

Third World Network General Statement (27 July 2015)

WIPO Standing Committee on the Law of Patents (22nd Session)

Thank you Madam Chair for this opportunity.

The 22nd Session of the Standing Committee on the Law of Patents is taking place exactly after the 20th year of the TRIPS Agreement.

During the last twenty years there is plenty of evidence to show that the TRIPS Agreement has failed to fulfill its promises especially in the context of addressing developmental challenges of developing countries.

The almost universal protection of product patent regime has failed to deliver on both innovation and access. There is no substantial increase in the R&D outcomes with regard to health products to meet the unmet health care needs of developing countries. Similarly, the patent monopoly is blocking access to affordable medicines and incapacitates both developing and developed countries to fulfill their obligation on the right to health. The exorbitant prices of Hepatitis C oral antiviral drugs are a case in point.

Against this background let us recall the main findings on patent contained in a declaration titled “***Declaration on Patent Protection: Regulatory Sovereignty Under TRIPS***” by worldwide experts convened by Max Plank Institute for Innovation and Competition on the occasion of the 20th anniversary of the TRIPS Agreement.

First, the “historically unprecedented numbers of patents filings and grants” create problems such as backlogs at patent offices, patent thickets, market entry barriers and increased litigation that ultimately generate impediments to research and commercialization. The result is rising costs of monitoring patents and legal uncertainty, limiting the economic freedom of market participants, which in turn affects consumer welfare and distorts competition. Thus “the overall social benefits of innovation are reduced while an imbalance emerges between those able to cope with the resulting insecurities and related costs, such as multinational enterprises with their own patent departments, and those who cannot, such as small and medium sized enterprises or individual inventors”.

Second, the new technologies like biotechnology, business methods and computer science as well as standard setting, strategic patenting and non-practicing entities all affect the functioning of the patent system as a regulatory institution.

Third, the role of patents incorporates management that has undergone a change from a defensive means to protect research and development outcomes to become strategic assets to influence the conditions of competition.

Fourth, the industrialized countries have tilted the balance in the patent regime towards right-holders by reducing the burden for the patent applicants such as expanded scope of patentability, lower eligibility standards and reduced fees, as well as extending the rights of patent owners such as longer term of patent, stricter sanctions and strengthened ways for private and public enforcement.

Against this background we call upon both the Member States and the WIPO Secretariat to shed the notion that patent is the necessary tool to stimulate technological invention and commercialization, and instead work towards curbing the abuse of patent monopoly.

The discussion on the two studies on inventive step and disclosure requirement is an important opportunity to curb the abuse of patent monopoly.

We are looking forward to a constructive engagement in the coming days and hope the Member States will take the right decisions to address the development challenges pose by patents.

Thank you