Property Rights,” in the Program and Budget for the 2000-2001 biennium lists the following activity:

Convening of two meetings of the Advisory Committee on Enforcement of Industrial Property Rights to consider current issues concerning the enforcement of rights, including infringement of patents and counterfeiting of trademarks and designs.

2. Generally speaking, the objective of the ACE/IP, as an Advisory Committee, is to:

“... monitor all activities in the area of international industrial property law, and related general industrial property issues, prepare studies and proposals for improvement, and consider the most appropriate approach to their adoption and implementation.”¹

¹ See the introduction to Main Program 09, “Development of Industrial Property Law,” in the Program and Budget for the 1998-1999 Biennium (document A/32/2–WO/BC/18/2, page 87; approval reported in document A/32/7, paragraph 93).

3. The present document proposes details concerning organizational and procedural matters for consideration by the ACE/IP, contains an overview of the related work of the WIPO Regional Bureaus and Departments/Units in the Sector of Cooperation for Development in the area of enforcement, contains a brief comment regarding the future work of the ACE/IP, and proposes the creation of an electronic forum for the ACE/IP.

II. Organizational and Procedural Matters

4. *Rules of Procedure.* With a view to streamlining procedures and avoiding a proliferation of differing approaches for the various Committees provided for in Main Program 09, "Development of Industrial Property Law," it has been the practice not to establish separate organizational rules for each Committee, with the consequence that the general rules of procedure adopted for WIPO bodies, namely the WIPO General Rules of Procedure (Publication No. 399 (FE) Rev.3) would apply. The ACE/IP, however, has the option to adopt, should it so desire, special rules of procedure containing specific departures from the General Rules of Procedure of WIPO.

5. Accordingly, it is proposed that the ACE/IP follow the decisions taken by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) and the Standing Committee on the Law of Patents (SCP) and adopt two special rules of procedure at this time. First, it is proposed that membership in the ACE/IP also be extended to Member States of the Paris Union that are not Member States of WIPO, and that observer status be extended to Member States of the United Nations that are not Member States of ACE/IP or the Paris Union. Second, it is proposed that, in order to allow for the greatest continuity in the work of the officers of the Standing Committee, the ACE/IP elect the Chair and the two Vice-Chairs for one year and that the outgoing Chair and Vice-Chairs shall immediately be eligible for re-election to the offices which they have held.

6. *Membership and observers.* Pursuant to Rules 7 and 8 of the General Rules of Procedure, and to the paragraph of Main Item 09 of the Program and Budget cited in paragraph 1, above, and with reference to page 92 of the Draft Program and Budget for the 1998-1999 Biennium (A/32/2 – WO/BC/18/2),² the Director General has invited to the first meeting of the ACE/IP Committee, as members, all Member States of WIPO and/or the Paris Union, and as observers, Member States of the United Nations that are not members of WIPO or the Paris Union and intergovernmental organizations and non-governmental organizations accredited with observer status with WIPO. In addition, a number of NGOs have been invited by the Director General as *ad hoc* observers.

7. In order to most effectively represent its position, each delegation, which within WIPO traditionally consists of representatives from the industrial property office, might find it advantageous to consult its agencies³ which are responsible for the enforcement of industrial property rights, and to include those agencies in the delegation. Consequently, the meetings

² Sub-program 09.3 of the Program and Budget for the 1998-1999 Biennium specifically states that the Advisory Committee is "to be made up of Member States and interested intergovernmental and non-governmental organizations."

³ They could include, for example, one or more of the following: judiciary/judicial service; customs; police; prosecutors (in lower and higher courts); and ministries responsible for law/legal affairs.

of the ACE/IP might thereby facilitate communication and networking among such agencies at the national and international levels.

8. *Languages.* Simultaneous interpretation in the current session of the ACE/IP will be provided from and into English, French, and Spanish. The working documents for the current session of the ACE/IP have been prepared in English, French and Spanish.

9. *Sessions.* In conformance with the budgetary allocation in Sub-program 09.3 of the current Program and Budget, it is proposed that the ACE/IP hold two sessions in the 2000-2001 Biennium. At the conclusion of each session of the ACE/IP, the Chair would provide a summary of the conclusions of that session. It is also suggested that, given the nature of the first session of the ACE/IP as an initial discussion of the issues and the setting of an agenda for the future, that the Secretariat not prepare a draft or final report. At the first session, the ACE/IP can decide whether a final report would be desirable at subsequent meetings.

10. *Funding of participation of government officials.* In conformance with the budgetary allocation in Sub-program 09.3 of the Program and Budget for the 2000-2001 Biennium, WIPO has facilitated for the present session the participation of representatives of developing countries, and of certain countries in Europe and Asia.

11. *Establishment of an ACE/IP Electronic Forum.* In conformance with the decisions taken by the SCT and the SCP, it is proposed that an ACE/IP Electronic Forum (herein referred to as "Electronic Forum") be established.

12. The Electronic Forum would be open for participation by all States members of the ACE/IP, and all interested intergovernmental and non-governmental organizations which have observer status in the ACE/IP. The International Bureau would provide administrative support for the maintenance of the Electronic Forum. An alternative means of participation for those who wish to participate in the Electronic Forum, but do not have access to e-mail, would be guaranteed, for example, by facsimile transmission or express mail.

13. The Electronic Forum would be used to make working documents available on the WIPO web site and secure approval by exchange of e-mail. The Electronic Forum would ensure that the quality of the working documents submitted to the ACE/IP were as high as possible, so that the discussions of the ACE/IP could focus on substantive issues rather than on questions of clarity, drafting or the accuracy of the documents. The Electronic Forum could also be used to facilitate communication and networking among the participants in the Electronic Forum and the delegations or delegates listed in the list of participants by posting their e-mail addresses.

14. To assist the ACE/IP in considering this proposal, the International Bureau will distribute a questionnaire at the opening of the first session of the ACE/IP. Each participant will be invited to indicate on the questionnaire whether he or she (i) has access to e-mail; (ii) is interested in participating in an electronic forum in order to accelerate the preparation of ACE/IP documents; and (iii) would like to have the e-mail addresses of participants and delegations or delegates posted on that electronic forum. A similar questionnaire will later be sent to invitees who did not actually attend the meeting.

15. *The ACE/IP is invited to adopt the special rules of procedure proposed in paragraph 5, above, and to note the working arrangements described in paragraphs 6-14, above.*

III. Work of the WIPO Regional Bureaus in the Area of Enforcement

16. Much of the work in the area of enforcement undertaken by the WIPO Regional Bureaus and the Intellectual Property Law Department of the Sector of Cooperation for Development is described in the current version of a regularly-updated document prepared by the Secretariat, entitled “WIPO’s Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000” (document WIPO/TRIPS/2000/1).⁴

17. As pointed out in that document, the International Bureau of WIPO, pursuant to various resolutions of the General Assembly of WIPO in 1994 and 1995 and the Agreement Between the World Intellectual Property Organization and the World Trade Organization (WIPO-WTO Agreement), which entered into force on January 1, 1996, has incorporated into its ongoing cooperation for development programs various activities regarding the enforcement of intellectual property rights. Such activities include legislative advice, awareness building and human resource development, institution building and modernization of the intellectual property system and enforcement. In the area of enforcement, in particular, WIPO has organized 3 interregional, 10 regional, 9 subregional and 60 national meetings concentrating wholly or partly on the enforcement provisions of the TRIPS agreement. In the area of human resource development, which includes enforcement issues, WIPO has organized some 122 regional meetings, including 8 ‘Mega’ meetings in various regions of the world, 251 subregional and national meetings, including training courses, and around 124 interregional courses and seminars.⁵ It should be noted that similar activities in the area of enforcement have also been carried out under the WIPO cooperation program for certain countries in Europe and Asia, first established as a distinct program in the Program and Budget for the 1998-1999 Biennium.

18. The work of the ACE/IP, as distinguished from the work undertaken by the WIPO Regional Bureaus and the Intellectual Property Law Department of the Sector of Cooperation for Development, as well as by the WIPO Division for Cooperation with Certain Countries in Europe and Asia, is to examine issues relating to enforcement of industrial property rights in the context of the progressive development of intellectual property law.

⁴ At present, the current version of the document is available only in English. An earlier version of the document was released as the Annex to “Cooperation with the World Trade Organization” (document WO/GA/24/5 Rev.), which was prepared for the WIPO General Assembly, Twenty-Fourth (14th Ordinary) Session, Geneva, September 20 to 29, 1999. Copies of this earlier version are available in English, French, and Spanish on the “Meetings” pages of the WIPO web site.

⁵ See “WIPO’s Legal and Technical Assistance to Developing Countries for the Implementation of the TRIPS Agreement from January 1, 1996 to June 30, 2000” (document WIPO/TRIPS/2000/1), pages 3-4, paragraphs (iii), (iv), (v), and (vii).

IV. Consideration of Future Work by the ACE/IP

19. As a formal meeting of Member States,⁶ the ACE/IP may address any enforcement issue with regard to industrial property rights that it deems appropriate.⁷

20. Among the issues that could be addressed by the ACE/IP are, *inter alia*, whether inroads could be made with regard to the technical legal issues concerning different approaches to exhaustion of rights for each industrial property right; whether comparative studies with regard to effective practices in the area of enforcement would be useful; and whether special efforts could be made in the areas of counterfeiting of trademarks and designs and infringement of patents.⁸ It should be recalled that in 1988 a WIPO Committee of Experts on Measures Against Counterfeiting and Piracy drafted, but did not adopt, Model Provisions for National Laws.⁹

21. *The ACE/IP is invited to engage in a discussion of the enforcement issues to be addressed.*

[End of document]

⁶ See footnote 2.

⁷ See paragraph 1 in this document.

⁸ The Program and Budget for the 2000-2001 Biennium, of course, specifically identifies infringement of patents and counterfeiting of trademarks and designs as likely issues for consideration. See paragraph 1 in this document.

⁹ See WIPO documents C&P/CE/2 (February 18, 1988) and C&P/CE/2 Corr. (April 25, 1988) regarding the Model Provisions themselves, and WIPO documents C&P/CE/4 (April 28, 1988) and C&P/CE/4 Corr. regarding the accompanying Report of the Committee of Experts. It should be noted that the term “counterfeiting” is defined broadly in Article A of the Model Provisions, and, as such, covers “the cases where the rights infringed are rights protected by industrial property (or rights similar to industrial property).” See the Observations Concerning Article A in the Model Provisions (page 4 of document C&P/CE/2).