

**Protection from Forcible Disclosure of Intellectual
Property (IP) Professional Advice (the protection)**

**Perspective and history of development of the protection
conducted by and on behalf of the International
Association for the Protection of Intellectual Property
(AIPPI) and AIPPI-Australia (AIPPI-A) from 2003 to 2019
(the privilege project or the project).**

Attachment 27

WIPO



SCP/13/1

ORIGINAL: English

DATE: March 23, 2009

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

STANDING COMMITTEE ON THE LAW OF PATENTS

Thirteenth Session
Geneva, March 23 to 27, 2009

AGENDA

adopted by the Standing Committee

1. Opening of the session
2. Adoption of the agenda
See the present document.
3. Accreditation of observers
See document SCP/13/6.
4. Adoption of the draft report of the twelfth session
See document SCP/12/5 Prov.
5. Report on the International Patent System
See documents SCP/12/3 Rev.2 and SCP/12/3 Rev.2 Add.
6. Preliminary studies on selected issues
See documents SCP/13/2, 3, 4 and 5.
7. Discussion on the July 2009 conference
8. Future work
9. Summary by the Chair
10. Closing of the session

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WIPO



SCP/13/8

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

GENEVA

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STANDING COMMITTEE ON THE LAW OF PATENTS

Thirteenth Session

Geneva, March 23 to 27, 2009

REPORT

adopted by the Standing Committee

INTRODUCTION

1. The Standing Committee on the Law of Patents ("the Committee" or "the SCP") held its thirteenth session in Geneva from March 23 to 27, 2009.

2. The following States members of WIPO and/or the Paris Union were represented at the meeting: Afghanistan, Algeria, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Burkina Faso, Burundi, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Czech Republic, Democratic People's Republic of Korea, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guatemala, Guinea, Haiti, Holy See, Hungary, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Jordan, Kenya, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lithuania, Luxembourg, Malaysia, Mauritius, Mexico, Morocco, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, United States of America, Uruguay, Viet Nam and Yemen (105).

3. Representatives of the African Regional Industrial Property Organization (ARIPO), the African Union (AU), the Eurasian Patent Office (EAPO), the European Commission (EC), the European Patent Office (EPO), the International Telecommunication Union (ITU), the Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC), South Centre (SC), the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) took part in the meeting in an observer capacity (10).

4. Representatives of the following non-governmental organizations took part in the meeting in an observer capacity: Asian Patent Attorneys Association (APAA), Center for International Environmental Law (CIEL), Centre for International Intellectual Property Studies (CEIPI), Chamber of Commerce of the United States of America (CCUSA), Chartered Institute of Patent Attorneys (CIPA), CropLife International, European Communities Trade Mark Association (ECTA), European Law Students' Association (ELSA International), Foundation for a Free Information Infrastructure (FFII e.v.), Free Software Foundation Europe (FSFE), Fridtjof Nansen Institute (FNI), German Association for Industrial Property and Copyright Law (GRUR), Institute of Professional Representatives before the European Patent Office (EPI), Intellectual Property Institute of Canada (IPIC), Inter-American Association of Industrial Property (ASIPI), International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP), International Association for the Protection of Industrial Property (AIPPI), International Centre for Trade and Sustainable Development (ICTSD), International Chamber of Commerce (ICC), International Federation of Industrial Property Attorneys (FICPI), International Federation of Pharmaceutical Manufacturers Association (IFPMA), IP Federation (formerly TMPDF), IQSensato, Japan Patent Attorneys Association (JPAA), Knowledge Ecology International, Inc. (KEI), Latin American Association of Pharmaceutical Industries (ALIFAR), Max Plank Institute for Intellectual Property, Competition and Tax Law (MPI), Royal Institute of International Affairs (Chatham House) and Third World Network (TWN) (29).

5. The list of participants is contained in Annex I to this report.

6. The following documents prepared by the International Bureau had been submitted to the SCP prior to the session: "Draft Agenda" (SCP/13/1 Prov.2), "Standards and Patents (SCP/13/2), "Exclusions from Patentable Subject Matter and Exceptions and Limitations to the Rights" (SCP/13/3), "The Client-Attorney Privilege" (SCP/13/4), "Dissemination of Patent Information" (SCP/13/5), "Accreditation of Observers" (SCP/13/6), "Report on the International Patent System" (SCP/12/3 Rev.2) and Addendum to the Report on the International Patent System" (SCP/12/3 Rev.2 Add.).

7. The Secretariat noted the interventions made and recorded them on tape. This report summarizes the discussions reflecting all the observations made.

GENERAL DISCUSSION

Agenda Item 1: Opening of the Session

8. The thirteenth session of the Standing Committee on the Law of Patents (SCP) was opened by the Chair, Mr. Maximiliano Santa Cruz (Chile). The Director General, Mr. Francis Gurry, welcomed the participants. Mr. Philippe Baechtold (WIPO) acted as Secretary.

where the experience and knowledge of WIPO and members of the SCP, could improve the current solutions and fill those gaps. The Representative stated that with respect to problems, the preliminary study offered anecdotes of problems, however not in the context how well the overall system worked. He recalled that there were some statistics given earlier about the few problems existed in relation to the far great number of standards that actually existed. In his opinion, there were two classes of problems well described in the paper. The first problem had to do with unfair competition, when IP was not disclosed. The second problem related to a legend on reasonable offers to license the IP. With respect to solutions to those kinds of problems, the Representative stressed the importance of maintaining incentives to innovate, particularly, in the areas that were about to be standardized. As regards the unfair competition problems, in the view of the Representative, the preliminary study well described how certain antitrust and competition policy actions, particularly, in the United States of America, had reduced and addressed those problems. Concerning the licensing commitment, the Representative noted that the study described how the system regulating itself with patent policies of standard setting organizations, and the role of contract litigation with respect to assuring that commitment. The Representative believed that there was no need to create new solutions to problems that primarily exist in theory, but not in actual practice. In conclusion, the Representative stressed the importance of WIPO joining and supporting other global fora, including ISO, ITU and WTO.

188. The Representative of the ICTSD pointed out that the UNCTAD/ICTSD project on IPRs and Sustainable Development had made available a policy brief on interface between patents and standards in international trade discussions. The policy brief contained a number of recommendations on how to address tensions between patents and standards. In particular, it contained discussions on the use of competition policy and the involvement of competition authorities. The Representative hoped that the policy brief would be a useful contribution to the debate.

The Client-Attorney Privilege

189. The Secretariat introduced document SCP/13/4.

190. The Delegation of El Salvador referred to the Germanic Romanic law, which its country applied, and the Anglo-Saxon law under which the client-attorney privilege conflicts could usually occur. The Delegation observed that, in its country, lawyers had the obligation to observe professional secrecy and violation of such obligation was subject to the criminal code. The Delegation was of the view that the Romanic law tradition could have been more reflected in the document. The Delegation explained that its national office offered a free assistance services for users, to which, in its view, the professional secrecy was not necessarily applicable, and requested that such cases be reflected in the document. The Delegation further suggested that the inclusion of best practices of national offices in Latin America would enrich the document with added-value.

191. The Delegation of China shared the concerns of many international attorney associations on the issue of attorney privilege in the area of patents: given that different countries in the area of attorney privilege had different systems and practices, patent attorneys' work could meet with difficulties. The Delegation was of the view that it was necessary to discuss the issue in the SCP in order for patent attorneys to provide better services to their clients. The Delegation observed that, since the attorney privilege issue was a general legal issue not limited to the area of patents, it was difficult for a country to establish a provision of the client-attorney privilege in the patent area only. On the contrary, an overall

consideration was needed. The Delegation noted that, for example, in China, the civil procedure law and the criminal law stipulated that anyone in possession of knowledge related to a case had the obligation to provide witness. A few years ago, its country revised the law of attorneys to the effect that attorneys should keep the information obtained during the professional practice secret if his or her client did not wish to disclose the information. The exceptions provided were any criminal facts or information that concerned the national security, public security or any information that threatened people's life and the safety on property. The Delegation therefore concluded that China had a professional secrecy obligation provision, but not a special attorney privilege system. Given the above, the Delegation considered that a focus should be given to different national legal systems, and further investigation, analysis and studies should be made. The Delegation took a cautious view toward the minimum standards, and considered that forming bilateral or multilateral arrangements was more practical. The Delegation further noted that, in the area of patents, various professionals, such as patent attorneys, patent agents or patent advisors, were involved in the services. Consequently, the Delegation observed that the questions as to whether the client-attorney privilege should cover those different professionals needed to be also considered.

192. The Delegation of Germany, speaking on behalf of Group B, stated that the preliminary study was important to both civil and common law countries of which the Group consisted. The Delegation agreed that the lack of uniform legal framework caused clients to risk losing confidentiality in advice they had obtained from IP advisors. On the other hand, in its view, the study showed how closely the aspect of confidentiality was linked with the scope of a party's duty to disclose information in legal proceedings. Further, the Delegation was of the view that the recognition of the client-attorney privilege in a foreign legal system had to be taken into account to safeguard comprehensive international protection of confidentiality. In the opinion of the Delegation, although an IP law might not be the only context in which such problems could arise, a global nature of trade and IPR made it the focal point. Group B therefore considered that the issue remained high on the agenda of the Committee. The Delegation supported further investigation of the issue, and believed that harmonization in that context would help creating a level playing field in international legal IP advice for the benefit of all stakeholders.

193. The Delegation of the Czech Republic, speaking on behalf of the European Community and its 27 Member States, stated that since the client-attorney relationship was not regulated in any international IP treaty, national laws and practices relating to the application of the privilege lacked uniformity. In the context of the European Union, the issue was left to its Member States to regulate it under the laws regulating this profession. Rule 153(1) of the Implementing Regulations under the revised EPC also provided for privileged communications between the professional representatives and their clients, effective from April 1, 2009. The European Community and its 27 Member States considered such privilege as a basis for the guarantee of free and confidential communications between clients and their representatives. The Delegation welcomed further investigation of all the options for addressing the issue, in particular, the feasibility of setting up minimum standards.

194. The Delegation of the Russian Federation stated that a Federal law of December 30, 2008, governing the activities of the patent attorneys, their registration, attestation and obligations and rights of those attorneys would enter into force on April 1, 2009. He explained that, according to that law, a patent attorney was authorized to implement his professional activity independently, but also based on the agreement between the patent attorney and its employer (legal entity). The employer of the patent attorney who had

concluded a commercial contract with a client, for instance, with an applicant or a patent holder, had to ensure the security of the documents received from a guarantor or contractor and to ensure that the information would not be disclosed. The Delegation further noted that the Federal law also established that an independent attorney had to ensure the security of the documents made and received in the course of performance of his professional activity. He was not authorized to disclose or to submit information without any agreement with the person whom he was representing. The violation of those provisions was serious. A party whose rights and the legal interest had been infringed was authorized to file a complaint with the Patent Agency of the Russian Federation, which could adopt one of the following decisions: warning the patent attorney, or the Agency could go to court to bring an action against the patent attorney with remedies such as stopping the activities of the attorney for a period of one year or an exclusion from the list of attorneys for a period of three years. If a patent attorney had caused damages to the person he was representing, the patent attorney was liable under the legislation of the Russian Federation. In other words, the employer of the patent attorney as well as the independent patent attorneys were under an obligation not to disclose or transfer to third parties the confidential information he had received in the course of his work in order to provide services based on commercial contract. The Delegation further explained that the Russian legislation provided a restricted privilege, since confidential information could be submitted to third parties by the decision of a court or if it was established by the Federal law. The Federal law on the trade secrets stated that the holder of information, which was a trade secret, had to submit that information when it was requested by the government authorities. In its turn, the government authorities who received the confidential information were obliged to submit that information upon Court's request, or request of the law enforcement bodies, according to the rules as provided by the legislation of the Russian Federation. In that case, it would be the government who guaranteed the confidentiality of such information. In conclusion, the Delegation stated that taking into account the differences existed in legislation of various countries on the subject, the Russian Federation supported further studies on exploring a minimum standard of privilege applicable to communications with patent attorneys.

195. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, stated that the members of its Group were of different levels of development and followed different judicial and legal practices regarding patent attorneys and patent attorney privileges. The Delegation stated that the following issues should be further analyzed in order to provide Member States sufficient information from different stakeholders' perspectives: (i) the impact of patent quality and costs; (ii) cost and benefit analysis for developing countries' judicial and administrative systems; (iii) impact on competition; and (iv) other impacts on development and public policy objectives.

196. The Delegation of the Republic of Serbia, speaking on behalf of the Regional Group of Central European and Baltic States, expressed its support to the establishment of a working group to study the client-attorney privilege or protection from foreseeable disclosure of IP professionals' advice.

197. The Delegation of Argentina considered that the prerogative of professional secrecy in client-lawyer relations was a question of private law, for which national jurisdictions were responsible. Accordingly, the Delegation confirmed that it would be advisable to maintain the provisions of Article 2.3 of the Paris Convention and Article 1.1 of the TRIPS Agreement.

198. The Delegation of Morocco stated that, in principle, the national and regional patent offices were bound by the professional secrecy as regard the procedures relating to the patent

system. It explained that, its Office was a public establishment whose staff had a status that was covered by professional secrecy. It prohibited the publication, disclosure or use of documents coming from the WIPO services. Consequently, everybody could be assured that the submitted information would not be disclosed.

199. The Delegation of the Republic of Korea observed that further discussions on the issue of the client-attorney privilege was beneficial for developing countries as well for developed countries, since in many developing countries, inventors were sometimes reluctant to file their patents in concerns of loosing the information and confidentiality in the process of filing patents. The Delegation considered that IP practitioners had to participate actively in discussing and developing any future harmonization on the issue of client-attorney privilege, since, in many countries, the client-attorney privilege was regulated by the association of those IP lawyers rather than the laws of the government. The Delegation further expressed its wish to share more information and experiences of various countries regarding the client-attorney privilege and to establish a working group that would including IP practitioners.

200. The Delegation of Brazil noted that there existed a variety of approaches regarding the concept of the privilege and the professional secrecy. The Delegation observed that the issue was new for the members of the Committee, was complex and involved a new area of concepts to be yet discussed and understood by the SCP. It believed that two important concepts were transparency in the relation of attorney and his client and accountability of IP advisors and other professionals of the area. In its view, the complexity of the subject derived mainly from differences between the civil law system and the common law system, and requested further reflection on the reality of civil law countries. The Delegation stated that, when considering the client-attorney privilege issue, the SCP should bare in mind the fact that the IP system lay on different legal tradition and, as stated in Article 1 of the TRIPS Agreement, Member States were free to implement IP provisions in a manner consistent with their own legal system and practice.

201. The Delegation of Australia associated itself with the positions stated by the Delegation of Germany on behalf of Group B. It appreciated the WIPO-AIPPI Conference on Client Privilege in Intellectual Property Advice, which was held in May 2008, and the availability of the materials relating to the Conference on the WIPO web site. The Delegation stated that while its government was considering legislative changes, international developments would be beneficial to address the issues and would benefit all WIPO Member States. The Delegation also expressed the need for wide analysis of national laws.

202. The Delegation of France associated itself with the statement made by the Delegation of the Czech Republic on behalf of the European Community and its 27 Member States, and explained that, as a civil law country, its procedure was based on the submission of proof and had no discovery procedure. Therefore, there was no client privilege regulations in France, but the professional secrecy existed in accordance with the Law of 1971. The Delegation, however, informed the Committee that its national legislation had a similar system concerning legal advisors as of 2004. The Delegation observed that an increased risk of disclosing information exchanged by IP professionals and their clients due to an order by a foreign court was considerable. Therefore, it suggested that different options described in the document be given in-depth consideration in order to determine the best solution for the complex problem.

203. The Delegation of Norway associated itself with the statement made by the Delegation of Germany on behalf of Group B. It stated that a consultation process was underway in its

country to introduce a client attorney privilege for the Norwegian and the European patent attorneys. The Delegation explained that, by following such strategy, it avoided a burdensome and costly national authorization scheme and took care of the necessary delimitation of the group of professionals who would be covered by the exemption. According to the proposal, provisions on confidentiality and legal proceedings for lawyers, priests, doctors and health care personnel in the Civil Procedure Act would be expanded to encompass the Norwegian and the European patent attorneys.

204. The Delegation of Ukraine supported the statement made by the Delegation of the Czech Republic on behalf of the European Community and its 27 Member States, and appreciated the information provided by the Delegation of the Russian Federation regarding the development of its national legislation. The Delegation stated that, in its country, the privilege applied only to attorneys who were also barristers at the same time. The Delegation requested that the issue remain on the agenda and supported the development of minimum standards.

205. The Delegation of Chile considered the very issue of the client-attorney privilege important, since it was meant to provide better professional advice in intellectual property. In its country, professional secrecy was recognized and had a great tradition in the law profession. The Delegation observed that, in Chile, many of the professionals who were involved in registration of and giving advice on intellectual property were lawyers, and as a result, the professional secrecy covered those intellectual property advice providers. The Delegation noted that since the issue was about the jurisdiction of the State, the authorities such as the Ministry of Justice should be listened to so as to maintain coherent systems. The Delegation considered that the issue involved international aspects even though each country had a different tradition, and therefore, required more analysis. It stressed the importance of holding wide discussions on the subject in the SCP, taking into account all the comments of the members.

206. The Delegation of the United States of America supported the statement made by the Delegation of Germany on behalf of Group B. The Delegation believed that further study of the issue was warranted, and that WIPO could play a useful role in enhancing understanding of the issue. At a minimum, the Delegation stated that WIPO could develop a comparative study, perhaps based on a survey methodology of what the actual situation was in various countries with regard to the client-attorney privilege. In its view, that would help WIPO Member States gaining greater understanding of the differences that existed and would serve a practical tool for practitioners even in the current environment.

207. The Delegation of the Islamic Republic of Iran associated itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. The Delegation noted that the function and authorization of attorneys had been regulated in different jurisdictions as a general principle that applied to various types of attorneys. Usually in civil law countries, the authorization given to the attorney by the client, the scope of authorization and the commitments of an attorney were specified in the power of attorney and, in case of breach of trust, specific punishments had been given. Or, through a contractual arrangement, any kind of contradiction of the commitments were protected under the civil and criminal laws. The Delegation sought clarification as to whether the privilege system had any particular differences with the above. In connection with paragraph 2 of the document, the Delegation was of the view that enforcement of IP rights and a relationship between a client and an attorney were two different concepts: the first referred to the enforcement of the IP rights against third parties and the latter referred to the commitments of a natural legal person to

each other on doing or prohibiting any action. The Delegation requested further clarification with respect to the meaning of the client-attorney privilege and the scope of disclosure of communication in that paragraph. The Delegation wondered if the disclosure meant the information contained in the application, such information had already been disclosed before the Office, and also could be submitted before the court. The Delegation observed that, for example, if the non-disclosure of the communication by the attorney contradicted with the public order, public health or security matters, as it was the case in compulsory licenses in a particular country, the attorney was under a pressure from the client because of the breach of the trust and from the government. It also raised questions as to the extent of the communication covered by the privilege and as to the degree of punishment against the whole or partial disclosure of communication. As regards paragraph 54 of the document, the Delegation wondered whether an IP advisor in a developing country or an LDC, who had limited IP activities, had consequently limited scope of privilege, and where the scope of the privilege was different in the country of an IP advisor and in the country of his client, which country's law should be applicable. In relation to the resolutions of non-governmental organizations in paragraphs 30 to 42, which referred to harmonization, the Delegation observed that a widespread similarity of national laws was usually the basis for harmonization of laws at the international level. The Delegation further noted that, as indicated in paragraph 18, qualifications of attorneys, sufficient knowledge of the language of the country concerned and continuing education were very important.

208. The Delegation of Egypt stated that there was some wisdom in granting Member States certain freedom under Article 2(3) of the Paris Convention so that each country, in accordance with its legal system and its economic and social conditions, might be able to determine the best possible way and the best possible framework for organizing the client-attorney relationship, taking into account the need for an appropriate balance between private rights and the public rights and freedom and the consideration concerning the public order. The Delegation considered that the preliminary study needed further clarification in order to show the different perspectives of relevant parties concerned, and should concentrate more on the aspect concerning the need to ensure justice and to fight against monopoly.

209. The Delegation of Pakistan sought clarification from the Secretariat on two points. First, as regards paragraph 15 concerning the expression "general opinion", the Delegation asked whose opinion that could be. Second, concerning paragraphs 63 and 64 on the issue of recognition of the professional qualifications of patent attorney services between countries, the Delegation observed that such issue came under Mode 4 of the WTO GATS Agreement, and asked which organization was the appropriate forum to raise the issue.

210. The Delegation of Denmark associated itself with the statements made by the Delegations of Germany on behalf of Group B and the Czech Republic on behalf of the European Community and its 27 Member States. The Delegation noted that, as its country was looking into the topic at the national level, it welcomed the investigation in the SCP as to how the challenges posed by the interaction of different legal systems could be solved. The Delegation wished to place the topic high on the agenda of the Committee, and supported further investigation of the options outlined in the preliminary study, including the establishment of minimum standards on the privilege applicable to communications with IP advisers.

211. The Delegation of Colombia observed that legislation was sometimes too general and could not clarify the ways things were being organized. The Delegation explained that, in its country, IP advisory services was provided by lawyers, who were covered by privilege

applicable to lawyers in accordance with the corresponding legislation. The Delegation wished to arrive at an IP system where everybody would be fully informed about the nature and validity of the rights. It explained that, in Andean countries, that would be possible provided that administrative *démarche* for getting the patent would not be challenged. On the other hand, patentability and examination of applications did not prevent the applicant to file the necessary documents.

212. The Delegation of Japan associated itself with the statement made by the Delegation of Germany on behalf of Group B. The Delegation believed that IP owners should be able to communicate frankly with IP advisers and that third parties needed to consult IP advisers freely on matters such as patent infringement. In its view, the client-attorney privilege had come into play to address those principles, and the lack of uniform rules and regulations among countries sometimes caused problems. The Delegation was of the opinion that Member States did not necessarily have comprehensive information on different practices at respective countries with regard to disclosure proceedings or the client-attorney privilege. It also pointed out that the scope of the IP advisers was not clear enough in the document, and therefore needed to be carefully defined. The Delegation therefore was of the view that a further study on the topic, for example by a questionnaire methodology, would be an appropriate direction.

213. The Delegation of Angola noted that the issue was new to the Committee and shared the concerns voiced by other delegations. As regards the scope of the privilege, the Delegation noted that its legal system recognized privilege for attorneys and lawyers in a purely civil procedure. Such privilege, however, was not applicable to the business circles. As regards the international recognition of the privilege, it should be initially dealt with on a bilateral and multilateral basis. With respect to a multilateral framework, the Delegation was of the view that a recognition of the qualifications of the attorneys fell within the framework of services, and it should be governed by the TRIPS Agreement. It believed that the recognition of privilege should be dealt with on a bilateral basis and Article 2(3) of the Paris Convention should apply.

214. The Delegation of Tunisia was of the view that the client-attorney privilege was not consistent with certain tradition of civil law. The Delegation sought clarification as regards the compliance of the client-attorney privilege with the principle of the disclosure in the field of patents, i.e., whether the client-attorney privilege would be enforced in some countries after filing an application for a patent.

215. The Delegation of Indonesia associated itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. The Delegation considered that particularly the rules that governed confidentiality of information required careful attention. It explained that, there was no specific law in Indonesia that regulated the relationship of client and IP advisor. Taking into account the complexity and different approaches in dealing with the client-attorney privilege, the Delegation was of the view that further studies were needed on the points mentioned by the Delegation of Sri Lanka as to provide more clarity on the issue of the client-attorney privilege.

216. The Delegation of India associated itself with the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. The Delegation was of the view that the preliminary study appeared to draw extensively on works undertaken by international associations of patent attorneys and reflected their concerns. The Delegation therefore sought a more comprehensive study taking into account views of all stakeholders, especially from the

perspective of public interest. In its view, the study did not devote sufficient attention to the client-attorney privilege as an exception to the general rule of disclosure. Where an exception was made available, it was provided on the basis that the relationship involved was of sufficient social importance to justify the sacrifice of availability of evidence. Hence, the Delegation observed that the need for such exception, where allowed, had to be related to the socio-economic conditions of the country concerned. Since such condition varied from country to country, in its view, the nature and extent of protection against disclosure would also vary. The Delegation was of the opinion that it was in reflection of such reality that Article 2(3) of the Paris Convention expressly left to national law the establishment of provisions on judicial procedures, allowing for diversity in judicial procedures between States. The Delegation was therefore of the view that every country should be allowed to set its level of privilege and extent of disclosure at a level that suited its socio-economic circumstances, ability and capacity to regulate and its particular level of development. The Delegation further stated that harmonization of client-attorney privileges implied harmonization of the law of exceptions to disclosure requirement. In its opinion, since disclosure was a substantive element of the patent system, harmonization of client-attorney privilege could have substantive implications and involve elements of substantive harmonization, and such harmonization would also keep more information out of the public domain adversely affecting the quality of patents, access to information and innovation, especially for developing countries. The Delegation therefore requested the Secretariat to undertake a more detailed and comprehensive study on the subject focusing on the above aspects.

217. The Delegation of Singapore supported the statement made by the Delegation of Sri Lanka on behalf of the Asian Group. Singapore's legislation generally provided that communication with respect to any matter relating to patents between a person and a registered patent agent was privileged from disclosure in legal proceedings in Singapore in the same way as communication between a person and his solicitor. The Delegation noted that the international dimension highlighted in the preliminary study provided valuable information for its consideration. The Delegation therefore supported further analysis of the existing privilege and secrecy provisions in the various jurisdictions in order to enable the Committee to enhance its understanding on the situations in other countries as well as concerns of the various stakeholders, including patent holders, possible users, members of the public and patent attorneys and patent agents.

218. The Delegation of Turkey believed that the Committee should continue its deliberations on the topic, and stated that civil society groups as well as relevant public authorities were very much interested in the issue in Turkey. In its view, even if the privilege could be considered as a subject within the national jurisdiction of each Member State, there was an important international dimension to the topic. In Turkey, attorneys were given privilege by the law, but patent agents, which did not have to be attorneys, were subject to general law and obligations, and that law in practice would give discretion to the courts. The Delegation considered that the deliberations in the Committee would also assist its authorities for their further consideration.

219. The Representative of the EPO stated that the revised EPC explicitly provided for confidentiality for communications between the professional representative and his client or any other person. The regulatory part of the EPC contained further new provisions which also governed the subject and gave examples of the types of information which were subject to professional secrecy, most notably communications or documents relating to the assessment of patentability, the preparation or prosecution of European patent applications or opinions

concerning the scope of protection. Further, the Representative supported the statements made by the Delegations of the Czech Republic on behalf of the European Community and its 27 Member States and Germany on behalf of Group B.

220. The Delegation of Chile clarified its previous statement by saying that, although it was important to further evaluate the issue, the Delegation did not consider it necessary to establish a working group.

221. The Representative of AIPPI noted that in 2003-2004, the courts in Canada and in Australia forced disclosure of non-lawyer patent advice, since neither Canada nor Australia recognized the non-lawyer patent attorneys in the United Kingdom for client privilege in their own countries. The Representative, however, observed that both Australia and the United Kingdom applied privilege to non-lawyer patent attorneys, but not between them: the United Kingdom did not recognize Australia's non-lawyer patent attorneys and *vice-versa*. The Representative noted that, at the AIPPI-WIPO Conference on privilege in May 2008, 20 experts had provided a very substantial comparative legal resource on privilege, and that the findings of the Conference included findings in relation to some of the matters on which the delegations had expressed their concerns. One of those issues was what was the theory that lay behind the privilege and what was the public interest in it. The Representative stated that the two major objectives of privilege and also the concept of professional secrecy were: first, the enforcement of the law by the giving of professional advice to the clients on the basis of full and frank disclosure; and second, the public interest in obtaining correct advice. In its view, they could not be achieved without full and frank disclosure. Therefore, the Representative observed that it was not surprising that the majority of countries provided such protection in a distinct public interest. He was, however, of the view that what was surprising was that such protection for full and frank disclosure was provided within their own borders, but not when the advice, which had been given within those borders, went beyond the borders. The Representative considered that, though not deliberate, it had a negative effect on what protection was intended for, that was, best advice and enforcement of the law. The Representative was supportive to the further study, and pointed out that it had no negative impact on anyone willing to make the study. The result could only be no change or a change which further supported the public interest in good governance. In his view, the result of such a change would be positive for obtaining advice of better quality as well. As contributions from the practitioners, the Representative stated that, first, the weight of the issue should not be judged only by the incident of litigation involved. He said that, in order to avoid communications on legal advice, the disclosure of which could be prejudicial, in practice, lawyers, patent attorneys and their clients had to apply strategies that involved additional costs. In his view, nobody could quantify the ways and costs which were involved in the practices, and they induced the opposite of what the national laws intended which was full and frank disclosure in order to obtain the public benefits. As to litigation, Canada has refused to recognize protection from disclosure and proceedings in Canada of a UK in-house patent attorney's advice and the same applies in Australia. He noted that those cases in aggregate involved both civil law and common law countries alike. Therefore, the Representative stated that it was not confined to common law countries, but had an effect in civil law countries as well. As a hypothetical example, the Representative noted that: a UK client consulted a UK patent agent about legal opinions received from the UK, Australia, Brazil, India, Canada and Nigeria, in which patents on the same subject were registered. He explained that all of the opinions would be subject to discovery in Australia and Canada, and if published in the proceedings, the opinions would not be secret any longer anywhere, including Brazil, India and Nigeria. In conclusion, the Representative suggested conducting a

more detailed study, which was well justified by and in support of the public interest in improving national governance.

222. The Representative of APAA was supportive for taking another step in-depth on the client privilege issue. While the home countries of the members of APAA included both developing and developed countries, common law countries, such as India, Malaysia, the Philippines and Australia, and civil law countries such as the Republic of Korea and Japan, the Representative was aware of the importance of the client privilege in the context of the global filing and jurisdictional litigation. In her view, where many prosecution and litigation arose in many jurisdictions, even if national law gave a sort of privilege to local IP advisers, it was not sufficient and might bring considerable chilling effect to hamper full and frank communication with clients. The Representative considered that, unless client privilege was admitted in every jurisdiction for both local IP advisers and foreign IP advisers, once a patent was litigated in one country with discovery proceedings, confidential information on infringement or validity between client and IP advisers in other countries was under the risk of forcible disclosure to an adverse party. The Representative explained that the courts of the United States of America had made inconsistent decisions on the issue of whether client privilege should be extended to communication between a foreign IP adviser and his clients, which had been made outside the United States of America, in relation to the foreign law. Thus, clients and IP advisers in the Asian region had confronted the problems of non-privilege due to the uncertainty of the United States case law. Speaking of a Korean example as one of civil law countries, the Representative said that confidential communication between Korean patent attorneys and lawyers and clients was found out of privilege, since the United States courts found no more than professional secrecy obligation in the Korea law. Concerning the Japanese experience as one of civil law countries, the Representative noted that the privilege of IP advices made by Japanese patent attorneys had been denied by US courts as seen in the case, *Honeywell v. Minolta* in 1986, where all communications made by Japanese patent attorneys had been forcibly disclosed. The Representative observed that, after the amendment to the Japanese Civil Code of Procedures in 1998, which gave rights to refuse to testify as an exception to document production order, the privilege of IP advice made by Japanese patent attorneys appeared to have become admissible before the United States courts as a matter of comity. In some cases, even under the amended Japanese law, he observed that no privilege was admissible before other courts, such as Australia and Canada in the light of *Eli Lilly v. Pfizer* case. The Representative was of the view that an international consensus to set minimum standards of the client privilege was necessary with a view to protect both local IP advisers and foreign IP advisers by way of mutual recognition in every jurisdiction without prejudice and without exception. She believed that it would be beneficial for applicants and patentees, third parties and the public. Referring to the APAA Resolution adopted in October 2008 in Singapore, the APAA urged that WIPO be a driving force to realize such international consensus on the client privilege. In her view, setting up a working group for further study on the client privilege issue could facilitate resolving step-by-step the current considerable differences in, for example, the scope of the privilege and the qualifications of IP advisers. The Representative believed that such universal client privilege would also raise the qualification of IP advisers for ensuring high-quality IP services.

223. The Representative of ASIPI noted that the client-attorney privilege had the nature of public order and that the issue was an actual issue, not a museum piece. The Representative supported the proposal made by AIPPI based on a study made by his organization, in which it had looked into, in particular, the protection of information in intellectual property advice by

non-lawyers and the protection of information coming from abroad. In his view, a further study regarding the existing situations in each jurisdiction was needed.

224. The Representative of ICC noted that his members, whether large or small businesses, operating locally or in export markets, required advice from professional advisors to understand how they could act within the limits of their own rights, and without infringing on the rights of others. For that reason, the Representative believed that the issue of client-attorney privilege was important, as it impacted on the quality of advice given to businesses in all countries by their local advisors or those in the markets where they had activities. Because of the increasingly international nature of commercial transactions involving IP rights, the Representative also believed that there was an important international dimension to the issue, which merited thorough consideration by WIPO. In his view, the issue was also important for the IP system in general, since privilege against disclosure of clients and advisor communications played a key role in the transparency of the IP system which was important for all stakeholders, and also helped to ensure respect for national laws. The Representative noted that the concept of confidentiality of professional advice was not a new concept in civil law countries nor in common law countries. In civil law countries, for example, it might already apply to different professions such as medical doctors, nurses, midwives, and attorneys-at-law. The Representative observed that IP professionals provided similar services to legal attorneys, but were not subject to the confidentiality obligation in several countries. It was the opinion of the Representative that assurance of confidentiality for communications between clients and their local professional advisors, including, for example, professionally qualified patent attorneys who might not be lawyers, encouraged full and frank exchange of information and advice between them. He believed that such full and frank exchanges promoted the rule of law by ensuring that clients had accurate and complete understanding of the IP rights that might apply to their activities. Therefore, the Representative was of the view that the client privilege promoted clear understanding of IP rights, and was at least as important to clients confronted by the IP rights of others as to IP right holders. Similarly, the Representative observed that full and frank exchange of information and advice between a client and a local IP professional helped better transparency of the scope and validity of IP rights by ensuring that the client understood what he could or could not do legally. He stated that the current differences in legal systems in regard to the protection of such exchanges of information and advice between clients and their local professional advisors meant that assurance of confidentiality was not available in many situations. This in turn meant that, in his view, local professional IP advisors were constrained to limit their advice by concerns that it might be disclosed publicly, for instance during litigation in their own country or elsewhere. The Representative noted that such situation could not be considered fully without also recognizing an increasing need for commerce in multiple jurisdictions across the world, with full understanding of all, possibly related, IP rights in all such jurisdictions. In his opinion, obstacles to such understanding were also obstacles to such commerce at a time when commerce was needed more than ever by all. In response to some Delegations which expressed concerns about the possibility of client-attorney privilege detracting from the role of the patent system in putting technical information in the public domain, the Representative clarified that the client-attorney privilege, or professional secrecy, applied only to advice given to a client by his or her professional advisor, and it did not cover publicly available information such as all the technical and other information relating to patents contained in patent applications. The client-attorney privilege, or professional secrecy, did not therefore in anyway detract from general patent disclosure requirements or the patent system's important role in putting technical information in the public domain. As an example of the client-attorney privilege, the Representative explained that, if an inventor or business sought advice on the validity of a

patent due to a risk of infringing that patent by putting his product on the market, such inventor or business should not be risked to be forced to hand over the advice he had obtained to the patent owner in later patent infringement proceedings. In conclusion, the Representative stated that the complexity of the issue called for further and deeper analysis to help clarify problems and identify opportunities and solutions, and urged the SCP to study the privilege issue further.

225. In response to the question raised by the Delegation of Pakistan, as regards paragraph 13, the Secretariat noted that it referred to the framework in which the question under consideration was brought up, namely, the WIPO-AIPPI Conference in which representatives from Member States, NGOs and other stakeholders had participated, and clarified that it was not meant to be generally reflecting the entire membership of the SCP. Concerning the question as to whether the issue should be dealt with in WIPO or WTO, the Secretariat stated that it was not an issue for the Secretariat to decide.

226. The Representative of FICPI stated that the increasing nature of global trade and IPRs made it very important to establish a level playing field so that individuals and companies, whether they were in developing countries or developed countries, were fully protected regardless of where the IP litigation occurred. In his view, clients who were in countries where there was no adequate recognition of privilege, or professional confidentiality, were at a serious and significant disadvantage. He continued that if the clients became involved in the litigation in foreign countries, which recognized and protected privileged information, and which allowed some discoveries, he would be protected from having to disclose any of its communications from its own IP advisers in that foreign country, whereas confidential communications between client and its IP advisers in its home country would have to be disclosed in the absence of recognition of the privilege. Therefore, in his view, it was important for all countries to adopt a minimum standard of privilege which would be recognized in all countries, regardless where the IP dispute or IP litigation occurred. He further continued that countries which did not adopt a minimum standard of privilege were subjecting their own citizens and companies to serious disadvantage when there was an IP dispute in other countries. Referring to the questions raised by some Delegations, the Representative clarified that the client-attorney privilege improved both patent quality and cost by ensuring more complete and frank disclosure, thereby providing more certainty and productivity. In addition, he stated that the client-attorney privilege protected the citizens and companies regardless of whether they were in developed or developing countries, and, the client-attorney privilege enhanced competition by securing better informed participation and increased certainty and productivity.

227. The Representative of GRUR stated that the protection of confidential information was guaranteed in Germany through various provisions contained, for instance, in the code on civil, criminal or administrative procedure, with an exception of the European patent attorneys or European trademark attorneys, which were not expressly mentioned in the various legal instruments. He stated, however, that the national perspective was not sufficient in view of the growing international impact of all professional advice, in particular, in the field of the protection of intellectual property. Referring to the international aspect of legal advice, the Representative noted that there seemed to be a concern not only for developed countries, but also for developing countries because all professional advisers having their residence in developing countries were constantly exposed to the uncertainties caused by the divergences in the protection of the professional secrecy. The Representative recalled that the protection of confidentiality was an element of due process of law guaranteed by the European Convention on Human Rights. Therefore, the Representative supported the initiative started

by FICPI, AIPPI, ICC and the other international NGOs to establish a reliable international legal framework for the protection of confidential information exchanged between a client and his professional IP adviser. The Representative noted that such international legal instrument would have to set out who was protected, what was protected, where and when the protection applied, how the protection operated and how it was going to be implemented. The Representative continued that the most reasonable approach was to set up a minimum standard of protection combined with the obligation to grant national treatment and most-favored-nation treatment. In his view, the protection should be accorded to the professional adviser, in addition to the client, because the obligation of the professional adviser to guarantee professional secrecy should also be respected. He stated that the secrecy could be lifted by the client. The Representative emphasized that the subject matter of protection was the confidential information as such, which was to be protected against all types of disclosure, be it through the production of the documents in discovery proceedings in the United States of America, or be it through the taking of depositions as witness where the professional adviser was exposed to questions about his advice he had given to the client and the confidential information he received. The Representative added that the protection should operate in all types of proceedings whether they were civil, criminal or administrative. The legal instrument should cover all types of proceedings be they for national or international courts, for instance the European Court of Justice, the Court of Appeal of the European Patent Office, a future European patents court on national or international administrative authorities, like the EPO and the European Commission before the Office in Alicante. The Representative stated that the European Commission should get involved in any negotiations about the initiative. It was convinced that the time was right to pursue the initiatives vigorously and urgently in WIPO.

228. The Representative of CIPA and EPI stated that the problems addressed in document SCP/13/4 were very well summarized in paragraph 261 of document SCP/12/3 Rev.2. According to his view, it was short, brief and understandable by all. The Representative stated that EPI and CIPA welcomed the fact that the SCP was looking very seriously to the problems caused by the non-uniform privilege provisions around the world. He noted that EPI and CIPA were willing to assist SCP and the Secretariat in any way possible in moving everyone to a solution to the benefit of all.

229. The Representative of IPIC stated that the issue of privilege for non-lawyer IP advisers had been a priority for IPIC for over 10 years. IPIC had commissioned numerous reports and legal opinions, as well as consulted all possible stakeholders on how it could be implemented in Canada for all IP advisers. The Representative stated that in Canada, there was a common-law solicitor-client privilege. However, in his opinion, Canadian courts had been slowly eroding the privilege for lawyer-IP advisers such that there was no longer certainty that IP legal advice relating to obtaining rights was protected by it. The Representative continued that, recently, Canadian courts had not recognized the statutory privilege of a UK patent attorney because there was no equivalent legislation in Canada. In his view, there were negative economic implications because of that development. It considered that IP owners needed certainty that they could rely on privilege to protect their IP legal advice, both, locally and around the world, in whatever country they did their business. They should be able to freely and fully communicate with their IP advisers on issues upon which they required such advice. The Representative further stated that IPIC urged WIPO to treat the issue as a matter of high priority and take the appropriate action to advance it as soon as possible.

230. The Representative of TWN noted that it was important in the discussion not to forget the public interest of the courts having sufficient information to make fair and accurate

decisions. The Representative stated that American courts had noted that the attorney-client privilege inhibited the search for truth and so should be confined within the narrowest possible limits. The Representative found it interesting that the Representatives of professional associations had not mentioned the problem of the abuse of the current level of privilege in many countries. As an example, the Representative mentioned the Nobel-Pharma case, where the inventors had given the Swedish patent agent a draft patent application which had included the citation to a book written by the inventor which had described the use of the invention more than two years earlier. The book was later held to anticipate the patent. However, the patent agent had deleted all references to the book from the patent application that had been filed in Sweden and the United States of America. The court had found that this evidence of actual deletion was defrauding the Patent Office. The Representative continued that if the communication with the agent had been privileged, the Patent Office and the court would never have found that out, and the patent would still be standing. The Representative noted that there were other cases where inventors had not mentioned their own public use of the invention more than one and half or two years before filing a patent application. And often only the inventor could know about the prior use. Therefore, the Representative considered that given the existing problems with the current level of privilege, even between lawyers and clients, there might be a need to consider the impact on patent quality and economies of extending the privilege even further. The Representative stated that the types of cases of abuse provided above even of the narrow lawyer-client privilege highlighted the importance of being very cautious of any further extension of it. In her view, in many jurisdictions, lawyers had the privilege because they had a strict primary duty to the court and that was enforced by a strong professional code of conduct. Abusing the privilege had serious consequences for lawyers. According to the opinion of the Representative, if that privilege was extended to other actors, such as patent attorneys and patent agents and in-house counsels who were not lawyers and did not have such a duty to the court, then that was more likely to result in abuse. Therefore, the Representative was of the view that there was a need for further examination of the situation on the ground in each country, as to whether the SMEs and domestic companies in developing countries, which were usually not intellectual property owners, would really be assisted by extending such privilege. She further noted that if the privilege was extended to patent attorneys and patent agents, that would create pressure on governments to extend the privilege to other professionals, like chartered accountants and auditors. In conclusion, the Representative stated that given the abuses seen even of lawyer-client privilege in jurisdiction that had strong professional codes of conduct and enforcement of these codes of conduct, extending the privilege without corresponding responsibility to non-lawyers and in-house counsels might need to be treated in caution.

231. The Representative of JPAA stated that the question of client privilege was an international issue. Therefore, the Representative strongly supported every activity to make an international agreement regarding client-attorney privilege between the Member States. In his view, first of all, it was necessary to study each national law on client-attorney privilege and the qualifications of the IP representatives or IP advisers. Therefore, the Representative stated that it supported all the efforts to establish a Working Group on the issue.

Agenda Item 7: Discussion on the July 2009 Conference

232. The Delegation of Sri Lanka, speaking on behalf of the Asian Group, stated that, while appreciating the actions taken by the Director General on the SCP recommendation to organize a conference on patents and public policy issues, the process of organizing such a conference should be more consultative. In this regard, the Asian Group was of the view that

WIPO



SCP/13/7

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WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

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STANDING COMMITTEE ON THE LAW OF PATENTS

Thirteenth Session
Geneva, March 23 to 27, 2009

SUMMARY BY THE CHAIR

Agenda Item 1: Opening of the Session

1. The thirteenth session of the Standing Committee on the Law of Patents (SCP) was opened by the Chair, Mr. Maximiliano Santa Cruz (Chile). The Director General, Mr. Francis Gurry, welcomed the participants. Mr. Philippe Baechtold (WIPO) acted as Secretary.

Agenda Item 2: Adoption of the revised Draft Agenda

2. The SCP adopted the revised draft agenda (document SCP/13/1 Prov.2) with the addition of an agenda item regarding the July 2009 conference, which was included in the final version (document SCP/13/1).

Agenda Item 3: Accreditation of Observers

3. The SCP approved the accreditation of the Royal Institute of International Affairs (Chatham House) as *ad hoc* observer (document SCP/13/6).

Agenda Item 4: Adoption of the Draft Report of the Twelfth Session

4. The Committee adopted the draft report of its twelfth session (document SCP/12/5 Prov.) as proposed, with an amendment in the Annex.

Agenda Item 5: Report on the International Patent System

5. The discussions were based on documents SCP/12/3 Rev.2 and SCP/12/3 Rev.2 Add.
6. The SCP agreed that document SCP/12/3 Rev.2 would remain open for further discussion at the next session of the SCP. If further comments are received from Member States, Annexes II and III of that document will be updated.

Agenda Item 6: Preliminary Studies on Selected Issues

7. Discussions were based on documents SCP/13/2, 3, 4 and 5. Many delegations stated that these documents constituted a good basis for discussions, and requested further elaborations and clarifications on various issues contained in the documents.

Agenda Item 7: Discussion on the July 2009 Conference

8. The Committee supported the holding of a Conference in July 2009 as suggested at the 12th session of the SCP. The Chair of the SCP and the Secretariat will conduct jointly open-ended consultations with all Member States on the program of the Conference, which will include the issues of health, the environment, climate change and food security.

Agenda Item 8: Future Work

9. Following a proposal by the Chair, the Committee
 - (a) reaffirmed that the non-exhaustive list of issues identified at the twelfth session of the SCP held in June 2008 would remain open for further elaboration and discussion at its next session, and decided to include two further issues in the list, namely “patents and the environment, with a particular attention to climate change and alternative sources of energy”, as well as “patent quality management systems”¹;
 - (b) agreed that documents SCP/13/2, 3, 4 and 5 would remain open for further discussion and comments at the next session of the SCP;
 - (c) decided that five studies will be prepared as follows, taking into account interventions of Members:

¹ See attached revised list.

(i) the Secretariat will commission external experts a study on exclusions, exceptions and limitations focused on, but not limited to, issues suggested by Members, such as public health, education, research and experimentation and patentability of life forms, including from a public policy, socio-economic developmental perspective, bearing in mind the level of economic development;

(ii) the Secretariat will prepare a concept paper on technical solutions to improve greater access to, and dissemination of, patent information;

(iii) the Secretariat will expand the preliminary study on the client-attorney privilege (document SCP/13/4), to reflect the current state of play in this area, taking into account perspective of various stakeholders and using external experts, if necessary;

(iv) the Secretariat will establish preliminary studies on the two following additional topics contained in the non-exhaustive list of issues agreed at the 12th session of the SCP: "Transfer of Technology" and "Opposition Systems".

(d) The Secretariat will hold presentations of the studies at the beginning of the next meeting.

(e) Several delegations expressed the importance of engagement in the work of the Committee, and in so doing underlined the need for the studies prepared to be available in all official UN languages. The Committee requested the Secretariat to produce the cost estimates of translating the studies.

10. The International Bureau informed the SCP that its fourteenth session was tentatively scheduled to be held from November 9 to 13, 2009, in Geneva.

11. The SCP noted that the present document was a summary established under the responsibility of the Chair and that the official record would be contained in the report of the session. The report would reflect all the interventions made during the meeting, and would be adopted in accordance with the procedure agreed by the SCP at its fourth session (see document SCP/4/6, paragraph 11), which provided for the members of the SCP to comment on the draft report made available on the SCP Electronic Forum. The Committee would then be invited to adopt the draft report, including the comments received, at its following session.

12. The SCP noted the contents of this summary by the Chair.

[Annex follows]

ANNEX

LIST OF ISSUES

(in the order of their appearance in document SCP/12/3)

Economic impact of the patent system

Transfer of technology

Competition policy and anti-competitive practices

Dissemination of patent information (including the registration of licenses)

Standards and patents

Alternative models for innovation

Harmonization of basic notions of substantive patentability requirements (e.g. prior art, novelty, inventive step, industrial applicability, disclosure)

Disclosure of inventions

Database on search and examination reports

Opposition system

Exceptions from patentable subject matter

Limitations to the rights

Research exemption

Compulsory licenses

Patent quality management systems

Client-attorney privilege

Patents and health (including exhaustion, the Doha Declaration and other WTO instruments, patent landscaping)

Relationship between the patent system and the CBD (Genetic resources/Traditional knowledge/disclosure of origin)

Relation of patents with other public policy issues

Patents and the environment, with particular attention to climate change and alternative sources of energy

[End of Annex and of document]

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[End of Annex and of document]