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Why the PMAC Matters: Reflections on the New European Patent Architecture in Light of CJEU President Koen Lenaerts' Keynote

By Flip Petillion

The inauguration of the Patent Mediation and Arbitration Centre (PMAC) confirms that the emerging European patent architecture should be understood as a single design resting on two interconnected pillars: the Unified Patent Court (UPC) and the PMAC. The PMAC is now a full part of that institutional design – a system that aims to centralise patent litigation while creating credible and enforceable alternatives to court proceedings at European level.

During the 1st PMAC Dispute Resolution Forum of 1 June 2026, held the day before the PMAC Inauguration Ceremony of 2 June 2026, a debate was moderated by Eric Runesson (former Justice of the Supreme Court of Sweden and PMAC Neutral) between Dr Marko Bošnjak, Judge at the Court of Justice of the European Union, Prof Dr Maja Brkan, Judge at the General Court of the European Union, and Dr Damjan Kukovec, Judge at the General Court of the European Union. That debate left part of the audience with considerable doubt as to the place of the PMAC in the European patent architecture.

The keynote delivered by Koen Lenaerts, President of the Court of Justice of the European Union (CJEU) and Professor at KU Leuven, at the inaugural session in Ljubljana on 2 June 2026, dispelled much of that doubt. It strongly supports the view that the PMAC is not a peripheral adjunct to the UPC but a structurally significant component of the new framework – and that the legal framework now in place is sound and workable.

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The UPC/PMAC system's integration in the EU judicial order

The legal significance of the PMAC lies in the way its mediation and arbitration mechanisms are embedded in the European judicial order. This is where President Lenaerts' keynote was most instructive, and where it cleared up the uncertainty left by the Forum debate. His remarks make clear that the viability of the entire UPC/PMAC system depends on its compatibility with the constitutional logic of EU law, and especially with the role of the CJEU in safeguarding the uniform interpretation of that law. This, to my mind, is the core institutional premise on which the PMAC ultimately rests.

That premise becomes clearest when one considers the architecture of the UPC itself. The UPC's legitimacy derives from the fact that it was carefully designed not as a court external to the EU legal order, but as a court common to the participating Member States, capable of engaging in the preliminary-reference dialogue with the CJEU.

President Lenaerts' discussion of ECJ Opinion 1/09 of 8 March 2011[1] reinforces exactly that point. The message of that opinion was that a centralised patent court cannot stand wholly outside the EU judicial structure if it is to exercise functions touching upon Union law. The problem with the earlier model was not centralisation as such, but the risk that the normal mechanisms for interpreting and enforcing EU law would be bypassed. The revised UPC model resolved that concern by aligning itself

[1] CJEU (Full Court), 8 March 2011, Opinion 1/09, ECLI:EU:C:2011:123.

with the logic already accepted for the Benelux Court of Justice. This matters not only for the UPC as a court, but also for the PMAC, which draws much of its practical and legal value from its connection to that same institutional framework.

The European-wide significance of the PMAC and the UPC

The PMAC's novelty does not lie merely in the existence of alternative dispute resolution in patent matters, but in the fact that such mechanisms are tied to a judicial structure capable of conferring European-wide enforceability. President Lenaerts emphasised that settlements reached under the PMAC's auspices, as well as arbitral awards, may be confirmed by the UPC – through exequatur decisions – and thereby become enforceable across the contracting Member States. This is a decisive innovation. Traditional mediation or arbitration in patent disputes often suffers from fragmented enforcement, requiring separate steps in multiple jurisdictions. The PMAC changes that dynamic by operating in symbiosis with the UPC. That considerably enhances the attractiveness of ADR in the European patent field, and supports the conclusion that the PMAC is designed not as a soft alternative with uncertain legal effects, but as a serious mechanism integrated into the broader system of patent adjudication.

This integration does not, however, eliminate the fundamental tension between private dispute resolution and the public demands of EU law, and President Lenaerts recognised both sides of it. On the one hand, he reaffirmed the established principle that arbitral tribunals are not "courts or tribunals" within the meaning of Article 267 TFEU and therefore cannot themselves refer questions to the CJEU. On the other hand, he underlined that once a court becomes involved – whether to support the arbitral process or to enforce an award – Union law is formally engaged. This is precisely where the UPC can play a distinctive role for the PMAC: it may serve as the institutional bridge through which private dispute resolution remains compatible with the requirements of EU law, without depriving arbitration and mediation of their autonomy.

Questions of public policy

This becomes especially important when one turns to the question of public policy (*ordre public*). The success of the PMAC will depend in part on whether the courts, and the UPC in particular, manage to apply EU public-policy control in a way that preserves both the authority of EU law and the effectiveness of arbitration. President Lenaerts' remarks on *Eco Swiss*[2] and *RFC Seraing*[3] support a restrained approach. His keynote strongly suggests that not every rule of Union law should be elevated to the level of European public policy, because doing so would hollow out the value of arbitration by inviting a near-complete rehearing at the enforcement stage. I find that reasoning persuasive.

EU public policy must remain confined to the essentials of the Union legal order – above all competition law and free movement. Such a restrained conception allows the PMAC to function meaningfully while ensuring that arbitration cannot be used to circumvent the fundamental norms on which the internal market depends.

[2] CJEU, 1 June 1999, C-126/97, *Eco Swiss*, EU:C:1999:269

[3] CJEU (Grand Chamber), 1 August 2025, C-600/23, *RFC Seraing*, ECLI:EU:C:2025:617.

SEPs and FRAND

The same reasoning applies with particular force to standard-essential patent (SEP) disputes. One of the most compelling aspects of the keynote was President Lenaerts' treatment of *Huawei v ZTE*[4] as a framework not merely for litigation, but also for structured negotiation and dispute resolution. The CJEU's case law already sets out a disciplined sequence of conduct that parties must follow in SEP licensing negotiations. That logic readily supports the conclusion that mediation and arbitration under the PMAC could be especially well suited to SEP disputes, provided they remain bounded by EU competition law and the FRAND framework. SEP disputes are often commercially complex, transnational, and highly sensitive to both confidentiality and legal discipline. The PMAC could therefore offer a forum that is more flexible than litigation while remaining normatively structured by the CJEU's case law.

Cross-border enforcement

A further relevant element is the effect of recent CJEU case law on cross-border patent enforcement, and here too the keynote provides important support. President Lenaerts' discussion of *BSH Hausgeräte*[5] shows that the CJEU is willing to interpret jurisdictional rules in a way that makes the centralised handling of multi-state infringement disputes more feasible. That ruling significantly strengthens the attractiveness of the UPC by reducing a defendant's ability to derail cross-border infringement actions simply by raising validity objections in relation to foreign patents. At the same time, the increased complexity of these proceedings reinforces the case for ADR: the more elaborate and multi-layered patent litigation becomes, the more commercially rational it may be for parties to seek a consensual or arbitral resolution instead. President Lenaerts himself appeared to recognise that this complexity may push parties toward mediation and arbitration. That observation seems to me correct, and it supports the broader conclusion that the PMAC's relevance will grow in parallel with the expansion of the UPC's jurisdictional reach.

I also consider President Lenaerts' remarks on the *inter partes* logic of BSH Hausgeräte significant for the PMAC. If validity issues concerning certain patents can, in some contexts, be assessed with only *inter partes* effect, this opens conceptual space for arbitral or mediated solutions that do not purport to bind the world at large but nevertheless resolve the dispute effectively between the parties. This is an important doctrinal point: it suggests that concerns about the private resolution of patent validity may be more manageable than is sometimes assumed, provided one remains clear about the limited legal effects of such determinations. The keynote therefore lends support to the argument that the PMAC may have a broader role in complex cross-border disputes than a narrow conception of arbitration in patent law would traditionally allow.

An evolving UPC system

Finally, I read President Lenaerts' reference to *Dyson v Dream International*[6] as a reminder that the boundaries of the UPC system are still evolving. That pending preliminary reference[7] shows that the

[4] CJEU, 16 July 2015, C-170/13, *Huawei v ZTE*, ECLI:EU:C:2015:477.
[5] CJEU (Grand Chamber), 25 February 2025, C-339/22, *BSH Hausgeräte*, ECLI:EU:C:2025:108.
[6] UPC Court of Appeal, 6 March 2026, *Dyson Technology Limited v Dreame International (Hongkong) Limited and others,* UPC_CoA_789/2025 and UPC_CoA_813/2025.
[7] The request for preliminary ruling was received by the ECJ on 11 March 2026 and given Case No. C-196/26.

relationship between the UPC, the national courts and the CJEU remains in active development – which, in my view, only strengthens the case for taking the PMAC seriously. In a landscape where jurisdictional reach, procedural coordination and cross-border remedies continue to develop, parties will likely value mechanisms that offer flexibility, confidentiality and the possibility of practical settlement without sacrificing legal credibility.

Conclusion

Overall, the PMAC should be understood as an integral and potentially transformative element of the new European patent order. What makes it significant is not simply that it offers mediation and arbitration, but that it does so within an institutional environment shaped by the UPC and indirectly supervised, through the judicial architecture of the Union, by the CJEU. President Koen Lenaerts' keynote supports that view at every major point: in his account of the constitutional foundations of the UPC, in his treatment of the role of the CJEU in relation to arbitration, in his restrained conception of EU public policy, in his reliance on *Huawei v ZTE* for SEP disputes, and in his analysis of *BSH Hausgeräte* as an expansion of cross-border patent adjudication. Taken together, these elements support the conclusion that the PMAC is not merely an accessory to the UPC, but a mechanism that may play a decisive role in making the European patent system more coherent, efficient and adaptable.

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It was a true honour to attend the Forum and the Inauguration Ceremony of the PMAC in Ljubljana on 2 June 2026. We had the pleasure of listening to and meeting Dr Nataša Pirc Musar, President of the Republic of Slovenia; Prof Dr Koen Lenaerts, President of the Court of Justice of the European Union; Dr Klaus Grabinski, President of the Court of Appeal of the Unified Patent Court and Chairman of the Presidium; Johannes Karcher, Chairman of the Administrative Committee of the Unified Patent Court; António Campinos, President of the European Patent Office; Eric Runesson, former Justice of the Supreme Court of Sweden and PMAC Neutral; Dr Marko Bošnjak, Judge at the Court of Justice of the European Union; Prof Dr Maja Brkan, Judge at the General Court of the European Union; and Dr Damjan Kukovec, Judge at the General Court of the European Union.

Congratulations to Aleš Zalar, PMAC Director, and his team – including Karin Seljak, PMAC Ljubljana Case Manager, and Eduardo Gomez, PMAC Lisbon Case Manager, and their colleagues – for setting up the PMAC within such a short timeframe and making it fully operational. I look forward to working with them.

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