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Delegations will find attached the final EU/Member States statements delivered at the above-mentioned WIPO meeting.

**35th Session of the WIPO Standing Committee on the Law of Patents (SCP)****(Geneva, 16-20 October 2023)****General statement**

Thank you Chair,

1. Spain is honoured to deliver this statement on behalf of the European Union and its Member States. First, we would like to congratulate you and your vice-chairs on your election. We look forward to working efficiently under your able guidance this week. We would also like to thank the WIPO Secretariat for its excellent work in preparing this meeting and providing us with all the relevant documents.
2. We are pleased to note the success of the previous session of the Committee in constructively discussing and advancing the five main topics on the agenda of the SCP and deciding on its future work. The EU and its Member States are committed to engaging constructively in our further discussions around the agreed work programme this week.
3. In order to take full advantage of the patent system, it is essential to deepen knowledge of patent law systems with a special emphasis on their differences and similarities as well as to learn from best practices across the globe. The SCP as a multilateral forum is of great importance for the further development, harmonisation and improvement of the international patent system as requested by users and stakeholders worldwide. We continue to believe that, in addition to its contribution to the quality of patents, the SCP should serve as a venue where harmonisation of substantive patent law can be achieved in the future.

4. The quality of patents, including opposition systems, has always been a priority for the EU and its Member States. Further work in this area is beneficial to all countries, irrespective of their level of development, since it would enhance the credibility, reliability, and stability of the international IP system. This session, we welcome a further study on the sufficiency of disclosure contained in SCP/35/5. We look forward to the compilation of information related to the expedited examination programs of IP offices contained in document SCP/35/6, as well as to all the activities on patents and AI that will take place during this week. AI technology provides numerous opportunities and challenges to the patent system, which are of fundamental importance for all WIPO Member States. We are convinced that sharing experiences and information on these topics in a multilateral forum such as the SCP is highly beneficial for all WIPO Member States.
5. The EU and its Member States attach great importance to the confidentiality of communications between clients and their patent advisors. We look forward to continuing discussions, as well as to a sharing session focusing on recent developments and practical cases.
6. In addition, we look forward to the sharing session on international cooperation in respect of technology transfer as well as to the session on practical experiences concerning two issues of great interest for the EU and its Member States: Standard Essential Patents (SEPs) and Fair, Reasonable and Non-Discriminatory (FRAND) licenses. However, we want to reiterate our belief that the SCP should avoid duplicating the efforts of the Committee on Development and Intellectual Property (CDIP) in technology transfer.
7. While the EU and its Member States consider all topics on the agenda important, we would like to reiterate our special interest in enhancing international cooperation and improving technical knowledge on patentability requirements. Ensuring a more efficient, more effective and higher-quality patent system in all WIPO Member States is in our view the right way forward in removing trade barriers and can prominently contribute to economic prosperity.
8. We reiterate the importance of retaining the delicate balance between the topics of the SCP and we are looking forward to continuing interesting discussions and constructive information sharing in the Committee.

Thank you.

## **EU statement supporting Ukraine**

Chair,

The European Union expresses solidarity with Ukraine and supports the sovereignty and the territorial integrity of Ukraine within its internationally recognised borders.

We demand on Russia to immediately stop its invasion of Ukraine and cease all violations of international law. Russia must instantly and completely withdraw its troops from the whole territory of Ukraine and fully respect Ukraine's territorial integrity, sovereignty and independence within its internationally recognised borders.

Ukraine has shown that innovation can be pursued even in the most severe circumstances, but it is also clear that innovation is helped by a progressive development of international patent law. At the SCP we look forward to sharing information and working towards the development of the international patent system with an inclusive and coordinated approach.

In light of the negative impact on the Ukrainian IP ecosystem of the ongoing Russian war of aggression, as reported by WIPO in document A/64/8, the EU and its Member States recognise the importance of WIPO's Assistance and Support for Ukraine's Innovation and Creativity Sector and Intellectual Property System. We therefore welcome the decision of the 64th series of meetings of the Assemblies of the Member States of WIPO to continue these activities, hoping for prompt and efficient recovery process of the Ukrainian IP ecosystem.

On behalf of the European Union and its Member States, let me reiterate our continuous support and solidarity with Ukraine and Ukrainian people. The EU will stand by Ukraine with steadfast support for as long as it takes.

Thank you.

### **Agenda item 3**

#### **Special Rules of Procedure**

(SCP/35/2)

Thank you Chair,

The European Union and its Member States thank the Secretariat for the proposed amendments to the special rules of procedure. We believe that some of the proposed amendments constitute an adequate step forward that will contribute to updating the working methods of our Committee. At the same time, we support application to the SCP of the General Rule of Procedure no 9 (3) that “the outgoing Chair and Vice-Chairs shall not be immediately eligible for re-election to the office which they have held”.

Thank you.

## **Agenda item 5**

### **Report on the international patent system: certain aspects of national/regional patent laws**

(SCP/35/3)

Thank you Chair,

1. The European Union and its Member States would like to thank the WIPO Secretariat for preparing SCP/35/3 and for updating the SCP electronic forum website. We also want to express our gratitude to the WIPO Member States for their important input.
2. In order to better understand various aspects of regional patent legislation and national patent systems, we think it is important to keep the SCP website up to date. It will then maintain its high value as a useful reference in our discussions. We also encourage all WIPO Member States to continue to provide information on recent developments concerning national and regional IP laws, as we can all benefit from this valuable information.
3. In relation to recent developments within the EU, on 1 June 2023, the unitary patent package took effect in 17 participating EU Member States. That means that, after many years in preparation, the EU unitary patent came into operation and the Unified Patent Court Agreement entered into force in those Member States.
4. We would also like to take this opportunity and inform the SCP about other patent-related initiatives currently under consideration within the EU. In April 2023, the European Commission brought forward proposals for several legislative initiatives.
5. Firstly, a reform of the EU supplementary protection certificate (SPC) regime that proposes a centralised procedure for the filing and examination of SPC applications designating several EU Member States and the creation of a unitary SPC complementing the unitary patent.
6. Secondly, an initiative on compulsory licensing that aims at improving the coherence and effectiveness of compulsory licences as a tool to tackle EU-wide crises, while recalling that compulsory licensing should remain a last-resort tool applicable only in the event of failure of voluntary agreements.

7. And thirdly, an initiative that seeks to create a fair and balanced licensing framework for standard-essential patents (SEPs).
8. All these proposals are currently being discussed in the European Parliament and the Council of the European Union, and we will be happy to report to future SCP meetings on developments in the legislative negotiations of these files.

Thank you.

## **Agenda item 6**

### **Exceptions and limitations to patent rights**

(SCP/35/4)

(Other related documents: SCP/14/7 and SCP/19/6)

Thank you Chair,

1. Thanks for allowing me to take the floor on behalf of the European Union and its Member States.
2. We thank the WIPO Secretariat for the preparation of the draft reference document on the exception regarding the use of articles on foreign vessels, aircraft and land vehicles contained in SCP/35/4.
3. We believe that the document provides an excellent overview of the exception regarding the use of articles on foreign vessels, aircraft and land vehicles contained in SCP/35/4. We value the great amount of work undertaken by the Secretariat to highlight the similarities and differences in the implementation of this exception in different jurisdictions. We would like to highlight the fact that its implementation has not posed any notable issues across various countries and that litigation is sparse. The detailed analysis of the legal frameworks, conditions and scope of the various exceptions is proving to be especially instructive.
4. We reiterate our appreciation for the compilation of legal provisions on the exception regarding the use of articles on foreign vessels, aircraft and land vehicles in the annex to SCP/35/4. The detailed account of laws implementing said exception in numerous countries and regional patent organisations is very helpful in understanding the legal basis of the exception throughout the different jurisdictions. We also believe that highlighting the challenges faced and the results of the implementation of the exception provides useful information for other WIPO Member States.
5. The EU and its Member States are looking forward to hearing further interventions from other delegations and an interesting and fruitful discussion on this agenda item.

Thank you.



## **Agenda item 7**

### **Quality of patents, including opposition systems**

#### **– Sharing session on the use of artificial intelligence for patent examination procedures**

(SCP/35/5, SCP/35/6, SCP/35/7 and SCP 35/8)

(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/28/8, SCP/30/9, SCP/31/8 Rev. and SCP/33/4)

Thank you Chair,

1. We have the privilege to take the floor on behalf of the European Union and its Member States.
2. The quality of patents, including opposition systems, has always been of particular importance to the EU and its Member States. We therefore reaffirm our strong support and commitment to advancing work on this topic.
3. AI is a key priority for the EU as it is a strategically important technology. Nonetheless, its creative potential raises a number of issues in the field of intellectual property policy. We are very satisfied to see several activities on AI in this session. We especially look forward to the sharing session on the use of AI for patent examination procedures, and to the update session by experts on the state of play regarding AI generated inventions. We hope that the further exchange of information and practical experiences will help all WIPO Member States to harness the benefits of AI. In this context, we would like to thank the WIPO Secretariat for preparing a report on the sharing session on patentability of inventions using AI and by AI contained in document SCP/35/8 and we hope that the Secretariat will once more prepare a report on these two new sessions.

4. In addition, the use of AI technology in patent offices is evolving rapidly and the irruption of generative AI that has taken place over the last .year seems very promising in that regard. In our view, it remains essential to retain the momentum of these discussions on AI by continuing the fruitful exchange between the various offices in our shared effort to harness the potential of AI to enhance efficiency and patent quality and to address the patentability issues recently raised by this technology. In that regard, we thank the Secretariat for the exhaustive overview on how jurisdictions around the world address the issue of AI authorship contained in document SCP35/7. The document should be updated on a regular basis in order to answer the numerous questions posed regarding AI inventorship.
5. Patentability issues relating to AI are also being discussed in other fora such as the WIPO Conversation on IP and AI, now renamed the WIPO Conversation on IP and Frontier Technologies. This being said, we still consider it essential to keep discussions on this core topic on the agenda of the SCP. Discussions should be accompanied by further activities such as sharing sessions and studies, as outlined in the proposal by Spain and France in SCP/30/9, as well as in the intervention of the Swiss delegation during the previous session of the Committee, as reflected in document SCP/35/8.
6. In addition to these important deliberations on AI, we would like to thank the WIPO Secretariat for preparing a further study on the sufficiency of disclosure, based on the information received from WIPO Member States and regional patent offices, and contained in SCP 35/5. The second part of this further study provides detailed information on the sufficiency of disclosure of inventions relating to the fields of Chemistry and Biotechnology.
7. In terms of expedited patent examination mechanisms at IP offices, the EU and its Member States thank the Secretariat for the compilation of information on expedited examination programs of IP offices contained in SCP35/6, based on the US proposal contained in SCP/33/4. The compilation shows that Patent Offices acknowledge the importance of timely delivery of their decisions as one of the main elements contributing to the quality of the patent granting process.
8. The EU and its Member States remain fully committed to reaching substantial progress on the core issue of the quality of patents. We are looking forward to an interesting and constructive discussion on this agenda item.

Thank you.

## **Agenda item 8**

### **Patents and Health**

- **Sharing session among Member States on practices involving licensing of medical technologies for the diagnoses, prevention and treatment of COVID19, including examples of compulsory and voluntary licensing**

(SCP/35/9)

(other related documents: SCP/16/7 and 7 Corr., SCP/17/11, SCP/24/4, SCP/28/10)

Thank you Chair,

1. I am taking the floor on behalf of the European Union and its Member States. The EU and its Member States welcome the cooperation efforts made by the WIPO, WHO and WTO on addressing issues raised by the COVID-19 pandemic and vaccines.
2. The COVID-19 pandemic has shown the importance of good cooperation at all levels and among all relevant actors, including public authorities, research institutions, companies and other organisations. The EU and its Member States are committed to further build on the lessons learned from the pandemic, and in particular on cooperation efforts that have ensured broad, affordable and equitable global access to quality, safe and effective diagnostics, treatments and vaccines in the fight against COVID-19 towards public health objectives. In that context, we welcome the sharing of practices involving the voluntary licensing of medical technologies for the diagnosis, prevention and treatment of COVID-19.
3. As we already highlighted at SCP 33 and SCP 34, to enable broad, affordable and equitable global distribution of diagnostics, treatments and vaccines, the EU has taken a leading role in the Global Coronavirus Response. This was made possible thanks to the good collaboration with all relevant actors, meaning both public authorities, and in particular the WHO on the one hand, and private entities on the other.

4. In May 2021, Commission President von der Leyen announced at the Global Health Summit a flagship ‘Team Europe’ initiative with the aim to enhance local manufacturing and access to vaccines, medicines and health technologies in Africa. So far, EUR 1.2 billion has been deployed from the EU budget and from European financial institutions such as the European Investment Bank, and from a number of EU Member States, namely Germany, France, Belgium and the Netherlands.
5. Team Europe aims to tackle, together with African partner states, barriers to production, access and availability, by covering investments in infrastructure and production capacity, the demand side and the enabling environment (such as training and skills, regulatory frameworks). The initiative supports country-level actions in frontrunner countries such as Senegal, Rwanda, South Africa and Ghana, and regional level actions supporting the WHO mRNA technology transfer hub and the implementation of the African Medicines Agency.
6. In June 2022, the EU launched with Latin America and the Caribbean States (LAC) a Partnership on vaccine production and health systems resilience. It addresses LAC leaders’ interest in strengthening health systems and local manufacturing capacities and supports ongoing regional efforts. The partnership was joined by France, Italy and Spain. It encompasses three key objectives towards equitable access: favouring mature regulatory systems aligned with international standards, engaging with private sector, and facilitating innovation and technology access. Various milestones have been achieved in 2023, including a matchmaking event to facilitate EU-LAC pharmaceutical partnerships, and a first high-level dialogue with all interested actors, followed-up by a business round table on health resilience. Specific related actions are in preparation in Mexico, Barbados, Costa Rica, Cuba and Brazil.
7. The EU and its Member States thus continue their efforts to ensure fair and affordable access to vaccines and treatments globally.
8. In that context, the EU and its Member States reiterate their support for voluntary licensing. Voluntary licensing initiatives have proved to be the most efficient and rapid means to ensure broad, timely and fair access to vaccines and medicines. Voluntary agreements also represent the best approach to promote innovation in the field of health, where the development of cutting-edge technologies generally requires large investments. Those investments can only be secured in the context of a well-functioning system for intellectual property rights, taking into consideration the importance of voluntary agreements.

9. The COVID-19 crisis has shown that the current international IP legal framework is sufficiently adapted and flexible to provide solutions, including compulsory licensing, should voluntary agreements fail to offer an adequate solution. These existing flexibilities need to be transposed and applied properly by the countries in cases of crisis.
10. The European Commission presented, in April 2023, a legislative proposal for an EU regulation introducing an EU-level compulsory licensing mechanism for crisis situations.
11. A careful balance between incentives in favour of both innovation and access to medicines needs to be preserved. Within the SCP, we would welcome continuing the discussions and sharing good practices in this respect.

Thank you.

## Agenda item 9

### **Confidentiality of communications between clients and their patent advisors**

- **Sharing session by members and observers of the SCP as well as relevant practitioners on recent developments and experiences concerning confidentiality of communications between clients and their patent advisors**

Thank you Chair,

1. We have the privilege to take the floor again on behalf of the European Union and its Member States.
2. The topic of confidentiality of communications between clients and their patent advisors remains of great importance to the EU and its Member States and we welcome this item on the agenda. Patent applicants or owners need to receive legal advice without the risk of forced disclosure of the communication with their patent advisors. Without such a safe environment, the quality and the enforcement of patents might be adversely affected.
3. The EU and its Member States have always believed that the convergence of WIPO Member States' different legal frameworks in the abovementioned field, irrespective of their level of development, will benefit users of the patent system. On this issue, we would like to promote an approach that would provide the necessary flexibility in light of the differences in the legal systems, and which would aim at conferring the same protection to communications between a client and its foreign patent adviser as under national law.
4. Increased awareness, and the opportunity to listen to contributions on developments and experiences relating to policy and practical issues, with a particular attention to cross-border elements, are highly beneficial for all WIPO Member States. Therefore, we look forward to the sharing session on recent developments and experiences concerning this issue. We also hope that the WIPO Secretariat will prepare a report on the sharing session.
5. Having said that, the EU and its Member States are of the view that this topic is of high relevance and should be further discussed at the SCP.

Thank you.

## Agenda item 10

### Transfer of technology

- **Sharing session on international cooperation in respect of technology transfer through the patent system, including technical assistance and capacity building, licensing of technology and collaboration involving both the public and private sectors**
- **Sharing session by SCP observers, intergovernmental organizations and other relevant stakeholders on their practical experience on Standard-Essential Patents (SEPs) and Fair, Reasonable and Non-Discriminatory (FRAND) licensing related issues**

Thank you Chair,

1. I am once more taking the floor on behalf of the European Union and its Member States.
2. Technology transfer is an important process fostering innovation and development. It can create win-win situations in international economic relations. That is why it remains a topic of great importance at the European Union level.
3. We look forward to the two sharing sessions scheduled for this session of the Committee. In the first one, we hope to witness instances of international cooperation in respect of technology transfer. The second one will provide an opportunity to get to know more about practical experiences on Standard-Essential Patents (SEPs) and Fair, Reasonable and Non-Discriminatory (FRAND) licenses, an issue of utmost interest for the EU and its Member States since a proposal for a regulation on the matter was published by the European Commission in April 2023 and it is currently under discussion in the European Parliament and Council of the European Union.
4. In parallel with its proposal for a regulation on SEPs, the European Commission has updated the EU strategy on Standardisation, published in February 2022. This strategy aims to strengthen the EU's global competitiveness, to enable a resilient, green and digital economy and to enshrine democratic values in technology applications while preserving the high-quality output of European Standards. Standardisation is a key contributor to industrial innovation and competitiveness and Standardisation agreements usually produce significant positive economic effects.

5. The EU and its Member States continue to attach great importance to Transfer of Technology. However, we would like to recall that the CDIP also tackles this issue and the SCP should, therefore, avoid duplicating CDIP's efforts in this regard.
6. We would also like to reiterate our support to the updating of the WIPO webpage on technology transfer with regard to information on national, regional and international technology exchange and licensing platforms.

Thank you.



## **Agenda item 13**

### **Closing Statement**

Thanks Chair,

1. Spain, speaking on behalf of the EU and its Member States, would like to thank you and the Vice Chair for your able leadership and excellent way in which you guided us during this week.
  2. We would also like to thank the Secretariat for the hard work carried out in the preparation of the session and during the week.
  3. We also want to thank the interpreters for literally enabling delegates to understand each other.
  4. We note with satisfaction the valuable information shared during this week.
  5. The EU and its Member States welcome the outcome of this session, as reflected in the Summary by the Chair.
  6. We look forward to future studies and activities included in the future work.
  7. The EU and its Member States reiterate their commitment in advancing the work of the SCP under all topics on the agenda.
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