27 January 2012

Preliminary set of provisions for the Rules of procedure 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

Introductory remarks

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

Basic principles of procedural law are already laid down in Part III of the draft Agreement on a UPC (hereinafter "draft Agreement"), for instance proportionality and fairness, case management, right to be heard, publicity, stages of the proceedings etc. The draft 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 draft Agreement, references are made to "Rules of Procedure" which shall spell out procedural details. This is a tried and tested legal technique: only the basic principles have been included in the draft Agreement, many procedural details being left for secondary legal instruments (rules of procedure, practice directions).

In accordance with Article 22(2) draft Agreement, the Rules of Procedure 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 of Procedure with Union law. Users of the patent system have however repeatedly requested that preparatory work on the Rules be started at an early stage, in order to enable a better assessment of the functioning of the future Court in practice.

It will indeed be a tremendous task to draw up truly European Rules of Procedure which will guarantee that the UPC adopts the most efficient and fair procedural practices, and thus becomes the attractive forum for resolving patent disputes that European businesses need.

It is currently envisaged that the Contracting Member States would, immediately after the signature of the Agreement, start the necessary preparations for the ratification of the Agreement to ensure its entry into force without delay. In parallel, the Contracting Member States would set up a Preparatory Committee in charge of preparing the practical arrangements for the early establishment and coming into operation of the Unified Patent Court. The Contracting Member States acknowledge the importance of appropriate Rules of Procedure for the Unified Patent 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. They affirm their willingness to draw up a complete and detailed set of Rules of Procedure before the entry into force of the Agreement.

The Preparatory Committee would complete the draft Rules of Procedure on the basis of input of expert judges, lawyers and industry representatives within three months of the signature of the Agreement. This draft should form the basis of a broad consultation with stakeholders before it is finalised with a view to reach agreement on it well before the end of the ratification procedures.

For the time being, the intention is to prepare a comprehensive draft which could form the basis for further work and broad consultations with stakeholders which shall take place in good time before the entry into force of the Agreement on the UPC.

Abbreviations & Main sources

EPC	European Patent Convention
EPLA RoP	"Annex I. Procedural law EPJ", prepared by Jan Willems, WPL/SUB 20/01, 27.8.2001
RoP CST	Rules of Procedure of the European Union Civil Service Tribunal
VR2	Second Venice Resolution, Principles relating to the Rules of Procedure of the European Patent Court, 4.11.2006
CJEU Statute	
CFI RoP	

Tentative levels for the various procedural fees have been included for illustrative purposes, without prejudice to the future decision of the Administrative Committee under Article 18(3) of the Agreement on the UPC. The levels indicated are based on informal collection of data and constitute only preliminary working hypotheses.

References to persons in these Rules of procedure may apply to women as well as to men.

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PREAMBLE

The Court shall conduct proceedings in accordance with these Rules of Procedure which shall be applied and interpreted on the basis of the principles of proportionality, fairness and equity.

Proportionality shall be ensured by giving due consideration to the nature and complexity of each case, its economic value and its importance to the parties.

Fairness shall be ensured by giving due consideration to the legitimate interests and expectations of the parties, including predictability of proceedings and the possibility to best present and defend their case.

Equity shall be ensured by giving due consideration to the necessary balance of interests of all parties including preventing any abuse of procedure and unnecessary costs and delays.

In accordance with these principles, the Court shall apply and interpret the Rules of Procedure in a way which will ensure efficiency and cost-effectiveness of proceedings and decisions of the highest quality.

In accordance with these principles, proceedings shall be conducted in a way which will normally allow deciding or otherwise concluding cases at first instance within one year. Case management shall be organised in accordance with this objective. 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 of Procedure by all first instance divisions and the Court of Appeal. Due consideration shall be given to this objective in any decision concerning leave to appeal against procedural orders.

Practice Directions shall lay down further details of the proceedings before the Court. They may not contradict or alter the provisions of the Agreement, the Statute or these Rules of Procedure.

[include references to general principles of procedural law as laid down in Article 6 of the European Convention on Human Rights, Articles 41 to 50 of the TRIPS Agreement, Article 47 of the Charter of Fundamental Rights and other applicable Union law?]

APPLICATION AND INTERPRETATION OF THE RULES OF PROCEDURE

Rule 1 – Power of judge to perform functions of the Court

Where these Rules provide for the Court to perform any act, that act may be performed by
(a) the presiding judge or the judge-rapporteur of the panel to which the case has been assigned,
(b) a single legally qualified judge (hereinafter "single judge"), where the case has been assigned to a single judge.

Relation with draft Agreement: Article 6(7)
Relation with draft Statute: Article 14(3)

Rule 2 – Power of staff of the Registry to perform functions of the Registry

Where these Rules provide for the Registry to perform any act, that act may be performed by a member of the staff of the Registry or of any sub-registry.

Rule 3 – Use of electronic means of communication and official forms

Written pleadings shall be lodged at the Registry in electronic form, in accordance with the Practice Directions. Parties shall make use of the official forms available on-line.

Relation with draft Agreement: Article 25
[In Practice Directions: definition of pleading, details on readable format]

Rule 4 – Service of orders, decisions and written pleadings

The Registry shall serve, in accordance with Part 5, Chapter 2,
(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.

Rule 5 – Language of written pleadings and written evidence

Written pleadings shall be lodged in the language of the proceedings, unless otherwise provided.

Rule 6 – Party and party's representative

Where these Rules provide that a party perform any act, that act shall be performed by a representative, unless otherwise provided [Rule 91(3)].

Relation with draft Agreement: Article 28

Rule 7 – 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 answer any question or provide any clarification or evidence, within time periods to be specified.

2. The Court may disregard any request, fact, evidence or argument which a party has not submitted in due time.

PART 1 – PROCEDURES BEFORE THE COURT OF FIRST INSTANCE

Rule 8 – 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;
(c) an oral procedure, which shall include an oral hearing of the parties;
(d) a procedure for the award of damages;
(e) a procedure for a cost order.
[unless otherwise provided, see Rule 90]

Relation with draft Agreement: Articles 32(1), 41 and 42

Rule 9 – 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 [without compromising its judicial position] propose that the parties make use of the facilities of the Patent Mediation and Arbitration centre in order to settle the dispute.

2. 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. *[more a rule on evidence]*

Relation with draft Agreement: Articles 17(3) and 52

CHAPTER 1 – WRITTEN PROCEDURE

SECTION 1 – INFRINGEMENT ACTION

Rule 10 – Exchange of written pleadings (infringement action)

1. The written procedure shall consist of
(a) the lodging of a Statement of claim (by the plaintiff) [Rule 11] and
(b) the lodging of a Statement of defence (by the defendant) [Rules 21-22].

2. The Statement of defence may include a Counterclaim for revocation [Rule 23(1)].

3. If a Counterclaim for revocation is lodged, the plaintiff may lodge a Reply to the counterclaim for revocation [Rule 28]. The Reply may include a Request to amend the claims [Rule 29].

4. If a Request to amend the claims is lodged, the defendant may lodge a Rejoinder to the request to amend the claims [Rule 30].

5. The judge-rapporteur may allow the exchange of further written pleadings, within time periods to be specified [Rule 34].

STATEMENT OF CLAIM

Rule 11 – Contents of the Statement of claim

The plaintiff shall lodge a *Statement of claim which shall contain
(a) the names of the plaintiff and of the plaintiff's representative,
(b) the name of the party against whom the Statement is made (the defendant),
(c) postal and electronic addresses for service on the plaintiff 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,
(e) a reference to the patent or patents concerned,
(f) where applicable, information about any pending proceedings relating to the patent or patents concerned before the Court, the European Patent Office or any other court or authority,
(g) an indication of the division which shall hear the case [Article 15a(1) or (6) of the Agreement]; where the parties have agreed in accordance with Article 15a(6) of the Agreement, the indication of the division which shall hear the case shall be accompanied by evidence of the defendant's agreement,
(h) where applicable, an indication that the case shall be heard by a single judge [Article 6(7) of the Agreement], accompanied by evidence of the defendant's agreement,
(i) the nature of the claim, the order or the remedy sought by the plaintiff,
(j) an indication of the facts relied on, in particular
    (i) one or more instances of alleged infringements specifying the date and place of each,
    (ii) the identification of the patent claims alleged to be infringed,
(k) the evidence relied on [Rule 170(1)], including any written witness statement [Rule 175], and where necessary an indication of any further evidence which will be offered in support,
(l) the reasons why the facts relied on constitute infringements of the patent claims, including arguments of law and where appropriate an explanation of the proposed claim interpretation,
(m) where the plaintiff assesses that the value of the dispute exceeds EUR 1 000 000, an indication of the value of the dispute, assessed on the basis of
    (i) the size of the parties,
    (ii) the defendant's turnover derived from the allegedly infringing acts,
    (iii) the economic value of the invention or inventions concerned,
    (iv) the remaining term of the patent or patents alleged to be infringed;
the plaintiff may include evidence in support of his assessment of the value of the dispute.

** For all written pleadings, parties will have to make use of forms available on-line (see Rule 3). Where a Rule lists the contents of pleadings, the sign * recalls that a form will be available to guide parties.*

Rule 12 – Language of the Statement of claim

1. The Statement of claim shall be drawn up
(a) in one of the languages of the regional division or local division
(i) which the plaintiff has chosen in accordance with Article 15a of the Agreement or
(ii) which the parties have agreed to bring the action before in accordance with Article 15a(6) of the Agreement, or
(b) in the language in which the patent was granted
(i) where the central division shall hear the case in accordance with Article 15a(1) or (6) of the Agreement or
(ii) where a Request to use the language in which the patent was granted as language of the proceedings is lodged in accordance with Rules 421 or 423 together with the Statement of claim.

2. The language in which the Statement of claim is drawn up shall be the language of the proceedings, without prejudice to Article 29(3), (4) or (4a) of the Agreement or Rules 18(2) or 421, 422 or 423.

3. The plaintiff may lodge a translation of the Statement of claim in an official language of the State where the defendant is domiciled and request that the translation be served on the defendant.

Relation with draft Agreement: Article 29

Rule 13 – Fee for the infringement action

1. The plaintiff shall pay the fixed fee for the infringement action [**EUR 6000], 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 501].

Relation with draft Agreement: Articles 18(3), 43 and 44

*** An tentative level for the various fees is included for illustrative purposes only, without prejudice to the future decision of the Administrative Committee relating to fees under Article 18(3) of the Agreement. See also the examples in Council Document 17120/1/11 REV 1 of 17.11.2011, page 4.*

Rule 14 – Examination as to formal requirements of the Statement of claim

1. The Registry shall, within three working days of lodging of the Statement of claim, examine whether the requirements of Rules 11(a) to (h), 12 and 13(1) have been complied with.

2. If the plaintiff has not complied with the requirements referred to in paragraph 1, the Registry shall inform the President of the Court of First Instance who shall reject the action as inadmissible. He may hear the plaintiff beforehand.

Rule 15 – Recording in the Register (Court of First Instance, infringement action)

1. If the requirements referred to in Rule 14(1) have been complied with, the Registry shall immediately, in accordance with the Instructions to the Registrar,
(a) attribute a date of receipt to the Statement of claim and a case number to the file,
(b) record the file in the Register,
(c) inform the plaintiff of the case number of the file and the date of receipt,
(d) assign the case to a panel of the division indicated by the plaintiff [Rule 11(g)] or to a single judge [Rule 11(h)], in accordance with the business distribution scheme.

2. The action shall be regarded as pending before the Court as from the date of receipt attributed to the Statement of claim.

Relation with draft Agreement: Articles 8 and 15a

Rule 16 – Designation of the judge-rapporteur

The presiding judge of the panel to which the case has been assigned [Rule 15(1)(d)] shall designate one judge of the panel as judge-rapporteur.

PROCEDURE WHEN THE DEFENDANT RAISES A PRELIMINARY OBJECTION

Rule 17 – Preliminary objection

1. Within two months of service of the Statement of claim, the defendant may lodge a Preliminary objection concerning
(a) the jurisdiction of the Court,
(b) the competence of the division indicated by the plaintiff [Rule 11(g)],
(c) the language of the Statement of claim [Rule 12].

2. A *Preliminary objection shall contain
(a) particulars in accordance with Rule 22(a) to (c),
(b) the decision or order sought by the defendant,
(c) the grounds upon which the Preliminary objection is based,
(d) where appropriate, an indication of the facts and evidence relied on.

3. The Preliminary objection shall be drawn up
(a) in the language of the proceedings [Rule 12(2)] or
(b) in an official language of the Contracting Member State where the defendant is domiciled.

4. The Registry shall invite the plaintiff to comment on the Preliminary objection. Where applicable, the plaintiff may of his own motion correct any deficiency [Rule 17(1)(b) or (c)], within one month. The judge-rapporteur shall be informed of any comment or correction made by the plaintiff.

5. The period for lodging the Statement of defence [Rule 21(1)] shall not be affected by the lodging of a Preliminary objection, unless the judge-rapporteur decides otherwise.

** An on-line form will be available to guide parties.*

Rule 18 – Decision or order on a Preliminary objection

1. As soon as possible after the expiry of the period (of one month) referred to in Rule 17(4), the judge-rapporteur shall decide whether the Preliminary objection shall be dealt with immediately or in the main proceedings.

2. Where the Preliminary objection is to be dealt with immediately, the judge-rapporteur shall present a Report on the Preliminary objection to the panel which shall decide on the Preliminary objection in accordance with Rule <on Decision or order of the panel in written proceedings>. The decision or order shall include instructions to the parties and to the Registry concerning the next step in the proceedings.

3. Where the Preliminary objection is to be dealt with in the main proceedings, the judge-rapporteur shall inform the parties.

Rule 19 – Appeal against decision or order on a Preliminary objection

1. An appeal against a decision or order under Rule 18 may only be lodged together with an appeal against a final decision on the merits of the Court of First Instance [Rule 118], unless the Court of Appeal grants leave to appeal [Rules 251-252].

2. If an appeal is lodged, proceedings at first instance may be stayed by the Court on a reasoned request by a party.

VALUE-BASED FEE FOR THE INFRINGEMENT ACTION

Rule 20 – Value-based fee for the infringement action

1. Where the value of the dispute exceeds EUR 1 000 000, the plaintiff shall pay a value-based fee for the infringement action, in accordance with Part 6 [Rules 500(2)(b) and 501(3)].

2. Within two months of service of the Statement of claim, the defendant may lodge an *Objection to the plaintiff's assessment of the value of the dispute [Rule 11(m)] which shall contain
(a) particulars in accordance with Rule 22(a) to (c),
(b) the order sought by the defendant,
(c) the grounds upon which the Objection is based,
(d) where appropriate, an indication of the facts and evidence relied on.

3. The judge-rapporteur may of his own motion *[object to]* the plaintiff's assessment of the value of the dispute.

4. The Registry shall invite the plaintiff to comment on any objection to his assessment of the value of the dispute, within 10 working days. The plaintiff may either provide evidence in support of his assessment or change his assessment.

5. The value of the dispute shall be determined by the judge-rapporteur (where the value of the dispute exceeds EUR 1 000 000), by way of order.

6. Rule 17(5) shall apply *mutatis mutandis*.

Relation with draft Agreement: Article 18(3)

** An on-line form will be available to guide parties.*

STATEMENT OF DEFENCE

Rule 21 – Lodging of the Statement of defence

The defendant shall lodge a Statement of defence within four 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 22 – Contents of the Statement of defence

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 of the persons authorised to accept service,
(c) the case number of the file,
(d) an indication whether the defendant has lodged a Preliminary objection [Rule 17],
(e) an indication of the facts relied on, including any challenge to the facts relied on by the plaintiff,
(f) the evidence relied on [Rule 170(1)], including any written witness statement [Rule 175], and where necessary an indication of any further evidence which will be offered in support,
(g) the reasons why the action shall fail, including arguments of law and where appropriate any challenge to the plaintiff's proposed claim interpretation.

Rule 23 – Counterclaim for revocation

The Statement of defence may include a *Counterclaim for revocation of the patent or patents alleged to be infringed which shall contain
(a) an indication of the extent to which revocation of the patent or patents alleged to be infringed is requested,
(b) one or more grounds for revocation, which may be supported by arguments of law,
(c) an indication of the facts relied on,
(d) the evidence relied on, including any written witness statement, and where necessary an indication of any further evidence which will be offered in support.
The defendant may state his position on the options provided for in Article 15a(2)(a), (b) or (c) of the Agreement.

** An on-line will be available to guide parties.*

Rule 24 – Fee for the Counterclaim for revocation

The defendant shall pay the fee for the Counterclaim for revocation [**EUR 4000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

Rule 25 – Examination as to formal requirements of the Statement of defence

1. The Registry shall, within three working days of lodging of the Statement of defence, examine whether the requirements of Rule 22(a) to (d) have been complied with. If the Statement of defence includes a Counterclaim for revocation, the Registry shall examine whether the requirements of Rules 23(1)(a) and (b) and 24 have 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 invite the defendant to
(a) correct the deficiencies noted, within one month,
(b) where applicable, pay the fee for the Counterclaim for revocation, within one month.

3. If the defendant does not correct the deficiencies noted within one month, the Registry shall inform the defendant that a decision by default will be given, in accordance with Rule 455.

4. If the defendant fails to pay the fee for the Counterclaim for revocation within one month, the Registry shall inform the judge-rapporteur who shall reject the Counterclaim for revocation as inadmissible. He may hear the defendant beforehand.

Rule 26 – Further schedule

1. At the latest 10 working days after service of the Statement of defence, the judge-rapporteur shall, after consulting the parties and in accordance with the Practice Directions, set
(a) where appropriate, a date and time for an interim conference with the parties,
(b) a date, and one alternative date, for the oral hearing.

2. On a reasoned request by a party and after consulting the other party, the judge-rapporteur may convene an early hearing, in accordance with the Practice Directions.

*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

Reply to the Counterclaim for Revocation and Request to Amend the Claims

Rule 28 – Lodging of the Reply to the counterclaim for revocation

1. Within three months of service of a Statement of defence which includes a Counterclaim for revocation, the plaintiff may lodge a Reply to the counterclaim for revocation. The period may be extended by the judge-rapporteur on a reasoned request by the plaintiff.

2. The Reply to the counterclaim for revocation shall contain
(a) an indication of the fact relied on, including any challenge to the facts relied on by the defendant,
(b) the evidence relied on [Rule 170(1)], including any written witness statement [Rule 175], and where necessary an indication of any further evidence which will be offered in support,
(c) the reasons why the counterclaim for revocation shall fail, including arguments of law.

Rule 29 – Request to amend the claims

1. The Reply to the counterclaim for revocation may include a *Request to amend the claims which shall contain
(a) the proposed amendments of the claims of the patent or patents concerned, including where 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 12(2)] is not the language in which the patent was granted, the plaintiff shall lodge a translation of the proposed amendments in the language of the proceedings,
(b) the grounds upon which the amendments are sought,
(c) an indication whether the proposals are definite or conditional; the proposed amendments, if conditional, must be reasonable in number in the circumstances of the case.

2. Any subsequent request to amend the claims may only be submitted with the leave of the judge-rapporteur.

** An on-line form will be available to guide parties.*

REJOINDER TO THE REQUEST TO AMEND THE CLAIMS

Rule 30 – Lodging of the Rejoinder to the request to amend the claims

1. Within two months of service of a Request to amend the claims, the defendant may lodge a *Rejoinder to the request to amend the claims setting out why
(a) the proposed amendments are not allowable and
(b) the patent cannot be maintained as requested.
The period may be extended by the judge-rapporteur on a reasoned request by the defendant.

2. Where appropriate in view of the proposed amendments, the Rejoinder to the request to amend the claims may contain submissions in accordance with Rule 42(c) to (e).

REQUEST FOR ALLOCATING A TECHNICALLY QUALIFIED JUDGE TO THE PANEL

Rule 31 – Request by a party for allocating a technically qualified judge

1. Any party to the proceedings may lodge a *Request for allocating a technically qualified judge to the panel which shall contain
(a) an indication of the relevant field of technology,
(b) the reasons why the allocation is requested.

2. The Request shall be lodged as early as possible in the written procedure. A Request lodged after the closure of the written procedure [Rule 33] 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 32 – Request by the judge-rapporteur for allocating a technically qualified judge

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.

** An on-line form will be available to guide parties.*

LAST STEPS IN THE WRITTEN PROCEDURE

Rule 33 – Closure of the written procedure

Following the exchange of written pleadings in accordance with Rule 10(1) and, where applicable, in accordance with Rule 10(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 34,
(b) where appropriate, confirm the date and the time set for the interim conference [Rule 26(1)(a)] or inform the parties that an interim conference will not be held.

Rule 34 – Further exchanges of written pleadings

On a reasoned request by a party lodged before the date on which the judge-rapporteur intends to close the written procedure [Rule 33(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 35 – Application of Article 15a(2) of the Agreement

1. The parties may at any tine during the written procedure state their position on the options provided for in Article 15a(2)(a), (b) and (c) of the Agreement. Where the parties have not stated their position, the judge-rapporteur shall, before the closure of the written procedure, invite the parties to do so within 10 working days.

2. Immediately after the written procedure has been closed, the judge-rapporteur shall present to the panel a Report on the application of Article 15a(2) of the Agreement which shall contain
(a) any position stated by the parties on the options provided for in Article 15a(2)(a), (b) and (c) of the Agreement,
(b) the judge-rapporteur's recommendation concerning the panel's use of its discretion under Article 15a(2) of the Agreement.

3. Within 10 working days, the panel shall decide by way of order how to proceed, in accordance with Rule <on Decision or order of the panel in written proceedings>; the panel shall aim at ensuring consistent practice across all regional and local divisions with respect to the application of Article 15a(2) of the Agreement.

4. Where the panel decides to proceed in accordance with Article 15a(2)(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.

5. Where the panel decides to proceed in accordance with Article 15a(2)(b) of the Agreement, the judge-rapporteur shall give particular consideration to
(a) suspending the infringement proceedings where the plaintiff has no commercial exposure to patent infringement [non-practicing entity]; the judge-rapporteur may invite the parties to provide evidence in this respect;
(b) suspending any pending Application for provisional measures [Rule 206];
(c) keeping the central division informed of any written or oral submission made by the parties in relation to the validity and the extent of protection conferred by the claims of the patent or patents concerned.

COUNTERCLAIM FOR REVOCATION REFERRED TO THE CENTRAL DIVISION UNDER ARTICLE 15a(2)(b) OF THE AGREEMENT

Rule 36 – Written procedure when the central division deals with a counterclaim for revocation

When a counterclaim for revocation is referred to the central division, it shall be dealt with as follows:
(a) Rule 15(1)(d) shall apply *mutatis mutandis*: the Registry shall assign the counterclaim for revocation to a panel of the central division, in accordance with the business distribution scheme; parties may request that the counterclaim be heard by a single judge;
(b) Rule 16 shall apply *mutatis mutandis*: the presiding judge of the panel to which the counterclaim for revocation has been assigned shall designate one judge of the panel as judge-rapporteur;
(c) Rule 25(1) shall apply *mutatis mutandis*: the judge-rapporteur shall set a date and a time for the interim conference (where appropriate) and set a date, and one alternative date, for the oral hearing, after consulting the parties and in accordance with the Practice Directions;
(d) Rule 35(5)(b) shall apply *mutatis mutandis*: the judge-rapporteur shall keep the regional division or the local division which referred the counterclaim for revocation to the central division informed of any written or oral submission made by the parties in relation to the validity and the extent of protection conferred by the claims of the patent or patents concerned.

Rule 37 – Language of the proceedings before the central division

1. Where the language of the proceedings before the regional division or the local 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 one month, a translation in the language in which the patent was granted of any written pleadings lodged during the written procedure. 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 shall be translated.

Rule 38 – Accelerated proceedings before the central division

In accordance with the Practice Directions, the judge-rapporteur shall endeavour to accelerate proceedings before the central division where
(a) an Application for provisional measures has been lodged [Rule 206],
(b) the regional division or the local division which referred the counterclaim for revocation to the central division has suspended the infringement proceedings [Rule 35(5)].

[In Practice Directions: options for reducing the timetable in case of accelerated proceedings]

CASE REFERRED TO THE CENTRAL DIVISION UNDER ARTICLE 15a(2)(c) OF THE AGREEMENT

Rule 39 – Written procedure when the central division deals with the case under Article 15a(2)(c) of the Agreement

When a case is referred to the central division under Article 15a(2)(c) of the Agreement, it shall be dealt with as follows:
(a) Rule 15(1)(d) shall apply *mutatis mutandis*: the Registry shall assign the case to a panel of the central division, in accordance with the business distribution scheme; parties may request that the case be heard by a single judge;
(b) Rule 16 shall apply *mutatis mutandis*: the presiding judge of the panel to which the case has been assigned shall designate one judge of the panel as judge-rapporteur;
(c) dates already set under Rule 25(1) shall be confirmed wherever possible;
(d) Rule 37 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 shall be translated.

SECTION 2 – REVOCATION ACTION

Rule 40 – Action to be directed against the patent proprietor

In any action for the revocation of a patent, the proprietor of the patent shall be party to the proceedings.

Relation with draft Agreement: Article 27(5)

Rule 41 – Exchange of written pleadings (revocation action)

1. The written procedure shall consist of
(a) the lodging of a Statement for revocation (by the plaintiff) [Rule 42] and
(b) the lodging of a Defence to revocation (by the defendant) [Rule 50].

2. The Defence to revocation may include
(a) a Request to amend the claims and
(b) a Counterclaim for infringement.

3. If a Request to amend the claims is lodged, the plaintiff may lodge a Reply to the request to amend the claims.

4. If a Counterclaim for infringement is lodged, the plaintiff may lodge a Reply to the counterclaim for infringement [Rule 56].

5. Rule 10(5) shall apply.

STATEMENT FOR REVOCATION

Rule 42 – Contents of the Statement for revocation

The plaintiff shall lodge a *Statement for revocation which shall contain
(a) particulars in accordance with Rule 11(a) to (f),
(b) where the parties have agreed to bring the action before a regional division or a local division in accordance with Article 15a(6) of the Agreement, an indication of the division which shall hear the case, accompanied by evidence of the defendant's agreement,
(c) where applicable, an indication that the case shall be heard by a single judge [Article 6(7) of the Agreement], accompanied by evidence of the defendant's agreement,
(d) the nature of the claim, the order or the remedy sought by the plaintiff,
(e) one or more grounds for revocation, which may be supported by arguments of law,
(f) an indication of the facts relied on,
(g) the evidence relied on, including any written witness statement, and where necessary an indication of any further evidence which will be offered in support.

Rule 43 – Language of the Statement for revocation

1. 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 regional division or a local division in accordance with Article 15a(6) of the Agreement, the Statement for revocation shall be drawn up in one of the languages referred to in Rule 12(1)(a)(ii) or (b)(ii).

3. Rule 12(2) and (3) shall apply *mutatis mutandis*.

Relation with draft Agreement: Article 29

** An on-line form will be available to guide parties.*

Rule 44 – Fee for the revocation action

The plaintiff shall pay the fee for the revocation action [**EUR 6000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

Relation with draft Agreement: Articles 43, 44

Rule 14 on Examination as to formal requirements of the Statement of claim shall apply *mutatis mutandis*

Rule 45 – Recording in the Register (Court of First Instance, revocation action)

1. Rule 15(1)(a) to (c) and (2) shall apply *mutatis mutandis*.

2. The Registry shall, in accordance with the business distribution scheme, assign the case
(a) to a panel of the central division,
(b) where the parties have agreed that a single judge should hear the case, to a single judge or
(b) where the parties have agreed to bring the action before a local division or a regional division in accordance with Article 15a(6) of the Agreement, to a panel of the regional division or the local division concerned.

Relation with draft Agreement: Articles 8 and 15a

Rule 16 on Designation of judge-rapporteur shall apply **Rules 17, 18 and 19 on Procedure when the defendant raises a Preliminary objection** shall apply *mutatis mutandis*

*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

DEFENCE TO REVOCATION

Rule 50 – Lodging of the Defence to revocation

1. The defendant shall lodge a Defence to revocation within four months of service of the Statement for revocation. The period shall be extended by the judge-rapporteur on a reasoned request by the defendant.

2. The Defence to revocation may include
(a) a Request to amend the claims,
(b) a Counterclaim for infringement.

Rule 51 – Contents of the Defence to revocation

1. The *Defence to revocation shall contain
(a) particulars in accordance with Rule 22(a) to (d),
(b) submissions in accordance with Rule 22(e) to (g).

2. Any Request to amend the claims shall contain submissions in accordance with Rule 29(1). Rule 29(2) shall apply.

3. Any Counterclaim for infringement shall contain submissions in accordance with Rule 11(i) to (l).

Rule 52 – Fee for the Counterclaim for infringement

The defendant shall pay the fee for the Counterclaim for infringement [**EUR 4000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

Rule 25 on Examination as to formal requirements of the Statement of defence shall apply *mutatis mutandis*
Rule 26 on Further schedule shall apply *mutatis mutandis*

** An on-line form will be available to guide parties.*
*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

REPLY TO THE REQUEST TO AMEND THE CLAIMS AND REPLY TO THE COUNTERCLAIM FOR INFRINGEMENT

Rule 30 on Lodging of the Rejoinder to the request to amend the claims shall apply *mutatis mutandis*

Rule 56 – Lodging of the Reply to the counterclaim for infringement

1. Within two months of service of a Counterclaim for infringement, the plaintiff may lodge a Reply to the counterclaim for infringement. The period may be extended by the judge-rapporteur on a reasoned request by the plaintiff.

2. Where appropriate in view of the submissions of the defendant [in the Counterclaim for revocation], the Reply may contain submissions in accordance with Rule 22(e) to (g).

Rules 31 and 32 on Request for allocating a technically qualified judge shall apply where the revocation action is heard by a regional division or a local division
Rule 33 on Closure of the written procedure shall apply *mutatis mutandis*
Rule 34 on Further exchanges of written pleadings shall apply

SECTION 3 – ACTION FOR DECLARATION OF NON-INFRINGEMENT

Rule 60 – Declaration of non-infringement

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, notwithstanding that no assertion to the contrary has been made by the proprietor, if it is shown that
(a) that person has applied in writing to the proprietor 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 has refused or failed to give any such acknowledgment.

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 plaintiff) [Rule 62],
(b) the lodging of a Defence to the declaration of non-infringement (by the defendant) [Rules 65-66].

2. The Defence to the declaration of non-infringement may include a Counterclaim for infringement.

3. If a Counterclaim for infringement is lodged, the plaintiff may lodge a Reply to the counterclaim for infringement.

4. Rule 10(5) shall apply.

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

1. The plaintiff shall lodge a *Statement for a declaration of non-infringement which shall contain
(a) particulars in accordance with Rule 11(a) to (f),
(b) where the parties have agreed to bring the action before a regional division or a local division in accordance with Article 15a(6) of the Agreement, an indication of the division which shall hear the case, accompanied by evidence of the defendant's agreement,
(c) where applicable, an indication that the case shall be heard by a single judge [Article 6(7) of the Agreement], accompanied by evidence of the defendant's agreement,
(d) the nature of the order or the remedy sought by the plaintiff,
(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,
(f) an indication of the facts relied on,
(g) the evidence relied on, including any written witness statement, and where necessary an indication of any further evidence which will be offered in support.

Rules 43, 44 and 45 relating to the Statement for revocation shall apply *mutatis mutandis*
Rule 14 on Examination as to formal requirements of the Statement of claim shall apply *mutatis mutandis*
Rules 17, 18 and 19 on Procedure when the defendant raises a Preliminary objection shall apply *mutatis mutandis*

Rule 65 – Lodging of the Defence to the declaration of non-infringement

The defendant shall lodge a Defence to the declaration of non-infringement within three 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.

Rule 66 – Contents of the Defence to the declaration of non-infringement

1. The Defence to the declaration of non-infringement shall contain:
(a) particulars in accordance with Rule 22(a) to (d),
(b) submissions in accordance with Rule 22(e) to (g).

2. Where the Defence to the declaration of non-infringement includes a Counterclaim for infringement, it shall contain submissions in accordance with Rule 11(i) to (l).

** An on-line form will be available to guide parties.*

Rule 67 – Fee for the Counterclaim for infringement

The defendant shall pay the fee for the Counterclaim for infringement [**EUR 4000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

Rule 25 on Examination as to formal requirements of the Statement of defence shall apply *mutatis mutandis* **Rule 26 on Further schedule** shall apply *mutatis mutandis* **Rule 56 on Lodging of the Reply to the counterclaim for infringement** shall apply *mutatis mutandis* **Rules 31 and 32 on Request for allocating a technically qualified judge** shall apply where the revocation action is heard by a regional division or a local division **Rule 33 on Closure of the written procedure** shall apply *mutatis mutandis* **Rule 34 on Further exchanges of written pleadings** shall apply

SECTION 4 – ACTION FOR DAMAGES OR COMPENSATION FROM THE PROVISIONAL PROTECTION CONFERRED BY A PUBLISHED EUROPEAN PATENT APPLICATION

Relation with draft Agreement: Article 15(1)(d)
[to be developed (as a rule: to be stayed until grant of the patent]

SECTION 5 – ACTION RELATING TO THE USE OF THE INVENTION PRIOR TO THE GRANTING OF THE PATENT OR TO THE RIGHT BASED ON PRIOR USE OF THE PATENT

Relation with draft Agreement: Article 15(1)(2)
[to be developed]

SECTION 6 – ACTION ON COMPENSATION FOR LICENCES ON THE BASIS OF ARTICLE 11 OF REGULATON ---/-- IMPLEMENTING ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Relation with draft Agreement: Article 15(1)(f)
[to be developed]

*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

SECTION 7 – ACTION AGAINST DECISIONS OF THE EUROPEAN PATENT OFFICE IN CARRYING OU THE TASKS REFERRED TO IN ARTICLE 12 OF REGULATION ---/-- IMPLEMENTING ENHANCED COOPERATION IN THE AREA OF THE CREATION OF UNITARY PATENT PROTECTION

Relation with draft Agreement: Articles 15(1)(g), 27(7) and 38b

Rule 90 – Stages of the proceedings (*ex parte* proceedings)

When an action is brought against a decision of the European Patent Office in carrying out the tasks referred to in Article 12 of Regulation ---/-- implementing enhanced cooperation in the area of the creation of unitary patent protection (hereinafter "decision of the Office"), proceedings before the Court of First Instance shall consist of
(a) a written procedure, which shall include a possibility for interlocutory revision by the European Patent Office;
(b) at the instance of the Court or at the request of the plaintiff, an oral procedure, which shall include an oral hearing.

Rule 91 – Request to annul or alter a decision of the European Patent Office

1. The plaintiff shall lodge at the Court and at the European Patent Office a Request 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 *Request to annul or alter a decision of the Office shall contain
(a) the names of the plaintiff and, where applicable, of the plaintiff's representative,
(b) where the plaintiff is not the proprietor of the European patent or the European patent with unitary effect concerned, evidence that he is affected by the decision of the Office and entitled to start proceedings [Article 27(7) of the Agreement],
(c) postal and electronic addresses for service on the plaintiff and the names of the persons authorised to accept service,
(d) a reference to the contested decision of the Office,
(e) where applicable, information about any pending proceedings relating to the patent concerned before the Court, the European Patent Office or any other court or authority,
(f) the order or the remedy sought by the plaintiff.

3. The plaintiff shall pay the fee for the action against a decision of the Office [**EUR 2000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

4. Rule 6 shall not apply.

Relation with draft Agreement: Articles 28(6) and 29(5)

Rule 92 – Examination as to formal requirements (*ex parte* proceedings)

1. The Registry shall, within three working days of lodging of the Request to annul or alter a decision of the Office, examine whether the requirements of Articles 27(7) and 29(5) of the Agreement and Rule 91 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 plaintiff to
(a) correct the deficiencies noted, within one month,
(b) where applicable, pay the fee for the action against a decision of the Office, within one month.

3. If the plaintiff 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 shall reject the action as inadmissible. He may hear the plaintiff beforehand.

Rule 93 – Recording in the Register (*ex parte* proceedings)

If the requirements referred to in Rule 92(1) have been complied with, the Registry shall immediately, in accordance with the Instructions to the Registrar,
(a) attribute a date of receipt to the Request to annul or alter a decision of the Office and a case number to the file,
(b) record the file in the Register,
(c) inform the plaintiff of the case number of the file and the date of receipt,
(d) inform the European Patent Office that the action is admissible.

Rule 94 – Interlocutory revision by the European Patent Office

1. If the European Patent Office considers that the action is well founded, it shall within three months of the date of the contested decision
(a) rectify the contested decision in accordance with the order or remedy sought by the plaintiff [Rule 91(2)(f)] and
(b) inform the Court and the plaintiff 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 plaintiff that the case 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 95 – Contents of the Statement of grounds (*ex parte* proceedings)

Where the case is not closed in accordance with Rule 94(2), the plaintiff shall lodge within four months of service of the decision of the Office lodge a *Statement of grounds which shall contain
(a) one or more grounds for annulling or altering the contested decision, in accordance with Rule 96,
(b) an indication of the facts and evidence relied on,
(c) where applicable, an indication that the case shall be heard by a single judge.

Rule 96 – Grounds for annulling or altering the contested decision

An action against a decision of the Office may be brought on grounds of
(a) infringement of Regulation ---/-- implementing enhanced cooperation in the area of the creation of unitary patent protection or of Regulation ---/-- implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements, or of any rule of law relating to their application,
(b) infringement of the internal rules of the European Patent Office for carrying out the tasks referred to in Article 12(1) of Regulation ---/--,
(c) infringement of an essential procedural requirement,
(d) misuse of power.

[Article 65 CTMR]

Rule 97 – Assignment to panel or to single judge, designation of judge-rapporteur

The Registry shall assign the case to a panel of the central division or to a single judge, in accordance with the business distribution scheme. The judge-rapporteur of the panel to which the case has been assigned shall designate one judge of the panel as judge-rapporteur.

<u>*Further procedure [to be developed]*</u>
- the judge-rapporteur may request further substantiation of the Request to annul or alter a decision of the Office, within a period to be specified
- the judge-rapporteur shall ask the plaintiff whether he wishes that an oral hearing be convened (or he may decide that an oral hearing shall be convened at his own instance)
- if an oral hearing is to be convened, the judge-rapporteur shall, after consulting the plaintiff and in accordance with the Practice Directions, set a date for the oral hearing.
- if no oral hearing is to be convened, the panel shall decide in accordance with Rule on <Decision or order of the panel in written proceedings>

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
(a) hold an interim conference with the parties,
(b) order the exchange of pleadings within time periods to be specified.

2. The judge-rapporteur shall have all authority to ensure a fair, orderly and efficient interim procedure.

3. Without prejudice to the principle of proportionality, the judge-rapporteur shall endeavour to complete the interim procedure within two months.

Relation with draft Agreement: Articles 24 and 32(2)

Rule 102 – Referral to the panel

1. The judge-rapporteur may refer any matter to the panel for decision.

2. Any party may request that a decision or order of the judge-rapporteur be referred to the panel for an early review. Pending review, the decision or order of the judge-rapporteur shall be effective.

Rule 103 – Preparation for the interim conference

Before the interim conference, the judge-rapporteur may order the parties, within time periods to be specified, to
(a) provide further clarification on specific points,
(b) answer specific questions,
(c) produce evidence,
(d) lodge specific documents.

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 necessary, clarify the position of the parties as regards those issues and facts,
(c) establish a schedule for the further progress of the proceedings [if further exchanges are allowed (Rule 107(2)],
(d) explore with the parties the possibilities to settle the dispute or to make use of the facilities of the Patent Mediation and Arbitration Centre,
(e) where necessary, issue orders regarding production of documents, experts, experiments or inspections,
(f) where appropriate, hold preparatory discussions with witnesses and experts with a view to properly prepare for the oral hearing,
(g) make any other decision or order as he deems necessary for the preparation of the oral hearing.

Relation with draft Agreement: Articles 17(3) and 32(2)

Rule 105 – Telephone conference and video conference

1. The interim conference shall 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.

[3. The judge-rapporteur may hold the interim conference in any language mastered by parties' representatives.]

Rule 106 – Recording of the interim conference

1. The interim conference shall be [audio / video] recorded, in accordance with the Practice Directions. The recording shall be made publicly available after the hearing, subject to paragraph 3.

2. An audience sheet shall be drawn up by the Registry in accordance with the Instructions to the Registrar.
[In Instructions to the Registrar: particulars regarding date, duration, persons attending]

3. After hearing the parties, the judge-rapporteur may order that the recording or parts thereof be kept confidential in the interest of the parties, other affected persons, public security, justice or public order.

Relation with draft Agreement: Articles 25, 26

PREPARATION FOR THE ORAL HEARING

Rule 107 – Further instruction

1. After the interim conference, the judge-rapporteur shall examine whether the state of preparation of the file is adequate, including where appropriate ensure that
(a) the parties have complied with orders made,
(b) the evidence produced is as complete as necessary for the efficient conduct of the oral hearing.

2. The judge-rapporteur shall set final dates for any further procedural step in the interim procedure as soon as possible, including where appropriate set a date within which the parties may lodge final written submissions.

Rule 108 – Summons to the oral hearing

1. The judge-rapporteur shall summon the parties to the oral hearing [which shall take place on the date set under Rule 26(1)(b)]. At least two months' notice of the summons shall be given, unless the parties agree to a shorter time period.

2. The Practice Directions shall lay down rules on rescheduling an oral hearing.
[In Practice Directions: list of serious reasons which may justify a rescheduling]

Rule 109 – Simultaneous interpretation during the oral hearing

1. At the latest one month before the oral hearing, a party may lodge a *Request for simultaneous interpretation during the oral hearing which shall contain
(a) an indication of the language to or from which the party requests simultaneous interpretation during the oral hearing,
(b) the grounds on which the Request is based,
(c) the field of technology concerned,
(d) any other information of relevance for the Request.

2. The judge-rapporteur shall decide on the Request and, where applicable, instruct the Registry to make all necessary arrangements for simultaneous interpretation.

3. A party wishing to engage an interpreter at its own expense shall inform the Registry at the latest one month before the oral hearing.

Relation with draft Agreement: Articles 29(4a) and 31(2)

Rule 110 – Closure of the interim procedure in view of the oral hearing

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 in accordance with Rule 107(2), the interim procedure shall be deemed closed on the last date set.

3. The oral procedure shall start on the date following the date on which the interim procedure is closed. The presiding judge shall take over the management of the case.

** An on-line form will be available to guide parties.*

CHAPTER 3 – ORAL PROCEDURE

Rule 112 – Role of the presiding judge (Case management)

The presiding judge shall
(a) have all authority to ensure fair, orderly and efficient oral procedure and
(b) ensure that the case is ready for decision on the merits at the end of the oral hearing.

Rule 113 – Conduct of the oral hearing

1. The oral hearing shall be held before the panel and shall be directed by the presiding judge.

2. The oral hearing shall consist of
(a) the hearing of the parties' oral submissions,
(b) if necessary and under the control of the presiding judge, the hearing of witnesses and experts, including where appropriate questioning by one party of the other party's witnesses and experts.

3. The presiding judge and the judges of the panel may in the course of the oral hearing put questions to the parties, to the parties' representatives and to any witness or expert.

Relation with draft Agreement: Article 33(1)(a)
("where appropriate" (§2(b)) – low threshold: the presiding judge starts with questioning witnesses and experts, thereafter parties are (normally) offered an opportunity to do so)

Rule 114 – Duration of the oral hearing

1. Without prejudice to the principle of proportionality, the presiding judge shall endeavour to complete the oral hearing within one day. The presiding judge may set time limits for parties' oral submissions in advance of the oral hearing, in accordance with the Practice Directions.

2. Oral testimony at the oral hearing shall be limited to issues identified by the judge-rapporteur or the presiding judge as having to be decided by oral evidence.

3. The presiding judge may, after consulting the panel, limit a party's oral submissions if the panel is sufficiently informed.

Rule 115 – 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.

Rule 116 – Recording of the oral hearing

The oral hearing shall be [audio / video] recorded, in accordance with the Practice Directions. Rule 106 shall apply *mutatis mutandis*.

Relation with draft Agreement: Article 26

Rule 117 – Absence of a party from the oral hearing

1. A party which does not wish to be present 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 present at the oral hearing, the Court may decide the case in accordance with Rule <on Decision or order of the panel in written proceedings>.

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 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 the oral hearing, it shall immediately inform the Registry. The Court shall decide whether adjournment of the oral hearing is justified.

Rule 118 – Decision on the merits

The decision on the merits of the Court shall be given in writing 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.

Relation with draft Agreement: Article 50

CHAPTER 4 – PROCEDURE FOR THE AWARD OF DAMAGES

Relation with draft Agreement: Article 41

Rule 125 – Separate proceedings for the award of damages

1. The award of damages to the successful party shall be the subject of separate proceedings following the decision on the merits.

2. In exceptional cases, the Court may order an interim award of damages to the successful party in the decision on the merits, subject to any conditions that the Court may order.

[VR2]

Rule 126 – Start of proceedings for the award of damages

Where the successful party (hereinafter "the applicant") wishes to claim damages, it shall within two months of service of the decision on the merits lodge
(a) an Application for the award of damages or
(b) a Request to lay open books.
The time period may be extended by the Registry on a reasoned request by the applicant.

SECTION 1 – APPLICATION FOR THE AWARD OF DAMAGES

Rule 131 – Contents of the Application for the award of damages

The *Application for the award of damages shall contain
(a) particulars in accordance with Rule 11(a) to (d),
(b) the date of the decision on the merits and the case number of the file,
(c) the kind of redress [damages, license fees, profits] requested by the applicant,
(d) an indication of the facts relied on, in particular calculations concerning lost profits or profits made by the unsuccessful party,
(e) an indication of the evidence offered in support.

** An on-line form will be available to guide parties.*

Rule 132 – Examination as to formal requirements of the Application for the award of damages

1. The Registry shall, within five working days of lodging of the Application for the award of damages, examine whether the requirements of Rules 126 and 131(a) to (c) have been complied with.

2. If the Application for the award 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 14(2) shall apply *mutatis mutandis*.

Rule 133 – Recording in the Register (Application for the award of damages)

If the requirements referred to in Rule 132(1) have been complied with, the Registry shall immediately, in accordance with the Instructions to the Registrar,
(a) attribute a date of receipt to the Application for the award 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 that an Application for the award of damages has been lodged.

Rule 134 – Reply of the unsuccessful party

1. If the unsuccessful party accepts the claim made in the Application for the award of damages, it shall within one month inform the Registry which shall present a Report on damages to the judge-rapporteur. The judge-rapporteur of the panel which has given the decision on the merits shall make the order for the award of damages in accordance with the Application for the award of damages.

2. If the unsuccessful party contests the claim made in the Application for the award of damages [or any part of it], it shall within one month of service of the Application for the award of damages lodge a Defence to the application for the award of damages.

Rule 135 – Contents of the Defence to the application for the award of damages

The *Defence to the Application for the award 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 of the persons authorised to accept service,
(c) the case 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,
(f) the evidence relied on.

Rule 136 – Further procedure (Application for the award of damages)

1. The judge-rapporteur of the panel which has given the decision on the merits may order further exchange of written pleadings, within time periods to be specified.

2. The provisions of Part 1, Chapters 2 (Interim procedure) and 3 (Oral procedure) shall apply *mutatis mutandis*. *[with a reduced timetable]*

SECTION 2 – REQUEST TO LAY OPEN BOOKS

Rule 141 – Contents of the Request to lay open books

The *Request to lay open books shall contain
(a) particulars in accordance with Rule 131(a) and (b),
(b) a description of the information held by the unsuccessful party to which the applicant requests access, in particular accounts, bank documents and any related document concerning the infringement,
(c) the reasons why the applicant needs access to this information,
(d) the facts relied on,
(e) an indication of the evidence offered in support.

Rule 132 on Examination as to formal requirements of the Application for the award of damages shall apply *mutatis mutandis* **Rule 133 on Recording in the Register** shall apply *mutatis mutandis*

** An on-line form will be available to guide parties.*

Rule 142 – Reply of the unsuccessful party

1. If the unsuccessful party accepts the Request to lay open books, it shall inform the Registry which shall present a Report on laying open books to the judge-rapporteur. The judge-rapporteur of the panel which has given the decision on the merits 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 or any part of it, it shall within one month of service of the Request to lay open books lodge a Defence to the request to lay open books.

Rule 135 on Contents of the Defence to the application for the award damages shall apply *mutatis mutandis*
Rule 136 on Further procedure (Application for the award damages) shall apply *mutatis mutandis*

Rule 143 – Decision on the Request to lay open books

1. Where the Request to lay open books is allowable, the Court shall
(a) order the unsuccessful party to open its books to the applicant within a time period to be specified,
(b) inform the applicant and specify a time period within which an Application for the award damages may be lodged.

2. Where the Request to lay open books is not allowable, the Court shall inform the applicant and specify a time period within which an Application for the award of damages may be lodged.

CHAPTER 5 – PROCEDURE FOR COST ORDER

Relation with draft Agreement: Article 42

Rule 150 – Separate proceedings for cost order

1. A cost order shall be the subject of separate proceedings following the decision on the merits.

2. In exceptional cases, the Court may order an interim award of costs to the successful party in the decision on the merits, subject to any conditions that the Court may decide.

Rule 151 – Start of proceedings for cost order

Where the successful party (hereinafter "the applicant") wishes to seek a cost order, it shall within one month of service of the decision on the merits lodge an *Application for a cost order which shall contain
(a) particulars in accordance with Rule 11(a) to (d),
(b) the date of the decision on the merits and the case number of the file,
(c) an indication of the costs for which compensation is requested, which may include costs of representation, of witnesses, of experts, of interpreters and of translators and other necessary expenses.
The time period may be extended by the Registry on a reasoned request by the applicant.

Rule 152 – Compensation for representation costs

1. The basis for the compensation for representation costs shall be the value of the dispute, as determined by the judge-rapporteur in accordance with Rule 20 (where the value of the dispute exceeds EUR 1 000 000). It shall be calculated by the Court in EUR within the following ranges, with due regard to the nature, complexity and extent of the dispute and the time spent by the representative or representatives for the services rendered:

	Value of the dispute	Compensation for representation costs
(a)	below 1 000 000	between 10 000 and 100 000**
(b)	between 1 000 000 and 5 000 000	between 75 000 and 200 000**
(c)	between 5 000 000 and 25 000 000	between 150 000 and 500 000**
(d)	between 25 000 000 and 50 000 000	between 300 000 and 800 000**
(e)	above 50 000 000	between 500 000 and 1 000 000**

** An on-line form will be available to guide parties.*
*** Purely tentative levels included for illustrative purposes only, without prejudice to the future decision of the Administrative Committee relating to fees under Article 18(3) of the Agreement.*

2. Where the relation between the value of the dispute and the time spent by the representative or representatives is manifestly disproportionate, the Court may increase or reduce compensation.

[3. The ranges set out in paragraph 1 shall not apply where the Court considers that an unsuccessful party has started a frivolous or vexatious action].

[An alternative way of determining compensation for representation costs could be based on actual billed (reasonable) costs (or a percentage thereof)].

Rule 153 – Compensation for costs of experts

The compensation for costs of experts 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 in accordance with Rule 181, compensation may be requested for payments made by the Registry towards the expenses incurred by a witness.

Rule 155 – Compensation for costs of interpreters and translators

1. The compensation for costs of interpreters shall be calculated within the range of **EUR 80 to 140 per hour, depending on the interpreter’s training and professional experience.

2. The compensation for costs of translators shall be calculated within the range of **EUR 60 to 100 per hour, depending on the translator's training and professional experience.

[or based on EUR per page]

PART 2 – EVIDENCE

Relation with draft Agreement: Article 33

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.
Means of evidence which are not written shall be lodged in accordance with the Practice Directions.

2. Means of obtaining evidence shall include in particular the following:
(a) hearing of the parties;
(b) summoning, hearing and questioning of witnesses;
(c) appointing and hearing of experts;
(d) ordering a party or a third party to produce evidence;
(e) ordering inspection of a place or a physical object;
(f) ordering measures to preserve evidence.

Rule 171 – Offering of evidence

1. A party making a statement of fact that is contested or contestable by the other party has to indicate the means of evidence to prove it. In case of failure to indicate the means of evidence, the Court may disregard such statement of fact.

2. A statement of fact that is not contested by any party shall be held to be true between the parties.

Rule 172 – Duty to produce evidence

1. Evidence available to a party regarding a statement of fact that is contested or contestable 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 taking its decision on the merits of the case.

CHAPTER 1 – WITNESSES AND EXPERTS OF THE PARTIES

Rule 175 – Written witness statement

1. A party seeking to offer witness evidence shall lodge a written witness statement.

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.

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

Where a party seeking to offer witness evidence either cannot obtain a written witness statement or wishes that the Court hear the witness in person, it shall lodge an *Application for the hearing of a witness in person which shall set out
(a) the reasons why the witness shall be heard in person and
(b) the facts which the party expects the witness to confirm.

Rule 177 – Power to disregard offer of witness evidence

If a party does not lodge a written witness statement or an Application for the hearing of a witness in person, the Court may disregard the offer of witness evidence.

Rule 178 – Summoning of witnesses to the oral hearing

1. The Court may order that a witness be heard in person
(a) of its own motion, in particular where a written witness statement is challenged by the other party or
(b) on Application for the hearing of a witness in person [Rule 176], in particular where a written witness statement has not been obtained from the witness.

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 case about which the witness is to be examined,
(d) information about the reimbursement of expenses incurred by the witness,
(e) information about the sanctions which may be imposed on a defaulting witness.

** An on-line form will be available to guide parties.*

Rule 179 – Hearing of witnesses

1. After the identity of the witness has been established and before hearing his evidence, the presiding judge shall inform the witness that he may be required to take the following oath:

"I declare that I shall tell the truth, the whole truth and nothing but the truth."

The Court may, after hearing the parties, exempt a witness from taking the oath.

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 decide that a certain question is not admissible and does not need to be answered by the witness.

6. The Court may allow a witness to give evidence through electronic means, such as video conference. Paragraphs 1 to 5 shall apply.

Rule 180 – 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 take the oath, the Court may impose upon him a pecuniary sanction not exceeding [**EUR 5000] and may order that a further summons be served at the witness's own expense.

[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 secret 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.]

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

*** Tentative level included for illustrative purposes only,*

Rule 181 – 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 182 – Experts of the parties

A party may provide any expert evidence that it considers necessary. Rules 175 to 180 shall apply *mutatis mutandis* to experts or the parties.

CHAPTER 2 – COURT EXPERTS

Relation with draft Agreement: Article 36

Rule 185 – Appointment of a court expert

1. Where the Court must resolve a specific technical question in relation to the case, it may appoint a court expert.

2. The parties may make suggestions regarding the identity of the court expert, his technical background and the questions to be put to him. The parties shall endeavour to agree on the identity of the court expert to be appointed by the Court.

3. The court expert shall answer only to the Court and shall possess the expertise, independence and impartiality required for being appointed as 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 case,
(c) the questions put to the expert, with the appropriate level of detail, including where appropriate suggestions relating to any experiments to be carried out,
(d) when and under what conditions the expert may receive other relevant information,
(e) the time period for the presentation of the expert report,
(f) information about the reimbursement of expenses incurred by the expert,
(g) information about the sanctions which may be imposed on a defaulting expert.

5. The expert shall receive a copy of the order, together with the documents that the Court considers to be necessary for carrying out his task.

6. If an appointed court expert does not present his report within the time period specified by the Court, the Court may appoint another expert in his place, without prejudice to the liability of the first expert for costs being made.

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)(e)].

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.

Rule 187 – Contacts between a court expert and the parties

1. On a reasoned request by a party, the judge-rapporteur may allow a party to present to the court expert its explanations on the technical questions dealt with by the court expert. The other party shall be informed *[and may likewise request to present its explanations to the court expert]*.

2. The court expert shall present a preliminary report to the parties which shall be invited to comment on it in writing. In the final report to be presented to the Court, the court expert shall endeavour to address any comments made by the parties.

Rule 188 – Final 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 expert

Rules 179, 180 and 181 shall apply *mutatis mutandis* where a court expert is summoned to be heard in person during the oral hearing.

CHAPTER 3 – ORDER TO PRODUCE EVIDENCE AND TO COMMUNICATE INFORMATION

ORDER TO PRODUCE EVIDENCE

Rule 190 – Order to produce evidence

1. Where a party has presented reasonably available evidence sufficient to support 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, subject to the protection of confidential information, order that party to produce such evidence.

2. During the written and interim procedures, a party may lodge an *Application for an order to produce evidence which shall contain
(a) particulars in accordance with Rule 11(a) to (d) and the case number of the file,
(b) a precise indication of the evidence which shall be produced by the other party or a third party;
(c) where evidence shall be produced by a third party, the name of the third party and postal and electronic addresses for service on the third party,
(d) the grounds on which the Application is based,
(e) an indication of the facts and evidence relied on.

3. Further procedure (to be developed)
- formalities examination by the Registry (application of Rules 14 and 15 mutatis mutandis)
- if admissible, the Application shall be forwarded to the judge-rapporteur (Rule 16)
- hearing of the other party / third party
- decision of the judge-rapporteur by way of order

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.

** An on-line form will be available to guide parties.*

6. If a party fails to comply with an order to produce evidence, the Court shall take account of this fact when taking its decision.

Relation with draft Agreement: Article 35(1)
[Article 6 (1) Directive 2004/48/EC; Article 43(1) TRIPS]

ORDER TO COMMUNICATE INFORMATION

Rule 191 – Application for order to communicate information

To be developed
*- the plaintiff may lodge a *Request for an order to communicate information*
- the Request shall contain … … a precise indication of the information sought as well as grounds, facts and evidence relied on
- the Court shall assess whether the Request is "justified and proportionate"
- it may hear the defendant and any third party affected
- it must take into account the interests of any third party affected
- the order of the Court shall specify exactly …

Relation with draft Agreement: Article 39

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

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 27 of the Agreement) (hereinafter "the applicant") before or after main proceedings on the merits of the case have been started before the Court.

2. The *Application for preserving evidence shall contain
(a) particulars in accordance with Rule 11(a) to (g),
(b) a clear indication of the measures requested [Rule 196(1)], including the exact location of the evidence to be preserved,
(c) the reasons why prompt measures are needed to preserve relevant evidence,
(d) an indication of the facts and 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 will 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.

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, Rules 12 or 43 shall apply *mutatis mutandis.*

5. The applicant shall pay the fee for the Application for preserving evidence [**EUR 1000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

Relation with draft Agreement: Article 35a
[Article 7 Directive 2004/48/EC; EPLA RoP §154]

** An on-line form will be available to guide parties.*
*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

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

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 with
- Rule 14(1) and (2): formalities examination by Registry
- Rule 15(1)(a) to (d): date of receipt, recording in the Register, case number, assignment to panel
- Rule 16: designation of judge-rapporteur by presiding judge
In urgent cases, the presiding judge may decide that he or an experienced judge of the panel, acting as single judge, shall decide on the Application in accordance with Rules 194 to 198 *[with a reduced time-table / accelerated proceedings]*.

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 14
- forwarded to the panel to which the case has been assigned or to the single judge to whom the case has been assigned [Rule 15(1)(d)]
In urgent cases (where the case 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 194 to 198
[with a reduced time-table / accelerated proceedings].

3. The single judge deciding on an Application for preserving evidence shall have all necessary powers of the Court, in accordance with Rule 1(b).

Relation with draft Agreement: Article 6(7)
[EPLA RoP §124+127, VR2]

Rule 194 – Examination of the Application for preserving evidence

1. The judge-rapporteur shall draw up a Report on the Application for preserving evidence.

2. Without prejudice to the Court's decision on the Application for preserving evidence, the judge-rapporteur 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) an indication of 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.

3. In exercising discretion, the judge-rapporteur shall in particular take into account
(a) the urgency of the case,
(b) whether the reasons for not hearing the defendant [Rule 192(3)] appear well-founded,
(c) the probability that evidence may be destroyed.

4. In urgent cases, the single judge [Rule 193] may decide immediately on the Application for preserving evidence.

[VR2, EPLA RoP §155]

** An on-line form will be available to guide parties.*

Rule 195 – Oral hearing

1. Where the judge-rapporteur 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. The judge-rapporteur shall prepare the oral hearing. Rule 107 shall apply *mutatis mutandis [with a reduced time-table]*. Part 2 on Evidence shall be applicable only to the extent determined by the judge-rapporteur.

3. Rules 112 to 117 shall apply *mutatis mutandis*. Where the applicant is absent from the oral hearing, the Court shall reject the Application for preserving evidence.

4. 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.

Relation with draft Agreement: Article 37(2)
[EPLA RoP §131-133, VR2]

Rule 196 – Decision on the Application for preserving evidence

1. Subject to the protection of confidential information, the Court may in particular order 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.

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.
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 to preserve evidence and present a Report on the measures to preserve evidence to the Court, within a time period to be specified.

5. The person referred to in paragraph 4 may be a judge of the Court or any other official who guarantees expertise, independence and impartiality. Where appropriate and allowed under applicable national law, the Court may order that a bailiff be present when the measures to preserve evidence are being carried out.

6. The order to preserve evidence shall indicate that an appeal may be lodged in accordance with Article 45 of the Agreement.

Relation with draft Agreement: Article 35a(1)-(3)
[Article 7 Directive 2004/48/EC;EPLA RoP §134+135; VR2]

Rule 197 – Order to preserve evidence without hearing the defendant

1. The Court may order measures to preserve evidence without the defendant having been heard where any delay is likely to cause irreparable harm to the applicant or where there is a demonstrable risk of evidence being destroyed.

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 after the execution of the measures.

3. Within 10 working days, 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,
(b) the facts and evidence relied on.

4. Further procedure
- formalities examination by the Registry
- with an opportunity for the defendant to correct any deficiency?
- if the Request for review is admissible, the Registry shall forward the Request to the judge-rapporteur
- the judge-rapporteur may hear the applicant or proceed immediately with drawing up a Report on the Request for review
- the panel shall decide whether the order shall be modified, revoked or confirmed.

Relation with draft Agreement: Article 37(5)
[Article 7 Directive 2004/48/EC]

** An on-line form will be available to guide parties.*

Rule 198 – Revocation of an order to preserve evidence

1. The Court shall ensure that an order to preserve evidence 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 not exceeding 31 calendar days, 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.

3. Of its own motion or on a reasoned request by the defendant, the Court may order that the applicant provides adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear. The Court shall decide whether it is appropriate to order the security by deposit or bank guarantee.

Relation with draft Agreement: Article 37(6) and (7)
[Article 7 Directive 2004/48/EC]

ORDER FOR INSPECTION

Rule 199 – Order for inspection

1. Subject to the protection of confidential information, the Court may, either of its own motion or on a reasoned request by a party, order an inspection of products, devices, methods, premises or local situations *in situ*.

2. Where the Court orders an inspection at the premises of a third party, the interests of that third party shall be duly taken into account.

3. The date and time for the inspection shall be determined in an order of the Court which shall take into account the views of the parties.

4. The Court may decide to have
(a) copies made from documents,
(b) photographs taken,
(c) samples or specimens taken,
(d) audio or video recordings made.

5. The Court shall appoint a court expert to conduct the inspection. Rule 185 shall apply *mutatis mutandis*.

6. An order for inspection shall in particular specify
(a) the date, time and place of the inspection,
(b) the name of the court expert appointed to conduct the inspection,
(c) the products, devices, methods, premises or local situations to be inspected,
(d) where appropriate, the name of the independent professional practitioner who shall be present at the inspection,
(e) the time period for the presentation of the court expert's report on the inspection.

[7. In cases where it is necessary and allowed under the applicable national law, a bailiff shall be present at the inspection.]

Relation with draft Agreement: Article 35a(2a) and (3)

<u>Procedure</u>
A party shall lodge an Application for inspection which shall contain … [Rule 192(2-(3)]
Language in which the Application shall be drawn up … [Rule 192(4)]
Fee for the Application … [Rule 192(5)]
The Registry shall examine the Application … [Rule 193]
The defendant / third party shall be heard
The judge-rapporteur shall draw up a Report on the Application
The panel shall decide

CHAPTER 5 – OTHER EVIDENCE

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 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 to carry out experiments which shall
(a) describe the proposed experiments,
(b) propose an expert to carry out such experiments,
(c) disclose any previous attempts to carry out similar experiments.

3. Other parties to the proceedings shall be invited to comment on the Request, including the identity of the expert proposed.

4. The party requesting experiments shall initially bear the costs of the experiment.

5. The order of the Court allowing the experiments shall specify in particular
(a) the name and address of the expert or experts who are to carry out the experiments 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,
(d) the time period for presenting the report on the experiments and, where appropriate, directions relating to the contents of the report.

6. Where appropriate, the Court may order that the experiments be carried out in the presence of the parties.

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.

** An on-line form will be available to guide parties.*

Rule 202 – Letters rogatory

1. The Court may, of its own motion or on a reasoned request by a party, issue letters rogatory for the hearing of witnesses by other competent courts or authorities.

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]

PART 3 – PROVISIONAL MEASURES

Relation with draft Agreement: Articles 15(1)(b) and 37

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;
(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 (within the meaning of Article 27 of the Agreement) (hereinafter "the applicant") before 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 11(a) to (g),
(b) a indication of the provisional measures which are being requested [Rule 212(1)],
(c) the reasons why provisional measures are necessary to prevent an impending infringement, to forbid the continuation of an alleged infringement or to make such continuation subject to the lodging of guarantees,
(d) an indication of the facts and evidence relied on in support of the Application, including evidence to support the claim that provisional measures are necessary,
(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,
(b) information about any prior correspondence between the parties concerning the alleged infringement.

4. An Application for provisional measures shall be lodged within reasonable time of the discovery of the act against which provisional measures are requested by the applicant.

5. Rule 12 shall apply *mutatis mutandis*. The applicant shall pay the fee for the Application for provisional measures [**EUR 3000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

** An on-line form will be available to guide parties.*
** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

Rule 207 – Protective letter

1. If a person entitled to start proceedings under Article 27 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 and shall contain
(a) the name of the defendant filing the Protective letter [and of the defendant's representative],
(b) the name of the presumed applicant 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 for provisional measures and the names of the persons authorised to accept service,
(e) where available, the number of the patent or patents concerned,
(f) the statement that the letter is a Protective letter,
(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 and
[information about the patent or patents expected to be asserted, including proprietor, status of grant, term and whether the patent is or has been declared essential to any standard]
[information about efforts made to obtain authorisation from the presumed applicant on reasonable commercial terms and conditions (cf. Article 31(b) TRIPS), where such efforts have not been successful within a reasonable period of time]
[information about any abuse by the presumed applicant (cf. Article 5A(2) Paris Convention), where the patent or patents concerned are standard-essential patents],
(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 filing the Protective letter shall pay the fee for filing a Protective letter [**EUR 500], in accordance with Part 6.

4. The Registry shall [within one working day of filing of the Protective letter] 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 immediately, in accordance with the Instructions to the Registrar,
(a) attribute a date of receipt and a number to the Protective letter,
(b) record the Protective letter in the Register,
(c) 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.

** An on-line form will be available to guide parties.*
*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

5. If no Application for provisional measures has been lodged within three months as from the date of receipt attributed to the Protective letter, the Protective letter shall be removed from the Register.

[Expenses incurred by filing a Protective letter should only be reimbursable to the defendant under the cost order referred to in Rules 150 and 151 if a Protective letter has been filed <u>before</u> the lodging of the Application for provisional measures and the latter has not been successful – to be developed in Part 1, Chapter 5.]

Language of the protective letter?

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 14(1) and (2). The Registry shall in addition examine whether the Application has been lodged within a reasonable time period [Rule 206(4)] and 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 15 [date of receipt, recording in the Register, case number, assignment to panel] and Rule 16 [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 214 *[with a reduced time-table / accelerated proceedings]*.

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 case has been assigned or to the single judge [Rule 15(1)(d)]. In urgent cases (where the case 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 214 *[with a reduced time-table / accelerated proceedings]*.

4. The single judge deciding on the Application for provisional measures shall have all necessary powers of the Court.

Relation with draft Agreement: Article 6(7)
[Article 14(3) draft Statute, EPLA RoP §124+127, VR2]

Rule 209 – Examination of the Application for provisional measures

1. The judge-rapporteur shall draw up a Report on the Application for provisional measures.

2. Without prejudice to the Court's decision on the Application for provisional measures, the judge-rapporteur 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) an indication of 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 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.

3. In exercising discretion, the judge-rapporteur shall in particular take into account
(a) the urgency of the case,
(b) whether the applicant has requested provisional measures without hearing the defendant,
(c) any Protective letter filed by the defendant; the judge-rapporteur shall in particular consider summoning parties to an oral hearing if a relevant Protective letter has been filed by the defendant.

4. In urgent cases, the single judge [Rule 193] may decide immediately on the Application for preserving evidence.

[EPLA RoP §128+129, VR2]

** An on-line form will be available to guide parties.*

Rule 210 – Oral hearing

1. Where the judge-rapporteur 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 judge-rapporteur may order the parties to provide further information, documents and other evidence before or during the oral hearing, including any reasonable evidence to satisfy the Court with a sufficient degree of certainty that the applicant is the right-holder, that the patent in question is valid and that his right is being infringed, or that such infringement is imminent. Part 2 on Evidence shall be applicable only to the extent determined by the Court.

3. Rules 112 to 117 shall apply *mutatis mutandis*. Where the applicant is absent from the oral hearing, 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.

Relation with draft Agreement: Article 37(4)
[EPLA RoP §130+131, VR2]

Rule 211 – Decision on the Application for provisional measures

1. The Court may in particular order the following provisional measures:
(a) injunctions against a defendant or against a third party whose intermediary services are used;
(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.

2. In taking its decision on the Application for provisional measures, the Court shall have the discretion to weigh up the interests of the parties and in particular take into account the potential harm for any of the parties resulting from ordering or refusing to order provisional measures. The Court shall in particular take into consideration whether the applicant is a non-practising entity having essentially financial interests which, in case of infringement, could be adequately covered by an award of damages.

3. The order on provisional measures shall be enforceable immediately, unless the Court decides otherwise. The Court may also set conditions to the enforceability of the order, specifying in particular any security which shall be provided by the applicant.

4. The decision on provisional measures shall indicate that an appeal may be brought in accordance with Article 45 of the Agreement.

Relation with draft Agreement: Article 37(2) and (3)
[EPLA RoP §134+135, VR2]

Rule 212 – Decision on provisional measures without hearing the defendant

1. The Court may order provisional measures without the defendant having been heard in cases where any delay is likely to cause irreparable harm to the applicant. Rule 211(2) shall apply.

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, without delay and at the latest immediately after the execution of the measures.

3. A review shall take place in accordance with Rule 197(3) and (4).

Relation with draft Agreement: Article 35a(4) and (5)

Rule 214 – 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 not exceeding 31 calendar days, 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 may order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

3. If requested by the defendant, the Court may also order the applicant to provide adequate security for the legal costs and other expenses incurred by the defendant which the applicant may be liable to bear. The Court shall decide whether it is appropriate to order the security by deposit or bank guarantee.

PART 4 – PROCEDURES BEFORE THE COURT OF APPEAL

Rule 251 – Appealable decisions

1. An appeal 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 orders referred to in Articles 29(4a), 35, 35a, 35b, 37 or 39 of the Agreement.

2. Other decisions or orders of the Court of First Instance may only be appealed together with the final decision, unless the Court of Appeal grants leave to appeal.

Relation with draft Agreement: Article 45(1)
[Examples of final decisions of the Court of First Instance: Rule 118 (*decision on the merits), Rule 136 (decision on the award of damages), Rule 150 (decision on costs)]*

Rule 252 – Application for leave to appeal

1. A party adversely affected by a decision or order referred to in Rule 251(2) may lodge an Application for leave to appeal within one month of service of the decision or order of the Court of First Instance.

2. The *Application for leave to appeal shall set out
(a) the reasons why the appeal should be heard before the final decision of the Court of First Instance is given,
(b) where necessary, the facts, evidence and arguments relied on.

3. The Registry shall, in accordance with the business distribution scheme, assign the Application for leave to appeal to a panel of the Court of Appeal which shall decide on the Application in accordance with Rule <on Decision or order of the panel in written proceedings>.

4. The Court of Appeal may
(a) grant interlocutory revision if it considers the Application for leave to appeal to be admissible and well founded,
(b) reject the Application for leave to appeal if it does not consider the Application to be allowable.

[VR2, CJEU Statute Annex on CST Article 10(3)]

** An on-line form will be available to guide parties.*

Rule 253 – Subject-matter of the proceedings before the Court of Appeal

1. Requests, facts, evidence and arguments submitted by the parties under Rules 261, 262 and 281 shall, subject to paragraph 2, constitute the subject-matter of the proceedings before the Court of Appeal. The Court of Appeal may of its own motion 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 were not made during proceedings before the Court of First Instance,
(b) whether 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.

3. The Court of Appeal may also take into account considerations of proportionality, including
(a) the value and technical complexity of the case,
(b) the societal impact of the decision,
(c) commercial aspects.

Relation with draft Agreement: Article 45(4)
[VR2, Article 114(2) EPC]

Rule 254 – Request for suspensive effect

1. A party may lodge a Request for suspensive effect, in accordance with Article 46 of the Agreement.

2. The *Request for suspensive effect shall set out
(a) the reasons why the appeal shall have suspensive effect,
(b) the facts, evidence and arguments relied on.

3. Rule 252(3) shall apply mutatis mutandis *[with a reduced time-table / accelerated proceedings]*.

Relation with draft Agreement: Article 46

** An on-line form will be available to guide parties.*

CHAPTER 1 – WRITTEN PROCEDURE

SECTION 1 – STATEMENT OF APPEAL, STATEMENT OF GROUNDS OF APPEAL

Rule 260 – 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 251(1)(a) and (b) or
(b) within one month of service of a decision or order referred to in Rules 251(1)(c) and 252(4)(a).

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 251(1)(a) and (b) or
(b) within two months of service of a decision or order referred to in Rules 251(1)(c) and 252(4)(a).

Relation with draft Agreement: Article 45(2)
[EPLA RoP §175]

Rule 261 – 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 case number attributed to the file in proceedings before the Court of First Instance,
(e) the order or remedy sought by the appellant.

[EPLA RoP §177]

** An on-line form will be available to guide parties.*

Rule 262 – 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,
(c) an indication of the facts and evidence on which the appeal is based.

[Rule 99 EPC]

Rule 263 – Language of the Statement of appeal and of the Statement of grounds of appeal

1. The Statement of appeal and the Statement of grounds of appeal shall be drawn up
(a) in the language of the proceedings before the Court of First Instance or
(b) where the parties have agreed in accordance with Article 30(2) of the Agreement, in the language in which the patent was granted; where the parties have agreed in accordance with Article 30(2) of the Agreement, evidence of the respondent's agreement shall be lodged by the appellant together with the Statement of appeal.

2. The language in which the Statement of appeal and the Statement of grounds of appeal is drawn up shall be the language of the proceedings, without prejudice to Article 30(3) of the Agreement.

Relationship with draft Agreement: Article 30

Rule 264 – Fee for the appeal

The appellant shall pay the fee for the appeal [**EUR 9000] or the fee for the interlocutory appeal [**EUR 4500], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

[EPC Article 108 and Rule 101(2), EPLA RoP §111+112]

** An on-line form will be available to guide parties.*

Rule 265 – Examination as to formal requirements of the Statement of appeal

1. The Registry shall, within three working days of lodging of the Statement of appeal, examine whether the requirements of Rules 260(1), 261(a) to (e), 263 and 264 have been complied with.

2. If the appellant has not complied with the requirements referred to in paragraph 1, the Registry shall inform the President of the Court of Appeal who shall reject the appeal as inadmissible. He may hear the appellant beforehand.

[EPLA RoP §108, 182,VR2, Article 90 EPC]

Rule 266 – Recording in the Register (Court of Appeal)

If the Statement of appeal complies with the requirements referred to in Rule 265(1), the Registry shall, in accordance with the Instructions to the Registrar,
(a) attribute a date of receipt to the Statement of appeal and a case number to the appeal file,
(b) record the appeal file in the Register,
(c) inform the appellant of the case number and the date of receipt,
(d) assign the case to a panel, in accordance with the business distribution scheme.

[VR2, EPLA RoP §183, 102]

Rule 267 – Designation of the judge-rapporteur

The presiding judge of the panel to which the case has been assigned [Rule 266(d)] shall designate one judge of the panel as judge-rapporteur.

[EPLA RoP §185]

*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

Rule 268 – 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 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. The time period under paragraph 1 may be extended by the judge-rapporteur on a reasoned request by the appellant.

3. If the appellant fails to lodge the translations under paragraph 1 within the period specified, the judge-rapporteur shall inform the panel which shall reject the appeal as inadmissible. The panel may hear the appellant beforehand.

4. 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 4, Chapter 5.

Relation with draft Agreement: Article 30(2) and (3)
[EPLA RoP §181(1)(3), IPLA]

Rule 269 – 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 262.

2. If the Statement of grounds of appeal does not comply with the requirements of Rule 262, the judge-rapporteur shall inform the panel which shall reject the appeal as inadmissible. The panel may hear the appellant beforehand.

3. Grounds of appeal which are not raised in the Statement of grounds of appeal shall not be admissible.

[EPLA RoP §179, 186, Rule 99 EPC, VR2]

Rule 270 – 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 265(2) or 269(2)] within one month of service of the decision, without providing new grounds of appeal.

2. The panel to which the case has been assigned under Rule 266(d) shall decide any challenge under paragraph 1 in accordance with Rule <on Decision or order of the panel in written proceedings>.

3. If a decision to reject an appeal as inadmissible is set aside, the appeal shall take its normal course.

[EPLA RoP §187]

SECTION 2 – STATEMENT OF RESPONSE

Rule 280 – Statement of response

Within three months of service of the Statement of grounds of appeal, any party to proceedings before the Court of First Instance which has not lodged a Statement of appeal may lodge a Statement of response. The period may be extended by the judge-rapporteur on a reasoned request by the respondent.

[VR2, EPLA RoP §189]

Rule 281 – 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 of the persons authorised to accept service,
(c) the case number of the appeal file,
(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.

[EPLA RoP §192, VR2]

** An on-line form will be available to guide parties.*

Rule 282 – Statement of cross-appeal

1. A party who has not lodged a Statement of appeal within the period referred to in Rule 260(1) may still bring an appeal by way of cross-appeal within the period referred to in Rule 280 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 261 and 262. Rules 265 and 269 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.

4. A cross-appeal shall be treated as an appeal as far as the fee for the appeal is concerned. Rule 264 shall apply *mutatis mutandis*.

5. If the Statement of appeal is withdrawn, any Statement of cross-appeal shall be deemed to be withdrawn.

[EPLA RoP §176, VR2]

Rule 26 on Further schedule shall apply *mutatis mutandis*

SECTION 3 – REPLY TO A STATEMENT OF CROSS-APPEAL

Rule 285 – Reply to a statement of cross-appeal

Where the Statement of response includes a statement of cross-appeal, the appellant may, within two months of service of the Statement of response, 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. The period may be extended by the judge-rapporteur on a reasoned request by the appellant.

[EPLA RoP §194]

** An on-line form will be available to guide parties.*

CHAPTER 2 – INTERIM PROCEDURE

The following Rules from Part 1, Chapter 2 shall apply *mutatis mutandis* in proceedings before the Court of Appeal:
- Rule 101 on Role of the judge-rapporteur (Case management)
- Rule 102 on Referral to the panel
- Rule 103 on Preparation for the interim conference
- Rule 104 on Aim of the interim conference
- Rule 105 on Telephone conference and video conference
- Rule 106 on Recording of the interim conference
- Rule 107 on Further instruction
- Rule 108 on Summons to the oral hearing
- Rule 109 on Simultaneous interpretation during the oral hearing
- Rule 110 on Closure of the interim procedure in view of the oral hearing

CHAPTER 3 – ORAL PROCEDURE

The following Rules from Part 1, Chapter 3 shall apply *mutatis mutandis* in proceedings before the Court of Appeal:
- Rule 112 on Rule of the presiding judge (Case management)
- Rule 113 on Conduct of the oral hearing
- Rule 114 on Duration of the oral hearing
- Rule 115 on Adjournment where the Court considers that further evidence is required
- Rule 116 on Recording of the oral hearing
- Rule 117 on Absence of the parties from the oral hearing

[To be developed?
Simplified appeal procedures for
- appeals against the award of damages by the Court of First Instance
- appeals against cost order by the Court of First Instance]

CHAPTER 4 – DECISIONS AND EFFECT OF DECISIONS

Rule 290 – Decision of the Court of Appeal

1. Rule 118 shall apply.

2. The decision shall either confirm the decision or order under appeal or set it aside totally or in part:
(a) if the decision or order under appeal is confirmed, it shall become *res judicata [between the parties]* from the date of the decision of the Court of Appeal;
(b) if the appeal is well founded, the Court of Appeal shall set aside, wholly or in part, the decision or order of the Court of First Instance.

3. The Court of Appeal may
(a) exercise any power within the competence of the Court of First Instance,
(b) refer the case back to the Court of First Instance for further prosecution [Rule 292].

Relation with draft Agreement: Article 50
[EPLA RoP §66+196+197, VR2, EPC Article 111(1)]

Rule 291 – Final decision of the Court of Appeal

If a final decision of the Court of First Instance is set aside, the Court of Appeal may, where the state of the proceedings so permits, give a final decision in the matter.

Rule 292 – Referral back

1. In exceptional circumstances, the Court of Appeal may refer the case back to the Court of First Instance for decision or for [retrial].

2. The decision referring a case back to the Court of First Instance shall specify the panel which shall deal further with the case, be it the same panel whose earlier decision or order is revoked or another panel.

3. Where a case 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 draft Agreement: Article 47
[CJEU Statute Article 61, EPLA RoP §198, VR2 (§1, 3rd hyphen)]

CHAPTER 5 – PROCEDURE FOR COST ORDER

*[To be developed on the model of Part 1, Chapter 5.
Will mainly include costs of representation]*

CHAPTER 6 – PROCEDURE FOR REQUEST FOR REHEARING

Rule 295 – Lodging of a Request for rehearing

1. A Request for rehearing may be lodged by any party adversely affected by a final decision of the Court of Appeal (hereinafter "the petitioner").

2. The Request for rehearing shall be lodged within the following periods:
(a) where the Request for rehearing is based on the ground of a fundamental procedural defect, within two months of service of the final decision of the Court of Appeal;
(b) where the Request for rehearing is based on the ground of an act which was held, by a final court decision, to constitute a criminal offence, within two months of the date on which the criminal offence has been established but in any event no later than ten years of service of the decision of the Court of Appeal.

Relation with draft Agreement: Article 55(2)
[EPLA RoP §175+200+202, Article 112a(4) EPC]

Rule 296 – Contents of the Request for rehearing

1. The *Request 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 of the persons authorised to accept service and
(c) an indication of the decision to be reviewed.

2. The Request for rehearing shall indicate the reasons for setting aside the final decision of the Court of Appeal, as well as the facts and evidence on which the Request is based.

[EPLA RoP §177, Rule 107 EPC]

** An on-line form will be available to guide parties.*

Rule 297 – Definition of fundamental procedural defects

A fundamental procedural defect under Article 55(1) of the Agreement may have occurred where
(a) a judge of the Court of Appeal took part in the decision in breach of Article 12 of the Agreement or Article 5 of the Statute,
(b) a person not appointed as a judge of the Court of Appeal sat on the panel which took the decision,
(c) a fundamental violation of Article 49 of the Agreement occurred or
(d) the Court of Appeal decided on the appeal without deciding on a request relevant to that decision.

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

Rule 298 – Obligation to raise objections

A Request for rehearing based on the ground of a fundamental procedural defect is only admissible where an objection in respect of the procedural defect was raised during the proceedings before the Court of Appeal and dismissed by the Court, except where such objection could not be raised during the proceedings before the Court of Appeal.

[Rule 106 EPC]

Rule 299 – Definition of criminal offence

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

[Rule 105 EPC]

Rule 300 – Fee for the rehearing

The petitioner shall pay the fee for the rehearing [**EUR 10 000], in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

Rule 266(a), (b) and (c) on Recording in the Register (Court of Appeal) shall apply *mutatis mutandis*

*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

Rule 301 – Suspensive effect

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

Relation with draft Agreement: Article 55(2)
[EPLA RoP §201, Article 112a(3) EPC]

Rule 302 – Examination as to formal requirements of the Request for rehearing

1. The Registry shall, within five working days of lodging of the Request for rehearing, examine whether the requirements of Rules 295, 296 and 300 have been complied with.

2. If the petitioner has not complied with the requirements referred to in paragraph 1, the Registry shall inform the President of the Court of Appeal who shall reject the Request for rehearing as inadmissible. He may hear the petitioner beforehand.

3. A decision to reject the Request for rehearing as inadmissible shall be notified to the parties to the proceedings before the Court of Appeal.

Rule 303 – Assignment of Request for rehearing to a panel

1. Immediately after the Request for rehearing has been recorded in the Register, the Registry 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 case to a panel consisting of three legally qualified judges, in accordance with the business distribution scheme, designating one judge as judge-rapporteur. He may order that judges of the Court of Appeal who participated in taking the decision to be reviewed shall not sit on the panel.

[EPLA RoP §185+203, Rule 108(3) EPC]

Rule 304 – Examination of the Request for rehearing

1. The judge-rapporteur shall examine the Request for rehearing. He may hear the petitioner and take any case management measure referred to in <Part 5, Chapter 7>.

2. If the judge-rapporteur considers that there is no basis for reviewing the decision, he shall present a Preliminary report on the Request for rehearing recommending that the panel rejects the Request for rehearing as not allowable.

3. If the judge-rapporteur considers that the Request for rehearing is allowable, he shall present a Report on the Request for rehearing recommending that the decision be reviewed.

4. The panel shall decide what action to take:
(a) a decision to reject the Request for rehearing as not allowable shall require a unanimous vote of the judges on the panel; it shall not contain any reasons;
(b) a decision to allow the Request for rehearing shall entail setting aside the decision under review, in whole or in part, and re-opening the proceedings for a new [trial] and decision; where proceedings are re-opened, the provisions governing proceedings before the Court of Appeal shall apply.

Relation with draft Agreement: Article 55(3)
[EPLA RoP §204+207]

PART 5 – GENERAL PROVISIONS

CHAPTER 1 – GENERAL PROCEDURAL PROVISIONS

Rule 340 – Examination by the Registry of its own motion

1. In any proceedings before the Court, the Registry shall, as early as possible 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, it shall inform the divisions concerned.

Relation with draft Agreement: Article 58(3) and (4)

Rule 341 – Date of pleadings

All pleadings shall bear a date. In the reckoning of time periods for taking steps in proceedings, the date of lodging of pleadings in electronic form at the Registry shall be taken into account.

[VR2, CST RoP Article 34]

Rule 342 – Public access to the Registry

1. Written pleadings and written evidence lodged at 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.

2. Any party may lodge a *Request for excluding public access to the file or to parts of the file which shall contain …

[To be developed]

Relation with draft Agreement: Articles 8, 26 and 40
Relation with draft Statute: Article 19(2)

Rule 343 – Leave to change claim or amend case

1. A plaintiff may at any stage of the proceedings apply to the Court for leave to change his claim or to amend his case.

2. Leave shall not be granted if, all circumstances considered, the change or amendment would
(a) result in a fresh case,
(b) be in clear contradiction to the plaintiff's previous case or
(c) unreasonably hinder the defendant in his defence.

3. Leave to limit a claim shall always be granted.

[EPLA RoP §8]

Rule 344 – Withdrawal

1. As long as there is no final decision in a case, a plaintiff may withdraw his action, without prejudice to any counterclaim.

2. In the event of a withdrawal, the Court shall
(a) give a decision declaring the proceedings closed,
(b) order the case to be removed from the Register and
(c) issue a cost order in accordance with Part 1, Chapter 5.

[EPLA RoP §7, CST RoP Article 74]
By contrast, §269 ZPO: Plaintiff may only declare withdrawal (without the approval of the defendant) until the start of the oral proceedings

CHAPTER 2 – SERVICE

Rule 350 – 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 the proceedings.

2. Where
(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 plaintiff 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.

3. Where service by means of electronic communication cannot be effected, the Registry shall serve the Statement of claim on the defendant by
(a) registered letter with advice of delivery, in accordance with the Practice Directions,
(b) fax, in accordance with the Practice Directions, or
(c) any method authorised by the Court under Rule 351.

4. A Statement of claim served in accordance with paragraphs 1, 2 and 3 is deemed to be served on the defendant
(a) where service takes place by means of electronic communication or by fax: on the day where the relevant electronic message was sent or the transmission of the fax was completed (GMT+1);
(b) where service takes place by registered letter with advice of delivery: 10 working days after posting, leaving with, delivering to or collection by the relevant service provider.

Rule 351 – Service of the Statement of claim by an alternative method or at an alternative place

1. Where it appears to the Court 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, 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.

Rule 352 – Notice of service and non-service of the Statement of claim

1. The Registry shall inform the plaintiff of the date on which the Statement of claim is deemed served under Rule 350(3).

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, the Registry shall inform the plaintiff.

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.

Rule 353 – Service of other pleadings

1. Immediately after written pleadings have been received at the Registry, the Registry shall serve the pleadings on the other party by means of electronic communication, in accordance with the Practice Directions.

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, in accordance with the Practice Directions,
(b) fax, in accordance with the Practice Directions, or
(c) any method authorised by the Court under Rule 351.

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 carries on its activities and which has a real connection with the claim;
(b) where the party is an individual: at his usual or last known residence.

[(4) Lex specialis on service on individuals where the plaintiff has reason to believe that the address is not the defendant's current address? (see CPR 6.11(3) and (4))]

Rule 354 – 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 Court and every other party.

Applicable law
<u>Service within the Union (except for DK)</u>: Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters
<u>Service in Denmark</u>: Agreement between the EU and Denmark of 19 October 2005 on the service of judicial and extrajudicial documents in civil or commercial matters
<u>Service outside the Union</u>: The Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters

CHAPTER 3 – RIGHTS AND OBLIGATIONS OF REPRESENTATIVES

Rule 359 – Powers of attorney

1. A representative who claims to be representing a party shall be believed upon his word in that respect.

2. The Court may order a representative to produce a written authority if his representative powers are challenged by the party concerned or if another party to the proceedings has established reasonable doubt as regards those representative powers.

[EPLA RoP §26]

Rule 360 – Certificate that a representative is authorised to practice before the Court

1. Any representative pursuant to Article 28(1) of the Agreement shall lodge at the Registry a certificate that he is authorised to practise before a court of a Contracting Member State.

2. At the request of the Court, any representative pursuant to Article 28(2) of the Agreement shall lodge the European Patent Litigation Certificate or otherwise justify that he has appropriate qualifications to represent a party before the Court.

[CST RoP Article 35(5); see also CJEU RoP Article 38(5)(a), CFI RoP Article 44(5)(a)]

Rule 361 – Attorney-client privilege

Where advice is sought from a representative in his capacity as such, all communications between the representative and his client or any other person, relating to that purpose and being of a confidential nature, are permanently privileged from disclosure in proceedings before the Court, unless such privilege is expressly waived by the client.

Relation to draft Agreement: Article 28(4)

[Rule 362 – Litigation privilege]

Confidential communications with a qualifying professional adviser and confidential information obtained or supplied for submission to such a qualifying professional adviser for the purpose of any pending or contemplated proceedings before the Court shall be privileged from disclosure in proceedings before the Court, unless such privilege is expressly waived by the party for whom the qualifying professional adviser is acting.

Rule 363 – Privileges, immunities and facilities

1. Representatives appearing before the Court or before any judicial authority to which it has addressed letters rogatory [Rule 199] shall enjoy immunity in respect of words spoken or written by them concerning the case 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, the 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.

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 the proper conduct of proceedings will not be hindered thereby.

Relation with draft Agreement: Article 28(4)
[CJEU RoP Article 32, CST RoP Article 30(3)(4)]

Rule 364 – Powers of the Court as regards representatives

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 365.

[CJEU Statute Article 19(5)]

Rule 365 – 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, it shall so inform the person concerned.
On the same grounds, the Court may at any time, after having heard the person concerned, 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 suspended for a period fixed by the presiding judge in order to enable the party concerned to appoint another representative.

3. Decisions taken under this Rule may be rescinded.

[CJEU RoP Article 35, CST RoP Article 32]

Rule 366 – Patent attorneys' right of audience

1. For the purposes of Article 28(2a) of the Agreement, the terms "patent attorneys" shall mean persons meeting the requirements of Article 134(1) or (3)(a) to (c) of the European Patent Convention, except European patent attorneys having a European Patent Litigation Certificate.

2. Patent attorneys shall be allowed to speak at hearings of the Court subject to the representative's responsibility to coordinate the presentation of a party's case.

3. Rules 361 to 365 shall apply *mutatis mutandis*.

Relation with draft Agreement: Article 28(2a)

Rule 367 – Change of a representative

Any change of representative shall take effect from the moment where the new representative states in writing to the Registry that he 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.

To be developed:
Change of representative in case of death or bankruptcy of a representative:
The Court shall grant the party concerned a period within which it may find a replacement
[EPLA RoP §27]

CHAPTER 4 – STAY OF PROCEEDINGS

Rule 370 – Stay of proceedings

1. If the proper administration of justice so requires, the Court may stay proceedings
(a) where it is seized of a case 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;
(b) where it is seized of a case relating to a supplementary protection certificate which is also the subject of proceedings before the European Patent Office or 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 [Rule 14] or a Preliminary objection [Rule 17];
(iii) dismissing an application to intervene [Rule 405];

(d) at the joint request of the parties;
(e) in other particular cases where the proper administration of justice so requires.

2. The decision to stay the proceedings shall be made by reasoned order of the judge-rapporteur after hearing the parties. The judge-rapporteur may refer the matter to the panel.

[CST RoP Article 71]

Rule 371 – Duration and effects of a stay of proceedings

1. The stay of proceedings shall take effect on the date indicated in the order of stay or, in the absence of such an indication, on the date of that order.

2. Where the order of stay does not fix the length of the stay, it shall end on the date indicated in the order of resumption or, in the absence of such indication, on the date of the order of resumption.

3. While proceedings are stayed, time shall cease to run for the purposes of procedural periods. Time shall begin to run afresh from the beginning for the purposes of the periods from the date on which the stay of proceedings comes to an end.

[CST RoP Article 72]

Rule 372 – Resumption of proceedings

Any decision referred to in Rule 371(2) or ordering the resumption of proceedings before the end of the stay shall be made by reasoned order of the judge-rapporteur after hearing the parties. The judge-rapporteur may refer the matter to the panel.

[CST RoP Article 71]

CHAPTER 5 – TIME PERIODS

Rule 380 – Calculation of periods

Any period of time prescribed by the Agreement, the Statute or these Rules of Procedure for the taking of any procedural step shall be reckoned as follows:
(a) where a period expressed in days, weeks, months or years is to be calculated from the moment at which an event occurs or an action takes place, computation shall start on the day following the day on which the relevant event occurred or an action took place;
(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) periods shall include official holidays, Sundays and Saturdays;
(f) periods shall not be suspended during the judicial vacations.

[RoP CST Article 100, EPC Rule 131]

Rule 381 – Extension and shortening of periods

[to be developed]

1. Automatic extension
If a period expires on a Saturday, Sunday or official holiday of the Contracting Member State in which the division concerned or the Court of Appeal is located, it shall be extended until the end of the first following working day.

2. Extension upon request
- on reasoned request by a party, lodged before the expiry of the period to be extended
- to be decided by the judge-rapporteur or the panel
- other parties to proceedings need not be heard (except where their interests could be affected)
- possibility of extension not available for all periods

3. Shortening of periods
- on reasoned request by a party
- to be ordered by the Court, where appropriate

CHAPTER 6 – PARTIES TO PROCEEDINGS

SECTION 1 – PLURALITY OF PARTIES

Rule 390 – Plurality of plaintiffs

1. Proceedings may be started by a plurality of plaintiffs, provided that they take the same position and are represented by the same representative.

2. If the Court is of the opinion that the requirement in paragraph 1 is not met, it may separate the proceedings in two or more separate proceedings against the same defendant.

3. Where the Court orders a separation of proceedings under paragraph 2, the plaintiffs in the new proceedings shall pay a new court fee, unless the Court decides otherwise, in accordance with Part 6.

[EPLA RoP §14]

Rule 391 – Plurality of defendants

1. Proceedings may be started against a plurality of defendants, provided that the claims against them are sufficiently related to justify a common decision.

2. If the Court is of the opinion that the requirement in paragraph 1 is not met, it may separate the proceedings in two or more separate proceedings against different defendants.

3. Where the Court orders a separation of proceedings under paragraph 2, the plaintiffs in the new proceedings shall pay a new court fee, unless the Court decides otherwise, in accordance with Part 6.

[EPLA RoP §15]

Rule 392 – Court fees in case of plurality of parties

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

2. If an originally justified plurality of parties ceases, whether because
(i) some of the parties instruct another representative to represent them,
(ii) they start to defend different positions or
(iii) the proceedings are separated by the Court into two or more separate proceedings,
a separate court fee shall be payable by the parties leaving the plurality of parties or the original proceedings, unless the Court decides otherwise, in accordance with Part 6.

3. Where appropriate, the Court may order that a separate fee be paid by one or more parties in a plurality of parties, in accordance with Part 6.

SECTION 2 – CHANGE IN PARTIES

Rule 395 – Change in parties

1. The Court may, on application by a party or any legal or natural person wishing to become a party, order a person to
(a) be added as a party,
(b) cease to be a party,
(c) be substituted for a party.

2. The Registry shall invite other parties to the proceedings to comment on the application, within 10 working days of 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 other matters of costs as regards such party.

[EPLA RoP §18]

Rule 396 – Consequences for the proceedings

1. Where the Court orders that a party be added, removed or substituted under Rule 395(1), it shall give directions to regulate the consequences as to case management.

2. The Court shall also determine the extent to which the new party is bound by the proceedings as then constituted.

[EPLA RoP §19]

SECTION 3 – DEATH, DEMISE OR INSOLVENCY OF A PARTY

Rule 400 – Death or demise of a party

1. If a party dies or ceases to exist during proceedings, the proceedings shall be stayed until such party 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, of its own motion or on an order of the Court, file continuation proceedings against such successor or successors.

4. Continuation proceedings shall be brought before the Court in accordance with Part 1. In continuation proceedings, the Court shall decide whether, and if so, to what extent, the defendants will take the position of the party that died or ceased to exist in the main proceedings.

5. The costs of continuation proceedings shall be decided independently from the costs of the main proceedings and solely on the basis of the outcome of the continuation proceedings.

[EPLA RoP §20]

Rule 401 – Insolvency of a party

1. If a defendant becomes insolvent under the national law of his State of domicile, proceedings shall be stayed *ex officio* until the competent national authority or person dealing with the insolvency has decided whether to continue the proceedings or not.

2. The plaintiff may withdraw the case against the defendant in accordance with Rule 354. Such withdrawal shall not prejudice the case against other defendants.

3. Any order concerning costs under Rule 354(2) shall be payable to the competent national authority or person dealing with the insolvency.

4. If proceedings are continued, the effect of a decision of the Court as regards the insolvent party in the case shall be determined by the national law of the bankrupt party.

[EPLA RoP §21]

SECTION 4 – TRANSFER OF PATENT

Rule 402 – Transfer of the patent during proceedings

1. If a patent 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 take over the proceedings to the extent that the patent has been transferred to him.

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.

3. If the new proprietor chooses not to take over the proceedings, any decision in proceedings that have been recorded in the Register can nevertheless be held against him.

[EPLA RoP §22]

SECTION 5 – INTERVENTION

Rule 405 – Application to intervene

1. An Application to intervene may be lodged [at any stage of the proceedings before the Court of First Instance] by any person establishing an interest in the result of a case submitted to the Court (hereinafter "the intervener").

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.

3. The intervener shall be represented in accordance with Article 28 of the Agreement.

4. The *Application to intervene shall contain
(a) a reference to the case 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 sought by the intervener,
(d) a statement of the facts establishing the right to intervene under paragraphs 1 and 2.

[CJEU Statute Article 40, CST RoP Articles 109+110(4), EPLA RoP §§163+164]

[To be developed: provisions on fee, formalities examination, admissibility]

** An on-line form will be available to guide parties.*

Rule 406 – Order on Application to intervene

The judge-rapporteur (during the written procedure and the interim procedure) or the presiding judge (during the oral hearing) shall decide on the Application to intervene by way of order.

[must he hear other parties?]

[CST RoP Article 109(6)]

Rule 407 – Statement in intervention

1. If an Application to intervene is admissible, the judge-rapporteur or the presiding judge shall
(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 serve on the intervener any written pleading served on the parties. On request by a party, secret or confidential documents may be omitted.

3. The *Statement in intervention shall contain
(a) 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,
(c) the facts and evidence relied on.

4. The intervener shall be treated as a party, unless otherwise provided.

[CST RoP Article 110, EPLA RoP §165]

** An on-line form will be available to guide parties.*

Rule 408 – Invitation to intervene

1. The judge-rapporteur or the presiding judge may, of his own motion 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.

2. If the person wishes to intervene, he shall present his Statement in intervention within two months of service of the invitation. Rules 405 and 407 shall apply *mutatis mutandis*.

[CST RoP Article 111, EPLA RoP §163]

Rule 409 – Appeal against an order on the Application to intervene

1. An appeal to the Court of Appeal may be brought against the order on the Application to intervene within one month of service of the order to the parties, by any person adversely affected by the order.

2. The lodging of a Statement of appeal shall not stay the main proceedings.

3. As long as the Court of Appeal has not decided otherwise, a party allowed to intervene shall be treated as a party to the proceedings.

4. The decision of the Court of Appeal shall
(a) state from what date it shall take effect and
(b) include an order relating to court fees and costs.

[CJEU Statute Article 57(2), EPLA RoP §172]

Rule 410 – Intervener's right to appeal

An intervener may bring an appeal only where the decision of the Court of First Instance directly affects him.

[CJEU Statute Article 56(2)]

SECTION 6 – REMOVING OR SUBSTITUTING A PARTY

Rule 415 – Application for removing a party from the proceedings

An *Application for removing a party from the proceedings may be lodged by any party (hereinafter "the applicant"). It shall contain
(a) the names of the applicant and of the applicant's representative,
(b) the names of the party to be removed and of his representative,
(c) the case number of the file,
(d) a concise statement of the grounds upon which the Application is based.

[EPLA RoP §167+168]

Rule 416 – Grounds for removing a party

The grounds upon which the Application for removing a party is based shall set out the reasons
(a) why it is desirable that a party be removed from the proceedings,
(b) where applicable, why that party's interest or liability has ceased or
(c) why its participation in the proceedings unnecessarily complicate or slow down the proceedings.

[EPLA RoP §169]

Rule 417 – Power of the Court to order proceedings to be continued as separate proceedings

1. When removing a party from the proceedings, the Court may order that proceedings concerning this party shall continue as separate proceedings.

2. Where appropriate, separate proceedings may be treated jointly with the existing proceedings.

[EPLA RoP §170]

Rule 418 – Application for substitution of a party

An application for a substitution of a party by one or more other persons shall be regarded as a combined application for adding a party and removing a party.

[EPLA RoP §171]

** An on-line form will be available to guide parties.*

Rule 419 – Appeal against an order to remove or substitute a party

1. An appeal to the Court of Appeal may be brought against an order to remove or substitute a party within two months of the notification of the order to the parties by any person adversely affected by the order.

2. The lodging of the Statement of appeal shall not stay the main proceedings.

3. As long as the Court of Appeal has not decided otherwise, a party removed from the proceedings shall be treated as a party to the proceedings.

4. The decision of the Court of Appeal shall
(a) state from what date it shall take effect and
(b) include an order relating to court fees and costs.

[CJEU Statute Article 57(2), EPLA RoP §172]

CHAPTER 7 – MISCELLANEOUS PROVISIONS ON LANGUAGES

Rule 421 – Request 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 a *Request by both parties to use the language in which the patent was granted as language of the proceedings, in accordance with Article 29(3) of the Agreement. The Request shall state that both parties agree to use the language in which the patent was granted as language of the proceedings.

2. Within three working days, the Registry shall present a Report on using the language in which the patent was granted as language proceedings to the panel.

3. The panel shall, within five working days, decide whether it approves the Request by both parties to use the language in which the patent was granted as language of the proceedings. Where the panel does not approve the Request, the Registry shall inform the parties which may request, within 10 working days, that the case be referred to the central division. The period of 10 working days may be extended by the Registry on a request by one of the parties.

4. Where
(a) a Statement of claim is drawn up in the language in which the patent was granted, in accordance with Rule 12(1)(b)(ii),
(b) a Request 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 case be referred to the central division,
the plaintiff shall lodge the Statement of claim in a language provided for in Rule 12(1)(a), within 10 working days. The period of 10 working days may be extended by the Registry on a request by the plaintiff.

Relation with draft Agreement: Article 29(3)

Rule 422 – Proposal from the judge-rapporteur to use of the language in which the patent was granted as language of the proceedings

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 12(2)] be changed to the language in which the patent was granted, in accordance with Article 29(4) of the Agreement

Relation with draft Agreement: Article 29(4)

** An on-line form will be available to guide parties.*

Rule 423 – Request by one party to use 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 a *Request by one party to use the language in which the patent was granted as language of the proceedings, in accordance with Article 29(4a) of the Agreement. The Request may include grounds and evidence that the other party has routinely been using the language in which the patent was granted for the purposes of his business.

2. The Registry shall invite the other party to indicate, within 10 working days, its position on the use of the language in which the patent was granted as language of the proceedings. Where a plaintiff's initial pleading [Statement of claim] is lodged in the language in which the patent was granted, the Registry shall inform the defendant of the possibility to lodge a Preliminary objection, in accordance with Rule 17 [within a period of two months of service of the Statement of claim].

3. Where the other party agrees to the use of the language in which the patent was granted as language of the proceedings, it may make its approval conditional on specific translation or interpretation arrangements.

4. After consulting the panel, the judge-rapporteur shall, within five working days, present a Report on using the language in which the patent was granted as language of the proceedings to the President of the Court of First Instance who shall decide on the Request by way of order, in accordance with Article 29(4a) of the Agreement.

4. Rule 421(4) shall apply *mutatis mutandis*.

Relation with draft Agreement: Article 29(4a)

Rule 424 – Consequences where the language of the proceedings is changed in the course of the proceedings

[to be developed, see Rules 37 and 109]

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

[Article 24 draft Agreement, CST RoP Part 2, Chapter 3]

Rule 431 – Responsibility for case management

1. During the written procedure and the interim procedure, case management shall be the responsibility of the judge-rapporteur.

2. On account of the scope of an envisaged case management order or of its importance to the disposal of the case, the judge-rapporteur may refer the matter to the panel.

3. After the closure of the interim conference in view of the oral hearing, case management shall be the responsibility of the presiding judge.

4. The Registry shall serve any case management orders on the parties.

[EPLA RoP §33, CST RoP Article 56]

Rule 432 – General powers of case management

Active case management includes
(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 issues;
(d) deciding the order in which issues are to be resolved;
(e) encouraging the parties to make use of the patent mediation and arbitration centre and facilitating the use of the centre;
(f) helping the parties to settle the whole or part of the case;
(g) fixing timetables or otherwise controlling the progress of the case;
(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 case as the Court can on the same occasion;
(j) dealing with the case without the parties needing to attend in person;
(k) making use of available technical means; and
(l) giving directions to ensure that the hearing of the case proceeds quickly and efficiently.

[EPLA RoP §36]

Rule 433 – Review of case management orders

1. Case management orders taken by the judge-rapporteur or the presiding judge shall be reviewed by the panel, on a reasoned application by a party. The other party shall be invited to comment.

2. An Application for the review of a case management order shall be lodged within two weeks of service of the order to the party concerned.

3. The party shall pay the fee for the review of a case management order, in accordance with Part 6. Rule 13(2) shall apply *mutatis mutandis*.

[EPLA RoP §34]

Rule 434 – Case management powers

Except where the Agreement, the Statute, these Rules of Procedure or the Practice Directions provide otherwise, the judge-rapporteur, the presiding judge or the panel may
(a) extend or shorten the period for compliance with any rule, practice direction or order;
(b) adjourn or bring forward the interim conference or the oral hearing;
(c) communicate with the parties to instruct them about wishes or requirements of the Court;
(d) direct a separate hearing of any issue;
(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 case.

[EPLA RoP §37+43]

Rule 435 – Varying or revoking orders

A power of the Court to make a case management order includes a power to vary or revoke such order.

[EPLA RoP §38]

Rule 436 – Exercise of managing powers

The Court may exercise its case management powers on the application by a party or of its own motion, unless otherwise provided.

[EPLA RoP §39]

Rule 437 – Orders of the Court's own motion

Where the judge-rapporteur or the presiding judge proposes to make an order of his own motion, he may invite any person likely to be affected by the order to comment within a period to be specified.

[EPLA RoP §40]

Rule 438 – Early hearing

Where the judge-rapporteur proposes to convene an early hearing to decide whether to make a case management order, he shall summon the parties likely to be affected by the order. At least one week's notice of the summons shall be given, unless the parties agree to a shorter period.

[EPLA RoP §41]

Rule 439 – Orders made without hearing the parties

1. The Court may make an order of its own motion without hearing the parties.

2. Any order under paragraph 1 shall include information concerning the right to apply to have it set aside, modified or stayed and specify a period for lodging the application.

3. Any party affected by the order may apply to have it set aside, modified or stayed.

[EPLA RoP §42]

Rule 440 – Connection — Joinder

1. In the interests of the proper administration of justice, the President of the Court of First Instance or the President of the Court of Appeal may, at any time, after hearing the parties, order that two or more cases shall, on account of the connection between them, be joined. The cases may subsequently be disjoined.

2. Where cases assigned to different panels of the Court of First Instance or of the Court of Appeal are to be joined on account of the connection between them, the President of the Court of First Instance or the President of the Court of Appeal shall decide on their re-assignment.

[CST RoP Article 46]

CHAPTER 9 – RULES RELATING TO THE ORGANISATION OF THE COURT

Rule 441 – Precedence

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 equally in precedence according to their seniority in office.

2. Where there is equal seniority in office, precedence shall be determined by age.

3. Retiring judges who are reappointed shall retain their former precedence.

[RoP EU CST Rule 5]

Rule 442 – Dates, times and place of the sittings of the Court

1. The dates and times of the sittings of the Court shall be fixed by the President of the Court of Appeal, on a proposal from the Presidium.

2. The Court may choose to hold one or more particular sittings in a place other than that in which it has its seat.

[Article 11 draft Statute] [CST RoP Article 23]

Rule 443 – Order in which cases are to be dealt with

1. The Court shall deal with the cases before it in the order in which they become ready for examination.

2. The President of the Court of First Instance or the President of the Court of Appeal may in special circumstances
(a) direct that a particular case be given priority;
(b) after hearing the parties, in particular with a view to facilitating an amicable settlement of the dispute, either on his own initiative or at the request of one of the parties, defer a case to be dealt with later.

[CST RoP Article 47]

Rule 444 – Deliberations

1. The Court shall deliberate in closed session.

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.

3. Every judge taking part in the deliberations shall state his opinion and the reasons for it. The conclusions reached by the majority of the judges after final discussion shall determine the decision of the Court. Votes shall be cast in reverse order to the order of precedence under Rule 440. Differences of view on the substance, wording or order of questions, or on the interpretation of a vote, shall be settled by decision of the Court.
[if equality of votes, presiding judge's votes shall count double]

4. The deliberation of the Court shall take place as soon as possible after the closure of the oral hearing in view of the final decision.

[CST RoP Article 27, EPLA RoP §65]

Rule 445 – Composition of panels and assignment of cases

[To be developed]

Relation with draft Statute: Article 14

Rule 446 – Appointment of presiding judge

[To be developed]

Relation with Article 14 draft Statute

To be developed
- Decision of the Presidium in case of difficulty in the context of Article 5(5) draft Statute (impartiality or integrity of judges)

CHAPTER 10 – DECISIONS AND ORDERS

Rule 450 – Decisions

1. Any decision shall contain
(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,
(f) a summary of the facts,
(g) the grounds for the decision,
(h) any order of the Court consequential upon the decision (other than costs) including any order giving immediate effect to an injunction.

2. The Court shall endeavour to give a decision without dissenting opinion.

3. Decisions shall be recorded in the Register.

[Article 34(4) draft Statute] [CST RoP Article 79, EPLA RoP §96, CJEU Statute Articles 36+37]

Rule 451 – Orders

1. Every order shall contain
(a) the statement that it is an order of the judge-rapporteur, of the presiding judge, of a President of the Court or of the Court,
(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,
(e) the operative part of the order.

2. Where, in accordance with these Rules, an order must be reasoned, it shall in addition contain:
(a) a statement of the forms of order sought by the parties,
(b) a summary of the facts,
(c) the grounds for the order.

Rule 452 – Binding effect

Decisions and orders of the Court of First Instance shall be binding from the date of their delivery.

[CST RoP Article 83(1)]

Rule 453 – Rectification of decisions

The Court may, by way of order, of its own motion or on application by a party made within one month of service of the decision to be rectified, after hearing the parties, rectify clerical mistakes, errors in calculation and obvious slips in the decision.

[CST RoP Article 84(1)]

Rule 454 – List of experts

[To be developed: call for candidates, criteria, selection procedure, decision to include on list, maintenance of list, availability, term, termination, exclusion, …]

Relation with draft Agreement: Article 36(2)

CHAPTER 11 – DECISION BY DEFAULT

Rule 455 – Decision by default (Court of First Instance)

1. If a defendant on whom a Statement of claim has been duly served fails to lodge a Statement of defence, the Court of First Instance shall give decision by default.

2. Before giving decision by default, the Court shall consider whether
(a) the Statement of claim is admissible,
(b) the appropriate formalities have been complied with and
(c) the action appears well founded.

3. A decision by default shall be enforceable. The Court may, however,
(a) grant a stay of enforcement until it has given its decision on any Application to set aside the decision by default under Rule 456, or
(b) make enforcement subject to the provision of security; this security shall be released if no Application to set aside a decision by default is lodged or if the Application fails.

[CST RoP Article 116(1)(2)(3), EPLA RoP §118]

Rule 456 – Application to set aside a decision by default

1. The defendant may lodge an Application to set aside a decision by default within one month of service of the decision by default.

2. The *Application to set aside a decision by default shall comply with the requirements of Rule 22. In addition, it shall mention the date and number of the decision by default. The defendant shall pay a fee for the Application to set aside the decision by default [**EUR 1000].

3. The proceedings shall be conducted in accordance with Part 1.

4. The decision of the Court shall be annexed to the decision by default. A note of the decision on the Application to set aside the decision by default shall be included in any publication of the decision by default.

Relation with draft Statute: Article 36
[CJEU Statute Article 41, EPLA RoP §119, CST RoP Article 116(4)-(6)]

** An on-line form will be available to guide parties.*
*** Tentative level included for illustrative purposes only, without prejudice to the decision of the Administrative Committee under Article 18(3) of the Agreement.*

Rule 457 – Decision by default (Court of Appeal)

Rules 455 and 456 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.

CHAPTER 12 – ACTIONS BOUND TO FAIL OR MANIFESTLY INADMISSIBLE

Rule 460 – No need to adjudicate

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, of its own motion, after hearing the parties, dispose of the action by way of order.

[CST RoP Article 75]

Rule 461 – Action manifestly bound to fail

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 is, in whole or in part, manifestly inadmissible or manifestly lacking any foundation in law, the Court may, without taking further steps in the proceedings, give a decision by way of order.

[CST RoP Article 76]

Rule 462 – Orders dismissing manifestly inadmissible claims

1. Orders under Rules 460 and 461 shall be taken by the President of the Court of First Instance or the President of the Court of Appeal, upon the recommendation of the judge-rapporteur of the panel to which the case has been assigned or the Registry.

2. Where the decision is taken by the President of the Court of First Instance, it is a final decision within the meaning of Rule 251(1)(a).

Rule 463 – Absolute bar to proceeding with an action

The Court may at any time, of its own motion, after hearing the parties, decide whether there exists any absolute bar to proceeding with an action. If the Court considers that it possesses sufficient information, it may, without taking further steps in the proceedings, give a decision by way of reasoned order.

[CST RoP Article 77]

CHAPTER 13 – SETTLEMENT

Rule 470 – Confirmation by the Court of a settlement

1. Where the parties have concluded their case by way of settlement, they shall inform the judge-rapporteur who shall present to the presiding judge a Report recommending that the panel confirm the settlement by decision of the Court.

2. On request by the parties, the decision of the Court shall set out the terms of the settlement.

3. On request by the parties, the case shall be removed from the Register.

4. The presiding judge shall give a decision as to costs in accordance with the terms of the settlement or, failing that, at his discretion.

Relation with draft Agreement: Article 52
[Directive 2008/52/EC, CST RoP Article 69]

PART 6 – FEES AND LEGAL AID

COURT FEES

Rule 500 – Court fees

1. Court fees provided for in these Rules of Procedure shall be shall be paid to the Court. They shall be levied in accordance with the provisions contained in this Part.

2. The court fees to be paid to the Court shall be as follows:

(a) Fixed fees, in **EUR

Court of First Instance
Fee for infringement action: 6000
Fee for counterclaim for revocation: 4000
Fee for revocation action: 6000
Fee for counterclaim for infringement: 4000
Fee for action against a decision of the European Patent Office: 2000
Fee for application to preserve evidence: 1000
Fee for application for provisional measures: 3000

Court of Appeal
Fee for appeal against final decision: 9000
Fee for appeal against interlocutory order: 4500

Fee for lodging a protective letter: 500
Fee for rehearing: 10 000

(b) Value-based fee for the infringement action, in **EUR

Value in dispute in EUR	Fees
between 1 000 000 and 5 000 000	15 000
between 5 000 000 and 25 000 000	25 000
between 25 000 000 and 50 000 000	50 000
above 50 000 000	100 000

*** An tentative level for the various fees is included for illustrative purposes only, without prejudice to the future decision of the Administrative Committee relating to fees under Article 18(3) of the Agreement. See also the examples in Council Document 17120/1/11 REV 1 of 17.11.2011, page 4.*

Rule 501 – Time periods for paying court fees

1. The fixed fees shall be paid in advance …

2. Proof of payment shall be provided together with the initial pleading.

3. The value-based fee for the infringement action shall be paid within 10 working days of service of the order determining the value of the dispute in accordance with Rule 20(5).

4. Where an Application for legal aid has been lodged in accordance with Rule 507, Rules 13(2), 44, 52, 67, 91, 192, 206, 264 and 300 shall not apply.

[To be further developed]

Relation with draft Agreement: Article 43(2)

Rule 502 – Reimbursement of court fees

[To be developed]

LEGAL AID

Rule 505 – Right to legal aid

A person is entitled to legal aid where
(a) it does not possess the necessary means and
(b) its requests for relief do not appear to be completely unfounded.

Rule 506 – Extent

1. Legal aid comprises
(a) a dispensation from court fee;
(b) a dispensation from the obligation to advance costs;
(c) the appointment of a representative by the Court; a representative can already be appointed to prepare proceedings.

2. Legal aid can be granted completely or partially.

3. Legal aid does not dispense from the obligation to compensate the successful party's costs.

Rule 507 – Application and procedure

1. An Application for legal aid may be lodged before or after proceedings have been started.

2. An applicant for legal aid must present evidence relating to his income and assets and set out his case.

3. The Court shall rule on the Application for legal aid in *[summary proceedings]*. The other party may be heard. The other party shall be heard where the Court envisages dispensing the applicant from providing security for the award of compensation for costs made in favour of that party.

4. For an appeal, a new Application for legal aid must be lodged.

Rule 508 – Revocation of legal aid

The Court revokes legal aid where entitlement has elapsed or never existed.

Rule 509 – Appeal

A decision completely or partially refusing or revoking legal laid may be appealed.

Rule 510 – Liquidation of the costs of the proceedings

1. If the party granted legal laid is not successful, the costs of the litigation are liquidated as follows:
(a) the representative is appropriately compensated by the Court;
(b) the court fees are borne by the Court;
(c) advances made by the opposing party are restituted;
(d) the party granted legal aid must compensate the successful party's costs.

2. If a party granted legal aid is successful and it does not appear likely that the costs awarded against the other party will be paid, the Court remunerates appropriately the representative who acted for the party that was granted legal aid.

Rule 511 – Reimbursement of legal aid

A party that has been granted legal aid must make repayment as soon as it is in a position to do so.
