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**NOTE**

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Delegations will find at annex, for information, the EU/Member States statements as delivered at the above-mentioned WIPO meeting.

**32nd Session of the WIPO Standing Committee on the Law of Patents (SCP)**

**(Geneva, 7-10 December 2020)**

**Agenda item 1**

**General statement**

*(submitted in writing)*

Chair,

1. Germany is honoured to take the floor 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 the able guidance of you and your Vice-Chairs during this week. The EU and its Member States would like to thank the WIPO secretariat for preparing this meeting as well as for providing all the relevant documents.
2. Ever since the beginning of international IP cooperation and the founding of WIPO as an international agency for IP, patent law has been of core importance not only in theory but also in practice. In order to take full advantage of the patent system, it is essential to know the similarities and differences of patent law systems as well as learning from best practices. The Standing Committee on the Law of Patents is the only multilateral forum of its kind and is, therefore, of great importance for the further development, harmonisation and improvement of the patent system which is requested by users around the world.
3. The EU and its Member States welcome the work of the previous sessions of the Committee on the five main topics on the agenda of the SCP and are fully committed to constructively engage in further discussions on the basis of the agreed work programme for this week. We trust that the positive spirit as we work together on discussions and initiatives seen at recent sessions of the committee will continue.

4. Chair, for the EU and its Member States, the quality of patents including opposition systems and the confidentiality of communications between clients and their patent advisors continue to be priority issues. 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. In that respect, we would like to thank the WIPO secretariat for its work in preparing the report on the sharing session on the use of Artificial Intelligence (AI) for examination of patent applications and are looking forward to another sharing session on patentability issues relating to AI scheduled for this week. AI technology provides numerous opportunities and challenges to the administration of the patent system, which are of fundamental importance for all Member States. We therefore believe that the sharing of experiences and information on these topics in the SCP is highly beneficial for all Member States.
5. The EU and its Member States are also prepared to further engage in discussions on patents and health as far as patent law questions are concerned. In that respect, we are looking forward to the two sharing sessions on this matter that will be held during this meeting. At the same time, we believe that any further work in this area should reflect a balanced approach that takes into account the various relevant factors. Discussions on other factors that may affect access to medicines should be left to other, more appropriate fora.
6. Chair, the European Union and its Member States remain fully committed to the work of this important Committee and look forward to a productive and positive session.

Thank you.

## Agenda item 4

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

(SCP/32/2)

Chair,

1. The European Union and its Member States wish to thank the WIPO secretariat for preparing document SCP/32/2.
2. We thank Australia, Poland, Thailand and Zimbabwe for their input based on which the SCP electronic forum website has been updated. The regularly updated SCP electronic forum website is an important source of information. The data contained provides insights into various patent legislations and contributes to a common better understanding.

Thank you.

## Agenda item 5

### Exceptions and limitations to patent rights

(SCP/32/3)

(SCP/14/7 and SCP/19/6)

Chair,

1. I am speaking on behalf of the European Union and its Member States. As this is the first time that the EU and its Member States take the floor, we first would like to congratulate you and your vice-chair on your election.
2. The EU and its Member States thank the secretariat for the preparation of the draft reference document on the exception regarding prior use contained in SCP/32/3.
3. We have studied the document with great interest. It provides an excellent overview of the widespread exception regarding prior use. We particularly value the great amount of work undertaken by the secretariat to highlight the similarities and differences in the implementation of the exception regarding prior use in different jurisdictions. The elaborations on the legal framework, conditions and scope of the exception are proving to be especially instructive.
4. We also appreciate the compilation of legal provisions on the exception regarding prior use in the annex to SCP/32/3. This detailed account of the exact wording of laws implementing said exception in more than 120 countries and regional patent organisations is very helpful in understanding the legal basis of the exception regarding prior use throughout the different jurisdictions.
5. The EU and its Member States are looking forward to hearing interventions of other delegations and having interesting and fruitful discussions on this agenda item.

Thank you.

## Agenda item 6

### Quality of patents, including opposition systems

#### – Sharing session on patentability issues relating to artificial intelligence

(SCP/31/3 and SCP/32/4)

(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)

Chair,

1. I am taking the floor on behalf of the European Union and its Member States.
2. The quality of patents, including opposition systems, is of particular importance to the EU and its Member States. We therefore reaffirm our strong support and commitment for advancing work on this topic.
3. We wish to thank the secretariat for the preparation of document SCP/32/4. The document provides an excellent overview of the valuable information exchanged during the sharing session on the use of Artificial Intelligence (AI) for examination of patent applications held at SCP/31. We thank all contributing Member States and offices for sharing information and experiences regarding their approaches to make use of AI in the context of patent examination. We believe that the exchange of ideas and experiences on this topic is of great value for all Member States.
4. We also highly appreciate the additional compilation of WIPO's activities in relation to technical assistance relating to AI tools. WIPO has done outstanding work in developing helpful AI-tools like WIPO translate or WIPO Speech-to-Text. We therefore greatly value WIPO's willingness to make those excellent tools available to patent offices of Member States.

5. As the document shows, the use of AI technology in patent offices is evolving rapidly. Therefore, we consider it essential to maintain the momentum of these discussions by continuing the fruitful exchange between the offices in our shared effort of harnessing the potential of AI for enhancing efficiency and patent quality. We consider document SCP/32/4 to be an excellent basis for the continuation of these discussions.
6. We also look forward to the sharing session on patentability issues relating to AI scheduled for this week. AI is a strategically important technology and thus a key priority for the EU. Its creative potential raises a number of issues in the field of intellectual property policy. The EU and its Member States consider it important to discuss patentability of AI-related inventions and the impact of AI on the established patent system within this Committee. Due to the challenges we jointly face when considering the patentability of AI-related inventions, the exchange of information and practical experiences is sure to be highly beneficial for all Member States.
7. Although patentability issues relating to AI are also being discussed in other fora like the WIPO Conversation on IP and AI, we consider it essential to keep discussions on this core topic on the agenda of the SCP, with further activities like sharing sessions and studies as outlined in the proposal by Spain and France contained in document SCP/30/9.
8. In addition to these important deliberations on AI, we also welcome the fact that the insightful study on approaches to the quality of the patent grant process contained in SCP/31/3 is still open for further discussion.
9. We also welcome the revised proposal SCP/31/8 REV by the delegations of Brazil and Spain to conduct a further study on sufficiency of disclosure, which is an element of substantive law and key to the proper functioning of the patent system. Following the example of the studies on inventive step, this is an area where the Committee could provide further insight into a requirement that deserves special attention in relation to AI-related inventions.
10. The EU and its Member States remain fully committed to achieving significant progress on the core issue of quality of patents. We are looking forward to an interesting and constructive discussion on this agenda item.

Thank you.

## Agenda item 7

### Patents and Health

– **Sharing session by Member States on challenges and opportunities in relation to types of patent licensing provisions in the healthcare technologies**

– **Initiatives on publicly accessible databases of patent status information concerning medicines and vaccines**

(SCP/31/5)

(SCP/16/7 and 7 Corr.; SCP/17/11; SCP/24/4; SCP/28/9 Rev. and 10 Rev.)

Chair,

1. The European Union and its Member States wish to express, once again, their understanding for challenges experienced when handling public health problems and access to safe, effective, qualitative and affordable medicines and vaccines for all. This remains a major challenge and a key Sustainable Development Goal that we must all support.
2. The COVID-19 pandemic shows how important medicines and vaccines – and their fair global distribution – are for the world. It will be a relief when vaccines are available which will save lives, protect the health of many and permit a gradual lifting of necessary restrictions.
3. Researchers and the pharmaceutical industry, supported by extensive public funding, have been putting extraordinary efforts into the development of future treatments and vaccines against COVID-19. It is crucial to ensure that there are incentives for these efforts and that they are adequately rewarded.
4. Broad, affordable and equitable access to safe and effective diagnostics, treatments and vaccines is crucial in the fight against COVID-19 and therefore such access is regarded as global public good.
5. We are committed to help ensure equitable access to affordable COVID-19 vaccines, once available, everywhere, for everyone who needs them.



6. To enable broad, affordable and equitable global distribution of treatments and vaccines, the EU has taken a leading role in the Global Coronavirus Response where so far nearly EUR 16 billion have been pledged and used also for universal access to tests, treatments and vaccines against COVID-19 for the global recovery. In collaboration with the WHO, the European Commission is actively supporting the Access to COVID-19 Tools Accelerator (ACT-A) and its vaccine pillar – the COVAX Facility.
7. A well-functioning system for intellectual property rights, including its wide range of exceptions and flexibilities, is part of the solution rather than an obstacle to achieve that objective. Therefore, a careful balance between incentives to innovation and access to medicines needs to be preserved, including in the discussions within the SCP. The extraordinary situation of the COVID-19 pandemic, with its very high amounts of public money provided, has to be taken into account when talking about this careful balance.
8. As set out in the recently published IP Action Plan of 25 November 2020<sup>1</sup>, the European Commission supports voluntary pooling and licensing of IP related to COVID-19 therapeutics and vaccines, in line with the resolution of the World Health Assembly. Such schemes should be based on a voluntary participation, ensuring broad and equitable access and allowing IP owners to recoup investments in a balanced way.
9. Furthermore, the Commission sees the need to ensure that effective systems for issuing compulsory licenses are in place, to be used as a means of last resort and a safety net, when all other efforts to make IP available have failed.
10. The TRIPS Agreement, together with the principles endorsed in the Doha Declaration, allows for flexibilities in relation to IPR protection, including in the case of a health emergency, such as the COVID-19 pandemic.

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<sup>1</sup> 13354/20.

11. WIPO is an important source of IP expertise and, therefore, the right forum as far as substantive issues of ‘patents and health’ are concerned. In that respect, we are looking forward to the sharing session on challenges and opportunities in relation to types of patent licensing provisions in the healthcare technologies, as well as to the initiatives on publicly accessible databases of patent status information. Both topics are of great importance to us.
12. The EU and its Member States once more thank the Secretariat for preparing the comprehensive ‘Review of existing research on patents and access to medical products and health technologies’, that is set out in document SCP/31/5. Compiling up-to-date facts is evidently a pre-requisite for proper evidence-based policymaking, and this impressive document contributes a lot to our collective understanding.

Thank you.

## Agenda item 8

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

(SCP/32/5)

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 document SCP/32/5. The report helps to raise awareness with regard to the existing different systems and the difficulties experienced by practitioners who are giving patent advice, in particular in cross-border situations.
2. The topic of confidentiality of communications between clients and their patents advisors remains of great importance to the EU and its Member States. Patent applicants or owners need to be able to receive legal advice without the risk of forced disclosure of the communication with their patent advisors. Without such a protected environment, the quality of patents as well as the enforcement of patents might be adversely affected.
3. The EU and its Member States believe that the convergence of the different legal frameworks in the field of confidentiality of communications between clients and patent advisors among WIPO Member States would benefit users of the patent system, irrespective of the level of development of individual WIPO Member States.
4. We would like to recall our preference for a legally non-binding approach, as we believe that this would enable the necessary flexibility in light of the differences in the legal systems that are applicable. The potential soft law instrument should aim at conferring the same protection to communications between a client and its foreign patent adviser as under national law.
5. We are looking forward to the further exchange and a fruitful discussion on that important topic.

Thank you.

## Agenda item 9

### Transfer of technology

– Sharing session by Member States on patent law provisions and practices that contributed to effective transfer of technology, including sufficiency of disclosure

(SCP/32/6)

Chair,

1. I am taking the floor on behalf of the European Union and its Member States.
2. We wish to thank the WIPO secretariat for the preparation of document SCP/32/6. We also thank Algeria, Argentina, Ecuador, France, Japan, Nigeria, the Philippines, Singapore and Zimbabwe for their valuable contributions to this document.
3. We consider the country-by-country account of relevant legal provisions, practical tools, programs and initiatives fostering transfer of technology to be immensely valuable. The document shows a broad variety of approaches taken by Member States to promote technology transfer, ranging from legislative measures to training programs and special support of SMEs.
4. The EU and its Member States continue to regard the transfer of technology as an issue of great importance.
5. However, the CDIP has produced an excellent overview of the work that WIPO is performing in this area. We therefore would like to reiterate that the SCP should avoid duplicating CDIP's efforts in this regard.
6. 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.