

WIPO General Assembly

Fifty-Fifth (30th Extraordinary) Session
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REPORT ON THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

prepared by the Secretariat

1. During the period under consideration, the Standing Committee on the Law of Patents (SCP) held its thirty-third session from December 6 to 9, 2021, in a hybrid format. The session was chaired by Mr. Leopoldo Soriano (Spain).
2. The SCP continued to address the following five topics during its thirty-third session: (i) exceptions and limitations to patent rights; (ii) quality of patents, including opposition systems; (iii) patents and health; (iv) the confidentiality of communications between clients and their patent advisors; and (v) transfer of technology.
3. The discussions were based on a number of proposals submitted by various delegations and documents prepared by the Secretariat, and the exchange of views and experiences contributed to a better understanding of each topic. In addition, a sharing session on the use of artificial intelligence (AI) for examination of patent applications provided a good opportunity for Member States to share their views and experiences, challenges and solutions on a specific topic.
4. Specifically, during the thirty-third session, the Committee held discussions on the draft reference document on the exception regarding prior use and a study on approaches to the quality of patent grant process. The Committee also continued its discussion on: (i) a review of existing research on patents and access to medical products and health technologies; (ii) patent law provisions that had contributed to effective transfer of technology, including sufficiency of disclosure; and (iii) confidentiality of communication between clients and their patent advisors.

5. Furthermore, the Committee discussed various proposals by the Member States, including the proposal by the Delegations of Brazil and Spain regarding a further study on the requirement of sufficiency of disclosure and the proposal by the Delegation of the United States of America for an information exchange on expedited patent examination mechanisms at intellectual property offices.

6. Under the agenda item, patents and health, the Committee was informed about the recent development with respect to Pat-INFORMED, MedsPaL and VaxPaL, and the Eurasian Patent Organization (EAPO) Pharmaceutical Register.

7. As regards the future activities of the Committee, the SCP will further advance its work based on the agreement on its future work reached at its thirty-third session. The Committee agreed that the non-exhaustive list of issues would remain open for further elaboration and discussion at the thirty-fourth session of the SCP. In addition, without prejudice to the mandate of the SCP, the Committee agreed that its work for the following session be confined to fact-finding and should not lead to harmonization at that stage. The future work program of the five topics under the SCP's agenda, agreed by the Committee, is as follows:

(a) With respect to the topic "exceptions and limitations to patent rights", the Secretariat will prepare a draft reference document regarding the exhaustion of patent rights, and will submit it to the thirty-fourth session. The subsequent type of exceptions and limitations to be covered by a draft reference document will be the exception regarding the use of articles on foreign vessels, aircrafts and land vehicles.

(b) Regarding the topic "quality of patents, including opposition systems", the Secretariat will prepare a study on the sufficiency of disclosure, as proposed in document SCP/31/8 Rev. During the thirty-fourth session, the Secretariat will also organize information sharing sessions on: (i) the patentability of inventions using AI and by AI; and (ii) expedited patent examination mechanisms at IP offices, as proposed in document SCP/33/4. In addition, the Secretariat will submit a report of the sharing session held on the use of artificial intelligence (AI) for examination of patent applications, which was held during the thirty-third session.

(c) As regards the topic "patents and health", at its thirty-fourth session, the Committee will continue to receive update on the initiatives on publicly accessible databases of patent status information concerning medicines and vaccines, in accordance with document SCP/28/10 Rev. The Secretariat will prepare an update of document SCP/31/5 (Review of Existing Research on Patents and Access to Medical Products and Health Technologies), extending the period under review and covering the period between 2019 and 2021, consistent with the terms of reference set out in document SCP/28/9 Rev. In addition, Representatives of the World Health Organization (WHO), World Intellectual Property Organization (WIPO) and World Trade Organization (WTO) will present their patent-related activities with respect to COVID-19 pandemic in the context of the trilateral cooperation. Representatives from the WHO and Medicines Patent Pool (MPP) will be invited to give presentations on the COVID-19 Technology Access Pool (C-TAP) and MPP's licensing activities, respectively.

(d) Concerning the topic "confidentiality of communications between clients and their patent advisors", the Secretariat will organize an information sharing session focusing on cross-border aspects of confidentiality of communications between clients and their patent advisors.

(e) As regards the topic “transfer of technology”, the Secretariat will organize an information sharing session to highlight the positive contributions of the patent system in enhancing innovation, technology transfer and industrial development of countries as well as challenges therein, through presentation of concrete cases by various stakeholders.

8. It was also agreed by the Committee that the information concerning certain aspects of national/regional patent laws would be updated, based on input received from Member States.

9. *The WIPO General Assembly is invited to take note of the “Report on the Standing Committee on the Law of Patents (SCP)” (document WO/GA/55/2).*

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