

Standing Committee on
Client Attorney Privilege

2016



Date: 7th September 2016

REPORT Standing Committee on

Client Attorney Privilege

Chair: Steven B. GARLAND
Responsible Reporter: Sarah Matheson

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

In general, the Committee continues to pursue the goal of a multilateral treaty on the protection against forced disclosure of confidential communications between IP owners and their IP advisors ("CAP").

A meeting of the Q199 Committee was held on October 14, 2015 at the Rio Congress to discuss the status of matters, including the below mentioned Group B+ initiative.

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

It is of significance to note that AIPPI and FICPI were again invited to attend the Group B+ meeting in Geneva on October 6, 2015 (we had also been invited to attend the September 23, 2014 meeting) to further discuss the CAP issue and the Group B+ initiative. Steven Garland attended on behalf of AIPPI (Koen Bijvank also attended on behalf of AIPPI in respect of issues related to patent harmonization). A separate report was sent to the Bureau in respect of this meeting. Coming out of that meeting, the Swiss delegation prepared a Questionnaire seeking further input from the Group B+ countries as to the issues/state of the law on CAP in their respective jurisdictions. Members of the Q199 Committee were encouraged to engage with their domestic Group B+ representatives to assist them in completing the Questionnaire. The results of the Questionnaire were published on the Group B+ website in April, 2016. There were no real surprises in the results as the state of the law on CAP in the various jurisdictions is already well known to AIPPI.

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

see above

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

It is to be recalled that as a result of the AIPPI/AIPLA/FICPI Colloquium on Privilege held in June of 2013 in Paris, a Joint Proposal was developed for a multilateral agreement on the protection of privileged

communications. This Proposal formed the basis for a draft multilateral agreement that was put forward by the Swiss, British, and Swedish delegations of Group B+ and which is currently being considered by that group.

- 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

not responded

- 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

As reported to the Bureau by separate e-mail of July 13, 2016, unfortunately the multilateral agreement on the CAP initiative is not really advancing presently at Group B+, apparently as a result in part from a lack of full support from the USPTO and a few other delegations. At the same time, Group B+ is now starting to focus more on patent law harmonization issues and the concern is that CAP will get left behind. Under the circumstances it would seem imperative that AIPPI increase its efforts to encourage the U.S. and other Group B+ delegations as may be necessary to support the CAP initiative.

The Group B+ delegates will be further considering this issue at their upcoming meeting in Geneva on October 6, 2016, and it appears that AIPPI will again be invited to attend and make submissions on the issue. It would be helpful to try and make gains with the U.S. Group B+ delegation (and other delegations as may be necessary) in advance of this meeting.

In terms of the status of the issue before the WIPO Standing Committee on Patents (SCP), the issue is for all intents and purposes at the present time largely at a stalemate for reasons explained in prior annual reports. However, the issue does still remain on the agenda. Based on the AIPPI summary report of the most recent SCP meeting in June, it appears that at the next SCP meeting work on this topic will continue by compiling a summary of court cases with respect to aspects of CAP including limitations or difficulties encountered. It is recommended that AIPPI Q199 Committee prepare a compilation of any such cases for submission to the SCP. Additionally, Marco Aleman is the Acting Director for the WIPO Patent Law Division and is the individual at WIPO that AIPPI has previously dealt with in respect of the CAP issue before the SCP. It would likely be helpful for AIPPI to meet with Mr. Aleman (for example at the Milan Congress if Mr. Aleman will be in attendance) to see what may be done to re-invigorate this issue at the SCP level.

- 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

Please see above

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

Please see above

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

not responded

AIPPI

Names and Functions of Committee Members

Chair	Steven B. GARLAND	Canada
Co Chair(s)	Wouter PORS	Netherlands
	Shoichi OKUYAMA	Japan
	James TUMBRIDGE	United Kingdom
Secretary	Andri HESS	Switzerland
Members	Ahmed ABOU ALI	Egypt
	Pravin ANAND	India
	Russell BAGNALL	South Africa
	Julie BALLANCE	New Zealand
	Fernando A. BARREDA	Peru
	Jacques BAUVIR	France
	Sung Jai CHOI	Republic of Korea
	Ejvind CHRISTIANSEN	Denmark
	Justin CHUMA ANOSIKE	Nigeria
	Cita CITRAWINDA NOERHADI	Indonesia
	Pier Luigi DE ANNA	Italy
	Luis DE LARRAMENDI	Spain
	M N Aydin DERIS	Turkey
	Peter FRANKE	Australia
	David GILAT	Israel
	Shalva GVARAMADZE	Georgia
	Gunnar Örn HARDARSON	Iceland
	Michal HAVLIK	Czech Republic
	David HILL	United States
	Tim JACKSON	New Zealand
	Marius J. JASON	Lithuania
	Morris JOHN	Singapore
	Urmaz KAULER	Estonia
	Chew Phye KEAT	Malaysia
	Yawar Irfan KHAN	Pakistan
	Seong-Ki KIM	Republic of Korea
	Olga KOUZNETSOVA	Belarus
	Dragana LEHOCKI	Serbia
	Jeffrey LEWIS	United States
	Richard LI YI	China
Johanna LILJA	Finland	
Margareta LINDEROTH	Sweden	
Marja-Leena MANSALA	Finland	
Gatis MERZVINSKIS	Latvia	

Martin MICHAUS	Mexico
Laura MICHELSEN	Colombia
David MUSKER	United Kingdom
Maria Milagros NEBREDA	Venezuela
Valentina NESHEVA	Bulgaria
Rogelio NICANDRO	Philippines
Rula NOSSEIR	APPI-MAF
Yuzuru OKABE	Japan
Jorge OTAMENDI	Argentina
Antonina PAKHARENKO-ANDERSON	Ukraine
Helen PAPACONSTANTINO	Greece
João PEREIRA DA CRUZ	Portugal
Cristobal PORZIO	Chile
Shane SMYTH	Ireland
Helmut SONN	Austria
Amund Brede SVENDSEN	Norway
Jozsef K. TÁLAS	Hungary
Wojciech TRYBOWSKI	Poland
Chavalit UTTASART	Thailand
Raluca VASILESCU	Romania
Detlef VON AHSEN	Germany
Mladen VUKMIR	Croatia
Aleksey V. ZALESOV	Russia
Claudia M. ZERAIK	Brazil