

Kluwer Patent Blog

A Unified Patent Court with austrian judges only?

Miquel Montaña (Clifford Chance) · Thursday, November 14th, 2013

Tomorrow is the deadline for persons with the qualifications required for appointment to judicial office in a state which is a contracting party to the Agreement on a Unified Patent Court (“UPC”) to express their interest in becoming a candidate judge on the stillborn UPC. According to paragraph 6 of the “Call for expression of interest of candidate judges of the future UPC”, prospective applicants must fulfil the following requirements:

- They must be nationals of a Contracting Member State,
- They must have a good command of at least one official language of the European Patent Office (DE/EN/FR),
- They must be able to ensure the highest standards of competence and have proven experience in the field of patent litigation,
 - Candidates for legally qualified judge position must possess the qualifications required for appointment to judicial offices in a Contracting Member State;
 - Candidates for technically qualified judge position must have university degree and proven expertise in a field of technology. They must also have proven knowledge of civil law and procedure relevant in patent litigation.

Candidates’ attention is drawn to the fact that according to Article 2 (3) of the Statute of the UPC, experience with patent litigation which has to be proven for the appointment may be acquired by the training framework of the UPC.

So, dear readers, bearing in mind that as of today only Austria has ratified the Agreement on a UPC, if you are interested in being considered as a candidate judge to the UPC, you may try the following courses of action within the next 24 hours:

First, you may try to persuade your Parliament to ratify tomorrow morning! However, even for judges versed in deciding the most difficult cases, and lawyers used to dealing with the most complex matters, this would appear to be a bit of a challenge. The Danish should go an extra mile and make the necessary arrangements so that a referendum is organised and completed tomorrow morning. Hmm, not impossible, but a bit difficult, isn’t it?

Second, you may wish to explore finding a canny way to acquire the Austrian nationality between today and tomorrow. If football players find easy ways of acquiring European nationalities, and

cardinals can acquire the Vatican's citizenship in a sip even if they do not live there, why should prospective candidate judges be let down? However, if you embark on this route be careful, for international courts have traditionally disliked "nationalities of convenience." Friedrich Nottebohm tried the trick acquiring Liechtenstein nationality (not so far from Austria!) and in a judgment dated 6 April 1955, the International Court of Justice jeopardised his plan, finding that his newly acquired Liechtenstein nationality was not opposable to Guatemala, the state where he had been living for years.

The last course of action is, of course, to hope that the Preparatory Committee of the UPC will interpret this requirement in a flexible way and will find you a space in the pipeline in anticipation that the state where you are national may ratify the Agreement on a UPC in due course. Although one might be tempted to assume that the countries that have signed the Agreement will necessarily ratify it, that's a big assumption to make, and nobody seems to have a crystal ball.

And, what if the Austrian candidates challenge the selection process for having admitted applicants who on 15 November 2013 did not fulfil the requirements? As matters stand, we may end up having a UPC with Austrian judges only...

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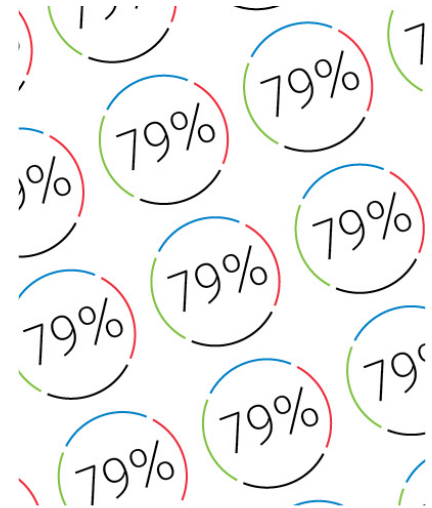
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