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

34th Session of the WIPO Standing Committee on the Law of Patents (SCP)

(Geneva, 26-30 September 2022)

General statement

Chair,

1. The Czech Republic 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 re-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 know the similarities and differences of patent law systems 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 worldwide. We continue to believe that, in addition to its contribution to the technical quality of patents, the SCP should serve as a venue for the evolution of the harmonised substantive patent law 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. In addition to important deliberations on AI, we also welcome the fact that a further study on the sufficiency of disclosure contained in SCP/34/5 has been prepared and will be presented for discussion later this week. We look forward to the sharing sessions on expedited patent examination mechanisms at IP offices as well as on the patentability of inventions using artificial intelligence. AI technology provides numerous opportunities and challenges to the administration of the patent system, which are of fundamental importance for all Member States. We are convinced that sharing experiences and information on these topics in a forum such as the SCP is highly beneficial for all 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 on recent developments and experiences, as well as to a sharing session focusing on cross-border aspects of this important topic.
6. In addition, we found the information exchange regarding the positive contributions of the patent system to enhancing innovation, technology transfer and the industrial development of countries useful. Technology transfer may have a great capacity to boost economic relationships in international business and is a tool that can help to foster 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.
7. The European Union and its Member States are committed to contributing to the work of the Committee in accordance with the agreed work plan for future meetings. We reiterate the importance of retaining the delicate balance between the topics of the SCP.
8. 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 future work.

Thank you.

Agenda item 3

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

(SCP/34/2)

Chair,

1. The European Union and its Member States would like to thank the WIPO Secretariat for preparing SCP/34/2 and for updating the SCP electronic forum website. We also want to express our gratitude to the 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 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, we would like to take this opportunity and inform the other delegations about the patent-related initiatives being prepared at the EU level. The President of the European Commission, Mrs Ursula von der Leyen, delivered her third State of the Union address on 14 September. In that context, upcoming initiatives on patents have been announced. The Commission is currently preparing several initiatives related to patent policy, that may result in legislative proposals being presented in 2023:
4. Firstly, a reform of the supplementary protection certificates (SPC) regime that would include the creation of 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 (which should tentatively be launched in 2023).

5. 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 compulsory licensing should remain a last-resort tool applicable only in the event of failure of voluntary agreements).
6. And thirdly, an initiative, comprising legislative and non-legislative proposals, that will aim at providing the tools and guidance necessary to smoothen the licensing of standard-essential patents, in particular to facilitate and encourage the roll-out of IoT.

Thank you.

Agenda item 4

Exceptions and limitations to patent rights

(SCP/34/3)

(Other relevant documents: 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 thank the WIPO Secretariat for the preparation of the draft reference document on the exception regarding exhaustion of patent rights contained in SCP/34/3.
3. We believe that the document provides an excellent overview of the widespread exception regarding exhaustion of patent rights in national laws and regional instruments. 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, specifically in some limitation of the patentee's rights after the patented goods have been legitimately released to the market. The detailed analysis of the legal frameworks, conditions and scope of the exceptions is proving to be especially instructive.
4. We reiterate our appreciation for the compilation of legal provisions on the exception regarding exhaustion of patent rights in the annex to SCP/34/3. 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 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 5

Quality of patents, including opposition systems

(SCP/34/4, SCP/34/5)

(Other relevant 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)

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, 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 especially look forward to the sharing session on the patentability of inventions using artificial intelligence and created by artificial intelligence. We hope that the further exchange of information and practical experiences will help all Member States to harness the benefits of AI; therefore we hope that the Secretariat will once more prepare a report on this sharing session.
4. In addition, the use of AI technology in patent offices is evolving rapidly. In this context, we would like to thank the WIPO Secretariat for preparing a report on the sharing session on the use of artificial intelligence for the examination of patent applications. In our view, it remains essential to retain the momentum of these discussions 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.

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, with further activities such as sharing sessions and studies as outlined in the proposal by Spain and France in SCP/30/9.
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 Member States and regional patent offices, and contained in SCP/34/5. The first part of this further study provides detailed information on the sufficient disclosure of inventions relating to biological materials, such as microorganisms, and of AI-related inventions. We look forward to the presentation of the second part of this study by the WIPO Secretariat at SCP 35.
7. In terms of expedited patent examination mechanisms at IP offices, the EU and its Member States look forward to having a sharing session on this issue, based on the US proposal contained in SCP/33/4.
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 6

Patents and Health

(SCP/34/6 and 6 ADD.)

(other relevant documents: 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 welcome the cooperation efforts made by the WIPO, WHO and WTO relating to COVID-19 pandemic and vaccines.
2. The COVID-19 pandemic has indeed shown the importance of good cooperation at all levels and among all relevant actors, including public authorities, research institutions, companies and other organisations. The European Union and its Member States are committed to make further efforts to ensure broad, affordable and equitable global access to safe and effective diagnostics, treatments and vaccines in the fight against COVID-19, including by fostering cooperation among key actors.
3. 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. ‘Team Europe’ has so far pledged around half a billion doses of 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’.

4. In May 2021, President von der Leyen announced at the Global Health Summit a flagship Team Europe initiative to support local manufacturing and access to vaccines, medicines and health technologies in Africa. This commitment has been reconfirmed at the AU-EU Summit that took place in February 2022. This initiative will be backed by EUR1 billion from the EU budget and European development finance institutions such as the European Investment Bank, and further funding from Member States. Team Europe aims to tackle, together with African partners, all the barriers to production, access and availability, and will cover investments in infrastructure and production capacity, the demand side and the enabling environment (such as training and skills, regulatory frameworks).
5. The initiative involves not only COVID-19, but also other infectious diseases such as tuberculosis or malaria, and encompasses vaccines, therapeutics or diagnostics.
6. These efforts are being complemented by private, self-financed initiatives. Production facilities of BioNtech (EU) are being established in Rwanda and the company is exploring other countries, and Moderna (US) announced a major investment of USD 500 million in Kenya. The European Commission organised a Business2Business event for private sector partners from the EEA and Africa in June 2022 that is being evaluated and followed up.
7. In the context of the COVID-19 pandemic, we have witnessed hundreds of private and voluntary partnerships among developers and manufacturers of vaccines. In 2021, in the EU alone around 60 factories have been involved at some point in key manufacturing steps of the COVID-19 vaccines. This illustrates the importance and the effectiveness of voluntary agreements to licence intellectual property rights and guarantee the swift manufacturing of key products in the context of a crisis. In that respect, the European Union and its Member States welcome and encourage initiatives aiming at supporting voluntary licensing activities.

8. A well-functioning system for intellectual property rights, including its exceptions and flexibilities, has turned out to be part of the solution. Compulsory licensing can be one of these solutions if well implemented at national level. The European Union will also draw the lessons from this crisis and has, to this effect, published this year a call for evidence and a public consultation on compulsory licensing in the EU, paving the way for an upcoming related initiative.
9. A careful balance between incentives in favour of both innovation and access to medicines needs to be preserved, including in the discussions within the SCP. The extraordinary situation of the COVID-19 pandemic has to be taken into account when addressing this careful balance.

Thank you.

Agenda item 7

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 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 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 still believe that the convergence of WIPO Member States' different legal frameworks in the abovementioned field, irrespective of their level of development, would benefit users of the patent system. On this issue, our preference is for 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 beneficial for all Member States. Therefore, we look forward to the sharing session on these important aspects. 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 8

Transfer of technology

Chair,

1. I am taking the floor on behalf of the European Union and its Member States.
2. Technology transfer is an important tool that helps foster innovation and development. It can create win-win situations in international economic relations. That is why it remains a topic of great importance for the European Union.
3. Besides the 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, which are of particular interest to the EU and its Member States. We also appreciate the information on the broad variety of approaches taken by Member States to promote technology transfer at national level.
4. We attended with interest the sharing session on patent law provision and practices that contribute to the effective transfer of technology at the last SCP. We are looking forward to continuing the discussions on this topic during this session and to sharing information, knowledge and experiences focussed on the positive contributions of the patent system to enhancing innovation, technology transfer and industrial development.
5. The EU and its Member States continue to attach great importance to this issue. However, we would like to recall that the CDIP has produced an excellent overview of the WIPO's work in this area. The SCP should, therefore, avoid duplicating CDIP's efforts in this regard.
6. 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 licensing platforms.

Thank you.

Agenda item 11

Closing Statement

Chair,

1. The Czech Republic, speaking on behalf of the European Union and its Member States, would like to thank you and your Vice Chairs 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. Special thanks go to the interpreters for literally enabling delegates to understand each other.
4. We note with satisfaction that a great amount of valuable information was shared during this week, such as during the sharing sessions organised under the topics on quality of patents, confidentiality of communications between clients and their patent advisors and transfer of technology as well as during insightful presentations under the agenda item Patents and health.
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 sharing sessions on the topic of artificial intelligence and confidentiality of communications between clients and their patent advisors.
7. The EU and its Member States reiterate their commitment in advancing the work of the SCP under all topics on the agenda.

Agenda item 11

EU statement supporting Ukraine

Chair,

I am delivering this statement on behalf of the European Union and its Member States, to reiterate our persistent support and solidarity with Ukraine, which is facing the continued and further escalating war of aggression of the Russian Federation.

We remain grateful for the adoption of the GA decision on *Assistance and Support for Ukraine's Innovation and Creativity Sector and Intellectual Property System*, and we would appreciate receiving regular updates on its implementation.

Thank you.
