

Standing Committee on

ADR

2015



Date: 3rd August 2015

REPORT **Standing Committee on**

ADR

Chair: Rafael ATAB DE ARAUJO
Responsible Reporter: Ari Laakkonen

1) Report on the activities of the Standing Committee during the reporting period

The activities of the ADR Standing Committee during this reporting year had a successful start with a meeting held during AIPPI Congress, in Toronto (2014). Most of our members attended it and we had the opportunity to discuss the main developments in ADR around the world, as well as the key issues that should be addressed during the reporting period.

One of the main aims set then was to enhance discussions with other Committees that work on related issues in order to explore potential cooperation opportunities and coordinate our activities.

On this basis, we have worked with the leadership of the Standing Committee on Standards and Patents in order to submit a Panel Session proposal on FRAND licensing for the Rio Congress, which was accepted by the Programme Committee as a double session. The Leaderships of both Committees have been working on the organization of this Panel, which will gather judges from different jurisdictions, industry representatives and an ADR specialist.

During this reporting year, our former Chair, Mr. Jacques de Werra, also organized an International Conference on Jurisdiction & Dispute Resolution in the Internet Era, held in the University of Geneva, in June 2015. Further to the cooperation with the Committee on Standards and Patents, its Chair was one of the speakers in such Conference.

Our Committee has also identified and reported to the RGT a public consultation launched by EU Commission about patents and standards, which raised several questions on ADR issues. This development reinforces our Committee's view on the potential relationship between these two fields. Unfortunately, given the very tight schedule for response and the need to organize AIPPI's participation taking into consideration that our Association is a Registered Organization for the purposes of the EU Transparency Register, a contribution to such consultation was ultimately not possible.

This may indicate the need for additional studies within our Association and consideration on the possible adoption of new ADR-related Resolutions that might serve as basis for AIPPI's contribution to such consultations.

In this regard, it is possible to note an increasing interest in potential use of ADR methods for IP matters, as it has been seen, for instance, in the first ever IP Mediation Open Day held by OHIM, in June 2015, as well as in the growing number of IP Offices that have started offering or have been considering offering ADR services, particularly in the field of Mediation.

AIPPI 2015 World Congress in Rio will also be featuring a Panel Session on Mediation, which could be starting point for more in-depth discussions within our Association as to the expedience of sponsoring or

encouraging its adoption for IP conflicts.

- 2) Key issues/developments relevant to the Terms of Reference of the Standing Committee (arising during the reporting period or coming up)
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As mentioned, European Commission launched a public consultation on patents and standards, with the objective of gathering information and views on the interplay between standardization and intellectual property rights (IPR) such as patents.

The consultation had an entire section on the role of ADR in resolving disputes over standard essential patents (SEP). The questions raised by EC are certainly of high importance, such as the usefulness of ADR for resolving such conflicts (and possibly for FRAND determination), the sponsoring of ADR mechanisms by Standard Setting Organizations (SSOs) etc.

Also in connection with SEP related conflicts, the decision recently rendered by the CJEU in the Huawei v ZTE dispute keeps the door open for ADR mechanisms for FRAND determination. Indeed, in § 68 of the decision, it indicates that “where no agreement is reached on the details of the FRAND terms following the counter-offer by the alleged infringer, the parties may, by common agreement, request that the amount of the royalty be determined by an independent third party, by decision without delay”.

Finally, it has become clear that attention to ADR mechanisms by IP Offices and even Courts is increasing. Conferences sponsored by IP Offices, such as the Mediation Open Day held by OHIM in June 2015 confirm this point.

- 3) Any recommendation for AIPPI involvement/action (describe what involvement/action is recommended and why, by whom and relevant time frames)
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Our Standing Committee believes that the interplay between ADR and SEP-related disputes as well as FRAND determination is an important aspect that should continue to be monitored in cooperation with the Standard Committee on Standards and Patents.

In addition, the continued discussions on the creation of the Patent Mediation and Arbitration Center under the Agreement on a Unified Patent Court is also a matter to be closely monitored. This includes discussions on the Rules of Procedure for this future court in connection with all ADR-related issues.

Furthermore, exploiting opportunities relating to ADR promotion in the IP area might also be an important action to be considered, in addition to a possible questionnaire to National Groups seeking information on developments in the area and, particularly, seeking further guidance on AIPPI potential position on the adoption of ADR mechanisms by IP Offices and Courts.

- 4) Plan for the activities of the Standing Committee for the next reporting period highlighting any priorities
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Our members are encouraged to monitor and inform our Committee on any developments on ADR-related issues around the world. One of our priorities should also be contributing to AIPPI eNews with further reports on any relevant topics identified in the next reporting period.

Our Committee should also keep closely monitoring the developments on discussions relating to the interplay between ADR, SEP disputes and FRAND determination, under potential coordination with Standing Committee of Patents and Standards

In addition, we should carefully monitor the creation of the Patent Mediation and Arbitration Center under the Agreement on a Unified Patent Court, which should also call for coordination with the respective AIPPI Standing Committee.

Finally, the development of working questions relating to ADR mechanisms is also a topic to be further reviewed by our Committee during the next reporting year.

Names and Functions of Committee Members

Chair	Rafael ATAB DE ARAUJO	Brazil
Co Chair(s)	Steve BAUER	United States
Secretary	Aurélia MARIE	France
Members	Cheryl AGRIS	United States
	Hakan BORGENTHÄLL	Sweden
	Lorna BRAZELL	United Kingdom
	Giovanni CASUCCI	Italy
	Jacques DE WERRA	Switzerland
	Norma S. FÉLIX	Argentina
	Wendela HARDEMARK	Sweden
	Zita HARSÁNYI	Hungary
	Maria E. MATEU	Spain
	Christian A. MEYER	Switzerland
	Aleksandr POLYAK	Ukraine
Paolina TESTA	Italy	
Dilek USTUN EKDIAL	Turkey	
Kozo YABE	Japan	