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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.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Opening statement

Madam Chair,

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

Considering that Estonia took over the position of the Presidency of the Council of the Europe Union from July 1st, I am honoured to deliver this statement on behalf of the EU and its Member States.

Firstly, we would like to thank the WIPO Secretariat for its work in preparing for this meeting. The European Union and its Member States are pleased that the previous session of the SCP held 4 interesting sharing sessions. We regret that – although we have spent considerable time on deliberations on the future work program – the SCP was not able to reach consensus. We hope that we will find consensus this week.

The programme for the coming days should provide opportunities for all of us to make steps forward on important issues. We have come here in a constructive spirit and with concrete proposals.

Having said this, we would like to highlight our areas of interest.
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 as endorsed by all other Member States of the European Union, as we believe that work on this topic would be of interest to member states across the spectrum of development.

We are keen to continue discussions on the topic of “Client-Patent Attorney Privilege”, as convergence of differing provisions would be of benefit to users of the patent system, irrespective of the level of development of individual WIPO Member States.

On patents and health, we believe that any further work in this area should reflect a balanced approach, taking into account the various factors of relevance to patents and health as for example proposed by the United States of America in document SCP/17/11.

At the same time we would like to recall that we cannot go beyond the mandate of the SCP and WIPO and discussions about other factors of access to medicines than patent protection should be left to other more appropriate fora.

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 on the topics. Currently the topics “Quality of Patents, including Opposition Systems”, “Patents and Health”, “Client-Patent Attorney Privilege”, “Exceptions and Limitations to Patent Rights”, and “Transfer of Technology” are under discussion. The European Union and its Member States express hope that during this session the Committee will manage to agree on a balanced work program based on the non-exhaustive list of issues which will also enable the Committee to work towards international harmonization of substantive patent law.

Finally we would like to highlight that the European Union under its enhanced cooperation procedure has made significant advances on the European Patent with unitary effect. In that context, significant advances have also been made on the creation of the Unified Patent Court. The Unitary Patent will help to attract and retain innovation, talent and investment.

Madam Chair, we remain committed to the work of this Committee and look forward to a constructive session.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 4

Report on the international patent system:

Certain aspects of national/regional patent laws

[Related documents: SCP/26/2]

Madam Chair,

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

The European Union and its Member States would like to thank the WIPO secretariat for preparing the document SCP/26/2. We believe that the SCP electronic forum website where the information has been published and updated based on input received from Member States serves as useful reference in further discussions and good basis for better understanding certain aspects of national and regional patent laws. We would like to thank the countries who have shared information regarding recent developments in national/regional patent laws.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session,

Geneva, 3-6 July 2017

Agenda Item 5

Exceptions and limitations to patent rights

[Related documents: SCP/14/7, SCP/19/6]

Madam Chair,

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

The EU and its Member States would like to thank the WIPO Secretariat for the work that was carried out during the 25th session of the SCP held last December, where delegations were given the opportunity to share their practical experiences on the effectiveness of, and challenges associated to, exceptions and limitations, in particular, in addressing development issues (documents SCP/25/3, 3 Add. and 3 Add. 2). We would like to encourage additional Member States to share their experiences in this regard.

The EU and its Member States also found interesting and useful the sharing session that took place in the December 2016 SCP on case studies, including court cases, on those exceptions and limitations that had proven effective to address development issues and/or economic strengthening. We believe that such sharing sessions on case studies have proven to be a useful source of knowledge and understanding of this topic.

We would like to take this opportunity to emphasize again the utmost importance of striking an appropriate balance between work on exceptions and limitations to patent rights and on the legal standards used to determine whether an invention is patentable, such as novelty, inventive step, and industrial applicability. These two topics are closely interlinked, therefore, a holistic approach should be taken in order to find an appropriate balance between the interests of rights holders and the general public.

Finally, the EU and its Member States would also like to express readiness to continue discussions on exceptions and limitations to patent rights.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 6

Quality of Patents, including opposition systems

[Related documents: SCP/26/3, SCP/26/4; other related documents: SCP/17/7, 8, 10, SCP/18/9, SCP/19/4, SCP/20/11 Rev., SCP/23/4 and SCP/24/3]

Madam Chair,

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

We continue to reiterate our support and commitment for advancing work on quality of patents.

The EU and its Member States remain convinced that international cooperation is an important tool for improving the quality of patents and the efficiency of the patent granting process worldwide. In particular, work sharing enables to avoid duplication of work, reduce backlogs and improve the overall efficiency of search and examination process.

Studies on how work sharing can amplify the efficiency of patent offices worldwide are a useful information source. The EU and its Member States welcome the questionnaire on the definition of the term “quality of patents”, and implementation of cooperation and collaboration between patent offices in search and examination of patent applications. We thank the Secretariat for compiling the answers to the questionnaire and for preparing the documents SCP/26/3 and SCP/26/4 and for giving the presentation today.

We welcome the focus in the questionnaire on how Member States understand the term “quality of patents” and think that the information gathered will be helpful as we pursue work in this area. We are pleased to see that 57 Member States and two regional patent offices responded to the questionnaire. However, we note that many Member States have not responded and we would encourage them to do so. The results of the study show that there are various approaches to defining the term “quality of patents” and the meaning of the term may be different for each stakeholder in different contexts. Nevertheless, two main concepts emerged from the responses – first, that the term “quality of patents” relates to the quality of a patent itself, i.e. meeting the patentability requirements, and second, that the term is related to the patent grant process within the IP offices. This shows that, although there are different opinions on what factors define the “quality of patents”, there appears to be a similar understanding on the main issues.

The study also showed the wide range of cooperation between IP offices and the growing use of different collaboration methods at bilateral, regional and international level. As was expected, such cooperation was found to facilitate the work of IP offices. It has also proven to have a positive impact on the efficiency of patent examination and the validity of granted patents. Given the positive benefits of work-sharing, the EU and its Member States encourage more widespread use of work-sharing among patent offices of different sizes and from different levels of development. We continue to see merit in a study by the WIPO Secretariat on how different laws and practices may limit the potential for work-sharing and what voluntary measures could be put in place to address any problems at the international level.

The EU and its Member States would like to thank the Secretariat for giving a presentation on the WIPO CASE during SCP 25, a platform for sharing information among participating IP offices with regards to search and examination reports. We believe that a dedicated page on the WIPO website for various other work sharing activities would further improve access to existing initiatives and enable patent offices to collaborate more efficiently.

We also welcome the interesting discussions we had during SCP 25 regarding Member States' experiences on international work sharing and collaboration. We saw case examples from Member States on how the examination and administration of patent applications can be facilitated by work sharing programs. Hearing about such successful examples can help more member states learn about, and participate in, work sharing programs. For information and education purposes, we continue to support the idea of conferences in the margins of SCP sessions on this topic.

We thank all WIPO Member States for the sharing session on examples and cases relating to assessment of inventive step held during IGC 25. We welcome the fact that this complex topic has continued to be discussed in the SCP. Proper evaluation of inventive step is key to guaranteeing a high quality patent system. To follow up and proceed from the study on inventive step contained in document SCP/22/3 we emphasize the importance of further examining this concept as well as methods of assessing the inventive step used in the WIPO Member States. A proposal to that effect has been made by Spain (SCP/19/5/Rev, SCP/24/3) and endorsed by all other Member States of the EU.

We would also like to reiterate our support for advancing work in this Committee pursuant to the proposals made by the US (SCP/19/4 and SCP/23/4) and the Republic of Korea, the UK and US (SCP/20/11), as well as earlier proposals concerning the quality of patents made 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 are committed to contribute to advancing our work under a work program on Quality of Patents which reflects key elements of these contributions.

We look forward to a constructive discussion on this agenda item.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 7

Patents and health – Opening statement

[Related documents: SCP/26/5; other related documents: SCP/16/7, SCP/16/7 Corr., SCP/17/11 and SCP/24/4]

Madam Chair,

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

The EU and its Member States wish to reiterate their understanding of the challenges and constraints certain countries may face in handling public health problems. Access to safe, effective, quality and affordable essential medicines and vaccines for all is a major challenge and a key Sustainable Development Goal that we all must support. The European Union and its Member States remain committed to increasing access to affordable medicines and to find solutions to the world's pressing public health challenges and inequities.

As set out in the 2010 Communication and Council Conclusions on 'the EU role in Global Health', the EU pursues a human rights-based approach to health. Strengthening all areas of a health system, including the availability of qualified health workers, the provision of affordable medicines and the adequate financing of the sector, is central to moving towards universal health coverage with quality health services accessible and affordable for all. The quality and integrity of the pharmaceutical distribution chain is also essential to improving public health.

The current innovation model, including the role of trade related to IP, has delivered consistent progress in global public health, leading to key new and improved treatments as well as much extended life expectancy, both in developed and least developed countries. This model already integrates a variety of tools such as incentives for innovation based on intellectual property, on public and private financing and awards or on public research.

Such variety is necessary to address situations, where there is a functioning market and those where there could be market failures.

We would like to recall the important and authoritative contribution of the tri-lateral WIPO-WTO-WHO study entitled “Promoting access to medical technologies.

We would also like to recall that we cannot go beyond the mandate of the SCP and the WIPO and discussions about non IP-related aspects about medicines should be left to more appropriate fora. We believe that any further work in this area of patents and health should reflect a balanced approach, taking into account the various factors of relevance to patents and health as for example proposed by the United States of America in document SCP/17/11.

We thank the Secretariat for the preparation of document SCP/26/5 on constraints faced by developing countries and LDCs in making full use of patent flexibilities and their impacts on access to affordable especially essential medicines for public health purposes in those countries and welcome the confirmation that 'securing access to medicines is of multi-disciplinary nature'. We take note of the suggestion contained in para 56 of the document on additional reporting by Member States on implementation and use of patent flexibilities in their territories. We are ready to consider this subject to further clarification of the type and method of reporting.

Thank you, Madam Chair.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 7

Patents and health – Statement on the proposal by Canada

[Related documents: SCP/26/6]

Madam Chair,

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

The EU and its Member States would like to thank the delegation of Canada for trying to bring our work forward on the topic of Patents and Health by proposing to conduct a review of pre-existing analysis and research on the topic of patent protection and access to medical products and health technologies. We see merit in studying these issues and are prepared to discuss and develop the proposal further. However, based on the current language, we have some reservations which do not enable us to fully support the proposal as it stands. In particular, the EU and its Member States fully agree with the delegation of Canada in that the SCP is mandated to focus on patent law. We would question how the study could on the one hand comply with the mandate of the SCP, and on the other the need to consider the question in the broader context of access to medicine, which clearly falls outside the remit of this Committee.

That being said, the EU and its Member States fully agree with the delegation of Canada that in addition to the patent system, there are a variety of other factors both on the supply and demand side that affect availability and affordability as well as the other access dimensions of medical products and health technologies. The non-exhaustive list in paragraph 2 of the proposal contains relevant examples of such factors. If the purpose of the intended inclusion of non-patent barriers in the review is to indirectly identify the impact of patents on availability and accessibility in the short term, then a possible alternative would be to look at the situation of the accessibility of medicines in environments without patent protection.

We note that as referred to in paragraph 42 of the document SCP/26/5, research has shown that of the items on the WHO Model List of Essential Medicines, the vast majority – even approx. 95% - of items are not under patent protection in most lower-income countries. Studies looking at the factors influencing the accessibility of such medicines in these countries could perhaps help us better understand the role of the patent system in ensuring the availability and accessibility of medicines. We agree with Canada that the policy-making work of SCP must rely on quality evidence. Thus, it is important that a possible review would build upon existing high quality research and studies conducted by neutral and objective parties. For this reason, we would welcome the reliance on studies prepared by UN organizations, such as WIPO and the WHO, as well as the WTO. As regards academic research, we need to ensure a high level of rigour, independence and relevance to the subject matter.

We also see a need for clarifications on the central terms used in the proposal. For example, the scope of “medical products and health technologies” remains unclear at this stage.

In general, we welcome the fact that the intention of the final report of the review would not be to make any original recommendations, but rather to provide a factual synopsis of the analysis and key conclusions and recommendations of the existing body of research. The EU and its Member States see the role of the potential review as a collection of information and a document supporting our future discussions, and not an outline of different policy options for WIPO.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 8

Confidentiality of Communications between Clients and their Patent Advisors

[Related document: SCP/25/4]

Madam Chair,

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

The European Union and its Member States extend their appreciation to the WIPO secretariat for preparing a compilation of court cases with respect to client-patent advisor privilege based on the information provided by members, and presented in document SCP/25/4.

In relation to confidentiality of communications between clients and their patent advisors, the EU and its MS suggest that tangible action is taken towards a concrete mechanism to address the recognition of foreign patent advisors' privilege.

We would like to reiterate that a soft law approach should be considered and work on a non-legally binding instrument would be beneficial to all the Member States, aiming at conferring in Member States the same protection to communications between a client and its foreign patent adviser as that applicable under national law to communications between a client and its national patent adviser. This should be without prejudice to existing national legislation and should ensure optimal flexibility.

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.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 9

Transfer of Technology

Madam Chair,

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

The EU and its Member States are of the view that the transfer of technology is an important factor in fostering development. However, considering that the CDIP has produced an excellent overview of the work that WIPO is performing in this area, our position is that the SCP should avoid duplicating the efforts of the CDIP in this respect.

During the recent CDIP 19 a new project was adopted as proposed by South Africa and contained in document CDIP/19/11: the Project on Intellectual Property Management and Transfer of Technology: Promoting the Effective Use of Intellectual Property in Developing Countries, Least Developed Countries and Countries with Economies in Transition. It was decided that the Secretariat will prepare and make available for the next session of the CDIP a compilation of existing national, regional and international technology exchange and technology licensing platforms, as well as of challenges related thereto, facing in particular developing and LDCs. We look forward to this document and constructive engagement on its basis.

We continue to support the updating of WIPO webpage on Technology Transfer regarding information of the national, regional and international technology exchange and technology licensing platforms as we have stated in previous SCP sessions.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 10

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]

Madam Chair,

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

In respect of the GRULAC proposal to revise the 1979 WIPO Model Law for Developing Countries on Inventions included in SCP/22/5, the EU & its Member States would like to recall that this topic is not on the work plan of the SCP. We reiterate that tailor-made and demand-driven technical assistance is already being provided by the WIPO Secretariat along the lines of the Development Agenda Recommendations.

This technical assistance takes into account country-specific needs and situations in a much more comprehensive manner than would be possible by applying the Model Law. By revising the Model Law we would promote a “one size fits all” approach, which we do not believe is relevant anymore in the current context. To-date, no convincing arguments for revision of the Model Law have been presented and thus we see no need to further discuss the proposal.

We would like to emphasize once again that the SCP should not attempt to interpret the provisions of the TRIPS agreement.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Agenda Item 11

Future Work

Madam Chair,

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

The EU and its Member States are of the view that our current work program contains significant and complex topics of the international patent system, while at the same time reflecting a balance of different regional priorities. For taking our work forward, it is of utmost importance to retain this delicate balance.

The priorities of the EU and its Member States regarding future work in this Committee are the following.

In particular, we attach considerable importance to advancing work on the Quality of Patents. We remain convinced that investing time on this topic is beneficial to all WIPO Member States, 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. We have held interesting and fruitful sharing session during our previous meetings and we have several good proposals on the table regarding work sharing, assessment of inventive step and improving the quality of search and examination.

The EU and its Member States remain committed to continuing work on the topic of Quality of Patents under our current work program as elaborated in SCP 23.

For our future work on the topic we suggest the following:

- A study on inventive step and the evaluation methods used in the WIPO Member States as proposed by Spain in document SCP/23/4 would allow for the improvement of understanding of the requirement.
- On work-sharing programs, we thank the Secretariat for maintaining and updating a dedicated page on the WIPO website for work sharing activities that improves awareness of existing initiatives and enables patent offices to collaborate more efficiently. 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 as suggested in SCP/20/11 Rev.
- 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. The study could identify areas where initiatives could be undertaken to improve the efficiency and quality of the patent system.
- We also welcome dealing with other key aspects of substantive patent law in relation to quality of patents.

Regarding other topics on our agenda, the EU and its member States remain committed to continuing work on the issue of confidentiality of communication between clients and their patent advisors, as convergence of differing provisions would be of benefit to users of the patent system. The time is ripe to address the recognition of foreign patent advisor's privilege through a soft law instrument. We would also welcome further studies on this topic.

We would also like to express readiness to continue discussions on exceptions and limitations to patent rights. In this context, we emphasize the utmost importance of striking an appropriate balance between work on exceptions and limitations to patent rights and on the legal standards used to determine whether an invention is patentable, such as novelty, inventive step, and industrial applicability.

These two topics are closely interlinked and an appropriate balance between the interests of rights holders and the general public must be maintained. In the past, sharing sessions on case studies have proved to be a useful source of knowledge and understanding of this topic.

We take note of the interest of developing and least developed countries to maintain the topic of patents and health in the work of this Committee. However, we continue 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. Possible 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 and the recent Proposal by the Delegation of Canada in SCP/26/6.

Similarly, possible further activities of this Committee in relation to the transfer of technology should be balanced, objective, and considered in light of the great many examples of the benefits of the patent system to technology transfer. We remain committed to consider any proposals to deepen our understanding of the impact of patent disclosure on transfer of technology, and wish to confirm our concrete suggestion to update the existing WIPO webpage on Technology Transfer.

The EU and its Member States suggest to carry on our discussions in this Committee on the basis of the five main topics in our current work plan. We do not support inclusion of discussions on the 1979 Model Law as this would take us away from a balanced work program reflecting different regional priorities. Furthermore, we continue to emphasize that this Committee should not engage in interpretation of provisions of the TRIPS Agreement.

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

Thank you.

WIPO – Standing Committee on the Law of Patents

Twenty-Sixth Session

Geneva, 3-6 July 2017

Closing statement

Madam Chair,

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

First, we would like to congratulate you, Madam Chair, for taking the work of this Committee forward during the past four days. Your contribution was especially significant on the topic of Future Work of the SCP. The three versions of the Chair's draft made a strenuous effort to incorporate the various proposals that have been made and the different positions of WIPO Members, in a balanced and forward-looking manner. For the future, we would recommend that informal consultations be as inclusive as possible and involve all major stakeholders that represent the views of Member States.

The EU and its Member States consider this a successful session. We had interesting discussions on the five main topics on the agenda of the SCP. New proposals were made, explained and discussed. We also welcomed further discussions on existing proposals on the Quality of Patents. We remain committed to advancing our work under a work program which reflects key elements of these contributions.

The EU and its Member States are glad that the Committee reached a consensus on its Future Work.

- As said in our previous statements this week, the EU and its Member States attach considerable importance to advancing work on the Quality of Patents. We welcome the decision of the Committee to have a sharing session at the next SCP on examples and cases relating to assessment of inventive step, and to give particular attention to the topics suggested in the proposal of Spain contained in document SCP/24/3. We believe that this sharing session could be helpful in preparing a study on inventive step for SCP/28. The EU and its Member States look forward to making a contribution to this work.

- We also welcome the possibility given to submit additional responses by Member States and regional patent offices to the Questionnaire on the term „Quality of Patents“ and Cooperation between Patent Offices in Search and Examination. We found the questionnaire and the compilation of answers prepared by the Secretariat helpful in gaining a better understanding of these topics. Contributions from other Member States besides the 57 who have already responded to the questionnaire, would increase the weight and value of the outcomes of the Questionnaire.
- The EU and its Member States welcome the decision to update and present the webpage on opposition and administrative revocation mechanisms by the Secretariat. It will help to enhance understanding on the different models available.
- On the topic of Patents and Health, we welcome the evidence-based approach of the Committee. We consider the supplementing of existing studies, holding information and sharing sessions a good way to work on the topic, as it enables to better understand the role of patents in health-related issues, including the many benefits to innovation. The EU and its Member States are committed to contribute to these discussions.
- Regarding the proposal by GRULAC, we welcome the alternative approach that was agreed on. We believe that addressing the problems raised by GRULAC in the form of individual and tailor-made legislative and technical assistance enables to take into account country-specific needs and is thus a lot more efficient than a „one size fits all“ approach. We hope that the informative session will help the relevant Member States to gain better understanding of the various types of assistance already provided by WIPO, and how these measures can be used to address their needs.

As for the long-term work of this Committee, the EU and its Member States would like to see more discussion on the issues relevant to harmonization of substantive patent law.

Thank you.