

Standing Committee on the Law of Patents

Sixteenth Session
Geneva, May 16 to 20, 2011

PROPOSAL FROM THE DELEGATIONS OF CANADA AND THE UNITED KINGDOM

Document prepared by the Secretariat

1. The Annex to this document contains a proposal from the Delegations of Canada and the United Kingdom in respect of a work program on quality of patents, for consideration under item 7 of the draft agenda: Quality of Patents, including Opposition Systems.

2. *The members of the Standing Committee on the Law of Patents (SCP) are invited to consider the contents of the Annex.*

[Annex follows]

WORK PROGRAM ON QUALITY OF PATENT

I. INTRODUCTION

1. The WIPO Standing Committee on the Law of Patents (SCP) reconvened in June 2008 after a three-year hiatus that was prompted by lack of agreement among Member States on the future work of the Committee.
2. Since June 2008, the Committee has met several times to discuss papers developed by the WIPO Secretariat and outside experts pursuant to mandates from Member States and covering a variety of topics with a view to developing a balanced work program for the Committee. While the discussions have been helpful in promoting a greater understanding of these issues, the Committee is still to develop its consideration of the prepared papers and studies into areas of concrete action.
3. These discussions are also taking place against the background of the Development Agenda, a number of agreed recommendations of which touch on subject matter relevant to or within the scope of the work of this Committee. Given this relationship, we believe the SCP is in a position to make a meaningful contribution to achieving positive, concrete results related to the Development Agenda.
4. The SCP was established "to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning the progressive international development of the law of patents" (SCP/1/2, paragraph 3; see also A/32/2, Main Program 09, "Development of Industrial Property Law").
5. An important aspect of the patent system is the quality of patents granted. The patent system must function properly and achieve the appropriate balance of interests as between innovators, third parties and the public if it is to serve its purpose of promoting innovation and fostering technological, social and economic development. The quality of patents is a key aspect of how the patent system functions in order to deliver economic and social policy objectives.
6. Patent offices make a significant contribution to the well-functioning of the patent system by taking appropriate measures to ensure that the patents they grant meet the standards that foster the policy objectives of the patent system. By focusing on the work that patent offices do to promote high quality patents, the Committee can engage in technical patent law, practice and procedure discussions.
7. Focusing on patent quality will also further basic aims of the Development Agenda, such as building the capacity of patent offices and providing technical assistance to such offices as needed.
8. Therefore, we think it appropriate that the work of this Committee should focus on the quality of patents and, accordingly, we propose the following work program.

II. PROPOSAL FOR AN SCP WORK PROGRAM ON QUALITY OF PATENTS

9. The proposed work plan for the SCP has three main components:
 - (a) Technical infrastructure development
 - (b) Information exchange on quality of patents
 - (c) Process improvement
10. Technical infrastructure development is intended to focus on information technology solutions to improve access to information relevant to patentability. Such improvements

can help build search and examination capacity by leveraging technology to enhance existing examination resources, and promote higher quality by providing access to new sources of information or new and improved ways of accessing existing information.

11. Information exchange on quality of patents is intended to help patent offices gain a greater understanding of the role of quality in patent office processes as they may contribute to the well-functioning of the patent system. The primary focus of this information exchange would be on patent office administrative processes and operations issues as they relate to quality assurance in the grant of patent rights. It is intended that patent offices of interested Member States will collect views and experiences from their users relating to quality of patent office processes and operations and share them with the Committee for further consideration. This work could allow patent offices to identify areas for improvement of patent office operations and processes affecting patent quality.
12. Process improvement is intended to identify ways offices can improve their patent granting processes to ensure an appropriate degree of quality, taking into account resource and other constraints as well as flexibilities provided for under international agreements. The primary focus of this component would be on search and examination processes. However, it could also consider relevant processes beyond grant, for example opposition procedures or the quality of applications filed.
13. It is envisioned that work would proceed on each component of the work plan concurrently, with a view to realizing near-term results and gains where possible. By making discrete progress initially, the Committee can build momentum toward greater gains in the future.
14. In this regard, this proposal, in our view, is inclusive of a broad range of interests of member states at different levels of development, as well as interests of users of the patent system and society more generally. More particularly, we believe this work plan is in keeping with the mandate and core expertise of this Committee as well as a number of recommendations of the Development Agenda, including, but not limited to:
 - (a) Recommendation 10: To assist Member States to develop and improve national intellectual property institutional capacity through further development of infrastructure and other facilities with a view to making national intellectual property institutions more efficient and promote fair balance between intellectual property protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with intellectual property; and
 - (b) Recommendation 11: To assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions and to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.

[End of Annex and of document]