



Date: 23rd September 2018

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);

The Committee convened an internal meeting at the Sydney Congress.

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 Committee submitted proposals for panel sessions and study questions.

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);

N/A

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

With the Bureau's consent the Committee asked 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. However, the German Constitutional Court did

not grant AIPPI permission to file such brief.

e)

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

The Committee discussed a draft position paper on the relationship between decisions of the EPO and the UPC at the Sydney Congress. The paper has been amended in line with these discussions and will be adopted at the Committee meeting at the Cancun Congress.

A paper on enforcement of UPC decisions has also been drafted and will be discussed at the Committee meeting at the Cancun 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.

On 26 April 2018 the UK ratified the UPC Agreement (notwithstanding the UK's notice under Article 50 Lisbon Treaty). The recent White Paper of the UK Government confirms the UK's intention to remain in the UPC even after Brexit.

Bulgaria recently ratified the Protocol on Provisional Application (PPA). So far France, the UK and eight other countries (Belgium, Denmark, Estonia, Finland, Italy, Luxembourg, the Netherlands and Sweden) have ratified the PPA. Apart from Germany (whose ratification of the UPC Agreement and PPA is on hold due to the pending constitutional complaint), only one more country must ratify the PPA for the provisional application phase to start.

All eyes are still on Germany. Even though the constitutional complaint was filed in March 2017, the proceedings before the German Constitutional Court are ongoing, and it is still unclear when the German Constitutional Court will hand down its decision.

The Constitutional Court of Hungary recently found that the UPC Agreement was incompatible with the current Hungarian Constitution. Therefore, Hungary's ratification of the UPCA will not be possible without an amendment to the Hungarian Constitution.

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;

N/A

b)

any other recommendations for AIPPI involvement/action;

N/A

c)

any recommendations for the work programme of your Standing Committee.

N/A

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 position paper on the relationship between decisions of the EPO and the UPC as discussed and amended at the Sydney Congress will be adopted at the Cancun Congress.

The draft paper on enforcement of UPC decisions will be discussed at the Cancun Congress. The Committee plans to do further work on the enforcement of UPC decisions, notably on the enforcement of saisies (orders to preserve evidence), and on the standard of appeal in the UPC.

In light of the ongoing constitutional challenge of the UPC in Germany, the Committee also plans to discuss the future of the UPC and the Committee more generally, including whether to look into ways to support the efforts to secure the UK's long term participation in the UPC system.

Names and Functions of Committee Members

Chair	Thierry CALAME	Switzerland
Vice Chair(s)	Christof AUGENSTEIN M.g.r. VAN GARDINGEN Annsley WARD	Germany Netherlands United Kingdom
Members	Rainer BEETZ Hélène CORRET Jacqueline M. DASPIT Gualtiero Luca DRAGOTTI Luis-Alfonso DURÁN Andrés ESTEVA WURTS Kim FINNILÄ Örjan GRUNDÉN Michal HAVLIK Alan JOHNSON Lori-Ann JOHNSON Louise JONSHAMMAR Seong-ki KIM Kaoru KURODA Nicolai LINDGREEN Diego PALLINI GERVASI John B. PEGRAM J.C.Sebastian PINCKAERS Oswin RIDDERBUSCH Cornelis (Kees) SCHÜLLER Thierry SUEUR József TÁLAS Mikkel VITTRUP	Austria France United States of America Italy Spain Mexico Finland Sweden Czech Republic United Kingdom United States of America Sweden Republic of Korea Japan Denmark Italy United States of America Netherlands Germany Switzerland France Hungary Denmark