Meeting of the Executive Committee in Lucerne

Administrative Session II

Q170: Substantive Patent Law Treaty (SPLT)

Monday, October 27, 2003 (14.00 - 15.30)

The Session was chaired by Mr. Jochen BüHLING (Germany), Deputy Reporter General, who invited the Chairman of Committee Q170, Mr. Alain GALLOCHAT (France), to submit a Report on the draft Resolution suggested by this Committee.

Mr. Alain GALLOCHAT introduced the draft Resolution which was submitted to the Executive Committee. He recalled the activities of the Committee Q170 which, twice, took part in the meetings of WIPO relating to the negotiation of the SPLT and presented the development of the negotiation of this treaty. He noted that this project of WIPO is today at a dead end, so much so that the negotiation meeting which was to be held in November 2003 was cancelled. However, WIPO maintained a meeting which must be held in May 2004 and invited the various non-governmental organizations to contribute to the success of this negotiation.

Mr. GALLOCHAT then explained the reasons for this blockage: according to the Committee, too many subjects were discussed simultaneously within the framework of the development of the SPLT and this diversity of subjects singularly complicated the negotiation. Moreover, some of the discussed subjects related to the fate of patents after their grant whereas that was not to be subject of the SPLT which was intended to harmonize and standardize the rules for the grant of patents. He also noted that the participating countries did not truly show a will to conclude an international treaty by refusing to accept the proposals of WIPO because, for many countries, these proposals seemed to them contrary to their current legislation. In the same way, the method of negotiation according to which "nothing is finished, rather it remains at least a subject to be negotiated" did not allow the development of the treaty to be usefully advanced.

In this context, Committee Q170 proposed to submit to the Executive Committee of AIPPI a Resolution in which it recommends to WIPO to concentrate the negotiations of the SPLT on some essential subjects for which the discussion already showed there exists a possibility of a consensus and to continue the discussion of other subjects only after completion of work on this first part of the SPLT. This position is also justified by the fact that other treaties are currently under discussion, such as PLT. Moreover, WIPO is also working on the reform of the PCT. He then presented then details of the draft Resolution and its goal: the Committee recommends that AIPPI decides in favour of a treaty whose object would be perhaps more reduced but which could be adopted quickly. This treaty could relate to certain questions for which consensus could be found easily.

Mr. Jochen BüHLING pointed out that AIPPI will organize, with the assistance of WIPO, a Seminar devoted to the draft of the SPLT in January 2004 in Geneva and that it is in this context that the Resolution suggested by the Committee Q170 is particularly important. He opened the discussion on the draft Resolution.

Mr. Edward LYNDON-STANFORD (United Kingdom) intervened to dispute that there was an opportunity to centralize search on a world level or to recognize the prior art search work carried out in other patent offices. He observed that in fact multiple searches sometimes make it possible to
find good prior art and that with only one search there is too much of a risk that important prior art is missed.

Mr. GALLOCHAT answered that he is completely in accord with this observation which reflects the interest of the public but he noted that too often one sees the duplication of search work without the additional search making it possible to discover new prior art. However, such a duplication, which in addition is extremely expensive, adds nothing to the patent system. It is for this reason that the Working Committee expresses the wish to reduce this phenomenon considerably.

Mr. BÜHLING noted that, even if the comment of Mr. LYNDON-STANFORD is completely justified, it does not have a direct relation with the draft Resolution because, as mentioned in item 2 of the draft Resolution, the objective is to avoid repetition of the same search work.

*The Assembly was invited to vote on paragraphs 1 and 2 of the draft Resolution which were adopted with a very large majority.*

Mr. GALLOCHAT again took the floor to present the recommendation of AIPPI concerning the organisation of the work of WIPO. He stressed that the process of harmonisation is in truth a continuous exercise, often obtained by advances which can appear minor but which, when added together, make it possible to obtain a considerable result.

Mr. István GÖDÖLLE (Hungary) asked himself whether he should take the opportunity to recommend this continuous harmonization because that reminds him too much of the programme of "permanent revolution". He thus proposed to remove item 3 from the draft Resolution.

*Item 3 was subjected to a vote and it was adopted with a very large majority.*

Mr. BÜHLING intervened to organize the discussion on items 4 and 5 of the draft Resolution of which each one comprises a certain number of references to the articles of the draft SPLT, some of which AIPPI would like to integrate into a treaty which could be adopted quickly and others of which would deserve a thorough discussion and could form part of second SPLT. He thus proposed to discuss items 4 and 5 of the draft Resolution together.

Mr. Michel DE BEAUMONT (France) intervened to ask himself whether he should take the opportunity to comment on the division suggested by the Committee. He observed that the majority of the points which form the subject of the first group of provisions which, according to Committee Q170, could quickly be adopted correspond exactly to the PLT. He considered that under these conditions it is not convenient thus to divide work.

Mr. François CURCHOD (Switzerland) expressed his approval of the draft suggested by Committee Q170 but he questioned whether the division of the provisions suggested by the draft Resolution was well founded. In particular he wished that Article 4 of the draft of the SPLT, Articles 7 and 12 be returned to a later negotiation like Article 15. Thus, the initial discussion would be, according to him, much more effective and would avoid certain traps which could exist if the division of subjects proposed by the draft Resolution were to be maintained by the Executive Committee of AIPPI.

Mr. Heinz BARDEHLE (Germany), intervening on his personal behalf, pointed to the Seminar which was organized by CIPA, Chartered Institute of Patent Attorneys, and AIPLA in London and he suggested that AIPPI coordinates its activities with other Associations with regard to the development of the SPLT. For the rest, he approved the suggestions of Mr. CURCHOD.

Mr. Michael MELLER (USA), intervening on his personal behalf, wished that the question of the grace period (Article 9) be discussed within the first basket of the negotiations of the SPLT. He considered on the other hand that the problem of "first to file" must be made the subject of later discussions.
Mr. GALLOCHAT commented on these interventions while suggesting making the question of the grace period appear in the first part.

Mr. Ivan HJERTMAN (Sweden) intervened to consider that the question of novelty, which must be discussed in the first basket, corresponds to the problem of the grace period. It is thus completely normal that the grace period is discussed quickly. But he wished that the subject of the right to the patent ("first to file") be also discussed at the time of the first phase of the negotiation.

Mr. Jochen BÜHLING proposed a vote on the amendment consisting of putting in paragraph 4 of the draft Resolution a reference to Article 9 of the SPLT relating to the grace period.

> This amendment was adopted with a very large majority.

> On the other hand, the other amendments consisting of making the other provisions of paragraph 5 appear in the first basket were rejected.

The Assembly then voted on the two paragraphs 4 and 5.

> These paragraphs were adopted with a very large majority.

Mr. GALLOCHAT intervened to comment on paragraph 6 of the draft Resolution. The Committee wished that the discussions relating in particular to the problem of the protection of genetic resources or traditional knowledge be dissociated from SPLT. It was for this reason that the Committee proposed the continuation of the consideration by WIPO of these questions but within another legal instrument.

> Paragraph 6 was subjected to a vote and it was adopted.

Mr. BÜHLING then submitted to the Executive Committee the Resolution as a whole.

> It was adopted with a very large majority.

This adoption was followed by applause.

Mr. GALLOCHAT then proposed to the Assembly the second Resolution relating to the problem of the costs of patents which was proposed by Committee Q170.

Mr. Sergio ELLMANN (Argentina) intervened to support the draft Resolution on his personal behalf. However, he questioned the formulation of the title of the draft Resolution, which appeared too general to him.

Mr. Richard ABNETT (United Kingdom) questioned the form of the Resolution. He considered that Patent Offices should be free to use the income from annual fees in particular to promote intellectual property.

Mr. David HARRISON (United Kingdom) supported the intervention of Mr. ABNETT and stressed that in particular the European Patent Office devotes quite considerable sums, and which arise from the annual maintenance fees, to promote industrial property or to provide education in particular in the countries of central Europe.

Mr. Alain GALLOCHAT intervened to indicate that he was in agreement with the editorial suggestions expressed by the speakers and that he would take them into account.

Under these conditions, Mr. BÜHLING submitted the draft Resolution to the vote.

> This Resolution was adopted in principle with a very large majority.
Mr. Vincenzo PEDRAZZINI (Switzerland), Secretary-General of AIPPI, closed the Session by inviting the participants to a coffee break and he announced that the Session would continue in particular to decide on the choice of the country in which the next Meeting of the Executive Committee of AIPPI, which will be held in 2007, will be received.

Minutes: Dariusz SZLEPER (France)
Translation: Chris MERCER (United Kingdom)