

## Standing Committee on the Law of Patents

**Twenty-Eighth Session**  
**Geneva, July 9 to 12, 2018**

PROPOSAL BY THE DELEGATIONS OF BRAZIL, CANADA AND SWITZERLAND

*Document prepared by the Secretariat*

1. The Annex to this document contains a proposal submitted by the Delegations of Brazil, Canada and Switzerland to conduct a review of existing research on patents and access to medical products and health technologies, for consideration under item 7 of the draft agenda: Patents and health.

*2. The members of the Standing Committee on the Law of Patents (SCP) are invited to consider the contents of the Annex.*

[Annex follows]

## PROPOSAL TO CONDUCT A REVIEW OF EXISTING RESEARCH ON PATENTS AND ACCESS TO MEDICAL PRODUCTS AND HEALTH TECHNOLOGIES

### Introduction

1. All countries have an interest in encouraging the development of new and innovative medical products and health technologies, promoting the transfer and dissemination of technological innovation, and ensuring timely access to these advancements at a sustainable cost to individuals and society. Governments rely on a variety of tools to support these public policy objectives, one of which is the patent system. Intellectual property policy requires balancing the interests of all stakeholders in order to maximise the overall welfare of society. In addition to the patent system, there are a variety of other factors both on the supply and demand side that affect availability and affordability as well as the other access dimensions of medical products and health technologies, both patented and generic.
2. The topic of the relationship between the patent system and public health outcomes has been the subject of extensive research in recent years. As the key multilateral forum mandated to focus on patent law, the policy-making work of the Standing Committee on the Law of Patents (SCP) relies on quality evidence. Member States may most efficiently contribute to this discourse by ensuring that our work builds upon existing research and does not duplicate what has been done before.

### Work Program

3. We propose that Member States direct the WIPO Secretariat to conduct a review of pre-existing analysis and research on the topic of patent protection and access to medical products and health technologies, consistent with the mandate of the SCP.
4. The proposed review would be based on the following parameters:
  - For the purposes of the review, “medical products and health technologies” refers to medicines, vaccines, diagnostics and medical devices.
  - The work would be undertaken by the WIPO Secretariat, in consultation with the WHO and WTO Secretariats as appropriate, in order to take advantage of the complementary subject matter expertise and pre-existing collaborative relationship of these organizations.
  - The review would cover studies prepared by relevant intergovernmental organizations such as WIPO, the WHO, the WTO and others; studies by external researchers commissioned by these organizations; and peer-reviewed academic research. The topics of such studies would include, *inter alia*:
    - The relationship between patents and other related issues and the affordability and availability of medical products and health technologies
    - The role of the patent system, including patent quality mechanisms, in incentivising and promoting the development of new medicines and health technologies to address the global disease burden, facilitating access to medical products and health technologies, and ensuring the supply of quality products
    - The role of the intellectual property system in fostering knowledge spillovers and technology transfer in the medical products and health technologies sector

- The role of compulsory and voluntary licensing mechanisms and patent pools in facilitating the affordability and availability of medical products and health technologies
  - The availability of essential medicines in countries where those medicines are not under patent, taking into consideration the variety of other factors both on the supply and demand side that affect availability and affordability
  - The review would cover work produced over the time period of 2005 to 2017.
5. Recognizing that the SCP is the key multilateral forum mandated to focus on patent law, the final product of the proposed work program would be a report of 40-50 pages providing a factual synopsis of the analysis and key conclusions *and recommendations* of this body of research, as well as an annex providing a list of the studies captured by the review. The report would not make any original recommendations, and inclusion of any document in the report should not be understood as an endorsement of that document's conclusions or recommendations by the Secretariat or Committee.
6. The report would allow Member States to engage on the topic of patents and access to medical products and health technologies and to structure our future work with a firm understanding of the current state of knowledge.
7. We propose that the Secretariat commence work on the review following the 28<sup>th</sup> Session of the SCP, with a view to presenting a final report at the 30<sup>th</sup> Session.

[End of Annex and of document]