



Standing Committee on **Enforcement**

2017



Date: 15th October 2017

REPORT Standing Committee on

Enforcement

Chair: Kenneth R. ADAMO
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, including at least:

- a) Internal meetings of the Standing Committee during the reporting period (whether by telephone, video conference or in person);

There were no formal meetings of the Committee during the period, save at the Milan Congress; several TC (telephone meetings) were held between the Chair, Co-chair and / or the Secretary; communications were by group emails relating to projects ongoing and planned, and to work product regarding the border remedy project. The setting up of the Committee's meeting during the Milan Congress and agenda preparation were all effected by group emails. The Committee met at the Milan Congress.

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

None

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

None

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

The Committee completed its border remedies review project, which produced an EU/ Euro-centric summary table with supporting summary discussions, for the EU, Germany, UK, Ireland, France and Italy; summary / standardized discussions for the USA, the PRC, the Phillipines, Argentina, Brazil, Japan, Turkey, Italy, Germany, France, and Ireland; and several more detailed reports for the USA and Japan. That work product was provided to the Reporter - General's team for review and consideration of distribution to AIPPI broadly on August 28, 2017.

Early attention was paid to initiating work on the 2d project, a study of the effect of oppositions and nullity proceedings on IP rights enforcement, which will be primary topic of the planned Sydney Congress Committee meeting.

2) Key issues/developments during the reporting period

Please include 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.

The border remedies project was the main focus, with some additional details of the 2d and 3d project being developed, and a possible 4th project, involving the study of which bodies/ courts/entities are competent for enforcement of different court orders / judgments, being suggested.

No contribution to AIPPI E- News was provided by the Committee during this period. (See 4. for the details of projects for the next 12 months).

3) Any recommendations 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. For example, please include:

In each case, please explain why such involvement/action is recommended, by whom it should be undertaken and any relevant time frames.

- a) any recommendations for involvement/action in relation to any upcoming or foreshadowed case law, legislative or regulatory developments, or policy initiatives;
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Much activity is occurring in both the United States and the EU, that AIPPI should be watching closely. The law regarding SEP, SSOs and FRAND continues to develop at a fast pace, at the SSO, governmental and court levels (possible WW analysis and resolution by legal or business means of SEP / FRAND issues may be near); administrative proceedings to test the propriety of granted / to-be-granted IP/patent rights are much in the forefront of enforcement activity and court challenges/ reviews (eg. post grant proceedings in the US, opposition proceedings in the EU and Japan), including USSupCt challenges to the constitutionality of post grant proceedings under the US AIA; and the status of the UPC and the Unified Patent, especially under the UK "Brexit" situation. all merit close Committee attention, study and comment

- b) any other recommendations for AIPPI involvement/action;
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None

- c) any recommendations for the work programme of your Study Committee.
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The nullity /opposition project will be the focus of the Committee's efforts, with a 3d new project, a study of the availability, mechanics and effect of punitive damages / damages based in willful infringing conduct and/ or litigation conduct (eg. US willful infringement as giving rise to a multiplier of actual, proven damages and potential recovery of attorneys fees and court costs), to be considered and agreed upon during the Sydney Congress meeting. The suggested 4th topic will also be discussed. Any new ideas for projects will also be brought out and added to the Committee's agenda for future work.

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 nullity / opposition project will likely include as study topics, an investigation and report / tabular summary of various proceedings, along the line of the work product that resulted from the border study project. Proceedings that will be investigated and reports on will include current EPO oppositions / opposition practices; US AIA post-grant proceedings, including IPRs, PGRs, and / or CBMRs; Japanese oppositions / opposition practices; the potential UPC practices and interface; and, for each country

studied , possible parallel use of these administrative proceedings with court proceedings, or as an adjunct to court proceedings , as well as how the final results of the nullity / opposition proceedings govern / limit or defeat court proceedings for traditional infringement relief/ remedies . Further details will be discussed at the Committee's Sydney Congress meeting .

AIPPI

Names and Functions of Committee Members

Chair(s)	Kenneth R. ADAMO	United States
Co Chair(s)	Emily O'NEILL	United Kingdom
Secretary	Gustavo DE FREITAS MORAES	Brasil
Members	Shishir AGARWAL	Mauritius
	Hakan AKDAG	Turkey
	Christof AUGENSTEIN	Germany
	Christina BERGGREN	Sweden
	Stefania BERGIA	Italy
	Riza Ferhan CAGIRGAN	Turkey
	Patrick CANTRILL	United Kingdom
	Tina CHAPPELL	United States
	Michael CRINSON	Canada
	Charles DE HAAS	France
	Gerard KELLY	Ireland
	Tae Eon KOO	Republic of Korea
	Anton KOVAL	Ukraine
	Victor LISOVENKO	Russia
	Manabu MIYAJIMA	Japan
	Mary PADBURY	Australia
	Mingo PALACIO	Argentina
	Carlos PÉREZ DE LA SIERRA	Mexico
	Wouter PORS	Netherlands
	Cornelis SCHÜLLER	Switzerland
Tsuyoshi SUEYOSHI	Japan	
Andrea VESTITA	Italy	
Kristin WHIDBY	United States	
Yanfeng XIONG	China	