

Protocol for a Standing Amicus Brief Committee of AIPPI

I. Background

- A. It is believed that a standing Amicus Brief Committee (“ABC”) is preferable to an *ad-hoc* group formed on a per-issue basis. Advantages of a standing ABC include:
 - i. Improved process control and interface with National and Regional Groups (“NRGs”)
 - ii. Improved uniformity
 - iii. Reduction of risk of inconsistent positions
 - iv. Clearly defined mandate
 - v. Clearly defined leadership
 - vi. Clearly defined process for proposing, approving, and preparing amicus briefs.
- B. The ABC must be constituted and empowered in a manner that appropriately balances the interests of the NRGs with the interests of AIPPI International.

II. Mandate of the ABC

The ABC shall function to bring the position of AIPPI International to the attention of national and regional tribunals in appropriate circumstances through the coordination and oversight of filing of amicus briefs. This function shall not extend to commentary on pending bills or legislation. As used herein, “filing of amicus briefs” refers broadly both to actual filing of amicus briefs in jurisdictions that have an amicus brief procedure and to taking other similar actions to allow AIPPI’s position to be considered in jurisdictions that do not have an amicus brief procedure, e.g., third party intervention.

III. Roles of the ABC

The roles and duties of the ABC shall include the following:

- A. Receive and review requests for amicus briefs
- B. Identify potential amicus situations and interface with the appropriate NRG(s)
- C. Research existing AIPPI positions as they relate to proposed amicus briefs and consult with Standing Committees where appropriate
- D. Submit proposals to the Bureau for filing of amicus briefs
- E. Coordinate and oversee the preparation of briefs
- F. Ensure briefs comply with the requirements set forth herein
- G. Report results to the Bureau and coordinate with the Communication Committee (“CC”) to communicate the results to the membership at large

IV. Operation of the ABC

- A. Identification of potential opportunities to file amicus briefs

- i. The existence and mandate of the ABC shall be communicated to the membership at large, together with an invitation to submit proposals for amicus briefs in appropriate circumstances.
- ii. A proposal to the ABC to file an amicus brief may be made by any NRG, by any AIPPI Committee, or by the Bureau. The proposer shall provide the ABC with a statement of the case, the intended purpose of the amicus brief, and an identification of pertinent, established AIPPI positions (if any). Such a proposal shall be referred to herein as an “Amicus Opportunity.”
- iii. The ABC shall also monitor the news, the activities of other NGOs, and other appropriate sources and may identify Amicus Opportunities on its own.

B. Working Method of the ABC

- i. Initial Assessment
 1. Upon receipt or identification of an Amicus Opportunity, the Chair shall first determine if any member of the ABC Leadership (Chair and two Vice Chairs) should be recused according to the Recusal Policy below. If any member of the ABC Leadership is recused, the Chair shall appoint a substitute from the ABC membership to fill the leadership position for purposes of this Amicus Opportunity only.
 2. The ABC Leadership shall, after any necessary recusal and substitution, timely make an initial assessment of the Amicus Opportunity and determine (by majority vote of the ABC Leadership) whether the Amicus Opportunity merits further investigation and consideration by the ABC. If this determination is affirmative, the Amicus Opportunity will be moved to the Evaluation Phase below. If this determination is negative, no further action on this Amicus Opportunity will be taken by the ABC.
- ii. The Evaluation Phase
 1. In response to an affirmative determination on an Amicus Opportunity during the Initial Assessment, the ABC Leadership shall timely send a notice to all ABC members and observers identifying the Amicus Opportunity together with the name of the case and names of the parties and request that anyone who should be recused pursuant to the Recusal Policy so indicate. From the remaining ABC members and, if necessary and appropriate due to subject matter expertise or other factors in the opinion of the ABC Leadership also from the remaining observers, the ABC Leadership shall establish an Evaluation Team of no fewer than three persons of which a majority must be ABC members.
 2. The Evaluation Team shall evaluate the merits of filing an amicus brief in the matter of the Amicus Opportunity. In connection with this evaluation, the Evaluation Team shall determine the AIPPI position on this matter, if any (see “Determining the AIPPI Position” below) and shall consider the relative importance of AIPPI’s participation in this matter from a policy perspective. If the subject matter of the Amicus Opportunity falls within the Scope of Work of an existing AIPPI

Standing Committee, the evaluation by the Evaluation Committee Team shall include consultation with the leadership of such Standing Committee. Any Standing Committee member or AIPPI member consulted by the Evaluation Team or who otherwise participates in Determining the AIPPI Position (other than any consultation that may take place where that AIPPI member is clearly doing so as a party representative) shall indicate in writing that they have reviewed the Recusal Policy and are not subject to recusal thereunder.

3. Upon completion of its evaluation, the Evaluation Team shall prepare a recommendation supporting filing or not filing an amicus brief for this Amicus Opportunity and explaining the proposed position(s) to be taken. Where necessary, the recommendation will be by majority vote of the Evaluation Team and the ABC Chair shall vote to break any tie. The Evaluation Team's recommendation shall be in writing and shall explain the bases for the recommendation being made, including explaining the existence or absence of an existing AIPPI position, the views of any AIPPI Standing Committee that was consulted, and the Evaluation Team's views on the importance of AIPPI's participation in this matter. In addition, if the procedures to permit filing of the amicus brief in the subject tribunal requires third party intervention or any other action that might give rise to any liability of AIPPI, e.g., for costs, the recommendation shall include an explanation of such procedures and potential liability.

iii. Amicus Brief Proposal to the Bureau

1. If the Evaluation Team's recommendation is to file an amicus brief, the Chair shall put the recommendation to vote by the ABC members (not including observers) and shall submit the recommendation to the Bureau together with a tally of the votes from the ABC members ("the ABC Amicus Brief Proposal").
2. If the Bureau approves the ABC Amicus Brief Proposal, the matter moves to the Brief Preparation Phase below. An amicus brief may not be filed without Bureau approval.

iv. Brief Preparation Phase

1. Upon commencement of the Brief Preparation Phase, the ABC Leadership shall confer with the NRG in whose jurisdiction the amicus brief is proposed to be filed ("the affected NRG") regarding the desirability of filing the recommended amicus brief (this is unnecessary if the request for filing the amicus brief was made by the relevant NRG). If the affected NRG opposes filing of the recommended amicus brief, the amicus brief will not be filed. In the event the proposed amicus brief is to be filed before a regional court or tribunal, the ABC Leadership shall consult with all of the NRGs for that region ("the affected NRGs"), and the recommended amicus brief shall not be filed if a majority of the affected NRGs oppose the filing of the brief.
2. Any NRG wishing to file an amicus brief in the name of AIPPI (whether International or NRG) must submit a proposal to the ABC. If that proposal is not approved pursuant to the

procedures herein, the NRG may not file an amicus brief in the name of AIPPI (International or NRG). This, of course, would not prevent a brief from being filed in the name of another national or regional association.

3. In the absence of opposition from the affected NRG(s), the ABC Leadership shall propose a Brief Team to draft the brief. The Brief Team is subject to Bureau approval. The Brief Team shall include at least one ABC member and also may include, for example, one or more members of AIPPI's Standing Committees, one or more members of the affected NRG(s), and other such persons suited to the matter at hand at the discretion of the ABC Leadership.
4. Upon completion of the amicus brief and approval thereof by the ABC Leadership, the amicus brief shall be submitted to the Bureau for approval. No amicus brief shall be filed in the name of AIPPI International or in the name of any NRG without Bureau approval.

v. Filing of Brief

1. In the case of a brief filed before a national tribunal, it is contemplated that the brief would be filed by the affected NRG or a representative thereof. In the case of a brief filed before a regional tribunal, it is contemplated that the brief would be filed by one or more of the affected NRGs or representatives thereof. In any event, the Bureau may adjust the manner of filing as may be required for the rules of the applicable tribunal.

vi. Follow-through

1. The Brief Team shall continue to monitor the case in question and shall advise the ABC, who shall in turn advise the CC and the Bureau, of the results of the case and of any citation or mention of the amicus brief.

C. Determining the AIPPI position

- i. It is the task of the ABC to determine whether AIPPI has an established position on the issue or issues in question that would allow AIPPI to file a meaningful amicus brief. The sources for this determination shall be the previous studies of AIPPI through the Study Committees and Standing Committees and the Resolutions taken by AIPPI ("prior work of AIPPI"). Where a Standing Committee exists with relevant expertise, the Standing Committee shall be consulted by the ABC.
- ii. If AIPPI has an established position, e.g., through a Resolution of AIPPI, the ABC shall review this position to determine whether the position is still current and applicable, or whether the position needs to be reconsidered. For example, a position taken by AIPPI in the past may not be suitable to be presented in an amicus brief due to passage of time or change of circumstances since the time the position was taken.
- iii. In determining whether AIPPI has an established position, and recognizing that the precise issue raised in a particular case may not align with the precise wording of, for example, a prior Resolution, it shall be considered that AIPPI has an established position if, in the

opinion of the ABC and subject to Bureau approval as set forth below, a position can be reasonably established based on the prior work of AIPPI.

- iv. If AIPPI does not have an established position, or if the established position needs to be reconsidered, the following questions must be considered by the ABC and the answers thereto included in any submission of an ABC Amicus Brief Proposal to the Bureau:
 1. Is the matter so urgent and important that AIPPI needs to establish a new position and to file an amicus brief?
 2. If so, can this new position be achieved by consultation of the NRGs or the ExCo?
 3. If the NRGs and the ExCo cannot be consulted due to time limitations, is an urgent decision of the Bureau (based on the recommendation of the ABC) required and appropriate?

V. Recusal Policy

A. Any ABC member or observer, Standing Committee member, National Regional Group member, or other AIPPI member who participates in Determining the AIPPI Position or the Brief Preparation Phase for the Amicus Opportunity who:

- i. represents a party to the case at issue,
- ii. is associated with a firm that represents a party to the case at issue,
- iii. is otherwise conflicted for any reason, or
- iv. wishes to be recused for any reason

shall be recused from any participation in the amicus brief in question.

B. Any ABC Amicus Brief Proposal submitted to the Bureau shall contain an express statement that this Recusal Policy has been observed.

C. Written documentation of compliance with the Recusal Policy shall be maintained by the ABC.

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