

UNIFIED PATENT COURT (UPC)  
Einheitliches Patentgericht (EPG)  
Juridiction Unifiée du Brevet (JUB)

PATENT MEDIATION AND ARBITRATION CENTRE

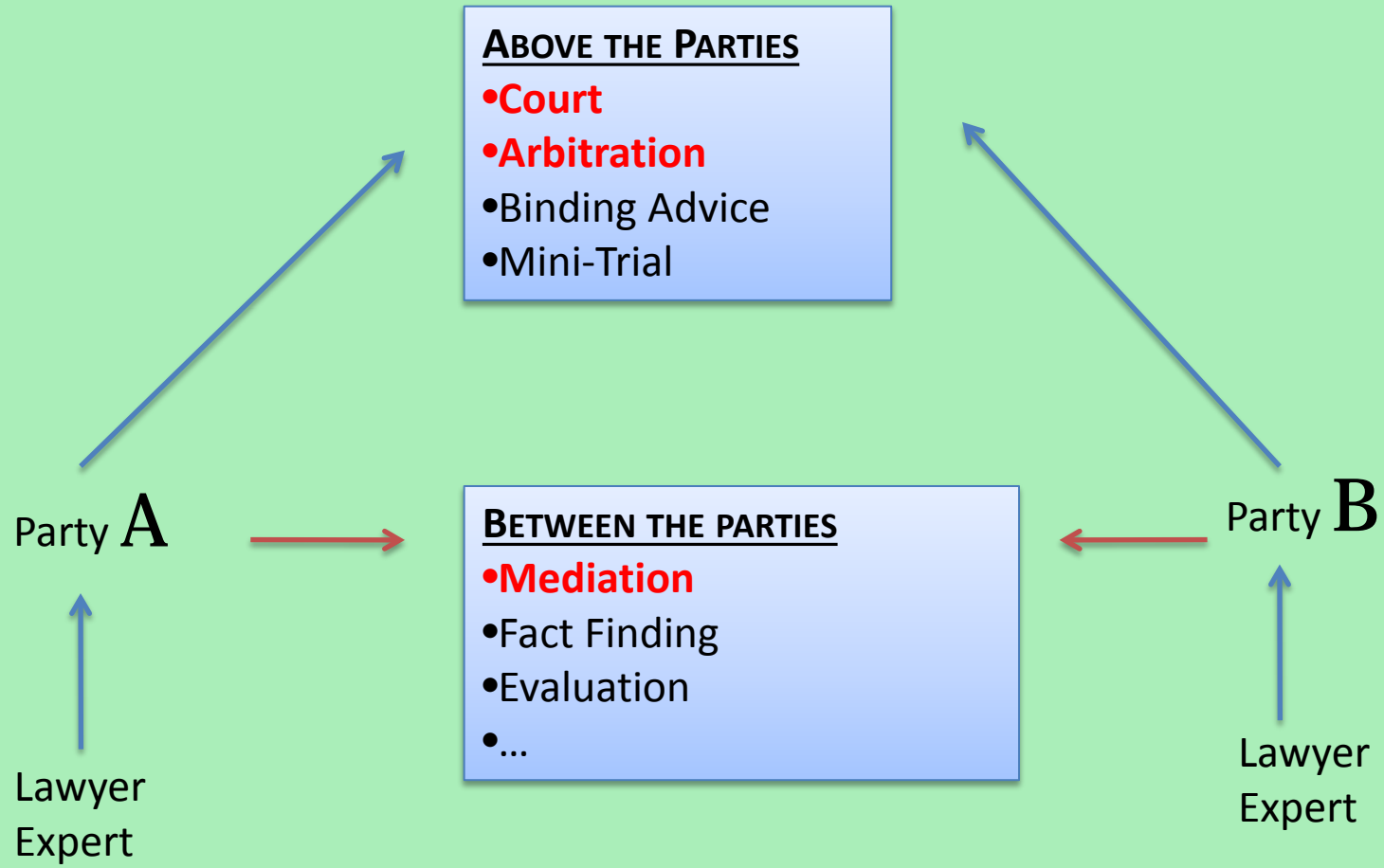
***Intellectual Property and the Judiciary***  
*17th Congress EIPIN*  
*January 28-30, 2016*

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*Court of Appeal Antwerp*  
*Belgium*

# The Structure

- I. DISPUTE RESOLUTION SYSTEMS
- II. THE CENTRE (PMAC) AND THE AGREEMENT
- III. CONSTRUCTIONAL PHASE (WORKING GROUP)
- IV. RULES OF OPERATION (HIGHLIGHTS)
- V. INTERACTION WITH THE COURT
- VI. PERSONAL NOTE ON ADR WITHIN THE CENTRE
- VII. ISSUES
- VIII. CENTRE OF OPPORTUNITIES

# I. Dispute Resolution Systems



## II. THE CENTRE (PMAAC)

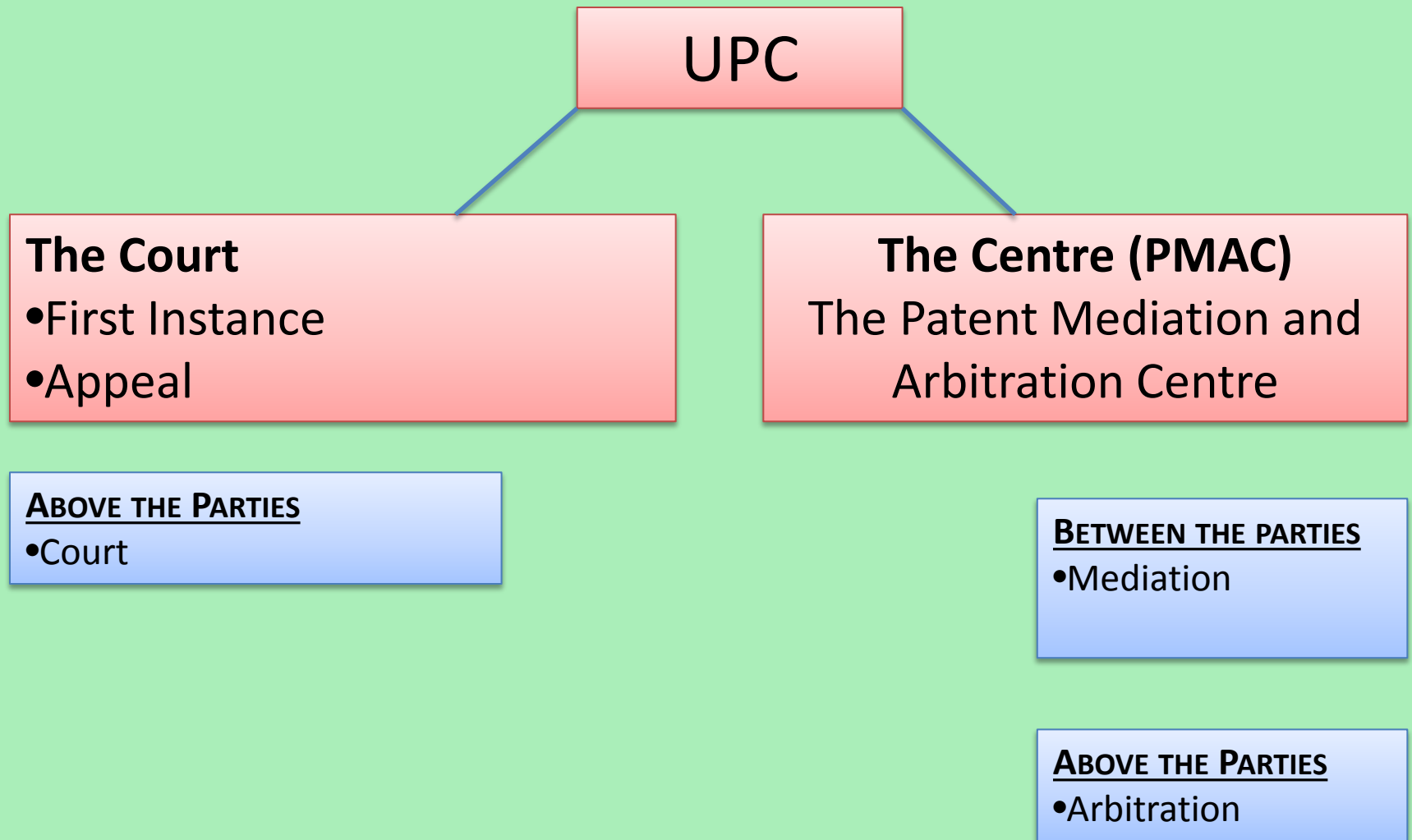
### Art. 35 UPCA

- (1) A patent mediation and arbitration centre ("the Centre") is hereby established. It shall have its seats in Ljubljana [Slovenia] and Lisbon [Portugal].*
- (2) The Centre shall provide facilities for mediation and arbitration of patent disputes falling within the scope of this Agreement. Article 82 shall apply mutatis mutandis to any settlement reached through the use of the facilities of the Centre, including through mediation. However, a patent may not be revoked or limited in mediation or arbitration proceedings.*
- (3) The Centre shall establish Mediation and Arbitration Rules.*
- (4) The Centre shall draw up a list of mediators and arbitrators to assist the parties in the settlement of their dispute.*

### Art. 39 UPCA (Financing of the Centre)

*The operating costs of the Centre shall be financed by the budget of the Court.*

# UPC : UNIQUE SYSTEM OF DISPUTE RESOLUTION ONE-STOP-SHOP DISPUTE RESOLUTION SYSTEM



# III. CONSTRUCTIONAL PHASE (WORKING GROUP)

## Problems

- Two articles as a framework
- Drafting process (Agreement)
- Bias regarding ADR
- Financial constraints UPC
- Pressure Slovenia and Portugal
- Believe/Disbelieve in the system (internal versus external)
- National protective reflexes (existing ADR-centres)
- ...

## But

### • It is in the Agreement!

- Work in the shade
- No expectations

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# IV. RULES OF OPERATION (HIGHLIGHTS)

- Name, Status, Seat and Aims
- Languages
- Finances
- Organisational structure
  - Director
  - Administrative Committee (=UPC)
  - Budget Committee and Auditors (=UPC)
  - Expert Committee (sub-committee Arbitration / Mediation)
- Staff
  - Director
  - Case Manager
  - Secretarial assistance
- List of Arbiters and Mediators
- Start of Operations

# V. INTERACTION WITH THE COURT

## A. JUDGE-RAPPORTEUR

**Rule 11.1.** At any stage of the proceedings, if the Court is of the opinion that the dispute is suitable for a settlement, it may propose that the parties make use of the facilities of the Patent Mediation and Arbitration Centre (“the Centre”) in order to settle or to explore a settlement of the dispute. **In particular the judge-rapporteur shall during the interim procedure, especially at an interim conference in accordance with Rule 104(d), explore with the parties the possibility of a settlement, including through mediation and/or arbitration, using the facilities of the Centre.** Parties who choose mediation in an attempt to settle a dispute are subsequently not prevented from initiating judicial proceedings before the Court in relation to that dispute by the expiry of limitation or prescription periods during the mediation process, which will stay the limitation or prescription periods until the end of the mediation process. If mediation proceedings are terminated without a dispute settlement agreement, the period shall continue to run from that moment.

# V. INTERACTION WITH THE COURT

## B. DAMAGES PROCEEDINGS

Decision on the merits (validity/infringement)

1y

Application for the Determination of Damages (which may include a request to lay open books)(R.126)

FORMAL EXAMINATION (R.134)

Compliance  
(R.16.4. / 6.)

Recording in the Registry (R.135)

Same panel (taken the decision on the merits)(R.135.2.)  
Possibility to stay the application pending appeal (R.136)

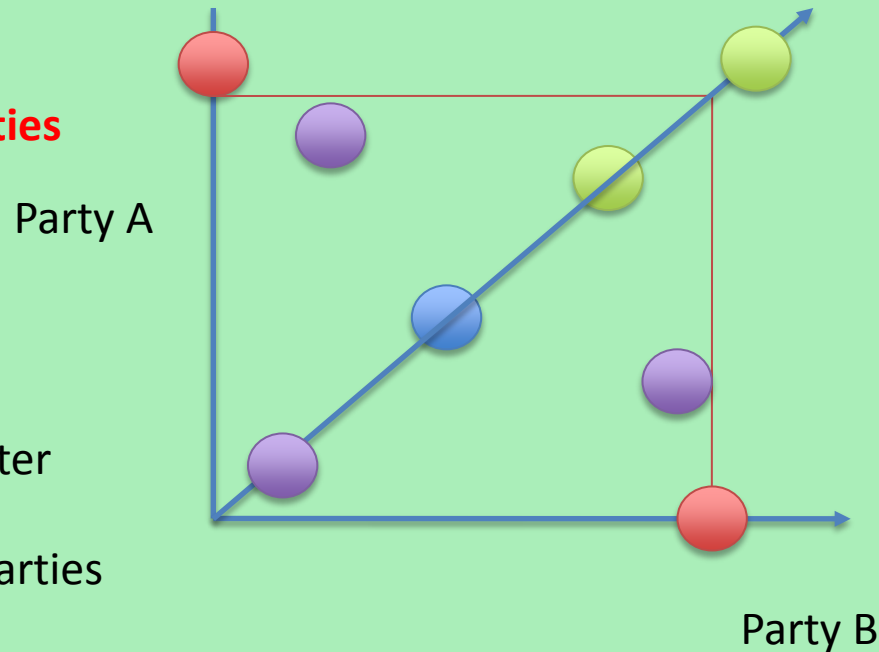
# VI. PERSONAL NOTE ON ADR WITHIN THE CENTRE

## Alternatives

- Conciliation
- Counselling
- Early neutral evaluation
- Arbitration
- Litigation
- Shuttle diplomacy

## •Settlement between parties

- Decision by Court/arbitrator
- Settlement between parties
- Facilitated Settlement by mediation



# VII. ISSUES

## A. From Organisational point of view

- Double seat of the Centre (operational problems)
- List of Mediators and Arbiters (Open or Closed?)
- Languages
- Fixed Fees (including ... excluding ...)(complementary)
- Collaboration with existing Centres
- ....

# VII. ISSUES

## B. From a legal point of view

- Competence

*Art. 35.2. (1<sup>st</sup> sentence) The Centre shall provide facilities for mediation and arbitration of patent disputes falling within the scope of this Agreement. ....*

*Art. 35.2. (3<sup>d</sup> sentence) However, a patent may not be revoked or limited in mediation or arbitration proceedings.*

- Enforcement

*Art. 35.2. (2<sup>nd</sup> sentence) Article 82 shall apply mutatis mutandis to any settlement reached through the use of the facilities of the Centre, including through mediation. ....*

# VII. ISSUES

## B. From a legal point of view

### **Art. 79 Settlement**

“The parties may, at any time in the course of proceedings, conclude their case by way of settlement, which shall be confirmed by a decision of the Court. A patent may not be revoked or limited by way of settlement.

### **Art. 82 (1) Enforcement of decisions and orders**

“Decisions and orders of the Court shall be enforceable in any Contracting Member State. An order for the enforcement of a decision shall be appended to the decision by the Court”.

### **Rule 11.2. Settlement**

“ Pursuant to Rule 365 the Court shall, if requested by the parties, by decision confirm the terms of any settlement or arbitral award by consent (irrespective of whether it was reached using the facilities of the Centre or otherwise), including a term which obliges the patent owner to limit, surrender or agree to the revocation of a patent or not to assert it against the other party and/or third parties. The parties may agree on costs to be awarded or may request the Court to decide on costs to be awarded in accordance with Rules 150 to 156 *mutatis mutandis*.”

### **Rule 365 (1) Confirmation by the Court of a Settlement**

“Where the parties have concluded their action by way of settlement, they shall inform the judge-rapporteur. The Court shall confirm the settlement by decision of the Court [Rule 11.2], if requested by the parties, and the decision may be enforced as a final decision of the Court.”

# VII. ISSUES

## B. From a legal point of view

### **Art. 41 (1) Rules of Procedure**

“The Rules of Procedure shall lay down the details of the proceedings before the Court. **They shall comply with this Agreement and the Statute**”.

### **Rule 1 (1) Application of the Rules and general principles of interpretation**

“The Court shall conduct proceedings in accordance with the Agreement, the Statute and these Rules, which include the Preamble to these Rules and the principles set out therein. **In the event of a conflict between the provisions of the Agreement and/or the Statute on the one hand and of the Rules on the other hand, the provisions of the Agreement and/or the Statute shall prevail.**”



## VIII. CENTRE OF OPPORTUNITIES.

- Backed by an independent Court and maintaining independence
- Working in the fringe of the UPC
- ADR part of educational framework of judges
- Digital environment
- Multi-linguistic environment
- Technical knowledge
- Optimized Rules of Mediation and Arbitration
- Light operational/adjustable structure
- ...

**QUESTIONS / REMARKS / OPINIONS**

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