

The European Patent Reform – The “expert teams” of the Preparatory Committee

Rechtsanwalt Dr. Ingeve Björn Stjerna, LL.M., Certified Specialist for Intellectual Property Law, Düsseldorf

Office translation of the original German language document, the article reflects the personal opinion of the author.

There have probably rarely been legislative proceedings of such technocratic nature as those on the European “patent package”. Patent practitioners, especially judges and members of the legal profession, have been involved extensively in order to use their experience for the new system. An important role in this is played by the Preparatory Committee of the Unified Patent Court which is entitled to appoint so-called “expert teams” for its support and advice. Conflicts of interest do not seem to play a role when it comes to filling the positions of these teams. Appointments from the legal profession, the members of which often have significant financial interests in the realisation of the “patent package”, have repeatedly been made in favor of the same individuals from only a few law firms. Some of these persons use their membership for promoting the advocacy services of their law firms. These “expert teams” and their composition will afterwards be given a closer look.

I. The Preparatory Committee of the Unified Patent Court

As is known, the so-called “Preparatory Committee” (“PC-UPC”) has been entrusted with undertaking the necessary steps for the Unified Patent Court (“UPC”) to become operational. A legal basis for its creation cannot be found, in the minutes of the signing of the Agreement on a Unified Patent Court (“UPCA”) it is said:¹

“The Signatory States intend to set up without any delay a Preparatory Committee which will be composed by their representatives. The Preparatory Committee shall prepare the practical arrangements and set out a roadmap for the early establishment and coming into operation of the Unified Patent Court. It may establish subgroups as appropriate and make use of teams of experts.”

This was based on the conviction that the member states should be responsible for building the UPC outside the existing institutional structures.² The inaugural meeting of the PC-UPC was held on 26/03/2013.³ In its own “communication plan”, its work is described as follows:⁴

¹ Council document 6572/13, p. 2, cipher 3, accessible at bit.ly/33Nmewp.

² Council document 7265/13, p. 2, cipher 6, accessible at bit.ly/3bsWIGA.

³ Council document 15819/13, p. 7, cipher 2, accessible at bit.ly/3v2g6fG.

⁴ Accessible at bit.ly/3ltYoxA.

“The Preparatory Committee is going to deal with complex issues and the outcome of its work will have a considerable impact on the users of the European patent system. The Committee must secure access to the knowledge and experience of the European stakeholders in order to establish an efficient, high quality and user friendly Unified Patent Court. In addition it is necessary for the Committee to engender users trust in the new court and its ability to function. Also there is a legitimate interest for stakeholders to know as much as possible about the work of the Committee. Therefore, the Committee’s work must be as transparent as possible.”

The Committee has been subdivided into five working groups, each led by a “coordinator”, its work being governed by the so-called “Organisational rules of the Preparatory Committee of the Unified Patent Court”⁵. Pursuant to Art. 9 no. 1 of these rules, the PC-UPC is entitled to mandate “teams of experts” in order to advise a working group and/or the PC-UPC on “particular questions”. More elaborate requirements as to the qualification and background of individuals qualifying for membership in such “team” and the procedure for their appointment do not exist, nor are there any provisions on how to deal with conflicts of interest.

II. The “expert teams” of the Preparatory Committee

The PC-UPC has repeatedly made use of its power to mandate such “expert teams”: So far, three groups have been created, one has meanwhile finished its work. Publicly announced was only the nomination of the latest of these “teams”, the so-called “Expert Panel”. As to the individuals on these “teams”, apart from the latter, a public communication exists for the so-called “Drafting Committee”. No explicit information has been provided as to the third “team of experts”, the so-called “Advisory Panel”.

1. The “Drafting Committee”

The most-widely known “expert team” probably is the “Drafting Committee” which was responsible for preparing the UPC Rules of Procedure. It ceased operation with the completion of the 16th draft and handed over to the “Legal Group” of the PC-UPC.⁶ Meanwhile, there is no more information available on the UPC website as to the

⁵ Accessible at bit.ly/3b4TrGI.

⁶ Cf. bit.ly/3eOEG7P.

composition of this Committee. Its members were the following individuals (origin in brackets):⁷

Lawyer *Kevin Mooney* (Chairman, UK), Simmons & Simmons LLP, London,

judge *Klaus Grabinski* (DE),

judge *Alice Pezard* (FR),

judge *Christopher Floyd* (UK),

lawyer *Willem Hoyng* (NL), Hoyng ROKH Monegier, Amsterdam,

lawyer *Winfried Tilmann* (DE), Hogan Lovells, Düsseldorf,

lawyer *Pierre Véron* (FR), Véron & Associés, Paris.

There is no information on the motives underlying the nomination of these people and on the eligibility criteria.

2. The “Advisory Panel”

On 18/12/2013, it was mentioned in passing on the UPC website that an “Advisory Panel” had been appointed to assist with the pre-selection of judges. It would assess the qualification and experience of the candidate judges and would assist with the contents of their training.⁸ The Panel is composed of the following individuals:

The former judge Sir *Robin Jacob* (Chairman, UK),

judge *Carl Josefsson* (SWE),

judge *Henrik Rothe* (DK),

judge *Vitorio Ragonesi* (IT),

the former judge *Sylvie Mandel* (FR),

the former judge *Joachim Bornkamm* (DE),

the former Advocate General of the Netherlands, *Toon Huydecoper*.

In this case as well, the selection and eligibility criteria were not made public.

3. The “Expert Panel”

On 16/09/2014, under the title “Chairman invites new Expert Panel to advise Preparatory Committee” the creation of an “Expert Panel” was announced on the UPC webpage.⁹

“The Chairman and his team attach great value to the involvement of practitioners and future users of the Unified Patent Court in its work. (...) The new Expert Panel is set up on an informal basis and will advise the Chairman and his working group coordinators; in this role Expert Panel members will participate in their personal capacity.”

Although more detailed information on the selection and applied procedure are missing here as well, there was, for

the first time, at least an explicit announcement on the creation of a “team of experts” and its personnel. The following persons are members to the Panel.¹⁰

Judge *Christopher Floyd* (UK),

judge *Colin Birss* (UK),

the former judge Sir *Robin Jacob* (UK),

judge *Marina Tavassi* (IT),

judge *Klaus Grabinski* (DE),

judge *Marie Courboulay* (FR),

lawyer *Kevin Mooney* (UK), Simmons & Simmons LLP, London,

lawyer *Willem Hoyng* (NL), Hoyng ROKH Monegier, Amsterdam,

lawyer *Winfried Tilmann* (DE), Hogan Lovells, Düsseldorf,

lawyer *Pierre Véron* (FR), Véron & Associés, Paris,

patent attorney *Eugen Popp* (DE), Meissner Bolte & Partner, Munich,

patent attorney *Christof Keussen* (DE), Glawe Delfs Moll, Hamburg,

patent attorney *Patrice Vidon* (FR), Vidon Group, Paris,

patent attorney *Tim Frain* (UK), Director IP Regulatory, Legal and Intellectual Property, Nokia Corp., London,

patent attorney *Udo Meyer* (DE), Vice-President Global Intellectual Property, BASF SE, Ludwigshafen.

The two latter persons are designated “business representatives”. They are employees of major international enterprises, representatives of small and medium-sized enterprises (“SMEs”) can neither be found on this nor on any other “team of experts” of the PC-UPC.

4. The “Advisory Committee” of Art. 14 UPCA

To be distinguished from said “teams of experts” is the so-called “Advisory Committee” under Art. 14 UPCA which, amongst others, is tasked with assisting the Administrative Committee in the preparation of the appointment of the UPC judges (Art. 14(1) lit. a) UPCA). Its composition has not yet been decided on.

5. Staffing of the “team of experts”

It is noticeable that certain persons have repeatedly been selected for respective teams. For instance, apart from one exception, all the members of the former “Drafting Committee” do now appear on the “Expert Panel”. They have been supplemented with persons sharing the commitment for the “patent package”. The agitation of patent attorney *Keussen*, especially in his functions as a Vice-President of

⁷ Accessible at xup.in/dl.10996317.

⁸ Accessible at archive.ph/Bv81K.

⁹ Accessible at archive.ph/fr0ws.

¹⁰ Ibid.

the German Chamber of Patent Attorneys and as the Chairman of the Specialist committee on patent and utility model law of the German Association for the Protection of Intellectual Property (“GRUR”) has already been described elsewhere.¹¹ No less active is patent attorney *Udo Meyer*, who apart from his function as Vice-President Global Intellectual Property at BASF SE holds major positions in a number of professional associations, e. g. as the President of the German Association of Intellectual Property Practitioners (“VPP”), as the Chairman of the Committee on Intellectual Property of the Federation of the German Industry (“BDI”) and as a member of the GRUR Executive Committee. After all, it apparently cannot be said that political considerations would play a minor role when it comes to selecting the members of these teams.

III. Correspondence with the Chairman of the Preparatory Committee

After a small group of individuals appear to be almost necessary members to the “teams of experts” of the PC-UPC and since even newly appointed persons seem to be chosen primarily based on political considerations, I contacted the Chairman of the PC-UPC, *Alexander Ramsay* of the Swedish Ministry of Justice, in autumn of 2015 in order to find out more about the selection process.

Due to the significant relevance of the “patent package” for the European economy, the high level of public interest in the topic and the relevance of the PC-UPC for its implementation, and not least with a view to the fundamental rights of freedom of speech, academic freedom and freedom of press, this correspondence is made public (afterwards “Ramsay correspondence”), interested persons can access it at www.stjerna.de. For space reasons only part of the discussed topics will be dealt with in this article.

In an e-mail of 14/10/2016, I asked *Alexander Ramsay* for information on the following issues:¹²

“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?”

In his answer, Mr *Ramsay* admitted that no selection procedure exists:¹³

“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.”

Afterwards, he elaborated more on the individual teams and their composition, explaining that the “Drafting Committee” had been selected from the former expert group¹⁴ of the European Commission, the members of which were “widely renowned for their expertise in the patent field”.¹⁵

The “Advisory Panel”, the existence of which was still unknown to me at that time, was meant to support the working group “HR & Training” with selecting and training the judges. Its members had been chosen as follows:¹⁶

“The members of the Preparatory Committee were asked to nominate individuals from their respective countries to take part in the Advisory Panel.”

Thus, the members to one “team of experts” selected those of another, certainly a remarkable procedure.

The positions on the “Expert Panel” were filled as follows:¹⁷

“The participants have been suggested by the chair and the [working group] coordinators based on their skills, experience, representation, interest in the project and the need to achieve an appropriate geographical balance.”

The “Expert Panel” consists of five British, five German, three French, one Italian and one Dutch national/s. Hence, of the 25 EU member states having signed the UPCA, five are represented on the Panel. This can hardly be “an appropriate geographical balance”, not to speak of an appropriately balanced representation of user groups.

Persons in charge frequently show quite an interesting reflex when being asked about the involvement of certain practitioners, especially those from the legal profession, in that they almost automatically assure that these people contributed “in their personal capacity”. This seems to mean that in this public function, they do not pursue any financial self-interests. To what extent it is realistic that highly paid lawyers which are still active practitioners, sometimes having substantial financial interests in the realisation of the “patent package”, will fulfill their functions only “in their personal capacity”, is left to be judged by the reader.

¹¹ *Stjerna*, The European Patent Reform – The peculiar silence of the German professional associations, accessible at www.stjerna.de/silence-associations/?lang=en.

¹² Ramsay correspondence, p. 7, accessible at bit.ly/3eMPutr.

¹³ Ramsay correspondence (fn. 12), p. 6.

¹⁴ Cf. bit.ly/3uRqF5t.

¹⁵ Ramsay correspondence (fn. 12), p. 6.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

I posed a further question in that regard:¹⁸

“In relation to the “acting in their personal capacity” which is regularly emphasized to what extent does this make a difference, in your opinion?”

Another query related to the composition of the “Expert Panel”:¹⁹

“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?”

Substantial answers were not given by Mr Ramsay. As to the meaning of the participation “in personal capacity”, he merely stated:²⁰

““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.”

He was likewise defensive as to who represented the interests of the SMEs on the “Expert Panel”:²¹

“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.”

I asked again:²²

“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?”

I also insisted as regards the interests of SMEs in the selection of personnel for the “teams of experts”:²³

“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?”

Alexander Ramsay answered the first question as follows:²⁴

“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.”

The aspect of whether the “patent package” is beneficial for SMEs remained unanswered, but he explained how the PC-UPC would take their interests into account.²⁵

“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.”

In order to find out how exactly it is achieved to keep the “interests of their firms” out of the minds of the “expert team“ members from the legal profession, I asked again:²⁶

“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?

(...)

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

¹⁸ Ramsay correspondence (fn. 12), p. 5.

¹⁹ Ibid.

²⁰ Ramsay correspondence (fn. 12), p. 4.

²¹ Ibid.

²² Ramsay correspondence (fn. 12), p. 3.

²³ Ibid.

²⁴ Ibid.

²⁵ Ramsay correspondence (fn. 12), p. 3.

²⁶ Ramsay correspondence (fn. 12), p. 2/3.

SMEs would be the main beneficiaries of a UP/UPC system?”

It does not come as a surprise that a material answer was given to neither of these questions. The aspect of how beneficial the “patent package” is for SMEs was recently dealt with in detail elsewhere, this is being referred to.²⁷

IV. “Acting in personal capacity” in practice – Correspondence with Kevin Mooney

The question remains how the participation in said “team of experts” “in personal capacity” is taking place in practice. If this tries to insinuate that the members from private practice give away their time altruistically and without any ulterior motives of a commercial nature, this will hardly be meant seriously or is at least not taken seriously as it can be seen from how this condition is dealt with by some members from the legal profession.

The case of Prof. *Tilmann* who participated in a hearing on the UPC in the European Scrutiny Committee of the House of Commons as a lawyer of his firm Hogan Lovells,²⁸ upon which the latter explicitly distanced itself from his statements,²⁹ is one example. How honest this is, remains to be decided by the reader.

Other members of the PC-UPC “team of experts” are likewise not too shy when it comes to connecting this membership to their professional activities. One example is *Kevin Mooney*, the Chairman of the former “Drafting Committee” and member of the “Expert Panel”, and his firm *Simmons & Simmons*.

As far as is known, *Kevin Mooney* – who is listed as a “luminary” amongst British patent practitioners by the law firm-sponsored “professional press” –³⁰ has stepped down from the partnership of the firm upon his 65th anniversary in autumn 2010 and is since working for it as a consultant. This consultancy relationship is also publicly documented, e. g. in the Chambers UK Guide which states on *Kevin Mooney* and his activities for *Simmons & Simmons*:³¹

“Kevin Mooney is a venerable figure in the world of patent law who acts as a consultant for the firm. He chairs the committee charged with drafting the rules and procedure for the forthcoming Unified Patent Court.”

In his function as the Chairman of the “Drafting Committee”, *Kevin Mooney*, until very recently, regularly participated in conferences with speeches on the UPC, in the programs of which he was repeatedly referred to as “Partner and Head of Intellectual Property, *Simmons & Simmons*, London”.³² Most recently³³, he was said to be

*“Partner and Head of Intellectual Property, *Simmons & Simmons*, London, Member of the expert group of the UPC.”*

As far as it can be seen, he was “Head of Intellectual Property” of said firm in the past, but, for some years, this is now somebody else. This can easily be found out on the webpage of said law firm. It is apparently nonetheless considered useful to publicly present Mr *Mooney* as the firm’s “Head of Intellectual Property”.

In February 2016, I contacted *Kevin Mooney* by e-mail and asked him for a statement.

For the motives described above in relation to the disclosure of the correspondence with *Alexander Ramsay* and due to the public function Mr *Mooney* exercises in his capacity as a member of the former “Drafting Committee” and of the “Expert Panel” in relation to the UPC, and with a view to the fundamental rights of freedom of speech, academic freedom and freedom of press, this correspondence – with the exception of private passages which are redacted – is made public as well (afterwards “Mooney correspondence”), interested persons can access it at www.stjerna.de.

My inquiry was as follows:³⁴

“I have recently requested from Mr Ramsay information about some aspects relating to the work of the Preparatory Committee, in particular to the “expert teams” set up by it like the Drafting Committee or, more recently, the Expert Panel. After he explained that the members of these teams were acting “in their personal capacity”, I asked him whether, as to the members from the legal profession, he was aware of any remuneration being paid by third parties, especially their (former) firms, to these members for their membership. He declined to comment.

*If I remember it correctly, partners at *Simmons & Simmons* - as in many other international law firms - retire from the partnership at the age of 65. As far as I am aware, you reached this age on 14 November 2010. To my knowledge, you afterwards entered into a paid consultancy agreement with the firm in view of your activities as regards the “unitary patent” and Unified Patent Court, especially your membership in the Drafting Committee for the Rules of Procedure. I assume that this consultancy agreement is still in place today.*

Please correct me if this understanding should be wrong.”

Mr *Mooney* answered:³⁵

²⁷ *Stjerna*, The European Patent Reform – A poisoned gift for SMEs”, accessible at www.stjerna.de/smes/?lang=en.

²⁸ Cf. bit.ly/3flNZ13, p. 40.

²⁹ Accessible at xup.in/dl.18302731.

³⁰ www.iam-media.com/patent1000/rankings.

³¹ Cf. xup.in/dl.43353251, p. 8.

³² Academy of European Law, “Annual Conference on the EU Unitary Patent 2015”, 26/11/2015, Brussels (bit.ly/3uRslGr);

“Preparing for the Unitary Patent Package”, London, 04/05/12/2014 (bit.ly/3brQz8f) and “The future unified patent litigation system in the European Union”, 23/09/2011, Warsaw (bit.ly/2RjGlzP).

³³ Academy of European Law, “Annual Conference on the EU Unitary Patent 2016”, 22/01/2016, Brussels (bit.ly/3eMbZib).

³⁴ Mooney correspondence, p. 3, accessible at bit.ly/2SHwjsv.

³⁵ Mooney correspondence (fn. 34), p. 2.

“I remain a partner of Simmons (not a consultant) and there is no compulsory retirement age for partners. In addition to my duties as a partner I continue to be involved in a number of wider professional activities including advice on the UPC Rules of Procedure but also advising the UK Government and the IPO on legislative changes, the EPO Academy on judges’ training and, as a former President of EPLAW, involvement in a wide range of other issues relevant to patent practice and litigation.”

Since he remained silent on the basis of his activities, I asked again, referring to the consultancy relationship mentioned, inter alia, in the Chambers UK Guide:³⁶

“It may be that you still have “partner” status (which, I assume, will then be more that of a salary partner) and that your work concentrates on said “wider professional activities”, but this does not address the core of my request, namely what the basis of your current work for Simmons & Simmons is.

As you did not (yet) comment on the information that this basis is in substance a paid consultancy agreement, I suppose this to be correct. This understanding is also supported by evidence, e. g. the current Chambers UK Guide stating you to act for Simmons “as a consultant”, not to mention corresponding information provided by colleagues.

Please feel free to comment/clarify/correct as you please.”

A more detailed explanation of the discrepancy between his statement and the publicly available information or even a clarification did not happen:³⁷

“No this correspondence is at an end. My email was correct.”

The latter may be true, but it seems not to be the whole truth. After Mr Mooney apparently noticed the ice getting thinner under his feet, he preferred taking the emergency exit from the correspondence. It seems that honesty and a sense of responsibility are not necessarily character traits of these days’ “luminaries”. I continued to ask:³⁸

“Then could you probably explain to me why you seem to participate in some conferences on the unitary patent/UPC as the “Head of Intellectual Property” of Simmons & Simmons? Is this still your position in the firm? Or is this designation merely a (frequent) mistake?”

I did not receive an answer.

In March of 2015, Kevin Mooney had been awarded a prize by a different “outlet” of said law firm-sponsored “professional press” for “Outstanding Individual Achievement in IP” in respect of, amongst others, his ac-

tivities as to the UPC Rules of Procedure. In a statement of his firm, he is cited with the following comment:³⁹

“It is a great honour to be recognised in this capacity. The UPC is the most significant development in intellectual property enforcement for a generation and it’s been a privilege to undertake such a crucial role in creating this new vision for IP in Europe.”

It seems that modesty and humility are also not everyone’s cup of tea. The firm’s true “Head of Intellectual Property” did not miss the opportunity to present Mr Mooney’s activities as a competitive advantage of his firm (emphasis added):⁴⁰

“We are delighted to see Kevin recognised at these awards. This is true testament to his substantial contribution to shaping and developing the intellectual property legal landscape in the UK and across Europe. His expertise in the legal ramifications of the UPC are an invaluable resource to our team, our clients and their businesses.”

This is an example of how the participation of “expert team” members “in personal capacity” and “without their employer’s interests in mind” can look like in practice. It also shows the more general problem of legislative proceedings with a strong technocratic emphasis as in the example of the “patent package”: The technocrats’ tendency to amalgamate their public function with financial self-interests. This is especially problematic if – as in the case of the “patent package” – statutory requirements and a Parliamentary control are widely non-existent.

V. Conclusion

First of all, it is quite remarkable that the positions on the “teams of experts” are apparently filled arbitrarily without an established procedure and without any independent assessment commensurate with the standards under the Rule of Law. It speaks for itself that instead of striving to obtain some degree of variety, the same people have repeatedly been selected for these “teams”. Especially the fact that only a few law firms are relied on repeatedly is striking. Without a doubt, the affected field of patent (infringement) law is a sophisticated and very special substance. However, it will not be suggested that the necessary expertise can be found exclusively in the UK, the Netherlands, Germany and France and, there, rests only with a hand full of senior gentlemen from the firms of Simmons & Simmons, Hoyng ROKH Monegier, Hogan Lovells and Véron & Associés.

Also the reference to the alleged membership “in personal capacity” is nothing more than a fig leaf to conceal the conflict of interest which at least members from the legal profession will almost certainly run into when exercising such function. As a matter of fact, they are interested in using their involvement in such “teams of experts” for generating profits, i. e. to utilize it for marketing their ad-

³⁶ Mooney correspondence (fn. 34), p. 1.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Cf. xup.in/dl.84926456.

⁴⁰ Ibid.

vocacy services and those of their firms. If a participation “in personal capacity” was really meant seriously and members of the legal profession are not excluded from such “teams of experts” per se due to the interest situation, these people, when appearing in their public function, should at least be obliged to exercise restraint and avoid any reference to their firms which can anyhow be found out easily by any interested person. Events like the one mentioned above do not only damage the credibility of the affected person, but ultimately also that of the “teams of experts” and of the PC-UPC itself. Not only against this background can the selection of personnel for the “Advisory Committee” of the UPC keenly be looked forward to.

It is furthermore a peculiar fact that in all of the “teams of experts”, no member comes from an SME environment, but two persons from the major industry and further ones from amongst its advisors. Was the “patent package” not designed to benefit and support SME? If this was truly desired would it not almost be inevitable to give them a voice in said “teams” as to allow for an appropriate consideration of their interests which are different from those of major industry in many respects? The fact that this does not happen is not without reason since the UPC is everything but a suitable forum for SMEs. Those set to benefit from the UPC can easily be recognized by looking at who agitates for its realisation and is involved in the preparations. It is no coincidence that these are mostly members of the major industry and of the legal profession.

* * *

For possibilities to support my work on the European patent reform please visit www.stjerna.de/contact/?lang=en.
Many thanks!