

Amicus Brief Committee Charter and Procedures

Charter:

The IPO Board of Directors established the Amicus Brief Committee to provide advice concerning how IPO should respond to intellectual property disputes moving through the courts. The committee is tasked with making a threshold determination that the matter presented raises a significant issue affecting intellectual property owners, and, where IPO's advocacy would assist a favorable outcome from IPO's strategic perspective, with recommending to the IPO Board of Directors the position IPO should take as amicus based on the interests of intellectual property owners and obtaining adequate and effective protection for those rights consistent with the rights of the public to freely enjoy public domain subject matter. The Committee focuses its efforts on intellectual property and legal issues that broadly impact intellectual property ownership and enforcement and will not recommend that IPO file amicus briefs in disputes implicating only the interests of the litigants.

The committee will:

- provide an on-going list of upcoming cases of potential interest to the Board for awareness and educational purposes, with new cases added to the list in advance of any committee vote on the same where the timeline allows,
- recommend judicial and contested administrative matters where IPO should participate as amicus,
- review requests from members of the public, including members of IPO and IPO Standing IP Committees, to determine whether IPO might participate as amicus,
- review every IP case in which the U.S. Supreme Court grants a writ of certiorari to determine whether IPO should participate as amicus,
- review every IP case in which the U.S. Court of Appeals for the Federal Circuit grants en banc rehearing to determine whether IPO should participate as amicus,
- report to the IPO Board of Directors on cases in which the Amicus Brief Committee recommends that IPO participate as amicus and propose the position an amicus brief should take,
- prepare briefs upon approval of proposed position by the IPO Board of Directors, for final review by IPO Executive Committee, and
- submit amicus briefs approved by the IPO Board of Directors.

Amicus Brief Committee Procedures:

- The Amicus Brief Committee will comprise no more than 20 members, at least half of which must be representative members of the IPO Board of Directors.
- The committee is chaired by a sustaining member of the IPO Board of Directors. The committee's vice-chairs are law firm members of IPO with extensive experience in IP litigation, preferably appellate practice. The remaining committee members are members of the IPO Board of Directors or partners or of counsel in law firm members of IPO.
- Committee members are appointed by the IPO President for one calendar-year terms. The membership will reflect a diversity of areas of IP specialization. Committee members should

consistently make time to fully engage the activity of the Committee, and law firm members should routinely expect to undertake pro bono drafting responsibilities on a semi-rotational basis. A list will be maintained of law firm members that drafted or contributed to briefs and will be shared annually with the IPO Board for transparency and recognition.

- No committee member may participate in a matter before the committee in which the member's company or firm has a direct interest in the case before the committee; this includes a law firm member whose firm represents a party in non-IP matters. Committee members who are employed by or represent a party with a direct interest in a matter before the committee are required to affirmatively recuse themselves from committee deliberations.
- A request for IPO to file an amicus brief must be submitted to IPO staff via email and shared immediately with committee leaders. The request must include 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 pages) describing the underlying positions of the litigants.
 - In matters outside the U.S. where IPO must seek leave to intervene before filing a brief, the requestor must submit both a draft motion and an outline of the proposed substantive brief.
- A party requesting amicus support shall provide notice to lead counsel of all parties involved in the litigation and provide IPO staff with the name and email address of such counsel. Requests for amicus support will be shared with opposing counsel who may elect to make submissions to the Amicus Brief Committee within three business days of receiving the original request. If the requesting party does not notify opposing counsel, IPO may delay consideration of the request until opposing counsel is notified. Finally, the party requesting amicus support from IPO shall inform IPO of other organizations from which amicus support has also been requested.
- IPO Standing IP Committees may also submit requests for amicus support to the Amicus Brief Committee and should follow the same procedures as parties requesting amicus support.
- IPO reserves the right to file a brief on any issue or position arising from the suit, regardless of whether the position is consistent with one advocated by the initial requestor or opponent.
- When the committee leaders believe the merits of a request that meet the requirements above warrant further discussion, committee members will receive the request and supporting materials via email in advance of a meeting to discuss the request. When facing tight timelines, early communications of such requests and basic background information will be provided to the committee, even if the request is not complete, in order to facilitate timely member engagement.
- The committee will also meet to review whether to recommend that IPO file a brief in every IP case in which the U.S. Supreme Court grants a writ of certiorari and in every IP case in which the U.S. Court of Appeals for the Federal Circuit grants en banc rehearing.
- At their discretion, the committee chair and staff liaison may consult board members outside the Amicus Brief Committee, subject to the same conflict of interest standards, concerning matters under consideration that are particularly relevant to their industries, areas of IP expertise, or IP issues of special relevance to their companies, including by extending invitations to join committee meetings as non-voting participants or by requesting comments that can be shared with the committee by email.
- Committee members and IPO board members who are invited to participate in committee meetings must keep confidential all aspects of committee deliberations. This expectation of confidentiality

extends to positions the committee might recommend IPO take in a brief, except for discussing possible positions with one or more other members of the IPO Board of Directors as may be useful in considering the matter.

- Where allowed by the relevant timeline and in light of the complexity of the issue, a very short outline of a likely IPO argument/position will be provided to the committee before its first meeting on the matter.
- After discussing a matter, the committee will vote on whether to recommend to the IPO Board of Directors that IPO file an amicus brief and what position IPO should take in the brief. A quorum of the committee (a majority of committee members) must vote, and any committee recommendation to the IPO Board of Directors must be supported by two-thirds of committee members voting, and not less than half of the sustaining Board members voting.
- If the committee supports recommending that IPO file a brief, a member of the Amicus Brief Committee will draft an outline of the proposed argument. After committee leaders verify that outline's consistency with the committee's discussion, the outline will be circulated to the full IPO Board of Directors for a vote on whether IPO will file an amicus brief based on the outline, delegating to the IPO Executive Committee the responsibility of reviewing the final text of the brief.
 - Note: In matters where IPO must seek leave to intervene before filing a brief or otherwise participating as a friend of the court, the IPO Board of Directors will vote based on two documents: 1) the motion to intervene and 2) the outline of the substantive brief, which will be filed only if the motion to intervene is granted. As with other briefs, the board delegates to the IPO Executive Committee the responsibility of reviewing the final text of the brief before filing to confirm consistency with the outline approved by the required majority of the board.
- Upon approval of the outline by the IPO Board of Directors, one or more members of the Amicus Brief Committee will draft the brief. The Chair may have a non-committee member draft submissions when there is not a committee member available to do so; nevertheless, the conflict policy continues to apply.
- With approval from the IPO President, the executive committee may recommend to the board that IPO participate as amicus in a case and propose the position(s) to be taken in such a brief without consulting the Amicus Brief Committee.

IPO Board of Directors Approval Procedures:

- If the Amicus Brief Committee determines that it supports filing a brief, the committee will prepare an outline of the proposed brief. The IPO Board of Directors determines whether the recommendation properly reflects IPO's potential interest as amicus and whether the matter is of interest to a large enough segment of the membership to merit IPO's participation.
- The Board of Directors must approve filing an amicus brief by a two-thirds majority vote of those present and voting. A majority of the Board of Directors or their proxies constitutes a quorum; members of the Board of Directors or their proxies who abstain from voting are counted for purposes of constituting a quorum, but abstentions are not considered when determining whether a two-thirds majority support filing a brief.
- No member of the Amicus Brief Committee or the IPO Board of Directors may participate in an amicus matter before the Board if the member or a related business entity is a party in the matter and are required to recuse themselves from discussion of and voting on an IPO amicus

brief.

- The delegation to the executive committee of the responsibility to review the final text of the brief is limited to confirming the brief is consistent with the outline supported by the required board majority. It is not a second vote on whether IPO should file a brief in the matter or take the position approved by the board.
- The executive committee may use its discretion, subject to a conflict of interest, to consult select board members when approving the final text of a brief, for example on issues particularly relevant to their industries, areas of IP expertise, or IP issues particularly relevant to their companies,
- Discussions of amicus matters before the Amicus Committee and the Board of Directors shall be confidential, and positions in expected briefs should be kept confidential until filing.