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SUBJECT: **Update on development agenda**  
PURPOSE: DISCUSSION

FICPI has devoted its Congress in Paris to discuss IP and balance, which is supposedly the main goal of the proposed development agenda in WIPO, which advocates that improvements in the patent system should consider the interest of all parties, including the public at large, and the particular needs of developing nations. One of the main goals of the agenda relies in promoting the public domain.

It seems appropriate for FICPI to rely on the expertise of its members to translate conceptual proposals of the development agenda into practical proposals, in particular in the context of the substantive patent harmonization (SPLT).

A position paper was adopted on November 2, 2005, in the Lisbon EXCO, on "Patent Law Harmonization vis-à-vis a Development Agenda" providing basic comments on an alternative reduced package for the SPLT including additional elements to fulfil some of the aspirations of developing countries (DngCs).

It is suggested that developing countries should agree to discuss substantive harmonization of patentability requirements, since they would be favoured in three aspects:

- Predictability encourages investments: foreign investors are more inclined to invest in countries which have a more familiar legislation;
- Uniform laws helps examination: offices in DngC will more easily apply searches and examination reports from other countries if basic requirements (prior art, novelty, inventive step) are the same (thus helping to reject patents which lack an inventive step, fulfilling desire to promote the public domain);
- Entitlement to foreign protection by inventors of DngC: many DngC have adopted novelty grace period provisions; lack of harmonization prevents inventors in such countries having previous disclosures to obtain patent protection in several developed countries (DCs); and
- An appropriate definition of prior art may help reducing the granting of patents lacking an actual inventive step.

It is suggested that a resolution is adopted reiterating some recommendations of the position paper, and adding new elements specifically aimed at developing countries.

A resolution might recommend:

1. In order to address the desire to promote the public domain, granting of trivial patents should be avoided:
  - (a) upon maintaining a **well equipped national Patent Office**, with examiners properly trained to perform prior art searches, and to issue rapid decisions, avoiding long periods of uncertainty for the inventor and for third parties,
  - (b) upon promoting **international harmonization of patentability requirements**, such as novelty and inventive step, in order to facilitate the mutual use of search results among patent offices in a non-binding manner.
2. Among aspects of a prior art definition to be harmonized, two in particular seem appropriate from a development perspective:
  - (a) the **secret prior art**, (i.e., an earlier filed, still unpublished patent application) should be considered as prior art with respect to a later filed patent application in the same jurisdiction **both for novelty and inventive step**, in order to avoid granting of patents lacking an inventive step;
  - (b) a **12-month novelty grace period, with no declaration**, should also become an international standard, (i) considering the relative lack of knowledge of individual inventors in developing countries as to the need to preserve novelty of an invention before filing a patent application; (ii) considering the possible desire of inventors to field-test an invention before investing in filing a patent application; and (iii) considering that the legislation of several developing countries already provide for a grace period.