



**International Chamber of Commerce**

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**Policy and Business Practices**

**ICC Statement on exceptions and limitations**

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

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**Intervention made by Richard Wilder 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.

I appreciate this additional opportunity to intervene on behalf of the ICC on these important issues.

The studies on exceptions and limitations provide a comprehensive and in-depth discussion of exclusions from patentability and exceptions and limitations to patentees' rights. We have not had an opportunity to review the study and its annexes in detail. Given the depth of the analysis of the situation in a number of WIPO Member States, such an analysis will take considerable time and effort and we will provide appropriate input in due course.

At this point, we make two general observations.

First, the ICC has long maintained that patents are critical to provide an incentive and reward for innovation and investment in R&D and future inventions in all fields of technology. Patents are also an essential mechanism to facilitate the transfer of technology as well as to facilitate foreign direct investment.

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Exceptions and limitations are provided for under international law and at the national level in patent systems. These are appropriate elements in a well-functioning patent system that includes the grant of rights and their enforcement.

But, we would caution against any activity at the national or international level to broaden exclusions from patentability – such that the exception swallows the general rule. That is, that undermines the functioning of patent systems as a whole.

SCP/15/3, Annex III brings an interesting review of patent exceptions in the health context. The representative of the IFPMA spoke to this already and I won't deal with it internally. I would only reinforce that negotiations with rights holders on licensing are usually a better tool to obtaining policy objectives like improved healthcare, food security and tackle climate change.

Second, there are some points in the annexes where the analysis of international law – in particular the TRIPS Agreement – should be more rigorous.

For example, there are statements at page 23 of SCP/15/3, Annex I and page 36 of SCP/15/3, Annex II that suggest that certain requirements under the TRIPS Agreement have little or no meaning.

At one point, the annexes state that WTO “contracting parties have considerable wiggle room to exclude subject matter from patentability on the basis that it does not constitute an invention (or an invention in a field of technology).” Of course international agreements are subject to interpretation – by the members of that agreement and any governing body. But this statement and similar ones are made with little or no analysis with reference to the Vienna Convention on the Law of Treaties or to relevant decisions by panels under the WTO's Dispute Settlement Understanding.

I believe that this view is consistent with that expressed by the distinguished delegate of Tanzania – in particular in his point about Article 27 having meaning.

This is important and we are concerned about this lack of rigor for two reasons.

First, as previously discussed, we feel that patents – in all fields of technology – play a critical role in incentivizing research and development as well as facilitating the transfer of technology. Suggestions that decisions as to whether and what to provide patent protection are uncertain runs counter to this role.

Second, business relies on legal stability to make investments – especially the long term investments in research and development of new products and the work necessary to bring them to market. Perhaps due to the lack of rigor of the analysis in the study and its annexes, they suggest an unfortunate degree of uncertainty in the establishment and enjoyment of intellectual property rights. This uncertainty would frustrate the goals and aspirations of the patent system.

Thank you Mr. Chairman.