

# **Roadmap of the Preparatory Committee of the Unified Patent Court updated SEPTEMBER 2014**

This is an updated Roadmap of the Preparatory Committee's work programme with amendments to some of the key milestones. The milestones have been updated to reflect the work which has taken place this year and reflects the better understanding each Working Group now has to complete their respective plans. The Roadmap also reflects the communication from the Committee that the Court will not be ready before the end of 2015.

This revised Roadmap is still ambitious and the Committee stays completely committed to its challenging task. However, its main objective is to ensure the quality and efficiency of the new Court, which has to gain the trust and confidence of the users of the patent system from the first day of its operation.

The Committee will work alongside colleagues responsible for the Unitary Patent in the Select Committee to ensure that the European Patent package is delivered in the most timely and efficient way.

It is anticipated that a further revision to this Roadmap will be completed and published in 2015 including a target date for the completion of the preparatory phase.

## **I. Overall Summary of work completed 2013/14**

In the last 12 months the Preparatory Committee has:

- ✓ Received an expression of interest from over 1,000 candidate judges (both for legally and technically qualified judges) and organised a pre-selection process;
- ✓ Set out the basic principles for the framework for the training of candidate judges;
- ✓ Opened the Training Centre for the Unified Patent Court in Budapest in March 2014 holding a two day conference to outline its function and future training provision;
- ✓ Published a brochure aimed at raising SMEs' awareness concerning the Patent package and its benefits;
- ✓ Published the 16th draft of the Rules of Procedure for the Unified Patent Court, along with a digest of the comments that were received in the written consultation on the preceding 15th draft of the said Rules;
- ✓ Published an interpretative note on the UPC website to assist users with developing a better understanding of the Preparatory Committee's positions;
- ✓ Commenced appointment of specialists in IT procurement to compile the necessary specification for a call for tender for the UPC's future electronic filing and case management system;
- ✓ Agreed and circulated a recommendation for minimum specification for facilities arrangements;
- ✓ Agreed to admit Croatia as observer to the Preparatory Committee;
- ✓ Announced the first regional division of the Unified Patent Court between Estonia, Latvia, Lithuania and Sweden;
- ✓ Announced five Signatory States who have completed their ratification process. These are Austria, France, Sweden, Belgium and Denmark;
- ✓ Initiated an early discussion on the arrangements for the transition from the preparatory phase to the operational phase of the new Court. This will be discussed at Committee meetings throughout 2015;
- ✓ Established an Expert Panel to advise the Chairman and working group co-ordinators on developing strategies on the UPC.

## II. Working areas

### a. Legal framework

Coordinator: Mr Johannes Karcher (Germany)

#### a.1 Rules of Procedure

The Preparatory Committee foresees the following time schedule:

February to September 2014	Study by team 1 of the draft Rules of Procedure and draft amendments
End of November 2014	Hearing of user organisations
December till February 2014	Further review of the draft rules of procedure by team 1
May 2015	Agreement on Rules Procedure in the Preparatory Committee

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

Drafts are expected in the first quarter 2015.

#### 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.

The first draft was presented to the Preparatory Committee in March and discussed in July 2014; a final draft to be agreed by January 2015.

#### 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.

A first draft of the Legal Group has been discussed by the Preparatory Committee in March 2014. Currently the draft is considered by the Finance Group. A second draft of both the Legal and the Finance Group is expected to be discussed in the beginning of 2015.

#### a.5. Rules of the Committees

The Legal Group has presented two proposals to the Preparatory Committee in March 2014, one on the Rules for the Administrative Committee of the UPC and one on the Budget Committee of the UPC. On the contents of both proposals consensus was reached in July 2014 at Preparatory Committee. On a third proposal, concerning the

Rules for the Advisory Committee of the UPC, a consultation of the Human Resource Group and the Advisory Panel is under way.

#### a.6 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.

A second report to the Preparatory Committee is expected in November 2014.

#### a.7 Rules on the litigation certificate for patent attorneys

A first draft has been discussed in Preparatory Committee in March 2014 which was amended in the light of these discussions and on which a public consultation has been carried out in June and July 2014. A revised draft is expected for early 2015.

### **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 have been discussed several times at the Preparatory Committee and a final agreement on the Rules is scheduled for October 2014.

#### 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.

A draft is expected to be finalised by March 2015.

#### 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.

A discussion on court fees is expected before the end of 2014. Following which, planning will commence for the consultation on fees to be launched in spring 2015. The budget for the first year of operation will then follow.

#### 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 March 2015.

### **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. 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. Possible models for the system and the type of supplier needs to be identified. An important element of this phase will be to identify the most appropriate method for procurement.

Work on this was completed in December 2013.

#### c.2 Discovery and Procurement process

Contractors will begin work on the tender documentation, commissioning a prototype system to test decisions about system type in the preparation phase. Internal and external patent court users will test the prototype and provide feedback virtually and at user workshops.

Information on aspects of the Court's operating model should help inform the tender specification.

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 in the autumn of 2014.

#### c.3 System development and testing

This activity is likely to be carried out in an iterative process, with configuration and testing carried out by a supplier or suppliers with further user input, overseen by the contractors who prepared the tender specification in the procurement phase. The system should be designed to serve the Court effectively for its first two years of operating, and its further use should be reviewed towards the end of that time.

Work is expected to be finalised during the last 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 local staff

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. This work will be taken forward jointly by the Facilities and HR & Training working groups.

The work on the number and qualifications of local staff is expected to be finalised in March 2015.

##### d.2 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 have started with the first training programs expected to start before the end of December 2014.

#### 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 was concluded in July 2014. . A provisional list of suitable candidates has been approved by the Committee. This will allow candidates to participate in the training program that is being established, see e.1.

#### 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 the second quarter of 2014 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.

[end\_report]