



24 July 2014

### **BUSINESSEUROPE COMMENTS ON PUBLIC CONSULTATION REGARDING EUROPEAN PATENT LITIGATION CERTIFICATE<sup>1</sup>**

BUSINESSEUROPE appreciates the work of the Preparatory Committee for the Unified Patent Court (UPC) to prepare a smooth entry into operation of the new system by timely adopting rules to implement the UPC Agreement (in particular Art. 48.2). In this context, we welcome the opportunity to comment on the draft decision regarding the European Patent Litigation Certificate (EPLC).

Qualified representation before the UPC is vital for innovative European industry. It provides the possibility of choosing the most adequate representative for a specific case among a wide number of recognised qualified persons with differentiated backgrounds and offering their services in a broad and pan-European competition contest.

It is therefore appreciated that the Rules for the EPLC tailor the content of the qualifying courses to these needs. In addition, they provide for a quality control mechanism of these courses under the responsibility of the UPC Administrative Committee. This also includes the involvement of universities and other non-profit higher educational bodies, encouraging the use of state of the art technology for distance learning in addition to the necessary in-person sessions.

The course accreditation and control mechanisms appear to be adequate to assure the quality of the qualifying courses and consequently the preparation of the European Patent Attorneys qualified under them to represent clients before the UPC.

Regarding Part II of the draft EPLC decision, we wish to offer some comments about Rule 12.

We support the aim of recognising possession of the required qualifications during a transitional period, in order to make available a sufficiently large pool of qualified people already at the beginning of the operation of the system.

We also support the inclusion of an open list of qualifying courses for the transitional period. This flexibility will facilitate preparation of a sufficiently large and geographically balanced body of qualified representatives.

It is important, however, that all the courses in the list include an appropriate session on litigation and advocacy to ensure the availability of a body of well-prepared European patent attorneys, capable of adequately serving their clients already in

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<sup>1</sup> These comments are not shared by CEOE, the Confederation of Employees and Industries of Spain.



advance of the entry into operation of the Court. This is critical for its future successful operation.

Finally, we note that Rule 12b aims at recognising the qualifying nature in the transitional period of activities in patent infringement actions before national courts. We share the underlying principle that such an activity and the knowledge and experience gained should be considered at least as qualifying as the studies listed under Rule 12a. However, considering that generally in Europe non-legally qualified people are not admitted to a solo representation of a party in Court, it appears to be more appropriate and closer to actual practice to amend the initial sentence of Rule 12b to read “**having acted for a party in at least**”.

In this context, we would suggest the making available of an additional training module as soon as reasonably possible on the topics specific to UPC Agreement, i.e. topics h) and i) of Rule 3 (e.g. of 20-25 h).

BUSINESSEUROPE thanks the Preparatory Committee for taking these comments into account before the final adoption of the Rules for the European Patent Litigation Certificate. BUSINESSEUROPE is also looking forward to continue working constructively with the Preparatory Committee towards ensuring the successful entry into operation of the UPC system.

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