

**AIPLA Committee Report**

DATE: October 3, 2013

MEETING: 2013 Annual Meeting

COMMITTEE NAME: AIPPI-US Division

COMMITTEE LEADERSHIP: David Hill, Chair; Philip Swain, Vice-Chair; Andrew Meunier, Secretary; William Ellis, Treasurer

OVERALL MISSION OF THE COMMITTEE AS IT RELATES TO AIPLA's **VISION, MISSION**, and **VALUES**: The AIPPI-US Division serves as the U.S. National Group of the international organization AIPPI (the "Association Internationale pour la Protection de la Propriete Intellectuelle"), an international federation of national groups of intellectual property practitioners from over 100 countries that has over 9,000 members worldwide. The AIPPI-US Division's main mission is to work within the framework of AIPLA to participate in the activities of the larger AIPPI organization. Those activities include conducting comparative law studies of intellectual property laws, with the goal of proposing measures to achieve harmonization of those laws on an international basis, which are then supplied to the WIPO, the WTO, and, to national patent and trade mark offices around the world. AIPPI conducts annual meetings every year to discuss and reach agreement on these resolutions, and also conducts workshops and seminars on other international intellectual property comparative law issues. In formulating its position on these issues, the AIPPI-US Division coordinates its actions, positions, resolutions, and communications with the appropriate committees and leadership of AIPLA, in accordance with AIPLA procedures.

PROJECTS:

**(1) The AIPPI Helsinki Forum and Executive Committee Meeting- September 6-10, 2013**

The Helsinki AIPPI Forum and Executive Committee Meeting concluded on September 10 with the final Executive Committee meeting and closing dinner. It was an extremely successful meeting. Thanks to the hard work of many of our members, the resolutions adopted by the Executive Committee of AIPPI were largely passed in a form that should be fully acceptable to the AIPPI US Division.

Special thanks are due to a number of our members. First, we owe gratitude to the authors of our four working committee reports that were prepared last spring. We also should recognize the additional contributions by several substantive law committees of AIPLA and the Board of Directors of AIPLA for their help in refining the final versions of the reports.

The reports were drafted by the members listed below:

**Q233 Grace Period for Patents:** Peter Schechter, Andrew Simpson, Tom Smegal, Kevin Tottis, Richard Beem, James Slattery, Marc Richards, Drew Meunier, and Damian Wasserbauer

**Q234 Term of Copyright Protection:** Howard B. Miller, Rudolph P. Hofmann, James R. Muldoon, and Christopher M. Scherer

**Q235 Relevant public for determining the degree of recognition of famous marks, well-known marks and marks with reputation:** Seth I. Appel, Griff Price, Robert Sacoff, Maria A. Scungio, Elise Selinger, Philip T. Shannon, and David Weild III

**Q236 Relief in IP proceedings other than injunctions or damages:** Ken Adamo, John Bird, Eugene Goryunov, John Johnson, Kristen McCallion, Alicia Shah, and Robert Wells

We were fortunate to have two members who were appointed as chair or co-chair of two of the AIPPI working committees in Helsinki. Bob Sacoff served as chair of the working committee on Q235, and Peter Schechter was appointed as co-chair of the working committee for Q233. The AIPPI US Division was represented on the working committee for Q234 by Howard Miller, AIPPI US Division Chair Dave Hill was the representative for Q236, standing in for Ken Adamo, who was unable to attend.

We also need to recognize several AIPPI-US Division members and other people from the United States who served as speakers in the Forum and Executive Committee Sessions of the meeting. Rich Beem spoke at Workshop IV on the topic, "Digital Gaming and IP/Patents," and Mark Halligan spoke at Workshop III on "Trade Secrets - Effective Protection for Innovation?" Mark Guetlich, the USPTO Director of Patent Policy and International Affairs delivered an introductory speech for Plenary Session Q236 on the topic "Relief in IP Proceedings other than injunctions or damages." Chris Carani spoke for Forum Workshop II, "*Apple v. Samsung* - Lessons for Design Law and Strategy." Elizabeth Doherty was a speaker for Pharma Workshop 2, "Second Medical Use Patents." Larry Welch moderated Pharma Workshop 3 on the topic "The TRIPS Tightrope - Public Health, Innovation, Incentives and Access." Kevin Smith spoke for Forum Workshop III, "Brand Strategy in Light of New Top Level Domains." Finally, Dale Nelson was on the panel for Forum Workshop V, "*UsedSoft v. Oracle* - Exhaustion Online?"

**EXECUTIVE COMMITTEE SESSIONS:** During the Executive Committee, John Osha was elected to continue serving on the AIPPI Bureau as a Deputy Reporter General. Larry Welch was elected to be the Chair of the AIPPI Programme Committee. The AIPPI US Division was also represented in Helsinki on the AIPPI Nominating Committee (Mark Halligan), the AIPPI Membership Committee (Alan Kasper), and the AIPPI Communications Committee (Bob Sacoff). In addition, the Executive Committee voted to select the venue for the 2017 AIPPI Annual Meeting, choosing Sydney, Australia.

At the Executive Committee and Plenary Sessions of the meeting, our Division had ten designated voting delegates, as follows:

Acting President: Wayne Sobon

Delegates: David W. Hill, Alan Kasper, Peter Schechter, Philip Swain, Drew Meunier, Andrew Simpston, Kenneth Adamo, Howard Miller, and Rich Beem.

In addition to these named delegates, many other members assisted with the voting in the various plenary and Executive Committee sessions during the meeting. Thanks go to Monica Barone, Sunhee

Lee, Vic Siber, Ray Moser, Steve Bauer, Bea Koempel-Thomas, Mark Halligan, Bob Sacoff, George Badenoch, Kelly Hyndman, and several others who stepped up to help with debate and voting.

Many others from our AIPPI-US Division were active during the meeting as members of various AIPPI Committees, and other events.

Our Division held a get-together for cocktails during the Helsinki meeting. We had a great turnout of members and others from the US who were attending the meeting. Thanks go to our Vice-Chair, Phil Swain, for arranging this event.

**AIPPI RESOLUTIONS:** Five resolutions were approved during the final Executive Committee Meeting on September 10, and one resolution was marked up for a final vote to be taken by correspondence in the near future. Copies of the approved resolutions are posted on the AIPPI website at <https://www.aippi.org/?sel=resolutions>. Our Division worked very hard in offering amendments and changes to the draft resolutions as they went through various stages of debate, and with a few exceptions, we succeeded in having our preferred language included in the final resolutions.

Most notable among the approved resolutions is the one on Grace Period for Patents, which endorses the need for an internationally harmonized grace period of 12 months, with no requirement for declarations to claim the grace period. We attempted to have a last minute draft resolution on Plain Packaging tabled to give us more time for polling our membership and developing a coordinated US position, but this was defeated. That resolution was significantly edited during the final Executive Committee meeting, and was eventually approved after the meeting by a vote through correspondence.

Other actions taken by the AIPPI during the AIPPI Executive Committee meeting week:

- Annual Congress - The Executive Committee approved in principle various changes to the Statutes and Regulations of AIPPI to standardize the Annual Meeting format of the Association in the future. Under the revised format, beginning after the 2014 Toronto Congress, each annual meeting will follow a Congress type schedule, and we will no longer alternate meetings between Forum & Executive Committee and Congress schemes.
- New AIPPI Groups - Two new AIPPI Groups were approved, one for Uruguay, and a second for the Central America and Caribbean Region. That regional Group includes members from Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, Costa Rica, Cuba, Curacao, Dominica, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Daint Vincent and the Grenadines, Trinidad and Tobago.
- Venue Selection for Meetings - A change was also made in how venues are to be selected for AIPPI meetings in the future. A Statutory Committee will be established for the purpose of selecting the venue for future AIPPI meetings in consultation with the Bureau. This will replace the current practice of choosing future meeting locations by Executive Committee vote.
- Amicus Committee - A proposal was presented to establish a Standing AIPPI Amicus Brief Committee, and suggested operating parameters were discussed.
- Awards and Recognitions - Y.B. Kim was made a Member of Honor, and several Awards of Merit were bestowed.
- Strategy Report Follow-up - Numerous efforts are ongoing and proposed in relation to the implementation of changes to AIPPI as a result of the Strategy Report presented at the 2012 AIPPI Seoul Congress. Among these are the efforts of Q237, a task force that is developing recommendations on the Role and Structure of the Bureau, Council of Presidents, and Executive

Committee for the future. Changes in terminology used by the Association are being planned, Committee protocols are being examined for revision, regulations on the composition and retention on committees are being reviewed, and provisions on the communication of AIPPI views are being reexamined for possible change.

#### **AIPPI 2014 Toronto, September 14-18, 2014**

The AIPPI 2014 Toronto Congress is scheduled for September 14-18, 2014. This event promises to be one of the best AIPPI meetings in many years. Our AIPPI-US Division was singled out in Helsinki as the fastest growing group in the past year, with a growth of 99%. Our goal is to reach 500 members by the Toronto Congress, and we will be asking our members to recruit new members from their firms and companies.

We expect to receive the Working Guidelines on the four Toronto working questions early in 2014, and we will be asking for volunteers to work on those questions soon. The following are the four Study Questions for Toronto:

- Second Medical Use or Indication Claims
- The Basic Mark Requirement under the Madrid System
- Exhaustion Issues in Copyright Law
- IP Licensing and Insolvency

**ADVOCACY:** As noted above, the AIPPI-US Division participates in comparative law studies in the larger international AIPPI organization on issues concerning harmonization of intellectual property laws. In that regard, the AIPPI-US Division generally advocates that the United States position or rule should be adopted when the international body agrees on a resolution for a harmonized proposal. When the AIPPI-US Division is developing its position on these issues, it seeks the guidance of the substantive AIPLA Committees which are responsible for the respective area of intellectual property law for each individual question that is being studied.

The AIPPI-US Division also expects that it may, from time to time, recommend that AIPLA take positions in amicus briefs on issues that may affect areas in which its members may have an interest, such as international harmonization of intellectual property laws.

**PUBLIC EDUCATION:** The AIPPI-US Division will publish its reports on questions of comparative law that it has prepared. In addition, the annual meetings of the AIPPI international organization, which are open to all AIPPI members, include workshops and seminars on international intellectual property law issues.

During the AIPLA annual meeting, the Division will hold its own Annual Meeting, which will take place on October 25, 2013 in Washington, DC. That meeting will include our annual election and business meeting, followed by a CLE program.

**MEMBER SERVICE:** The AIPPI-US Division will have meetings at each of the AIPLA regular stated meetings. It also makes available opportunities to all of its members to participate in preparing the United States reports on the comparative law studies for the international harmonization resolutions.

All of its members also have the opportunity to attend the international meetings of the AIPPI organization, where they can attend the seminars and workshops as well as the discussions of the resolutions on international harmonization, and also provides members the opportunity to network with international companies and practitioners. In addition, there are several sub-committees of the AIPPI-US Division which will make international trips to meet with their counterpart AIPPI organizations in other countries. For example, there is an Asia-Pacific Sub-Committee which will travel to Japan, China, and Korea this fall to meet with the AIPPI groups in those countries. That Sub-Committee is also coordinating its activities with the appropriate AIPLA international committees.

**GLOBAL OUTREACH:** As noted above, the principal activity of the AIPPI-US Division is global outreach, to work within the framework of the AIPPI international organization toward international harmonization of intellectual property laws. Our members attend the international meetings of the AIPPI international organization, and we have sub-committees which visit from time to time with their counterpart AIPPI national groups in other countries, in cooperation with other AIPLA international committees.

Our Division trip to visit AIPPI Groups in Japan, Korea and China is scheduled for the week of November 11-15, 2013, and planning is well underway.