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Guidelines on Independence

(as revised on 5th December 2014)

The Federal Patent Court intends to proceed in accordance with the following Guidelines with regard to ensuring its independence. The specifics of each case will be considered.

Section 1: General Provisions

Art. 1 Subject matter

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

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

Art. 2 General principles

¹ 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.

² 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.

³ 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

¹ A Court member shall refuse to sit on a panel in a specific matter where the member deems that grounds for recusal under Article 47 paragraph 1 CCP, Articles 10–12 or 28 PatCA or special grounds for recusal under Article 4 of these

Guidelines are present on the basis of information known to him or received from the parties.

² A Court member shall not be consulted for ruling on a matter where grounds for recusal under paragraph 1 are deemed to be present.

³ Grounds for recusal under paragraph 1 shall not be deemed to be present where the parties having knowledge of such facts do not expressly reject the appointment or continued participation of the Court member.

Art. 4 Special grounds for recusal

¹ 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 Court member is or has been within the past year a governing body or employee of one of the parties to the dispute or is or was otherwise able to exert a perceptible influence on one of the parties to the dispute either in a personal capacity or through a company that the member works for outside the Federal Patent Court, or holds 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.
- b. The Court member or the company in which he/she works 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 governing body or employee of such a party.
- c. The Court member or the company in which he/she works advises, regularly advises or has advised within the past year one of the parties to the dispute in another matter.
- d. The member or the company that the member works for advises, regularly advises or has advised within the past year a third party against one of the parties to the dispute in another matter.
- e. 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.
- f. The member or the company that the member works for is or was acting in an administrative capacity as the contact person for the patent in dispute.
- g. The member or the company that the member works for is or was directly mandated within the past year or regularly mandated by one of the parties to the dispute as the contact person and maintenance of intellectual property rights.

Art. 5 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. 6 General recusal procedure

Article 48–51 CCP and Art. 7–9 of these Guidelines are applicable to the recusal procedure.

Art. 7 Disclosure obligation

¹ 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.

² 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.

³ 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 hear the parties to the proceeding and then review the grounds for recusal.

Art. 8 Motions for recusal, waiver of invocation

¹ 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.

² 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. 9 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. 10

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.

In the name of the Federal Patent Court

The President: Dieter Brändle

First clerk: Susanne Anderhalden