

GROUP B+ PLENARY MEETING

Wednesday 9 July 2025

Hotel President Wilson Genève, WI Conference Room
47, Quai Wilson CH-1209 Geneva,

Summary

Part I: Meeting of the Group B+ and User Associations

1. Welcome and introduction (Chair)

The Chair convened the meeting and delivered opening remarks. He noted that the past year had been productive, yielding favorable outcomes in both Client Attorney Privilege (CAP) and Substantive Patent Law Harmonization (SPLH). He expressed gratitude to the Australian delegation for their diligent efforts as new Chair of the Core Group

2. Client-Attorney Privilege update (AU)

The Australian delegation provided an update with regard to the Draft Multilateral Agreement on CAP. The delegation reported that the Core Group on CAP had finalized the report on the 2022 consultations, revised the draft agreement, and conducted new consultations on the revisions. Key findings from the stakeholder consultations indicated that respondents considered CAP a significant issue, with many favoring a binding agreement approach over a soft law framework, as the latter was deemed insufficient to address the issue of CAP effectively. Some stakeholders also suggested expanding the document to encompass additional intellectual property (IP) rights. The consultation had led to a limited revision to the Draft Agreement text: e.g. “confidential” should be explicitly included in Article 2 of the draft agreement. The Core Group had incorporated commentary of the draft agreement in the Explanatory Report. Stakeholders had concerns regarding Article 6 exceptions and in-house counsel. The Core Group emphasizes that the nature of the Agreement — whether binding or non-binding— must be resolved prior to addressing other textual issues. The Core Group intends to seek guidance on whether the Draft Agreement should be binding or non-binding by inviting the members of Group B+ to each consult their stakeholders and then provide the member’s view on the issue to the Core Group.

Several industry groups provided interventions. The IP Federation emphasized the importance of clearly defining the scope of application of the Group B+ proposal, specifically identifying the individuals covered and the types of attorney work products included. They further requested the scope be expanded to explicitly cover in-house attorneys and encompass additional work products, such as consultations on licensing or trade secrets. The representative from AIPLA expressed support for the agreement, highlighting its potential for significant real-world impact, and encouraged offices to work to a favorable conclusion rapidly. BusinessEurope reiterated that the issues were important to users and that companies' information was at stake. In addition, BusinessEurope noted that there was a need for harmonised rules to protect SMEs. AIPPI suggested that a soft law approach could be useful, as soft law could be implemented into hard law

nationally and informed the Plenary that it has started work on a model law. FICPI underscored the significance of Articles 1, 2 and 4. According to FICPI, Article 6 was useful and should remain.

The Chair noted that the discussion of these matters would continue throughout the following year and should address the nature of the agreement.

3. Presentation by FICPI-AIPPI

In June 2024, FICPI, AIPPI and AIPLA organised a colloquium on SPLH in Munich, Germany, hosted on the premises of the European Patent Office (EPO). FICPI presented an overview of the outcomes of the colloquium as well as their perspective. Several topics were discussed including grace period, Prior User Rights (PURs) and conflicting applications. FICPI indicated that in their presentation, they would not discuss conflicting applications but focus on the grace period and PURs. Regarding grace period, the group reported that discussions during the colloquium explored a dual grace period framework, comprising a cumulative, simultaneous six-month period prior to the priority date, and a twelve-month period before the actual filing date. FICPI intended to further develop this scheme and evaluate its advantages and disadvantages. The colloquium also addressed the concept of “candid declarations” in relation to the grace period, though the concept remained undefined. FICPI indicated that there was support for a “candid” declaration, which could result in the publication of certain details of a patent application and would be subject to correction if needed. FICPI committed to conducting a thorough analysis of the benefits and drawbacks of “candid declarations” and identifying their key features.

Regarding PURs, the colloquium recognized their role as an effective mechanism for encouraging applicants to file patent applications promptly. Discussions explored options such as maintaining the current scope of PURs, permitting changes to be brought to the use under the PUR, provided that no new claims were infringed. It was noted that PURs would need to be established individually in each country or region. The colloquium also considered the concept of a new regime termed “graced prior user defence” (PUD), which would apply when a party accused of patent infringement benefited from a grace period for priority filing date (PFD) on the patent, and the prior use stemmed from the PFD. FICPI would investigate the pros and cons of a distinct regime for PURs, including issues of scope, volume and territory for PURs and PUDs. FICPI indicated openness to collaborations with other user associations and joint efforts.

AIPPI presented its perspective and provided an update on its recent activities. From 2013 to 2018, AIPPI undertook a comprehensive process to develop resolutions addressing key issues, including grace periods, conflicting applications, and PURs, suggesting simple, easy-to-implement rules. Between 2024 and 2026, AIPPI formulated additional resolutions focused on harmonizing disclosure requirements, a summary report, and a draft resolution on compulsory licensing, along with an explanatory note on divisional applications and double patenting. These resolutions were shared with Group B+, and AIPPI expressed support for the implementation of a grace period and for a system of conflicting applications whereby secret prior art should be applicable to the examination of novelty only, without anti-self-collision.

The EPO, as host of the colloquium, stated that the event provided a dynamic platform for generating innovative ideas. However, it noted that the concept of a “candid declaration” raised more questions than it answered and that the proposed PUR framework met with controversy rather than consensus, could increase costs and dilute the disincentive function of the PUR in a grace period context. The EPO was intrigued by new ideas related to the duration of the grace period, found the discussions on the grace period, and conflicting applications very interesting, and expressed the hope that continued discussions would take place in a forum similar to the previous year’s colloquium.

The IPO reported that the Industry Trilateral Group, including JIPA, had engaged in further discussions on harmonization and intended to submit a report on these deliberations to Group B+. The United States, echoed the EPO’s remarks that another colloquium would be useful, and Japan added that the colloquium was a forum to exchange creative ideas and was eager to contribute to further discussions on SPLH. The Chair agreed, endorsing the continuation of discussions in a colloquium format. AIPPI suggested that its upcoming World Congress in Yokohama could provide a valuable opportunity to advance these discussions.

4. Presentation on European PUR study (EPO)

The EPO provided an update on its extensive study of European case law concerning PURs. This analysis encompassed jurisprudence from ten different jurisdictions. The EPO prepared a detailed report examining the case law, which highlighted both convergences and divergences across the various legal systems. Despite the differing approaches observed, the EPO underscored that all national provisions pursued common policy objectives of fairness and efficiency in balancing the interests of patentees and prior users.

BusinessEurope intervened by strongly advocating for the harmonization of PURs across the relevant jurisdictions. The organization acknowledged the points of convergence identified in the EPO study, which are to be further discussed, and emphasized the importance of establishing a unified approach to enhance fairness and efficiency in the application of PURs.

5. Presentation by the voluntary B+ Working Group on SPLH (UK)

The UK, presenting on behalf of the voluntary B+ Working Group (WG) on SPLH, delivered an update that comprised two main components:

- 1) *Summary of Options on Areas of Divergence*: This report addresses divergences in grace periods, conflicting applications, and prior user rights. It drew on contributions from nearly 40 respondents representing industry and user associations from Australia, Canada, Europe, Japan, Korea, and the United States. The report showed broad support for SPLH, with a majority of respondents recognizing the need for compromise. It also identified convergences in the following areas: the burden of showing that a pre-filing disclosure was graced should rest on the applicant; intervening disclosures by third parties should constitute prior art; and PCT applications should be incorporated into the prior art upon entry into the national or regional phase.
- 2) *Update on the Study of Prior User Rights*: The conditions for the accrual and scope of PURs were examined separately from the report on divergences. For this study, the B+ WG relied

on two papers on PURs prepared by the Group B+ Subgroup in 2016. Information was collected from 14 jurisdictions, encompassing current national legislation, policy objectives, practical implementations, and case law interpretations. The voluntary B+ WG is currently analyzing this data, focusing on the timing, general standards for accrual, and additional requirements related to the acquisition of the rights, as well as examining the allowability of changes in volume, embodiments, and types of use concerning the scope of the rights.

The IP Federation remained actively engaged in SPLH discussions and expressed a desire for accelerated progress. It proposed that topics be addressed concurrently to distribute the workload more effectively. Stakeholders could be consulted again and involved further in this process.

The IPO intervened on behalf of the Trilateral Industry (IT3), expressing support for the ongoing work and indicating that it will serve as input for a refined package of proposals. The IT3 will subsequently report its findings to Group B+.

6. Any other business

There were no requests for other business and the meeting concluded.

Part II: Meeting of the Group B+ delegations

In the second part of the meeting, the Group B+ delegations discussed future work. The Chair began by requesting that the group maintain an open mind as stakeholders would like the Group B+ to continue its work on SPLH.

1. Future work on Client Attorney Privilege -- Continuation of Mandate (AU)

On behalf of the CAP Core Group, Australia announced that, following two rounds of stakeholder consultations, the group had developed a comprehensive understanding of the areas of convergence and divergence among involved parties. The primary unresolved matter concerned the nature of the agreement, specifically whether it should be binding or non-binding. To address this, Australia proposed that member states discuss outstanding issues with their stakeholder groups, consider the member state's preferred approach to those outstanding issues, and report the member's views back to the Core Group.

The Chair proposed that the Core Group continue the work as proposed by the AU workplan. One delegation intervened to say that, based on past consultations with its stakeholders, there was a sense that the agreement should be binding in nature. This delegation supported the work plan. Another delegation stated that the CAP agreement should be binding to ensure users the same level of protection. The delegation explained that the difference between the SCP and Group B+ was that, in Group B+, member states shared similarities in their systems. It should therefore be possible to find common ground and bring Member States together toward a binding agreement. If the CAP agreement leaned toward a soft-law instrument, this delegation wondered whether Group B+ would be the best forum to deal with it and whether this should not fall under the WIPO SCP. Ultimately,

various Group B+ members supported moving ahead with the proposed workplan for the CAP Core Group.

2. Proposed workplan by Voluntary WG on SPLH – continuation of mandate (UK)

The United Kingdom as the Chair of the voluntary B+WG presented the proposed future workplan for the second half of 2025 and 2026. The B+ WG chair proposed that the WG complete the analysis of the existing systems in relation to PURs. The goal would be to prepare and circulate a stakeholder questionnaire, with the intention to hold stakeholder meetings in early 2026. The second half of 2026 would be dedicated to preparing a B+ WG report that incorporated stakeholder input, for circulation ahead of the Group B+ Plenary in 2026.

The Chair of Group B+ expressed his appreciation to the UK and emphasized that PURs were a vital component in establishing a balanced mechanism for a grace period. He urged other members of Group B+ to participate in the voluntary B+ WG. One delegation voiced concerns that there had been limited progress and cautioned against a fragmented, piecemeal approach. Another delegation indicated that it did not plan to enhance its status to become a member of the B+ WG, citing insufficient progress as the primary reason. A different delegation highlighted the importance of bringing users together in a single forum to facilitate dialogue and expressed full support for the activities of the voluntary B+ WG. Additionally, one delegation suggested that, to advance the process, it might be necessary to initiate text-based negotiations. A large majority of delegations expressed support for the work plan proposed by the UK for the upcoming year. The Chair concluded that, despite the perceived slow progress, the complexity and enduring nature of the issue required a gradual, step-by-step approach. He emphasized that sustained persistence would ultimately lead to a meaningful outcome. Accordingly, he recommended supporting the work of the B+ WG, given the clear roadmap presented, with a review and stock-taking scheduled for the next Group B+ Plenary.

3. The Intergovernmental Standard Network on SEPs (CA)

At the request of the Chair at the previous year's plenary, Canada provided an update on discussions within the Intergovernmental Standard Network (ISN) on Standard Essential Patents (SEPs). Canada reported that the ISN's charter was to address challenges in the global SEP system, facilitate information sharing, and promote coordination on policy, best practices, and dispute resolution mechanisms. The ISN had agreed to discuss key topics including SEP licensing challenges (with a focus on Fair, Reasonable, and Non-Discriminatory [FRAND] methodologies), alternative dispute resolution (ADR) for SEPs, and SEP depositories, among other issues. The next ISN meeting, scheduled for July 2025, would provide updates on major SEP policy and legal developments, ADR mechanisms and best practices, as well as capacity building and education for small and medium-sized enterprises (SMEs). Additionally, the ISN would host a hybrid event on the margins of the World Intellectual Property Organization SEP Symposium in September 2025, focusing on "standards and the European Patent system." The fourth ISN meeting was planned for early 2026, with a potential emphasis on FRAND methodologies.

The Group B+ agreed, and the Chair concurred, that a Group B+ member of the ISN should provide regular updates on ISN discussions and outcomes to the Group B+ Plenary.

4. Discussion and approval of Meeting Statement

The Chair of Group B+ summarized the recent Plenary discussion. He highlighted that the meeting was conducted in two parts, with the first part featuring valuable input from industry groups and user associations. Updates on progress were provided by both the Core Group on CAP and the Voluntary B+ WG on SPLH, with their work scheduled to continue into the upcoming year. The Chair announced that the B+ WG's Report on options regarding areas of divergence would be published on the Group B+ website. Additionally, a representative from the ISN would present a report on its activities at next year's Plenary.

Three delegations expressed interest in exploring additional issues, particularly the intersection of artificial intelligence and intellectual property. These delegations raised concerns that Group B+ and the broader IP community risked ceding leadership on such matters to non-IP forums, which could pose challenges for stakeholders. They urged Group B+ to broaden its scope by establishing new work streams to address other critical areas of interest. The Chair indicated openness to receiving proposals for work in these areas of particular relevance to the group, provided that the proposing delegations were willing to invest the necessary resources. He recalled that a similar call for new topics had been issued two years prior, with only the topic of SEPs being proposed before the group of interested states ultimately moved discussions to a parallel forum—the ISN.

5. Conclusion of the meeting

The Chair expressed thanks to all participants for their efforts throughout the year and announced that the European Patent Office (EPO) would assume the Secretariat of Group B+ for the upcoming year. He also acknowledged the United States Patent and Trademark Office (USPTO) for its dedicated service as Secretariat in the past year.