

**Subject:** Preliminary set of provisions for the  
Rules of procedure of the European and Community Patents Court

**By:** *epi*

**To:** European Commission

**Summary:** The purpose of the Rules of Procedure is ultimately to provide for an expedient, cost-efficient and secure procedure, uniform for the EEUPC. The fourth draft of the Rules of Procedure has been studied giving special attention to this purpose.

We believe that rules should not be so detailed that the judges are caught in a network of Rules of Procedure that do not allow them to take short cuts in the procedure and to discard arguments of minor importance and requests for extension of time.

The provision of Practice Directions has been contemplated as non-compulsory guidance for judges. Although another set of procedural guidance rules may lead to confusion, it could help by restricting the subject Rules of Procedure to compulsory Rules and moving non-binding details into the Practice Directions. However such Directions have not yet been drafted.

**Documents:** Rules of Procedure, fourth draft, 16 October 2009  
Council Working Document 7928/09, 23 March 2009

**Date:** 21.06.2010

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## ***epi* Position**

### **Draft Rules of Procedure for the EEUPC, 16.10.2009**

#### Rules 1 – 31

1. Rules 1 to 31 deal with the infringement action in first instance. In the interest of expediency we recommend setting a time frame in Rule 8, with the possibility of extension only if really necessary. For the same reason, we strongly approve setting out the case as early as possible, as stipulated in Rule 11. One member coined the adagio “front-loading without overloading”. Rule 11 further should allow for suing on more than one patent, as this often happens.
2. In the interest of third parties, the registry should inform the Patent Register that a statement of claim has been filed (Rule 10).
3. Rule 14 seems somewhat harsh. If the Statement of Claim does not comply with the Rules, the Registry should set a time frame for correction. In case of terminal non-compliance, the Statement of Claim will be null and void, but the defendant should be informed nevertheless.
4. If the Rules have been complied with, the Registry should serve the Statement of Claim on the defendant without delay.
5. Again in the interest of expediency, the period of four months for filing the Statement of Defence (Rule 17) should not be extended. If the defence is a Counterclaim for Revocation and in replying to this counterclaim the patent Proprietor is allowed to amend the claims according to Rule 29, he should also be allowed to align the description with the claims.

#### Rules 41-67

6. We generally agree with the Rules 41-67 dealing with counterclaims for revocation. We also welcome Rules 60-67, as a Declaration of Non-infringement may help avoiding litigation altogether.

#### Rules 101-118

7. We agree with these Rules. The interim procedure gives the judge-rapporteur the necessary power to actively manage the case and ensure a fair, orderly and efficient procedure, including the possibility of an interim conference. This can greatly speed up cases and reduce cost. However, experiments should be ordered (Rule 104) only where necessary and only in exceptional circumstances, to deter the courts ordering experiments as a usual practice.
8. We consider it expedient that the judge-rapporteur should be allowed to add non-binding comment to the summons to an oral hearing (as is customary in EPO opposition proceedings).

#### Rule 355

10. We considered whether there should be a general principle that the proceedings should, even including the initial service on the defendant, be based on electronic means of communication.
11. As much as we would welcome electronic communication, a defendant might have no computer and no e-address (unlikely but possible); in addition, electronic communication can break down or communications can be sequestered in spam-filters, with the recipient being unaware that they were sent and the sender not knowing that they were not received. Therefore, if electronic communication is compulsory, there should be an obligation on the recipient to acknowledge, and in the absence of acknowledgement within say one week, the sender should mail a copy by post.

## General

12. Although Rules 390.2 and 391.2 provide for separating proceedings, there is no procedure for trying two or more actions in the same trial, as consolidated proceedings. The statements of claim could be lodged in the same division or in different divisions with perhaps different working languages. Depending on the facts, the consolidation of actions can provide a significant saving of court time. Such actions could result from the lodging of two or more statements of claim in one or more of the following circumstances:

- i) alleging infringement of two or more patents, and/or
- ii) by different plaintiffs, and/or
- iii) against different defendants.