

Unified Patent Court Procedure

Augenstein / Agé / Wilson

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Preface

The creation of the Unified Patent Court marks a defining moment in the history of European patent litigation. Long envisioned as a means to streamline and unify the enforcement of patent rights across participating EU Member States, the UPC seeks to introduce greater efficiency, predictability, and consistency into a landscape historically fragmented by a patchwork of jurisdictions. These jurisdictions have traditionally applied differing legal and procedural approaches to patent law, often reflecting deep-rooted historical and cultural traditions. Notably, the civil law and common law systems, broad as they are, encompass a wide array of procedural and legal practices. For instance, the Nordic countries' approach to evidence stands in stark contrast to the procedures followed by German or French courts. Even the common law systems of Ireland and the United Kingdom exhibit considerable variation.

The UPC, and in particular its Rules of Procedure, were intentionally designed to draw from these diverse traditions and the accumulated expertise of national patent courts, with the goal of creating a more efficient, unified system. Perhaps the most influential contributors to the drafting of the Rules were those of prominent UK, German, French and Dutch lawyers and judges.

When the UPC began to emerge as a tangible prospect in 2010, we enthusiastically embarked on what would become a long and winding journey – mirroring the path of the UPC itself which included legal challenges to the UPC, the complications of Brexit, and numerous iterations of the Rules of Procedure.

We assembled a dedicated group of experienced patent law practitioners from France, the United Kingdom, Germany, the Netherlands, and the Nordic countries. Each contributor brought deep expertise grounded in their national practice, shaped by years of experience in both litigation and advisory roles, as well as active involvement in the transition to the UPC.

From the outset, we recognised that the UPC Agreement and its Rules of Procedure would be interpreted by judges and lawyers from a range of European legal traditions, meaning there would be no singular understanding of any given provision. To better understand the nuances of these interpretations, and the origins of the provisions in national practice, we gathered several times in a country hotel near Brussels, where we enjoyed rigorous discussions and debates over the meaning of each article and related rule. These retreats proved invaluable, enriching our understanding of the legal framework and its various interpretations as well as cementing lifelong bonds between us all.

Our chosen process was not the fastest way to produce a commentary, indeed during the term of this project, authors have moved firm and in one case established a new law firm. One of our authors has even been appointed to the UPC Court of Appeal. With our process of appointing a lead author for each chapter, supported by contributors from different legal traditions, we believe we have been able to offer insights and perspectives that a single author could not. Where relevant, we have incorporated national legal approaches to specific issues and the initial case law of the UPC itself.

This commentary is international in both scope and spirit. While the UPC is a European institution, its influence will extend globally. Patent holders, licensees, and litigants from all jurisdictions – whether within or outside the EU – will need to under-

Preface

stand how the Court operates, the strategic decisions it entails, and how it interacts with existing national systems and the European Patent Office.

Our aim with this work is to provide both a reference and a practical tool. It is designed to assist practitioners, judges, academics, and industry stakeholders as they navigate the UPC's new legal landscape. With this in mind, we have favoured an integrated approach to the commentary by viewing the provisions of the Agreement, Rules of Procedure and Statute in relation to one another rather than in isolation. By combining national perspectives with a shared commitment to clarity and practical relevance, we hope this commentary will contribute meaningfully to the development of a cohesive and effective pan-European patent litigation system.

We would like to thank not only the listed authors, but also those who contributed to the project in other important ways including Maciej Padamczyk, Marta Diaz and Fraser Simpson who provided invaluable research and drafting support.

The UPC will inevitably evolve through its case law, institutional practice, and the experience of its users. This volume is a starting point – firmly grounded in the present, but with a keen eye toward the future. We offer it with the hope that it will promote understanding, foster dialogue, and build confidence in this ambitious new chapter for patent law in Europe.

Christof Augenstein, Sabine Agé and Alex Wilson

June 2025



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