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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO GENERAL ASSEMBLY

Thirty-Eighth (19th Ordinary) Session Geneva, September 22 to October 1, 2009

REPORT ON THE WORK OF THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)

Document prepared by the Secretariat

1. The thirteenth session of the Standing Committee on the Law of Patents (SCP) was held from March 23 to 27, 2009, in Geneva. Delegations from 103 member States, ten inter-governmental organizations, and 28 non-governmental organizations participated in the Committee which was chaired by Mr. Maximiliano Santa Cruz (Chile). The discussions at the thirteenth session of the SCP are summarized in the following paragraphs.¹
2. The Committee reaffirmed that the non-exhaustive list of issues, identified at its twelfth session in June 2008, would remain open for further elaboration and discussion at its next session. It also decided to include two further issues in the list, namely “patents and the environment, with a particular attention to climate change and alternative sources of energy” and “patent quality management systems”.
3. In accordance with the decision made at the twelfth session of the SCP, the Secretariat submitted four preliminary studies, namely, “Standards and Patents (document SCP/13/2)”, “Exclusions from Patentable Subject Matter and Exceptions and Limitations to the Rights (document SCP/13/3)”, “The Client-Attorney Privilege (document SCP/13/4)” and

¹ The full Summary by the Chair (document SCP/13/7) of the session is contained in the Annex to this document.

“Dissemination of Patent Information (document SCP/13/5)” to the Committee for discussions. Many delegations stated that these preliminary studies constituted a good basis for further discussions and requested further elaboration on, and clarification of, various issues. It was agreed that these documents would remain open for further discussion and comments at the next session of the SCP. Further, the Committee agreed that the Secretariat should:

(a) commission external experts to prepare a study on exclusions, exceptions and limitations focused on, but not limited to, issues suggested by members, such as public health, education, research and experimentation and patentability of life forms, including from a public policy, socio-economic developmental perspective bearing in mind the level of economic development;

(b) prepare a concept paper on technical solutions to improve greater access to, and dissemination of, patent information;

(c) expand the preliminary study on the client-attorney privilege to reflect the current state of play taking into account the perspective of various stakeholders and using external experts, if necessary; and

(d) establish preliminary studies on “Transfer of Technology” and “Opposition Systems”.

4. The Committee also discussed the Report on the International Patent System (documents SCP/12/3 Rev.2 and Rev.2 Add.), which would remain open for further discussion at the next session of the SCP.

5. In addition, some discussions were held with respect to the program of an international Conference, which had been suggested at the twelfth session of the SCP. The Committee also held discussions on the publication languages of studies established for the Committee.

Conference on Intellectual Property and Public Policy Issues, July 13 and 14, 2009

6. It is recalled that the SCP had, at its twelfth session, recommended that the Director General consider including provision in the revised Program and Budget for 2009 for a Conference on issues relating to the implications, including public policy implications, of patents on certain areas of public policy, such as health, the environment, climate change and food security.

7. Following consultations with member States, a Conference on Intellectual Property and Public Policy Issues was held on July 13 and 14, 2009, at the International Conference Center Geneva (CICG). It was attended by around 450 participants, including representatives of Member States, intergovernmental organizations and non-governmental organizations as well as individual participants. The program of the Conference, presentations, speakers' biographies as well as audio files are available on WIPO's website at: http://www.wipo.int/meetings/en/2009/ip_gc_ge/.

8. The Conference was opened by the Director General, and addressed various issues relating to the interface of intellectual property with other areas of public policy, notably health, the environment, climate change and food security. It served as a global forum to

discuss issues and solutions to some of the major challenges in relation to intellectual property the world is facing.

9. At the closing of the Conference, Mr. Maximiliano Santa Cruz, Chair of the SCP, observed that innovation and technology, coupled with technology transfer, were important contributions to solving problems that might arise in certain areas. While acknowledging the important interplay between intellectual property and the four public policy areas under discussion, he noted that the level of maturity of the discussion was different in those four areas, for example, in the areas of public health and climate change. He further observed that, in connection with the inherent tension between innovation and access to innovation, concepts such as prior informed consent and benefit sharing had been introduced in the debate and the instruments of different public policy issues. In addition, he noted that the impact of intellectual property rights might be stronger in areas where there was no substitute technology, whereas in other areas such as green technology where substitute technology was available, the impact might be weaker. He considered that the Conference had been an invitation to open minds to new solutions in innovative ways, recalling that, even if intellectual property might have an adverse effect in development, it could also be part of the solution.

10. The General Assembly is invited to take note of the contents of this document.

[Annex follows]

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SCP/13/7

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON THE LAW OF PATENTS

Thirteenth Session
Geneva, March 23 to 27, 2009

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

11. The thirteenth session of the Standing Committee on the Law of Patents (SCP) was opened by the Chair, Mr. Maximiliano Santa Cruz (Chile). The Director General, Mr. Francis Gurry, welcomed the participants. Mr. Philippe Baechtold (WIPO) acted as Secretary.

Agenda Item 2: Adoption of the revised Draft Agenda

12. The SCP adopted the revised draft agenda (document SCP/13/1 Prov.2) with the addition of an agenda item regarding the July 2009 conference, which was included in the final version (document SCP/13/1).

Agenda Item 3: Accreditation of Observers

13. The SCP approved the accreditation of the Royal Institute of International Affairs (Chatham House) as *ad hoc* observer (document SCP/13/6).

Agenda Item 4: Adoption of the Draft Report of the Twelfth Session

14. The Committee adopted the draft report of its twelfth session (document SCP/12/5 Prov.) as proposed, with an amendment in the Annex.

Agenda Item 5: Report on the International Patent System

15. The discussions were based on documents SCP/12/3 Rev.2 and SCP/12/3 Rev.2 Add.

16. The SCP agreed that document SCP/12/3 Rev.2 would remain open for further discussion at the next session of the SCP. If further comments are received from Member States, Annexes II and III of that document will be updated.

Agenda Item 6: Preliminary Studies on Selected Issues

17. Discussions were based on documents SCP/13/2, 3, 4 and 5. Many delegations stated that these documents constituted a good basis for discussions, and requested further elaborations and clarifications on various issues contained in the documents.

Agenda Item 7: Discussion on the July 2009 Conference

18. The Committee supported the holding of a Conference in July 2009 as suggested at the 12th session of the SCP. The Chair of the SCP and the Secretariat will conduct jointly open-ended consultations with all Member States on the program of the Conference, which will include the issues of health, the environment, climate change and food security.

Agenda Item 8: Future Work

19. Following a proposal by the Chair, the Committee

(a) reaffirmed that the non-exhaustive list of issues identified at the twelfth session of the SCP held in June 2008 would remain open for further elaboration and discussion at its next session, and decided to include two further issues in the list, namely “patents and the environment, with a particular attention to climate change and alternative sources of energy”, as well as “patent quality management systems”²;

(b) agreed that documents SCP/13/2, 3, 4 and 5 would remain open for further discussion and comments at the next session of the SCP;

(c) decided that five studies will be prepared as follows, taking into account interventions of Members:

² See attached revised list.

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(i) the Secretariat will commission external experts a study on exclusions, exceptions and limitations focused on, but not limited to, issues suggested by Members, such as public health, education, research and experimentation and patentability of life forms, including from a public policy, socio-economic developmental perspective, bearing in mind the level of economic development;

(ii) the Secretariat will prepare a concept paper on technical solutions to improve greater access to, and dissemination of, patent information;

(iii) the Secretariat will expand the preliminary study on the client-attorney privilege (document SCP/13/4), to reflect the current state of play in this area, taking into account perspective of various stakeholders and using external experts, if necessary;

(iv) the Secretariat will establish preliminary studies on the two following additional topics contained in the non-exhaustive list of issues agreed at the 12th session of the SCP: “Transfer of Technology” and “Opposition Systems”.

(d) The Secretariat will hold presentations of the studies at the beginning of the next meeting.

(e) Several delegations expressed the importance of engagement in the work of the Committee, and in so doing underlined the need for the studies prepared to be available in all official UN languages. The Committee requested the Secretariat to produce the cost estimates of translating the studies.

20. The International Bureau informed the SCP that its fourteenth session was tentatively scheduled to be held from November 9 to 13, 2009, in Geneva.

21. 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.

22. *The SCP noted the contents of this summary by the Chair.*

[Annex follows]

[SCP/13/7
ANNEX]

LIST OF ISSUES
(in the order of their appearance in document SCP/12/3)

Economic impact of the patent system

Transfer of technology

Competition policy and anti-competitive practices

Dissemination of patent information (including the registration of licenses)

Standards and patents

Alternative models for innovation

Harmonization of basic notions of substantive patentability requirements (e.g. prior art, novelty, inventive step, industrial applicability, disclosure)

Disclosure of inventions

Database on search and examination reports

Opposition system

Exceptions from patentable subject matter

Limitations to the rights

Research exemption

Compulsory licenses

Patent quality management systems

Client-attorney privilege

Patents and health (including exhaustion, the Doha Declaration and other WTO instruments, patent landscaping)

Relationship between the patent system and the CBD (Genetic resources/Traditional knowledge/disclosure of origin)

Relation of patents with other public policy issues

Patents and the environment, with particular attention to climate change and alternative sources of energy

[End of Annex and of document]