

Kluwer Patent Blog

Shortlist of judges for Unified Patent Court

Pieter Callens (Eubelius) · Friday, July 11th, 2014

This week the Preparatory Committee of the Unified Patent Court gathered at the Finnish Permanent Representation to the European Union for their sixth meeting.

At this meeting the Committee approved a shortlist of suitable candidate judges that have the potential to become a judge of the UPC. As you know, the UPC will need both legally and technically qualified judges. The first plans to divide the shortlist of the legally and technically qualified judges into 4 categories was put away for the better option of working with two categories in the shortlist i.e. eligible candidates and candidates eligible after training. Last year, more than 1300 applications were received for UPC judge (both legally and technically qualified). The grey hair Advisory panel, composed of senior patent judges had the difficult task of reviewing all applications and came back with a shortlist of 354 candidates eligible for legally qualified judge and 341 candidates for technically qualified judge. From the 354 candidates for legally qualified judge 171 are eligible as such, while 183 are eligible after training.

Training of the first candidates eligible after training is expected to start after the summer. The training centre for judges was officially opened in Budapest on 13 March 2014. This center shall provide different kinds of training, including internships at national patent courts in the leading countries (France, Germany, UK, the Netherlands). Applicants for judge shall be notified within the coming weeks of their presence on the shortlist.

It came for a lot of people as a surprise that more than 354 candidates were found with potential to become a legally qualified judge. However, it should be taken into account that the UPC Agreement clearly states that legally qualified judges have to possess the “qualifications required for appointment to judicial offices in a Contracting Member State”. A literal reading of this requirement implies that to become a judge in the UPC, it is sufficient to have the qualifications in a Contracting Member State to become a judge. It is not required to actually be or have been a judge in one of the member states. Article 15 of the UPC Agreement further specifies that judges should ensure the highest standards of competence and have proven experience in the field of patent litigation. Therefore, lawyers that have a proven experience in patent litigation and possess the qualifications required for appointment to judicial offices in a Contracting Member State, could be candidate and can appear on the shortlist.

A technically qualified judge needs a university degree, a proven expertise in a field of technology and a proven knowledge of civil law and procedure relevant in patent litigation. It is to be expected that a lot of patent attorneys applied for technically qualified judge.

The shortlist adopted by the Preparatory Committee is off course without prejudice to the formal adption of the judges. The judges need to be appointed by the (to be set up) Administrative Committee of the Court.

Besides the adoption of the shortlist, the Preparatory Committee keeps working on a number of other aspects such as the IT-system of the Court, the Financial Regulation, the rules of the Administrative Committee, the rules of the Budget Committee and the Rules of Procedure. A public hearing on the Rules of Procedure shall take place in the autumn of 2014. Before the public hearing a 17th draft of the Rules would be published.

The target date for the start of the UPC Court has shifted the last months from the beginning to the end of 2015. Meanwhile, 5 member states (Austria, France, Belgium, Sweden and Denmark) have notified the ratification of the UPC Agreement. But also Malta would have ratified and the Baltic States Estonia, Latvia and concluded an agreement with Sweden in March 2014 to create a regional Nordic-Baltic division of the UPC, with its seat in Stockholm. The Nordic-Baltic division will use only English as the language of proceedings.

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