

“IP Question of the Day”

Question: What are the substantive and formal conditions for a valid transfer of the priority right?



In conversation with... **Joshua Goldberg**

Joshua Goldberg is the Chair of the AIPPI Communications Committee. A Brooklyn native, he is a co-managing partner and patent attorney with a keen interest in current media and IP issues.

How did you get involved in AIPPI communications?

It's a fairly typical story I would say. I was an AIPPI member in the US and wanted to get more involved. I started out by becoming the US National Group Reporter, helping out with the AIPPI-US website, etc.

At the same time, Bob Sacoff was stepping down from the Communications Committee and tapped me up as his replacement. I was then nominated to be part of the committee and, after serving there for several years, I have ended up as the Committee Chair.

What kind of things does the Committee do?

It has really evolved over time. It used to just be preparing the eNewsletter sent every couple of months. The role has now expanded, and the eNewsletter has become bigger, more read etc. In addition, social media has really taken off. A lot also goes on behind the scenes to facilitate communication within AIPPI. For example, we have guests from different committees presenting at our meetings, all to promote increased and effective communications across AIPPI.

What is your involvement at this year's Congress as Chair?

I will present to the Council of Presidents and the Executive Committee what the Communications Committee has done since the last Congress and plans to do in the near future. Outside of meetings, the daily Congress News also falls under our remit.

What do you consider to be the Communications Committee's biggest success to date?

There are actually two! Firstly, the social media presence has really been boosted. We've added YouTube and Instagram accounts. Our main communication channel, LinkedIn, has increased by 66% in just 18 months to almost 14,000 followers!

Secondly, we've really gotten a handle on the National Group Reporters across all the different regions. We have better communication with them, have introduced bi-annual meetings and the effect of all this can be seen in the doubling of content of the AIPPI newsletter.

How can someone reading this get involved in AIPPI communication work?

They can contact us. Be a guest at a meeting. Let us know if you have a special skill to share.

Or they can get involved at a national level by talking to their local leadership and letting them know of their interest in AIPPI communications.

Check out the Newsletter page and volunteer to be a National Group Reporter if that role is currently vacant for your region. If not, talk to your Group Reporter about submitting articles. There are guidelines and deadlines available online to help you.

Is there anything coming up in the future we should know about?

We would like to continue the progress of the past two years. Committee members have done Trojan work, and we want to continue the upward trajectory. On a more concrete level, we hope to introduce individual pages for National & Regional Groups on the AIPPI website in the coming months.

Any final thoughts?

Although we are a thriving committee, we are always on the lookout for more people to get involved. Please just reach out.

Interview conducted by Diarmuid De Faoite, AIPPI Communications Manager.

Answer: Find out today at Panel Session 9: Transfer of priority rights – getting what you bought.

WIPO & IP5 offices: Challenges for IP Protection Post Pandemic

Today at 12:00 PM CEST!

As the world struggles to come back to a certain normality, it is important to look back on the effects the pandemic had on IP rights, and then to look forward for future trends and expected changes to IP. With this perspective, the head of WIPO and the IP5 offices provide insights on their experiences during the crisis and what lies ahead with possible developments in IP laws and practices.

This prerecorded session is moderated by AIPPI President, Luiz Henrique do Amaral, and will not include any Q&A.

Panellists:



Daren Tang
Director General,
World Intellectual Property Organization
(WIPO)



António Campinos
President, European Patent Office
(EPO)



Drew Hirshfeld
Performing the functions & duties of the Under Secretary
of Commerce for IP & Director of the USPTO, United
States Patent and Trademark Office (USPTO)



Shen Changyu
Commissioner, China National
Intellectual Property Administration



Sam-sup Moon
Director General, Intellectual Property
Protection and International Cooperation
Bureau of KIPO



Kiyoshi Mori
Commissioner, Japan Patent Office



WIPO



EPO



USPTO



CNIPA



KIPO



JPO



In conversation with...

Johanna Flythström

Johanna Flythström is the Chair of the AIPPI Study Question on *Reasonable awareness in compensation for IP infringement* as well as being a member of AIPPI's Programme Committee and a Vice Chair of the Standing Committee on Patents. Qualified as an attorney-at-law and a patent attorney, she is a partner at Roschier Attorneys Ltd. in Helsinki, Finland, specializing in both contentious and non-continuous IP work across disciplines.

Can you briefly explain why this Study Question is of interest to the IP community?

This Study Question aims to answer the question of what effect the knowledge and awareness of the infringer should have on recoverable damages. Currently, approaches and practices around the world vary greatly and the same factual conduct, e.g., the global launch of a specific product across a number of jurisdictions, can lead to different consequences – and levels of damages – in different jurisdictions. This makes it more difficult, at the stage of planning product launches and similar activities, to proactively take steps to reduce the risk of exposure to damages awards. Also, for the right holders the same act of infringement can lead to unsustainably different outcomes. Harmonization of this topic would provide much needed clarity and legal certainty to the question for both the right holders as well as for the potential infringers.

How was the teamwork?

Simply excellent! We have a great, diverse, dedicated, and knowledgeable leadership team comprising of two Vice Chairs – Amandine Metier (FR) and Michael Crinson (CA) – with Tom Reid (AU) acting as the secretary to the committee. Ari Laakkonen from the Reporter General Team (RGT) has been an invaluable support to us with his breadth and depth of expertise.

Have you previously been involved in any Study Questions?

My journey with AIPPI Study Questions started as a young lawyer participating in the work of the Finnish national AIPPI group and later chairing the Finnish groups on various Study Questions. My first exposure to working in the Study Committee leadership was in Rio in 2016, working as the secretary for the trade secrets question. Last year, it was my first time to chair a Study Question in an online format with the AI inventorship question. Each time it has been a rewarding experience, not only professionally but also for having the opportunity to work with wonderful IP colleagues around the world.

How did you come to be the Chair?

Great question – the RGT would probably know the real answer! I have been actively involved in the Study Questions for quite a number of years and have been very happy to have been asked to take responsibility in various roles in the Study Committees.

Is there any one person or group you would like to acknowledge for their support?

In addition to the support from, and teamwork with, the leadership team and Ari from the RGT, the greatest acknowledgement goes once again to the representatives of each group that participated in the Study Committee work in preparation for the Congress. Without all the thoughtful comments, active discussions, and the willingness to understand and consolidate views as exemplified by the Study Committee members, the Study Question process would simply not work. So, my heartfelt “thank you” to all our committee members.

Did COVID make the process more difficult?

This is the second time driving the process in the online format. For me, both the traditional process and the online process have their benefits. Hopefully in the coming years we will be able to return to the in-person Congress but will take some of the best learnings from the online process with us to further develop the Study Question process.

Interview conducted by Diarmuid De Faoite, AIPPI Communications Manager.

Panel Session 9

Transfer of priority rights – getting what you bought

Wednesday, October 20, 12:00 PM-1:00 PM (CEST)

Article 4 of the Paris Convention, pursuant to which an applicant filing an application for an IP right in one country, can claim a right of priority from that application in other countries, is the basis for the priority right.

Often, the first applicant will also be the applicant in other countries. However, this is not always the case, e.g. in the context of acquisitions, employee inventions and restructurings. It is then vital to ensure that the right is indeed transferred. But what are the substantive and formal conditions for a valid transfer of the priority right? The answer to this question is important: if no priority can be invoked, this can affect the validity of the patent.

No clear picture emerges from the case law (e.g. at EPO level and various national courts), and harmonization would be very welcome.

This panel session will address several key issues, including: (a) the formal conditions for transferring a priority right, (b) whether the priority right can be assigned independently from the application it originates from, (c) partial transfer of priority and (d) which is the law applicable to a transfer.

Panel Session 10

Many A's and no end in sight: anti-suit & anti-anti-suit injunctions

Wednesday, October 20, 5:30 PM-6:30 PM (CEST)

This Panel Session will address out-of-jurisdiction judgments in the form of anti-suit and anti-anti-suit injunctions.

The fundamental question that arises in this topic is whether or not a single court can claim the exclusive jurisdiction over worldwide FRAND rates and thereby exclude other (foreign) courts from ruling on the same issue. An important issue in this respect is that anti-suit-injunctions may constitute a massive interference with the sovereignty of a state and could therefore come into conflict with national principles of law.

The relevance of this topic is reflected in the large number of decisions worldwide in which the courts have had to deal with anti-suit injunctions (e.g., *Nokia v. Daimler* and *Continental*, *Huawei v. Conversant*, *InterDigital v. Xiaomi*). Moreover, it seems impossible to predict how many more A's will be added in the future and how disputes over anti-suit-injunctions might best be resolved.

This panel session will discuss availability and limits of A+ Injunctions worldwide, taking the perspective of the patent owner and the implementer. The topic of this panel session may evolve into a future Study Question.

Have you joined the AIPPI Cafés?



In these **45** minute-long interactive sessions, participants can exchange views on the defined topic. After a brief introduction by the moderator, anyone can contribute to the conversation. No advance registration is required, participants can “walk-in” and join the conversation.

With **36** different topics there's bound to be something that takes your interest! Check out the [online programme](#) for further details.

Wednesday, October 20, 2021

10:30 AM - 11:30	Replay Recorded Panel Session 8: Turning local into international: protection of GIs Panellists: Laura Collada, Marcus Höpperger, Miwako Takimura
12:00 PM - 1:00 PM	Panel Session 9: Transfer of priority rights – getting what you bought Panellists: Koen Bijvank, Tobias Bremi, Danny Huntington, Heli Pihlajamaa
12:00 PM - 1:00 PM	WIPO & IP5 offices: Challenges for IP Protection Post Pandemic Panellists: António Campinos, Shen Changyu, Drew Hirshfeld, Sam-sup Moon, Kiyoshi Mori, Daren Tang
1:00 PM - 1:45 PM	AIPPI Café 20: Working requirement in patent law: a global perspective Panellists: Koen Bijvank, Vidisha Garg, Drew Meunier
1:00 PM - 1:45 PM	AIPPI Café 21: Forensics in biotech litigation Panellists: Mamta Rani Jha, Martin Klok, Daniel Lim, Eliza Saunders, Koen Vanhalst
1:00 PM - 1:45 PM	AIPPI Café 22: Hit ‘pause’, then pivot: non-use and TM protection in a pandemic Panellists: Melanie Harvey, Maria Scungio
1:00 PM - 1:45 PM	AIPPI Café 23: Damages for trade secret misappropriation Panellists: Thomas Cuche, Anna Maria Stein, Sarah van den Brande
1:00 PM - 1:45 PM	AIPPI Café 24: Exchange of local brand stories and interesting brand protection strategies Panellists: Debbie David, Nina Fitzgerald, Jaewon Yoon
2:00 PM - 4:00 PM	Plenary Session 3: Q279 - Reasonable awareness in compensation for infringement of IP rights
4:30 PM - 5:15 PM	AIPPI Café 25: Pharma & border enforcement Panellists: Olga Capasso, Hector Chagoya, Pablo Fuentes
4:30 PM - 5:15 PM	AIPPI Café 26: Bad faith & trade marks Panellists: Christian Durán, Aurelia Marie, Gilles Rubens
4:30 PM - 5:15 PM	AIPPI Café 27: IP for currency: Non-fungible Tokens Panellists: Toby Bond, Kevin Shipley, Nathan Yang
4:30 PM - 5:15 PM	AIPPI Café 28: ADR in FRAND disputes Panellists: Rafael Atab, Steven Bauer, Pauline Debré, Márcio Merkl, Paolina Testa, Richard Vary Laura Whiting, Johanna Wright
4:30 PM - 5:15 PM	AIPPI Café 29: Accelerated digitalization of services in IP practices (pre and post COVID) Panellists: Isabelle Chabot, Nazli Korkut Ozsoy, Marek Lazewski, Annie Tsoi, Judith Willert
5:30 PM - 6:30 PM	Panel Session 10: Many A's and no end in sight: anti-suit & anti-anti-suit injunctions Panellists: Peter Damerell, Zhichao (Kevin) Duan, Clemens-August Heusch Sponsored by Beijing Gaowo Law Firm
5:30 PM - 6:30 PM	Reports of AIPPI Standing Committees
7:00 PM - 8:00 PM	Replay Recorded Panel Session 9: Transfer of priority rights – getting what you bought Panellists: Koen Bijvank, Tobias Bremi, Danny Huntington, Heli Pihlajamaa

Thank you

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Law of Raw Data

Edited by Christian Czychowski & Jan Bernd Nordemann

Law of Raw Data gives an overview of the legal situation across major countries and how such data is contractually handled in practice in the respective countries. In recent years, digital technologies have transformed business and society, impacting all sectors of the economy and a wide variety of areas of life. Digitization is leading to rapidly growing volumes of data with great economic potential. Data, in its raw or unstructured form, has become an important and valuable economic asset, and protection of raw data has become a crucial subject for the intellectual property community. As legislators struggle to develop a settled legal regime in this complex area, this invaluable handbook will offer a careful and dedicated analysis of the legal instruments and remedies, both existing and potential, that provide such protection across a wide variety of national legal systems.

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