

Standing Committee on

Unitary Patent / Unified Patent Court

2016



Date: 3rd August 2016

REPORT Standing Committee on

Unitary Patent / Unified Patent Court

Chair: Alan JOHNSON

Responsible Reporter: Ari Laakkonen

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

Please provide a general overview of the activities of your Standing Committee over the last 12 months, but please include at least:

- a) meetings of the Standing Committee during the reporting period

Since Rio, the Committee has convened three telephone meetings to discuss the work of the Committee, in particular the position papers (see below) and preparations for the Milano Congress.

- b) any external representation on behalf of AIPPI by any member of your Standing Committee

not responded

- c) any contribution by your Standing Committee to any external consultations

not responded

- d) any studies or analyses undertaken or position papers prepared by your Standing Committee, with a brief summary of the outcome(s)

The Committee has undertaken two surveys:

1. On national court fees for various types of patent actions; and
2. On the relationship between the decisions of patent granting authorities in post-grant opposition proceedings and decisions of courts; including in particular the status of decisions of courts when the granting authority subsequently decides the patent is invalid or should be limited. (This is referred to as the "Unilin questions" as a shorthand - named after a UK case which discussed this issue.) The survey addressed issues such as the status of injunctions granted, and damages and costs awarded in favour of patentees.

The results of the court fees survey was communicated to the UPC Preparatory Committee for consideration when setting the UPC court fees.

The results of the survey on the Unilin question were analysed and summarised in a position paper with the intention of submitting this to the Preparatory Committee and, when appointed, the judges of the UPC so as to assist in the development of a policy for the Court. It was considered that further work should be done on this issue given the time available before appointment of the judges.

In addition, the Committee has identified further areas for study, with work having already been started on topics such as the requirements for the first President of the Court, and the wider UPC judiciary. The Committee has also discussed potential work on enforcement of UPC decisions (at a national level) with the Enforcement Committee.

- e) involvement of your Standing Committee in any other activities of AIPPI, eg Panel Sessions, contribution to Study Guidelines, etc

not responded

- f) any other relevant activities

The Committee has agreed to hold a half day session at the Milano Congress. The session will begin with a debate about the impact of Brexit on the UPC and feature a mock UPC preliminary injunction application, and for that purpose the Secretary of the Committee, Annsley Ward, devised a scenario involving biosimilars patents, and various members of the Committee have agreed to act as advocates. The judges will be four well-known European patents judges who will also participate in a Q&A session.

- 2) Key issues/developments relevant to the Terms of Reference of your Standing Committee during the reporting period

Please include a short summary of any significant case law, legislative or regulatory developments, or policy initiatives, including their relevance and/or any implications for the work of your Standing Committee or for AIPPI more generally

It had been expected that the UPC would open for business in about May 2017. However, the UK's decision in the 23 June referendum to exit from the EU raises considerable issues for the UPC, especially since the UK is one of three mandatory ratifying countries. It is not expected that the UK will ratify the UPC Agreement at least in the short term, and if so, this will result in (at least) a significant delay in the commencement of the UPC.

- 3) Any recommendation for AIPPI involvement/action for the next 12 months

This need not be limited to recommendations for your Standing Committee but can be recommendations for AIPPI more broadly. In each case, please explain why such involvement/action is recommended, by whom it should be undertaken and any relevant time frames. For example, please include:

- a) any recommendation for involvement/action in relation to any upcoming or foreshadowed case law, legislative or regulatory developments, or policy initiatives

In view of "Brexit", the work of the Committee will have to be re-thought. The Committee should consider whether it would wish to recommend to AIPPI to advocate a system which includes the UK despite its exit from the EU, which may possibly mean a system which could include other non-EU EPC countries such as Switzerland; or a system strictly limited to EU countries and therefore excluding the UK.

- b) any other recommendation(s) for AIPPI involvement/action

not responded

- 4) Outline of the work programme of your Standing Committee for the next 12 months

Please set out specific activities and priorities having regard to the matters in 1) - 3) above, including any relevant time frames

The Committee will be reviewing its revised priorities in the light of "Brexit" at the Milano Congress. It is likely, however, that the priorities will focus on the strategic question of the membership of the UPC. The Committee can potentially influence policy in this area, as well as commenting on specific proposals which may be tabled by third parties.

Names and Functions of Committee Members

Chair	Alan JOHNSON	United Kingdom
Co Chair(s)	Thierry CALAME	Switzerland
Secretary	Annsley WARD	United Kingdom
Members	Christof AUGENSTEIN	Germany
	Rainer BEETZ	Austria
	Hélène CORRET	France
	Thomas CUCHE	France
	Jacqueline DASPIT	United States
	Gualtiero DRAGOTTI	Italy
	Andrés ESTEVA	Mexico
	Kim FINNILÄ	Finland
	Örjan GRUNDÉN	Sweden
	Michal HAVLIK	Czech Republic
	Louise JOHNHAMMAR	Sweden
	Lori-Ann JOHNSON	United States
	Kaoru KURODA	Japan
	Jochen PAGENBERG	Germany
	Diego PALLINI GERVASI	Italy
	John B. PEGRAM	United States
	Sebastian PINCKAERS	Netherlands
Peter-Ulrik PLESNER	Denmark	
Cornelis SCHÜLLER	Switzerland	
Thierry SUEUR	France	
József TÁLAS	Hungary	
Mark VAN GARDINGEN	Netherlands	