

## ANNEX I

## STATUTE OF THE UNIFIED PATENT COURT

## Article 1

**Scope of the Statute**

This Statute contains institutional and financial arrangements for the Unified Patent Court as established under Article 1 of the Agreement.

## CHAPTER I

## JUDGES

## Article 2

**Eligibility of judges**

1. Any person who is a national of a Contracting Member State and fulfils the conditions set out in Article 15 of the Agreement and in this Statute may be appointed as a judge.
2. Judges shall have a good command of at least one official language of the European Patent Office.
3. Experience with patent litigation which has to be proven for the appointment pursuant to Article 15(1) of the Agreement may be acquired by training under Article 11(4)(a) of this Statute.

## Article 3

**Appointment of judges**

1. Judges shall be appointed pursuant to the procedure set out in Article 16 of the Agreement.
2. Vacancies shall be publicly advertised and shall indicate the relevant eligibility criteria as set out in Article 2. The Advisory Committee shall give an opinion on candidates' suitability to perform the duties of a judge of the Court. The opinion shall comprise a list of most suitable candidates. The list shall contain at least twice as many candidates as there are vacancies. Where necessary, the Advisory Committee may recommend that, prior to the decision on the appointment, a candidate judge receive training in patent litigation pursuant to Article 11(4)(a).
3. When appointing judges, the Administrative Committee shall ensure the best legal and technical expertise and a balanced composition of the Court on as broad a geographical basis as possible among nationals of the Contracting Member States.
4. The Administrative Committee shall appoint as many judges as are needed for the proper functioning of the Court. The Administrative Committee shall initially appoint the necessary number of judges for setting up at least one panel in each of the divisions of the Court of First Instance and at least two panels in the Court of Appeal.
5. The decision of the Administrative Committee appointing full-time or part-time legally qualified judges and full-time technically qualified judges shall state the instance of the Court and/or the division of the Court of First Instance for which each judge is appointed and the field(s) of technology for which a technically qualified judge is appointed.
6. Part-time technically qualified judges shall be appointed as judges of the Court and shall be included in the Pool of Judges on the basis of their specific qualifications and experience. The appointment of these judges to the Court shall ensure that all fields of technology are covered.

*Article 4***Judges' term of office**

1. Judges shall be appointed for a term of six years, beginning on the date laid down in the instrument of appointment. They may be re-appointed.
  
2. In the absence of any provision regarding the date, the term shall begin on the date of the instrument of appointment.

*Article 5***Appointment of the members of the Advisory Committee**

1. Each Contracting Member State shall propose a member of the Advisory Committee who fulfils the requirements set out in Article 14(2) of the Agreement.
  
2. The members of the Advisory Committee shall be appointed by the Administrative Committee acting by common accord.

*Article 6***Oath**

Before taking up their duties judges shall, in open court, take an oath to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

*Article 7***Impartiality**

1. Immediately after taking their oath, judges shall sign a declaration by which they solemnly undertake that, both during and after their term of office, they shall respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
  
2. Judges may not take part in the proceedings of a case in which they:
  - (a) have taken part as adviser;
  
  - (b) have been a party or have acted for one of the parties;
  
  - (c) have 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) have a personal or financial interest in the case or in relation to one of the parties; or
  
  - (e) are related to one of the parties or the representatives of the parties by family ties.
  
3. If, for some special reason, a judge considers that he or she should not take part in the judgement or examination of a particular case, that judge shall so inform the President of the Court of Appeal accordingly or, in the case of judges of the Court of First Instance, the President of the Court of First Instance. If, for some special reason, the President of the Court of Appeal or, in the case of judges of the Court of First Instance, the President of the Court of First Instance considers that a judge should not sit or make submissions in a particular case, the President of the Court of Appeal or the President of the Court of First Instance shall justify this in writing and notify the judge concerned accordingly.

4. Any party to an action may object to a judge taking part in the proceedings on any of the grounds listed in paragraph 2 or where the judge is suspected, with good reason, of partiality.

5. Any difficulty arising as to the application of this Article shall be settled by decision of the Presidium, in accordance with the Rules of Procedure. The judge concerned shall be heard but shall not take part in the deliberations.

#### *Article 8*

##### **Immunity of judges**

1. The judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in relation to their official capacity.

2. The Presidium may waive the immunity.

3. Where immunity has been waived and criminal proceedings are instituted against a judge, that judge shall be tried, in any of the Contracting Member States, only by the court competent to judge the members of the highest national judiciary.

4. The Protocol on the privileges and immunities of the European Union shall apply to the judges of the Court, without prejudice to the provisions relating to immunity from legal proceedings of judges which are set out in this Statute.

#### *Article 9*

##### **End of duties**

1. Apart from replacement after expiry of a judge's term pursuant to Article 4, or death, the duties of a judge shall end when that judge resigns.

2. Where a judge resigns, the letter of resignation shall be addressed to the President of the Court of Appeal or, in the case of judges of the Court of First Instance, the President of the Court of First Instance for transmission to the Chairman of the Administrative Committee.

3. Save where Article 10 applies, a judge shall continue to hold office until that judge's successor takes up his or her duties.

4. Any vacancy shall be filled by the appointment of a new judge for the remainder of his or her predecessor's term.

#### *Article 10*

##### **Removal from office**

1. A judge may be deprived of his or her office or of other benefits only if the Presidium decides that that judge no longer fulfils the requisite conditions or meets the obligations arising from his or her office. The judge concerned shall be heard but shall not take part in the deliberations.

2. The Registrar of the Court shall communicate this decision to the Chairman of the Administrative Committee.

3. In the case of a decision depriving a judge of his or her office, a vacancy shall arise upon that notification.

#### *Article 11*

##### **Training**

1. Appropriate and regular training of judges shall be provided for within the training framework set up under Article 19 of the Agreement. The Presidium shall adopt Training Regulations ensuring the implementation and overall coherence of the training framework.

2. The training framework shall provide a platform for the exchange of expertise and a forum for discussion, in particular by:

- (a) organising courses, conferences, seminars, workshops and symposia;
- (b) cooperating with international organisations and education institutes in the field of intellectual property; and
- (c) promoting and supporting further vocational training.

3. An annual work programme and training guidelines shall be drawn up, which shall include for each judge an annual training plan identifying that judge's main training needs in accordance with the Training Regulations.

4. The training framework shall in addition:

- (a) ensure appropriate training for candidate-judges and newly appointed judges of the Court;
- (b) support projects aimed at facilitating cooperation between representatives, patent attorneys and the Court.

#### *Article 12*

#### **Remuneration**

The Administrative Committee shall set the remuneration of the President of the Court of Appeal, the President of the Court of First Instance, the judges, the Registrar, the Deputy-Registrar and the staff.

### CHAPTER II

#### **ORGANISATIONAL PROVISIONS**

##### SECTION 1

#### ***Common provisions***

#### *Article 13*

#### **President of the Court of Appeal**

1. The President of the Court of Appeal shall be elected by all judges of the Court of Appeal for a term of three years, from among their number. The President of the Court of Appeal may be re-elected twice.
2. The elections of the President of the Court of Appeal shall be by secret ballot. A judge obtaining an absolute majority shall be elected. If no judge obtains an absolute majority, a second ballot shall be held and the judge obtaining the most votes shall be elected.
3. The President of the Court of Appeal shall direct the judicial activities and the administration of the Court of Appeal and chair the Court of Appeal sitting as a full Court.
4. If the office of the President of the Court of Appeal falls vacant before the date of expiry of his or her term, a successor shall be elected for the remainder thereof.

#### *Article 14*

#### **President of the Court of First Instance**

1. The President of the Court of First Instance shall be elected by all judges of the Court of First Instance who are full-time judges, for a term of three years, from among their number. The President of the Court of First Instance may be re-elected twice.

2. The first President of the Court of First Instance shall be a national of the Contracting Member State hosting the seat of the central division.
3. The President of the Court of First Instance shall direct the judicial activities and the administration of the Court of First Instance.
4. Article 13(2) and (4), shall by analogy apply to the President of the Court of First Instance.

#### *Article 15*

##### **Presidium**

1. The Presidium shall be composed of the President of the Court of Appeal, who shall act as chairperson, the President of the Court of First Instance, two judges of the Court of Appeal elected from among their number, three judges of the Court of First Instance who are full-time judges of the Court elected from among their number, and the Registrar as a non-voting member.
2. The Presidium shall exercise its duties in accordance with this Statute. It may, without prejudice to its own responsibility, delegate certain tasks to one of its members.
3. The Presidium shall be responsible for the management of the Court and shall in particular:
  - (a) draw up proposals for the amendment of the Rules of Procedure in accordance with Article 41 of the Agreement and proposals regarding the Financial Regulations of the Court;
  - (b) prepare the annual budget, the annual accounts and the annual report of the Court and submit them to the Budget Committee;
  - (c) establish the guidelines for the training programme for judges and supervise the implementation thereof;
  - (d) take decisions on the appointment and removal of the Registrar and the Deputy-Registrar;
  - (e) lay down the rules governing the Registry including the sub-registries;
  - (f) give an opinion in accordance with Article 83(5) of the Agreement.
4. Decisions of the Presidium referred to in Articles 7, 8, 10 and 22 shall be taken without the participation of the Registrar.
5. The Presidium can take valid decisions only when all members are present or duly represented. Decisions shall be taken by a majority of the votes.

#### *Article 16*

##### **Staff**

1. The officials and other servants of the Court shall have the task of assisting the President of the Court of Appeal, the President of the Court of First Instance, the judges and the Registrar. They shall be responsible to the Registrar, under the authority of the President of the Court of Appeal and the President of the Court of First Instance.
2. The Administrative Committee shall establish the Staff Regulations of officials and other servants of the Court.

#### *Article 17*

##### **Judicial vacations**

1. After consulting the Presidium, the President of the Court of Appeal shall establish the duration of judicial vacations and the rules on observing official holidays.

2. During the period of judicial vacations, the functions of the President of the Court of Appeal and of the President of the Court of First Instance may be exercised by any judge invited by the respective President to that effect. In cases of urgency, the President of the Court of Appeal may convene the judges.

3. The President of the Court of Appeal or the President of the Court of First Instance may, in proper circumstances, grant leave of absence to respectively judges of the Court of Appeal or judges of the Court of First Instance.

## SECTION 2

### **The Court of First Instance**

#### *Article 18*

#### **Setting up and discontinuance of a local or regional division**

1. A request from one or more Contracting Member States for the setting up of a local or regional division shall be addressed to the Chairman of the Administrative Committee. It shall indicate the seat of the local or regional division.

2. The decision of the Administrative Committee setting up a local or regional division shall indicate the number of judges for the division concerned and shall be public.

3. The Administrative Committee shall decide to discontinue a local or regional division at the request of the Contracting Member State hosting the local division or the Contracting Member States participating in the regional division. The decision to discontinue a local or regional division shall state the date after which no new cases may be brought before the division and the date on which the division will cease to exist.

4. As from the date on which a local or regional division ceases to exist, the judges assigned to that local or regional division shall be assigned to the central division, and cases still pending before that local or regional division together with the sub-registry and all of its documentation shall be transferred to the central division.

#### *Article 19*

#### **Panels**

1. The allocation of judges and the assignment of cases within a division to its panels shall be governed by the Rules of Procedure. One judge of the panel shall be designated as the presiding judge, in accordance with the Rules of Procedure.

2. The panel may delegate, in accordance with the Rules of Procedure, certain functions to one or more of its judges.

3. A standing judge for each division to hear urgent cases may be designated in accordance with the Rules of Procedure.

4. In cases where a single judge in accordance with Article 8(7) of the Agreement, or a standing judge, in accordance with paragraph 3 of this Article, hears a case that judge shall carry out all functions of a panel.

5. One judge of the panel shall act as Rapporteur, in accordance with the Rules of Procedure.

#### *Article 20*

#### **Pool of Judges**

1. A list with the names of the judges included in the Pool of Judges shall be drawn up by the Registrar. In relation to each judge, the list shall at least indicate the linguistic skills, the field of technology and experience of, as well as the cases previously handled by, that judge.

2. A request addressed to the President of the Court of First Instance to assign a judge from the Pool of Judges shall indicate, in particular, the subject-matter of the case, the official language of the European Patent Office used by the judges of the panel, the language of the proceedings and the field of technology required.

#### SECTION 3

### **The Court of Appeal**

#### *Article 21*

#### **Panels**

1. The allocation of judges and the assignment of cases to panels shall be governed by the Rules of Procedure. One judge of the panel shall be appointed as the presiding judge, in accordance with the Rules of Procedure.
2. When a case is of exceptional importance, and in particular when the decision may affect the unity and consistency of the case law of the Court, the Court of Appeal may decide, on the basis of a proposal from the presiding judge, to refer the case to the full Court.
3. The panel may delegate, in accordance with the Rules of Procedure, certain functions to one or more of its judges.
4. One judge of the panel shall act as Rapporteur, in accordance with the Rules of Procedure.

#### SECTION 4

### **The Registry**

#### *Article 22*

#### **Appointment and removal from office of the Registrar**

1. The Presidium shall appoint the Registrar of the Court for a term of six years. The Registrar may be re-appointed.
2. Two weeks before the date fixed for appointing the Registrar, the President of the Court of Appeal shall inform the Presidium of the applications which have been submitted for the post.
3. Before taking up his or her duties, the Registrar shall take oath before the Presidium to perform the duties of the Registrar impartially and conscientiously.
4. The Registrar may be removed from office only if the Registrar no longer meets the obligations arising from his or her office. The Presidium shall take its decision after having heard the Registrar.
5. If the office of the Registrar falls vacant before the date of expiry of the term thereof, the Presidium shall appoint a new Registrar for a term of six years.
6. If the Registrar is absent or prevented from attending or where such post is vacant, the President of the Court of Appeal after having consulted the Presidium shall designate a member of the staff of the Court to carry out the duties of the Registrar.

#### *Article 23*

#### **Duties of the Registrar**

1. The Registrar shall assist the Court, the President of the Court of Appeal, the President of the Court of First Instance and the judges in the performance of their functions. The Registrar shall be responsible for the organisation and activities of the Registry under the authority of the President of the Court of Appeal.

2. The Registrar shall in particular be responsible for:
  - (a) keeping the register which shall include records of all cases before the Court;
  - (b) keeping and administering lists drawn up in accordance with Articles 18, 48(3) and 57(2) of the Agreement;
  - (c) keeping and publishing a list of notifications and withdrawals of opt-outs in accordance with Article 83 of the Agreement;
  - (d) publishing the decisions of the Court, subject to the protection of confidential information;
  - (e) publishing annual reports with statistical data; and
  - (f) ensuring that the information on opt-outs in accordance with Article 83 of the Agreement is notified to the European Patent Office.

#### *Article 24*

##### **Keeping of the register**

1. Detailed rules for keeping the register of the Court shall be prescribed in the Rules governing the Registry, adopted by the Presidium.
2. The rules on access to documents of the Registry shall be provided for in the Rules of Procedure.

#### *Article 25*

##### **Sub-registries and Deputy-Registrar**

1. A Deputy-Registrar shall be appointed for a term of six years by the Presidium. The Deputy-Registrar may be re-appointed.
2. Article 22(2) to (6) shall apply by analogy.
3. The Deputy-Registrar shall be responsible for the organisation and activities of sub-registries under the authority of the Registrar and the President of the Court of First Instance. The duties of the Deputy-Registrar shall in particular include:
  - (a) keeping records of all cases before the Court of First Instance;
  - (b) notifying every case before the Court of First Instance to the Registry.
4. The Deputy-Registrar shall also provide administrative and secretarial assistance to the divisions of the Court of First Instance.

### CHAPTER III

#### **FINANCIAL PROVISIONS**

#### *Article 26*

##### **Budget**

1. The budget shall be adopted by the Budget Committee on a proposal from the Presidium. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations, established in accordance with Article 33.
2. Within the budget, the Presidium may, in accordance with the Financial Regulations, transfer funds between the various headings or subheadings.

3. The Registrar shall be responsible for the implementation of the budget in accordance with the Financial Regulations.

4. The Registrar shall annually make a statement on the accounts of the preceding financial year relating to the implementation of the budget which shall be approved by the Presidium.

#### *Article 27*

##### **Authorisation for expenditure**

1. The expenditure entered in the budget shall be authorised for the duration of one accounting period unless the Financial Regulations provide otherwise.

2. In accordance with the Financial Regulations, any appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period.

3. Appropriations shall be set out under different headings according to type and purpose of the expenditure, and subdivided, to the extent necessary, in accordance with the Financial Regulations.

#### *Article 28*

##### **Appropriations for unforeseeable expenditure**

1. The budget of the Court may include appropriations for unforeseeable expenditure.

2. The employment of these appropriations by the Court shall be subject to the prior approval of the Budget Committee.

#### *Article 29*

##### **Accounting period**

The accounting period shall commence on 1 January and end on 31 December.

#### *Article 30*

##### **Preparation of the budget**

The Presidium shall submit the draft budget of the Court to the Budget Committee no later than the date prescribed in the Financial Regulations.

#### *Article 31*

##### **Provisional budget**

1. If, at the beginning of the accounting period, the budget has not been adopted by the Budget Committee, expenditure may be effected on a monthly basis per heading or other division of the budget, in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the Presidium do not exceed one-twelfth of those provided for in the draft budget.

2. The Budget Committee may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the budget appropriations for the preceding accounting period.

#### *Article 32*

##### **Auditing of accounts**

1. The annual financial statements of the Court shall be examined by independent auditors. The auditors shall be appointed and if necessary dismissed by the Budget Committee.

2. The audit, which shall be based on professional auditing standards and shall take place, if necessary, in situ, shall ascertain that the budget has been implemented in a lawful and proper manner and that the financial administration of the Court has been conducted in accordance with the principles of economy and sound financial management. The auditors shall draw up a report after the end of each accounting period containing a signed audit opinion.

3. The Presidium shall submit to the Budget Committee the annual financial statements of the Court and the annual budget implementation statement for the preceding accounting period, together with the auditors' report.

4. The Budget Committee shall approve the annual accounts together with the auditors' report and shall discharge the Presidium in respect of the implementation of the budget.

#### *Article 33*

#### **Financial Regulations**

1. The Financial Regulations shall be adopted by the Administrative Committee. They shall be amended by the Administrative Committee on a proposal from the Court.

2. The Financial Regulations shall lay down in particular:

- (a) arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;
- (b) the method and procedure whereby the payments and contributions, including the initial financial contributions provided for in Article 37 of the Agreement are to be made available to the Court;
- (c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision; and
- (d) the generally accepted accounting principles on which the budget and the annual financial statements are to be based.

#### CHAPTER IV

#### **PROCEDURAL PROVISIONS**

#### *Article 34*

#### **Secrecy of deliberations**

The deliberations of the Court shall be and shall remain secret.

#### *Article 35*

#### **Decisions**

1. When a panel sits in composition of an even number of judges, decisions of the Court shall be taken by a majority of the panel. In case of equal vote, the vote of the presiding judge shall prevail.

2. In the event of one of the judges of a panel being prevented from attending, a judge from another panel may be called upon to sit in accordance with the Rules of Procedure.

3. In cases where this Statute provides that the Court of Appeal shall take a decision sitting as a full court, such decision shall be valid only if it is taken by at least 3/4 of the judges comprising the full court.

4. Decisions of the Court shall contain the names of the judges deciding the case.
5. Decisions shall be signed by the judges deciding the case, by the Registrar for decisions of the Court of Appeal, and by the Deputy-Registrar for decisions of the Court of First Instance. They shall be read in open court.

*Article 36*

**Dissenting opinions**

A dissenting opinion expressed separately by a judge of a panel in accordance with Article 78 of the Agreement shall be reasoned, given in writing and shall be signed by the judge expressing this opinion.

*Article 37*

**Decision by default**

1. At the request of a party to an action, a decision by default may be given in accordance with the Rules of Procedure, where the other party, after having been served with a document instituting proceedings or with an equivalent document, fails to file written submissions in defence or fails to appear at the oral hearing. An objection may be lodged against that decision within one month of it being notified to the party against which the default decision has been given.
2. The objection shall not have the effect of staying enforcement of the decision by default unless the Court decides otherwise.

*Article 38*

**Questions referred to the Court of Justice of the European Union**

1. The procedures established by the Court of Justice of the European Union for referrals for preliminary rulings within the European Union shall apply.
  2. Whenever the Court of First Instance or the Court of Appeal has decided to refer to the Court of Justice of the European Union a question of interpretation of the Treaty on European Union or of the Treaty on the Functioning of the European Union or a question on the validity or interpretation of acts of the institutions of the European Union, it shall stay its proceedings.
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