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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-Third Session

Geneva, 30 November – 4 December 2015

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.

Looking at the programme of the week ahead of us, we are pleased to see two sharing sessions on the programme. The first on experience of experts from different regions on inventive step assessment in examination, opposition and revocation procedures, and the second on confidentiality protection applied to different types of patent professionals and to national and foreign patent advisors.

We are confident that these sharing sessions will provide useful insights and provide a valuable basis for further progress in this area. In this respect, we welcome the contributions that the delegations of Spain and the UK will make at the sharing session(s).

In relation to the topic 'quality of patents', it was agreed at the 22nd session of the SCP that the WIPO secretariat would improve the webpage on work sharing and collaborative activities. We would be grateful if the WIPO secretariat could provide us with a presentation this week on the improved features of the website.

Another event we are looking forward to this week is the seminar on patents and health. We hope that the seminar will provide useful information in relation to challenges and opportunities faced.

With regard to our discussions on the future work of this committee, we believe that it is important to retain the delicate balance of different regional priorities in the current work program. 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 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 favour of launching a questionnaire containing the elements of all the proposals by the Delegations of Canada and the UK, Denmark and the US, as contained in document SCP/18/9. Work in this area could be beneficial to all WIPO Members, as it could enhance international cooperation, and ensure a more efficient, effective, and higher quality patent system to all.

Second, in relation to the 'Client-Patent Attorney Privilege'. We hope that the sharing session will provide valuable input in taking this work forward, as convergence of differing provisions would be of benefit to users of the patent system.

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

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. The Unitary Patent provides for a simple and affordable patent protection. The Unitary Patent will help to attract and retain innovation, talent and investment. It will come into effect once the necessary ratifications have taken place.

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

Thank you Chair.

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**Member States' experience and case studies on the effectiveness of Exceptions & Limitations
(SCP/23/3)**

Chair,

The European Union and its Member States would like to thank the WIPO secretariat for preparing document SCP/23/3 on Member States' experience and case studies on the effectiveness of exceptions and limitations. The document contains information from 9 Member States. The European Union and its Member States believe that these documents will serve as a useful reference. We note with regret that the document contains only information from 9 member States.

As regards exceptions and limitations in general, we would like to stress 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.

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**Feasibility study on the disclosure of INN in patent applications/patents (SCP/21/9) and
Seminar**

Chair,

On behalf of the European Union and its Member States, I would like to thank the WIPO secretariat for the feasibility study on the disclosure of international non-proprietary names (INN) in patents applications and/or patents in document SCP/21/9, which we discussed at the 21st session of SCP.

We would reiterate our position expressed at this session. The EU and its Member States have studied the document, and it appears that on the basis of the information assessed and provided by the study, the case for a disclosure requirement of INNs has not been made. The costs and benefits are unclear, and the study highlights other limitations.

According to the preliminary findings, it is impossible to disclose, at the time of filing, the future corresponding and yet to be published INN in patent applications filed before the publication of the Recommended INN. In this scenario, the preliminary findings point to the major challenge of how to retroactively link the corresponding INN information to such applications without unduly burdening applicants and patent offices. Also, the mere indication of INN in patent applications is not sufficient to find out, with one click, what a patent searcher is looking for. At the same time, the study points to the fact that patent searchers have developed methodologies to search patents for a medicine, primarily using publicly available databases, and that increasing sophistication of IT tools might significantly contribute to a simpler and more cost efficient patent search in the fields of chemistry and pharmacology.

Concerning the subject of patents and health in general, we are looking forward to this week is the seminar on patents and health. We hope that the seminar will provide useful information in relation to challenges and opportunities faced.

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 of the Delegation of the United States of America.

Thank you Chair.

Statement by the European Union and its Member States

WIPO - Standing Committee on the Law of Patents

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Transfer of Technology SCP/22/4

Chair,

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

At SCP 22 it was decided to discuss transfer of technology vis-à-vis sufficiency of disclosure, as contained in document SCP/22/4. 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.

The study expresses 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 16, which recently took place, the evaluation report on the "Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions" has been discussed. As a follow up, the CDIP has requested the WIPO secretariat to map WIPO's existing activities in the field of technology transfer for consideration at CDIP 17. We consider this a valuable exercise in completing the project. Until completion of this project and a thorough follow up analysis, we are not in favor of launching new initiatives within this Committee.

Thank you.

Statement by the European Union and its Member States

WIPO - Standing Committee on the Law of Patents

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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.

We would like to thank the delegations for their presentations. 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.

Statement by the European Union and its Member States

WIPO - Standing Committee on the Law of Patents

Twenty-Third Session

Geneva, 30 November – 4 December 2015

1979 Model Law (SCP/22/5)

Chair,

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

At the 22nd 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 tailored 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.

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Future work

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 a balance.

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. In relation to quality of patents, we are committed to deal with discussing key aspects of substantive patent law and this has to be reflected in the future work program.

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. We would also like to support the US proposal on work sharing presented on Monday, and we note with satisfaction the overwhelming cross-regional support it received.

We also support conferences on the margins of the SCP sessions, during which experiences on work sharing programs could be discussed, and ways to improve the usefulness of these programs to IP offices could be explored, 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.

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.

Thank you.

WIPO - Standing Committee on the Law of Patents

Twenty-third session

Geneva, 30 November – 04 December 2015

Closing Statement

Dear Madam Chair,

The EU and its Member States would like to thank you for 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, and also all delegations for their presentations during this session of the SCP.

We are very disappointed that no consensus could be reached on future work. We want to note that 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 the proposed work plan on future work. This work program contained elements with which we are uncomfortable with; nevertheless, the overall package on future work represented a reflection of regional interests that we have heard this week.

That being said Madam Chair, we welcome the agreement that has been reached and look forward to following sessions of this committee.

Thank you Madam Chair.
