



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 14 November 2012**

**16221/12**

**PI 145  
COUR 73**

**NOTE**

from: Presidency  
to: Delegations  
No. prev. doc.: 17580/11 PI 170 COUR 72  
Subject: Draft agreement on a Unified Patent Court and draft Statute  
- Updated draft declaration of the contracting Member States concerning  
the preparations for the coming into operation of the UPC agreement

Delegations will find in the Annex a revised version of the above mentioned draft declaration, which takes into account developments since November 2011.

From a procedural point of view, it is suggested that this declaration takes the form of minutes of the signing of the agreement.

Changes in relation to the previous version (17580/11) are underlined.

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**DRAFT**

**MINUTES**

**OF THE SIGNING OF THE AGREEMENT ON A UNIFIED PATENT COURT AND  
DRAFT STATUTE**

The Plenipotentiaries of the Kingdom of Belgium..... today signed the Agreement on a Unified Patent Court and draft Statute.

On this occasion, the signatories agreed to annex to these Minutes the following arrangements.

Done at Brussels, .... 2013.

**DECLARATION OF THE CONTRACTING MEMBER STATES**  
**CONCERNING THE PREPARATIONS FOR THE COMING INTO OPERATION**

**OF THE UNIFIED PATENT COURT**

1. The [...] Member States having signed the Agreement on a Unified Patent Court (hereafter “Signatory States”) consider that the Agreement should be ratified as quickly as possible without prejudicing their national ratification procedures, including as appropriate their constitutional and parliamentary requirements, and that the Unified Patent Court should become fully operational upon the entry into force of the Agreement without undue delay. To this end, they undertake to use their best efforts and affirm their willingness to start promptly with the preparation for the expeditious establishment of the Unified Patent Court.
2. The Signatory States are determined to ensure that the Unified Patent Court achieves a high degree of efficiency and delivers expeditious and high quality decisions from the outset. With this in mind they think it necessary that all practical arrangements for the proper functioning of the Unified Patent Court are already in place or are duly prepared before the entry into force of the Agreement.
3. The Signatory States intend to set up without any delay a Preparatory Committee which will be composed by their representatives. The Preparatory Committee shall prepare the practical arrangements and set out a roadmap for the early establishment and coming into operation of the Unified Patent Court. It may establish subgroups as appropriate and make use of teams of experts.

4. The Signatory States consider that the Preparatory Committee should in particular organise without delay training of future judges, prepare Rules of Procedure for the Unified Patent Court, prepare the budget of the Unified Patent Court for the first financial year, make proposals for appropriate facilities for the divisions of the First Instance and the Court of Appeal, prepare the setting-up of the Administrative Committee and the adoption of its Rules of Procedure, prepare the setting-up of the Budget Committee, prepare the election of the members of [...] the Advisory Committee, prepare the election of judges and the recruitment of administrative staff.
5. The Signatory States stress that the most urgent task is to organise training for future judges from Member States where there is currently little experience with patent litigation. To this end, the Contracting Member States who have specialised courts dealing with a significant number of patent cases affirm their willingness to offer appropriate training possibilities, in particular internships, for candidate judges from other Member States without any delay. The Preparatory Committee shall draw up an appropriate training plan, covering all relevant areas of law including competition law, and provide support for the organisational arrangements.
6. The Signatory States recall the importance of appropriate Rules of Procedure for the Unified Patent Court and of their uniform application, which are vital to guarantee that the decisions of the Court are of the highest quality and that proceedings are organised in the most efficient and cost effective manner. They affirm their willingness to draw up a complete and detailed set of Rules of Procedure before the entry into force of the Agreement. The Preparatory Committee shall complete a first draft of Rules of Procedure on the basis of input of expert judges, lawyers and industry representatives within three months. This draft should be the basis of a broad consultation with stakeholders before it is finalised with a view to reaching agreement on it well before the end of the ratification procedures. The adoption of the Rules of Procedure by the Administrative Committee should be preceded by a consultation with the European Commission on their compatibility with Union Law.

7. The Signatory States emphasize that, for the proper functioning of the Unified Patent Court, it is important that from the outset it has appropriate facilities at its disposal. The Signatory States intending to host a local, regional or the central division of the Court of First Instance or the Court of Appeal affirm their intention to have the appropriate facilities in terms of premises, furniture, office and IT equipment and administrative support staff in place before the entry into force of the Agreement. The Preparatory Committee shall serve as an interlocutor for the host Signatory States and shall provide the necessary support for the organisational arrangements.
8. The Signatory States consider that the fee system of the Unified Patent Court should be straightforward and predictable for the users. Accordingly, the Unified Patent Court should apply a mixed system of fixed and value-based fees. The Court should be accessible for parties with limited resources. Thus the court fees should be set at an appropriate level. Whilst all users of the Unified Patent Court should contribute to its financing, users having more significant economic interests should provide a reasonable and proportionate contribution to the functioning of the Court, on the basis of an additional value-based fee, proportionate to the economic value of the case at stake in the specific procedure, applicable above a pre-defined ceiling. The fee system should provide adequate and specific tools to ensure proper access for small and medium-sized enterprises, micro entities, natural persons, non profit organisations, universities and public research organisations to the Unified Patent Court, especially in relation to cases of high economic value.
9. The Signatory States consider that the availability of supplementary protection certificates for pharmaceutical and plant protection products should be ensured in accordance with Regulation 469/2009 and Regulation 1610/96, for which the Commission is invited to present proposals in due time and as necessary.

10. The Signatory States recognize that the proper preparation for the coming into operation of the Unified Patent Court relies on their collective effort and on their efficient cooperation. They will act in good faith and use their best endeavours during the preparatory phase to ensure that the Unified Patent Court will work in the most efficient and cost effective way, will deliver judgments of the highest quality and will from the outset gain the trust and confidence of the users of the patent system.
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