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International Association for the Protection of Intellectual Property
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AIPPI Bureau

New Bureau of AIPPI (Article by Stephan Freischem, Secretary General)

On the 6th of October 2010, the last day of at the 42nd World Congress of AIPPI in Paris, the Executive Committee elected a new Bureau. A significant number of officers left the Bureau after reaching the maximum term of office, namely

- Thierry Mollet-Viéville, France, President
- Michael Brunner, UK, Secretary General
- Jochen Bühling, Germany, Reporter General
- Eiji Katayama, Japan, Treasurer General
- Dariusz Szeleper, France, Deputy Reporter General
- Robert Miller, Australia, Assistant Secretary General
- Nicolai Lindgreen, Denmark, Assistant Reporter General
- Shoichi Okuyama, Japan, Assistant Reporter General

These officers have devoted much of their time and professional experience to AIPPI over the last several years. Their open attitude ensured an open and productive working atmosphere. We thank them deeply and we will miss them dearly.

The members of the new Bureau of AIPPI are:

- President: Yoon-Bae Kim (Rep of Korea)

After leading the Korean Group of AIPPI and other national Chapters of international IP associations for many years and after serving two years on the Bureau as Vice President, Patent Attorney Yoon-Bae Kim from Seoul takes over the lead role in the Bureau until the Congress 2012 in Incheon/Seoul, Korea.



- Vice President: John Bochnovic (Canada)

John Bochnovic brings his vast experience of national and international IP associations into the Bureau. For his active participation in the work of AIPPI he received the Award of Merit in 2001. John works as a Barrister, Solicitor, Patent and Trademark Agent in Ottawa.



- Secretary General: Stephan Freischem (Germany)

Stephan Freischem has learned the secrets of AIPPI as Deputy Secretary General over the past four years after a five year term as Secretary of the German National Group. He is a Patent Attorney practicing in Cologne.



- Reporter General: Thierry Calame (Switzerland)

Attorney at Law and IP litigation expert Thierry Calame practices in a Zurich law firm with a long tradition of participating in AIPPI activities. He started in the Reporter General's Team where he served for more than a decade as Assistant and Deputy.



- Treasurer General: Gunnar Baumgärtel (Germany)

Berlin Patent Attorney Gunnar Baumgärtel swapped sides after checking the expenses of the former Bureau as Chairman of the Financial Advisory Committee for four years. He will now be responsible for the accounts, still under close control of the FAC.



- Deputy Secretary General: Laurent Thibon (France)

Laurent Thibon, Patent Attorney from Grenoble, actively participated in the preparation of this year's Congress in Paris and served as Treasurer of the French National Group. He will use his experience in the future by supporting the Secretary General as Deputy.



- Deputy Reporter General: Nicola Dagg (UK)

Nicola Dagg, solicitor and IP litigation expert practicing in London, is one of the Deputies of the Reporter General after gathering experience on the team as an Assistant over the last four years.



- Deputy Reporter General: Sarah Matheson (Australia)

Melbourne-based Legal Practitioner & Trade Marks Attorney joined the Reporter General's Team in 2009 as an Assistant, after gathering experience as a member of AIPPI's Working and Special Committees, and is now the second Deputy Reporter General.



- Assistant Secretary General: Renata Righetti (Italy)

Renata Righetti, IP practitioner in Milan, was one of the key Individuals responsible for AIPPI's Forum/ExCo in Sorrento in 2000. Since 2007, she has been an Assistant Secretary General responsible for the Groups in Europe and Africa.



- Assistant Secretary General: Sergio Ellmann (Argentina)

Buenos Aires-based IP lawyer Sergio Ellmann has actively supported the Argentine Group of AIPPI for a number of years and has chaired the National IP association in that country. In 2008, he joined the extended Bureau as Assistant Secretary General responsible for the Groups in the Americas.



- Assistant Secretary General: Karen Abraham (Malaysia)

Kuala Lumpur IP lawyer Karen Abraham is widely known in the Association as long-term President of the Malaysian Group. She now joins the extended Bureau as Assistant Secretary General responsible for the Groups in Asia/Oceania.



- Assistant Reporter General: Sara Ulfsdotter (Sweden)

Sara Ulfsdotter, IP lawyer in Stockholm with a focus on patent litigation, was active as Assistant Secretary on the Executive Committee of the Swedish Group before joining the Team of the Reporter General in 2010 as Assistant.



- Assistant Reporter General: John Osha (USA)

John Osha, Attorney at Law and Patent Attorney in Houston, served the US National Group as Group Reporter for patent related Working Questions before joining the Team of the Reporter General in 2010 as Assistant.



- Assistant Reporter General: Kazuhiko Yoshida (Japan)

Tokyo-based Attorney at Law and Patent Attorney Kazuhiko Yoshida gathered experience in the scientific work of AIPPI by co-authoring Group Reports to Working Questions for the Japanese Group, before joining the Team of the Reporter General in 2010 as Assistant.



AIPPI Congress 2010

Review of the Paris Congress, 3-6 October 2010 (Article by Thierry Mollet-Viéville)

Under the patronage of Mr. François FILLON, the French Prime Minister and the Head of the Government, whom AIPPI would like to salute here with gratitude, the 42nd World Intellectual Property Congress of AIPPI was held on October 3 - 6, 2010, for the fourth time in Paris, the city of lights; in France, the country of liberties; in Europe, a part of the world that will always keep "its intellectual vitality."

After the 32nd Congress that took place in Paris in 1983, coinciding with the celebration of the centennial of the Paris Convention of 1883, AIPPI thus welcomed over 1.900, participants from over 85 countries.

This Congress was most excellently prepared by the French Group of AIPPI presided by Thierry SUEUR and his Organization Committee, also co-presided by Denis MONEGIER du SORBIER.

1.

- A) The opening ceremony took place on Sunday, October 3, 2010, in the main amphitheatre of Palais des Congrès, in front of an audience of more than 1,500 people who were thus able to appreciate the speech in French and English given by the President of AIPPI, Thierry MOLLET-VIEVILLE.

Then, following the questions asked by Thierry SUEUR, Francis GURRY, the Director General of WIPO, Benoît BATTISTELLI, the President of the European Patent Office, and Yves LAPIERRE, the Director of INPI, presented to the audience their actions and needs in the field of Intellectual Property, whether worldwide, in Europe or in France.

After that, Messrs. GURRY, BATTISTELLI and LAPIERRE gave out the three Academic Prizes of AIPPI to Mr. Guillaume HENRY, Michel ABELLO, Vincent CASSIERS and Arnaud DE LA TOUR, Matthieu GLACHANT, Yann MÉNIÈRE.

- B) The day before, the Members of the Council of Presidents have been welcomed in the splendid 19th century French residence that is now the JACQUEMART ANDRE Museum, where after discovering or rediscovering many works of art by artists such as REMBRANDT, VAN DYCK, CANALETTO, etc., they were invited to sit down to a gourmet dinner.

2 As the parliament of IP, AIPPI is the largest IP forum, since it brings together all the professionals who are interested in all the branches of this science, whether in matters of invention patents, trademarks, designs or copyrights.

AIPPI is a unique association in the world because it is a volunteer and non-political organization; it brings together over 9,000 Members from over 100 countries whom it consults on all IP issues to come to a significant and representative consensus, thanks to this broad base of professionals who devote their time to AIPPI to express their needs and solutions.

At the Paris Congress, in addition to the thirteen workshops and the "PHARMA day", AIPPI discussed the five following questions:

- Which skilled person should assess the inventive step, which is the requirement for the protection, in all technical areas, of inventions that deserve such protection?
- Manufacturing and commerce are being relocated beyond many borders. What remedies should be provided for contributory infringement of a patent right?
- To improve technology transfer, how can we protect industrial and business secrets?
- Considering the multiplication of means of communication, how can trademarks be protected against dilution?

- With respect to digital techniques, should we not be generous and accept new copyright exceptions?

To answer these various questions, AIPPI seeks to achieve a balanced equilibrium between rights and obligations whether those of IP owners or those of the advocates of free competition. AIPPI wishes for the quality of its scientific work to be as high as possible. For this it depends on the quality of the men and women, who are willing to take time from their professional work to contribute their knowledge and experience to AIPPI.

The French Bâtonnier, Eugène POUILLET, the first President of AIPPI, at its first Congress in 1900 in Paris, expressed the hope that *"we will thus work towards a creation of peace, of concord, (...) for the benefit of humanity... thanks to a few people of good will... that will always be remembered with gratitude..."*

- 3 It was at the Louvre, the largest palace in Europe, that the Congress participants were able to come together for a private party on Monday, October 4, 2010, and admire some of the world's most well-known paintings and sculptures.

They were also invited to admire, in a late night extravaganza, the glimmering and crystalline Pyramid that I.M. PEI, the Chinese-American architect, brought to us to commemorate the bicentennial of the French Revolution in 1989.

- 4 Lastly, at the famous Château de Versailles, the Congress participants were invited to admire, in different rooms such as the prestigious Galerie des Glaces, various works of the famous Japanese artist, Takashi MURAKAMI, who wants to create a bridge between past and future, and introduce us to the Versailles wonderland.

A sumptuous dinner was then served for nearly 1,800 guests in the Galerie des Batailles and the Orangerie.

- A) After the welcoming speech given by Thierry SUEUR, the President of the French Group of AIPPI, Christine LAGARDE, the French Minister of Economy and Industry, gave a speech, in both French and English, on the future of Intellectual Property, particularly in France and Europe. With her distinguished elegance and her clarity of mind, the Minister of Economy and Industry filled the audience with enthusiasm, prompting a warm round of applause and congratulations upon her exit with Vincent LAMANDA, the First Presiding Judge of the French Supreme Court.
 - B) After that, Thierry MOLLET-VIEVILLE, the President of AIPPI, said a few personal words to bestow the Award of Merit on Mr. Ulf DAHLGREN, and to name Mrs. Esmé du PLESSIS and Mr. Jorge OTAMENDI as Members of Honor.
 - C) Then the dance floor was opened and taken over by many couples who danced late into the night.
- 5 AIPPI is remarkable in that, thanks to the most varied cultures it welcomes, each of its Members agrees to contribute, through their human and financial efforts, to the quality and dissemination of its work.

The President of AIPPI, Thierry MOLLET-VIEVILLE, expresses his most sincere wishes for the continued success of AIPPI in the future, thanks to its new officers such as Messrs. Yoon Bae KIM, Thierry CALAME, Stephan FREISCHM and Gunnar BAUMGÄRTEL, who are respectively President, Reporter General, Secretary General and Treasurer General of AIPPI.

Sous le patronage de Monsieur le Premier Ministre du Gouvernement de la République Française, Monsieur François FILLON, que l'AIPPI salue ici avec reconnaissance, le 42ème Congrès Mondial de la Propriété Intellectuelle de l'AIPPI s'est tenu pour la quatrième fois, du 3 au 6 octobre 2010, à Paris ville des lumières, en France au pays des libertés, en Europe région du monde qui conservera toujours « sa vitalité intellectuelle ».

Après le 32ème Congrès qui s'était tenu à Paris en 1983, notamment pour célébrer le centenaire de la Convention de Paris de 1883, l'AIPPI a ainsi accueilli plus de 1.900, participants venant de plus de 85 pays.

Ce Congrès a été de manière excellente préparé par le Groupe Français de l'AIPPI présidé par Thierry SUEUR et par son Comité d'Organisation également co-présidé par Denis MONEGIER du SORBIER.

1.

- A) La cérémonie d'ouverture s'est déroulée le dimanche 3 octobre 2010 dans le grand amphithéâtre du Palais des Congrès, devant plus de 1.500 présents qui ont ainsi pu apprécier le discours en français et en anglais du Président de l'AIPPI, Thierry MOLLET-VIEVILLE.

Puis sur les questions posées par Thierry SUEUR, le Directeur Général de l'OMPI, Francis GURRY, le Président de l'Office Européen des Brevets, Benoît BATTISTELLI et le Directeur de l'INPI, Yves LAPIERRE, ont fait part à l'audience de leurs actions et de leurs besoins dans le domaine de la Propriété Intellectuelle, que ce soit dans le monde ou en Europe et en France.

Puis MM. GURRY, BATTISTELLI et LAPIERRE ont remis les trois prix Académiques de l'AIPPI à M. Guillaume HENRY, Michel ABELLO, Vincent CASSIERS et Arnaud DE LA TOUR, Matthieu GLACHANT, Yann MÉNIÈRE.

- B) La veille, les Membres de Conseil des Présidents, avaient été accueillis dans cette splendide demeure française du XIXème siècle que constitue aujourd'hui le Musée JACQUEMART ANDRE, où un fin dîner leur a été servi après qu'ils aient pu découvrir ou redécouvrir de nombreuses oeuvres d'art, celles notamment de REMBRANDT, VAN DYCK, CANALETTO...

- 2 Parlement de la PI, l'AIPPI est en effet le plus grand Forum de la PI, car elle regroupe tous les professionnels qui s'intéressent à toutes les branches de cette science, que ce soit en matière de brevets d'invention, de marques, de modèles ou encore de droits d'auteur.

L'AIPPI est une association unique au monde, car, Organisation bénévole et non politique, elle regroupe plus de 9.000 membres provenant de plus de 100 pays, qu'elle consulte sur chaque question de PI afin de parvenir à un consensus significatif et représentatif, grâce à cette large base de praticiens qui se dévouent à l'AIPPI pour exprimer leurs besoins et leurs solutions.

Lors de ce Congrès de Paris, outre les treize ateliers et une « journée PHARMA », l'AIPPI a traité des cinq questions suivantes :

- Quel homme du métier pour apprécier l'activité inventive, condition nécessaire pour protéger, dans tous les domaines techniques, les inventions qui le méritent?
- Les actes de fabrication et de commerce se délocalisent au-delà de nombreuses frontières; comment sanctionner la contrefaçon de brevet par fourniture de moyens?
- Pour améliorer le transfert des technologies, comment protéger le secret des industries et des affaires?
- Face à la multiplication des moyens de communication, comment protéger une marque contre sa dilution?
- Face aux techniques numériques, ne doit-on pas faire preuve de générosité et accepter de nouvelles exceptions aux droits d'auteur?

Pour répondre à ces différentes questions, l'AIPPI recherche une balance équilibrée entre les droits et les obligations que ce soit ceux des titulaires de PI ou ceux des partisans de la concurrence libérale. L'AIPPI attache encore à ses travaux scientifiques, la plus grande qualité possible; cette qualité dépend elle-même de la qualité des hommes et des femmes qui veulent bien s'extraire de leur pratique professionnelle, pour lui apporter leurs connaissances et expériences.

C'est le Bâtonnier français Eugène POUILLET, premier Président de l'AIPPI lors de son premier Congrès en 1900 à Paris, qui formait l'espoir de « travailler ainsi à une oeuvre de paix, de concorde, au bien de l'humanité...grâce à quelques personnes de bonne volonté...dont on se souviendra toujours avec reconnaissance...».

- 3 C'est dans le plus grand palais d'Europe, le Louvre, que le lundi 4 octobre 2010 les congressistes ont pu se retrouver, exclusivement entre eux, pour admirer certaines des peintures et sculptures les plus connues dans le monde.

Ils ont pu également, au cours d'une féerie nocturne, admirer la Pyramide, brillante et cristalline, que l'architecte sino-américain I. M. PEI a fait jaillir pour célébrer en 1989 le bicentenaire de la révolution française.

- 4 Enfin c'est dans le célèbre Château de Versailles que les congressistes ont pu admirer, dans différentes salles comme la prestigieuse Galerie des glaces, différentes oeuvres du célèbre artiste japonais, Takashi MURAKAMI, qui a voulu créer un pont entre le passé et le futur pour nous faire découvrir le pays des merveilles de Versailles.

Un somptueux dîner fut ensuite donné à près de 1.800 convives, dans la Galerie des Batailles et à l'Orangerie.

- A) Après le discours d'accueil prononcé par Thierry SUEUR, Président du Groupe Français de l'AIPPI, Madame le Ministre de l'Economie et de l'Industrie, Christine LAGARDE, a prononcé, en français et en anglais, un discours sur l'avenir de la Propriété Intellectuelle, notamment en France et en Europe. Par son élégante distinction et sa clarté d'esprit, Madame le Ministre de l'Economie a enthousiasmé l'audience qui a tenu, lors de son départ avec Monsieur le Premier Président de la Cour de Cassation, Vincent LAMANDA, à les féliciter par des applaudissements les plus vifs.
- B) Puis le Président de l'AIPPI, Thierry MOLLET-VIEVILLE, a prononcé quelques mots personnels pour remettre à M. Ulf DAHLGREN, Mme Esmé du PLESSIS et M. Jorge OTAMENDI les titres de Lauréat du Mérite et de Membres d'Honneur.
- C) C'est alors que la piste fut envahie par de nombreux couples qui dansèrent tard dans la nuit.
- 5 L'AIPPI est remarquable en ce que, grâce aux cultures les plus diverses qu'elle accueille, chacun de ses Membres accepte de contribuer par ses efforts humains et financiers, à la qualité et à la diffusion de ses travaux.

Le Président de l'AIPPI, Thierry MOLLET-VIEVILLE, exprime ici ses vœux les plus sincères pour que l'AIPPI rencontre à l'avenir de nouveaux succès, notamment grâce à ses nouveaux officiers, tels que MM. Yoon Bae KIM, Thierry CALAME, Stephan FREISCHM et Gunnar BAUMGÄRTEL, respectivement Président, Rapporteur Général, Secrétaire Général et Trésorier Général de l'AIPPI.

AIPPI Academic Prize 2010 (AIPPI AIPPI French Group)

At the Paris Congress three contributions were awarded with the Academic Prize. The complete French texts of these contributions will be made available at www.aippi.fr shortly.

- Winner of the first Prize -Guillaume Henry

Intellectual Property Rights and Green Technologies

According to international experts scientific reports, the humanity has to face nowadays an unprecedented challenge: limit, even stop climate change due to human activities, among which the effects, if they are unpredictable, could become dreadful. Two options are conceivable to limit greenhouse gas emission: i) either to radically modify our lifestyles, ii) or to massively invest in the research for new low- emissions technologies. It appears that only the second branch of the alternative seems realistic to us because citizens of the developed countries don't want to change their lifestyle and those coming from developing countries want as well to have access to the consumer society. In this green technologies research race, the most important role will be played by private companies as we can not expect massive subventions from the States and Governments in this field.. That's why the patents role in the green technologies research has to be appreciated facing this matter of fact.

-First of all we have to facilitate green innovations. The patent role is essential because it confers a monopoly to its owner which is of prime importance to incite private companies to invest. . Certain adjustments could be developed or generalized as the acceleration of the procedures of examination by national offices, the decrease of taxes and annuities and especially, the elaboration of specific databases and the use of a homogeneous vocabulary. But the intensification of the protection is probably not a realistic way.

-Secondly we have to facilitate the diffusion of green technologies in advanced economies. This acceleration is necessary because reports show that green technologies diffusion rhythms are too slow to reach the international objectives of reduction of greenhouse gas emissions. But in order to avoid the risk to finally hinder innovation, voluntary diffusion should be privileged: creation of patents pools and especially incentive to grant licenses. Compulsory licenses should remain a supplementary tool.

-Finally we should transfer green technologies towards developing countries, it being understood that it is necessary to distinguish between countries such as India or China which have important patents portfolios on green technologies and countries less advanced in this domain. The so called "agreements flexibilities" mechanism of ADPIC can be an effective tool to ensure access to key technologies for developing countries, as it has been showed in the past for the health field.. Besides, we would strongly promote a unique frame of negotiation of the prevention of climate change including in an explicit way intellectual property rights.

- Lauréat du 1er Prix - Guillaume Henry

Les droits de Propriété Intellectuelle et les technologies vertes

Les rapports scientifiques des experts sur le climat indiquent que l'humanité est aujourd'hui face à un défi sans précédent : limiter, voire stopper les changements climatiques dus à l'activité humaine, dont les effets, s'ils sont difficilement prévisibles, pourraient s'avérer dramatiques. Deux options sont envisageables pour limiter l'émission de gaz à effet de serre : soit modifier radicalement nos modes de vie, soit investir massivement dans la recherche de nouvelles technologies « vertes » moins émissives. Seule la seconde branche de l'alternative apparaît réaliste parce que les citoyens des pays développés ne souhaitent pas changer leur mode de vie et ceux des pays en développement désirent également accéder à la société de consommation. Dans cette course à la recherche de technologies vertes, les acteurs privés joueront le premier rôle car les finances publiques des Etats ne permettent pas d'espérer des investissements suffisamment massifs dans ce domaine. C'est à partir de ce constat que le rôle des brevets dans le développement des technologies vertes doit être apprécié.

-Le premier impératif est de favoriser l'innovation verte. Le rôle des brevets est essentiel car le monopole qu'ils confèrent est un outil d'incitation primordial pour les entreprises privées. Certains ajustements pourraient être développés ou généralisés comme l'accélération des procédures d'examen par les offices, la diminution des taxes et annuités et surtout, l'élaboration de bases de données spécifiques et l'utilisation d'un vocabulaire homogène. Mais le renforcement de la protection n'est probablement pas une voie réaliste.

-Le second impératif est celui de favoriser la diffusion des technologies vertes au sein des économies développées. Cette accélération est nécessaire car les études montrent que les rythmes de diffusion des technologies sont trop lents pour atteindre les objectifs internationaux de réduction des émissions de gaz à effet de serre. Afin de ne pas risquer d'entraver l'innovation, les outils de diffusion volontaire devraient être privilégiés : création de pools de brevets et surtout incitation à accorder des licences. En revanche, les licences non volontaires devraient rester un outil subsidiaire.

-Le troisième impératif est celui du transfert des technologies vertes vers les pays en développement, étant entendu qu'il faut distinguer entre les pays tels que l'Inde ou la Chine qui disposent de portefeuilles importants de brevets sur les technologies vertes et les pays moins avancés dans ce domaine. Le mécanisme dit de flexibilités des accords ADPIC peut être un outil efficace de transfert de technologies, comme l'exemple de la santé l'a montré. En outre, un cadre unique de négociation de la prévention des changements climatiques incluant de manière explicite les droits de propriété intellectuelle est fortement souhaitable.

- Winners of the Second Prize -Arnaud de la Tour, Matthieu Glachant and Yann Ménière

Innovation and international technology transfer: The case of the Chinese photovoltaic industry

China is the largest solar photovoltaic cell producer in the world, with more than one third of worldwide production in 2008, exporting more than 95 percent of what it produces. The purpose of this paper is to understand the drivers of this success and its limits, with a particular emphasis on the role of technology transfers and innovation. Our analysis combines a review of international patent data at a detailed technology level with field interviews of ten Chinese PV companies. We show that Chinese producers have acquired the technologies and skills necessary to produce PV products through two main channels: the purchasing of manufacturing equipment in a competitive international market and the recruitment of skilled executives from the Chinese diaspora who built pioneer PV firms. The success of these firms in their market is, however, not reflected in their performance in terms of innovation. Rather, patent data rather highlight a policy -driven effort to catch up in critical technological areas.

- Lauréats du 2 ème Prix -Arnaud de la Tour, Matthieu Glachant and Yann Ménière

Innovation et transferts de technologie : Le cas de l'industrie photovoltaïque en Chine

La Chine est devenue en quelques années le premier producteur mondial de panneaux solaires. Elle a produit plus d'un tiers des panneaux fabriqués dans le monde en 2008, et en a exporté 95%. Le but de cet article est de comprendre les facteurs ayant permis ce développement spectaculaire, mais aussi d'en éclairer les limites, en accordant une attention particulière à l'innovation et aux transferts de technologie. L'analyse proposée s'appuie d'une part sur une base de données de 79.642 brevets liés à l'industrie photovoltaïque, d'autre part sur une enquête de terrain réalisée auprès de professionnels de cette filière en Chine. Nous montrons que les entreprises chinoises ont acquis la technologie nécessaire pour entrer dans l'industrie solaire photovoltaïque par deux moyens principaux : l'achat de lignes de production clef en main sur un marché concurrentiel de fournisseurs d'équipements dans les pays industrialisés, et la disponibilité de cadres qualifiés au sein de la Diaspora chinoise, lesquels ont fondé les premières entreprises du pays. A contrario, les principaux verrous technologiques auxquels sont encore confrontés les industriels chinois concernent des procédés protégés par le secret, pour lesquels il n'existe pas de marchés d'équipements concurrentiels. Dans ce contexte, l'effort d'innovation chinois est principalement mené par l'Etat, et vise à rattraper les pays développés dans les segments technologiques où l'industrie chinoise est encore peu présente.

- Winner of the third Prize -Michel Abello and Vincent Cassiers

A comparative analysis of Anton Piller (counterfeit seizure) orders in France and Belgium.

This article by Michel Abello and Vincent Cassiers consists in a comparative analysis of French and Belgian law governing Anton Piller orders.

The authors have selected five criteria on which to construct their analysis.

Firstly, the authors look at the historic origins of Anton Piller orders in French and Belgian law, and show how French law influenced Belgian law in this field.

Secondly, the authors analyse the respective judicial frameworks and focus upon the existence of an international legal framework, based on the Agreement on trade-related aspects of international property rights and on EU law. This legal framework requires a basic harmonization between Anton Piller orders in all EU member countries.

The third aspect of their comparison concerns the very essence of the procedures under Anton Piller orders, namely, definitions and seizure measures. Here, the authors discuss the salient features of each type of measure (nature, conditions for granting authorization and its implementation) under French and Belgian law.

This analysis of comparative law continues with a fourth section concerning rules on jurisdiction and procedure. The authors note that the uniformity of rules on procedure for all intellectual property rights, as observed in Belgian law,

contrasts with differing rules on procedure in French law, depending on whether the procedure in question concerns intellectual property rights or authors' rights.

The fifth section focuses on the protection of the legitimate interests of the seized party, and details current measures, in French and Belgian law, intended to protect confidential information.

The authors conclude with a comparative table summarizing the main differences and similarities between French and Belgian law in the field of Anton Piller orders. The main differences relate to:

- the conditions under which a seizure may be allowed; these conditions are more severe under Belgian law (whereby it is necessary to show not only the existence of an intellectual property right and serious instances of infringement but also that the seizure is reasonable in the interests of all concerned including those of third parties) than under French law (whereby it is sufficient to show the existence of an intellectual property right and a possible infringement);
- the possibility to take action on the basis of a foreign intellectual property right which is expressly recognized in Belgian law though this possibility does not exist under French law;
- the existence of two kinds of counterfeit seizure order in French law (either for copyright or for all other intellectual property rights) whereas the Belgian law has a single standard procedure applicable to all intellectual property rights;
- the protection of confidential information; although Belgian law seems more precise on this point than French law, though there is little difference in practice.

Finally, the authors draw attention to how counterfeit seizure orders might evolve in future on the following three points:

- 1° a complete harmonization of the Anton Piller order procedures for all intellectual property rights to bolster public confidence by clarifying transparency and legal protection;
- 2° the extension of Anton Piller orders (possibly limited in their current definition) to the protection of foreign intellectual property rights to better protect the holders of rights;
- 3° the development of protection of confidential information to prevent the misuse of the procedure for industrial or commercial espionage purposes.

- Lauréats du 3ème Prix -Michel ABELLO, Vincent CASSIERS

La saisie-contrefaçon : analyse de droit comparé France-Belgique

La contribution de Michel Abello et Vincent Cassiers porte sur une comparaison de l'état du droit français et du droit belge relatifs à la procédure de saisie-contrefaçon. La comparaison s'articule autour de cinq points.

Dans un premier point, les auteurs examinent les origines historiques de la procédure de saisie-contrefaçon en droit belge et en droit français et relèvent l'influence du droit français sur le droit belge dans cette matière.

Le deuxième élément de l'analyse concerne le cadre juridique. Les auteurs soulignent ici l'existence d'un cadre juridique international, dérivé de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce et du droit communautaire. Ce cadre juridique impose une harmonisation minimale de la procédure de saisie-contrefaçon dans les Etats membres de l'Union européenne.

Le troisième point de la contribution permet d'approcher l'essence même de la procédure de saisie-contrefaçon, à savoir les mesures de description et de saisie. Pour chaque type de mesure, les auteurs exposent, en droit français et en droit belge, leur nature, leurs conditions d'octroi et les modalités pratiques de leur mise en œuvre.

L'examen de droit comparé se poursuit avec une quatrième section relative aux règles de compétence et de procédure. Les auteurs observent que l'uniformité des règles de procédure pour tous les droits de propriété intellectuelle prévalant en droit belge contraste avec l'existence de règles de procédure différentes en droit français selon que la procédure a pour objet un droit de propriété industrielle ou un droit d'auteur.

Le cinquième point de l'analyse est consacré à la protection des intérêts légitimes de la partie saisie et détaille notamment les mesures existantes, en droit français et en droit belge, quant à la protection des renseignements confidentiels.

Dans leur conclusion, les auteurs résument les convergences et les divergences essentielles des droits français et belge en matière de saisie-contrefaçon dans un tableau comparatif. Les principales divergences portent sur :

- les conditions relatives à l'octroi d'une mesure de saisie, plus souples en droit français (où il suffit de démontrer l'existence d'un droit de propriété intellectuelle et d'une menace d'atteinte à ce droit) qu'en droit belge (où il faut démontrer non seulement l'existence d'un droit et d'indices sérieux d'une atteinte à ce droit mais aussi le caractère raisonnable de la saisie compte tenu de tous les intérêts concernés en ce compris l'intérêt des tiers) ;
- la possibilité d'agir sur la base d'un droit intellectuel étranger qui est expressément reconnue en Belgique tandis que cette possibilité n'existe pas en droit français ;
- l'existence de deux variantes de la procédure de saisie contrefaçon en droit français (pour le droit d'auteur d'une part et pour les autres droits de propriété intellectuelle d'autre part) là où le droit belge ne connaît qu'une seule procédure de saisie-contrefaçon applicable à l'ensemble des droits de propriété intellectuelle.
- la protection des renseignements confidentiels ; le droit belge étant plus contraignant pour le magistrat sur ce point que le droit français même s'il semble que, dans la pratique, les divergences soient peu importantes.

Enfin, les auteurs insistent sur trois pistes de réflexion pour l'évolution future de la saisie-contrefaçon :

- 1° harmoniser complètement la procédure de saisie-contrefaçon pour l'ensemble des droits de propriété intellectuelle et ce, afin de promouvoir l'intérêt général en renforçant la transparence et la sécurité juridique ;
- 2° ouvrir la procédure de saisie-contrefaçon, éventuellement limitée à la description, aux droits intellectuels étrangers, dans l'intérêt des titulaires de droit ;
- 3° développer la protection des renseignements confidentiels du saisi afin de prévenir le détournement de la procédure de saisie-contrefaçon à des fins d'espionnage industriel ou commercial.

Resolutions adopted (AIPPI General Secretariat)

Presentations of the Workshops are available

(AIPPI General Secretariat)

Congress Pictures

(AIPPI General Secretariat)

AIPPI Committees

Special Committees Reports are available online (AIPPI Special Committees)

Communications Committee annual report for the 42nd Congress Paris 2010 (Esmé du Plessis)

Forthcoming Events

AIPPI Lapland Symposium 2011, Levi Summit Conference Center, Lapland, Finland, March 31 - April 2, 2011 (Finnish AIPPI Group)

The Finnish AIPPI Group organizes its next triennial symposium with the topic "Trade Dress Protection – A Land of Confusion?" in Lapland (Finland) at the Levi ski resort on 31 March – 2 April 2011. The symposium program can be found here [The conference venue Levi Summit is situated on panoramic hillside of the Levi fell. For more information on the symposium, location and registration, please go to \[www.kalevatravel.fi/aippi2011\]\(http://www.kalevatravel.fi/aippi2011\).](#)

Articles and notes

Intellectual property litigation in the United Kingdom: important reforms will lead to cheaper determination of smaller less complex cases (Article by Ashley W. Roughton, UK Group Reporter)

Important new procedures in the Patents County Court (shortly to be re-named the Intellectual Property County Court), available since the beginning of October 2010, provide, for the first time, the potential for determination of lower value and less complex patent and other IP (trade mark and design right) disputes in the United Kingdom before a specialist judge. The rules bear some similarities with the procedures in Germany, although infringement and validity can be heard together if desired. The procedure is likely to be quick and to result in much lower costs than previously experienced in the UK. Also completely new, is the £50,000 cap on exposure to the other side's costs if the case is lost. The cap does not apply to a party's own costs but the limitations on the procedure can be expected to reduce those costs significantly as well. The new system will exist alongside the specialist Patents Court (a division of the High Court) which will remain available, with all its traditional procedures for disclosure and cross examination of witnesses etc., for determination of more substantial disputes.

The conduct of patent trials in the United Kingdom takes a well understood and standard course where the principal event is (in many cases) the point where the persons versed in the technology concerned and chosen by the respective parties come to court to answer questions. This has traditionally taken place at the trial of the action which is more or less the final step in the process. Given that legal costs are an increasing function of the time taken between initiating an action and the trial of that action, this process means that only those with enough money can get their case to trial. The result is that parties with limited budgets can be denied their right of access to the courts.

In 1988, the British government initiated a scheme which was intended to provide access to the patent courts for those who were less well off whilst at the same time preserving the existing structures. This proved not to be quite as popular as the government had anticipated. There followed years of uncertainty and under use and it has only been in recent years that the scheme has become more popular. However the drawbacks were still apparent; the parties had to litigate their patent disputes as if they were of unlimited means and they were still liable for the full costs of the action if they lost. There appeared to be no apparent saving either in terms of time, cost or, importantly, risk. What was needed was firmer control over costs and a way of bringing the case out at an earlier stage but at the same time providing certain disadvantages to litigants who were better off - in short, a first class system for those who wanted to pay for it and a standard class system for those who did not want anything more than to get to a specific destination in the most economical way. This analogy - or describing it as a first class/standard class system - is by no means perfect though. In the new patent system, for instance, the standard class travellers - to stretch the metaphor - would have to give up certain of their rights such as the right to disclosure of documents or the right to cross examine fully.

A review committee looked into the current status of intellectual property litigation and concluded that it was important to provide access to a low cost forum for Small or Medium Sized Enterprises (SMEs) whose cases tended to be less complex and of lower value (though there was no empirical evidence to support this). Further, the review committee concluded that the existing manner of conducting patent and other IP trials, where important aspects (such as legal argument) were left more or less to the end of the case meant that most of the costs had been incurred before it was possible to get an idea of what the issues and arguments were in a case. Hence, it was concluded that disclosure of each party's respective cases (including legal argument) should take place at an earlier stage in the litigation.

This meant that there was a firm basis for a proposal that a fuller statement of the case (which included legal argument) be prepared at the outset. The key, however, to economy was that the case had the attention of the judicial mind from the earliest of stages: some 2-4 weeks after the formal statements of case or pleadings had been filed and served. The judge was to be given a discretion whether or not to make any orders so that the new procedure had the flexibility to be "tailored" to the needs of a particular dispute. The judge could, for instance, make no orders and direct that the case be determined, on paper, on the basis of competing claims, counterclaims and defences, with no witnesses; or, he could make directions which would make the process look more like a trial in the main Patents Court. The judge would have to apply a cost-benefit analysis to whether to make any additional orders for disclosure, cross examination or experts. In practice, the judge will make every effort to keep proceedings as simple and cheap as possible without prejudicing the ability of the process to achieve a fair determination. Interlocutory applications will usually be dealt with on paper and the costs of such applications will be dealt with at trial. Further, trials are not to last more than a day or two and, if any cross examination is allowed, it will be strictly controlled. The parties are to have equal access to the court, in terms of time, and the trial timetable will be set by the judge.

Costs which can be claimed from the losing party will be limited to £50,000 and standard fees will be payable for each step so, for instance, the costs of attending and dealing with a pre-trial timetabling conference will be set on a standard, published, basis. Additional costs can be ordered but only in exceptional cases.

Finally, cases can be transferred between the Patents Court and the Patents County Court depending on the financial means of the parties or, if it is appropriate, having regard to the value of the claim, complexity of the issues and estimated length of trial.

All these changes have been introduced by amendments to the Civil Procedure Rules.

This provides a real basis for a genuine two track process for lower value disputes. Whether it will work is dependent upon the dedication of the already hard working judges, the will of the users of the system and, in short, whether it works. The introduction of a pick and mix system where the judge can choose what features of a main patent trial are appropriate for a given dispute whilst at the same time conducting a cost benefit analysis may well provide cause for optimism.