



Reference number:  
UPC\_CoA\_364/2024  
APL\_39133/2024  
and  
UPC\_CoA\_393/2024  
APL\_40020/2024

**Order**  
**of the President of the Court of Appeal of the Unified Patent Court**  
**issued on 22 August 2024**

APPLICANT:

- [REDACTED]

PETITION FOR REVIEW:

- APL\_39133/2024 UPC\_CoA\_364/2024 of 1 July 2024,  
and
- APL\_40020/2024 UPC\_CoA\_393/2024 of 4 July 2024

ORDER OF THE REGISTRAR TO BE REVIEWED:

- Order of the Registrar ORD\_33260/2024 of 4 June 2024 concerning APP\_31136/2024

DECISION DENYING RELIEF OF THE REGISTRAR:

- Order of the Registrar ORD\_43102/2024 of 23 July 2024 concerning APL\_39133/2024  
UPC\_CoA\_364/2024 and ORD\_43106/2024 concerning APL\_40020/2024  
UPC\_CoA\_393/2024

SUMMARY OF FACTS:

1. On 27 May 2024, the applicant requested to be entered on the list of representatives before the Unified Patent Court (UPC), claiming that he fulfilled the requirements of Article 48(2) of the Agreement on a Unified Patent Court (hereinafter: UPCA). With his application, he submitted a copy of a certificate from the European Patent Office certifying that he had passed the European qualifying examination and thus fulfilled the requirement for entry on the list of professional representatives authorised to act before the European Patent Office, as well as a link to the electronically maintained list showing that he is included there. In addition, he submitted a copy of a certificate from the German Patent Office dated 23 June 1998, which shows that is entitled to use the title “Patentassessor” (patent assessor) after passing the examination in accordance with § 8 of the German Patent Attorney Code, as well as a copy of a certificate from the German Patent Office indicating that he is admitted as a patent attorney. As part of his training to become a patent attorney, he completed the so-called “Munich Year” from 1 June 1997 to 30 May 1998

and successfully passed subsequent written and oral examinations in June and July 1998. The training content of a “Munich Year” completed during this period is equivalent to the “Law for Patent Attorneys” (“Recht für Patentanwältinnen und Patentanwälte”) course of the FernUniversität (Distance-Learning University) in Hagen, which is listed as an alternative appropriate qualification during the transitional period under Rule 12.1(a)(ii) of the Rules on the European Patent Litigation Certificate and other appropriate qualifications (hereinafter: EPLC Rules). The equivalence is also evidenced by a letter from the German Patent and Trademark Office dated 14 March 2024 and the explanatory memorandum to the Third Regulation of the Federal Ministry of Justice amending the Regulation concerning Patent Attorney Training and Examination (Begründung zur Dritten Verordnung des Bundesministeriums der Justiz zur Änderung der Patentanwaltsausbildungs- und -prüfungsverordnung) of 23 November 1998 (BR-Drucksache 926/98). In addition, the applicant pointed out that he had studied at the Universities of Hanover and Munich and had participated in working groups, introductory exercises, and seminars, for which he submitted corresponding evidence.

2. In a decision dated 4 June 2024, the Registrar of the UPC rejected the application. In his reasoning, he stated that no course and/or certificate other than those listed in Rule 12.1(a) of the EPLC Rules could be recognised as an alternative qualification. Since the applicant had failed to demonstrate that he had completed any of the courses listed therein, or had been granted any of the certificates mentioned therein, or any qualification referred to in Rule 11, his application must be rejected.
3. In his petition for review, the applicant asserts that, contrary to the summary of facts in the decision of the Registrar of the UPC, he fulfils the criteria under Rule 12.1(a)(ii)), that sufficient grounds are not given for the decision, and that it is not disputed in the contested decision that the course content in “Law for Patent Attorneys” course in the years 1998 and 1999 was part of the so-called “Munich Year” and was transferred from this “Munich Year” to the course “Law for Patent Attorneys” course in 1999, and that the applicant successfully completed the “Munich Year” in 1997 and 1998, passing both written and oral examinations.
4. In a decision dated 23 July 2024, the Registrar of the UPC (represented by the Deputy-Registrar of the UPC) did not grant the petition for review APL\_35133/2024 and APL\_40020/204 filed by the applicant and referred it to the President of the Court of Appeal for a final decision. The applicant’s argument that the contested decision does not dispute the fact that the programme/curriculum of the “Law for Patent Attorneys” course at the FernUniversität in Hagen was part of the “Munich Year” in 1998 and 1999, and that it was transferred from the Munich course to the “Law for Patent Attorneys” course is irrelevant because the list of courses and certificates mentioned in Rule 12.1(a)(ii) is exhaustive, and therefore no other certificates with an equivalent programme/curriculum can be recognised.

5. The applicant responded to the decision denying relief of the Registrar of the UPC by a written submission dated 5 August 2024, arguing in particular that the narrow interpretation of Rule 12.1(a) of the EPLC Rules in that decision does not sufficiently take into account the purpose of the rule, nor the fundamental rights to freedom of occupation and freedom to provide services under Articles 56-62 TFEU, as well as the principle of equality. In his view, the training content integrated into the “Munich Year” in 1997 and 1998 was continued as a separate study programme entitled “Law for Patent Attorneys” starting in 1999, with this study programme remaining so closely linked to patent attorney training that admission and disenrollment were contingent on whether the person was undergoing patent attorney training. In this context, he argues that it appears to be a formality unsupported by the purpose of Rule 12.1(a)(ii) EPLC that the applicant’s training during the “Munich Year” was not duly considered in the decision under review.

REASONS FOR THE ORDER:

6. The application for review is admissible, but not well-founded.
7. Pursuant to Article 48(2) UPCA, parties may be represented by a European patent attorney who is authorised under Article 134 EPC to act as a professional representative before the European Patent Office and has the necessary qualification, such as the European Patent Litigation Certificate. Pursuant to Rule 286.2 of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP), these requirements must be met by submitting the relevant certificates. The fact that Rule 286.2 RoP expressly mentions only the submission of the European Patent Litigation Certificate in accordance with the requirements of the Administrative Committee, i.e. in accordance with the EPLC Rules of the Administrative Committee dated 22 February 2022, or an equivalent certificate, does not mean that the applicant is not also required to provide proof that they are authorised to act as a professional representative before the European Patent Office.
8. The applicant has indeed demonstrated, through his entry on the list maintained by the European Patent Office that he is authorised to act as a professional representative before the European Patent Office. However, there is no evidence that he possesses the qualification required under Article 48(2) UPCA to represent a party before the Unified Patent Court, which can be demonstrated, for example, by a European Patent Litigation Certificate.
9. The requirements for such a qualification have been further detailed and definitively established by the Administrative Committee in the Rules on the European Patent Litigation Certificate and other appropriate qualifications pursuant to Art. 48(2) UPCA, dated 22 February 2022 (EPLC Rules).
10. In this respect, the applicant relies solely on Rule 12.1(a)(ii) of the EPLC Rules, according to which, for a period of one year from the entry into force of the Agreement, the required qualification as a patent attorney under Art. 48(2) UPCA can also be proved by successful completion of the “Law for Patent Attorneys” course at the FernUniversität in Hagen or the “Kandidatenkurs Fischbachau”.

11. However, the applicant has failed to provide such proof.
12. The applicant has neither provided proof that he successfully completed the “Law for Patent Attorneys” course at the FernUniversität in Hagen, nor has he demonstrated that this was the case with regard to the “Kandidatenkurs Fischbachau”.
13. Rather, the applicant claims that the content of the “Law for Patent Attorneys” course at the FernUniversität in Hagen was part of his training to become a patent attorney during the so-called “Munich Year” in 1997 and 1998, which he attended and successfully passed with both written and oral examinations. Even taking this argument into account, proof of successful completion of the “Law for Patent Attorneys” course at the FernUniversität in Hagen has not been provided.
14. The purpose of the “Rules on the European Patent Litigation Certificate and other appropriate qualifications pursuant to Article 48(2) UPCA” is to definitively establish the requirements for obtaining these qualifications, as is indicated by their title and the reference to the general provision in Art. 48(2) UPCA. Rule 14.2 of the EPLC Rules provides that a request for entry on the list of party representatives before the Unified Patent Court based on the recognition of another appropriate qualification under Rule 11 or Rule 12.1(a) of the EPLC Rules must include a copy of the relevant diploma, certificate or other evidence. Accordingly, it is the sole responsibility of the UPC Registrar, to whom such an application has been submitted, to verify whether the qualification specified in Rule 11 or one of the qualifications listed in the catalogue of Rule 12(1)(a) has been demonstrated by the evidence submitted. However, it is neither the task of the Registrar of the UPC, nor within his authority to determine the equivalence of a successfully completed course not mentioned in the catalogue of Rule 12.1(a) of the EPLC Rules with a successfully completed course mentioned therein. Accordingly, the Registrar of the UPC’s findings in his decisions of 4 June 2024 and 23 July 2024, that the catalogue of courses and certificates referred to in Rule 12.1(a) of the EPLC Rules is exhaustive, are correct and therefore not subject to objection.
15. The applicant’s application clearly does not meet these requirements, as he has neither provided proof of the successful completion of the “Law for Patent Attorneys” course of the FernUniversität in Hagen, as provided in the catalogue of Rule 12.1(a)(ii) of the EPLC Rules, nor of the successful completion of any other courses listed there, nor the grant of any of the certificates listed therein.
16. It may remain undecided whether, in a case where a course listed in the catalogue of Rule 12.1(a) of the EPLC Rules and a course not listed there - differing only in title while having an unchanged curriculum and identical requirements for successful completion - can be considered as proof of an alternative qualification under Rule 12.1(a) of the EPLC Rules when only the successful completion of the latter course has been demonstrated. For such a case has not been demonstrated by the applicant in this case.
17. For his claim that the training content of the “Law for Patent Attorneys” course was part of the

“Munich Year” in 1997 and 1998, the applicant refers to the explanatory memorandum of the Federal Ministry of Justice dated 23 November 1998 regarding the Third Regulation amending the Regulation concerning Patent Attorney Training and Examination (Dritte Verordnung zur Änderung der Patentanwaltsausbildungs- und -prüfungsverordnung) and the explanations therein concerning the implementation of the amendments to § 7 of the German Patent Attorney Code (PatAnwO) in § 7 of the Regulation concerning Patent Attorney Training and Examination (BR-Drucksache 926/98). It states the following:

“Paragraph 2 stipulates that the supplementary study programme in general law should be completed before beginning the training with the patent attorney and the patent court. The shortening of the “Munich Year” to eight months can only be justified if, during the training phases at the Patent Office and Patent Court, it is largely possible to dispense with imparting general legal knowledge in the working groups. The candidates must have this knowledge; the training phases serve the purpose of the practical application and deepening of the legal knowledge previously acquired.”

This passage of the explanatory memorandum cited by the applicant merely indicates that the working groups conducted during the “Munich Year” to impart general legal knowledge before the Regulation came into force, could be dispensed with, in the assessment of the legislator, because this knowledge is now already being imparted in the supplementary study programme required under § 7 of the German Patent Attorney Code (PatAnwO). However, it does not follow from this that the curriculum of this supplementary programme was identical to the curriculum of the working groups previously conducted during the “Munich Year”, including the respective requirements for their successful completion, and that only the title of the course changed.

- 18 Nothing different results if the letter submitted by the applicant from the German Patent and Trademark Office dated 14 March 2024 is also taken into account. It can be inferred from this that the applicant, during his training at the German Patent Office and the Federal Patent Court from 1997 to 1998, took part, among other things, in working groups on general substantive and procedural law. The obligation to supplement the training to become a patent attorney with a study programme in general law was introduced with the amendment to the German Patent Attorney Code (PatAnwO) of 16 August 1998, effective 1 January 1999. The studies in general law provided for in Section 7 (3), sentence 1, of the German Patent Attorney Code since then are generally carried out by completing a study programme at the FernUniversität in Hagen ("Law for Patent Attorneys"), which is specially tailored to the needs of patent attorneys. In the light of this study programme, the Ordinance concerning Patent Attorney Training was also amended and the official year (training at the German Patent and Trademark Office and the Federal Patent Court) was shortened by a total of 4 months, effective 1 January 1999. Additionally, it was stipulated that the supplementary studies in general law should be

completed before the start of the second training phase. This was intended to ensure that the patent attorney candidates would already possess basic legal knowledge at the start of their year in office, and that the training periods at the German Patent and Trademark Office and the Federal Patent Court would primarily serve the practical application and deepening of the previously acquired legal knowledge. The Patent and Trademark Office and the Patent Court were henceforth largely to refrain from the task of imparting general legal knowledge in working groups. The working group in which the applicant participated has no longer been formed since then. These statements do not indicate that the curriculum and the respective requirements for successful completion during the Munich Year were identical to those applicable to the "Law for Patent Attorneys" course at the FernUniversität in Hagen.

19. The applicant's further argument in his response to the Registrar's decision denying relief, that according to the examination regulations of the FernUniversität in Hagen, only persons undergoing training to become patent attorneys are admitted to the continuing education programme "Law for Patent Attorneys" does not lead to a different conclusion. This is because it cannot be inferred from this that the curriculum of the working groups conducted in Munich in 1997 and 1998, including the requirements for successful completion, was identical to the "Law for Patent Attorneys" study programme at the FernUniversität in Hagen.
20. Finally, the applicant's arguments also do not demonstrate that the provision in Rule 12.1(1)(a) of the EPLC Rules, which ties the recognition of another qualification during a transition period solely to the successful completion of only the courses listed in the catalogue of Rule 12.1(1)(a) of the EPLC Rules or the issuance of the certificates referred to therein, violates his freedom to choose an occupation under Article 15 of the Charter of Fundamental Rights of the European Union or his freedom to provide services under Article 56 et seq. of the TFEU. Even if it is assumed that the freedom to choose an occupation or to provide services is impaired, the aforementioned provision is nevertheless justified by the fact that, in the interests of ensuring qualified representation of the parties before the Unified Patent Court, only European patent attorneys who, in addition to being authorised to represent parties before the European Patent Office, have also demonstrated their ability to conduct European patent litigation through an appropriate certificate or equivalent qualification are to be admitted as party representatives pursuant to Art. 48(2) UPCA. This purpose requires that the specific conditions for obtaining such a certificate and the equivalent qualifications be regulated in detail, which was conclusively achieved with the adoption of the EPLC Rules by the Administrative Council, in which all Contracting Member States of the Agreement on a Unified Patent Court are represented, pursuant to Art. 12 UPCA.
21. Furthermore, it should be noted that the applicant still has the opportunity to demonstrate the appropriate qualification by obtaining a European Patent Litigation Certificate or a law degree under Rule 11 of the EPLC Rules and to be registered on the list as a representative before the Unified Patent Court.

22. A violation of the principle of equality has also not been substantiated by the applicant, as he, as outlined, unlike representatives admitted before the European Patent Office who are registered on the list, has not demonstrated the successful completion of a course listed in Rule 12.1(a) of the EPLC Rules or the issuance of a certificate mentioned therein.
23. An oral hearing, as suggested by the applicant, is not provided for in the EPLC rules. It is also not necessary, as the applicant has been given multiple opportunities to submit written statements during the ongoing proceedings.
24. In view of the above, the petition for review of the Registrar's decision is unsuccessful.

ORDER:

The petition for review of the Registrar's decision of 4 June 2024 is dismissed.

This Order was issued on 22 August 2024.

Klaus Grabinski, President of the Court of Appeal of the Unified Patent Court