



Administrative Committee

Code of Conduct of Judges of the Unified Patent Court

24 April 2023

To The Administrative Committee
From The Advisory Committee
Re Advice with respect to the Code of Conduct
Date 17 February 2023

The Advisory Committee after having cooperated with the Presidium herewith submits a Code of Conduct for adoption by your Committee (Art. 7(3) of the Regulation governing the conditions of service of judges, the Registrar and the Deputy-Registrar of the Unified Patent Court).

The Presidium has indicated to fully agree with this code.

Willem Hoyng
Chairman

**DECISION OF THE ADMINISTRATIVE COMMITTEE OF 24 APRIL 2023
ON A CODE OF CONDUCT FOR JUDGES OF THE UNIFIED PATENT COURT**

THE ADMINISTRATIVE COMMITTEE

HAVING REGARD to the Agreement on a Unified Patent Court (“the Agreement”) and in particular Article 17 thereof;

HAVING REGARD to the Statute of the Unified Patent Court (“the Statute”) and in particular Article 7 thereof;

HAVING REGARD to the Regulations Governing the Conditions of Service of Judges, the Registrar and the Deputy-Registrar of the Unified Patent Court (“the Regulations”) and in particular Articles 6 to 11 thereof;

CONSIDERING THAT Article 7(4) of the Statute provides that a judge may not take part in proceedings where any of the mandatory grounds listed in Article 7(2) of the Statute exist, or where the judge is suspected, with good reasons, of partiality;

CONSIDERING THAT Article 7(3) of the Regulations provides that the Code of Conduct shall provide guidance to judges on how to avoid situations which might be perceived by an informed observer as giving rise to a conflict of interest;

HAVING REGARD to the proposal of the Advisory Committee in cooperation with the Presidium for a Code of Conduct, submitted to the Administrative Committee pursuant to Article 7(3) of the Regulations;

HAS ADOPTED the following

CODE OF CONDUCT FOR JUDGES OF THE UNIFIED PATENT COURT

Article 1 Definitions

For the purposes of this Code of Conduct:

“The Court” means the Unified Patent Court;

“Judge” means a judge of the Court; a reference to a judge as “he” or “his” shall be understood to mean “he or she” and “his or her”;

“Close family member” or “close family ties” refers to a spouse, life partner, a sibling, child, parent and any other family member with whom a close relationship exists.

“Firm a judge works for” means any firm, partnership or company for which a judge works or in which he serves in any capacity.

Article 2 Scope

1. This Code of Conduct shall apply to current judges, including judges appointed with effect from the date of entry into force of the Court, and where applicable former legally and technically qualified judges.
2. Except where otherwise provided, all provisions of this Code of Conduct shall apply to legally qualified judges and to technically qualified judges, to full-time judges, and to part-time judges.

Article 3 General Principles

1. A judge shall uphold the independence of his office and the authority of the Court and shall conduct himself accordingly in carrying out his judicial functions. He shall perform these functions with probity, integrity, impartiality, conscience, loyalty and discretion, in compliance with the Agreement, the Statute, the Regulations and this Code of Conduct, thereby respecting the dignity of his office and enhancing public confidence in the Court.
2. A judge shall perform his duties solely on the basis of his own assessment of the merits of the case as presented by the parties, without taking account of any personal or national interest. He shall neither seek nor accept any instructions from any government, authority, organisation or person.
3. A judge shall not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended or having the capacity to influence the performance of his judicial functions. Any courtesy gift of minor value shall not be regarded as having such influence.

4. A judge shall avoid being placed in any situation which might reasonably be perceived by an informed observer as giving rise to a conflict of interest.
5. Notwithstanding the judge's freedom of expression and association, a judge shall act and express himself, through whatever medium, with the constraint that the office requires and in such a manner that the performance of his judicial functions or the confidence in his independence, integrity, impartiality, the dignity of his office or the authority of the Court may not be or appear to be adversely affected.
6. Without prejudice to his duties as provided in Article 8, a judge shall be independent of the parties to the dispute from the time he is allocated to the panel until the final decision or any other way of settlement of the proceedings he takes part in.
7. A judge may not refer to his position at the Court as means of promoting his business or interests. A judge shall prevent the firm the judge works for from using his position at the Court as means of promoting its business or interests. A judge may refer to his appointment as a judge of the Court, provided it is not used as a marketing tool.
8. A judge shall take reasonable steps to maintain and enhance the knowledge and skills necessary for judicial office at a specialised patent court and shall endeavour to render his decisions carefully and as soon as possible.
9. Confidential information acquired by a judge in his judicial capacity shall not be used or disclosed by him for any purpose not related to his judicial duties. A judge shall preserve the secrecy of everything discussed between judges in the course of performing their judicial duties, whether or not related to a specific case, and whether or not expressed during deliberations.

Article 4 Other occupations and external activities of judges

1. A judge shall comply with his obligation to be available so as to devote himself, to the extent of his appointment, fully to the performance of his duties.
2. As per Article 17(2) of the Agreement, a legally qualified judge, as well as a

technically qualified judge who is a full-time judge of the Court may not engage in any other occupation, whether gainful or not, unless an exception is granted by the Administrative Committee. As per Article 17(3) of the Agreement, the exercise of other judicial functions at national level does not require an exception pursuant to Article 17(2) of the Agreement.

3. As per Article 17(4) of the Agreement, the exercise of the office of a technically qualified judge who is a part-time judge of the Court shall not exclude the exercise of other functions provided there is no conflict of interest. In order to maintain confidence in the independence and impartiality of the court, to allow judges to work together in a spirit of mutual trust and to avoid potential conflicts of interest, the judge may not act as a representative before the Court, as provided for in Article 48 of the Agreement, in any matter, and may not give legal or technical advice in any capacity on a case pending before the Court or after being instructed to prepare therefor.
4. Activities closely related to his judicial functions, such as occasional participation in and occasional contributions to seminars, conferences, symposia, lectures or publications such as articles, commentaries and handbooks, shall not be regarded as "other occupation" which requires an exception granted by the Administrative Committee.
5. Assuming unremunerated managerial or administrative duties in non-profit organisations which carry out activities in the general interest in the legal, cultural, artistic, social, sporting or charitable fields and in teaching or research establishments shall not be regarded as holding a public office within the meaning of Article 8(4) of the Regulations.
6. A judge who intends to undertake activities mentioned in paragraphs 4 or 5 of this Article, shall be allowed to do so if, prior to doing so, he notifies the President of the Court of Appeal thereof, using a form provided by the President, and the President does not object thereto on the grounds that the activity may interfere with the judge's office or judicial functions. In case of an objection by the President, the judge may refer the issue to the Presidium for review.
7. Whenever involved in external activities, the judge shall express himself orally or in writing in such a way that under the given circumstances it is clear that he only

expresses his personal opinion and not that of the Court. A judge shall not comment on pending cases and shall avoid expressing views which may undermine the standing and integrity of the Court.

8. Without prejudice to paragraphs 2 and 3 of this Article, if a judge engages in gainful activities or receives a remuneration for any external activities, he shall declare said activities to the President of his instance.
9. A judge may receive remuneration for any external activity only if he performs that activity while on leave or outside the working time for the court.
10. A judge should be aware that activities which are sponsored by, or that target specific industry or interest groups, as well as participation in and contributions to in-house events, whether or not remuneration is paid, create an impression of dependence or partiality of the judge.

Article 5 Reasons excluding participation in proceedings

1. As per Article 7(2) of the Statute, a judge may not take part in the proceedings of a case in which he:
 - a) has taken part as advisor;
 - b) has been a party to the dispute or has acted for one of the parties to the dispute;
 - c) has been called upon to pronounce as a member of a court, tribunal, board of appeal, arbitration or mediation panel, a commission of inquiry or in any other capacity;
 - d) has a personal or financial interest in the case or in relation to one of the parties to the dispute; or
 - e) is related to one of the parties to the dispute or one of the representatives of the parties to the dispute by family ties.
2. A judge should always be aware, that, without prejudice to Article 7(2) of the Statute, any party to an action may object to a judge taking part in the proceedings where the judge is suspected, with good reason, of partiality (reason for recusal). Such a reason arises upon the occurrence of circumstances that, from the point of view of an informed and reasonable observer, would give rise to justifiable doubts as to the judge's impartiality or independence. Such doubts are justified if an informed and reasonable observer would conclude that there is a likelihood that

the judge may be influenced in his decision by other factors than the merits of the case as presented by the parties. As far as possible, the judge should avoid conduct that gives rise to such reasonable doubt. However, since circumstances giving rise to reasonable doubt cannot always be avoided, especially for technically qualified judges who are part-time judges, immediate and comprehensive disclosure of those circumstances from which reasonable doubts about impartiality or independence might arise for the judge himself or for a party is particularly important in these cases.

3. Those doubts may in particular arise if:
 - a) the judge is or has been within the past five years a member of the governing body or employee of a party to the dispute or is or was otherwise able to exert a perceptible influence on a party to the dispute either in a personal capacity or through a firm the judge works or has worked for;
 - b) the judge or a close family member holds assets or has other financial or personal interests in a party to the dispute which, because of their scale, might reasonably be perceived as being capable of giving rise to a conflict of interest;
 - c) the judge or a close family member is related to a party to the dispute or to a person having a controlling influence on a party or to one of the representatives of a party by close family ties;
 - d) the judge has a close friendship or serious enmity with a party to the dispute or with a person having a controlling influence on a party or with one of the representatives of a party;
 - e) the judge or the firm the judge works for is or was acting for or against a party to the dispute, in any other matter, in any capacity, within the last three years;
 - f) the judge or the firm the judge works for is or was within the past year acting in an administrative capacity as the contact person for the patent in dispute;
 - g) the judge or the firm the judge works for is or was within the past year mandated by a party to the dispute to provide an address of notification for the maintenance of intellectual property rights;
 - h) the judge or the firm he works for advises or represents, on a regular or

- repeated basis, a competitor of a party to the dispute, in particular a competitor in a market where the patent interests of different groups of market participants typically diverge (such as the interests of originator and generic producers or the interests of holders and users of standard-essential patents);
- i) the judge or a close family member or the firm the judge works for has a personal or financial interest in the matter in dispute;
 - j) the judge or the firm the judge works for is or was involved in the dispute or the matter in dispute or does or did advise or represent a party to the dispute or a third party in the matter in dispute;
 - k) the judge has publicly stated an opinion on a matter specifically pertaining to the case, unless it is a general statement without a direct link to the matter;
4. Advising a third party in the technical field of the matter in dispute shall not per se give rise to apprehension of bias. The judge should nevertheless be aware that the more similarities there are between the subject matter of such an advice and the matter in dispute, the more significant the decision of the dispute could be for the subject matter of such an advice and the more similar the interests involved appear to be, the closer a possible concern of bias is.
5. For the purposes of paragraph 3 of this Article, a party to the dispute shall include, where appropriate, in case of a legal entity, any person or other legal entity having a controlling influence on the party, as well as any other legal entity the party has a controlling influence on.

Article 6 Disclosure

1. As per Article 7(3) of the Statute, when allocated to a panel a judge shall make reasonable inquiries to identify any reason for not taking part in the proceedings and shall disclose any such reason without delay to the President of the relevant instance.
2. If a judge is to be allocated to a panel the judge shall, at the request of the President of the relevant instance, carry out such an inquiry and report about the result of his inquiry prior to his allocation to the panel. The judge shall ensure that the information provided by him when making the required inquiries shall be kept

confidential, also by persons other than himself.

3. In a situation where there is a reason for not taking part in the proceedings concerning the President of the Court of Appeal or of the Court of First Instance, the President shall report to the Presidium, for that purpose excluding the respective President.
4. In considering whether any possible reason for not taking part in the proceedings is to be disclosed, a judge shall not give consideration to the status of the proceedings. Any doubt as to whether a judge should disclose certain facts or circumstances should be resolved in favour of disclosure which in itself does not indicate the existence of a conflict of interest.

Article 7 Decision on recusal

1. As per Article 7(3) of the Statute, the President of the relevant instance shall, upon disclosure of any possible reason for recusal and having heard the judge concerned, decide whether or not the judge may take part in the proceedings. The President shall notify the judge in writing, giving reasons for the decision.
2. As per Article 7(5) of the Statute, any difficulty arising as to the application of paragraph 1 shall be settled by decision of the Presidium. In the situation of Article 6(3), the Presidium shall replace the President in the application of paragraph 1. The judge concerned shall be heard. If he is a member of the Presidium, he may not take part in the decision or in the deliberations.
3. Unless the President of the relevant instance or the Presidium has decided that the judge shall not take part in the proceedings, the President shall inform the parties of the existence of a possible reason for recusal. The procedure under Rule 346 of the Rules of Procedure shall apply *mutatis mutandis*.
4. A reason for recusal shall be considered not to be present if the parties, having been informed or having otherwise acquired knowledge of said reason, accept the allocation of the judge to the panel or the continued participation of the judge to the proceedings or fail to notify an objection to the judge taking part in the proceedings as soon as reasonably practicable.

Article 8 Duties of a judge after leaving office

1. After leaving office, a judge shall continue to be bound by the duty of discretion.
2. A full-time judge shall, after leaving office, not become involved:
 - a) in any manner whatsoever in cases which were pending before the panel of which he was a member when he left office;
 - b) in any manner whatsoever in cases directly or clearly connected with cases, including concluded cases, which he has dealt with as a judge.
3. Paragraph 2 shall apply mutatis mutandis to a part-time judge after the proceedings he has taken part in have ended.
4. Without prejudice to paragraphs 2 and 3 of this Article, a judge shall not act as advisor to any of the parties to proceedings he has taken part in as a judge within a period of three years after the final decision in such proceedings.
5. A judge who has been assigned to a panel at least once in the last two years before leaving office shall not act as a representative as provided for in Article 48 of the Agreement
 - for a period of three years after leaving office before a division of the Court to which he was permanently assigned within the last three years,
 - for a period of two years before a division to which he was assigned in individual cases within the last two years,
 - and for a period of one year before all other divisions.

For the purposes of this provision, the Court of Appeal shall be deemed to be a division and the sections of the central division shall be deemed to be different divisions.

Article 9 Entry into force

This Code of Conduct shall enter into force on 24 April 2023.

Done on 24 April 2023 (online meeting)

For the Administrative Committee

singed Johannes Karcher

The Chairperson