



Date: 3rd September 2018

REPORT

Standing Committee on

ADR

Chair: Rafael ATAB DE ARAUJO
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);

The Standing Committee on ADR had its initial meeting for this reporting year during AIPPI World Congress of 2017, in Sydney.

In view of the more limited number of participants, a new “lunch meeting” format was agreed upon and was ultimately approved by all the participants. During the meeting, members had the opportunity to debate about developments on ADR in different jurisdictions and discuss future work for our Committee. We have also addressed our members’ contributions to AIPPI e-News and possible recommendations on Panels for future AIPPI Congresses.

Members have also discussed the joint work undertaken so far in cooperation with Standards and Patents Committee, as well as our strategies for the preparation of a future global report on ADR legislation and environment.

The Committee has also noted that some IP Associations are beginning to become more closely engaged in promoting ADR among their members. In this regard, members decided to look into the topic more carefully in the future and consider opportunities for setting up ADR courses and even AIPPI-approved lists of mediators, before entertaining further discussions with AIPPI on the matter or prepare a concrete proposal.

In addition to the annual meeting, our Committee members also had the opportunity to take part in discussions during three phone calls over the year. Unfortunately, our members live in

several different time zones, so that joining calls has not been an easy task. Nonetheless, these phone calls have been very helpful in keeping our members updated on latest developments in ADR environment around the globe and allowed us to discuss ongoing work of the Committee and suggestions for AIPPI.

Some of the discussions resulted in contributions to AIPPI e-News and proposals to AIPPI Programme Committee, as discussed below.

b)

were proposals for panel sessions and study questions submitted and/or did your Standing Committee further contribute in this respect (e.g. by providing input to the draft Study Guidelines)?

The Standing Committee on ADR submitted to AIPPI proposals for possible Panels to next AIPPI World Congress as well as suggestions on possible speakers for this year's Congress. These suggestions were the result of discussions undertaken during phone calls and exchange of e-mails by our Committee members.

c)

any external representation and participation in working groups on behalf of AIPPI by any member of your Standing Committee (e.g. at WIPO, EUIPO);

The Standing Committee on ADR has not been required to represent AIPPI or participate in working groups on behalf of the Association. Nonetheless, our Japanese member Kozo Yabe has been invited, as a senior member of AIPPI Japanese Group, to attend a mock international arbitration event held in Japan and hosted by Japanese Patent Office (JPO): "Mock International Arbitration - Toward Early Dispute Resolution of Standard Essential Patents (SEPs) in the 5G Era", as detailed below.

d)

any contribution by your Standing Committee to any external consultations; and

The Standing Committee on ADR has not been required to prepare contributions to any external consultations.

e)

any studies or analyses undertaken or position papers prepared by your Standing Committee,

with a brief summary of the outcome(s).

The Standing Committee on ADR has been working with the Standing Committee on Patents and Standards on an "Outline of Introductory Text and Questions for AIPPI Questionnaire Regarding the Use of ADR Mechanisms in the Context of FRAND-Related Disputes".

This document includes a draft questionnaire to be sent to AIPPI National Groups and could lead to a possible future Resolution on this matter by AIPPI. The Committees are discussing a possible joint meeting during AIPPI 2018 World Congress for preparing a final version of this draft to be submitted to AIPPI RGT's consideration.

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.

One of the responsibilities of our Committee is to identify and report legislative and case law developments in the ADR area. Discussions on such developments usually take place during our annual meeting and telephone calls over the year. Also, whenever an important development is identified, our Committee tries to report it more generally through an article on AIPPI e-News.

This year, the following articles have been or will be published as a result of our members activities:

(i) *Gonçalo De Sampaio reported Portugal's experience with "Mandatory Arbitration for Pharmaceutical Patents" and how this ADR proceeding established by Portuguese law has been impacting the pharmaceutical patent litigation arena in Portugal. The route adopted by Portugal for this type of dispute is somewhat unique and should be carefully observed by AIPPI, given its success in that jurisdiction.*

(ii) *Dilek Ustun Ekdial commented on Turkey's new Regulation that established mandatory arbitration on disputes involving employee inventions. Employees' IP Rights have always been a difficult topic in most jurisdictions, so that monitoring the developments of this procedure in Turkey could be helpful in proposing alternative approaches to resolving this type of disputes. Such alternative approaches might be particularly important and useful in multi-jurisdiction disputes.*

(iii) *Kozo Yabe has prepared an article for AIPPI e-News on JPO's initiative with the Mock International on disputes involving SEP's in the 5G Era, which took place on June 2018. The Mock Arbitration Tribunal was composed of arbitrators from different jurisdictions, including Japan, South Korea, China, USA, UK and Germany. A high number of attendees in this event seem to reaffirm the importance of the joint work being currently undertaken by the ADR and*

Standards and Patents Committees of AIPPI. The event is also available on video, at YouTube:

<https://www.youtube.com/watch?v=S9UxrDnyDwQ> [https://www.youtube.com/watch?v=S9UxrDnyDwQ]

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;

AIPPI should continue to monitor any developments on the ADR arena. The complex nature of IP disputes indicates the need for alternative approaches and legal developments on some jurisdictions, as those reported under section 2, above, seem to indicate that Alternative Dispute Resolution policies are gaining momentum.

b)

any other recommendations for AIPPI involvement/action;

not responded

c)

any recommendations for the work programme of your Standing Committee.

Our Committee should continue to undertake its main task of monitoring developments in the ADR arena worldwide. It should also monitor more carefully the work of other IP Associations in connection with the setting up of ADR Centers and how AIPPI can promote ADR among its own members.

In addition, our Committee should focus on the two ongoing projects:

(i) *Joint work with Standards and Patents Committee relating to the drafting of a Questionnaire Regarding the Use of ADR Mechanisms in the Context of FRAND-Related Disputes;*

(ii) *Study and Preparation of a Global Guide on ADR in connection with IP disputes*

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.

Considering the recommendations for the work programme of our Standing Committee set forth in item 3(c) above, our priority in the next 12 months would be finalizing the joint work on the Questionnaire for the FRAND-related disputes, which should occur shortly after AIPPI 2018 World Congress. Subsequent work would include additional cooperation with Standards and Patents Committee for compiling answers received from National Groups and working towards a possible draft Resolution for 2019 World Congress.

In parallel, our Committee should work on a strategy for advancing on the project of a Global Guide on ADR. A tentative timeline should also be discussed in our next meeting at AIPPI World Congress in Cancun.

Names and Functions of Committee Members

| | | |
|--------------------|----------------------------|--------------------------|
| Chair | Rafael ATAB DE ARAUJO | Brazil |
| Vice Chair(s) | Steve BAUER | United States |
| | Aurélia MARIE | France |
| Members | Cheryl AGRIS | United States of America |
| | Håkan BORGENTHÄLL | Sweden |
| | Giovanni CASUCCI | Italy |
| | Jacques DE WERRA | Switzerland |
| | Susan GATFORD | Australia |
| | Wendela HÅRDEMARK | Sweden |
| | Jonathan MESIANO-CROOKSTON | Canada |
| | Christian Alexander MEYER | Switzerland |
| | Richard PRICE | United Kingdom |
| | Dorota RZAZEWSKA | Poland |
| | Goncalo de SAMPAIO | Portugal |
| | Paolina TESTA | Italy |
| Dilek USTUN EKDIAL | Turkey | |
| Laura WHITING | United Kingdom | |
| Kozo YABE | Japan | |