



## Resolution of the Executive Committee, Hangzhou, China 26-30 March 2017

### “TRIPs and extreme backlogs in patent examination”

**FICPI**, the International Federation of Intellectual Property Attorneys, broadly representative of the free profession throughout the world, assembled at its Executive Committee held in Hangzhou, China from 26 to 30 March 2017, passed the following Resolution:

**Noting** that TRIPs Art. 62.2<sup>i</sup> requires Members to ensure the granting or registration of intellectual property rights “within a reasonable period of time” so as to avoid unwarranted curtailment of the period of protection;

**Noting** that some existing bilateral trade agreements<sup>ii</sup> define a reasonable period of time to constitute the longer of between four to five years from the date when the patent application was filed or two to three years from the date when the request for examination was filed; and

**Considering** that the average delay in granting patents by some patent offices greatly exceeds the above periods;

**FICPI urges that:**

- (a) (i) the period of five years from the date when the patent application was filed or, if applicable,
  - (ii) the period of three years from the date when the request for examination was filed or from the date of entry into a national phase PCT;
- is adopted as a standard with respect to the interpretation of “reasonable period of time” within the meaning of TRIPs’ Art. 62.2;
- (b) patent offices engage in actions to maintain the pendency of patent applications below the above periods, if necessary by making or intensifying the use of available resources, such as, but not limited to, PPH agreements, cooperative examination, use of shared information on examination (e.g. Global Dossier) or PCT search and examination reports; and
  - (c) if the examination period exceeds the applicable period of item (a), and if the local legislation so provides, patent owners should continue to be entitled to adjustment of the patent term to compensate for the time exceeding such period to the extent that the delay is caused by the patent office.

*[End of document]*

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<sup>i</sup> ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES

Article 62

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.



ii See, e.g.:

(A) FTA USA-Chile: ARTICLE 17.9.6. Each Party shall provide for the adjustment of the term of a patent, at the request of the patent owner, to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall be understood to include a delay in the issuance of the patent of more than five years from the date of filing of the application in the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods of time attributable to actions of the patent applicant need not be included in the determination of such delays.

(B) FTA USA-Colombia: ARTICLE 16.9.6. (b) Each Party shall provide the means to and shall, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent, other than a patent for a pharmaceutical product, by restoring patent term or patent rights. Each Party may provide the means to and may, at the request of the patent owner, compensate for unreasonable delays in the issuance of a patent for a pharmaceutical product by restoring patent term or patent rights. Any restoration under this subparagraph shall confer all of the exclusive rights of a patent subject to the same limitations and exceptions applicable to the original patent. For purposes of this subparagraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than five years from the date of filing of the application in the territory of the Party, or three years after a request for examination of the application has been made, whichever is later, provided that periods attributable to actions of the patent applicant need not be included in the determination of such delays.

(C) FTA USA-Australia: ARTICLE 17.9.8. (a) If there are unreasonable delays in a Party's issuance of patents, that Party shall provide the means to, and at the request of a patent owner, shall, adjust the term of the patent to compensate for such delays. An unreasonable delay shall at least include a delay in the issuance of a patent of more than four years from the date of filing of the application in the Party, or two years after a request for examination of the application has been made, whichever is later. For the purposes of this paragraph, any delays that occur in the issuance of a patent due to periods attributable to actions of the patent applicant or any opposing third person need not be included in the determination of such delay.