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Von:

Thomaschewski, Isolde

Gesendet:

Dienstag, 22. April 2014 07:49

An:

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WG: Flashreport Verfahrensordnung

Anlagen:

15th Draft Compared with the 16th Draft (WORD) (20152394_1).DOCX;

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Guten Morgen,

bitte diese Mail mit den Anlagen (doppelseitig/heften) ausdrucken und an mich.

Danke und Liebe Grüße I. Thomaschewski III B 4

----Ursprüngliche Nachricht-----

Von: Karcher, Johannes

Gesendet: Donnerstag, 17. April 2014 07:56

An: Weis, Hubert - ALIII -

Cc: Ernst, Christoph - UALIIIB -; Walz, Stefan Betreff: Flashreport Verfahrensordnung

Lieber Herr Weis,

bevor ich heute Mittag in den Osterurlaub starte, möchte ich Ihnen eine weitere Ausgabe meiner spannenden "Fortsetzungsgeschichte" mit einem kurzen Überblick über den Sachstand zur Verfahrensordnung des Einheitlichen Patentgerichts übersenden und in diesem Rahmen einige Kernpunkte ansprechen, die auch in der Community bei Veranstaltungen und den Diskussionen auf den Fluren entsprechenden Raum einnehmen.

Grundlage der Diskussion ist der als Anlage beigefügte 16. Entwurf der Verfahrensordnung, der Ende Januar 2014 von der Expertengruppe unter Vorsitz von Kevin Mooney (DE-Teilnehmer Dr. Grabinski vom BGH und Prof. Tilmann) unter Auswertung der schriftlichen Anhörung der Nutzer (Juni bis Anfang Oktober 2013) vorgelegt worden ist und punmehr in meiner Rechtsgruppe im zuständigen Team 1 - Verfahrensordnung auf der Ebene der MS beraten wird.

I. Aktuell

Aktuell bin ich gestern zurück von einer Veranstaltung mit den schwedischen Nutzern in Stockholm zum Entwurf der Verfahrensordnung. Die Stimmung war interessiert und freundlich, so dass die schwedische Industrie von ihrer traditionell eher zurückhaltenden Einstellung zu einer deutlich unterstützenden Haltung gefunden hat. Man geht davon aus, dass das neue System kommt. Es waren auch eine Reihe von Richterinnen und Richtern anwesend, die sich ebenfalls für das neue System sehr interessierten. Der Entwurf eines Ratifikationsgesetzes einschließlich der nationalen Folgeänderungen ist in SE kürzlich ins Parlament eingebracht worden. Mit einer Verabschiedung wird Ende Mai / im Juni gerechnet.

Am 10.4. 2014 habe ich eine zweite Sitzung der Rechtsgruppe in Berlin abgehalten, auf der wir Ergänzungsvorschläge der in der Arbeitsgruppe vertretenen Mitgliedstaaten beraten haben. Über diese fachlichen Einzelpunkte konnte weitgehend Einvernehmen erzielt werden, so dass ich insofern beginnen kann, Formulierungsvorschläge zu erarbeiten, um diese der Arbeitsgruppe für die nächste Sitzung zur Beratung vorzulegen.

Neben diesen technischen Punkten gibt es eine Reihe von größeren Fragen, die auf der ersten Sitzung am 18.2.2014 Gegenstand einer ersten Diskussion waren, für die aber noch keine abschließenden Lösungen gefunden wurden. Aus

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dem Kreis dieser Fragen möchte ich nachfolgend unter II. einige Punkte hervorheben, die auch in der allgemeinen Diskussion eine starke Rolle spielen.

II. Wichtige Einzelfragen

* Registrierung eines opt-outs (Artikel 83 Absatz 3 ÜEP, Regel 5 VerfO)

Sofern noch keine Klage vor dem EPG anhängig ist können Inhaber europäischer Bündelpatente nach Artikel 83 Absatz 3 ÜEP ein "opt-out" erklären und ihr Schutzrecht aus dem neuen System mit der Folge ausnehmen, dass es weiterhin - wie bisher - der nationalen Gerichtsbarkeit und dem nationalen Recht unterliegt. Das opt-out wird mit Eintragung in das Register des Gerichts wirksam. Starke Besorgnis besteht in den Reihen der Nutzer, dass zu Beginn des neuen Systems eine so große Zahl von Opt-Out-Anträgen gestellt wird, dass es zu Verzögerungen bei der Eintragung kommen kann. Das befürchtete Szenario besteht darin, dass vor Eintragung des opt-outs eine Klage beim EPG eingereicht wird, die die Zuständigkeit des EPG begründen würde. Ein opt-out würde mangels rechtzeitiger Eintragung nicht mehr zum Zuge kommen.

Der Entwurf der Verfahrensordnung bietet als Lösung an, dass Opt-Out-Anträge schon vor dem Inkrafttreten des ÜEP beim Europäischen Patentamt gestellt werden können, diese am Tag des Inkrafttretens des Übereinkommens dem Gericht übergeben werden und dann (gesammelt) in das Register einbezogen werden.

Problematisch erscheint, dass die Verfahrensordnung des Gerichts dem EPA eine offizielle Funktion bei der Ausübung der Aufgaben des Gerichts zuweisen würde. Das EPA würde quasi im Auftrag des Gerichts tätig, was nur schwer konstruierbar erscheint. Unklar ist auch, ob das EPA eine solche Aufgabe überhaupt übernehmen könnte und wollte.

Die Diskussion mit unseren Völkerrechtlern hat ergeben, dass die Lösung des Problems wohl auf eine andere Weise zu suchen sein dürfte. Die Prämisse, dass das EPG am ersten Tage des Inkrafttretens des ÜEP bereits funktionsfähig sein müsse und deshalb auch bereits zu diesem Zeitpunkt Klagen eingehen könnten, deren Erhebung ein opt-out ausschlösse, trifft wohl so nicht zu. Nach Inkrafttreten des Übereinkommens trifft die MS die völkerrechtliche Pflicht, in angemessener Zeit für den Aufbau des Gerichts Sorge zu tragen. Mit unserer Arbeit im Vorbereitenden Ausschuss bereiten wir den Start des neuen Systems ja bereits - sowelt möglich - vor. Gleichwohl kann das Gericht nicht am Tage des Inkrafttretens bereits seine Arbeit aufnehmen. Das kann mit Blick auf die notwendigen Abläufe nicht funktionieren. Vielmehr brauchen wir einen - möglichst kurzen - Zeitraum, in dem die Arbeitsfähigkeit hergestellt werden muss: Der Verwaltungsausschuss muss sich konstituieren, das Ausschreibungs- und Einstellungsverfahren für die Richter muss durchgeführt werden, Finanzbeiträge müssen geleistet werde, die Präsidenten sind von den Richtern zu wählen, die Spruchkörper müssen gebildet werden, die Verfahrensordnung u.a.m. muss verabschiedet werden.

Die Lösung dürfte demzufolge so aussehen, dass der Verwaltungsausschuss beschließt, dass Klagen beim Gericht erst eingereicht werden können, wenn die Arbeitsfähigkeit des Gerichts hergestellt ist. Der Präsident wird ermächtigt, das konkrete Datum festzulegen und zu veröffentlichen.

Innerhalb dieser Phase kann das Gericht auch die Opt-out Anträge bearbeiten. Dabei kann das EPA durchaus eine Hilfestellung für die Anmelder bieten, in dem es die Anträge bündelt. Wichtig wäre insofern nur, dass das EPA als Erfüllungsgehilfe der Anmelder und nicht des Gerichts agiert.

Zusätzliche Verfahrenssprache (Artikel 49 Absatz 2 ÜEP, Regel 14 Absatz 2 VerfO)

Für die Bestimmung der Verfahrenssprache enthält Artikel 49 Absatz 1 ÜEP den Grundsatz, dass Verfahrenssprache die Sprache desjenigen MS ist, in dem die Kammer ihren Sitz hat (also in Deutschland: Deutsch). Zusätzlich gibt es in Artikel 49 Absatz 2 ÜEP für die MS die Möglichkeit, für "ihre" Kammern weitere EPO Sprachen (Deutsch, Englisch, Französisch) als Verfahrenssprache zuzulassen. Dabei treffen zwei widerstreitende Interessen aufeinander. Die Sprache des Sitzlandes soll einerseits eine sprachlich ungehinderte Kommunikation zwischen Richterbank (In DE zwei heimische Richter + ein dritter deutschsprachiger ausländischer Kollege) und Parteivertretern sicherstellen.

Gleichzeitig liegt hierin ein Schutz des Beklagten, der vor der DE-Lokalkammer Deutsch verwenden kann. Andererseits besteht ein Interesse daran, den Gerichtsstandort Deutschland für ausländische Verfahrensbeteiligte attraktiv zu gestalten. Dem würde eine großzügige Möglichkeit entgegen kommen, Englisch als Verfahrenssprache zuzulassen.

Die Expertengruppe tendierte zu einer Lösung, dem Kläger die Wahl zwischen der Verfahrenssprache des Sitzlandes und einer zusätzlich vom MS zugelassenen weiteren Sprache (Englisch) einzuräumen.

Im Hinblick auf eine bessere politische Akzeptanz hat die Expertengruppe dann aber die folgenden zwei Alternativen vorgeschlagen:

o Alternative 1

Die MS, die eine weitere EPO Sprache als Verfahrenssprache zulassen, können gleichzeitig festlegen unter welchen Bedingungen diese weitere Sprache anzuwenden ist.

o Alternative 2

Die Landessprache des Lokalkammersitzes kommt nur dann zum Zuge, wenn der Beklagte in diesem MS seinen Wohnsitz hat und die Klage vor keiner anderen Kammer anhängig gemacht werden kann (nur lokale Verletzung in einem MS). Sobald eine Verletzung auch in einem anderen teilnehmenden MS vorliegt (überregionale Verletzung) kann der Kläger auf die zusätzliche Verfahrenssprache (regelmäßig Englisch) übergehen.

In der Diskussion im zuständigen Team Verfahrensordnung der Rechtsgruppe zeichnet sich eine überwiegende Unterstützung der Alternative 2 ab. Die Alternative 1 sieht sich der Kritik ausgesetzt, dass sie zu einem unvorhersehbaren und uneinheitlichen Sprachenregime führen würde, das den an ein einheitliches Verfahren zu stellenden Anforderungen nicht gerecht würde und damit keine ausreichende Rechtssicherheit böte.

Für DE wäre die erste Alternative attraktiv, um die betroffenen Interessen jeweils optimal zur Geltung zu bringen: Schutz der Beklagten, Attraktivität des DE-Standorts und Berücksichtigung der Sprachkapazitäten in den deutschen Lokalkammern. Um dem Einwand der Unübersichtlichkeit einer Bestimmung der Parameter durch den betr. MS zu entgehen, könnte man erwägen, die möglichen Parameter eines Einsatzes der zusätzlichen Sprachen in einer abschließenden Liste bereits in der Verfahrensordnung aufzuführen, aus der die MS auswählen können (z.B. Begrenzung weiterer Sprache auf einzelne Kammern, Möglichkeit schriftliche Unterlagen auf Englisch einzureichen, Möglichkeit mündlicher Beiträge auf Englisch, Vorbehalt der Absetzung der schriftlichen Entscheidung in der heimischen Sprache etc.).

* Unterlassungsverfügungen (Artikel 62 ff. ÜEP, Regel 118 VerfO)

Über diesen Punkt haben wir bereits gesprochen. In aller Kürze noch einmal zusammengefasst, sieht die Lage wie folgt aus: Das Übereinkommen sieht in Artikel 63 Regelungen zur Unterlassungsverfügung in der Hauptsache vor. Hier wird dem Gericht ein gewisser Ermessensspielraum ("may grant") eingeräumt, der aber wegen des in Artikel 25 ÜEP bestehenden Rechts aus dem Patent auf Unterlassung einer Verletzung eng auszulegen ist und dem Gericht lediglich eine Handhabe geben soll, in atypischen Sonderfällen / Missbrauchsfällen die "Notbremse" ziehen zu können. Da diese atypischen Fälle naturgemäß kaum typisierbar sind, gibt es auch keine das Ermessen konkretisierenden Bestimmungen, auch nicht in der Verfahrensordnung. Es soll dem Gericht vorbehalten bleiben, Anwendungsfälle in seiner Rechtsprechung herauszuarbeiten.

Insbesondere gibt es bei der Unterlassungsverfügung in der Hauptsache auch keine Verhältnismäßigkeitsprüfung. Anders bei einer einstweiligen Verfügung, bei der in Artikel 62 Absatz 2 ÜEP eine Abwägung der beteiligten Interessen vorgesehen ist. Das ist aber gerechtfertigt, weil in der Situation der Eilmaßnahme das Gericht sich noch keine abschließende Überzeugung über das Vorliegen einer Verletzung gebildet hat, so dass auch das Beklagteninteresse im Rahmen einer Abwägung bei der Entscheidung über den Erlass einer Maßnahme regelmäßig einzubeziehen und gegen das Klägerinteresse abzuwägen ist.

Regel 118 Absatz 1 VerfO enthält keine weitere Konkretisierung des in Artikel 63 für den Erlass der Unterlassungsverfügung eingeräumten Ermessens sondern verweist nur auf diese Grundlage im Übereinkommen. In Regel 118 Absatz 2 VerfO kommt eine zusätzliche Möglichkeit hinzu, die Artikel 12 der Durchsetzungsrichtlinie entstammt. Hier geht es um Entschädigung statt Unterlassung. Die dort aufgeführten Voraussetzungen – darunter diejenige, dass keine vorsätzliche oder fahrlässige Rechtsverletzung vorliegen darf - müssen allerdings kumulativ erfüllt sein, so dass ein solcher Fall kaum praktisch vorkommen dürfte. Zumindest wird das Unterlassungsanspruch nicht ernsthaft relativiert.

Von den anderen MS, die ebenfalls der Lobbyarbeit der Telekom-Industrie ausgesetzt sind, kommt weiterhin starker Druck, auch für die Unterlassungsverfügung in der Hauptsache eine Abwägung einzuführen und in dieser Weise das "may grant" in Artikel 62 ÜEP zu konkretisieren. Hier werde ich weiter gegensteuern.

* "Procedural appeals" (Artikel 73 Absatz 2 b) ii ÜEP, Regel 220 VerfO)

Das Übereinkommen sieht in Artikel 73 vor, dass grundsätzlich nur die Instanz beendenden Entscheidungen sowie einige im Einzelnen ausgewählte Beschlüsse wie z. B. einstweilige Maßnahmen mit einem Rechtmittel vor dem Berufungsgericht angegriffen werden können. Prozessleitende Verfügungen können grundsätzlich nicht gesondert sondern nur zusammen mit der rechtsmittelfähigen Endentscheidung überprüft werden. Eine Ausnahme besteht dann, wenn die Überprüfung einer prozessleitenden Verfügung vom Gericht zugelassen wird ("leave to appeal").

Keine Einigung besteht im Rahmen der Regel 220 VerfO bisher darüber, ob eine solche Zulassung des Rechtsmittels ausschließlich durch das Gericht erster Instanz erfolgt (wenn kein "leave" erteilt wird dann bleibt nur Rüge zusammen mit der Berufung gegen die Endentscheidung) oder ob bei Ablehnung durch die Kammer der ersten Instanz zusätzlich auch das Berufungsgericht angerufen werden kann.

Wir und auch die DE-Mitglieder in der Experten Gruppe Dr. Grabinski und Prof. Tilmann vertreten mit Blick auf den Ausnahmesituation, dass sich das Berufungsgericht in die Prozessleitung der ersten Instanz einmischt, die erste Variante. Außerdem besteht die Gefahr, dass sich bei systematischem Gebrauch dieser Möglichkeit ein deutliches Verzögerungspotenzial entwickelt. Insofern stellt Regel 220 Absatz 5 VerfO nunmehr zumindest klar, dass dem Zulassungsantrag keine aufschiebende Wirkung zukommt. Unterstützung findet unsere Auffassung allerdings nur von ITA.

Nach der ganz überwiegenden Ansicht der MS sollte auch das Berufungsgericht über einen solchen Antrag entscheiden, wenn die Kammer der ersten Instanz diesen zuvor abgelehnt hat. Formal bezieht sich diese Auffassung auf die Formulierung in Artikel 73 Absatz 2 b) ii) ÜEP "where the court grants leave to appeal..." und Artikel 6 Absatz 1 ÜEP, wonach der Begriff "Court" das Gericht erster Instanz und das Berufungsgericht umfasst. Erschwerend hinzu kommt, dass – wie sich zwischenzeitlich herausgestellt hat – in Großbritannien derartige "procedural appeals" ein erprobtes Rechtsinstitut sind, das sich – von den Gerichten zurückhaltend gehandhabt – in der Praxis offenbar bewährt, zumindest nicht zu den von uns befürchteten Problemen geführt hat. Darüber hinaus wird darin – nicht ganz von der Hand zu weisen – die Möglichkeit gesehen, dem Berufungsgericht von Beginn an ein Instrument an die Hand zu geben, auf ein einheitliches Verfahren vor den zahlreichen erstinstanzlichen Kammern hinzuwirken. Schließlich sieht die Mehrheit hierin eine Möglichkeit, allzu selbstherrliche Entscheidungen der erstinstanzlichen Kammern zur Trennung des Verletzungs- vom Nichtigkeitsverfahren einer effektiven Kontrolle zu unterziehen, um auch insofern einheitliche Standards zu erreichen. Die Sorgen über die Trennung von Verletzungs- und Nichtigkeitsverfahren ("Bifurcation") sind immer noch sehr stark und wirken sich an vielen Ecken – so auch hier – aus.

Meine Prognose wäre, dass es bei diesem Punkt auf den von der Mehrheit unterstützen Ansatz hinausläuft.

III. Weiteres Vorgehen

Die Arbeitsgruppe Recht des Vorbereitenden Ausschusses muss sich zunächst über konkrete Ergänzungen des Entwurfs einigen. Wir sind soweit, dass für eine Reihe von Punkten Änderungsvorschläge erarbeitet werden können, die vor Sommerpause durch die Arbeitsgruppe beraten werden könnten (eine oder zwei Sitzungen).

Änderungen sind mit der Expertengruppen abzustimmen, um sicherzustellen, dass durch die Änderungen keine neuen Probleme entstehen.

Grundlegendere Fragen werden eine Fortsetzung der Beratungen auch nach der Sommerpause erfordern (ein oder zwei Sitzungen).

Nach Fertigstellung einer überarbeiteten Fassung 16' der Verfahrensordnung soll Im Herbst eine mündliche Anhörung der europäischen Nutzer stattfinden. Ich bin mit der ERA im Gespräch, die ihre Räumlichkeiten und logistische Unterstützung für eine solche Veranstaltung anbietet. Finanzierung der Veranstaltung durch BMJ scheint möglich. Als Termin steuere ich Ende Oktober an.

Nach der mündlichen Anhörung muss Änderungsbedarf in der Arbeitsgruppe beraten werden und – wo erforderlich – eine Einigung über Ergänzungen herbeigeführt werden.

Ende dieses Jahres / Anfang 2015 könnte ein erster Gesamtentwurf stehen, der dann dem Vorbereitenden Ausschuss vorgelegt werden kann.

Frohe Ostern und beste Grüße

Johannes Karcher

15th 16th draft of 31st May 2013 Of 31 January 2014

Preliminary set of provisions for the Rules of Procedure ("Rules") of the Unified Patent Court

Status

- 1. First draft dated 29 May 2009
 - discussed in expert meetings on 5 June and 19 June 2009
- 2. Second draft (Part 1, Chapter 1) dated 9 July 2009, Working-paper from the Commission-Services, Council working document 11813/09
 - discussed in Council Working Party on Intellectual Property (Patents) on 22 July 2009
- 3. Third draft dated 25 September 2009
 - discussed in expert meeting on 2 October 2009
- 4. Fourth draft dated 16 October 2009
 - discussed at the 5th European Patent Judges' Forum on 30 and 31 October 2009
- 5. Fifth draft dated 27 January 2012
 - discussed in expert meeting on 3 February 2012
- 6. Sixth draft dated 22 February 2012
 - discussed by the Drafting Committee on 25/26 February 2012
- 7. Seventh draft dated 20 March 2012
 - discussed by the Drafting Committee on 24/25 March 2012
- 8. Eighth draft dated 30 March 2012
 - For technical consultation
- 9. Ninth draft dated 24 May 2012
- 10. Tenth draft dated 16 October 2012
- 11. Eleventh draft dated 07 November 2012
 - Discussed by Drafting Committee on 09 and 10 November 2012
- 12. Twelfth draft dated 29 November
- 13. Thirteenth draft dated 14 January 2013
 - Renumbered version
- 14. Fourteenth draft dated 31 January 2013
 - For further informal comment prior to the public consultation
- 15. 15th draft dated 31st May 2013
 - For public consultation
- 16. 16th draft dated 31 January 2014
 - Discussed by Drafting Committee on 16 and 17 November and 14 December 2013 in light of comments from public consultation.
 - Provided to Preparatory Committee on 31 January 2014.

Formatvorlagendefinition

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Formatierte Tabelle

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Introductory remarks

The present document contains a draft set of provisions for the Rules of the Unified Patent Court (hereinafter "UPC" or "Court") and the Statute of the Court (hereinafter "Statute").

Basic principles of procedural law are already laid down in Part III of the Agreement on a UPC (hereinafter "Agreement"), for instance proportionality and fairness, case management, right to be heard, publicity, stages of the proceedings etc. The Agreement also contains general provisions on languages, parties, representation, means of evidence, experts, and defines the powers of the UPC to order provisional measures (in particular preliminary injunctions), to issue orders to preserve evidence (saisie-contrefaçon), corrective measures etc.

However, in several places in the Agreement, references are made to the Rules which shall spell out procedural details. This is a tried and tested legal technique: only the basic principles have been included in the Agreement, many procedural details being left for secondary legal instruments.

In accordance with Article 41(2) Agreement, the Rules of the UPC shall be adopted by the Administrative Committee, on the basis of broad consultations with all stakeholders and following an opinion of the European Commission on the compatibility of the Rules with Union law.

The Contracting Member States, having signed the Agreement,_have set up a Preparatory Committee in charge of preparing the practical arrangements for the early establishment and coming into operation of the Court. The Contracting Member States acknowledge the importance of appropriate Rules for the Court and of their uniform application, which are vital to guarantee that the decisions of the Court are of the highest quality and that proceedings are organised in the most efficient and cost effective manner. Rules

A small Drafting Committee of expert judges and lawyers was appointed in 2012 to take this work forward.

The eighth draft prepared by the Drafting Committee was the subject of wide technical consultation with professional and industry bodies. -A list of respondents who commented on that draft is set out below.

The fourteenth draft was the subject of further technical comment by professional and industry bodies. A further list of respondents is set out below.

The aim of the Drafting Committee remains to assist the Preparatory Committee to complete the draft Rules following a formal public consultation.

Comments on the eighth draft of the Rules were received from the following.

Joachim Feldges BDI Modiano & Partners Association des Praticiens Européens des Brevets

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Formatierte Tabelle

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EGA

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Thomas Bopp

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EPI – Preliminary Comments

Association of Intellectual Property Law Firms in Sweden

Intellectual Property Lawyers Association (UK)

Research in Motion

The Danish Association of the Pharmaceutical Industry

Association des Avocats de Proprieté Industrielle

Dutch/Belgian Respondents I Dutch/Belgian Respondents II

European Patent Lawyers Association I European Patent Lawyers Association II

Licensing Executives Society (Britain & Ireland)

epi GSMA

Confederation of Swedish Enterprise

Comments on the fourteenth draft were received from the following.

D.Musker

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Catherine Mateu (EPLAW) Josef Talas (EPLAW)

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Nicholas Fox

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Participants in the formal public consultation

Comments on the fifteenth draft were received from the following.

Peter DeLange

Patentanwaltskammer

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AIPPI-

Christian Koster

Casalonga

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Bundespatentgerichts

KONINKLIJKE Phillips N.V.

CMS

The Law Society of Scotland

Google Inc.

European Patent Lawyers Association

The Institute of Professional Representatives

before the European Patent Office

Mathys & Squire

Judge Dr. Tamas Csoti, Metropolitan

Tribunal, Budapest, Hungary

Eight UK Patent Attorney Firms

Stibbe Lawyers

Intellectual Property Owners' Association

Association de Praticiens Europeens des

Brevets

Purdue Pharma L.P.

Axel Horns

Withers & Rogers LLP

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Technology

Electronics

Cohausz & Florack GlaxoSmithKline Qualcomm Europe Inc. Japanese Group of AIPPI The Association of Danish Industrial Property Executives Pfizer Limited Japanese Intellectual Property Association The Association of Finnish Patent Attorneys Novo Nordisk A/S The Bio Industry Association Judge Gabriella Muscolo LIF Sweden Pharma Industry Finland The Danish Association of Pharmaceutical Industries Carpmaels & Ransford H Lundbeck A/S The British Association of the International Federation of Intellectual Property Attorney Microsoft Corporation Finland Chamber of Commerce E'studio Legale Pino AIPPI France Preu Bohlig & Partner Vertex Pharmaceuticals Incorporated Confederation of Finnish Industries Jones Day Haseltine Lake LLP Industry Coalition on the UPC Rules of Procedure The British Generic Manufacturers Association Tony Pluckrose Max Planck Institute for Intellectual Property and Competition Law Confederation of Danish Industry Rolls-Royce PLC **Bristows LLP** Centro Studi Anticontraffazione Ficpi International Bundesrechtsanwaltskammer Field Fisher Waterhouse LLP Simon Roberts British Patent Attorney Advocates

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Potter Clarkson LLP

European Generic Medicines Association

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Telecommunications

Association (Intellect)

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Assiciation des Avocats de Propriete Industrielle Groupe de Travail de Institute de Recherche en Propriete Intellectuelle Council of Bars and Law Societies of Europe **Business Europe**

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Abbreviations

EPC: European Patent Convention

Regulation (EU) No 1257/2012: Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection (OJEU L 361, 31.12.2012, p. 1)

Regulation (EU) No 1260/2012: Regulation (EU) No 1260/2012 of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements (OJEU L 361, 31.12.2012, p. 89)

Regulation (EU) No 1215/2012: Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the-recognition and enforcement of judgments in civil and commercial matters

Levels for the various procedural fees have not been included

References to persons in these Rules may apply to legal persons as well as natural persons. Words importing the masculine gender shall include the feminine and vice versa.

For all written pleadings, parties will have to make use of forms available on-line (see Rule 4). Where a Rule lists the contents of pleadings, the sign * indicates that a form will be available to guide parties.

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Rule 344 – Deliberations

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PREAMBLE

The Court shall conduct proceedings in accordance with the Agreement on a Unified Patent Court ("the Agreement"), the Statute of the Unified Patent Court ("the Statute") and these Rules. In the event of a conflict between the provisions of the Agreement and/or the Statute on the one hand and of the Rules on the other hand, the provisions of the Agreement and/or the Statute shall prevail.

The Rules shall be applied and interpreted in accordance with Articles 41(3), 42and 42 and 52(1) of the Agreement on the basis of the principles of proportionality, flexibility, fairness and equity.

Proportionality shall be ensured by giving due consideration to the nature and complexity of each action and its importance.

Flexibility shall be ensured by applying all procedural rules in a flexible and balanced manner with the required level of discretion for the judges to <u>organizeorganise</u> the proceedings in the most efficient and cost effective manner.

Fairness and equity shall be ensured by having regard to the legitimate interests of all parties.

In accordance with these principles, the Court shall apply and interpret the Rules in a way which shall ensure decisions of the highest quality.

In accordance with these principles, 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 whilst recognising that complex actions may require more time and procedural steps and simple actions less time and less procedural steps. Decisions on costs and/or damages may take place at the same time or as soon as practicable thereafter. -Case management shall be organised in accordance with these objectives. Parties shall cooperate with the Court and set out their full case as early as possible in the proceedings.

The Court shall endeavour to ensure consistent application and interpretation of these Rules by all-first instance divisions and the Court of Appeal. Due consideration shall also be given to this objective in any decision concerning leave to appeal against procedural orders.

APPLICATION AND INTERPRETATION OF THE RULES

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APPLICATION AND INTERPRETATION OF THE RULES

Rule 1 - Application of the Rules

- 1. The Court shall conduct proceedings in accordance with the Agreement on a Unified Patent Court ("the Agreement"), the Statute of the Unified Patent Court ("the Statute") and these Rules—which include the Preamble to these Rules and the principles set out therein. In the event of a conflict between the provisions of the Agreement and/or the Statute on the one hand and of the Rules on the other hand, the provisions of the Agreement and/or the Statute shall prevail.
- 2. Where these Rules provide for the Court to perform any act other than an act exclusively reserved for a panel of the Court, the President of the Court of First Instance or the President of the Court of Appeal, that act may be performed by:
- (a) the presiding judge or the judge-rapporteur of the panel to which the action has been assigned;
- (b) a single legally qualified judge where the action has been assigned to a single judge;
- (c) the standing judge designated pursuant to Rule 345.5.

Relation with Agreement: Article 8(7)

Relation with draft-Statute: Article 19(3)

Rule 2 - Supplementary protection certificate

- 1. Subject to paragraph 2, in these Rules with the exception of Rule 5 the expression "patent" and "proprietor" shall whenever appropriate include, respectively, a supplementary protection certificate as defined in Article 2(h) of the Agreement and granted in respect of the patent and the proprietorholder of such certificate.
- 2. References in these Rules to the language in which the patent was granted shall mean that language and not the language in which a supplementary protection certificate in respect of the patent was granted.

Rule 3 - Power of staff of the Registry and a sub-registry to perform functions of the Registry

Where these Rules refer to the Registry or Registrar and provide for the Registry to perform any act that reference shall include the relevant sub-registry and that act may be performed by the Registrar or by a member of staff of the Registry or relevant sub-registry.

Rule 4 - Lodging of documents

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.

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2. Where it is not possible to lodge a document electronically for any reason a party may lodge the document in hard-copy form. An electronic copy of the document shall be lodged as soon as practicable thereafter.

Relation with Agreement: Article 44

Rule 5 - Lodging of an Application to opt out and withdrawal of an opt-out*,

1.(a) The proprietor of a European patent (including a European patent that has expired) or an the applicant for a published application for a European patent (hereinafter in this Rule 5, an "application") who wishes to opt out that patent or application from the exclusive competence of the Court in accordance with Article 83(3) of the Agreement shall, subject to Rule 5.913, lodge an *Application with the Registry. Where the patent or application is owned by two or more proprietors, all proprietors shall lodge the Application. The Application shall be made in respect of each of the contracting member states in which the European patent is owned by the proprietor or proprietors in question.

- 2(b) Where the patent or application is owned by two or more proprietors or applicants, all proprietors or applicants shall lodge the Application.
- (c) The Application shall be made in respect of all of the Contracting Member States for which the European patent is designated.
- 2.(a) An Application to opt out a European patent or application pursuant to Rule 5.1 or an Application to withdraw an opt-out pursuant to Rule 5.8 shall extend to any supplementary protection certificate(s) based on the European patent.
- (b) Where any such supplementary protection certificate has been granted at the date of lodging the Application, the holder(s) of the supplementary protection certificate(s) shall if different from the proprietor(s) of the patent lodge the Application together with the proprietor(s).
- (c) Where any such supplementary protection certificate is granted subsequent to lodging the Application, the opt-out shall take effect automatically on grant of said supplementary protection certificate(s), and the holder(s) of such supplementary protection certificate(s) based on the European patent shall notify the Registry of the details required under Rule 5.3.
- (d) Rules 5.7 and 5.9 shall apply mutatis mutandis in relation to actions commenced in respect of any supplementary protection certificate.
- (e) For the avoidance of doubt, it is not possible to opt out supplementary protection certificates (whether granted by the authorities of a Contracting Member State or otherwise) based on a European patent with unitary effect.
- 3. The *Application to opt out shall contain:
- (a) the name of the proprietor or proprietors or applicant or applicants for the European patent (or patents) or application (or applications) and of the holder or holders of any supplementary protection certificate (or supplementary protection certificates) based on the European patent (or patents) in question, and all relevant postal and, where applicable, electronic addresses; and

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(b) where such proprietor(s), applicant(s) or holder(s) have appointed a representative, the name and postal address and electronic address for service of the representative;

(c) details of the patent (or patents) and/or application (or applications) eoneemed-including the number (or numbers);); and-in

(d) details of any supplementary protection certificate (or supplementary protection certificates) granted based on the ease of patent (or patents the designated Contracting Member States) concerned, including the number (or numbers).

34. Rule 8 shall not apply to Applications made pursuant to this Rule 5. Where a representative is appointed, such a representative may include professional representatives and legal practitioners as defined in Article 134 EPC in addition to those referred to in Article 48 of the Agreement.

5. The applicant(s) for an opt-out shall pay the fixed fee in accordance with Part 6. The Applicationshall not be entered in the register until the fixed fee has been paid. One fixed fee shall be payable in respect of each European patent or application for which an Application to opt out has been filed, including any supplementary protection certificate based on said patent or application.

46. Subject to Rule 5.35 the Registrar shall as soon as practicable enter the Application to opt out in the register. -Subject to -Rule 5.57, the optoutopt out shall be regarded as effective from the date of entry in the register.

57. In the event that an action has been commenced before the Court in respect of a patent (or patents) and/or an application (or applications) contained in an Application to opt out prior to the date of entry of the Application in the register the Registrar shall notify the applicant of such action as soon as practicable and, the Application for opt—out shall be ineffective in respect of the patent (or patents) and/or application (or applications) in question.

68. A proprietor or proprietors of a patent (or patents) and/or an application (or applications) the subject of an opt-out pursuant to this Rule may lodge an *Application to withdraw the opt-out in respect of the patent(s) or application(s) (or of one or more of the subject patents or applications, but not in respect of different designations of the opt-out-same patent or application). The Application shall contain the particulars in accordance with Rule 5.23 and shall be accompanied by the fixed fee in accordance with Part 6; Rule 5.5 shall apply mutatis mutandis. Subject to the receipt of the fixed fee the Registrar shall as soon as practicable enter the Application to withdraw in the register and the withdrawal shall be regarded as effective from the date of entry in the register.

79. In the event that an action has been commenced before a court of a Contracting Member State in respect of a patent or application contained in an Application to withdraw the opt-out, prior to the entry of the Application in the register, the Application to withdraw the opt-out shall be ineffective in respect of the patent or application in question.

10. Where an application for a European patent subject to an opt-out pursuant to this Rule proceeds to grant as a European patent with unitary effect, the proprietor or proprietors shall notify the Registry. The opt-out shall be deemed to have been withdrawn and the Registrar shall as soon as practicable enter the withdrawal in the register. No fee shall be payable pursuant to Rule 5.8.

11. A patent or application the subject of an Application to withdraw which has been entered on the register may not thereafter be the subject of a further Application to opt out.

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812. The Registrar shall as soon as practicable notify the European Patent Office of the entries in the register pursuant to -Rules 5.46 and 5.68.

[913. An Application to opt out may be lodged with the European Patent Office after a date to be announced by the European Patent Office and before the coming into effect of the Agreement. -The Application shall be accompanied by the fixed fee provided for in Rule 5.35 and shall otherwise comply with any instructions for lodging the Application issued by the European Patent Office. -At the date of entry into force of the Agreement in accordance with Article 5989 of the Agreement the European Patent Office will transfer details of all such Applications (and of any pending Applications) and all such fees to the Registrar and. The Registrar shall enter the Applications shall be treated as enteredreceived on the register and effective fromunder the said date of entry into force of the Agreement.]

Relation with Agreement: Article 83(3) and (4)

*Note to -Rule 5

*The Drafting Committee would like to note, in response to certain written comments received, that the provisions of Article 83 of the Agreement for opting out are clear and provide for:

- (i) a complete ousting of the jurisidiction jurisdiction of the UPC;
- (ii) such ouster is, subject to Rule 5.68, for the life of the relevant patent/application and including the time after the patent has expired, has lapsed or has been withdrawn; and
- (iii) covers all designations owned by the proprietor(s) in question.

Rule 6 - Service and supply of orders, decisions, written pleadings and other documents

- 1. The Registry shall as soon as practicable serve, in accordance with Part 5, Chapter 27:
- (a) orders and decisions of the Court on the parties;
- (b) written pleadings of a party on the other party.

Where applicable, the Registry shall inform the parties of the opportunity to reply or to take any other appropriate step in the proceedings and of any time period for so doing.

- 2. The Registry shall also as soon as practicable supply to the parties copies of documents referred to in <u>these Rules</u> and lodged with pleadings and written evidence.
- 3. Where the postal or electronic address for service provided by a party pursuant to these Rules has changed that party shall give notice in writing to the Registry and to every other party as soon as such change has taken place.

Rule 7 - Language of written pleadings and written evidence

1. Written pleadings and other documents, including written evidence, shall be lodged in the language of the proceedings, unless the Court or these Rules otherwise provide.

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2. Where these Rules or the Court require a pleading or other document to be translated it shall not be necessary to provide a formal testament as to the accuracy of such translation unless the accuracy is challenged by a party or such testament is ordered by the Court.

Rule 8 - Party and party's representative

- 1. A party shall be represented in accordance with Article 48 of the Agreement unless otherwise provided by these Rules [Rules 5, 88.5 and 378.5].
- 2. For the purpose of all proceedings in relation to a patent, where these <u>RulesprovideRules provide</u> that a party perform any act or that any act be performed upon a party that act shall be performed by or upon the representative for the time being of the party.
- 3. Except where these Rules provide otherwise, a party shall not communicate with the Court without informing the other party or parties. Where such communication is in writing, the communication should be copied to the other party or parties unless these Rules provide that the Court will supply a copy to the other party or parties.
- 4. For the purposes of proceedings under these Rules in relation to the proprietor(s) of a patent, the person(s) shown in the register of the European Patent Office as the proprietor(s) shall be treated as such.

Relation with Agreement: Article 48

Rule 9 - Powers of the Court

- 1. The Court may, at any stage of the proceedings, of its own motion or on reasoned request by a party, order a party to take any step, answer any question or provide any clarification or evidence, within time periods to be specified.
- 2. The Court may disregard any step, fact, evidence or argument which a party has not taken or submitted in dueaccordance with a time limit set by the Court or these Rules.
- 3. Subject to paragraph 4, on a reasoned request by a party, the Court may:
- (a) extend, even retrospectively, a time period referred to in these Rules or imposed by the Court; and
- (b) shorten any such time period.
- 4. The Court shall not extend or shorten the time periods referred to in Rule 198.1 and Rule 224.1

PART 1 - PROCEDURES BEFORE THE COURT OF FIRST INSTANCE

Rule 10 - Stages of the proceedings (inter partes proceedings)

Proceedings before the Court of First Instance shall consist of the following stages:

- (a) a written procedure;
- (b) an interim procedure, which may include an interim conference with the parties;

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- (c) an oral procedure which, subject to Rules 116.1 and 117, shall include an oral hearing of the parties where necessary;
- (d) a procedure for the award of damages, which may include a procedure to lay open books;
- (e) procedures a procedure for cost orders decisions.

Relation with Agreement: Articles 52(1), 68 and 69

Rule 11 - Settlement

- 1. At any stage of the proceedings, if the Court is of the opinion that the dispute is suitable for a settlement, it may propose that the parties make use of the facilities of the Patent Mediation and Arbitration Centre ("the Centre") in order to settle or to explore a settlement of the dispute. -In particular the judge—rapporteur shall atduring the interim procedure, in particular at an interim conference in accordance with Rule 104(d)), explore with the parties the possibility of a settlement, including through mediation and/or arbitration, using the facilities of the Centre.
- 2. Pursuant to Rule 365 the Court shall, if requested by the parties, by decision confirm the terms of any settlement, or arbitral award (irrespective of whether it was reached using the facilities of the Centre or otherwise), including a term which obliges the patent owner to limit, surrender or agree to the revocation of a patent or not to assert it against the other party and/or third parties. -The parties may agree on costs to be awarded or may request the Court to decide on costs to be awarded in accordance with Rules 150 to 156 mutatis mutandis.
- 3. Save for the purpose of enforcing the terms of any such settlement agreement by any person no opinion expressed, suggestion made, proposal put forward, concession made or document drawn up for the purposes of settlement may be relied on as evidence by the Court or the parties in proceedings before the Court or any other court unless such matter was expressed to be made on an open basis and freely disclosable to the Court or any other court.

Relation with Agreement: Articles 35, 52(2) and 79

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CHAPTER 1.- WRITTEN PROCEDURE

SECTION 1 - INFRINGEMENT ACTION

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 claimant) [Rule 13];
- (b) the lodging of a Statement of defence (by the defendant) [Rules 23 and 24]; and, optionally
- (c) the lodging of a Reply to the Statement of defence (by the claimant) [Rule 29](b)]; and
- (d) the lodging of a Rejoinder to the Reply (by the defendant) [Rule 29]-(c)].
- 2. The Statement of defence may include a Counterclaim for revocation [Rule 25.1].
- 3. If a Counterclaim for revocation is lodged:
- (a) the claimant and any proprietor who becomes a party pursuant to Rule 25.3 (hereinafter in this Rule 12 and Rules 29 to 32, "the proprietor") shall lodge a Defence to the Counterclaim for revocation [Rule 29], which may include an Application to amend the patent by the proprietor [Rule 30];
- (b)- the defendant may lodge a Reply to the Defence to the Counterclaim [Rule 51]29(d)]; and
- (c)- the claimant and the proprietor may lodge a Rejoinder to the Reply to the Defence to the Counterclaim [Rule 52]-29(e)].
- 4. If an Application to amend the patent is lodged by the proprietor, the defendant shall lodge a Defence to the Application to amend the patent in the Reply to the Defence to the Counterclaim, the proprietor may lodge a Reply to the Defence to the Application to amend and the defendant may lodge a Rejoinder to such Reply [Rule 32].
- 5. The judge-rapporteur may allow the exchange of further written pleadings, within time periods to be specified [Rule 36].

STATEMENT OF CLAIM

Rule 13 - Contents of the Statement of claim

- 1. The claimant shall lodge a *Statement of claim with the division chosen by him {[Article 33 of the Agreement]] which shall contain:
- (a) the names name of the claimant (and, where the claimant is a corporate entity, the location of its registered office) and of the claimant's representative;
- (b) the name of the party against whom the Statement is made (the defendant), (and, where the defendant is a corporate entity, the location of its registered office);
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- (c) postal and electronic addresses for service on the claimant and the names of the persons authorised to accept service;
- (d) postal and, where available, electronic addresses for service on the defendant and the names of the persons authorised to accept service, if known;
- (e) where the claimant is not the proprietor or not the only proprietor of the patent (or patents) concerned, postal and where available, electronic addresses for service on the -proprietor and the names and addresses of the persons authorised to accept service, if known, [Article 47(2) and (4) of the Agreement];
- (f) where the claimant is not the proprietor of the patent (or patents) concerned, or not the only proprietor, evidence to show the claimant is entitled to commence proceedings [Article 47(2) and (3) of the Agreement].
- (g) details of the patent (or patents) concerned, including the number (or numbers),);
- (h) where applicable, information about any prior or pending proceedings relating to the patent (or patents) concerned before the Court including any action for revocation or a declaration of non-infringement pending before the central division and the date of any such action, the European Patent Office or any other court or authority;
- (i) an indication of the division which shall hear the action [Article 33(1) to (6) of the Agreement] with an explanation of why that division has competence; where the parties have agreed in accordance with Article 33(7) of the Agreement, the indication of the division which shall hear the action shall be accompanied by evidence of the defendant's agreement.
- (j) where applicable, an indication that the action shall be heard by a single judge [Article 8(7) of the Agreement], accompanied by evidence of the defendant's agreement;
- (k) the nature of the claim, the order or the remedy sought by the claimant;
- (1) an indication of the facts relied on, in particular-:
 - (i) one or more instances of alleged infringements or threatened infringements specifying the date and place of each;
 - (ii) the identification of the patent claims alleged to be infringed;
- (m) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;
- (n) the reasons why the facts relied on constitute infringements an infringement of the patent claims, including arguments of law and where appropriate an explanation of the proposed claim interpretation,:
- (o) an indication of any order the claimant will seek during the interim procedure [Rule 104(e)]];
- (p) where the claimant assesses that the value of the infringement action exceeds [EUR***], an indication of the value; and

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- (q) a list of the documents, including any witness statements, referred to in the Statement of Claimclaim, together with any request that all or part of any such document need not be translated and/or any Application pursuant to Rule 262.2.
- 2. The claimant shall at the same time supply a copy of each of the documents referred to in the Statement of Claimclaim.
- 3. The judge-rapporteur shall decide on any request made pursuant to Rule 13.1(q) as soon as practicable after his designation pursuant to Rule 18.

Rule 14 - Language of the Statement of claim

- 1.- Without prejudice to Article 49(3)(), (4) and (6) of the Agreement and subject to Rule 14.2 and Rule 272.7, the Statement of claim shall be drawn up:
- (a)— in the official language or one of the official languages designated as language(s) of proceedings pursuant to Article 49(1) of the Agreement; or
- (b) in one of the languages designated as language(s) of proceedings pursuant to Article 49(2) of the Agreement.

ALTERNATIVE 1

2. Where aA Contracting Member State hosting a local division or may designate more than one of its official languages under Article 49(1) of the Agreement and notify the conditions under which the panels of the division must or may use one of these languages as language of the proceedings. The same applies to the official language(s) designated by Contracting Member States sharing a regional division and to the official language(s) designated under Article 49(2).

ALTERNATIVE 2

2. Where a defendant has his domicile or principal place of business in a Contracting Member Statesharinghosting a local or participating in a regional division has/for which several languages have been designated two or more languages of proceedings pursuant to Article 49(1) and/or Article 49(2) of the Agreement (2) of the Agreement, and where the action could not be brought pursuant to Article 33(1)(a) of the Agreement before any other local or regional division, the Statement of claim shall be drawn up in the official language in which of the defendant normally conducts its business in its Contracting Member State, or in case of a Contracting Member State having several official regional languages in the official language of the region in which the defendant has his domicile or principal place of business.

In case of a Contracting Member State or a region having several official languages, or in case of multiple defendants having their residence or principal place of business in different Contracting Member States or different regions of a Contracting Member State having different languages, the Statement of claim shall be drawn up in the language of choice of the claimant.*

3.- Subject to Article 49(5) and Rules 321 to 323 the language of the Statement of claim shall be the language of proceedings and without prejudice to Rule 16.5 the Registry shall return any pleading lodged in a language other than the language of the proceedings.

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Relation with Agreement: Article 49

*Note to Rule 14.2

Comments in the consultation made it clear that Rule 14.2 as originally drafted was not practicable, and two alternatives have been proposed. The Committee was unable to agree on either, although a narrow majority favoured Alternative 1, and it was resolved to provide both for consideration by the Preparatory Committee.

The Committee itself, however, would prefer a simple rule allowing the claimant to chose the language of proceedings.

Rule 15 - Fee for the infringement action

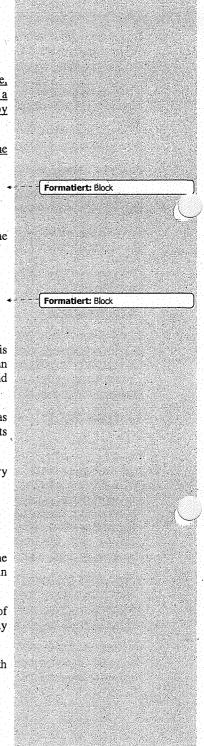
- 1. The claimant shall pay the fixed fee for the infringement action in accordance with Part-6.
- 2. The Statement of claim shall not be deemed to have been lodged until the fixed fee for the infringement action has been paid, unless otherwise provided [Rule 371].

Relation with Agreement: Articles 36(3), 70 and 71

Rule 16 - Examination as to formal requirements of the Statement of claim

- 1. The Registry shall as soon as practicable check whether one or more of the patents concerned is the subject of an opt-out pursuant to Article 83(3) of the Agreement and Rule 5. In the event of an opt-out the Registry shall as soon as practicable inform the claimant who shall withdraw or amend the Statement of claim as appropriate.
- 2. In the event that the patent(s) concerned are not the subject of an opt-out the Registry shall, as soon as practicable after the lodging of the Statement of claim, examine whether the requirements of Rules-13.1 (a) to $(\frac{1}{10}-k)$, 13.2, 14 and 15.1 have been complied with.
- 3. If the claimant has not complied with the requirements referred to in paragraph 2, the Registry shall as soon as practicable invite the claimant to:
- (a) correct the deficiencies within 14 days of service of such notification; and
- (b) where applicable, pay the fee for the infringement action within said 14 days.
- 4. The Registry shall at the same time inform the claimant that if the claimant fails to correct the deficiencies <u>and/or to pay the fee</u> within the time stated a decision by default may be given, in accordance with Rule-355.
- 5. If the claimant fails to correct the deficiencies or pay the fee, the Registry shall inform a judge of the division who may reject the action as inadmissible by a decision by default. He The judge may give the claimant an opportunity to be heard beforehand.
- 6. The claimant may make an application to set aside the decision by default in accordance with Rule 356.

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Rule 17 - Recording in the register (Court of First Instance, infringement action)

- 1. If the requirements referred to in Rule 16.2 have been complied with, the Registry shall as soon as practicable.
- (a) record the date of receipt of the Statement of claim and attribute an action number to the file;
- (b) record the file in the register; and
- (c) inform the claimant of the action number of the file and the date of receipt-
- 2. The President of the Court of First Instance or suchpresiding judge of athe division to whom the President has delegated this task-shall assign the action to a panel.
- <u>3. Unless otherwise agreed by the panel the most senior judge The following shall be determine the distribution of actions between the sections of the central division.</u>
- (a) Where an action involves a single patent having a single classification, the Registry shall allocate the action to the section appropriate to the classification of the patent according to Annex II of the Agreement. The presiding judge of that section shall assign the action to a panel.
- (b) Where an action involves more than one patent and a majority of the patents have a single-classification appropriate to a single section according to Annex II of the Agreement, the Registry shall allocate the action to that section. The presiding judge of that section shall assign the action to a panel.
- 3(c) Where neither paragraph (a) nor (b) applies, the Registry shall refer the action to the presiding judge of the section appropriate to the classification of the patent first listed, according to Annex II of the Agreement. If the presiding judge of that section considers that the action should to be heard by his section, he shall assign it to a panel. If he considers otherwise, he shall refer the action to the presiding judge of either other section he considers appropriate, who shall likewise consider whether the action should be heard in his section. If that presiding judge considers otherwise, he shall refer the action to the President of the Court of First Instance, who shall allocate it to the section he considers appropriate. The presiding judge of that section shall assign the action to a panel.
- 4. The action shall be regarded as pendinghaving commenced before the Court as from the date of receipt attributed to the Statement of claim.

Relation with Agreement: Article 7(2), Article 10

Rule 18 - Designation of the judge-rapporteur

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The presiding judge of the panel to which the action has been assigned [Rule 17.2] shall designate one legal judge of the panel as judge-rapporteur. -The presiding judge may designate himself as judge-rapporteur. - The Registry shall as soon as practicable notify the claimant and defendant of the identity of the judge-rapporteur.

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PROCEDURE WHEN THE DEFENDANT RAISES A PRELIMINARY OBJECTION

Rule 19 - Preliminary objection

- 1. Within one month of service of the Statement of claim, the defendant may lodge a Preliminary-objection concerning:
- (a) the jurisdiction and competence of the Court,
- (b) the competence of the division indicated by the claimant [Rule 13.1(i)];)];
- (c) the language of the Statement of claim [Rule 14].
- 2. A *Preliminary objection shall contain:
- (a) particulars in accordance with Rule 24.1(a) to (c);
- (b) the decision or order sought by the defendant;
- (c) the grounds upon which the Preliminary objection is based; and
- (d) where appropriate the facts and evidence relied on.
- 3. The Preliminary objection shall be drawn up-
- (a) in the language of the proceedings [Rule 14.2]3]; or
- (b) in an official language of the Contracting Member State where the defendant has his residence, or principal place of business, or in the absence of residence or principal place of business, place of business. (b) in one of the official languages of the European Patent Office.
- 4. If the action has been commenced before a regional division the defendant may by a Preliminary objection request a transfer of the action to the central division pursuant to Article 33(2) of the Agreement. —The Preliminary objection shall in such a case contain all facts and evidence supporting the existence of the same infringement in three or more regional divisions.
- 5. The Registry shall as soon as practicable invite the claimant to comment on the Preliminary objection. Where applicable, the claimant may of his own motion correct any deficiency [Rule 19.1(b) or (c)], within 14 days of service of notification of the Preliminary objection. Alternatively the claimant may submit written comments within the same period. The judge-rapporteur shall be informed of any correction made or written comments submitted by the claimant. If the deficiency referred to in Rule 19.1(b) is corrected and the claimant has indicated another division, which is competent, the judge-rapporteur shall refer the action to the division indicated by the claimant.
- 6. The period for lodging the Statement of defence [Rule 23] shall not be affected by the lodging of a Preliminary objection, unless the judge-rapporteur decides otherwise.
- 7. The defendant's failure to lodge a Preliminary objection within the time period referred to in Rule 19.1 shall be treated as a submission to the jurisdiction and competence of the Court and the competence of the division chosen by the claimant.

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Rule 20 - Decision or order on a Preliminary objection

- 1. As soon as practicable after the expiry of the period referred to in Rule 19.45, the judge-rapporteur shall decide the Preliminary objection. –The judge-rapporteur shall give the parties an opportunity to be heard.-The decision shall include instructions to the parties and to the Registry concerning the next step in the proceedings.
- 2. Where the Preliminary objection is to be dealt with in the main proceedings, the judge-rapporteur shall inform the parties.

Rule 21 - Appeal against decision or order on a Preliminary objection

- 1. A decision of the judge-rapporteur allowing the Preliminary objection may be appealed pursuant to Rule 220.1(a). -An order of the judge-rapporteur rejecting the Preliminary objection may only be appealed pursuant to Rule 220.2.
- 2. If an appeal is lodged, proceedings at first instance may be stayed by the judge-rapporteur or the Court of Appeal on a reasoned request by a party.
- 3. Rule 19.6 shall apply mutatis mutandis.

VALUE-BASED FEE FOR THE INFRINGEMENT ACTION

Rule 22 - Value-based fee for the infringement action

- 1. The value of the infringement action shall be determined by the judge-rapporteur where, taking into account the value of the dispute is as assessed by one or both the parties as exceeding [EUR***], by way of an order during the interim procedure.
- 2. Where the value of the infringement action exceeds [EUR***], the claimant shall pay a value-based fee for the infringement action, in accordance with Part 6 [Rules 370.2(b) and 371.4].

STATEMENT OF DEFENCE

Rule 23 - Lodging of the Statement of defence

The defendant shall lodge a Statement of defence within three months of service of the Statement of claim. The period may be extended by the judge-rapporteur on a reasoned request by the defendant.

Rule 24 - Contents of the Statement of defence

- 1. The *Statement of defence shall contain:
- (a) the names of the defendant and of the defendant's representative;
- (b) postal and electronic addresses for service on the defendant and the names and addresses of the persons authorised to accept service;
- (c) the action number of the file;
- (d) an indication whether the defendant has lodged a Preliminary objection [Rule_19];

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- (e) an indication of the facts relied on, including any challenge to the facts relied on by the claimant,
- (f) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support.
- (g) the reasons why the action shall fail, arguments of law-including any assertion that the patent (or patents) concerned is (are) invalid and any argument arising from the provisions of Article 28 of the Agreement and where appropriate any challenge to the claimant's proposed claim interpretation-:
- (h) an indication of any order the defendant will seek in respect of the infringement action during the interim procedure [Rule 104(e)].)];
- (i) a statement whether the defendant disputes the claimant's assessment of the value of the infringement action and the grounds for such dispute; and
- (j) a list of the documents, including any witness statements, referred to in the Statement of defence together with any request that all or part of any such document need not be translated-and/or any Application pursuant to Rule 262.2. Rule 13.2 and .3 shall apply mutatis mutandis.
- 2. The defendant shall at the same time supply a copy of each of the documents referred to in the Statement of Defence.

Rule 25 - Counterclaim for revocation

- 1. If the Statement of defence includes an assertion that the patent (or patents) alleged to be infringed is (are) invalid the Statement of defence shall include a *Counterclaim for revocation against the proprietor(s) of the patent (or patents) for revocation of said patent (or patents) in accordance with Rule 43. The Counterclaim for revocation shall contain:
- (a) an indication of the extent to which revocation of the patent (or patents) is requested;
- (b) one or more grounds for revocation, which shall as far as possible be supported by arguments of law, and where appropriate an explanation of the defendant's proposed claim construction.
- (c) an indication of the facts relied on;
- (d) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;
- (e) an indication of any order the defendant will seek during the interim procedure [Rule 104(e)].)];
- (f) where the defendant assesses that the value of the dispute including the Counterclaim exceeds the value of the infringement action by more than [EUR***] an indication of the value of the dispute including the Counterclaim.
- (g) a statement of his position, if any, on the options provided for in Article 33(3)(a), (b) or (c) of the Agreement and Rule 37.47;

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- (h) a list of the documents, including any witness statements, referred to in the Counterclaim for revocation together with any request that all or part of any such documents need not be translated. Rule 13.2 and 3 shall apply mutatis mutandis; and
- 2. The defendant shall at the same time supply a copy of each of the documents referred to in the Counterclaim for revocation.
- 3.(i) insofar as the proprietor(s) of the patent (or patents) are not claimant(s) in the infringement proceedings, the information required by Rule 13.1(b) and (d) in respect of said proprietor(s).
- 2. Where the claimant is not the proprietor or not the only proprietor of the patent (or patents) concerned the Registry shall as soon as practicable serve a copy of the Counterclaim for revocation on the relevant proprietor(s) in accordance with Rule 13.1(e) and shall supply a copy of each document referred to in paragraph 2. 2. Rule 271 shall apply mutatis mutandis. The proprietor(s) in question shall become a party (parties) to the revocation proceedings and shall be treated as defendant(s) in all subsequent proceedings. The proprietor(s) shall provide details pursuant to Rule 13.1(e) if not already provided by the claimant.

Rule 26 - Fee for the Counterclaim for revocation

The defendant shall pay the fee for the Counterclaim for revocation in accordance with Part-6. Rule 15.2 shall apply mutatis mutandis.

Rule 27 - Examination as to formal requirements of the Statement of defence

- 1. The Registry shall, as soon as practicable after the lodging of the Statement of defence,:
- (a) examine whether the requirements of Rule-24.1(a) to (d) have been complied with; and
- (b) if the Statement of defence includes a Counterclaim for revocation, examine whether the obligation to pay the fee pursuant to Rule 26 has been complied with.
- 2. If the Registry considers that the Statement of defence or the Counterclaim for revocation does not comply with any of the requirements referred to in paragraph 1, it shall as soon as practicable invite the defendant to:
- (a) correct the deficiencies noted, within 14 days, of service of such notification; and
- (b) where applicable, pay the fee for the Counterclaim for revocation, within said 14 days.
- 3. The Registry shall at the same time inform the defendant that if the defendant fails to correct the deficiencies or pay the fee within the time stated a decision by default may be given, in accordance with Rule 355.
- 4. If the defendant fails to correct the deficiencies or to pay the fee for the Counterclaim for revocation, as appropriate, within <u>said</u> 14 days, the Registry shall inform the judge-rapporteur who may give a decision by default. He may give the defendant an opportunity to be heard beforehand.
- 5. The defendant may make an application to set aside the decision by default in accordance with Rule 356.

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Rule 28 - Further schedule

As soon as practicable after service of the Statement of defence, the judge-rapporteur shall, after-consulting the parties set a date and time for an interim conference (where necessary,—[Rule 101.1]) and set a date, and one alternative date, for the oral hearing.

DEFENCE TO THE COUNTERCLAIM FOR REVOCATION, REPLY TO THE STATEMENT OF THE-DEFENCE AND APPLICATION TO AMEND THE PATENT AND REJOINDER TO THE REPLY

Rule 29 – Lodging of Defence to the Counterclaim for revocation, Reply to the Statement ofdefence and Rejoinder to the Reply

- 1.(a) Within two months of service of a Statement of defence which includes a Counterclaim for revocation, the the proprietor claimant shall lodge a Defence to the Counterclaim for revocation and the claimant including, any Application to amend the claims pursuant to Rule 30, and may lodge a Reply to the Statement of defence.
- (b) Within one month of service of a Statement of defence which does not include a Counterclaim for revocation, the claimant may lodge a Reply to the Statement of defence.
- (c) Within one month of service of a Reply to the Statement of defence which does not include a Counterclaim for revocation the defendant may lodge a Rejoinder to the Reply to the Statement of defence. The Rejoinder to the Reply to the Statement of defence shall be limited to a response to the matters raised in the Reply to the Statement of defence.
- (d) Within one month of service of the Defence to Counterclaim the defendant may lodge a Reply to the Defence to the Counterclaim together with any Defence to an Application to amend the claims pursuant to Rule 32, if applicable.
- (e)- Within one month of the service of the Reply to the Defence to the counterclaim, the claimant, the proprietor may lodge a Rejoinder to the Reply together with any Reply to the Defence to an Application to amend the claims pursuant to Rule 32, if applicable. The Rejoinder to the Reply to the Statement of defence shall be limited to a response to the matters raised in the Reply to the Statement of defence.
- (f) Where the claimant is not the proprietor of the patent, all references to the claimant in this Rule 29a29 regarding an Application to amend the patent shall be read as including the proprietor.

Rule 29A - Contents of the Defence to the counterclaim Counterclaim

- 1. The Defence to the Counterclaim for revocation shall contain:
- (a) an indication of the facts relied on, including any challenge to the facts relied on by the defendant;
- (b) the evidence relied on [Rule 170.1], where available, and an indication of any further evidence which will be offered in support;

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- (c) the reasons why the counterclaim for revocation shall fail, including arguments of law and any argument as to why any dependent claim of the patent (or patents) is independently valid.;
- (d) an indication of any order the claimant and the proprietor will seek in respect of the revocation action at the interim conference [Rule 104(e)];)];
- (e) the claimant's and the proprietor's response to the defendant's choice of option, if any, provided for in Article-33(3)(a), (b) or (e) of the Agreement and Rule 37.4;
- (f) the claimant's and the proprietor's response to the defendant's assessment of the value of the dispute (including the Counterclaim) pursuant to Rule 25.1(f)...); and
- (g) a list of the documents, including any witness statements, referred to in the Defence to the Counterclaim together with any request that all or part of any such document shall not be translated. Rule 13 and/or any Application pursuant to Rule 262.2. Rule 13.2 and .3 shall apply mutatis mutandis.
- 2. The claimant and the proprietor shall at the same time supply a copy of each of the documents referred to in the Defence to the Counterclaim.

Rule 30 - Application to amend the patent

- 1. The Defence to the Counterclaim for revocation may include an *Application by the proprietor of the patent to amend the patent which shall contain-:
- (a) the proposed amendments of the claims of the patent concerned and/or specification, including where applicable and appropriate one or more alternative sets of claims (auxiliary requests), in the language in which the patent was granted; where the language of the proceedings [Rule 14.23] is not the language in which the patent was granted, the-elaimant proprietor shall lodge a translation of the proposed amendments in the language of the proceedings, and where the patent is a European patent with unitary effect in the language of the defendant's domicile in a Contracting Member State or of the place of the alleged infringement or threatened infringement in a Contracting Member State if so requested by the defendant;
- (b) an explanation as to why the amendments satisfy the requirement of Articles 84 and 123(2) and (3) EPC and why the proposed amended claims are valid, and infringed; and
- (c) an indication whether the proposals are conditional or unconditional; the proposed amendments, if conditional, must be reasonable in number in the circumstances of the case.
- 2. Any subsequent request to amend the patent may only be admitted into the proceedings with the permission of the Court.
- 3. Where other proceedings involving the patent subject to an Application pursuant to Rule 30.1 are on-going, the claimant shall notify the Court in question that such an Application has been made and provide the information required in Rule 30.1(a).

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Rule 31 - Value-based fee for the dispute including the Counterclaim for revocation* Formatiert: Block Formatiert: Nicht Kapitälchen * Views received during the technical consultation on whether a defendant in an infringement action should pay a value based fee for a counterclaim in addition to a fixed fee are mixed. L_LIVE_EMEA1:15571909L_LIVE_EMEA1:16175270v2

- 1. The value of the dispute (including the Counterclaim for revocation) shall be determined by the judge-rapporteur—(where, taking into account the said-value isas assessed by one or both the parties to exceed the value of the infringement action by more than [EUR***], by way of an order at during the interim conference procedure.
- 2. Where the value of the dispute including the Counterclaim for revocation exceeds the value of the infringement action as agreed or ordered by the judge rapporteur, [EUR***], the defendant shall pay a value-based fee for the excess dispute in accordance with Part 6 [Rules 370.2(b) and 371.4].

DEFENCE TO THE APPLICATION TO AMEND THE PATENT

Rule 32 – Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply

- 1. Within one month wo months of service of an Application to amend the claims, the defendant shall lodge a *Defence to the Application to amend the claims setting out whether he opposes the Application to amend the claims and, if so, why:
- (a) the proposed amendments are not allowable; and
- (b) the patent cannot be maintained as requested.
- 2. Where appropriate in view of the proposed amendments, the Defence to the Application to amend the claims may contain submissions in accordance with Rule 45(d) to (h) and alternative non-infringement submissions.
- 3. The proprietor may lodge a Reply to the Defence to the Application to amend the claims within one month of service of the Defence and the defendant may within one month of the service of the Reply lodge a Rejoinder to the Reply.- The Rejoinder shall be limited to the matters raised in the Reply.

APPLICATION FOR ALLOCATING A TECHNICALLY QUALIFIED JUDGE TO THE PANEL

Rule 33 - Application by a party for allocating a technically qualified judge

- 1. Any party to the proceedings may lodge an *Application for allocating a technically qualified judge to the panel which shall contain an indication of the relevant field of technology.
- 2. The Application shall be lodged as early as possible in the written procedure. An Application lodged after the closure of the written procedure [Rule 35] shall only be granted if justified in view of changed circumstances, such as new submissions presented by the other party, and allowed by the Court.
- 3. If the requirements of paragraphs 1 and 2 have been complied with, the President of the Court of First Instance shall allocate a technically qualified judge to the panel, after consulting the judge-rapporteur.

Rule 34 - Request by the judge-rapporteur for allocating a technically qualified judge

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- 1. The judge-rapporteur may at any time during the written procedure, after consulting the presiding judge and the parties, request the President of the Court of First Instance to allocate a technically qualified judge to the panel.
- 2. Where a technically qualified judge is allocated to the panel, the judge-rapporteur may at any time consult the technically qualified judge.

LAST STEPS IN THE WRITTEN PROCEDURE

Rule 35 - Closure of the written procedure

Following the exchange of written pleadings in accordance with Rule 12.1 and, where applicable, in accordance with Rule 12.2 to .4, the judge-rapporteur shall-

- (a) inform the parties of the date on which he intends to close the written procedure, without prejudice to Rule 36; and
- (b) where an interim conference is necessary ([Rules 28 and 101.1),], confirm the date and the time set for the interim conference [Rule-28] or inform the parties that an interim conference will not be held.

Rule 36 - Further exchanges of written pleadings

Without prejudice to the powers of the judge-rapporteur pursuant to Rule 110.1, on a reasoned request by a party lodged before the date on which the judge-rapporteur intends to close the written procedure [Rule 35(a)], the judge-rapporteur may allow the exchange of further written pleadings, within a period to be specified. Where the exchange of further written pleadings is allowed, the written procedure shall be deemed closed upon expiry of the specified period.

Rule 37 - Application of Article 33(3) of the Agreement

- 1. As soon as practicable after the closure of the written procedure the panel shall decide by way of order how to proceed with respect to the application of Article 33(3) of the Agreement. -The parties shall be given an opportunity to be heard [Rule 264]. The panel shall set out in its order brief reasons for its decision.
- 2.- The Panel may by order take an earlier decision if appropriate having considered the parties' pleadings and having given the parties an opportunity to be heard [Rule 264].
- 3. Where the panel decides to proceed in accordance with Article 33(3)(a) of the Agreement, the judge-rapporteur shall request the President of the Court of First Instance to allocate to the panel a technically qualified judge if not already allocated pursuant to Rules 33 and 34.
- 4. Where the panel decides to proceed in accordance with Article 33(3)(b) of the Agreement, the panel may stay the infringement proceedings pending a final decision in the revocation procedure and shall stay the infringement proceedings where there is a high likelihood that the relevant claims of the patent (or patents) will be held to be invalid on any ground by the final decision in the revocation procedure.

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COUNTERCLAIM FOR REVOCATION REFERRED TO THE CENTRAL DIVISION UNDER ARTICLE-33(3)(b) OF THE AGREEMENT

Rule 38 – Written procedure when the central division deals with a Counterclaim for revocation under Article 33(3)-()(b) of the Agreement

When a Counterclaim for revocation is referred to the central division, it shall be dealt with as follows:

- (a) Rule 17.2 and .3 shall apply mutatis mutandis: the President of the Court of First Instance shall assign the Counterclaim for revocation to a panel of the central division in accordance with Article 7(2) of the Agreement and Annex II thereto. The parties may request that the Counterclaim be heard by a single legally qualified judge;
- (b) Rule 18 shall apply *mutatis mutandis*: the presiding judge of the panel to which the Counterclaim for revocation has been assigned shall designate one legally qualified judge of the panel as judge-rapporteur;
- (c)- The judge-rapporteur shall give any further directions necessary for the future conduct of the written procedure before the central division;
- (d) Rule 28 shall apply mutatis mutandis: the judge-rapporteur shall after consulting the parties set a date and a time for the interim conference (where necessary, [Rules 28 and 101)]) and set a date, and one alternative date, for the oral hearing.

Rule 39 - Language of the proceedings before the central division

- 1. Where the language of the proceedings before the regional division or the local regional division which referred the Counterclaim for revocation to the central division is not the language in which the patent was granted, the judge-rapporteur may order that the parties lodge, within a period of 21 daysone month, a translation in the language in which the patent was granted of any written pleadings and such other documents lodged during the written procedure as the judge-rapporteur may direct. The period may be extended by the judge-rapporteur on a reasoned request by a party.
- 2. Where appropriate, the judge-rapporteur may specify in his order that only excerpts of parties' written pleadings and other documents shall be translated.
- 3. Where the language of the proceedings before the <u>regional local</u> division or the <u>localregional</u> division is the language in which the patent was granted the pleadings served in accordance with Rules 24, 25, 29, 29a, 30 and 32 shall stand.

Rule 40 - Accelerated proceedings before the central division

The judge-rapporteur shall accelerate proceedings before the central division where an Application for provisional measures has been lodged [Rule 206].

an Application for provisional measures has been lodged [Rule 206].

ACTION REFERRED TO THE CENTRAL DIVISION UNDER ARTICLE-33(3)(c) OF THE AGREEMENT

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Rule 41 – Written procedure when the central division deals with the action under Article-33(3)(c) of the Agreement

When an action is referred to the central division under Article 33(3)(c) of the Agreement, it shall be dealt with as follows:

- (a) Rule 17.2 <u>and .3</u> shall apply *mutatis mutandis*: the President of the Court of First Instance shall assign the action to a panel of the central division. The parties may request that the action be heard by a single judge;
- (b) Rule 18 shall apply *mutatis mutandis*: the presiding judge of the panel to which the action has been assigned shall designate one judge of the panel as judge-rapporteur;
- (c) dates already set under Rule 28 shall be confirmed wherever possible;
- (d) Rule 39 shall apply mutatis mutandis: the judge-rapporteur may order that the parties lodge_a translation in the language in which the patent was granted of any written pleadings lodged during the written procedure; where appropriate, the judge-rapporteur may specify in his order that only excerpts of parties' written pleadings and other documents shall be translated. -Otherwise the pleadings lodged during the written procedure shall stand—;
- (e) The judge-rapporteur shall give any further directions necessary for the future conduct of the written procedure before the central division.

SECTION 2 - REVOCATION ACTION

Rule 43 - Action to be directed against the patent proprietor

Any action for the revocation of a patent shall be directed against the <u>proprietors proprietor(s)</u> of the patent (or patents).

Relation with Agreement: Article Articles 47(5) and 65(1)

Rule 44 - Exchange of written pleadings (revocation action)

- 1. The written procedure shall consist of:
- (a) the lodging of a Statement for revocation (by the claimant) [Rule 45]; and
- (b) the lodging of a Defence to revocation (by the defendant) [Rule 49]]; and optionally
- (c) the lodging of a Reply to the Defence to revocation (by the claimant) [Rule 51];
- (d) the lodging of a Rejoinder to the Reply (by the defendant) [Rule 52]].
- 2. The Defence to revocation may include-:
- (a) an Application to amend the patent (or patents); and
- (b) a Counterclaim for infringement by the proprietor(s) of the patent or by an exclusive licensee of the proprietor (or patents).

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- 3. If an Application to amend the patent is lodged, the <u>defendant claimant</u> shall lodge a Defence to the Application to amend the patent—(or patents). The <u>defendant may lodge a Reply to the Defence to the Application</u>. The claimant may lodge a Rejoinder to the Reply. The Rejoinder shall be <u>limited to a response to the matters raised in the Reply</u>.
- 4. If a Counterclaim for infringement is lodged, the claimant shall lodge a Defence to the Counterclaim for infringement [Rule 56], the defendant may lodge a Reply to the Defence to the Counterclaim [Rule 56.3] and the claimant may lodge a Rejoinder to the Reply [Rule 56.4].
- 5. Rule 12.5 shall apply.

STATEMENT FOR REVOCATION

Rule 45 - Contents of the Statement for revocation

- 1. The claimant shall, subject to point (b), lodge a *Statement for revocation at the Registry in accordance with Article 7(2) of the Agreement and Annex II thereto. The Statement for revocation shall contain:
- (a) particulars in accordance with Rule 13.1(a) to (h);):
- (b) where the parties have agreed to bring the action before a <u>local division or a regional division or a local division</u> in accordance with Article 33(7) of the Agreement, an indication of the division which shall hear the action, accompanied by evidence of the defendant's agreement;
- (c) where applicable, an indication that the action shall be heard by a single judge [Article 8(7) of the Agreement], accompanied by evidence of the defendant's agreement,:
- (d) an indication of the extent to which revocation of the patent (or patents) is requested;
- (e) one or more grounds for revocation, which shall as far as possible be supported by arguments of law, and where appropriate an explanation of the claimant's proposed claim construction;
- (f) an indication of the facts relied on;

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- (g) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;
- (h) an indication of any order the claimant will seek during the interim procedure [Rule 104(e)];
- (i) where the claimant assesses that the value of the revocation action exceeds [EUR***], an indication of the value; and
- (j) a list of the documents, including any witness statements, referred to in the Statement for revocation together with any request that all or part of any such document need not be translated. Rule 13 and/or any Application pursuant to Rule 262.2. Rule 13.2 and .3 shall apply mutatis mutandis.
- 2. The claimant shall at the same time supply a copy of each of the documents referred to in the Statement for revocation.

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Rule 46 - Language of the Statement for revocation

- 1. Subject to paragraph 2, the Statement for revocation shall be drawn up in the language in which the patent was granted.
- 2. Where the parties have agreed to bring the action before a local or a regional division in accordance with Article 33(7) of the Agreement, the Statement for revocation shall be drawn up in one of the languages referred to in Rule 14.1(a)(ii), (b)(ii), (e) or (d).) and (b).

3. Rule 14.5 shall apply mutatis mutandis.

Relation with Agreement: Article 49

Rule 47 - Fee for the revocation action

The claimant shall pay the fee for the revocation action in accordance with Rule 57.2 and Part_6. Rule 15.2- shall apply *mutatis mutandis*.

Relation with Agreement: Articles 70 and 71

Rule 16 on Examination as to formal requirements of the Statement of claim shall apply-mutatis mutandis,

Rule 48 - Recording in the register (Court of First Instance, revocation action)

1. Rule 17.1(a) to (c), 2 and .23 shall apply mutatis mutandis.

2. The President of the Court of First Instance shall assign the action

(a) to a panel of the central division,

- (b) where the parties have agreed may request that the action be heard by a single judge should hear the action, to a single judge or.
- (e) where the parties have agreed to bring the action before a local division or a regional division in accordance with Article 33(7) of the Agreement, to a panel of the local or regional division concerned.

The Registrar shall notify the European Patent Office that the patent (or patents) in question is (or are) subject to an action for revocation.

Relation with Agreement: Articles 10 and 33

Rule 18 on Designation of judge-rapporteur shall apply

Rules 19, (other than Rule 19.4), 20 and 21 on Procedure when the defendant raises a Preliminary objection shall apply mutatis mutandis,

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DEFENCE TO REVOCATION

Rule 49- Lodging of the Defence to revocation

- 1. The defendant shall lodge a Defence to revocation within three months of service of the Statement for revocation.
- 2. The Defence to revocation may include:
- (a) an Application to amend the patent;
- (b) a Counterclaim for infringement.

Rule 50 - Contents of the Defence to revocation and Counterclaim for infringement

- 1. The *Defence to revocation shall contain the matters referred to in Rule 24.1(a) to (c) and Rule-29(a) shall apply.
- 2. Any Application to amend the patent shall contain the matters referred to in Rule 30.1(a) to (c). Rule_30.2 shall apply.
- 3. Any Counterclaim for infringement shall contain the matters referred to in Rule 13.1(k) to (q) and where the defendant assesses that the value of the dispute including the Counterclaim for infringement exceeds the value of the revocation action by more than [EUR***] an assessment of the value of the dispute including the Counterclaim. -Rule 13.2 and .3 shall apply.

Rule 51 - Reply to Defence to revocation

The claimant may lodge a Reply to the Defence to revocation within one month two months of service of the Defence to revocation.

Rule 52 - Rejoinder to the Reply

The defendant may lodge a Rejoinder to the Reply to the Defence to Counterclaim within one month of the service of the Reply. The Rejoinder shall be limited to a response to the matters raised in the Reply.

Rule 53 - Fee for the Counterclaim for infringement

The defendant shall pay the fee for the Counterclaim for infringement in accordance with Part-6. Rule 15.2 shall apply mutatis mutandis.

Rule 27 on Examination as to formal requirements of the Statement of defence shall applymutatis mutandis

Rule 28 on Further schedule shall apply mutatis mutandis

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DEFENCE TO THE APPLICATION TO AMEND THE PATENT AND DEFENCE TO THE COUNTERCLAIMFOR INFRINGEMENT

Rule 32 on Lodging of the Defence to the Application to amend the patent shall apply mutatismutandis

Rule 56 - Lodging of the Defence to the Counterclaim for infringement

- 1. Within one month of service of a Counterclaim for infringement, the claimant shall lodge at Defence to the Counterclaim for infringement. The period may be extended by the judge rapporteur on a reasoned request by the claimant.
- 2. The Defence to the Counterclaim shall contain the matters referred to in Rule 24.1(e) to (h) and (j) and a statement whether the claimant disputes the defendant's assessment of the value of the dispute (including the Counterclaim) pursuant to Rule 50.3 and the reasons for such dispute. -Rule 24.2 shall apply.
- 3. The defendant may lodge a Reply to the Defence to the Counterclaim for infringement within one month
- 4. The claimant may lodge a Rejoinder to the Reply within one month of the service of the Reply. The Rejoinder shall be limited to matters raised in the Reply.

Rules 33 and 34 on Request for allocating a technically qualified judge shall apply where the revocation action is heard by local division or regional division

Rule 35 on Closure of the written procedure shall apply mutatis mutandis,

Rule 36 on Further exchanges of written pleadings shall apply

Rule 57 - Value-based fee for the revocation action

- 1. The value of the revocation action shall be determined by the judge-rapporteur (where, taking into account the value of the dispute is as assessed by one or both the parties as exceeding [EUR***]), by way of an order atduring the interim conference procedure.
- 2. Where the value of the revocation action exceeds [EUR***] the claimant shall pay a value-based fee for the revocation action in accordance with Part 6 [Rules 370.2(b) and 371.4].

Rule 58 - Value-based fee for the dispute (including the Counterclaim for infringement)

1. The value of the dispute including the Counterclaim for infringement shall be determined by the judge-rapporteur-where, taking into account the said-value is as assessed by one or both the parties to exceed the value of the revocation action by more than [EUR***], by way of an order at during the interim conference procedure.

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2. Where the value of the dispute including the Counterclaim for infringement exceeds the value of the revocation action as agreed or ordered by the judge-rapporteur, [EUR***], the defendant shall pay a value-based fee for the excess dispute in accordance with Part 6 [Rules 370,-2_(b\+)) and 371.4].

SECTION 3 - ACTION FOR DECLARATION OF NON-INFRINGEMENT

Rule 60 - Declaration of non-infringement

- 1. A declaration that the performance of a specific act does not, or a proposed act would not, constitute an infringement of a patent may be made by the Court in proceedings between the person doing or proposing to do the act and the patent proprietor or licensee entitled to commence infringement proceedings pursuant to Article 47 of the Agreement, if the patent proprietor or such licensee has asserted that the act is an infringement, or, if no -such assertion has been made by the patent proprietor or licensee, if:
- (a) that person has applied in writing to the proprietor or licensee for a written acknowledgment to the effect of the declaration claimed, and has provided him with full particulars in writing of the act in question; and
- (b) the proprietor or licensee has refused or failed to give any such acknowledgment within one month.
- 2. The action for a declaration shall be directed against the proprietor of the patent or the licensee who has asserted an infringement or refused or failed to give an acknowledgement pursuant to paragraph 1(b).

Rule 61 - Exchange of written pleadings (action for declaration of non-infringement)

- 1. The written procedure shall consist of:
- (a) the lodging of a Statement for a declaration of non-infringement (by the claimant) [Rule-62]-];
- (b) the lodging of a Defence to the Statement for a declaration of non-infringement (by the defendant) [Rules-65-66]-]; and, optionally
- (c) the lodging of a Reply to the Defence to the Statement for a declaration of non-infringement [Rule 67]-];
- (d) the lodging of a Rejoinder to the Reply [Rule 67].
- 2. Rule 12.5 shall apply.

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Rule 62 - Contents of the Statement for a declaration of non-infringement

- 4. The claimant shall, subject to point (b), lodge at the Registry in accordance with Article 3433(4), Article 7(2) of the Agreement and Annex II thereto, a *Statement for a declaration of non-infringement which shall contain:
- (a) particulars in accordance with Rule 13.1(a) to (h), and particulars confirming that the requirements of Rule 60 are met;

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- (b) where the parties have agreed to bring the action before a local division or a regional division in accordance with Article 33(7) of the Agreement, an indication of the division which shall hear the action, accompanied by evidence of the defendant's agreement.
- (c) where applicable, an indication that the action shall be heard by a single judge [Article 8(7) of the Agreement], accompanied by evidence of the defendant's agreement;
- (d) the declaration sought by the claimant;
- (e) the reasons why the performance of a specific act does not, or a proposed act would not, constitute an infringement of the patent or patents concerned, including arguments of law and where appropriate on explanation of the claimant's proposed claim construction;
- (f) an indication of the facts relied on;
- (g) the evidence relied on, where available, and an indication of any further evidence which will be offered in support;
- (h) an indication of any order the claimant will seek at the interim conference [Rule 104(e)];
- (i) where the claimant assesses that the value of the declaratory action exceeds [EUR***], an indication of the value; and
- (j) a list of the documents, including any witness statements, referred to in the Statement for a declaration together with any request that all or part of any such document need not be translated-Rule 13 and/or any Application pursuant to Rule 262.2. Rule 13.2 and .3 shall apply mutatis mutandis.
- 2. The claimant shall at the same time supply a copy of each of the documents referred to in the Statement for a declaration.

Rules 46, 47 and 48 relating to the Statement for revocation shall apply mutatis mutandis

Rules 16 and 17 on Examination as to formal requirements of the Statement of claim and Recording on the register shall apply mutatis mutandis

Rule 18 on Designation of the judge-rapporteur shall apply mutatis-mutandis

Rules 19, (other than Rule 19.4), 20 and 21 on Procedure when the defendant raises a Preliminary objection shall apply mutatis mutandis,

Rule 65 - Lodging of the Defence to the Statement for a declaration of non-infringement

The defendant shall lodge a Defence to the Statement for a declaration of non-infringement withintwo months of service of the Statement for a declaration of non-infringement. The period may be extended by the judge-rapporteur on a reasoned request by the defendant. Formatiert: Block

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Rule 66 - Contents of the Defence to the Statement for a declaration of non-infringement

The *Defence to the Statement for a declaration of non-infringement shall contain the matters* referred to in Rule 24.1(a) to (h) and a statement whether the defendant disputes the claimant's assessment of the value of the declaratory action and the grounds for such dispute(a) to (j). Rule 13.2 and .3 shall apply mutatis mutandis.

Rule 67 - Reply to Defence to the Statement for a declaration of non-infringement and Defence to Counterclaim and Rejoinder to the Reply

- 1. The claimant may lodge a Reply to the Defence to the Statement for a declaration of non-infringement within one month.
- 2. The defendant may lodge a Rejoinder to the Reply within one month of service of the Reply. The Rejoinder shall be limited to the matters raised in the Reply.

Rule 68 - Fee for the action for a declaration of non-infringement

The claimant shall pay the fee for the action for a declaration of non-infringement [EUR***], in accordance with Part 6. Rule-15.2 shall apply mutatis mutandis.

Rule 27 on Examination as to formal requirements of the Statement of defence shall apply-

Rule 28 on Further schedule shall apply mutatis mutandis

Rules 33 and 34 on Request for allocating a technically qualified judge shall apply where the action is heard by a regional division or a local division

Rule 35 on Closure of the written procedure shall apply mutatis mutandis

Rule 36 on Further exchanges of written pleadings shall apply

Rule 69 - Value-based fee for the action for a declaration of non-infringement

- 1. The value of the action for a declaration of non-infringement shall be determined by the judge-rapporteur-where, taking into account the value of the dispute is as assessed by one or both the parties as exceeding [EUR***], by way of an order at during the interim conference procedure.
- 2. Where the value of the dispute exceeds [EUR***] the claimant shall pay a value-based fee for the action for a declaration of non-infringement in accordance with Part 6 [Rules 370.2(b) and 371.4].

SECTION 4 - ACTIONS WITHIN ARTICLE 33(5) AND (6) OF THE AGREEMENT

Rule 70 – Revocation actions action and subsequent infringement actions action in a local or regional division (Article 33(5) of the Agreement).

1. Where a claimant has lodged a Statement for revocation ([Rule 45]) before the central division and the defendant or a licensee entitled to commence proceedings pursuant to Article 47 of the

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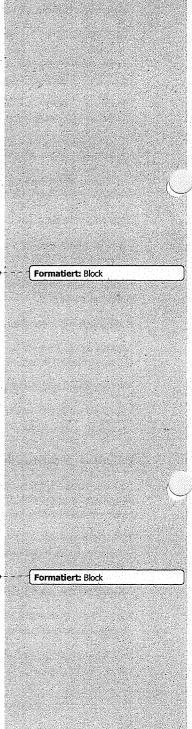
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Agreement subsequently initiates an infringement action in a local or regional division against the claimant in respect of the same patent (or patents) the following procedures shall apply.

- 2. The Registry at the local or regional division shall proceed in accordance with Rules 16 and 17. The Registry shall as soon as practicable notify the President of the Court of First Instance- of the revocation action in the central division, the infringement action in the local or regional division and any counterclaim for revocation in the infringement action.
- 3. Unless Where a counterclaim for revocation is brought in the infringement action and there is identity of parties as between the two actions, unless otherwise agreed by the parties, the President of the Court of First Instance shall require the panel appointed in the central division to hear the revocation action pursuant to Rule 48.2 to stay all further proceedings in the revocation action pending a decision of the panel hearing the action for infringement pursuant to Article 33(3) of the Agreement and Rule 37.
- 4. Where the claimant who has lodged a Statement for revocation does not lodge a Counterclaim for revocation in the infringement action referred in Rule 70.1 the judge rapporteur in the infringement action shall as soon as practicable notify the President of the Court of the First Instance and the stay referred to in Rule 70.3 shall be lifted.
- 5.4. The panel hearing the action for infringement shall when exercising its discretion under-Article-33(3) of the Agreement take into consideration how far the revocation action in the central division was advanced prior to the stay referred to in Rule 70.3.
- 65. Where the panel hearing the action for infringement decides to proceed in accordance with Article 33(3)(a) of the Agreement, Rules 33 and 34 shall apply mutatis mutandis to the action for infringement.
- 76. Where the panel hearing the action for infringement decides to proceed in accordance with Article-33(3)(b) or (c) of the Agreement, Rules 37.3, 384 and 39 to 41 shall apply mutatis mutandis.

Rule 71 – Actions for declaration of non-infringement within Article 33(6) of the Agreement

- 1. Where a claimant has lodged an action for declaration of non-infringement (Rule 60) before the central division against the patent proprietor or a licensee entitled to commence infringement proceedings pursuant to Article 47 of the Agreement and the defendant proprietor or licensee subsequently initiates an action for infringement in a local or regional division against the claimant in respect of the same patent or patents and with respect to the same alleged infringements the following procedure shall apply.
- 2. The Registry shall proceed in accordance with Rule 16 and 17. The Registry shall as soon aspracticable notify the President of the Court of First Instance of the co-pending actions and the dates attributed to them.
- 3. If the date attributed by the Registry to the action for infringement pursuant to Rule 17.1(a) is within three months of the date attributed to the action for declaration of non-infringement the President of the Court of First Instance shall require the panel of the central division to stay all



further proceedings in the action for a declaration. —If the date attributed to the action for infringement is outside the said three month period there shall be no stay but the presiding judges of the central division and the local or regional division concerned shall consult to agree on the future progress of proceedings including the possibility of a stay of one action pursuant to Rule-295(k).

Rule 72 - Action for declaration of non-infringement and action for revocation

An action for declaration of non-infringement may be lodged together with an action for revocation of the patent (or patents) in question. -Fees shall be paid in accordance with both Rules 47 and 57 and Rules 68 and 69.

SECTION 5 - ACTION FOR COMPENSATION FOR LICENCES ON THE BASIS OF ARTICLE 8 OF OF REGULATION (EU) No. 1257/2012

Rule 80 - Compensation for a licence of right

- 1. The *Application for appropriate compensation {[Article 32(1)(h) of the Agreement]] shall contain:
- (a) particulars in accordance with Rule 13.1(a) to (d);
- (b) information on the filing of the statement as referred to in Article 8(1) of Regulation (EU) No-1257/2012;
- (c) the licence agreement referred to in Article 8(2) of Regulation (EU) No 1257/2012.
- 2. Rules 132, 133, 135 and 137 to 140 apply mutatis mutandis to the procedure for appropriate compensation.
- 3. The applicant shall pay the fee for compensation in accordance with Part 6. -Rule 15.2 shall apply *mutatis mutandis*.

Relation with Agreement: Article 32(1)(h)

SECTION 6 - ACTION AGAINST DECISIONS OF THE EUROPEAN PATENT OFFICE-IN CARRYING OUT THE TASKS REFERRED TO IN ARTICLEACTION AGAINST DECISIONS OF THE EUROPEAN PATENT OFFICE IN CARRYING OUT THE TASKS REFERRED TO IN ARTICLE 9 OF REGULATIONOF REGULATION (EU) No. 1257/2012

Relation with Agreement: Articles 32(1)(i), 47(7) and 66

Rule 85 - Stages of the proceedings (ex parte proceedings)

Where 1. Subject to rule 85.2, where an action is brought against a decision of the European Patent-Office in carrying out the tasks referred to in Article 9 of Regulation (EU) No 1257/2012 (hereinafter "decision of the Office"), proceedings before the Court of First Instance shall consist of:

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- (a) a written procedure, which shall include a possibility for interlocutory review by the European Patent Office;
- (b) an interim procedure, which may include an interim conference; and
- (c), an oral procedure which, at the request of the claimant or at the instance of the Court, may include an oral hearing.
- 2. This Rule and Rules 88 (save as expressly provided for in Rule 97.2), 89 and 91 to 96 shall not apply to an expedited action against a decision of the Office pursuant to Rule 97.

Rule 86 - Suspensive effect

An action against a decision of the Office shall have suspensive effect.

Rule 87 - Grounds for annulling or altering a decision of the Office

An action against a decision of the Office may be brought on grounds of:

- (a) infringement of Regulation (EU) No 1257/2012 or of Regulation (EU) No 1260/2012 or of any rule of law relating to their application;
- (b) infringement of the implementing rules of the European Patent Office for carrying out the tasks referred to in Article 9(1) of Regulation (EU) No 1257/2012;
- (c) infringement of an essential procedural requirement;
- (d) misuse of power.

Rule 88 - Application to annul or alter a decision of the Office

- 1. The claimant shall lodge an Application at the Registry, in accordance with Article 7(2) of the Agreement and Annex II thereto, to annul or alter a decision of the Office in the language in which the patent was granted, within two months of service of the decision of the Office.
- 2. The *Application to annul or alter a decision of the Office shall contain:
- (a) the names of the claimant and, where applicable, of the claimant's representative;
- (b) where the claimant is not the proprietor of the European patent with unitary effect, an explanation and evidence that he is adversely affected by the decision of the Office and entitled to start proceedings [Article 47(7) of the Agreement];
- (c) postal and electronic addresses for service on the claimant and the names and addresses of the persons authorised to accept service;
- (d) a reference to the contested decision of the Office;
- (e) where applicable, information about any prior or pending proceedings relating to the patent concerned before the Court, the European Patent Office or any other court or authority;
- (f) an indication whether the action shall be heard by a single judge;

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- (g) the order or the remedy sought by the claimant;
- (h) one or more grounds for annulling or altering the contested decision, in accordance with Rule-87;
- (i) the facts, evidence and arguments relied on-; and
- (j) a list of the documents, including any witness statements, referred to in the Application together with any request that all or part of any such document need not be translated-<u>and/or any</u> Application pursuant to Rule 262.2. Rule 13.2 and 3 shall apply mutatis mutandis.
- 3. The claimant shall at the same time supply a copy of each of the documents referred to in the Application
- 43. The claimant shall pay the fee for the action against a decision of the Office, in accordance with* Part 6. Rule 15.2 shall apply mutatis mutandis.
- 54. Rule 8 shall not apply.

Relation with Agreement: Articles 32(1)(i), 33(9), 47(7), 48(7) and 49(6)

Rule 89 - Examination as to formal requirements (ex parte proceedings)

- 1. The Registry shall, as soon as practicable after an Application to annul or alter a decision of the Office has been lodged, examine whether the requirements of Articles 47(7) and 49(6) of the Agreement and Rule 88.1, .2(a) to (d) and .43 have been complied with.
- 2. If the Registry considers that any of the requirements referred to in paragraph 1 has not been complied with, it shall invite the claimant to:
- (a) correct the deficiencies noted, within 14 days, from the date of service of such notification; and
- (b) where applicable, pay the fee for the action against a decision of the Office, within said 14 days.
- 3. The Registry shall at the same time inform the claimant that if the claimant fails to correct the deficiencies within the time stated a decision by default may be given in accordance with Rule-355.
- 4. If the claimant fails to correct the deficiencies noted or to pay the fee for the action against a decision of the Office, the Registry shall inform the President of the Court of First Instance who may reject the action as inadmissible by a decision by default. He may give the claimant an opportunity to be heard beforehand.
- 5. The claimant may make an application to set aside the decision by default in accordance with Rule 356.

Rule 90 - Recording in the register (ex parte proceedings)

If the requirements referred to in Rule 89.1 have been complied with, the Registry shall as soon as practicable-:

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- (a) record the date of receipt of the Application to annul or alter a decision of the Office and attribute an action number to the file;
- (b) record the file in the register;
- (c) inform the claimant of the action number of the file and the date of receipt; and
- (d) forward the Application to the European Patent Office, with an indicating indication that the Application is admissible.

Rule 91 - Interlocutory revision by the European Patent Office

- 1. If the European Patent Office considers that the Application to annul or alter a decision of the Office is well founded, it shall within one month of the date of receipt of the Application:
- (a) rectify the contested decision in accordance with the order or remedy sought by the claimant [Rule 882(g)]88.2(f)]; and
- (b) inform the Court that the decision has been rectified.
- 2. Where the Court is informed by the European Patent Office that the contested decision has been rectified, it shall inform the claimant that the action is closed. It may order full or partial reimbursement of the fee for the action against a decision of the Office, in accordance with Part-6.

Rule 92 - Assignment to panel or to single judge, designation of judge-rapporteur

Where the action is not closed in accordance with Rule 91.2, the President of the Court of First Instance shall, as soon as practicable after the expiry of the period referred to in Rule 91.1, assign the action to a panel of the central division in accordance with Rule 17.2 or to a single judge if requested by the claimant [Rule 88.2(f)]. Rule 18 shall apply.

Rule 93 - Examination of the Application to annul or alter a decision of the Office

- 1. In the examination of the Application to annul or alter a decision of the Office, the judge-rapporteur may invite the claimant to lodge further written pleadings, within a time period to be specified.
- 2. Where appropriate, the judge-rapporteur may, after consulting the claimant, set a date and time for an interim conference.
- 3. Rule 35 shall apply mutatis mutandis.

Rule 94 - Invitation to the President of the European Patent Office to comment

The judge-rapporteur may, on his own initiative or on request by the President of the European Patent Office, invite the President of the European Patent Office to comment in writing on any question arising in the course of proceedings under this Section. The President shall not become party to the proceedings. The claimant shall be entitled to submit his observations on the President's comments.

Rule 95 - Lex specialis for the interim procedure (ex parte procedure)

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During the interim procedure, the judge-rapporteur shall invite the claimant to indicate whether he wishes that an oral hearing be convened. The judge-rapporteur may convene an oral hearing at his own instance. Rules 111 to 118 shall apply *mutatis mutandis*.

Rule 96 - Lex specialis for the oral procedure (ex parte procedure)

1. Rules 110.3, 111, 115 and 118.7 shall apply to the oral hearing and to the decision of the Court.

2. If an oral hearing is not convened, the panel shall decide in accordance with Rule 117.

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Rule 97 - Application to annul a decision of the Office to refuse a request for unitary effect*

- 1. The proprietor of a patent whose request for unitary effect has been refused by the Office shall lodge an Application at the Registry in accordance with Article 7(2) of the Agreement and Annex II thereto, to reverse the decision of the Office, in the language in which the patent was granted, within 10 days of service of the decision of the European Patent Office.
- 2. The Application shall contain particulars in accordance with Rule 88.2(a), (c), (d) and (f) to (i) and the proprietor shall pay the fee for the action against the decision of the Office in accordance with Part 6. Rule 15.2 shall apply mutatis mutandis.
- 3. If the requirements referred to in Rule 97.2 have been complied with, Rule 90 shall apply *mutatis mutandis*.
- 4. The Registry shall as soon as practicable forward the Application to the standing judge who may invite the President of the European Patent Office to comment on the Application, but shall in any event decide the Application within 10 days of the date of receipt of the Application.
- 5. A Statement of appeal by the proprietor of the patent or the President of the European Patent Office against the decisions of the standing judge pursuant to Rule 97.4 may be lodged within 10 days of service of the said decision. The Statement of appeal shall contain the particulars previously lodged pursuant to Rule 97.2 and also the reasons for setting aside the contested decision. The appellant shall pay the fee for the appeal in accordance with Part 6. Rule 15.2 shall apply mutatis mutandis. If the requirements of this Rule 97.5 have been complied with the Registry shall record the appeal in accordance with Rule 230.1 and shall as soon as practicable assign the appeal to the standing judging of the Court of Appeal [Rule 345.5 and 345.8] who may invite the other party to comment on the appeal but shall in any event decide the appeal within 10 days of receipt by the Registry of the Statement of appeal.
- 6. The Registry shall as soon as practicable notify the Office of the decision on the Application or on the appeal as the case may be.

* Note to Rule 97

As a result of the time limits imposed by Contracting Member States for validation of European patents, it may not be possible to appeal from the decision of the standing judge pursuant to Rule 97.5 before said time limits expire. This should be addressed.

Rule 98 - Costs

The parties shall bear their own costs in any action pursuant to Rule 85 or Rule 97.

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CHAPTER 2 - INTERIM PROCEDURE

Rule 101 - Role of the judge-rapporteur (Case management)

- 1. During the interim procedure, the judge-rapporteur shall make all necessary preparations for the oral hearing. He may in particular, where appropriate, and subject to the mandate of the panel, hold an interim conference with the parties which may be held on more than one occasion and may exercise the powers provided for in Rule 334.
- 2. The judge-rapporteur shall have the obligation to ensure a fair, orderly and efficient interim procedure.
- 3. Without prejudice to the principle of proportionality, the judge-rapporteur shall complete the interim procedure within three months of the closure of the written procedure.

Relation with Agreement: Articles 43 and 52(2)

Rule 102 - Referral to the panel

- 1. The judge-rapporteur may refer any matter to the panel for decision and the panel may of its own motion review any decision or order of the judge-rapporteur or the conduct of the interim procedure.
- 2. Any party may request that a decision or order of the judge-rapporteur be referred to the panel for an early review pursuant to Rule 333. Pending review, the decision or order of the judge-rapporteur shall be effective.

Rule 103 - Preparation for the interim conference

Whether or not the judge-rapporteur decides to hold an interim conference, he may order the parties, within time periods to be specified, in particular to:

- (a) provide further clarification on specific points;
- (b) answer specific questions;
- (c) produce evidence;
- (d) lodge specific documents including each party's summary of the orders to be sought at the interim conference.

INTERIM CONFERENCE

Rule 104 - Aim of the interim conference

The interim conference shall enable the judge-rapporteur to:

- (a) identify main issues and determine which relevant facts are in dispute;
- (b) where appropriate, clarify the position of the parties as regards those issues and facts;
- (c) establish a schedule for the further progress of the proceedings;

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- (d) explore with the parties the possibilities to settle the dispute or to make use of the facilities of the Centre;
- (e) where appropriate, issue orders regarding production of further pleadings, documents, experts (including court experts), experiments, inspections, further written evidence, the matters to be the subject of oral evidence and the scope of questions to be put to the witnesses:
- (f) where appropriate, but only in the presence of the parties, hold preparatory discussions with witnesses and experts with a view to properly preparing for the oral hearing.
- (g) make any other decision or order as he deems necessary for the preparation of the oral hearing including, after consultation with the presiding judge, an order for a separate hearing of witnesses and experts before the panel—:
- (h) set a date for any separate hearing pursuant to point (g) of this Rule and confirm the date for the oral hearing:
- (i) decide the value of the particular dispute which value may, in exceptional cases, differ as between the parties depending upon the parties' individual circumstances.

Relation with Agreement: Article 52(2)

Rule 105 - Telephone conference and video Holding the interim conference

- 1. The interim conference may be held by telephone conference or by video conference.
- 2. On request by a party and subject to the approval of the judge-rapporteur, the interim conference may be held in Court. If the interim conference is held in Court, it shall be open to the public unless the Court decides to make it, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interests of justice or public order.
- 3. The judge-rapporteur may hold the interim conference in any language mastered by the parties' representatives.
- 4. Following the interim conference, the judge-rapporteur shall issue an order setting out the decisions taken.

Rule 106 - Recording of the interim conference

If the <u>The</u> interim conference is held in court it shall be open to the public and shall be [audio / video] recorded. The recording shall be made <u>publicly</u> available at the <u>premises of the Court to the parties or their representatives</u> after the hearing, subject to any order of the judge rapporteur that certain information be kept confidential.

Relation with Agreement: Articles 44 and 45

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PREPARATION FOR THE ORAL HEARING

Rule 108 - Summons to the oral hearing

The judge-rapporteur shall summon the parties to the oral hearing which shall take place before the panel on the date(s) set under Rule 28 and/or Rule 41(c) and Rule 104(h). If no date(s) have been set under Rule 104(h)—the judge-rapporteur shall set a date for the oral hearing.— At least two months' notice shall be given, unless the parties agree to a shorter time period.

Rule 109 - Simultaneous interpretation during oral hearings

- 1. At the latest one month before the oral hearing including any separate hearing of witnesses and experts a party may lodge an *Application -for simultaneous interpretation which shall contain:
- (a) an indication of the language to or from which the party requests simultaneous interpretation during the oral hearing;
- (b) the reasons for the Request;
- (c) the field of technology concerned;
- (d) any other information of relevance for the Request.
- 2. The judge-rapporteur shall decide whether and to what extent simultaneous interpretation is appropriate and shall, instruct the Registry to make all necessary arrangements for simultaneous interpretation. In the event that the judge-rapporteur refuses to order simultaneous interpretation the parties may request arrangements to be made, so far as practically possible, for simultaneous interpretation at their cost.
- 3. The judge-rapporteur may decide on his own motion to order simultaneous interpretation and shall instruct the Registry and inform the parties accordingly.
- 4. A party wishing to engage an interpreter at its own expense shall inform the Registry at the latest two weeks before the oral hearing.

Relation with Agreement: Article 51(2)

Rule 110 - Closure of the interim procedure

- 1. As soon as the judge-rapporteur considers that the state of preparation of the file is adequate, he shall inform the presiding judge and the parties that the interim procedure is closed in view of the oral hearing.
- 2. Where final dates have been set pursuant to Rules 103 and 104 the interim procedure shall be deemed closed on the last date set.
- 3. The oral procedure shall start immediately after the interim procedure is closed. The presiding judge shall, in consultation with the judge-rapporteur, take over the management of the action.

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CHAPTER'3 - ORAL PROCEDURE

Rule 111 - Role of the presiding judge (Case management)

The presiding judge shall:

- (a) have all authority to ensure a fair, orderly and efficient oral procedure; and
- (b) ensure that the action is ready for decision on the merits at the end of the oral hearing.

Rule 112 - Conduct of the oral hearing

- 1. The oral hearing shall be held before the panel and shall be under the control of the presiding judge.
- 2. The oral hearing shall consist of:
- (a) the hearing of the parties' oral submissions;
- (b) if ordered during the interim procedure, the hearing of witnesses and experts under the control of the presiding judge.
- 3. The presiding judge and the judges of the panel may provide a preliminary introduction to the action and put questions to the parties, to the parties' representatives and to any witness or expert.
- 4. Under the control of the presiding judge, the parties may put questions to the witness or expert. The presiding judge may prohibit any question which is not designed to adduce admissible evidence.
- 5. With the consent of the Court a witness may give evidence in a language other than the language of proceedings.

Relation with Agreement: Articles 52(3) amd and 53(1)(a)

Rule 113 - Duration of the oral hearing

- 1. Without prejudice to the application of 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.
- 2. Oral testimony at the oral hearing or at any separate hearing shall be limited to issues identified by the judge-rapporteur or the presiding judge as having to be decided on the basis of oral evidence.
- 3. The presiding judge may, after consulting the panel, limit a party's oral submissions if the panel is sufficiently informed.

Rule 114 - Adjournment where the Court considers that further evidence is required

In exceptional cases, the Court may, after hearing the parties' oral submissions, decide to adjourn proceedings and call for further evidence.

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Rule 115 - The -oral hearing

The oral hearing and any separate hearing of witnesses shall be open to the public unless the Courtedecides to make a hearing, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interests of justice or public order. The hearing shall be faudio /video]-recorded. Rule 106 The recording shall apply mutatis mutandis be made available to the parties or their representatives at the premises of the Court after the hearing.

Relation with Agreement: Article 45

Rule 116 - Absence of a party from the oral hearing

- 1. A party which does not wish to be <u>presentrepresented</u> at the oral hearing shall inform the Registry in good time. Where both parties have informed the Registry that they do not wish to be <u>presentrepresented</u> at the oral hearing, the Court may decide the action in accordance with Rule 117.
- 2. The Court shall not be obliged to delay any step in the procedure, including the decision on the merits, by reason only of the absence of a party from the oral hearing.
- 3. A party absent from that is not represented at the oral hearing shall be treated as relying only on its written case and not wishing to contest any new submission that the other party may be allowed to make at the oral hearing.
- 4. If due to an exceptional occurrence a party is prevented from attending being represented at the oral hearing, the Court shall upon a reasoned request of that party, adjourn the oral hearing.

Rule 117 - Absence of both parties from the oral hearing

Where both parties have informed the Registry that they do not wish to be present represented at the oral hearing the Court shall take a decision on the merits on the basis of the pleadings and evidence submitted by the parties and the court expert, if applicable, and otherwise in accordance with Rules 118 and 350 to 354.

Rule 118 - Decision on the merits

1. Subject to the following provisions of this Rule, in In addition to the orders and measures referred to in Articles 63, 64, 66, 67 and 80 of the Agreement the Court may, if requested, order the payment of damages and or compensation according to Article -68 and 32(1)(f) of the Agreement. The amount of the damages and or the compensation may be stated in the order or determined in separate proceedings ([Rules 125-143). The Court may subject any order or measure to a security].

to be given by the successful party to the unsuccessful party as determined by the Court in accordance with Rule 352.

2. In 2. Without prejudice to the general discretion provided for in Articles 63 and 64 of the Agreement, in appropriate cases and at the request of the party liable to the orders and measures provided for in paragraph 1 the Court may order damages and/or compensation to be paid to the injured party instead of applying the orders and measures if that person acted unintentionally and without negligence, if execution of the orders and measures in question would cause such party

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disproportionate harm and if damages and/or compensation to the injured party appear to the Court to be reasonably satisfactory.

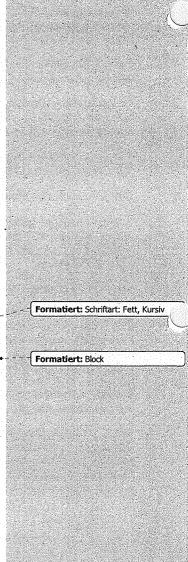
- 3. If, while there are infringement proceedings before a local or regional division, a revocation action is pending between the same parties before the central division or an opposition is pending before the European Patent Office, the local or regional division:
- (a) may render its decision on the merits of the infringement claim, including its orders, under the condition subsequent pursuant to Article 56(1) of the Agreement that the patent (patents) is (are) not held to be wholly or partially invalid by the final decision in the revocation procedure or a final decision of the European Patent Office or under any other term or condition; or-;
- (b) may stay the infringement proceedings pending a decision in the revocation procedure or a decision of the European Patent Office and shall stay the infringement proceedings if it is of the view that there is a high likelihood that the relevant claims of the patent (or patents) will be held to be invalid on any ground by the final decision in the revocation procedure or of the European Patent Office- where such decision of the European Patent Office may be expected to be given rapidly.
- 4. Where, in the decision on the merits of a direct action or a counterclaim for revocation action, the patent (or patents) is (are) found to be entirely or partially invalid, the Court shall revoke the patent (patents) entirely or partially according to Article 65 of the Agreement.
- 5. Where the Court has made orders in accordance with paragraph 3(a) any party may apply to the local or regional division within two months following a final decision of the central division or the Court of Appeal or the European Patent Office as the case may be on the validity of the patent(s) for orders consequential on such final decision [Rule 354.4].
- 6. The Court shall decide in principle on the obligation to bear legal costs in accordance with Article 69 of the Agreement. In advance of the decision, the parties shall submit a preliminary estimate of the legal costs that they intend to seek to recover.

7-(a) The Court shall give the decision on the merits as soon as possible after the closure of the oral hearing. The Court shall endeavour to issue the decision on the merits in writing within six weeks of the oral hearing.

- 8. In exceptional cases the(b) The Court shall give reasons for its decision.
- 8. The Court may give its decision immediately after the closure of the oral hearing and provide its+ reasons on a subsequent date.
- 9. The orders of the Court referred to in paragraphs 1, 2 and 3(a) shall be enforceable on the defendant only after the claimant has notified the Court which part of the orders he intends to enforce and the said notice has been served on the defendant by the Registry. The Court may subject any order or measure to a security to be given by the successful party to the unsuccessful party as determined by the Court in accordance with Rule 352.

Relation with Agreement: Article 77

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Rule 119 - Interim award of damages

The Court may order an interim award of damages to the successful party in the decision on themerits, subject to any conditions that the Court may order. Such award shall at least cover the expected costs of the procedure for the award of damages and compensation on the part of the successful party.

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CHAPTER 4 - PROCEDURE FOR THE DETERMINATION OF DAMAGES -AND COMPENSATION

Rule 125 - Separate proceedings for determining the amount of damages ordered

The determination of the amount of damages ordered for the successful party may be the subject of separate proceedings. —The determination shall include the determination of the amount of compensation, if any, to be awarded as a result of the provisional protection conferred by a published European patent application ([Article 32(1)(f) of the Agreement, Article 67 EPC)] and compensation to be paid pursuant to Rules 118.5, 198.2, 118.5, 213.2 and 354.4. The expression "damages" used in Chapter 4 shall be deemed to include such compensation and interest at the rate and for the period that the Court shall decide.

Rule 126 - Start of proceedings for the determination of damages

Where the successful party (hereinafter "the applicant") wishes to have the amount of damages determined, it shall no later than one year from service of the final decision on the merits (including any final decision on appeal) on both infringement and validity (or in the case of assessmentan award under Rules 118.5, 198.2, 118.5, 213.2 or 354.4 from the date of the order for such assessmentaward) lodge an Application for the determination of damages-including, which may include a request for an order to lay open books.

Relation with Agreement: Article 68

SECTION 1 - APPLICATION FOR THE DETERMINATION OF DAMAGES

Rule 131 - Contents of the Application for the determination of damages

- 1. The *Application for the determination of damages shall contain:
- (a) particulars in accordance with Rule 13.1(a) to (d);
- (b) the date of the decision on the merits and the action number of the file;
- (c) if required a request for an order to lay open books (Rules 141 to 143) in which case the applicant shall provide the matters set out in Rule 141(b) to (e).
- 2. After any procedure for the laying open of books is complete, or, if that has not been requested, in the Application referred to in Rule 131.1 the applicant shall indicate:
- (a) the redress (damages, licence fees, profits) and the interest thereon requested by him;
- (b) an indication of the facts relied on, in particular calculations concerning lost profits or profits made by the unsuccessful party;
- (c) the evidence relied on;
- (d) a statement as to whether the decision on the merits is the subject of an appeal;
- (e) his assessment of the value of the determination amount of damages due to him.

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Rule 132 - Fee for the Application for the determination of damages

The applicant shall pay the fee for the determination of damages [EUR***] in accordance with Part-6. Rule 15.2 shall apply *mutatis mutandis*.

Rule 133 - Value-based fee for the determination of damages

Where the value of the determination of damages is assessed by the applicant to exceed based on the assessment under Rule 131.2(e) exceeds [EUR***] the applicant shall pay a fee based on the value-based fee of that assessment for the determination of damages in accordance with Part 6 [Rules 370.2(b) and 371.4]*

Rule 134 – Examination as to formal requirements of the Application for the determination of damages

- 1. The Registry shall, as soon as practicable after the lodging of the Application for the determination of damages, examine whether the requirements of Rules 126, 131.1 and .2(d) and (e) and 132 have been complied with.
- 2. If the Application for the determination of damages does not comply with the requirements referred to in paragraph 1, the Registry shall invite the applicant to correct the deficiencies noted within a time period to be specified.
- 3. Rule 16.4 to .6 shall apply mutatis mutandis.

Rule 135 – Recording in the register (Application for the determination of damages) and service

- 1. If the requirements referred to in Rule 131.1 and .2(d) and (e) have been complied with, the Registry shall as soon as practicable,:
- (a) record the date of receipt toof the Application for the determination of damages;
- (b) record the Application in the register;
- (c) inform the applicant of the date of receipt,
- (d) inform the panel which has given the decision on the merits on infringement that an Application for the determination of damages has been lodged;
- (e) serve the Application upon the unsuccessful party.
- 2. The panel which has given the decision on the merits on infringement shall be the panel for the determination of damages unless for any reason this is not possible or practical in which case the President of the Court at First Instance or suchpresiding judge of athe division to whom the President has delegated this taskconcerned shall appoint a fresh panel. Rules 17.2 and 18 shall apply mutatis mutandis.

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^{*}In the technical consultation it has been questioned whether a value based fee is appropriate where such a fee has already been paid in the original infringement proceedings.

Rule 136 - Stay of the Application for a determination of damages

The Court may stay the Application for a determination of damages pending any appeal on the merits pursuant to Rule 295(g) on a reasoned request by the unsuccessful party. The applicant shall be given the opportunity to be heard. If the Court continues the proceedings on the Application it may order the applicant to render a security according to Rule 352.

Rule 137 - Reply of the unsuccessful party

- 1. If the unsuccessful party accepts the claim made in the Application for the determination of damages, it shall within two months inform the Registry. The judge-rapporteur shall make the order for the determination of damages in accordance with the Application for the determination of damages.
- 2. If the unsuccessful party contests the claim made in the Application for the determination of damages, it shall within two months of service of the Application for the determination of damages or, where there was a procedure for the laying open of books, within two months of service of the indication pursuant to Rule 131.2. lodge a Defence to the application for the determination- of damages.

Rule 138 - Contents of the Defence to the application for the determination of damages

The *Defence to the Application for the determination of damages shall contain:

- (a) the names of the unsuccessful party and of that party's representative;
- (b) postal and electronic addresses for service on the unsuccessful party and the names and addresses of the persons authorised to accept service.
- (c) the action number attributed to the file;
- (d) the reasons why the Application for the award of damages is contested;
- (e) an indication of the facts relied on; and
- (f) the evidence relied on.

Rule 139 - Reply to the Defence for the determination of damages and Rejoinder to the Reply

The applicant may within one month lodge a Reply to the Defence for the determination of damages, limited to the matters raised in the Defence. The unsuccessful party may lodge a Rejoinder to the Reply, limited to the matters raised in the Reply.

Rule 140 - Further procedure (Application for the determination of damages)

1. The judge-rapporteur may order further exchange of written pleadings, within time periods to be specified.

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2. The provisions of Part_1, Chapters 2 (Interim procedure) and 3 (Oral procedure) shall apply *mutatis mutandis* but with such reduced timetable as the judge-rapporteur may order. -He shall decide on the obligation to bear the legal costs of the proceedings for the determination of damages in accordance with Article 69 of the Agreement.

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SECTION 2 - REQUEST TO LAY OPEN BOOKS

Rule 141 - Contents of the Request to lay open books

If the applicant has made a request pursuant to Rule 131.1(c), Rules 134 to 136 shall apply mutatis mutandis. The Request shall contain:

(a) particulars in accordance with Rule 131.1(a) and (b);

(b) details of any information ordered by the Court and given by the other party pursuant to Rule 191;

- (c) a description of the information held by the unsuccessful party to which the applicant requests access, in particular documents relating to turnover and profits generated by the infringing products or regarding the extent of use of the infringing process as well as accounts, and bank documents, and any related document concerning the infringement;
- (ed) the reasons why the applicant needs access to this information;
- (de) the facts relied on; and
- (ef) the evidence offered in support.

Rule 142 – Defence of the unsuccessful party-and, Reply to $\underline{\text{the}}$ Defence $\underline{\text{and Rejoinder to the}}$ $\underline{\text{Reply}}$

- 1. If the unsuccessful party accepts the Request to lay open books, it shall inform the Registry. The judge-rapporteur shall make the order to lay open books in accordance with the Request to lay open books.
- 2. If the unsuccessful party contests the Request to lay open books, it shall within two months of service of the Request to lay open books lodge a Defence to the Request to lay open books.
- 3. The applicant may within 14 days of service of the Defence to the Request lodge a Reply to the Defence to the Request to lay open books, limited to the matters raised in the Defence. The unsuccessful party may within 14 days of service of the Reply lodge a Rejoinder, limited to the matters raised in the Reply.

Rule 138 on Contents of the Defence to the application for the determination of damages shall apply mutatis mutandis

Rule 139 - Reply to the Defence for the determination of damages shall apply mutatis mutandis.

Rule 140 on Further procedure (Application for the determination of damages) shall apply

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mutatis mutandis.

Rule 143 - Decision on the Request to lay open books

- 1. The Court may-:
- (a) order the unsuccessful party to open its books to the applicant within a time period to bespecified and subject to such terms as the Court may deem appropriate having regard *inter alia* to Article 58 of the Agreement and Rule 190.1, and .4;
- (b) inform the applicant and specify a time period within which the procedure for the award of damages shall be continued.
- 2. Where the Request to lay open books is not allowable, the Court shall inform the applicant and specify a time period within which the procedure for the award of damages shall be continued. [Rule 131.2].

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CHAPTER 5 - PROCEDURE FOR COST ORDER DECISION

Rule 150 - Separate proceedings for cost orderdecision

- 1. A cost <u>orderdecision</u> may be the subject of separate proceedings following a decision on the merits and, if applicable, a decision for the determination of damages. The cost <u>orderdecision</u> shall cover costs incurred in the proceedings by the Court such as costs for simultaneous interpretation and costs incurred pursuant to Rules 180.3, <u>185.7</u>, 188, 201 and 202 and, subject to the Rules 152 to 156, the costs of the successful party-<u>including Court fees paid by that party [Rule 151(d)].</u>
- 2. The Court may order an interim award of costs to the successful party in the decision on the merits [Rule 119] or in a decision for the determination of damages, subject to any conditions that the Court may decide.

Rule 151 - Start of proceedings for cost orderdecision

Where the successful party (hereinafter "the applicant") wishes to seek a cost <u>orderdecision</u>, it shall within one month of service of the decision lodge an *Application for a cost <u>orderdecision</u> which shall contain:

- (a) particulars in accordance with Rule 13.1(a) to $(d)_{\frac{1}{2}}$):
- (b) the date of the decision and the action number of the file,;
- (c) a statement as to whether the decision on the merits is the subject of an appeal, if known at the date of the Application:
- (d) an indication of the costs for which compensation is requested, which may include recovery of court fees and costs of representation, of witnesses, of experts, and other expenses: and
- (e) the preliminary estimate of the legal costs that the party submitted pursuant to Rule 118.6.

Rule 152 - Compensation for representation costs re decision on the merits

- 1. The successful party shall be entitled to recover reasonable and proportionate costs for representation.
- 2. The Administrative Committee shall adopt a scale of recoverable costs which shall set ceilings for such costs by reference to the value of the dispute. The scale may be adjusted from time to time.

Rule 153 - Compensation for costs of experts

The compensation for costs of experts of the parties [Rule 181] exceeding the expenses referred to in Rule 180.1 shall be based on the rates that are customary in the-respective sector, with due regard to the required expertise, the complexity of the issue and the time spent by the expert for the services rendered.

Rule 154 - Compensation for costs of witnesses

Where the Court has ordered the deposit of a sum sufficient to cover the expenses of a witness inaccordance with Rule 180.2 or of a party's expert in accordance with Rule 181, compensation may Formatiert: Block, Nicht vom nächsten Absatz trennen

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be requested for payments made by the Registry towards the expenses incurred by a witness-or an expert.

Rule 155 - Compensation for costs of interpreters and translators

- 1. The compensation for costs of interpreters shall be the rates that are customary in the country of the division in question, depending on the interpreter's training and professional experience.
- 2. The compensation for costs of translators shall be the rates that are customary in the country of the division in question, depending on the translator's training and professional experience.

Rule 156 - Further procedure

- 1. The judge-rapporteur may request the applicant to provide written evidence of all costs requested in Rule 151(d). The judge-rapporteur shall allow the unsuccessful party an opportunity to comment in writing on the costs requested including any item of costs that should be apportioned or borne by each party in accordance with Article 69(1) to (3) of the Agreement.
- 2. The judge-rapporteur shall decide in writing on the costs to be awarded or apportioned in accordance with Article 69(1) to (3) of the Agreement.
- 3. The costs shall be paid within the period ordered by the judge-rapporteur.

Rule 157 - Appeal against the eostscost decision

The decision of the judge rapporteur as to costs only may be appealed to the Court of Appeal in accordance with Rule 221.

Relation with Agreement: Article 69

The decision of the judge rapporteur as to CHAPTER 6 -SECURITY FOR COSTS

Rule 158 - Security for costs only may be appealed to of a party

- 1. At any time during proceedings, following a reasoned request by one party, the Court may order the other party to provide adequate security for the legal costs and other expenses incurred and/or to be incurred by the requesting party, which the other party may be liable to bear. Where the Court decides to order such security, it shall decide whether it is appropriate to order the security by deposit or bank guarantee.
- 2. The Court shall give the parties an opportunity to be heard before making an order for security. Rule 354 shall apply to the enforcement of Appeal the order.
- 3. The order for security shall indicate that an appeal may be lodged in accordance with Rule* 221 Article 73 of the Agreement and Rule 220.2.

Relation with the Agreement: Article 69(4)

Rule 159 - Security for costs of the Court

Except where deposits are rendered pursuant to Rule 180.2, the Court may order that either or both parties provide adequate security (either by deposit or bank guarantee) to cover costs incurred

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and/or to be incurred in the proceedings by the Court, pending a cost decision pursuant to Rule 150.1. Rules 158.2 and .3 shall apply.

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PART 2 - EVIDENCE

Rule 170 - Means of evidence and means of obtaining evidence

- 1. In proceedings before the Court, the means of evidence shall include in particular the following:
- (a) written evidence, whether printed, hand-written or drawn, in particular documents, written witness statements, plans, drawings, photographs;
- (b) expert reports and reports on experiments carried out for the purpose of the proceedings;
- (c) physical objects, in particular devices, products, embodiments, exhibits, models;
- (d) electronic files and audio / video recordings.
- 2. Means of obtaining evidence shall include in particular the following:
- (a) hearing of the parties;
- (b(b) requests for information;
- (c) production of documents;
- (d) summoning, hearing and questioning of witnesses;
- (ee) appointing, receiving opinions from, summoning and hearing and questioning of experts;
- (d(f) ordering inspection of a place or a physical object;
- (g) conducting comparative tests and experiments;
- (h) sworn statements in writing (written witness statements).
- 3. Means of obtaining evidence shall further include [Article 59 and 60 of the Agreement]:
- (a) ordering a party or a third party to produce evidence;
- (e) ordering inspection of a place or a physical object;
- (f(b)) ordering measures to preserve evidence.

Rule 171 - Offering of evidence

- 1. A party making a statement of fact that is contested or likely to be contested by the other party shall indicate the means of evidence to prove it. In case of failure to indicate the means of evidence regarding a contested fact, the Court shall take such failure into account when deciding the issue in question.
- 2. A statement of fact that is not specifically contested by any party shall be held to be true as between the parties.

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Rule 172 - Duty to produce evidence

- 1. Evidence available to a party regarding a statement of fact that is contested or likely to be contested by the other party must be produced by the party making that statement of fact.
- 2. The Court may at any time during the proceedings order a party making a statement of fact to produce evidence that lies in the control of that party. If the party fails to produce the evidence, the Court shall take such failure into account when deciding on the issue in question.

Relation with Agreement: Article 53

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CHAPTER 1 - WITNESSES AND EXPERTS OF THE PARTIES

Rule 175 - Written witness statement

- 1. A party seeking to offer witness evidence mayshall lodge a written witness statement of a written summary of the evidence to be given.
- 2. A written witness statement shall be signed by the witness and shall include a statement of the witness that he is aware of his obligation to tell the truth and of his liability under applicable national law in the event of any breach of this obligation. The statement shall set out the language in which the witness shall give oral evidence, if necessary.
- 3. The written witness statement or written summary of the evidence to be given shall set out:
- (a) any current or past relationship between the witness and the party offering the evidence; and
- (b) any actual or potential conflict of interest that may affect the impartiality of the witness.

Rule 176 - Application for the hearing of a witness in person

Where Subject to the orders of the Court referred to in Rules 104(e) and 112.2(b) a party seeking to offer oral witness evidence cannot obtain a written witness statement, it shall make an *Application for the hearing of athe witness in person which shall set out:

- (a) the reasons why the witness shallshould be heard in person-and;
- (b) the facts which the party expects the witness to confirm-; and
- (c) the language in which the witness shall give evidence.

Rule 177 - Summoning of witnesses to the oral hearing

- 1. The Court may of its own motion order that a witness be heard in person-or:
- (a(a) of its own motion;
- (b) where a written witness statement is challenged by the other party; or
- (bc) on an application for the hearing of a witness in person [Rule 176].
- 2. An order of the Court summoning a witness to the oral hearing shall in particular indicate:
- (a) the name, address and description of the witness;
- (b) the date and place of the oral hearing;
- (c) an indication of the facts of the action about which the witness is to be examined;
- (d) information about the reimbursement of expenses incurred by the witness,:
- (c) information about the sanctions which may be imposed on a defaulting witness [Rule 179).
- (f) a statement as to whether that the witness will be questioned by the Court and the parties; and

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(f) the language of the proceedings and the possibility of arranging simultaneous interpretation between that language and the language of the witness, if necessary [Rule 109].

3. In its order summoning the witness, the Court shall also inform the witness of his duties and rights as a witness under Rules 178 and 179, including the sanctions which may be imposed on a defaulting witness.

Rule 178 - Hearing of witnesses

1. After the identity of the witness has been established and before hearing his evidence, the presiding judge shall ask the witness to make the following declaration:

"I solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth."

- 2. The witness shall give his evidence to the Court.
- 3. The hearing of a witness who has signed a written witness statement shall begin with the confirmation of the evidence given therein. The witness may elaborate on the evidence contained in his written witness statement.
- 4. The presiding judge and the judges of the panel may put questions to the witness.
- 5. Under the control of the presiding judge, the parties may put questions to the witness. The presiding judge may prohibit any question which is not designed to adduce admissible evidence.
- 6. The Court may allow a witness to give evidence through electronic means, such as video conference. Paragraphs 1 to 5 and 7 shall apply.
- 7. With the consent of the Court a witness may give evidence in a language other than the language of proceedings.

Rule 179 - Duties of witnesses

- 1. Witnesses who have been duly summoned shall obey the summons and attend the oral hearing.
- 2. Without prejudice to paragraph 3, if a witness who has been duly summoned fails to appear before the Court or refuses to give evidence or to make the declaration referred to in Rule 178.1, the Court may impose upon him a pecuniary sanction not exceeding [EUR***] and may order that a further summons be served at the witness's own expense. The Court may send a Letter Rogatoryletter rogatory to the competent national court pursuant to Rule 202.
- 3. Nobody shall be obliged to sign a written witness statement or to give evidence at an oral hearing if he/she is a spouse, partner equal to a spouse under applicable national law, descendant, sibling or parent of a party. A witness may also refuse to answer questions if answering them would violate a professional privilege or other duty of confidentiality imposed by the national law applicable to the witness or expose him or his spouse, partner equal to a spouse under applicable national law, descendant, sibling or parent to criminal prosecution under applicable national law.

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4. The Court may decide to report to the competent authorities of the Contracting Member States whose courts have criminal jurisdiction in case of the giving of false evidence on the part of a witness.

Rule 180 - Reimbursement of expenses of witnesses

- 1. A witness shall be entitled to reimbursement of:
- (a) expenses for travelling and stay; and
- (b) loss of income caused by his hearing in person.

After the witness has carried out his duties and upon his request, the Registry shall make a payment to the witness towards the expenses incurred.

- 2. Where a party has lodged an Application for the hearing of a witness in person, the Court shall make the summoning of the witness conditional upon the deposit of a sum sufficient to cover the expenses referred to in paragraph 1.
- 3. Where the Court orders of its own motion that a witness be heard in person, the funds necessary shall be provided by the Court.

Rule 181 - Experts of the parties

- 1. Subject to the orders of the Court referred to in Rules 104(e) and 112.2(b) a party may provide any expert evidence that it considers necessary. Rules 175 to 180.1 and .2 shall apply mutatis mutandis to experts of the parties.
- 2. An order of the Court under Rule 177 summoning the expert shall additionally set out that:
- (a) an expert has a duty to assist the Court impartially on matters relevant to his area of expertise which overrides any duty to the party retaining him; and
- (b) an expert is to be independent and objective, and shall not act as an advocate for any party to the proceedings.

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CHAPTER 2 – COURT EXPERTS

Rule 185 - Appointment of a court expert

- 1. Where the Court must resolve a specific technical <u>or other question</u> in relation to the action, it may of its own motion (and after hearing the parties) appoint a court expert.
- 2. The parties may make suggestions regarding the identity of the court expert, his technical <u>or other relevant</u> background and the questions to be put to him.
- 3. The court expert shall be responsible to the Court and shall possess the expertise, independence and impartiality required for being appointed as court expert. The parties shall be entitled to be heard on the expertise, independence and impartiality of the court expert.
- 4. The Court shall appoint a court expert by way of order which shall in particular specify:
- (a) the name and address of the expert appointed;
- (b) a short description of the facts of the action;
- (c) the evidence submitted by the parties in respect of the technical or other question;
- (d) the questions put to the expert, with the appropriate level of detail, including where appropriate suggestions relating to any experiments to be carried out;
- (e) when and under what conditions the expert may receive other relevant information-;
- (f) the time period for the presentation of the expert report;
- (g) information about the reimbursement of expenses incurred by the expert-;
- (h) information about the sanctions which may be imposed on a defaulting expert; and

(i) his duties under Rule 186.

- 5. The expert shall receive a copy of the order, together with the documents and other evidence that the Court considers to be necessary for carrying out his task.
- 6. The expert shall be required upon receipt of the order to confirm in writing that he will present the expert report within the time period specified by the Court.
- 7. The Court shall agree with the expert on a fee covering his written expert report and his participation in the oral hearing. The Court may reduce anythis fee agreed with the expert by an equitable amount if the expert diddees not deliver his report within the time period specified by the Court or if the report did not have the quality to be expected of the expert.
- 8. If an appointed court expert does not present his report within the time period specified or, if extended at the expert's request, the extended period, the Court may appoint another expert in his place. –The Court may hold the expert liable for all or part of the costs of appointing and reimbursing another expert.
- 9. The Registry shall maintain an indicative list of <u>technical</u> experts.

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Rule 186 - Duties of a court expert

- 1. The court expert shall present an expert report in writing within the time period specified by the Court [Rule 185.4(f)].
- 2. The court expert shall be under the supervision of the Court and shall inform the Court of his progress in carrying out his task.
- 3. The court expert shall give expert advice only on questions which have been put to him.
- 4. The court expert shall not communicate with one party without the other party being present or without the consent of the other party. He shall document all communications with the parties in his report.
- 5. The court expert shall not communicate the contents of his report to third parties.
- 6. The court expert shall attend the oral hearing and shall be open to answer questions from the Court and the parties.
- 7. The court expert has an overriding duty to assist the Court impartially on matters relevant to his area of expertise. He is to be independent and objective, and shall not act as an advocate for any party to the proceedings.

Rule 187 - Expert report

Once the-final report of the court expert has been presented to the Court, the Court shall invite the parties to comment on it either in writing or during the oral hearing.

Rule 188 - Hearing of a court expertRulesexpert

Rules 178 to 180.1 and .3 shall apply mutatis mutandis to a court expert.

Relation with Agreement: Article 57

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CHAPTER 3 – ORDER TO PRODUCE EVIDENCE AND TO COMMUNICATE INFORMATION ORDER TO PRODUCE EVIDENCE AND TO COMMUNICATE INFORMATION

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ORDER TO PRODUCE EVIDENCE

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. For the protection of confidential information the Court may order that the evidence be disclosed to certain named persons only and be subject to appropriate terms of non-disclosure.
- 2. During the written and interim procedures, a party may request such an order to produce evidence.
- 3. The judge-rapporteur may make such order in the written procedure or in the interim procedure having given the other/third party an opportunity to be heard.
- 4. An order to produce evidence shall in particular specify:
- (a) under which conditions, in what form and within what time period the evidence shall be produced;
- (b) any sanction which may be imposed if the evidence is not produced according to the order.
- 5. Where the Court orders a third party to produce evidence, the interests of that third party shall be duly taken into account.
- 6. An order to produce evidence shall be subject to the provisions of Rules 179.3, 287 and 288. The order shall indicate that an appeal may be brought in accordance with Article 73 of the Agreement and Rule 220.1.
- 7. If a party fails to comply with an order to produce evidence, the Court shall take such failure into account when deciding on the issue in question.

Relation with Agreement: Article 59

[Article 6 (1) Directive 2004/48/EC; Article 43(1) TRIPS]

ORDER TO COMMUNICATE INFORMATION

Rule 191 - Application for order to communicate information

1. The Court may in response to a reasoned request of a party order the other party or any third party to communicate such information in the control of that other party or third party as is specified in Article 67 of the Agreement or such other information as is reasonably necessary for the purpose of advancing that party's case. Rule 190.1 (second sentence), 190.5 and 190.6 shall apply mutatis mutandis.

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Relation with the Agreement: Article 67

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CHAPTER 4 - ORDER TO PRESERVE EVIDENCE (SAISIE) AND ORDER FOR **INSPECTION**ORDER TO PRESERVE EVIDENCE (SAISIE) AND ORDER FOR INSPECTION

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ORDER TO PRESERVE EVIDENCE (Saisie)

Rule 192 - Application for preserving evidence

- 1. An Application for preserving evidence may be lodged by a party (within the meaning of Article 47 of the Agreement) (hereinafter "the applicant") at the division where the applicant has commenced infringement proceedings on the merits. -If the application is lodged before proceedings on the merits have been started it shall be lodged at the division where the applicant intends to start proceedings on the merits.
- 2. The *Application for preserving evidence shall contain:
- (a) particulars in accordance with Rule 13.1(a) to (i);):
- (b) a clear indication of the measures requested [Rule 196.1], including the exact location(s) (where they are known or suspected with good reason) of the evidence to be preserved;
- (c) the reasons why promptthe proposed measures are needed to preserve relevant evidence;; and
- (d) the facts and, if available, evidence relied on in support of the Application.

Where main proceedings on the merits of the case have not yet been started before the Court, the Application shall in addition contain a concise description of the action which will be started before the Court, including an indication of the facts and evidence which willmay be relied on in support.

- 3. Where the applicant requests that measures to preserve evidence be ordered without hearing the other party (hereinafter "the defendant"), the Application for preserving evidence shall in addition set out the reasons for not hearing the defendant having regard in particular to Rule 197. -The applicant shall be under a duty to disclose any material fact known to it which might influence the court in deciding whether to make an order without hearing the defendant. The application shall not be entered on the register until notice has been given to the defendant pursuant to Rule 197.2.
- 4. Where the Application for preserving evidence is lodged after main proceedings on the merits of the case have been started before the Court, the Application shall be drawn up in the language of the proceedings. Where the Application is lodged before main proceedings on the merits of the case have been started before the Court, Rule 14 shall apply mutatis mutandis.
- 5. The applicant shall pay the fee for the Application for preserving evidence [EUR***], in accordance with Part 6. Rule 15.2 shall apply mutatis mutandis.

Relation with Agreement: Article -60

[Article 7 Directive 2004/48/EC]

Rule 193 - Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge

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- 1. Where main proceedings on the merits of the case have not yet been started before the Court, the Application for preserving evidence shall be dealt with in accordance withRulewith Rule 16 (formalities examination by Registry), Rule 17.1(a) to (c) and .2 (date of receipt, recording in the register, action number, assignment to panel) and Rule 18 (designation only of judge-rapporteur by presiding judge).
- 2. Where main proceedings on the merits of the case have already been started before the Court, an Application for preserving evidence shall immediately be examined by the Registry in accordance with Rule 16 and forwarded to the panel to which the action has been assigned or to the single judge to whom the action has been assigned-[Rules 17.2 and 194.3 and .4].
- 3. The judge-rapporteur or single judge deciding on an Application for preserving evidence shall have all necessary powers of the Court.

Rule 194 - Examination of the Application for preserving evidence

- 1. The Court -shall have the discretion to:
- (a) inform the defendant about the Application and invite him to lodge, within a time period to be specified, an *Objection to the Application for preserving evidence which shall contain:
 - (i) the reasons why the Application shall fail;
 - (ii) the facts and evidence relied on, in particular any challenge to the facts and evidence relied on by the applicant;
 - (iii) where main proceedings on the merits of the case have not yet been started before the Court, the reasons why the action which will be started before the Court shall fail and an indication of the facts and evidence relied on in support;
- (b) summon the parties to an oral hearing;
- (c) summon the applicant to an oral hearing without the presence of the defendant;
- (d) decide the Application without having heard the defendant.
- 2. In exercising its discretion, the Court shall take into account:
- (a) the urgency of the action;
- (b) whether the reasons for not hearing the defendant [Rule 192.3 and Rule 197] appear well-founded;
- (c) the probability that evidence may be destroyed or otherwise cease to be available [Rule 197].
- 3. The presiding judge may decide that he or the judge-rapporteur or other single judge or the standing judge may decide on the Application.
- 4. In cases of extreme urgency the applicant may apply without formality for an order to preserve evidence to the standing judge -designated -in accordance with Rule 345:5. The standing judge shall decide the procedure to be followed on the Application.

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- 5. If the Court decides to inform the defendant about the Application the Court will first give the applicant the possibility to withdraw the Application. In the event of such withdrawal the applicant may request that the Court shall order that the Application and its contents shall remain confidential.
- 6. If the patent the subject of the Application is also the subject of a Protective Letter pursuant to Rule 207 the applicant may withdraw the Application pursuant to paragraph 5.

Rule 195 - Oral hearing

- 1. Where the Court decides to summon the parties to an oral hearing, the date for the oral hearing shall be set as soon as possible after the date of receipt of the Application for preserving evidence.
- 2. Rules 111 to 116 shall apply mutatis mutandis. Where the applicant is absent from the oral hearing without a reasonable excuse, the Court shall reject the Application for preserving evidence.
- 3. The decision of the Court on the Application for preserving evidence shall be given in writing as soon as possible after the closure of the oral hearing. If the Court deems appropriate, the decision may be given orally to the parties at the end of the oral hearing but shall as soon as practicable thereafter be given in writing.

Relation with Agreement: Article 60

Rule 196 - Decision Order on the Application for preserving evidence

- 1. The Court may order, in particular, the following:
- (a) preserving evidence by detailed description, with or without the taking of samples;
- (b) physical seizure of allegedly infringing goods;
- (c) physical seizure of the materials and implements used in the production and/or distribution of these goods and any related document.
- (d) the preservation and disclosure of digital media and data and the disclosure of any passwords necessary to access them.

For the protection of confidential information the Court may order that any of the above bedisclosed only to certain named persons and subject to appropriate terms of non-disclosure.

- 2. An order to preserve evidence shall specify that, unless otherwise ordered by the Court, the outcome of the measures to preserve evidence may only be used in the proceedings on the merits of the case.
- 3. The order to preserve evidence shall be enforceable immediately, unless the Court decides otherwise. The Court may set conditions to the enforceability of the order, specifying in particular:
- (a) who may represent the applicant when the measures to preserve evidence are being carried out and under what conditions;
- (b) any security which shall be provided by the applicant.

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If necessary, the Court may set penalties applicable to the applicant if these conditions are not observed.

- 4. The order to preserve evidence shall specify a person who shall carry out the measures referred to in paragraph 1 and present a written Report on the measures to preserve evidence, all in accordance with the national law of the place where the measures are executed, to the Court within a time period to be specified.
- 5. The person referred to in paragraph 4 shall be a professional person or expert, who guarantees expertise, independence and impartiality. Where appropriate and allowed under applicable national law, the person may be a bailiff or assisted by a bailiff. In no circumstances may an employee or director of the applicant be present at the execution of the measures.
- 6. The Court may order the applicant to provide adequate security for the legal costs and other expenses and compensation for any injury incurred or likely to be incurred by the defendant which the applicant may be liable to bear. The Court shall do so where the order to preserve evidence was made without the defendant having been heard. The Court shall decide whether it is appropriate to order the security by deposit or bank guarantee.
- 7. The order to preserve evidence shall indicate that an appeal may be lodged in accordance with Article-73 of the Agreement and Rule 220.1.

Relation with Agreement: Article 60(1)-(4)

[Article 7 Directive 2004/48/EC]

Rule 197 - Order to preserve evidence without hearing the defendant

- 1. The Court may order measures to preserve evidence {[Rule 196.1]] without the defendant having been heard, in particular where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed or otherwise ceasing to be available.
- 2. Where measures to preserve evidence are ordered without the defendant having been heard, Rule 195 shall apply *mutatis mutandis* to the oral hearing without the presence of the defendant. In such cases, the defendant shall be given notice, without delay and at the latest-immediately afterat the time of the execution of the measures.
- 3. Within 10 working 30 days after the execution of the measures, the defendant may request a review of the order to preserve evidence. The *Request for review shall set out:
- (a) the reasons why the order to preserve evidence shall be revoked or modified; and
- (b) the facts and evidence relied on.
- 4. The Court shall order an oral hearing to review the order without delay. -Rule 195 shall apply. The Court may modify, revoke or confirm the order. In case the order is modified or revoked the Court shall oblige the persons to whom confidential information has been disclosed to keep this information confidential- [Rule 196.1]].

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Relation with Agreement: Article 60(6)

[Article 7 Directive 2004/48/EC]

Rule 198 - Revocation of an order to preserve evidence

- 1. The Court shall ensure that an order to preserve evidence is revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if, within a time period not exceeding 31 calendar days or 20 working days from the date of the order, whichever is the longer, the applicant does not start proceedings on the merits of the case before the Court.
- 2. Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of the patent, the Court may order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures [Rule 354.4].

Relation with Agreement: Article 60(8) and (9)

[Article 7 Directive 2004/48/EC]

ORDER FOR INSPECTION

Rule 199 - Order for inspection

- 1. The Court may, either of its own motion (but only after hearing the parties) or on a reasoned request by a party, order an inspection of products, devices, methods, premises or local situations in situ. -For the protection of confidential information the Court may order that any of the above be disclosed only to certain named persons and subject to appropriate terms of non-disclosure in accordance with Article 58 of the Agreement.
- 2. Rules 192 to 197 and Rule 198.2 shall apply mutatis mutandis.

Relation with Agreement: Article 60

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CHAPTER 5 - OTHER EVIDENCE

Rule 200 - Order to freeze assets

- 1. -Where a party has presented reasonably available and plausible evidence in support of its claim that a patent has been or is about to be infringed the Court may, whether before or after proceedings have been commenced, order a party not to remove from its jurisdiction any assets or particular assets located therein nor to deal in any assets, whether located in-within its jurisdiction or not.
- 2. -Rules 192 to 197 and 198.2 shall apply mutatis mutandis.

Relation with Agreement: Article 61

Rule 201 - Experiments ordered by the Court

- 1. Without prejudice to the possibility for parties or parties' experts to carry out experiments, the Court may, of its own motion (but only after hearing the parties) or on a reasoned request by a party, order an experiment to prove a statement of fact for the purpose of proceedings before the Court.
- 2. A party requesting to be allowed to prove a statement of fact by means of experiments shall lodge a request as soon as practicable in the written procedure or the interim procedure to carry out experiments which shall:
- (a) identify the facts intended to be established by the experiments, describe the proposed experiments in detail and the reasons for carrying out the proposed experiments;
- (b) propose an expert to carry out such experiments; and
- (c) disclose any previous attempts to carry out similar experiments.
- 3. Other parties to the proceedings shall be invited to state whether they dispute the facts intended to be established by the experiments. –They shall also be invited to comment on the request, including the identity of the expert proposed and the description of the experiments.
- 4. Unless otherwise ordered by the Court the party requesting experiments shall initially bear the costs of the experiment.
- 5. The order of the Court allowing the experiments shall specify the detailed experiments and:
- (a) the name and address of the expert or experts who are to carry out the experiments as Court's expert(s) and draw up the report on the experiments.
- (b) the time period for carrying out the experiments and, where appropriate, the exact time and place where they are to be carried out,:
- (c) if necessary, other conditions for carrying out the experiments; and
- (d) the time period for presenting the report on the experiments and, where appropriate, directions relating to the contents of the report.

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- 6. Where appropriate, the Court may order that the experiments be carried out in the presence of the parties and their experts.
- 7. Once the report on the experiments is presented to the Court, it shall invite the parties to comment on it either in writing or during the oral hearing. The expert(s) may be summoned to the oral hearing.

Rule 202 - Letters rogatory

- 1. The Court may, of its own motion (but only after hearing the parties) or on a reasoned request by a party, issue letters rogatory for the hearing of witnesses or experts by other competent courts or authorities. Rule 180 shall apply.
- 2. The Court shall draw up letters rogatory in the language of the competent court or authority or shall attach to such letters a translation into that language.
- 3. Subject to paragraph 4, the competent court or authority shall apply national law as to the procedures to be followed in executing such requests and, in particular, as to the appropriate measures of compulsion.
- 4. The Court shall be informed of the time when, and the place where, the enquiry or other legal measure is to take place. It may inform the parties, witnesses and experts concerned.

[Council Regulation No 1206/2001 of 28 May 2001 on co-operation between the courts of the Member States in the taking of evidence in civil or commercial matters]

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PART 3 - PROVISIONAL MEASURES

Rule 205 - Stages of the proceedings (summary proceedings)

Summary proceedings before the Court of First Instance shall consist of the following stages:

- (a) a written procedure; and
- (b) an oral procedure, which may include an oral hearing of the parties or of one of the parties.

Rule 206 – Application for provisional measures

- 1. An Application for provisional measures may be lodged by a party (hereinafter "the applicant") before or after main proceedings on the merits of the case have been started before the Court.
- 2. An *Application for provisional measures shall contain:
- (a) particulars in accordance with Rule 13.1(a) to (i);
- (b) a indication of the provisional measures which are being requested [Rule 211.1],-];
- (c) the reasons why provisional measures are necessary to prevent a threatened infringement, to forbid the continuation of an alleged infringement or to make such continuation subject to the lodging of guarantees.
- (d) the facts and evidence relied on in support of the Application, including evidence to support the claim that provisional measures are necessary including the matters referred to in Rule 211.2 and .3; and
- (e) a concise description of the action which will be started before the Court, including an indication of the facts and evidence which will be relied on in support of the main proceedings on the merits of the case.
- 3. Where the applicant requests that provisional measures be ordered without hearing the other party (hereinafter "the defendant"), the *Application for provisional measures shall in addition contain:
- (a) the reasons for not hearing the defendant having regard in particular to Rule 197; and
- (b) information about any prior correspondence between the parties concerning the alleged infringement.
- 4. The applicant shall be under a duty to disclose any material fact known to it which might influence the Court in deciding whether to make an order without hearing the defendant including any pending proceedings and/or any unsuccessful attempt in the past to obtain provisional measures in respect of the patent (or patents).
- 5. Rule 14 shall apply *mutatis mutandis*. The applicant shall pay the fee for the Application for provisional measures [EUR***], in accordance with Part 6. Rule 15.2 shall apply *mutatis mutandis*.

Relation with Agreement: Articles 32(1)(c) and 62

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Rule 207 - Protective letter

- 1. If a person entitled to start proceedings under Article 47 of the Agreement considers it likely that an Application for provisional measures against him as a defendant may be lodged before the Court in the near future, he may file a Protective letter.
- 2. The *Protective letter shall be filed with the Registry in the language(s) of the patent(s) and shall contain:
- (a) the name of the defendant or defendants filing the Protective letter and of the defendant's representative;
- (b) the name of the presumed applicant or applicants for provisional measures;
- (c) postal and electronic addresses for service on the defendant filing the Protective letter and the names of the persons authorised to accept service;
- (d) postal and, where available, electronic addresses for service on the presumed applicant or applicants for provisional measures and the names of the persons authorised to accept service if known;
- (e) where available, the number of the patent (or patents) concerned and, where applicable, information about any prior or pending proceedings referred to in Rule 13.1(h);); and
- (f) the statement that the letter is a Protective letter.

The Protective letter may contain:

- (g) an indication of the facts relied on, which may include a challenge to the facts expected to be relied on by the presumed applicant or applicants and/or, where applicable, any assertion that the patent (or patents) is (are) invalid and the grounds for such assertion;
- -(h) any available written evidence relied on;
- (i) the arguments of law, including the reasons why any Application for provisional measures should be rejected.
- 3. The defendant or defendants filing the Protective letter shall pay the fee for filing a Protective letter [EUR***], in accordance with Part 6. -Rule 15.2 shall apply mutatis mutandis.
- 4. The Registry shall as soon as practicable examine whether the requirements of paragraphs-2(a) to (f) and 3 have been complied with. If these requirements have been complied with, the Registry shall as soon as practicable;
- (a) record the date of receipt and assign a number to the Protective letter;
- (b) subject to Rule 207.6, record the Protective letter in the register;
- (c) provide details of the Protective letter to all local and regional divisions; and
- (d) where an Application for provisional measures has already been lodged, inform the panel or the single judge dealing with the Application about the filing of the Protective letter.
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- 5. If the defendant has not complied with the requirements of paragraph2paragraph 2 the Registry shall as soon as practicable invite the defendant to:
- (a) correct the deficiencies within 14 days of service of such notification; and
- (b) where applicable, pay the fee referred to in paragraph 3.
- 6. The protective letter shall not be publicly available on the register until it has been forwarded to the applicant pursuant to Rule 207.7.
- 7. Where an Application for provisional measures is subsequently lodged the Registrar shall forward a copy of the protective letter to the panel or judge appointed under Rule 208 together with the Application for provisional measures and shall forward a copy to the applicant or applicants as soon as practicable.
- 8. If no Application for provisional measures has been lodged within six months from the date of receipt of the Protective letter, the Protective letter shall be removed from the register unless the person who has lodged the Protective letter has prior to the expiry of such period applied for an extension of six months and paid a fee for the extension [EUR***] in accordance with Part 6. Further extensions may be obtained on further payments of the fee.
- 8. Rule 15.2 shall apply mutatis mutandis.

Rule 208 – Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge

- 1. The Application for provisional measures shall be examined by the Registry in accordance with Rule 16. The Registry shall in addition examine whether any Protective letter relevant for the Application is recorded in the register.
- 2. Where main proceedings on the merits of the case have not yet been started before the Court, Rule 17 (date of receipt, recording in the register, action number, assignment to panel) and Rule 18 (designation of judge-rapporteur by presiding judge) shall apply *mutatis mutandis*. In-urgent cases, the presiding judge may decide that he or an experienced judge of the panel, acting as single judge, may decide on the Application in accordance with Rules-209 to 213 with a reduced time-table.
- 3. Where main proceedings on the merits of the case have already been started before the Court, the Application for provisional measures shall immediately be forwarded to the panel to which the action has been assigned or to the single judge. In urgent cases (where the action has not been assigned to a single judge), the presiding judge may decide that he or the judge-rapporteur, acting as single judge, may decide on the Application in accordance with Rules-209 to 213 with a reduced time-table.
- 4. The single judge deciding on the Application for provisional measures shall have all necessary powers of the Court.

Relation with draft Statute: Article 19

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Rule 209 - Examination of the Application for provisional measures

- 1. Without prejudice to the Court's decision on the Application for provisional measures, the Court-shall have the discretion to-:
- (a) inform the defendant about the Application and invite him to lodge, within a time period to be specified, an *Objection to the Application for provisional measures which shall contain:
 - (i) the reasons why the Application shall fail;
 - (ii) the facts and evidence relied on, in particular any challenge to the facts and evidence relied on by the applicant; and
 - (iii) where main proceedings on the merits of the case have not yet been started before the Court, the reasons why the action which will be started before the Court shall fail and the facts and evidence relied on in support,
- (b) summon the parties to an oral hearing;
- (c) summon the applicant to an oral hearing without the presence of the defendant.
- 2. In exercising its discretion pursuant to Rule 209.1, the Court shall in particular take into account:
- (a) whether the patent has been upheld in an opposition procedure before the European Patent Office or has been the subject of proceedings in any other court;
- (b) the urgency of the action;
- (c) whether the applicant has requested provisional measures without hearing the defendant and whether the reasons for not hearing the defendant appear well-founded, and
- (d) any Protective letter filed by the defendant; the Court shall in particular consider summoning parties to an oral hearing if a relevant Protective letter has been filed by the defendant.
- 3. In cases of extreme urgency the standing judge appointed in accordance with Rule 345.5 may decide immediately on the Application for provisional measures and the procedure to be followed on the Application.
- 4. If the applicant has applied for provisional measures without hearing the defendant and the Court decides not to grant provisional measures without hearing the defendant the applicant may withdraw the Application and may request that the Court order that the Application and the contents of the Application remain confidential.

Rule 210 - Oral hearing

- 1. Where the Court decides to summon the parties to an oral hearing, the date for the oral hearing shall be set as soon as possible after the date of receipt of the Application for provisional measures.
- 2. The Court may order the parties to provide further information, documents and other evidence before or during the oral hearing, including evidence to enable the Court to make its decision in

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accordance with Rule 211. Part-2 of these Rules on Evidence shall be applicable only to the extent determined by the Court.

- 3. Rules 111 to 116 shall apply mutatis mutandis. Where the applicant is absent from the oral hearing without a reasonable excuse, the Court shall reject the Application for provisional measures.
- 4. The decision of the Court on the Application for provisional measures shall be given in writing as soon as possible after the closure of the oral hearing. If the Court deems appropriate, its decision may be given orally to the parties at the end of the oral hearing, prior to providing its decision in writing.

Rule 211 - DecisionOrder on the Application for provisional measures

- 1. The Court may in particular order the following provisional measures:
- (a) injunctions against a defendant;
- (b) the seizure or delivery up of the goods suspected of infringing a patent right so as to prevent their entry into or movement within the channels of commerce;
- (c) if an applicant demonstrates circumstances likely to endanger the recovery of damages, a precautionary seizure of the movable and immovable property of the defendant, including the blocking of his bank accounts and other assets;
- (d) make an interim award of costs.
- 2. In taking its decision the Court may require the applicant to provide reasonable evidence to satisfy the Court with a sufficient degree of certainty that the applicant is entitled to commence proceedings pursuant to Article 47, that the patent in question is valid and that his right is being infringed, or that such infringement is imminent.
- 3. In taking its decision on the Application for provisional measures, the the Court shall have in the exercise of its discretion to weigh up the interests of the parties and, in particular, take into account the potential harm for either of the parties resulting from the granting or the refusal of the injunction.
- 44. The Court shall have regard to any unreasonable delay in seeking provisional measures.
- 5. The Court may order the applicant to provide adequate security for appropriate compensation for any injury likely to be caused to the defendant which the applicant may be liable to bear in the event that the Court revokes the order for provisional measures. -The Court shall do so where interim measures are ordered without the defendant having been heard. The Court shall decide whether it is appropriate to order the security by deposit or bank guarantee. -The order shall be effective only after the security has been given to the defendant in accordance with the Court's decision.
- 5. The <u>decisionorder</u> on provisional measures shall indicate that an appeal may be brought in accordance with Article 73 of the Agreement and Rule 220.1.

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Relation with Agreement: Article 62(2) and (4)

Rule 212 - Decision Order on provisional measures without hearing the defendant

- 1. The Court may only order provisional measures without the defendant having been heard in cases where any delay is likely to cause irreparable harm to the applicant. Rule 197 shall apply mutatis mutandis.
- 2. Where provisional measures are ordered without the defendant having been heard, Rule 210 shall apply *mutatis mutandis* to the oral hearing without the presence of the defendant. In such cases, the defendant shall be given notice of the provisional measures without delay and at the latest immediately at the time of execution of the measures.
- 3. The defendant may request a review. -Rule 197.3 and .4 shall apply mutatis mutandis.

Relation with Agreement: Article 60(5) and (6)

Rule 213 - Revocation of provisional measures

- 1. The Court shall ensure that provisional measures are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if, within a time period provided for in the Court's order, not exceeding 31 calendar days or 20 working days, whichever is the longer, from the date of the Court's order, the applicant does not start proceedings on the merits of the case before the Court.
- 2. Where provisional measures are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of the patent, the Court shallmay order the applicant, upon request of the defendant, to provide the defendant with appropriate compensation for any injury caused by those measures [Rule 354.4].

Relation with Agreement 60(9).

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PART 4 - PROCEDURES BEFORE THE COURT OF APPEAL

Rule 220 - Appealable decisions

- 1. An appeal by a party adversely affected may be brought against-:
- (a) final decisions of the Court of First Instance;
- (b) decisions terminating proceedings as regards one of the parties;
- (c) decisions or ordersOrders referred to in Articles-49(5), 59, 60, 61, 62 or 67 of the Agreement.
- 2. Procedural decisions or orders may be appealed with leave of the Court*
- 2. Orders other than those referred in Rule 220.1 and Rule 97.5, shall be the subject of an appeal together with the appeal of the decision or may be appealed with the leave of the Court within 15 days of service of the court's decision to that effect. In the event of a refusal of the Court of First Instance to grant leave within 15 days of its order, an application to the Court of Appeal may be made pursuant to Rule 221.*
- 3. The Court of Appeal may hear appeals against separate decisions on the merits in infringement-proceedings and in validity proceedings together.

Relation with Agreement: Article 73

[Examples of final decisions of the Court of First Instance: Rule 118 (decision on the merits), Rule 140 (decision on the award of damages), Rule 157 (decision on costs)]

* -Note to Rule 220.2

Some members Members of the Drafting Committee believe there is a lack of clarity in do not agree as to the construction of Article 73(2)(b)(ii) as to and the proper meaning of "Court". It is for the Court of Appeal to resolve this. The Committee have therefor simply reproduced the wording of the Article in provisions of Rule 220.2, second sentence, Rule 221.1 referring to Rule 220.2 and the references to Rule 221 and Rule 224 have been included provisionally so that a procedure exists if the Court of Appeal decides that it may also grant leave to appeal. The members who construe Article 73 as only allowing the Court of First Instance to grant leave to appeal do not agree to those inclusions.

Rule 221 - Application for leave to appeal

- 1. A party adversely affected by a decision or order-referred to in Rule 157 or a refusal to grant leave to appeal an order pursuant to Rule 220.2 may lodge an Application for leave to appeal to the Court of Appeal within 15 ealendar-days of service of the decision or order-of the Court refusing leave to appeal.
- 2. The *Application for leave to appeal shall set out-:
- (a) the reasons why the appeal should be heard-;
- (b) where necessary, the facts, evidence and arguments relied on.

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- 3. The President of the Court of Appeal shall assign the Application for leave to appeal to a single judgethe standing judge (Rule 345.5 and .8) who shall decide on granting leave to appeal.
- 4. If leave to appeal a cost decision is granted the standing judge shall decide the appeal.

Rule 222 - Subject-matter of the proceedings before the Court of Appeal

- 1. Requests, facts, evidence and arguments submitted by the parties under Rules-221, 225, 226, 236 and 238 shall, subject to paragraph-2, constitute the subject-matter of the proceedings before the Court of Appeal. The Court of Appeal shall consult the file of the proceedings before the Court of First Instance.
- 2. Requests, facts and evidence which have not been submitted by a party during proceedings-before the Court of First Instance may be disregarded by the Court of Appeal. When exercising discretion, the Court shall in particular take into account:
- (a) whether a party seeking to lodge new submissions is able to justify that the new submissions could not reasonably have been made during proceedings before the Court of First Instance.
- (b) whether the relevance of the new submissions are highly relevant for the decision on the appeal;
- (c) the position of the other party regarding the lodging of the new submissions.

Relation with Agreement: Article 73(4)

[Article 114(2) EPC]

Rule 223 - Application for suspensive effect

- 1. A party may lodge an Application for suspensive effect, in accordance with Article 74 of the Agreement.
- 2. The *Application for suspensive effect shall set out:
- (a) the reasons why the lodging of the appeal shall have suspensive effect;
- (b) the facts, evidence and arguments relied on.
- 3. Rule 221.3 shall apply *mutatis mutandis*. -The Court of Appeal shall decide the Application without delay.
- 4. In cases of extreme urgency the applicant may apply at any time without formality for an order for suspensive effect to the standing judge [Rule 345.5 and 8]. The standing judge shall have all the powers of the Court of Appeal and shall decide the procedure to be followed on the application.
- 5. There shall be no suspensive effect for an appeal of an order pursuant to Rule 220.2.

Relation with Agreement: Article 74

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CHAPTER 1 - WRITTEN PROCEDURE

SECTION 1 - STATEMENT OF APPEAL, STATEMENT OF GROUNDS OF APPEAL

Rule 224 – Time periods for lodging the Statement of appeal and the Statement of grounds of appeal

- 1. A Statement of appeal shall be lodged by the appellant:
- (a) within two months of service of a decision referred to in Rule 220.1(a) and (b); or
- (b) within 15 calendar days of service of a decision oran order referred to in Rules Rule 220.1(c) and .2 or a decision referred to in Rule 220.2 or in Rule 221.3.
- 2. The Statement of grounds of appeal shall be lodged by the appellant:
- (a) within four-months of service of a decision referred to in Rule 220.1(a) and (b); or
- (b) within 15 ealendar days of service of a decision or referred to in Rule 157 or an order referred to in Rule 220.1(c) and or a decision referred to in Rule 220.2 or in Rule 221.3.

Relation with Agreement: Article 73(1) and (2)

Rule 225 - Contents of the Statement of appeal

The *Statement of appeal shall contain:

- (a) the names of the appellant and of the appellant's representative;
- (b) the names of the respondent and of the respondent's representative;
- (c) postal and electronic addresses for service on the appellant and on the respondent, as well as the names of the persons authorised to accept service;
- (d) the date of the decision or order appealed against and the action number attributed to the file in proceedings before the Court of First Instance; and
- (e) the order or remedy sought by the appellant, including any order for expedition of the appeal pursuant to Rule 9.3(b) and the reasons justifying such order for expedition.

Rule 226 - Contents of the Statement of grounds of appeal

The *Statement of grounds of appeal shall contain-:

- (a) an indication of which parts of the decision or order are contested;
- (b) the reasons for setting aside the contested decision or order; and
- (c) an indication of the facts and evidence on which the appeal is based in accordance with Rule-222.1 and .2.

[Rule 99 EPC]

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Rule 227 - Language of the Statement of appeal and of the Statement of grounds of appeal

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- 1. The Statement of appeal and the Statement of grounds of appeal shall be drawn up-:
- (a) without prejudice to Article 50(3) of the Agreement, in the language of the proceedings before the Court of First Instance; or
- (b) where the parties have agreed in accordance with Article 50(2) of the Agreement, in the language in which the patent was granted.— Where the parties have agreed in accordance with Article 50(2) of the Agreement, evidence of the respondent's agreement shall be lodged by the appellant together with the Statement of appeal.

Relationship with Agreement: Article 50

Rule 228 - Fee for the appeal

The appellant shall pay the fee for the appeal [EUR***], in accordance with Part 6. Rule_15.2 shall apply mutatis mutandis.

[EPC Article 108 and Rule 101.2]

Rule 229 - Examination as to formal requirements of the Statement of appeal

- 1. The Registry shall, as soon as practicable after the lodging of the Statement of appeal, examine whether the requirements of Rules 224.1, 225, 227 and 228 have been complied with.
- 2. If the appellant has not complied with the requirements referred to in Rules 225, 227 and 228, the Registry shall invite the appellant to:
- (a) correct the deficiencies within 14 days; and
- (b) where applicable, pay the fee for the appeal within 14 days.

If the appellant has not met the requirement of paragraph 1 or if the applicant fails to correct the deficiencies or pay the fee the Registry shall inform the President of the Court of Appeal who shall reject the appeal as inadmissible by a decision by default. —He may give the appellant an opportunity to be heard beforehand.

Rule 230 - Recording in the register (Court of Appeal)

- 1. If the Statement of appeal complies with the requirements referred to in Rule 229.1, the Registry shall—:
- (a) record the date of receipt to the Statement of appeal and aan action number to the appeal file-:
- (b) record the appeal file in the register;
- (c) inform the appellant of the action number and the date of receipt-; and
- (d) serve the Statement of appeal on all parties to the proceedings at first instance.

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- 2. The President of the Court of Appeal shall assign the action to a panel. Unless otherwise agreed by the
- 3. The panel the most senior judge-shall be as soon as practicable decide whether to grant any order for expedition pursuant to Rule 225(e) having given the presiding judge parties an opportunity to be heard.

Rule 231 - Designation of the judge-rapporteur

The presiding judge of the panel to which the action has been assigned shall designate one judge of the panel as judge-rapporteur. The presiding judge may designate himself as the judge-rapporteur. The Registry shall as soon as practicable notify the appellant and respondent of the identity of the judge-rapporteur.

Rule 232 - Translation of file

- 1. If the language of the proceedings before the Court of Appeal is not the language of the proceedings before the Court of First Instance, the judge-rapporteur may order the appellant to lodge, within a time period to be specified, translations into the language of the proceedings before the Court of Appeal of-:
- (a) written pleadings and other documents lodged by the parties before the Court of First Instance, as specified by the judge-rapporteur;
- (b) decisions or orders of the Court of First Instance.
- 2. If the appellant fails to lodge the translations under paragraph 1 within the period specified, the Court of Appeal mayjudge-rapporteur shall reject the appeal by a decision by default in accordance with Rule 357. The panelHe may give the appellant an opportunity to be heard beforehand.
- 3. The appellant may request that documented costs of translations be taken into account when the Court fixes the amount of costs in accordance with Part 1, Chapter 5.

Relation with Agreement: Article 50(2) and (3)

Rule 233 - Preliminary examination of the Statement of grounds of appeal

- 1. The judge-rapporteur shall examine whether the Statement of grounds of appeal satisfies the requirements of Rule 226.
- 2. If the Statement of grounds of appeal does not comply with the requirements of Rule 226, the judge-rapporteur shall give the appellant leave to amend the Statement of grounds of appeal within such period as he may decide. If the appellant fails to amend the Statement within such period the Court of Appealjudge-rapporteur may reject the appeal as inadmissible. The panel mayHe shall give the appellant an opportunity to be heard beforehand.
- 3. Grounds of appeal which are not raised within the period specified for the Statement of grounds of appeal in Rule 224.2 shall not be admissible.

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Rule 234 - Challenge to the decision to reject an appeal as inadmissible

- 1. The appellant may challenge a decision to reject the appeal as inadmissible under Rules-224.1, 229.2 or 233.2 within one month of service of the decision, without providing new grounds of appeal.
- 2. The panel to which the action has been assigned under Rule 230.2 shall decide any challenge under paragraph 1.
- 3. If a decision to reject an appeal as inadmissible is set aside, the appeal shall take its normal course.

SECTION 2 - STATEMENT OF RESPONSE

Rule 235 - Statement of response

- 1. Within three months of service of the Statement of grounds of appeal pursuant to Rule 224.2(a), any other party to proceedings before the Court of First Instance (hereinafter "respondent") may lodge a Statement of response, which shall be served on the appellant.
- 2. Within 15-calendar days of service of grounds of appeal pursuant to Rule 224.2(b), any other party to proceedings before the Court of First Instance (hereinafter "respondent") may lodge a Statement of Response, which shall be served on the appellant.

Rule 236 - Contents of the Statement of response

- 1. The *Statement of response shall contain:
- (a) the names of the respondent and the respondent's representative;
- (b) postal and electronic addresses for service on the respondent and the names and addresses of the persons authorised to accept service;
- (c) the action number of the appeal file; and
- (d) a response to the grounds of appeal.
- 2. The respondent may support the decision of the Court of First Instance on grounds other than those given in the decision.

Rule 237 - Statement of cross-appeal

- 1. A party who has not lodged a Statement of appeal within the period referred to in Rule 224.1 may still bring an appeal by way of cross-appeal within the period referred to in Rule 235 if one of the other parties has lodged a Statement of appeal.
- 2. A *Statement of cross-appeal shall be included in the Statement of response. It shall comply with the requirements of Rules 225 and 226. Rules 229 and 233 shall apply *mutatis mutandis* to the Statement of cross-appeal.
- 3. A Statement of cross-appeal shall not be admissible in any other way or at any other time.

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- 4. A cross-appeal shall be treated as an appeal as far as the fee for the appeal is concerned. Rule-228 shall apply mutatis mutandis.
- 5. If the Statement of appeal is withdrawn, any Statement of cross-appeal shall be deemed to be withdrawn.

Rule 28 on Further schedule shall apply mutatis mutandis

SECTION 3 - REPLY TO A STATEMENT OF CROSS-APPEAL

Rule 238 - Reply to a statement of cross-appeal

- 1. Where the Statement of response served pursuant to Rule 235.1 includes a statement of eross-appeal, the The appellant may, within two months of service of the any Statement of response cross-appeal under Rules 237, 235.1, lodge a *Reply to the Statement of cross-appeal which shall contain a response to the grounds of appeal raised in the Statement of cross-appeal.
- 2. Where the Statement of response served pursuant to Rule 235.2 includes a statement of eross appeal, the The appellant may, within 15 calendar days of service of the Statement of response cross-appeal under Rules 237 and 235.2, lodge a *Reply to the Statement of cross-appeal which shall contain a response to the grounds of appeal raised in the Statement of cross-appeal.

Rule 28 on Further schedule shall apply mutatis mutandis

SECTION 4 - REFERRAL TO THE FULL COURT

Rule 238A - Decision to refer

- 1. The panel to which the action has been assigned may refer it to the full Court of Appeal if the panel considers, on a proposal from the presiding judge, the case to be of exceptional importance and, in particular, where the decision in the action may affect the consistency and unity of the case law of the Court.
- 2. The presiding judge of the panel shall request that the President of the Court of Appeal and the two judges of the Court of Appeal who are members of the Presidium to appoint the judges of the Court of Appeal to the full Court. The appointees shall be the President of the Court of Appeal and not less than ten (legal and technical) judges of the Court of Appeal to represent the initial two panels of the Court of Appeal. In the event that the Court of Appeal shall have more than two panels the appointees to the full Court shall increase by five judges, (legal and technical), for each additional panel.
- 3. Decisions of the full Court shall be by no less than a three-quarters majority of the judges of the full Court.

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CHAPTER 2 - INTERIM PROCEDURE

Rule 239 - Role of the judge-rapporteur

1.- Upon the expiry of the periods specified in Rules 224 to 238 the judge-rapporteur shall make allnecessary preparations for the oral hearing. Subject always to the provisions of Rule 222, the
judge-rapporteur shall, to the extent appropriate, have the powers and exercise the duties set out in
Rules 101 to 110 mutatis mutandis.

2..... As soon as the judge-rapporteur considers that the appeal is ready for oral hearing he shall summon the parties to the oral hearing. At Except for appeals against the orders referred to in Rule 220.1(c) and 220.2, and subject to any order for expedition pursuant to Rule 230.3, at least two monthsmonths' notice shall be given unless the parties agree to a shorter time period. The interim procedure shall be deemed closed and oral procedure shall start immediately on the giving of such summons. The presiding judge shall, in consultation with the judge-rapporteur take over the management of the action.

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CHAPTER 3 – ORAL PROCEDURE

Rule 240 - Conduct of the oral hearing

Subject to Rule 241 the oral hearing shall be held before the panel and shall be directed by the presiding judge. Subject always to Rule 222, Rules 111, 112, 115, 116 and 117 shall apply mutatis mutandis.

Rule 241 - Conduct of the oral hearing for an appeal of a costs order cost decision

The oral hearing for an appeal of a <u>eosts ordercost decision</u> pursuant to Rule 157 shall be heard by the standing judge [Rule 345.5] alone and .8] who shall have all the powers of the Court of Appeal.

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CHAPTER 4 – DECISIONS AND EFFECT OF DECISIONS

Rule 242 - Decision of the Court of Appeal

- 1. The <u>decisionCourt of Appeal</u> shall either reject the appeal or set the decision or order aside totally or in part substituting its own decision or order, including an order for costs both in respect of the proceedings at first instance and on appeal.
- 2. The Court of Appeal may:
- (a) exercise any power within the competence of the Court of First Instance;

(b)(b) in exceptional circumstances refer the action back to the Court of First Instance for decision or for retrial [Rule 243]. It shall not normally be an exceptional circumstance justifying a referral back that the Court of First Instance failed to decide an issue which it is necessary for the Court of Appeal to decide on appeal.

Relation with Agreement: Article 75

Rule 243 - Referral back

- 1. In exceptional circumstances, the Court of Appeal may refer the action back to the Court of First Instance for decision or for retrial.
- 2. The decision referring <u>ean</u> action back to the Court of First Instance shall specify whether it the same panel whose earlier decision or order is revoked shall deal further with the action or whether another panel shall be appointed by the <u>President presiding judge</u> of the <u>Court of First Instance</u> division concerned.
- 32. Where <u>an</u> action is referred back to the Court of First Instance, the Court shall be bound by the decision of the Court of Appeal and its ratio decidendi.

Relation with Agreement: Article 75

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CHAPTER 5 - PROCEDURE FOR APPLICATION FOR REHEARING

Rule 245 - Lodging of an Application for rehearing

- 1. An Application for rehearing may be lodged by any party adversely affected by a final decision (hereinafter "the final decision") of the Court of First Instance for which the time for lodging an appeal has expired or of the Court of Appeal (hereinafter "the petitioner").
- 2. The Application for rehearing shall be lodged at the Court of Appeal within the following periods:
- (a) where the Application for rehearing is based on the ground of a fundamental procedural defect, within two months of the discovery of the fundamental defect or of service of the final decision, whichever is the later;
- (b) where the Application for rehearing is based on an act which has been held, by a final court decision, to constitute a criminal offence, within two months of the date on which the criminal offence has been so held or service of the final decision, whichever is the later;
- (c) but in any event no later than ten years of service of the final decision.

Relation with Agreement: Article 81

[EPLA RoP §175+200+202, Article 112a(4) EPC]

Rule 246 - Contents of the Application for rehearing

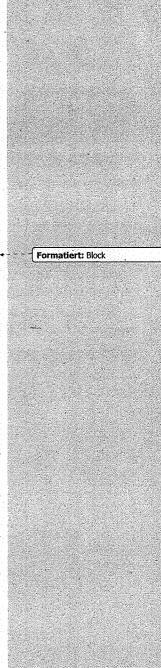
- 1. The *Application for rehearing shall contain:
- (a) the names of the petitioner and of the petitioner's representative;
- (b) postal and electronic addresses for service on the petitioner and the names and addresses of the persons authorised to accept service; and
- (c) an indication of the decision to be reviewed.
- 2. The Application for rehearing shall indicate the reasons for setting aside the final decision, as well as the facts and evidence on which the Application is based.

Rule 247 -Fundamental procedural defects

A fundamental procedural defect under Article 81(1) of the Agreement may have occurred, for example, where:

- (a)—a judge of the Court of Appeal took part in the decision in breach of Article 17 of the Agreement or Article 7 of the Statute—;
- (b)-a person not appointed as a judge of the Court of Appeal sat on the panel which took the final decision-:
- (c)-a fundamental violation of Article 76 of the Agreement occurred in the proceedings which have led to the final decision;

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(d)-the Court of Appeal decided the appeal without deciding on a request relevant to that decision; or

(e) a breach of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms has occurred.

[Article 112a(2) EPC and Rule 104 EPC]

Rule 248 - Obligation to raise objections

- 1. An Application for rehearing based on the ground of a fundamental procedural defect isonly admissible where an objection in respect of the procedural defect was raised during the proceedings before the Court of First Instance or the Court of Appeal and dismissed by the Court, except where such objection could not behave been raised during the proceedings before the Court of First Instance or the Court of Appeal.
- 2. An application for rehearing based upon the ground of a fundamental procedural defect is not admissible where the party could have brought an appeal in respect of the defect but failed to do so.

[Rule 106 EPC]

Rule 249 - Definition of criminal offence

A criminal offence shall only be considered to have occurred if it is finally held to be such an offence by a competent court or authority. A conviction is not necessary.

[Rule 105 EPC]

Rule 250 - Fee for the rehearing

The petitioner shall pay the fee for the rehearing [EUR***], in accordance with Part 6. Rule-15.2 shall apply *mutatis mutandis*. The court may waive payment of the fee in the circumstances contemplated by Rule 245.2(a) or (b).

Rule 230.1 on Recording in the register (Court of Appeal) shall apply mutatis mutandis.

Rule 251 - Suspensive effect

The lodging of an Application for rehearing shall not have suspensive effect unless the Court of Appeal decides otherwise.

Relation with Agreement: Article 81(2)

Rule 252 - Examination as to formal requirements of the Application for rehearing

1. The Registry shall, as soon as practicable after the lodging of the Application for rehearing, examine whether the requirements of Rules 245, 246 and 250 have been complied with.

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- 2. If the petitioner has not complied with the requirements referred to in paragraph 1, the Registry shall invite the petitioner to:
- (a) correct the deficiencies within 14 days; and
- (b) where applicable, pay the fee for the rehearing within 14 days.

If the petitioner fails to correct the deficiencies or pay the fee the Registry shall inform the President of the Court of Appeal who shall assign the case to the standing judge (Rule 345.5 and 8) who may reject the Application for rehearing as inadmissible. He mayshall give the petitioner an opportunity to be heard beforehand.

Rule 253 - Assignment of Application for rehearing to a panel

- 1. Immediately after the Application for rehearing has been recorded in the register, the Registry shall serve a copy of the Application for rehearing on all other parties and shall inform the President of the Court of Appeal that a Request for rehearing has been lodged.
- 2. The President of the Court of Appeal shall assign the action to a panel consisting of three legally qualified judges. He may order that judges of the Court who participated in taking the decision to be reviewed shall not sit on the panel.

Rule 254 - Examination of the Application for rehearing

- 1. After hearing the parties the panel may make:
- (a) a decision to reject the Application for rehearing as not allowable; such a decision shall be by a majority vote of the judges on the panel; it shall. It need not contain any reasons;
- (b) a decision to allow the Application for rehearing; such a decision shall set aside or suspend the decision under review, in whole or in part, and re-open the proceedings for a new hearing and decisions, Where proceedings are re-opened, the panel shall give directions for the future proceedings before the Court of Appeal.

Relation with Agreement: Article 81(3)



PART 5 - GENERAL PROVISIONS

CHAPTER 1 - GENERAL PROCEDURAL PROVISIONS

CHAPTER 1 – GENERAL PROCEDURAL PROVISIONS

Rule 260 - Examination by the Registry of its own motion

- 1. In any proceedings before the Court, the Registry shall, as soon as practicable in the proceedings, of its own motion, examine whether an opt-out has effect for the patent or patents concerned.
- 2. Where the Registry notes that two or more actions between the same parties and concerning the same patent or patents are initiated before several divisions, (whether or not between the same parties), it shall as soon as practicable inform the divisions concerned.

Relation with Agreement: Article 83(3) and (4)

Relation with draft Statute: Articles 23 and 24

Rule 261 - Date of pleadings

All pleadings and documents lodged with pleadings shall bear a time and a date which shall be the time and date of receipt of pleadings in electronic form at the Registry. The time shall be the local time of the Registry. The Registrar shall be responsible for time and date marking.

Rule 262 - Public access to the register

- 1. Without prejudice to Rule 207.6 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 for on-line consultation, unless a party requests that certain information be kept confidential and the Court makes such an order. Written pleadings and written evidence shall not be made available for public access until 14 days after they are lodged.
- 2. A party may lodge an Application with the Court for an order that certain information should be excluded from public access or restricted to certain named persons on the grounds set out in and in accordance with Article 58 of the Agreement.
- 3. The *Application shall contain:
- (a) details of the information alleged to be confidential or otherwise to be restricted;
- (b) the grounds upon which the applicant claims the information should be restricted; and
- (c) details of the persons to be prohibited from access to the information or conversely to be allowed access.
- 4. The Court shall invite written comments from any other party prior to making any order.
- 5. Pending a decision of the Court on the Application the information alleged to be confidential shall not be publicly accessible on the register.

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6. The Registrar shall as soon as practicable take all such steps with regard to access to the register as may be necessary to give effect to an order of the Court under this Rule.

Relation with Agreement: Articles 10, 45 and 58

Relation with-draft Statute: Article 24(2)

Rule 263 - Leave to change claim or amend case

- 1. A party may at any stage of the proceedings apply to the Court for leave to change its claim or to amend its case, including adding a counterclaim. -Any such application shall explain why such change or amendment was not included in the original pleading.
- 2. <u>LeaveSubject to Rule 263.3</u>, <u>leave</u> shall not be granted if, all circumstances considered, the party seeking the amendment cannot satisfy the Court that:
- (a) the amendment in question could not have been made with reasonable diligence at an earlier stage; and
- (b) the amendment will not unreasonably hinder the other party in the conduct of its action.
- 3. Leave to limit a claim in an action unconditionally shall always be granted.
- 4. The Court may re-consider fees already paid in the light of an amendment.

Rule 264 - An opportunity to be heard

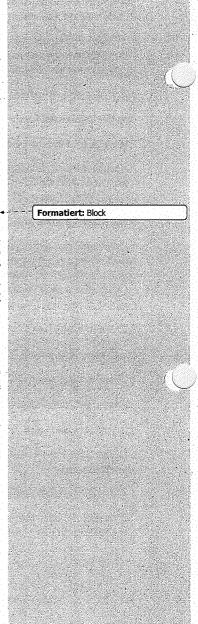
Where these rules provide that a party or parties shall or may be given an opportunity to be heard before the Court makes an order or takes some action the Court shall or may (as the case may be) request the parties to provide written submissions within a specified period and/or shall or may invite the parties to an oral hearing on a fixed date by the Court. The Court may also order that a hearing take place by telephone or video conference. Rules 105 and 106 shall apply mutatis mutandis.

Rule 265 - Withdrawal

- 1. As long as there is no final decision in an action, a claimant may apply to withdraw his action. The Court shall decide the application after hearing the other party (or parties).- The application to withdraw shall not be permitted if the other party (or parties) has (have) a legitimate interest in the action being decided by the Court.
- 2. If withdrawal is permitted, the Court shall-
- (a) give a decision declaring the proceedings closed;
- (b) order the decision to be entered on the register; and
- (c) issue a cost orderdecision in accordance with Part 1, Chapter 5.

Rule 266 - Preliminary references to the Court of Justice of the European Union

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- 1. At any stage of the proceedings where a question is raised before the Court and the Court considers that a decision on the question by the Court of Justice of the European Union ("CJEU") is necessary before the Court can give judgment, the Court of First Instance may and the Court of Appeal shall of-request the CJEU to give a ruling thereon.
- 2. The Court shall in requesting a ruling follow the procedure set out in the Rules of the CJEU.
- 3. If the Court requests the CJEU to apply its expedited procedure the order request shall in addition set out:
- (a) the matters of fact and law which establish its urgency; and
- (b) the reasons why an expedited ruling is appropriate.
- 4. The Registrar shall as soon as practicable forward the <u>orderrequest</u> and any request to apply the expedited procedure to the Registrar of the CJEU.
- 5. Unless otherwise decided by the Court the proceedings shall be stayed until the CJEU has given a ruling on the question.

Rule 267 - Actions pursuant to Article 22 of the Agreement

Where an action for damages has been brought against a Contracting Member State pursuant to Article 22 of the Agreement the President of the Court of Appeal shall as soon as practicable following a request from the competent authority in the Contracting Member State provide the competent authority with copies of all pleadings, evidence, decisions and orders available to the Court in its proceedings that are relevant to the action for damages.

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CHAPTER 2 - SERVICE

SECTION 1 – SERVICE WITHIN THE CONTRACTING MEMBER STATES OR BY-AGREEMENT

Rule 270 — Scope of this Section

- 1. The rules for service of the Statement of claim set out in this Section shall apply whenever the defendant has provided an electronic address for the purpose of service of the proceedings under Rule 271.1 or .2 or has an address for service for the purpose of any one of the modes of service here provided within the territory of any of the Contracting Member States.
- 2. A Statement of claim, irrespective of where it is lodged, may be served in the manner here provided on a defendant in the territory of any of the Contracting Member States.
- 3. For the purpose of Rules 270 to 275 the term Statement of claim shall, where appropriate, include a Statement for revocation (Rule 45), a Statement for a declaration of non infringement (Rule 60), an Application for preserving evidence (Rule 192) and an Application for provisional measures (Rule 206) mean all originating pleadings in actions referred to in Article 32(1) of the Agreement.

Rule 271 - Service of the Statement of claim

1. The Registry may serve the Statement of claim on the defendant at an electronic address which the defendant has provided for the purpose of service in the proceedings and shall inform the defendant of the rights under Rule 271.7.

2. Where:

elaimant(a) the defendant has provided the electronic address of a representative as an address at which the defendant may be served with the Statement of Claim; or

- (b) a representative acting for the defendant has notified the Registry or the claimant that he accepts service of the Statement of Claim on behalf of the defendant at an electronic address, the Registry may serve the Statement of Claim at the electronic address of that representative,
- (c) forthe Registry may serve the Statement of Claim at the electronic address of that representative.
- 3. For the purpose of serving a Statement for revocation ([Rule 41)45] or of serving a Statement for declaration of non-infringement ([Rule 60),62], reference to representative under Rule 271.2(a) or (b) shall additionally include professional representatives and legal practitioners as defined in Article 134 EPC who are recorded as the appointed representative for the European-patent-or patents with unitary effect, the subject of the proceedings, in the register for unitary patent protection (regulation Regulation (EU) No 1257/2012, Article 2(e)).)) or in the register of the patent office of a Contracting Member State.
- 3.4. Where service by means of electronic communication cannot be effected, the Registry shall serve the Statement of claim on the defendant by:

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- (a) registered letter with advice of delivery;
- (b) fax; or
- (c) any method authorised by the Court under Rule 275.
- 45. Service under Rule 271.34(a) shall be effected at the following place:
- (a) where the defendant is a company or other legal person, at its statutory seat, central administration or principal place of business within the Contracting Member States or at any place within the Contracting Member States where the company or other legal person has a place of business-;
- (b) where the defendant is an individual: at his usual or last known residence within the Contracting Member States.; or
- (c) for the purpose of serving a Statement for revocation ([Rule 41)45] or of serving a Statement for a declaration of non-infringement ([Rule 60),62], at the place of business of a professional representative or legal practitioner as defined in Article 134 EPC who is recorded as the appointed representative for the European-patent-with unitary effect, the subject of the proceedings, in the register for unitary patent protection (regulationRegulation (EU) No 1257/2012, Article 2(e)) or of the patent office of a Contracting Member State.
- 56. Subject to Rule 272.2 and Rule 272.3, a Statement of claim served in accordance with paragraphs 1, 2 and 3 to 5 is deemed to be served on the defendant:
- (a) where service takes place by means of electronic communication or by fax, on the day when the relevant electronic message was sent or the transmission of the fax was completed (GMT+1); or
- (b) where service takes place by registered letter with advice of delivery such letter shall be deemed to be served on the addressee on the tenth working day following posting unless it has failed to reach the addressee or has in fact reached him on a later date. –Such service shall be deemed effective even if acceptance of the letter has been refused.
- 7. Where the defendant would be entitled to refuse service if Article 8 of Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("the EU Service Regulation") were applicable and where he has notified the refusal to the Register within one week of the attempted service together with an indication of the language(s) he understands, the Registry shall inform the claimant. The claimant shall provide to the Registry translations of at least the Statement of claim and the information required in Rule 13.1(a) to (p) in a language provided for by Article 8(1)(a) or (b) of the EU Service Regulation. The Statement of claim shall not be deemed served in accordance with this Chapter, and time limits shall not run, until service of said translations by the Registry upon the defendant in accordance with these Rules.

Rule 272 - Notice of service and non-service of the Statement of claim

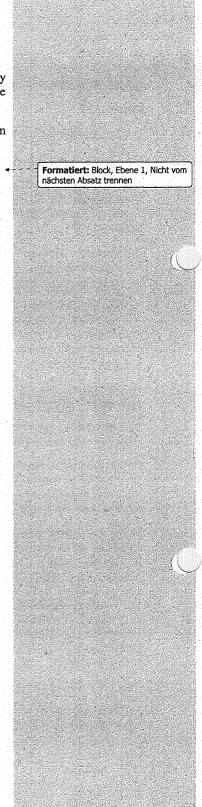
1. The Registry shall inform the claimant of the date on which the Statement of claim is deemed served under Rule 271.56.

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- 2. Where the Registry has served the Statement of claim by registered letter with advice of delivery and the Statement of claim is returned to the Registry for any reason, the Registry shall inform the claimant.
- 3. Paragraph 2 shall apply *mutatis mutandis* where the Registry has served the Statement of claim by fax and the fax appears not to have been received.



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SECTION 2 – SERVICE OUTSIDE THE CONTRACTING MEMBER STATES

Rule 273 – Scope of this Section

This Section applies to service of a Statement of claim in any case in which the defendant has not-provided an electronic address for service of the proceedings or otherwise may not be served within the territory of the Contracting Member States in a manner provided for under any of the methods prescribed in Section 1 or Section 3.

Rule 274 - Service outside the Contracting Member States

- 1. Where a Statement of claim is to be served outside the Contracting Member States, it may be so served by the Registry:
- (a) by any method provided by:
 - (i) Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("the EU Service Regulation") where it applies but-respecting the rights of the recipient granted by the Regulation; or
 - (ii) The Hague Convention on the service abroad of judicial and extra-judicial documents in civil or commercial matters 1965 ("the Hague Service Convention") or any other applicable convention <u>or agreement</u> where it applies; or,
 - (iii) to the extent that there is no such convention or agreement in force, either by service through diplomatic or consular channels from the Contracting Member State in which the Registrysub-registry of the relevant division is established; or,
- (b) by any method permitted by the law of the state where service is to be effected.
- 2. No Statement of claim may be served <u>under the Rule 274</u> in a manner which is contrary to the law of the state where service is effected.
- 3. The Registry shall inform the claimant of the date on which the Statement of claim is deemed served under Rule 274.1.
- 4.- The Registry shall inform the claimant if for any reason service pursuant to Rule 274.1 cannot be effected.

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SECTION 3 - SERVICE BY AN ALTERNATIVE METHOD

Rule 275 - Service of the Statement of claim by an alternative method or at an alternative place

- 1. Where it appears to the Court on an application by the claimant that there is a good reason to authorise service by a method or at a place not otherwise permitted by this Chapter, the Court may by way of order permit service by an alternative method or at an alternative place.
- 2. On a reasoned request by the claimant, the Court may order that steps already taken to bring the Statement of claim to the attention of the defendant by an alternative method or at an alternative place is good service.
- 3. An order under this rule shall specify-:
- (a) the method or place of service;
- (b) the date on which the Statement of claim is deemed served; and
- (c) the period for filing the Statement of defence.
- 4. No order for alternative service under this Rule outside the Contracting Member States shall be made permitting service in a manner that is contrary to the law of the state where service is to be effected.

SECTION 4 – SERVICE OF ORDERS-AND, DECISIONS AND WRITTEN PLEADINGS

Rule 276 - Service of orders and decisions

- 1.- Any order or decision of the Court shall be served on each of the parties in accordance with the provisions of Sections 1, 2 or 3 -of this Chapter, as the case may be.
- 2. Decisions by default pursuant to Rule 355 resulting from failure of the defendant to lodge a Defence to revocation ([Rule 50]) or failure to lodge a Defence to the Statement for a declaration of non-infringement ([Rule 65]) within the time limit set by these Rules or by the Court, may be served on the defendant at the place of business of a professional representative or legal practitioner as defined in Article 134 EPC who is recorded as the appointed representative for the subject European patent with unitary effect, the subject of the proceedings in the register for unitary patent protection (regulation[Regulation (EU) No 1257/2012, Article 2(e)-)] or in the register of the patent office of a Contracting Member State.

Rule 277 - Decisions by default under Part 5, Chapter 11

No decision by default shall be entered under Part 5, Chapter 11 unless the Court is satisfied that either:

(a) Thethe Statement of claim was served by a method prescribed by the internal law of the state addressed for the service of documents in domestic actions upon persons who are within its territory; or

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(b) Thethe Statement of claim was actually delivered to the defendant or to his residence or place of business by another method provided for under this Chapter 2.

Rule 278 - Service of otherwritten pleadings and other documents

- 1. As soon as practicable after written pleadings have been received at the Registry, the Registry shall serve the pleadings and any other document lodged with the pleadings on the other party by means of electronic communication—except if the pleading contains a request for an ex parte proceeding. Rule 262.2 shall apply.
- 2. Where service by means of electronic communication cannot be effected, the Registry shall serve the written pleadings on the party by:
- (a) registered letter with advice of delivery;
- (b) fax; or
- (c) any method authorised by the Court under Rule 275.
- 3. Service under paragraph 2(a) shall be effected at the following place:
- (a) where the party is a company or other legal person: at its statutory seat, central administration, principal place of business or at any place within the Contracting Member States where the company or other legal person has a place of business;
- (b) where the party is an individual: at his usual or last known residence within the Contracting Member States.
- 4. -Rule 271.56 and Rule 272 shall apply mutatis mutandis

Rule 279 - Change of electronic address for service

Where the electronic address for service of a party changes, that party must give notice in writing of the change as soon as it has taken place to the -Registry and every other party- [Rule 6.3].

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CHAPTER CHAPTER 3 - RIGHTS AND OBLIGATIONS RIGHTS AND OBLIGATIONS OF REPRESENTATIVES

Rule 284 - Duty of representatives not to misrepresent facts or cases

A representative of a party shall neither knowingly or negligently misrepresent cases or facts before the Court.

Relation to Agreement: Article 48(6)

Rule 285 - Powers of attorney

1. A representative who claims to be representing a party shall be accepted as such provided however the Court may order a representative to produce a written authority if his representative powers are challenged.

Rule 286 - Certificate that a representative is authorised to practice before the Court

- 1. A representative pursuant to Article 48(1) of the Agreement shall lodge at the Registry a certificate that he is a lawyer authorised to practise before a court of a Contracting Member State. Lawyers A lawyer within the meaning of Article 48(1) of the Agreement are also persons possessing a law degree (jurist) person who are is authorised by the Swedish Patent Attorneys Board or equivalent bodyto pursue professional activities under a title referred to in a Contracting Member State. They shall lodge a certificate evidencing such authorisation. Article 1 of Directive 98/5/EC. In subsequent actions the representative may refer to the certificate previously lodged.
- 2. A representative pursuant to Article 48(2) of the Agreement shall lodge at the Registry the European Patent Litigation Certificate as defined by the Administrative Committee or otherwise justify that he has appropriate qualifications to represent a party before the Court. In subsequent actions such representative may refer to the certificate or other evidence of appropriate qualification previously lodged.

* Note to Rule 286.1

The reference to Swedish jurists in the definition of lawyer in the 15th Draft has resulted in considerable adverse comment and confusion. The definition has been altered to exclude such reference but the status of such persons still needs to be dealt with.

Rule 287 - Attorney-client privilege

- 1. Where a client seeks advice from a lawyer he has instructed in a professional capacity, whether in connection with proceedings before the Court or otherwise, then any confidential communication (whether written or oral) between them relating to the seeking or the provision of that advice is privileged from disclosure, whilst it remains confidential, in any proceedings before the Court or in arbritration or mediation proceedings before the Centre.
- 2. This privilege applies also to communications between a client and a lawyer employed by the client and instructed to act in a professional capacity and a client and a patent attorney (including a patent attorney employed by the client) who is instructed in his professional capacity to advise on patent matters.

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- 3. This privilege extends to the work product of the lawyer or patent attorney (including communications between lawyers and/or patent attorneys employed in the same firm or entity or between lawyers and/or patent attorneys employed by the same client) and to any record of a privileged communication.
- 4. This privilege prevents the lawyer or patent attorney and his client from being questioned or examined about the contents or nature of their communications.
- 5. This privilege may be expressly waived by the client.
- 6. The expressions "lawyer" shall mean a person as defined in Rule 286.1 and any other person who is qualified to practice as a lawyer and to give legal advice under the law of the state where he practises and who is professionally instructed to give such advice. This shall include persons possessing a law degree (jurist) who are authorised by the Swedish Patent Attorneys Board or equivalent body in a Contracting Member State—and the The expression "patent attorney" shall mean a person who is recognised as eligible to give advice under the law of the state where he practices practises in relation to the protection of any invention or to the prosecution or litigation of any patent or patent application and is professionally consulted to give such advice.
- 7. The expression -"patent attorney" shall also include a professional representative before the European Patent Office pursuant to Article 134(1) European Patent Convention

Relation to Agreement: Article 48(4)

Rule 288 - Litigation privilege

Where a client, or a lawyer or patent attorney as specified in Rules 287.1, 287.2, 287.6 and 287.7 instructed by a client in a professional capacity, communicates confidentially with a third party for the purposes of obtaining information or evidence of any nature for the purpose of or for use in any proceedings, including proceedings before the European Patent Office, such communications shall be privileged from disclosure in the same way and to the same extent as provided for in Rule 287.

Relation to Agreement: Article 48(5)

Rule 289 - Privileges, immunities and facilities

- 1. Representatives appearing before the Court or before any judicial authority to which it has addressed letters rogatory [Rule 202] shall enjoy immunity in respect of words spoken or written by them concerning the action or the parties.
- 2. Representatives shall enjoy the following further privileges and facilities:
- (a) papers and documents relating to the proceedings shall be exempt from both search and seizure;
- (b) any allegedly infringing product or device relating to the proceedings shall be exempt from both search and seizure when brought to the Court for the purposes of the proceedings.

In the event of a dispute, customs officials or police may seal those papers, documents or allegedly infringing products or devices. They shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and of the person concerned.

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- 3. Representatives shall be entitled to travel in the course of duty without hindrance.
- 4. The privileges, immunities and facilities specified in paragraphs 1 to 3 are granted exclusively in the interests of the proper conduct of proceedings.
- 5. The Court may waive the immunity where it considers that a representative is guilty of conduct which is contrary to the proper conduct of proceedings.

Relation with Agreement: Article 48

Rule 290 - Powers of the Court as regards representatives

- 1. -As regards representatives who appear before it, the Court shall have the powers normally accorded to courts of law, under the conditions laid down in Rule 291.
- 2.- Representatives who appear before the Court shall strictly comply with any code of conduct adopted for such representatives by the Court Administrative Committee.

Rule 291 - Exclusion from the proceedings

- 1. If the Court considers that the conduct of a party's representative towards the Court, towards any judge of the Court or towards any member of the staff of the Registry is incompatible with the dignity of the Court or with the requirements of the proper administration of justice, or that such representative uses his rights for purposes other than those for which they were granted, or that such representative is otherwise in breach of any code of conduct adopted pursuant to Rule 290.2 it shall so inform the person concerned. —On the same grounds, the Court may at any time, after having given the person concerned an opportunity to be heard, exclude that person from the proceedings by way of order. That order shall have immediate effect.
- 2. Where a party's representative is excluded from the proceedings, the proceedings shall be stayed for a period fixed by the presiding judge in order to enable the party concerned to appoint another representative.

Rule 292 - Patent attorneys' right of audience

- 1. For the purposes of Article 48(4) of the Agreement, the term "patent attorneys" assisting a representative referred to in Article 48(1) and/or Article 48(2) of the Agreement shall mean persons meeting the requirements of -Rule 287.6 or Rule 287.7 and practising in a Contracting Member State.
- 2. Such patent attorneys shall be allowed to speak at hearings of the Court at the discretion of the Court and subject to the representative's responsibility to coordinate the presentation of a party's case.
- 3. Rules 287 to 291 shall apply mutatis mutandis.

Relation with Agreement: Article 48(4)

Rule 293 – Change of a representative

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Any change of representative shall take effect from the receipt by the Registry of notification that annew representative shall in future be representing the party concerned. Until the moment where such statement is received, the former representative remains responsible for the conduct of the proceedings and for communications between the Court and the party concerned.

CHAPTER

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CHAPTER 4 - STAY OF PROCEEDINGS STAY OF PROCEEDINGS

Rulé 295 - Stay of proceedings

The Court may stay proceedings:

- (a) where it is seized of an action relating to a patent which is also the subject of opposition proceedings or limitation proceedings (including subsequent appeal proceedings) before the European Patent Office or a national authority where a decision in such proceedings may be expected to be given rapidly;
- (b) where it is seized of an action relating to a supplementary protection certificate which is also the subject of proceedings before a national court or authority;
- (c) where an appeal is brought before the Court of Appeal against a decision or order of the Court of First Instance:
 - (i) disposing of the substantive issues in part only,;
 - (ii) disposing of an admissibility issue or a Preliminary objection;
 - (iii) dismissing an application to intervene [Rule 313];
- (d) at the joint request of the parties;
- (e) pursuant to Rule 37;
- (f) pursuant to Rule 118;
- (g) pursuant to Rule 136;
- (h) pursuant to Rule 266;
- (i) pursuant to Rules 310 and 311;
- (j) to give effect to the provisions of Regulation 1215/2012 and the Lugarno Lugano Convention;
- (k) in any other case where the proper administration of justice so requires.

Rule 296 - Duration and effects of a stay of proceedings

- 1. The stay of proceedings shall take effect on the date indicated in the order to stay or, in the absence of such an indication, on the date of that order. -The Court shall stipulate what effect the stay shall have on any existing orders.
- 2. Where the order to stay does not fix the length of the stay, it shall end on the date indicated in the order to resume proceedings or, in the absence of such indication, on the date of the order to resume.
- 3. While proceedings are stayed, time shall cease to run for the purposes of procedural periods. Time shall begin to run afresh for the purposes of procedural periods from the date on which the stay of proceedings comes to an end.

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Rule 297 - Resumption of proceedings

Any decision referred to in Rule 296.2-or ordering the resumption of proceedings before the end of the stay shall be made by order of the judge-rapporteur after hearing the parties. The judge-rapporteur may refer the matter to the panel.

Rule 298 — Accelerated proceedings before the European Patent Office

The Court may of its own motion or at the request of a party request that opposition proceedings or limitation proceedings (including any subsequent appeal proceedings) before the European Patent Office be accelerated in accordance with the proceedings of the European Patent Office. The Court may stay its proceedings in accordance with Rule 295(a) pending the outcome of such request and any subsequent accelerated proceedings.

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CHAPTER CHAPTER 5 - TIME PERIODS

Rule 300 - Calculation of periods

Any period of time prescribed by the Agreement, the Statute, these Rules or any order of the Court for the taking of any procedural step shall be laid down in terms of full days, weeks, months or years and shall be reckoned as follows:

- (a) computation shall start on the day following the day on which the relevant event occurred; in the case of service of a document, the relevant event shall be the receipt of that document in accordance with Chapter 2;
- (b) when a period is expressed as one year or a certain number of years, it shall expire in the relevant subsequent year in the month having the same name and on the day having the same number as the month and the day on which the said event occurred. If the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month;
- (c) when a period is expressed as one month or a certain number of months, it shall expire in the relevant subsequent month on the day which has the same number as the day on which the said event occurred. If the relevant subsequent month has no day with the same number, the period shall expire on the last day of that month;
- (d) when a period is expressed as one week or a certain number of weeks, it shall expire in the relevant subsequent week on the day having the same name as the day on which the said event occurred;
- (e) day shall mean a calendar day unless expressed as a working day-;
- (f) calendar days shall include official holidays of the Contracting Member State in which the division or section of the central division concerned or the Court of Appeal is located, Sundays and Saturdays and Sundays;
- (g) working days shall not include official holidays of the <u>contracting Contracting Member State</u> in which the division <u>or section of the central division</u> concerned or the Court of Appeal is located, <u>Sundays and Sundays</u>.
- (h) periods shall not be suspended during the judicial vacations.

[EPC Rule 131]

Rule 301 - Automatic extension of periods

- 1. If a period expires on a Saturday, Sunday or official holiday of the Contracting Member State in which the division or section of the central division concerned or the Court of Appeal is located, it shall be extended until the end of the first following working day.
- 2. Paragraph 1 shall apply *mutatis mutandis* if documents filed in electronic form cannot be received by the Court.

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CHAPTER CHAPTER 6 - PARTIES TO PROCEEDINGS PARTIES TO PROCEEDINGS

SECTIONSECTION 1 - PLURALITY OF PARTIES PLURALITY OF PARTIES

Rule 302 - Plurality of claimants or patents

- 1. The Court may order that proceedings commenced by a plurality of claimants or in respect of a plurality of patents be heard in separate proceedings.
- 2. Where the Court orders a separation of proceedings the Court shall decide on the payment of a new court fee (or court fees) in accordance with Part_6.
- 3. The Court may order that parallel infringement or revocation proceedings relating to the same patent (or patents) and before the same local or regional division or the central division or the Court of Appeal be heard together where it is in the interests of justice to do so.

Rule 303 - Plurality of defendants*

- 1. Proceedings may be started against a plurality of defendants if the court has competence in-respect of all of them.*
- 2. The Court may separate the proceedings into two or more separate proceedings against different defendants.
- 3. Where the Court orders a separation of proceedings under paragraph 2, the claimants in the new proceedings shall pay a new court fee in accordance with Part 6, unless the Court decides otherwise.

*Note to Rule 303

The Drafting Committee notes that Article 33(1)(b) first paragraph, second sentence of the Agreement has somewhat narrower wording than Article 8(1) of Regulation (EU) No 1215/2012 (Brussels Regulation), since it requires a "commercial relationship" between the defendants.

Rule 304 - Court fees in the event- of plurality of parties

If and as long as a plurality of parties in an action are represented by one and the same representative and take the same position, they shall be regarded as one party as far as the payment of court fees is concerned.

SECTIONSECTION 2 - CHANGE IN PARTIES CHANGE IN PARTIES

Rule 305 - Change in parties

- 1. The Court may, on application by a party, order a person to:
- (a) be added as a party-;

*The Drafting Committee believes that Article 33(1)(b) of the Agreement is narrower in scope than Article 6 of Regulation (EU) No 1215/2012 (Brussels Regulation).

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- (b) cease to be a party;
- (c) be substituted for a party.
- 2. The Court shall invite other parties to the proceedings to comment on the application, as soon as practicable after service of the application.
- 3. When ordering that a person shall become a party or shall cease to be a party, the Court may make appropriate orders as to payment of court fees and costs as regards such party.

Rule 306 - Consequences for the proceedings

- 1. Where the Court orders that a party be added, removed or substituted under Rule 305.1, it shall give directions to regulate the consequences as to case management.
- 2. The Court shall also determine the extent to which a new party is bound by the proceedings as then constituted.

SECTION 3 DEATH, DEMISE OR INSOLVENCY OF A PARTY

SECTION 3 - DEATH, DEMISE OR INSOLVENCY OF A PARTY

Rule 310 - Death or demise of a party

- 1. If a party dies or ceases to exist during proceedings, the proceedings shall be stayed until suchparty is replaced by his successor or successors. The Court may specify a period in this respect.
- 2. If there are more than two parties to the proceedings, the Court may decide that:
- (a) proceedings between the remaining parties be continued separately; and
- (b) the stay shall only concern the proceedings regarding the party that no longer exists.
- 3. If the successor or successors of the party that died or ceased to exist does not or do not continue—the proceedings of his or their own motion, within a period specified by the Court, any other party may apply to have the successor or successors added to or substituted for a party or parties.
- 4. The Court shall decide who shall be added or substituted as a party or parties pursuant to Rule 305 and Rule 306 shall apply *mutatis mutandis*.

Rule 311 - Insolvency of a party

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1. If a party is declared insolvent under the law applicable to the insolvency proceedings the proceedings may be stayed until the competent national authority or person dealing with the insolvency has decided whether to continue the proceedings or not. Where the competent national authority or person dealing with the insolvency decides not to continue the proceedings, the Court may decide, upon a reasoned request by the other party, that the proceedings should be continued if a further stay would be unfair to that other party.	Formatiert: Block
2. The claimant may withdraw the action against an insolvent defendant in accordance with Rule265Rule 265 and a defendant may withdraw a Counterclaim for revocation against an insolvent claimant. Such withdrawal shall not prejudice the action against other parties.	Formatiert: Block
3. Any costs ordercost decision in favour of an insolvent party under Rule 156 shall be payable to the competent national authority or person dealing with the insolvency.	7 Formatiert: Block
4. If proceedings are continued, the effect of a decision of the Court as regards the insolvent party. In the action shall be determined by the said law	Formatiert: Block
ECTIONSECTION 4 - TRANSFER OF PATENT TRANSFER OF PATENT +	Formatiert: Block, Nicht vom nächste Absatz trennen
Rule 312 – Transfer of the patent or patent application during proceedings	Formatiert: Nicht Großbuchstaben Formatiert: Block, Nicht vom nächste Absatz trennen
1. If a patent or patent application is transferred, for one or more Contracting Member States, to- another proprietor after proceedings have been started before the Court, the Court may authorise the new proprietor to -be added as a party or substituted for a party pursuant to Rule 305 to the extent that the patent and the claims in the proceedings have been assigned to the new proprietor. Rule 306 shall apply <i>mutatis mutandis</i> .	Formatiert: Block Formatiert: Schriftart: Kursiv
2. If the new proprietor takes over the proceedings, no new court fee shall be payable, even if the new proprietor is represented by a new representative.	- Formatiert: Block
3. If the new proprietor chooses not to take over the proceedings, any decision in proceedings that* have been recorded in the register shall be binding upon him.	Formatiert: Block
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SECTIONSECTION 5 - INTERVENTION INTERVENTION	Formatiert: Nicht Großbuchstaben
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Rule 313 – Application to intervene	Formatiert: Block
1. An Application to intervene may be lodged at any stage of the proceedings before the Court of First Instance or the Court of Appeal by any person establishing a legal interest in the result of an action submitted to the Court (hereinafter "_'the intervener").").	Formatiert: Block
2. An Application to intervene shall be admissible only if it is made in support, in whole or in part, of a claim, order or remedy sought by one of the parties and is made before the closure of the written procedure unless the Court of First Instance or Court of Appeal orders otherwise.	Formatiert: Block
3. The intervener shall be represented in accordance with Article 48 of the Agreement.	Formatiert: Block
4. The *Application to intervene shall contain:	Formatiert: Block
(a) a reference to the action number of the file;	
(b) the names of the intervener and of the intervener's representative, as well as postal and electronic addresses for service and the names of the persons authorised to accept service.	
(c) the claim, order or remedy in support of which intervention is sought by the intervener; and	
(d) a statement of the facts establishing the right to intervene under paragraphs-1 and 2.	
Rule 314 - Order on Application to intervene	Formatiert: Block
The judge-rapporteur shall decide on the admissibility of the Application to intervene by way of order. The other parties shall be given an opportunity to be heard beforehand.	Formatiert: Block
Rule 315 – Statement in intervention	Formatiert: Block
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1. If an Application to intervene is admissible, the judge-rapporteur or the presiding judge shall:	Formatiert: Block
(a) inform the parties to proceedings; and	
(b) specify a period within which the intervener may lodge a Statement in intervention.	
2. The Registry shall as soon as practicable serve on the intervener any written pleading served by the parties. On a reasoned request by a party the Court may for the protection of confidential information order that a pleading or part of a pleading be disclosed only to certain named persons and subject to appropriate terms of non-disclosure.	Formatiert: Block
3. The *Statement in intervention shall contain:	Formatiert: Block
(a) a statement as to the issues involving the intervener and one or more of the parties, and their connection to the matters in dispute;	
(b) the arguments of law, <u>and</u>	
(c) the facts and evidence relied on.	
4. The intervener shall be treated as a party, unless otherwise ordered by the Court.	Formatiert: Block
Rule 316 – Invitation to intervene	Formatiert: Block
1. The judge-rapporteur or the presiding judge may, of his own motion (but only after consulting	Formatiert: Block
the parties) or on a reasoned request from a party, invite any person concerned by the outcome of the dispute to inform the Court, within a period to be specified, whether he wishes to intervene in the proceedings. A party who contends that the person should be bound by the decision in the action even if he refuses to intervene shall give reasons for this contention in its reasoned request. In such a case the invitation must include these reasons and must state that the party making the request contends that the person should be bound by the decision in the action even if that person refuses to intervene.	
2. If the person wishes to intervene, he shall present his Application to intervene within one month- of service of the invitation and his Statement in intervention within such further period to be specified by the judge-rapporteur or the presiding judge. Rule 313.3 and .4 and Rule 315 shall apply mutatis mutandis.	Formatiert: Block
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3. An intervener shall be bound by the decision in the action.	Formatiert: Block
생활한 발생활한 경험에 가장 사람이 가지 않는 사람이 있는 것이 되었다. 그 사람이 되었다는 것이 되었다. 사람들은 사람들은 사람들은 사람들은 사람들은 사람들이 되었다. 그 사람들은 사람들은 사람들은 사람들은 사람들은 사람들은 사람들은 사람들은	
4. If the person invited to intervene pursuant to Rule 316.1 does not intervene but wishes to contend that he should not be bound by the decision in the action, he shall lodge a statement to that effect within the one month period referred to in Rule 316.2. If no such statement is lodged within the time specified he shall be bound by the decision in the action as between himself and any other party to the action and shall not be entitled to argue that the decision in the action was wrong or that the inviting party did not conduct the proceedings leading to the decision in the action properly. If a statement is lodged within the time specified then the Court shall decide the application having heard the parties and the person invited to intervene. If the Court rejects the application, the person invited to intervene may present his Application to intervene within one month of service of the Court's decision rejecting the application. Rule 316.2 shall apply.	
Rule 317 – No appeal against an order on the Application to intervene	Formatiert: Block
There shall be no right to appeal from an order refusing an Application to intervene.	Formatiert: Block
SECTION 6 - RE-ESTABLISHMENT OF RIGHTS	Formatiert: Englisch (Großbritannien)
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Rule 320 – Re-establishment of rights	Formatiert: Englisch (Großbritannien)
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1. Where a party has failed to observe a time-limit for an appeal under these Rules or set by the Court for a cause which, despite all due care having been taken by the party, was outside his control and the non-observance of this time limit has had the direct consequence of causing the party to	Formatiert: Block
lose a right or means of redress, the relevant panel of the Court may upon the request of that party re-establish the right or means of redress.	
lose a right or means of redress, the relevant panel of the Court may upon the request of that party	
lose a right or means of redress, the relevant panel of the Court may upon the request of that party	Formatiert: Block
lose a right or means of redress, the relevant panel of the Court may upon the request of that party re-establish the right or means of redress. 2. The *Application for Re-establishment of rights shall be lodged with the Registrar for the relevant panel within one month of the removal of the cause for non-observance of the time-limit but in any event within three months of the non-observed time-limitWithin that time-limit a fee	Formatiert: Block
lose a right or means of redress, the relevant panel of the Court may upon the request of that party re-establish the right or means of redress. 2. The *Application for Re-establishment of rights shall be lodged with the Registrar for the relevant panel within one month of the removal of the cause for non-observance of the time-limit but in any event within three months of the non-observed time-limit. Within that time-limit a fee for a Request for Re-establishment of rights fixed under Rule 370 shall be paid. 3. The Application shall-:	
lose a right or means of redress, the relevant panel of the Court may upon the request of that party re-establish the right or means of redress. 2. The *Application for Re-establishment of rights shall be lodged with the Registrar for the relevant panel within one month of the removal of the cause for non-observance of the time-limit but in any event within three months of the non-observed time-limit. Within that time-limit a fee for a Request for Re-establishment of rights fixed under Rule 370 shall be paid. 3. The Application shall-: (a) state the grounds on which it is based and shall set out the facts on which it relies; and	
lose a right or means of redress, the relevant panel of the Court may upon the request of that party re-establish the right or means of redress. 2. The *Application for Re-establishment of rights shall be lodged with the Registrar for the relevant panel within one month of the removal of the cause for non-observance of the time-limit but in any event within three months of the non-observed time-limit. Within that time-limit a fee for a Request for Re-establishment of rights fixed under Rule 370 shall be paid. 3. The Application shall-:	

(b) contain the evidence relied on in the form of affidavits from all persons involved in the non-observance of the time-limit and the persons involved in establishing the precautionary measures of due care taken in order to avoid such cases of non-compliance.	
4. The omitted act shall be performed or completed together with Application for Re-establishment—within the time-limit mentioned in paragraph 2.	Formatiert: Block
5. There shall be no grant of Re-establishment of rights in respect of the non-observance of the time- limit mentioned in paragraphs 2 and 4 of this Rule.	Formatiert: Block
6. The panel shall decide on the Application for Re-establishment of rights by way of orderTheother parties shall be given an opportunity to be heard beforehand.	Formatiert: Block
7. There shall be no right to appeal from an order rejecting an Application for Re-establishment of rights- or from an order granting Re-establishment of rights.	Formatiert: Block
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CHAPTER 7 - MISCELLANEOUS PROVISIONS ON LANGUAGES

Rule 321 - Application by both parties to use of the language in which the patent was granted as language of the proceedings

- 1. At any time during the written procedure, any party may lodge an *Application by both parties to use the language in which the patent was granted as language of the proceedings, in accordance with Article 49(3) of the Agreement. The Application shall state that both parties agree to use the language in which the patent was granted as the language of the proceedings.
- 2. As soon as practicable, the Registry shall forward the Application to the panel.
- 3. The panel shall, as soon as practicable, decide whether it approves the Application by both parties to use the language in which the patent was granted as the language of the proceedings. Where the panel does not approve the Application, the Registry shall as soon as practicable inform the parties who may request, within 10 working days, that the action be referred to another division or to the central division and the action shall be transferred accordingly. The period of 10 working days may be extended by the judge rapporteur on a reasoned request by one of the parties.
- 4. Where the action is transferred to the central division Rule 41 shall apply mutatis mutandis.

5. Where

(a) a Statement of claim is drawn up in the language in which the patent was granted, in accordance with Rule 14.1(b)(ii),

- (b) an Application by both parties to use the language in which the patent was granted as language proceedings is not allowed and
- (c) the parties do not request that the action be referred to the central division,

the claimant shall lodge the Statement of claim in a language provided for in Rule 14.1(a), (c) or (d) within 10 working days. The period of 10 working days may be extended by the judge rapporteur on a reasoned request by the claimant.

6. The judge rapporteur shall at the request of a party specify whether any other pleading or document shall be translated and at whose cost.

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Relation with Agreement: Article 49(3)	
Rule 322 - Proposal from the judge-rapporteur to use of the language in which the patent* was granted as language of the proceedings	Formatiert: Block
At any time during the written procedure and the interim procedure, the judge-rapporteur may, of his own motion or on a request by a party, after consulting the panel, propose to the parties that the language of the proceedings (Rule 14.5) be changed to the language in which the patent was granted, in accordance with Article 49(4) of the Agreement. If the parties and panel agree the language of the proceedings shall be changed.	
Relation with Agreement: Article 49(4)	Formatiert: Block
Rule 323 – Application by one party to use the language in which the patent was granted as- language of the proceedings	Formatiert: Block
1. If a party wishes to use the language in which the patent was granted as language of the proceedings, in accordance with Article_49(5) of the Agreement, the party shall include such *Application in the Statement of Claim, in the case of a claimant, or in the Statement of Defence, in the case of a defendant. The judge-rapporteur shall forward the Application to the President of the Court of First Instance.	Formatiert; Block
2. The President shall invite the other party to indicate, within 10 days, its position on the use of the language in which the patent was granted as language of the proceedings.	Formatiert: Block
3. The President, having consulted the panel of the division, may order that the language in which the patent was granted shall be the language of the proceedings and may make the order conditional on specific translation or interpretation arrangements.	Formatiert: Block
Relation with Agreement: Article-49(5)	Formatiert: Block
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Rule 324 – Consequences where the language of the proceedings is changed in the course of the proceedings

An *Application under Rule 321.1 or 323.1 shall specify whether existing pleadings and other-documents should be translated and at whose cost. If the parties cannot agree the judge-rapporteur or the President of the Court of First Instance, as the case may be, shall decide in accordance with Rule 321.6 or Rule 323.3.

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CHAPTER 8—CASE MANAGEMENT (Measures of organisation of procedure)

CHAPTER 8 - CASE MANAGEMENT Formatiert: Block [Article 43 Agreement, CST RoP Part 2, Chapter 3] Rule 331 - Responsibility for case management Formatiert: Block 1. During the written procedure and the interim procedure, case management shall be the responsibility of the judge-rapporteur subject to Rules 102 and 333. 2. The judge-rapporteur may refer a proposed order to the panel. Formatiert: Block 3. After the closure of the interim conference, case management shall be the responsibility of the presiding judge in consultation with the judge-rapporteur. 4. The Registry shall serve any case management orders on the parties as soon as practicable afterthe decision of the judge-rapporteur, presiding judge or panel. Formatiert: Block Rule 332 - General principles of case management Active case management includes: Formatiert: Block (a) encouraging the parties to co-operate with each other during the proceedings; (b) identifying the issues at an early stage; (c) deciding promptly which issues need full investigation and disposing summarily of other (d) deciding the order in which issues are to be resolved; (e) encouraging the parties to make use of the Centre and facilitating the use of the Centre; (f) helping the parties to settle the whole or part of the action; (g) fixing timetables or otherwise controlling the progress of the action; (h) considering whether the likely benefits of taking a particular step justify the cost of taking it; (i) dealing with as many aspects of the action as the Court can on the same occasion; L_LIVE_EMEA1:15571909L_LIVE_EMEA1:16175270v2

(j) dealing with the action without the parties needing to attend in person;	
(k) making use of available technical means; and	
(1) giving directions to ensure that the hearing of the action proceeds quickly and efficiently.	
Rule 333 – Review of case management orders	Formatiert: Block
1. Case management decisions or orders made by the judge-rapporteur or the presiding judge shall-be reviewed by the panel, on a reasoned Application by a party.	Formatiert: Block
2. An *Application for the review of a case management order shall be lodged within two weeks of service of the orderThe Application shall set out the grounds for review and the evidence, if any, in support of the groundsThe other party shall be given an opportunity to be heard.	Formatiert: Block
3. The party seeking a review shall pay the fee for the review of a case management order, in accordance with Part-6. Rule 15.2 shall apply mutatis mutandis.	Formatiert: Block
4. The panel shall as soon as practicable decide the Application for review and make any necessary revised case management order.	Formatiert: Block
5. A decision of the panel on an Application for review is a procedural decision for the purposes of Rule 220.2.	Formatiert: Block
Rule 334 – Case management powers	Formatiert: Block
Except where the Agreement, the Statute or these Rules provide otherwise, the judge-rapporteur, the presiding judge or the panel may:	Formatiert: Block
(a) extend or shorten the period for compliance with any rule, practice direction or order; <u>[Rule 9.3]</u> :	
(b) adjourn or bring forward the interim conference or the oral hearing;	The second secon
(c) communicate with the parties to instruct them about wishes or requirements of the Court;	
(d) direct a separate hearing of any issue;	
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(e) decide the order in which issues are to be decided;	
(f) exclude an issue from consideration;	
(g) dismiss or decide on a claim after a decision on a preliminary issue makes a decision on further issues irrelevant to the outcome of the action.	
(h) dismiss a pleadingclaim summarily if it has no prospect of succeeding;	
(i) consolidate any matter or issue or order them to be heard together,:	
(j) make any order pursuant to Rules 103 to 109.	and the second
Rule 335 – Varying or revoking orders	Formatiert: Block
The power of the Court to make a case management order includes a power to vary or revoke such	Formatiert: Block
order.	
Rule 336 – Exercise of case management powers	- Formatiert: Block
The Court may exercise its case management powers on the application by a party or of its own- motion, unless otherwise provided.	Formatiert: Block
inotion, unless otherwise provided.	
	<u> </u>
Rule 337 – Orders of the Court's own motion	Formatiert: Block, Nicht vom nächsten Absatz trennen
Where the Court proposes to make an order of hisits own motion, it may do so but only after-hearing the parties.	Formatiert: Block
Rule 340 – Connection — Joinder	Formatiert: Block
1. In the interests of the proper administration of justice, a presiding judge and of avoiding	
inconsistent decisions, where an more than one action concerning the same patent (whether or not between the same parties) is pending (after consultation with any other relevant presiding judge),	
the President of the Court of First Instance where actions are before:	
(a) different panels (whether in the same or different divisions); or the President	
and de la companya d Esta de la companya	
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(b) different panels of the Court of Appeal where actions are pending,

the panels may by agreement, at any time, after hearing the parties, order that two or more actions shall, on account of the connection between them, be heard together.

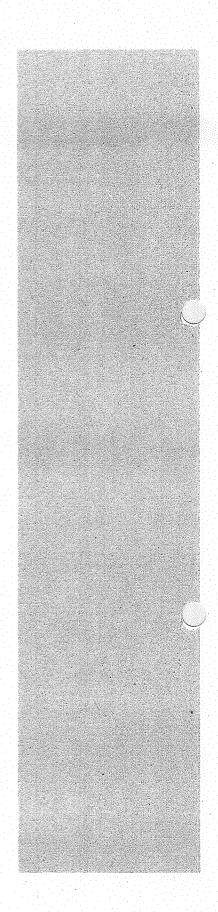
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CHAPTER 9 - RULES RELATING TO THE ORGANISATION OF THE COURT

2. The actions may subsequently be disjoined.



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CHAPTER 9 - RULES RELATING TO THE ORGANISATION OF THE COURT		
Rule 341 – Precedence	= - Formatiert: Block	\bigcup
1. With the exception of the President of the Court of Appeal and the President of the Court of First-Instance, the judges shall rank in precedence according to their seniority in office.	Formatiert: Block	
2. Where there is equal seniority in office, precedence shall be determined by age.	Formatiert: Block	\bigcup
3. Retiring judges who are reappointed shall retain their former precedence.	Formatiert: Block	J
4. Unless otherwise agreed by the panel the most senior judge shall be the presiding judge.	Formatiert: Block	\bigcup
Rule 342 – Dates, times and place of the sittings of the Court	Formatiert: Block	J
1. The duration of judicial vacations shall be fixed by the President of the Court of Appeal, on at proposal from the PresidiumThe dates and times of the sittings of the Court shall be decided by the presiding judge of the local or regional division in question.	Formatiert: Block)
2. The Court may choose to hold one or more particular sittings in a place other than that in which it has its seat. Subject to any rules agreed by the relevant Contracting Member States pursuant to Article 7(5) of the Agreement where an action is pending before a regional division the judge-rapporteur or the presiding judge shall designate the place within the region for each hearing having regard to the residence or place of business of the defendant(s) and all other relevant circumstances such as the facilities available, the financial means of the parties and the place of infringement.	Formatiert: Block	
Relation with draft- Statute: Article 17	Formatiert: Block	
Rule 343 – Order in which actions are to be dealt with	Formatiert: Block	
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1. The Court shall deal with the actions before it in the order in which they become ready for hearing in accordance with Rule 108.	Formatiert: Block
2. The presiding judge of a local or regional division for an action pending before it, the President presiding judge of the Courtsection of First Instance the central division for an action pending before it or the President of the Court of Appeal for an action pending before the Court of Appeal may of its own motion or on application by a party, after hearing the parties ([Rule 264):]:	Formatiert: Block
(a) direct that a particular action be given priority and that time limits provided for in these Rules be shortened;	Formatiert: Schriftart: Fett, Kursiv
(b) defer an action to be dealt with later, in particular with a view to facilitating an amicable settlement of the dispute.	
[CST RoP Article 47]	Formatiert: Block
Rule 344 – Deliberations	Formatiert: Block
1. The Court shall deliberate in closed session.	Formatiert: Block
2. The presiding judge shall preside over the deliberations. Only those judges who were present at the oral hearing may take part in the deliberations on the decision.	Formatiert: Block
3. The deliberation of the Court shall take place as soon as possible after the closure of the oral-hearing.	Formatiert: Block
Rule 345 – Composition of panels and assignment of actions	
1. The presiding judge of each local or regional division or section of the central division (being the judge in the division or section appointed by the Presidium as the presiding judge of the division or section) shall allocate the legally qualified judges assigned to his division or section to its panels for the duration of one year. He shall previously consult all judges of the division. The allocation shall be subject to the approval of the President of the Court of First Instance.	Formatiert: Block
2 The allocation shall be in conformity with Article 8 of the Agreement.	Formatiert: Block
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3 The actions pending in the division or section shall be assigned to the panels by the Registrar- following aan action-distribution-scheme established by the presiding judge of the division or section for the duration of one calendar year, preferably distributing the actions accordinglyaccording to the date of receipt of the actions at the division. Paragraph 1, sentences 2 and 3 shall apply mutatis mutandis to the establishment of the action distribution scheme or section.	Formatiert: Block
4 Each panel may delegate to one of more judges of the panel:	Formatiert: Block
(a)- the function of acting as a single judge; or	
(b)- the function of acting for the panel in the procedures of Part 1 Chapter 4 (Procedure for the Determination of Damages and Compensation, including the procedure for the laying open of books) and Chapter 5 (Procedure for Cost Orders). Decisions). These functions may be delegated to the judge-rapporteur who has prepared the action for the oral hearing.	
5 The presiding judge of the division or section shall designate a judge assigned to his division as a standing judge for urgent actionsThe assignment may be limited to certain periods of time.	- Formatiert: Block
6 If all parties agree to having the action heard by a single judge, the presiding judge of the panel-to which the action is allocated shall assign the action to a legally qualified judge of the panel.	Formatiert: Block
7. ParagraphsWhere paragraphs 1 to 6 shall-apply mutatis mutandis to the central division. Allereferences to decisions by the presiding judge of the division shall, regarding a section of the central division, refer to the President of the Court of First Instance may of his own motion review that decision.	Formatiert: Block
8. Paragraphs 1 to 6 shall apply mutatis mutandis to the Court of AppealAll references to the presiding judge of the division shall, regarding the Court of Appeal, refer to the President of the Court of Appeal.	Formatiert: Block
Relation with draft-Statute: Article 19	- Formatiert: Block
Rule 346 — Settling difficulties arising as to the application Application of Article 7 of the Statute	Formatiert: Block
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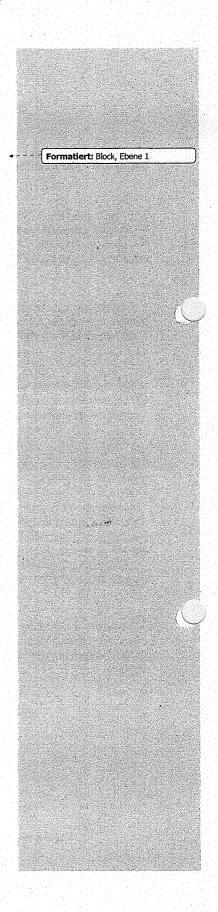
1.— If a judge of the Court of First Instance, during his term of office, does not respect the obligations arising from his office, pursuant to Article 7(1) and (2) of the Statute, the President -of the Court of the First Instance, after hearing the judge, may formally in writing put the judge on notice of such failureIf the judge continues not to fully respect the obligations of his office, the President of the Court of First Instance shall ask the President to decide on the consequences of such failure.	Formatiert: Block
2. Paragraph 1 shall apply to a judge of the Court of Appeal. The President of the Court of Appeals shall perform the functions attributed in paragraph 1 to the President of the Court of First Instance.	Formatiert: Block
3 If a judge of the Court, after having ceased to hold office, does not behave with integrity and discretion as regards the acceptance of appointments or benefits, the President of the Court of First Instance or the President of the Court of Appeal may ask the Presidium to decide on the consequences of such behaviour.	Formatiert: Block
4 If a party objects to a judge taking part in proceedings pursuant to Article 7(4) of the Statute, the presiding judge of the local or regional division to which the judge is allocated or, if the action is pending before a section of the central division, the President of the Courtpresiding judge of First Instancethat section shall, after hearing the judge concerned, decide whether the objection is admissible having regard to Article-7(2) of the Statute.	Formatiert: Block
5 If the objection is admissible, the presiding judge of the division or the President section of the Court of First Instance, as the action may be central division shall refer the action to the Presidium which shall hear the judge concerned and shall decide whether the objection shall stand or not.	Formatiert: Block
6. Paragraphs 4 and 5 shall apply to a judge of the Court of AppealThe President presiding judge of the Court of Appeal panel shall perform the functions attributed in these Rules to the President presiding judge of the Court of First Instance panel or section in these paragraphs.	Formatiert: Block
Relation with draft -Statute: Article 7	Formatiert: Block
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CHAPTERCHAPTER 10 - DECISIONS AND ORDERS -	- Formatiert: Nicht Großbuchstaben
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	Formatiert: Block
Rule 350 – Decisions	Formatiert: Block
1. Any decision shall contain:	Formatiert: Block
(a) the statement that it is a decision of the Court,	
(b) the date of its delivery;	
(c) the names of the presiding judge, the judge-rapporteur and other judges taking part in it-;	
(d) the names of the parties and of the parties' representatives;	
(e) an indication of the claim, order or remedy sought by the parties;	error dan error er
(f) a summary of the facts; and	
(g) the grounds for the decision,	
2. The order of the Court consequential upon the decision (other than costs) including any order	- Formatiert: Block
giving immediate effect to an injunction, shall be appended to the decisionThe Order shall	
comply with Rule 351.	
3. Any dissenting opinion shall be attached to the Court's decision.	Formatiert: Block
4. The decision of the Court of First Instance shall contain a summary of the requests and facts-	- Formatiert: Block
submitted by the parties and a statement of the facts and arguments on which the Court bases its decision.	
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5. All decisions shall be recorded in the register.	Formatiert: Block
AND TRANSPORT OF THE PROPERTY	
Relation with draft-Statute: Article-35(4)	Formatiert: Block
	A Company of the Comp
Rule 351 – Orders	Formatiert: Block
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1. Every order shall contain; (a) the statement that it is an order of the judge-rapporteur, of the standing judge, of the single judge, of the presiding judge, of a President of the Court or of the Courts; (b) the date of its adoption; (c) the names of any judge taking part in its adoption; (d) the names of the parties and of the parties' representatives; and (e) the operative part of the order. 2. Where, in accordance with these Rules the Court grants leave to appeal an order the order shall ine addition contain: (a) a statement of the forms of order sought by the parties; (b) a summary of the facts; and (c) the grounds for the order. 3. All orders shall be recorded in the register. Formatiert: Block Formatiert:		
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Rule 354 – Enforcement +	Formatiert: Block
1. Subject to Rule 118.9 and Rule 352 decisions and orders of the Court shall be directlyenforceable from their date of delivery in each Contracting Member State in accordance with the enforcement procedures and conditions governed by the law of the particular Contracting Member State where enforcement takes place.	Formatiert: Block
2. Decisions and orders of the Court shall be enforced in those non-Contracting Member States—which are Member States of Regulation (EU) No 1215/2012 or the Lugano Convention in accordance with the provisions of the said Regulation or Convention as the case may be.	Formatiert: Block
3. Decisions and orders of the Court shall be enforced in States which are not Contracting Members-States or member states of the Regulation or Convention referred to in paragraph 2 in accordance with the law of that state.	Formatiert: Block
4. Where during an action an enforceable decision or order of the Court is subsequently varied orrevoked, the Court may order the party which has enforced such decision or order, upon the request of the party against whom the decision or order has been enforced, to provide appropriate compensation for any injury caused by the enforcement. Rule 125 shall apply mutatis mutandis. Rule 125 shall apply mutatis mutandis. Where an enforceable decision or order has been made pursuant to a finding of infringement of a patent and, following the conclusion of the action, the patent is amended or revoked, the Court may order, upon the request of the party against whom the decision or order would be enforceable, that the decision or order cease to be enforceable. Rule 125 shall apply mutatis mutandis.	Formatiert: Block
5. The Court's decisions and orders may provide for periodic penalty payments payable to the Court in the event that a party fails to comply with the terms of the order or an earlier orderThe value of such payments shall be set by the Court having regard to the importance of the order in question.	Formatiert: Block
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CHAPTERRelation with Agreement: Article 82



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CHAPTER 11 - DECISION BY DEFAULT DECISION BY DEFAULT	Formatiert: Nicht Großbuchstaben
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Rule 355 – Decision by default (Court of First Instance)	Formatiert: Block
1. If a party fails to take a step within the time limit set according to these Rules or by the Court, the Court of First Instance may give decision by default.	Formatiert: Block
2. A decision by default shall be enforceable. The Court may, however,—:	Formatiert: Block
(a) grant a stay of enforcement until it has given its decision on any Application under Rule 356, or	
(b) make enforcement subject to the provision of security; this security shall be released if no Application is made or if the Application fails.	
Rule 356 – Application to set aside a decision by default	Formatiert: Block
1. A party against whom a decision by default has been given may lodge an *Application to set*aside that decision within one month of service of the decision.	Formatiert: Block
2. The *Application to set aside a decision by default shall eomply with the requirements of Rule 24 or Rule 29a as the case may be together with contain the party's explanation for the default. In addition, it It shall mention the date and number of the decision by default. The party shall pay a fee for the Application to set aside the decision by default [EUR***]. The Application shall be accompanied by the step the party has failed to take.	Formatiert: Block
3. If the provisions of Rule 356.2 are met the Application shall be allowed and a note of allowance——shall be included in any publication of the decision by default.	Formatiert: Block
Relation with draft Statute: Article 37	Formatiert: Block
Rule 357 – Decision by default (Court of Appeal)	Formatiert: Block
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1. Rules 355 and 356 shall apply mutatis mutandis where a respondent on whom a Statement of appeal and a Statement of the grounds of appeal have been duly served fails to lodge a Statement of response or where a party fails to file a Reply to a Statement of Cross-Appeal or translations ordered by the judge-rapporteur.

2. If the respondent fails to lodge a Statement of response and fails to lodge an Application to setaside pursuant to Rule 356 the Court of Appeal shall consider the merits of the appeal and if the appeal is well-founded it shall give a reasoned decision.

3. For the avoidance of doubt the 3. The provisions of Rules 355 and 356 shall not apply where aparty fails to comply with the time limits set in Rule 224.1.

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CHAPTER

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CHAPTER 12 – ACTIONS BOUND TO FAIL OR MANIFESTLY INADMISSIBLE OR MANIFESTLY INADMISSIBLE	Formatiert: Nicht Großbuchstaben Formatiert: Nicht Großbuchstaben
Rule 360 – No need to adjudicate	Formatiert: Block
If the Court finds that an action has become devoid of purpose and that there is no longer any need- to adjudicate on it, it may at any time, on the application of a party or of its own motion, after giving the parties an opportunity to be heard, dispose of the action by way of order.	Formatiert: Block
Rule 361 – Action manifestly bound to fail	Formatiert: Block
Where it is clear that the Court has no jurisdiction to take cognisance of an action or of certain of the claims therein or where the action or defence is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Court may, after giving the parties an opportunity to be heard, give a decision by way of order.	Formatiert: Block
Rule 362 – Absolute bar to proceeding with an action	Formatiert: Block
The Court may at any time, on the application of a party or of its own motion, after giving the parties an opportunity to be heard, decide that there exists an absolute bar to proceeding with an action, for example because of the application of the principle of res judicata. Rule 363.2 shall apply mutatis mutandis.	Formatiert: Block
Rule 363 – Orders dismissing manifestly inadmissible claims	Formatiert: Block
1. Orders under Rules 360, 361 and 362 shall be taken by the panel -upon the recommendation of the judge-rapporteur.	Formatiert: Block
2. Where the decision is taken by the Court of First Instance pursuant to Rules 360, 361 and 362 it is a final decision within the meaning of Rule 220.1(a).	- Formatiert: Block
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CHAPTER

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CHAPTER 13 – SETTLEMENTSETTLEMENT Rule 365 – Confirmation by the Court of a settlement 1. Where the parties have concluded their action by way of settlement, they shall inform the judge-rapporteur. The Court shall confirm the settlement by decision of the Court [Rule 11.2] and the decision may be enforced as a final decision of the Court. 2. At the request of the parties the Court may order that details of the settlement are confidential. Formatiert: Block 4. The judge-rapporteur shall give a decision as to costs in accordance with the terms of the settlement or, failing that, at his discretion.		
Rule 365 – Confirmation by the Court of a settlement 1. Where the parties have concluded their action by way of settlement, they shall inform the judge-rapporteur. The Court shall confirm the settlement by decision of the Court [Rule 11.2] and the decision may be enforced as a final decision of the Court. 2. At the request of the parties the Court may order that details of the settlement are confidential. 3. Subject to Rule 365.2 the decision of the Court under Rule 365.1 shall be entered on the register. Formatiert: Block 4. The judge-rapporteur shall give a decision as to costs in accordance with the terms of the		
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	4. The indee-rapporteur shall give a decision as to costs in accordance with the terms of the	- Formatiert: Block
Relation with Agreement: Article 79 Formatiert: Block	Relation with Agreement: Article 79	Formatiert: Block
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PART 6 – FEES AND LEGAL AID	
COURT FEES -	Formatiert: Block
Rule 370 – Court fees	Formatiert: Block
1. Court fees provided for in these Rules shall be shall be paid to the Court. They shall be levied in accordance with the provisions contained in this Part.	Formatiert: Block
2. The court fees to be paid to the Court shall be as follows:	Formatiert: Block
(a) Fixed fees, in [EUR**]	Formatiert: Block
Court of First Instance	
Fee for an opt-out	
Fee for withdrawal of an opt-out	
Fee for infringement action:	
Fee for counterclaim for revocation:	
Fee for revocation action:	
Fee for counterclaim for infringement:	
Fee for declaration of non-infringement:	
Fee for action for compensation for licence of right	
Fee for action against a decision of the European Patent Office:	
Fee for application to review a case management order:	
Fee for application- to preserve evidence:	
Fee for application for provisional measures:	
Fee for application to determine damages:	
Fee for application to determine compensation pursuant to Rule 125:	
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Fee for application for re-establishment of rights:	7 2 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3 3
Fee for application to file a protective letter to or to prolong the period kept on the register:	
Fee for application to set aside decision by default:	
Court of Appeal	
Fee for appeal pursuant to Rule 220.1(a) and (b)	
Fee for appeal pursuant to Rule 220.1(c) and .2	
Fee for lodging a protective letter:	
Fee for rehearing:	
(b) Value-based fees in [EUR***]	
Value in dispute in EUR Fees	
Rule 371 – Time periods for paying court fees	
1The fixed fees [{[Rules 5, 15.1, 26, 47, 53, 68, 132, 192.5, 206.4, 207.3, 228]}] shall be paid at the time of lodging the relevant pleading or application. The payment shall be made to one of the bank accounts indicated by the Court and it shall indicate the paying party or its representative together with the number of the patent (or patents) involved and the number of the case.	Formatiert: Block
2 Proof of payment shall be provided together with the relevant pleading or application.	Formatiert: Block
3 In cases of urgency, where a payment in advance is not possible, the representative of the party in question shall pay the fixed fee within the period set by the Court and the Court may order that the relevant pleading or application shall be deemed lodged and effective when received by the Registry if payment of the fixed fee is made within such period.	Formatiert: Block
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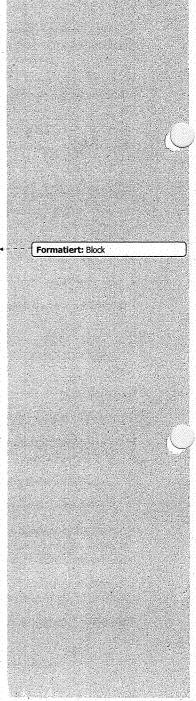
4.- The value-based fee shall be paid within 10-working days of service of the order determining the-Formatiert: Block value of the dispute in accordance with the Rules 22, 31, 57, 58, 69, 104(i) and 133. 5.- Where an Application for legal aid has been lodged in accordance with Rule 377, the rules on Formatiert: Block the obligation as to the time when to pay the fixed fees under Rule 371.1 shall not apply. Relation with Agreement: Article 70 Formatiert: Block LEGAL AID Formatiert: Block Formatiert: Block Rule 375 - Aim and scope 1. In order to ensure effective access to justice, the Court may grant legal aid to a party who is a natural person (the applicant). 2. Legal aid may be granted in respect of any proceedings before the Court. Formatiert: Block, Nicht vom nächsten Rule 376 - Costs eligible for legal aid 1. Subject to Article 71(3) of the Agreement, legal aid may cover, in whole or in part, the following costs: (a) court fees; (b) costs of legal assistance and representation regarding: (i) pre-litigation advice with a view to reaching a settlement prior to commencing legal Formatiert: Einzug: Links: 1,27 cm proceedings; (ii) commencing and maintaining proceedings before the Court; (iii) all costs relating to proceedings including the application for legal aid-; (c) other necessary costs related to the proceedings to be borne by a party, including costs of witnesses, experts, interpreters and translators and necessary travel, accommodation and subsistence costs of the applicant and his representative. 2. Subject to Article 71(3) of the Agreement, legal aid may also cover the costs awarded to the successful party, in the event that the applicant loses the action. Formatiert: Block Rule 377 - Conditions for granting legal aid L_LIVE_EMEA1:15571909L_LIVE_EMEA1:16175270v2

- 1. Any natural person shall be entitled to apply for legal aid where:
- (a) due to his or her economic situation, he or she is wholly or partly unable to meet the costs referred to in Rule 376; and
- (b) the action in respect of which the application for legal aid is made has a reasonable prospect of success.
- 2. The Administrative Committee shall define thresholds above which legal aid applicants are deemed wholly or partly able to bear the costs of proceedings set out in Rule 376. These thresholds may not prevent applicants whose economic situation is above the thresholds from being granted legal aid if they prove that they are in fact unable to pay the costs of the proceedings referred to in Rule 376 as a result of the high level of the cost of living in the Contracting Member State of domicile or habitual residence.
- 3. When deciding on the grant of legal aid the Court shall, without prejudice to paragraph 1(a), consider all relevant circumstances including the importance of the action to the applicant and also the nature of the action when the application concerns a claim arising directly out of the applicant's trade or self-employed profession.

Rule 378 - Application for legal aid

- 1. An application for legal aid may be lodged before or after proceedings have been started before the Court.
- 2. The *Application for legal aid shall contain in a language of a Contracting Member State:
- (a) the name of the applicant;
- (b) postal and electronic addresses for service on the applicant and the names of the persons authorised to accept service;
- (c) the name of the other party as well as postal and electronic addresses for service on the other party where available and the names of the persons authorised to accept service, if known;
- (d) the action number of the action in respect of which the application is made or, where the application is lodged before the action has been brought, a brief description of the action;
- (e) an indication of the value of the action and the costs to be covered by legal aid;
- (f) where legal aid is requested for-costs of legal assistance and representation, the name of the proposed representative;

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- (g) an indication of the applicant's financial resources, such as income, assets and capital, and of the applicant's family situation including an assessment of the resources of persons who are financially dependent on the applicant; and
- (h) where appropriate, a reasoned request for suspension of a time limit which would otherwise need to be observed until the date of notification of the order deciding on legal aid.
- 3. The application for legal aid must be supported by:
- (a) evidence of the applicant's need for assistance, such as certificates attesting his income, assets and capital and family situation; and
- (b) where the application is lodged before the action has been brought, an indication of the evidence in support of the action.
- 4. In the event of an appeal, a new application shall be lodged.
- 5. Rule 8 shall not apply.

Rule 379 - Examination and decision

- 1. The Registry shall examine the formal admissibility of the application for legal aid.
- 2. If the requirements referred to in Rule 378 have not been met, the applicant shall, as soon as practicable, be invited to correct the deficiencies within 14 days.
- 3. If the requirements referred to in Rule 378 have been met, the decision on such application shall be taken, by way of order, by the judge-rapporteur or, where the application is lodged before the action has been brought, by the standing judge.
- 4. Before making a decision on an application for legal aid, the Court shall invite the other party to submit written observations unless it is already apparent from the information submitted that the conditions referred to in Rule 377 are not met.
- 5. An order refusing legal aid shall state the reasons on which it is based.
- 6. An order granting legal aid may provide for:
- (a) an exemption, wholly or partly, from Court fees;
- (b)- an interim amount to be paid to enable the applicant and/or the representative of the applicant to meet any request of the judge-rapporteur or single judge prior to making a final order:
- (c) an amount to be paid to the representative of the applicant or a limit which the representative's disbursements and fees may not exceed;
- (d) a contribution to be made by the applicant to the costs referred to in Rule 376.1(c).
- 7. Where the legal aid covers, in whole or in part, the costs of legal assistance and representation the order granting legal aid shall designate the representative of the applicant-

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- 8. On a request by the designated representative, the Court may order that an amount shall be paid by way of advance.
- 9. Where requested by the applicant in accordance with Rule 378.2(gh), the Court shall decide on the suspension of any time limit.

Rule 380 - Withdrawal of legal aid

- 1. If the economic situation of the applicant which has led to the grant of legal aid according to Rule 377.1(a) alters during the proceedings, or if the information given by the applicant pursuant to Rule 378.2(g) is found to be wholly or partially incorrect, the Court may at any time, of his own motion or on a reasoned request of the other party, withdraw wholly or partly legal aid but only after having heard the applicant.
- 2. An order withdrawing legal aid shall state the reasons on which it is based.

Rule 381 - Appeal

An order wholly or partly refusing or withdrawing legal aid may be appealed to the Court of Appeal if the Court of First Instance grants leave to appeal. If such leave is granted the Court may grant legal aid for the conduct of the appeal.

Rule 382 - Recovery

- 1. Where the Court has ordered another party to pay the costs of the applicant for legal aid, that other party shall be required to refund to the Court any sums advanced by way of legal aid. In the event of a shortfall between the costs so ordered and the sums advanced by way of legal aid the applicant may be required to meet such shortfall from any damages or compensation awarded by the Court or from any sum received by way of settlement.
- 2. In the event of withdrawal of legal aid under Rule 380, the applicant may be required to refund to the Court any sums advanced by way of legal aid.

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Formatiert: Links: 3,17 cm, Rechts: 3,17 cm, Abschnittsbeginn: Neue Seite



RAT DER EUROPÄISCHEN UNION

Brüssel, den 14. Februar 2013 (OR. en)

16351/2/12 REV 2

PI 148 COUR 77

GESETZGEBUNGSAKTE UND ANDERE RECHTSINSTRUMENTE

Betr.: Übereinkommen über ein Einheitliches Patentgericht

ÜBEREINKOMMEN ÜBER EIN EINHEITLICHES PATENTGERICHT

ÜBEREINKOMMEN ÜBER EIN EINHEITLICHES PATENTGERICHT

DIE VERTRAGSMITGLIEDSTAATEN -

IN DER ERWÄGUNG, dass die Zusammenarbeit zwischen den Mitgliedstaaten der Europäischen Union auf dem Gebiet des Patentwesens einen wesentlichen Beitrag zum Integrationsprozess in Europa leistet, insbesondere zur Schaffung eines durch den freien Waren- und Dienstleistungsverkehr gekennzeichneten Binnenmarkts innerhalb der Europäischen Union und zur Verwirklichung eines Systems, mit dem sichergestellt wird, dass der Wettbewerb im Binnenmarkt nicht verzerrt wird,

IN DER ERWÄGUNG, dass der fragmentierte Patentmarkt und die beträchtlichen Unterschiede zwischen den nationalen Gerichtssystemen sich nachteilig auf die Innovation auswirken, insbesondere im Falle kleiner und mittlerer Unternehmen, für die es schwierig ist, ihre Patente durchzusetzen und sich gegen unberechtigte Klagen und Klagen im Zusammenhang mit Patenten, die für nichtig erklärt werden sollten, zu wehren,

IN DER ERWÄGUNG, dass das Europäische Patentübereinkommen (EPÜ), das von allen Mitgliedstaaten der Europäischen Union ratifiziert worden ist, ein einheitliches Verfahren für die Erteilung europäischer Patente durch das Europäische Patentamt vorsieht,

IN DER ERWÄGUNG, dass Patentinhaber nach der Verordnung (EU) Nr. 1257/2012¹ eine einheitliche Wirkung ihrer europäischen Patente beantragen können, damit sie in den Mitgliedstaaten der Europäischen Union, die an der Verstärkten Zusammenarbeit teilnehmen, einen einheitlichen Patentschutz genießen,

Verordnung (EU) Nr. 1257/2012 des Europäischen Parlaments und des Rates vom 17. Dezember 2012 über die Umsetzung der Verstärkten Zusammenarbeit im Bereich der Schaffung eines einheitlichen Patentschutzes (ABI. EU L 361 vom 31.12.2012, S. 1) mit allen nachfolgenden Änderungen.

IN DEM WUNSCH, durch die Errichtung eines Einheitlichen Patentgerichts für die Regelung von Rechtsstreitigkeiten über die Verletzung und Rechtsgültigkeit von Patenten die Durchsetzung von Patenten und die Verteidigung gegen unbegründete Klagen und Klagen im Zusammenhang mit Patenten, die für nichtig erklärt werden sollten, zu verbessern und die Rechtssicherheit zu stärken,

IN DER ERWÄGUNG, dass das Einheitliche Patentgericht in der Lage sein sollte, rasche und hochqualifizierte Entscheidungen sicherzustellen und dabei einen angemessenen Interessenausgleich zwischen den Rechteinhabern und anderen Parteien unter Berücksichtigung der erforderlichen Verhältnismäßigkeit und Flexibilität zu gewährleisten,

IN DER ERWÄGUNG, dass das Einheitliche Patentgericht ein gemeinsames Gericht der Vertragsmitgliedstaaten und somit Teil ihres Rechtswesens sein sollte und dass es mit einer ausschließlichen Zuständigkeit für europäische Patente mit einheitlicher Wirkung und für die nach dem EPÜ erteilten Patente ausgestattet sein sollte,

IN DER ERWÄGUNG, dass der Gerichtshof der Europäischen Union die Einheitlichkeit der Rechtsordnung der Union und den Vorrang des Rechts der Europäischen Union sicherzustellen hat,

UNTER HINWEIS AUF die Verpflichtungen der Vertragsmitgliedstaaten im Rahmen des Vertrags über die Europäische Union (EUV) und des Vertrags über die Arbeitsweise der Europäischen Union (AEUV), einschließlich der Verpflichtung zur loyalen Zusammenarbeit nach Artikel 4 Absatz 3 EUV und der Verpflichtung, durch das Einheitliche Patentgericht die uneingeschränkte Anwendung und Achtung des Unionsrechts in ihrem jeweiligen Hoheitsgebiet und den gerichtlichen Schutz der dem Einzelnen aus diesem Recht erwachsenden Rechte zu gewährleisten,

IN DER ERWÄGUNG, dass das Einheitliche Patentgericht, wie jedes nationale Gericht auch, das Unionsrecht beachten und anwenden und in Zusammenarbeit mit dem Gerichtshof der Europäischen Union – dem Hüter des Unionsrechts –seine korrekte Anwendung und einheitliche Auslegung sicherstellen muss; insbesondere muss es bei der ordnungsgemäßen Auslegung des Unionsrechts mit dem Gerichtshof der Europäischen Union zusammenarbeiten, indem es sich auf dessen Rechtsprechung stützt und ihn gemäß Artikel 267 AEUV um Vorabentscheidungen ersucht,

IN DER ERWÄGUNG, dass nach der Rechtsprechung des Gerichtshofs der Europäischen Union zur außervertraglichen Haftung die Vertragsmitgliedstaaten für Schäden, die durch Verstöße des Einheitlichen Patentgerichts gegen das Unionsrecht einschließlich des Versäumnisses, den Gerichtshof der Europäischen Union um eine Vorabentscheidung zu ersuchen, entstanden sind, haften sollten,

IN DER ERWÄGUNG, dass Verstöße des Einheitlichen Patentgerichts gegen das Unionsrecht, einschließlich des Versäumnisses, den Gerichtshof der Europäischen Union um eine Vorabentscheidung zu ersuchen, unmittelbar den Vertragsmitgliedstaaten anzulasten sind und daher gemäß den Artikeln 258, 259 und 260 AEUV gegen jeden Vertragsmitgliedstaat ein Verletzungsverfahren angestrengt werden kann, um die Achtung des Vorrangs des Unionsrechts und seine ordnungsgemäße Anwendung zu gewährleisten,

UNTER HINWEIS auf den Vorrang des Unionsrechts, das den EUV, den AEUV, die Charta der Grundrechte der Europäischen Union, die vom Gerichtshof der Europäischen Union entwickelten allgemeinen Grundsätze des Unionsrechts, insbesondere das Recht auf einen wirksamen Rechtsbehelf vor einem Gericht und das Recht, von einem unabhängigen und unparteiischen Gericht in einem fairen Verfahren öffentlich und innerhalb angemessener Frist gehört zu werden, sowie die Rechtsprechung des Gerichtshofs der Europäischen Union und das Sekundärrecht der Europäischen Union umfasst,

IN DER ERWÄGUNG, dass dieses Übereinkommen jedem Mitgliedstaat der Europäischen Union zum Beitritt offenstehen sollte; Mitgliedstaaten, die beschlossen haben, nicht an der Verstärkten Zusammenarbeit im Bereich der Schaffung eines einheitlichen Patentschutzes teilzunehmen, können sich in Bezug auf europäische Patente, die für ihr jeweiliges Hoheitsgebiet erteilt wurden, an diesem Übereinkommen beteiligen,

IN DER ERWÄGUNG, dass dieses Übereinkommen am 1. Januar 2014 in Kraft treten sollte oder aber am ersten Tag des vierten Monats nach Hinterlegung der 13. Ratifikations- oder Beitrittsurkunde, sofern dem Kreis der Vertragsmitgliedstaaten, die ihre Ratifikations- oder Beitrittsurkunden hinterlegt haben, die drei Staaten angehören, in denen es im Jahr vor dem Jahr der Unterzeichnung des Übereinkommens die meisten gültigen europäischen Patente gab, oder aber am ersten Tag des vierten Monats nach dem Inkrafttreten der Änderungen der Verordnung (EU) 1215/2012¹, die das Verhältnis zwischen jener Verordnung und diesem Übereinkommen betreffen, je nachdem, welcher Zeitpunkt der späteste ist –

SIND WIE FOLGT ÜBEREINGEKOMMEN:

Verordnung (EU) Nr. 1215/2012 des Europäischen Parlaments und des Rates vom 12. Dezember 2012 über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen (ABI. L 351 vom 20.12.2012, S. 1) mit allen nachfolgenden Änderungen.

TEIL I - ALLGEMEINE UND INSTITUTIONELLE BESTIMMUNGEN

KAPITEL I - ALLGEMEINE BESTIMMUNGEN

ARTIKEL 1

Einheitliches Patentgericht

Es wird ein Einheitliches Patentgericht für die Regelung von Streitigkeiten über europäische Patente und europäische Patente mit einheitlicher Wirkung errichtet.

Das Einheitliche Patentgericht ist ein gemeinsames Gericht der Vertragsmitgliedstaaten und unterliegt somit denselben Verpflichtungen nach dem Unionsrecht wie jedes nationale Gericht der Vertragsmitgliedstaaten.

ARTIKEL 2

Begriffsbestimmungen

Für die Zwecke dieses Übereinkommens bezeichnet der Ausdruck

- a) "Gericht" das Einheitliche Patentgericht, das mit diesem Übereinkommen errichtet wird,
- b) "Mitgliedstaat" einen Mitgliedstaat der Europäischen Union,

- c) "Vertragsmitgliedstaat" einen Mitgliedstaat, der Vertragspartei dieses Übereinkommens ist,
- d) "EPÜ" das Übereinkommen über die Erteilung europäischer Patente vom 5. Oktober 1973 mit allen nachfolgenden Änderungen,
- e) "europäisches Patent" ein nach dem EPÜ erteiltes Patent, das keine einheitliche Wirkung aufgrund der Verordnung (EU) Nr. 1257/2012 hat,
- f) "europäisches Patent mit einheitlicher Wirkung" ein nach dem EPÜ erteiltes Patent, das aufgrund der Verordnung (EU) Nr. 1257/2012 einheitliche Wirkung hat,
- g) "Patent" ein europäisches Patent und/oder ein europäisches Patent mit einheitlicher Wirkung,
- h) "ergänzendes Schutzzertifikat" ein nach der Verordnung (EG) Nr. 469/2009¹ oder der Verordnung (EG) Nr. 1610/96² erteiltes ergänzendes Schutzzertifikat,
- i) "Satzung" die als Anhang I beigefügte Satzung des Gerichts, die Bestandteil dieses Übereinkommens ist,
- j) "Verfahrensordnung" die gemäß Artikel 41 festgelegte Verfahrensordnung des Gerichts.

Verordnung (EG) Nr. 1610/96 des Europäischen Parlaments und des Rates vom 23. Juli 1996 über die Schaffung eines ergänzenden Schutzzertifikats für Pflanzenschutzmittel (ABI. EG L 198 vom 8.8.1996, S. 30) mit allen nachfolgenden Änderungen.

Verordnung (EG) Nr. 469/2009 des Europäischen Parlaments und des Rates vom 6. Mai 2009 über das ergänzende Schutzzertifikat für Arzneimittel (ABl. EU L 152 vom 16.6.2009, S. 1) mit allen nachfolgenden Änderungen.

ARTIKEL 3

Geltungsbereich

Dieses Übereinkommen gilt

- a) für alle europäischen Patente mit einheitlicher Wirkung,
- b) für alle ergänzenden Schutzzertifikate, die zu einem durch ein Patent geschützten Erzeugnis erteilt worden sind,
- c) unbeschadet des Artikels 83 für alle europäische Patente, die zum Zeitpunkt des Inkrafttretens dieses Übereinkommens noch nicht erloschen sind oder die nach diesem Zeitpunkt erteilt werden und
- d) unbeschadet des Artikels 83 für alle europäischen Patentanmeldungen, die zum Zeitpunkt des Inkrafttretens dieses Übereinkommens anhängig sind oder die nach diesem Zeitpunkt eingereicht werden.

ARTIKEL 4

Rechtsstellung

- (1) Das Gericht besitzt in jedem Vertragsmitgliedstaat Rechtspersönlichkeit und die weitestgehende Rechts- und Geschäftsfähigkeit, die juristischen Personen nach dessen Rechtsvorschriften zuerkannt wird.
- (2) Das Gericht wird vom Präsidenten des Berufungsgerichts vertreten, der im Einklang mit der Satzung gewählt wird.

ARTIKEL 5

Haftung

(1) Die vertragliche Haftung des Gerichts unterliegt dem für den betreffenden Vertrag geltenden Recht gemäß der Verordnung (EG) Nr. 593/2008 (Rom I)¹, sofern anwendbar, oder andernfalls gemäß dem Recht des Mitgliedstaats des befassten Gerichts.

Verordnung (EG) Nr. 593/2008 des Europäischen Parlaments und des Rates vom 17. Juni 2008 über das auf vertragliche Schuldverhältnisse anzuwendende Recht (Rom I) (ABI. EU L 177 vom 4.7.2008, S. 6) mit allen nachfolgenden Änderungen.

- (2) Die außervertragliche Haftung des Gerichts für durch das Gericht oder sein Personal in Ausübung seiner Amtstätigkeit verursachte Schäden sofern es sich dabei nicht um eine Zivil- und Handelssache im Sinne der Verordnung (EG) Nr. 864/2007 (Rom II)¹ handelt richtet sich nach dem Recht des Vertragsmitgliedstaats, in dem der Schaden eingetreten ist. Diese Bestimmung lässt Artikel 22 unberührt.
- (3) Die Zuständigkeit für die Beilegung von Rechtsstreitigkeiten nach Absatz 2 liegt bei einem Gericht des Vertragsmitgliedstaats, in dem der Schaden eingetreten ist.

KAPITEL II - INSTITUTIONELLE BESTIMMUNGEN

ARTIKEL 6

Gericht

- (1) Das Gericht besteht aus einem Gericht erster Instanz, einem Berufungsgericht und einer Kanzlei.
- (2) Das Gericht nimmt die ihm mit diesem Übereinkommen übertragenen Aufgaben wahr.

Verordnung (EG) Nr. 864/2007 des Europäischen Parlaments und des Rates vom 11. Juli 2007 über das auf außervertragliche Schuldverhältnisse anzuwendende Recht (Rom II), (ABI. EU L 199 vom 31.7.2007, S. 40) mit allen nachfolgenden Änderungen.

Gericht erster Instanz

- (1) Das Gericht erster Instanz umfasst eine Zentralkammer sowie Lokalkammern und Regionalkammern.
- (2) Die Zentralkammer hat ihren Sitz in Paris und verfügt über eine Abteilung in London und eine Abteilung in München. Die Verfahren vor der Zentralkammer werden gemäß Anhang II, der Bestandteil dieses Übereinkommens ist, verteilt.
- (3) Eine Lokalkammer wird in einem Vertragsmitgliedstaat auf dessen Antrag hin in Einklang mit der Satzung errichtet. Ein Vertragsmitgliedstaat, in dessen Gebiet eine Lokalkammer errichtet wird, benennt deren Sitz.
- (4) In einem Vertragsmitgliedstaat wird auf seinen Antrag hin eine zusätzliche Lokalkammer für jeweils einhundert Patentverfahren errichtet, die in diesem Vertragsmitgliedstaat pro Kalenderjahr vor oder nach dem Inkrafttreten dieses Übereinkommens in drei aufeinanderfolgenden Jahren eingeleitet worden sind. Die Anzahl der Lokalkammern je Vertragsmitgliedstaat darf vier nicht überschreiten.

(5) Für zwei oder mehr Vertragsmitgliedstaaten wird auf deren Antrag hin im Einklang mit der Satzung eine Regionalkammer errichtet. Diese Vertragsmitgliedstaaten benennen den Sitz der betreffenden Kammer. Die Regionalkammer kann an unterschiedlichen Orten tagen.

ARTIKEL 8

Zusammensetzung der Spruchkörper des Gerichts erster Instanz

- (1) Alle Spruchkörper des Gerichts erster Instanz sind multinational zusammengesetzt. Unbeschadet des Absatzes 5 und des Artikels 33 Absatz 3 Buchstabe a bestehen sie aus drei Richtern.
- (2) Jeder Spruchkörper einer Lokalkammer in einem Vertragsmitgliedstaat, in dem vor oder nach dem Inkrafttreten dieses Übereinkommens in drei aufeinanderfolgenden Jahren durchschnittlich weniger als fünfzig Patentverfahren je Kalenderjahr eingeleitet worden sind, besteht aus einem rechtlich qualifizierten Richter, der Staatsangehöriger des Vertragsmitgliedstaats ist, in dessen Gebiet die betreffende Lokalkammer errichtet worden ist, und zwei rechtlich qualifizierten Richtern, die nicht Staatsangehörige dieses Vertragsmitgliedstaats sind und ihm gemäß Artikel 18 Absatz 3 von Fall zu Fall aus dem Richterpool zugewiesen werden.

- (3) Ungeachtet des Absatzes 2 besteht jeder Spruchkörper einer Lokalkammer in einem Vertragsmitgliedstaat, in dem vor oder nach dem Inkrafttreten dieses Übereinkommens in drei aufeinanderfolgenden Jahren durchschnittlich mindestens fünfzig Patentverfahren je Kalenderjahr eingeleitet worden sind, aus zwei rechtlich qualifizierten Richtern, die Staatsangehörige des Vertragsmitgliedstaats sind, in dessen Gebiet die betreffende Lokalkammer errichtet worden ist, und einem rechtlich qualifizierten Richter, der nicht Staatsangehöriger dieses Vertragsmitgliedstaats ist und der ihm gemäß Artikel 18 Absatz 3 aus dem Richterpool zugewiesen wird. Dieser dritte Richter ist langfristig in der Lokalkammer tätig, wo dies für eine effiziente Arbeit von Kammern mit hoher Arbeitsbelastung notwendig ist.
- (4) Jeder Spruchkörper einer Regionalkammer besteht aus zwei rechtlich qualifizierten Richtern, die aus einer regionalen Liste mit Richtern ausgewählt werden und Staatsangehörige eines der betreffenden Vertragsmitgliedstaaten sind, und einem rechtlich qualifizierten Richter, der nicht Staatsangehöriger eines der betreffenden Vertragsmitgliedstaaten ist und ihm gemäß Artikel 18 Absatz 3 aus dem Richterpool zugewiesen wird.
- (5) Auf Antrag einer der Parteien ersucht jeder Spruchkörper einer Lokal- oder Regionalkammer den Präsidenten des Gerichts erster Instanz, ihm gemäß Artikel 18 Absatz 3 aus dem Richterpool einen zusätzlichen technisch qualifizierten Richter zuzuweisen, der über eine entsprechende Qualifikation und Erfahrung auf dem betreffenden Gebiet der Technik verfügt. Überdies kann jeder Spruchkörper einer Lokal- oder Regionalkammer nach Anhörung der Parteien auf eigene Initiative ein solches Ersuchen unterbreiten, wenn er dies für angezeigt hält.

Wird ihm ein solcher technisch qualifizierter Richter zugewiesen, so darf ihm kein weiterer technisch qualifizierter Richter nach Artikel 33 Absatz 3 Buchstabe a zugewiesen werden.

- (6) Jeder Spruchkörper der Zentralkammer besteht aus zwei rechtlich qualifizierten Richtern, die Staatsangehörige unterschiedlicher Vertragsmitgliedstaaten sind, und einem technisch qualifizierten Richter, der ihm gemäß Artikel 18 Absatz 3 aus dem Richterpool zugewiesen wird und über eine entsprechende Qualifikation und Erfahrung auf dem betreffenden Gebiet der Technik verfügt. Jeder Spruchkörper der Zentralkammer, der mit Klagen nach Artikel 32 Absatz 1 Buchstabe i befasst ist, besteht jedoch aus drei rechtlich qualifizierten Richtern, die Staatsangehörige unterschiedlicher Vertragsmitgliedstaaten sind.
- (7) Ungeachtet der Absätze 1 bis 6 und im Einklang mit der Verfahrensordnung können die Parteien vereinbaren, dass ihre Rechtsstreitigkeit von einem rechtlich qualifizierten Richter als Einzelrichter entschieden wird.
- (8) Den Vorsitz in jedem Spruchkörper des Gerichts erster Instanz führt ein rechtlich qualifizierter Richter.

Berufungsgericht

(1) Jeder Spruchkörper des Berufungsgerichts tagt in einer multinationalen Zusammensetzung aus fünf Richtern. Er besteht aus drei rechtlich qualifizierten Richtern, die Staatsangehörige unterschiedlicher Vertragsmitgliedstaaten sind, und zwei technisch qualifizierten Richtern, die über eine entsprechende Qualifikation und Erfahrung auf dem betreffenden Gebiet der Technik verfügen. Die technisch qualifizierten Richter werden dem Spruchkörper vom Präsidenten des Berufungsgerichts aus dem Richterpool gemäß Artikel 18 zugewiesen.

- (2) Ungeachtet des Absatzes 1 besteht ein Spruchkörper, der mit Klagen nach Artikel 32 Absatz 1 Buchstabe i befasst ist, aus drei rechtlich qualifizierten Richtern, die Staatsangehörige unterschiedlicher Vertragsmitgliedstaaten sind.
- (3) Den Vorsitz in jedem Spruchkörper des Berufungsgerichts führt ein rechtlich qualifizierter Richter.
- (4) Die Spruchkörper des Berufungsgerichts werden im Einklang mit der Satzung gebildet.
- (5) Das Berufungsgericht hat seinen Sitz in Luxemburg.

Kanzlei

- (1) Am Sitz des Berufungsgerichts wird eine Kanzlei eingerichtet. Sie wird vom Kanzler geleitet und nimmt die ihr durch die Satzung zugewiesenen Aufgaben wahr. Vorbehaltlich der in diesem Übereinkommen festgelegten Bedingungen und der Verfahrensordnung ist das von der Kanzlei geführte Register öffentlich.
- (2) An allen Kammern des Gerichts erster Instanz werden Nebenstellen der Kanzlei eingerichtet.

- (3) Die Kanzlei führt Aufzeichnungen über alle vor dem Gericht verhandelten Verfahren. Nach der Einreichung unterrichtet die betreffende Nebenstelle die Kanzlei über jedes Verfahren.
- (4) Das Gericht ernennt im Einklang mit Artikel 22 der Satzung den Kanzler und legt die Bestimmungen zu dessen Amtsführung fest.

Ausschüsse

Zur Sicherstellung einer effektiven Durchführung und Funktionsweise dieses Übereinkommens werden ein Verwaltungsausschuss, ein Haushaltsausschuss und ein Beratender Ausschuss eingesetzt. Diese nehmen insbesondere die in diesem Übereinkommen und in der Satzung vorgesehenen Aufgaben wahr.

ARTIKEL 12

Verwaltungsausschuss

(1) Der Verwaltungsausschuss setzt sich aus je einem Vertreter der Vertragsmitgliedstaaten zusammen. Die Europäische Kommission ist bei den Sitzungen des Verwaltungsausschusses als Beobachter vertreten.

- (2) Jeder Vertragsmitgliedstaat verfügt über eine Stimme.
- (3) Der Verwaltungsausschuss fasst seine Beschlüsse mit Dreiviertelmehrheit der vertretenen Vertragsmitgliedstaaten, die eine Stimme abgeben, sofern in diesem Übereinkommen oder der Satzung nicht etwas anderes bestimmt ist.
- (4) Der Verwaltungsausschuss gibt sich eine Geschäftsordnung.
- (5) Der Verwaltungsausschuss wählt aus seiner Mitte einen Vorsitzenden für eine Amtszeit von drei Jahren. Die Wiederwahl ist zulässig.

Haushaltsausschuss

- (1) Der Haushaltsausschuss setzt sich aus je einem Vertreter der Vertragsmitgliedstaaten zusammen.
- (2) Jeder Vertragsmitgliedstaat verfügt über eine Stimme.

- (3) Der Haushaltsausschuss fasst seine Beschlüsse mit der einfachen Mehrheit der Vertreter der Vertragsmitgliedstaaten. Zur Feststellung des Haushaltsplans ist jedoch eine Dreiviertelmehrheit der Vertreter der Vertragsmitgliedstaaten erforderlich.
- (4) Der Haushaltsausschuss gibt sich eine Geschäftsordnung.
- (5) Der Haushaltsausschuss wählt aus seiner Mitte einen Vorsitzenden für eine Amtszeit von drei Jahren. Die Wiederwahl ist zulässig.

Beratender Ausschuss

- (1) Der Beratende Ausschuss
 - a) unterstützt den Verwaltungsausschuss bei der Vorbereitung der Ernennung der Richter des Gerichts,
 - b) unterbreitet dem in Artikel 15 der Satzung genannten Präsidium Vorschläge zu den Leitlinien für den in Artikel 19 genannten Schulungsrahmen für Richter und
 - c) übermittelt dem Verwaltungsausschuss Stellungnahmen zu den Anforderungen an die in Artikel 48 Absatz 2 genannte Qualifikation.

- (2) Dem Beratenden Ausschuss gehören Patentrichter und auf dem Gebiet des Patentrechts und der Patentstreitigkeiten tätige Angehörige der Rechtsberufe mit der höchsten anerkannten Qualifikation an. Sie werden gemäß dem in der Satzung festgelegten Verfahren für eine Amtszeit von sechs Jahren ernannt. Die Wiederernennung ist zulässig.
- (3) Die Zusammensetzung des Beratenden Ausschusses muss ein breites Spektrum an einschlägigem Sachverstand und die Vertretung eines jeden Vertragsmitgliedstaats gewährleisten. Die Mitglieder des Beratenden Ausschusses üben ihre Tätigkeit in völliger Unabhängigkeit aus und sind an keine Weisungen gebunden.
- (4) Der Beratende Ausschuss gibt sich eine Geschäftsordnung.
- (5) Der Beratende Ausschuss wählt aus seiner Mitte einen Vorsitzenden für eine Amtszeit von drei Jahren. Die Wiederwahl ist zulässig.

KAPITEL III - RICHTER DES GERICHTS

ARTIKEL 15

Auswahlkriterien für die Ernennung der Richter

(1) Das Gericht setzt sich sowohl aus rechtlich qualifizierten als auch aus technisch qualifizierten Richtern zusammen. Die Richter müssen die Gewähr für höchste fachliche Qualifikation bieten und über nachgewiesene Erfahrung auf dem Gebiet der Patentstreitigkeiten verfügen.

- (2) Die rechtlich qualifizierten Richter müssen die für die Berufung in ein richterliches Amt in einem Vertragsmitgliedstaat erforderliche Qualifikation haben.
- (3) Die technisch qualifizierten Richter müssen über einen Hochschulabschluss und nachgewiesenen Sachverstand auf einem Gebiet der Technik verfügen. Sie müssen auch über nachgewiesene Kenntnisse des für Patentstreitigkeiten relevanten Zivil- und Zivilverfahrensrechts verfügen.

Ernennungsverfahren

- (1) Der Beratende Ausschuss erstellt im Einklang mit der Satzung eine Liste der Kandidaten, die am besten geeignet sind, um zu Richtern des Gerichts ernannt zu werden.
- (2) Der Verwaltungsausschuss ernennt auf Grundlage dieser Liste einvernehmlich die Richter des Gerichts.
- (3) Die Durchführungsbestimmungen für die Ernennung der Richter werden in der Satzung festgelegt.

Richterliche Unabhängigkeit und Unparteilichkeit

- (1) Das Gericht, seine Richter und der Kanzler genießen richterliche Unabhängigkeit. Bei der Ausübung ihrer Amtstätigkeit sind die Richter an keine Weisungen gebunden.
- (2) Rechtlich qualifizierte Richter und technisch qualifizierte Richter, die Vollzeitrichter des Gerichts sind, dürfen keine andere entgeltliche oder unentgeltliche Berufstätigkeit ausüben, es sei denn, der Verwaltungsausschuss hat eine Ausnahme von dieser Vorschrift zugelassen.
- (3) Ungeachtet des Absatzes 2 schließt die Ausübung des Richteramtes die Ausübung einer anderen richterlichen Tätigkeit auf nationaler Ebene nicht aus.
- (4) Die Ausübung des Amtes eines technisch qualifizierten Richters, bei dem es sich um einen Teilzeitrichter des Gerichts handelt, schließt die Ausübung anderer Aufgaben nicht aus, sofern kein Interessenkonflikt besteht.
- (5) Im Fall eines Interessenkonflikts nimmt der betreffende Richter nicht am Verfahren teil. Die Vorschriften für die Behandlung von Interessenkonflikten werden in der Satzung festgelegt.

Richterpool

- (1) Nach Maßgabe der Satzung wird ein Richterpool eingerichtet.
- (2) Dem Richterpool gehören alle rechtlich qualifizierten Richter und alle technisch qualifizierten Richter des Gerichts erster Instanz an, die Vollzeitrichter oder Teilzeitrichter des Gerichts sind. Dem Richterpool gehört für jedes Gebiet der Technik mindestens ein technisch qualifizierter Richter mit einschlägiger Qualifikation und Erfahrung an. Die technisch qualifizierten Richter des Richterpools stehen auch dem Berufungsgericht zur Verfügung.
- (3) Wenn in diesem Übereinkommen oder in der Satzung vorgesehen, werden die Richter aus dem Richterpool vom Präsidenten des Gerichts erster Instanz der betreffenden Kammer zugewiesen. Die Zuweisung der Richter erfolgt auf der Grundlage ihres jeweiligen rechtlichen oder technischen Sachverstands, ihrer Sprachkenntnisse und ihrer einschlägigen Erfahrung. Die Zuweisung von Richtern gewährleistet, dass sämtliche Spruchkörper des Gerichts erster Instanz mit derselben hohen Qualität arbeiten und über dasselbe hohe Niveau an rechtlichem und technischem Sachverstand verfügen.

Schulungsrahmen

- (1) Um den verfügbaren Sachverstand auf dem Gebiet der Patentstreitigkeiten zu verbessern und zu vermehren und eine geografisch breite Streuung dieser speziellen Kenntnisse und Erfahrungen sicherzustellen, wird ein Schulungsrahmen für Richter geschaffen, der im Einzelnen in der Satzung festgelegt wird. Die Einrichtung für diesen Schulungsrahmen befindet sich in Budapest.
- (2) Der Schulungsrahmen weist insbesondere folgende Schwerpunkte auf:
 - a) Praktika bei nationalen Patentgerichten oder bei Kammern des Gerichts erster Instanz mit einem hohen Aufkommen an Patenstreitsachen;
 - b) Verbesserung der Sprachkenntnisse;
 - c) technische Aspekte des Patentrechts;
 - d) Weitergabe von Kenntnissen und Erfahrungen in Bezug auf das Zivilverfahrensrecht für technisch qualifizierte Richter;
 - e) Vorbereitung von Bewerbern für Richterstellen.

(3) Der Schulungsrahmen leistet eine kontinuierliche Schulung. Es werden regelmäßige Sitzungen aller Richter des Gerichts veranstaltet, um die Entwicklungen im Patentrecht zu erörtern und die Einheitlichkeit der Rechtsprechung des Gerichts zu gewährleisten.

KAPITEL IV – VORRANG DES UNIONSRECHTS SOWIE HAFTUNG UND VERANTWORTLICHKEIT DER VERTRAGSMITGLIEDSTAATEN

ARTIKEL 20

Vorrang und Achtung des Unionsrechts

Das Gericht wendet das Unionsrecht in vollem Umfang an und achtet seinen Vorrang.

ARTIKEL 21

Vorabentscheidungsersuchen

Als gemeinsames Gericht der Vertragsmitgliedstaaten und Teil ihres Gerichtssystems arbeitet das Gericht – wie jedes nationale Gericht– mit dem Gerichtshof der Europäischen Union zur Gewährleistung der korrekten Anwendung und einheitlichen Auslegung des Unionsrechts insbesondere im Einklang mit Artikel 267 AEUV zusammen. Entscheidungen des Gerichtshofs der Europäischen Union sind für das Gericht bindend.

Haftung für durch Verstöße gegen das Unionsrecht entstandene Schäden

- (1) Die Vertragsmitgliedstaaten haften gesamtschuldnerisch für Schäden, die durch einen Verstoß des Berufungsgerichts gegen das Unionsrecht entstanden sind, gemäß dem Unionsrecht über die außervertragliche Haftung der Mitgliedstaaten für Schäden, die durch Verstöße ihrer nationalen Gerichte gegen das Unionsrecht entstanden sind.
- (2) Eine Klage wegen solcher Schäden ist gegen den Vertragsmitgliedstaat, in dem der Kläger seinen Wohnsitz oder den Sitz seiner Hauptniederlassung oder in Ermangelung derselben seinen Geschäftssitz hat, bei der zuständigen staatlichen Stelle dieses Vertragsmitgliedstaats zu erheben. Hat der Kläger seinen Wohnsitz oder den Sitz seiner Hauptniederlassung oder in Ermangelung derselben seinen Geschäftssitz nicht in einem Vertragsmitgliedstaat, so kann er seine Klage gegen den Vertragsmitgliedstaat, in dem das Berufungsgericht seinen Sitz hat, bei der zuständigen staatlichen Stelle dieses Vertragsmitgliedstaats erheben.

Die zuständige staatliche Stelle wendet bei allen Fragen, die nicht im Unionsrecht oder in diesem Übereinkommen geregelt sind, die *lex fori* mit Ausnahme ihres internationalen Privatrechts an. Der Kläger hat Anspruch darauf, von dem Vertragsmitgliedstaat, gegen den er geklagt hat, die von der zuständigen staatlichen Stelle zuerkannte Schadenssumme in voller Höhe erstattet zu bekommen.

(3) Der Vertragsmitgliedstaat, der für die Schäden aufgekommen ist, hat einen Anspruch darauf, von den anderen Vertragsmitgliedstaaten anteilige Beiträge zu erlangen, die gemäß der Methode nach Artikel 37 Absätze 3 und 4 festzusetzen sind. Die Einzelheiten bezüglich der Beiträge der Vertragsmitgliedstaaten nach diesem Absatz werden vom Verwaltungsausschuss festgelegt.

ARTIKEL 23

Verantwortlichkeit der Vertragsmitgliedstaaten

Handlungen des Gerichts sind jedem Vertragsmitgliedstaat einzeln, einschließlich für die Zwecke der Artikel 258, 259 und 260 AEUV, und allen Vertragsmitgliedstaaten gemeinsam unmittelbar zuzurechnen.

KAPITEL V - RECHTSQUELLEN UND MATERIELLES RECHT

ARTIKEL 24

Rechtsquellen

- (1) Unter uneingeschränkter Beachtung des Artikels 20 stützt das Gericht seine Entscheidungen in Rechtsstreitigkeiten, in denen es nach diesem Übereinkommen angerufen wird, auf
 - a) das Unionsrecht einschließlich der Verordnung (EU) Nr. 1257/2012 und der Verordnung (EU) Nr. 1260/2012¹,
 - b) dieses Übereinkommen,
 - c) das EPÜ,
 - d) andere internationale Übereinkünfte, die für Patente gelten und für alle Vertragsmitgliedstaaten bindend sind, und
 - e) das nationale Recht.

Verordnung (EU) Nr. 1260/2012 des Rates vom 17. Dezember 2012 über die Umsetzung der verstärkten Zusammenarbeit im Bereich der Schaffung eines einheitlichen Patentschutzes im Hinblick auf die anzuwendenden Übersetzungsregelungen (ABI. L 361 vom 31.12.2012, S. 89) mit allen nachfolgenden Änderungen.

- (2) Soweit das Gericht seine Entscheidungen auf nationale Rechtsvorschriften stützt, gegebenenfalls auch auf das Recht von Nichtvertragsstaaten, wird das anwendbare Recht wie folgt bestimmt:
 - a) durch unmittelbar anwendbare Vorschriften des Unionsrechts, die Bestimmungen des internationalen Privatrechts enthalten, oder
 - b) in Ermangelung unmittelbar anwendbarer Vorschriften des Unionsrechts oder in Fällen, in denen diese nicht anwendbar sind, durch internationale Rechtsinstrumente, die Bestimmungen des internationalen Privatrechts enthalten, oder
 - c) in Ermangelung von Vorschriften im Sinne der Buchstaben a und b durch nationale Vorschriften zum internationalen Privatrecht nach Bestimmung durch das Gericht.
- (3) Das Recht von Nichtvertragsstaaten gilt insbesondere in Bezug auf die Artikel 25 bis 28 und die Artikel 54, 55, 64, 68 und 72, wenn es in Anwendung der in Absatz 2 genannten Vorschriften als anwendbares Recht bestimmt wird.

Recht auf Verbot der unmittelbaren Benutzung der Erfindung

Ein Patent gewährt seinem Inhaber das Recht, Dritten zu verbieten, ohne seine Zustimmung

- a) ein Erzeugnis, das Gegenstand des Patents ist, herzustellen, anzubieten, in Verkehr zu bringen, zu gebrauchen oder zu den genannten Zwecken einzuführen oder zu besitzen;
- b) ein Verfahren, das Gegenstand des Patents ist, anzuwenden, oder, falls der Dritte weiß oder hätte wissen müssen, dass die Anwendung des Verfahrens ohne Zustimmung des Patentinhabers verboten ist, zur Anwendung im Hoheitsgebiet der Vertragsmitgliedstaaten, in denen dieses Patent Wirkung hat, anzubieten;
- c) ein durch ein Verfahren, das Gegenstand des Patents ist, unmittelbar hergestelltes Erzeugnis anzubieten, in Verkehr zu bringen, zu gebrauchen oder zu den genannten Zwecken einzuführen oder zu besitzen.

Recht auf Verbot der mittelbaren Benutzung der Erfindung

- (1) Ein Patent gewährt seinem Inhaber das Recht, Dritten zu verbieten, ohne seine Zustimmung im Hoheitsgebiet der Vertragsmitgliedstaaten, in denen dieses Patent Wirkung hat, anderen als zur Benutzung der patentierten Erfindung berechtigten Personen Mittel, die sich auf ein wesentliches Element der Erfindung beziehen, zur Benutzung der Erfindung in diesem Gebiet anzubieten oder zu liefern, wenn der Dritte weiß oder hätte wissen müssen, dass diese Mittel dazu geeignet und bestimmt sind, für die Benutzung der Erfindung verwendet zu werden.
- (2) Absatz 1 gilt nicht, wenn es sich bei den Mitteln um allgemein im Handel erhältliche Erzeugnisse handelt, es sei denn, dass der Dritte den Belieferten bewusst veranlasst, in einer nach Artikel 25 verbotenen Weise zu handeln.
- (3) Personen, die die in Artikel 27 Buchstaben a bis e genannten Handlungen vornehmen, gelten nicht als zur Benutzung der Erfindung berechtigte Personen im Sinne des Absatzes 1.

ARTIKEL 27

Beschränkungen der Wirkungen des Patents

Die Rechte aus einem Patent erstrecken sich nicht auf

a) Handlungen, die im privaten Bereich zu nichtgewerblichen Zwecken vorgenommen werden;

- Handlungen zu Versuchszwecken, die sich auf den Gegenstand der patentierten Erfindung b) beziehen:
- c) die Verwendung biologischen Materials zum Zwecke der Züchtung, Entdeckung oder Entwicklung anderer Pflanzensorten;
- erlaubte Handlungen nach Artikel 13 Absatz 6 der Richtlinie 2001/82/EG¹ oder Artikel 10 d) Absatz 6 der Richtlinie 2001/83/EG², im Hinblick auf alle Patente, die das Erzeugnis im Sinne einer dieser Richtlinien erfassen;
- die unmittelbare Einzelzubereitung von Arzneimitteln in Apotheken aufgrund ärztlicher e) Verordnung und auf Handlungen, welche die auf diese Weise zubereiteten Arzneimittel betreffen:
- den Gebrauch des Gegenstands der patentierten Erfindung an Bord von Schiffen derjenigen f) Länder des Internationalen Verbands zum Schutz des gewerblichen Eigentums (Pariser Verband) oder Mitglieder der Welthandelsorganisation, die nicht zu den Vertragsmitgliedstaaten gehören, in denen das Patent Wirkung hat, im Schiffskörper, in den Maschinen, im Takelwerk, an den Geräten und sonstigem Zubehör, wenn die Schiffe vorübergehend oder zufällig in die Gewässer eines Vertragsmitgliedstaats gelangen, in dem das Patent Wirkung hat, vorausgesetzt, dieser Gegenstand wird dort ausschließlich für die Bedürfnisse des Schiffs verwendet;

Richtlinie 2001/83/EG des Europäischen Parlaments und des Rates vom 6. November 2001 zur Schaffung eines Gemeinschaftskodexes für Humanarzneimittel (ABI. EG L 311 vom

28.11.2001, S. 67) mit allen nachfolgenden Änderungen.

Richtlinie 2001/82/EG des Europäischen Parlaments und des Rates vom 6. November 2001 zur Schaffung eines Gemeinschaftskodexes für Tierarzneimittel (ABI. EG L 311 vom 28.11.2001, S. 1) mit allen nachfolgenden Änderungen.

- den Gebrauch des Gegenstands der patentierten Erfindung in der Bauausführung oder für den Betrieb von Luft- oder Landfahrzeugen oder sonstigen Transportmitteln derjenigen Länder des Internationalen Verbands zum Schutz des gewerblichen Eigentums (Pariser Verband) oder Mitglieder der Welthandelsorganisation, die nicht zu den Vertragsmitgliedstaaten gehören, in denen das Patent Wirkung hat, oder des Zubehörs solcher Luft- oder Landfahrzeuge, wenn diese vorübergehend oder zufällig in das Hoheitsgebiet eines Vertragsmitgliedstaats gelangen, in dem das Patent Wirkung hat;
- h) die in Artikel 27 des Abkommens vom 7. Dezember 1944 über die Internationale Zivilluftfahrt¹ genannten Handlungen, wenn diese Handlungen ein Luftfahrzeug eines Vertragsstaats jenes Abkommens betreffen, der nicht zu den Vertragsmitgliedstaaten gehört, in denen das Patent Wirkung hat;
- die Verwendung seines Ernteguts durch einen Landwirt zur generativen oder vegetativen Vermehrung durch ihn selbst im eigenen Betrieb, sofern das pflanzliche Vermehrungsmaterial vom Patentinhaber oder mit dessen Zustimmung zum landwirtschaftlichen Anbau an den Landwirt verkauft oder auf andere Weise in Verkehr gebracht wurde. Das Ausmaß und die Modalitäten dieser Verwendung entsprechen denjenigen des Artikels 14 der Verordnung (EG) Nr. 2100/94²;
- j) die Verwendung von geschützten landwirtschaftlichen Nutztieren durch einen Landwirt zu landwirtschaftlichen Zwecken, sofern die Zuchttiere oder anderes tierisches Vermehrungsmaterial vom Patentinhaber oder mit dessen Zustimmung an den Landwirt verkauft oder auf andere Weise in Verkehr gebracht wurden. Diese Verwendung erstreckt sich auch auf die Überlassung der landwirtschaftlichen Nutztiere oder des anderen tierischen Vermehrungsmaterials zur Ausübung der landwirtschaftlichen Tätigkeit des Landwirts, jedoch nicht auf seinen Verkauf mit dem Ziel oder im Rahmen einer Vermehrung zu Erwerbszwecken;

Internationale Zivilluftfahrt-Organisation (ICAO), "Abkommen von Chicago", Dokument 7300/9 (9. Ausgabe, 2006).

Verordnung (EG) Nr. 2100/94 des Rates vom 27. Juli 1994 über den gemeinschaftlichen Sortenschutz (ABl. EG L 227 vom 1.9.1994, S. 1) mit allen nachfolgenden Änderungen.

- k) Handlungen und die Verwendung von Informationen, die gemäß den Artikeln 5 und 6 der Richtlinie 2009/24/EG¹, insbesondere den Bestimmungen betreffend Dekompilierung und Interoperabilität, erlaubt sind und
- 1) Handlungen, die gemäß Artikel 10 der Richtlinie 98/44/EG² erlaubt sind.

Recht des Vorbenutzers der Erfindung

Wer in einem Vertragsmitgliedstaat ein Vorbenutzungsrecht oder ein persönliches Besitzrecht an einer Erfindung erworben hätte, wenn ein nationales Patent für diese Erfindung erteilt worden wäre, hat in diesem Vertragsmitgliedstaat die gleichen Rechte auch in Bezug auf ein Patent, das diese Erfindung zum Gegenstand hat.

Richtlinie 98/44/EG des Europäischen Parlaments und des Rates vom 6. Juli 1998 über den rechtlichen Schutz biotechnologischer Erfindungen (ABI. EG L 213 vom 30.7.1998, S. 13)

mit allen nachfolgenden Änderungen.

Richtlinie 2009/24/EG des Europäischen Parlaments und des Rates vom 23. April 2009 über den Rechtsschutz von Computerprogrammen (ABI. EU L 111 vom 5.5.2009, S. 16) mit allen nachfolgenden Änderungen.

Erschöpfung der Rechte aus einem europäischen Patent

Die durch das europäische Patent verliehenen Rechte erstrecken sich nicht auf Handlungen, die ein durch das Patent geschütztes Erzeugnis betreffen, nachdem das Erzeugnis vom Patentinhaber oder mit seiner Zustimmung in der Europäischen Union in Verkehr gebracht worden ist, es sei denn, der Patentinhaber hat berechtigte Gründe, sich dem weiteren Vertrieb des Erzeugnisses zu widersetzen.

ARTIKEL 30

Wirkung von ergänzenden Schutzzertifikaten

Das ergänzende Schutzzertifikat gewährt die gleichen Rechte wie das Patent und unterliegt den gleichen Beschränkungen und Verpflichtungen.

KAPITEL VI - INTERNATIONALE UND SONSTIGE ZUSTÄNDIGKEIT DES GERICHTS

ARTIKEL 31

Internationale Zuständigkeit

Die internationale Zuständigkeit des Gerichts wird im Einklang mit der Verordnung (EU) Nr. 1215/2012 oder gegebenenfalls auf Grundlage des Übereinkommens über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen (Lugano-Übereinkommen)¹bestimmt.

ARTIKEL 32

Zuständigkeit des Gerichts

- (1) Das Gericht besitzt die ausschließliche Zuständigkeit für
 - a) Klagen wegen tatsächlicher oder drohender Verletzung von Patenten und ergänzenden Schutzzertifikaten und zugehörige Klageerwiderungen, einschließlich Widerklagen in Bezug auf Lizenzen,
 - b) Klagen auf Feststellung der Nichtverletzung von Patenten und ergänzenden Schutzzertifikaten,

Übereinkommen über die gerichtliche Zuständigkeit und die Anerkennung und Vollstreckung von Entscheidungen in Zivil- und Handelssachen, beschlossen am 30. Oktober 2007 in Lugano, mit allen nachfolgenden Änderungen.

- c) Klagen auf Erlass von einstweiligen Maßnahmen und Sicherungsmaßnahmen und einstweiligen Verfügungen,
- d) Klagen auf Nichtigerklärung von Patenten und Nichtigerklärung der ergänzenden Schutzzertifikate,
- e) Widerklagen auf Nichtigerklärung von Patenten und Nichtigerklärung der ergänzenden Schutzzertifikate,
- f) Klagen auf Schadenersatz oder auf Entschädigung aufgrund des vorläufigen Schutzes, den eine veröffentlichte Anmeldung eines europäischen Patents gewährt,
- g) Klagen im Zusammenhang mit der Benutzung einer Erfindung vor der Erteilung eines Patents oder mit einem Vorbenutzungsrecht,
- h) Klagen auf Zahlung einer Lizenzvergütung aufgrund von Artikel 8 der Verordnung (EU) Nr. 1257/2012 und
- i) Klagen gegen Entscheidungen, die das Europäische Patentamt in Ausübung der in Artikel 9 der Verordnung (EU) Nr. 1257/2012 genannten Aufgaben getroffen hat.
- (2) Für Klagen im Zusammenhang mit Patenten und ergänzenden Schutzzertifikaten, die nicht in die ausschließliche Zuständigkeit des Gerichts fallen, sind weiterhin die nationalen Gerichte der Vertragsmitgliedstaaten zuständig.

Zuständigkeit der Kammern des Gerichts erster Instanz

- (1) Unbeschadet des Absatzes 7 sind die in Artikel 32 Absatz 1 Buchstaben a, c, f und g genannten Klagen zu erheben bei
 - a) der Lokalkammer in dem Vertragsmitgliedstaat, in dessen Gebiet die tatsächliche oder drohende Verletzung erfolgt ist oder möglicherweise erfolgen wird, oder bei der Regionalkammer, an der dieser Vertragsmitgliedstaat beteiligt ist, oder
 - b) der Lokalkammer in dem Vertragsmitgliedstaat, in dessen Gebiet der Beklagte oder, bei mehreren Beklagten, einer der Beklagten seinen Wohnsitz oder den Sitz seiner Hauptniederlassung oder in Ermangelung derselben seinen Geschäftssitz hat, oder bei der Regionalkammer, an der dieser Vertragsmitgliedstaat beteiligt ist. Eine Klage gegen mehrere Beklagte ist nur dann zulässig, wenn zwischen diesen eine Geschäftsbeziehung besteht und die Klage denselben Verletzungsvorwurf betrifft.

Die in Artikel 32 Absatz 1 Buchstabe h genannten Klagen sind gemäß Unterabsatz 1 Buchstabe b bei der Lokal- oder Regionalkammer zu erheben.

Klagen gegen Beklagte, die ihren Wohnsitz oder den Sitz ihrer Hauptniederlassung oder – in Ermangelung derselben – ihren Geschäftssitz nicht im Gebiet der Vertragsmitgliedstaaten haben, sind gemäß Unterabsatz 1 Buchstabe a bei der Lokal- oder Regionalkammer zu erheben oder bei der Zentralkammer.

Ist im betreffenden Vertragsmitgliedstaat keine Lokalkammer errichtet worden und ist dieser Vertragsmitgliedstaat nicht an einer Regionalkammer beteiligt, so sind die Klagen bei der Zentralkammer zu erheben.

(2) Ist eine Klage im Sinne des Artikels 32 Absatz 1 Buchstaben a, c, f, g oder h bei einer Kammer des Gerichts erster Instanz anhängig, so darf zwischen denselben Parteien zum selben Patent keine Klage im Sinne des Artikels 32 Absatz 1 Buchstaben a, c, f, g oder h bei einer anderen Kammer erhoben werden.

Ist eine Klage im Sinne des Artikels 32 Absatz 1 Buchstabe a bei einer Regionalkammer anhängig und ist die Verletzung im Gebiet von mindestens drei Regionalkammern erfolgt, so verweist die betreffende Regionalkammer das Verfahren auf Antrag des Beklagten an die Zentralkammer.

Wird bei mehreren Kammern eine Klage erhoben, die dieselben Parteien und dasselbe Patent betrifft, so ist die zuerst angerufene Kammer für das gesamte Verfahren zuständig und jede später angerufene Kammer erklärt die Klage im Einklang mit der Verfahrensordnung für unzulässig.

- (3) Im Fall einer Verletzungsklage im Sinne des Artikels 32 Absatz 1 Buchstabe a kann eine Widerklage auf Nichtigerklärung im Sinne des Artikels 32 Absatz 1 Buchstabe e erhoben werden. Die betreffende Lokal- oder Regionalkammer kann nach Anhörung der Parteien nach eigenem Ermessen beschließen,
 - a) sowohl die Verletzungsklage als auch die Widerklage auf Nichtigerklärung zu verhandeln und den Präsidenten des Gerichts erster Instanz zu ersuchen, ihr aus dem Richterpool gemäß Artikel 18 Absatz 3 einen technisch qualifizierten Richter zuzuweisen, der über entsprechende Qualifikation und Erfahrung auf dem betreffenden Gebiet der Technik verfügt,
 - b) die Widerklage auf Nichtigerklärung zur Entscheidung an die Zentralkammer zu verweisen und das Verletzungsverfahren auszusetzen oder fortzuführen oder
 - c) den Fall mit Zustimmung der Parteien zur Entscheidung an die Zentralkammer zu verweisen.
- (4) Die in Artikel 32 Absatz 1 Buchstaben b und d genannten Klagen sind bei der Zentralkammer zu erheben. Wurde jedoch bereits bei einer Lokal- oder Regionalkammer eine Verletzungsklage im Sinne des Artikels 32 Absatz 1 Buchstabe a zwischen denselben Parteien zum selben Patent erhoben, so dürfen diese Klagen nur vor derselben Lokal- oder Regionalkammer erhoben werden.
- (5) Ist eine Klage auf Nichtigerklärung im Sinne des Artikels 32 Absatz 1 Buchstabe d bei der Zentralkammer anhängig, so kann gemäß Absatz 1 des vorliegenden Artikels bei jeder Kammer oder bei der Zentralkammer zwischen denselben Parteien zum selben Patent eine Verletzungsklage im Sinne des Artikels 32 Absatz 1 Buchstabe a erhoben werden. Die betreffende Lokal- oder Regionalkammer kann nach ihrem Ermessen gemäß Absatz 3 des vorliegenden Artikels verfahren.

- (6) Eine Klage zur Feststellung der Nichtverletzung im Sinne des Artikels 32 Absatz 1
 Buchstabe b, die bei der Zentralkammer anhängig ist, wird ausgesetzt, wenn innerhalb von drei
 Monaten nach Klageerhebung vor der Zentralkammer bei einer Lokal- oder Regionalkammer
 zwischen denselben Parteien oder zwischen dem Inhaber einer ausschließlichen Lizenz und der
 Partei, die die Feststellung der Nichtverletzung beantragt hat, zum selben Patent eine
 Verletzungsklage im Sinne des Artikels 32 Absatz 1 Buchstabe a erhoben wird.
- (7) Die Parteien können bei Klagen im Sinne des Artikels 32 Absatz 1 Buchstaben a bis h übereinkommen, ihre Klage bei der Kammer ihrer Wahl, auch bei der Zentralkammer, zu erheben.
- (8) Die in Artikel 32 Absatz 1 Buchstaben d und e genannten Klagen können erhoben werden, ohne dass der Kläger zuvor Einspruch beim Europäischen Patentamt einlegen muss.
- (9) Die in Artikel 32 Absatz 1 Buchstabe i genannten Klagen sind bei der Zentralkammer zu erheben.
- (10) Die Parteien unterrichten das Gericht über alle beim Europäischen Patentamt anhängigen Nichtigerklärungs-, Beschränkungs- oder Einspruchsverfahren und über jeden Antrag auf beschleunigte Bearbeitung beim Europäischen Patentamt. Das Gericht kann das Verfahren aussetzen, wenn eine rasche Entscheidung des Europäischen Patentamts zu erwarten ist.

Räumlicher Geltungsbereich von Entscheidungen

Die Entscheidungen des Gerichts gelten im Falle eines europäischen Patents für das Hoheitsgebiet derjenigen Vertragsmitgliedstaaten, für die das europäische Patent Wirkung hat.

KAPITEL VII - MEDIATION UND SCHIEDSVERFAHREN IN PATENTSACHEN

ARTIKEL 35

Mediations- und Schiedszentrum für Patentsachen

- (1) Es wird ein Mediations- und Schiedszentrum für Patentsachen (im Folgenden "Zentrum") errichtet. Es hat seine Sitze in Laibach und Lissabon.
- (2) Das Zentrum stellt Dienste für Mediation und Schiedsverfahren in Patentstreitigkeiten, die unter dieses Übereinkommen fallen, zur Verfügung. Artikel 82 gilt für jeden Vergleich, der durch die Inanspruchnahme der Dienste des Zentrums, auch im Wege der Mediation, erreicht worden ist, entsprechend. In Mediations- und in Schiedsverfahren darf ein Patent jedoch weder für nichtig erklärt noch beschränkt werden.

- (3) Das Zentrum legt eine Mediations- und Schiedsordnung fest.
- (4) Das Zentrum stellt ein Verzeichnis der Mediatoren und Schiedsrichter auf, die die Parteien bei der Streitbeilegung unterstützen.

TEIL II - FINANZVORSCHRIFTEN

ARTIKEL 36

Haushalt des Gerichts

- (1) Der Haushalt des Gerichts wird aus den eigenen Einnahmen des Gerichts und erforderlichenfalls zumindest in der Übergangszeit nach Artikel 83 aus Beiträgen der Vertragsmitgliedstaaten finanziert. Der Haushaltsplan muss ausgeglichen sein.
- (2) Die eigenen Einnahmen des Gerichts bestehen aus den Gerichtsgebühren und den sonstigen Einnahmen.

- (3) Die Gerichtsgebühren werden vom Verwaltungsausschuss festgesetzt. Sie umfassen eine Festgebühr in Kombination mit einer streitwertabhängigen Gebühr oberhalb einer vorab festgesetzten Schwelle. Die Höhe der Gerichtsgebühren wird so festgesetzt, dass ein angemessenes Gleichgewicht zwischen dem Grundsatz eines fairen Zugangs zum Recht insbesondere für kleine und mittlere Unternehmen, Kleinstunternehmen, natürliche Personen, Organisationen ohne Erwerbszweck, Hochschulen und öffentliche Forschungseinrichtungen und einer angemessenen Beteiligung der Parteien an den dem Gericht entstandenen Kosten gewährleistet ist, wobei der wirtschaftliche Nutzen für die beteiligten Parteien und das Ziel der Eigenfinanzierung und ausgeglichener Finanzmittel des Gerichts berücksichtigt werden. Die Höhe der Gerichtsgebühren wird vom Verwaltungsausschuss regelmäßig überprüft. Für kleine und mittlere Unternehmen und Kleinstunternehmen können gezielte Unterstützungsmaßnahmen in Betracht gezogen werden.
- (4) Ist das Gericht nicht in der Lage, mit seinen Eigenmitteln einen ausgeglichenen Haushalt zu erzielen, so stellen ihm die Vertragsmitgliedstaaten besondere Finanzbeiträge zur Verfügung.

Finanzierung des Gerichts

(1) Die Betriebskosten des Gerichts werden gemäß der Satzung vom Haushalt des Gerichts gedeckt.

Vertragsmitgliedstaaten, die eine Lokalkammer errichten, stellen die hierfür erforderlichen Einrichtungen zur Verfügung. Vertragsmitgliedstaaten mit einer gemeinsamen Regionalkammer stellen gemeinsam die hierfür erforderlichen Einrichtungen zur Verfügung. Vertragsmitgliedstaaten, in denen die Zentralkammer, deren Abteilungen oder das Berufungsgericht errichtet werden, stellen die hierfür erforderlichen Einrichtungen zur Verfügung. Während eines ersten Übergangszeitraums von sieben Jahren ab Inkrafttreten dieses Übereinkommens stellen die betreffenden Vertragsmitgliedstaaten zudem Verwaltungspersonal zur Unterstützung zur Verfügung; das für dieses Personal geltende Statut bleibt hiervon unberührt.

- (2) Die Vertragsmitgliedstaaten leisten am Tag des Inkrafttretens dieses Übereinkommens die ersten finanziellen Beiträge, die zur Errichtung des Gerichts erforderlich sind.
- Während des ersten Übergangszeitraums von sieben Jahren ab Inkrafttreten dieses Übereinkommens bemessen sich die Beiträge der einzelnen Vertragsmitgliedstaaten, die das Übereinkommen bereits vor seinem Inkrafttreten ratifiziert haben oder ihm beigetreten sind, nach der Zahl der europäischen Patente, die zum Zeitpunkt des Inkrafttretens dieses Übereinkommens in ihrem jeweiligen Hoheitsgebiet Wirkung haben, und der Zahl der europäischen Patente, zu denen bei ihren nationalen Gerichten in den drei Jahren vor dem Inkrafttreten dieses Übereinkommens Verletzungsklagen- oder Klagen auf Nichtigerklärung erhoben worden sind.

Während dieses ersten Übergangszeitraums von sieben Jahren bemessen sich die Beiträge der Mitgliedstaaten, die das Übereinkommen nach seinem Inkrafttreten ratifizieren oder ihm beitreten, nach der Zahl der europäischen Patente, die zum Zeitpunkt der Ratifikation oder des Beitritts im Hoheitsgebiet des jeweiligen ratifizierenden oder beitretenden Mitgliedstaats Wirkung haben, und der Zahl der europäischen Patente, zu denen bei ihren nationalen Gerichten in den drei Jahren vor der Ratifikation oder dem Beitritt Verletzungsklagen oder Klagen auf Nichtigerklärung erhoben worden sind.

(4) Werden nach Ablauf des ersten Übergangszeitraums von sieben Jahren – der Zeitpunkt, zu dem erwartet wird, dass das Gericht die Eigenfinanzierung erreicht – Beiträge der Vertragsmitgliedstaaten erforderlich, so werden diese nach dem Verteilerschlüssel für die Jahresgebühren für europäische Patente mit einheitlicher Wirkung festgelegt, der zu dem Zeitpunkt gilt, zu dem die Beiträge nötig werden.

ARTIKEL 38

Finanzierung des Schulungsrahmens für Richter

Der Schulungsrahmen für Richter wird aus dem Haushalt des Gerichts finanziert.

Finanzierung des Zentrums

Die Betriebskosten des Zentrums werden aus dem Haushalt des Gerichts finanziert.

TEIL III - ORGANISATION UND VERFAHRENSVORSCHRIFTEN

KAPITEL I – ALLGEMEINE BESTIMMUNGEN

ARTIKEL 40

Satzung

- (1) In der Satzung werden die Einzelheiten der Organisation und der Arbeitsweise des Gerichts geregelt.
- (2) Die Satzung ist diesem Übereinkommen als Anhang beigefügt. Die Satzung kann auf Vorschlag des Gerichts oder auf Vorschlag eines Vertragsmitgliedstaats nach Konsultation des Gerichts durch einen Beschluss des Verwaltungsausschusses geändert werden. Diese Änderungen dürfen jedoch weder im Widerspruch zu diesem Übereinkommen stehen, noch zu seiner Änderung führen.
- (3) Die Satzung gewährleistet, dass die Arbeitsweise des Gerichts so effizient und kostenwirksam wie möglich organisiert wird und dass ein fairer Zugang zum Recht sichergestellt ist.

Verfahrensordnung

- (1) Die Verfahrensordnung regelt die Einzelheiten der Verfahren vor dem Gericht. Sie steht mit diesem Übereinkommen und der Satzung im Einklang.
- (2) Die Verfahrensordnung wird nach eingehender Konsultation der Beteiligten vom Verwaltungsausschuss angenommen. Zuvor ist eine Stellungnahme der Europäischen Kommission zur Vereinbarkeit der Verfahrensordnung mit dem Unionsrecht einzuholen.
- Die Verfahrensordnung kann auf Vorschlag des Gerichts und nach Konsultation der Europäischen Kommission durch einen Beschluss des Verwaltungsausschusses geändert werden. Diese Änderungen dürfen jedoch weder im Widerspruch zu diesem Übereinkommen oder der Satzung stehen, noch zur Änderung dieses Übereinkommens oder der Satzung führen.
- (3) Die Verfahrensordnung gewährleistet, dass die Entscheidungen des Gerichts höchsten Qualitätsansprüchen genügen und dass die Verfahren so effizient und kostenwirksam wie möglich durchgeführt werden. Sie gewährleistet einen fairen Ausgleich zwischen den berechtigten Interessen aller Parteien. Sie verschafft den Richtern den erforderlichen Ermessensspielraum, ohne die Vorhersagbarkeit des Verfahrens für die Parteien zu beeinträchtigen.

Verhältnismäßigkeit und Fairness

- (1) Das Gericht führt die Verfahren auf eine ihrer Bedeutung und Komplexität angemessene Art und Weise durch.
- (2) Das Gericht gewährleistet, dass die in diesem Übereinkommen und in der Satzung vorgesehenen Vorschriften, Verfahren und Rechtsbehelfe auf faire und ausgewogene Weise angewandt werden und den Wettbewerb nicht verzerren.

ARTIKEL 43

Fallbearbeitung

Das Gericht leitet die bei ihm anhängige Verfahren aktiv nach Maßgabe der Verfahrensordnung, ohne das Recht der Parteien zu beeinträchtigen, den Gegenstand und die ihren Vortrag stützenden Beweismittel ihrer Rechtsstreitigkeit zu bestimmen.

Elektronische Verfahren

Das Gericht macht nach Maßgabe der Verfahrensordnung den bestmöglichen Gebrauch von elektronischen Verfahren, wie der elektronischen Einreichung von Parteivorbringen und Beweisantritten, sowie von Videokonferenzen.

ARTIKEL 45

Öffentlichkeit der Verhandlungen

Die Verhandlungen sind öffentlich, es sei denn, das Gericht beschließt, soweit erforderlich, sie im Interesse einer der Parteien oder sonstiger Betroffener oder im allgemeinen Interesse der Justiz oder der öffentlichen Ordnung unter Ausschluss der Öffentlichkeit zu führen.

ARTIKEL 46

Parteifähigkeit

Jede natürliche oder juristische Person oder jede einer juristischen Person gleichgestellte Gesellschaft, die nach dem für sie geltenden nationalen Recht berechtigt ist, ein Verfahren anzustrengen, kann in Verfahren, die beim Gericht anhängig sind, Partei sein.

Parteien

- (1) Der Patentinhaber ist berechtigt, das Gericht anzurufen.
- (2) Sofern in der Lizenzvereinbarung nichts anderes bestimmt ist, hat der Inhaber einer ausschließlichen Lizenz in Bezug auf ein Patent das Recht, in gleicher Weise wie der Patentinhaber das Gericht anzurufen, vorausgesetzt, der Patentinhaber wurde zuvor unterrichtet.
- (3) Der Inhaber einer nicht ausschließlichen Lizenz ist nicht berechtigt, das Gericht anzurufen, es sei denn, der Patentinhaber wurde zuvor unterrichtet und die Lizenzvereinbarung lässt dies ausdrücklich zu.
- (4) Dem von einem Lizenzinhaber angestrengten Verfahren kann der Patentinhaber als Partei beitreten.
- (5) Die Rechtsgültigkeit eines Patents kann im Rahmen einer Verletzungsklage, die vom Inhaber einer Lizenz erhoben wurde, nicht angefochten werden, wenn der Patentinhaber nicht an dem Verfahren teilnimmt. Die Partei, die im Rahmen einer Verletzungsklage die Rechtsgültigkeit eines Patents anfechten will, muss eine Klage gegen den Patentinhaber erheben.
- (6) Jede andere natürliche oder juristische Person oder jede Vereinigung, die von einem Patent betroffen und nach dem für sie geltenden nationalen Recht berechtigt ist, Klage zu erheben, kann nach Maßgabe der Verfahrensordnung Klage erheben.

(7) Jede natürliche oder juristische Person und jede Vereinigung, die nach dem für sie geltenden nationalen Recht berechtigt ist, ein Verfahren anzustrengen, und die von einer Entscheidung betroffen ist, die das Europäische Patentamt in Ausübung der in Artikel 9 der Verordnung (EU) Nr. 1257/2012 genannten Aufgaben getroffen hat, ist berechtigt, eine Klage nach Artikel 32 Absatz 1 Buchstabe i zu erheben.

ARTIKEL 48

Vertretung

- (1) Die Parteien werden von Anwälten vertreten, die bei einem Gericht eines Vertragsmitgliedstaats zugelassen sind.
- (2) Die Parteien können alternativ von einem europäischen Patentanwalt vertreten werden, der gemäß Artikel 134 EPÜ befugt ist, vor dem Europäischen Patentamt als zugelassener Vertreter aufzutreten, und die erforderliche Qualifikation hat, beispielsweise ein Zertifikat zur Führung europäischer Patentstreitverfahren.
- (3) Die Anforderungen an die Qualifikation gemäß Absatz 2 werden vom Verwaltungsausschuss festgelegt. Der Kanzler führt ein Verzeichnis europäischer Patentanwälte, die befugt sind, Parteien vor Gericht zu vertreten.
- (4) Die Vertreter der Parteien können sich von Patentanwälten unterstützen lassen, die in Verhandlungen vor Gericht im Einklang mit der Verfahrensordnung das Wort ergreifen dürfen.

- (5) Die Vertreter der Parteien genießen nach Maßgabe der Verfahrensordnung die zur unabhängigen Wahrnehmung ihrer Aufgaben erforderlichen Rechte und Befreiungen, darunter das Recht, Mitteilungen zwischen einem Vertreter und der Partei oder jeder anderen Person im gerichtlichen Verfahren nicht offenlegen zu müssen, sofern die betreffende Partei nicht ausdrücklich auf dieses Recht verzichtet.
- (6) Die Vertreter der Parteien dürfen Fälle oder Sachverhalte vor dem Gericht weder wissentlich noch aufgrund fahrlässiger Unkenntnis falsch darstellen.
- (7) Eine Vertretung gemäß den Absätzen 1 und 2 des vorliegenden Artikels ist in Verfahren nach Artikel 32 Absatz 1 Buchstabe i nicht erforderlich.

KAPITEL II - VERFAHRENSSPRACHE

ARTIKEL 49

Verfahrenssprache vor dem Gericht erster Instanz

(1) Verfahrenssprache vor einer Lokal- oder Regionalkammer ist eine Amtssprache der Europäischen Union, die die Amtssprache oder eine der Amtssprachen des Vertragsmitgliedstaats ist, in dessen Gebiet sich die betreffende Kammer befindet, oder die Amtssprache(n), die von den Vertragsmitgliedstaaten mit einer gemeinsamen Regionalkammer bestimmt wird/werden.

- (2) Ungeachtet des Absatzes 1 können die Vertragsmitgliedstaaten eine oder mehrere der Amtssprachen des Europäischen Patentamts als Verfahrenssprache(n) ihrer Lokal- oder Regionalkammer bestimmen.
- (3) Die Parteien können vorbehaltlich der Billigung durch den zuständigen Spruchkörper vereinbaren, die Sprache, in der das Patent erteilt wurde, als Verfahrenssprache zu verwenden. Billigt der betreffende Spruchkörper die Wahl der Parteien nicht, so können die Parteien beantragen, dass der Fall an die Zentralkammer verwiesen wird.
- (4) Mit Zustimmung der Parteien kann der zuständige Spruchkörper aus Gründen der Zweckmäßigkeit und Fairness beschließen, dass die Sprache, in der das Patent erteilt wurde, als Verfahrenssprache verwendet wird.
- (5) Auf Ersuchen einer der Parteien und nach Anhörung der anderen Parteien und des zuständigen Spruchkörpers kann der Präsident des Gerichts erster Instanz aus Gründen der Fairness und unter Berücksichtigung aller erheblichen Umstände einschließlich der Standpunkte der Parteien und insbesondere des Standpunkts des Beklagten beschließen, dass die Sprache, in der das Patent erteilt wurde, als Verfahrenssprache verwendet wird. In diesem Fall prüft der Präsident des Gerichts erster Instanz, inwieweit besondere Übersetzungs- und Dolmetschvorkehrungen getroffen werden müssen.
- (6) Verfahrenssprache vor der Zentralkammer ist die Sprache, in der das betreffende Patent erteilt wurde.

Verfahrenssprache vor dem Berufungsgericht

- (1) Verfahrenssprache vor dem Berufungsgericht ist die Verfahrenssprache vor dem Gericht erster Instanz.
- (2) Ungeachtet des Absatzes 1 können die Parteien vereinbaren, die Sprache, in der das Patent erteilt wurde, als Verfahrenssprache zu verwenden.
- (3) In Ausnahmefällen und soweit dies angemessen erscheint, kann das Berufungsgericht mit Zustimmung der Parteien eine andere Amtssprache eines Vertragsmitgliedstaats als Verfahrenssprache für das gesamte Verfahren oder einen Teil des Verfahrens bestimmen.

ARTIKEL 51

Weitere Sprachenregelungen

- (1) Alle Spruchkörper des Gerichts erster Instanz und das Berufungsgericht können auf eine Übersetzung verzichten, soweit dies angemessen erscheint.
- (2) Alle Kammern des Gerichts erster Instanz und das Berufungsgericht sehen, soweit dies angemessen erscheint, auf Verlangen einer der Parteien eine Verdolmetschung vor, um die betreffenden Parteien bei mündlichen Verfahren zu unterstützen.

- (3) Wird bei der Zentralkammer eine Verletzungsklage erhoben, so hat ein Beklagter, der seinen Wohnsitz, den Sitz seiner Hauptniederlassung oder seinen Geschäftssitz in einem Mitgliedstaat hat, ungeachtet des Artikels 49 Absatz 6 Anspruch darauf, dass relevante Dokumente auf seinen Antrag hin in die Sprache des Mitgliedstaats, in dem er seinen Wohnsitz oder den Sitz seiner Hauptniederlassung oder in Ermangelung derselben seinen Geschäftssitz hat, übersetzt werden, sofern
 - a) die Zuständigkeit gemäß Artikel 33 Absatz 1 Unterabsatz 3 oder 4 bei der Zentralkammer liegt,
 - b) die Verfahrenssprache vor der Zentralkammer keine Amtssprache des Mitgliedstaats ist, in dem der Beklagte seinen Wohnsitz oder den Sitz seiner Hauptniederlassung oder – in Ermangelung derselben – seinen Geschäftssitz hat, und
 - c) der Beklagte nicht über ausreichende Kenntnisse der Verfahrenssprache verfügt.

KAPITEL III - VERFAHREN VOR DEM GERICHT

ARTIKEL 52

Schriftliches Verfahren, Zwischenverfahren und mündliches Verfahren

- (1) Das Verfahren vor dem Gericht umfasst nach Maßgabe der Verfahrensordnung ein schriftliches Verfahren, ein Zwischenverfahren und ein mündliches Verfahren. Alle Verfahren werden auf flexible und ausgewogene Weise durchgeführt.
- (2) Im Rahmen des sich an das schriftliche Verfahren anschließenden Zwischenverfahrens obliegt es gegebenenfalls und vorbehaltlich eines Mandats des gesamten Spruchkörpers dem als Berichterstatter tätigen Richter, eine Zwischenanhörung einzuberufen. Dieser Richter prüft zusammen mit den Parteien insbesondere die Möglichkeit eines Vergleichs, auch im Wege der Mediation, und/oder eines Schiedsverfahrens unter Inanspruchnahme der Dienste des in Artikel 35 genannten Zentrums.
- (3) Im Rahmen des mündlichen Verfahrens erhalten die Parteien Gelegenheit zur ordnungsgemäßen Darlegung ihrer Argumente. Das Gericht kann mit Zustimmung der Parteien ohne mündliche Anhörung entscheiden.

Beweismittel

(1) In den Verfahren vor dem Gericht sind insbesondere folgende Be		en Verfahren vor dem Gericht sind insbesondere folgende Beweismittel zulässig:
	a)	Anhörung der Parteien;
	b)	Einholung von Auskünften;
	c)	Vorlage von Urkunden;
	d)	Vernehmung von Zeugen;
	e)	Gutachten durch Sachverständige;
	. f)	Einnahme des Augenscheins;
	g)	Vergleichstests oder Versuche;

Abgabe einer schriftlichen eidesstattlichen Erklärung (Affidavit).

h)

(2) Die Verfahrensordnung regelt das Verfahren zur Durchführung der Beweisaufnahme. Die Vernehmung der Zeugen und Sachverständigen erfolgt unter der Aufsicht des Gerichts und beschränkt sich auf das notwendige Maß.

ARTIKEL 54

Beweislast

Die Beweislast für Tatsachen trägt unbeschadet des Artikels 24 Absätze 2 und 3 die Partei, die sich auf diese Tatsachen beruft.

ARTIKEL 55

Umkehr der Beweislast

- (1) Ist der Gegenstand eines Patents ein Verfahren zur Herstellung eines neuen Erzeugnisses, so gilt unbeschadet des Artikels 24 Absätze 2 und 3 bis zum Beweis des Gegenteils jedes identische ohne Zustimmung des Patentinhabers hergestellte Erzeugnis als nach dem patentierten Verfahren hergestellt.
- (2) Der Grundsatz des Absatzes 1 gilt auch, wenn mit erheblicher Wahrscheinlichkeit das identische Erzeugnis nach dem patentierten Verfahren hergestellt wurde und es dem Patentinhaber trotz angemessener Bemühungen nicht gelungen ist, das tatsächlich für solch ein identisches Erzeugnis angewandte Verfahren festzustellen.

(3) Bei der Führung des Beweises des Gegenteils werden die berechtigten Interessen des Beklagten an der Wahrung seiner Produktions- und Geschäftsgeheimnisse berücksichtigt.

KAPITEL IV - BEFUGNISSE DES GERICHTS

ARTIKEL 56

Allgemeine Befugnisse des Gerichts

- (1) Das Gericht kann die in diesem Übereinkommen festgelegten Maßnahmen, Verfahren und Abhilfemaßnahmen anordnen und seine Anordnungen nach Maßgabe der Verfahrensordnung von Bedingungen abhängig machen.
- (2) Das Gericht trägt den Interessen der Parteien gebührend Rechnung und gewährt den Parteien vor Erlass einer Anordnung rechtliches Gehör, es sei denn, dies ist mit der wirksamen Durchsetzung der Anordnung nicht vereinbar.

Gerichtssachverständige

- (1) Das Gericht kann unbeschadet der für die Parteien bestehenden Möglichkeit, Sachverständigenbeweise vorzulegen, jederzeit Gerichtssachverständige bestellen, damit diese Gutachten zu bestimmten Aspekten einer Rechtsstreitigkeit abgeben. Das Gericht stellt dem bestellten Sachverständigen alle Informationen zur Verfügung, die er benötigt, um sein Gutachten erstatten zu können.
- (2) Hierzu erstellt das Gericht nach Maßgabe der Verfahrensordnung ein nicht verbindliches Verzeichnis von Sachverständigen. Dieses Verzeichnis wird vom Kanzler geführt.
- (3) Die Gerichtssachverständigen müssen die Gewähr für Unabhängigkeit und Unparteilichkeit bieten. Die für Richter geltenden Vorschriften des Artikels 7 der Satzung für die Regelung von Interessenkonflikten gelten für die Gerichtssachverständigen entsprechend.
- (4) Die dem Gericht von den Gerichtssachverständigen vorgelegten Gutachten werden den Parteien zur Verfügung gestellt; diese erhalten Gelegenheit zur Stellungnahme.

Schutz vertraulicher Informationen

Das Gericht kann zum Schutz von Geschäftsgeheimnissen, personenbezogenen Daten oder sonstigen vertraulichen Informationen einer Verfahrenspartei oder eines Dritten oder zur Verhinderung eines Missbrauchs von Beweismitteln anordnen, dass die Erhebung und Verwendung von Beweisen in den vor ihm geführten Verfahren eingeschränkt oder für unzulässig erklärt werden oder der Zugang zu solchen Beweismitteln auf bestimmte Personen beschränkt wird.

ARTIKEL 59

Anordnung der Beweisvorlage

- (1) Auf Antrag einer Partei, die alle vernünftigerweise verfügbaren Beweismittel zur hinreichenden Begründung ihrer Ansprüche vorgelegt und die in der Verfügungsgewalt der gegnerischen Partei oder einer dritten Partei befindlichen Beweismittel zur Begründung ihrer Ansprüche bezeichnet hat, kann das Gericht die Vorlage dieser Beweismittel durch die gegnerische Partei oder eine dritte Partei anordnen, sofern der Schutz vertraulicher Informationen gewährleistet wird. Eine solche Anordnung darf nicht zu einer Pflicht zur Selbstbelastung führen.
- (2) Das Gericht kann auf Antrag einer Partei unter den Voraussetzungen des Absatzes 1 die Übermittlung von in der Verfügungsgewalt der gegnerischen Partei befindlichen Bank-, Finanzoder Handelsunterlagen anordnen, sofern der Schutz vertraulicher Informationen gewährleistet wird.

Anordnung der Beweissicherung und der Inspektion von Räumlichkeiten

- (1) Auf Ersuchen des Antragstellers, der alle vernünftigerweise verfügbaren Beweismittel zur Begründung der Behauptung, dass das Patent verletzt worden ist oder verletzt zu werden droht, vorgelegt hat, kann das Gericht selbst vor Einleitung eines Verfahrens in der Sache schnelle und wirksame einstweilige Maßnahmen zur Sicherung der rechtserheblichen Beweismittel hinsichtlich der behaupteten Verletzung anordnen, sofern der Schutz vertraulicher Informationen gewährleistet wird.
- (2) Diese Maßnahmen können die ausführliche Beschreibung mit oder ohne Einbehaltung von Mustern oder die dingliche Beschlagnahme der verletzenden Erzeugnisse sowie gegebenenfalls der für die Herstellung und/oder den Vertrieb dieser Erzeugnisse verwendeten Materialien und Geräte und der zugehörigen Unterlagen umfassen.
- (3) Das Gericht kann selbst vor Einleitung eines Verfahrens in der Sache auf Ersuchen des Antragstellers, der Beweismittel zur Begründung der Behauptung, dass das Patent verletzt worden ist oder verletzt zu werden droht, vorgelegt hat, die Inspektion von Räumlichkeiten anordnen. Eine Inspektion von Räumlichkeiten wird von einer vom Gericht nach Maßgabe der Verfahrensordnung bestellten Person vorgenommen.
- (4) Der Antragsteller ist bei der Inspektion der Räumlichkeiten nicht zugegen; er kann sich jedoch von einem unabhängigen Fachmann vertreten lassen, der in der gerichtlichen Anordnung namentlich zu nennen ist.

- (5) Die Maßnahmen werden nötigenfalls ohne Anhörung der anderen Partei angeordnet, insbesondere dann, wenn durch eine Verzögerung dem Inhaber des Patents wahrscheinlich ein nicht wiedergutzumachender Schaden entstünde, oder wenn nachweislich die Gefahr besteht, dass Beweise vernichtet werden.
- (6) Werden Maßnahmen zur Beweissicherung oder Inspektion von Räumlichkeiten ohne Anhörung der anderen Partei angeordnet, so sind die betroffenen Parteien unverzüglich, spätestens jedoch unmittelbar nach Vollziehung der Maßnahmen davon in Kenntnis zu setzen. Auf Antrag der betroffenen Parteien findet eine Prüfung, die das Recht zur Stellungnahme einschließt, mit dem Ziel statt, innerhalb einer angemessenen Frist nach der Mitteilung der Maßnahmen zu entscheiden, ob diese abgeändert, aufgehoben oder bestätigt werden müssen.
- (7) Die Maßnahmen zur Beweissicherung können davon abhängig gemacht werden, dass der Antragsteller eine angemessene Kaution stellt oder eine entsprechende Sicherheit leistet, um gemäß Absatz 9 eine Entschädigung des Antragsgegners für den von diesem erlittenen Schaden sicherzustellen.
- (8) Das Gericht stellt sicher, dass die Maßnahmen zur Beweissicherung auf Antrag des Antragsgegners unbeschadet etwaiger Schadensersatzforderungen aufgehoben oder auf andere Weise außer Kraft gesetzt werden, wenn der Antragsteller nicht innerhalb einer Frist die 31 Kalendertage oder 20 Arbeitstage nicht überschreitet, wobei der längere der beiden Zeiträume gilt bei dem Gericht eine Klage anstrengt, die zu einer Sachentscheidung führt.

(9) Werden Maßnahmen zur Beweissicherung aufgehoben oder werden sie aufgrund einer Handlung oder Unterlassung des Antragstellers hinfällig, oder wird in der Folge festgestellt, dass keine Verletzung oder drohende Verletzung des Patents vorlag, so kann das Gericht auf Antrag des Antragsgegners anordnen, dass der Antragsteller dem Antragsgegner angemessen Ersatz für einen aufgrund dieser Maßnahmen entstandenen Schaden zu leisten hat.

ARTIKEL 61

Arrest

- (1) Auf Ersuchen des Antragstellers, der alle vernünftigerweise verfügbaren Beweismittel zur Begründung der Behauptung, dass das Patent verletzt worden ist oder verletzt zu werden droht, vorgelegt hat, kann das Gericht selbst vor Einleitung eines Verfahrens in der Sache einer Partei untersagen, Vermögensgegenstände aus seinem Zuständigkeitsbereich zu verbringen oder über Vermögensgegenständen zu verfügen, unabhängig davon, ob sie sich in seinem Zuständigkeitsbereich befinden oder nicht.
- (2) Artikel 60 Absätze 5 bis 9 gelten für die in diesem Artikel genannten Maßnahmen entsprechend.

Einstweilige Maßnahmen und Sicherungsmaßnahmen

- (1) Das Gericht kann im Wege einer Anordnung gegen einen angeblichen Verletzer oder eine Mittelsperson, deren Dienste der angebliche Verletzer in Anspruch nimmt, Verfügungen erlassen, um eine drohende Verletzung zu verhindern, die Fortsetzung der angeblichen Verletzung einstweilig und gegebenenfalls unter Androhung von Zwangsgeldern zu untersagen oder die Fortsetzung an die Stellung von Sicherheiten zu knüpfen, durch die eine Entschädigung des Rechtsinhabers gewährleistet werden soll.
- (2) Das Gericht wägt nach Ermessen die Interessen der Parteien gegeneinander ab und berücksichtigt dabei insbesondere den möglichen Schaden, der einer der Parteien aus dem Erlass der Verfügung oder der Abweisung des Antrags erwachsen könnte.
- (3) Das Gericht kann auch die Beschlagnahme oder Herausgabe der Erzeugnisse, bei denen der Verdacht auf Verletzung des Patents besteht, anordnen, um deren Inverkehrbringen und Umlauf auf den Vertriebswegen zu verhindern. Das Gericht kann die vorsorgliche Beschlagnahme beweglichen und unbeweglichen Vermögens des angeblichen Verletzers einschließlich der Sperrung der Bankkonten und der Beschlagnahme sonstiger Vermögenswerte des angeblichen Verletzers anordnen, wenn der Antragsteller glaubhaft macht, dass die Erfüllung seiner Schadensersatzforderung fraglich ist.

- (4) Im Falle der Maßnahmen nach den Absätzen 1 und 3 kann das Gericht dem Antragsteller auferlegen, alle vernünftigerweise verfügbaren Beweise vorzulegen, um sich mit ausreichender Sicherheit davon überzeugen zu können, dass der Antragsteller der Rechtsinhaber ist und dass das Recht des Antragstellers verletzt wird oder dass eine solche Verletzung droht.
- (5) Artikel 60 Absätze 5 bis 9 gelten für die in diesem Artikel genannten Maßnahmen entsprechend.

Endgültige Verfügungen

- (1) Wird eine Patentverletzung festgestellt, so kann das Gericht gegen den Verletzer eine Verfügung erlassen, durch die die Fortsetzung der Verletzung untersagt wird. Das Gericht kann auch eine Verfügung gegen Mittelspersonen erlassen, deren Dienste von einem Dritten zwecks Verletzung eines Patents in Anspruch genommen werden.
- (2) Gegebenenfalls werden bei Nichteinhaltung der Verfügung nach Absatz 1 an das Gericht zu zahlende Zwangsgelder verhängt.

Abhilfemaßnahmen im Rahmen von Verletzungsverfahren

- (1) Das Gericht kann auf Antrag des Antragstellers anordnen, dass in Bezug auf Erzeugnisse, die nach seinen Feststellungen ein Patent verletzen, und gegebenenfalls in Bezug auf Materialien und Geräte, die vorwiegend zur Schaffung oder Herstellung dieser Erzeugnisse verwendet wurden, unbeschadet etwaiger Schadensersatzansprüche der geschädigten Partei aus der Verletzung sowie ohne Entschädigung irgendwelcher Art geeignete Maßnahmen getroffen werden.
- (2) Zu diesen Maßnahmen gehört
 - a) die Feststellung einer Verletzung,
 - b) der Rückruf der Erzeugnisse aus den Vertriebswegen,
 - c) die Beseitigung der verletzenden Eigenschaft des Erzeugnisses,
 - d) die endgültige Entfernung der Erzeugnisse aus den Vertriebswegen oder
 - e) die Vernichtung der Erzeugnisse und/oder der betreffenden Materialien und Geräte.

- (3) Das Gericht ordnet an, dass die betreffenden Maßnahmen auf Kosten des Verletzers durchgeführt werden, es sei denn, es werden besondere Gründe geltend gemacht, die dagegen sprechen.
- (4) Bei der Prüfung eines Antrags auf Anordnung von Abhilfemaßnahmen nach diesem Artikel berücksichtigt das Gericht das Erfordernis der Verhältnismäßigkeit zwischen der Schwere der Verletzung und den anzuordnenden Abhilfemaßnahmen, die Bereitschaft des Verletzers, das Material in einen nichtverletzenden Zustand zu versetzen, sowie die Interessen Dritter.

Entscheidung über die Gültigkeit eines Patents

- (1) Das Gericht entscheidet über die Gültigkeit eines Patents auf der Grundlage einer Klage auf Nichtigerklärung oder einer Widerklage auf Nichtigerklärung.
- (2) Das Gericht kann ein Patent nur aus den in Artikel 138 Absatz 1 und Artikel 139 Absatz 2 EPÜ genannten Gründen entweder ganz oder teilweise für nichtig erklären.
- (3) Betreffen die Nichtigkeitsgründe nur einen Teil des Patents, so wird das Patent unbeschadet des Artikels 138 Absatz 3 EPÜ durch eine entsprechende Änderung der Patentansprüche beschränkt und teilweise für nichtig erklärt.

- (4) Soweit ein Patent für nichtig erklärt wurde, gelten die in den Artikeln 64 und 67 EPÜ genannten Wirkungen als von Anfang an nicht eingetreten.
- (5) Erklärt das Gericht ein Patent in einer Endentscheidung ganz oder teilweise für nichtig, so übersendet es eine Abschrift der Entscheidung an das Europäische Patentamt und im Falle eines europäischen Patents an das nationale Patentamt des betreffenden Vertragsmitgliedstaats.

Befugnisse des Gerichts in Bezug auf Entscheidungen des Europäischen Patentamts

- (1) Bei Klagen nach Artikel 32 Absatz 1 Buchstabe i kann das Gericht alle Befugnisse ausüben, die dem Europäischen Patentamt nach Artikel 9 der Verordnung (EU) Nr. 1257/2012 übertragen wurden, einschließlich der Berichtigung des Registers für den einheitlichen Patentschutz.
- (2) Bei Klagen nach Artikel 32 Absatz 1 Buchstabe i tragen die Parteien abweichend von Artikel 69 ihre eigenen Kosten.

Befugnis, die Erteilung einer Auskunft anzuordnen

- (1) Das Gericht kann auf einen begründeten und die Verhältnismäßigkeit wahrenden Antrag des Antragstellers hin nach Maßgabe der Verfahrensordnung anordnen, dass der Verletzer dem Antragsteller über Folgendes Auskunft erteilt:
 - a) Ursprung und Vertriebswege der verletzenden Erzeugnisse oder Verfahren,
 - b) die erzeugten, hergestellten, ausgelieferten, erhaltenen oder bestellten Mengen und die Preise, die für die verletzenden Erzeugnisse gezahlt wurden und
 - c) die Identität aller an der Herstellung oder dem Vertrieb von verletzenden Erzeugnissen oder an der Anwendung des verletzenden Verfahrens beteiligten dritten Personen.
- (2) Das Gericht kann nach Maßgabe der Verfahrensordnung ferner anordnen, dass jede dritte Partei, die
 - a) nachweislich verletzende Erzeugnisse in gewerblichem Ausmaß in ihrem Besitz hatte oder die ein verletzendes Verfahren in gewerblichem Ausmaß angewandt hat,
 - b) nachweislich für verletzende Tätigkeiten genutzte Dienstleistungen in gewerblichem Ausmaß erbracht hat oder

c) nach den Angaben einer unter den Buchstaben a und b genannten Person an der Erzeugung, Herstellung oder am Vertrieb verletzender Erzeugnisse oder Verfahren bzw. an der Erbringung solcher Dienstleistungen beteiligt war,

dem Antragsteller die in Absatz 1 genannten Auskünfte erteilt.

ARTIKEL 68

Zuerkennung von Schadenersatz

- (1) Das Gericht ordnet auf Antrag der geschädigten Partei an, dass der Verletzer, der wusste oder vernünftigerweise hätte wissen müssen, dass er eine Patentverletzungshandlung vornahm, der geschädigten Partei zum Ausgleich des von ihr wegen der Verletzung erlittenen tatsächlichen Schadens angemessenen Schadenersatz zu leisten hat.
- (2) Die geschädigte Partei ist soweit wie möglich in die Lage zu versetzen, in der sie sich ohne die Verletzung befunden hätte. Dem Verletzer darf kein Nutzen aus der Verletzung erwachsen. Der Schadenersatz hat jedoch keinen Strafcharakter.

- (3) Bei der Festsetzung des Schadenersatzes verfährt das Gericht wie folgt:
 - a) Es berücksichtigt alle in Frage kommenden Aspekte, wie die negativen wirtschaftlichen Auswirkungen, einschließlich der Gewinneinbußen für die geschädigte Partei und der zu Unrecht erzielten Gewinne des Verletzers, sowie in geeigneten Fällen auch andere als wirtschaftliche Faktoren, wie den immateriellen Schaden für die geschädigte Partei, oder
 - b) es kann stattdessen in geeigneten Fällen den Schadensersatz als Pauschalbetrag festsetzen, und zwar auf der Grundlage von Faktoren wie mindestens dem Betrag der Vergütung oder Gebühr, die der Verletzer hätte entrichten müssen, wenn er die Erlaubnis zur Nutzung des betreffenden Patents eingeholt hätte.
- (4) Für Fälle, in denen der Verletzer die Verletzungshandlung vorgenommen hat, ohne dass er dies wusste oder vernünftigerweise hätte wissen müssen, kann das Gericht die Herausgabe der Gewinne oder die Zahlung einer Entschädigung anordnen.

Kosten des Rechtsstreits

(1) Die Kosten des Rechtsstreits und sonstigen Kosten der obsiegenden Partei werden in der Regel, soweit sie zumutbar und angemessen sind, bis zu einer gemäß der Verfahrensordnung festgelegten Obergrenze von der unterlegenen Partei getragen, sofern Billigkeitsgründe dem nicht entgegenstehen.

- (2) Obsiegt eine Partei nur teilweise oder liegen außergewöhnliche Umständen vor, so kann das Gericht anordnen, dass die Kosten nach Billigkeit verteilt werden oder die Parteien ihre Kosten selbst tragen.
- (3) Eine Partei, die dem Gericht oder einer anderen Partei unnötige Kosten verursacht hat, soll diese tragen.
- (4) Auf Antrag des Beklagten kann das Gericht anordnen, dass der Antragsteller für die Kosten des Rechtsstreits und sonstigen Kosten des Beklagten, die der Antragsteller möglicherweise tragen muss, angemessene Sicherheiten zu leisten hat, insbesondere in den in den Artikeln 59 bis 62 genannten Fällen.

Gerichtsgebühren

- (1) Die Verfahrensparteien haben Gerichtsgebühren zu entrichten.
- (2) Sofern in der Verfahrensordnung nicht anderweitig festgelegt, sind die Gerichtsgebühren im Voraus zu entrichten. Eine Partei, die eine vorgeschriebene Gerichtsgebühr nicht entrichtet hat, kann von der weiteren Beteiligung am Verfahren ausgeschlossen werden.

Prozesskostenhilfe

- (1) Ist eine Partei, die eine natürliche Person ist, außerstande, die Kosten des Verfahrens ganz oder teilweise zu bestreiten, so kann sie jederzeit Prozesskostenhilfe beantragen. Die Bedingungen für die Gewährung von Prozesskostenhilfe werden in der Verfahrensordnung festgelegt.
- (2) Das Gericht entscheidet nach Maßgabe der Verfahrensordnung, ob die Prozesskostenhilfe ganz oder teilweise bewilligt oder versagt werden soll.
- (3) Der Verwaltungsausschuss legt auf Vorschlag des Gerichts die Höhe der Prozesskostenhilfe und die Regeln für die diesbezügliche Kostentragung fest.

ARTIKEL 72

Verjährungsfrist

Unbeschadet des Artikels 24 Absätze 2 und 3 können Klagen im Zusammenhang mit allen Formen der finanziellen Entschädigung nicht später als fünf Jahre, nachdem der Antragsteller von dem letzten Ereignis, das Veranlassung zur Klage bietet, Kenntnis erlangte oder vernünftigerweise hätte erlangen müssen, erhoben werden.

KAPITEL V - RECHTSMITTEL

ARTIKEL 73

Berufung

- (1) Eine Partei, die mit ihren Anträgen ganz oder teilweise unterlegen ist, kann beim Berufungsgericht innerhalb von zwei Monaten ab dem Tag, an dem die Entscheidung zugestellt worden ist, Berufung gegen eine Entscheidung des Gerichts erster Instanz einlegen.
- (2) Eine Partei, die mit ihren Anträgen ganz oder teilweise unterlegen ist, kann gegen eine Anordnung des Gerichts erster Instanz beim Berufungsgericht Berufung einlegen, und zwar
 - bei den Anordnungen gemäß Artikel 49 Absatz 5 sowie den Artikeln 59 bis 62 und 67 innerhalb von 15 Kalendertagen nach Zustellung der Anordnung an den Antragsteller;
 - b) bei anderen als den unter Buchstabe a genannten Anordnungen
 - i) zusammen mit der Berufung gegen die Entscheidung oder
 - ii) wenn das Gericht die Berufung zulässt, innerhalb von 15 Tagen nach Zustellung der entsprechenden Entscheidung des Gerichts.

- (3) Die Berufung gegen eine Entscheidung oder eine Anordnung des Gerichts erster Instanz kann auf rechtliche und tatsächliche Gesichtspunkte gestützt werden.
- (4) Neue Tatsachen und neue Beweismittel können nur vorgelegt werden, wenn dies mit der Verfahrensordnung im Einklang steht und vernünftigerweise nicht davon ausgegangen werden konnte, dass die betreffende Partei diese Tatsachen und Beweismittel im Verfahren vor dem Gericht erster Instanz hätte vorlegen können.

Wirkung der Berufung

- (1) Die Berufung hat keine aufschiebende Wirkung, sofern das Berufungsgericht auf begründeten Antrag einer der Parteien nicht etwas anderes beschließt. In der Verfahrensordnung wird sichergestellt, dass ein solcher Beschluss unverzüglich gefasst wird.
- (2) Ungeachtet des Absatzes 1 hat die Berufung gegen eine Entscheidung im Zusammenhang mit Klagen oder Widerklagen auf Nichtigerklärung und im Zusammenhang mit Klagen aufgrund von Artikel 32 Absatz 1 Buchstabe i stets aufschiebende Wirkung.
- (3) Die Berufung gegen eine Anordnung gemäß Artikel 49 Absatz 5 oder den Artikeln 59 bis 62 oder 67 hindert nicht die Fortsetzung des Ausgangsverfahrens. Bis zu einer Entscheidung des Berufungsgerichts über die angefochtene Anordnung darf das Gericht erster Instanz jedoch keine Entscheidung im Ausgangsverfahren erlassen.

Entscheidung über die Berufung und Zurückverweisung

- (1) Ist eine Berufung gemäß Artikel 73 begründet, so hebt das Berufungsgericht die Entscheidung des Gerichts erster Instanz auf und erlässt eine Endentscheidung. In Ausnahmefällen und im Einklang mit der Verfahrensordnung kann das Berufungsgericht die Sache an das Gericht erster Instanz zur Entscheidung zurückverweisen.
- (2) Wird eine Sache gemäß Absatz 1 an das Gericht erster Instanz zurückverwiesen, so ist dieses an die rechtliche Beurteilung in der Entscheidung des Berufungsgerichts gebunden.

KAPITEL VI - ENTSCHEIDUNGEN

ARTIKEL 76

Entscheidungsgrundlage und rechtliches Gehör

(1) Das Gericht entscheidet nach Maßgabe der von den Parteien gestellten Anträge und darf nicht mehr zusprechen, als beantragt ist.

- (2) Sachentscheidungen dürfen nur auf Gründe, Tatsachen und Beweismittel gestützt werden, die von den Parteien vorgebracht oder auf Anordnung des Gerichts in das Verfahren eingebracht wurden und zu denen die Parteien Gelegenheit zur Stellungnahme hatten.
- (3) Das Gericht würdigt die Beweise frei und unabhängig.

Formerfordernisse

- (1) Die Entscheidungen und Anordnungen des Gerichts sind im Einklang mit der Verfahrensordnung zu begründen und schriftlich abzufassen.
- (2) Die Entscheidungen und Anordnungen des Gerichts werden in der Verfahrenssprache abgefasst.

ARTIKEL 78

Entscheidungen des Gerichts und abweichende Meinungen

(1) Die Entscheidungen und Anordnungen des Gerichts trifft der Spruchkörper mit Mehrheit nach Maßgabe der Satzung. Bei Stimmengleichheit ist die Stimme des vorsitzenden Richters ausschlaggebend.

(2) In Ausnahmefällen kann jeder Richter des Spruchkörpers eine abweichende Meinung getrennt von der Entscheidung des Gerichts zum Ausdruck bringen.

ARTIKEL 79

Vergleich

Die Parteien können im Laufe des Verfahrens jederzeit ihren Rechtsstreit im Wege eines Vergleichs beenden, der durch eine Entscheidung des Gerichts bestätigt wird. Ein Patent kann jedoch durch einen Vergleich weder für nichtig erklärt noch beschränkt werden.

ARTIKEL 80

Veröffentlichung von Entscheidungen

Das Gericht kann auf Antrag des Antragstellers und auf Kosten des Verletzers geeignete Maßnahmen zur Verbreitung von Informationen über die betreffende Entscheidung des Gerichts einschließlich der Bekanntmachung der Entscheidung sowie ihrer vollständigen oder teilweisen Veröffentlichung in den Medien anordnen.

Wiederaufnahme des Verfahrens

- (1) Nach einer Endentscheidung des Gerichts kann das Berufungsgericht ausnahmsweise einem Antrag auf Wiederaufnahme des Verfahrens stattgeben, wenn
 - a) die die Wiederaufnahme beantragende Partei einer Tatsache von entscheidender Bedeutung gewahr wird, die der die Wiederaufnahme beantragenden Partei vor Verkündung der Entscheidung unbekannt war; einem solchen Antrags darf nur wegen einer Handlung stattgegeben werden, die durch eine Endentscheidung eines nationalen Gerichts als Straftat qualifiziert wurde, oder
 - b) ein grundlegender Verfahrensfehler vorliegt, insbesondere wenn einem nicht vor Gericht erschienenen Beklagten das verfahrenseinleitende Schriftstück oder ein gleichwertiges Schriftstück nicht so rechtzeitig und in einer Weise zugestellt worden ist, dass er sich verteidigen konnte.
- (2) Der Wiederaufnahmeantrag ist binnen zehn Jahren ab dem Zeitpunkt der Entscheidung, spätestens jedoch zwei Monate ab dem Zeitpunkt des Bekanntwerdens der neuen Tatsache oder des Verfahrensfehlers einzureichen. Ein solcher Antrag hat keine aufschiebende Wirkung, es sei denn, das Berufungsgericht entscheidet anders.

- (3) Im Einklang mit der Verfahrensordnung hebt das Berufungsgericht die zu überprüfende Entscheidung ganz oder teilweise auf und ordnet die Wiederaufnahme des Verfahrens zur neuen Verhandlung und Entscheidung an, wenn der Wiederaufnahmeantrag begründet ist.
- (4) Personen, die in gutem Glauben Patente nutzen, die Gegenstand einer zu überprüfenden Entscheidung sind, soll gestattet werden, die Patente auch weiterhin zu nutzen.

Vollstreckung der Entscheidungen und Anordnungen

- (1) Die Entscheidungen und Anordnungen des Gerichts sind in allen Vertragsmitgliedstaaten vollstreckbar. Eine Anordnung zur Vollstreckung einer Entscheidung wird der Entscheidung des Gerichts beigefügt.
- (2) Gegebenenfalls kann die Vollstreckung einer Entscheidung davon abhängig gemacht werden, dass eine Sicherheit oder gleichwertige Garantien gestellt werden, die insbesondere im Falle von Verfügungen eine Entschädigung für erlittenen Schaden sicherstellen.
- (3) Unbeschadet dieses Übereinkommens und der Satzung unterliegt das Vollstreckungsverfahren dem Recht des Vertragsmitgliedstaates, in dem die Vollstreckung erfolgt. Entscheidungen des Gerichts werden unter den gleichen Bedingungen vollstreckt wie Entscheidungen, die in dem Vertragsmitgliedstaat, in dem die Vollstreckung erfolgt, ergangen sind.

(4) Leistet eine Partei einer Anordnung des Gerichts nicht Folge, so kann sie mit an das Gericht zu zahlenden Zwangsgeldern belegt werden. Das einzelne Zwangsgeld muss im angemessenen Verhältnis zu der Bedeutung der zu vollstreckenden Anordnung stehen und lässt das Recht der Partei, Schadenersatz oder eine Sicherheit zu fordern, unberührt.

TEIL IV - ÜBERGANGSBESTIMMUNGEN

ARTIKEL 83

Übergangsregelung

- (1) Während einer Übergangszeit von sieben Jahren nach dem Inkrafttreten dieses Übereinkommens können Klagen wegen Verletzung bzw. auf Nichtigerklärung eines europäischen Patents oder Klagen wegen Verletzung bzw. auf Nichtigerklärung eines ergänzenden Schutzzertifikats, das zu einem durch ein europäisches Patent geschützten Erzeugnis ausgestellt worden ist, weiterhin bei nationalen Gerichten oder anderen zuständigen nationalen Behörden erhoben werden.
- (2) Klagen, die am Ende der Übergangszeit vor einem nationalen Gericht anhängig sind, werden durch den Ablauf der Übergangszeit nicht berührt.

- (3) Ist noch keine Klage vor dem Gericht erhoben worden, so kann ein Inhaber oder Anmelder eines europäischen Patents, das vor Ablauf der Übergangszeit nach Absatz 1 und gegebenenfalls Absatz 5 erteilt oder beantragt worden ist, sowie ein Inhaber eines ergänzenden Schutzzertifikats, das zu einem durch ein europäisches Patent geschützten Erzeugnis erteilt worden ist, die ausschließliche Zuständigkeit des Gerichts ausschließen. Zu diesem Zweck muss er der Kanzlei spätestens einen Monat vor Ablauf der Übergangszeit eine Mitteilung über die Inanspruchnahme dieser Ausnahmeregelung zukommen lassen. Die Inanspruchnahme der Ausnahmeregelung wird mit der Eintragung der entsprechenden Mitteilung in das Register wirksam.
- (4) Sofern noch keine Klage vor einem nationalen Gericht erhoben worden ist, können Inhaber oder Anmelder europäischer Patente oder Inhaber ergänzender Schutzzertifikate, die zu einem durch ein europäisches Patent geschützten Erzeugnis erteilt worden sind, die die Ausnahmeregelung nach Absatz 3 in Anspruch genommen haben, jederzeit von dieser Ausnahmeregelung zurücktreten. In diesem Fall setzen sie die Kanzlei davon in Kenntnis. Der Verzicht auf die Inanspruchnahme der Ausnahmeregelung wird mit der Eintragung der entsprechenden Mitteilung in das Register wirksam.
- (5) Fünf Jahre nach dem Inkrafttreten dieses Übereinkommens führt der Verwaltungsausschuss eine eingehende Konsultation der Nutzer des Patentsystems und eine Erhebung durch, um die Zahl der europäischen Patente und der ergänzenden Schutzzertifikate, die zu einem durch ein europäisches Patent geschützten Erzeugnis erteilt worden sind, derentwegen weiterhin nach Absatz 1 Klagen wegen Verletzung oder auf Nichtigerklärung bei den nationalen Gerichten erhoben werden, die Gründe dafür und die damit verbundenen Auswirkungen zu ermitteln. Auf Grundlage dieser Konsultation und einer Stellungnahme des Gerichts kann der Verwaltungsausschuss beschließen, die Übergangszeit um bis zu sieben Jahre zu verlängern.

TEIL V - SCHLUSSBESTIMMUNGEN

ARTIKEL 84

Unterzeichnung, Ratifikation und Beitritt

- (1) Dieses Übereinkommen liegt für alle Mitgliedstaaten am 19. Februar 2013 zur Unterzeichnung auf.
- (2) Dieses Übereinkommen bedarf der Ratifikation nach Maßgabe der jeweiligen verfassungsrechtlichen Erfordernisse der Mitgliedstaaten. Die Ratifikationsurkunden werden beim Generalsekretariat des Rates der Europäischen Union (im Folgenden "Verwahrer") hinterlegt.
- (3) Jeder Mitgliedstaat, der dieses Übereinkommen unterzeichnet hat, notifiziert der Europäischen Kommission seine Ratifikation des Übereinkommens zum Zeitpunkt der Hinterlegung seiner Ratifikationsurkunde gemäß Artikel 18 Absatz 3 der Verordnung (EU) Nr. 1257/2012.
- (4) Dieses Übereinkommen steht allen Mitgliedstaaten zum Beitritt offen. Die Beitrittsurkunden werden beim Verwahrer hinterlegt.

Aufgaben des Verwahrers

- (1) Der Verwahrer erstellt beglaubigte Abschriften dieses Übereinkommens und übermittelt sie den Regierungen aller Mitgliedstaaten, die das Übereinkommen unterzeichnen oder ihm beitreten.
- (2) Der Verwahrer notifiziert den Regierungen der Mitgliedstaaten, die das Übereinkommen unterzeichnen oder ihm beitreten,
 - a) jede Unterzeichnung;
 - b) die Hinterlegung jeder Ratifikations- oder Beitrittsurkunde;
 - c) den Zeitpunkt des Inkrafttretens dieses Übereinkommens.
- (3) Der Verwahrer lässt dieses Übereinkommen beim Sekretariat der Vereinten Nationen registrieren.

ARTIKEL 86

Geltungsdauer des Übereinkommens

Dieses Übereinkommen wird auf unbegrenzte Zeit geschlossen.

Revision des Übereinkommens

- (1) Entweder sieben Jahre nach Inkrafttreten dieses Übereinkommens oder sobald 2000 Verletzungsverfahren vom Gericht entschieden worden sind je nachdem, was später eintritt und sofern erforderlich in der Folge in regelmäßigen Abständen, führt der Verwaltungsausschuss eine eingehende Konsultation der Nutzer des Patentsystems durch, die folgenden Aspekten gewidmet ist: Arbeitsweise, Effizienz und Kostenwirksamkeit des Gerichts sowie Vertrauen der Nutzer des Patentsystems in die Qualität der Entscheidungen des Gerichts. Auf Grundlage dieser Konsultation und einer Stellungnahme des Gerichts kann der Verwaltungsausschuss beschließen, dieses Übereinkommen zu überarbeiten, um die Arbeitsweise des Gerichts zu verbessern.
- (2) Der Verwaltungsausschuss kann dieses Übereinkommen ändern, um es mit einem internationalen Vertrag auf dem Gebiet des Patentwesens oder mit dem Unionsrecht in Einklang zu bringen.
- (3) Ein aufgrund der Absätze 1 und 2 gefasster Beschluss des Verwaltungsausschusses wird nicht wirksam, wenn ein Vertragsmitgliedstaat binnen zwölf Monaten ab dem Zeitpunkt des Beschlusses auf Grundlage seiner einschlägigen nationalen Entscheidungsverfahren erklärt, dass er nicht durch den Beschluss gebunden sein will. In diesem Fall wird eine Überprüfungskonferenz der Vertragsmitgliedstaaten einberufen.

Sprachen des Übereinkommens

- (1) Dieses Übereinkommen ist in einer Urschrift in deutscher, englischer und französischer Sprache abgefasst, wobei jeder Wortlaut gleichermaßen verbindlich ist.
- (2) Die in anderen als den in Absatz 1 genannten Amtssprachen von Vertragsmitgliedstaaten erstellten Wortlaute dieses Übereinkommens werden als amtliche Fassungen betrachtet, wenn sie vom Verwaltungsausschuss genehmigt wurden. Bei Abweichungen zwischen den verschiedenen Wortlaute sind die in Absatz 1 genannten Wortlaute maßgebend.

ARTIKEL 89

Inkrafttreten

(1) Dieses Übereinkommen tritt am 1. Januar 2014 in Kraft oder am ersten Tag des vierten Monats nach Hinterlegung der dreizehnten Ratifikations- oder Beitrittsurkunde gemäß Artikel 84, einschließlich der Hinterlegung durch die drei Mitgliedstaaten, in denen es im Jahr vor dem Jahr der Unterzeichnung des Übereinkommens die meisten geltenden europäischen Patente gab, oder am ersten Tag des vierten Monats nach dem Inkrafttreten der Änderungen der Verordnung (EU) Nr. 1215/2012, die das Verhältnis zwischen jener Verordnung und diesem Übereinkommen betreffen, je nachdem, welcher Zeitpunkt der späteste ist.

(2) Jede Ratifikation bzw. jeder Beitritt nach Inkrafttreten dieses Übereinkommens wird am ersten Tag des vierten Monats nach Hinterlegung der Ratifikations- oder Beitrittsurkunde wirksam.

Zu Urkunde dessen haben die hierzu gehörig befugten Unterzeichneten dieses Übereinkommen unterzeichnet.

Geschehen zu Brüssel am 19. Februar 2013 in einer Urschrift in deutscher, englischer und französischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist; die Urschrift wird im Archiv des Generalsekretariats des Rates der Europäischen Union hinterlegt.

ANHANG I

SATZUNG DES EINHEITLICHEN PATENTGERICHTS

ARTIKEL 1

Geltungsbereich der Satzung

Diese Satzung enthält institutionelle und finanzielle Regelungen für das nach Artikel 1 des Übereinkommens errichtete Einheitliche Patentgericht.

KAPTITEL I - RICHTER

ARTIKEL 2

Auswahlkriterien für die Richter

- (1) Jede Person, die die Staatsangehörigkeit eines Vertragsmitgliedstaats besitzt und die Voraussetzungen nach Artikel 15 des Übereinkommens und nach dieser Satzung erfüllt, kann zum Richter ernannt werden.
- (2) Die Richter müssen mindestens eine Amtssprache des Europäischen Patentamts gut beherrschen.

(3) Die nach Artikel 15 Absatz 1 des Übereinkommens für die Ernennung nachzuweisende Erfahrung auf dem Gebiet der Patentstreitigkeiten kann durch Schulungen nach Artikel 11 Absatz 4 Buchstabe a dieser Satzung erworben werden.

ARTIKEL 3

Ernennung der Richter

- (1) Die Richter werden gemäß dem in Artikel 16 des Übereinkommens festgelegten Verfahren ernannt.
- (2) Offene Stellen werden unter Angabe der entsprechenden, in Artikel 2 festgelegten Auswahlkriterien öffentlich ausgeschrieben. Der Beratende Ausschuss gibt eine Stellungnahme zur Eignung der Bewerber für die Ausübung des Amts eines Richters am Gericht ab. Die Stellungnahme enthält eine Liste der geeignetsten Bewerber. Die Zahl der auf der Liste aufgeführten Bewerber ist mindestens doppelt so hoch wie die Zahl der offenen Stellen. Der Beratende Ausschuss kann erforderlichenfalls empfehlen, dass ein Bewerber für eine Richterstelle eine Schulung in Patentstreitigkeiten nach Artikel 11 Absatz 4 Buchstabe a erhält, bevor über seine Ernennung entschieden wird.
- (3) Bei der Ernennung der Richter achtet der Verwaltungsausschuss darauf, dass die zu ernennenden Bewerber über das höchste Niveau an rechtlichem und technischem Sachverstand verfügen, sowie auf eine ausgewogene Zusammensetzung des Gerichts, indem die Richter unter den Staatsangehörigen der Vertragsmitgliedstaaten auf möglichst breiter geografischer Grundlage ausgewählt werden.
- (4) Der Verwaltungsausschuss ernennt die für den ordnungsgemäßen Geschäftsgang des Gerichts benötigte Zahl von Richtern. Der Verwaltungsausschuss ernennt zunächst die Zahl von Richtern, die erforderlich ist, um zumindest einen Spruchkörper bei jeder der Kammern des Gerichts erster Instanz und mindestens zwei Spruchkörper beim Berufungsgericht bilden zu können.

- (5) Der Beschluss des Verwaltungsausschusses zur Ernennung von rechtlich qualifizierten Vollzeit- oder Teilzeitrichtern und technisch qualifizierten Vollzeitrichtern bezeichnet die Instanz des Gerichts und/oder die Kammer des Gerichts erster Instanz, in die jeder einzelne Richter berufen wird, sowie das oder die Gebiete der Technik, für das bzw. die ein technisch qualifizierter Richter ernannt wird.
- (6) Technisch qualifizierte Teilzeitrichter werden zu Richtern des Gerichts ernannt und auf der Grundlage ihrer spezifischen Qualifikation und Erfahrung in den Richterpool aufgenommen. Mit der Berufung dieser Richter an das Gericht wird gewährleistet, dass alle Gebiete der Technik abgedeckt sind.

Amtszeit der Richter

- (1) Die Richter werden für eine Amtszeit von sechs Jahren ernannt, die mit dem in der Ernennungsurkunde bestimmten Tag beginnt. Wiederernennung ist zulässig.
- (2) In Ermangelung einer Bestimmung über den Tag der Arbeitsaufnahme beginnt die Amtszeit mit dem Ausstellungstag der Ernennungsurkunde.

Ernennung der Mitglieder des Beratenden Ausschusses

- (1) Jeder Vertragsmitgliedstaat schlägt ein Mitglied des Beratenden Ausschusses vor, das die Anforderungen nach Artikel 14 Absatz 2 des Übereinkommens erfüllt.
- (2) Die Mitglieder des Beratenden Ausschusses werden vom Verwaltungsausschuss im gegenseitigen Einvernehmen ernannt.

ARTIKEL 6

Richtereid

Die Richter leisten vor Aufnahme ihrer Amtstätigkeit in öffentlicher Sitzung den Eid, ihr Amt unparteiisch und gewissenhaft auszuüben und das Beratungsgeheimnis zu wahren.

Unparteilichkeit

- (1) Unmittelbar nach der Eidesleistung unterzeichnen die Richter eine Erklärung, in der sie die feierliche Verpflichtung übernehmen, während der Ausübung und nach Ablauf ihrer Amtstätigkeit die sich aus ihrem Amt ergebenden Pflichten zu erfüllen, insbesondere die Pflicht, bei der Annahme bestimmter Tätigkeiten oder Vorteile nach Ablauf dieser Tätigkeit ehrenhaft und zurückhaltend zu sein.
- (2) Die Richter dürfen nicht an Verhandlungen zu einer Sache teilnehmen, in der sie
 - a) als Berater mitgewirkt haben,
 - b) selbst Partei waren oder für eine der Parteien tätig waren,
 - c) als Mitglied eines Gerichts, einer Beschwerdekammer, einer Schieds- oder Schlichtungsstelle oder eines Untersuchungsausschusses oder in anderer Eigenschaft zu befinden hatten,
 - d) ein persönliches oder finanzielles Interesse an der Sache oder in Bezug auf eine der Parteien haben oder
 - e) in verwandtschaftlicher Beziehung zu einer Partei oder einem Vertreter einer Partei stehen.

- (3) Ist ein Richter der Auffassung, bei der Entscheidung oder Prüfung einer bestimmten Rechtsstreitigkeit aus einem besonderen Grund nicht mitwirken zu können, so macht er dem Präsidenten des Berufungsgerichts oder wenn er Richter des Gerichts erster Instanz ist dem Präsidenten des Gerichts erster Instanz davon Mitteilung. Hält der Präsident des Berufungsgerichts oder im Falle der Richter des Gerichts erster Instanz der Präsident des Gerichts erster Instanz die Teilnahme eines Richters an der Verhandlung oder Entscheidung einer bestimmten Sache aus einem besonderen Grund für unangebracht, so begründet der Präsident des Berufungsgerichts oder der Präsident des Gerichts erster Instanz dies schriftlich und setzt den betroffenen Richter hiervon in Kenntnis.
- (4) Jede Prozesspartei kann die Teilnahme eines Richters an der Verhandlung aus einem der in Absatz 2 genannten Gründe oder wegen begründeter Besorgnis der Befangenheit ablehnen.
- (5) Ergibt sich bei der Anwendung dieses Artikels eine Schwierigkeit, so entscheidet das Präsidium im Einklang mit der Verfahrensordnung. Der betroffene Richter wird angehört, wirkt aber bei der Beschlussfassung nicht mit.

Immunität der Richter

(1) Die Richter sind keiner Gerichtsbarkeit unterworfen. Bezüglich der Handlungen, die sie im Zusammenhang mit ihrer amtlichen Eigenschaft vorgenommen haben, steht ihnen diese Befreiung auch nach Abschluss ihrer Amtstätigkeit zu.

- (2) Das Präsidium kann die Immunität aufheben.
- (3) Wird nach Aufhebung der Befreiung ein Strafverfahren gegen einen Richter eingeleitet, so darf dieser im Gebiet jedes Vertragsmitgliedstaats nur vor einem Gericht angeklagt werden, das für Verfahren gegen Richter der höchsten nationalen Gerichte zuständig ist.
- (4) Das Protokoll über die Vorrechte und Befreiungen der Europäischen Union findet auf die Richter des Gerichts Anwendung; die Bestimmungen dieser Satzung betreffend die Immunität der Richter von der Gerichtsbarkeit bleiben hiervon unberührt.

Ende der Amtszeit

- (1) Abgesehen von der Neubesetzung nach Ablauf der Amtszeit gemäß Artikel 4 und von Todesfällen endet das Amt eines Richters durch dessen Rücktritt.
- (2) Bei Rücktritt eines Richters ist das Rücktrittsschreiben an den Präsidenten des Berufungsgerichts oder im Falle der Richter des Gerichts erster Instanz an den Präsidenten des Gerichts erster Instanz zur Weiterleitung an den Vorsitzenden des Verwaltungsausschusses zu richten.

- (3) Mit Ausnahme der Fälle, in denen Artikel 10 Anwendung findet, bleibt jeder Richter bis zum Amtsantritt seines Nachfolgers im Amt.
- (4) Bei Ausscheiden eines Richters wird ein neuer Richter für die verbleibende Amtszeit seines Vorgängers ernannt.

Entlassung aus dem Amt

- (1) Ein Richter kann nur dann seines Amtes enthoben oder sonstiger gewährter Vergünstigungen für verlustig erklärt werden, wenn er nach dem Urteil des Präsidiums nicht mehr die erforderlichen Voraussetzungen erfüllt oder den sich aus seinem Amt ergebenden Verpflichtungen nicht mehr nachkommt. Der betroffene Richter wird angehört, wirkt aber bei der Beschlussfassung nicht mit.
- (2) Der Kanzler des Gerichts übermittelt die Entscheidung dem Vorsitzenden des Verwaltungsausschusses.
- (3) Wird durch eine solche Entscheidung ein Richter seines Amtes enthoben, so wird sein Sitz mit dieser Benachrichtigung frei.

Schulung

- (1) Mit dem gemäß Artikel 19 des Übereinkommens geschaffenen Schulungsrahmen wird für eine angemessene und regelmäßige Schulung der Richter gesorgt. Das Präsidium beschließt Schulungsvorschriften zur Gewährleistung der Umsetzung und der Gesamtkohärenz des Schulungsrahmens.
- (2) Der Schulungsrahmen bietet eine Plattform für den Austausch von Fachwissen und ein Forum für Diskussionen; dies wird insbesondere durch Folgendes gewährleistet:
 - a) Veranstaltung von Lehrgängen, Konferenzen, Seminaren, Workshops und Symposien,
 - b) Zusammenarbeit mit internationalen Organisationen und Bildungseinrichtungen im Bereich des Schutzes des geistigen Eigentums und
 - c) Förderung und Unterstützung weiterer Fortbildungsmaßnahmen.
- (3) Es werden ein jährliches Arbeitsprogramm und Schulungsleitlinien erstellt, die für jeden Richter einen jährlichen Schulungsplan enthalten, in dem sein Hauptbedarf an Schulung gemäß den Schulungsvorschriften ausgewiesen wird.

- (4) Ferner gewährleistet der Schulungsrahmen
 - a) eine angemessene Schulung der Bewerber für Richterstellen und der neu ernannten Richter des Gerichts;
 - b) die Unterstützung von Projekten, die auf die Förderung der Zusammenarbeit zwischen Parteivertretern, Patentanwälten und dem Gericht abzielen.

Vergütung

Der Verwaltungsausschuss legt die Vergütung des Präsidenten des Berufungsgerichts, des Präsidenten des Gerichts erster Instanz, der Richter, des Kanzlers, des Hilfskanzlers und des Personals fest.

KAPITEL II – ORGANISATORISCHE BESTIMMUNGEN

ABSCHNITT 1 – GEMEINSAME BESTIMMUNGEN

ARTIKEL 13

Präsident des Berufungsgerichts

- (1) Der Präsident des Berufungsgerichts wird von allen Richtern des Berufungsgerichts aus ihrer Mitte für eine Amtszeit von drei Jahren gewählt. Der Präsident des Berufungsgerichts kann zweimal wiedergewählt werden.
- (2) Die Wahl des Präsidenten des Berufungsgerichts ist geheim. Gewählt ist der Richter, der die absolute Mehrheit der Stimmen erhält. Erreicht keiner der Richter die absolute Mehrheit, so findet ein zweiter Wahlgang statt, in dem gewählt ist, wer die meisten Stimmen auf sich vereinigt.
- (3) Der Präsident des Berufungsgerichts leitet die gerichtlichen Tätigkeiten und die Verwaltung des Berufungsgerichts und führt den Vorsitz des als Plenum tagenden Berufungsgerichts.
- (4) Endet die Amtszeit des Präsidenten des Berufungsgerichts vor ihrem Ablauf, so wird das Amt für die verbleibende Zeit neu besetzt.

Präsident des Gerichts erster Instanz

- (1) Der Präsident des Gerichts erster Instanz wird von allen Richtern des Gerichts erster Instanz, die Vollzeitrichter sind, aus ihrer Mitte für eine Amtszeit von drei Jahren gewählt. Der Präsident des Gerichts erster Instanz kann zweimal wiedergewählt werden.
- (2) Der erste Präsident des Gerichts erster Instanz ist Staatsangehöriger des Vertragsmitgliedstaats, in dessen Gebiet die Zentralkammer ihren Sitz hat.
- (3) Der Präsident des Gerichts erster Instanz leitet die gerichtlichen Tätigkeiten und die Verwaltung des Gerichts erster Instanz.
- (4) Artikel 13 Absätze 2 und 4 gilt für den Präsidenten des Gerichts erster Instanz entsprechend.

ARTIKEL 15

Präsidium

(1) Das Präsidium besteht aus dem Präsidenten des Berufungsgerichts, der den Vorsitz führt, dem Präsidenten des Gerichts erster Instanz, zwei Richtern, die die Richter des Berufungsgerichts aus ihrer Mitte gewählt haben, drei Richtern, die die Vollzeitrichter des Gerichts erster Instanz aus ihrer Mitte gewählt haben, und dem Kanzler als nicht stimmberechtigtem Mitglied.

- (2) Das Präsidium nimmt seine Aufgaben im Einklang mit dieser Satzung wahr. Unbeschadet seiner eigenen Zuständigkeit kann es bestimmte Aufgaben an eines seiner Mitglieder übertragen.
- (3) Das Präsidium ist für die Verwaltung des Gerichts zuständig und hat dabei insbesondere die Aufgabe,
 - Vorschläge zur Änderung der Verfahrensordnung gemäß Artikel 41 des
 Übereinkommens und Vorschläge zu der Finanzordnung des Gerichts auszuarbeiten;
 - b) den Jahreshaushalt, die Jahresrechnung und den Jahresbericht des Gerichts zu erstellen und diese Unterlagen dem Haushaltsausschuss vorzulegen;
 - c) die Leitlinien für das Programm zur Schulung der Richter festzulegen und die Durchführung dieses Programms zu überwachen;
 - d) Entscheidungen über die Ernennung des Kanzlers und des Hilfskanzlers und über deren Entlassung aus dem Amt zu treffen;
 - e) die Regelungen für die Kanzlei einschließlich ihrer Nebenstellen festzulegen;
 - f) Stellungnahmen gemäß Artikel 83 Absatz 5 des Übereinkommens abzugeben.

- (4) Die in den Artikeln 7, 8, 10 und 22 genannten Entscheidungen des Präsidiums werden ohne Mitwirkung des Kanzlers getroffen.
- (5) Das Präsidium ist nur dann beschlussfähig, wenn alle seine Mitglieder anwesend oder ordnungsgemäß vertreten sind. Beschlüsse werden mit Stimmenmehrheit gefasst.

Personal

- (1) Die Beamten und sonstigen Bediensteten des Gerichts unterstützen den Präsidenten des Berufungsgerichts, den Präsidenten des Gerichts erster Instanz, die Richter und den Kanzler. Sie unterstehen dem Kanzler unter Aufsicht des Präsidenten des Berufungsgerichts und des Präsidenten des Gerichts erster Instanz.
- (2) Der Verwaltungsausschuss erlässt das Statut der Beamten und sonstigen Bediensteten des Gerichts.

ARTIKEL 17

Gerichtsferien

(1) Nach Anhörung des Präsidiums legt der Präsident des Berufungsgerichts die Dauer der Gerichtsferien und die Regeln für die Einhaltung der gesetzlichen Feiertage fest.

- (2) Während der Gerichtsferien können das Amt des Präsidenten des Berufungsgerichts und das Amt des Präsidenten des Gerichts erster Instanz durch einen Richter wahrgenommen werden, der von dem jeweiligen Präsidenten damit beauftragt wird. In dringenden Fällen kann der Präsident des Berufungsgerichts die Richter einberufen.
- (3) Der Präsident des Berufungsgerichts oder der Präsident des Gerichts erster Instanz können den Richtern des Berufungsgerichts bzw. den Richtern des Gerichts erster Instanz in begründeten Fällen Urlaub gewähren.

ABSCHNITT 2 - GERICHT ERSTER INSTANZ

ARTIKEL 18

Errichtung und Auflösung von Lokal- oder Regionalkammern

- (1) Anträge eines oder mehrerer Vertragsmitgliedstaaten auf Errichtung einer Lokal- oder Regionalkammer sind an den Vorsitzenden des Verwaltungsausschusses zu richten. Im Antrag ist anzugeben, wo die Lokal- oder Regionalkammer angesiedelt sein soll.
- (2) Im Beschluss des Verwaltungsausschusses zur Errichtung einer Lokal- oder Regionalkammer wird die Zahl der Richter angegeben, die an die betreffende Kammer berufen werden; der Beschluss wird öffentlich zugänglich gemacht.

- (3) Der Verwaltungsausschuss beschließt auf Antrag des Vertragsmitgliedstaats, in dessen Gebiet die betreffende Lokalkammer errichtet worden ist, oder auf Antrag der Vertragsmitgliedstaaten, die an der betreffenden Regionalkammer beteiligt sind, über die Auflösung einer Lokal- oder Regionalkammer. Im Beschluss über die Auflösung einer Lokal- oder Regionalkammer werden der Zeitpunkt, ab dem bei der betreffenden Kammer keine neuen Fälle mehr anhängig gemacht werden können, sowie der Zeitpunkt angegeben, an dem sie ihre Tätigkeit einstellt.
- (4) Ab dem Zeitpunkt, an dem die Lokal- oder Regionalkammer ihre Tätigkeit einstellt, werden die an diese Kammer berufenen Richter an die Zentralkammer berufen, und die noch bei der Lokal- oder Regionalkammer anhängigen Fälle werden gemeinsam mit der Nebenstelle der Kanzlei und den gesamten Unterlagen auf die Zentralkammer übertragen.

Spruchkörper

- (1) Die Verfahrensordnung regelt die Zuweisung von Richtern und die Fallzuweisung innerhalb einer Kammer an ihre Spruchkörper. Ein Richter des Spruchkörpers wird im Einklang mit der Verfahrensordnung zum vorsitzenden Richter bestimmt.
- (2) Die Spruchkörper können im Einklang mit der Verfahrensordnung bestimmte Aufgaben an einen oder mehrere ihrer Richter übertragen.

- (3) Im Einklang mit der Verfahrensordnung kann für jede Kammer ein ständiger Richter bestimmt werden, der dringende Rechtsstreitigkeiten entscheidet.
- (4) In Fällen, in denen die Rechtsstreitigkeit gemäß Artikel 8 Absatz 7 des Übereinkommens von einem Einzelrichter oder gemäß Absatz 3 dieses Artikels von einem ständigen Richter entschieden wird, nimmt dieser alle Aufgaben eines Spruchkörpers wahr.
- (5) Ein Richter des Spruchkörpers übernimmt im Einklang mit der Verfahrensordnung die Aufgabe des Berichterstatters.

Richterpool

- (1) Der Kanzler erstellt eine Liste mit den Namen der dem Richterpool angehörenden Richter. Für jeden Richter werden in der Liste mindestens seine Sprachkenntnisse, sein technisches Fachgebiet und seine Erfahrung sowie die Rechtsstreitigkeiten, mit denen er vorher befasst war, angegeben.
- (2) Ein an den Präsidenten des Gerichts erster Instanz gerichteter Antrag, einen Richter aus dem Richterpool zu benennen, muss insbesondere folgende Angaben enthalten: den Gegenstand der Rechtssache, die von den Richtern des Spruchkörpers verwendete Amtssprache des Europäischen Patentamts, die Verfahrenssprache und das Gebiet der Technik, für das der Richter qualifiziert sein muss.

ABSCHNITT 3 - BERUFUNGSGERICHT

ARTIKEL 21

Spruchkörper

- (1) Die Zuweisung von Richtern und die Fallzuweisung an die Spruchkörper richten sich nach der Verfahrensordnung. Ein Richter des Spruchkörpers wird im Einklang mit der Verfahrensordnung zum vorsitzenden Richter ernannt.
- (2) Bei Rechtsstreitigkeiten von außergewöhnlicher Bedeutung, insbesondere wenn die Entscheidung die Einheitlichkeit und Kohärenz der Rechtsprechung des Gerichts berühren könnte, kann das Berufungsgericht auf Vorschlag des vorsitzenden Richters beschließen, die Rechtsstreitigkeit dem Plenum vorzulegen.
- (3) Die Spruchkörper können im Einklang mit der Verfahrensordnung bestimmte Aufgaben an einen oder mehrere ihrer Richter übertragen.
- (4) Ein Richter des Spruchkörpers übernimmt im Einklang mit der Verfahrensordnung die Aufgabe des Berichterstatters.

ABSCHNITT 4 - KANZLEI

ARTIKEL 22

Ernennung und Entlassung des Kanzlers

- (1) Der Kanzler des Gerichts wird vom Präsidium für eine Amtszeit von sechs Jahren ernannt. Die Wiederernennung des Kanzlers ist zulässig.
- (2) Der Präsident des Berufungsgerichts unterrichtet das Präsidium zwei Wochen vor dem für die Ernennung des Kanzlers vorgesehenen Zeitpunkt über die eingegangenen Bewerbungen.
- (3) Vor Aufnahme seiner Amtstätigkeit leistet der Kanzler vor dem Präsidium den Eid, sein Amt unparteiisch und gewissenhaft auszuüben.
- (4) Der Kanzler kann nur aus dem Amt entlassen werden, wenn er den sich aus seinem Amt ergebenden Verpflichtungen nicht mehr nachkommt. Das Präsidium entscheidet nach Anhörung des Kanzlers.
- (5) Endet die Amtszeit des Kanzlers vor ihrem Ablauf, so ernennt das Präsidium einen neuen Kanzler für die Dauer von sechs Jahren.

(6) Ist der Kanzler abwesend oder verhindert oder ist sein Amt vakant, so beauftragt der Präsident des Berufungsgerichts nach Anhörung des Präsidiums ein Mitglied des Personals des Gerichts mit der Wahrnehmung der Aufgaben des Kanzlers.

ARTIKEL 23

Aufgaben des Kanzlers

- (1) Der Kanzler steht dem Gericht, dem Präsidenten des Berufungsgerichts, dem Präsidenten des Gerichts erster Instanz und den Richtern bei der Ausübung ihres Amtes zur Seite. Der Kanzler ist unter Aufsicht des Präsidenten des Berufungsgerichts für die Organisation und den Geschäftsgang der Kanzlei verantwortlich.
- (2) Der Kanzler ist insbesondere verantwortlich für
 - a) das Führen des Registers, in dem Aufzeichnungen über alle vor dem Gericht verhandelten Verfahren enthalten sind,
 - b) das Führen und die Verwaltung der nach Artikel 18, Artikel 48 Absatz 3 und Artikel 57 Absatz 2 des Übereinkommens erstellten Listen,

- das Führen und die Veröffentlichung einer Liste der Mitteilungen über die Inanspruchnahme der Ausnahmeregelung bzw. den Verzicht auf diese Regelung nach Artikel 83 des Übereinkommens,
- d) die Veröffentlichung der Entscheidungen des Gerichts unter Wahrung des Schutzes vertraulicher Informationen,
- e) die Veröffentlichung der Jahresberichte mit statistischen Daten und
- f) die Gewährleistung, dass die Informationen über die Inanspruchnahme der Ausnahmeregelung nach Artikel 83 des Übereinkommens dem Europäischen Patentamt übermittelt werden.

Registerführung

- (1) In den vom Präsidium erlassenen Regelungen für die Kanzlei werden die Einzelheiten über die Führung des Registers des Gerichts festgelegt.
- (2) Die Verfahrensordnung regelt den Zugang zu den Akten der Kanzlei.

Nebenstellen der Kanzlei und Hilfskanzler

- (1) Vom Präsidium wird ein Hilfskanzler für eine Amtszeit von sechs Jahren ernannt. Die Wiederernennung des Hilfskanzlers ist zulässig.
- (2) Artikel 22 Absätze 2 bis 6 gilt entsprechend.
- (3) Der Hilfskanzler ist unter Aufsicht des Kanzlers und des Präsidenten des Gerichts erster Instanz für die Organisation und den Geschäftsgang der Nebenstellen der Kanzlei verantwortlich. Der Hilfskanzler ist insbesondere verantwortlich für
 - a) die Führung der Akten über alle vor dem Gericht erster Instanz verhandelten Verfahren;
 - b) die Unterrichtung der Kanzlei über jedes vor dem Gericht erster Instanz verhandelte Verfahren.
- (4) Der Hilfskanzler stellt den Kammern des Gerichts erster Instanz Verwaltungs- und Sekretariatsunterstützung zur Verfügung.

KAPITEL III - FINANZVORSCHRIFTEN

ARTIKEL 26

Haushaltsplan

- (1) Der Haushaltsplan wird vom Haushaltsausschuss auf Vorschlag des Präsidiums festgestellt. Er wird nach Maßgabe der allgemein anerkannten Rechnungslegungsgrundsätze aufgestellt, die in der gemäß Artikel 33 erlassenen Finanzordnung festgelegt sind.
- (2) Innerhalb des Haushaltsplans kann das Präsidium nach Maßgabe der Finanzordnung Mittelübertragungen zwischen den einzelnen Kapiteln oder Unterkapiteln vornehmen.
- (3) Der Kanzler ist nach Maßgabe der Finanzordnung für die Ausführung des Haushaltsplans verantwortlich.
- (4) Der Kanzler erstellt jedes Jahr eine Jahresrechnung zum abgelaufenen Haushaltsjahr, die die Ausführung des Haushaltsplans darlegt; diese Jahresrechnung wird vom Präsidium genehmigt.

Genehmigung von Ausgaben

- (1) Die im Haushaltsplan ausgewiesenen Ausgaben werden für die Dauer eines Rechnungslegungszeitraums genehmigt, sofern die Finanzordnung nichts anderes bestimmt.
- (2) Nach Maßgabe der Finanzordnung dürfen die nicht für Personalausgaben vorgesehenen Mittel, die bis zum Ende eines Rechnungslegungszeitraums nicht verbraucht worden sind, nicht über das Ende des nachfolgenden Rechnungslegungszeitraums hinaus übertragen werden.
- (3) Die Mittel werden nach Art und Zweckbestimmung der Ausgabe auf die verschiedenen Kapitel aufgeteilt und nach Maßgabe der Finanzordnung soweit erforderlich weiter unterteilt.

ARTIKEL 28

Mittel für unvorhersehbare Ausgaben

- (1) Im Haushaltsplan des Gerichts können Mittel für unvorhersehbare Ausgaben veranschlagt werden.
- (2) Die Verwendung dieser Mittel durch das Gericht setzt die vorherige Zustimmung des Haushaltsausschusses voraus.

Rechnungslegungszeitraum

Der Rechnungslegungszeitraum beginnt am 1. Januar und endet am 31. Dezember.

ARTIKEL 30

Erstellung des Haushaltsplans

Das Präsidium legt dem Haushaltsausschuss den Haushaltsplanentwurf des Gerichts spätestens zu dem in der Finanzordnung vorgegebenen Termin vor.

ARTIKEL 31

Vorläufiger Haushaltsplan

(1) Hat der Haushaltsausschuss zu Beginn eines Rechnungslegungszeitraums den Haushaltsplan noch nicht festgestellt, so können nach der Finanzordnung für jedes Kapitel oder jede sonstige Untergliederung des Haushaltsplans monatliche Ausgaben bis zur Höhe eines Zwölftels der im vorangegangenen Rechnungslegungszeitraum eingesetzten Mittel vorgenommen werden, wobei die dem Präsidium auf diese Weise zur Verfügung gestellten Mittel jedoch ein Zwölftel der entsprechenden Mittelansätze des Haushaltsplanentwurfs nicht überschreiten dürfen.

(2) Der Haushaltsausschuss kann unter Beachtung der sonstigen Bestimmungen des Absatzes 1 Ausgaben genehmigen, die über ein Zwölftel der im vorangegangenen Rechnungslegungszeitraum eingesetzten Mittel hinausgehen.

ARTIKEL 32

Rechnungsprüfung

- (1) Der Jahresabschluss des Gerichts wird von unabhängigen Rechnungsprüfern geprüft. Die Rechnungsprüfer werden vom Haushaltsausschuss bestellt und erforderlichenfalls abberufen.
- (2) Durch die Rechnungsprüfung, die nach fachgerechten Rechnungsprüfungsgrundsätzen und erforderlichenfalls an Ort und Stelle erfolgt, wird festgestellt, dass der Haushaltsplan rechtmäßig und ordnungsgemäß ausgeführt und die Finanzverwaltung des Gerichts nach den Grundsätzen der Sparsamkeit und der Wirtschaftlichkeit der Haushaltsführung durchgeführt worden sind. Nach Abschluss eines jeden Rechnungslegungszeitraums erstellen die Rechnungsprüfer einen Bericht, der einen unterzeichneten Rechnungsprüfungsvermerk enthält.
- (3) Das Präsidium legt dem Haushaltsausschuss den Jahresabschluss des Gerichts und die jährliche Übersicht über die Ausführung des Haushaltsplans für das abgelaufene Haushaltsjahr zusammen mit dem Bericht der Rechnungsprüfer vor.
- (4) Der Haushaltsausschuss genehmigt die Jahresrechnung sowie den Bericht der Rechnungsprüfer und erteilt dem Präsidium Entlastung hinsichtlich der Ausführung des Haushaltsplans.

Finanzordnung

- (1) Die Finanzordnung wird vom Verwaltungsausschuss erlassen. Sie wird vom Verwaltungsausschuss auf Vorschlag des Gerichts geändert.
- (2) Die Finanzordnung regelt insbesondere
 - a) die Art und Weise der Aufstellung und Ausführung des Haushaltsplans sowie der Rechnungslegung und Rechnungsprüfung;
 - die Art und Weise sowie das Verfahren, wie die Zahlungen und Beiträge, einschließlich der in Artikel 37 des Übereinkommens vorgesehenen ersten finanziellen Beiträge, dem Gericht zur Verfügung zu stellen sind;
 - c) die Vorschriften über die Verantwortung der Anweisungsbefugten und der Rechnungsführer sowie die entsprechenden Aufsichtsmaßnahmen und
 - d) die dem Haushaltsplan und dem Jahresabschluss zugrunde zu legenden allgemein anerkannten Rechnungslegungsgrundsätze.

KAPITEL IV - VERFAHRENSVORSCHRIFTEN

ARTIKEL 34

Beratungsgeheimnis

Die Beratungen des Gerichts sind und bleiben geheim.

ARTIKEL 35

Entscheidungen

- (1) Besteht ein Spruchkörper aus einer geraden Zahl von Richtern, so trifft das Gericht seine Entscheidungen mit der Mehrheit des Spruchkörpers. Im Falle der Stimmengleichheit gibt die Stimme des vorsitzenden Richters den Ausschlag.
- (2) Bei Verhinderung eines Richters eines Spruchkörpers kann nach Maßgabe der Verfahrensordnung ein Richter eines anderen Spruchkörpers herangezogen werden.
- (3) In den Fällen, in denen diese Satzung vorsieht, dass das Berufungsgericht eine Entscheidung als Plenum trifft, ist diese Entscheidung nur dann gültig, wenn sie von mindestens 3/4 der Richter des Plenums getroffen wird.

- (4) In den Entscheidungen des Gerichts werden die Richter, die in der Rechtsstreitigkeit entscheiden, namentlich aufgeführt.
- (5) Entscheidungen werden unterzeichnet von den Richtern, die in der Rechtsstreitigkeit entscheiden, sowie bei Entscheidungen des Berufungsgerichts vom Kanzler und bei Entscheidungen des Gerichts erster Instanz vom Hilfskanzler. Sie werden in öffentlicher Sitzung verkündet.

Abweichende Meinungen

Die von einem Richter eines Spruchkörpers nach Artikel 78 des Übereinkommens vertretene abweichende Meinung ist schriftlich zu begründen und von dem die Meinung vertretenden Richter zu unterzeichnen.

Versäumnisentscheidung

- (1) Auf Antrag einer Prozesspartei kann eine Versäumnisentscheidung nach Maßgabe der Verfahrensordnung ergehen, wenn die andere Partei, der ein verfahrenseinleitendes Schriftstück oder ein gleichwertiges Schriftstück zugestellt worden ist, keine schriftliche Erwiderung einreicht oder nicht zur mündlichen Verhandlung erscheint. Gegen diese Entscheidung kann binnen eines Monats nach Zustellung an die Partei, gegen die die Versäumnisentscheidung ergangen ist, Einspruch eingelegt werden.
- (2) Der Einspruch hat keine Aussetzung der Vollstreckung der Versäumnisentscheidung zur Folge, es sei denn, dass das Gericht etwas anderes beschließt.

Anrufung des Gerichtshofs der Europäischen Union

- (1) Es gelten die vom Gerichtshof der Europäischen Union für Vorabentscheidungsersuchen innerhalb der Europäischen Union eingerichteten Verfahren.
- (2) Hat das Gericht erster Instanz oder das Berufungsgericht beschlossen, den Gerichtshof der Europäischen Union mit einer Frage zur Auslegung des Vertrags über die Europäischen Union oder des Vertrags über die Arbeitsweise der Europäische Union oder mit einer Frage zur Gültigkeit oder zur Auslegung von Rechtsakten der Organe der Europäischen Union zu befassen, so setzt es sein Verfahren aus.

ANHANG II

Verteilung von Rechtsstreitigkeiten innerhalb der Zentralkammer¹

LONDON (Abteilung)	PARIS (Sitz)	MÜNCHEN (Abteilung)
	Büro des Präsidenten	
(A) Täglicher Lebensbedarf	(B) Arbeitsverfahren; Transportieren	(F) Maschinenbau; Beleuchtung; Heizung; Waffen; Sprengen
(C) Chemie; Hüttenwesen	(D) Textilien; Papier	
	(E) Bauwesen; Erdbohren; Bergbau	
	(G) Physik	
	(H) Elektrotechnik	

Die Einteilung in acht Sektionen (A bis H) beruht auf der Internationalen Patentklassifikation der Weltorganisation für geistiges Eigentum (http://www.wipo.int/classifications/ipc/en).