

GROUP B+ PLENARY MEETING

Geneva, 16th July 2024

SUMMARY OF DISCUSSIONS

On Tuesday 16 July, 2024 the Group B+ held a two-part in-person Plenary meeting. The meeting was chaired by the Director General of the National Institute of Industrial Property (INPI), Mr. Pascal Faure (France), and hosted by the JPO as the Group B+ Secretariat. During the first part of the meeting, Group B+ delegations met with representatives of user associations from the Industry Trilateral (IT3): AIPLA, IPO, BusinessEurope (BE) and JIPA, as well as FICPI, AIPPI and the IP Federation.

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

1. Welcoming addresses by the Chair

The Chair welcomed the delegations and expressed his gratitude to the Secretariat for organizing and hosting the meeting. He also emphasized the importance of the discussion for substantive patent law harmonization.

2. Client-Attorney Privilege update (Australia (AU))

The B+ Core Group (AU, CA, ES, JP, KR, SE, chaired by CH, with UK, US and FR as observers) gave an update regarding their work on client-attorney privilege (CAP). AU, which will take over the role of leading the B+ Core Group, noted that the group will continue to discuss the explanatory report on a draft agreement regarding the cross-border aspects of Client-Attorney Privilege (CAP), and emphasized that CAP was very important for high quality advice from attorneys. AU mentioned that the future work of the Core Group would involve analyzing stakeholders' responses to the most recent Core Group consultation and making a report on the consultation results at the next Plenary meeting. A preliminary analysis is going to be shared with the Core Group in the following months. Members wishing to do so were invited to join the Core Group.

One delegation CA thanked AU for their contribution to the CAP discussion and noted that they would like to commit to continuous discussions.

The IP Federation, BusinessEurope and AIPLA thanked for CH's contribution so far, and AU's replacement from within the Group to lead it; and emphasized that CAP should cover all aspects of client-attorney communications. They also requested that the Group B+ continue work on this point in the future.

The IP Federation, BusinessEurope and AIPLA emphasized that client-attorney privilege should cover communications with both lawyers in private practice and in-house counsel from industry.

The Chair noted the alignment of the user associations, thanked the B+ Core Group for their contribution, expressed that the CAP issues are very important for all cross-border stakeholders, and expressed hope that discussions would continue in this regard.

3. *Report on the AIPPI-FICPI-AIPLA Colloquium on SPLH (AIPLA, AIPPI, FICPI)*

AIPLA, AIPPI and FICPI presented the outcomes of the Substantive Patent Law Harmonization (SPLH) Colloquium held in June 2024 in Munich. AIPLA, AIPPI and FICPI announced that they intended to publish a joint statement very soon and expressed their intention to continue to hold similar events to discuss key SPLH issues.

The Chair expressed his gratitude to the AIPLA, AIPPI and FICPI, and noted that it was important to exchange opinions about all topics (grace period, conflicting application and prior user rights) with users. In this regard, the Colloquium was very fruitful for understanding the differences between national practices and legislation.

The JP and, UK delegations thanked the AIPLA, AIPPI and FICPI for holding the Colloquium, and noted that they looked forward to having continued discussions on the key SPLH topics.

The US delegation commented that this kind of Colloquium was very productive, and that it was important to have discussions not only among Group B+ delegations, but also with user associations. It said that the success of the Colloquium laid in the pragmatic approach of the participants, with an effort to break away from established positions in order to simplify issues without over-complicating proposals.

BusinessEurope said that it was desirable that the SPLH discussion consider the balance of interests among large entities, SMEs, individuals and universities. The result should be an agreement on an overall package that balances the interests of entities engaged in innovation with the protection of third parties and should be advanced by users.

The EPO was happy to be associated with the effort of the Colloquium. and emphasized that the SPLH discussion was important for global development. It encouraged all the user associations involved to continue their efforts and pleaded that the need to insure simplicity of the system and avoid unnecessary burdens on users and offices should guide future efforts to find common ground.

Finally, the Chair noted that he looked forward to receiving the joint statement of the Colloquium, and that it was important to seek flexibility and possible options to simplify the patent system, keeping in mind the original spirit of patent rights being balanced between patent holders and third parties. He noted that the Colloquium had made an excellent contribution to the process, and called for another Colloquium to be held in the years to come.

4. *Presentation on European alignment exercise (European Patent Office (EPO))*

The EPO reported on behalf of the European delegations on the ongoing European alignment process regarding SPLH, designed to allow European delegations to reach common positions on best practices and possible flexibilities on contentious SPLH issues: namely, the grace period, conflicting applications and prior user rights.

The EPO explained that the next steps in the process would be a study on European case law regarding prior user rights (accrual and scope of prior user rights) and the exploration of possible flexibilities with users.

The Chair expressed gratitude for the presentation by the EPO delegation and emphasized that prior user rights was one of the key topics of the global package and also noted that it was important to deepen the discussions with users on this issue.

5. *Report on the work of the voluntary Group B+ Working Group on SPLH (United Kingdom (UK), WG Chair)*

The Chair of the voluntary B+ Working Group (B+ WG), Mr. Julyan Elbro, presented the current status of the work, namely the analysis of existing studies and the progressing analysis of the consultation with users (meetings and questionnaire). The purpose of the work was to understand the impacts of rules on the global patent system.

The Chair expressed his gratitude to the B+ WG and its Chair; and also emphasized that it was important to deepen the understanding of the differences between the legislations of different countries. He noted that user engagement was very strong, there was a willingness to compromise. Many convergences were emerging.

The CH delegation thanked the B+ WG, and noted that Europe was a complex entity where it was difficult to reach a consensus. It reminded delegations that any result would need to be ratified by parliaments and thus the simpler the norms were, the higher the chance that they would be widely accepted and adopted.

JIPA thanked the B+ WG on behalf of the IT3, and for the opportunity to comment on the results of the report. JIPA also asked the B+ WG to consider the prior user rights criteria developed by IT3 in its Element Paper, and stated that the IT3 planned to discuss these issues further taking into account the B+ WG report.

The KR delegation thanked the B+ WG Chair and the B+ WG for their work . It noted that there were divergences of opinions amongst their own users, and it believed that further studies were needed to move forward.

IP Federation thanked B+ WG for their work and for the publication of the results of the consultations and expressed the hope that compromises and convergences could be found.

The Chair thanked all the user associations for their engagement, emphasizing that their continuing contribution was essential to the success of the common work on SPLH.

Part II: Meeting of the Group B+ Delegations

In the second part of the meeting, the Group B+ delegations discussed future work.

1. Proposed workplan for the voluntary B+ Working Group on SPLH – continuation of mandate (UK, B+ WG Chair)

The Chair of the voluntary B+WG presented the proposed future workplan for the second half of 2024 and 2025. In the second half of 2024, the B+WG will incorporate the results of the questionnaire and the analysis of both these results and the feedback received during the user consultations in the report of prior studies, and then circulate an updated report to all Group B+ members. In 2025, the B+WG will commence a study focused on Prior User Rights (PURs). It will also continue to engage as appropriate with user associations on the substance of the final report, in particular on issues where divergences remain and further exchanges may be helpful.

The Chair expressed his gratitude to the B+ WG Chair and emphasized that prior user rights was a key topic for finding a balanced mechanism for a grace period. The Chair agreed that it was desirable that the B+ WG continue their work based on the proposal by the B+ WG Chair and invited the Group B+ members to consider joining the B+ WG.

Two delegations expressed concern regarding what they perceived to be the duplication of the work on prior user rights in Europe, as well as within the B+ WG, while they supported the further work proposed by the B+ WG Chair. One delegation pointed out that it would be beneficial to reach out to industry user associations, particularly those who organized the Colloquium, to inquire what kind of work the B+ WG could undertake to narrow the divergences on some issues, which would be beneficial to user groups in their discussions.

Another delegation supported the proposal by the B+ WG Chair, and said it was fruitful to have continued discussions with industry groups while avoiding duplication.

The EPO clarified that the work carried out both at the European and at the B+ WG level would be complementary and that there would be no duplication, but a parallel process which would create synergies, as the outcomes of the European study would flow into the work of the B+ WG. These constituted complementary steps rather than overlap. It mentioned that the study on European case law on prior user rights was just launched and expected the results to be shared with B+ members in the first half of 2025.

Four further delegations supported the B+ WG Chair's proposal.

The Chair concluded that the B+ WG would continue their future work and refer to the outcomes of other efforts regarding SPLH, such as the European prior user right study and the results and proposals of the SPLH Colloquium hosted by users. In the second half of 2024, the WG would incorporate the results of the questionnaire and the analysis of both these results and the feedback received during the user consultations in the report of prior studies and circulate an updated report to all Group B+ members. The WG would also initiate discussions with users, including the associations that organized the Colloquium (AIPPI, FICPI and AIPLA) to seek a way to produce synergies between their efforts and the work of the B+ WG, and potentially adjust its work plan for 2025 in consequence. In 2025, the B+ WG would commence a study focused on Prior User Rights (PURs). It would also continue to engage as appropriate with user associations on the substance of the final report, in particular on issues where divergences remain and further exchanges may be helpful.

2. *Proposal for work on Standard Essential Patents (Canada (CA))*

The delegation of CA proposed to pause discussions on Standard Essential Patents in Group B+ in view of the discussions on SEPs launched in a new forum in collaboration with the delegations of the US and UK.

The Chair expressed his gratitude to the CA delegation, and requested that the delegations of CA, US and UK report on their discussions at the next Plenary meeting. The three delegations indicated that they were at the very beginning of their efforts.

One delegation welcomed this new forum, as well as the Chair's request that progress be reported on to the Group B+ Plenary, as these groups should not drift away from one another. Another delegation thanked the CA delegation and indicated that they were happy to consider future work on SEPs. This framework had many possibilities for solving the SEP matters, and it was pointed out that the group might also report their work in the Standard Committee on Law of Patents (SCP), in WIPO.

The Chair concluded by noting that divergences should be avoided when matters were discussed in different fora, and for this reason, it was important that this new group working on SEPs report on their discussions to the Group B+ Plenary.

3. *Conclusion of the meeting*

The Chair announced that the USPTO would be taking over the Secretariat of Group B+ for the upcoming year and thanked the JPO for their dedicated work as Secretariat in the past year.