

## ***Guidelines on Independence (as amended as of 28 November 2011)***

*The Federal Patent Court intends to proceed in accordance with the following Guidelines with regard to ensuring its independence. The decision on how to proceed in a specific case shall be left to the discretion of the competent panel.*

### **Section 1: General Provisions**

#### **Art. 1** Subject matter

<sup>1</sup> The purpose of these Guidelines is to ensure the independence of the judicial activity of the members of the Federal Patent Court.

<sup>2</sup> This is without prejudice to Article 47–51 CCP, Article 10–12 PatCA and Article 28 PatCA.

#### **Art. 2** General principles

<sup>1</sup> A member of the Federal Patent Court shall be independent of the parties from the time the member is consulted for sitting on the panel until the proceeding is concluded.

<sup>2</sup> Acting as a part-time member of the Federal Patent Court while engaging in legal representation before the Court in another matter does not constitute a lack of independence or bias per se on the part of the part-time members of the Court.

<sup>3</sup> During their term of office, the ordinary members of the Administrative Board of Judges shall not represent any parties before the Federal Patent Court.

### **Section 2: Grounds for Recusal and Declaration of Recusal**

#### **Art. 3** General grounds for recusal and declaration of recusal

<sup>1</sup> A Court member shall refuse to sit on a panel in a specific matter where the member deems grounds for recusal as defined in Article 47 paragraph 1 CCP or special grounds for recusal according to Article 4 of these Guidelines to be present.

<sup>2</sup> A Court member shall not be consulted for ruling on a matter where grounds for recusal as defined in Article 47 paragraph 1 CCP or special grounds for recusal in terms of Article 4 of these Guidelines are deemed to be present.

<sup>3</sup> Grounds for recusal as defined in Article 47 paragraph 1 CCP or Article 4 of these Guidelines shall not be deemed to be present where neither the Administrative Board of Judges nor the parties having knowledge of such facts expressly reject the appointment or continued participation of the Court member.

#### **Art. 4** Special grounds for recusal

<sup>1</sup> A Court member shall recuse him- or herself due to personal interest in a matter as defined in Article 47 paragraph 1 letter a CCP, due to involvement in the same matter as provided for in Article 47 paragraph 1 letter b CCP, due to involvement in another matter as provided for in Article 47 paragraph 1 letter f CCP specifically for the following reasons:

- a. The member is one of the parties to the dispute or is employed in a company that is closely affiliated with one of the parties to the dispute.
- b. The member advises or has advised one of the parties to the dispute or a third party in the matter in dispute or has otherwise influenced the matter in dispute in the capacity of a body or employee of such a party.
- c. The member advises or has advised one of the parties to the dispute in another matter during the previous three years and this activity is associated with significant income or is performed on a regular basis for the party to the dispute.
- d. The member advises or has advised a third party against one of the parties to the dispute in another matter during the previous year and this activity was associated with significant income or is performed on a regular basis against the party to the dispute.
- e. The member is or has been a body or employee of one of the parties to the dispute during the previous three years or has otherwise exerted a perceptible influence on one of the parties to the dispute, or possesses significant assets or other interests in one of the parties to the dispute or a closely affiliated company or has a vested interest in the outcome of the matter in dispute.
- f. The company for which a member of the Federal Patent Court works outside of the Court or a closely affiliated company advises or has previously advised one of the parties to the dispute or a third party in the same matter.
- g. The company for which a member of the Federal Patent Court works outside of the Court or a closely affiliated company advises or has previously advised one of the parties to the dispute in another matter during the previous three years or possesses significant assets or other interests in one of the parties to the dispute or a closely affiliated company or has a vested interest in the outcome of the matter in dispute.

- h. The company for which a member of the Federal Patent Court works outside of the Court or a closely affiliated company advises or has previously advised one of third parties against one of the parties to the dispute in another matter during the previous year and the activity was associated with significant income or is performed regularly against the party to the dispute.
- i. The member has publicly stated an opinion on the matter, whether in a written, verbal or other manner; this shall not extend to positions of a fundamentally general nature or publications of a legal or technical nature without a direct link to the matter.

**Art. 5** Strictly formal representation of the Swiss part of European patents or retainership as a service address.

<sup>1</sup> Purely administrative activities for achieving or maintaining the validity of the Swiss part of a European patent of one of the parties to the dispute shall not be deemed to constitute advisory or grounds for recusal in terms of Art. 4 para. 1 where the patent is not the matter in controversy in the dispute and provided that no significant income or income over and beyond the income for strictly administrative work is received through this administrative work for the party to the dispute. Any such facts shall be disclosed as provided for in Art. 7 where they are or become known to the Court member.

<sup>2</sup> Purely administrative activities shall extend to the following in particular:

- a. Formal assumption of representation and the role as a service address in proceedings involving the Swiss Federal Institute of Intellectual Property.
- b. The submission of translations.
- c. The payment of fees and charges, in particular annual fees.

**Art. 6** Advising of third parties in the technical field of the matter in dispute

Advising of third parties in the technical field of the matter in dispute shall not constitute grounds for recusal in terms of Art. 4 para. 1.

### Section 3: Recusal Procedure

**Art. 7** General recusal procedure

Article 48–51 CCP and Art. 8-10 of these Guidelines are applicable to the recusal procedure.

**Art. 8** Disclosure obligation

<sup>1</sup> Each member of the Court shall disclose immediately to the Administrative Board of Judges any possible grounds for recusal as provided for in Article 47 paragraph 1

CCP and shall recuse him- or herself where he or she should perceive any grounds to be present. The Administrative Board of Judges shall be informed in cases of doubt.

<sup>2</sup> In contemplating whether any facts as defined in paragraph 1 are to be disclosed, the Court member shall not give any consideration to the status of the proceeding.

<sup>3</sup> Where a Court member so affected according to paragraph 1 discloses possible grounds for recusal without recusing him- or herself, the Administrative Board of Judges shall review the grounds for recusal and hear the parties to the proceeding.

**Art. 9** Motions for recusal, waiver of invocation

<sup>1</sup> A party seeking to reject a Court member shall file a motion for recusal with the Federal Patent Court within ten days of gaining knowledge of facts that, in the party's opinion, constitute grounds for recusal as defined in Article 47 para. 1 CCP. The facts on which recusal is based shall be substantiated. The Court member concerned shall state his or her position on the motion.

<sup>2</sup> Where a fact according to paragraph 1 is not invoked within the time period stipulated in paragraph 1, the fact can no longer be invoked during the proceeding.

**Art. 10** Decision on grounds for recusal

The Administrative Board of Judges shall rule on the grounds for recusal in the absence of the concerned member of the Court.

### Section 4: Assumption of Representation upon the Conclusion of a Proceeding

**Art. 11**

A Court member is prohibited from acting as legal council to a party to a proceeding for no less than one year upon the conclusion of a dispute before the Federal Patent Court, including the conclusion of any appellate proceeding.

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In the name of the Federal Patent Court

The President: Dieter Brändle

The Second Ordinary Judge: Tobias Bremi