



Council of the
European Union

069892/EU XXVI. GP
Eingelangt am 28/06/19

Brussels, 28 June 2019
(OR. en)

10788/19

PI 104

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	9747/19 + REV1 + COR1
Subject:	30th session of the WIPO Standing Committee on the Law of Patents (SCP) (Geneva 24-27 June 2019) - Final EU/Member States statements

Delegations will find at Annex, 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 30th Session

(WIPO, Geneva, 24-27 June 2019)

General / Opening Statement

Madam Chair,

1. Romania is honoured to deliver this statement on behalf of the EU and its Member States. First, we wish to congratulate you on your election as the Chair of this important Committee. We would also like to welcome the new Vice-Chairs and thank the WIPO Secretariat for its work in preparing this meeting.
2. We are pleased to note the success of the previous sessions of the Committee in constructively discussing and advancing the important topics on the agenda of the SCP and in deciding on the future work of the Committee. The EU and its Member States are committed to constructively engage in our discussions on the basis of the agreed work programme for this week.
3. We support the agenda and the mandate of the SCP, which implies discussing the non-exhaustive list of issues on a fact-finding basis, in the manner we proceeded in the Committee during its past meetings. However, while at this stage it appears challenging to achieve further patent harmonization in the SCP, the EU and its Member States wish to again emphasize that harmonization of substantive patent law should be seen as the mid and long term aim of this Committee. Our present fact-finding work and discussions are of course highly relevant for this future work.

4. We believe that the program for the coming days will bring us forward on important issues. As we have pointed out in previous sessions, the EU and its Member States attach great importance to advancing work on the "Quality of Patents". In this respect, we would like to thank the WIPO Secretariat for its work in preparing the Further Study on Inventive Step (Part III) contained in document SCP/30/4 and to all our colleagues for their contribution to this document. The continuation of the sharing sessions on "Quality of Patents" will be of great benefit for the WIPO Secretariat's forthcoming study which was agreed to be delivered at the next session and therefore we encourage Member States from across all regional groups to participate.
5. We are looking forward to discussing the new revised proposal presented by Spain and France contained in document SCP/30/9 as well as to the background document SCP/30/5 on emerging technologies. We are also keen to continue discussions on the topic of "Client-Patent Attorney Privilege", as convergence of differing provisions would be beneficial to users of the patent system.
6. The EU and its Member States look forward to interesting and fruitful discussions with respect to an update of publicly accessible databases on patent status information concerning medicines and vaccines, as well as the sharing of experiences by the Secretariat and relevant institutions on capacity building activities relating to the negotiation of licensing agreements in the field of patents and health. We believe that any further work in this area should reflect a balanced approach, taking into account the various relevant factors. At the same time, we would like to recall that we cannot go beyond the mandate of the SCP and WIPO. Discussions about other factors that might have an impact on access to medicines should be left to other more appropriate fora.
7. Madam Chair, we remain committed to the work of this Committee and look forward to a constructive session.

Thank you.

Standing Committee on the Law of Patents

30th Session

(WIPO, Geneva, 24-27 June 2019)

Report on the International Patent System:

Certain Aspects of National/Regional Patent Laws

(SCP/30/2)

Madam Chair,

1. I am speaking on behalf of the European Union and its Member States. The EU and its Member States wish to thank the WIPO Secretariat for preparing the document SCP/30/2.
2. We also thank Algeria, Australia, Belarus, Bosnia and Herzegovina, the Czech Republic, Ecuador, Georgia, Guatemala, Kazakhstan, Panama and Portugal for their input based on which the SCP electronic forum website has been updated. We think it is important to keep the SCP website up to date to maintain its value as a useful reference in our discussions and a good basis for better understanding of various aspects of regional patent legislation and national patent systems.
3. Any information on recent developments and changes of national or regional IP laws are always highly relevant to all stakeholders. For example, the EU recently adopted a Regulation allowing, under certain conditions, the manufacturing of generic medicines in respect of medicines protected by a ‘supplementary protection certificate’ (SPC) after the expiry of the patent. This exception provided for in Regulation (EU) 2019/933 will be subject to strict conditions, and will only be available for two purposes: export outside the EU to countries where no IP protection exists, or stockpiling in the EU in the last six months prior to SPC expiry.

Thank you.

Standing Committee on the Law of Patents

30th Session

(WIPO, Geneva, 24-27 June 2019)

Exceptions and limitations to patent rights

(SCP/30/3)

(Related documents: SCP/14/7 and SCP/19/6)

Madam Chair,

1. I am speaking on behalf of the European Union and its Member States.
2. We would like to thank the Secretariat for the preparation of the draft reference document on the exception regarding compulsory licensing (contained in document SCP/30/3), which provides a useful compilation of different experiences and information, and a good overview of the international legal framework on the exception regarding compulsory licensing.
3. The EU and its Member States reiterate their understanding of the challenges and constraints which might be faced by certain countries in handling public health problems. We believe that access to safe, effective, quality and affordable essential medicines and vaccines for all is a major challenge and a key Sustainable Development Goal which must be supported by all.
4. We remain committed to increasing access to affordable medicines and to finding solutions to the world's pressing public health challenges and inequities.
5. However, we would like to recall that the SCP cannot go beyond its mandate and we encourage delegations to continue to reflect a balanced approach, taking into account all the various factors of relevance to patents and health. There are many aspects of the health system playing an important role in ensuring accessibility and affordability of medicines, such as incentives to research and innovation, but also the availability of qualified health workers, the provision of affordable medicines, as well as the adequate financing of the sector and others.

6. The EU and its Member States would like to express their continued engagement in constructive discussions on the topic of exceptions and limitations to patent rights.

Thank you.

Standing Committee on the Law of Patents

30th Session

(WIPO, Geneva, 24-27 June 2019)

Quality of patents, including opposition systems

(SCP/30/4 & 30/5)

(Related documents: SCP/17/7, 8 and 10, SCP/18/9, SCP/19/4,

SCP/20/11 Rev., SCP/23/4, SCP/24/3, SCP/28/7 and 8)

Madam Chair,

1. I am speaking on behalf of the EU and its Member States. The EU and its Member States wish to thank the WIPO Secretariat for preparing the comprehensive document SCP/30/4. We would like to thank also to our colleagues from the EPO, Argentina, Australia, Brazil, China, Costa Rica, Germany, Austria, Chile, Ecuador, India, Philippines, Portugal, the Republic of Korea, Russian Federation, UK, the USA who substantially contributed to this document, a truly comprehensive study on practice around the world for assessing the inventive step in the field of chemistry.
2. The inventive step requirement became more and more a core part of the substantive patentability requirement and its correct evaluation ensures that exclusive rights are awarded only to inventions whose contributions to the state of the art deserve it. The guidance provided by the study may be considered particularly useful, because the art of chemistry may be characterised by its experimental nature. In comparison to electronic or mechanical field, research outcomes in the chemistry sector are less predictable. For example, it is not always easy to predict technical effects of a chemical compound only from its structure, and thus the technical effects need to be verified and confirmed by experimental data.
3. The EU and its Member States expect that this, and the previous studies on inventive step will help us gain a better understanding of this requirement.

4. Although there are various approaches on the factors that define the concept quality of patents, and its meaning may be different for different stakeholders in different contexts, we sense a converging understanding of the main issues. Therefore, we are confident that the findings of the questionnaire on the term quality of patents, and the various sharing sessions on this topic, such as the one that is to be held this week, will prove useful in carrying out our work in the area of quality of patents.
5. Exchanges of practices and information among experts on the issue of quality of patents are one of the most important things we expect to be addressed in the SCP. The further deepening of the understanding of the offices' practices related to the inventive step is the basis upon which international work sharing and collaboration can be built. The EU and its Member States have consistently supported a more widespread use of work-sharing among patent offices of different sizes and on different levels of development.
6. The EU and its Member States also support the continuation of sharing sessions on the quality of the patent grant process. We look forward to learning more from other delegations, in particular regarding the capacity building of patent examiners and offices, and hope that these valuable contributions will result in an insightful study on approaches to the quality of the patent grant process by the WIPO Secretariat, which was agreed to be delivered at the next session. To achieve this, we encourage parties from across all regional groups to participate, so that the future study can be as comprehensive as possible.
7. In recent years, there have been rapid developments in the field of Artificial Intelligence (AI) that may sooner or later be reflected in patent law. Therefore, we appreciate the new revised proposal presented by Spain and France (contained in document SCP 30/9) and we are of the view that the new activities included in it, such as information-sharing sessions on the use of AI for the examination of patent applications and patentability of AI related inventions, would benefit us all to gain a better understanding of the real impacts of new technologies on the patent system.

8. We would also like to thank the WIPO Secretariat for preparing background document SCP/30/5 on emerging technologies. The EU and its Member States recognize that the patent system should contribute to the promotion of technological innovation as well as to the transfer and dissemination of technology, for the benefits of the society at large, through balanced rights and obligations of technology producers and users of technological knowledge. We acknowledge that digital technologies, including Artificial Intelligence technology, are common challenges to all countries and we believe that the discussion on this topic can provide countries with solutions and possible ways of addressing those challenges.

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

Thank you.

Standing Committee on the Law of Patents

30th Session

(WIPO, Geneva, 3 - 6 June 2019)

Patents and Health

See document SCP/30/6

Other related documents: SCP/17/7, 8 and 10, SCP/18/9, SCP/19/4, SCP/20/11 Rev., SCP/23/4, SCP/24/3, SCP/28/7 and 8.

Chair,

1. The EU and its Member States wish to thank the WIPO Secretariat for preparing document SCP/30/6, illustrating the experiences of the International Bureau of WIPO on its capacity building activities in the area of negotiations of licensing agreements. We consider training dedicated to licensing of IP to be important for both licensors and licensees. This can foster the uptake of protected innovations, to the benefit of all. Therefore, we encourage WIPO to continue offering training on licensing negotiations to potential licensors and licensees.
2. Access to safe, effective, qualitative and affordable medicines and vaccines for all remains a major challenge and a key Sustainable Development Goal that we all must support.
3. Accessibility and affordability of medicines can and should be fostered in many ways: Incentives to research and innovation, such as intellectual property, are one way. But other factors such as the availability of qualified health workers or the adequate financing of the sector, as well as many others, are also of key importance.
4. Intellectual property rights such as patents should not be understood as barriers. They incentivize innovation, leading to new and improved treatments. A careful balance between incentives to innovation and access to medicines needs to be maintained, including in the discussions within the SCP.

5. With respect to patent rights, a number of exceptions and limitations already ease access to patented inventions in the EU, for example the Bolar exemption and the ‘Regulation on compulsory licensing of patents relating to the manufacture of pharmaceutical products for export to countries with public health problems’.
6. The EU and its Member States thank the Secretariat for organizing a sharing of experiences by the Secretariat and invited relevant institutions on capacity building activities relating to negotiating licensing agreements. Capacity building, increasing transparency and awareness raising are promising initiatives to the benefit of all, as they can contribute to reduce cost and friction.

Thank you.

Standing Committee on the Law of Patents

30th Session

(WIPO, Geneva, 24-27 June 2019)

Confidentiality of communications between clients and their patent advisors

(SCP/30/7)

Madam Chair,

1. I am speaking on behalf of the European Union and its Member States. The EU and its Member States wish to thank the WIPO Secretariat for preparing the document SCP/30/7. We also thank Austria, Colombia, Ecuador, Guatemala, the Republic of Kazakhstan, the Kyrgyz Republic and the Republic of Moldova for their input, based on which the SCP electronic forum website has been updated.
2. As stated on previous occasions, the EU and its Member States would like to see further action taken to address the recognition of foreign patent advisors' privilege. We believe that work on a non-legally binding instrument would be beneficial to all WIPO Member States. The potential soft law instrument should aim at providing the same protection to communications between a client and its foreign patent adviser as that applicable under national law, in each Member State, to communications between a client and its national patent adviser. This should be without prejudice to existing national legislation and should ensure optimal flexibility.
3. We sincerely hope the discussions in the SCP will lead to a better understanding of the different systems in the field of confidentiality of communications between clients and patent attorneys among WIPO Member States for the benefit of our clients.

Thank you.

Standing Committee on the Law of Patents

30th Session

(WIPO, Geneva, 24-27 June 2019)

Transfer of technology

Madam Chair,

1. I am taking the floor on behalf of the European Union and its Member States. The EU and its Member States wish to thank the WIPO Secretariat for preparing the document SCP/30/8. We also thank Argentina, Australia, Brazil, Colombia, Costa Rica, Ecuador, Kazakhstan, Kyrgyzstan, Malaysia, Portugal, Moldova, Romania, Spain and the UK for their input based on which the SCP electronic forum website has been updated.
2. Technology transfer has the potential to create win-win situations in international economic relations. This is why this is an issue of great importance for the European Union. For example, when we look at the stocktaking action undertaken by the WIPO Secretariat according to information contained in document CDIP/20/10 Rev., we can see that two out of five listed regional platforms for technology exchange are situated in the European Union and hosted by the European Commission, servicing all Member States and stakeholders. 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.
3. As previously stated we continue to support updating the WIPO webpage on Technology Transfer regarding information on national, regional and international technology exchange and technology licensing platforms.

Thank you.

Standing Committee on the Law of Patents

30th Session

(WIPO, Geneva, 24-27 June 2019)

Draft EU Closing Statement

Madam Chair,

1. On behalf of the EU and its Member States let me congratulate you and the Vice-Chairs for your able leadership and excellent way in which you have guided member states through our agenda items this week.
2. We would also like to thank the Secretariat for the hard work carried out in preparation of this meeting.
3. Our special thanks go to the interpreters, too, for literally enabling us to understand each other.
4. We note with satisfaction that a great amount of valuable information has been shared during this week through the sharing sessions organized under the topics on exceptions and limitations and quality of patents.
5. The EU and its Member States welcome the outcome of the present session as reflected in the Summary by the Chair. We look forward to future sharing sessions on the topic of AI.
6. The EU and its Member States reiterate their commitment in advancing the work of the SCP under all topics on its agenda.

Thank you.
