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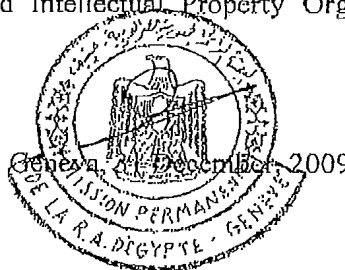
**Permanent Mission of the Arab Republic of Egypt
to the United Nations Office and other International Organizations in Geneva**

CHAN. 2009.294

The Permanent Mission of the Arab Republic of Egypt to the United Nations Office and other International Organizations in Geneva presents its compliments to the International Bureau of the World Intellectual Property Organization (WIPO), and has the honor to refer to the discussions held during the fourth session of the WIPO Committee on Development and Intellectual Property (CDIP), held in Geneva during the period 16-20 November, 2009, where during the consideration of document CDIP/4/7 concerning the Project on "Intellectual Property and Technology Transfer: Common Challenges - Building Solutions," the Committee agreed, as reflected in paragraph 8 of the Summary by the Chair, that discussions on that document would continue at the fifth session of the CDIP, and that a group of like-minded countries would submit a document containing comments on the implementation of the relevant recommendations before the end of 2009.

In this regard, the Permanent Mission of Egypt has the honor to enclose herewith the document containing the comments by this group of like-minded developing countries comprising the African Group, the Arab Group, Brazil and India.

The Permanent Mission of the Arab Republic of Egypt avails itself of this opportunity to renew to the International Bureau of the World Intellectual Property Organization (WIPO) the assurances of its highest consideration.



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Comments by a Group of Like-Minded Developing Countries¹
Project on Intellectual Property and Technology Transfer:
Common Challenges - Building Solutions (CDIP/4/7)

I) Thematic Project Approach:

1. The Thematic Project Approach to Implementing the Recommendations of the WIPO Development Agenda was proposed by the WIPO Secretariat during the third session of the Committee on Development and Intellectual Property (CDIP) (27 April – 1 May, 2009). The general proposal for this approach can be found in WIPO Document CDIP/3/INF/1. Following discussion of this approach by Member States (paragraphs 212 to 270 of the Report of the third session of CDIP, in WIPO Document CDIP/3/9 Prov.2), the Chair of CDIP proposed elements that will constitute the approach to discussions on thematic projects. These elements were approved by consensus, and were included in paragraph 8 of the Chair's Summary in Document CDIP/3/9 Prov.2, and are reproduced hereunder:

“Under Agenda Item 7, the Committee agreed to proceed on the basis of the following guidelines:

- (i) each recommendation would be discussed first in order to agree on the activities for implementation;*
 - (ii) recommendations that dealt with similar or identical activities would be brought under one theme, where possible; and*
 - (iii) implementation would be structured in the form of projects and other activities, as appropriate, with the understanding that additional activities may be proposed.”*
2. As such, CDIP agreed that the basis for discussions on the proposed thematic projects will be the Development Agenda (DA) Recommendations that are included under them.

II) Analysis of the Relevant DA Recommendations and Technology Transfer:

3. The WIPO Secretariat produced, in Document CDIP/4/7, the proposed thematic project entitled “Intellectual Property and Technology Transfer: Common Challenges - Building Solutions.” This project pertains to DA Recommendations 19, 25, 26, and 28.
4. In addition to these four DA Recommendations, other relevant Recommendations to the theme of technology transfer can also include Recommendations 17, 22, 23, 27, 29 and 31.
5. An important initial point to consider as we strive to implement the DA Recommendations above is to look at what is meant by the term “Transfer of Technology,” and what is its definition. In this regard, there have been previous attempts at defining the term, and there is a need to review these attempts towards establishing agreement on its contours. The

¹ These comments are presented by the African Group, the Arab Group, Brazil, and India. They represent, without prejudice to individual country or group positions, the view of a group of like-minded developing countries on the project presented in Document CDIP/4/7. This submission is made pursuant to the decision of the fourth session of the WIPO Committee on Development and Intellectual Property (16-20 November, 2009), as reflected in paragraph 8 of the Summary by the Chair.

Draft International Code of Conduct on the Transfer of Technology (1985 version) provides a good starting point.

6. This definition should include market mechanisms such as commercial transactions in trade, FDI, licensing and joint R&D arrangements. It should also include legitimate informal, non-market channels such as imitation through product inspection, reverse engineering, software decompilation, and simple trial and error. Finally, a third component of this definition should include efforts exerted by intergovernmental organizations (IGOs), development assistance agencies, and non-governmental organizations (NGOs). Similarly, the definition should encompass technology transfer that occurs through the study of available information, including patent disclosure provided sufficient information is made available for engineers to understand the technologies.

7. The consideration of the issue of technology transfer should be guided by relevant international legal provisions on the issue, namely:

TRIPS Article 7: The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

and,

WIPO-UN Agreement Article 1: The United Nations recognizes the World Intellectual Property Organization (hereinafter called the " Organization ") as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, inter alia, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development....

8. In addition to these two important international legal provisions, three specific sets of issues need to be considered when discussing technology transfer, namely: international IP standards pertaining to technology transfer; technology transfer supportive IP-related policies by developed countries; and multilateral supportive measures.

9. International IP Standards Pertaining to Technology Transfer: a more dynamic approach to transfer and dissemination of technology, for the benefit of developing and least developed countries, should take advantage of the flexibilities of the international regime to the full and incorporate, among others, appropriate policies with respect to:

- (i) protection criteria (e.g. patentability);
- (ii) duration of rights beyond a reasonable time to justify rewarding innovation and creativity;
- (iii) exceptions to exclusive rights;
- (iv) use of public tools (e.g. disclosure and working requirements, compulsory licensing, open source software);
- (v) system of protection relevant to national circumstances;
- (vi) administrative and procedural aspects;
- (vii) monitoring of anti-competitive behavior and other forms of abuse of rights.

10. Technology-Transfer Supportive IP-Related Policies by Developed Countries: with a view to promoting transfer and dissemination of technology, among other related objectives, WIPO should contribute to a debate with other relevant international organizations, as appropriate, on such initiatives as an undertaking by developed countries to provide:

- (i) technical and financial assistance for improving the ability of countries to absorb technology;

- (ii) fiscal benefits to firms transferring technologies to developing countries of the same type often available in developed countries for firms that transfer technologies to nationally less developed regions;
- (iii) same tax advantages for R&D performed abroad as for R&D done at home. For example, to meet the terms of Article 66.2 of TRIPS, there might be somewhat greater advantages offered for R&D performed in LDCs and other developing countries;
- (iv) fiscal incentives to encourage enterprises to train scientific, engineering and management graduates from developing countries, with a view to their knowledge being used for development of technology in their country of origin;
- (v) public resources, such as those from the National Science Foundation or National Institutes for Health in the United States, could be used to support research into the technology development and technology transfer needs of developing countries;
- (vi) grant programs could be established for research into technologies that would be of greatest productivity for the purpose of meeting priority social needs of developing countries. Technologies developed under such programs could be made publicly available, specially those funded through public resources;
- (vii) grant programs could be devised that offer support to proposals that meaningfully involve research teams in developing countries, in partnership with research groups in donor countries;
- (viii) Universities should be encouraged to recruit and train students from developing countries in science, technology, and management. Incentives for setting up degree programs through distance learning or even foreign establishments may be particularly effective;
- (ix) Special trust funds for the training of scientific and technical personnel, for facilitating the transfer of technologies that are particularly sensitive for the provision of public goods, and for encouraging research in developing countries.

11. Multilateral Supportive Measures: at the multilateral level, the following initiatives could be considered:

- (i) Adoption of commitments like those contained in Article 66.2 of the TRIPS Agreement, expanded to benefit other developing countries;
- (ii) the establishment of a special fee on applications through the Patent Cooperation Treaty, the revenues of which would be earmarked for the promotion of research and development (R&D) activities in LDCs and other developing countries;
- (iii) the establishment of an intermediary conduit to reduce the asymmetric information problem in private transactions between technology buyers and sellers, for knowledge about successful technology-acquisition programs that have been undertaken by national and sub-national governments in the past. It could serve a useful role in encouraging collaboration and information sharing among member governments. Such program could involve, for example, detailed information about past policies and effective partnerships between agencies and domestic firms in acquiring technologies and the terms involved, such as royalty rates and contract clauses that resulted in actual local absorption. They could also describe the most effective roles for public research facilities and universities in facilitating technology transfer. Once enough information of this type has been compiled and studied, it could attempt to develop a model technology transfer contract for different sectors that could serve as a guideline

for technology transfer and would represent the legitimate interests of both buyers and sellers;²

III) General Comments and Questions on the Proposed Project:

12. The project should be renamed as “Access to Knowledge & Technology.” This is proposed as a means to capture the essence of the technology transfer exercise.
13. The focus of the project should be on the needs of DCs and LDCs, and obstacles to achieving technology transfer. There is a need for concrete definition of problems.
14. In principle the ideas are positive, but there is a need to emphasize that the approach should be guided by the different levels of development, and avoid falling into the trap of a 'one-size fits all' approach. It must be acknowledged that IP could play a role supportive of technology transfer, but it could also be hindering it. What is important to note is that there is also a proposal that recommendations of the high level expert forum be incorporated into WIPO's programs. The high level expert forum must therefore be balanced and its composition should be decided by the Member States. Prior to embarking on ambitious projects as outlined in the proposed project document, it is first important for countries to define their thinking with regard to technology transfer. Secretariat should prepare a working document on IP related policies and initiatives that are necessary to promote technology transfer. This working document should then be discussed in CDIP for the Member States to determine the next steps.
15. What is meant by a “New Platform for Technology Transfer and IP Collaboration?” The term is vague and not clear as to what it would imply.
16. There are no action-oriented results in the project. While it is a good basis for a long-term approach, it fails to take into account the need for concrete steps to start initiating technology transfer to developing countries.
17. The project needs to start with a literature review of existing work and efforts done in the field of technology transfer, particularly by other international organizations, such as UNCTAD, UNEP, UNIDO, WHO, WTO among others. It should consider the history of multilateralism on the subject. This literature review should be pre-defined with the list of issues sought to be addressed (*see particularly DA Recs. 30 and 40*). These points were explicitly raised at the Open Forum on the DA projects hosted by WIPO on 13 and 14 October 2009. The comments raised during this Open Forum should be reflected in this project.
18. While technology transfer is viewed principally in the patent domain, yet the area of copyright and other categories of IPRs should not be overlooked, including the contribution from relevant Programs of WIPO.
19. Substantive ideas for the project, and in addition to the specific comments in the next section, should include:
 - (i) Setting up of a database that specifically targets R&D technology transfer possibilities from developed countries.
 - (ii) Review of the patent landscaping reports being prepared under the Project on “Developing Tools for Access to Patent Information” (CDIP/4/6), with a view to identifying the possibilities of international transfer of technology in these areas. Similar analysis of patent landscaping, from the viewpoint of technology transfer, in the areas of food and agriculture should also be undertaken.

² WIPO should consider its previous work in this regard, including work it has done on model contracts for technology transfer.

- (iii) Look at alternatives for R&D efforts and support to innovation aside from the currently existing patent system. This was taken up before by the World Health Organization in its Commission on Intellectual Property Rights, Innovation and Public Health, and could be used as a model for a similar exercise by WIPO.
 - (iv) What are possible open source models and what is their contribution to technology transfer (see DA Rec. 36).
 - (v) Consider the TRIPS Agreement, and how technology transfer has not been achieved under it. There should be a discussion and analysis of what WIPO can do in this regard.
 - (vi) How can developing countries address the problem of Brain Drain?
20. On the Implementation Timeline of the Project, the sequence of events for the project seems to be counter-intuitive. Regional consultations need to be at the very beginning of the project, in order to identify needs, and not at the end.
21. WIPO had a proposal to establish Technology and Innovation Support Centers (TISCs), which was referred to in the Program and Budget 2010-11. How will it fit into this project?
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IV) Specific Comments on the Proposed Project:

Brief Description of Project:		<u>Comments</u>
	<p>The project will include a range of activities that will explore possible initiatives and IP-related policies for promoting technology transfer, particularly for the benefit of developing countries. It will consist of five progressive phases towards developing a new platform for Technology Transfer and IP Collaboration, namely: (i) the organization of a High Level International Expert Forum on “Technology Transfer and IP: Common Challenges - Building Solutions” to analyze the needs in the area of technology transfer and propose a New Platform for Technology Transfer and IP Collaboration; (ii) the elaboration of a number of analytic studies, including economic studies and case studies on international technology transfer, that will provide inputs for the High-Level Expert Forum; (iii) the creation of a Web Forum on “Technology Transfer and IP: Common Challenges - Building Solutions”; (iv) five Regional Technology Transfer Consultation meetings; and (v) the incorporation of any adopted set of recommendations resulting from the above activities into WIPO programs.</p>	<ul style="list-style-type: none"> • The objective is not only to promote technology transfer, it must also look at means to disseminate and facilitate access to technology for development. • What is the purpose of the creation of a platform? • More clarification of the High Level International Expert Forum? What is the aim of the High Level Forum? Is it to develop policies? How will developed countries apply these aspects to ensure technology transfer? Linkages with work already undertaken in other international organizations. Must be complementary not duplicative. Relevant international organizations should be represented in this High Level Forum. • How and who will be commissioned to conduct these studies? • Peer reviews should be foreseen for case studies.

2. PROJECT DESCRIPTION	<u>COMMENTS</u>
2.1. Introduction to the Issue/Concern	
<p>Concerns about the access to and transfer of knowledge and technology between different actors on the national (university - private sector - industry) and the regional/international levels is becoming increasingly important, not only because creativity and innovation are crucial for competitiveness and economic growth in the knowledge based economy, but also because they may be part of the solution in some of the issues raised by complex contemporary problems and needs, for example, in the field of climate change or in the attempts to reduce the knowledge and technology gap between countries.</p> <p>The WIPO Project will consist of the following five components:</p> <p>1. Organization of a High-level Expert Forum to initiate discussions on how, within WIPO’s mandate, to further facilitate access to knowledge and technology for developing countries and LDCs, including in emerging areas, such as climate change, as well as other areas of special interest for developing countries, taking into account recommendations 19, 25, 26 and 28. The Forum would provide a framework for an open dialogue among independent experts from both developed and developing countries knowledgeable in public and private sector technology transfer. In addition to the specific areas indicated in recommendations 19, 25, 26 and 28, the experts may identify further issues related to improving technology transfer and to propose potential solutions. The objective would be to obtain high-level expert recommendations as a basis for the creation of a “New Platform for Technology Transfer and IP Collaboration”.</p>	<ul style="list-style-type: none"> • Who will decide on the composition of the experts? It should be up to the Member States to decide on the proposals and composition of the experts. • Climate change is not the only area of interest. The technology transfer needs of DCs and LDCs involve many more sectors, so there should not be a focus on any one sector. • What does “High-level” mean? • It would be good to focus the subject of the forum specifically on “IP and technology transfer,” and not to leave it too broad. • Participation should be open to all, with mechanisms put in place to ensure that wider voices are taken on board when recommendations are being formulated. • Is this high-level forum idea really necessary, would it not just add an additional layer of work? A sort of distancing the work or outsourcing the work??

2. The High-level Expert Forum will benefit from a series of inputs that will contribute to, and provide substantive backing to their deliberations, including, in particular:

(a) a series of economic studies on IP and International Technology Transfer. These studies would focus on areas that have received less attention in the available economic literature and on identifying possible obstacles and suggesting possible ways in which technology transfer could be enhanced;

(b) a study that will provide information on existing intellectual property right (IPR)-related policies and initiatives that exist in various countries to promote technology transfer to developing countries, including the use of flexibilities in international IP agreements;

(c) a series of case studies of cooperation and exchange between R&D institutions in developed countries and R&D institutions in developing countries;

(d) a study on Favorable Incentive Policies for businesses to become partners in technology transfer processes at the national and international level; and

- The High-level Expert Forum should also benefit from consultations with Member States.

- What are the TORs of these studies? Member States must be consulted in drawing them up.
- Efforts need to be made to ensure that the studies are not redundant with existing studies on technology transfer.

- Benefits and disadvantages must be highlighted. Challenges faced by developing countries should be the focus, and not just a simple inventory of what “various countries” are doing on technology transfer. Focus on concrete and practical policies and initiatives.

The following additional papers/studies should be undertaken:

- Prepare a paper (that is objective and well referenced) for discussion on measures available in the TRIPS Agreement for developing countries to promote transfer and dissemination of technology with a particular focus on patentability criteria, limitations and exceptions to patent rights, compulsory licenses and government use authorizations, anti-competitive provisions, pre- and post grant oppositions, application of Article 44.2 of the TRIPS Agreement, transitional period for LDCs etc.
- Prepare a study for discussion on the extent to which Article 66.2 has been fulfilled. Article 66.2 pertains to “Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.”

(e) an analysis of transfer of technologies issues relating to emerging issues.

3. The third component of this project will aim at incorporating all stakeholders, including policy makers, academia, private sector and NGOs in the Member States in the debate and further development of the issue, by setting up web-based WIPO Forums on “Technology Transfer and IP: Common Challenges - Building Solutions” and on the “New Platform for Technology Transfer and IP Collaboration”.

- Conduct a study of R&D policies found in the public and private sector of developed countries and analyze its impact on enhancing R&D capacity in developing countries. The study should be conducted with a view to identifying policies that increase cost for developing country institutions to conduct R&D, hamper R&D in developing countries and that leads to misappropriation of biological resources of developing countries.
- Make use/reference to the study currently under preparation as requested by the Standing Committee on the Law of Patents (SCP) on technology transfer, and which is to be presented and discussed in the next SCP session.
- Request specific studies on technology transfer needs in certain specific regions or sub-regions.

- This should encompass not only emerging issues, but more importantly, issues of traditional concern to DCs and LDCs.

- The risk is that this web-based forum might not be able to capture all views on the topic, especially those from DCs and LDCs. There is a need for precise national and regional discussions, not a virtual web-based discussion. The web forum could be used however to solicit comments on commissioned papers from the public at large, in the format of an uploaded pdf file and blog.
- A possible improvement on the web-forum proposal is to create virtual mailboxes where any interested party can upload their studies or recommendations on possible ways to achieve technology transfer.

<p>4. The project will also include the organization of five Regional Technology Transfer Consultation Meetings, including some for developed countries, in order to discuss the “New Platform” with regional policy makers, academia and private sector.</p> <p>5. Strengthening the existing activities within WIPO, which foster access to knowledge and technology for developing countries and LDCs, and their local creativity and innovation, by incorporating elements of the “New Platform”.</p>	<ul style="list-style-type: none"> • Inter-regional roundtables should also be included in national and regional Consultation Meetings. • Why only “strengthening” existing activities. Why not initiate new activities? Also, what are existing activities within WIPO? • It is a Member State Body that will approve the “incorporation of the elements.”
<p>2.2. Objectives</p>	
<p>The objectives of this project are framed by recommendations 19, 25, 26 and 28. In particular, the project will aim to explore initiatives and IP-related policies to enhance international technology transfer, particularly for the benefit of developing countries.</p> <p>Target beneficiaries include: government officials and policy-makers, universities and research institutions, industry; patent professionals and technology managers.</p>	<ul style="list-style-type: none"> • Ensure that Government Officials on various areas, not only IP experts, are invited.
<p>2.3. Delivery Strategy</p>	
<ul style="list-style-type: none"> — Preparation of a project paper including a detailed description of the above-mentioned components; — Studies, case studies and papers described above to be commissioned to experts or elaborated by the Secretariat, as appropriate; 	<ul style="list-style-type: none"> • The delivery strategy must involve consultations with Member States on how to proceed and continue with the project at its various stages. • The delivery strategy should foresee peer reviews.

<p>— Elaboration of a concept paper on building solutions as the basis for discussion at the High Level International Expert Forum;</p> <p>— Creation of a Web Forum on “Technology Transfer and IP: Common Challenges - Building Solutions” within the framework of the portal on Innovation and Technology Transfer Support Structure for National Institutions to be established in the context of the project for Recommendation 10;</p> <p>— Preparation and provision of materials, modules, teaching tools and other instruments resulting from recommendations adopted at the Expert Meeting, and inclusion of such results into the global WIPO capacity building framework. This may include contents and concrete country projects related to the design and development of the necessary infrastructure for IP asset management in relation to technology transfer;</p> <p>— Organization of regional consultations on the “New Platform for Technology Transfer and IP Collaboration”; and</p> <p>— Any new activities or initiatives required for Member States’ adoption and implementation of the New Platform would be outside of the scope of this project and may be integrated into WIPO’s regular program activities on innovation and technology transfer.</p> <p>Potential risks include ensuring that the project appropriately addresses the issue in different contexts, in particular, bearing in mind the different levels of development. In order to mitigate this risk, consultations with different stakeholders throughout project delivery will be essential.</p>	<ul style="list-style-type: none"> • These regional consultations should precede the adoption of the “New Platform...” • Who are the “stakeholders” referred to here?
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3. REVIEW AND EVALUATION		<u>COMMENTS</u>
3.1. Project Review Schedule		
<p>1. Monitoring reports, a first in six-months and a second in 18-months after the initial report, will indicate whether outputs and targets have been reached and what progress has been made towards the achievement of the project objectives; and</p> <p>2. A final self-evaluation report will be established at the end of the project, evaluating the degree of the achievement of the project and best ways of the inclusion of such results into the global WIPO capacity building framework.</p>		
<p>3.2. Project Self-Evaluation <i>In addition to the project self-evaluation, an independent evaluation may also be undertaken for the project</i></p>		<ul style="list-style-type: none"> • These need to be re-evaluated. It should be recalled that comments from the Open Ended Forum organized by WIPO in October 2009 highlighted the need for external, non-biased evaluation.
<u>Project Outputs</u>	<u>Indicators of Successful Completion (Output Indicators)</u>	<ul style="list-style-type: none"> • Successful completion could only be measured at the national and regional level where there are clear examples of technology transfer.
1. Project paper	Draft document ready within three months from approval of the project.	
2. Studies, case studies and analyses	Completion of the studies and analyses within the established timeframe and the standards required by the terms of reference (TORs).	
3. Web Forum established and used	<ul style="list-style-type: none"> – Web Forum operational within nine months; – Number of web forum users and qualitative feedback from web forum users; 	

	and — Compilation and analysis of public opinion discussions posted on the Web Forum.	
4. Organization of High-level Expert Forum	— High-level attendance to the Forum; — Positive feedback from participants on concept paper and studies; and — Forum results in adoption of a New Platform on Technology Transfer and IP.	• Member States consultations.
5. Organization of Regional Technology Transfer Consultation Meetings	Feedback on consultations by participants	• Member States consultations. • Identification of regions – particularly areas which greater need for tech transfer.
6. Strengthened existing activities within WIPO, which foster access to knowledge and technology	Incorporation of any adopted set of recommendations resulting from the activities of the Project into the WIPO programs.	

<u>Project Objective(s)</u>	<u>Indicator(s) of Success in Achieving Project Objective (Outcome Indicators)</u>	<u>Comments</u>
Exploration, enhanced understanding and consensus on possible IP initiatives or policies to enhance technology transfer, particularly for the benefit of developing countries	Adoption of the New Platform by Member States and feedback from the Committee on the extent to which understanding of the issues have been enhanced and project objective has been met	• This seems to include a normative element. If such, then this must be guided by DA Rec. 22.

[End of Document]