

Report of the Litigation Committee (LitCom)

A. Casalonga (FR), Chair

I) Rules of procedure of UPC

1. The 18th draft has been published in August 2015.

The draft was finally accepted by the Preparatory Committee on October, 19 2015.

It seems difficult now to obtain any further change before the Rules of procedure are adopted by the Administrative Committee.

2. The following issues were nevertheless studied by the LitCom:

a) **Rule 286 – Certificate that a representative is authorized to practice before the Court**

Rule 286-1 states that representatives according to Article 48 (1) of the UPCA must be lawyers authorized to practice before a court of a Member State of the EU. This provision forbids representation to a lawyer practicing for example in the US.

It was feared that a similar provision could be introduced in this rule also for EPAs authorized to represent according to Article 48 (2) of the UPCA.

The LitCom prepared a paper arguing against such limitation of professional exercise and insisting on the unitary character of the EPAs profession.

3. In view of the final version of Rule 286 and the unofficial comments of the Preparatory Committee, it was decided that filing this paper would be unnecessary and possibly dangerous.

4. The present satisfactory situation is therefore that all EPAs on the EPO list having the appropriate qualification (European patent litigation certificate or equivalent) will have the possibility of entering the List for Representation before the UPC.

b) **Rule 292 – Patent attorneys' right of audience**

5. The present wording of this rule limits the right of patent attorneys (national and EPAs) to assist a representative, to persons practicing in a Contracting Member State of the UPC.

6. Since this would violate the principle of a unified profession of EPAs, the LitCom intends to suggest an amendment of this rule, cancelling the limitation of the place of practice for EPAs.

c) **Representation by a team comprising lawyers and EPAs**

7. Since Article 48(2) states that "parties may alternatively be represented by EPAs", some voices feared that this could be interpreted in such a way that no EPA could participate to a team comprising already a lawyer.

8. Reassurance was given by the chair of the Preparatory Committee that those fears were unfounded

II) Representation before the UPC – Draft EPLC Rules

9. The final draft was published in September 2015. The main changes are the followings:

1- Rule 2: The EPLC may be issued by the UPC training center in Budapest (in addition to Universities and non profit educational bodies established in the EU)

2- Rule 10: The Budapest training center will assist educational bodies who would wish to provide courses at the seat of the center (by providing infrastructure and organization)

3- Rule 10: The Budapest training center will facilitate e-learning options

4- Rule 12: the transitional period is now reduced to 1 year (instead of 3)

5- Rule 12: diplomas of additional Universities and law schools situated in Germany, UK, The Netherlands, Hungary, Italy and Poland are now accepted for recognition during the transitional period

6- Rule 12: the other qualifications accepted during the transitional period are:

- representation before a national Court without a lawyer in 3 patent infringement cases within 5 years (instead of 2 cases within 4 years)
- or having acted as a judge before a national court in 3 patent infringement cases within 5 years

7- Rule 14: If a request for recognition of other appropriate qualifications is filed details for identifying the infringement actions and possibly a copy of the power of attorney, must be filed

8- Rules 15 to 20: the requests for recognition are examined by the Registrar. The decisions of the Registrar may be reviewed under the control of the President of the Court of Appeal

III) Protocol of the UPCA

10. A protocol of the UPC agreement was signed on October 1st 2015 by the Signatory States.

11. It is expected that this protocol could be ratified soon so as to allow a part of the UPCA to enter into force in June 2016.

12. The various committees of the UPC, the Registrar, the pool of judges, the central, local and regional divisions could therefore be organized during a preparatory period before the definitive entry into force of the entire agreement, possibly beginning 2017. The IT system could also be experimented in advance.

13. Applications for opt-out could be filed at the Registry during this preparatory period.