



**COUNCIL OF
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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Delegations will find attached, for information, the statements delivered on behalf of the European Union and its Member States at the above-mentioned WIPO meeting.

STANDING COMMITTEE ON THE LAW OF PATENTS

20th session

Geneva, January 27 - 31, 2014

Statement by the European Union and its Member States

General statement

Mr. Chairman,

1. The European Union and its Member States, would like to congratulate you on your election as Chair of this Committee and express our wish that under your stewardship the 20th session of this Committee will reach a well-balanced program for its future work. In this regard, we associate ourselves with the statement made by Group B & CEBS. We remain committed to the work of this Committee and look forward to a constructive session. 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, the US, and Spain. 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 benefit to users of the patent system.

4. We also highlight our great interest in the topic of work-sharing, which has the potential to enhance international cooperation, and bring a more efficient, effective, and higher quality patent system to all, which presents problems only solvable through an international approach.
5. We would also like to express our readiness to continue discussions on exceptions and limitations to patent rights. 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.
6. 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. However, any possible future initiative of the Committee in this area should be carefully considered in light of the great incentive the patent system can provide to innovation in order to address the evolving global disease burden, and other health challenges.
7. Similarly, possible further activities of this Committee in relation to the transfer of technology should be balanced, and objective, and considered in light of the great many examples of the benefits of the patent system to technology transfer, and the relatively fewer examples of the patent system as an impediment.
8. We also hope that our pursuit of a balanced work program will lead us to working towards discussions on the international harmonization of substantive patent law in the long term, to which we are strongly committed.
9. In closing, we 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.

STANDING COMMITTEE ON THE LAW OF PATENTS

20th session

Geneva, January 27 - 31, 2014

Statement by the European Union and its Member States

on Agenda Item 6

Exceptions and limitations to patent rights

(SCP/14/7, SCP/19/6 and SCP/20/3 –7)

Mr. Chairman,

1. On behalf of the European Union and its Member States, we would like to thank the Secretariat for the preparation of documents SCP/20/3 – 7 containing a summary of how certain exceptions and limitations to patent rights are provided for in national laws, as well as the practical challenges encountered by Member States in implementing them.
2. The European Union and its Member States recognize the importance attached to the issues of exceptions and limitations to patent rights, and we are sure that these documents will serve as a useful reference for academics, law and policy makers working in the area.
3. Exceptions and limitations to patent rights maintain an appropriate balance between the interests of rights holders and the general public. 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.

4. We note that SCP 19 mandated the Secretariat to prepare a further document in this area for SCP21 covering the remaining exceptions and limitations to patent rights contained in document SCP/18/3. In preparing this document we emphasise that WIPO should be objective and not seek to judge the effectiveness of exceptions and limitations in meeting national development or other criteria.
5. Finally, we look forward to the Seminar to be held on exceptions and limitations to patent rights and to the resulting discussions.

Thank you.

STANDING COMMITTEE ON THE LAW OF PATENTS

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Geneva, January 27 - 31, 2014

Statement by the European Union and its Member States

on Agenda Item 7

Quality of patents, including opposition systems

Work-sharing programs among patent offices and use of external information for search and examination

(SCP/17/7, 8, 10, SCP/18/9, SCP/19/4 and 5)

(SCP/20/8)

Mr. Chairman,

1. The European Union and its Member States reiterates its support for 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), the Delegation of the US (document SCP/17/10), and the Delegation of Spain (document SCP/19/5). 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.
2. 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 continue to encourage a broader range of members to do the same.

3. 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, taking into account relevant comments/suggestions from other groups.
4. 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 look further at the inventive step concept and methods of evaluating inventive step used in the WIPO Member States. We think that this proposal has the potential of becoming a new agenda item, that could help us opening new areas of work to make further progress.

[OPPOSITION SYSTEMS]

5. In relation to opposition systems, the European Union and its Member States recognize the important role of opposition procedures, and similar administrative revocation and invalidation mechanisms, in 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.
6. 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.
7. 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 compilation of models of opposition systems and other administrative revocation and invalidation mechanisms, in a non-exhaustive manner.

[WORK-SHARING PROGRAMS AMONG PATENT OFFICES AND USE OF EXTERNAL
INFORMATION FOR SEARCH AND EXAMINATION]

8. As regards, work-sharing programs, the European Union and its Member States would like to thank the Secretariat for its preparation of document SCP/20/8 on work-sharing programs among patent offices.
9. It is notable that all the work-sharing regimes identified aim to enhance international cooperation to improve the quality and efficiency of the patent system overall. Many also endeavor to support and improve the PCT system to the same aim, and are assisted by WIPO.
10. The work-sharing initiatives listed most frequently involve the sharing of information and work products related to the search and substantive examination of patents, through specialised IT systems. Some also involved the use of collaborative patent classification regimes, and standardised documents.
11. We support the proposal by the delegations of Japan, the Republic of Korea, the United Kingdom and the United States of America regarding worksharing. A dedicated page on the WIPO website for work sharing activities would improve awareness of existing initiatives and enable patent offices to collaborate more effectively. Annual conferences on the margins of the SCP sessions would also provide a valuable opportunity to share experiences on worksharing programs and find ways to improve the usefulness of these programs to IP offices, to users of the IP system and to the general public.
12. Given the positive benefits described in relation to work-sharing, and the optional nature of the schemes endeavors, we encourage more widespread use of worksharing among patent offices of different sizes and from different levels of development. Work-sharing among patent offices of different sizes could be further used by offices if some difficulties identified in the document SCP 20/8 were removed.

13. In our view it would be useful for WIPO to further explore these challenges. We would therefore propose that the WIPO Secretariat work with Member States to prepare a study into how different laws and practices limit the potential for work-sharing, and what voluntary measures could be put in place to address any problems at the international level.

Thank you

STANDING COMMITTEE ON THE LAW OF PATENTS

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Statement by the European Union and its Member States

on Agenda Item 8

Patents and Health

(SCP/16/7, SCP/16/7 Corr., SCP/17/11)

Mr. Chairman,

1. 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 that regard, we are supportive of adequate activities which may assist those countries.
2. We are aware of the efforts made by WIPO, the WHO and the WTO as presented in document SCP/17/4 and the Trilateral Study entitled “Promoting Access to Medical Technologies and Innovation: Intersections between public health, intellectual property and trade”. The Trilateral Study highlights that lack of access to medical technologies is rarely due to a single isolated factor, such as patents and other intellectual property, but includes: rational selection and use of medicines, affordable prices, sustainable financing and reliable health and supply systems with quality as an underpinning element. The mere existence of IPRs on a product is not a barrier to, nor its absence a guarantee of, access to that product.
3. The study also highlights that providing specific incentives to absorb the high cost and associated risks and liabilities is a central policy challenge which has been the historic role of the patent system in particular as applied to pharmaceuticals. Access without innovation would mean a declining capacity to meet an evolving global disease burden.

4. We therefore emphasise that any further work in this area should reflect a balanced approach, taking into account the various interfaces and factors of relevance to patents and health and drawing, for instance, inspiration from the proposal of the Delegation of the United States of America.

Thank you.

STANDING COMMITTEE ON THE LAW OF PATENTS

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Statement by the European Union and its Member States

on Agenda Item 9

Confidentiality of communications between clients and their patent advisors

(SCP/20/9)

Mr. Chairman,

1. The EU and its Member States would like to thank the Secretariat for the preparation of the compilation of laws and practices in relation to confidentiality of communications between clients and their patent advisors, SCP/20/9, and the accompanying presentation.
2. The European Union and its Member States remain 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.

With regard to those countries who state that they do not have any provisions on confidentiality of communications, and that any attempt to establish minimum standards would undermine national legislations, we would urge a constructive approach.

3. In closing, we reiterate our commitment to engage in discussions to further elaborate this topic.

Thank you.

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Statement by the European Union and its Member States

on Agenda Item 10

Transfer of Technology

(SCP/20/10)

Mr. Chairman,

1. The European Union and its Member States would like to thank the Secretariat for preparing document SCP/20/10 expanding the study on patent-related incentives and impediments to the transfer of technology through practical examples and experience.
2. In particular, we note again with satisfaction the systematic approach and objectivity shown in the latter document listing various activities on the transfer of technology undertaken by WIPO and its Member States. We also note that the Secretariat had difficulty in identifying cases in which patents were an impediment to technology transfer. In our view this demonstrates that all efforts to improve the patent system have a positive impact on technology transfer.
3. SCP/20/10 builds on the findings of SCP/18/8, that a 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 essential elements for a patent system to fulfill its objectives in terms of innovation and transfer of technology. In particular SCP/20/10 highlights that better awareness of the patent system, and the encouragement of private sector, also play an important role in aiding technology transfer.

4. As regards the WIPO Development Agenda and CDIP projects concerning transfer of technology, we note that the project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions is due to report by the next session of the CDIP in May 2014. We would therefore 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.

Thank you.

STANDING COMMITTEE ON THE LAW OF PATENTS

20th session

Geneva, January 27 - 31, 2014

Statement by the European Union and its Member States

on Agenda Item 11

Future work

Mr. Chairman,

1. The European Union and its Member States wish to emphasize that in discussing future work a balanced program should be reached.
2. In reference to quality of patents a work program should be established based on the proposals made by the Delegations of Canada and the UK (document SCP/17/8), the Delegation of Denmark (document SCP/17/7), the Delegation of the US (document SCP/17/10) and the Delegation of Spain (document SCP/19/5). As a next step, 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, a study on inventive step and the evaluation methods used in the WIPO Member States as proposed by Spain, would allow for the improvement of understanding of the requirement.

As regards opposition systems, the elaboration of a compilation of models of opposition systems and other administrative revocation and invalidation mechanisms, in a non-exhaustive manner should be considered.

On work-sharing programs a dedicated page on the WIPO website for work sharing activities would improve awareness of existing initiatives and enable patent offices to collaborate more effectively. Annual conferences on the margins of the SCP sessions would allow for the sharing of experiences on work-sharing programs and explore ways to improve the usefulness of these programs to IP offices, to users of the IP system and to the general public. A study by the WIPO Secretariat into how different laws and practices limit the potential for work-sharing, and what voluntary measures could be put in place to address any problems at the international level could identify areas, where initiatives could be undertaken to improve the efficiency of the patent system . Given the optional nature of the schemes endeavors, any efforts to improve the quality and efficiency of the patent system should not be hindered.

3. As regards the topic of patents and health, while understanding the concerns of developing and least developed countries in handling public health problems, we wish to emphasize that the mere existence of IPRs on a product is not a barrier to, nor its absence a guarantee of, access to that product. Elements of the proposal made by the United States of America (SCP/17/11) could be considered in discussing further work.
4. In relation to confidentiality of communications between clients and their patent advisors concrete mechanisms should be considered to address the recognition of foreign patent advisors' privilege. A soft law approach, whereby WIPO Member States adopt non-binding principles that could be applied at the national level, would allow for the convergence of existing systems to the benefit of users of the patent system, irrespective of the level of development of individual WIPO Member States.
5. On the topic of transfer of technology, a report on the project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions is due by the next session of the CDIP in May 2014. Until completion of this project and its follow up analysis, we are not in favor of launching new initiatives within this Committee.
6. Finally, as regards exceptions and limitations, a document covering the remaining exceptions and limitations to patent rights has already been mandated and is expected to be presented by the Secretariat in the next session of the SCP.

7. We look forward to a constructive discussion and remain committed to participate towards establishing a well-balanced work program.

Thank you.
