

AUTM Policy: Amicus Brief Policy

Approved by the AUTM Board of Directors on May 24, 2022



AUTM Policy on Involvement in Ongoing Litigation

Policy Short Name

- Amicus Brief Policy

Purpose/Goals/Objectives

- To establish a set of criteria that aims to provide a more systematic approach to the process of deciding whether to formally opine on important legal issues when requested by the litigants or amici. The usual manner of support being to join an amicus brief.
- To ensure that the issues on which AUTM does formally opine are selected judiciously in order to avoid diluting AUTM's important voice.

Policy Owner

- Public Policy Legal Task Force (PPLTF)

Method

- Create a series of questions such that as more questions are answered in the affirmative, involvement becomes increasingly warranted.

Questions

- Does the issue involved have a significant impact on university technology transfer (e.g., research funding and compliance; ownership of inventions, works of authorship, marks, or trade secrets; the further development of early-stage technologies; licensing; start-up formation and growth)?
- Does the issue involved have a significant impact on U.S. or international intellectual property law (e.g., domestic patent, copyright, trademark, or trade secret laws or international treaties or conventions involving intellectual property)?
- Is the policy position implicated by becoming involved aligned with AUTM's core mission and the point of view or preferences of a significant cross-section of AUTM's members?
- Does the timing and available bandwidth of PPLTF personnel given filing deadlines and other priorities permit involvement?
- Is there an opportunity to join with other similar-minded amici?
- Is the litigation far enough along to warrant involvement (i.e., has the litigation reached the right tribunal)?
- Was the issue wrongly decided by the prior tribunal?

¹ The earlier the question, the greater its weight.

Procedures²

- Litigants, other amici or counsel coordinating the amici (CCA) make contact with the PPLTF Chair for an initial discussion of the request for involvement (e.g., joining an amicus brief).
- The Chair, performing the role of gate keeper, conducts an initial assessment of the request based on the above criteria.
- If, in the opinion of the Chair, the request meets the minimum threshold for further consideration, the Chair communicates the request to the full PPLTF for its review based on the above criteria and group discussion; preferably during the next monthly meeting, but via e-mail is acceptable when time is of the essence.
- At the conclusion of the discussion, the Chair calls a preliminary vote on whether to become involved.
- If the PPLTF votes to become involved, the Chair works with the CEO to schedule a board meeting on or about three (3) business days before the brief's filing deadline so the board can vote on AUTM's formal involvement.
- The Chair works with amici or CCA to find other similar-minded amici and a brief that is aligned with AUTM's point of view on the issue. On certain issues, however, the PPLTF may determine that AUTM has a unique perspective that should be set forth in a separate, standalone brief. In such a circumstance, the Chair will, in parallel, seek out law firms who might be willing to draft a brief on strictly AUTM's behalf pro bono.
- Chair obtains the 1st draft of the brief (joint or standalone) and sends to PPLTF members for review.
- The PPLTF reviews and comments on the brief and iterates with the amici or the CCA and the author of the brief as time permits.
- At the appropriate time, the PPLTF will take a final vote on a recommendation to the board on whether to become involved.
- Upon an affirmative vote from the PPLTF, a member of the PPLTF (when applicable, the PPLTF member who is also a member of the board) will present the PPLTF recommendation to the board at the pre-scheduled meeting in advance of its vote.
- For amicus briefs, if the board votes to become involved, the Chair will work with the amici, the CCA or AUTM's pro bono counsel as appropriate to finalize the administrative matters required for AUTM to formally become an amicus and join the brief in time for filing by the deadline.

² These steps here represent the typical steps. Each case is different and may require ad hoc modifications due to filing deadlines or other reasons.