

January 2014

Legal Working Group - Team 7

Draft Proposal for

**RULES ON THE EUROPEAN PATENT LITIGATION CERTIFICATE
AND OTHER APPROPRIATE QUALIFICATIONS**

DRAFT**DECISION OF THE ADMINISTRATIVE COMMITTEE****RULES ON THE EUROPEAN PATENT LITIGATION CERTIFICATE AND
OTHER APPROPRIATE QUALIFICATIONS PURSUANT TO ARTICLE
48 (2) OF THE AGREEMENT ON A UNIFIED PATENT COURT**

THE ADMINISTRATIVE COMMITTEE OF THE UNIFIED PATENT COURT,
HAS DECIDED AS FOLLOWS:

Part I – European Patent Litigation Certificate**Rule 1****European Patent Litigation Certificate**

The European Patent Litigation Certificate, hereinafter referred to as Certificate, may be acquired in accordance with the provisions laid down in this Part.

Rule 2**European Patent Litigation Course**

The Certificate may be issued by universities of a Contracting Member State after successful completion of a course on European patent litigation, hereinafter referred to as the Course.

Rule 3**Content of the Course**

(1) The curriculum of the Course shall cover

- a) a general introduction into law, including main aspects of European law;
- b) basic knowledge of private law, including contract law and company law, in both common and continental law;
- c) basic knowledge of international private law;
- d) the role, organisation and patent-related case law of the Court of Justice of the European Union, including case law on supplementary protection certificates;

- e) unitary patent protection, providing advanced knowledge of Regulations 1157/2012 (EU) and 1160/2012 (EU);
- f) patent infringement and patent nullity proceedings in Contracting Member States;
- g) Unified Patent Court, providing advanced knowledge of the Agreement on the Unified Patent Court and Statute as well as the Rules of Procedure;
- h) litigation before the Unified Patent Court, providing advanced knowledge of procedures, practice and case management before the Unified Patent Court.

(2) The Course shall focus in particular on the contents mentioned in paragraph 1 e) to h) and include practical exercise on litigation and negotiation.

Rule 4

Duration of the Course and examination requirements

- (1) The minimum duration of the Course shall be 120 hours.
- (2) The Course shall be concluded by both a written and oral examination focusing on the subjects of Rule 3 paragraph 2.

Rule 5

Course languages and e-learning

- (1) The Course may be provided in any official language of a Contracting Member State.
- (2) E-learning facilities are not excluded as a supplementary part of the program.

Rule 6

Educational bodies

Universities of a Contracting Member State shall be accredited to offer the Course.

Rule 7

Request for accreditation

The request for accreditation of the Course shall be filed with the Unified Patent Court in one of the official languages of the European Patent Office and shall contain:

- a) the curriculum of the Course envisaged;
- b) information concerning the requirements according to Rules 4 and 5;
- c) information concerning the number of hours for each topic of the Course;
- d) names and titles of the selected teachers;
- e) draft scheme of examination, defining the objectives and the method of examination, including the number and duration of written and oral exams.

Rule 8

Examination of the request and decision by the Registrar

- (1) The request for accreditation shall be examined by the Registrar.
- (2) If the requirements under Rules 3 until 6 are met and the request for accreditation complies with Rule 7 the Registrar shall accredit the Course applied for. Accreditation is granted for five years following the date of the notification of the decision on accreditation. A new request for accreditation may be filed one year before the expiry of the five-years at the earliest.
- (3) If the request for accreditation complies with Rule 7 but the requirements under Rules 3 until 6 are not met, the Registrar shall reject the request.
- (4) If the request for accreditation fails to comply with the requirements of Rule 7, the Registrar shall invite the requestor to correct the deficiencies noted within a non-extendable period of two months. If the deficiencies are not corrected in due time, the Registrar shall reject the request.

Rule 9

Reports

Participating Universities are required to report every year to the Registrar on the contents, results and statistics of the accredited Course.

Rule 10**Lodgement of the Certificate**

The European Patent Attorney wishing to represent parties before the Unified Patent Court shall lodge the Certificate at the Registrar. He will thereafter be registered on the list of entitled representatives under Article 48(3) of the Agreement on a Unified Patent Court.

Part II – Other appropriate qualifications**Rule 11****Law Diplomas**

European Patent Attorneys holding a bachelor or master degree in law or who have passed an equivalent state exam in law of a Member State of the European Union shall be deemed to have appropriate qualifications pursuant to Article 48 (2) of the Agreement on a Unified Patent Court and may apply for registration on the list of entitled representatives.

Rule 12**Transitional Period**

During a period of three years from the entry into force of the Agreement on a Unified Patent Court entry on the list of entitled representatives may also be requested by any European Patent Attorney who

(1) passed one of the following courses:

- a) Centre d'Études Internationales de la Propriété Intellectuelle, courses leading to the Diploma on Patent litigation in Europe or to the Diploma of international studies in industrial property (specialized in patents);
- b) FernUniversität in Hagen, course "Law for Patent Attorneys";
- c) Nottingham Law School, course "Intellectual Property Litigation and Advocacy".

or

(2) has represented a party in at least two patent infringement actions, initiated before a national court of a Contracting Member State within the four years preceding the application for registration.

Rule 13

Request for recognition of other appropriate qualifications

- (1) Requests for recognition of other appropriate qualifications shall be filed with the Unified Patent Court in one of the official languages of the European Patent Office.
- (2) In case of Rule 11 or 12 (1), the request for recognition of other appropriate qualifications shall contain a copy of the respective diploma.
- (3) In case of Rule 12 (2), the request shall include all details necessary to identify the infringement actions the European Patent Attorney intends to rely on such as
 - a) name of the parties,
 - b) court seized with the action,
 - c) date of issue of the proceedings.

Reasonably available evidence to support the request, such as a copy of the power of attorney shall be submitted.

Rule 14

Examination of the request for recognition of other appropriate qualifications

- (1) The request for recognition of other appropriate qualifications shall be examined by the Registrar.
- (2) If the requirements contained in Rules 11 or 12 are met and the request for recognition of other appropriate qualifications complies with Rule 13, the registration of the European Patent Attorney on the list of entitled representatives shall be effected.
- (3) If the request for recognition of other appropriate qualifications complies with Rule 13 but the requirements under Rules 11 or 12 are not met, the Registrar shall reject the request.
- (4) If the request for accreditation fails to comply with the requirements of Rule 13, the Registrar shall invite the requester to correct the deficiencies noted within a non-

extendable period of two months. If the deficiencies are not corrected in due time, the Registrar shall reject the request.

Part III - Registration

Rule 15

Duration of registrations

- (1) Notwithstanding paragraph 2 of this Rule, registration of European Patent Attorneys on the list of entitled representatives shall be permanent, including registrations under the transitional provisions according to Rule 12.
- (2) Registration on the list of entitled representatives shall cease to have effect in the event that the registered representative ceases to be a registered European Patent Attorney in the list of European Patent Attorneys maintained by the European Patent Office. The Registrar will strike the name off the list of entitled representatives, upon request or ex-officio. In case the European Patent Attorney is re-entered on the list maintained by the European Patent Office, he shall, upon his request, be re-entered by the Registrar on the list of entitled representatives.
- (3) The registrar will strike the name of an entitled representative from the list, if he so requests.

Part IV – Review

Rule 16

Decisions subject to review

Decisions of the Registrar referred to in Rules 8, 14 and 15 may be challenged in accordance with the following provisions.

Rule 17

Formalities of the petition for review

The petition for review shall be filed in writing in one of the official languages of the European Patent Office, within one month of notification of the challenged decision.

It shall indicate the reasons for setting aside the decision of the Registrar.

Rule 18

Revision by the Registrar and decision by the President of the Court of Appeal

- (1) If the Registrar considers the petition for review to be admissible and well founded, he shall rectify his decision.
- (2) If the Registrar does not rectify his decision within one month of receipt of the petition for review, he shall forward it to the President of the Court of Appeal who shall decide on the petition for review.

Part V – Notification and Entry into force

Rule 19

Notification

Decisions of the Registrar and the President of the Court of Appeal shall be notified.

Rule 20

Entry into force

This Decision shall enter into force on [...].

Done at [...] on [...]

For the Administrative Committee
The Chairman