

**Table with explanatory notes to the changes made by the Legal Group of the Preparatory Committee in the 17<sup>th</sup> draft of the Rules of Procedure**

| <b>Rule</b> | <b>New text</b>   | <b>Explanatory remarks</b>   |
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| Rule 3      | Where these Rules refer to the Registry or Registrar and provide for the Registry to perform any act that reference shall include the relevant sub-registry and that act may be performed by the Registrar or by a member of staff of the Registry or <b>relevant</b> sub-registry <b>of the relevant division</b> .  | Actions for which the UPC has jurisdiction under Articles 32 of the Agreement on a Unified Patent Court (the Agreement or UPCA) are directly lodged at the division which is competent within the UPC according to Article 33 UPCA. Consequently, under Rule 13.1, the Statement of claim shall be lodged with the division chosen by the claimant. The amendment to Rule 3 clarifies with regard to the Registry which “sub-registry” is referred to, namely the sub-registry of the division which is in charge of the case. See also amendment to Rule 4.1. |
| Rule 4.1    | 1. Written pleadings and other documents shall be lodged at the Registry <b>or relevant sub-registry</b> in electronic form. Parties shall make use of the official forms available on-line. The receipt of documents shall be confirmed by the automatic issue of an electronic receipt, which shall indicate the date and local time of receipt.  | This change clarifies that documents and pleadings may be lodged not only at the Registry but also at the sub-registry of the division dealing with the case (see also Rule 3).  |
| Rule 5.2(c) | (c) Where any such supplementary protection certificate is granted subsequent to lodging the Application, the opt-out shall take effect automatically on grant of said supplementary protection certificate(s). <b>and the holder(s) of such supplementary protection certificate(s) based on the European patent shall notify the Registry of the details required under Rule 5.3.</b>   | In view of the principle laid down in Rule 5.2(a) – that an Application to opt-out a European patent shall extend to any supplementary protection certificate (SPC) based on that European patent – it seems superfluous to provide that the holder of a SPC shall notify the Registry of details which the Registry has already received when the Application to opt-out the European patent or the European patent application was lodged. This reduces the administrative burden for both holders of SPCs and the Registry.                                 |
| Rule 5.5    | 5. The applicant(s) for an opt-out shall pay the fixed fee in accordance with Part 6 <b>[to the Registry within 30 days]</b> . The Application shall not be entered in the register until the fixed fee has been paid. One fixed fee shall be payable in respect of each European patent or application for which an Application to opt out has been filed, including any supplementary protection certificate based on said patent or application. | This change provides for a 30-day time period for the payment of the opt-out fee. The principle that the Application is only entered in the register once the fee has been paid is maintained.   |
| Rule 5.7    | 7. In the event that an action has been commenced before the Court in respect of a patent (or patents) and/or an application (or applications) contained in an Application to opt out prior to the date of entry of the Application in the register, the Application for opt-   | This change clarifies that not only actions pending before the UPC but also actions before the UPC which are already concluded render ineffective any Application to opt-out a European patent or a European patent application involved in these actions. An action brought to the UPC thus constitutes an absolute bar to an   |

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|           | out shall be ineffective in respect of the patent (or patents) and/or application (or applications) in question, <b>irrespective of whether the action is pending or has been concluded.</b>  | Application to opt-out. The risk that the UPC and national courts deal one after the other with the same European patent – and reach diverging decisions – can thus be reduced.  |
| Rule 5.9  | 9. In the event that an action has been commenced before a court of a Contracting Member State in respect of a patent or application contained in an Application to withdraw the opt-out, prior to the entry of the Application in the register, the Application to withdraw the opt-out shall be ineffective in respect of the patent or application in question, <b>irrespective of whether the action is pending or has been concluded.</b>  | In the same vein as the change to Rule 5.7, this change clarifies that not only actions pending before a national court but also actions before a national court which are already concluded render ineffective any Application to withdraw the opt-out of a European patent or a European patent application involved in these actions. This change implies that any future action concerning that European patent or application will be heard by a national court – and not by the UPC – so that diverging interpretations will not occur.  |
| Rule 5.10 | 10. Where an application for a European patent subject to an opt-out pursuant to this Rule proceeds to grant as a European patent with unitary effect, the proprietor or proprietors shall notify the Registry. The opt-out shall be deemed to have been withdrawn <b>in respect of the Contracting Member States covered by the European patent with unitary effect</b> and the Registrar shall as soon as practicable enter the withdrawal in the register. No fee shall be payable pursuant to Rule 5.8.   | This change takes into account that the territorial scope of the first European patents with unitary effect will in all likelihood not cover all 25 Member States participating in enhanced cooperation (see Article 18(2), 2 <sup>nd</sup> sub-paragraph, Regulation 1257/2012/EU). For those participating Member States which will not yet have ratified the UPC Agreement, a classical European patent may still be obtained (in addition to a European patent with unitary effect covering those States which have ratified the UPC Agreement). The change to Rule 5.10, 2 <sup>nd</sup> sentence, clarifies the effect of the opt-out of a European patent application if a European patent with unitary effect not covering all participating Member States is obtained: in such cases, the opt-out shall be deemed to be withdrawn only in respect of the Contracting Member States covered by the European patent with unitary effect. In participating Member States which have not ratified the UPCA, a European patent may be validated and, if so, the opt-out shall be effective for that European patent. |
| Rule 5.13 | <del>f13. An Application to opt out may be lodged with the European Patent Office aAfter a date to be announced by the European Patent Office and before the coming into effect of the Agreement, the European Patent Office may, as a service to applicants and under the terms specified by it, collect Applications to opt-out. The Application shall be accompanied by the fixed fee provided for in Rule 5.35 and shall otherwise comply with any instructions for lodging the Application issued by the European Patent Office. At the date of entry into force of the Agreement the European Patent Office will</del> Where the European Patent Office, until the day of the date of | The change clarifies that the service of the European Patent Office (EPO) provided for in Rule 5.13 is a service to applicants. In that sense, the EPO represents the applicants and is not to be considered as a representative of the UPC.   |

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|           | <p>entry into force of the Agreement in accordance with Article 89 of the Agreement, transfers to the Registrar details of all such Applications (and of any pending Applications) <b>and all such fees to the Registrar and</b> the Registrar shall enter the Applications received on the register under the said date of entry into force of the Agreement.]</p>  |   |
| Rule 7.2  | <p>2. Where these Rules or the Court require a pleading or other document to be translated it shall not be necessary to provide a formal <b>testament certification by the translator</b> as to the accuracy of such translation unless the accuracy is challenged by a party or such <b>testament certification</b> is ordered by the Court <b>or required by these Rules.</b></p>  | <p>The term “testament” seems ambiguous and has been replaced by “certification”. Where a certification is ordered by the Court or required by the Rules of Procedure (see e.g. Rule 118.8), the translator shall certify the translation as to its accuracy.</p>   |
| Rule 11.1 | <p>1. At any stage of the proceedings, if the Court is of the opinion that the dispute is suitable for a settlement, it may propose that the parties make use of the facilities of the Patent Mediation and Arbitration Centre (“the Centre”) in order to settle or to explore a settlement of the dispute. In particular the judge-rapporteur shall during the interim procedure, in particular at an interim conference in accordance with Rule 104(d), explore with the parties the possibility of a settlement, including through mediation and/or arbitration, using the facilities of the Centre. <b>Parties who choose mediation in an attempt to settle a dispute are subsequently not prevented from initiating judicial proceedings before the Court in relation to that dispute by the expiry of limitation or prescription periods during the mediation process.</b></p> | <p>Rule 11.1 provides for the possibility for the Court to refer the parties to mediation and to declare the settlement or award enforceable. Should the parties attempt to settle, it is recognised in EU law that this should not have a negative impact on their rights under any rules on limitation or prescription periods (see Article 8 of Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters which provides that Member States (MS) shall “ensure that parties who choose mediation in an attempt to settle a dispute are not subsequently prevented from initiating judicial proceedings or arbitration in relation to that dispute by the expiry of limitation or prescription periods during the mediation process”). The addition of Rule 11.1, 3<sup>rd</sup> sentence, ensures that such rights are respected.</p> |
| Rule 11.2 | <p>2. Pursuant to Rule 365 the Court shall, if requested by the parties, by decision confirm the terms of any settlement, or arbitral award <b>by consent</b> (irrespective of whether it was reached using the facilities of the Centre or otherwise), including a term which obliges the patent owner to limit, surrender or agree to the revocation of a patent or not to assert it against the other party</p>   | <p>According to Article 35(2), 2<sup>nd</sup> sentence of the Agreement, Article 82 on enforcement of decisions and orders shall apply mutatis mutandis to any settlement reached through the use of the Patent Mediation and Arbitration Centre. This change in Rule 11.2 clarifies the type of arbitral award that can be enforced as settlement under Article 82 UPCA by specifying that the parties must have consented to the arbitral award. The Court shall on request by the parties confirm</p>  |

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|                    | and/or third parties. The parties may agree on costs to be awarded or may request the Court to decide on costs to be awarded in accordance with Rules 150 to 156 <i>mutatis mutandis</i> .  | such an arbitral award. Other arbitral awards are enforced by way of the New York Convention of 1958.   |
| Rule 14<br>Heading | <a href="#"><b>Language of the Statement of claim</b></a> Use of languages under Article 49(1) and (2) of the Agreement   | The heading reflects the scope of revised Rule 14.  |
| Rule 14.1          | <p>1. Without prejudice to Articles 49(3) to (6) of the Agreement and subject to Rule 14.2, Rule 271.7 and Rules 321 to 323, proceedings shall be conducted:</p> <p>(a) in the official language or one of the official languages designated as language(s) of proceedings pursuant to Article 49(1) of the Agreement; or</p> <p>(b) in a language designated as additional language of proceedings by a Contracting Member State pursuant to Article 49(2) of the Agreement.</p> | <p>Article 49 UPCA contains the regime on the language of proceedings for the Court of First Instance:</p> <ul style="list-style-type: none"> <li>- Article 49(1) UPCA provides that the language of proceedings shall be an official EU language of the Contracting Member State hosting the relevant division or designated by the Member States sharing a regional division;</li> <li>- Article 49(2) UPCA allows a Contracting Member State to designate one or more EPO additional language(s) (“notwithstanding”) as language(s) of proceedings.</li> </ul> <p>Rule 14 is addressing this specific situation where a Contracting Member State in addition to the language of proceedings under Article 49(1) UPCA has designated one or more EPO language(s) under Article 49(2) UPCA. Where use is made of Article 49(2) UPCA, it remains unclear how the additional language is used in proceedings. Rule 14 fills this gap left by the UPCA and determines under what conditions the additional language can be used in the proceedings. Rule 14 needs to take various elements into consideration which must be reconciled, in particular</p> <ul style="list-style-type: none"> <li>- the interest of the plaintiff to make use of the additional language,</li> <li>- the interest of the defendant, notably individuals and SME, to be sued in the “home” language of the Member State of their residence or seat,</li> <li>- the ability of the judges of the division in question to deal with the case in the additional language.</li> </ul> <p>Rule 14.1 distinguishes between the “official language” designated under Article 49(1) UPCA and the “additional language” designated under Article 49(2) UPCA.</p> |
| Rule 14.2          | <p>2. Where a Contracting Member State hosts a local division or participates in a regional division for which several languages have been designated pursuant to Article 49(1) and/or Article 49(2) of the Agreement:</p> <p>(a) subject to paragraphs (b) [and (c)], the claimant may choose as the language of proceedings any of the language(s) designated</p>   | <p>Rule 14.2(a) contains the principle that the plaintiff may choose any of the languages from among those designated under Article 49(1) and (2) UPCA. However, this is, regarding the additional language, a privilege which cannot be granted to one of the parties (the plaintiff) without limitations. The privilege is limited by the exceptions in Rule 14.2(b) and [c]).</p> <p>Rule 14.2(b) contains the first exception to the claimant's privilege to choose: The</p>  |

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|           | <p>pursuant to Article 49(1) and/or Article 49(2);</p> <p>(b) in proceedings before a local or regional division in a Contracting Member State against a defendant who has his domicile or principal place of business in that Contracting Member State where the action could not be brought pursuant to Article 33(1)(a) of the Agreement before any other local or regional division, proceedings shall be conducted in the official language of the Contracting Member State (Rule 14.1(a)). Where a designation by a Contracting Member State having several official regional languages so indicates, proceedings shall be conducted in the official language of the region in which the defendant has his domicile or principal place of business. Where there are two or more such defendants whose domicile or principle place of business has different regional languages, the claimant may choose the language from the regional languages in question.</p> <p>[(c). Where a designation of an additional language under Article 49 (2) for a regional division or for one or more local division(s) hosted in a Member State so indicates, parties may use the additional language:</p> <ul style="list-style-type: none"> <li>(i) for a Preliminary objection [Rule 19] and/or</li> <li>(ii) for written pleadings and other documents, including written evidence [Rule 7], and/or for oral hearings].</li> </ul> | <p>“small local operator”-clause which protects locally operating defendants. Where a case could not be brought before any other local or regional division, i.e. where the domicile / seat of the defendant and the infringement are both located in one Member State only, the language of proceedings remains the “official language” under Article 49(1) UPCA. These defendants should be ensured that they will only be sued in the “home” language.</p> <p>In addition, where a Member State having designated more than one language under Article 49(1) UPCA as regional languages, that Member State may indicate that the regional language of the domicile / seat of the defendant shall be used limiting the use of the official languages under Article 49(1) UPCA and Rule 14.1(a).</p> <p>Rule 14.2(c) in square brackets contains a proposal for a second exception to the claimant's privilege to choose: The “English limited clause” which allows Member States wishing to open up the proceedings in particular for the English language as an additional language to do so in a reasonable manner taking into consideration the protection of defendants domiciled in that Member State and the language abilities of the judges of the division hosted in that Member State. Such a Member State may include in its “designation” (Article 49(2) UPCA, Rule 14.1(b)) an “indication” (“so indicates”) to what extent it allows the additional language to be used. For reasons of legal certainty the Member State may only indicate conditions from the closed list contained in Rule 14.2(c)(i) and (ii). The additional language (English) may thus be allowed:</p> <ul style="list-style-type: none"> <li>(i) for a preliminary objection and/or</li> <li>(ii) in the written procedure and/or for the oral hearings.</li> </ul> <p>Where a Member State does not make any indications or withdraws indications made under Rule 14.2(c), the plaintiff may choose the additional language as language of proceedings (Rule 14.2(a)) with the effect that the entire proceedings including the judgment will be in that language.</p> |
| Rule 14.3 | <p>3. The Registrar shall maintain a list of languages communicated by Contracting Member States pursuant to Article 49(1) and Article 49(2) as well as designations by Contracting Member States made pursuant to Rule 14.2(b) [and (c)]. The list shall be made publically available online.</p>   | <p>Rule 14.3 provides for transparency by entrusting the Registrar with the tasks of keeping and publishing a list of languages designated under Article 49(1) and (2) UPCA as well as designations under Rule 14.2(b) [and (c)].</p>  |

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| Rule 14.4       | 4. The Registrar shall return any pleading lodged in a language other than the language of proceedings.   | Where pleadings are not lodged in the language of proceedings allowed under Rule 14.1, the pleadings are returned by the Registrar.   |
| Rule 17 Heading | Recording in the register and assignment (Court of First Instance, infringement action)   | The change to the heading clarifies that Rule 17 also deals with the assignment of infringement actions to panels (Rule 17.2).  |
| Rule 17.2       | 2. The presiding judge of the division-action shall be assigned the action to a panel of a division according to Rule 345.3. Where requested by the parties the action shall be assigned to a single judge in accordance with Rule 345.6.   | The assignment of actions to the panels of a division is according to Article 19(1) UPCA, Rule 345.3, the duty of the Registrar following an action distribution scheme, which ensures assignment of the cases to panels in an objective pre-determined order. Rule 17.2 is brought into line with this approach.<br>Assignment to a single judge (on request by both parties) is also provided for (see Article 8(7) UPCA and Rule 345.6).   |
| Rule 19.3       | 3. The Preliminary objection shall be drawn up :<br>(a) in the language pursuant to Rule 14 of the proceedings [Rule 14.2]; or<br>[(b) in one of the official languages of the European Patent Office].   | Square brackets have been inserted in Rule 19.3(b) as it seems difficult to justify the use of an EPO language which is not a language of proceedings under Article 49(1) or (2) UPCA. Still, the desire to simplify the language regime at the preliminary objection stage seems justified, and if they so wish, Member States could allow the use of an additional EPO language designated under Article 49(2) UPCA (see Rule 14.2(c)(i)).  |
| Rule 30.1(a)    | 1. The Defence to the Counterclaim for revocation may include an *Application by the proprietor of the patent to amend the patent which shall contain:<br>(a) the proposed amendments of the claims of the patent concerned and/or specification, including where applicable and appropriate one or more alternative sets of claims (auxiliary requests), in the language in which the patent was granted; where the language of the proceedings [Rule 14.3] is not the language in which the patent was granted, the proprietor shall lodge a translation of the proposed amendments in the language of the proceedings, and where the patent is a European patent with unitary effect in the language of the defendant's domicile in a Contracting Member State of the EU or of the place of the alleged infringement or threatened infringement in a Contracting Member State if so requested by the defendant;<br>... | The change to Rule 30.1(a) ensures compliance with Article 4 of Regulation (EU) 1260/2012 on the translation arrangements for the European patent with unitary effect: Where an amendment of the claims of a European patent with unitary effect is sought by a claimant (patent proprietor) in an infringement action, the claimant must at the request of the defendant file a translation of the proposed amendments in the language of the defendant's domicile in "a Member State of the EU" (i.e. including where applicable also the languages of countries which do not participate in enhanced cooperation) or of the place of the alleged infringement. |

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| Rule 37.5       | 5. Where the panel decides to proceed in accordance with Article 33(3)(b) of the Agreement and not to stay the proceedings, the judge-rapporteur of the regional or local division shall communicate to the central division the dates set for the interim conference and for the oral hearing according to Rule 28.   | New Rule 37.5 ensures that a panel of a local or regional division (which has referred the counterclaim for revocation to the central division without staying proceedings) inform the central division of the dates set for interim conferences and oral hearings; this will contribute to synchronise the calendars of the divisions dealing in parallel with cases involving the same patent and the same parties.   |
| Rule 38(a)      | When a Counterclaim for revocation is referred to the central division, it shall be dealt with as follows:<br>(a) Rule 17.2 and .3 shall apply <i>mutatis mutandis</i> : <a href="#">the President of the Court of First Instance shall assign</a> the Counterclaim for revocation <a href="#">shall be assigned</a> to a panel of the central division in accordance with Article 7(2) of the Agreement and Annex II thereto. <a href="#">The parties may request that the Counterclaim be heard by a single legally qualified judge</a> ;<br>...                 | Similarly to the changes to Rule 17.2, assignment of counterclaims for revocation to a panel will be made by the Registrar under the action-distribution scheme provided for in Rule 345.3 (and not by the President of the Court of First Instance); it is also not necessary to repeat that parties may request that a single judge hears the counterclaim, as Rule 17.2 applies <i>mutatis mutandis</i> .  |
| Rule 40         | The judge-rapporteur shall accelerate proceedings before the central division where<br>(a) an Application for provisional measures has been lodged [Rule 206]; or<br>(b) the regional or local division has referred the counterclaim for revocation to the central division and where the infringement action has not been stayed.<br>In the latter case, the judge-rapporteur of the panel of the central division shall endeavour to set a date for the oral hearing on the revocation action prior to the date of the oral hearing of the infringement action. | Together with new Rule 37.5, this addition in Rule 40(b) aims at the effective handling of the situation where a counterclaim for revocation has been referred to the central division while the infringement action is being dealt with by a local or regional division (without stay of proceedings); in such cases, the judge-rapporteur at the central division shall accelerate proceedings and endeavour to set an early date for the oral hearing, taking into account the information received (under new Rule 37.5) from the local or regional division about the date set for the oral hearing. New Rule 40(b) will not lead to acceleration in <u>all</u> cases where counterclaims for revocation are referred to the central division – only cases where the parallel infringement action is <u>not</u> stayed will be accelerated; in practice, the synchronisation of the calendars remains within the discretion of the judge-rapporteur (“shall endeavour”). |
| Rule 48 Heading | Rule 48 – Recording in the register <a href="#">and assignment</a> (Court of First Instance, revocation action)  | This change corresponds to the change made to the heading of Rule 17.   |
| Rule 48         | 1. Rule 17. <a href="#">1, 2 and 3</a> shall apply <i>mutatis mutandis</i> . <a href="#">The parties may request that the action be heard by a single judge</a> .  | As in Rule 17.2, assignment of cases will follow the action-distribution-scheme provided for in Rule 345.3. Parties may agree that a single judge hears the case, as provided for in Rule 17.2 which is applicable <i>mutatis mutandis</i> .  |
| Rule 70.3       | 3. Where a counterclaim for revocation is brought in the   | This change clarifies that it is the panel which is dealing with the case itself that   |

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|                      | infringement action and there is identity of parties as between the two actions, unless otherwise agreed by the parties, <b>the President of the Court of First Instance shall require</b> the panel appointed in the central division to hear the revocation action <b>to shall</b> stay all further proceedings in the revocation action pending a decision of the panel hearing the action for infringement pursuant to Article 33(3) of the Agreement and Rule 37.   | will apply the law including the provisions on the stay of proceedings; it is not appropriate that the President of the Court of First Instance interferes.  |
| Rule 88.2(b)         | <p>2. The *Application to annul or alter a decision of the Office shall contain:</p> <p>(a) the names of the claimant and, where applicable, of the claimant's representative;</p> <p>(b) where the claimant is not the proprietor of <b>or applicant for</b> the European patent with unitary effect, an explanation and evidence that he is adversely affected by the decision of the Office and entitled to start proceedings [Article 47(7) of the Agreement];</p> <p>...</p>  | The rule applies in cases where the claimant is not identical with the proprietor of and – according to the change – applicant for the European patent with unitary effect. Only In these cases the claimant has to give an (additional) explanation and evidence that he is adversely affected by the challenged decision of the EPO and entitled to start proceedings.   |
| Rule 92              | Where the action is not closed in accordance with Rule 91.2, the <b>President of the Court of First Instance</b> shall, as soon as practicable after the expiry of the period referred to in Rule 91.1, <b>be assigned</b> <b>the action</b> to a panel of the central division or to a single judge if requested by the claimant [Rule 88.2(f)] <b>in accordance with Rule 345.3</b> . Rule 18 shall apply.   | This change clarifies that assignment of the case to a panel by the Registrar will follow the action-distribution-scheme provided for in Rule 345.3. See also Rule 17.   |
| Rule 97.1, .4 and .5 | <p>1. The proprietor of a patent whose request for unitary effect has been refused by the Office shall lodge an Application at the Registry in accordance with Article 7(2) of the Agreement and Annex II thereto, to reverse the decision of the Office, in the language in which the patent was granted, within <b>10 days three weeks</b> of service of the decision of the European Patent Office.</p> <p>...</p> <p>4. The Registry shall as soon as practicable forward the Application to the standing judge who may invite the President of the European Patent Office to comment on the Application, but shall in any event</p> | <p>In practice, the 10 day-time periods provided for in the earlier version of Rule 97.1 and .4 would have been too short, both for the party having to prepare the Application and for the standing judge having to decide the case; the same applies in Rule 97.5 for the appeal stage.</p> <p>Instead, a 3-week period is provided for, which will give the party more time to lodge an Application satisfying the requirements and will give the standing judge sufficient time to decide the Application.</p> <p>In those MS which still provide for validation requirements, the respective time period usually covers 3 months. Consequently, there would still be time left to validate the European patent at national level if the request for unitary effect is</p> |

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|             | <p>decide the Application within <b>10 days three weeks</b> of the date of receipt of the Application.</p> <p>5. A Statement of appeal by the proprietor of the patent or the President of the European Patent Office against the decisions of the standing judge pursuant to Rule 97.4 may be lodged within <b>10 days three weeks</b> of service of the said decision. The Statement of appeal shall contain the particulars previously lodged pursuant to Rule 97.2 and also the reasons for setting aside the contested decision. The appellant shall pay the fee for the appeal in accordance with Part 6. Rule 15.2 shall apply <i>mutatis mutandis</i>. If the requirements of this Rule 97.5 have been complied with the Registry shall record the appeal in accordance with Rule 230.1 and shall as soon as practicable assign the appeal to the standing judge of the Court of Appeal [Rule 345.5 and 345.8] who may invite the other party to comment on the appeal but shall in any event decide the appeal within <b>10 days three weeks</b> of receipt by the Registry of the Statement of appeal.</p> <p>...</p> | <p>rejected by the EPO. It should furthermore be noted that MS in the Select Committee consider prolonging the 3-month validation period in order to ensure that the proprietor of a European patent who has not obtained a European patent with unitary effect may still validate the European patent at national level.</p>   |
| Rule 103.2  | <p><b>2. If a party fails to comply with an order of the judge-rapporteur within the time period specified, the judge-rapporteur may give a decision by default pursuant to Rule 355.</b></p>   | <p>In line with the changes to the decision by default scheme in Rule 355.1(a), new Rule 103.2 provides that a decision by default may be given against a party which has not complied with an order of the judge-rapporteur in the interim procedure.</p>  |
| Rule 104(j) | <p>The interim conference shall enable the judge-rapporteur to:</p> <p>...</p> <p><b>(j) order the parties to submit, in advance of the decision at the oral hearing, a preliminary estimate of the legal costs that they will seek to recover.</b></p>   | <p>In connection with Rule 118.6, 2<sup>nd</sup> sentence, which provides that parties <u>should</u> submit (in advance of the Court's decision on the merits) a preliminary estimate of the legal costs that they intend to seek to recover, new Rule 104(j) clarifies at what stage of the proceedings parties <u>may</u> be ordered by the judge-rapporteur to submit such a preliminary estimate.</p>                     |
| Rule 105.1  | <p>1. The interim conference <u>may</u> <u>should</u>, where practicable, be held by telephone conference or by video conference.</p>   | <p>In line with Article 44 UPCA which provides that the Court shall make "best use of electronic procedures ... such as video conferencing", the change to Rule 105.1 reinforces that the interim conference should, where practicable, be held by telephone conference or by video conference saving time and means especially for those parties who would need to travel long distance. It will lie in the power of the</p> |

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|             |   | judge-rapporteur to assess whether use of these means of electronic communications are practicable in the particular case.   |
| Rule 105.2  | 2. On request by a party, <ins>and</ins> subject to paragraph 1 and the approval of the judge-rapporteur, the interim conference may be held in Court. If the interim conference is held in Court, it shall be open to the public unless the Court decides to make it, to the extent necessary, confidential in the interests of one or both parties or third parties or in the general interests of justice or public order. | The change to Rule 105.2 clarifies that the exception – interim conference held in Court – is subject to the general rule in Rule 105.1.   |
| Rule 109.5  | 5. Costs for simultaneous interpretation are costs of the proceedings to be decided upon under Rule 150 except where a party engages an interpreter at its own expense under paragraph 4; these costs are borne solely by that party.   | New Rule 109.5 clarifies that costs for simultaneous interpretation at an oral hearing are, as a general rule, considered as costs of the proceedings which shall be borne by the parties (where necessary, following a cost decision under Part 1, Chapter 5); an exception is included in new Rule 150.1, 3 <sup>rd</sup> sentence. In addition, new Rule 109.5 clarifies that where a party brings an interpreter (as provided for in Rule 109.4), the costs shall be borne by that party.  |
| Rule 116.3  | 3. A party that is not represented at the oral hearing shall be treated as relying only on its written case <ins>and not wishing to contest any new submission that the other party may be allowed to make at the oral hearing</ins> .  | A balance is sought between, on the one side, the need to protect a (duly summoned) party absent from an oral hearing against new submissions made by the other party during the oral hearing and, on the other side, the need of the panel to bring proceedings to an end and reach a decision on the merits despite the absence of the party. The new wording of Rule 116.3 ensures that a (duly summoned but absent) party is treated as relying only on its written case, but it is no longer implied that the absent party will not wish to contest new submission made by the other party at the oral hearing. It will lie in the discretion of the Court whether to admit new submissions in the proceedings and – if they are admitted – whether they are of such relevance for the decision that the oral hearing should be adjourned so that the party absent from the oral hearing shall be given an opportunity to be heard. |
| Rule 116.5  | 5. The provisions of this Rule are without prejudice to the power of the Court to give a decision by default pursuant to Rule 355.  | In line with the changes to the decision by default scheme in Rule 355.1(b), new Rule 116.5 clarifies that Rule 116 does not prevent the Court from giving a decision by default against a party which has been duly summoned to the oral hearing but has failed to appear.  |
| Rule 118.1  | 1. In addition to the orders and measures <ins>and without prejudice to the discretion of the Court</ins> referred to in Articles 63, 64, 67 and 80 of the Agreement the Court may, if requested, order the payment of damages or compensation according to Articles 68 and 32(1)(f) of   | The amendment to Rule 118.1 contains a reference to the discretion of the Court as laid down in Articles 63, 64, 67 and 80 UPCA according to which the Court “may” give an order.  |

| Rule                             | New text   | Explanatory remarks  |
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|                                  | the Agreement. The amount of the damages or the compensation may be stated in the order or determined in separate proceedings [Rules 125-143].   |  |
| Rule 118.2                       | <p><b><u>2. Without prejudice to the general discretion provided for in Articles 63 and 64 of the Agreement, in appropriate cases and at the request of the party liable to the orders and measures provided for in paragraph 1 the Court may order damages and/or compensation to be paid to the injured party instead of applying the orders and measures if that person acted unintentionally and without negligence, if execution of the orders and measures in question would cause such party disproportionate harm and if damages and/or compensation to the injured party appear to the Court to be reasonably satisfactory.</u></b></p>       | <p>Rule 118.2 has been deleted. This provision had subjected the order of alternative measures, i.e. compensation instead of orders and measures referred to in paragraph 1, to a number of requirements which would have to be cumulatively met. It was felt that such a scenario would be difficult to imagine in particular where an infringer acted not only unintentionally but also without any negligence and that therefore the provision could in practice hardly apply. The deletion of the wording which stems from Article 12 of the Enforcement Directive 2004/48/EC is in line with EU law since the directive does not make implementation of this provision an obligation of MS (“Member States may provide”). Where the Court finds an infringement of a patent it will under Article 63 of the Agreement give order of injunctive relief. Only under very exceptional circumstances it will use its discretion and not give such an order. This follows from Article 25 of the Agreement which recognizes the right to prevent the use of the invention without the consent of the patent proprietor as the core right of the patentee. When exercising this discretion the Court can also consider the use of alternative measures.</p> |
| Rule 118.6<br>(new<br>numbering) | <p><b><u>6.</u></b> The Court shall decide in principle on the obligation to bear legal costs in accordance with Article 69 of the Agreement. In advance of the decision, the parties <b><u>shall</u></b> submit a preliminary estimate of the legal costs that they intend to seek to recover.</p>  | <p>In line with Rule 118.6, 1<sup>st</sup> sentence, which provides that the Court shall decide “in principle” on legal costs, the change to Rule 118.6, 2<sup>nd</sup> sentence, clarifies that a preliminary estimate need not be submitted in all cases. See also new Rule 104(j) which provides that the interim conference shall enable the judge-rapporteur to order the parties to submit a preliminary estimate during the interim procedure.</p>  |
| Rule 118.9<br>(new<br>numbering) | <p><b><u>9.</u></b> The orders of the Court referred to in paragraphs 1, <b><u>2</u></b> and 3(a) shall be enforceable on the defendant only after the claimant has notified the Court which part of the orders he intends to enforce, a certified translation in accordance with Rule 7.2, where applicable, into the official language of a Contracting Member State in which the enforcement shall take place has been provided by the claimant and the said notice has been served on the defendant by the Registry. The Court may subject any order or measure to a security to be given by the successful party to the unsuccessful party as</p> | <p>This change provides that a claimant wishing to enforce a decision must provide, where applicable, a translation of the decision in the official language of the Contracting Member State in which the enforcement shall take place. As an exception to the general rule that translations need not be certified (Rule 7.2), a translation under Rule 118.9 must be certified by the translator.</p>  |

| Rule          | New text   | Explanatory remarks  |
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|               | determined by the Court in accordance with Rule 352.   |  |
| Rule 150.1    | 1. A cost decision may be the subject of separate proceedings following a decision on the merits and, if applicable, a decision for the determination of damages. The cost decision shall cover costs incurred in the proceedings by the Court such as costs for simultaneous interpretation and costs incurred pursuant to Rules 180.3, 185.7, 188, 201 and 202 and, subject to the Rules 152 to 156, the costs of the successful party including Court fees paid by that party [Rule 151(d)]. Costs for interpretation and translation which is necessary for the judges of the Court in order to conduct the case in the language of proceedings are borne solely by the Court. | Legal costs including the Court fees and other expenses are born by the unsuccessful party in accordance with Article 69(1) of the Agreement. The Court decides on these costs under Rule 150.<br>New Rule 150.1, 3 <sup>rd</sup> sentence, clarifies that, where interpretation and translation exceptionally is necessary for the judges of the Court to conduct the case in the language of proceedings, the costs of such interpretation and translation shall not be the subject of the cost decision, but shall be considered as overhead expenses of the Court, which shall be covered by the Court's budget. See also the explanatory remarks to Rule 109.5. |
| Rule 180.2    | 2. Where a party has lodged an Application for the hearing of a witness in person, The Court shall make the summoning of the a witness conditional upon the deposit by the party relying on the witness of a sum sufficient to cover the expenses referred to in paragraph 1.  | This change clarifies that a party shall always make a deposit when it is relying on a witness and expenses occur (for travelling, stay or loss of income, cf. Rule 180.1(a) and (b)).   |
| Rule 180.3    | 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 180.3 has been deleted; Rule 180.2 applies.   |
| Rule 192.2(d) | 2. The *Application for preserving evidence shall contain:<br>(a) particulars in accordance with Rule 13.1(a) to (i);<br>(b) a clear indication of the measures requested [Rule 196.1], including the exact location(s) (where they are known or suspected with good reason) of the evidence to be preserved;<br>(c) the reasons why the proposed measures are needed to preserve relevant evidence; and<br>(d) the facts and, if available, evidence relied on in support of the Application.<br>...  | The deletion of the words "if available" clarifies that a party must provide the Court with facts and evidence in support of an Application to preserve evidence, leaving it to the Court in the particular case to assess whether the requirement of Article 60(1) UPC ("reasonably available evidence") has been complied with.  |
| Rule 196.6    | 6. The Court may order the applicant to provide adequate security  | This change clarifies that – despite the general rule that the Court shall order   |

| Rule       | New text   | Explanatory remarks   |
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|            | for the legal costs and other expenses and compensation for any injury incurred or likely to be incurred by the defendant which the applicant may be liable to bear. The Court shall do so where the order to preserve evidence was made without the defendant having been heard, <b>unless there are special circumstances not to do so</b> . The Court shall decide whether it is appropriate to order the security by deposit or bank guarantee.  | adequate security when it orders measures to preserve evidence without hearing the other party ( <i>inaudita</i> ) – such security need not be provided in special circumstances (if e.g. no damage can occur or only a sample of an inexpensive mass-product is sought).   |
| Rule 198.1 | 1. The Court shall ensure that an order to preserve evidence is revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if, within a time period not exceeding 31 calendar days or 20 working days, whichever is the longer, from the date <b>specified in or the Court's order with due account to the date where the Report referred to in Rule 196.4 shall be presented</b> , the applicant does not start proceedings on the merits of the case before the Court. | This change clarifies the beginning of the time period at the end of which the order to preserve evidence is revoked or otherwise ceases to have effect at the request of the defendant, if no proceedings on the merits are brought. It is the starting date specified in the Court's order. While specifying the starting date, the Court shall take into account the date when the written report (Rule 196.4) is presented by the person who has carried out the measure. See also Article 50(6) TRIPS Agreement and Article 7(3) Directive 2004/48/EC. |
| Rule 199.1 | 1. The Court may, <b>either of its own motion (but only after hearing the parties) or</b> on a reasoned request by a party, order an inspection of products, devices, methods, premises or local situations <i>in situ</i> . For the protection of confidential information the Court may order that any of the above be disclosed only to certain named persons and subject to appropriate terms of non-disclosure in accordance with Article 58 of the Agreement.  | In line with the principle of party disposition, this change ensures that the Court does not take the initiative to order inspections of its own motion; this is in conformity with Article 60(3) UPCA which only provides for an inspection order “at the request of the applicant”.   |
| Rule 200.2 | 2. Rules 192 to 197 and 198- <b>2</b> shall apply <i>mutatis mutandis</i> .  | This change clarifies that also paragraph 1 of Rule 198 shall apply <i>mutatis mutandis</i> to orders to freeze assets. The party seeking an order to freeze assets should therefore start proceedings on the merits of the case within the time period determined in accordance with Article 60(8) UPCA which is applicable by analogy (see Article 61(2) UPCA).   |
| Rule 201.1 | 1. Without prejudice to the possibility for parties or parties' experts to carry out experiments, the Court may, <b>of its own motion (but only after hearing the parties) or</b> on a reasoned request by a party, order an experiment to prove a statement of fact for the purpose of  | In line with the principle of party disposition, this change ensures that the Court does not take the initiative to order of its own motion that an experiment be carried out.  |

| Rule       | New text  | Explanatory remarks  |
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|            | proceedings before the Court.   |  |
| Rule 205   | Provisional measures are treated by way of <del>summary</del> proceedings before the Court of First Instance which shall consist of the following stages:<br>(a) a written procedure; and<br>(b) an oral procedure, which may include an oral hearing of the parties or of one of the parties.  | This change provides that a special type of proceedings applies when the Court is examining applications for provisional measures, both at first and second instance. The applications are treated by way of “summary proceedings” which – with regard to the urgency – do not contain an interim procedure (Rule 205) and follow special Rules (i.e. in Rule 209, 211.2).   |
| Rule 211.5 | 5. The Court may order the applicant to provide adequate security for appropriate compensation for any injury likely to be caused to the defendant which the applicant may be liable to bear in the event that the Court revokes the order for provisional measures. The Court shall do so where interim measures are ordered without the defendant having been heard <del>unless there are special circumstances not to do so</del> . The Court shall decide whether it is appropriate to order the security by deposit or bank guarantee. The order shall be effective only after the security has been given to the defendant in accordance with the Court’s decision. | This change clarifies that, where the Court orders provisional measures without hearing the other party ( <i>inaudita</i> ), it shall as a general rule order adequate security for appropriate compensation for any injury likely to be caused to the party which has not been heard. However, such security need not be provided if there are special circumstances not to do so (if e.g. no damage can occur). See also Rule 196.6. |
| Rule 212.1 | 1. The Court may only order provisional measures without the defendant having been heard, in <del>particular cases</del> where any delay is likely to cause irreparable harm to the applicant <del>or where there is a demonstrable risk of evidence being destroyed</del> . Rule 197 shall apply <i>mutatis mutandis</i> .   | This change aligns the wording of Rule 212.1 with Article 60(5) UPCA (applicable by analogy to provisional measures via Article 62(5) UPCA).   |
| Rule 213.1 | 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 <del>provided for in the Court’s order</del> , not exceeding 31 calendar days or 20 working days, whichever is the longer, from the date <del>of specified in</del> the Court’s order, the applicant does not start proceedings on the merits of the case before the Court.   | In line with the change to Rule 198.1, this change clarifies that the Court should specify a starting date in its order, to enable parties to know from which date the time period for requesting revocation of provisional measures is running.   |

| Rule       | New text   | Explanatory remarks  |
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| Rule 220.2 | <p>2. Orders other than those referred in Rule 220.1 and Rule 97.5, shall be the subject of an appeal together with the appeal of the decision or may be appealed with the leave of the Court of First Instance within 15 days of service of the Court's decision to that effect. In the event of a refusal of the Court of First Instance to grant leave within 15 days of <del>its</del> the order of one of its panels, <del>an application</del> a request for a discretionary review to the Court of Appeal may be made <del>pursuant to Rule 221.*</del> within 15 calendar days from the end of that period. Rule 333.3 shall apply <i>mutatis mutandis</i>. The request shall set out the matters referred to in Rule 221.2.</p> <p>The President of the Court of Appeal shall assign the request for a discretionary review to the standing judge (Rule 345.5 and .8). The standing judge may deny the request without giving reasons. If the standing judge allows the request after having heard the other party, the President of the Court of Appeal shall assign the review to a panel of the Court of Appeal for a decision. The Court of Appeal may consult the presiding judge or the judge rapporteur of the panel of the Court of First Instance which has refused the leave order.</p> | <p>Under Article 73(1) UPCA, an appeal against a decision of the Court of First Instance may be brought before the Court of Appeal where a party has been unsuccessful, in whole or part, in its submissions. In addition, under Article 73(2)(a) UPCA, certain privileged orders of the Court, namely the orders referred to in Articles 49(5), 59 to 62, 67 (including orders to produce evidence and to inspect premises or orders for provisional measures which have a particular impact on the parties) may also be appealed. By contrast, under Article 73(2)(b) UPCA, other procedural orders which are not privileged in this way may in principle only be appealed together with the appeal against the final decision of the Court of First Instance or where the "Court" grants leave to appeal. This latter situation is addressed in Rule 220.2.</p> <p>Most of the procedural orders which have not been privileged under Article 73(2)(a) UPCA do not touch upon basic interests of the parties. In the interest of a speedy and efficient procedure, their control should in principle, according to the logic of the UPCA, be dealt with together with the appeal against the final decision. However, some of the orders which have not been privileged may in certain cases touch basic interests of parties, and a consistent application and interpretation of the Rules governing such orders seems desirable. To achieve this, these orders may therefore be appealed where the "Court grants leave".</p> <p>The issue is whether the leave procedure is</p> <ul style="list-style-type: none"> <li>- a means for the independent Court of First Instance to seek guidance from the Court of Appeal on certain procedural questions, or</li> <li>- a mechanism of control of proceedings pending before the Court of First Instance by the Court of Appeal.</li> </ul> <p>On the one side, the possibility to appeal against each procedural decision of the Court of First Instance might, where systematically done, have a negative impact on serenity of proceedings. On the other side, not allowing the parties to address themselves to the Court of Appeal, where leave has been refused by the Court of First Instance, might mean that an important way to guarantee uniform procedures would be missing.</p> <p>In this context new Rule 220.2 sets out an approach designed to give the Court of Appeal means to effectively control procedural orders of the Court of First Instance but at the same time allowing the Court of Appeal to limit its intervention to cases of particular importance thus avoiding systematic appeals in this field which would</p> |

| Rule       | New text   | Explanatory remarks  |
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|            |  | <p>risk paralyzing proceedings.</p> <p>Where the Court of First Instance has not given leave to appeal, a party adversely affected by the order may request a discretionary review by the Court of Appeal within the prescribed time limit. In the request for discretionary review, the party shall set out the matters referred to in Rule 221.2, i.e. the reasons for the request and the necessary facts, evidence and arguments relied on. The review is discretionary because the Court of Appeal may or may not admit the review allowing the Court of Appeal to step in only in those cases of importance that merit a decision by the Court of Appeal on pending procedural issues before the Court of First Instance. If the review is admitted by the standing judge, a panel of the Court of Appeal decides on the order after having heard the other party. The panel may consult the panel in the Court of First Instance (its presiding judge or its judge-rapporteur) which has given the order.</p> <p>It is understood that, where the first instance procedural order is given by the judge-rapporteur, the party adversely affected must request first an early review by the panel of the Court of First Instance panel (Rules 102.2 and 333.1). Therefore, an application for a discretionary review by the Court of Appeal applies to orders given or upheld by the first instance panel.</p> |
| Rule 221.1 | <p>1. A party adversely affected by a decision referred to in Rule 157 <del>or a refusal to grant leave to appeal an order pursuant to Rule 220.2</del> may lodge an Application for leave to appeal to the Court of Appeal within 15 days of service of the decision of the Court refusing leave to appeal.</p> | <p>In cases falling under new Rule 220.2 enabling an unsuccessful party to request a discretionary review by the Court of Appeal, Rule 221.1 on the Application for leave to appeal to the Court of Appeal against cost decisions should not apply .</p>   |
| Rule 221.3 | <p>3. The <del>President of the Court of Appeal shall assign the</del> Application for leave to appeal <del>shall be assigned</del> to the standing judge (Rule 345.5 and .8) who shall decide on granting leave to appeal.</p>  | <p>In line with the changes made to Rules 17.2, 38(a), 48, 92, 230.2 and 253.2, the assignment of an Application for leave to appeal to the standing judge of the Court of Appeal shall be made by the Registrar in accordance with Rule 345..</p>   |
| Rule 230.2 | <p>2. The <del>President of the Court of Appeal</del> action shall be assigned <del>the</del> <del>action</del> to a panel according to Rule 345.3 and .8.</p>   | <p>Similarly, assignment of cases to the panels of the Court of Appeal will follow the action-distribution-scheme provided for in Rule 345.</p>  |
| Rule 253.2 | <p>2. <del>The President of the Court of Appeal</del> The action shall be assigned <del>the</del> <del>action</del> to a panel consisting of three legally qualified judges. <del>He</del> The President of the Court of Appeal may order that</p>   | <p>See above Rules 17.2, 38(a), 48, 92, 221.3, 230.2.</p>  |

| Rule                | New text   | Explanatory remarks   |
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|                     | judges of the Court who participated in taking the decision to be reviewed shall not sit on the panel.   |   |
| Rule 254.1(a)       | 1. After hearing the parties the panel may make:<br>(a) a decision to reject the Application for rehearing as not allowable; such a decision shall be by a majority vote of the judges on the panel. <i>It need not contain any reasons;</i><br>...  | In accordance with Article 77 UPCA, decisions and orders shall be reasoned; this should also apply to a decision to reject an Application for rehearing.  |
| Rule 262<br>Heading | Public access to the register  | The new heading expresses that the focus of Rule 262 is on public access to the register.   |
| Rule 262.1          | 1. Without prejudice to Articles 58 and 60(1) of the Agreement and subject to Rule 190.1, Rule 194.5, Rule 196.1, Rule 197.4, Rule 199.1, Rule 207.6, Rule 209.4, Rule 315.2 and Rule 365.2, written pleadings, written evidence, decisions and orders lodged at or made by the Court and recorded by the Registry shall be made available to the public <i>for on-line consultation</i> , unless a party has requested that certain information be kept confidential and provided specific reasons for such confidentiality. The Registrar shall ensure that information subject of such a request shall not be made available pending an Application pursuant to Rule 262.2. Where a party 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. <i>the Court makes such an order. Written pleadings and written evidence shall not be made available for public access until 14 days after they are lodged.</i> | The references which have been added at the beginning of Rule 262.1 ensure that specific provisions on confidentiality both in the UPCA and in the Rules of Procedure remain outside the scope of the new scheme laid down in Rule 262.1, which is as follows:<br>- as a general rule, written pleadings and written evidence lodged by the parties as well as decisions and orders of the Court shall be public, if specific rules for confidentiality do not apply;<br>- where a party requests that certain information be kept confidential, that information shall be excluded from public access by the Registrar; the party shall provide specific reasons for its request as well as redacted copies of the relevant parts. |
| Rule 262.2          | 2. A party member of the public may lodge an Application with the Court for an order that <i>certain any</i> information excluded from public access pursuant to Rule 262.1 may be made available to the applicant. <i>should be excluded from public access or restricted to certain named persons on the grounds set out in and in accordance with Article 58 of the Agreement.</i>  | New Rule 262.2 provides that a member of the public wishing to have access to information which has been excluded from public access may lodge an Application that the excluded information be made available to it. Only in this case the Court will have to make a decision on the confidentiality issue.   |
| Rule 262.3          | 3. The *Application shall contain:<br>(a) details of the information alleged to be confidential, so far as   | New Rule 262.3 lays down the requirements relating to the contents of the Application that excluded information be made available. The member of the public   |

| Rule                               | New text  | Explanatory remarks   |
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|                                    | <p>possible or otherwise to be restricted;</p> <p>(b) the grounds upon which the applicant believes the reasons for confidentiality should not be accepted claims the information should be restricted; and</p> <p>(c) the purpose for which the information is needed details of the persons to be prohibited from access to the information or conversely to be allowed access.</p>   | shall in particular set out the reasons why confidentiality should not be accepted (Rule 262.3(b)) and the purpose for which the information is needed (Rule 262.3(c)).   |
| Rule 262.4                         | 4. The Court shall invite written comments from any other party the parties prior to making any order.  | The change to Rule 262.4 clarifies that the Court shall offer the parties the opportunity to comment on the Application described in Rule 262.2 and .3.   |
| Rule 262.5                         | 5. The Court shall allow the Application unless legitimate reasons given by the party concerned for the confidentiality of the information clearly outweigh the interest of the applicant to access such information. Pending a decision of the Court on the Application the information alleged to be confidential shall not be accessible on the register.  | New Rule 262.5 provides that the Court shall allow access to the excluded information. This shall not be the case where the party concerned can provide legitimate reasons for the confidentiality which clearly outweigh the interest of the member of the public to gain access.  |
| Rule 266.5                         | 5. The Court may stay the proceedings. Where it does not stay proceedings, it shall not give judgement until the CJEU has given a ruling on the question.   | This change ensures compliance with EU-law and Article 38(2) UPC Statute. The express possibility not to stay proceedings ("Unless otherwise decided by the Court") has been deleted. However, under Article 267 TFEU, a stay of the entire proceedings is not compulsory. Therefore, the new wording of Rule 266.5 clarifies that the UPC cannot give its judgement before the CJEU has ruled on the request and that the UPC is not forced to automatically cease activities and stay its proceedings as soon as a request is sent to the CJEU. |
| Rule 267, 2 <sup>nd</sup> sentence | Where an action for damages has been brought against a Contracting Member State pursuant to Article 22 of the Agreement the President of the Court of Appeal, shall as soon as practicable following a request from the competent authority in the Contracting Member State, provide the competent authority with copies of all pleadings, evidence, decisions and orders available to the Court in its proceedings that are relevant to the action for damages. The President of the Court of Appeal shall have an opportunity to comment. | There could be instances where a national authority hearing an action for damages under Article 22 UPCA could usefully be informed by the President of the Court of Appeal of particular circumstances of relevance for the action for damages brought before the national authority. In addition to transmittal of pleadings, evidence, decisions and orders, the change to Rule 267, 2 <sup>nd</sup> sentence, ensures that the President of the Court of Appeal shall have an opportunity to comment in such cases.                            |
| Heading of Section 1 in            | SERVICE WITHIN THE CONTRACTING MEMBER STATES OR BY AGREEMENT  | The Heading of Part 5, Chapter 2 has been changed to better reflect the contents of the Chapter.  |

| Rule              | New text   | Explanatory remarks  |
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| Part 5, Chapter 2 |  |  |
| Rule 270.1        | <p>1. <del>The rules for service of the Statement of claim set out in this Section and the Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters (“the EU Service Regulation”) shall apply. whenever the defendant has provided an electronic address for the purpose of service of the proceedings under Rule 271.1 or 2 or has an address for service for the purpose of any one of the modes of service here provided within the territory of any of the Contracting Member States.</del></p>  | <p>New Rule 270.1 clarifies that Regulation 1393/2007/EC on the service in the MS of judicial and extrajudicial documents in civil or commercial matters (“EU Service Regulation”) is applicable to the service of documents also within the Contracting MS, alongside the Rules in the UPC’s Rules of Procedure. While the Rules of Procedure may establish a system of service of documents which “expedite or further simplify” the service mechanisms in the Service Regulation (see Article 20(2) EU Service Regulation), certain fundamental rights of the parties under Union law which are connected to service of documents must nevertheless always be respected (in particular the rights of parties under Articles 8, 9 and 19 EU Service Regulation). This application of the EU service Regulation leads to several changes in Rule 271.</p> |
| Rule 270.2 (old)  | <p><del>2. A Statement of claim, irrespective of where it is lodged, may be served in the manner here provided on a defendant in the territory of any of the Contracting Member States.</del></p>  | <p>This provision is superfluous and has been deleted.</p>   |
| Rule 271.1        | <p>1. The Registry may serve the Statement of claim on the defendant at an electronic address which the defendant has provided for the purpose of service in the proceedings <del>and shall inform the defendant of the rights under Rule 271.7</del> provided that the service is effected using appropriately high technical standards guaranteeing</p> <ul style="list-style-type: none"> <li>(a) the identity of the sender</li> <li>(b) the safe transmission and</li> <li>(c) the possibility for the addressee to take notice of the documents.</li> </ul> <p>A list of secure identification and transmission standards is contained in Annex [X] of the Rules of Procedure.</p> | <p>New Rule 271.1 defines service at an electronic address by referring to a set of “appropriately high technical standards” to be included in an Annex of the Rules of Procedure. These standards will in particular guarantee the identity of the sender, the safe transmission and the possibility for the addressee to take notice of the documents. According to Article 44 UPCA, the Court shall make best use of electronic procedures. Where possible, the service shall therefore be effected by secure electronic means.</p> <p>The duty of the Registry to inform the defendant of his rights to refuse service has been deleted from Rule 271.1 and is now provided for in Rule 271.7.</p>   |
| Rule 271.2        | <p>2. <del>The Registry may, under the conditions of paragraph 1(a) to (c) serve the Statement of claim where:</del></p> <ul style="list-style-type: none"> <li>(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</li> </ul>  | <p>New Rule 271.2 refers to the technical standards mentioned in Rule 271.1(a) to (c) when the Statement of claim is served at an electronic address of the defendant’s representative.</p>  |

| Rule          | New text   | Explanatory remarks  |
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|               | (b) a representative acting for the defendant has notified the Registry or the claimant that he accepts service of the Statement of Claim on behalf of the defendant at an electronic address<br><b>the Registry may serve the Statement of Claim</b> at the electronic address of that representative.  |  |
| Rule 271.4    | <p>4. Where service by means of electronic communication cannot be effected, the Registry shall serve the Statement of claim on the defendant by:</p> <p>(a) <b>any other method foreseen in the EU Service Regulation, in particular by registered letter according to Article 14 of that regulation</b> with advice of delivery;</p> <p>(b) <b>fax provided that the requirements of paragraph 1 (a) to (c) are observed;</b> or</p> <p>(c) <b>where service in accordance with paragraphs 4(a) and 4(b) could not be effected any method permitted by the law of the EU Member State where service is to be effected or authorised by the Court under Rule 275.</b></p> | <p>Where the service cannot be effected electronically, new Rule 271.4(a) refers more broadly to “any other method” of service (other than electronic) as foreseen in the EU Service Regulation. The most common other method is expressly mentioned: registered letter with advice of delivery as referred to in Article 14 of the EU Service Regulation. In addition, as an alternative, service by fax is provided for in Rule 271.4(b) if the technical standards applicable to electronic transmission are complied with.</p> <p>Finally, as a last resort – where service could not be effected by registered letter or by fax – new Rule 271.4(c) provides that service may be effected either by any method permitted by the law of the EU MS where service is to be effected or by any method authorised by the Court under Rule 275.</p> |
| Rule 271.5(a) | <p>5. Service under Rule 271.4(a) shall be effected at the following place:</p> <p>(a) where the defendant is a company or other legal person, at its statutory seat, central administration or principal place of business within the Contracting Member States or at any place within the Contracting Member States where the company or other legal person has a <b>permanent or temporary</b> place of business;</p> <p>...</p>  | <p>This change to Rule 271.5(a) clarifies that service on a defendant can be effected at any place within the Contracting MS where the company or legal person has a place of business – whether permanent or temporary place – allowing in particular service at trade fairs.</p>   |
| Rule 271.6(b) | <p>6. Subject to Rule 272.2 and Rule 272.3, a Statement of claim served in accordance with paragraphs 1 to 5 is deemed to be served on the defendant:</p> <p>...</p> <p>(b) where service takes place by registered letter with advice of delivery such letter shall be deemed to be served on the addressee on the tenth day following posting unless <b>it has failed to reach the</b></p>   | <p>This change clarifies that where service is effected by registered letter and the advice of delivery has not been returned a fiction that the letter has been served on the addressee is not justified.</p> <p>In addition, a reference to Rule 271.7 has been inserted to clarify that service is not deemed effective when the defendant is entitled to refuse service according to Article 8 of the EU Service Directive.</p>  |

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|            | <p><a href="#">addressee, or the advice of delivery has not been returned or has in fact reached him on a later date. Such service shall, except where paragraph 7 applies, be deemed effective even if acceptance of the letter has been refused.</a></p>  |   |
| Rule 271.7 | <p>7. Where the defendant <a href="#">would be</a> is entitled to refuse service <a href="#">if according to Article 8 of the EU Service Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("the EU Service Regulation") were applicable</a> and where he has notified the refusal to the Register within one week of the attempted service together with an indication of the language(s) he understands, the Registry shall inform the claimant. The claimant shall provide to the Registry translations of at least the Statement of claim and the information required in Rule 13.1(a) to (p) in a language provided for by Article 8(1)(a) or (b) of the EU Service Regulation. The Statement of claim shall not be deemed served in accordance with this Chapter, and time limits shall not run, until service of said translations by the Registry upon the defendant in accordance with these Rules. <a href="#">For the determination of the date of service Articles 8(3) and 9 of the EU Service Regulation apply.</a><br/> <a href="#">When serving the Statement of claim the defendant shall be informed of these rights.</a></p> | <p>In Rule 271.7, a new formulation at the outset clarifies that the EU-Service Regulation is applicable. The defendant may in some cases have a right to refuse service as provided for in Article 8 of the EU Service Regulation (e.g. missing translation). Importantly for the claimant, Rule 217.7, 4<sup>th</sup> sentence, ensures that the claimant may benefit from the date on which the service was effected (even without the necessary translation), so that e.g. limitation periods may be interrupted. Finally, the Registry's duty to inform the defendant of his rights under Article 8 of the EU Service Regulation is now provided for in the last sentence of Rule 217.7.</p>   |
| Rule 286.1 | <p>1. A representative pursuant to Article 48(1) of the Agreement shall lodge at the Registry a certificate that he is a lawyer authorised to practise before a court of an <a href="#">Contracting EU</a> Member State. A lawyer within the meaning of Article 48(1) of the Agreement is a person who is authorised to pursue professional activities under a title referred to in Article 1 of Directive 98/5/EC <a href="#">and by way of exception a person with equivalent legal professional qualifications who, owing to national rules, is permitted to practice in patent infringement and invalidity litigation but not under such title.</a> In subsequent actions the representative may refer to the certificate</p>   | <p>In Rule 286.1, 1<sup>st</sup> sentence, the addition of "EU" clarifies that also lawyers authorised to practice before courts of EU MS which are not – or not yet – Contracting MS to the UPCA may lodge the certificate.</p> <p>In Rule 286.1, 2<sup>nd</sup> sentence, the term "lawyer" is defined by a reference to Directive 98/5/EC. The amendment also addresses a specific situation in Sweden and Finland: a further specific category of other persons is defined by way of exception, whereby emphasis is on</p> <ul style="list-style-type: none"> <li>• the equivalence of their "<a href="#">legal</a> professional qualifications" to lawyers;</li> <li>• national rules which permit that these persons practice in patent infringement</li> </ul> |

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|            | previously lodged.  | <p>and invalidity litigation like any other lawyer but not under the title governed by the directive.</p> <p>These additional persons should fall under Article 48(1) UPCA. The distinction between lawyers under Article 48(1) UPCA, Rule 286.1, and European patent attorneys with appropriate qualifications under Article 48(2) UPCA, Rule 286.2, remains untouched.</p> |
| Rule 287.1 | 1. Where a client seeks advice from a lawyer <b>or a patent attorney</b> he has instructed in a professional capacity, whether in connection with proceedings before the Court or otherwise, then any confidential communication (whether written or oral) between them relating to the seeking or the provision of that advice is privileged from disclosure, whilst it remains confidential, in any proceedings before the Court or in arbitration or mediation proceedings before the Centre.  | This change clarifies that lawyers and patent attorneys advising a client may enjoy an attorney-client privilege.  |
| Rule 287.2 | 2. This privilege applies also to communications between a client and a lawyer <b>or patent attorney</b> employed by the client and instructed to act in a professional capacity, <b>whether in connection with proceedings before the Court or otherwise and a client and a patent attorney (including a patent attorney employed by the client) who is instructed in his professional capacity to advise on patent matters.</b>   | The wording of Rule 287.2 has been aligned with the wording of Rule 287.1, to clarify that privilege extends to lawyers and patent attorneys employed by a client.   |
| Rule 287.6 | <p>6. <b>For the purpose of Rules 287 and 288</b></p> <p>(a) the expressions “lawyer” shall mean a person as defined in Rule 286.1 and any other person who is qualified to practise as a lawyer and to give legal advice under the law of the state where he practises and who is professionally instructed to give such advice.</p> <p>(b) the expression “patent attorney” shall <b>mean include</b> a person who is recognised as eligible to give advice under the law of the state where he practises in relation to the protection of any invention or to the prosecution or litigation of any patent or patent application and is professionally consulted to give such advice.</p> | This change simply divides in sub-paragraphs (a) and (b) the definitions of “lawyer” and “patent attorney” and clarifies that the definitions are also of relevance for Rule 288.  |

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| Rule 287.7  | 7. The expression “patent attorney” shall also include a professional representative before the European Patent Office pursuant to Article 134(1) European Patent Convention.  | As it is Article 134(1) EPC which contains the basic delimitation of the group of persons concerned (“whose names appear on a list maintained ... by the EPO”), the broad reference to Article 134 EPC is made more specific by a reference to paragraph 1 of Article 134 EPC.   |
| Rule 292.1  | 1. For the purposes of Article 48(4) of the Agreement, the term “patent attorneys” assisting a representative referred to in Article 48(1) and/or Article 48(2) of the Agreement shall mean persons meeting the requirements of Rule 287.6(b) or Rule 287.7 and practising in a Contracting Member State.  | This change is consequential to the change to Rule 287.6.  |
| Rule 295(j) | The Court may stay proceedings:<br>...<br>(j) to give effect to <b>Union law, in particular</b> the provisions of Regulation 1215/2012 and the Lugano Convention;<br>...   | New Rule 295(j) broadens the reference to Union law as a stay may be required pursuant to other rules of Union law than those mentioned (e.g. on the basis of Regulation 1346/2000/EC on insolvency proceedings).  |
| Rule 311.4  | 4. If proceedings are continued, the effect of a decision of the Court as regards the insolvent party in the action shall be determined by the <b>said</b> law <b>applicable to the insolvency proceedings</b> .   | The cross-reference in Rule 311.4 (“said law”) has been clarified. That reference spans from Rule 311.1, 1 <sup>st</sup> sentence (which refers to “the law applicable to the insolvency proceedings”), to Rule 311.4. Instead of the reference to “said law”, the full reference to “the law applicable to the insolvency proceedings” is now included in Rule 311.4. |
| Rule 316.1  | 1. The judge-rapporteur or the presiding judge may, of his own motion (but only after consulting the parties) or on a reasoned request from a party, invite any person concerned by the outcome of the dispute to inform the Court, within a period to be specified, whether he wishes to intervene in the proceedings. <b>A party who contends that the person should be bound by the decision in the action even if he refuses to intervene shall give reasons for this contention in its reasoned request. In such a case the invitation must include these reasons and must state that the party making the request contends that the person should be bound by the decision in the action even if that person refuses to intervene.</b> | The deleted text has been moved to Rule 316a(1).   |
| Rule 316.4  | <b>4. If the person invited to intervene pursuant to Rule 316.1 does not</b>   | The deleted text has been moved to Rule 316a(2).   |

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|           | <p>intervene but wishes to contend that he should not be bound by the decision in the action, he shall lodge a statement to that effect within the one month period referred to in Rule 316.2. If no such statement is lodged within the time specified he shall be bound by the decision in the action as between himself and any other party to the action and shall not be entitled to argue that the decision in the action was wrong or that the inviting party did not conduct the proceedings leading to the decision in the action properly. If a statement is lodged within the time specified then the Court shall decide the application having heard the parties and the person invited to intervene. If the Court rejects the application, the person invited to intervene may present his Application to intervene within one month of service of the Court's decision rejecting the application. Rule 316.2 shall apply.</p>  |  |
| Rule 316a | <p><b>Forced intervention</b></p> <p>1. A party who contends that the person should be bound by the decision in the action even if he refuses to intervene shall give reasons for this contention in its reasoned request. In such a case the invitation must include these reasons and must state that the party making the request contends that the person should be bound by the decision in the action even if that person refuses to intervene.</p> <p>2. If the person invited to intervene pursuant to Rule 316.1 does not intervene but wishes to contend that he should not be bound by the decision in the action, he shall lodge a statement to that effect within the one month period referred to in Rule 316.2. If no such statement is lodged within the time specified he shall be bound by the decision in the action as between himself and any other party to the action and shall not be entitled to argue that the decision in the action was wrong or that the inviting party did not conduct the proceedings leading to the decision in the action properly. If a statement is lodged within the time specified then the Court shall</p> | <p>New Rule 316a takes up the wording of Rule 316.1, 2<sup>nd</sup> sentence, and .4 which relate to cases where a party is contending that a person (who is not party to the proceedings) should be bound by the decision of the Court even if that person refuses to intervene ("forced intervention").</p> <p>In Rule 316a.2, 3<sup>rd</sup> sentence, it is clarified that the Court shall decide whether the person invited to intervene (but not wishing to intervene and having lodged a statement to that effect) shall be bound by the decision.</p> <p>Similarly, it is clarified in Rule 316a.2, 4<sup>th</sup> sentence that in this sentence the Court is not deciding on an "application" to intervene. Where the Court orders the forced intervention the person concerned may still lodge an Application to intervene.</p> <p>Finally, Rule 316a, 6<sup>th</sup> sentence, provides that a person who has been invited to intervene fails to present an Application to intervene, he shall be bound by the decision in the action.</p> |

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|            | decide whether the person invited to intervene shall be bound having heard the parties and the person invited to intervene. If the Court so decides, the person invited to intervene may present an Application to intervene within one month of service of the Court's decision. Rule 316.2 shall apply. If the person invited to intervene fails to present such an application, he shall be bound by the decision in the action.   |  |
| Rule 320.2 | 2. The *Application for Re-establishment of rights shall be lodged with the Registry <del>as for the relevant panel</del> within one month of the removal of the cause for non-observance of the time-limit but in any event within <del>three</del> six months of the non-observed time-limit. Within that time-limit a fee for a Request for Re-establishment of rights fixed under Rule 370 shall be paid.   | The first change clarifies that the Application for re-establishment of rights shall be lodged at the Registry (see Rule 4.1). In addition, as the absolute time limit of 3 months for lodging the Application irrespective of any knowledge of the person concerned seems very short, it is more equitable to provide for a 6 month time period in these exceptional cases. |
| Rule 340.1 | 1. In the interests of the proper administration of justice and of avoiding inconsistent decisions, where more than one action concerning the same patent (whether or not between the same parties) is pending before:<br>(a) different panels (whether in the same or different divisions); or<br>(b) different panels of the Court of Appeal,<br>the panels may by agreement, at any time, after hearing the parties, order that two or more actions shall, on account of the connection between them, be heard together. Article 33 of the Agreement shall be respected. | The change to Rule 340.1 clarifies that Article 33 UPCA (which lays down the rules on the competence of the divisions of the Court of First Instance) must be complied with also in cases where panels of different divisions are considering to join two or more pending actions relating to the same patent.   |
| Rule 341.4 | 4. The Presidium may determine the presiding judge of a panel. In the absence of such a determination by the Presidium and unless otherwise agreed by the panel the most senior judge shall be the presiding judge.   | Since the task of determining the presiding judges of the panels concerns the self-administration of the Court, it is appropriate to entrust this task to the Presidium; focus should be in particular on the experience of the presiding judges, not necessarily on a judge's seniority.  |
| Rule 342.1 | 1. The duration of judicial vacations shall be fixed by the President of the Court of Appeal, on a proposal from the Presidium. The dates and times of the sittings of the Court shall be decided by the presiding judge of the panel of the <del>local or regional</del> division in   | This change to Rule 342.1, 2 <sup>nd</sup> sentence, clarifies that the panel (and not the division) should decide on the dates and times of its sittings.   |

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| Rule 343.2            | <p>2. The presiding judge of a panel local or regional division for an action before it, the President presiding judge of the Court section of First Instance the central division for an action pending before it or the President of the Court of Appeal for an action pending before the Court of Appeal may of its own motion or on application by a party, after hearing the parties [Rule 264]:</p> <ul style="list-style-type: none"> <li>(a) direct that a particular action be given priority and that time limits provided for in these Rules be shortened;</li> <li>(b) defer an action to be dealt with later, in particular with a view to facilitating an amicable settlement of the dispute.</li> </ul>   | This change clarifies that it is the presiding judge of a panel who shall decide on the order in which the actions assigned to his panel are to be dealt with; directions from the presiding judge of the division would interfere with the independence of the judges of the panel to which a case is assigned.  |
| Rule 345.1            | 1. The presiding judge of each local or regional division or section of the central division (being the judge in the division or section appointed by the Presidium as the presiding judge of the division or section) shall, after consultation, allocate the legally qualified judges assigned to his division or section to its panels.   | This change clarifies that the presiding judge of a division shall consult the judges of the division concerning the allocation of legally qualified judges to the panels.  |
| Rule 346.1, .2 and .3 | <p><del>1. If a judge of the Court of First Instance, during his term of office, does not respect the obligations arising from his office, pursuant to Article 7(1) and (2) of the Statute, the President of the Court of the First Instance, after hearing the judge, may formally in writing put the judge on notice of such failure. If the judge continues not to fully respect the obligations of his office, the President of the Court of First Instance shall ask the Presidium to decide on the consequences of such failure.</del></p> <p><del>2. Paragraph 1 shall apply to a judge of the Court of Appeal. The President of the Court of Appeal shall perform the functions attributed in paragraph 1 to the President of the Court of First Instance.</del></p> | Paragraphs 1, 2 and 3 of Rule 346 which relate to the exceptional instance of misconduct of a judge and disciplinary liability have been deleted. Such provisions should not be included in the Rules of Procedure dealing with the procedure for the litigation of patents. Instead, an examination to include similar provisions in regulations relating to judges' service has been proposed to the Preparatory Committee's Working Group on Human resources and Training. |

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|                   | <u>3. If a judge of the Court, after having ceased to hold office, does not behave with integrity and discretion as regards the acceptance of appointments or benefits, the President of the Court of First Instance or the President of the Court of Appeal may ask the Presidium to decide on the consequences of such behaviour.</u>  |   |
| Rule 354.1        | 1. Subject to Rule 118.9 and Rule 352 decisions and orders of the Court shall be directly enforceable from their date of <u>delivery service</u> in each Contracting Member State. <u>Enforcement shall take place</u> in accordance with the enforcement procedures and conditions governed by the law of the particular Contracting Member State where enforcement takes place.  | This change clarifies that a decision is enforceable from the date of its service and not from the date of delivery. The second sentence of Rule 354.1 now clarifies that enforcement procedures and conditions are governed by national law (see Article 82 (3) UPCA). |
| Rule 354.2 and .3 | <u>2. Decisions and orders of the Court shall be enforced in those non-Contracting Member States which are Member States of Regulation (EU) No 1215/2012 or the Lugano Convention in accordance with the provisions of the said Regulation or Convention as the case may be.</u><br><br><u>3. Decisions and orders of the Court shall be enforced in States which are not Contracting Member States or member states of the Regulation or Convention referred to in paragraph 2 in accordance with the law of that state.</u>  | There is no room for these provisions in the UPC's Rules of Procedure which do not govern the enforcement of decisions in States which are not Contracting Member States.   |
| Rule 354.4        | 4. Where during an action an enforceable decision or order of the Court is subsequently varied or revoked, the Court may order the party which has enforced such decision or order, upon the request of the party against whom the decision or order has been enforced, to provide appropriate compensation for any injury caused by the enforcement. Rule 125 shall apply <i>mutatis mutandis</i> . Where an enforceable decision or order has been made pursuant to a finding of infringement of a patent and, following the conclusion of the action, the patent is amended or revoked, the Court may order, upon the request of the party against whom the decision or order would | The last sentence of Rule 354.4 is deleted as it is already contained in Rule 354.4, 2 <sup>nd</sup> sentence.  |

| Rule       | New text   | Explanatory remarks  |
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|            | be enforceable, that the decision or order ceases to be enforceable.<br><i>Rule 125 shall apply mutatis mutandis.</i>  |  |
| Rule 355.1 | 1. A decision by default may be given against a party where: <i>If a party fails to take a step within the time limit set according to these Rules or by the Court, the Court of First Instance may give decision by default</i><br>(a) the Rules of Procedure so provide if a party fails to take a step within the time limit foreseen in these Rules or set by the Court; or<br>(b) without prejudice to Rules 116 and 117, the party which was duly summoned fails to appear at an oral hearing. | The power of the UPC to grant a decision by default whenever a party fails to take a step within the time limit set by the Rules of Procedure or by the Court seems too wide.<br>In line with Article 37(1) UPC Statute, new Rule 355.1 specifies the situations where a decision by default may be given against a party:<br>- Rule 355.1(a) refers to situations expressly provided for in the Rules of Procedure, namely Rules 16.5, 27.4, 89.4, 103.2 (new), 229.2 and 232.2;<br>- Rule 355.1(b) refers to the situation where a party fails to appear at an oral hearing despite having been duly summoned. |
| Rule 355.2 | 2. A decision by default against the defendant of the claim or counterclaim may only be given where the facts put forward by the claimant justify the remedy sought.   | In accordance with general principles of law and in order to protect a defaulting party against abuses, new Rule 355.2 ensures that the Court – before giving a decision by default against a defendant – assesses whether the facts put forward by the claimant justify the remedy sought.  |
| Rule 356.2 | 2. The Application to set aside a decision by default shall contain the party's explanation for the default. It shall mention the date and number of the decision by default. The party shall pay a fee for the Application to set aside the decision by default [EUR***]. <i>In the case of Rule 355.1(a) the Application shall be accompanied by the step the party has failed to take.</i>  | The change to Rule 356.2, 4 <sup>th</sup> sentence, clarifies that only a party which has failed to take a step within a time limit shall take that step together with the Application for setting aside the decision by default. This requirement can obviously not apply where a party did not appear at an oral hearing.  |
| Rule 356.3 | 3. If the provisions of Rule 356.2 are met the Application shall be allowed <i>unless a party has been put on notice in an earlier decision that a further decision by default shall be final. If the application is allowed, and</i> a note of allowance shall be included in any publication of the decision by default.   | This change seeks to prevent abuses of the possibility to apply for setting aside a decision by default for example using default situation to delay proceedings. The Court can decide (in a first decision) that a further decision by default shall be final. In such cases, subsequent Applications to set aside a decision by default shall not be allowed.  |