

Resolution



Question Q187

Limitations on exclusive IP Rights by competition law

AIPPI

reminding:

- that at the Congresses in Berlin in 1963 and in San Francisco in 1975 AIPPI adopted the Resolutions on the Question Q37B which confirmed that patent rights and the rules relating to economic freedom are not in conflict but, on the contrary, contribute to economic progress and serve the public interest,
- that at the Melbourne Congress in 2001, AIPPI adopted a Resolution on the relationship between technical standards and patent rights reminding that a patent right may be used in the standard only with the consent of the patent owner,
- that the harmonisation of intellectual property rights contained in the TRIPS Agreement was agreed upon with the aim of promoting economic development by means of the liberalisation of global trade
- and that the exclusive rights conferred by intellectual property laws and their exercise are the object, in various countries, of different exceptions and limitations, based among others on competition considerations

and considering

- that intellectual property rights (and certainly patents) play an increasingly important role in the economic activity especially in the field of new and emerging technologies,
- that the correct applicability of the principles of competition law should not affect the recognition of intellectual property rights,
- and that there is an increasing interest by Public Authorities and by third parties, including non-governmental organizations, confronted with intellectual property rights to challenge the existence and exercise of such rights by invoking competition law,

adopts the following Resolution:

- 1) The AIPPI reconfirms its view that competition law (the rules which are intended to safeguard free and fair competition) and intellectual property (IP) law are not in conflict but, on the contrary, both contribute to economic progress and serve the public interest.
- 2) The granting of IP rights shall be ruled by IP laws and regulations only.

With respect to such granting competition law should not be applicable.

The necessity of free and fair competition should be taken into consideration during the establishment of IP laws and regulations, which provide for such IP rights.

- 3) The laws and the regulations governing the IP rights should provide for an efficient mechanism to challenge the validity of IP rights which have been granted without fulfilling the conditions set out in IP law.

This mechanism should in all cases include the possibility of judicial review.

This will assist in the prevention of possible adverse effects on competition.

- 4) The rules of competition law may apply to the exercise of IP rights.

If in particular cases, the exercise of IP rights contravenes competition law, then the law should allow for the necessary remedies.

However, the application of such law must not affect the existence of the IP right and it should be accepted as a governing principle that IP rights convey exclusive rights.

Decisions by a government agency should always be open to independent judicial review.

- 5) The general public should be informed about the usefulness and value of IP for society and the balance struck between the IP law and competition law regimes.

Governments, NGO's and professional IP organizations should be actively involved in this process.