Intellectual Property Mediation Conference

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UNIFIED PATENT COURT (UPC)
Einheitliches Patentgericht (EPG)
Juridiction Unifiée du Brevet (JUB)

PATENT MEDIATION AND ARBITRATION CENTRE (PMAC)
UPC
1. Legal Framework
2. Structure of the Court
3. State of Play

PMAC
4. Legal Framework
5. Competence
6. (Draft) Legal Structure
7. Operational Issues
8. Opportunities
1. Legal Framework UPC

**CURRENT PATENT LITIGATION**
- Patents are subject to the laws of the countries of registration, and so are claims for infringement (CJEU 13 July 2006, Roche / Primus & Goldenberg)
- 38 countries to litigate & 38 national laws to apply
- Art. 24.1. Brussels I Regulation: validity exclusive jurisdiction of each country of registration

**UPC LITIGATION SYSTEM**
- Common court for patent litigation (infringement/validity/damages)
- 25 countries (Poland & Spain?)
- Two tier system (CFI and CA)
- No anglo-saxon “discovery” / “disclosures”
- No German “Besichtigungsanspruch”
- Introduction of “witness statements” / “cross-examination”
- Unitary and European Patents

**NATIONAL COURTS**
- *European Patents/National Patents*
1. Legal Framework UPC

EU Legal Order

Unitary Patent Regulation
REGULATION (EU) No 1257/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection

Translation Regulation
COUNCIL REGULATION (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

Intergouvernemental

Unified Patent Court Agreement (UPCA)
COUNCIL AGREEMENT on a Unified Patent Court (2013/C 175/01)
2. Structure of the Court

CJEU

Court of Appeal
Luxembourg

Local Divisions
(....)

Central Division
- Paris (perf. operations & transporting, textiles, fixed constructions, physics & electricity)
- London (human necessities, chemistry, metallurgy)
- Munich (mechanical engineering, lighting, heating, weapons, blasting)

Regional Divisions

COURT OF FIRST INSTANCE

Registry (Luxembourg)

Training Center for Judges (Budapest)

Patent Mediation and Arbitration Centre (Lisbon/Ljubljana)
3. State of Play UPC

Minutes of the Signing of the UPCA (doc. 6572/13)
  • PrepCom shall prepare practical arrangements and set out a roadmap for the establishment and coming into operation of the court
  • To be formalised by the Administrative Council (once in operation)
  • PrepCom composed of the representatives from the Signatory States

Urgent matter
  • Training of judges / appointment of judges
  • Rules of Procedure
  • Budget and Governance of the Court
  • Facilities
  • ....

5 working areas
  Legal, Financial, IT, Facilities, HR & Training

Legal Framework
  • Working groups (Arbitration and Mediation Centre – Group 6)

Provisional Target Date
4. Legal Framework PMAC

The Agreement

ARTICLE 6 / The Court
(1) The Court shall comprise a Court of First Instance, a Court of Appeal and a Registry.

ARTICLE 35 / Patent mediation and arbitration centre
(1) A patent mediation and arbitration centre ("the Centre") is hereby established. It shall have its seats in Ljubljana [Slovenia] and Lisbon [Portugal].
(2) The Centre shall provide facilities for mediation and arbitration of patent disputes falling within the scope of this Agreement. Article 82 shall apply mutatis mutandis to any settlement reached through the use of the facilities of the Centre, including through mediation. However, a patent may not be revoked or limited in mediation or arbitration proceedings.
(3) The Centre shall establish Mediation and Arbitration Rules.
(4) The Centre shall draw up a list of mediators and arbitrators to assist the parties in the settlement of their dispute.

ARTICLE 39 / Financing of the Centre
The operating costs of the Centre shall be financed by the budget of the Court.

ARTICLE 52 / Written, interim and oral procedures
(2) In the interim procedure, after the written procedure and if appropriate, the judge acting as Rapporteur, subject to a mandate of the full panel, shall be responsible for convening an interim hearing. That judge shall in particular explore with the parties the possibility for a settlement, including through mediation, and/or arbitration, by using the facilities of the Centre referred to in Article 35.
4. Legal Framework PMAC

The Rules (16th Draft)

Rule 11 – Settlement.
1. At any stage of the proceedings...... it may propose that the parties make use of the facilities of the Patent Mediation and Arbitration Centre (“the Centre”) in order to settle or to explore a settlement of the dispute. In particular the judge-rapporteur shall during the interim procedure, in particular at an interim conference in accordance with Rule 104(d), explore with the parties the possibility of a settlement, including through mediation and/or arbitration, using the facilities of the Centre.
2. Pursuant to Rule 365 the Court shall, if requested by the parties, by decision confirm the terms of any settlement or arbitral award......
3. ..... 

Rule 104 / Aim of the interim conference
The interim conference shall enable the judge-rapporteur to (d) explore with the parties the possibilities to settle the dispute or to make use of the facilities of the Centre,

Rule 287 / Attorney-client privilege
Where a client seeks advice from a lawyer he has instructed in a professional capacity, whether in connection with proceedings before the Court or otherwise, then any confidential communication (whether written or oral) between them relating to the seeking or the provision of that advice is privileged from disclosure, whilst it remains confidential, in any proceedings before the Court or in arbitration or mediation proceedings before the Centre.

Rule 332 / General principles of case management
Active case management includes (e) encouraging the parties to make use of the Centre and facilitating the use of the Centre;
5. Competence PMAC

- The Centre is competent for “mediation and arbitration of patent disputes falling within the scope of this Agreement”

- Competent for disputes related to “opted-out” European patents?

- Article 35.2 UPCA „... Article 82 shall apply mutatis mutandis to any settlement reached through the use of the facilities of the Centre, including through mediation.”
6. (Draft) Legal Structure

PMAC = part of the UPC

- **Administrative Committee**
  - What
  - Duties

- **Advisory Committee**
  - What
  - Duties

- **Case-Managers**
  - Who
  - Where

- **Secretarial assistance**
  - Who
  - Where
7. Operational Issues

• One Centre / Two Seats
• Languages
• Fixed Fees (including ... excluding ...)
• Draft Rules of Mediation and Arbitration
8. Centre of opportunities!

- Backed by an independent Court and maintaining independence
- Working in the fringe of the UPC
- ADR part of educational framework of judges
- Digital environment
- Multi-linguistic environment
- Technical knowledge
- Optimized Rules of Mediation and Arbitration
- Light operational/adjustable structure
- …
Questions?