

Contents

<i>List of Contributors</i>	xxxi
<i>Abbreviations</i>	xxxiii
<i>Table of Cases</i>	xli
<i>Table of Decisions</i>	lxiii
<i>Table of Legislation</i>	lxiv
<i>Table of Transnational Instruments</i>	lxxxvii
Introduction to this Commentary (Tilman)	1
Annex I: The actions of Italy and Spain (Tilman)	57
Annex II: The Exit Referendum in the UK (Tilman)	63
Annex III: The Constitutional Complaint in Germany (Tilman)	65
Diagram: contributions of EPC, UPCA, and EPUE Reg to an EPUE (Tilman)	66
REGULATION (EU) NO 1257/2012 (EPUE REG)	
Introduction (Tilman)	69
Recitals (Tilman)	77
CHAPTER I: GENERAL PROVISIONS	93
Article 1 (Subject matter) (Tilman)	94
Article 2 (Definitions) (Tilman)	101
Article 3 (European patent with unitary effect) (Tilman)	104
Article 4 (Date of effect) (Tilman)	126
CHAPTER II: EFFECTS OF A EUROPEAN PATENT WITH UNITARY EFFECT	129
Article 5 (Uniform protection) (Tilman)	130
Article 6 (Exhaustion of the rights conferred by a European patent with unitary effect) (Busche)	140
CHAPTER III: A EUROPEAN PATENT WITH UNITARY EFFECT AS AN OBJECT OF PROPERTY	148
Article 7 (Treating a European patent with unitary effect as a national patent) (Tilman)	149
Article 8 (Licences of right) (Tilman)	181

CHAPTER IV: INSTITUTIONAL PROVISIONS	184
Article 9 (Administrative tasks in the framework of the European Patent Organisation) (Tilman)	185
Annex: Rules relating to Unitary Patent Protection (RUPR) (Tilman)	199
CHAPTER V: FINANCIAL PROVISIONS	233
Article 10 (Principle on expenses) (Tilman)	234
Annex: Budgetary and Financial Rules (BFR) (Tilman)	238
Article 11 (Renewal fees) (Tilman)	243
Article 12 (Level of renewal fees) (Tilman)	247
Annex: Rules relating to Fees for Unitary Patent Protection (RFeesUPP)	254
Article 13 (Distribution) (Tilman)	258
CHAPTER VI: FINAL PROVISIONS	262
Article 14 (Cooperation between the Commission and the EPO) (Tilman)	263
Article 15 (Application of competition law and the law relating to unfair competition) (Tilman)	267
Article 16 (Report on the operation of this Regulation) (Tilman)	271
Article 17 (Notification by the participating Member States) (Tilman)	272
Article 18 (Entry into force and application) (Tilman)	274

COUNCIL REGULATION (EU) NO 1260/2012 (EPUET REG)

Introduction (Keussen)	277
Recitals (Keussen)	285
Articles of the Regulation	289
Article 1 (Subject matter) (Keussen)	290
Article 2 (Definitions) (Keussen)	291
Article 3 (Translation arrangements for the European patent with unitary effect) (Keussen)	292
Article 4 (Translation in the event of a dispute) (Keussen)	294
Article 5 (Administration of a compensation scheme) (Keussen)	303
Article 6 (Transitional measures) (Keussen)	307
Article 7 (Entry into force) (Keussen)	311
Article 8 (Composition of the panels of the Court of First Instance)	386
Article 9 (The Court of Appeal) (Büttner)	397
Article 10 (The Registry) (Büttner)	401
Article 11 (Committees) (Büttner)	406
Article 12 (The Administrative Committee) (Büttner)	408
Article 13 (The Budget Committee) (Büttner)	411
Article 14 (The Advisory Committee) (Büttner)	413
CHAPTER III JUDGES OF THE COURT	416
Article 15 (Eligibility criteria for the appointment of judges) (Büttner)	417
Article 16 (Appointment Procedure) (Büttner)	422
Article 17 (Judicial independence and impartiality) (Büttner)	427
Article 18 (Pool of judges) (Büttner)	432
Article 19 (Training framework) (Büttner)	436
CHAPTER IV THE PRIMACY OF UNION LAW, LIABILITY AND RESPONSIBILITY OF THE CONTRACTING MEMBER STATES	439
Article 20 (Primacy of and respect for Union law) (Tilmann)	440
Article 21 (Requests for preliminary rulings) (Tilmann)	448
Article 22 (Liability for damage caused by infringements of Union law) (Tilmann)	450
Article 23 (Responsibility of the Contracting Member States) (Tilmann)	464
CHAPTER V SOURCES OF LAW AND SUBSIDIARITY	467
Article 24 (Sources of law) (Tilmann)	468
Article 25 (Right to prevent the direct use of the invention) (Busche)	484

AGREEMENT ON A UNIFIED PATENT COURT (UPCA)

Introduction (Tilman)	313
Preamble/Recitals (Tilman)	357
PART I: GENERAL AND INSTITUTIONAL PROVISIONS	364
<i>CHAPTER I: GENERAL PROVISIONS</i>	364
Article 1 (Unified Patent Court) (Tilman)	365
Article 2 (Definitions) (Tilman)	367
Article 3 (Scope of application) (Tilman)	368
Article 4 (Legal status) (Tilman)	370
Article 5 (Liability) (Tilman)	374
<i>CHAPTER II: INSTITUTIONAL PROVISIONS</i>	377
Article 6 (The Court) (Büttner)	378
Article 7 (The Court of First Instance) (Büttner)	380
Article 8 (Composition of the panels of the Court of First Instance) (Büttner)	386
Article 9 (The Court of Appeal) (Büttner)	397
Article 10 (The Registry) (Büttner)	401
Article 11 (Committees) (Büttner)	406
Article 12 (The Administrative Committee) (Büttner)	408
Article 13 (The Budget Committee) (Büttner)	411
Article 14 (The Advisory Committee) (Büttner)	413
<i>CHAPTER III: JUDGES OF THE COURT</i>	416
Article 15 (Eligibility criteria for the appointment of judges) (Büttner)	417
Article 16 (Appointment Procedure) (Büttner)	422
Article 17 (Judicial independence and impartiality) (Büttner)	427
Article 18 (Pool of Judges) (Büttner)	432
Article 19 (Training framework) (Büttner)	436
<i>CHAPTER IV: THE PRIMACY OF UNION LAW, LIABILITY AND RESPONSIBILITY OF THE CONTRACTING MEMBER STATES</i>	439
Article 20 (Primacy of and respect for Union law) (Tilman)	440
Article 21 (Requests for preliminary rulings) (Tilman)	448
Article 22 (Liability for damage caused by infringements of Union law) (Tilman)	459
Article 23 (Responsibility of the Contracting Member States) (Tilman)	464
<i>CHAPTER V: SOURCES OF LAW AND SUBSTANTIVE LAW</i>	467
Article 24 (Sources of law) (Tilman)	468
Article 25 (Right to prevent the direct use of the invention) (Busche)	484

Article 26 (Right to prevent the indirect use of the invention) (Tilman and Grabinski)	505
Article 27 (Limitations of the effects of a patent) (Busche)	528
Article 28 (Right based on prior use of the invention) (Busche)	540
Article 29 (Exhaustion of the rights conferred by a European patent) (Busche)	549
Article 30 (Effects of supplementary protection certificates) (Tilman)	552
Annex I: Draft of a unitary SPC Regulation (Tilman)	566
Annex II: CFEU decisions on SPCs (Tilman)	571
CHAPTER VI: INTERNATIONAL JURISDICTION AND COMPETENCE	578
Article 31 (International jurisdiction) (Tilman and Grabinski)	579
Article 32 (Competence of the Court) (Tilman and Grabinski)	590
Article 33 (Competence of the divisions of the Court of First Instance) (Tilman)	624
Article 34 (Territorial scope of decisions) (von Falck and Dorn)	662
CHAPTER VII: PATENT MEDIATION AND ARBITRATION	692
Article 35 (Patent mediation and arbitration centre) (Tochtermann)	693
Annex: Mediation Rules (Tochtermann)	697
PART II: FINANCIAL PROVISIONS	703
Article 36 (Budget of the Court) (Tilman)	704
Article 37 (Financing of the Court) (Tilman)	709
Article 38 (Financing of the training framework for judges) (Tilman)	713
Article 39 (Financing of the Centre) (Tilman)	714
PART III: ORGANISATION AND PROCEDURAL PROVISIONS	715
CHAPTER I: GENERAL PROVISIONS	715
Article 40 (Statute) (Tilman)	716
Article 41 (Rules of Procedure) (Tilman)	720
Article 42 (Proportionality and fairness) (Tilman)	725
Article 43 (Case management) (Tilman)	729
Article 44 (Electronic procedures) (Tilman)	733
Article 45 (Public proceedings) (Tilman)	735
Article 46 (Legal capacity) (Tilman)	742
Article 47 (Parties) (Tilman)	744
Article 48 (Representation) (Tilman)	751
Annex: Draft Decision of the Administrative Committee, Rules on the European Patent Litigation Certificate and Other Appropriate Qualifications pursuant to Article 48(2) of the Agreement on a Unified Patent Court (EPLC Rules) (Tilman)	763

<i>CHAPTER II: LANGUAGE OF PROCEEDINGS</i>	768
Article 49 (Language of proceedings at the Court of First Instance) (Keussen and Tilmann)	769
Article 50 (Language of proceedings at the Court of Appeal) (Tilmann)	784
Article 51 (Other language arrangements) (Keussen and Tilmann)	787
<i>CHAPTER III: PROCEEDINGS BEFORE THE COURT</i>	793
Article 52 (Written, interim and oral procedures) (von Falck and Dorn)	794
Article 53 (Means of evidence) (von Falck and Dorn)	809
Article 54 (Burden of proof) (Dorn)	831
Article 55 (Reversal of burden of proof) (Dorn)	837
<i>CHAPTER IV: POWERS OF THE COURT</i>	845
Article 56 (The general powers of the Court) (Tilmann)	846
Article 57 (Court experts) (Tilmann)	850
Article 58 (Protection of confidential information) (Tilmann)	857
Article 59 (Order to produce evidence) (Tilmann)	866
Article 60 (Order to preserve evidence and to inspect premises) (Tilmann)	874
Annex: US pre-trial discovery (Tilmann)	895
Article 61 (Freezing orders) (Tilmann)	899
Article 62 (Provisional and protective measures) (Tilmann)	904
Article 63 (Permanent injunctions) (Tilmann)	924
Article 64 (Corrective measures in infringement proceedings) (Tilmann)	947
Article 65 (Decision on the validity of a patent) (Faehndrich, Klicznik, and M. Tilmann)	957
Article 66 (Powers of the Court concerning decisions of the European Patent Office) (Kuczera)	1018
Article 67 (Power to order the communication of information) (Tilmann)	1021
Article 68 (Award of damages) (Tilmann)	1030
Article 69 (Legal costs) (Tilmann and Dold)	1056
Article 70 (Court fees) (Plassmann and Dold)	1087
Article 71 (Legal aid) (Gundt)	1097
Article 72 (Period of limitation) (Gundt)	1100
<i>CHAPTER V: APPEALS</i>	1118
Article 73 (Appeal) (Tochtermann)	1119
Article 74 (Effects of an appeal) (Tochtermann)	1129
Article 75 (Decision on appeal and referral back) (Tochtermann)	1131
<i>CHAPTER VI: DECISIONS</i>	1133
Article 76 (Basis for decisions and right to be heard) (von Falck and Stoll)	1134
Article 77 (Formal Requirements) (von Falck and Stoll)	1148

Article 78 (Decisions of the Court and dissenting opinions) (von Falck and Stoll)	1151
Article 79 (Settlement) (von Falck and Stoll)	1154
Article 80 (Publication of decisions) (von Falck and Stoll)	1168
Article 81 (Rehearing) (Tilman and Dorn)	1172
Article 82 (Enforcement of decisions and orders) (von Falck and Stoll)	1191
PART IV: TRANSITIONAL PROVISIONS	1224
Article 83 (Transitional regime) (Tilman)	1225
PART V: FINAL PROVISIONS	1257
Article 84 (Signature, ratification and accession) (Tilman)	1258
Article 85 (Functions of the depositary) (Tilman)	1263
Article 86 (Duration of the Agreement) (Tilman)	1264
Article 87 (Revision) (Tilman)	1267
Article 88 (Languages of the Agreement) (Tilman)	1274
Article 89 (Entry into force) (Tilman)	1277

STATUTE OF THE UNIFIED PATENT COURT (UPC STATUTE)	
Article 1 (Scope of the Statute) (Tochtermann)	1288
CHAPTER I: JUDGES	1290
Article 2 (Eligibility of judges) (Tochtermann)	1291
Article 3 (Appointment of judges) (Tochtermann)	1294
Article 4 (Judges' term of office) (Tochtermann)	1297
Article 5 (Appointment of the members of the Advisory Committee) (Tochtermann)	1298
Article 6 (Oath) (Tochtermann)	1299
Article 7 (Impartiality) (Tochtermann)	1300
Article 8 (Immunity of judges) (Tochtermann)	1305
Article 9 (End of duties) (Tochtermann)	1306
Article 10 (Removal from office) (Tochtermann)	1307
Article 11 (Training) (Tochtermann)	1309
Article 12 (Remuneration) (Tochtermann)	1311
CHAPTER II: ORGANISATIONAL PROVISIONS	1312
SECTION 1: COMMON PROVISIONS	1312
Article 13 (President of the Court of Appeal) (Tochtermann)	1313
Article 14 (President of the Court of First Instance) (Tochtermann)	1315
Article 15 (Presidium) (Tochtermann)	1317
Article 16 (Staff) (Tochtermann)	1319
Article 17 (Judicial vacations) (Tochtermann)	1320
SECTION 2: THE COURT OF FIRST INSTANCE	1321
Article 18 (Setting up and discontinuance of a local or regional division) (Tochtermann)	1322
Article 19 (Panels) (Tochtermann)	1324
Article 20 (Pool of Judges) (Tochtermann)	1328
SECTION 3: THE COURT OF APPEAL	1330
Article 21 (Panels) (Tochtermann)	1331
SECTION 4: THE REGISTRY	1333
Article 22 (Appointment and removal from office of the Registrar) (Tochtermann)	1334
Article 23 (Duties of the Registrar) (Tochtermann)	1336
Article 24 (Keeping of the register) (Tochtermann)	1337
Article 25 (Sub-registries and Deputy-Registrar) (Tochtermann)	1338

CHAPTER III: FINANCIAL PROVISIONS	1339
Article 26 (Budget) (Tochtermann)	1340
Article 27 (Authorization for expenditure) (Tochtermann)	1343
Article 28 (Appropriations for unforeseeable expenditure) (Tochtermann)	1344
Article 29 (Accounting period) (Tochtermann)	1345
Article 30 (Preparation of the budget) (Tochtermann)	1346
Article 31 (Provisional budget) (Tochtermann)	1347
Article 32 (Auditing of accounts) (Tochtermann)	1348
Article 33 (Financial Regulations) (Tochtermann)	1350
CHAPTER IV: PROCEDURAL PROVISIONS	1351
Article 34 (Secrecy of deliberations) (Tochtermann)	1352
Article 35 (Decisions) (Tochtermann)	1353
Article 36 (Dissenting opinions) (Tochtermann)	1355
Article 37 (Decision by default) (Tochtermann)	1356
Article 38 (Questions referred to the Court of Justice of the European Union) (Tochtermann)	1359

RULES OF PROCEDURE OF THE UNIFIED PATENT COURT (UPCARoP)	
Preamble (Tilman)	1361
APPLICATION AND INTERPRETATION OF THE RULES OF PROCEDURE	
Rule 1 (Application of the Rules and general principles of interpretation) (Tilman)	1369
Rule 2 (Supplementary protection certificate) (Tilman)	1373
Rule 3 (Power of staff of the Registry and a sub-registry to perform functions of the Registry) (Tilman)	1376
Rule 4 (Lodging of documents) (Tilman)	1378
Rule 5 (Lodging of an Application to opt out and withdrawal of an opt-out) (Tilman)	1382
Rule 6 (Service and supply of orders, decisions, written pleadings and other documents) (Tilman)	1389
Rule 7 (Language of written pleadings and written evidence) (Tilman)	1391
Rule 8 (Party and party's representative) (Tilman)	1394
Rule 9 (Powers of the Court) (Tilman)	1398
PART 1: PROCEDURES BEFORE THE COURT OF FIRST INSTANCE	1403
Rule 10 (Stages of the proceedings (<i>inter partes</i> proceedings)) (Tilman)	1404
Rule 11 (Settlement) (Tochtermann)	1409
CHAPTER 1: WRITTEN PROCEDURE	1414
Section 1: <i>Infringement Action</i>	1414
Rule 12 (Exchange of written pleadings (infringement action)) (Plassmann and Steininger)	1415
Rule 13 (Contents of the Statement of claim) (Plassmann and Steininger)	1422
Rule 14 (Use of languages under Article 49(1) and (2) of the Agreement) (Tilman)	1433
Rule 15 (Fee for the infringement action) (Plassmann and Steininger)	1449
Rule 16 (Examination as to formal requirements of the Statement of claim) (Plassmann and Steininger)	1450
Rule 17 (Recording in the register and assignment (Court of First Instance, infringement action)) (Plassmann and Steininger)	1456
Rule 18 (Designation of the judge-rapporteur) (Plassmann and Steininger)	1462
Rule 19 (Preliminary objection) (Plassmann and Steininger)	1467
Rule 20 (Decision or order on a Preliminary objection) (Plassmann and Steininger)	1475
Rule 21 (Appeal against decision or order on a Preliminary objection) (Plassmann and Steininger)	1477
Rule 22 (Value-based fee for the infringement action) (Plassmann)	1479

Rule 23 (Lodging of the Statement of defence) (Plassmann and Steininger)	1481
Rule 24 (Contents of the Statement of defence) (Plassmann and Steininger)	1484
Rule 25 (Counterclaim for revocation) (Plassmann and Steininger)	1490
Rule 26 (Fee for the Counterclaim for revocation) (Plassmann)	1498
Rule 27 (Examination as to formal requirements of the Statement of defence) (Plassmann and Steininger)	1499
Rule 28 (Further schedule) (Plassmann and Steininger)	1502
Rule 29 (Lodging of Defence to the Counterclaim for revocation, Reply to the Statement of defence and Rejoinder to the Reply) (Plassmann and Steininger)	1505
Rule 29A (Contents of the Defence to the Counterclaim) (Plassmann and Steininger)	1511
Rule 30 (Application to amend the patent) (Plassmann and Dorn)	1515
Rule 32 (Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply) (Plassmann and Dorn)	1527
Rule 33 (Application by a party for allocating a technically qualified judge) (Plassmann and Steininger)	1530
Rule 34 (Request by the judge-rapporteur for allocating a technically qualified judge) (Plassmann and Steininger)	1534
Rule 35 (Closure of the written procedure) (Plassmann and Steininger)	1536
Rule 36 (Further exchanges of written pleadings) (Plassmann and Steininger)	1538
Rule 37 (Application of Article 33(3) of the Agreement) (Tilman)	1541
(Preliminary remarks) (Kuczera)	1550
Rule 38 (Written procedure when the central division deals with a Counterclaim for revocation under Article 33(3)(b) of the Agreement) (Kuczera)	1551
Rule 39 (Language of the proceedings before the central division) (Kuczera)	1554
Rule 40 (Accelerated proceedings before the central division) (Kuczera)	1558
Rule 41 (Written procedure when the central division deals with the action under Article 33(3)(c) of the Agreement) (Kuczera)	1562
Section 2: Revocation Action	1566
Rule 42 (Action to be directed against the patent proprietor) (Faehndrich, Klicznik, and M. Tilman)	1567
Rule 43 (Exchange of written pleadings (revocation action)) (Faehndrich, Klicznik, and M. Tilman)	1573
Rule 44 (Contents of the Statement for revocation) (Faehndrich, Klicznik, and M. Tilman)	1575
Rule 45 (Language of the Statement for revocation) (Faehndrich, Klicznik, and M. Tilman)	1582

Rule 46 (Fee for the revocation action) (Plassmann)	1584
Rule 47 (Examination as to formal requirements, recording in the register, assignment (Court of First Instance, revocation action) and designation of the judge-rapporteur) (Faehndrich, Klicznik, and M. Tilmann)	1585
Rule 48 (Preliminary objection) (Plassmann and Steininger)	1586
Rule 49 (Lodging of the Defence to revocation) (Faehndrich, Klicznik, and M. Tilmann)	1587
Rule 50 (Contents of the Defence to revocation and Counterclaim for infringement) (Faehndrich, Klicznik, and M. Tilmann)	1588
Rule 51 (Reply to Defence to revocation) (Faehndrich, Klicznik, and M. Tilmann)	1598
Rule 52 (Rejoinder to the Reply) (Faehndrich, Klicznik, and M. Tilmann)	1599
Rule 53 (Fee for the Counterclaim for infringement) (Plassmann)	1600
Rule 54 (Examination as to formal requirements and further schedule) (Plassmann and Steininger)	1601
Rule 55 (Lodging of the Defence to the Application to amend the patent, the Reply to the Defence and the Rejoinder to the Reply) (Plassmann and Dorn)	1602
Rule 56 (Lodging of the Defence to the Counterclaim for infringement) (Faehndrich, Klicznik, and M. Tilmann)	1603
Rule 57 (Request for allocating a technically qualified judge) (Plassmann and Steininger)	1607
Rule 58 (Closure of the written procedure subject to the possible exchange of further pleadings) (Plassmann and Steininger)	1608
Rule 60 (Value-based fee for the dispute including the Counterclaim for infringement) (Plassmann)	1609
<i>Section 3: Action for Declaration of Non-Infringement</i>	1611
Rule 61 (Declaration of non-infringement) (von Falck and Dorn)	1612
Rule 62 (Exchange of written pleadings (action for declaration of non-infringement)) (von Falck and Dorn)	1618
Rule 63 (Contents of the Statement for a declaration of non-infringement) (von Falck and Dorn)	1619
Rule 64 (Language of the Statement for a declaration of non-infringement and fee for the declaration of non-infringement) (von Falck and Dorn)	1628
Rule 65 (Examination as to formal requirements, recording in the register, assignment and designation of the judge-rapporteur) (von Falck and Dorn)	1629
Rule 66 (Preliminary objection) (von Falck and Dorn)	1630

Rule 67 (Lodging of the Defence to the Statement for a declaration of non-infringement) (von Falck and Dorn)	1631
Rule 68 (Contents of the Defence to the Statement for a declaration of non-infringement) (von Falck and Dorn)	1632
Rule 69 (Reply to Defence to the Statement for a declaration of non-infringement and Rejoinder to the Reply) (von Falck and Dorn)	1634
Rule 70 (Fee for the action for a declaration of non-infringement) (Plassmann)	1636
Rule 71 (Examination as to formal requirements and further schedule) (Plassmann and Steininger)	1637
Rule 72 (Request for allocating a technically qualified judge) (Plassmann and Steininger)	1638
Rule 73 (Closure of the written procedure subject to the possible exchange of further pleadings) (Plassmann and Steininger)	1639
Rule 74 (Value-based fee for the action for a declaration of non-infringement) (Plassmann)	1640
<i>Section 4: Actions within Article 33(5) and (6) of the Agreement</i>	1641
Rule 75 (Revocation action and subsequent infringement action in a local or regional division (Article 33(5) of the Agreement)) (von Falck and Dorn)	1642
Rule 76 (Actions for declaration of non-infringement within Article 33(6) of the Agreement) (von Falck and Dorn)	1653
Rule 77 (Action for declaration of non-infringement and action for revocation) (von Falck and Dorn)	1657
<i>Section 5: Action for Compensation for Licences on the basis of Article 8 of Regulation (EU) No 1257/2012</i>	1658
Rule 80 (Compensation for a licence of right) (Plassmann and Kuczera)	1659
<i>Section 6: Action against Decisions of the European Patent office in Carrying out the Tasks Referred to in Article 9 of Regulation (EU) No 1257/2012</i>	1662
Preliminary remarks on Rules 85–98 (Kuczera)	1663
Rule 85 (Stages of the proceedings (<i>ex parte</i> proceedings)) (Kuczera)	1665
Rule 86 (Suspensive effect) (Kuczera)	1668
Rule 87 (Grounds for annulling or altering a decision of the Office) (Kuczera)	1669
Rule 88 (Application to annul or alter a decision of the Office) (Kuczera)	1674
Rule 89 (Examination as to formal requirements (<i>ex parte</i> proceedings)) (Kuczera)	1682
Rule 90 (Recording in the register (<i>ex parte</i> proceedings)) (Kuczera)	1686

Rule 91 (Interlocutory revision by the European Patent Office) (Kuczera)	1688
Rule 92 (Assignment to panel or to single judge, designation of judge-rapporteur) (Kuczera)	1691
Rule 93 (Examination of the Application to annul or alter a decision of the Office) (Kuczera)	1693
Rule 94 (Invitation to the President of the European Patent Office to comment) (Kuczera)	1695
Rule 95 (<i>Lex specialis</i> for the interim procedure (<i>ex parte</i> procedure)) (Kuczera)	1697
Rule 96 (<i>Lex specialis</i> for the oral procedure (<i>ex parte</i> procedure)) (Kuczera)	1699
Rule 97 (Application to annul a decision of the Office to refuse a request for unitary effect) (Kuczera)	1700
Rule 98 (Costs) (Kuczera)	1708

CHAPTER 2: INTERIM PROCEDURE

Rule 101 (Role of the judge-rapporteur (Case management)) (Tochtermann)	1710
Rule 102 (Referral to the panel) (Tochtermann)	1712
Rule 103 (Preparation for the interim conference) (Tochtermann)	1714
Rule 104 (Aim of the interim conference) (Tochtermann)	1716
Rule 105 (Holding the interim conference) (Tochtermann)	1719
Rule 106 (Recording of the interim conference) (Tochtermann)	1721
Rule 108 (Summons to the oral hearing) (Tochtermann)	1722
Rule 109 (Simultaneous interpretation during oral hearings) (Tochtermann)	1723
Rule 110 (Closure of the interim procedure) (Tochtermann)	1725

CHAPTER 3: ORAL PROCEDURE

Rule 111 (Role of the presiding judge (Case management)) (Tochtermann)	1730
Rule 112 (Conduct of the oral hearing) (Tochtermann)	1731
Rule 113 (Duration of the oral hearing) (Tochtermann)	1733
Rule 114 (Adjournment where the Court considers that further evidence is required) (Tochtermann)	1735
Rule 115 (The oral hearing) (Tochtermann)	1736
Rule 116 (Absence of a party from the oral hearing) (Tochtermann)	1738
Rule 117 (Absence of both parties from the oral hearing) (Tochtermann)	1741
Rule 118 (Decision on the merits) (Tilmann)	1742
Rule 119 (Interim award of damages) (Steininger)	1756

CHAPTER 4: PROCEDURE FOR THE DETERMINATION OF DAMAGES AND COMPENSATION	1758
Rule 125 (Separate proceedings for determining the amount of damages ordered) (Steininger)	1759
Rule 126 (Start of proceedings for the determination of damages) (Steininger)	1763
Section 1: Application for the Determination of Damages	1767
Rule 131 (Contents of the Application for the determination of damages) (Steininger)	1768
Rule 132 (Fee for the Application for the determination of damages) (Plassmann)	1774
Rule 133 (Value-based fee for the determination of damages) (Plassmann)	1775
Rule 134 (Examination as to formal requirements of the Application for the determination of damages) (Steininger)	1776
Rule 135 (Recording in the register (Application for the determination of damages) and service) (Steininger)	1779
Rule 136 (Stay of the Application for a determination of damages) (Steininger)	1783
Rule 137 (Reply of the unsuccessful party) (Steininger)	1785
Rule 138 (Contents of the Defence to the Application for the determination of damages) (Steininger)	1788
Rule 139 (Reply to the Defence to the Application for the determination of damages and Rejoinder to the Reply) (Steininger)	1792
Rule 140 (Further procedure (Application for the determination of damages)) (Steininger)	1794
Section 2: Request to Lay Open Books	1797
Rule 141 (Contents of the Request to lay open books) (Steininger)	1798
Rule 142 (Defence of the unsuccessful party, Reply to the Defence and Rejoinder to the Reply) (Steininger)	1802
Rule 143 (Further procedure) (Steininger)	1804
Rule 144 (Decision on the Request to lay open books) (Steininger)	1805
CHAPTER 5: PROCEDURE FOR COST DECISION	1808
Rule 150 (Separate proceedings for cost decision) (Plassmann and Dold)	1809
Rule 151 (Start of proceedings for cost decision) (Plassmann and Dold)	1814
Rule 152 (Compensation for representation costs) (Plassmann and Dold)	1818
Rule 153 (Compensation for costs of experts) (Plassmann and Dold)	1820
Rule 154 (Compensation for costs of witnesses) (Plassmann and Dold)	1821
Rule 155 (Compensation for costs of interpreters and translators) (Plassmann)	1822

Rule 156 (Further procedure) (Plassmann and Dold)	1823
Rule 157 (Appeal against the cost decision) (Plassmann and Dold)	1825
<i>CHAPTER 6: SECURITY FOR COSTS</i>	1826
Rule 158 (Security for costs of a party) (Plassmann)	1827
Rule 159 (Security for costs of the Court) (Plassmann)	1831
PART 2: EVIDENCE	1834
Introduction to Part 2 (Ahrens)	1835
Rule 170 (Means of evidence and means of obtaining evidence) (Ahrens)	1853
Rule 171 (Offering of evidence) (Ahrens)	1858
Rule 172 (Duty to produce evidence) (Ahrens)	1866
Rule 173 (Cooperation between the courts of the Member States in the taking of evidence) (Ahrens)	1871
<i>CHAPTER 1: WITNESSES AND EXPERTS OF THE PARTIES</i>	1884
Rule 175 (Written witness statement) (Ahrens)	1885
Rule 176 (Application for the hearing of a witness in person) (Ahrens)	1892
Rule 177 (Summoning of witnesses to the oral hearing) (Ahrens)	1893
Rule 178 (Hearing of witnesses) (Ahrens)	1897
Rule 179 (Duties of witnesses) (Ahrens)	1902
Rule 180 (Reimbursement of expenses of witnesses) (Ahrens)	1908
Rule 181 (Experts of the parties) (Ahrens)	1910
<i>CHAPTER 2: COURT EXPERTS</i>	1916
Rule 185 (Appointment of a court expert) (Ahrens)	1917
Rule 186 (Duties of a court expert) (Ahrens)	1922
Rule 187 (Expert report) (Ahrens)	1926
Rule 188 (Hearing of a court expert) (Ahrens)	1927
<i>CHAPTER 3: ORDER TO PRODUCE EVIDENCE AND TO COMMUNICATE INFORMATION</i>	1928
Rule 190 (Order to produce evidence) (Ahrens)	1929
Rule 191 (Application for order to communicate information) (Ahrens)	1940
<i>CHAPTER 4: ORDER TO PRESERVE EVIDENCE (SAISIE) AND ORDER FOR INSPECTION</i>	1942
Rule 192 (Application for preserving evidence) (Ahrens)	1943
Rule 193 (Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge) (Ahrens)	1949
Rule 194 (Examination of the Application for preserving evidence) (Ahrens)	1951

Rule 195 (Oral hearing) (Ahrens)	1955
Rule 196 (Order on the Application for preserving evidence) (Ahrens)	1957
Rule 197 (Order to preserve evidence without hearing the defendant) (Ahrens)	1963
Rule 198 (Revocation of an order to preserve evidence) (Ahrens)	1965
Rule 199 (Order for inspection) (Ahrens)	1970
CHAPTER 5: OTHER EVIDENCE	1973
Rule 200 (Order to freeze assets) (Ahrens)	1974
Rule 201 (Experiments ordered by the Court) (Ahrens)	1976
Rule 202 (Letters rogatory) (Ahrens)	1979
PART 3: PROVISIONAL MEASURES	1986
Rule 205 (Stages of the proceedings (summary proceedings)) (Dorn)	1987
Rule 206 (Application for provisional measures) (Dorn)	1990
Rule 207 (Protective letter) (von Falck and Dorn)	1998
Rule 208 (Examination as to formal requirements, recording in the register, assignment to panel, designation of judge-rapporteur, single judge) (von Falck and Dorn)	2012
Rule 209 (Examination of the Application for provisional measures) (von Falck and Dorn)	2015
Rule 210 (Oral hearing) (von Falck and Dorn)	2020
Rule 211 (Order on the Application for provisional measures) (von Falck and Dorn)	2023
Rule 212 (Order on provisional measures without hearing the defendant) (von Falck and Dorn)	2032
Rule 213 (Revocation of provisional measures) (von Falck and Dorn)	2035
PART 4: PROCEDURES BEFORE THE COURT OF APPEAL	2038
Rule 220 (Appealable decisions) (Büttner)	2039
Rule 221 (Application for leave to appeal against cost decisions) (Büttner)	2048
Rule 222 (Subject-matter of the proceedings before the Court of Appeal) (Büttner)	2050
Rule 223 (Application for suspensive effect) (Büttner)	2056
CHAPTER 1: WRITTEN PROCEDURE	2060
Section 1: <i>Statement of Appeal, Statement of Grounds of Appeal</i>	2060
Rule 224 (Time periods for lodging the Statement of appeal and the Statement of grounds of appeal) (Büttner)	2061
Rule 225 (Contents of the Statement of appeal) (Büttner)	2065
Rule 226 (Contents of the Statement of grounds of appeal) (Büttner)	2067
Rule 228 (Fee for the appeal) (Plassmann)	2070

Rule 230 (Recording in the register (Court of Appeal)) (Büttner)	2071
Rule 231 (Designation of the judge-rapporteur) (Büttner)	2074
Rule 232 (Translation of file) (Büttner)	2076
Rule 233 (Preliminary examination of the Statement of grounds of appeal) (Büttner)	2079
Rule 234 (Challenge to the decision to reject an appeal as inadmissible) (Büttner)	2083
<i>Section 2: Statement of Response</i>	2086
Rule 235 (Statement of response) (Büttner)	2087
Rule 236 (Contents of the Statement of response) (Büttner)	2089
Rule 237 (Statement of cross-appeal) (Büttner)	2091
<i>Section 3: Reply to a Statement of Cross-Appeal</i>	2095
Rule 238 (Reply to a statement of cross-appeal and further schedule) (Büttner)	2096
<i>Section 4: Referral to the Full Court</i>	2098
Rule 238A (Decision to refer) (Büttner)	2099
CHAPTER 2: INTERIM PROCEDURE	2101
Rule 239 (Role of the judge-rapporteur) (Büttner)	2102
CHAPTER 3: ORAL PROCEDURE	2105
Rule 240 (Conduct of the oral hearing) (Büttner)	2106
Rule 241 (Conduct of the oral hearing for an appeal of a cost decision) (Büttner)	2107
CHAPTER 4: DECISIONS AND EFFECT OF DECISIONS	2109
Rule 242 (Decision of the Court of Appeal) (Büttner)	2110
Rule 243 (Referral back) (Büttner)	2114
CHAPTER 5: PROCEDURE FOR APPLICATION FOR REHEARING	2118
Rule 245 (Lodging of an Application for rehearing) (Dorn)	2119
Rule 246 (Contents of the Application for rehearing) (Dorn)	2122
Rule 247 (Fundamental procedural defects) (Dorn)	2124
Rule 248 (Obligation to raise objections) (Dorn)	2130
Rule 249 (Definition of criminal offence) (Dorn)	2132
Rule 250 (Fee for the rehearing) (Tilman)	2134
Rule 251 (Recording in the register) (Büttner)	2136
Rule 252 (Suspensive effect) (Tilman)	2137
Rule 253 (Examination as to formal requirements of the Application for rehearing) (Tilman)	2140

Rule 254 (Assignment of Application for rehearing to a panel) (Tilman)	2141
Rule 255 (Examination of the Application for rehearing) (Tilman)	2144
PART 5: GENERAL PROVISIONS	2148
CHAPTER 1: GENERAL PROCEDURAL PROVISIONS	2148
Rule 260 (Examination by the Registry of its own motion) (von Falck and Stoll)	2149
Rule 261 (Date of pleadings) (von Falck and Stoll)	2152
Rule 262 (Public access to the register) (von Falck and Stoll)	2153
Rule 262A (Protection of Confidential Information) (Tilman)	2158
Rule 263 (Leave to change claim or amend case) (von Falck and Stoll)	2162
Rule 264 (An opportunity to be heard) (von Falck and Stoll)	2168
Rule 265 (Withdrawal) (von Falck and Stoll)	2169
Rule 266 (Preliminary references to the Court of Justice of the European Union) (von Falck and Stoll)	2173
Rule 267 (Actions pursuant to Article 22 of the Agreement) (von Falck and Stoll)	2179
CHAPTER 2: SERVICE	2180
Section 1: Service within the Contracting Member States	2180
Rule 270 (Scope of this Section) (von Falck and Stoll)	2181
Rule 271 (Service of the Statement of claim) (von Falck and Stoll)	2183
Rule 272 (Notice of service and non-service of the Statement of claim) (von Falck and Stoll)	2192
Section 2: Service Outside the Contracting Member States	2193
Rule 273 (Scope of this Section) (von Falck and Stoll)	2194
Rule 274 (Service outside the Contracting Member States) (von Falck and Stoll)	2195
Section 3: Service by an Alternative Method	2199
Rule 275 (Service of the Statement of claim by an alternative method or at an alternative place) (von Falck and Stoll)	2200
Section 4: Service of orders, Decisions and Written Pleadings	2203
Rule 276 (Service of orders and decisions) (von Falck and Stoll)	2204
Rule 277 (Decisions by default under Part 5, Chapter 11) (von Falck and Stoll)	2205
Rule 278 (Service of written pleadings and other documents) (von Falck and Stoll)	2207
Rule 279 (Change of electronic address for service) (von Falck and Stoll)	2209

<i>CHAPTER 3: RIGHTS AND OBLIGATIONS OF REPRESENTATIVES</i>	2210
Rule 284 (Duty of representatives not to misrepresent facts or cases)	
(Tilman)	2211
Rule 285 (Powers of attorney) (Tilman)	2213
Rule 286 (Certificate that a representative is authorized to practice before the Court) (Tilman)	2215
Rule 287 (Attorney–client privilege) (Tilman)	2218
Rule 288 (Litigation privilege) (Tilman)	2222
Rule 289 (Privileges, immunities and facilities) (Tilman)	2223
Rule 290 (Powers of the Court as regards representatives) (Tilman)	2225
Annex: Proposal for a Code of Conduct for the UPC (Tilman)	2226
Rule 291 (Exclusion from the proceedings) (Tilman)	2229
Rule 292 (Patent attorneys’ right of audience) (Tilman)	2230
Rule 293 (Change of a representative) (Tilman)	2231
<i>CHAPTER 4: STAY OF PROCEEDINGS</i>	2233
Rule 295 (Stay of proceedings) (Plassmann and Dorn)	2234
Rule 296 (Duration and effects of a stay of proceedings) (Plassmann and Dorn)	2247
Rule 297 (Resumption of proceedings) (Plassmann and Dorn)	2249
Rule 298 (Accelerated proceedings before the European Patent Office) (Plassmann and Dorn)	2251
<i>CHAPTER 5: TIME PERIODS</i>	2253
Rule 300 (Calculation of periods) (Plassmann and Dorn)	2254
Rule 301 (Automatic extension of periods) (Plassmann and Dorn)	2256
<i>CHAPTER 6: PARTIES TO PROCEEDINGS</i>	2258
Section 1: Plurality of Parties	2258
Rule 302 (Plurality of claimants or patents) (Plassmann and Dorn)	2259
Rule 303 (Plurality of defendants) (Plassmann and Dorn)	2266
Section 2: Change in Parties	2270
Rule 305 (Change in parties) (Plassmann and Dorn)	2271
Rule 306 (Consequences for the proceedings) (Plassmann and Dorn)	2276
Section 3: Death, Demise or Insolvency of a Party	2277
Rule 310 (Death or demise of a party) (Plassmann and Dorn)	2278
Rule 311 (Insolvency of a party) (Plassmann and Dorn)	2281
Section 4: Transfer of Patent	2289
Rule 312 (Transfer of the patent or patent application during proceedings) (Plassmann and Dorn)	2290

Section 5: Intervention	2293
Rule 313 (Application to intervene) (Plassmann and Dorn)	2294
Rule 314 (Order on Application to intervene) (Plassmann and Dorn)	2299
Rule 315 (Statement in intervention) (Plassmann and Dorn)	2301
Rule 316 (Invitation to intervene) (Plassmann and Dorn)	2306
Rule 316A (Forced intervention) (Plassmann and Dorn)	2309
Rule 317 (No appeal against an order on the Application to intervene) (Plassmann and Dorn)	2311
Section 6: Re-Establishment of Rights	2312
Rule 320 (Re-establishment of rights) (Plassmann and Dorn)	2313
CHAPTER 7: MISCELLANEOUS PROVISIONS ON LANGUAGES	2321
Rule 321 (Application by both parties to use of the language in which the patent was granted as language of the proceedings) (Keussen)	2322
Rule 322 (Proposal from the judge-rapporteur to use of the language in which the patent was granted as language of the proceedings) (Keussen)	2325
Rule 323 (Application by one party to use the language in which the patent was granted as language of the proceedings) (Keussen)	2327
Rule 324 (Consequences where the language of the proceedings is changed in the course of the proceedings) (Keussen)	2329
CHAPTER 8: CASE MANAGEMENT	2331
Rule 331 (Responsibility for case management) (Chakraborty and Dormann)	2332
Rule 332 (General principles of case management) (Chakraborty and Dormann)	2335
Rule 333 (Review of case management orders) (Chakraborty and Dormann)	2338
Rule 334 (Case management powers) (Chakraborty and Dormann)	2342
Rule 335 (Varying or revoking orders) (Chakraborty and Dormann)	2346
Rule 336 (Exercise of case management powers) (Chakraborty and Dormann)	2347
Rule 337 (Orders of the Court's own motion) (Chakraborty and Dormann)	2348
Rule 340 (Connection Joinder) (Chakraborty and Dormann)	2349
CHAPTER 9: RULES RELATING TO THE ORGANISATION OF THE COURT	2352
Rule 341 (Precedence) (Chakraborty and Dormann)	2353
Rule 342 (Dates, times and place of the sittings of the Court) (Chakraborty and Dormann)	2355
Rule 343 (Order in which actions are to be dealt with) (Chakraborty and Dormann)	2358

Rule 344 (Deliberations) (Chakraborty and Dormann)	2361
Rule 345 (Composition of panels and assignment of actions) (Chakraborty and Dormann)	2364
Rule 346 (Application of Article 7 of the Statute) (Chakraborty and Dormann)	2370
CHAPTER 10: DECISIONS AND ORDERS	2373
Rule 350 (Decisions) (Chakraborty and Dormann)	2374
Rule 351 (Orders) (Chakraborty and Dormann)	2378
Rule 352 (Binding effect of decisions or orders subject to security) (Chakraborty and Dormann)	2380
Rule 353 (Rectification of decisions and orders) (Chakraborty and Dormann)	2384
Rule 354 (Enforcement) (von Falck and Stoll)	2386
CHAPTER 11: DECISION BY DEFAULT	2402
Rule 355 (Decision by default (Court of First Instance)) (Chakraborty and Dormann)	2403
Rule 356 (Application to set aside a decision by default) (Chakraborty and Dormann)	2409
Rule 357 (Decision by default (Court of Appeal)) (Chakraborty and Dormann)	2412
CHAPTER 12: ACTIONS BOUND TO FAIL OR MANIFESTLY INADMISSIBLE	2416
Rule 360 (No need to adjudicate) (Chakraborty and Dormann)	2417
Rule 361 (Action manifestly bound to fail) (Chakraborty and Dormann)	2419
Rule 362 (Absolute bar to proceeding with an action) (Chakraborty and Dormann)	2421
Rule 363 (Orders dismissing manifestly inadmissible claims) (Chakraborty and Dormann)	2423
CHAPTER 13: SETTLEMENT	2425
Rule 365 (Confirmation by the Court of a settlement) (Tochtermann)	2426
PART 6: FEES AND LEGAL AID	2427
Rule 370 (Court fees) (Tilman)	2428
Annex I: Recoverable costs (Tilman)	2444
Annex II: Guidelines for the determination of Court fees and the ceiling of recoverable costs of the successful party (Tilman)	2452
Rule 371 (Time periods for paying court fees) (Plassmann)	2460

LEGAL AID

Rule 375 (Aim and scope) (Gundt)	2465
Rule 376 (Costs eligible for legal aid) (Gundt)	2468
Rule 376A (Maximum amount to be paid for representation) (Gundt)	2471
Rule 377 (Conditions for granting legal aid) (Gundt)	2472
Rule 377A (Conditions regarding the financial situation of the applicant) (Gundt)	2474
Rule 378 (Application for legal aid) (Gundt)	2475
Rule 378A (Type of proof) (Gundt)	2477
Rule 379 (Examination and decision) (Gundt)	2478
Rule 379A (Alteration of economic situation) (Gundt)	2482
Rule 380 (Withdrawal of legal aid) (Gundt)	2483
Rule 381 (Appeal) (Gundt)	2485
Rule 382 (Recovery) (Plassmann)	2486

APPENDICES

Appendix 1:	Protocol to the Agreement on a Unified Patent Court on provisional application	2487
Appendix 2:	Paris Convention for the Protection of Industrial Property	2489
Appendix 3:	Convention on the Unification of Certain Points of Substantive Law on Patents for Invention	2511
Appendix 4:	Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)	2515
Appendix 5:	Directive 2004/48/EC on the enforcement of intellectual property rights	2541
Appendix 6:	Directive 98/44/EC on the legal protection of biotechnological inventions	2553
Appendix 7:	Regulation (EU) No 608/2013 concerning customs enforcement of intellectual property rights	2563
Appendix 8:	Regulation (EC) No 469/2009 on the supplementary protection certificate for medicinal products	2587
Appendix 9:	Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	2597
Appendix 10:	Council Regulation (EC) No 1206/2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters	2629
Appendix 11:	Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents)	2647
Appendix 12:	European Patent Convention (EPC)	2663
Appendix 13:	Vienna Convention on the Law of Treaties 1969	2781
Appendix 14:	Protocol on Privileges and Immunities of the Unified Patent Court	2801
<i>Index</i>		2807