



Standing Committee on
Unitary Patent / Unified Patent Court

2017



Date: 13th October 2017

REPORT Standing Committee on

Unitary Patent / Unified Patent Court

Chair: Thierry CALAME

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);

Since Milano, the Committee has convened two telephone meetings to discuss the further work of the Committee and a potential resolution on the relationship between decisions of the EPO and the UPC (also referred to as the Unilin question).

- 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; and

not responded

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

In view of the UK's intention to ratify the UPC Agreement despite "Brexit", the Committee has decided to continue undertaking substantive studies rather than taking a stance on the political question whether to pursue the UPCA without the UK or whether to advocate a system which includes the UK and possibly other non-EU countries such as Switzerland.

The Committee did further work on the survey about the relationship between decisions of the EPO and the UPC, which it had conducted among the national groups in 2016. Additional group reports were submitted after Milano, so the summary report has been updated accordingly. The Committee is currently considering whether to adopt a resolution or position paper on this question. A draft position paper has been prepared which will be discussed at the Sydney Congress.

A paper on enforcement of UPC decisions has also been drafted which will equally be discussed at the Sydney Congress.

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 entry into force of the Unified Patent Court has been further delayed. In November 2016 the UK confirmed that it is proceeding with preparations to ratify the UPC Agreement despite the UK's formal notice under Article 50 of the Lisbon Treaty to terminate the UK's membership of the EU. The ratification process of the UPCA by the UK still continues. If the timetable does not suffer any further delays, UK ratification could occur by the end of the year.

In Germany, ratification of the UPCA was approved in the first half of 2017 and it was expected that the German government would now proceed to ratification. However, in June 2017 it became public that in March 2017 a complaint had been filed with the German Constitutional Court against the German ratification of the UPCA. The complaint claims that the UPCA is not compliant with German and European law. As a result, the German ratification process has been suspended. The German Constitutional Court has asked selected lawyers associations to file comments on the complaint until 31 October 2017, so it is expected that it will decide about the complaint within the next few months. If the Constitutional Court requires amendments regarding the ratification, the process will be further delayed, given that the German parliament is currently being newly constituted after the general election in September 2017. Due to the principle of discontinuity the new Bundestag could not amend the existing draft, but would have to start anew.

The UPC Preparatory Committee acknowledges that the constitutional complaint before the German Constitutional Court makes it difficult to maintain a definitive starting date for the period of provisional application. The UPC Preparatory Committee is hopeful that the complaint will be resolved quickly and that the period of provisional application can start soon. Apart from the required ratification of the UPCA by UK and Germany, a few more signatory states have to accede to the Protocol on Provisional Application.

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;

We have recommended to the Bureau to ask the German Constitutional Court for permission to file an amicus brief to comment on the complaint filed by a German individual against the German ratification of the UPCA. This permission has been given in principle, subject to approval of the amicus brief.

- b) any other recommendations for AIPPI involvement/action;

not responded

- c) any recommendations for the work programme of your Study Committee.

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.

A draft position paper on the relationship between decisions of the EPO and the UPC will be discussed at the Sydney Congress.

Equally, a draft paper on the enforcement of UPC decisions will be discussed at the Sydney Congress.

The Committee plans to do further work on the enforcement of UPC decisions, in particular on the

enforcement of saisies (orders to preserve evidence).

The Committee has also resolved to work on the standard of appeal in the UPC.

AIPPI

Names and Functions of Committee Members

Chair(s)	Thierry CALAME	Switzerland
Co Chair(s)	Christof AUGENSTEIN	Germany
	Annsley WARD	United Kingdom
Secretary	Mark VAN GARDINGEN	Netherlands
Members	Rainer BEETZ	Austria
	Hélène CORRET	France
	Jacqueline DASPIT	United States
	Gualtiero DRAGOTTI	Italy
	Andrés ESTEVA-WURTS	Mexico
	Kim FINNILÄ	Finland
	Örjan GRUNDÉN	Sweden
	Michal HAVLIK	Czech Republic
	Louise JOHNSHAMMAR	Sweden
	Alan JOHNSON	United Kingdom
	Lori-Ann JOHNSON	United States
	Seong-Ki KIM	South Korea
	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	