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BUSINESSEUROPE COMMENTS TO THE DRAFT RULES OF PROCEDURE FOR THE UNIFIED PATENT COURT

The setting up of the Unified Patent Court (UPC) has put Europe on the path of establishing a new, unique, original system capable of delivering high quality, timely and cost effective decisions with Europe-wide effect. Such a system has the potential for significant cost-savings for European companies navigating through its currently fragmented patent litigation systems.

BUSINESSEUROPE would like to share its views on the draft Rules of Procedure (RoP), one of the key streams of work of the Preparatory Committee in charge of the UPC implementation.

GENERAL COMMENTS

BUSINESSEUROPE first wishes to recognise the outstanding work of the drafting committee in preparing the complete set of RoP for the UPC. It provides a strong and reliable basis for an efficient operation of the Court.

The draft Rules appear to be based on a consensus on best practices in the various court systems in Europe, where such consensus was available, and, where such a consensus was not reached, on the most sensible compromise possible under the Agreement on setting up the UPC. We support this approach.

It is essential that the RoP stay entirely and clearly within the boundaries of the Agreement.

It should be kept in mind that the RoP will be applied by experienced judges who, although coming from different Member States with different procedural systems, should have the ability to adjust to the new Court with its own rules of procedure. It is the quality and experience of the judges that will lead to the clear, consistent and predictable decisions that Europe's economy needs. This is a key condition for the success of the UPC. BUSINESSEUROPE would like to reiterate its view that the process of identifying, selecting and training judges also in terms of language capacities for the Court remains one of the most essential and urgent tasks of the Preparatory Committee.

We strongly support the objective running through the whole set of Rules to streamline the litigation process so as to arrive at final decisions in a reasonable time frame.

In addition, the RoP should be in accordance with the principles of European procedural law. This accounts for example for the loser pays-principle that needs to be established.



The publication of the draft court fee structure will also be necessary at an early stage, in order for the users of the system to have the appropriate time to assess it.

ADDITIONAL COMMENTS

(1) POSSIBILITY TO OPT OUT DURING THE TRANSITIONAL PERIOD

BUSINESSEUROPE strongly supports the objective of proposed Rule 5(9). However, its practical implementation including the involvement of the EPO requires clarification, before the Agreement comes into effect.

(2) COURT FEES

The combination of Rules 25(1) and 26 appear to require the payment of a court fee by a defendant who simply wishes to invoke as a defence the invalidity of the claims that are at issue in an infringement action. This amounts to a requirement to pay a court fee to defend oneself in contradiction to the right of access to justice.

While the fixed fee of Rule 26 will at least be known in advance to the defendant, it is not so with the value-based fee of Rule 31. The lack of any clear indication in Rule 31 on how and on what basis the judge-rapporteur will determine the “value of the dispute” over and above the “value of the infringement action” creates too much of an uncertainty as to the total amount of fees the defendant may eventually have to pay. This may risk the right of defence of a party.

(3) LANGUAGE OF PROCEEDINGS

Rule 14(2) is difficult to reconcile with Article 49 of the Agreement, particularly where the competence of the division before which the case is brought is based on Article 33(1)(a). It is particularly difficult to understand the reference to “its Contracting Member State” at the end of the Rule. Should it be “this Contracting Member State”? Clarification is all the more necessary that plaintiffs cannot seriously proceed if they are unsure of the language in which they must write their Statement of Claim.

In view of the above, Rule 14(2) should be either deleted or substantially modified.
