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STANDING COMMITTEE ON THE LAW OF PATENTS (SCP): STATUS OF DISCUSSIONS, SUGGESTIONS AND PROPOSALS

Document prepared by the Secretariat

INTRODUCTION

1. This information document provides an overview of the status of discussions, suggestions and proposals concerning six topics discussed at the thirteenth and fourteenth sessions of the Standing Committee on the Law of Patents (SCP), which were held from March 23 to 27, 2009 and from January 26 to 29, 2010, respectively. Those six topics are: standards and patents; exclusions from patentable subject matter and exceptions and limitations to the rights; the client–patent advisor privilege; dissemination of patent information; transfer of technology; and opposition systems. The document aims at providing references for Member States and facilitating discussions by the Committee. It by no means recommends or suggests any future direction of the SCP. For a full reflection of the discussions at the previous sessions of the SCP, reference is made to the reports of those sessions (documents SCP/13/8 and SCP/14/10 Prov.1).

STANDARDS AND PATENTS

2. Issues relating to patents and technical standards were discussed at the thirteenth and fourteenth sessions of the SCP. Discussions were based on a preliminary study prepared by the International Bureau (document SCP/13/2).

3. All delegations who spoke considered that the issue of standards and patents was important, and deserved further analysis and discussions in the SCP. Some delegations indicated areas of particular importance to them and suggested some options for further elaboration and consideration.

4. The importance of striking a balance between the interests of patent holders, manufacturers (standard implementers) and end users was underlined by some delegations. They indicated that due consideration should be given to the public interest perspective and the right holders' perspective when examining the issues of patents and standards. In that context, one delegation supported the use of open standards, noting that a patent owner should be provided an incentive to have its proprietary technology included in the standard.

5. Some delegations raised concerns about inappropriate use or misuse of patents in connection with standard-setting activities. They pointed to the limits of patent policies established by standard setting organizations, which did not bind parties who were not participating in the standardization process. In addressing the issue of strategic behavior of patent owners that might involve the misuse of patents, one delegation questioned the effectiveness of contractual solutions, and suggested further studying the effectiveness of the use of compulsory licensing provisions. One delegation suggested that exclusions from patentable subject matter and exceptions and limitations to the rights be taken into account. The representative of one non-governmental organization, however, disagreed and was of the view that neither the international patent system nor its implementation at the national level required changes.

6. Some delegations stated that the effect of competition law in addressing these issues should be further examined.

7. With respect to the real-world situation, one delegation, supported by the representative of one non-governmental organization, noted that the number of disputes that resulted in litigation was a single digit per year, and considering the number of standards that had been adopted, there was no crisis in standard setting as claimed by some. On the other hand, some other non-governmental organizations noted that problems with standards and patents existed in some areas, such as in the field of software.

8. The flexibilities available under the patent system as well as the flexibilities in the standard setting system were also addressed by some delegations. One delegation stated that the flexibilities in the patent system supporting public policy objectives must not be undermined. Another delegation stated that standard development organizations and the standard development process itself must be flexible and capable of adapting the most innovative and best performing technologies available.

9. One delegation noted that standards designed for promoting interoperability and connectivity on the one hand, and standards related to areas of public policy, such as security, public health and the environment on the other, should not be treated in the same manner. Another delegation pointed out that, where mandatory standards were covered by patented technologies, this might require special public policy consideration.

10. Some delegations observed that the dissemination of patent information had some bearing on the disclosure of essential patents and patent applications in the standard-setting processes, and that a close cooperation among standard setting organizations and patent offices was important in order to ensure the coherence between the patent system and the standardization systems.

11. Some delegations requested further analysis regarding the implications of the issues for developing countries. In addition, some delegations requested more information concerning open software and standards.

12. As regards the options for the further exploration of the issues, some delegations suggested that further studies be conducted. One delegation stated that more concrete activities, analysis and assessment should be carried out in order to enhance the understanding of the problems in this area. As pointed out by one delegation, the interaction between the patent system and the standardization system may differ in each country because of the differences among national patent systems as well as the differences among national standardization systems having regard to the different industrial bases. Some delegations suggested that further study be conducted in order to formulate possible draft guidelines on patents in standardization. One delegation, however, was not in favor of a mandatory, single set of guidelines which would deprive diverse standard setting communities and innovative industries of the current flexibility in developing standards according to different processes and policies. The representative of one non-governmental organization suggested that the SCP gather information regarding the disclosure of essential patents and consider its proposal on a disclosure mechanism.

13. In addition, many delegations supported a close cooperation with the World Trade Organization (WTO) and with international standard-setting organizations, for example, the International Organization for Standardization (ISO) and the International Telecommunication Union (ITU). Among various ways and means of cooperation, such as a regular exchange of information, a joint seminar or a joint publication, the preparation of a collaborative study was mentioned by some delegations.

EXCLUSIONS FROM PATENTABLE SUBJECT MATTER AND EXCEPTIONS AND LIMITATIONS TO THE RIGHTS

14. Discussions concerning exclusions from patentable subject matter and exceptions and limitations to the rights were held at the thirteenth and fourteenth sessions of the SCP. They were based on a preliminary study prepared by the International Bureau (documents SCP/13/3 and SCP/14/7).

15. Most of the delegations who intervened considered that the issue of exclusions from patentable subject matter and exceptions and limitations to the rights was a very important subject in patent law. Some delegations attached this importance *inter alia* to the following factors: its balancing role in the patent system, provision of a policy space for policy makers in managing their development concerns, access to information, transfer of technology, and issues in the area of public policies, in particular, public health and food security, and ethics. One delegation pointed out that exceptions and limitations and their correlation with the development dimension was actually inherent in nature. Another delegation stated that the issue was part of the checks and balances of the international patent system, since it guaranteed the dissemination of technology embodied in the invention. It considered that developing countries should use patent policies in a sensible way, draw the maximum benefit from intellectual property, and be able to adapt patent policies to their particular circumstances and realities. Further, one delegation underlined that strong intellectual property rights and enforcement provisions were consistent with exceptions and limitations. It further maintained that exceptions and limitations complemented strong intellectual property rights and enforcement.

16. One delegation was of the view that the use of exceptions and limitations to patent rights had remained rather limited, especially in developing countries. In that context, the proposal was made by some delegations that the discussions on the issue should take into consideration the interests of technologically less advanced countries, in particular, the effects of exceptions and limitations on their development, the economic dimension and competition perspective.

17. Some delegations underlined their particular interest in reviewing specific issues, such as technical and non-technical creations, computer programs, life forms, exhaustion of rights, compulsory licensing, second medical use and business methods. Some delegations suggested that the Committee further look into national practices and interpretations by courts with respect to exclusions, exceptions and limitations.

18. A proposal was made by the Delegation of Brazil on exceptions and limitations to patent rights (document SCP/14/7).

19. Many delegations supported the proposal of the Delegation of Brazil, and therefore agreed that the work in that area should be undertaken along the lines proposed in the document. They agreed that establishing such a working program would contribute to the effective implementation of the Development Agenda. Some delegations were of the opinion that the proposal was important because it highlighted the obstacles which impeded the implementation of flexibilities that were foreseen in the international patent system. Some delegations stated that the proposal was of a particular importance to developing countries as it would assist them in bridging the gap between the existing legal framework and its actual implementation, designing and implementing their public policies, particularly as regards health, competiveness and transfer of technology. Along those lines, another delegation stated that the proposal should continue being part of the basic working document in order to continue promoting and strengthening the mobility of the work carried out in the Committee.

20. Some other delegations pointed out that the proposal needed to be considered together with the external experts' study on exclusions, exceptions and limitations to the rights at the following session to have a complete overview of the situation and avoid duplication of work. Likewise, some other delegations underlined the importance of the systematic analysis of the issue, therefore those delegations wished to review the study commissioned to external experts before deciding on a future work program on the issue. In particular, one of those delegations considered that the rationale and systematic evaluation of whether more work was needed in the area could be made only after the external experts' study had been produced. However, another delegation stated that the fact that the study by external experts had not yet been submitted to the Committee should not hinder Member States from proposing a work program on the issue.

21. In addition, one delegation expressed its concern about the sequence of how the different items were being handled. In its view, it would be advantageous to look at exceptions and limitations in conjunction with the substantive standards for protection which could be national, regional or international. The delegation was of the view that without discussing those items in context, the picture would be incomplete.

22. As to the implementation of the proposal of the Delegation of Brazil, one delegation was of the view that, as an initial step, the proposal should include a description of experiences of countries with exceptions and limitations and the identification of case law in that area with a view to developing a reference document, and advising ways on how not to restrict exceptions and limitations and not to exclude other possibilities which could benefit the development of countries. Another delegation suggested that the proposal

should include an analysis of constraints in implementing the limitations and exceptions in the patent law as well as a more detailed analysis of the rule of exceptions and limitations, particularly with reference to implementing government policies with regard to public health and other global issues. Having in mind the issues relating to access to medicines for the public, one delegation suggested that the third phase of the proposal include studies on the return on investment and the development of new medicines. Another delegation stated that the suggested approach in the third phase should not limit existing flexibilities. The representative of one non-governmental organization said that some academic works, including WHO documents, which provided regulations on compulsory licensing of many countries, could contribute to the proposal of the Delegation of Brazil. Another non-governmental organization suggested that the flexibilities found in Part 3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) on the enforcement of intellectual property rights be made explicit in the proposal. In addition, another non-governmental organization suggested that paragraph 22 of the proposal be divided into sub-topics in order to separate the ordinary limitations, such as the use of patented subject matter for private, non-commercial use, from the right of prior use and compulsory licensing.

23. As regards the modalities of discussing the proposal, the Delegation of Brazil expressed its wish that the proposal be discussed in conjunction with the study to be submitted by external experts, but at the same time, as a separate issue.

24. In relation to the content of the study commissioned to external experts regarding exclusions, exceptions and limitations to the rights, the following comments have been made by some delegations:

- the study should contain the economic aspect, in addition to the legal analysis, in order to enable the evaluation of the economic consequences of exceptions and limitations in various countries;

- the study should include an analysis of the implications of the bilateral and regional free trade agreements on the ability to use the exceptions and limitations;

- the study should focus on the patentability of life forms, bioethics, the socio-economic development and public policy, taking into account the economic, social and cultural impact of patentability of life forms in developing countries;

- the proposal by the Delegation of Brazil should be considered in the study.

THE CLIENT-PATENT ADVISOR PRIVILEGE

25. Discussions concerning the client-patent advisor privilege were held at the thirteenth and fourteenth sessions of the SCP. They were based on preliminary studies prepared by the International Bureau (documents SCP/13/4 and SCP/14/2).

26. While discussions on the issue of the client-patent advisor privilege have raised various views, it appears that, in general, the majority of delegations supported the idea of further analysis of the subject matter with a view to contribute to a better understanding of the various aspects of the issue.

27. Some delegations noted a growing attention in respect of the topic of the client-patent advisor privilege in their respective countries. In some countries, legislative changes in that area were being undertaken.

28. Some delegations and the representative of one non-governmental organization made a link between the issue of client-patent advisor privilege and the requirement of disclosure of inventions in patent applications. The representative of one non-governmental organization, however, drew the attention of the Committee to the fact that the disclosure of communications between the client and his advisor and the disclosure of an invention in a patent application were two distinct issues. Some other delegations referred to the rules of communication between applicants and patent offices or obligations of patent offices to keep patent applications confidential.

29. Several delegations and one-non governmental organization were of the view that the issue of client-patent advisor privilege should be addressed at the national level. They provided the following arguments to support their views:

- the client-patent advisor privilege was a matter of private law which belonged to national jurisdiction. Therefore, it was appropriate to continue relying on Article 2(3) of the Paris Convention and Article 1.1 of the TRIPS Agreement. Each country should be allowed to set its level of privilege and extent of disclosure that suited its social or economic circumstances and its particular level of development. Harmonizing the client-attorney privilege implied harmonizing the exceptions to the disclosure.

- the privilege was extended to lawyers in some jurisdictions because they had a strict duty to the code enforced by strong professional codes of conduct. Abusing such privilege had serious consequences for the lawyers, and therefore, extending such a privilege to other professions, such as patent attorneys and patent agents, who were not lawyers and did not have such duty to the code, would be inappropriate. The focus should be on the balance between public and private rights, as well as on the implication of the client-patent advisor privilege on public interest, including its impact on patent quality, competition and other aspects of development.

- the problems might not be solved by amending patent laws, as they actually touched upon the essential litigation system and the legal culture of different countries. Since there was no disclosure or privilege concept under the legal systems in some countries, it was not the right time to formulate internationally uniform standards. Therefore, the discussion of the issue should take full account of the intrinsic differences between legal cultures or systems.

- the professional secrecy obligation has a serious ethical component. The obligation did not exist for economic reasons, as in the case of patents, but for protecting the interests of the client and covers certain professional positions related to the ethical and personal behavior of people.

- the client-patent advisor privilege might be detrimental to the public interest in terms of ensuring that all relevant information was made available to the responsible authorities for investigating the truth for the sake of justice.

- the extension of the privilege to patent advisors might have adverse effect on patent applications, on the TRIPS flexibilities, on patent opposition systems, and on the transparency of patent procedures.

30. The delegations who offered the above views stressed the importance of clarifying the practices relating to the client-patent advisor privilege in different countries and their implications. In particular, one delegation sought clarification on the possible adverse

implications of having uniform legal standards internationally. Another delegation suggested that the Secretariat should elaborate further on the interplay between the extension of the concept and the transparency of the patent system, and on what would be the possible result of harmonizing the existing procedures on the enforcement of IP and the legal procedures of Member States. In addition, the request was made by those delegations to study existing case law regarding the acceptance and denial of that concept in different Member States.

31. In relation to the argument that the issue of the client-patent advisor privilege should not be debated in the SCP because it was a private law matter, the representative of one non-governmental organization drew the attention of the Committee to the fact that national laws were inadequate to solve international problems relating to the loss of their own nationals' advice privilege in another territory. He was of the view that those international problems could be solved through minimal intervention in national laws.

32. Referring to concerns raised by some delegations that the protection might be used to disguise information and thus be detrimental to the public interest, the representative of one non-governmental organization noted that privilege had been globally accepted for lawyers and that, in that context, privilege was considered to be balanced with the public interest. Since IP advisors also gave legal advice in the context of their work, he considered that the application of protection against forcible disclosure to non-lawyer patent advisors was not an expansion of the privilege in those countries which already had provided protection for lawyers.

33. As regards the reference made by some delegations to Article 2(3) of the Paris Convention and Article 3(2) of the TRIPS Agreement, some non-governmental organization expressed the view that those international legal instruments did not prevent Member States from agreeing on issues pertaining to national law. In addition, the representative of one non-governmental organization observed that the issue at stake was not to question the right of national jurisdictions or national legislators to shape their national laws, but rather how the effect of national laws regarding the existing protection against forcible disclosure could be maintained internationally. That was, in his view, a purely international dimension, which national solutions could not sufficiently cover. In that context, further clarification of the scope of Article 2(3) of the Paris Convention and Article 3(2) of the TRIPS Agreement was requested. In addition, further analysis was requested on the extent of Article 43 of the TRIPS Agreement by the representative of one non-governmental organization.

34. One delegation expressed its reservation as far as the convenience of discussing the issue at the international level was concerned. Nevertheless, it considered that a constructive way to move forward would be to find out more about national legislation and practices.

35. Some other delegations and a number of non-governmental organizations stated that international development was necessary to adequately address the issue. In particular, they suggested that a further study on the treatment of confidential information revealed to patent advisors in various countries should be undertaken. It was suggested that such a study could focus on how confidentiality of communications between patent advisors and their clients in one country was recognized in other jurisdictions and what possible options could be considered for a better recognition of the confidentiality of communications between patent advisors and their clients beyond national borders. One delegation suggested that such information be collected through a questionnaire prepared by the Secretariat.

36. Another representative of one non-governmental organization was of the opinion that the client-patent advisor privilege was essential in international practice involving IP rights. It considered that it would facilitate the understanding of inventions disclosed in patents and transfer of technology, and increase cost effectiveness of IP advice essential to a proper working of the IP system, both for right holders and for third parties. Similarly, another representative of one non-governmental organization urged for the mutual recognition of the privilege to be adopted at the international level, as it considered that such recognition was supportive of businesses engaging in international trade, regardless of the state of development of their home country. Another representative of one non-governmental organization stated that such recognition might lead its Government to take steps to provide for privilege for patent advisors regardless of their legal qualification at the national level.

37. Noting an increasing number of international litigations which had exposed the clients to a higher risk of forcible disclosure, some non-governmental organizations considered that the SCP was the right forum to address the issue at the international level. In particular, some of the non-governmental organizations suggested that a WIPO working group dedicated to client-attorney privilege issues be set up to assess problems in the various legal systems, and study the feasibility of setting minimum international standards for the mutual recognition of the client privilege. Another non-governmental organization was of the view that the legal certainty for patent owners and their patent attorneys could only be achieved through some sort of a legally binding international instrument, obliging the Contracting Parties to protect the confidentiality of written or oral communications between patent or trademark attorneys and their clients made in the context of, or dealing with, actual or future proceedings in the field of intellectual property rights before national or regional courts and authorities, in particular in trans-border actions.

38. Some non-governmental organizations, supporting an international instrument on the issue of the patent advisor privilege, stated that such privilege should cover patent attorneys qualified to act before regional offices as well as suitably qualified in-house patent advisors.

39. One delegation stated that the use of the term “privilege” was inappropriate for describing the concept in all countries as it was used for a particular legal contract in common law countries. The representative of one non-governmental organization suggested that the work forward should be guided by making a distinction between the professional secrecy obligation and the evidentiary privilege for legal advisors. One delegation stated that the issue should be examined from a technical and legal standpoint.

DISSEMINATION OF PATENT INFORMATION

40. Discussions concerning dissemination of patent information were held at the thirteenth and fourteenth sessions of the SCP. They were based on preliminary studies prepared by the International Bureau (documents SCP/13/5 and SCP/14/3).

41. All delegations who spoke emphasized the importance of improving dissemination of patent information. There was wide support by Member States for WIPO’s rich array of projects relating to patent information, as articulated in documents SCP/13/5 and SCP/14/3. Those activities that have been carried out by the relevant sectors of WIPO and various Committees such as the Committee on Development and Intellectual Property (CDIP) include: further development of a web-based search service and enrichment of PATENTSCOPE®; a cross-language tool; the establishment of Technology Information Service Centers; digitization and access to patent and non-

patent databases; provision of search services; studies on the public domain and capacity building activities.

42. Many delegations expressed the need for a free and easily accessible global database or a portal on which the complete collection of patent information could be found. Many delegations suggested that WIPO should explore the possibility of enhancing and expanding PATENTSCOPE® to create a global database of complete patent information which would cover not only PCT, but also national/regional patents and non-patent literature, and which would be free, easily accessible and user-friendly. Similarly, many delegations suggested that a database or a portal that would provide access to national search and examination reports be developed. Further, some delegations suggested the incorporation of additional national phase data, including national search and examination reports relating to PCT international applications, into PATENTSCOPE®. In addition, some delegations stated that accessibility of legal status information, such as which national application had been successfully registered and at which stage in the procedure those applications were, should be improved.

43. In a nutshell, the above suggestions indicated that WIPO should be aiming towards the development of a global patent information platform, whether a database, a portal or a link to national patent information services, which is complete, free-of-charge and user-friendly. At the thirteenth session of the SCP, the Director General confirmed that WIPO was working towards achieving this goal.

44. Some delegations also mentioned the need for an analysis and assessment of the specific needs of developing countries. One delegation sought more analytical information on the use of patent information in developing countries. Another delegation underlined the necessity of assessing the capacity of developing countries in generating the patent information. One delegation requested WIPO to develop a study containing information about royalty data of patent holders. Further, one delegation invited Member States of the SCP to expand discussions to those technologies that served the basic needs of developing countries such as food security, water purification, and energy matters.

45. Some delegations stated that the quality of the disseminated information was crucial for the dissemination and transfer of technology. Therefore, it was suggested that a follow-up study on sufficiency of disclosure precede the creation of any multilateral database.

46. It was further stated that enhancing the accessibility of search and examination reports of questionable quality would not solve the existing problems. One delegation, therefore, was of the view that the exchange of search and examination reports must comply with a minimum set of rules, be on a voluntary basis, and should be organized in accordance with a common standard for the presentation of information.

47. In order to address specificities of patent applications at the national/regional level, one delegation suggested that information concerning all the details of the availability of patent information be collected through a questionnaire.

48. Some other suggestions made at previous sessions of the SCP were to explore avenues towards the alignment and the simplification of the existing technical environments and tools, and to analyze and evaluate experiences carried out at the regional level, for example, LATIPAT. One delegation suggested that the Secretariat prepare a catalogue of various available databases and websites, classified in categories.

49. The representative of one non-governmental organization suggested that the SCP explore the creation of a multilateral mechanism administered by WIPO to share information on disputes over patentability of national/regional patents.

50. As the relevant WIPO fora and WIPO's Global IP Infrastructure Sector have been working towards technical solutions to improve access to, and dissemination of, patent information, at the thirteenth session of the SCP, the Director General noted that the SCP might reflect upon its specific role in the Strategic Goals of WIPO.

TRANSFER OF TECHNOLOGY

51. Discussions concerning transfer of technology were held at the fourteenth session of the SCP. They were based on a preliminary study prepared by the International Bureau (document SCP/14/4).

52. Some delegations requested more information relating to broader questions concerning transfer of technology, such as analyzing why developing countries could not establish absorbing capacity despite many forms of development assistance, or how transfer of technology could be brought in line with ethics and morality. Some delegations sought clarification regarding the definition of the term "transfer of technology".

53. However, many delegations' interventions focused on the question as to how the patent system affected transfer of technology, how it could better contribute to transferring technologies and the role of the patent system in transferring technologies to developing countries. In this regard, many delegations addressed two elements relating to the improvement of the system: how to further facilitate transfer of technology for development and how to remove any obstacles that might hinder transfer of technology for development.

54. With respect to the link between the patent system and transfer of technology, some delegations drew the attention of the SCP to specific aspects that might have relevance to the improvement of the system. They included the following:

- sufficient disclosure of patented inventions plays an important role in the processes of dissemination and transfer of technology;

- patent trolls and patent thickets negatively affect transfer of technology;

- an inappropriate level of patentability or of protection may become a barrier to transfer of technology;

- voluntary initiatives to facilitate the international flow of technological knowledge should be encouraged;

- an overview of licensing provisions which might adversely affect transfer of technology should be provided;

- providing relevant information to potential licensing parties, such as indicating technologies that are ready for licensing or providing licenses of rights, facilitates transfer of technology;

- a special analysis on how the patent system could better contribute to transferring technologies in the areas of climate change, food security and other global

challenges should be conducted. Another delegation stated that transfer of technology in the area of the classical industries, which would have a direct impact on economic development in many countries, should be examined;

- innovation asset management on the part of technology transferees plays an important role in ensuring a successful transfer of technology.

55. One delegation stated that more focus should be given to the role of patents in the process of foreign direct investments.

56. Many delegations underlined the gap between theory and practice in reality. Difficulties in implementing public policies and involving private enterprises to facilitate transfer of technology with a view to stimulate local innovation and development of marketable products were mentioned. Some delegations suggested further analysis of the constraints by developing countries to use tools for transfer of technology, including voluntary licenses and use of flexibilities in the patent system. Further, some delegations stated that cases and experiences in developing countries should be reflected in further studies. In addition, some delegations stressed the importance of national statistics regarding transfer of technology in order to reflect the real impact of patents on transfer of technology. One delegation, however, noted the insufficient availability of official statistics in this area.

57. The representative of one non-governmental organization suggested that the global free software development community be further studied as an example of businesses and individuals playing a central role in increasing the flow of knowledge.

58. In addition to further examining particular issues relating to patents and transfer of technology, some delegations sought concrete action-oriented solutions. They included adopting practical guidelines or rules of procedures that facilitate transfer of technology bearing in mind flexibilities in national patent laws, and setting up a plan of action to address major challenges to transfer of technologies in relation to patent law.

59. Some delegations suggested that collaboration be increased between WIPO and other UN agencies. As to the form of such collaboration, the establishment of a collaborative study and the organization of a briefing by other organizations concerning their respective activities, were mentioned by some delegations.

60. One delegation stated that the SCP should primarily focus on the international transfer of technology. Some delegations expressed concerns about the implications of the international legal framework, such as the TRIPS Agreement, free trade agreements, economic partnership agreements and other plurilateral agreements, to the transfer of technology.

61. Some delegations expressed their commitment to work towards the creation of new models to promote innovation based on the collaboration between the private and the public sector. One delegation, however, noted that public-private partnerships were essentially geared towards mobilizing national resources, and that successful models of highly advanced market economies might not be applicable to countries at different levels of development.

62. Due to the cross-sectoral nature of the issues, some delegations suggested that an independent commission or a panel of experts, which would examine the issues and make recommendations, be established.

OPPOSITION SYSTEMS

63. Issues relating to opposition systems were discussed at the fourteenth session of the SCP. The discussions were based on a preliminary study prepared by the International Bureau (document SCP/14/5).

64. In general, most of the delegations considered that the opposition procedures played an important role as an additional layer of review to ensure the quality and credibility of patents and constituted a rapid, easy and economical mechanism by which third parties could challenge the grant of a patent.

65. While noting the lack of any international treaty specifically dealing with opposition procedures, one delegation stated that Member States should attempt to design such procedures in a fair and equitable manner in order to avoid any excessively complicated procedures or procedures causing unjustified delays as regards the grant of patents. In addition, the discretion of Member States to include or not to include an opposition mechanism in their national legislation was underlined.

66. Some delegations and the representative of one non-governmental organization drew the attention of the SCP to specific issues which could be elaborated further in order to better understand and improve the mechanisms of opposition procedures. They included the following:

- the need for the provision of various statistics in different Member States, including comprehensive information displaying how many WIPO Member States' patent laws provided pre-grant opposition and how many provided post-grant opposition procedures; quantitative data on the number of accepted and rejected requests for opposition in various patent offices; a break-up of such information according to various technological areas;

- clarification as to the mechanisms regulating opposition procedures in civil law countries;

- an analysis of the positive role played by opposition systems in some countries;

- a further study on the costs of resolving disputes over patent validity, both through litigation before a court, or through pre- or post-grant opposition proceedings, as well as an exploration of new ways to share information obtained in various proceedings that examined the validity of patents, such as a database of judicial and non-judicial opposition proceedings in the area of patents.

67. The importance of other related procedures in enhancing the quality of patents, such as submissions of information by third parties, was recognized by many delegations. The representative of one non-governmental organization underlined that such a procedure should be well-defined, be a low-cost process and be available also to parties with limited financial or legal resources. Delegations suggested the following areas to be further elaborated in relation to third party observation systems:

- more detailed information on such procedures, including information on whether the applicant was entitled to comment on the relevant submissions;

- developing or updating guidelines on the participation of third parties in the patent granting process;

- the possibility of incorporating a third party observation system in the search projects mentioned in document SCP/14/3.

68. The discussion at the second session of the PCT Working Group, which was held from May 4 to 9, 2009, on the possibility of introducing third party observations in the Patent Cooperation Treaty (PCT) system was recalled by one delegation. Another delegation noted the need for a better understanding of the efficiency of the third party observation systems in order to incorporate them into the PCT Guidelines.

69. In addition, some delegations highlighted the relevance of revocation procedures to opposition procedures and the similar objective of both procedures.

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