

Standing Committee on the Law of Patents

**Seventeenth Session
Geneva, December 5 to 9, 2011**

SUMMARY BY THE CHAIR

AGENDA ITEM 1: OPENING OF THE SESSION

1. The seventeenth session of the Standing Committee on the Law of Patents (SCP) was opened by Mr. Francis Gurry, Director General, who welcomed the participants. Mr. Philippe Baechtold (WIPO) acted as Secretary.

AGENDA ITEM 2: ADOPTION OF THE REVISED DRAFT AGENDA

2. The SCP adopted the revised draft agenda (document SCP/17/1 Prov.2) as proposed.

AGENDA ITEM 3: ADOPTION OF THE DRAFT REPORT OF THE SIXTEENTH SESSION

3. The Committee adopted the draft report of its sixteenth session (document SCP/16/9 Prov.2) as proposed.

AGENDA ITEM 4: REPORT ON THE INTERNATIONAL PATENT SYSTEM

4. The discussions were based on documents SCP/12/3 Rev.2, SCP/12/3 Rev.2 Add., SCP/17/2 and 2 Add.

5. The SCP agreed that this agenda item would remain on the agenda of the next session of the SCP. Document SCP/17/2 will be updated based on the comments received from Member States.

AGENDA ITEM 5: EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS

6. The discussions were based on documents SCP/14/7, SCP/17/3 and 3 Add.
7. The Secretariat noted that 56 Member States and one regional patent office had responded to the Questionnaire on Exceptions and Limitations to Patent Rights. Many delegations stated that the responses to the Questionnaire provided useful information, and supported the extension of the deadline for the submission of answers to the Questionnaire.
8. Some delegations supported the proposal from the Delegation of Brazil (document SCP/14/7). In addition, a number of follow-up activities by the Committee were suggested by some delegations. Some delegations, however, suggested that the Committee decide on further activities only after receiving more responses to the Questionnaire.

AGENDA ITEM 6: QUALITY OF PATENTS, INCLUDING OPPOSITION SYSTEMS

9. The discussions were based on documents SCP/17/INF/2, SCP/17/7, 8, 9 and 9 Add.
10. Some delegations supported the revised proposal submitted by the Delegations of Canada and the United Kingdom (document SCP/17/8), while some other delegations requested further clarifications on the contents of the revised proposal, and raised concerns about a broad definition of the term "quality of patents" and the proposed work program. A proposal submitted by the Delegation of Denmark (document SCP/17/7) was supported by some delegations. Some other delegations also presented their views on the issue of quality of patents. The Delegation of the United States of America also submitted a proposal on the quality of patents (document SCP/17/10) during the meeting.
11. In relation to opposition systems (document SCP/17/9 and 9 Add.), some delegations suggested that the Secretariat prepare a study on other administrative mechanisms that provided opportunities for third parties to challenge the validity of granted patents, such as invalidation or revocation procedures, and on procedures related to the limitation of granted patents.

AGENDA ITEM 7: PATENTS AND HEALTH

12. The discussions were based on documents SCP/16/7, SCP/16/7 Corr., SCP/17/INF/3 and SCP/17/4.
13. Some delegations supported the proposal submitted by the Delegation of South Africa on behalf of the African Group and the Development Agenda Group (documents SCP/16/7 and 7 Corr.). Some delegations, however, stated that they were not able to endorse that proposal in its current form.
14. The Delegation of the United States of America submitted a proposal on patents and health (document SCP/17/11) during the meeting. Some delegations supported the proposal, while some other delegations made preliminary comments, asked questions and requested clarification and more time to examine the proposal.
15. With respect to both proposals, some delegations raised concerns about the duplicative nature of the proposed activities with the work undertaken by other WIPO fora or other relevant intergovernmental organizations (World Health Organization (WHO) and World Trade Organization (WTO)).

16. The Secretariat as well as the Representatives of the WHO and the WTO presented recent activities of their respective organizations in relation to this agenda item. Some delegations favored future briefings by WIPO, WTO and WHO on patents and health.

AGENDA ITEM 8: CONFIDENTIALITY OF COMMUNICATIONS BETWEEN CLIENTS AND THEIR PATENT ADVISORS

17. The discussions were based on document SCP/17/5.

18. Some delegations suggested that the Committee further explore possible remedies to solve the problems in relation to cross-border aspects of confidentiality of communications between clients and patent advisors. Some delegations suggested the exploration of minimum, voluntary standards for possible remedies to solve the cross-border problems, which may be used by national authorities, if they so wish. Some delegations stated that this issue was a matter of national law, and that there was no consensus on international norm-setting or on any set of common principles.

AGENDA ITEM 9: TRANSFER OF TECHNOLOGY

19. The discussions were based on document SCP/14/4 Rev.2.

20. A special seminar entitled "Patents and Technology Transfer", which was organized by the WIPO Chief Economist in the morning of December 5, 2011, preceding the session of the SCP, was welcomed by delegations.

21. Some delegations suggested that the Committee continue working on the issue of transfer of technology, focusing, in particular, on practical aspects and case studies. Some delegations, however, considered that the work of the CDIP and, in particular, the completion of the CDIP project on intellectual property and technology transfer: Common Challenges – Building Solutions (document CDIP/6/4 Rev.), should precede any further activities on transfer of technology to be undertaken by the SCP.

AGENDA ITEM 10: REVISED RULES OF PROCEDURE

22. The discussions were based on document SCP/17/6 Rev.

23. The SCP adopted the special rules of procedure set out in paragraphs 4 and 5 of document SCP/17/6 Rev.

AGENDA ITEM 11: FUTURE WORK

24. The non-exhaustive list of issues will remain open for further elaboration and discussion at the next session of the SCP.

25. The SCP agreed that the future work of the SCP would be carried out as follows:

(a) Exceptions and Limitations to Patent Rights

(i) This topic will remain on the agenda of the 18th session of the SCP.

- (ii) The deadline for further submissions of, or supplements to, answers by member States and regional offices to the questionnaire (document SCP/16/3 Rev.) is extended to March 9, 2012.
 - (iii) The Secretariat will post the answers received on the SCP electronic forum.
 - (iv) The Secretariat will prepare, for SCP/18, a new document which will present the answers contained in document SCP/17/3 and 3 Add, as well as those received by the above deadline, in a revised format, allowing an easier understanding of the material, presenting statistics and reorganizing the information provided in clusters, based on, for example, the sections of the questionnaire.
- (b) Quality of Patents, including Opposition Systems
- (i) This topic will remain on the agenda of the 18th session of the SCP.
 - (ii) The proposals submitted by the United Kingdom and Canada (document SCP/17/8) and Denmark (document SCP/17/7) were discussed at SCP/17, but no consensus was reached. Those proposals and the proposal by the United States of America (SCP/17/10) will be discussed at the next session of the SCP.
 - (iii) The Secretariat will invite member States and observers of the SCP to submit written comments on the three proposals, and any other comments or submissions, by February 28, 2012. Member States' comments will be translated into all working languages of the SCP if they are received not later than February 28, 2012. If such comments are received after that date, best efforts will be made to provide such translations. Comments from observers will be posted in the languages they are received. Observers are invited to submit their comments in as many working languages of the Committee as possible. The Secretariat will post the comments received on the SCP electronic forum and will compile them in a document to be submitted to the next session of the SCP.
 - (iv) The Secretariat will revise document SCP/17/9 (Opposition Systems), taking into account the comments made, and any additional information to be submitted, by Member States, in particular, information on administrative revocation and invalidation mechanisms, and other similar procedures not addressed in the above document.
- (c) Patents and Health
- (i) This topic will remain on the agenda of the 18th session of the SCP.
 - (ii) The proposal submitted by the Delegation of South Africa on behalf of the African Group and the Development Agenda Group (document SCP/16/7) was discussed at SCP/17, but no consensus was reached. The proposal will be further discussed at the next session.
 - (iii) The proposal submitted by the Delegation of the United States of America (document SCP/17/11) will be discussed at the next session.

- (iv) The Secretariat will invite member States and observers of the SCP to submit written comments on the two proposals (documents SCP/16/7 and SCP/17/11), and any other comments or submissions, by February 28, 2012. Member States' comments will be translated into all working languages of the SCP if they are received not later than February 28, 2012. If such comments are received after that date, best efforts will be made to provide such translations. Comments from observers will be posted in the languages they are received. Observers are invited to submit their comments in as many working languages of the Committee as possible. The Secretariat will post the comments received on the SCP electronic forum and will compile them in a document to be submitted to the next session of the SCP.
 - (v) The Secretariat will prepare, for the 18th session of the SCP, a document listing projects and activities, including their status or outcome, on patents and health in WIPO, the WTO and WHO, and citing the relevant documents of the three organizations.
 - (vi) In the event the SCP decides to invite the WTO and WHO to future sessions of the SCP, Member States will be informed well in advance.
- (d) Confidentiality of communications between clients and their patent advisors
- (i) This topic will remain on the agenda of the 18th session of the SCP.
 - (ii) The Secretariat will expand its study (document SCP/17/5) to explain approaches to cross-border issues and possible remedies identified in the area of confidentiality of communications between clients and patent advisors.
- (e) Transfer of Technology
- (i) This topic will remain on the agenda of the 18th session of the SCP.
 - (ii) The Secretariat will prepare a document listing the various WIPO activities in the area of technology transfer and expand its study on patent-related incentives and impediments to transfer of technology (SCP/14/4 Rev.2) through practical examples and experiences. The SCP may consider the possibility of organizing a seminar to complement the study.
 - (iii) The Secretariat will assist Member States in facilitating the complementary and non-duplicative nature of the work undertaken by the SCP and CDIP on the issue of transfer of technology.

26. The Secretariat informed the SCP that its eighteenth session would be held in May or June 2012, in Geneva.

27. The SCP noted that the present document was a summary established under the responsibility of the Chair and that the official record would be contained in the report of the session. The report would reflect all the interventions made during the meeting, and would be adopted in accordance with the procedure agreed by the SCP at its fourth session (see document SCP/4/6, paragraph 11), which provided for the members of the SCP to comment on the draft report made available on the SCP Electronic Forum. The Committee would then be invited to adopt the draft report, including the comments received, at its following session.

28. The SCP noted the contents of this summary by the Chair.

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