

## **Standing Committee on the Law of Patents**

**Thirty-First Session**  
**Geneva, December 2 to 5, 2019**

### **SUMMARY OF DOCUMENT SCP/31/5: REVIEW OF EXISTING RESEARCH ON PATENTS AND ACCESS TO MEDICAL PRODUCTS AND HEALTH TECHNOLOGIES**

*Document prepared by the Secretariat*

1. The Standing Committee on the Law of Patents (SCP), at its twenty-ninth and thirtieth sessions, held in Geneva from December 3 to 6, 2018, and June 24 to 27, 2019, respectively, agreed that the Secretariat would submit, at the thirty-first session of the SCP, a review of existing research on patents and access to medical products and health technologies, as contained in document SCP/28/9 Rev. (see paragraph 22 of document SCP/29/7 and paragraph 23 of document SCP/30/10). 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".
2. Pursuant to the above SCP decisions, the Secretariat prepared the said review, which is contained in document SCP/31/5 "Review of Existing Research on Patents and Access to Medical Products and Health Technologies", and submitted it to the Committee's discussions at its thirty-first session to be held in Geneva from December 2 to 5, 2019.
3. In view of the volume of document SCP/31/5, the present document is prepared as a summary of that document.
4. In line with the above SCP decisions, the review was conducted in accordance with the proposal contained in document SCP/28/9 Rev. Specifically, it was undertaken by the Secretariat in consultation with the WHO and WTO Secretariats and included studies prepared by these organizations as well as other relevant intergovernmental organizations (IGOs). The review also includes studies prepared by external researchers commissioned by these organizations, as well as peer-reviewed academic research.

5. As mandated by the Committee, in conducting the said review, the Secretariat primarily searched studies on the following topics:

- The relationship between patents and other related issues and the affordability and availability of medical products and health technologies;<sup>1</sup>
- 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.

6. The review covered work produced over the time period of 2005 to 2018. Each study was summarized to provide, in about half a page, 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.

7. With regard to the works produced by the IGOs, in addition to the works of WIPO, WHO, WTO, and the works of external researchers commissioned by these organizations, the search was conducted on publications made by, *inter alia*, European Union, UNCTAD, UNAIDS, OECD, UNDP, ICTSD and South Centre.

8. The search of academic literature was conducted on more than 80 peer-reviewed journals, taking into account the relevance of their fields to the mandated topics. The readers should be mindful of the fact that while all identified peer-reviewed academic studies on the above topics have been included in this review, no quality assessment of their contents has been made by the Secretariat. Additionally, as mandated by the SCP, the review does not include working documents, drafts, blogs, commentaries and opinion pieces, etc. which are not considered to be peer-reviewed academic research.

9. Different number of studies have been identified in relation to each of the mandated topics above. Most of the economic and legal literature identified was relevant to the following topics: (i) the role of the patent system in incentivizing and promoting the development of new medicines and health technologies to address the global disease burden; (ii) the role of the patent system in fostering knowledge spillovers and technology transfer in the medical products and health technologies sector; (iii) the relationship between patents and the affordability and

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<sup>1</sup> For the purposes of this review, “medical products and health technologies” refers to medicines, vaccines, diagnostics and medical devices.

availability of medical products and health technologies; and (iv) the role of compulsory licensing mechanisms in facilitating the affordability and availability of medical products and health technologies. Less amount of literature has been found in relation to the topic of 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 sides that affect availability and affordability. This reflects a lack of published research on that topic in economics, legal or other fields alike.

[Annex follows]

List of studies included in the review of existing research on patents and access to medical products and health technologies:

1. World Intellectual Property Organization (2015), Chapter 2: Historical Breakthrough Innovations - Antibiotics, World Intellectual Property Report, WIPO, Chapter 2.
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