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HUNGARIAN CHAMBER OF PATENT ATTORNEYS

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Hungary

To: Preparatory Committee

Re: Public Consultation on the Rules on the European Patent Litigation Certificate and Other Appropriate Qualifications pursuant to Article 48 (2) of the Agreement on a Unified Patent Court

Dear Sirs,

Thank you for the possibility to set forth our comments to the draft on the Rules on the European Patent Litigation Certificate and Other Appropriate Qualifications pursuant to Article 48 (2) of the Agreement on a Unified Patent Court within the framework of the public consultation of this issue.

As an introduction, we would mention that on the basis of the activities of our members in different international IP associations (especially *epi*, EPLIT and CNIPA), we concentrate on issues which were not discussed in the concerning submissions of these associations or not in the depth as, in our opinion, would be necessary.

1. As it comes from the proposals of the above mentioned associations of patent attorneys, some amendments were suggested concerning Rule 12 (Other qualifications during a transitional period). Our further comments are as follows:

a) Concerning Rule 12 (a):

According to the information obtained, in the list of the eligible courses only the first three courses are aimed to provide the students with a general knowledge of law (where the CEIPI and the Nottingham Law School concentrate on litigation). The other three courses deal mainly with intellectual property law, as it comes from the name of the courses, too.

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We are of the opinion that some other national qualification courses have a similar aim and probably a similar structure in the subjects. For example in Hungary a specific 2-year industrial property course (stipulated by law) is organized by the Hungarian Intellectual Property Office (see details in the enclosed summary). Here we would highlight only one of the subjects: “Court procedure in IP related procedures and suits” and, after passing all the 14 examinations, defending the diploma work, passing the 3-year candidate period, passing the final examination and taking the oath, *a qualified patent attorney is allowed to represent before every level of the court system (first instance, second instance, Supreme Court). It ensures that Hungarian patent attorneys have the possibility to obtain a real practice in every type of court procedures.*

Accordingly, we respectfully ask to insert into the list of the eligible courses the following one:

“x”) Hungarian Intellectual Property Office, “High Level Course on Industrial Property Law” .

b) Concerning the phrase “action” in Rule 12 (b):

It is an important deficiency of the proposal that the term “action” is not defined there. Accordingly, it is not clear what can be accounted as an “infringement action”. We have to keep in mind that there can be a first instance decision, and thereafter a second instance decision, and in some cases the final decision is drawn by the Supreme Court (regarding the specificities of the Hungarian system).

The definition of the term “action” should also be considered in connection with the “5-year limit”. It may happen that after appeal(s) the case is sent back to the first level again (e.g. because of a procedural error), so a case may last for many years.

Accordingly, it seems to be advisable to declare that a decision on the merits at any level of a court system should be accounted as an action. Moreover, obtaining a decision in a Preliminary Injunction case at any instance should also be regarded as an independent action (which is also tried in Hungary at first instance by the same court where the regular action is/will be initiated, so it should be counted separately).

Please note that in lack of such a definition, the term “infringement action” cannot be interpreted since the practice is different in the member states how a court case/action is defined.

c) Concerning the phrase “having represented a party on his own without the assistance of a lawyer” in Rule 12 (b):

From this aspect the Hungarian practice can be relevant since in Hungary a patent attorney is allowed to represent before any level of the court system on his own. Of course, the same is true for lawyers (i.e. for attorneys at law). However, in the practice, double representation is applied in almost every important case (i.e. when the case has a remarkable complexity, i.e. practically in almost every patent infringement case). It means that the overwhelming part of the litigation practice comes from cases where patent

attorneys and lawyers represent together. Here we would underline that the double representation is not a unique Hungarian situation. In such type of representation, it is not relevant from the viewpoint of obtained practice whether the patent attorney represented alone or together with a lawyer.

Accordingly, we are of the opinion that the wording “having represented a party before a relevant court” should be applied in Rule 12 (b).

In our interpretation the phrase “having represented” embraces the right to speak before the relevant court (which really should be a minimum level for an accepted practice).

Please note that without this broadening a remarkable part of the very patent attorneys would be excluded who have the most recognised practice nationally.

Yours faithfully,

Dr. Ferenc TÖRÖK
President of the Hungarian
Chamber of Patent Attorneys

Enclosure: Details of the national qualification for patent attorneys in Hungary

Budapest, July 24, 2014

ENCLOSURE

Details of the national qualification for patent attorneys in Hungary

In Hungary a specific law is drawn for regulating the profession of patent attorneys (Law XXXII, 1995 on Patent Attorneys). The examination for becoming a patent attorney is regulated by the Ministerial Decree 76, 1995 issued by of the Ministry of Justice.

The education is organized by the Hungarian Intellectual Property Office (HIPO). It is based on a 2-year course (270 contact hours), embracing 14 main subjects, one of them is entitled “Court procedure in IP related procedures and suits”. After passing all the 14 examinations a diploma work should be elaborated to finish this stage. Besides this 2-year course, there is a compulsory 3-year practice as a patent attorney candidate, then the candidate (enrolled on the list of candidates handled by the Hungarian Chamber of Patent Attorneys) has to pass the official patent attorney qualification examination which has a written and an oral part. The latter should be accomplished before a senate having the following composition: 3 persons from the management of the HIPO and 2 patent attorneys nominated by the Hungarian Chamber of Patent Attorneys, and the senate is chaired by the President or Vice-President of the HIPO. Having passed this examination an oath should be taken before the President of the Hungarian Chamber of Patent Attorneys.

Finally it should be underlined that *the patent attorney title in Hungary gives authorization for representation before every level of the court system* (first instance, second instance, Supreme Court). It ensures that Hungarian Patent Attorneys have the possibility to obtain a real practice in every type of court procedures.