REPORT ON THE TWELFTH SESSION OF THE STANDING COMMITTEE
ON THE LAW OF PATENTS (WIPO MEETING)

GENEVA, JUNE 23 – 27, 2008

by Alain GALLOCHAT

The 12th session of the SCP was opened by Francis GURRY, Deputy Director General of WIPO, Philippe BAECHTOLD (WIPO) acting as Secretary of that meeting.

The SCP elected its Chair, namely Mr. Maximiliano Santa Cruz (Chile) and two Vice-Chairs, Mrs Bucura IONESCU (Romania) and Mr. Yin XINTIAN (China).

It is to be pointed out that the SCP did not hold any formal meeting since June 2005, three years ago, when the debate terminated in a complete deadlock. At least this 12th session gave the opportunity to the delegations to re-open the debate and to exchange among them; in this respect, said 12th session was successful.

After the General Assemblies of WIPO in September 2007, it was asked to the SCP to work out a working programme; this latter was precisely part of the Agenda prepared by the International Bureau, said Agenda not being focussed on the SPLT as such, but open to any issue deemed to be important to the SCP members. The proposed Agenda (SCP/12/1 Prov.) was adopted and the Institute for Trade Standards and Sustainable Development – a non-governmental organization – was duly accredited as an observer. Furthermore, the report of the 11th session of the SCP (SCP 11/6 Prov.) was formally approved without any change.

Then the Chair gave the floor to the SCP members who had the possibility of presenting their more relevant issues, referring to the (voluminous) report which had been prepared by the International Bureau (SCP 12/3). This report entitled “Report on the international patent system” and containing a lot of statistics and figures is a comprehensive document on the various aspects and approaches of the patent system:

- Economic rationale for patents and needs in the international patent system
- Technology disclosure through the patent system
- Technology diffusion and the patent system
- The current multilateral framework
- Patent systems and existing forms of cooperation
- Support structures for the patent system
- Perceived threats to the effectiveness of patents as incentives to innovation
- The innovation incentive in the context of public policy objectives
It was clearly out of the question to study that report paragraph by paragraph. The delegations were invited to debate freely about said report and all of them recognized that it was a good basis for the future SCP work. The developing countries insisted on the fact that their specific needs and situations should be taken into account and they repeated several times that no priority should be given among the issues to be dealt with.

On behalf of AIPPI, I had the opportunity to take the floor twice, the first time for informing the SCP members that among the issues, one of them, namely the impact of public health on the patent system, should be discussed at the Boston Congress leading to a resolution, and the second time pointing out that the issue of the client-attorney privilege – of major importance for both the developing and the industrialized countries – had been already debated at the AIPPI who co-organized with WIPO a conference on that issue in May 2008. I suggested consequently to the SCP to include that issue among those to be worked on as soon as possible by the SCP.

After a long debate, which did not show any aggressiveness among the delegations, the Chair announced that he intended to prepare a list of issues that could be considered for the future working programme; such a list of 18 issues (including the client-attorney privilege and some aspects of the harmonization of the patent system) is annexed to the present report.

Such a list was accepted by the delegations who commented a long time about it; finally, the Chair announced that his intent was to prepare a short list of issues. Four issues were then proposed by the Chair:

- Dissemination of patent information (*inter alia* the issue of a database on search and examination reports).
- Exceptions from patentable subject matter and limitations to the rights, *inter alia* research exemption and compulsory licenses.
- Patents and standards.
- Client-attorney privilege.

The delegations accepted that short list, provided:

- There is no priority for those 4 issues.
- The remaining issues of the list of 18 issues are still on the agenda.
- Other issues can be added at any time, the list of 18 issues being non exhaustive.

Furthermore, a Conference should be organized in order to have a better idea on the implications of patents on certain areas of public policy, such as health, environment, climate change or food security. According to Francis GURRY, the objective of said Conference is twofold:

- to show that WIPO is open, and wishes to develop a dialogue with other institutions (WHO, WTO, OECD, FAO for instance), WIPO having a competence on Intellectual Property, the other institutions having their own competences on other issues;
- to show that WIPO clearly understands the importance of such issues and implications.

The delegations and the observers have till the end of October 2008 to present their observations on the different issues debated during that 12th SCP meeting. Interestingly, several delegations, including Brazil, stressed the importance of the observers, and generally speaking of all the stakeholders, in the future debates.

The 13th SCP meeting is scheduled to be held in Geneva in the first quarter of 2009; it is to be kept in mind that such forthcoming SCP meeting will not be focussed on the SPLT: the SPLT as such is likely to be postponed for an unspecified time, although some of its issues will be worked on by the SCP in the framework of its “working programme”.

In the meantime, election of the future Director General of WIPO will take place at the General Assemblies of WIPO to be held in Geneva on September 22-30, 2008; it is relevant to mention that the candidate who has been designated by the appropriate body of WIPO according to the process of the WIPO elections and who needs to be formally elected by the General Assemblies is Francis GURRY.

The documents referred to in that report, including the summary by the Chair (SCP/12/4 Rev.) are available on the WIPO website (http://www.wipo.int/scp).
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 appliability, 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
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