

## **WIPO General Assembly**

**Forty-Ninth (23<sup>rd</sup> Ordinary) Session**  
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### **REPORT ON THE STANDING COMMITTEE ON THE LAW OF PATENTS (SCP)**

*prepared by the Secretariat*

1. During the period under consideration, the Standing Committee on the Law of Patents (SCP) held two sessions, namely, the twenty-fifth session from December 12 to 15, 2016, and the twenty-sixth session from July 3 to 6, 2017. Both sessions were chaired by Mrs. Bucura Ionescu from Romania.
2. During these two sessions, the SCP continued to address the following five topics:<sup>1</sup> (i) exceptions and limitations to patent rights; (ii) quality of patents, including opposition systems; (iii) patents and health; (iv) the confidentiality of communications between clients and their patent advisors; and (v) transfer of technology.
3. The discussions at these two sessions were based on a number of proposals submitted by various delegations and documents prepared by the Secretariat. Delegations discussed those proposals and documents from various viewpoints, exchanged their views and experiences which contributed to advancing their understanding of each topic. In addition, sharing sessions held during the twenty-fifth session provided a good opportunity for Member States to share their views and experiences, challenges and solutions on each of those issues.

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<sup>1</sup> The summaries of the discussions at the twenty-fifth and twenty-sixth sessions of the SCP are contained in the respective Summary by the Chair (documents SCP/25/5 and SCP/26/7), available at: [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=41286](http://www.wipo.int/meetings/en/details.jsp?meeting_id=41286) and [http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=42299](http://www.wipo.int/meetings/en/details.jsp?meeting_id=42299), respectively.

4. Specifically, during the twenty-fifth session, delegations shared their practical experiences on the effectiveness of, and challenges associated to, exceptions and limitations, and on court cases with respect to client-patent advisor privilege. Furthermore, the Committee continued discussing the feasibility study on disclosure of International Nonproprietary Names (INN) in patent applications and patents. Moreover, during the said session, the Secretariat presented the improvements that had been made on the dedicated webpages regarding: (i) opposition systems and other administrative revocation and invalidation mechanisms; and (ii) transfer of technology. Four sharing sessions covering various topics relating to patents were also held during the twenty-fifth session as follows: (i) a sharing session on case studies, including court cases, on those exceptions and limitations that have proven effective to address development issues and/or economic strengthening; (ii) a sharing session on examples and cases relating to assessment of inventive step; (iii) a sharing session on national experiences relating to use of health-related patent flexibilities for promoting public health objectives or the challenges thereof; and (iv) a sharing session on the relationship between patent systems and transfer of technology as well as examples and cases presented by experts from different regions with a view to deepening the understanding of the impact of sufficiency of disclosure on transfer of technology.

5. During the intersessional period between the twenty-fifth and twenty-sixth sessions of the SCP, the Secretariat finalized a questionnaire on the term “quality of patents” and cooperation between patent offices in search and examination, and sent it to the WIPO Member States and regional patent offices.

6. During the twenty-sixth session of the SCP, the Committee discussed responses to the said questionnaire presented by the Secretariat. With respect to patents and health, following the sharing session relating to use of health-related patent flexibilities, held at the twenty-fifth session, a study on constraints faced by developing countries and least developed countries (LDCs) in making full use of patent flexibilities and their impacts on access to affordable especially essentially medicines for public health purposes in developing countries and LDCs was presented and discussed at the twenty-sixth session.

7. As regards the future activities of the Committee, the SCP will further advance its work based on the agreement on its future work reached at its twenty-sixth session. The Committee agreed that the non-exhaustive list of issues would remain open for further elaboration and discussion at the twenty-seventh session of the SCP. In addition, without prejudice to the mandate of the SCP, the Committee agreed that its work for the following session be confined to fact-finding and should not lead to harmonization at that stage. The future work program of the five topics under the SCP’s agenda is as follows:

- With respect to the topic “exceptions and limitations to patent rights”, the Committee agreed that the Secretariat would prepare a draft reference document on exceptions and limitations to patent rights in conjunction with patent protection, which would contain the following elements for each exception and limitation: (i) the description of the exception and limitation; (ii) its objectives and goals; (iii) national/regional implementation; (iv) challenges faced by Member States in its implementation; and (v) results of its implementation. As a first step, the draft reference document covering the exception regarding acts for obtaining regulatory approval from authorities (the so-called Bolar exception) will be submitted to the twenty-seventh session. The Secretariat will make use of all information available from the SCP activities, and will invite Member States to send any additional inputs for the preparation of the draft reference document.

– Regarding the topic “quality of patents, including opposition systems”, it was agreed that the Secretariat would update a summary of the responses to the Questionnaire on the Term “Quality of Patents” and Cooperation between Patent Offices in Search and Examination, taking into account the additional responses to be submitted by Member States and regional patent offices. In addition, during the twenty-seventh session, a sharing session will be held on further examples and cases relating to assessment of inventive step, giving a particular attention to the topics suggested in paragraph 8 of document SCP/24/3 (Proposal by the Delegation of Spain). The sharing session will be held with a view to submitting a further study on inventive step at the twenty-eighth session. Furthermore, during the twenty-seventh session, a half-day information exchange session on cooperation between patent offices in search and examination will be held. The information exchange session will address, among other issues, the effects of such cooperation on the patent granting process and capacity building. As regards the webpage on opposition and administrative revocation mechanisms, the Secretariat will continue to update that webpage, based on inputs received from Member States and regional patent offices.

– As regards the topic “patents and health”, it was decided that the Secretariat would supplement the study on the constraints faced by developing countries and LDCs in making full use of patent flexibilities and their impacts on the access to affordable especially essential medicines for public health purposes in developing countries and LDCs (document SCP/26/5) with inputs from members and observers of the SCP. The Secretariat will also update the feasibility study on the disclosure of International Nonproprietary Names (INN) in patent applications and patents (document SCP/21/9), and will submit it to the twenty-seventh session. In addition, the Committee agreed that a sharing session among Member States on patents and other related issues on access to medicines would be held. In this connection, the Secretariat will invite experts from the World Health Organization (WHO) and the World Trade Organization (WTO) to present the issues regarding the availability of generic medicines in developing countries and LDCs. Moreover, the Committee will hold a half-day information exchange session on publicly accessible databases on patent information status and data on medicines and vaccines. The Chair will invite a representative of the WHO to make a presentation on this topic and a representative of the Medicines Patent Pool (MPP) to make a presentation on its Medicines Patents & Licenses Database (MedsPaL). The information exchange session will address, among other issues, practical utilization of those databases and the issues addressed in paragraphs 18 and 19 of document SCP/24/4 (Proposal by the African Group for a Work Program on Patents and Health).

– Concerning the topic “confidentiality of communications between clients and their patent advisors”, the SCP agreed that a sharing session on the experiences of Member States in implementing the confidentiality of communication between clients and their patent advisors through national legislation, including cross-border issues, would be held during the twenty-seventh session.

– As regards the topic “transfer of technology”, the Committee agreed to hold, during the twenty-seventh session, a sharing session on patent law provisions that had contributed to effective transfer of technology.

8. It was also agreed by the Committee that the information concerning certain aspects of national/regional patent laws would be updated, based on input received from Member States.

9. In addition, at the twenty-sixth session, the SCP decided that, as the final deliberation of the proposal by the Group of Latin American and Caribbean Countries (GRULAC) on the revision of the 1979 WIPO Model Law for Developing Countries on Inventions (SCP/22/5), the Secretariat would organize, during the twenty-seventh session of the SCP, an informative session on legislative assistance in the field of patents and related capacity building.

*10. The WIPO General Assembly is invited to take note of the "Report on the Standing Committee on the Law of Patents" (document WO/GA/49/6).*

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