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OMPI
ORGANIZACIÓN MUNDIAL
DE LA PROPIEDAD
INTELECTUAL

SCP/31/5 SUMMARY
ORIGINAL: INGLÉS
FECHA: 6 DE NOVIEMBRE DE 2019

Comité Permanente sobre el Derecho de Patentes

Trigésima primera sesión
Ginebra, 2 a 5 de diciembre de 2019

RESUMEN DEL DOCUMENTO SCP/31/5: RESEÑA DE LAS INVESTIGACIONES EXISTENTES SOBRE LAS PATENTES Y EL ACCESO A LOS PRODUCTOS MÉDICOS Y A LAS TECNOLOGÍAS DE LA SALUD

Documento preparado por la Secretaría

1. El Comité Permanente sobre el Derecho de Patentes (SCP), en sus sesiones vigesimonovena y trigésima, celebradas en Ginebra del 3 al 6 de diciembre de 2018 y del 24 al 27 de junio de 2019, respectivamente, acordó que la Secretaría presentara, en la trigésima primera sesión del SCP, una reseña de las investigaciones existentes sobre las patentes y el acceso a los productos médicos y a las tecnologías de la salud, como se señala en el documento SCP/28/9 Rev. (véanse el párrafo 22 del documento SCP/29/7 y el párrafo 23 del documento SCP/30/10). El documento SCP/28/9 Rev. es una propuesta de las delegaciones de la Argentina, el Brasil, el Canadá y Suiza para que se efectúe esa reseña y el Comité la examine en relación con el punto del orden del día “Las patentes y la salud”.

2. De conformidad con las decisiones anteriores del SCP, la Secretaría preparó dicha reseña, que figura en el documento SCP/31/5, titulado “Reseña de las investigaciones existentes sobre las patentes y el acceso a los productos médicos y a las tecnologías de la salud”, y la presentó al Comité para que la examinara en su trigésima primera sesión, que se celebrará en Ginebra del 2 al 5 de diciembre de 2019.

3. En vista del volumen del documento SCP/31/5, el presente documento constituye un resumen de dicho documento.

4. Conforme a las decisiones anteriores del SCP, la reseña se efectuó con arreglo a la propuesta que figura en el documento SCP/28/9 Rev. En concreto, fue llevada a cabo por la Secretaría, tras haber consultado las secretarías de la OMS y la OMC, y comprendió estudios preparados por esas organizaciones y otras organizaciones intergubernamentales (OIG)

pertinentes. En la reseña también se incluyen estudios de investigadores externos encargados por esas organizaciones, así como investigaciones académicas revisadas por expertos.

5. Conforme a lo dispuesto por el Comité, para elaborar la reseña, la Secretaría se centró en los estudios sobre los siguientes temas:

- La relación entre las patentes y otras cuestiones conexas y la asequibilidad y disponibilidad de los productos médicos y las tecnologías de la salud[1];

- La función del sistema de patentes, incluidos los mecanismos relativos a la calidad de las patentes, en lo que respecta a incentivar y fomentar el desarrollo de nuevos medicamentos y tecnologías de la salud para hacer frente a la incidencia de la morbilidad mundial, a facilitar el acceso a los productos médicos y las tecnologías de la salud, y a velar por el suministro de productos de calidad;

- La función del sistema de propiedad intelectual en lo que respecta a fomentar el trasvase de conocimientos y la transferencia de tecnología en el sector de los productos médicos y las tecnologías de la salud;

- La función de los mecanismos de concesión de licencias obligatorias y voluntarias y de los consorcios de patentes a la hora de facilitar la asequibilidad y la disponibilidad de productos médicos y tecnologías de la salud; y

- La disponibilidad de los medicamentos esenciales en los países en que esos medicamentos no están sujetos a derechos de patente, tomando en consideración los diversos factores relacionados con la oferta y la demanda que influyen en la disponibilidad y la asequibilidad.

6. La reseña comprende las obras publicadas entre 2005 y 2018. Cada estudio ha sido resumido para proporcionar, en aproximadamente media página, una sinopsis objetiva del análisis, las principales conclusiones y las recomendaciones formuladas por los autores. La lista de estudios incluida en la reseña figura en el Anexo del presente documento.

7. Con respecto a las obras producidas por las OIG, además de las de la OMPI, la OMS, la OMC y las obras de investigadores externos encargadas por esas organizaciones, la búsqueda se llevó a cabo en publicaciones de la Unión Europea, la UNCTAD, el ONUSIDA, la OCDE, el PNUD, el ICTSD y el Centro del Sur, entre otras organizaciones.

8. La búsqueda de literatura académica se llevó a cabo en más de 80 revistas examinadas por expertos, teniendo en cuenta la pertinencia de los campos respectivos para los temas incluidos en el mandato. Cabe señalar que, si bien la reseña incluye todos los estudios académicos revisados por expertos que se han encontrado sobre los temas mencionados anteriormente, la Secretaría no ha evaluado la calidad del contenido de los estudios. Además, con arreglo a lo dispuesto por el SCP, la reseña no incluye publicaciones como documentos de trabajo, proyectos, blogs, comentarios ni artículos de opinión que no se consideren investigaciones académicas revisadas por expertos.

9. En relación con cada uno de los temas mencionados en el mandato, se ha encontrado un número diferente de estudios. La mayor parte de la literatura económica y jurídica detectada es pertinente para los siguientes temas: i) la función del sistema de patentes en lo que respecta a incentivar y fomentar el desarrollo de nuevos medicamentos y tecnologías de la salud para hacer frente a la incidencia de la morbilidad mundial; ii) la función del sistema de patentes en lo

[1] A los fines de la presente reseña, por “productos médicos y tecnologías de la salud” se entienden medicamentos, vacunas, diagnósticos y dispositivos médicos.

que respecta a fomentar el trasvase de conocimientos y la transferencia de tecnología en el sector de los productos médicos y las tecnologías de la salud; iii) la relación entre las patentes y la asequibilidad y disponibilidad de los productos médicos y las tecnologías de la salud; y iv) la función de los mecanismos de concesión de licencias obligatorias a la hora de facilitar la asequibilidad y la disponibilidad de productos médicos y tecnologías de la salud. Se han encontrado menos publicaciones en relación con el tema de la disponibilidad de los medicamentos esenciales en los países en que esos medicamentos no están sujetos a derechos de patente, tomando en consideración los diversos factores relacionados con la oferta y la demanda que influyen en la disponibilidad y la asequibilidad. Ello obedece a la falta de investigaciones publicadas sobre este tema tanto en los ámbitos económico y jurídico como en otras esferas.

[Sigue el Anexo]

Lista de estudios incluidos en la reseña de las investigaciones existentes sobre las patentes y el acceso a los productos médicos y a las tecnologías de la salud:

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