

**Von:** Ingve Stjerna  
**Gesendet:** Montag, 22. Februar 2016 15:49  
**An:** Alexander Ramsay  
**Cc:** Eileen Tottle  
**Betreff:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr Ramsay,

thank you for your message.

I conclude that you are not willing to answer my question in relation to the Expert Panel members from the legal profession and a possible remuneration being paid to them by third parties for their membership. Although this silence does not come as a surprise to me, bearing in mind the official Preparatory Committee terminology that members were acting "in their private capacity", I will try to obtain clarification of this important aspect elsewhere.

As to my second question, I understand that the EU member states were only involved in the selection of members for the Advisory Panel and that this was not the case for the Drafting Committee and for the Expert Panel.

Much to my astonishment, you also seem to be reluctant to provide a meaningful answer to my question whether the Preparatory Committee - in line with political operators - considers SMEs to be the main beneficiaries of a UP/UPC system. I was not asking which wording in the UPC Agreement would lend support to the allegation that this was the case, but for your position as the Chairman of the Preparatory Committee. However, the fact that you avoid a statement on this aspect is, I think, answer enough.

Thank you very much for your time and support!

With kind regards  
Ingve Stjerna

**Von:** Alexander Ramsay  
**Gesendet:** Dienstag, 16. Februar 2016 14:06  
**An:** Ingve Stjerna  
**Cc:** Eileen Tottle  
**Betreff:** SV: Setup of "expert teams" by the Preparatory Committee

Dear Mr. Stjerna, I believe I have provided you with answers to your questions and have no further comments. A closing remark from my side concerning your specific SME related question would be that the Preparatory Committee of course is guided by the wording of the Agreement also in respect of the interest of SMEs to this reform. I would in particular like to highlight the second recital concerning the difficulties SME experience today when wishing to expand (and enforce) their patent protection to other parts of the single market than their "home territory". To come to terms with these difficulties is of course an important objective of the reform

"CONSIDERING that the fragmented market for patents and the significant variations between national court systems are detrimental for innovation, in particular for small and medium sized enterprises which have difficulties to enforce their patents and to defend themselves against unfounded claims and claims relating to patents which should be revoked"

Kind regards

Alexander Ramsay

**Från:** Ingve Stjerna  
**Skickat:** den 12 februari 2016 08:43  
**Till:** Alexander Ramsay  
**Kopia:** Eileen Tottle  
**Ämne:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr Ramsay,

I will continue waiting for your answers to my questions below until next Wednesday, 17 February 2016. Thereafter, I will assume that you are not prepared to comment.

With kind regards  
Ingve Stjerna

**Von:** Ingve Stjerna  
**Gesendet:** Montag, 8. Februar 2016 08:39  
**An:** Alexander Ramsay  
**Cc:** Eileen Tottle  
**Betreff:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr Ramsay,

could you please let me know when I can expect to obtain an answer to my enquiry below?

Having regard to your statements earlier in this correspondence and to your frequent explanations in public, one would expect these questions to be rather easy and quick to answer.

Thank you.

With kind regards  
Ingve Stjerna

**Von:** Ingve Stjerna  
**Gesendet:** Freitag, 22. Januar 2016 10:51  
**An:** Alexander Ramsay  
**Cc:** Eileen Tottle  
**Betreff:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr Ramsay,

thank you very much for your further explanations.

As to the expert team members belonging to the legal profession: Are you aware of any member receiving payment from a third party (e. g. their firm) for this membership?

Do I understand you correctly that the contracting EU member states were involved only with regard to the selection of the members of the Advisory Panel, i. e. that there was no such involvement in relation to the members of the Drafting Committee and those of the Expert Panel?

As regards the Expert Panel, I would like to repeat my earlier question as it has not yet been answered: Is it also the position of the Preparatory Committee that SMEs would be the main beneficiaries of a UP/UPC system?

Thank you for your support.

With kind regards  
Ingve Stjerna

**Von:** Alexander Ramsay  
**Gesendet:** Donnerstag, 14. Januar 2016 15:42  
**An:** Ingve Stjerna  
**Cc:** Eileen Tottle  
**Betreff:** SV: Setup of "expert teams" by the Preparatory Committee

Dear Mr Stjerna, a happy new year to you as well! As for your further questions, please see my comments included in red in your email below.

Kind regards  
Alexander Ramsay

**Från:** Ingve Stjerna  
**Skickat:** den 13 januari 2016 14:04  
**Till:** Alexander Ramsay  
**Kopia:** Eileen Tottle  
**Ämne:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr Ramsay,

first of all, I would like to wish you a happy new year!

Coming back to your message below, I have some additional queries.

As to the individuals appointed to the expert teams and your remark that they were "acting in their personal capacity", you appear to be saying that their membership to said teams is strictly separated from their commercial professional activities and their employers or law firms. These days, I came across an announcement for a new book on the "unitary patent" (UP) and Unified Patent Court (UPC) (cf. link here) edited by Prof. Tilmann and another partner of the Hogan Lovells firm, with a vast number of patent lawyers from these firm's German practice contributing to the book. As one of the advantages of this book, it is stated: "Editor has contributed to the formulation of the new provisions." As you did not answer my previous question on what difference the emphasized "personal capacity" proviso makes, do you regard such activities to be compatible with it? **The purpose of the wording is that they are not taking part in the group/team/panel as a representative of their respective employer (with their employers interest in mind) but in their personal capacity providing their personal skill and engagement. I do regard professor Tilmann's activity as an editor to be compatible with the fact that he is taking part in the expert panel/drafting committee.**

With regard to the Advisory Panel, what is the reason why its composition has not yet been made public (as far as I can see)? **No particular reason. I did in fact think that their names were published at the website.** While reviewing its composition, I noted with some surprise the membership of Prof. Bornkamm. As far as I am aware, he is primarily active in the non-technical fields of intellectual property law, especially in trademark law and competition law, while one of the Committee's major tasks is the

selection and training of judges for the UPC. As you indicated that the members of the expert teams are invited by the Chair of the Preparatory Committee (PC), what was the motivation behind the invitation/appointment of Prof. Bornkamm? When it comes to the Advisory Panel (AP) the question was put to all the Contracting Member States to nominate members. All MS were given this opportunity. In those cases a MS chose to nominate a candidate this was accepted by the Committee. Only those MS now represented in the AP took this opportunity. Prof Bornkamm was nominated by Germany.

In relation to the composition of the Expert Panel, I was asking who represented the SME perspective as SMEs are said to be the major beneficiaries of the new system. You did not wish to comment on the absence of an SME representative on this panel, stating that the latter was not "the only way the Committee brings in opinions of users". Then, what are these other ways relied on by the PC to bring in user feedback, especially from SMEs? Is it also the position of the PC that SMEs would be the main beneficiaries of a UP/UPC system? For instance: The PC has conducted a number of consultations on major topics - the Rules of Procedure (including a hearing), the Court fees and the Patent Litigation Certificate - open to all stakeholders. The IT team has held workshops all over Europe regarding the functionality of the IT system, also this open to stakeholders. Members of the PC is regularly taking part in conferences and educational events informing about the activities of the Committee as well as receiving input, questions and comments.

Finally, I would like to repeat my question whether the EU member states are in any way involved in questions relating to the staffing of the PC expert teams. I understand your remark that "the EU" does not make "formal decisions" in that regard, but my question related to the individual EU members states. Are they likewise not involved? As stated above the individual EU MS participating in the PC nominated the members of the AP. As regards the members of the DC and EP the participants have been suggested by the chair together with the coordinators of the working groups.

I thank you for your time and your support in understanding better the backgrounds of your Committee's work.

With kind regards  
Ingve Stjerna

**Von:** Alexander Ramsay  
**Gesendet:** Dienstag, 1. Dezember 2015 10:36  
**An:** Ingve Stjerna  
**Cc:** Eileen Tottle  
**Betreff:** SV: Setup of "expert teams" by the Preparatory Committee

Dear Mr Stjerna,

The experts are providing advice to the Committee and as you might understand work together with the coordinators of the working groups and the chair. The actual question posed to the individual to take part in a group I would say normally comes from the chair.

"Acting in their personal capacity" underline that they are not taking part as a representative of their employer but that their participation is based on personal skills, experience and interest. The original Commission expert group was deemed to be too big. There has not been a formal selection process and thus no formal selection criteria.

The Advisory Panel was formed before the pre-selection process was initiated. This should mean second half of 2013. As I said in my previous mail member states were free to nominate members. Participants of the AP are the following; Robin Jacob (UK), Carl Josefsson (SE), Henrik Rothe (DK), Vitorio Ragonesi (IT), Sylvie Mandel (FR), Joachim Bornkamm (DE) and Toon Huydecoper (DE).

The expert panel consist of lawyers, judges, patent attorneys and business representatives. They are expected to provide technical advice based on their experience. You could of course always argue that it should be composed differently or that additional elements should be added. I would however then underline that this is not the only way the Committee brings in opinions of users.

The UPC will be an international organization and not an EU institution. Matters decided in the PC is therefore not decided by the EU in a formal sense. However I would like to point out that the PC consist of 25 EU MS.

Kind regards  
Alexander Ramsay

**Från:** Ingve Stjerna  
**Skickat:** den 26 november 2015 08:21  
**Till:** Alexay Ramsay  
**Kopia:** Eileen Tottle  
**Ämne:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr Ramsay,

could you please let me know when I can expect to receive a reply to my message below? The answers to my questions should neither be difficult nor involve confidential information, especially bearing in mind the Preparatory Committee's explicit commitment to transparency.

With kind regards  
Ingve Stjerna

**Von:** Ingve Stjerna  
**Gesendet:** Freitag, 6. November 2015 12:47  
**An:** Alexander Ramsay  
**Cc:** Eileen Tottle  
**Betreff:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr Ramsay,

thank you very much for your answer.

As to your statement that the members of the expert teams are not appointed in a formal sense, but "asked in an informal manner and in their personal capacity" to advise the Preparatory Committee (PC), who asks these persons accordingly, is it the PC Chair? In relation to the "acting in their personal capacity" which is regularly emphasized to what extent does this make a difference, in your opinion?

As to your comment below on the Drafting Committee (DC), not all the members of the European Commission expert group are also part of the DC. What is the reason for this? Could you please tell me whether there was any selection process and if so, what the applied selection criteria were?

Unfortunately, I cannot find any information as regards the Advisory Panel. Could you please let me know when it was established and which individuals are part of it?

In terms of the Expert Panel, you state that one of the objectives in the selection process, amongst others, was to strike an appropriate geographical balance. Would it not be likewise important trying to also achieve sort of a "professional balance" across the panel in relation to judges, lawyers, patent attorneys on the one hand, but also between private practice and industry representatives on the other? For instance, who is representing the perspective of SMEs which, according to the political operators, are meant to be a major beneficiary of the "unitary patent" and UPC?

In general, is my understanding correct that the EU member states are not in any way involved in any questions relating to the staffing of expert teams and that this is a matter solely for the PC to decide?

I would be grateful if you could provide some more clarification on these points.

With kind regards  
Ingve Stjerna

**Von:** Alexander Ramsay  
**Gesendet:** Dienstag, 3. November 2015 09:43  
**An:** Ingve Stjerna  
**Cc:** Eileen Tottle  
**Betreff:** SV: Setup of "expert teams" by the Preparatory Committee

Dear Mr. Stjerna

As you probably know the Organisational rules of the Preparatory Committee provides the possibility for the Preparatory Committee to mandate teams of experts to advise a working group and/or the Preparatory Committee. There are three such teams. The members are not appointed in a formal sense but asked in an informal manner and in their personal capacity to provide advice to the Committee.

The Drafting Committee is based on the expert group established already by the European Commission and most of its members were part also of this group. The Drafting Committee is composed of experts widely renowned for their expertise in the patent field. The Preparatory Committee has been relying on the expert advice of the members of the Drafting Committee when it comes to the Rules of Procedure.

The Advisory Panel was established to bring experience and advice to assist the HR & Training working group, as well as the Chair of the Preparatory Committee, on aspects of pre-selection and training of judges. The members of the Preparatory Committee were asked to nominate individuals from their respective countries to take part in the Advisory Panel.

The Expert Panel has been established to provide advice to the chair and the coordinators of the different work streams on other issues than those covered by the Drafting Committee and the Advisory Panel. The participants have been suggested by the chair and the coordinators based on their skills, experience, representation, interest in the project and the need to achieve an appropriate geographical balance.

Kind regards  
Alexander Ramsay

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**From:** Ingve Stjerna  
**Sent:** 30 October 2015 10:23  
**To:** Paul van Beukering; Alexander Ramsay  
**Cc:** Eileen Tottle  
**Subject:** AW: Setup of "expert teams" by the Preparatory Committee

Dear Mr van Beukering,  
Dear Mr Ramsay,

As I have not yet received any reaction on my below email sent to the Secretariat two weeks ago, I take the freedom to address you directly in your function as the Chairpersons of the Preparatory Committee, kindly asking you to provide me with information in relation to my three questions below.

As you know, according to your Committee's own rules on external communication, its work is meant to be "as transparent as possible", satisfying the "legitimate interest of stakeholders to know as much as possible about the work of the Committee". Against this background, I would highly appreciate obtaining the requested information on the creation and composition of the "expert teams" appointed and relied on by your Committee.

With kind regards  
Ingve Stjerna

**Von:** Ingve Stjerna  
**Gesendet:** Mittwoch, 14. Oktober 2015 11:16  
**An:** Eileen Tottle  
**Betreff:** Setup of "expert teams" by the Preparatory Committee

Dear Mr van Beukering,

I contact you in your capacity as the Chairman of the Preparatory Committee for the planned Unified Patent Court, hoping that you will be in a position to help me with regard to the below.

I am an attorney at law in Germany, practicing on the area of patent litigation. I follow closely the developments on the "unitary patent" and planned Unified Patent Court (UPC).

The Preparatory Committee has repeatedly established "expert teams" to assist it with certain aspects of the setup of the UPC, examples are the

"Drafting Committee" for the Rules of Procedure or the so-called "Expert Panel".

As details on the procedure underlying the creation and composition of such "expert teams" are not communicated to the public - at least as far as I am aware -, I would be interested in finding out more about this, especially in relation to the following aspects:

- (1) How are the members for said "expert teams" selected and what procedure is followed for their selection?
- (2) What are the individual and professional requirements for becoming a member in an "expert team"?
- (3) How does the formal appointment of a member for an "expert team" take place and who takes the appointment decision?

I would be grateful for your assistance with clarifying these points.

With kind regards  
Ingve Stjerna

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