

Standing Committee on the Law of Patents

Twenty-Sixth Session
Geneva, July 3 to 6, 2017

PROPOSAL BY THE DELEGATION OF CANADA

Document prepared by the Secretariat

1. The Annex to this document contains a proposal submitted by the Delegation of Canada to conduct a review of existing research on patents and access to medical products and health technologies, for consideration under item 7 of the draft agenda: Patents and health.

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

[Annex follows]

PROPOSAL TO CONDUCT A REVIEW OF EXISTING RESEARCH ON PATENTS AND
ACCESS TO MEDICAL PRODUCTS AND HEALTH TECHNOLOGIES

INTRODUCTION

1. All countries have an interest in encouraging the development of new and innovative medical products and health technologies while ensuring timely access to these advancements at a sustainable cost to individuals and society. Governments rely on a variety of policy tools to achieve these objectives, one of which is the patent system. Intellectual property policy requires balancing the interests of all stakeholders in order to maximise the overall welfare of society.
2. In addition to the patent system, there are a variety of other factors both on the supply and demand side that affect availability and affordability as well as the other access dimensions of medical products and health technologies, both patented and generic. These include taxes, tariffs, price control regulations, differential pricing modalities and bulk purchasing arrangements. Beyond pricing, other important factors affecting the affordability and availability of medical products and health technologies include sustainable health financing and reimbursement systems, the rational selection and use of medical products and reliable health and supply systems, as well as the purchasing power and insurance coverage of patients.
3. The topic of the relationship between the patent system and public health outcomes has been the subject of extensive research in recent years. As the key multilateral forum mandated to focus on patent law, the policy-making work of the Standing Committee on the Law of Patents (SCP) relies on quality evidence. Member States may most efficiently contribute to this discourse by ensuring that our work builds upon existing research and does not duplicate what has been done before.

WORK PROGRAM

4. Canada proposes that Member States direct the WIPO conduct a review of pre-existing analysis and research on the topic of patent protection and access to medical products and health technologies, consistent with the mandate of the SCP.
5. The proposed review would be based on the following parameters:
 - (a) The work would be undertaken by the WIPO Secretariat, in consultation with the WHO and WTO Secretariats as appropriate, in order to take advantage of the complementary subject matter expertise and pre-existing collaborative relationship of these organizations.
 - (b) The review would cover studies prepared by relevant intergovernmental organizations such as WIPO, WHO, WTO and others; studies by external researchers commissioned by these organizations; and peer-reviewed academic research. The topics of such studies would include, *inter alia*:
 - The relationship between patent protection and the affordability and availability of medical products and health technologies.
 - The role of the intellectual property system in incentivising and promoting the development of new medicines and health technologies, and in ensuring the supply of quality products.

- The role of the intellectual property system fostering knowledge spillovers and technology transfer in the medical products and health technologies sector.
- The role and performance of compulsory and voluntary licensing mechanisms and patent pools in facilitating affordability and availability of medical products and health technologies.
- The relationship between various non-patent barriers and the availability and accessibility of essential medicines, in order to indirectly distill the impact of patents on availability and accessibility in the short term.

(c) The review would cover work produced over the time period of 2005 to 2016.

6. The final product of the proposed work program would be a report of 40-50 pages providing a factual synopsis of the analysis and key conclusions and recommendations of this body of research, as well as an annex providing a list of the studies captured by the review. The report would not make any original recommendations, and inclusion of any document in the report should not be understood as an endorsement of that document's conclusions or recommendations by the Secretariat or Committee.

7. The report would allow Member States to engage on the topic of patents and access to medical products and health technologies and to structure our future work with a firm understanding of the current state of knowledge.

8. We propose that the Secretariat commence work on the review following the twenty-sixth session of the SCP, with a view to presenting a final report at the twenty-eighth session.

[End of Annex and of document]