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**NOTE**

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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.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Opening Statement**

Madame, la Présidente,

L'Union européenne et ses Etats membres tiennent à féliciter, vous et votre vice-présidente, d'avoir été élues à la présidence de notre comité, et nous sommes prêts à participer activement aux discussions de la semaine sous votre direction éclairée.

We are pleased that the previous SCP session held a successful and interesting discussion regarding Member States' experiences on international work sharing and collaboration. Progress has also been achieved in the area of confidentiality of communications between clients and their patent advisors, where a fruitful seminar was held.

This week's program contains two studies, one on inventive step contained in document SCP/22/3, and one on sufficiency of disclosure contained in SCP/22/4. We would like to thank the WIPO Secretariat for its work in preparing these studies, and look forward to the discussions on these topics.

Madam Chair,

The current work program contains 5 topics under discussion, namely “Quality of Patents, including Opposition Systems”, “Client-Patent Attorney Privilege”, “Exceptions and Limitations to Patent Rights”, “Transfer of Technology”, and “Patents and Public Health”. We regret that the intensive discussions held on the future work program during SCP 21 did not result in a future work program acceptable to all.

In relation to the important discussions on the future work program that will take place this week; we would like to note that the current work program contains a delicate balance of different priorities. It is of the utmost importance to retain this balance.

The EU and its Member States attach considerable importance to advancing the work on the quality of patents. Firstly, several proposals have been made by the Delegations of Canada and the UK, Denmark, the US, and by the Delegation of Spain, as endorsed by all other Member States of the European Union. We remain in favor of launching a questionnaire containing the elements of all the proposals by the Delegations of Canada and the UK, Denmark and the US. Work in this area could be beneficial to all WIPO Members.

We held an interesting and fruitful work sharing session during our previous session. We have already formulated several ideas on how to take this work forward, such as a dedicated webpage on the WIPO website, conferences and studies. By investing time on this topic, we could enhance international cooperation, and ensure a more efficient, effective, and higher quality patent system to all.

Another topic on which we would like to make progress is the “Client-Patent Attorney Privilege”, as convergence of differing provisions would be of benefit to users of the patent system.

Document SCP/22/5 contains a proposal from GRULAC to revise the 1979 WIPO Model Law for Developing Countries on Inventions. This proposal would likely imply a very substantial amount of time that would need to be dedicated by the SCP [to this normative work]. In addition, several items on the current work program, such as exceptions and limitations, overlap with the proposal. As a consequence, a new balance in relation to the topics under discussion would need to be found.

Furthermore, the proposal is unclear in relation to important points such as oversight and execution of the exercise. On the substance, we would like to emphasize that a possible revision of the model law should not touch upon interpretation of the TRIPS provisions. We therefore need more clarity on such key issues in order to properly consider the implications of this proposal for the discussions on the future work program.

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

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

Merci, Madame la Présidente.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Item 6**

**SCP/22/3 and SCP 22/4**

Madam Chair,

In order to reduce the number of interventions, the EU and its Member States will address all the issues under item 6 (i) of the agenda in a single statement.

The European Union and its Member States would like to thank WIPO for the two studies being presented in relation to the work strand on Quality of patents. Once again we would like to reiterate our support for advancing work on quality of patents.

Document SCP/22/3 contains a study on inventive step. The study addresses core elements in the patent system, such as the 'person skilled in the art', 'methodologies employed for evaluating an inventive step', and 'obviousness'. The study contains input from a broad range of WIPO's membership. We emphasize the importance of further examining the inventive step concept as well as methods of evaluating inventive step in WIPO Member States according to the proposal made by Spain and endorsed by all other Member States of the European Union (document SCP/19/5Rev), such as cases where the outcome of the assessment of inventive step varies among Member states.

Document SCP/22/4 contains a study on sufficiency of disclosure. It consists of three parts, the enabling disclosure requirement, the support requirement, and the written description requirement. The study contains information based on the contributions of 58 Member States and 3 regional offices. We have read the study with great interest, and look forward to the discussions this week.

Regarding the other documents under this agenda item, we believe a work program should be established in relation to **quality of patents**, 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 by the Delegation of Spain, as endorsed by all other Member States of the European Union (document SCP/19/5 Rev.). We remain in favor of launching a questionnaire containing the elements of all the proposals by the Delegations of Canada and the UK, Denmark and the US.

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. Conferences on the margins of the SCP sessions would allow for the exchange 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.

Thank you.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Item 6.ii**

Madam Chair,

Our statement is done on behalf of the EU and its Member States.

As regards **exceptions and limitations**, we believe that, although limited and specific limitations and exceptions are justified, an evaluation of their impact on development by the secretariat and the preparation of the manual under the name of WIPO as presented are not the right ways forward. 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.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Item 6.iii**

Madam Chair,

Our statement is done on behalf of the EU and its Member States.

As regards the topic of **patents and health**, the European Union and its Member States wish to reiterate their understanding of the challenges and constraints certain countries may face in handling public health problems. We would like to emphasize once again that the mere existence of IPRs on a product is not a barrier to, nor its absence a guarantee of, access to that product. We believe 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. We could build upon the proposal made by the United States of America (document SCP/17/11).



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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Item 6.iv**

Madam Chair,

Our statement is done 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.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Item 6.v**

Madam Chair,

Our statement is done on behalf of the EU and its Member States.

On the topic of **transfer of technology**, we note that the project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions is under implementation. Until completion of this project and a thorough follow up analysis, we are not in favor of launching new initiatives within this Committee.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Item 7**

Madam Chair,

Our statement is done on behalf of the EU and its Member States.

This is a general statement on this item of the agenda, and does not take account of the recent interventions.

We would like to thank GRULAC for their proposal to revise the 1979 WIPO Model Law for Developing Countries on Inventions included in SCP/22/5. In our view, it leads to the harmonization of the patent law. Further, it overlaps with items on the current work program, such as exceptions and limitations. On a substantive note, we would like to emphasize once again that a WIPO should not touch upon interpretation of the TRIPS provisions.

We fully understand the importance of assistance to developing countries, including on legal matters concerning the area of patents. However, such legislative assistance is already provided by the WIPO Secretariat, taking 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.

Thank you.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Item 8**

Madam Chair,

The European Union and its Member States wish to emphasize that in discussing future work a balanced program should be reached. The current five agenda items reflect different priorities and we believe it is of the utmost importance to maintain this balance.

Concerning the GRULAC proposal to revise the 1979 WIPO Model Law for developing countries on inventions, we would like to refer to our statement delivered earlier this afternoon.

In relation to the other topics, we reiterate our points of view expressed during the previous SCP session in November 2014.

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 by the Delegation of Spain, as endorsed by all other Member States of the European Union (document SCP/19/5 Rev.). We remain in favor of launching a questionnaire containing the elements of all the proposals by the Delegations of Canada and the UK, Denmark and the US.

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. Conferences on the margins of the SCP sessions would allow for the exchange 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.

As regards the topic of **patents and health**, the European Union and its Member States wish to reiterate their understanding of the challenges and constraints certain countries may face in handling public health problems. We would like to emphasize once again that the mere existence of IPRs on a product is not a barrier to, nor its absence a guarantee of, access to that product. We believe 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. We could build upon the proposal made by the United States of America (document SCP/17/11).

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.

On the topic of **transfer of technology**, we note that the project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions is under implementation. Until completion of this project and a thorough follow up analysis, we are not in favor of launching new initiatives within this Committee.

As regards **exceptions and limitations**, we believe that, although limited and specific limitations and exceptions are justified, an evaluation of their impact on development by the secretariat and the preparation of the manual under the name of WIPO as presented are not the right ways forward. 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.

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

Thank you.

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

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

**Twenty-second session**

**Geneva, 27-31 July 2015**

**Closing Statement**

Dear Madam Chair,

The EU and its Member States would like to thank you for your indefatigable 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.

The EU and its Members States, in an effort to take the work of this committee forward and in the spirit of compromise that should be the hallmark of our work, could have accepted your initial proposal. This proposal contained elements with which we were uncomfortable with; nevertheless, the overall package represented a fair reflection of the balance of interests that we have heard this week.

We understood this to be a closed package but it was subsequently reopened and amended to reflect the needs of some groups. In this respect we note with regret that no EU proposal has been taken on board.

That being said Madam Chair, we very much welcome the agreement that has just been reached and look forward to this committee engaging in substantive work at the next session.

Thank you Madam Chair.