

WIPO



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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

STANDING COMMITTEE ON THE LAW OF PATENTS

Third Session

Geneva, September 6 to 14, 1999

INFORMATION CONCERNING FEE REDUCTIONS BY THE OFFICES

prepared by the International Bureau

1. At the third session of the Standing Committee on the Law of Patents (SCP), the SCP discussed the issue of fee reduction by the Offices (agenda item 4, documents SCP/3/6 and 6 Add.). The SCP concluded that this issue would be referred for informal consultations. The portion of the Report, document SCP/3/11, which reflects the discussion of the SCP is attached as Annex I.
2. Subsequent to the third session of the SCP, the International Bureau received a communication from the World Trade Organization (WTO), indicating that the Members of the WTO, which had considered a request by the International Bureau to give advice on the TRIPS compatibility of a certain aspect of this question, were not in a position to give such advice. A copy of the letter received from the WTO, and a response to that letter sent by the International Bureau, are attached herewith for the information of the members of the SCP, as Annexes II and III, respectively.

[Annexes follow]

Document SCP/3/11, paragraphs 210 to 216

Agenda Item 4: Information concerning fee reductions by the Offices

210. The discussion was based on documents SCP/3/6 (Fee Reductions by the Offices) and SCP/3/6 Add. (Additional Information Concerning Fee Reductions by the Offices).

211. The Delegations of Germany and Sweden, supported by the Representative of CIPA, expressed concern with regard to a general and wide-ranging approach such as the one proposed in the document. The recommendation should leave room for alternative approaches of assisting inventors based on an individual assessment of the inventors' ability to pay the fees and to bear the cost of a patent agent. Particularly in those countries where Offices were financed exclusively by fees, fee reductions for particular categories of inventors would have to be subsidized either by higher fees for other categories of applicants or by taxes. Such a general approach to fee reductions would, however, leave ample room for circumventions. The Delegation of Japan stated that, while it was not generally against the concept of fee reductions, the issue should be left to each country's discretion as a matter of national public policy.

212. The Delegation of Sudan reminded the Committee that the work of inventors was crucial to WIPO, as an intellectual property organization. The Delegation preferred that the discussions go forward on the basis of its original proposal, as set out in document SCP/2/10 and reflected in document SCP/3/6. It considered whether its proposal could be referred to another forum within WIPO.

213. The Delegation of India pointed out that its government has adopted a system of reductions of 60% to 80% for individual applicants, depending on their circumstances. It believed that fee reductions were most important for applicants who wished to obtain protection abroad. The Delegation supported the position of the Delegation of Sudan, which was further supported by the Delegations of Egypt, Kenya, Jordan, China, Argentina, South Africa and Cameroon.

214. The Representatives of IFIA and WASME expressed their strong support for the approach contained in document SCP/3/6, namely, a system of fee reductions for independent inventors regardless of nationality and income, which would constitute a real help for applicants from certain countries. At least 25 countries were currently applying the system for fee reductions advocated by the Delegation of Sudan. The Representative of IFIA added that his organization was currently carrying out a survey of the countries providing fee reductions of 50% or more in favor of independent inventors, and that the results of that survey would be posted twice a year on IFIA's website in order to encourage countries and organizations to adopt a new system of fee reduction and to inform inventors worldwide.

215. After further discussion and informal consultations, the Delegation of Sudan observed that it appeared that a number of delegations in the SCP did not have the authority to adopt a policy on this matter, and that therefore there did not seem to be a possibility within the present Standing Committee of reaching a consensus, which would be desirable in light of the importance of the issue. Therefore, the Delegation proposed to refer the issue for informal consultations.

216. In conclusion, it was agreed to refer the issue for informal consultations.

[Annex II follows]

ANNEX II

Letter dated November 17, 1999 (reference: It124-ao)

From: World Trade Organization
Geneva

To: Mr. Shozo Uemura
Vice-Director General
OMPI

Dear Mr. Uemura,

The purpose of this letter is to inform you, further to my letters of 16 December 1998 and 1 March 1999, of the developments in the consideration that has been given by WTO Members to the request of the WIPO Standing Committee on the Law of Patents for advice on two questions relating to the interpretation of Articles 4 and 5 of the TRIPS Agreement that you communicated in your letter of 10 November 1998.

WTO Members had further discussions of this matter at the informal meetings of the Council for TRIPS held on 7 July and 20 October. In these discussions, the view was expressed that it would not be appropriate for the Council to provide a joint response on behalf of its Members given that such a response might have legal implications. The point was made that, while it was the responsibility of each WTO Member, in drawing up its national laws and practices, to determine what is consistent with its WTO obligations, the appropriate means of recourse for any other WTO Member believing that any such legislation or practice was not in conformity with the requirements of the TRIPS Agreement was through the WTO dispute settlement system. At the same time, the point was also made that decisions interpreting WTO Agreements could be adopted under the procedure set forth in Article IX:2 of the Marrakech Agreement Establishing the World Trade Organization. However, the views expressed by the delegations on the questions that had been posed were considered too few to suggest that the necessary conditions for reaching common interpretations in respect of these issues had been met.

Yours sincerely,

Adrian Otten
Director
Intellectual Property Division

[Annex III follows]

09.1
07.1 OMC

November 25, 1999

Dear Mr. Otten,

Thank you for your letter of November 17, 1999, concerning developments in the WTO Council for TRIPS relating to my request for interpretation of Articles 4 and 5 of the TRIPS Agreement. We appreciate the attention and consideration that you and the Council Members have given to this request, and we note with interest the information that you communicated in your letter.

From the point of view of WIPO, the Standing Committee on the Law of Patents (SCP), in its meeting from September 6 to 14, 1999, considered further the issue of reduction of fees by patent offices. At the conclusion of the meeting, the issue was referred for informal consultations. A copy of the report of that meeting is attached. In particular, I refer you to paragraphs 210 to 216 of that Report.

Sincerely yours,

Shozo Uemura
Deputy Director General

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[End of Annexes and of document]