

The Rules of Procedure of the Unified Patent Court

*28 November 2014 • 50th Anniversary of CEIPI
Council of Europe • Strasbourg*

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A V O C A T S

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Overview

- A landmark in patent litigation and in European civil procedure
- All the rules are not in the Rules
- The best of both worlds
- Main features
- Hot topics
- What's next?



A formidable challenge

- The Agreement aims at creating the first supranational court in Europe having jurisdiction for disputes between private parties
- Not a national court,
Not a EU court,
Instead, a court "*common to several EU Member States*"

All the rules are not in the Rules

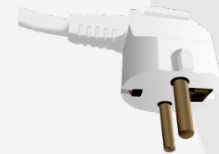
- Brussels I Regulation
- The 19 February 2013 Agreement on a Unified Patent Court
- The Rules of Procedure

Rules of procedure also in Brussels I Regulation

Regulation (EU) N^o 542/2014 of the
European Parliament and of the Council of
15 May 2014
amending Regulation (EU) N^o 1215/2012
as regards the rules to be applied with
respect to the Unified Patent Court and
the Benelux Court of Justice

Purpose of Regulation Nº 542/2014

- Allows entry into force of the UPC Agreement
- Ensures compatibility of the Brussels I Regulation with the courts common to several Member States
- Provides the UPC with a (limited) 'long-arm jurisdiction' toward Turkey and other EP non-EU states



Many rules of procedure in the Unified Patent Court Agreement



More than 50% of the 89 articles of the 19 February 2013 UPC Agreement are procedural provisions

Summary

Rules of Procedure

- Drafting process
- Main features
- Hot topics



Drafting process: stage 0



SECOND VENICE RESOLUTION

San Servolo, 4th November 2006

We, the European Patent Judges named below, approve the attached principles for the Rules of Procedure of the European Patent Court

4 November 2006, Venice Forum: European Patent Judges approve the principles of the Rules of Procedure

Drafting process: stages 1-5



**2007-2012: EU Commission's Expert group
Judges, Lawyers and Business representatives**

Drafting process: stages 6-15



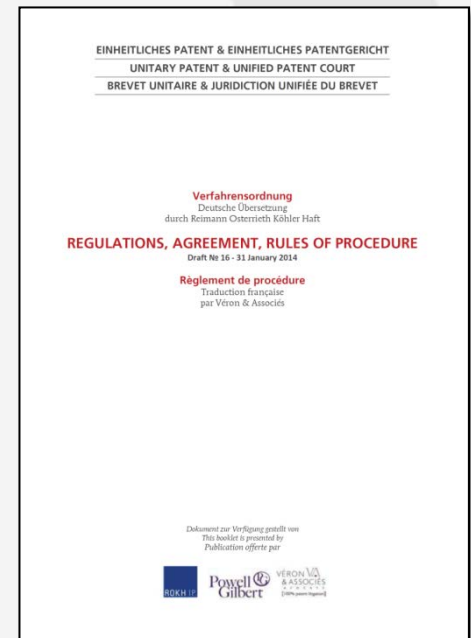
**2012-2014: Drafting Committee
Judges and Lawyers**

Draft 15 (31 May 2013): 111 comments received



Draft 16 (31 January 2014)

Reviewed and modified in 2014 by the Preparatory Committee





Drafting process: stages 17 +



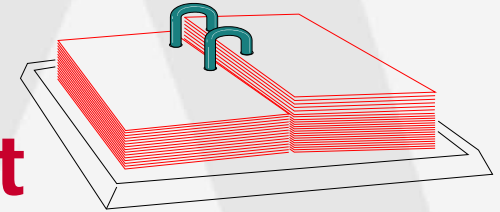
26 November 2014: Public hearing in Trier

The best of both worlds



Main features of the proceedings

- One year for a judgment
- Mainly written proceedings, in electronic form
- Registrar: an important person
- Preformatted proceedings
- Front-loading system
- Judge-rapporteur: a case manager
- Hearing of a witness in person exceptional
- One day
- Court's fees



One year for a judgment

*"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**"*
(preamble)

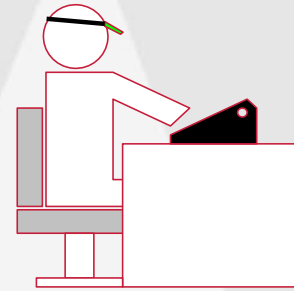
Written proceedings in electronic form



« 1. Written pleadings and other documents shall be lodged at the Registry in electronic form. Parties shall make use of the official forms available on-line. 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. »
(Rule 4)

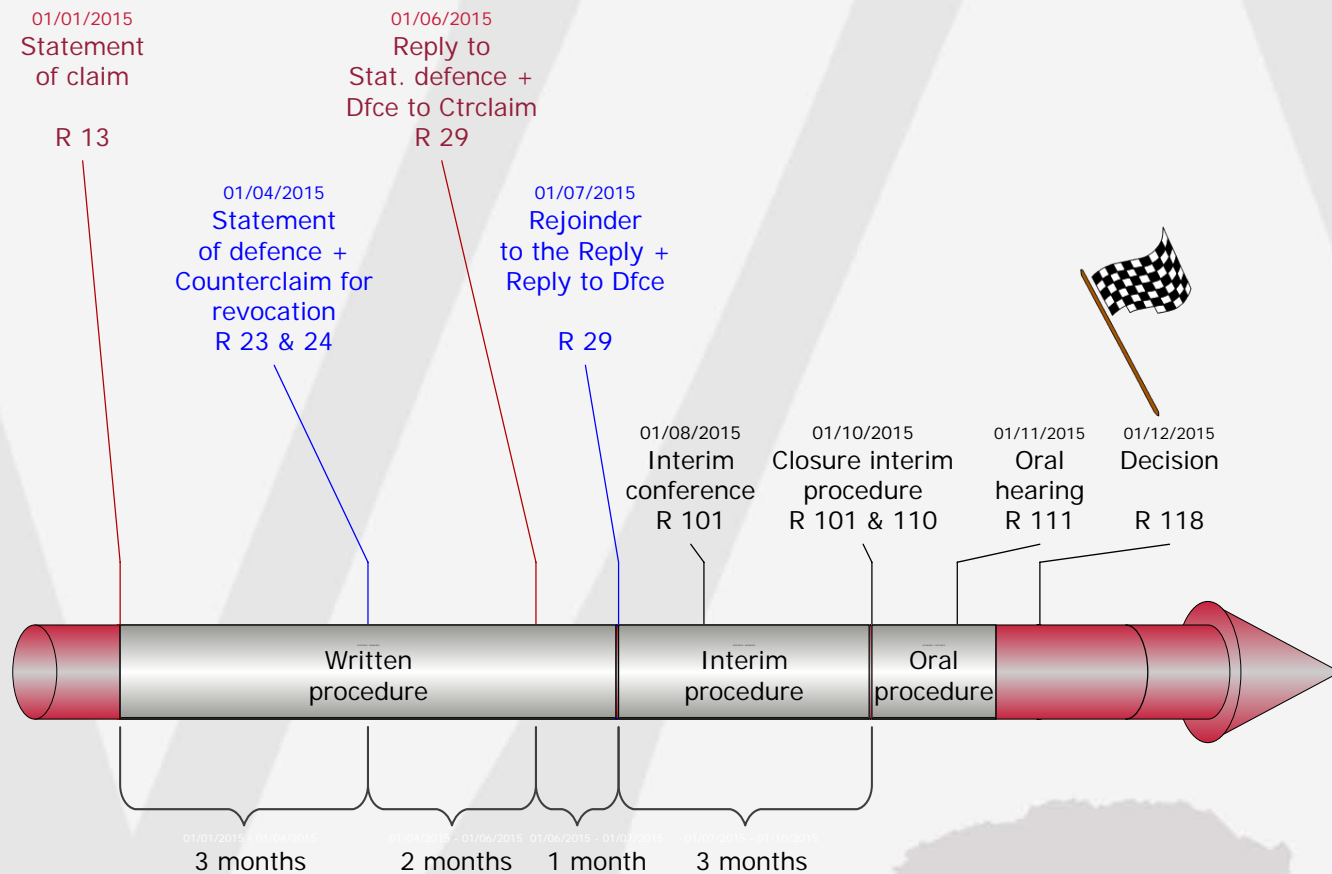
<http://prototype.unified-patent-court.org>

The Registrar: an important person



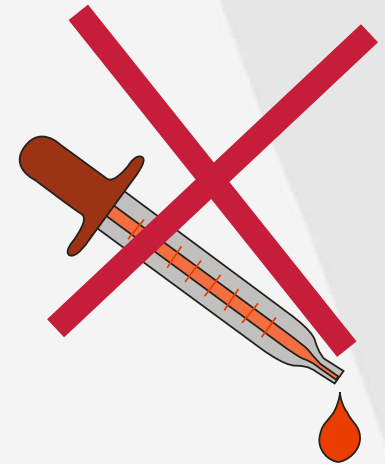
- Enters the Application to opt out in the register
- Examines, when receiving pleadings, whether the formal requirements have been complied with (may invite parties to correct deficiencies)
- Serves the Statement of claim and all further pleadings upon the parties

Preformatted proceedings



Front-loading system

No dribs and drabs system



The judge-rapporteur: a case manager



Hearing of a witness in person exceptional



Oral hearing: one day



“Rule 113 – Duration of the oral hearing

- 1. Without prejudice to 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, in accordance with the Practice Directions.*
- 2. Oral testimony at the oral hearing shall be limited to issues identified by the judge-rapporteur or the presiding judge as having to be decided by oral evidence.*
- 3. The presiding judge may, after consulting the panel, limit a party's oral submissions if the panel is sufficiently informed.”*

Costs



“(1) The budget of the Court shall be financed by the Court's own financial revenues...”

(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.”*

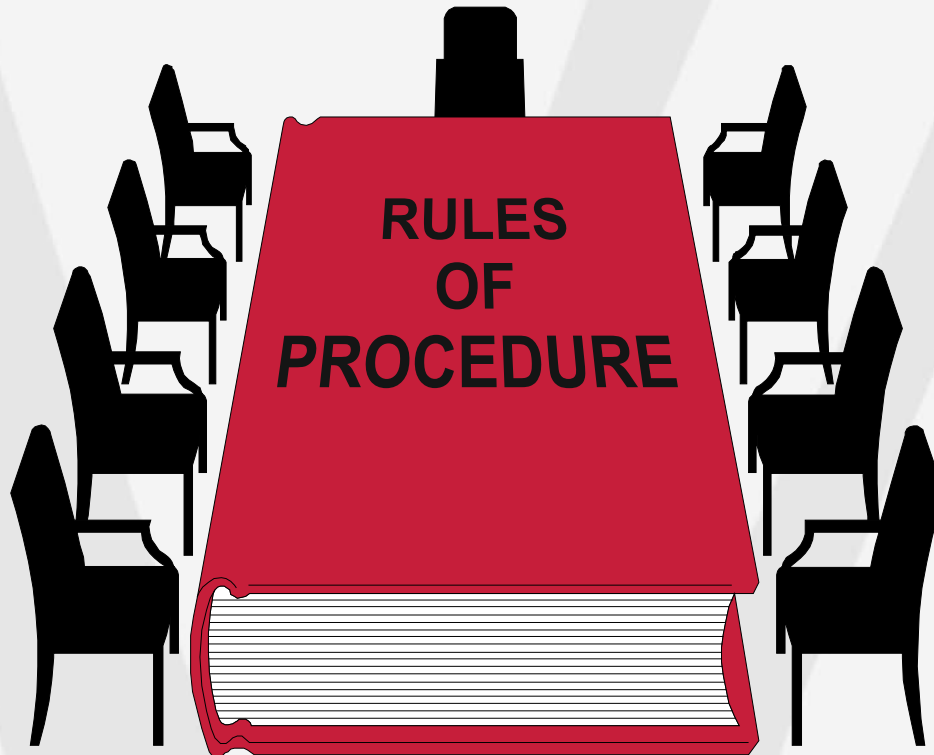
(Art. 36 of the Agreement)

Rules of Procedure: hot topics

- Opt-out provisions
- Language of the Statement of claim
- Bifurcation
- Decision on provisional measures
- Final decisions (permanent injunctions)
- Leave for procedural appeals
- Representatives authorised to practice



What's next?



2015: Administrative Committee's final approval

Outstanding question: the judges' robe?



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Thank you

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