

Procedure before the Unified Patent Court

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Summary

- The Unified Patent Court Agreement
- The Rules of Procedure
- Main features of the procedure



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Agreement on a Unified Patent Court in Europe



**Signing ceremony February 19, 2013
Brussels**

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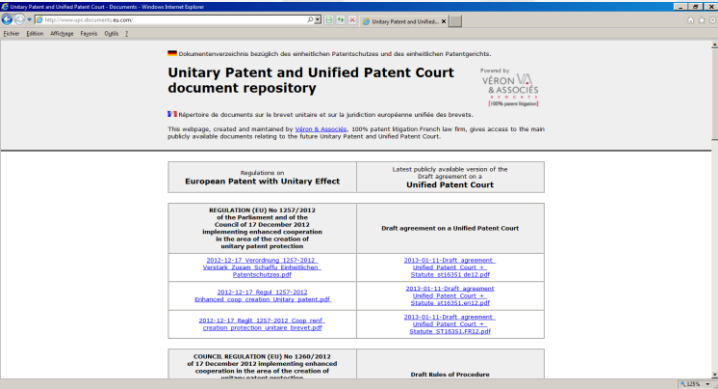
Legal sources of the procedural rules

- The **Unified Patent Court Agreement** contains many important provisions (≈ 45 articles on 89) on procedural matters (jurisdiction, language of proceedings)
[2013-01-11-Draft agreement Unified Patent Court + Statute st16351.en12.pdf](#)
- The draft **Rules of procedure** of the Unified Patent Court (V14) 31 January 2013 (382 articles) contain detailed rules
[http://www.upc.documents.eu.com/PDFs/2013-01-31_Rules_of_Procedure_Draft_14_\(15829021_1\).PDF](http://www.upc.documents.eu.com/PDFs/2013-01-31_Rules_of_Procedure_Draft_14_(15829021_1).PDF)

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The main publicly available documents can be found on
www.upc.documents.eu.com



Regulations on European Patent with Unitary Effect	Latest publicly available version of the Draft agreement on a Unified Patent Court
REGULATION (EU) No 1257/2012 of the Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection	Draft agreement on a Unified Patent Court
2012-12-17_Regulation_1257-2012_Vermerk_Zusatz_Schweiz_Europaisches_Patentschutz.pdf	2012-01-11_Draft_agreement_Unified_Patent_Court_-_Stable_211631.pdf
2012-12-17_Regul_1257-2012_Enhanced_coop_creation_unitary_patent.pdf	2012-01-11_Draft_agreement_Unified_Patent_Court_-_Stable_211631.pdf
2012-12-17_Regul_1257-2012_Comp_regul_creation_and_protection_unitary_patent.pdf	2012-01-11_Draft_agreement_Unified_Patent_Court_-_Stable_211631.pdf
COMBINED REGULATION (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection	Draft Rules of Procedure

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Details
The Agreement: procedural rules


- Part I General and Institutional Provisions
 - ▶ **Chapter VI International Jurisdiction and Competence**
 - ▶ [Article 31 International Jurisdiction](#)
 - ▶ [Article 32 Competence of the Court](#)
 - ▶ [Article 33 Competence of the divisions of the Court of First Instance](#)

Forum shopping inside

Bifurcation inside

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Details

The Agreement: procedural rules

- Part III Organisation and Procedural Provisions
 - ▶ **Chapter II Language of Proceedings**
 - [Article 49 Language of proceedings at the Court of First Instance](#)
 - [Article 50 Language of proceedings at the Court of Appeal](#)
 - Article 51 Other language arrangements



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Rules of procedure (382 rules)

- Draft **Rules of procedure** of the Unified Patent Court 31 January 2013 (V14)
[http://www.upc.documents.eu.com/PDFs/2013-01-31_Rules_of_Procedure_Draft_14_\(15829021_1\).PDF](http://www.upc.documents.eu.com/PDFs/2013-01-31_Rules_of_Procedure_Draft_14_(15829021_1).PDF)
- *“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)

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Main features of the procedure

- Staged procedure
- Written phase predominant
- Pre-trial discovery very limited
- Order to preserve evidence (*saisie*) available
- Front loading type
- Preliminary injunction available



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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."



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Written stage essential



"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 plaintiff)
- (b) the lodging of a Statement of defence (by the defendant) and, optionally
- (c) the lodging of a Reply to the Statement of defence (by the plaintiff) and
- (d) the lodging of a Rejoinder to the Reply (by the defendant)."

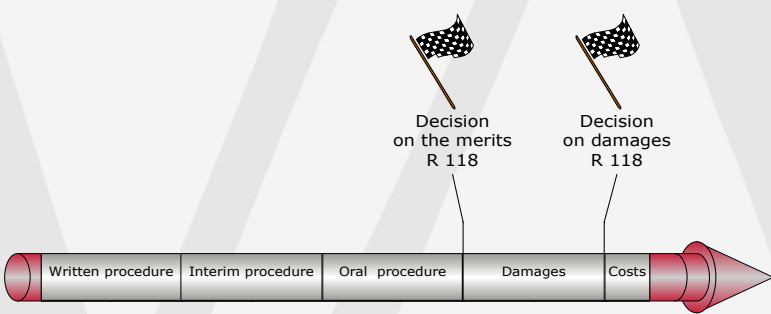



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Rule 8 ROP Stages of the proceedings



Decision on the merits
R 118

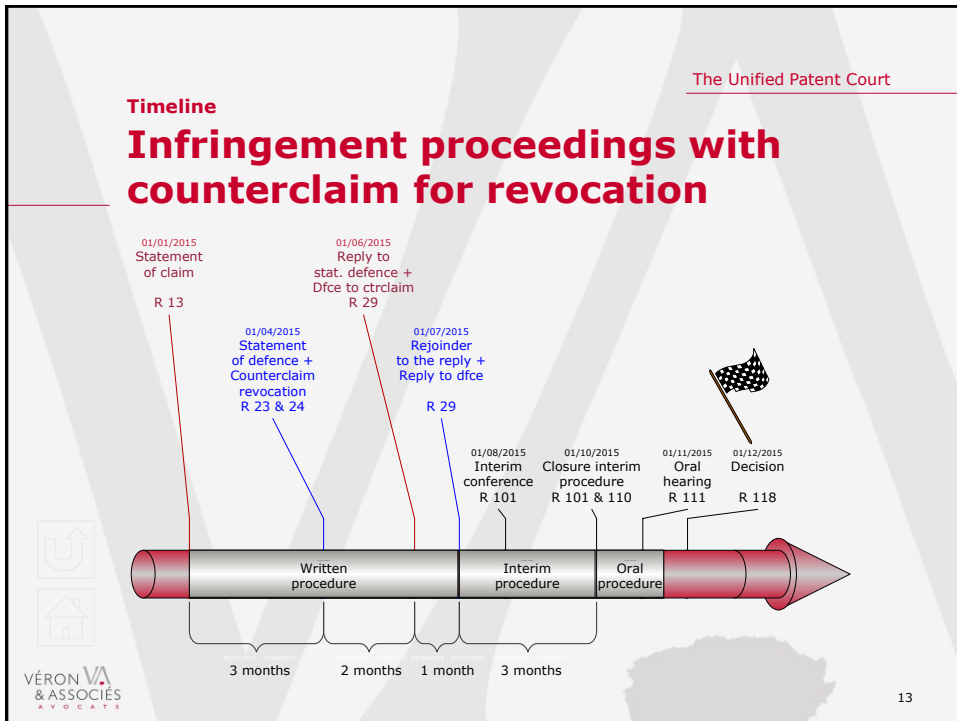
Decision on damages
R 118

Written procedure Interim procedure Oral procedure Damages Costs

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Pre-trial discovery very limited

"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 upon a reasoned request of the party specifying such evidence, order that party to produce such evidence."

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60 Agreement Order to preserve evidence (*saisie*) available



“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.”



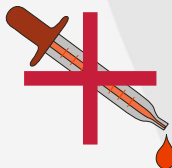



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Front loading system (not drips and drabs system)



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Rule 104 Interim conference with the judge rapporteur




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Rule 113 Hearing of a witness in person exceptional

"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."




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Oral hearing



"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."*



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Thank you

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