



Date: 3rd September 2018

REPORT

Standing Committee on

Client Attorney Privilege

Chair: Steven 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, including at least:

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

A meeting of the Standing Committee on Client-Attorney Privilege was held at the Sydney Congress to discuss the status of the committee's initiatives before the SCP and the Group B+ (please see below for more details).

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)?

not responded

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);

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 17, 2017 at the Sydney Congress to discuss the status of matters, including the below mentioned Group B+ initiative.

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.

It is of significance to note that AIPPI was again invited to attend the Group B+ meeting in Geneva on October 3, 2017 as Group B+'s discussions on the multilateral agreement progressed. The recent focus of Group B+ was in defining certain terms pertinent to any multilateral agreement, including the definition of "professional advice" that would be the basis for the protection provided by any such agreement. Presently, Group B+ is looking at having such advice include only "patent advice". While the Committee made a submission confirming AIPPI's preferred view that any agreement also extend to "trademark advice", in the alternative the Committee also submitted that to the extent the agreement is limited to "patent advice", there should be included an "opt in" provision that would provide for the ability of signatory countries, at their choosing, to extend the protection to beyond "patent advice. Group B+ is meeting in September of this year during the AIPPI Cancun Congress and AIPPI has again been invited to attend to follow the ongoing discussions on this initiative.

Last year it was reported of some concerns that the multilateral agreement on the CAP initiative was not really advancing at Group B+ apparently as a result in part from a lack of full support from the certain national delegations. However, this appears to have not actually been the case, and any uncertainty in this regard has been addressed and the initiative continues to move forward. Indeed, it is hoped that if matters continue to progress at Group B+ that there is a real possibility of a draft of a multilateral agreement being finalized in 2019.

In terms of the status of the issue before the WIPO Standing Committee on Patents (SCP), the issue continues to be on the agenda though there is still opposition to any kind of a solution via the SCP by certain developing countries and groups (for reasons previously reported on). AIPPI attended the July 2018 meeting where there was an information gathering session on this issue. In advance of the meeting Q199 members were canvassed as to any recent changes in domestic legislation in respect of CAP type protection, and AIPPI in both oral submissions and a PowerPoint presentation at the SCP meeting providing a summary of the status of matters in various countries and regions. These were provided to the Bureau under separate cover. Overall, the presentation included a review of the most up-to-date information of the Q199 Committee on common law and civil law jurisdictions, including recent changes to the Canadian and U.S. domestic legislation, along with references to a number of other recent changes/proposals in terms of Sweden, Switzerland, The Netherlands,

and the UPC regulations. Additionally, while at the meeting, it was learned that both Denmark and Belgium had recently changed their domestic laws to provide privilege for communications between agents and their clients.

Overall, the matter remains on the SCP agenda. Although there has not been any advancement on this issue, there does seem to be some recent, positive views at the SCP level being expressed of a possible “soft law” solution of some kind.

d)

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

Please see above

e)

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

Please see above

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.

Please see above

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;

It is recommended that the Committee and AIPPI continue to monitor and participate in the SCP and Group B+ work. As noted above, it is hoped that the Group B+ initiative may lead to a multilateral agreement by the end of 2019. It is also possible given more positive comments heard at SCP recently that the SCP may be on a path to a soft law solution, though any such result will likely still be a number of years in the future.

b)

any other recommendations for AIPPI involvement/action;

not responded

c)

any recommendations for the work programme of your Standing 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.

not responded

AIPPI

Names and Functions of Committee Members

Chair	Steven GARLAND	Canada
Vice Chair(s)	Andri HESS	Switzerland
	Shoichi OKUYAMA	Japan
Members	Ahmed M.G. ABOU ALI	Egypt
	Pravin ANAND	India
	Russell A. BAGNALL	South Africa
	Julie BALLANCE	New Zealand
	Jacques BAUVIR	France
	Sung Jai CHOI	Republic of Korea
	Cita CITRAWINDA NOERHADI	Indonesia
	Pier Luigi DE ANNA	Italy
	Luis-Alfonso DURÁN	Spain
	Emma FEMIC	Sweden
	Peter FRANKE	Australia
	David GILAT	Israel
	Shalva GVARAMADZE	Georgia
	Gunnar Orn HARDARSON	Iceland
	Michal HAVLIK	Czech Republic
	David W. HILL	United States of America
	Tim JACKSON	New Zealand
	Marius Jakulis JASON	Lithuania
	Morris JOHN	Singapore
	Urmaz KAULER	Estonia
Yawar Irfan KHAN	Pakistan	
Seong-ki KIM	Republic of Korea	
Olga I. KOUZNETSOVA	Belarus	
Dragana LEHOCKI	Serbia	
Jeffrey LEWIS	United States of America	
(Richard)Yi LI	China	
Johanna LILJA	Finland	
Marja-Leena MANSALA	Finland	
Martin MICHAUS	Mexico	

David MUSKER	United Kingdom
María Milagros NEBREDA	Venezuela
Rogelio C. NICANDRO	Philippines
Yuzuru OKABE	Japan
Jorge OTAMENDI	Argentina
Antonina PAKHARENKO-ANDERSON	Ukraine
Helen PAPACONSTANTINO	Greece
Joao PEREIRA DA CRUZ	Portugal
Chew PHYE KEAT	Malaysia
Wouter PORS	Netherlands
Cristobal PORZIO	Chile
Shane SMYTH	Ireland
Helmut SONN	Austria
Amund Brede SVENDSEN	Norway
József TÁLAS	Hungary
Fernando TRIANA SOTO	Colombia
Wojciech TRYBOWSKI	Poland
Chavalit UTTASART	Thailand
Malin VAN ODIJK	Sweden
Raluca VASILESCU	Romania
Erwin-Detlef VON AHSEN	Germany
Mladen VUKMIR	Croatia
Alexey V. ZALESOV	Russian Federation
Claudia Maria ZERAIK	Brazil