ABRITRATION AND MEDIATION IN THE PROCEEDINGS BEFORE THE UNIFIED PATENT COURT

I- Introduction on arbitration and mediation

Although a patent dispute may be resolved through court litigation, parties increasingly¹ submit disputes to mediation, arbitration or any other Alternative Dispute Resolution (“ADR”).

As a reminder, arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to arbitrator(s) who make a binding decision on the dispute. A party cannot unilaterally withdraw from arbitration. By contrast, in mediation, mediator(s) only help the parties to reach a mutually satisfactory settlement of their dispute. The parties are free to abandon the mediation process at any time, and in the absence of a settlement agreement signed by the parties, mediation may be followed by arbitration.

By choosing arbitration/mediation, the parties opt for a private dispute resolution procedure, instead of going to court. This private option may result from an arbitration clause (in French, “clause compromissoire”) in the relevant agreement signed by the parties prior to a dispute arising under this agreement. In case of an already existing dispute, the parties may refer to arbitration/mediation by means of a submission agreement (in French, “convention ad hoc”).

Nowadays, in Europe and in the rest of the world, it is widely admitted to resolve patent disputes through arbitration/mediation, rather than resorting to judicial proceedings. In some States, the patent law² explicitly mentions that arbitration/mediation constitutes an alternative solution to patent judicial proceedings.

Before going into details regarding provisions dealing with arbitration/mediation in the Agreement on a Unified Patent Court³ (“the Agreement”), it is mentioned that parties often choose to go to arbitration/mediation rather than to national courts for the following perceived advantages:

- Arbitration/mediation is often faster than court litigation. Mostly because the administrative procedure is simpler, but also because an arbitration award generally constitutes a binding and final decision, with very limited avenues for appeal.
- Arbitration/mediation is supposed to be cheaper, especially when the dispute has an international scope. Indeed, the parties may save costs by settling their international dispute through a single procedure.
- The parties may freely choose:
  o the arbitration/mediation Centre among several possibilities⁴;

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² French IP Code, L.615-17, text entered into force on May 17, 2011
³ Agreement on a Unified Patent Court, 16351/12, January 11, 2013
⁴ Examples: WIPO Arbitration and Mediation Center; ICC International Court of Arbitration; The International Arbitration Chamber of Paris; London Court of International Arbitration (LCIA);
- arbitrator(s)/mediator(s) with expert knowledge and from certain legal/technical backgrounds;
- the law to be applied;
- the language of the proceedings.

- With the provisions of the New York Convention\(^5\), arbitration awards are easier to enforce in other countries than patent court judgments\(^6\);
- Arbitration/mediation awards and proceedings are generally confidential.

II- Arbitration/mediation and the Unified Patent Court

Turning now to the Agreement, the increasing practice of using ADR procedure has been taken into account by the establishment\(^7\) of a new Patent mediation and arbitration Centre (“the Centre”). One of the goals of this Centre is to offer mediation and arbitration facilities to the parties to reach a settlement of their case pending before the Unified Patent Court (“the Court”)\(^8\).

As a preliminary remark, we may notice that the Centre and the Court are both established by the same Agreement and the Centre will be financed by the budget of the Court\(^9\). Hence, we are at the dawn of a brand new European system in which a patent mediation and arbitration Centre will be directly attached to a patent court.

II.A- Establishment of the Centre by the Agreement – Basic provisions

The Centre shall have two seats in Ljubljana and Lisbon\(^10\).

Mediation and Arbitration Rules\(^11\) shall be established by the Centre. According to the Irish EU Presidency\(^12\), a proposal for Rules regarding mediation and arbitration has to be one of the preliminary tasks for the Preparatory Committee. However, up to now, it seems that these Mediation and Arbitration Rules have not been drafted yet.

\(^{5}\) Convention on the Recognition and Enforcement of Foreign Arbitral Awards, signed by more than 145 countries, including all the Contracting Member States to the Agreement.

\(^{6}\) Especially when the validity of the patent is challenged: C-4/03 ECJ case law, Gat v Luk, July 17, 2006: cross-border injunctions not available irrespective of whether the validity issue of the patent is raised by way of an action or as a defence (inter partes effect). In the EU Regulation N°1215/2012 of December 12, 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (it shall apply from January 10, 2015), article 24(4) has been amended in that sense (corresponding to former article 22(4) of the EU Regulation N°44/2001). However, the recasted Regulation N°1215/2012 facilitates the implementation of cross-border injunctions with the new provisions of article 39: “A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required”.

\(^{7}\) Article 35(1) of the Agreement

\(^{8}\) Article 52(2) of the Agreement

\(^{9}\) Article 39 of the Agreement

\(^{10}\) Article 35(1) of the Agreement

\(^{11}\) Article 35(3) of the Agreement

\(^{12}\) Document 7265/13 dated March 8, 2013: Setting up of the Preparatory Committee in the context of the Agreement on a Unified Patent Court
Also, a list of mediators and arbitrators shall be drawn up by the Centre, to assist the parties in the settlement of their disputes.

II.B- Interpretation of the legal provisions

The main provisions in relation to mediation/arbitration and settlements are as follows:

**Article 35(2) of the Agreement:**
“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.”...

**Article 79 of the Agreement:**
“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.”

**Rule 11 of the RoP:**
“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 in order to settle or to explore a settlement of the dispute. In particular the judge-rapporteur shall at the 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.

2. Pursuant to Rule 365 the Court shall by decision confirm the terms of any settlement, 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.”...

**Rule 365 of the RoP:**
“1. Where the parties have concluded their case by way of settlement, they shall inform the judge-rapporteur. The Court shall confirm the settlement by decision of the Court [Rule 11.2] and the decision may be enforced as a final decision of the Court. »...”

In view of the above provisions, some interpretations shall be made before making any comments regarding the future mediation and arbitration system in relation to the Unified Patent Court.

**II.B.1- Submission of a dispute to the Centre, before litigation**

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13 Article 35(4) of the Agreement
It goes without saying that a case may be submitted to the Centre during the proceedings before the Court, as detailed below.

However, it remains to be determined whether such a submission to the Centre is also possible in a conventional situation where parties want to settle their dispute by mediation and/or arbitration, prior to any patent litigation before the Court.

As mentioned above, article 35(2) of the Agreement states that the Centre shall provide facilities for mediation and arbitration of patent disputes falling within the scope of this Agreement. Because of the wording of this article and in the absence of explicit requirements for a pending action before the Court, we believe that the facilities of the Centre may also be used more conventionally prior to any judicial procedure, for example by application of a mediation/arbitration clause.

This interpretation seems also to be in line with the EU Presidency proposal\(^{15}\) regarding the main features of the previously envisaged EU patent jurisdiction, which served as a basis for the drafting of the Agreement.

**II.B.2- Consistency between articles 35(2) and 79 of the Agreement**

Articles 35(2) and 79 of the Agreement have to be interpreted in order not to constitute any conflicting provisions. In fact, on the one hand article 79 of the Agreement indicates that during the proceedings before the Court, a settlement shall be confirmed by a decision of the Court. On the other hand, article 35(2) of the Agreement basically indicates that a settlement of the Centre is on the same level as a decision of the Court concerning enforcement. Therefore, when an action is pending before the Court, the question arises whether a settlement reached through the Centre is also subject to the provisions of article 79 of the Agreement. In other words, it has to be determined whether such a settlement of the Centre has to be confirmed by a decision of the Court.

At first sight, we may assume the confirmation by decision of article 79 of the Agreement only applies to settlements reached during the proceedings before the Court, without resorting to the Centre.

However, when looking at rule 11 of the RoP, paragraph 1 indicates that the judge-rapporteur shall explore with the parties the possibility of a settlement, including through mediation and/or arbitration by using the facilities of the Centre, and paragraph 2 indicates that the Court shall by decision confirm the terms of any settlement. Because no distinction is made in this last rule 11.2 between settlements reached through the Centre and other settlements, we believe that those settlements reached through the Centre shall also be confirmed by a decision of the Court. Rule 365 of the RoP leads to the same interpretation, i.e. same treatment irrespective of the type of settlement, whether it has been reached through the Centre or not.

But because a settlement of the Centre seems to be directly enforceable through the combined provisions of articles 35 and 82 of the Agreement, the assumption that this

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\(^{15}\) Point 16 of the EU Working document of the presidency n°14492/07, dated October 30, 2007
settlement should also be confirmed by a decision (enforceable as a final decision of the Court\textsuperscript{16}) is highly questionable.

Therefore, for the sake of consistency of articles 35(2) and 79 of the Agreement, we will assume that any settlement reached through the Centre:
- shall be directly enforceable when no litigation is pending before the Court; or
- shall be confirmed by an enforceable decision of the Court when litigation is pending before this Court.

II.B.3- Scope of the term “settlement” of articles 35(2) and 79 of the Agreement

Conventionally, a mediation procedure terminates with a settlement signed by the parties, also designated as a “settlement agreement”\textsuperscript{17}. Therefore, there is no doubt that the term “settlement” in articles 35(2) and 79 of the Agreement and in rule 11.1 of the RoP concerns any settlement reached through mediation by the parties.

However, with respect to arbitration, if no settlement agreement is reached during the proceedings, a binding decision is rendered by the arbitrator(s), also designated as an arbitration award/decision\textsuperscript{18} (in French, “sentence arbitrale”). It is not an agreement between the parties, but quite similar to a judicial court decision with a binding effect.

With a literal interpretation, we may come to the conclusion that articles 35(2) and 79 of the Agreement do not concern any arbitration award obtained through arbitration, because such an award has definitely not the same legal effect as a settlement agreement. Should an arbitration award be considered beyond the scope of the previous articles, such award would not be enforceable through the provisions of the Agreement, but would fall within the scope of the New York Convention as any other arbitration award. In other words, the successful party would have to confirm the arbitration award/decision by a conventional exequatur judgment of a national court of the Contracting Member State where the enforcement takes place.

However, we are not sure whether the legislator was willing to exclude the arbitration awards/decisions from the scope of these articles, especially not from article 35(2) of the Agreement.

From our point of view, some credit should be given to this other assumption that the term settlement should also cover arbitration awards/decisions of the Centre. By referring to settlements including those obtained through mediation, article 35(2) of the Agreement implicitly refers to any other settlement reached through arbitration. But even if arbitration proceedings may often end with a settlement agreement\textsuperscript{19}, the dispute is generally terminated/resolved/settled by an arbitration award/decision. Hence, we may

\textsuperscript{16} Rule 365.1 of the RoP
\textsuperscript{17} See WIPO Mediation Rules
\textsuperscript{18} See WIPO Arbitration Rules
\textsuperscript{19} 42\% of WIPO-administered Arbitration Cases end with a settlement and 58\% with an arbitration award (www.wipo.int)
admit that these arbitration awards/decisions at least fall within the scope of article 35(2) of the Agreement.

The French and German versions of the Agreement are not very helpful regarding the scope of the term settlement in articles 35(2) and 79 of the Agreement. “Vergleich” in the German version seems to limit the scope to settlement agreement, and “Règlement” in the French version of article 35(2) seems to be of a broader scope, including both settlement agreements and arbitration awards. However, unlike the English and German versions using the same term in both articles, in the French version of article 79 of the Agreement, the term settlement has been translated differently, into the word “Transaction”, which refers to a settlement agreement...

If it remains questionable whether arbitration awards/decisions of the Centre may be directly enforceable through the provisions of the Agreement, it is however clearly the case for mediation settlements of the Centre. In this regard, the Agreement is in the continuity of the recent Directive 2008/52/EC of the European Parliament and of the Council promoting mediation in civil and commercial matters. According to this Directive already transposed into national laws, Member States shall ensure that it is possible for the parties to request that the content of a mediation agreement be made enforceable. But this Directive only applies to cross-border disputes, with parties having their residences in different Member States. In this sense, the Agreement goes a bit further because the settlements of the Centre are meant to be directly enforceable in any Contracting Member State (provided that an order of enforcement is appended to the settlement by the Court), irrespective of the nationalities of the parties.

II.C- Competence of the Centre

The Centre shall have in principle competence to deal with any patent dispute falling within the scope of the Agreement, i.e. including all the matters for which the Court has exclusive competence according to article 32 of the Agreement.

To this broad competence of the Centre, there is however one exception mentioned in article 35(2) of the Agreement, stating that a patent may not be revoked or limited in mediation or arbitration proceedings. This restriction is in line with the current practice of arbitration and mediation in Europe. For example, France, Germany, UK and the

20 Combined provisions of articles 35(2) and 82 of the Agreement
23 Articles 35(2) and 82(1) of the Agreement
24 On the recognition and enforcement of court settlements (including mediation settlements approved by a court of a EU Member State), see also the future regime of Article 59 of the recasted Regulation N°1215/2012: “A court settlement which is enforceable in the Member State of origin shall be enforced in the other Member States under the same conditions as authentic instruments” i.e. “without any declaration of enforceability being required” (article 58).
25 See also article 79 of the Agreement stating that a patent may not be revoked or limited by way of settlement.
Netherlands refuse to recognize the arbitrability of a claim for the declaration of invalidity of a patent with effect *erga omnes*. In these States, validity of a patent generally falls within the exclusive jurisdiction of the national court system. As an exception, in Switzerland (which is obviously not a Contracting Member State to the Agreement), arbitral tribunals are empowered to decide on the validity of patents.\(^{27}\)

In fact, most States refusing to recognize the arbitrability of a claim for the declaration of invalidity of a patent, with effect *erga omnes*, are putting forward public policy reasons. However, in those States having a less liberal approach than Switzerland, the parties are generally allowed to discuss validity during mediation/arbitration, with effect *inter partes*.\(^{28}\)

In this respect, in the proceedings before the Centre, the parties will certainly have the same possibility to discuss the validity of the patent and to make a decision with effect *inter partes*, in line with the current arbitration/mediation practice in Europe.

Furthermore, as explicitly mentioned in rule 11.2 of the RoP, the parties will also have the possibility to oblige the patentee, through a term of the settlement, to agree to the revocation of the patent or to limit the patent. Therefore, we understand that in the new system governed by the Agreement and the RoP, it will be admitted that settlements may indirectly have effect toward third parties regarding validity of patents.

If such a limiting term is agreed upon in the settlement, the patentee will have the obligation to limit the patent before the EPO in case of a European patent with unitary effect, or to limit the patent before national patent offices in case of a classic European patent.\(^{29}\) By contrast, when the Court makes such a decision of limitation, this is the Court itself that shall send a copy of the decision to the EPO and, with respect to a classic European patent, to the national patent office of any Contracting Member State concerned.

As a final remark, it should be pointed out that in the Agreement and the RoP, mediation and arbitration are always associated to the Centre. However, in terms of disputes falling within the scope of the Agreement, we believe that the Center will not have exclusive competence regarding mediation and arbitration. Therefore, the parties will probably not be barred from using the facilities of other mediation/arbitration centers to settle their dispute, before or after judicial proceedings have started in front of the Court.

**II.D- Use of the Centre when a case is pending before the Court**

**II.D.1- Submission of a case to the Centre**

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\(^{27}\) Decision of the Federal Office of Intellectual Property of December 15, 1975

\(^{28}\) See supra note 26, and French case law - CA Paris, 1ère Chambre, 28 février 2008, Société Hidravlika


\(^{30}\) Article 65(5) of the Agreement

\(^{31}\) It is not mentioned that the Centre will have exclusive competence, as it is the case for the Court for judicial proceedings (according to article 32 of the Agreement).
Rule 11.1 of the RoP mentions that 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 in order to settle or to explore a settlement of the case.

In this regard, the judge-rapporteur and the presiding judge have the responsibility of the case management\(^ {32}\), which includes encouraging the parties to make use of the Centre\(^ {33}\). These provisions are then very similar to those of the UK Civil Procedure Rules encouraging the parties to use an alternative dispute resolution procedure if it is considered appropriate\(^ {34}\). Regarding the comparison with the UK civil procedural law in terms of encouraging the parties to use an ADR procedure, it is noticed that UK judges are willing to impose cost sanctions against successful parties who unreasonably declined to mediate\(^ {35}\). Therefore, the judges of the Unified Patent Court may be expected to apply such cost sanctions principle.

According to the Agreement\(^ {36}\), it is reminded that the proceedings before the Court shall consist of a written procedure, followed by an interim procedure and terminated by an oral procedure. This applies both in front of the Court of first instance and the Court of Appeal. In the Agreement and the RoP, it is mentioned\(^ {37}\) that the judge-rapporteur shall explore with the parties the possibility of using the facilities of the Centre in particular at the interim conference, during the interim procedure.

As to the costs for the submission of a case to the Centre, we know that court fees shall be paid at the beginning of the proceedings before the Court\(^ {38}\). Hence, if the facilities of the Centre are used after the payment of the court fees, there remains a question as to whether the parties will have to pay additional fees. The answer is not clear in the Agreement and the RoP, but it stands to reason that the Mediation and Arbitration Rules will be very helpful on this matter.

In fact, article 39 of the Agreement indicates that the operating costs of the Centre shall be financed by the budget of the Court, which is itself financed by the Court’s own financial revenues including court fees and other revenues according to article 36(2) of the Agreement. Therefore, it is possible that some arbitration/mediation fees fall within these “other revenues”, but in this case, we may expect that court fees should be at least partially reimbursed if the parties conclude their case before the Centre. However, such a reimbursement is not mentioned in the 15\(^ {th}\) draft of the RoP\(^ {39}\).

As a conclusion, costs for using the facilities of the Centre remain an important issue to be addressed.

**II.D.2- Proceedings before the Centre**

32 Rule 331.1 and Rule 331.3 of the RoP
33 Rule 332(e) of the RoP
34 Part 1, point 1.4(e) of the UK CPR
35 High Court, 2003, Royal bank of Canada v State for Defence
36 Article 52(1) of the Agreement
37 Article 52(2) of the Agreement, rules 11(1) and 104(d) of the RoP
38 Rule 371.1 of the RoP
39 It is noted that former rule 372 of the 14\(^ {th}\) draft of the RoP regarding reimbursement of court fees has been deleted in the last 15\(^ {th}\) draft.
When the parties agree to use the facilities of the Centre to settle their case, the Court decides to defer later the case to be dealt with, and the proceedings before the Centre are then initiated. The procedure before the Centre will be mostly governed by the Mediation and Arbitration rules that are yet to be drafted.

However, it is likely that the parties will encounter some restrictions on their choices regarding particulars of the proceedings before the Centre, in contrast with a standard mediation/arbitration procedure where the parties are almost entirely free in their choices.

In particular, it is not sure that the parties will have the choice of the law to be applied by the arbitrators/mediators. Indeed, it is not unreasonable to believe that the Centre will have to apply the same sources of law as those considered by the Court, in the sense of article 24 of the Agreement. According to this article, the Court shall base its decisions on Union law, including Regulation (EU) N° 1257/2012 and Regulation (EU) N° 1260/2012, the Agreement, the EPC, other international agreements applicable to patents and binding on all the Contracting Member States, and national laws.

The same doubt applies for the language of the proceedings before the Centre. Especially, it is unforeseen whether the parties will have the possibility to use a language other than the language of the proceedings before the Court. But again, it stands to reason that the Mediation and Arbitration Rules will be addressing these issues.

As another example, we may mention the question of the representation of the parties before the Centre. Before the existing mediation and arbitration centers, there is usually a liberal approach regarding the representation of the parties. For example, before the WIPO arbitration and mediation Centre, the parties may be represented by any persons of their choice, irrespective of nationality or professional qualification. In the proceedings before the Centre established by the Agreement, it is questionable whether this liberal approach will apply, or if the parties will have to respect the provisions of the Agreement regarding representation.

The above-mentioned potential differences with conventional arbitration/mediation procedures will be, for sure, limited, and the parties will still benefit from the advantages of this type of private proceedings.

For example, they will probably have the choice of the arbitrators/mediators among the list drawn up by the Centre, and the proceedings before the Centre and the details of the settlement will remain confidential.

Further, the proceedings will be quick because there will be no possibility for appeal against a settlement delivered by the Centre and confirmed by a final decision of the Court.

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40 Rule 343.2.(b) of the RoP
42 COUNCIL REGULATION (EU) N° 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements.
43 Article 13 of the WIPO Arbitration Rules, October 1st, 2002
44 Article 48 of the Agreement
45 Article 35(4) of the Agreement
46 Rules 11.3 and 365.2 of the RoP
47 Rule 365.1 of the RoP: the settlement (reached through the Centre) is confirmed by a final decision of the Court.
II.D.3- Termination of the proceedings before the Court

Assuming that our interpretation at point II.B.2 is correct, when the parties have reached a settlement through the use of the facilities of the Centre, they shall inform the judge-rapporteur. Then, the Court shall confirm the settlement by decision of the Court, which is a final decision of the Court not subjected to appeal.

Then, the decision of the Court based on the settlement may be enforced as any other final and binding decision of the Court. In particular, the decision may be directly enforced in any Contracting Member State under procedures and conditions governed by the law of the particular Contracting Member State where enforcement takes place. In this regard, according to the RoP, the decision may also be enforced in other States, in particular in non-Contracting member States to the Agreement which are Member States of Council regulation 1215/2012 Regulation or the Lugano Convention.

Moreover, in the settlement, the parties may agree on costs to be awarded or may request the Court to decide on costs to be awarded. In the first case, the presiding judge shall give a decision as to costs in accordance with the terms of the settlement. In the second case, the mediation/arbitration proceedings shall be followed before the Court by a procedure for cost order regarding compensation for representation costs and for other costs incurred during the dispute by the successful party and by the Court (witnesses, translations, etc.). This procedure for cost order shall be exactly of the same type as proceedings following a decision of the Court on the merits and, if applicable, following a decision of the Court for the determination of damages.

Then, after the confirmation by decision of the settlement, the decision of the Court shall be entered on the register. Therefore, the decision shall be public but at the request of the parties, the Court may order that details of the settlement remain confidential.

Should the proceedings before the Centre end with an arbitration award, and such arbitration award is to be considered beyond the scope of the term settlement of rules 365.1 and 11.2 of the RoP, we are not sure how the procedure is likely to be terminated before the Court. In this case, the successful party would have, for enforcement purposes and in application of the New York Convention, to confirm the arbitration award/decision by an

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48 Rule 365.1 of the RoP
49 Article 79 of the Agreement and rules 11.2 and 365.1 of the RoP
50 Rule 365.1 of the RoP
51 Rule 365.1 of the RoP
52 Articles 82.1 and 82.3 of the Agreement and rule 354.1 of the RoP
53 Rule 354.2 and 354.3 of the RoP
54 See supra note 35
55 Rules 11.2 and 365.4 of the RoP
56 Rule 365.4 of the RoP
57 according to rules 150 to 156 of the RoP
58 Rule 365.3 of the RoP
59 Rule 365.2 of the RoP
60 see interpretation at point II.B.3
exequatur judgment of a national court of the Contracting Member State where the enforcement takes place\textsuperscript{61}.

However, in practice, we believe that the parties encouraged by the judge to settle their case will mainly choose mediation rather than arbitration, so as to retain the possibility to opt out of the settlement process and go back before the Court in order to obtain a decision on the merits.

Finally, if the parties do not settle the whole case before the Centre, for example after abandonment of the mediation process by one of the parties, the case shall be referred back to the Court that shall then render a decision on the merits, on the remaining unsettled issues.

III- Conclusion

The Agreement on a Unified Patent Court includes the particularity of establishing a mediation and arbitration Centre, to be financed by the own budget of the Court. Because the parties will be encouraged to settle their case through the use of the facilities of the Centre, this body will probably have a central place in the resolution of the disputes brought before the Court.

As a reminder, the Agreement shall enter into force\textsuperscript{62} on the later date of January 1\textsuperscript{st}, 2014, the 1\textsuperscript{st} day of the 4\textsuperscript{th} month after the date of entry into force of the amendments to EU Regulation N°1215/2012 concerning its relationship with the Agreement, and the 1\textsuperscript{st} day of the 4\textsuperscript{th} month after the ratification of the Agreement by a 13\textsuperscript{th} Member State, provided that France, UK and Germany have already ratified it.

Before that date, Mediation and Arbitration Rules (to be drafted), together with any potential amendment to the rules of the RoP, will certainly provide some answers to the remaining issues discussed above, like costs of the Centre, proceedings before the Centre, relation between the Centre and the Court once the case has been settled, etc.

\textit{Brevalex – July 2013}

\textsuperscript{61} Regulation N°1215/2012, regarding enforcement, still excludes arbitration from its scope (article 1.d).

\textsuperscript{62} Article 89 of the Agreement