

# Amendments to 18<sup>th</sup> Draft of Rules of Procedure

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# Amendments to 18<sup>th</sup> Draft of Rules of Introduction

- The 18<sup>th</sup> draft of the rules of Procedure for the UPC was approved by the Preparatory Committee at its 19<sup>th</sup> meeting on 15<sup>th</sup> March 2017 and has been published on the UPC website.
- As a result of ongoing work and changes in EU law since 2017 some 34 amendments have been identified, many quite trivial but some significant. These amendments were “presented” to the Administrative Committee on 22<sup>nd</sup> February
- The Opinion of the European Commission on the revised rules was obtained on 22<sup>nd</sup> June – subject to minor comments the rules were a “comprehensive, adequate and balanced framework”.
- The revised rules were formally approved by the Administrative Committee on 08<sup>th</sup> July.

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## Rule 4 – Lodging of documents

1. Written pleadings and other documents shall be signed and lodged at the Registry or relevant sub-registry in electronic form. Parties shall make use of the official forms available online. The receipt of documents shall be confirmed by the automatic issue of an electronic receipt, which shall indicate the date and local time of receipt.
2. Where it is not possible to lodge a document electronically for any the sole reason that the electronic case management system of the Court has ceased to function a party may lodge a document in hard-copy form at the Registry or a sub-registry. An electronic copy of the document shall be lodged as soon as possible thereafter.

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## Rule 5 – Lodging of an Application to opt out and withdrawal of an opt-out

1. The proprietor of a European patent (including a European patent that has expired) or the applicant for a published application for a European patent (hereinafter in this Rule 5 an “application”) who wishes to opt out that patent or application from the exclusive competence of the Court in accordance with Article 83(3) of the Agreement shall lodge an Application (hereinafter in this Rule 5 an “Application to opt out”) with the Registry.
  - (a) Where the patent or application is owned by two or more proprietors or applicants, all proprietors or applicants shall lodge the Application to opt out. Where the person lodging an Application to opt out is not recorded as the proprietor or applicant in the registers referred to in Rule 8.5(a) and (b), respectively, the person shall lodge a declaration pursuant to paragraph 3(e).
  - (b) The Application to opt out shall be made in respect of all of the ~~Contracting Member States~~ states for which the European patent has been granted or which have been designated in the application.
3. The Application to opt out shall contain:
  - (a) the name of each proprietor or applicant for the European patent or application and of the holder of any supplementary protection certificate based on the European patent in question, and all relevant postal and, where applicable, electronic addresses;

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## Rule 5 – Lodging of an Application to opt out and withdrawal of an opt-out, cont.

(b) the name and postal address and electronic address of

(i) the representative appointed by the applicant or the proprietor in accordance with Article 48 of the Agreement or

(ii) any other person lodging the Application to opt out on behalf of the proprietor or the applicant and the mandate for lodging the Application to opt out;

(c) details of the patent and/or application including the EP publication number;

(d) ...

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

5. The Registrar shall as soon as practicable enter the Application to opt out in the register. Subject to paragraph 6, the opt-out which meets the requirements laid down in this Rule shall be regarded as effective from the date of entry in the register. If the requirements recorded in the register are missing or incorrect, a correction may be lodged with the Registry. The date of entry of the correction shall be noted in the register. The opt-out shall be effective from the date of correction.

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## Rule 5 – Lodging of an Application to opt out and withdrawal of an opt-out, cont.

7. A proprietor of a patent or an application the subject of an opt-out pursuant to this Rule may lodge an Application to withdraw in respect of the patent or application, but not in respect of different ~~Contracting Member States~~ states for which the European patent has been granted or which have been designated in the application. The Application to withdraw shall contain the particulars in accordance with paragraph 3. The Registrar shall as soon as practicable enter the Application to withdraw in the register and the withdrawal shall be regarded as effective from the date of entry in the register. Paragraphs 1(a) and 5 shall apply mutatis mutandis.

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## Rule 5A – Application to remove an unauthorised application to opt out or unauthorised withdrawal of an opt-out.

1. Without prejudice to the lodging of an Application to opt out or withdraw an opt-out in accordance with Rule 5, the proprietor of a European patent or the applicant for a published application for a European patent or holder of a supplementary protection certificate in relation to which an Application to opt out or withdraw the opt-out is entered in the register may lodge an Application to remove the entry of an unauthorised Application to opt out or withdrawal of the opt-out from the Registry setting out the reasons.
2. The Registrar shall mark the status of the Application to opt out or withdraw the opt-out entered in the register as subject to an Application for removal. The Registrar shall decide on the Application for removal as soon as practicable. If the final decision is to remove the Application to opt out or withdrawal of an opt-out the Registrar shall delete it in the register.
3. The decision on the Application for removal may be subject to an Application for review to the President of the Court of Appeal. The Application for review shall be lodged with the Registrar in one of the official languages of the European Patent Office, within one month of the notification of the challenged decision setting out the request, facts, evidence and arguments. If the Application for review is allowable, the President of the Court of Appeal shall order the Registrar to remove the opt-out or the withdrawal of the opt-out.

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## Rule 13 – Lodging of documents

1. The claimant shall lodge a Statement of claim with the division chosen by him [Article 33 of the Agreement] which shall contain:

(a) ...

...

(q) a list of the documents, including any witness statements, referred to in the Statement of claim, together with any request that all or part of any such document need not be translated and/or any request pursuant to Rule 262.1 or Rule 262A.

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## Rule 104 – Aim of the interim conference

The interim conference shall enable the judge-rapporteur to:

(h) set a date for any separate hearing pursuant to point (g) of this Rule, and confirm the date for the oral hearing and order, where appropriate, after consultation with the presiding judge and the parties that the oral hearing or a separate hearing of witnesses and experts be wholly or partly by video conference in accordance with Rule 112.3;

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## Rule 112 – Conduct of the oral hearing

1. The oral hearing shall be held before the panel and shall be under the control of the presiding judge.
2. The oral hearing shall consist of:
  - (a) the hearing of the parties' oral submissions;
  - (b) ~~if ordered during the interim procedure~~, the hearing of witnesses and experts under the control of the presiding judge.
3. The Court may decide to:
  - (a) allow a party, representative or accompanying person, to attend the oral hearing by video-conference,
  - (b) hear a party, witnesses or expert through electronic means, such as video conference or
  - (c) hold the oral hearing by videoconference if all parties agree or the Court considers it appropriate to do so due to exceptional circumstances.

In all cases, the oral hearing shall be transmitted simultaneously in picture and sound to the court room.
43. The presiding judge and the judges of the panel may provide a preliminary introduction to the action and put questions to the parties, to the parties' representatives and to any witness or expert.
54. Under the control of the presiding judge, the parties may put questions to the witness or expert. The presiding judge may prohibit any question which is not designed to adduce admissible evidence.
65. With the consent of the Court a witness may give evidence in a language other than the language of proceedings.

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## Rule 262 – Public access to the register

1. Without prejudice to Articles 58 and 60(1) of the Agreement and subject to Rules 190.1, 194.5, 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2, and following, where applicable, redaction of personal data within the meaning of Regulation (EU) 2016/679 and confidential information according to paragraph 2

(a) decisions and orders made by the Court shall be published,

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

1a.2. unless a party may has requested that certain information of written pleadings or evidence be kept confidential and provided specific reasons for such confidentiality. To this end content of the register is made publicly available upon request according to paragraph 1 (b) only 14 days after it has been available to all recipients. The Registrar shall ensure that beyond this time period information subject of such a request for confidentiality shall not be made available pending an Application pursuant to paragraph 32 or an appeal pursuant to Rule 220.2. Whenre a party lodges a requests that parts of written pleadings or written evidence shall be kept confidential, he shall also provide copies of the said documents with the relevant parts redacted when making the request.

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## Rule 262 – Public access to the register – cont.

32. A member of the public may lodge an Application with the Court for an order that any information excluded from public access pursuant to paragraph 24a may be made available to the applicant.

43. The Application shall contain:

- (a) details of the information alleged to be confidential, so far as possible;
- (b) the grounds upon which the applicant believes the reasons for confidentiality should not be accepted; and
- (c) the purpose for which the information is needed.

54. The Court shall invite written comments from the parties prior to making any order.

65. The Court shall allow the Application unless legitimate reasons given by the party concerned for the confidentiality of the information outweigh the interest of the applicant to access such information.

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

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## Rule 262A – Protection of Confidential Information

1. Without prejudice to Article 60(1) of the Agreement and Rules 190.1, 194.5 196.1, 197.4, 199.1, 207.7, 209.4, 315.2 and 365.2 a party may make an application to the Court for an order that certain information contained in its pleadings or the collection and use of evidence in proceedings may be restricted or prohibited or that access to such information or evidence be restricted to specific persons.
2. The Application shall contain the grounds upon which the applicant believes the information or evidence in question should be restricted in accordance with Article 58 of the Agreement.
3. The Application shall be made at the same time as lodging a document containing the information or evidence ad shall provide a copy of the unredacted relevant document and, if applicable, a copy of the redacted document.
4. The Court shall invite written comments from the representatives of the other parties prior to making any order.
5. The Court may allow the Application considering in particular whether the grounds relied upon by the applicant for the order significantly outweigh the interest of the other party to have full access to the information and evidence in question.
  - (a) The number of persons referred to in paragraph 1 shall be no greater than necessary in order to ensure compliance with the right of the parties to the legal proceedings to an effective remedy and to a fair trial, and shall include, at least, one natural person from each party and the respective lawyers or other representatives of those parties to the legal proceedings.

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## Rule 346 – Application of Article 7 of the Statute

1. A party who believes to have reason to object to a judge taking part in proceedings pursuant to Article 7(4) of the Statute shall as soon as is reasonably practicable in the circumstances notify the President of the Court of First Instance or the President of the Court of Appeal wherever the case is pending that it objects to the judge taking part in the proceedings.
2. Any failure to notify an objection as soon as is reasonably practicable shall amount to a waiver of such objection.
3. The President concerned shall, after hearing the judge involved, decide whether the objection is valid pursuant to Article 7(2) and (4) of the Statute and considering the circumstances.
4. In case of any difficulty within the meaning of Article 7(5) of the Statute the President shall be replaced on the panel of judges allocated to the case concerned.
5. If it is decided that the objection is valid the judge concerned shall be replaced on the panel of judges allocated to the case concerned.
6. The panel assigned to the proceedings may decide to continue with the proceedings or to stay the proceedings pending the final decision of the President concerned or the Presidium. The President concerned or the Presidium may give instructions in the final decision as to the future conduct of the proceedings.

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## Training for Judges

- 11,000 applications were received for judicial appointment. A short list of 200 was prepared for interview
- The Advisory Committee was appointed on 22<sup>nd</sup> February and interviews were completed end May/beginning June.
- The Advisory Committee recommended the appointment of 5 full-time LQJs and 35 part-time LQJs and 50 part-time TQJs.
- Thus 85 (not the full-time LQJs) judges will receive training from October 2022.
- Basic Judge-craft training for TQJs to commence October and to be provided by CEIPI in Strasbourg.
- Advanced Rules of Procedure training for all judges to commence 21<sup>st</sup> November. Judges will be mixed (LQJ & TQJ) and divided into 4 groups. Training for each group will be over 4 days and will comprise:
  - Presentations on the Rules of Procedure
  - A presentation on judge-craft
  - Procedure for judicial orders on the CMS – practical demonstration
  - Presentation on the Brussels Regulation
  - An interactive mock trial over 2 days
- Training on the CMS for all judges and registry staff will commence during January 2023 prior to expected opening of the court on 01 March 2023. This is expected to comprise four groups over 4 days for each group.

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