Networking warm-up for first timers and young members

Participate as much as possible (and to network and have fun!) was the message first timers to the AIPPI Congress got at yesterday’s informal but informative information and networking session. For the first time this year, a Young AIPPI Forum was organised for members aged 36 and under to mingle with each other and get tips from more experienced members.

Those who are new to the AIPPI are encouraged to get involved as much as possible by:

- Contacting the respective national group
- Speaking to bureau members
- Participating in events
- Becoming a study question representative
- Being involved as an observer to committees

But to get involved, it’s important to step out of our comfort zones and meet people. The interactive and entertaining networking skills workshop (which involved games of untangling ropes and passing around bouncy balls!) came in handy at the Young AIPPI Forum held at the Home Nightclub.

Personal coach Derek Percival’s top piece of advice was: “The gap to successful networking is only as big as you think it is.” Sometimes, the gap is only in our heads and we start imagining barriers that do not exist in reality. For some it might be easier and others not so much, but either way we have to put in the effort.

“It’s been good to have this opportunity and to use the right brain as well as the left brain! I think the people who took part know each other much better now and will be more confident during the Congress. I very much hope we will be able to do it again in Cancun next year.” said Marek Lazewski, second deputy secretary general of AIPPI.

Some tips to keep in mind when networking:

- Be aware of different personality types and adjust your style. We tend to gravitate towards people who are similar to us, but that means closing a lot of doors.
- Pay attention to cross-cultural differences. For example, handing out business cards with both hands is essential in many Asian cultures.
- Show genuine interest in people. Personal insight adds value to a conversation.
- To get a better answer, ask a better question. Truly listen to someone, instead of listening to respond.

New national group welcomed

The United Arab Emirates was unanimously approved as the newest national group of AIPPI in yesterday’s ExCo 1 meeting. Two representatives from the new group were presented with their national flag and took their place as delegates.

The group already has 34 members and a preparatory meeting in Dubai on May 1 was attended by 20 people. The UAE is covered by the APPIMAF group but there was strong support for establishing its own national group, following in the footsteps of Jordan last year.

The ExCo also voted yesterday to suspend the membership of the Nigerian national group. Secretary General Laurent Thibon said that the group is two years in arrears, and the Bureau recommends suspension in such circumstances.

About 1,300 people are registered for this year’s Congress and for the first time non-members are able to attend. There are 36 non-members registered and Thibon said: “This is a good way to attract more participants and to market AIPPI.”
The need for cooperation on IP harmonisation across jurisdictions was the key message that IP leaders from AIPPI, IP Australia and WIPO conveyed at the AIPPI World Congress Opening Ceremony last night.

Andrew Massie, representing the Australian national group, offered a warm welcome with an exchange of “G’Day mate” greetings. True to Australian culture, the indigenous dance performance gave visitors a glimpse into the long history of this part of the country.

Hao Ma, president of the AIPPI, took guests down memory lane with photos from the 120-year history of the AIPPI and reminded us of the momentous impact that the organisation has achieved, such as influencing the creation of the Madrid Protocol.

“As we progress in the information age and see a rise in the use of robotics, artificial intelligence and automation, the need for IP is more important than ever,” said Patricia Kelly, director general of IP Australia. “But the lack of agreement is an impediment to move IP development forward. This calls for a more robust approach and a consensus for it.”

With the asymmetry in technology between developed and developing nations, finding that consensus will be a challenge but there has been continual growth in the number of countries acceding to treaties. “The rise of new players coupled with an increase in demand for innovation and technology intensity means competition has intensified and the need for a rules-based system is more important than ever,” said Francis Gurry, director general of WIPO. He noted the increasing demand for IP through the Patent Cooperation Treaty, Madrid Protocol and Hague Convention, which saw growth of 7.4%, 7.2% and 35% respectively in the past 12 months.

The speakers agreed that it is an exciting time to be in the IP industry as more than ever there is a need to bring industry together to focus on what is needed to move IP development forward in the face of rapid innovation, increased global trade and information flow.
Paving the way for Cancun

The questions that will be discussed at next year’s Congress in Cancun were outlined yesterday. Topics will include conflicting patent applications, protection of 3D trade marks, partial designs and joint liability for IP infringement. This continues the tradition that AIPPI has used in the past to help formulate the topics of study that will be embarked upon immediately after this Congress concludes.

Sarah Matheson, AIPPI Reporter General, outlined the first question on conflicting patent applications. Conflicting applications are filed when two or more patent applications are filed claiming the same or nearly the same subject matter.

“This is an area which has been attracting a lot of attention around substantive law harmonisation, and the AIPPI has not yet got a position in this area,” she said. “It is quite timely that the ExCo has selected this topic because it is something that is very much under discussion.”

Anne Marie Verschuur introduced the second question on the protection of 3D trade marks. Several jurisdictions allow for the registration of shape trade marks consisting of three-dimensional shapes but their registrability and scope of protection continue to present many challenges.

“Shapes in the marketplace also function as trademark signs and as a source indicator,” she said. “But if you then want to protect your sign you will find registration is often difficult because there are, for example, exclusions on functionality, central value or the nature of goods.”

The third question on partial designs was presented by Yusuke Inui and Ari Laakkonen. Industrial design or design patents typically protect the outward appearance or ornamentation of an object or article of manufacture, but there is little clarity regarding protection of one specific portion of a design.

As examples Inui and Laakkonen discussed a specific handle of a frying pan, and how the handle could be protected separately from the pan itself. This example was used to outline complications such as description or depiction, what the scope of protection is for the part in question and the question of spare parts and repairation, which must both fit and match the original object.

This topic is of particular practical and economic significance because laws tend to differ across jurisdictions and parts can be easily copied.

Lastly, Congress 2018 in Cancun will discuss joint liability for IP infringement. This subject was presented by Ralph Niek, who said that this is of importance because the TRIPs Agreement defines direct infringement, but is silent on what constitutes indirect or contributory infringement. The question asks if participants can be liable for infringement as a result of their acts as combined with the acts of others, and whether this can amount or contribute to infringement activity.

IP news in brief

EPO

The EPO Administrative Council has elected António Campinos to succeed Benoît Battistelli as President of the Office with effect from July 1 next year. Campinos has led the EU IPO since 2010 and was formerly head of the Portuguese IP office.

Europe

The CJEU has confirmed that the IP Translator and Praktiker cases are not retroactively applicable in its decision in EUPO v Cactus (C-352/15 P) of October 11. IP Translator addressed the scope of protection for EU trade marks which have the class headings as the specification of goods/services.

Nigeria

Nigeria has ratified three WIPO copyright treaties and acceded to another. On October 4 the country notified WIPO that it had ratified the WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty and Marrakesh Treaty, all of which will come into force on January 4 2018. It acceded to the Beijing Treaty, which has not yet entered into force. Costa Rica also ratified the Marrakesh Treaty on October 9.

United States

The US Court of Appeals for the Federal Circuit has vacated the permanent injunction in the dispute between Amgen and Sanofi/Regeneron over a cholesterol-lowering treatment. Sanofi and Regeneron Pharmaceuticals appealed a final judgment of the District of Delaware in January that held that two patents were not invalid and granted a permanent injunction enjoining sales of Praluent, which is marketed by Sanofi/Aventis and Regeneron Pharmaceuticals.

United Kingdom

The UK Supreme Court has agreed to hear the Shanks v Unilever dispute on employee compensation. The case, arising from patents filed in the 1980s, was decided by the Court of Appeal in February and concerns the meaning of “outstanding benefit” and the relevance of the employer’s size.
New book on design rights

Wolters Kluwer has published the third volume in its AIPPI Law Series books. The book, titled Design Rights: Functionality and Scope of Protection, is edited by Christopher V Carani and addresses one of the Study Questions discussed at last year’s Congress in Milan: the doctrine of functionality as applied to design rights.

“I had the pleasure of chairing the study question and presiding over the robust debate. Questions about functionality and scope of protection are lurking behind almost every design right dispute,” said Carani. “The key to the functionality doctrine conundrum is identifying, and faithfully adhering to, the doctrine’s underlying policy objectives, which is to prevent monopolisation of a functional idea via a design right.”

The book seeks to address those policy issues, with chapters from 26 countries and the European Union, and more than 300 images. Carani also asked all the contributors to consider some hypothetical questions about the eligibility and scope of protection of a design for a key which has a key blade and a monkey-shaped key head – and he says the responses were “fascinating” and varied greatly. The “monkey key” hypothetical will be familiar to those who took part in last year’s Study Question in Milan.

With respect to eligibility, Carani identified three main tests that courts have applied, sometimes unwittingly within the same jurisdiction: (1) Are there any alternative designs?

(2) Were there aesthetic considerations in the mind of the designer? and (3) Does the appearance of the product matter to the relevant consumer? Often, eligibility of a design depends on which test is employed, Carani notes. In general, the alternative design test is narrowly tailored and best achieves the goal of guarding against the monopolisation concern, according to Carani.

Beyond eligibility, the book also looks at scope of protection and how to treat design features whose appearance is dictated by function: (1) is such feature excluded?, (2) is it included, as it is part of the overall visual appearance? (3) Is it included but assigned less visual weight? Carani questions the wisdom of excluding any features of the whole, whether such features are old or purely functional.

Last year’s AIPPI Resolution on the issue of design functionality represents the “gold standard” on thinking on the issue, says Carani, and next year there will be another Study Question on partial designs: “Design law is so compartmentalised, desperately needing even basic harmonisation, and AIPPI is uniquely positioned to help that process. We as a group can ask in an aspirational sense: what should the law be?”

Copies of Design Rights, as well as previous books in the series, are available at the Wolters Kluwer booth #11.

“Design law is so compartmentalised, desperately needing even basic harmonisation, and AIPPI is uniquely positioned to help that process”

Quantifying monetary relief

AIPPI will today debate a resolution on methods for the quantification of monetary relief for infringement of IP rights. The resolution was drafted to cover damages across all IP rights, and all fields of technology, but accounts of profit, additional or exemplary damages and specific issues related to FRAND were excluded from the scope.

The question tackles topics including how to assess lost profits, how to assess reasonable royalties, recovery of profits lost by conveyed sales and how damages for multi-component products should be treated. It goes into some detail about what factors courts should take into account and what influence an injunction should have on damages calculation.

One source of discussion at yesterday’s Study Committee meeting was the mechanism that should be available to preserve confidential commercial/financial information relevant to assessing lost profits. Representatives of national groups debated whose information should be protected, and what procedures should be put in place regarding legal representatives and independent experts.

The background to the question recognises that damages enquiries are inevitably fact-sensitive, and some facts (such as lost sales that never happened) are not available. It says courts should be prepared to make judgments based on evidence available, and should assess and give appropriate weight to that evidence.

AIPPI received 40 reports from national and regional groups on this question. This is the first of the four study questions to be debated at this year’s Congress. Check out future issues of the AIPPI Congress News for previews of the other questions.

Secrets and lies

AIPPI is hosting a multimedia, round-the-world adventure at this year’s Congress: judges, in-house counsel and private practitioners from various jurisdictions will discuss trade secrets developments and analyse a detailed case study. The session, which features video interviews as well as live speakers, starts at 9am and will last three hours with a 30-minute coffee break.

The case study involves a company called Zenotech and the alleged theft of trade secrets. The full scenario will be revealed at 9am tomorrow!

“In light of last year’s legislative moves in the US (with the DTSA), Europe (with the EUTSD) and in Asia and against the backdrop of a perceived weakening of the patent system in the US, we considered it was an opportune time to examine the issues arising in cross-border trade secrets enforcement,” said Annsley Merelle Ward of Bristows, who is co-moderating the session.

“We considered it was an opportune time to examine the issues arising in cross-border trade secrets enforcement”
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For 120 years, AIPPI has been shaping IP and we want to continue to fulfil this dream.
What are your top tips for getting over jet lag?

Kamila Blagopoluchnaya
FJM International Solicitors & Lawyers
Moscow, Russia
I have special tablets for sleeping, which makes it ok. This is my third day in Sydney, and I am absolutely fine.

Tajeshwar Singh
Protector
Trondheim, Norway
It is best to adjust to the new time zone as soon as possible before you travel, sleep well and don’t drink too much coffee on the plane!

Henning Erb
Olbracht Patentanwälte
Frankfurt, Germany
If you travel in an easterly direction it is good to go to bed late, and not to get up too late in the morning.

Sukklu Singh
SS Rana & Co
New Delhi, India
I think the best way to get over jet lag is to have a hard coffee, and then maybe have a nice long sleep the day after.

Tatyana Voloshchuk
St Onge Steward Johnston & Reens
Stamford, USA
I’ve not really beaten it yet. I think having a lot of meetings, partying a lot and not having an opportunity to sleep helped!

Himanshu Sharma
Singh & Associates
New Delhi, India
I think just eating a lot, drinking a lot and sleeping on your flight is the best tip to beat it.

Roberto Carapeto
Licks Attorneys
Rio de Janeiro, Brazil
I usually try to adapt to the time zone before actually going, and then usually it is about trying to sleep on the first night. That is the most important thing for me.

Gilles Pfend
Katzaroz
Geneva, Switzerland
I think that sleeping during the flight is the best way to make sure you recover easily.

Julien Guerrero Juk
Werner Juk Baudello & Cia
Cuernavaca, Mexico
Do a lot of exercise, stay awake during daylight hours, and maybe have a glass of wine at the end of the day to help you relax.

Catherine Mateu
Cabinet Armengaud & Guerlain
Paris, France
Drink chamomile tea, and try to rest and enjoy yourself, although it hasn’t worked that well for me so far!

Things to do in Sydney

From beach walks and gardens, to jazz bars and museums, the antipodean jewel has it all

S
situated on the edge of south-eastern Australia, Sydney has it all: culture, a coastline and wide transportation network connecting to major domestic and international destinations. And as the financial centre of Australia, the metropolis is home to immigrant communities from around the world, notably Europe and Asia.

Few cities match Sydney when it comes to outstanding areas of natural beauty. One shouldn’t miss out on the six-kilometre walk from Bondi Beach to Coogee Beach, with secret rock pools and stunning cliff top views along the way. In particular, a five-kilometre walk up the Federation Cliff offers a panoramic view of the Pacific Ocean from Dover Heights to Watson Bay. The walk boasts views of stunning sandstone cliffs and panoramas of the Tasman Sea.

Gordon’s Bay, which is situated south of Clowelly Beach and north of Coogee Beach, is one of the world’s most secluded spots for snorkeling as well as paddling with a combination of lush bush, steep cliffs and houses nestled below. Taronga Zoo, a prime location for catching a glimpse of wildlife, is also one of the top spots for some of the best harbour views in the city.

For those wishing to spend a relaxing afternoon in a park, engaging in leisurely activities without breaking a sweat, a visit to Sydney’s centuries-old 30-hectare Royal Botanic Gardens will do the trick. The park features a variety of flora and fauna as well as an aviary and a zoo, while Australia’s oldest park, Hyde Park, houses the famous ANZAC Memorial building and numerous monuments and statues. Located at Circular Quay on the edge of Sydney Harbour, the Museum of Contemporary Art Australia (MCA), which is housed in the former Maritime Services building whose architectural style is a fine example of late art deco design, is another place for a relaxing afternoon and an educational experience.

As one of the most well-connected cites in the world, Sydney has a well-established public transportation network. Using unique Opal cards, foreign visitors can get on a ferry and explore Sydney Harbour and its islands such as Cockatoo Island, one of the world heritage-listed Australian convict sites for $2.50 per person.

The Sydney Harbour Bridge – also accessed via public transport – is unmissable. Built and opened in 1932 the bridge is nicknamed The Coathanger and carries rail, vehicular, bicycle, and pedestrian traffic between the Sydney central business district (CBD) and the North Shore.

For Asian tourists hankering after a taste of home, Spice Alley, tucked behind the Kensington Street laneway in Chippendale will whet their appetite. The open-air courtyard serves up hawker-style dishes from Singapore, Thailand, Vietnam, Malaysia and Hong Kong.

And when the sun sets on Sydney, the city shifts a gear. After a day of sessions and networking, a host of jazz bars and fine dining places will keep delegates from their beds. The Hero of Waterloo Hotel, a 170-year-old hotel located within the city’s iconic Rocks precinct, is a popular highlight. It features a variety of live jazz, soul and folk performances, while Jazushi offers an eclectic experience by serving a blend of fine Japanese fusion dishes complemented by live jazz. Foundry 616 is another unmissable spot, as the key venue for a number of major music festivals in town such as the Sydney International Women’s Jazz festival.

For history buffs, Elizabeth Bay House, known as the finest house in the colony built between 1835 and 1839, is recommended. Designed by renowned architect John Verge for Colonial Secretary Alexander Macleay and his family, the house was restored and turned into a house museum in 1977.

Once surrounded by an extensive 54-acre garden and described as a ‘botanist’s paradise’, it now features a library and a rich entomology collection. For the more adventurous, a visit to the centuries-old Water Police station offers a glimpse at the dark side of Sydney. Once the city’s busiest legal hub where criminals and the police co-existed, it has been renovated and turned into a museum. In particular, the Justice and Police Museum, which was originally the Water Police Court, is a sandstone complex where one of the busiest legal and policing precincts in NSW used to be.
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<tr>
<th>Time</th>
<th>Event</th>
<th>Location</th>
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<tr>
<td>07.30-08.30</td>
<td>RGT, PC Breakfast</td>
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<td>09.00-10.30</td>
<td>Plenary Session: Standing Committee on GI</td>
<td>Cockle Bay Room 1+2</td>
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<td>09.00-12.30</td>
<td>Panel Session I: The best kept trade secret</td>
<td>C3.4 + 3.5</td>
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<td>09.00-10.30</td>
<td>Briefing: Development and IP</td>
<td>C3.3</td>
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<tr>
<td>10.30-11.00</td>
<td>Coffee break</td>
<td>The Gallery</td>
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<tr>
<td>11.00-12.30</td>
<td>Plenary Session: Standing Committee on Pharma &amp; Biotechnology</td>
<td>Cockle Bay Room 1+2</td>
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<td>11.00-12.30</td>
<td>Panel Session IV: The business of IP – IP and competition</td>
<td>C3.3</td>
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<tr>
<td>12.30-14.00</td>
<td>Lunch Briefing: Development of the IP system in China</td>
<td>Parkside Ballroom 1</td>
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<tr>
<td>12.30-14.00</td>
<td>Networking Lunch</td>
<td>Grand Ballroom</td>
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<tr>
<td>14.00-17.30</td>
<td>Plenary Session: Study Question Quantification of Monetary Relief</td>
<td>Cockle Bay Room 1+2</td>
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<tr>
<td>14.00-15.30</td>
<td>Panel Session II: On a different note – copyright and music</td>
<td>C3.4 + C3.5</td>
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<td>14.00-15.30</td>
<td>Panel Session V: The business of IP – venturing with IP</td>
<td>C3.3</td>
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<td>14.00-16.00</td>
<td>Secretaries &amp; Treasurers Meeting</td>
<td>C3.2</td>
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<tr>
<td>15.30-16.00</td>
<td>Coffee break</td>
<td>The Gallery</td>
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<tr>
<td>16.00-17.30</td>
<td>Panel Session III: Developments in post-grant proceedings</td>
<td>C3.4 + C3.5</td>
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<td>16.00-17.30</td>
<td>Panel Session VI: The business of IP – Big data, big issues</td>
<td>C3.3</td>
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<tr>
<td>16.30-17.30</td>
<td>Independent Members Meeting</td>
<td>C3.2</td>
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<tr>
<td>18.00-19.00</td>
<td>Women in AIPPI</td>
<td>O Bar and Dining</td>
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In an uncertain legal environment, we are one law firm that is not content simply to accept the status quo. We work constantly to influence the evolving body of Mexico’s intellectual property laws, with the goal of ultimately bringing them in line with international standards. While we continue to make great strides in this regard, clients from all over the world rely on us to prosecute, manage, and defend their IP portfolios under the laws that exist today. In other words, we work effectively with the system, even as we seek to change it.