

## **Third World Network Statement on the Study on Inventive Step (27 July 2015)**

### **WIPO Standing Committee on the Law of Patents (22<sup>nd</sup> Session)**

Thank you Madam Chair for this opportunity.

Inventive step is one of the three basic criteria for patentability. A high threshold level of patentability criteria is important to prevent the abuse of patent monopoly.

Patents should not serve as a tool to protect monopoly but serve its so-called declared purpose i.e. promoting R&D and technological advancement. Therefore the inventive step tests and methodologies should do away with all commercial concerns and focus on the technological advancement.

Over the years, patent offices, especially in the industrialized countries, have brought down the patentability criteria, particularly the inventive step, to a lower level to increase the quantity of patents at the cost of quality of patents.

One of the important steps to curb the granting of patents with low threshold level patentability criteria is to increase the threshold level of the inventive step criterion.

Under the TRIPS Agreement there is enough flexibility to determine the threshold level of the inventive steps. The first phase towards this end is to define and conceptualize the person skilled in the art as a person “highly skilled” in the art instead of “ordinary skill” in the art.

We call upon Member States to move away from low levels of inventive step threshold to high levels and arrest the patenting of trivial patenting like the patenting of known pharmaceutical substance.

The study unfortunately does not deal with the flexibility available to WIPO Member States in determining the threshold level of the inventive step requirement.

Further, the study reveals that technological advancement is not the sole criterion for evaluating the inventive step. Some of the criteria on evaluating the level of inventiveness mentioned in the study clearly result in low levels of inventive step threshold. For instance, some patent offices recognize a particular commercial success as a criterion to satisfy the inventive step. This clearly shows that technological advancement is not the sole criterion for judging inventive step and would result in granting of patents on trivial inventions.

Therefore it is important to analyze the implications of various methods of evaluating inventive step and the level of inventive step on its potential to eliminate trivial inventions.

We call upon Member States to set a higher threshold level for assessing the inventive step. Towards this end Member States should carry out an independent assessment of effectiveness of existing methods of assessing inventive step in preventing patenting of trivial inventions.

We also call upon developing countries not to follow the existing methods of assessment of inventive step in developed countries without carrying out the above assessment.

Further, we also urge the WIPO Secretariat not to advocate the existing inventive step assessment methods without carrying out such an assessment by a panel of independent experts.

We also take this opportunity to express our concerns on free trade agreements like the Trans-Pacific Partnership (TPP) Agreement which takes away the policy space for setting high threshold levels for inventive step.

A high level inventive step often has the potential to save peoples' lives. Patent offices can safeguard the public interest from the abuse of patent monopoly, often used by pharmaceutical transnational corporations, by denying patents on known substances. The lack of patent monopoly for the Hepatitis C medicine **Sofosbuvir**, in Egypt for example, clearly shows us this. The **Sofosbuvir** patent in Egypt was rejected on the grounds of lack of inventiveness.

Thank you