Warsaw, 25 August 2014

Preparatory Committee

Unified Patent Court

**Re: Draft Decision of the Administrative Committee on Rules on the European Patent Litigation Certificate (EPLC) Other Appropriate Qualifications Pursuant to Article 48(2) of the Agreement on a Unified Patent Court**

Dear Sirs,

FICPI Polish provisional section welcomes the consultation and supports the idea of allowing parties litigating at the UPC to be represented by European Patent Attorneys (EPAs) with an appropriate additional qualification (EPLC). We would like to make the following important comments, on the draft:

1. **Non-discrimination among EPAs**. Since the EPA qualification is uniform throughout all EPC member states, it follows clearly from principles of fairness and non-discrimination that all EPAs regardless of their country of origin should have the same access to the EPLC.
2. **Recognition of a national exam admitting to practice before courts.** We agree with the principle that there are qualifications (such as university degrees listed in the non exhaustive list in art. 12) in EPC member states that have been recognised as sufficient to allow patent attorneys to represent parties at court. Taking these exams/university courses should be recognised as sufficient to practice also before the UPC. There are however countries in which such material is already introduced into the standard curriculum of courses for patent attorneys and persons who have passed the patent attorney exam are qualified to practice before the national court i.a. in patent matters. Eg. in Poland there is a requirement for thorough preparation on topics outlined in rule 3 and these are then tested in the final exam. The preparation was in the course of last years provided either by a post-graduate university degree (from Warsaw University and earlier from Jagiellonian University in Krakow) or by specially organised program conducted by professors from these institutions and experienced practitioners, judges, etc. We believe that these qualifications and exams should be recognised equally to the university courses listed.
3. **Fairness in recognising experience gained by representation in court**. We finally agree it is important to recognise practical experience as equal to classroom preparation. It is worth noting that most of the patent infringement cases, save for very simple ones, are conducted by teams. This reality needs to be recognised and we believe that the restriction on independent representation being the only way to gain practical experience, will lead to paradoxical result whereby only EPAs who worked in the simplest of cases will be regarded as having gained experience and those running the most complex once with the assistance of (or on an equal footing with) a lawyer will not be regarded as sufficiently experienced. Thus anybody who was actively involved in representing, i.e. running the patent infringement cases is meant to have the requisite experience.

In the attached we have introduced changes ,which reflect the above proposals.

We would be pleased to provide the Committee with further information (eg. about the qualifications in Poland) and hope this is useful in furthering the goal of an accessible and fair patent court system.

On behalf of FICPI Polish provisional group:

Marek Lazewski