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**SCP/34/8**  
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## **Standing Committee on the Law of Patents**

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

SUMMARY BY THE CHAIR

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

1. The thirty-fourth session of the Standing Committee on the Law of Patents (SCP) was opened by Mr. Leopoldo Belda Soriano (Spain), elected Chair of the SCP. Ms. Lisa Jorgenson, Deputy Director General, Patents and Technology Sector, 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 revised draft agenda (document SCP/34/1 Prov.2).

### **AGENDA ITEM 3: REPORT ON THE INTERNATIONAL PATENT SYSTEM**

3. Discussions were based on document SCP/34/2.

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

5. 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 4: EXCEPTIONS AND LIMITATIONS TO PATENT RIGHTS**

6. Discussions were based on documents SCP/14/7, SCP/19/6, SCP/34/3.
7. The Committee held discussions on the draft reference document on the exception regarding exhaustion of rights (SCP/34/3). The Committee continued discussion on the issues regarding the exceptions and limitations to patent rights.
8. Some delegations suggested further activities under this agenda item.

#### **AGENDA ITEM 5: QUALITY OF PATENTS, INCLUDING OPPOSITION SYSTEM**

9. 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/34/4 and 5.
10. A report of the sharing session on the use of artificial intelligence (AI) for examination of patent applications, held on December 7, 2021 during the thirty-third session of the SCP (document SCP/34/4), was submitted to the Committee.
11. Member States shared information on patentability of inventions using AI and by AI.
12. In addition, Member States shared their experiences and information on the expedited examination mechanisms at their IP offices.
13. Furthermore, the Committee held discussions on the further study on the sufficiency of disclosure (Part I) that covered the issues relating to biological materials, such as microorganisms, and AI-related inventions (document SCP/34/5).
14. Some delegations suggested activities to be carried out by the Committee with respect to quality of patents, including opposition systems.

#### **AGENDA ITEM 6: PATENTS AND HEALTH**

15. Discussions were based on documents SCP/16/7 and 7 Corr., SCP/17/11, SCP/24/4, SCP/28/9 Rev. and 10 Rev. and SCP/34/6.
16. The Secretariat submitted document SCP/34/6 that updated document SCP/31/5 (Review of existing research on patents and access to medical products and health technologies) to the Committee for discussion.
17. In addition, the Committee continued to receive updates on the initiatives on publicly accessible databases of patent status information concerning medicines and vaccines. In particular, the Committee was informed about the information sharing platform for patents on pandemic prevention against COVID-19 from the China Patent Information Center.
18. Furthermore, the Representatives of WIPO, WTO and WHO presented their patent-related activities with respect to COVID-19 pandemic in the context of the trilateral cooperation. The Representative of WHO made a presentation on the C-TAP initiative. The Representative of MPP presented its licensing activities.
19. The Committee continued further discussion on the 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 7: CONFIDENTIALITY OF COMMUNICATIONS BETWEEN CLIENTS AND THEIR PATENT ADVISORS**

20. The Committee held an information sharing session focusing on cross-border aspects of confidentiality of communication between clients and their patent advisors.

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

## **AGENDA ITEM 8: TRANSFER OF TECHNOLOGY**

22. The Committee held an information sharing session to highlight the positive contributions of the patent system in enhancing innovation, technology transfer and industrial development of countries as well as challenges therein, through presentations of concrete cases by various stakeholders.

23. 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 the Committee on Development and Intellectual Property (CDIP). Some delegations stated that while the CDIP took a project-based approach, the SCP addressed systemic constraints on technology transfer under the patent system.

24. In addition, the Committee discussed the proposal by the Delegation of Canada (document SCP/34/7).

## **AGENDA ITEM 9: FUTURE WORK**

25. 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 the use of articles on foreign vessels, aircrafts and land vehicles, to be submitted to SCP/35. The Committee agreed that the subsequent types of exceptions and limitations to be covered by draft reference documents will be the exceptions regarding extemporaneous preparation of medicines and farmers' and/or breeders' use of patented inventions.

### Quality of Patents, including Opposition Systems

- The Secretariat will prepare a “further study on the sufficiency of disclosure (Part II)” relating to inventions having an experimental nature in unpredictable art, such as chemistry and biotechnology, and any other areas that deserve special attention, as proposed in document SCP/31/8 Rev., based on the information received from Member States and regional patent offices, to be submitted to SCP/35.
- The Secretariat will prepare a document compiling information relating to the expedited examination programs of IP offices, including information on Prioritized Examination of COVID-19 related patent applications. The document will include those expedited examination programs discussed during SCP/34 as well as any additional contributions provided to the Secretariat by Member States prior to SCP/35.
- The Secretariat will: (i) produce a compilation on how jurisdictions around the world address the issue of AI inventorship, through jurisprudence, legislation and practice to be updated on a regular basis, and present it at SCP/35; and (ii) invite technical experts to SCP/35 to update the Committee on the state of play regarding AI generated inventions including AI technology capabilities and applications.
- The Secretariat will submit, at SCP/35, a report of the information sharing session held during SCP/34 on patentability of inventions using AI and by AI.
- The Secretariat will organize, at SCP/35, an information sharing session on the use of AI for patent examination procedures.

### Patents and Health

- In accordance with document SCP/28/10 Rev., the Committee will review and decide, at SCP/35, whether the regular update on the initiatives on publicly accessible databases of patent status information concerning medicines and vaccines be extended.
- At SCP/35, the Secretariat will organize a sharing session among Member States on practices involving licensing of medical technologies for the diagnosis, prevention and treatment of COVID-19, including examples of compulsory and voluntary licensing.

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

- At SCP/35, the Secretariat will organize a sharing session by members and observers of the SCP as well as relevant practitioners on recent developments and experiences concerning confidentiality of communications between clients and their patent advisors.

### Transfer of Technology

- At SCP/35, the Secretariat will organize a member states sharing session 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, provided that this session will not be duplicative with the work undertaken under the agenda item patents and health.
- As proposed in document SCP/34/7 Rev., the Secretariat will organize, at SCP/35, 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.

26. The Secretariat informed the SCP that its thirty-fifth session is tentatively scheduled to be held in Geneva from October 16 to 20, 2023.

27. 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.

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

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