

IPO Amicus Brief Committee

IPO Interest as Amicus:

To assist IPO in executing its stated policies and positions, the IPO Board of Directors has established an Amicus Brief Committee to oversee how IPO might respond to certain intellectual property disputes moving through the courts. The Committee shall determine IPO's interest as amicus in a matter by making a threshold determination that the matter presented raises a significant issue affecting the value of ownership that attaches to an intellectual property right or the ability of owners of intellectual property rights to effectively and efficiently obtain redress for infringements or threatened infringements on those rights. In general, the Committee shall make recommendations concerning the position IPO should take as amicus in a matter based on the interests of owners of intellectual property rights and adequate and effective protection for such rights, consistent with the rights of the public to freely enjoy public domain subject matter. The Committee shall focus its efforts on those intellectual property and legal issues that broadly impact the ownership of intellectual property, and therefore the Committee will not recommend that IPO act as an amicus in disputes that are narrowly drawn to the interests of the litigants.

Membership:

The Amicus Brief Committee will consist of not more than 20 members. Fifty percent of the members must be members of the IPO Board of Directors. The Chair of the Committee will be a corporate member who is affiliated with a sustaining member of the IPO Board of Directors. If the Committee has a Deputy Chair, the Deputy Chair will be from an IPO corporate member. The Committee shall have two Vice-Chairs, who shall be law firm members of IPO with extensive experience in IP litigation matters. The remaining members of the Committee will be members of the IPO Board of Directors or partners or of counsel in law firm members of IPO. The members of the Committee will serve one calendar-year terms. The IPO President will appoint members to the Amicus Brief Committee. The chair of the Committee may, from time-to-time, recommend members for appointment to the Committee. The membership will reflect a diversity of areas of IP specialization.

Purpose:

The Amicus Brief Committee will –

- (1) attempt to identify judicial and contested administrative matters where IPO should participate as amicus,
- (2) review requests from members of the public, including members of IPO, to determine whether IPO might participate as amicus,

- (3) review every IP case in which the U.S. Supreme Court grants a writ of certiorari, to determine whether IPO might participate as amicus,
- (4) review every IP case in which the U.S. Court of Appeals for the Federal Circuit grants en banc rehearing, to determine whether IPO might participate as amicus,
- (5) report to the IPO Board of Directors on judicial matters where the Amicus Brief Committee recommends that IPO should participate as amicus, proposing positions that should be taken in IPO amicus briefs,
- (6) when the IPO Board of Directors approves IPO participation as amicus, develop the submissions to be made as amicus prior to final approval by the IPO Board of Directors, and
- (7) on behalf of IPO submit amicus briefs approved by the IPO Board of Directors.

Committee Procedures:

- (1) No member of the Committee may participate in any matter before the Committee if the member, or their firm, has a direct interest in the underlying matter before the Committee; this includes a law firm member whose firm represents a party in a matter in non-IP related issues. Members of the Committee who are or represent a party with a direct interest in any matter are required to affirmatively recuse themselves from Committee deliberations.
- (2) Committee discussions and positions in expected briefs should be kept confidential.
- (3) A request to the Committee to determine whether IPO might act as amicus in a controversy must be submitted to the chair via email. The submission must include, as email attachments, copies of relevant pleadings, motions, decisions, or other papers to reflect the nature of the controversy, the nature of the issue or issues of possible amicus interest, and a short paper (no more than three (3) pages) describing the underlying positions of the litigants. In addition, the party requesting amicus support shall provide notice to lead counsel of all parties involved in the litigation and will provide the Chair with the name and email address of such counsel. Requests for amicus support will be shared with opposing counsel who shall be free to make submissions to the Amicus Committee as well, so long as such submissions are made within three (3) business days from the original request. If the requesting party does not notify opposing counsel, the Chair reserves the right to delay consideration of the request until opposing counsel is so informed of the request for amicus support. Finally, the party requesting amicus support from IPO shall inform the Chair of the names of other organizations from which amicus support has also been requested.
- (4) When a request is made that meets the requirements above, and the Chair, the Deputy Chair (if any), and Vice-Chairs believe the merits of the request may warrant further discussion, the Chair will forward the materials received from the requestor to the members of the Committee via email and schedule a teleconference for further discussion among the members of the entire Amicus Brief Committee. IPO reserves the right to file a brief on any issue or position arising from the suit, regardless of whether that position is the one advocated by the initial requester or the opponent.

- (5) After a full discussion of the matter, the Committee will undertake a final vote concerning a recommendation to the IPO Board of Directors of the position that IPO should undertake with respect to the amicus request. The Committee will not recommend to the IPO Board of Directors the participation of IPO as an amicus except upon a two-third's vote of the membership of the Committee who are participating in the teleconference.
- (5) If the IPO Board of Directors authorizes IPO to participate as amicus in a matter, the chair shall appoint one or more members of the Committee to serve as a drafting committee for any submissions that IPO as amicus might make in connection with the matter. The draft submission will be circulated by the drafting committee to the IPO Board of Directors for approval.
- (6) With approval from the IPO President, the IPO Executive Committee may recommend to the IPO Board of Directors that IPO participate as amicus in a case and propose the position(s) to be taken in such a brief, without consulting the Amicus Committee.

IPO Board of Director Approval Procedures:

If the Amicus Brief Committee determines that it would support the filing of an Amicus Brief, the Committee will provide a clear, written explanation of why the filing of a brief is in the general interest of IPO. The IPO Board of Directors shall receive recommendations from the IPO Amicus Brief Committee for participation of IPO as amicus and submit these recommendations to the Board for approval when the Board determines that the recommendation properly reflects IPO's potential interest as amicus and the matter is of sufficient interest to merit amicus participation by IPO. A two-thirds vote of the Board is required for approval.