



---

**SCP/35/10**  
**ORIGINAL: ENGLISH**  
**DATE: OCTOBER 20, 2023**

## Standing Committee on the Law of Patents

**Thirty-Fifth Session**  
**Geneva, October 16 to 20, 2023**

SUMMARY BY THE CHAIR

### **AGENDA ITEM 1: OPENING OF THE SESSION**

1. The thirty-fifth session of the Standing Committee on the Law of Patents (SCP) was opened by Ms. Lisa Jorgenson, Deputy Director General, Patents and Technology Sector, who welcomed the participants. Mr. Andras Jokuti, Director, Patent and Technology Law Division, acted as Secretary.

### **AGENDA ITEM 2: ADOPTION OF THE AGENDA**

2. The SCP adopted the draft agenda (document SCP/35/1 Prov.).

### **AGENDA ITEM 3: SPECIAL RULES OF PROCEDURE**

3. Discussions were based on document SCP/35/2.

4. Taking into account the discussion held prior to the thirty-fifth session of the SCP with the Group Coordinators on the Special Rules of Procedure of the SCP, the Secretariat revised its proposal regarding the amendment to the Special Rules of Procedure of the SCP and a transitional arrangement for the election of Officers, as follows:

(i) The paragraph on the election of officers in the Special Rules of Procedure for the SCP will be amended as follows:

~~“The SCP shall elect a Chair and two Vice-Chairs for two consecutive sessions. In order to allow for the greatest possible continuity in the work of the officers of the SCP, the Chair~~

~~and the two Vice-Chairs will be elected for one year. The outgoing Chair and Vice-Chairs shall be immediately eligible for re-election to the offices which they have held."~~

Consequently, in accordance with Rule 9(3) of the General Rules of Procedure of WIPO, the outgoing Chair and Vice-Chairs shall not be immediately eligible for re-election to the office which they have held.

- (ii) The amendment proposed in item (i) will enter into force immediately.
- (iii) As a transitional arrangement, the officers to be elected at SCP/35 will preside over SCP/35 and SCP/36. The subsequent election of officers will be held during SCP/36. The terms of these officers elected during SCP/36 will start immediately after the closure of SCP/36.

5. The Committee adopted the amended provision of the Special Rules or Procedure of the SCP as referred to in paragraph 4, item (i), and the arrangement regarding its entry into force in paragraph 4, item (ii). The Committee also agreed on the transitional arrangement as referred to in paragraph 4, item (iii).

#### **AGENDA ITEM 4: ELECTION OF A CHAIR AND TWO VICE-CHAIRS**

6. The SCP unanimously elected, for two consecutive sessions, Mr. Tanyaradzwa Milne Manhombo (Zimbabwe) as Chair and Ms. Vita Kiriliauskaite (Republic of Lithuania) as Vice Chair.

#### **AGENDA ITEM 5: REPORT ON THE INTERNATIONAL PATENT SYSTEM**

7. Discussions were based on document SCP/35/3.

8. Some delegations shared information on recent developments of their national patent laws with the Committee.

9. The SCP agreed that the information concerning certain aspects of national/regional patent laws [[http://www.wipo.int/scp/en/annex\\_ii.html](http://www.wipo.int/scp/en/annex_ii.html)] would be updated based on input received from Member States.

#### **AGENDA ITEM 6: EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS**

10. Discussions were based on documents SCP/14/7, SCP/19/6 and SCP/35/4.

11. The Committee held discussions on the draft reference document on the exception regarding the use of articles on foreign vessels, aircraft and land vehicles (document SCP/35/4). The Committee continued discussion on the issues regarding the exceptions and limitations to patent rights.

12. The Committee recalled that, at its thirty-fourth session, the Committee agreed that the subsequent types of exceptions and limitations to be covered by draft reference documents would be the exception regarding extemporaneous preparation of medicines and farmers' and/or breeders' use of patented inventions.

## **AGENDA ITEM 7: QUALITY OF PATENTS, INCLUDING OPPOSITION SYSTEMS**

13. Discussions were based on documents SCP/17/7, 8 and 10, SCP/18/9, SCP/19/4, SCP/20/11 Rev., SCP/23/4, SCP/24/3, SCP/28/8, SCP/30/9 and SCP/31/8 Rev., SCP/33/4, SCP/35/5 and SCP/35/6, 7 and 8.

14. The expedited examination programs of Intellectual Property Offices (IPOs), including information on Prioritized Examination of COVID 19 related patent applications (document SCP/35/6) was discussed by the Committee.

15. The Committee also held discussions on the further study on the sufficiency of disclosure (Part II) that covered issues relating to inventions having an experimental nature in unpredictable art, such as chemistry and biotechnology, as proposed in document SCP/31/8 Rev. (document SCP/35/5).

16. In addition, a report of the sharing session on patentability of inventions using artificial intelligence (AI) and by AI, held during the thirty-fourth session of the SCP (document SCP/35/8), was submitted to the Committee.

17. The Committee also invited technical experts to make presentations on the state of play regarding AI generated inventions.

18. Furthermore, Member States shared information on the use of AI for patent examination procedures. The International Bureau also presented the work of WIPO's Advanced Technology Applications Center (ATAC) using AI.

19. The Committee also discussed document SCP/35/7, which provided a compilation on how jurisdictions around the world addressed the issue of AI inventorship, through jurisprudence, legislation and practice.

20. Some delegations suggested activities to be carried out by the Committee with respect to quality of patents, including opposition systems.

## **AGENDA ITEM 8: PATENTS AND HEALTH**

21. Discussions were based on documents SCP/16/7 and 7 Corr., SCP/17/11, SCP/24/4, SCP/28/10 Rev. and SCP/35/9.

22. The Secretariat submitted document SCP/35/9 (Review of the regular updates on the initiatives on publicly accessible databases of patent status information concerning medicines and vaccines) to the Committee for discussion.

23. In addition, Member States held a sharing session on practices involving licensing of medical technologies for the diagnosis, prevention and treatment of COVID-19, including examples of compulsory and voluntary licensing.

24. The Committee continued further discussion on various aspects reflected in the proposals by the Member States. Some delegations suggested other activities to be carried out by the Committee with respect to patents and health.

## **AGENDA ITEM 9: CONFIDENTIALITY OF COMMUNICATIONS BETWEEN CLIENTS AND THEIR PATENT ADVISORS**

25. The Committee held an information sharing session focusing on recent developments and experiences concerning confidentiality of communications between clients and their patent advisors.

26. Some delegations suggested activities to be carried out by the Committee under this agenda item.

## **AGENDA ITEM 10: TRANSFER OF TECHNOLOGY**

27. The Secretariat organized a sharing session by SCP observers, intergovernmental organizations and other relevant stakeholders on their practical experiences on Standard-Essential Patents (SEPs) and Fair, Reasonable and Non-Discriminatory (FRAND) licensing related issues.

28. In addition, a Member States sharing session was held on international cooperation in respect of technology transfer through the patent system, including technical assistance and capacity building, licensing of technology and collaboration involving both the public and private sectors.

29. Some delegations suggested activities to be carried out by the Committee under this agenda item. Some other delegations stated that discussion on this topic in the SCP should avoid duplication of work with other bodies.

## **AGENDA ITEM 11: FUTURE WORK**

30. The Committee decided its future work as follows:

- The non-exhaustive list of issues will remain open for further elaboration and discussion at the next session of the SCP.
- Without prejudice to the mandate of the SCP, the Committee agreed that its work for the next session be confined to fact-finding and not lead to harmonization at this stage, and would be carried out as follows:

### Exceptions and Limitations to Patent Rights

- In accordance with the agreement within the Committee at SCP/26, the Secretariat will continue to work on a draft reference document on exceptions and limitations to patent rights in conjunction with patent protection. The Secretariat will prepare a draft reference document on the exception regarding extemporaneous preparation of medicines, to be submitted to SCP/36, and a draft reference document on the exception regarding farmers' and/or breeders' use of patented inventions, to be submitted to SCP/37.

### Quality of Patents, including Opposition Systems

- The Secretariat will prepare a study on various aspects of the unity of invention, including divisional applications, in different fields of technology, based on the information received from Member States and regional patent offices, to be submitted to SCP/36.

- The Secretariat will update document SCP/30/5 by compiling current laws and practices relating to the patentability of artificial intelligence (AI)-related inventions, based on the information received from Member States and regional patent offices, which will be submitted to SCP/36.
- The Secretariat will update document SCP/35/7, Annex, Sections V (National/Regional Legal Frameworks Regarding the Concept of Inventorship) and VI (The “DABUS” Case), based on the information received from Member States and regional patent offices, which will be submitted to SCP/37. Regarding Section VI (The “DABUS” Case), the Secretariat will also include information regarding new cases and decisions on AI as inventor, based on the information received from Member States and regional patent offices.
- With a view to further clarifying the interaction between humans and AI and how AI may impact the role of humans in the inventive process, the Secretariat will invite experts to SCP/36 to update the Committee on how AI technology is used by researchers to generate new technical solutions and by users of the patent system in their R&D process.
- The Secretariat will organize, at SCP/36, a sharing session on the use of various tools, including AI, for effective patent examination procedures. The sharing session will also address challenges faced by IP offices in developing, deploying and using such tools. The Secretariat will prepare a report on the sharing session on the use of AI for patent examination procedures held during SCP/35 and the above sharing session on the use of various tools, including AI, for effective patent examination procedures to be held during SCP/36, and will submit it to SCP/37.
- The Secretariat will create a dedicated webpage on the expedited examination programs of IP offices, and update it regularly on the basis of the information received from Member States and regional patent offices.

#### Patents and Health

- The Committee will continue to receive updates on the initiatives on publicly accessible databases of patent status information concerning medicines and vaccines during SCP/36 and 37, and include a sharing session on experiences of Member States on their use, and to invite the providers of the data to participate. The possibility of further continuation of such work shall be based on the agreement by the Committee.
- The Secretariat will update document SCP/26/5 (Constraints Faced by Developing Countries and LDCs in Making Full Use of Patent Flexibilities and their Impact on the Access to Affordable Especially Essential Medicines for Public Health Purposes in those Countries), based on the information received from Member States, in view of their experiences relating to the COVID-19 pandemic.

#### Confidentiality of Communications between Clients and Their Patent Advisors

- The Secretariat will continue updating a dedicated webpage on laws and practices relating to confidentiality of communications between clients and

their patent advisors, including in-house counsel.  
([https://www.wipo.int/scp/en/confidentiality\\_advisors\\_clients/national\\_laws\\_practices.html](https://www.wipo.int/scp/en/confidentiality_advisors_clients/national_laws_practices.html)).

- The Secretariat will update document SCP/25/4 (Compilation of Court Cases with respect to Client-Patent Advisor Privilege), based on the information received from Member States.

#### Transfer of Technology

- The Secretariat will update document SCP/32/6 (Patent Law Provisions that Contribute to Effective Transfer of Technology, including Sufficiency of Disclosure), based on information received from Member States and submit it to SCP/36.
- As proposed in document SCP/34/7 Rev., the Secretariat will organize, at SCP/36, a sharing session by Member States on policy experiences on Standard-Essential Patents (SEPs) and Fair, Reasonable and Non-Discriminatory (FRAND) licensing related issues.
- The Secretariat will prepare, based on the information submitted by Member States, a study on patent inventorship and ownership issues arising from collaborative research and cross-border collaboration and their implications for technology transfer to be submitted at SCP/36.
- The Secretariat will organize a roundtable at SCP/36 and invite technology transfer experts. They will address issues relating to patent inventorship and ownership with respect to university inventions and their implications for technology transfer, including the creation of e.g., spin-offs and start-ups. The Secretariat will prepare a report of the roundtable and submit it to SCP/37.

31. The Secretariat informed the SCP that the dates of the thirty-sixth session will be announced at the later stage.

32. The SCP noted that the present document was a summary established under the responsibility of the Chair. The Committee noted that in line with paragraph 30 of the Summary Report of the sixty-second series of Meetings of the Assemblies of the Member States of WIPO (document A/62/12), the verbatim reports of the SCP would be replaced by automated speech to-text transcripts and translations. Accordingly, the official report of the current session will be made available in that form. In order to help improve the automated speech-to-text technology, delegations are requested to provide corrections of substantial nature to the Secretariat, preferably four weeks before the following session of the Committee.

33. The SCP noted the contents of this summary by the Chair.

[End of document]