

## Consultation on the Draft Rules on the European Patent Litigation Certificate and other appropriate qualifications.

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### ARTICLE 48-2 JUB

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Compagnie Nationale des Conseils en Propriété Industrielle (CNCPI), established by article L 422-9 of the French Code of Intellectual Property, is the representative body of French professionals specialized in Industrial Property. It includes more than 900 members, about half of them are representatives before the European Patent Office (EPA's).

CNCPI has been active for many years for the establishment of a Court for validity and infringement of European patent.

CNCPI supports the implementation of the Unified Patent Court (UPC), wishes the rapid start of its activity and is ready to play its role to contribute to this purpose.

This note is the contribution of CNCPI to the public consultation on the draft decision of the Preparatory Committee established by its legal group on the subject noted in the title.

#### • INTRODUCTION

Conditions for success of UPC are many, we consider here that a reasonable operating cost and high quality decisions are the most important. For this last point are particularly targeted the speed and predictability of decisions.

Representatives of the parties will contribute to these objectives through their advising work and the representation of the parties. In this purpose, the International Agreement establishing the UPC states that the parties may decide whether to be represented by lawyers (Rule 48-1) or by European patent attorneys (Rule 48-2).

This last possibility for parties is submitted to an additional condition which is that the EPA's have appropriate qualifications such as a European Patent Litigation Certificate.

The application of this condition, that is the subject of this consultation, must provide the objectives above recalled and aim to ensure consistency of competence and independence for all representatives. Mainly it has to assert that the authorized EPA's will provide advices and services similar to those of lawyers who have a legitimate right to representation before the new jurisdiction as before all others.

In this purpose, it should be recalled that the EPA's have passed an examination considered of a high level, organized and controlled by the EPO (European Patent Office). This review focuses on the theoretical and practical knowledge regarding Patent Laws, the validity of patents and also some aspects of infringement, the application of the European Patent Convention which has its own rules of procedure and interferes with other international Conventions and national laws in this field. This examination may only be presented by professionals who have completed a scientific training and had a practice of three years under the control of a qualified European patent attorney.

Appropriate qualifications required by UPC agreement are those which, in addition to the qualification recognized by the EQE, serve the purpose of its proper functioning. CNCPI approves major options of the draft rules submitted to the consultation, and provides the following comments:

- The DRAFT RULES

1. European Certificate Patent Litigation

- Rule 2: The issuance of the Certificate of decentralized manner by centers in charge of both teaching and examination seems well suited.

Taking into account the specificities of each category, it seems particularly appropriate that the training of all professionals, involved in the functioning of UPC, is homogeneous. Thus, the possibility for the training center for judges in Budapest to organize training for representatives and issue the certificate is suitable. It seems desirable to clarify that it will, in this role, meet the same requirements as other training centers.

- Rule 4: The number of hours proposed here seems to respond appropriately to the above recalled objectives taking into consideration the prior professional training of EPA's.

- Rule 6: The strict limitation of universities and non-profit organizations could be unduly burdensome. We suggest that exemptions may be granted by the Administrative Committee.

2. Other qualifications

- Rule 12-a: The courses listed appear to meet the objectives of this regulation. Given the number of countries involved and the diversity of training systems, there are certainly more courses satisfying this requirement, it is appreciated that the list is not limiting. To facilitate the implementation of this provision by the Administrative Committee it may be useful to expressly stipulate that a principle of equivalence between different formations is acceptable.

- Rule 12-b: The application of this provision could prove difficult either due to regulation or by the practice. In many states, the EPA's do not directly represent the parties in national Courts. But their role is often important and should be taken into account. It is therefore proposed to extend this requirement by providing that substantial contributions in patent litigation can be taken into account even if they constituted assistance to a lawyer.

3. Article 48-5 and 48-6

The rules for these articles do not fall within the scope of this consultation. However, due to their proximity to the object of this consultation which is the first, it seems justified to bring now the following comments to the attention of the Legal Group:

The UPC agreement establishes the provisions for the conduct of Representatives regardless of the way (48-1 or 48-2) they meet the conditions for representation. These provisions which are intended to ensure the safety of the parties and of their representatives are related to very different and particular national contexts. It is to implement uniform rules that it was necessary to make specific provisions in the UPC agreement. The precisions that must be brought to them by the Rules (RoP) have no reason to be different depending on the access road to the representation. Any other approach would be at least a source of complexity, and probably confusing, this to the detriment of the parties and to the safe and to the conduct of the trial.



CNCPI hopes that this approach and these comments will contribute to the progression of the UPC and we remain available to the Legal Group and to the Legal Preparatory Committee to provide any clarification or to participate in a hearing.

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