



**COUNCIL OF  
THE EUROPEAN UNION**

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**NOTE**

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From: General Secretariat  
To: Delegations

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Subject: 18th session of the WIPO Standing Committee on the Law of Patents  
(Geneva, May 21 to 25, 2012)  
- Final statements by the European Union and its Member States

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Delegations will find in the Annex, for information, the statements made at the above-mentioned WIPO meeting on behalf of the European Union and its Member States.

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**STANDING COMMITTEE ON THE LAW OF PATENTS**

**18<sup>th</sup> session  
Geneva, May 21 to 25, 2012**

**Statement by the European Union and its Member States**

**Opening statement**

Mr. Chairman,

1. The European Union and its Member States, would like to convey to you our sincere congratulations on your election and that of the Deputy Chairman. We reaffirm our full commitment to the work of this Committee and look forward to a constructive, efficient and fruitful session under your chairmanship. We would also like to thank the WIPO Secretariat for its extensive work in preparing for this meeting.
2. The upcoming session of the SCP will continue discussions on significant issues such as quality of patents including opposition systems, exceptions and limitations to patent rights, patents and health, confidentiality of communication between client and their patent advisors and transfer of technology addressing important and complex questions of the international patent system. All these discussions with the hope of getting a more efficient and accessible patent system as a whole.
3. In particular, we attach considerable importance to advancing work on the quality of patents along the lines proposed by delegations from Canada, the UK, Denmark and the US. We are also committed to continuing work on issues of opposition systems and confidentiality of communication between clients and their patent advisors, which are of benefits to users of the patent system.

4. We would also like to express our readiness to continue discussions on exceptions and limitations to patent rights and on possible further steps regarding this topic. In this context, however, we emphasize the utmost importance of striking an appropriate balance between work on exceptions and limitations to patent rights and on corresponding legal standards used to determine whether an invention is patentable, as these two topics are closely interlinked.
5. Given the importance of the issue of patents and health for tackling public health problems in developing and least developed countries, we fully understand the interest of these countries to include this topic in the future work of this Committee. Taking into account the great number of ongoing projects, work programmes and other activities, in particular within WIPO, the WHO and the WTO, we are of the view that any possible initiative of the Committee in this area should be carefully considered to avoid duplication of efforts either for WIPO or other international organization.
6. Similarly, possible further activities of this Committee in relation to the transfer of technology should be considered after completion of extensive work which is to be undertaken under the project on intellectual property and technology transfer within the CDIP and its follow up analysis.
7. The European Union and its Member States would like to express the hope that a balanced work programme of this Committee enabling fruitful discussion on technical issues concerning patent law will be promptly established. We also hope that this will lead to working towards the international harmonization of substantive patent law, to which we are strongly committed.
8. In closing, I would like to say that the European Union and its Member States reiterate their full commitment to cooperate and participate actively and constructively in discussions of this Committee.

Thank you.

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# STANDING COMMITTEE ON THE LAW OF PATENTS

18<sup>th</sup> session  
Geneva, May 21 to 25, 2012

## Statement by the European Union and its Member States

### on Agenda Item 7 Exceptions and limitations to patent rights

(SCP/14/7 and SCP/18/3)

Mr. Chairman,

1. The European Union and its Member States would like to express our gratitude to the Secretariat for the preparation of the overview of the responses to the questionnaire on exceptions and limitations to patent rights in document SCP/18/3. We would also like to take this opportunity to acknowledge the contribution of those WIPO Member States who have provided the Committee with answers to the questionnaire. Information gathered on the basis of the 73 answers received by 28 March, 2012, 20 of which are from EU Member States, increases knowledge of this Committee about the national or regional legal frameworks regarding exceptions and limitations to patent rights.
2. While the European Union and its Member States recognize the importance attached to these issues, we believe that, regarding further work on this topic, an appropriate balance between right holders and the interests of the general public should be maintained. Thus, neither exclusions from patentability nor exceptions and limitations to patent rights should be discussed without corresponding legal standards used to determine whether an invention is patentable, such as novelty, inventive step, and industrial applicability.
3. The European Union and its Member States commit to participating actively and constructively in the debate in order to contribute to the final fulfillment of this Committee's objectives.

Thank you,

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# STANDING COMMITTEE ON THE LAW OF PATENTS

18<sup>th</sup> session  
Geneva, May 21 to 25, 2012

## Statement by the European Union and its Member States

### on Agenda Item 8 (i) Quality of patents

(SCP/17/7, 8, 10 and SCP/18/INF/2)

Mr. Chairman,

1. The European Union and its Member States are convinced that good quality of patents increase the legal certainty of both patent holders and third parties, contribute to the scientific and technical progress and ensure that patent systems perform properly its economic functions. Ensuring high quality to granted patents is heavily dependent on the high quality of patent search reports, efficient patent examination procedures that will ensure sufficient disclosure of inventions and well defined claims, and efficient opposition and appeals systems.
2. In this regard, we would like to reiterate our support to advancing work on quality of patents proposed by the Delegations of Canada and the UK (document SCP/17/8), the Delegation of Denmark (document SCP/17/7) and the Delegation of the US (document SCP/17/10). We consider these proposals fully complementary to the mandate and the core expertise of this Committee as well as taking into account a number of the Development Agenda Recommendations, in particular Recommendations 10, 11, 19 and 29.
3. We notice with pleasure that further WIPO Member States, including six European Union Member States, have already contributed to the discussions on quality of patents with comments, additional proposals and further information about the subject matter, compiled in the documents SCP/17/INF/2 and SCP/18/INF/3, and we encourage a broader range of members to do the same.

4. In the context of quality of patents, we also wish to underline that the adequate application of patentability criteria such as novelty, inventive step and industrial applicability represents important elements of this subject matter.
  
5. The European Union and its Member States are of the view that the Committee should establish a work programme on quality of patents. As to the next steps to be taken by this Committee in relation to the subject matter, we are in favour of launching a questionnaire containing the elements of all the proposals by the Delegations of Canada and the UK, Denmark and the US. Furthermore, in relation to the third component of the work programme proposed by the Delegations of Canada and the UK “Process improvement”, we support the proposal of Spain to launch studies dealing with the inventive step concept and methods of evaluating inventive step used in the WIPO Member States.
  
6. Mr. Chairman, the European Union and its Member States wish to assure you of our commitment to advance discussions of this Committee on quality of patents in line with proposals made by the Delegations of Canada and the UK, Denmark and the US.

Thank you.

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**STANDING COMMITTEE ON THE LAW OF PATENTS**

**18<sup>th</sup> session  
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**Statement by the European Union and its Member States**

**on Agenda Item 8 (ii)  
Opposition systems and other administrative revocation and invalidation mechanisms**

(SCP/18/4)

Mr. Chairman,

1. The European Union and its Member States would like to thank the Secretariat for revision of document SCP/18/4 on opposition systems and other administrative revocation and invalidation mechanisms, providing additional information on administrative revocation and invalidation mechanisms, and other similar procedures, as requested by the Committee at its last session.
2. We are convinced of the important role of opposition procedures and similar administrative revocation and invalidation mechanisms for ensuring the proper functioning of patent systems. In particular, we are convinced of their contribution to increasing the quality of patents by providing a simple, rapid and inexpensive alternative to litigation.
3. In this context, we would also like to reiterate that the freedom of all WIPO Member States in deciding whether or not to introduce such procedures or mechanisms into their national legislation should be preserved.
4. Having said that, the European Union and its Member States are of the view that the Committee should continue its work on opposition systems [, and consider the elaboration of a reference book / a handbook of the most successful models of opposition systems and other administrative revocation and invalidation mechanism, in a non-exhaustive manner, to serve as a reference to WIPO Member States].

Thank you.

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# STANDING COMMITTEE ON THE LAW OF PATENTS

18<sup>th</sup> session  
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## Statement by the European Union and its Member States

### on Agenda Item 9 Patents and Health

(SCP/16/7, SCP/16/7 Corr., SCP/17/11, SCP/18/5 and SCP/18/INF/3)

Mr. Chairman,

1. The European Union and its Member States would like to thank the Secretariat for preparing the documents relating to patents and health, in particular document SCP/18/5 listing projects and activities on patents and health in WIPO, the WHO and the WTO, including references to relevant documents of these organizations. This provides the Committee with a valuable overview and needed information about a wide range of activities undertaken by WIPO, WHO and the WTO in the area of patents and health, including in cooperation with other international organizations, such as UNITAID. Together with document SCP/17/4 on WIPO activities on patents and health, the document is essential for this Committee's consideration on possible further work in the area of patents and health. Further, we also thank the US delegation for their proposal in document SCP/17/11.
2. First of all, the European Union and its Member States wish to reiterate their understanding of the concerns of developing and least developed countries, as well as the challenges and constraints they face in handling public health problems. In this regard, we are supportive of adequate activities which may assist those countries to address these concerns through adapting their national patent legislation.



3. On the basis of the overview of the work already undertaken in the field of patents and health provided by documents SCP/17/4 and SCP/18/5, we note that numerous projects and activities within WIPO, the WHO and the WTO, are either completed or pending. In particular, among the activities undertaken so far by WIPO in this area, there is a pending CDIP project on "Developing tools for Access to Patent Information", which to a certain extent already implement the activities provided for in element II of the work programme proposed by the African Group and some other WIPO Member States in their joint document SCP/16/7 concerning information exchange. Within the framework of the CDIP, there is also an ongoing work programme on flexibilities in the intellectual property system, within which patent-related flexibilities and a strategy for WIPO's technical assistance in the area of flexibilities have been discussed. So far two documents dealing with patent-related flexibilities in the multilateral legal framework and their legislative implementation at the national and regional level (documents CDIP/5/4 Rev. and CDIP/7/3) were discussed at the CDIP. Furthermore, the WHO, WIPO and the WTO carry out the Trilateral study "Promoting Access and Medical Innovation: Intersections between Public Health, Intellectual Property and Trade", which will support technical cooperation and dialogue on issues concerning public health, intellectual property and trade and their relationship with access to and innovation of medical technologies.
  
4. Against this background, any further work in the area of patents and health as well as the relevant forum for such work should be carefully considered in order to avoid unnecessary duplication of efforts entailing additional financial obligations either for WIPO or other international organizations. In particular, before moving forward, we are of the view that adequate analyzing of existing projects and activities in the field of patents and health as listed in document SCP/18/5 should be undertaken to identify the concrete patent-related issues which eventually could be addressed in this committee. In any case, further work in this area should reflect a balanced approach, taking into account various interfaces and factors of relevance to patents and health drawing for instance inspiration from the US proposal as well .

5. As regards the WTO, we would like to underline the importance of putting TRIPS flexibilities in the wider context of the efficient and adequate IP system to stimulate innovation. In the WIPO context, the European Union and its Member States are of the view that most concerns of the developing and least developed countries relating to public health and the activities, proposed in the work programme of the African Group and some other WIPO Member States, can be addressed accordingly either within the framework of the mentioned CDIP project and the work programme on flexibilities. Furthermore, we would like to stress the importance of close cooperation with other international organizations, in particular with the WHO and the WTO. In this respect, a parallel avenue could be to continue discussions on public health related issues at the trilateral coordination platform among WIPO, WHO and the WTO, which have already been carrying out work in this area.
  
6. Mr. Chairman, the European Union and its Member States would like to assure you that we remain committed to advancing work on this issue and are ready to participate actively and constructively in the forthcoming discussions on this topic.

Thank you.

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# STANDING COMMITTEE ON THE LAW OF PATENTS

18<sup>th</sup> session  
Geneva, May 21 to 25, 2012

## Statement by the European Union and its Member States

### on Agenda Item 10 Confidentiality of Communications between Clients and their Patent Advisors

(SCP/18/6)

Mr. Chairman,

1. On behalf of the European Union and its Member States, we would like to thank the Secretariat for preparing document SCP/18/6 which addresses potential legal mechanisms for solving the cross-border issues of confidentiality of communications between clients and patent advisors.
2. The document provides the Committee with a useful overview of possible remedies identified with respect to the cross border aspects of preserving the confidentiality of communications between patent advisors and their clients, including rules concerning the recognition of foreign patent advisors by national laws, choice of law rules and practical approaches.
3. The European Union and its Member States are convinced that the convergence of existing diverse systems in the area of confidentiality of communications between clients and patent advisors among WIPO Member States would be beneficial for users of the patent system, irrespective of the level of development of individual WIPO Member States. In our view, time is ripe to consider concrete mechanisms to address the recognition of foreign patent advisors' privilege. To avoid the need to amend national legislation or change national judicial systems, a soft law approach should be considered, whereby WIPO Member States adopt non-binding principles that could be applied at the national level.
4. The European Union and its Member States would like to reiterate their support for the continuation of the work on this issue in this Committee. In this respect, we would like to assure you, Mr. Chairman that we are ready to participate actively and constructively in the forthcoming discussions on this topic.

Thank you.

# STANDING COMMITTEE ON THE LAW OF PATENTS

18<sup>th</sup> session  
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## Statement by the European Union and its Member States

### on Agenda Item 11 Transfer of Technology

(SCP/18/7 and 8)

Mr. Chairman,

1. The European Union and its Member States would like to thank the Secretariat for preparing document SCP/18/7 expanding the study on patent-related incentives and impediments to the transfer of technology through practical examples and experience and document SCP/18/8.
2. In particular, we note with satisfaction the systematic approach and objectivity shown in the latter document listing various activities on the transfer of technology undertaken by WIPO. In general, this document shows that all efforts to improve the patent system have a positive impact on the contribution of the patent system to technology transfer, either directly, through recommendations and projects established under the Development Agenda, or indirectly, through a number of patent-related activities, including the development of legal and institutional frameworks, technological infrastructure and tools, capacity building or raising awareness. In this respect, high quality of granted patents, sufficient disclosure of inventions in patent applications, an adequate scope of patent protection or the well-functioning PCT system are mentioned as examples of essential elements for patent system to fulfill its objectives also in terms of innovation and transfer of technology.
3. As regards the WIPO Development Agenda and CDIP projects concerning transfer of technology, there are five pending projects, listed in the document SCP/18/8, aiming at the issue of transfer of technology. In particular, extensive work is to be undertaken under the project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions implementing recommendation 19, 25, 26 and 28 under the WIPO Development Agenda. We would like to reiterate that, until completion of this project and its follow up analysis, we are not in favor of launching new initiatives on transfer of technology within this Committee.

4. Having said that, the European Union and its Member States are of the view that, for the time being, further work of this Committee on transfer of technology should be discontinued. On the basis of analysis of results of the CDIP projects, we will be ready to re-open this issue if appropriate.

Thank you,

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# STANDING COMMITTEE ON THE LAW OF PATENTS

18<sup>th</sup> session  
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## Statement by the European Union and its Member States

### on Agenda Item 12 Contribution of the SCP to the implementation of the respective Development Agenda Recommendations

Mr. Chairman,

1. On behalf of the European Union and its Member States we would like to recall that the SCP, according to document SCP/1/2, paragraph 3 on page 2, was established to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning the progressive international development of patent law including patent law harmonization. In fulfilling its mandate, this committee can serve the well functioning of the patent system and the promotion of innovation and technology transfer, and also contribute to the implementation of a number of Recommendations of the Development Agenda.
2. Since we have made relatively little progress on the different items on the agenda of this committee, due to divergent views on how to move forward, it might be difficult to give a full picture at this stage of the implementation of the relevant Development Agenda Recommendations.
3. From a procedural perspective, we would like to underline that in reporting to the General Assembly on its contribution on the implementation of the respective Recommendations of the Development Agenda, SCP should stick to the modalities already agreed in the form of reporting. Also, according to established WIPO practice, we believe that this item in our agenda should not be a permanent one.
4. We also would like to point out that when implementing a balanced work program of the SCP we should avoid the duplication of work with other WIPO committees and other international organizations.

Thank you, Mr. Chairman.

# STANDING COMMITTEE ON THE LAW OF PATENTS

**18<sup>th</sup> session**  
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## **Statement by the European Union and its Member States**

### **EU closing statement**

1. We would like to thank you for all your hard work and efforts during this session. You have shown a remarkable leadership in guiding the Committee in its deliberations and negotiations.
2. We would also like to thank the secretariat for their valuable work and assistance.
3. The EU and its member states have been working hard to explore the possibilities of reaching a well-balanced working programme during this 18th session of the SCP. We have from the out-set been committed to finding solutions and we have seriously considered remarks and comments made by all delegations.
4. However, it is with regret that we must conclude that we have not been able to reach a well-balanced programme for future work, and reach an agreement on the issues discussed during this SCP session. This is unfortunately for all member states and does in our view hinder the progression on the important patent law issues that the SCP are mandated to explore.
5. A balanced future working program is in our view a program that takes into account member states different interests. The elements in the different topics should balance. In this respect, we note that the proposals for future work put forward by certain members in the attempt to reach an agreement would unacceptable tip the balance in a future working programme.
6. Two topics – namely quality of patents and patent advisor privilege – are of particular interest to the EU member states. Unfortunately a solution on these two topics weren't found. We are committed to find solutions for these topics as well as a future balanced work programme for the SCP.

Thank you.