

Unified Patent Court Procedure

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a) Infringement action. R. 17.1 UPC RoP provides that, if the requirements stated above are complied with, the fee has been paid and/or the possible deficiencies have been corrected, the Registry must:

- record the date of receipt of the Statement of claim;
- attribute an action number to the file;
- record the file in the register;
- inform the claimant of the action number of the file and the date of receipt.

The recording of cases will notably allow the Registry to ensure that one patent is not subject to several proceedings before the Court at the same time (regardless of whether or not these proceedings are between the same parties). In such event, R. 260.2 UPC RoP provides that the duty of the Registry is limited to inform the relevant divisions.

b) Revocation action. The above procedure as to the recording of a Statement of claim in furtherance of an infringement action also applies to the filing of a revocation action as provided by R. 47.1 UPC RoP.

In this regard, it is noteworthy that R. 47.2 UPC RoP requires the Registry to **notify the EPO** that the patent(s) is (are) subject to revocation. This requirement must be read in light of the legal status of a UP, which is an EP granted by the EPO to which unitary effect over the Contracting Member States is subsequently granted. Therefore, the EPO remains competent as regards the application, examination and grant of these patents; and, since a decision on revocation may impact the patent's validity in the Contracting Member States it is important that the EPO is notified in order to update its own register.

c) Appeals before the Court of Appeal. The duty of examination and recording of the Registry equally applies to the Statement of Appeal.

R. 229 UPC RoP compels the Registry to examine the content of the **Statement of Appeal** and guarantee that all required information is included. In addition, as for the examination process of the **Statement of Claim**, it is not within the Registry's power to guarantee the veracity of the provided information. Its assessment is purely formal.

Should **information be missing**, the appellant will be granted by the Registry the possibility to:

- correct the deficiencies within 14 days of service of such notification;
- where applicable, pay the fee for the appeal within said 14 days.

Moreover, **failure to comply** with R. 229 UPC RoP will oblige the Registry to inform the President of the CoA and dismissal of the appeal will be pronounced by a decision by default. R. 229.5 specifies that the judge may give the appellant an opportunity to be heard beforehand.

As for the **recording of a Statement of Appeal**, R. 230.1(a)–(c) UPC RoP mirror the recording process laid down under R. 17.1 UPC RoP.

If the **statement complies with the requirements**, the Registry shall record the date of receipt and assign an action number to the appeal file. The Registry is also responsible for serving the Statement of Appeal on all parties to the proceedings at first instance (R. 230.1(d) UPC RoP).

4. Assigning the actions lodged before the UPC

After having recorded the cases that have been lodged, the Registry must assign the cases either to a panel or to a single judge (where agreed and requested by the parties pursuant to R. 17.2 and 345.6 UPC RoP) as indicated by R. 345.3 UPC RoP, which means that in practice, the actions are usually distributed according to the date of

receipt (R. 17.2 UPC RoP). The same repartition process applies to the appeal actions (R. 345.3 and .8 UPC RoP).

- 65 R. 17.3 UPC RoP provides a **specific assignment process** that the Registry has to follow to determine how to distribute actions between the central division and its sections.
- 66 As has been discussed previously, the seat of the central division as well as its sections are tasked with dealing with specific areas of technology. The actions are therefore assigned to the panels of the central division depending on the underlying field of technology of the patent at in dispute.²⁶
- 67 R. 17.3 UPC RoP contemplates three situations in this regard:
- Should the action involve one patent falling within the scope of one technological area (corresponding to a single classification), the Registry assigns the case to either the seat or one of its sections accordingly.²⁷
 - Should the action involve more than one patent, the majority of which fall within the scope of a single classification; again, the Registry assigns the case to either the seat or one of its sections accordingly.²⁸
 - Should the action involve either a single patent falling within the scope of several classifications or several patents, with no majority of the patents falling within the scope of one classification; then the Registry can either (i) refer the action to the seat or section of the central division corresponding to the first classification of the single patent, or (ii) to that of the first patent mentioned in the Statement of claim in the case of several patents with no majority as regards classification.
 - The presiding judge of the selected panel may reject this assignment. In such a case, that presiding judge will instruct the Registry to refer the action to another panel of the seat or section of the central division he considers appropriate. If the presiding judge of the panel which is the subject of the referral does not agree, he or she will inform the President of the CFI, who shall allocate the action to the seat or the section of the central division he or she considers appropriate.

5. Implementation of the UPC budget

- 68 According to Art. 26(3) UPCS, the Registrar will be responsible for the implementation of the budget of the Court in accordance with the Financial Regulations.²⁹
- 69 The Registrar must also annually make a statement on the accounts of the preceding financial year relating to the implementation of the budget, which shall be approved by the Presidium.³⁰

Article 11 Committees

¹An Administrative Committee, a Budget Committee and an Advisory Committee shall be set up in order to ensure the effective implementation and operation of this Agreement. ²They shall in particular exercise the duties foreseen by this Agreement and the Statute.

²⁶ → Art. 7 mn. 4 et seq.

²⁷ Annex II UPCA. It is important to note that the London division is no longer relevant since the Brexit. For now, these competences are to be taken over by the Paris and Munich divisions.

²⁸ Annex II UPCA.

²⁹ → Art. 36 and 37.

³⁰ For further information on the Presidium → Art. 6 mn. 35 et seq.

A. Overview

Art. 11 creates **three Committees**, namely, the Administrative Committee (Art. 12), 1 the Budget Committee (Art. 13) and the Advisory Committee (Art. 14).

These Committees should not be confused with the Registry set up under Art. 10, 2 even though they both are established under the same Chapter of the UPCA relating to the institutions of the Court.¹ In contrast to the Registry, the duties of which relate to the judicial organisation and administration of the Court,² the purpose of the Committees is to ensure ‘the effective implementation and operation’ of the UPCA. The duties of the Committees therefore exclusively relate to the **organisational aspects** of the Court.

The Protocol to the Agreement on a Unified Patent Court on provisional application³ 3 supplemented the UPCA to enable the setting up of the three Committees during the ‘sunrise period’, in order to avoid a ‘cliff edge’ between the entry into force of the agreement and the opening of the Court.⁴ The signatory Member States concluded that an advance period of implementation was needed to guarantee a ‘smooth transition into the operational phase of the UPC and [its] proper functioning’.⁵

While the procedural requirements for the appointment of a member of the Advisory 4 Committee (as well as for the appointment of judges)⁶ are clearly specified in Art. 14(2) UPCA and Art. 5 UPSCs, no specific requirements or qualifications are specified regarding the nomination of the **members of the Administrative and Budget Committees**. The only condition specified in the UPCA is that these Committees must include among their number at least one representative of each Contracting Member State which has completed the ratification process.⁷

B. Explanation

When considering the organisation of the UPC, it is readily apparent that it was 5 (among other influences) **modelled after the organisation of the EPO and EUIPO** as regards institutional committees. The EPO also has an Administrative Council which supervises the Office’s activities, a Budget Committee, and a Standing Advisory Committee (the SACEPO). These organisational similarities may assist with understanding how the Court was intended to operate. The existence of such organisational committees at the UPC is yet another demonstration that it has a **hybrid character**; it is a judicial court with the institutional organisation of an international organisation.

¹ i.e., ‘Part I – General and institutional provisions; Chapter II – Institutional provisions’.

² → Art. 10.

³ Art. 3(1) of the Protocol to the Agreement on a Unified Patent Court on provisional application, signed on 1 October 2015.

⁴ See → Ch. 1 mn. 63 et seq. for further details on the ‘sunrise period’ and setup of the Court.

⁵ Preamble of the Protocol to the Agreement on a Unified Patent Court on provisional application, signed on 1 October 2015.

⁶ Art. 15 et seq.

⁷ The requirement for ratification is not explicitly stated in the text, but its adoption in practice may be inferred from the current composition of the Committees (and is also consistent with the case law of the Court with regard to ratification, → Art. 31). Other UPCA signatory states which have not yet ratified the UPCA (or indeed any other EU Member State) nevertheless may be invited to appoint an observer of the committee’s meetings.

- 6 Each of the three UPC Committees is empowered to establish its **own rules of procedure**.⁸ Each of these is discussed in more detail in the chapter dedicated to each specific committee, but in general terms they include provisions such as the committee's structure and voting mechanisms, its agenda and proceedings, its composition, its language policy, its confidentiality policy as regards its meetings and documents and the procedure to appeal one of its decisions.
- 7 The **right to appeal against decisions of subordinate administrative bodies**, including the Budget Committee,⁹ is given to permanent employees of the Court only.¹⁰ In the case of most employees of the Court, this appeal will be to the Internal Appeal Board,¹¹ but for judges, the Registrar and Deputy Registrar, the appeal must be made to the Presidium, which may be further appealed to the Administrative Committee.¹² This restriction of standing to employees of the Court is understandable, as the decisions of these committees should only impact the employees of the Court and not its users.
- 8 In any case, **the Administrative Committee's decisions are final**, and no further appeal is possible. This is in contrast to the situation for appeals filed by employees of the EPO, in whose case an unsatisfactory decision of the Appeal Committee may be subject to review by the Administrative Tribunal of the International Labour Organization (ILO). Given that the UPC is a Court established by an international treaty, its employees should in principle also be able to file a complaint against the committees' decisions before the Administrative Tribunal of the ILO. However, the ILO's Administrative Tribunal can only hear complaints from serving and former officials of international organisations that have recognised its jurisdiction. The EPO recognises the Tribunal's jurisdiction in Art. 13 EPC.¹³ Nonetheless, the absence of a similar provision in the UPCA suggests that such Tribunal has no jurisdiction to hear a complaint coming from an employee of the UPC. Such complaints may therefore be only resolved internally.
- 9 As regards **immunities**, the representatives of a Contracting Member State enjoy, while attending meetings of the Administrative Committee, the Budget Committee or the Advisory Committee, immunity from legal process in respect of all acts performed by them in their official capacity (words spoken or written). In other words, they enjoy the same immunity as judges do, which means that such status shall continue even after the termination of their employment.
- 10 The UPCA itself is silent regarding the **language** of the Committees. However, as widely anticipated, each of the Committees has adopted the three official languages of the UPC, i.e. German, English and French. Each of the Committees must provide an interpretation of any discussions in one of the official languages into the other two languages throughout each meeting, unless that Committee in question unanimously decides to dispense with this requirement.

⁸ Art. 12(4), 13(4) and 14(4).

⁹ Since the Advisory Committee, as its name implies, can only issue non-binding opinions and cannot make decisions, it is unlikely in practice to be the subject of such an appeal.

¹⁰ The position is similar in respect of appeals against the EPO's Administrative Council's decisions. See Art. 18 EPO rules of procedure (CA/D 10/12), and Art. 108 et seq. of Title VIII on Settlement of Disputes of the Service Regulations of the EPO (Statutes of the permanent employees of the EPO).

¹¹ Title VII, Staff Regulations of the Unified Patent Court, version of 22 February 2022.

¹² Title VII, Regulations Governing the Conditions of Service of Judges, the Registrar and the Deputy-Registrar of the Unified Patent Court, 8 July 2022 Consolidated Version.

¹³ Art. 13(1) EPC: 'Employees and former employees of the European Patent Office or their successors in title may apply to the Administrative Tribunal of the International Labour Organization in the case of disputes with the European Patent Organisation (...)'.

Article 12

The Administrative Committee

(1) ¹The Administrative Committee shall be composed of one representative of each Contracting Member State. ²The European Commission shall be represented at the meetings of the Administrative Committee as observer.

(2) Each Contracting Member State shall have one vote.

(3) The Administrative Committee shall adopt its decisions by a majority of three quarters of the Contracting Member States represented and voting, except where this Agreement or the Statute provides otherwise.

(4) The Administrative Committee shall adopt its rules of procedure.

(5) ¹The Administrative Committee shall elect a chairperson from among its members for a term of three years. ²That term shall be renewable.

Article 3 UPCS

Appointment of judges

(1). Judges shall be appointed pursuant to the procedure set out in Article 16 of the Agreement.

(2). ¹Vacancies shall be publicly advertised and shall indicate the relevant eligibility criteria as set out in Article 2. ²The Advisory Committee shall give an opinion on candidates' suitability to perform the duties of a judge of the Court. ³The opinion shall comprise a list of most suitable candidates. ⁴The list shall contain at least twice as many candidates as there are vacancies. ⁵Where necessary, the Advisory Committee may recommend that, prior to the decision on the appointment, a candidate judge receive training in patent litigation pursuant to Article 11(4)(a).

(3) When appointing judges, the Administrative Committee shall ensure the best legal and technical expertise and a balanced composition of the Court on as broad a geographical basis as possible among nationals of the Contracting Member States.

(4) ¹The Administrative Committee shall appoint as many judges as are needed for the proper functioning of the Court. ²The Administrative Committee shall initially appoint the necessary number of judges for setting up at least one panel in each of the divisions of the Court of First Instance and at least two panels in the Court of Appeal.

(5) The decision of the Administrative Committee appointing full-time or part-time legally qualified judges and full-time technically qualified judges shall state the instance of the Court and/or the division of the Court of First Instance for which each judge is appointed and the field(s) of technology for which a technically qualified judge is appointed.

(6) ¹Part-time technically qualified judges shall be appointed as judges of the Court and shall be included in the Pool of Judges on the basis of their specific qualifications and experience. ²The appointment of these judges to the Court shall ensure that all fields of technology are covered.

Article 12 UPCS

Remuneration

The Administrative Committee shall set the remuneration of the President of the Court of Appeal, the President of the Court of First Instance, the judges, the Registrar, the Deputy-Registrar and the staff.

Article 16 UPCS

Staff

(1) ¹The officials and other servants of the Court shall have the task of assisting the President of the Court of Appeal, the President of the Court of First Instance, the judges and the Registrar. ²They shall be responsible to the Registrar, under the authority of the President of the Court of Appeal and the President of the Court of First Instance.

(2) The Administrative Committee shall establish the Staff Regulations of officials and other servants of the Court.

Article 18 UPCS

Setting up and discontinuance of a local or regional division

(1) ¹A request from one or more Contracting Member States for the setting up of a local or regional division shall be addressed to the Chairman of the Administrative Committee.
²It shall indicate the seat of the local or regional division.

(2) The decision of the Administrative Committee setting up a local or regional division shall indicate the number of judges for the division concerned and shall be public.

(3) ¹The Administrative Committee shall decide to discontinue a local or regional division at the request of the Contracting Member State hosting the local division or the Contracting Member States participating in the regional division. ²The decision to discontinue a local or regional division shall state the date after which no new cases may be brought before the division and the date on which the division will cease to exist.

(4) As from the date on which a local or regional division ceases to exist, the judges assigned to that local or regional division shall be assigned to the central division, and cases still pending before that local or regional division together with the sub-registry and all of its documentation shall be transferred to the central division.

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A. Composition of the Administrative Committee

1 According to the first sentence of Art. 12(1) each Contracting Member State ‘shall be’ represented within the Administrative Committee. However, in practice this appears to have been interpreted to mean that all Contracting Member States *which have completed the ratification process* may (but are not obliged to) nominate a representative (and an alternate representative) to the Committee.¹ In addition, the Committee may invite any other EU Member State to appoint a representative who will attend meetings as an observer – at the time of writing, this option had been

¹ Since there has been no official statement on this at the time of writing, this is inferred from the composition of the current Committee, which was exclusively composed of voting members which had completed the ratification process (which would also be consistent with the case law of the Court with regard to ratification, → Art. 31). Moreover, some commentators have noted that Art. 5(6) of the Rules of Procedure of the Administrative Committee seems to imply that states which have not completed the ratification process may only attend meetings with the Committee’s invitation.

exercised for five UPCA signatories which had not yet completed the ratification process for various reasons,² as well as one non-UPCA state (Spain).³

I. Participation

The **Presidents of the CoA and CFI**⁴ must participate (but may not vote) in 2 meetings of the Committee, and may be assisted by other Presidium members 'or servants of the Court' unless the Committee decides to exclude their assistance (Art. 5(1) Rules of Procedure of the Administrative Committee (RoPAC)). The **Chairpersons of the Budget and Advisory Committees** may also attend, but may only speak on the invitation of the Committee (Art. 5(2) RoPAC). The Committee also has broad discretion to invite other participants if doing so would assist its deliberations (Art. 2(1) and 5(3)–(8) RoPAC).

The Administrative Committee is also required to include the **European Commis-** 3 **sion** as an additional observer member (Art. 12(1) UPCA and Art. 5(5) RoPAC). Art. 17 TFEU specifies that the Commission shall promote the interests of the Union and ensure the application of the Treaties and of measures adopted by the institutions pursuant to them. Thus, its presence among the Administrative Committee is intended ensure the compliance of the UPC system with the EU principles and its subjection to the control of the CJEU.

In the same way as the Administrative Committees of other intellectual property 4 institutions which have an impact within the EU (such as those of the EPO⁵ or the EUIPO), the Administrative Committee of the Court has the **ability to sign agreements with other intergovernmental organisations** entrusted with carrying out international procedures in the field of patents (or in the field of intellectual property more generally),⁶ enabling those organisations to be represented at its meetings as observers. At the time of writing, however, this possibility had only been exercised for the EPO. Additionally, several organisations representing different categories of users of the Court⁷ were also attending as of the date of publication. These organisations are only able to attend meetings as observers, and as such, they would have a limited ability to participate in the organisation of the Court, lacking the ability to vote or propose resolutions.

² Namely the Czech Republic, Hungary, Ireland, Poland, and Slovakia.

³ <https://www.unified-patent-court.org/en/organisation/administrative-committee> (last visited 1 June 2025).

⁴ The President of the CoA is required to take part in 'all' Committee meetings, but the President of the CFI is only required to take part in meetings relating to the CFI – Art. 5(1).

⁵ Art. 30 EPC: '(1) The World Intellectual Property Organization shall be represented at the meetings of the Administrative Council, in accordance with an agreement between the Organisation and the World Intellectual Property Organization. (2) Other intergovernmental organisations entrusted with carrying out international procedures in the field of patents, with which the Organisation has concluded an agreement, shall be represented at the meetings of the Administrative Council, in accordance with such agreement. Other intergovernmental organisations entrusted with carrying out international procedures in the field of patents, with which the Organisation has concluded an agreement, shall be represented at the meetings of the Administrative Council, in accordance with such agreement.'

⁶ The EUIPO or WIPO, for example.

⁷ Namely the European Patent Lawyers Association (EPLAW), the European Patent Litigators Association (EPLIT), the Institute of Professional Representatives before the European Patent Office (epi) and BusinessEurope.

II. Chairperson

- 5 The Administrative Committee is chaired by one of its members, who is elected for a renewable period of **three years** (Art. 3(2) RoPAC). It is not explicitly stated in either the UPCA or RoPAC that the Chairperson should be a representative of one of the Contracting Member States, or if the representative of the EU Commission can be the Administrative Committee's Chairperson, though the latter possibility seems unlikely given that the European Commission only has the status of observer (Art. 12(1)). Indeed, the inaugural Chairperson was Johannes Karcher (representing Germany) and the inaugural Deputy Chairperson was Paul van Beukering (representing the Netherlands).
- 6 A question remains as to how many times the chairpersonship (or deputy chairpersonship) can be renewed. In the absence of clarification, the phrasing of Art. 12(5) and Art.3(2) RoPAC suggest that it could in principle be **renewed indefinitely**.

III. Membership requirements

- 7 **No specific requirements or qualities** are stated in the UPCA with regard to the nomination of the members of the Administrative Committee. Looking at the list of members of the Administrative Council of the EPO or of the Administrative Committee of the EUIPO, it seems likely that the members of the Administrative Committee will primarily be chosen from among the national Intellectual Property Offices of Contracting Member States. Indeed, the inaugural Committee was at the time of writing mainly composed of members with backgrounds in national Intellectual Property Offices or closely associated governmental departments.

B. Organisation of the Administrative Committee

- 8 Each Contracting Member State has one vote. Although the EU Commission's representative on the Committee must be consulted before any vote is taken on any matter which concerns EU law (Art. 8(2) RoPAC), the Commission remains only an observer and not a voting member.
- 9 As regards the decision-making process, every decision of the Administrative Committee must be taken with a majority of three quarters (Art. 12(3)) of the voting Contracting Member States that are represented and voting (ignoring abstentions). Art. 12 specifies that this decision-making requirement can be overruled by the UPCA or the Statute, but at the time of writing, no provision in either the UPCA, the Statute of the RoPAC overrules it.
- 10 Art. 12 further indicates that the Administrative Committee 'shall adopt its rules of procedure'. This was duly done at one of the first meetings of the Administrative Committee in February 2022. To complete the organisation of the Committee, as part of the first RoPAC, the Committee chose to establish a Secretariat (Art. 4 RoPAC) which is responsible for maintaining the minutes of Committee meetings (Art. 11 RoPAC), organising the Committee's proceedings and handling all correspondence directed to the Committee (Art. 15 RoPAC).