

## Regulations on the Federal Patent Court

(PR-PatC)

of 12.12.2012

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*The Federal Patent Court,*

on the basis of Article 20 paragraph 3 letter a of the Patent Court Act of 20 March 2009<sup>1</sup> (PatCA),

*hereby enacts the following Rules of Procedure:*

### Section 1: Organisation of the Court

#### **Art. 1** Tasks of the Plenary Court

<sup>1</sup> The Plenary Court is responsible for electing the Vice-President and, as applicable, another member of the Administrative Board of Judges as provided for in Article 20 paragraph 2 PatCA.

<sup>2</sup> It advises the Administrative Board of Judges in drafting rules and regulations.

#### **Art. 2** Convening of the Plenary Court

The Plenary Court is convened by the President of the Federal Patent Court.

#### **Art. 3** President

<sup>1</sup> The following tasks and duties are incumbent upon the President of the Federal Patent Court, namely:

- a. External representation of the Court;
- b. Presiding over the Plenary Court and the Administrative Board of Judges;

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<sup>1</sup> SR **173.41**

- c. Convening of the Plenary Court and the Administrative Board of Judges;
- d. Designation of an alternate for the Administrative Board of Judges from among the legally trained judges as provided for in Article 20 paragraph 2 PatCA;
- e. Designation of the members of a panel.
- f. Establishment of the language of a proceeding and allowing the use of English;
- g. Establishment of external sitting locations.

<sup>2</sup> The Vice-President or the third full-time member of the Administrative Board of Judges represents and supports the President and attends to the President's tasks and duties in concert with him or her.

#### **Art. 4** Administrative Board of Judges

<sup>1</sup> The Administrative Board of Judges is responsible for:

- a. Enacting rules and regulations as provided for in Article 20 paragraph 3 letter a PatCA;
- b. Adopting decisions pertaining to the admission of patent attorneys as representatives as provided for in Article 29 paragraph 1 PatCA and maintaining a list to this end;
- c. Making employer decisions;
- d. Adopting the draft budget, accounts and annual report for the attention of the Federal Assembly;
- e. All tasks and duties that are not assigned to another body.

<sup>2</sup> It adopts its decisions by way of a majority resolution. A quorum is deemed to be present where at least two members take part in a session or circular proceeding. Where there is a tie vote, the President has the deciding vote.

<sup>3</sup> A plenum of the Administrative Board of Judges is required for decisions on disputed motions for recusal as provided for in Article 11.

<sup>4</sup> Where a member is indisposed or is affected by a motion for recusal, the member shall be represented by his or her alternate as provided for in Article 20 paragraph 2 PatCA. Where the alternate or other member of the Administrative Board of Judges is indisposed or is affected by a motion for recusal, the member shall be represented by the legally trained judge with the highest seniority; where two judges have the same seniority the higher age shall be decisive.

#### **Art. 5** Chief Court Registrar

<sup>1</sup> The Chief Court Registrar presides over the court administration.

<sup>2</sup> He or she is responsible for:

- a. the preparation and execution of the rulings adopted by the Administrative Board of Judges;
- b. the preparation of the budget, the accounts and the finance plan;
- c. financial controlling in association with the General Secretariat of the Federal Administrative Court;
- d. the preparation of the annual report;
- e. safeguarding security;
- f. ensuring appropriate IT services.

<sup>3</sup> He or she takes part in the sessions of the Plenary Court and the Administrative Board of Judges in an advisory capacity and is responsible for transcribing the proceedings.

<sup>4</sup> He or she also serves as court clerk as provided for in Art. 9.

#### **Art. 6**                      Signatory powers

<sup>1</sup> The President and the Chief Court Registrar sign jointly in matters falling within the competence of the Plenary Court or the Administrative Board of Judges.

<sup>2</sup> The President signs individually in matters falling within his or her sole competence.

<sup>3</sup> The Chief Court Registrar signs individually in administrative matters. He or she may delegate signatory powers for specific matters to other persons.

## **Section 2: Organisation of Adjudication**

#### **Art. 7**                      Panels

<sup>1</sup> The President of the Federal Patent Court shall establish the size and members of a panel in accordance with the provisions of Article 21 PatCA.

<sup>2</sup> Where a preparatory hearing takes place, the President shall designate one or two specialist judges to take part in the hearing with him or her or the instructing judge.

<sup>2</sup> After the second exchange of briefs the panel shall be supplemented as needed for the main proceeding. Where a decision of the Court is already required beforehand, the panel shall be supplemented accordingly for adopting the decision.

<sup>3</sup> The specialist judges shall be selected in accordance with their expertise. In so doing, every effort shall be made to strive for a balanced workload of the specialist judges.

#### **Art. 8**                      Other gainful activities of judges

<sup>1</sup> Where a full-time judge who serves the Court on a part-time basis wishes to pursue a gainful activity outside of the Court as defined in Article 11 PatCA, he or she shall submit a request to the Administrative Board of Judges for permission.

<sup>2</sup> Permission shall be granted where time constraints do not prevent the judge from unconditionally complying with all the duties of his or her office. The provisions pertaining to incompatibility as defined in Article 10 PatCA must be heeded in any event.

#### **Art. 9** Court clerks

<sup>1</sup> The court clerks are responsible for the tasks and duties as defined in Article 24 paragraphs 1 and 2 PatCA.

<sup>2</sup> They are also responsible for:

- a. the transcription of court proceedings and deliberations;
- b. the publication of decisions.

<sup>3</sup> An instructing judge may authorise a court clerk to sign an instruction order in the judge's name.

### **Section 3: Recusal Procedure**

#### **Art. 10** Disclosure obligation

<sup>1</sup> Each Court member shall disclose to the Administrative Board of Judges any potential grounds for recusal as provided for in Article 47 paragraph 1 CCP<sup>2</sup> this shall be done immediately and irrespective of the status of a proceeding.

<sup>2</sup> Where the Court member so concerned perceives grounds for recusal to be present, he or she shall recuse him- or herself.

#### **Art. 11** Decisions on recusal

<sup>1</sup> The Administrative Board of Judges shall render decisions on disputed motions for recusal to the exclusion of the Court members concerned.

### **Section 4: Decision Procedure**

#### **Art. 12** Adoption of decisions

<sup>1</sup> Decisions are adopted by way of circular proceeding or oral deliberation in camera.

<sup>2</sup> Circular proceedings are presided over by the President.

<sup>3</sup> Hearings of parties and oral deliberations are presided over by the President where he or she belongs to the panel. In other cases they are presided over by the instructing judge.

<sup>2</sup> SR 271

**Art. 13** Approval of the Court's opinions and dissenting opinion

<sup>1</sup> Where a decision is adopted by way of circular, the Court's opinion may not be amended upon the conclusion of the circular proceeding unless all the judges involved are in agreement, save for changes of an editorial nature.

<sup>2</sup> Where a decision is adopted in an oral deliberation, the written Court's opinion shall be circulated among the judges involved in the proceeding for their approval; paragraph 1 shall apply accordingly.

<sup>3</sup> A court member can express his dissenting opinion in case of a majority decision. The dissenting opinion is attached to the decision as appendix and is published along with the decision.

**Art. 14** Signing of decisions

<sup>1</sup> Judgements shall be signed by the presiding member of the panel and the court clerk. Where the presiding member is unable to do this, another member of the panel shall sign in his or her stead.

<sup>2</sup> Decisions adopted by a judge sitting alone as provided for in Article 23 PatCA shall be signed by the deciding judge and the court clerk. Where the judge is unable to do this, a Court member designated by the deciding judge as his or her deputy shall sign in his or her stead.

**Section 5: Video and audio recordings****Art. 15**

Video and audio recordings are prohibited in the rooms of the Federal Patent Court.

**Section 6: Final Provisions****Art. 16** Entry into force

These Regulations shall enter into force on 1 January 2012.

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In the name of the Federal Patent Court

The President: Dieter Brändle

The Second Ordinary Judge: Tobias Bremi