

PROCEDURE FOR REQUESTING AIPLA AMICUS PARTICIPATION IN A PENDING CASE.

To: Counsel Seeking AIPLA Amicus Participation

Re: AIPLA Amicus Committee Procedures and Policies

The AIPLA Amicus Committee is pleased to consider requests to review cases for possible AIPLA amicus brief participation. This letter will advise you of certain operating policies and procedures of AIPLA and its Amicus Committee. When submitting a request for consideration by AIPLA's Amicus Committee, we prefer that you e-mail to the Committee Chair, the materials described below. If you cannot do that, you must submit 30 copies of the materials, each copy in an unsealed, prepaid courier or express mail envelope. The materials to be submitted are:

The opinion of the court or agency, and a very brief letter (not more than 2 pages), with an e-mail or facsimile copy to opposing counsel, succinctly outlining the following: (a) the issue(s) in the case which you wish AIPLA to consider; (b) the principal reasons why you believe the court below erred, or should be supported, regarding the issue(s); (c) why you think the court's handling of the issue(s) could have a material effect on the state of the law or the intellectual property bar; and (d) the date upon which any brief prepared by AIPLA would be due, if one is filed.

Any other materials that you deem essential to understanding the issues, e.g., briefs filed by the parties. Be selective; forward only essential items. All such materials must be listed in your letter.

A copy of all the materials and this letter must be served on opposing counsel by e-mail, or by courier or express mail if the materials are submitted other than by email.

Note to Opposing Counsel: If you wish to respond, please send the undersigned a brief letter within 3 business days from your receipt of the foregoing materials, preferably by e-mail, with a copy to the requesting counsel. If you wish to include additional materials, please e-mail them, or submit 30 copies as described above. If we do not hear from you within 3 business days, we will assume you do not wish to provide any comments or materials. The Chair normally will then distribute all the materials to the Amicus Committee members. However, in some cases the Chair may elect not to distribute the materials if he believes the case does not warrant the investment of the time of the Committee members and the Board of Directors. Any counsel taking exception to such a decision by the Chair may contact the president of AIPLA for reconsideration.

After the materials are distributed, the Committee members consider the issues, and vote on whether AIPLA should file a brief and, if so, in favor of what position. If the Committee recommends to the Board that a brief be filed, the

materials are forwarded to the Board members, and they determine whether a brief will be filed.

The foregoing AIPLA procedures impose time constraints. Thus, you should not initiate this process unless there is a minimum of six (preferably eight) weeks before the amicus brief would be due. However, AIPLA does not object to your seeking an extension of time on the ground that you have asked AIPLA to consider filing an amicus brief. In communicating with any court or agency about possible AIPLA amicus participation, counsel for both sides should remember:

The fact that AIPLA is considering the case does not mean that AIPLA believes that the court or agency has made an error or a correct decision, or that AIPLA will eventually decide to file a brief.

If the Amicus Committee does not recommend a brief be filed, or if the Board decides not to file a brief despite the Committee's recommendation to do so, such a decision does not indicate any position by AIPLA on the issues in the case. AIPLA considers it highly inappropriate for a party to attach any particular significance to such action by AIPLA in any brief or argument to a court or agency. AIPLA often decides not to file a brief for reasons that have no relation to the merits.

Once a case is considered by AIPLA, AIPLA retains total control over its position in the case, even if that position is adverse to that of the party which brought the case to AIPLA's attention. Consequently, any party who brings a case to AIPLA's attention may not withdraw the case from AIPLA's consideration if the party does not agree with AIPLA's position. Thank you for your attention to these requirements.

To facilitate future communication, it would be appreciated if you would indicate your email address, if available, in any communication with the committee.