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THE EUROPEAN UNION**

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**WORKING DOCUMENT**

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from: Presidency

to: Working Party on Intellectual Property (Patents)

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Subject : Draft Agreement on the European Union Patent Judiciary

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Delegations will find in Annex a revised Presidency working document containing a Draft Agreement on the European Union Patent Judiciary for discussion at the meetings of the Intellectual Property (Patents) Working Party on 28 May and 11 June 2008. The revised version takes account of the discussions in the Working Party on 2, 8 and 25 April 2008 as well as of comments and observations received from stakeholders.

Delegations will also find annexed two lists of issues to be included respectively in the Statute of the European Union Patent Judiciary and in the Rules of Procedure, which need to be developed at a later stage.

**EUROPEAN UNION PATENT COURT –  
DRAFT AGREEMENT**

THE CONTRACTING PARTIES,

CONSIDERING that co-operation amongst the countries of Europe in the field of patents contributes significantly to the integration process in Europe, in particular to the establishment of an internal market within the European Economic Area characterized by the free movement of goods and services and the creation of a system ensuring that competition in the internal market is not distorted,

CONSIDERING that the fragmented market for patents and the significant variations between national court systems are detrimental for innovation, in particular for small and medium sized enterprises which have difficulties to enforce their patents and to defend themselves against unfounded claims,

WISHING to improve the enforcement of patents and to enhance legal certainty by setting up a European Union Patent Court for litigation related to the infringement and validity of patents,

CONSIDERING that the integrated and exclusive European Union Patent Court shall be set up for Community patents and European patents designating the Contracting Parties, and it shall be open for all Contracting States of the European Patent Convention,

CONSIDERING that the European Union Patent Court shall be designed to ensure expeditious and high quality decisions, striking a faire balance between the interests of right holders and other parties and taking into account the need for proportionality and flexibility,

CONSIDERING that the Court of Justice of the European Communities shall ensure the uniformity of the Community legal order,

HAVE AGREED AS FOLLOWS:

## **PART I – GENERAL AND INSTITUTIONAL PROVISIONS**

### **CHAPTER I - GENERAL PROVISIONS**

#### **Article 1**

##### **European Union Patent Court**

A jurisdictional system for the settlement of litigation related to the infringement and validity of Community patents and European patents is hereby established. To this end, a European Union Patent Court is created.

#### **Article 2**

##### **Definitions**

- (1) "Court" means the European Union Patent Court.
- (2) "Community Patent" means a patent within the meaning of Article 2, paragraph 1, of Regulation (EC) No... on the Community patent.
- (3) "European Patent" means a patent granted under the provisions of the European Patent Convention designating one or more Contracting Parties to this Agreement.
- (4) "European Patent Convention" means the Convention on the Grant of European Patents of 5 October 1973, as amended.
- (5) "European Patent Office" means the organ carrying out the granting of patents as established by Article 4, paragraph 2, point a) of the European Patent Convention.
- (6) "Patent" means a Community patent or a European patent.
- (7) "Statute" means the Protocol on the Statute of the European Union Patent Court which is an integral part of this Agreement.

(8) "Rules of Procedure" means the Rules of Procedure established by the Court in accordance with the provisions of this Agreement and the Statute.

(9) "Contracting Party" means a State party to this Agreement.

(10) "Member State" means a Member State of the European Union.

(11) "Council" means the Council of the European Union.

(12) "Commission" means the Commission of the European Community.

### **Article 3**

#### **Scope of Application**

This Agreement shall apply to:

- (a) any Community patent;
- (b) any supplementary protection certificate issued for a Community patent;
- (c) compulsory licenses in accordance with Article [21] of Council Regulation (EC) No ... on the Community patent;
- (d) any European patent which was granted and not yet expired at the date referred to in Article 60 or was granted after that date, without prejudice to Article 58; and
- (e) any application for a patent which is pending at the date referred to in Article 60 or filed after that date.

### **Article 3a**

#### **Legal status**

- (1) The Court shall have legal personality.

(2) In each of the territories of the Contracting Parties, the Court shall enjoy the most extensive legal capacity according to legal persons under the national law of that State.

(3) The Court shall be represented by the President of the Court.

### **Article 3b**

#### **Privileges and immunities**

The Protocol on the Privileges and Immunities of the European Communities shall apply to the Court.

### **Article 3c**

#### **Liability**

(1) The contractual liability of the Court shall be governed by the law applicable to the contract in question.

(2) The non-contractual liability of the Court in respect of any damage caused by it or its staff shall be governed by the law of *[the state of seat of the organ of the Court concerned]*.

## **CHAPTER II - ORGANS OF THE COURT**

### **Article 4**

#### **The Court**

(1) The Court shall comprise a Court of First Instance, a Court of Appeal and a Registry.

(2) The Court shall perform the functions assigned to it by this Agreement.

## **Article 5**

### **The Court of First Instance**

(1) The Court of First Instance shall comprise a central division as well as local and/or regional divisions.

(2) A local division shall be set up in the territory of a Contracting Party upon its request.

(3) An additional local division shall be set up in the territory of a Contracting Party upon its request when more than one hundred patent cases per calendar year have been commenced in that Contracting Party during three successive years prior to or subsequent to the date referred to in Article 60. The maximum number of divisions per Contracting Party shall be three.

(4) Contracting Parties hosting a local division shall designate its seat and provide the facilities necessary for that purpose.

(5) A regional division shall be set up for two or more Contracting Parties, upon their request. Such Contracting Parties shall designate the seat(s) of the division concerned. The regional division may hear cases in multiple locations.

(6) The central division shall have its seat in [...].

## **Article 6**

### **The Court of Appeal**

(1) The Court of Appeal shall have its seat in [...].

(2) The Court of Appeal shall sit in one or more panels established in accordance with the Statute.

## **Article 7**

### **Composition of Panels**

- (1) Any panel of the Court of First Instance shall have a multinational composition. Without prejudice to paragraph 5 and Article 15b (7) it shall consist of three Judges.
- (2) Any panel of a local division shall consist of two permanent Judges, who shall have habitual residence on the territory of the Contracting Parties hosting the division concerned. The third Judge shall be a member of the Pool of Judges referred to in Article 13.
- (3) In Contracting Parties where during a period of three successive years more than fifty patent cases per calendar year have been commenced at first instance the third Judge referred to in paragraph 2 shall serve on a permanent basis at the local division. In other Contracting Parties the member of the Pool of Judges shall be seconded to the local division on a case by case basis.
- (4) Any panel of a regional division shall consist of two permanent Judges chosen from a regional list of Judges, who shall have habitual residence on the territory of the Contracting Parties concerned, and one Judge from the Pool of Judges who shall not have habitual residence in the Contracting Parties concerned.
- (5) Without prejudice to paragraph 4, any local or regional division may request, where appropriate, and after having heard the parties, the President of the Court of First Instance to allocate it a technically qualified Judge from the Pool of Judges.
- (6) Any panel of the central division shall consist of two legally qualified Judges and one technically qualified Judge.
- (7) Any panel of the Court of Appeal shall consist of five Judges having a multinational composition. It shall consist of three legally qualified Judges and two technically qualified Judges.
- (8) Any panel shall be chaired by a legally qualified Judge.

## **Article 8**

### **The Registry**

- (1) A Registry shall be set up at the seat of the central division. It shall be managed by the Registrar and perform the functions assigned to it in accordance with the Statute.
- (2) A sub-registry shall be set up at any local or regional division.
- (3) The Registry shall keep records of all cases before the Court. Upon filing the sub-registry concerned shall notify every case to the Registry.

## **Article 9**

### **Advisory Committee**

- (1) An Advisory Committee shall be set up in accordance with the Statute.
- (2) The composition of the Advisory Committee shall ensure the highest standards of competence in the field of patent litigation, a broad range of relevant expertise and the broadest possible geographic distribution within the territory of the Contracting Parties.
- (3) The Advisory Committee shall assist the Council:
  - (a) in the preparation of the appointment for judges of the Court and
  - (b) in the establishment of the Court fees referred to in Article 43.

## **CHAPTER III – JUDGES OF THE COURT**

### **Article 10**

#### **Eligibility criteria**

(1) The Court shall comprise both legally and technically qualified Judges. Legally qualified Judges shall be qualified for judicial functions at the national level. Technically qualified Judges shall have a university degree in a field of technology.

(2) Judges shall ensure the highest standards of competence in the field of patent litigation. They shall have adequate knowledge of civil law and a proven experience in patent litigation.

### **Article 11**

#### **Appointment Procedure**

(1) The Judges shall be appointed by the Council, in accordance with the procedure laid down in the Statute, on the basis of proposals from the Advisory Committee.

(2) Judges from Contracting Parties which are not Member States shall be appointed in accordance with Part IIIA.

### **Article 12**

#### **Judicial Independence and Impartiality**

(1) The Court, its Judges and the Registrar shall enjoy judicial independence. In their decisions, the Judges shall not be bound by any instructions and shall comply only with the provisions of this Agreement, the Statute and the Rules of Procedure.

(2) Judges shall not take part in proceedings concerning patents or patent applications if there is a conflict of interest, in particular when they have been connected in any way in a previous function. Rules for conflict of interest shall be provided for in the Statute.

(3) The exercise of the office of a legally qualified Judge shall not exclude the exercise of other judicial functions at the national level.

(4) The exercise of the office of a technically qualified Judge shall not exclude the exercise of other functions provided there is no conflict of interest.

### **Article 13**

#### **Pool of Judges**

(1) A Pool of Judges shall be set up in accordance with the Statute.

(2) The Pool shall consist of legally and technically qualified Judges from the Court of First Instance and the Court of Appeal. The appointment of technically qualified members of the Pool shall ensure that the Pool disposes of at least one member with qualifications and experience per field of technology.

(3) At the request of a local or regional division the President of the Court of First Instance shall allocate Judges from the Pool of Judges to the division concerned. The allocation of Judges shall be based on their technical and legal expertise, linguistic skills and proven experience.

### **Article 14**

#### **Training Framework**

(1) A training framework for Judges shall be set up in order to improve and increase available patent litigation expertise and to ensure a broad geographic distribution of such specific knowledge and experience.

(2) The training framework shall in particular focus on:

- (a) internships in patent divisions having a substantial number of patent litigation cases;
- (b) improvement of language skills;
- (c) technical aspects of patent law;
- (d) the dissemination of knowledge and experience on civil procedures for technically qualified Judges; and
- (e) the preparation of candidate-Judges.

(3) The training framework will provide for continuous training. Regular meetings will be organized between all Judges of the Court in order to discuss developments in patent law and ensure consistency of jurisprudence.

## **CHAPTER IIIA – SUBSTANTIVE LAW**

### **Article 14a**

#### **Substantive patent law**

For the purpose of litigation under this Agreement the Court shall base its decisions on:

- (a) the provisions of this Agreement;
- (b) the provisions of Council Regulation (EC) No ... on the Community patent;
- (c) those provisions of the European Patent Convention which apply to every European patent;
- (d) those provisions of national law which have been enacted by the Contracting Parties to implement Article 65, Article 67, paragraphs (2) and (3) and Article 70, paragraphs 3 and 4, of the European Patent Convention;
- (e) the provisions of Regulation (EC) No 816/2006 of the European Parliament and the Council of 17 May 2006 on compulsory licensing of patents relating to the manufacture of pharmaceuticals for export to countries with public health problems; and
- (f) the provisions of Regulation (EC) No 1768/92 of 18 June 1992 concerning the creation of a supplementary protection certificate for plant protection products, as amended.

## **Article 14b**

### **Application of national civil law**

To the extent that decisions will not be based on the provisions referred to in Article [14b] but shall be based on national civil law, the applicable law will be determined in accordance with

- (a) Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II);
- (b) EC Convention on the 2007 on the law applicable to contractual obligations (Rome I); and
- (c) other instruments of private international law applicable between the Contracting Parties.

## **Article 14c**

### **Infringement of European patents**

A European patent shall confer on its proprietor the right to prevent any third party not having his consent:

- (a) from making, offering, putting on the market or using a product which is the subject-matter of the patent, or importing or stocking the product for these purposes;
- (b) from using a process which is the subject-matter of the patent or, when the third party knows, or it is obvious in the circumstances, that the use of the process is prohibited without the consent of the proprietor of the patent, from offering the process for use; and
- (c) from offering, putting on the market, using, importing or stocking for these purposes a product obtained directly by a process which is the subject-matter of the patent.

## **Article 14d**

### **Indirect infringements of European patents**

(1) A European patent shall also confer on its proprietor the right to prevent any third party not having his consent from supplying or offering to supply any person, other than a party entitled to exploit the patented invention, with means, relating to an essential element of that invention, for putting it into effect therein, when the third party knows, or it is obvious in the circumstances, that these means are suitable and intended for putting that invention into effect.

(2) Paragraph 1 shall not apply when the means are staple commercial products, except where the third party induces the person supplied to commit acts prohibited by Article 14c.

(3) Persons performing the acts referred to in Article 14e (a) to (c) shall not be considered to be parties entitled to exploit the invention within the meaning of paragraph 1.

## **Article 14e**

### **Limitations to the effects of the European patent**

The rights conferred by a European patent shall not extend to:

- (a) acts done privately and for non-commercial purposes;
- (b) acts done for experimental purposes relating to the subject-matter of the patented invention;
- (c) the extemporaneous preparation for individual cases in a pharmacy of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared
- (d) the use on board vessels of the countries of the Union of Paris for the Protection of Industrial Property, other than the Contracting Parties, of the patented invention, in the body of the vessel, in the machinery, tackle, gear and other accessories, when such vessels temporarily or accidentally enter the waters of the Contracting Parties, provided that the invention is used there exclusively for the needs of the vessel;

(e) the use of the patented invention in the construction or operation of aircraft or land vehicles of the countries of the Union of Paris for the Protection of Industrial Property, other than the Contracting Parties, or of accessories of such aircraft or land vehicles, when these temporarily or accidentally enter the territory of the Contracting Parties; and

(f) the acts specified in Article 27 of the Convention on International Civil Aviation of 7 December 1944, where these acts concern the aircraft of a State, other than a Contracting State, benefiting from that Article.

#### **Article 14f**

##### **Right based on prior use of the invention**

Any person, who, if a national patent had been granted in respect of an invention, would have had, in a Contracting Party, a right based on prior use of that invention or a right of personal possession of that invention, shall enjoy, in that Contracting Party, the same rights in respect of a European patent for the same invention.

### **CHAPTER IV – JURISDICTION, ALLOCATION OF CASES AND EFFECTS OF DECISIONS**

#### **Article 15**

##### **Jurisdiction**

(1) The Court shall have exclusive competence in respect of:

- (a) actions for actual or threatened infringements or for a declaration of non-infringement;
- (b) actions or counterclaims for revocation;
- (c) actions for damages or compensation derived from the provisional protection conferred by a published patent application;
- (d) actions relating to the use of the invention prior to the granting of the patent or to the right based on prior use of the patent;

(e) actions for the grant or revocation of compulsory licenses and on compensation for licences within the meaning of [Articles 21 and 22] of Council Regulation (EC) No. ... on the Community patent; and

(f) actions on compensation for licences within the meaning of [Article 20 (1)] of Council Regulation (EC) No. ... on the Community patent.

(2) The national courts of the Contracting Parties shall have jurisdiction in actions related to Community patents and European patents which do not come within the exclusive jurisdiction of the Court.

### **Article 15a**

#### **Allocation of cases**

(1) Direct actions for revocation or actions for declaration of non-infringement shall be brought before the central division. Such action may only be initiated if no action for infringement has been initiated between the same parties on the same patent before a local or a regional division.

(2) If an action for revocation is pending before the central division, an action for infringement between the same parties on the same patent may be initiated at any division, subject to paragraph 5. The local or regional division concerned may either stay the proceedings or refer the action for decision to the central division.

(3) An action for declaration of non-infringement pending before the central division shall be terminated once an infringement action between the same parties on the same patent is initiated before a local or regional division.

(4) The action referred to in paragraph 1 can be brought without the plaintiff having to initiate an opposition procedure before the European Patent Office.

(5) Actions for actual or threatened infringement, actions for damages and compensation, actions relating to the use of the invention prior to the granting of the patent or to the right based on prior use of the patent, actions for the grant or revocation of compulsory licenses and on compensation for licences, and actions for interlocutory injunctions shall be brought before:

(a) the local division hosted by the Contracting Party where the actual or threatened infringement occurs or may occur, or the regional division in which this Contracting Party participates; or

(b) the local division hosted by the Contracting Party where the defendant is domiciled or the regional division in which this Contracting Party participates.

If the Contracting Party concerned does not host a local division and does not participate in a regional division, actions shall be brought before the central division.

(6) In any case parties can agree to bring an action before the division of their choice, including the central division.

(7) Where a counterclaim for revocation is brought in the case of an action for infringement, the local or regional division concerned shall, after having heard the parties, have the discretion to:

(a) either proceed with both the infringement action and with the counterclaim for revocation and request the President of the Court of First Instance to assign it a technically qualified Judge in the field of technology concerned from the Pool of Judges;

(b) refer the counterclaim for decision to the central division and proceed with the infringement proceedings; or

(c) with agreement of the parties, refer the case for decision to the central division.

## **Article 16**

### **Territorial effects of decisions**

Decisions of the Court will have effect, in the case of a Community patent, for the whole territory of the European Union and in the case of a European patent for the territory of those Contracting Parties for which the European patent has been validated.

## **CHAPTER V – Patent Arbitration and Mediation**

## **Article 17**

### **Patent arbitration and mediation centre**

(1) A patent arbitration and mediation centre is hereby established ("the Centre").

(2) The Centre shall provide facilities for mediation and arbitration of patent disputes falling within the scope of this Agreement with the exception of disputes concerning the validity of the patent.

(3) In the interim procedure referred to in Article 32 paragraph 2, the Judge acting as Rapporteur shall explore with the parties the possibilities for a settlement through arbitration and mediation, and for the use of the facilities of the Centre.

## **Article 17a**

### **Organisation**

(1) The Centre shall have its seat in [...].

(2) The Centre shall establish Arbitration and Mediation Rules.

(3) The Centre shall draw up a list of mediators and arbitrators to assist the parties in the settlement of their dispute.

## **PART II – FINANCIAL PROVISIONS**

### **Article 18**

#### **Budget**

(1) The budget shall be based upon the Court's own financial revenues and, where necessary, contributions from the Community budget and from the Contracting Parties which are not Member States, in accordance with the Statute.

(2) The Court's own financial revenues shall comprise Court fees and other revenues.

### **Article 19**

#### **Financing of the Court**

Operating costs of the Court shall be financed from its budget, in accordance with the Statute

### **Article 20**

#### **Financing of the Training Framework for Judges**

The Training Framework for Judges shall be financed by the European Community and Contracting Parties which are not Member States.

### **Article 21**

#### **Financing of the Centre**

Operating costs of the Centre shall be financed in accordance with the Statute

## **PART III - PROCEDURAL PROVISIONS**

### **CHAPTER 1 – GENERAL**

#### **Article 22**

##### **Rules of Procedure**

- (1) The Court shall establish its Rules of Procedure.
- (2) Those Rules shall require the approval of the Council, acting by a qualified majority.

#### **Article 23**

##### **General obligations**

- (1) The Court shall deal with litigation in ways which are proportionate to its importance and complexity.
- (2) The Court shall ensure that the rules, procedures and remedies are used in a fair and equitable way and in particular do not distort competition.

#### **Article 24**

##### **Case management**

The Court shall actively manage the cases before it in accordance with the Rules of Procedure.

#### **Article 25**

##### **Electronic procedures**

The Court shall make best use of electronic procedures, such as electronic filing of submissions of the parties and stating of evidence in electronic form, as well as video conferencing for overall communication, in accordance with the Rules of Procedure.

## **Article 26**

### **Public proceedings**

The proceedings shall be open to the public unless the Court decides to make them, to the extent necessary, confidential in the interest of one of the parties or other affected persons, or in the general interest of justice or public order.

## **Article 27**

### **Parties**

(1) Any natural or legal person, or any body equivalent to a legal person entitled to initiate proceedings in accordance with the applicable law of the Contracting Party concerned, who is proprietor of a patent shall have access to the Court in order to bring actions, to defend itself against actions, or to seek application of the procedures and remedies foreseen in this Agreement or the Rules of Procedure.

(2) The holder of an exclusive licence under a patent shall be able to institute proceedings before the Court in the same way as the proprietor, provided that the patent proprietor is given prior notice, unless the licensing agreement provides otherwise.

(3) The holder of a non-exclusive licence shall be entitled to initiate litigation before the Court, provided that the patent proprietor is given prior notice and in so far as expressly permitted by the license agreement.

(4) In cases initiated by any licence holder, the patent proprietor shall be entitled to intervene in the procedure.

(5) The validity of a patent cannot be contested in infringement proceedings initiated by the holder of a licence where the proprietor of the patent does not take part in the proceedings. The party in infringement proceedings wanting to contest the validity of a patent shall have to institute proceedings against the proprietor.

(6) Any other natural or legal person, or any body equivalent to a legal person entitled to initiate proceedings in accordance with the applicable law of the Contracting Party concerned, who is directly and individually concerned by a patent may institute proceedings in accordance with the Rules of Procedure.

## **Article 28**

### **Representation**

(1) The parties shall be represented by lawyers authorized to practise before a court of a Contracting Party who may be assisted by a European Patent Attorney, who is a national of a Contracting Party entitled to act as professional representative before the European Patent Office (hereafter: European Patent Attorney), and/or by patent attorneys with proven patent litigation experience.

(2) Notwithstanding paragraph 1, European Patent Attorneys and patent attorneys with proven patent litigation experience who are in possession of a European Union Litigation Certificate may represent the parties in actions for revocation of a patent before the central division.

(3) Representatives of the parties and their assistants shall enjoy the rights and immunities necessary to the independent exercise of their duties.

(4) Representatives of the parties and their assistants shall be obliged not to misrepresent cases or facts before the Court either knowingly or with good reasons to know.

## **CHAPTER II – LANGUAGES OF PROCEEDINGS**

### **Article 29**

#### **Language of proceedings at the Court of First Instance**

(1) The language of proceedings before any local or regional division is (are) the official European Union language(s) of the Member State or the official language(s) of other Contracting Parties hosting the relevant division, or the official language(s) designated by Contracting Parties sharing a regional division.

(2) Notwithstanding paragraph 1, Contracting Parties may designate one of the official languages of the European Patent Organisation as the language of proceedings of their local or regional division.

(3) Parties shall be entitled to agree on the use of the language in which the patent was granted as language of proceedings subject to approval by the relevant division. If the division concerned does not approve their choice, the parties can request that the case is referred to the central division.

(4) At the request of one of the parties and after having heard the other partie(s) the relevant local or regional division can, on grounds of convenience and fairness, decide on the use of the language in which the patent is granted as language of proceedings.

(5) The language of proceedings at the central division is the language in which the patent concerned was granted.

### **Article 30**

#### **Language of proceedings at the Court of Appeal and for review**

(1) The language of proceedings before the Court of Appeal shall be the language of proceedings before the Court of First Instance.

(2) Parties shall be entitled to agree on the use of the language in which the patent is granted as language of proceedings.

(3) In exceptional cases and to the extent deemed appropriate, the Court may decide on another European Union official language or the official language of a Contracting Party which is not a Member State as the language of proceedings for the whole or part of the proceedings, subject to agreement by the parties.

(4) The language of proceedings for the review procedure shall be the language of proceedings before the Court of Appeal.

## **Article 31**

### **Other language arrangements**

(1) Any division concerned and the Court of Appeal shall be entitled, to the extent deemed appropriate, to dispense with translation requirements.

(2) At the request of one of the parties, and to the extent deemed appropriate, any division and the Court of Appeal shall provide interpretation facilities to assist the partie(s) concerned at oral proceedings.

## **CHAPTER III – PROCEEDINGS BEFORE THE COURT**

### **Article 32**

#### **Oral, interim and written procedures**

(1) The proceedings before the Court shall consist of a written, interim and oral procedure, in accordance with the Rules of Procedure. All parts shall be organized in a flexible and balanced manner

(2) In the interim procedure, after the written procedure and if appropriate, the Judge acting as Rapporteur, subject to a mandate of the full panel and designated in accordance with the Rules of Procedure, shall be responsible for convening an interim hearing. He shall in particular explore the possibility for a settlement.

(3) The oral procedure shall give parties the opportunity to explain properly their arguments. The Court may, on the agreement of the parties, dispense with the oral procedure.

## **Article 33**

### **Means of evidence**

(1) In proceedings before the Court, the means of giving or obtaining evidence shall include in particular the following:

- hearing the parties,
- requests for information,
- production of documents,
- hearing witnesses,
- opinions by experts,
- inspection,
- comparative tests or experiments,
- sworn statements in writing (affidavits).

(2) The Rules of Procedure shall govern the procedure for taking such evidence. Questioning of witnesses and experts shall be under the control of the Court and be limited to what is strictly necessary.

## **Article 33a**

### **Burden of proof**

The burden of the proof of facts shall be on the party relying to those facts

## **Article 34**

### **Reversal of burden of proof**

(1) If the subject-matter of a patent is a process for obtaining a new product, the identical product when produced without the consent of the proprietor shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process.

(2) The same shall apply if there is a substantial likelihood that the identical product was made by the process and the proprietor of the patent has been unable, despite reasonable efforts, to determine the process actually used.

(3) In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and trade secrets shall be taken into account.

## **CHAPTER IV – POWERS OF THE COURT**

### **Article 34a**

#### **General**

(1) The Court may impose such measures, procedures and remedies as are laid down in this Agreement and may make its orders subject to other conditions, in accordance with the Statute and the Rules of Procedure.

(2) The Court shall take due account of the interest of the parties and shall, before making an order, give any party an opportunity to present its interests unless this is incompatible with an effective enforcement of such order.

### **Article 35**

#### **Order to produce evidence**

(1) Where a party has presented reasonably available evidence sufficient to support its claims and has, in substantiating those claims, specified evidence which lies in the control of the opposing party or a third party, the Court may order that party to produce such evidence. The Court may consider that a reasonable sample of a substantial number of copies of a protected object constitutes reasonable evidence.

(2) On application by a party the Court may order, under the same conditions as specified in paragraph 1, the communication of banking, financial or commercial documents under the control of the opposing party.

## **Article 35a**

### **Order to preserve evidence and to inspect property**

- (1) The Court may, even before the commencement of proceedings on the merits of the case, on application by a party who has presented reasonably available evidence to support the claim that the patent right has been infringed or is about to be infringed, order prompt and effective provisional measures to preserve relevant evidence in respect of the alleged infringement.
- (2) Such measures may include the detailed description, with or without the taking of samples, or the physical seizure of the infringing goods, and, in appropriate cases, the materials and implements used in the production and/or distribution of these goods and the documents relating thereto.
- (3) At the inspection of the premises the requesting party shall not be present itself but may be represented by an independent professional practitioner appointed by the Court and whose name has to be specified in the Court's order. Practitioners qualified to carry out the inspections referred shall be notified to the Registry by the Member States.
- (4) The measures shall be taken, if necessary without the other party having been heard, in particular where any delay is likely to cause irreparable harm to the proprietor of the patent, or where there is a demonstrable risk of evidence being destroyed.
- (5) Where measures to preserve evidence are adopted without the other party having been heard, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall take place upon request of the parties affected with a view to deciding, within a reasonable period after the notification of the measures, whether the measures shall be modified, revoked or confirmed.
- (6) The Court shall ensure that the measures to preserve evidence are revoked or otherwise cease to have effect, upon request of the defendant, without prejudice to the damages which may be claimed, if the applicant does not institute, within a period not exceeding 20 working days or 31 calendar days, whichever is the longer, proceedings leading to a decision on the merits of the case before the Court.

(7) Where the measures to preserve evidence are revoked, or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of the patent right, the Court may order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by those measures.

### **Article 35b**

#### **Freezing orders**

The Court may order a party to refrain from removing from its jurisdiction any assets located there, or from dealing in any assets, whether located within its jurisdiction or not.

### **Article 36**

#### **Court experts**

(1) Without prejudice to the possibility for the parties to produce expert evidence, the Court may at any time appoint experts in order to provide expertise for specified technical aspects of the case.

(2) To this end, an indicative list of technical experts covering all technical fields shall be drawn up by the Court in accordance with the Rules of Procedure and kept by the Registry.

(3) The technical experts shall guarantee independence and impartiality.

(4) Expert advice given to the Court shall be made available to the parties who shall have the possibility to comment on the advice given.

## **Article 37**

### **Provisional and protective measures**

(1) The Court may grant injunctions against an alleged infringer or against a third party whose intermediary services are used by the alleged infringer, on a provisional basis, intended to prevent any impending infringement, to forbid the continuation of the alleged infringement or to make such continuation subject to the lodging of guarantees.

(2) Under the same conditions, the Court may grant injunctions against an intermediary whose services are being used by a third party to infringe a patent right.

(3) The Court may also order the seizure or delivery up of the goods suspected of infringing a patent right so as to prevent their entry into or movement within the channels of commerce. If the injured party demonstrates circumstances likely to endanger the recovery of damages, the Court may order the precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets.

(4) The Court may, in respect of the measures referred to in paragraphs 1, 2 and 3, require the applicant to provide any reasonable evidence in order to satisfy itself with a sufficient degree of certainty that the applicant is the right-holder and that the applicant's right is being infringed, or that such infringement is imminent.

(5) Article 35a paragraphs 4 to 7 shall apply *mutatis mutandis* to the measures referred to in this Article.

## **Article 37a**

### **Permanent injunctions**

(1) Where a decision is taken finding an infringement of a patent, the Court may grant an injunction aimed at prohibiting the continuation of the infringement. The Court may also grant such injunctions against an intermediary whose services are being used by a third party to infringe a patent right

(2) Where appropriate, such injunction shall be subject to a recurring penalty payment with a view to ensuring compliance.

## **Article 38**

### **Corrective measures in infringement proceedings**

(1) Without prejudice to any damages due to the injured party by reason of the infringement, and without compensation of any sort, the Court may order, at the request of the applicant, that appropriate measures be taken with regard to goods found to be infringing patent rights and, in appropriate cases, with regard to materials and implements principally used in the creation or manufacture of those goods.

(2) Such measures shall include:

- (a) a declaration of the fact of infringement;
- (b) recall from the channels of commerce;
- (c) deprive the product from its infringing property;
- (d) definitive removal from the channels of commerce; or
- (e) destruction.

(3) The Court shall order that those measures be carried out at the expense of the infringer, unless particular reasons are invoked for not doing so.

(4) In considering a request for corrective measures, the need for proportionality between the seriousness of the infringement and the remedies ordered; the willingness of the party concerned to convert the materials into a non-infringing state, as well as the interests of third parties shall be taken into account.

## **Article 38a**

### **Decision on invalidity of a patent**

(1) The Court shall declare a patent invalid, either entirely or partly, on the grounds referred to in Article 138, paragraph 1, of the European Patent Convention.

(2) The Court shall limit the patent by a corresponding amendment of the claims and revoke the patent in part if the grounds for revocation affect the patent only in part.

(2) Whereas the Court, in a final decision, has declared a patent invalid, either entirely or partly, it shall send a copy of the decision to the European Patent Office and, with respect to a European patent, to the national patent office of any Contracting Party concerned.

## **Article 39**

### **Power to order the communication of information**

(1) The Court may, in response to a justified and proportionate request of the claimant and in accordance with the Rules of Procedure, order a party (allegedly) infringing the patent to inform the claimant of:

- (a) the origin and distribution channels of the infringing goods or processes;
- (b) the quantities produced, manufactured, delivered, received or ordered, as well as the price obtained for the goods in question; and
- (c) the identity of any third person involved in the production or distribution of infringing goods or in the use of an infringing process.

(2) The Court may, in accordance with the Rules of Procedure, also order any other person who:

- (a) was found in the possession of infringing goods or in the use of an infringing process;
- (b) was found to be providing services used in infringing activities; or

(c) who was indicated by the person referred to in (a) or (b) as being involved in the production, manufacture or distribution of the goods or processes or in the provision of the services,

to provide the injured party with the information referred to in paragraph 1 (a),(b) and (c).

#### **Article 40**

##### **Protection of confidential information**

To protect a party's or a third party's trade secrets, personal data or other confidential information, or to prevent an abuse of evidence, the Court may order that the use of evidence in proceedings before it be restricted or prohibited or that access to such evidence be restricted to certain persons.

#### **Article 41**

##### **Award of damages**

(1) The Court may, on the application of the injured party, order the infringer who knowingly, or with reasonable grounds to know, engaged in a patent infringing activity, to pay the injured party damages appropriate to the prejudice actually suffered as a result of the infringement.

(2) The injured party shall, to the extent possible, be restored in the position he would have been in if no infringement had taken place. The party infringing the patent shall not benefit from the infringement. However, damages shall not be punitive.

(3) When the Court sets the damages:

(a) it shall take into account all appropriate aspects, such as the negative economic consequences, including lost profits, which the injured party has suffered, any unfair profits made by the infringer and, in appropriate cases, elements other than economic factors, such as the moral prejudice caused to the injured party by the infringement; and

(b) as an alternative to (a), it may, in appropriate cases, set the damages as a lump sum on the basis of elements such as at least the amount of the royalties or fees which would have been due if the infringer had requested authorisation to use the patent in question.

(4) Where the infringers did not knowingly, or with reasonable grounds to know, engage in infringing activity, the Court may order the recovery of profits or the payment of damages, which may be pre-established.

## **Article 42**

### **Legal costs**

(1) Reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity requires otherwise.

(2) Where a party succeeds only in part or in exceptional circumstances, the Court may order that costs be apportioned equitably or that the parties bear their own costs.

(3) A party should bear any unnecessary costs it has caused the Court or another party.

## **Article 43**

### **Court fees**

(1) Parties to proceedings before the Court shall pay court fees, to be established and reviewed periodically in accordance with the Statute

(2) The amount of the court fees shall ensure a right balance between the principle of fair access to justice and an adequate contribution of the parties for the services rendered by the Court.

(3) Court fees shall be paid in advance. Any party which has not paid a prescribed court fee may be excluded from further participation in the proceedings.

## **Article 44**

### **Legal aid**

(1) A party who is a natural person and wholly or in part unable to meet the costs of the proceedings may at any time apply for legal aid. The conditions which need to be satisfied for the full or partial grant of legal aid shall be laid down in the Rules of Procedure.

(2) The Court shall decide whether legal aid should be granted in full or in part, or whether it should be refused, in accordance with the Rules of Procedure.

## **Article 44a**

### **Period of limitation**

Proceedings relating to use, to the right based on prior use, to infringement and to damages referred to in this chapter may be initiated until five years from the date on which the requesting party became, or had reasonable grounds to become, aware of the facts justifying the proceedings.

## **CHAPTER V – APPEAL AND REVIEW**

## **Article 45**

### **Appeal**

(1) An appeal from decisions of the Court of First Instance shall lie to the Court of Appeal.

(2) Appeals of decisions of the Court of First Instance may be based on points of law and matters of fact.

(3) New facts and new evidence may only be introduced if their submission by the party concerned could not reasonably have been expected during proceedings at first instance, in accordance with the Rules of Procedure.

(4) An appeal against a final decision or against an order in the meaning of Articles 35, 35a, 35b, 37 and 39 of the Court of First Instance may be brought before the Court of Appeal within three months of the notification of the decision appealed against.

## **Article 46**

### **Effects of an appeal**

(1) Without prejudice to paragraph 2, an appeal shall not have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties.

(2) An appeal against a decision on actions or counterclaims for revocation shall have suspensive effect unless the Court of Appeal decides otherwise at the motivated request of one of the parties.

(3) Appeals against decisions under Articles 35, 35a, 35b, 37 and 39 shall not prevent the continuation of the underlying procedure. The Court may not conclude however the case before having a decision on these appeals.

## **Article 47**

### **Decision in appeal and referral back**

(1) If the appeal is well-founded, the second instance court shall revoke the decision of the first instance court and give final judgement. The Court of Appeal may in exceptional cases and in accordance with the Rules of Procedure refer the case back to the first instance court for decision.

(2) Where a case is referred back to the Court of First Instance it shall be bound by the decision of the second instance court on points of law.

## **Article 48**

### **Petition for Review (cassation)**

- (1) Decisions given by the Court of Appeal under Article 45 may be subject to further review by the Court of Justice of the European Communities on points of law only, in accordance with the Statute.
- (2) A petition for review shall have no suspensive effect.

## **CHAPTER VI - DECISIONS**

### **Article 49**

#### **Basis for decisions**

- (1) The Court shall decide in accordance with the requests submitted by the parties on the basis of applicable substantive patent law. The Court shall not award more than is requested.
- (2) The decisions on the merits may only be based on arguments or evidence on which the parties have had an opportunity to present their comments.
- (3) Apart from well-known facts, decisions on the merits may only be based on the grounds, facts and evidence put forward by the parties or introduced into the procedure by the order of the Court.
- (4) The Court shall evaluate evidence freely and independently.

### **Article 50**

#### **Formal requirements**

- (1) The decision of the Court shall be reasoned and will be given in writing within three months of the end of the oral/written procedure.
- (2) The decision of the Court will be delivered in the language of proceedings.

## **Article 51**

### **Concurring or dissenting opinions**

(1) Decisions of the Court shall be taken by a majority of the panel, in accordance with the Statute. In case of equal votes the vote of the presiding Judge shall prevail.

(2) In exceptional circumstances any member of the division may express his opinion separately from the decision, whether that opinion be concurring or dissenting.

## **Article 52**

### **Settlement**

The parties may, at any time in the course of proceedings, conclude their case by way of settlement confirmed by a decision of the Court. The validity of a patent may not be subject to a settlement.

## **Article 53**

### **Stay of proceedings**

(1) A party shall inform the Court when it has requested the European Patent Office accelerated processing in opposition procedures or before the boards of appeal. The Court may stay proceedings when the European Patent Office will apply the accelerated procedure and a rapid decision may be expected.

(2) The Rules of Procedure shall provide details on the stay of proceedings in connected cases.

## **Article 54**

### **Publication of decisions**

The Court may order, at the request of the applicant and at the expense of the infringer, appropriate measures for the dissemination of the information concerning the decision, including displaying the decision and publishing it in full or in part in public media.

## **Article 55**

### **Rehearing**

- (1) A petition for rehearing after a final decision may exceptionally be made to the Court of Appeal on discovery of a fact which is of such a nature as to be a decisive factor and which, when the judgment was given, was unknown to the party claiming the revision and only on grounds of a fundamental procedural defect or of an act which was held, by a final court decision, to constitute a criminal offence.
- (2) A request for a rehearing shall be filed within 10 years from the date of the judgment and shall not have suspensive effect unless the Court of Appeal decides otherwise.
- (3) If the request for a rehearing is founded the Court of Appeal may set aside, in whole or in part, the decision under review and re-open the proceedings for a new trial and decision.
- (4) Persons using patents which are the subject-matter of a decision and who are acting in good faith should be allowed to continue the use.

## **Article 56**

### **Recognition and enforcement of decisions**

- (1) Decisions of the Court shall be enforceable, if necessary, subject to the provision of security or an equivalent assurance to ensure compensation for any prejudice suffered.
- (2) The order for its enforcement is appended to the decision by the Court. A decision of the Court shall be recognised and enforceable in any Contracting Party without the need for a declaration of enforceability and without any possibility of opposing its recognition.
- (3) Without prejudice to the provisions of this Agreement and the Statute, the enforcement procedures shall be governed by the law of the Contracting Party of enforcement. Any decision of the Court shall be enforced under the same conditions as a judgement given in the Contracting Party of enforcement.

(4) If a party does not comply with the terms of an order of the Court, then this could be sanctioned with a periodic penalty payment payable to the Court. The individual fine should be proportionate to the importance of the order to be enforced. The periodic penalty payment should be ordered without prejudice to the party's right to claim damages or security.

## **PART IIIA – MIXED COMMITTEE**

### **Article 57**

*[EU Member States and non-EU Member States – to be developed]*

## **PART IV – TRANSITIONAL PROVISIONS**

### **Article 58**

#### **Transitional Period**

(1) During a transitional period of seven years proceedings for infringement or validity of a European patent may still be initiated before the national courts or other competent authority of a Member State having jurisdiction under national law which for that purpose shall continue to apply to European patents effective in the Contracting Parties.

(2) Any proceedings pending before a national court at the end of the transitional period shall continue to be subject to the transitional regime.

(3) In order to ensure during a transitional period of seven years a most efficient use and pooling of resources, and without prejudice to Articles 5 and Article 7, paragraph 3, those Contracting Parties where prior to the period referred to in Article 60 during a period of three successive years less than fifty patent cases per calendar year have commenced shall:

- a) either have panels of local divisions which shall initially consist of one member having habitual residence in the Member State concerned and two members from the Pool of Judges not having habitual residence in the Member State concerned; or
- b) join a regional division with a critical mass of at least fifty cases per year.

(4) Holders of European patents granted prior to the date referred to in Article 60 shall have the possibility to opt out from the application of Article 3. To this end they shall notify their opt-out to the Registry by the latest one month before expiry of the transitional period.

(5) Holders of European patents having made use of the opt-out foreseen by paragraph 4 shall be entitled to withdraw their opt-out at any moment. In this event they shall notify the Registry accordingly.

## **PART V – FINAL PROVISIONS**

### **Article 58a**

#### **Signature, ratification**

This Agreement shall be subject to ratification. Instruments of ratification shall be deposited with the Government of [...].

### **Article 58b**

#### **Accession**

(1) This Agreement shall be open to accession by any Contracting State of the European Patent Convention.

(2) Instruments of accession shall be deposited with the Government of [...].

### **Article 58c**

#### **Duration of the agreement**

This Agreement shall be of unlimited duration.

## **Article 58d**

### **Revision**

(1) This Agreement may be revised by a Conference of the Contracting Parties.

(2) Not later than five years from the date referred to in Article 60, the Commission shall draw up a report on the operation of the Court.

## **Article 58e**

### **Languages of the agreement and depositing**

## **Article 59**

### **Entry into force**

## **Article 60**

### **Entry into operation**

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**Preliminary list of topics to be included in the Statute  
of the European Union Patent Court**

**I. Judges**

- Appointment of Judges (procedure of appointment of Judges from EU Member States and other Contracting parties; term of office) (*Council WD: Article 11*)
- Eligibility of Judges (requirements for legally and technically qualified Judges) (*Council WD: Article 10*)
  - Oath
  - Impartiality (*Council WD: Article 12*)
  - Immunity of Judges
- End of duties (death, resignation; replacement of Judges, depriving of office)
- Status of Candidate-Judges
- Training (setting up of training framework, tasks, organization) (*Council WD: Article 14*)

**II. Organisation**

**President of the Court**

- Election of the President of the Court (*Council WD: Article 3a(3)*)
- Duties of the President of the Court
- Replacement of the President of the Court

**Court of First Instance** (*Council WD: Article 5*)

- Setting up and organisation of local divisions (*Council WD: Article 5(4)*)
- Setting up and organisation of regional divisions (*Council WD: Article 5(5)*)
- Setting up and organisation of a central division
- Discontinuance of local/regional divisions
- Establishment of panels in local divisions
- Establishment of panels in regional divisions
- Establishment of panels in central divisions

- President of the Court of First Instance
- Composition of panels in local/regional and central divisions (multinationality, permanence, number of Judges, legally and technically qualified Judges, possibility for parties to request one Judge panel, presiding Judge, etc) (*Council WD: Article 7 (1-5)*)

### **Court of Appeal**

- Setting up and organisation of the Court of Appeal
- Establishment of panels (*Council WD: Article 6*)
- Composition of panels (multinationality, number of Judges, legally and technically qualified Judges, presiding Judge, etc) (*Council WD: Article 7(6)*)

### **Cassation** (*Council WD: Article 48*)

- Conditions for petition for Review to the Court of Justice (cassation)
- Effects of judgments of the Court of Justice

### **Pool of Judges** (*Council WD: Article 13*)

- Setting up and operation of pool of Judges
- Procedure of assigning Judges from pool of Judges

### **Declining jurisdiction and referral of cases**

- Declining jurisdiction
- Referral of cases (including cases from local/regional divisions to central division) (*Council WD: Article 15b*)

### **Registry** (*Council WD: Article 8*)

- Appointment of the Registrar
- Duties
- Relationship with the European Patent Office patent register

**Sub-registries** (*Council WD: Article 8(2)*)

- Setting up of sub-registries in all local and regional divisions
- Duties (including notification of cases to the Registry and management of case list) (*Council WD: Article 8(3)*)

**Staff** (*Council WD: Article 3b*)

- Applicable staff regulations
- Duties of staff

**Advisory Committee** (*Council WD: Article 9*)

- Setting up of Advisory Committee
- Composition and organisation
- Execution of functions

**Budget**

- Establishment and review of court fees (*Council WD: Article 43 (1)*)
- Contributions from Community budget and other Contracting Parties (*Council WD: Article 18 (2)*)
- Operating costs (definition, financing or co-financing, etc) (*Council WD: Article 19*)

**Decisions of the Court**

- Majority of the panel to take a decision
  - Role of the presiding Judge in case of equal votes
-

**Preliminary list of topics to be included in the Rules of Procedure  
of the European Union Patent Court**

**I. Organisation of the Court**

**1. Working of the Court**

- Sessions, judicial vacations
- Dates, times and places of sitting of the Court (including the possibility for central and regional divisions to hold hearing in multiple locations) (*Council WD: Article 5 (4) and (6)*)
- Inability to attend or absence of a Judge
- Procedure of assignment of cases to panels
- Appointment and duties of Judge-Rapporteur (*Council WD: Article 32 (2)*)

**2. Registry** (*Council WD: Article 8*)

- Appointment and oath of the Registrar
- Assistants of the Registrar
- Replacement of the Registrar
- Keeping of the Registry (including information on notifications about opt-outs)
- Procedure of publication of decisions

**3. Languages** (*Council WD: Chapter II, Articles 29-31*)

- Detailed language arrangements

**4. Parties**

- Initiation of proceedings by third parties (conditions, procedure) (*Council WD: Article 27(6)*)
- Special cases for a party to initiate proceedings (including proceedings initiated by an applicant for a patent or a prior user)
- Intervention in proceedings (application, conditions, invitation by the Court) (*Council WD: Article 27(4)*)

## **5. Representatives of parties** *(Council WD: Article 28)*

- Requirements for representatives
- Requirements for European Patent Attorneys (including rules on EU patent litigation certificates or proof of patent litigation experience)
- Privileges, immunities and facilities of representatives
- Status of parties' representatives
- Misrepresentation
- Exclusion from proceedings

## **II. Procedure**

### **1. Written procedure** *(Council WD: Article 32 (1))*

- Lodging of pleadings
- Application (including its putting in order, serving and publication)
- Lodging of defence
- Second exchange of pleadings
- Offers to introduce further evidence
- New pleas in law
- Documents for consideration
- Confidentiality *(Council WD: Articles 26 and 40)*

### **2. Interim procedure** *(Council WD: Article 32 (1) and (2))*

- Conditions for convening an interim hearing
- Role of Judge-Rapporteur
- Mandate of a panel to Judge-Rapporteur
- Possibility for a settlement

### **3. Oral procedure** *(Council WD: Article 32 (1) and (3))*

- Public proceedings *(Council WD: Article 26)*
- Decision of the Court to make proceedings confidential *(Council WD: Article 26)*
- Holding of hearings

- Date of the hearing
- Absence of the parties from the hearing
- Conduct of the hearing
- Close of the oral procedure
- Minutes of the hearing
- Interpretation to assist the parties (*Council WD: Article 31 (2)*)

#### **4. Electronic procedures** (*Council WD: Article 25*)

- Use of electronic procedures
- Electronic filing of submissions and evidence
- Electronic communication

#### **5. Obtaining evidence** (*Council WD: Article 33*)

- Means of obtaining evidence
- Procedure depending on means of obtaining evidence
- Witnesses (summoning, examination, duties, oath)
- Experts (appointment, duties, oath, report, objection)
- Court experts (drawing up a list of experts in specific technical fields, appointment) (*Council WD: Article 36*)
- Order to produce evidence (*Council WD: Article 35*)
- Order to preserve evidence and to inspect property (*Council WD: Article 35b*)
- Freezing orders (*Council WD: Article 35c*)
- Conditions and procedure for ordering the communication of information (*Council WD: Article 39*)

#### **6. Provisional and permanent injunctions**

- Granting provisional and protective measures (application, procedure) (*Council WD: Article 37*)
- Granting permanent injunctions (application, procedure) (*Council WD: Article 37b*)
- Ordering corrective measures (request, procedure) (*Council WD: Article 38*)

## **7. Settlement** (*Council WD: Article 32 (2) and Article 52*)

- Examination for possibilities to settle, proposing solutions by the Court
- Agreement of the parties
- Confirmation by the Court

## **8. Staying of proceedings** (*Council WD: Articles 15b and 53*)

- General conditions and procedure
- Staying of proceedings when validity and infringement questions are split (*Council WD: Articles 15b*)
- Staying of proceedings due to action at the European Patent Office (*Council WD: Articles 53*)
- Staying or proceedings in connected cases
- Duration and effects

## **9. Expedited proceedings**

- Conditions for expedited proceedings

## **10. Discontinuance of proceedings**

- Discontinuance of proceedings at the wish of applicant; no need to adjudicate; action bound to fail; absolute bar to proceedings

## **11. Decisions** (*Council WD: Chapter VI, Articles 49-51 and 54*)

- Deliberations (secrecy)
- Quorum
- Majority of the panel to take a decision [*proposed to refer to the Rules of Procedure instead of the Statute in Council WD: Article 51 (1)*]
- Role of the presiding Judge in case of equal votes [*proposed to refer to the Rules of Procedure instead of the Statute in Council WD: Article 51 (1)*]
- Content and form of a decision
- Delivery of a decision
- Binding and territorial effect of a decision (*Council WD: Article 16*)

- Rectification
- Enforcement (including rules of lodging of security) (*Council WD: Articles 46 and 56*)
- Publication
- Protection of confidential data in published decisions
- Publication of decision as a measure for dissemination of information (*Council WD: Article 54*)

## **12. Legal costs** (*Council WD: Article 42*)

- Decision as to costs
- Allocation
- Unreasonable costs
- Costs of enforcing a decision
- Recoverable costs
- Dispute as to costs
- Payment

## **13. Legal aid** (*Council WD: Article 44*)

- Substantive conditions
- Formal conditions
- Procedure for granting aid

## **14. Serving of documents**

- Procedure of serving documents
- Serving of documents by electronic means

## **15. Time limits**

- Calculation of periods of time prescribed in the Agreement
- Extension of time limits
- Unforeseeable circumstances/force majeure in relation to time limits

### **III. Special forms of procedure**

#### **1. Appeals** (*Council WD: Article 45-46*)

- Conditions for appeals against decisions of the Court
- Proceedings in the Court of Appeal
- Decision in appeal
- Conditions and procedure for introduction of new facts and new evidence in the appeal instance  
(*Council WD: Article 45 (3)*)

#### **2. Referral back to the Court of First Instance** (*Council WD: Article 47*)

- Conditions for referral back
- Procedure for examining cases referred back

#### **3. Petition for review** (*Council WD: Article 48*)

- Conditions and procedure for petition for review (cassation)

#### **4. Exceptional review procedures**

- Conditions and procedure for rehearing (*Council WD: Article 55*)
- Third-party proceedings (when a decision affecting a third party has been taken without its participation)
- Interpretation of decisions of the Court

#### **5. Decisions by default**

- Procedure of taking decision by default (when defendant fails to lodge defence)
- Application to set aside a decision by default

### **IV. Final provisions**

- Entry into force
- Publication of the Rules of Procedure

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