

# The Rules of Procedure of the Unified Patent Court The making-of

*One year into the UPC. Legal diversity breeds success.  
Juve Patent & Bardehle Pagenberg  
Hotel Ritz Paris • 31 May 2024*

Pierre Véron

Honorary President EPLAW (European Patent Lawyers Association)  
Member of the Expert Panel group of the Unified Patent Court  
Member of the Drafting Committee of the Rules of Procedure



## A 40-year story (part 1)

1973 Birth of the European Patent

1975 Community Patent Convention

1999 French initiative

2000 Draft regulation on the community patent

2000 European Patent Litigation Protocol

2003 EU Commission's Communication

2003 European Patent Litigation Agreement

2007 EU Commission's Communication

2008 Draft agreement 14970/08



## A 40-year story (part 2)

2009-03-29 Draft agreement 7928/09

2009-04-24 Request for an opinion to CJEU

2011-03-10 Council decision 2011/167/UE  
Enhanced cooperation unitary patent protection

2011-03-08 CJEU negative opinion

2011-04-13 Prop. Regulation  
Enhanced cooperation unitary patent protection

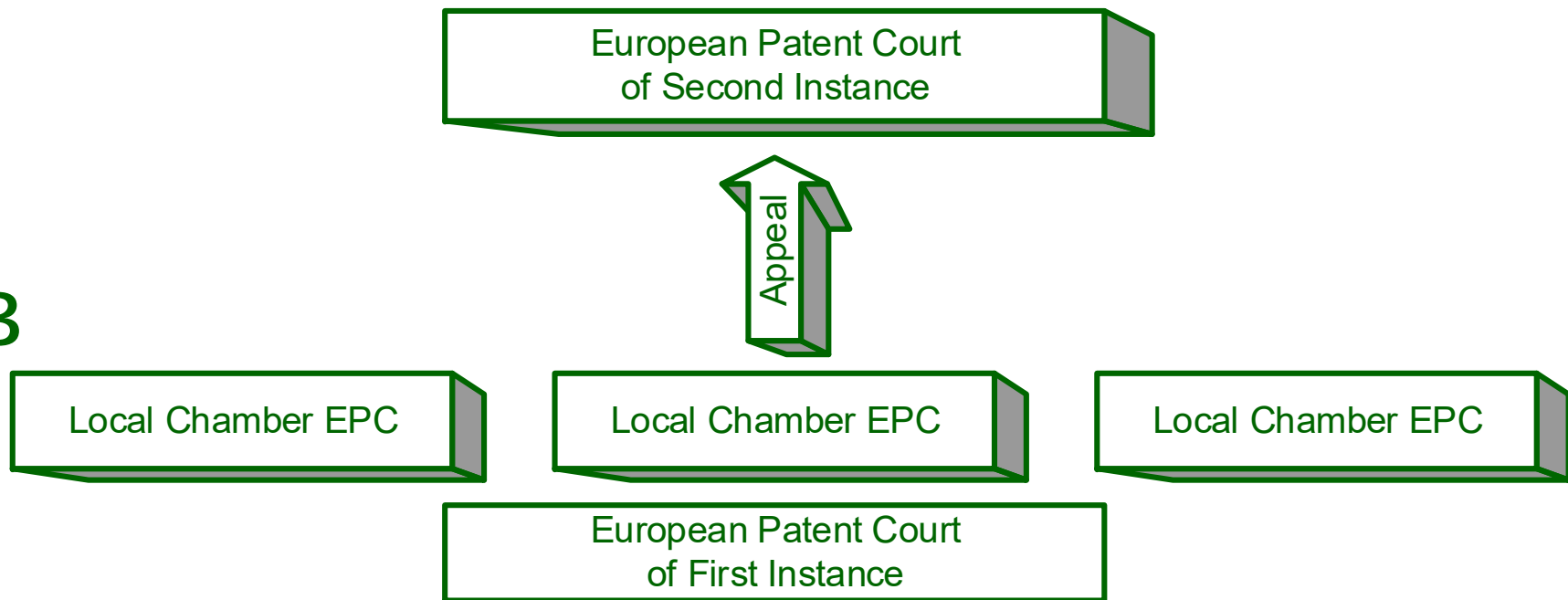
2011-04-13 Prop. Regulation translation arrangements

2011-10-26 Draft agreement on a Unified Patent Court  
and draft Statute - Revised Presidency text 16023/11

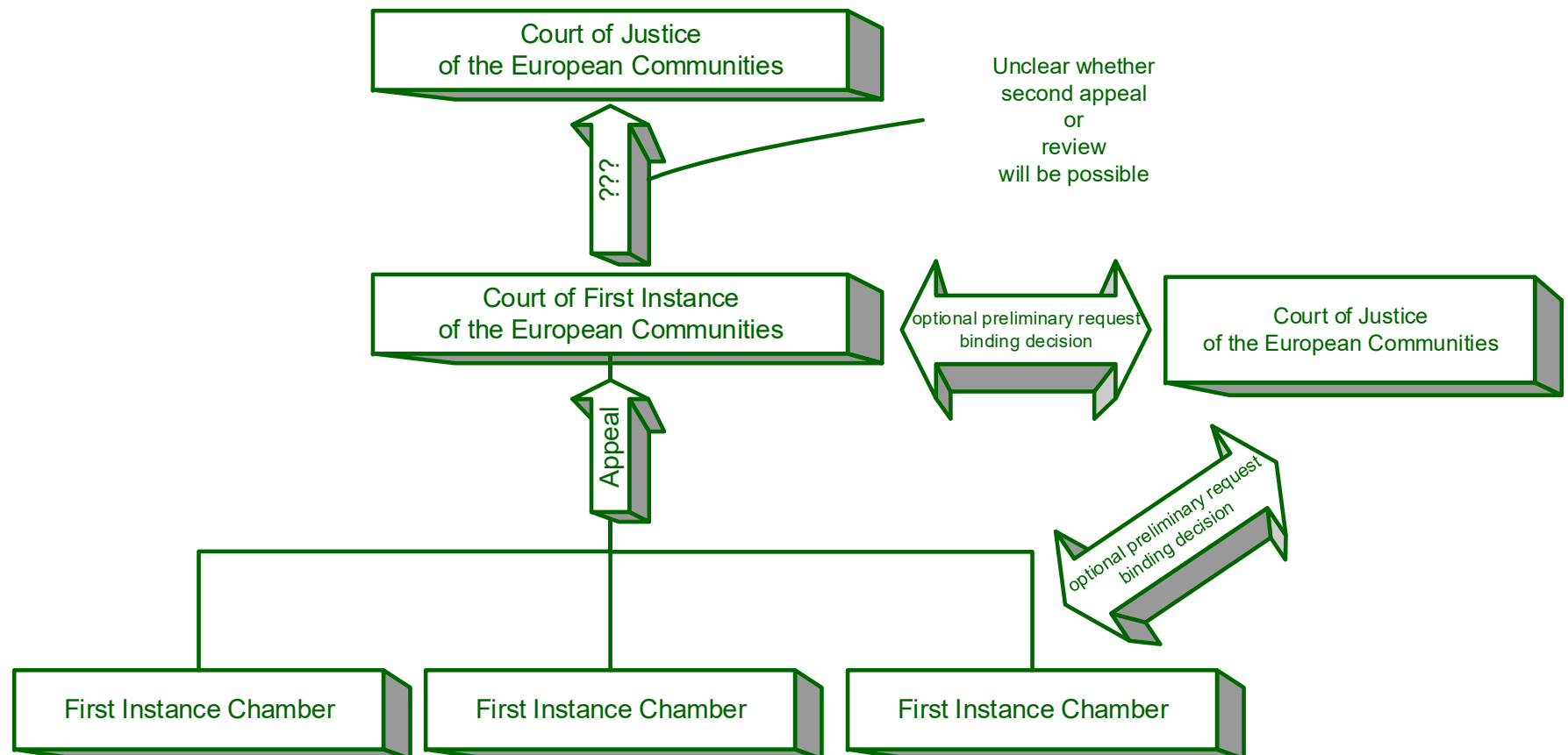


# European Patent Litigation Agreement

2003



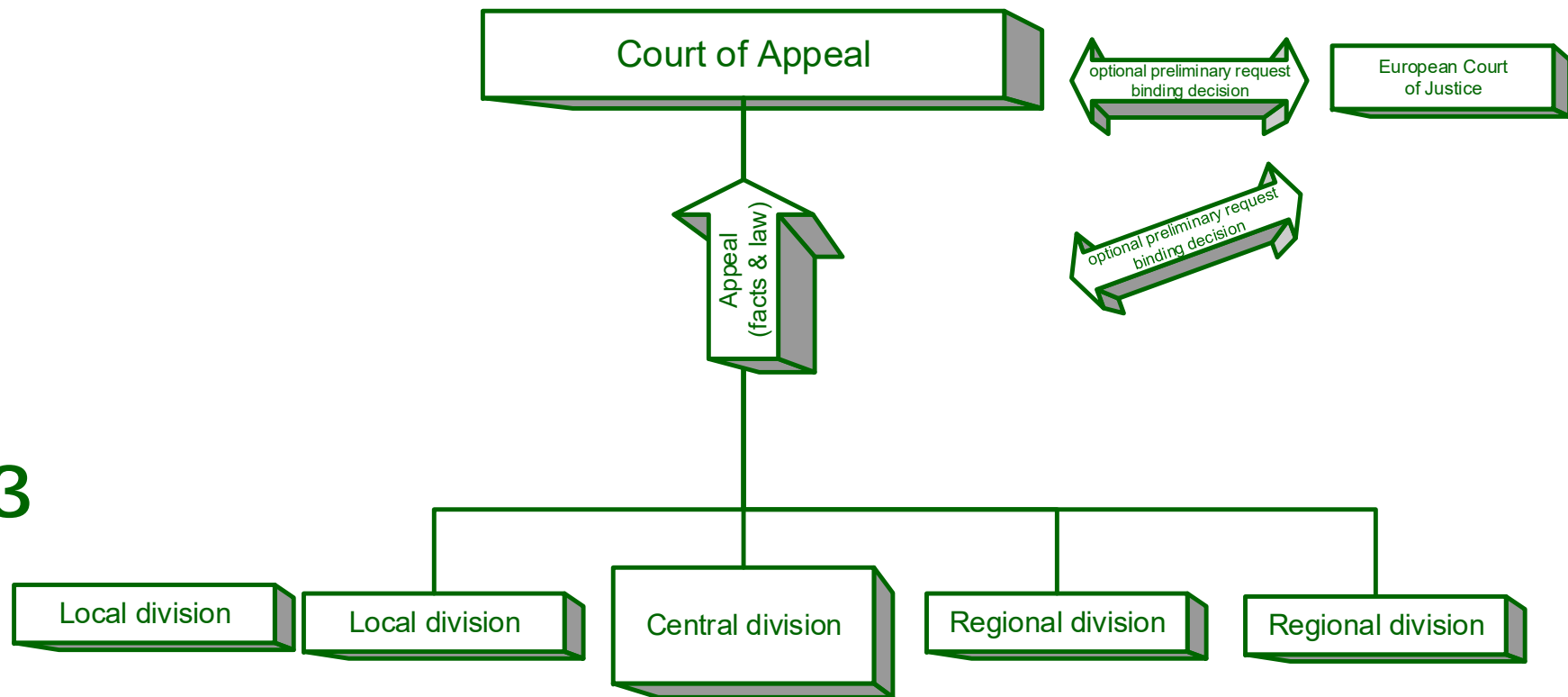
# 2007 Commission Communication



2007



# 19 February 2013 Agreement on the Unified Patent Court



2013



# Signature of the Regulations by the Presidents of the European Parliament and the Council on 17 December 2012

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Brussels 19 February 2013

# Unified Patent Court Agreement signing ceremony





# 2017-2021 Ratification Process in Germany

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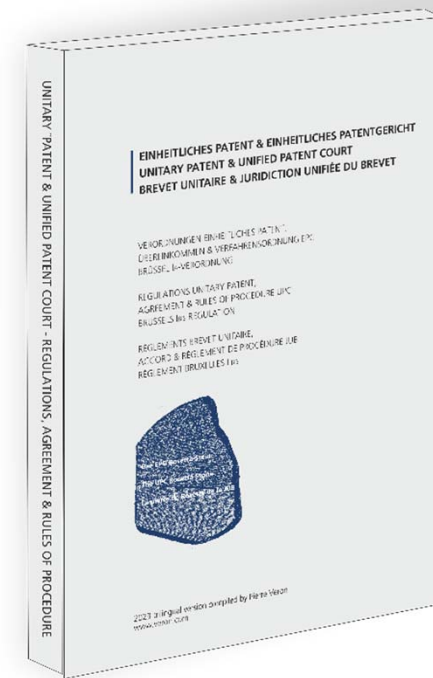
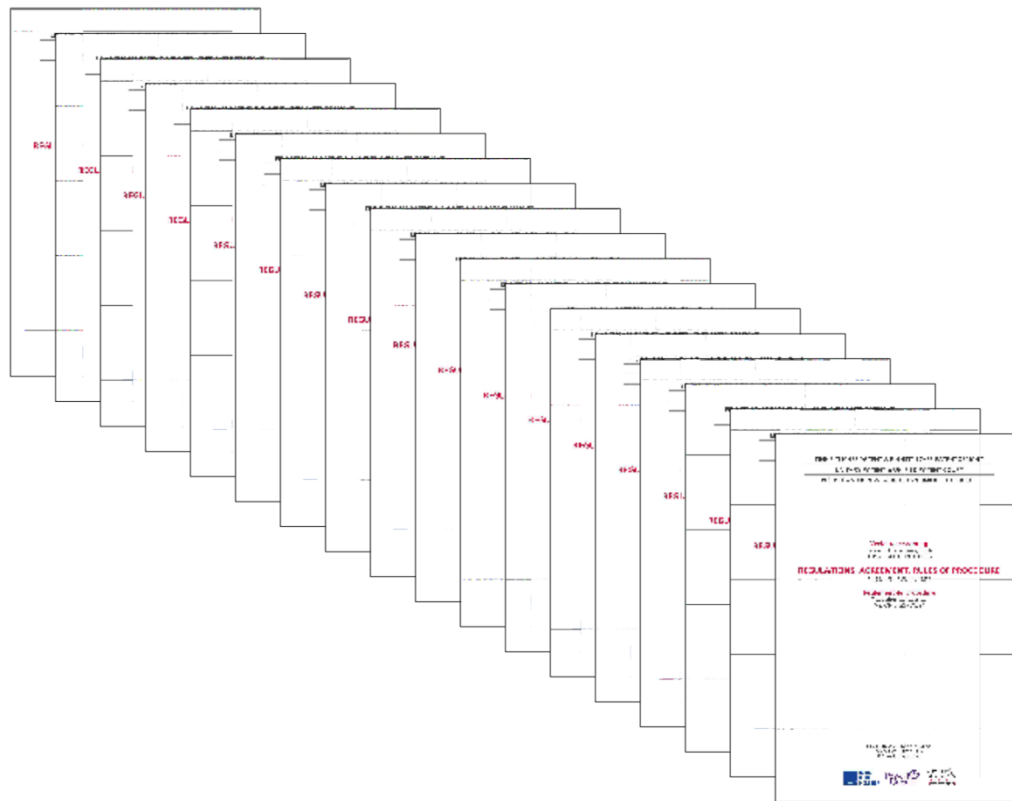
2017

2021



# Rules of procedure

## The making of (18+ drafts)





Lord Hoffmann  
(House of Lords)



Peter Meier-Beck  
Bundesgerichtshof



**Claude Vallet**  
**Paris Court**  
**then EPO Legal BOA**



**Massimo Scuffi**  
**Corte di cassazione**



## Venice mock trials



# Venice Scepter held by Kevin Mooney



15 November 2008 (Venice IV)

## Rules of procedure : stage 0

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### **SECOND VENICE RESOLUTION**

**San Servolo, 4<sup>th</sup> November 2006**

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

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**4 November 2006, Venice Forum : European Patent Judges approve the main principles of the rules of procedure**

## Rules of procedure: stages 1-5



2007-2012: The Expert group of the European Union  
Commission (judges, attorneys and industry representatives)



## The EPLAW/UPC band on Abbey Road



Pierre Véron, Willem Hoyng, Winfried Tilmann, Kevin Mooney  
Starting their European tour

# 13 December 2013 Düsseldorf

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## Rules of procedure: stages 6-16



2012-2014: The Drafting Committee, judges and attorneys

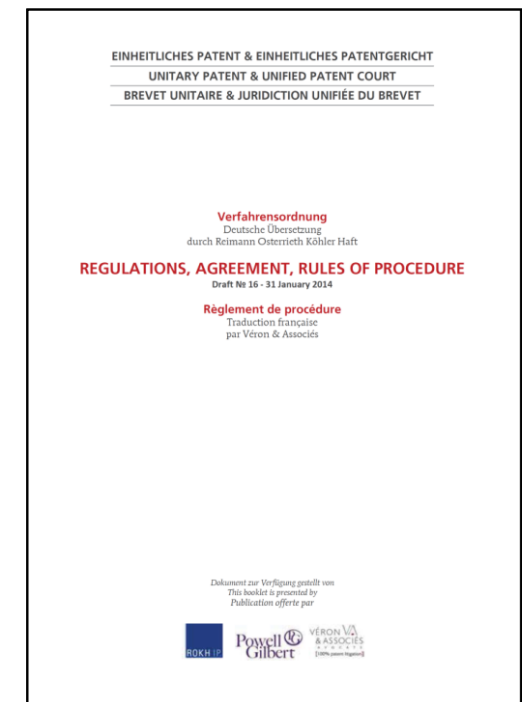


# Draft 15 (31 May 2013): 111 comments received



# Draft 17 (31 October 2014)

Reviewed by the Preparatory  
Committee



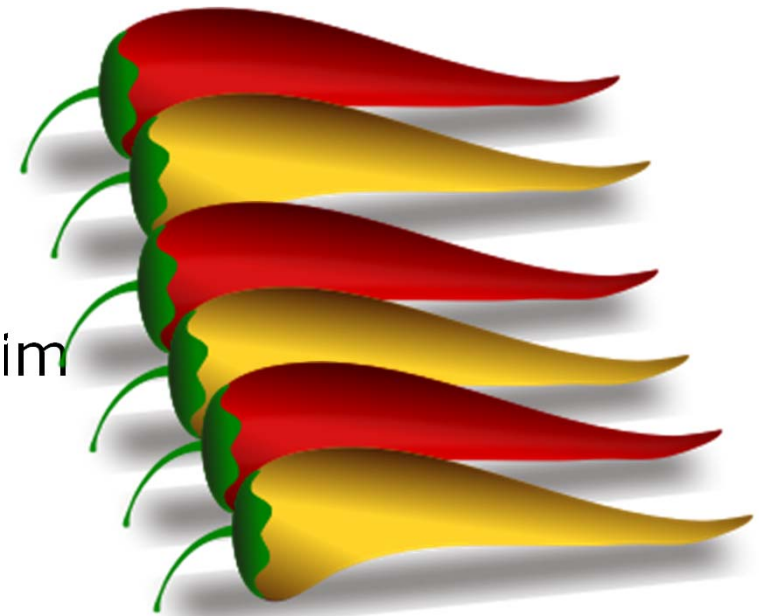
## Drafting process: stages 17 +



26 November 2014: Public hearing in Trier

# Rules of Procedure: hot topics in Trier

- 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



## Opt-out provisions

- Why? any reason to pay fees for status quo?
- How much? “administrative level” or more?
- Who? all proprietors
- What? SPC goes with patent
- For how long? life of the patent
- Where? sunrise period EPO, Registry





## Berlin 25-26 June 2015

Joint meeting Legal Framework Working Group, Preparatory Committee + Drafting Committee about the 18<sup>th</sup> draft

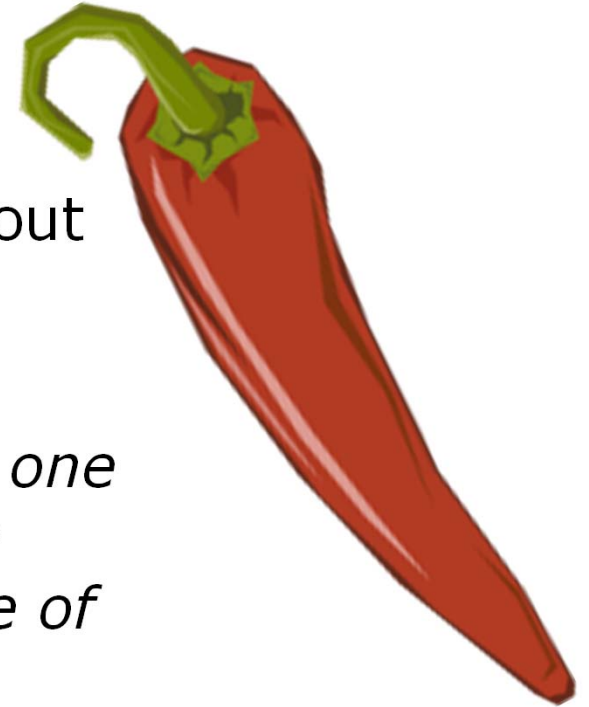


Johannes Karcher  
coordinator of the  
Legal Framework  
Working Group



# Rules of Procedure: hot topics in Berlin

- Proprietorship and registration for opt out and for proceedings
- Language of the proceedings when Contracting Member States "*designate one or more of the official languages of the European Patent Office as the language of proceedings of their local or regional division*".



2017-2021

Pause



9 February 2022

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## Draft proposal Administrative Committee

### **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, written pleadings, ~~written~~ evidence, decisions and orders lodged at or made by the Court and recorded by the Registry shall be available to the public upon reasoned request to the Registry following, where applicable, anonymisation of personal data within the meaning of Regulation (EU) 2016/679. ~~by the registry,~~ The decision is taken by the judge-rapporteur after consulting the parties.



25 July 2022

## Final text 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.



## Improvement expected






# Trilingual book

## TRILINGUAL BOOKLET DE/EN/FR (APRIL 2023 EDITION)

comprising Unitary Patent Regulations, Unified Patent Court Agreement and Rules of Procedure (adopted July 2022); this new edition also includes the **Brussels I Regulation** and the **UPC's table of fees**.

 ENGLISH    FRENCH    GERMAN

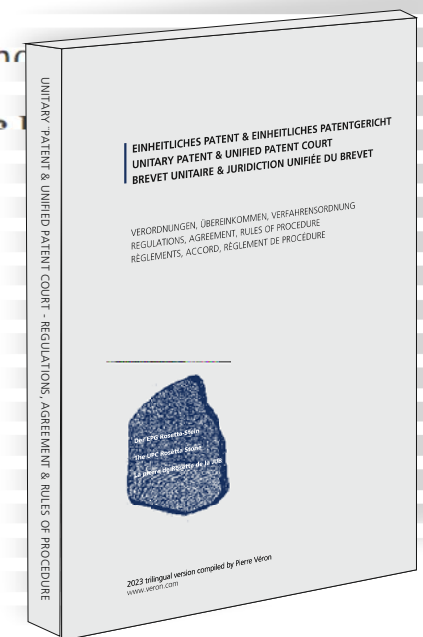
Version April 2023 with user-friendly navigation aids | 9 Mo | 

Printable version April 2023 with standard navigation aids | 7 Mo | 



Paper books can be obtained from Amazon:

<https://www.veron.com/upc/main-documents/>




# Full text search engine in the UPC decisions (all translated into English)

Welcome to this search engine in the Unified Patent Court decisions

► About and operation

Global search

▼ Field search

Date	equals to ▼	jj/mm/aaaa 
Parties	<input type="text"/>	



<https://www.veron.com/upc-caselaw>



# Overview

## The 10 main features of the UPC proceedings

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



Pierre Véron

Thank you



[pierre.veron@veron.com](mailto:pierre.veron@veron.com)