

Simmons & Simmons' **Unified Patent Court e-Laws**

July 2023

Simmons & Simmons'

Unified Patent Court e-Laws

Introduction

We have created an e-bundle with all relevant UPC legislation, including an enhanced version of the UPC Agreement and the Rules of Procedure to improve accessibility. This document includes links to all references mentioned in the Agreement and the Rules. It tries to eliminate the need for manual search and continuous scrolling back and forth.

References to the Agreement, Rules and featuring additional documents are linked within this document. References to other legislation that is not part of this document, e.g. the TFEU Treaty, are linked to external sources such as EUR-Lex [here](#).

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The "bookmarks" (sometimes called "navigation" or "contents") panel can be found in most PDF viewers in the top left corner of the application. It might look like  or . We recommend using this feature for navigating the document.

We aim to keep improving this document and add more content and features in the future. This is document version number **2023-07.12**.

Click [here](#) to meet the Simmons UPC team and see how we can help.

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Agreement on a Unified Patent Court (2013/C 175/01)

Interpretation

Interpretation

THE CONTRACTING MEMBER STATES,

CONSIDERING that cooperation amongst the Member States of the European Union in the field of patents contributes significantly to the integration process in Europe, in particular to the establishment of an internal market within the European Union characterised by the free movement of goods and services and the creation of a system ensuring that competition in the internal market is not distorted;

CONSIDERING that the fragmented market for patents and the significant variations between national court systems are detrimental for innovation, in particular for small and medium-sized enterprises which have difficulties to enforce their patents and to defend themselves against unfounded claims and claims relating to patents which should be revoked;

CONSIDERING that the European Patent Convention ('EPC') which has been ratified by all Member States of the European Union provides for a single procedure for granting European patents by the European Patent Office;

CONSIDERING that by virtue of Regulation (EU) No 1257/2012 (*Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ L 361, 31.12.2012, p. 1) including any subsequent amendments.*)), patent proprietors can request unitary effect of their European patents so as to obtain unitary patent protection in the Member States of the European Union participating in the enhanced cooperation;

[Regulation \(EU\) No 1257/2012](#)

[Regulation \(EU\) No 1215/2012](#)

Article 4(3) of the TEU

Article 258 of the TFEU

Article 259 of the TFEU

Article 260 of the TFEU

Article 267 of the TFEU



WISHING to improve the enforcement of patents and the defence against unfounded claims and patents which should be revoked and to enhance legal certainty by setting up a Unified Patent Court for litigation relating to the infringement and validity of patents;

CONSIDERING that the Unified Patent Court should be devised to ensure expeditious and high quality decisions, striking a fair balance between the interests of right holders and other parties and taking into account the need for proportionality and flexibility;

CONSIDERING that the Unified Patent Court should be a court common to the Contracting Member States and thus part of their judicial system, with exclusive competence in respect of European patents with unitary effect and European patents granted under the provisions of the EPC;

CONSIDERING that the Court of Justice of the European Union is to ensure the uniformity of the Union legal order and the primacy of European Union law;

RECALLING the obligations of the Contracting Member States under the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), including the obligation of sincere cooperation as set out in Article 4(3) TEU and the obligation to ensure through the Unified Patent Court the full application of, and respect for, Union law in their respective territories and the judicial protection of an individual's rights under that law;

CONSIDERING that, as any national court, the Unified Patent Court must respect and apply Union law and, in collaboration with the Court of Justice of the European Union as guardian of Union law, ensure its correct application and uniform interpretation; the Unified Patent Court must in particular cooperate with the Court of Justice of the European Union in properly interpreting Union law by relying on the latter's case law and by requesting preliminary rulings in accordance with Article 267 TFEU;

CONSIDERING that the Contracting Member States should, in line with the case law of the Court of Justice of the European Union on non-contractual liability, be liable for damages caused by



infringements of Union law by the Unified Patent Court, including the failure to request preliminary rulings from the Court of Justice of the European Union;

CONSIDERING that infringements of Union law by the Unified Patent Court, including the failure to request preliminary rulings from the Court of Justice of the European Union, are directly attributable to the Contracting Member States and infringement proceedings can therefore be brought under Article 258, 259 and 260 TFEU against any Contracting Member State to ensure the respect of the primacy and proper application of Union law;

RECALLING the primacy of Union law, which includes the TEU, the TFEU, the Charter of Fundamental Rights of the European Union, the general principles of Union law as developed by the Court of Justice of the European Union, and in particular the right to an effective remedy before a tribunal and a fair and public hearing within a reasonable time by an independent and impartial tribunal, the case law of the Court of Justice of the European Union and secondary Union law;

CONSIDERING that this Agreement should be open to accession by any Member State of the European Union; Member States which have decided not to participate in the enhanced cooperation in the area of the creation of unitary patent protection may participate in this Agreement in respect of European patents granted for their respective territory;

CONSIDERING that this Agreement should enter into force on 1 January 2014 or on the first day of the fourth month after the 13th deposit, provided that the Contracting Member States that will have deposited their instruments of ratification or accession include the three States in which the highest number of European patents was in force in the year preceding the year in which the signature of the Agreement takes place, or on the first day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215/2012 (*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 (OJ L 351, 20.12.2012, p. 1) including any subsequent amendments.*)) concerning its relationship with this Agreement, whichever is the latest,



HAVE AGREED AS FOLLOWS:

Part I General and Institutional Provisions

Chapter I General provisions

Article 1 Unified Patent Court

A Unified Patent Court for the settlement of disputes relating to European patents and European patents with unitary effect is hereby established.

The Unified Patent Court shall be a court common to the Contracting Member States and thus subject to the same obligations under Union law as any national court of the Contracting Member States.

Article 2 Definitions

For the purposes of this Agreement:

- (a) 'Court' means the Unified Patent Court created by this Agreement.
- (b) 'Member State' means a Member State of the European Union.
- (c) 'Contracting Member State' means a Member State party to this Agreement.
- (d) 'EPC' means the Convention on the Grant of European Patents of 5 October 1973, including any subsequent amendments.
- (e) 'European patent' means a patent granted under the provisions of the EPC, which does not benefit from unitary effect by virtue of Regulation (EU) No 1257/2012.
- (f) 'European patent with unitary effect' means a patent granted under the provisions of the EPC which benefits from unitary effect by virtue of Regulation (EU) No 1257/2012.
- (g) 'Patent' means a European patent and/or a European patent with unitary effect.
- (h) 'Supplementary protection certificate' means a supplementary protection certificate granted under Regulation (EC) No 469/2009 (*Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products (OJ L 152, 16.6.2009, p. 1) including any subsequent amendments.*) or under Regulation (EC) No 1610/96 (*Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a*

[Article 41 Rules of Procedure](#)
[Regulation \(EU\) No 1257/2012](#)
[Regulation \(EC\) No 469/2009](#)
[Regulation \(EC\) No 1610/96](#)



supplementary certificate for plant protection products (OJ L 198, 8.8.1996, p. 30) including any subsequent amendments.)

- (i) 'Statute' means the Statute of the Court as set out in Annex I, which shall be an integral part of this Agreement.
- (j) 'Rules of Procedure' means the Rules of Procedure of the Court, as established in accordance with Article 41.

Article 3 **Scope of application**

[Article 83](#) Transitional regime

This Agreement shall apply to any:

- (a) European patent with unitary effect;
- (b) supplementary protection certificate issued for a product protected by a patent;
- (c) European patent which has not yet lapsed at the date of entry into force of this Agreement or was granted after that date, without prejudice to Article 83; and
- (d) European patent application which is pending at the date of entry into force of this Agreement or which is filed after that date, without prejudice to Article 83.

Article 4 **Legal status**

1. The Court shall have legal personality in each Contracting Member State and shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State.
2. The Court shall be represented by the President of the Court of Appeal who shall be elected in accordance with the Statute.

Article 5 **Liability**

1. The contractual liability of the Court shall be governed by the law applicable to the contract in question in accordance with Regulation (EC) No 593/2008 (*Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)* (OJ L 177, 4.7.2008, p. 6) including any subsequent amendments.) (Rome

[Article 22](#) Liability for damage caused by infringements of Union law
Regulation (EC) No 593/2008
Regulation (EC) No 864/2007



- l), where applicable, or failing that in accordance with the law of the Member State of the court seized.
2. The non-contractual liability of the Court in respect of any damage caused by it or its staff in the performance of their duties, to the extent that it is not a civil and commercial matter within the meaning of Regulation (EC) No 864/2007 (*Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)* (OJ L 199, 31.7.2007, p. 40) including any subsequent amendments.) (Rome II), shall be governed by the law of the Contracting Member State in which the damage occurred. This provision is without prejudice to the application of Article 22.
 3. The court with jurisdiction to settle disputes under paragraph 2 shall be a court of the Contracting Member State in which the damage occurred.

Chapter II Institutional provisions

Article 6 The Court

1. The Court shall comprise a Court of First Instance, a Court of Appeal and a Registry.
2. The Court shall perform the functions assigned to it by this Agreement.

Article 7 The Court of First Instance

1. The Court of First Instance shall comprise a central division as well as local and regional divisions.
2. The central division shall have its seat in Paris, with sections in London and Munich. The cases before the central division shall be distributed in accordance with Annex II, which shall form an integral part of this Agreement.
3. A local division shall be set up in a Contracting Member State upon its request in accordance with the Statute. A Contracting Member State hosting a local division shall designate its seat.
4. An additional local division shall be set up in a Contracting Member State upon its request for every one hundred patent cases per calendar year that have been commenced in that Contracting Member State during three successive years prior to or subsequent to the date of



entry into force of this Agreement. The number of local divisions in one Contracting Member State shall not exceed four.

5. A regional division shall be set up for two or more Contracting Member States, upon their request in accordance with the Statute. Such Contracting Member States shall designate the seat of the division concerned. The regional division may hear cases in multiple locations.

Article 8 Composition of the panels of the Court of First Instance

1. Any panel of the Court of First Instance shall have a multinational composition. Without prejudice to paragraph 5 of this Article and to Article 33(3)(a), it shall sit in a composition of three judges.
2. Any panel of a local division in a Contracting Member State where, during a period of three successive years prior or subsequent to the entry into force of this Agreement, less than fifty patent cases per calendar year on average have been commenced shall sit in a composition of one legally qualified judge who is a national of the Contracting Member State hosting the local division concerned and two legally qualified judges who are not nationals of the Contracting Member State concerned and are allocated from the Pool of Judges in accordance with Article 18(3) on a case by case basis.
3. Notwithstanding paragraph 2, any panel of a local division in a Contracting Member State where, during a period of three successive years prior or subsequent to the entry into force of this Agreement, fifty or more patent cases per calendar year on average have been commenced, shall sit in a composition of two legally qualified judges who are nationals of the Contracting Member State hosting the local division concerned and one legally qualified judge who is not a national of the Contracting Member State concerned and is allocated from the Pool of Judges in accordance with Article 18(3). Such third judge shall serve at the local division on a long term basis, where this is necessary for the efficient functioning of divisions with a high work load.
4. Any panel of a regional division shall sit in a composition of two legally qualified judges chosen from a regional list of judges, who shall be nationals of the Contracting Member States concerned, and one legally qualified judge who shall not be a national of the Contracting Member States concerned and who shall be allocated from the Pool of Judges in accordance with Article 18(3).

[Article 18](#) Pool of Judges

[Article 32](#) Competence of the Court

[Article 33](#) Competence of the divisions of the Court of First Instance

5. Upon request by one of the parties, any panel of a local or regional division shall request the President of the Court of First Instance to allocate from the Pool of Judges in accordance with Article 18(3) an additional technically qualified judge with qualifications and experience in the field of technology concerned. Moreover, any panel of a local or regional division may, after having heard the parties, submit such request on its own initiative, where it deems this appropriate.
In cases where such a technically qualified judge is allocated, no further technically qualified judge may be allocated under Article 33(3)(a).
6. Any panel of the central division shall sit in a composition of two legally qualified judges who are nationals of different Contracting Member States and one technically qualified judge allocated from the Pool of Judges in accordance with Article 18(3) with qualifications and experience in the field of technology concerned. However, any panel of the central division dealing with actions under Article 32(1)(i) shall sit in a composition of three legally qualified judges who are nationals of different Contracting Member States.
7. Notwithstanding paragraphs 1 to 6 and in accordance with the Rules of Procedure, parties may agree to have their case heard by a single legally qualified judge.
8. Any panel of the Court of First Instance shall be chaired by a legally qualified judge.

Article 9 The Court of Appeal

1. Any panel of the Court of Appeal shall sit in a multinational composition of five judges. It shall sit in a composition of three legally qualified judges who are nationals of different Contracting Member States and two technically qualified judges with qualifications and experience in the field of technology concerned. Those technically qualified judges shall be assigned to the panel by the President of the Court of Appeal from the pool of judges in accordance with Article 18.
2. Notwithstanding paragraph 1, a panel dealing with actions under Article 32(1)(i) shall sit in a composition of three legally qualified judges who are nationals of different Contracting Member States.
3. Any panel of the Court of Appeal shall be chaired by a legally qualified judge.
4. The panels of the Court of Appeal shall be set up in accordance with the Statute.

[Article 18](#) Pool of Judges

[Article 32](#) Competence of the Court

5. The Court of Appeal shall have its seat in Luxembourg.

Article 10 The Registry

[Article 22 of the Statute](#) Appointment and removal from office of the Registrar

1. A Registry shall be set up at the seat of the Court of Appeal. It shall be managed by the Registrar and perform the functions assigned to it in accordance with the Statute. Subject to conditions set out in this Agreement and the Rules of Procedure, the register kept by the Registry shall be public.
2. Sub-registries shall be set up at all divisions of the Court of First Instance.
3. The Registry shall keep records of all cases before the Court. Upon filing, the sub-registry concerned shall notify every case to the Registry.
4. The Court shall appoint the Registrar in accordance with Article 22 of the Statute and lay down the rules governing the Registrar's service.

Article 11 Committees

An Administrative Committee, a Budget Committee and an Advisory Committee shall be set up in order to ensure the effective implementation and operation of this Agreement. They shall in particular exercise the duties foreseen by this Agreement and the Statute.

Article 12 The Administrative Committee

1. The Administrative Committee shall be composed of one representative of each Contracting Member State. The European Commission shall be represented at the meetings of the Administrative Committee as observer.
2. Each Contracting Member State shall have one vote.
3. The Administrative Committee shall adopt its decisions by a majority of three quarters of the Contracting Member States represented and voting, except where this Agreement or the Statute provides otherwise.
4. The Administrative Committee shall adopt its rules of procedure.



5. The Administrative Committee shall elect a chairperson from among its members for a term of three years. That term shall be renewable.

Article 13 The Budget Committee

1. The Budget Committee shall be composed of one representative of each Contracting Member State.
2. Each Contracting Member State shall have one vote.
3. The Budget Committee shall take its decisions by a simple majority of the representatives of the Contracting Member States. However, a majority of three-quarters of the representatives of Contracting Member States shall be required for the adoption of the budget.
4. The Budget Committee shall adopt its rules of procedure.
5. The Budget Committee shall elect a chairperson from among its members for a term of three years. That term shall be renewable.

Article 14 The Advisory Committee

1. The Advisory Committee shall:
 - (a) assist the Administrative Committee in the preparation of the appointment of judges of the Court;
 - (b) make proposals to the Presidium referred to in Article 15 of the Statute on the guidelines for the training framework for judges referred to in Article 19; and
 - (c) deliver opinions to the Administrative Committee concerning the requirements for qualifications referred to in Article 48(2).
2. The Advisory Committee shall comprise patent judges and practitioners in patent law and patent litigation with the highest recognised competence. They shall be appointed, in accordance with the procedure laid down in the Statute, for a term of six years. That term shall be renewable.
3. The composition of the Advisory Committee shall ensure a broad range of relevant expertise and the representation of each of the Contracting Member States. The members of the Advisory Committee shall be completely independent in the performance of their duties and shall not be bound by any instructions.

[Article 19](#) Training framework
[Article 48](#) Representation
[Article 15 of the Statute](#) Presidium



4. The Advisory Committee shall adopt its rules of procedure.
5. The Advisory Committee shall elect a chairperson from among its members for a term of three years. That term shall be renewable.

Chapter III Judges of the Court

Article 15 **Eligibility criteria for the appointment of judges**

1. The Court shall comprise both legally qualified judges and technically qualified judges. Judges shall ensure the highest standards of competence and shall have proven experience in the field of patent litigation.
2. Legally qualified judges shall possess the qualifications required for appointment to judicial offices in a Contracting Member State.
3. Technically qualified judges shall have a university degree and proven expertise in a field of technology. They shall also have proven knowledge of civil law and procedure relevant in patent litigation.

Article 16 **Appointment procedure**

1. The Advisory Committee shall establish a list of the most suitable candidates to be appointed as judges of the Court, in accordance with the Statute.
2. On the basis of that list, the Administrative Committee shall appoint the judges of the Court acting by common accord.
3. The implementing provisions for the appointment of judges are set out in the Statute.

Article 17 **Judicial independence and impartiality**

1. The Court, its judges and the Registrar shall enjoy judicial independence. In the performance of their duties, the judges shall not be bound by any instructions.



2. Legally qualified judges, as well as technically qualified judges who are full-time judges of the Court, may not engage in any other occupation, whether gainful or not, unless an exception is granted by the Administrative Committee.
3. Notwithstanding paragraph 2, the exercise of the office of judges shall not exclude the exercise of other judicial functions at national level.
4. The exercise of the office of technically qualified judges who are part-time judges of the Court shall not exclude the exercise of other functions provided there is no conflict of interest.
5. In case of a conflict of interest, the judge concerned shall not take part in proceedings. Rules governing conflicts of interest are set out in the Statute.

Article 18 **Pool of Judges**

1. A Pool of Judges shall be established in accordance with the Statute.
2. The Pool of Judges shall be composed of all legally qualified judges and technically qualified judges from the Court of First Instance who are full-time or part-time judges of the Court. The Pool of Judges shall include at least one technically qualified judge per field of technology with the relevant qualifications and experience. The technically qualified judges from the Pool of Judges shall also be available to the Court of Appeal.
3. Where so provided by this Agreement or the Statute, the judges from the Pool of Judges shall be allocated to the division concerned by the President of the Court of First Instance. The allocation of judges shall be based on their legal or technical expertise, linguistic skills and relevant experience. The allocation of judges shall guarantee the same high quality of work and the same high level of legal and technical expertise in all panels of the Court of First Instance.

Article 19 **Training framework**

1. A training framework for judges, the details of which are set out in the Statute, shall be set up in order to improve and increase available patent litigation expertise and to ensure a broad geographic distribution of such specific knowledge and experience. The facilities for that framework shall be situated in Budapest.
2. The training framework shall in particular focus on:



- (a) internships in national patent courts or divisions of the Court of First Instance hearing a substantial number of patent litigation cases;
 - (b) improvement of linguistic skills;
 - (c) technical aspects of patent law;
 - (d) the dissemination of knowledge and experience in civil procedure for technically qualified judges;
 - (e) the preparation of candidate-judges.
3. The training framework shall provide for continuous training. Regular meetings shall be organised between all judges of the Court in order to discuss developments in patent law and to ensure the consistency of the Court's case law.

Chapter IV The primacy of Union law, liability and responsibility of the Contracting Member States

Article 20 Primacy of and respect for Union law

The Court shall apply Union law in its entirety and shall respect its primacy.

Article 21 Requests for preliminary rulings

Article 267 TFEU

As a court common to the Contracting Member States and as part of their judicial system, the Court shall cooperate with the Court of Justice of the European Union to ensure the correct application and uniform interpretation of Union law, as any national court, in accordance with Article 267 TFEU in particular. Decisions of the Court of Justice of the European Union shall be binding on the Court.

Article 22 Liability for damage caused by infringements of Union law

[Article 37](#) Financing of the Court

1. The Contracting Member States are jointly and severally liable for damage resulting from an infringement of Union law by the Court of Appeal, in accordance with Union law concerning non-contractual liability of Member States for damage caused by their national courts breaching Union law.
2. An action for such damages shall be brought against the Contracting Member State where the claimant has its residence or principal place of business or, in the absence of residence or

principal place of business, place of business, before the competent authority of that Contracting Member State. Where the claimant does not have its residence, or principal place of business or, in the absence of residence or principal place of business, place of business in a Contracting Member State, the claimant may bring such an action against the Contracting Member State where the Court of Appeal has its seat, before the competent authority of that Contracting Member State.

The competent authority shall apply the *lex fori*, with the exception of its private international law, to all questions not regulated by Union law or by this Agreement. The claimant shall be entitled to obtain the entire amount of damages awarded by the competent authority from the Contracting Member State against which the action was brought.

3. The Contracting Member State that has paid damages is entitled to obtain proportional contribution, established in accordance with the method laid down in Article 37(3) and (4), from the other Contracting Member States. The detailed rules governing the Contracting Member States' contribution under this paragraph shall be determined by the Administrative Committee.

Article 23 Responsibility of the Contracting Member States

Actions of the Court are directly attributable to each Contracting Member State individually, including for the purposes of Articles 258, 259 and 260 TFEU, and to all Contracting Member States collectively.

Article 258 TFEU
Article 259 TFEU
Article 260 TFEU

Chapter V Sources of law and substantive law

Article 24 Sources of law

1. In full compliance with Article 20, when hearing a case brought before it under this Agreement, the Court shall base its decisions on:
 - (a) Union law, including Regulation (EU) No 1257/2012 and Regulation (EU) No 1260/2012 (Note: Council Regulation (EU) No 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 (OJ L 361, 31.12.2012, p. 89) including any subsequent amendments.);

[Article 20](#) Primacy of and respect for Union law
[Article 25](#) Right to prevent the direct use of the invention
[Article 26](#) Right to prevent the indirect use of the invention
[Article 27](#) Limitations of the effects of a patent



- (b) this Agreement;
 - (c) the EPC;
 - (d) other international agreements applicable to patents and binding on all the Contracting Member States; and
 - (e) national law.
2. To the extent that the Court shall base its decisions on national law, including where relevant the law of non- contracting States, the applicable law shall be determined:
- (a) by directly applicable provisions of Union law containing private international law rules, or
 - (b) in the absence of directly applicable provisions of Union law or where the latter do not apply, by international instruments containing private international law rules; or
 - (c) in the absence of provisions referred to in points (a) and (b), by national provisions on private international law as determined by the Court.
3. The law of non-contracting States shall apply when designated by application of the rules referred to in paragraph 2, in particular in relation to Articles 25 to 28, 54, 55, 64, 68 and 72.

[Article 28](#) Right based on prior use of the invention

[Article 54](#) Burden of proof

[Article 55](#) Reversal of burden of proof

[Article 64](#) Corrective measures in infringement proceedings

[Article 68](#) Award of damages

[Article 72](#) Period of limitation

[Regulation \(EU\) No 1257/2012](#)

[Regulation \(EU\) No 1260/2012](#)

Article 25 Right to prevent the direct use of the invention

A patent shall confer on its proprietor the right to prevent any third party not having the proprietor's consent from the following:

- (a) making, offering, placing on the market or using a product which is the subject-matter of the patent, or importing or storing the product for those purposes;
- (b) using a process which is the subject-matter of the patent or, where the third party knows, or should have known, that the use of the process is prohibited without the consent of the patent proprietor, offering the process for use within the territory of the Contracting Member States in which that patent has effect;
- (c) offering, placing on the market, using, or importing or storing for those purposes a product obtained directly by a process which is the subject-matter of the patent.



Article 26 Right to prevent the indirect use of the invention

1. A patent shall confer on its proprietor the right to prevent any third party not having the proprietor's consent from supplying or offering to supply, within the territory of the Contracting Member States in which that patent has effect, any person other than a party entitled to exploit the patented invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or should have known, that those means are suitable and intended for putting that invention into effect.
2. Paragraph 1 shall not apply when the means are staple commercial products, except where the third party induces the person supplied to perform any of the acts prohibited by Article 25.
3. Persons performing the acts referred to in Article 27(a) to (e) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.

Article 27 Limitations of the effects of a patent

The rights conferred by a patent shall not extend to any of the following:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject-matter of the patented invention;
- (c) the use of biological material for the purpose of breeding, or discovering and developing other plant varieties;
- (d) the acts allowed pursuant to Article 13(6) of Directive 2001/82/EC (*Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1) including any subsequent amendments.*) or Article 10(6) of Directive 2001/83/EC (*Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67) including any subsequent amendments.*) in respect of any patent covering the product within the meaning of either of those Directives;
- (e) the extemporaneous preparation by a pharmacy, for individual cases, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared;

[Article 25](#) Right to prevent the direct use of the invention

[Article 27](#) Limitations of the effects of a patent

Article 5 of Directive 2009/24/EC
Article 6 of Directive 2009/24/EC
Article 10 of Directive 98/44/EC
Article 10 of Directive 2001/83/EC
Article 13 of Directive 2001/82/EC
Article 14 of Regulation (EC) No 2100/94
Article 27 of the Convention on International Civil Aviation of 7 December 1944



- (f) the use of the patented invention on board vessels of countries of the International Union for the Protection of Industrial Property (Paris Union) or members of the World Trade Organisation, other than those Contracting Member States in which that patent has effect, in the body of such vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of a Contracting Member State in which that patent has effect, provided that the invention is used there exclusively for the needs of the vessel;
- (g) the use of the patented invention in the construction or operation of aircraft or land vehicles or other means of transport of countries of the International Union for the Protection of Industrial Property (Paris Union) or members of the World Trade Organisation, other than those Contracting Member States in which that patent has effect, or of accessories to such aircraft or land vehicles, when these temporarily or accidentally enter the territory of a Contracting Member State in which that patent has effect;
- (h) the acts specified in Article 27 of the Convention on International Civil Aviation of 7 December 1944 (*International Civil Aviation Organization (ICAO), 'Chicago Convention', Document 7300/9 (9th edition, 2006).*) where these acts concern the aircraft of a country party to that Convention other than a Contracting Member State in which that patent has effect;
- (i) the use by a farmer of the product of his harvest for propagation or multiplication by him on his own holding, provided that the plant propagating material was sold or otherwise commercialised to the farmer by or with the consent of the patent proprietor for agricultural use. The extent and the conditions for this use correspond to those under Article 14 of Regulation (EC) No 2100/94; (*Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ L 227, 1.9.1994, p. 1) including any subsequent amendments.*);
- (j) the use by a farmer of protected livestock for an agricultural purpose, provided that the breeding stock or other animal reproductive material were sold or otherwise commercialised to the farmer by or with the consent of the patent proprietor. Such use includes making the animal or other animal reproductive material available for the purposes of pursuing the farmer's agricultural activity, but not the sale thereof within the framework of, or for the purpose of, a commercial reproductive activity;



- (k) the acts and the use of the obtained information as allowed under Articles 5 and 6 of Directive 2009/24/EC, (*Directive 2009/24/EC of the European Parliament and of the Council of 23 April 2009 on the legal protection of computer programs (OJ L 111, 5.5.2009, p. 16) including any subsequent amendments.*) in particular, by its provisions on decompilation and interoperability; and
- (l) the acts allowed pursuant to Article 10 of Directive 98/44/EC. (*Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ L 213, 30.7.1998, p. 13) including any subsequent amendments.*)

Article 28 Right based on prior use of the invention

Any person, who, if a national patent had been granted in respect of an invention, would have had, in a Contracting Member State, a right based on prior use of that invention or a right of personal possession of that invention, shall enjoy, in that Contracting Member State, the same rights in respect of a patent for the same invention.

Article 29 Exhaustion of the rights conferred by a European patent

The rights conferred by a European patent shall not extend to acts concerning a product covered by that patent after that product has been placed on the market in the European Union by, or with the consent of, the patent proprietor, unless there are legitimate grounds for the patent proprietor to oppose further commercialisation of the product.

Article 30 Effects of supplementary protection certificates

A supplementary protection certificate shall confer the same rights as conferred by the patent and shall be subject to the same limitations and the same obligations.

Chapter VI International jurisdiction and competence

Article 31 International jurisdiction

[Regulation \(EU\) No 1215/2012](#)



The international jurisdiction of the Court shall be established in accordance with Regulation (EU) No 1215/2012 or, where applicable, on the basis of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Lugano Convention) (*Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, done at Lugano on 30 October 2007, including any subsequent amendments.*)

Article 32 Competence of the Court

1. The Court shall have exclusive competence in respect of:
 - (a) actions for actual or threatened infringements of patents and supplementary protection certificates and related defences, including counterclaims concerning licences;
 - (b) actions for declarations of non-infringement of patents and supplementary protection certificates;
 - (c) actions for provisional and protective measures and injunctions;
 - (d) actions for revocation of patents and for declaration of invalidity of supplementary protection certificates;
 - (e) counterclaims for revocation of patents and for declaration of invalidity of supplementary protection certificates;
 - (f) actions for damages or compensation derived from the provisional protection conferred by a published European patent application;
 - (g) actions relating to the use of the invention prior to the granting of the patent or to the right based on prior use of the invention;
 - (h) actions for compensation for licences on the basis of Article 8 of Regulation (EU) No 1257/2012; and
 - (i) actions concerning decisions of the European Patent Office in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012.
2. The national courts of the Contracting Member States shall remain competent for actions relating to patents and supplementary protection certificates which do not come within the exclusive competence of the Court.

[Article 8 of Regulation \(EU\) No 1257/2012](#)

Licences of right

[Article 9 of Regulation \(EU\) No 1257/2012](#)

Administrative tasks in the framework of the European Patent Organisation

Article 33 Competence of the divisions of the Court of First Instance

[Article 18](#) Pool of Judges

[Article 32](#) Competence of the Court

1. Without prejudice to paragraph 7 of this Article, actions referred to in Article 32(1)(a), (c), (f) and (g) shall be brought before:
 - (a) the local division hosted by the Contracting Member State where the actual or threatened infringement has occurred or may occur, or the regional division in which that Contracting Member State participates; or
 - (b) the local division hosted by the Contracting Member State where the defendant or, in the case of multiple defendants, one of the defendants has its residence, or principal place of business, or in the absence of residence or principal place of business, its place of business, or the regional division in which that Contracting Member State participates. An action may be brought against multiple defendants only where the defendants have a commercial relationship and where the action relates to the same alleged infringement.

Actions referred to in Article 32(1)(h) shall be brought before the local or regional division in accordance with point (b) of the first subparagraph.

Actions against defendants having their residence, or principal place of business or, in the absence of residence or principal place of business, their place of business, outside the territory of the Contracting Member States shall be brought before the local or regional division in accordance with point (a) of the first subparagraph or before the central division.

If the Contracting Member State concerned does not host a local division and does not participate in a regional division, actions shall be brought before the central division.

2. If an action referred to in Article 32(1)(a), (c), (f), (g) or (h) is pending before a division of the Court of First Instance, any action referred to in Article 32(1)(a), (c), (f), (g) or (h) between the same parties on the same patent may not be brought before any other division.

If an action referred to in Article 32(1)(a) is pending before a regional division and the infringement has occurred in the territories of three or more regional divisions, the regional division concerned shall, at the request of the defendant, refer the case to the central division.



In case an action between the same parties on the same patent is brought before several different divisions, the division first seized shall be competent for the whole case and any division seized later shall declare the action inadmissible in accordance with the Rules of Procedure.

3. A counterclaim for revocation as referred to in Article 32(1)(e) may be brought in the case of an action for infringement as referred to in Article 32(1)(a). The local or regional division concerned shall, after having heard the parties, have the discretion either to:
 - (a) proceed with both the action for infringement and with the counterclaim for revocation and request the President of the Court of First Instance to allocate from the Pool of Judges in accordance with Article 18(3) a technically qualified judge with qualifications and experience in the field of technology concerned.
 - (b) refer the counterclaim for revocation for decision to the central division and suspend or proceed with the action for infringement; or
 - (c) with the agreement of the parties, refer the case for decision to the central division.
4. Actions referred to in Article 32(1)(b) and (d) shall be brought before the central division. If, however, an action for infringement as referred to in Article 32(1)(a) between the same parties relating to the same patent has been brought before a local or a regional division, these actions may only be brought before the same local or regional division.
5. If an action for revocation as referred to in Article 32(1)(d) is pending before the central division, an action for infringement as referred to in Article 32(1)(a) between the same parties relating to the same patent may be brought before any division in accordance with paragraph 1 of this Article or before the central division. The local or regional division concerned shall have the discretion to proceed in accordance with paragraph 3 of this Article.
6. An action for declaration of non-infringement as referred to in Article 32(1)(b) pending before the central division shall be stayed once an infringement action as referred to in Article 32(1)(a) between the same parties or between the holder of an exclusive licence and the party requesting a declaration of non-infringement relating to the same patent is brought before a local or regional division within three months of the date on which the action was initiated before the central division.
7. Parties may agree to bring actions referred to in Article 32(1)(a) to (h) before the division of their choice, including the central division.



- 8. Actions referred to in Article 32(1)(d) and (e) can be brought without the applicant having to file notice of opposition with the European Patent Office.
- 9. Actions referred to in Article 32(1)(i) shall be brought before the central division.
- 10. A party shall inform the Court of any pending revocation, limitation or opposition proceedings before the European Patent Office, and of any request for accelerated processing before the European Patent Office. The Court may stay its proceedings when a rapid decision may be expected from the European Patent Office.

Article 34 Territorial scope of decisions

Decisions of the Court shall cover, in the case of a European patent, the territory of those Contracting Member States for which the European patent has effect.

Chapter VII Patent mediation and arbitration

Article 35 Patent mediation and arbitration centre

- 1. A patent mediation and arbitration centre ('the Centre') is hereby established. It shall have its seats in Ljubljana and Lisbon.
- 2. 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. However, a patent may not be revoked or limited in mediation or arbitration proceedings.
- 3. The Centre shall establish Mediation and Arbitration Rules.
- 4. The Centre shall draw up a list of mediators and arbitrators to assist the parties in the settlement of their dispute.

[Article 82](#) Enforcement of decisions and orders

Part II Financial Provisions

Article 36 Budget of the Court

[Article 83](#) Transitional regime

1. The budget of the Court shall be financed by the Court's own financial revenues and, at least in the transitional period referred to in Article 83 as necessary, by contributions from the Contracting Member States. The budget shall be balanced.
2. The Court's own financial revenues shall comprise court fees and other revenues.
3. Court fees shall be fixed by the Administrative Committee. They shall consist of a fixed fee, combined with a value-based fee above a pre-defined ceiling. The Court fees shall be fixed at such a level as to ensure a right balance between the principle of fair access to justice, in particular for small and medium- sized enterprises, micro-entities, natural persons, non-profit organisations, universities and public research organisations and an adequate contribution of the parties for the costs incurred by the Court, recognising the economic benefits to the parties involved, and the objective of a self-financing Court with balanced finances. The level of the Court fees shall be reviewed periodically by the Administrative Committee. Targeted support measures for small and medium-sized enterprises and micro entities may be considered.
4. If the Court is unable to balance its budget out of its own resources, the Contracting Member States shall remit to it special financial contributions.

Article 37 Financing of the Court

1. The operating costs of the Court shall be covered by the budget of the Court, in accordance with the Statute.
Contracting Member States setting up a local division shall provide the facilities necessary for that purpose. Contracting Member States sharing a regional division shall provide jointly the facilities necessary for that purpose. Contracting Member States hosting the central division, its sections or the Court of Appeal shall provide the facilities necessary for that purpose. During an initial transitional period of seven years starting from the date of the entry into force of this Agreement, the Contracting Member States concerned shall also provide administrative support staff, without prejudice to the Statute of that staff.

2. On the date of entry into force of this Agreement, the Contracting Member States shall provide the initial financial contributions necessary for the setting up of the Court.
3. During the initial transitional period of seven years, starting from the date of the entry into force of this Agreement, the contribution by each Contracting Member State having ratified or acceded to the Agreement before the entry into force thereof shall be calculated on the basis of the number of European patents having effect in the territory of that State on the date of entry into force of this Agreement and the number of European patents with respect to which actions for infringement or for revocation have been brought before the national courts of that State in the three years preceding entry into force of this Agreement.
During the same initial transitional period of seven years, for Member States which ratify, or accede to, this Agreement after the entry into force thereof, the contributions shall be calculated on the basis of the number of European patents having effect in the territory of the ratifying or acceding Member State on the date of the ratification or accession and the number of European patents with respect to which actions for infringement or for revocation have been brought before the national courts of the ratifying or acceding Member State in the three years preceding the ratification or accession.
4. After the end of the initial transitional period of seven years, by which the Court is expected to have become self-financing, should contributions by the Contracting Member States become necessary, they shall be determined in accordance with the scale for the distribution of annual renewal fees for European patents with unitary effect applicable at the time the contribution becomes necessary.

Article 38 Financing of the training framework for judges

The training framework for judges shall be financed by the budget of the Court.

Article 39 Financing of the Centre

The operating costs of the Centre shall be financed by the budget of the Court.

Part III Organisation and Procedural Provisions

Chapter I General provisions

Article 40 Statute

1. The Statute shall lay down the details of the organisation and functioning of the Court.
2. The Statute is annexed to this Agreement. The Statute may be amended by decision of the Administrative Committee, on the basis of a proposal of the Court or a proposal of a Contracting Member State after consultation with the Court. However, such amendments shall not contradict or alter this Agreement.
3. The Statute shall guarantee that the functioning of the Court is organised in the most efficient and cost-effective manner and shall ensure equitable access to justice.

Article 41 Rules of Procedure

1. The Rules of Procedure shall lay down the details of the proceedings before the Court. They shall comply with this Agreement and the Statute.
2. The Rules of Procedure shall be adopted by the Administrative Committee on the basis of broad consultations with stakeholders. The prior opinion of the European Commission on the compatibility of the Rules of Procedure with Union law shall be requested.
The Rules of Procedure may be amended by a decision of the Administrative Committee, on the basis of a proposal from the Court and after consultation with the European Commission. However, such amendments shall not contradict or alter this Agreement or the Statute.
3. The Rules of Procedure shall guarantee that the decisions of the Court are of the highest quality and that proceedings are organised in the most efficient and cost effective manner. They shall ensure a fair balance between the legitimate interests of all parties. They shall provide for the required level of discretion of judges without impairing the predictability of proceedings for the parties.



Article 42 Proportionality and fairness

1. The Court shall deal with litigation in ways which are proportionate to the importance and complexity thereof.
2. The Court shall ensure that the rules, procedures and remedies provided for in this Agreement and in the Statute are used in a fair and equitable manner and do not distort competition.

Article 43 Case management

The Court shall actively manage the cases before it in accordance with the Rules of Procedure without impairing the freedom of the parties to determine the subject-matter of, and the supporting evidence for, their case.

Article 44 Electronic procedures

The Court shall make best use of electronic procedures, such as the electronic filing of submissions of the parties and stating of evidence in electronic form, as well as video conferencing, in accordance with the Rules of Procedure.

Article 45 Public proceedings

The proceedings shall be open to the public unless the Court decides to make them confidential, to the extent necessary, in the interest of one of the parties or other affected persons, or in the general interest of justice or public order.

Article 46 Legal capacity

Any natural or legal person, or any body equivalent to a legal person entitled to initiate proceedings in accordance with its national law, shall have the capacity to be a party to the proceedings before the Court.

Article 47 Parties

1. The patent proprietor shall be entitled to bring actions before the Court.

[Article 32](#) Competence of the Court

2. Unless the licensing agreement provides otherwise, the holder of an exclusive licence in respect of a patent shall be entitled to bring actions before the Court under the same circumstances as the patent proprietor, provided that the patent proprietor is given prior notice.
3. The holder of a non-exclusive licence shall not be entitled to bring actions before the Court, unless the patent proprietor is given prior notice and in so far as expressly permitted by the licence agreement.
4. In actions brought by a licence holder, the patent proprietor shall be entitled to join the action before the Court.
5. The validity of a patent cannot be contested in an action for infringement brought by the holder of a licence where the patent proprietor does not take part in the proceedings. The party in an action for infringement wanting to contest the validity of a patent shall have to bring actions against the patent proprietor.
6. Any other natural or legal person, or any body entitled to bring actions in accordance with its national law, who is concerned by a patent, may bring actions in accordance with the Rules of Procedure.
7. Any natural or legal person, or any body entitled to bring actions in accordance with its national law and who is affected by a decision of the European Patent Office in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012 is entitled to bring actions under Article 32(1)(i).

[Article 9 of Regulation \(EU\) No 1257/2012](#)
Administrative tasks in the framework of the
European Patent Organisation

Article 48 Representation

1. Parties shall be represented by lawyers authorised to practise before a court of a Contracting Member State.
2. Parties may alternatively be represented by European Patent Attorneys who are entitled to act as professional representatives before the European Patent Office pursuant to Article 134 of the EPC and who have appropriate qualifications such as a European Patent Litigation Certificate.
3. The requirements for qualifications pursuant to paragraph 2 shall be established by the Administrative Committee. A list of European Patent Attorneys entitled to represent parties before the Court shall be kept by the Registrar.

[Article 32](#) Competence of the Court
[Article 134 of the EPC](#) Representation before
the European Patent Office

4. Representatives of the parties may be assisted by patent attorneys, who shall be allowed to speak at hearings of the Court in accordance with the Rules of Procedure.
5. Representatives of the parties shall enjoy the rights and immunities necessary for the independent exercise of their duties, including the privilege from disclosure in proceedings before the Court in respect of communications between a representative and the party or any other person, under the conditions laid down in the Rules of Procedure, unless such privilege is expressly waived by the party concerned.
6. Representatives of the parties shall be obliged not to misrepresent cases or facts before the Court either knowingly or with good reasons to know.
7. Representation in accordance with paragraphs 1 and 2 of this Article shall not be required in proceedings under Article 32(1)(i).

Chapter II Language of proceedings

Article 49 Language of proceedings at the Court of First Instance

1. The language of proceedings before any local or regional division shall be an official European Union language which is the official language or one of the official languages of the Contracting Member State hosting the relevant division, or the official language(s) designated by Contracting Member States sharing a regional division.
2. Notwithstanding paragraph 1, Contracting Member States may designate one or more of the official languages of the European Patent Office as the language of proceedings of their local or regional division.
3. The parties may agree on the use of the language in which the patent was granted as the language of proceedings, subject to approval by the competent panel. If the panel does not approve their choice, the parties may request that the case be referred to the central division.
4. With the agreement of the parties the competent panel may, on grounds of convenience and fairness, decide on the use of the language in which the patent was granted as the language of proceedings.
5. At the request of one of the parties and after having heard the other parties and the competent panel, the President of the Court of First Instance may, on grounds of fairness and taking into



account all relevant circumstances, including the position of parties, in particular the position of the defendant, decide on the use of the language in which the patent was granted as language of proceedings. In this case the President of the Court of First Instance shall assess the need for specific translation and interpretation arrangements.

6. The language of proceedings at the central division shall be the language in which the patent concerned was granted.

Article 50 **Language of proceedings at the Court of Appeal**

1. The language of proceedings before the Court of Appeal shall be the language of proceedings before the Court of First Instance.
2. Notwithstanding paragraph 1 the parties may agree on the use of the language in which the patent was granted as the language of proceedings.
3. In exceptional cases and to the extent deemed appropriate, the Court of Appeal may decide on another official language of a Contracting Member State as the language of proceedings for the whole or part of the proceedings, subject to agreement by the parties.

Article 51 **Other language arrangements**

1. Any panel of the Court of First Instance and the Court of Appeal may, to the extent deemed appropriate, dispense with translation requirements.
2. At the request of one of the parties, and to the extent deemed appropriate, any division of the Court of First Instance and the Court of Appeal shall provide interpretation facilities to assist the parties concerned at oral proceedings.
3. Notwithstanding Article 49(6), in cases where an action for infringement is brought before the central division, a defendant having its residence, principal place of business or place of business in a Member State shall have the right to obtain, upon request, translations of relevant documents in the language of the Member State of residence, principal place of business or, in the absence of residence or principal place of business, place of business, in the following circumstances:

[Article 33](#) Competence of the divisions of the Court of First Instance
[Article 49](#) Language of proceedings at the Court of First Instance



- (a) jurisdiction is entrusted to the central division in accordance with Article 33(1) third or fourth subparagraph, and
- (b) the language of proceedings at the central division is a language which is not an official language of the Member State where the defendant has its residence, principal place of business or, in the absence of residence or principal place of business, place of business, and
- (c) the defendant does not have proper knowledge of the language of the proceedings.

Chapter III Proceedings before the Court

Article 52 Written, interim and oral procedures

1. The proceedings before the Court shall consist of a written, an interim and an oral procedure, in accordance with the Rules of Procedure. All procedures shall be organized in a flexible and balanced manner.
2. In the interim procedure, after the written procedure and if appropriate, the judge acting as Rapporteur, subject to a mandate of the full panel, shall be responsible for convening an interim hearing. That judge shall in particular explore with the parties the possibility for a settlement, including through mediation, and/or arbitration, by using the facilities of the Centre referred to in Article 35.
3. The oral procedure shall give parties the opportunity to explain properly their arguments. The Court may, with the agreement of the parties, dispense with the oral hearing.

[Article 35](#) Patent mediation and arbitration centre

Article 53 Means of evidence

1. In proceedings before the Court, the means of giving or obtaining evidence shall include in particular the following:
 - (a) hearing the parties;
 - (b) requests for information;
 - (c) production of documents;
 - (d) hearing witnesses;



- (e) opinions by experts;
 - (f) inspection;
 - (g) comparative tests or experiments;
 - (h) sworn statements in writing (affidavits).
2. The Rules of Procedure shall govern the procedure for taking such evidence. Questioning of witnesses and experts shall be under the control of the Court and be limited to what is necessary.

Article 54 Burden of proof

[Article 24](#) Sources of law

Without prejudice to Article 24(2) and (3), the burden of the proof of facts shall be on the party relying on those facts.

Article 55 Reversal of burden of proof

[Article 24](#) Sources of law

1. Without prejudice to Article 24(2) and (3), if the subject- matter of a patent is a process for obtaining a new product, the identical product when produced without the consent of the patent proprietor shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process.
2. The principle set out in paragraph 1 shall also apply where there is a substantial likelihood that the identical product was made by the patented process and the patent proprietor has been unable, despite reasonable efforts, to determine the process actually used for such identical product.
3. In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting its manufacturing and trade secrets shall be taken into account.

Chapter IV Powers of the Court

Article 56 The general powers of the Court

1. The Court may impose such measures, procedures and remedies as are laid down in this Agreement and may make its orders subject to conditions, in accordance with the Rules of Procedure.
2. The Court shall take due account of the interest of the parties and shall, before making an order, give any party the opportunity to be heard, unless this is incompatible with the effective enforcement of such order.

Article 57 Court experts

[Article 7 of the Statute](#) Impartiality

1. Without prejudice to the possibility for the parties to produce expert evidence, the Court may at any time appoint court experts in order to provide expertise for specific aspects of the case. The Court shall provide such expert with all information necessary for the provision of the expert advice.
2. To this end, an indicative list of experts shall be drawn up by the Court in accordance with the Rules of Procedure. That list shall be kept by the Registrar.
3. The court experts shall guarantee independence and impartiality. Rules governing conflicts of interest applicable to judges set out in Article 7 of the Statute shall by analogy apply to court experts.
4. Expert advice given to the Court by court experts shall be made available to the parties which shall have the possibility to comment on it.

Article 58 Protection of confidential information

To protect the trade secrets, personal data or other confidential information of a party to the proceedings or of a third party, or to prevent an abuse of evidence, the Court may order that the collection and use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to specific persons.

Article 59 Order to produce evidence

1. At the request of a party which has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party or a third party, the Court may order the opposing party or a third party to present such evidence, subject to the protection of confidential information. Such order shall not result in an obligation of self-incrimination.
2. At the request of a party the Court may order, under the same conditions as specified in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 60 Order to preserve evidence and to inspect premises

1. At the request of the applicant which has presented reasonably available evidence to support the claim that the patent has been infringed or is about to be infringed the Court may, even before the commencement of proceedings on the merits of the case, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information.
2. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing products, and, in appropriate cases, the materials and implements used in the production and/or distribution of those products and the documents relating thereto.
3. The Court may, even before the commencement of proceedings on the merits of the case, at the request of the applicant who has presented evidence to support the claim that the patent has been infringed or is about to be infringed, order the inspection of premises. Such inspection of premises shall be conducted by a person appointed by the Court in accordance with the Rules of Procedure.
4. At the inspection of the premises the applicant shall not be present itself but may be represented by an independent professional practitioner whose name has to be specified in the Court's order.

5. Measures shall be ordered, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the proprietor of the patent, or where there is a demonstrable risk of evidence being destroyed.
6. Where measures to preserve evidence or inspect premises are ordered without the other party in the case having been heard, the parties affected shall be given notice, without delay and at the latest immediately after the execution of the measures. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures are to be modified, revoked or confirmed.
7. The measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 9.
8. The Court shall ensure that the measures to preserve evidence are revoked or otherwise cease to have effect, at the defendant's request, without prejudice to the damages which may be claimed, if the applicant does not bring, within a period not exceeding 31 calendar days or 20 working days, whichever is the longer, action leading to a decision on the merits of the case before the Court.
9. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of the patent, the Court may order the applicant, at the defendant's request, to provide the defendant with appropriate compensation for any damage suffered as a result of those measures.

Article 61 **Freezing orders**

1. At the request of the applicant which has presented reasonably available evidence to support the claim that the patent has been infringed or is about to be infringed the Court may, even before the commencement of proceedings on the merits of the case, order a party not to remove from its jurisdiction any assets located therein, or not to deal in any assets, whether located within its jurisdiction or not.

[Article 60](#) Order to preserve evidence and to inspect premises



2. Article 60(5) to (9) shall apply by analogy to the measures referred to in this Article.

Article 62 **Provisional and protective measures**

[Article 60](#) Order to preserve evidence and to inspect premises

1. The Court may, by way of order, grant injunctions against an alleged infringer or against an intermediary whose services are used by the alleged infringer, intended to prevent any imminent infringement, to prohibit, on a provisional basis and subject, where appropriate, to a recurring penalty payment, the continuation of the alleged infringement or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the right holder.
2. The Court shall have the discretion to weigh up the interests of the parties and in particular to take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction.
3. The Court may also order the seizure or delivery up of the products suspected of infringing a patent so as to prevent their entry into, or movement, within the channels of commerce. If the applicant demonstrates circumstances likely to endanger the recovery of damages, the Court may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of the bank accounts and of other assets of the alleged infringer.
4. The Court may, in respect of the measures referred to in paragraphs 1 and 3, require the applicant to provide any reasonable evidence in order to satisfy itself with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed, or that such infringement is imminent.
5. Article 60(5) to (9) shall apply by analogy to the measures referred to in this Article.

Article 63 **Permanent injunctions**

1. Where a decision is taken finding an infringement of a patent, the Court may grant an injunction against the infringer aimed at prohibiting the continuation of the infringement. The Court may also grant such injunction against an intermediary whose services are being used by a third party to infringe a patent.
2. Where appropriate, non-compliance with the injunction referred to in paragraph 1 shall be subject to a recurring penalty payment payable to the Court.

Article 64 **Corrective measures in infringement proceedings**

1. Without prejudice to any damages due to the injured party by reason of the infringement, and without compensation of any sort, the Court may order, at the request of the applicant, that appropriate measures be taken with regard to products found to be infringing a patent and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those products.
2. Such measures shall include:
 - (a) a declaration of infringement;
 - (b) recalling the products from the channels of commerce;
 - (c) depriving the product of its infringing property;
 - (d) definitively removing the products from the channels of commerce; or
 - (e) the destruction of the products and/or of the materials and implements concerned.
3. The Court shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.
4. In considering a request for corrective measures pursuant to this Article, the Court shall take into account the need for proportionality between the seriousness of the infringement and the remedies to be ordered, the willingness of the infringer to convert the materials into a non-infringing state, as well as the interests of third parties.

Article 65 **Decision on the validity of a patent**

1. The Court shall decide on the validity of a patent on the basis of an action for revocation or a counterclaim for revocation.
2. The Court may revoke a patent, either entirely or partly, only on the grounds referred to in Articles 138(1) and 139(2) of the EPC.
3. Without prejudice to Article 138(3) of the EPC, if the grounds for revocation affect the patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part.
4. To the extent that a patent has been revoked it shall be deemed not to have had, from the outset, the effects specified in Articles 64 and 67 of the EPC.

[Article 138 of the EPC](#) Revocation of European patents
[Article 139 of the EPC](#) Prior rights and right arising on the same date
[Article 64 of the EPC](#) Rights conferred by a European patent
[Article 67 of the EPC](#) Rights conferred by a European patent application after publication



5. Where the Court, in a final decision, revokes a patent, either entirely or partly, it shall send a copy of the decision to the European Patent Office and, with respect to a European patent, to the national patent office of any Contracting Member State concerned.

Article 66 Powers of the Court concerning decisions of the European Patent Office

1. In actions brought under Article 32(1)(i), the Court may exercise any power entrusted on the European Patent Office in accordance with Article 9 of Regulation (EU) No 1257/2012, including the rectification of the Register for unitary patent protection.
2. In actions brought under Article 32(1)(i) the parties shall, by way of derogation from Article 69, bear their own costs.

[Article 32](#) Competence of the Court

[Article 69](#) Legal costs

[Article 9 of Regulation \(EU\) No 1257/2012](#)
Administrative tasks in the framework of the
European Patent Organisation

Article 67 Power to order the communication of information

1. The Court may, in response to a justified and proportionate request of the applicant and in accordance with the Rules of Procedure, order an infringer to inform the applicant of:
 - (a) the origin and distribution channels of the infringing products or processes;
 - (b) the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the infringing products; and
 - (c) the identity of any third person involved in the production or distribution of the infringing products or in the use of the infringing process.
2. The Court may, in accordance with the Rules of Procedure, also order any third party who:
 - (a) was found in the possession of the infringing products on a commercial scale or to be using an infringing process on a commercial scale;
 - (b) was found to be providing on a commercial scale services used in infringing activities; or
 - (c) was indicated by the person referred to in points (a) or (b) as being involved in the production, manufacture or distribution of the infringing products or processes or in the provision of the services,to provide the applicant with the information referred to in paragraph 1.

Article 68 **Award of damages**

1. The Court shall, at the request of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in a patent infringing activity, to pay the injured party damages appropriate to the harm actually suffered by that party as a result of the infringement.
2. The injured party shall, to the extent possible, be placed in the position it would have been in if no infringement had taken place. The infringer shall not benefit from the infringement. However, damages shall not be punitive.
3. When the Court sets the damages:
 - (a) it shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the injured party by the infringement; or
 - (b) as an alternative to point (a), it may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of the royalties or fees which would have been due if the infringer had requested authorisation to use the patent in question.
4. Where the infringer did not knowingly, or with reasonable grounds to know, engage in the infringing activity, the Court may order the recovery of profits or the payment of compensation.

Article 69 **Legal costs**

1. Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise, up to a ceiling set in accordance with the Rules of Procedure.
2. Where a party succeeds only in part or in exceptional circumstances, the Court may order that costs be apportioned equitably or that the parties bear their own costs.
3. A party should bear any unnecessary costs it has caused the Court or another party.
4. At the request of the defendant, the Court may order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear, in particular in the cases referred to in Articles 59 to 62.

[Article 59](#) Order to produce evidence
[Article 60](#) Order to preserve evidence and to inspect premises
[Article 61](#) Freezing orders
[Article 62](#) Provisional and protective measures



Article 70 Court fees

1. Parties to proceedings before the Court shall pay court fees.
2. Court fees shall be paid in advance, unless the Rules of Procedure provide otherwise. Any party which has not paid a prescribed court fee may be excluded from further participation in the proceedings.

Article 71 Legal aid

1. A party who is a natural person and who is unable to meet the costs of the proceedings, either wholly or in part, may at any time apply for legal aid. The conditions for granting of legal aid shall be laid down in the Rules of Procedure.
2. The Court shall decide whether legal aid should be granted in full or in part, or whether it should be refused, in accordance with the Rules of Procedure.
3. On a proposal from the Court, the Administrative Committee shall set the level of legal aid and the rules on bearing the costs thereof.

Article 72 Period of limitation

Without prejudice to Article 24(2) and (3), actions relating to all forms of financial compensation may not be brought more than five years after the date on which the applicant became aware, or had reasonable grounds to become aware, of the last fact justifying the action.

[Article 24](#) Sources of law

Chapter V Appeals

Article 73 Appeal

1. An appeal against a decision of the Court of First Instance may be brought before the Court of Appeal by any party which has been unsuccessful, in whole or in part, in its submissions, within two months of the date of the notification of the decision.
2. An appeal against an order of the Court of First Instance may be brought before the Court of Appeal by any party which has been unsuccessful, in whole or in part, in its submissions:

[Article 49](#) Language of proceedings at the Court of First Instance

[Article 59](#) Order to produce evidence

[Article 60](#) Order to preserve evidence and to inspect premises

[Article 61](#) Freezing orders

[Article 62](#) Provisional and protective measures



- (a) for the orders referred to in Articles 49(5), 59 to 62 and 67 within 15 calendar days of the notification of the order to the applicant;
- (b) for other orders than the orders referred to in point (a):
 - (i) together with the appeal against the decision, or
 - (ii) where the Court grants leave to appeal, within 15 days of the notification of the Court's decision to that effect.
- 3. The appeal against a decision or an order of the Court of First Instance may be based on points of law and matters of fact.
- 4. New facts and new evidence may only be introduced in accordance with the Rules of Procedure and where the submission thereof by the party concerned could not reasonably have been expected during proceedings before the Court of First Instance.

[Article 67](#) Power to order the communication of information

Article 74 **Effects of an appeal**

- 1. An appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties. The Rules of Procedure shall guarantee that such a decision is taken without delay.
- 2. Notwithstanding paragraph 1, an appeal against a decision on actions or counterclaims for revocation and on actions based on Article 32(1)(i) shall always have suspensive effect.
- 3. An appeal against an order referred to in Articles 49(5), 59 to 62 or 67 shall not prevent the continuation of the main proceedings. However, the Court of First Instance shall not give a decision in the main proceedings before the decision of the Court of Appeal concerning an appealed order has been given.

[Article 32](#) Competence of the Court

[Article 49](#) Language of proceedings at the Court of First Instance

[Article 59](#) Order to produce evidence

[Article 60](#) Order to preserve evidence and to inspect premises

[Article 61](#) Freezing orders

[Article 62](#) Provisional and protective measures

[Article 67](#) Power to order the communication of information

Article 75 **Decision on appeal and referral back**

- 1. If an appeal pursuant to Article 73 is well-founded, the Court of Appeal shall revoke the decision of the Court of First Instance and give a final decision. The Court of Appeal may in exceptional cases and in accordance with the Rules of Procedure refer the case back to the Court of First Instance for decision.

[Article 73](#) Appeal



2. Where a case is referred back to the Court of First Instance pursuant to paragraph 1, the Court of First Instance shall be bound by the decision of the Court of Appeal on points of law.

Chapter VI Decisions

Article 76 Basis for decisions and right to be heard

1. The Court shall decide in accordance with the requests submitted by the parties and shall not award more than is requested.
2. Decisions on the merits may only be based on grounds, facts and evidence, which were submitted by the parties or introduced into the procedure by an order of the Court and on which the parties have had an opportunity to present their comments.
3. The Court shall evaluate evidence freely and independently.

Article 77 Formal requirements

1. Decisions and orders of the Court shall be reasoned and shall be given in writing in accordance with the Rules of Procedure.
2. Decisions and orders of the Court shall be delivered in the language of proceedings.

Article 78 Decisions of the Court and dissenting opinions

1. Decisions and orders of the Court shall be taken by a majority of the panel, in accordance with the Statute. In case of equal votes, the vote of the presiding judge shall prevail.
2. In exceptional circumstances, any judge of the panel may express a dissenting opinion separately from the decision of the Court.

Article 79 Settlement

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.

Article 80 Publication of decisions

The Court may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of information concerning the Court's decision, including displaying the decision and publishing it in full or in part in public media.

Article 81 Rehearing

1. A request for rehearing after a final decision of the Court may exceptionally be granted by the Court of Appeal in the following circumstances:
 - (a) on discovery of a fact by the party requesting the rehearing, which is of such a nature as to be a decisive factor and which, when the decision was given, was unknown to the party requesting the rehearing; such request may only be granted on the basis of an act which was held, by a final decision of a national court, to constitute a criminal offence; or
 - (b) in the event of a fundamental procedural defect, in particular when a defendant who did not appear before the Court was not served with the document initiating the proceedings or an equivalent document in sufficient time and in such a way as to enable him to arrange for the defence.
2. A request for a rehearing shall be filed within 10 years of the date of the decision but not later than two months from the date of the discovery of the new fact or of the procedural defect. Such request shall not have suspensive effect unless the Court of Appeal decides otherwise.
3. If the request for a rehearing is well-founded, the Court of Appeal shall set aside, in whole or in part, the decision under review and re-open the proceedings for a new trial and decision, in accordance with the Rules of Procedure.
4. Persons using patents which are the subject-matter of a decision under review and who act in good faith should be allowed to continue using such patents.

Article 82 Enforcement of decisions and orders

1. Decisions and orders of the Court shall be enforceable in any Contracting Member State. An order for the enforcement of a decision shall be appended to the decision by the Court.



2. Where appropriate, the enforcement of a decision may be subject to the provision of security or an equivalent assurance to ensure compensation for any damage suffered, in particular in the case of injunctions.
3. Without prejudice to this Agreement and the Statute, enforcement procedures shall be governed by the law of the Contracting Member State where the enforcement takes place. Any decision of the Court shall be enforced under the same conditions as a decision given in the Contracting Member State where the enforcement takes place.
4. If a party does not comply with the terms of an order of the Court, that party may be sanctioned with a recurring penalty payment payable to the Court. The individual penalty shall be proportionate to the importance of the order to be enforced and shall be without prejudice to the party's right to claim damages or security.

Part IV Transitional Provisions

Article 83 Transitional regime

1. During a transitional period of seven years after the date of entry into force of this Agreement, an action for infringement or for revocation of a European patent or an action for infringement or for declaration of invalidity of a supplementary protection certificate issued for a product protected by a European patent may still be brought before national courts or other competent national authorities.
2. An action pending before a national court at the end of the transitional period shall not be affected by the expiry of this period.
3. Unless an action has already been brought before the Court, a proprietor of or an applicant for a European patent granted or applied for prior to the end of the transitional period under paragraph 1 and, where applicable, paragraph 5, as well as a holder of a supplementary protection certificate issued for a product protected by a European patent, shall have the possibility to opt out from the exclusive competence of the Court. To this end they shall notify their opt-out to the Registry by the latest one month before expiry of the transitional period. The opt-out shall take effect upon its entry into the register.
4. Unless an action has already been brought before a national court, proprietors of or applicants for European patents or holders of supplementary protection certificates issued for a product protected by a European patent who made use of the opt-out in accordance with paragraph 3 shall be entitled to withdraw their opt-out at any moment. In this event they shall notify the Registry accordingly. The withdrawal of the opt-out shall take effect upon its entry into the register.
5. Five years after the entry into force of this Agreement, the Administrative Committee shall carry out a broad consultation with the users of the patent system and a survey on the number of European patents and supplementary protection certificates issued for products protected by European patents with respect to which actions for infringement or for revocation or declaration of invalidity are still brought before the national courts pursuant to paragraph 1, the reasons for this and the implications thereof. On the basis of this consultation and an opinion of the Court, the Administrative Committee may decide to prolong the transitional period by up to seven years.

Part V Final Provisions

Article 84 Signature, ratification and accession

[Article 18 of Regulation \(EU\) No 1257/2012](#)
Entry into force and application

1. This Agreement shall be open for signature by any Member State on 19 February 2013.
2. This Agreement shall be subject to ratification in accordance with the respective constitutional requirements of the Member States. Instruments of ratification shall be deposited with the General Secretariat of the Council of the European Union (hereinafter referred to as ‘the depositary’).
3. Each Member State having signed this Agreement shall notify the European Commission of its ratification of the Agreement at the time of the deposit of its ratification instrument pursuant to Article 18(3) of Regulation (EU) No 1257/2012.
4. This Agreement shall be open to accession by any Member State. Instruments of accession shall be deposited with the depositary.

Article 85 Functions of the depositary

1. The depositary shall draw up certified true copies of this Agreement and shall transmit them to the governments of all signatory or acceding Member States.
2. The depositary shall notify the governments of the signatory or acceding Member States of:
 - (a) any signature;
 - (b) the deposit of any instrument of ratification or accession;
 - (c) the date of entry into force of this Agreement.
3. The depositary shall register this Agreement with the Secretariat of the United Nations.

Article 86 Duration of the Agreement

This Agreement shall be of unlimited duration.



Article 87 **Revision**

1. Either seven years after the entry into force of this Agreement or once 2 000 infringement cases have been decided by the Court, whichever is the later point in time, and if necessary at regular intervals thereafter, a broad consultation with the users of the patent system shall be carried out by the Administrative Committee on the functioning, efficiency and cost-effectiveness of the Court and on the trust and confidence of users of the patent system in the quality of the Court's decisions. On the basis of this consultation and an opinion of the Court, the Administrative Committee may decide to revise this Agreement with a view to improving the functioning of the Court.
2. The Administrative Committee may amend this Agreement to bring it into line with an international treaty relating to patents or Union law.
3. A decision of the Administrative Committee taken on the basis of paragraphs 1 and 2 shall not take effect if a Contracting Member State declares within twelve months of the date of the decision, on the basis of its relevant internal decision-making procedures, that it does not wish to be bound by the decision. In this case, a Review Conference of the Contracting Member States shall be convened.

Article 88 **Languages of the Agreement**

1. This Agreement is drawn up in a single original in the English, French and German languages, each text being equally authentic.
2. The texts of this Agreement drawn up in official languages of Contracting Member States other than those specified in paragraph 1 shall, if they have been approved by the Administrative Committee, be considered as official texts. In the event of divergences between the various texts, the texts referred to in paragraph 1 shall prevail.

Article 89 **Entry into force**

1. This Agreement shall enter into force on 1 January 2014 or on the first day of the fourth month after the deposit of the thirteenth instrument of ratification or accession in accordance with Article 84, including the three Member States in which the highest number of European patents had

[Article 84](#) Signature, ratification and accession
[Regulation \(EU\) No 1215/2012](#)



effect in the year preceding the year in which the signature of the Agreement takes place or on the first day of the fourth month after the date of entry into force of the amendments to Regulation (EU) No 1215/2012 concerning its relationship with this Agreement, whichever is the latest.

2. Any ratification or accession after the entry into force of this Agreement shall take effect on the first day of the fourth month after the deposit of the instrument of ratification or accession.

In witness whereof the undersigned, being duly authorised thereto, have signed this Agreement,

Done at Brussels on 19 February 2013 in English, French and German, all three texts being equally authentic, in a single copy which shall be deposited in the archives of the General Secretariat of the Council of the European Union.



Annex I Statute of the Unified Patent Court

Article 1 **Scope of the Statute**

This Statute contains institutional and financial arrangements for the Unified Patent Court as established under Article 1 of the Agreement.

[Article 1 of the Agreement](#) Unified Patent Court

Chapter I Judges

Article 2 **Eligibility of judges**

- 1. Any person who is a national of a Contracting Member State and fulfils the conditions set out in Article 15 of the Agreement and in this Statute may be appointed as a judge.
- 2. Judges shall have a good command of at least one official language of the European Patent Office.
- 3. Experience with patent litigation which has to be proven for the appointment pursuant to Article 15(1) of the Agreement may be acquired by training under Article 11(4)(a) of this Statute.

[Article 15 of the Agreement](#) Eligibility criteria for the appointment of judges
[Article 11 of this Statute](#) Training

Article 3 **Appointment of judges**

- 1. Judges shall be appointed pursuant to the procedure set out in Article 16 of the Agreement.
- 2. Vacancies shall be publicly advertised and shall indicate the relevant eligibility criteria as set out in Article 2. The Advisory Committee shall give an opinion on candidates' suitability to perform the duties of a judge of the Court. The opinion shall comprise a list of most suitable candidates. The list shall contain at least twice as many candidates as there are vacancies. Where necessary, the Advisory Committee may recommend that, prior to the decision on the appointment, a candidate judge receive training in patent litigation pursuant to Article 11(4)(a).
- 3. When appointing judges, the Administrative Committee shall ensure the best legal and technical expertise and a balanced composition of the Court on as broad a geographical basis as possible among nationals of the Contracting Member States.
- 4. The Administrative Committee shall appoint as many judges as are needed for the proper functioning of the Court. The Administrative Committee shall initially appoint the necessary

[Article 16 of the Agreement](#) Appointment procedure
[Article 2](#) Eligibility of judges
[Article 11](#) Training



number of judges for setting up at least one panel in each of the divisions of the Court of First Instance and at least two panels in the Court of Appeal.

5. The decision of the Administrative Committee appointing full-time or part-time legally qualified judges and full-time technically qualified judges shall state the instance of the Court and/or the division of the Court of First Instance for which each judge is appointed and the field(s) of technology for which a technically qualified judge is appointed.
6. Part-time technically qualified judges shall be appointed as judges of the Court and shall be included in the Pool of Judges on the basis of their specific qualifications and experience. The appointment of these judges to the Court shall ensure that all fields of technology are covered.

Article 4 **Judges' term of office**

1. Judges shall be appointed for a term of six years, beginning on the date laid down in the instrument of appointment. They may be re-appointed.
2. In the absence of any provision regarding the date, the term shall begin on the date of the instrument of appointment.

Article 5 **Appointment of the members of the Advisory Committee**

1. Each Contracting Member State shall propose a member of the Advisory Committee who fulfils the requirements set out in Article 14(2) of the Agreement.
2. The members of the Advisory Committee shall be appointed by the Administrative Committee acting by common accord.

[Article 14 of Agreement](#) The Advisory Committee

Article 6 **Oath**

Before taking up their duties judges shall, in open court, take an oath to perform their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

Article 7

Impartiality

1. Immediately after taking their oath, judges shall sign a declaration by which they solemnly undertake that, both during and after their term of office, they shall respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
2. Judges may not take part in the proceedings of a case in which they:
 - (a) have taken part as adviser;
 - (b) have been a party or have acted for one of the parties;
 - (c) have been called upon to pronounce as a member of a court, tribunal, board of appeal, arbitration or mediation panel, a commission of inquiry or in any other capacity;
 - (d) have a personal or financial interest in the case or in relation to one of the parties; or
 - (e) are related to one of the parties or the representatives of the parties by family ties.
3. If, for some special reason, a judge considers that he or she should not take part in the judgement or examination of a particular case, that judge shall so inform the President of the Court of Appeal accordingly or, in the case of judges of the Court of First Instance, the President of the Court of First Instance. If, for some special reason, the President of the Court of Appeal or, in the case of judges of the Court of First Instance, the President of the Court of First Instance considers that a judge should not sit or make submissions in a particular case, the President of the Court of Appeal or the President of the Court of First Instance shall justify this in writing and notify the judge concerned accordingly.
4. Any party to an action may object to a judge taking part in the proceedings on any of the grounds listed in paragraph 2 or where the judge is suspected, with good reason, of partiality.
5. Any difficulty arising as to the application of this Article shall be settled by decision of the Presidium, in accordance with the Rules of Procedure. The judge concerned shall be heard but shall not take part in the deliberations.

Article 8 Immunity of judges

1. The judges shall be immune from legal proceedings. After they have ceased to hold office, they shall continue to enjoy immunity in respect of acts performed by them in relation to their official capacity.
2. The Presidium may waive the immunity.
3. Where immunity has been waived and criminal proceedings are instituted against a judge, that judge shall be tried, in any of the Contracting Member States, only by the court competent to judge the members of the highest national judiciary.
4. The Protocol on the privileges and immunities of the European Union shall apply to the judges of the Court, without prejudice to the provisions relating to immunity from legal proceedings of judges which are set out in this Statute.

Article 9 End of duties

1. Apart from replacement after expiry of a judge's term pursuant to Article 4, or death, the duties of a judge shall end when that judge resigns.
2. Where a judge resigns, the letter of resignation shall be addressed to the President of the Court of Appeal or, in the case of judges of the Court of First Instance, the President of the Court of First Instance for transmission to the Chairman of the Administrative Committee.
3. Save where Article 10 applies, a judge shall continue to hold office until that judge's successor takes up his or her duties.
4. Any vacancy shall be filled by the appointment of a new judge for the remainder of his or her predecessor's term.

[Article 4](#) Judges' term of office

[Article 10](#) Removal from office

Article 10 Removal from office

1. A judge may be deprived of his or her office or of other benefits only if the Presidium decides that that judge no longer fulfils the requisite conditions or meets the obligations arising from his or her office. The judge concerned shall be heard but shall not take part in the deliberations.
2. The Registrar of the Court shall communicate this decision to the Chairman of the Administrative Committee.

3. In the case of a decision depriving a judge of his or her office, a vacancy shall arise upon that notification.

Article 11 Training

[Article 19 of the Agreement](#) Training framework

1. Appropriate and regular training of judges shall be provided for within the training framework set up under Article 19 of the Agreement. The Presidium shall adopt Training Regulations ensuring the implementation and overall coherence of the training framework.
2. The training framework shall provide a platform for the exchange of expertise and a forum for discussion, in particular by:
 - (a) organising courses, conferences, seminars, workshops and symposia;
 - (b) cooperating with international organisations and education institutes in the field of intellectual property; and
 - (c) promoting and supporting further vocational training.
3. An annual work programme and training guidelines shall be drawn up, which shall include for each judge an annual training plan identifying that judge's main training needs in accordance with the Training Regulations.
4. The training framework shall in addition:
 - (a) ensure appropriate training for candidate-judges and newly appointed judges of the Court;
 - (b) support projects aimed at facilitating cooperation between representatives, patent attorneys and the Court.

Article 12 Remuneration

The Administrative Committee shall set the remuneration of the President of the Court of Appeal, the President of the Court of First Instance, the judges, the Registrar, the Deputy-Registrar and the staff.

Chapter II Organisational Provisions

Section 1 Common provisions

Article 13 President of the Court of Appeal

1. The President of the Court of Appeal shall be elected by all judges of the Court of Appeal for a term of three years, from among their number. The President of the Court of Appeal may be re-elected twice.
2. The elections of the President of the Court of Appeal shall be by secret ballot. A judge obtaining an absolute majority shall be elected. If no judge obtains an absolute majority, a second ballot shall be held and the judge obtaining the most votes shall be elected.
3. The President of the Court of Appeal shall direct the judicial activities and the administration of the Court of Appeal and chair the Court of Appeal sitting as a full Court.
4. If the office of the President of the Court of Appeal falls vacant before the date of expiry of his or her term, a successor shall be elected for the remainder thereof.

Article 14 President of the Court of First Instance

1. The President of the Court of First Instance shall be elected by all judges of the Court of First Instance who are full-time judges, for a term of three years, from among their number. The President of the Court of First Instance may be re-elected twice.
2. The first President of the Court of First Instance shall be a national of the Contracting Member State hosting the seat of the central division.
3. The President of the Court of First Instance shall direct the judicial activities and the administration of the Court of First Instance.
4. Article 13(2) and (4), shall by analogy apply to the President of the Court of First Instance.

[Article 13](#) President of the Court of Appeal

Article 15 Presidium

1. The Presidium shall be composed of the President of the Court of Appeal, who shall act as chairperson, the President of the Court of First Instance, two judges of the Court of Appeal

[Article 41 of the Agreement](#) Rules of Procedure
[Article 83 of the Agreement](#) Transitional regime



- elected from among their number, three judges of the Court of First Instance who are full-time judges of the Court elected from among their number, and the Registrar as a non-voting member.
2. The Presidium shall exercise its duties in accordance with this Statute. It may, without prejudice to its own responsibility, delegate certain tasks to one of its members.
 3. The Presidium shall be responsible for the management of the Court and shall in particular:
 - (a) draw up proposals for the amendment of the Rules of Procedure in accordance with Article 41 of the Agreement and proposals regarding the Financial Regulations of the Court;
 - (b) prepare the annual budget, the annual accounts and the annual report of the Court and submit them to the Budget Committee;
 - (c) establish the guidelines for the training programme for judges and supervise the implementation thereof;
 - (d) take decisions on the appointment and removal of the Registrar and the Deputy-Registrar;
 - (e) lay down the rules governing the Registry including the sub-registries;
 - (f) give an opinion in accordance with Article 83(5) of the Agreement.
 4. Decisions of the Presidium referred to in Articles 7, 8, 10 and 22 shall be taken without the participation of the Registrar.
 5. The Presidium can take valid decisions only when all members are present or duly represented. Decisions shall be taken by a majority of the votes.

[Article 7](#) Impartiality

[Article 8](#) Immunity of judges

[Article 10](#) Removal from office

[Article 22](#) Appointment and removal from office of the Registrar

Article 16

Staff

1. The officials and other servants of the Court shall have the task of assisting the President of the Court of Appeal, the President of the Court of First Instance, the judges and the Registrar. They shall be responsible to the Registrar, under the authority of the President of the Court of Appeal and the President of the Court of First Instance.
2. The Administrative Committee shall establish the Staff Regulations of officials and other servants of the Court.

Article 17 Judicial vacations

1. After consulting the Presidium, the President of the Court of Appeal shall establish the duration of judicial vacations and the rules on observing official holidays.
2. During the period of judicial vacations, the functions of the President of the Court of Appeal and of the President of the Court of First Instance may be exercised by any judge invited by the respective President to that effect. In cases of urgency, the President of the Court of Appeal may convene the judges.
3. The President of the Court of Appeal or the President of the Court of First Instance may, in proper circumstances, grant leave of absence to respectively judges of the Court of Appeal or judges of the Court of First Instance.

Section 2 The Court of First Instance

Article 18 Setting up and discontinuance of a local or regional division

1. A request from one or more Contracting Member States for the setting up of a local or regional division shall be addressed to the Chairman of the Administrative Committee. It shall indicate the seat of the local or regional division.
2. The decision of the Administrative Committee setting up a local or regional division shall indicate the number of judges for the division concerned and shall be public.
3. The Administrative Committee shall decide to discontinue a local or regional division at the request of the Contracting Member State hosting the local division or the Contracting Member States participating in the regional division. The decision to discontinue a local or regional division shall state the date after which no new cases may be brought before the division and the date on which the division will cease to exist.
4. As from the date on which a local or regional division ceases to exist, the judges assigned to that local or regional division shall be assigned to the central division, and cases still pending before that local or regional division together with the sub-registry and all of its documentation shall be transferred to the central division.



Article 19

Panels

1. The allocation of judges and the assignment of cases within a division to its panels shall be governed by the Rules of Procedure. One judge of the panel shall be designated as the presiding judge, in accordance with the Rules of Procedure.
2. The panel may delegate, in accordance with the Rules of Procedure, certain functions to one or more of its judges.
3. A standing judge for each division to hear urgent cases may be designated in accordance with the Rules of Procedure.
4. In cases where a single judge in accordance with Article 8(7) of the Agreement, or a standing judge, in accordance with paragraph 3 of this Article, hears a case that judge shall carry out all functions of a panel.
5. One judge of the panel shall act as Rapporteur, in accordance with the Rules of Procedure.

[Article 8 of the Agreement](#) Composition of the panels of the Court of First Instance

Article 20

Pool of Judges

1. A list with the names of the judges included in the Pool of Judges shall be drawn up by the Registrar. In relation to each judge, the list shall at least indicate the linguistic skills, the field of technology and experience of, as well as the cases previously handled by, that judge.
2. A request addressed to the President of the Court of First Instance to assign a judge from the Pool of Judges shall indicate, in particular, the subject-matter of the case, the official language of the European Patent Office used by the judges of the panel, the language of the proceedings and the field of technology required.

Section 3 The Court of Appeal

Article 21

Panels

1. The allocation of judges and the assignment of cases to panels shall be governed by the Rules of Procedure. One judge of the panel shall be appointed as the presiding judge, in accordance with the Rules of Procedure.



2. When a case is of exceptional importance, and in particular when the decision may affect the unity and consistency of the case law of the Court, the Court of Appeal may decide, on the basis of a proposal from the presiding judge, to refer the case to the full Court.
3. The panel may delegate, in accordance with the Rules of Procedure, certain functions to one or more of its judges.
4. One judge of the panel shall act as Rapporteur, in accordance with the Rules of Procedure.

Section 4 The Registry

Article 22 Appointment and removal from office of the Registrar

1. The Presidium shall appoint the Registrar of the Court for a term of six years. The Registrar may be re- appointed.
2. Two weeks before the date fixed for appointing the Registrar, the President of the Court of Appeal shall inform the Presidium of the applications which have been submitted for the post.
3. Before taking up his or her duties, the Registrar shall take oath before the Presidium to perform the duties of the Registrar impartially and conscientiously.
4. The Registrar may be removed from office only if the Registrar no longer meets the obligations arising from his or her office. The Presidium shall take its decision after having heard the Registrar.
5. If the office of the Registrar falls vacant before the date of expiry of the term thereof, the Presidium shall appoint a new Registrar for a term of six years.
6. If the Registrar is absent or prevented from attending or where such post is vacant, the President of the Court of Appeal after having consulted the Presidium shall designate a member of the staff of the Court to carry out the duties of the Registrar.

Article 23 Duties of the Registrar

1. The Registrar shall assist the Court, the President of the Court of Appeal, the President of the Court of First Instance and the judges in the performance of their functions. The Registrar shall be responsible for the organisation and activities of the Registry under the authority of the President of the Court of Appeal.

[Article 18 of the Agreement](#) Pool of Judges
[Article 48\(3\) of the Agreement](#) Representation
[Article 57\(2\) of the Agreement](#) Court experts
[Article 83 of the Agreement](#) Transitional regime

2. The Registrar shall in particular be responsible for:
 - (a) keeping the register which shall include records of all cases before the Court;
 - (b) keeping and administering lists drawn up in accordance with Articles 18, 48(3) and 57(2) of the Agreement;
 - (c) keeping and publishing a list of notifications and withdrawals of opt-outs in accordance with Article 83 of the Agreement;
 - (d) publishing the decisions of the Court, subject to the protection of confidential information;
 - (e) publishing annual reports with statistical data; and
 - (f) ensuring that the information on opt-outs in accordance with Article 83 of the Agreement is notified to the European Patent Office.

Article 24 **Keeping of the register**

1. Detailed rules for keeping the register of the Court shall be prescribed in the Rules governing the Registry, adopted by the Presidium.
2. The rules on access to documents of the Registry shall be provided for in the Rules of Procedure.

Article 25 **Sub-registries and Deputy-Registrar**

1. A Deputy-Registrar shall be appointed for a term of six years by the Presidium. The Deputy-Registrar may be re-appointed.
2. Article 22(2) to (6) shall apply by analogy.
3. The Deputy-Registrar shall be responsible for the organisation and activities of sub-registries under the authority of the Registrar and the President of the Court of First Instance. The duties of the Deputy-Registrar shall in particular include:
 - (a) keeping records of all cases before the Court of First Instance;
 - (b) notifying every case before the Court of First Instance to the Registry.
4. The Deputy-Registrar shall also provide administrative and secretarial assistance to the divisions of the Court of First Instance.

[Article 22](#) Appointment and removal from office of the Registrar



Chapter III Financial Provisions

Article 26 Budget

[Article 33](#) Financial Regulations

1. The budget shall be adopted by the Budget Committee on a proposal from the Presidium. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations, established in accordance with Article 33.
2. Within the budget, the Presidium may, in accordance with the Financial Regulations, transfer funds between the various headings or subheadings.
3. The Registrar shall be responsible for the implementation of the budget in accordance with the Financial Regulations.
4. The Registrar shall annually make a statement on the accounts of the preceding financial year relating to the implementation of the budget which shall be approved by the Presidium.

Article 27 Authorisation for expenditure

1. The expenditure entered in the budget shall be authorised for the duration of one accounting period unless the Financial Regulations provide otherwise.
2. In accordance with the Financial Regulations, any appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period.
3. Appropriations shall be set out under different headings according to type and purpose of the expenditure, and subdivided, to the extent necessary, in accordance with the Financial Regulations.

Article 28 Appropriations for unforeseeable expenditure

1. The budget of the Court may include appropriations for unforeseeable expenditure.
2. The employment of these appropriations by the Court shall be subject to the prior approval of the Budget Committee.



Article 29 Accounting period

The accounting period shall commence on 1 January and end on 31 December.

Article 30 Preparation of the budget

The Presidium shall submit the draft budget of the Court to the Budget Committee no later than the date prescribed in the Financial Regulations.

Article 31 Provisional budget

1. If, at the beginning of the accounting period, the budget has not been adopted by the Budget Committee, expenditure may be effected on a monthly basis per heading or other division of the budget, in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the Presidium do not exceed one-twelfth of those provided for in the draft budget.
2. The Budget Committee may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the budget appropriations for the preceding accounting period.

Article 32 Auditing of accounts

1. The annual financial statements of the Court shall be examined by independent auditors. The auditors shall be appointed and if necessary dismissed by the Budget Committee.
2. The audit, which shall be based on professional auditing standards and shall take place, if necessary, in situ, shall ascertain that the budget has been implemented in a lawful and proper manner and that the financial administration of the Court has been conducted in accordance with the principles of economy and sound financial management. The auditors shall draw up a report after the end of each accounting period containing a signed audit opinion.
3. The Presidium shall submit to the Budget Committee the annual financial statements of the Court and the annual budget implementation statement for the preceding accounting period, together with the auditors' report.



4. The Budget Committee shall approve the annual accounts together with the auditors' report and shall discharge the Presidium in respect of the implementation of the budget.

Article 33 Financial Regulations

[Article 37 of the Agreement](#) Financing of the Court

1. The Financial Regulations shall be adopted by the Administrative Committee. They shall be amended by the Administrative Committee on a proposal from the Court.
2. The Financial Regulations shall lay down in particular:
 - (a) arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;
 - (b) the method and procedure whereby the payments and contributions, including the initial financial contributions provided for in Article 37 of the Agreement are to be made available to the Court;
 - (c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision; and
 - (d) the generally accepted accounting principles on which the budget and the annual financial statements are to be based.

Chapter IV Procedural Provisions

Article 34 Secrecy of deliberations

The deliberations of the Court shall be and shall remain secret.

Article 35 Decisions

1. When a panel sits in composition of an even number of judges, decisions of the Court shall be taken by a majority of the panel. In case of equal vote, the vote of the presiding judge shall prevail.
2. In the event of one of the judges of a panel being prevented from attending, a judge from another panel may be called upon to sit in accordance with the Rules of Procedure.



3. In cases where this Statute provides that the Court of Appeal shall take a decision sitting as a full court, such decision shall be valid only if it is taken by at least 3/4 of the judges comprising the full court.
4. Decisions of the Court shall contain the names of the judges deciding the case.
5. Decisions shall be signed by the judges deciding the case, by the Registrar for decisions of the Court of Appeal, and by the Deputy-Registrar for decisions of the Court of First Instance. They shall be read in open court.

Article 36 **Dissenting opinions**

A dissenting opinion expressed separately by a judge of a panel in accordance with Article 78 of the Agreement shall be reasoned, given in writing and shall be signed by the judge expressing this opinion.

[Article 78 of the Agreement](#) Decisions of the Court and dissenting opinions

Article 37 **Decision by default**

1. At the request of a party to an action, a decision by default may be given in accordance with the Rules of Procedure, where the other party, after having been served with a document instituting proceedings or with an equivalent document, fails to file written submissions in defence or fails to appear at the oral hearing. An objection may be lodged against that decision within one month of it being notified to the party against which the default decision has been given.
2. The objection shall not have the effect of staying enforcement of the decision by default unless the Court decides otherwise.

Article 38 **Questions referred to the Court of Justice of the European Union**

1. The procedures established by the Court of Justice of the European Union for referrals for preliminary rulings within the European Union shall apply.
2. Whenever the Court of First Instance or the Court of Appeal has decided to refer to the Court of Justice of the European Union a question of interpretation of the Treaty on European Union or of



the Treaty on the Functioning of the European Union or a question on the validity or interpretation of acts of the institutions of the European Union, it shall stay its proceedings.



ANNEX II

DISTRIBUTION OF CASES WITHIN THE CENTRAL DIVISION ⁽¹⁾

LONDON Section	PARIS Seat	MUNICH Section
Human necessities (C) Chemistry, Metallurgy	President's Office (B) Performing operations, transporting (D) Textiles, paper (E) Fixed constructions (G) Physics (H) Electricity	(F) Mechanical engineering, lighting, heating, weapons, blasting

⁽¹⁾ The classification into 8 sections (A to H) is based on the International Patent Classification of the World Intellectual Property Organisation (<http://www.wipo.int/classifications/ipc/en>).



Rules of Procedure of the Unified Patent Court

as adopted by decision of the Administrative Committee on 8 July 2022

entry into force: 1 September 2022

Abbreviations

Abbreviations

Agreement: Agreement on a Unified Patent Court of 19 February 2013 (OJ C 175, 20.6.2013, p. 1) including any subsequent amendments

Directive 98/5/EC: Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained (OJ L 77, 14.3.1998, p. 36) including any subsequent amendments

EPC: Convention on the Grant of European Patents of 5 October 1973 (European Patent Convention) including any subsequent amendments

The Hague Convention: Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 including any subsequent amendments

Lugano Convention: Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 (OJ L 147, 10.6.2009, p. 5) including any subsequent amendments

Regulation (EU) 2020/1783: Regulation (EU) 2020/1783 of the European Parliament and of the Council of 25 November 2020 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence) (recast), OJ L 405, 2.12.2020, p. 1 including any subsequent amendments

Regulation (EU) No 1215/2012: 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 (OJ L 351, 20.12.2012, p. 1) including any subsequent amendments



Regulation (EU) No 1257/2012: Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJ L 361, 31.12.2012, p. 1) including any subsequent amendments

Regulation (EU) No 1260/2012: Regulation (EU) No 1260/2012 of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJ L 361, 31.12.2012, p. 89) including any subsequent amendments including any subsequent amendments

Regulation (EU) 2020/1784: Regulation (EU) 2020/1784 1783 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (recast), OJ L 405, 2.12.2020; p. 40

Statute: Statute of the Unified Patent Court (OJ C 175, 20.6.2013, p. 29) including any subsequent amendments



Preamble

Preamble

1. The Court shall conduct proceedings in accordance with the Agreement, the Statute and these Rules. In the event of a conflict between the provisions of the Agreement and/or the Statute on the one hand and of the Rules on the other hand, the provisions of the Agreement and/or the Statute shall prevail.
2. The Rules shall be applied and interpreted in accordance with Articles 41(3), 42 and 52(1) of the Agreement on the basis of the principles of proportionality, flexibility, fairness and equity.
3. Proportionality shall be ensured by giving due consideration to the nature and complexity of each action and its importance.
4. Flexibility shall be ensured by applying all procedural rules in a flexible and balanced manner with the required level of discretion for the judges to organise the proceedings in the most efficient and cost effective manner.
5. Fairness and equity shall be ensured by having regard to the legitimate interests of all parties.
6. In accordance with these principles, the Court shall apply and interpret the Rules in a way which shall ensure decisions of the highest quality.
7. In accordance with these principles, proceedings shall be conducted in a way which will normally allow the final oral hearing on the issues of infringement and validity at first instance to take place within one year whilst recognising that complex actions may require more time and procedural steps and simple actions less time and fewer procedural steps. Decisions on costs and/or damages may take place at the same time or as soon as practicable thereafter. Case management shall be organised in accordance with these objectives. Parties shall cooperate with the Court and set out their full case as early as possible in the proceedings.
8. The Court shall endeavour to ensure consistent application and interpretation of these Rules by all first instance divisions and the Court of Appeal. Due consideration shall also be given to this objective in any decision concerning leave to appeal against procedural orders.

[Article 41 of the Agreement](#) Rules of Procedure

[Article 42 of the Agreement](#) Proportionality and fairness

[Article 52 of the Agreement](#) Written, interim and oral procedures

Application and Interpretation of the Rules

Rule 1 Application of the Rules and general principles of interpretation

1. The Court shall conduct proceedings in accordance with the Agreement, the Statute and these Rules, which include the Preamble to these Rules and the principles set out therein. In the event of a conflict between the provisions of the Agreement and/or the Statute on the one hand and of the Rules on the other hand, the provisions of the Agreement and/or the Statute shall prevail.
2. Where these Rules provide for the Court to perform any act other than an act exclusively reserved for a panel of the Court, the President of the Court of First Instance or the President of the Court of Appeal, that act may be performed by:
 - (a) the presiding judge or the judge-rapporteur of the panel to which the action has been assigned;
 - (b) a single legally qualified judge where the action has been assigned to a single judge;
 - (c) the standing judge designated pursuant to Rule 345.5.
3. References to persons in these Rules may apply to legal persons as well as natural persons. Words importing the masculine gender shall include the feminine and vice versa. Unless the contrary intention appears, words in the singular include the plural and vice versa.

Relation with Agreement: Article 8(7)

Relation with Statute: Article 19(3) and (4)

[Article 8 of the Agreement](#) Composition of the panels of the Court of First Instance
[Article 19 of Statute](#) Panels
[Rule 345](#) Composition of panels and assignment of actions

Rule 2 Supplementary protection certificate

1. Subject to paragraph 2, in these Rules with the exception of Rule 5 the expression “patent” and “proprietor” shall whenever appropriate include, respectively, a supplementary protection certificate as defined in Article 2(h) of the Agreement and granted in respect of the patent and the holder of such certificate.
2. References in these Rules to the language in which the patent was granted shall mean that language and not the language in which a supplementary protection certificate in respect of the patent was granted.

[Article 2 of the Agreement](#) Definitions
[Rule 5](#) Lodging of an Application to opt out and withdrawal of an opt-out



Rule 3 **Power of staff of the Registry and a sub-registry to perform functions of the Registry**

Where these Rules refer to the Registry or Registrar and provide to perform any act that reference shall include – where applicable – the Deputy-Registrar and the relevant sub-registry and that act may be performed by the Registrar, the Deputy-Registrar or by a member of staff of the Registry or sub-registry of the relevant division.

Rule 4 **Lodging of documents**

1. Written pleadings and other documents shall be signed and lodged at the Registry or relevant sub-registry in electronic form. Parties shall make use of the official forms available online. The receipt of documents shall be confirmed by the automatic issue of an electronic receipt, which shall indicate the date and local time of receipt.
2. Where it is not possible to lodge a document electronically for the reason that the electronic case management system of the Court has ceased to function a party may lodge a document in hard-copy form at the Registry or a sub-registry. An electronic copy of the document shall be lodged as soon as practicable thereafter.

Relation with Agreement: Article 44

[Article 44 of the Agreement](#) Electronic procedures

Rule 5 **Lodging of an Application to opt out and withdrawal of an opt-out**

1. The proprietor of a European patent (including a European patent that has expired) or the applicant for a published application for a European patent (hereinafter in this Rule 5 an “application”) who wishes to opt out that patent or application from the exclusive competence of the Court in accordance with Article 83(3) of the Agreement shall lodge an Application (hereinafter in this Rule 5 an “Application to opt out”) with the Registry.
 - (a) Where the patent or application is owned by two or more proprietors or applicants, all proprietors or applicants shall lodge the Application to opt out. Where the person lodging an Application to opt out is not recorded as the proprietor or applicant in the registers referred to in Rule 8.5(a) and (b), respectively, the person shall lodge a declaration pursuant to paragraph 3(e).

[Article 32 of the Agreement](#) Competence of the Court

[Article 48 of the Agreement](#) Representation

[Article 83 of the Agreement](#) Transitional regime

[Rule 5](#) Lodging of an Application to opt out and withdrawal of an opt-out

[Rule 8](#) Party and party’s representative



- (b) The Application to opt out shall be made in respect of all of the states for which the European patent has been granted or which have been designated in the application.
- 2. An Application to opt out or an Application to withdraw an opt-out pursuant to paragraph 7 (hereinafter in this Rule 5 an “Application to withdraw”) shall extend to any supplementary protection certificate based on the European patent.
 - (a) Where any such supplementary protection certificate has been granted at the date of lodging the Application to opt out or the Application to withdraw, the holder of the supplementary protection certificate shall, if different from the proprietor of the patent, lodge the Application to opt out or the Application to withdraw together with the proprietor.
 - (b) Where any such supplementary protection certificate is granted subsequent to lodging the Application to opt out, the opt-out shall take effect automatically on grant of said supplementary protection certificate.
 - (c) Paragraphs 6 and 8 shall apply *mutatis mutandis*. For the purposes of paragraphs 6 and 8, reference to actions
 - (i) in respect of a European patent shall apply to all supplementary protection certificates based on that European patent, and
 - (ii) in respect of a supplementary protection certificate shall apply to the European patent on which such supplementary protection certificate is based and
 - (iii) in respect of a supplementary protection certificate shall apply to all other supplementary protection certificates based on the same European patent.
 - (d) For the avoidance of doubt, it is not possible to opt out supplementary protection certificates, whether granted by the authorities of a Contracting Member State or otherwise, based on a European patent with unitary effect.
- 3. The Application to opt out shall contain:
 - (a) the name of each proprietor or applicant for the European patent or application and of the holder of any supplementary protection certificate based on the European patent in question, and all relevant postal and, where applicable, electronic addresses;
 - (b) the name and postal address and electronic address of
 - (i) the representative appointed by the applicant or the proprietor in accordance with Article 48 of the Agreement or



- (ii) any other person lodging the Application to opt out on behalf of the proprietor or the applicant and the mandate for lodging the Application to opt out;
 - (c) details of the patent and/or application including the EP publication number;
 - (d) details of any supplementary protection certificate granted based on the patent concerned, including the number; and
 - (e) for the purposes of paragraph 1(a), a declaration by or on behalf of each proprietor or applicant pursuant to Rule 8.5 that he is entitled to be registered in the national patent register.
- 4. Rule 8 shall not apply to Applications to opt out and to Applications to withdraw made pursuant to this Rule 5.
- 5. The Registrar shall as soon as practicable enter the Application to opt out in the register. Subject to paragraph 6, the opt-out which meets the requirements laid down in this Rule shall be regarded as effective from the date of entry in the register. If the requirements recorded in the register are missing or incorrect, a correction may be lodged with the Registry. The date of entry of the correction shall be noted in the register. The opt-out shall be effective from the date of correction.
- 6. In the event that an action has been commenced before the Court in respect of a patent and/or an application contained in an Application to opt out prior to the date of entry of the Application to opt out in the register or prior to the date of correction pursuant to paragraph 5, the Application to opt out shall be ineffective in respect of the patent and/or application in question, irrespective of whether the action is pending or has been concluded.
- 7. A proprietor of a patent or an application the subject of an opt-out pursuant to this Rule may lodge an Application to withdraw in respect of the patent or application, but not in respect of different states for which the European patent has been granted or which have been designated in the application. The Application to withdraw shall contain the particulars in accordance with paragraph 3. The Registrar shall as soon as practicable enter the Application to withdraw in the register and the withdrawal shall be regarded as effective from the date of entry in the register. Paragraphs 1(a) and 5 shall apply *mutatis mutandis*.
- 8. In the event that an action has been commenced before a court of a Contracting Member State in a matter over which the Court also has jurisdiction pursuant to Article 32 of the Agreement in respect of a patent or application contained in an Application to withdraw, prior to the entry of the Application to withdraw in the register or any time before the date pursuant to paragraph 5, the



Application to withdraw shall be ineffective in respect of the patent or application in question, irrespective of whether the action is pending or has been concluded.

9. Where an application for a European patent subject to an opt-out pursuant to this Rule proceeds to grant as a European patent with unitary effect the opt-out shall be deemed to have been withdrawn and the Registrar shall as soon as practicable enter the withdrawal in the register.
10. A patent or application the subject of an Application to withdraw which has been entered on the register may not thereafter be the subject of a further Application to opt out.
11. The Registrar shall as soon as practicable notify the European Patent Office and the national patent office of any Contracting Member States concerned of the entries in the register pursuant to paragraphs 5 and 7.
12. Applications accepted by the Registry before the entry into force of the Agreement shall be treated as entered on the register on the date of entry into force of the Agreement.

Relation with Agreement: Article 83(3) and (4)

Rule 5A **Application to remove an unauthorised application to opt out or unauthorised withdrawal of an opt-out**

1. Without prejudice to the lodging of an Application to opt out or withdraw an opt-out in accordance with Rule 5, the proprietor of a European patent or the applicant for a published application for a European patent or holder of a supplementary protection certificate in relation to which an Application to opt out or withdraw the opt-out is entered in the register may lodge an Application to remove the entry of an unauthorised Application to opt out or withdrawal of the opt-out from the Registry setting out the reasons.
2. The Registrar shall mark the status of the Application to opt out or withdraw the opt-out entered in the register as subject to an Application for removal. The Registrar shall decide on the Application for removal as soon as practicable. If the final decision is to remove the Application to opt out or withdrawal of an opt-out the Registrar shall delete it in the register.
3. The decision on the Application for removal may be subject to an Application for review to the President of the Court of Appeal. The Application for review shall be lodged with the Registrar in one of the official languages of the European Patent Office, within one month of the notification of the challenged decision setting out the request, facts, evidence and arguments. If the Application

[Rule 5](#) Lodging of an Application to opt out and withdrawal of an opt-out



for review is allowable, the President of the Court of Appeal shall order the Registrar to remove the opt-out or the withdrawal of the opt-out.

Rule 6 **Service and supply of orders, decisions, written pleadings and other documents**

1. The Registry shall as soon as practicable serve, in accordance with Part 5, Chapter 2:
 - (a) orders and decisions of the Court on the parties;
 - (b) written pleadings and other documents of a party on the other party. Where applicable, the Registry shall inform the parties of the opportunity to reply or to take any other appropriate step in the proceedings and of any time period for so doing.
2. The Registry shall also as soon as practicable supply to the parties copies of documents referred to in these Rules and lodged with pleadings and written evidence.
3. Where the postal or electronic address for service provided by a party pursuant to these Rules has changed that party shall give notice to the Registry and to every other party as soon as such change has taken place.

Rule 7 **Language of written pleadings and written evidence**

1. Written pleadings and other documents, including written evidence, shall be lodged in the language of the proceedings unless the Court or these Rules otherwise provide.
2. Where these Rules or the Court require a pleading or other document to be translated it shall not be necessary to provide a formal certification by the translator as to the accuracy of such translation unless the accuracy is challenged by a party or such certification is ordered by the Court or required by these Rules.

Rule 8 **Party and party's representative**

1. A party shall be represented in accordance with Article 48 of the Agreement unless otherwise provided by these Rules [Rules 5, 88.4 and 378.5].

[Article 48 of the Agreement](#) Representation
[Rule 5](#) Lodging of an Application to opt out and withdrawal of an opt-out
[Rule 8](#) Party and party's representative
[Rule 42](#) Action to be directed against the patent proprietor



2. For the purpose of all proceedings in relation to a patent, where these Rules provide that a party performs any act or that any act be performed upon a party that act shall be performed by or upon the representative for the time being of the party.
3. Except where these Rules provide otherwise, a party shall not communicate with the Court without informing the other party. Where such communication is in writing, the communication should be copied to the other party unless these Rules provide that the Court will supply a copy to the other party.
4. For the purposes of proceedings under these Rules in relation to the proprietor of a European patent with unitary effect, the person shown in the Register for unitary patent protection [Regulation (EU) No 1257/2012, Article 2(e)] as the proprietor shall be treated as such. If during proceedings before the Court a new proprietor is recorded in the Register for unitary patent protection, the former registered proprietor may apply to the Court pursuant to Rule 305.1(c) for the substitution of the new proprietor.
5. Subject to paragraph 6, for the purposes of proceedings under these Rules:
 - (a) in relation to the proprietor of a European patent, the person entitled to be registered as proprietor under the law of each Contracting Member State in which such European patent has been validated shall be treated as the proprietor whether or not such person is in fact recorded in the register of patents maintained in such Contracting Member State (hereinafter “national patent register”); and
 - (b) in relation to the applicant for a European patent, the person entitled to be registered as applicant whether or not such person is in fact recorded as such in the European Patent Register kept by the European Patent Office.
 - (c) For the purposes of paragraph 5, there shall be a rebuttable presumption that the person shown in each national patent register and the European Patent Register kept by the European Patent Office is the person entitled to be registered as proprietor or applicant as the case may be.
6. For the purposes of proceedings pursuant to Rules 42 and 61 in relation to a European patent, the person shown in the national patent register [Rule 8.5(a)] as the proprietor shall be treated as such for each Contracting Member State or, as far as no such person is registered in a national

[Rule 61](#) Declaration of non-infringement

[Rule 88](#) Application to annul or alter a decision of the Office

[Rule 305](#) Change in parties

[Rule 378](#) Application for legal aid

[Article 2 of Regulation \(EU\) No 1257/2012](#)

Definitions



patent register, the last person shown recorded as proprietor in the European Patent Register kept by the European Patent Office.

Relation with Agreement: Article 48

Rule 9

Powers of the Court

1. The Court may, at any stage of the proceedings, of its own motion or on a reasoned request by a party, make a procedural order such as to order a party to take any step, answer any question or provide any clarification or evidence, within time periods to be specified.
2. The Court may disregard any step, fact, evidence or argument which a party has not taken or submitted in accordance with a time limit set by the Court or these Rules.
3. Subject to paragraph 4, on a reasoned request by a party, the Court may:
 - (a) extend, even retrospectively, a time period referred to in these Rules or imposed by the Court; and
 - (b) shorten any such time period.
4. The Court shall not extend the time periods referred to in Rules 198.1, 213.1 and 224.1.

[Rule 198](#) Revocation of an order to preserve evidence

[Rule 213](#) Revocation of provisional measures

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

Part 1 – Procedures before the court of first instance

Rule 10 Stages of the proceedings (*inter partes* proceedings)

Proceedings before the Court of First Instance shall consist of the following stages:

- (a) a written procedure;
- (b) an interim procedure, which may include an interim conference with the parties;
- (c) an oral procedure which, subject to Rules 116.1 and 117, shall include an oral hearing of the parties unless the Court dispenses with the oral hearing with the agreement of the parties;
- (d) a procedure for the award of damages, which may include a procedure to lay open books;
- (e) a procedure for cost decisions.

Relation with Agreement: Articles 52, 68 and 69

Rule 11 Settlement

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 (“the Centre”) in order to settle or to explore a settlement of the dispute. In particular, the judge-rapporteur shall during the interim procedure, especially at an 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. Parties who choose mediation in an attempt to settle a dispute are subsequently not prevented from initiating judicial proceedings before the Court in relation to that dispute by the expiry of limitation or prescription periods during the mediation process, which will stay the limitation or prescription periods until the end of the mediation process. If mediation proceedings are terminated without a dispute settlement agreement, the period shall continue to run from that moment.
2. Pursuant to Rule 365 the Court shall, if requested by the parties, by decision confirm the terms of any settlement or arbitral award by consent (irrespective of whether it was reached using the facilities of the Centre or otherwise), 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

[Article 52 of the Agreement](#) Written, interim and oral procedures

[Article 68 of the Agreement](#) Award of damages

[Article 69 of the Agreement](#) Legal costs

[Rule 116](#) Absence of a party from the oral hearing

[Rule 117](#) Absence of both parties from the oral hearing

[Article 35 of the Agreement](#) Patent mediation and arbitration centre

[Article 52 of the Agreement](#) Written, interim and oral procedures

[Article 79 of the Agreement](#) Settlement

[Rule 104](#) Aim of the interim conference

[Rule 150](#) Separate proceedings for cost decision

[Rule 151](#) Start of proceedings for cost decision

[Rule 152](#) Compensation for representation costs

[Rule 153](#) Compensation for costs of experts

[Rule 154](#) Compensation for costs of witnesses

[Rule 155](#) Compensation for costs of interpreters and translators

[Rule 156](#) Further procedure



third parties. The parties may agree on costs to be awarded or may request the Court to decide on costs to be awarded in accordance with Rules 150 to 156 *mutatis mutandis*.

3. Save for the purpose of enforcing the terms of any such settlement agreement by any person no opinion expressed, suggestion made, proposal put forward, concession made or document drawn up for the purposes of settlement may be relied on as evidence by the Court or the parties in proceedings before the Court or any other court unless such matter was expressed to be made on an open basis and freely disclosable to the Court or any other court.

Relation with Agreement: Articles 35, 52(2) and 79

[Rule 365](#) Confirmation by the Court of a settlement

Chapter 1 – Written Procedure

Section 1 Infringement Action

Rule 12 Exchange of written pleadings (infringement action)

1. The written procedure shall consist of:
 - (a) the lodging of a Statement of claim (by the claimant) [Rule 13];
 - (b) the lodging of a Statement of defence (by the defendant) [Rules 23 and 24]; and, optionally
 - (c) the lodging of a Reply to the Statement of defence (by the claimant) [Rule 29(b)]; and
 - (d) the lodging of a Rejoinder to the Reply (by the defendant) [Rule 29(c)].
2. The Statement of defence may include a Counterclaim for revocation [Rule 25.1].
3. If a Counterclaim for revocation is lodged:
 - (a) the claimant and any proprietor who becomes a party pursuant to Rule 25.2 (hereinafter in this Rule 12 and Rules 29 to 32, “the proprietor”) shall lodge a Defence to the Counterclaim for revocation [Rule 29(a)], which may include an Application to amend the patent by the proprietor [Rule 30];
 - (b) the defendant may lodge a Reply to the Defence to the Counterclaim [Rule 29(d)]; and
 - (c) the claimant and the proprietor may lodge a Rejoinder to the Reply to the Defence to the Counterclaim [Rule 29(e)].

[Rule 12](#) Exchange of written pleadings (infringement action)

[Rule 13](#) Contents of the Statement of claim

[Rule 23](#) Lodging of the Statement of defence

[Rule 24](#) Contents of the Statement of defence

[Rule 25](#) Counterclaim for revocation

[Rule 29](#) Lodging of Defence to the Counterclaim for revocation, Reply to the Statement of defence and Rejoinder to the Reply

[Rule 30](#) Application to amend the patent

[Rule 32](#) Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

[Rule 36](#) Further exchanges of written pleadings

4. If an Application to amend the patent is lodged by the proprietor, the defendant shall lodge a Defence to the Application to amend the patent in the Reply to the Defence to the Counterclaim, the proprietor may lodge a Reply to the Defence to the Application to amend and the defendant may lodge a Rejoinder to such Reply [Rule 32].
5. The judge-rapporteur may allow the exchange of further written pleadings, within time periods to be specified [Rule 36].

Rule 13

Contents of the Statement of claim

1. The claimant shall lodge a Statement of claim with the division chosen by him [Article 33 of the Agreement] which shall contain:
 - (a) the name of the claimant, and, where the claimant is a corporate entity, the location of its registered office, and of the claimant's representative;
 - (b) the name of the party against whom the Statement is made (the defendant), and, where the defendant is a corporate entity, the location of its registered office;
 - (c) postal and electronic addresses for service on the claimant and the names of the persons authorised to accept service;
 - (d) postal and, where available, electronic addresses for service on the defendant and the names of the persons authorised to accept service, if known;
 - (e) where the claimant is not the proprietor or not the only proprietor of the patent concerned, postal and where available, electronic addresses for service on the proprietor and the names and addresses of the persons authorised to accept service, if known;
 - (f) where the claimant is not the proprietor of the patent concerned, or not the only proprietor, evidence to show the claimant is entitled to commence proceedings [Article 47(2) and (3) of the Agreement];
 - (g) details of the patent concerned, including the number;
 - (h) where applicable, information about any prior or pending proceedings relating to the patent concerned before the Court including any action for revocation or a declaration of non-infringement pending before the central division and the date of any such action, the European Patent Office or any other court or authority;

[Article 8 of the Agreement](#) Composition of the panels of the Court of First Instance
[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Article 47 of the Agreement](#) Parties
[Rule 18](#) Designation of the judge-rapporteur
[Rule 104](#) Aim of the interim conference
[Rule 170](#) Means of evidence and means of obtaining evidence
[Rule 262](#) Public access to the register
[Rule 262A](#) Protection of Confidential Information

- (i) an indication of the division which shall hear the action [Article 33(1) to (6) of the Agreement] with an explanation of why that division has competence; where the parties have agreed in accordance with Article 33(7) of the Agreement, the indication of the division which shall hear the action shall be accompanied by evidence of the defendant's agreement;
 - (j) where applicable, an indication that the action shall be heard by a single judge [Article 8(7) of the Agreement], accompanied by evidence of the defendant's agreement;
 - (k) the nature of the claim, the order or the remedy sought by the claimant;
 - (l) an indication of the facts relied on, in particular:
 - (i) one or more instances of alleged infringements or threatened infringements specifying the date and place of each;
 - (ii) the identification of the patent claims alleged to be infringed;
 - (m) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;
 - (n) the reasons why the facts relied on constitute an infringement of the patent claims, including arguments of law and where appropriate an explanation of the proposed claim interpretation;
 - (o) an indication of any order the claimant will seek during the interim procedure [Rule 104(e)];
 - (p) where the claimant assesses that the value of the infringement action exceeds EUR500.000, an indication of the value; and
 - (q) a list of the documents, including any witness statements, referred to in the Statement of claim, together with any request that all or part of any such document need not be translated and/or any request pursuant to Rule 262.2 or Rule 262A.
2. The claimant shall at the same time supply a copy of each of the documents referred to in the Statement of claim.
 3. The judge-rapporteur shall decide on any request made pursuant to paragraph 1(q) as soon as practicable after his designation pursuant to Rule 18.

Rule 14 **Use of languages under Article 49(1) and (2) of the Agreement**

1. Without prejudice to Articles 49(3) to (6) of the Agreement and subject to paragraph 2 and Rules 271.7, 321 to 323, proceedings shall be conducted:

[Article 33\(1\)\(a\) of the Agreement](#) Competence of the divisions of the Court of First Instance
[Article 49 of the Agreement](#) Language of proceedings at the Court of First Instance

- (a) in the official language or one of the official languages designated as language(s) of proceedings pursuant to Article 49(1) of the Agreement; or
 - (b) in a language designated as language of proceedings by a Contracting Member State pursuant to Article 49(2) of the Agreement.
- 2. Where a Contracting Member State hosts a local division or participates in a regional division for which several languages have been designated pursuant to Article 49(1) and/or Article 49(2) of the Agreement:
 - (a) subject to paragraphs 2(b) and (c), the claimant may choose as the language of proceedings any of the language(s) designated pursuant to Article 49(1) and/or Article 49(2) of the Agreement;
 - (b) in proceedings before a local or regional division in a Contracting Member State against a defendant who has his domicile or principal place of business in that Contracting Member State where the action could not be brought pursuant to Article 33(1)(a) of the Agreement before any other local or regional division, proceedings shall be conducted in the official language of the Contracting Member State (paragraph 1(a)). Where a designation by a Contracting Member State having several official regional languages so indicates, proceedings shall be conducted in the official language of the region in which the defendant has his domicile or principal place of business. Where there are two or more such defendants whose domicile or principle place of business has different regional languages, the claimant may choose the language from the regional languages in question. Where a designation by a Contracting Member State having several official languages so indicates, proceedings shall be conducted in the official language of the defendant. Where there are two or more such defendants with different official languages, the claimant may choose the language from the official languages in question.
 - (c) Where a designation of a language under Article 49(2) of the Agreement for a regional division or for one or more local division(s) hosted in a Member State so indicates, the judge-rapporteur may order in the interest of the panel to provide that judges may use in the oral proceedings the language according to paragraph 1(a) and/or to provide that the Court may make any order and deliver any decision in the language according to paragraph 1(a) together

[Rule 118](#) Decision on the merits

[Rule 271](#) Service of the Statement of claim

[Rule 321](#) Application by both parties to use of the language in which the patent was granted as language of the proceedings

[Rule 322](#) Proposal from the judge-rapporteur to use of the language of the proceedings

[Rule 323](#) Application by one party to use the language in which the patent was granted as language of the proceedings



with a certified translation for the purpose of Rule 118.8 into the language according to paragraph 1(b).

3. The Registrar shall maintain a list of languages communicated by Contracting Member States pursuant to Article 49(1) and Article 49(2) of the Agreement as well as designations by Contracting Member States made pursuant to paragraph 2(b) and (c). The list shall be made publically available online.
4. The Registrar shall return any pleading lodged in a language other than the language of proceedings.

Rule 15

Fee for the infringement action

1. The claimant shall pay the fixed fee and, where applicable, the value based fee for the infringement action in accordance with Part 6.
2. The Statement of claim shall not be deemed to have been lodged until the fixed fee and, where applicable, the value based fee for the infringement action has been paid, unless otherwise provided.

Relation with Agreement: Articles 36(3), 70 and 71

[Article 36 of the Agreement](#) Budget of the Court

[Article 70 of the Agreement](#) Court fees

[Article 71 of the Agreement](#) Legal aid

Rule 16

Examination as to formal requirements of the Statement of claim

1. The Registry shall as soon as practicable check whether the patent concerned is the subject of an opt-out pursuant to Article 83(3) of the Agreement and Rule 5. In the event of an opt-out the Registry shall as soon as practicable inform the claimant who may withdraw or amend the Statement of claim as appropriate.
2. The Registry shall, as soon as practicable after the lodging of the Statement of claim, examine whether the requirements of Rules 13.1 (a) to (j), .2, 14 and 15.1 have been complied with.
3. If the claimant has not complied with the requirements referred to in paragraph 2, the Registry shall as soon as practicable invite the claimant to:
 - (a) correct the deficiencies within 14 days of service of such notification; and
 - (b) where applicable, pay the fee for the infringement action within said 14 days.

[Article 83 of the Agreement](#) Transitional regime

[Rule 5](#) Lodging of an Application to opt out and withdrawal of an opt-out

[Rule 13](#) Contents of the Statement of claim

[Rule 14](#) Use of languages under Article 49(1) and (2) of the Agreement

[Rule 15](#) Fee for the infringement action

[Rule 355](#) Decision by default (Court of First Instance)

4. The Registry shall at the same time inform the claimant that if the claimant fails to correct the deficiencies or pay the fee within the time stated, a decision by default may be given, in accordance with Rule 355.
5. If the claimant fails to correct the deficiencies or pay the fee, the Registry shall inform a judge of the division who may reject the action as inadmissible by a decision by default. The judge may give the claimant an opportunity to be heard beforehand.

Rule 17 Recording in the register and assignment (Court of First Instance, infringement action)

1. If the requirements referred to in Rule 16.2 or 16.3 have been complied with, the Registry shall as soon as practicable:
 - (a) record the date of receipt of the Statement of claim and attribute an action number to the file;
 - (b) record the file in the register; and
 - (c) inform the claimant of the action number of the file and the date of receipt.
2. The action shall be assigned to a panel of a division according to Rule 345.3. Where requested by the parties the action shall be assigned to a single judge in accordance with Rule 345.6.
3. The following shall determine the distribution of actions between the seat of the central division and its sections.
 - (a) Where an action involves a single patent having a single classification, the Registry shall allocate the action to the seat or the section of the central division appropriate to the classification of the patent according to Annex II of the Agreement. The Registry shall assign the action to a panel in accordance with Rule 345.3.
 - (b) Where an action involves more than one patent and a majority of the patents have a single classification appropriate to the seat or a single section of the central division according to Annex II of the Agreement, the Registry shall allocate the action to the seat or that section of the central division. The Registry shall assign the action to a panel in accordance with Rule 345.3.
 - (c) Where neither paragraph (a) nor (b) applies, especially where
 - (i) the action involves a single patent having more than one classification or

Annex II of the Agreement
[Article 7 of the Agreement](#) The Court of First Instance
[Article 10 of the Agreement](#) The Registry
[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 345](#) Composition of panels and assignment of actions

- (ii) where the action involves more than one patent and no majority of the patents have a single classification corresponding to the seat or to one of the sections of the central division,

the Registry shall assign the action in accordance with Rule 345.3 to the panel at the seat or the section appropriate to the first classification of either the single patent or, where the action involves more than one patent, the patent first listed in the Statement of claim, according to Annex II of the Agreement. If the presiding judge of the respective panel considers that the reference of the action is appropriate, he shall accept it. If he considers otherwise, he shall instruct the Registry to refer the action in accordance with Rule 345.3 to the presiding judge of a panel of either the seat or the other section of the central division he considers appropriate, who shall likewise consider whether the re-allocation of the action is appropriate. If that presiding judge considers otherwise, he shall inform the President of the Court of First Instance, who shall allocate the action to the seat or the section of the central division he considers appropriate. The Registry shall assign the action to a panel in accordance with Rule 345.3.

- 4. The action shall be regarded as having commenced before the Court as from the date of receipt attributed to the Statement of claim.

Relation with Agreement: Article 7(2), Article 10

Rule 18 **Designation of the judge-rapporteur**

The presiding judge of the panel to which the action has been assigned [Rule 17.2] shall designate one legally qualified judge of the panel as judge-rapporteur. The presiding judge may designate himself as judge-rapporteur. The Registry shall as soon as practicable notify the claimant and defendant of the identity of the judge-rapporteur.

[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)

Rule 19 **Preliminary objection**

- 1. Within one month of service of the Statement of claim, the defendant may lodge a Preliminary objection concerning:

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Rule 5](#) Lodging of an Application to opt out and withdrawal of an opt-out

- (a) the jurisdiction and competence of the Court, including any objection that an opt-out pursuant to Rule 5 applies to the patent that is the subject of the proceedings;
 - (b) the competence of the division indicated by the claimant [Rule 13.1(i)];
 - (c) the language of the Statement of claim [Rule 14].
2. A Preliminary objection shall contain:
 - (a) particulars in accordance with Rule 24(a) to (c);
 - (b) the decision or order sought by the defendant;
 - (c) the grounds upon which the Preliminary objection is based; and
 - (d) where appropriate the facts and evidence relied on.
 3. The Preliminary objection shall be drawn up in the language pursuant to Rule 14.
 4. If the action has been commenced before a regional division the defendant may by a Preliminary objection request a transfer of the action to the central division pursuant to Article 33(2) of the Agreement. The Preliminary objection shall in such a case contain all facts and evidence supporting the existence of the same infringement in the territories of three or more regional divisions.
 5. The Registry shall as soon as practicable invite the claimant to comment on the Preliminary objection. Where applicable, the claimant may of his own motion correct any deficiency [paragraph 1(b) or (c)], within 14 days of service of notification of the Preliminary objection. Alternatively the claimant may submit written comments within the same period. The judge-rapporteur shall be informed of any correction made or written comments submitted by the claimant. If the deficiency referred to in paragraph 1(b) is corrected and the claimant has indicated another division, which is competent, the judge-rapporteur shall refer the action to the division indicated by the claimant.
 6. The period for lodging the Statement of defence [Rule 23] shall not be affected by the lodging of a Preliminary objection, unless the judge-rapporteur decides otherwise.
 7. The defendant's failure to lodge a Preliminary objection within the time period referred to in paragraph 1 shall be treated as a submission to the jurisdiction and competence of the Court and the competence of the division chosen by the claimant.

[Rule 13](#) Contents of the Statement of claim
[Rule 14](#) Use of languages under Article 49(1) and (2) of the Agreement
[Rule 23](#) Lodging of the Statement of defence
[Rule 24](#) Contents of the Statement of defence



Rule 20 **Decision or order on a Preliminary objection**

[Rule 19](#) Preliminary objection

1. As soon as practicable after the expiry of the period referred to in Rule 19.5, the judge-rapporteur shall decide the Preliminary objection. The judge-rapporteur shall give the parties an opportunity to be heard. The decision shall include instructions to the parties and to the Registry concerning the next step in the proceedings.
2. Where the Preliminary objection is to be dealt with in the main proceedings, the judge-rapporteur shall inform the parties.

Rule 21 **Appeal against decision or order on a Preliminary objection**

[Rule 220](#) Appealable decisions

1. A decision of the judge-rapporteur allowing the Preliminary objection may be appealed pursuant to Rule 220.1(a). An order of the judge-rapporteur rejecting the Preliminary objection may only be appealed pursuant to Rule 220.2.
2. If an appeal is lodged, proceedings at first instance may be stayed by the judge-rapporteur or the Court of Appeal on a reasoned request by a party.

Rule 22 **Determination of value-based fee for the infringement action**

[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 370](#) Court fees

1. The value of the infringement action shall be determined by the judge-rapporteur under Rule 370.6, taking into account the value as assessed by the parties, by way of an order during the interim procedure.
2. Where the value of the infringement action exceeds EUR 500.000, the claimant shall pay a value-based fee for the infringement action, in accordance with Part 6. Rule 16.3 to .5 shall apply *mutatis mutandis*.

Rule 23 **Lodging of the Statement of defence**

The defendant shall lodge a Statement of defence within three months of service of the Statement of claim.

Rule 24 Contents of the Statement of defence

The Statement of defence shall contain:

- (a) the names of the defendant and of the defendant's representative;
- (b) postal and electronic addresses for service on the defendant and the names and addresses of the persons authorised to accept service;
- (c) the action number of the file;
- (d) an indication whether the defendant has lodged a Preliminary objection [Rule 19];
- (e) an indication of the facts relied on, including any challenge to the facts relied on by the claimant;
- (f) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;
- (g) the reasons why the action shall fail, arguments of law and any argument arising from the provisions of Article 28 of the Agreement and where appropriate any challenge to the claimant's proposed claim interpretation;
- (h) an indication of any order the defendant will seek in respect of the infringement action during the interim procedure [Rule 104(e)];
- (i) a statement whether the defendant disputes the claimant's assessment of the value of the infringement action and the grounds for such dispute; and
- (j) a list of the documents, including any witness statements, referred to in the Statement of defence together with any request that all or part of any such document need not be translated and/or any request pursuant to Rule 262.2 or Rule 262A. Rule 13.2 and .3 shall apply *mutatis mutandis*.

[Article 28 of the Agreement](#) Right based on prior use of the invention
[Rule 13](#) Contents of the Statement of claim
[Rule 19](#) Preliminary objection
[Rule 104](#) Aim of the interim conference
[Rule 170](#) Means of evidence and means of obtaining evidence
[Rule 262](#) Public access to the register
[Rule 262A](#) Protection of Confidential Information

Rule 25 Counterclaim for revocation

1. If the Statement of defence includes an assertion that the patent alleged to be infringed is invalid the Statement of defence shall include a Counterclaim against the proprietor of the patent for revocation of said patent in accordance with Rule 42. The Counterclaim for revocation shall contain:
 - (a) an indication of the extent to which revocation of the patent is requested;

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Rule 13](#) Contents of the Statement of claim
[Rule 37](#) Application of Article 33(3) of the Agreement



- (b) one or more grounds for revocation, which shall as far as possible be supported by arguments of law, and where appropriate an explanation of the defendant's proposed claim construction;
 - (c) an indication of the facts relied on;
 - (d) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;
 - (e) an indication of any order the defendant will seek during the interim procedure [Rule 104(e)];
 - (f) a statement of his position, if any, on the options provided for in Article 33(3) of the Agreement and Rule 37.4;
 - (g) a list of the documents, including any witness statements, referred to in the Counterclaim for revocation together with any request that all or part of any such documents need not be translated and/or any request pursuant to Rule 262.2 or Rule 262A. Rule 13.2 and .3 shall apply *mutatis mutandis*; and
 - (h) insofar as the proprietor of the patent is not claimant in the infringement proceedings, the information required by Rule 13.1(b) and (d) in respect of said proprietor.
2. Where the claimant is not the proprietor or not the only proprietor of the patent concerned, the Registry shall as soon as practicable serve a copy of the Counterclaim for revocation on the relevant proprietor in accordance with Rule 13.1(e) and shall supply a copy of each document referred to in paragraph 1(h). Rule 271 shall apply *mutatis mutandis*. The proprietor in question shall become a party to the revocation proceedings and shall be treated as defendant in all subsequent proceedings. The proprietor shall provide details pursuant to Rule 13.1(e) if not already provided by the claimant.

[Rule 42](#) Action to be directed against the patent proprietor
[Rule 104](#) Aim of the interim conference
[Rule 262](#) Public access to the register
[Rule 262A](#) Protection of Confidential Information
[Rule 271](#) Service of the Statement of claim

Rule 26 **Fee for the Counterclaim for revocation**

The defendant shall pay the fee for the Counterclaim for revocation in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.

[Rule 15](#) Fee for the infringement action

Rule 27 **Examination as to formal requirements of the Statement of defence and Counterclaim for revocation**

1. The Registry shall, as soon as practicable after the lodging of the Statement of defence:

[Rule 24](#) Contents of the Statement of defence
[Rule 25](#) Counterclaim for revocation
[Rule 26](#) Fee for the Counterclaim for revocation

- (a) examine whether the requirements of Rule 24(a) to (d) have been complied with; and
 - (b) if the Statement of defence includes a Counterclaim for revocation, examine whether the requirements of Rule 25.1(g) and (h), and the obligation to pay the fee pursuant to Rule 26 has been complied with.
2. If the Registry considers that the Statement of defence or the Counterclaim for revocation does not comply with any of the requirements referred to in paragraph 1, it shall as soon as practicable invite the defendant to:
- (a) correct the deficiencies noted, within 14 days of service of such notification; and
 - (b) where applicable, pay the fee for the Counterclaim for revocation, within said 14 days.
3. The Registry shall at the same time inform the defendant that if the defendant fails to correct the deficiencies or pay the fee within the time stated, a decision by default may be given, in accordance with Rule 355.
4. If the defendant fails to correct the deficiencies or to pay the fee for the Counterclaim for revocation, as appropriate, within said 14 days, the Registry shall inform the judge-rapporteur who may give a decision by default. He may give the defendant an opportunity to be heard beforehand.

[Rule 355](#) Decision by default (Court of First Instance)

Rule 28 Further schedule

As soon as practicable after service of the Statement of defence, the judge-rapporteur shall, after consulting the parties, set a date and time for an interim conference (where necessary [Rule 101.1]) and set a date for the oral hearing. The judge-rapporteur may set one alternative date.

Rule 29 Lodging of Defence to the Counterclaim for revocation, Reply to the Statement of defence and Rejoinder to the Reply

- (a) Within two months of service of a Statement of defence which includes a Counterclaim for revocation, the claimant shall lodge a Defence to the Counterclaim for revocation together with any Reply to the Statement of defence and any Application to amend the patent pursuant to Rule 30, if applicable.

[Rule 29](#) Lodging of Defence to the Counterclaim for revocation, Reply to the Statement of defence and Rejoinder to the Reply

[Rule 30](#) Application to amend the patent

[Rule 32](#) Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

- (b) Within two months of service of a Statement of defence which does not include a Counterclaim for revocation, the claimant may lodge a Reply to the Statement of defence.
- (c) Within one month of service of a Reply to the Statement of defence which does not include a Counterclaim for revocation the defendant may lodge a Rejoinder to the Reply to the Statement of defence. The Rejoinder to the Reply to the Statement of defence shall be limited to a response to the matters raised in the Reply to the Statement of defence.
- (d) Within two months of service of the Defence to Counterclaim the defendant may lodge a Reply to the Defence to the Counterclaim together with any Rejoinder to the Reply to the Statement of defence and any Defence to an Application to amend the patent pursuant to Rule 32, if applicable.
- (e) Within one month of the service of the Reply to the Defence to the Counterclaim, the claimant may lodge a Rejoinder to the Reply together with any Reply to the Defence to an Application to amend the patent pursuant to Rule 32, if applicable. The Rejoinder to the Reply to the Statement of defence shall be limited to a response to the matters raised in the Reply to the Statement of defence.
- (f) Where the claimant is not the proprietor of the patent, all references to the claimant in this Rule 29 regarding an Application to amend the patent shall be read as including the proprietor.

Rule 29A Contents of the Defence to the Counterclaim

The Defence to the Counterclaim for revocation shall contain:

- (a) an indication of the facts relied on, including any challenge to the facts relied on by the defendant;
- (b) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;
- (c) the reasons why the Counterclaim for revocation shall fail, including arguments of law and any argument as to why any dependent claim of the patent is independently valid;
- (d) an indication of any order the claimant and the proprietor will seek in respect of the revocation action at the interim conference [Rule 104(e)];

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Rule 13](#) Contents of the Statement of claim
[Rule 37](#) Application of Article 33(3) of the Agreement
[Rule 104](#) Aim of the interim conference
[Rule 170](#) Means of evidence and means of obtaining evidence
[Rule 262](#) Public access to the register
[Rule 262A](#) Protection of Confidential Information

- (e) the claimant's and the proprietor's response to the defendant's choice of option, if any, provided for in Article 33(3) of the Agreement and Rule 37.4; and
- (f) a list of the documents, including any witness statements, referred to in the Defence to the Counterclaim together with any request that all or part of any such document shall not be translated and/or any request pursuant to Rule 262.2 or Rule 262A. Rule 13.2 and .3 shall apply *mutatis mutandis*.

Rule 30 Application to amend the patent

1. The Defence to the Counterclaim for revocation may include an Application by the proprietor of the patent to amend the patent which shall contain:
 - (a) the proposed amendments of the claims of the patent concerned and/or specification, including where applicable and appropriate one or more alternative sets of claims (auxiliary requests), in the language in which the patent was granted; where the language of the proceedings [Rule 14.3] is not the language in which the patent was granted, the proprietor shall lodge a translation of the proposed amendments in the language of the proceedings, and where the patent is a European patent with unitary effect in the language of the defendant's domicile in a Member State of the EU or of the place of the alleged infringement or threatened infringement in a Contracting Member State if so requested by the defendant;
 - (b) an explanation as to why the amendments satisfy the requirements of Articles 84 and 123(2), (3) EPC and why the proposed amended claims are valid and, if applicable, why they are infringed; and
 - (c) an indication whether the proposals are conditional or unconditional; the proposed amendments, if conditional, must be reasonable in number in the circumstances of the case.
2. Any subsequent request to amend the patent may only be admitted into the proceedings with the permission of the Court.
3. Where other proceedings involving the patent subject to an Application to amend the patent are pending, the claimant shall notify the Court or the authority in question that such an Application has been made and provide the information required in paragraph 1(a).

[Rule 14](#) Use of languages under Article 49(1) and (2) of the Agreement
[Article 84 of the EPC](#) Claims
[Article 123 of the EPC](#) Amendments

Rule 32 **Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply**

[Rule 44](#) Contents of the Statement for revocation

1. Within two months of service of an Application to amend the patent, the defendant shall lodge a Defence to the Application to amend the patent setting out whether he opposes the Application to amend the patent and, if so, why:
 - (a) the proposed amendments are not allowable; and
 - (b) the patent cannot be maintained as requested.
2. Where appropriate in view of the proposed amendments, the Defence to the Application to amend the patent may contain submissions in accordance with Rule 44(d) to (h) and alternative non-infringement submissions.
3. The proprietor may lodge a Reply to the Defence to the Application to amend the patent within one month of service of the Defence and the defendant may within one month of the service of the Reply lodge a Rejoinder to the Reply. The Rejoinder shall be limited to the matters raised in the Reply.

Rule 33 **Application by a party for allocating a technically qualified judge**

[Rule 35](#) Closure of the written procedure

1. Any party to the proceedings may lodge an Application for allocating a technically qualified judge to the panel which shall contain an indication of the relevant field of technology.
2. The Application shall be lodged as early as possible in the written procedure. An Application lodged after the closure of the written procedure [Rule 35] shall only be granted if justified in view of changed circumstances, such as new submissions presented by the other party, and allowed by the Court.
3. If the requirements of paragraphs 1 and 2 have been complied with, the President of the Court of First Instance shall allocate a technically qualified judge to the panel, after consulting the judge-rapporteur.

Rule 34 Request by the judge-rapporteur for allocating a technically qualified judge

1. The judge-rapporteur may at any time during the written procedure, after consulting the presiding judge and the parties, request the President of the Court of First Instance to allocate a technically qualified judge to the panel.
2. Where a technically qualified judge is allocated to the panel, the judge-rapporteur may at any time consult the technically qualified judge.

Rule 35 Closure of the written procedure

Following the exchange of written pleadings in accordance with Rule 12.1 and, where applicable, in accordance with Rule 12.2 to .4, the judge-rapporteur shall:

- (a) inform the parties of the date on which he intends to close the written procedure, without prejudice to Rule 36; and
- (b) where an interim conference is necessary [Rules 28 and 101.1], confirm the date and the time set for the interim conference [Rule 28] or inform the parties that an interim conference will not be held.

[Rule 12](#) Exchange of written pleadings (infringement action)

[Rule 28](#) Further schedule

[Rule 36](#) Further exchanges of written pleadings

[Rule 101](#) Role of the judge-rapporteur (Case management)

Rule 36 Further exchanges of written pleadings

Without prejudice to the powers of the judge-rapporteur pursuant to Rule 110.1, on a reasoned request by a party lodged before the date on which the judge-rapporteur intends to close the written procedure [Rule 35(a)], the judge-rapporteur may allow the exchange of further written pleadings, within a period to be specified. Where the exchange of further written pleadings is allowed, the written procedure shall be deemed closed upon expiry of the specified period.

[Rule 35](#) Closure of the written procedure

[Rule 110](#) Closure of the interim procedure

Rule 37 Application of Article 33(3) of the Agreement

1. As soon as practicable after the closure of the written procedure the panel shall decide by way of order how to proceed with respect to the application of Article 33(3) of the Agreement. The parties

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance

[Rule 28](#) Further schedule



shall be given an opportunity to be heard [Rule 264]. The panel shall set out in its order brief reasons for its decision.

2. The Panel may by order take an earlier decision if appropriate having considered the parties' pleadings and having given the parties an opportunity to be heard [Rule 264].
3. Where the panel decides to proceed in accordance with Article 33(3)(a) of the Agreement, the judge-rapporteur shall request the President of the Court of First Instance to allocate to the panel a technically qualified judge if not already allocated pursuant to Rules 33 and 34.
4. Where the panel decides to proceed in accordance with Article 33(3)(b) of the Agreement, the panel may stay the infringement proceedings pending a final decision in the revocation proceedings and shall stay the infringement proceedings where there is a high likelihood that the relevant claims of the patent will be held to be invalid on any ground by the final decision in the revocation proceedings.
5. Where the panel decides to proceed in accordance with Article 33(3)(b) of the Agreement and not to stay the proceedings, the judge-rapporteur of the regional or local division shall communicate to the central division the dates set for the interim conference and for the oral hearing according to Rule 28.

[Rule 33](#) Application by a party for allocating a technically qualified judge

[Rule 34](#) Request by the judge-rapporteur for allocating a technically qualified judge

[Rule 264](#) An opportunity to be heard

Rule 38 **Written procedure when the central division deals with a Counterclaim for revocation under Article 33(3)(b) of the Agreement**

When a Counterclaim for revocation is referred to the central division, it shall be dealt with as follows:

- (a) Rule 17.2 and .3 shall apply *mutatis mutandis*;
- (b) Rule 18 shall apply *mutatis mutandis*: the presiding judge of the panel to which the Counterclaim for revocation has been assigned shall designate one legally qualified judge of the panel as judge-rapporteur;
- (c) The judge-rapporteur shall give any further directions necessary for the future conduct of the written procedure before the central division;
- (d) Rule 28 shall apply *mutatis mutandis*: the judge-rapporteur shall after consulting the parties set a date and a time for the interim conference (where necessary [Rules 28 and 101]) and set a date, and one alternative date, for the oral hearing.

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance

[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)

[Rule 18](#) Designation of the judge-rapporteur

[Rule 28](#) Further schedule

[Rule 101](#) Role of the judge-rapporteur (Case management)

Rule 39 **Language of the proceedings before the central division**

1. Where the language of the proceedings before the local division or the regional division which referred the Counterclaim for revocation to the central division is not the language in which the patent was granted, the judge-rapporteur may order that the parties lodge, within a period of one month, a translation in the language in which the patent was granted of any written pleadings and such other documents lodged during the written procedure as the judge-rapporteur may direct.
2. Where appropriate, the judge-rapporteur may specify in his order that only excerpts of parties' written pleadings and other documents shall be translated.
3. Where the language of the proceedings before the local division or the regional division is the language in which the patent was granted the pleadings served in accordance with Rules 24, 25, 29, 29a, 30 and 32 shall stand.

Rule 40 **Accelerated proceedings before the central division**

The judge-rapporteur shall accelerate proceedings before the central division where

- (a) an Application for provisional measures has been lodged [Rule 206]; or
- (b) the regional or local division has referred the Counterclaim for revocation to the central division and where the infringement action has not been stayed.

In the latter case, the judge-rapporteur of the panel of the central division shall endeavour to set a date for the oral hearing on the revocation action prior to the date of the oral hearing of the infringement action.

Rule 41 **Written procedure when the central division deals with the action under Article 33(3)(c) of the Agreement**

When an action is referred to the central division under Article 33(3)(c) of the Agreement, it shall be dealt with as follows:

[Rule 24](#) Contents of the Statement of defence

[Rule 25](#) Counterclaim for revocation

[Rule 29](#) Lodging of Defence to the Counterclaim for revocation, Reply to the Statement of defence and Rejoinder to the Reply

[Rule 29A](#) Contents of the Defence to the Counterclaim

[Rule 30](#) Application to amend the patent

[Rule 32](#) Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

[Rule 206](#) Application for provisional measures

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance

[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)



- (a) Rule 17.2 and .3 shall apply *mutatis mutandis*. The parties may request that the action be heard by a single judge;
- (b) Rule 18 shall apply *mutatis mutandis*: the presiding judge of the panel to which the action has been assigned shall designate one judge of the panel as judge-rapporteur;
- (c) dates already set under Rule 28 shall be confirmed wherever possible;
- (d) Rule 39 shall apply *mutatis mutandis*: the judge-rapporteur may order that the parties lodge a translation in the language in which the patent was granted of any written pleadings lodged during the written procedure; where appropriate, the judge-rapporteur may specify in his order that only excerpts of parties' written pleadings and other documents shall be translated. Otherwise the pleadings lodged during the written procedure shall stand;
- (e) The judge-rapporteur shall give any further directions necessary for the future conduct of the written procedure before the central division.

[Rule 18](#) Designation of the judge-rapporteur
[Rule 28](#) Further schedule
[Rule 39](#) Language of the proceedings before the central division

Section 2 Revocation Action

Rule 42 Action to be directed against the patent proprietor

- 1. Any action for the revocation of a patent shall be directed against the proprietor of the patent.
- 2. If the action for revocation is directed against the proprietor in accordance with Rule 8.6 ("the registered proprietor") but the registered proprietor is not a proprietor within the meaning of Rule 8.5(a) or (b) ("the Rule 8.5 proprietor") each such registered proprietor shall as soon as practicable after service of the Statement for revocation apply to the Court pursuant to Rule 305.1(c) for the substitution of the registered proprietor by the Rule 8.5 proprietor.

Relation with Agreement: Articles 47(5) and 65(1)

[Article 47 of the Agreement](#) Parties
[Article 65 of the Agreement](#) Decision on the validity of a patent
[Rule 8](#) Party and party's representative
[Rule 305](#) Change in parties

Rule 43 Exchange of written pleadings (revocation action)

- 1. The written procedure shall consist of:
 - (a) the lodging of a Statement for revocation (by the claimant) [Rule 44]; and
 - (b) the lodging of a Defence to revocation (by the defendant) [Rule 49]; and optionally
 - (c) the lodging of a Reply to the Defence to revocation (by the claimant) [Rule 51];
 - (d) the lodging of a Rejoinder to the Reply (by the defendant) [Rule 52].

[Rule 12](#) Exchange of written pleadings (infringement action)
[Rule 44](#) Contents of the Statement for revocation
[Rule 49](#) Lodging of the Defence to revocation
[Rule 51](#) Reply to Defence to revocation



2. The Defence to revocation may include:
 - (a) an Application to amend the patent; and
 - (b) a Counterclaim for infringement by the proprietor of the patent.
3. If an Application to amend the patent is lodged, the claimant shall lodge a Defence to the Application to amend the patent. The defendant may lodge a Reply to the Defence to the Application. The claimant may lodge a Rejoinder to the Reply. The Rejoinder shall be limited to a response to the matters raised in the Reply.
4. If a Counterclaim for infringement is lodged, the claimant shall lodge a Defence to the Counterclaim for infringement [Rule 56], the defendant may lodge a Reply to the Defence to the Counterclaim [Rule 56.3] and the claimant may lodge a Rejoinder to the Reply [Rule 56.4].
5. Rule 12.5 shall apply.

[Rule 52](#) Rejoinder to the Reply
[Rule 56](#) Lodging of the Defence to the Counterclaim for infringement

Rule 44 **Contents of the Statement for revocation**

The claimant shall, subject to point (b), lodge a Statement for revocation at the Registry in accordance with Article 7(2) of the Agreement and Annex II thereto. The Statement for revocation shall contain:

- (a) particulars in accordance with Rule 13.1(a) to (d) and (g), (h);
- (b) where the parties have agreed to bring the action before a local division or a regional division in accordance with Article 33(7) of the Agreement, an indication of the division which shall hear the action, accompanied by evidence of the defendant's agreement;
- (c) where applicable, an indication that the action shall be heard by a single judge [Article 8(7) of the Agreement], accompanied by evidence of the defendant's agreement;
- (d) an indication of the extent to which revocation of the patent is requested;
- (e) one or more grounds for revocation, which shall as far as possible be supported by arguments of law, and where appropriate an explanation of the claimant's proposed claim construction;
- (f) an indication of the facts relied on;
- (g) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;
- (h) an indication of any order the claimant will seek during the interim procedure [Rule 104(e)];

Annex II of the Agreement
[Article 7 of the Agreement](#) The Court of First Instance
[Article 8 of the Agreement](#) Composition of the panels of the Court of First Instance
[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Rule 13](#) Contents of the Statement of claim
[Rule 104](#) Aim of the interim conference
[Rule 262](#) Public access to the register
[Rule 262A](#) Protection of Confidential Information

and

- (i) a list of the documents, including any witness statements, referred to in the Statement for revocation together with any request that all or part of any such document need not be translated and/or any request pursuant to Rule 262.2 and Rule 262A. Rule 13.2 and .3 shall apply *mutatis mutandis*.

Rule 45 Language of the Statement for revocation

1. Subject to paragraph 2, the Statement for revocation shall be drawn up in the language in which the patent was granted.
2. Where the parties have agreed to bring the action before a local or a regional division in accordance with Article 33(7) of the Agreement, the Statement for revocation shall be drawn up in one of the languages referred to in Rule 14.1(a) and (b).

Relation with Agreement: Article 49

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Article 49 of the Agreement](#) Language of proceedings at the Court of First Instance
[Rule 14](#) Use of languages under Article 49(1) and (2) of the Agreement

Rule 46 Fee for the revocation action

The claimant shall pay the fee for the revocation action in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.

Relation with Agreement: Articles 70 and 71

[Article 70 of the Agreement](#) Court fees
[Article 71 of the Agreement](#) Legal aid
[Rule 15](#) Fee for the infringement action

Rule 47 Examination as to formal requirements, recording in the register, assignment (Court of First Instance, revocation action) and designation of the judge-rapporteur

1. Rules 16 to 18 shall apply *mutatis mutandis*.
2. The Registrar shall notify the European Patent Office that the patent in question is subject to an action for revocation.

Relation with Agreement: Articles 10 and 33

[Article 10 of the Agreement](#) The Registry
[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)
[Rule 18](#) Designation of the judge-rapporteur



Rule 48 Preliminary objection

Rule 19.1 to .3 and .5 to .7 as well as Rules 20 and 21 shall apply *mutatis mutandis*.

[Rule 19](#) Preliminary objection

[Rule 20](#) Decision or order on a Preliminary objection

[Rule 21](#) Appeal against decision or order on a Preliminary objection

Rule 49 Lodging of the Defence to revocation

1. The defendant shall lodge a Defence to revocation within two months of service of the Statement for revocation.
2. The Defence to revocation may include:
 - (a) an Application to amend the patent;
 - (b) a Counterclaim for infringement.

Rule 50 Contents of the Defence to revocation and Counterclaim for infringement

1. The Defence to revocation shall contain the matters referred to in Rule 24(a) to (c). Rule 29A(a) to (d) and (f) shall apply *mutatis mutandis*.
2. Any Application to amend the patent shall contain the matters referred to in Rule 30.1(a), (c) and an explanation as to why the amendments satisfy the requirements of Articles 84 and 123(2), (3) EPC and why the proposed amended claims are valid. Rule 30.2 shall apply.
3. Any Counterclaim for infringement shall contain the matters referred to in Rule 13.1(k) to (q). Rule 13.2 and .3 shall apply.

[Rule 13](#) Contents of the Statement of claim

[Rule 24](#) Contents of the Statement of defence

[Rule 29A](#) Lodging of Defence to the Counterclaim for revocation, Reply to the Statement of defence and Rejoinder to the Reply

[Rule 30](#) Application to amend the patent

[Article 84 of the EPC](#) Claims

[Article 123 of the EPC](#) Amendments

Rule 51 Reply to Defence to revocation

Within two months of service of the Defence to revocation the claimant may lodge a Reply to the Defence to revocation together with any Defence to an Application to amend the patent pursuant to Rule 43.3 and 55 as well as any Defence to the Counterclaim for infringement pursuant to Rule 56.1, if applicable.

[Rule 43](#) Exchange of written pleadings (revocation action)

[Rule 55](#) Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

[Rule 56](#) Lodging of the Defence to the Counterclaim for infringement



Rule 52 Rejoinder to the Reply

Within one month of the service of the Reply the defendant may lodge a Rejoinder to the Reply to the Defence to revocation together with any Reply to the Defence to an Application to amend the patent pursuant to Rule 43.3 and 55 as well as any Reply to the Defence to the Counterclaim for infringement pursuant to Rule 56.3, if applicable. The Rejoinder shall be limited to a response to the matters raised in the Reply.

Rule 53 Fee for the Counterclaim for infringement

The defendant shall pay the fixed fee and, where applicable, the value based fee for the Counterclaim for infringement in accordance with Part 6. Rule 15 and Rule 16.3 to 5 shall apply *mutatis mutandis*.

Rule 54 Examination as to formal requirements and further schedule

Rules 27 and 28 shall apply *mutatis mutandis*.

Rule 55 Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

Rule 32 shall apply *mutatis mutandis*.

Rule 56 Lodging of the Defence to the Counterclaim for infringement

- 1. Within two months of service of a Counterclaim for infringement, the claimant shall lodge a Defence to the Counterclaim for infringement.

[Rule 43](#) Exchange of written pleadings (revocation action)
[Rule 55](#) Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply
[Rule 56](#) Lodging of the Defence to the Counterclaim for infringement

[Rule 15](#) Fee for the infringement action
[Rule 16](#) Examination as to formal requirements of the Statement of claim

[Rule 27](#) Examination as to formal requirements of the Statement of defence and Counterclaim for revocation
[Rule 28](#) Further schedule

[Rule 32](#) Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

[Rule 24](#) Contents of the Statement of defence
[Rule 43](#) Exchange of written pleadings (revocation action)
[Rule 50](#) Contents of the Defence to revocation and Counterclaim for infringement

2. The Defence to the Counterclaim for infringement shall contain the matters referred to in Rule 24.1(e) to (h) and (j) and a statement whether the claimant disputes the defendant's assessment of the value of the Counterclaim pursuant to Rule 50.3 and the reasons for such dispute.
3. The defendant may lodge a Reply to the Defence to the Counterclaim for infringement within one month.
4. Within one month of the service of the Reply to the Defence to the Counterclaim for infringement the claimant may lodge a Rejoinder to the Reply together with any Rejoinder to the Reply to the Defence to the Application to amend the patent pursuant to Rule 43.3 and 55. The Rejoinder shall be limited to matters raised in the Reply.

[Rule 55](#) Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

Rule 57 Request for allocating a technically qualified judge

Rules 33 and 34 shall apply *mutatis mutandis*.

[Rule 33](#) Application by a party for allocating a technically qualified judge

[Rule 34](#) Request by the judge-rapporteur for allocating a technically qualified judge

Rule 58 Closure of the written procedure subject to the possible exchange of further pleadings

Rules 35 and 36 shall apply *mutatis mutandis*.

[Rule 35](#) Closure of the written procedure

[Rule 36](#) Further exchanges of written pleadings

Rule 60 Determination of the value-based fee for the Counterclaim for infringement

1. The value of the Counterclaim for infringement shall be determined by the judge-rapporteur under Rule 370.6, taking into account the value as assessed by the parties, by way of an order during the interim procedure.
2. Where the value of the Counterclaim for infringement exceeds EUR 500.000, the defendant shall pay a value-based fee in accordance with Part 6. Rule 16.3 to .5 shall apply *mutatis mutandis*.

[Rule 16](#) Examination as to formal requirements of the Statement of claim

[Rule 370](#) Court fees



Section 3 Action for Declaration of Non-Infringement

Rule 61 Declaration of non-infringement

1. A declaration that the performance of a specific act does not, or a proposed act would not, constitute an infringement of a patent may be made by the Court in proceedings between the person doing or proposing to do the act and the patent proprietor or licensee entitled to commence infringement proceedings pursuant to Article 47 of the Agreement, if the patent proprietor or such licensee has asserted that the act is an infringement, or, if no such assertion has been made by the patent proprietor or licensee, if:
 - (a) that person has applied in writing to the proprietor or licensee for a written acknowledgment to the effect of the declaration claimed, and has provided him with full particulars in writing of the act in question; and
 - (b) the proprietor or licensee has refused or failed to give any such acknowledgment within one month.
2. The action for a declaration shall be directed against the proprietor of the patent or the licensee who has asserted an infringement or refused or failed to give an acknowledgement pursuant to paragraph 1(b).
3. If the action for a declaration of non-infringement is directed against the proprietor of the patent in accordance with Rule 8.6 (“the registered proprietor”) but the registered proprietor is not a proprietor within the meaning of Rule 8.5(a) or (b) (“the Rule 8.5 proprietor”) each such registered proprietor shall as soon as possible after service of the Statement for a declaration of non-infringement apply to the Court pursuant to Rule 305.1(c) for the substitution of the registered proprietor by the Rule 8.5 proprietor.

[Article 47 of the Agreement](#) Parties
[Rule 8](#) Party and party’s representative
[Rule 305](#) Change in parties

Rule 62 Exchange of written pleadings (action for declaration of non-infringement)

1. The written procedure shall consist of:
 - (a) the lodging of a Statement for a declaration of non-infringement (by the claimant) [Rule 63];
 - (b) the lodging of a Defence to the Statement for a declaration of non-infringement (by the defendant) [Rules 67 and 68]; and, optionally

[Rule 12](#) Exchange of written pleadings (infringement action)
[Rule 63](#) Contents of the Statement for a declaration of non-infringement
[Rule 67](#) Lodging of the Defence to the Statement for a declaration of non-infringement



- (c) the lodging of a Reply to the Defence to the Statement for a declaration of non-infringement [Rule 69];
 - (d) the lodging of a Rejoinder to the Reply [Rule 69].
2. Rule 12.5 shall apply.

Rule 63 **Contents of the Statement for a declaration of non-infringement**

The claimant shall, subject to point (b), lodge at the Registry in accordance with Article 33(4), Article 7(2) of the Agreement and Annex II thereto, a Statement for a declaration of non-infringement which shall contain:

- (a) particulars in accordance with Rule 13.1(a) to (h) and particulars confirming that the requirements of Rule 61 are met;
- (b) where the parties have agreed to bring the action before a local division or a regional division in accordance with Article 33(7) of the Agreement, an indication of the division which shall hear the action, accompanied by evidence of the defendant's agreement;
- (c) where applicable, an indication that the action shall be heard by a single judge [Article 8(7) of the Agreement], accompanied by evidence of the defendant's agreement;
- (d) the declaration sought by the claimant;
- (e) the reasons why the performance of a specific act does not, or a proposed act would not, constitute an infringement of the patent concerned, including arguments of law and where appropriate an explanation of the claimant's proposed claim construction;
- (f) an indication of the facts relied on;
- (g) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;
- (h) an indication of any order the claimant will seek at the interim conference [Rule 104(e)];
- (i) where the claimant assesses that the value of the declaratory action exceeds EUR 500.000, an indication of the value; and
- (j) a list of the documents, including any witness statements, referred to in the Statement for a declaration together with any request that all or part of any such document need not be

[Rule 68](#) Contents of the Defence to the Statement for a declaration of non-infringement

[Rule 69](#) Reply to Defence to the Statement for a declaration of non-infringement and Rejoinder to the Reply

Annex II of the Agreement

[Article 7 of the Agreement](#) The Court of First Instance

[Article 8 of the Agreement](#) Composition of the panels of the Court of First Instance

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance

[Rule 13](#) Contents of the Statement of claim

[Rule 61](#) Declaration of non-infringement

[Rule 104](#) Aim of the interim conference

[Rule 262](#) Public access to the register

[Rule 262A](#) Protection of Confidential Information



translated and/or any request pursuant to Rule 262.2 or Rule 262A. Rule 13.2 and .3 shall apply *mutatis mutandis*.

Rule 64	Language of the Statement for a declaration of non-infringement Rule 45 shall apply <i>mutatis mutandis</i> .	Rule 45 Language of the Statement for revocation
Rule 65	Examination as to formal requirements, recording in the register, assignment and designation of the judge-rapporteur Rules 16 to 18 shall apply <i>mutatis mutandis</i> .	Rule 16 Examination as to formal requirements of the Statement of claim Rule 17 Recording in the register and assignment (Court of First Instance, infringement action) Rule 18 Designation of the judge-rapporteur
Rule 66	Preliminary objection Rule 19.1 to .3 and .5 to .7 as well as Rules 20 and 21 shall apply <i>mutatis mutandis</i> .	Rule 19 Preliminary objection Rule 20 Decision or order on a Preliminary objection Rule 21 Appeal against decision or order on a Preliminary objection
Rule 67	Lodging of the Defence to the Statement for a declaration of non-infringement The defendant shall lodge a Defence to the Statement for a declaration of non-infringement within two months of service of the Statement for a declaration of non-infringement.	
Rule 68	Contents of the Defence to the Statement for a declaration of non-infringement The Defence to the Statement for a declaration of non-infringement shall contain the matters referred to in Rule 24(a) to (j). Rule 13.2 and .3 shall apply <i>mutatis mutandis</i> .	Rule 13 Contents of the Statement of claim Rule 24 Contents of the Statement of defence



Rule 69 Reply to Defence to the Statement for a declaration of non-infringement and Rejoinder to the Reply

- 1. The claimant may lodge a Reply to the Defence to the Statement for a declaration of non-infringement within one month.
- 2. The defendant may lodge a Rejoinder to the Reply within one month of service of the Reply. The Rejoinder shall be limited to the matters raised in the Reply.

Rule 70 Fee for the action for a declaration of non-infringement

The claimant shall pay the fixed fee and, where applicable, the value based fee for the action for a declaration of non-infringement in accordance with Part 6. Rule 15.2 and Rule 16.3 to .5 shall apply *mutatis mutandis*.

[Rule 15](#) Fee for the infringement action
[Rule 16](#) Examination as to formal requirements of the Statement of claim

Rule 71 Examination as to formal requirements and further schedule

Rules 27 and 28 shall apply *mutatis mutandis*.

[Rule 27](#) Examination as to formal requirements of the Statement of defence and Counterclaim for revocation
[Rule 28](#) Further schedule

Rule 72 Request for allocating a technically qualified judge

Rules 33 and 34 shall apply *mutatis mutandis*.

[Rule 33](#) Application by a party for allocating a technically qualified judge
[Rule 34](#) Request by the judge-rapporteur for allocating a technically qualified judge

Rule 73 Closure of the written procedure subject to the possible exchange of further pleadings

Rules 35 and 36 shall apply *mutatis mutandis*.

[Rule 35](#) Closure of the written procedure
[Rule 36](#) Further exchanges of written pleadings

Rule 74 Value-based fee for the action for a declaration of non-infringement

- 1. The value of the action for a declaration of non-infringement shall be determined by the judge-rapporteur under Rule 370.6, taking into account the value as assessed by the parties, by way of an order during the interim procedure.

[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 370](#) Court fees

2. Where the value exceeds EUR500.000 the claimant shall pay a value-based fee for the action for a declaration of non-infringement in accordance with Part 6. Rule 16.3 to .5 shall apply *mutatis mutandis*.

Section 4 Actions within Article 33(5) and (6) of the Agreement

Rule 75 Revocation action and subsequent infringement action in a local or regional division (Article 33(5) of the Agreement)

1. Where a claimant has lodged a Statement for revocation [Rule 44] before the central division and the defendant or a licensee entitled to commence proceedings pursuant to Article 47 of the Agreement subsequently initiates an infringement action in a local or regional division against the claimant in respect of the same patent the following procedures shall apply.
2. The Registry at the local or regional division shall proceed in accordance with Rules 16 and 17. The Registry shall as soon as practicable notify the President of the Court of First Instance of the revocation action in the central division, the infringement action in the local or regional division and any Counterclaim for revocation in the infringement action. The presiding judges of the panels seized shall be informed likewise about actions in the other divisions.
3. Where a Counterclaim for revocation is brought in the infringement action and there is identity of parties as between the two actions, unless otherwise agreed by the parties, the panel appointed in the central division to hear the revocation action shall stay all further proceedings in the revocation action pending a decision of the panel hearing the action for infringement pursuant to Article 33(3) of the Agreement and Rule 37.
4. The panel hearing the action for infringement shall when exercising its discretion under Article 33(3) of the Agreement take into consideration how far the revocation action in the central division was advanced prior to the stay referred to in paragraph 3.
5. Where the panel hearing the action for infringement decides to proceed in accordance with Article 33(3)(a) of the Agreement, Rules 33 and 34 shall apply *mutatis mutandis* to the action for infringement.
6. Where the panel hearing the action for infringement decides to proceed in accordance with Article 33(3)(b) or (c) of the Agreement, Rules 37.4 and 39 to 41 shall apply *mutatis mutandis*.

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Article 47 of the Agreement](#) Parties
[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)
[Rule 33](#) Application by a party for allocating a technically qualified judge
[Rule 34](#) Request by the judge-rapporteur for allocating a technically qualified judge
[Rule 37](#) Application of Article 33(3) of the Agreement
[Rule 39](#) Language of the proceedings before the central division
[Rule 40](#) Accelerated proceedings before the central division
[Rule 41](#) Written procedure when the central division deals with the action under Article 33(3)(c) of the Agreement
[Rule 44](#) Contents of the Statement for revocation

Rule 76 Actions for declaration of non-infringement within Article 33(6) of the Agreement

1. Where a claimant has lodged an action for declaration of non-infringement (Rule 61) before the central division against the patent proprietor or a licensee entitled to commence infringement proceedings pursuant to Article 47 of the Agreement and the defendant proprietor or licensee subsequently initiates an action for infringement in a local or regional division against the claimant in respect of the same patent and with respect to the same alleged infringement the following procedure shall apply.
2. The Registry shall proceed in accordance with Rule 16 and 17. The Registry shall as soon as practicable notify the President of the Court of First Instance of the co-pending actions and the dates attributed to them. The presiding judges of the panels seized shall be informed likewise about the action in the other division.
3. If the date attributed by the Registry to the action for infringement pursuant to Rule 17.1(a) is within three months of the date attributed to the action for declaration of non-infringement the panel of the central division shall stay all further proceedings in the action for a declaration. If the date attributed to the action for infringement is outside the said three month period there shall be no stay but the presiding judges of the central division and the local or regional division concerned shall consult to agree on the future progress of proceedings including the possibility of a stay of one action pursuant to Rule 295(f).

[Article 47 of the Agreement](#) Parties
[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)
[Rule 61](#) Declaration of non-infringement
[Rule 295](#) Stay of proceedings

Rule 77 Action for declaration of non-infringement and action for revocation

An action for declaration of non-infringement may be lodged together with an action for revocation of the patent in question. Fees shall be paid in accordance with both Rules 46 and Rules 70 and 74.

[Rule 46](#) Fee for the revocation action
[Rule 70](#) Fee for the action for a declaration of non-infringement
[Rule 74](#) Value-based fee for the action for a declaration of non-infringement

Section 5 Action for Compensation for Licences on the Basis of Article 8 of Regulation (EU) No 1257/2012**Rule 80 Compensation for a licence of right**

1. The Application for appropriate compensation [Article 32(1)(h) of the Agreement] shall contain:
(a) particulars in accordance with Rule 13.1(a) to (d);

[Article 32 of the Agreement](#) Competence of the Court
[Rule 13](#) Contents of the Statement of claim

- (b) information on the filing of the statement as referred to in Article 8(1) of Regulation (EU) No 1257/2012;
- (c) the licence agreement referred to in Article 8(2) of Regulation (EU) No 1257/2012.
- 2. Rules 132, 133, 134, 135 and 137 to 140 apply *mutatis mutandis* to the procedure for appropriate compensation.

Relation with Agreement: Article 32(1)(h)

[Rule 132](#) Fee for the Application for the determination of damages
[Rule 133](#) Determination of the value-based fee for the determination of damages
[Rule 134](#) Examination as to formal requirements of the Application for the determination of damages
[Rule 135](#) Recording in the register (Application for the determination of damages) and service
[Rule 137](#) Reply of the unsuccessful party
[Rule 138](#) Contents of the Defence to the Application for the determination of damages
[Rule 139](#) Reply to the Defence to the Application for the determination of damages and Rejoinder to the Reply
[Rule 140](#) Further procedure (Application for the determination of damages)
[Article 8 of Regulation \(EU\) No 1257/2012](#)
 Licences of right

Section 6 Action against Decisions of the European Patent Office in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012

Rule 85 Stages of the proceedings (*ex parte* proceedings)

- 1. Subject to paragraph 2, where an action is brought against a decision of the European Patent Office in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012 (hereinafter "decision of the Office"), proceedings before the Court of First Instance shall consist of:
 - (a) a written procedure, which shall include a possibility for interlocutory review by the European Patent Office;
 - (b) an interim procedure, which may include an interim conference; and

[Rule 88](#) Application to annul or alter a decision of the Office
[Rule 89](#) Examination as to formal requirements (*ex parte* proceedings)
[Rule 91](#) Interlocutory revision by the European Patent Office
[Rule 92](#) Assignment to panel or to single judge, designation of judge-rapporteur
[Rule 93](#) Examination of the Application to annul or alter a decision of the Office



- (c) an oral procedure which, at the request of the claimant or at the instance of the Court, may include an oral hearing.
- 2. This Rule and Rules 88 (save as expressly provided for in Rule 97.2), 89 and 91 to 96 shall not apply to an expedited action against a decision of the Office pursuant to Rule 97.

[Rule 94](#) Invitation to the President of the European Patent Office to comment
[Rule 95](#) *Lex specialis* for the interim procedure (*ex parte* procedure)
[Rule 96](#) *Lex specialis* for the oral procedure (*ex parte* procedure)
[Rule 97](#) Application to annul a decision of the Office to reject a request for unitary effect
[Article 9 of Regulation \(EU\) No 1257/2012](#)
Administrative tasks in the framework of the European Patent Organisation

Rule 86 **Suspensive effect**

An action against a decision of the Office shall have suspensive effect.

Rule 87 **Grounds for annulling or altering a decision of the Office**

An action against a decision of the Office may be brought on grounds of:

- (a) infringement of Regulation (EU) No 1257/2012 or of Regulation (EU) No 1260/2012 or of any rule of law relating to their application;
- (b) infringement of any of the implementing rules of the European Patent Office for carrying out the tasks referred to in Article 9(1) of Regulation (EU) No 1257/2012;
- (c) infringement of an essential procedural requirement;
- (d) misuse of power.

[Regulation \(EU\) No 1257/2012](#)
[Regulation \(EU\) No 1260/2012](#)
[Article 9 of Regulation \(EU\) No 1257/2012](#)
Administrative tasks in the framework of the European Patent Organisation

Rule 88 **Application to annul or alter a decision of the Office**

- 1. The claimant shall lodge an Application at the Registry, in accordance with Article 7(2) of the Agreement and Annex II thereto, to annul or alter a decision of the Office in the language in which the patent was granted, within two months of service of the decision of the Office.
- 2. The Application to annul or alter a decision of the Office shall contain:

Annex II of the Agreement
[Article 7 of the Agreement](#) The Court of First Instance
[Article 32 of the Agreement](#) Competence of the Court



- (a) the names of the claimant and, where applicable, of the claimant's representative;
 - (b) where the claimant is not the proprietor of or applicant for the European patent with unitary effect, an explanation and evidence that he is adversely affected by the decision of the Office and entitled to start proceedings [Article 47(7) of the Agreement];
 - (c) postal and electronic addresses for service on the claimant and the names and addresses of the persons authorised to accept service;
 - (d) a reference to the contested decision of the Office;
 - (e) where applicable, information about any prior or pending proceedings relating to the patent concerned before the Court, the European Patent Office or any other court or authority;
 - (f) an indication whether the action shall be heard by a single judge;
 - (g) the order or the remedy sought by the claimant;
 - (h) one or more grounds for annulling or altering the contested decision, in accordance with Rule 87;
 - (i) the facts, evidence and arguments relied on; and
 - (j) a list of the documents, including any witness statements, referred to in the Application together with any request that all or part of any such document need not be translated and/or any request pursuant to Rule 262.2 or Rule 262A. Rule 13.2 and 3 shall apply *mutatis mutandis*.
3. The claimant shall pay the fee for the action against a decision of the Office, in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.
4. Rule 8 shall not apply.

Relation with Agreement: Articles 32(1)(i), 33(9), 47(7), 48(7) and 49(6)

Rule 89

Examination as to formal requirements (*ex parte* proceedings)

1. The Registry shall, as soon as practicable after an Application to annul or alter a decision of the Office has been lodged, examine whether the requirements of Articles 47(7) and 49(6) of the Agreement and Rule 88.1, .2(a) to (d) and .3 have been complied with.
2. If the Registry considers that any of the requirements referred to in paragraph 1 has not been complied with, it shall invite the claimant to:
 - (a) correct the deficiencies noted, within 14 days from the date of service of such notification; and

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance
[Article 48 of the Agreement](#) Representation
[Article 49 of the Agreement](#) Language of proceedings at the Court of First Instance
[Article 47 of the Agreement](#) Parties
[Rule 3](#) Power of staff of the Registry and a sub-registry to perform functions of the Registry
[Rule 8](#) Party and party's representative
[Rule 13](#) Contents of the Statement of claim
[Rule 15](#) Fee for the infringement action
[Rule 87](#) Grounds for annulling or altering a decision of the Office
[Rule 262](#) Public access to the register
[Rule 262A](#) Protection of Confidential Information

[Article 47 of the Agreement](#) Parties
[Article 49 of the Agreement](#) Language of proceedings at the Court of First Instance
[Rule 88](#) Application to annul or alter a decision of the Office
[Rule 355](#) Decision by default (Court of First Instance)

- (b) where applicable, pay the fee for the action against a decision of the Office, within said 14 days.
- 3. The Registry shall at the same time inform the claimant that if the claimant fails to correct the deficiencies or pay the fee within the time stated, a decision by default may be given in accordance with Rule 355.
- 4. If the claimant fails to correct the deficiencies noted or to pay the fee for the action against a decision of the Office, the Registry shall inform the President of the Court of First Instance who may reject the action as inadmissible by a decision by default. He may give the claimant an opportunity to be heard beforehand.

Rule 90 **Recording in the register (*ex parte* proceedings)**

If the requirements referred to in Rule 89.1 have been complied with, the Registry shall as soon as practicable:

- (a) record the date of receipt of the Application to annul or alter a decision of the Office and attribute an action number to the file;
- (b) record the file in the register;
- (c) inform the claimant of the action number of the file and the date of receipt; and
- (d) forward the Application to the European Patent Office, with an indication that the Application is admissible.

Rule 91 **Interlocutory revision by the European Patent Office**

- 1. If the European Patent Office considers that the Application to annul or alter a decision of the Office is well founded, it shall within two months of the date of receipt of the Application:
 - (a) rectify the contested decision in accordance with the order or remedy sought by the claimant [Rule 88.2(g)]; and
 - (b) inform the Court that the decision has been rectified.

[Rule 89](#) Examination as to formal requirements (*ex parte* proceedings)

[Rule 88](#) Application to annul or alter a decision of the Office



2. Where the Court is informed by the European Patent Office that the contested decision has been rectified, it shall inform the claimant that the action is closed. It may order full or partial reimbursement of the fee for the action against a decision of the Office, in accordance with Part 6.

Rule 92 **Assignment to panel or to single judge, designation of judge-rapporteur**

Where the action is not closed in accordance with Rule 91.2, the action shall, as soon as practicable after the expiry of the period referred to in Rule 91.1, be assigned to a panel of the central division or to a single judge if requested by the claimant [Rule 88.2(f)] in accordance with Rule 345.3. Rule 18 shall apply.

[Rule 18](#) Designation of the judge-rapporteur
[Rule 88](#) Application to annul or alter a decision of the Office
[Rule 91](#) Interlocutory revision by the European Patent Office
[Rule 345](#) Composition of panels and assignment of actions

Rule 93 **Examination of the Application to annul or alter a decision of the Office**

1. In the examination of the Application to annul or alter a decision of the Office, the judge-rapporteur may invite the claimant to lodge further written pleadings, within a time period to be specified.
2. Where appropriate, the judge-rapporteur may, after consulting the claimant, set a date and time for an interim conference.
3. Rule 35 shall apply *mutatis mutandis*.

[Rule 35](#) Closure of the written procedure

Rule 94 **Invitation to the President of the European Patent Office to comment**

The judge-rapporteur may, on his own initiative or on request by the President of the European Patent Office, invite the President of the European Patent Office to comment in writing on any question arising in the course of proceedings under this Section including any appeal by the claimant pursuant to Rule 220. The claimant shall be entitled to submit his observations on the President's comments.

[Rule 220](#) Appealable decisions

Rule 95 *Lex specialis for the interim procedure (ex parte procedure)*

During the interim procedure, the judge-rapporteur shall invite the claimant to indicate whether he wishes that an oral hearing be convened. The judge-rapporteur may convene an oral hearing at his own instance.

Rule 96 *Lex specialis for the oral procedure (ex parte procedure)*

1. Rules 110.3, 111, 115 and 118.6 shall apply to the oral hearing and to the decision of the Court.
2. If an oral hearing is not convened, the panel shall decide in accordance with Rule 117.

[Rule 110](#) Closure of the interim procedure

[Rule 111](#) Role of the presiding judge (Case management)

[Rule 115](#) The oral hearing

[Rule 117](#) Absence of both parties from the oral hearing

[Rule 118](#) Decision on the merits

Rule 97 *Application to annul a decision of the Office to reject a request for unitary effect*

1. The proprietor of a patent whose request for unitary effect has been rejected by the Office shall lodge an Application at the Registry in accordance with Article 7(2) of the Agreement and Annex II thereto, to reverse the decision of the Office, in the language in which the patent was granted, within three weeks of service of the decision of the European Patent Office.
2. The Application shall contain particulars in accordance with Rule 88.2(a), (c), (d) and (g) to (j) and the proprietor shall pay the fee for the action against the decision of the Office in accordance with Part 6. Rule 15.2 and Rule 89 shall apply *mutatis mutandis*.
3. If the requirements referred to in paragraph 2 have been complied with, Rule 90 shall apply *mutatis mutandis*.
4. The Registry shall as soon as practicable forward the Application to the standing judge who may invite the President of the European Patent Office to comment on the Application, but shall in any event decide the Application within three weeks of the date of receipt of the Application.
5. A Statement of appeal by the proprietor of the patent or the President of the European Patent Office against the decisions of the standing judge pursuant to paragraph 4 may be lodged within three weeks of service of the said decision. The Statement of appeal shall contain the particulars previously lodged pursuant to paragraph 2 and also the reasons for setting aside the contested

Annex II of the Agreement

[Article 7\(2\) of the Agreement](#) The Court of First Instance

[Rule 15](#) Fee for the infringement action

[Rule 88](#) Application to annul or alter a decision of the Office

[Rule 89](#) Examination as to formal requirements (*ex parte* proceedings)

[Rule 90](#) Recording in the register (*ex parte* proceedings)

[Rule 230](#) Recording in the register (Court of Appeal)

[Rule 345](#) Composition of panels and assignment of actions



decision. The appellant shall pay the fee for the appeal in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*. If the requirements of this paragraph 5 have been complied with, the Registry shall record the appeal in accordance with Rule 230.1 and shall as soon as practicable assign the appeal to the standing judge of the Court of Appeal [Rule 345.5 and 345.8] who may invite the other party to comment on the appeal but shall in any event decide the appeal within three weeks of receipt by the Registry of the Statement of appeal.

6. The Registry shall as soon as practicable notify the Office of the decision on the Application or on the appeal as the case may be.

Rule 98

Costs

The parties shall bear their own costs in any action pursuant to Rule 85 or 97.

[Rule 85](#) Stages of the proceedings (*ex parte* proceedings)

[Rule 97](#) Application to annul a decision of the Office to reject a request for unitary effect

Chapter 2 – Interim Procedure

Rule 101 Role of the judge-rapporteur (Case management)

1. During the interim procedure, the judge-rapporteur shall make all necessary preparations for the oral hearing. He may in particular, where appropriate, and subject to the mandate of the panel, hold an interim conference with the parties which may be held on more than one occasion and may exercise the powers provided for in Rule 334.
2. The judge-rapporteur shall have the obligation to ensure a fair, orderly and efficient interim procedure.
3. Without prejudice to the principle of proportionality, the judge-rapporteur shall complete the interim procedure within three months of the closure of the written procedure.

Relation with Agreement: Articles 43 and 52(2)

[Article 43 of the Agreement](#) Case management

[Article 52 of the Agreement](#) Written, interim and oral procedures

[Rule 334](#) Case management powers

Rule 102 Referral to the panel

1. The judge-rapporteur may refer any matter to the panel for decision and the panel may of its own motion review any decision or order of the judge-rapporteur or the conduct of the interim procedure.
2. Any party may request that a decision or order of the judge-rapporteur be referred to the panel for a review pursuant to Rule 333. Pending review, the decision or order of the judge-rapporteur shall be effective.

[Rule 333](#) Review of case management orders

Rule 103 Preparation for the interim conference

1. Whether or not the judge-rapporteur decides to hold an interim conference, he may order the parties, within time periods to be specified, in particular to:
 - (a) provide further clarification on specific points;
 - (b) answer specific questions;
 - (c) produce evidence;

[Rule 355](#) Decision by default (Court of First Instance)

(d) lodge specific documents including each party's summary of the orders to be sought at the interim conference.

The judge-rapporteur shall at the same time inform the party concerned that if the party fails to comply with the order within the time period specified, a decision by default may be given in accordance with Rule 355.

2. If a party fails to comply with an order of the judge-rapporteur within the time period specified, the judge-rapporteur may give a decision by default pursuant to Rule 355.

Rule 104

Aim of the interim conference

The interim conference shall enable the judge-rapporteur to:

- (a) identify main issues and determine which relevant facts are in dispute;
- (b) where appropriate, clarify the position of the parties as regards those issues and facts;
- (c) establish a schedule for the further progress of the proceedings;
- (d) explore with the parties the possibilities to settle the dispute or to make use of the facilities of the Centre;
- (e) where appropriate, issue orders regarding production of further pleadings, documents, experts (including court experts), experiments, inspections, further written evidence, the matters to be the subject of oral evidence and the scope of questions to be put to the witnesses;
- (f) where appropriate, but only in the presence of the parties, hold preparatory discussions with witnesses and experts with a view to properly preparing for the oral hearing;
- (g) make any other decision or order as he deems necessary for the preparation of the oral hearing including, after consultation with the presiding judge, an order for a separate hearing of witnesses and experts before the panel;
- (h) set a date for any separate hearing pursuant to point (g) of this Rule, confirm the date for the oral hearing and order, where appropriate, after consultation with the presiding judge and the parties that the oral hearing or a separate hearing of witnesses and experts be wholly or partly by video conference in accordance with Rule 112.3;

[Article 52 of the Agreement](#) Written, interim and oral procedures

[Rule 112](#) Conduct of the oral hearing

[Rule 152](#) Compensation for representation costs

[Rule 370](#) Court fees

- (i) decide the value of the action in accordance with Rule 370.6.;
- (j) decide the value of the proceeding for the purpose of applying the scale of ceilings for recoverable costs (Rule 152.3);
- (k) order the parties to submit, in advance of the decision at the oral hearing, a preliminary estimate of the legal costs that they will seek to recover.

Relation with Agreement: Article 52(2)

Rule 105 **Holding the interim conference**

1. The interim conference should, where practicable, be held by telephone conference or by video conference.
2. On request by a party, subject to paragraph 1 and the approval of the judge-rapporteur, the interim conference may be held in Court. If the interim conference is held in Court, it shall be open to the public unless the Court decides to make it, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interests of justice or public order.
3. The judge-rapporteur may hold the interim conference in any language agreed by the parties' representatives.
4. Rule 103 shall apply *mutatis mutandis*.
5. Following the interim conference, the judge-rapporteur shall issue an order setting out the decisions taken.

[Rule 103](#) Preparation for the interim conference

Rule 106 **Recording of the interim conference**

1. The interim conference shall be audio recorded. The recording shall be made available at the premises of the Court to the parties or their representatives after the hearing.

Relation with Agreement: Articles 44 and 45

[Article 44 of the Agreement](#) Electronic procedures
[Article 45 of the Agreement](#) Public proceedings

Rule 108 **Summons to the oral hearing**

The judge-rapporteur shall summon the parties to the oral hearing which shall take place before the panel on the date(s) set under Rules 28 and/or 41(c) and 104(h). If no date(s) have been set the

[Rule 28](#) Further schedule
[Rule 41](#) Written procedure when the central division deals with the action under Article 33(3)(c) of the Agreement

judge-rapporteur shall set a date for the oral hearing. At least two months' notice shall be given, unless the parties agree to a shorter time period.

Rule 109

Simultaneous interpretation during oral hearings

2. At the latest one month before the oral hearing including any separate hearing of witnesses and experts a party may lodge a Request for simultaneous interpretation which shall contain:
 - (a) an indication of the language to or from which the party requests simultaneous interpretation during the oral hearing;
 - (b) the reasons for the Request;
 - (c) the field of technology concerned;
 - (d) any other information of relevance for the Request.
3. The judge-rapporteur shall decide whether and to what extent simultaneous interpretation is appropriate and shall instruct the Registry to make all necessary arrangements for simultaneous interpretation. In the event that the judge-rapporteur refuses to order simultaneous interpretation the parties may request arrangements to be made, so far as practically possible, for simultaneous interpretation at their cost.
4. The judge-rapporteur may decide of his own motion to order simultaneous interpretation and shall instruct the Registry and inform the parties accordingly.
5. A party wishing to engage an interpreter at its own expense shall inform the Registry at the latest two weeks before the oral hearing.
6. Costs for simultaneous interpretation are costs of the proceedings to be decided upon under Rule 150 except where a party engages an interpreter at its own expense under paragraph 4; these costs are borne solely by that party.

Relation with Agreement: Article 51(2)

Rule 110

Closure of the interim procedure

1. As soon as the judge-rapporteur considers that the state of preparation of the file is adequate, he shall inform the presiding judge and the parties that the interim procedure is closed in view of the oral hearing.

[Rule 104](#) Aim of the interim conference

[Article 51 of the Agreement](#) Other language arrangements

[Rule 150](#) Separate proceedings for cost decision

[Rule 103](#) Preparation for the interim conference

[Rule 104](#) Aim of the interim conference



2. Where final dates have been set pursuant to Rules 103 and 104 the interim procedure shall be deemed closed on the last date set.
3. The oral procedure shall start immediately after the interim procedure is closed. The presiding judge shall, in consultation with the judge-rapporteur, take over the management of the action.

Chapter 3 – Oral Procedure

Rule 111 **Role of the presiding judge (Case management)**

The presiding judge shall:

- (a) have all authority to ensure a fair, orderly and efficient oral procedure; and
- (b) ensure that the action is ready for decision on the merits at the end of the oral hearing.

Rule 112 **Conduct of the oral hearing**

1. The oral hearing shall be held before the panel and shall be under the control of the presiding judge.
2. The oral hearing shall consist of:
 - (a) the hearing of the parties' oral submissions;
 - (b) the hearing of witnesses and experts under the control of the presiding judge.
3. The Court may decide to:
 - (a) allow a party, representative or accompanying person, to attend the oral hearing by videoconference,
 - (b) hear a party, witnesses or expert through electronic means, such as video conference or
 - (c) hold the oral hearing by videoconference if all parties agree or the Court considers it appropriate to do so due to exceptional circumstances.

In all cases, the oral hearing shall be transmitted simultaneously in picture and sound to the court room.

[Article 52 of the Agreement](#) Written, interim and oral procedures

[Article 53 of the Agreement](#) Means of evidence

4. The presiding judge and the judges of the panel may provide a preliminary introduction to the action and put questions to the parties, to the parties' representatives and to any witness or expert.
5. Under the control of the presiding judge, the parties may put questions to the witness or expert. The presiding judge may prohibit any question which is not designed to adduce admissible evidence.
6. With the consent of the Court a witness may give evidence in a language other than the language of proceedings.

Relation with Agreement: Articles 52(3) and 53(1)

Rule 113 **Duration of the oral hearing**

1. Without prejudice to the application of the principle of proportionality, the presiding judge shall endeavour to complete the oral hearing within one day. The presiding judge may set time limits for parties' oral submissions in advance of the oral hearing.
2. Oral testimony at the oral hearing or at any separate hearing shall be limited to issues identified by the judge-rapporteur or the presiding judge as having to be decided on the basis of oral evidence.
3. The presiding judge may, after consulting the panel, limit a party's oral submissions if the panel is sufficiently informed.

Rule 114 **Adjournment where the Court considers that further evidence is required**

In exceptional cases, the Court may, after hearing the parties' oral submissions, decide to adjourn proceedings and call for further evidence.

Rule 115 **The oral hearing**

The oral hearing and any separate hearing of witnesses shall be open to the public unless the Court decides to make a hearing, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interests of justice or public order. The hearing shall be audio

[Article 45 of the Agreement](#) Public proceedings
[Rule 103](#) Preparation for the interim conference



recorded. The recording shall be made available to the parties or their representatives at the premises of the Court after the hearing. Rule 103 shall apply *mutatis mutandis*.

Relation with Agreement: Article 45

Rule 116 **Absence of a party from the oral hearing**

1. A party which does not wish to be represented at the oral hearing shall inform the Registry in good time. Where both parties have informed the Registry that they do not wish to be represented at the oral hearing, the Court may decide the action in accordance with Rule 117.
2. The Court shall not be obliged to delay any step in the procedure, including the decision on the merits, by reason only of the absence of a party from the oral hearing.
3. A party that is not represented at the oral hearing shall be treated as relying only on its written case.
4. If due to an exceptional occurrence a party is prevented from being represented at the oral hearing, the Court shall on a reasoned request of that party, adjourn the oral hearing.
5. The provisions of this Rule are without prejudice to the power of the Court to give a decision by default pursuant to Rule 355.

Rule 117 **Absence of both parties from the oral hearing**

Where both parties have informed the Registry that they do not wish to be represented at the oral hearing the Court shall take a decision on the merits on the basis of the pleadings and evidence submitted by the parties and the court expert, if applicable, and otherwise in accordance with Rules 118 and 350 to 354.

Rule 118 **Decision on the merits**

1. In addition to the orders and measures and without prejudice to the discretion of the Court referred to in Articles 63, 64, 67 and 80 of the Agreement the Court may, if requested, order the payment of damages or compensation according to Articles 68 and 32(1)(f) of the Agreement.

[Rule 117](#) Absence of both parties from the oral hearing

[Rule 355](#) Decision by default (Court of First Instance)

[Rule 118](#) Decision on the merits

[Rule 350](#) Decisions

[Rule 351](#) Orders

[Rule 352](#) Binding effect of decisions or orders subject to security

[Rule 353](#) Rectification of decisions and orders

[Rule 354](#) Enforcement

[Article 32 of the Agreement](#) Competence of the Court

[Article 56\(1\) of the Agreement](#) The general powers of the Court



- The amount of the damages or the compensation may be stated in the order or determined in separate proceedings [Rules 125-144].
2. If, while there are infringement proceedings before a local or regional division, a revocation action is pending between the same parties before the central division or an opposition is pending before the European Patent Office, the local or regional division:
 - (a) may render its decision on the merits of the infringement claim, including its orders, under the condition subsequent pursuant to Article 56(1) of the Agreement that the patent is not held to be wholly or partially invalid by the final decision in the revocation proceedings or a final decision of the European Patent Office or under any other term or condition; or
 - (b) may stay the infringement proceedings pending a decision in the revocation procedure or a decision of the European Patent Office and shall stay the infringement proceedings if it is of the view that there is a high likelihood that the relevant claims of the patent will be held to be invalid on any ground by the final decision in the revocation proceedings or of the European Patent Office where such decision of the European Patent Office may be expected to be given rapidly.
 3. Where, in the decision on the merits of a revocation action, the patent is found to be entirely or partially invalid, the Court shall revoke the patent entirely or partially according to Article 65 of the Agreement.
 4. Where the Court has made orders in accordance with paragraph 2(a) any party may apply to the local or regional division within two months following a final decision of the central division or the Court of Appeal or the European Patent Office as the case may be on the validity of the patent for orders consequential on such final decision [Rule 354.2].
 5. The Court shall decide in principle on the obligation to bear legal costs in accordance with Article 69 of the Agreement. The Court may order in advance of the decision that the parties submit a preliminary estimate of the legal costs that they will seek to recover.
 6. The Court shall give the decision on the merits as soon as possible after the closure of the oral hearing. The Court shall endeavour to issue the decision on the merits in writing within six weeks of the oral hearing. The Court shall give reasons for its decision.
 7. The Court may give its decision immediately after the closure of the oral hearing and provide its reasons on a subsequent date.

[Article 63 of the Agreement](#) Permanent injunctions

[Article 64 of the Agreement](#) Corrective measures in infringement proceedings

[Article 65 of the Agreement](#) Decision on the validity of a patent

[Article 67 of the Agreement](#) Power to order the communication of information

[Article 68 of the Agreement](#) Award of damages

[Article 69 of the Agreement](#) Legal costs

[Article 77 of the Agreement](#) Formal requirements

[Article 80 of the Agreement](#) Publication of decisions

[Rule 7](#) Language of written pleadings and written evidence

[Rule 125](#) Separate proceedings for determining the amount of damages ordered

[Rule 126](#) Start of proceedings for the determination of damages

[Rule 131](#) Contents of the Application for the determination of damages

[Rule 132](#) Fee for the Application for the determination of damages

[Rule 133](#) Determination of the value-based fee for the determination of damages

[Rule 134](#) Examination as to formal requirements of the Application for the determination of damages



8. The orders of the Court referred to in paragraphs 1 and 2(a) shall be enforceable on the defendant only after the claimant has notified the Court which part of the orders he intends to enforce, a certified translation of the orders in accordance with Rule 7.2, where applicable, into the official language of a Contracting Member State in which the enforcement shall take place has been provided by the claimant and the said notice and, where applicable, a certified translation of the orders have been served on the defendant by the Registry. The Court may subject any order or measure to a security to be given by the successful party to the unsuccessful party as determined by the Court in accordance with Rule 352.

Relation with Agreement: Article 77

[Rule 135](#) Recording in the register (Application for the determination of damages) and service

[Rule 136](#) Stay of the Application for a determination of damages

[Rule 137](#) Reply of the unsuccessful party

[Rule 138](#) Contents of the Defence to the Application for the determination of damages

[Rule 139](#) Reply to the Defence to the Application for the determination of damages and Rejoinder to the Reply

[Rule 140](#) Further procedure (Application for the determination of damages)

[Rule 141](#) Contents of the Request to lay open books

[Rule 142](#) Defence of the unsuccessful party, Reply to the Defence and Rejoinder to the Reply

[Rule 143](#) Further procedure

[Rule 144](#) Decision on the Request to lay open books

[Rule 352](#) Binding effect of decisions or orders subject to security

[Rule 354](#) Enforcement

Rule 119 **Interim award of damages**

The Court may order an interim award of damages to the successful party in the decision on the merits, subject to any conditions that the Court may order. Such award shall at least cover the expected costs of the procedure for the award of damages and compensation on the part of the successful party.

Chapter 4 – Procedure for the Determination of Damages and Compensation

Rule 125 Separate proceedings for determining the amount of damages ordered

The determination of the amount of damages ordered for the successful party may be the subject of separate proceedings. The determination shall include the determination of the amount of compensation, if any, to be awarded as a result of the provisional protection conferred by a published European patent application [Article 32(1)(f) of the Agreement, Article 67 EPC] and compensation to be paid pursuant to Rules 118.1, 198.2, 213.2 and 354.2. The expression “damages” used in Chapter 4 shall be deemed to include such compensation and interest at the rate and for the period that the Court shall decide.

[Article 32 of the Agreement](#) Competence of the Court
[Rule 118](#) Decision on the merits
[Rule 198](#) Revocation of an order to preserve evidence
[Rule 213](#) Revocation of provisional measures
[Rule 354](#) Enforcement
[Article 67 of the EPC](#) Rights conferred by a European patent application after publication

Rule 126 Start of proceedings for the determination of damages

Where the successful party wishes to have the amount of damages determined, it shall no later than one year from service of the final decision on the merits (including any final decision on appeal) on both infringement and validity (or in the case of an award under Rules 118.1, 198.2, 213.2 or 354.2 from the date of the order for such award) lodge an Application for the determination of damages, which may include a request for an order to lay open books.

Relation with Agreement: Article 68

[Article 68 of the Agreement](#) Award of damages
[Rule 118](#) Decision on the merits
[Rule 198](#) Revocation of an order to preserve evidence
[Rule 213](#) Revocation of provisional measures
[Rule 354](#) Enforcement

Section 1 Application for the Determination of Damages

Rule 131 Contents of the Application for the determination of damages

1. The Application for the determination of damages shall contain:
 - (a) particulars in accordance with Rule 13.1(a) to (d);
 - (b) the date of the decision on the merits and the action number of the file;
 - (c) if required a request for an order to lay open books (Rules 141 to 144) in which case the applicant shall provide the matters set out in Rule 141(b) to (e).

[Rule 13](#) Contents of the Statement of claim
[Rule 141](#) Contents of the Request to lay open books
[Rule 142](#) Defence of the unsuccessful party, Reply to the Defence and Rejoinder to the Reply
[Rule 143](#) Further procedure



2. After any procedure for the laying open of books is complete, or, if that has not been requested in [Rule 144](#) Decision on the Request to lay open books the Application referred to in paragraph 1 the applicant shall indicate:
- (a) the redress (damages, licence fees, profits) and the interest thereon requested by him;
 - (b) an indication of the facts relied on, in particular calculations concerning lost profits or profits made by the unsuccessful party;
 - (c) the evidence relied on;
 - (d) a statement as to whether the decision on the merits is the subject of an appeal;
 - (e) his assessment of the amount of damages due to him.

Rule 132 Fee for the Application for the determination of damages

[Rule 15](#) Fee for the infringement action

The applicant shall pay the fixed fee and, where applicable, the value based fee for the determination of damages in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.

Rule 133 Determination of the value-based fee for the determination of damages

Where the value of the action exceeds EUR500.000 the applicant shall pay a value based fee for the determination of damages in accordance with Part 6.

Rule 134 Examination as to formal requirements of the Application for the determination of damages

1. The Registry shall, as soon as practicable after the lodging of the Application for the determination of damages, examine whether the requirements of Rules 126, 131.1 and .2(d) and (e) and 132 have been complied with.
2. If the Application for the determination of damages does not comply with the requirements referred to in paragraph 1, the Registry shall invite the applicant to correct the deficiencies noted within a time period to be specified.
3. Rule 16.4 to .5 shall apply *mutatis mutandis*.

[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 126](#) Start of proceedings for the determination of damages
[Rule 131](#) Contents of the Application for the determination of damages
[Rule 132](#) Fee for the Application for the determination of damages

Rule 135 Recording in the register (Application for the determination of damages) and service

1. If the requirements referred to in Rule 131.1 and .2(d) and (e) have been complied with, the Registry shall as soon as practicable:

[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)



- (a) record the date of receipt of the Application for the determination of damages;
 - (b) record the Application in the register;
 - (c) inform the applicant of the date of receipt;
 - (d) inform the panel which has given the decision on the merits on infringement that an Application for the determination of damages has been lodged;
 - (e) serve the Application upon the unsuccessful party.
2. The panel which has given the decision on the merits on infringement shall be the panel for the determination of damages unless for any reason this is not possible or practical in which case the presiding judge of the division concerned shall appoint a fresh panel. Rules 17.2 and 18 shall apply *mutatis mutandis*.

[Rule 18](#) Designation of the judge-rapporteur
[Rule 131](#) Contents of the Application for the determination of damages

Rule 136 **Stay of the Application for a determination of damages**

The Court may stay the Application for a determination of damages pending any appeal on the merits pursuant to Rule 295(h) on a reasoned request by the unsuccessful party. The applicant shall be given the opportunity to be heard. If the Court continues the proceedings on the Application, it may order the applicant to render a security according to Rule 352.

[Rule 295](#) Stay of proceedings
[Rule 352](#) Binding effect of decisions or orders subject to security

Rule 137 **Reply of the unsuccessful party**

1. If the unsuccessful party accepts the claim made in the Application for the determination of damages, it shall within two months inform the Registry. The judge-rapporteur shall make the order for the determination of damages in accordance with the Application for the determination of damages.
2. If the unsuccessful party contests the claim made in the Application for the determination of damages, it shall within two months of service of the Application for the determination of damages or, where there was a procedure for the laying open of books, within two months of service of the indication pursuant to Rule 131.2, lodge a Defence to the Application for the determination of damages.

[Rule 131](#) Contents of the Application for the determination of damages

Rule 138 Contents of the Defence to the Application for the determination of damages

The Defence to the Application for the determination of damages shall contain:

- (a) the names of the unsuccessful party and of that party's representative;
- (b) postal and electronic addresses for service on the unsuccessful party and the names and addresses of the persons authorised to accept service;
- (c) the action number attributed to the file;
- (d) the reasons why the Application for the award of damages is contested;
- (e) an indication of the facts relied on; and
- (f) the evidence relied on.

Rule 139 Reply to the Defence to the Application for the determination of damages and Rejoinder to the Reply

The applicant may within one month lodge a Reply to the Defence to the Application for the determination of damages, limited to the matters raised in the Defence. The unsuccessful party may lodge a Rejoinder to the Reply within one month of service of the Reply, limited to the matters raised in the Reply.

Rule 140 Further procedure (Application for the determination of damages)

[Article 69 of the Agreement](#) Legal costs

1. The judge-rapporteur may order further exchange of written pleadings, within time periods to be specified.
2. The provisions of Part 1, Chapters 2 (Interim procedure) and 3 (Oral procedure) shall apply *mutatis mutandis* but with such reduced timetable as the judge-rapporteur may order. He shall decide on the obligation to bear the legal costs of the proceedings for the determination of damages in accordance with Article 69 of the Agreement.

Section 2 Request to Lay Open Books

Rule 141 Contents of the Request to lay open books

If the applicant has made a request pursuant to Rule 131.1(c), Rules 134 to 136 shall apply *mutatis mutandis*. The Request shall contain:

- (a) particulars in accordance with Rule 131.1(a) and (b);
- (b) details of any information ordered by the Court and given by the other party pursuant to Rule 191;
- (c) a description of the information held by the unsuccessful party to which the applicant requests access, in particular documents relating to turnover and profits generated by the infringing products or regarding the extent of use of the infringing process as well as accounts and bank documents, and any related document concerning the infringement;
- (d) the reasons why the applicant needs access to this information;
- (e) the facts relied on; and
- (f) the evidence offered in support.

[Rule 131](#) Contents of the Application for the determination of damages

[Rule 134](#) Examination as to formal requirements of the Application for the determination of damages

[Rule 135](#) Recording in the register (Application for the determination of damages) and service

[Rule 136](#) Stay of the Application for a determination of damages

[Rule 191](#) Application for order to communicate information

Rule 142 Defence of the unsuccessful party, Reply to the Defence and Rejoinder to the Reply

1. If the unsuccessful party accepts the Request to lay open books, it shall within two months of service of the Request to lay open books inform the Registry. The judge-rapporteur shall make the order to lay open books in accordance with the Request to lay open books.
2. If the unsuccessful party contests the Request to lay open books, it shall within two months of service of the Request to lay open books lodge a Defence to the Request to lay open books.
3. The applicant may within 14 days of service of the Defence to the Request lodge a Reply to the Defence to the Request to lay open books, limited to the matters raised in the Defence. The unsuccessful party may within 14 days of service of the Reply lodge a Rejoinder, limited to the matters raised in the Reply.

Rule 143 Further procedure

Rule 140 shall apply *mutatis mutandis*.

[Rule 140](#) Further procedure (Application for the determination of damages)

Rule 144 Decision on the Request to lay open books

1. The Court may:
 - (a) order the unsuccessful party to open its books to the applicant within a time period to be specified and subject to such terms as the Court may deem appropriate having regard inter alia to Article 58 of the Agreement and Rule 190.1 and .4;
 - (b) inform the applicant and specify a time period within which the procedure for the award of damages shall be continued.
2. Where the Request to lay open books is not allowable, the Court shall inform the applicant and specify a time period within which the procedure for the award of damages shall be continued [Rule 131.2].

[Article 58 of the Agreement](#) Protection of confidential information

[Rule 131](#) Contents of the Application for the determination of damages

[Rule 190](#) Order to produce evidence

Chapter 5 – Procedure for the Cost Decision

Rule 150 Separate proceedings for cost decision

1. A cost decision may be the subject of separate proceedings following a decision on the merits and, if applicable, a decision for the determination of damages. The cost decision shall cover costs incurred in the proceedings by the Court such as costs for simultaneous interpretation and costs incurred pursuant to Rules 173, 180.1, 185.7, 188 and 201 and, subject to the Rules 152 to 156, the costs of the successful party including Court fees paid by that party [Rule 151(d)]. Costs for interpretation and translation which is necessary for the judges of the Court in order to conduct the case in the language of proceedings are borne solely by the Court.
2. The Court may order an interim award of costs to the successful party in the decision on the merits [Rule 119] or in a decision for the determination of damages, subject to any conditions that the Court may decide.

[Rule 119](#) Interim award of damages

[Rule 151](#) Start of proceedings for cost decision

[Rule 152](#) Compensation for representation costs

[Rule 153](#) Compensation for costs of experts

[Rule 154](#) Compensation for costs of witnesses

[Rule 155](#) Compensation for costs of interpreters and translators

[Rule 156](#) Further procedure

[Rule 173](#) Judicial Cooperation in the taking of evidence

[Rule 180](#) Reimbursement of expenses of witnesses

[Rule 185](#) Appointment of a court expert



Rule 151 **Start of proceedings for cost decision**

Where the successful party (hereinafter "the applicant") wishes to seek a cost decision, it shall within one month of service of the decision lodge an Application for a cost decision which shall contain:

- (a) particulars in accordance with Rule 13.1(a) to (d);
- (b) the date of the decision and the action number of the file;
- (c) a statement as to whether the decision on the merits is the subject of an appeal, if known at the date of the Application;
- (d) an indication of the costs for which compensation is requested, which may include recovery of court fees and costs of representation, of witnesses, of experts, and other expenses; and
- (e) the preliminary estimate of the legal costs that the party submitted pursuant to Rule 118.5.

Rule 152 **Compensation for representation costs**

- 1. The applicant shall be entitled to recover reasonable and proportionate costs for representation.
- 2. The Administrative Committee shall adopt a scale of ceilings for recoverable costs by reference to the value of the proceedings. The scale may be adjusted from time to time.
- 3. Where a claim, counterclaim, application, request or appeal subject to only a fixed fee is made, the party concerned shall, in the first submission, assess its respective value for the purpose of calculating the applicable ceiling. The other party shall be heard. Rule 370.6 shall apply *mutatis mutandis*.

Rule 153 **Compensation for costs of experts**

The compensation for costs of experts of the parties [Rule 181] exceeding the expenses referred to in Rule 180.1 shall be based on the rates that are customary in the respective sector, with due regard to the required expertise, the complexity of the issue and the time spent by the expert for the services rendered.

[Rule 188](#) Hearing of a court expert
[Rule 201](#) Experiments ordered by the Court

[Rule 13](#) Contents of the Statement of claim
[Rule 118](#) Decision on the merits

[Rule 370](#) Court fees

[Rule 180](#) Reimbursement of expenses of witnesses
[Rule 181](#) Experts of the parties

Rule 154 Compensation for costs of witnesses

Where the Court has ordered the deposit of a sum sufficient to cover the expenses of a witness in accordance with Rule 180.2 or of a party's expert in accordance with Rule 181, compensation may be requested for payments made by the Registry towards the expenses incurred by a witness or an expert.

[Rule 180](#) Reimbursement of expenses of witnesses

[Rule 181](#) Experts of the parties

Rule 155 Compensation for costs of interpreters and translators

1. The compensation for costs of interpreters shall be the rates that are customary in the country of the division in question, depending on the interpreter's training and professional experience.
2. The compensation for costs of translators shall be the rates that are customary in the country of the division in question, depending on the translator's training and professional experience.

Rule 156 Further procedure

1. The judge-rapporteur may request the applicant to provide written evidence of all costs requested in Rule 151(d). The judge-rapporteur shall allow the unsuccessful party an opportunity to comment in writing on the costs requested including any item of costs that should be apportioned or borne by each party in accordance with Article 69(1) to (3) of the Agreement.
2. The judge-rapporteur shall decide in writing on the costs to be awarded or apportioned in accordance with Article 69(1) to (3) of the Agreement.
3. The costs shall be paid within the period ordered by the judge-rapporteur.

[Article 69 of the Agreement](#) Legal costs
[Rule 151](#) Start of proceedings for cost decision

Rule 157 Appeal against the cost decision

4. The decision of the judge-rapporteur as to costs only may be appealed to the Court of Appeal in accordance with Rule 221.

[Article 69 of the Agreement](#) Legal costs
[Rule 221](#) Application for leave to appeal against cost decisions

Relation with the Agreement: Article 69

Chapter 6 – Security for Costs

Rule 158 Security for costs of a party

1. At any time during proceedings, following a reasoned request by one party, the Court may order the other party to provide, within a specified time period, adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party, which the other party may be liable to bear. Where the Court decides to order such security, it shall decide whether it is appropriate to order the security by deposit or bank guarantee.
2. The Court shall give the parties an opportunity to be heard before making an order for security. Rule 354 shall apply to the enforcement of the order.
3. The order for security shall indicate that an appeal may be lodged in accordance with Article 73 of the Agreement and Rule 220.2.
4. The Court shall, when specifying the time period in paragraph 1, inform the party concerned that if the party fails to provide adequate security within the time stated, a decision by default may be given, in accordance with Rule 355.
5. If a party fails to provide adequate security within the time stated, the Court may give a decision by default pursuant to Rule 355.

Relation with the Agreement: Article 69(4)

[Article 69 of the Agreement](#) Legal costs
[Article 73 of the Agreement](#) Appeal
[Rule 220](#) Appealable decisions
[Rule 354](#) Enforcement
[Rule 355](#) Decision by default (Court of First Instance)

Rule 159 Security for costs of the Court

Except where deposits are rendered pursuant to Rule 180.2, the Court may order that either or both parties provide adequate security (either by deposit or bank guarantee) to cover costs incurred and/or to be incurred in the proceedings by the Court, pending a cost decision pursuant to Rule 150.1. Rule 158.2 and .3 shall apply.

[Rule 150](#) Separate proceedings for cost decision
[Rule 158](#) Security for costs of a party
[Rule 180](#) Reimbursement of expenses of witnesses



Part 2 – Evidence

Rule 170 **Means of evidence and means of obtaining evidence**

1. In proceedings before the Court, the means of evidence shall include in particular the following:
 - (a) written evidence, whether printed, hand-written or drawn, in particular documents, written witness statements, plans, drawings, photographs;
 - (b) expert reports and reports on experiments carried out for the purpose of the proceedings;
 - (c) physical objects, in particular devices, products, embodiments, exhibits, models;
 - (d) electronic files and audio/video recordings.
2. Means of obtaining evidence shall include in particular the following:
 - (a) hearing of the parties;
 - (b) requests for information;
 - (c) production of documents;
 - (d) summoning, hearing and questioning of witnesses;
 - (e) appointing, receiving opinions from, summoning and hearing and questioning of experts;
 - (f) ordering inspection of a place or a physical object;
 - (g) conducting comparative tests and experiments;
 - (h) sworn statements in writing (written witness statements).
3. Means of obtaining evidence shall further include [Article 59 and 60 of the Agreement]:
 - (a) ordering a party or a third party to produce evidence;
 - (b) ordering measures to preserve evidence.

[Article 59 of the Agreement](#) Order to produce evidence
[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises

Rule 171 **Offering of evidence**

1. A party making a statement of fact that is contested or likely to be contested by the other party shall indicate the means of evidence to prove it. In case of failure to indicate the means of evidence regarding a contested fact, the Court shall take such failure into account when deciding the issue in question.
2. A statement of fact that is not specifically contested by any party shall be held to be true as between the parties.



Rule 172 **Duty to produce evidence**

1. Evidence available to a party regarding a statement of fact that is contested or likely to be contested by the other party must be produced by the party making that statement of fact.
2. The Court may at any time during the proceedings order a party making a statement of fact to produce evidence that lies in the control of that party. If the party fails to produce the evidence, the Court shall take such failure into account when deciding on the issue in question.

Relation with Agreement: Article 53

[Article 53 of the Agreement](#) Means of evidence

Rule 173 **Judicial Cooperation in the taking of evidence**

For the judicial cooperation in the taking of evidence, the Court shall apply any method provided by:

1. The Regulation (EU) No 2020/1783, where it applies;
2. The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, where it applies, or any other applicable convention or agreement; or
3. to the extent that there is no such convention or agreement in force, national law on the procedures to be followed for the judicial cooperation in the taking of evidence.

[Regulation \(EU\) No 2020/1783](#)
[The Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters](#)

Chapter 1 Witnesses and Experts of the Parties

Rule 175 **Written witness statement**

1. A party seeking to offer witness evidence shall lodge a written witness statement or a written summary of the evidence to be given.
2. A written witness statement shall be signed by the witness and shall include a statement of the witness that he is aware of his obligation to tell the truth and of his liability under applicable national law in the event of any breach of this obligation. The statement shall set out the language in which the witness shall give oral evidence, if necessary.
3. The written witness statement or written summary of the evidence to be given shall set out:
 - (a) any current or past relationship between the witness and the party offering the evidence; and
 - (b) any actual or potential conflict of interest that may affect the impartiality of the witness.



Rule 176 **Application for the hearing of a witness in person**

Subject to the orders of the Court referred to in Rules 104(e) and 112.2(b) a party seeking to offer oral witness evidence shall make an Application for the hearing of a witness in person which shall set out:

- (a) the reasons why the witness should be heard in person;
- (b) the facts which the party expects the witness to confirm; and
- (c) the language in which the witness shall give evidence.

Rule 177 **Summoning of witnesses to the oral hearing**

1. The Court may order that a witness be heard in person:
 - (a) of its own motion;
 - (b) where a written witness statement is challenged by the other party; or
 - (c) on an Application for the hearing of a witness in person [Rule 176].
2. An order of the Court summoning a witness to the oral hearing shall in particular indicate:
 - (a) the name, address and description of the witness;
 - (b) the date and place of the oral hearing;
 - (c) an indication of the facts of the action about which the witness is to be examined;
 - (d) information about the reimbursement of expenses incurred by the witness;
 - (e) a statement that the witness will be questioned by the Court and the parties; and
 - (f) the language of the proceedings and the possibility of arranging simultaneous interpretation between that language and the language of the witness, if necessary [Rule 109].
3. In its order summoning the witness, the Court shall also inform the witness of his duties and rights as a witness under Rules 178 and 179, including the sanctions which may be imposed on a defaulting witness.

Rule 178 **Hearing of witnesses**

1. After the identity of the witness has been established and before hearing his evidence, the presiding judge shall ask the witness to make the following declaration: "I solemnly, sincerely and

[Rule 104](#) Aim of the interim conference

[Rule 112](#) Conduct of the oral hearing

[Rule 109](#) Simultaneous interpretation during oral hearings

[Rule 176](#) Application for the hearing of a witness in person

[Rule 178](#) Hearing of witnesses

[Rule 179](#) Duties of witnesses

truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth."

2. The witness shall give his evidence to the Court.
3. The hearing of a witness who has signed a written witness statement shall begin with the confirmation of the evidence given therein. The witness may elaborate on the evidence contained in his written witness statement.
4. The presiding judge and the judges of the panel may put questions to the witness.
5. Under the control of the presiding judge, the parties may put questions to the witness. The presiding judge may prohibit any question which is not designed to adduce admissible evidence.
6. With the consent of the Court a witness may give evidence in a language other than the language of proceedings.

Rule 179 **Duties of witnesses**

1. Witnesses who have been duly summoned shall obey the summons and attend the oral hearing.
2. Without prejudice to paragraph 3, if a witness who has been duly summoned fails to appear before the Court or refuses to give evidence or to make the declaration referred to in Rule 178.1, the Court may impose upon him a pecuniary sanction not exceeding EUR50.000 and may order that a further summons be served at the witness's own expense.
3. Nobody shall be obliged to sign a written witness statement or to give evidence at an oral hearing if he is a spouse, partner equal to a spouse under applicable national law, descendant, sibling or parent of a party. A witness may also refuse to answer questions if answering them would violate a professional privilege or other duty of confidentiality imposed by the national law applicable to the witness or expose him or his spouse, partner equal to a spouse under applicable national law, descendant, sibling or parent to criminal prosecution under applicable national law.
4. The Court may decide to report to the competent authorities of the Contracting Member States whose courts have criminal jurisdiction in case of the giving of false evidence on the part of a witness.

[Rule 178](#) Hearing of witnesses

Rule 180 Reimbursement of expenses of witnesses

1. A witness shall be entitled to reimbursement of:
 - (a) expenses for travelling and stay; and
 - (b) loss of income caused by his hearing in person. After the witness has carried out his duties and upon his request, the Registry shall make a payment to the witness towards the expenses incurred.
2. The Court shall make the summoning of a witness conditional upon the deposit by the party relying on the witness of a sum sufficient to cover the expenses referred to in paragraph 1.

Rule 181 Experts of the parties

1. Subject to the orders of the Court referred to in Rules 104(e) and 112.2(b) a party may provide any expert evidence that it considers necessary. Rules 175 to 180 shall apply *mutatis mutandis* to experts of the parties.
2. An order of the Court under Rule 177 summoning the expert shall additionally set out that:
 - (a) an expert has a duty to assist the Court impartially on matters relevant to his area of expertise which overrides any duty to the party retaining him; and
 - (b) an expert is to be independent and objective, and shall not act as an advocate for any party to the proceedings.

[Rule 104](#) Aim of the interim conference
[Rule 112](#) Conduct of the oral hearing
[Rule 175](#) Written witness statement
[Rule 176](#) Application for the hearing of a witness in person
[Rule 177](#) Summoning of witnesses to the oral hearing
[Rule 178](#) Hearing of witnesses
[Rule 179](#) Duties of witnesses
[Rule 180](#) Reimbursement of expenses of witnesses

Chapter 2 Court Experts

Rule 185 Appointment of a court expert

1. Where the Court must resolve a specific technical or other question in relation to the action, it may of its own motion, and after hearing the parties, appoint a court expert.
2. The parties may make suggestions regarding the identity of the court expert, his technical or other relevant background and the questions to be put to him.

[Rule 186](#) Duties of a court expert



3. The court expert shall be responsible to the Court and shall possess the expertise, independence and impartiality required for being appointed as court expert. The parties shall be entitled to be heard on the expertise, independence and impartiality of the court expert.
4. The Court shall appoint a court expert by way of order which shall in particular specify:
 - (a) the name and address of the expert appointed;
 - (b) a short description of the facts of the action;
 - (c) the evidence submitted by the parties in respect of the technical or other question;
 - (d) the questions put to the expert, with the appropriate level of detail, including where appropriate suggestions relating to any experiments to be carried out;
 - (e) when and under what conditions the expert may receive other relevant information;
 - (f) the time period for the presentation of the expert report;
 - (g) information about the reimbursement of expenses incurred by the expert;
 - (h) information about the sanctions which may be imposed on a defaulting expert; and
 - (i) his duties under Rule 186.
5. The expert shall receive a copy of the order, together with the documents and other evidence that the Court considers to be necessary for carrying out his task.
6. The expert shall be required upon receipt of the order to confirm in writing that he will present the expert report within the time period specified by the Court.
7. The Court shall agree with the expert on a fee covering his written expert report and his participation in the oral hearing. The Court may reduce this fee by an equitable amount if the expert does not deliver his report within the time period specified by the Court or if the report did not have the quality to be expected of the expert.
8. If an appointed court expert does not present his report within the time period specified or, if extended at the expert's request, the extended period, the Court may appoint another expert in his place. The Court may hold the expert liable for all or part of the costs of appointing and reimbursing another expert.
9. The Registry shall maintain an indicative list of technical experts.

Rule 186**Duties of a court expert**

1. The court expert shall present an expert report in writing within the time period specified by the Court [Rule 185.4(f)].
2. The court expert shall be under the supervision of the Court and shall inform the Court of his progress in carrying out his task.
3. The court expert shall give expert advice only on questions which have been put to him.
4. The court expert shall not communicate with one party without the other party being present or without the consent of the other party. He shall document all communications with the parties in his report.
5. The court expert shall not communicate the contents of his report to third parties.
6. The court expert shall attend the oral hearing if requested to do so by the Court and shall answer questions from the Court and the parties.
7. The court expert has an overriding duty to assist the Court impartially on matters relevant to his area of expertise. He is to be independent and objective, and shall not act as an advocate for any party to the proceedings.

Rule 187**Expert report**

Once the report of the court expert has been presented to the Court, the Court shall invite the parties to comment on it either in writing or during the oral hearing.

Rule 188**Hearing of a court expert**

Rules 178 to 180 shall apply *mutatis mutandis* to a court expert.
Relation with Agreement: Article 57

[Rule 185](#) Appointment of a court expert

[Article 57 of the Agreement](#) Court experts
[Rule 178](#) Hearing of witnesses
[Rule 179](#) Duties of witnesses
[Rule 180](#) Reimbursement of expenses of witnesses

Chapter 3 Order to Produce Evidence and to Communicate Information

Rule 190 Order to produce evidence

1. Where a party has presented reasonably available and plausible evidence in support of its claims and has, in substantiating those claims, specified evidence which lies in the control of the other party or a third party, the Court may on a reasoned request by the party specifying such evidence, order that other party or third party to produce such evidence. For the protection of confidential information the Court may order that the evidence be disclosed to certain named persons only and be subject to appropriate terms of non-disclosure.
2. During the written and interim procedures, a party may request such an order to produce evidence.
3. The judge-rapporteur may make such order in the written procedure or in the interim procedure having given the other/third party an opportunity to be heard.
4. An order to produce evidence shall in particular specify:
 - (a) under which conditions, in what form and within what time period the evidence shall be produced;
 - (b) any sanction which may be imposed if the evidence is not produced according to the order.
5. Where the Court orders a third party to produce evidence, the interests of that third party shall be duly taken into account.
6. An order to produce evidence shall be subject to the provisions of Rules 179.3, 287 and 288. The order shall indicate that an appeal may be brought in accordance with Article 73 of the Agreement and Rule 220.1.
7. If a party fails to comply with an order to produce evidence, the Court shall take such failure into account when deciding on the issue in question.

Relation with Agreement: Article 59

Rule 191 Application for order to communicate information

The Court may in response to a reasoned request by a party order the other party or any third party to communicate such information in the control of that other party or third party as is specified in

[Article 59 of the Agreement](#) Order to produce evidence

[Article 73 of the Agreement](#) Appeal

[Rule 179](#) Duties of witnesses

[Rule 220](#) Appealable decisions

[Rule 287](#) Attorney-client privilege

[Rule 288](#) Litigation privilege

[Article 67 of the Agreement](#) Power to order the communication of information

[Rule 190](#) Order to produce evidence



Article 67 of the Agreement or such other information as is reasonably necessary for the purpose of advancing that party's case. Rule 190.1 second sentence, .5 and .6 shall apply *mutatis mutandis*.

Relation with the Agreement: Article 67

Chapter 4 Order to Preserve Evidence (SAISIE) and Order for Inspection

Rule 192 Application for preserving evidence

1. An Application for preserving evidence may be lodged by a party (within the meaning of Article 47 of the Agreement) (hereinafter "the applicant") at the division where the applicant has commenced infringement proceedings on the merits. If the application is lodged before proceedings on the merits have been started it shall be lodged at the division where the applicant intends to start proceedings on the merits.
2. The Application for preserving evidence shall contain:
 - (a) particulars in accordance with Rule 13.1(a) to (i);
 - (b) a clear indication of the measures requested [Rule 196.1], including the exact location of the evidence to be preserved where it is known or suspected with good reason;
 - (c) the reasons why the proposed measures are needed to preserve relevant evidence; and
 - (d) the facts and evidence relied on in support of the Application.

Where main proceedings on the merits of the case have not yet been started before the Court, the Application shall in addition contain a concise description of the action which will be started before the Court, including an indication of the facts and evidence which may be relied on in support.

3. Where the applicant requests that measures to preserve evidence be ordered without hearing the other party (hereinafter "the defendant"), the Application for preserving evidence shall in addition set out the reasons for not hearing the defendant having regard in particular to Rule 197. The applicant shall be under a duty to disclose any material fact known to it which might influence the Court in deciding whether to make an order without hearing the defendant. The application shall not be entered on the register until notice has been given to the defendant pursuant to Rule 197.2.

[Article 47 of the Agreement](#) Parties
[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Rule 13](#) Contents of the Statement of claim
[Rule 14](#) Use of languages under Article 49(1) and (2) of the Agreement
[Rule 15](#) Fee for the infringement action
[Rule 196](#) Order on the Application for preserving evidence
[Rule 197](#) Order to preserve evidence without hearing the defendant



4. Where the Application for preserving evidence is lodged after main proceedings on the merits of the case have been started before the Court, the Application shall be drawn up in the language of the proceedings. Where the Application is lodged before main proceedings on the merits of the case have been started before the Court, Rule 14 shall apply *mutatis mutandis*.
5. The applicant shall pay the fee for the Application for preserving evidence, in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.

Relation with Agreement: Article 60

Rule 193

Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge

1. Where main proceedings on the merits of the case have not yet been started before the Court, the Application for preserving evidence shall be dealt with in accordance with Rule 16 (formalities examination by Registry), Rule 17.1(a) to (c) and .2 (date of receipt, recording in the register, action number, assignment to panel) and Rule 18 (designation only of judge-rapporteur by presiding judge).
2. Where main proceedings on the merits of the case have already been started before the Court, an Application for preserving evidence shall immediately be examined by the Registry in accordance with Rule 16 and forwarded to the panel to which the action has been assigned or to the judge to whom the action has been assigned [Rules 17.2, 194.3 and .4].
3. The judge deciding on an Application for preserving evidence shall have all necessary powers of the Court.

[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)
[Rule 18](#) Designation of the judge-rapporteur
[Rule 194](#) Examination of the Application for preserving evidence

Rule 194

Examination of the Application for preserving evidence

1. The Court shall have the discretion - including where the Application is made pursuant to Rule 192.3 - to:
 - (a) inform the defendant about the Application and invite him to lodge, within a time period to be specified, an Objection to the Application for preserving evidence which shall contain:
 - (i) the reasons why the Application shall fail;

[Rule 192](#) Application for preserving evidence
[Rule 197](#) Order to preserve evidence without hearing the defendant
[Rule 207](#) Protective letter
[Rule 345](#) Composition of panels and assignment of actions



- (ii) the facts and evidence relied on, in particular any challenge to the facts and evidence relied on by the applicant; (iii) where main proceedings on the merits of the case have not yet been started before the Court, the reasons why the action which will be started before the Court shall fail and an indication of the facts and evidence relied on in support;
- (b) summon the parties to an oral hearing;
- (c) summon the applicant to an oral hearing without the presence of the defendant;
- (d) decide the Application without having heard the defendant.
- 2. In exercising its discretion, the Court shall take into account:
 - (a) the urgency of the action;
 - (b) whether the reasons for not hearing the defendant [Rules 192.3 and 197] appear well-founded;
 - (c) the probability that evidence may be destroyed or otherwise cease to be available [Rule 197].
- 3. The presiding judge may decide that he or the judge-rapporteur or other single judge or the standing judge may decide on the Application.
- 4. In cases of extreme urgency the standing judge appointed in accordance with Rule 345.5 may decide immediately on an Application to preserve evidence and the procedure to be followed on the Application.
- 5. If the Court decides to inform the defendant about the Application the Court will first give the applicant the possibility to withdraw the Application. In the event of such withdrawal the applicant may request that the Court shall order that the Application and its contents shall remain confidential.
- 6. If the patent the subject of the Application is also the subject of a Protective letter pursuant to Rule 207 the applicant may withdraw the Application pursuant to paragraph 5.

Rule 195

Oral hearing

- 1. Where the Court decides to summon the parties to an oral hearing, the date for the oral hearing shall be set as soon as possible after the date of receipt of the Application for preserving evidence.

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Rule 111](#) Role of the presiding judge (Case management)
[Rule 112](#) Conduct of the oral hearing
[Rule 113](#) Duration of the oral hearing



2. Rules 111 to 116 shall apply *mutatis mutandis*. Where the applicant is absent from the oral hearing without a reasonable excuse, the Court shall reject the Application for preserving evidence.
3. The decision of the Court on the Application for preserving evidence shall be given in writing as soon as possible after the closure of the oral hearing. If the Court deems appropriate, the decision may be given orally to the parties at the end of the oral hearing but shall as soon as practicable thereafter be given in writing.

Relation with Agreement: Article 60

[Rule 114](#) Adjournment where the Court considers that further evidence is required
[Rule 115](#) The oral hearing
[Rule 116](#) Absence of a party from the oral hearing

Rule 196

Order on the Application for preserving evidence

1. The Court may order, in particular, the following:
 - (a) preserving evidence by detailed description, with or without the taking of samples;
 - (b) physical seizure of allegedly infringing goods;
 - (c) physical seizure of the materials and implements used in the production and/or distribution of these goods and any related document;
 - (d) the preservation and disclosure of digital media and data and the disclosure of any passwords necessary to access them.

For the protection of confidential information the Court may order that any of the above be disclosed only to certain named persons and subject to appropriate terms of non-disclosure.

2. An order to preserve evidence shall specify that, unless otherwise ordered by the Court, the outcome of the measures to preserve evidence may only be used in the proceedings on the merits of the case.
3. The order to preserve evidence shall be enforceable immediately, unless the Court decides otherwise. The Court may set conditions to the enforceability of the order, specifying in particular:
 - (a) who may represent the applicant when the measures to preserve evidence are being carried out and under what conditions;
 - (b) any security which shall be provided by the applicant.

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Article 73 of the Agreement](#) Appeal
[Rule 220](#) Appealable decisions

If necessary, the Court may set penalties applicable to the applicant if these conditions are not observed.

4. The order to preserve evidence shall specify a person who shall carry out the measures referred to in paragraph 1 and present a written Report on the measures to preserve evidence, all in accordance with the national law of the place where the measures are executed, to the Court within a time period to be specified.
5. The person referred to in paragraph 4 shall be a professional person or expert, who guarantees expertise, independence and impartiality. Where appropriate and allowed under applicable national law, the person may be a bailiff or assisted by a bailiff. In no circumstances may an employee or director of the applicant be present at the execution of the measures.
6. The Court may order the applicant to provide adequate security for the legal costs and other expenses and compensation for any injury incurred or likely to be incurred by the defendant which the applicant may be liable to bear. The Court shall do so where the order to preserve evidence was made without the defendant having been heard, unless there are special circumstances not to do so. The Court shall decide whether it is appropriate to order the security by deposit or bank guarantee.
7. The order to preserve evidence shall indicate that an appeal may be lodged in accordance with Article 73 of the Agreement and Rule 220.1.

Relation with Agreement: Article 60(1)-(4)

Rule 197 **Order to preserve evidence without hearing the defendant**

1. The Court may order measures to preserve evidence [Rule 196.1] without the defendant having been heard, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed or otherwise ceasing to be available.
2. Where measures to preserve evidence are ordered without the defendant having been heard, Rule 195 shall apply *mutatis mutandis* to the oral hearing without the presence of the defendant. In such cases, the defendant shall be given notice, immediately at the time of the execution of the measures.

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Rule 195](#) Oral hearing
[Rule 196](#) Order on the Application for preserving evidence



3. Within 30 days after the execution of the measures, the defendant may request a review of the order to preserve evidence. The Request for review shall set out:
 - (a) the reasons why the order to preserve evidence shall be revoked or modified; and
 - (b) the facts and evidence relied on.
4. The Court shall order an oral hearing to review the order without delay. Rule 195 shall apply. The Court may modify, revoke or confirm the order. In case the order is modified or revoked the Court shall oblige the persons to whom confidential information has been disclosed to keep this information confidential [Rule 196.1].

Relation with Agreement: Article 60(6)

Rule 198 **Revocation of an order to preserve evidence**

1. The Court shall ensure that an order to preserve evidence is revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if, within a time period not exceeding 31 calendar days or 20 working days, whichever is the longer, from the date specified in the Court's order with due account to the date where the Report referred to in Rule 196.4 shall be presented, the applicant does not start proceedings on the merits of the case before the Court.
2. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of the patent, the Court may order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures [Rule 354.2].

Relation with Agreement: Article 60(8) and (9)

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Rule 196](#) Order on the Application for preserving evidence
[Rule 354](#) Enforcement

Rule 199 **Order for inspection**

1. The Court may, on a reasoned request by a party, order an inspection of products, devices, methods, premises or local situations in situ. For the protection of confidential information the Court may order that any of the above be disclosed only to certain named persons and subject to appropriate terms of non-disclosure in accordance with Article 58 of the Agreement.

[Article 58 of the Agreement](#) Protection of confidential information
[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Rule 192](#) Application for preserving evidence



2. Rules 192 to 198 shall apply *mutatis mutandis*.

Relation with Agreement: Article 60

[Rule 193](#) Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge

[Rule 194](#) Examination of the Application for preserving evidence

[Rule 195](#) Oral hearing

[Rule 196](#) Order on the Application for preserving evidence

[Rule 197](#) Order to preserve evidence without hearing the defendant

[Rule 198](#) Revocation of an order to preserve evidence

Chapter 5 Other Evidence

Rule 200 Order to freeze assets

1. Where a party has presented reasonably available and plausible evidence in support of its claim that a patent has been or is about to be infringed the Court may, whether before or after proceedings have been commenced, order a party not to remove from its jurisdiction any assets or particular assets located therein nor to deal in any assets, whether located within its jurisdiction or not.
2. Rules 192 to 198 shall apply *mutatis mutandis*.

Relation with Agreement: Article 61

[Article 61 of the Agreement](#) Freezing orders

[Rule 192](#) Application for preserving evidence

[Rule 193](#) Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge

[Rule 194](#) Examination of the Application for preserving evidence

[Rule 195](#) Oral hearing

[Rule 196](#) Order on the Application for preserving evidence

[Rule 197](#) Order to preserve evidence without hearing the defendant

[Rule 198](#) Revocation of an order to preserve evidence

Rule 201

Experiments ordered by the Court

1. Without prejudice to the possibility for parties or parties' experts to carry out experiments, the Court may, on a reasoned request by a party, order an experiment to prove a statement of fact for the purpose of proceedings before the Court.
2. A party requesting to be allowed to prove a statement of fact by means of experiments shall lodge a request as soon as practicable in the written procedure or the interim procedure to carry out experiments which shall:
 - (a) identify the facts intended to be established by the experiments, describe the proposed experiments in detail and the reasons for carrying out the proposed experiments;
 - (b) propose an expert to carry out such experiments; and
 - (c) disclose any previous attempts to carry out similar experiments.
3. Other parties to the proceedings shall be invited to state whether they dispute the facts intended to be established by the experiments. They shall also be invited to comment on the request, including the identity of the expert proposed and the description of the experiments.
4. Unless otherwise ordered by the Court the party requesting experiments shall initially bear the costs of the experiment.
5. The order of the Court allowing the experiments shall specify the detailed experiments and:
 - (a) the name and address of the expert who is to carry out the experiments as Court's expert and draw up the report on the experiments;
 - (b) the time period for carrying out the experiments and, where appropriate, the exact time and place where they are to be carried out;
 - (c) if necessary, other conditions for carrying out the experiments; and
 - (d) the time period for presenting the report on the experiments and, where appropriate, directions relating to the contents of the report.
6. Where appropriate, the Court may order that the experiments be carried out in the presence of the parties and their experts.
7. Once the report on the experiments is presented to the Court, it shall invite the parties to comment on it either in writing or during the oral hearing. The expert may be summoned to the oral hearing.

Part 3 – Provisional Measures

Rule 205 Stages of the proceedings (summary proceedings)

Provisional measures are treated by way of summary proceedings which shall consist of the following stages:

- (a) a written procedure; and
- (b) an oral procedure, which may include an oral hearing of the parties or of one of the parties.

Rule 206 Application for provisional measures

1. An Application for provisional measures may be lodged by a party (hereinafter "the applicant") before or after main proceedings on the merits of the case have been started before the Court.
2. An Application for provisional measures shall contain:
 - (a) particulars in accordance with Rule 13.1(a) to (i);
 - (b) a indication of the provisional measures which are being requested [Rule 211.1];
 - (c) the reasons why provisional measures are necessary to prevent a threatened infringement, to forbid the continuation of an alleged infringement or to make such continuation subject to the lodging of guarantees;
 - (d) the facts and evidence relied on in support of the Application, including evidence to support the claim that provisional measures are necessary including the matters referred to in Rule 211.2 and .3; and
 - (e) a concise description of the action which will be started before the Court, including an indication of the facts and evidence which will be relied on in support of the main proceedings on the merits of the case.
3. Where the applicant requests that provisional measures be ordered without hearing the other party (hereinafter "the defendant"), the Application for provisional measures shall in addition contain:
 - (a) the reasons for not hearing the defendant having regard in particular to Rule 197; and
 - (b) information about any prior correspondence between the parties concerning the alleged infringement.

[Article 32 of the Agreement](#) Competence of the Court

[Article 62 of the Agreement](#) Provisional and protective measures

[Rule 13](#) Contents of the Statement of claim

[Rule 14](#) Use of languages under Article 49(1) and (2) of the Agreement

[Rule 15](#) Fee for the infringement action

[Rule 197](#) Order to preserve evidence without hearing the defendant

[Rule 211](#) Order on the Application for provisional measures



4. The applicant shall be under a duty to disclose any material fact known to it which might influence the Court in deciding whether to make an order without hearing the defendant including any pending proceedings and/or any unsuccessful attempt in the past to obtain provisional measures in respect of the patent.
5. Rule 14 shall apply *mutatis mutandis*. The applicant shall pay the fee for the Application for provisional measures, in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.

Relation with Agreement: Articles 32(1)(c) and 62

Rule 207

Protective letter

1. If a person entitled to start proceedings under Article 47 of the Agreement considers it likely that an Application for provisional measures against him as a defendant may be lodged before the Court in the near future, he may file a Protective letter.
2. The Protective letter shall be filed with the Registry in the language of the patent and shall contain:
 - (a) the name of the defendant or defendants filing the Protective letter and of the defendant's representative;
 - (b) the name of the presumed applicant for provisional measures;
 - (c) postal and electronic addresses for service on the defendant filing the Protective letter and the names of the persons authorised to accept service;
 - (d) postal and, where available, electronic addresses for service on the presumed applicant for provisional measures and the names of the persons authorised to accept service if known;
 - (e) where available, the number of the patent concerned and, where applicable, information about any prior or pending proceedings referred to in Rule 13.1(h); and
 - (f) the statement that the letter is a Protective letter.
3. The Protective letter may contain:
 - (a) an indication of the facts relied on, which may include a challenge to the facts expected to be relied on by the presumed applicant and/or, where applicable, any assertion that the patent is invalid and the grounds for such assertion;
 - (b) any available written evidence relied on;

[Article 47 of the Agreement](#) Parties
[Rule 13](#) Contents of the Statement of claim
[Rule 15](#) Fee for the infringement action
[Rule 208](#) Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge



- (c) the arguments of law, including the reasons why any Application for provisional measures should be rejected.
- 4. The defendant or defendants filing the Protective letter shall pay the fee for filing a Protective letter, in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.
- 5. The Registry shall as soon as practicable examine whether the requirements of paragraphs 2(a) to (f) and 4 have been complied with. If these requirements have been complied with, the Registry shall as soon as practicable:
 - (a) record the date of receipt and assign a number to the Protective letter;
 - (b) subject to paragraph 7, record the Protective letter in the register;
 - (c) provide details of the Protective letter to all divisions; and
 - (d) where an Application for provisional measures has already been lodged, inform the panel or the single judge dealing with the Application about the filing of the Protective letter.
- 6. If the defendant has not complied with the requirements of paragraph 2 the Registry shall as soon as practicable invite the defendant to:
 - (a) correct the deficiencies within 14 days of service of such notification; and
 - (b) where applicable, pay the fee referred to in paragraph 4.
- 7. The protective letter shall not be publicly available on the register until it has been forwarded to the applicant pursuant to paragraph 8.
- 8. Where an Application for provisional measures is subsequently lodged the Registrar shall forward a copy of the protective letter to the panel or judge appointed under Rule 208 together with the Application for provisional measures and shall forward a copy to the applicant as soon as practicable.
- 9. If no Application for provisional measures has been lodged within six months from the date of receipt of the Protective letter, the Protective letter shall be removed from the register unless the person who has lodged the Protective letter has prior to the expiry of such period applied for an extension of six months and paid a fee for the extension in accordance with Part 6. Further extensions may be obtained on further payments of the fee.
- 10. Rule 15.2 shall apply *mutatis mutandis*.

Rule 208**Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge**

1. The Application for provisional measures shall be examined by the Registry in accordance with Rule 16. The Registry shall in addition examine whether any Protective letter relevant for the Application is recorded in the register.
2. Where main proceedings on the merits of the case have not yet been started before the Court, Rule 17 (date of receipt, recording in the register, action number, assignment to panel) and Rule 18 (designation of judge-rapporteur by presiding judge) shall apply *mutatis mutandis*. In urgent cases, the presiding judge may decide that he or an experienced judge of the panel, acting as single judge, may decide on the Application in accordance with Rules 209 to 213 with a reduced time-table.
3. Where main proceedings on the merits of the case have already been started before the Court, the Application for provisional measures shall immediately be forwarded to the panel to which the action has been assigned or to the single judge. In urgent cases (where the action has not been assigned to a single judge), the presiding judge may decide that he or the judge-rapporteur, acting as single judge, may decide on the Application in accordance with Rules 209 to 213 with a reduced time-table.
4. The single judge deciding on the Application for provisional measures shall have all necessary powers of the Court.

Relation with Statute: Article 19

Rule 209**Examination of the Application for provisional measures**

1. Without prejudice to the Court's decision on the Application for provisional measures, the Court shall have the discretion – including where the Application is made pursuant to Rule 206.3 – to:
 - (a) inform the defendant about the Application and invite him to lodge, within a time period to be specified, an Objection to the Application for provisional measures which shall contain:
 - (i) the reasons why the Application shall fail;
 - (ii) the facts and evidence relied on, in particular any challenge to the facts and evidence relied on by the applicant; and (iii) where main proceedings on the merits of the case have

[Article 19 of the Statute](#) Panels

[Rule 16](#) Examination as to formal requirements of the Statement of claim
[Rule 17](#) Recording in the register and assignment (Court of First Instance, infringement action)

[Rule 18](#) Designation of the judge-rapporteur
[Rule 209](#) Examination of the Application for provisional measures

[Rule 210](#) Oral hearing

[Rule 211](#) Order on the Application for provisional measures

[Rule 212](#) Order on provisional measures without hearing the defendant

[Rule 213](#) Revocation of provisional measures

[Rule 206](#) Application for provisional measures

[Rule 207](#) Protective letter

[Rule 345](#) Composition of panels and assignment of actions

not yet been started before the Court, the reasons why the action which will be started before the Court shall fail and the facts and evidence relied on in support;

- (b) summon the parties to an oral hearing;
- (c) summon the applicant to an oral hearing without the presence of the defendant.
- 2. In exercising its discretion pursuant to paragraph 1, the Court shall in particular take into account:
 - (a) whether the patent has been upheld in an opposition procedure before the European Patent Office or has been the subject of proceedings in any other court;
 - (b) the urgency of the action;
 - (c) whether the applicant has requested provisional measures without hearing the defendant and whether the reasons for not hearing the defendant appear well-founded; and
 - (d) any Protective letter filed by the defendant; the Court shall in particular consider summoning parties to an oral hearing if a relevant Protective letter has been filed by the defendant.
- 3. In cases of extreme urgency the standing judge appointed in accordance with Rule 345.5 may decide immediately on the Application for provisional measures and the procedure to be followed on the Application.
- 4. If the applicant has applied for provisional measures without hearing the defendant and the Court decides not to grant provisional measures without hearing the defendant the applicant may withdraw the Application and may request that the Court order that the Application and the contents of the Application remain confidential.
- 5. If the patent the subject of the Application is also the subject of a protective letter pursuant to Rule 207 the applicant may withdraw the Application pursuant to paragraph 4.

Rule 210

Oral hearing

- 1. Where the Court decides to summon the parties to an oral hearing, the date for the oral hearing shall be set as soon as possible after the date of receipt of the Application for provisional measures.
- 2. The Court may order the parties to provide further information, documents and other evidence before or during the oral hearing, including evidence to enable the Court to make its decision in accordance with Rule 211. Part 2 of these Rules on Evidence shall be applicable only to the extent determined by the Court.

[Rule 111](#) Role of the presiding judge (Case management)

[Rule 112](#) Conduct of the oral hearing

[Rule 113](#) Duration of the oral hearing

[Rule 114](#) Adjournment where the Court considers that further evidence is required

[Rule 115](#) The oral hearing



3. Rules 111 to 116 shall apply *mutatis mutandis*. Where the applicant is absent from the oral hearing without a reasonable excuse, the Court shall reject the Application for provisional measures.
4. The decision of the Court on the Application for provisional measures shall be given in writing as soon as possible after the closure of the oral hearing. If the Court deems appropriate, its decision may be given orally to the parties at the end of the oral hearing, prior to providing its decision in writing.

[Rule 116](#) Absence of a party from the oral hearing

[Rule 211](#) Order on the Application for provisional measures

Rule 211

Order on the Application for provisional measures

1. The Court may in particular order the following provisional measures:
 - (a) injunctions against a defendant;
 - (b) the seizure or delivery up of the goods suspected of infringing a patent right so as to prevent their entry into or movement within the channels of commerce;
 - (c) if an applicant demonstrates circumstances likely to endanger the recovery of damages, a precautionary seizure of the movable and immovable property of the defendant, including the blocking of his bank accounts and other assets;
 - (d) an interim award of costs.
2. In taking its decision the Court may require the applicant to provide reasonable evidence to satisfy the Court with a sufficient degree of certainty that the applicant is entitled to commence proceedings pursuant to Article 47, that the patent in question is valid and that his right is being infringed, or that such infringement is imminent.
3. In taking its decision the Court shall in the exercise of its discretion weigh up the interests of the parties and, in particular, take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction.
4. The Court shall have regard to any unreasonable delay in seeking provisional measures.
5. The Court may order the applicant to provide adequate security for appropriate compensation for any injury likely to be caused to the defendant which the applicant may be liable to bear in the event that the Court revokes the order for provisional measures. The Court shall do so where interim measures are ordered without the defendant having been heard unless there are special circumstances not to do so. The Court shall decide whether it is appropriate to order the security

[Article 47 of the Agreement](#) Parties

[Article 62 of the Agreement](#) Provisional and protective measures

[Article 73 of the Agreement](#) Appeal

[Rule 220](#) Appealable decisions



by deposit or bank guarantee. The order shall be effective only after the security has been given to the defendant in accordance with the Court's decision.

6. The order on provisional measures shall indicate that an appeal may be brought in accordance with Article 73 of the Agreement and Rule 220.1.

Relation with Agreement: Article 62(2) and (4)

Rule 212 **Order on provisional measures without hearing the defendant**

1. The Court may order provisional measures without the defendant having been heard, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed. Rule 197 shall apply *mutatis mutandis*.
2. Where provisional measures are ordered without the defendant having been heard, Rule 210 shall apply *mutatis mutandis* to the oral hearing without the presence of the defendant. In such cases, the defendant shall be given notice of the provisional measures without delay and at the latest immediately at the time of execution of the measures.
3. The defendant may request a review. Rule 197.3 and .4 shall apply *mutatis mutandis*.

Relation with Agreement: Article 60(5) and (6)

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Rule 197](#) Order to preserve evidence without hearing the defendant
[Rule 210](#) Oral hearing

Rule 213 **Revocation of provisional measures**

1. The Court shall ensure that provisional measures are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if, within a time period not exceeding 31 calendar days or 20 working days, whichever is the longer, from the date specified in the Court's order, the applicant does not start proceedings on the merits of the case before the Court. When specifying the date, the Court shall take due account, where applicable, of the date on which the Report referred to in Rule 196.4 shall be presented.
2. Where provisional measures are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of the patent, the Court may order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by those measures [Rule 354.2].

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Rule 196](#) Order on the Application for preserving evidence
[Rule 354](#) Enforcement



Relation with Agreement: Article 60(9)

Part 4 – Procedures before the Court of Appeal

Rule 220 Appealable decisions

1. An appeal by a party adversely affected may be brought against:
 - (a) final decisions of the Court of First Instance;
 - (b) decisions terminating proceedings as regards one of the parties;
 - (c) orders referred to in Articles 49(5), 59, 60, 61, 62 or 67 of the Agreement.
2. Orders other than those referred to in paragraph 1 and Rule 97.5, may be either the subject of an appeal together with the appeal against the decision or may be appealed with the leave of the Court of First Instance within 15 days of service of the Court’s decision to that effect.
3. In the event of a refusal of the Court of First Instance to grant leave within 15 days of the order of one of its panels a request for a discretionary review to the Court of Appeal may be made within 15 calendar days from the end of that period. Rule 333.3 shall apply *mutatis mutandis*. The request shall set out the matters referred to in Rule 221.2.
4. The Registrar shall assign the request for a discretionary review to the standing judge (Rule 345.5 and .8). The standing judge may deny the request without giving reasons. If the standing judge allows the request after having heard the other party, he shall order what further steps, if any, the parties shall take and within what time limits and the President of the Court of Appeal shall assign the review to a panel of the Court of Appeal for a decision. The Court of Appeal may consult the presiding judge or the judge-rapporteur of the panel of the Court of First Instance which has refused the leave order.
5. The Court of Appeal may hear appeals against separate decisions on the merits in infringement proceedings and in validity proceedings together.

Relation with Agreement: Article 73

Rule 221 Application for leave to appeal against cost decisions

1. A party adversely affected by a decision referred to in Rule 157 may lodge an Application for leave to appeal to the Court of Appeal within 15 days of service of the decision of the Court.
2. The Application for leave to appeal shall set out:

[Article 49 of the Agreement](#) Language of proceedings at the Court of First Instance
[Article 59 of the Agreement](#) Order to produce evidence
[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises
[Article 61 of the Agreement](#) Freezing orders
[Article 62 of the Agreement](#) Provisional and protective measures
[Article 67 of the Agreement](#) Power to order the communication of information
[Article 73 of the Agreement](#) Appeal
[Rule 97](#) Application to annul a decision of the Office to reject a request for unitary effect
[Rule 221](#) Application for leave to appeal against cost decisions
[Rule 333](#) Review of case management orders
[Rule 345](#) Composition of panels and assignment of actions

[Rule 157](#) Appeal against the cost decision
[Rule 345](#) Composition of panels and assignment of actions



- (a) the reasons why the appeal should be heard;
- (b) where necessary, the facts, evidence and arguments relied on.
- 3. The Application for leave to appeal shall be assigned to the standing judge (Rule 345.5 and .8) who shall decide on granting leave to appeal.
- 4. If leave to appeal a cost decision is granted the standing judge shall decide the appeal.

Rule 222 **Subject-matter of the proceedings before the Court of Appeal**

- 1. Requests, facts, evidence and arguments submitted by the parties under Rules 221, 225, 226, 236 and 238 shall, subject to paragraph 2, constitute the subject-matter of the proceedings before the Court of Appeal. The Court of Appeal shall consult the file of the proceedings before the Court of First Instance.
- 2. Requests, facts and evidence which have not been submitted by a party during proceedings before the Court of First Instance may be disregarded by the Court of Appeal. When exercising discretion, the Court shall in particular take into account:
 - (a) whether a party seeking to lodge new submissions is able to justify that the new submissions could not reasonably have been made during proceedings before the Court of First Instance;
 - (b) the relevance of the new submissions for the decision on the appeal;
 - (c) the position of the other party regarding the lodging of the new submissions.

Relation with Agreement: Article 73(4)

Rule 223 **Application for suspensive effect**

- 1. A party may lodge an Application for suspensive effect, in accordance with Article 74 of the Agreement.
- 2. The Application for suspensive effect shall set out:
 - (a) the reasons why the lodging of the appeal shall have suspensive effect;
 - (b) the facts, evidence and arguments relied on.
- 3. The Court of Appeal shall decide the Application without delay.
- 4. In cases of extreme urgency the applicant may apply at any time without formality for an order for suspensive effect to the standing judge [Rule 345.5 and .8]. The standing judge shall have all the

[Article 73 of the Agreement](#) Appeal
[Rule 221](#) Application for leave to appeal against cost decisions
[Rule 225](#) Contents of the Statement of appeal
[Rule 226](#) Contents of the Statement of grounds of appeal
[Rule 236](#) Contents of the Statement of response
[Rule 238](#) Reply to a Statement of cross-appeal and further schedule

[Article 74 of the Agreement](#) Effects of an appeal
[Rule 220](#) Appealable decisions
[Rule 221](#) Application for leave to appeal against cost decisions
[Rule 345](#) Composition of panels and assignment of actions



powers of the Court of Appeal and shall decide the procedure to be followed on the application, which may include a subsequent written Application.

5. There shall be no suspensive effect for an appeal of an order pursuant to Rule 220.2, Rule 220.3 or 221.3.

Relation with Agreement: Article 74

Chapter 1 – Written Procedure

Section 1 Statement of Appeal, Statement of Grounds of Appeal

Rule 224 Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

1. A Statement of appeal shall be lodged by the appellant:
 - (a) within two months of service of a decision referred to in Rule 220.1(a) and (b); or
 - (b) within 15 days of service of an order referred to in Rule 220.1(c) or a decision referred to in Rule 220.2 or 221.3.
2. The Statement of grounds of appeal shall be lodged by the appellant:
 - (a) within four months of service of a decision referred to in Rule 220.1(a) and (b); or
 - (b) within 15 days of service of an order referred to in Rule 220.1(c) or a decision referred to in Rule 220.2 or 221.3.

Relation with Agreement: Article 73(1) and (2)

[Article 73 of the Agreement](#) Appeal
[Rule 220](#) Appealable decisions
[Rule 221](#) Application for leave to appeal
against cost decisions

Rule 225 Contents of the Statement of appeal

The Statement of appeal shall contain:

- (a) the names of the appellant and of the appellant's representative;
- (b) the names of the respondent and of the respondent's representative;
- (c) postal and electronic addresses for service on the appellant and on the respondent, as well as the names of the persons authorised to accept service;

[Rule 9](#) Powers of the Court



- (d) the date of the decision or order appealed against and the action number attributed to the file in proceedings before the Court of First Instance; and
- (e) the order or remedy sought by the appellant, including any order for expedition of the appeal pursuant to Rule 9.3(b) and the reasons justifying such order for expedition.

Rule 226 **Contents of the Statement of grounds of appeal**

The Statement of grounds of appeal shall contain:

- (a) an indication of which parts of the decision or order are contested;
- (b) the reasons for setting aside the contested decision or order; and
- (c) an indication of the facts and evidence on which the appeal is based in accordance with Rule 222.1 and .2.

[Rule 222](#) Subject-matter of the proceedings before the Court of Appeal

Rule 227 **Language of the Statement of appeal and of the Statement of grounds of appeal**

The Statement of appeal and the Statement of grounds of appeal shall be drawn up:

- (a) without prejudice to Article 50(3) of the Agreement, in the language of the proceedings before the Court of First Instance; or
- (b) where the parties have agreed in accordance with Article 50(2) of the Agreement, in the language in which the patent was granted. Where the parties have agreed in accordance with Article 50(2) of the Agreement, evidence of the respondent's agreement shall be lodged by the appellant together with the Statement of appeal.

[Article 50 of the Agreement](#) Language of proceedings at the Court of Appeal

Relationship with Agreement: Article 50

Rule 228 **Fee for the appeal**

The appellant shall pay the fixed fee and, where applicable, the value based fee for the appeal, in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.

[Rule 15](#) Fee for the infringement action

Rule 229 Examination as to formal requirements of the Statement of appeal

1. The Registry shall, as soon as practicable after the lodging of the Statement of appeal, examine whether the requirements of Rules 224.1, 225, 227 and 228 have been complied with.
2. If the appellant has not complied with the requirements referred to in Rules 225, 227 or 228, the Registry shall invite the appellant to:
 - (a) correct the deficiencies within 14 days of service of such notification; and
 - (b) where applicable, pay the fee for the appeal within said 14 days.
3. The Registry shall at the same time inform the appellant that if the appellant fails to correct the deficiencies or to pay the fee within the time stated, a decision by default may be given in accordance with Rule 357.
4. If the appellant has not met the requirements of Rules 225, 227 and 228 and fails to correct the deficiencies or pay the fee the Registry shall inform the President of the Court of Appeal who shall reject the appeal as inadmissible by a decision by default. He may give the appellant an opportunity to be heard beforehand.
5. If the appellant has not met the requirements of Rule 224.1, the Registry shall inform the President of the Court of Appeal who shall reject the appeal as inadmissible. He may give the appellant an opportunity to be heard beforehand.

Rule 230 Recording in the register (Court of Appeal)

1. If the Statement of appeal complies with the requirements referred to in Rule 229.1, the Registry shall:
 - (a) record the date of receipt to the Statement of appeal and an action number to the appeal file;
 - (b) record the appeal file in the register;
 - (c) inform the appellant of the action number and the date of receipt; and
 - (d) serve the Statement of appeal on all parties to the proceedings at first instance.
2. The action shall be assigned to a panel according to Rule 345.3 and .8.
3. The panel shall as soon as practicable decide whether to grant any order for expedition pursuant to Rule 225(e) having given the parties an opportunity to be heard.

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

[Rule 225](#) Contents of the Statement of appeal

[Rule 227](#) Language of the Statement of appeal and of the Statement of grounds of appeal

[Rule 228](#) Fee for the appeal

[Rule 357](#) Decision by default (Court of Appeal)

[Rule 225](#) Contents of the Statement of appeal

[Rule 229](#) Examination as to formal requirements of the Statement of appeal

[Rule 345](#) Composition of panels and assignment of actions

Rule 231 **Designation of the judge-rapporteur**

The presiding judge of the panel to which the action has been assigned shall designate one legally qualified judge of the panel as judge-rapporteur. The presiding judge may designate himself as the judge-rapporteur. The Registry shall as soon as practicable notify the appellant and respondent of the identity of the judge-rapporteur.

Rule 232 **Translation of file**

1. If the language of the proceedings before the Court of Appeal is not the language of the proceedings before the Court of First Instance, the judge-rapporteur may order the appellant to lodge, within a time period to be specified, translations into the language of the proceedings before the Court of Appeal of:
 - (a) written pleadings and other documents lodged by the parties before the Court of First Instance, as specified by the judge-rapporteur;
 - (b) decisions or orders of the Court of First Instance.

The judge-rapporteur shall at the same time inform the appellant that if the appellant fails to lodge the translations within the time period specified, a decision by default may be given in accordance with Rule 357.

2. If the appellant fails to lodge the translations under paragraph 1 within the time period specified, the judge-rapporteur shall reject the appeal by a decision by default in accordance with Rule 357. He may give the appellant an opportunity to be heard beforehand.
3. The appellant may request that documented costs of translations be taken into account when the Court fixes the amount of costs in accordance with Part 1, Chapter 5.

Relation with Agreement: Article 50(2) and (3)

Rule 233 **Preliminary examination of the Statement of grounds of appeal**

1. The judge-rapporteur shall examine whether the Statement of grounds of appeal satisfies the requirements of Rule 226.

[Article 50 of the Agreement](#) Language of proceedings at the Court of Appeal
[Rule 357](#) Decision by default (Court of Appeal)

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal
[Rule 226](#) Contents of the Statement of grounds of appeal

2. If the Statement of grounds of appeal does not comply with the requirements of Rule 226, the judge-rapporteur shall give the appellant leave to amend the Statement of grounds of appeal within such period as he may decide. If the appellant fails to amend the Statement within such period the judge-rapporteur may reject the appeal as inadmissible. He shall give the appellant an opportunity to be heard beforehand.
3. Grounds of appeal which are not raised within the period specified for the Statement of grounds of appeal in Rule 224.2 shall not be admissible.

Rule 234 Challenge to the decision to reject an appeal as inadmissible

1. The appellant may challenge a decision to reject the appeal as inadmissible under Rules 224.1 or 233.2 within one month of service of the decision, without providing new grounds of appeal.
2. The action shall be assigned to a panel according to Rule 345.3 and .8.
3. If a decision to reject an appeal as inadmissible is set aside, the appeal shall take its normal course.

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

[Rule 233](#) Preliminary examination of the Statement of grounds of appeal

[Rule 345](#) Composition of panels and assignment of actions

Section 2 Statement of Response

Rule 235 Statement of response

1. Within three months of service of the Statement of grounds of appeal pursuant to Rule 224.2(a), any other party to proceedings before the Court of First Instance (hereinafter "respondent") may lodge a Statement of response, which shall be served on the appellant.
2. Within 15 days of service of grounds of appeal pursuant to Rule 224.2(b), any other party to proceedings before the Court of First Instance (hereinafter "respondent") may lodge a Statement of response, which shall be served on the appellant.
3. If the respondent fails to lodge a Statement of response, the Court of Appeal may give a reasoned decision.

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

Rule 236 **Contents of the Statement of response**

1. The Statement of response shall contain:
 - (a) the names of the respondent and the respondent's representative;
 - (b) postal and electronic addresses for service on the respondent and the names and addresses of the persons authorised to accept service;
 - (c) the action number of the appeal file; and
 - (d) a response to the grounds of appeal.
2. The respondent may support the decision of the Court of First Instance on grounds other than those given in the decision.

Rule 237 **Statement of cross-appeal**

1. A party who has not lodged a Statement of appeal within the period referred to in Rule 224.1 may still bring an appeal by way of cross-appeal within the period referred to in Rule 235 if one of the other parties has lodged a Statement of appeal.
2. A Statement of cross-appeal shall be included in the Statement of response. It shall comply with the requirements of Rules 225 and 226. Rules 229, 233 and 234 shall apply *mutatis mutandis* to the Statement of cross-appeal.
3. A Statement of cross-appeal shall not be admissible in any other way or at any other time.
4. A cross-appeal shall be treated as an appeal as far as the fee for the appeal is concerned. Rule 228 shall apply *mutatis mutandis*.
5. If the Statement of appeal is withdrawn, any Statement of cross-appeal shall be deemed to be withdrawn.

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

[Rule 225](#) Contents of the Statement of appeal

[Rule 226](#) Contents of the Statement of grounds of appeal

[Rule 228](#) Fee for the appeal

[Rule 229](#) Examination as to formal requirements of the Statement of appeal

[Rule 233](#) Preliminary examination of the Statement of grounds of appeal

[Rule 234](#) Challenge to the decision to reject an appeal as inadmissible

[Rule 235](#) Statement of response

Section 3 Reply to a Statement of Cross-Appeal

Rule 238 Reply to a Statement of cross-appeal and further schedule

[Rule 28](#) Further schedule
[Rule 235](#) Statement of response
[Rule 237](#) Statement of cross-appeal

1. The appellant may, within two months of service of any Statement of cross-appeal under Rules 237, 235.1, lodge a Reply to the Statement of cross-appeal which shall contain a response to the grounds of appeal raised in the Statement of cross-appeal.
2. The appellant may, within 15 days of service of the Statement of cross-appeal under Rules 237 and 235.2, lodge a Reply to the Statement of cross-appeal which shall contain a response to the grounds of appeal raised in the Statement of cross-appeal.
3. Rule 28 shall apply *mutatis mutandis*.

Section 4 Referral to the Full Court

Rule 238A Decision to refer

1. The panel to which the action has been assigned may refer it to the full Court of Appeal if the panel considers, on a proposal from the presiding judge, the case to be of exceptional importance and, in particular, where the decision in the action may affect the consistency and unity of the case law of the Court.
2. The presiding judge of the panel shall request the President of the Court of Appeal and the two judges of the Court of Appeal who are members of the Presidium to appoint the judges of the Court of Appeal to the full Court. The appointees shall be the President of the Court of Appeal and not less than ten (legally and technically qualified) judges of the Court of Appeal to represent the initial two panels of the Court of Appeal. In the event that the Court of Appeal shall have more than two panels the appointees to the full Court shall increase by five judges, (legally and technically qualified), for each additional panel.
3. Decisions of the full Court shall be by no less than a three-quarters majority of the judges of the full Court.

Chapter 2 – Interim Procedure

Rule 239 Role of the judge-rapporteur

1. Upon the expiry of the periods specified in Rules 224 to 238 the judge-rapporteur shall make all necessary preparations for the oral hearing. Subject always to the provisions of Rule 222, the judge-rapporteur shall, to the extent appropriate, have the powers and exercise the duties set out in Rules 101 to 110 *mutatis mutandis*.
2. As soon as the judge-rapporteur considers that the appeal is ready for oral hearing he shall summon the parties to the oral hearing. Except for appeals against the orders referred to in Rule 220.1(c) and 220.2, and subject to any order for expedition pursuant to Rule 230.3, at least two months' notice shall be given unless the parties agree to a shorter time period. The interim procedure shall be deemed closed and oral procedure shall start immediately on the giving of such summons. The presiding judge shall, in consultation with the judge-rapporteur take over the management of the action.

[Rule 101](#) Role of the judge-rapporteur (Case management)

[Rule 102](#) Referral to the panel

[Rule 103](#) Preparation for the interim conference

[Rule 104](#) Aim of the interim conference

[Rule 105](#) Holding the interim conference

[Rule 106](#) Recording of the interim conference

[Rule 108](#) Summons to the oral hearing

[Rule 109](#) Simultaneous interpretation during oral hearings

[Rule 110](#) Closure of the interim procedure

[Rule 220](#) Appealable decisions

[Rule 222](#) Subject-matter of the proceedings before the Court of Appeal

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

[Rule 225](#) Contents of the Statement of appeal

[Rule 226](#) Contents of the Statement of grounds of appeal

[Rule 227](#) Language of the Statement of appeal and of the Statement of grounds of appeal

[Rule 228](#) Fee for the appeal

[Rule 229](#) Examination as to formal requirements of the Statement of appeal

[Rule 230](#) Recording in the register (Court of Appeal)



- [Rule 231](#) Designation of the judge-rapporteur
- [Rule 232](#) Translation of file
- [Rule 233](#) Preliminary examination of the Statement of grounds of appeal
- [Rule 234](#) Challenge to the decision to reject an appeal as inadmissible
- [Rule 235](#) Statement of response
- [Rule 236](#) Contents of the Statement of response
- [Rule 237](#) Statement of cross-appeal
- [Rule 238](#) Reply to a Statement of cross-appeal and further schedule

Chapter 3 – Oral Procedure

Rule 240 Conduct of the oral hearing

Subject to Rule 241 the oral hearing shall be held before the panel and shall be directed by the presiding judge. Subject always to Rule 222, Rules 111, 112, 115, 116 and 117 shall apply *mutatis mutandis*.

- [Rule 111](#) Role of the presiding judge (Case management)
- [Rule 112](#) Conduct of the oral hearing
- [Rule 115](#) The oral hearing
- [Rule 116](#) Absence of a party from the oral hearing
- [Rule 117](#) Absence of both parties from the oral hearing
- [Rule 222](#) Subject-matter of the proceedings before the Court of Appeal
- [Rule 241](#) Conduct of the oral hearing for an appeal of a cost decision

Rule 241 Conduct of the oral hearing for an appeal of a cost decision

- [Rule 157](#) Appeal against the cost decision



The oral hearing for an appeal of a cost decision pursuant to Rule 157 shall be heard by the standing judge [Rule 345.5 and .8] who shall have all the powers of the Court of Appeal.

[Rule 345](#) Composition of panels and assignment of actions

Chapter 4 – Decisions and Effect of Decisions

Rule 242 **Decision of the Court of Appeal**

1. The Court of Appeal shall either reject the appeal or set the decision or order aside totally or in part substituting its own decision or order, including an order for costs both in respect of the proceedings at first instance and on appeal.
2. The Court of Appeal may:
 - (a) exercise any power within the competence of the Court of First Instance;
 - (b) in exceptional circumstances refer the action back to the Court of First Instance for decision or for retrial [Rule 243]. It shall not normally be an exceptional circumstance justifying a referral back that the Court of First Instance failed to decide an issue which it is necessary for the Court of Appeal to decide on appeal.

Relation with Agreement: Article 75

[Article 75 of the Agreement](#) Decision on appeal and referral back
[Rule 243](#) Referral back

Rule 243 **Referral back**

1. The decision referring an action back to the Court of First Instance shall specify whether the same panel whose earlier decision or order is revoked shall deal further with the action or whether another panel shall be appointed by the presiding judge of the division concerned.
2. Where an action is referred back to the Court of First Instance, the Court shall be bound by the decision of the Court of Appeal and its ratio decidendi.

Relation with Agreement: Article 75

[Article 75 of the Agreement](#) Decision on appeal and referral back

Chapter 5 – Procedure for Application for Rehearing

Rule 245 Lodging of an Application for rehearing

[Article 81 of the Agreement](#) Rehearing

1. An Application for rehearing may be lodged by any party adversely affected by a final decision (hereinafter "the final decision") of the Court of First Instance for which the time for lodging an appeal has expired or of the Court of Appeal (hereinafter "the petitioner").
2. The Application for rehearing shall be lodged at the Court of Appeal within the following periods:
 - (a) where the Application for rehearing is based on the ground of a fundamental procedural defect, within two months of the discovery of the fundamental defect or of service of the final decision, whichever is the later;
 - (b) where the Application for rehearing is based on an act which has been held, by a final court decision, to constitute a criminal offence, within two months of the date on which the criminal offence has been so held or service of the final decision, whichever is the later;
 - (c) but in any event no later than ten years of service of the final decision.

Relation with Agreement: Article 81

Rule 246 Contents of the Application for rehearing

1. The Application for rehearing shall contain:
 - (a) the names of the petitioner and of the petitioner's representative;
 - (b) postal and electronic addresses for service on the petitioner and the names and addresses of the persons authorised to accept service; and
 - (c) an indication of the decision to be reviewed.
2. The Application for rehearing shall indicate the reasons for setting aside the final decision, as well as the facts and evidence on which the Application is based.

Rule 247 Fundamental procedural defects

A fundamental procedural defect under Article 81(1) of the Agreement may have occurred, for example, where:

[Article 17 of the Agreement](#) Judicial independence and impartiality
[Article 76 of the Agreement](#) Basis for decisions and right to be heard



- (a) a judge of the Court took part in the decision in breach of Article 17 of the Agreement or Article 7 of the Statute;
- (b) a person not appointed as a judge of the Court sat on the panel which took the final decision;
- (c) a fundamental violation of Article 76 of the Agreement occurred in the proceedings which have led to the final decision;
- (d) the decision was made without deciding on a request relevant to that decision; or
- (e) a breach of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms has occurred.

[Article 81 of the Agreement](#) Rehearing
[Article 7 of the Statute](#) Impartiality
Article 6 of the Convention for the Protection
of Human Rights and Fundamental Freedoms

Rule 248 **Obligation to raise objections**

1. An Application for rehearing based on the ground of a fundamental procedural defect is only admissible where an objection in respect of the procedural defect was raised during the proceedings before the Court of First Instance or the Court of Appeal and dismissed by the Court, except where such objection could not have been raised during the proceedings before the Court of First Instance or the Court of Appeal.
2. An application for rehearing based upon the ground of a fundamental procedural defect is not admissible where the party could have brought an appeal in respect of the defect but failed to do so.

Rule 249 **Definition of criminal offence**

A criminal offence shall only be considered to have occurred if it is finally held to be such an offence by a competent court or authority. A conviction is not necessary.

Rule 250 **Fee for the rehearing**

The petitioner shall pay the fee for the rehearing, in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*. The Court may waive payment of the fee in the circumstances contemplated by Rule 245.2(a) or (b).

[Rule 15](#) Fee for the infringement action
[Rule 245](#) Lodging of an Application for
rehearing



Rule 251 **Recording in the register**
Rule 230.1 shall apply *mutatis mutandis*.

Rule 252 **Suspensive effect**
The lodging of an Application for rehearing shall not have suspensive effect unless the Court of Appeal decides otherwise.
Relation with Agreement: Article 81(2)

Rule 253 **Examination as to formal requirements of the Application for rehearing**

1. The Registry shall, as soon as practicable after the lodging of the Application for rehearing, examine whether the requirements of Rules 245, 246 and 250 have been complied with.
2. If the petitioner has not complied with the requirements referred to in paragraph 1, the Registry shall invite the petitioner to:
 - (a) correct the deficiencies within 14 days; and
 - (b) where applicable, pay the fee for the rehearing within 14 days.

If the petitioner fails to correct the deficiencies or pay the fee the case shall be assigned to the standing judge by the Registrar (Rule 345.5 and .8) who may reject the Application for rehearing as inadmissible. He shall give the petitioner an opportunity to be heard beforehand.

Rule 254 **Assignment of Application for rehearing to a panel**

1. Immediately after the Application for rehearing has been recorded in the register, the Registry shall serve a copy of the Application for rehearing on all other parties and shall inform the President of the Court of Appeal that a Request for rehearing has been lodged.
2. The action shall be assigned to a panel consisting of three legally qualified judges. The President of the Court of Appeal may order that judges of the Court who participated in taking the decision to be reviewed shall not sit on the panel.

Rule 255 **Examination of the Application for rehearing**

[Rule 230](#) Recording in the register (Court of Appeal)

[Article 81 of the Agreement](#) Rehearing

[Rule 245](#) Lodging of an Application for rehearing
[Rule 246](#) Contents of the Application for rehearing
[Rule 250](#) Fee for the rehearing
[Rule 345](#) Composition of panels and assignment of actions

[Article 81 of the Agreement](#) Rehearing



After hearing the parties the panel may make:

- (a) a decision to reject the Application for rehearing as not allowable; such a decision shall be by a majority vote of the judges on the panel.
- (b) a decision to allow the Application for rehearing; such a decision shall set aside or suspend the decision under review, in whole or in part, and re-open the proceedings for a new hearing and decisions. Where proceedings are re-opened, the panel shall give directions for the future proceedings.

Relation with Agreement: Article 81(3)

Part 5 – General Provisions

Chapter 1 – General Procedural Provisions

Rule 260 Examination by the Registry of its own motion

1. In any proceedings before the Court, the Registry shall, as soon as practicable in the proceedings, of its own motion, examine whether an opt-out has effect for the patent concerned.
2. Where the Registry notes that two or more actions concerning the same patent are initiated before several divisions (whether or not between the same parties), it shall as soon as practicable inform the divisions concerned.

Relation with Agreement: Article 83(3) and (4)

Relation with Statute: Articles 23 and 24

[Article 83 of the Agreement](#) Transitional regime

[Article 23 of the Statute](#) Duties of the Registrar

[Article 24 of the Statute](#) Keeping of the register

Rule 261 Date of pleadings

All pleadings and documents lodged with pleadings shall bear a time and a date which shall be the time and date of receipt of pleadings at the Registry. The time shall be the local time of the Registry. The Registrar shall be responsible for time and date marking.

Rule 262 Public access to the register

1. Without prejudice to Articles 58 and 60(1) of the Agreement and subject to Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2, and following, where applicable, redaction of personal data within the meaning of Regulation (EU) 2016/679 and confidential information according to paragraph 2
 - (a) decisions and orders made by the Court shall be published,
 - (b) written pleadings and evidence, lodged at the Court and recorded by the Registry shall be available to the public upon reasoned request to the Registry; the decision is taken by the judge-rapporteur after consulting the parties.
2. A party may request that certain information of written pleadings or evidence be kept confidential and provide specific reasons for such confidentiality. To this end content of the register is made

[Article 10 of the Agreement](#) The Registry

[Article 45 of the Agreement](#) Public proceedings

[Article 58 of the Agreement](#) Protection of confidential information

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises

[Article 24 of Statute](#) Keeping of the register

[Rule 190](#) Order to produce evidence

[Rule 194](#) Examination of the Application for preserving evidence



publicly available according to paragraph 1 (b) only 14 days after it has been available to all recipients. The Registrar shall ensure that beyond this time period information subject of a request for confidentiality shall not be made available pending an Application pursuant to paragraph 3 or an appeal pursuant to Rule 220.2. When a party lodges a request that parts of written pleadings or evidence shall be kept confidential, he shall also provide copies of the said documents with the relevant parts redacted when making the request.

3. A member of the public may lodge an Application with the Court for an order that any information excluded from public access pursuant to paragraph 2 may be made available to the applicant.
4. The Application shall contain:
 - (a) details of the information alleged to be confidential, so far as possible;
 - (b) the grounds upon which the applicant believes the reasons for confidentiality should not be accepted; and
 - (c) the purpose for which the information is needed.
5. The Court shall invite written comments from the parties prior to making any order.
6. The Court shall allow the Application unless legitimate reasons given by the party concerned for the confidentiality of the information outweigh the interest of the applicant to access such information.
7. The Registrar shall as soon as practicable take all such steps with regard to access to the register as may be necessary to give effect to an order of the Court under this Rule.

Relation with Agreement: Articles 10, 45, 58 and 60(1)

Relation with Statute: Article 24(2)

Rule 262A Protection of Confidential Information

1. Without prejudice to Article 60(1) of the Agreement and Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2 a party may make an Application to the Court for an order that certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons.
2. The Application shall contain the grounds upon which the applicant believes the information or evidence in question should be restricted in accordance with Article 58 of the Agreement.

[Rule 196](#) Order on the Application for preserving evidence

[Rule 197](#) Order to preserve evidence without hearing the defendant

[Rule 199](#) Order for inspection

[Rule 207](#) Protective letter

[Rule 209](#) Examination of the Application for provisional measures

[Rule 220](#) Appealable decisions

[Rule 315](#) Statement in intervention

[Rule 365](#) Confirmation by the Court of a settlement

Regulation (EU) 2016/679

[Article 58 of the Agreement](#) Protection of confidential information

[Article 60 of the Agreement](#) Order to preserve evidence and to inspect premises

[Rule 190](#) Order to produce evidence

[Rule 194](#) Examination of the Application for preserving evidence



3. The Application shall be made at the same time as lodging a document containing the information or evidence and shall provide a copy of the unredacted relevant document and, if applicable, a copy of the redacted document.
4. The Court shall invite written comments from the representatives of the other parties prior to making any order.
5. The Court may allow the Application considering in particular whether the grounds relied upon by the applicant for the order significantly outweigh the interest of the other party to have full access to the information and evidence in question.
6. The number of persons referred to in paragraph 1 shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.
7. The Registrar shall as soon as practicable take all such steps with regard to access to the evidence as may be necessary to give effect to the order of the Court under this Rule.

Relation with Agreement: Article 58

[Rule 196](#) Order on the Application for preserving evidence

[Rule 197](#) Order to preserve evidence without hearing the defendant

[Rule 199](#) Order for inspection

[Rule 207](#) Protective letter

[Rule 209](#) Examination of the Application for provisional measures

[Rule 315](#) Statement in intervention

[Rule 365](#) Confirmation by the Court of a settlement

Rule 263

Leave to change claim or amend case

1. A party may at any stage of the proceedings apply to the Court for leave to change its claim or to amend its case, including adding a counterclaim. Any such application shall explain why such change or amendment was not included in the original pleading.
2. Subject to paragraph 3, leave shall not be granted if, all circumstances considered, the party seeking the amendment cannot satisfy the Court that:
 - (a) the amendment in question could not have been made with reasonable diligence at an earlier stage; and
 - (b) the amendment will not unreasonably hinder the other party in the conduct of its action.
3. Leave to limit a claim in an action unconditionally shall always be granted.
4. The Court may re-consider fees already paid in the light of an amendment.

Rule 264 **An opportunity to be heard**

Where these Rules provide that a party shall or may be given an opportunity to be heard before the Court makes an order or takes some action, the Court shall or may (as the case may be) request the parties to provide written submissions within a specified period and/or shall or may invite the parties to an oral hearing on a fixed date by the Court. The Court may also order that a hearing takes place by telephone or video conference. Rules 105 and 106 shall apply *mutatis mutandis*.

[Rule 105](#) Holding the interim conference
[Rule 106](#) Recording of the interim conference

Rule 265 **Withdrawal**

1. As long as there is no final decision in an action, a claimant may apply to withdraw his action. The Court shall decide the application after hearing the other party. The application to withdraw shall not be permitted if the other party has a legitimate interest in the action being decided by the Court.
2. If withdrawal is permitted, the Court shall:
 - (a) give a decision declaring the proceedings closed;
 - (b) order the decision to be entered on the register; and
 - (c) issue a cost decision in accordance with Part 1, Chapter 5.

The withdrawal of an action by the claimant shall have no effect on any counterclaim in the action. The Court may however refer any counterclaim for revocation to the Central Division.

Rule 266 **Preliminary references to the Court of Justice of the European Union**

1. At any stage of the proceedings where a question is raised before the Court and the Court considers that a decision on the question by the Court of Justice of the European Union (“CJEU”) is necessary before the Court can give judgment, the Court of First Instance may and the Court of Appeal shall request the CJEU to give a ruling thereon.
2. The Court shall in requesting a ruling follow the procedure set out in the Rules of the CJEU.
3. If the Court requests the CJEU to apply its expedited procedure the request shall in addition set out:
 - (a) the matters of fact and law which establish its urgency; and
 - (b) the reasons why an expedited ruling is appropriate.



4. The Registrar shall as soon as practicable forward the request and any request to apply the expedited procedure to the Registrar of the CJEU.
5. The Court may stay the proceedings. Where it does not stay proceedings, it shall not give judgement until the CJEU has given a ruling on the question.

Rule 267 Actions pursuant to Article 22 of the Agreement

Where an action for damages has been brought against a Contracting Member State pursuant to Article 22 of the Agreement, the President of the Court of Appeal shall, as soon as practicable following a request from the competent authority in the Contracting Member State, provide the competent authority with copies of all pleadings, evidence, decisions and orders available to the Court in its proceedings that are relevant to the action for damages. The President of the Court of Appeal shall have an opportunity to comment.

[Article 22 of the Agreement](#) Liability for damage caused by infringements of Union law

Chapter 2 – Service

Section 1 Service within the Contracting Member States

Rule 270 Scope of this Section

1. For service of the Statement of claim within the Contracting Member States the law of the European Union on the service of documents in civil and commercial matters [Regulation (EU) 2020/1784] and the rules set out in this Section, in particular Rule 271.2 shall apply.
2. For the purpose of Rules 270 to 275 the term Statement of claim shall, where appropriate, mean all originating pleadings in actions referred to in Article 32(1) of the Agreement.

[Article 32 of the Agreement](#) Competence of the Court
[Rule 270](#) Scope of this Section
[Rule 271](#) Service of the Statement of claim
[Rule 272](#) Notice of service and non-service of the Statement of claim
[Rule 273](#) Scope of this Section
[Rule 274](#) Service outside the Contracting Member States
[Rule 275](#) Service of the Statement of claim by an alternative method or at an alternative place
[Regulation \(EU\) 2020/1784](#)



Rule 271 Service of the Statement of claim

1. The Registry shall serve the Statement of claim by electronic means if the conditions referred to in Article 19 of the Regulation (EU) 2020/1784 are met
 - (a) on the defendant at an electronic address which the defendant has provided for the purpose of service in the proceedings; or
 - (b) on a representative of the defendant if the defendant has provided the electronic address of a representative pursuant to Rule 8.1 as an address at which the defendant may be served with the Statement of claim; or
 - (c) on a representative of the defendant pursuant to Rule 8.1 if the representative has notified the Registry or the claimant that he accepts service of the Statement of claim on behalf of the defendant at an electronic address.
2. Where a representative pursuant to Rule 8.1 accepts service on behalf of a party service may be effected within the closed electronic system of the UPC Case Management System (CMS).
3. For the purpose of serving a Statement for revocation [Rule 44] or of serving a Statement for declaration of non-infringement [Rule 63], reference to representative under paragraph 2(b) or (c) shall additionally include professional representatives and legal practitioners as defined in Article 134 EPC who are recorded as the appointed representative for the patent, the subject of the proceedings, in the Register for unitary patent protection [Regulation (EU) No 1257/2012, Article 2(e)] or in the national patent register [Rule 8.5(a)].
4. Where service by electronic means cannot be effected, the Registry shall serve the Statement of claim on the defendant by:
 - (a) any other method foreseen by the law of the European Union on the service of documents in civil and commercial matters [Regulation (EU) 2020/1784], in particular by registered letter with acknowledgement of receipt or equivalent [Article 18 Regulation (EU) 2020/1784]; or
 - (b) where service in accordance with paragraph 4(a) could not be effected any method permitted by the law of the Member State of the European Union where service is to be effected or authorised by the Court under Rule 275.
5. Service under this Section shall be effected at the following place:
 - (a) where the defendant is a company or other legal person, at its statutory seat, central administration or principal place of business within the Contracting Member States or at any

[Rule 8](#) Party and party's representative
[Rule 13](#) Contents of the Statement of claim
[Rule 44](#) Contents of the Statement for revocation
[Rule 63](#) Contents of the Statement for a declaration of non-infringement
[Rule 272](#) Notice of service and non-service of the Statement of claim
[Rule 275](#) Service of the Statement of claim by an alternative method or at an alternative place
[Article 18 of Regulation \(EU\) 2020/1784](#) Service by postal services
[Article 19 of Regulation \(EU\) 2020/1784](#) Electronic service
[Article 2 of Regulation \(EU\) No 1257/2012](#) Definitions
[Annex I of Regulation \(EU\) 2020/1784](#)
[Article 134 of the EPC](#) Representation before the European Patent Office



- place within the Contracting Member States where the company or other legal person has a permanent or temporary place of business;
- (b) where the defendant is an individual, at his usual or last known residence within the Contracting Member States; or
 - (c) for the purpose of serving a Statement for revocation [Rule 44] or of serving a Statement for a declaration of non-infringement [Rule 63], at the place of business of a professional representative or legal practitioner as defined in Article 134 EPC who is recorded as the appointed representative for the patent, the subject of the proceedings, in the Register for unitary patent protection [Regulation (EU) No 1257/2012, Article 2(e)] or of the patent office of a Contracting Member State.
6. Subject to Rule 272.2 and .3, a Statement of claim served in accordance with paragraphs 1 to 5 is deemed to be served on the defendant:
- (a) where service takes place by means of electronic communication, on the day when the relevant electronic message was sent (GMT+1);
 - (b) where service takes place by registered letter with acknowledgement of receipt or equivalent such letter shall be deemed to be served on the addressee on the tenth day following posting unless it has failed to reach the addressee, has in fact reached him on a later date or the acknowledgement of receipt or equivalent has not been returned. Such service shall, except where paragraph 8 applies, be deemed effective even if acceptance of the letter has been refused.
7. The Registry shall advise the defendant that he may refuse to accept a Statement of Claim if it is not written or not accompanied by a translation into a language that he understands or that is an official language of the place where service is to be effected, by enclosing with the document to be served form L in Annex I of Regulation (EU) 2020/1784.
8. Where the defendant is entitled to refuse service and where he has notified the refusal to the Registry within two weeks of the attempted service together with an indication of the language(s) he understands, the Registry shall inform the claimant. The claimant shall provide to the Registry translations of at least the Statement of claim and the information required in Rule 13.1(a) to (p) in a language provided for by paragraph 7.

Rule 272 Notice of service and non-service of the Statement of claim

1. The Registry shall inform the claimant of the date on which the Statement of claim is deemed served under Rule 271.6.
2. Where the Registry has served the Statement of claim by registered letter with acknowledgement of receipt or equivalent and the Statement of claim is returned to the Registry for any reason, the Registry shall inform the claimant.
3. Paragraph 2 shall apply *mutatis mutandis* where the Registry has served the Statement of claim by means of electronic communication and the relevant electronic message appears not to have been received.

Rule 271 Service of the Statement of claim

Section 2 Service outside the Contracting Member States

Rule 273 Scope of this Section

This Section applies to service of a Statement of claim outside the Contracting Member States.

Rule 274 Service outside the Contracting Member States

1. Where a Statement of claim is to be served outside the Contracting Member States, it shall be so served by the Registry
 - (a) by any method provided by:
 - (i) The law of the European Union on the service of documents in civil and commercial matters [Regulation (EU) 2020/1784] where it applies;
 - (ii) The Hague Service Convention or any other applicable convention or agreement where it applies; or
 - (iii) to the extent that there is no such convention or agreement in force, either by service through diplomatic or consular channels from the Contracting Member State in which the sub-registry of the relevant division is established;
 - (b) where service in accordance with paragraph 1(a) could not be effected by any method permitted by the law of the state where service is to be effected or as authorised by the Court under Rule 275.

Rule 274 Service outside the Contracting Member States

Rule 275 Service of the Statement of claim by an alternative method or at an alternative place

Regulation (EU) 2020/1784



2. No Statement of claim may be served under this Rule 274 in a manner which is contrary to the law of the state where service is effected.
3. The Registry shall inform the claimant of the date on which the Statement of claim is deemed served under paragraph 1.
4. The Registry shall inform the claimant if for any reason service pursuant to paragraph 1 cannot be effected.

Section 3 Service by an Alternative Method

Rule 275 Service of the Statement of claim by an alternative method or at an alternative place

1. Where service in accordance with Section 1 or 2 could not be effected the Court on an application by the claimant that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Chapter, the Court may by way of order permit service by an alternative method or at an alternative place.
2. On a reasoned request by the claimant, the Court may order that steps already taken to bring the Statement of claim to the attention of the defendant by an alternative method or at an alternative place is good service.
3. An order under this rule shall specify:
 - (a) the method or place of service;
 - (b) the date on which the Statement of claim is deemed served; and
 - (c) the period for filing the Statement of defence.
4. No order for alternative service under this Rule shall be made permitting service in a manner that is contrary to the law of the state where service is to be effected.

Section 4 Service of Orders, Decisions and Written Pleadings

Rule 276 Service of orders and decisions

1. Any order or decision of the Court shall be served on each of the parties in accordance with the provisions of Sections 1, 2 or 3 of this Chapter 2, as the case may be.
2. Decisions by default pursuant to Rule 355 resulting from failure of the defendant to lodge a Defence to revocation [Rule 50] or failure to lodge a Defence to the Statement for a declaration of

[Article 2 of Regulation \(EU\) No 1257/2012](#)

Definitions

[Article 134 of the EPC](#) Representation before the European Patent Office

[Rule 8](#) Party and party's representative



non-infringement [Rule 67] within the time limit set by these Rules or by the Court, may be served on the defendant at the place of business of a professional representative or legal practitioner as defined in Article 134 EPC who is recorded as the appointed representative for the subject European patent with unitary effect, the subject of the proceedings, in the Register for unitary patent protection [Regulation (EU) No 1257/2012, Article 2(e)] or in the national patent register [Rule 8.5(a)].

[Rule 50](#) Contents of the Defence to revocation and Counterclaim for infringement

[Rule 67](#) Lodging of the Defence to the Statement for a declaration of non-infringement

[Rule 355](#) Decision by default (Court of First Instance)

Rule 277 **Decisions by default under Part 5, Chapter 11**

No decision by default shall be entered under Part 5, Chapter 11 unless the Court is satisfied that either:

- (a) the Statement of claim was served by a method prescribed by the internal law of the state addressed for the service of documents in domestic actions upon persons who are within its territory; or
- (b) the Statement of claim was actually served on the defendant under this Chapter 2.

Rule 278 **Service of written pleadings and other documents**

1. As soon as practicable after written pleadings have been received at the Registry, the Registry shall serve the pleadings and any other document lodged with the pleadings on the other party by means of electronic communication except if the pleading contains a request for an *ex parte* proceeding.
2. Where service by means of electronic communication cannot be effected, the Registry shall serve the written pleadings on the party by:
 - (a) registered letter with acknowledgement of receipt or equivalent; or
 - (b) any method authorised by the Court under Rule 275.
3. Service under paragraph 2(a) shall be effected at the following place:
 - (a) where the party is a company or other legal person: at its statutory seat, central administration, principal place of business or at any place within the Contracting Member States where the company or other legal person has a place of business;

[Rule 8](#) Party and party's representative

[Rule 271](#) Service of the Statement of claim

[Rule 272](#) Notice of service and non-service of the Statement of claim

[Rule 275](#) Service of the Statement of claim by an alternative method or at an alternative place

- (b) where the party is an individual: at his usual or last known residence within the Contracting Member States.
4. Rule 271.6 and 272 shall apply *mutatis mutandis*.
 5. Where a party is represented pursuant to Rule 8.1, the pleadings and other documents referred to in paragraph 1 shall be served on that representative. Paragraph 2 shall apply *mutatis mutandis*.

Rule 279 **Change of electronic address for service**

Where the electronic address for service of a party changes, that party must give notice in writing of the change as soon as it has taken place to the Registry and every other party [Rule 6.3].

[Rule 6](#) Service and supply of orders, decisions, written pleadings and other documents

Chapter 3 – Rights and Obligations of Representatives

Rule 284 **Duty of representatives not to misrepresent facts or cases**

A representative of a party shall not misrepresent cases or facts before the Court either knowingly or with good reasons to know.

Relation to Agreement: Article 48(6)

[Article 48 of the Agreement](#) Representation

Rule 285 **Powers of attorney**

1. A representative who claims to be representing a party shall be accepted as such provided however the Court may order a representative to produce a written authority if his representative powers are challenged.
2. In the event of a successful challenge to a representative's authority pursuant to paragraph 1 the Court may make an order pursuant to Rule 291.

[Rule 291](#) Exclusion from the proceedings

Rule 286 **Certificate that a representative is authorised to practice before the Court**

1. A representative pursuant to Article 48(1) of the Agreement shall lodge at the Registry a certificate that he is a lawyer authorised to practise before a court of a Member State of the

[Article 48 of the Agreement](#) Representation
Article 1 of Directive 98/5/EC



European Union. A lawyer within the meaning of Article 48(1) of the Agreement is a person who is authorised to pursue professional activities under a title referred to in Article 1 of Directive 98/5/EC and by way of exception a person with equivalent legal professional qualifications who, owing to national rules, is permitted to practice in patent infringement and invalidity litigation but not under such title. In subsequent actions the representative may refer to the certificate previously lodged.

2. A representative pursuant to Article 48(2) of the Agreement shall lodge at the Registry the European Patent Litigation Certificate as defined by the Administrative Committee or otherwise justify that he has appropriate qualifications to represent a party before the Court. In subsequent actions such representative may refer to the certificate or other evidence of appropriate qualification previously lodged.

Rule 287 Attorney-client privilege

1. Where a client seeks advice from a lawyer or a patent attorney he has instructed in a professional capacity, whether in connection with proceedings before the Court or otherwise, then any confidential communication (whether written or oral) between them relating to the seeking or the provision of that advice is privileged from disclosure, whilst it remains confidential, in any proceedings before the Court or in arbitration or mediation proceedings before the Centre.
2. This privilege applies also to communications between a client and a lawyer or patent attorney employed by the client and instructed to act in a professional capacity, whether in connection with proceedings before the Court or otherwise.
3. This privilege extends to the work product of the lawyer or patent attorney (including communications between lawyers and/or patent attorneys employed in the same firm or entity or between lawyers and/or patent attorneys employed by the same client) and to any record of a privileged communication.
4. This privilege prevents the lawyer or patent attorney and his client from being questioned or examined about the contents or nature of their communications.
5. This privilege may be expressly waived by the client.
6. For the purpose of Rules 287 and 288:

[Article 134 of the EPC](#) Representation before the European Patent Office
[Article 48 of the Agreement](#) Representation
[Rule 286](#) Certificate that a representative is authorised to practice before the Court
[Rule 287](#) Attorney-client privilege
[Rule 288](#) Litigation privilege

- (a) the expression “lawyer” shall mean a person as defined in Rule 286.1 and any other person who is qualified to practise as a lawyer and to give legal advice under the law of the state where he practises and who is professionally instructed to give such advice.
 - (b) the expression “patent attorney” shall include a person who is recognised as eligible to give advice under the law of the state where he practises in relation to the protection of any invention or to the prosecution or litigation of any patent or patent application and is professionally consulted to give such advice.
7. The expression “patent attorney” shall also include a professional representative before the European Patent Office pursuant to Article 134 (1) EPC.

Relation to Agreement: Article 48(4)

Rule 288 Litigation privilege

Where a client, or a lawyer or patent attorney as specified in Rule 287.1, .2, .6 and .7 instructed by a client in a professional capacity, communicates confidentially with a third party for the purposes of obtaining information or evidence of any nature for the purpose of or for use in any proceedings, including proceedings before the European Patent Office, such communications shall be privileged from disclosure in the same way and to the same extent as provided for in Rule 287.

Relation to Agreement: Article 48(5)

[Article 48 of the Agreement](#) Representation
[Rule 287](#) Attorney-client privilege

Rule 289 Privileges, immunities and facilities

1. Representatives appearing before the Court shall enjoy immunity in respect of words spoken or written by them concerning the action or the parties.
2. Representatives shall enjoy the following further privileges and facilities:
 - (a) papers and documents relating to the proceedings shall be exempt from both search and seizure;
 - (b) any allegedly infringing product or device relating to the proceedings shall be exempt from both search and seizure when brought to the Court for the purposes of the proceedings. In the event of a dispute, customs officials or police may seal those papers, documents or

[Article 48 of the Agreement](#) Representation



allegedly infringing products or devices. They shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and of the person concerned.

3. Representatives shall be entitled to travel in the course of duty without hindrance.
4. The privileges, immunities and facilities specified in paragraphs 1 to 3 are granted exclusively in the interests of the proper conduct of proceedings.
5. The Court may waive the immunity where it considers that a representative is guilty of conduct which is contrary to the proper conduct of proceedings.

Relation with Agreement: Article 48

Rule 290 Powers of the Court as regards representatives

[Rule 291](#) Exclusion from the proceedings

1. As regards representatives who appear before it, the Court shall have the powers normally accorded to courts of law, under the conditions laid down in Rule 291.
2. Representatives who appear before the Court shall strictly comply with any code of conduct adopted for such representatives by the Administrative Committee.

Rule 291 Exclusion from the proceedings

[Rule 290](#) Powers of the Court as regards representatives

1. If the Court considers that the conduct of a party's representative towards the Court, towards any judge of the Court or towards any member of the staff of the Registry is incompatible with the dignity of the Court or with the requirements of the proper administration of justice, or that such representative uses his rights for purposes other than those for which they were granted, or that such representative is otherwise in breach of any code of conduct adopted pursuant to Rule 290.2 it shall so inform the person concerned. On the same grounds, the Court may at any time, after having given the person concerned an opportunity to be heard, exclude that person from the proceedings by way of order. That order shall have immediate effect.
2. Where a party's representative is excluded from the proceedings, the proceedings shall be stayed for a period fixed by the presiding judge in order to enable the party concerned to appoint another representative.



Rule 292 **Patent attorneys' right of audience**

- 1. For the purposes of Article 48(4) of the Agreement, the term "patent attorneys" assisting a representative referred to in Article 48(1) and/or (2) of the Agreement shall mean persons meeting the requirements of Rule 287.6(b) or .7 and practising in a Contracting Member State.
- 2. Such patent attorneys shall be allowed to speak at hearings of the Court at the discretion of the Court and subject to the representative's responsibility to coordinate the presentation of a party's case.
- 3. Rules 285 and 287 to 291 shall apply *mutatis mutandis*.

Relation with Agreement: Article 48(4)

- [Article 48 of the Agreement](#) Representation
- [Rule 285](#) Powers of attorney
- [Rule 287](#) Attorney-client privilege
- [Rule 288](#) Litigation privilege
- [Rule 289](#) Privileges, immunities and facilities
- [Rule 290](#) Powers of the Court as regards representatives
- [Rule 291](#) Exclusion from the proceedings

Rule 293 **Change of a representative**

Any change of representative shall take effect from the receipt by the Registry of notification that a new representative shall in future be representing the party concerned. Until the moment where such statement is received, the former representative remains responsible for the conduct of the proceedings and for communications between the Court and the party concerned.

Rule 294 **Removal from the register of representatives**

An Application to remove a representative's name, being a representative qualified pursuant to Article 48(1) of the Agreement, from the register of representatives may be made:

- (a) by the representative himself in the event he retires or for any other reason ceases to satisfy the requirements of Rule 286;
- (b) by a representative on behalf of a listed representative who has died.

- [Article 48 of the Agreement](#) Representation
- [Rule 286](#) Certificate that a representative is authorised to practice before the Court

Chapter 4 – Stay of Proceedings

Rule 295 Stay of proceedings

The Court may stay proceedings:

- (a) where it is seized of an action relating to a patent which is also the subject of opposition proceedings or limitation proceedings (including subsequent appeal proceedings) before the European Patent Office or a national authority where a decision in such proceedings may be expected to be given rapidly;
- (b) where it is seized of an action relating to a supplementary protection certificate which is also the subject of proceedings before a national court or authority;
- (c) where an appeal is brought before the Court of Appeal against a decision or order of the Court of First Instance:
 - (i) disposing of the substantive issues in part only;
 - (ii) disposing of an admissibility issue or a Preliminary objection;
- (d) at the joint request of the parties;
- (e) pursuant to Rule 37;
- (f) pursuant to Rules 75 and 76;
- (g) pursuant to Rule 118;
- (h) pursuant to Rule 136;
- (i) pursuant to Rule 266;
- (j) pursuant to Rules 310 and 311;
- (k) pursuant to Rule 346;
- (l) to give effect to Union law, in particular the provisions of Regulation (EU) No 1215/2012 and the Lugano Convention;
- (m) in any other case where the proper administration of justice so requires.

[Rule 37](#) Application of Article 33(3) of the Agreement

[Rule 75](#) Revocation action and subsequent infringement action in a local or regional division (Article 33(5) of the Agreement)

[Rule 76](#) Actions for declaration of non-infringement within Article 33(6) of the Agreement

[Rule 118](#) Decision on the merits

[Rule 136](#) Stay of the Application for a determination of damages

[Rule 266](#) Preliminary references to the Court of Justice of the European Union

[Rule 310](#) Death or demise of a party

[Rule 311](#) Insolvency of a party

[Rule 346](#) Application of Article 7 of the Statute Regulation (EU) No 1215/2012

Rule 296 **Duration and effects of a stay of proceedings**

1. The stay of proceedings shall take effect on the date indicated in the order to stay or, in the absence of such an indication, on the date of that order. The Court shall stipulate what effect the stay shall have on any existing orders.
2. Where the order to stay does not fix the length of the stay, it shall end on the date indicated in the order to resume proceedings or, in the absence of such indication, on the date of the order to resume.
3. While proceedings are stayed, time shall cease to run for the purposes of procedural periods. Time shall begin to run afresh for the purposes of procedural periods from the date on which the stay of proceedings comes to an end.

Rule 297 **Resumption of proceedings**

Any decision referred to in Rule 296.2 ordering the resumption of proceedings before the end of the stay shall be made by order of the judge-rapporteur after hearing the parties. The judge-rapporteur may refer the matter to the panel.

[Rule 296](#) Duration and effects of a stay of proceedings

Rule 298 **Accelerated proceedings before the European Patent Office**

The Court may of its own motion or at the request of a party request that opposition proceedings or limitation proceedings (including any subsequent appeal proceedings) before the European Patent Office be accelerated in accordance with the proceedings of the European Patent Office. The Court may stay its proceedings in accordance with Rule 295(a) pending the outcome of such request and any subsequent accelerated proceedings.

[Rule 295](#) Stay of proceedings

Chapter 5 – Time Periods

Rule 300 Calculation of periods

Any period of time prescribed by the Agreement, the Statute, these Rules or any order of the Court for the taking of any procedural step shall be laid down in terms of full days, weeks, months or years and shall be reckoned as follows:

- (a) computation shall start on the day following the day on which the relevant event occurred; in the case of service of a document, the relevant event shall be the receipt of that document in accordance with Part 5, Chapter 2;
- (b) when a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred. If the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month;
- (c) when a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred. If the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month;
- (d) when a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred;
- (e) day shall mean a calendar day unless expressed as a working day;
- (f) calendar days shall include official holidays of the Contracting Member State in which the division or the seat of the central division or its section concerned or the Court of Appeal is located, Saturdays and Sundays;
- (g) working days shall not include official holidays of the Contracting Member State in which the division or the seat of the central division or its section concerned or the Court of Appeal is located, Saturdays and Sundays;
- (h) periods shall not be suspended during the judicial vacations.

Rule 301 **Automatic extension of periods**

1. If a period expires on a Saturday, Sunday or official holiday of the Contracting Member State in which the division or the seat of the central division or its section concerned or the Court of Appeal is located, it shall be extended until the end of the first following working day.
2. Paragraph 1 shall apply *mutatis mutandis* if documents filed in electronic form cannot be received by the Court.

Chapter 6 – Parties to Proceedings**Section 1 Plurality of Parties****Rule 302** **Plurality of claimants or patents**

1. The Court may order that proceedings commenced by a plurality of claimants or in respect of a plurality of patents be heard in separate proceedings.
2. Where the Court orders a separation of proceedings the Court shall decide on the payment of a new court fee or court fees in accordance with Part 6.
3. The Court may order that parallel infringement or revocation proceedings relating to the same patent or patents and before the same local or regional division or the central division or the Court of Appeal be heard together where it is in the interests of justice to do so.

Rule 303 **Plurality of defendants**

1. Proceedings may be started against a plurality of defendants if the Court has competence in respect of all of them.
2. The Court may separate the proceedings into two or more separate proceedings against different defendants.
3. Where the Court orders a separation of proceedings under paragraph 2, the claimants in the new proceedings shall pay a new court fee in accordance with Part 6, unless the Court decides otherwise.



Section 2 Change in Parties

Rule 305 Change in parties

1. The Court may, on application by a party, order a person to:
 - (a) be added as a party;
 - (b) cease to be a party;
 - (c) be substituted for a party.
2. The Court shall invite other parties to the proceedings to comment on the application, as soon as practicable after service of the application.
3. When ordering that a person shall become a party or shall cease to be a party, the Court may make appropriate orders as to payment of court fees and costs as regards such party.

Rule 306 Consequences for the proceedings

[Rule 305](#) Change in parties

1. Where the Court orders that a party be added, removed or substituted under Rule 305.1, it shall give directions to regulate the consequences as to case management.
2. The Court shall also determine the extent to which a new party is bound by the proceedings as then constituted.

Section 3 Death, Demise or Insolvency of a Party

Rule 310 Death or demise of a party

[Rule 305](#) Change in parties

[Rule 306](#) Consequences for the proceedings

1. If a party dies or ceases to exist during proceedings, the proceedings shall be stayed until such party is replaced by his successor. The Court may specify a period in this respect.
2. If there are more than two parties to the proceedings, the Court may decide that:
 - (a) proceedings between the remaining parties be continued separately; and
 - (b) the stay shall only concern the proceedings regarding the party that no longer exists.
3. If the successor of the party that died or ceased to exist does not continue the proceedings of his own motion, within a period specified by the Court, any other party may apply to have the successor added to or substituted for a party.

4. The Court shall decide who shall be added or substituted as a party pursuant to Rule 305 and 306 shall apply *mutatis mutandis*.

Rule 311 Insolvency of a party

[Rule 265](#) Withdrawal

1. If a party is declared insolvent under the law applicable to the insolvency proceedings the Court shall stay the proceedings up to three months. They may be stayed until the competent national authority or person dealing with the insolvency has decided whether to continue the proceedings or not. Where the competent national authority or person dealing with the insolvency decides not to continue the proceedings, the Court may decide, upon a reasoned request by the other party, that the proceedings should be continued in accordance with the applicable national insolvency law.
2. Proceedings may also be stayed at the request of a temporary administrator who has been appointed before a party is declared insolvent.
3. The claimant may withdraw the action against an insolvent defendant in accordance with Rule 265 and a defendant may withdraw a Counterclaim against an insolvent claimant. Such withdrawal shall not prejudice the action against other parties.
4. If proceedings are continued, the effect of a decision of the Court as regards the insolvent party in the action shall be determined by the law applicable to the insolvency proceedings.

Section 4 Transfer of Patent

Rule 312 Transfer of the patent or patent application during proceedings

[Rule 305](#) Change in parties
[Rule 306](#) Consequences for the proceedings

1. If a patent or patent application is transferred, for one or more Contracting Member States, to another proprietor after proceedings have been started before the Court, the Court may authorise the new proprietor to be added as a party or substituted for a party pursuant to Rule 305 to the extent that the patent and the claims in the proceedings have been assigned to the new proprietor. Rule 306 shall apply *mutatis mutandis*.
2. If the new proprietor takes over the proceedings, no new court fee shall be payable, even if the new proprietor is represented by a new representative.

3. If the new proprietor chooses not to take over the proceedings, any decision in proceedings that have been recorded in the register shall be binding upon him.

Section 5 Intervention

Rule 313 Application to intervene

[Article 48 of the Agreement](#) Representation

1. An Application to intervene may be lodged at any stage of the proceedings before the Court of First Instance or the Court of Appeal by any person establishing a legal interest in the result of an action submitted to the Court (hereinafter “the intervener”).
2. An Application to intervene shall be admissible only if it is made in support, in whole or in part, of a claim, order or remedy sought by one of the parties and is made before the closure of the written procedure unless the Court of First Instance or Court of Appeal orders otherwise.
3. The intervener shall be represented in accordance with Article 48 of the Agreement.
4. The Application to intervene shall contain:
 - (a) a reference to the action number of the file;
 - (b) the names of the intervener and of the intervener’s representative, as well as postal and electronic addresses for service and the names of the persons authorised to accept service;
 - (c) the claim, order or remedy in support of which intervention is sought by the intervener; and
 - (d) a statement of the facts establishing the right to intervene under paragraphs 1 and 2.

Rule 314 Order on Application to intervene

The judge-rapporteur shall decide on the admissibility of the Application to intervene by way of order. The other parties shall be given an opportunity to be heard beforehand.

Rule 315 Statement in intervention

1. If an Application to intervene is admissible, the judge-rapporteur or the presiding judge shall:
 - (a) inform the parties to proceedings; and
 - (b) specify a period within which the intervener may lodge a Statement in intervention.
2. The Registry shall as soon as practicable serve on the intervener any written pleading served by the parties. On a reasoned request by a party the Court may for the protection of confidential

information order that a pleading or part of a pleading be disclosed only to certain named persons and subject to appropriate terms of non-disclosure.

3. The Statement in intervention shall contain:
 - (a) a statement as to the issues involving the intervener and one or more of the parties, and their connection to the matters in dispute;
 - (b) the arguments of law; and
 - (c) the facts and evidence relied on.
4. The intervener shall be treated as a party, unless otherwise ordered by the Court.

Rule 316 **Invitation to intervene**

[Rule 313](#) Application to intervene
[Rule 314](#) Order on Application to intervene
[Rule 315](#) Statement in intervention

1. The judge-rapporteur or the presiding judge may, of his own motion after hearing the parties, or on a reasoned request from a party, invite any person concerned by the outcome of the dispute to inform the Court, within a period to be specified, whether he wishes to intervene in the proceedings.
2. If the person wishes to intervene, he shall present his Application to intervene within one month of service of the invitation and his Statement in intervention within such further period to be specified by the judge-rapporteur or the presiding judge. Rules 313.3, .4, 314 and 315 shall apply *mutatis mutandis*.
3. An intervener shall be bound by the decision in the action.

Rule 316A **Forced intervention**

[Rule 316](#) Invitation to intervene

1. A party who contends that the person should be bound by the decision in the action even if he refuses to intervene shall give reasons for this contention in its reasoned request. In such a case the invitation must include these reasons and must state that the party making the request contends that the person should be bound by the decision in the action even if that person refuses to intervene.
2. If the person invited to intervene pursuant to Rule 316.1 does not intervene but wishes to contend that he should not be bound by the decision in the action, he shall lodge a statement to that effect within the one month period referred to in Rule 316.2. If no such statement is lodged within the

time specified he shall be bound by the decision in the action as between himself and any other party to the action and shall not be entitled to argue that the decision in the action was wrong or that the inviting party did not conduct the proceedings leading to the decision in the action properly. If a statement is lodged within the time specified then the Court shall decide whether the person invited to intervene shall be bound having heard the parties and the person invited to intervene. If the Court so decides, the person invited to intervene may present an Application to intervene within one month of service of the Court's decision. Rule 316.2 shall apply. If the person invited to intervene fails to present such an application, he shall be bound by the decision in the action.

Rule 317 No appeal against an order on the Application to intervene

There shall be no appeal against an order refusing an Application to intervene.

Section 6 Re-establishment of Rights

Rule 320 Re-establishment of rights

1. Where a party has failed to observe a time-limit set by these Rules or the Court for a cause which, despite all due care having been taken by the party, was outside his control and the non-observance of this time limit has had the direct consequence of causing the party to lose a right or means of redress, the relevant panel of the Court may upon the request of that party re-establish the right or means of redress.
2. The Application for Re-establishment of rights shall be lodged with the Registry within one month of the removal of the cause for non-observance of the time-limit but in any event within six months of the non-observed time-limit. Within that time-limit a fee shall be paid for a Request for Re-establishment of rights, in accordance with Part 6.
3. The Application shall:
 - (a) state the grounds on which it is based and shall set out the facts on which it relies; and
 - (b) contain the evidence relied on in the form of affidavits from all persons involved in the non-observance of the time-limit and the persons involved in establishing the precautionary measures of due care taken in order to avoid such cases of non-compliance.

4. The omitted act shall be performed or completed together with Application for Re-establishment within the time-limit mentioned in paragraph 2.
5. There shall be no grant of Re-establishment of rights in respect of the non-observance of the time limit mentioned in paragraphs 2 and 4 of this Rule.
6. The panel shall decide on the Application for Re-establishment of rights by way of order. The other parties shall be given an opportunity to be heard beforehand.
7. There shall be no right to appeal from an order rejecting an Application for Re-establishment of rights or from an order granting Re-establishment of rights.

Chapter 7 – Miscellaneous Provisions on Languages

Rule 321 **Application by both parties to use of the language in which the patent was granted as language of the proceedings**

1. At any time during the written procedure, any party may lodge an Application by both parties to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(3) of the Agreement. The Application shall state that both parties agree to use the language in which the patent was granted as the language of the proceedings.
2. As soon as practicable, the Registry shall forward the Application to the panel.
3. The panel shall, as soon as practicable, decide whether it approves the Application by both parties to use the language in which the patent was granted as the language of the proceedings. Where the panel does not approve the Application, the Registry shall as soon as practicable inform the parties who may request, within 10 days, that the action be referred to the central division and the action shall be transferred accordingly.
4. Where the action is transferred to the central division Rule 41 shall apply *mutatis mutandis*.

Relation with Agreement: Article 49(3)

[Article 49 of the Agreement](#) Language of proceedings at the Court of First Instance
[Rule 41](#) Written procedure when the central division deals with the action under Article 33(3)(c) of the Agreement

Rule 322	Proposal from the judge-rapporteur to use of the language in which the patent was granted as language of the proceedings At any time during the written procedure and the interim procedure, the judge-rapporteur may, of his own motion or on a request by a party, after consulting the panel, propose to the parties that the language of the proceedings be changed to the language in which the patent was granted, in accordance with Article 49(4) of the Agreement. If the parties and panel agree the language of the proceedings shall be changed. <i>Relation with Agreement: Article 49(4)</i>	Article 49 of the Agreement Language of proceedings at the Court of First Instance
Rule 323	Application by one party to use the language in which the patent was granted as language of the proceedings 1. If a party wishes to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(5) of the Agreement, the party shall include such Application in the Statement of Claim, in the case of a claimant, or in the Statement of Defence, in the case of a defendant. The judge-rapporteur shall forward the Application to the President of the Court of First Instance. 2. The President shall invite the other party to indicate, within 10 days, its position on the use of the language in which the patent was granted as language of the proceedings. 3. The President, having consulted the panel of the division, may order that the language in which the patent was granted shall be the language of the proceedings and may make the order conditional on specific translation or interpretation arrangements. <i>Relation with Agreement: Article 49(5)</i>	Article 49 of the Agreement Language of proceedings at the Court of First Instance
Rule 324	Consequences where the language of the proceedings is changed in the course of the proceedings An Application under Rule 321.1 or 323.1 shall specify whether existing pleadings and other documents should be translated and at whose cost. If the parties cannot agree the judge-rapporteur or the President of the Court of First Instance, as the case may be, shall decide in accordance with Rule 323.3.	Rule 321 Application by both parties to use of the language in which the patent was granted as language of the proceedings Rule 323 Application by one party to use the language in which the patent was granted as language of the proceedings

Chapter 8 – Case Management

Rule 331 Responsibility for case management

1. During the written procedure and the interim procedure, case management shall be the responsibility of the judge-rapporteur subject to Rules 102 and 333.
2. The judge-rapporteur may refer a proposed order to the panel.
3. After the closure of the interim conference, case management shall be the responsibility of the presiding judge in consultation with the judge-rapporteur.
4. The Registry shall serve any case management orders on the parties as soon as practicable after the decision of the judge-rapporteur, presiding judge or panel.

[Article 43 of the Agreement](#) Case management

[Rule 102](#) Referral to the panel

[Rule 333](#) Review of case management orders

Rule 332 General principles of case management

Active case management includes:

- (a) encouraging the parties to co-operate with each other during the proceedings;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues need full investigation and disposing summarily of other issues;
- (d) deciding the order in which issues are to be resolved;
- (e) encouraging the parties to make use of the Centre and facilitating the use of the Centre;
- (f) helping the parties to settle the whole or part of the action;
- (g) fixing timetables or otherwise controlling the progress of the action;
- (h) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (i) dealing with as many aspects of the action as the Court can on the same occasion;
- (j) dealing with the action without the parties needing to attend in person;
- (k) making use of available technical means; and
- (l) giving directions to ensure that the hearing of the action proceeds quickly and efficiently.

Rule 333 Review of case management orders

1. Case management decisions or orders made by the judge-rapporteur or the presiding judge shall be reviewed by the panel, on a reasoned Application by a party.
2. An Application for the review of a case management order shall be lodged within 15 days of service of the order. The Application shall set out the grounds for review and the evidence, if any, in support of the grounds. The other party shall be given an opportunity to be heard.
3. The party seeking a review shall pay the fee for the review of a case management order, in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.
4. The panel shall as soon as practicable decide the Application for review and make any necessary revised case management order.
5. A decision of the panel on an Application for review is a procedural decision for the purposes of Rule 220.2.

[Rule 15](#) Fee for the infringement action

[Rule 220](#) Appealable decisions

Rule 334 Case management powers

Except where the Agreement, the Statute or these Rules provide otherwise, the judge-rapporteur, the presiding judge or the panel may:

- (a) extend or shorten the period for compliance with any rule or order [Rule 9.3];
- (b) adjourn or bring forward the interim conference or the oral hearing;
- (c) communicate with the parties to instruct them about wishes or requirements of the Court;
- (d) direct a separate hearing of any issue;
- (e) decide the order in which issues are to be decided;
- (f) exclude an issue from consideration;
- (g) dismiss or decide on a claim after a decision on a preliminary issue makes a decision on further issues irrelevant to the outcome of the action;
- (h) dismiss a claim summarily if it has no prospect of succeeding;
- (i) consolidate any matter or issue or order them to be heard together;
- (j) make any order pursuant to Rules 103 to 109.

[Rule 9](#) Powers of the Court

[Rule 103](#) Preparation for the interim conference

[Rule 104](#) Aim of the interim conference

[Rule 105](#) Holding the interim conference

[Rule 106](#) Recording of the interim conference

[Rule 108](#) Summons to the oral hearing

[Rule 109](#) Simultaneous interpretation during oral hearings



Rule 335 **Varying or revoking orders**

The power of the Court to make a case management order includes a power to vary or revoke such order.

Rule 336 **Exercise of case management powers**

The Court may exercise its case management powers on the application by a party or of its own motion, unless otherwise provided.

Rule 337 **Orders of the Court's own motion**

Where the Court proposes to make an order of its own motion, it may do so but only after hearing the parties.

Rule 340 **Connection Joinder**

1. In the interests of the proper administration of justice and of avoiding inconsistent decisions, where more than one action concerning the same patent (whether or not between the same parties) is pending before:
 - (a) different panels (whether in the same or different divisions); or
 - (b) different panels of the Court of Appeal,the panels may by agreement, at any time, after hearing the parties, order that two or more actions shall, on account of the connection between them, be heard together. Article 33 of the Agreement shall be respected.
2. The actions may subsequently be disjoined.

[Article 33 of the Agreement](#) Competence of the divisions of the Court of First Instance

Chapter 9 – Rules relating to the Organisation of the Court

Rule 341 Precedence

1. With the exception of the President of the Court of Appeal and the President of the Court of First Instance, the judges shall rank in precedence according to their seniority in office.
2. Where there is equal seniority in office, precedence shall be determined by age.
3. Retiring judges who are reappointed shall retain their former precedence.
4. The Presidium may determine the presiding judge of a panel. In the absence of such a determination by the Presidium and unless otherwise agreed by the panel the most senior judge shall be the presiding judge.

Rule 342 Dates, times and place of the sittings of the Court

1. The duration of judicial vacations shall be fixed by the President of the Court of Appeal, on a proposal from the Presidium. The dates and times of the sittings of the Court shall be decided by the presiding judge of the panel in question.
2. The Court may choose to hold one or more particular sittings in a place other than that in which it has its seat. Subject to any rules agreed by the relevant Contracting Member States pursuant to Article 7(5) of the Agreement where an action is pending before a regional division the judge-rapporteur or the presiding judge shall designate the place within the region for each hearing having regard to the residence or place of business of the defendant and all other relevant circumstances such as the facilities available, the financial means of the parties and the place of actual or threatened infringement.

Relation with Statute: Article 17

[Article 7 of the Agreement](#) The Court of First Instance
[Article 17 of the Statute](#) Judicial vacations

Rule 343 Order in which actions are to be dealt with

1. The Court shall deal with the actions before it in the order in which they become ready for hearing in accordance with Rule 108.
2. The presiding judge of a panel may, after hearing the parties [Rule 264]:

[Rule 108](#) Summons to the oral hearing
[Rule 264](#) An opportunity to be heard

- (a) direct that a particular action be given priority and that time limits provided for in these Rules be shortened;
- (b) defer an action to be dealt with later, in particular with a view to facilitating an amicable settlement of the dispute.

Rule 344 **Deliberations**

- 1. The Court shall deliberate in closed session.
- 2. The presiding judge shall preside over the deliberations. Only those judges who were present at the oral hearing may take part in the deliberations on the decision.
- 3. The deliberation of the Court shall take place as soon as possible after the closure of the oral hearing.

Rule 345 **Composition of panels and assignment of actions**

- 1. The President of the Court of First Instance or a judge to whom he has delegated this task in a division, the seat of the central division or one of its sections shall allocate the judges to the panels of the local and regional divisions, the seat of the central division and its sections.
- 2. The allocation shall be in conformity with Article 8 of the Agreement.
- 3. The actions pending in the division, the seat of the central division or one of its sections shall be assigned to the panels by the Registrar following an action-distribution-scheme established by the presiding judge of each local or regional division, the seat of the central division and its sections (being the judge appointed by the Presidium as the presiding judge) for the duration of one calendar year, preferably distributing the actions according to the date of receipt of the actions at the division or section.
- 4. Each panel may delegate to one or more judges of the panel:
 - (a) the function of acting as a single judge; or
 - (b) the function of acting for the panel in the procedures of Part 1 Chapter 4 (Procedure for the Determination of Damages and Compensation, including the procedure for the laying open of books) and Chapter 5 (Procedure for Cost Decisions). These functions may be delegated to the judge-rapporteur who has prepared the action for the oral hearing.

[Article 8 of the Agreement](#) Composition of the panels of the Court of First Instance
[Article 19 of the Statute](#) Panels

5. The President of the Court of First Instance or a judge to whom he has delegated this task in a division, the seat of the central division or one of its sections shall designate the judges assigned to each division, the seat of the central division and each of its sections as standing judges for urgent actions. The assignment may be limited to certain periods of time.
6. If all parties agree to having the action heard by a single judge, the presiding judge of the panel to which the action is allocated shall assign the action to a legally qualified judge of the panel.
7. Where paragraphs 1 to 6 apply to decisions by the presiding judge of the seat of the central division or one of its sections, the President of the Court of First Instance may of his own motion review that decision.
8. Paragraphs 1 to 6 shall apply *mutatis mutandis* to the Court of Appeal; the President of the Court of Appeal exercising the respective functions.

Relation with Statute: Article 19

Rule 346

Application of Article 7 of the Statute

[Article 7 of the Statute](#) Impartiality

1. A party who believes to have reason to object to a judge taking part in proceedings pursuant to Article 7(4) of the Statute shall as soon as is reasonably practicable in the circumstances notify the President of the Court of First Instance or the President of the Court of Appeal wherever the case is pending that it objects to the judge taking part in the proceedings.
2. Any failure to notify an objection as soon as is reasonably practicable shall amount to a waiver of such objection.
3. The President concerned shall, after hearing the judge involved, decide whether the objection is valid pursuant to Article 7(2) and (4) of the Statute and considering the circumstances.
4. In case of any difficulty within the meaning of Article 7(5) of the Statute the President concerned shall refer the matter to the Presidium.
5. If it is decided that the objection is valid the judge concerned shall be replaced on the panel of judges allocated to the case concerned.
6. The panel assigned to the proceedings may decide to continue with the proceedings or to stay the proceedings pending the final decision of the President concerned or the Presidium. The



President concerned or the Presidium may give instructions in the final decision as to the future conduct of the proceedings.

Relation with Statute: Article 7

Chapter 10 – Decisions and Orders

Rule 350

Decisions

[Article 35 of the Statute](#) Decisions
[Rule 351](#) Orders

1. Any decision shall contain:
 - (a) the statement that it is a decision of the Court;
 - (b) the date of its delivery;
 - (c) the names of the presiding judge, the judge-rapporteur and other judges taking part in it;
 - (d) the names of the parties and of the parties' representatives;
 - (e) an indication of the claim, order or remedy sought by the parties;
 - (f) a summary of the facts; and
 - (g) the grounds for the decision.
2. The order of the Court consequential upon the decision (other than costs) including any order giving immediate effect to an injunction, shall be appended to the decision. The order shall comply with Rule 351.
3. Any dissenting opinion shall be attached to the Court's decision.
4. The decision of the Court of First Instance shall contain a summary of the requests and facts submitted by the parties and a statement of the facts and arguments on which the Court bases its decision.
5. All decisions shall be recorded in the register.

Relation with Statute: Article 35(4)

Rule 351 Orders

1. Every order shall contain:
 - (a) the statement that it is an order of the judge-rapporteur, of the standing judge, of the single judge, of the presiding judge, of a President of the Court or of the Court;
 - (b) the date of its adoption;
 - (c) the names of any judge taking part in its adoption;
 - (d) the names of the parties and of the parties' representatives; and
 - (e) the operative part of the order.
2. Where, in accordance with these Rules the Court grants leave to appeal an order the order shall in addition contain:
 - (a) a statement of the forms of order sought by the parties;
 - (b) a summary of the facts; and
 - (c) the grounds for the order.
3. All orders shall be recorded in the register.

Rule 352 Binding effect of decisions or orders subject to security

1. Decisions and orders may be subject to the rendering of a security (whether by deposit or bank guarantee or otherwise) by a party to the other party for legal costs and other expenses and compensation for any damage incurred or likely to be incurred by the other party if the decisions and orders are enforced and subsequently revoked.
2. The Court may upon the application of a party release a security by order.

Rule 353 Rectification of decisions and orders

The Court may, by way of order, of its own motion or on application by a party made within one month of service of the decision or order to be rectified, after hearing the parties, rectify clerical mistakes, errors in calculation and obvious slips in the decision or order.

Rule 354 Enforcement

1. Subject to Rule 118.8 and 352 decisions and orders of the Court shall be directly enforceable from their date of service in each Contracting Member State. Enforcement shall take place in accordance with the enforcement procedures and conditions governed by the law of the particular Contracting Member State where enforcement takes place.
2. Where during an action an enforceable decision or order of the Court is subsequently varied or revoked, the Court may order the party which has enforced such decision or order, upon the request of the party against whom the decision or order has been enforced, to provide appropriate compensation for any injury caused by the enforcement. Rule 125 shall apply *mutatis mutandis*. Where an enforceable decision or order has been made pursuant to a finding of infringement of a patent and, following the conclusion of the action, the patent is amended or revoked, the Court may order, upon the request of the party against whom the decision or order would be enforceable, that the decision or order ceases to be enforceable.
3. The Court's decisions and orders may provide for periodic penalty payments payable to the Court in the event that a party fails to comply with the terms of the order or an earlier order. The value of such payments shall be set by the Court having regard to the importance of the order in question.
4. If it is alleged that a party has failed to comply with the terms of the order of the Court, the first instance panel of the division in question may decide on penalty payments provided for in the order upon the request of the other party or of its own motion. The procedure foreseen in Rule 264 shall apply. After having heard both parties the Court may make an appropriate order which may be subject to an appeal pursuant to Rule 220.2.

Relation with Agreement: Article 82

[Article 82 of the Agreement](#) Enforcement of decisions and orders
[Rule 118](#) Decision on the merits
[Rule 125](#) Separate proceedings for determining the amount of damages ordered
[Rule 220](#) Appealable decisions
[Rule 264](#) An opportunity to be heard
[Rule 352](#) Binding effect of decisions or orders subject to security

Chapter 11 – Decisions by Default

Rule 355 Decision by default (Court of First Instance)

1. Upon request a decision by default may be given against a party where:

[Rule 116](#) Absence of a party from the oral hearing

- (a) the Rules of Procedure so provide if a party fails to take a step within the time limit foreseen in these Rules or set by the Court; or
 - (b) without prejudice to Rules 116 and 117, the party which was duly summoned fails to appear at an oral hearing.
- [Rule 117](#) Absence of both parties from the oral hearing
- [Rule 356](#) Application to set aside a decision by default
2. A decision by default against the defendant of the claim or counterclaim may only be given where the facts put forward by the claimant justify the remedy sought and the procedural conduct of the defendant does not preclude to give such decision.
 3. A decision by default against the defendant of the claim or counterclaim may only be given where the time limits for the defence to the claim or counterclaim have expired and thus, it is established that the service of the claim or counterclaim was effected in sufficient time to enable the defendant to enter a defence.
 4. A decision by default shall be enforceable. The Court may, however:
 - (a) grant a stay of enforcement until it has given its decision on any Application under Rule 356; or
 - (b) make enforcement subject to the provision of security; this security shall be released if no Application is made or if the Application fails.

Rule 356 **Application to set aside a decision by default**

- [Article 37 of the Statute](#) Decision by default
- [Rule 355](#) Decision by default (Court of First Instance)
1. A party against whom a decision by default has been given may lodge an Application to set aside that decision within one month of service of the decision.
 2. The Application to set aside a decision by default shall contain the party's explanation for the default. It shall mention the date and number of the decision by default. The party shall pay a fee for the Application to set aside the decision by default, in accordance with Part 6. In the case of Rule 355.1(a) the Application shall be accompanied by the step the party has failed to take.
 3. If the provisions of paragraph 2 are met the Application shall be allowed unless a party has been put on notice in an earlier decision that a further decision by default shall be final. If the Application is allowed, a note of allowance shall be included in any publication of the decision by default.

Relation with Statute: Article 37

Rule 357 **Decision by default (Court of Appeal)**

1. Rules 355 and 356 shall apply *mutatis mutandis*, in particular where a respondent on whom a Statement of appeal and a Statement of the grounds of appeal have been duly served fails to lodge a Statement of response or where a party fails to file a Reply to a Statement of Cross-Appeal or translations ordered by the judge-rapporteur.
2. When considering whether to give a decision by default, the Court of Appeal may consider the merits of the appeal.
3. Rules 355 and 356 shall apply *mutatis mutandis* where the appellant fails to correct the deficiencies or to pay the fee pursuant to Rule 229.4 or to lodge the translations pursuant to Rule 232.1 within the period specified.

[Rule 229](#) Examination as to formal requirements of the Statement of appeal
[Rule 232](#) Translation of file
[Rule 355](#) Decision by default (Court of First Instance)
[Rule 356](#) Application to set aside a decision by default

Chapter 12 – Actions bound to fail or manifestly inadmissible

Rule 360 **No need to adjudicate**

If the Court finds that an action has become devoid of purpose and that there is no longer any need to adjudicate on it, it may at any time, on the application of a party or of its own motion, after giving the parties an opportunity to be heard, dispose of the action by way of order.

Rule 361 **Action manifestly bound to fail**

Where it is clear that the Court has no jurisdiction to take cognisance of an action or of certain of the claims therein or where the action or defence is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Court may, after giving the parties an opportunity to be heard, give a decision by way of order.

Rule 362 Absolute bar to proceeding with an action

The Court may at any time, on the application of a party or of its own motion, after giving the parties an opportunity to be heard, decide that there exists an absolute bar to proceeding with an action, for example because of the application of the principle of res judicata.

Rule 363 Orders dismissing manifestly inadmissible claims

1. Orders under Rules 360, 361 and 362 shall be taken by the panel upon the recommendation of the judge-rapporteur.
2. Where the decision is taken by the Court of First Instance pursuant to Rules 360, 361 and 362 it is a final decision within the meaning of Rule 220.1(a).

[Rule 220](#) Appealable decisions
[Rule 360](#) No need to adjudicate
[Rule 361](#) Action manifestly bound to fail
[Rule 362](#) Absolute bar to proceeding with an action

Chapter 13 – Settlement

Rule 365 Confirmation by the Court of a settlement

1. Where the parties have concluded their action by way of settlement, they shall inform the judge-rapporteur. The Court shall confirm the settlement by decision of the Court [Rule 11.2], if requested by the parties, and the decision may be enforced as a final decision of the Court.
2. At the request of the parties the Court may order that details of the settlement are confidential.
3. Subject to paragraph 2 the decision of the Court under paragraph 1 shall be entered on the register.
4. The judge-rapporteur shall give a decision as to costs in accordance with the terms of the settlement or, failing that, at his discretion.

Relation with Agreement: Article 79

[Article 79 of the Agreement](#) Settlement
[Rule 11](#) Settlement

Part 6 – Fees and Legal Aid

Rule 370

Court fees

1. Court fees provided for in these Rules shall be paid in accordance with the provisions contained in this Part and the table of fees adopted by the Administrative Committee pursuant to Article 36 (3) of the Agreement (hereinafter: table of fees).
2. A fixed fee shall be paid in accordance with Section I (fixed fees) of the table of fees for the following actions at the Court of First Instance:
 - (a) Infringement action [Rule 15],
 - (b) Counterclaim for infringement [Rule 53],
 - (c) Action for declaration of non-infringement [Rule 70],
 - (d) Action for compensation for licence of right [Rule 80.3],
 - (e) Application to determine damages [Rule 132].
3. In addition to the fixed fee a value-based fee shall be paid in accordance with Section II (value-based fees) of the table of fees for those actions at the Court of First Instance set out in paragraph 2, which exceed a value of 500,000 EUR.
4. For the following procedures and actions at the Court of First Instance a fee shall be paid in accordance with Section III (other procedures and actions) of the table of fees adopted by the Administrative Committee:
 - (a) Revocation action [Rule 46],
 - (b) Counterclaim for revocation [Rule 26],
 - (c) Application for provisional measures [Rule 206.5],
 - (d) Action against a decision of the European Patent Office [Rule 88.3, 97.2],
 - (e) Application to preserve evidence [Rule 192.5],
 - (f) Application for an order for inspection [Rule 199.2],
 - (g) Application for an order to freeze assets [Rule 200.2],
 - (h) Filing a protective letter [Rule 207.3],
 - (i) Application to prolong the period of a protective letter to be kept on the register [Rule 207.9],
 - (j) Application for rehearing [Rule 250],
 - (k) Application for re-establishment of rights [Rule 320.2],

[Article 36 of the Agreement](#) Budget of the Court

[Rule 15](#) Fee for the infringement action

[Rule 16](#) Examination as to formal requirements of the Statement of claim

[Rule 26](#) Fee for the Counterclaim for revocation

[Rule 46](#) Fee for the revocation action

[Rule 53](#) Fee for the Counterclaim for infringement

[Rule 70](#) Fee for the action for a declaration of non-infringement

[Rule 80](#) Compensation for a licence of right

[Rule 88](#) Application to annul or alter a decision of the Office

[Rule 97](#) Application to annul a decision of the Office to reject a request for unitary effect

[Rule 132](#) Fee for the Application for the determination of damages

[Rule 192](#) Application for preserving evidence

[Rule 199](#) Order for inspection

[Rule 200](#) Order to freeze assets

[Rule 206](#) Application for provisional measures

[Rule 207](#) Protective letter

[Rule 220](#) Appealable decisions

[Rule 221](#) Application for leave to appeal against cost decisions

[Rule 228](#) Fee for the appeal

- (l) Application to review a case management order [Rule 333.3],
- (m) Application to set aside decision by default [Rule 356.2].
- 5. For the following procedures at the Court of Appeal a fixed fee and, where applicable, a value based fee shall be paid in accordance with Section IV. of the table of fees:
 - (a) Appeal pursuant to Rule 220.1 (a) and (b) [Rule 228],
 - (b) Interlocutory appeal pursuant to Rule 220.1(c), appeal with leave of the Court of First Instance pursuant to Rule 220.2 or allowance by the Court of Appeal pursuant to Rule 220.4 or appeal of a cost decision with leave of the Court of Appeal pursuant to Rule 221.4 [Rule 228],
 - (c) Application for leave to appeal against cost decision pursuant to Rule 221 [Rule 228],
 - (d) Request for discretionary review pursuant to Rule 220.3, [Rule 228],
 - (e) Application for re-establishment of rights [Rule 320.2],
 - (f) Application to review a case management order pursuant to Rule 220.2 [R. 333.3],
 - (g) Application to set aside decision by default pursuant to Rule 357 [Rule 356.2],
 - (h) Application for rehearing pursuant to Rule 245.2 [Rule 250].
- 6. The assessment of the value of the relevant action in paragraphs 3 and 5 shall reflect the objective interest pursued by the filing party at the time of filing the action. In deciding on the value, the Court may in particular take into account the guidelines laid down in a decision of the Administrative Committee for this purpose.
- 7. If an action has more than one claimant and/or more than one defendant or if an action concerns a plurality of patents only one fixed fee and, if applicable, one value-based fee shall apply.
- 8. Small enterprises and micro-enterprises are required to pay only 60 % of the fees provided for in paragraphs 2 to 5 above (hereinafter: regular fees) subject to the following:
 - (a) In the Statement of claim or Counterclaim or in the application for a procedure or an appeal the party shall lodge with the Registry a notification in an electronic form in the language of the proceedings. In this notification the party shall provide an affirmation that he fulfils either the criteria of a “small enterprise” or a “micro-enterprise” as defined in Title I of the Annex to the Recommendation of the European Commission n° 2003/361 of 6 May 2003.
 - (b) If the requirements referred to above have not been met Rule 16.3 to .5 shall apply *mutatis mutandis*.

- [Rule 245](#) Lodging of an Application for rehearing
- [Rule 250](#) Fee for the rehearing
- [Rule 265](#) Withdrawal
- [Rule 320](#) Re-establishment of rights
- [Rule 333](#) Review of case management orders
- [Rule 345](#) Composition of panels and assignment of actions
- [Rule 355](#) Decision by default (Court of First Instance)
- [Rule 356](#) Application to set aside a decision by default
- [Rule 357](#) Decision by default (Court of Appeal)



- (c) The Court may, of its own motion, order the party to supply further documentation including any document relating to that party's financial resources. The application shall be dealt with by the Court as soon as practicable.
 - (d) The Court may, at any time, of its own motion, and after having heard the party order payment of
 - (i) the remainder of the regular fee, in the event that payment of 60 % of the regular fees is manifestly disproportionate and unreasonable having regard to the financial capacity of the party;
 - (ii) the remainder of the regular fee plus an additional 50 % of that regular fee, if the affirmation provided by the party is found to be wholly or partially incorrect. An order for the payment of an additional fee pursuant to (i) and (ii) above shall state the reasons for such order.
 - (e) If the additional fee is not paid within the time limit set by the Court, a decision by default against the party shall be given by the Court pursuant to Rule 355.
9. Fixed and value-based fees may be reimbursed as follows:
- (a) If the action is heard by a single judge [Rule 345.6.] the party liable for the Court fee will be reimbursed by 25 % of the fee.
 - (b) In case of the withdrawal of an action [Rule 265] the party liable for the Court fees will be reimbursed by:
 - (i) 60 % if the action is withdrawn before the closure of the written procedure
 - (ii) 40 % if the action is withdrawn before the closure of the interim procedure
 - (iii) 20 % if the action is withdrawn before the closure of the oral procedure
 - (c) If the parties have concluded their action by way of settlement the party liable for the Court fees will be reimbursed by:
 - (i) 60 % if the action is settled before the closure of the written procedure
 - (ii) 40 % if the action is settled before the closure of the interim procedure
 - (iii) 20 % if the action is settled before the closure of the oral procedure
 - (d) Only one of the reimbursements referred to in paragraph 9 (a), (b) and (c) will apply per action and party. Where more than one reimbursement is applicable, the larger will be applied for each party.

(e) In exceptional cases, having regard, in particular, to the stage of the proceedings and the procedural behaviour of the party, the Court may deny or decrease the reimbursement payable according to paragraph 9 (b) and (c) of the aforementioned provisions.

10. If the amount of Court fees threatens the economic existence of a party who is not a natural person, and has presented reasonably available and plausible evidence to support that the amount of Court fees threatens its economic existence, the Court may upon request by that party, wholly or partially reimburse the fixed and value-based fee. In reaching a decision the Court shall reflect on all circumstances of the case including the procedural behaviour of the party. Before making such a decision the Court may give the other party an opportunity to be heard.

11. The party seeking reimbursement under paragraphs 9 and 10 shall lodge a reasoned Application for reimbursement to the Court. The Court shall deal with the application without delay and if satisfied that the reimbursement is appropriate shall direct the Registrar to make the payment as soon as practicable.

Rule 371 **Time periods for paying court fees**

1. The fixed fees provided for in Section I and Section IV of the table of fees and fees for other procedures and actions provided for in Section III of the table of fees shall be paid at the time of lodging the relevant pleading or application. The payment shall be made to one of the bank accounts indicated by the Court and it shall indicate the paying party or its representative together with the number of the patent involved and the number of the case.
2. Proof of payment shall be provided together with the relevant pleading or application.
3. In cases of urgency, where a payment in advance is not possible, the representative of the party in question shall pay the fixed fee within the period set by the Court and the Court may order that the relevant pleading or application shall be deemed lodged and effective when received by the Registry if payment of the fixed fee is made within such period.
4. The value-based fee provided for in Section II of the table of fees shall be paid according to the claimant's assessment of the value at the time of lodging the relevant pleading or application. In the event that a higher value is determined by the judge-rapporteur the remaining fees due shall be paid within 10 days of service of the order determining the value of the action in accordance

[Article 70 of the Agreement](#) Court fees
[Rule 22](#) Determination of value-based fee for the infringement action
[Rule 60](#) Determination of the value-based fee for the Counterclaim for infringement
[Rule 74](#) Value-based fee for the action for a declaration of non-infringement
[Rule 133](#) Determination of the value-based fee for the determination of damages
[Rule 377](#) Conditions for granting legal aid
Section II of the table of fees

with the Rules 22, 60, 74, and 133. Where the value is lower, the Court will reimburse overpaid fees.

5. Where an Application for legal aid has been lodged in accordance with Rule 377, the rules on the obligation as to the time when to pay the fees under paragraph 1 shall not apply.

Relation with Agreement: Article 70

Rule 375 **Aim and scope**

1. In order to ensure effective access to justice, the Court may grant legal aid to a party (hereinafter “the applicant”).
2. Legal aid may be granted in respect of any proceedings before the Court.

Rule 376 **Costs eligible for legal aid**

[Article 71 of the Agreement](#) Legal aid

1. Subject to Article 71(3) of the Agreement, legal aid may cover, in whole or in part, the following costs:
 - (a) court fees;
 - (b) costs of legal assistance and representation regarding:
 - (i) pre-litigation advice with a view to reaching a settlement prior to commencing legal proceedings;
 - (ii) commencing and maintaining proceedings before the Court; (iii) all costs relating to proceedings including the application for legal aid;
 - (iii) enforcement of decisions;
 - (c) other necessary costs related to the proceedings to be borne by a party, including costs of witnesses, experts, interpreters and translators and necessary travel, accommodation and subsistence costs of the applicant and his representative.
2. Subject to Article 71(3) of the Agreement, legal aid may also cover the costs awarded to the successful party, in the event that the applicant loses the action.

Rule 376A **Maximum amount to be paid for representation**

1. For the costs of representation pursuant to Rule 376.1(b) the maximum level of legal aid that may be granted by the Court shall be the maximum amount of recoverable costs laid down in the decision of the Administrative Committee pursuant to Article 69(1) of the Agreement and Rule 152.2.
2. The Administrative Committee may define thresholds below the level set in paragraph 1 for the maximum level of legal aid for representation pursuant to Rule 376.1(b), taking into account necessary costs for legal representation in the Contracting Member States and the need to guarantee adequate access to justice.

[Article 69 of the Agreement](#) Legal costs
[Rule 152](#) Compensation for representation costs
[Rule 376](#) Costs eligible for legal aid

Rule 377 **Conditions for granting legal aid**

1. The applicant shall be entitled to apply for legal aid where:
 - (a) owing to his economic situation, he is wholly or partly unable to meet the costs referred to in Rule 376; and
 - (b) the action in respect of which the application for legal aid is made has a reasonable prospect of success, considering the applicant's procedural position; and
 - (c) the claimant applying for legal aid is entitled to bring actions under Article 47 of the Agreement.
2. The Administrative Committee may define thresholds above which legal aid applicants are deemed wholly or partly able to bear the costs of proceedings set out in Rule 376. These thresholds may not prevent applicants whose economic situation is above the thresholds from being granted legal aid if they prove that they are in fact unable to pay the costs of the proceedings referred to in Rule 376 as a result of the high level of the cost of living in the Contracting Member State of domicile or habitual residence.
3. When deciding on the grant of legal aid the Court shall, without prejudice to paragraph 1(a), consider all relevant circumstances including the importance of the action to the applicant and also the nature of the action when the application concerns a claim arising directly out of the applicant's trade or self-employed profession.

[Article 47 of the Agreement](#) Parties
[Rule 376](#) Costs eligible for legal aid

Rule 377A **Conditions regarding the financial situation of the applicant**

1. When assessing a party's financial situation, his income and assets must be taken into account.
2. Income shall include all earnings in money or equivalent value after deducting all costs required by the applicant and dependent persons in order to cover their reasonable living expenses (disposable income).
3. The Administrative Committee shall define the deductions from income and assets to be taken into account when assessing the applicant's financial situation. It shall also define levels of monthly instalments to be paid by the applicant. All thresholds set by the Administrative Committee shall be adapted regularly to price and income indices.

Rule 378 **Application for legal aid**

[Rule 8](#) Party and party's representative

1. An application for legal aid may be lodged before or after proceedings have been started before the Court.
2. The Application for legal aid shall contain in a language of a Contracting Member State:
 - (a) the name of the applicant;
 - (b) postal and electronic addresses for service on the applicant and the names of the persons authorised to accept service;
 - (c) the name of the other party as well as postal and electronic addresses for service on the other party where available and the names of the persons authorised to accept service, if known;
 - (d) the action number of the action in respect of which the application is made or, where the application is lodged before the action has been brought, a brief description of the action;
 - (e) an indication of the value of the action and the costs to be covered by legal aid;
 - (f) where legal aid is requested for costs of legal assistance and representation, the name of the proposed representative;
 - (g) an indication of the applicant's financial resources, such as income, assets and capital, and of the applicant's family situation including an assessment of the resources of persons who are financially dependent on the applicant;
 - (h) where appropriate, a reasoned request for suspension of a time limit which would otherwise need to be observed until the date of notification of the order deciding on legal aid.



3. The application for legal aid must be supported by:
 - (a) evidence of the applicant's need for assistance, such as certificates attesting his income, assets and capital and family situation; and
 - (b) where the application is lodged before the action has been brought, an indication of the evidence in support of the action.
4. In the event of an appeal, a new application shall be lodged.
5. Rule 8 shall not apply.

Rule 378A **Type of proof**

1. To be admissible, the application must contain a statement of the facts and legal situation, with specific mention of the evidence to be presented. The application must also contain a statement regarding the economic and financial situation of the applicant. The following documents shall be attached to the application:
 - (a) latest property and income declarations of the applicant;
 - (b) a document showing the personal monthly income for the previous year, or a declaration of unemployment delivered by the competent authorities, or a certificate proving that the applicant is receiving aid or financial support under a social welfare scheme;
 - (c) a certificate of composition of household;
 - (d) any other official document that can provide proof of the financial situation of the applicant.
2. Where appropriate, a certificate relating to the income of other members of the household of the applicant should also be attached to the application. The official documents shall not be older than 3 months. At the request of the Court, the applicant shall produce further documentation and, if so requested, an affidavit of the truthfulness of his statements, otherwise the application will not be admissible.

Rule 379 **Examination and decision**

1. The Registry shall examine the formal admissibility of the application for legal aid and the conditions regarding the financial situation of the applicant pursuant to Rules 377.1(a), .2 and 377A.

[Rule 376](#) Costs eligible for legal aid
[Rule 377](#) Conditions for granting legal aid
[Rule 377A](#) Conditions regarding the financial situation of the applicant

2. If the requirements referred to in Rules 377.1(a), .2, 377A, 378 and 378A have not been met, the applicant shall, as soon as practicable, be invited to correct the deficiencies within 14 days. [Rule 378](#) Application for legal aid
3. If the requirements referred to in Rules 377.1(a), .2, 377A, 378 and 378A have been met or the applicant fails to correct a deficiency, the decision on such application shall be taken, by way of order, by the judge-rapporteur or, where the application is lodged before the action has been brought, by the standing judge. [Rule 378A](#) Type of proof
4. Before making a decision on an application for legal aid, the Court shall invite the other party to submit written observations unless it is already apparent from the information submitted that the conditions referred to in Rule 377.1(b) have not been met. Documents regarding the economic and financial situation of the applicant shall be made accessible to the other party only where the applicant has consented or the applicant's refusal of consent is unreasonable or in the view of the Court the other party has a right to information on the economic or financial situation of the applicant.
5. An order refusing legal aid shall state the reasons on which it is based.
6. An order granting legal aid may provide for:
 - (a) an exemption, wholly or partly, from Court fees;
 - (b) an interim amount to be paid to enable the applicant and/or the representative of the applicant to meet any request of the judge-rapporteur or standing judge prior to making a final order;
 - (c) an amount to be paid to the representative of the applicant or a limit which the representative's disbursements and fees may not exceed;
 - (d) a contribution to be made by the applicant to the costs referred to in Rule 376.1(c).
7. Legal aid may be granted only for the period from receipt of the application with the Court.
8. Where the legal aid covers, in whole or in part, the costs of legal assistance and representation the order granting legal aid shall designate the representative of the applicant.
9. On a request by the designated representative, the Court may order that an amount shall be paid by way of advance.
10. Where requested by the applicant in accordance with Rule 378.2(h), the Court shall decide on the suspension of any time limit.



Rule 379A **Alteration of economic situation**

The applicant shall inform the Court promptly of any alteration in his economic situation.

Rule 380 **Withdrawal of legal aid**

1. If the economic situation of the applicant which has led to the grant of legal aid according to Rule 377.1(a) alters during the proceedings, the Court may at any time, of his own motion or on a reasoned request by the other party, withdraw wholly or partly legal aid but only after having heard the applicant.
2. The Court may withdraw wholly or partly legal aid if the applicant:
 - (a) by inaccurately representing the circumstances of the case, has misrepresented its prospects of success, which are determinative for the approval of assistance with Court costs; or
 - (b) has grossly negligently made false statements as to his personal or economic circumstances; or
 - (c) has not immediately informed the Court of a considerable improvement to his financial circumstances;
 - (d) has been in arrears for longer than three months with the payment of a monthly instalment or with the payment of any other amount.
3. An order withdrawing legal aid shall state the reasons on which it is based.

[Rule 377](#) Conditions for granting legal aid

Rule 381 **Appeal**

1. An order wholly or partly refusing or withdrawing legal aid may be appealed to the Court of Appeal. The appeal shall be filed with the Court of Appeal within a period of one month after receiving the order and satisfy the provisions of Rules 377 to 379. The President of the Court of Appeal shall appoint a panel which shall decide on the appeal having heard the applicant.
2. An application for legal aid to appeal a decision of the Court of First Instance shall be filed with the Court of Appeals and shall satisfy the provisions of Rules 377 to 379. The Application for legal aid to bring an appeal against a decision of the Court of First Instance shall be filed within the time limit provided for the appeal as specified in Rule 224 and should, where possible, be accompanied by the appeal itself. The Application shall be assigned according to Rule 345.8.

[Rule 224](#) Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

[Rule 345](#) Composition of panels and assignment of actions

[Rule 377](#) Conditions for granting legal aid

[Rule 377A](#) Conditions regarding the financial situation of the applicant

[Rule 378](#) Application for legal aid

[Rule 378A](#) Type of proof



[Rule 379](#) Examination and decision

[Rule 380](#) Withdrawal of legal aid

Rule 382

Recovery

1. Where the Court has ordered another party to pay the costs of the applicant for legal aid, that other party shall be required to refund to the Court any sums advanced by way of legal aid. In the event of a shortfall between the costs so ordered and the sums advanced by way of legal aid the applicant may be required to meet such shortfall from any damages or compensation awarded by the Court or from any sum received by way of settlement.
2. In the event of withdrawal of legal aid under Rule 380, the applicant may be required to refund to the Court any sums advanced by way of legal aid.

UPC

Code of Conduct for Representatives

Explanatory Note

Explanatory Note

According to Rule 290.2 UPC Rules of Procedure (“RoP”), representatives who appear before the Court shall strictly comply with any code of conduct adopted for such representatives by the Administrative Committee.

The draft decision submitted in this document contains a proposal for such a Code of Conduct. In late 2013, EPLAW formed a working group, to assist in developing a Code of Conduct covering practical needs as well as taking into consideration binding national regulations. Said working group undertook a comparative study of existing professional laws to identify needs as well as limitations for regulations within the Code of Conduct. In late 2014, EPLAW and EPLIT developed a joint proposal for the Code of Conduct. In 2015, epi joined this group. In doing so, the respective organizations aimed to ensure consideration of a maximum of practical experience and professional standards across the relevant European professions.

The draft Code of Conduct was discussed in the 3rd UPC Expert Panel Meeting in Paris on 18 September 2015, where valuable feedback was received and thereafter incorporated. Furthermore, experts in particular from IPLA and CCBE proposed amendments to the draft Code of Conduct from April to June 2016, which are mostly incorporated in the current draft. The draft Code of Conduct has been presented to and discussed by the Preparatory Committee of the UPC on various occasions and was finally approved at its 17th meeting on 30 June 2016 on the basis of document PC/04/2016. The submitted draft is subject only to editorial amendments and remained otherwise unchanged.



1. Field of Application

Clause 1 Field of Application

This Code is the Code of Conduct referred to in Rule 290.2 Rules of Procedure (ROP). It shall apply to representatives under Art. 48.1 or .2 of the Agreement on a Unified Patent Court (“Agreement”) with respect to all activities related to proceedings before the Unified Patent Court (“Court”), considering that said representatives may at the same time be subject to other professional and commercial codes and laws, including disciplinary measures. For the avoidance of doubt, in case of any conflict between this Code of Conduct and the RoP, the latter shall prevail.

Note: The reference to national professional laws is intended to remind practitioners that they may, in addition to this Code of Conduct, be subject to national, regional (e.g. epi or CCBE) or other codes of conduct which may include disciplinary measures. Also, for legal reasons, the scope of this Code of Conduct has to be limited to the scope required by the RoP, i.e. in particular the relationship between the Court and representatives, and cannot be in contradiction to binding national law.

2. General Conduct

Clause 2.1 Relationship with the Court

In all dealings with the Court, any judge of the Court or any member of the staff of the Registry, a representative shall act respectfully and courteously and - based on sufficient education on the law and Rules governing the Court and proceedings before the Court - competently, and shall do everything possible to uphold the good reputation of his or her respective professional association.

Note: While the term “competently” is not and cannot be intended to impose any formal requirement for Continuing Professional Education (CPE), it seems important for enabling the Court to reach the objective of ensuring decisions of the highest quality (see Preamble of RoP) that representatives inform themselves sufficiently about the new system and applicable law to prepare their cases correspondingly.



Clause 2.2 Fair Conduct of Proceedings

A representative must always have due regard for the fair conduct of proceedings. He or she shall exercise his or her rights in good faith and shall not abuse the Court process. He or she shall be reasonably accommodating and flexible regarding scheduling and routine matters.

Clause 2.3 Contact with Judges of the Court

Save to the extent necessary for *ex parte* procedures, no representative shall contact a judge about a specific case without the participation or prior consent of the representative of every other party to those proceedings.

Clause 2.4 Demeanour in Court

2.4.1 A representative shall act towards the Court as an independent counsellor by serving the interests of his or her Clients in an unbiased manner without regard to his or her personal feelings or interests.

2.4.2 A representative shall act courteously towards other representatives, persons accompanying the representatives, parties, witnesses and experts.

2.4.3 A representative is responsible for taking appropriate steps to ensure the appropriate demeanour in Court of anyone accompanying him or her.

Note: "Accompanying" means attending in person or otherwise, e.g. by telephone or video link. "In Court" includes interim conferences, telephone conferences, video conferences or anything where there is an official communication between the representative and Court. "Anyone" includes inter alia clients and patent attorneys assisting under Art. 48(4) of the Agreement.

Clause 2.5 False or Misleading Information

If a representative becomes aware that he or she has inadvertently misled the Court, or that a witness has given evidence which is not true, the representative shall seek the Client's consent to inform the Court as appropriate.



Note: This addresses the situation where non-witness evidence is provided to Court by the representative in good faith which turns out to be misleading later-on, or that witness evidence turns out to be incorrect. While this is important to achieve the objective of Art.48(6) of the Agreement, the intention is not to introduce a US-style inequitable conduct doctrine.

Clause 2.6 Information unrelated to the subject matter of the proceedings

Where a representative who represents an applicant obtains information not related to the case when carrying out measures ordered by the Court to preserve or gather evidence (including inspection of premises), the representative shall not use that information for any purpose or disclose the same to any person, including his or her client.

3. Dealings with Witnesses and Party Experts

Clause 3.1 Information on legal obligations

A representative shall ensure that witnesses are at all times fully informed about their obligation to tell the truth and of their liability under applicable national law in the event of any breach of this obligation. Equally, a representative shall ensure that party experts are fully informed about their obligation to assist the court impartially, being independent and objective and not advocating for any party.

Clause 3.2 Contact

Subject to Clause 3.1 and to the extent necessary, a representative may contact witnesses and party experts out of court in the context of a specific pending case in which they are involved, to verify the eligibility for their respective roles, to explain their roles, and to assist with the preparation of their evidence. A representative must do everything to ensure that the substance of the evidence of a witness or party expert solely reflects the witness's or expert's respective recollection or opinion.

Clause 3.3 Compensation

If required, the representative may arrange for reasonable compensation for the time spent to prepare and present evidence of witnesses and party experts.
The representative must upon request of the Court or upon reasonable request of a party inform the Court about the extent of that compensation.

Note: While the Court has discretion to give or withhold grounds for such a request, any party should give reasons for their request to avoid unnecessary disclosure or related obligations; whether such request is reasonable is up to the Court. Party experts are included alongside fact witnesses as their role under the Rules of Procedure is to provide for independent evidence. As part of a “reasonable compensation”, appropriate accommodation, travel costs, etc. for preparatory purposes should be allowable.

4. Change of representation

Clause 4 In the event of a change of representation in accordance with R 293 RoP, the former representative shall, unless the circumstances dictate otherwise, be responsible for effecting notification of the change to the Registry without undue delay.
The former representative shall without undue delay transfer or copy to the new representative all documents that are necessary for the handling of the case and are not available from the database of the Court.

Done at Luxembourg on 8 February 2023
For the Administrative Committee



Code of Conduct of Judges of the Unified Patent Court

Draft Decision of the Administrative Committee

**DRAFT DECISION OF THE ADMINISTRATIVE COMMITTEE OF 24 APRIL 2023
ON A CODE OF CONDUCT FOR JUDGES OF THE UNIFIED PATENT COURT**

THE ADMINISTRATIVE COMMITTEE

HAVING REGARD to the Agreement on a Unified Patent Court (“the Agreement”) and in particular Article 17 thereof;

HAVING REGARD to the Statute of the Unified Patent Court (“the Statute”) and in particular Article 7 thereof;

HAVING REGARD to the Regulations Governing the Conditions of Service of Judges, the Registrar and the Deputy-Registrar of the Unified Patent Court (“the Regulations”) and in particular Articles 6 to 11 thereof;

CONSIDERING THAT Article 7(4) of the Statute provides that a judge may not take part in proceedings where any of the mandatory grounds listed in Article 7(2) of the Statute exist, or where the judge is suspected, with good reasons, of partiality;

CONSIDERING THAT Article 7(3) of the Regulations provides that the Code of Conduct shall provide guidance to judges on how to avoid situations which might be perceived by an informed observer as giving rise to a conflict of interest;

HAVING REGARD to the proposal of the Advisory Committee in cooperation with the Presidium for a Code of Conduct, submitted to the Administrative Committee pursuant to Article 7(3) of the Regulations;



HAS ADOPTED the following

Article 1 **Definitions**

For the purposes of this Code of Conduct:

“The Court” means the Unified Patent Court;

“Judge” means a judge of the Court; a reference to a judge as “he” or “his” shall be understood to mean “he or she” and “his or her”;

“Close family member” or “close family ties” refers to a spouse, life partner, a sibling, child, parent and any other family member with whom a close relationship exists.

“Firm a judge works for” means any firm, partnership or company for which a judge works or in which he serves in any capacity.

Article 2 **Scope**

1. This Code of Conduct shall apply to current judges, including judges appointed with effect from the date of entry into force of the Court, and where applicable former legally and technically qualified judges.
2. Except where otherwise provided, all provisions of this Code of Conduct shall apply to legally qualified judges and to technically qualified judges, to full-time judges, and to part-time judges.

Article 3 **General Principles**

1. A judge shall uphold the independence of his office and the authority of the Court and shall conduct himself accordingly in carrying out his judicial functions. He shall perform these functions with probity, integrity, impartiality, conscience, loyalty and discretion, in compliance with the Agreement, the Statute, the Regulations and this Code of Conduct, thereby respecting the dignity of his office and enhancing public confidence in the Court.
2. A judge shall perform his duties solely on the basis of his own assessment of the merits of the case as presented by the parties, without taking account of any personal or national interest. He shall neither seek nor accept any instructions from any government, authority, organisation or person.



3. A judge shall not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended or having the capacity to influence the performance of his judicial functions. Any courtesy gift of minor value shall not be regarded as having such influence.
4. A judge shall avoid being placed in any situation which might reasonably be perceived by an informed observer as giving rise to a conflict of interest.
5. Notwithstanding the judge's freedom of expression and association, a judge shall act and express himself, through whatever medium, with the constraint that the office requires and in such a manner that the performance of his judicial functions or the confidence in his independence, integrity, impartiality, the dignity of his office or the authority of the Court may not be or appear to be adversely affected.
6. Without prejudice to his duties as provided in Article 8, a judge shall be independent of the parties to the dispute from the time he is allocated to the panel until the final decision or any other way of settlement of the proceedings he takes part in.
7. A judge may not refer to his position at the Court as means of promoting his business or interests. A judge shall prevent the firm the judge works for from using his position at the Court as means of promoting its business or interests. A judge may refer to his appointment as a judge of the Court, provided it is not used as a marketing tool.
8. A judge shall take reasonable steps to maintain and enhance the knowledge and skills necessary for judicial office at a specialised patent court and shall endeavour to render his decisions carefully and as soon as possible.
9. Confidential information acquired by a judge in his judicial capacity shall not be used or disclosed by him for any purpose not related to his judicial duties. A judge shall preserve the secrecy of everything discussed between judges in the course of performing their judicial duties, whether or not related to a specific case, and whether or not expressed during deliberations.

Article 4 **Other occupations and external activities of judges**

1. A judge shall comply with his obligation to be available so as to devote himself, to the extent of his appointment, fully to the performance of his duties.



2. As per Article 17(2) of the Agreement, a legally qualified judge, as well as a technically qualified judge who is a full-time judge of the Court may not engage in any other occupation, whether gainful or not, unless an exception is granted by the Administrative Committee. As per Article 17(3) of the Agreement, the exercise of other judicial functions at national level does not require an exception pursuant to Article 17(2) of the Agreement.
3. As per Article 17(4) of the Agreement, the exercise of the office of a technically qualified judge who is a part-time judge of the Court shall not exclude the exercise of other functions provided there is no conflict of interest. In order to maintain confidence in the independence and impartiality of the court, to allow judges to work together in a spirit of mutual trust and to avoid potential conflicts of interest, the judge may not act as a representative before the Court, as provided for in Article 48 of the Agreement, in any matter, and may not give legal or technical advice in any capacity on a case pending before the Court or after being instructed to prepare therefor.
4. Activities closely related to his judicial functions, such as occasional participation in and occasional contributions to seminars, conferences, symposia, lectures or publications such as articles, commentaries and handbooks, shall not be regarded as “other occupation” which requires an exception granted by the Administrative Committee.
5. Assuming unremunerated managerial or administrative duties in non-profit organisations which carry out activities in the general interest in the legal, cultural, artistic, social, sporting or charitable fields and in teaching or research establishments shall not be regarded as holding a public office within the meaning of Article 8(4) of the Regulations.
6. A judge who intends to undertake activities mentioned in paragraphs 4 or 5 of this Article, shall be allowed to do so if, prior to doing so, he notifies the President of the Court of Appeal thereof, using a form provided by the President, and the President does not object thereto on the grounds that the activity may interfere with the judge's office or judicial functions. In case of an objection by the President, the judge may refer the issue to the Presidium for review.
7. Whenever involved in external activities, the judge shall express himself orally or in writing in such a way that under the given circumstances it is clear that he only expresses his personal opinion and not that of the Court. A judge shall not comment on pending cases and shall avoid expressing views which may undermine the standing and integrity of the Court.

8. Without prejudice to paragraphs 2 and 3 of this Article, if a judge engages in gainful activities or receives a remuneration for any external activities, he shall declare said activities to the President of his instance.
9. A judge may receive remuneration for any external activity only if he performs that activity while on leave or outside the working time for the court.
10. A judge should be aware that activities which are sponsored by, or that target specific industry or interest groups, as well as participation in and contributions to in-house events, whether or not remuneration is paid, create an impression of dependence or partiality of the judge.

Article 5 **Reasons excluding participation in proceedings**

1. As per Article 7(2) of the Statute, a judge may not take part in the proceedings of a case in which he:
 - a) has taken part as advisor;
 - b) has been a party to the dispute or has acted for one of the parties to the dispute;
 - c) has been called upon to pronounce as a member of a court, tribunal, board of appeal, arbitration or mediation panel, a commission of inquiry or in any other capacity;
 - d) has a personal or financial interest in the case or in relation to one of the parties to the dispute; or
 - e) is related to one of the parties to the dispute or one of the representatives of the parties to the dispute by family ties.
2. A judge should always be aware, that, without prejudice to Article 7(2) of the Statute, any party to an action may object to a judge taking part in the proceedings where the judge is suspected, with good reason, of partiality (reason for recusal). Such a reason arises upon the occurrence of circumstances that, from the point of view of an informed and reasonable observer, would give rise to justifiable doubts as to the judge's impartiality or independence. Such doubts are justified if an informed and reasonable observer would conclude that there is a likelihood that the judge may be influenced in his decision by other factors than the merits of the case as presented by the parties. As far as possible, the judge should avoid conduct that gives rise to such reasonable doubt. However, since circumstances giving rise to reasonable doubt cannot always be avoided, especially for technically qualified judges who are part-time judges, immediate and



comprehensive disclosure of those circumstances from which reasonable doubts about impartiality or independence might arise for the judge himself or for a party is particularly important in these cases.

3. Those doubts may in particular arise if:
- a) the judge is or has been within the past five years a member of the governing body or employee of a party to the dispute or is or was otherwise able to exert a perceptible influence on a party to the dispute either in a personal capacity or through a firm the judge works or has worked for;
 - b) the judge or a close family member holds assets or has other financial or personal interests in a party to the dispute which, because of their scale, might reasonably be perceived as being capable of giving rise to a conflict of interest;
 - c) the judge or a close family member is related to a party to the dispute or to a person having a controlling influence on a party or to one of the representatives of a party by close family ties;
 - d) the judge has a close friendship or serious enmity with a party to the dispute or with a person having a controlling influence on a party or with one of the representatives of a party;
 - e) the judge or the firm the judge works for is or was acting for or against a party to the dispute, in any other matter, in any capacity, within the last three years;
 - f) the judge or the firm the judge works for is or was within the past year acting in an administrative capacity as the contact person for the patent in dispute;
 - g) the judge or the firm the judge works for is or was within the past year mandated by a party to the dispute to provide an address of notification for the maintenance of intellectual property rights;
 - h) the judge or the firm he works for advises or represents, on a regular or repeated basis, a competitor of a party to the dispute, in particular a competitor in a market where the patent interests of different groups of market participants typically diverge (such as the interests of originator and generic producers or the interests of holders and users of standard-essential patents);
 - i) the judge or a close family member or the firm the judge works for has a personal or financial interest in the matter in dispute;



- j) the judge or the firm the judge works for is or was involved in the dispute or the matter in dispute or does or did advise or represent a party to the dispute or a third party in the matter in dispute;
- k) the judge has publicly stated an opinion on a matter specifically pertaining to the case, unless it is a general statement without a direct link to the matter;
- 4. Advising a third party in the technical field of the matter in dispute shall not per se give rise to apprehension of bias. The judge should nevertheless be aware that the more similarities there are between the subject matter of such an advice and the matter in dispute, the more significant the decision of the dispute could be for the subject matter of such an advice and the more similar the interests involved appear to be, the closer a possible concern of bias is.
- 5. For the purposes of paragraph 3 of this Article, a party to the dispute shall include, where appropriate, in case of a legal entity, any person or other legal entity having a controlling influence on the party, as well as any other legal entity the party has a controlling influence on.

Article 6 Disclosure

- 1. As per Article 7(3) of the Statute, when allocated to a panel a judge shall make reasonable inquiries to identify any reason for not taking part in the proceedings and shall disclose any such reason without delay to the President of the relevant instance.
- 2. If a judge is to be allocated to a panel the judge shall, at the request of the President of the relevant instance, carry out such an inquiry and report about the result of his inquiry prior to his allocation to the panel. The judge shall ensure that the information provided by him when making the required inquiries shall be kept confidential, also by persons other than himself.
- 3. In a situation where there is a reason for not taking part in the proceedings concerning the President of the Court of Appeal or of the Court of First Instance, the President shall report to the Presidium, for that purpose excluding the respective President.
- 4. In considering whether any possible reason for not taking part in the proceedings is to be disclosed, a judge shall not give consideration to the status of the proceedings. Any doubt as to whether a judge should disclose certain facts or circumstances should be resolved in favour of disclosure which in itself does not indicate the existence of a conflict of interest.



Article 7 Decision on recusal

1. As per Article 7(3) of the Statute, the President of the relevant instance shall, upon disclosure of any possible reason for recusal and having heard the judge concerned, decide whether or not the judge may take part in the proceedings. The President shall notify the judge in writing, giving reasons for the decision.
2. As per Article 7(5) of the Statute, any difficulty arising as to the application of paragraph 1 shall be settled by decision of the Presidium. In the situation of Article 6(3), the Presidium shall replace the President in the application of paragraph 1. The judge concerned shall be heard. If he is a member of the Presidium, he may not take part in the decision or in the deliberations.
3. Unless the President of the relevant instance or the Presidium has decided that the judge shall not take part in the proceedings, the President shall inform the parties of the existence of a possible reason for recusal. The procedure under Rule 346 of the Rules of Procedure shall apply *mutatis mutandis*.
4. A reason for recusal shall be considered not to be present if the parties, having been informed or having otherwise acquired knowledge of said reason, accept the allocation of the judge to the panel or the continued participation of the judge to the proceedings or fail to notify an objection to the judge taking part in the proceedings as soon as reasonably practicable.

Article 8 Duties of a judge after leaving office

1. After leaving office, a judge shall continue to be bound by the duty of discretion.
2. A full-time judge shall, after leaving office, not become involved:
 - a) in any manner whatsoever in cases which were pending before the panel of which he was a member when he left office;
 - b) in any manner whatsoever in cases directly or clearly connected with cases, including concluded cases, which he has dealt with as a judge.
3. Paragraph 2 shall apply *mutatis mutandis* to a part-time judge after the proceedings he has taken part in have ended.
4. Without prejudice to paragraphs 2 and 3 of this Article, a judge shall not act as advisor to any of the parties to proceedings he has taken part in as a judge within a period of three years after the final decision in such proceedings.



5. A judge who has been assigned to a panel at least once in the last two years before leaving office shall not act as a representative as provided for in Article 48 of the Agreement
 - for a period of three years after leaving office before a division of the Court to which he was permanently assigned within the last three years,
 - for a period of two years before a division to which he was assigned in individual cases within the last two years,
 - and for a period of one year before all other divisions.For the purposes of this provision, the Court of Appeal shall be deemed to be a division and the sections of the central division shall be deemed to be different divisions.

Article 9 Entry into force

This Code of Conduct shall enter into force on 24 April 2023.

Done on 24 April 2023 (online meeting)
For the Administrative Committee



Rules on the European Patent Litigation Certificate and other appropriate qualifications pursuant to Article 48(2) of the Agreement on a Unified Patent Court

THE ADMINISTRATIVE COMMITTEE OF THE UNIFIED PATENT COURT HAS DECIDED AS FOLLOWS:

Part I – European Patent Litigation Certificate

Rule 1 European Patent Litigation Certificate

The European Patent Litigation Certificate (hereinafter referred to as Certificate) may be acquired in accordance with the provisions laid down in this Part.

Rule 2 European Patent Litigation Course

The Certificate may be issued by universities and other non-profit educational bodies of higher or professional education established in a Member State of the European Union as well as by the Unified Patent Court’s Training Centre in Budapest (hereinafter referred to as Training Centre) to European Patent Attorneys (Words importing the masculine gender shall include the feminine and vice versa) entitled to act as professional representatives before the European Patent Office pursuant to Article 134 of the European Patent Convention (hereinafter referred to as European Patent Attorneys) who have successfully completed a course on European patent litigation accredited pursuant to Rules 6 – 8 (hereinafter referred to as Course).

Rule 3 Content of the Course

1. The curriculum of the Course shall cover:
 - (a) a general introduction into law, including main aspects of European law;
 - (b) basic knowledge of private law, including contract law, company law and tort law, in both common and continental law, and private international law;
 - (c) the role, organisation and patent-related case law of the Court of Justice of the European Union, including case law on supplementary protection certificates;



- (d) enforcement of patents, providing knowledge of Directive 2004/48 (EC) on the enforcement of intellectual property rights and relevant case law of the Court of Justice of the European Union;
 - (e) unitary patent protection, providing advanced knowledge of Regulations 1257/2012 (EU) implementing enhanced cooperation in the area of the creation of unitary patent protection and 1260/2012 (EU) implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, as well as the Rules relating to unitary patent protection;
 - (f) a comparative overview on patent infringement proceedings and revocation of patents in Contracting Member States;
 - (g) the operation of the Unified Patent Court, providing advanced knowledge of the Agreement on the Unified Patent Court and the Unified Patent Court's Statute;
 - (h) litigation before the Unified Patent Court, providing advanced knowledge of procedures, litigation and advocacy skills, practice and case management before the Unified Patent Court, with special regard to the Rules of Procedure of the Unified Patent Court.
2. The Course shall focus in particular on the contents mentioned in points (e)-(h) of paragraph (1) and include practical exercise on litigation and negotiation.

Rule 4 **Duration of the Course and examination requirements**

- 1. The minimum duration of the Course shall be 120 hours of lectures and practical training.
- 2. The Course shall be concluded by both a written and oral examination.

Rule 5 **Course languages and e-learning**

- 1. The Course may be provided in any official language of a Member State of the European Union.
- 2. E-learning facilities are encouraged as an integral part of the Course. However, practical training always requires personal participation.



Rule 6 **Accreditation requirement**

Universities and other non-profit educational bodies of higher or professional education established in a Member State of the European Union may offer the Course subject to accreditation by the Administrative Committee.

Rule 7 **Request for accreditation**

The request for accreditation of the Course shall be filed with the Unified Patent Court in one of the official languages of the European Patent Office and shall contain:

- (a) the curriculum of the Course envisaged;
- (b) information concerning the requirements under Rules 4 and 5;
- (c) information concerning the requestor's status;
- (d) information concerning the number of hours for each topic of the Course;
- (e) names and titles of the selected teachers;
- (f) draft scheme of examination, defining the objectives and the method of examination, including the number and duration of written and oral exams.

Rule 8 **Examination of the request and decision**

1. The request for accreditation shall be decided upon by the Administrative Committee on the basis of an opinion of the Advisory Committee.
2. If the requirements under Rules 3 – 6 are met and the request for accreditation complies with Rule 7, the Advisory Committee shall give an opinion in favour of accreditation to the Administrative Committee.
3. If the requirements under Rules 3 – 6 are not met or if the request for accreditation fails to comply with Rule 7, the Advisory Committee shall give a negative opinion on the request. In this event, the Administrative Committee shall communicate the Advisory Committee's opinion to the requestor and invite him, according to the nature of the objection, to correct the deficiencies noted or to submit comments within a non-extendable period of two months. If the deficiencies are not corrected in due time, the Administrative Committee shall refuse the request. If the requestor corrects the deficiencies or submits comments, the Administrative Committee shall consult the



Advisory Committee once again and decide on the request on the basis of the second opinion of the Advisory Committee.

4. Accreditation is granted for five academic years following the date of the notification of the decision on accreditation. The request for the prolongation of the accreditation for another five years may be filed one year before the expiry of the five-year period at the earliest. Rule 7 and Rule 8(1) - (3) shall apply *mutatis mutandis*.

Rule 9 **Reports**

Participating educational bodies are required to report every year to the Unified Patent Court on the curriculum, results and statistics of the accredited Course. The Administrative Committee takes note of this report.

Rule 10 **Training Centre**

1. The Training Centre, by offering the necessary infrastructural and organisational assets, shall assist the educational bodies that wish to provide a Course at the seat of the Training Centre as well. It may also facilitate e-learning options.
2. The Training Centre may also offer the Course in compliance with Rules 3 – 5. In this case, Rule 9 applies to the Training Centre as well.

Part II – Other appropriate qualifications

Rule 11 **Law diplomas**

European Patent Attorneys holding a bachelor or master degree in law according to relevant educational standards in a Member State of the European Union or who have passed an equivalent state exam in law of a Member State of the European Union shall be deemed to have appropriate qualifications pursuant to Article 48(2) of the Agreement on a Unified Patent Court and may apply for registration on the list of entitled representatives.

Rule 12

Other qualifications during a transitional period

1. During a period of one year from the entry into force of the Agreement on a Unified Patent Court, any of the following shall also be deemed as appropriate qualifications for a European Patent Attorney pursuant to Article 48(2) of the Agreement on a Unified Patent Court:
 - (a) the successful completion of one of the following courses or the grant of one of the following certificates:
 - (i) Centre d'Études Internationales de la Propriété Intellectuelle, courses leading to the Diploma on Patent litigation in Europe or to the Diploma of international studies in industrial property (specialized in patents);
 - (ii) FernUniversität in Hagen, course "Law for Patent Attorneys" and its predecessor, the course "Kandidatenkurs Fischbachau";
 - (iii) Humboldt-Universität zu Berlin, course "Zusatzstudium Gewerblicher Rechtsschutz";
 - (iv) Nottingham Law School, course "Intellectual Property Litigation and Advocacy";
 - (v) Queen Mary University of London, courses "Certificate in Intellectual Property Law" or "MSc Management of Intellectual Property";
 - (vi) Intellectual Property Regulation Board, "Intellectual Property Litigation Certificate";
 - (vii) Intellectual Property Regulation Board, "Higher Courts Litigation Certificate";
 - (viii) Intellectual Property Regulation Board, "Higher Courts Advocacy Certificate";
 - (ix) Stichting Beroepsopleiding Octrooigemachtigden, course "Beroepsopleiding Octrooigemachtigden";
 - (x) Hungarian Intellectual Property Office, course "Advanced Course in Intellectual Property";
 - (xi) University of Milano, course "Corso di Perfezionamento in Brevettistica";
 - (xii) Politecnico di Milano, "Certificato di superamento dell'esame conclusivo del Corso di Proprietà Industriale – Brevetti";
 - (xiii) University of Warsaw, course "Podyplomowe Studium Prawa Wlasnosci Przemyslowej";
 - or
 - (b) having represented a party on his own without the assistance of a lawyer admitted to the relevant court or having acted as a judge in at least three patent infringement actions, initiated



before a national court of a Contracting Member State within the five years preceding the application for registration.

2. Paragraph 1(a) applies to the courses and certificates mentioned under (iv) to (viii) to the extent that they have been successfully completed or granted until 31 December 2020.

Part III – Registration

Rule 13 Entry on the list of representatives based on the Certificate

The European Patent Attorney wishing to represent parties before the Unified Patent Court shall lodge the Certificate with the Registrar. He shall thereafter be registered on the list of entitled representatives under Article 48(3) of the Agreement on a Unified Patent Court (hereinafter referred to as List).

Rule 14 Request for recognition of other appropriate qualifications

1. Requests for recognition of other appropriate qualifications shall be filed with the Registrar in one of the official languages of the European Patent Office.
2. In case of requests filed pursuant to Rule 11 or 12(1)(a), the request for recognition of other appropriate qualifications shall contain a copy of the respective diploma, certificate or other respective proof.
3. In case of requests filed pursuant to Rule 12(1)(b), the request shall include all details necessary to identify the infringement actions the European Patent Attorney intends to rely on such as:
 - (a) name of the parties;
 - (b) court seized with the action;
 - (c) date of commencement of the proceedings.

Reasonably available evidence to support the request, such as a copy of the power of attorney, shall be submitted.



Rule 15 **Examination of and decision on the request for recognition of other appropriate qualifications**

1. The request for recognition of other appropriate qualifications shall be examined by the Registrar. The Registrar may, if he deems it necessary, consult the Advisory Committee for an opinion.
2. If the requirements contained in Rules 11 or 12 are met and the request for recognition of other appropriate qualifications complies with Rule 14, the Registrar shall enter the requestor on the List.
3. If the request for recognition of other appropriate qualifications complies with Rule 14, but the requirements under Rules 11 or 12 are not met, the Registrar shall reject the request.
4. If the request for recognition of appropriate qualification fails to comply with the requirements of Rule 14, the Registrar shall invite the requestor to correct the deficiencies noted within a non-extendable period of two months. If the deficiencies are not corrected in due time, the Registrar shall reject the request.

Rule 16 **Effect of entries**

1. Subject to paragraph 2, 3 and 4 of this Rule, registrations of European Patent Attorneys on the List shall be permanent, including registrations under the transitional provisions pursuant to Rule 12.
2. Registration on the List shall cease to have effect in the event that the registered representative ceases to be a registered European Patent Attorney on the list of European Patent Attorneys maintained by the European Patent Office. The Registrar will strike the name off the List, upon request or ex-officio. In case the European Patent Attorney is re-entered on the list maintained by the European Patent Office, he shall, upon his request, be re-entered by the Registrar on the List.
3. Where the requirements for the entry are not met or no longer met the Registrar shall strike the name of an entitled representative from the List. He shall take due note of a final decision of the Unified Patent Court in case of a challenge of the registration in a procedure. Furthermore, the Registrar shall strike the name of an entitled representative from the List upon decision of a competent court or authority establishing that the registration has been obtained by fraud; a conviction is not necessary.



4. The Registrar will strike the name of an entitled representative from the List upon his request to this effect.

Part IV – Review

Rule 17 **Decisions subject to review**

Decisions of the Registrar referred to in Rules 15 and 16 may be challenged in accordance with the following provisions.

Rule 18 **Formalities of the petition for review**

The petition for review shall be filed in writing with the Registrar in one of the official languages of the European Patent Office, within one month of the notification of the challenged decision. It shall indicate the reasons for setting aside the decision of the Registrar.

Rule 19 **Revision by the Registrar**

1. If the Registrar considers the petition for review to be admissible and well founded, he shall rectify his decision.
2. If the Registrar does not rectify his decision within one month of receipt of the petition for review, he shall forward it to the President of the Court of Appeal who shall decide on the petition for review.

Rule 20 **Decision by the President of the Court of Appeal**

If the petition for review is admissible, the President of the Court of Appeal shall examine whether the appeal is allowable. If the petition for review is allowable, he shall alter the Registrar's decision. If the petition for review is not allowable, he shall reject it.



Part V – Notification and Entry into force

Rule 21 **Notification**

Decisions of the Administrative Committee, the Registrar and the President of the Court of Appeal shall be notified.

Rule 22 **Entry into force**

This Decision shall enter into force on 15 June 2022.



Guidelines for the determination of the court fees and the ceiling of recoverable costs

Explanatory Note

Explanatory Note

The Administrative Committee (AC), according to Rule 370.6 Rules of Procedure of the Unified Patent Court (“RoP”) and in the light of Art. 36 para. 3 Agreement of a Unified Patent Court (UPCA), is laying down guidelines to decide on the value of the proceedings.

The draft decision submitted in this document contains a proposal for such guidelines. Since the value of the proceedings is also relevant for the ceiling of recoverable costs, Article 69 para. 1 UPCA and Rule 152.2 and .3 RoP, the submitted draft also includes guidelines for the determination of value of proceedings with regard to ceilings of recoverable costs.

The proposal has been prepared by the Legal Working Group with the involvement of participating Member States. The guidelines have been presented to and discussed by the Preparatory Committee of the UPC on various occasions and were finally approved at its 14th meeting on 24 February 2016 on the basis of document PC/08/Feb 2016. The outcome of these discussions had been included in the final document.

The submitted draft is subject only to editorial amendments and remained in substance otherwise unchanged.

Draft Decision of the Administrative Committee

DRAFT DECISION OF THE ADMINISTRATIVE COMMITTEE OF 24 APRIL 2023 ON THE GUIDELINES FOR THE DETERMINATION OF COURT FEES AND THE CEILING OF RECOVERABLE COSTS OF THE SUCCESSFUL PARTY

The purpose of these Guidelines is to provide UPC judges for both, the Court of First Instance and the Court Appeal with a method for establishing the value of actions for the determination of Court fees and the ceilings for the recoverable costs for the representatives of the successful party. The



Guidelines do not interfere with the liberty of judges to apply in a given case other methods which may be required by the circumstances of the case.

I. Principles

Principles

1. The method of determining a value-based fee should be as simple as practically possible. The most practicable method, in most cases, will be a valuation based on an appropriate licence fee (infra II). A valuation based on the claimant's loss of profits or the defendant's profits gained may also be applied, where appropriate, but will normally be too complex to be determined at the beginning of proceedings resulting in a mini-trial.
2. The valuation should relate to the summed up values of the main remedies claimed (injunction for the future, damages for the past), not excluding, where appropriate, the value of other remedies claimed.
3. Where the parties agree on a valuation the Court should in principle base its valuation on their estimate.
4. References in these Guidelines to a patent shall include a supplementary protection certificate.

II. Suggested Approaches

Clause 1 Infringement action

a) Determining the value for applying the Rules on Court fees:

The calculation of the value of the injunction claim and for the damage claim should be based on a royalty calculation as follows:

- (1) The defendant's turnover in the alleged infringing product for the future up to the expiry of the patent (injunction claim) and for the past (damage claim) should be calculated based upon the known existing turnover of the defendant or, if not known or not yet existent, the market share the defendant has taken and/or may reasonably be assumed to take.
- (2) A royalty rate should be applied to (1) based upon:
 - (i) the existing royalty rate for the same invention charged by the claimant, or



- (ii) the generally accepted industry rate for the type of invention in question, or
 - (iii) a royalty rate determined by the Court after hearing the parities.
 - (3) Where a damage claim
 - (i) is limited to awarding damages in principle, the value of that claim (pursuant (1)) should be reduced by 50%;
 - (ii) specifies the amount of damages, the value should correspond to the amount claimed.
 - (4) The value of an Application for the Determination of Damages including any Request to lay open books should correspond to the amount of damages specified in the Application or if no such sum is specified the value as calculated in accordance with (1) and (2).
 - (5) If the action is based on more than one patent and/or if the action is directed against more than one party the value should be calculated in accordance with (1) and (2) on the basis of a combined licence for all patents and all defendants across all territories covered by the patents.
- b) Determining the value for applying the Rules on recoverable costs:
The calculation should be the same as according to II.1.a).

Clause 2 Counterclaim for revocation and revocation actions

- a) Determining the value for applying the Rules on Court fees:
There is no need to determine the value of revocation counterclaims or revocation actions since for both actions there is only a fixed fee to be paid.
- b) Determining the value for applying the Rules on recoverable costs:
- (1) The value of a counterclaim for revocation or of a revocation action should be determined having regard to the value of the patent to be revoked.
 - (2) In the absence of relevant information
 - (i) the value of a revocation action may be assumed to be equal to the value of an appropriate licence fee calculate on the basis of the turnover of the parties for the remaining lifetime of the patent,
 - (ii) the value of the revocation counterclaim may be assumed as being equal to the value of the infringement action (II.1. a), above) plus up to 50%.



- (3) If the action concerns more than one patent, the value of each patent should be calculated separately and the values determined should be added together to become the value of the action.
- (4) The value of the infringement action and the value of the revocation counterclaim pending before the same division should be added together for determining the level of recoverable costs.

Clause 3 Actions for Declaration of non-infringement

Determining the value for applying the Rules on Court fees and the Rules on recoverable costs:
The value of an action for a Declaration of non-infringement should be calculated in accordance with II.1. a) and b) above (infringement action).

Clause 4 Actions for compensation for license of right

Determining the value for applying the Rules on Court fees and the Rules on recoverable costs:
The value of an action for compensation for license of right should be calculated in accordance with II.1. a) and b) above.

Clause 5 Application for interim relief pursuant to Article 62 of the UPC Agreement

a) Determining the value for applying the Rules on Court fees:
There is no need to determine the value of an Application for interim relief since for such an Application there is only a fixed fee to be paid.

b) Determining the value for the Rules on recoverable costs:
In case of the application for interim relief which is not followed by an infringement action on the merits the value of an application for interim relief for determining the level of the recoverable costs should be calculated at 66% of the value calculated in accordance with II.1. b) above.



Table of Court Fees for the Unified Patent Court

Explanatory Note

Introduction

According to Article 36 para. 3 UPCA the court fees of the UPC shall be fixed by the Administrative Committee. The draft decision submitted in this document contains a proposal for such court fees.

The proposal has been prepared by the Legal and Finance Working Groups with the involvement of participating Member States. The attached table of fees has been presented to and discussed by the Preparatory Committee of the UPC on various occasions and was finally approved at its 14th meeting on 24 / 25 February 2016 on the basis of document PC/09/Feb2016. The outcome of these discussions has been included in the final document. The submitted draft is subject only to minor amendments explained below.

Amendments

1. Some drafting errors needed to be corrected. The references to the respective rules in the Rules of Procedures contained in square brackets have been adapted, where necessary.
2. The appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to an application for provisional measures [R. 206.5] has only been moved down and regrouped together with the (other) interlocutory appeals [R. 220.1(c), 228] covering the further measures. The court fees for the respective orders for measures remain unchanged: Appeal as to an application of provisional measures (11,000 EUR, Rule 220.1(c), Art. 62 UPCA) and other orders (3,000 EUR, Rule 220.1 (c), Art. 49.5, 59, 60, 61, or 67 UPCA).
3. The appeal pursuant to Rule 220.2 [R. 228], for which leave has been granted by the Court of First Instance [R. 220.2] or which has been allowed by the Court of Appeal [R. 220.4] is missing in the table. It is proposed to set the fee at a lower level of 1,500 EUR since impact and complexity of these further orders under Rule 220.2 are in general lower than those of Rule 220.1(c) for which 3,000 EUR are foreseen.



- 4. For the Application for re-establishment of rights a fee had only been foreseen for the Court Appeal and has now been amended accordingly for the Court of First Instance.
- 5. For the appeal against cost decisions the table only foresaw a fee for the Application for leave to appeal of 1,500 EUR. Added is a fee for the actual appeal in case leave is granted of 3,000 EUR, Rule 221.4 [R. 228]. It is specified that in this case the fee of 1,500 EUR for the leave procedure does not arise.

Section 1 Table of Court Fees

Table 1 Fixed fees (Court of First Instance)

Procedures/actions	Fixed fee
Infringement action [R. 15]	11,000 €
Counterclaim for infringement [R. 53]	11,000 €
Action for declaration of non-infringement [R. 70]	11,000 €
Action for compensation for license of right [R. 80.2]	11,000 €
Application to determine damages [R. 132]	3,000 €

Table 2 Value-based fees (Court of First Instance and Court of Appeal)

Value of action	Additional value-based fee
Up to and including 500,000 €	0 €
Up to and including 750,000 €	2,500 €



Up to and including 1,000,000 €	4,000 €
Up to and including 1,500,000 €	8,000 €
Up to and including 2,000,000 €	13,000 €
Up to and including 3,000,000 €	20,000 €
Up to and including 4,000,000 €	26,000 €
Up to and including 5,000,000 €	32,000 €
Up to and including 6,000,000 €	39,000 €
Up to and including 7,000,000 €	46,000 €
Up to and including 8,000,000 €	52,000 €
Up to and including 9,000,000 €	58,000 €
Up to and including 10,000,000 €	65,000 €
Up to and including 15,000,000 €	75,000 €
Up to and including 20,000,000 €	100,000 €
Up to and including 25,000,000 €	125,000 €
Up to and including 30,000,000 €	150,000 €
Up to and including 50,000,000 €	250,000 €
more than 50,000,000 €	325,000 €



Table 3 Other procedures and actions (Court of First Instance)

Procedures/actions	Fixed fee
Revocation action [R. 46]	20,000 €
Counterclaim for revocation [R. 26]	same fee as the infringement action subject to a fee limit of 20,000 €
Application for provisional measures [R. 206.5]	11,000 €
Action against a decision of the European Patent Office [R. 88.3, 97.2]	1,000 €
Application to preserve evidence [R. 192.5]	350 €
Application for an order for inspection [R. 199.2]	350 €
Application for an order to freeze assets [R. 200.2]	1,000 €
Filing a protective letter [R. 207.4]	200 €
Application to prolong the period of a protective letter kept on the register [R. 207.9]	100 €
Application for re-establishment of rights [R. 320.2]	350 €



Application to review a case management order [R. 333.3]	300 €
Application to set aside decision by default [R. 356.2]	1,000 €

Table 4 Court of Appeal

Appeals/applications	Fee
Appeal pursuant to Rule 220.1 (a) and (b) [R. 228] as to an infringement action [R. 15]	11,000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R. 228] as to a counterclaim for infringement [R. 53]	11,000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R. 228] as to a revocation action [R. 46]	20,000 €
Appeal pursuant to Rule 220.1 (a) and (b) [R. 228] as to a counterclaim for revocation [R. 26]	fee paid in the first instance
Appeal pursuant to Rule 220.1 (a) and (b) [R. 228] as to an action for declaration of non-infringement [R. 70]	11,000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R. 228] as to an action for compensation for license of right [R. 80.2]	11,000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R. 228] as to an application to determine damages [R. 132]	3,000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1(c) [R. 228] as to an application for provisional measures [Art. 62 UPCA, R. 206.5]	11,000 €



Appeal pursuant to Rule 220.1(c) [R. 228] as to an application for orders referred to in Art. 49.5, 59, 60, 61, or 67 UPCA	3,000 €
Application for rehearing [R. 250]	2,500 €
Appeal pursuant to Rule 220.1 (a) and (b) [R. 97.5] as to an action against a decision of the European Patent Office [R. 88.3, 97.2]	1.000 €
Appeal pursuant to Rule 220.2 [R. 228], for which leave has been granted by the Court of First Instance [R. 220.2] or which has been allowed by the Court of Appeal [R. 220.4]	1.500 €
Request for discretionary review to the Court of Appeal [R. 220.3]. The fee does not arise if the appeal is allowed.	350 €
Appeal against cost decision pursuant to Rule 221.4 [R. 228]	3,000 €
Application for leave to appeal against cost decisions [R. 221, 228]. The fee does not arise if the appeal is allowed.	1,500 €
Application for re-establishment of rights [R. 320.2]	350 €
Application to review a case management order [R. 333.3]	300 €
Application to set aside decision by default [R. 356.2]	1,000 €

Section 2 Entry into Force

Entry into Force

This Decision shall enter into force on 1st September 2022.

Done at Luxembourg on 8 July 2022



Scale of ceilings for recoverable costs

Explanatory Note

Explanatory Note

The Administrative Committee (AC), according to Rule 152.2 Rules of Procedure of the Unified Patent Court (“RoP”), is adopting a scale of ceilings for recoverable costs.

The draft decision submitted in this document contains a proposal for such ceilings.

The proposal has been prepared by the Legal Working Group with the involvement of participating Member States. The scale of ceilings has been presented to and discussed by the Preparatory Committee of the UPC on various occasions and were finally approved at its 14th meeting on 25 February 2016 on the basis of document PC/09/Feb2016. The outcome of these discussions had been included in the final document.

The submitted draft is subject only to editorial amendments and remains in substance otherwise unchanged.

Draft Decision of the Administrative Committee

DRAFT DECISION OF THE ADMINISTRATIVE COMMITTEE OF 24 APRIL 2023 ON THE SCALE OF RECOVERABLE COST CEILINGS

THE ADMINISTRATIVE COMMITTEE

HAVING REGARD to Article 69 para. 1 of the Agreement on a Unified Patent Court (hereinafter: Agreement) and pursuant to Rule 152.2 of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP),

CONSIDERING that:

- (1) Article 69 of the Agreement qualifies the general rule that the unsuccessful party shall bear the successful party's costs by a number of principles, which serve as important safeguards when the Court makes its decision on costs, by allowing for exceptions from the general rule or limiting its application. The ceiling on the recoverable representation costs is only one of the safeguards against undue cost recovery, and the last one to apply when the Court makes its decision on costs. Firstly, only reasonable and proportionate legal costs and other expenses incurred by the successful party may be recovered from the unsuccessful party. Moreover, equity may also serve as a self-standing ground for rendering the general rule inapplicable. Furthermore, in case of partial success or in exceptional circumstances, the Court may order the parties to bear their own costs, or apply a different apportionment of cost, based on equity. Unnecessary costs caused to the Court or the other party shall be borne by the party incurring them, which means that even the successful party has to reimburse costs caused that are deemed unnecessary by the Court. Only the recoverable costs established in compliance with these principles is measured against the ceilings set forth in this Decision. There is a large margin of appreciation for the Court when applying the safeguarding principles before making a cost decision, and thus, the ceilings are only to be regarded as a safety net, i.e. an absolute cap on recoverable representation costs applicable in every case.
- (2) In limited situations, such as the particular complexity of the case or multiple languages used in the proceedings having an impact on the representation costs, upon request by one party, the ceiling laid down in the Annex, having regard to the financial capability of all the parties in the light of the principle of fair access to justice may be raised up to a certain extent.
- (3) Upon request by one of the parties, the Court may lower the ceiling applicable in the Annex with regard to that party if, in the event that the requesting party is unsuccessful, the recoverable costs of representation to be awarded to the successful party would threaten the economic existence of the requesting party, especially if the latter is an SME, non-profit organisation, university, public research organisation or natural person. For this purpose the Court shall take into consideration all available information on the parties, including, where possible, the procedural behaviour of the parties, the applicable level of the ceiling for recoverable costs in comparison with the annual turnover of both parties, the type of economic activity of both parties, as well as the impact the lowering of the ceiling would have on the other party.

- (4) The Rules of Procedure shall apply *mutatis mutandis* when the Court decides on a request to raise or to lower the ceiling laid down in the Annex.
- (5) Apart from the regular adjustment pursuant to Rule 152.2, an early review of the scale of ceilings for recoverable costs is called for, with a view of possible amendments, in the light of the practice of how judges apply the cost recovery rules.

HAS ADOPTED THIS DECISION:

Article 1

- (1) The scale of ceilings for recoverable costs shall be set forth in the Annex.
- (2) The ceilings of recoverable costs shall apply to representation costs.
- (3) The ceiling shall be applied to each instance of the Court proceedings regardless of the number of parties, claims or patents concerned.
- (4) In case of partial success, the ceiling applicable in the case shall correspond to the proportion of success of the party seeking cost recovery.

Article 2

- (1) In limited situations, such as the particular complexity of the case or multiple languages used in the proceeding, the Court may upon request by one party, having regard to the financial capability of all the parties in the light of the principle of fair access to justice, raise the ceiling laid down in the Annex:
 - a) by up to 50 % of the applicable level in the scale corresponding to a value of the proceeding up to and including EUR 1 million;
 - b) by up to 25 % of the applicable level in the scale corresponding to a value of the proceeding of more than EUR 1 million and up to and including EUR 50 million;
 - c) up to EUR 5 million in cases with a value of the proceeding of more than EUR 50 million.
- (2) Upon request of one of the parties, the Court may lower the ceiling applicable with regard to that party if, in the event that the requesting party is unsuccessful, the amount of re-coverable costs of representation to be awarded to the successful party would threaten the economic existence of the requesting party, in particular if the latter is an SME, non-profit organisation, university, public research organisation or natural person.
- (3) When deciding upon a request to lower the ceiling, the Court shall take into consideration the circumstances of the case and all available information on the parties, including, where possible, the procedural behaviour of the parties, the applicable level of the ceiling for recoverable costs in



comparison with the annual turnover of both parties, the type of economic activity of both parties, as well as the impact the lowering of the ceiling would have on the other party.

- (4) A request to raise or lower the ceiling shall be made as soon as possible and practicable in the proceeding. This may be with the Statement of claim by the plaintiff, or with the Statement of defence by the defendant but shall be lodged in sufficient time to enable the Court to make a decision before closure of the interim procedure. The request shall include all reasonably available evidence.
- (5) The request to raise or lower the ceiling shall be dealt with by the Court without delay after having heard the parties and at the latest before closure of the interim procedure.

Article 3

The Administrative Committee shall review this Decision within two years after the entry into force of the Agreement, and thereafter every three years.

Article 4

This Decision shall enter into force on 25 April 2023.

Done at Luxembourg on 24 April 2023

For the Administrative Committee

Annex

Value of the proceeding	Ceiling for recoverable costs
Up to and including 250,000 €	Up to 38,000 €
Up to and including 500,000 €	Up to 56,000 €
Up to and including 1,000,000 €	Up to 112,000 €
Up to and including 2,000,000 €	Up to 200,000 €
Up to and including 4,000,000 €	Up to 400,000 €



Up to and including 8,000,000 €	Up to 600,000 €
Up to and including 16,000,000 €	Up to 800,000 €
Up to and including 30,000,000 €	Up to 1,200,000 €
Up to and including 50,000,000 €	Up to 1,500,000 €
More than 50,000,000 €	Up to 2,000,000 €

Rules relating to Unitary Patent Protection

Rules relating to Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection and to Council Regulation (EU) No 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 *((Adopted by decision of the Select Committee of the Administrative Council SC/D 1/15 of 15.12.2015 (OJ EPO 2016, A39), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012))*

(hereinafter "Rules relating to Unitary Patent Protection")

Part I Institutional Provisions

Chapter I Subject Matter

Rule 1 Subject matter

- (1) The participating Member States hereby entrust the European Patent Office with the tasks referred to in Article 9, paragraph 1, Regulation (EU) No 1257/2012. In carrying out these tasks, the European Patent Office shall apply the present Rules and shall be bound by decisions handed down by the Unified Patent Court in actions brought under Article 32, paragraph 1(i), Agreement on a Unified Patent Court. (Published in OJ EPO 2013, 287)
- (2) In case of conflict between the provisions of the present Rules and Union law, including Regulation (EU) No 1257/2012 (Published in OJ EPO 2013, 111) and Regulation (EU) No 1260/2012 (Published in OJ EPO 2013, 132) the provisions of Union law shall prevail.

Chapter II Select Committee of the Administrative Council

Rule 2 Competences and duties

- (1) The Select Committee of the Administrative Council shall be competent to amend
 - (a) the present Rules;
 - (b) the Rules relating to Fees for Unitary Patent Protection;
 - (c) other rules or decisions of a financial or budgetary nature;
 - (d) its Rules of Procedure.

- (2) The Select Committee of the Administrative Council shall ensure the governance and supervision of the activities related to the tasks entrusted to the European Patent Office in accordance with Rule 1, paragraph 1.

Chapter III Functions and Powers of the President of the European Patent Office and special departments of the European Patent Office

Rule 3 Functions and powers of the President of the European Patent Office

The Unitary Patent Protection Division referred to in Rule 4 shall be managed by the President of the European Patent Office, who shall be responsible for its activities to the Select Committee of the Administrative Council. To this end, Article 10, paragraphs 2 and 3, EPC shall apply *mutatis mutandis*.

Rule 4 Unitary Patent Protection Division

- (1) A Unitary Patent Protection Division is hereby established within the European Patent Office as a special department within the meaning of Article 143, paragraph 2, EPC.
- (2) The tasks entrusted to the European Patent Office in accordance with Rule 1, paragraph 1, shall be carried out under the responsibility of the Unitary Patent Protection Division.
- (3) Decisions of the Unitary Patent Protection Division shall be taken by one legally qualified member.
- (4) The President of the European Patent Office may entrust to employees who are not legally qualified members the execution of duties falling to the Unitary Patent Protection Division and involving no legal difficulties.

Part II Procedures to be carried by the European Patent Office under Regulations (EU) No 1257/2012 and No 1260/2012

Chapter I The Request for Unitary Effect

Rule 5 General

- (1) At the request of the proprietor of the European patent, unitary effect shall be registered by the European Patent Office in the Register for unitary patent protection.



- (2) Unitary effect shall be registered only if the European patent has been granted with the same set of claims in respect of all the participating Member States.

Rule 6

Requirements of the request for unitary effect

- (1) The request for unitary effect shall be filed with the European Patent Office no later than one month after publication of the mention of grant of the European patent in the European Patent Bulletin.
- (2) The request for unitary effect shall be filed in writing in the language of the proceedings and shall contain:
 - (a) particulars of the proprietor of the European patent making the request (hereinafter "the requester") as provided for in Rule 41, paragraph 2(c), EPC;
 - (b) the number of the European patent to which unitary effect shall be attributed;
 - (c) where the requester has appointed a representative, particulars as provided for in Rule 41, paragraph 2(d), EPC;
 - (d) a translation of the European patent as required under Article 6, paragraph 1, Regulation (EU) No 1260/2012, as follows:
 - where the language of the proceedings is French or German, a full translation of the specification of the European patent into English; or
 - where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the European Union.

Rule 7

Examination of the request by the European Patent Office

- (1) If the requirements under Rule 5, paragraph 2, are met and the request for unitary effect complies with Rule 6, the European Patent Office shall register the unitary effect in the Register for unitary patent protection and communicate the date of this registration to the requester.
- (2) If the requirements under Rule 5, paragraph 2, are not met or the request for unitary effect does not comply with Rule 6, paragraph 1, the European Patent Office shall reject the request.
- (3) If the requirements under Rule 5, paragraph 2, are met and the request for unitary effect complies with Rule 6, paragraph 1, but fails to comply with the requirements of Rule 6, paragraph



2, the European Patent Office shall invite the requester to correct the deficiencies noted within a non-extendable period of one month. If the deficiencies are not corrected in due time, the European Patent Office shall reject the request.

Chapter II Compensation Scheme

Rule 8 Definition and beneficiaries

- (1) Proprietors of European patents with unitary effect for which the European patent application was filed in an official language of the European Union other than English, French or German shall be entitled to compensation for translation costs if their residence or principal place of business is in a member state of the European Union and they are an entity or a natural person referred to in paragraph 2.
- (2) Compensation for translation costs shall be granted, on request, to a patent proprietor falling within one of the following categories:
 - (a) small and medium-sized enterprises as defined in European Commission recommendation 2003/361/EC dated 6 May 2003;
 - (b) natural persons; or
 - (c) non-profit organisations as defined in Article 2, paragraph 1(14) of Regulation (EU) No 1290/2013, universities and public research organisations.
- (3) If the patent has multiple proprietors, compensation will be granted only if each proprietor fulfils the conditions referred to in paragraphs 1 and 2.
- (4) If the European patent application or the European patent was transferred before a request for unitary effect was filed, compensation will be granted only if both the initial applicant and the proprietor of the patent fulfil the conditions referred to in paragraphs 1 and 2.
- (5) The compensation scheme provided for in paragraph 1 shall also apply to Euro-PCT applications originally filed at a receiving office in an official language of the European Union other than English, French or German.

Rule 9 Request for compensation

- (1) The proprietor of a European patent who wishes to benefit from compensation under Rule 8 shall file a request for it together with the request for unitary effect referred to in Rule 6.
- (2) The request for compensation for translation costs shall contain a declaration that the proprietor of the European patent is an entity or a natural person referred to in Rule 8, paragraph 2.

Rule 10 Examination of the request and grant of compensation

- (1) After the European Patent Office has registered the unitary effect of the European patent in the Register for unitary patent protection and has examined the request for compensation, it shall inform the patent proprietor whether that request has been granted or rejected.
- (2) Once granted, compensation shall not be rescinded, even if, as a result of changed circumstances, the proprietor no longer qualifies for it under Rule 8.
- (3) Should the Office have reason to doubt the veracity of the declaration filed under Rule 9, paragraph 2, it shall invite the patent proprietor to provide evidence that he fulfils the requirements of Rule 8, paragraph 2. Articles 113(1) and 114 EPC shall apply.
- (4) If the Office finds that the compensation was granted on the basis of a false declaration, it shall invite the patent proprietor to pay, together with the next renewal fee falling due, an additional fee composed of the amount of the compensation paid and an administrative fee as laid down in the Rules relating to Fees for Unitary Patent Protection. If this additional fee is not paid in due time, the European patent with unitary effect shall lapse under Rule 14.

Rule 11 Level of compensation

Reimbursement of translation costs shall be made up to a ceiling and paid in the form of a lump sum, in accordance with the Rules relating to Fees for Unitary Patent Protection. The ceiling shall be fixed on the basis of the average length of a European patent and the average translation cost per page, taking account of the average reduction granted under Rule 6 EPC.

Chapter III Licences of Right

Rule 12 Filing of the statement by the patent proprietor

- (1) The proprietor of a European patent with unitary effect may file a statement with the European Patent Office that he is prepared to allow any person to use the invention as a licensee in return for appropriate consideration. In that case, the renewal fees for the European patent with unitary effect which fall due after receipt of the statement shall be reduced; the amount of the reduction shall be fixed in the Rules relating to Fees for Unitary Patent Protection. The statement shall be entered in the Register for unitary patent protection.
- (2) The statement referred to in paragraph 1 may be withdrawn at any time by a communication to this effect to the European Patent Office. Such withdrawal shall not take effect until the amount by which the renewal fees were reduced is paid to the European Patent Office.
- (3) The statement referred to in paragraph 1 may not be filed as long as an exclusive licence is recorded in the Register for unitary patent protection or a request for the recording of such a licence is pending before the European Patent Office.
- (4) No request for recording an exclusive licence in the Register for unitary patent protection shall be admissible after the statement referred to in paragraph 1 has been filed, unless that statement is withdrawn.

Chapter IV Renewal Fees

Rule 13 Payment of renewal fees for European patents with unitary effect

- (1) Renewal fees for European patents with unitary effect and additional fees for their late payment shall be paid to the European Patent Office. Those fees shall be due in respect of the years following the year in which the mention of the grant of the European patent which benefits from unitary effect is published in the European Patent Bulletin.
- (2) A renewal fee for the European patent with unitary effect in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application which led to the European patent with unitary effect. Renewal fees may not be validly paid more than three months before they fall due.



- (3) If a renewal fee is not paid in due time, the fee may still be paid within six months of the due date, provided that an additional fee is also paid within that period.
- (4) A renewal fee in respect of a European patent with unitary effect falling due under paragraph 2 within three months of the notification of the communication referred to in Rule 7(1) may still be paid within that period without the additional fee referred to in paragraph 3.
- (5) A renewal fee for a European patent with unitary effect which would have fallen due under paragraph 2 in the period starting on the date of publication of the mention of the grant of the European patent in the European Patent Bulletin up to and including the date of the notification of the communication referred to in Rule 7(1) shall be due on that latter date. This fee may still be paid within three months of that latter date without the additional fee referred to in paragraph 3.
- (6) Rule 51, paragraphs 4 and 5, EPC shall apply *mutatis mutandis*.

Chapter V Lapse

Rule 14 Lapse

- (1) A European patent with unitary effect shall lapse:
 - (a) 20 years after the date of filing of the European patent application;
 - (b) if a renewal fee and, where applicable, any additional fee have not been paid in due time.
- (2) The lapse of a European patent with unitary effect for failure to pay a renewal fee and any additional fee within the due period shall be deemed to have occurred on the date on which the renewal fee was due.

Part III Information to the Public

Chapter I Register for Unitary Patent Protection

Rule 15 Establishment of the Register for unitary patent protection

- (1) The Register for unitary patent protection provided for in Article 9, paragraph 1(b), Regulation (EU) No 1257/2012 is hereby established as a special part of the European Patent Register kept by the European Patent Office under Article 127 EPC.

- (2) Entries in the Register for unitary patent protection shall be made in the three official languages of the European Patent Office. In case of doubt, the entry in the language of the proceedings shall be authentic.

Rule 16 **Entries in the Register for unitary patent protection**

- (1) The Register for unitary patent protection shall contain the following entries:
- (a) date of publication of the mention of the grant of the European patent;
 - (b) date of filing of the request for unitary effect for the European patent;
 - (c) particulars of the representative of the proprietor of the European patent as provided for in Rule 41, paragraph 2(d), EPC; in the case of several representatives, only the particulars of the representative first named, followed by the words "and others" and, in the case of an association referred to in Rule 152, paragraph 11, EPC, only the name and address of the association;
 - (d) date and purport of the decision on the registration of unitary effect for the European patent;
 - (e) date of registration of the unitary effect of the European patent;
 - (f) date of effect of the European patent with unitary effect pursuant to Article 4, paragraph 1, Regulation (EU) No 1257/2012;
 - (g) participating Member States in which the European patent with unitary effect has unitary effect pursuant to Article 18, paragraph 2, Regulation (EU) No 1257/2012;
 - (h) particulars of the proprietor of the European patent with unitary effect as provided for in Rule 41, paragraph 2(c), EPC;
 - (i) 5 family name, given names and country and place of residence of the inventor designated by the applicant for or proprietor of the patent, unless he has waived his right to be mentioned under Rule 20, paragraph 1, EPC; *((Amended by decision of the Select Committee of the Administrative Council SC/D 3/21 of 16.12.2021 (OJ EPO 2022, A39), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/201))*
 - (j) rights and transfer of such rights relating to the European patent with unitary effect where the present Rules provide that they shall be recorded at the request of an interested party;



- (k) licensing commitments undertaken by the proprietor of the European patent with unitary effect in international standardisation bodies pursuant to Article 9, paragraph 1(c), Regulation (EU) No 1257/2012, where the proprietor requested their registration;
- (l) date of filing and date of withdrawal of the statement provided for in Rule 12;
- (m) date of lapse of the European patent with unitary effect;
- (n) data as to the payment of renewal fees for the European patent with unitary effect, including, where applicable, data on the payment of an additional fee pursuant to Rule 13, paragraph 3;
- (o) a record of the information communicated to the European Patent Office concerning proceedings before the Unified Patent Court;
- (p) a record of the information communicated to the European Patent Office by the central industrial property offices, courts and other competent authorities of the participating Member States;
- (q) date and purport of the decision on the validity of a European patent with unitary effect taken by the Unified Patent Court;
- (r) date of receipt of a request for re-establishment of rights;
- (s) refusal of a request for re-establishment of rights;
- (t) date of re-establishment of rights;
- (u) dates of interruption and resumption of proceedings;
- (v) date of issuance, date of expiry and date and purport of the decision on the validity of a supplementary protection certificate for a product protected by the European patent with unitary effect as well as the participating Member State issuing it;
- (w) information regarding a place of business of the applicant on the date of filing of the application for the European patent pursuant to Article 7, paragraph 1(b), Regulation (EU) No 1257/2012, which may be provided by the proprietor of the European patent together with the request for unitary effect referred to in Rule 6. *((Amended by decision of the Select Committee of the Administrative Council SC/D 1/22 of 23.03.2022 (OJ EPO 2022, A40), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012))*

- (x) information regarding the residence or principal place of business of the applicant on the date of filing of the application for the European patent pursuant to Article 7, paragraph 1(a), Regulation (EU) No 1257/2012. *((Inserted by decision of the Select Committee of the Administrative Council SC/D 3/21 of 16.12.2021 (OJ EPO 2022, A39), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012))*
- (2) The President of the European Patent Office may decide that entries additional to those referred to in paragraph 1 shall be made in the Register for unitary patent protection.

Chapter II Publications

Rule 17 European Patent Bulletin and Official Journal of the European Patent Office

- (1) The European Patent Bulletin referred to in Article 129(a) EPC shall contain, as a special part, the particulars the publication of which is prescribed by the present Rules, the Chairperson of the Select Committee of the Administrative Council or the President of the European Patent Office.
- (2) The Official Journal referred to in Article 129(b) EPC shall contain, as a special part, notices and information of a general character issued by the Select Committee of the Administrative Council or by the President of the European Patent Office, as well as any other information relevant to the implementation of unitary patent protection.

Rule 18 Publication of translations

The President of the European Patent Office shall determine the form of the publication of the translations referred to in Rule 6, paragraph 2(d), and the data to be included.

Rule 19 Inclusion of decisions of the Unified

Patent Court in the files The European Patent Office shall include a copy of any decision of the Unified Patent Court forwarded to it by the Court and relating to European patents with unitary effect, including those decisions referred to in Rule 1, in the files relating to the European patent with unitary effect, where it shall be open to inspection.

Part IV Common Provisions

Rule 20 Common provisions governing procedure

- (1) The following provisions of the EPC, as amended, shall apply *mutatis mutandis*: Article 14, paragraphs 1, 3 and 7; Article 113, paragraph 1; Articles 114, 117, 119, 120, 125; Article 128, paragraph 4; Articles 131, 133; Article 134, paragraphs 1, 5 and 8.
- (2) The following provisions of the Implementing Regulations to the EPC, as amended, shall apply *mutatis mutandis*:
 - (a) Rules 1 and 2; unless otherwise provided Rule 3, paragraph 1, first sentence; Rule 3, paragraph 3; Rules 4 and 5;
 - (b) Rules 22 to 24;
 - (c) Rule 50, paragraphs 2 and 3;
 - (d) Rule 111, paragraph 1; Rules 112 and 113;
 - (e) Rule 115; Rule 116, paragraph 1; Rules 117 to 124;
 - (f) Rules 125 to 130;
 - (g) Rule 131; Rule 133, paragraph 1, subject to the proviso that the document referred to in that provision has been received no later than one month after expiry of the period; Rule 134;
 - (h) Rule 139, first sentence, and Rule 140;
 - (i) Rule 142;
 - (j) Rules 144 to 147;
 - (k) Rules 148 to 150;
 - (l) Rules 151 to 153.
- (3) When applying the provisions referred to in paragraphs 1 and 2 *mutatis mutandis*, the term "Contracting States" shall be understood as meaning the Contracting States to the EPC, except in Article 125 EPC, where it shall be understood as meaning the participating Member States.
- (4) Where the present Rules, including the provisions of the EPC applicable *mutatis mutandis* under the present Rules, refer to "a period to be specified", this period shall be specified by the European Patent Office. Unless otherwise provided, a period specified by the European Patent Office shall be neither less than one month nor more than four months.

Rule 21 **Oral proceedings**

- (1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings where the parties and the subject of the proceedings are the same.
- (2) Nevertheless, in the procedure concerning the request for unitary effect, oral proceedings shall take place before the Unitary Patent Protection Division at the request of the proprietor of the European patent only where the Unitary Patent Protection Division considers this to be expedient.
- (3) Oral proceedings before the Unitary Patent Protection Division shall not be public.

Rule 22 **Re-establishment of rights**

- (1) A proprietor of a European patent or of a European patent with unitary effect who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the European patent with unitary effect to lapse according to Rule 14, paragraph 1(b), or the loss of any other right or means of redress.
- (2) Any request for re-establishment of rights under paragraph 1 shall be filed in writing within two months of the removal of the cause of non-compliance with the period, but at the latest within one year of expiry of the unobserved time limit. However, a request for re-establishment of rights in respect of the period specified in Rule 6, paragraph 1, shall be filed within two months of expiry of that period. The request for re-establishment of rights shall not be deemed to have been filed until the fee prescribed in the Rules relating to Fees for Unitary Patent Protection has been paid.
- (3) The request shall state the grounds on which it is based and shall set out the facts on which it relies. The omitted act shall be completed within the relevant period for filing the request according to paragraph 2.
- (4) The European Patent Office shall grant the request, provided that the conditions laid down in the present Rule are met. Otherwise, it shall reject the request.



- (5) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
- (6) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights and in respect of the period referred to in Rule 7, paragraph 3.
- (7) Any person who, in one or several participating Member States, has in good faith used or made effective and serious preparations for using an invention which is the subject of a European patent with unitary effect in the period between the loss of rights referred to in paragraph 1 and publication in the Register for unitary patent protection of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

Rule 23 **Form of decisions**

Decisions of the European Patent Office against which actions can be brought before the Unified Patent Court in accordance with Article 32, paragraph 1(i), Agreement on a Unified Patent Court shall be reasoned and shall be accompanied by a communication pointing out the possibility of bringing an action before the Unified Patent Court. The parties may not invoke the omission of the communication.

Rule 24 **Interlocutory revision**

If the European Patent Office is informed by the Unified Patent Court that an application to annul or alter a decision of the European Patent Office is admissible and if the European Patent Office considers that the application is well founded, it shall, within two months of the date of receipt of the application,

- (a) rectify the contested decision in accordance with the order or remedy sought by the claimant and
- (b) inform the Unified Patent Court that the decision has been rectified.



Rules relating to Fees for Unitary Patent Protection

Adopted by decision of the Select Committee of the Administrative Council SC/D 2/15 of 15.12.2015 (OJ EPO 2016, A40), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012.

Article 1

General

The fees due to be paid to the European Patent Office, the compensation for translation costs to be paid to proprietors of a European patent with unitary effect by the European Patent Office, as provided for in the Rules relating to Unitary Patent Protection, and the fees and expenses which the President of the European Patent Office lays down pursuant to Article 5 shall be levied or paid in accordance with the provisions contained in Articles 2 to 6.

Article 2

Fees provided for in the Rules relating to Unitary Patent Protection

- (1) The fees due to be paid to the European Patent Office shall be as follows:
1. Renewal fees for the European patent with unitary effect (Rule 13, paragraph 1, Rules relating to Unitary Patent Protection), calculated in each case from the date of filing of the application

for the 2nd year	35 EUR
for the 3 rd year	105 EUR
for the 4 th year	145 EUR
for the 5 th year	315 EUR
for the 6 th year	475 EUR
for the 7 th year	630 EUR
for the 8th year	815 EUR



for the 9 th year	990 EUR
for the 10 th year	1175 EUR
for the 11 th year	1460 EUR
for the 12 th year	1775 EUR
for the 13 th year	2105 EUR
for the 14 th year	2455 EUR
for the 15 th year	2830 EUR
for the 16 th year	3240 EUR
for the 17 th year	3640 EUR
for the 18 th year	4055 EUR
for the 19 th year	4455 EUR
for the 20 th year	4855 EUR

2. Additional fee for belated payment of a renewal fee (Rule 13, paragraph 3, relating to Unitary Patent Protection) is 50% of the belated renewal fee.
- (2) The fee for re-establishment of rights (Rule 22, paragraph 2, relating to Unitary Patent Protection) shall be payable in the amount laid down in Article 2, paragraph 1, item 13, of the Rules relating to Fees under the EPC, as amended.



Article 3 **Reduction of renewal fees**

The reduction of the renewal fees for the European patent with unitary effect laid down in Rule 12, paragraph 1, relating to Unitary Patent Protection shall be 15%.

Article 4 **Compensation for translation costs**

- (1) The amount of the lump sum provided for in Rule 11 relating to Unitary Patent Protection shall be EUR 500.
- (2) The administrative fee provided for in Rule 10, paragraph 4, relating to Unitary Patent Protection shall be 50% of the lump sum referred to in paragraph 1.

Article 5 **Fees, expenses and prices laid down by the President of the European Patent Office**

The administrative fees provided for in the Rules relating to Unitary Patent Protection and the fees and expenses charged for any services rendered by the European Patent Office other than those specified in the present Rules shall be payable in the amounts laid down by the President of the European Patent Office pursuant to Article 3 of the Rules relating to Fees under the EPC.

Article 6 **Common provisions governing procedure**

The following provisions of the Rules relating to Fees under the EPC, as amended, shall apply *mutatis mutandis*: Articles 4 to 8, Article 12 and Article 13.

Article 7 **Review of renewal fee level and report on specific entities**

No later than five years from the date of application of Regulation (EU) No 1257/2012, and every five years thereafter,

- (a) the European Patent Office shall submit a report to the Select Committee of the Administrative Council assessing the financial impact of the European patent with unitary effect on the budget of the European Patent Organisation and on the renewal fee income of the participating Member States and, where necessary, make an appropriate proposal for adjusting the level of renewal fees;



- (b) the European Patent Office shall, after consultation of the European Commission, submit a report to the Select Committee of the Administrative Council on the use of the European patent with unitary effect by specific entities, such as small and medium-sized enterprises, and, where necessary, make proposals with a view to improving their access to the European patent with unitary effect.

Rules of Procedure of the Presidium of the Unified Patent Court

Article 1 Composition and Term of Office of the members of the Presidium

- 1) The Presidium shall be composed of the President of the Court of Appeal, who shall act as Chairperson, the President of the Court of First Instance, two judges of the Court of Appeal elected from among their number, three judges of the Court of First Instance who are full-time judges of the Court elected from among their number, and the Registrar as a non-voting member.
- 2) The members of the Presidium to be elected shall be elected in accordance with Art. 15 (1) of the Statute of the Unified Patent Court for a term of three years. The members of the Presidium may be re-elected.
- 3) In case a member of the Presidium is permanently prevented from exercising his or her duties due to waiver of immunity, end of his or her duties or removal from office or other, a substitute member shall be elected in due time in accordance with Art. 15(1) of the Statute of the Unified Patent Court for the rest of that member's term.

Article 2 Deputising for the Chairperson and members of the Presidium

- 1) The Chairperson and each member of the Presidium shall designate a permanent deputy who shall represent the Chairperson or a member in case of their absence. Each member may only represent one other member of the Presidium except in exceptional circumstances referred to in Art. 3 (1).
- 2) Deputies shall be chosen among other members of the Presidium from the same Instance.
- 3) Members of the Presidium shall notify the Chairperson about their absence in order to ensure that this can be considered when organising meetings or launching written procedures.
- 4) The Registrar shall be deputised by the Deputy-Registrar in case of his or her absence.

Article 3 Decisions of the Presidium

- 1) Decisions of the Presidium shall be taken at meetings or via written procedure by simple majority. All decisions shall be taken by at least four members of the Presidium. As a rule, at

least two members of each Instance shall be present. In exceptional circumstances of extreme urgency only, a member of the Presidium may represent two other members of the Presidium of his or her Instance not being present. Whether such circumstances are present is to be decided by the Chairperson or his or her deputy, after consulting the other members of the Presidium as much as feasible.

- 2) Proposals for decisions shall be submitted to the Presidium by the Chairperson or by one or several of its members at the latest one week before the meeting of the Presidium.
- 3) Voting at meetings shall be taken by show of hands. However, at the request of at least one of the members a secret ballot shall be held. Votes may be taken electronically, regardless of whether or not the vote is taken by secret ballot.
- 4) The member chosen by the Chairperson (President of the Court of Appeal) or the President of the Court of First Instance as deputy shall also represent the Chairperson or the President of the Court of First Instance in all other functions as Acting President of the Court of Appeal or as Acting President of the Court of First Instance.

Article 4 **Meetings of the Presidium**

- 1) Meetings of the Presidium shall be convened by the Chairperson on his or her own initiative or at the request of at least two of its members. Such requests shall indicate the items to be discussed. In case of a request of at least two members of the Presidium, the meeting shall take place as soon as practicable.
- 2) Meetings may take place onsite with the members being present physically, or online. In case of onsite meetings, the online participation of individual members who have impediments attending onsite, shall be made possible unless the Chairperson decides in the invitation that an item of the agenda requires onsite participation of all members of the Presidium.
- 3) Onsite meetings can take place at the Court of Appeal, at the seat or section[s] of the central division, at one of the local or regional divisions or at any other location which is deemed appropriate.
- 4) Except in case of urgency (e.g., decisions under Article 7.5 of the Statute of the Unified Patent Court) the date, time and, in case of onsite meetings, the location, of a meeting shall be communicated two weeks in advance.

- 5) The meetings of the Presidium shall be confidential and all members shall respect their confidential character.

Article 5

Agenda, documents for and minutes of meetings

- 1) The draft agenda, proposals for decisions and other documents for the meeting shall be drawn up by the Chairperson, unless such proposals or documents are put on the draft agenda at the request of one or several of the members of the Presidium. Any member of the Presidium may request to add further items to the draft agenda. The first draft agenda and proposals for decisions or other documents shall be communicated two weeks in advance for consideration at the meeting.
- 2) The final draft agenda shall be communicated to the members of the Presidium at least 5 calendar days before each meeting unless urgency requires a shorter deadline. Requests to add further items by one or several member(s) of the Presidium shall be communicated to the other members of the Presidium at least 10 calendar days before each meeting together with relevant documents. The final agenda shall be adopted by the Presidium at the beginning of each meeting.
- 3) With the agreement of a simple majority of the Presidium, urgent questions may be added to the agenda at any time before the end of the meeting, and items on the agenda may be deleted or carried over to a subsequent meeting.
- 4) The Chairperson or a member of the Presidium who was invited by the Chairperson to that effect shall draw up minutes recording the names of the members of the Presidium present or represented and a summary of decisions taken at each meeting. After approval of the Presidium, decisions taken in each meeting shall be published on the website of the Court with the exception of decisions on items which the Presidium decides to be confidential.
- 5) The Chairperson shall be assisted in the tasks mentioned by a member of the staff of the Court designated by the Chairperson, who will provide secretarial support to the Presidium.

Article 6

Written Procedures

- 1) Matters of routine or daily business may be decided by written procedure.

- 2) A written procedure shall be launched by the Chairperson or in case of his or her absence by his or her Deputy, on his or her own initiative or at the request of one or several of the members of the Presidium.
- 3) With the launch of every written procedure the deadline for replies shall be communicated which should normally be at least 4 calendar days, unless urgency requires a shorter deadline.
- 4) Failure to reply to a written procedure within the deadline shall be considered as consent to a proposal for decision. Such failure shall only be considered as consent if the respective member has been reminded at least once to that effect. A proposal submitted for voting by written procedure may not be amended; it shall be approved or rejected in its entirety.

Article 7 Repartition of tasks within the Presidium

- 1) Notwithstanding its collective responsibility, the Presidium can decide to delegate certain tasks to one or several of its members.
- 2) The Presidium can also decide to entrust one or several of its members with the elaboration of documents and proposals for decisions.
- 3) Where necessary the Chairperson shall designate one or several members of the staff of the court to assist the members of the Presidium with such tasks.

Article 8 Amendments and Entry into force

- 1) The Presidium may amend these Rules of Procedure.
- 2) These Rules of Procedure enter into force on 29 November 2022.

Done at Luxembourg on 29 November 2022
For the Presidium



Protocol on Privileges and Immunities of the Unified Patent Court

Preamble

The undersigning Contracting Member States of the Agreement on a Unified Patent Court,

CONSIDERING that the Unified Patent Court has been established by the Agreement on a Unified Patent Court of 19 February 2013 as an international organisation with legal personality in each Contracting Member State;

RECALLING that the Agreement on a Unified Patent Court provides, in Article 37(1), that Contracting Member States hosting the central division of the Court of First Instance or one of its sections, a local or regional division of the Court of First Instance or the Court of Appeal of the Unified Patent Court shall provide facilities and, during the initial seven years, also administrative support staff;

RECALLING that the Statute of the Unified Patent Court provides, in Article 8, that the Protocol on the privileges and immunities of the European Union shall apply to the judges of the Unified Patent Court;

RECALLING that Article 8(4) of the Statute of the Unified Patent Court covers both the privileges and immunities of the judges of the Unified Patent Court and that the application of the Protocol on the privileges and immunities of the European Union to the judges of the Unified Patent Court has been foreseen because of the intrinsic link of the latter with the European patent with unitary effect and cannot create any precedent for the application of that Protocol to other international organizations with regard to the host nation policies of the Contracting Member States;

RECALLING that the Administrative Committee has the competence to set up an internal tax and a social security scheme under the powers of administration which are conferred to it by the Unified Patent Court Agreement;



RECALLING that the Agreement on a Unified Patent Court provides, in Article 4, that the Unified Patent Court shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State;

RECOGNIZING that the Unified Patent Court needs to benefit from privileges and immunities which are necessary for the exercise of its functions;

CONSIDERING that a common approach on how to address issues of privileges and immunities is essential in view of the needs of the Unified Patent Court and of the Contracting Member States;

RECOGNIZING that additional bilateral Headquarter Agreements may be concluded between the Unified Patent Court and Contracting Member States hosting the central division of the Court of First Instance or one of its sections, a local or regional division of the Court of First Instance or the Court of Appeal of the Unified Patent Court.

Have agreed as follows:

Article 1

Use of terms

For the purpose of this Protocol:

- a) “Agreement” means the Agreement on a Unified Patent Court of 19 February 2013;
- b) “Statute” means the Statute of the Unified Patent Court as set out in Annex I of the Agreement;
- c) “State Party” means a State party to this Protocol;
- d) “Contracting Member State” means a State party to the Agreement;
- e) “Court” means the Unified Patent Court created by the Agreement;
- f) “Court of Appeal” means the Court of Appeal of the Court;
- g) “The official activities of the Court” means the activities that are necessary for the fulfilment by the Court of the purposes and functions it has been entrusted with in accordance with the provisions of the Agreement;



- h) “Premises of the Court” means land and buildings made available to the Court by the Contracting Member State in accordance with Article 37 of the Agreement and used for the official activities of the Court;
- i) “Judge” means a Judge of the Court.
- j) “Registrar” means the Registrar and the Deputy-Registrar of the Court.
- k) “Staff” means all personnel employed by the Court as officials and other servants of the Court except the Judges and the Registrar.
- l) “Family” means, with respect to any person, the spouse and dependent members of the immediate family of such person forming part of such person’s household, as recognised by the hosting Contracting Member State;
- m) “Representatives of the parties” means the lawyers, European patent attorneys or patent attorneys authorised to practice or assist before the Court under Article 48 of the Agreement.

Article 2 **General provisions on privileges and immunities of the Court**

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the exercise of its official activities.

Article 3 **Inviolability of the premises of the Court**

The premises of the Court shall be inviolable, subject to such conditions as may be agreed with the State Party concerned and subject to the responsibility of the State Party hosting the central division of the Court of First Instance or one of its sections, a local or regional division of the Court of First Instance or the Court of Appeal with respect to the facilities that are to be provided by such a State Party.

Article 4 **Inviolability of archives and documents**

The archives of the Court, and all papers and documents in whatever form belonging to it, held by it or addressed to it shall be inviolable at all times and wherever they may be located.



Article 5 **Immunity of the Court, its property, assets and funds**

1. The Court shall enjoy immunity from legal process, except:
 - a. insofar as in any particular case it has expressly waived its immunity;
 - b. as in the event of civil proceedings against it with respect to contractual liability brought by persons others than the Judges, the Registrar or the Staff of the Court;
 - c. as in cases of civil proceedings against it with respect to non-contractual liability except where the claim is based on the performance of the Court's jurisprudence or
 - d. in the case of a civil proceeding brought by a third party for damages resulting from an accident caused by a motor vehicle belonging to, or operated on behalf of, the Court, or in respect of a motor traffic offence involving such a vehicle.
2. The Court shall enjoy immunity from legal process in respect of search, requisition, confiscation, seizure or expropriation of, or any other form of interference with, the property, assets and funds of the Court, wherever located, without the authorisation of the Court.
3. To the extent necessary to exercise its official activities, the property, assets and funds of the Court shall be exempt from restrictions, regulations, controls and moratoria of any nature.

Article 6 **Immunity of Representatives of a State Party**

1. Representatives of a State Party shall enjoy, while attending meetings of the Administrative Committee, the Budget Committee and the Advisory Committee immunities from legal process in respect of all acts performed by them in their official capacity, including their words spoken or written. This immunity shall continue to be accorded even after the termination of their mission.
2. Their official papers and documents shall be inviolable.
3. No State Party is obliged to extend the immunities referred to in paragraph 1 and 2 to its own nationals or any person who at the time of taking up his functions with the Court has his permanent residence in that State.

Article 7 **Exemption from taxes**

1. The Court, its property and assets, shall be exempt from all direct taxes.
2. The Court shall

- a. be exempt from or accorded a refund of value added taxes paid on any substantial purchase of goods and services which are necessary and supplied for the official activities of the Court, subject to the limitations laid down by the host State Party;
 - b. however not be exempt from taxes and dues which amount to charges for public utility services.
3. Goods purchased under such an exemption or reimbursement shall not be sold or otherwise disposed of in that State Party or in another Member State of the European Union, except in accordance with the conditions laid down by the State Party which granted the exemption or reimbursement.
4. Without prejudice to the obligations arising for the State Parties under European Union law and the application of laws and regulations, the conditions and procedure shall be determined by the competent fiscal authorities of each State Party.

Article 8 **Funds and freedom from currency restrictions**

The State Parties shall accord the Court the freedom of currency restrictions which is necessary for the exercise of its official activities.

Article 9 **Privileges and Immunities of the Judges and the Registrar**

1. The privileges and immunities of the Judges are governed by Article 8 of the Statute and by reference in Article 8 of the Statute by the Protocol on the privileges and immunities of the European Union.
2. Article 8 of the Statute and the Protocol on the privileges and immunities of the European Union shall apply to the Registrar.
3. When applied in accordance with paragraph 1 and 2, only Article 11(b-e) to 14 of the Protocol on the privileges and immunities of the European Union are to be applied in analogy adapted to the specific circumstances of the Court. This means in particular that the Judges and the Registrar shall:
 - a. be liable to an internal tax for the benefit of the Court on salaries, wages and emoluments paid to them by the Court;

- b. from the date on which the internal tax under letter (a) is applied, be exempted from national taxation on the salaries, wages and emoluments, paid to them by the Court, but not on pensions and annuities, paid to them by the Court;
- c. from the date on which the Judges and the Registrar are subject to a social security and health scheme established by the Court, with respect to services rendered for the Court, be exempted from all compulsory contributions to national social security and health schemes.

Article 10 Immunities and privileges of the Staff

1. The Staff shall be immune from legal process in respect of all acts performed by them in their official capacity, including their words spoken or written. This immunity shall continue to be accorded even after the termination of their employment with the Court.
2. The Staff shall,
 - a. be liable to an internal tax for the benefit of the Court on salaries, wages and emoluments paid to them by the Court;
 - b. from the date on which the internal tax under letter (a) is applied, be exempted from national taxation on the salaries, wages and emoluments, but not on pensions and annuities, paid to them by the Court; these salaries, wages and emoluments may be taken into account by the State Parties for the purpose of assessing the amount of taxation to be applied to income from other sources;
 - c. from the date on which the Staff is subject to a social security and health scheme established by the Court, with respect to services rendered for the Court, be exempted from all compulsory contributions to national social security and health schemes.
3. No State Party is obliged to extend the privileges referred to in paragraph 2 to its own nationals or to a person who immediately prior to the employment by the Court was a resident of that State Party.

Article 11 Emblem and flag

The Court shall be entitled to display its emblem and flag at its premises subject to such conditions as may be agreed with the State Party concerned, on vehicles used for official purposes as well as on its website and documents.

Article 12 Cooperation with the authorities of State Parties

1. Without prejudice to their privileges and immunities, it is the duty of all persons enjoying privileges and immunities under Article 6, 9 and 10 to respect the laws and regulations of the State Party in whose territory they may operate in their official capacity.
2. The Court shall cooperate at all times with the appropriate authorities of State Parties to facilitate the enforcement of their laws and to prevent the occurrence of any abuse in connection with the privileges, immunities and facilities referred to in this Protocol.

Article 13 Purpose and waiver of privileges and immunities provided for in Article 6, 9 and 10

1. The privileges and immunities provided for in this Protocol are not established for the personal benefit of those persons in whose favour they are granted. Their purpose is solely in the interest of the Court, especially to ensure, in all circumstances, the freedom of action of the Court and the complete independence of the persons concerned.
2. The Presidium of the Court shall have not only the right but also the duty to waive the immunity of Judges, the Registrar and the Staff under Articles 9 and 10, when it considers that such immunity would hinder the normal course of justice, and that it is possible to waive such immunity without prejudicing the interests of the Court. A State Party has the same right regarding its representatives in the Administrative Committee and the Budget Committee (Article 6). The Administrative Committee shall have the same right and obligation regarding the members of the Advisory Committee.

Article 14 **Access, residence and departure**

Without prejudice to European Union law, the concerned State Party shall take all the necessary steps to facilitate;

- a. the entry into, departure from and residence in its territory of all persons who are performing official duties for the Court, namely the Judges, the Registrar, Staff employed by the Court and staff provided by the State Parties as well as, where persons performing official duties for the Court are based in the State Party and are not nationals or permanent residents of that State Party, dependent members of their families, and
- b. the entry into and departure from its territory of all persons who are called to or summoned by the Court in an official capacity, namely parties, Representatives of parties, interpreters, witnesses and experts before the Court.

Article 15 **Notification**

The Registrar shall communicate within one month of the entry into force of this Protocol to all State Parties the names of the Judges, the Registrar and the Staff to whom this Protocol applies. In addition to above, appointment/arrival of any Judge, Registrar or Staff to the Court and any change of circumstances shall be reported as soon as possible and at the latest within one month of the date of the relevant change of circumstance.

Article 16 **Settlement of disputes**

1. The Court shall make provisions for appropriate modes of settlement of disputes involving any person referred to in this Protocol who by reason of his or her official position enjoys immunity or the Court in cases when it enjoys immunity under Article 5, if such immunity has not been waived.
2. All disputes arising out of the interpretation or application of this Protocol shall be referred to an arbitral tribunal unless the parties have agreed to another mode of settlement. If a dispute arises between the Court and a State Party which is not settled by consultation, negotiation or other agreed mode of settlement within three months following a request by one of the parties to the dispute, it shall at the request of either party be referred for final decision to a panel of three

arbitrators: one to be chosen by the Court, one to be chosen by the State Party and the third, who shall be Chairman of the panel, to be chosen by the first two arbitrators. If either party has failed to make its appointment of an arbitrator within two months of the appointment of an arbitrator by the other party, the President of the European Court of Justice shall make such appointment. Should the first two arbitrators fail to agree upon the appointment of the third arbitrator within three months following the appointment of the first two arbitrators the third arbitrator shall be chosen by the President of the European Court of Justice upon the request of the Court or the State Party.

Article 17 **Signature, ratification, acceptance, approval or accession and deposition**

1. This Protocol shall be open for signature by all Contracting Member States from 29 June 2016 until 29 June 2017 at the Council of the European Union in Brussels.
2. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the General Secretariat of the Council of the European Union, hereinafter referred to as the depositary.
3. After 29 June 2017 this Protocol shall remain open for accession by all Contracting Member States. The instruments of accession shall be deposited with the depositary.

Article 18 **Entry into force**

1. This Protocol shall enter into force 30 days after the date on which the last of the four State Parties – France, Germany, Luxembourg and the United Kingdom – has deposited its instrument of ratification, acceptance approval or accession.
2. For each State Party, which deposits its instrument after the date referred to in paragraph 1, this Protocol shall enter into force 30 days after the date of deposit of its instrument of ratification, acceptance, approval or accession.



Article 19 **Provisional application**

A Contracting Member State may at any time notify the depositary that it will apply this Protocol provisionally.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Brussels this 29th of June 2016 in the English, French and German languages, all three texts being equally authentic, in a single copy, which shall be deposited with the depositary who shall transmit a certified true copy to all signatory and acceding States.

Note that only the English text appears here in this edition of Simmons & Simmons UPC e-Laws.



Set-up of local and regional divisions of the Court of First Instance of the Unified Patent Court

Explanatory Note

Explanatory Note

According to Article 18 of the Statute of the Unified Patent Court (hereafter ‘UPCA’), the setting up of local and regional divisions of the Court of First Instance of the Unified Patent Court shall be adopted by the Administrative Committee.

According to Article 18 (2) of the Statute of the Unified Patent Court, said decision shall indicate the number of judges for the division concerned and shall be public.

The draft decision hereunder follows the oral requests made by delegations at the Administrative Committee’s meeting of 22 February 2022, under agenda point VI. a. and the letter dated 31 March 2022, received by the Chairman of the Administrative Committee from the German delegation on the set-up of additional local divisions under Article 7(4) of the UPCA.

Decision of the Administrative Committee

Decision of the Administrative Committee of 8 July 2022 ON THE SET-UP OF LOCAL AND REGIONAL DIVISIONS OF THE COURT OF FIRST INSTANCE OF THE UNIFIED PATENT COURT

THE ADMINISTRATIVE COMMITTEE OF THE UNIFIED PATENT COURT

HAVING REGARD to the Agreement on a Unified Patent Court and in particular Article 7(3), (4) and (5) and Article 8(1) to (4) thereof;



HAVING REGARD to the Statute of the Unified Patent Court and in particular Article 18(1) and (2) thereof;

HAS DECIDED AS FOLLOWS:

Set-up of local and regional divisions of the Court of First Instance

I. Set-up of local and regional divisions of the Court of First Instance of the Unified Patent Court

1. Local divisions of the Court of First Instance of the Unified Patent Court shall be established at the following locations, with the indicated number of judges for the division concerned:
 - a. in Vienna, Austria – 1 Legally Qualified Judge
 - b. in Brussels, Belgium – 1 Legally Qualified Judge
 - c. in Copenhagen, Denmark – 1 Legally Qualified Judge
 - d. in Helsinki, Finland – 1 Legally Qualified Judge
 - e. in Paris, France – 2 Legally Qualified Judges
 - f. in Düsseldorf, Germany – 2 Legally Qualified Judges
 - g. in Hamburg, Germany – 2 Legally Qualified Judges
 - h. in Mannheim, Germany – 2 Legally Qualified Judges
 - i. in Munich, Germany – 2 Legally Qualified Judges
 - j. in Milan, Italy – 2 Legally Qualified Judges
 - k. in Lisbon, Portugal – 1 Legally Qualified Judge
 - l. in Ljubljana, Slovenia – 1 Legally Qualified Judge
 - m. in The Hague, The Netherlands – 2 Legally Qualified Judges
2. The following regional division of the Court of First Instance of the Unified Patent Court shall be established, with the indicated number of judges for the division concerned:
 - a. Nordic-Baltic regional division, mainly located in Stockholm – 2 Legally Qualified Judges

II. Entry into force

This decision shall enter into force on 8 July 2022.



EU

Directive 2004/48/EC on the enforcement of intellectual property rights

Corrigendum to Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights

(Official Journal of the European Union L 157 of 30 April 2004)

Directive 2004/48/EC should read as follows:

DIRECTIVE 2004/48/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 29 April 2004 on the enforcement of intellectual property rights

Corrigendum

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee (OJ C 32, 5.2.2004, p. 15.)

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty (*Opinion of the European Parliament of 9 March 2004 (not yet published in the Official Journal) and Council Decision of 26 April 2004*),

Whereas:



- (1) The achievement of the internal market entails eliminating restrictions on freedom of movement and distortions of competition, while creating an environment conducive to innovation and investment. In this context, the protection of intellectual property is an essential element for the success of the internal market. The protection of intellectual property is important not only for promoting innovation and creativity, but also for developing employment and improving competitiveness.
- (2) The protection of intellectual property should allow the inventor or creator to derive a legitimate profit from his/her invention or creation. It should also allow the widest possible dissemination of works, ideas and new know-how. At the same time, it should not hamper freedom of expression, the free movement of information, or the protection of personal data, including on the Internet.
- (3) However, without effective means of enforcing intellectual property rights, innovation and creativity are discouraged and investment diminished. It is therefore necessary to ensure that the substantive law on intellectual property, which is nowadays largely part of the *acquis communautaire*, is applied effectively in the Community. In this respect, the means of enforcing intellectual property rights are of paramount importance for the success of the internal market.
- (4) At international level, all Member States, as well as the Community itself as regards matters within its competence, are bound by the Agreement on trade-related aspects of intellectual property (the TRIPS Agreement), approved, as part of the multilateral negotiations of the Uruguay Round, by Council Decision 94/800/EC (OJ L 336, 23.12.1994, p. 1) and concluded in the framework of the World Trade Organisation.
- (5) The TRIPS Agreement contains, in particular, provisions on the means of enforcing intellectual property rights, which are common standards applicable at international level and implemented in all Member States. This Directive should not affect Member States' international obligations, including those under the TRIPS Agreement.
- (6) There are also international conventions to which all Member States are parties and which also contain provisions on the means of enforcing intellectual property rights. These include, in particular, the Paris Convention for the Protection of Industrial Property, the Berne



- Convention for the Protection of Literary and Artistic Works, and the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.
- (7) It emerges from the consultations held by the Commission on this question that, in the Member States, and despite the TRIPS Agreement, there are still major disparities as regards the means of enforcing intellectual property rights. For instance, the arrangements for applying provisional measures, which are used in particular to preserve evidence, the calculation of damages, or the arrangements for applying injunctions, vary widely from one Member State to another. In some Member States, there are no measures, procedures and remedies such as the right of information and the recall, at the infringer's expense, of the infringing goods placed on the market.
 - (8) The disparities between the systems of the Member States as regards the means of enforcing intellectual property rights are prejudicial to the proper functioning of the Internal Market and make it impossible to ensure that intellectual property rights enjoy an equivalent level of protection throughout the Community. This situation does not promote free movement within the internal market or create an environment conducive to healthy competition.
 - (9) The current disparities also lead to a weakening of the substantive law on intellectual property and to a fragmentation of the internal market in this field. This causes a loss of confidence in the internal market in business circles, with a consequent reduction in investment in innovation and creation. Infringements of intellectual property rights appear to be increasingly linked to organised crime. Increasing use of the Internet enables pirated products to be distributed instantly around the globe. Effective enforcement of the substantive law on intellectual property should be ensured by specific action at Community level. Approximation of the legislation of the Member States in this field is therefore an essential prerequisite for the proper functioning of the internal market.
 - (10) The objective of this Directive is to approximate legislative systems so as to ensure a high, equivalent and homogeneous level of protection in the internal market.
 - (11) This Directive does not aim to establish harmonised rules for judicial cooperation, jurisdiction, the recognition and enforcement of decisions in civil and commercial matters, or deal with applicable law. There are Community instruments which govern such matters in general terms and are, in principle, equally applicable to intellectual property.



- (12) This Directive should not affect the application of the rules of competition, and in particular Articles 81 and 82 of the Treaty. The measures provided for in this Directive should not be used to restrict competition unduly in a manner contrary to the Treaty.
- (13) It is necessary to define the scope of this Directive as widely as possible in order to encompass all the intellectual property rights covered by Community provisions in this field and/or by the national law of the Member State concerned. Nevertheless, that requirement does not affect the possibility, on the part of those Member States which so wish, to extend, for internal purposes, the provisions of this Directive to include acts involving unfair competition, including parasitic copies, or similar activities.
- (14) The measures provided for in Articles 6(2), 8(1) and 9(2) need to be applied only in respect of acts carried out on a commercial scale. This is without prejudice to the possibility for Member States to apply those measures also in respect of other acts. Acts carried out on a commercial scale are those carried out for direct or indirect economic or commercial advantage; this would normally exclude acts carried out by end consumers acting in good faith.
- (15) This Directive should not affect substantive law on intellectual property, Directive 95/46/EC of 24 October 1995 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (*OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1)*). Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (*OJ L 13, 19.1.2000, p. 12*) and Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (*OJ L 178, 17.7.2000, p. 1*).
- (16) The provisions of this Directive should be without prejudice to the particular provisions for the enforcement of rights and on exceptions in the domain of copyright and related rights set out in Community instruments and notably those found in Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (*OJ L 122, 17.5.1991, p. 42. Directive as amended by Directive 93/98/EEC (OJ L 290, 24.11.1993, p. 9)*) or in Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (*OJ L 167, 22.6.2001, p. 10*).

- (17) The measures, procedures and remedies provided for in this Directive should be determined in each case in such a manner as to take due account of the specific characteristics of that case, including the specific features of each intellectual property right and, where appropriate, the intentional or unintentional character of the infringement.
- (18) The persons entitled to request application of those measures, procedures and remedies should be not only the rightholders but also persons who have a direct interest and legal standing in so far as permitted by and in accordance with the applicable law, which may include professional organisations in charge of the management of those rights or for the defence of the collective and individual interests for which they are responsible.
- (19) Since copyright exists from the creation of a work and does not require formal registration, it is appropriate to adopt the rule laid down in Article 15 of the Berne Convention, which establishes the presumption whereby the author of a literary or artistic work is regarded as such if his/her name appears on the work. A similar presumption should be applied to the owners of related rights since it is often the holder of a related right, such as a phonogram producer, who will seek to defend rights and engage in fighting acts of piracy.
- (20) Given that evidence is an element of paramount importance for establishing the infringement of intellectual property rights, it is appropriate to ensure that effective means of presenting, obtaining and preserving evidence are available. The procedures should have regard to the rights of the defence and provide the necessary guarantees, including the protection of confidential information. For infringements committed on a commercial scale it is also important that the courts may order access, where appropriate, to banking, financial or commercial documents under the control of the alleged infringer.
- (21) Other measures designed to ensure a high level of protection exist in certain Member States and should be made available in all the Member States. This is the case with the right of information, which allows precise information to be obtained on the origin of the infringing goods or services, the distribution channels and the identity of any third parties involved in the infringement.
- (22) It is also essential to provide for provisional measures for the immediate termination of infringements, without awaiting a decision on the substance of the case, while observing the rights of the defence, ensuring the proportionality of the provisional measures as appropriate

to the characteristics of the case in question and providing the guarantees needed to cover the costs and the injury caused to the defendant by an unjustified request. Such measures are particularly justified where any delay would cause irreparable harm to the holder of an intellectual property right.

- (23) Without prejudice to any other measures, procedures and remedies available, rightholders should have the possibility of applying for an injunction against an intermediary whose services are being used by a third party to infringe the rightholder's industrial property right. The conditions and procedures relating to such injunctions should be left to the national law of the Member States. As far as infringements of copyright and related rights are concerned, a comprehensive level of harmonisation is already provided for in Directive 2001/29/EC. Article 8(3) of Directive 2001/29/EC should therefore not be affected by this Directive.
- (24) Depending on the particular case, and if justified by the circumstances, the measures, procedures and remedies to be provided for should include prohibitory measures aimed at preventing further infringements of intellectual property rights. Moreover there should be corrective measures, where appropriate at the expense of the infringer, such as the recall and definitive removal from the channels of commerce, or destruction, of the infringing goods and, in appropriate cases, of the materials and implements principally used in the creation or manufacture of these goods. These corrective measures should take account of the interests of third parties including, in particular, consumers and private parties acting in good faith.
- (25) Where an infringement is committed unintentionally and without negligence and where the corrective measures or injunctions provided for by this Directive would be disproportionate, Member States should have the option of providing for the possibility, in appropriate cases, of pecuniary compensation being awarded to the injured party as an alternative measure. However, where the commercial use of counterfeit goods or the supply of services would constitute an infringement of law other than intellectual property law or would be likely to harm consumers, such use or supply should remain prohibited.
- (26) With a view to compensating for the prejudice suffered as a result of an infringement committed by an infringer who engaged in an activity in the knowledge, or with reasonable grounds for knowing, that it would give rise to such an infringement, the amount of damages awarded to the rightholder should take account of all appropriate aspects, such as loss of



earnings incurred by the rightholder, or unfair profits made by the infringer and, where appropriate, any moral prejudice caused to the rightholder. As an alternative, for example where it would be difficult to determine the amount of the actual prejudice suffered, the amount of the damages might be derived from elements such as the royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question. The aim is not to introduce an obligation to provide for punitive damages but to allow for compensation based on an objective criterion while taking account of the expenses incurred by the rightholder, such as the costs of identification and research.

- (27) To act as a supplementary deterrent to future infringers and to contribute to the awareness of the public at large, it is useful to publicise decisions in intellectual property infringement cases.
- (28) In addition to the civil and administrative measures, procedures and remedies provided for under this Directive, criminal sanctions also constitute, in appropriate cases, a means of ensuring the enforcement of intellectual property rights.
- (29) Industry should take an active part in the fight against piracy and counterfeiting. The development of codes of conduct in the circles directly affected is a supplementary means of bolstering the regulatory framework. The Member States, in collaboration with the Commission, should encourage the development of codes of conduct in general. Monitoring of the manufacture of optical discs, particularly by means of an identification code embedded in discs produced in the Community, helps to limit infringements of intellectual property rights in this sector, which suffers from piracy on a large scale. However, these technical protection measures should not be misused to protect markets and prevent parallel imports.
- (30) In order to facilitate the uniform application of this Directive, it is appropriate to provide for systems of cooperation and the exchange of information between Member States, on the one hand, and between the Member States and the Commission on the other, in particular by creating a network of correspondents designated by the Member States and by providing regular reports assessing the application of this Directive and the effectiveness of the measures taken by the various national bodies.
- (31) Since, for the reasons already described, the objective of this Directive can best be achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of



proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

- (32) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for intellectual property, in accordance with Article 17(2) of that Charter,

HAVE ADOPTED THIS DIRECTIVE:

Chapter I Objective and Scope

Article 1 Subject matter

This Directive concerns the measures, procedures and remedies necessary to ensure the enforcement of intellectual property rights. For the purposes of this Directive, the term ‘intellectual property rights’ includes industrial property rights.

Article 2 Scope

1. Without prejudice to the means which are or may be provided for in Community or national legislation, in so far as those means may be more favourable for rightholders, the measures, procedures and remedies provided for by this Directive shall apply, in accordance with Article 3, to any infringement of intellectual property rights as provided for by Community law and/or by the national law of the Member State concerned.
2. This Directive shall be without prejudice to the specific provisions on the enforcement of rights and on exceptions contained in Community legislation concerning copyright and rights related to copyright, notably those found in Directive 91/250/EEC and, in particular, Article 7 thereof or in Directive 2001/29/EC and, in particular, Articles 2 to 6 and Article 8 thereof.
3. This Directive shall not affect:
 - (a) the Community provisions governing the substantive law on intellectual property, Directive 95/46/EC, Directive 1999/93/EC or Directive 2000/31/EC, in general, and Articles 12 to 15 of Directive 2000/31/EC in particular;

- (b) Member States' international obligations and notably the TRIPS Agreement, including those relating to criminal procedures and penalties;
- (c) any national provisions in Member States relating to criminal procedures or penalties in respect of infringement of intellectual property rights.

Chapter II Measures, Procedures and Remedies

Section 1 General provisions

Article 3 General obligation

1. Member States shall provide for the measures, procedures and remedies necessary to ensure the enforcement of the intellectual property rights covered by this Directive. Those measures, procedures and remedies shall be fair and equitable and shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
2. Those measures, procedures and remedies shall also be effective, proportionate and dissuasive and shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

Article 4 Persons entitled to apply for the application of the measures, procedures and remedies

Member States shall recognise as persons entitled to seek application of the measures, procedures and remedies referred to in this chapter:

- (a) the holders of intellectual property rights, in accordance with the provisions of the applicable law;
- (b) all other persons authorised to use those rights, in particular licensees, in so far as permitted by and in accordance with the provisions of the applicable law;
- (c) intellectual property collective rights-management bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law;

- (d) professional defence bodies which are regularly recognised as having a right to represent holders of intellectual property rights, in so far as permitted by and in accordance with the provisions of the applicable law.

Article 5 **Presumption of authorship or ownership**

For the purposes of applying the measures, procedures and remedies provided for in this Directive,

- (a) for the author of a literary or artistic work, in the absence of proof to the contrary, to be regarded as such, and consequently to be entitled to institute infringement proceedings, it shall be sufficient for his/her name to appear on the work in the usual manner;
- (b) the provision under (a) shall apply *mutatis mutandis* to the holders of rights related to copyright with regard to their protected subject matter.

Section 2 Evidence

Article 6 **Evidence**

1. Member States shall ensure that, on application by a party which has presented reasonably available evidence sufficient to support its claims, and has, in substantiating those claims, specified evidence which lies in the control of the opposing party, the competent judicial authorities may order that such evidence be presented by the opposing party, subject to the protection of confidential information. For the purposes of this paragraph, Member States may provide that a reasonable sample of a substantial number of copies of a work or any other protected object be considered by the competent judicial authorities to constitute reasonable evidence.
2. Under the same conditions, in the case of an infringement committed on a commercial scale Member States shall take such measures as are necessary to enable the competent judicial authorities to order, where appropriate, on application by a party, the communication of banking, financial or commercial documents under the control of the opposing party, subject to the protection of confidential information.

Article 7 Measures for preserving evidence

1. Member States shall ensure that, even before the commencement of proceedings on the merits of the case, the competent judicial authorities may, on application by a party who has presented reasonably available evidence to support his/her claims that his/her intellectual property right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement, subject to the protection of confidential information. Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto. Those measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the rightholder or where there is a demonstrable risk of evidence being destroyed.

Where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.

2. Member States shall ensure that the measures to preserve evidence may be subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 4.
3. Member States shall ensure that the measures to preserve evidence are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.
4. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement



or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

5. Member States may take measures to protect witnesses' identity.

Section 3 Right of information

Article 8 Right of information

1. Member States shall ensure that, in the context of proceedings concerning an infringement of an intellectual property right and in response to a justified and proportionate request of the claimant, the competent judicial authorities may order that information on the origin and distribution networks of the goods or services which infringe an intellectual property right be provided by the infringer and/or any other person who:
 - (a) was found in possession of the infringing goods on a commercial scale;
 - (b) was found to be using the infringing services on a commercial scale;
 - (c) was found to be providing on a commercial scale services used in infringing activities;or
 - (d) was indicated by the person referred to in point (a), (b) or (c) as being involved in the production, manufacture or distribution of the goods or the provision of the services.
2. The information referred to in paragraph 1 shall, as appropriate, comprise:
 - (a) the names and addresses of the producers, manufacturers, distributors, suppliers and other previous holders of the goods or services, as well as the intended wholesalers and retailers;
 - (b) information on the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods or services in question.
3. Paragraphs 1 and 2 shall apply without prejudice to other statutory provisions which:
 - (a) grant the rightholder rights to receive fuller information;
 - (b) govern the use in civil or criminal proceedings of the information communicated pursuant to this Article;
 - (c) govern responsibility for misuse of the right of information;or

- (d) afford an opportunity for refusing to provide information which would force the person referred to in paragraph 1 to admit to his/her own participation or that of his/her close relatives in an infringement of an intellectual property right;
- or
- (e) govern the protection of confidentiality of information sources or the processing of personal data.

Section 4 Provisional and precautionary measures

Article 9 Provisional and precautionary measures

1. Member States shall ensure that the judicial authorities may, at the request of the applicant:
 - (a) issue against the alleged infringer an interlocutory injunction intended to prevent any imminent infringement of an intellectual property right, or to forbid, on a provisional basis and subject, where appropriate, to a recurring penalty payment where provided for by national law, the continuation of the alleged infringements of that right, or to make such continuation subject to the lodging of guarantees intended to ensure the compensation of the rightholder; an interlocutory injunction may also be issued, under the same conditions, against an intermediary whose services are being used by a third party to infringe an intellectual property right; injunctions against intermediaries whose services are used by a third party to infringe a copyright or a related right are covered by Directive 2001/29/EC;
 - (b) order the seizure or delivery up of the goods suspected of infringing an intellectual property right so as to prevent their entry into or movement within the channels of commerce.
2. In the case of an infringement committed on a commercial scale, the Member States shall ensure that, if the injured party demonstrates circumstances likely to endanger the recovery of damages, the judicial authorities may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information.
3. The judicial authorities shall, in respect of the measures referred to in paragraphs 1 and 2, have the authority to require the applicant to provide any reasonably available evidence in order to

satisfy themselves with a sufficient degree of certainty that the applicant is the rightholder and that the applicant's right is being infringed, or that such infringement is imminent.

4. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 2 may, in appropriate cases, be taken without the defendant having been heard, in particular where any delay would cause irreparable harm to the rightholder. In that event, the parties shall be so informed without delay after the execution of the measures at the latest.

A review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable time after notification of the measures, whether those measures shall be modified, revoked or confirmed.

5. Member States shall ensure that the provisional measures referred to in paragraphs 1 and 2 are revoked or otherwise cease to have effect, upon request of the defendant, if the applicant does not institute, within a reasonable period, proceedings leading to a decision on the merits of the case before the competent judicial authority, the period to be determined by the judicial authority ordering the measures where the law of a Member State so permits or, in the absence of such determination, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer.
6. The competent judicial authorities may make the provisional measures referred to in paragraphs 1 and 2 subject to the lodging by the applicant of adequate security or an equivalent assurance intended to ensure compensation for any prejudice suffered by the defendant as provided for in paragraph 7.
7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

Section 5 Measures resulting from a decision on the merits of the case

Article 10 Corrective measures

1. Without prejudice to any damages due to the rightholder by reason of the infringement, and without compensation of any sort, Member States shall ensure that the competent judicial authorities may order, at the request of the applicant, that appropriate measures be taken with regard to goods that they have found to be infringing an intellectual property right and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those goods. Such measures shall include:
 - (a) recall from the channels of commerce;
 - (b) definitive removal from the channels of commerce;or
 - (c) destruction.
2. The judicial authorities shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.
3. In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account.

Article 11 Injunctions

Member States shall ensure that, where a judicial decision is taken finding an infringement of an intellectual property right, the judicial authorities may issue against the infringer an injunction aimed at prohibiting the continuation of the infringement. Where provided for by national law, non-compliance with an injunction shall, where appropriate, be subject to a recurring penalty payment, with a view to ensuring compliance. Member States shall also ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right, without prejudice to Article 8(3) of Directive 2001/29/EC.

Article 12 Alternative measures

Member States may provide that, in appropriate cases and at the request of the person liable to be subject to the measures provided for in this section, the competent judicial authorities may order pecuniary compensation to be paid to the injured party instead of applying the measures provided for in this section if that person acted unintentionally and without negligence, if execution of the measures in question would cause him/her disproportionate harm and if pecuniary compensation to the injured party appears reasonably satisfactory.

Section 6 Damages and legal costs**Article 13 Damages**

1. Member States shall ensure that the competent judicial authorities, on application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in an infringing activity, to pay the rightholder damages appropriate to the actual prejudice suffered by him/her as a result of the infringement.

When the judicial authorities set the damages:

- (a) they shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the rightholder by the infringement;
 - or
 - (b) as an alternative to (a), they may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of royalties or fees which would have been due if the infringer had requested authorisation to use the intellectual property right in question.
2. Where the infringer did not knowingly, or with reasonable grounds know, engage in infringing activity, Member States may lay down that the judicial authorities may order the recovery of profits or the payment of damages, which may be pre-established.



Article 14 Legal costs

Member States shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this.

Section 7 Publicity measures

Article 15 Publication of judicial decisions

Member States shall ensure that, in legal proceedings instituted for infringement of an intellectual property right, the judicial authorities may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part. Member States may provide for other additional publicity measures which are appropriate to the particular circumstances, including prominent advertising.

Chapter III Sanctions by Member States

Article 16 Sanctions by Member States

Without prejudice to the civil and administrative measures, procedures and remedies laid down by this Directive, Member States may apply other appropriate sanctions in cases where intellectual property rights have been infringed.

Chapter IV Codes of Conduct and Administrative Cooperation

Article 17 Codes of conduct

Member States shall encourage:

- (a) the development by trade or professional associations or organisations of codes of conduct at Community level aimed at contributing towards the enforcement of the intellectual property rights, particularly by recommending the use on optical discs of a code enabling the identification of the origin of their manufacture;



- (b) the submission to the Commission of draft codes of conduct at national and Community level and of any evaluations of the application of these codes of conduct.

Article 18 Assessment

1. Three years after the date laid down in Article 20(1), each Member State shall submit to the Commission a report on the implementation of this Directive.

On the basis of those reports, the Commission shall draw up a report on the application of this Directive, including an assessment of the effectiveness of the measures taken, as well as an evaluation of its impact on innovation and the development of the information society. That report shall then be transmitted to the European Parliament, the Council and the European Economic and Social Committee. It shall be accompanied, if necessary and in the light of developments in the Community legal order, by proposals for amendments to this Directive.

2. Member States shall provide the Commission with all the aid and assistance it may need when drawing up the report referred to in the second subparagraph of paragraph 1.

Article 19 Exchange of information and correspondents

For the purpose of promoting cooperation, including the exchange of information, among Member States and between Member States and the Commission, each Member State shall designate one or more national correspondents for any question relating to the implementation of the measures provided for by this Directive. It shall communicate the details of the national correspondent(s) to the other Member States and to the Commission.

Chapter V Final Provisions

Article 20 Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 29 April 2006. They shall forthwith inform the Commission thereof.



When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

Article 21 **Entry into force**

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

Article 22 **Addressees**

This Directive is addressed to the Member States.

Done at Strasbourg, 29 April 2004.

Regulation (EC) No 469/2009 concerning the supplementary protection certificate for medicinal products

Preamble

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee (OJ C 77, 31.3.2009, p. 42),

Acting in accordance with the procedure laid down in Article 251 of the Treaty (*Opinion of the European Parliament of 21 October 2008 (not yet published in the Official Journal) and Council Decision of 6 April 2009*)),

Whereas:

- (1) Council Regulation (EEC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (OJ L 182, 2.7.1992, p. 1) has been substantially amended several times (See Annex I). In the interests of clarity and rationality the said Regulation should be codified.
- (2) Pharmaceutical research plays a decisive role in the continuing improvement in public health.
- (3) Medicinal products, especially those that are the result of long, costly research will not continue to be developed in the Community and in Europe unless they are covered by favourable rules that provide for sufficient protection to encourage such research.
- (4) At the moment, the period that elapses between the filing of an application for a patent for a new medicinal product and authorisation to place the medicinal product on the market makes



the period of effective protection under the patent insufficient to cover the investment put into the research.

- (5) This situation leads to a lack of protection which penalises pharmaceutical research.
 - (6) There exists a risk of research centres situated in the Member States relocating to countries that offer greater protection.
 - (7) A uniform solution at Community level should be provided for, thereby preventing the heterogeneous development of national laws leading to further disparities which would be likely to create obstacles to the free movement of medicinal products within the Community and thus directly affect the functioning of the internal market.
 - (8) Therefore, the provision of a supplementary protection certificate granted, under the same conditions, by each of the Member States at the request of the holder of a national or European patent relating to a medicinal product for which marketing authorisation has been granted is necessary. A regulation is therefore the most appropriate legal instrument.
 - (9) The duration of the protection granted by the certificate should be such as to provide adequate effective protection. For this purpose, the holder of both a patent and a certificate should be able to enjoy an overall maximum of 15 years of exclusivity from the time the medicinal product in question first obtains authorisation to be placed on the market in the Community.
 - (10) All the interests at stake, including those of public health, in a sector as complex and sensitive as the pharmaceutical sector should nevertheless be taken into account. For this purpose, the certificate cannot be granted for a period exceeding five years. The protection granted should furthermore be strictly confined to the product which obtained authorisation to be placed on the market as a medicinal product.
 - (11) Provision should be made for appropriate limitation of the duration of the certificate in the special case where a patent term has already been extended under a specific national law,
- HAVE ADOPTED THIS REGULATION:

Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) 'medicinal product' means any substance or combination of substances presented for treating or preventing disease in human beings or animals and any substance or combination



of substances which may be administered to human beings or animals with a view to making a medical diagnosis or to restoring, correcting or modifying physiological functions in humans or in animals;

- (b) 'product' means the active ingredient or combination of active ingredients of a medicinal product;
- (c) 'basic patent' means a patent which protects a product as such, a process to obtain a product or an application of a product, and which is designated by its holder for the purpose of the procedure for grant of a certificate;
- (d) 'certificate' means the supplementary protection certificate;
- (e) 'application for an extension of the duration' means an application for an extension of the duration of the certificate pursuant to Article 13(3) of this Regulation and Article 36 of Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use (OJ L 378, 27.12.2006, p. 1).

Article 2 **Scope**

Any product protected by a patent in the territory of a Member State and subject, prior to being placed on the market as a medicinal product, to an administrative authorisation procedure as laid down in Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67) or Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1) may, under the terms and conditions provided for in this Regulation, be the subject of a certificate.

Article 3 **Conditions for obtaining a certificate**

A certificate shall be granted if, in the Member State in which the application referred to in Article 7 is submitted and at the date of that application:

- (a) the product is protected by a basic patent in force;
- (b) a valid authorisation to place the product on the market as a medicinal product has been granted in accordance with Directive 2001/83/EC or Directive 2001/82/EC, as appropriate;

- (c) the product has not already been the subject of a certificate;
- (d) the authorisation referred to in point (b) is the first authorisation to place the product on the market as a medicinal product.

Article 4 **Subject matter of protection**

Within the limits of the protection conferred by the basic patent, the protection conferred by a certificate shall extend only to the product covered by the authorisation to place the corresponding medicinal product on the market and for any use of the product as a medicinal product that has been authorised before the expiry of the certificate.

Article 5 **Effects of the certificate**

Subject to the provisions of Article 4, the certificate shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations.

Article 6 **Entitlement to the certificate**

The certificate shall be granted to the holder of the basic patent or his successor in title.

Article 7 **Application for a certificate**

1. The application for a certificate shall be lodged within six months of the date on which the authorisation referred to in Article 3(b) to place the product on the market as a medicinal product was granted.
2. Notwithstanding paragraph 1, where the authorisation to place the product on the market is granted before the basic patent is granted, the application for a certificate shall be lodged within six months of the date on which the patent is granted.
3. The application for an extension of the duration may be made when lodging the application for a certificate or when the application for the certificate is pending and the appropriate requirements of Article 8(1)(d) or Article 8(2), respectively, are fulfilled.
4. The application for an extension of the duration of a certificate already granted shall be lodged not later than two years before the expiry of the certificate.

5. Notwithstanding paragraph 4, for five years following the entry into force of Regulation (EC) No 1901/2006, the application for an extension of the duration of a certificate already granted shall be lodged not later than six months before the expiry of the certificate.

Article 8 **Content of the application for a certificate**

1. The application for a certificate shall contain:
 - (a) a request for the grant of a certificate, stating in particular:
 - (i) the name and address of the applicant;
 - (ii) if he has appointed a representative, the name and address of the representative;
 - (iii) the number of the basic patent and the title of the invention;
 - (iv) the number and date of the first authorisation to place the product on the market, as referred to in Article 3(b) and, if this authorisation is not the first authorisation for placing the product on the market in the Community, the number and date of that authorisation;
 - (b) a copy of the authorisation to place the product on the market, as referred to in Article 3(b), in which the product is identified, containing in particular the number and date of the authorisation and the summary of the product characteristics listed in Article 11 of Directive 2001/83/EC or Article 14 of Directive 2001/82/EC;
 - (c) if the authorisation referred to in point (b) is not the first authorisation for placing the product on the market as a medicinal product in the Community, information regarding the identity of the product thus authorised and the legal provision under which the authorisation procedure took place, together with a copy of the notice publishing the authorisation in the appropriate official publication;
 - (d) where the application for a certificate includes a request for an extension of the duration:
 - (i) a copy of the statement indicating compliance with an agreed completed paediatric investigation plan as referred to in Article 36(1) of Regulation (EC) No 1901/2006;
 - (ii) where necessary, in addition to the copy of the authorisation to place the product on the market as referred to in point (b), proof of possession of authorisations to place the product on the market of all other Member States, as referred to in Article 36(3) of Regulation (EC) No 1901/2006.



2. Where an application for a certificate is pending, an application for an extended duration in accordance with Article 7(3) shall include the particulars referred to in paragraph 1(d) of this Article and a reference to the application for a certificate already filed.
3. The application for an extension of the duration of a certificate already granted shall contain the particulars referred to in paragraph 1(d) and a copy of the certificate already granted.
4. Member States may provide that a fee is to be payable upon application for a certificate and upon application for the extension of the duration of a certificate.

Article 9 **Lodging of an application for a certificate**

1. The application for a certificate shall be lodged with the competent industrial property office of the Member State which granted the basic patent or on whose behalf it was granted and in which the authorisation referred to in Article 3(b) to place the product on the market was obtained, unless the Member State designates another authority for the purpose.

The application for an extension of the duration of a certificate shall be lodged with the competent authority of the Member State concerned.

2. Notification of the application for a certificate shall be published by the authority referred to in paragraph 1. The notification shall contain at least the following information:
 - (a) the name and address of the applicant;
 - (b) the number of the basic patent;
 - (c) the title of the invention;
 - (d) the number and date of the authorisation to place the product on the market, referred to in Article 3(b), and the product identified in that authorisation;
 - (e) where relevant, the number and date of the first authorisation to place the product on the market in the Community;
 - (f) where applicable, an indication that the application includes an application for an extension of the duration.
3. Paragraph 2 shall apply to the notification of the application for an extension of the duration of a certificate already granted or where an application for a certificate is pending. The notification

shall additionally contain an indication of the application for an extended duration of the certificate.

Article 10 **Grant of the certificate or rejection of the application for a certificate**

1. Where the application for a certificate and the product to which it relates meet the conditions laid down in this Regulation, the authority referred to in Article 9(1) shall grant the certificate.
2. The authority referred to in Article 9(1) shall, subject to paragraph 3, reject the application for a certificate if the application or the product to which it relates does not meet the conditions laid down in this Regulation.
3. Where the application for a certificate does not meet the conditions laid down in Article 8, the authority referred to in Article 9(1) shall ask the applicant to rectify the irregularity, or to settle the fee, within a stated time.
4. If the irregularity is not rectified or the fee is not settled under paragraph 3 within the stated time, the authority shall reject the application.
5. Member States may provide that the authority referred to in Article 9(1) is to grant certificates without verifying that the conditions laid down in Article 3(c) and (d) are met.
6. Paragraphs 1 to 4 shall apply *mutatis mutandis* to the application for an extension of the duration.

Article 11 **Publication**

1. Notification of the fact that a certificate has been granted shall be published by the authority referred to in Article 9(1). The notification shall contain at least the following information:
 - (a) the name and address of the holder of the certificate;
 - (b) the number of the basic patent;
 - (c) the title of the invention;
 - (d) the number and date of the authorisation to place the product on the market referred to in Article 3(b) and the product identified in that authorisation;
 - (e) where relevant, the number and date of the first authorisation to place the product on the market in the Community;



- (f) the duration of the certificate.
- 2. Notification of the fact that the application for a certificate has been rejected shall be published by the authority referred to in Article 9(1). The notification shall contain at least the information listed in Article 9(2).
- 3. Paragraphs 1 and 2 shall apply to the notification of the fact that an extension of the duration of a certificate has been granted or of the fact that the application for an extension has been rejected.

Article 12 Annual fees

Member States may require that the certificate be subject to the payment of annual fees.

Article 13 Duration of the certificate

- 1. The certificate shall take effect at the end of the lawful term of the basic patent for a period equal to the period which elapsed between the date on which the application for a basic patent was lodged and the date of the first authorisation to place the product on the market in the Community, reduced by a period of five years.
- 2. Notwithstanding paragraph 1, the duration of the certificate may not exceed five years from the date on which it takes effect.
- 3. The periods laid down in paragraphs 1 and 2 shall be extended by six months in the case where Article 36 of Regulation (EC) No 1901/2006 applies. In that case, the duration of the period laid down in paragraph 1 of this Article may be extended only once.
- 4. Where a certificate is granted for a product protected by a patent which, before 2 January 1993, had its term extended or for which such extension was applied for, under national law, the term of protection to be afforded under this certificate shall be reduced by the number of years by which the term of the patent exceeds 20 years.

Article 14 **Expiry of the certificate**

The certificate shall lapse:

- (a) at the end of the period provided for in Article 13;
- (b) if the certificate holder surrenders it;
- (c) if the annual fee laid down in accordance with Article 12 is not paid in time;
- (d) if and as long as the product covered by the certificate may no longer be placed on the market following the withdrawal of the appropriate authorisation or authorisations to place on the market in accordance with Directive 2001/83/EC or Directive 2001/82/EC. The authority referred to in Article 9(1) of this Regulation may decide on the lapse of the certificate either of its own motion or at the request of a third party.

Article 15 **Invalidity of the certificate**

1. The certificate shall be invalid if:
 - (a) it was granted contrary to the provisions of Article 3;
 - (b) the basic patent has lapsed before its lawful term expires;
 - (c) the basic patent is revoked or limited to the extent that the product for which the certificate was granted would no longer be protected by the claims of the basic patent or, after the basic patent has expired, grounds for revocation exist which would have justified such revocation or limitation.
2. Any person may submit an application or bring an action for a declaration of invalidity of the certificate before the body responsible under national law for the revocation of the corresponding basic patent.

Article 16 **Revocation of an extension of the duration**

1. The extension of the duration may be revoked if it was granted contrary to the provisions of Article 36 of Regulation (EC) No 1901/2006.
2. Any person may submit an application for revocation of the extension of the duration to the body responsible under national law for the revocation of the corresponding basic patent.

Article 17 **Notification of lapse or invalidity**

1. If the certificate lapses in accordance with point (b), (c) or (d) of Article 14, or is invalid in accordance with Article 15, notification thereof shall be published by the authority referred to in Article 9(1).
2. If the extension of the duration is revoked in accordance with Article 16, notification thereof shall be published by the authority referred to in Article 9(1).

Article 18 **Appeals**

The decisions of the authority referred to in Article 9(1) or of the bodies referred to in Articles 15(2) and 16(2) taken under this Regulation shall be open to the same appeals as those provided for in national law against similar decisions taken in respect of national patents.

Article 19 **Procedure**

1. In the absence of procedural provisions in this Regulation, the procedural provisions applicable under national law to the corresponding basic patent shall apply to the certificate, unless the national law lays down special procedural provisions for certificates.
2. Notwithstanding paragraph 1, the procedure for opposition to the granting of a certificate shall be excluded.

Article 20 **Additional provisions relating to the enlargement of the Community**

Without prejudice to the other provisions of this Regulation, the following provisions shall apply:

- (a) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained after 1 January 2000 may be granted a certificate in Bulgaria, provided that the application for a certificate was lodged within six months from 1 January 2007;



- (b) any medicinal product protected by a valid basic patent in the Czech Republic and for which the first authorisation to place it on the market as a medicinal product was obtained:
 - (i) in the Czech Republic after 10 November 1999 may be granted a certificate, provided that the application for a certificate was lodged within six months of the date on which the first market authorisation was obtained;
 - (ii) in the Community not earlier than six months prior to 1 May 2004 may be granted a certificate, provided that the application for a certificate was lodged within six months of the date on which the first market authorisation was obtained;
- (c) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained in Estonia prior to 1 May 2004 may be granted a certificate, provided that the application for a certificate was lodged within six months of the date on which the first market authorisation was obtained or, in the case of those patents granted prior to 1 January 2000, within the six months provided for in the Patents Act of October 1999;
- (d) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained in Cyprus prior to 1 May 2004 may be granted a certificate, provided that the application for a certificate was lodged within six months of the date on which the first market authorisation was obtained; notwithstanding the above, where the market authorisation was obtained before the grant of the basic patent, the application for a certificate must be lodged within six months of the date on which the patent was granted;
- (e) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained in Latvia prior to 1 May 2004 may be granted a certificate. In cases where the period provided for in Article 7(1) has expired, the possibility of applying for a certificate shall be open for a period of six months starting no later than 1 May 2004;
- (f) any medicinal product protected by a valid basic patent applied for after 1 February 1994 and for which the first authorisation to place it on the market as a medicinal product was obtained in Lithuania prior to 1 May 2004 may be granted a certificate, provided that the application for a certificate was lodged within six months from 1 May 2004;



- (g) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained after 1 January 2000 may be granted a certificate in Hungary, provided that the application for a certificate was lodged within six months from 1 May 2004;
- (h) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained in Malta prior to 1 May 2004 may be granted a certificate. In cases where the period provided for in Article 7(1) has expired, the possibility of applying for a certificate shall be open for a period of six months starting no later than 1 May 2004;
- (i) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained after 1 January 2000 may be granted a certificate in Poland, provided that the application for a certificate was lodged within six months starting no later than 1 May 2004;
- (j) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained after 1 January 2000 may be granted a certificate in Romania. In cases where the period provided for in Article 7(1) has expired, the possibility of applying for a certificate shall be open for a period of six months starting no later than 1 January 2007;
- (k) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained in Slovenia prior to 1 May 2004 may be granted a certificate, provided that the application for a certificate was lodged within six months from 1 May 2004, including in cases where the period provided for in Article 7(1) has expired;
- (l) any medicinal product protected by a valid basic patent and for which the first authorisation to place it on the market as a medicinal product was obtained in Slovakia after 1 January 2000 may be granted a certificate, provided that the application for a certificate was lodged within six months of the date on which the first market authorisation was obtained or within six months of 1 July 2002 if the market authorisation was obtained before that date.



Article 21 **Transitional provisions**

1. This Regulation shall not apply to certificates granted in accordance with the national legislation of a Member State before 2 January 1993 or to applications for a certificate filed in accordance with that legislation before 2 July 1992.

With regard to Austria, Finland and Sweden, this Regulation shall not apply to certificates granted in accordance with their national legislation before 1 January 1995.

2. This Regulation shall apply to supplementary protection certificates granted in accordance with the national legislation of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Malta, Poland, Slovenia and Slovakia prior to 1 May 2004 and the national legislation of Romania prior to 1 January 2007.

Article 22 **Repeal**

Regulation (EEC) No 1768/92, as amended by the acts listed in Annex I, is repealed. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

Article 23 **Entry into force**

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Annexes

Annex I and Annex II are omitted here, for their content see the online version at <http://data.europa.eu/eli/dir/2004/48/2004-04-30>

This Regulation shall be binding in its entirety and directly applicable in all Member States.
Done at Strasbourg, 6 May 2009.



Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters

Preamble

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 67(4) and points (a), (c) and (e) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (OJ C 218, 23.7.2011, p. 78),

Acting in accordance with the ordinary legislative procedure (*(Position of the European Parliament of 20 November 2012 (not yet published in the Official Journal) and decision of the Council of 6 December 2012)*),

Whereas:

- (1) On 21 April 2009, the Commission adopted a report on the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12, 16.1.2001, p. 1). The report concluded that, in general, the operation of that Regulation is satisfactory, but that it is desirable to improve the application of certain of its provisions, to further facilitate the free circulation of judgments and to further enhance access to justice. Since a number of amendments are to be made to that Regulation it should, in the interests of clarity, be recast.



- (2) At its meeting in Brussels on 10 and 11 December 2009, the European Council adopted a new multiannual programme entitled ‘The Stockholm Programme – an open and secure Europe serving and protecting citizens’ (OJ C 115, 4.5.2010, p. 1). In the Stockholm Programme the European Council considered that the process of abolishing all intermediate measures (the exequatur) should be continued during the period covered by that Programme. At the same time the abolition of the exequatur should also be accompanied by a series of safeguards.
- (3) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extra-judicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.
- (4) Certain differences between national rules governing jurisdiction and recognition of judgments hamper the sound operation of the internal market. Provisions to unify the rules of conflict of jurisdiction in civil and commercial matters, and to ensure rapid and simple recognition and enforcement of judgments given in a Member State, are essential.
- (5) Such provisions fall within the area of judicial cooperation in civil matters within the meaning of Article 81 of the Treaty on the Functioning of the European Union (TFEU).
- (6) In order to attain the objective of free circulation of judgments in civil and commercial matters, it is necessary and appropriate that the rules governing jurisdiction and the recognition and enforcement of judgments be governed by a legal instrument of the Union which is binding and directly applicable.
- (7) On 27 September 1968, the then Member States of the European Communities, acting under Article 220, fourth indent, of the Treaty establishing the European Economic Community, concluded the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, subsequently amended by conventions on the accession to that Convention of new Member States ((OJ L 299, 31.12.1972, p. 32, OJ L 304, 30.10.1978, p. 1, OJ L 388, 31.12.1982, p. 1, OJ L 285, 3.10.1989, p. 1, OJ C 15, 15.1.1997, p. 1. For a consolidated text, see OJ C 27, 26.1.1998, p. 1)) (‘the 1968 Brussels Convention’). On 16 September 1988, the then Member States of the European Communities and certain EFTA States concluded the



Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ L 319, 25.11.1988, p. 9) ('the 1988 Lugano Convention'), which is a parallel convention to the 1968 Brussels Convention. The 1988 Lugano Convention became applicable to Poland on 1 February 2000.

- (8) On 22 December 2000, the Council adopted Regulation (EC) No 44/2001, which replaces the 1968 Brussels Convention with regard to the territories of the Member States covered by the TFEU, as between the Member States except Denmark. By Council Decision 2006/325/EC (OJ L 120, 5.5.2006, p. 22), the Community concluded an agreement with Denmark ensuring the application of the provisions of Regulation (EC) No 44/2001 in Denmark. The 1988 Lugano Convention was revised by the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (OJ L 147, 10.6.2009, p. 5), signed at Lugano on 30 October 2007 by the Community, Denmark, Iceland, Norway and Switzerland ('the 2007 Lugano Convention').
- (9) The 1968 Brussels Convention continues to apply to the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.
- (10) The scope of this Regulation should cover all the main civil and commercial matters apart from certain well-defined matters, in particular maintenance obligations, which should be excluded from the scope of this Regulation following the adoption of Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (OJ L 7, 10.1.2009, p. 1).
- (11) For the purposes of this Regulation, courts or tribunals of the Member States should include courts or tribunals common to several Member States, such as the Benelux Court of Justice when it exercises jurisdiction on matters falling within the scope of this Regulation. Therefore, judgments given by such courts should be recognised and enforced in accordance with this Regulation.
- (12) This Regulation should not apply to arbitration. Nothing in this Regulation should prevent the courts of a Member State, when seised of an action in a matter in respect of which the parties have entered into an arbitration agreement, from referring the parties to arbitration, from staying

or dismissing the proceedings, or from examining whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.

A ruling given by a court of a Member State as to whether or not an arbitration agreement is null and void, inoperative or incapable of being performed should not be subject to the rules of recognition and enforcement laid down in this Regulation, regardless of whether the court decided on this as a principal issue or as an incidental question.

On the other hand, where a court of a Member State, exercising jurisdiction under this Regulation or under national law, has determined that an arbitration agreement is null and void, inoperative or incapable of being performed, this should not preclude that court's judgment on the substance of the matter from being recognised or, as the case may be, enforced in accordance with this Regulation. This should be without prejudice to the competence of the courts of the Member States to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 ('the 1958 New York Convention'), which takes precedence over this Regulation.

This Regulation should not apply to any action or ancillary proceedings relating to, in particular, the establishment of an arbitral tribunal, the powers of arbitrators, the conduct of an arbitration procedure or any other aspects of such a procedure, nor to any action or judgment concerning the annulment, review, appeal, recognition or enforcement of an arbitral award.

- (13) There must be a connection between proceedings to which this Regulation applies and the territory of the Member States. Accordingly, common rules of jurisdiction should, in principle, apply when the defendant is domiciled in a Member State.
- (14) A defendant not domiciled in a Member State should in general be subject to the national rules of jurisdiction applicable in the territory of the Member State of the court seised. However, in order to ensure the protection of consumers and employees, to safeguard the jurisdiction of the courts of the Member States in situations where they have exclusive jurisdiction and to respect the autonomy of the parties, certain rules of jurisdiction in this Regulation should apply regardless of the defendant's domicile.
- (15) The rules of jurisdiction should be highly predictable and founded on the principle that jurisdiction is generally based on the defendant's domicile. Jurisdiction should always be

available on this ground save in a few well-defined situations in which the subject-matter of the dispute or the autonomy of the parties warrants a different connecting factor. The domicile of a legal person must be defined autonomously so as to make the common rules more transparent and avoid conflicts of jurisdiction.

- (16) In addition to the defendant's domicile, there should be alternative grounds of jurisdiction based on a close connection between the court and the action or in order to facilitate the sound administration of justice. The existence of a close connection should ensure legal certainty and avoid the possibility of the defendant being sued in a court of a Member State which he could not reasonably have foreseen. This is important, particularly in disputes concerning non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation.
- (17) The owner of a cultural object as defined in Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 74, 27.3.1993, p. 74) should be able under this Regulation to initiate proceedings as regards a civil claim for the recovery, based on ownership, of such a cultural object in the courts for the place where the cultural object is situated at the time the court is seised. Such proceedings should be without prejudice to proceedings initiated under Directive 93/7/EEC.
- (18) In relation to insurance, consumer and employment contracts, the weaker party should be protected by rules of jurisdiction more favourable to his interests than the general rules.
- (19) The autonomy of the parties to a contract, other than an insurance, consumer or employment contract, where only limited autonomy to determine the courts having jurisdiction is allowed, should be respected subject to the exclusive grounds of jurisdiction laid down in this Regulation.
- (20) Where a question arises as to whether a choice-of-court agreement in favour of a court or the courts of a Member State is null and void as to its substantive validity, that question should be decided in accordance with the law of the Member State of the court or courts designated in the agreement, including the conflict-of-laws rules of that Member State.
- (21) In the interests of the harmonious administration of justice it is necessary to minimise the possibility of concurrent proceedings and to ensure that irreconcilable judgments will not be given in different Member States. There should be a clear and effective mechanism for

resolving cases of *lis pendens* and related actions, and for obviating problems flowing from national differences as to the determination of the time when a case is regarded as pending. For the purposes of this Regulation, that time should be defined autonomously.

- (22) However, in order to enhance the effectiveness of exclusive choice-of-court agreements and to avoid abusive litigation tactics, it is necessary to provide for an exception to the general *lis pendens* rule in order to deal satisfactorily with a particular situation in which concurrent proceedings may arise. This is the situation where a court not designated in an exclusive choice-of-court agreement has been seised of proceedings and the designated court is seised subsequently of proceedings involving the same cause of action and between the same parties. In such a case, the court first seised should be required to stay its proceedings as soon as the designated court has been seised and until such time as the latter court declares that it has no jurisdiction under the exclusive choice-of-court agreement. This is to ensure that, in such a situation, the designated court has priority to decide on the validity of the agreement and on the extent to which the agreement applies to the dispute pending before it. The designated court should be able to proceed irrespective of whether the non-designated court has already decided on the stay of proceedings.

This exception should not cover situations where the parties have entered into conflicting exclusive choice-of-court agreements or where a court designated in an exclusive choice-of-court agreement has been seised first. In such cases, the general *lis pendens* rule of this Regulation should apply.

- (23) This Regulation should provide for a flexible mechanism allowing the courts of the Member States to take into account proceedings pending before the courts of third States, considering in particular whether a judgment of a third State will be capable of recognition and enforcement in the Member State concerned under the law of that Member State and the proper administration of justice.
- (24) When taking into account the proper administration of justice, the court of the Member State concerned should assess all the circumstances of the case before it. Such circumstances may include connections between the facts of the case and the parties and the third State concerned, the stage to which the proceedings in the third State have progressed by the time



proceedings are initiated in the court of the Member State and whether or not the court of the third State can be expected to give a judgment within a reasonable time.

That assessment may also include consideration of the question whether the court of the third State has exclusive jurisdiction in the particular case in circumstances where a court of a Member State would have exclusive jurisdiction.

- (25) The notion of provisional, including protective, measures should include, for example, protective orders aimed at obtaining information or preserving evidence as referred to in Articles 6 and 7 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45). It should not include measures which are not of a protective nature, such as measures ordering the hearing of a witness. This should be without prejudice to the application of Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1).
- (26) Mutual trust in the administration of justice in the Union justifies the principle that judgments given in a Member State should be recognised in all Member States without the need for any special procedure. In addition, the aim of making cross-border litigation less time-consuming and costly justifies the abolition of the declaration of enforceability prior to enforcement in the Member State addressed. As a result, a judgment given by the courts of a Member State should be treated as if it had been given in the Member State addressed.
- (27) For the purposes of the free circulation of judgments, a judgment given in a Member State should be recognised and enforced in another Member State even if it is given against a person not domiciled in a Member State.
- (28) Where a judgment contains a measure or order which is not known in the law of the Member State addressed, that measure or order, including any right indicated therein, should, to the extent possible, be adapted to one which, under the law of that Member State, has equivalent effects attached to it and pursues similar aims. How, and by whom, the adaptation is to be carried out should be determined by each Member State.
- (29) The direct enforcement in the Member State addressed of a judgment given in another Member State without a declaration of enforceability should not jeopardise respect for the rights of the

defence. Therefore, the person against whom enforcement is sought should be able to apply for refusal of the recognition or enforcement of a judgment if he considers one of the grounds for refusal of recognition to be present. This should include the ground that he had not had the opportunity to arrange for his defence where the judgment was given in default of appearance in a civil action linked to criminal proceedings. It should also include the grounds which could be invoked on the basis of an agreement between the Member State addressed and a third State concluded pursuant to Article 59 of the 1968 Brussels Convention.

- (30) A party challenging the enforcement of a judgment given in another Member State should, to the extent possible and in accordance with the legal system of the Member State addressed, be able to invoke, in the same procedure, in addition to the grounds for refusal provided for in this Regulation, the grounds for refusal available under national law and within the time-limits laid down in that law. The recognition of a judgment should, however, be refused only if one or more of the grounds for refusal provided for in this Regulation are present.
- (31) Pending a challenge to the enforcement of a judgment, it should be possible for the courts in the Member State addressed, during the entire proceedings relating to such a challenge, including any appeal, to allow the enforcement to proceed subject to a limitation of the enforcement or to the provision of security.
- (32) In order to inform the person against whom enforcement is sought of the enforcement of a judgment given in another Member State, the certificate established under this Regulation, if necessary accompanied by the judgment, should be served on that person in reasonable time before the first enforcement measure. In this context, the first enforcement measure should mean the first enforcement measure after such service.
- (33) Where provisional, including protective, measures are ordered by a court having jurisdiction as to the substance of the matter, their free circulation should be ensured under this Regulation. However, provisional, including protective, measures which were ordered by such a court without the defendant being summoned to appear should not be recognised and enforced under this Regulation unless the judgment containing the measure is served on the defendant prior to enforcement. This should not preclude the recognition and enforcement of such measures under national law. Where provisional, including protective, measures are ordered by



a court of a Member State not having jurisdiction as to the substance of the matter, the effect of such measures should be confined, under this Regulation, to the territory of that Member State.

- (34) Continuity between the 1968 Brussels Convention, Regulation (EC) No 44/2001 and this Regulation should be ensured, and transitional provisions should be laid down to that end. The same need for continuity applies as regards the interpretation by the Court of Justice of the European Union of the 1968 Brussels Convention and of the Regulations replacing it.
- (35) Respect for international commitments entered into by the Member States means that this Regulation should not affect conventions relating to specific matters to which the Member States are parties.
- (36) Without prejudice to the obligations of the Member States under the Treaties, this Regulation should not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.
- (37) In order to ensure that the certificates to be used in connection with the recognition or enforcement of judgments, authentic instruments and court settlements under this Regulation are kept up-to-date, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of amendments to Annexes I and II to this Regulation. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (38) This Regulation respects fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial guaranteed in Article 47 of the Charter.
- (39) Since the objective of this Regulation cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- (40) The United Kingdom and Ireland, in accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the TEU and to the then Treaty establishing the European Community, took part in the adoption and application of Regulation (EC) No 44/2001. In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.
- (41) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application, without prejudice to the possibility for Denmark of applying the amendments to Regulation (EC) No 44/2001 pursuant to Article 3 of the Agreement of 19 October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 299, 16.11.2005, p. 62),

HAVE ADOPTED THIS REGULATION:

Chapter I Scope and Definitions

- Article 1**
1. This Regulation shall apply in civil and commercial matters whatever the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*).
 2. This Regulation shall not apply to:
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or out of a relationship deemed by the law applicable to such relationship to have comparable effects to marriage;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) arbitration;
 - (e) maintenance obligations arising from a family relationship, parentage, marriage or affinity;

(f) wills and succession, including maintenance obligations arising by reason of death.

Article 2

For the purposes of this Regulation:

- (a) ‘judgment’ means any judgment given by a court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.
For the purposes of Chapter III, ‘judgment’ includes provisional, including protective, measures ordered by a court or tribunal which by virtue of this Regulation has jurisdiction as to the substance of the matter. It does not include a provisional, including protective, measure which is ordered by such a court or tribunal without the defendant being summoned to appear, unless the judgment containing the measure is served on the defendant prior to enforcement;
- (b) ‘court settlement’ means a settlement which has been approved by a court of a Member State or concluded before a court of a Member State in the course of proceedings;
- (c) ‘authentic instrument’ means a document which has been formally drawn up or registered as an authentic instrument in the Member State of origin and the authenticity of which:
 - (i) relates to the signature and the content of the instrument; and
 - (ii) has been established by a public authority or other authority empowered for that purpose;
- (d) ‘Member State of origin’ means the Member State in which, as the case may be, the judgment has been given, the court settlement has been approved or concluded, or the authentic instrument has been formally drawn up or registered;
- (e) ‘Member State addressed’ means the Member State in which the recognition of the judgment is invoked or in which the enforcement of the judgment, the court settlement or the authentic instrument is sought;
- (f) ‘court of origin’ means the court which has given the judgment the recognition of which is invoked or the enforcement of which is sought.

Article 3

For the purposes of this Regulation, ‘court’ includes the following authorities to the extent that they have jurisdiction in matters falling within the scope of this Regulation:

- (a) in Hungary, in summary proceedings concerning orders to pay (fizetési meghagyásos eljárás), the notary (közjegyz?);
- (b) in Sweden, in summary proceedings concerning orders to pay (betalningsföreläggande) and assistance (handräckning), the Enforcement Authority (Kronofogdemyndigheten).

Chapter II Jurisdiction

Section 1 General provisions

- Article 4**
- 1. Subject to this Regulation, persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State.
 - 2. 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.

- Article 5**
- 1. Persons domiciled in a Member State may be sued in the courts of another Member State only by virtue of the rules set out in Sections 2 to 7 of this Chapter.
 - 2. In particular, the rules of national jurisdiction of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1) shall not be applicable as against the persons referred to in paragraph 1.

- Article 6**
- 1. If the defendant is not domiciled in a Member State, the jurisdiction of the courts of each Member State shall, subject to Article 18(1), Article 21(2) and Articles 24 and 25, be determined by the law of that Member State.
 - 2. As against such a defendant, any person domiciled in a Member State may, whatever his nationality, avail himself in that Member State of the rules of jurisdiction there in force, and in particular those of which the Member States are to notify the Commission pursuant to point (a) of Article 76(1), in the same way as nationals of that Member State.

Section 2 Special jurisdiction

- Article 7**
- A person domiciled in a Member State may be sued in another Member State:



- (1)
 - (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
 - (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a Member State where, under the contract, the goods were delivered or should have been delivered,
 - in the case of the provision of services, the place in a Member State where, under the contract, the services were provided or should have been provided;
 - (c) if point (b) does not apply then point (a) applies;
- (2) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
- (3) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- (4) as regards a civil claim for the recovery, based on ownership, of a cultural object as defined in point 1 of Article 1 of Directive 93/7/EEC initiated by the person claiming the right to recover such an object, in the courts for the place where the cultural object is situated at the time when the court is seised;
- (5) as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated;
- (6) as regards a dispute brought against a settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the Member State in which the trust is domiciled;
- (7) as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:
 - (a) has been arrested to secure such payment; or
 - (b) could have been so arrested, but bail or other security has been given;

provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.



Article 8 A person domiciled in a Member State may also be sued:

- (1) where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
- (2) as a third party in an action on a warranty or guarantee or in any other third-party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
- (3) on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
- (4) in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the Member State in which the property is situated.

Article 9 Where by virtue of this Regulation a court of a Member State has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that Member State, shall also have jurisdiction over claims for limitation of such liability.

Section 3 Jurisdiction in matters relating to insurance

Article 10 In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7.

Article 11 1. An insurer domiciled in a Member State may be sued:

- (a) in the courts of the Member State in which he is domiciled;
- (b) in another Member State, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the claimant is domiciled; or
- (c) if he is a co-insurer, in the courts of a Member State in which proceedings are brought against the leading insurer.



2. An insurer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

Article 12

In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 13

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 10, 11 and 12 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 14

1. Without prejudice to Article 13(3), an insurer may bring proceedings only in the courts of the Member State in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 15

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;
- (2) which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section;
- (3) which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State, and which has the effect of conferring jurisdiction on the courts of that Member State even if the harmful

event were to occur abroad, provided that such an agreement is not contrary to the law of that Member State;

- (4) which is concluded with a policyholder who is not domiciled in a Member State, except in so far as the insurance is compulsory or relates to immovable property in a Member State; or
- (5) which relates to a contract of insurance in so far as it covers one or more of the risks set out in Article 16.

Article 16 The following are the risks referred to in point 5 of Article 15:

- (1) any loss of or damage to:
 - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit other than passengers' baggage where the transit consists of or includes carriage by such ships or aircraft;
- (2) any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) in so far as, in respect of the latter, the law of the Member State in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b);
- (3) any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;
- (4) any risk or interest connected with any of those referred to in points 1 to 3;
- (5) notwithstanding points 1 to 4, all 'large risks' as defined in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

Section 4 Jurisdiction over consumer contracts

- Article 17**
- 1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Article 6 and point 5 of Article 7, if:



- (a) it is a contract for the sale of goods on instalment credit terms;
 - (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
 - (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the Member State of the consumer's domicile or, by any means, directs such activities to that Member State or to several States including that Member State, and the contract falls within the scope of such activities.
2. Where a consumer enters into a contract with a party who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.
 3. This Section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 18

1. A consumer may bring proceedings against the other party to a contract either in the courts of the Member State in which that party is domiciled or, regardless of the domicile of the other party, in the courts for the place where the consumer is domiciled.
2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the Member State in which the consumer is domiciled.
3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 19

The provisions of this Section may be departed from only by an agreement:

- (1) which is entered into after the dispute has arisen;
- (2) which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
- (3) which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same Member State,



and which confers jurisdiction on the courts of that Member State, provided that such an agreement is not contrary to the law of that Member State.

Section 5 Jurisdiction over individual contracts of employment

- Article 20**
1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Article 6, point 5 of Article 7 and, in the case of proceedings brought against an employer, point 1 of Article 8.
 2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a Member State but has a branch, agency or other establishment in one of the Member States, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that Member State.

- Article 21**
1. An employer domiciled in a Member State may be sued:
 - (a) in the courts of the Member State in which he is domiciled; or
 - (b) in another Member State:
 - (i) in the courts for the place where or from where the employee habitually carries out his work or in the courts for the last place where he did so; or
 - (ii) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.
 2. An employer not domiciled in a Member State may be sued in a court of a Member State in accordance with point (b) of paragraph 1.

- Article 22**
1. An employer may bring proceedings only in the courts of the Member State in which the employee is domiciled.
 2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

- Article 23**
- The provisions of this Section may be departed from only by an agreement:
- (1) which is entered into after the dispute has arisen; or



- (2) which allows the employee to bring proceedings in courts other than those indicated in this Section.

Section 6 Exclusive jurisdiction

Article 24

The following courts of a Member State shall have exclusive jurisdiction, regardless of the domicile of the parties:

- (1) in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the Member State in which the property is situated. However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the Member State in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same Member State;
- (2) in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or the validity of the decisions of their organs, the courts of the Member State in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
- (3) in proceedings which have as their object the validity of entries in public registers, the courts of the Member State in which the register is kept;
- (4) in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the Member State in which the deposit or registration has been applied for, has taken place or is under the terms of an instrument of the Union or an international convention deemed to have taken place. Without prejudice to the jurisdiction of the European Patent Office under the Convention on the Grant of European Patents, signed at Munich on 5 October 1973, the courts of each Member State shall have exclusive jurisdiction in proceedings concerned with the registration or validity of any European patent granted for that Member State;



- (5) in proceedings concerned with the enforcement of judgments, the courts of the Member State in which the judgment has been or is to be enforced.

Section 7 Prorogation of jurisdiction

Article 25

1. If the parties, regardless of their domicile, have agreed that a court or the courts of a Member State are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction, unless the agreement is null and void as to its substantive validity under the law of that Member State. Such jurisdiction shall be exclusive unless the parties have agreed otherwise. The agreement conferring jurisdiction shall be either:
 - (a) in writing or evidenced in writing;
 - (b) in a form which accords with practices which the parties have established between themselves; or
 - (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.
2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.
3. The court or courts of a Member State on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between those persons or their rights or obligations under the trust are involved.
4. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to Articles 15, 19 or 23, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 24.
5. An agreement conferring jurisdiction which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
The validity of the agreement conferring jurisdiction cannot be contested solely on the ground that the contract is not valid.



Article 26

1. Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 24.
2. In matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee is the defendant, the court shall, before assuming jurisdiction under paragraph 1, ensure that the defendant is informed of his right to contest the jurisdiction of the court and of the consequences of entering or not entering an appearance.

Section 8 Examination as to jurisdiction and admissibility

Article 27

Where a court of a Member State is seised of a claim which is principally concerned with a matter over which the courts of another Member State have exclusive jurisdiction by virtue of Article 24, it shall declare of its own motion that it has no jurisdiction.

Article 28

1. Where a defendant domiciled in one Member State is sued in a court of another Member State and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Regulation.
2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
3. Article 19 of Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) (OJ L 324, 10.12.2007, p. 79) shall apply instead of paragraph 2 of this Article if the document instituting the proceedings or an equivalent document had to be transmitted from one Member State to another pursuant to that Regulation.
4. Where Regulation (EC) No 1393/2007 is not applicable, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted abroad pursuant to that Convention.



Section 9 Lis pendens — related actions

Article 29

1. Without prejudice to Article 31(2), where proceedings involving the same cause of action and between the same parties are brought in the courts of different Member States, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. In cases referred to in paragraph 1, upon request by a court seised of the dispute, any other court seised shall without delay inform the former court of the date when it was seised in accordance with Article 32.
3. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

1. Where related actions are pending in the courts of different Member States, any court other than the court first seised may stay its proceedings.
2. Where the action in the court first seised is pending at first instance, any other court may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 31

1. Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.
2. Without prejudice to Article 26, where a court of a Member State on which an agreement as referred to in Article 25 confers exclusive jurisdiction is seised, any court of another Member State shall stay the proceedings until such time as the court seised on the basis of the agreement declares that it has no jurisdiction under the agreement.
3. Where the court designated in the agreement has established jurisdiction in accordance with the agreement, any court of another Member State shall decline jurisdiction in favour of that court.
4. Paragraphs 2 and 3 shall not apply to matters referred to in Sections 3, 4 or 5 where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer



or the employee is the claimant and the agreement is not valid under a provision contained within those Sections.

Article 32

1. For the purposes of this Section, a court shall be deemed to be seised:
 - (a) at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the claimant has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or
 - (b) if the document has to be served before being lodged with the court, at the time when it is received by the authority responsible for service, provided that the claimant has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

The authority responsible for service referred to in point (b) shall be the first authority receiving the documents to be served.

2. The court, or the authority responsible for service, referred to in paragraph 1, shall note, respectively, the date of the lodging of the document instituting the proceedings or the equivalent document, or the date of receipt of the documents to be served.

Article 33

1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and proceedings are pending before a court of a third State at the time when a court in a Member State is seised of an action involving the same cause of action and between the same parties as the proceedings in the court of the third State, the court of the Member State may stay the proceedings if:
 - (a) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and
 - (b) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.
2. The court of the Member State may continue the proceedings at any time if:
 - (a) the proceedings in the court of the third State are themselves stayed or discontinued;
 - (b) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or



- (c) the continuation of the proceedings is required for the proper administration of justice.
- 3. The court of the Member State shall dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.
- 4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.

Article 34

- 1. Where jurisdiction is based on Article 4 or on Articles 7, 8 or 9 and an action is pending before a court of a third State at the time when a court in a Member State is seised of an action which is related to the action in the court of the third State, the court of the Member State may stay the proceedings if:
 - (a) it is expedient to hear and determine the related actions together to avoid the risk of irreconcilable judgments resulting from separate proceedings;
 - (b) it is expected that the court of the third State will give a judgment capable of recognition and, where applicable, of enforcement in that Member State; and
 - (c) the court of the Member State is satisfied that a stay is necessary for the proper administration of justice.
- 2. The court of the Member State may continue the proceedings at any time if:
 - (a) it appears to the court of the Member State that there is no longer a risk of irreconcilable judgments;
 - (b) the proceedings in the court of the third State are themselves stayed or discontinued;
 - (c) it appears to the court of the Member State that the proceedings in the court of the third State are unlikely to be concluded within a reasonable time; or
 - (d) the continuation of the proceedings is required for the proper administration of justice.
- 3. The court of the Member State may dismiss the proceedings if the proceedings in the court of the third State are concluded and have resulted in a judgment capable of recognition and, where applicable, of enforcement in that Member State.
- 4. The court of the Member State shall apply this Article on the application of one of the parties or, where possible under national law, of its own motion.



Section 10 Provisional, including protective, measures

Article 35 Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.

Chapter III Recognition and Enforcement

Section 1 Recognition

Article 36

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.
2. Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45.
3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.

Article 37

1. A party who wishes to invoke in a Member State a judgment given in another Member State shall produce:
 - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and
 - (b) the certificate issued pursuant to Article 53.
2. The court or authority before which a judgment given in another Member State is invoked may, where necessary, require the party invoking it to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate referred to in point (b) of paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation.

Article 38 The court or authority before which a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part, if:



- (a) the judgment is challenged in the Member State of origin; or
- (b) an application has been submitted for a decision that there are no grounds for refusal of recognition as referred to in Article 45 or for a decision that the recognition is to be refused on the basis of one of those grounds.

Section 2 Enforcement

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.

Article 40 An enforceable judgment shall carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed.

Article 41

1. Subject to the provisions of this Section, the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. A judgment given in a Member State which is enforceable in the Member State addressed shall be enforced there under the same conditions as a judgment given in the Member State addressed.
2. Notwithstanding paragraph 1, the grounds for refusal or of suspension of enforcement under the law of the Member State addressed shall apply in so far as they are not incompatible with the grounds referred to in Article 45.
3. The party seeking the enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 42

1. For the purposes of enforcement in a Member State of a judgment given in another Member State, the applicant shall provide the competent enforcement authority with:
 - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
 - and



- (b) the certificate issued pursuant to Article 53, certifying that the judgment is enforceable and containing an extract of the judgment as well as, where appropriate, relevant information on the recoverable costs of the proceedings and the calculation of interest.
- 2. For the purposes of enforcement in a Member State of a judgment given in another Member State ordering a provisional, including a protective, measure, the applicant shall provide the competent enforcement authority with:
 - (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity;
 - (b) the certificate issued pursuant to Article 53, containing a description of the measure and certifying that:
 - (i) the court has jurisdiction as to the substance of the matter;
 - (ii) the judgment is enforceable in the Member State of origin; and
 - (c) where the measure was ordered without the defendant being summoned to appear, proof of service of the judgment.
- 3. The competent enforcement authority may, where necessary, require the applicant to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate.
- 4. The competent enforcement authority may require the applicant to provide a translation of the judgment only if it is unable to proceed without such a translation.

Article 43

- 1. Where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53 shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person.
- 2. Where the person against whom enforcement is sought is domiciled in a Member State other than the Member State of origin, he may request a translation of the judgment in order to contest the enforcement if the judgment is not written in or accompanied by a translation into either of the following languages:
 - (a) a language which he understands; or
 - (b) the official language of the Member State in which he is domiciled or, where there are several official languages in that Member State, the official language or one of the official languages of the place where he is domiciled.

Where a translation of the judgment is requested under the first subparagraph, no measures of enforcement may be taken other than protective measures until that translation has been provided to the person against whom enforcement is sought.

This paragraph shall not apply if the judgment has already been served on the person against whom enforcement is sought in one of the languages referred to in the first subparagraph or is accompanied by a translation into one of those languages.

3. This Article shall not apply to the enforcement of a protective measure in a judgment or where the person seeking enforcement proceeds to protective measures in accordance with Article 40.

Article 44

1. In the event of an application for refusal of enforcement of a judgment pursuant to Subsection 2 of Section 3, the court in the Member State addressed may, on the application of the person against whom enforcement is sought:
 - (a) limit the enforcement proceedings to protective measures;
 - (b) make enforcement conditional on the provision of such security as it shall determine; or
 - (c) suspend, either wholly or in part, the enforcement proceedings.
2. The competent authority in the Member State addressed shall, on the application of the person against whom enforcement is sought, suspend the enforcement proceedings where the enforceability of the judgment is suspended in the Member State of origin.

Section 3 Refusal of recognition and enforcement

Article 45

1. On the application of any interested party, the recognition of a judgment shall be refused:
 - (a) if such recognition is manifestly contrary to public policy (ordre public) in the Member State addressed;
 - (b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

- (c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;
 - (d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or
 - (e) if the judgment conflicts with:
 - (i) Sections 3, 4 or 5 of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or
 - (ii) Section 6 of Chapter II.
2. In its examination of the grounds of jurisdiction referred to in point (e) of paragraph 1, the court to which the application was submitted shall be bound by the findings of fact on which the court of origin based its jurisdiction.
 3. Without prejudice to point (e) of paragraph 1, the jurisdiction of the court of origin may not be reviewed. The test of public policy referred to in point (a) of paragraph 1 may not be applied to the rules relating to jurisdiction.
 4. The application for refusal of recognition shall be made in accordance with the procedures provided for in Subsection 2 and, where appropriate, Section 4.

Article 46

On the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

Article 47

1. The application for refusal of enforcement shall be submitted to the court which the Member State concerned has communicated to the Commission pursuant to point (a) of Article 75 as the court to which the application is to be submitted.
2. The procedure for refusal of enforcement shall, in so far as it is not covered by this Regulation, be governed by the law of the Member State addressed.
3. The applicant shall provide the court with a copy of the judgment and, where necessary, a translation or transliteration of it.



The court may dispense with the production of the documents referred to in the first subparagraph if it already possesses them or if it considers it unreasonable to require the applicant to provide them. In the latter case, the court may require the other party to provide those documents.

4. The party seeking the refusal of enforcement of a judgment given in another Member State shall not be required to have a postal address in the Member State addressed. Nor shall that party be required to have an authorised representative in the Member State addressed unless such a representative is mandatory irrespective of the nationality or the domicile of the parties.

Article 48 The court shall decide on the application for refusal of enforcement without delay.

- Article 49**
1. The decision on the application for refusal of enforcement may be appealed against by either party.
 2. The appeal is to be lodged with the court which the Member State concerned has communicated to the Commission pursuant to point (b) of Article 75 as the court with which such an appeal is to be lodged.

Article 50 The decision given on the appeal may only be contested by an appeal where the courts with which any further appeal is to be lodged have been communicated by the Member State concerned to the Commission pursuant to point (c) of Article 75.

- Article 51**
1. The court to which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under Article 49 or Article 50 may stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.
 2. Where the judgment was given in Ireland, Cyprus or the United Kingdom, any form of appeal available in the Member State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1.



Section 4 Common provisions

Article 52 Under no circumstances may a judgment given in a Member State be reviewed as to its substance in the Member State addressed.

Article 53 The court of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex I.

Article 54 1. If a judgment contains a measure or an order which is not known in the law of the Member State addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of that Member State which has equivalent effects attached to it and which pursues similar aims and interests.

Such adaptation shall not result in effects going beyond those provided for in the law of the Member State of origin.

2. Any party may challenge the adaptation of the measure or order before a court.
3. If necessary, the party invoking the judgment or seeking its enforcement may be required to provide a translation or a transliteration of the judgment.

Article 55 A judgment given in a Member State which orders a payment by way of a penalty shall be enforceable in the Member State addressed only if the amount of the payment has been finally determined by the court of origin.

Article 56 No security, bond or deposit, however described, shall be required of a party who in one Member State applies for the enforcement of a judgment given in another Member State on the ground that he is a foreign national or that he is not domiciled or resident in the Member State addressed.

Article 57 1. When a translation or a transliteration is required under this Regulation, such translation or transliteration shall be into the official language of the Member State concerned or, where there are several official languages in that Member State, into the official language or one of the official languages of court proceedings of the place where a judgment given in another Member State is invoked or an application is made, in accordance with the law of that Member State.



2. For the purposes of the forms referred to in Articles 53 and 60, translations or transliterations may also be into any other official language or languages of the institutions of the Union that the Member State concerned has indicated it can accept.
3. Any translation made under this Regulation shall be done by a person qualified to do translations in one of the Member States.

Chapter IV Authentic Instruments and Court Settlements

Article 58

1. An authentic instrument which is enforceable in the Member State of origin shall be enforceable in the other Member States without any declaration of enforceability being required. Enforcement of the authentic instrument may be refused only if such enforcement is manifestly contrary to public policy (ordre public) in the Member State addressed.

The provisions of Section 2, Subsection 2 of Section 3, and Section 4 of Chapter III shall apply as appropriate to authentic instruments.

2. The authentic instrument produced must satisfy the conditions necessary to establish its authenticity in the Member State of origin.

Article 59

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.

Article 60

The competent authority or court of the Member State of origin shall, at the request of any interested party, issue the certificate using the form set out in Annex II containing a summary of the enforceable obligation recorded in the authentic instrument or of the agreement between the parties recorded in the court settlement.

Chapter V General Provisions

Article 61

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.



Article 62

1. In order to determine whether a party is domiciled in the Member State whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the Member State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

Article 63

1. For the purposes of this Regulation, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
 - (a) statutory seat;
 - (b) central administration; or
 - (c) principal place of business.
2. For the purposes of Ireland, Cyprus and the United Kingdom, 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
3. In order to determine whether a trust is domiciled in the Member State whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 64

Without prejudice to any more favourable provisions of national laws, persons domiciled in a Member State who are being prosecuted in the criminal courts of another Member State of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other Member States.

Article 65

1. The jurisdiction specified in point 2 of Article 8 and Article 13 in actions on a warranty or guarantee or in any other third-party proceedings may be resorted to in the Member States included in the list established by the Commission pursuant to point (b) of Article 76(1) and Article 76(2) only in so far as permitted under national law. A person domiciled in another



Member State may be invited to join the proceedings before the courts of those Member States pursuant to the rules on third-party notice referred to in that list.

2. Judgments given in a Member State by virtue of point 2 of Article 8 or Article 13 shall be recognised and enforced in accordance with Chapter III in any other Member State. Any effects which judgments given in the Member States included in the list referred to in paragraph 1 may have, in accordance with the law of those Member States, on third parties by application of paragraph 1 shall be recognised in all Member States.
3. The Member States included in the list referred to in paragraph 1 shall, within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC (OJ L 174, 27.6.2001, p. 25) ('the European Judicial Network') provide information on how to determine, in accordance with their national law, the effects of the judgments referred to in the second sentence of paragraph 2.

Chapter VI Transitional Provisions

Article 66

1. This Regulation shall apply only to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015.
2. Notwithstanding Article 80, Regulation (EC) No 44/2001 shall continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation.

Chapter VII Relationship with Other Instruments

Article 67

This Regulation shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in instruments of the Union or in national legislation harmonised pursuant to such instruments.



- Article 68**
1. This Regulation shall, as between the Member States, supersede the 1968 Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.
 2. In so far as this Regulation replaces the provisions of the 1968 Brussels Convention between the Member States, any reference to that Convention shall be understood as a reference to this Regulation.

Article 69

Subject to Articles 70 and 71, this Regulation shall, as between the Member States, supersede the conventions that cover the same matters as those to which this Regulation applies. In particular, the conventions included in the list established by the Commission pursuant to point (c) of Article 76(1) and Article 76(2) shall be superseded.

- Article 70**
1. The conventions referred to in Article 69 shall continue to have effect in relation to matters to which this Regulation does not apply.
 2. They shall continue to have effect in respect of judgments given, authentic instruments formally drawn up or registered and court settlements approved or concluded before the date of entry into force of Regulation (EC) No 44/2001.

- Article 71**
1. This Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments.
 2. With a view to its uniform interpretation, paragraph 1 shall be applied in the following manner:
 - (a) this Regulation shall not prevent a court of a Member State which is party to a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not party to that convention. The court hearing the action shall, in any event, apply Article 28 of this Regulation;
 - (b) judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation.



Where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation on recognition and enforcement of judgments may be applied.

Article 71a

1. For the purposes of this Regulation, a court common to several Member States as specified in paragraph 2 (a 'common court') shall be deemed to be a court of a Member State when, pursuant to the instrument establishing it, such a common court exercises jurisdiction in matters falling within the scope of this Regulation.
2. For the purposes of this Regulation, each of the following courts shall be a common court:
 - (a) the Unified Patent Court established by the Agreement on a Unified Patent Court signed on 19 February 2013 (the 'UPC Agreement'); and
 - (b) the Benelux Court of Justice established by the Treaty of 31 March 1965 concerning the establishment and statute of a Benelux Court of Justice (the 'Benelux Court of Justice Treaty').

Article 71b

The jurisdiction of a common court shall be determined as follows:

- (1) a common court shall have jurisdiction where, under this Regulation, the courts of a Member State party to the instrument establishing the common court would have jurisdiction in a matter governed by that instrument;
- (2) where the defendant is not domiciled in a Member State, and this Regulation does not otherwise confer jurisdiction over him, Chapter II shall apply as appropriate regardless of the defendant's domicile.

Application may be made to a common court for provisional, including protective, measures even if the courts of a third State have jurisdiction as to the substance of the matter;
- (3) where a common court has jurisdiction over a defendant under point 2 in a dispute relating to an infringement of a European patent giving rise to damage within the Union, that court may also exercise jurisdiction in relation to damage arising outside the Union from such an infringement.



Such jurisdiction may only be established if property belonging to the defendant is located in any Member State party to the instrument establishing the common court and the dispute has a sufficient connection with any such Member State.

Article 71c

1. Articles 29 to 32 shall apply where proceedings are brought in a common court and in a court of a Member State not party to the instrument establishing the common court.
2. Articles 29 to 32 shall apply where, during the transitional period referred to in Article 83 of the UPC Agreement, proceedings are brought in the Unified Patent Court and in a court of a Member State party to the UPC Agreement.

Article 71d

This Regulation shall apply to the recognition and enforcement of:

- (a) judgments given by a common court which are to be recognised and enforced in a Member State not party to the instrument establishing the common court; and
- (b) judgments given by the courts of a Member State not party to the instrument establishing the common court which are to be recognised and enforced in a Member State party to that instrument.

However, where recognition and enforcement of a judgment given by a common court is sought in a Member State party to the instrument establishing the common court, any rules of that instrument on recognition and enforcement shall apply instead of the rules of this Regulation.

Article 72

This Regulation shall not affect agreements by which Member States, prior to the entry into force of Regulation (EC) No 44/2001, undertook pursuant to Article 59 of the 1968 Brussels Convention not to recognise judgments given, in particular in other Contracting States to that Convention, against defendants domiciled or habitually resident in a third State where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 73

1. This Regulation shall not affect the application of the 2007 Lugano Convention.
2. This Regulation shall not affect the application of the 1958 New York Convention.

3. This Regulation shall not affect the application of bilateral conventions and agreements between a third State and a Member State concluded before the date of entry into force of Regulation (EC) No 44/2001 which concern matters governed by this Regulation.

Chapter VIII Final Provisions

Article 74 The Member States shall provide, within the framework of the European Judicial Network and with a view to making the information available to the public, a description of national rules and procedures concerning enforcement, including authorities competent for enforcement, and information on any limitations on enforcement, in particular debtor protection rules and limitation or prescription periods. The Member States shall keep this information permanently updated.

Article 75 By 10 January 2014, the Member States shall communicate to the Commission:

- (a) the courts to which the application for refusal of enforcement is to be submitted pursuant to Article 47(1);
- (b) the courts with which an appeal against the decision on the application for refusal of enforcement is to be lodged pursuant to Article 49(2);
- (c) the courts with which any further appeal is to be lodged pursuant to Article 50; and
- (d) the languages accepted for translations of the forms as referred to in Article 57(2).

The Commission shall make the information publicly available through any appropriate means, in particular through the European Judicial Network.

Article 76

1. The Member States shall notify the Commission of:
 - (a) the rules of jurisdiction referred to in Articles 5(2) and 6(2);
 - (b) the rules on third-party notice referred to in Article 65; and
 - (c) the conventions referred to in Article 69.
2. The Commission shall, on the basis of the notifications by the Member States referred to in paragraph 1, establish the corresponding lists.
3. The Member States shall notify the Commission of any subsequent amendments required to be made to those lists. The Commission shall amend those lists accordingly.



4. The Commission shall publish the lists and any subsequent amendments made to them in the Official Journal of the European Union.
5. The Commission shall make all information notified pursuant to paragraphs 1 and 3 publicly available through any other appropriate means, in particular through the European Judicial Network.

Article 77

The Commission shall be empowered to adopt delegated acts in accordance with Article 78 concerning the amendment of Annexes I and II.

Article 78

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 77 shall be conferred on the Commission for an indeterminate period of time from 9 January 2013.
3. The delegation of power referred to in Article 77 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 77 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 79

By 11 January 2022 the Commission shall present a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation. That report shall include an evaluation of the possible need for a further extension of the rules on



jurisdiction to defendants not domiciled in a Member State, taking into account the operation of this Regulation and possible developments at international level. Where appropriate, the report shall be accompanied by a proposal for amendment of this Regulation.

Article 80

This Regulation shall repeal Regulation (EC) No 44/2001. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in Annex III.

Article 81

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
It shall apply from 10 January 2015, with the exception of Articles 75 and 76, which shall apply from 10 January 2014.
This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Annexes

Annexes

Annex I, Annex II and Annex III are omitted here, for their content see the online version at <http://data.europa.eu/eli/reg/2012/1215/2015-02-26>



Regulation (EU) No 1257/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection

Preamble

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union and in particular the first paragraph of Article 118 thereof,

Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ L 76, 22.3.2011, p. 53),

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure (*(Position of the European Parliament of 11 December 2012 (not yet published in the Official Journal) and decision of the Council of 17 December 2012)*),

Whereas:

- (1) The creation of the legal conditions enabling undertakings to adapt their activities in manufacturing and distributing products across national borders and providing them with greater choice and more opportunities contributes to the attainment of the objectives of the Union set out in Article 3(3) of the Treaty on European Union. Uniform patent protection within the internal market, or at least a significant part thereof, should feature amongst the legal instruments which undertakings have at their disposal.
- (2) Pursuant to the first paragraph of Article 118 of the Treaty on the Functioning of the European Union (TFEU), measures to be taken in the context of the establishment and functioning of the



internal market include the creation of uniform patent protection throughout the Union and the establishment of centralised Union-wide authorisation, coordination and supervision arrangements.

- (3) On 10 March 2011, the Council adopted Decision 2011/167/EU authorising enhanced cooperation between Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom (hereinafter ‘participating Member States’) in the area of the creation of unitary patent protection.
- (4) Unitary patent protection will foster scientific and technological advances and the functioning of the internal market by making access to the patent system easier, less costly and legally secure. It will also improve the level of patent protection by making it possible to obtain uniform patent protection in the participating Member States and eliminate costs and complexity for undertakings throughout the Union. It should be available to proprietors of a European patent from both the participating Member States and from other States, regardless of their nationality, residence or place of establishment.
- (5) The Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter ‘EPC’), established the European Patent Organisation and entrusted it with the task of granting European patents. This task is carried out by the European Patent Office (hereinafter ‘EPO’). A European patent granted by the EPO should, at the request of the patent proprietor, benefit from unitary effect by virtue of this Regulation in the participating Member States. Such a patent is hereinafter referred to as a ‘European patent with unitary effect’.
- (6) In accordance with Part IX of the EPC a group of Contracting States to the EPC may provide that European patents granted for those States have a unitary character. This Regulation constitutes a special agreement within the meaning of Article 142 of the EPC, a regional patent treaty within the meaning of Article 45(1) of the Patent Cooperation Treaty of 19 June 1970 as last modified on 3 February 2001 and a special agreement within the meaning of Article 19 of the Convention for the Protection of Industrial Property, signed in Paris on 20 March 1883 and last amended on 28 September 1979.



- (7) Unitary patent protection should be achieved by attributing unitary effect to European patents in the post-grant phase by virtue of this Regulation and in respect of all the participating Member States. The main feature of a European patent with unitary effect should be its unitary character, i.e. providing uniform protection and having equal effect in all the participating Member States. Consequently, a European patent with unitary effect should only be limited, transferred or revoked, or lapse, in respect of all the participating Member States. It should be possible for a European patent with unitary effect to be licensed in respect of the whole or part of the territories of the participating Member States. To ensure the uniform substantive scope of protection conferred by unitary patent protection, only European patents that have been granted for all the participating Member States with the same set of claims should benefit from unitary effect. Finally, the unitary effect attributed to a European patent should have an accessory nature and should be deemed not to have arisen to the extent that the basic European patent has been revoked or limited.
- (8) In accordance with the general principles of patent law and Article 64(1) of the EPC, unitary patent protection should take effect retroactively in the participating Member States as from the date of publication of the mention of the grant of the European patent in the European Patent Bulletin. Where unitary patent protection takes effect, the participating Member States should ensure that the European patent is deemed not to have taken effect on their territory as a national patent, so as to avoid any duplication of patent protection.
- (9) The European patent with unitary effect should confer on its proprietor the right to prevent any third party from committing acts against which the patent provides protection. This should be ensured through the establishment of a Unified Patent Court. In matters not covered by this Regulation or by Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of unitary patent protection with regard to the applicable translation arrangements (See page 89 of the Official Journal), the provisions of the EPC, the Agreement on a Unified Patent Court, including its provisions defining the scope of that right and its limitations, and national law, including rules of private international law, should apply.
- (10) Compulsory licences for European patents with unitary effect should be governed by the laws of the participating Member States as regards their respective territories.



- (11) In its report on the operation of this Regulation, the Commission should evaluate the functioning of the applicable limitations and, where necessary, make appropriate proposals, taking account of the contribution of the patent system to innovation and technological progress, the legitimate interests of third parties and overriding interests of society. The Agreement on a Unified Patent Court does not preclude the European Union from exercising its powers in this field.
- (12) In accordance with the case-law of the Court of Justice of the European Union, the principle of the exhaustion of rights should also be applied to European patents with unitary effect. Therefore, rights conferred by a European patent with unitary effect should not extend to acts concerning the product covered by that patent which are carried out within the participating Member States after that product has been placed on the market in the Union by the patent proprietor.
- (13) The regime applicable to damages should be governed by the laws of the participating Member States, in particular the provisions implementing Article 13 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004, p. 45).
- (14) As an object of property, a European patent with unitary effect should be dealt with in its entirety, and in all the participating Member States, as a national patent of the participating Member State determined in accordance with specific criteria such as the applicant's residence, principal place of business or place of business.
- (15) In order to promote and facilitate the economic exploitation of an invention protected by a European patent with unitary effect, the proprietor of that patent should be able to offer it to be licensed in return for appropriate consideration. To that end, the patent proprietor should be able to file a statement with the EPO that he is prepared to grant a license in return for appropriate consideration. In that case, the patent proprietor should benefit from a reduction of the renewal fees as from the EPO's receipt of such statement.
- (16) The group of Member States making use of the provisions of Part IX of the EPC may give tasks to the EPO and set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter 'Select Committee').



- (17) The participating Member States should give certain administrative tasks relating to European patents with unitary effect to the EPO, in particular as regards the administration of requests for unitary effect, the registration of unitary effect and of any limitation, licence, transfer, revocation or lapse of European patents with unitary effect, the collection and distribution of renewal fees, the publication of translations for information purposes during a transitional period and the administration of a compensation scheme for the reimbursement of translation costs incurred by applicants filing European patent applications in a language other than one of the official languages of the EPO.
- (18) In the framework of the Select Committee, the participating Member States should ensure the governance and supervision of the activities related to the tasks entrusted to the EPO by the participating Member States, ensure that requests for unitary effect are filed with the EPO within one month of the date of publication of the mention of the grant in the European Patent Bulletin and ensure that such requests are submitted in the language of the proceedings before the EPO together with the translation prescribed, during a transitional period, by Regulation (EU) No 1260/2012. The participating Member States should also ensure the setting, in accordance with the voting rules laid down in Article 35(2) of the EPC, of the level of the renewal fees and the share of the distribution of the renewal fees in accordance with the criteria set out in this Regulation.
- (19) Patent proprietors should pay a single annual renewal fee for a European patent with unitary effect. Renewal fees should be progressive throughout the term of the patent protection and, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, should cover all costs associated with the grant of the European patent and the administration of the unitary patent protection. The level of the renewal fees should be set with the aim of facilitating innovation and fostering the competitiveness of European businesses, taking into account the situation of specific entities such as small and medium-sized enterprises, for example in the form of lower fees. It should also reflect the size of the market covered by the patent and be similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time when the level of the renewal fees is first set.



- (20) The appropriate level and distribution of renewal fees should be determined in order to ensure that, in relation to the unitary patent protection, all costs of the tasks entrusted to the EPO are fully covered by the resources generated by the European patents with unitary effect and that, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, the revenues from the renewal fees ensure a balanced budget of the European Patent Organisation.
- (21) Renewal fees should be paid to the European Patent Organisation. The EPO should retain an amount to cover the expenses generated at the EPO in carrying out tasks in relation to the unitary patent protection in accordance with Article 146 of the EPC. The remaining amount should be distributed among the participating Member States and should be used for patent-related purposes. The share of distribution should be set on the basis of fair, equitable and relevant criteria, namely the level of patent activity and the size of the market, and should guarantee a minimum amount to be distributed to each participating Member State in order to maintain a balanced and sustainable functioning of the system. The distribution should provide compensation for having an official language other than one of the official languages of the EPO, having a disproportionately low level of patenting activity established on the basis of the European Innovation Scoreboard, and/or having acquired membership of the European Patent Organisation relatively recently.
- (22) An enhanced partnership between the EPO and central industrial property offices of the Member States should enable the EPO to make regular use, where appropriate, of the result of any search carried out by central industrial property offices on a national patent application the priority of which is claimed in a subsequent European patent application. All central industrial property offices, including those which do not perform searches in the course of a national patent-granting procedure, can play an essential role under the enhanced partnership, inter alia, by giving advice and support to potential patent applicants, in particular small and medium-sized enterprises, by receiving applications, by forwarding applications to the EPO and by disseminating patent information.
- (23) This Regulation is complemented by Regulation (EU) No 1260/2012, adopted by the Council in accordance with the second paragraph of Article 118 of the TFEU.



- (24) Jurisdiction in respect of European patents with unitary effect should be established and governed by an instrument setting up a unified patent litigation system for European patents and European patents with unitary effect.
- (25) Establishing a Unified Patent Court to hear cases concerning the European patent with unitary effect is essential in order to ensure the proper functioning of that patent, consistency of case-law and hence legal certainty, and cost-effectiveness for patent proprietors. It is therefore of paramount importance that the participating Member States ratify the Agreement on a Unified Patent Court in accordance with their national constitutional and parliamentary procedures and take the necessary steps for that Court to become operational as soon as possible.
- (26) This Regulation should be without prejudice to the right of the participating Member States to grant national patents and should not replace the participating Member States' laws on patents. Patent applicants should remain free to obtain either a national patent, a European patent with unitary effect, a European patent taking effect in one or more of the Contracting States to the EPC or a European patent with unitary effect validated in addition in one or more other Contracting States to the EPC which are not among the participating Member States.
- (27) Since the objective of this Regulation, namely the creation of unitary patent protection, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, where appropriate by means of enhanced cooperation, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Chapter I General Provisions

Article 1 Subject matter

1. This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection, authorised by Decision 2011/167/EU.

2. This Regulation constitutes a special agreement within the meaning of Article 142 of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter ‘EPC’).

Article 2 Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (a) ‘Participating Member State’ means a Member State which participates in enhanced cooperation in the area of the creation of unitary patent protection by virtue of Decision 2011/167/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the TFEU, at the time the request for unitary effect as referred to in Article 9 is made;
- (b) ‘European patent’ means a patent granted by the European Patent Office (hereinafter ‘EPO’) under the rules and procedures laid down in the EPC;
- (c) ‘European patent with unitary effect’ means a European patent which benefits from unitary effect in the participating Member States by virtue of this Regulation;
- (d) ‘European Patent Register’ means the register kept by the EPO under Article 127 of the EPC;
- (e) ‘Register for unitary patent protection’ means the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of a European patent with unitary effect are registered;
- (f) ‘European Patent Bulletin’ means the periodical publication provided for in Article 129 of the EPC.

Article 3 European patent with unitary effect

1. A European patent granted with the same set of claims in respect of all the participating Member States shall benefit from unitary effect in the participating Member States provided that its unitary effect has been registered in the Register for unitary patent protection.

A European patent granted with different sets of claims for different participating Member States shall not benefit from unitary effect.



2. A European patent with unitary effect shall have a unitary character. It shall provide uniform protection and shall have equal effect in all the participating Member States.

It may only be limited, transferred or revoked, or lapse, in respect of all the participating Member States.

It may be licensed in respect of the whole or part of the territories of the participating Member States.

3. The unitary effect of a European patent shall be deemed not to have arisen to the extent that the European patent has been revoked or limited.

Article 4 **Date of effect**

1. A European patent with unitary effect shall take effect in the participating Member States on the date of publication by the EPO of the mention of the grant of the European patent in the European Patent Bulletin.
2. The participating Member States shall take the necessary measures to ensure that, where the unitary effect of a European patent has been registered and extends to their territory, that European patent is deemed not to have taken effect as a national patent in their territory on the date of publication of the mention of the grant in the European Patent Bulletin.

Chapter II Effects of a European Patent with Unitary Effect

Article 5 **Uniform protection**

1. The European patent with unitary effect shall confer on its proprietor the right to prevent any third party from committing acts against which that patent provides protection throughout the territories of the participating Member States in which it has unitary effect, subject to applicable limitations.
2. The scope of that right and its limitations shall be uniform in all participating Member States in which the patent has unitary effect.
3. The acts against which the patent provides protection referred to in paragraph 1 and the applicable limitations shall be those defined by the law applied to European patents with unitary



effect in the participating Member State whose national law is applicable to the European patent with unitary effect as an object of property in accordance with Article 7.

4. In its report referred to in Article 16(1), the Commission shall evaluate the functioning of the applicable limitations and shall, where necessary, make appropriate proposals.

Article 6 **Exhaustion of the rights conferred by a European patent with unitary effect**

The rights conferred by a European patent with unitary effect shall not extend to acts concerning a product covered by that patent which are carried out within the participating Member States in which that patent has unitary effect after that product has been placed on the market in the Union by, or with the consent of, the patent proprietor, unless there are legitimate grounds for the patent proprietor to oppose further commercialisation of the product.

Chapter III A European Patent with Unitary Effect as an Object of Property

Article 7 **Treating a European patent with unitary effect as a national patent**

1. A European patent with unitary effect as an object of property shall be treated in its entirety and in all the participating Member States as a national patent of the participating Member State in which that patent has unitary effect and in which, according to the European Patent Register:
 - (a) the applicant had his residence or principal place of business on the date of filing of the application for the European patent; or
 - (b) where point (a) does not apply, the applicant had a place of business on the date of filing of the application for the European patent.
2. Where two or more persons are entered in the European Patent Register as joint applicants, point (a) of paragraph 1 shall apply to the joint applicant indicated first. Where this is not possible, point (a) of paragraph 1 shall apply to the next joint applicant indicated in the order of entry. Where point (a) of paragraph 1 does not apply to any of the joint applicants, point (a) of paragraph 1 shall apply accordingly.
3. Where no applicant had his residence, principal place of business or place of business in a participating Member State in which that patent has unitary effect for the purposes of paragraphs 1 or 2, the European patent with unitary effect as an object of property shall be treated in its



entirety and in all the participating Member States as a national patent of the State where the European Patent Organisation has its headquarters in accordance with Article 6(1) of the EPC.

4. The acquisition of a right may not be dependent on any entry in a national patent register.

Article 8 **Licences of right**

1. The proprietor of a European patent with unitary effect may file a statement with the EPO to the effect that the proprietor is prepared to allow any person to use the invention as a licensee in return for appropriate consideration.
2. A licence obtained under this Regulation shall be treated as a contractual licence.

Chapter IV Institutional Provisions

Article 9 **Administrative tasks in the framework of the European Patent Organisation**

1. The participating Member States shall, within the meaning of Article 143 of the EPC, give the EPO the following tasks, to be carried out in accordance with the internal rules of the EPO:
 - (a) to administer requests for unitary effect by proprietors of European patents;
 - (b) to include the Register for unitary patent protection within the European Patent Register and to administer the Register for unitary patent protection;
 - (c) to receive and register statements on licensing referred to in Article 8, their withdrawal and licensing commitments undertaken by the proprietor of the European patent with unitary effect in international standardisation bodies;
 - (d) to publish the translations referred to in Article 6 of Regulation (EU) No 1260/2012 during the transitional period referred to in that Article;
 - (e) to collect and administer renewal fees for European patents with unitary effect, in respect of the years following the year in which the mention of the grant is published in the European Patent Bulletin; to collect and administer additional fees for late payment of renewal fees where such late payment is made within six months of the due date, as well as to distribute part of the collected renewal fees to the participating Member States;

- (f) to administer the compensation scheme for the reimbursement of translation costs referred to in Article 5 of Regulation (EU) No 1260/2012;
 - (g) to ensure that a request for unitary effect by a proprietor of a European patent is submitted in the language of the proceedings as defined in Article 14(3) of the EPC no later than one month after the mention of the grant is published in the European Patent Bulletin; and
 - (h) to ensure that the unitary effect is indicated in the Register for unitary patent protection, where a request for unitary effect has been filed and, during the transitional period provided for in Article 6 of Regulation (EU) No 1260/2012, has been submitted together with the translations referred to in that Article, and that the EPO is informed of any limitations, licences, transfers or revocations of European patents with unitary effect.
2. The participating Member States shall ensure compliance with this Regulation in fulfilling their international obligations undertaken in the EPC and shall cooperate to that end. In their capacity as Contracting States to the EPC, the participating Member States shall ensure the governance and supervision of the activities related to the tasks referred to in paragraph 1 of this Article and shall ensure the setting of the level of renewal fees in accordance with Article 12 of this Regulation and the setting of the share of distribution of the renewal fees in accordance with Article 13 of this Regulation.

To that end they shall set up a select committee of the Administrative Council of the European Patent Organisation (hereinafter ‘Select Committee’) within the meaning of Article 145 of the EPC. The Select Committee shall consist of the representatives of the participating Member States and a representative of the Commission as an observer, as well as alternates who will represent them in their absence. The members of the Select Committee may be assisted by advisers or experts. Decisions of the Select Committee shall be taken with due regard for the position of the Commission and in accordance with the rules laid down in Article 35(2) of the EPC.

3. The participating Member States shall ensure effective legal protection before a competent court of one or several participating Member States against the decisions of the EPO in carrying out the tasks referred to in paragraph 1.

Chapter V Financial Provisions

Article 10 Principle on expenses

The expenses incurred by the EPO in carrying out the additional tasks given to it, within the meaning of Article 143 of the EPC, by the participating Member States shall be covered by the fees generated by the European patents with unitary effect.

Article 11 Renewal fees

1. Renewal fees for European patents with unitary effect and additional fees for their late payment shall be paid to the European Patent Organisation by the patent proprietor. Those fees shall be due in respect of the years following the year in which the mention of the grant of the European patent which benefits from unitary effect is published in the European Patent Bulletin.
2. A European patent with unitary effect shall lapse if a renewal fee and, where applicable, any additional fee have not been paid in due time.
3. Renewal fees which fall due after receipt of the statement referred to in Article 8(1) shall be reduced.

Article 12 Level of renewal fees

1. Renewal fees for European patents with unitary effect shall be:
 - (a) progressive throughout the term of the unitary patent protection;
 - (b) sufficient to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection; and
 - (c) sufficient, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, to ensure a balanced budget of the European Patent Organisation.
2. The level of the renewal fees shall be set, taking into account, among others, the situation of specific entities such as small and medium-sized enterprises, with the aim of:
 - (a) facilitating innovation and fostering the competitiveness of European businesses;
 - (b) reflecting the size of the market covered by the patent; and

- (c) being similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time the level of the renewal fees is first set.
- 3. In order to attain the objectives set out in this Chapter, the level of renewal fees shall be set at a level that:
 - (a) is equivalent to the level of the renewal fee to be paid for the average geographical coverage of current European patents;
 - (b) reflects the renewal rate of current European patents; and
 - (c) reflects the number of requests for unitary effect.

Article 13 Distribution

- 1. The EPO shall retain 50 per cent of the renewal fees referred to in Article 11 paid for European patents with unitary effect. The remaining amount shall be distributed to the participating Member States in accordance with the share of distribution of the renewal fees set pursuant to Article 9(2).
- 2. In order to attain the objectives set out in this Chapter, the share of distribution of renewal fees among the participating Member States shall be based on the following fair, equitable and relevant criteria:
 - (a) the number of patent applications;
 - (b) the size of the market, while ensuring a minimum amount to be distributed to each participating Member State;
 - (c) compensation to the participating Member States which have:
 - (i) an official language other than one of the official languages of the EPO;
 - (ii) a disproportionately low level of patenting activity; and/or
 - (iii) acquired membership of the European Patent Organisation relatively recently.

Chapter VI Final Provisions

Article 14 Cooperation between the Commission and the EPO

The Commission shall establish a close cooperation through a working agreement with the EPO in the fields covered by this Regulation. This cooperation shall include regular exchanges of views on the functioning of the working agreement and, in particular, on the issue of renewal fees and their impact on the budget of the European Patent Organisation.

Article 15 Application of competition law and the law relating to unfair competition

This Regulation shall be without prejudice to the application of competition law and the law relating to unfair competition.

Article 16 Report on the operation of this Regulation

1. Not later than three years from the date on which the first European patent with unitary effect takes effect, and every five years thereafter, the Commission shall present to the European Parliament and the Council a report on the operation of this Regulation and, where necessary, make appropriate proposals for amending it.
2. The Commission shall regularly submit to the European Parliament and the Council reports on the functioning of the renewal fees referred to in Article 11, with particular emphasis on compliance with Article 12.

Article 17 Notification by the participating Member States

1. The participating Member States shall notify the Commission of the measures adopted in accordance with Article 9 by the date of application of this Regulation.
2. Each participating Member State shall notify the Commission of the measures adopted in accordance with Article 4(2) by the date of application of this Regulation or, in the case of a participating Member State in which the Unified Patent Court does not have exclusive jurisdiction with regard to European patents with unitary effect on the date of application of this Regulation,



by the date from which the Unified Patent Court has such exclusive jurisdiction in that participating Member State.

Article 18 **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 1 January 2014 or the date of entry into force of the Agreement on a Unified Patent Court (the 'Agreement'), whichever is the later.

By way of derogation from Articles 3(1), 3(2) and 4(1), a European patent for which unitary effect is registered in the Register for unitary patent protection shall have unitary effect only in those participating Member States in which the Unified Patent Court has exclusive jurisdiction with regard to European patents with unitary effect at the date of registration.

3. Each participating Member State shall notify the Commission of its ratification of the Agreement at the time of deposit of its ratification instrument. The Commission shall publish in the Official Journal of the European Union the date of entry into force of the Agreement and a list of the Member States who have ratified the Agreement at the date of entry into force. The Commission shall thereafter regularly update the list of the participating Member States which have ratified the Agreement and shall publish such updated list in the Official Journal of the European Union.
4. The participating Member States shall ensure that the measures referred to in Article 9 are in place by the date of application of this Regulation.
5. Each participating Member State shall ensure that the measures referred to in Article 4(2) are in place by the date of application of this Regulation or, in the case of a participating Member State in which the Unified Patent Court does not have exclusive jurisdiction with regard to European patents with unitary effect on the date of application of this Regulation, by the date from which the Unified Patent Court has such exclusive jurisdiction in that participating Member State.
6. Unitary patent protection may be requested for any European patent granted on or after the date of application of this Regulation.



This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.
Done at Brussels, 17 December 2012.



Regulation (EU) No 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements

Preamble

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the second paragraph of Article 118 thereof,

Having regard to Council Decision 2011/167/EU of 10 March 2011 authorising enhanced cooperation in the area of the creation of unitary patent protection (OJ L 76, 22.3.2011, p. 53),

Having regard to the proposal from the European Commission, After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament, Acting in accordance with a special legislative procedure,

Whereas:

- (1) Pursuant to Decision 2011/167/EU, Belgium, Bulgaria, the Czech Republic, Denmark, Germany, Estonia, Ireland, Greece, France, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and the United Kingdom (hereinafter "participating Member States") were authorised to establish enhanced cooperation between themselves in the area of the creation of unitary patent protection.
- (2) Under Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary



patent protection (See page 1 of this Official Journal), certain European patents granted by the European Patent Office (hereinafter 'EPO') under the rules and procedures of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter 'EPC') should, at the request of the patent proprietor, benefit from unitary effect in the participating Member States.

- (3) Translation arrangements for European patents benefiting from unitary effect in the participating Member States (hereinafter 'European patent with unitary effect') should be established by means of a separate Regulation, in accordance with the second paragraph of Article 118 of the Treaty on the Functioning of the European Union (TFEU).
- (4) In accordance with Decision 2011/167/EU the translation arrangements for European patents with unitary effect should be simple and cost-effective. They should correspond to those provided for in the proposal for a Council Regulation on the translation arrangements for the European Union patent, presented by the Commission on 30 June 2010, combined with the elements of compromise proposed by the Presidency in November 2010 that had wide support in the Council.
- (5) Such translation arrangements should ensure legal certainty and stimulate innovation and should, in particular, benefit small and medium-sized enterprises (SMEs). They should make access to the European patent with unitary effect and to the patent system as a whole easier, less costly and legally secure.
- (6) Since the EPO is responsible for the grant of European patents, the translation arrangements for the European patent with unitary effect should be built on the current procedure in the EPO. Those arrangements should aim to achieve the necessary balance between the interests of economic operators and the public interest, in terms of the cost of proceedings and the availability of technical information.
- (7) Without prejudice to the transitional arrangements, where the specification of a European patent with unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations should be required. Article 14(6) of the EPC provides that the specification of a European patent is published in the language of the proceedings before the EPO and includes a translation of the claims into the other two official languages of the EPO.



- (8) In the event of a dispute concerning a European patent with unitary effect, it is a legitimate requirement that the patent proprietor at the request of the alleged infringer should provide a full translation of the patent into an official language of either the participating Member State in which the alleged infringement took place or the Member State in which the alleged infringer is domiciled. The patent proprietor should also be required to provide, at the request of a court competent in the participating Member States for disputes concerning the European patent with unitary effect, a full translation of the patent into the language used in the proceedings of that court. Such translations should not be carried out by automated means and should be provided at the expense of the patent proprietor.
- (9) In the event of a dispute concerning a claim for damages, the court hearing the dispute should take into consideration the fact that, before having been provided with a translation in his own language, the alleged infringer may have acted in good faith and may have not known or had reasonable grounds to know that he was infringing the patent. The competent court should assess the circumstances of the individual case and, inter alia, should take into account whether the alleged infringer is a SME operating only at local level, the language of the proceedings before the EPO and, during the transitional period, the translation submitted together with the request for unitary effect.
- (10) In order to facilitate access to European patents with unitary effect, in particular for SMEs, applicants should be able to file their patent applications at the EPO in any official language of the Union. As a complementary measure, certain applicants obtaining European patents with unitary effect, having filed a European patent application in one of the official languages of the Union, which is not an official language of the EPO, and having their residence or principal place of business within a Member State, should receive additional reimbursements of the costs of translating from the language of the patent application into the language of the proceedings of the EPO, beyond what is currently in place at the EPO. Such reimbursements should be administered by the EPO in accordance with Article 9 of Regulation (EU) No 1257/2012.
- (11) In order to promote the availability of patent information and the dissemination of technological knowledge, machine translations of patent applications and specifications into all official languages of the Union should be available as soon as possible. Machine translations are



being developed by the EPO and are a very important tool in seeking to improve access to patent information and to widely disseminate technological knowledge. The timely availability of high quality machine translations of European patent applications and specifications into all official languages of the Union would benefit all users of the European patent system. Machine translations are a key feature of European Union policy. Such machine translations should serve for information purposes only and should not have any legal effect.

- (12) During the transitional period, before a system of high quality machine translations into all official languages of the Union becomes available, a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 should be accompanied by a full translation of the specification of the patent into English where the language of the proceedings before the EPO is French or German, or into any official language of the Member States that is an official language of the Union where the language of the proceedings before the EPO is English. Those arrangements would ensure that during a transitional period all European patents with unitary effect are made available in English which is the language customarily used in the field of international technological research and publications. Furthermore, such arrangements would ensure that with respect to European patents with unitary effect, translations would be published in other official languages of the participating Member States. Such translations should not be carried out by automated means and their high quality should contribute to the training of translation engines by the EPO. They would also enhance the dissemination of patent information.
- (13) The transitional period should terminate as soon as high quality machine translations into all official languages of the Union are available, subject to a regular and objective evaluation of the quality by an independent expert committee established by the participating Member States in the framework of the European Patent Organisation and composed of the representatives of the EPO and the users of the European patent system. Given the state of technological development, the maximum period for the development of high quality machine translations cannot be considered to exceed 12 years. Consequently, the transitional period should lapse 12 years from the date of application of this Regulation, unless it has been decided to terminate that period earlier.



- (14) Since the substantive provisions applicable to a European patent with unitary effect are governed by Regulation (EU) No 1257/2012 and are completed by the translation arrangements provided for in this Regulation, this Regulation should apply from the same date as Regulation (EU) No 1257/2012.
- (15) This Regulation is without prejudice to the rules governing the languages of the Institutions of the Union established in accordance with Article 342 of the TFEU and to Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385/58). This Regulation is based on the linguistic regime of the EPO and should not be considered as creating a specific linguistic regime for the Union, or as creating a precedent for a limited language regime in any future legal instrument of the Union.
- (16) Since the objective of this Regulation, namely the creation of a uniform and simple translation regime for European patents with unitary effect, cannot be sufficiently achieved by the Member States and can therefore, by reasons of the scale and effects of this Regulation, be better achieved at Union level, the Union may adopt measures, where appropriate by means of enhanced cooperation, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAS ADOPTED THIS REGULATION:

Article 1 **Subject matter**

This Regulation implements enhanced cooperation in the area of the creation of unitary patent protection authorised by Decision No 2011/167/EU with regard to the applicable translation arrangements.

Article 2 **Definitions**

For the purposes of this Regulation, the following definitions shall apply:



- (a) 'European patent with unitary effect' means a European patent which benefits from unitary effect in the participating Member States by virtue of Regulation (EU) No 1257/2012;
- (b) 'Language of the proceedings' means the language used in the proceedings before the EPO as defined in Article 14(3) of the Convention on the Grant of European Patents of 5 October 1973, as revised on 17 December 1991 and on 29 November 2000 (hereinafter 'EPC').

Article 3 **Translation arrangements for the European patent with unitary effect**

1. Without prejudice to Articles 4 and 6 of this Regulation, where the specification of a European patent, which benefits from unitary effect has been published in accordance with Article 14(6) of the EPC, no further translations shall be required.
2. A request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 shall be submitted in the language of the proceedings.

Article 4 **Translation in the event of a dispute**

1. In the event of a dispute relating to an alleged infringement of a European patent with unitary effect, the patent proprietor shall provide at the request and the choice of an alleged infringer, a full translation of the European patent with unitary effect into an official language of either the participating Member State in which the alleged infringement took place or the Member State in which the alleged infringer is domiciled.
2. In the event of a dispute relating to a European patent with unitary effect, the patent proprietor shall provide in the course of legal proceedings, at the request of a court competent in the participating Member States for disputes concerning European patents with unitary effect, a full translation of the patent into the language used in the proceedings of that court.
3. The cost of the translations referred to in paragraphs 1 and 2 shall be borne by the patent proprietor.
4. In the event of a dispute concerning a claim for damages, the court hearing the dispute shall assess and take into consideration, in particular where the alleged infringer is a SME, a natural person or a non-profit organisation, a university or a public research organisation, whether the alleged infringer acted without knowing or without reasonable grounds for knowing, that he was



infringing the European patent with unitary effect before having been provided with the translation referred to in paragraph 1.

Article 5 **Administration of a compensation scheme**

1. Given the fact that European patent applications may be filed in any language under Article 14(2) of the EPC, the participating Member States shall in accordance with Article 9 of Regulation (EU) No 1257/2012, give, within the meaning of Article 143 of the EPC, the EPO the task of administering a compensation scheme for the reimbursement of all translation costs up to a ceiling, for applicants filing patent applications at the EPO in one of the official languages of the Union that is not an official language of the EPO.
2. The compensation scheme referred to in paragraph 1 shall be funded through the fees referred to in Article 11 of Regulation (EU) No 1257/2012 and shall be available only for SMEs, natural persons, non-profit organisations, universities and public research organisations having their residence or principal place of business within a Member State.

Article 6 **Transitional measures**

1. During a transitional period starting on the date of application of this Regulation a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012 shall be submitted together with the following:
 - (a) where the language of the proceedings is French or German, a full translation of the specification of the European patent into English; or
 - (b) where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the Union.
2. In accordance with Article 9 of Regulation (EU) No 1257/2012, the participating Member States shall give, within the meaning of Article 143 of the EPC, the EPO the task of publishing the translations referred to in paragraph 1 of this Article as soon as possible after the date of the submission of a request for unitary effect as referred to in Article 9 of Regulation (EU) No 1257/2012. The text of such translations shall have no legal effect and shall be for information purposes only.



3. Six years after the date of application of this Regulation and every two years thereafter, an independent expert committee shall carry out an objective evaluation of the availability of high quality machine translations of patent applications and specifications into all the official languages of the Union as developed by the EPO. This expert committee shall be established by the participating Member States in the framework of the European Patent Organisation and shall be composed of representatives of the EPO and of the non-governmental organisations representing users of the European patent system invited by the Administrative Council of the European Patent Organisation as observers in accordance with Article 30(3) of the EPC.
4. On the basis of the first of the evaluations referred to in paragraph 3 of this Article and every two years thereafter on the basis of the subsequent evaluations, the Commission shall present a report to the Council and, if appropriate, make proposals for terminating the transitional period.
5. If the transitional period is not terminated on the basis of a proposal of the Commission, it shall lapse 12 years from the date of application of this Regulation.

Article 7 **Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. It shall apply from 1 January 2014 or the date of entry into force of the Agreement on a Unified Patent Court, whichever is the later.

This Regulation shall be binding in its entirety and directly applicable in the participating Member States in accordance with the Treaties.
Done at Brussels, 17 December 2012.

Regulation (EC) No 1610/96 concerning the creation of a supplementary protection certificate for plant protection products

Preamble

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission (OJ C 390, 31.12.1994, p.21 and OJ C 335, 13.12.1995, p.15),

Having regard to the opinion of the Economic and Social Committee (OJ No C 155, 21.6.1995, p.14),

Acting in accordance with the procedure referred to in Article 189b of the Treaty (*Opinion of the European Parliament of 15 June 1995 (OJ C 166, 3.7.1995, p.89), common position of the Council of 27 November 1995 (OJ C 353, 30.12.1995, p.36) and decision of the European Parliament of 12 March 1996 (OJ C 96, 1.4.1996, p.30)*),

- (1) Whereas research into plant protection products contributes to the continuing improvement in the production and procurement of plentiful food of good quality at affordable prices;
- (2) Whereas plant protection research contributes to the continuing improvement in crop production;
- (3) Whereas plant protection products, especially those that are the result of long, costly research, will continue to be developed in the Community and in Europe if they are covered by favourable rules that provide for sufficient protection to encourage such research;
- (4) Whereas the competitiveness of the plant protection sector, by the very nature of the industry, requires a level of protection for innovation which is equivalent to that granted to medicinal



products by Council Regulation (EEC) No 1768 /92 of 18 June 1992 concerning the creation of a supplementary protection certificate for medicinal products (4);

- (5) Whereas, at the moment, the period that elapses between the filing of an application for a patent for a new plant protection product and authorization to place the said plant protection product on the market makes the period of effective protection under the patent insufficient to cover the investment put into the research and to generate the resources needed to maintain a high level of research;
- (6) Whereas this situation leads to a lack of protection which penalizes plant protection research and the competitiveness of the sector,
- (7) Whereas one of the main objectives of the supplementary protection certificate is to place European industry on the same competitive footing as its North American and Japanese counterparts;
- (8) Whereas, in its Resolution of 1 February 1993 ([^] on a Community programme of policy and action in relation to the environment and sustainable development, the Council adopted the general approach and strategy of the programme presented by the Commission, which stressed the interdependence of economic growth and environmental quality; whereas improving protection of the environment means maintaining the economic competitiveness of industry; whereas, accordingly, the issue of a supplementary protection certificate can be regarded as a positive measure in favour of environmental protection;
- (9) Whereas a uniform solution at Community level should be provided for, thereby preventing the heterogeneous development of national laws leading to further disparities which would be likely to hinder the free movement of plant protection products within the Community and thus directly affect the functioning of the internal market; whereas this is in accordance with the principle of subsidiarity as defined by Article 3b of the Treaty;
- (10) Whereas, therefore, there is a need to create a supplementary protection certificate granted, under the same conditions, by each of the Member States at the request of the holder of a national or European patent relating to a plant protection product for which marketing authorization has been granted is necessary; whereas a Regulation is therefore the most appropriate legal instrument;

- (11) Whereas the duration of the protection granted by the certificate should be such as to provide adequate, effective protection; whereas, for this purpose, the holder of both a patent and a certificate should be able to enjoy an overall maximum of fifteen years of exclusivity from the time the plant protection product in question first obtains authorization to be placed on the market in the Community;
- (12) Whereas all the interests at stake in a sector as complex and sensitive as plant protection must nevertheless be taken into account; whereas, for this purpose, the certificate cannot be granted for a period exceeding five years;
- (13) Whereas the certificate confers the same rights as those conferred by the basic patent; whereas, consequently, where the basic patent covers an active substance and its various derivatives (salts and esters), the certificate confers the same protection;
- (14) Whereas the issue of a certificate for a product consisting of an active substance does not prejudice the issue of other certificates for derivatives (salts and esters) of the substance, provided that the derivatives are the subject of patents specifically covering them;
- (15) Whereas a fair balance should also be struck with regard to the determination of the transitional arrangements; whereas such arrangements should enable the Community plant protection industry to catch up to some extent with its main competitors, while making sure that the arrangements do not compromise the achievement of other legitimate objectives concerning the agricultural policy and environment protection policy pursued at both national and Community level;
- (16) Whereas only action at Community level will enable the objective, which consists in ensuring adequate protection for innovation in the field of plant protection, while guaranteeing the proper functioning of the internal market for plant protection products, to be attained effectively;
- (17) Whereas the detailed rules in recitals 12, 13 and 14 and in Articles 3(2), 4, 8(1)(c) and 17(2) of this Regulation are also valid, *mutatis mutandis*, for the interpretation in particular of recital 9 and Articles 3, 4, 8(1)(c) and 17 of Council Regulation (EEC) No 1768/92,

HAVE ADOPTED THIS REGULATION:



Article 1

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'plant protection products': active substances and preparations containing one or more active substances, put up in the form in which they are supplied to the user, intended to:
 - (a) protect plants or plant products against all harmful organisms or prevent the action of such organisms, in so far as such substances or preparations are not otherwise defined below;
 - (b) influence the life processes of plants, other than as a nutrient (e.g. plant growth regulators);
 - (c) preserve plant products, in so far as such substances or products are not subject to special Council or Commission provisions on preservatives;
 - (d) destroy undesirable plants; or
 - (e) destroy parts of plants, check or prevent undesirable growth of plants;
2. 'substances': chemical elements and their compounds, as they occur naturally or by manufacture, including any impurity inevitably resulting from the manufacturing process;
3. 'active substances': substances or micro-organisms including viruses, having general or specific action:
 - (a) against harmful organisms; or
 - (b) on plants, parts of plants or plant products;
4. 'preparations': mixtures or solutions composed of two or more substances, of which at least one is an active substance, intended for use as plant protection products;
5. 'plants': live plants and live parts of plants, including fresh fruit and seeds;
6. 'plant products': products in the unprocessed state or having undergone only simple preparation such as milling, drying or pressing, derived from plants, but excluding plants themselves as defined in point 5;
7. 'harmful organisms': pests of plants or plant products belonging to the animal or plant kingdom, and also viruses, bacteria and mycoplasmas and other pathogens;
8. 'product': the active substance as defined in point 3 or combination of active substances of a plant protection product;
9. 'basic patent': a patent which protects a product as defined in point 8 as such, a preparation as defined in point 4, a process to obtain a product or an application of a product, and which is designated by its holder for the purpose of the procedure for grant of a certificate;

10. 'certificate': the supplementary protection certificate.

Article 2 **Scope**

Any product protected by a patent in the territory of a Member State and subject, prior to being placed on the market as a plant protection product, to an administrative authorization procedure as laid down in Article 4 of Directive 91/414/EEC ((OJ L 230, 19.8.1991, p. 1. *Directive as last amended by Directive 95/36/EC (OJ L 172, 22. 7. 1995, p. 8)*)), or pursuant to an equivalent provision of national law if it is a plant protection product in respect of which the application for authorization was lodged before Directive 91/414/EEC was implemented by the Member State concerned, may, under the terms and conditions provided for in this Regulation, be the subject of a certificate.

Article 3 **Conditions for obtaining a certificate**

1. A certificate shall be granted if, in the Member State in which the application referred to in Article 7 is submitted, at the date of that application:
 - (a) the product is protected by a basic patent in force;
 - (b) a valid authorization to place the product on the market as a plant protection product has been granted in accordance with Article 4 of Directive 91/414/EEC or an equivalent provision of national law;
 - (c) the product has not already been the subject of a certificate;
 - (d) the authorization referred to in (b) is the first authorization to place the product on the market as a plant protection product.
2. The holder of more than one patent for the same product shall not be granted more than one certificate for that product. However, where two or more applications concerning the same product and emanating from two or more holders of different patents are pending, one certificate for this product may be issued to each of these holders.

Article 4 **Subject-matter of protection**

Within the limits of the protection conferred by the basic patent, the protection conferred by a certificate shall extend only to the product covered by the authorizations to place the corresponding plant protection product on the market and for any use of the product as a plant protection product that has been authorized before the expiry of the certificate.

Article 5 **Effects of the certificate**

Subject to Article 4, the certificate shall confer the same rights as conferred by the basic patent and shall be subject to the same limitations and the same obligations.

Article 6 **Entitlement to the certificate**

The certificate shall be granted to the holder of the basic patent or his successor in title .

Article 7 **Application for a certificate**

1. The application for a certificate shall be lodged within six months of the date on which the authorization referred to in Article 3(1)(b) to place the product on the market as a plant protection product was granted.
2. Notwithstanding paragraph 1, where the authorization to place the product on the market is granted before the basic patent is granted, the application for a certificate shall be lodged within six months of the date on which the patent is granted.

Article 8 **Content of the application for a certificate**

1. The application for a certificate shall contain:
 - (a) a request for the grant of a certificate, stating in particular:
 - (i) the name and address of the applicant;
 - (ii) the name and address of the representative, if any;
 - (iii) the number of the basic patent and the title of the invention;



- (iv) the number and date of the first authorization to place the product on the market, as referred to in Article 3(1)(b) and, if this authorization is not the first authorization to place the product on the market in the Community, the number and date of that authorization;
 - (b) a copy of the authorization to place the product on the market, as referred to in Article 3(1)(b), in which the product is identified, containing in particular the number and date of the authorization and the summary of the product characteristics listed in Part A.I (points 1-7) or B.I (points 1-7) of Annex II to Directive 91/414/EEC or in equivalent national laws of the Member State in which the application was lodged;
 - (c) if the authorization referred to in (b) is not the first authorization to place the product on the market as a plant protection product in the Community, information regarding the identity of the product thus authorized and the legal provision under which the authorization procedure took place, together with a copy of the notice publishing the authorization in the appropriate official publication or, failing such a notice, any other document proving that the authorization has been issued, the date on which it was issued and the identity of the product authorized.
2. Member States may require a fee to be payable upon application for a certificate.

Article 9

Lodging of an application for a certificate

1. The application for a certificate shall be lodged with the competent industrial property office of the Member State which granted the basic patent or on whose behalf it was granted and in which the authorization referred to in Article 3(1)(b) to place the product on the market was obtained, unless the member State designates another authority for the purpose.
2. Notification of the application for a certificate shall be published by the authority referred to in paragraph 1.

The notification shall contain at least the following information:

- (a) the name and address of the applicant;
- (b) the number of the basic patent;
- (c) the title of the invention;
- (d) the number and date of the authorization to place the product on the market, referred to in Article 3(1)(b), and the product identified in that authorization;

- (e) where relevant, the number and date of the first authorization to place the product on the market in the Community.

Article 10

Grant of the certificate or rejection of the application

1. Where the application for a certificate and the product to which it relates meet the conditions laid down in this Regulation, the authority referred to in Article 9(1) shall grant the certificate.
2. The authority referred to in Article 9(1) shall, subject to paragraph 3, reject the application for a certificate if the application or the product to which it relates does not meet the conditions laid down in this Regulation.
3. Where the application for a certificate does not meet the conditions laid down in Article 8, the authority referred to in Article 9(1) shall ask the applicant to rectify the irregularity, or to settle the fee, within a stated time.
4. If the irregularity is not rectified or the fee is not settled under paragraph 3 within the stated time, the application shall be rejected.
5. Member States may provide that the authority referred to in Article 9(1) is to grant certificates without verifying that the conditions laid down in Article 3(1)(c) and (d) are met.

Article 11

Publication

1. Notification of the fact that a certificate has been granted shall be published by the authority referred to in Article 9(1). The notification shall contain at least the following information:
 - (a) the name and address of the holder of the certificate;
 - (b) the number of the basic patent;
 - (c) the title of the invention;
 - (d) the number and date of the authorization to place the product on the market referred to in Article 3(1)(b) and the product identified in that authorization;
 - (e) where relevant, the number and date of the first authorization to place the product on the market in the Community;
 - (f) the duration of the certificate.



2. Notification of the fact that the application for a certificate has been rejected shall be published by the authority referred to in Article 9(1). The notification shall contain at least the information listed in Article 9(2).

Article 12 **Annual fees**

Member States may require the certificate to be subject to the payment of annual fees.

Article 13 **Duration of the certificate**

1. The certificate shall take effect at the end of the lawful term of the basic patent for a period equal to the period which elapsed between the date on which the application for a basic patent was lodged and the date of the first authorization to place the product on the market in the Community, reduced by a period of five years.
2. Notwithstanding paragraph 1, the duration of the certificate may not exceed five years from the date on which it takes effect.
3. For the purposes of calculating the duration of the certificate, account shall be taken of a provisional first marketing authorization only if it is directly followed by a definitive authorization concerning the same product.

Article 14 **Expiry of the certificate**

The certificate shall lapse:

- (a) at the end of the period provided for in Article 13;
- (b) if the certificate-holder surrenders it;
- (c) if the annual fee laid down in accordance with Article 12 is not paid in time;
- (d) if and as long as the product covered by the certificate may no longer be placed on the market following the withdrawal of the appropriate authorization or authorizations to place it on the market in accordance with Article 4 of Directive 91 /414/EEC or equivalent provisions of national law. The authority referred to in Article 9(1) may decide on the lapse of the certificate either on its own initiative or at the request of a third party.

Article 15 **Invalidity of the certificate**

1. The certificate shall be invalid if:
 - (a) it was granted contrary to the provisions of Article 3;
 - (b) the basic patent has lapsed before its lawful term expires;
 - (c) the basic patent is revoked or limited to the extent that the product for which the certificate was granted would no longer be protected by the claims of the basic patent or, after the basic patent has expired, grounds for revocation exist which would have justified such revocation or limitation .
2. Any person may submit an application or bring an action for a declaration of invalidity of the certificate before the body responsible under national law for the revocation of the corresponding basic patent.

Article 16 **Notification of lapse or invalidity**

If the certificate lapses in accordance with Article 14 (b), (c) or (d) or is invalid in accordance with Article 15, notification thereof shall be published by the authority referred to in Article 9(1).

Article 17 **Appeals**

1. The decisions of the authority referred to in Article 9(1) or of the body referred to in Article 15(2) taken under this Regulation shall be open to the same appeals as those provided for in national law against similar decisions taken in respect of national patents.
2. The decision to grant the certificate shall be open to an appeal aimed at rectifying the duration of the certificate where the date of the first authorization to place the product on the market in the Community, contained in the application for a certificate as provided for in Article 8, is incorrect.

Article 18 **Procedure**

1. In the absence of procedural provisions in this Regulation, the procedural provisions applicable under national law to the corresponding basic patent and, where appropriate, the procedural provisions applicable to the certificates referred to in Regulation (EEC) No 1768/92, shall apply



to the certificate, unless national law lays down special procedural provisions for certificates as referred to in this Regulation.

2. Notwithstanding paragraph 1, the procedure for opposition to the granting of a certificate shall be excluded.

Article 19 **Transitional Provisions 1**

1. Any product which, on the date on which this Regulation enters into force, is protected by a valid basic patent and for which the first authorization to place it on the market as a plant protection product in the Community was obtained after 1 January 1985 under Article 4 of Directive 91/414/EEC or an equivalent national provision may be granted a certificate.
2. An application made under paragraph 1 for a certificate shall be submitted within six months of the date on which this Regulation enters into force.

Article 20 **Transitional Provisions 2**

In those Member States whose national law did not, on 1 January 1990, provide for the patentability of plant protection products, this Regulation shall apply from 2 January 1998.
Article 19 shall not apply in those Member States.

Article 21 **Final Provision - Entry into force**

This Regulation shall enter into force six months after its publication in the Official Journal of the European Communities.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 July 1996.



Regulation (EU) No 2020/1783 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (taking of evidence)

Preamble

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (OJ C 62, 15.2.2019, p. 56),

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure (*Position of the European Parliament of 13 February 2019 (not yet published in the Official Journal) and position of the Council at first reading of 4 November 2020 (not yet published in the Official Journal). Position of the European Parliament of 23 November 2020 (not yet published in the Official Journal)*),

Whereas:

- (1) Council Regulation (EC) No 1206/2001 (*Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters (OJ L 174, 27.6.2001, p. 1)*) has been amended before. Since further substantial amendments are to be made, that Regulation should be recast in the interests of clarity.



- (2) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is ensured. To establish such an area, the Union is to adopt, among other measures, measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (3) For the purposes of the proper functioning of the internal market and the development of an area of civil justice in the Union, it is necessary to further improve and expedite cooperation between the courts of the different Member States in relation to the taking of evidence. This Regulation seeks to improve the effectiveness and speed of judicial proceedings by simplifying and streamlining the mechanisms for cooperation in the taking of evidence in cross-border proceedings, while at the same time helping to reduce delays and costs for individuals and businesses. Providing greater legal certainty and simpler, streamlined and digitalised procedures will encourage individuals and businesses to engage in cross-border transactions, thereby boosting trade within the Union and thus the functioning of the internal market.
- (4) This Regulation lays down rules on cooperation between the courts of the different Member States in relation to the taking of evidence in civil or commercial matters.
- (5) For the purposes of this Regulation, the term 'court' should also be understood to mean authorities that exercise judicial functions, that act pursuant to a delegation of power by a judicial authority or that act under the control of a judicial authority, and that are competent under national law to take evidence for the purposes of judicial proceedings in civil or commercial matters. This includes in particular authorities that qualify as courts under other Union legal acts, such as Council Regulation (EU) 2019/1111 (*Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (OJ L 178, 2.7.2019, p. 1)*) and Regulations (EU) No 1215/2012 (*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 (OJ L 351, 20.12.2012, p. 1)*) and (EU) No 650/2012 (*Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters*



of succession and on the creation of a European Certificate of Succession (OJ L 201, 27.7.2012, p. 107)) of the European Parliament and of the Council.

- (6) To ensure the utmost clarity and legal certainty, the request for the taking of evidence should be transmitted on a form completed in the language of the Member State of the requested court or in another language accepted by that Member State. For the same reasons, forms should also be used as much as possible for further communication between the relevant courts.
- (7) In order to ensure speedy transmission of requests and communications between Member States for the purposes of taking of evidence, any appropriate modern communications technology should be used. Therefore, as a rule, all communication and exchange of documents should be carried out through a secure and reliable decentralised IT system comprising national IT systems that are interconnected and technically interoperable, for example, and without prejudice to further technological progress, based on e-CODEX. Accordingly, a decentralised IT system should be established for data exchanges under this Regulation. The decentralised nature of that IT system would enable data exchanges exclusively between one Member State and another, without any of the Union institutions being involved in those exchanges.
- (8) Without prejudice to possible future technological progress, the secure decentralised IT system and its components should not be understood to necessarily constitute a qualified electronic registered delivery service as defined by Regulation (EU) No 910/2014 of the European Parliament and of the Council (*Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73)*).
- (9) The Commission should be responsible for the creation, maintenance and future development of reference implementation software which Member States should be able to use instead of a national IT system, in accordance with the principles of data protection by design and by default. The Commission should design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles laid down in Regulations (EU) 2018/1725 (*Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the*

processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39)) and (EU) 2016/679 (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1)) of the European Parliament and of the Council, in particular the principles of data protection by design and by default. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring a level of security and interoperability which is appropriate for the exchange of information in the context of the taking of evidence.

- (10) In relation to the components of the decentralised IT system which are under the responsibility of the Union, the managing entity should have sufficient resources in order to ensure the proper functioning of that system.
- (11) The competent authority or authorities under national law should be responsible as controllers within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data that they carry out under this Regulation for the transmission of requests and other communications between Member States.
- (12) Transmission through the decentralised IT system could become impossible due to a disruption of the system or the nature of the evidence, for example when transmitting DNA or blood samples. Other means of communication could be more appropriate also in exceptional circumstances, which could include situations in which converting voluminous documentation into electronic form would impose a disproportionate administrative burden on the competent authorities or whereby the original document is needed in paper format to assess its authenticity. Where the decentralised IT system is not used, transmission should be carried out by the most appropriate alternative means. Such alternative means should entail, inter alia, transmission being performed as swiftly as possible and in a secure manner by other secure electronic means or by postal service.
- (13) In order to enhance electronic cross-border transmission of documents through the decentralised IT system, such documents should not be denied legal effect and should not be



considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form. However, that principle should be without prejudice to the assessment of the legal effects or the admissibility of such documents as evidence in accordance with national law. It should also be without prejudice to national law regarding the conversion of documents.

- (14) This Regulation should be without prejudice to the ability of authorities to exchange information under systems established under other Union instruments, such as Regulation (EU) 2019/1111 or Council Regulation (EC) No 4/2009 (*Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations* (OJ L 7, 10.1.2009, p. 1)), even where that information has evidentiary value, thus leaving the choice of the most appropriate method to the requesting authority.
- (15) Requests for the taking of evidence should be executed expeditiously. If it is not possible for a request to be executed within 90 days of its receipt by the requested court, the requested court should inform the requesting court accordingly, stating the reasons which prevent it from executing the request swiftly.
- (16) To ensure that this Regulation is effective, the circumstances in which it is possible to refuse to execute a request for the taking of evidence should be confined to strictly limited exceptional situations.
- (17) The requested court should execute a request for the taking of evidence in accordance with its national law.
- (18) The parties to the proceedings and their representatives, if any, should be able to be present at the taking of evidence, if that is provided for by the law of the Member State of the requesting court, in order to be able to follow the proceedings in a comparable way as if evidence were taken in the Member State of the requesting court. They should also have the right to request to participate in the taking of evidence in order to have a more active role in the taking of evidence. However, the conditions under which they may participate should be determined by the requested court in accordance with its national law.
- (19) The representatives of the requesting court should be able to be present at the taking of evidence, if that is compatible with the law of the Member State of the requesting court, in order to be in a better position to evaluate the evidence. They should also have the right to request to



participate in the taking of evidence, under the conditions laid down by the requested court in accordance with its national law, in order to have a more active role in the taking of evidence.

- (20) In order to facilitate the taking of evidence, it should be possible for a court of a Member State, in accordance with its national law, to take evidence directly in another Member State, if the request for direct taking of evidence is accepted by the latter, and under the conditions determined by the central body or competent authority of the requested Member State.
- (21) Modern communications technology, for example videoconferencing, which is an important means of simplifying and accelerating the taking of evidence, is currently not used to its full potential. Where evidence is to be taken by examining a person such as a witness, a party to the proceedings or an expert present in another Member State, the requesting court should take that evidence directly using videoconferencing or other distance communications technology, where that technology is available to the court and the court considers the use of such technology to be appropriate with regard to the specific circumstances of the case and the fair conduct of the proceedings. Video conferencing could also be used to hear a child as provided for in Regulation (EU) 2019/1111. However, where the central body or competent authority of the requested Member State deems certain conditions to be necessary, direct taking of evidence should be done under those conditions in accordance with the law of that Member State. The central body or competent authority of the requested Member State should be able to refuse the direct taking of evidence wholly or partially, if such direct taking of evidence would be contrary to fundamental principles of the law of that Member State.
- (22) Where evidence is to be taken by examining a person using videoconferencing or other distance communications technology, the requesting court, upon its request, should be provided with assistance in finding an interpreter, including in finding a certified interpreter where specifically requested.
- (23) The court seised of the proceedings should provide the parties and their legal representatives with instructions as to the procedure for presenting documents or other material when the examinations are conducted using video conferencing or other appropriate distance communications technology.
- (24) In order to facilitate the taking of evidence by diplomatic agents or consular officers, such persons should be able to, in the territory of another Member State and within the area in which



they are accredited, take evidence without the need for a prior request, by hearing, without the use of coercive measures, nationals of the Member State which they represent, in the context of proceedings pending in the courts of the Member State which they represent. However, it should be left to the discretion of the Member State whether its diplomatic agents or consular officers have the power to take evidence as part of their functions.

- (25) The taking of evidence by diplomatic agents or consular officers should take place at the premises of the diplomatic mission or consulate except in exceptional circumstances. Such circumstances could include the fact that the person to be heard is unable to come to the premises because of a serious illness.
- (26) The execution of a request for evidence to be taken in accordance with this Regulation should not give rise to a claim for reimbursement of taxes or costs. Nevertheless, if the requested court requires reimbursement, the fees paid to experts and interpreters, as well as the costs occasioned by execution in accordance with a special procedure provided for by national law or by the use of distance communications technology, should not be borne by that court. In such a case, the requesting court should take the necessary measures to ensure reimbursement without delay. Where the opinion of an expert is required, the requested court should be able, before executing the request, to ask the requesting court for an adequate deposit or advance towards the costs.
- (27) In order to update the forms in Annex I to this Regulation or to make technical changes to those forms, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to that Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.



- (28) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council (*Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers* (OJ L 55, 28.2.2011, p. 13)).
- (29) This Regulation should prevail over the provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States that have the same scope of application as this Regulation. This Regulation does not preclude Member States from maintaining or concluding agreements or arrangements to further facilitate cooperation in the taking of evidence, provided that those agreements or arrangements are compatible with this Regulation.
- (30) It is essential that effective means of obtaining, preserving and presenting evidence are available and that rights of defence are respected and confidential information is protected. In this context, it is important to encourage the use of modern technology.
- (31) The procedures for taking, preserving and presenting evidence should ensure that procedural rights, as well as privacy and the integrity and confidentiality of personal data, are protected in accordance with Union and national law.
- (32) It is important to ensure that this Regulation is applied in compliance with Union data protection law and that the application of this Regulation respects the protection of privacy as enshrined in the Charter of Fundamental Rights of the European Union. It is also important to ensure that any processing of personal data under this Regulation is undertaken in accordance with Regulation (EU) 2016/679, Directive 2002/58/EC of the European Parliament and of the Council (*Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)* (OJ L 201, 31.7.2002, p. 37)), as well as Regulation (EU) 2018/1725. Personal data should be processed under this Regulation only for the specific purposes set out herein.



- (33) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission should evaluate this Regulation on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of this Regulation and the need for any further action. Where Member States collect data on the numbers of requests transmitted and requests executed, as well as the number of cases in which transmission was performed by means other than through the decentralised IT system, they should provide the Commission with such data for monitoring purposes. The reference implementation software developed by the Commission as a back-end system should programmatically collect the data necessary for monitoring purposes and such data should be transmitted to the Commission. Where Member States choose to use a national IT system instead of the reference implementation software developed by the Commission that system may be equipped to programmatically collect those data and in that case those data should be transmitted to the Commission.
- (34) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States but can rather, by reason of the creation of a simplified legal framework ensuring the direct, effective and speedy transmission of requests and communications concerning the taking of evidence, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (35) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 13 September 2019 (OJ C 370, 31.10.2019, p. 24).
- (36) In order to make its provisions more easily accessible and readable, Regulation (EC) No 1206/2001 should be repealed and replaced by this Regulation.
- (37) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Regulation.



(38) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Chapter I General Provisions

Article 1 Scope

1. This Regulation applies in civil or commercial matters in which the court of a Member State, in accordance with the law of that Member State, requests:
 - (a) the competent court of another Member State to take evidence; or
 - (b) the taking of evidence directly in another Member State.
2. A request shall not be made to obtain evidence which is not intended for use in judicial proceedings that have already commenced or are being contemplated.

Article 2 Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘court’ means courts and other authorities in Member States as communicated to the Commission under Article 31(3), that exercise judicial functions, that act pursuant to a delegation of power by a judicial authority or that act under the control of a judicial authority, and which are competent under national law to take evidence for the purposes of judicial proceedings in civil or commercial matters;
- (2) ‘decentralised IT system’ means a network of national IT systems and interoperable access points operating under the individual responsibility and management of each Member State, that enables the secure and reliable cross-border exchange of information between the national IT systems.



Article 3 **Direct transmission between courts**

1. Requests referred to in point (a) of Article 1(1) shall be transmitted by the court before which the proceedings are commenced or contemplated ('requesting court'), directly to the competent court of another Member State ('requested court'), for the taking of evidence.
2. Each Member State shall draw up a list of the courts competent to take evidence in accordance with this Regulation. The list shall also indicate the territorial and, where applicable, the special jurisdiction of those courts.

Article 4 **Central body**

1. Each Member State shall designate a central body that is responsible for:
 - (a) supplying information to the courts;
 - (b) seeking solutions to any difficulties which may arise in respect of a request;
 - (c) forwarding, in exceptional cases, a request to the competent court at the request of a requesting court.
2. Federal Member States, Member States in which several legal systems apply and Member States with autonomous territorial units shall be free to designate more than one central body.
3. Each Member State shall also designate the central body referred to in paragraph 1 of this Article or one or more competent authorities to be responsible for taking decisions on requests made pursuant to Article 19.

Chapter II Transmission and Execution of Requests

Section 1 Transmission of requests

Article 5 **Form and content of requests**

1. Requests shall be made using form A or, where appropriate, form L in Annex I. Each request shall contain the following details:
 - (a) the requesting and, where appropriate, the requested court;
 - (b) the names and addresses of the parties to the proceedings and their representatives, if any;
 - (c) the nature and subject matter of the case and a brief statement of the facts;

- (d) a description of the taking of evidence requested;
 - (e) where the request is for the examination of a person:
 - the name and address of the person to be examined,
 - the questions to be put to the person to be examined or a statement of the facts about which that person is to be examined,
 - where appropriate, a reference to the right to refuse to testify under the law of the Member State of the requesting court,
 - any requirement that the examination be carried out under oath or affirmation instead of an oath, and any special form to be used for such oath or affirmation,
 - where appropriate, any other information that the requesting court deems necessary;
 - (f) where the request is for any form of taking of evidence other than that mentioned in point (e), the documents or other objects to be inspected;
 - (g) where appropriate, any request pursuant to Article 12(3) or (4), or Article 13 or 14 and any information necessary for the execution thereof.
2. The request and all accompanying documents shall be exempt from the need for authentication or any equivalent formality.
 3. Documents which the requesting court considers necessary to enclose for the execution of the request shall be accompanied by a translation of the documents in the language in which the request was written.

Article 6 Language

Requests and communications made pursuant to this Regulation shall be drawn up in the official language of the requested Member State or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where the requested taking of evidence is to take place, or in another language which that Member State has indicated it will accept.

Each Member State shall communicate to the Commission any official language of the Union other than its own in which the forms set out in Annex I may be completed.



Article 7 **Transmission of requests and other communications**

1. Requests and communications made pursuant to this Regulation shall be transmitted through a secure and reliable decentralised IT system with due respect for fundamental rights and freedoms. That decentralised IT system shall be based on an interoperable solution such as e-CODEX.
2. The general legal framework for the use of qualified trust services set out in Regulation (EU) No 910/2014 shall apply to the requests and communications transmitted through the decentralised IT system.
3. Where requests and communications referred to in paragraph 1 of this Article require or feature a seal or handwritten signature, qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 may be used instead.
4. Where transmission in accordance with paragraph 1 is not possible due to the disruption of the decentralised IT system or to the nature of the evidence concerned, or due to exceptional circumstances, the transmission shall be carried out by the swiftest, most appropriate alternative means, taking into account the need to ensure reliability and security.

Article 8 **Legal effects of electronic documents**

Documents that are transmitted through the decentralised IT system shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form.

Section 2 Receipt of requests

Article 9 **Receipt of requests**

1. Within 7 days of the receipt of a request, the requested competent court shall send an acknowledgement of receipt to the requesting court using form B in Annex I. Where the request does not comply with the conditions laid down in Articles 6 and 7, the requested court shall enter a note to that effect in the acknowledgement of receipt.
2. Where the requested court does not have jurisdiction to execute a request, made using form A in Annex I, which complies with the conditions laid down in Article 6, that court shall forward the



request to the competent court of its Member State and shall inform the requesting court thereof using form C in Annex I.

Article 10 **Incomplete requests**

1. If a request cannot be executed because it does not contain all of the necessary information referred to in Article 5, the requested court shall inform the requesting court thereof without delay and, at the latest, within 30 days of receipt of the request using form D in Annex I, and shall request the requesting court to send the missing information, specifying the information missing as precisely as possible.
2. If a request cannot be executed because a deposit or advance has been requested in accordance with Article 22(3), the requested court shall inform the requesting court thereof without delay, at the latest within 30 days of receipt of the request using form D in Annex I, and shall inform the requesting court how the deposit or advance is to be made. The requested court shall acknowledge receipt of the deposit or advance without delay, at the latest within 10 days of receiving the deposit or the advance, using form E in Annex I.

Article 11 **Completion of the request**

1. If the requested court has noted on the acknowledgement of receipt pursuant to Article 9(1) that the request does not comply with the conditions laid down in Articles 6 and 7 or has informed the requesting court pursuant to Article 10 that the request cannot be executed because it does not contain all of the necessary information referred to in Article 5, the time limit laid down in Article 12 shall begin to run when the requested court has received the duly completed request.
2. Where the requested court has asked for a deposit or advance in accordance with Article 22(3), the time limit laid down in Article 12 shall begin to run when the deposit or the advance is made.

Section 3 Taking of evidence by the requested court

Article 12 General provisions on the execution of a request

1. The requested court shall execute the request without delay and, at the latest, within 90 days of receipt of the request.
2. The requested court shall execute the request in accordance with its national law.
3. The requesting court may call for the request to be executed in accordance with a special procedure provided for in its national law, using form A in Annex I. The requested court shall execute the request in accordance with the special procedure unless doing so would be incompatible with its national law or it is unable to do so because of major practical difficulties. If the requested court does not comply with the call for the request to be executed in accordance with a special procedure for one of those reasons, it shall inform the requesting court using form H in Annex I.
4. The requesting court may ask the requested court to use specific communications technology in the taking of evidence, in particular by using videoconferencing or teleconferencing.

The requested court shall use the communications technology specified pursuant to the first subparagraph unless doing so would be incompatible with its national law or the requested court is unable to do so because of major practical difficulties.

If the requested court does not use the specified communications technology for one of those reasons, it shall inform the requesting court using form H in Annex I.

If the communications technology referred to in the first subparagraph is not available in the requesting or in the requested court, those courts may make such communications technology available by mutual agreement.

Article 13 Taking of evidence with the presence and participation of the parties

1. If the law of the Member State of the requesting court so provides, the parties and their representatives, if any, shall have the right to be present at the taking of evidence by the requested court.
2. In its request, the requesting court shall inform the requested court, using form A in Annex I, that the parties and their representatives, if any, will be present and, where appropriate, that their

participation in the taking of evidence is requested. This information may also be given at any other appropriate time.

3. If the participation of the parties and their representatives, if any, is requested in the taking of evidence, the requested court shall determine the conditions under which they may participate, in accordance with Article 12.
4. The requested court shall notify the parties and their representatives, if any, of the time and the place where the taking of evidence will take place and, where appropriate, of the conditions under which they may participate in the taking of evidence, using form I in Annex I.
5. Paragraphs 1 to 4 are without prejudice to the ability of the requested court to request the parties and their representatives, if any, to be present at or to participate in the taking of evidence if provided for by the law of its Member State.

Article 14

Taking of evidence with the presence and participation of representatives of the requesting court

1. Where compatible with the law of the Member State of the requesting court, representatives of the requesting court shall have the right to be present in the taking of evidence by the requested court.
2. For the purposes of this Article, the term ‘representative’ includes judicial personnel designated by the requesting court in accordance with its national law. The requesting court may also designate any other person, such as an expert, in accordance with its national law.
3. In its request, the requesting court shall inform the requested court, using form A in Annex I, that its representatives will be present and, where appropriate, that their participation in the taking of evidence is requested. This information may also be given at any other appropriate time.
4. If the participation of the representatives of the requesting court is requested in the taking of evidence, the requested court shall determine, in accordance with Article 12, the conditions under which they may participate.
5. The requested court shall notify the requesting court of the time and the place where the taking of evidence will take place and, where appropriate, of the conditions under which its representatives may participate in the taking of evidence, using form I in Annex I.



Article 15 **Coercive measures**

Where necessary, in executing a request the requested court shall apply the appropriate coercive measures in the instances and to the extent as are provided for by the law of the Member State of the requested court for the execution of a request made for the same purpose by its national authorities or one of the parties concerned.

Article 16 **Refusals to execute requests**

1. A request for the examination of a person shall not be executed where the person concerned invokes the right to refuse to give evidence or is prohibited from giving evidence:
 - (a) under the law of the Member State of the requested court; or
 - (b) under the law of the Member State of the requesting court, and such right or prohibition has been specified in the request, or, if necessary, at the instance of the requested court, has been confirmed by the requesting court.
2. The execution of a request may only be refused on grounds other than those referred to in paragraph 1, where one or more of the following grounds applies:
 - (a) the request does not fall within the scope of this Regulation;
 - (b) the execution of the request does not fall within the functions of the judiciary under the law of the Member State of the requested court;
 - (c) the requesting court does not comply with the request of the requested court to complete the request for the taking of evidence pursuant to Article 10 within 30 days of the requested court asking it to do so; or
 - (d) a deposit or advance asked for in accordance with Article 22(3) is not made within 60 days of the requested court asking for such a deposit or advance.
3. A requested court shall not refuse to execute a request solely on the ground that under its national law another court of that Member State has exclusive jurisdiction over the subject matter of the case or that the law of that Member State would not admit the right of action on the subject matter.

4. If the execution of a request is refused on one of the grounds referred to in paragraph 2, the requested court shall notify the requesting court thereof within 60 days of receipt of the request by the requested court using form K in Annex I.

Article 17 **Notification of delay**

If the requested court is not in a position to execute the request within 90 days of receipt of the request, it shall inform the requesting court thereof using form J in Annex I. When it does so, it shall give the grounds for the delay as well as the estimated time it expects it will need to execute the request.

Article 18 **Procedure after the execution of the request**

The requested court shall send to the requesting court the documents confirming the execution of the request, without delay and, where appropriate, shall return the documents received from the requesting court. Those documents shall be accompanied by a confirmation of execution using form K in Annex I.

Section 4 Direct taking of evidence by the requesting court and taking of evidence by diplomatic agents or consular officers

Article 19 **Direct taking of evidence by the requesting court**

1. Where a court requests the taking of evidence directly in another Member State, it shall submit a request to the central body or to the competent authority of that Member State, using form L in Annex I.
2. The direct taking of evidence may only take place if it can be carried out on a voluntary basis without the use of coercive measures. Where the direct taking of evidence implies that a person has to be examined, the requesting court shall inform that person that the taking of evidence shall take place on a voluntary basis.
3. The direct taking of evidence shall be carried out by a member of the judicial personnel or by any other person, such as an expert, who is designated in accordance with the law of the Member State of the requesting court.



4. Within 30 days of receiving the request for the direct taking of evidence, the central body or the competent authority of the requested Member State shall inform the requesting court as to whether the request has been accepted and, if necessary, shall inform the requesting court of the conditions under which the direct taking of evidence is to be carried out according to the law of its Member State, using form M in Annex I. The central body or the competent authority may assign a court of its Member State to take part in the direct taking of evidence in order to ensure that this Article is properly applied and that the conditions under which the direct taking of evidence is to be carried out are complied with.
5. Where the requesting court has not received information within 30 days of acknowledgement of receipt of the request for the direct taking of evidence as to whether the request has been accepted, it may send a reminder to the central body or competent authority of the requested Member State. If the requesting court does not receive a reply within 15 days of the acknowledgement of receipt of the reminder, the request for the direct taking of evidence shall be considered accepted. However, in extraordinary circumstances where the central body or competent authority was prevented from reacting to the request within the deadline following the reminder, grounds for the refusal of direct taking of evidence may exceptionally still be invoked at any time after the expiration of that deadline until the moment of the actual direct taking of evidence.
6. The central body or the competent authority of the requested Member State may assign a court of its Member State to provide practical assistance in the direct taking of evidence.
7. The central body or the competent authority of the requested Member State may refuse a request for direct taking of evidence only if:
 - (a) it does not fall within the scope of this Regulation;
 - (b) it does not contain all of the necessary information referred to in Article 5; or
 - (c) the direct taking of evidence requested is contrary to fundamental principles of law in its Member State.
8. Without prejudice to any conditions laid down in accordance with paragraph 4, the requesting court shall conduct the direct taking of evidence in accordance with the law of its Member State.



Article 20 **Direct taking of evidence by videoconferencing or other distance communications technology**

1. Where evidence is to be taken by examining a person who is present in another Member State, and the court requests the taking of evidence directly in accordance with Article 19, that court shall take evidence using videoconferencing or other distance communications technology provided that such technology is available to the court and the court considers the use of such technology to be appropriate in the specific circumstances of the case.
2. A request for the direct taking of evidence using videoconferencing or other distance communications technology shall be made using form N in Annex I. The requesting court and the central body or the competent authority of the requested Member State or the court assigned to provide practical assistance in the direct taking of evidence shall agree on the practical arrangements for the examination.
Upon request, the requesting court shall be provided with assistance in finding an interpreter if necessary.

Article 21 **Taking of evidence by diplomatic agents or consular officers**

Member States may provide in their national law for their courts to be able to request their diplomatic agents or consular officers in the territory of another Member State and within the area in which they are accredited to take evidence at the premises of the diplomatic mission or consulate, except in exceptional circumstances, without the need for a prior request, by hearing, on a voluntary basis and without the use of coercive measures, nationals of the Member State which they represent in the context of proceedings pending in the courts of the Member State which they represent. The requested diplomatic agent or consular officer shall execute the request in accordance with the law of his or her Member State.

Section 5 Costs

Article 22 **Costs**

1. The execution of a request for the taking of evidence in accordance with Article 12 shall not give rise to any claim for the reimbursement of taxes or costs.



2. By way of derogation from paragraph 1, the requested court may require the reimbursement of taxes or costs. If the requested court so requires, the requesting court shall ensure that the following are reimbursed without delay:
 - the fees paid to experts and interpreters, and
 - the costs occasioned by the application of Article 12(3) and (4).

The obligation of the parties to bear such fees or costs shall be governed by the law of the Member State of the requesting court.

3. Where the opinion of an expert is required, before executing the request for the taking of evidence, the requested court may ask the requesting court for an adequate deposit or advance towards the anticipated costs of the expert opinion. In all other cases, a deposit or advance shall not be a condition for the execution of a request for the taking of evidence.

The deposit or advance shall be made by the parties if that is provided for by the law of the Member State of the requesting court.

Chapter III Final Provisions

Article 23 Manual and amendment of Annex I

1. The Commission shall draw up and regularly update a manual containing the information provided by the Member States in accordance with Article 31 and the agreements or arrangements in force, in accordance with Article 29(3). It shall make the manual available electronically, in particular through the European Judicial Network in Civil and Commercial Matters and on the European e-Justice Portal.
2. The Commission is empowered to adopt delegated acts in accordance with Article 24 to amend Annex I in order to update the forms set out therein or to make technical changes to those forms.

Article 24 Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 23(2) shall be conferred on the Commission for a period of 5 years from 22 December 2020. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.
3. The delegation of power referred to in Article 23(2) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 23(2) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or of the Council.

Article 25 Adoption of implementing acts by the Commission

1. The Commission shall adopt implementing acts establishing the decentralised IT system, setting out the following:
 - (a) the technical specification defining the methods of communication by electronic means for the purposes of the decentralised IT system;
 - (b) the technical specifications for communication protocols;



- (c) the information security objectives and relevant technical measures ensuring minimum information security standards for the processing and communication of information within the decentralised IT system;
 - (d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
 - (e) the establishment of a steering committee comprising representatives of the Member States to ensure the operation and maintenance of the decentralised IT system in order to meet the objectives of this Regulation.
2. The implementing acts referred to in paragraph 1 of this Article shall be adopted by 23 March 2022 in accordance with the examination procedure referred to in Article 26(2).

Article 26 **Committee procedure**

- 1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 27 **Reference implementation software**

- 1. The Commission shall be responsible for the creation, maintenance and future development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and future development of the reference implementation software shall be financed from the general budget of the Union.
- 2. The Commission shall provide, maintain and support on a free-of-charge basis implementation of the software components underlying the access points.

Article 28 **Costs of the decentralised IT system**

- 1. Each Member State shall bear the costs of the installation, operation and maintenance of its access points interconnecting the national IT systems in the context of the decentralised IT system.



2. Each Member State shall bear the costs of establishing and adjusting its national IT systems to make them interoperable with the access points, and shall bear the costs of administering, operating and maintaining those systems.
3. Paragraphs 1 and 2 shall be without prejudice to the possibility of Member States to apply for grants to support the activities referred to in those paragraphs under the Union's financial programmes.

Article 29 Relationship with agreements or arrangements between Member States

1. This Regulation shall prevail in relation to matters to which it applies over other provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States, and in particular the Hague Convention of 1 March 1954 on Civil Procedure and the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters, in relations between the Member States party thereto.
2. This Regulation shall not preclude Member States from maintaining or concluding agreements or arrangements to further facilitate the taking of evidence, provided that those agreements or arrangements are compatible with this Regulation.
3. Member States shall send to the Commission:
 - (a) a copy of any agreements or arrangements referred to in paragraph 2 concluded between the Member States, as well as drafts of any such agreements or arrangements which they intend to adopt; and
 - (b) any denunciation of, or amendments to, those agreements or arrangements.

Article 30 Protection of information transmitted

1. Any processing of personal data carried out pursuant to this Regulation, including the exchange or transmission of personal data by the competent authorities, shall be in conformity with Regulation (EU) 2016/679.

Any exchange or transmission of information by competent authorities at Union level shall be undertaken in accordance with Regulation (EU) 2018/1725.



Personal data which are not relevant for the handling of a specific case shall be deleted immediately.

2. The competent authority or authorities under national law shall be regarded as controllers within the meaning of Regulation (EU) 2016/679 with respect to personal data processing under this Regulation.
3. Notwithstanding paragraphs 1 and 2, information transmitted under this Regulation shall be used by the requested court only for the purpose for which it was transmitted.
4. Requested courts shall ensure that such information remains confidential, in accordance with their national law.
5. Paragraphs 3 and 4 shall be without prejudice to national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.
6. This Regulation shall be without prejudice to Directive 2002/58/EC.

Article 31 Communication

1. Member States shall communicate to the Commission the following:
 - (a) the list drawn up pursuant to Article 3(2) indicating the territorial and, where applicable, the special jurisdiction of the courts;
 - (b) the names and addresses of the central bodies and competent authorities designated pursuant to Article 4(3), indicating their territorial jurisdiction;
 - (c) the technical means for the receipt of requests available to the courts on the list drawn up pursuant to Article 3(2);
 - (d) the languages accepted for requests, as referred to in Article 6.
2. Member States shall inform the Commission of any subsequent changes to the information referred to in paragraph 1.
3. Each Member State shall communicate to the Commission details of the other authorities that are competent to take evidence for the purposes of judicial proceedings in civil or commercial matters. Member States shall inform the Commission of any subsequent changes to those details.

4. Member States may notify the Commission if they are in a position to operate the decentralised IT system earlier than required by this Regulation. The Commission shall make such information available electronically, in particular through the European e-Justice Portal.

Article 32 Monitoring

1. By 2 July 2023, the Commission shall establish a detailed programme for monitoring the outputs, results and impact of this Regulation.
2. The monitoring programme shall specify the action to be taken by the Commission and by the Member States to monitor the outputs, results and impact of this Regulation. It shall set out when the data referred to in paragraph 3 are to be collected for the first time, which shall be at the latest 2 July 2026, and at what further intervals those data are to be collected.
3. Member States shall provide the Commission with the following data necessary for the purposes of monitoring, where available:
 - (a) the number of requests for the taking of evidence transmitted in accordance with Article 7(1) and Article 19(1) respectively;
 - (b) the number of requests for the taking of evidence executed in accordance with Article 12 and Article 19(8) respectively;
 - (c) the number of cases in which the request for the taking of evidence was transmitted by means other than through the decentralised IT system in accordance with Article 7(4).
4. The reference implementation software and, where equipped to do so, the national back-end system shall programmatically collect the data referred to in points (a) and (b) of paragraph 3 and transmit them to the Commission on a regular basis.

Article 33 Evaluation

1. No later than 5 years after the date of application of Article 7 in accordance with Article 35(3), the Commission shall carry out an evaluation of this Regulation and present a report on its main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by a legislative proposal.

2. Member States shall provide the Commission with the information necessary for the preparation of the report referred to in paragraph 1.

Article 34 **Repeal**

1. Regulation (EC) No 1206/2001 shall be repealed as from the date of application of this Regulation, with the exception of Article 6 of Regulation (EC) No 1206/2001 which shall be repealed as from the date of application of Article 7 referred to in Article 35(3) of this Regulation.
2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 35 **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from 1 July 2022.
2. Article 31(3) shall apply from 23 March 2022.
3. Article 7 shall apply from the first day of the month following the period of 3 years after the date of entry into force of the implementing acts referred to in Article 25.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.
Done at Brussels, 25 November 2020.

Annexes and Forms

Annexes and Forms

Annex I, Annex II, Annex III and Forms A to N are omitted here, for their content see the online version at <http://data.europa.eu/eli/reg/2020/1783/oj>



Regulation (EU) No 2020/1784 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)

Preamble

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee (OJ C 62, 15.2.2019, p. 56),

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure (*Position of the European Parliament of 13 February 2019 (not yet published in the Official Journal) and position of the Council at first reading of 4 November 2020 (not yet published in the Official Journal). Position of the European Parliament of 23 November 2020 (not yet published in the Official Journal)*),

Whereas:

- (1) Regulation (EC) No 1393/2007 of the European Parliament and of the Council (*Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 (OJ L*



324, 10.12.2007, p. 79)) has been amended before. Since further substantial amendments are to be made, that Regulation should be recast in the interests of clarity.

- (2) The Union has set itself the objective of maintaining and developing the Union as an area of freedom, security and justice in which the free movement of persons is ensured. To establish such an area, the Union is to adopt, among other measures, measures relating to judicial cooperation in civil matters needed for the proper functioning of the internal market.
- (3) For the purposes of the proper functioning of the internal market and the development of an area of civil justice in the Union, it is necessary to further improve and expedite the transmission and service of judicial and extrajudicial documents between the Member States in civil and commercial matters, while ensuring a high level of security and protection in the transmission of such documents, safeguarding the rights of addressees and protecting privacy and personal data. This Regulation seeks to improve the effectiveness and speed of judicial procedures by simplifying and streamlining them as regards the service of judicial and extrajudicial documents in the Union, while at the same time helping to reduce delays and costs for individuals and businesses. Providing greater legal certainty and simpler, streamlined and digitalised procedures, will encourage individuals and businesses to engage in cross-border transactions, thereby boosting trade within the Union and thus the functioning of the internal market.
- (4) This Regulation lays down rules on the service of judicial and extrajudicial documents in the Member States in civil or commercial matters. It should not apply to the service of judicial and extrajudicial documents in other matters such as revenue, customs or administrative matters.
- (5) Cross-border service should be construed as service from one Member State to another Member State.
- (6) This Regulation should not apply to the service of documents on a party's authorised representative in the forum Member State, but should apply to the service of any document on a party in another Member State if such service is required under the law of the forum Member State, irrespective of whether the document has been served on the party's representative.
- (7) Where an addressee has no known address for service in the forum Member State, but has one or more known addresses for service in one or more other Member States, the document should be transmitted to such other Member State for service under this Regulation. This



situation should not be construed as domestic service within the forum Member State. In particular, the document should not be served on the addressee by a fictitious method of service, such as service by posting an announcement on the court notice board or by depositing the document in the court file.

- (8) For the purposes of this Regulation, the term ‘extrajudicial documents’ should be understood to include documents that have been drawn up or certified by a public authority or official, and other documents of which the formal transmission to an addressee residing in another Member State is necessary for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law. The term ‘extrajudicial documents’ should not be understood to include documents issued by administrative authorities for the purposes of administrative proceedings.
- (9) Efficiency and speed in judicial proceedings in civil matters require that judicial and extrajudicial documents be transmitted directly and by rapid means between local bodies designated by the Member States. Member States should be able to designate separate transmitting agencies and receiving agencies or to designate one or more agencies to perform both functions for a period of five years. It should, however, be possible to renew that designation every five years.
- (10) In order to ensure the speedy transmission of documents between Member States for the purposes of service, any appropriate modern communications technology should be used, provided that certain conditions as to the integrity and reliability of the document received are met. Therefore, as a rule, all communication and exchange of documents between the agencies and bodies designated by the Member States should be carried out through a secure and reliable decentralised IT system comprising national IT systems that are interconnected and technically interoperable, for example, and without prejudice to further technological progress, based on e-CODEX. Accordingly, a decentralised IT system should be established for data exchanges under this Regulation. The decentralised nature of that IT system would enable data exchanges exclusively between one Member State and another, without any of the Union institutions being involved in those exchanges.
- (11) Without prejudice to possible future technological progress, the secure decentralised IT system and its components should not be understood to necessarily constitute a qualified electronic registered delivery service as defined by Regulation (EU) No 910/2014 of the European Parliament and of the Council (*Regulation (EU) No 910/2014 of the European Parliament and*

of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (OJ L 257, 28.8.2014, p. 73)).

- (12) The Commission should be responsible for the creation, maintenance and future development of reference implementation software which Member States should be able to use instead of a national IT system, in accordance with the principles of data protection by design and by default. The Commission should design, develop and maintain the reference implementation software in compliance with the data protection requirements and principles laid down in Regulations (EU) 2018/1725 (*Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39))* and (EU) 2016/679 (*Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1))* of the European Parliament and of the Council, in particular the principles of data protection by design and by default. The reference implementation software should also include appropriate technical measures and enable the organisational measures necessary for ensuring a level of security and interoperability which is appropriate for the exchange of information in the context of service of documents.
- (13) In relation to the components of the decentralised IT system which are under the responsibility of the Union, the managing entity should have sufficient resources in order to ensure the proper functioning of that system.
- (14) The competent authority or authorities under national law should be responsible as controllers within the meaning of Regulation (EU) 2016/679 in relation to the processing of personal data that they carry out under this Regulation for the transmission of documents between Member States.
- (15) Transmission through the decentralised IT system could become impossible due to a disruption of the system. Other means of communication could be more appropriate also in exceptional



circumstances, which could include situations in which converting voluminous documentation into electronic form would impose a disproportionate administrative burden on the transmitting agency or whereby the original document is needed in paper format to assess its authenticity. Where the decentralised IT system is not used, transmission should be carried out by the most appropriate alternative means. Such alternative means should entail, inter alia, transmission being performed as swiftly as possible and in a secure manner by other secure electronic means or by postal service.

- (16) In order to enhance electronic cross-border transmission of documents through the decentralised IT system, such documents should not be denied legal effect and should not be considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form. However, that principle should be without prejudice to the assessment of the legal effects or the admissibility of such documents as evidence in accordance with national law. It should also be without prejudice to national law regarding the conversion of documents.
- (17) In order to facilitate the transmission and service of documents between Member States, the forms set out in Annex I should be used. The document to be transmitted should be accompanied by a request drawn up using form A in Annex I. The form should be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it can accept. Each Member State should indicate the official language or languages of the Union other than its own which it can accept.
- (18) An acknowledgment of receipt using form D in Annex I should be sent automatically to the transmitting agency through the decentralised IT system or by other means, as soon as possible and in any event within seven days of receipt of the document.
- (19) When it receives a certificate of non-service of documents, it is important for the transmitting agency to know whether the authorities of the Member State addressed have submitted requests to domicile registries or other databases, where such registries or databases exist, for a search for a new address for the person to be served. Therefore, Member States should inform the Commission if their authorities make such requests on their own initiative in cases where the address indicated in the request for service is not correct. However, this Regulation



should not impose an obligation on the authorities of the Member States to make such requests.

- (20) Where a request for service cannot be fulfilled on the basis of the information or the documents transmitted, where it falls outside the scope of this Regulation, where non-compliance with the formal conditions makes the service impossible, or where it was sent to a receiving agency not having territorial jurisdiction, the receiving agency should undertake the steps provided for in this Regulation without a delay that is unjustified, unreasonable and unnecessary in the light of the particular circumstances, including the means of communication at the disposal of the receiving agency.
- (21) Speed in transmission requires documents to be served within days of receipt of the document. The service of documents should be effected as soon as possible, and in any event within one month of their receipt by the receiving agency.
- (22) The receiving agency should continue to take all necessary steps to effect the service of the document even in cases where it has not been possible to effect the service within one month of the receipt of the document, for example, because the defendant was on holiday away from his or her home or was on business away from his or her office. However, in order to avoid an open-ended obligation for the receiving agency to take steps to effect the service of a document, the transmitting agency should be able to specify a time limit after which service is no longer necessary, using form A in Annex I.
- (23) To ensure that this Regulation is effective, the circumstances in which it is possible to refuse the document to be served should be confined to exceptional situations.
- (24) In all cases where the document to be served is not in the official language or one of the official languages of the place of service, the receiving agency should inform the addressee in writing using form L in Annex I that the addressee can refuse to accept the document to be served if it is neither in a language which the addressee understands nor in the official language or one of the official languages of the place of service. This rule should also apply to any subsequent service once the addressee has exercised the right of refusal. The right of refusal should also apply in respect of service by diplomatic agents or consular officers, service by postal services, electronic service and direct service. It should be possible to remedy the service of the refused document by serving a translation of the document on the addressee.



- (25) If a translation is attached to the document to be served, it should be certified or otherwise deemed suitable for proceedings in accordance with the law of the Member State of origin. The translation should be made available to the Member State where service is to take place. The translation of documents into another language for the purpose of ensuring compliance with this Regulation is without prejudice to the ability of the recipient to challenge the correctness of the translation in accordance with the law of the forum Member State.
- (26) If the addressee has refused to accept the document and the court or authority seised of the legal proceedings decides upon verification that the refusal was not justified, that court or authority should consider an appropriate way of informing the addressee of that decision in accordance with national law. For the purposes of verifying whether the refusal was justified the court or authority should take into account all the relevant information on the file in order to determine the language skills of the addressee. Where relevant, when assessing the language skills of the addressee, the court or authority could take into account factual elements, for example documents written by the addressee in the language concerned, whether the addressee's profession involves particular language skills, whether the addressee is a citizen of the forum Member State or whether the addressee previously resided in that Member State for an extended period of time.
- (27) Given the differences between the Member States as regards their rules of procedure, the effective date of service varies from one Member State to another. In the light of such situations and the possible difficulties that may arise, this Regulation should provide for a system under which the law of the Member State addressed determines the date of service. However, where under the law of a Member State a document has to be served within a particular period, the date to be taken into account with respect to the applicant should be that determined by the law of that Member State. That double date system exists only in a limited number of Member States. If Member States apply that system, they should communicate that information to the Commission, which should make that information available electronically through the European Judicial Network in Civil and Commercial Matters established by Council Decision 2001/470/EC (*Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters (OJ L 174, 27.6.2001, p. 25)*) and on the European e-Justice Portal.



- (28) In order to facilitate access to justice, Member States should lay down a single fixed fee for recourse to a judicial officer or a person competent under the law of the Member State addressed. That fee should respect the principles of proportionality and non-discrimination. The requirement of a single fixed fee should not preclude the possibility for Member States to set different fees for different types of service, as long as they respect those principles.
- (29) Each Member State should be free to effect the service of documents by postal services on persons residing in another Member State directly by registered letter with acknowledgement of receipt or equivalent. It should be possible to use a postal service, whether private or public, for the service of documents in different forms of letters, including bundles of letters.
- (30) In line with the established case law of the Court of Justice of the European Union (*Judgment of the Court of Justice of 2 March 2017, Andrew Marcus Henderson v Novo Banco SA, C-354/15, ECLI:EU:C:2017:157*), direct service by postal service under this Regulation should be considered to be validly effected, even if the document was not delivered to the addressee in person, where it was served at the addressee's home address on an adult person who is living in the same household as the addressee or who is employed there by the addressee and who has the ability and is willing to accept the document, unless the law of the forum Member State only allows the service of that document on the addressee in person.
- (31) Efficiency and speed in cross-border judicial proceedings require direct, expedited and secure channels for serving documents on persons in other Member States. Consequently, it should be possible to effect the service of documents directly by electronic means on an addressee who has a known address for service in another Member State. The conditions for the use of such type of direct electronic service should be such as to ensure that electronic service is effected only by electronic means that are available under the law of the forum Member State for the domestic service of documents and should ensure that there are appropriate safeguards for the protection of the interests of the addressee, including high technical standards and a requirement for express consent by the addressee.
- (32) It should be possible for an addressee to be served electronically using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014, provided that the addressee has given prior express consent to use electronic means for the purpose of serving documents in the course of legal proceedings. In such cases, prior express consent



could be given for specific proceedings or as a general consent to the service of documents in the course of legal proceedings by those means of service. That consent could also be given where, under the law of the forum Member State, procedural documents could be served through an electronic system and the addressee has consented to the use of that system in relation to the service of documents before serving documents on the addressee through that system.

- (33) The addressee could be served electronically without the use of qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014, provided that the addressee has given prior express consent to the court or authority seised of the proceedings or to the party responsible for service in those proceedings to use email sent to a specified email address in the course of those proceedings, provided that proof of receipt of the document by the addressee is received. The addressee should confirm receipt of the document by signing and returning an acknowledgement of receipt or by returning an email from the email address furnished by the addressee for service. The acknowledgement of receipt could also be signed electronically. In order to guarantee the security of transmission, Member States could specify additional conditions under which they will accept electronic service by email where their law sets stricter conditions in respect of service by email or where their law does not allow such service by email. Such conditions could address issues such as the identification of the sender and the recipient, the integrity of the documents sent and the protection of the transmission against outside interference.
- (34) It should be possible for any person with an interest in particular judicial proceedings to effect service of documents directly through the judicial officers, officials or other competent persons of the Member State in which the service is sought, provided that such direct service is permitted under the law of that Member State.
- (35) Where national law and this Regulation allow the court to give judgment even if no certificate of service or delivery of the document instituting the proceedings or its equivalent has been received, every reasonable effort should be made to obtain the certificate through the competent authorities or bodies of the Member State addressed before any judgement is given, in compliance with any other requirements safeguarding the interests of the defendant. Unless incompatible with national law, all reasonable efforts should be made to inform the defendant



that court proceedings have been instituted using any available channels of communication, including modern communications technology, for which an address or an account is known to the court seised of the proceedings.

- (36) The Commission should draw up a manual containing information relevant for the proper application of this Regulation. The manual should be made available through the European Judicial Network in Civil and Commercial Matters. The Commission and the Member States should do their utmost to ensure that the information in the manual is up to date and complete, especially as regards the contact details of receiving and transmitting agencies.
- (37) In calculating the periods and time limits provided for in this Regulation, Council Regulation (EEC, Euratom) No 1182/71 (*Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1)*) should apply.
- (38) In order to update the forms in Annex I to this Regulation or to make technical changes to those forms, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to that Annex. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making (OJ L 123, 12.5.2016, p. 1). In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (39) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council (*Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13)*).



- (40) This Regulation should prevail over the provisions contained in bilateral or multilateral agreements or arrangements concluded by the Member States that have the same scope of application as this Regulation, in particular the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters in relations between the Member States party thereto. This Regulation does not preclude Member States from maintaining or concluding agreements or arrangements to expedite or simplify the transmission of documents, provided that those agreements or arrangements are compatible with this Regulation.
- (41) The fundamental rights and freedoms of all persons involved should be fully observed and respected in accordance with Union law, in particular the rights to equal access to justice, to non-discrimination and to the protection of personal data and privacy.
- (42) The information transmitted pursuant to this Regulation should be suitably protected. Such protection falls within the scope of Regulation (EU) 2016/679 and of Directive 2002/58/EC of the European Parliament and of the Council (*Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)* (OJ L 201, 31.7.2002, p. 37)). Personal data which are not relevant for the handling of a specific case should be deleted immediately.
- (43) In accordance with paragraphs 22 and 23 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, the Commission should evaluate this Regulation on the basis of information collected through specific monitoring arrangements in order to assess the actual effects of this Regulation and the need for any further action. Where Member States collect data on the service of documents under this Regulation, in particular information on the numbers of requests transmitted and requests received, the number of cases in which transmission was performed by means other than through the decentralised IT system, the number of certificates of non-service of documents received and the number of notifications of refusal on the grounds of language received by the transmitting agencies, they should provide the Commission with such data for monitoring purposes. The reference implementation software developed by the Commission as a back-end system should programmatically collect the data necessary for monitoring purposes and such data should be transmitted to the



Commission. Where Member States choose to use a national IT system instead of the reference implementation software developed by the Commission, that system may be equipped to programmatically collect those data and, in that case, those data should be transmitted to the Commission.

- (44) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States because of the differences between national rules governing jurisdiction and the recognition and enforcement of decisions, but can rather, by reason of the direct applicability and binding nature of this Regulation, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (45) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 and delivered an opinion on 13 September 2019 (OJ C 370, 31.10.2019, p. 24).
- (46) In order to make its provisions more easily accessible and readable, Regulation (EC) No 1393/2007 should be repealed and replaced by this Regulation.
- (47) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Regulation.
- (48) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:



Chapter I General Provisions

Article 1 Scope

1. This Regulation applies to the cross-border service of judicial and extrajudicial documents in civil or commercial matters. It does not apply, in particular, to revenue, customs or administrative matters or to the liability of a Member State for actions or omissions in the exercise of state authority (*acta iure imperii*).
2. With the exception of Article 7, this Regulation does not apply where the address of the person to be served with a document is not known.
3. This Regulation does not apply to the service of a document in the forum Member State on a representative authorised by the person to be served, regardless of the place of residence of that person.

Article 2 Definitions

For the purposes of this Regulation, the following definitions apply:

- (1) ‘forum Member State’ means the Member State in which the judicial proceedings take place;
- (2) ‘decentralised IT system’ means a network of national IT systems and interoperable access points, operating under the individual responsibility and management of each Member State, that enables the secure and reliable cross-border exchange of information between the national IT systems.

Article 3 Transmitting and receiving agencies

1. Each Member State shall designate the public officers, authorities or other persons competent for the transmission of judicial or extrajudicial documents to be served in another Member State (‘transmitting agencies’).
2. Each Member State shall designate the public officers, authorities or other persons competent for the receipt of judicial or extrajudicial documents from another Member State (‘receiving agencies’).



3. Member States may designate separate transmitting agencies and receiving agencies or designate one or more agencies to perform both functions. Federal Member States, Member States in which several legal systems apply and Member States with autonomous territorial units may designate more than one such agency. The designation shall have effect for a period of five years and may be renewed for further five-year periods.
4. Each Member State shall provide the Commission with the following information:
 - (a) the names and addresses of the receiving agencies referred to in paragraphs 2 and 3;
 - (b) the geographical areas in which those receiving agencies have jurisdiction;
 - (c) the means by which those receiving agencies are able to receive documents where Article 5(4) applies; and
 - (d) the languages that may be used for the completion of the forms set out in Annex I.

Member States shall notify the Commission of any subsequent modification of the information referred to in the first subparagraph.

Article 4 **Central body**

Each Member State shall designate a central body that is responsible for:

- (a) supplying information to the transmitting agencies;
- (b) seeking solutions to any difficulties which may arise during the transmission of documents for service;
- (c) forwarding, in exceptional cases, a request for service to the competent receiving agency at the request of a transmitting agency.

Federal Member States, Member States in which several legal systems apply and Member States with autonomous territorial units may designate more than one central body.

Article 5 **Means of communication to be used by transmitting agencies, receiving agencies and central bodies**

1. Documents to be served, requests, confirmations, receipts, certificates and communications carried out on the basis of the forms in Annex I between transmitting agencies and receiving agencies, between those agencies and the central bodies, or between the central bodies of



different Member States, shall be transmitted through a secure and reliable decentralised IT system. That decentralised IT system shall be based on an interoperable solution such as e-CODEX.

2. The general legal framework for the use of qualified trust services set out in Regulation (EU) No 910/2014 shall apply to the documents to be served, requests, confirmations, receipts, certificates and communications transmitted through the decentralised IT system.
3. Where the documents to be served, requests, confirmations, receipts, certificates and other communications referred to in paragraph 1 of this Article require or feature a seal or handwritten signature, qualified electronic seals or qualified electronic signatures as defined in Regulation (EU) No 910/2014 may be used instead.
4. Where transmission in accordance with paragraph 1 is not possible due to the disruption of the decentralised IT system or due to exceptional circumstances, the transmission shall be carried out by the swiftest, most appropriate alternative means, taking into account the need to ensure reliability and security.

Article 6 **Legal effects of electronic documents**

Documents that are transmitted through the decentralised IT system shall not be denied legal effect or considered inadmissible as evidence in the proceedings solely on the grounds that they are in electronic form.

Article 7 **Assistance in address enquiries**

1. Where the address of the person to be served with the judicial or extrajudicial document in another Member State is not known, that Member State shall provide assistance in determining the address in, at least, one of the following ways:
 - (a) providing for designated authorities to which transmitting agencies may address requests on the determination of the address of the person to be served;
 - (b) allowing persons from other Member States to submit requests, including electronically, for information about addresses of persons to be served directly to domicile registries or other



- publicly accessible databases by means of a standard form available on the European e-Justice Portal; or
- (c) providing detailed information, through the European e-Justice Portal, on how to find the addresses of persons to be served.
2. Each Member State shall provide the Commission with the following information with a view to making it available through the European e-Justice Portal:
- (a) the means of assistance which the Member State will provide in its territory pursuant to paragraph 1;
 - (b) where applicable, the names and contact details of the authorities referred to in points (a) and (b) of paragraph 1;
 - (c) whether the authorities of the Member State addressed submit, on their own initiative, requests to domicile registries or other databases for information about addresses in cases where the address indicated in the request for service is not correct.

Member States shall notify the Commission of any subsequent modification of the information referred to in the first subparagraph.

Chapter II Judicial Documents

Section 1 Transmission and service of judicial documents

Article 8 Transmission of documents

1. Judicial documents shall be transmitted directly and as quickly as possible between the transmitting and receiving agencies.
2. The document to be transmitted shall be accompanied by a request drawn up using form A in Annex I. The form shall be completed in the official language of the Member State addressed or, if there are several official languages in that Member State, in the official language or one of the official languages of the place where service is to be effected, or in another language which that Member State has indicated it will accept.

Each Member State shall communicate to the Commission any official language of the Union other than its own in which the form may be completed.



3. Documents that are transmitted under this Regulation shall be exempt from requirements of legalisation or any equivalent formality.
4. Where the transmitting agency requests that a copy of the document sent in paper format in accordance with Article 5(4) be returned together with the certificate referred to in Article 14, it shall send that document in duplicate.

Article 9 **Translation of documents**

1. The transmitting agency to which the applicant has forwarded the document for transmission shall advise the applicant that the addressee may refuse to accept the document if it is not in one of the languages provided for in Article 12(1).
2. The applicant shall bear any costs of translation prior to the transmission of the document, without prejudice to any possible subsequent decisions by the court or competent authority on liability for such costs.

Article 10 **Receipt of documents by receiving agency**

1. Upon receipt of a document, the receiving agency shall automatically send to the transmitting agency an acknowledgement of receipt as soon as possible through the decentralised IT system or, where the acknowledgement is sent by other means, as soon as possible and in any event within seven days of receipt, using form D in Annex I.
2. Where the request for service cannot be fulfilled on the basis of the information or documents transmitted, the receiving agency shall contact the transmitting agency without undue delay in order to obtain the missing information or documents, using form E in Annex I.
3. Where the request for service is manifestly outside the scope of this Regulation or where non-compliance with the formal conditions required makes service impossible, the request and the documents transmitted shall be returned to the transmitting agency upon receipt, without undue delay, together with a notice of return, using form F in Annex I.
4. Where a receiving agency receives a document for service which it does not have territorial jurisdiction to serve, it shall forward that document without undue delay, together with the request, to the receiving agency that has territorial jurisdiction in the Member State addressed, if



the request complies with the conditions laid down in Article 8(2). The receiving agency shall inform the transmitting agency accordingly at the same time, using form G in Annex I. Upon receipt of the document and the request by the receiving agency having territorial jurisdiction in the Member State addressed, that receiving agency shall send an acknowledgement of receipt to the transmitting agency as soon as possible and in any event within seven days of receipt, using form H in Annex I.

Article 11 **Service of documents**

1. The receiving agency shall itself serve the document or have it served, either in accordance with the law of the Member State addressed or by a particular method requested by the transmitting agency, unless that method is incompatible with the law of that Member State.
2. The receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of its receipt. If it has not been possible to effect the service within one month of receipt of the document, the receiving agency shall:
 - (a) immediately inform the transmitting agency by means of form K in Annex I or, if the transmitting agency has requested information by means of form I in Annex I, by means of form J in Annex I; and
 - (b) continue to take all necessary steps to effect the service of the document where service seems to be possible within a reasonable period of time, unless the transmitting agency indicates that service is no longer necessary.

Article 12 **Refusal to accept a document**

1. The addressee may refuse to accept the document to be served if the document is not written in, or is not accompanied by a translation into, either:
 - (a) a language which the addressee understands; or
 - (b) the official language of the Member State addressed or, if there are several official languages in that Member State, the official language or one of the official languages of the place where service is to be effected.

2. The receiving agency shall inform the addressee of the right provided for in paragraph 1 where the document is not written in, or is not accompanied by a translation into, a language referred to in point (b) of that paragraph, by enclosing with the document to be served form L in Annex I, which shall be provided in:
 - (a) the official language or one of the official languages of the Member State of origin; and
 - (b) a language referred to in point (b) of paragraph 1.

If there is an indication that the addressee understands an official language of another Member State, form L in Annex I shall also be provided in that language.

Where a Member State translates form L in Annex I into a language of a third country, it shall communicate that translation to the Commission with a view to making it available on the European e-Justice Portal.

3. The addressee may refuse to accept the document either at the time of service or within two weeks of the time of service by making a written declaration of refusal of acceptance. For that purpose, the addressee may either return to the receiving agency form L in Annex I or a written declaration stating that the addressee refuses to accept the document because of the language in which it was served.
4. Where the receiving agency is informed that the addressee refuses to accept the document pursuant to paragraphs 1, 2 and 3, it shall immediately inform the transmitting agency by means of the certificate of service or non-service, using form K in Annex I, and return the request and, where available, each document of which a translation is requested.
5. The service of the refused document may be remedied through the service on the addressee, in accordance with this Regulation, of that document together with a translation into a language provided for in paragraph 1. In such a case, the date of service of the document shall be the date on which the document and its translation were served in accordance with the law of the Member State addressed. However, where the law of a Member State requires a document to be served within a particular period, the date to be taken into account with respect to the applicant shall be the date of the service of the initial document, determined in accordance with Article 13(2).
6. Paragraphs 1 to 5 apply also to the other means of transmission and service of judicial documents provided for in Section 2.



7. For the purposes of paragraphs 1 and 2, the diplomatic agents or consular officers in cases where service is effected in accordance with Article 17, and the authority or person in cases where service is effected in accordance with Article 18, 19 or 20 shall inform the addressee that the addressee may refuse to accept the document and that either form L in Annex I or a written declaration of refusal must be sent to those agents or officers or to that authority or person respectively.

Article 13 **Date of service**

1. Without prejudice to Article 12(5), the date of service effected pursuant to Article 11 shall be the date on which the document was served in accordance with the law of the Member State addressed.
2. However, where the law of a Member State requires a document be served within a particular period, the date to be taken into account with respect to the applicant shall be that determined by the law of that Member State.
3. This Article also applies to the other means of transmission and service of judicial documents provided for in Section 2.

Article 14 **Certificate of service and copy of the document served**

1. Upon completion of the formalities concerning the service of the document in question, the receiving agency shall draw up a certificate of completion of those formalities using form K in Annex I and send it to the transmitting agency, together with, where Article 8(4) applies, a copy of the document served.
2. The certificate referred to in paragraph 1 shall be completed in the official language or one of the official languages of the Member State of origin or in another language which the Member State of origin has indicated that it will accept. Each Member State shall indicate any official language of the Union other than its own in which form K in Annex I may be completed.



Article 15 **Costs of service**

1. The service of judicial documents originating in a Member State shall not give rise to any obligation for the payment or reimbursement of taxes or costs for services rendered by the Member State addressed.
2. By way of derogation from paragraph 1, the applicant shall pay or reimburse the costs of:
 - (a) recourse to a judicial officer or to a person competent under the law of the Member State addressed;
 - (b) the use of a particular method of service.

Member States shall lay down a single fixed fee for recourse to a judicial officer or to a person competent under the law of the Member State addressed. That fee shall be in accordance with the principles of proportionality and non-discrimination. Member States shall communicate such fixed fees to the Commission.

Section 2 Other means of transmission and service of judicial documents

Article 16 **Transmission by diplomatic or consular channels**

In exceptional circumstances, each Member State may use diplomatic or consular channels to transmit judicial documents for the purpose of service to the receiving agencies or central bodies of another Member State.

Article 17 **Service by diplomatic agents or consular officers**

1. Each Member State may effect service of judicial documents on persons residing in another Member State, without the use of coercive measures, directly through its diplomatic agents or consular officers.
2. A Member State may communicate to the Commission that it is opposed to service of judicial documents, as referred to in paragraph 1, within its territory, unless the documents are to be served on nationals of the Member State in which the documents originate.



Article 18 **Service by postal services**

The service of judicial documents may be effected directly by postal services on persons present in another Member State by registered letter with acknowledgement of receipt or equivalent.

Article 19 **Electronic service**

1. The service of judicial documents may be effected directly on a person who has a known address for service in another Member State by any electronic means of service available under the law of the forum Member State for the domestic service of documents, provided that:
 - (a) the documents are sent and received using qualified electronic registered delivery services within the meaning of Regulation (EU) No 910/2014 and the addressee gave prior express consent to the use of electronic means for serving documents in the course of legal proceedings; or
 - (b) the addressee gave prior express consent to the court or authority seized of the proceedings or to the party responsible for service of documents in such proceedings to the use of email sent to a specified email address for the purpose of serving documents in the course of those proceedings and the addressee confirms receipt of the document with an acknowledgement of receipt, including the date of receipt.
2. In order to guarantee the security of transmission, any Member State may specify and communicate to the Commission the additional conditions under which it will accept electronic service referred to in point (b) of paragraph 1, where its law sets stricter conditions in that respect or does not allow electronic service by email.

Article 20 **Direct service**

1. Any person with an interest in particular judicial proceedings may effect the service of judicial documents directly through the judicial officers, officials or other competent persons of the Member State in which the service is sought, provided that such direct service is permitted under the law of that Member State.
2. A Member State that allows direct service shall provide the Commission with information regarding which professions or competent persons are permitted to effect the direct service of

documents in their territory. The Commission shall make that information available through the European e-Justice Portal.

Chapter III Extrajudicial Documents

Article 21 Transmission and service of extrajudicial documents

Extrajudicial documents may be transmitted to and served in another Member State in accordance with this Regulation.

Chapter IV Final Provisions

Article 22 Defendant not entering an appearance

1. Where a document instituting proceedings or its equivalent has had to be transmitted to another Member State for the purpose of service under this Regulation and the defendant has not entered an appearance, judgment shall not be given until it is established that the service or the delivery of the document was effected in sufficient time to enable the defendant to enter a defence and that:
 - (a) the document was served by a method prescribed by the law of the Member State addressed for the service of documents in domestic actions upon persons who are within its territory; or
 - (b) the document was in fact delivered to the defendant or to the defendant's residence by another method provided for by this Regulation.
2. Each Member State may communicate to the Commission the fact that a court, notwithstanding paragraph 1, may give judgment even if no certificate of service or delivery of the document instituting proceedings or its equivalent has been received, provided that all the following conditions are fulfilled:
 - (a) the document was transmitted by one of the methods provided for in this Regulation;
 - (b) a period considered adequate by the court in the particular case, which shall not be less than six months, has elapsed since the date of the transmission of the document;

- (c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain one through the competent authorities or bodies of the Member State addressed.

That information shall be made available through the European e-Justice Portal.

- 3. Notwithstanding paragraphs 1 and 2, in justified cases of urgency courts may order any provisional or protective measures.
- 4. Where a document instituting proceedings or its equivalent has had to be transmitted to another Member State for the purpose of service in accordance with this Regulation and a judgment has been given against a defendant who has not entered an appearance, the judge shall have the power to relieve the defendant from the effects of the expiry of the time for appeal from the judgment where both of the following conditions are fulfilled:
 - (a) the defendant, without any fault on the defendant's part, did not have knowledge of the document in sufficient time to enter a defence or did not have knowledge of the judgment in sufficient time to appeal; and
 - (b) the defendant has raised a prima facie defence to the action on the merits.

An application for such relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Member State may communicate to the Commission the fact that an application for relief will not be admissible if it is filed after the expiry of a deadline set by the Member State in that communication. That deadline shall in no case be sooner than one year following the date of the judgment. That information shall be made available through the European e-Justice Portal.

- 5. Paragraph 4 shall not apply to judgments concerning the status or capacity of persons.

Article 23 **Amendment of Annex I**

The Commission is empowered to adopt delegated acts in accordance with Article 24 to amend Annex I in order to update the forms set out therein or to make technical changes to those forms.



Article 24 **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 23 shall be conferred on the Commission for a period of five years from 22 December 2020. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Article 23 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 23 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 25 **Adoption of implementing acts by the Commission**

1. The Commission shall adopt implementing acts establishing the decentralised IT system, setting out the following:

- (a) the technical specifications defining the methods of communication by electronic means for the purposes of the decentralised IT system;
 - (b) the technical specifications for communication protocols;
 - (c) the information security objectives and relevant technical measures ensuring minimum information security standards for the processing and communication of information within the decentralised IT system;
 - (d) the minimum availability objectives and possible related technical requirements for the services provided by the decentralised IT system;
 - (e) the establishment of a steering committee comprising representatives of the Member States to ensure the operation and maintenance of the decentralised IT system in order to meet the objectives of this Regulation.
2. The implementing acts referred to in paragraph 1 of this Article shall be adopted by 23 March 2022 in accordance with the examination procedure referred to in Article 26(2).

Article 26 **Committee procedure**

- 1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
- 2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 27 **Reference implementation software**

- 1. The Commission shall be responsible for the creation, maintenance and future development of reference implementation software which Member States may choose to apply as their back-end system instead of a national IT system. The creation, maintenance and future development of the reference implementation software shall be financed from the general budget of the Union.
- 2. The Commission shall provide, maintain and support on a free-of-charge basis implementation of the software components underlying the access points.



Article 28 **Costs of the decentralised IT system**

1. Each Member State shall bear the costs of the installation, operation and maintenance of its access points interconnecting the national IT systems in the context of the decentralised IT system.
2. Each Member State shall bear the costs of establishing and adjusting its national IT systems to make them interoperable with the access points and shall bear the costs of administering, operating and maintaining those systems.
3. Paragraphs 1 and 2 shall be without prejudice to the possibility of Member States to apply for grants to support the activities referred to in those paragraphs under the Union's financial programmes.

Article 29 **Relationship with agreements or arrangements between Member States**

1. This Regulation shall prevail in relation to matters to which it applies over other provisions contained in bilateral or multilateral agreements or arrangements concluded by Member States, and in particular the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, in relations between the Member States party thereto.
2. This Regulation shall not preclude Member States from maintaining or concluding agreements or arrangements to expedite or further simplify the transmission of documents, provided that those agreements or arrangements are compatible with this Regulation.
3. Member States shall send to the Commission:
 - (a) a copy of any agreements or arrangements referred to in paragraph 2 concluded between the Member States, as well as drafts of any such agreements or arrangements which they intend to adopt; and
 - (b) any denunciation of, or amendments to, those agreements or arrangements.



Article 30 **Legal aid**

This Regulation shall not affect the application of Article 24 of the Hague Convention of 1 March 1954 on Civil Procedure or Article 13 of the Convention on International Access to Justice of 25 October 1980 between the Member States party to those Conventions.

Article 31 **Protection of information transmitted**

1. Any processing of personal data carried out pursuant to this Regulation, including the exchange or transmission of personal data by the competent authorities, shall be in conformity with Regulation (EU) 2016/679.

Any exchange or transmission of information by competent authorities at Union level shall be undertaken in accordance with Regulation (EU) 2018/1725.

Personal data which are not relevant for the handling of a specific case shall be deleted immediately.

2. The competent authority or authorities under national law shall be regarded as controllers within the meaning of Regulation (EU) 2016/679 with respect to personal data processing under this Regulation.
3. Notwithstanding paragraphs 1 and 2, information transmitted under this Regulation shall be used by the receiving agency only for the purpose for which it was transmitted.
4. Receiving agencies shall ensure that such information remains confidential, in accordance with their national law.
5. Paragraphs 3 and 4 shall be without prejudice to national laws enabling data subjects to be informed of the use made of information transmitted under this Regulation.
6. This Regulation shall be without prejudice to Directive 2002/58/EC.

Article 32 **Respect for fundamental rights under Union law**

The fundamental rights and freedoms of all persons involved shall be fully observed and respected in accordance with Union law, in particular the rights to equal access to justice, to non-discrimination and to the protection of personal data and privacy.

Article 33 Communication, publication and manual

1. Member States shall communicate to the Commission the information referred to in Articles 3, 7, 12, 14, 17, 19, 20 and 22.
Member States shall communicate to the Commission if their national law requires a document to be served within a particular period as referred to in Articles 12(5) and 13(2).
2. Member States may notify the Commission if they are in a position to operate the decentralised IT system earlier than required by this Regulation. The Commission shall make such information available electronically, in particular through the European e-Justice Portal.
3. The Commission shall publish the information communicated in accordance with paragraph 1 in the Official Journal of the European Union, with the exception of the addresses and other contact details of the agencies and of the central bodies and the geographical areas in which they have jurisdiction.
4. The Commission shall draw up and regularly update a manual containing the information referred to in paragraph 1. It shall make the manual available electronically, in particular through the European Judicial Network in Civil and Commercial Matters and on the European e-Justice Portal.

Article 34 Monitoring

1. By 2 July 2023, the Commission shall establish a detailed programme for monitoring the outputs, results and impact of this Regulation.
2. The monitoring programme shall specify the action to be taken by the Commission and by the Member States to monitor the outputs, results and impact of this Regulation. It shall set out when the data referred to in paragraph 3 are to be collected for the first time, which shall be at the latest 2 July 2026, and at what further intervals those data are to be collected.
3. Member States shall provide the Commission with the following data necessary for the purposes of monitoring, where available:
 - (a) the number of requests for the service of documents transmitted in accordance with Article 8;
 - (b) the number of requests for the service of documents executed in accordance with Article 11;



- (c) the number of cases in which the request for the service of documents was transmitted by means other than through the decentralised IT system in accordance with Article 5(4);
 - (d) the number of received certificates of non-service of documents;
 - (e) the number of refusals of documents for language reasons received by the transmitting agencies.
4. The reference implementation software and, where equipped to do so, the national back-end system shall programmatically collect the data referred to in points (a), (b) and (d) of paragraph 3 and transmit them to the Commission on a regular basis.

Article 35 **Evaluation**

1. No later than five years after the date of application of Article 5 in accordance with Article 37(2), the Commission shall carry out an evaluation of this Regulation and present a report on its main findings to the European Parliament, the Council and the European Economic and Social Committee, accompanied, where appropriate, by a legislative proposal.
2. Member States shall provide the Commission with the information necessary for the preparation of the report referred to in paragraph 1.

Article 36 **Repeal**

1. Regulation (EC) No 1393/2007 shall be repealed as from the date of application of this Regulation, with the exception of Articles 4 and 6 of Regulation (EC) No 1393/2007, which shall be repealed as from the date of application of Articles 5, 8 and 10 referred to in Article 37(2) of this Regulation.
2. References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex III.

Article 37 **Entry into force and application**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.



It shall apply from 1 July 2022.

2. Articles 5, 8 and 10 shall apply from the first day of the month following the period of three years after the date of entry into force of the implementing acts referred to in Article 25.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.
Done at Brussels, 25 November 2020.

Annexes and Forms

Annexes and Forms

Annex I, Annex II, Annex III and Forms A to L are omitted here, for their content see the online version at <http://data.europa.eu/eli/reg/2020/1784/oj>

International

The Hague Convention (Service abroad)

This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under “Conventions” or under the “Service Section”. For the full history of the Convention, see Hague Conference on Private International Law, Actes et documents de la Dixième session (1964), Tome III, Notification (391 pp.).

Preamble The States signatory to the present Convention,
Desiring to create appropriate means to ensure that judicial and extrajudicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time,
Desiring to improve the organisation of mutual judicial assistance for that purpose by simplifying and expediting the procedure,
Have resolved to conclude a Convention to this effect and have agreed upon the following provisions:

Article 1 The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad. This Convention shall not apply where the address of the person to be served with the document is not known.

Chapter I – Judicial Documents

Article 2 Each Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6. Each State shall organise the Central Authority in conformity with its own law.

Article 3 The authority or judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other

equivalent formality. The document to be served or a copy thereof shall be annexed to the request. The request and the document shall both be furnished in duplicate.

Article 4 If the Central Authority considers that the request does not comply with the provisions of the present Convention it shall promptly inform the applicant and specify its objections to the request.

Article 5 The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –

- a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
- b) by a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.

Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.

If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.

That part of the request, in the form attached to the present Convention, which contains a summary of the document to be served, shall be served with the document.

Article 6 The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention. The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service. The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities. The certificate shall be forwarded directly to the applicant.



- Article 7** The standard terms in the model annexed to the present Convention shall in all cases be written either in French or in English. They may also be written in the official language, or in one of the official languages, of the State in which the documents originate.
The corresponding blanks shall be completed either in the language of the State addressed or in French or in English.
- Article 8** Each Contracting State shall be free to effect service of judicial documents upon persons abroad, without application of any compulsion, directly through its diplomatic or consular agents.
Any State may declare that it is opposed to such service within its territory, unless the document is to be served upon a national of the State in which the documents originate.
- Article 9** Each Contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another Contracting State which are designated by the latter for this purpose.
Each Contracting State may, if exceptional circumstances so require, use diplomatic channels for the same purpose.
- Article 10** Provided the State of destination does not object, the present Convention shall not interfere with –
- a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
 - b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
 - c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.
- Article 11** The present Convention shall not prevent two or more Contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding Articles and, in particular, direct communication between their respective authorities.

Article 12 The service of judicial documents coming from a Contracting State shall not give rise to any payment or reimbursement of taxes or costs for the services rendered by the State addressed.
The applicant shall pay or reimburse the costs occasioned by —

- a) the employment of a judicial officer or of a person competent under the law of the State of destination,
- b) the use of a particular method of service.

Article 13 Where a request for service complies with the terms of the present Convention, the State addressed may refuse to comply therewith only if it deems that compliance would infringe its sovereignty or security.
It may not refuse to comply solely on the ground that, under its internal law, it claims exclusive jurisdiction over the subject-matter of the action or that its internal law would not permit the action upon which the application is based.
The Central Authority shall, in case of refusal, promptly inform the applicant and state the reasons for the refusal.

Article 14 Difficulties which may arise in connection with the transmission of judicial documents for service shall be settled through diplomatic channels.

Article 15 Where a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and the defendant has not appeared, judgment shall not be given until it is established that —

- a) the document was served by a method prescribed by the internal law of the State addressed for the service of documents in domestic actions upon persons who are within its territory, or
- b) the document was actually delivered to the defendant or to his residence by another method provided for by this Convention, and that in either of these cases the service or the delivery was effected in sufficient time to enable the defendant to defend.



Each Contracting State shall be free to declare that the judge, notwithstanding the provisions of the first paragraph of this Article, may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –

- a) the document was transmitted by one of the methods provided for in this Convention,
- b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

Notwithstanding the provisions of the preceding paragraphs the judge may order, in case of urgency, any provisional or protective measures.

Article 16

When a writ of summons or an equivalent document had to be transmitted abroad for the purpose of service, under the provisions of the present Convention, and a judgment has been entered against a defendant who has not appeared, the judge shall have the power to relieve the defendant from the effects of the expiration of the time for appeal from the judgment if the following conditions are fulfilled –

- a) the defendant, without any fault on his part, did not have knowledge of the document in sufficient time to defend, or knowledge of the judgment in sufficient time to appeal, and
- b) the defendant has disclosed a prima facie defence to the action on the merits.

An application for relief may be filed only within a reasonable time after the defendant has knowledge of the judgment.

Each Contracting State may declare that the application will not be entertained if it is filed after the expiration of a time to be stated in the declaration, but which shall in no case be less than one year following the date of the judgment.

This Article shall not apply to judgments concerning status or capacity of persons.

Chapter II – Extrajudicial Documents

Article 17 Extrajudicial documents emanating from authorities and judicial officers of a Contracting State may be transmitted for the purpose of service in another Contracting State by the methods and under the provisions of the present Convention.

Chapter III – General Clauses

Article 18 Each Contracting State may designate other authorities in addition to the Central Authority and shall determine the extent of their competence.
The applicant shall, however, in all cases, have the right to address a request directly to the Central Authority.
Federal States shall be free to designate more than one Central Authority.

Article 19 To the extent that the internal law of a Contracting State permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Article 20 The present Convention shall not prevent an agreement between any two or more Contracting States to dispense with –

- a) the necessity for duplicate copies of transmitted documents as required by the second paragraph of Article 3,
- b) the language requirements of the third paragraph of Article 5 and Article 7,
- c) the provisions of the fourth paragraph of Article 5,
- d) the provisions of the second paragraph of Article 12.

Article 21 Each Contracting State shall, at the time of the deposit of its instrument of ratification or accession, or at a later date, inform the Ministry of Foreign Affairs of the Netherlands of the following –

- a) the designation of authorities, pursuant to Articles 2 and 18,
- b) the designation of the authority competent to complete the certificate pursuant to Article 6,

- c) the designation of the authority competent to receive documents transmitted by consular channels, pursuant to Article 9.

Each Contracting State shall similarly inform the Ministry, where appropriate, of –

- a) opposition to the use of methods of transmission pursuant to Articles 8 and 10,
- b) declarations pursuant to the second paragraph of Article 15 and the third paragraph of Article 16,
- c) all modifications of the above designations, oppositions and declarations.

Article 22 Where Parties to the present Convention are also Parties to one or both of the Conventions on civil procedure signed at The Hague on 17th July 1905, and on 1st March 1954, this Convention shall replace as between them Articles 1 to 7 of the earlier Conventions.

Article 23 The present Convention shall not affect the application of Article 23 of the Convention on civil procedure signed at The Hague on 17th July 1905, or of Article 24 of the Convention on civil procedure signed at The Hague on 1st March 1954.
These Articles shall, however, apply only if methods of communication, identical to those provided for in these Conventions, are used.

Article 24 Supplementary agreements between Parties to the Conventions of 1905 and 1954 shall be considered as equally applicable to the present Convention, unless the Parties have otherwise agreed.

Article 25 Without prejudice to the provisions of Articles 22 and 24, the present Convention shall not derogate from Conventions containing provisions on the matters governed by this Convention to which the Contracting States are, or shall become, Parties.

Article 26 The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.
It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.



Article 27

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of Article 26.
The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

Article 28

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of Article 27. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.
The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.
In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

Article 29

Any State may, at the time of signature, ratification or accession, declare that the present Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect on the date of entry into force of the Convention for the State concerned.
At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.
The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

Article 30

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 27, even for States which have ratified it or acceded to it subsequently.
If there has been no denunciation, it shall be renewed tacitly every five years.



Any denunciation shall be notified to the Ministry of Foreign Affairs of the Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 31

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in Article 26, and to the States which have acceded in accordance with Article 28, of the following –

- a) the signatures and ratifications referred to in Article 26;
- b) the date on which the present Convention enters into force in accordance with the first paragraph of Article 27;
- c) the accessions referred to in Article 28 and the dates on which they take effect;
- d) the extensions referred to in Article 29 and the dates on which they take effect;
- e) the designations, oppositions and declarations referred to in Article 21;
- f) the denunciations referred to in the third paragraph of Article 30.



Convention on the Grant of European Patents (European Patent Convention)

of 5 October 1973 as revised by the Act revising Article 63 EPC of 17 December 1991 and the Act revising the EPC of 29 November 2000 (The new text of the Convention adopted by the Administrative Council of the European Patent Organisation by decision of 28 June 2001 (see OJ EPO 2001, Special edition No. 4, p. 55) has become an integral part of the Revision Act of 29 November 2000 under Article 3(2), second sentence, of that Act)

Footnotes and cross-references are added for the convenience of the reader; they do not form part of the official text.

Preamble

Preamble

The Contracting States,

DESIRING to strengthen co-operation between the States of Europe in respect of the protection of inventions,

DESIRING that such protection may be obtained in those States by a single procedure for the grant of patents and by the establishment of certain standard rules governing patents so granted,

DESIRING, for this purpose, to conclude a Convention which establishes a European Patent Organisation and which constitutes a special agreement within the meaning of Article 19 of the Convention for the Protection of

Industrial Property, signed in Paris on 20 March 1883 and last revised on 14 July 1967, and a regional patent treaty within the meaning of Article 45, paragraph 1, of the Patent Cooperation Treaty of 19 June 1970,

HAVE AGREED on the following provisions:



Part I General and Institutional Provisions

Chapter I General provisions

Article 1 European law for the grant of patents

A system of law, common to the Contracting States, *(there are currently 38 Contracting States: AL, AT, BE, BG, CH, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IS, IT, LI, LT, LU, LV, MC, MK, MT, NL, NO, PL, PT, RO, RS, SE, SI, SK, SM, TR.)* for the grant of patents for invention is established by this Convention.

Article 2 European patent

Art. 63-65, 68, 69, 70, 99-105c, 142
R. 75, 85, 89, 90-96

- (1) Patents granted under this Convention shall be called European patents.
- (2) The European patent shall, in each of the Contracting States for which it is granted, have the effect of and be subject to the same conditions as a national patent granted by that State, unless this Convention provides otherwise.

Article 3 Territorial effect

Art. 79, 149
R. 39

The grant of a European patent may be requested for one or more of the Contracting States.

Article 4 European Patent Organisation

(See decisions of the Enlarged Board of Appeal G 5/88, G 7/88, G 8/88, G 1/04 (Annex I)).

- (1) A European Patent Organisation, hereinafter referred to as the Organisation, is established by this Convention. It shall have administrative and financial autonomy.
- (2) The organs of the Organisation shall be:
 - (a) the European Patent Office;
 - (b) the Administrative Council.
- (3) The task of the Organisation shall be to grant European patents. This shall be carried out by the European Patent Office supervised by the Administrative Council.



Article 4a

Conference of ministers of the Contracting States

Art. 4

(Inserted by the Act revising the European Patent Convention of 29.11.2000)

A conference of ministers of the Contracting States responsible for patent matters shall meet at least every five years to discuss issues pertaining to the Organisation and to the European patent system.

Chapter II The European Patent Organisation

Article 5

Legal status

(See decisions of the Enlarged Board of Appeal G 5/88, G 7/88, G 8/88 (Annex I).)

- (1) The Organisation shall have legal personality.
- (2) In each of the Contracting States, the Organisation shall enjoy the most extensive legal capacity accorded to legal persons under the national law of that State; it may in particular acquire or dispose of movable and immovable property and may be a party to legal proceedings.
- (3) The President of the European Patent Office shall represent the Organisation.

Article 6

Headquarters

(See decisions of the Enlarged Board of Appeal G 5/88, G 7/88, G 8/88 (Annex I).)

- (1) The Organisation shall have its headquarters in Munich.
- (2) The European Patent Office shall be located in Munich. It shall have a branch at The Hague.

Article 7

Sub-offices of the European Patent Office

Art. 35

(See decisions of the Enlarged Board of Appeal G 5/88, G 7/88, G 8/88 (Annex I).)
By decision of the Administrative Council, sub-offices of the European Patent Office may be created, if need be, for the purpose of information and liaison, in the Contracting States and with



intergovernmental organisations in the field of industrial property, subject to the approval of the Contracting State or organisation concerned.

Article 8 **Privileges and immunities**

The Protocol on Privileges and Immunities annexed to this Convention shall define the conditions under which the Organisation, the members of the Administrative Council, the employees of the European Patent Office, and such other persons specified in that Protocol as take part in the work of the Organisation, shall enjoy, in each Contracting State, the privileges and immunities necessary for the performance of their duties.

Article 9 **Liability**

- (1) The contractual liability of the Organisation shall be governed by the law applicable to the contract in question.
- (2) The non-contractual liability of the Organisation in respect of any damage caused by it or by the employees of the European Patent Office in the performance of their duties shall be governed by the law of the Federal Republic of Germany. Where the damage is caused by the branch at The Hague or a sub-office or employees attached thereto, the law of the Contracting State in which such branch or sub-office is located shall apply.
- (3) The personal liability of the employees of the European Patent Office towards the Organisation shall be governed by their Service Regulations or conditions of employment.
- (4) The courts with jurisdiction to settle disputes under paragraphs 1 and 2 shall be:
 - (a) for disputes under paragraph 1, the courts of the Federal Republic of Germany, unless the contract concluded between the parties designates a court of another State;
 - (b) for disputes under paragraph 2, the courts of the Federal Republic of Germany, or of the State in which the branch or sub-office is located.



Chapter III The European Patent Office

Article 10 Management

R. 9, 11

(See decisions/opinions of the Enlarged Board of Appeal G 5/88, G 7/88, G 8/88, G 1/02 (Annex I).)

- (1) The European Patent Office shall be managed by the President, who shall be responsible for its activities to the Administrative Council.
- (2) To this end, the President shall have in particular the following functions and powers:
 - (a) he shall take all necessary steps to ensure the functioning of the European Patent Office, including the adoption of internal administrative instructions and information to the public;
 - (b) unless this Convention provides otherwise, he shall prescribe which acts are to be performed at the European Patent Office in Munich and its branch at The Hague respectively;
 - (c) he may submit to the Administrative Council any proposal for amending this Convention, for general regulations, or for decisions which come within the competence of the Administrative Council;
 - (d) he shall prepare and implement the budget and any amending or supplementary budget;
 - (e) he shall submit a management report to the Administrative Council each year;
 - (f) he shall exercise supervisory authority over the staff;
 - (g) subject to Article 11, he shall appoint the employees and decide on their promotion;
 - (h) he shall exercise disciplinary authority over the employees other than those referred to in Article 11, and may propose disciplinary action to the Administrative Council with regard to employees referred to in Article 11, paragraphs 2 and 3;
 - (i) he may delegate his functions and powers.
- (3) *(See decision of the Administrative Council of 06.07.1978 on substitution for the President of the EPO (OJ EPO 1978, 326).)* The President shall be assisted by a number of Vice-Presidents. If the President is absent or indisposed, one of the Vice-Presidents shall take his place in accordance with the procedure laid down by the Administrative Council.



Article 11 Appointment of senior employees

Art. 21, 22, 35

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The President of the European Patent Office shall be appointed by the Administrative Council.
- (2) The Vice-Presidents shall be appointed by the Administrative Council after the President of the European Patent Office has been consulted.
- (3) The members, including the Chairmen, of the Boards of Appeal and of the Enlarged Board of Appeal shall be appointed by the Administrative Council on a proposal from the President of the European Patent Office. They may be re-appointed by the Administrative Council after the President of the European Patent Office has been consulted.
- (4) The Administrative Council shall exercise disciplinary authority over the employees referred to in paragraphs 1 to 3.
- (5) The Administrative Council, after consulting the President of the European Patent Office, may also appoint as members of the Enlarged Board of Appeal legally qualified members of the national courts or quasi-judicial authorities of the Contracting States, who may continue their judicial activities at the national level. They shall be appointed for a term of three years and may be reappointed.

Article 12 Duties of office

Employees of the European Patent Office shall be bound, even after the termination of their employment, neither to disclose nor to make use of information which by its nature is a professional secret.

Article 13 Disputes between the Organisation and the employees of the European Patent Office

- (1) Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation, in accordance with the Statute of the Tribunal and within the limits and subject to the conditions laid down in the Service Regulations for permanent employees or the Pension Scheme Regulations or arising from the conditions of employment of other employees.



- (2) An appeal shall only be admissible if the person concerned has exhausted such other means of appeal as are available to him under the Service Regulations, the Pension Scheme Regulations or the conditions of employment.

Article 14

Languages of the European Patent Office, European patent applications and other documents

Art. 70, 80, 90, 92, 93, 97, 98, 103, 127, 129
R. 3-7, 36, 40, 49, 61, 68, 112

(Amended by the Act revising the European Patent Convention of 29.11.2000. See decisions of the Enlarged Board of Appeal G 6/91, G 2/95, G 4/08 (Annex I).

- (1) The official languages of the European Patent Office shall be English, French and German.
- (2) A European patent application shall be filed in one of the official languages or, if filed in any other language, translated into one of the official languages in accordance with the Implementing Regulations. Throughout the proceedings before the European Patent Office, such translation may be brought into conformity with the application as filed. If a required translation is not filed in due time, the application shall be deemed to be withdrawn.
- (3) The official language of the European Patent Office in which the European patent application is filed or into which it is translated shall be used as the language of the proceedings in all proceedings before the European Patent Office, unless the Implementing Regulations provide otherwise.
- (4) Natural or legal persons having their residence or principal place of business within a Contracting State having a language other than English, French or German as an official language, and nationals of that State who are resident abroad, may file documents which have to be filed within a time limit in an official language of that State. They shall, however, file a translation in an official language of the European Patent Office in accordance with the Implementing Regulations. If any document, other than those documents making up the European patent application, is not filed in the prescribed language, or if any required translation is not filed in due time, the document shall be deemed not to have been filed.
- (5) European patent applications shall be published in the language of the proceedings.



- (6) Specifications of European patents shall be published in the language of the proceedings and shall include a translation of the claims in the other two official languages of the European Patent Office.
- (7) The following shall be published in the three official languages of the European Patent Office:
 - (a) the European Patent Bulletin;
 - (b) the Official Journal of the European Patent Office.
- (8) Entries in the European Patent Register shall be made in the three official languages of the European Patent Office. In cases of doubt, the entry in the language of the proceedings shall be authentic.

Article 15 **Departments entrusted with the procedure** Art. 16-22, 143
(See *opinion of the Enlarged Board of Appeal G 1/02 (Annex I).*) R. 8-13

To carry out the procedures laid down in this Convention, the following shall be set up within the European Patent Office:

- (a) a Receiving Section;
- (b) Search Divisions;
- (c) Examining Divisions;
- (d) Opposition Divisions;
- (e) a Legal Division;
- (f) Boards of Appeal;
- (g) an Enlarged Board of Appeal.

Article 16 **Receiving Section** Art. 15
(Amended by the Act revising the European Patent Convention of 29.11.2000.) R. 10, 11

The Receiving Section shall be responsible for the examination on filing and the examination as to formal requirements of European patent applications.



Article 17 **Search Divisions** Art. 15, 92
(Amended by the Act revising the European Patent Convention of 29.11.2000.)
R. 11, 61-65

The Search Divisions shall be responsible for drawing up European search reports.

Article 18 **Examining Divisions** Art. 15, 33, 94, 97
R. 10, 11, 70, 159

- (1) The Examining Divisions shall be responsible for the examination of European patent applications.
- (2) (See opinion of the Enlarged Board of Appeal G 1/02 (Annex I).) An Examining Division shall consist of three technically qualified examiners. However, before a decision is taken on a European patent application, its examination shall, as a general rule, be entrusted to one member of the Examining Division. Oral proceedings shall be before the Examining Division itself. If the Examining Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner. In the event of parity of votes, the vote of the Chairman of the Examining Division shall be decisive.

Article 19 **Opposition Divisions** Art. 99
(See decision/opinion of the Enlarged Board of Appeal G 5/91, G 1/02 (Annex I).)
R. 11, 75-89

- (1) The Opposition Divisions shall be responsible for the examination of oppositions against any European patent.
- (2) An Opposition Division shall consist of three technically qualified examiners, at least two of whom shall not have taken part in the proceedings for grant of the patent to which the opposition relates. An examiner who has taken part in the proceedings for the grant of the European patent may not be the Chairman. Before a decision is taken on the opposition, the Opposition Division may entrust the examination of the opposition to one of its members. Oral proceedings shall be before the Opposition Division itself. If the Opposition Division considers that the nature of the decision so requires, it shall be enlarged by the addition of a legally qualified examiner who shall



not have taken part in the proceedings for grant of the patent. In the event of parity of votes, the vote of the Chairman of the Opposition Division shall be decisive.

Article 20

Legal Division

Art. 15, 127, 134, 134a
R. 11

(See decisions of the President of the EPO of 21.11.2013 concerning the responsibilities of the Legal Division (OJ EPO 2013, 600) and concerning the entrustment to non-legally qualified staff of certain duties incumbent on the Legal Division (OJ EPO 2013, 601).)

- (1) The Legal Division shall be responsible for decisions in respect of entries in the Register of European Patents and in respect of registration on, and deletion from, the list of professional representatives.
- (2) Decisions of the Legal Division shall be taken by one legally qualified member.

Article 21

Boards of Appeal

Art. 11, 15, 106
R. 12a, 12b, 12c, 12d, 97, 98

(Amended by the Act revising the European Patent Convention of 29.11.2000. See decisions/opinions of the Enlarged Board of Appeal G 2/90, G 8/95, G 1/02, G 3/03, G 1/11 (Annex I).)

- (1) The Boards of Appeal shall be responsible for the examination of appeals from decisions of the Receiving Section, the Examining Divisions and Opposition Divisions, and the Legal Division.
- (2) For appeals from decisions of the Receiving Section or the Legal Division, a Board of Appeal shall consist of three legally qualified members.
- (3) For appeals from a decision of an Examining Division, a Board of Appeal shall consist of:
 - (a) two technically qualified members and one legally qualified member, when the decision concerns the refusal of a European patent application or the grant, limitation or revocation of a European patent, and was taken by an Examining Division consisting of less than four members;



- (b) three technically and two legally qualified members, when the decision was taken by an Examining Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires;
- (c) three legally qualified members in all other cases.
- (4) For appeals from a decision of an Opposition Division, a Board of Appeal shall consist of:
 - (a) two technically qualified members and one legally qualified member, when the decision was taken by an Opposition Division consisting of three members;
 - (b) three technically and two legally qualified members, when the decision was taken by an Opposition Division consisting of four members, or when the Board of Appeal considers that the nature of the appeal so requires.

Article 22 Enlarged Board of Appeal

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

Art. 11, 15, 112, 112a
R. 12a, 12b, 12c, 12d, 13, 109

- (1) The Enlarged Board of Appeal shall be responsible for:
 - (a) deciding on points of law referred to it by Boards of Appeal under Article 112;
 - (b) giving opinions on points of law referred to it by the President of the European Patent Office under Article 112;
 - (c) deciding on petitions for review of decisions of the Boards of Appeal under Article 112a.
- (2) In proceedings under paragraph 1(a) and (b), the Enlarged Board of Appeal shall consist of five legally and two technically qualified members. In proceedings under paragraph 1(c), the Enlarged Board of Appeal shall consist of three or five members as laid down in the Implementing Regulations. In all proceedings, a legally qualified member shall be the Chairman.

Article 23 Independence of the members of the Boards

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

Art. 11
R. 12a, 12b, 12c, 12d, 13

- (1) The members of the Enlarged Board of Appeal and of the Boards of Appeal shall be appointed for a term of five years and may not be removed from office during this term, except if there are serious grounds for such removal and if the Administrative Council, on a proposal from the Enlarged Board of Appeal, takes a decision to this effect. Notwithstanding sentence 1, the term of office of members of the Boards shall end if they resign or are retired in accordance with the Service Regulations for permanent employees of the European Patent Office.
- (2) The members of the Boards may not be members of the Receiving Section, Examining Divisions, Opposition Divisions or Legal Division.
- (3) *(See decision of the Enlarged Board of Appeal G 2/06 (Annex I).)* In their decisions the members of the Boards shall not be bound by any instructions and shall comply only with the provisions of this Convention.
- (4) *(See the Rules of Procedure of the Boards of Appeal, last amendments approved by decisions of the Administrative Council CA/D 5/19 of 26.06.2019 (OJ EPO 2019, A63) and CA/D 3/21 of 23.03.2021 (OJ EPO 2021, A19) and the Rules of Procedure of the Enlarged Board of Appeal, last amendments approved by decision of the Administrative Council CA/D 3/15 of 25.03.2015 (OJ EPO 2015, A35). See decision of the Enlarged Board of Appeal G 6/95 (Annex I).)* The Rules of Procedure of the Boards of Appeal and the Enlarged Board of Appeal shall be adopted in accordance with the Implementing Regulations. They shall be subject to the approval of the Administrative Council.

Article 24 Exclusion and objection

R. 144

(See decisions of the Enlarged Board of Appeal G 5/91, G 1/05, G 2/08 of 15.06.2009, G 3/08 of 16.10.2009 (Annex I).)

- (1) Members of the Boards of Appeal or of the Enlarged Board of Appeal may not take part in a case in which they have any personal interest, or if they have previously been involved as representatives of one of the parties, or if they participated in the decision under appeal.

- (2) If, for one of the reasons mentioned in paragraph 1, or for any other reason, a member of a Board of Appeal or of the Enlarged Board of Appeal considers that he should not take part in any appeal, he shall inform the Board accordingly.
- (3) Members of a Board of Appeal or of the Enlarged Board of Appeal may be objected to by any party for one of the reasons mentioned in paragraph 1, or if suspected of partiality. An objection shall not be admissible if, while being aware of a reason for objection, the party has taken a procedural step. An objection may not be based upon the nationality of members.
- (4) The Boards of Appeal and the Enlarged Board of Appeal shall decide as to the action to be taken in the cases specified in paragraphs 2 and 3, without the participation of the member concerned. For the purposes of taking this decision the member objected to shall be replaced by his alternate.

Article 25 Technical opinion

At the request of the competent national court hearing an infringement or revocation action, the European Patent Office shall be obliged, on payment of an appropriate fee (*See Article 2(1), item 20, of the Rules relating to Fees.*), to give a technical opinion concerning the European patent which is the subject of the action. The Examining Division shall be responsible for issuing such opinions.

Chapter IV The Administrative Council

Article 26 Membership

- (1) The Administrative Council shall be composed of the Representatives and the alternate Representatives of the Contracting States. Each Contracting State shall be entitled to appoint one Representative and one alternate Representative to the Administrative Council.
- (2) The members of the Administrative Council may, in accordance with the Rules of Procedure of the Administrative Council, be assisted by advisers or experts.



Article 27 **Chairmanship**

- (1) The Administrative Council shall elect a Chairman and a Deputy Chairman from among the Representatives and alternate Representatives of the Contracting States. The Deputy Chairman shall ex officio replace the Chairman if he is prevented from carrying out his duties.
- (2) The terms of office of the Chairman and the Deputy Chairman shall be three years. They may be re-elected.

Article 28 **Board**

(See decisions of the Administrative Council of 05.06.2003 setting up a Board of the Administrative Council (OJ EPO 2003, 333) and of 30.10.2003 concerning the operation of the Board of the Administrative Council (OJ EPO 2003, 579).)

- (1) When there are at least eight Contracting States, the Administrative Council may set up a Board composed of five of its members.
- (2) The Chairman and the Deputy Chairman of the Administrative Council shall be members of the Board ex officio; the other three members shall be elected by the Administrative Council.
- (3) The term of office of the members elected by the Administrative Council shall be three years. They may not be re-elected.
- (4) The Board shall perform the duties assigned to it by the Administrative Council in accordance with the Rules of Procedure.

Article 29 **Meetings**

- (1) Meetings of the Administrative Council shall be convened by its Chairman.
- (2) The President of the European Patent Office shall take part in the deliberations of the Administrative Council.
- (3) The Administrative Council shall hold an ordinary meeting once each year. In addition, it shall meet on the initiative of its Chairman or at the request of one-third of the Contracting States.



- (4) The deliberations of the Administrative Council shall be based on an agenda, and shall be held in accordance with its Rules of Procedure.
- (5) The provisional agenda shall contain any question whose inclusion is requested by any Contracting State in accordance with the Rules of Procedure.

Article 30 Attendance of observers

- (1) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with an agreement between the Organisation and the World Intellectual Property Organization.
- (2) Other intergovernmental organisations entrusted with carrying out international procedures in the field of patents, with which the Organisation has concluded an agreement, shall be represented at the meetings of the Administrative Council, in accordance with such agreement.
- (3) Any other intergovernmental and international non-governmental organisations carrying out an activity of interest to the Organisation may be invited by the Administrative Council to be represented at its meetings during any discussion of matters of mutual interest.

Article 31 Languages of the Administrative Council

- (1) The languages used in the deliberations of the Administrative Council shall be English, French and German.
- (2) Documents submitted to the Administrative Council, and the minutes of its deliberations, shall be drawn up in the three languages specified in paragraph 1.

Article 32 Staff, premises and equipment

The European Patent Office shall place at the disposal of the Administrative Council, and of any committee established by it, such staff, premises and equipment as may be necessary for the performance of their duties.

Article 33**Competence of the Administrative Council in certain cases**

Art. 35
R. 9, 12c, 122

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions/opinions of the Enlarged Board of Appeal G 5/88, G 7/88, G 8/88, G 6/95,
G 1/02 (Annex I).)*

- (1) The Administrative Council shall be competent to amend:
 - (a) the time limits laid down in this Convention;
 - (b) Parts II to VIII and Part X of this Convention, to bring them into line with an international treaty relating to patents or European Community legislation relating to patents;
 - (c) the Implementing Regulations.
- (2) The Administrative Council shall be competent, in conformity with this Convention, to adopt or amend:
 - (a) the Financial Regulations;
 - (b) the Service Regulations for permanent employees and the conditions of employment of other employees of the European Patent Office, the salary scales of the said permanent and other employees, and also the nature of any supplementary benefits and the rules for granting them;
 - (c) the Pension Scheme Regulations and any appropriate increases in existing pensions to correspond to increases in salaries;
 - (d) the Rules relating to Fees;
 - (e) its Rules of Procedure.
- (3) Notwithstanding Article 18, paragraph 2, the Administrative Council shall be competent to decide, in the light of experience, that in certain categories of cases Examining Divisions shall consist of one technically qualified examiner only. Such decision may be rescinded.
- (4) The Administrative Council shall be competent to authorise the President of the European Patent Office to negotiate and, subject to its approval, to conclude agreements on behalf of the European Patent Organisation with States, with intergovernmental organisations and with documentation centres set up on the basis of agreements with such organisations.
- (5) The Administrative Council may not take a decision under paragraph 1(b):



- concerning an international treaty, before its entry into force;
- concerning European Community legislation, before its entry into force or, where that legislation lays down a period for its implementation, before the expiry of that period.

Article 34 **Voting rights**

- (1) The right to vote in the Administrative Council shall be restricted to the Contracting States.
- (2) Each Contracting State shall have one vote, except where Article 36 applies.

Article 35 **Voting rules**

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The Administrative Council shall take its decisions, other than those referred to in paragraphs 2 and 3, by a simple majority of the Contracting States represented and voting.
- (2) A majority of three-quarters of the votes of the Contracting States represented and voting shall be required for the decisions which the Administrative Council is empowered to take under Article 7, Article 11, paragraph 1, Article 33, paragraphs 1(a) and (c), and 2 to 4, Article 39, paragraph 1, Article 40, paragraphs 2 and 4, Article 46, Article 134a, Article 149a, paragraph 2, Article 152, Article 153, paragraph 7, Article 166 and Article 172.
- (3) Unanimity of the Contracting States voting shall be required for the decisions which the Administrative Council is empowered to take under Article 33, paragraph 1(b). The Administrative Council shall take such decisions only if all the Contracting States are represented. A decision taken on the basis of Article 33, paragraph 1(b), shall not take effect if a Contracting State declares, within twelve months of the date of the decision, that it does not wish to be bound by that decision.
- (4) Abstentions shall not be considered as votes.

Article 36 Weighting of votes

- (1) In respect of the adoption or amendment of the Rules relating to Fees and, if the financial contribution to be made by the Contracting States would thereby be increased, the adoption of the budget of the Organisation and of any amending or supplementary budget, any Contracting State may require, following a first ballot in which each Contracting State shall have one vote, and whatever the result of this ballot, that a second ballot be taken immediately, in which votes shall be given to the States in accordance with paragraph 2. The decision shall be determined by the result of this second ballot.
- (2) The number of votes that each Contracting State shall have in the second ballot shall be calculated as follows:
 - (a) the percentage obtained for each Contracting State in respect of the scale for the special financial contributions, pursuant to Article 40, paragraphs 3 and 4, shall be multiplied by the number of Contracting States and divided by five;
 - (b) the number of votes thus given shall be rounded upwards to the next whole number;
 - (c) five additional votes shall be added to this number;
 - (d) nevertheless, no Contracting State shall have more than 30 votes.

Chapter V Financial provisions

Article 37 Budgetary funding

Art. 47, 50

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

The budget of the Organisation shall be financed:

- (a) by the Organisation's own resources;
- (b) by payments made by the Contracting States in respect of renewal fees for European patents levied in these States;
- (c) where necessary, by special financial contributions made by the Contracting States;
- (d) where appropriate, by the revenue provided for in Article 146;
- (e) where appropriate, and for tangible assets only, by third-party borrowings secured on land or buildings;

(f) where appropriate, by third-party funding for specific projects.

Article 38 The Organisation's own resources

Art. 40

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

The Organisation's own resources shall comprise:

- (a) all income from fees and other sources and also the reserves of the Organisation;
- (b) the resources of the Pension Reserve Fund, which shall be treated as a special class of asset of the Organisation, designed to support the Organisation's pension scheme by providing the appropriate reserves.

Article 39 Payments by the Contracting States in respect of renewal fees for European patents

Art. 35, 40, 41, 47, 50, 141, 146, 147, 176

- (1) *(See decision of the Administrative Council of 08.06.1984 on the proportion of renewal fees for European patents to be remitted to the EPO (OJ EPO 1984, 296).)* Each Contracting State shall pay to the Organisation in respect of each renewal fee received for a European patent in that State an amount equal to a proportion of that fee, to be fixed by the Administrative Council; the proportion shall not exceed 75% and shall be the same for all Contracting States. However, if the said proportion corresponds to an amount which is less than a uniform minimum amount fixed by the Administrative Council, the Contracting State shall pay that minimum to the Organisation.
- (2) Each Contracting State shall communicate to the Organisation such information as the Administrative Council considers to be necessary to determine the amount of these payments.
- (3) The due dates for these payments shall be determined by the Administrative Council.
- (4) If a payment is not remitted fully by the due date, the Contracting State shall pay interest from the due date on the amount remaining unpaid.

Article 40

Level of fees and payments – Special financial contributions

Art. 35, 36, 47, 50, 146, 170, 176

- (1) The amounts of the fees referred to in Article 38 and the proportion referred to in Article 39 shall be fixed at such a level as to ensure that the revenue in respect thereof is sufficient for the budget of the Organisation to be balanced.
- (2) However, if the Organisation is unable to balance its budget under the conditions laid down in paragraph 1, the Contracting States shall remit to the Organisation special financial contributions, the amount of which shall be determined by the Administrative Council for the accounting period in question.
- (3) These special financial contributions shall be determined in respect of any Contracting State on the basis of the number of patent applications filed in the last year but one prior to that of entry into force of this Convention, and calculated in the following manner:
 - (a) one half in proportion to the number of patent applications filed in that Contracting State;
 - (b) one half in proportion to the second highest number of patent applications filed in the other Contracting States by natural or legal persons having their residence or principal place of business in that Contracting State.

However, the amounts to be contributed by States in which the number of patent applications filed exceeds 25 000 shall then be taken as a whole and a new scale drawn up in proportion to the total number of patent applications filed in these States.

- (4) Where the scale position of any Contracting State cannot be established in accordance with paragraph 3, the Administrative Council shall, with the consent of that State, decide its scale position.
- (5) Article 39, paragraphs 3 and 4, shall apply *mutatis mutandis* to the special financial contributions.
- (6) The special financial contributions shall be repaid with interest at a rate which shall be the same for all Contracting States. Repayments shall be made in so far as it is possible to provide for this purpose in the budget; the amount thus provided shall be distributed among the Contracting States in accordance with the scale referred to in paragraphs 3 and 4. (7) The special financial contributions remitted in any accounting period shall be repaid in full before any such contributions or parts thereof remitted in any subsequent accounting period are repaid.



Article 41 **Advances** Art. 50, 146

- (1) At the request of the President of the European Patent Office, the Contracting States shall grant advances to the Organisation, on account of their payments and contributions, within the limit of the amount fixed by the Administrative Council. The amount of such advances shall be determined in proportion to the amounts due from the Contracting States for the accounting period in question.
- (2) Article 39, paragraphs 3 and 4, shall apply *mutatis mutandis* to the advances.

Article 42 **Budget**

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The budget of the Organisation shall be balanced. It shall be drawn up in accordance with the generally accepted accounting principles laid down in the Financial Regulations. If necessary, there may be amending or supplementary budgets. 35 Amended by the Act revising the European Patent Convention of 29.11.2000. Art. 50, 146
- (2) The budget shall be drawn up in the unit of account fixed in the Financial Regulations.

Article 43 **Authorisation for expenditure**

- (1) The expenditure entered in the budget shall be authorised for the duration of one accounting period, unless the Financial Regulations provide otherwise.
- (2) In accordance with the Financial Regulations, any appropriations, other than those relating to staff costs, which are unexpended at the end of the accounting period may be carried forward, but not beyond the end of the following accounting period.
- (3) Appropriations shall be set out under different headings according to type and purpose of the expenditure and subdivided, as far as necessary, in accordance with the Financial Regulations.



Article 44 **Appropriations for unforeseeable expenditure**

- (1) The budget of the Organisation may contain appropriations for unforeseeable expenditure.
- (2) The employment of these appropriations by the Organisation shall be subject to the prior approval of the Administrative Council.

Article 45 **Accounting period**

The accounting period shall commence on 1 January and end on 31 December.

Article 46 **Preparation and adoption of the budget**

Art. 35

- (1) The President of the European Patent Office shall submit the draft budget to the Administrative Council no later than the date prescribed in the Financial Regulations.
- (2) The budget and any amending or supplementary budget shall be adopted by the Administrative Council.

Article 47 **Provisional budget**

Art. 146

- (1) If, at the beginning of the accounting period, the budget has not been adopted by the Administrative Council, expenditures may be effected on a monthly basis per heading or other division of the budget, in accordance with the Financial Regulations, up to one-twelfth of the budget appropriations for the preceding accounting period, provided that the appropriations thus made available to the President of the European Patent Office shall not exceed one-twelfth of those provided for in the draft budget. Art. 35 Art. 146
- (2) The Administrative Council may, subject to the observance of the other provisions laid down in paragraph 1, authorise expenditure in excess of one-twelfth of the appropriations.
- (3) The payments referred to in Article 37(b) shall continue to be made, on a provisional basis, under the conditions determined under Article 39 for the year preceding that to which the draft budget relates.
- (4) The Contracting States shall pay each month, on a provisional basis and in accordance with the scale referred to in Article 40, paragraphs 3 and 4, any special financial contributions necessary

to ensure implementation of paragraphs 1 and 2. Article 39, paragraph 4, shall apply *mutatis mutandis* to these contributions.

Article 48 Budget implementation

- (1) The President of the European Patent Office shall implement the budget and any amending or supplementary budget on his own responsibility and within the limits of the allocated appropriations.
- (2) Within the budget, the President of the European Patent Office may, in accordance with the Financial Regulations, transfer funds between the various headings or sub-headings.

Article 49 Auditing of accounts

- (1) The income and expenditure account and a balance sheet of the Organisation shall be examined by auditors whose independence is beyond doubt, appointed by the Administrative Council for a period of five years, which shall be renewable or extensible.
- (2) The audit shall be based on vouchers and shall take place, if necessary, in situ. The audit shall ascertain whether all income has been received and all expenditure effected in a lawful and proper manner and whether the financial management is sound. The auditors shall draw up a report containing a signed audit opinion after the end of each accounting period.
- (3) The President of the European Patent Office shall annually submit to the Administrative Council the accounts of the preceding accounting period in respect of the budget and the balance sheet showing the assets and liabilities of the Organisation together with the report of the auditors.
- (4) The Administrative Council shall approve the annual accounts together with the report of the auditors and shall discharge the President of the European Patent Office in respect of the implementation of the budget.

Article 50 Financial Regulations

Art. 33

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

The Financial Regulations shall lay down in particular:

- (a) the arrangements relating to the establishment and implementation of the budget and for the rendering and auditing of accounts;
- (b) the method and procedure whereby the payments and contributions provided for in Article 37 and the advances provided for in Article 41 are to be made available to the Organisation by the Contracting States;
- (c) the rules concerning the responsibilities of authorising and accounting officers and the arrangements for their supervision;
- (d) the rates of interest provided for in Articles 39, 40 and 47;
- (e) the method of calculating the contributions payable by virtue of Article 146;
- (f) the composition of and duties to be assigned to a Budget and Finance Committee which should be set up by the Administrative Council;
- (g) the generally accepted accounting principles on which the budget and the annual financial statements shall be based.

Article 51 Fees

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The European Patent Office may levy fees for any official task or procedure carried out under this Convention.
- (2) Time limits for the payment of fees other than those fixed by this Convention shall be laid down in the Implementing Regulations.
- (3) Where the Implementing Regulations provide that a fee shall be paid, they shall also lay down the legal consequences of failure to pay such fee in due time.



- (4) The Rules relating to Fees shall determine in particular the amounts of the fees and the ways in which they are to be paid. 36 Amended by the Act revising the European Patent Convention of 29.11.2000.

Part II Substantive Patent Law

Chapter I Patentability

Article 52 Patentable Inventions

Art. 54, 56, 57, 100, 138
R. 26, 27, 29

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions of the Enlarged Board of Appeal G 1/98, G 1/03, G 2/03, G 3/08, G 1/16
(Annex I).)*

- (1) European patents shall be granted for any inventions, in all fields of technology, provided that they are new, involve an inventive step and are susceptible of industrial application.
- (2) The following in particular shall not be regarded as inventions within the meaning of paragraph 1:
 - (a) discoveries, scientific theories and mathematical methods;
 - (b) aesthetic creations;
 - (c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
 - (d) presentations of information.
- (3) Paragraph 2 shall exclude the patentability of the subject-matter or activities referred to therein only to the extent to which a European patent application or European patent relates to such subject-matter or activities as such.

Article 53 Exceptions to patentability

Art. 54, 100, 138
R. 28, 29

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions/opinion of the Enlarged Board of Appeal G 3/95, G 1/98, G 1/03, G 2/03,
G 1/04, G 2/06, G 1/07, G 2/07, G 1/08, G 2/08, G 1/16, G 3/19 (Annex I).)*



European patents shall not be granted in respect of:

- (a) inventions the commercial exploitation of which would be contrary to "ordre public" or morality; such exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation in some or all of the Contracting States;
- (b) plant or animal varieties or essentially biological processes for the production of plants or animals; this provision shall not apply to microbiological processes or the products thereof;
- (c) methods for treatment of the human or animal body by surgery or therapy and diagnostic methods practised on the human or animal body; this provision shall not apply to products, in particular substances or compositions, for use in any of these methods.

Article 54

Novelty

Art. 53, 55, 56, 80, 85, 89, 100, 138, 153
R. 40, 42, 61, 138, 165

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See decisions/opinions of the Enlarged Board of Appeal G 2/88, G 6/88, G 1/92, G 3/93, G 1/98, G 2/98, G 3/98, G 2/99, G 1/03, G 2/03, G 2/08, G 1/16 (Annex I).)

- (1) An invention shall be considered to be new if it does not form part of the state of the art.
- (2) The state of the art shall be held to comprise everything made available to the public by means of a written or oral description, by use, or in any other way, before the date of filing of the European patent application.
- (3) Additionally, the content of European patent applications as filed, the dates of filing of which are prior to the date referred to in paragraph 2 and which were published on or after that date, shall be considered as comprised in the state of the art.
- (4) Paragraphs 2 and 3 shall not exclude the patentability of any substance or composition, comprised in the state of the art, for use in a method referred to in Article 53(c), provided that its use for any such method is not comprised in the state of the art.
- (5) *(See notice from the EPO of 20.09.2010 (OJ EPO 2010, 514).)* Paragraphs 2 and 3 shall also not exclude the patentability of any substance or composition referred to in paragraph 4 for any



specific use in a method referred to in Article 53(c), provided that such use is not comprised in the state of the art.

Article 55 **Non-prejudicial disclosures** Art. 100, 138

- (1) For the application of Article 54, a disclosure of the invention shall not be taken into consideration if it occurred no earlier than six months preceding the filing of the European patent application and if it was due to, or in consequence of:
- (a) (*See decisions of the Enlarged Board of Appeal G 3/98, G 2/99 (Annex I).*) an evident abuse in relation to the applicant or his legal predecessor, or
 - (b) the fact that the applicant or his legal predecessor has displayed the invention at an official, or officially recognised, international exhibition falling within the terms of the Convention on international exhibitions signed at Paris on 22 November 1928 and last revised on 30 November 1972.
- (2) In the case of paragraph 1(b), paragraph 1 shall apply only if the applicant states, when filing the European patent application, that the invention has been so displayed and files a supporting certificate within the time limit and under the conditions laid down in the Implementing Regulations.
- R. 25, 159

Article 56 **Inventive step** Art. 52, 100, 138

(*See decisions/opinions of the Enlarged Board of Appeal G 2/98, G 3/98, G 2/99, G 1/03, G 2/03, G 1/16 (Annex I).*)

R. 30, 42, 61

An invention shall be considered as involving an inventive step if, having regard to the state of the art, it is not obvious to a person skilled in the art. If the state of the art also includes documents within the meaning of Article 54, paragraph 3, these documents shall not be considered in deciding whether there has been an inventive step.

Article 57

Industrial application

(See decisions of the Enlarged Board of Appeal G 1/03, G 2/03, G 1/04, G 1/16 (Annex I).)

Art. 52, 100, 138
R. 29, 30, 42

An invention shall be considered as susceptible of industrial application if it can be made or used in any kind of industry, including agriculture.

Chapter II Persons entitled to apply for and obtain a European patent – Mention of the inventor

Article 58

Entitlement to file a European patent application

(See decisions of the Enlarged Board of Appeal G 3/99, G 2/04 (Annex I).)

A European patent application may be filed by any natural or legal person, or any body equivalent to a legal person by virtue of the law governing it.

Article 59

Multiple applicants

A European patent application may also be filed either by joint applicants or by two or more applicants designating different Contracting States.

Art. 118
R. 41, 72, 151

Article 60

Right to a European patent

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions/opinions of the Enlarged Board of Appeal G 3/92, G 2/98, G 1/03, G 2/03 (Annex I).)*

Art. 118
R. 41, 72, 151

- (1) The right to a European patent shall belong to the inventor or his successor in title. If the inventor is an employee, the right to a European patent shall be determined in accordance with the law of the State in which the employee is mainly employed; if the State in which the employee is mainly employed cannot be determined, the law to be applied shall be that of the State in which the employer has the place of business to which the employee is attached.



- (2) If two or more persons have made an invention independently of each other, the right to a European patent therefor shall belong to the person whose European patent application has the earliest date of filing, provided that this first application has been published.
- (3) In proceedings before the European Patent Office, the applicant shall be deemed to be entitled to exercise the right to a European patent.

Article 61 European patent applications filed by non-entitled persons

Art. 100, 128, 138
R. 6, 14-18, 45, 51, 60, 78, 136, 143, 147

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision of the Enlarged Board of Appeal G 3/92 (Annex I).)*

- (1) If by a final decision it is adjudged that a person other than the applicant is entitled to the grant of the European patent, that person may, in accordance with the Implementing Regulations:
 - (a) prosecute the European patent application as his own application in place of the applicant;
 - (b) file a new European patent application in respect of the same invention; or
 - (c) request that the European patent application be refused.
- (2) Article 76, paragraph 1, shall apply *mutatis mutandis* to a new European patent application filed under paragraph 1(b).

Article 62 Right of the inventor to be mentioned

Art. 81
R. 19-21, 60, 143

The inventor shall have the right, vis-à-vis the applicant for or proprietor of a European patent, to be mentioned as such before the European Patent Office.

Chapter III Effects of the European patent and the European patent application

Article 63 Term of the European patent

Art. 2

(Amended by the Act revising Article 63 EPC of 17.12.1991, which entered into force on 04.07.1997 (OJ EPO 1992, 1 ff).)

- (1) The term of the European patent shall be 20 years from the date of filing of the application.



- (2) Nothing in the preceding paragraph shall limit the right of a Contracting State to extend the term of a European patent, or to grant corresponding protection which follows immediately on expiry of the term of the patent, under the same conditions as those applying to national patents:
 - (a) in order to take account of a state of war or similar emergency conditions affecting that State;
 - (b) if the subject-matter of the European patent is a product or a process for manufacturing a product or a use of a product which has to undergo an administrative authorisation procedure required by law before it can be put on the market in that State. 51 Amended by the Act revising the European Patent Convention of 29.11.2000.
- (3) Paragraph 2 shall apply *mutatis mutandis* to European patents granted jointly for a group of Contracting States in accordance with Article 142.
- (4) A Contracting State which makes provision for extension of the term or corresponding protection under paragraph 2(b) may, in accordance with an agreement concluded with the Organisation, entrust to the European Patent Office tasks associated with implementation of the relevant provisions.

Article 64 Rights conferred by a European patent

Art. 2, 67, 68, 97

(See decisions of the Enlarged Board of Appeal G 2/88, G 1/98 (Annex I).)

- (1) A European patent shall, subject to the provisions of paragraph 2, confer on its proprietor from the date on which the mention of its grant is published in the European Patent Bulletin, in each Contracting State in respect of which it is granted, the same rights as would be conferred by a national patent granted in that State.
- (2) If the subject-matter of the European patent is a process, the protection conferred by the patent shall extend to the products directly obtained by such process.
- (3) Any infringement of a European patent shall be dealt with by national law.



Article 65 Translation of the European patent

Art. 2, 70
R. 71, 82

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See the Agreement of 17.10.2000 on the application of Article 65 EPC (London Agreement, OJ EPO 2001, 549), which entered into force on 01.05.2008 (OJ EPO 2008, 123) and which currently has 22 contracting states: AL, BE, CH, DE, DK, FI, FR, GB, HR, HU, IE, IS, LI, LT, LU, LV, MC, MK, NL, NO, SE, SI (see www.epo.org/law-practice/legal-texts/london-agreement.html).)

- (1) Any Contracting State may, if the European patent as granted, amended or limited by the European Patent Office is not drawn up in one of its official languages, prescribe that the proprietor of the patent shall supply to its central industrial property office a translation of the patent as granted, amended or limited in one of its official languages at his option or, where that State has prescribed the use of one specific official language, in that language. The period for supplying the translation shall end three months after the date on which the mention of the grant, maintenance in amended form or limitation of the European patent is published in the European Patent Bulletin, unless the State concerned prescribes a longer period.
- (2) Any Contracting State which has adopted provisions pursuant to paragraph 1 may prescribe that the proprietor of the patent must pay all or part of the costs of publication of such translation within a period laid down by that State.
- (3) Any Contracting State may prescribe that in the event of failure to observe the provisions adopted in accordance with paragraphs 1 and 2, the European patent shall be deemed to be void ab initio in that State.

Article 66 Equivalence of European filing with national filing

Art. 80, 87, 88, 135, 137, 140
R. 40, 155

(See opinion of the Enlarged Board of Appeal G 4/98 (Annex I).)

A European patent application which has been accorded a date of filing shall, in the designated Contracting States, be equivalent to a regular national filing, where appropriate with the priority claimed for the European patent application.



Article 67 **Rights conferred by a European patent application after publication**

Art. 68, 70, 93, 153

R. 68

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See opinion of the Enlarged Board of Appeal G 4/98 (Annex I).)

- (1) A European patent application shall, from the date of its publication, provisionally confer upon the applicant the protection provided for by Article 64, in the Contracting States designated in the application.
- (2) Any Contracting State may prescribe that a European patent application shall not confer such protection as is conferred by Article 64. However, the protection attached to the publication of the European patent application may not be less than that which the laws of the State concerned attach to the compulsory publication of unexamined national patent applications. In any event, each State shall ensure at least that, from the date of publication of a European patent application, the applicant can claim compensation reasonable in the circumstances from any person who has used the invention in that State in circumstances where that person would be liable under national law for infringement of a national patent.
- (3) Any Contracting State which does not have as an official language the language of the proceedings may prescribe that provisional protection in accordance with paragraphs 1 and 2 above shall not be effective until such time as a translation of the claims in one of its official languages at the option of the applicant or, where that State has prescribed the use of one specific official language, in that language:
 - (a) has been made available to the public in the manner prescribed by national law, or
 - (b) has been communicated to the person using the invention in the said State.
- (4) The European patent application shall be deemed never to have had the effects set out in paragraphs 1 and 2 when it has been withdrawn, deemed to be withdrawn or finally refused. The same shall apply in respect of the effects of the European patent application in a Contracting State the designation of which is withdrawn or deemed to be withdrawn.



Article 68 **Effect of revocation or limitation of the European patent**

Art. 2, 101, 105b

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

The European patent application and the resulting European patent shall be deemed not to have had, from the outset, the effects specified in Articles 64 and 67, to the extent that the patent has been revoked or limited in opposition, limitation or revocation proceedings.

Article 69 **Extent of protection**

(Amended by the Act revising the European Patent Convention of 29.11.2000.

The Protocol on the Interpretation of Article 69 EPC is an integral part of the Convention pursuant to Article 164, paragraph 1.

See decisions of the Enlarged Board of Appeal G 2/88, G 6/88 (Annex I).)

- (1) The extent of the protection conferred by a European patent or a European patent application shall be determined by the claims. Nevertheless, the description and drawings shall be used to interpret the claims.
- (2) For the period up to grant of the European patent, the extent of the protection conferred by the European patent application shall be determined by the claims contained in the application as published. However, the European patent as granted or as amended in opposition, limitation or revocation proceedings shall determine retroactively the protection conferred by the application, in so far as such protection is not thereby extended.



Article 70 **Authentic text of a European patent application or European patent**

Art. 2
R. 7

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision of the Enlarged Board of Appeal G 1/10 (Annex I).)*

- (1) The text of a European patent application or a European patent in the language of the proceedings shall be the authentic text in any proceedings before the European Patent Office and in any Contracting State.
- (2) If, however, the European patent application has been filed in a language which is not an official language of the European Patent Office, that text shall be the application as filed within the meaning of this Convention.
- (3) Any Contracting State may provide that a translation into one of its official languages, as prescribed by it according to this Convention, shall in that State be regarded as authentic, except for revocation proceedings, in the event of the European patent application or European patent in the language of the translation conferring protection which is narrower than that conferred by it in the language of the proceedings.
- (4) Any Contracting State which adopts a provision under paragraph 3:
 - (a) shall allow the applicant for or proprietor of the patent to file a corrected translation of the European patent application or European patent. Such corrected translation shall not have any legal effect until any conditions established by the Contracting State under Article 65, paragraph 2, or Article 67, paragraph 3, have been complied with;
 - (b) may prescribe that any person who, in that State, in good faith has used or has made effective and serious preparations for using an invention the use of which would not constitute infringement of the application or patent in the original translation, may, after the corrected translation takes effect, continue such use in the course of his business or for the needs thereof without payment.



Chapter IV The European patent application as an object of property

Article 71

Transfer and constitution of rights

R. 22, 23, 85

A European patent application may be transferred or give rise to rights for one or more of the designated Contracting States.

Article 72

Assignment

R. 22, 85

An assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.

Article 73

Contractual licensing

R. 23, 24

A European patent application may be licensed in whole or in part for the whole or part of the territories of the designated Contracting States.

Article 74

Law applicable

Art. 148

Unless this Convention provides otherwise, the European patent application as an object of property shall, in each designated Contracting State and with effect for such State, be subject to the law applicable in that State to national patent applications.

Part III The European Patent Application

Chapter I Filing and requirements of the European patent application

Article 75

Filing of a European patent application

Art. 76, 120, 130, 153

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

R. 35, 41, 133, 134, 147

- (1) A European patent application may be filed:
- (a) *(See decision of the President of the EPO of 03.01.2017 designating the EPO's filing offices (OJ EPO 2017, A11), notice from the EPO of 14.02.2018 concerning the availability of the EPO filing offices (OJ EPO 2018, A18) and notice from the EPO of 16.03.2018 concerning the*



closing of the mailroom at its headquarters in Munich (OJ EPO 2018, A27).) with the European Patent Office, or

- (b) *(See notice from the EPO of 30.01.2018 concerning changes to the filing options available in Belgium for European patent applications and international applications (OJ EPO 2018, A17) and notice from the EPO of 20.11.2019 concerning changes to the filing options available in San Marino for European patent applications and international applications (OJ EPO 2019, A96).)* if the law of a Contracting State so permits, and subject to Article 76, paragraph 1, with the central industrial property office or other competent authority of that State. Any application filed in this way shall have the same effect as if it had been filed on the same date with the European Patent Office.
- (2) Paragraph 1 shall not preclude the application of legislative or regulatory provisions which, in any Contracting State:
 - (a) govern inventions which, owing to the nature of their subject-matter, may not be communicated abroad without the prior authorisation of the competent authorities of that State, or
 - (b) prescribe that any application is to be filed initially with a national authority, or make direct filing with another authority subject to prior authorisation.

Article 76 **European divisional applications**

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See opinion/decision of the Enlarged Board of Appeal G 4/98, G 1/05, G 1/06 (Annex I).)

Art. 61, 75, 100, 128, 138

R. 4, 6, 16, 36, 38, 41, 45, 51, 57, 60, 135,
143, 147

- (1) A European divisional application shall be filed directly with the European Patent Office in accordance with the Implementing Regulations. It may be filed only in respect of subject-matter which does not extend beyond the content of the earlier application as filed; in so far as this requirement is complied with, the divisional application shall be deemed to have been filed on the date of filing of the earlier application and shall enjoy any right of priority.
- (2) All the Contracting States designated in the earlier application at the time of filing of a European divisional application shall be deemed to be designated in the divisional application.



Article 77 Forwarding of European patent applications

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

Art. 135, 137
R. 35, 37, 45, 112, 134, 155

- (1) The central industrial property office of a Contracting State shall forward to the European Patent Office any European patent application filed with it or any other competent authority in that State, in accordance with the Implementing Regulations.
- (2) A European patent application the subject of which has been made secret shall not be forwarded to the European Patent Office.
- (3) A European patent application not forwarded to the European Patent Office in due time shall be deemed to be withdrawn.

Article 78 Requirements of a European patent application

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) A European patent application shall contain:
 - (a) a request for the grant of a European patent;
 - (b) a description of the invention;
 - (c) one or more claims;
 - (d) any drawings referred to in the description or the claims;
 - (e) an abstract,

and satisfy the requirements laid down in the Implementing Regulations.

- (2) *(See notice from the EPO (OJ EPO 2016, A20).)* A European patent application shall be subject to the payment of the filing fee and the search fee. If the filing fee or the search fee is not paid in due time, the application shall be deemed to be withdrawn.



Article 79 Designation of Contracting States

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

Art. 3, 66, 80, 121, 149
R. 15-17, 36, 39, 40, 41, 70, 71, 72, 112, 135,
139, 143, 159, 160

- (1) All the Contracting States party to this Convention at the time of filing of the European patent application shall be deemed to be designated in the request for grant of a European patent.
- (2) *(See opinion of the Enlarged Board of Appeal G 4/98 (Annex I).)* The designation of a Contracting State may be subject to the payment of a designation fee.
- (3) The designation of a Contracting State may be withdrawn at any time up to the grant of the European patent.

Article 80 Date of filing

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision/opinion of the Enlarged Board of Appeal G 2/95, G 4/98 (Annex I).)*

Art. 54, 60, 66, 78, 79, 83, 84, 90, 92
R. 19, 30, 38, 39, 40-42, 49, 55, 56, 60, 143

The date of filing of a European patent application shall be the date on which the requirements laid down in the Implementing Regulations are fulfilled.

Article 81 Designation of the inventor

The European patent application shall designate the inventor. If the applicant is not the inventor or is not the sole inventor, the designation shall contain a statement indicating the origin of the right to the European patent.

Art. 62, 90
R. 19-21, 41, 60, 143, 144, 163

Article 82 Unity of invention

(See decision/opinion of the Enlarged Board of Appeal G 1/91, G 2/92, G 1/11 (Annex I).)

R. 43, 44, 64, 164

The European patent application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.



Article 83	Disclosure of the invention <i>(See decision/opinion of the Enlarged Board of Appeal G 2/93, G 2/98 (Annex I).)</i> The European patent application shall disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art.	Art. 78, 80, 100, 138 R. 31-34, 40, 42
Article 84	Claims <i>(See decisions/opinions of the Enlarged Board of Appeal G 2/98, G 1/03, G 2/03, G 1/04, G 2/10, G 3/14, G 1/16 (Annex I).)</i> The claims shall define the matter for which protection is sought. They shall be clear and concise and be supported by the description.	Art. 78, 80 R. 40, 43, 45, 49, 57, 62a, 63, 162
Article 85	Abstract The abstract shall serve the purpose of technical information only; it may not be taken into account for any other purpose, in particular for interpreting the scope of the protection sought or applying Article 54, paragraph 3.	Art. 78 R. 47, 49, 66, 68
Article 86	Renewal fees for the European patent application <i>(Amended by the Act revising the European Patent Convention of 29.11.2000.)</i> (1) Renewal fees for the European patent application shall be paid to the European Patent Office in accordance with the Implementing Regulations. These fees shall be due in respect of the third year and each subsequent year, calculated from the date of filing of the application. If a renewal fee is not paid in due time, the application shall be deemed to be withdrawn. (2) The obligation to pay renewal fees shall terminate with the payment of the renewal fee due in respect of the year in which the mention of the grant of the European patent is published in the European Patent Bulletin.	Art. 122, 141 R. 14, 51, 71, 112, 135, 136, 142, 159



Chapter II Priority

Article 87 Priority right

Art. 66, 122
R. 52, 57-59, 136

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See decisions/opinions of the Enlarged Board of Appeal G 3/93, G 2/95, G 2/98, G 1/03, G 2/03, G 1/16 (Annex I).)

- (1) Any person who has duly filed, in or for
 - (a) any State party to the Paris Convention for the Protection of Industrial Property or
 - (b) any Member of the World Trade Organization, an application for a patent, a utility model or a utility certificate, or his successor in title, shall enjoy, for the purpose of filing a European patent application in respect of the same invention, a right of priority during a period of twelve months from the date of filing of the first application.
- (2) Every filing that is equivalent to a regular national filing under the national law of the State where it was made or under bilateral or multilateral agreements, including this Convention, shall be recognised as giving rise to a right of priority.
- (3) A regular national filing shall mean any filing that is sufficient to establish the date on which the application was filed, whatever the outcome of the application may be.
- (4) A subsequent application in respect of the same subject-matter as a previous first application and filed in or for the same State shall be considered as the first application for the purposes of determining priority, provided that, at the date of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as a basis for claiming a right of priority.
- (5) If the first filing has been made with an industrial property authority which is not subject to the Paris Convention for the Protection of Industrial Property or the Agreement Establishing the World Trade Organization, paragraphs 1 to 4 shall apply if that authority, according to a communication issued by the President of the European Patent Office, recognises that a first



filing made with the European Patent Office gives rise to a right of priority under conditions and with effects equivalent to those laid down in the Paris Convention.

Article 88 Claiming priority

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision/opinion of the Enlarged Board of Appeal G 3/93, G 2/98 (Annex I).)*

Art. 66, 79, 90, 93
R. 5, 6, 41, 52, 53,
57-60, 68, 139,
163

- (1) *(See decision of the President of the EPO of 12.07.2007 concerning the filing of priority documents for European divisional applications and for new European patent applications under Article 61(1)(b) EPC (Special edition No. 3, OJ EPO 2007, B.2) and decision of the President of the EPO of 09.08.2012 on the filing of priority documents (OJ EPO 2012, 492).)* An applicant desiring to take advantage of the priority of a previous application shall file a declaration of priority and any other document required, in accordance with the Implementing Regulations.
- (2) Multiple priorities may be claimed in respect of a European patent application, notwithstanding the fact that they originated in different countries. Where appropriate, multiple priorities may be claimed for any one claim. Where multiple priorities are claimed, time limits which run from the date of priority shall run from the earliest date of priority.
- (3) If one or more priorities are claimed in respect of a European patent application, the right of priority shall cover only those elements of the European patent application which are included in the application or applications whose priority is claimed.
- (4) If certain elements of the invention for which priority is claimed do not appear among the claims formulated in the previous application, priority may nonetheless be granted, provided that the documents of the previous application as a whole specifically disclose such elements.

Article 89 Effect of priority right

(See decisions/opinions of the Enlarged Board of Appeal G 3/93, G 2/98, G 3/98, G 2/99 (Annex I).)



The right of priority shall have the effect that the date of priority shall count as the date of filing of the European patent application for the purposes of Article 54, paragraphs 2 and 3, and Article 60, paragraph 2.

Part IV Procedure up to grant

Article 90 Examination on filing and examination as to formal requirements

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See opinions of the Enlarged Board of Appeal G 4/98, G 1/02 (Annex I).)*

Art. 16, 78, 80, 88, 92
R. 6, 10, 38, 40, 45, 53, 55-60, 111-113, 137,
139, 140, 142, 152, 153

- (1) The European Patent Office shall examine, in accordance with the Implementing Regulations, whether the application satisfies the requirements for the accordane of a date of filing.
- (2) If a date of filing cannot be accorded following the examination under paragraph 1, the application shall not be dealt with as a European patent application.
- (3) If the European patent application has been accorded a date of filing, the European Patent Office shall examine, in accordance with the Implementing Regulations, whether the requirements in Articles 14, 78 and 81, and, where applicable, Article 88, paragraph 1, and Article 133, paragraph 2, as well as any other requirement laid down in the Implementing Regulations, have been satisfied.
- (4) Where the European Patent Office in carrying out the examination under paragraphs 1 or 3 notes that there are deficiencies which may be corrected, it shall give the applicant an opportunity to correct them.
- (5) If any deficiency noted in the examination under paragraph 3 is not corrected, the European patent application shall be refused unless a different legal consequence is provided for by this Convention. Where the deficiency concerns the right of priority, this right shall be lost for the application.

Article 91 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*



Article 92

Drawing up of the European search report

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See notice from the EPO concerning the programme for accelerated prosecution of European patent applications "PACE" (OJ EPO 2015, A93) and notice from the EPO concerning ways to expedite the European grant procedure (OJ EPO 2015, A94).)

The European Patent Office shall, in accordance with the Implementing Regulations, draw up and publish a European search report in respect of the European patent application on the basis of the claims, with due regard to the description and any drawings.

Art. 17, 80, 153
R. 30, 61-66, 70, 70a, 137

Article 93

Publication of the European patent application

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See decision of the President of the EPO (Special edition No. 3, OJ EPO 2007, D.3).

See opinion of the Enlarged Board of Appeal G 2/98 (Annex I).)

- (1) The European Patent Office shall publish the European patent application as soon as possible
 - (a) after the expiry of a period of eighteen months from the date of filing or, if priority has been claimed, from the date of priority, or
 - (b) at the request of the applicant, before the expiry of that period.
- (2) The European patent application shall be published at the same time as the specification of the European patent when the decision to grant the patent becomes effective before the expiry of the period referred to in paragraph 1(a).

Art. 14, 16, 54, 67, 69, 88, 92, 98,
115, 127, 128, 153
R. 10, 14, 20, 36, 47, 48, 52, 53, 66-69, 70-
70b, 114, 143

Article 94

Examination of the European patent application

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See notice from the EPO concerning the programme for accelerated prosecution of European patent applications "PACE" (OJ EPO 2015, A93) and notice from the EPO concerning ways to expedite the European grant procedure (OJ EPO 2015, A94).)

Art. 18, 121, 124, 129, 150
R. 6, 10, 69, 70, 70b, 71, 112-114, 135-138,
141, 142, 159

- (1) The European Patent Office shall, in accordance with the Implementing Regulations, examine on request whether the European patent application and the invention to which it relates meet the requirements of this Convention. The request shall not be deemed to be filed until the examination fee has been paid. *(See notice from the EPO (OJ EPO 2016, A20).)*
- (2) If no request for examination has been made in due time, the application shall be deemed to be withdrawn.
- (3) If the examination reveals that the application or the invention to which it relates does not meet the requirements of this Convention, the Examining Division shall invite the applicant, as often as necessary, to file his observations and, subject to Article 123, paragraph 1, to amend the application.
- (4) If the applicant fails to reply in due time to any communication from the Examining Division, the application shall be deemed to be withdrawn.

Article 95 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 96 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 97 **Grant or refusal**

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions of the Enlarged Board of Appeal G 10/93, G 1/10 (Annex I).)*

- (1) If the Examining Division is of the opinion that the European patent application and the invention to which it relates meet the requirements of this Convention, it shall decide to grant a European patent, provided that the conditions laid down in the Implementing Regulations are fulfilled.
- (2) If the Examining Division is of the opinion that the European patent application or the invention to which it relates does not meet the requirements of this Convention, it shall refuse the application unless this Convention provides for a different legal consequence.



- (3) The decision to grant a European patent shall take effect on the date on which the mention of the grant is published in the European Patent Bulletin.

Article 98 **Publication of the specification of the European patent**

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

Art. 14, 93
R. 20, 21, 52, 53, 73, 74, 138

The European Patent Office shall publish the specification of the European patent as soon as possible after the mention of the grant of the European patent has been published in the European Patent Bulletin.

Article 99 **Opposition**

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

See decisions/opinions of the Enlarged Board of Appeal G 4/88, G 5/88, G 7/88, G 8/88, G 10/91, G 9/93, G 1/95, G 7/95, G 3/97, G 4/97, G 3/99, G 1/02, G 2/04, G 3/04, G 1/13 (Annex I).)

Art. 105
R. 3, 6, 14, 73, 76- 78, 84-86, 89, 112, 142, 143

- (1) Within nine months of the publication of the mention of the grant of the European patent in the European Patent Bulletin, any person may give notice to the European Patent Office of opposition to that patent, in accordance with the Implementing Regulations. Notice of opposition shall not be deemed to have been filed until the opposition fee has been paid.
- (2) The opposition shall apply to the European patent in all the Contracting States in which that patent has effect.
- (3) Opponents shall be parties to the opposition proceedings as well as the proprietor of the patent.
- (4) Where a person provides evidence that in a Contracting State, following a final decision, he has been entered in the patent register of such State instead of the previous proprietor, such person shall, at his request, replace the previous proprietor in respect of such State. Notwithstanding Article 118, the previous proprietor and the person making the request shall not be regarded as joint proprietors unless both so request.



Part V Opposition and Limitation Procedure

(Title amended by the Act revising the European Patent Convention of 29.11.2000.)

Article 100 Grounds for opposition

Art. 76, 83, 101, 123
R. 76, 80

(See decisions/opinions of the Enlarged Board of Appeal G 3/89, G 10/91, G 11/91, G 1/95, G 2/95, G 7/95, G 1/99, G 3/04 (Annex I).)

Opposition may only be filed on the grounds that:

- (a) the subject-matter of the European patent is not patentable under Articles 52 to 57;
- (b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- (c) the subject-matter of the European patent extends beyond the content of the application as filed, or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed.

Article 101 Examination of the opposition – Revocation or maintenance of the European patent

Art. 65, 68, 103
R. 18, 77-86, 111, 113, 138, 140, 143

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions/opinions of the Enlarged Board of Appeal G 1/88, G 1/90, G 1/91, G 9/91, G 10/91, G 9/92, G 4/93, G 1/99, G 1/02 (Annex I).)*

- (1) If the opposition is admissible, the Opposition Division shall examine, in accordance with the Implementing Regulations, whether at least one ground for opposition under Article 100 prejudices the maintenance of the European patent. During this examination, the Opposition Division shall invite the parties, as often as necessary, to file observations on communications from another party or issued by itself.
- (2) If the Opposition Division is of the opinion that at least one ground for opposition prejudices the maintenance of the European patent, it shall revoke the patent. Otherwise, it shall reject the opposition.



- (3) *(See decision of the Enlarged Board of Appeal G 3/14 (Annex I).)* If the Opposition Division is of the opinion that, taking into consideration the amendments made by the proprietor of the European patent during the opposition proceedings, the patent and the invention to which it relates
- (a) meet the requirements of this Convention, it shall decide to maintain the patent as amended, provided that the conditions laid down in the Implementing Regulations are fulfilled;
 - (b) do not meet the requirements of this Convention, it shall revoke the patent.

Article 102 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 103 **Publication of a new specification of the European patent**

Art. 14
R. 20, 21, 87

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

If the European patent is maintained as amended under Article 101, paragraph 3(a), the European Patent Office shall publish a new specification of the European patent as soon as possible after the mention of the opposition decision has been published in the European Patent Bulletin.

Article 104 **Costs**

Art. 106
R. 11, 88, 97, 111, 140

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision of the Enlarged Board of Appeal G 3/99 (Annex I).)*

- (1) Each party to the opposition proceedings shall bear the costs it has incurred, unless the Opposition Division, for reasons of equity, orders, in accordance with the Implementing Regulations, a different apportionment of costs.
- (2) The procedure for fixing costs shall be laid down in the Implementing Regulations.
- (3) Any final decision of the European Patent Office fixing the amount of costs shall be dealt with, for the purpose of enforcement in the Contracting States, in the same way as a final decision given



by a civil court of the State in which enforcement is to take place. Verification of such decision shall be limited to its authenticity.

Article 105 Intervention of the assumed infringer

Art. 99
R. 3, 76-86, 89, 112, 114

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions of the Enlarged Board of Appeal G 4/91, G 1/94, G 2/04, G 3/04, G 1/05
(Annex I).)*

- (1) Any third party may, in accordance with the Implementing Regulations, intervene in opposition proceedings after the opposition period has expired, if the third party proves that
 - (a) proceedings for infringement of the same patent have been instituted against him, or
 - (b) following a request of the proprietor of the patent to cease alleged infringement, the third party has instituted proceedings for a ruling that he is not infringing the patent.
- (2) An admissible intervention shall be treated as an opposition.

Article 105a Request for limitation or revocation

Art. 14, 64, 68, 98, 99, 123
R. 6, 90, 92, 93, 138, 143

(Inserted by the Act revising the European Patent Convention of 29.11.2000.)

- (1) At the request of the proprietor, the European patent may be revoked or be limited by an amendment of the claims. The request shall be filed with the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to have been filed until the limitation or revocation fee has been paid.
- (2) The request may not be filed while opposition proceedings in respect of the European patent are pending.

Article 105b Limitation or revocation of the European patent

Art. 14, 84, 123
R. 6, 91, 94, 95, 138, 111, 140

(Inserted by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The European Patent Office shall examine whether the requirements laid down in the Implementing Regulations for limiting or revoking the European patent have been met.
- (2) If the European Patent Office considers that the request for limitation or revocation of the European patent meets these requirements, it shall decide to limit or revoke the European patent in accordance with the Implementing Regulations. Otherwise, it shall reject the request.
- (3) The decision to limit or revoke the European patent shall apply to the European patent in all the Contracting States in respect of which it has been granted. It shall take effect on the date on which the mention of the decision is published in the European Patent Bulletin.

Article 105c Publication of the amended specification of the European patent

Art. 14
R. 20, 21, 96, 138, 143

(Inserted by the Act revising the European Patent Convention of 29.11.2000.)

If the European patent is limited under Article 105b, paragraph 2, the European Patent Office shall publish the amended specification of the European patent as soon as possible after the mention of the limitation has been published in the European Patent Bulletin.

Part VI Appeals Procedure

Article 106 Decisions subject to appeal

Art. 104, 112a
R. 88, 97, 98, 101, 111, 142

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See decisions/opinions of the Enlarged Board of Appeal G 1/90, G 1/99, G 1/02, G 3/03 (Annex I).)

- (1) An appeal shall lie from decisions of the Receiving Section, Examining Divisions, Opposition Divisions and the Legal Division. It shall have suspensive effect.
- (2) A decision which does not terminate proceedings as regards one of the parties can only be appealed together with the final decision, unless the decision allows a separate appeal.

(3) The right to file an appeal against decisions relating to the apportionment or fixing of costs in opposition proceedings may be restricted in the Implementing Regulations.

Article 107 **Persons entitled to appeal and to be parties to appeal proceedings** R. 101, 111

(See decisions of the Enlarged Board of Appeal G 1/88, G 2/91, G 4/91, G 9/92, G 1/99, G 3/99, G 3/03, G 2/04, G 3/04, G 1/12 (Annex I).)

Any party to proceedings adversely affected by a decision may appeal. Any other parties to the proceedings shall be parties to the appeal proceedings as of right.

Article 108 **Time limit and form** R. 3, 6, 99, 101, 103, 111

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions of the Enlarged Board of Appeal G 1/86, G 2/97, G 1/99, G 3/03, G 2/04, G 3/04, G 1/12, G 1/16 (Annex I).)*

Notice of appeal shall be filed, in accordance with the Implementing Regulations, at the European Patent Office within two months of notification of the decision. Notice of appeal shall not be deemed to have been filed until the fee for appeal has been paid. Within four months of notification of the decision, a statement setting out the grounds of appeal shall be filed in accordance with the Implementing Regulations.

Article 109 **Interlocutory revision** R. 103

(See decision of the Enlarged Board of Appeal G 3/03 (Annex I).)

(1) If the department whose decision is contested considers the appeal to be admissible and well founded, it shall rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.



- (2) If the appeal is not allowed within three months of receipt of the statement of grounds, it shall be remitted to the Board of Appeal without delay, and without comment as to its merit.

Article 110 Examination of appeals R. 100-102, 111-113

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decisions/opinions of the Enlarged Board of Appeal G 9/91, G 10/91, G 10/93,
G 3/99 (Annex I).)*

If the appeal is admissible, the Board of Appeal shall examine whether the appeal is allowable. The examination of the appeal shall be conducted in accordance with the Implementing Regulations.

Article 111 Decision in respect of appeals Art. 112a
R. 100-103, 111, 140

(See decisions of the Enlarged Board of Appeal G 9/92, G 10/93, G 3/03 (Annex I).)

- (1) Following the examination as to the allowability of the appeal, the Board of Appeal shall decide on the appeal. The Board of Appeal may either exercise any power within the competence of the department which was responsible for the decision appealed or remit the case to that department for further prosecution.
- (2) If the Board of Appeal remits the case for further prosecution to the department whose decision was appealed, that department shall be bound by the ratio decidendi of the Board of Appeal, in so far as the facts are the same. If the decision under appeal was taken by the Receiving Section, the Examining Division shall also be bound by the ratio decidendi of the Board of Appeal.

Article 112 Decision or opinion of the Enlarged Board of Appeal Art. 22
R. 111, 140

(See decisions/opinions of the Enlarged Board of Appeal G 1/86, G 2/88, G 4/88, G 5/88, G 6/88, G 7/88, G 8/88, G 1/90, G 1/92, G 3/95, G 6/95, G 2/97, G 2/98, G 3/98, G 4/98, G 1/99, G 2/99, G



3/99, G 1/02, G 1/03, G 2/03, G 3/03, G 1/04, G 2/04, G 3/04, G 1/05, G 2/06, G 3/08, G 1/12, G 1/14, G 3/14, G 1/15, G 1/16, G 1/18, G 2/19, G 3/19 (Annex I).)

- (1) In order to ensure uniform application of the law, or if a point of law of fundamental importance arises:
 - (a) the Board of Appeal shall, during proceedings on a case and either of its own motion or following a request from a party to the appeal, refer any question to the Enlarged Board of Appeal if it considers that a decision is required for the above purposes. If the Board of Appeal rejects the request, it shall give the reasons in its final decision;
 - (b) the President of the European Patent Office may refer a point of law to the Enlarged Board of Appeal where two Boards of Appeal have given different decisions on that question.
- (2) In the cases referred to in paragraph 1(a) the parties to the appeal proceedings shall be parties to the proceedings before the Enlarged Board of Appeal.
- (3) The decision of the Enlarged Board of Appeal referred to in paragraph 1(a) shall be binding on the Board of Appeal in respect of the appeal in question.

Article 112a Petition for review by the Enlarged Board of Appeal

Art. 22, 106, 111
R. 104-111, 140

(Inserted by the Act revising the European Patent Convention of 29.11.2000.)

- (1) Any party to appeal proceedings adversely affected by the decision of the Board of Appeal may file a petition for review of the decision by the Enlarged Board of Appeal.
- (2) The petition may only be filed on the grounds that:
 - (a) a member of the Board of Appeal took part in the decision in breach of Article 24, paragraph 1, or despite being excluded pursuant to a decision under Article 24, paragraph 4;
 - (b) the Board of Appeal included a person not appointed as a member of the Boards of Appeal;
 - (c) a fundamental violation of Article 113 occurred;
 - (d) any other fundamental procedural defect defined in the Implementing Regulations occurred in the appeal proceedings; or



- (e) a criminal act established under the conditions laid down in the Implementing Regulations may have had an impact on the decision.
- (3) The petition for review shall not have suspensive effect.
- (4) The petition for review shall be filed in a reasoned statement, in accordance with the Implementing Regulations. If based on paragraph 2(a) to (d), the petition shall be filed within two months of notification of the decision of the Board of Appeal. If based on paragraph 2(e), the petition shall be filed within two months of the date on which the criminal act has been established and in any event no later than five years from notification of the decision of the Board of Appeal. The petition shall not be deemed to have been filed until after the prescribed fee has been paid.
- (5) The Enlarged Board of Appeal shall examine the petition for review in accordance with the Implementing Regulations. If the petition is allowable, the Enlarged Board of Appeal shall set aside the decision and shall re-open proceedings before the Boards of Appeal in accordance with the Implementing Regulations.
- (6) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the decision of the Board of Appeal and publication in the European Patent Bulletin of the mention of the decision of the Enlarged Board of Appeal on the petition, may without payment continue such use in the course of his business or for the needs thereof.

Part VII Common Provisions

Chapter I Common provisions governing procedure

Article 113 Right to be heard and basis of decisions

(See decisions/opinions of the Enlarged Board of Appeal G 7/91, G 8/91, G 4/92, G 2/04 (Annex I).)

- (1) The decisions of the European Patent Office may only be based on grounds or evidence on which the parties concerned have had an opportunity to present their comments.



(2) The European Patent Office shall examine, and decide upon, the European patent application or the European patent only in the text submitted to it, or agreed, by the applicant or the proprietor of the patent.

Article 114 **Examination by the European Patent Office of its own motion** R. 116

(See decisions/opinions of the Enlarged Board of Appeal G 7/91, G 8/91, G 9/91, G 10/91, G 4/92, G 9/92, G 8/93, G 10/93, G 1/95, G 7/95, G 1/99 (Annex I).)

- (1) In proceedings before it, the European Patent Office shall examine the facts of its own motion; it shall not be restricted in this examination to the facts, evidence and arguments provided by the parties and the relief sought.
- (2) The European Patent Office may disregard facts or evidence which are not submitted in due time by the parties concerned.

Article 115 **Observations by third parties** Art. 93
R. 114

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision of the President of the EPO of 10.05.2011 (OJ EPO 2011, 418) and notice from the EPO of 05.07.2017 (OJ EPO 2017, A86) concerning the filing and processing of third-party observations under Article 115 EPC.)*

In proceedings before the European Patent Office, following the publication of the European patent application, any third party may, in accordance with the Implementing Regulations, present observations concerning the patentability of the invention to which the application or patent relates. That person shall not be a party to the proceedings.

Article 116 **Oral proceedings** R. 4, 82, 115, 116, 124

(See decisions of the Enlarged Board of Appeal G 2/94, G 4/95 (Annex I).)



See decision of the President of the EPO of 22.11.2022 concerning the format of oral proceedings before examining and opposition divisions, the Legal Division and the Receiving Section (OJ EPO 2022, A103).

See notice from the EPO of 22.11.2022 concerning oral proceedings by videoconference before examining and opposition divisions, the Legal Division and the Receiving Section, as well as consultations by videoconference before examining divisions (OJ EPO 2022, A106).

See notices of the Vice-President DG 3 (Special edition No. 3 OJ EPO 2007, H.1, H.2 and H.3; OJ EPO 2014, A21).)

- (1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings before the same department where the parties and the subject of the proceedings are the same.
- (2) Nevertheless, oral proceedings shall take place before the Receiving Section at the request of the applicant only where the Receiving Section considers this to be expedient or where it intends to refuse the European patent application.
- (3) Oral proceedings before the Receiving Section, the Examining Divisions and the Legal Division shall not be public.
- (4) Oral proceedings, including delivery of the decision, shall be public, as regards the Boards of Appeal and the Enlarged Board of Appeal, after publication of the European patent application, and also before the Opposition Divisions, in so far as the department before which the proceedings are taking place does not decide otherwise in cases where admission of the public could have serious and unjustified disadvantages, in particular for a party to the proceedings.

Article 117 Means and taking of evidence

R. 4, 117-124, 150

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See decisions/opinions of the Enlarged Board of Appeal G 3/89, G 11/91, G 4/95 (Annex I).)



- (1) In proceedings before the European Patent Office the means of giving or obtaining evidence shall include the following:
 - (a) hearing the parties;
 - (b) requests for information;
 - (c) production of documents;
 - (d) hearing witnesses;
 - (e) opinions by experts;
 - (f) inspection;
 - (g) sworn statements in writing.
- (2) The procedure for taking such evidence shall be laid down in the Implementing Regulations.

Article 118 **Unity of the European patent application or European patent**

Art. 59, 99
R. 18, 78, 138

Where the applicants for or proprietors of a European patent are not the same in respect of different designated Contracting States, they shall be regarded as joint applicants or proprietors for the purposes of proceedings before the European Patent Office. The unity of the application or patent in these proceedings shall not be affected; in particular the text of the application or patent shall be uniform for all designated Contracting States, unless this Convention provides otherwise.

Article 119 **Notification**

R. 112, 125-130

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision of the President of the EPO of 11.03.2015 concerning the pilot project to introduce new means of electronic communication in EPO proceedings (OJ EPO 2015, A28) and notice from the EPO of 04.09.2014 concerning the use of an address for correspondence (OJ EPO 2014, A99).)*

Decisions, summonses, notices and communications shall be notified by the European Patent Office of its own motion in accordance with the Implementing Regulations. Notification may, where exceptional circumstances so require, be effected through the intermediary of the central industrial property offices of the Contracting States.



Article 120 **Time limits** R. 131-136, 160

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

The Implementing Regulations shall specify:

- (a) the time limits which are to be observed in proceedings before the European Patent Office and are not fixed by this Convention;
- (b) the manner of computation of time limits and the conditions under which time limits may be extended;
- (c) the minima and maxima for time limits to be determined by the European Patent Office.

Article 121 **Further processing of the European patent application** R. 135

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) If an applicant fails to observe a time limit vis-à-vis the European Patent Office, he may request further processing of the European patent application.
- (2) The European Patent Office shall grant the request, provided that the requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.
- (3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
- (4) Further processing shall be ruled out in respect of the time limits in Article 87, paragraph 1, Article 108 and Article 112a, paragraph 4, as well as the time limits for requesting further processing or re-establishment of rights. The Implementing Regulations may rule out further processing for other time limits.

Article 122 **Re-establishment of rights** R. 136, 143

*(Amended by the Act revising the European Patent Convention of 29.11.2000.
See decision of the Enlarged Board of Appeal G 1/86 (Annex I).)*



- (1) An applicant for or proprietor of a European patent who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the refusal of the European patent application or of a request, or the deeming of the application to have been withdrawn, or the revocation of the European patent, or the loss of any other right or means of redress.
- (2) The European Patent Office shall grant the request, provided that the conditions of paragraph 1 and any other requirements laid down in the Implementing Regulations are met. Otherwise, it shall reject the request.
- (3) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
- (4) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights. The Implementing Regulations may rule out re-establishment for other time limits.
- (5) Any person who, in a designated Contracting State, has in good faith used or made effective and serious preparations for using an invention which is the subject of a published European patent application or a European patent in the period between the loss of rights referred to in paragraph 1 and publication in the European Patent Bulletin of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.
- (6) Nothing in this Article shall limit the right of a Contracting State to grant re-establishment of rights in respect of time limits provided for in this Convention and to be observed vis-à-vis the authorities of such State.

Article 123

Amendments

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See decisions of the Enlarged Board of Appeal G 2/88, G 3/89, G 11/91, G 1/93, G 2/95, G 2/98, G 1/99, G 1/03, G 2/03, G 1/05, G 2/10, G 3/14, G 1/15, G 1/16 (Annex I).)

Art. 100, 138

R. 4, 7, 18, 57, 58, 71, 78-82, 137, 138



- (1) The European patent application or European patent may be amended in proceedings before the European Patent Office, in accordance with the Implementing Regulations. In any event, the applicant shall be given at least one opportunity to amend the application of his own volition.
- (2) The European patent application or European patent may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed.
- (3) The European patent may not be amended in such a way as to extend the protection it confers.

Article 124 Information on prior art

Art. 140
R. 70b, 112, 141

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The European Patent Office may, in accordance with the Implementing Regulations, invite the applicant to provide information on prior art taken into consideration in national or regional patent proceedings and concerning an invention to which the European patent application relates.
- (2) If the applicant fails to reply in due time to an invitation under paragraph 1, the European patent application shall be deemed to be withdrawn.

Article 125 Reference to general principles

(See decisions of the Enlarged Board of Appeal G 1/99, G 3/04 (Annex I).)

In the absence of procedural provisions in this Convention, the European Patent Office shall take into account the principles of procedural law generally recognised in the Contracting States.

Article 126 (deleted) *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Chapter II Information to the public or to official authorities

Article 127 European Patent Register

Art. 14, 20, 129
R. 21-24, 85, 143

(Amended by the Act revising the European Patent Convention of 29.11.2000.)



See decisions of the President of the EPO concerning the information given in the European Patent Register (OJ EPO 2009, 598, 2011, 110, and 2014, A19).)

The European Patent Office shall keep a European Patent Register, in which the particulars specified in the Implementing Regulations shall be recorded. No entry shall be made in the European Patent Register before the publication of the European patent application. The European Patent Register shall be open to public inspection.

Article 128 **Inspection of files**

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

Art. 76, 93, 130, 131
R. 16, 19, 31-33, 68, 113, 144-147, 149

- (1) Files relating to European patent applications which have not yet been published shall not be made available for inspection without the consent of the applicant.
- (2) Any person who can prove that the applicant has invoked the rights under the European patent application against him may obtain inspection of the files before the publication of that application and without the consent of the applicant.
- (3) Where a European divisional application or a new European patent application filed under Article 61, paragraph 1, is published, any person may obtain inspection of the files of the earlier application before the publication of that application and without the consent of the applicant.
- (4) *(See decision of the President of the EPO of 12.07.2007 concerning documents excluded from file inspection (Special edition No. 3 OJ EPO 2007, J.3), decision of the President of the EPO of 20.02.2019 on the inspection of files (OJ EPO 2019, A16) and decision of the President of the EPO of 20.02.2019 concerning online file inspection of documents contained in the file held by the EPO as receiving Office, International Searching Authority or Authority specified for supplementary search (OJ EPO 2019, A17).)* After the publication of the European patent application, the files relating to the application and the resulting European patent may be inspected on request, subject to the restrictions laid down in the Implementing Regulations.



- (5) Even before the publication of the European patent application, the European Patent Office may communicate to third parties or publish the particulars specified in the Implementing Regulations.

Article 129 **Periodical publications**

Art. 14, 94, 97, 127, 153
R. 21, 31-34, 69, 143

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

The European Patent Office shall periodically publish:

- (1) a European Patent Bulletin containing the particulars the publication of which is prescribed by this Convention, the Implementing Regulations or the President of the European Patent Office;
- (2) an Official Journal containing notices and information of a general character issued by the President of the European Patent Office, as well as any other information relevant to this Convention or its implementation.

Article 130 **Exchange of information**

R. 141, 148

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) Unless this Convention or national laws provide otherwise, the European Patent Office and the central industrial property office of any Contracting State shall, on request, communicate to each other any useful information regarding European or national patent applications and patents and any proceedings concerning them.
- (2) Paragraph 1 shall apply to the communication of information by virtue of working agreements between the European Patent Office and
 - (a) the central industrial property offices of other States;
 - (b) any intergovernmental organisation entrusted with the task of granting patents;
 - (c) any other organisation.
- (3) Communications under paragraphs 1 and 2(a) and (b) shall not be subject to the restrictions laid down in Article 128. The Administrative Council may decide that communications under



paragraph 2(c) shall not be subject to such restrictions, provided that the organisation concerned treats the information communicated as confidential until the European patent application has been published.

Article 131	Administrative and legal co-operation	Art. 117 R. 117-120, 148-150
(1) Unless this Convention or national laws provide otherwise, the European Patent Office and the courts or authorities of Contracting States shall on request give assistance to each other by communicating information or opening files for inspection. Where the European Patent Office makes files available for inspection by courts, Public Prosecutors' Offices or central industrial property offices, the inspection shall not be subject to the restrictions laid down in Article 128. (2) At the request of the European Patent Office, the courts or other competent authorities of Contracting States shall undertake, on behalf of the Office and within the limits of their jurisdiction, any necessary enquiries or other legal measures.		

Article 132	Exchange of publications
(1) The European Patent Office and the central industrial property offices of the Contracting States shall despatch to each other on request and for their own use one or more copies of their respective publications free of charge. (2) The European Patent Office may conclude agreements relating to the exchange or supply of publications.	

Chapter III Representation

Article 133	General principles of representation	Art. 90, 134, 134a,144 R. 41, 76, 126, 130, 142, 143, 151-154
<i>(Amended by the Act revising the European Patent Convention of 29.11.2000. See decisions of the Enlarged Board of Appeal G 2/94, G 4/95, G 3/99 (Annex I).)</i> (1) Subject to paragraph 2, no person shall be compelled to be represented by a professional representative in proceedings established by this Convention.		

- (2) Natural or legal persons not having their residence or principal place of business in a Contracting State shall be represented by a professional representative and act through him in all proceedings established by this Convention, other than in filing a European patent application; the Implementing Regulations may permit other exceptions.
- (3) Natural or legal persons having their residence or principal place of business in a Contracting State may be represented in proceedings established by this Convention by an employee, who need not be a professional representative but who shall be authorised in accordance with the Implementing Regulations. The Implementing Regulations may provide whether and under what conditions an employee of a legal person may also represent other legal persons which have their principal place of business in a Contracting State and which have economic connections with the first legal person.
- (4) The Implementing Regulations may lay down special provisions concerning the common representation of parties acting in common.

Article 134 **Representation before the European Patent Office** Art. 20, 35, 133, 134a

R. 142, 143, 152-154

(Amended by the Act revising the European Patent Convention of 29.11.2000.

See decision of the President of the EPO of 21.11.2013 concerning the responsibilities of the Legal Division (OJ EPO 2013, 600) and notice from the EPO of 12.05.2015 concerning representation before the EPO (OJ EPO 2015, A55).

See decisions of the Enlarged Board of Appeal G 2/94, G 4/95, G 3/99, G 2/04 (Annex I).)

- (1) Representation of natural or legal persons in proceedings established by this Convention may only be undertaken by professional representatives whose names appear on a list maintained for this purpose by the European Patent Office.
- (2) Any natural person who
 - (a) is a national of a Contracting State,
 - (b) has his place of business or employment in a Contracting State and
 - (c) *(See decision of the Administrative Council CA/D 26/08 of 10.12.2008 amending the Regulation on the European qualifying examination for professional representatives before*



the EPO, which entered into force on 01.01.2009 (OJ EPO 2009, 9; see supplementary publication 2, OJ EPO 2019).) has passed the European qualifying examination may be entered on the list of professional representatives.

- (3) During a period of one year from the date on which the accession of a State to this Convention takes effect, entry on that list may also be requested by any natural person who
 - (a) is a national of a Contracting State,
 - (b) has his place of business or employment in the State having acceded to the Convention and
 - (c) is entitled to represent natural or legal persons in patent matters before the central industrial property office of that State. Where such entitlement is not conditional upon the requirement of special professional qualifications, the person shall have regularly so acted in that State for at least five years.
- (4) Entry shall be effected upon request, accompanied by certificates indicating that the conditions laid down in paragraph 2 or 3 are fulfilled.
- (5) Persons whose names appear on the list of professional representatives shall be entitled to act in all proceedings established by this Convention.
- (6) For the purpose of acting as a professional representative, any person whose name appears on the list of professional representatives shall be entitled to establish a place of business in any Contracting State in which proceedings established by this Convention may be conducted, having regard to the Protocol on Centralisation annexed to this Convention. The authorities of such State may remove that entitlement in individual cases only in application of legal provisions adopted for the purpose of protecting public security and law and order. Before such action is taken, the President of the European Patent Office shall be consulted.
- (7) *(See decision of the President of the EPO (OJ EPO 2012, 13).)* The President of the European Patent Office may grant exemption from:
 - (a) the requirement of paragraphs 2(a) or 3(a) in special circumstances;
 - (b) the requirement of paragraph 3(c), second sentence, if the applicant furnishes proof that he has acquired the requisite qualification in another way.
- (8) Representation in proceedings established by this Convention may also be undertaken, in the same way as by a professional representative, by any legal practitioner qualified in a Contracting State and having his place of business in that State, to the extent that he is entitled

in that State to act as a professional representative in patent matters. Paragraph 6 shall apply *mutatis mutandis*.

Article 134a Institute of Professional Representatives before the European Patent Office

R. 12, 153

(Inserted by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The Administrative Council shall be competent to adopt and amend provisions governing:
- (a) *(See Regulation on the establishment of an Institute of Professional Representatives before the EPO (OJ EPO 1997, 350) and the changes of 07.06.2002 (OJ EPO 2002, 429 ff), 17.06.2004 (OJ EPO 2004, 361) and 07.12.2006 (OJ EPO 2007, 12). See decision of the Administrative Council CA/D 31/08 of 10.12.2008 determining the members of the Institute of Professional Representatives before the European Patent Office to whom Article 15 of the Protocol on Privileges and Immunities of the European Patent Organisation applies (OJ EPO 2009, 28), which entered into force on 01.01.2009.)* the Institute of Professional Representatives before the European Patent Office, hereinafter referred to as the Institute;
 - (b) the qualifications and training required of a person for admission to the European qualifying examination and the conduct of such examination; *(See Regulation on the European qualifying examination for professional representatives before the EPO as of 10.12.2008 (CA/D 26/08, OJ EPO 2009, 9), implementing provisions as of 10.12.2008 and instructions concerning the qualifications required for enrolment for the European qualifying examination (all published in the supplementary publication 2, OJ EPO 2019).)*
 - (c) *(See Regulation on discipline for professional representatives of 21.10.1977 (OJ EPO 1978, 91 ff; re amendment see OJ EPO 2008, 14), additional rules of procedure of the three disciplinary bodies of 06.06.1980 (OJ EPO 1980, 176 ff; re amendments see OJ EPO 2007, 552 and 548) and Code of Conduct of the Institute of Professional Representatives before the EPO (OJ EPO 2003, 523 ff).)* the disciplinary power exercised by the Institute or the European Patent Office in respect of professional representatives;

- (d) the obligation of confidentiality on the professional representative and the privilege from disclosure in proceedings before the European Patent Office in respect of communications between a professional representative and his client or any other person.
- (2) Any person entered on the list of professional representatives referred to in Article 134, paragraph 1, shall be a member of the Institute.

Part VIII Impact on National Law

Chapter I Conversion into a national patent application

Article 135 Request for conversion

Art. 137, 140
R. 37, 112, 155, 156

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The central industrial property office of a designated Contracting State shall, at the request of the applicant for or proprietor of a European patent, apply the procedure for the grant of a national patent in the following circumstances:
 - (a) where the European patent application is deemed to be withdrawn under Article 77, paragraph 3;
 - (b) in such other cases as are provided for by the national law, in which the European patent application is refused or withdrawn or deemed to be withdrawn, or the European patent is revoked under this Convention.
- (2) In the case referred to in paragraph 1(a), the request for conversion shall be filed with the central industrial property office with which the European patent application has been filed. That office shall, subject to the provisions governing national security, transmit the request directly to the central industrial property offices of the Contracting States specified therein.
- (3) In the cases referred to in paragraph 1(b), the request for conversion shall be submitted to the European Patent Office in accordance with the Implementing Regulations. It shall not be deemed to be filed until the conversion fee has been paid. The European Patent Office shall transmit the request to the central industrial property offices of the Contracting States specified therein.

- (4) The effect of the European patent application referred to in Article 66 shall lapse if the request for conversion is not submitted in due time.

Article 136 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 137 Formal requirements for conversion

Art. 140
R. 155

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) A European patent application transmitted in accordance with Article 135, paragraph 2 or 3, shall not be subjected to formal requirements of national law which are different from or additional to those provided for in this Convention.
- (2) Any central industrial property office to which the European patent application is transmitted may require that the applicant shall, within a period of not less than two months:
- (a) pay the national application fee; and
 - (b) file a translation of the original text of the European patent application in an official language of the State in question and, where appropriate, of the text as amended during proceedings before the European Patent Office which the applicant wishes to use as the basis for the national procedure.

Chapter II Revocation and prior rights

Article 138 Revocation of European patents

Art. 76, 83, 123

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) Subject to Article 139, a European patent may be revoked with effect for a Contracting State only on the grounds that:
- (a) the subject-matter of the European patent is not patentable under Articles 52 to 57;
 - (b) the European patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;



- (c) *(See decisions/opinions of the Enlarged Board of Appeal G 3/89, G 11/91, G 2/95 (Annex I).)*
the subject-matter of the European patent extends beyond the content of the application as filed or, if the patent was granted on a divisional application or on a new application filed under Article 61, beyond the content of the earlier application as filed;
- (d) the protection conferred by the European patent has been extended; or
- (e) the proprietor of the European patent is not entitled under Article 60, paragraph 1.
- (2) If the grounds for revocation affect the European patent only in part, the patent shall be limited by a corresponding amendment of the claims and revoked in part.
- (3) In proceedings before the competent court or authority relating to the validity of the European patent, the proprietor of the patent shall have the right to limit the patent by amending the claims. The patent as thus limited shall form the basis for the proceedings.

Article 139 **Prior rights and rights arising on the same date**

Art. 138, 140
R. 138

(See decisions of the Enlarged Board of Appeal G 1/03, G 2/03 (Annex I).)

- (1) In any designated Contracting State a European patent application and a European patent shall have with regard to a national patent application and a national patent the same prior right effect as a national patent application and a national patent.
- (2) A national patent application and a national patent in a Contracting State shall have with regard to a European patent designating that Contracting State the same prior right effect as if the European patent were a national patent.
- (3) Any Contracting State may prescribe whether and on what terms an invention disclosed in both a European patent application or patent and a national application or patent having the same date of filing or, where priority is claimed, the same date of priority, may be protected simultaneously by both applications or patents.

Article 140 **National utility models and utility certificates**

R. 112, 155, 156

(Amended by the Act revising the European Patent Convention of 29.11.2000.)



Articles 66, 124, 135, 137 and 139 shall apply to utility models and utility certificates and to applications for utility models and utility certificates registered or deposited in the Contracting States whose laws make provision for such models or certificates.

Article 141 Renewal fees for European patents

Art. 39, 97

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) Renewal fees for a European patent may only be imposed for the years which follow that referred to in Article 86, paragraph 2.
- (2) Any renewal fees falling due within two months of the publication in the European Patent Bulletin of the mention of the grant of the European patent shall be deemed to have been validly paid if they are paid within that period. Any additional fee provided for under national law shall not be charged.

Part IX Special Agreements

Article 142 Unitary patents

Art. 2

(The group of EU member states participating in enhanced co-operation in the area of the creation of unitary patent protection implemented that co-operation by Regulation (EU) No. 1257/2012 of the European Parliament and of the Council and Council Regulation No. 1260/2012 (OJ EPO 2013, 110, 111 and 132), thereby availing itself of the authorisation given in Article 142(1) and the provisions of Part IX of the EPC. The third component of the EU "patent package" is the Agreement on a Unified Patent Court (OJ EPO 2013, 286, 287).)

- (1) Any group of Contracting States, which has provided by a special agreement that a European patent granted for those States has a unitary character throughout their territories, may provide that a European patent may only be granted jointly in respect of all those States.

- (2) Where any group of Contracting States has availed itself of the authorisation given in paragraph 1, the provisions of this Part shall apply.

Article 143 Special departments of the European Patent Office

Art. 15, 144-146

(See decision of the President of the EPO of 30.05.2022 concerning the allocation of the tasks to be carried out by the European Patent Office in relation to the European patent with unitary effect and concerning the entrustment of duties incumbent on the Unitary Patent Protection Division (OJ EPO 2022, A69).)

- (1) The group of Contracting States may give additional tasks to the European Patent Office.
(2) Special departments common to the Contracting States in the group may be set up within the European Patent Office in order to carry out the additional tasks. The President of the European Patent Office shall direct such special departments; Article 10, paragraphs 2 and 3, shall apply *mutatis mutandis*.

Article 144 Representation before special departments

Art. 133

The group of Contracting States may lay down special provisions to govern representation of parties before the departments referred to in Article 143, paragraph 2.

Article 145 Select committee of the Administrative Council

- (1) The group of Contracting States may set up a select committee of the Administrative Council for the purpose of supervising the activities of the special departments set up under Article 143, paragraph 2; the European Patent Office shall place at its disposal such staff, premises and equipment as may be necessary for the performance of its duties. The President of the European Patent Office shall be responsible for the activities of the special departments to the select committee of the Administrative Council.
(2) The composition, powers and functions of the select committee shall be determined by the group of Contracting States.



Article 146 **Cover for expenditure for carrying out special tasks**

Art. 37, 50

Where additional tasks have been given to the European Patent Office under Article 143, the group of Contracting States shall bear the expenses incurred by the Organisation in carrying out these tasks. Where special departments have been set up in the European Patent Office to carry out these additional tasks, the group shall bear the expenditure on staff, premises and equipment chargeable in respect of these departments. Article 39, paragraphs 3 and 4, Article 41 and Article 47 shall apply *mutatis mutandis*.

Article 147 **Payments in respect of renewal fees for unitary patents**

If the group of Contracting States has fixed a common scale of renewal fees in respect of European patents, the proportion referred to in Article 39, paragraph 1, shall be calculated on the basis of the common scale; the minimum amount referred to in Article 39, paragraph 1, shall apply to the unitary patent. Article 39, paragraphs 3 and 4, shall apply *mutatis mutandis*.

Article 148 **The European patent application as an object of property**

- (1) Article 74 shall apply unless the group of Contracting States has specified otherwise.
- (2) The group of Contracting States may provide that a European patent application for which these Contracting States are designated may only be transferred, mortgaged or subjected to any legal means of execution in respect of all the Contracting States of the group and in accordance with the provisions of the special agreement.

Article 149 **Joint designation**

Art. 3, 79, 153
R. 39

(See *Treaty between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection of 22.12.1978* (OJ EPO 1980, 407 ff).)

- (1) The group of Contracting States may provide that these States may only be designated jointly, and that the designation of one or some only of such States shall be deemed to constitute the designation of all the States of the group.
- (2) Where the European Patent Office acts as a designated Office under Article 153, paragraph 1, paragraph 1 shall apply if the applicant has indicated in the international application that he wishes to obtain a European patent for one or more of the designated States of the group. The same shall apply if the applicant designates in the international application one of the Contracting States in the group, whose national law provides that the designation of that State shall have the effect of the application being for a European patent.

Article 149a Other agreements between the Contracting States

Art. 35

(Inserted by the Act revising the European Patent Convention of 29.11.2000.)

- (1) Nothing in this Convention shall be construed as limiting the right of some or all of the Contracting States to conclude special agreements on any matters concerning European patent applications or European patents which under this Convention are subject to and governed by national law, such as, in particular
 - (a) an agreement establishing a European patent court common to the Contracting States party to it;
 - (b) an agreement establishing an entity common to the Contracting States party to it to deliver, at the request of national courts or quasi-judicial authorities, opinions on issues of European or harmonised national patent law;
 - (c) *(See the Agreement of 17.10.2000 on the application of Article 65 EPC (London Agreement, OJ EPO 2001, 549), which entered into force on 01.05.2008 (OJ EPO 2008, 123) and which currently has 22 contracting states: AL, BE, CH, DE, DK, FI, FR, GB, HR, HU, IE, IS, LI, LT, LU, LV, MC, MK, NL, NO, SE, SI (see www.epo.org/law-practice/legal-texts/london-agreement.html).)* an agreement under which the Contracting States party to it dispense fully or in part with translations of European patents under Article 65;



- (d) an agreement under which the Contracting States party to it provide that translations of European patents as required under Article 65 may be filed with, and published by, the European Patent Office.
- (2) The Administrative Council shall be competent to decide that:
 - (a) the members of the Boards of Appeal or the Enlarged Board of Appeal may serve on a European patent court or a common entity and take part in proceedings before that court or entity in accordance with any such agreement;
 - (b) the European Patent Office shall provide a common entity with such support staff, premises and equipment as may be necessary for the performance of its duties, and the expenses incurred by that entity shall be borne fully or in part by the Organisation.

Part X International Applications under the patent

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

Article 150 Application of the Patent Cooperation Treaty

R. 157-159, 165

- (1) The Patent Cooperation Treaty of 19 June 1970, hereinafter referred to as the PCT, shall be applied in accordance with the provisions of this Part.
- (2) *(See decision of the President of the EPO of 11.03.2015 concerning the pilot project to introduce new means of electronic communication in EPO proceedings, (OJ EPO 2015, A28) and decision of the President of the EPO of 20.02.2019 concerning online file inspection of documents contained in the file held by the EPO as receiving Office, International Searching Authority or Authority specified for supplementary search (OJ EPO 2019, A17).* International applications filed under the PCT may be the subject of proceedings before the European Patent Office. In such proceedings, the provisions of the PCT and its Regulations shall be applied, supplemented by the provisions of this Convention. In case of conflict, the provisions of the PCT or its Regulations shall prevail.



Article 151 The European Patent Office as a receiving Office

Art. 35, 153
R. 157

(See notice from the EPO concerning the requirements to be observed when filing an international application with the EPO as a PCT receiving Office (OJ EPO 2014, A33) and decision of the President of the EPO of 24.10.2014 concerning the filing of international applications with the EPO acting as receiving Office using ePCT-Filing (OJ EPO 2014, A107).)

The European Patent Office shall act as a receiving Office within the meaning of the PCT, in accordance with the Implementing Regulations. Article 75, paragraph 2, shall apply.

Article 152 The European Patent Office as an International Searching Authority or International Preliminary Examining Authority

Art. 21, 35
R. 158, 161

(See agreement between the EPO and the International Bureau of WIPO under the PCT of 30.10/28.11.2017 with effect from 01.01.2018 (OJ EPO 2017, A115, last amendments see OJ EPO 2018, A24 and A35, OJ EPO 2019, A5, and OJ EPO 2020, A35 and A68).

See notice from the EPO concerning the carrying out of Supplementary International Searches under the PCT (OJ EPO 2010, 316, and 2014, A117, pt. 3).

See notice from the EPO of 08.03.2017 concerning the processing by the EPO as ISA of informal comments on earlier search results ("PCT Direct") (OJ EPO 2017, A21).

See notices from the EPO concerning the introduction of a "top-up" search in the procedure under Chapter II PCT (OJ EPO 2014, A57) and online filing of the demand under Chapter II PCT (OJ EPO 2014, A71).)

The European Patent Office shall act as an International Searching Authority and International Preliminary Examining Authority within the meaning of the PCT, in accordance with an agreement between the Organisation and the International Bureau of the World Intellectual Property Organization, for applicants who are residents or nationals of a State party to this Convention. This agreement may provide that the European Patent Office shall also act for other applicants.



Article 153 The European Patent Office as designated Office or elected Office

Art. 35, 92, 93, 129
R. 65, 68, 113, 159-165

(See decision of the Enlarged Board of Appeal G 4/08 (Annex I).)

- (1) The European Patent Office shall be
 - (a) a designated Office for any State party to this Convention in respect of which the PCT is in force, which is designated in the international application and for which the applicant wishes to obtain a European patent, and
 - (b) an elected Office, if the applicant has elected a State designated pursuant to letter (a).
- (2) An international application for which the European Patent Office is a designated or elected Office, and which has been accorded an international date of filing, shall be equivalent to a regular European application (Euro-PCT application).
- (3) The international publication of a Euro-PCT application in an official language of the European Patent Office shall take the place of the publication of the European patent application and shall be mentioned in the European Patent Bulletin.
- (4) If the Euro-PCT application is published in another language, a translation into one of the official languages shall be filed with the European Patent Office, which shall publish it. Subject to Article 67, paragraph 3, the provisional protection under Article 67, paragraphs 1 and 2, shall be effective from the date of that publication.
- (5) The Euro-PCT application shall be treated as a European patent application and shall be considered as comprised in the state of the art under Article 54, paragraph 3, if the conditions laid down in paragraph 3 or 4 and in the Implementing Regulations are fulfilled.
- (6) The international search report drawn up in respect of a Euro-PCT application or the declaration replacing it, and their international publication, shall take the place of the European search report and the mention of its publication in the European Patent Bulletin.
- (7) *(See decision of the Administrative Council CA/D 11/09 of 28.10.2009 (OJ EPO 2009, 594) dispensing with the supplementary European search report in the case of an international application where the international search report or supplementary international search report was drawn up by the EPO.*
See decision of the Administrative Council CA/D 8/15 of 16.12.2015 (OJ EPO 2016, A2) reducing the fee for the supplementary European search where the international search report or



supplementary international search report was drawn up by the Austrian Patent Office, the Finnish Patent and Registration Office, the Spanish Patent and Trademark Office, the Swedish Patent and Registration Office, the Nordic Patent Institute or the Visegrad Patent Institute. This decision is applicable to international applications filed up to and including 31.03.2020 where the fee for the supplementary European search is paid on or after 01.07.2016.

See decision of the Administrative Council CA/D 16/17 of 13.12. 2017 (OJ EPO 2018, A3) abrogating decision of the Administrative Council CA/D 10/05 (OJ EPO 2005, 548) concerning cases where the search fee for the supplementary European search is to be reduced.) A supplementary European search report shall be drawn up in respect of any Euro-PCT application under paragraph 5. The Administrative Council may decide that the supplementary search report is to be dispensed with or that the search fee is to be reduced.

Article 154 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 155 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 156 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 157 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 158 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Part XI Transitional Provisions

(Articles 159, 160, 161, 162 and 163 were deleted by the Act revising the European Patent Convention of 29.11.2000.)

Part XII Final Provisions

Article 164 Implementing Regulations and Protocols

(Amended by the Act revising the European Patent Convention of 29.11.2000.)

- (1) The Implementing Regulations, the Protocol on Recognition, the Protocol on Privileges and Immunities, the Protocol on Centralisation, the Protocol on the Interpretation of Article 69 and the Protocol on Staff Complement shall be integral parts of this Convention.
- (2) *(See decisions/opinions of the Enlarged Board of Appeal G 2/95, G 6/95, G 1/02 (Annex I).)* In case of conflict between the provisions of this Convention and those of the Implementing Regulations, the provisions of this Convention shall prevail.

Article 165 Signature – Ratification

Art. 166, 178

- (1) *(Signatory states: AT, BE, CH, DE, DK, FR, GB, GR, IE, IT, LI, LU, MC, NL, NO, SE. Conference participants: signatory states plus ES, FI, PT, TR, YU. Invited states: Conference participants plus CY, IS.)* This Convention shall be open for signature until 5 April 1974 by the States which took part in the Inter-Governmental Conference for the setting up of a European System for the Grant of Patents or were informed of the holding of that conference and offered the option of taking part therein.
- (2) This Convention shall be subject to ratification; instruments of ratification shall be deposited with the Government of the Federal Republic of Germany.

Article 166 Accession

Art. 35, 178

- (1) This Convention shall be open to accession by:
 - (a) the States referred to in Article 165, paragraph 1;
 - (b) any other European State at the invitation of the Administrative Council.



- (2) Any State which has been a party to the Convention and has ceased to be so as a result of the application of Article 172, paragraph 4, may again become a party to the Convention by acceding to it.
- (3) Instruments of accession shall be deposited with the Government of the Federal Republic of Germany.

Article 167 *(Deleted by the Act revising the European Patent Convention of 29.11.2000.)*

Article 168 Territorial field of application

Art. 178

- (1) Any Contracting State may declare in its instrument of ratification or accession, or may inform the Government of the Federal Republic of Germany by written notification at any time thereafter, that this Convention shall be applicable to one or more of the territories for the external relations of which it is responsible. European patents granted for that Contracting State shall also have effect in the territories for which such a declaration has taken effect.
- (2) If the declaration referred to in paragraph 1 is contained in the instrument of ratification or accession, it shall take effect on the same date as the ratification or accession; if the declaration is notified after the deposit of the instrument of ratification or accession, such notification shall take effect six months after the date of its receipt by the Government of the Federal Republic of Germany.
- (3) Any Contracting State may at any time declare that the Convention shall cease to apply to some or to all of the territories in respect of which it has given notification pursuant to paragraph 1. Such declaration shall take effect one year after the date on which the Government of the Federal Republic of Germany received notification thereof.

Article 169 Entry into force

Art. 178

(For Belgium, Germany, France, Luxembourg, the Netherlands, Switzerland and the United Kingdom: 7 October 1977; Sweden: 1 May 1978; Italy: 1 December 1978; Austria: 1 May 1979; Liechtenstein: 1 April 1980; Greece and Spain: 1 October 1986; Denmark: 1 January 1990; Monaco: 1 December 1991; Portugal: 1 January 1992; Ireland: 1 August 1992; Finland: 1 March

1996; Cyprus: 1 April 1998; Turkey: 1 November 2000; Bulgaria, Czech Republic, Estonia, Slovakia: 1 July 2002; Slovenia: 1 December 2002; Hungary: 1 January 2003; Romania: 1 March 2003; Poland: 1 March 2004; Iceland: 1 November 2004; Lithuania: 1 December 2004; Latvia: 1 July 2005; Malta: 1 March 2007; Croatia and Norway: 1 January 2008; North Macedonia: 1 January 2009; San Marino: 1 July 2009; Albania: 1 May 2010; Serbia: 1 October 2010.)

- (1) This Convention shall enter into force three months after the deposit of the last instrument of ratification or accession by six States on whose territory the total number of patent applications filed in 1970 amounted to at least 180 000 for all the said States.
- (2) Any ratification or accession after the entry into force of this Convention shall take effect on the first day of the third month after the deposit of the instrument of ratification or accession.

Article 170 Initial contribution

- (1) Any State which ratifies or accedes to this Convention after its entry into force shall pay to the Organisation an initial contribution, which shall not be refunded.
- (2) The initial contribution shall be 5% of an amount calculated by applying the percentage obtained for the State in question, on the date on which ratification or accession takes effect, in accordance with the scale provided for in Article 40, paragraphs 3 and 4, to the sum of the special financial contributions due from the other Contracting States in respect of the accounting periods preceding the date referred to above.
- (3) In the event that special financial contributions were not required in respect of the accounting period immediately preceding the date referred to in paragraph 2, the scale of contributions referred to in that paragraph shall be the scale that would have been applicable to the State concerned in respect of the last year for which financial contributions were required.

Article 171 Duration of the Convention

The present Convention shall be of unlimited duration.



Article 172 **Revision**

Art. 35, 166, 175, 176

- (1) This Convention may be revised by a Conference of the Contracting States.
- (2) The Conference shall be prepared and convened by the Administrative Council. The Conference shall not be validly constituted unless at least three-quarters of the Contracting States are represented at it. Adoption of the revised text shall require a majority of three-quarters of the Contracting States represented and voting at the Conference. Abstentions shall not be considered as votes.
- (3) The revised text shall enter into force when it has been ratified or acceded to by the number of Contracting States specified by the Conference, and at the time specified by that Conference.
- (4) Such States as have not ratified or acceded to the revised text of the Convention at the time of its entry into force shall cease to be parties to this Convention as from that time.

Article 173 **Disputes between Contracting States**

- (1) Any dispute between Contracting States concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Administrative Council, which shall endeavour to bring about agreement between the States concerned.
- (2) If such agreement is not reached within six months from the date when the dispute was referred to the Administrative Council, any one of the States concerned may submit the dispute to the International Court of Justice for a binding decision.

Article 174 **Denunciation**

Art. 175, 176, 178

Any Contracting State may at any time denounce this Convention. Denunciation shall be notified to the Government of the Federal Republic of Germany. It shall take effect one year after the date of receipt of such notification.



Article 175 Preservation of acquired rights

- (1) In the event of a State ceasing to be party to this Convention in accordance with Article 172, paragraph 4, or Article 174, rights already acquired pursuant to this Convention shall not be impaired.
- (2) A European patent application which is pending when a designated State ceases to be party to the Convention shall be processed by the European Patent Office, as far as that State is concerned, as if the Convention in force thereafter were applicable to that State.
- (3) Paragraph 2 shall apply to European patents in respect of which, on the date mentioned in that paragraph, an opposition is pending or the opposition period has not expired.
- (4) Nothing in this Article shall affect the right of any State that has ceased to be a party to this Convention to treat any European patent in accordance with the text to which it was a party.

Article 176 Financial rights and obligations of former Contracting States

- (1) Any State which has ceased to be a party to this Convention in accordance with Article 172, paragraph 4, or Article 174, shall have the special financial contributions which it has paid pursuant to Article 40, paragraph 2, refunded to it by the Organisation only at the time when and under the conditions whereby the Organisation refunds special financial contributions paid by other States during the same accounting period.
- (2) The State referred to in paragraph 1 shall, even after ceasing to be a party to this Convention, continue to pay the proportion pursuant to Article 39 of renewal fees in respect of European patents remaining in force in that State, at the rate current on the date on which it ceased to be a party.

Article 177 Languages of the Convention

- (1) This Convention, drawn up in a single original, in the English, French and German languages, shall be deposited in the archives of the Government of the Federal Republic of Germany, the three texts being equally authentic. Art. 175, 176, 178
- (2) The texts of this Convention drawn up in official languages of Contracting States other than those specified in paragraph 1 shall, if they have been approved by the Administrative Council, be



considered as official texts. In the event of disagreement on the interpretation of the various texts, the texts referred to in paragraph 1 shall be authentic.

Article 178 Transmission and notifications

Art. 165, 166, 169

- (1) The Government of the Federal Republic of Germany shall draw up certified true copies of this Convention and shall transmit them to the Governments of all signatory or acceding States.
- (2) The Government of the Federal Republic of Germany shall notify to the Governments of the States referred to in paragraph 1:
 - (a) the deposit of any instrument of ratification or accession;
 - (b) any declaration or notification received pursuant to Article 168;
 - (c) any denunciation received pursuant to Article 174 and the date on which such denunciation comes into force.
- (3) The Government of the Federal Republic of Germany shall register this Convention with the Secretariat of the United Nations.

IN WITNESS WHEREOF, the Plenipotentiaries authorised thereto, having presented their Full Powers, found to be in good and due form, have signed this Convention.

Done at Munich this fifth day of October one thousand nine hundred and seventy-three



Lugano Convention

Preamble

THE HIGH CONTRACTING PARTIES TO THIS CONVENTION,

DETERMINED to strengthen in their territories the legal protection of persons therein established,

CONSIDERING that it is necessary for this purpose to determine the international jurisdiction of the courts, to facilitate recognition, and to introduce an expeditious procedure for securing the enforcement of judgments, authentic instruments and court settlements,

AWARE of the links between them, which have been sanctioned in the economic field by the free trade agreements concluded between the European Community and certain States members of the European Free Trade Association,

TAKING INTO ACCOUNT:

- the Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, as amended by the Accession Conventions under the successive enlargements of the European Union,
- the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters, which extends the application of the rules of the 1968 Brussels Convention to certain States members of the European Free Trade Association,
- Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which has replaced the abovementioned Brussels Convention,
- the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005,

PERSUADED that the extension of the principles laid down in Regulation (EC) No 44/2001 to the Contracting Parties to this instrument will strengthen legal and economic cooperation,



DESIRING to ensure as uniform an interpretation as possible of this instrument,

HAVE in this spirit DECIDED to conclude this Convention, and

HAVE AGREED AS FOLLOWS:

Title I Scope

- Article 1**
1. This Convention shall apply in civil and commercial matters whatever the nature of the court or tribunal.
It shall not extend, in particular, to revenue, customs or administrative matters.
 2. The Convention shall not apply to:
 - (a) the status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship, wills and succession;
 - (b) bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
 - (c) social security;
 - (d) arbitration.
 3. In this Convention, the term 'State bound by this Convention' shall mean any State that is a Contracting Party to this Convention or a Member State of the European Community. It may also mean the European Community.

Title II Jurisdiction

Section 1 General provisions

- Article 2**
1. Subject to the provisions of this Convention, persons domiciled in a State bound by this Convention shall, whatever their nationality, be sued in the courts of that State.
 2. Persons who are not nationals of the State bound by this Convention in which they are domiciled shall be governed by the rules of jurisdiction applicable to nationals of that State.



- Article 3**
1. Persons domiciled in a State bound by this Convention may be sued in the courts of another State bound by this Convention only by virtue of the rules set out in Sections 2 to 7 of this Title.
 2. In particular the rules of national jurisdiction set out in Annex I shall not be applicable as against them.

- Article 4**
1. If the defendant is not domiciled in a State bound by this Convention, the jurisdiction of the courts of each State bound by this Convention shall, subject to the provisions of Articles 22 and 23, be determined by the law of that State.
 2. As against such a defendant, any person domiciled in a State bound by this Convention may, whatever his nationality, avail himself in that State of the rules of jurisdiction there in force, and in particular those specified in Annex I, in the same way as the nationals of that State.

Section 2 Special jurisdiction

- Article 5**
- A person domiciled in a State bound by this Convention may, in another State bound by this Convention, be sued:
1.
 - (a) in matters relating to a contract, in the courts for the place of performance of the obligation in question;
 - (b) for the purpose of this provision and unless otherwise agreed, the place of performance of the obligation in question shall be:
 - in the case of the sale of goods, the place in a State bound by this Convention where, under the contract, the goods were delivered or should have been delivered;
 - in the case of the provision of services, the place in a State bound by this Convention where, under the contract, the services were provided or should have been provided.
 - (c) if (b) does not apply then subparagraph (a) applies;
 2. in matters relating to maintenance:
 - (a) in the courts for the place where the maintenance creditor is domiciled or habitually resident;or

- (b) in the court which, according to its own law, has jurisdiction to entertain proceedings concerning the status of a person if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties; or
 - (c) in the court which, according to its own law, has jurisdiction to entertain proceedings concerning parental responsibility, if the matter relating to maintenance is ancillary to those proceedings, unless that jurisdiction is based solely on the nationality of one of the parties;
- 3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur;
- 4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
- 5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated;
- 6. as settlor, trustee or beneficiary of a trust created by the operation of a statute, or by a written instrument, or created orally and evidenced in writing, in the courts of the State bound by this Convention in which the trust is domiciled;
- 7. as regards a dispute concerning the payment of remuneration claimed in respect of the salvage of a cargo or freight, in the court under the authority of which the cargo or freight in question:
 - (a) has been arrested to secure such payment; or
 - (b) could have been so arrested, but bail or other security has been given;provided that this provision shall apply only if it is claimed that the defendant has an interest in the cargo or freight or had such an interest at the time of salvage.

Article 6

A person domiciled in a State bound by this Convention may also be sued:

- 1. where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings;



2. as a third party in an action on a warranty or guarantee, or in any other third party proceedings, in the court seised of the original proceedings, unless these were instituted solely with the object of removing him from the jurisdiction of the court which would be competent in his case;
3. on a counter-claim arising from the same contract or facts on which the original claim was based, in the court in which the original claim is pending;
4. in matters relating to a contract, if the action may be combined with an action against the same defendant in matters relating to rights in rem in immovable property, in the court of the State bound by this Convention in which the property is situated.

Article 7 Where by virtue of this Convention a court of a State bound by this Convention has jurisdiction in actions relating to liability from the use or operation of a ship, that court, or any other court substituted for this purpose by the internal law of that State, shall also have jurisdiction over claims for limitation of such liability.

Section 3 Jurisdiction in matters relating to insurance

Article 8 In matters relating to insurance, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5).

Article 9

1. An insurer domiciled in a State bound by this Convention may be sued:
 - (a) in the courts of the State where he is domiciled; or
 - (b) in another State bound by this Convention, in the case of actions brought by the policyholder, the insured or a beneficiary, in the courts for the place where the plaintiff is domiciled; or
 - (c) if he is a co-insurer, in the courts of a State bound by this Convention in which proceedings are brought against the leading insurer.
2. An insurer who is not domiciled in a State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 10 In respect of liability insurance or insurance of immovable property, the insurer may in addition be sued in the courts for the place where the harmful event occurred. The same applies if movable and



immovable property are covered by the same insurance policy and both are adversely affected by the same contingency.

Article 11

1. In respect of liability insurance, the insurer may also, if the law of the court permits it, be joined in proceedings which the injured party has brought against the insured.
2. Articles 8, 9 and 10 shall apply to actions brought by the injured party directly against the insurer, where such direct actions are permitted.
3. If the law governing such direct actions provides that the policyholder or the insured may be joined as a party to the action, the same court shall have jurisdiction over them.

Article 12

1. Without prejudice to Article 11(3), an insurer may bring proceedings only in the courts of the State bound by this Convention in which the defendant is domiciled, irrespective of whether he is the policyholder, the insured or a beneficiary.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 13

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the policyholder, the insured or a beneficiary to bring proceedings in courts other than those indicated in this Section; or
3. which is concluded between a policyholder and an insurer, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same State bound by this Convention, and which has the effect of conferring jurisdiction on the courts of that State even if the harmful event were to occur abroad, provided that such an agreement is not contrary to the law of that State; or
4. which is concluded with a policyholder who is not domiciled in a State bound by this Convention, except insofar as the insurance is compulsory or relates to immovable property in a State bound by this Convention; or

5. which relates to a contract of insurance insofar as it covers one or more of the risks set out in Article 14.

Article 14

The following are the risks referred to in Article 13(5):

1. any loss of or damage to:
 - (a) seagoing ships, installations situated offshore or on the high seas, or aircraft, arising from perils which relate to their use for commercial purposes;
 - (b) goods in transit, other than passengers' baggage, where the transit consists of or includes carriage by such ships or aircraft;
2. any liability, other than for bodily injury to passengers or loss of or damage to their baggage:
 - (a) arising out of the use or operation of ships, installations or aircraft as referred to in point 1(a) insofar as, in respect of the latter, the law of the State bound by this Convention in which such aircraft are registered does not prohibit agreements on jurisdiction regarding insurance of such risks;
 - (b) for loss or damage caused by goods in transit as described in point 1(b);
3. any financial loss connected with the use or operation of ships, installations or aircraft as referred to in point 1(a), in particular loss of freight or charter-hire;
4. any risk or interest connected with any of those referred to in points 1 to 3;
5. notwithstanding points 1 to 4, all large risks.

Section 4 Jurisdiction over consumer contracts**Article 15**

1. In matters relating to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5), if:
 - (a) it is a contract for the sale of goods on instalment credit terms; or
 - (b) it is a contract for a loan repayable by instalments, or for any other form of credit, made to finance the sale of goods; or
 - (c) in all other cases, the contract has been concluded with a person who pursues commercial or professional activities in the State bound by this Convention of the consumer's domicile or, by



any means, directs such activities to that State or to several States including that State, and the contract falls within the scope of such activities.

2. Where a consumer enters into a contract with a party who is not domiciled in the State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention, that party shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.
3. This section shall not apply to a contract of transport other than a contract which, for an inclusive price, provides for a combination of travel and accommodation.

Article 16

1. A consumer may bring proceedings against the other party to a contract either in the courts of the State bound by this Convention in which that party is domiciled or in the courts for the place where the consumer is domiciled.
2. Proceedings may be brought against a consumer by the other party to the contract only in the courts of the State bound by this Convention in which the consumer is domiciled.
3. This Article shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 17

The provisions of this Section may be departed from only by an agreement:

1. which is entered into after the dispute has arisen; or
2. which allows the consumer to bring proceedings in courts other than those indicated in this Section; or
3. which is entered into by the consumer and the other party to the contract, both of whom are at the time of conclusion of the contract domiciled or habitually resident in the same State bound by this Convention, and which confers jurisdiction on the courts of that State, provided that such an agreement is not contrary to the law of that State.

Section 5 Jurisdiction over individual contracts of employment

Article 18

1. In matters relating to individual contracts of employment, jurisdiction shall be determined by this Section, without prejudice to Articles 4 and 5(5).

2. Where an employee enters into an individual contract of employment with an employer who is not domiciled in a State bound by this Convention but has a branch, agency or other establishment in one of the States bound by this Convention, the employer shall, in disputes arising out of the operations of the branch, agency or establishment, be deemed to be domiciled in that State.

Article 19

An employer domiciled in a State bound by this Convention may be sued:

1. in the courts of the State where he is domiciled; or
2. in another State bound by this Convention:
 - (a) in the courts for the place where the employee habitually carries out his work or in the courts for the last place where he did so; or
 - (b) if the employee does not or did not habitually carry out his work in any one country, in the courts for the place where the business which engaged the employee is or was situated.

Article 20

1. An employer may bring proceedings only in the courts of the State bound by this Convention in which the employee is domiciled.
2. The provisions of this Section shall not affect the right to bring a counter-claim in the court in which, in accordance with this Section, the original claim is pending.

Article 21

The provisions of this Section may be departed from only by an agreement on jurisdiction:

1. which is entered into after the dispute has arisen; or
2. which allows the employee to bring proceedings in courts other than those indicated in this Section.

Section 6 Exclusive jurisdiction

Article 22

The following courts shall have exclusive jurisdiction, regardless of domicile:

1. in proceedings which have as their object rights in rem in immovable property or tenancies of immovable property, the courts of the State bound by this Convention in which the property is situated.

However, in proceedings which have as their object tenancies of immovable property concluded for temporary private use for a maximum period of six consecutive months, the courts of the State bound by this Convention in which the defendant is domiciled shall also have jurisdiction, provided that the tenant is a natural person and that the landlord and the tenant are domiciled in the same State bound by this Convention;

2. in proceedings which have as their object the validity of the constitution, the nullity or the dissolution of companies or other legal persons or associations of natural or legal persons, or of the validity of the decisions of their organs, the courts of the State bound by this Convention in which the company, legal person or association has its seat. In order to determine that seat, the court shall apply its rules of private international law;
3. in proceedings which have as their object the validity of entries in public registers, the courts of the State bound by this Convention in which the register is kept;
4. in proceedings concerned with the registration or validity of patents, trade marks, designs, or other similar rights required to be deposited or registered, irrespective of whether the issue is raised by way of an action or as a defence, the courts of the State bound by this Convention in which the deposit or registration has been applied for, has taken place or is, under the terms of a Community instrument or an international convention, deemed to have taken place.
Without prejudice to the jurisdiction of the European Patent Office under the Convention on the grant of European patents, signed at Munich on 5 October 1973, the courts of each State bound by this Convention shall have exclusive jurisdiction, regardless of domicile, in proceedings concerned with the registration or validity of any European patent granted for that State irrespective of whether the issue is raised by way of an action or as a defence;
5. 5. in proceedings concerned with the enforcement of judgments, the courts of the State bound by this Convention in which the judgment has been or is to be enforced.

Section 7 Prorogation of jurisdiction

Article 23

1. If the parties, one or more of whom is domiciled in a State bound by this Convention, have agreed that a court or the courts of a State bound by this Convention are to have jurisdiction to settle any disputes which have arisen or which may arise in connection with a particular legal relationship, that court or those courts shall have jurisdiction. Such jurisdiction shall be exclusive



unless the parties have agreed otherwise. Such an agreement conferring jurisdiction shall be either:

- (a) in writing or evidenced in writing; or
 - (b) in a form which accords with practices which the parties have established between themselves; or
 - (c) in international trade or commerce, in a form which accords with a usage of which the parties are or ought to have been aware and which in such trade or commerce is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade or commerce concerned.
2. Any communication by electronic means which provides a durable record of the agreement shall be equivalent to 'writing'.
 3. Where such an agreement is concluded by parties, none of whom is domiciled in a State bound by this Convention, the courts of other States bound by this Convention shall have no jurisdiction over their disputes unless the court or courts chosen have declined jurisdiction.
 4. The court or courts of a State bound by this Convention on which a trust instrument has conferred jurisdiction shall have exclusive jurisdiction in any proceedings brought against a settlor, trustee or beneficiary, if relations between these persons or their rights or obligations under the trust are involved.
 5. Agreements or provisions of a trust instrument conferring jurisdiction shall have no legal force if they are contrary to the provisions of Articles 13, 17 or 21, or if the courts whose jurisdiction they purport to exclude have exclusive jurisdiction by virtue of Article 22.

Article 24 Apart from jurisdiction derived from other provisions of this Convention, a court of a State bound by this Convention before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.

Section 8 Examination as to jurisdiction and admissibility

Article 25 Where a court of a State bound by this Convention is seised of a claim which is principally concerned with a matter over which the courts of another State bound by this Convention have



exclusive jurisdiction by virtue of Article 22, it shall declare of its own motion that it has no jurisdiction.

Article 26

1. Where a defendant domiciled in one State bound by this Convention is sued in a court of another State bound by this Convention and does not enter an appearance, the court shall declare of its own motion that it has no jurisdiction unless its jurisdiction is derived from the provisions of this Convention.
2. The court shall stay the proceedings so long as it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him to arrange for his defence, or that all necessary steps have been taken to this end.
3. Instead of the provisions of paragraph 2, Article 15 of the Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial matters shall apply if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Convention.
4. Member States of the European Community bound by Council Regulation (EC) No 1348/2000 of 29 May 2000 or by the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, signed at Brussels on 19 October 2005, shall apply in their mutual relations the provision in Article 19 of that Regulation if the document instituting the proceedings or an equivalent document had to be transmitted pursuant to that Regulation or that Agreement.

Section 9 Lis pendens — related actions

Article 27

1. Where proceedings involving the same cause of action and between the same parties are brought in the courts of different States bound by this Convention, any court other than the court first seised shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seised is established.
2. Where the jurisdiction of the court first seised is established, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 28

1. Where related actions are pending in the courts of different States bound by this Convention, any court other than the court first seised may stay its proceedings.
2. Where these actions are pending at first instance, any court other than the court first seised may also, on the application of one of the parties, decline jurisdiction if the court first seised has jurisdiction over the actions in question and its law permits the consolidation thereof.
3. For the purposes of this Article, actions are deemed to be related where they are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Article 29

Where actions come within the exclusive jurisdiction of several courts, any court other than the court first seised shall decline jurisdiction in favour of that court.

Article 30

For the purposes of this Section, a court shall be deemed to be seised:

1. at the time when the document instituting the proceedings or an equivalent document is lodged with the court, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have service effected on the defendant; or
2. if the document has to be served before being lodged with the court at the time when it is received by the authority responsible for service, provided that the plaintiff has not subsequently failed to take the steps he was required to take to have the document lodged with the court.

Section 10 Provisional, including protective, measures**Article 31**

Application may be made to the courts of a State bound by this Convention for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another State bound by this Convention have jurisdiction as to the substance of the matter.

Title III Recognition and Enforcement**Article 32**

For the purposes of this Convention, ‘judgment’ means any judgment given by a court or tribunal of a State bound by this Convention, whatever the judgment may be called, including a decree, order,

decision or writ of execution, as well as the determination of costs or expenses by an officer of the court.

Section 1 Recognition

Article 33

1. A judgment given in a State bound by this Convention shall be recognised in the other States bound by this Convention without any special procedure being required.
2. Any interested party who raises the recognition of a judgment as the principal issue in a dispute may, in accordance with the procedures provided for in Sections 2 and 3 of this Title, apply for a decision that the judgment be recognised.
3. If the outcome of proceedings in a court of a State bound by this Convention depends on the determination of an incidental question of recognition that court shall have jurisdiction over that question.

Article 34

A judgment shall not be recognised:

1. if such recognition is manifestly contrary to public policy in the State in which recognition is sought;
2. where it was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. if it is irreconcilable with a judgment given in a dispute between the same parties in the State in which recognition is sought;
4. if it is irreconcilable with an earlier judgment given in another State bound by this Convention or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the State addressed.

Article 35

1. Moreover, a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Title II, or in a case provided for in Article 68. A judgment may furthermore be refused recognition in any case provided for in Article 64(3) or 67(4).



2. In its examination of the grounds of jurisdiction referred to in the foregoing paragraph, the court or authority applied to shall be bound by the findings of fact on which the court of the State of origin based its jurisdiction.
3. Subject to the provisions of paragraph 1, the jurisdiction of the court of the State of origin may not be reviewed. The test of public policy referred to in Article 34(1) may not be applied to the rules relating to jurisdiction.

Article 36 Under no circumstances may a foreign judgment be reviewed as to its substance.

- Article 37**
1. A court of a State bound by this Convention in which recognition is sought of a judgment given in another State bound by this Convention may stay the proceedings if an ordinary appeal against the judgment has been lodged.
 2. A court of a State bound by this Convention in which recognition is sought of a judgment given in Ireland or the United Kingdom may stay the proceedings if enforcement is suspended in the State of origin, by reason of an appeal.

Section 2 Enforcement

- Article 38**
1. A judgment given in a State bound by this Convention and enforceable in that State shall be enforced in another State bound by this Convention when, on the application of any interested party, it has been declared enforceable there.
 2. However, in the United Kingdom, such a judgment shall be enforced in England and Wales, in Scotland, or in Northern Ireland when, on the application of any interested party, it has been registered for enforcement in that part of the United Kingdom.

- Article 39**
1. The application shall be submitted to the court or competent authority indicated in the list in Annex II.
 2. The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought, or to the place of enforcement.

- Article 40**
1. The procedure for making the application shall be governed by the law of the State in which enforcement is sought.
 2. The applicant must give an address for service of process within the area of jurisdiction of the court applied to. However, if the law of the State in which enforcement is sought does not provide for the furnishing of such an address, the applicant shall appoint a representative ad litem.
 3. The documents referred to in Article 53 shall be attached to the application.

Article 41 The judgment shall be declared enforceable immediately on completion of the formalities in Article 53 without any review under Articles 34 and 35. The party against whom enforcement is sought shall not at this stage of the proceedings be entitled to make any submissions on the application.

- Article 42**
1. The decision on the application for a declaration of enforceability shall forthwith be brought to the notice of the applicant in accordance with the procedure laid down by the law of the State in which enforcement is sought.
 2. The declaration of enforceability shall be served on the party against whom enforcement is sought, accompanied by the judgment, if not already served on that party.

- Article 43**
1. The decision on the application for a declaration of enforceability may be appealed against by either party.
 2. The appeal is to be lodged with the court indicated in the list in Annex III.
 3. The appeal shall be dealt with in accordance with the rules governing procedure in contradictory matters.
 4. If the party against whom enforcement is sought fails to appear before the appellate court in proceedings concerning an appeal brought by the applicant, Article 26(2) to (4) shall apply even where the party against whom enforcement is sought is not domiciled in any of the States bound by this Convention.
 5. An appeal against the declaration of enforceability is to be lodged within one month of service thereof. If the party against whom enforcement is sought is domiciled in a State bound by this Convention other than that in which the declaration of enforceability was given, the time for

appealing shall be two months and shall run from the date of service, either on him in person or at his residence. No extension of time may be granted on account of distance.

Article 44 The judgment given on the appeal may be contested only by the appeal referred to in Annex IV.

- Article 45**
1. The court with which an appeal is lodged under Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only on one of the grounds specified in Articles 34 and 35. It shall give its decision without delay.
 2. Under no circumstances may the foreign judgment be reviewed as to its substance.

- Article 46**
1. The court with which an appeal is lodged under Article 43 or Article 44 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the State of origin or if the time for such an appeal has not yet expired; in the latter case, the court may specify the time within which such an appeal is to be lodged.
 2. Where the judgment was given in Ireland or the United Kingdom, any form of appeal available in the State of origin shall be treated as an ordinary appeal for the purposes of paragraph 1. 3. The court may also make enforcement conditional on the provision of such security as it shall determine.

- Article 47**
1. When a judgment must be recognised in accordance with this Convention, nothing shall prevent the applicant from availing himself of provisional, including protective, measures in accordance with the law of the State requested without a declaration of enforceability under Article 41 being required.
 2. The declaration of enforceability shall carry with it the power to proceed to any protective measures.
 3. During the time specified for an appeal pursuant to Article 43(5) against the declaration of enforceability and until any such appeal has been determined, no measures of enforcement may



be taken other than protective measures against the property of the party against whom enforcement is sought.

Article 48

1. Where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them.
2. An applicant may request a declaration of enforceability limited to parts of a judgment.

Article 49

A foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the State of origin.

Article 50

1. An applicant who in the State of origin has benefited from complete or partial legal aid or exemption from costs or expenses shall be entitled, in the procedure provided for in this Section, to benefit from the most favourable legal aid or the most extensive exemption from costs or expenses provided for by the law of the State addressed.
2. However, an applicant who requests the enforcement of a decision given by an administrative authority in Denmark, in Iceland or in Norway in respect of maintenance may, in the State addressed, claim the benefits referred to in paragraph 1 if he presents a statement from the Danish, Icelandic, or Norwegian Ministry of Justice to the effect that he fulfils the economic requirements to qualify for the grant of complete or partial legal aid or exemption from costs or expenses.

Article 51

No security, bond or deposit, however described, shall be required of a party who in one State bound by this Convention, applies for enforcement of a judgment given in another State bound by this Convention on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought.



Article 52 In proceedings for the issue of a declaration of enforceability, no charge, duty or fee calculated by reference to the value of the matter at issue may be levied in the State in which enforcement is sought.

Section 3 Common provisions

Article 53

1. A party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity.
2. A party applying for a declaration of enforceability shall also produce the certificate referred to in Article 54, without prejudice to Article 55.

Article 54 The court or competent authority of a State bound by this Convention where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Convention.

Article 55

1. If the certificate referred to in Article 54 is not produced, the court or competent authority may specify a time for its production or accept an equivalent document or, if it considers that it has sufficient information before it, dispense with its production.
2. If the court or competent authority so requires, a translation of the documents shall be produced. The translation shall be certified by a person qualified to do so in one of the States bound by this Convention.

Article 56 No legalisation or other similar formality shall be required in respect of the documents referred to in Article 53 or Article 55(2), or in respect of a document appointing a representative ad litem.

Title IV Authentic Instruments and Court Settlements

Article 57

1. A document which has been formally drawn up or registered as an authentic instrument and is enforceable in one State bound by this Convention shall, in another State bound by this Convention, be declared enforceable there, on application made in accordance with the procedures provided for in Article 38, et seq. The court with which an appeal is lodged under



Article 43 or Article 44 shall refuse or revoke a declaration of enforceability only if enforcement of the instrument is manifestly contrary to public policy in the State addressed.

2. Arrangements relating to maintenance obligations concluded with administrative authorities or authenticated by them shall also be regarded as authentic instruments within the meaning of paragraph 1.
3. The instrument produced must satisfy the conditions necessary to establish its authenticity in the State of origin.
4. Section 3 of Title III shall apply as appropriate. The competent authority of a State bound by this Convention where an authentic instrument was drawn up or registered shall issue, at the request of any interested party, a certificate using the standard form in Annex VI to this Convention.

Article 58

A settlement which has been approved by a court in the course of proceedings and is enforceable in the State bound by this Convention in which it was concluded shall be enforceable in the State addressed under the same conditions as authentic instruments. The court or competent authority of a State bound by this Convention where a court settlement was approved shall issue, at the request of any interested party, a certificate using the standard form in Annex V to this Convention.

Title V General Provisions

Article 59

1. In order to determine whether a party is domiciled in the State bound by this Convention whose courts are seised of a matter, the court shall apply its internal law.
2. If a party is not domiciled in the State whose courts are seised of the matter, then, in order to determine whether the party is domiciled in another State bound by this Convention, the court shall apply the law of that State.

Article 60

1. For the purposes of this Convention, a company or other legal person or association of natural or legal persons is domiciled at the place where it has its:
 - (a) statutory seat; or
 - (b) central administration; or
 - (c) principal place of business.

2. For the purposes of the United Kingdom and Ireland 'statutory seat' means the registered office or, where there is no such office anywhere, the place of incorporation or, where there is no such place anywhere, the place under the law of which the formation took place.
3. In order to determine whether a trust is domiciled in the State bound by this Convention whose courts are seised of the matter, the court shall apply its rules of private international law.

Article 61

Without prejudice to any more favourable provisions of national laws, persons domiciled in a State bound by this Convention who are being prosecuted in the criminal courts of another State bound by this Convention of which they are not nationals for an offence which was not intentionally committed may be defended by persons qualified to do so, even if they do not appear in person. However, the court seised of the matter may order appearance in person; in the case of failure to appear, a judgment given in the civil action without the person concerned having had the opportunity to arrange for his defence need not be recognised or enforced in the other States bound by this Convention.

Article 62

For the purposes of this Convention, the expression 'court' shall include any authorities designated by a State bound by this Convention as having jurisdiction in the matters falling within the scope of this Convention.

Title VI Transitional Provisions

Article 63

1. This Convention shall apply only to legal proceedings instituted and to documents formally drawn up or registered as authentic instruments after its entry into force in the State of origin and, where recognition or enforcement of a judgment or authentic instruments is sought, in the State addressed.
2. However, if the proceedings in the State of origin were instituted before the entry into force of this Convention, judgments given after that date shall be recognised and enforced in accordance with Title III:
 - (a) if the proceedings in the State of origin were instituted after the entry into force of the Lugano Convention of 16 September 1988 both in the State of origin and in the State addressed;



- (b) in all other cases, if jurisdiction was founded upon rules which accorded with those provided for either in Title II or in a convention concluded between the State of origin and the State addressed which was in force when the proceedings were instituted.

Title VII Relationship to Council Regulation (EC) No 44/2001 and Other Instruments

Article 64

1. This Convention shall not prejudice the application by the Member States of the European Community of the Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as well as any amendments thereof, of the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968, and of the Protocol on interpretation of that Convention by the Court of Justice of the European Communities, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, as well as of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005.
2. However, this Convention shall in any event be applied:
 - (a) in matters of jurisdiction, where the defendant is domiciled in the territory of a State where this Convention but not an instrument referred to in paragraph 1 of this Article applies, or where Articles 22 or 23 of this Convention confer jurisdiction on the courts of such a State;
 - (b) in relation to lis pendens or to related actions as provided for in Articles 27 and 28, when proceedings are instituted in a State where the Convention but not an instrument referred to in paragraph 1 of this Article applies and in a State where this Convention as well as an instrument referred to in paragraph 1 of this Article apply;
 - (c) in matters of recognition and enforcement, where either the State of origin or the State addressed is not applying an instrument referred to in paragraph 1 of this Article.
3. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the ground of jurisdiction on which the judgment has been based differs from that resulting from this Convention and recognition or enforcement is sought against a party who is domiciled in a



State where this Convention but not an instrument referred to in paragraph 1 of this Article applies, unless the judgment may otherwise be recognised or enforced under any rule of law in the State addressed.

Article 65

Subject to the provisions of Articles 63(2), 66 and 67, this Convention shall, as between the States bound by this Convention, supersede the conventions concluded between two or more of them that cover the same matters as those to which this Convention applies. In particular, the conventions mentioned in Annex VII shall be superseded.

Article 66

1. The conventions referred to in Article 65 shall continue to have effect in relation to matters to which this Convention does not apply.
2. They shall continue to have effect in respect of judgments given and documents formally drawn up or registered as authentic instruments before the entry into force of this Convention.

Article 67

1. This Convention shall not affect any conventions by which the Contracting Parties and/or the States bound by this Convention are bound and which in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. Without prejudice to obligations resulting from other agreements between certain Contracting Parties, this Convention shall not prevent Contracting Parties from entering into such conventions.
2. This Convention shall not prevent a court of a State bound by this Convention and by a convention on a particular matter from assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another State bound by this Convention which is not a party to that convention. The court hearing the action shall, in any event, apply Article 26 of this Convention.
3. Judgments given in a State bound by this Convention by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other States bound by this Convention in accordance with Title III of this Convention.
4. In addition to the grounds provided for in Title III, recognition or enforcement may be refused if the State addressed is not bound by the convention on a particular matter and the person against whom recognition or enforcement is sought is domiciled in that State, or, if the State addressed is



a Member State of the European Community and in respect of conventions which would have to be concluded by the European Community, in any of its Member States, unless the judgment may otherwise be recognised or enforced under any rule of law in the State addressed.

5. Where a convention on a particular matter to which both the State of origin and the State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Convention which concern the procedures for recognition and enforcement of judgments may be applied.

Article 68

1. This Convention shall not affect agreements by which States bound by this Convention undertook, prior to the entry into force of this Convention, not to recognise judgments given in other States bound by this Convention against defendants domiciled or habitually resident in a third State where, in cases provided for in Article 4, the judgment could only be founded on a ground of jurisdiction as specified in Article 3(2). Without prejudice to obligations resulting from other agreements between certain Contracting Parties, this Convention shall not prevent Contracting Parties from entering into such conventions.
2. However, a Contracting Party may not assume an obligation towards a third State not to recognise a judgment given in another State bound by this Convention by a court basing its jurisdiction on the presence within that State of property belonging to the defendant, or the seizure by the plaintiff of property situated there:
 - (a) if the action is brought to assert or declare proprietary or possessory rights in that property, seeks to obtain authority to dispose of it, or arises from another issue relating to such property; or
 - (b) if the property constitutes the security for a debt which is the subject-matter of the action.

Title VIII Final Provisions

Article 69

1. The Convention shall be open for signature by the European Community, Denmark, and States which, at the time of the opening for signature, are Members of the European Free Trade Association.



2. This Convention shall be subject to ratification by the Signatories. The instruments of ratification shall be deposited with the Swiss Federal Council, which shall act as Depositary of this Convention.
3. At the time of the ratification, the Contracting Parties may submit declarations in accordance with Articles I, II and III of Protocol 1.
4. The Convention shall enter into force on the first day of the sixth month following the date on which the European Community and a Member of the European Free Trade Association deposit their instruments of ratification.
5. The Convention shall enter into force in relation to any other Party on the first day of the third month following the deposit of its instrument of ratification.
6. Without prejudice to Article 3(3) of Protocol 2, this Convention shall replace the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988 as of the date of its entry into force in accordance with paragraphs 4 and 5 above. Any reference to the 1988 Lugano Convention in other instruments shall be understood as a reference to this Convention.
7. Insofar as the relations between the Member States of the European Community and the non-European territories referred to in Article 70(1)(b) are concerned, this Convention shall replace the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, signed at Brussels on 27 September 1968, and of the Protocol on interpretation of that Convention by the Court of Justice of the European Communities, signed at Luxembourg on 3 June 1971, as amended by the Conventions of Accession to the said Convention and the said Protocol by the States acceding to the European Communities, as of the date of the entry into force of this Convention with respect to these territories in accordance with Article 73(2).

Article 70

1. After entering into force this Convention shall be open for accession by:
 - (a) the States which, after the opening of this Convention for signature, become Members of the European Free Trade Association, under the conditions laid down in Article 71;
 - (b) Member States of the European Community acting on behalf of certain non-European territories that are part of the territory of that Member State or for whose external relations that Member State is responsible, under the conditions laid down in Article 71;

- (c) any other State, under the conditions laid down in Article 72.
- 2. States referred to in paragraph 1, which wish to become a Contracting Party to this Convention, shall address their application to the Depositary. The application, including the information referred to in Articles 71 and 72 shall be accompanied by a translation into English and French.

Article 71

- 1. Any State referred to in Article 70(1)(a) and (b) wishing to become a Contracting Party to this Convention:
 - (a) shall communicate the information required for the application of this Convention;
 - (b) may submit declarations in accordance with Articles I and III of Protocol 1.
- 2. The Depositary shall transmit any information received pursuant to paragraph 1 to the other Contracting Parties prior to the deposit of the instrument of accession by the State concerned.

Article 72

- 1. Any State referred to in Article 70(1)(c) wishing to become a Contracting Party to this Convention:
 - (a) shall communicate the information required for the application of this Convention;
 - (b) may submit declarations in accordance with Articles I and III of Protocol 1; and
 - (c) shall provide the Depositary with information on, in particular:
 - (1) their judicial system, including information on the appointment and independence of judges;
 - (2) their internal law concerning civil procedure and enforcement of judgments; and
 - (3) their private international law relating to civil procedure.
- 2. The Depositary shall transmit any information received pursuant to paragraph 1 to the other Contracting Parties prior to inviting the State concerned to accede in accordance with paragraph 3 of this Article.
- 3. Without prejudice to paragraph 4, the Depositary shall invite the State concerned to accede only if it has obtained the unanimous agreement of the Contracting Parties. The Contracting Parties shall endeavour to give their consent at the latest within one year after the invitation by the Depositary.



4. The Convention shall enter into force only in relations between the acceding State and the Contracting Parties which have not made any objections to the accession before the first day of the third month following the deposit of the instrument of accession.

Article 73

1. The instruments of accession shall be deposited with the Depositary.
2. In respect of an acceding State referred to in Article 70, the Convention shall enter into force on the first day of the third month following the deposit of its instrument of accession. As of that moment, the acceding State shall be considered a Contracting Party to the Convention.
3. Any Contracting Party may submit to the Depositary a text of this Convention in the language or languages of the Contracting Party concerned, which shall be authentic if so agreed by the Contracting Parties in accordance with Article 4 of Protocol 2.

Article 74

1. This Convention is concluded for an unlimited period.
2. Any Contracting Party may, at any time, denounce the Convention by sending a notification to the Depositary.
3. The denunciation shall take effect at the end of the calendar year following the expiry of a period of six months from the date of receipt by the Depositary of the notification of denunciation.

Article 75

The following are annexed to this Convention:

- a Protocol 1, on certain questions of jurisdiction, procedure and enforcement,
- a Protocol 2, on the uniform interpretation of this Convention and on the Standing Committee,
- a Protocol 3, on the application of Article 67 of this Convention,
- Annexes I through IV and Annex VII, with information related to the application of this Convention,
- Annexes V and VI, containing the certificates referred to in Articles 54, 58 and 57 of this Convention,
- Annex VIII, containing the authentic languages referred to in Article 79 of this Convention, and
- Annex IX, concerning the application of Article II of Protocol 1.

These Protocols and Annexes shall form an integral part of this Convention.



Article 76

Without prejudice to Article 77, any Contracting Party may request the revision of this Convention. To that end, the Depositary shall convene the Standing Committee as laid down in Article 4 of Protocol 2.

Article 77

1. The Contracting Parties shall communicate to the Depositary the text of any provisions of the laws which amend the lists set out in Annexes I through IV as well as any deletions in or additions to the list set out in Annex VII and the date of their entry into force. Such communication shall be made within reasonable time before the entry into force and be accompanied by a translation into English and French. The Depositary shall adapt the Annexes concerned accordingly, after having consulted the Standing Committee in accordance with Article 4 of Protocol 2. For that purpose, the Contracting Parties shall provide a translation of the adaptations into their languages.
2. Any amendment of Annexes V through VI and VIII through IX to this Convention shall be adopted by the Standing Committee in accordance with Article 4 of Protocol 2.

Article 78

1. The Depositary shall notify the Contracting Parties of:
 - (a) the deposit of each instrument of ratification or accession;
 - (b) the dates of entry into force of this Convention in respect of the Contracting Parties;
 - (c) any declaration received pursuant to Articles I to IV of Protocol 1;
 - (d) any communication made pursuant to Article 74(2), Article 77(1) and paragraph 4 of Protocol 3.
2. The notifications will be accompanied by translations into English and French.

Article 79

This Convention, drawn up in a single original in the languages listed in Annex VIII, all texts being equally authentic, shall be deposited in the Swiss Federal Archives. The Swiss Federal Council shall transmit a certified copy to each Contracting Party.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, have signed this Convention.

Note that in this version of Simmons & Simmons' UPC e-Laws, the signatures are omitted.

Protocol I on certain questions of jurisdiction, procedure and enforcement

Article I

1. Judicial and extrajudicial documents drawn up in one State bound by this Convention which have to be served on persons in another State bound by this Convention shall be transmitted in accordance with the procedures laid down in the conventions and agreements applicable between these States.
2. Unless the Contracting Party on whose territory service is to take place objects by declaration to the Depositary, such documents may also be sent by the appropriate public officers of the State in which the document has been drawn up directly to the appropriate public officers of the State in which the addressee is to be found. In this case the officer of the State of origin shall send a copy of the document to the officer of the State applied to who is competent to forward it to the addressee. The document shall be forwarded in the manner specified by the law of the State applied to. The forwarding shall be recorded by a certificate sent directly to the officer of the State of origin.
3. Member States of the European Community bound by Council Regulation (EC) No 1348/2000 of 29 May 2000 or by the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, signed at Brussels on 19 October 2005, shall apply in their mutual relations that Regulation and that Agreement.

Article II

1. The jurisdiction specified in Articles 6(2) and 11 in actions on a warranty or guarantee or in any other third party proceedings may not be fully resorted to in the States bound by this Convention referred to in Annex IX. Any person domiciled in another State bound by this Convention may be sued in the courts of these States pursuant to the rules referred to in Annex IX.
2. At the time of ratification the European Community may declare that proceedings referred to in Articles 6(2) and 11 may not be resorted to in some other Member States and provide information on the rules that shall apply.
3. Judgments given in the other States bound by this Convention by virtue of Article 6(2) or Article 11 shall be recognised and enforced in the States mentioned in paragraphs 1 and 2 in accordance with Title III. Any effects which judgments given in these States may have on third

parties by application of the provisions in paragraphs 1 and 2 shall also be recognised in the other States bound by this Convention.

Article III

1. Switzerland reserves the right to declare upon ratification that it will not apply the following part of the provision in Article 34(2):
'unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so'.
If Switzerland makes such declaration, the other Contracting Parties shall apply the same reservation in respect of judgments rendered by the courts of Switzerland.
2. Contracting Parties may, in respect of judgments rendered in an acceding State referred to in Article 70(1)(c), by declaration reserve:
 - (a) the right mentioned in paragraph 1; and
 - (b) the right of an authority mentioned in Article 39, notwithstanding the provisions of Article 41, to examine of its own motion whether any of the grounds for refusal of recognition and enforcement of a judgment is present or not.
3. If a Contracting Party has made such a reservation towards an acceding State as referred to in paragraph 2, this acceding State may by declaration reserve the same right in respect of judgments rendered by the courts of that Contracting Party.
4. Except for the reservation mentioned in paragraph 1, the declarations are valid for periods of five years and are renewable at the end of such periods. The Contracting Party shall notify a renewal of a declaration referred to under paragraph 2 not later than six months prior to the end of such period. An acceding State may only renew its declaration made under paragraph 3 after renewal of the respective declaration under paragraph 2.

Article IV

The declarations referred to in this Protocol may be withdrawn at any time by notification to the Depositary. The notification shall be accompanied by a translation into English and French. The Contracting Parties provide for translations into their languages. Any such withdrawal shall take effect as of the first day of the third month following that notification.



Protocol 2 on the uniform interpretation of the Convention and on the Standing Committee

Preamble

THE HIGH CONTRACTING PARTIES,

HAVING REGARD to Article 75 of this Convention,

CONSIDERING the substantial link between this Convention, the 1988 Lugano Convention, and the instruments referred to in Article 64(1) of this Convention,

CONSIDERING that the Court of Justice of the European Communities has jurisdiction to give rulings on the interpretation of the provisions of the instruments referred to in Article 64(1) of this Convention,

CONSIDERING that this Convention becomes part of Community rules and that therefore the Court of Justice of the European Communities has jurisdiction to give rulings on the interpretation of the provisions of this Convention as regards the application by the courts of the Member States of the European Community,

BEING AWARE of the rulings delivered by the Court of Justice of the European Communities on the interpretation of the instruments referred to in Article 64(1) of this Convention up to the time of signature of this Convention, and of the rulings delivered by the courts of the Contracting Parties to the 1988 Lugano Convention on the latter Convention up to the time of signature of this Convention,

CONSIDERING that the parallel revision of both the 1988 Lugano and Brussels Conventions, which led to the conclusion of a revised text for these Conventions, was substantially based on the above mentioned rulings on the 1968 Brussels and the 1988 Lugano Conventions,

CONSIDERING that the revised text of the Brussels Convention has been incorporated, after the entry into force of the Amsterdam Treaty, into Regulation (EC) No 44/2001,

CONSIDERING that this revised text also constituted the basis for the text of this Convention,



DESIRING to prevent, in full deference to the independence of the courts, divergent interpretations and to arrive at an interpretation as uniform as possible of the provisions of this Convention and of those of the Regulation (EC) No 44/2001 which are substantially reproduced in this Convention and of other instruments referred to in Article 64(1) of this Convention,

HAVE AGREED AS FOLLOWS:

Article 1

1. Any court applying and interpreting this Convention shall pay due account to the principles laid down by any relevant decision concerning the provision(s) concerned or any similar provision(s) of the 1988 Lugano Convention and the instruments referred to in Article 64(1) of the Convention rendered by the courts of the States bound by this Convention and by the Court of Justice of the European Communities.
2. For the courts of Member States of the European Community, the obligation laid down in paragraph 1 shall apply without prejudice to their obligations in relation to the Court of Justice of the European Communities resulting from the Treaty establishing the European Community or from the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Brussels on 19 October 2005.

Article 2

Any State bound by this Convention and which is not a Member State of the European Community is entitled to submit statements of case or written observations, in accordance with Article 23 of the Protocol on the Statute of the Court of Justice of the European Communities, where a court or tribunal of a Member State of the European Community refers to the Court of Justice for a preliminary ruling a question on the interpretation of this Convention or of the instruments referred to in Article 64(1) of this Convention.

Article 3

1. The Commission of the European Communities shall set up a system of exchange of information concerning relevant judgments delivered pursuant to this Convention as well as relevant judgments under the 1988 Lugano Convention and the instruments referred to in Article 64(1) of this Convention. This system shall be accessible to the public and contain judgments delivered

by the courts of last instance and of the Court of Justice of the European Communities as well as judgments of particular importance which have become final and have been delivered pursuant to this Convention, the 1988 Lugano Convention, and the instruments referred to in Article 64(1) of this Convention. The judgments shall be classified and provided with an abstract.

The system shall comprise the transmission to the Commission by the competent authorities of the States bound by this Convention of judgments as referred to above delivered by the courts of these States.

2. A selection of cases of particular interest for the proper functioning of the Convention will be made by the Registrar of the Court of Justice of the European Communities, who shall present the selected case law at the meeting of experts in accordance with Article 5 of this Protocol.
3. Until the European Communities have set up the system pursuant to paragraph 1, the Court of Justice of the European Communities shall maintain the system for the exchange of information established by Protocol 2 of the 1988 Lugano Convention for judgments delivered under this Convention and the 1988 Lugano Convention.

Article 4

1. A Standing Committee shall be set up, composed of the representatives of the Contracting Parties.
2. At the request of a Contracting Party, the Depositary of the Convention shall convene meetings of the Committee for the purpose of:
 - a consultation on the relationship between this Convention and other international instruments,
 - a consultation on the application of Article 67, including intended accessions to instruments on particular matters according to Article 67(1), and proposed legislation according to Protocol 3.
 - the consideration of the accession of new States. In particular, the Committee may ask acceding States referred to in Article 70(1)(c) questions about their judicial systems and the implementation of the Convention. The Committee may also consider possible adaptations to the Convention necessary for its application in the acceding States,

- the acceptance of new authentic language versions pursuant to Article 73(3) of this Convention and the necessary amendments to Annex VIII,
 - a consultation on a revision of the Convention pursuant to Article 76,
 - a consultation on amendments to Annexes I through IV and Annex VII pursuant to Article 77(1),
 - the adoption of amendments to Annexes V and VI pursuant to Article 77(2),
 - a withdrawal of the reservations and declarations made by the Contracting Parties pursuant to Protocol 1 and necessary amendments to Annex IX.
3. The Committee shall establish the procedural rules concerning its functioning and decision-making. These rules shall provide for the possibility to consult and decide by written procedure.

Article 5

1. The Depositary may convene, whenever necessary, a meeting of experts to exchange views on the functioning of the Convention, in particular on the development of the case-law and new legislation that may influence the application of the Convention.
2. This meeting shall be composed of experts of the Contracting Parties, of the States bound by this Convention, of the Court of Justice of the European Communities, and of the European Free Trade Association. It shall be open to any other experts whose presence is deemed appropriate.
3. Any problems arising on the functioning of the Convention may be referred to the Standing Committee referred to in Article 4 of this Protocol for further action.

Protocol 3 on the application of Article 67 of the Convention

Protocol 3 THE HIGH CONTRACTING PARTIES HAVE AGREED AS FOLLOWS:

1. For the purposes of the Convention, provisions which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments and which are or will be contained in acts of the institutions of the European Communities shall be treated in the same way as the conventions referred to in Article 67(1).
2. If one of the Contracting Parties is of the opinion that a provision contained in a proposed act of the institutions of the European Communities is incompatible with the Convention, the



Contracting Parties shall promptly consider amending the Convention pursuant to Article 76, without prejudice to the procedure established by Protocol 2.

3. Where a Contracting Party or several Parties together incorporate some or all of the provisions contained in acts of the institutions of the European Community referred to in paragraph 1 into national law, then these provisions of national law shall be treated in the same way as the conventions referred to in Article 67(1).
4. The Contracting Parties shall communicate to the Depositary the text of the provisions mentioned in paragraph 3. Such communication shall be accompanied by a translation into English and French.

Annexes

Annexes I to IX are omitted here, for their content see the online version at <http://data.europa.eu/eli/convention/2007/712/oj>



Non-embedded documents

Some documents relating to the UPC and referenced above do not feature altogether. See below for links to their online version.

Document	Link
Directive 98/5/EC (...facilitate permanent legal practice in other member states)	http://data.europa.eu/eli/dir/1998/5/oj
TFEU Treaty	http://data.europa.eu/eli/treaty/tfeu_2012/oj



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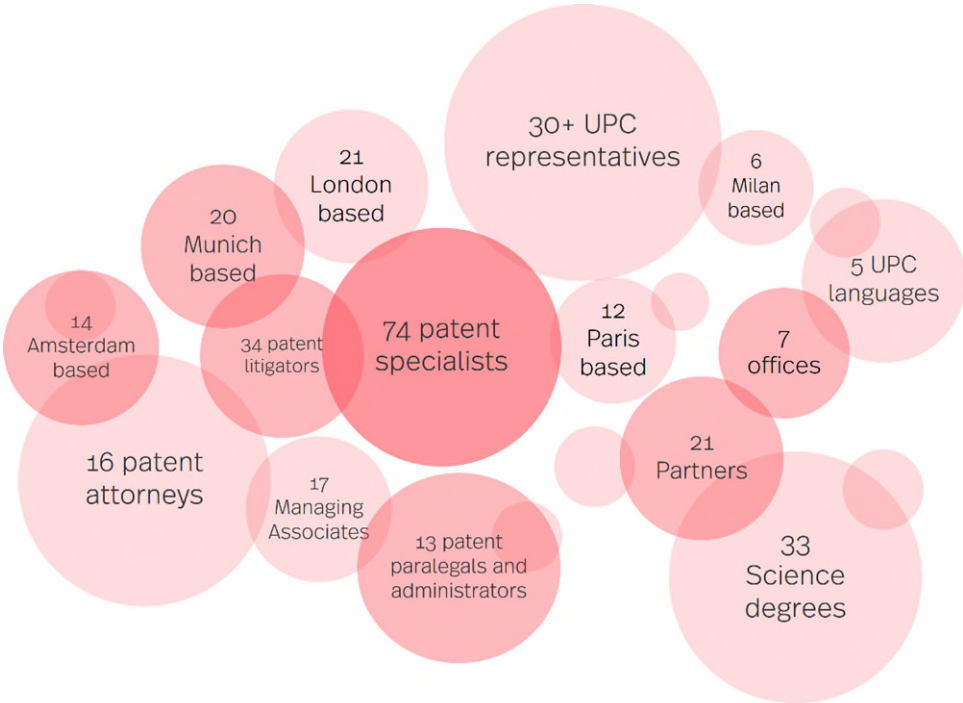




UPC bench strength

The Unified Patent Court (UPC) and Unitary Patent (UP) system will bring new opportunities and challenges to patent litigation and patent filing strategies in Europe.

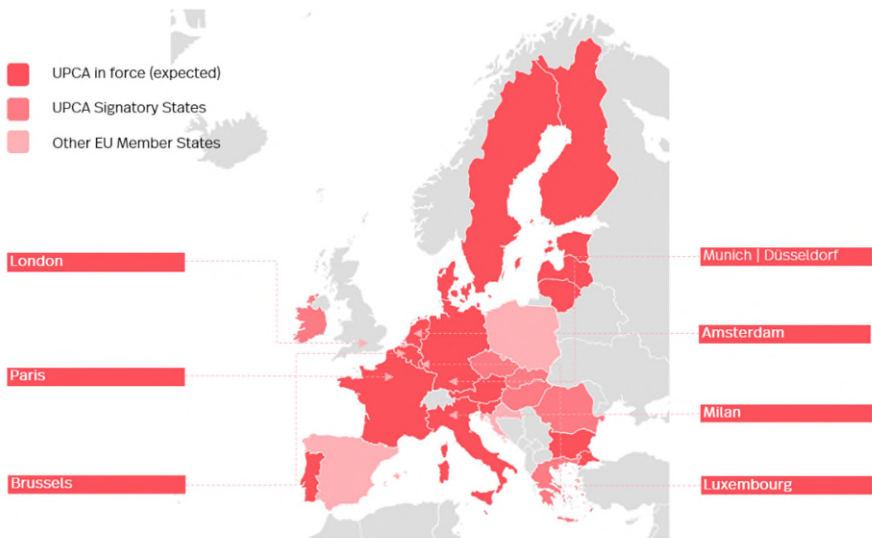
We are ready to advise and assist you with our diverse team of legal and technical experts across all core UPC jurisdictions.



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We are one partnership spanning all major UPC jurisdictions, which allows us to prioritize our clients' interests over our own.

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