Draft Rules 1 – 24 relating to unitary patent protection – consolidated version

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SUMMARY

Implementation at the European Patent Office of Regulations (EU) No 1257/2012 and No 1260/2012.

The present document contains a consolidated version of draft Rules 1-24 relating to unitary patent protection as approved in principle at the Select Committee's 11th meeting held in Munich on 9 December 2014. The draft Rule on financial issues will be discussed later on in the framework of budgetary and financial issues and has been put in brackets in this text.

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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 arrangements

(hereinafter "Rules relating to Unitary Patent Protection")

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) In case of conflict between the provisions of the present Rules and Union law, including Regulation (EU) No 1257/2012 and Regulation (EU) No 1260/2012, the provisions of Union law shall prevail.

Rule 1 – Subject matter

1. Article 142(1) EPC stipulates that any group of contracting states may provide by a special agreement that a European patent granted for those states has a unitary character throughout their territories. Article 1 Regulation (EU) No 1257/2012 provides that the regulation constitutes a special agreement within the meaning of Article 142(1) EPC. Furthermore, Article 3(2) Regulation (EU) No 1257/2012 holds that a European patent with unitary effect has a unitary character. Therefore, in accordance with Article 142(2) EPC, the provisions of Part IX EPC, Special Agreements, apply.

2. The group of contracting states within the meaning of Article 142(1) EPC may give the European Patent Office (hereinafter "EPO") additional tasks (see Article 143(1) EPC). Special departments common to the contracting states in the group may be set up within the EPO to carry out these additional tasks (see Article 143(2) EPC). In accordance with these principles, proposed Rule 1(1) defines the subject matter of the present rules, which is to lay down the provisions required to implement the tasks entrusted to the EPO under Regulations (EU) No 1257/2012 and (EU) No 1260/2012. These rules are referred to as the "Rules relating to Unitary Patent Protection", as reflected in the title.

3. Paragraph 1 of Rule 1 holds that the additional tasks as provided for in Regulation (EU) No 1257/2012 are entrusted to the EPO by virtue of the present rules. The EPO, in carrying out these tasks, will be bound by decisions handed down by the Unified Patent Court (UPC) in actions brought under Article 32(1)(i) Agreement on a Unified Patent Court.

4. Proposed Rule 1(2) contains a conflict rule modelled on Article 164(2) EPC. It guarantees that Union law, including the provisions of Regulations (EU) No 1257/2012 and No 1260/2012 take precedence over the provisions of the present rules. Where an interpretation of the present provisions runs counter Union law, including the two regulations, that interpretation cannot be followed and the EPO will have to provide an alternative one that complies with Union law in order to resolve the conflict.

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;

(c) other rules or decisions of a financial or budgetary nature;

(d) its Rules of Procedure.

(2) The Select Committee 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.

Rule 2 – Competences and duties of the Select Committee

1. At their inaugural meeting of 20 March 2013, the participating member states established the Select Committee of the Administrative Council of the European Patent Organisation within the meaning of Article 145(1) EPC and in accordance with Article 9(2) Regulation (EU) No 1257/2012.

2. Article 145(2) EPC provides that the powers and functions of the Select Committee of the Administrative Council will be determined by the group of contracting states referred to in Article 142(1) EPC.

3. Pursuant to Article 9(2) Regulation (EU) No 1257/2012, the participating member states will ensure compliance with said regulation in fulfilling their international obligations undertaken in the EPC and will co-operate to that end. Moreover, in their capacity as contracting states to the EPC, the participating member states will ensure the governance and supervision of the activities related to the tasks referred to in Article 9(1) of the regulation and will ensure the setting of the level of renewal fees in accordance with Article 12 of the regulation and the setting of the share of distribution of the renewal fees in accordance with Article 13 of the regulation. To that end they will set up a Select Committee of the Administrative Council of the European Patent Organisation within the meaning of Article 145 EPC.

4. Mirroring the competences of the Administrative Council as provided for in the EPC (see Articles 33(1)(2) and 46 EPC), it is proposed that the Select Committee should be competent to amend the present rules, the Rules relating to Fees, other rules or decisions of a financial or budgetary nature and its own rules of procedure. The wording used in proposed paragraph 1 corresponds to the one of Article 9(5) of the Rules of procedure of the Select Committee.

5. Paragraph 2 stipulates that the Select Committee will ensure the governance and supervision of the activities related to the tasks entrusted to the EPO, in accordance with Article 9(2) Regulation (EU) No 1257/2012 and Article 145(1) EPC.

6. The membership, chairmanship, voting rights and all other issues related to the procedures and functioning of the Select Committee are laid down in the Rules of Procedure of the Select Committee.

CHAPTER III FUNCTIONS AND POWERS OF THE PRESIDENT OF THE EPO AND SPECIAL DEPARTMENTS OF THE EPO

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 3 – Functions and powers of the President of the European Patent Office

1. Proposed Rule 3 reiterates and clarifies the President's management functions as provided for in the EPC: it sets out the power to manage, i.e. direct the special department established under Article 143 EPC which is in fact the Unitary Patent Protection Division under Rule 4(1). The tasks entrusted to the EPO under Rule 1(1) will be carried out under the responsibility of this division.

2. The proposed Rule also reflects the principle set out in Article 145(1) EPC according to which the President of the EPO is responsible for the activities of the Unitary Patent Protection Division to the Select Committee of the Administrative Council (see also Article 10(1) EPC).

3. In accordance with Article 143(2) EPC, Article 10(2) and (3) EPC shall apply *mutatis mutandis.*

4. Accordingly, the President of the EPO will in particular take all necessary steps to ensure the functioning of the Unitary Patent Protection Division, including the adoption of internal administrative instructions and information to the public (see Article 10(2)(a) EPC). He will also have the possibility to submit to the Select Committee any proposal for amending the present Rules or for decisions which come within the competence of the Select Committee (see Article 10(2)(c) EPC). This is, of course, without prejudice to the possibility of the participating member states to submit any proposal to the Select Committee in accordance with Article 8(2) of the Rules of Procedure of the Select Committee. Furthermore, a management report will have to be submitted each year by the President of the EPO to the Select Committee (See Article 10(2)(e) EPC).

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 EPO 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.

Rule 4 – Unitary Patent Protection Division

1. Under Article 143(1) EPC, the group of Contracting States having availed itself of the authorisation provided for in Article 142(1) EPC, may give additional tasks to the EPO. According to Article 143(2) EPC, special departments common to the group of Contracting States may be set up within the EPO in order to carry out these additional tasks. Moreover, Article 143(2) EPC lays down that the President of the EPO shall direct such special departments and that Article 10(2) and (3) EPC shall apply mutatis mutandis. Finally, pursuant to Article 145(1) EPC, the Select Committee of the Administrative Council supervises the activities of the special departments set up under Article 143(2) EPC.

2. It is proposed to set up such a special department and to name it "Unitary Patent Protection Division". Such a special department will be responsible for the additional tasks referred to in Article 9, paragraph 1, Regulation (EU) No 1257/2012 and entrusted to the EPO under Rule 1(1) by the participating member states. The departments referred to in Article 15 EPC are not responsible for these additional tasks lying outside the normal EPO grant procedure. Therefore, there is a need to set up a special department. This will clarify that the departments entrusted with the procedures laid down in the EPC, namely the Search, Examining, Opposition and Legal Divisions as well as the Boards of Appeal will not have any responsibility when it comes to the unitary patent. In particular, actions against decisions of the Unitary Patent Protection Division will have to be brought before the Unified Patent Court (see Articles 32(1)(i) and 47(7) UPC Agreement) and not before the EPO Boards of Appeal.

3. Given the predominantly legal nature of the decisions to be taken by the Unitary Patent Protection Division, it is proposed that its decisions be taken by one legally qualified member (see also Article 20(2) EPC). This is in line with Article 8(6) UPC Agreement which lays down that any panel of the central division dealing with actions under Article 32(1)(i) UPC Agreement shall sit in a composition of (three) legally qualified judges.

4. Paragraph 4 foresees that the President of the EPO may entrust to employees who are not legally qualified members (i.e. formalities officers) the execution of individual duties falling to the Unitary Patent Protection Division, and involving no legal difficulties. Accordingly, certain aspects of the procedures may be delegated to formalities officers under the conditions to be determined by the President of the EPO, e.g. where a request is not disputed or where a task does not involve complex legal questions.

5. No additional administrative infrastructure will be required for the Unitary Patent Protection Division. It will in fact be a virtual division in the sense that its staff will be the existing staff of the Legal Division under Article 20 EPC which deals with tasks identical or similar to those for which the Unified Patent Division will be responsible. The department will thus wear two hats and will take decisions either in its capacity as Unified Patent Protection Division or in its capacity as Legal Division. By using the existing infrastructure and expertise, additional costs can be kept low.

PART II PROCEDURES TO BE CARRIED OUT 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 only be registered if the European patent has been granted with the same set of claims in respect of all the participating Member States.

Rule 5 – The request for unitary effect – General

I. Requirements for the registration of unitary effect

1. Paragraph 1 reflects the fact that procedurally, under Regulation (EU) No 1257/2012, unitary patent protection is obtained by a formal request of the proprietor of the European patent to be filed with the EPO.

2. Paragraph 2 sets out the "substantive" requirements for obtaining unitary effect. It sticks to the wording of Article 3(1) in conjunction with Recital 7 Regulation (EU) No 1257/2012: unitary effect is registered only where the European patent has been granted with the same set of claims for all the 25 participating member states, irrespective of whether these States have ratified the UPC Agreement or not.

3. The territorial scope of a European patent with unitary effect for which unitary effect is already registered in the Register for unitary patent protection will have to be determined under Article 18(2), second subparagraph, Regulation (EU) No 1257/2012, i.e. by referring to the date of registration. The participating member states in which the European patent with unitary effect has unitary effect under Article 18(2), second subparagraph, Regulation (EU) No 1257/2012 will be indicated in the Register for unitary patent protection for information purposes (see Rule 16(1)(g)).

4. Where one of the two joint requirements set out in paragraph 2 (i.e. designation of all the participating member states in the granted European patent and same set of claims for all these Member States), or even both, is/are not fulfilled, unitary effect cannot be registered by the EPO (see Article 3(1) and Recital 7 Regulation (EU) No 1257/2012).

5. No express authorisation to introduce a specific fee for the request for unitary effect has been included: such a fee would constitute a supplementary formal and financial requirement not provided for by Regulation (EU) No 1257/2012 and could unnecessarily complicate and therefore delay the procedure for requesting unitary effect (it would inevitably lead to instances of non-payment, or partial payment, or late payment, and thereby necessitate remedies, surcharge, sanctions such as the request deemed not to have been filed, etc.) when, in fact, the procedure should be kept as simple and attractive as possible.

II. Multiple proprietors in respect of the same or different participating member states

6. Unitary effect can also be requested where a European patent was granted to multiple proprietors in respect of the same or different participating member states as long as said European patent has been granted with the same set of claims in respect of all the participating member states. Procedurally, the request will then have to be filed via the common representative referred to in Rule 151 EPC (see Rule 20(2)(l), which provides that Rule 151 EPC applies *mutatis mutandis*).

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 6 – Requirements of the request for unitary effect

1. Rule 6 sets out the formal requirements for obtaining unitary effect, as opposed to the "substantive" requirements set out in Rule 5(2).

2. Paragraph 1 of the proposed rule, in accordance with Article 9(1)(g) Regulation (EU) No 1257/2012, stipulates a non-extendable time limit of one month after the mention of the grant is published in the European Patent Bulletin for filing the request for unitary effect.

3. In order to avoid any formal deficiencies, the EPO intends to provide appropriate (electronic) forms for filing the request for unitary effect which will contain checkboxes alerting the patent proprietor to all the relevant formal requirements.

4. Should the patent proprietor omit to file a request for unitary effect, i.e. file no request for unitary effect with the EPO, he may obtain re-establishment of rights in respect of the period specified in Rule 6(1). The request for re-establishment must however be filed within two months of expiry of the aforementioned period, by analogy with the re-establishment of rights for the priority period under Article 87(1) EPC (see Rule 22(2)) and the omitted act, i.e. the filing of the request for unitary effect, must also be completed in this period (Rule 22(3)). For a request for unitary effect filed too late, i.e. after the expiry of the one-month period specified in Rule 6(1), see the explanatory remarks on Rule 7 below.

5. Paragraph 2 specifies the language to be used in accordance with Article 9(1)(g) Regulation (EU) No 1257/2012, namely the language of proceedings, as well as the requirement under the EPC for the written form. Paragraph 2(a) is required so that the EPO can check the requester's identity, i.e. whether he is in fact the patent proprietor. The number of the European patent is required to identify the patent to which unitary effect will be attributed. Paragraph 2(c) is needed in case a representative has been appointed. Paragraph 2(d) sets out the transitional translation requirement of Article 9(1)(h) Regulation (EU) No 1257/2012 and Article 6(1) Regulation (EU) No 1260/2012. It will have to be deleted as soon as the transitional period is terminated.

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.

Rule 7 – Examination of the request by the EPO

1. In view of the overriding need for legal certainty and in the interest of clarity, the procedure for requesting and registering unitary effect should be as straightforward as possible. In particular, the overall duration of this procedure should be as short as possible bearing in mind that the public, patent offices, courts (including the Unified Patent Court) and other national authorities should know as soon as possible whether unitary effect will be attributed to a granted European patent. Furthermore, the participating member states have a particular interest in a swift registration of the unitary effect since they have to ensure, where the unitary effect of a European patent has been registered, that the European patent is deemed not to have taken effect as a national patent in their territory (see Article 4(2) Regulation (EU) No 1257/2012). On the other hand, patent proprietors requesting unitary effect do have a legitimate interest in obtaining possibilities to remedy minor formal deficiencies contained in the request and in getting duly heard under Article 113(1) EPC, as is the case for any other procedure governed by the EPC and with which they are acquainted.

2. Paragraph 1 governs the case where all requirements, both formal and substantive as provided for under Rules 5(2) and 6, are met. In this case, the EPO can register the unitary effect in the Register for unitary patent protection and communicate the date of this registration to the patent proprietor.

3. Paragraph 2 governs three scenarios: (a) the request is filed within the one-month period of Rule 6(1) and the substantive requirements of Rule 5(2) are not met; (b) the request is filed after the expiry of the one-month period of Rule 6(1) and the substantive requirements of Rule 5(2) are met; (c) the request is filed after the expiry of the one-month period of Rule 6(1) and the substantive requirements of Rule 5(2) are not met. The fourth possible scenario, in which no request for unitary effect has been filed by the patent proprietor, is not governed by paragraph 2 since the EPO cannot issue a rejection in the absence of a request. See the explanatory remarks on Rule 6 for more information on this scenario.

4. In cases (a) to (c), the EPO will reject the request for unitary effect without setting a further time limit for correcting deficiencies. Before it does so, it will have to give the patentee the opportunity to comment, i.e. send out at least one communication inviting the requester to comment under Article 113(1) EPC, which applies pursuant to Rule 20(1). It is proposed that in case (b) the requester should be given the possibility to request re-establishment of rights in respect of the one-month period specified in Rule 6(1) within two months of expiry of that period (see Rule 22(2)). Procedurally speaking, the EPO may then, together with the rejection of the request, inform the patent proprietor that he may still request re-establishment of rights in respect of the period specified in Rule 6(1) within two months of the expiry of that period.

5. Paragraph 3 governs the case where the one-month period of Rule 6(1) and the substantive requirements of Rule 5(2) are met but where any of the formal requirements of Rule 6(2) have not been fulfilled. In such a case, the EPO would -– as usual in proceedings before the EPO – give the requester the opportunity to remedy the deficiency within a non-extendable period of one month. If the requester fails to observe this period, re-establishment of rights is ruled out, no other legal remedy is available and the request for unitary effect is rejected (see Rule 22(6)), i.e. the EPO takes a final decision against which an action can be brought before the Unified Patent Court (see Article 32(1)(i) in conjunction with Article 66 Agreement on a Unified Patent Court).

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 is an entity or a natural person referred to in paragraph 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 8 – Compensation scheme: definition and beneficiaries

1. Under Rule 8(1), the scheme is open to proprietors of European patents with unitary effect granted on the basis of an application they themselves have filed in an EU official language other than English, French and German (the EPO official languages) if their residence or principal place of business is in an EU member state.

2. Besides geographical location and language used, beneficiaries of the scheme must also be in one of the following categories:

   (a) small and medium-sized enterprises (SMEs);
   (b) natural persons; or
   (c) non-profit organisations, universities and public research organisations.

3. The definition of SMEs is that set out in European Commission recommendation 2003/361/EC of 6 May 2003 on micro, small and medium-sized enterprises. The recommendation defines an enterprise as any entity engaged in an economic activity, irrespective of its legal form. The category of micro, small and medium sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons, which have an annual turnover not exceeding EUR 50m or an annual balance-sheet total not exceeding EUR 43m, and for which no more than 25% of the capital is held directly or indirectly by another company which is itself not an SME.

4. The definition of non-profit organisations is that set out in Article 2, paragraph 1(14) of Regulation (EU) No. 1290/2013 laying down the rules for participation in the framework programme for research and innovation. Thus, '*non-profit legal entity' means a legal entity which by its legal form is non-profitmaking or which has a legal or statutory obligation not to distribute profits to its shareholders or individual members.*

5. Universities and public research organisations are not expressly defined in EU texts, so details will be presented in an EPO notice, reflecting these bodies' definitions as set out with a view to the amendment of the scope of application of Rule 6 EPC (cf. CA/97/13 Rev. 1 and the notice from the EPO dated 10 January 2014, OJ EPO 2014, A23).

6. To prevent abuse, such as making a natural person or SME a co-proprietor of the patent in order to qualify for the scheme, Rule 8(3) provides that if there are multiple proprietors, compensation will be granted only if each of them fulfils the eligibility requirements.

7. The rule's paragraph 1 governs compensation requests submitted by the same entity that filed the patent application; in such cases, the eligibility criteria must be fulfilled when the European patent application is filed. Its paragraph 4 governs those submitted after ownership of the application or patent has changed (e.g. following a transfer or merger); here, compensation will be granted only if both the original applicant and the new owner (for the latter when requesting compensation) fulfil the eligibility criteria as regards not only nationality but also type of entity.

8. The scheme applies to Euro-direct applications filed at the EPO and also, as expressly stated in Rule 8(5), to Euro-PCT applications originally filed at a PCT receiving office in the 23 countries eligible for the scheme (or the International Bureau) in an EU (but non-EPO) official language. Under Article 153(2) EPC, an international application for which the EPO is a designated or elected office is legally equivalent to a regular European application, and as such is covered by Article 5 of Regulation (EU) No. 1260/2012.

Rule 9 Request for compensation

(1) The proprietor of a European patent who wishes to benefit from compensation under Rule 8 must 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 9 – Request for compensation

1. Proprietors have to file their request for compensation with the EPO after grant of the European patent, together with their request for unitary effect. That is in line with the texts adopted; under recital 10 of Regulation (EU) No. 1260/2012 the compensation should go to *"certain applicants obtaining European patents with unitary effect"*. Although translation costs will then be reimbursed some time (three to four years) after they were actually incurred, this possibility of subsequent reimbursement shall be seen as an incentive for SMEs to opt for unitary protection.

2. Rule 9 stipulates that the request for compensation must be filed with the EPO at the same time as the request for registration of unitary effect, i.e. no later than one month after publication of the mention of grant of the European patent in the European Patent Bulletin (see Rule 6); no longer period for filing it is envisaged. The request forms for unitary effect will also include a box for requesting compensation; proprietors will merely have to tick the box.

3. Together with the request for compensation the proprietor must submit a solemn declaration that he (and the initial applicant, if a transfer of ownership has occurred) fulfils the eligibility requirements under Rule 8. He must make this declaration on an EPO form. The EPO does not plan to require him to provide supporting documents about his status, and will not normally verify the veracity of the declaration. It may however conduct spot checks before granting compensation.

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. If this additional fee is not paid in due time, the European patent with unitary effect shall lapse under Rule 14.

Rule 10 – Examination of the request and grant of compensation

1. The EPO will quickly examine requests for compensation according to Rule 10(1) to make sure that the request for unitary effect has indeed been filed, that all proprietors have made the necessary declaration, and that there are no doubts as to the declaration's veracity. After these simple checks, the EPO will notify the proprietor that it is granting compensation and pay it to him. Compensation cannot be paid until the European patent's unitary effect has been entered in the Register for unitary patent protection. This compensation is to be covered by the renewal fees for European patents with unitary effect, which means that it cannot be granted until unitary effect is registered, as opposed to merely requested.

2. Once compensation is granted, the proprietor will keep it whatever happens to his status, e.g. he no longer fulfils the SME criteria or assigns his unitary patent to a new proprietor who does not meet the eligibility requirements under Rule 8(2).

3. However, if the EPO has serious doubts about the veracity of the declaration filed with the compensation request, e.g. because of information from a third party, under Rule 10(3) it could exceptionally review its grant of the compensation, and ask the beneficiary to provide evidence (such as a copy of his balance sheet or a declaration about how many person he employs) that he fulfils the eligibility criteria. Proceedings under Articles 113(1) and 114 EPC would then ensue.

4. If, at the end of these proceedings, the Office believes that a false declaration has been made, it will inform the beneficiary under Rule 10(4) that it has revised its decision to grant the compensation, and require him to refund the sum paid, in the form of an additional fee when paying the next renewal fee for his unitary patent (possibly within the six-month grace period). This additional fee will be equal to the translation costs paid, plus an administrative fee to cover processing costs. The administrative fee will be laid down, in the rules relating to fees, at 50% of the amount of compensation paid. If this additional fee is not paid in due time, his unitary patent will lapse under Rule 14(1).

5. Decisions taken by the Office in administering the compensation scheme procedures described above are appealable before the Unified Patent Court.

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. 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.

Rule 11 – Level of compensation

1. The level of compensation is fixed in the form of a lump-sum. The lump sum paid constitutes the ceiling on the reimbursement of all translation costs, under Article 5(1) of Regulation (EU) No. 1260/2012. For real translation costs below this ceiling, the scheme will bring requesters financial advantages which go beyond what is foreseen in Article 5 of Regulation (EU) No. 1260/2012.

2. The reimbursement ceiling takes account of the average length of European patent specifications and the average cost of translating a text from one of the 21 EU but non-EPO official languages into English, French or German.

3. Lastly, the level of compensation must take account of the reductions granted on filing and during examination, under Rule 6 EPC and Article 14 Rules relating to Fees (EPC), for the same categories of applicant.

4. The lump sum fixed in the rules relating to fees (for unitary patent protection) will be reviewed periodically as further technical progress in machine translation enable applicants to obtain translations more cheaply.

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 compensation. 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. 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.

Rule 12 – Filing of a statement by the patent proprietor

1. Article 8(1) Regulation (EU) No 1257/2012 provides that the proprietor of a European patent with unitary effect may file a statement with the EPO to the effect that the proprietor is prepared to allow any person to use the invention as a licensee in return for appropriate compensation. Paragraph 2 of that provision specifies that a licence obtained under the Regulation will be treated as a contractual licence. In accordance with Article 11(3) Regulation (EU) No 1257/2012, renewal fees which fall due after receipt of the statement referred to in Article 8(1) of said regulation will be reduced. Recital 15 of the regulation adds that the patent proprietor should get a reduction of the renewal fees as from the time the EPO receives the statement referred to in Article 8(1) of the regulation.

2. Article 9(1)(c) Regulation (EU) No 1257/2012 provides that the EPO is given the task of receiving and registering the statements on licensing referred to in Article 8 and their withdrawal, and of licensing the commitments undertaken by the proprietor of the European patent with unitary effect in international standardisation bodies.

3. Proposed Rule 12(1) lays down the procedure for filing the statement referred to in Article 8 Regulation (EU) No 1257/2012 and specifies that the amount of the renewal fee reduction will be fixed in the Rules relating to Fees. Paragraph 2 specifies that the statement can be withdrawn by the proprietor at any time, in line with Article 9(1)(c) Regulation (EU) No 1257/2012. The withdrawal will only take effect if the amount by which the renewal fees were reduced is paid to the EPO.

4. Paragraph 3 deals with cases where an exclusive licence is recorded in the register. Paragraph 4 specifies that no exclusive licence may be recorded after a statement has been filed, unless it is withdrawn.

5. Pursuant to Article 32(1)(h) Agreement on a Unified Patent Court, the Court will have exclusive competence in respect of actions for compensation for licences on the basis of Article 8 Regulation (EU) No 1257/2012. Therefore, in the case of dispute, the Unified Patent Court will have to determine the amount of the appropriate compensation referred to in Article 8 Regulation (EU) No 1257/2012 and Rule 8(1) if a request for same is made by one of the contracting parties to the licence agreement.

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.

Rule 13 – Payment of renewal fees for European patents with unitary effect

1. In accordance with Articles 9(1)(e) and 11 Regulation (EU) No 1257/2012, proposed paragraph 1 sets out the obligation to pay the EPO renewal fees and, where applicable, additional fees in the event of their late payment, for the European patent with unitary effect, the amount of the fees being laid down in the Rules relating to Fees. Renewal fees for the European patent with unitary effect 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 (see also Article 141(1) EPC).

2. Proposed paragraph 2 provides for the due date of payment of renewal fees and is almost identical to the wording of Rule 51(1) EPC. Proposed paragraph 3 is fully aligned with Rule 51(2) EPC, which provides for an additional period of six months if the renewal fees have not been paid on or before the due date. Proposed paragraphs 4 and 5 provide for a special period for paying the first renewal fees for the European patent with unitary effect.

3. If the renewal fee has not been paid on the due date, the EPO will inform, as a courtesy service (and as is the current practice with respect to renewal fees to be paid for the European patent application under Article 86 EPC), the proprietor of the European patent with unitary effect as soon as possible of the option of paying the fee, plus an additional fee, in the six months following the due date, that period having already begun.

4. If the renewal fee is not paid within the additional six-month period, the EPO will send a communication under Rule 112(1) EPC (which applies mutatis mutandis pursuant to Rule 20(2)(d)), notifying the proprietor of the European patent with unitary effect of the loss of rights. The communication does not constitute a decision within the meaning of Article 32(1)(i) Agreement on a Unified Patent Court, so an action cannot be brought against it before the Unified Patent Court. Failure to pay the renewal fee within the additional six-month period can be redressed using re-establishment of rights under Rule 22.

5. Alternatively, if the finding of the EPO causing the loss of rights is inaccurate, a review of the finding can be requested by applying for a decision under Rule 112(2) EPC, said rule applying *mutatis mutandis*. An action against that decision could then be brought before the Unified Patent Court.

6. The computation of time limits is to be effected under Rules 131 and 134 EPC (see Rule 20(2)(g)) in accordance with the current EPO practice: when the due date falls on a date the EPO cannot receive mail within the meaning of Rule 134(1) EPC (which applies mutatis mutandis under Rule 20(2)(g)), the due date is not changed since it does not constitute a period which can be extended. Instead, the last day for valid payment is deferred to the first working day thereafter.

7. Furthermore, the six-month additional period of Rule 13(3) starts on the last day of the month referred to in Rule 13(2), even if the EPO cannot receive mail on that date because of holidays, mail interruption or strike. However, Rule 134(1) EPC is to be applied to the expiry of the six-month additional period, deferring the last day for valid payment to the first working day.

8. Article 9(1)(e) of Regulation (EU) No 1257/2012 provides that the EPO, when collecting and administering renewal fees as well as additional fees for late payment, shall perform these latter tasks in accordance with the internal rules of the EPO. The purpose of the application of these internal rules of the EPO is the full alignment between EPO procedures relating to European patent applications and European patents on the one hand and the procedures relating to the European patent with unitary effect on the other. Therefore, when calculating the additional period under Rule 13(3) (which is identical to Rule 51(2) EPC), the internal rules of the EPO, as resulting from decision J 4/91 of the Legal Board of Appeal (see Official Journal 1992, 402), are to be applied. Whilst the method to be used differs from the one described in Regulation (EEC, EURATOM) No 1182/71 determining the rules applicable to periods, dates and time limits, this is not in contradiction with the aforementioned Regulation, in that the latter expressly provides derogations in its preamble. It follows that the six-month period for the payment of a renewal fee with additional fee expires on the last day of the sixth month after the due date (in the light of Rule 13(2)) and not on the day of that month corresponding in number to the due date (see Rule 131(4) EPC applying mutatis mutandis under Rule 20(2)(g)). Thus, the calculation is to be made from the last day of the month to the last day of the month (de ultimo ad ultimo, e.g. if the due date is 28 February, then the end of the six-month period will be 31 August and not 28 August). See point 7 above as to the application of Rule 134(1) EPC.

9. The consequence of non-payment of the renewal fee, and where applicable, additional fee, is the lapse of the European patent with unitary effect in accordance with Article 11(2) Regulation (EU) No 1257/2012 (see Rule 14(1)(b)). The lapse takes effect on the due date.

10. Proposed paragraph 4 is similar to the content of Article 141(2) EPC and extends the two-month safety period to three months. A renewal fee in respect of a European patent with unitary effect falling due 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. In case the UPC overturns a decision of the EPO and orders the EPO to register unitary effect, the EPO will notify the patent proprietor a communication under Rule 7(1) informing him of the date of registration of unitary effect in the Register for unitary patent protection. This will trigger the three-month period for paying the renewal fee without an additional fee. The course of the six-month period under Rule 13(3) is unaffected: it starts running from the due date. However, Rule 13(4) has the effect that an additional fee under Rule 13(3) does not have to be paid where the renewal fee is paid within the three-month safety period.

11. Proposed paragraph 5 covers the case where a renewal fees falls due after the grant of the European patent but before the unitary effect is registered. This could in particular occur where the procedure for registering unitary effect takes a long time owing, for example, to a request for re-establishment of rights or the involvement of the Unified Patent Court. If, at the end of such a procedure, the decision to register unitary effect is finally notified to the patent proprietor by the EPO, the European patent with unitary effect takes effect on the date of publication of the mention of the grant of the European patent in the European Patent Bulletin in accordance with Article 4(1) Regulation (EU) No 1257/2012. Owing to this retroactive effect (see Recital 8 Regulation (EU) No 1257/2012), renewal fees would have fallen due for the period starting on the date of publication of the mention of the grant of the European patent in the European Patent Bulletin and up to and including the date of the notification of the communication referred to in Rule 7(1). Proposed paragraph 5 shifts the due date to the date of said notification and allows the payment of renewal fees within three months of this notification without any additional fee. If not paid within this period, Rule 13(3) applies, i.e. the fee(s) can still be paid with an additional fee within six months, starting from the date of notification.

12. Proposed paragraph 6 provides that Rule 51(4) and (5) EPC do apply mutatis mutandis. Rule 51(4) EPC refers to the case where a European patent with unitary effect lapses due to the non-payment of renewal fees and a request for re-establishment of rights is successful. Rule 51(5) governs the analogous situation where a petition for review or a rehearing under Article 81 UPC Agreement is successful.

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.

Rule 14 – Lapse

1. The proposed rule summarises the situations in which the European patent with unitary effect lapses. Paragraph 1(a) of the proposed rule reflects Article 63(1) EPC which provides that the term of the European patent is 20 years from the date of filing of the application. Paragraph 1 (b) covers the case of non-payment in due time of a renewal fee and, where applicable, any additional fee (see Article 11(2) Regulation (EU) No 1257/2012).

2. It is proposed that the date of effect of the lapse in the case referred to in paragraph 1(b) should be specified: in such a case, the lapse of a European patent with unitary effect is 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 15 – Establishment of the Register for unitary patent protection

1. See the explanatory remarks below under Rule 16.

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 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) family name, given names and address 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;

Rule 16 – Entries in the Register for unitary patent protection

I. General

1. Article 9 Regulation (EU) No 1257/2012 sets out that the participating member states will, within the meaning of Article 143 EPC, give the EPO some additional tasks to be carried out in conformity with the "internal rules" of the EPO. Pursuant to Article 9(1)(b) Regulation (EU) No 1257/2012, these tasks comprise the inclusion of the Register for unitary patent protection within the European Patent Register and the administration thereof. Article 2(e) Regulation (EU) No 1257/2012, specifies that "Register for unitary patent protection means the register constituting part of the European Patent Register in which the unitary effect and any limitation, licence, transfer, revocation or lapse of a European patent with unitary effect are registered."

2. In accordance with the above provisions, Rule 15 provides that a Register for unitary patent protection is hereby established as an integral but special, i.e. dedicated, part of the present European Patent Register kept by the EPO under Article 127 EPC.

3. For reasons of legal certainty and transparency for the users, the Register for unitary patent protection will be set up as a separate part of the European Patent Register covering all entries required for the European patent with unitary effect. This will be adequately reflected in the online architecture of the Register for unitary patent protection. Strong interaction between the classical European Patent Register and the Register for unitary patent protection (e.g. by interlinking) will ensure a smooth handling by the users. Appropriate links can also be envisaged to the Register of the Unified Patent Court.

(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(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 request for re-establishment of rights;

(s) refusal of request for re-establishment of rights;

(t) date of re-establishment of rights;

(u) dates of interruption and resumption of proceedings;

II. Entries in the Register for unitary patent protection

4. The Register for unitary patent protection has to contain all the entries expressly set out in Regulation (EU) No 1257/2012, in particular the fact that unitary effect has been registered and the date of that registration. However, since the list of entries to the Register for unitary patent protection of Regulation (EU) No 1257/2012 is far from being exhaustive, it is proposed to set up a list of additional entries, the provision serving as model being Rule 143(1) EPC.

III. Procedure for entering transfers, licences and other rights and any legal means of execution (Rule 16(1)(j) in conjunction with Rule 20(2)(b))

5. Regulation (EU) No 1257/2012 does not contain any provisions as regards the procedure for registering transfers, licences and other rights (such as rights in rem, pledges, security interests etc.) and any legal means of execution, in particular as to the required request, documentary evidence and administrative fee.

6. It is therefore proposed that Rules 22 to 24 EPC apply mutatis mutandis to entries made in the Register for unitary patent protection (see Rule 20(2)(b)). This ensures full alignment with the current EPO practice. Accordingly, Rule 16(1)(j) sets out that rights and transfer of such rights relating to the European patent with unitary effect shall be registered where the present Rules (which include Rules 22 to 24 EPC applying mutatis mutandis pursuant to Rule 20(2)(b)) provide that they shall be recorded at the request of an interested party. Rule 16(1)(j) and Rule 20(2)(b) are to be broadly interpreted so as to ensure that all types of national rights and legal means of execution can be registered in the Register for unitary patent protection (see Article 7 Regulation (EU) No 1257/2012).

7. A European patent with unitary effect may only be transferred in respect of all the participating member states (Article 3(2) Regulation (EU) No 1257/2012). The transfer of a European patent with unitary effect is recorded in the Register for unitary patent protection at the request of an interested party and on production of documents satisfying the EPO that such transfer has taken place. The request is deemed not to have been filed until such time as the prescribed administrative fee has been paid (Rules 22(1) and (2) EPC).

(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;

(w) information regarding the 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 provided by the proprietor of the European patent or of the European patent with unitary effect.

(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.

8. Any kind of written evidence suitable to prove the transfer is admissible. This includes formal documentary proof such as the instrument of transfer itself (original or a copy thereof) or other official documents or extracts thereof, provided that they directly verify the transfer. In case of doubt, the EPO may ask for a certified copy of the document. Where the original document is not in one of the three official languages of the EPO, the EPO may require a certified translation into one of the official languages. A declaration signed by both parties to the contract verifying the transfer is also sufficient.

9. The above principles on standards of proof also apply to the registration of licences and rights in rem. The registration of legal means of execution, however, requires the filing of the instrument (original or copy) itself.

10. If the evidence presented is found to be unsatisfactory, the EPO informs the party requesting the transfer accordingly and invites it to remedy the stated deficiencies. If the request complies with the requirements of Rule 22(1) EPC, the transfer is registered with the date on which the request, the required evidence or the fee has been received by the EPO, whichever is the latest. The competent department for decisions regarding entries in the Register for unitary patent protection is the Unitary Patent Protection Division.

11. A European patent with unitary effect may be licensed in respect of the whole or part of the territories of the participating member states (Article 3(2) Regulation (EU) No 1257/2012). It may, in respect of all the participating member states, give rise to rights in rem and may be the subject of legal means of execution (see Article 7 Regulation (EU) No 1257/2012). Moreover, compulsory licences for European patents with unitary effect are governed by the laws of the participating member states as regards their respective territories (see Recital 10 Regulation (EU) No 1257/2012). Rule 22(1) and (2) EPC do also apply to the registration of the grant, establishment or transfer of such rights and any legal means of execution affecting a European patent with unitary effect (see Rule 23(1) EPC).

12. A licence will be recorded in the Register for unitary patent protection as an exclusive licence if the applicant and the licensee so require. A licence will be recorded as a sub-licence where it is granted by a licensee whose licence is recorded in the Register for unitary patent protection (see Rules 24 (a) and (b) EPC). See explanatory remarks 8 and 9 as to the standard of proof.

13. Upon request and subject to the payment of the prescribed administrative fee, a registration of a licence or other right shall be cancelled on production of documents satisfying the EPO that the right has lapsed or has been declared invalid, or of a declaration of the proprietor of the right that he consents to the cancellation (Rule 23(2) EPC).

IV. Registration of licensing commitments: only on express request of the proprietor of the European patent with unitary effect (Rule 16 (1)(k))

14. Pursuant to Article 9(1)(c), Regulation (EU) No 1257/2012, the participating member states shall give the EPO the task to receive and register licensing commitments undertaken by the proprietor of the European patent with unitary effect in international standardisation bodies.

15. Publishing the licencing commitments in the Register for unitary patent protection can give parties interested in implementing a certain standard an overview of the patent number, patent claims, the proprietor to address for licencing and the type of licence commitment. This can facilitate the bilateral licensing negotiations necessary for the successful widespread adoption of a standard and to provide assurances to implementers of the standard that the patented technologies will be available to parties seeking to license them.

16. Therefore, there may be an interest for the holder of a standard essential patent to have the licensing commitment made public not only within the standard association but also to the outside world via the publication in the Register for unitary patent protection. The entry in the register of a licensing commitment is voluntary, not subject to the payment of an administrative fee and takes place only upon express request by the patent proprietor (see Rule 16(1)(k)). Additional information will be published by the EPO as to which precise information is to be filed by the patent proprietor for the purpose of registering a licensing commitment undertaken in European and international standardisation bodies.

17. Once a licence has been granted by the proprietor of the European patent with unitary effect as a result of the licencing commitment, this licence can be registered in the Register for unitary patent protection as described above under Rules 22 to 24 EPC which apply mutatis mutandis.

V. Voluntary indication of the place of business within the meaning of Article 7(1)(b) Regulation (EU) No 1257/2012 (Rule 16(1)(w))

18. Users have pointed out the practical usefulness of having an indication, in the Register for unitary patent protection, of the 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 governs the European patent with unitary effect as an object of property. This indication is considered useful in cases where the applicant of an international application under the PCT designating or electing the EPO (Euro-PCT application) or of a European patent application does not have a principal place of business on the date of filing of the application in one of the participating Member States pursuant to Article 7(1)(a) Regulation (EU) No 1257/2012. In such cases, the proprietor of a European patent with unitary effect may, on a purely voluntary basis, provide information regarding the place of business of the applicant pursuant to Article 7(1)(b) Regulation (EU) No 1257/2012 to the EPO. The display of the place of business in the Register for unitary patent protection shall have no legal effect with respect to the applicable law under Article 7 Regulation (EU) No 1257/2012 and shall be for information only.

VI. Delegation clause for additional Register entries

19. For the sake of efficiency, a paragraph 2 is proposed which lays down a provision equivalent to Rule 143(2) EPC allowing the President of the EPO to decide that entries additional to those referred to in paragraph 1 be made in the Register for unitary patent protection. This implies that the entries referred to in paragraph 1 may not be amended nor deleted by the President of the EPO.

20. In the interest of good patent information policy, there is a need to constantly improve and upgrade the European Patent Register including its future special part, i.e. the Register for unitary patent protection, so as to adapt the Register to the evolving needs of its users. It would moreover be burdensome and inefficient to ask the Select Committee for each and every minor additional Register entry to amend the Rules relating to unitary patent protection.

21. This is also the ratio of Rule 143(2) EPC which gives the President the possibility to add entries to the European Patent Register. The President decided for instance to add via a decision some procedural occurrences such as the date of despatch of a supplementary European search report, new documents coming to light after the European search report was drawn up, or the date of a request for limitation or revocation of the European patent. For the purpose of the present Rules, these additional entries could for example include entries which are required by the relevant national law applicable to the European patent with unitary effect as an object of property under Article 7 Regulation (EU) No 1257/2012).

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 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 or by the President of the European Patent Office, as well as any other information relevant to the implementation of unitary patent protection.

Rule 17 – European Patent Bulletin and Official Journal of the EPO

1. Article 129(a) EPC provides that the EPO will periodically publish a European Patent Bulletin containing the particulars the publication of which is prescribed by the EPC, the Implementing Regulations to the EPC, the Chairperson of the Select Committee or the President of the EPO.

2. Obviously, no reference is presently made in Article 129(a) EPC to the present rules. Thus, a special provision appears necessary which would expressly make that reference and thereby ensure publication of all particulars set out in the present rules in the European Patent Bulletin (which contains bibliographic data as well as data laid down in Rule 143 EPC). As is the case for the Register for unitary patent protection and for file inspection, it would make sense to have a dedicated chapter for unitary patent entries in the European Patent Bulletin.

3. Since the Select Committee and the President of the EPO will take decisions pertaining to unitary patent protection the relevant texts will be published in a dedicated chapter of the EPO's Official Journal.

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 18 – Publication of translations

1. Over a transitional period of a maximum of 12 years starting from the date of application of Regulation (EU) No 1260/2012, a request for unitary effect will have to be submitted together with translations of the specification in accordance with Article 6 of said regulation.

2. Under Article 6(2) Regulation (EU) No 1260/2012, in accordance with Article 9 Regulation (EU) No 1257/2012, the participating member states will, within the meaning of Article 143 EPC, give the EPO the task of publishing the translations referred to in paragraph 1 as soon as possible after the date on which a request for unitary effect is filed. The text of such translations will have no legal value and be for information purposes only.

3. It is proposed that the translations should be published in electronic form. The President of the EPO will be empowered to select an appropriate form for such electronic publication. This may consist of including the translations in the public part of the file relating to the European patent with unitary effect, where they can be inspected online by the public.

Rule 19 Inclusion of decisions of the Unified Patent Court in the files

The EPO 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.

Rule 19 – Inclusion of decisions of the Unified Patent Court in the files

1. In order to inform the public, decisions taken by the Unified Patent Court should be included in the files relating to the European patent with unitary effect, where they will be open to file inspection.

2. Rule 19 is worded as a blanket clause and allows inclusion in the files of any decision relating to the European patent with unitary effect, including those decisions referred to in Rule 1 (i.e. decisions handed down by the Court in actions brought under in Article 32, paragraph 1(i), Agreement on a Unified Patent Court). Based on this framework, any decision of the Court can be included in the files of the EPO in accordance with the Agreement on a Unified Patent Court and the Rules of procedure of the Unified Patent Court.

3. For instance, Article 65(5) Agreement on a Unified Patent Court sets out that, where the Court, in a final decision, has revoked a patent, either entirely or partly, it will send a copy of the decision to the EPO. The EPO will include said copy in the files relating to the European patent with unitary effect and will in particular not publish a new specification where the European patent with unitary effect is revoked partly.

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; Rule 112 and 113;
(e) Rules 115; Rule 116, paragraph1; Rule 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 for Article 125 EPC where it shall be understood as meaning the participating Member States.

Rule 20 – Common provisions governing procedure

I. General

1. Regulation (EU) No 1257/2012 sets out that the participating member states will, within the meaning of Article 143 EPC, give the EPO some additional tasks, to be carried out in accordance with the "internal rules" of the EPO. For the sake of clarity and definiteness, i.e. legal certainty, and since not all procedural rules of the EPC are of relevance in the present context, it is proposed that a list of the procedural rules of the EPC (both from the Convention and the Implementing Regulations) that apply for the purpose of the present rules be provided. As a result, with respect to the purely procedural aspects of the tasks entrusted to the EPO under Rule 1, only the EPC-provisions enumerated in Rule 20 and those referred to in some other of the present Rules (see for example Rule 13(6) referring to Rule 51(4) and (5) EPC) will apply.

2. The legislative technique chosen, i.e. a dynamic reference to the relevant EPC-provisions allows automatic and full alignment to the current EPO procedures and related practice. It thereby provides legal certainty and clarity for the users acquainted with the classical EPO procedures. In terms of legislation, the dynamic reference ensures that whenever EPC procedural rules are being amended by the Administrative Council so as to improve the EPO procedures, these changes will automatically be applicable for the purpose of the present Rules without necessitating an adoption by the Select Committee.

3. Only in exceptional cases have some EPC-provisions been reworded and adapted to the needs of the procedures relating to unitary patent protection. This is in particular the case for all the time limits which have been kept short in line with the aim of the Regulation which is to keep the overall duration of the procedure for requesting unitary effect reasonably short for the sake of legal certainty.

(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.

4. The applicability of some EPC-provisions will sometimes imply a delegation of powers to the President of the EPO for implementing this rule. For example, with respect to the implementation of Rule 144(d) EPC which deals with “Parts of the file to be excluded from file inspection”, the President of the EPO took a decision excluding documents from inspection if their inspection would for example be prejudicial to personal or economic interests. This decision would for instance also apply since it was taken under the relevant EPC rule applying *mutatis mutandis*. Again, the objective is to have a full alignment to the EPO procedure in order to avoid parallel procedures and higher costs arising therefrom and to obtain legal certainty and simplicity for the users acquainted with the EPO procedures.

5. It is to be noted that, pursuant to Rule 20(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 for Article 125 EPC where it shall be understood as meaning the participating Member States. Accordingly, the term “contracting states” referred to in Articles 119, 131, 133 and Article 134, paragraphs 1, 5 and 8 EPC, Rules 148 to 150 EPC, means the contracting states to the EPC.

II. Language Regime

6. Article 14(1) EPC determines the official languages of the EPO, and Article 14(3) EPC defines the term "language of proceedings". Both provisions are applicable as laid down in Rule 20(1). However, the request for unitary effect has to be filed in the language of proceedings (see Article 9(1)(g) Regulation (EU) No 1257/2012 and Rule 6 (2)). This deviates from the EPC regime, where any of the three EPO official languages may be used as a matter of principle in written proceedings (see Rule 3(1) EPC). It is therefore proposed that unless otherwise provided, Rule 3(1), first sentence, EPC (as well as Rule 3(3) EPC) should apply mutatis mutandis.

7. As a consequence, as regards the language in written proceedings before the EPO, any party may use any official language of the EPO except for the request for unitary effect itself, which has to be filed in the language of proceedings. In practice, users will complete a dedicated form when requesting unitary effect which will inter alia contain the request in the three official languages of the EPO.

8. In order to avoid delays in the straightforward procedure for requesting unitary effect, the EPC provisions allowing documents to be filed within a time limit in an admissible non-EPO language provided that a translation is filed within a month are not applicable (Article 14(4) EPC; Rule 3(1), second sentence, EPC; and Rule 6(2) EPC). As a result, it will for instance not be possible to file a request for re-establishment of rights in an admissible non-EPO language and to file a translation within a month. This is in contrast to the proceedings governed by the EPC). In practice, however, this possibility is almost never used when it comes to requests for re-establishment of rights or replying to an invitation from the EPO to rectify a deficiency within a certain period.

III. File inspection and constitution, maintenance and preservation of files

9. Documents relating to the procedure for the registration of unitary effect as well as any document relating to the European patent with unitary effect will have to be open to public file inspection. It is therefore proposed that a special part be created in the existing electronic file relating to the European patent application and the resulting European patent.

10. For that purpose, it is proposed that Article 128(4) EPC should apply *mutatis mutandis* to European patents with unitary effect. As a result, the files relating to a European patent with unitary effect could be inspected on request, subject to the modalities and restrictions laid down in Rules 144 to 146 EPC, which also apply *mutatis mutandis*.

11. As regards the constitution, maintenance and preservation of files, it is proposed that Rule 147 EPC should apply *mutatis mutandis.*

IV. Representation

12. It is proposed that Articles 133 and 134 paragraphs 1, 5 and 8 EPC, as well as Rules 151 to 153 EPC apply mutatis mutandis. In other words, almost the entire, unaltered EPO regime applies, except for some provisions on the list of professional representatives which are not relevant in the present context. As explained under point 5 above, the term “Contracting State” used in Articles 133 and 134 EPC is to be understood as meaning the EPC Contracting States and not the 25 member states participating to enhanced cooperation (see Rule 20(3))

13. This means that for example a Spanish firm having its place of business in Spain is not subject to compulsory representation by a professional representative for the purpose of filing a request for unitary effect and all the other procedures regarding a European patent with unitary effect. Where a legal person does however not have its place of business in an EPC Contracting State, it will need to be represented by a professional representative and act through him in all proceedings regarding the European patent with unitary effect, including for the act of filing of the request for unitary effect.

V. Oral proceedings and taking of evidence, notifications, time limits

14. Part VII, Chapters III (oral proceedings and taking of evidence) and IV (notifications) of the Implementing Regulations to the EPC apply mutatis mutandis. The fundamental right to oral proceedings is provided for in Rule 21, see the explanations there.

15. As regards the calculation of periods, Rule 131 EPC applies mutatis mutandis. For the purpose of legal certainty, and in order to keep the overall duration of the procedure for requesting unitary effect reasonably short, in line with Regulation (EU) No 1257/2012, some modifications to the periods of the EPC are proposed: Rule 20(4) takes over the substance of Rule 132 EPC but shortens the minimum period to one month instead of two. The reason for this shortening is that the procedure for requesting unitary effect significantly differs from the patent grant procedure insofar as it exclusively relates to the fulfilment of purely formal requirements. It does in particular not require the preparation of substantive replies from the requester which would justify longer periods.

16. Furthermore, the content of Rule 133(1) EPC is set out separately in Rule 20(1)(g) with the proviso that the document referred to therein must have been received no later than one month after expiry of the relevant period. This is to be in line with the one-month period for filing the request for unitary effect, given the fact that the main documents to be filed with the EPO will in fact be the request for unitary effect and the translations.

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, oral proceedings shall take place before the Unitary Patent Protection Division at the request of the proprietor of the European patent in the procedure concerning the request for unitary effect 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 21 – Oral proceedings

1. In accordance with Article 116(1) EPC which enshrines the fundamental right to oral proceedings, paragraph 1 provides that oral proceedings take place either at the instance of the Unitary Patent Protection Division if it considers this to be expedient or at the request of any party to the proceedings. However, the Unitary Patent Protection Division may reject a request for further oral proceedings before it where the parties and the subject of the proceedings are the same.

2. However, in the interest of procedural economy, it is proposed that the principle under which oral proceedings are to be held upon request of any party to the proceedings should be expressly restricted in proceedings concerning the request for unitary effect. Thus, oral proceedings in proceedings concerning the request for unitary effect will normally be excluded and should take place only if the Unified Patent Protection Division considers this to be expedient. Only in exceptional cases where face-to-face dialogue is likely to result in a speedier resolution of the issues relevant to the registration of unitary effect will the EPO deem oral proceedings to be expedient.

3. The procedure for registering unitary effect should be kept as expeditious as possible for reasons of legal certainty. Holding oral proceedings at the request of the proprietor where the EPO intends to refuse the request for unitary effect would as a rule considerably delay the whole proceedings because the EPO would need to duly prepare oral proceedings (proprietor to be summoned with at least two months' notice of the summons according to Rule 115(1) EPC which applies mutatis mutandis (see Rule 20(2)(e)). This would also be very cost-intensive (communication accompanying the summons to be issued, translations to be provided, minutes to be taken). Oral proceedings would moreover not produce any further clarity, because the possible formal defects can usually not be removed and the legal situation will be clear cut and simple in the majority of cases (see Rules 5 and 6).

4. Oral proceedings with respect to other procedures, such as the procedure for re-establishment of rights with regard to the time limit for paying renewal fees or with regard to the time limit for filing the request for unitary effect, are unaffected by this restriction and are to be held on request in accordance with proposed paragraph 1.

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 prescribed fee 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 22 – Re-establishment of rights

1. It is proposed that re-establishment of rights as the only applicable means of legal redress for all the procedures relating to the European patent with unitary effect, including the procedure for requesting unitary effect, should be introduced. Due to editorial constraints, a cross reference to the numerous different EPC provisions governing re-establishment of rights and its interaction with further processing would be unclear and too difficult to read. Therefore, a new all-inclusive provision has been formulated.

2. A typical case giving rise to re-establishment of rights will be the failure to pay renewal fees in time for the European patent with unitary effect. In addition, should the proprietor of the European patent omit to file a request for unitary effect or file said request too late, it is proposed that he should be able to obtain re-establishment of rights in respect of the non-extendable one-month period specified in Rule 6(1). It is furthermore proposed that in such a case, the request for re-establishment should be filed within two months of expiry of that period. The omitted act, i.e. the filing of the request for unitary effect, must also be completed within this two-month period.

3. The special period of two months instead of the usual one-year-period is due to the fact that the procedure for requesting unitary effect should be, in line with Regulation (EU) No 1257/2012, an expeditious procedure with a short overall duration for reasons of legal certainty. The prevailing interest is therefore an early clarification of the legal situation in the state of uncertainty following grant where the patentee can either opt for a European patent with unitary effect or a different legal regime via national validations (see also the special period provided for the re-establishment of rights in the priority period under Article 87(1) EPC in conjunction with Rule 136 EPC)).

4. For the same reason, - i.e. keeping the procedure short - it is proposed to exclude from re-establishment of rights the period referred to in Rule 7(3) (i.e. the one month period for rectifying formal deficiencies in the request for unitary effect).

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 23 – Form of decisions

1. Proposed Rule 23 reproduces Rule 111(2) EPC with some adaptations required in view of the fact that actions against EPO decisions are to be brought before the Unified Patent Court.

Rule 24 Interlocutory revision

(1) 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.

Rule 24 – Interlocutory revision

1. Proposed Rule 24 is largely modelled on Article 109 EPC and goes hand in hand with Rule 91 of the draft Rules of procedure of the Unified Patent Court (16th draft of 31 January 2014, hereinafter referred to as draft RoP UPC)).

2. Actions concerning decisions of the EPO in carrying out the tasks referred to in Article 9 Regulation (EU) No 1257/2012 are to be brought before the Unified Patent Court (see Article 32(1)(i) UPC Agreement) within two months of service of the decision of the EPO (see Rule 88 draft RoP UPC which governs “Applications to annul or alter a decision of the Office").

3. The UPC then makes an admissibility check (and the applicant can correct deficiencies where applicable). If the application is admissible, the UPC will forward it to the EPO under Rule 90 draft RoP UPC. Under Rule 91 draft RoP UPC, the EPO has one month from the date of receipt of the application to rectify the contested decision and to inform the Court that the decision has been rectified.

4. Proposed Rule 24 mirrors this procedure. However, it is noted that the period of one month for both the rectification and information of the Court provided in UPC RoP is quite short. If interlocutory revision is to be an efficient and workable system, the EPO needs more time, i.e. a minimum of two months (under the current EPO practice, the period is three months, see Art. 109 EPC).

5. Since actions concerning decisions of the EPO in carrying out the tasks referred to in Article 9 Regulation (EU) No 1257/2012 are to be brought before the Unified Patent Court and not before the EPO, which could have allowed a post-decision revision mechanism without a possible involvement of the UPC, it is proposed to establish, in the framework of the implementation, an EPO internal procedure (e.g. internal Guidelines) which will ensure that in cases where an adverse decision is likely to be issued (e.g. rejection of a request) or where the case involves complex legal questions, a legally qualified member of the Unitary patent protection Division (see Rule 4(3)) is involved before the issuance of the decision. This would guarantee that EPO decisions against which an action can be brought before the UPC are legally sound.

PART V FINANCIAL ISSUES

Rule 25 [Cover for expenditure incurred by the European Patent Office[1]

(1) The costs incurred by the European Patent Office in carrying out the tasks entrusted to it in accordance with Article 9, paragraph 1, Regulation (EU) No 1257/2012 have to be borne by the participating Member States pursuant to Article 146 EPC and have to be covered by the renewal fees generated by the European patent with unitary effect pursuant to Article 10 Regulation (EU) No 1257/2012.

(2) In case the application of paragraph 1 does not lead to a balance of income and expenditure, the relevant provisions of the EPC shall apply.

(3) The implementation of paragraphs 1 and 2 shall ensure cost neutral performance of the tasks entrusted to the EPO. It shall be governed by the EPO's Financial Regulations.]

[1] To be discussed in the context of the financial issues.

Rule 25 – Cover for expenditure incurred by the European Patent Office

1. According to Article 146 EPC and Article 10 ff Regulation (EU) No 1257/2012 the European patent with unitary effect has to be self-financing and has to be implemented in a way that ensures budget neutrality.

2. Paragraph 2 is intended to deal in particular with the situation which might occur in the initial phase.