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Standing Committee on the Law of Patents

Thirty-Fourth Session
Geneva, September 26 to 30, 2022

**SUMMARY OF DOCUMENT SCP/34/6: UPDATE OF DOCUMENT SCP/31/5
(REVIEW OF EXISTING RESEARCH ON PATENTS AND ACCESS TO MEDICAL
PRODUCTS AND HEALTH TECHNOLOGIES)**

prepared by the Secretariat

1. The Standing Committee on the Law of Patents (SCP), at its thirty-third session, held in Geneva from December 6 to 9, 2021, agreed that the Secretariat would submit, at the thirty-fourth session of the SCP, an update of document SCP/31/5 containing the review of existing research on patents and access to medical products and health technologies, extending the period under review and covering the period between 2019 and 2021, consistent with the terms of reference set out in document SCP/28/9 Rev. (see first bullet point under “patents and health” in paragraph 24 of document SCP/33/5).¹
2. Pursuant to the above SCP decision, the Secretariat prepared the said update of document SCP/31/5, which is contained in Annexes to document SCP/34/6, for the Committee’s discussions at its thirty-fourth session to be held in Geneva, in a hybrid format, from September 26 to 30, 2022. In line with the decision of the Committee at its thirty-third session, the update was made in accordance with the terms set out in document SCP/28/9 Rev.
3. In view of the volume of document SCP/34/6, the present document is prepared as a summary of that document.

¹ Document SCP/28/9 Rev. is a proposal by the Delegations of Argentina, Brazil, Canada and Switzerland to conduct such a review for Committee’s consideration under the agenda item “Patents and health”.

4. As mandated by the Committee, studies included in the review relate to the following topics:

- The relationship between patents and other related issues and the affordability and availability of medical products and health technologies;²
- The role of the patent system, including patent quality mechanisms, in incentivizing and promoting the development of new medicines and health technologies to address the global disease burden, facilitating access to medical products and health technologies, and ensuring the supply of quality products;
- The role of the intellectual property system in fostering knowledge spillovers and technology transfer in the medical products and health technologies sector;
- The role of compulsory and voluntary licensing mechanisms and patent pools in facilitating the affordability and availability of medical products and health technologies; and
- The availability of essential medicines in countries where those medicines are not under patent, taking into consideration the variety of other factors both on the supply and demand side that affect availability and affordability.

5. Each study was summarized to provide a factual synopsis of the analysis, key conclusions and recommendations of the author(s) of the study. The list of studies included in the review is presented in the Annex to this document.

6. In conducting this update, a search methodology similar to the one used for producing document SCP/31/5 was employed. Thus, in addition to the works of the WHO, WIPO and WTO, the search was conducted on publications prepared by, or commissioned to external researchers by, the following intergovernmental organizations (IGOs), among others: European Union, UNCTAD, UNAIDS, OECD, UNDP and South Centre. With respect to the academic literature, the search was conducted on more than 80 peer-reviewed journals, taking into account the relevance of their fields to the mandated topics.

7. Document SCP/34/6 is structured into three main sections: (i) Studies prepared by the WHO, WIPO, WTO and other relevant intergovernmental organizations, including studies prepared by external researchers commissioned by these organizations; (ii) Peer-reviewed academic research (economic literature); and (iii) Peer-reviewed academic research (legal and general literature).

8. Most of the literature identified was relevant to the following topics: (i) the relationship between patents and other related issues and the affordability and availability of medical products and health technologies; (ii) the role of compulsory and voluntary licensing mechanisms and patent pools in facilitating the affordability and availability of medical products and health technologies; and (iii) the role of the patent system in incentivizing and promoting the development of new medicines and health technologies to address the global disease burden. A lesser amount of studies focus on the role of the patent system in fostering knowledge spillovers and technology transfer in the medical products and health technologies sector, although various issues relating to patent licensing are relevant to technology transfer. Some studies cover more than one topic, or analyze a specific subject regarding its impact on both access to innovative products and incentives to innovate. Comparable to the finding in the first review contained in document SCP/31/5, no studies specifically focusing on the availability

² For the purposes of this review, “medical products and health technologies” refers to medicines, vaccines, diagnostics and medical devices.

of essential medicines in countries where those medicines are not under patent protection appear to have been published during the period under this update, reconfirming a lack of research on that topic.

9. Similar to document SCP/31/5, the readers should be mindful of the fact that no quality assessment of the contents of the identified publications and peer reviewed academic studies included in this update has been made by the Secretariat. Additionally, as mandated by the SCP, the update does not include working documents, drafts, blogs, commentaries and opinion pieces, etc. which are not considered to be peer-reviewed academic research.

[Annex, follows]

LIST OF STUDIES INCLUDED IN THE UPDATE OF THE REVIEW OF EXISTING RESEARCH ON PATENTS AND ACCESS TO MEDICAL PRODUCTS AND HEALTH TECHNOLOGIES (2019-2021)

1. Abbas M. Z. (2020), Treatment of the Novel COVID-19: Why Costa Rica's Proposal for the Creation of a Global Pooling Mechanism Deserves Serious Consideration?, *Journal of Law and the Biosciences*, Vol. 7, No. 1, pp. 1-10.
2. Abbas M. Z. (2021), Parallel Importation as a Policy Option to Reduce Price of Patented Health Technologies, *Journal of Generic Medicines*, Vol. 17, No. 4, pp. 214–219.
3. Abbott F. M. and Reichman J. H. (2020), Facilitating Access to Cross-Border Supplies of Patented Pharmaceuticals: The Case of the COVID-19 Pandemic, *Journal of International Economic Law*, Vol. 23, No. 3, pp. 535–561.
4. Adekola T. A. (2020), Regional Mechanism under Doha Paragraph 6 System – The Largely Untested Alternative Route for Access to Patented Medicines, *Asian Journal of WTO & International Health Law and Policy*, Vol. 15, No. 1, pp. 61-90.
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