

GUIDING PRINCIPLES

Inventor Assistance Program (IAP)

February 2016

1. Background

The World Economic Forum (the Forum) and the World Intellectual Property Organization (WIPO) are both committed to finding ways to help promote progress and innovation through the strengthening, expansion and optimization of the global IP system. Fundamental to this mission is the shared belief that creativity and great ideas come from people of all walks of life, and that a truly successful IP system is therefore one that is accessible to all, without regard to their socioeconomic status, geography or financial means.

With this in mind, the Forum and WIPO have come together to develop the Inventor Assistance Program (IAP), an innovative program aimed at making the IP system more accessible by matching financially under-resourced inventors of promising new technologies and ideas with qualified IP counsel, to assist in securing patent protection for their innovations. IAP is designed to assist both individuals and small entities who lack the financial resources or sophistication to navigate the patent system on their own.

Beginning as a pilot program in Colombia in 2015, the IAP will be set up as a partnership between the national government of each participating country ("Member Country"), WIPO, the Forum, and IP counsel qualified to practice and represent participating inventors in one or more Member Countries.

The IAP is open to those qualifying countries, entities and individuals who, upon accepting these Guiding Principles, become Members of the program. Following the launch of the pilot, the program will be extended to several other countries in the coming years, with an ultimate vision and goal of global reach.

2. Guiding Principles

Despite significant progress in recent years in harmonizing and simplifying the world's IP systems, the process for protecting one's inventions and ideas remains mysterious, complex, or simply inaccessible for many talented inventors around the world. The principal goal of IAP is to bring as many under-resourced inventors as possible into their local IP systems by giving them the knowledge, tools and means that they need to file complete applications, undergo substantive examination, and ultimately enjoy the benefits of a duly issued patent.

While the circumstances vary by individual and country—factors which will be taken into account when implementing and optimizing IAP locally—recent data indicates that a common problem for many inventors is the sheer complexity of the patent laws and rules for those who, due to financial constraints, are unable to retain a qualified attorney, and instead are forced to navigate the system on their own. In developing countries, *pro se* applicants (as these self-filing inventors are called) often make up the vast majority of total local patent filings, but the rejection/withdrawal rate among them on procedural (non-substantive) grounds is disproportionately high.¹ This data indicates that what is needed most for many inventors are the expertise of qualified legal counsel to assist with the complexities of patent prosecution. A second group which, for obvious reasons, is not reflected in Patent Office data consists of those inventors who are unaware of the system altogether, or who are sufficiently intimidated or disillusioned by its complexity or costs that they simply do not file patent applications.

¹ Concerning Colombia, a total of 3418 applications Pro Se have been filed at the Col IP Office (SIC), which corresponds to 1473 applications of Patents for inventions and 1945 for Utility Models. Out of these, 1300 have failed due the applicant's absence or low level of knowledge about patent law and prosecution; 546 have been abandoned and 754 rejected due to formalities inaccuracies or failures in the prosecution (namely no answer to an office action or answer out of time; no request of substantive examination or request out time, among others).

The IAP aims to assist both of these groups by establishing two alternative paths of admission to the program—(a) a direct access path which matches more experienced inventors (as evidenced by their filing of *pro se* applications) with qualified IP counsel to help them navigate their country's system; and (b) an IP education/outreach path, which first introduces less experienced inventors to the IP system through an online course, before matching them with qualified counsel upon successful completion.

While aimed primarily at assisting under-resourced inventors, the IAP was also built on the principle that an adequate, inclusive global IP system brings benefits to everyone. When an under-resourced inventor is given the means to patent his or her invention, the opportunities for financing to develop commercial products increase dramatically, which ultimately allows the public and the world to enjoy useful, life-enriching, or (as the case may be) life-saving technologies that in many cases would otherwise remain obscure or unknown. By the same token, when new ideas are patented, new knowledge reaches other inventors in the form of the published patent or application, which leads to the next generation of improvements or inventions, even where no immediate commercial products result. Governments and patent offices of participating countries also benefit by helping to expand local participation in the patent system, reducing patent examination burdens and challenges posed by *pro se* applicants, building new relationships with partners in the program, and turning their country's home-grown creativity and ideas into new sources of revenue, jobs and inspiration. In all cases, local economies and populations ultimately benefit from increased prosperity, increased knowledge, and the fulfillment that generally accompanies a culture and mindset of innovation.

Last, for IP attorneys and law firms who volunteer to participate on a *pro bono* basis, in addition to the personal satisfaction that always comes from helping a great cause, IAP provides excellent training, knowledge and skill-building opportunities, positive local and global publicity, and may lead to new business opportunities from IAP clients who develop into thriving businesses, venture capitalists and other financiers who become involved, or through exposure to other partners during the course of the program.

3. Structure and Governance

The IAP has three main components: i) a Membership, ii) a Clearing House and iii) a Steering Committee, which shall share responsibility for the IAP.

i) Membership

Membership in the IAP is available to three types of entities: (a) Governments; (b) *Pro bono* patent attorneys/firms; and (c) Supporters. Subject to the further requirements discussed in their respective sections below, Membership in IAP is open to those Members of each type that accept these guiding principles in writing, and who commit themselves to play the active roles that are indicated herein (see summary in annex V).

a. Governments

Country Membership in the IAP will be decided on a case-by-case basis by the Steering Committee. Governments of developing countries that are interested in becoming Members of the IAP should contact WIPO or a member of the Steering Committee with an expression of interest, including a statement of how the IAP is expected to benefit that country (See Steering Committee Members, Annex I). The Steering Committee will review the request and make a decision based, among other things, on the current capacity of the IAP to be extended to a new country, the current state and capacity of the local patent system in the

applying country, and the current state of patent filings and patent grants for local (resident) applicants. On the latter criteria, a low number of applications by local residents, and/or a high number of rejections due to an evident lack of legal assistance are factors that would weigh in favor of IAP membership.

Governments that become IAP Members are expected to actively participate in the local implementation and tailoring² of the program to the local needs and practice of inventors and IP counsel in their country, and to help promote the program inside the country, including outreach efforts to inform inventors of the program's existence and eligibility criteria. Governments may be represented in the IAP by the country's Patent Office, or by any other agency, department or office with responsibility and authority to act on behalf of the Government with regard to the IAP's activities in that country.

As indicated in the attached flowchart (annex IV a), there are two paths of admission to IAP, one for *pro se* applicants who have filed a patent application on their own behalf, and one for those inventors who have not yet filed an application in the local patent office. For the first path, the local Patent Office will be responsible for informing *pro se* applicants about the IAP's existence, eligibility criteria, procedures and rules upon receipt of the *pro se* application. Each applicant will then decide individually whether to apply to the IAP, which is done directly with the WIPO Clearing House (see Section ii below). For the second path, the local Patent Office and/or other local government bodies are expected to assist in promoting the online education program offered by WIPO, or other equivalent courses that may be developed for a specific country and offered through the local patent office.

b. Pro Bono Patent Attorneys

The core function of the IAP is to provide IP-related legal services to inventors who would not be able to bear the costs of such services on their own. The donation of IP attorneys' time and expertise is, therefore, the lifeblood of the program. The IAP membership is open to any attorney admitted to practice before the patent office of the country in which the attorney desires to participate, provided that he/she accepts these guiding principles in writing. In order to assure the quality of legal services provided in IAP, it is generally expected that all patent attorneys who participate in the program will have prior experience practicing in the local patent office.

Given the jurisdictional restrictions of legal practice, rosters of pro bono patent attorneys will be built country-wise. An updated database of pro bono patent attorneys by country will be kept by the WIPO Clearing House. Attorneys who are admitted to practice in more than one IAP jurisdiction may apply for membership in multiple countries.

It is the responsibility of the patent attorney to provide high quality legal services throughout the IAP representation, from the moment the power of attorney is accepted until the patent application process is finished. The level and quality of such services must be no different from that provided to private (paying) clients. The attorney-client relationship in the IAP cases shall be governed by the same laws, rules and ethical standards that apply to paying clients in the jurisdiction where the representation occurs. For the avoidance of doubt, the role of the WIPO Clearing House (described in more detail in section ii (below)) is not legal in nature, and its involvement in an individual IAP matter ends the moment that a match is made between an inventor and a Member attorney

² Each government will establish an objective threshold by which to determine when inventors or small businesses are "under-resourced" for purposes of eligibility for the IAP, either referring to national rules of assistance for equivalent programs aimed at helping under-resourced, impoverished, or indigent populations, or to international rules (e.g. UN/World Bank). These thresholds are subject to review and will require the approval of the IAP Steering Committee.

Program attorneys are expected to provide all legal representation to IAP clients on a pro bono basis (i.e. free of charge).³ Out-of-pocket costs, however, such as translations, filing fees, photocopies, etc. are not covered by the pro bono agreement, unless the patent attorney and client agree otherwise (see forms in annex VI). The costs of patent claim drafting (if needed) and search of the state of the art may or may not be covered, depending on local requirements and the customs of local legal practice.

Pro bono patent attorneys will also be introduced to various WIPO services which may help in addressing costs in many situations. These include:

- Patentscope <http://patentscope.wipo.int/search/en/search.jsf>
- ASPI <http://www.wipo.int/aspi/en/>
- ARDI <http://www.wipo.int/ardi/en/>
- Patent drafting programs
- TISC (ask the expert chat) http://www.wipo.int/tisc/en/ask_the_expert/

c. Supporters

Corporations who regularly engage law firms around the world to represent them in IP matters in the course of their businesses are encouraged to join IAP as Corporate Supporter Members. At a minimum, this should include all corporations who participate as members of the IAP Steering Committee. Corporate Supporter Members will promote IAP to their internal networks of preferred firms, and seek to recruit qualified counsel from these firms to serve as pro bono patent attorneys for the program. Corporate Supporter Members should also look for and consider opportunities to support the IAP financially where possible, e.g. to help fund national or regional training sessions, coordination meetings, or marketing or publicity efforts.

A variety of other entities may also become Supporter Members of IAP at the discretion of the IAP Steering Committee. These may include global IP law firms with established pro bono programs and a presence in developing countries, as well as regional or international IP lawyers associations, both of whom would be expected to play a promoting and recruiting role similar to the Corporate Supporter member role described above (see forms in annex VI).

Member's Withdrawal

Members of any type may withdraw from the program at any time by sending a written communication to the Chair of the IAP Steering Committee. Withdrawal will take effect two months after the Chair's acknowledgment of receipt of such communication.

ii) Clearing House

WIPO will serve as the central Clearing House for the IAP. As such, according to WIPO practice and rules, human and financial resources will be provided for the project, the main activities of which are as follows:

- *Screening and evaluation*

As part of its role as the program Clearing House, WIPO, working through national TISC centers,⁴ will lead a screening and evaluation board/committee in each country which will be

³ The IAP is cognizant that the extent to which attorneys customarily engage in pro bono legal representation as a part of their professional careers varies from country to country, particularly with respect to IP services. While true pro bono services are expected of Member attorneys, in the rare case where this is not feasible in a particular country, IAP urges Member Governments to consider any action to improve the situation.

⁴ Technology and Innovation Support Centers (TISCs) are designed to provide innovators in developing countries with access to locally based, high quality technology information services and other related services.

responsible for ensuring that all inventors applying to the IAP have met the threshold criteria for entry into the program. The threshold criteria shall consist of the following:

- i) The applicant (individual or entity) is a national of, or is domiciled in, a country currently participating in the IAP;
- ii) The applicant meets the financial criteria to qualify as “under-resourced” according to the standards applicable for the relevant IAP country;
- iii) The applicant has either filed a *pro se* patent application, or has completed the online course offered by the WIPO Clearing House.⁵; and
- iv) A substantive evaluation on whether the invention represents a “promising idea,” and may consider such criteria as the subjective ingenuity that the invention may exhibit, its practicality, its potential to benefit society, its likelihood to result in a beneficial commercial product, the likely benefit to the applicant from inclusion in the program (e.g. likelihood to lead to future inventions), etc.

This substantive evaluation is not a patentability examination, and will not impact any decision taken by national IP offices. . The Steering Committee will establish and periodically update these criteria as part of its ongoing governing responsibilities. Any material used during this exercise shall be communicated to the patent attorney in order to help him/her in their duties.

- *Roster of pro bono attorneys*

WIPO will maintain an updated list of pro bono patent attorneys participating in the IAP by country and technical specialty. In general, each attorney will only be assigned one active case until all other attorneys on the list for the country have been given the opportunity to participate. If, as expected, the number of cases exceeds the number of pro bono attorneys, attorneys may volunteer for additional cases, provided the resulting workload is manageable within the applicable rules of ethics (as with paying clients).

- *Database*

WIPO will maintain a database with all cases and their current status, from the request of assistance until the application process is closed (either because the applicant does not classify or because the prosecution is finished). In maintaining such database, and in communicating with pro bono attorneys, no privileged or confidential information will be requested, used, or exchanged. It is the responsibility of pro bono counsel to ensure that any applicable attorney-client privilege, professional privilege or confidentiality is observed, just as with private clients.

Within the context of a joint engagement with national and regional industrial property authorities, the World Intellectual Property Organization (WIPO) supports the effective operation of TISCs by: i) Facilitating access to patent databases and other scientific and technology resources; ii) Training local users through on-site and distance learning; iii) Providing information and training materials; iv) Supporting awareness-raising activities and v) Disseminating best practices and experiences among TISCs

⁵ In order to maximize awareness and interest in IAP, the program will be promoted through the following sources: i) Letters to all *pro se* applicants upon receipt by the local patent office; ii) marketing; iii) WIPO activities related to innovation promotion and awareness; iv) Government campaigns; and v) IAP promotional activities undertaken by the Forum and WIPO.

- *Online course as an alternative admission path*

To enable the alternative admission path for those inventors who have not filed a *pro se* application, WIPO will offer an online course on patents in the framework of the IAP. This course is a prerequisite for inventors or small businesses that have not yet filed a *pro se* application.

iii) **Steering Committee**

The Steering Committee shall be established by a separate Steering Committee Charter. Steering Committee membership and conduct shall be governed by the Steering Committee Charter.

Financing IAP Activities

The Steering Committee has no powers in regard to financing of WIPO activities as the Clearing House. Members recognized that the activities of the IAP may require direct disbursement of funds to support the progress of this project.

Main Purpose and Functions

The purpose of the Steering Committee is to act as the central governance body for the IAP and to provide overall strategic direction, guidance and support to both initiatives. In furtherance of this purpose, the principal functions of the Steering Committee concerning the IAP are to:

- Create a work program and overall activity schedule for the IAP
- Monitor all activities and projects initiated as part of the work program
- Establish a regular meeting schedule, extend invitations to appropriate meeting participants and make physical arrangements for the meetings
- Determine the self-assessment process that the Committee will utilize to develop action plans and track progress
- Review and approve the objective financial criteria for “under-resourced” inventors proposed by each participating IAP Member country
- Set general standards for substantive criteria for admission into the IAP, and review substantive criteria proposed by IAP Member countries
- Provide guidance for, review and approve the IAP IP education modules
- Solicit and raise any funds necessary for the central implementation and operation of the IAP
- Approve, provide direction for, and/or help to develop central public relations and communications campaigns to promote and disseminate information about the IAP to Governments, patent attorneys, inventors and the public; and
- Obtain the approval and support of all IAP Members involved in the adoption and implementation of the Action Plan.

4. Inventors and Application Process

The IAP is aimed at providing top quality IP legal services to qualified under-resourced inventors, whether they apply for a patent individually or as a part of a small or medium business entity (SME). As such, inventors who participate in the IAP are the direct beneficiaries of the program.

As discussed above, admission into the IAP can occur through two alternative paths: (a) a direct access path which matches more experienced inventors (as evidenced by their filing of pro se applications) with qualified IP counsel; and (b) an IP education/outreach path, which first introduces less experienced inventors to the IP system through an online course before matching them with qualified counsel. (See Flowcharts, Annex II).

To be eligible to participate in the IAP, inventors or SMEs (“applicants”) must fulfill all of the requirements described in the “*Screening and Evaluation*” section above. All applicants who believe that they meet these criteria are encouraged to apply. After screening and evaluation the national screening board/committee will contact those applicants who are admitted into the program and provide instructions on how to proceed. Inventors officially become enrolled in the IAP upon execution of the program’s binding terms , after which they will be matched with an IAP attorney (see forms in Annex IV).

5. Changes to Guiding Principles

Changes to these Guiding Principles and Annexes shall only be permitted by unanimous vote of those Steering Committee Members who cast a vote.

[Annexes Follow]

Annex I

List of Steering Committee Members

Co-Chairs

David Kappos, Partner, Cravath, Swaine & Moore

John Villasenor, Non-Resident Senior Fellow, Brookings Institution / Professor, UCLA

Members

Alisa Harbin, Head - Group Litigation and IP, Novartis

Álvaro Correa-Ordoñez, Partner, Baker & McKenzie Colombia

Catharina Maracke, Associate Professor, Keio University

Corey Salsberg, Head - International IP Policy, Novartis

John Sandage, Deputy Director-General, WIPO

Jose Luis Londoño, Director of IP – Department of Commerce and Industry, Government of Colombia

Kerstin Jorna, Director – Intellectual Property Directorate, European Commission

Marco Aleman, Acting Director - Patent Law Division, WIPO

Martina Larkin, Senior Director, World Economic Forum

Nicholas Davis, Head of Society and Innovation, Member of the Executive Committee, World Economic Forum

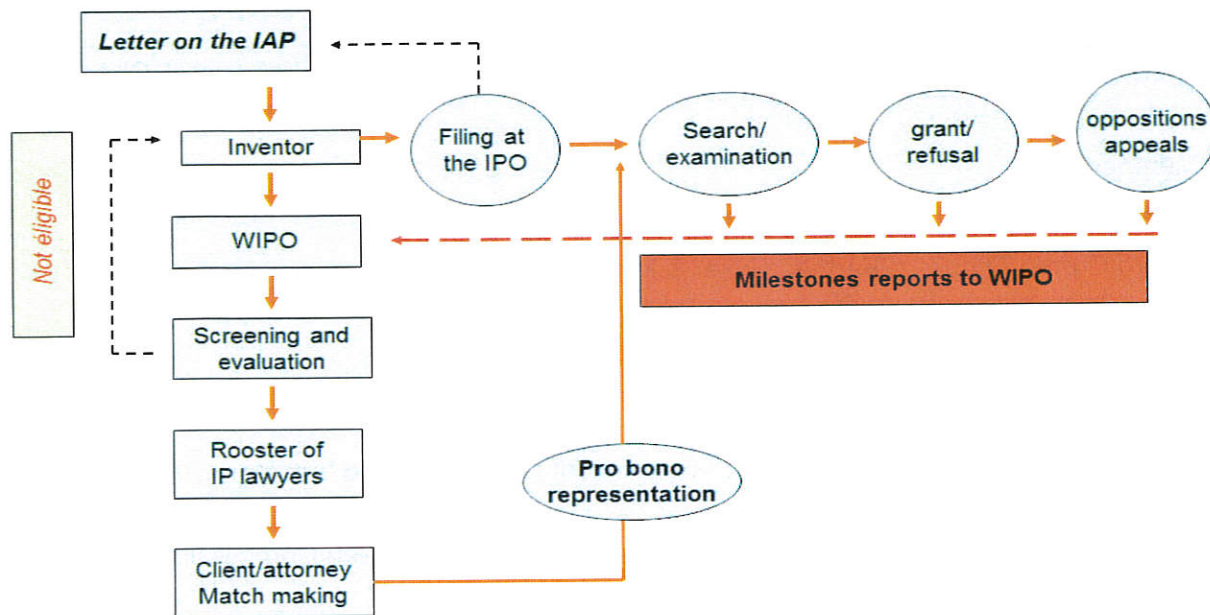
Timothy Loomis, Vice President and Chief Patent Counsel, Qualcomm

Annex II

Flowcharts

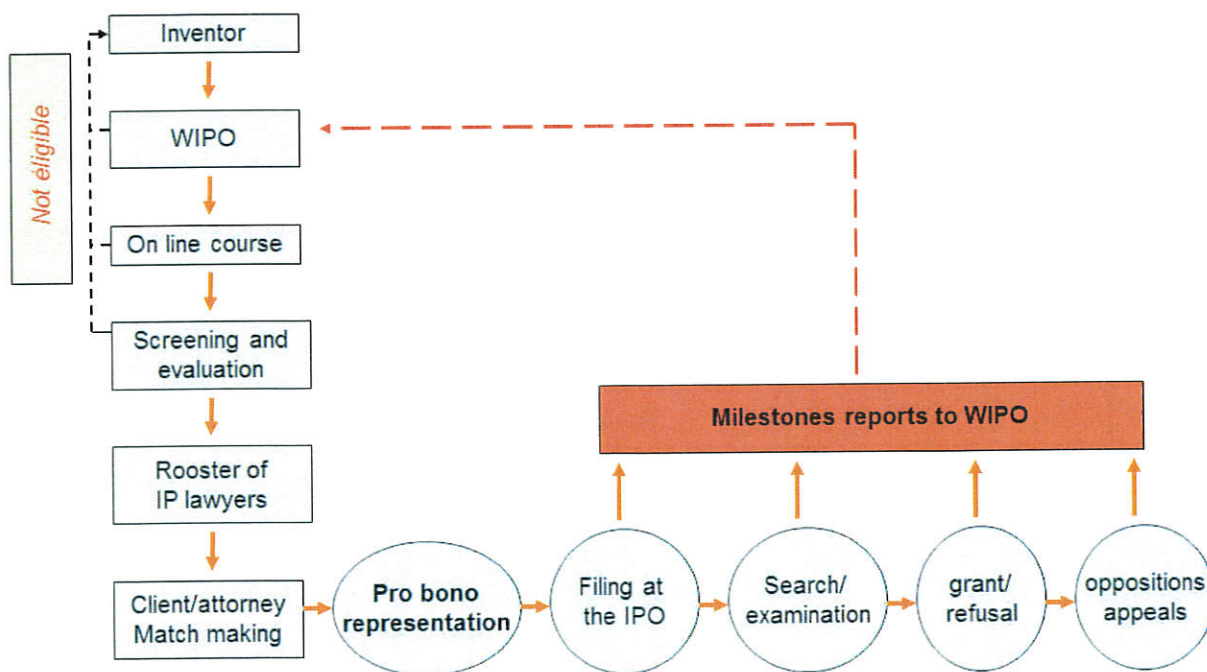
(a)

Clearing house work (pro se filing)



(b)

Clearing house work (course on patents)



Annex III

Summary of roles to be played

The Forum

- Leadership
- Publicity
- Promoting clients, among others means, through other Global Agenda Council Projects (see network of Global Agenda Council, issues brief)
- Actions on marketing and communication:
 1. The inventor award of the year
 2. The pro bono patent attorney of the year

Corporate Members of IAP

- Promoting the recruitment of pro bono IP lawyers
- Promoting new members beyond Corporate Members
- Marketing and fundraising
- Promoting clients, among others means, through national oriented campaigns to promote the protection of inventive ideas

WIPO

- Secretariat support as the “clearing house” of the project
- The function of leading through national TISCs screening boards role to filter inventors according to the project criteria
- Elaborating and keeping a national oriented list of pro bono patent attorneys and working with regional and international bar associations to promote this project.
- Referring inventors to the pro bono patent attorney based on the jurisdiction and area of practice
- Keeping a data base of cases, with indication of status (1. client contact; 2. Match making Client-Pro bono patent attorney; 3. Indication of milestones in the process and 4. Closing the file). And making available statistics on the project.
- Promoting clients, among other means, via current courses and activities on innovation and patent information
- Making available an online course on patents which would be one alternative requirement for eligibility (instead of Pro Se filing)
- Providing courses/material/info on search of the state of the art (Inn and Tech Support Section) and on patent drafting
- Actions on marketing and communication:
 1. On the web: i) an IAP webpage; and ii) a link on the IAP will be included in different programs on innovation promotion
 2. The pilot program will be presented in the WIPO magazine; and
 3. Reference to the IAP would be made in training programs addressed to users, e.g., PCT seminars for users.

Pro bono patent attorneys

- Registered at the roster of pro bono patent attorneys, only if duly authorized to practice according to local/national rules and requirements
- Insurance liability according to local practice and rules
- Provide timely and high quality standard services to the client, at the same level to the regular client
- Keep the records and follow the prosecution of the application
- Informing WIPO about milestones of the process

Governments

- In consultation with the steering committee determine the main elements of the IAP in the respective country, e.g., determining the threshold for considering “under resource” an inventor and when an invention is considered promising.
- Communicate to Pro Se applicants by written letter the existence of the IAP.
- Set up the screening board, promote and facilitate their functioning in the framework of the work conducted by the national TISC.
- Promoting clients, among other things means, communicating to inventors that seem to fulfill the criteria of eligibility about the existence of this project
- Promoting the recruitment of pro bono IP lawyers, including a close relationship with the national association of patent agents.
- Considering options for the identification of funds to cover the costs associated with the filing of patents, namely, patent office’s fees and other out of pocket costs
- Publicity, in particular establishing an IAP webpage with links with the WIPO program webpage

Annex IV

Forms

1. Application for Pro Bono Legal Assistance
2. Volunteer Patent Attorney Information Submission
3. Letter of acceptance (Screening board)
4. Letter of referral of the inventor to the patent attorney
5. Attorney Letter of Engagement
6. Letter of withdrawal (Inventor Application)
7. Withdrawal from Representation
8. Case Closing Form
9. Confidentiality Agreement

[End of annexes and of document]

