

DRAFT

DECISION OF THE ADMINISTRATIVE COMMITTEE

RULES ON THE EUROPEAN PATENT LITIGATION CERTIFICATE AND OTHER APPROPRIATE QUALIFICATIONS PURSUANT TO ARTICLE 48(2) OF THE AGREEMENT ON A UNIFIED PATENT COURT

THE ADMINISTRATIVE COMMITTEE OF THE UNIFIED PATENT COURT
HAS DECIDED AS FOLLOWS:

Part I – European Patent Litigation Certificate

Rule 1 – European Patent Litigation Certificate

The European Patent Litigation Certificate (hereinafter referred to as Certificate) may be acquired in accordance with the provisions laid down in this Part.

Rule 2 – European Patent Litigation Course

The Certificate may be issued by universities and other non-profit educational bodies of higher or professional education established in a Member State of the European Union as well as by the Unified Patent Court's Training Centre in Budapest (hereinafter referred to as Training Centre) to European Patent Attorneys¹ entitled to act as professional representatives before the European Patent Office pursuant to Article 134 of the European Patent Convention (hereinafter referred to as European Patent Attorneys) who have successfully completed a course on European patent litigation accredited pursuant to Rules 6 – 8 (hereinafter referred to as Course).

Rule 3 – Content of the Course

1. The curriculum of the Course shall cover:
 - (a) a general introduction into law, including main aspects of European law;

¹ Words importing the masculine gender shall include the feminine and vice versa.

- (b) basic knowledge of private law, including contract law, company law and tort law, in both common and continental law, and private international law;
- (c) the role, organisation and patent-related case law of the Court of Justice of the European Union, including case law on supplementary protection certificates;
- (d) enforcement of patents, providing knowledge of Directive 2004/48 (EC) on the enforcement of intellectual property rights and relevant case law of the Court of Justice of the European Union;
- (e) unitary patent protection, providing advanced knowledge of Regulations 1257/2012 (EU) implementing enhanced cooperation in the area of the creation of unitary patent protection and 1260/2012 (EU) implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, as well as the Rules relating to unitary patent protection;
- (f) a comparative overview on patent infringement proceedings and revocation of patents in Contracting Member States;
- (g) the operation of the Unified Patent Court, providing advanced knowledge of the Agreement on the Unified Patent Court and the Unified Patent Court's Statute;
- (h) litigation before the Unified Patent Court, providing advanced knowledge of procedures, litigation and advocacy skills, practice and case management before the Unified Patent Court, with special regard to the Rules of Procedure of the Unified Patent Court.

2. The Course shall focus in particular on the contents mentioned in points (e)-(h) of paragraph (1) and include practical exercise on litigation and negotiation.

Rule 4 – Duration of the Course and examination requirements

1. The minimum duration of the Course shall be 120 hours of lectures and practical training.
2. The Course shall be concluded by both a written and oral examination.

Rule 5 – Course languages and e-learning

1. The Course may be provided in any official language of a Member State of the European Union.
2. E-learning facilities are encouraged as an integral part of the Course. However, practical training always requires personal participation.

Rule 6 – Accreditation requirement

Universities and other non-profit educational bodies of higher or professional education established in a Member State of the European Union may offer the Course subject to accreditation by the Administrative Committee.

Rule 7 – Request for accreditation

The request for accreditation of the Course shall be filed with the Unified Patent Court in one of the official languages of the European Patent Office and shall contain:

- (a) the curriculum of the Course envisaged;
- (b) information concerning the requirements under Rules 4 and 5;
- (c) information concerning the requestor's status;
- (d) information concerning the number of hours for each topic of the Course;
- (e) names and titles of the selected teachers;
- (f) draft scheme of examination, defining the objectives and the method of examination, including the number and duration of written and oral exams.

Rule 8 – Examination of the request and decision

1. The request for accreditation shall be decided upon by the Administrative Committee on the basis of an opinion of the Advisory Committee.

2. If the requirements under Rules 3 – 6 are met and the request for accreditation complies with Rule 7, the Advisory Committee shall give an opinion in favour of accreditation to the Administrative Committee.

3. If the requirements under Rules 3 – 6 are not met or if the request for accreditation fails to comply with Rule 7, the Advisory Committee shall give a negative opinion on the request.

In this event, the Administrative Committee shall communicate the Advisory Committee's opinion to the requestor and invite him, according to the nature of the objection, to correct the deficiencies noted or to submit comments within a non-extendable period of two months. If the deficiencies are not corrected in due time, the Administrative Committee shall refuse the request. If the requestor corrects the deficiencies or submits comments, the Administrative Committee shall consult the Advisory Committee once again and decide on the request on the basis of the second opinion of the Advisory Committee.

4. Accreditation is granted for five academic years following the date of the notification of the decision on accreditation. The request for the prolongation of the accreditation for another

five years may be filed one year before the expiry of the five-year period at the earliest. Rule 7 and Rule 8(1)-(3) shall apply mutatis mutandis.

Rule 9 – Reports

Participating educational bodies are required to report every year to the Unified Patent Court on the curriculum, results and statistics of the accredited Course. The Administrative Committee takes note of this report.

Rule 10 – Training Centre

1. The Training Centre, by offering the necessary infrastructural and organisational assets, shall assist the educational bodies that wish to provide a Course at the seat of the Training Centre as well. It may also facilitate e-learning options.

2. The Training Centre may also offer the Course in compliance with Rules 3 – 5. In this case, Rule 9 applies to the Training Centre as well.

Part II – Other appropriate qualifications

Rule 11 – Law diplomas

European Patent Attorneys holding a bachelor or master degree in law according to relevant educational standards in a Member State of the European Union or who have passed an equivalent state exam in law of a Member State of the European Union shall be deemed to have appropriate qualifications pursuant to Article 48(2) of the Agreement on a Unified Patent Court and may apply for registration on the list of entitled representatives.

Rule 12 – Other qualifications during a transitional period

During a period of one year from the entry into force of the Agreement on a Unified Patent Court, any of the following shall also be deemed as appropriate qualifications for a European Patent Attorney pursuant to Article 48(2) of the Agreement on a Unified Patent Court:

(a) the successful completion of one of the following courses or the grant of one of the following certificates:

- (i) Centre d'Études Internationales de la Propriété Intellectuelle, courses leading to the Diploma on Patent litigation in Europe or to the Diploma of international studies in industrial property (specialized in patents);

- (ii) FernUniversität in Hagen, course “Law for Patent Attorneys” and its predecessor, the course “Kandidatenkurs Fischbachau”;
- (iii) Humboldt-Universität zu Berlin, course “Zusatzstudium Gewerblicher Rechtsschutz”;
- (iv) Nottingham Law School, course “Intellectual Property Litigation and Advocacy”;
- (v) Queen Mary University of London, courses “Certificate in Intellectual Property Law” or “MSc Management of Intellectual Property”;
- (vi) Intellectual Property Regulation Board, “Intellectual Property Litigation Certificate”;
- (vii) Intellectual Property Regulation Board, “Higher Courts Litigation Certificate”;
- (viii) Intellectual Property Regulation Board, “Higher Courts Advocacy Certificate”;
- (ix) Stichting Beroepsopleiding Octrooigemachtigden, course “Beroepsopleiding Octrooigemachtigden”;
- (x) Hungarian Intellectual Property Office, course “Advanced Course in Intellectual Property”;
- (xi) University of Milano, course “Corso di Perfezionamento in Brevettistica”;
- (xii) Politecnico di Milano, “Certificato di superamento dell’esame conclusivo del Corso di Proprietà Industriale – Brevetti”;²
- (xiii) University of Warsaw, course “Podyplomowe Studium Prawa Własności Przemysłowej”;

or

- (b) having represented a party on his own without the assistance of a lawyer admitted to the relevant court or having acted as a judge in at least three patent infringement actions, initiated before a national court of a Contracting Member State within the five years preceding the application for registration.

² Rule 12(a) has been updated according to the decision of the Preparatory Committee of 30 June 2016 amending the “DRAFT RULES ON THE EUROPEAN PATENT LITIGATION CERTIFICATE AND OTHER APPROPRIATE QUALIFICATIONS PURSUANT TO ARTICLE 48(2) OF THE AGREEMENT ON A UNIFIED PATENT COURT”

Part III – Registration

Rule 13 – Entry on the list of representatives based on the Certificate

The European Patent Attorney wishing to represent parties before the Unified Patent Court shall lodge the Certificate with the Registrar. He shall thereafter be registered on the list of entitled representatives under Article 48(3) of the Agreement on a Unified Patent Court (hereinafter referred to as List).

Rule 14 – Request for recognition of other appropriate qualifications

1. Requests for recognition of other appropriate qualifications shall be filed with the Registrar in one of the official languages of the European Patent Office.
2. In case of requests filed pursuant to Rule 11 or 12(a), the request for recognition of other appropriate qualifications shall contain a copy of the respective diploma, certificate or other respective proof.
3. In case of requests filed pursuant to Rule 12(b), the request shall include all details necessary to identify the infringement actions the European Patent Attorney intends to rely on such as:
 - (a) name of the parties;
 - (b) court seized with the action;
 - (c) date of commencement of the proceedings.

Reasonably available evidence to support the request, such as a copy of the power of attorney, shall be submitted.

Rule 15 – Examination of and decision on the request for recognition of other appropriate qualifications

1. The request for recognition of other appropriate qualifications shall be examined by the Registrar. The Registrar may, if he deems it necessary, consult the Advisory Committee for an opinion.
2. If the requirements contained in Rules 11 or 12 are met and the request for recognition of other appropriate qualifications complies with Rule 14, the Registrar shall enter the requestor on the List.
3. If the request for recognition of other appropriate qualifications complies with Rule 14, but the requirements under Rules 11 or 12 are not met, the Registrar shall reject the request.

4. If the request for accreditation fails to comply with the requirements of Rule 14, the Registrar shall invite the requestor to correct the deficiencies noted within a non-extendable period of two months. If the deficiencies are not corrected in due time, the Registrar shall reject the request.

Rule 16 – Effect of entries

1. Subject to paragraph 2, 3 and 4 of this Rule, registrations of European Patent Attorneys on the List shall be permanent, including registrations under the transitional provisions pursuant to Rule 12.

2. Registration on the List shall cease to have effect in the event that the registered representative ceases to be a registered European Patent Attorney on the list of European Patent Attorneys maintained by the European Patent Office. The Registrar will strike the name off the List, upon request or ex-officio. In case the European Patent Attorney is reentered on the list maintained by the European Patent Office, he shall, upon his request, be re-entered by the Registrar on the List.

3. The Registrar shall strike the name of an entitled representative from the List upon a final decision of a competent court or authority establishing that the registration on the List has been obtained by fraud; a conviction is not necessary.

4. The Registrar will strike the name of an entitled representative from the List upon his request to this effect.

Part IV – Review

Rule 17 – Decisions subject to review

Decisions of the Registrar referred to in Rules 15 and 16 may be challenged in accordance with the following provisions.

Rule 18 – Formalities of the petition for review

The petition for review shall be filed in writing with the Registrar in one of the official languages of the European Patent Office, within one month of the notification of the challenged decision. It shall indicate the reasons for setting aside the decision of the Registrar.

Rule 19 – Revision by the Registrar

1. If the Registrar considers the petition for review to be admissible and well founded, he shall rectify his decision.
2. If the Registrar does not rectify his decision within one month of receipt of the petition for review, he shall forward it to the President of the Court of Appeal who shall decide on the petition for review.

Rule 20 – Decision by the President of the Court of Appeal

If the petition for review is admissible, the President of the Court of Appeal shall examine whether the appeal is allowable. If the petition for review is allowable, he shall alter the Registrar's decision. If the petition for review is not allowable, he shall reject it.

Part V – Notification and Entry into force

Rule 21 – Notification

Decisions of the Administrative Committee, the Registrar and the President of the Court of Appeal shall be notified.

Rule 22 – Entry into force

This Decision shall enter into force on [...].

Done at [...] on [...]

For the Administrative Committee

The Chairman