



Protocol for a Standing Amicus Brief Committee of AIPPI

I. Background

In its meetings following the Paris Congress 2010, the AIPPI Bureau decided to move ahead with the project of an Amicus Brief Committee of AIPPI. At the request of the Bureau, an initial proposal was prepared by Jochen Bühling setting out further actions to be taken in order to set up the Committee. After consideration of the initial proposal within the RGT, and discussion of the pertinent aspects thereof within the Bureau as a whole, this Revised Proposal has been prepared for further consideration and eventual implementation.

II. Observations

- A. It is believed that a standing Amicus Brief Committee (“ABC”) is preferable to an *ad-hoc* group formed on a per-issue basis. Advantages of a standing ABC include:
 - i. Improved process control and management of relations with National and Regional Groups (“NRGs”)
 - ii. Improved uniformity
 - iii. Reduction of risk of inconsistent positions
 - iv. Clearly defined mandate
 - v. Clearly defined leadership
- B. Recent events have underscored the importance of a clearly defined process for proposing, approving, and preparing amicus briefs.
- C. The ABC must be constituted and empowered in a manner that appropriately balances the interests of the NRGs with the interests of AIPPI International.

III. Mandate of the ABC

The ABC shall function to bring the position of AIPPI International to the attention of national and regional tribunals in appropriate circumstances through the coordination and oversight of filing of amicus briefs. This function shall not extend to commentary on pending bills or legislation.

IV. Roles of the ABC

The roles and duties of the ABC shall include the following:

- A. Receive and review requests for amicus briefs
- B. Identify potential amicus situations and interface with the appropriate NRG(s)
- C. Research existing AIPPI positions as they relate to proposed amicus briefs and consult with Special Committees where appropriate
- D. Make recommendations to the Bureau RE the advisability and necessity of filing a brief
- E. Coordinate and oversee the preparation of briefs
- F. Ensure briefs comply with the requirements set forth herein

- G. Report results to the Bureau and coordinate with the Communication Committee (“CC”) to communicate the results to the membership at large

V. Operation of the ABC

- A. Identification of potential opportunities to file amicus briefs
 - i. The existence and mandate of the ABC shall be communicated to the membership at large, together with an invitation to submit proposals for amicus briefs in appropriate circumstances.
 - ii. A proposal for filing an amicus brief may be made by any NRG, by any AIPPI Committee, or by the Bureau. The proposer shall provide the ABC with a statement of the case, the intended purpose of the amicus brief, and an identification of pertinent, established AIPPI positions (if any).
 - iii. The ABC shall also monitor the news and the activities of other NGOs, and may identify potential amicus brief opportunities on its own.
- B. The Investigation Phase
 - i. ABC brief team
 - 1. Upon receipt of a proposal to file an amicus brief, the Chair shall establish a brief team of ABC members to investigate the proposal.
 - ii. Coordination with NRGs
 - 1. Upon commencement of the Investigation Phase, the ABC shall consult with the NRG in whose jurisdiction the amicus brief is proposed to be filed regarding the desirability of filing an amicus brief (this is unnecessary if the request for filing the amicus brief was made by the relevant NRG). If the NRG opposes filing of an amicus brief, the amicus brief will not be filed. In the event the proposed amicus brief is to be filed before a regional court or tribunal, the ABC shall consult with all of the NRGs for that region, and the amicus brief shall not be filed if a majority of the NRGs for that region oppose the filing of the brief.
 - 2. Any NRG wishing to file an amicus brief in the name of AIPPI (whether International or NRG) must submit a proposal to the ABC. If that proposal is not approved pursuant to the procedures herein, the NRG may not file an amicus brief in the name of AIPPI (International or NRG). This, of course, would not prevent a Group from filing a brief in the name of another national or regional association.
 - 3. In the event the ABC and the appropriate NRG(s) agree in principle to the desirability of filing an amicus brief, the relevant NRG(s) shall identify a person or persons responsible for interfacing with the ABC during the investigation and brief preparation phases of the project.
 - iii. Determining the AIPPI position
 - 1. It is the task of the ABC to determine whether AIPPI has an established position on the issue or issues in question that would allow AIPPI to file a meaningful amicus brief. The sources for this determination shall be the previous studies of AIPPI through the Working Committees and Special Committees and the Resolutions taken by AIPPI (“prior work of

- AIPPI"). Where a Special Committee exists with relevant expertise, the Special Committee shall be consulted by the ABC.
2. If AIPPI has an established position, e.g., through a Resolution of AIPPI, the ABC shall review this position to determine whether the position is still current and applicable, or whether the position needs to be reconsidered. For example, a position taken by AIPPI in the past may not be suitable to be presented in an amicus brief due to passage of time or change of circumstances since the time the position was taken.
 3. In determining whether AIPPI has an established position, and recognizing that the precise issue raised in a particular case may not align with the precise wording of, for example, a prior Resolution, it shall be considered that AIPPI has an established position if, in the opinion of the ABC and subject to Bureau approval as set forth below, a position can be reasonably established based on the prior work of AIPPI.
 4. If AIPPI does not have an established position, or if the established position needs to be reconsidered, the following questions must be considered by the ABC:
 - a. Is the matter so urgent and important that AIPPI needs to establish a new position and to file an amicus brief?
 - b. If so, can this new position be achieved by consultation of the NRGs or the ExCo?
 - c. If the NRGs and the ExCo cannot be consulted due to time limitations, is an urgent decision of the Bureau (based on the recommendation of the ABC) required and appropriate?
 - d. Only if the ABC answers "a" and one of "b" and "c" in the affirmative shall the ABC proceed with submission of a request for approval of the amicus brief to the Bureau.
- iv. Submission for Bureau approval
1. After consultation with the appropriate NRG, and after determining that AIPPI has an established position on the issue in question, or the ABC believes that the requirements of paragraph V(B)(iii)(4) are satisfied, the ABC shall submit a request to the Bureau for approval to file the amicus brief. No amicus brief shall be filed in the name of AIPPI International or in the name of any NRG without Bureau approval.

C. Brief Preparation Phase

- i. Upon receipt of Bureau approval to file an amicus brief, the project will enter the brief preparation phase.
- ii. The ABC brief team shall coordinate with the NRG(s) regarding drafting of the amicus brief.
 1. In the event the subject of the proposal is within the scope of an existing Special Committee, input shall be solicited from the Special Committee at the outset of the brief preparation phase.
 2. Depending upon, *inter alia*, the subject of the proposal, the existence of a Special Committee relating to this subject, and availability of resources, the ABC brief team shall facilitate selection of appropriate persons to draft the brief. Depending upon the circumstances, the brief may be drafted primarily by the NRG(s), by a Special Committee, by the ABC brief team

itself, or by a combination thereof. However, the ABC shall have final authority for the form of the brief.

- iii. The final draft of the brief shall be submitted to the Bureau for approval prior to filing.

D. Filing of Brief

- i. In the case of a brief filed before a national tribunal, it is contemplated that the brief would be filed by the NRG or a representative thereof. In the case of a brief filed before a regional tribunal, it is contemplated that the brief would be filed by members of the Bureau and, where appropriate, the Chair of a participating Special Committee. In any event, the Bureau may adjust the manner of filing as may be required for the rules of the applicable tribunal.

E. Follow-through

- i. The ABC's brief team shall monitor the case in question, and shall advise the ABC, who shall in turn advise the CC and the Bureau, of the results of the case and of any citation or mention of the amicus brief.

VI. Preparatory Tasks

In the interest of determining in which jurisdictions amicus briefs may be admissible, and further in the interest of determining appropriate composition of the ABC, a brief survey may be sent to the NRGs.

VII. Composition of the ABC

- A. The ABC is a permanent Committee that can be set up either as a Bureau Advisory Committee or at a later stage even as a Statutory Committee. Its members shall be representative of gender, age, geographical and professional diversity of the membership of AIPPI. However, while not required, it is intended that in normal cases the members of the ABC will be from jurisdictions where amicus briefs are admissible. In the case of the United States, which has the most active amicus brief practice, more than one U.S. member on the ABC may be appropriate.
- B. The Officers of the ABC shall be a Chair, a vice-Chair, and a Secretary. The total membership of the ABC, once fully constituted, shall be between 10 and 15 people.

VIII. Recusal policy

- A. Any ABC member who represents, or is associated with a firm that represents, a party to the case at issue shall recuse him or herself and shall not participate in any fashion in the amicus brief in question.
- B. Any recommendation to the Bureau from the ABC regarding an amicus brief shall contain an express statement that the recusal policy has been observed.
- C. In this respect it is also important to document the process that led to an amicus brief and to have this statement on record. It may be that, at a later stage, a third party will object to the amicus brief or even challenge its legitimacy. In that case, clear and complete records will be required.

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