

Rules relating to Unitary Patent Protection

as adopted by decision of the Select Committee of the Administrative Council of the European Patent Organisation of 15 December 2015 and as last amended by decision of the Select Committee of the Administrative Council of 23 March 2022

Rules relating to Regulation (EU) No 1257/2012 of the European Parliament and of the Council of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection and to Council Regulation (EU) No 1260/2012 of 17 December 2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements¹

(hereinafter "Rules relating to Unitary Patent Protection")

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¹ Adopted by decision of the Select Committee of the Administrative Council SC/D 1/15 of 15.12.2015 (OJ EPO 2016, A39), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012.

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PART I

INSTITUTIONAL PROVISIONS

CHAPTER I

SUBJECT MATTER

Rule 1

Subject matter

- (1) The participating Member States hereby entrust the European Patent Office with the tasks referred to in Article 9, paragraph 1, Regulation (EU) No 1257/2012. In carrying out these tasks, the European Patent Office shall apply the present Rules and shall be bound by decisions handed down by the Unified Patent Court in actions brought under Article 32, paragraph 1(i), Agreement on a Unified Patent Court.²
- (2) In case of conflict between the provisions of the present Rules and Union law, including Regulation (EU) No 1257/2012³ and Regulation (EU) No 1260/2012,⁴ the provisions of Union law shall prevail.

CHAPTER II

SELECT COMMITTEE OF THE ADMINISTRATIVE COUNCIL

Rule 2

Competences and duties

- (1) The Select Committee of the Administrative Council shall be competent to amend
 - (a) the present Rules;
 - (b) the Rules relating to Fees for Unitary Patent Protection;
 - (c) other rules or decisions of a financial or budgetary nature;
 - (d) its Rules of Procedure.
- (2) The Select Committee of the Administrative Council shall ensure the governance and supervision of the activities related to the tasks entrusted to the European Patent Office in accordance with Rule 1, paragraph 1.

² Published in OJ EPO 2013, 287.

³ Published in OJ EPO 2013, 111.

⁴ Published in OJ EPO 2013, 132.

CHAPTER III FUNCTIONS AND POWERS OF THE PRESIDENT OF THE EUROPEAN PATENT OFFICE AND SPECIAL DEPARTMENTS OF THE EUROPEAN PATENT OFFICE

Rule 3

Functions and powers of the President of the European Patent Office

The Unitary Patent Protection Division referred to in Rule 4 shall be managed by the President of the European Patent Office, who shall be responsible for its activities to the Select Committee of the Administrative Council. To this end, Article 10, paragraphs 2 and 3, EPC shall apply *mutatis mutandis*.

Rule 4

Unitary Patent Protection Division

- (1) A Unitary Patent Protection Division is hereby established within the European Patent Office as a special department within the meaning of Article 143, paragraph 2, EPC.
- (2) The tasks entrusted to the European Patent Office in accordance with Rule 1, paragraph 1, shall be carried out under the responsibility of the Unitary Patent Protection Division.
- (3) Decisions of the Unitary Patent Protection Division shall be taken by one legally qualified member.
- (4) The President of the European Patent Office may entrust to employees who are not legally qualified members the execution of duties falling to the Unitary Patent Protection Division and involving no legal difficulties.

PART II

PROCEDURES TO BE CARRIED BY THE EUROPEAN PATENT OFFICE UNDER REGULATIONS (EU) NO 1257/2012 AND NO 1260/2012

CHAPTER I

THE REQUEST FOR UNITARY EFFECT

Rule 5

General

- (1) At the request of the proprietor of the European patent, unitary effect shall be registered by the European Patent Office in the Register for unitary patent protection.
- (2) Unitary effect shall be registered only if the European patent has been granted with the same set of claims in respect of all the participating Member States.

Rule 6

Requirements of the request for unitary effect

- (1) The request for unitary effect shall be filed with the European Patent Office no later than one month after publication of the mention of grant of the European patent in the European Patent Bulletin.
- (2) The request for unitary effect shall be filed in writing in the language of the proceedings and shall contain:
 - (a) particulars of the proprietor of the European patent making the request (hereinafter "the requester") as provided for in Rule 41, paragraph 2(c), EPC;
 - (b) the number of the European patent to which unitary effect shall be attributed;
 - (c) where the requester has appointed a representative, particulars as provided for in Rule 41, paragraph 2(d), EPC;
 - (d) a translation of the European patent as required under Article 6, paragraph 1, Regulation (EU) No 1260/2012, as follows:
 - where the language of the proceedings is French or German, a full translation of the specification of the European patent into English; or
 - where the language of the proceedings is English, a full translation of the specification of the European patent into any other official language of the European Union.

Rule 7**Examination of the request by the European Patent Office**

- (1) If the requirements under Rule 5, paragraph 2, are met and the request for unitary effect complies with Rule 6, the European Patent Office shall register the unitary effect in the Register for unitary patent protection and communicate the date of this registration to the requester.
- (2) If the requirements under Rule 5, paragraph 2, are not met or the request for unitary effect does not comply with Rule 6, paragraph 1, the European Patent Office shall reject the request.
- (3) If the requirements under Rule 5, paragraph 2, are met and the request for unitary effect complies with Rule 6, paragraph 1, but fails to comply with the requirements of Rule 6, paragraph 2, the European Patent Office shall invite the requester to correct the deficiencies noted within a non-extendable period of one month. If the deficiencies are not corrected in due time, the European Patent Office shall reject the request.

**CHAPTER II
COMPENSATION SCHEME****Rule 8****Definition and beneficiaries**

- (1) Proprietors of European patents with unitary effect for which the European patent application was filed in an official language of the European Union other than English, French or German shall be entitled to compensation for translation costs if their residence or principal place of business is in a member state of the European Union and they are an entity or a natural person referred to in paragraph 2.
- (2) Compensation for translation costs shall be granted, on request, to a patent proprietor falling within one of the following categories:
 - (a) small and medium-sized enterprises as defined in European Commission recommendation 2003/361/EC dated 6 May 2003;
 - (b) natural persons; or
 - (c) non-profit organisations as defined in Article 2, paragraph 1(14) of Regulation (EU) No 1290/2013, universities and public research organisations.
- (3) If the patent has multiple proprietors, compensation will be granted only if each proprietor fulfils the conditions referred to in paragraphs 1 and 2.
- (4) If the European patent application or the European patent was transferred before a request for unitary effect was filed, compensation will be granted only if both the initial applicant and the proprietor of the patent fulfil the conditions referred to in paragraphs 1 and 2.
- (5) The compensation scheme provided for in paragraph 1 shall also apply to Euro-PCT applications originally filed at a receiving office in an official language of the European Union other than English, French or German.

Rule 9**Request for compensation**

- (1) The proprietor of a European patent who wishes to benefit from compensation under Rule 8 shall file a request for it together with the request for unitary effect referred to in Rule 6.
- (2) The request for compensation for translation costs shall contain a declaration that the proprietor of the European patent is an entity or a natural person referred to in Rule 8, paragraph 2.

Rule 10**Examination of the request and grant of compensation**

- (1) After the European Patent Office has registered the unitary effect of the European patent in the Register for unitary patent protection and has examined the request for compensation, it shall inform the patent proprietor whether that request has been granted or rejected.
- (2) Once granted, compensation shall not be rescinded, even if, as a result of changed circumstances, the proprietor no longer qualifies for it under Rule 8.
- (3) Should the Office have reason to doubt the veracity of the declaration filed under Rule 9, paragraph 2, it shall invite the patent proprietor to provide evidence that he fulfils the requirements of Rule 8, paragraph 2. Articles 113(1) and 114 EPC shall apply.
- (4) If the Office finds that the compensation was granted on the basis of a false declaration, it shall invite the patent proprietor to pay, together with the next renewal fee falling due, an additional fee composed of the amount of the compensation paid and an administrative fee as laid down in the Rules relating to Fees for Unitary Patent Protection. If this additional fee is not paid in due time, the European patent with unitary effect shall lapse under Rule 14.

Rule 11**Level of compensation**

Reimbursement of translation costs shall be made up to a ceiling and paid in the form of a lump sum, in accordance with the Rules relating to Fees for Unitary Patent Protection. The ceiling shall be fixed on the basis of the average length of a European patent and the average translation cost per page, taking account of the average reduction granted under Rule 6 EPC.

**CHAPTER III
LICENCES OF RIGHT****Rule 12****Filing of the statement by the patent proprietor**

- (1) The proprietor of a European patent with unitary effect may file a statement with the European Patent Office that he is prepared to allow any person to use the invention as a licensee in return for appropriate consideration. In that case, the renewal fees for the European patent with unitary effect which fall due after receipt of the statement shall be reduced; the amount of the reduction shall be fixed in the Rules relating to Fees for Unitary Patent Protection. The statement shall be entered in the Register for unitary patent protection.

- (2) The statement referred to in paragraph 1 may be withdrawn at any time by a communication to this effect to the European Patent Office. Such withdrawal shall not take effect until the amount by which the renewal fees were reduced is paid to the European Patent Office.
- (3) The statement referred to in paragraph 1 may not be filed as long as an exclusive licence is recorded in the Register for unitary patent protection or a request for the recording of such a licence is pending before the European Patent Office.
- (4) No request for recording an exclusive licence in the Register for unitary patent protection shall be admissible after the statement referred to in paragraph 1 has been filed, unless that statement is withdrawn.

CHAPTER IV RENEWAL FEES

Rule 13

Payment of renewal fees for European patents with unitary effect

- (1) Renewal fees for European patents with unitary effect and additional fees for their late payment shall be paid to the European Patent Office. Those fees shall be due in respect of the years following the year in which the mention of the grant of the European patent which benefits from unitary effect is published in the European Patent Bulletin.
- (2) A renewal fee for the European patent with unitary effect in respect of the coming year shall be due on the last day of the month containing the anniversary of the date of filing of the European patent application which led to the European patent with unitary effect. Renewal fees may not be validly paid more than three months before they fall due.
- (3) If a renewal fee is not paid in due time, the fee may still be paid within six months of the due date, provided that an additional fee is also paid within that period.
- (4) A renewal fee in respect of a European patent with unitary effect falling due under paragraph 2 within three months of the notification of the communication referred to in Rule 7(1) may still be paid within that period without the additional fee referred to in paragraph 3.
- (5) A renewal fee for a European patent with unitary effect which would have fallen due under paragraph 2 in the period starting on the date of publication of the mention of the grant of the European patent in the European Patent Bulletin up to and including the date of the notification of the communication referred to in Rule 7(1) shall be due on that latter date. This fee may still be paid within three months of that latter date without the additional fee referred to in paragraph 3.
- (6) Rule 51, paragraphs 4 and 5, EPC shall apply *mutatis mutandis*.

CHAPTER V

LAPSE

Rule 14

Lapse

- (1) A European patent with unitary effect shall lapse:
 - (a) 20 years after the date of filing of the European patent application;
 - (b) if a renewal fee and, where applicable, any additional fee have not been paid in due time.
- (2) The lapse of a European patent with unitary effect for failure to pay a renewal fee and any additional fee within the due period shall be deemed to have occurred on the date on which the renewal fee was due.

PART III INFORMATION TO THE PUBLIC

CHAPTER I REGISTER FOR UNITARY PATENT PROTECTION

Rule 15

Establishment of the Register for unitary patent protection

- (1) The Register for unitary patent protection provided for in Article 9, paragraph 1(b), Regulation (EU) No 1257/2012 is hereby established as a special part of the European Patent Register kept by the European Patent Office under Article 127 EPC.
- (2) Entries in the Register for unitary patent protection shall be made in the three official languages of the European Patent Office. In case of doubt, the entry in the language of the proceedings shall be authentic.

Rule 16

Entries in the Register for unitary patent protection

- (1) The Register for unitary patent protection shall contain the following entries:
 - (a) date of publication of the mention of the grant of the European patent;
 - (b) date of filing of the request for unitary effect for the European patent;
 - (c) particulars of the representative of the proprietor of the European patent as provided for in Rule 41, paragraph 2(d), EPC; in the case of several representatives, only the particulars of the representative first named, followed by the words "and others" and, in the case of an association referred to in Rule 152, paragraph 11, EPC, only the name and address of the association;
 - (d) date and purport of the decision on the registration of unitary effect for the European patent;
 - (e) date of registration of the unitary effect of the European patent;
 - (f) date of effect of the European patent with unitary effect pursuant to Article 4, paragraph 1, Regulation (EU) No 1257/2012;
 - (g) participating Member States in which the European patent with unitary effect has unitary effect pursuant to Article 18, paragraph 2, Regulation (EU) No 1257/2012;
 - (h) particulars of the proprietor of the European patent with unitary effect as provided for in Rule 41, paragraph 2(c), EPC;

- (i)⁵ family name, given names and country and place of residence of the inventor designated by the applicant for or proprietor of the patent, unless he has waived his right to be mentioned under Rule 20, paragraph 1, EPC;
- (j) rights and transfer of such rights relating to the European patent with unitary effect where the present Rules provide that they shall be recorded at the request of an interested party;
- (k) licensing commitments undertaken by the proprietor of the European patent with unitary effect in international standardisation bodies pursuant to Article 9, paragraph 1(c), Regulation (EU) No 1257/2012, where the proprietor requested their registration;
- (l) date of filing and date of withdrawal of the statement provided for in Rule 12;
- (m) date of lapse of the European patent with unitary effect;
- (n) data as to the payment of renewal fees for the European patent with unitary effect, including, where applicable, data on the payment of an additional fee pursuant to Rule 13, paragraph 3;
- (o) a record of the information communicated to the European Patent Office concerning proceedings before the Unified Patent Court;
- (p) a record of the information communicated to the European Patent Office by the central industrial property offices, courts and other competent authorities of the participating Member States;
- (q) date and purport of the decision on the validity of a European patent with unitary effect taken by the Unified Patent Court;
- (r) date of receipt of a request for re-establishment of rights;
- (s) refusal of a request for re-establishment of rights;
- (t) date of re-establishment of rights;
- (u) dates of interruption and resumption of proceedings;
- (v) date of issuance, date of expiry and date and purport of the decision on the validity of a supplementary protection certificate for a product protected by the European patent with unitary effect as well as the participating Member State issuing it;

⁵ Amended by decision of the Select Committee of the Administrative Council SC/D 3/21 of 16.12.2021 (OJ EPO 2022, A39), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012.

- (w)⁶ information regarding a place of business of the applicant on the date of filing of the application for the European patent pursuant to Article 7, paragraph 1(b), Regulation (EU) No 1257/2012, which may be provided by the proprietor of the European patent together with the request for unitary effect referred to in Rule 6.
- (x)⁷ information regarding the residence or principal place of business of the applicant on the date of filing of the application for the European patent pursuant to Article 7, paragraph 1(a), Regulation (EU) No 1257/2012.
- (2) The President of the European Patent Office may decide that entries additional to those referred to in paragraph 1 shall be made in the Register for unitary patent protection.

CHAPTER II PUBLICATIONS

Rule 17

European Patent Bulletin and Official Journal of the European Patent Office

- (1) The European Patent Bulletin referred to in Article 129(a) EPC shall contain, as a special part, the particulars the publication of which is prescribed by the present Rules, the Chairperson of the Select Committee of the Administrative Council or the President of the European Patent Office.
- (2) The Official Journal referred to in Article 129(b) EPC shall contain, as a special part, notices and information of a general character issued by the Select Committee of the Administrative Council or by the President of the European Patent Office, as well as any other information relevant to the implementation of unitary patent protection.

Rule 18

Publication of translations

The President of the European Patent Office shall determine the form of the publication of the translations referred to in Rule 6, paragraph 2(d), and the data to be included.

Rule 19

Inclusion of decisions of the Unified Patent Court in the files

The European Patent Office shall include a copy of any decision of the Unified Patent Court forwarded to it by the Court and relating to European patents with unitary effect, including those decisions referred to in Rule 1, in the files relating to the European patent with unitary effect, where it shall be open to inspection.

⁶ Amended by decision of the Select Committee of the Administrative Council SC/D 1/22 of 23.03.2022 (OJ EPO 2022, A40), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012.

⁷ Inserted by decision of the Select Committee of the Administrative Council SC/D 3/21 of 16.12.2021 (OJ EPO 2022, A39), which will enter into force on the date of application of Regulations (EU) No 1257/2012 and No 1260/2012.

PART IV COMMON PROVISIONS

Rule 20

Common provisions governing procedure

- (1) The following provisions of the EPC, as amended, shall apply *mutatis mutandis*: Article 14, paragraphs 1, 3 and 7; Article 113, paragraph 1; Articles 114, 117, 119, 120, 125; Article 128, paragraph 4; Articles 131, 133; Article 134, paragraphs 1, 5 and 8.
- (2) The following provisions of the Implementing Regulations to the EPC, as amended, shall apply *mutatis mutandis*:
 - (a) Rules 1 and 2; unless otherwise provided Rule 3, paragraph 1, first sentence; Rule 3, paragraph 3; Rules 4 and 5;
 - (b) Rules 22 to 24;
 - (c) Rule 50, paragraphs 2 and 3;
 - (d) Rule 111, paragraph 1; Rules 112 and Rule 113 EPC;
 - (e) Rule 115; Rule 116, paragraph 1; Rules 117 to 124;
 - (f) Rules 125 to 130;
 - (g) Rule 131; Rule 133, paragraph 1, subject to the proviso that the document referred to in that provision has been received no later than one month after expiry of the period; Rule 134;
 - (h) Rule 139, first sentence, and Rule 140;
 - (i) Rule 142;
 - (j) Rules 144 to 147;
 - (k) Rules 148 to 150;
 - (l) Rules 151 to 153.
- (3) When applying the provisions referred to in paragraphs 1 and 2 *mutatis mutandis*, the term "Contracting States" shall be understood as meaning the Contracting States to the EPC, except in Article 125 EPC, where it shall be understood as meaning the participating Member States.
- (4) Where the present Rules, including the provisions of the EPC applicable *mutatis mutandis* under the present Rules, refer to "a period to be specified", this period shall be specified by the European Patent Office. Unless otherwise provided, a period specified by the European Patent Office shall be neither less than one month nor more than four months.

Rule 21**Oral proceedings**

- (1) Oral proceedings shall take place either at the instance of the European Patent Office if it considers this to be expedient or at the request of any party to the proceedings. However, the European Patent Office may reject a request for further oral proceedings where the parties and the subject of the proceedings are the same.
- (2) Nevertheless, in the procedure concerning the request for unitary effect, oral proceedings shall take place before the Unitary Patent Protection Division at the request of the proprietor of the European patent only where the Unitary Patent Protection Division considers this to be expedient.
- (3) Oral proceedings before the Unitary Patent Protection Division shall not be public.

Rule 22**Re-establishment of rights**

- (1) A proprietor of a European patent or of a European patent with unitary effect who, in spite of all due care required by the circumstances having been taken, was unable to observe a time limit vis-à-vis the European Patent Office shall have his rights re-established upon request if the non-observance of this time limit has the direct consequence of causing the European patent with unitary effect to lapse according to Rule 14, paragraph 1(b), or the loss of any other right or means of redress.
- (2) Any request for re-establishment of rights under paragraph 1 shall be filed in writing within two months of the removal of the cause of non-compliance with the period, but at the latest within one year of expiry of the unobserved time limit. However, a request for re-establishment of rights in respect of the period specified in Rule 6, paragraph 1, shall be filed within two months of expiry of that period. The request for re-establishment of rights shall not be deemed to have been filed until the fee prescribed in the Rules relating to Fees for Unitary Patent Protection has been paid.
- (3) The request shall state the grounds on which it is based and shall set out the facts on which it relies. The omitted act shall be completed within the relevant period for filing the request according to paragraph 2.
- (4) The European Patent Office shall grant the request, provided that the conditions laid down in the present Rule are met. Otherwise, it shall reject the request.
- (5) If the request is granted, the legal consequences of the failure to observe the time limit shall be deemed not to have ensued.
- (6) Re-establishment of rights shall be ruled out in respect of the time limit for requesting re-establishment of rights and in respect of the period referred to in Rule 7, paragraph 3.
- (7) Any person who, in one or several participating Member States, has in good faith used or made effective and serious preparations for using an invention which is the subject of a European patent with unitary effect in the period between the loss of rights referred to in paragraph 1 and publication in the Register for unitary patent protection of the mention of re-establishment of those rights, may without payment continue such use in the course of his business or for the needs thereof.

Rule 23**Form of decisions**

Decisions of the European Patent Office against which actions can be brought before the Unified Patent Court in accordance with Article 32, paragraph 1(i), Agreement on a Unified Patent Court shall be reasoned and shall be accompanied by a communication pointing out the possibility of bringing an action before the Unified Patent Court. The parties may not invoke the omission of the communication.

Rule 24**Interlocutory revision**

If the European Patent Office is informed by the Unified Patent Court that an application to annul or alter a decision of the European Patent Office is admissible and if the European Patent Office considers that the application is well founded, it shall, within two months of the date of receipt of the application,

- (a) rectify the contested decision in accordance with the order or remedy sought by the claimant and
- (b) inform the Unified Patent Court that the decision has been rectified.