



Date: 3rd September 2018

REPORT

Standing Committee on

Standards and Patents

Chair: Gertjan KUIPERS
Responsible Reporter: John Osha

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 SC had regular telephone meetings, in essence every second Monday of the month. In such calls we discussed minutes from the previous calls, the current actions of the SC as well as recent noteworthy developments in the countries represented by the membership. Although the geographic spread of the membership provides for a global coverage it remains a challenge to accommodate all members in different time zones with a suitable time slot.

Some member of the SC were present at the Sydney congress and met there. No official meeting was however held there.

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)?

Where the SC had submitted proposals for panel sessions in the past, in the past year no specific proposals were made. The upcoming congress in Cancun does however feature a panel session dealing with Standard Essential Patents, in particular from the portfolio angle to which the SC will contribute.

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 Chair of the SC participated in a session at WIPO in July called Information session on Patents and Standards. A report on that session was sent to AIPPI and circulated in the SC. The session dealt with topics that have been or still are on the agenda of the SC, such as the SDO - PTO relationship and prior art (see below), as well as ADR in FRAND disputes.

Some other members, not in their capacity as member of the SC however, participated in various sessions on the topic of Standards and Patents in their respective countries and reported on that during our monthly calls.

d)

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

In the past year the SC did not contribute to any external consultations officially. The upcoming expert group of the EU may however provide an nice opportunity to contribute in the upcoming year.

e)

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

The SC finalized the paper on prior art in SDOs and the access thereto by PTOs. The work on FRAND and ADR (a joint effort by the SC and the SC on ADR) is ongoing

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.

I. Asia

1. China

Recently the Chinese courts tried a number of SEP-related disputes in telecommunication sectors, like Huawei v. Samsung and Qualcomm v. Meizu both of which involve 3G and 4G SEPs, as well as Iwncomm v. Sony which involves WAPI technology which is a competitor of WIFI and developed by Chinese companies. The Courts in Beijing and Nanjing are also trying three 4G-related SEP disputes initiated by an NPE called Longhorn against HTC. Aside from these judicial practice, Beijing High Court also added a section about trial of SEP-related disputes in its Guidelines for Determination of Patent Infringement in April 2017. This April Guangdong High Court also issued a Working Guideline of Guangdong High People's Court on the Trial of Standard Essential Patent Dispute Cases (for trial implementation). Both Guidelines have stipulated the conditions under which a Court could issue an injunction against the accused infringer when an SEP is listed, which incorporates more detailed explanation to Article 24 of Judicial Interpretations of Application of Law for Trial of Patent

Infringement Disputes of the Supreme Court which took effect as of April 1 2016.

Below is a chart to illustrate the conditions under which the Court may issue an injunction or not in the context of latest court guidelines and practice.

	No obvious fault of Implementer	Obvious faults of Implementer
No obvious fault of SEP holder	No injunction (Implementer prefers to depositing a bond)	Injunction
Obvious faults of SEP holder	No injunction	TBD based on whose fault leads to failure in a negotiation

The factors to be considered to decide the faults of the parties in view of business practice include (a) overall negotiation process between the parties; (b) time, manner and content of the negotiation between the parties; and (c) reasons for interruption or deadlock of the negotiation. The SEP holder will be found in fault if they commit the following conducts:

- failing to issue a negotiation notice or failing to notify the scope of patents to be licensed;
- failing to provide the patent list or claim charts;
- failing to make a specific offer or providing obviously unreasonable license conditions, which results in failure to reach a license agreement;
- failing to make a response within a reasonable period; or
- obstructing or interrupting the negotiation without due cause.

On the other hand, the standard implementer will be found in fault if they commit the following conducts:

- refusing to negotiate with the SEP holder or to make a clear response within a reasonable period of time;
- refusing to conclude an NDA without due cause;
- refusing to make substantive responses to the patent list and claim charts as provided by the SEP holder within a reasonable period of time;
- refusing to make substantive responses after receiving license conditions from the SEP holder within a reasonable period of time;
- proposing obviously unreasonable license conditions which results in failure to reach a license agreement; or
- deploying delay tactics.

The Working Guideline of Guangdong High Court made a further step in that it has made it clear that any party engaged in an unsuccessful SEP negotiation could file a royalty (FRAND rate) dispute lawsuit before the Court. And more importantly, as inspired by the precedents in the UK and the US, like *Unwired Planet v. Huawei* (UK) and *TCL v. Ericsson* (US), the Guideline has imparted to the court a right to determine the FRAND rate not only for China, but also for other jurisdictions unless the answering party has made a clear opposition and its opposition is found reasonable by the court. We invite your particular attention to this

provision since it may have enormous implications on SEP holders and standard implementers. For example, a non-Chinese SEP holder may face the prospect of having a global royalty rate decided by the home court of a standard implementer in China. That being said, a non-Chinese SEP holder may seek for, at an early stage of negotiation, an agreement with the standard implementer for a neutral arbitration institution or court to decide a FRAND rate in case no consensus could be reached within a period of time, to prevent a Chinese court from ruling on worldwide rates in case the SEP holder does not have much belief in the Chinese court. On the other hand, a standard implementer who has more belief in Chinese courts (probably its hometown court), may have more incentive to file such a FRAND rate action proactively.

The question mark is still there in case there are concurrent pending FRAND actions out of China. In other words, will the Chinese court or foreign court show any courtesy to their counterpart? And the enforcement of the worldwide FRAND rate issued by a Chinese court may also be an issue since no Chinese court has issued any anti-suit injunction like their counterparts in the US, to better impart a deterrent effect to their decisions.

2. Japan

On June 5, 2018, Japan Patent Office (JPO) released “The Guide to Licensing Negotiations involving Standard Essential Patents.” While the Guide aims to enhance transparency and predictability, facilitate negotiations between rights holders and implementers, and help prevent or quickly resolve disputes concerning the licensing of standard essential patents (“SEPs”) which are essential in implementing standards in the field of wireless communications and the like, the Guide is intended to be neutral and non-legally binding. Moreover, the Guide should be distinguished from “guidelines” that are promulgated by regulatory and enforcement agencies as internal enforcement guiding principles.

The JPO invited the submission of proposals also called for public comments and received around 50 comments from Japan and abroad in formulating the Guide. The JPO plans to revise and augment the Guide as the environment surrounding SEP licensing negotiations continuing to transform.

The Guide surveys the prominent cases around the world concerning SEP/FRAND to such as Apple v. Samsung (Japan), Microsoft v. Motorola (USA), In re Innovatio, and TCL v. Ericsson (USA) Huawei v. ZTE (EU), Unwired Planet v. Huawei (U.K.), and Huawei v. Samsung (China).

3. South Korea

The most prominent case in South Korea concerning SEP/FRAND in the past 12 months has been the lawsuit between Qualcomm and Korea Fair Trade Commission (KFTC).

In December 2016, the KFTC, after 3 years of investigation, found Qualcomm’s licensing business concerning its SEPs in violation of Korean anti-trust laws. The KFTC issued a fine in the amount of KRW 1.03 trillion (approximately US\$900 million) and also issued remedial orders against Qualcomm (to correct Qualcomm’s licensing practices). Qualcomm filed an appeal to the Seoul High Court and also filed a preliminary injunction against the KFTC issued

remedial orders (to place a hold on the enforcement of the remedial orders until the final decision by the Court on the main action). While the appeal is currently pending at the Seoul High Court, the preliminary injunction application was finally rejected by the Korean Supreme Court in November 2017.

The issues in appeal at the Seoul High Court are as follows:

- whether Qualcomm violated its FRAND commitment (and the Korean anti-trust laws) by not licensing its SEPs to competitor chip suppliers;
- whether Qualcomm violated the Korean anti-trust laws by refusing to sell its modem chips to handset companies that are not licensed to Qualcomm patents that cover those chips; and
- whether Qualcomm violated the Korean anti-trust laws by bundling its SEPs and non-SEPs without fairly negotiating the licensing terms and requiring free cross-licenses to handset company patents.

The KFTC issued remedial orders in accordance with the above findings, and the most noteworthy of the KFTC's remedial orders is requiring Qualcomm to license its SEPs exhaustively to competitor chip suppliers.

While the main parties to the suit are Qualcomm (plaintiff) and the KFTC (defendant), the Korean court allowed participation of the third parties as having interests in the lawsuit. Such third parties include Apple, Intel, Ericsson, Huawei, and MediaTek. Samsung withdrew itself from the participation after reaching an agreement with Qualcomm in January 2018.

II. Europe

1. Germany

Higher Regional Court of Düsseldorf, 30 March 2017 (published in November 2018 after redacting)[1][#_ftn1] : This decision provides guidelines under the *Huawei/ZTE*[2][#_ftn2] criteria in Germany. The patentee must inform the defendant about the patent infringement. Then, the defendant has to demonstrate his willingness to conclude FRAND license agreement. The Defendant must answer in a reasonable period after the notice of patent infringement. This period depends on details provided by the Claimant: the less information it gives to the Defendant the longer it can take. In that case, the Court considered that the Claimant did not submit an offer in conformity with the FRAND requirements. The higher fees comparing to licenses on the same patent with third party were not justified in an objective way and therefore terms were discriminatory for the Defendant. The Court also held that although the Defendant bears the burden of proof to prove that offer's terms are not in conformity with FRAND principles, the patentee bears the burden of proof about the details of the FRAND-license agreements with third licensees.

2. The Netherlands

Archos S.A. v. Koninklijke Philips N.V., NL, District Court of The Hague, 10 February 2017, citation number: ECLI:NL:RBDHA:2017:1025. Prior to this case, Philips had

brought three patent infringement cases regarding UMTS SEPs against Archos in the Dutch court's accelerated regime. In response, Archos filed this case on the merits, purely regarding the FRAND questions at stake.

The various infringement cases concerned patents declared as being essential to the UMTS standard. The court first lists the negotiation history and the exact royalty rates proposed by both parties (about a factor 10 apart from one another), before coming to the declarations that Archos claimed, namely that Philips' offer was not FRAND, and that Archos' offer was FRAND (and additionally, to declare that Archos' offer was in fact higher than FRAND). The court then analyses the negotiation history and contrary to Archos' position that Philips offer was not FRAND and not negotiable, concludes that it was in fact Archos who failed to negotiate those points and held off on further negotiations

[4.3] (...) In this, it must be taken into account that until the decision of the European Court of Justice in the matter of Huawei/ZTE, the initiative for taking a license was in the case law laid with the user of the standard and is not so much with the SEP holder, at least, section 6.22 of the decision of this court in the matter of Philips/SK Kassetten, as well as the Orange Book decision of the German Bundesgerichtshof were generally understood in that way. The, on this crucial point, contrary decision of the Court of Justice came on 15 July 2015 and in the opinion of the court formed a new moment for negotiation between parties. Philips in accordance with that decision took the initiative with its offer of 28 July 2015. In the meeting subsequently planned on 3 September 2015, Archos however still appeared to slam the door shut by, as has been established without contest, indicating that if Philips wanted more than a few thousands of euros it would have to take legal action against Archos. In that light, it seems unfitting that Archos reproaches Philips to have not been open to negotiation, or at least that position is insufficiently substantiated.

The court further examines the various arguments raised by Archos, inter alia that Philips packaged its UMTS and LTE portfolios into one proposed license deal, that that proposal failed to depart from the correct share of Philips SEP patents in the UMTS pool, made use of royalty stacking, did not apply a technical quality weighing and finally did not depart from a Smallest Saleable Patent Practising Unit (SSPPU, here: the Qualcomm baseband chip) point of view.

In the end, none of the points raised by Archos comes to any real effect, since the court mainly follows Philips' position that Archos should simply have negotiated further on those points it did not consider to be FRAND. Since Philips is able to offer relevant comparables in its licensing efforts, the court finally rejects Archos' request for a declaration that Philips' offer was not FRAND

This decision shows the court is willing to address FRAND issues in-depth, demonstrated here by the court getting to grips with FRAND royalty calculation methods, such as alternative technologies and the SSPPU approach.

3. United Kingdom

Unwired Planet, England and Wales High Court, 30 November 2017^[3]_[#_ftn3] : The

High Court released two judgements, one is the final public version of the judgement granting a FRAND license to Unwired Planet and the other one ruling on the confidentiality of commercial licensing information redacted in the original public judgment. The question for Judge Birss was whether commercial licensing information should be treated as confidential. The High Court set out relevant factors to determine if a judgment should be redacted[4][#_ftn4] . In that case, Judge Birss considered that the publication of the commercial licensing information in issue would affect the competitive position of the parties.

Conversant Wireless Licensing S.A.R.L v Huawei Technologies Co. Ltd, ZTE Corporation and Ors, England and Wales High Court, 16 April 2018[5][#_ftn5] :

Conversant has several patents declared as SEP by ETSI standards. The firm made offers for a global FRAND license to Huawei and ZTE, but the parties failed to reach an agreement. Later, Huawei and ZTE commenced proceedings in China and in the UK to establish invalidity and non-infringement of Conversant's patents. Concurrently, Conversant claimed for a FRAND license before the High Court. Huawei denied the jurisdiction of the High Court because the Chinese market represented 56% of its worldwide sales while the UK represented only 1%. Therefore, it could not be the appropriate forum. The High Court held that even where a challenge to the validity of a foreign patent is pending in other jurisdictions, it has jurisdiction to set a global FRAND license.

4. European Commission

Communication of the European commission, 29 November 2017[6][#_ftn6] : The European Commission presented its guidance on standard-essential patent (SEP) licensing. The Commission identified three main areas where the SEP licensing environment could be improved.

In the first section, the Commission explains how to increase transparency and relevant information related to SEP's. It recommends that Standard Development Organizations (SDO) should provide a detailed information in their databases and improve their accessibility[7][#_ftn7] . Final patent usually differs from the declared patent application. For this reason, rightsholders should review their declaration when the final granting decision is taken and report to the case reference if applicable. Moreover, the scrutiny on essentiality claims should be performed by an independent expert. However, an increased scrutiny of essentiality must be balanced against the cost associated with such a review.

In the second section, the Commission establishes key principles on the FRAND concept to support parties in their negotiations and to reduce litigation. First, the Commission recalls that there no "one-size-fit-all" solution on what FRAND is. Its depends on sector and over time. Second, licensing terms should relate to the economic value of the patented technology. Third, parties need to consider a reasonable aggregate rate for the standard, assessing the overall added value of the technology. Fourth, there should be no discrimination if implementers are similarly situated. Finally, the Commission encourages the creation of patent pools and licensing platforms to facilitate SEP licensing.

The third section is about the enforcement environment for SEP's. The Commission considers

that a relief injunctive against a bad faith party must be proportional. The Commission will continue to work with stakeholders to develop and use methodologies which allow for efficient and effective SEP litigation as well as encourage ADR and mediation.

European Commission Decision, 5 July 2018^[8] : The Commission set up a group of experts to increase expertise and know-how on the determination of FRAND licensing terms and valuation of SEPs. The group will be in charge to provide an expertise to the Commission, to facilitate an exchange of good practice in SEP licensing, to assist the Commission in the implementation of policy required for ensuring a balanced framework and to gather information on licensing and valuation practices in accordance with its previous Communication^[9] .III

III. USA

Herebelow is a review of the developments in the United States for the past 12-month period related to standard essential patents, presented in general chronological order. A leading asterisk (*) is placed in front of what may be the most important developments.

U.S. International Trade Commission (ITC) Inv. No. 337-TA-1012 (Fujifilm v. Sony). In 2017, an administrative law judge (ALJ) ruled that patents asserted by Fujifilm against Sony products were not essential to an LTO-7 standard developed by a small consortium related to magnetic tapes. Specifically, he found that the patent claims did not read onto the standard. Accordingly, he ruled that Fujifilm could not have breach a commitment to license the patents on reasonable and non-discriminatory (RAND) terms, because that commitment only arose if the patents actually were essential to the standard. The full ITC Commission reviewed the ALJ's decision and agreed that the patents were not essential to the standard and, therefore, there was no RAND obligation for those patents.

U.S. International Trade Commission (ITC) Inv. No. 33-7TA-1023 (Netlist v. Hynix). In 2017, an ALJ made an initial determination that patent owner Netlist had not breached its commitment to JEDEC to license patents that are essential to computer memory standards on RAND terms. The ALJ ruled that the licensing commitment given under JEDEC's intellectual property right (IPR) policy applied only for patents that actually are essential to the standard. In this case, the ALJ found that the patents were not infringed and, therefore, not essential. Further, the accused infringer Hynix had not carried its burden to prove that Netlist's licensing offer was "demonstrably free of any unfair competition." Hynix alleged that the licensing offer from Netlist had a different effective royalty rate than that in a license agreement that Netlist had with Samsung, and thus was discriminatory. But Hynix had failed to account for substantial non-monetary value that Netlist also received in the Samsung license. This became the final decision of the ITC.

***New SEP Antitrust Policies of the U.S. Department of Justice (DOJ).** The new DOJ administration's Assistant Attorney General (AAG) for the Antitrust Division, Makan Delrahim, has announced new DOJ policies with respect to standard essential patents. AAG Delrahim has stated that competition authorities should play a lesser role in interfering with SEP issues, which can be addressed by traditional contract and patent law. He indicated that

the theoretical concern of patent holdup by SEP owners was not as big an issue as some had claimed, and that a bigger concern is patent holdout by those who practice and refuse to license the patented technology. He also indicated a concern that those who sell products using patented technology may commit antitrust violations if they collude to force a standards-setting body to form IPR policies that are adverse to patent owner. The statements of an AAG at DOJ, like AAG Delrahim, are considered official DOJ policy. This is different than, for example, statements from the Chair or other Commissioners of the U.S. Federal Trade Commission (FTC), which are only their personal views, may conflict with other Commissioners' views and are not FTC policy.

***TCL v. Ericsson (C.D. Cal.).** In late 2017, Judge Selna held a bench trial (i.e., trial before the judge, not a jury) to determine licensing rates for a portfolio of Ericsson patents alleged to be essential to ETSI mobile cellular standards. Judge Selna rejected the methodologies presented by both parties to determine what would be a FRAND royalty and derived his own method. He ultimately determined a royalty that was higher than TCL asserted, but much lower than what Ericsson asserted. This is a very fact-sensitive decision that may not have a lot of application to other cases. But it is important to review because it is one of the few U.S. decisions to determine a FRAND royalty and to do so for a large portfolio of standard essential patents. The decision is on appeal at the Federal Circuit.

Goda Kaisha v. TCL (D. Del.). The court dismissed antitrust claims that were premised on an alleged breach of a commitment to license standard essential patents on FRAND terms. The court held that the required antitrust injury-in-fact cannot occur solely from a patent owner filing suit under the SEPs, because the remedies granted in such an action would be consistent with the FRAND commitment and lawful.

St. Lawrence v. Motorola Mobility (E.D. Tex.). The court dismissed equitable defenses and competition claims based on alleged breach of a commitment to license standard essential patents on FRAND terms. Motorola alleged a breach because patent owner St. Lawrence (1) required Motorola to take a worldwide FRAND license, (2) used the threat of injunctive relief in Germany to coerce SEP licensing, (3) entered different licensing terms with different licensees and (4) not disclosing effective royalties from licensing the SEPs under a patent pool when negotiating individual licenses to those same patents. This is another case showing that competition law claims may not prevail when a patent owner has followed traditional patent enforcement and licensing strategies or even if they breached a FRAND commitment (the remedy lies in contract law, not competition law).

U.S. International Trade Commission (ITC) Inv. No. 337-TA-1081 (Philips v. Feit). The ALJ dismissed patent misuse defenses premised on patent owner Philips filing the complaint in the ITC without first offering a license on FRAND terms. The ALJ found that accused infringer Feit had not pled its defense with the required specificity. Among other things, Feit's concern about Philips requiring a license to the entire patent portfolio, without more, was not unlawful because "package licensing arrangements do not constitute patent misuse unless ... they broaden the scope of the patent by imposing an unreasonable restraint on competition."

***Momenta v. Amphastar (D. Mass.).** This case involved standards related to pharmaceutical drug manufacturing processes. The district court held that patents were not enforceable against certain drug manufacturing processes, because they were not disclosed when the patent owner was participating in the standard setting organization United States Pharmacopeia (USP) at the time the standard was adopted. Unenforceability, however, was limited to the specific process used to practice the standard and the patent could be asserted against other processes that infringed the patent.

***Huawei v. Samsung (N.D. Cal.).** Judge Orrick enjoined Huawei from enforcing an injunction it received in China against Samsung until after this U.S. court action on licensing related standard essential patents on fair, reasonable and non-discriminatory terms was tried and decided. Judge Orrick was concerned that the injunction in China would provide Huawei too much leverage, because Samsung had a major manufacturing facility in China that made the accused infringing products sold worldwide. Among other things, waiting until the U.S. court action was decided would cause little interference with the Chinese injunction because the Chinese injunction involved only two SEPs and was on appeal, so the U.S. court action would be decided by the end of the year.

Cellular Equipment v. ZTE (E.D. Tex.). Magistrate Judge Mitchell ruled that factual issues required a trial to determine whether patents were essential to a standard and, thus, subject to a commitment to license those patents on FRAND terms. During the case, the patent owner Cellular Equipment had made statements indicating that the patents were essential to the standard. This case illustrates why it is important to distinguish between (1) identifying a patent that may be essential to a standard and being willing to license it on FRAND terms if it is essential to the standard and (2) a patent actually being essential to the standard and, thus, being subject to the FRAND commitment.

***Core Wireless v. Apple (Fed. Cir.).** The Federal Circuit ruled that the equitable doctrine of implied waiver may preclude a patent owner from asserting a patent where the patent owner proposed a technical contribution to a standard setting body (which was not adopted) but failed to disclose that, at the same time, it had filed a foreign patent application (from which the U.S. patent claimed priority) that may read onto the standard. The case is remanded back down to the trial court to determine whether the patent owner received an unfair benefit from failing to disclose the foreign application.

***Optis v. Huawei (E.D. Tex.).** A jury recently found that Huawei willfully infringed patents owned by PanOptis and awarded a running reasonable royalty for each patent. Four of the patents were alleged to be essential to ETSI mobile cellular standards and subject to a commitment to license the patents on FRAND terms. A fifth patent was found infringed based on portions of a video-compression standard combined with the Android operating system on infringing products; this patent was not considered a standard essential patent and was not subject to a FRAND commitment. The jury awarded a running reasonable royalty of \$7.7 million for that single patent, which was almost three times the combined reasonable royalty award of \$2.8 million for the FRAND-committed patent. The court will now hold a bench trial (i.e., trial before the judge, not a jury) to determine whether PanOptis breached its FRAND commitment.

[1][#_ftnref1] Higher Regional Court of Düsseldorf, 30 March 2017, (docket no. I-15 U 66/15)[http://www.justiz.nrw.de/nrwe/olgs/duesseldorf/j2017/I_15_U_66_15_Urteil_20170330.html]

[2][#_ftnref2] *Huawei v ZTE*, Court of Justice of the European Union, 16 July 2015[<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130dc628e9bedb3c440fdae72da2f6ad58679.e34KaxiLc3eQc40LaxqMbN4Pb3yLe0?text=&docid=165911&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=278948>]

[3][#_ftnref3] *Unwired Planet*, High Court of England and Wales, 30 November 2017[<https://www.twobirds.com/~media/files/unwired-planet-v-huawei-2017-ewhc-3083-pat.pdf?la=en>]

[4][#_ftnref4] The nature of the information (e.g.: technical trade secret); the effect of the publication of the information (e.g.: public interest, destroying a trade secret), the nature of the proceedings, the relationship between the information in issue and the judgment (no impact in the understanding of the decision), the position in the proceeding of the person seeking to restrain publication (e.g.: third party).

[5][#_ftnref5] *Conversant Wireless Licensing S.A.R.L v Huawei Technologies Co. Ltd, ZTE Corporation and Ors* [2018] EWHC 808 (Pat)[<http://www.bailii.org/ew/cases/EWHC/Patents/2018/808.html>]

[6][#_ftnref6] European Commission communication setting out the EU approach to Standard Essential Patents, 29 November 2017[<https://ec.europa.eu/docsroom/documents/26583>]

[7][#_ftnref7] The European Commission implements guidance: user friendly interface, information searchable based on the relevant standardisation project, eliminate duplications, links to patent office databases including updates of patent status, ownership and its transfer.

[8][#_ftnref8] Commission decision setting up a group of experts on licensing and valuation of standard essential patents, 5 July 2018[<http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=37653&no=1>]

[9][#_ftnref9] Communication of the European commission, setting out the EU approach to Standard Essential Patents, 29 November 2017[<https://ec.europa.eu/docsroom/documents/26583>]

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;

The SC should consider if and if so how it could participate in the Expert Group set up by the European Commission's Decision of 5 July 2018. This Expert Group is set up to increase expertise and know-how on the determination of FRAND licensing terms and valuation of SEPs. The group will be in charge to provide an expertise to the Commission, to facilitate an exchange of good practice in SEP licensing, to assist the Commission in the implementation of policy required for ensuring a balanced framework and to gather information on licensing and valuation practices in accordance with its previous Communication of November 2017.

b)

any other recommendations for AIPPI involvement/action;

The SC should consider to participate in ADR and FRAND conferences.

c)

any recommendations for the work programme of your Standing Committee.

With respect to the present work programme, the SC should aim to conduct the ADR and FRAND survey in the remainder of 2018 and finalize a report on this by Q1/Q2 2019. In this way this may be combined with the aforementioned participation in conferences.

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.

With respect to the present work programme, the SC should aim to conduct the ADR and FRAND survey in the remainder of 2018 and finalize a report on this by Q1/Q2 2019. In this way this may be combined with the aforementioned participation in conferences. In addition the meeting in Cancun should be used to put new relevant topics on the agenda of the SC for further study.

Names and Functions of Committee Members

Chair	Gertjan KUIPERS	Netherlands
Vice Chair(s)	Calvin PARK	Republic of Korea
	Pauline DEBRÉ	France
Members	Jesus ARRIBAS GARCIA	Spain
	Monica BARONE	United States of America
	John BRUNNER	United Kingdom
	Khristine C. DY	Philippines
	Martin FÄHNDRICH	Germany
	Jeffrey GLUCK	United States of America
	Malin GULLSTRAND BERGH	Sweden
	Clemens-August HEUSCH	Germany
	Joyce HO	Independent members
	Per JOSEFSON	Sweden
	David LONG	United States of America
	Márcio MERKL	Brazil
	Andrea MITTLER	Italy
	Kiyoko NAKAOKA	Japan
	Elisabeth OPIE	Australia
	P.I. REESKAMP	Netherlands
	Ignacio SANCHEZ ECHAGÜE	Argentina
	Ekrem SOYLU	Turkey
	Svetlana STADLER	Israel
	Hawthorne SUH	Republic of Korea
Peter TRELOAR	Australia	
Stephane TRONCHON	France	
Richard VARY	United Kingdom	
Taliah WALKLETT	United Kingdom	
Maohua WANG	China	
Johanna WRIGHT	Sweden	