

Standing Committee on the Law of Patents

Thirtieth Session
Geneva, June 24 to 27, 2019

REVISED PROPOSAL OF DOCUMENT SCP/28/7 BY THE DELEGATIONS OF FRANCE AND SPAIN

Document prepared by the Secretariat

1. The Annex to this document contains a revised version of the proposal described in document SCP/28/7. The revised proposal, which relates to activities and studies on artificial intelligence and patents, is submitted by the Delegations of France and Spain for consideration by the Committee 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]

PROPOSAL BY THE DELEGATIONS OF FRANCE AND SPAIN ABOUT ACTIVITIES
AND STUDIES ON ARTIFICIAL INTELLIGENCE AND PATENTS

1. The topic “quality of patents, including opposition systems” has been on the agenda of the Standing Committee on the Law of Patents (SCP) since its 16th session.
2. Throughout these years, the Secretariat has carried out a series of studies on quality of patents (Inventive step, Sufficiency of disclosure, Reutilization of work done by other Offices, Opposition Systems, Concept of “Quality of patents”, among others). It has also organized numerous sessions for sharing experiences. The availability to the general public of these studies, as well as of the presentations provided during sharing sessions, has contributed to increasing knowledge on various topics closely related to substantive patent law.
3. In recent years there have been dizzying developments in the field of Artificial Intelligence that will sooner or later be reflected in patent law. As the only multilateral forum in this field, the Standing Committee on Patent Law cannot remain oblivious to this reality, where the so-called Artificial Intelligence is already becoming part of our everyday lives.
4. WIPO has already shown that it is aware of this reality, as seen in the report published in February 2018, where 37 Intellectual Property Offices indicated how they use these new technologies in their management. The Director General of WIPO, at the opening of the meeting about this topic held in May 2018, also stated that efforts should be made to explore how to cooperate internationally in this regard in order to avoid duplication of effort.
5. The report “WIPO Technology Trends – Artificial Intelligence” offers a thorough analysis of statistical data concerning Artificial Intelligence (AI) and Patents, identifying trends, key players, geographical spread and market activity. Nevertheless, neither patent-law related issues nor the AI-based patent searchers have been tackled in said report.
6. The French and the Spanish delegations therefore believe that it is in the interest of all member states that this Committee should devote its attention to these issues.
7. The Secretariat has already been asked to prepare an information document on patents and new technologies for this session of the Committee.
8. Following this information document, and in order to respond to the questions raised, these delegations requested that the Secretariat of the Committee undertake a series of activities concerning artificial intelligence and patents, including “experience exchange sessions” and studies on the various issues related to the “patentability of artificial intelligence” and “the use of artificial intelligence for the search for the state of the art” if possible with the help of recognized specialists in this field.
9. As a first step, the Secretariat could organize a session at SCP/31 to share experiences and information on the use of artificial intelligence for the examination of patent applications.
10. The Committee could focus in particular on assisted patent searching (for prior art), automatic patent classification, use of chatboxes for clients and/or examiners, automatic translation, automatic detection of exclusion from patentability and automatic detection of problems/solutions in patent documents.

11. During SCP/32, the Secretariat could organize a one-day information-sharing session on issues related to the patentability of inventions such as artificial intelligence software as computer-implemented inventions, the use of artificial intelligence as an aid to the creation of inventions or inventions generated independently by Artificial Intelligence.

12. These different scenarios raise many questions related to the requirement of sufficiency of description, the definition of the skilled person, the taking into account of the state of the prior art when it has been generated by an AI, the ownership of rights, the duration of protection of these inventions or the liability for acts of infringement carried out by artificial intelligence.

[End of Annex and of document]