

# Potential of the Patent Mediation and Arbitration Centre (PMAC) of the Unified Patent Court (UPC)

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The Patent Mediation and Arbitration Centre (PMAC) has been established as an integral component of the new Unified Patent Court (UPC) system and is expected to become operational early this year. This article analyses the institutional framework, competence, procedural design, and enforcement mechanisms of the PMAC, situating it within the broader landscape of international patent dispute resolution and comparing it to established Alternative Dispute Resolution (ADR) institutions such as the World Intellectual Property Organization Arbitration and Mediation Center (WIPO AMC) and the International Chamber of Commerce (ICC). Particular attention is given to the PMAC's potential role in resolving Standard Essential Patent (SEP)/FRAND disputes following the withdrawal of the European Commission's proposed SEP Regulation. While the voluntary and confidential nature of PMAC proceedings cannot replicate the transparency and mandatory mechanisms envisaged by the Regulation, the Centre may nevertheless emerge as a meaningful complementary forum—especially if the UPC actively encourages mediation and arbitration in appropriate cases. Finally, the article examines the implications of the CJEU (Court of Justice of the European Union)'s BSH/Electrolux decision for cross-border enforcement and assesses whether the PMAC could evolve into a structured venue for resolving multinational patent disputes. The analysis concludes that, if applied pragmatically, the PMAC has the potential to become a central pillar of ADR.

*Keywords:* Patent Mediation and Arbitration Centre (PMAC), Unified Patent Court (UPC), Alternative Dispute Resolution (ADR), SEP/FRAND disputes, Cross-border patent enforcement, BSH/Electrolux

## Introduction

With the entry into force of the Unified Patent Court (UPC), the Patent Mediation and Arbitration Centre

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(PMAC) was established as an institutional component of the new system (Art. 35 Para. 1 s. 1 UPCA). Following nearly two and a half years of preparatory work, the PMAC is expected to become operational in early 2026.

The PMAC will serve as the specialized appropriate dispute resolution (ADR) body within the UPC framework. Conducting its activities in English, French, and German, it aims to ensure broad accessibility for patent stakeholders across Europe and beyond. Institutionally and financially integrated in the UPC structure, the PMAC operates from Ljubljana and Lisbon (Art. 35 Para. 1 s. 2 UPCA).

Its primary function is to provide facilities and institutional support for mediation and arbitration in disputes falling within UPC's jurisdiction. The PMAC thereby promotes efficiency and flexibility in patent disputes and complements litigation before the UPC. Parties may refer to the PMAC either for disputes already pending before the UPC or for disputes outside of active litigation.

This article explores the institutional framework, competence, and procedural potential of the PMAC, particularly in light of existing international ADR institutions as the World Intellectual Property Organization Arbitration and Mediation Center (WIPO AMC) or the International Chamber of Commerce (ICC).

Beyond these institutional and procedural considerations, the PMAC's establishment also prompts reflection on its potential to fill the regulatory gap left by the withdrawal of the European Union's proposed Standard Essential Patent (SEP) Regulation. Furthermore, recent developments in European private international law—most notably the CJEU (Court of Justice of the European Union)'s decision in *BSH/Electrolux*—raise the question of whether the PMAC's competence could evolve to encompass cross-border and non-EU patent disputes or even extend beyond patents to related intellectual property rights, like trade secrets.

Against this background, the present article proceeds in six parts. Following this introduction (Part I), Part II examines the institutional framework of the PMAC, outlining its legal foundations, competences, and enforcement mechanisms. Part III explores the PMAC's added value compared to existing institutions, especially as an alternative or complementary mechanism for resolving FRAND-related disputes after the failure of the SEP Regulation. Part IV considers the broader jurisdictional implications of the *BSH/Electrolux* ruling for the PMAC's potential role in cross-border enforcement. Finally, Part V offers concluding reflections on the PMAC's long-term potential and its significance for the evolving landscape of European patent dispute resolution.

## **Institutional Framework of the PMAC**

### **Legal Foundations**

The legal foundations of the PMAC are laid down in Arts. 35, 39, 52, 79 of the UPCA, together with Rules 11 and 365 of the Rules of Procedure (RoP). Art. 35 Para. 3 UPCA provides that the PMAC shall adopt Mediation and Arbitration Rules. Two separate sets of rules have been developed—one governing mediation and the other arbitration. Drafts of both were released in April and May 2025, followed by a public consultation period which ended on 21 July 2025.<sup>1</sup>

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<sup>1</sup> Draft Mediation Rules (22 April 2025) available at: [https://www.unifiedpatentcourt.org/sites/default/files/upc\\_documents/PMAC%20Mediation%20Rules.pdf](https://www.unifiedpatentcourt.org/sites/default/files/upc_documents/PMAC%20Mediation%20Rules.pdf) and Draft Arbitration Rules (28 May 2025), available at: [https://www.unifiedpatentcourt.org/sites/default/files/upc\\_tenders/PMAC%20Arbitration%20Rules.pdf](https://www.unifiedpatentcourt.org/sites/default/files/upc_tenders/PMAC%20Arbitration%20Rules.pdf).

Following the adoption of the Codes of Conduct and the Selection Criteria for mediators, arbitrators, and experts, the PMAC has begun accepting applications for the list of mediators, arbitrators and experts (Art. 35 Para. 4 UPCA).<sup>2</sup> Parties engaging in PMAC proceedings will be able to select mediators, arbitrators, and experts directly from these lists, ensuring both transparency and quality assurance.

### Competence and Potential Extension of PMAC's Scope

**Statutory competence under the UPCA.** Under Art. 35 Para. 2 s. 1 UPCA, the PMAC is mandated to provide facilities for mediation and arbitration of patent disputes within the UPC's material scope as defined in Art. 3 UPCA. This includes:

- (a) European patents with unitary effect;
- (b) supplementary protection certificates (SPCs);
- (c) European patents which have not yet lapsed at the date of entry into force of the UPCA or were granted after that date, without prejudice to Art. 83; and
- (d) European patent applications which are pending at the date of entry into force of the UPCA or which are filed after that date, without prejudice to Art. 83.

Pursuant to Art. 35 Para. 2 s. 3 UPCA, the PMAC may neither revoke nor limit patents, thereby excluding determinations that directly affect patent validity. Nonetheless, this provision should not be understood as precluding the PMAC from engaging with validity-related questions *inter partes*.<sup>3</sup> It appears consistent with the purpose of the UPCA to allow arbitral tribunals to address such issues, provided that their determinations have no *erga omnes* effect.<sup>4</sup>

Rule 11 Para. 2 RoP confirms this interpretation, as it explicitly allows the UPC to confirm settlements or arbitral awards obliging a patent owner to limit, surrender, or agree to the revocation of a patent or not to assert it against other parties (Simmons + Simmons LLP, 2023). Such settlements or awards, while not constitutive in nature, can produce indirect effects on patent validity through the parties' autonomous exercise of their rights.<sup>5</sup> The Draft Mediation Rules (DMR) and the Draft Arbitration Rules (DAR) both explicitly note the applicability of Rule 11 Para. 2 RoP to any settlement or arbitral award by consent, reached under the PMAC.

**Functional interpretation and potential broadening of scope.** Some commentators suggest that, under Art. 35 Para. 2 s. 1 UPCA, the PMAC may only hear disputes that would themselves fall within the UPC's material competence—that is, disputes involving patents and claims of the kind over which the UPC would also have competence.<sup>6</sup>

Building on this, a central question concerns whether patents falling outside the material scope of Art. 3 UPCA are excluded from the institutional competence of the PMAC, or whether their inclusion may nevertheless

<sup>2</sup> <https://www.unifiedpatentcourt.org/en/news/pmac-now-open-application>.

<sup>3</sup> *De Werra*, New Developments of IP Arbitration and Mediation in Europe: The Patent Mediation and Arbitration Center Instituted by the Agreement on a Unified Patent Court, p. 27, available at: <http://archive-ouverte.unige.ch/unige:39878>, who maintains that arbitral tribunals may address issues of validity or scope *inter partes* given their frequent occurrence in license and technology transfer disputes.

<sup>4</sup> *Picht*, GRUR Int. 2018, 1 (7 et seq), who argues that while Art. 35 Para. 2 UPCA excludes *constitutive erga omnes* determinations, it does not preclude arbitral awards producing *indirect* effects on patent validity through party consent.

<sup>5</sup> *Picht*, GRUR Int. 2018, 1 (7 et seq), noting that *inter partes* obligations to limit or surrender a patent may validly produce *indirect erga omnes* effects.

<sup>6</sup> *Blanke-Roeser*, SchiedsVZ 2023, 340 (343); *Kaneko*, EU-Einheitspatent und Schiedsverfahren 2018, 88, 107.

be permissible under a broader, functional interpretation in cases where both parties wish to make use of PMAC facilities. From a practical perspective, parties managing global patent portfolios—comprising national, opted-out, European, and unitary patents—may have a legitimate economic interest in resolving all related disputes before a single forum rather than through fragmented, multi-jurisdictional proceedings (Simmons + Simmons LLP, 2023).

Both DMR and DAR appear to accommodate a certain degree of flexibility in this regard. Art. 2 Para. 1 of each framework provides that their scope extends to “related disputes”, and Art. 2 Para. 3 expressly allows the parties to agree that “any other disposable right or obligation factually or legally linked to the dispute” may be included in the mediation or arbitration. These provisions open the door to a functional extension of the PMAC’s competence, though they simultaneously raise the question of how far such linkage may reasonably reach.

*Picht* argues in favor of a functional and efficiency-oriented interpretation of Art. 35 UPCA. In his view, a strict alignment between the competences of the PMAC and those of the UPC is neither textually required nor practically desirable. Given the efficiency rationale underlying both the UPC and the PMAC, disputes that are factually or legally connected to unitary or European patents should fall within the PMAC’s reach, provided that they exhibit a qualified link to matters governed by the UPCA. Such an interpretation would prevent parallel proceedings and promote procedural economy.<sup>7</sup>

Accordingly, contracts with global reach—such as license or technology transfer agreements covering both unitary/European and national patents, or other connected intellectual property rights—could justify the PMAC’s involvement, insofar as the dispute remains anchored in the subject matter governed by the UPCA.<sup>8</sup>

The inclusion of other intellectual property rights, such as trademarks or designs, remains highly controversial.<sup>9</sup> *Picht* cautions that such expansion would require additional institutional resources and expertise, potentially diluting the PMAC’s specialized focus on patent matters.<sup>10</sup> *Blanke-Roeser*, by contrast, supports the view that the PMAC should have competence where a case partially falls within the UPC’s scope, consistent with the wording of Art. 2 Para 1 and 3 DMR/DAR. This approach would prevent delays caused by objections based on a lack of competence, while ensuring that at least one element of the dispute concerns a unitary or European patent.<sup>11</sup>

Nevertheless, caution must be exercised against a boundless expansion of competence. The PMAC’s scope must be defined in a way that safeguards legal certainty while accommodating the realities of complex, multi-layered IP disputes. A balanced approach would allow the PMAC to handle unitary/European and national patents as well as related IP—especially where they protect the same invention or constitute overlapping rights—while excluding matters entirely detached from the substantive scope of the UPCA. Ultimately, the PMAC’s credibility and effectiveness as a forum for ADR will depend on its ability to maintain a high degree of patent-specific expertise without diluting its mandate through an overly expansive interpretation of its competence.

## Proceedings

Proceedings before the PMAC are designed to be flexible, time-efficient, and confidentiality-oriented.

<sup>7</sup> *Picht*, GRUR Int. 2018, 1 (9 ff.).

<sup>8</sup> *De Werra*, New Developments of IP Arbitration and Mediation in Europe, p. 24; *Probst/Feller/Pless*, GRUR Int. 2016, 766 (767).

<sup>9</sup> *De Werra*, New Developments of IP Arbitration and Mediation in Europe, p. 24.

<sup>10</sup> *Picht*, GRUR Int. 2018, 1 (10).

<sup>11</sup> *Blanke-Roeser*, SchiedVZ 2023, 340 (344).

According to Rule 11 Para. 1 RoP, the UPC may refer a case to the PMAC at any stage of the proceedings if the judge-rapporteur considers an amicable settlement appropriate.

Under the DMR, mediation proceedings are primarily conducted through electronic means, unless the parties agree otherwise. The parties may determine the place of the mediation for any necessary physical meetings, failing which the Centre will decide, taking into account the circumstances of the case (Art. 13 Paras. 1-2 DMR). The language of the mediation is chosen by agreement of the parties or, in its absence, determined by the Centre based on the language most closely related to the dispute (Art. 14 DMR).

The conduct of proceedings is largely party-driven: The mediator facilitates communication, identifies interests, and may make proposals for settlement but has no authority to impose a decision (Art. 15 Para. 3 DMR). Proceedings are to be conducted in good faith and with the aim of an expeditious resolution. As a general rule, mediation should be concluded within three months from the appointment of the mediator; any extensions require the agreement of all parties and the Centre (Art. 15 Para. 4 DMR).

The mediator may, for consideration by the parties, suggest alternative or hybrid procedures, such as expert determination, early neutral evaluation, or mediation followed by arbitration (med-arb), to reach an efficient and cost-effective settlement (Art. 16 DMR). Mediation proceedings are terminated either upon the conclusion of a settlement, by expiry of deadlines, or by declaration of the mediator or a party (Art. 17 DMR).

By contrast, arbitration proceedings under the DAR are more formalised, involving a case management conference, procedural timetables, and a final award that is binding on the parties unless otherwise agreed between them.

It follows from Art. 22 DAR that an initial case management conference is held as soon as practicable after the tribunal's constitution, typically via videoconference, to establish the procedural timetable and address preliminary matters such as jurisdictional objections, interim relief, and evidentiary questions. Subsequent case management conferences may be convened as needed (Art. 23 DAR).

The DAR further provides that the final award should, in principle, be rendered within one year from the commencement of proceedings (Art. 22 Para. 4 DAR). Hearings shall be *in camera*, with the Tribunal empowered to impose additional confidentiality regimes to protect the parties' or third parties' confidential information and trade secrets (Art. 28 Para. 4 DAR). Unless otherwise agreed, hearings are to be conducted by videoconference or electronic means (Art. 22 Para. 1, Art. 28 Para. 6 DAR).

## Enforcement

Settlements concluded under the auspices of the PMAC are directly enforceable throughout all Member States of the UPC pursuant to Art. 35 Para. 2 s. 2 UPCA in conjunction with Art. 82 UPCA.<sup>12</sup>

Beyond the territorial scope of the UPCA, international enforceability depends on whether the parties have chosen mediation or arbitration under the PMAC Rules. Any arbitral award benefits from recognition and enforcement under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards,<sup>13</sup> which remains the cornerstone of international arbitration enforcement.

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<sup>12</sup> Also Art. 30 DMR.

<sup>13</sup> Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 ("New York Convention").

Conversely, where parties reach a mediated settlement, its cross-border recognition may be facilitated by the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention on Mediation),<sup>14</sup> which establishes an autonomous framework for the enforcement of international mediation settlements.

Together, these two international instruments—the New York Convention and the Singapore Convention—provide complementary enforcement regimes for arbitral and mediated outcomes.<sup>15</sup>

Yet, the UPCA and its RoP do not expressly regulate how PMAC arbitral awards interact with pending or subsequent UPC proceedings. While such awards are binding *inter partes*, they have no automatic *res judicata* effect before the UPC. Future clarification—potentially coupled with a hybrid disclosure mechanism balancing transparency and confidentiality<sup>16</sup>—could further align PMAC outcomes with UPC litigation practice, particularly in complex portfolio or SEP/FRAND disputes.

### Added Value of the PMAC Compared to Existing Institutions

#### Distinguishing Features in General

One naturally raises the question, of what additional value the PMAC can offer, given the long-standing presence of established institutions such as the World Intellectual Property Organization Arbitration and Mediation Center (WIPO AMC) or the International Chamber of Commerce (ICC) with its well-recognized Arbitration Rules.

The PMAC, though institutionally established under the UPC framework, is modeled after private ADR entities such as WIPO or the ICC. It follows the traditional voluntary ADR model,<sup>17</sup> offering confidential mediation and, where agreed, binding arbitration.

The PMAC's distinctive feature lies in its institutional integration within the structure of the UPC. Unlike other international ADR bodies, it is embedded in a hybrid procedural framework that connects ADR mechanisms directly with judicial proceedings. In particular, the active role of the judge-rapporteur, who is expressly mandated under the RoP to promote an amicable settlement, establishes a novel procedural interface between adjudication and consensual dispute resolution. This structural link not only has the potential to enhance procedural efficiency, but also to strengthen the perceived legitimacy and enforceability of settlements, thereby fostering a more coherent and harmonised dispute resolution culture within the EU.

#### The PMAC and SEP Disputes

**Background: Withdrawal of the EU SEP Regulation.** The potential added value of the PMAC for the resolution of SEP disputes in particular has often been discussed in the context of the meanwhile withdrawn European Commission proposal for an EU SEP Regulation: The evolving and continuous challenges in SEP licensing, i.e. the lack of transparency, the lack of predictability, the lack of proper FRAND determination

<sup>14</sup> United Nations Convention on International Settlement Agreements Resulting From Mediation (Singapore Convention on Mediation), adopted by the UN General Assembly on 20 December 2018, UN Doc. A/RES/73/198; entered into force 12 September 2020.

<sup>15</sup> Baillie, Evaluating the Impact of the Singapore Convention on Mediation 2018 on the Future Relevance of the New York Convention 1958 (July 14, 2025), p. 4. Available at SSRN: <https://ssrn.com/abstract=5350771>.

<sup>16</sup> SPC III. 2. b.

<sup>17</sup> WIPO Mediation Rules; ICC Mediation Rules; Proposal for a Directive Amending Directive 2013/11/EU on alternative dispute resolution for consumer disputes, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828.

mechanisms, and the lengthy and costly negotiations and litigation<sup>18</sup> prompted the European Commission (Commission) to propose the SEP Regulation in 2023.<sup>19</sup> Following lengthy stakeholder consultations and legislative debate between the European Commission, Parliament and Council, the Commission has expressed its intention to withdraw<sup>20</sup> the proposal and finally decided on the withdrawal on July 31, 2025,<sup>21</sup> despite opposition from several Member States and stakeholders (MLex, 2025; Houldsworth, 2025; Mueller, 2025; Klos, 2025).

The SEP Regulation was designed to rebalance market asymmetries. Among its key principles were the establishment of a public SEP database administrated by EUIPO,<sup>22</sup> essentiality checks to verify declared SEPs,<sup>23</sup> an aggregate royalty determination to clarify total licensing costs,<sup>24</sup> and a mandatory FRAND conciliation mechanism.<sup>25</sup> This structured procedure would have compelled parties to engage in a nine-month<sup>26</sup> conciliation before litigation, thereby reducing the risk of injunction pressure, ensuring that SEP licensing negotiations are more transparent and avoiding any hold-up or abusive practices.

However, the SEP Regulation did receive important criticisms (Verschuur, Bergsma, de Rijke, & Rietema, 2024; Bonadio & Sampathkumar, 2023; Colangelo, 2024; Camesasca & Sideri, 2024). SEP holders raised concerns regarding the overall burden, the ability to enforce their patents and their diminished negotiation power, while SEP implementers questioned whether consistent FRAND determinations and transparency can be actually secured. The mandatory FRAND conciliation mechanism received intensive attention, with opponents claiming that the SEP Regulation risks delaying enforcement and blocking access to justice contrary to human rights (Jacob & Nikolic, 2023; IP Europe, 2023; Nokia, 2023; 4iPCouncil, 2023; Chinembiri, 2023), and proponents defending the compatibility with legal precedent and the material potential to resolve SEP licensing disputes efficiently (Camesasca & Sideri, 2024).

**Potential of the PMAC as an alternative forum for SEP/FRAND disputes.** With the proposal for an SEP Regulation withdrawn, PMAC offers a new venue for amicably resolving disputes concerning European and Unitary patents and supplementary protection certificates. In the second trimester of 2025 PMAC has launched a public consultation on its revised DMR/DAR, including provisions specifically tailored to SEP disputes (Patent Mediation and Arbitration Centre of the Unified Patent Court, n.d.; 2025a; 2025b) attracting the attention of the stakeholders in the SEP licensing market.

This raises the question in how far the facilities provided by the PMAC may or may not “fill the gap” left by the withdrawal of the SEP Regulation proposal.

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<sup>18</sup> European Commission, “Setting out the EU Approach to Standard Essential Patents” (Communication), COM(2017) 712 final, 29 November 2017.

<sup>19</sup> European Commission, “Proposal for a Regulation of the European Parliament and of the Council on Standard Essential Patents and Amending Regulation (EU) 2017/1001” COM(2023) 232 final (“SEP Regulation”).

<sup>20</sup> European Commission, “Commission Work Programme 2025—Moving Forward Together: A Bolder, Simpler, Faster Union” (Annexes to the Communication) COM(2025) 45 final, Annex IV: Withdrawals, No 17. at 25.

<sup>21</sup> Formal withdrawal notice not yet published at the time of writing.

<sup>22</sup> SEP Regulation, Art. 4.

<sup>23</sup> SEP Regulation, Art. 28 et. eq.

<sup>24</sup> SEP Regulation, Arts. 14-18.

<sup>25</sup> SEP Regulation, Arts. 34-38.

<sup>26</sup> SEP Regulation, Art. 37.

Undoubtedly, there are limits to what the PMAC can possibly offer when compared with the far more ambitious legislative approach envisaged by the withdrawn SEP Regulation proposal:

First, the voluntary nature of both PMAC mediation and arbitration (with mutual consent needed for their commencement) allows SEP holders to refuse participation if litigation leverage better serves their interests. This contrasts with the mandatory FRAND conciliation mechanism proposed under the SEP Regulation, which sought to require a procedure before infringement actions could be launched before the courts. Without a mandatory procedure, PMAC can neither protect SEP implementers from the injunctive threats by SEP holders nor ensure fair terms for both parties in SEP licensing negotiations. At the same time, the voluntary framework also offers no solution against unwilling implementers who might strategically delay or avoid engagement in good-faith negotiations.

In addition, PMAC currently provides no procedural incentives to encourage parties to meaningfully engage, support, or facilitate the proceedings once initiated. The objective of achieving a credible and balanced FRAND determination critically depends on the parties' willingness to disclose the relevant information and documentation to mediators or arbitrators. Without a clear framework that promotes transparency and cooperation, even well-structured ADR mechanisms risk stagnation. Consideration could therefore be given to introducing incentive-based procedural tools—for instance, cost or procedural advantages for parties that demonstrate good-faith cooperation or timely submission of relevant materials.

Second, confidentiality in both PMAC mediation and arbitration, in conjunction with the lack of a binding force in mediation limits PMAC's credibility to truly improve the SEP licensing playing field. In particular, settlements reached through PMAC processes do not create legal precedent or provide transparency to the broader market. As a result, SEP implementers cannot rely on any of those outcomes in future negotiations and they remain vulnerable to discriminatory licensing practices by SEP holders.

From a transparency perspective, confidentiality constitutes a double-edged sword. While it safeguards the parties' commercial interests and encourages negotiation, it simultaneously restricts public insight and the development of consistent FRAND practices. In the context of SEP disputes, this lack of transparency has long been criticized. Building on the rationale of the withdrawn SEP Regulation, it might therefore be worth considering a hybrid disclosure model for SEP-related ADR proceedings—introducing a regime of partial confidentiality that preserves the benefits of privacy while allowing limited publication of anonymised outcomes or methodological aspects.

Third, unlike the EU SEP Regulation, which under Art. 34 envisaged the possibility of a mandatory pre-litigation FRAND conciliation even in the context of pending or threatened infringement claims, the PMAC framework currently lacks any mechanism designed to restrict judicial enforcement until a FRAND determination has been made. This difference substantially limits PMAC's potential to "fast-track" SEP disputes or reduce litigation pressure. To enable such pre-litigation FRAND determinations, a legislative amendment to the UPCA would likely be required by the contracting Member States. Pending such reform, PMAC could nonetheless consider incorporating an early, non-binding third-party evaluation mechanism into its DAR—allowing the parties to obtain an independent, reasoned assessment of FRAND terms at an early stage, thereby promoting settlement without prejudicing judicial rights.



Consequently, what the PMAC can possibly offer in the context of SEPs necessarily falls well short of the level of transparency and enforceability proposed by the SEP Regulation.

That, however, is not to say, that PMAC might not nevertheless offer a meaningful opportunity to aid the resolution of SEP disputes specifically: Unlike most other patent disputes, SEP/FRAND disputes are not typically actually concerned with whether or not the alleged infringer must not practice a single (or a handful of) patent(s), but rather with what would be FRAND licensing terms allowing the use of large portfolios of SEPs. The resulting discrepancy between the subject of patent infringement proceedings and the actual dispute between parties in FRAND/SEP matters has repeatedly been called out<sup>27</sup>. Unlike UK and Chinese courts, national courts in the EU have been hesitating to address that actual dispute directly by determining FRAND rates in the context of such proceedings. This is not due to laziness but to arguably valid concerns that courts may not be best positioned to do so.<sup>28</sup>

While FRAND case law under EU law, notably the binding guidance provided by the Court of Justice of the European Union (“CJEU”) in *Huawei v ZTE*,<sup>29</sup> has continued to evolve and while that evolution has continued to reveal persistent and significant differences in interpretation of the CJEU’s rulings between different courts,<sup>30</sup> it is fair to say that only few rulings have so far taken any kind of view on what would or would not have constituted FRAND terms between the parties. Rather, the question of whether the alleged infringer has complied with its good-faith negotiation behavioral requirements described or implied by the CJEU’s ruling has often taken center stage in actual proceedings and has formed a threshold to considering the FRANDness of licensing offers that defendants have often failed to overcome.

Through its integration and structural interfaces with the UPC, the PMAC could well introduce valuable new opportunities for more nuanced resolution of SEP infringement proceedings: Instead of having to focus on a binary determination of willingness or the lack thereof, judges will have the opportunity to encourage parties to turn to the PMAC for tackling the question of FRAND terms in appropriate cases. Conversely, the readiness or not of either party to invoke the PMAC’s services could provide additional evidence for judges to assess willingness under *Huawei/ZTE*. For sure, this would necessarily be highly case-specific. Depending on the circumstances, there could be entirely valid reasons for either party to not wish to engage in an ADR proceeding.

**Practical attractiveness for stakeholders.** Whether or not the PMAC will actually turn out to meaningfully complement existing EU FRAND dispute resolution will ultimately depend on its attractiveness to market players in practice.

Generally speaking, one would think that from the SEP holders’ perspective, PMAC can preserve their strategic flexibility while providing a neutral forum for dispute resolution. In particular, the voluntary nature of both PMAC mediation<sup>31</sup> and arbitration<sup>32</sup> ensures that SEP holders are not forced into a dispute resolution

<sup>27</sup> *Walz/Benz/Pichlmaier*, GRUR 2022, 446-456, 513-522 and references quoted therein.

<sup>28</sup> *Meier-Beck*, GRUR Int. 2025, 342-350.

<sup>29</sup> Judgment of 16 July 2015, *Huawei Technologies Co. Ltd v ZTE Corp.*, ZTE Deutschland GmbH, C-170/13, ECLI:EU:C:2015:477 (“*Huawei v. ZTE*”).

<sup>30</sup> See *Leistner*, The First SEP/FRAND Decisions on the Merits of the UPC—An Overview in Context, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=5309340](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5309340) for an overview, specifically addressing the first UPPC FRAND decisions on the merits.

<sup>31</sup> DMR, Art. 2(4).

<sup>32</sup> DAR, Art. 2(4).

procedure against their will, leaving them the negotiation leverage. Further, PMAC ensures confidentiality, as the mediation and arbitration outcomes are not recorded and made publicly available,<sup>33</sup> thereby reducing the risk of the outcomes or agreements disclosure that could weaken their negotiation position in future deals. In addition to offering flexibility and privacy, PMAC arbitration, if chosen, can result in binding awards enforceable under New York Convention,<sup>34</sup> offering global recognition for SEP holders seeking a credible dispute resolution structure.<sup>35</sup>

From SEP implementers' perspective, choosing PMAC mediation can be presented as evidence of willingness under *Huawei/ZTE*<sup>36</sup> framework, potentially limiting the SEP holder's chances of securing injunctive relief claiming that the implementer is acting in bad faith. Further, the confidentiality provisions protect sensitive licensing information from a broader disclosure and safeguard SEP implementers' reputation in case of an unfavorable outcome. At the same time, the enforceability of the arbitration awards provides additional safeguards for future relevant SEP licensing negotiations.

Finally, the ongoing PMAC consultations indicate its attempt to adapt its rules to SEP specific disputes seeking to take into account the concerns around the SEP Regulation while maintaining the core principles of an ADR body. The PMAC has the opportunity to position itself as a credible, preferred and trusted forum for SEP licensing disputes. While it cannot provide the same level of transparency as the SEP Regulation, we believe that PMAC has the potential to evolve into a meaningful complementary tool in SEP landscape. That potential may or may not materialize. It is to be hoped that SEP holders and implementers engage to explore it. Best case, the PMAC could evolve to become a trusted and recognized center of expertise for essentiality checks and global rate determinations.

### **Impact of the *BSH/Electrolux* Decision**

The decision of the European Court of Justice (CJEU) in *BSH/Electrolux*<sup>37</sup> constitutes a significant change in the interpretation of the Brussels I Bis Regulation (BIBR)<sup>38</sup> regarding how patent infringement cases are handled across EU member states, particularly when the validity of the patent is challenged. This landmark ruling will have a profound impact on patent infringement proceedings, both within European national courts and the UPC.

#### **Core Findings of the Decision**

Article 4 of the BIBR states that persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State; and persons who are not nationals of the Member State in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that Member State.

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<sup>33</sup> DMR, Art. 21; DAR, Arts. 45 and 48.

<sup>34</sup> United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) ("New York Convention").

<sup>35</sup> European Patent Office, Benchmarking of mediation and arbitration rules of institutions comparable to the UPC's PMAC, March 2025, pp. 6 and 29-30.

<sup>36</sup> Judgment of 16 July 2015, *Huawei Technologies Co. Ltd v ZTE Corp., ZTE Deutschland GmbH*, C-170/13, ECLI:EU:C:2015:477 ("Huawei v. ZTE").

<sup>37</sup> CJEU, Judgement of 25 February 2025—Case C-339/22, *BSH Hausgeräte GmbH v Electrolux AB*, ECLI:EU:C:2025:108.

<sup>38</sup> Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

Further, Article 24 Para. 4 BIBR states that the courts of the Member State have exclusive jurisdiction, regardless of the domicile of the parties, in proceedings concerned with the registration or validity of patents.

So far, these rules implied that in case of an infringement action before a court of a Member State where the defendant contested the validity of a patent granted in another Member State, the court should decline jurisdiction on deciding both on the patent's validity and on the infringement claim. The CJEU decision on *GAT/LuK*<sup>39</sup> reinforced that principle and the CJEU decision on *Solvay v Honeywell*<sup>40</sup> indicated that Article 24(4) BIBR must be interpreted as not precluding.

In addition and according to Article 71 BIBR and Article 31 UPCA,<sup>41</sup> these principles apply also to litigation before the UPC.

In contrast to the traditional approach, in the *BSH/Electrolux* ruling, the CJEU stated that Article 24(4) BIBR

must be interpreted as meaning that a court of the Member State of domicile of the defendant which is seised, pursuant to Article 4(1) of that regulation, of an action alleging infringement of a patent granted in another Member State, does still have jurisdiction to hear that action where, in the context of that action, that defendant challenges, as its defence, the validity of that patent, whereas the courts of that other Member State have exclusive jurisdiction to rule on that validity<sup>42</sup>.

In addition, the CJEU in the *BSH/Electrolux* case assessed whether courts of Member States have jurisdiction to rule on infringement and validity of patents granted in countries outside the EU, such as the UK, Turkey, the USA, or China. The CJEU in its decision stated that Article 24 Para. 4

must be interpreted as not applying to a court of a third State and, consequently, as not conferring any jurisdiction, whether exclusive or otherwise, on such a court as regards the assessment of the validity of a patent granted or validated by that State. If a court of a Member State is seised, on the basis of Article 4(1) of that regulation, of an action alleging infringement of a patent granted or validated in a third State in which the question of the validity of that patent is raised, as a defence, that court has jurisdiction, pursuant to Article 4(1), to rule on that defence, its decision in that regard not being such as to affect the existence or content of that patent in that third State or to cause the national register of that State to be amended.<sup>43</sup>

This means that courts of the Member States can assess both infringement and validity of such patents *inter partes*, with no effect on the foreign patent register, thereby greatly expanding the scope of consolidated cross-border infringement actions in Europe.

### Potential Implications for the PMAC

The *BSH/Electrolux* judgment may serve to extend the UPC's jurisdiction to decide on infringement issues in non-UPC countries, allowing patentees to consolidate enforcement across multiple jurisdictions and seek wider cross-broader injunctions, while requiring defendants to defend against unified proceedings with potentially significant consequences. At the same time, the *BSH/Electrolux* ruling indicates that validity remains fragmented, as only the courts granting the validity can revoke a patent with *erga omnes* effect, risking parallel revocation actions. This may lead to more bifurcation and forum shopping.

<sup>39</sup> Case C-04/03, Gesellschaft für Antriebstechnik mbH & Co. KG v Lamellen und Kupplungsbau Beteiligungs KG, ECLI:EU:C:2006:457.

<sup>40</sup> Case C-616/10, Solvay SA v Honeywell Fluorine Products Europe BV and Others, ECLI:EU:C:2012:445.

<sup>41</sup> Agreement on a Unified Patent Court, 2013/C 175/01.

<sup>42</sup> Case C-339/22, Para. 77(1).

<sup>43</sup> Case C-339/22, Para. 77(2).

In this context, PMAC could become an attractive and structured forum for resolving cross-border SEP licensing disputes through mediation or arbitration, taking advantage of the fact that UPC confirmed settlements can become enforceable across countries even outside the EU.

### Conclusion and Outlook

If implemented with discipline and pragmatism, the PMAC can evolve into a genuine centre of excellence for patent ADR in Europe: a forum that (1) accelerates the resolution of UPC-connected disputes, (2) provides a credible path to portfolio-level settlements (especially in SEP/FRAND cases), and (3) offers a structured venue for cross-border arrangements in the wake of *BSH/Electrolux*. It will not replace courts—nor should it aim to. Its comparative advantage lies in marrying the procedural proximity to the UPC with the flexibility and confidentiality of ADR, delivering outcomes that are faster, commercially sensible, and internationally enforceable.

In short, the PMAC clearly emerges as the new kid on the European patent dispute block—one well worth getting to know, to engage with, and, perhaps in time, to introduce into the family of established international ADR institutions.

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