

The UPC Patent Mediation and Arbitration Centre in practice: Key considerations for stakeholders

1. Introduction

Sandart is a boutique law firm specializing in both dispute resolution and intellectual property. We have therefore taken a particular interest in the creation of a new European centre for alternative dispute resolution in the field of patents – **the Patent Mediation and Arbitration Centre (PMAC)**.

When the Unified Patent Court (UPC) opened its doors on 1 June 2023, the legal foundation for the PMAC was simultaneously established, with seats in Ljubljana, Slovenia, and Lisbon, Portugal. The PMAC shall operate independently but forms part of the UPC and is financed by the budget of the court.¹ Preparations for the PMAC's operations are well advanced and the current announcement is that it will open its services at the beginning of 2026. Under the leadership of Director Aleš Zalar, eleven experts are currently finalising the rules for mediation and arbitration as well as compiling a list of approved arbitrators and mediators.² Although only a draft set of rules exists at present, they provide valuable insight into how the two procedures, mediation and arbitration, are intended to function.

In this article, we outline the key features of the PMAC's planned operations, the categories of disputes it may handle, and the potential advantages and disadvantages for companies and other stakeholders engaging with the centre.

2. What types of disputes can the PMAC handle?

The jurisdiction of the PMAC is defined in Art. 35(2) of the Agreement on a Unified Patent Court (UPCA), which stipulates that the centre shall provide facilities for mediation and arbitration of patent disputes falling within the scope of the UPCA. Its external jurisdiction therefore corresponds to that of the UPC, as set out exhaustively in Art. 32 UPCA. The jurisdiction primarily covers cases concerning patent infringement and invalidity of European patents with unitary effect (Unitary Patents), European patents that have not been opted out (European Patents), as well

¹ See Article 39 of the UPCA and Rules of Operation of the Mediation and Arbitration Centre (Version dated 8 July 2022).

² The application process to be included in the PMAC list of mediators, arbitrators and expert determiners is now open.

as supplementary protection certificates (SPC's) for such patents.³ Contractual disputes generally fall outside the UPC's and the PMAC's jurisdiction.

Interestingly, the draft arbitration rules⁴ express a broader jurisdiction, stating that the PMAC may also handle “*related disputes*” (Art. 1, Draft Arbitration Rules). Whether this language will survive into the final version remains to be seen. It is doubtful, however, whether the PMAC can extend its jurisdiction through procedural rules beyond what follows from the UPCA. Although the parties are generally free to determine how their dispute should be resolved, uncertainty remains as to whether the parties may validly designate the PMAC as the proper forum in arbitration clauses in various patent-related agreements, such as licence or research and development agreements.

3. How are proceedings initiated before the PMAC?

Cases may be brought before the PMAC either by referral from pending UPC proceedings or by direct initiation from one or both parties. Several procedural rules encourage parties to consider this option. At the interim conference, judges are required to explore the possibility of a settlement, including the use of the PMAC's services (Art. 52(2) UPCA and Rule 11 of the Rules of Procedure of the Unified Patent Court (RoP)). If mediation is ongoing, deadlines such as limitation periods are stayed until the mediation is concluded (Rule 11(1) RoP). The UPC may also defer certain decisions during ongoing proceedings to facilitate an amicable settlement (Rule 343.b RoP).

The draft rules contain an interesting mechanism; a party may request an alternative dispute resolution (ADR) information conference, which can lead to an agreement to pursue any of the ADR services offered by the centre, such as arbitration and mediation (Art. 4 Draft arbitration rules). Since ADR is based on voluntary participation, it is unlikely that a reluctant party will accept these forms of dispute resolution. However, a recommendation from the UPC to attend an information conference may help overcome a situation where both parties are interested in

³ The UPCA is only binding on those Member States that have ratified the agreement.

⁴ ARBITRATION RULES of the Patent Mediation and Arbitration Centre (Version 28 May 2025).

seeking an amicable solution to their dispute, but neither wishes to take the initiative for tactical reasons.

4. The draft procedural rules for arbitration and mediation

The PMAC's Draft Arbitration Rules draw inspiration from rules of established institutions such as the SCC Arbitration Institute (SCC) and the International Chamber of Commerce (ICC). Much will therefore appear familiar to experienced arbitration practitioners, though some noticeable differences emerge.

One such difference concerns the production of documents. The PMAC rules lean more towards an "IBA-inspired" model (Art. 31 Draft Arbitration Rules), whereas the SCC and ICC rules grant the arbitral tribunal greater discretion (Art. 31(3) SCC Arbitration Rules (SCC Rules) and Art. 22 ICC 2021 Rules of Arbitration (ICC Rules)). Another difference relates to timeframes for rendering awards. The PMAC aims for awards to be issued within nine months of Procedural Order No. 1 (Art. 40 Draft Arbitration Rules), compared to six months at the SCC from the referral of the case to the arbitral tribunal (Art. 43 SCC Rules) and six months from signing the Terms of Reference in ICC proceedings (Art. 31 ICC Rules).

Confidentiality provisions mark a more significant departure. Confidentiality is regulated both for the PMAC/arbitral tribunal and the parties (Art. 45 Draft Arbitration Rules). A confidentiality obligation for the centre/arbitral tribunal is not unusual and is also found in the SCC Rules (Art. 3 SCC Rules) and the ICC Rules (Art. 22(3) ICC Rules and Art. 8 ICC Rules, Appendix I). What is unexpected, however, is the exceptions to confidentiality. For example, confidentiality does not apply to the centre or the arbitral tribunal regarding information that is "*necessarily disclosed in connection with a court action relating to the proceedings*". The scope of this exception is difficult to anticipate. One conceivable scenario is where the arbitral tribunal itself is sued, in which case the arbitral tribunal could rely on documents from the proceedings in its defence.

More strikingly, however, the Draft Arbitration Rules impose confidentiality obligations directly on the parties, something absent from both the SCC Rules and the ICC Rules (this is instead commonly regulated separately between the parties). At first glance such a rule may seem positive, but the stipulated exceptions risk rendering it hollow. For example, a party may disclose information to protect or

pursue the legal rights of a party (Art. 45.4(v) Draft Arbitration Rules). In practice, this may mean that sensitive evidence such as licence fees or other financial information could be used by a party for the purpose of gaining advantage in other legal proceedings.

A further point of interest concerns the seat of arbitration. The seat determines both which mandatory procedural rules apply and in which country the arbitral award is considered to have been made, thereby governing where a challenge may be brought. The current draft reflects the established principle of party autonomy and sets out three alternative proposals for determining the seat when the parties have not agreed upon one (Art. 18 Draft Arbitration Rules). Under the first proposal, the arbitral tribunal shall determine the seat based on the circumstances of the case, while the other two proposals restrict the choice; either (i) to a state party to the UPCA or the European Patent Convention (EPC), or (ii) to one of the PMAC's seat countries (Slovenia and Portugal) or the seat countries of the UPC's central division at first instance (France, and possibly also Germany and Italy). It remains to be seen which alternative will ultimately be adopted following the public consultation of the draft rules.

The draft mediation rules⁵ (Draft Mediation Rules) similarly resemble those of the SCC and ICC, while again containing certain differences. Mediation should normally be concluded within three months (Art. 15(4) Draft Mediation Rules), with the possibility of extension, whereas the SCC Rules requires only that the mediator conducts the proceedings without undue delay (Art. 9(1) SCC Mediation Rules) and the ICC imposes no time limit unless agreed by the parties (Art. 2(1)(d) and Art. 2(6) ICC Mediation Rules). The Draft Mediation Rules also allow for hybrid solutions. For example, the mediator may propose an expert determination of a specific issue in dispute or an early neutral evaluation. It is also possible to combine processes, such as mediation followed by arbitration, or the reverse. In contrast, both SCC and ICC place more responsibility on the parties to initiate such arrangements.

⁵ Mediation Rules (Version 11; Date: 22.4.2025).

5. FRAND disputes

The PMAC's ambition to position itself as a forum for resolving disputes related to standard essential patents (SEPs) and so-called FRAND (Fair Reasonable and Non-Discriminatory) licensing terms is clear from the Draft Arbitration Rules. A dedicated section addresses FRAND disputes, setting out that the parties should define the scope of the FRAND dispute as precisely as possible and allowing for tailored confidentiality measures (section 7). For example, a confidentiality advisor may be appointed with the somewhat vague mandate to ensure confidentiality or restrict access to sensitive information. As the arbitral tribunal already enjoys broad powers to manage the proceedings pursuant to Art. 20(2) Draft Arbitration Rules, the specific FRAND provisions do not appear strictly necessary. Instead, they seem primarily intended to signal the centre's competence to manage such disputes.

In February this year, the European Commission withdrew from its controversial SEP regulation proposal which would have created an EUIPO-based centre of expertise for SEP disputes. Against this backdrop, the PMAC's explicit focus on FRAND matters appears strategic. It may be read as an effort to establish itself as a preferred venue for FRAND disputes, including the determination of licence fees, an issue that remains unresolved within the UPC's jurisdiction.

6. Enforcement of arbitral awards and settlements

When it comes to enforcement of arbitral awards, the PMAC adheres to the international standard: awards are enforceable under the New York Convention.

What is new is the role of the UPC. The court may issue decisions and judgments of settlements reached through mediation and consent awards (Art. 2 Draft Arbitration Rules). Such decisions or judgments are directly enforceable in all UPC member states and under the Brussels I Regulation and the Lugano Convention (Arts. 31, 79, 82 UPCA). This provides a simpler – and likely less costly – alternative to traditional enforcement via the New York Convention. The fact that this option is limited to settlements and consent awards is likely a result of that the parties' consent reduces the need for the control mechanism otherwise required under the New York Convention.

Importantly, patents cannot be revoked or limited through mediation or arbitration (Art. 35(2) and 79 UPCA). On the other hand, there is nothing preventing the parties from entering into an agreement, which can be confirmed by the UPC, whereby the patent holder undertakes to revoke or limit its patent (Rule 11.2 RoP). In practice, this allows a party to secure an enforceable judgment compelling a patent holder to withdraw or limiting its patent, through the combined use of the UPC and the PMAC.

7. Advantages and disadvantages of the PMAC

It remains to be seen how much the PMAC will be used in practice, but it will most likely operate as a complement to the UPC. The centre may prove attractive in follow-on disputes arising from UPC judgments—for example, the determination of damages after an injunction in an infringement case, or in FRAND matters where an arbitral tribunal is authorised to set licence terms. In such cases, the faster and more flexible procedure through the PMAC may be preferable.

There are, however, certain challenges. For the parties, confidentiality is a key advantage of alternative dispute resolution. While the parties are of course free to agree on confidentiality, the robustness of the default confidentiality rules in the current draft arbitration and mediation rules remain uncertain. From a broader perspective, and as a general concern with an increased number of arbitrations, moving disputes out of courts may reduce the development of case law, undermining predictability and consistency. At present, the costs of using the PMAC are also unclear, as the draft rules stipulate that the PMAC and arbitrators are entitled to fees, but refer to an unpublished appendix for the amount of the fees.

Despite these uncertainties, the PMAC is a forum to keep an eye on.

Anna Bladh Redzic & Jennie Andersson