

2016 – Report on Resolution

Publication of Patent Applications

A Resolution titled "Publication of Patent Applications", prepared by a Working Group of AIPPI's Standing Committee on Patents, was adopted by AIPPI on 20 September 2016 during the AIPPI World Congress in Milan.

The topic of publication of patent applications has previously been studied by AIPPI, namely in Q89 – "Harmonisation of certain provisions of the legal systems for protecting inventions" (Amsterdam, 1989) in connection with a series of resolutions related to a WIPO draft Patent Law Treaty concerning the harmonisation of substantive provisions of patent law that never became final. AIPPI also studied early publication and provisional protection of patent applications in Q98 - "Early publication and provisional protection of patent applications" (Barcelona, 1990).

Along with prior user rights, the grace period and the treatment of conflicting applications, publication of patent applications is one of four topics identified as being key to harmonisation of patent law by the Tegernsee Group. AIPPI's position, as set out in the Resolution, is that the international nature of patent law, legal certainty and the practical functioning of the patent system underpins the importance of harmonised procedures concerning publication of patent applications around the world.

During the Study Committee meeting on 17 September, 2016, it was decided not to include the topic of interim protection on the basis of a patent application in the resolution. The remaining draft Resolution proved relatively uncontroversial.

The Resolution as adopted states that as a general rule, a patent application should be published 18 months after the date of priority or the date of filing the patent application. Moreover, a patent applicant should have the right to request early publication with regard to specific applications.

The Resolution sets out a timeframe with regard to preparation of the publication. Taking into account the differences in practice throughout the world. AIPPI resolved that patent offices should notify the applicant of the proposed publication date at least two months in advance (unless early publication has been requested). Furthermore, an application should not be published if it is withdrawn, abandoned or rejected prior to the publication preparation due date, which should be no earlier than one month prior to the proposed publication date and no earlier than 17 months after the date of priority of the application.

AIPPI also resolved that if the applicant requests a search report and a preliminary assessment of patentability at the time of filing, patent offices should provide such report and assessment prior to, or at the same time as, notifying the proposed publication date. If a request for early

publication has been made, such report and assessment should be provided no later than two months prior to the date which would have been the general 18-month publication date absent the request for early publication.

Finally, it was resolved that patent offices should have the right to defer publication if the relevant national governmental officials are reasonably of the opinion that such publication would cause a threat to national security.

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