

Standing Committee on the Law of Patents

Twenty-Eighth Session
Geneva, July 9 to 12, 2018

PROPOSAL BY THE DELEGATION OF SPAIN

Document prepared by the Secretariat

1. The Annex to this document contains a proposal submitted by the Delegation of Spain to conduct studies on new technologies and patentability, for consideration under item 6 of the draft agenda: Quality of patents, including opposition systems.

2. *The members of the Standing Committee on the Law of Patents (SCP) are invited to consider the contents of the Annex.*

[Annex follows]

PROPOSAL TO CONDUCT STUDIES ON NEW TECHNOLOGIES AND PATENTABILITY
UNDER THE AGENDA ITEM “QUALITY OF PATENTS” OF THE
STANDING COMMITTEE ON THE LAW OF PATENTS

1. The topic “the quality of patents, including opposition systems” has been on the agenda since the 16th session of the Standing Committee on the Law of Patents.
2. Throughout these years, the Secretariat has carried out a series of studies (Inventive step, Sufficiency of disclosure, Reutilization of work done by other Offices, Opposition Systems, Concept of “Quality of patents”, among others). It has also organized numerous sessions for sharing experiences. The availability to the general public of these studies, as well as of the presentations provided during sharing sessions, has contributed to increasing knowledge on various topics closely related to substantive patent law.
3. In recent years there has been a dizzying technological development that will sooner or later be reflected in patent law. As the only multilateral forum in this field, the Standing Committee on the Law of Patents cannot remain oblivious to this reality, where the so-called Artificial Intelligence, “blockchain”, “big data”, etc. are playing an increasingly important role in many areas of life.
4. WIPO has already shown that it is aware of this reality, as seen in the report published last February, where 37 Intellectual Property Offices indicated how they use these new technologies in their management. Also, WIPO’s Director General, at the opening of the May 23-25 meeting about this topic, stated that efforts should be made to explore how to cooperate internationally in this regard in order to avoid duplication of effort.
5. This delegation therefore believes that it is in the interest of all Member States that this Committee should devote its attention to this issue.
6. The so called “blockchain” is a distributed and difficult to alter database technology that is already being used in the world of patents. It would be interesting to know under what circumstances the technology could be used, as well as its advantages and disadvantages compared to the current situation. For example, to determine the content of the state of the art or as a means of proof of prior use that could be used as defense against a possible accusation of alleged infringement.
7. With regard to what is known as Artificial Intelligence or super-software, as other authors prefer to call it, its use will have an impact on the search for the state of the art, with repercussions on productivity increases, which will probably make it possible to deal with the examination of a constantly growing number of patent applications.
8. Artificial Intelligence presents a series of problematic situations that patent law will have to address sooner or later, as the current rules are not prepared for such a disruptive change. Many questions arise concerning Artificial Intelligence and patents:
 - What will happen to the people whose data are used for the development of patented Artificial Intelligence? Will they be entitled to any financial compensation?
 - Will the current patent legal life span in this sector remain adequate? Does the patent system have to be amended in order to cater for these inventions?
 - How will the requirement of sufficiency of disclosure be met? To what extent will an adequate description of the “black box” that is sometimes used to represent the “neural networks” be necessary?

- How should the figure of the person skilled in the art be defined in order to assess inventive step of inventions developed by Artificial Intelligence programs?
- Who will be entitled to a patent on an invention developed by an Artificial Intelligence program? The software? The creator of the program? The user?
- Should these inventions generated by “Artificial Intelligence” be patentable?

9. In order to address the questions raised, this delegation requests the Secretariat of the Committee, if possible with the assistance of renowned experts in the field, to carry out a study or studies addressing all or some of the aspects raised in points 6 to 8 of this proposal.

[End of Annex and of document]