



International Chamber of Commerce

The world business organization

Policy and Business Practices

**ICC General Statement
To WIPO Standing Committee on the Law of Patents: Fifteenth Session**

October 11-15, 2010 (Geneva, Switzerland)

Intervention made by Ivan Hjertman on behalf of ICC at meeting of the WIPO Standing Committee on the Law on Patents (SCP/15)

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Thank you, Mr. Chairman.

ICC, the International Chamber of Commerce, represents small and large businesses from all sectors in over 120 countries worldwide.

Businesses are both users and producers of intellectual property, including patents, and have an interest in a well-functioning, efficient and effective patent system which provides legal certainty, transparency and predictability.

The SCP is addressing several issues of great interest to the business community, including exceptions and limitations, client-patent advisor privilege, standards, and technology transfer. Businesses are directly impacted by these issues in their daily operations and are keen to contribute their experiences and views on the practical implications of proposals being discussed.

We will very briefly touch upon these issues, on which we will elaborate further at the relevant time during the meeting.

With respect to exceptions and limitations, ICC has long maintained that patents are critical tools to providing an incentive and reward for innovation and investment in R&D and future inventions. Thus, we would urge caution in any moves at the national or international level to broaden exclusions from patentability, and

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recommend addressing concerns about an over-expansive subject matter through more appropriate patent provisions, such as inventive step, sufficiency of disclosure, or limitations on infringement. It is important to keep in mind that the widespread use of compulsory licenses can lower juridical certainty and reduce the incentives to research. Instead of fostering, frequent use of compulsory license might hinder access to critical products and technologies.

On the topic of client-patent advisor privilege, ICC would like to reiterate its belief that an international framework for the mutual respect of communications with legal advisers on intellectual property matters is needed. This will contribute to making the IP system more effective, clear and transparent, and facilitate international trade and development. Such an international instrument would provide the guarantees of confidentiality required for full and frank exchanges between the owners of IPRs and those who are confronted by IPRs with their respective IP advisers allowing them to clearly understand those rights and guide their actions regarding them.

With respect to standards, ICC observes that companies seek to both harmonize the way in which goods and services are designed through standards and to gain part of the return on investments through patent protection. We do not believe that either the international patent system or its national implementation requires changes to address concerns about patents and standards.

We turn now to technology transfer. ICC believes that the availability of economically feasible options to address global challenges – including to health, the environment, and food security – will depend on the development, commercialization and widespread dissemination of effective existing technologies and new, currently non-commercial technologies. The private sector has been, and will continue to be, responsible for the vast majority of investments and the development and diffusion



of the new and improved technologies that will be essential to meet these challenges. The ability to amortize these investments and assure a return to those who supply the necessary capital is secured by intellectual property protection of the inventions that will result from the private sector research and development effort.

The patent system is intended to correct the under-provision of innovation due to “free rider” effects “by providing innovators with limited exclusive rights to prevent others from exploiting their invention and thereby enabling the innovators to appropriate the returns on their investment”. At the same time, the patent system requires innovators to disclose fully their inventions to the public. These fundamental elements of the patent system play an important role in the dissemination of knowledge and the transfer of technology. In addition, “open innovation” is becoming an increasingly popular model for organizations working in complex technological fields. Intellectual property plays a critical role in supporting “open innovation” because it provides the legal certainty necessary for broader sharing of technical information and know-how. Patents, in particular, play an essential role in supporting collaborations and partnerships between different organizations involved in developing such technologies.

When the SCP considers potential mechanisms to foster the transfer of technology, therefore, they should consider carefully the practical impact of their decisions on innovative activity and not resort to solutions that might jeopardize the essential role of patents by creating additional uncertainties for intellectual property owners.

We look forward to contributing further to the SCP’s discussions during the course of this meeting.

Thank you.