

DAG – Draft General Statement before the 15th session of the Standing Committee on Patents – October, 11th, 2010.

Mr. Chairman,

On behalf of the Development Agenda Group let me assure you of our full support for a successful session of the Standing Committee of Patents - SCP. We know from experience that, under your chairmanship, the Committee will be in safe hands.

The Development Agenda Group, of which Brazil is now the coordinator, was created in April this year. This is therefore the first time our members, including developing countries from Africa, Asia and Latin America, participate as a Group before the SCP. As explained in the Development Agenda Group Guiding Principles, circulated as an official document of the Committee on Development and Intellectual Property, our platform is centered on the need for incorporating the development dimension in all areas of WIPO's work.

The agenda of this session of the SCP is a busy one, reflecting developments that are largely positive in the overall deliberations of the SCP over the past few years. The Development Agenda Group welcomes the fact that we have not only numerous preliminary studies to examine and to take action on, but also proposals for a work program tabled by member countries.

Since March 2009, indeed, the SCP has provided an invaluable forum for discussions on a number of patent-law related issues of interest to all members of WIPO, including some of clear importance to developing countries such as (i) exclusions, exceptions and limitations, (ii) the interface between transfer of technology and the patent system, (iii) patents and standards, and (iv) anti-competitive practices.

The debate at the SCP has allowed for an extremely useful exchange of views on different aspects of patent law that have a direct bearing on how developing countries should calibrate their national models of patent law, according to their specific social and economic realities and leaving behind in the process the dogma that granting patents and enforcing them would necessarily foster or lead to innovation.

Mr. Chairman,

For the Development Agenda Group, progress on the SCP towards reaching an agreed work program continues to be a desirable goal. For that to happen, we must gradually move towards identifying broad areas of common interest and start focusing on those areas.

Two elements are of vital importance in trying to reach agreement on a work program at the SCP.

Firstly, discussions at the SCP should never lose sight of the fundamental trade-off at the root of the patent system. Patents are a temporary waiver of competition rules by which Government authorities grant inventors exclusive rights for the economic exploitation of their technical innovation in return for the public dissemination of the technology contained in that innovation. The availability of the technical details of the innovation is an essential element of the trade-off, balancing the interests of the inventor and those of society at large. One of the major tasks of the SCP is precisely to make sure that the two elements of the trade-off are not off-balance.

Secondly, the thematic approach to studies and discussions should not be seen as an end in itself. It is a first and possibly necessary step to better understanding the specifics of all the issues involved. However, discussions on different aspects of patent law will have to progressively converge and eventually become integrated into clusters of elements of a common work program. We are not proposing, to be sure, any degree of harmonization of substantive patent law, but rather simply restating the fact there are clearly established interconnectedness among different clusters of topics in patent law.

Mr. Chairman,

The Development Agenda Group will make comments separately on each topic under agenda item 5. At this stage, let me only stress that we consider that all studies submitted to the SCP, be they prepared by the Secretariat or commissioned to external experts, must be of high quality and balanced. A major concern to us is that all studies must adequately reflect development considerations.

Given the significance of these Studies and the rich and substantive discussions in this Committee on them, we would like to request that comments and suggestions made by various members of the Committee on each Study, be collated separately under an Addendum Document and referenced to in each Study. Cross-referencing the Study to the comments of Member States will allow a deeper appreciation of the contents of the Study and a fuller understanding of Member States' perspectives on the issue. This would more effectively contribute to the objective behind the exercise of undertaking these Studies, namely enabling a better and more comprehensive understanding of these important issues.

We wish also to request the Secretariat to keep the Studies open for comments by Member States and other stakeholders. In keeping with the decision taken at the 12th session of the SCP, we also hope that the non-exhaustive list of issues remains 'non-

exhaustive' and open to proposals for inclusion of subjects that are agreed to by all Member States.

By the same token, the mainstreaming of the Development Agenda recommendations into the substantive work, debates and studies in the SCP is an indispensable ingredient for progress to be made.

Let me recall in this regard that the SCP is the first intergovernmental body at WIPO that meets after the recently-concluded General Assemblies, during which member countries approved coordination mechanisms and monitoring, assessing and reporting modalities for the implementation of the Development Agenda.

One of the provisions of the approved coordination mechanisms is “to instruct the relevant WIPO bodies to include in their annual report to the Assemblies a description of their contribution to the implementation of the respective Development Agenda Recommendations.”

The DAG considers that we must as soon as possible start discussing how this Committee will report to the General Assembly on the implementation of the Development Agenda. Maybe Mr. Chairman, you may wish to consult informally with different groups on how best to report to the General Assembly, or alternatively allocate some time during plenary sessions for the discussion of the reporting process. In any way, we think member countries should express their views on this matter.

In this connection, let me thank the Secretariat for providing us with document SCP /15/INF/2, on the status of work relating to the non-exhaustive list of issues agreed by the SCP and their connection with the Development Agenda Recommendations.

This document does provide useful information that may be used in the process of reporting to the General Assembly. However, it is essentially a factual information sheet that does not reflect any quality assessment, nor any decisions by members of the SCP. This document shall not be taken in any way as an indication of how the Development Agenda is being implemented in the SCP.

In our view, the implementation of the Development Agenda demands the SCP to approach its work in a manner supportive of development, preserving the need for policy space within national patent legislations for development strategies and goals.

That is why, Mr. Chairman, the reporting of the SCP to the General Assembly on the implementation of the Development Agenda will have to take the views of member countries on board, even if they happen to diverge, which may very well be the case. The idea is not necessarily that member countries should agree on the contents of the reporting, but rather that their views be incorporated into it. It is possible that the best way to accomplish this will be in a summary by the chair of the SCP. We would like to

discuss those proposals during the course of this and the next session of the SCP. We certainly need an agenda item dedicated to this matter during the SCP session that precedes the General Assemblies.

Mr. Chairman,

At the last session of the SCP, held in January this year, the delegation of Brazil presented a proposal for a work program on exceptions and limitations, contained in document SCP/14/7. As reflected in the Chair's summary of the last session, the proposal will be considered again at this session of the committee, under agenda item 5(b).

The DAG fully endorses that proposal and hopes that it be approved during this session, so that we can already start implementing it immediately. There is no reason to wait any longer. The delegation of Brazil will express more detailed views under the appropriate agenda item on how it intends to proceed with the proposal, which received widespread support at the last session and constitutes a practical and empirical way to continue advancing work on exceptions and limitations.

Regarding future work, in addition to the proposal by Brazil, the Development Agenda Group believes that we can make progress on all issues of the non-exhaustive list as well as on others.

Thank you