SOUTH CENTRE

REPORT

DEVELOPING COUNTRIES ACTIVELY DEFEND A BALANCED PATENT AGENDA AT THE WIPO STANDING COMMITTEE ON PATENTS

I. Background

The 38th Session of the Standing Committee on Patents (SCP) of the World Intellectual Property Organization (WIPO) was held from 2 to 6 November 2026.

The WIPO SCP is a permanent committee for international discussion on patent law and policy. The SCP can also provide guidance to the patent-related activities of the WIPO Secretariat. Member States define the agenda and outputs of the SCP, while many Observers attend the sessions, from patent attorney associations to public interest groups. The Chair for the session was Mr. Christoph Spennemann (Switzerland) and the Vice Chairs, Denise Pérez (Chile) and Lucy Zamykalová (Czech Republic).

The 37th session of the SCP was held in November 2025. The South Centre took stock of discussions in that session, which concluded with an anomaly in the usual procedures in the Committee when the United States broke consensus with the longstanding agreement in the SCP by rejecting the statement that the SCP would focus on fact-finding and technical work, not harmonization of patent law. That understanding has kept the SCP functional for more than a decade and has appeared in Chair's summaries for years. The new understanding that helped break deadlock in the 37th session was carried over into the 38th session. The Chair's Summary for the 38th session notes that "During SCP/37, some Member States agreed that without prejudice to the mandate of the SCP, the Committee's work on the issue for the next session be confined to fact-finding and not lead to harmonization at this stage, while one Member State expressed disagreement".

The question of harmonization also ran through the general statements of developing countries, which called for a balanced work programme in which exceptions and limitations, patents and health and transfer of technology receive the same attention as patent quality and emerging technologies. The African Group (South Africa) called for the effective mainstreaming of the WIPO Development Agenda into the substantive work of the SCP and recalled that any discussion towards the international harmonization of patent laws must take into account the varying levels of social, economic and technological development among Member States. The Group of Latin America and the Caribbean (GRULAC) (Haiti) affirmed its support for a balanced, development-oriented international patent system that reflects the diversity of national legal frameworks and capacities, and Bangladesh asked for a development-oriented future work programme that respects national policy space.

The proposals of Group B (Canada) were largely reflected in the agreed future work, while several proposals by the African Group were narrowed or not taken up, as were the proposals by the Central European and Baltic States (CEBS) Group (Georgia) and by China. The United States in particular opposed China's proposal on outer space activities. The allocation of time during the session also tilted towards the discussion of SCP priorities for developed countries. It was noted by GRULAC that a full day was devoted to artificial intelligence (AI), while less than half a day was allocated for patents and health and even less to exceptions and limitations.

The South Centre delivered a Statement to the session. It stressed that the SCP must preserve national policy space and support development-oriented patent policies instead of harmonizing standards of patent protection. Among other issues, it called for an independent evaluation of WIPO technical assistance under Development Agenda Recommendation 14 and for practical tools addressing patent-related barriers to technology transfer, particularly in health and green technologies.

Mandate issues aside, the 38th session of the SCP discussed various issues. Which topics are taken up at each session is decided by Member States through negotiation.

II. Discussion Of Selected Agenda Items During SCP 38

The Chair's Summary provides the agreed summary record of the session. Below are some elements of the discussion, considering in particular the interventions of developing countries.

1. Report on the International Patent System

Discussions were based on document SCP/38/2 on the information on aspects of national and regional patent laws. The WIPO Secretariat reported on the first phase of the restructuring of the information on the SCP electronic forum, with new webpages on prior art, novelty, inventive step and grace periods and updated pages on sufficiency of disclosure, exclusions from patentable subject matter and exceptions and limitations. A second phase will update and restructure the remaining content.

2. Exceptions and Limitations to Patent Rights

The Committee discussed the draft reference document SCP/38/3 on the exception regarding private and/or non-commercial use. It was generally welcomed as a basis for discussion. Some countries gave examples of how their patent laws include the private and non-commercial use exception. Developing countries stressed exceptions and limitations deserve the same attention as the protection of rights and noted their importance for public health, agriculture and food, education, technology transfer and socioeconomic development.

3. Quality of Patents, Including Opposition Systems

The Committee has recently turned its consideration of issues related to the interface of patents and AI under this agenda item, though the title would appear otherwise. The Committee discussed the updated background document SCP/38/4 on patents and emerging technologies, the update on AI and inventorship covering the DABUS cases in SCP/38/5 Corr. and the report on the expert exchange held at SCP 37 together with SCP/38/6 providing a summary of policy

options. A sharing session was held on AI and other tools for patent examination and an experts' exchange on patentability criteria and AI inventorship.

In the general statements, developing countries approached artificial intelligence with caution. Some of the points raised were that the summary of policy options should remain descriptive and not become a basis for harmonized guidance on patentability, that claims involving AI should be supported by evidence of how they work, and to consider the special situation of offices that grant patents without substantive examination. Other issues raised were the importance of robust patentability standards and effective opposition mechanisms and the need for transparency and human oversight in the use of AI tools in examination. Caution was also expressed against premature or uniform responses. It was noted that information exchange on AI should help offices keep pace with technology while preserving national policy space. Practical tools and capacity building for national offices were also called for, as well as more exchange on opposition systems.

China also presented a proposal SCP/38/10 for an information exchange on the protection of intellectual property in connection with outer space activities.

4. Patents and Health

The Committee heard updates on publicly accessible databases of patent status information on medical products and health technologies, with presentations on Pat-INFORMED, MedsPal, the Eurasian Pharmaceutical Register and the free technological surveillance services of the Spanish Patent and Trademark Office.

Developing countries recalled earlier proposals including SCP/24/4 and stressed the need to strengthen WIPO technical assistance under Development Agenda Recommendation 14 for the use of TRIPS flexibilities for public health and underlined the importance of reliable patent information and of flexibilities for access to medicines, and requested practical outcomes that help developing countries use flexibilities.

5. Confidentiality of Communications Between Clients and their Patent Advisors

Discussions were based on the study SCP/38/7 on the categories of professionals who enjoy protection against forcible disclosure of confidential communications in court proceedings.

6. Transfer of Technology

The Committee discussed the study SCP/38/8 Corr. on conditions of foreign filing and challenges for innovators in the cross-border collaborative environment and the study SCP/38/9 on best practices and challenges in technology transfer in the health and green technology sectors focusing on industry-academia collaboration. The Secretariat reported on the implementation of the WIPO Strategy on Standard Essential Patents 2024-2026, and the WIPO Arbitration and Mediation Center presented its guidance on alternative dispute resolution options for FRAND disputes.

III. Future Work for SCP/39 and SCP/40

The future work of the Committee continues on the basis of the non-exhaustive list of issues, which remains open for further elaboration and discussion at the next session of the SCP.

The decision on future work in the Summary by the Chair again recalls the understanding reached at SCP/37 that, without prejudice to the mandate of the SCP, the work of the Committee for the next session be confined to fact-finding and not lead to harmonization at this stage, while one Member State expressed disagreement.

Regional groups and Member States presented their proposals for future work in plenary, before the negotiations moved to informal consultations. The African Group tabled four proposals, on exceptions and limitations, quality of patents, patents and health and transfer of technology. Group B tabled proposals under quality of patents, confidentiality of communications and transfer of technology, the CEBS group and China each tabled a proposal under quality of patents, and Australia presented a proposal on behalf of a group of Member States.

The final agreed work departed significantly from what developing countries had proposed, and less so from the proposals of Group B. Most of the negotiation took place in informal consultations.

1. Future Work on Exceptions and Limitations to Patent Rights

The SCP/37 had already mandated future work under this item for SCP/39. This consists of a draft reference document compiling national and regional provisions on inventions relevant to national defense, and a supplement to documents SCP/30/3 and SCP/36/3 on compulsory licences, government use and the extemporaneous preparation of medicines.

The African Group proposed that the Secretariat develop a toolkit drawing on all the studies undertaken by the SCP, to guide Member States in the design and implementation of patent policy and to serve as a resource for WIPO technical assistance. GRULAC supported the proposal and described it as a portal consolidating existing SCP studies and reference documents. The proposal was dropped entirely given Group B opposition. No new work was agreed under this agenda item, and the future work is limited to the two documents already decided at SCP/37.

The proposal echoed a long-standing call by the South Centre for the useful SCP reference documents to be put to practical use. Although they are available on the SCP website and electronic forum, they are not as visible as they could be. Bringing them together as a WIPO publication would help ensure that they serve as practical tools for informing patent policy and are used in WIPO technical assistance.

2. Future Work on Quality of Patents, Including Opposition Systems

The SCP/37 had already mandated the Secretariat to publish by SCP/39 a compilation of publicly available materials on standard professional conduct in patent examination, in response

to the proposal of Saudi Arabia (SCP/37/10). The Summary by the Chair of this session adds that the compilation will be presented to the Committee at SCP/39.

The African Group proposed that the Committee continue discussing the experiences of patent offices with the AI models and tools they are developing and using to support their activities, including but not limited to patent examination, giving classification, prior art search, translation, formality checks and administrative support as examples. It also proposed examining safeguards for the design and deployment of AI systems, covering transparency, human oversight, bias and errors, data governance, including where data is stored and processed, and avoiding vendor lock-in. GRULAC supported this focus.

The proposal was largely adopted, but with narrower safeguards. There will be a sharing session among Member States at SCP/39 on the experiences of patent offices with AI models and tools. The agreed text refers only to measures addressing human oversight, transparency and bias.The safeguards on errors, data governance and vendor lock-in were removed, although they are of special relevance to offices that rely on tools supplied by third parties. Countries can however bring these issues into the discussion when the sharing session on AI tools takes place at SCP/39.

Group B proposed sharing sessions on the policy options in the areas of patentability criteria and AI inventorship from annex 2 of document SCP/38/6, starting with sufficiency of disclosure at SCP/39, and reports updating the Committee on the expert exchange and on the sharing session held at this session. The Committee agreed on a sharing session at SCP/39 on the policy options on sufficiency of disclosure and enablement, and on the two reports. Australia requested an update of document SCP/38/5 for SCP/39 with information from an informal paper on the flexibility of national joint inventorship regimes to accommodate the involvement of AI, contributed by Australia, Chile, Germany, Morocco, Singapore, Switzerland, Israel, Japan, the United Arab Emirates and the United Kingdom. The update was agreed for SCP/40.

The CEBS group proposed a comparative study on the impact of generative AI on patent examination workloads and procedural mechanisms, building on existing WIPO work. The study would examine how the use of generative AI by applicants and third parties may affect the volume, length and complexity of submissions to patent offices and the workload of examiners. It would also look at the risks of mass or coordinated AI-generated submissions, particularly through third-party observations and opposition mechanisms, and at safeguards that could help offices address these challenges while respecting the procedural rights of applicants and third parties. The Asia Pacific Group (APG) welcomed the proposal but asked for more time to consider it. The proposal was not included in the agreed future work.

China proposed a compilation of Member States' experiences on the protection of intellectual property in connection with outer space activities, followed by a sharing session or expert seminar. The APG expressed general support for the proposal, while the United States maintained that it could not support it. The proposal will be discussed again at the next SCP session.

3. Future Work on Patents and Health

The SCP/37 had already defined some future work under this item. Importantly, the Secretariat will provide a status update on WIPO technical assistance under Development Agenda Recommendation 14 at SCP/40.

The African Group proposed a study and discussion of cases addressing anticompetitive practices and licensing, with presentations from experts. The APG and Brazil expressed support for the proposal.

The proposal was substantially changed. According to the Chair's Summary, the Secretariat will prepare an "inclusive study on patent licensing contracts and other contractual arrangements in the health sector" for SCP/39, followed by a sharing session by Member States.

The reference to anticompetitive practices, which was central to the proposal, disappeared. What was agreed was an "inclusive study on patent licensing contracts and other contractual arrangements in the health sector", and the proposal for presentations by experts was replaced by sharing among Member States. The study should nonetheless be expected to examine in detail the clauses in patent licensing contracts, including how such clauses have been assessed under national law, in particular competition law. In the sharing session at SCP/39, Member States may also share national experiences on the control of anticompetitive practices in patent licensing contracts and other contractual arrangements in the health sector.

The SCP has not undertaken a dedicated study on competition law cases related to pharmaceuticals or health. The African Group's proposal would have filled a gap in the work of the Committee and help Member States draw on experience in using competition law, a flexibility recognized under the TRIPS Agreement, to address anticompetitive practices that affect access to medicines and health technologies. This is an issue of interest to all countries and in line with Development Agenda recommendations 7, 23 and 32.

4. Future Work on Confidentiality of Communications Between Clients and their Patent Advisors

Group B proposed a panel discussion at the next session on legislation and initiatives relating to confidentiality, and the Committee agreed that the Secretariat will organize such a panel at SCP/39.

5. Future Work on Transfer of Technology

The African Group requested two separate studies, one on health technologies and one on green technologies, on how international collaborative projects, including but not limited to academia and industry, transfer technology to manufacturers in developing countries and LDCs. The studies were to document concrete collaborations that led to local production or deployment, such as the mRNA hub, determine how TRIPS Article 66.2 incentives for LDCs are working to transfer technology, and identify licensing provisions or conditions that promote affordable access beyond ordinary market terms. The studies were also to identify policy options.

The proposal was reframed before adoption. The Secretariat will prepare, with a focus on patent licensing, a study on international collaborative projects in the health area resulting in technology transfer to manufacturers, particularly in developing countries and LDCs, for SCP/39. A similar study on environmentally sound technologies will follow at SCP/40.

The language on patent licensing narrows the scopescope. Transfer of technology to manufacturers in developing countries and LDCs was diluted to transfer to manufacturers "particularly in" developing countries and LDCs, and the reference to collaboration between

academia and industry was dropped. The agreed text does not specify that the studies should document concrete collaborations that led to local production or deployment, such as the mRNA hub. The other objectives were also not included, namely the assessment of how TRIPS Article 66.2 incentives for LDCs are working to transfer technology, licensing provisions or conditions that promote affordable access beyond ordinary market terms, and the identification of policy options.

The Committee agreed that the Secretariat will present at SCP/39 on the implementation of the WIPO Strategy on Standard Essential Patents (SEPs) 2024-2026 and any follow-up work on SEPs.

IV. Outlook for SCP/39

A balanced work programme is in the interest of all Member States. It should be balanced in substance, in the time allocated to each agenda item, and in the methods of work, whether studies, expert presentations, panels or sharing sessions.

The understanding that the work of the Committee is confined to fact-finding and does not lead to harmonization at this stage continues to stand, despite the disagreement of one Member State.

Proposals that were not taken up at this session or narrowed can be tabled again for future work at subsequent sessions of the SCP. Close coordination among developing countries will be essential to build consensus around proposals.

The SCP 38 session did not take up an agenda item on the contributions of the SCP to the implementation of the WIPO Development Agenda, which is provided for in the coordination mechanism for the Development Agenda. WIPO committees are still expected to report on their contribution to the implementation of the Development Agenda, and the SCP in its next agenda should reflect this.

The 39th session of the SCP is scheduled for 18 to 22 October 2027.