



Council of the  
European Union

Brussels, 5 July 2016  
(OR. en)

10919/16

PI 78

**NOTE**

---

From: Presidency  
To: Delegations

---

No. prev. doc.: 10289/1/16 PI 73 REV 1

---

Subject: 24th Session of WIPO Standing Committee on the Law of Patents  
(Geneva, 27-30 June 2016)  
- Final EU statements

---

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.

**WIPO - Standing Committee on the Law of Patents**

**Twenty-Fourth Session**

**Geneva, 27-30 June 2016**

**Opening Statement**

Chair,

The EU and its Member States would like to thank you for your continued guidance and leadership in relation to the SCP.

The programme for the coming week reflects the balance of different regional priorities and should provide opportunities to all of us to make much needed progress. We have come here with a constructive spirit and with concrete proposals.

During the previous sessions we have spent a disproportionate amount of time on deliberations on the future work program. We supported at that time the proposal made by you – Mr Chairman - on future work and are positive that this week we will find consensus.

With regard to our discussions on the future work of this committee, we believe that it is important to retain the delicate balance in the current work program. Taking a look at the agenda for this week, we note that inclusion of discussions on the 1979 Model Law would take us further away from a balanced work program.

Having said this, we would like to highlight our areas of interest.

First, on the topic of 'quality of patents'. Several proposals on work sharing, assessment of inventive step and improving the quality of search and examination have been made by the delegations of Canada and the UK, Denmark, Spain and the US and have been endorsed by all other Member States of the European Union. We remain convinced that work in this area could be beneficial to all WIPO Members, as it could enhance international cooperation and improve the knowledge of patentability requirements thus ensuring a more efficient, effective, and higher quality patent system to all.

Secondly, in relation to the 'Client-Patent Attorney Privilege' the time is ripe to consider a concrete mechanism to address the recognition of foreign advisors' privilege. We are convinced that a compilation of court cases with respect to cross border aspects of client-advisor privilege would be of benefit to all users of the patent system.

We remain committed to discussing key aspects of substantive patent law, with the aim of international patent law harmonization.

If however we will make no progress on the future work program this week, we will need to reconsider the frequency and duration of meetings of this standing committee.

Finally we would like to highlight the significance of the work undertaken by the European Union under its enhanced cooperation procedure on the European Patent with unitary effect and the creation of the Unified Patent Court.

We remain dedicated to the work of this Committee and look forward to a constructive session.

Thank you Chair.

## **Exceptions & limitations to patents rights**

Related documents: SCP/14/7 and SCP/19/6.

Chair,

I am speaking on behalf of the European Union and its Member States.

For this agenda item we have not seen any new contributions from Member States, beside the documents from previous sessions, namely SCP/14/7 and 19/9. At the previous session we have discussed document SCP/23/3 on Member States' experience and case studies on the effectiveness of exceptions and limitations. The European Union and its Member States believe that this document will serve as a useful reference.

If we want to have a meaningful outcome on exceptions & limitations it is essential that we can learn from practical experiences on the effectiveness and challenges of E&L in addressing development issues and stimulating innovation. We therefore could consider as part of our future work program - as was proposed during SCP 23 - a sharing session between member states on case studies with respect to E&L.

As regards exceptions and limitations in general, we would like to stress once again that exceptions and limitations to patent rights maintain an appropriate balance between the interests of rights holders and the general public. Taking this balance into account, it is important to address both sides at the same time, on the one hand exclusions from patentability or exceptions and limitations to patent rights, and on the other the corresponding legal standards used to determine whether an invention is patentable, such as novelty, inventive step, and industrial applicability.

Thank you chair.

## Quality of patents, including opposition systems.

Related documents: CP/17/7, 8, 10, SCP/18/9, SCP/19/4, SCP/20/11 Rev. and SCP/23/4.

Chair,

The EU & its Member States believe that worksharing and international cooperation can be powerful tools that contribute to making the work of patent offices more efficient and effective, and can be instrumental in helping offices to grant high quality patents.

It is clear that many offices around the world, both large and small, are taking advantage of work sharing in order to avoid duplication of work, reduce backlogs and improve the overall efficiency of the search & examination process.

The WIPO Secretariat could assist member states in benefiting from existing tools and practices by – for instance - providing a dedicated page on the WIPO website where member states can collect information on existing worksharing programs and educate themselves. Conferences in the margins of SCP sessions on this topic will also be beneficial. Further, we believe that a study on how worksharing can amplify the efficiency of patent offices worldwide would be most useful.

As all patent professionals know, inventive step is the most difficult patentability requirement to assess. Its proper evaluation is key to guaranteeing a high quality patent system. Therefore we would like to see further studies on the assessment of inventive step within this committee.

Several constructive proposals have been made by delegations to that effect, and we would like to reiterate our support for the proposals made by the US – SCP/19/4 and SCP/23/4 -, the proposal made by the Republic of Korea, the UK and US – SCP/20/11, the Spanish proposal of studies on inventive step (SCP 19/5/rev) – and earlier proposals made on improving the efficiency of patent offices by Denmark, Canada, the UK and US under SCP/17/7, 8, 10, and SCP/18/9.

Key elements of these contributions are well reflected in the proposal for a work program which you elaborated during last session of the SCP. We fully subscribe to these elements under ‘quality of patents’ in this work program and are ready to commence our work to the benefit of all member states.

Thank you Chair.

## Patents & Health I

Related documents: SCP/16/7, SCP/16/7 Corr. and SCP/17/11

Chair,

The topic of patents & health is of great importance interest to the EU & its Member States. Developing and least developed countries face numerous public health challenges such as neglected diseases and the spread of HIV-AIDS, malaria and TB. Availability of medicines to treat these illnesses is a major challenge and a key Sustainable Development Goal that we all support.

IPR flexibilities and widespread use of compulsory licensing are however not the single solution for this problem. The lack of patent protection can in fact be one of the factors that prevents medicines reaching the neediest patients in developing countries. New drugs are more likely to be launched in a country where patent protection is strong. Many other factors besides patents directly affect the availability of medicines as we have all learnt when the trilateral study by WTO/WHO/WIPO on access to medicines was published in 2012. The study concluded that "lack of access to medical technologies is rarely due entirely to a single determinant." There are many factors affecting access which are not related to intellectual property, such as lack of access to quality health care, poor infrastructure, lack of distribution and supply systems, lack of quality control, the possible abuse in the setting of prices, and financial sustainability of national health systems.

We very much hope that the outcome of the UN HL Panel Level on A2M will contribute to galvanise MS action on the multiple barriers affecting access to essential medicines..

In closing, we would like to emphasise that any further work in the area of patents and health 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 SCP/17/11 of the Delegation of the United States of America.

Thank you Chair.

## Patents & Health - II

Madam Chair,

We take note of the proposal on Patents and Health made by the African Group. We have not been in a position to analyse the proposal in detail, and we would propose to come back to it during the next SCP meeting. As a general remark, we will continue to consider those proposals, that fall within the WIPO mandate and within the agreed scope of this committee, in a constructive spirit.

Thank you Madam Chair.



## Confidentiality of communications between clients and their patent advisors

Thank you Chair,

This statement is made on behalf of the EU and its Member States.

In relation to confidentiality of communications between clients and their patent advisors, time is ripe to consider a concrete mechanism to address the recognition of foreign patent advisors' privilege. Without prejudice to existing national legislation and in order to ensure optimal flexibility, a soft law approach should be considered, aiming at conferring in Member States the same protection to communications between a client and its foreign patent adviser than that applicable under national law to communications between a client and its national patent adviser.

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.

Thank you.

## Transfer of Technology

Chair,

This statement is on behalf the EU and its Member States.

At the previous SCP 23 we discussed document SCP/22/4, which contained a study on sufficiency of disclosure. The study expressed that 'it is through the disclosure requirement that the patent system facilitates the dissemination of information and access to technological knowledge contained in the patent application. This results in the expansion of public stocks of technical knowledge and an increase in the overall social benefits, for example, inducing the technology transfer and avoiding a duplicative R&D. We would like to support this statement.

During CDIP 17, which took place in April 2016 we discussed the evaluation report on the "Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions". We also took notice of WIPO secretariat's mapping of existing WIPO activities in the field of technology transfer. We consider this mapping document to be highly useful, as it allows for a deeper understanding of how WIPO activities are relevant for promoting Tech Transfer. This exercise confirmed once again the relevance and positive role of IP, and especially patents, in promoting technology transfer.

The EU & its Member States are of the view that the CDIP has produced an excellent overview of work that WIPO performs in this area. The SCP should avoid duplicating the efforts of CDIP in this respect. But as a way forward we are committed to consider proposals to deepen our understanding of the impact of patent disclosure on transfer of technology and as a concrete step we suggest – as we also did in CDIP 17 - to update the existing WIPO webpage on Technology Transfer.

Thank you.

**Proposal of the Group of Countries of Latin America and the Caribbean (GRULAC) on the revision of the 1979 WIPO Model Law for Developing Countries on Inventions**

Related document: SCP/22/5.

Chair,

This intervention is made on behalf of the EU and its Member States.

At the 22<sup>nd</sup> session of the SCP, the proposal by GRULAC to revise the 1979 WIPO Model Law for Developing Countries on Inventions included in SCP/22/5 was introduced. Although the background information was interesting, we are still unclear as to the reason and background why this revision is sought, as we believe more appropriate means are already available.

In this regard we would like to stress again the tailor made and demand driven technical assistance by the WIPO Secretariat that is being provided along the lines of the Development Agenda Recommendations. This includes technical assistance on legal matters concerning the area of patents. The technical assistance takes into account specific country needs and situations, in a way that is much more wide ranging than a simple application of the Model law would be. So far, we have not heard any convincing arguments about the need to revise the model law in order to further consider the proposal.

If taken forward, a revision would lead to a substantive harmonization of the patent law. In which case we could use the opportunity and start with harmonization of other aspects of patent law, which could be beneficial to all. On a substantive note, we would like to emphasize once again that WIPO should not touch upon interpretation of the TRIPS provisions.

Thank you.

## Future Work

Madam Chair,

With regard to our discussions on the future work of this committee, we believe that it is important to retain the delicate balance in the SCP work programme. This balance is captured through the agreed scope of five agenda items which reflect different priorities. We wish to reiterate that an inclusion of discussions on the 1979 Model Law takes us further away from such a balance.

We are convinced that a number of the proposals on the table could be beneficial to all WIPO Members, where these enhance international cooperation and improve the knowledge on patentability requirements, thus ensuring a more efficient, effective and higher quality patent system to all.

This is the case for Quality of Patents, where several constructive proposals on work sharing, assessment of inventive step and improving the quality of search and examination have been made. We would like to reiterate our support for the proposals made by the US on the study of worksharing (SCP/19/4 and SCP/23/4) the proposal made by the Republic of Korea, the UK and the US (SCP/20/11rev), the Spanish proposal of studies on inventive step (SCP 19/5/rev) and earlier proposals made on improving the efficiency of patent offices by Denmark, Canada, the UK and US (SCP/17/7, 8, 10) and (SCP/18/9).

On Client-Attorney Privilege, we are convinced that a compilation of court cases with respect to cross border aspects of client-advisor privilege would be beneficial to all users of the patent system.

On Exceptions and Limitations, we could consider a sharing session between member states on case studies.

Future work on Patents and Health should reflect a balanced approach and could, for instance, draw inspiration from the proposal made by the delegation of the United States under (SCP/17/11).

On Confidentiality of Communications between clients and their patent advisors, we feel the time is ripe to consider a concrete mechanism to address the recognition fo foreign patent advisors' privilege, through a soft law approach.

Finally, on Transfer of Technology, we remain committed to consider proposals to deepen our understanding of the impact of patent disclosure on transfer of a technology, and would wish to confirm our concrete suggestion to update the existing WIPO webpage on Technology Transfer.

Thank you Madam Chair.

## Closing Statement

Madam Chair,

The EU and its Member States would like to thank you for your guidance and your efforts in identifying compromise solutions in order to achieve consensus on future work

We would also like to thank the secretariat for all the support that it has provided this week, as well as the interpreters for their hard work.

The EU and its Member States welcome the agreement that was reached on future work. We feel that the overall package represents a reflection of regional interests. We consider this a reflection of the spirit of compromise that should be the hallmark of our work, and in this spirit, we look forward to the following sessions of this committee.

Thank you Madam Chair.

---