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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 meeting of the World Intellectual Property Organisation.

ANNEX

Standing Committee on the Law of Patents

31st Session

(WIPO, Geneva, 2-5 December 2019)

General/Opening Statement

Madam Chair,

1. I am speaking on behalf of the EU and its Member States. First, we wish to thank the Chair, the Vice-Chairs and the WIPO Secretariat for their work in preparing for this meeting.

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, namely the quality of patents, client-attorney privilege, exceptions and limitations, transfer of technology, and patents and health. The EU and its Member States are committed to continue the discussions based on the agreed work programme during this week.

3. The quality of patents including opposition systems is of particular importance to us. High quality patents can guarantee the proper balance between the interests of inventors, industry and other stakeholders on the one hand and of the society on the other hand. We will continue to advance and contribute to this work, in particular on the topic of Artificial Intelligence (AI).

4. Apart from focusing on the mere technical quality of patents, we continue to believe that the SCP should also serve as a venue for discussions about the existing differences of patent law systems and the evolution of substantive patent law in the future. In our opinion harmonisation of substantive patent law should be seen as the mid and long term aim of this Committee. We would like to reiterate our special interest in enhancing international cooperation and improving the technical knowledge on patentability requirements. Ensuring a more efficient, effective and higher quality patent system in all Member States is a way to contribute to economic prosperity.

5. In addition, the information exchange regarding patent provisions that support technology transfer is of high interest for us. Technology transfer may have a capacity to boost economic relationships in international business. Therefore, it is an important tool that helps fostering innovation and development. However, we want to emphasise that the SCP should avoid duplicating the efforts of the Committee on Development and Intellectual Property (CDIP) in this matter.

6. On patents and health, the EU and its Member States look forward to interesting and fruitful discussions, notably in the context of the update on initiatives on publicly accessible databases of patent status information concerning medicines and vaccines and the review by the Secretariat of existing research on patents and access to medical products and health technologies. Further work in this area however needs to reflect a balanced approach, taking into account the various relevant factors. We would also like to recall that we cannot go beyond the mandates of the SCP and of WIPO. Discussions about other factors that might have an impact on access to medicines should be left to other more appropriate fora.

7. The European Union and its Member States are committed to contribute to the work of the Committee in accordance with the agreed work plan of the future meetings. We reiterate the importance of retaining the delicate balance between the topics of the SCP.

8. Madam Chair, we are looking forward to continuing interesting discussions and constructive information sharing in the Committee and we hope to achieve tangible results in the future work.

Thank you.

Item 4: Report on the International Patent System:

Certain Aspects of National/Regional Patent Laws

Madam Chair,

1. The EU and its Member States wish to thank the WIPO Secretariat for preparing the document SCP/31/2.

2. The WIPO Secretariat has updated the SCP electronic forum website based on Member States' input.

3. In order to understand various aspects of regional patent legislation and national patent systems we need to keep up with changes in different patent systems and their functioning. Therefore, we warmly thank the Secretariat for their hard work in keeping the website up-to-date. We also encourage all Member States to continue to provide information on recent developments of national and regional IP laws, as we will all benefit from this valuable information sharing.

Thank you.

Item 5: 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 EU and its Member States.

2. We look forward to continuing discussions during this session on the exception regarding compulsory licensing, on which the Secretariat prepared a draft reference document SCP/30/3 for our previous SCP session in June. This document contains interesting information on the international legal framework and of the different experiences in this matter.

3. We reiterate our understanding of the challenges and constraints that certain countries might face in addressing their public health concerns. The EU and its Member States are fully aware of the existence of provisions on compulsory licenses allowing third parties and/or governments, under certain circumstances and conditions, to use a patented invention without the authorisation of the right holder; such provisions are found in the national legislation of a large number of countries.

4. Document SCP/30/3 clearly states those policy objectives that compulsory licensing provisions usually pursue. One of them is 'facilitating access to pharmaceutical products to address public health problems'. 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, the availability of qualified health workers, as well as adequate financing of the health sector.

5. The EU and its Member States are looking forward to hearing interventions of other delegations and having interesting and fruitful discussions.

Thank you.

Item 6: Quality of patents, including opposition systems

(SCP/31/3 and 4, SCP/30/4)

(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 and SCP/30/9)

Madam Chair,

1. I am speaking on behalf of the EU and its Member States. We reiterate our strong support and commitment for advancing work on the topic of quality of patents.

2. We thank the Secretariat for preparing a study on approaches to the quality of the patent grant process, contained in the document SCP/31/3. The study takes into account the findings of information sharing undertaken during SCP 29 and SCP 30. The sharing sessions were very informative and we would like to thank the numerous contributors. Quality of patents is one of the core elements of the patent system and the exchange of practices and information among experts on this issue is among the most important tasks of the SCP.

3. Artificial Intelligence, blockchain and big data are transforming our world. They present new challenges to the patent community but also create new possibilities. The use of artificial intelligence for prior art searches is of great interest to us and we consider that the SCP is the right forum to address these issues and to provide Member States with useful information that will contribute to enhancing patent quality. Therefore, based on the proposal by Spain and France, contained in document SCP/30/9, we look forward to the session scheduled for this week in order to share experiences and information on the use of artificial intelligence in the examination of patent applications. We also look forward to continuing with this topic in a sharing session on issues related to the patentability of AI inventions during the next session of the SCP.

4. The further study on inventive step (part III) provided by the Secretariat and contained in SCP/30/4 is open for further discussions by Member States. We are confident that the findings of this study together with the earlier studies are useful in carrying out our work in this area.

5. The concept of inventive step belongs to the heart and center of the patent system. We think that the inventive step requirement is a core element of substantive patentability requirement and as such ensures that exclusive rights are awarded only to inventions whose contributions to society deserve it.

6. A further deepening of the understanding on the patent offices' practices relating to the inventive step requirement can form the fundamental basis upon which international work sharing and collaboration can be built on. The EU and its Member States continue to encourage more widespread use of work sharing among patent offices. Again, a better common understanding with respect to e.g. opposition and administrative revocation mechanisms may lead to a more streamlined patent system in a way beneficial for all Member States.

7. In addition, we thank the Secretariat for preparing a report on its technical assistance activities relating to opposition systems and other administrative revocation mechanisms contained in the document SCP/31/4.

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

Thank you.

(In the continued discussion of this agenda item, the following further statement was made.)

Madam Chair,

1. Finland is taking the floor on behalf of the EU and its Member States. We would like to thank the delegation of Brazil for their proposal SCP/31/8 regarding a further study and sharing sessions on sufficiency of disclosure.

2. The proposal certainly has some positive elements, but as already pointed out by other delegations, the proposal was circulated last Thursday and therefore we would appreciate having more time to study it thoroughly. The EU and its Member States remain open to discussing the proposal in more detail in SCP 32.

Thank you.

Item 7: Patents and Health

(SCP/31/5 and SCP/31/6) (Related documents: SCP/16/7 and 7 Corr., SCP/17/11, SCP/24/4, SCP/28/9 Rev. and 10 Rev.)

Madam Chair,

1. The EU and its Member States wish to express, once more, their understanding for challenges experienced by a number of countries when handling public health problems and 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.

2. In this context and beyond, intellectual property rights such as patents should not be understood as barriers. To the contrary, they incentivise innovation and lead to new and improved treatments to the benefit of least developed to developed countries. Therefore, a careful balance between incentives to innovation and access to medicines needs to be preserved, including in the discussions within the SCP.

3. Many factors contribute to accessibility and affordability of medicines, including the availability of qualified health workers, an adequate financing of the sector and incentives to research and innovate.

4. With respect to patent rights, the EU already eases access to patented inventions via a number of exceptions and limitations, 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'.

5. We thank for the presentations on a number of initiatives on publicly accessible databases of patent status information concerning medicines and vaccines. Increasing transparency, capacity building and awareness raising are promising initiatives to the benefit of all, as they can contribute to reduce cost and friction.

6. The EU and its Member States thank the Secretariat for preparing this 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.

7. In that context, it may be useful to mention that the European Commission recently conducted two studies which may be of relevance in the work of this Committee when reviewing existing research on patents and access to medical products. These two studies are: firstly, a study on 'the legal aspects of supplementary protection certificates (SPCs) in Europe', conducted by the Max Planck Institute; and secondly, a study on 'the economic impact of supplementary protection certificates, pharmaceutical incentives and rewards in Europe', conducted by Copenhagen Economics. These studies are of course available on the Commission's website. They were important elements behind the development and adoption, earlier this year, of an EU Regulation introducing an 'SPC manufacturing waiver', which is a new exception allowing generic and biosimilar medicines to be manufactured, during the term of an SPC, for the purpose of either exporting them to non-EU countries, or storing them in the EU until the SPC expires.

8. These two Commission studies, alongside the WIPO Review as set out in document SCP/31/5 and the many other studies to which WIPO Review refers, will feed into current and upcoming policy reflections of the EU. All the above-mentioned studies will feed into future exchanges of views in this Committee.

9. The EU and its Member States wish to thank the WIPO Secretariat for preparing document SCP/31/6, reporting on the sharing session regarding the experiences on capacity building activities related to negotiating licensing agreements. The sharing session was highly valuable and informative and we would like to thank the numerous contributors. Training for licensing of intellectual property is of great importance for both licensors and licensees, big and small entities. It can contribute to foster the uptake of protected innovations, to the benefit of all.

Thank you.

Item 8: Confidentiality of communications between clients and their patent advisors

Madam Chair,

1. I am speaking on behalf of the European Union and its Member States.

2. The EU and its Member States place great importance to the topic of client-patent attorney privilege. We would like to reiterate our sincere interest in further steps to be taken regarding the recognition of foreign patent advisor´s privilege. The present situation with unclear or lacking regulation in this area causes legal uncertainty and unpredictability for patent applicants and their advisors.

3. We also recall our preference for a legally non-binding and flexible instrument because in our view this would provide advantages not only for the users of the system but also for all Member States. We are of the opinion that the same protection should be given to communications between a client and its foreign patent advisor as is applicable under national law between a client and its national patent attorney.

4. We look forward to the sharing session on this matter as it will increase the awareness and gives us a possibility to hear of the experiences of the practitioners and Member States regarding developments and experiences covering policy and practical issues with a particular attention to cross-border elements. We are looking forward to the further exchange of views about this important matter.

Thank you.

Item 9: Transfer of technology

(SCP/31/7)

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/31/7. We also thank Australia, Costa Rica, Ecuador, Germany and Slovakia for their valuable input to this document.

2. Technology transfer is an important tool that helps foster innovation and development. It can create win-win situations in international economic relations. Therefore, it remains a topic of great importance for the European Union.

3. Besides sufficiency of disclosure, there are many ways to support technology transfer. We therefore welcome the interesting examples provided by some delegations, notably on collaboration and links between researchers and industry, transparency on licensing conditions or special support to SMEs. The EU's Research & Innovation Framework Programmes are also good examples of initiatives promoting cross-border collaboration, including with non-EU countries.

4. However, the CDIP has produced an excellent overview of the work that WIPO is performing in this area. We therefore would like to remind that the SCP needs to avoid duplication of work and contradiction with CDIP's work in this area.

5. 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.