

WIPO-WTO Colloquium für Teachers of Intellectual Property Intellectual Property Jurisprudence – Trends of IP Litigations

Geneva, 21 June 2019 – Dr. Lorenza Ferrari Hofer

Agenda

- AIPPI – History and today
- TRIPS – Enforcement of IPR
- AIPPI and Enforcement of IPR – Trends
- Switzerland – Enforcement of IPR
- Switzerland and EU – Trends in Enforcement of IPR

AIPPI has a long history

AIPPI was created in May 1897 in Brussels, Eugène Pouillet (first president)

Action of AIPPI in the improvement and development of national and "unionist" rights

Search for a balance between individual and community interests.

AIPPI played a crucial role in 1897-1910 at a time of "restricted unions"

"The inventor protected everywhere and everywhere in the same way. What a beautiful dream! At the same time, men brought together by their interests will feel attracted to each other and we will thus work for a work of peace, harmony, we will work for the good of humanity"

Union Conferences in Brussels (1891-1900) and Washington (1911)
Additional States joined the Paris Convention

- More than 9'000 members, incl. lawyers, patent and trademark attorneys, companies, in-house counsel, judges, academics
 - 68 National Groups
 - 2 Regional Groups
 - More than 100 Independent Members
 - 125 countries represented - AIPPI Switzerland with 295 members
- AIPPI yearly provides more than 40 country reports and comparative resolutions on specific and actual study topics (patents, utility models, trademarks, designs, copyright, trade secrets, geographical indications, protection against unfair competition, etc.)

- TRIPS Agreement includes a comprehensive section regarding the enforcement of IP rights (Part III, sec. 1-5):
 - availability of enforcement procedures (Article 41)
 - civil and administrative procedures and remedies (Articles 42 to 49)
 - provisional measures (Article 50)
 - special requirements related to border measures (Articles 51 to 60), and
 - criminal procedures (Article 61)
- TRIPS Agreement does not attempt to harmonize enforcement rules, but sets substantive standards of protection for IPR
- By conducting studies of existing national laws, AIPPI proposes measures to achieve harmonisation of these laws on an international basis.

- Recent AIPPI working questions and resolutions on enforcement (a.o.):
 - Damages for infringements of IPR (2008)
 - Liability for contributory infringements (2008/2011)
 - Availability of injunctions in cases of infringements of IPR(2011)
 - Relief in IP proceedings other than injunction or damages (2013)
 - Security interests and IP (2016)
 - Quantification of monetary relief (2017)
 - IP damages for acts other than sales (2019)
- HCCH - Treatment of Intellectual Property-Related Judgments (ongoing)
- AIPPI Enforcement Standing Committee
- AIPPI TRIPS Standing Committee

- Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters
- Several Hague Conventions on evidence, service of decisions, etc.
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- General enforcement rules in Civil Procedure and Penal Procedure Codes applicable to IPR
 - Sole cantonal instances for IP disputes
 - Federal Patent Court (specialized court)
- Specific rules in Patent Law, Trademark Law, Design Law, and Copyright Law

- Trade and fabrication secrets, know-how
 - Limited protection and enforcement of holder's rights in Switzerland (Article 5 and 6 Law on Unfair Competition, Article 162 CP)
 - EU Directive 2016/943 on protection of undisclosed know-how and business information (trade secrets)
- Data and databases
 - Limited protection as compilation of works (copyright) and as work results (Article 4 Copyright Law, Article 5 c Law on Unfair Competition)
 - EU Directive 96/9 on the legal protection of databases (protection by copyright) – under review
- Artificial Intelligence (AIPPI Swiss Day 2019)
 - Switzerland - Protection under Article 5 c Law on Unfair Competition?



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