

MAIN PROGRAM 05

Development of Industrial Property Law

05.1 Law of Patents

05.2 Law of Trademarks, Industrial Designs and Geographical Indications

Summary

92. This Main Program consists of two Sub-programs. Under Sub-program 05.1, Law of Patents, the primary activity is to provide support for the Standing Committee on the Law of Patents (SCP). As one of four standing committees within WIPO, the SCP deals with clusters of interlocking issues in the area of patent law and gives Member States an effective mechanism for setting priorities, allocating resources, and ensuring the coordination and continuity of inter-related on-going work.

93. Under Sub-program 05.2, Law of Trademarks, Industrial Designs and Geographical Indications, the primary activity is to provide support for the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), which deals with clusters of interlocking issues in the areas of trademarks, industrial designs, geographical indications, and unfair competition.

94. The main resources under Main Program 05 will continue to be utilized to provide support for the Standing Committees, in order to further the progressive development of industrial property law. The activities of the International Bureau under this Main Program will continue to provide industrial property legal advice to Member States and to other units within WIPO, participate in relevant seminars and conferences, follow developments in national and regional industrial property law, coordinate with other international intergovernmental organizations (IGOs) involved in industrial property, and administer and promote the industrial property treaties that are administered by WIPO.

SUB-PROGRAM 05.1 Law of Patents

Objectives:

- ◆ To increase the awareness of Member States and other concerned parties of the importance and benefits of harmonizing patent law and to make progress towards the adoption of a legal instrument on further harmonization of patent law.
- ◆ To promote adherence to and appropriate implementation of WIPO-administered patent treaties, in particular, the Patent Law Treaty (PLT) and to provide information on current issues relating to the law of patents. To investigate the desirability and feasibility of establishing rules relating to the industrial property aspects of space law.
- ◆ To investigate the desirability and feasibility of establishing rules relating to the impact on patentability of disclosures on the Internet and infringement of patents on the Internet.
- ◆ To study the desirability and feasibility of establishing a system for the central recording of changes in patents and patent applications.
- ◆ To investigate the desirability and feasibility of further developing the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, including in particular consideration of a system for the deposit of DNA sequence listings referred to in patent applications.

Background

95. National and regional patent laws differ from country to country and region to region, causing problems for patent applicants and owners, in particular in terms of complexity and costs of international patent protection. The PLT, which was adopted at a Diplomatic Conference held in Geneva from May 11 to June 2, 2000, has contributed to harmonizing and streamlining patent formalities and procedures, but has not addressed issues of substantive patent law. In this respect, the Member States in the Standing Committee on the Law of Patents have expressed the position that discussions concerning further harmonization of patent law, in particular harmonization of substantive issues of patent law, should be a matter of priority. In addition, specific demands and needs have arisen in relation to the reform of the Budapest Treaty, the recording of DNA sequence listings in patent applications and in respect of studying the industrial property aspects of space law.

Expected Results	Performance Indicators
1. Greater awareness of the importance and benefits of further harmonizing patent law and substantive progress towards the possible adoption of a legal instrument on further harmonization of patent law.	☐ Number of meetings of the Standing Committee on the Law of Patents (SCP), and progress towards the adoption of a legal instrument on the further harmonization of patent law.
2. Greater level of awareness and understanding of current issues in the law of patents	☐ Number and nature of studies and guides published on current issues in the law of patents.

Expected Results	Performance Indicators
3. Increased awareness of the benefits of adherence to the WIPO-administered patent treaties, and, in particular, of the adherence to the PLT.	☐ Number of missions, meetings and workshops to promote the treaties and feedback thereon.
4. Agreement of Member States on the form of further addressing the issue.	☐ Progress in the relevant discussions.

Activities

- ◆ Convening of four meetings of the SCP (and any Working Group set up by this Committee), to consider current issues relating to the law of patents, including:
 - continuation of discussions on further harmonizing patent law;
 - the desirability and feasibility of harmonizing rules concerning the patent law implications of disclosure of information on the Internet, such as its impact on patentability, including whether such information has become state-of-the-art even if it was disclosed on the Internet for only a limited time, and concerning infringement of patents on the Internet;
 - the desirability and feasibility of establishing a central system to record changes in patents and patent applications for participating IPOs;
 - the desirability and feasibility of further development of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the purposes of Patent Procedure in order to:
 - clearly regulate and harmonize rules for public access to deposited biological material;
 - consider the possibility of biodeposits regarding traditional knowledge based on biological material and resources;
 - consider the possibility of setting up a system for the single deposit in a data bank of DNA sequence listings referred to in a patent application, with the effect of replacing the whole contents of the listing.
 - consideration of the measures to take and the form to give to any conclusions Member States may draw on the protection of industrial property in outer space.
- ◆ Preparation of studies on important issues relating to the law of patents that might not yet be ready for consideration by the SCP; where appropriate with the help of consultants, including certain practical questions relating to the patentability of biotechnological inventions, and, in cooperation with other sectors of WIPO, a study on possible policy recommendations for the protection, management and commercialization of industrial property rights developed or held, for example, by universities, research institutions, United Nations specialized agencies and other international IGOs, to assist those organizations in their economic-technical activities.

- ◆ Promotion of the PLT, by increasing the understanding of the principles of procedural patent law harmonization, including correspondence, legal advice, missions to speak at and attend seminars as well as advise national governments.
- ◆ Administration and promotion of WIPO-administered treaties in the area of patents (including the Paris Convention for the Protection of Industrial Property and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure), by promoting the understanding of the international principles relating to the law of patents, including provision of legal advice, participation in relevant seminars and meetings, consultation with national governments, preparation and provision of advice concerning WIPO documents and publications, publication of an updated version of the *Guide to the Deposit of Microorganisms under the Budapest Treaty*, and following the activities of the World Trade Organization (WTO).
- ◆ Updating of the WIPO guides on the licensing of biotechnology and on the licensing of integrated circuits, to promote licensing as an efficient tool to facilitate the transfer of technology and the commercialization of industrial property rights.
- ◆ Contribution to the preparation of a Guide on International Treaty Provisions concerning Industrial Property Protection as far as the law of patents is concerned.

SUB-PROGRAM 05.2

Law of Trademarks, Industrial Designs and Geographical Indications

Objectives:

- ◆ To increase the awareness and build consensus among Member States and other concerned parties on the necessity for harmonizing certain principles and rules of the law of trademarks, industrial designs and geographical indications.
- ◆ To revise and modernize the Trademark Law Treaty.
- ◆ To provide information on current issues relating to the law of trademarks, industrial designs and geographical indications.
- ◆ To promote adherence to and implementation of the WIPO-administered treaties in the areas of the law of trademarks, industrial designs and geographical indications.

Background

96. The principles and rules of the law of trademarks, industrial designs and geographical indications differ from country to country. This creates uncertainty for right holders and users wishing to market their products and seeking protection for their rights in several countries. In the years since the adoption of the Trademark Law Treaty (TLT), many developments have taken place necessitating the revision and modernization of the treaty, including the growth of electronic commerce and electronic filing, increasing globalization of the world economy requiring further harmonization of trademark law, and developments allowing consideration of creating an Assembly to modify the Regulations to the treaty. In recent years, the WIPO Assembly and the Paris Union Assembly have adopted a number of Joint Recommendations concerning protection of marks and other industrial property rights. Continuing consideration should be given to including these soft law provisions into a future treaty, and to the further development of industrial property law through the adoption of new joint recommendations. In addition, expanding international trade and cooperation necessitate taking a close look at all areas of international protection, including geographical indications, industrial designs and competition law.

Expected Results	Performance Indicators
1. Greater awareness of the necessity for the harmonization of certain principles and rules of the law of trademarks, industrial designs and geographical indications and consensus for action in this regard.	☐ Feedback from the SCT regarding the necessity for the harmonization of certain principles and rules of the law in these areas.
2. Greater level of awareness of current issues in the law of trademarks, industrial designs and geographical indications.	☐ Number of studies and guides published on current issues in the law of trademarks, industrial designs and geographical indications.
3. Increased awareness of the benefits of adherence to the WIPO-administered treaties or implementation of Joint Recommendations in the law of trademarks, industrial designs and geographical indications.	☐ Number of missions, meetings and workshops to promote the treaties and Joint Recommendations and feedback thereon.

Activities

- ◆ Convening of four meetings of the SCT (and any Working Group set up by this Committee), to consider current issues, including:
 - the revision of the TLT to address, *inter alia*, the creation of an Assembly, inclusion of provisions on electronic filing, and the incorporation of the Joint Recommendation on trademark licenses; preparation and convening of a diplomatic conference for the revision of the TLT;
 - the desirability and feasibility of harmonizing substantive trademark law, including the protection for new trademarks (sound, smell, three-dimensional marks, etc.), the requirements for use of a mark prior to registration, substantive grounds for refusal, etc.; facilitation of discussion in the SCT to incorporate in this framework the Joint

Recommendation concerning provisions on the protection of well-known marks and the proposed Joint Recommendation on the protection of marks and other industrial property rights in relation with the use of signs on the Internet;

- the continuation of the work of the SCT on geographical indications that took place during the 2000-2001 biennium, studying the desirability and feasibility of establishing guiding principles on issues concerning the protection of geographical indications, such as the nature of the rights in geographical indications, how to obtain effective protection for geographical indications in different countries, and, where protection is based on registration, the desirable and essential features of the registration procedure.
- ◆ Preparation of studies on important issues relating to the law of trademarks, industrial designs and geographical indications that might not yet be ready for consideration by the SCT, where appropriate with the help of consultants, including the following:
 - exploration of the desirability and feasibility of harmonizing procedures and substantive rules concerning the protection of industrial designs;
 - preparation of studies on globalization of trademarks, and the nature of rights deriving from domain names, and exploration of the practicality of establishing a principle of internationally well-known marks;
 - further developing the work concerning the protection of marks and other industrial property rights on the Internet, in particular, counterfeiting of marks on the Internet;
 - ways to effectively combat acts of unfair competition (with reference to Article 10*bis* of the Paris Convention), in particular on the Internet;
 - issues relating to intellectual property and competition law.
- ◆ Publication of international standards for eventual adoption by the WIPO General Assembly and the Paris Union Assembly concerning the law of trademarks, industrial designs and geographical indications, through the medium of joint recommendations.
- ◆ Administration and promotion of treaties administered by WIPO and joint recommendations in the area of trademarks, industrial designs and geographical indications (including the Paris Convention for the Protection of Industrial Property and the Trademark Law Treaty) by promoting an understanding of the international principles relating to the law of trademarks, industrial designs and geographical indications, including correspondence, legal advice, missions to speak at seminars, and advising national governments; preparation and provision of advice concerning WIPO documents and publications; notifications of emblems of States and intergovernmental organizations under Article 6*ter* of the Convention and in accordance with the 1995 Agreement between WIPO and the WTO; publication of an updated version of the Article 6*ter* CD-ROM. Preparations for publishing on-line all communications made so far under Article 6*ter*. Following the activities of the WTO.

- ◆ Organization of the next in the series of worldwide symposia on the international protection of geographical indications in cooperation with an interested government, and publication of the presentations made at the symposium.
- ◆ Contribution to the preparation of a *Guide on International Treaty Provisions concerning Industrial Property Protection* as far as the law of trademarks, industrial designs and geographical indications is concerned.
- ◆ Updating and publishing the WIPO Guide on Franchising.

Table 11.5 Detailed Budget 2002-2003
Main Program 05
Development of Industrial Property Law

A. Budget Variation by Object of Expenditure
(in thousands of Swiss francs)

Object of Expenditure	2000-2001 Revised Budget A	Variation						2002-2003 Proposed Budget E=A+D
		Program		Cost		Total		
		Amount B	% B/A	Amount C	% C/A	Amount D=B+C	% D/A	
Staff Expenses	5,182	728	14.0	384	7.4	1,112	21.5	6,294
Travel and Fellowships	1,479	(59)	(4.0)	51	3.4	(8)	(0.5)	1,471
Contractual Services	1,513	(47)	(3.1)	54	3.6	7	0.5	1,520
Operating Expenses	55	(1)	(1.8)	2	3.6	1	1.8	56
Equipment and Supplies	8	-	-	-	-	-	-	8
	8,237	621	7.5	491	6.0	1,112	13.5	9,349

B. Budget Variation by Post Category

Post Category	2000-2001	Variation	2002-2003
	Revised Budget A	B-A	Proposed Budget B
Directors	4	-	4
Professionals	4	2	6
General Service	6	-	6
TOTAL	14	2	16

**C. Budget Allocation by Sub-program and
Detailed Object of Expenditure**
(in thousands of Swiss francs)

Object of Expenditure	Sub-program		Total
	1	2	
Staff Expenses			
Posts	4,476	1,692	6,168
Short-term Expenses	63	63	126
Travel and Fellowships			
Staff Missions	387	348	735
Government Officials	368	368	736
Contractual Services			
Conferences	396	396	792
Consultants	340	340	680
Publishing	20	20	40
Other	4	4	8
Operating Expenses			
Communication and Other	28	28	56
Equipment and Supplies			
Furniture and Equipment	4	4	8
Total	6,086	3,263	9,349