

Order
of the President of the Court of Appeal of the Unified Patent Court
concerning a petition for review of a decision by the Registrar
issued on 24 July 2025

HEADNOTE:

- The transitional period provided under Rule 12.1(a) of the EPLC Rules is as a rule not subject to extension or exception.

KEYWORD:

- EPLC Rules

APPLICANT:

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[REDACTED]
[REDACTED]

PETITION FOR REVIEW:

- ☐ APL_28067/2025 UPC_CoA_521/2025

ORDER OF THE REGISTRAR TO BE REVIEWED:

- ☐ Order of the Registrar ORD_18929/2025 of 12 May 2025 concerning App_14789/2025

DECISION OF THE REGISTRAR DENYING RELIEF:

- ☐ Order of the Registrar ORD_32541/2025 of 9 July 2025 concerning APL_28067/2025
UPC_CoA_521/2025

SUMMARY OF FACTS:

1. On 27 March 2025, the applicant requested to be entered on the list of representatives before the Unified Patent Court (UPC), claiming that he fulfilled the requirements of Article 48(2) of the Agreement on a Unified Patent Court (UPCA). With his application, he submitted a certificate dated 9 June 2023, which attests that the applicant successfully obtained the certificate entitled “Certificato di superamento dell’esame conclusivo del Corso di Proprietà Industriale - Brevetti”. This course is referred to in Rule 12.1(a) of the Rules on the European Patent Litigation Certificate and other appropriate qualifications (hereinafter: EPLC Rules).

2. On 12 May 2025, the Registrar of the UPC rejected the application as it had not been filed within the transitional period of one year from the entry into force of the UPC Agreement on 1 June 2023 during which it was possible to file applications for registration as a representative pursuant to Rule 12.1 EPLC Rules.
3. In his petition for review of 12 June 2025, the applicant asserts that:
 - the deadline of 3 June 2024 should not be construed restrictively and should apply solely to the acquisition of the requisite qualification under the transitional regime, and not to the date of registration on the list of representatives;
 - the missed deadline resulted from a clerical error—an isolated and exceptional incident within an otherwise reliable paralegal department—and did not amount to wilful neglect. Accordingly, the principles of equity and proportionality should be applied to rectify the matter by reinstating the applicant’s right to registration as a UPC representative.
4. On 9 July 2025, the Registrar held that the petition for review is admissible but unfounded and forwarded it to the President of the Court of Appeal pursuant to Rule 12.1 EPLC Rules.
5. In the reasons for his decision, the Registrar stated that:
 - the certificate entitled “Corso di proprietà industriale – brevetti” shall be deemed an appropriate qualification during a period of one year from the entry into force of the Agreement on a Unified Patent Court,
 - from the wording, it is clear that the intention of Rule 12.1 EPLC Rules is to provide a grace period during which such certificates shall be deemed a valid basis for registration, and that such certificates cannot serve as a basis for registration if the application is filed after the expiry of the transitional period.
 - the transitional period lasted for one year, during which the applicant had ample opportunity to verify whether the registration had been successful. Against this background, the clerical error invoked by the applicant was not considered sufficient to re-establish the applicant’s right to registration despite the missed deadline.

REASONS FOR THE ORDER:

6. The Petition for Review is admissible but unfounded.
7. Pursuant to Article 48(2) UPCA, parties may be represented by European Patent Attorneys who are entitled to act as professional representative before the European Patent Office pursuant to Article 134 EPC and who have appropriate qualifications such as a European Patent Litigation Certificate. In accordance with Rule 286.2 Rules of Procedure of the Unified Patent Court (hereinafter: Rules of Procedure), these requirements must be demonstrated by submitting the relevant certificates.
8. Although the applicant has proven – by his entry in the list maintained by the European Patent Office - that he is authorised to act as a professional representative before the European Patent Office, there is no evidence that he holds the qualification required to represent a party before the Unified Patent Court under Article 48(2) UPCA, such as, for example, a European Patent

Litigation Certificate.

9. The requirements for such a qualification have been defined in more detail, and exclusively, by the Administrative Committee in the EPLC Rules. According to Rule 2 EPLC Rules, the qualification requires a certificate confirming successful completion of an accredited course on European Patent Litigation, or as stated in Rule 12.1(a) EPLC Rules, the successful completion of certain specifically named courses.
10. The applicant's request does not meet the requirements set out in Rule 2 and 12.1(a) EPLC Rules respectively.
11. The course completed by the applicant at Politecnico Milano was conducted prior to its accreditation by the Administrative Committee on 19 July 2024 and is thus not an accredited course within the meaning of Rule 2 EPLC Rules.
12. The course completed by the applicant is named in Rule 12.1(a)(xii) EPLC Rules listing "other qualifications". Pursuant to Rule 12.1 EPLC Rules, such courses are deemed appropriate qualification only "[d]uring a period of one year from the entry into force of the Agreement on a Unified Patent Court". This period commenced on 1 June 2023 and (, since 1 June and 2 June fell on a Saturday and Sunday respectively,) expired on 3 June 2024. The applicant's request, dated 27 March 2025, was filed after the expiry of this period.
13. Contrary to the applicant's assertion, the period set out in Rule 12.1 EPLC Rules does not refer to the date on which the qualification was obtained. According to the wording of Rule 12.1 EPLC Rules, the listed courses and certificates are deemed appropriate qualifications during a period of one year from the entry into force of the UPCA.
14. Rule 12.1 EPLC Rules does not establish a period of time during which a certificate may be granted and still serve as a valid basis for registration, regardless of when the application is filed. Based on the wording "during a period of one year", the opposite understanding of Rule 12.1 EPLC Rules would imply that the validity is limited to certificates granted within the period of one year from the entry into force of the Agreement and subsequently contradict with Rule 12.2 EPLC Rules, which limits the exception in Rule 12.1(a) EPLC Rules to certain courses and certificates that were successfully completed or granted by 31 December 2020. The limitation of Rule 12.2 EPLC Rules would serve no practical purpose if the exception of Rule 12.1 EPLC Rules ("[d]uring a period of one year from the entry into force of the Agreement on a Unified Patent Court") were understood to apply only to those courses completed and certificates granted between 1 June 2023 and 3 June 2024.
15. Rule 12 EPLC Rules does not set a time limit for submitting a request for registration, as confirmed by Rules 13 and 14 EPLC Rules. Consequently, requests filed after 3 June 2024 are, in that respect, admissible. However, Rule 12.1 is relevant to the substantive question of whether the request for registration is well-founded, namely whether the applicant possesses an appropriate qualification. For courses and certificates listed under Rule 12.1 EPLC Rules, this is only the case if the request was filed before the expiry of the grace period on 3 June 2024.
16. Only during this transitional period the successful completion of one of the courses or the grant

of one of the certificates listed in Rule 12.1(a) EPLC Rules can be deemed as an appropriate qualification for a European Patent Attorney pursuant to Article 48(2) UPCA and as such to be an equivalent to a European Patent Litigation Course accredited by the UPC Administrative Committee on the basis of an opinion of the UPC Advisory Committee under Rule 8.1 EPLC Rules.

17. Neither the EPLC Rules themselves nor the application of said rules by the Registrar of the UPC violate the principles of equality and proportionality. The EPLC Rules, in particular Rule 2 and 12.1, are justified by the objective of ensuring qualified representation of the parties before the Unified Patent Court. According to Article 48(2) UPCA, only European Patent Attorneys may be admitted as party representatives, provided they are not only authorized to act before the European Patent Office but have also demonstrated their ability to conduct European patent litigation through an appropriate certificate or equivalent qualification. This purpose requires that the more detailed requirements for obtaining such a certificate and the equivalent qualification be explicitly regulated, which has been fully achieved through the adoption of the EPLC Rules by the Administrative Committee, in which all Contracting Member States of the Agreement on a Unified Patent Court are represented. The principles of equality or of proportionality do not require the Member States to provide exceptions to the general rule of completing an accredited course. In this context, the decision of the Member States to allow registration based on unaccredited courses only for a limited period and only for a specified list of courses is, in itself, not objectionable.
18. Furthermore, it should be noted that the applicant still can demonstrate the required qualification by either obtaining a European Patent Litigation Certificate or a legal diploma under Rule 11 EPLC Rules. Upon fulfilling these conditions, the applicant may then be entered in the list of representatives before the Unified Patent Court.
19. The applicant's submission that the failure to request registration before the expiry of the grace period under Rule 12.1 EPLC Rules occurred despite the fact "that all due care required by the circumstances was observed". However, the "one-off oversight" described in the applicant's request does not justify the registration by way of re-establishment of rights.
20. Under the Rules of Procedure, a party which has failed to observe a time-limit may, under the conditions laid down in Rule 320 Rules of Procedure, request a re-establishment of rights. However, the EPLC Rules do neither include a rule on the re-establishment of right nor do they refer to Rule 320 Rules of Procedure.
21. Even if the Rule 320 Rules of Procedure would be applicable, it were already doubtful whether the "period of one year from the entry into force" of the UPC Agreement laid down in Rule 12.1 EPLC Rules is a deadline that could be subject to a re-establishment of right since the wording refers to the fact that certain courses and certificates "shall ... be deemed as appropriate" which implies that this is not a procedural deadline but a material provision.
22. If the principles on re-establishment of rights would be applied on the period of Rule 12.1 EPLC Rules in the present case, the respective requirements are not met. A re-establishment of right requires that a deadline was missed "despite all due care having been taken". In case of the proper registration as a representative at the UPC it is not sufficient to only task administrative staff with the registration. In addition, due care must be taken that the registration was completed successful e.g. by double-checking in a timely manner. The applicant's submission that his team

of paralegals “mistakenly believe[ed] that this would automatically enroll [him] in the list of UPC representatives” is therefore not sufficient to support any re-establishment of rights.

23. Furthermore, the requirements for such re-establishment of rights are also not met in the case at hand, as the applicant would be required to file such an application no later than six months after the expiry of the missed deadline. Such time limit for the re-establishment of rights is justified, as it serves the essential purpose of ensuring the timely conclusion of proceedings and thus providing legal certainty.


24. In view of the above, the petition for review of the Registrar's decision is unsuccessful.

ORDER:

The petition for review of the Registrar's decision of 12 May 2025 is rejected.

This Order was issued on 24 July 2025.

KLAUS STEFAN
MARTIN
Grabinski



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