

Kluwer Patent Blog

Judge Sam Granata: Success mediation and arbitration centre of Unified Patent Court will depend largely on performance Court

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Draft rules for the Patent Mediation and Arbitration Centre (PMAC) of the Unified Patent Court (UPC) will be discussed during the next meeting of the UPC Preparatory Committee on 19 October 2015. Together with these rules, a Memorandum of Operation will be introduced regarding the proposed legal and operational structure of the Centre. Sam Granata, a Belgian judge and member of the Legal Framework Group of the UPC Preparatory Committee, thinks the popularity of the future PMAC will depend largely on the success of the Court. ‘A performative co-driver needs an excellent driver.’

In an interview with Kluwer IP Law, Granata – speaking in a personal capacity – explained that different from the Court itself, the UPC Agreement doesn’t provide guidelines regarding the operational structure of the PMAC. So the working group on Mediation and Arbitration of the Legal Framework Group didn’t only have to set up draft rules for the PMAC, but provide its structure as well. It was discussed in several meetings during the past year. ‘The working group balanced between national (Portuguese and Slovenian) aims, financial burdens and legal solutions, but believes it has found such a balance.’




In the plans of the working group, the PMAC will have a director, an administrative committee, a budget committee and auditors, its own advisory committee with two sub-committees for mediation and arbitration, and an appointing committee.

The working group will propose that the three official EPO languages, English, French and German, are used at the Centre. However, parties are free to choose another language. ‘Should a dispute arise between two Chinese parties, for instance, then the language or arbitration/mediation might be Chinese.’

The director and the advisory committee will determine the criteria for national and international experts to be admitted to the list of arbitrators and mediators of the PMAC, Granata said. The Centre will also provide an appropriate application form to that list which includes information for users.

Facilities for the PMAC have not been set up. According to Granata it is important to understand that the facilities, planned in Ljubljana and Lisbon, are administrative seats. ‘The actual arbitration and mediation will be dealt with where parties agree on, although stimuli might be provided to arbitrate and mediate in the two cities (e.g. use of arbitration/mediation rooms complementary to the fees).’

 Granata thinks that in the start-up phase of the PMAC, it will mainly be the judge-rapporteur who will refer cases to the Centre. ‘It is his task throughout the proceedings and especially during the interim conference to guide parties to a settlement. Taking into consideration the (possible) consecutive nature of proceedings (i.e. first a decision on infringement/validity and later on damages and costs) I think the Centre will probably have to focus on mediation regarding damages and costs.’

The central role of the judge-rapporteur also means that the PMAC will probably have more mediation than arbitration cases in its first period, according to Granata: ‘Arbitration is an alternative to Court proceedings and parties have already made such a choice when introducing the case before the Court. Mediation might be a real alternative to settle an already introduced case. Once the Centre has established confidence, it may attract more disputes that have not been introduced to the Court.’

Establish confidence. How do you do that? Granata sees several elements which are of influence. ‘The Centre is novel in the sense that it is actual part of a Court, the UPC. But it is the actual Court which is sitting at the steering wheel of the UPC. The Centre is a mere passenger, which in due time might become a co-driver. So first the Court must prove its excellence. A performative co-driver needs an excellent driver.’

Apart from that, the position of the judge-rapporteur, as already mentioned, is important. He or she will have an important task to inform the parties of the possibilities and advantages of the PMAC. Fees, which haven’t been discussed yet, will certainly be a factor as well.’

Granata is not surprised there has been very little interest from the outside world in the creation of the Patent Mediation and Arbitration Centre, compared to the rest of the UPC. ‘The focus is on the Court. Alternative Dispute Resolution (ADR) is, besides damages/cost issues, not widely used in patent disputes. The lack of interest might be to the advantage of the Centre. It will be a flexible entity with a lightweight structure, which will not be a financial burden for the UPC but might on the other hand develop into a more elaborate entity upon demand of the users.’

It is not the aim of the Centre to compete with existing ADR-centres throughout the world. I believe that the same arbitrators and mediators will be part of the lists held by these Centres. Administrative ease but also the credibility of the Centres will lead parties to them. On the other hand, it needs to be stressed that the PMAC has a direct link with the Court, which might stimulate the use of ADR, especially mediation.’

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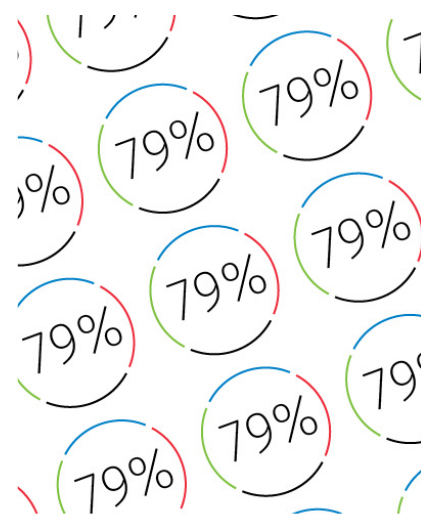
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