

## **Standing Committee on the Law of Patents**

**Thirty-First Session**  
**Geneva, December 2 to 5, 2019**

### **PROPOSAL BY THE DELEGATION OF BRAZIL**

*Document prepared by the Secretariat*

1. The Annex to this document contains a proposal regarding a further study and sharing sessions on sufficiency of disclosure, submitted by the Delegation of Brazil for consideration by the Committee under item 6 of the draft agenda: Quality of patents, including opposition systems.

2. *The members of the Standing Committee on the Law of Patents (SCP) are invited to consider the contents of the Annex.*

[Annex follows]

THIRTY-FIRST SESSION OF THE STANDING COMMITTEE ON THE LAW OF PATENTS

PROPOSAL FROM BRAZIL

FURTHER STUDY ON SUFFICIENCY OF DISCLOSURE

1. At the twenty-second session of the Standing Committee on the Law of Patents (SCP), held in Geneva from July 27 to 31, 2015, the Committee discussed a study on sufficiency of disclosure prepared by the Secretariat (document SCP/22/4).
2. The study was based on the information submitted by Members and Regional Patent Offices to the International Bureau in response to Note C. 8403, dated December 15, 2014. In total, 58 Member States and three Regional Patent Offices provided information on their national laws in relation to the requirement of sufficiency of disclosure.
3. The document SCP/22/4 presents valuable information on national laws and their application of the main general principles of sufficiency of disclosure, notably: (i) the enabling disclosure requirement; (ii) the support requirement; and (iii) the written description requirement.
4. This first compilation document contributed to the sharing of best practices and solutions adopted by Members on the role of sufficiency of disclosure with a view to ensure the granting of high-quality patents. However, because it is a mere compilation of national legislations, the document does not delve into the threshold of analysis of actual patent requests, in a similar manner than achieved on the Committee's work on the inventive step requirement, based on the proposal submitted by Spain (SCP/24/3).
5. According to Article 29 of the TRIPS Agreement, Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor. Sufficiency of disclosure is thus a central element of a balanced patent system and a necessary counterpart for the granting of a patent.
6. Given the importance of this subject for the topic of Quality of Patents, Brazil believes that the discussion on sufficiency of disclosure should move up on the Agenda Item "Quality of Patents, including Opposition Systems". Brazil further proposes that the Secretariat prepares a study on sufficiency of disclosure to address specific aspects of the description in patent requests related to the chemical sector.
7. Due to the complexity of this technological sector, it is of paramount importance that the patent description is sufficient in a manner that a person skilled in the art is able to reproduce the invention without undue experimentation and/or further consultations with the patent owner. It is well-recognized by Members that patent description is paramount in assuring the full reproduction of the invention both after the patent expires and in the licensing process to third parties. This allows for the effective use of a patent and contributes to the research and development (R&D) of new products and processes.

Brazil thus believes that a further study on sufficiency of disclosure would increase transparency on how the analysis of this requisite is carried out by Patent Offices and the different approaches adopted to guarantee the effective reproduction of the invention by third parties once the patent has expired or when the patent is licensed.

8. The study should cover Inorganic and Organic Chemistry, including Pharmaceuticals. We suggest the following topics to compose the further study on sufficiency of disclosure:

- Chemical compounds defined by Markush Formula;
- Esters, ethers, salts, N-oxides;
- Stereoisomers (enantiomers, diastereomers, Cis-trans and E-Z isomerism);
- Pro-drugs;
- Compositions and formulations;
- Polymorphic forms and crystalline, co-crystals, hydrates, solvates;
- New use of a known compound;
- Manufacturing process of chemical products.

9. The study would be based on the information submitted by Members and Regional Patent Offices, and consist of a collection of factual information on their practices.

10. Following the publication and presentation of the study by the Secretariat to the SCP, Members States are invited to participate in sharing sessions to present their own examination experiences and practices.

[End of Annex and of document]