AIPPI 2014 Toronto

World Intellectual Property Congress

Toronto 2014 September 14 – 17, 2014

AIPPI

Preliminary Programme

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Event management

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Event venue

- Metro Toronto Convention Centre
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  M5V 2W6 Canada
  http://www.mtccc.com

AIPPI Canada Website

- http://www.aippicanada.org

For information on accommodation and tours please consult the red brochure "Accommodation & Social Events" or visit our website at www.aippi.net.

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Dear AIPPI members, delegates and guests,

On behalf of the Canadian Group of AIPPI, and AIPPI International, we extend a warm invitation to participate in the AIPPI Toronto Congress. This event will enable you to participate in the establishment of new international IP standards, to experience the traditional comradeship of IP practitioners from around the world, to learn about current issues and cases in your fields of endeavour, as well as to savour the sights and amenities of this year's host city. We will also introduce you to the rest of Canada during the formal programme.

Toronto is a vibrant cosmopolitan city, reflecting multitudes of cultures, cuisine, and entertainment. In addition to the extensive professional development schedule, the Congress has been designed to introduce you to the food, arts, music and sights of Canada. We will delight in showing you our city. No visit to Toronto is complete without a visit to Niagara Falls. Therefore, we are offering a post-Congress tour to this spectacular site. We hope you can join us on this tour so that you can relax and continue to network with your AIPPI family.

September is one of the finest weather months in Canada, with warm days and comfortable evening temperatures. For those of you staying on, the autumn colours will just be starting in the outlying countryside, and so will the hockey pre-season. We look forward to seeing you in Toronto this September.

Philip C. Mendes da Costa
Chairman, Organizing Committee for AIPPI 2014 Toronto

Bruce Morgan
President AIPPI Canada

A word about AIPPI

The International Association for the Protection of Intellectual Property, generally known under the acronym "AIPPI", is the world's leading international organisation dedicated to the development and improvement of intellectual property laws.

It is a politically neutral, non-profit organisation, headquartered in Switzerland, and which currently has almost 9000 members, representing more than 100 countries.

The objective of AIPPI is to improve and promote the protection of intellectual property on both an international and national basis. It pursues this objective by working for the development, expansion and improvement of international and regional treaties and agreements, and also national laws relating to intellectual property.

AIPPI operates by conducting studies of existing national laws and policies, and proposing measures to promote best practices and achieve international harmonisation of law, policy and practice. In this context, AIPPI has increasingly become involved with defining well-balanced systems for protecting and enforcing intellectual property rights.

Organization and Membership

AIPPI Membership:
• 64 National Groups • 2 Regional Group • 188 Independent Members

AIPPI's members are people actively interested in intellectual property protection at a national or international level. They include lawyers, patent and trademark agents or attorneys and representatives from industrial corporations, as well as judges, academics, scientists and engineers.

AIPPI is organized into 64 National and two Regional Groups and membership is attained by joining one of these Groups. In countries where no Group exists, membership is attained as an Independent Member of AIPPI.

The primary bodies through which AIPPI works are:

- the **General Assembly**, in which all members have a right to participate and which is responsible for adopting and modifying AIPPI's Statutes;
- the **Executive Committee** (ExCo), the principal decision-making body of AIPPI, which is made up of delegates from all of the Groups – around 300 in number;
- the **Council of Presidents**, made up of the Presidents of the Groups plus a representative of the Independent Members as well as Presidents and Members of Honour; and,
- the **Bureau** which directs the activities of AIPPI; it has nine members including the President of AIPPI who chairs the Bureau; the Vice-President; the Secretary General and a Deputy who with three Assistants, are responsible for administration and representation; the Reporter General and two Deputies who, with three Assistants, organize the analytical work and studies conducted by AIPPI; the Treasurer General in charge of financial resources; and a Congress Representative.

AIPPI also includes **Statutory Committees**: the Programme Committee, which recommends IP subjects for study; the Finance Advisory Committee, which acts as an internal auditor; the Nominating Committee, which proposes candidates for AIPPI's various elective positions; the Membership Committee, which proposes strategies to attract new members and to improve the services AIPPI can offer to best meet the needs of its members; the Communications Committee, which gathers and disseminates important and topical IP information and is responsible for overseeing AIPPI's website, archives, and external communications such as e-News.

The Working Methods of AIPPI

The **Programme Committee** (PC) identifies important and timely IP issues for study which are put into the form of numbered Questions.

The **Reporter General Team** (RGT) drafts Working Guidelines for each Question. The National/Regional Groups prepare reports which set out the current legal position on the Question in their respective jurisdictions, and provide recommendations and comments on harmonisation of the law.

The Summary Report for each Question and Group Reports form the basis for **Working Committees** (consisting of members from the National/Regional Groups responsible for a particular Question) to prepare draft Resolutions, which are debated at annual meetings. When a consensus is achieved, final Reports and Resolutions representing the position of AIPPI are adopted by the ExCo. These Resolutions are presented to WIPO and other international NGOs as well as the IP offices and governments of the National/Regional Groups, as guidance on harmonization.

Special Committees (SC) study Questions of emerging or particular urgency and monitor developments in IP law, allowing AIPPI to deal with matters requiring action outside the regular cycle for Working Questions. This is important in view of public consultations, meetings or other projects in which AIPPI is invited to participate, and where it is frequently necessary to study documents and formulate the opinion of AIPPI on the basis of previous Resolutions before the next ExCo meeting takes place.

AIPPI Meetings

From 2015, AIPPI Congresses will take place every year. The decision-making bodies of AIPPI, the Council of Presidents and the Executive Committee, convene at all Congresses of AIPPI.

Congresses are open only to AIPPI members. Normally, about 2000 members attend with around 500 accompanying persons. Forthcoming Congress venues include Rio de Janeiro (2015), Milan (2016), Sydney (2017), Cancun (2018), Istanbul (2019) and Hangzhou (2020).

As noted above, at AIPPI meetings Working Committees engage in discussions to achieve a consensus on Resolutions representing the positions of AIPPI. However, a large majority of attendees are there for the excellent networking opportunities and for the educational programme of AIPPI, which typically features a day of workshops on international IP issues relating to pharmaceuticals and two days of international workshops on contemporary IP law issues. In addition, there are special panels of experts discussing current and future developments, mock trials, meetings of corporate representatives from industry and a women in IP meeting.

Programme at a Glance

	Friday - 12.09.14	Saturday - 13.09.14		Sunday - 14.09.14				Monday - 15.09.14			Tuesday - 16.09.14			Wednesday - 17.09.14			Thursday- 18.09.14		
07.30 - 08.00	SGT & RGT Breakfast	SGT Breakfast	RGT Breakfast	SGT Breakfast	RGT Breakfast			SGT Breakfast	RGT, PC Breakfast		RGT, PC, SCs Breakfast								07.30 - 08.00
08.00 - 08.30																			08.00 - 08.30
08.30 - 09.00				WC Briefing										Plenary Session IV Q241	Workshop V Patenting computer implemented inventions	Workshop VI Free riding / Parasitism			08.30 - 09.00
09.00 - 09.30	Bureau meeting	Bureau meeting		WC Q238 Second medical use or indication claims	WC Q239 The basic mark requirement under the Madrid System	WC Q240 Exhaustion issues in copyright law	WC Q241 IP licensing and insolvency	Executive Committee I			Plenary Session II Q239	Pharma Workshop 1 Requirements for disclosure of utility or ind. applicability & ramifications for patent validity	Workshop II Copyright aspects of embedding, framing and hyperlinking					Day tour to Niagara Falls (optional)	09.00 - 09.30
09.30 - 10.00																	Bureau meeting		09.30 - 10.00
10.00 - 10.30														Coffee break					10.00 - 10.30
10.30 - 11.00				Coffee break				Coffee break			Coffee break			Plenary Session IV Q241	Workshop VII Cross-border infringement of IP rights	Workshop VIII IP implications of 3D printing			10.30 - 11.00
11.00 - 11.30				Working Committee meetings (continued)				Executive Committee I			Plenary Session II Q239	Pharma Workshop 2 Biosimilar pharmaceutical products	Workshop III Client-Attorney Privilege - issues for harmonization						11.00 - 11.30
11.30 - 12.00																			11.30 - 12.00
12.00 - 12.30														General Assembly					12.00 - 12.30
12.30 - 13.00	Lunch	Lunch		Working Committee Lunch			Lunch Bureau with Guests	Working Lunch		Lunch Bureau with Sec/Tres	Working Lunch								12.30 - 13.00
13.00 - 13.30														Working Lunch			Lunch		13.00 - 13.30
13.30 - 14.00																			13.30 - 14.00
14.00 - 14.30	Bureau meeting	Council of Presidents' meeting		Working Committee meetings (continued)			NGO Coordination meeting	Plenary Session I Q238	Workshop I Mock trial - International IP Arbitration	Secretaries & Treasurers meeting	Plenary Session III Q240	Pharma Workshop 3 Patent term extensions & SPCs – latest developments	Workshop IV Use of survey evidence in trademark cases	Executive Committee II			Bureau meeting		14.00 - 14.30
14.30 - 15.00																			14.30 - 15.00
15.00 - 15.30																			15.00 - 15.30
15.30 - 16.00		Coffee break		Coffee break				Coffee break			Coffee break			Coffee break					15.30 - 16.00
16.00 - 16.30		Council of Presidents' meeting		Introduction Working Questions 2015			Plenary Session (Prior user rights)	Plenary Session I Q238	Workshop I Mock trial - International IP Arbitration		Plenary Session III Q240	Pharma Workshop 4 Early Resolution Mechanisms for Patent Disputes Regarding Approved Drug Products		Executive Committee II					16.00 - 16.30
16.30 - 17.00																			16.30 - 17.00
17.00 - 17.30																			17.00 - 17.30
17.30 - 18.00																			17.30 - 18.00
18.00 - 18.30				First time attendees				Women in AIPPI											18.00 - 18.30
18.30 - 19.00																			18.30 - 19.00
19.00 - 19.30																			19.00 - 19.30
19.30 - 20.00	Dinner Bureau	Council of Presidents' dinner		Opening Ceremony				Cultural evening											19.30 - 20.00
20.00 - 20.30																			20.00 - 20.30
20.30 - 21.00				Welcoming Reception										Closing Dinner					20.30 - 21.00
21.00 - 21.30																			21.00 - 21.30
21.30 - 22.00																			21.30 - 22.00
22.00 - 22.30																			22.00 - 22.30
22.30 -																			22.30 -

We kindly remind you that private receptions are only allowed on Tuesday 16 September 2014

Legend:

Preparatory meetings	for Working Committee members
ExCo Sessions	for all participants
Evening events	for all participants
Workshops	for all participants
Pharma Workshop	for all participants
Designated events	by invitation only
Bureau	internal meetings
Post Day Tour	not included in the registration fee

Programme at a Glance

Friday	12 September 2014
07.30 – 08.30	SGT & RGT Breakfast
09.00 – 17.30	Bureau meeting
12.30 – 14.00	Lunch
19.30 – 22.30	Bureau dinner

Saturday	13 September 2014
07.30 – 08.30	SGT Breakfast / RGT Breakfast
09.00 – 12.30	Bureau meeting
12.30 – 14.00	Lunch
14.00 – 17.00	Council of Presidents' meeting
15.30 – 16.00	Coffee break
19.30 – 22.30	Council of Presidents' dinner

Sunday	14 September 2014
07.30 – 08.30	SGT Breakfast / RGT Breakfast
08.30 – 09.00	Working Committee Briefing
09.00 – 15.30	Working Committee Meetings:
Q238	Second medical use and other second indication claims
Q239	The basic mark requirement under the Madrid System
Q240	Exhaustion issues in copyright law
Q241	IP Licensing and insolvency
10.30 – 11.00	Coffee break
12.30 – 14.00	Working Committee Lunch
12.30 – 14.00	Lunch Bureau with Guests
14.00 – 15.30	NGO Coordination meeting
15.30 – 16.00	Coffee break
16.00 – 17.30	Introduction Working Questions 2015
16.00 – 19.00	Plenary Session (Prior user rights)
18.00 – 19.00	First time attendees
19.30 – 20.30	Opening Ceremony
20.30 – 22.30	Welcoming Reception

Monday	15 September 2014
07.30 – 08.30	RGT, PC Breakfast / SGT Breakfast
09.00 – 12.30	Executive Committee I
10.30 – 11.00	Coffee break
12.30 – 14.00	Working Lunch
12.30 – 14.00	Lunch Bureau with Sec/Tres
14.00 – 17.30	Plenary Session I Q238
14.00 – 17.30	Workshop I Mock trial - International IP Arbitration
14.00 – 15.30	Secretaries & Treasurers meeting
15.30 – 16.00	Coffee break
18.00 – 19.00	Women in AIPPI
19.30 – 01.00	Cultural evening

Tuesday	16 September 2014
07.30 – 08.30	RGT, PC, SCs Breakfast
09.00 – 12.30	Plenary Session II Q239
09.00 – 10.30	Pharma Workshop 1 Requirements for disclosure of utility or ind. applicability & ramifications for patent validity
09.00 – 10.30	Workshop II Copyright aspects of embedding, framing and hyperlinking
10.30 – 11.00	Coffee break
11.00 – 12.30	Pharma Workshop 2 Biosimilar pharmaceutical products
11.00 – 12.30	Workshop III Client-Attorney Privilege - issues for harmonization
12.30 – 14.00	Working Lunch
14.00 – 17.30	Plenary Session III Q240
14.00 – 15.30	Pharma Workshop 3 Patent term extensions & SPCs – latest developments
14.00 – 15.30	Workshop IV Use of survey evidence in trademark cases
15.30 – 16.00	Coffee break
16.00 – 17.30	Pharma Workshop 4 Early Resolution Mechanisms for Patent Disputes Regarding Approved Drug Products

Wednesday	17 September 2014
08.30 – 12.00	Plenary Session IV Q241
08.30 – 10.00	Workshop V Patenting computer implemented inventions
08.30 – 10.00	Workshop VI Free riding / Parasitism
10.00 – 10.30	Coffee break
10.30 – 12.00	Workshop VII Cross-border infringement of IP rights
10.30 – 12.00	Workshop VIII IP implications of 3D printing
12.00 – 13.00	General Assembly
13.00 – 14.00	Working Lunch
14.00 – 18.00	Executive Committee II
15.30 – 16.00	Coffee break
20.00 – 01.00	Closing Dinner

Thursday	18 September 2014
09.30 – 16.30	Bureau meeting
13.00 – 14.00	Lunch
09.00 – 18.00	Day tour to Niagara Falls (optional)

Preparatory meetings	for Working Committee members
ExCo Sessions	for all participants
Evening events	for all participants
Workshops	for all participants
Pharma Workshop	for all participants
Designated events	by invitation only
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Q238

Second medical use and other second indication claims

The granting of patent protection on second medical uses or indications of known chemical compounds provides an important incentive for the development of solutions for unmet medical needs. Indeed, while sometimes a drug is successfully developed for more than one use, there are many drugs for which the first known use of the compound did not succeed, but a new use for the compound resulted in an important medicine. Further, sometimes compounds previously discovered for non-medical uses are subsequently found to be effective for medical uses. Thus, known compounds represent an important resource for the development of new medicines. However, such drugs cannot be developed without the incentives of the patent system.

At the present time, patenting of such uses is accomplished via a patchwork of protection around the world. The type of claims covering medical uses varies from country to country, as does the method of enforcement. Some countries allow for claims to the method of treatment itself, others allow for claims to the use of a compound to prepare a medicament to treat the disease (so-called Swiss type claims), some allow claims to pharmaceutical formulations for a particular purpose, or claims to the compound when used to treat the disease. A number of countries (such as India, Egypt, and the countries of the Andean Pact), do not allow patent protection of second medical uses at all.

Similarly, enforcement of second medical use claims varies around the world. Some exempt the enforcement of such claims against medical professionals. The form of certain types of claims (e.g., use of the compound to prepare a medicament) necessarily limits the parties against whom the claims will be enforced.

All of this leads to a great deal of uncertainty as to how to provide the appropriate level of protection. Thus, the present question seeks to determine the type, scope, and enforcement of patent protection for new uses of known chemical compounds. This question will thus ask the following of each country group:

1. Does your country permit patents covering any aspect of new uses of known pharmaceutical compounds? If so, what is the form of such protection? Does it have an explicit basis in the national patent law, or is it applied, e.g., via international agreements, regulations, established practice, or decisions of higher courts?

2. If your country provides protection for new medical uses, against whom are such claims enforceable? Are certain parties exempted, e.g., medical practitioners? If a drug is approved for more than one use, what level of knowledge of the actual use does a party making a generic version of the drug need to have to be deemed an infringer of the use claim?

3. For a patented new use of known pharmaceutical compounds, what instruments do the courts have for determining and establishing infringement? For example, are there provisions for inspection of marketing authorization files, viewing the party's activities at its premises, or inspection of product packaging, or the like?

4. In a patent infringement case for a second use type claim, can a preliminary injunction be granted solely upon the statements provided in the product packaging and/or based on the writing of a prescription? What level of proof is necessary for an injunction to be granted in favor of the patentee?

Q239

The basic mark requirement under the Madrid System

There are great differences of opinion about the basic mark requirement under the Madrid System. The basic mark requirement requires a basic registration in the country of origin following which other parties to the system can be designated as part of an international registration. Abolishing it, as favoured by some, is more complex than it may look at fir st glance. There is no uniformity between the national trademark laws of the members of the Madrid System and it will likely be very difficult for them to agree on a common uniform trademark code as the basis for the registration of an international registration mark without a basic mark (which might e.g. be fi led with WIPO and could also address other perceived disadvantages). Or should any national registration (or application) qualify as a basic registration?

Some strongly support the abolishment of the basic mark requirement and the central attack, i.e. the possibility – which has a five year limit - to nullify an international registration by nullifying its basic registration. For example, in some countries with a restrictive examination practice, it is hard to obtain a registration for a basic mark under the Madrid System, thus blocking a party from access to the Madrid System even though the mark might be admitted readily in many other jurisdictions. Further, the effect of the central attack may be considered excessive where its effect extends to countries in which the owner making the central attack has no rights at all. Also, simplification and cost benefits are cited.

On the other hand, others consider that abolishing the basic mark requirement (and the central attack linked to it) may not be a realistic option and could pose more problems than might be resolved. They point to the need to review the reasons why the Trademark Registration Treaty ("TRT") was not accepted by the vast majority of members of the Madrid System, although the TRT had neither a basic mark requirement nor a central attack option. The basic mark requirement is arguably part of a balanced system that permits an applicant to make a first contact with the national trademark office before the mark is extended on an international level, while the basic mark requirement also has value in relation to the examination procedure (in particular in view of the differing linguistic backgrounds). The central attack possibility is an efficient tool for trademark owners, its supporters say. More generally, it is noted that a well working system should not be abolished lightly in favour of an uncertain alternative (both in terms of efficiency and costs).

If the dependency of the international registration on the basic mark during a certain period is seen as a reasonable system balancing the different interests at stake, there may be support for reducing the dependency period from 5 years to e.g. 3 years to mitigate uncertainty arising from the availability of the central attack. Alternatively, there may be support for restricting the effect of the central attack to countries in which the owner of the basic mark has senior rights.

In addition, it will also be necessary to consider the basic mark requirement in the context of necessary translations, transliterations and transcriptions if a mark is intended to be used and protected in countries with different languages/writing systems. The Madrid System is cost efficient as long as the mark is used in one representation (Latin, Kanji, Chinese, etc.) in all designated countries. Should an owner intend to use and protect the same mark in different jurisdictions which require different written representations, there are not only cost issues (e.g. a trademark owner may need to register a basic registration in Latin words in China while they only wish to use the mark elsewhere), but also issues of genuine use of the several versions of the mark.

Thus, the basic mark requirement is a complex issue. The present question aims to (i) study present use, as well as the support or lack thereof for a change of the basic mark requirement and/or the central attack option linked to it under the Madrid System, (ii) study the form potential changes could take and (iii) clarify and make recommendations as to the pros and cons of such changes.

Q240
Exhaustion issues in copyright law

The availability of relief for infringement is fundamental to the protection of intellectual property rights (IPRs). In Hyderabad (2011), AIPPI adopted Resolution Q219 regarding injunctive relief in the case of infringements of IPRs. In Boston, in 2008, AIPPI adopted Resolution Q203 dealing with damages in the context of trademark infringement, and, notably, counterfeiting and piracy of trademarks. Besides injunctive relief and damages, there are other remedies permitting 'effective action against any act of infringement' (Article 41 (1) TRIPS) which AIPPI has not studied so far. We propose to explore the availability of relief, other than injunctions or damages, in IP proceedings. Exhaustion of copyright is a widely accepted principle. After a first sale of a copyrighted work in the form of a tangible good with the consent of the right owner, the distribution right derived from copyright is said to be "exhausted". That is why exhaustion is also called the " First Sale Doctrine" in some jurisdictions like the US. First LPs, music cassettes and video tapes, later CD's, DVD's, CDROMs and the like could be freely sold without any copyright restriction. There are interesting recent developments with respect to exhaustion of copyrights in important jurisdictions, such as the EU and the US.

1. Copyright jurisdictions treat exhaustion differently in international scenarios. For example, the EU and the EEA only recognise international exhaustion within their respective territories, while the US Supreme Court only recently allowed international exhaustion also for works first sold outside the United States (Kertsaeng v. John Wile & Sons, Inc. of March 19, 2013 document No. 11/697). In some jurisdictions like Switzerland and Japan, international exhaustion is generally recognised.

2. In the digital world, fewer and fewer tangible data media are used for the distribution of copyrighted works. Software, music, films, games and e-books may be downloaded from online-shops for permanent or temporary use. For software copyright, the CJEU decision UsedSoft v. Oracle (of July 3, 2012; C-128/11) has recognised exhaustion of copyright for permanent copies downloaded online under certain conditions. It is unclear in the EU if this concept also applies to other works such as films, music, games or e-books. Consumer protection groups have been lobbying for a longer time to establish exhaustion of downloaded copies in, for example, the US. Slogans like "You bought it, you own it" by the US electronic Frontier Foundation (EFF) summarise their standpoint. But are downloaded copies really fully comparable with copies bought on tangible data carriers? A lot of issues arise when taking a closer look.

3. Also, AIPPI studied "Exhaustion of IPRs in cases of recycling or repair of goods" in Q205. This question, however, was limited to patents, designs and trademarks, and Resolution Q205 of the Congress in Boston in 2008 noted that exhaustion of copyrights in cases of recycling or repair of goods presents additional complexities and should be a matter for further study. Now, AIPPI seeks to explore whether or not the same principles as adopted in the Resolution Q205 should equally apply to copyrightable works.

Q241
IP Licensing and insolvency

The recent insolvency of several large companies that owned substantial patent portfolios and participated in international licensing arrangements has brought to the forefront the issue of IP licensing and insolvency and the potentially devastating effects on parties to such agreements should the licensor or licensee become insolvent.

In many industries, such as in the high-tech and the telecommunications industry, cross-licensing systems are important in providing the market players with the necessary freedom to operate. Other industries, such as the music & entertainment industry, thrive on sub-licensing arrangements. In all these cases, a serious concern arises: If the licensor becomes insolvent, does this result in loss of rights of a licensee? Further, what protections are or should be available to licensors if their licensee becomes insolvent?

Many countries do not provide clear protection or guidance (by way of statute or jurisprudence) to licensing parties involved in an insolvency scenario. Moreover, even in those countries where some guidance is in place, national approaches vary dramatically.

Additionally, given the cross-border nature of IP rights and of many IP licensing arrangements, jurisdictional issues may also arise in an insolvency situation.

Questions that could therefore be explored in respect of this topic might include some or all of the following:

1. Do a country's laws or jurisprudence provide rights and/or obligations for licensees/licensors in the event a licensor/ licensee becomes insolvent, e.g., Section 365(n) of the US Bankruptcy Code or Section 103 of the German Insolvency Act?

2. Are there non-statutory based steps available or that licensors/licensees should consider adopting to protect against insolvency scenarios, e.g., specific contractual provisions, recordal of rights, or establishment of IP holding companies?

3. What rights and duties does a bankruptcy administrator have with regard to liquidating the IP assets of an insolvent party?

4. Which national insolvency laws are applicable when the licensors/licensees are from different countries and/or the license pertains to IP assets of more than one country?

5. Does the approach vary depending on the type of IP right in question?

Overall, in view of the global importance of licensing of IP rights and the serious consequences that may arise from the uncertainties and potential pitfalls associated with insolvency scenarios, AIPPI is well suited to consider the domestic and international issues that arise, and to contribute to a discussion on possible harmonization of these issues.

Prior User Rights

AIPPI studied the grace period for patents in the context of Question Q233 at the Executive Committee meeting in 2013 in Helsinki. During the deliberations in the Q233 working committee meeting and the plenary session in Helsinki, it became clear that the partially related topic of "prior user rights" should equally be studied. Accordingly, the Resolution Q233 notes that AIPPI could valuably extend its work on the issue of prior user rights.

The issue of prior user rights has previously been studied by AIPPI, but the Resolution Q89D Prior Use dates back to 1989 (Amsterdam ExCo). The passage of time and changes in relevant national laws make this topic ripe for reconsideration at this time, in particular:

1. The passage of the AIA in the United States, representing an important move by the US towards global patent harmonization in many respects; specifically, the AIA expands the defense beyond just business methods to cover all technologies.

2. The perceived change of view of national groups on this issue;

3. The work of the "Tegernsee Group", attended by heads of offices and representatives from Denmark, France, Germany, Japan, the UK, the USA and the EPO, which identified prior user rights as one of four topics being key to harmonization.

Against this background, the Bureau has decided to study prior user rights again with a view to adopting a Resolution on prior user rights at the upcoming Executive Committee Meeting in Toronto. To this effect, a Questionnaire prepared by the Patents Committee and the Reporter General Team has been sent to the National and Regional Groups. A summary of the Groups' answers and a draft Resolution will be provided to Groups prior to the Executive Committee Meeting in Toronto.

The purpose of this plenary session is to debate the substance of the draft Resolution on prior user rights. All participants are invited to attend.

Pharma 1
Requirements for disclosure of utility or industrial applicability and ramifications for patent validity

Disclosure requirements to demonstrate utility or industrial applicability raise issues for pharmaceutical patents in a number of countries. In particular, developments in Canada and China have caused concerns.

Since 2005, Canadian courts have more frequently applied the "promise doctrine" to assess whether an invention has utility. The promise of the patent is construed having regard to the context of the patent as a whole, through the eyes of the person skilled in the art and in relation to the science and information available at the time of filing. The evaluation as to whether that promise has been fulfilled imposes high evidentiary standards and positive disclosure requirements on the patentee. Many key pharmaceutical patents have been invalidated on the application of the promise doctrine in Canada in recent years. There has been much litigation on this issue, including the submission of a Notice of Arbitration against Canada under the North American Free Trade Agreement (NAFTA). The Supreme Court of Canada has also recently granted leave to appeal in a case concerning the drug Plavix. A key issue in the appeal will be the level of disclosure required for utility.

In China, under examination standards most recently revised in 2006, the State Intellectual Property Office has been rejecting patent applications, and invalidating granted patents, with claims to pharmaceutical compounds per se, due to lack of data in the specification as filed. China had previously allowed such claims, consistently with the other major patent offices (for example, the rest of the IP5, USPTO, EPO, JPO, and KIPO). This practice has now been revised again, and SIPO has indicated that applicants will be permitted to submit data during patent prosecution to answer any concerns raised by the examiner. However, questions remain on how this will be implemented.

Speakers from different jurisdictions will address the current status of requirements for disclosure and utility.

Pharma 2
Biosimilar pharmaceutical products

This workshop will explore the latest developments in this area, including key issues of definition, the intersection between patent and regulatory regimes, and the naming of biosimilars.

While legislation and regulatory guidelines in several jurisdictions provide for biological medicinal products to be granted marketing approval on the basis of "similarity" or "comparability" to an originator's reference product, the requirements for "biosimilarity" are not typically defined with precision. Furthermore, in many jurisdictions, biosimilarity is not taken to indicate interchangeability or permit automatic substitution of a biosimilar for the originator's reference product. Lack of precision in legislative and regulatory definitions of biosimilarity, interchangeability and substitutability have the potential to result in legal disputes at various levels.

Reference to the innovator product is an integral component of regulatory approval. In the US, a legislative regime is directed to the early identification and resolution of patent disputes relating to biosimilars. Persons applying for marketing approval for biosimilars must disclose their application dossier to the sponsor of the reference product. Lists of relevant patents, owned or licensed by the reference product sponsor are provided, and there are limitations on the timing of any patent infringement proceedings, and on the capacity of either party to apply for declaratory judgment on issues of infringement, validity or enforceability. What are the merits of this type of regime, and how should information exchange and dispute resolution provisions operate?

The question of whether or not biosimilars ought to be assigned the same non-proprietary name as their reference products continues to attract considerable controversy. In October 2013, the WHO's INN Committee agreed to take forward, for further development, a proposal that each biosimilar be assigned a two-part international non-proprietary name (INN), comprising the INN of the reference product plus a unique suffix (called a "biological qualifier") comprising letters selected in accordance with INN principles. That proposal substantively corresponds to the approach to naming biosimilars currently proposed in Australia. Biological qualifiers have also been applied in other jurisdictions, including Japan.

Pharma 3

Patent Term Extensions and Supplementary Protection Certificates (SPCs) - Latest Developments

Because the development of a pharmaceutical product can take 10 years or more, and patent applications need to be filed at the beginning of the process, a number of countries now provide means for various forms of patent term restoration to account for the delays due to regulatory requirements. In some countries (for example, the US, Japan, Australia, South Korea), it is in the form of an extension to the term of the patent, while in Europe, it is in the form of a separate grant of rights, called a Supplementary Protection Certificate (SPC).

While this topic was covered in a workshop in Hyderabad in 2011, there have been a number of very recent developments regarding SPCs, including several recent decisions which may provide answers to questions as to what products may be covered by an SPC, how the description in the claim will affect that, and whether a patent can be used to obtain more than one SPC. Additional questions concern whether a patent holder who is not the developer of the product is entitled to an SPC.

In Canada, as a result of the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), Canada will provide sui-generis additional protection for up to two years for eligible pharmaceutical patents.

This workshop will explore the latest developments in these areas.

Pharma 4

Early Resolution Mechanisms for Patent Disputes Regarding Approved Drug Products

The 1984 Hatch Waxman Act in the United States represented a significant change in the manner in which patent disputes involving approved drug products are resolved. The system involves several elements:

- notification by the innovator company to the regulatory agency of the patents covering the approved drug product
- listing of the products by the regulatory agency
- a requirement that generic applicants for regulatory approval state their position as to the patents, ie:
    - o they will wait until the patent(s) expire
    - o they intend to market before the patent(s) expire, because they believe they are invalid, or their proposed generic product does not infringe the claims
- if the generic company states it intends to market its product before the relevant patents expire, the innovator company may initiate patent litigation, and approval of the generic product is withheld for up to 30 months pending resolution of the patent dispute in the courts.

In the US, this system is referred to as "Patent Linkage." Similar versions or elements of this system have since been adopted in Canada, Mexico, Australia, Singapore and South Korea, sometimes as part of respective Free Trade Agreements with the US. A number of issues have arisen in various countries including the burden of proof and right of appeal (in Canada).

The innovator biopharmaceutical industry would like to see this system of patent linkage adopted in other jurisdictions, such as Europe and Japan. In Europe, the Unitary Patent System may provide a good vehicle for obtaining early resolution of patent disputes.

This panel will explore the benefits of this system, and the applicability in other jurisdictions.

Workshop I
Mock trial - International IP Arbitration

The AIPPI Boston Congress in 2008 featured a mock patent trial that focused on five different jurisdictions. At the AIPPI Paris Congress in 2010 an international panel of judges discussed selected patent law issues. The Seoul Congress in 2012 featured a mock patent trial with judges and lawyers from leading jurisdictions conducting the trial of an IT case. Following on from the success of these mock trial presentations, the Toronto Congress will showcase a mock International IP arbitration.

As IP becomes increasingly global in nature, it is more common for owners of IP rights and their competitors to find themselves in legal disputes involving related rights in multiple jurisdictions. One leading method that is available to parties in an attempt to reach a global resolution of an IP dispute is an international arbitration. The arbitration process has the advantage of providing a single forum for disposition of disputes, the procedure of which can be tailored to the particular wants or requirements of the participants, and without the formality of the specific rules of practice of the individual domestic legal systems that may have granted the rights at issue.

The Toronto Congress mock arbitration is designed to demonstrate the general nature of an international IP arbitration and to focus on the typical procedural, evidentiary, legal and tactical issues that may arise in such a proceeding. The mock participants will include leading IP arbitrators and litigators from around the world conducting the arbitration of a design case. The participants will deal with design rights from multiple jurisdictions in a single arbitration process.

Workshop II
Copyright aspects of embedding, framing and hyperlinking

The legal status of embedding, framing and hyperlinking in copyright law has been handled differently by the courts in for example Canada, the USA, Asia and the EU. In general, the legal issues concern the question whether a link to copyright-protected material constitutes infringement of someone's copyright.

Copyright law and linking is an issue that has grown in importance and complexity for rightholders, companies, Internet users and Internet service providers as well as the society at large.

In this workshop, linking issues will be analysed in light of recent case law and experienced professionals will share their practical experience of the issues in a variety of jurisdictions.

Workshop III

Client-Attorney Privilege - issues for harmonization

The protection against forced disclosure of confidential communications between lawyers and their clients is well established in many jurisdictions. However, in many countries individuals qualified to provide intellectual property advice include non-lawyer IP advisors, and in some jurisdictions these confidential communications are not subject to protection from forced disclosure. Additionally, certain past experiences in a number of countries, including Australia, Canada, France, Japan and the United States, have demonstrated a troubling lack of international harmonization in respect of the protection that may attach to a communication in one country, and a court or tribunal's ability or willingness to uphold that protection in another country.

In view of the global problems that exist, WIPO (through the SCP) has been considering the issue for a number of years. AIPPI, FICPI, and the AIPLA hosted a Colloquium in 2013 on the issue which was attended by government representatives of Australia, Canada, Denmark, Germany, Japan, Switzerland, and the United States, as well as academics, members of the judiciary and IP practitioners from around the world. Coming out of the Colloquium, the AIPPI, FICPI, and AIPLA developed a Joint Proposal for an international agreement that would address the recognized problems on this issue. It also appears that the Group B+ Countries may be considering using the Joint Proposal as a framework for moving forward on an agreement of some kind.

At the same time, the Canadian Government has recently announced a consultation process on the issue. This is especially significant given that Canada does not presently provide protection for the confidential communications between clients and their domestic and foreign non-lawyer IP advisors.

This workshop will focus on the underlying substantive issues which may potentially impede harmonization in this important area and discuss ways to overcome them.

Workshop IV

Use of survey evidence in trademark cases

In many different types of trade mark proceedings, including infringement, opposition and cancellation proceedings, the primary issues often involve considering whether there is a particular level of reputation, a link (as generally required for dilution/free riding) and/or a likelihood of confusion amongst competing marks. The perspective from which questions of this kind are typically considered is that of the average, relevant consumer and factual evidence may help deciding those questions.

In attempting to establish reputation, a link or confusion, it has become common practice in some jurisdictions for parties to rely upon consumer surveys. However, the use of and reliance on such surveys as being representative of the perspective of the relevant consumer is not without controversy. For example, the Supreme Court of Canada has indicated that in many cases survey evidence is not appropriate and/or should be given little weight.

Issues surrounding the use of survey evidence include:

1. Should survey evidence even be considered or admitted?
2. If so, under what circumstances and to what extent should such evidence be relied upon by the Court or tribunal?
3. What is the comparative probative value of phone, mall interrupt (in person), written, or Internet based surveys?
4. The selection and number of the respondents
5. What is the proper form and content of the questions that may be asked of respondents, depending on the particular issue being considered?
6. What is the role, if any, of the use of a control and what type of control should be used?

This workshop will focus on survey evidence in trade mark proceedings in different jurisdictions, and will include speakers from several jurisdictions with different backgrounds.

Workshop V
Patenting computer implemented inventions

Once again, the issue of patents for computer software and business methods is in the spotlight. In 2014, in the case of Alice Corp. v. CLS Bank International, the United States Supreme Court will rule on whether claims to computer-implemented inventions are directed to patent eligible subject matter.

This case is being closely followed by the software industry in the United States and internationally, and a large number of amicus curiae briefs have been filed, including one such brief by AIPPI.

In conjunction with leading experts from the law and industry, this Workshop will consider the case and assess its repercussions, as well as review the issue of patents for computer-implemented inventions more widely from an international standpoint.

Workshop VI
Free riding / Parasitism

Free riders try to take advantage of the reputation attaching to a third party's trade mark, product configuration or packaging, in order to benefit from the attractive force of those marketing tools, and the efforts expended by the right holder in creating that attractive force. Historically, a plaintiff has been required to demonstrate a likelihood of confusion in order to succeed in an action against a free rider. Today, trade mark and competition laws have evolved so as to provide broader protection against free riding (or "parasitism", another common term used).

Recent trade mark decisions in various jurisdictions have not required a likelihood of confusion in circumstances where the public makes a connection between the sign used by the free rider and the trade mark, thereby allowing the free rider to take unfair advantage of the reputation of the trade mark. On the other hand, the protection against free riding is not absolute: there may be a justification for the use.

In many jurisdictions the courts have also expanded the scope of unfair competition law in relation to look-alike products. This is particularly important in jurisdictions where trade mark law does not provide a ground for action against such products. This provides protection against exploitation for trade marks and trade dress which enjoy a reputation, irrespective of whether there is a danger of confusion as to the origin of the relevant goods.

This trend will be investigated in this workshop by speakers from various jurisdictions and different legal backgrounds.

Workshop VII
Cross-border infringement of IP rights

In an ever more globalised world, the consequence of IP rights existing in one jurisdiction can be felt in another. This is particularly the case from the perspective of IP rights which concern internet-based technologies and content, which are, in theory, available throughout the world.

A number of national courts have considered the situation in the context of patent infringement, for example in the cases of: NTP vs. Research In Motion in the United States, and Menashe v. William Hill in the United Kingdom. In the context of trademark and copyright law, it has been seen that rights can easily be infringed on the Internet in several jurisdictions at one time.

This Workshop will review the state of play concerning cross-border infringement of IP rights and look at scenarios from an international perspective to show how courts in major jurisdictions consider the issues of venue, applicable law and place of infringement.

Workshop VIII
IP implications of 3D printing

2013 was the year that 3D printing came of age with some commentators declaring 3D printing to be the "third industrial revolution". Looking to the future, the plummeting cost of 3D printers and related tools will ensure that 3D-printed articles and products become ever more common. One example is in the area of replacement parts. How do IP rights affect this fast-developing area of technology?

Some experts fear that design files for 3D printers could be made available illegally on the Internet on a large scale, as has been the case with films and music. Printed objects may be protected by design or copyright law, but also by patent or trademark law. But do IP rights protect against the offering of the files? Is there protection against users downloading and printing, including for private purposes? Who would be held liable for infringement? Moreover, does exhaustion apply in case of legally printed products? And could the file legally obtained be re-sold?

This Workshop will review the current technology for 3D printing, its future applications and consider the repercussions in the context of IP rights.

Women in AIPPI

The Women in IP networking event is now a firm tradition at AIPPI's annual meeting. It provides a forum to meet with old and new colleagues and friends, and to exchange information about business opportunities and working life as professional women practising in IP.

We are pleased to announce that in Toronto, the Women in AIPPI reception will be generously hosted at the premises of Norton Rose Fulbright.

The Women in AIPPI event is deliberately informal. The aim is for women IP professionals to get to know each other, expand their networks and learn about the practice of IP in the many countries in which AIPPI is represented. As is now the established format, after a short introduction, the rest is up to you. We look forward to seeing our women colleagues at this event in Toronto.

Corporate industry meeting

AIPPI appreciates that in-house counsel have subjects of interest particular to the in-house sector. AIPPI provides a session exclusively for participants from industry at its meetings. The purpose is to provide a forum for discussion and exchange of views on issues of common interest, including to provide feedback on ways in which AIPPI can address the needs of its existing industry members, and attract further members from industry.

Registration procedure

- Please register online at **www.aippi.net**.
- Only AIPPI members can register for the Congress.
- In order to register for the Congress you will need your **AIPPI login** information. Please make sure that you have this information before starting with your online registration. If you do not have your AIPPI login information, you may retrieve it automatically at **www.aippi.org/?sel=members** or contact us at **registration@aippi.org**.

- **Joining AIPPI when you register**

  In order to participate in the Congress you must be a member of one of the National Groups of AIPPI or an independent member. To simplify the process for those non-members wishing to attend the AIPPI 2014 Congress, the National Groups in **Argentina, Australia, Canada, Croatia, Czech Republic, Egypt, France, Germany, India, Latvia, Panama, Rep. of Korea, South Africa, Sweden, Switzerland, Thailand,** and the **USA** have allowed IP professionals residing in those countries to join the respective National Group of AIPPI when they register for the Congress, for an additional payment of **CHF 200**. That payment will cover the subscription to the respective National Group through the end of 2014. As soon as your payment has been processed, you will receive a login code enabling you to start your online registration for the Congress. Alternatively, it is possible to register directly with the National/Regional Group where different membership fees may apply.

  If you reside in a country not listed above, please refer to the National or Regional Group of your country for joining AIPPI before the Congress. Contact information can be found at www.aippi.org in the section 'Officers & Addresses' for joining AIPPI as an independent member.

  Should you have further queries about the registration procedure, please contact us at registration@aippi.org.

SAVE ON THE REGISTRATION FEES BY REGISTERING BY 9 JUNE 2014

Registration Fees (Taxes included)	**By 9 June**	**From 10 June to 11 August**	**From 12 August & onsite**
Participant	CAD 1'750	CAD 2'450	CAD 3'070
Young members/Students	50% of the above indicated fees		
Full time academic professional	50% of the above indicated fees		
Join and Register	Additional payment of CHF 200 to the above fees		
Accompanying person	CAD 800	CAD 1'100	CAD 1'400
Closing dinner (reservation fee)	CAD 150		

Note:

- Payments can be made by bank transfer or credit card through the online registration system.
- Payment by bank transfer will be possible until **11 August 2014.** After that date, only online registrations with credit card payment will be possible.

- **Congress participant's fee includes:**
- Attendance at Workshops
- Attendance at ExCo Sessions
- Opening Ceremony & Welcoming reception on Sunday, 14 September 2014
- Cultural evening on Monday, 15 September 2014
- Coffee Breaks and Lunches
- Participant bag, including documents
- Final Programme & List of Participants
- Tourist Documentation of Toronto

- **Accompanying person's fee includes:**
- City tour
- Opening Ceremony & Welcoming reception on Sunday, 14 September 2014
- Cultural evening on Monday, 15 September 2014
- Tourist Documentation of Toronto

If you belong to one of the three groups below, please contact the General Secretariat (registration@aippi.org) for processing with your registration:

1. **Young participants, less than 30 years old:**
- Send us a copy of your ID or passport by FAX +41 44 280 58 85.
- Regular fees will be charged if the General Secretariat does not receive the credentials within one week of registration.

2. **Student Lawyers:**
- Send us a copy of your student card for the current year by FAX +41 44 280 58 85.
- Regular fees will be charged if the General Secretariat does not receive the credentials within one week of registration.

3. **Full time academic professional:**
- Please send us information on the academic institution that you work for and your occupation in this institution by Fax: +41 44 280 58 85.
- Regular fees will be charged if the General Secretariat does not receive the credentials within one week of registration.

Changes and Cancellation Policies

Any cancellation must be sent to AIPPI General Secretariat in writing (fax or email).

For cancellations received by **21 July 2014**, the fee will be refunded less CAD 100 for administrative costs. After this date, no refund will be possible.

Request for modifications of a registration are free of charge until **21 July 2014**. After that date a handling fee of CAD 30 per modification will be charged.

In case of visa refusal, a refund will only be possible if communicated to the General Secretariat two weeks prior to the meeting and the visa has been requested three months prior to the meeting.

All refunds will be processed after the Congress.

Visa requirements and Passport

All visitors are to obtain the necessary documentation for entry into Canada. Inquiries should be directed to your nearest Canadian High Commission, Consulate or Embassy. All visitors will need a passport to enter Canada. For further information regarding Canada Customs procedures, visit www.canada.gc.ca.

Important - United States Visa Requirements

Prior to booking your flight, please note that if your flight includes a stop-over in the United States, you may require an additional visa in order to enter the US. Please review the US Department of State website for details on which countries require visas for entry: Visa Waiver Program (VWP).

The AIPPI 2014 Congress Secretariat would be pleased to provide letters of invitation to participants registered for the AIPPI 2014 Congress to assist in their visa applications for travel to Canada.

In order to be issued an invitation letter, the participant must be registered for the Conference. For details, please visit the Citizenship and Immigration Canada website: www.cic.gc.ca.

Registration opening hours

Saturday, 13 September 2014 from 08.00 to 18.00
Sunday, 14 September 2014 from 08.00 to 18.00
Monday, 15 September 2014 from 08.00 to 18.00
Tuesday, 16 September 2014 from 08.00 to 18.00
Wednesday, 17 September 2014 from 08.00 to 14.00

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AIR CANADA

Fly with Air Canada to Toronto

Air Canada has been appointed as the official airline for the AIPPI 2014 World Intellectual Property Congress 14-17 September 2014 in Toronto.

Book online and take advantage of a 10% discount on Flex, Latitude and Business Class airfares to Toronto (YYZ) with Air Canada. The booking code must be used at the time of booking, and reservations must be made online.

Please note that the eligible travel period for usage of the conference promotional code through Air Canada is Sunday, September 07, 2014 to Wednesday, September 24, 2014.

You will receive the Air Canada promotional code once your registration is completed.

List of participants

During the online registration process you will be asked to upload a picture of yourself which will be published with the online and printed list of participants.

Only pictures of the participants are allowed, no firm logos will be printed.

The pictures should be in jpg-format, not bigger than 2MB and they should not exceed 272 x 272 pixels (2,3 x 2,3 cm in 300 dpi resolution). Examples of pictures can be found when registering online.

Networking area

A networking area will be available in the convention center. You are invited to use this area to meet your client and friends. Please look for the "meeting point".

Event Documents and Badges

Event documents and badges should be collected onsite at the registration desk. Name badges must be worn at all times including social functions. Badges will be checked for admission to all events.

Certificate of Attendance

A certificate of attendance can be collected with the badges at the registration desk.

Language of the Congress

The working language of the AIPPI Congress is English. For the Sessions of the Executive Committee and for General Assembly, translations from French, German and Spanish into English will be provided.

Tax Refunds

Visitors to Canada may qualify for a refund of some of the Goods and Services Tax/Harmonized Sales Tax (GST/HST) they have paid during their visit in Canada. Please visit http://www.cra-arc.gc.ca/visitors for more information on how to receive a refund.

Who do the world's most innovative companies choose for IP protection in Canada?

1. Ranked as a Tier One firm in patent prosecution, patent contentious, trademark prosecution and trademark/copyright contentious (*Managing Intellectual Property's 2013 World IP Survey*)

2. Successful counsel in the Canadian Trademark Case of the Year (*Managing Intellectual Property's 2013 North America Awards*)

3. Ranked as a Band 1 firm in Canadian Intellectual Property Law (*Chambers Global – The World's Leading Lawyers for Business*, 2013 Edition)

4. We have handled more patent and trademark applications than any other firm in Canada

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We look forward to seeing you in Toronto.

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