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

33rd Session of the WIPO Standing Committee on the Law of Patents (SCP)

(Geneva, 6-9 December 2021)

General statement

(Submitted in writing)

Chair,

1. Slovenia is honoured to deliver this statement on behalf of the European Union and its Member States. First, we would like 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 excellent work in preparing this meeting of the Standing Committee on the Law of Patents.
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 deciding on the future work of the Committee. The EU and its Member States are committed to engage constructively in our further discussions during this week.
3. We still believe that in order to take full advantage of the patent system, it is crucial to know how different patent law systems converge or diverge as well as to learn from best practices across the globe. The work of the SCP, as a multilateral forum, is therefore of great importance for the further development, harmonisation and improvement of the international patent system as requested by users worldwide.

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 one of the priority issues. Further work in this area is beneficial to all countries, since it strives to enhance the credibility, reliability and stability of the international IP system. In addition to 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. We look forward to the sharing session on the use of artificial intelligence for examination of patent applications. 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 fora such as SCP is highly beneficial for all Member States.
5. In addition, we found the information exchange regarding patent provisions that support technology transfer useful, since it may have a great capacity to boost economic relationships in international business and is a tool that helps fostering innovation and development. 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 this matter.
6. 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.
7. Chair, we are looking forward to continuing interesting discussions and constructive information sharing in the Committee and we hope to achieve results at the end of the session as well as in the future work.

Thank you.

Agenda item 5

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

(SCP/33/3)

Chair,

1. The European Union and its Member States wish to thank the WIPO secretariat for preparing document SCP/33/3. We want to express gratitude to the WIPO Secretariat for updating the SCP electronic forum website as well as Member States for their vital input.
2. We think it is important to keep the SCP website up to date to maintain its core 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. We also encourage all Member States to continue to provide information on recent developments of national and regional IP laws, as we firmly believe that we can all benefit from this valuable information sharing.

Thank you.

Agenda item 6

Exceptions and limitations to patent rights

(SCP/32/3)

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

Chair,

1. I am taking the floor on behalf of the European Union and its Member States.
2. We once again thank the WIPO Secretariat for the preparation of the draft reference document on the exception regarding prior use contained in SCP/32/3.
3. We believe that the document provides an excellent overview of the widespread exceptions regarding prior use. We 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 frameworks, conditions and scope of the exceptions are still proving to be especially instructive.
4. We reiterate our appreciation for the compilation of legal provisions on the exceptions regarding prior use in the annex to SCP/32/3. The detailed account of laws implementing said exceptions in numerous countries and regional patent organisations is very helpful in understanding the legal basis of the exception regarding prior use throughout the different jurisdictions. We also believe that highlighting challenges faced and results of implementation of the exception regarding prior use provides useful information for other Member States.
5. The EU and its Member States are looking forward to hearing further interventions of other delegations and having interesting and fruitful discussions on this agenda item.

Thank you.

Agenda item 7

Quality of patents, including opposition systems

– Sharing session on the use of artificial intelligence for examination of patent applications

(SCP/31/3 and SCP/33/4)

(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 Rev.)

Chair,

1. I am once again 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. 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.
4. We especially look forward to the sharing session on the use of artificial intelligence for examination of patent applications relating to AI. AI is a key priority for the EU as it is strategically important technology. Nonetheless, its creative potential raises a number of issues in the field of intellectual property policy. We hope that further exchange of information and practical experiences will help all Member States to harness the benefits of it; therefore we hope that the Secretariat will once more prepare the report from this sharing session.
5. Patentability issues relating to AI are also being discussed in other fora like the WIPO Conversation on IP and AI, now renamed 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, with further activities like sharing sessions and studies as outlined in the proposal by Spain and France contained in document SCP/30/9.

6. 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.
7. We once again welcome the revised proposal, contained in the document SCP/31/8 REV, by the delegations of Brazil and Spain to conduct a further study on sufficiency of disclosure, as an element of substantive law and key to the proper functioning of the patent system.
8. The EU and its Member States remain fully committed to reaching substantial 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.

Proposal by the Delegation of the United States of America for an Information Exchange on Expedited Patent Examination Mechanisms at Intellectual Property Offices

(SCP/33/4)

Chair,

1. Slovenia is taking the floor on behalf of the EU and its Member States. We would like to thank the delegation of the USA for their proposal, contained in the document SCP/33/4, for an information exchange on expedited patent examination mechanisms at intellectual property offices.
2. The proposal certainly seems to contain some interesting elements, but we would appreciate having more time to study it thoroughly and suggest to the delegation of USA to supplement their proposal by a more detailed work plan, for example proposing the sharing session and future report by the Secretariat. The EU and its Member States remain open to discussing the document in more detail in SCP 34.

Thank you.

Agenda item 8

Patents and Health

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

(SCP/31/5)

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

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 express their understanding for the challenges experienced when handling public health problems and ensuring access to safe, effective, qualitative and affordable medicines and vaccines for all. This remains a major challenge amid the on-going COVID-19 pandemic, and a key Sustainable Development Goal that we must all support.
2. Indeed, the COVID-19 pandemic has shown how important medicines and vaccines are for the world.
3. Researchers and the pharmaceutical industry, supported by extensive public funding, have been putting extraordinary efforts into the development of treatments and vaccines against COVID-19. Effective incentives supporting these efforts have been crucial.
4. Broad, affordable and equitable global access to safe and effective diagnostics, treatments and vaccines is equally crucial in the fight against COVID-19, and therefore such access may be regarded as a global public good objective.
5. We are committed to continuing to help ensure equitable access to affordable COVID-19 vaccines at global level.

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. ‘Team Europe’ has so far pledged around half a billion doses of effective COVID-19 vaccines for developing countries. In collaboration with the WHO, the EU and its Member States are actively supporting the ‘Access to COVID-19 Tools Accelerator’ (ACT-A) and its vaccine pillar – the ‘COVAX Facility’. By financing more than a quarter of this multilateral structure and as the biggest donor after the US, the EU and its Member States are living up to their undertakings.
7. A well-functioning system for intellectual property rights, including its exceptions and flexibilities, has turned out to be part of the solution. In 2021, we have witnessed hundreds of voluntary partnerships among developers and manufacturers of vaccines. In the EU alone, 60 factories have been involved at some point in 2021 in key manufacturing steps of the COVID-19 vaccines. Today, the EU has a monthly production capacity of over 300 million COVID-19 vaccine doses, and this is continuing to expand even further. In October, the EU exported over 80% of its production of COVID-19 vaccines. Therefore, a careful balance between incentives in favour both of innovation and of access to medicines needs to be preserved, including in the discussions within the SCP. The extraordinary situation of the COVID-19 pandemic, and the very large amounts of public money provided, has to be taken into account when addressing this careful balance.

Thank you.

Agenda item 9

Confidentiality of communications between clients and their patent advisors

Chair,

1. I am speaking on behalf of the European Union and its Member States.
2. The topic of confidentiality of communications between clients and their patents advisors remains of great importance to the EU and its Member States and we welcome the initiative to keep this item on the agenda. In the absence of protected environment where patent applicants or owners are able to receive legal advice without the risk of forced disclosure of the communication with their patent advisors, the quality of patents as well as the enforcement of patents might be adversely affected.
3. The EU and its Member States still believe that the convergence of the different legal frameworks in the aforementioned field among WIPO Member States, irrespective of their level of development, would benefit users of the patent system. On this issue, our preference is for an approach that would enable the necessary flexibility in light of the differences in the legal systems, which should aim at conferring the same protection to communications between a client and its foreign patent adviser as under national law.
4. We look forward to the continued discussion on this matter as it will increase awareness and give us a possibility to hear the experiences of practitioners and Member States regarding developments and experience covering policy and practical issues with a particular attention to cross-border elements. We are thus looking forward to the further exchange of views about this important matter and would be pleased to see a sharing session being organised during SCP/34.

Thank you.

Agenda item 10

Transfer of technology

(SCP/32/6)

Chair,

1. I am once more taking the floor on behalf of the European Union and its Member States.
2. We consider the country-by-country account of not only specific relevant legal provisions but also technology transfer law, practical tools, programmes and initiatives to be immensely valuable. We appreciate information on the broad variety of approaches taken by Member States to promote technology transfer, ranging from legislative measures to training programmes and special support of SMEs, which are of a particular interest of the EU and its Member States.
3. We attended with interest the sharing session on patent law provision and practices, that contributed to effective transfer of technology and we are looking forward to continuing the discussions on this topic during this session.
4. The EU and its Member States continue to regard the transfer of technology as an issue of great importance. Nonetheless, we wish once again to recall that the CDIP has produced an excellent overview of WIPO's work and we would caution against duplication of the Committee's efforts.
5. As previously stated, we continue to support the updating of the WIPO webpage on Technology Transfer with regard to information on national, regional and international technology exchange and technology licensing platforms.

Thank you.
