

BIO Intellectual Property Amicus Subcommittee

Guidelines

Membership:

The IP Amicus Subcommittee (“Subcommittee”) consists of not more than 16 Members, a ¾ majority of which shall be corporate Members, and the Associate General Counsel for Intellectual Property for BIO (AGCIP). The AGCIP will, with the consent of the Subcommittee’s Chair and Co-Chair, appoint Members to the Subcommittee. Membership appointments will be designed to reflect the diversity of BIO’s membership. Both the Chair and Co-Chair shall have extensive experience in IP matters. The Members of the Subcommittee will serve for one-year terms, and at the discretion of the AGCIP, a Member may serve consecutive one year terms.

Member responsibilities:

Members of the Subcommittee are expected to act as advocates for the interests of BIO’s membership at large, and to participate in the Subcommittee’s activities on an ongoing basis. This commitment includes participation in voting, discussion of positions BIO should take, and review of requests and draft submissions. Because membership in the Subcommittee is held individually (not in the form of a “corporate” membership), Members cannot ordinarily delegate their responsibilities. Active participation in the preparation and drafting of amicus submissions is encouraged and appreciated. Depending on BIO’s budget constraints, corporate Members may be asked for financial contributions for filing of any briefs.

Purpose:

The Subcommittee will:

- (1) identify judicial and contested administrative matters where BIO should participate as amicus;
- (2) review requests from BIO members and the public, to determine whether BIO should participate as amicus;
- (3) develop and approve the submissions to be made as amicus;
- (4) as necessary, notify the BIO Executive Committee of the positions that BIO should take as amicus and seek approval of the Executive Committee or the BIO Board of Directors on amicus submissions developed and approved by the Subcommittee; and
- (5) secure the submission on behalf of BIO of approved amicus submissions.

Committee Procedures:

- (1) Recusal, conflict of interest: No Member of the Subcommittee shall participate in any matter before the Subcommittee where the Member has a direct interest in the underlying matter before the Subcommittee. Members who are or represent a party with a direct interest in any matter are required to affirmatively recuse themselves from Subcommittee deliberations.
- (2) Submission via e-mail: All written materials necessary for the activities of the Subcommittee should be submitted and circulated via e-mail wherever possible.
- (3) Handling of requests:

(i) A request for BIO's amicus participation may be made by any BIO member or by any member of the public. Requesters should be aware that requests for BIO amicus participation in petitions for rehearing or for the grant of certiorari will not ordinarily be considered unless the legal issues in the case are of exceptional importance to BIO's membership.

(ii) All requests must be submitted to the Chair, Co-Chair or the AGCIP in writing. 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 the underlying positions of the litigants.

(iii) The AGCIP, Chair or Co-Chair will attempt to obtain all necessary information for determination of BIO's interest as amicus. At the request of the AGCIP, Chair or Co-Chair, adverse parties to the proceeding at issue may be invited to present their positions in the matter under consideration by the Subcommittee.

(iv) Where a request is made that meets the requirements above, the Chair, Co-Chair or AGCIP will forward the relevant materials to the Members of the Subcommittee and indicate a deadline for Subcommittee Members to vote. In parallel, the request and, as appropriate, supplementary materials, will be circulated to the Intellectual Property Counsels' Committee ("IPCC") via email with an invitation to provide the Subcommittee with additional commentary and recommendations.

(4) Initial vote: A majority of the corporate Members of the Subcommittee shall constitute a quorum for the initial vote. By affirmative vote of a majority of participating Members, the Subcommittee will make an initial determination of whether BIO participation as amicus may be warranted. In the absence of a quorum, or if at least a majority of the participating Members do not vote in support of further discussion of BIO amicus participation in a matter, the Subcommittee will report to both the IPCC and the requester of the Subcommittee's lack of interest in amicus participation and the Subcommittee will undertake no further deliberations with respect to the request. If at least a majority of participating Subcommittee Members do vote in support of further discussion of BIO amicus participation in a matter, the Chair will conduct further deliberations concerning BIO participation as amicus and shall schedule a teleconference to discuss the issues and BIO's positions. The AGCIP will not ordinarily vote during Subcommittee deliberations, except to cast a tie-breaking vote.

(5) Where the Subcommittee recommends by initial vote that BIO participate as amicus in a matter (and when the Board of Directors authorization is required, after such authorization has been obtained), the chair shall appoint one or more Members of the Subcommittee to serve as a working group for any amicus submissions that BIO may make in connection with the matter. The working group, with the support of outside counsel as necessary, will prepare a draft submission for circulation to the remaining Members of the Subcommittee.

(6) Final vote: A 2/3 majority of the Members of the Subcommittee shall constitute a quorum for the final vote. By affirmative vote of 3/4 of its participating Members, the Subcommittee will make a final recommendation with respect to the submission.

(7) Upon final vote, the Subcommittee shall finalize the submission, have it approved by the President of BIO or BIO's General Counsel, and submit it to the court on behalf of BIO.

BIO Interest as Amicus:

The Subcommittee shall determine BIO's interest as amicus in a matter by determining whether the matter raises a significant intellectual property issue, including the ability of owners of intellectual property rights to effectively and efficiently obtain redress for infringements or threatened infringements of intellectual property rights.

BIO Board of Director Approval Procedures:

Where appropriate, any matter of amicus participation may be submitted to the BIO Board of Directors or the Executive Committee of the Board for approval.