

The Rules of Procedure of the Unified Patent Court

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

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The Unified Patent Court

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?

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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
- Not a national court,
Not a EU court,
Instead, a court "*common to several EU Member States*"

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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

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Rules of procedure also in Brussels I Regulation

Regulation (EU) N° 542/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU) N° 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 N° 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

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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

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Drafting process: stages 1-5



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

3 February 2012, Brussels, European Commission, rue de Spa, 2, room Casalis de Digne

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Drafting process: stages 6-15




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

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Draft 15 (31 May 2013): 111 comments received



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Draft 16 (31 January 2014)

Reviewed and modified in 2014 by the Preparatory Committee




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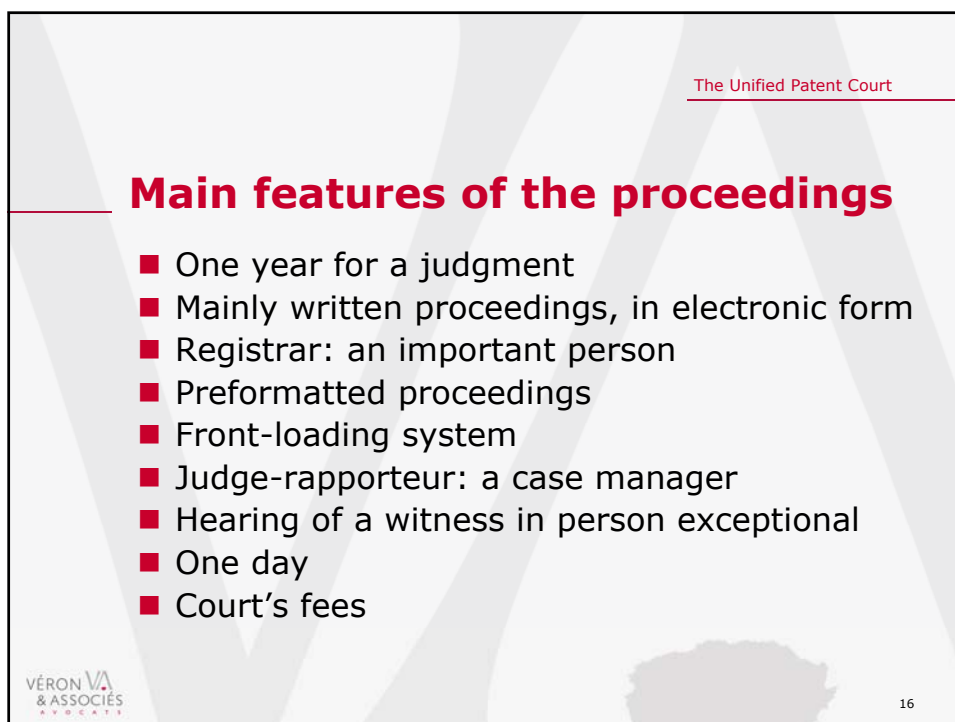
Drafting process: stages 15 +



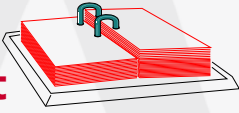
26 November 2014: Public hearing in Trier

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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)

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The Unified Patent Court



Written proceedings in electronic form

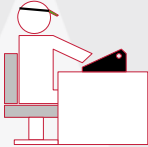
“1. Written pleadings and other documents shall be lodged at the Registry in electronic form. Parties shall make use of the official forms available on-line. The receipt of documents shall be confirmed by the automatic issue of an electronic receipt, which shall indicate the date and local time of receipt. »
(Rule 4)

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

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The Unified Patent Court

The Registrar: an important person



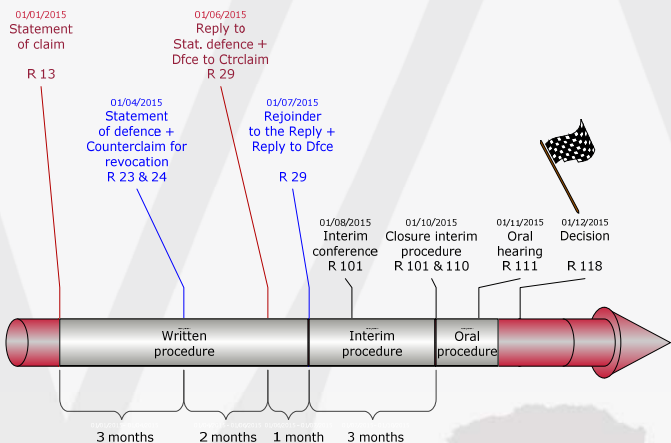
- Enters the Application to opt out in the register
- Examines, when receiving pleadings, whether the formal requirements have been complied with (may invite parties to correct deficiencies)
- Serves the Statement of claim and all further pleadings upon the parties

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Preformatted proceedings



The diagram illustrates the preformatted proceedings timeline, represented as a red arrow pointing right. The stages and their durations are:

- Written procedure** (3 months): Includes the filing of the Statement of claim (R 13) on 01/01/2015 and the Statement of defence + Counterclaim for revocation (R 23 & 24) on 01/04/2015.
- Interim procedure** (3 months): Includes the Reply to Stat. defence + Dfce to Ctrclaim (R 29) on 01/06/2015, the Rejoinder to the Reply + Reply to Dfce (R 29) on 01/07/2015, and the Interim conference (R 101) on 01/08/2015.
- Oral procedure** (3 months): Includes the Closure interim procedure (R 101 & 110) on 01/10/2015, the Oral hearing (R 111) on 01/11/2015, and the Decision (R 118) on 01/12/2015.


A checkered flag icon is placed at the end of the arrow, signifying the conclusion of the proceedings.



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Front-loading system

No dribs and drabs system



The illustration shows a yellow front loader on the left. On the right, a pipette is shown with a red 'X' over it, and a single drop of orange liquid is falling from its tip. The background features a stylized sunburst pattern.

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The judge-rapporteur: a case manager




The illustration depicts a judge with a balding head and glasses, wearing a black judicial robe over a blue shirt and orange tie. He is seated at a wooden desk and is reading a green document. The background features a stylized sunburst pattern.

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Hearing of a witness in person exceptional




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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.”*

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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)

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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

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What's next?



2015: Administrative Committee's final approval

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Thank you

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