

# The Unified Patent Court

state of the play in February 2013


LES FRANCE • The New European Patent System  
Paris • 6 February 2013

Pierre Véron  
Honorary President  
EPLAW  
(European Patent Lawyers Association)

VÉRON VA  
& ASSOCIÉS  
A V O C A T S  
Paris ■ Lyon

The Unified Patent Court

## On the table today

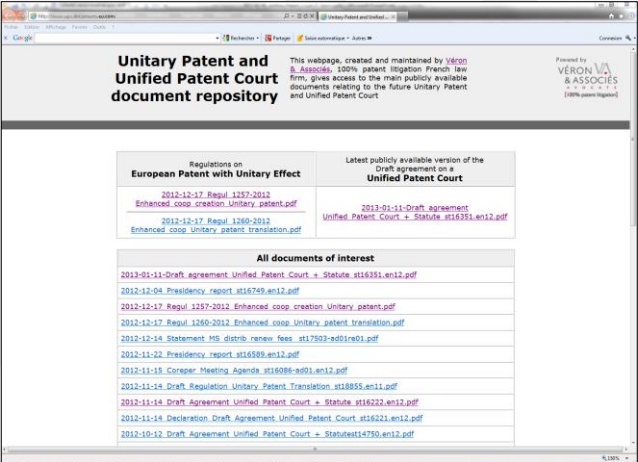
- 
 17 December 2012  
**Regulation** 1257/2012 enhanced cooperation creation of unitary patent protection  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0001:0008:EN:PDF>
- 
 17 December 2012  
**Regulation** 1260/2012 (translation arrangements)  
<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:361:0089:0092:EN:PDF>
- 
 11 January 2013  
**Draft Agreement**  
 Unified Patent Court and draft Statute  
 Revised Presidency text 16351/12 (new numbering)  
<http://register.consilium.europa.eu/pdf/en/12/st16/st16351.en12.pdf>
- 
 Draft **Rules of procedure** of the Unified Patent Court  
 24 May 2012 unpublished (V13 or higher to be released this spring)

VÉRON VA  
& ASSOCIÉS  
A V O C A T S

2

The Unified Patent Court

**The main publicly available documents can be found on**  
**[www.upc.documents.eu.com](http://www.upc.documents.eu.com)**



The screenshot shows a web browser displaying the website 'Unitary Patent and Unified Patent Court document repository'. The page is organized into sections: 'Regulations on European Patent with Unitary Effect' and 'Latest publicly available version of the Draft agreement on a Unified Patent Court'. Below these are 'All documents of interest' with a list of PDF links and dates.

3

The Unified Patent Court

**A formidable challenge**

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

4

The Unified Patent Court

# 1 A changing territory

EPO  
and EU

EPO  
NON EU

(Two different Europes: EU & EPO)

VÉRON VA & ASSOCIÉS AVOCATS

5

The Unified Patent Court

# 1 A changing territory

25 UP  
(EPO + EU + UP)

NON UP  
(EPO + EU)

EPO  
(NON EU)

COE  
(NON EPO - NON EU)

(Three different Europes: EU, EPO & UP)

VÉRON VA & ASSOCIÉS AVOCATS

6

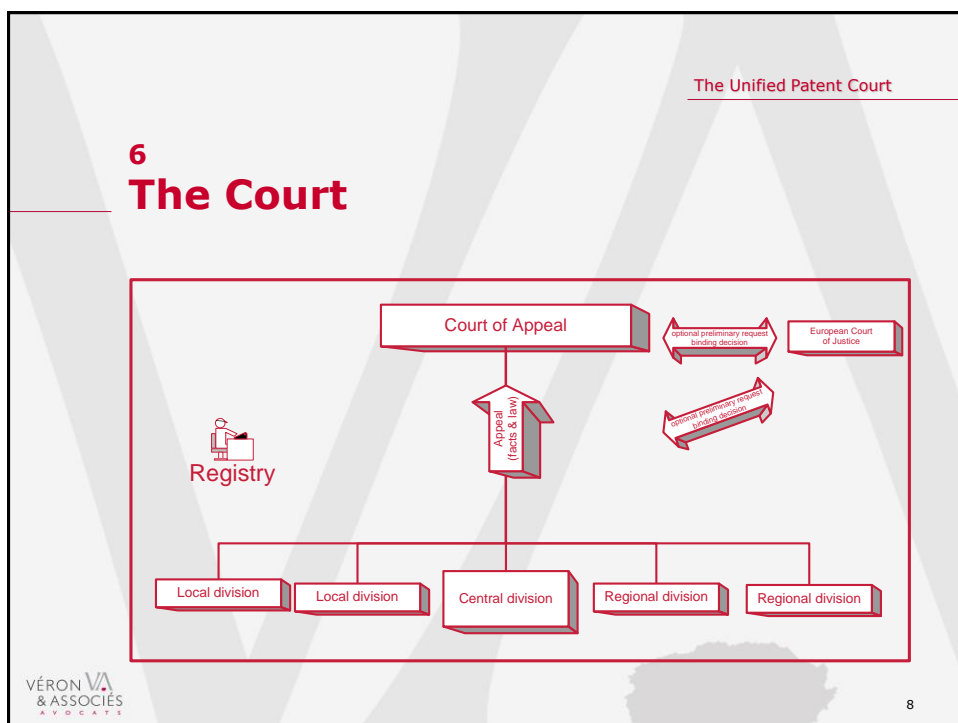
The Unified Patent Court

### 3 Scope of application

- Unitary patent
- SPCs for a patent  
(although these are national IP rights)
- European patent
- European patent application

7

VÉRON VA  
& ASSOCIÉS  
AVOCATS



The Unified Patent Court

## 7 The Court of first instance

```

graph TD
    Root[ ] --- C[Central division]
    Root --- R1[Regional division]
    Root --- L1[Local division]
    Root --- R2[Regional division]
    Root --- L2[Local division]
  
```

9

VÉRON & ASSOCIÉS  
AVOCATS

The Unified Patent Court

## 7 The Court of first instance: local divisions

“(3) A local division shall be set up in a Contracting Member State upon its request in accordance with the Statute...”

(4) An additional local division shall be set up in a Contracting Member State upon its request for every 100 patent cases per calendar year that have been commenced in that Contracting Member State during 3 successive years prior to or subsequent to the date of entry into force of this Agreement. The number of divisions in one Contracting Member State shall not exceed 4.”

“Article 37 Financing of the Court  
... Contracting Member States setting up a local division shall provide the facilities necessary for that purpose”

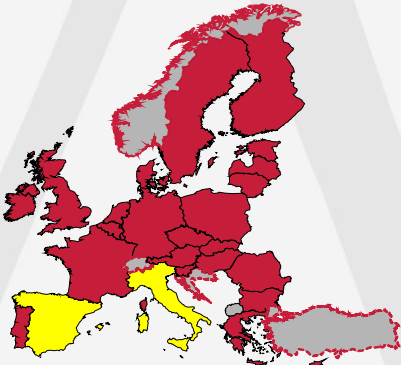
10

VÉRON & ASSOCIÉS  
AVOCATS

The Unified Patent Court

## 7 The Court of first instance: regional divisions

(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 and shall provide the necessary facilities for that purpose. The regional division may hear cases in multiple locations.



VÉRON VA  
& ASSOCIÉS  
AVOCATS

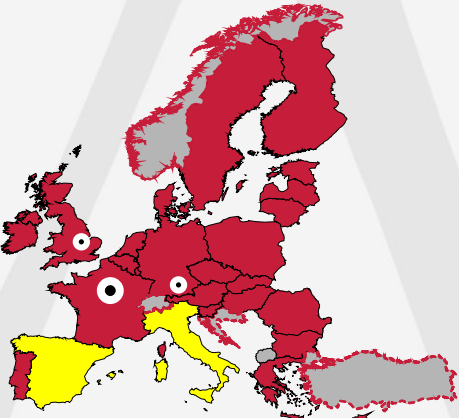
11

The Unified Patent Court

## 7 The Court of first instance: central division

(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...

Contracting Member States hosting the central division, its sections or the Court of Appeal shall provide the facilities necessary for that purpose.




VÉRON VA  
& ASSOCIÉS  
AVOCATS

12

The Unified Patent Court

**Article 7 and Annex II**


## The Court of first instance: central division and sections



**London**

SECTION A — HUMAN NECESSITIES

SECTION C — CHEMISTRY; METALLURGY



**Paris**

PRESIDENT'S OFFICE


SECTION B — PERFORMING OPERATIONS; TRANSPORTING

SECTION D — TEXTILES; PAPER

SECTION E — FIXED CONSTRUCTIONS

SECTION G — PHYSICS

SECTION H — ELECTRICITY



**Munich**

SECTION F — MECHANICAL ENGINEERING; LIGHTING; HEATING; WEAPONS; BLASTING

13

VÉRON VA & ASSOCIÉS AVOCATS

The Unified Patent Court

## 15 The 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.

14

VÉRON VA & ASSOCIÉS AVOCATS

## 16 The judges: appointment

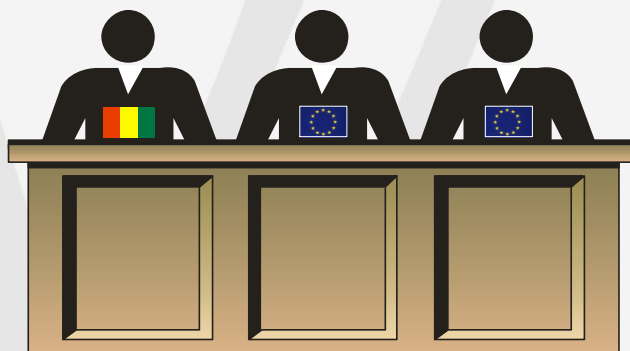
(1) The **Advisory Committee\*** shall establish a list of the most suitable candidates to be appointed as judges of the Court, in accordance with the Statute.

(2) On the basis of this list, the Administrative Committee shall appoint the judges of the Court acting by common accord.

(3) The implementing provisions for the appointment are set out in the Statute.

\* 14 (2) The Advisory Committee shall comprise patent judges and practitioners in patent law and patent litigation with the highest recognised competence.

## 8 (2) Panel: 1<sup>st</sup> instance local division

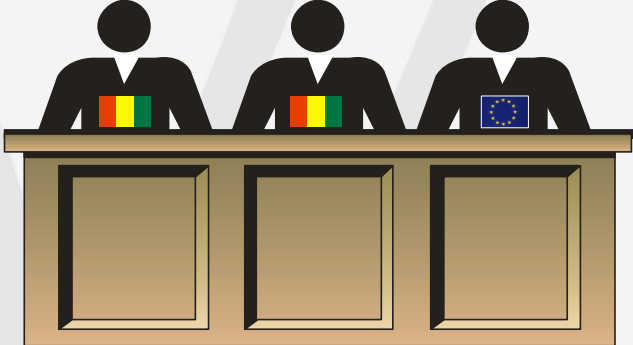


**Member State with < 50 cases**



The Unified Patent Court

**8 (3) & (4)**  
**Panel: 1<sup>st</sup> instance local division**




**Member State with  $\geq 50$  cases  
or regional division**

VÉRON VA  
& ASSOCIÉS  
AVOCATS

17

The Unified Patent Court

**8 (5)**  
**Panel: Additional technical judge**



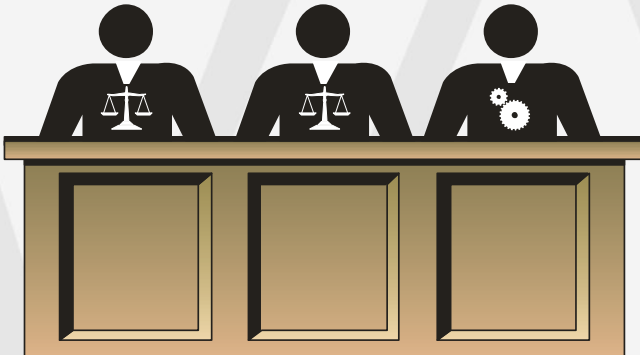
**upon request by one of the parties  
or on the panel's initiative**

VÉRON VA  
& ASSOCIÉS  
AVOCATS

18

The Unified Patent Court

**8 (6)**  
**Panel: 1<sup>st</sup> instance central division**




**Tech. judge except for 32 (1) (i)  
actions concerning EPO decisions on UP**

VÉRON VA  
& ASSOCIÉS  
AVOCATS

19

The Unified Patent Court

**9**  
**Panel: Court of Appeal**



VÉRON VA  
& ASSOCIÉS  
AVOCATS

20

The Unified Patent Court

---

## Applicable law

- 24 (1) substantive law
- 24 (2) conflict of law
- 25-30 rights conferred and limitations
- 63-70 sanctions and damages

21

The Unified Patent Court

---

## Applicable law (historical)

### 6-8 Draft Regulation vs 14f - 14i draft Agreement

Proposal for a Regulation	Draft agreement
Article 6 Right to prevent the direct use of the invention	Article 14f Right to prevent the direct use of the invention
Article 7 Right to prevent the indirect use of the invention	Article 14g Right to prevent the indirect use of the invention
Article 8 Limitation of the effects of the European patent with unitary effect	Article 14h Limitations of the effects of the European patent
Unitary Patent	European Patent

22

The Unified Patent Court

## Applicable law (present)

### 5 Regulation indirectly refers to 25-30 Agreement

Article 5 Regulation refers to article 7 Regulation for applicable national law

National law

23

VÉRON & ASSOCIÉS AVOCATS

The Unified Patent Court

## 34 Territorial effects of the decision

**European Patent**  
All the countries where the patent is in force

**Unitary Patent**  
All UP countries

24

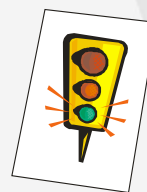
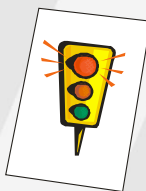
VÉRON & ASSOCIÉS AVOCATS

## 47 Plaintiffs

- The patentee
- The exclusive licensee, provided that the proprietor is given prior notice, unless the licensing agreement provides otherwise
- The non-exclusive licensee cannot initiate proceedings but can join them

## 32 Jurisdiction

- Infringement
- Declaration of non-infringement
- Revocation
- Miscellaneous



The Unified Patent Court

**33 (1)  
Infringement: (a) place of infringement**




VÉRON VA  
& ASSOCIÉS  
AVOCATS

27

The Unified Patent Court

**33 (2) § 2  
Infringement: multi-regional infringement**




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.

VÉRON VA  
& ASSOCIÉS  
AVOCATS

28

The Unified Patent Court

**33 (1)  
Infringement: (b) defendant's domicile**



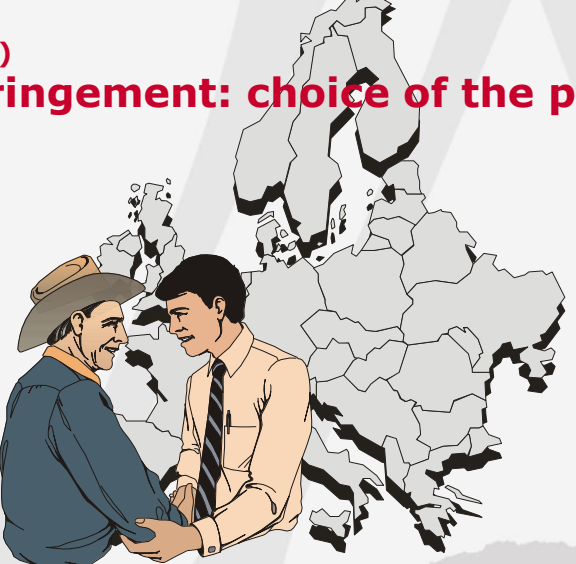
A cartoon illustration of a man with a mustache and glasses, wearing a yellow shirt and blue trousers, holding a yellow sign with the words 'HOME SWEET HOME' and a red heart. He is pointing the sign towards a map of Europe, where a red pin is placed in France. The background features a stylized map of Europe with diagonal light rays.

VÉRON VA  
& ASSOCIÉS  
AVOCATS

29

The Unified Patent Court

**33 (7)  
Infringement: choice of the parties**



A cartoon illustration of two men shaking hands. One man is wearing a cowboy hat and a blue shirt, while the other is wearing a white shirt and a tie. They are standing in front of a map of Europe. The background features a stylized map of Europe with diagonal light rays.

VÉRON VA  
& ASSOCIÉS  
AVOCATS

30

The Unified Patent Court

### 33 (3) Concurrence of actions: infringement then revocation

The local division has the discretion to:

- ▶ proceed with the infringement proceedings and counterclaim for revocation (with a technically qualified judge);
- ▶ refer the counterclaim for decision to the central division and proceed with the infringement proceedings (bifurcation); or
- ▶ with agreement of parties, refer the case to the central division

VÉRON VA & ASSOCIÉS AVOCATS

31

The Unified Patent Court

### 33 (5) Concurrence of actions: revocation then infringement

The local division may either

- ▶ Proceed with the infringement proceedings, or
- ▶ stay the infringement proceedings, or
- ▶ if parties agree, refer the infringement action for decision to the central division

VÉRON VA & ASSOCIÉS AVOCATS

32



The Unified Patent Court

### 33 (4) Revocation and non-infringement

The diagram illustrates the structure of the Unified Patent Court, which is divided into five divisions: two Regional divisions, two Local divisions, and one Central division. Below this structure, two icons represent legal actions: a red 'X' icon for 'Revocation action' and a traffic light icon for 'Action for a declaration of non-infringement'. A red arrow points from the 'Action for a declaration of non-infringement' icon towards the 'Central division' box, indicating that such an action is filed with the Central division.

Revocation action
Action for a declaration of non-infringement

VÉRON VA & ASSOCIÉS AVOCATS

33

The Unified Patent Court

### 33 (6) Concurrence of actions non-infringement then infringement

The diagram shows a horizontal timeline from 01/01/2014 to 01/01/2016. Two traffic light icons represent legal actions. The first icon is labeled 'Action for declaration of non-infringement Central division' with the date 30/06/2014. The second icon is labeled 'Infringement action Local division' with the date 01/09/2015. A red line connects the two icons, indicating a period of stay. The text below states that the non-infringement action is stayed once an infringement action is initiated within three months before the local division.

30/06/2014
01/09/2015

Action for declaration of non-infringement Central division
Infringement action Local division


01/01/2014
01/01/2015
01/01/2016

**The action for a declaration of non-infringement before the central division shall be stayed once an infringement action is initiated within three months before local division**

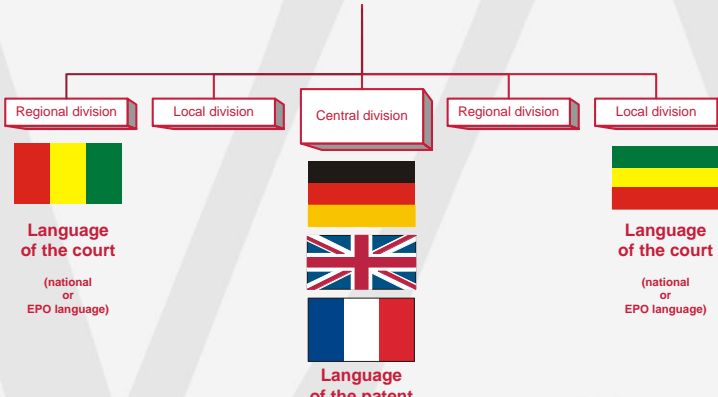
VÉRON VA & ASSOCIÉS AVOCATS

34

The Unified Patent Court



## 49 Language of proceedings: 1<sup>st</sup> instance




```

graph TD
    Root[ ] --- RD1[Regional division]
    Root --- LD1[Local division]
    Root --- CD[Central division]
    Root --- RD2[Regional division]
    Root --- LD2[Local division]
    
    RD1 --- F1[Flag: Italy, Spain, France]
    LD1 --- F2[Flag: Germany, UK, France]
    CD --- F3[Flag: Germany, UK, France]
    RD2 --- F4[Flag: Hungary, Czech Republic, Slovakia]
    LD2 --- F5[Flag: Hungary, Czech Republic, Slovakia]
    
    F1 --- L1[Language of the court  
(national or EPO language)]
    F2 --- L2[Language of the patent]
    F3 --- L2
    F4 --- L3[Language of the court  
(national or EPO language)]
    F5 --- L3
    
```

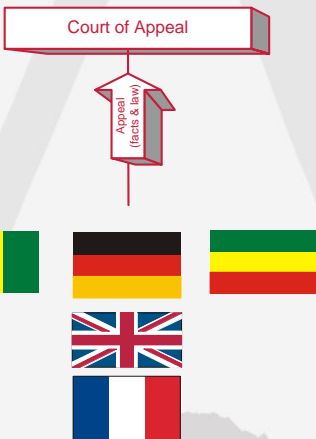
35

The Unified Patent Court



## 50 Language of proceedings: appeal

- Language of 1<sup>st</sup> instance
- Language of the patent (upon the parties' agreement)
- Language chosen by the court and approved by the parties



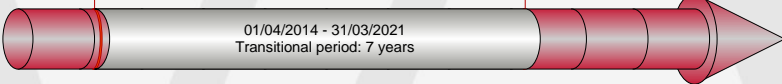
36

The Unified Patent Court

## 83 Transitional period: 7 years

01/04/2014  
 Entry into operation  
 Unified Patent Court  
 Agreement

31/03/2021  
 End of  
 Transitional Period



01/04/2014 - 31/03/2021  
Transitional period: 7 years

- National courts still competent for EP
- European Patent holders may opt out from Unified Patent Court (withdrawal possible)

VÉRON VA  
& ASSOCIÉS  
AVOCATS

37

The Unified Patent Court

## 83 Transitional 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, 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 Registry.

(4) Unless an action has already been brought before a national court, proprietors of or applicants for European patents 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 Registry.”

VÉRON VA  
& ASSOCIÉS  
AVOCATS

38

36

## Court fees

“(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.”

36 (3)

## Court fees

“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. »


The Unified Patent Court

---

## Rules of procedure (≈ 400 rules)

- Draft **Rules of procedure** of the Unified Patent Court 24 May 2012 (V13 or higher to be released this spring)
- “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)

41



The Unified Patent Court


---

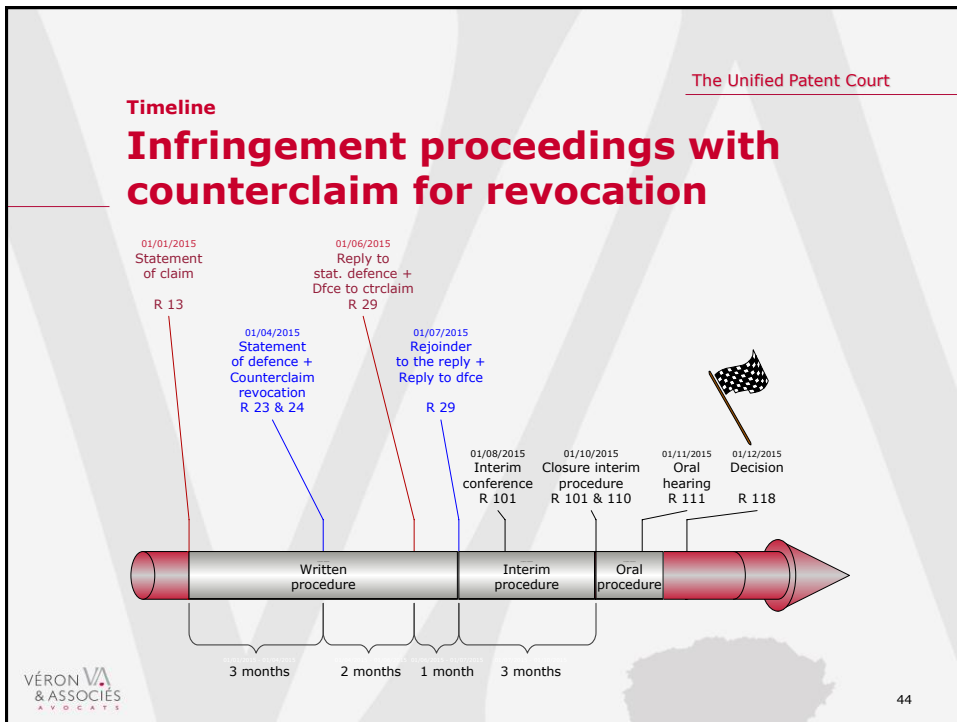
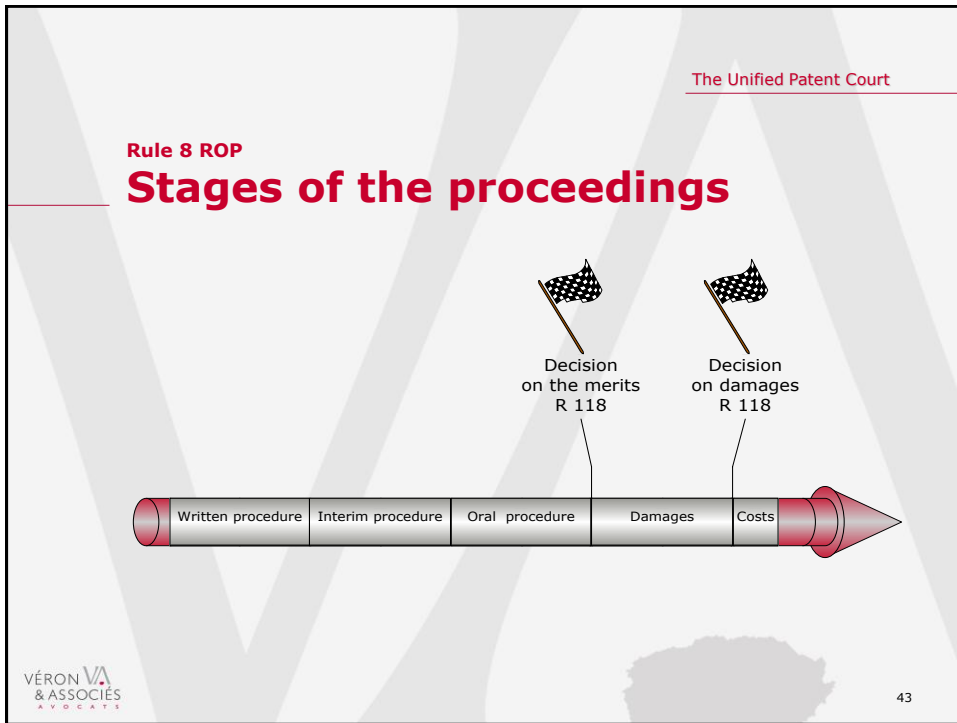
### Rule 8 ROP

## Stages of the proceedings

- (a) the written procedure;
- (b) the interim procedure, which may include an interim conference with the parties;
- (c) the oral procedure, which shall include an oral hearing of the parties where necessary;
- (d) the procedure for the award of damages;
- (e) the procedure for a cost order.


42





The Unified Patent Court

## Front loading system? or drips and drabs system?




VÉRON VA  
& ASSOCIÉS  
AVOCATS

45

This slide features a light gray background with diagonal white stripes. At the top right, the text 'The Unified Patent Court' is written in a small, dark font. Below this, the main title 'Front loading system? or drips and drabs system?' is displayed in a large, bold, red font. The central illustration shows a yellow front loader on the left and a red pipette with a single drop of red liquid on the right. In the bottom left corner, the logo for 'VÉRON VA & ASSOCIÉS AVOCATS' is visible, and the number '45' is in the bottom right corner.

The Unified Patent Court

## Interim conference with the JR?



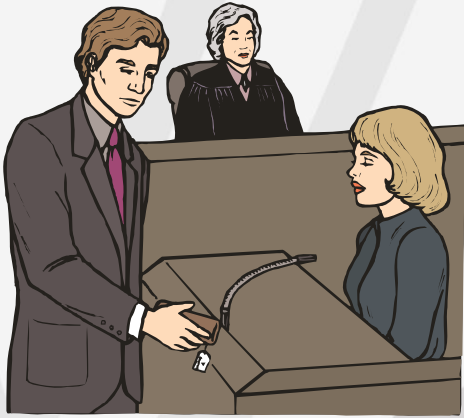
VÉRON VA  
& ASSOCIÉS  
AVOCATS

46

This slide has a similar design to the one above, with a light gray background and diagonal white stripes. At the top right, it says 'The Unified Patent Court'. The main title 'Interim conference with the JR?' is in a large, bold, red font. The central illustration depicts a cartoon judge with a balding head, wearing glasses, a black robe, a blue shirt, and an orange tie, sitting at a wooden desk and reading a green document. The logo for 'VÉRON VA & ASSOCIÉS AVOCATS' is in the bottom left, and the number '46' is in the bottom right.

The Unified Patent Court

## Hearing of a witness in person exceptional



VÉRON VA  
& ASSOCIÉS  
AVOCATS

47

The Unified Patent Court

## Oral hearing

### Rule 114 – 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.

VÉRON VA  
& ASSOCIÉS  
AVOCATS

48



**Pierre Véron**



1, rue Volney  
75002 Paris  
Tel. +33 (0)1 47 03 62 62  
Fax +33 (0)1 47 03 62 69

53, avenue Maréchal Foch  
69006 Lyon  
Tel. +33 (0)4 72 69 39 39  
Fax +33 (0)4 72 69 39 49

[pierre.veron@veron.com](mailto:pierre.veron@veron.com)  
[www.veron.com](http://www.veron.com)

**Thank you**

VÉRON **VA**  
& ASSOCIÉS  
A V O C A T S

