

Roadmap of the preparatory committee of the Unified Patent Court

I. Introduction

In the declaration of the Contracting Member States concerning the preparation for the coming into operation of the Unified Patent Court, the Preparatory Committee is asked to set out a roadmap for the early establishment and coming into operation of the Unified Patent Court (UPC). This document contains the roadmap. The aim of this roadmap is twofold. It serves as a tool for the Preparatory Committee to manage and control its tasks and at the same time enhances the transparency and predictability of the Committee's work towards interested circles.

II. Basic principles

At its first meeting the Preparatory Committee decided that early 2015 would be a realistic target date for the entry into operation of the UPC. It has deliberately left some flexibility to fix the exact date at a later stage. The roadmap takes this as a starting point. The Preparatory Committee realizes that this is a very ambitious target date that does not leave much room for delays. It shall therefore closely monitor the feasibility of the target date and take appropriate measures if needed.

The Committee regards its task to prepare the UPC to be fully operational in early 2015 as from the first day of its existence. It means that the UPC will need to be equipped with sufficient judges who have the necessary experience with patent litigation and, as far as possible shall have received the required training as well as being adequately staffed. The legal and financial framework will also need to be in place.

The UPC will need to have at its disposal adequate facilities and an electronic filing and case management system. The Registry will need to be able to register and manage cases. Patent holders wishing to opt out their patents in accordance with Article 83.3 of the UPC Agreement shall have the opportunity to register their opt-outs in a way which ensures that the opt out is effective from the first day of the UPC being in operation. Requirements for the patent litigation certificate as well as training shall be decided upon in advance.

The UPC shall be operational on its first day of existence despite the fact that none of the executive functions of the Court will exist beforehand. This will be a logistical challenge to the Committee and the transition will need to be carefully planned. The Preparatory Committee shall therefore in due time establish a scenario for the smooth transition from the preparatory phase into the operational phase, including a plan for the necessary decisions and appointments and the sequence in which they must be realized.

III. Working method

The Preparatory Committee's activities are organised in five areas, each led by a coordinator. These coordinators shall organise the work in the area for which they are responsible. They shall report to and receive guidance from the Committee. For each area project teams (and in certain cases sub teams) have been formed. These teams are composed of experts from the Signatory States.

Stakeholders shall be consulted in the course of the Committee's and the project teams' work according to the Communication plan.

For most areas it will be important to have an indication of the workload of the UPC during its first years and on Signatory States' choices with regard to setting up regional and local divisions. Therefore an assessment of what may be expected during the first years will be carried out. A good starting point for the assessment would be the study of the Commission DG Internal Market on caseload and financing of UPC. Signatory States' activities with regard to regional and local divisions shall be regularly evaluated.

IV. Working areas

a. Legal framework

Coordinator: Mr Johannes Karcher (Germany)

a.1 Rules of Procedure

Work will be based on the draft proposal elaborated by the expert practitioners group chaired by Mr Kevin Mooney. In a first step, a comprehensive consultation of the users shall take place on the basis of this draft. In a second step a special project team will in the light of the comments of the users examine the draft proposal and discuss the necessity for amendments. The European Commission shall be requested to give its opinion on the compatibility of the Rules of Procedure with Union law. The project team will be advised by the expert practitioners group.

The preparatory Committee foresees the following time schedule:

May 2013	Elaboration of 15th Draft of the Rules of Procedure by expert practitioners group
11 June 2013	Decision of the Preparatory Committee on Consultation
Mid June till end of September 2013	Comprehensive consultation of the interested circles
October – November 2013	Expert practitioners group will study and evaluate the comments made in the consultation
December 2013	Proposals and comments of the expert practitioners group
January till mid February 2014	Study by team 1 of the draft Rules of Procedure and comments
End of February 2014	Hearing of user organisations
March till May 2014	Review of the draft rules of procedure by team 1
June till July 2014	Adoption of Rules Procedure in the Preparatory Committee

a.2 Rules governing the Registry and the Registrars service, Rules on the Advisory, Budget and Administrative Committees.

Work is expected to commence immediately and first drafts are expected to be finalised in October 2013.

a.3 Rules on legal aid

The circumstances under which a person is deemed to be wholly or partially unable to meet the costs of proceedings, the level of the legal aid and the bearing of the costs thereof shall be defined. Since the Rules of Procedure contain provisions on legal aid as well, both projects shall be aligned closely.

Work is expected to commence immediately and a first draft is expected to be finalised in October 2013.

a.4 Court Fees and recoverable costs

A schedule for the Court fees, containing of a fixed fee as well as a value based fee above the defined ceiling of the fixed fee shall be established. Also a method for the calculation of the value of the case shall be defined. The question of court fees is also dealt with by the financial group. While the legal group will primarily assume the responsibility for the establishment of a schedule of the different fees, the financial group will determine the amount for those different fees of the court. A scale of

recoverable costs shall be adopted, which shall set ceilings for such costs by reference to the value of the dispute.

Work is expected to commence immediately and a first draft is expected for October 2013.

a.5 Mediation and arbitration

Mediation and arbitration are neighbouring fields. Especially general questions concerning the main set up shall be discussed together.

For the establishment of the rules on mediation and arbitration a number of principle questions need to be decided upon before the drafting of the rules can be tackled. An analysis and comparison with existing systems will need to take place in order to ensure that the system brings added value to the users.

Work shall commence with the necessary analysis and the establishment of the principles on the basis of which the Applicable Rules shall be drafted.

Work is expected to commence immediately aiming a first draft in October 2013.

a.6 Rules on the litigation certificate for patent attorneys

The compilation of a curriculum needs to be successfully completed for the establishment of a litigation certificate. Such a curriculum could be administered by a suitable educational body. Alongside with the establishment of a standard there is a need to explore the possibility to offer courses at several locations.

Work is expected to commence immediately, aiming at a first draft to be ready December 2013.

b. Financial aspects

Coordinator: Mr Jean François Magaña (France)

b.1 Financial regulations

The Financial regulations shall include provisions regarding the establishment, structure and implementation of the budget, internal control and audit procedures. The Regulations could if possible be based on examples taken from other international organisations. An accountancy scheme that complies to IPSAS shall be developed. Work is expected to commence immediately and a draft is expected to be finalised in December 2013.

b.2 Pension, social security and salary schemes

Managing social security systems should not be a main task for the UPC. The possibility to outsource such activities shall therefore be explored. (For example to a specialised agency such as the Coordinated Organisations International Service for Remuneration and Pensions). It shall be explored whether this is feasible also with regard to salary schemes.

Work is expected to commence immediately and a draft is expected to be finalised by December 2013.

b.3 Budgets and sustainability

An evaluation shall be made of the operational costs that can be foreseen for the first 7 years, taking into account that during this transitional period many costs will be borne by Signatory States hosting seats or divisions of the Court. Based on this evaluation and the provisions that shall be developed with regard to court fees and legal aid (IV-a supra) a budget for the first year shall be developed. The budget shall display the estimated contributions of each Signatory State.

The question of court fees is also dealt with by the legal framework group. While the legal framework group primarily will assume the responsibility for the establishment of a schedule of the different fees, the financial group will need to determine the amount for those different fees of the court. The level of the court fees is of significant importance to the users. It should therefore be easy accessible and structured in a separate part of the budget. The level of the court fees will be the object of a public consultation. It will be launched after the first assessment of the level of the court fees has been presented.

Work is expected to commence immediately. A first assessment/draft of the acceptable fee level the budget for the first year of operation is expected in December 2013. Thereafter the budget for the first year of operation is expected to be finalised in May 2014.

b.4 Member State's proportional contribution to a Member State that has paid damages.

A schedule shall be developed for Member States' proportional contributions to a Member State that has paid damages to a party in case of violation of Union law by the UPC. The schedule is expected to be available by April 2014.

c. **IT**

Coordinator: Mr Neil Feinson (United Kingdom)

Under this chapter, the Preparatory Committee will develop an electronic filing and case management system (IT-system) which must:

- Be fully accessible on line for judges and other staff of the UPC;
- Enable secure exchange of documents and information both internally (between seats, sections, divisions, panels, judges and staff of the Registry and sub-registries) and externally (between the UPC and parties to proceedings, who should be able to file submissions and documents in electronic form).

In addition public on-line inspection of certain parts of the files shall be enabled and a comprehensive Court website shall be developed. (For the preparatory phase, a Preparatory Committee website shall be developed.) Work under this chapter can be split up into three phases.

c.1 Preparatory work and decisions

During this phase, the required functionality of the system needs to be defined. Preferably a distinction should be made between what is necessary for the UPC to be operational and what is desirable and could possibly be developed at a slower track. The technical specifications for the procurement will be prepared and possible models for the system and their supplier's needs to be identified. An important element of this phase will be to identify the most appropriate method for procurement.

Work is expected to be finalised in September 2013.

c.2 Procurement process

It is assumed that the cost of the IT-system will exceed the EU procurement thresholds and the relevant approach to adopt under EU rules is the restricted procedure.

The procurement process is expected to take place September 2013-March 2014.

c.3 System development and testing

The length of time required for these two phases will depend on whether an off-the-

shelf solution is identified or extensive development work is required and on the working method used. If an agile approach is adopted, testing and development can proceed in parallel sprints.

It may be necessary to develop the system in two phases, with non-key but still desirable requirements delayed until a second phase.

Work is expected to be finalised during the first quarter of 2015.

d. **Facilities**

Coordinator: Mrs Anne Goedert (Luxemburg)

The Signatory States hosting a local, regional or the central division of the Court of First Instance or the Court of Appeal have affirmed their intention to have the appropriate facilities in terms of premises, furniture, offices and IT equipment and administrative support staff in place before the entry into force of the Agreement.

d.1 Requirements

The number of court rooms, offices and other premises that are needed will be identified on the basis of the expected workload during the first years. Flexible facilities may serve to align to the needs of a growing organisation.

Requirements with regard to IT equipment will be identified. The need for arrangements with the hosting countries shall be investigated with regard to maintenance and other facilities and services as well as with regard to the necessary access and security requirements. If deemed necessary such arrangements shall be prepared. Requirements with regard to simultaneous translation and other translation facilities shall be determined in coordination with the hosting countries.

Work on these requirements is expected to be finalised by December 2013.

d.2 local staff

Finally the required number and qualifications of local staff shall be determined on the basis of which hosting countries shall be asked to provide these resources.

The work on the number and qualifications of local staff is expected to be finalised in February 2014.

d.3 Headquarter agreements

The need for Headquarter agreements shall be analysed and if necessary preparatory work shall be conducted.

e. **Human resources and training**

Coordinator: Mr Olivér Várhelyi (Hungary)

The organisation of the training of candidate judges, the preparation of the nomination of the first group of judges and the organisation of the initial pool of judges are the priority under this chapter. The preparation of it shall be conducted by the expert group, which will be assisted by an Advisory Panel, composed of experienced, active or former members of chambers of appeal or supreme courts or former lawyers with recognised competence in patent litigation.

e.1 Training

Preparations will be made for a permanent training framework, that shall be further developed and endorsed by the Administrative Committee once established (confer infra). Simultaneously, a provisional intensive training framework for candidate judges both legally and technically qualified will be established for the preparatory phase and

the first year of operation of the UPC.

For legally qualified judges, training should consist of advanced courses in patent law and patent litigation, possibly combined with mock-trials and internships at patent courts in countries with highly specialized and highly experienced patent courts as well as courses on the UPC Agreement and the Rules of Procedure.

For technically qualified judges training should consist of basic concepts of patent law relating in particular to the validity and basic concepts of civil procedure, as well as training on the UPC Agreement and the Rules of Procedure.

Language training for both legally and technically qualified judges should allow judges to work on files and participate in deliberations on a patent case in at least one language which is not their mother tongue.

Preparations will start in June 2013, with the first training programs expected to start in November 2013.

e.2 Preparation for the nomination of judges

Based on the assumptions with regard to the number of cases and divisions (confer III supra), the number of required judges will be assessed. It is assumed that in the early years, the UPC will work as much as possible with part time judges and (in particular in the local divisions with high workload, the central division and the Court of Appeal) a limited number of full time judges.

Recruitment of the first judges of the UPC will aim at appointing a sufficient number of part- time and full time judges before the entry into operation of the UPC and to create a reserve list of judges who could be appointed should the case law increase more than expected.

Appointment of judges shall be done by the Administrative Committee, once the UPC is established. It is the task of the Preparatory Committee to prepare the nomination process to the extent that the appointment will be possible without any difficulty. To this end a pre selection process shall be started before the summer break. A provisional list of suitable candidates shall be established in October, allowing the candidates to participate in the training program that is to be established.

Work is expected to be finalised during the first quarter of 2015

e.3 List of arbitrators and mediators and list of court experts

Preparation of the lists of arbitrators and mediators and a list of court experts are expected to start in fall 2013 by publishing calls for interest. In the case of mediators and arbitrators additional training may be offered.

e.4 List of patent attorneys entitled to represent parties before the UPC

Based on the work of the Legal Framework group (IV-a supra) the HR group shall make facilities available that will enable patent attorneys that meet the requirements for obtaining a patent litigation certificate to register with the UPC.

e.5 Plan for future permanent training framework provided in Article 19 UPC Agreement.

Based on the experiences of the initial training framework, a plan for a permanent training framework shall be prepared, to be further endorsed and executed by the administrative Committee.