
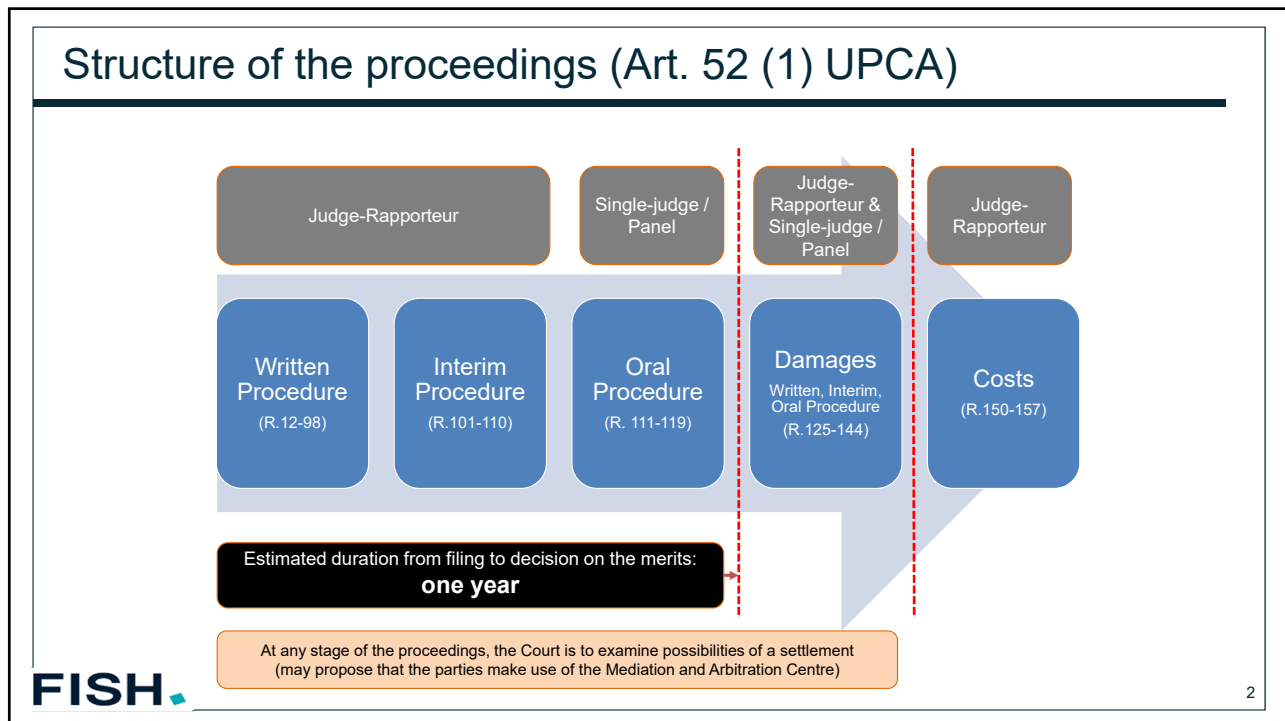


Unified Patent Court Procedure

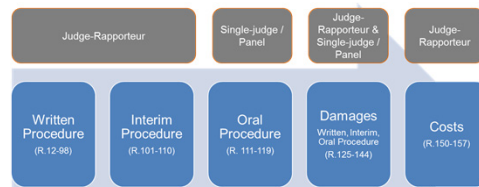
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Procedural Principle & Case Management

- A mix of civil law & common law procedures
- Principle of building a file of party submissions and evidence
 - Not reliant on presentation of all evidence at a trial, as in U.S.
 - Analogous to U.S. PTAB trial procedure.
- The UPC Agreement and Rules provide for strong Case Management:
 - In the interim procedure stage by the Judge-Rapporteur, and
 - In the oral procedure stage by the Presiding Judge.



FISH.

General Duty of Production & Burden of Proof

- Production of evidence:
 - A party making statement of fact that is contested or likely to be contested must produce evidence available to that party
 - Clearly includes evidence on which a party relies—no surprises;
 - Not entirely clear whether the duty of production includes evidence that might be harmful to a party.
 - The Court may order a party making a statement of fact to produce evidence that lies in the control of that party.
 - If the party fails to produce the evidence, the Court shall take such failure into account when deciding on the issue in question.
- Burden of proof:
 - Comparable to the burdens of proof and going forward with evidence in the United States.

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Obtaining Evidence

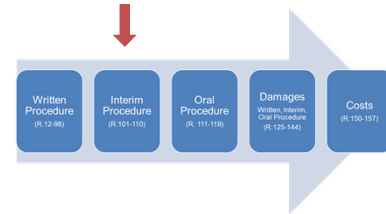
- Means of obtaining evidence include:
 - Hearing of the parties;
 - Written witness statements;
 - Summoning, hearing and questioning of witnesses;
 - Appointing, receiving opinions from, summoning and hearing and questioning of experts;
 - Party experts to be heard at the Court's discretion;
 - Requests for information;
 - Production of documents;
 - Ordering inspection of a place or a physical object;
 - Conducting comparative tests and experiments; and
 - Ordering a party or a third party to produce evidence.

Inspection & Seizure of Evidence (*Saisie*)

- Court may, on a reasoned request by a party, order an **inspection** of products, devices, methods, premises or local situations *in situ*.
- Court may issue an order to **preserve evidence**, by **seizure** if it appears necessary
 - Order may include provisions:
 - (a) preserving evidence by detailed description, with or without the taking of samples;
 - (b) physical seizure of allegedly infringing goods;
 - (c) physical seizure of the materials and implements used in the production and/or distribution of these goods and any related document; and
 - (d) the preservation and disclosure of digital media and data and the disclosure of any passwords necessary to access them.

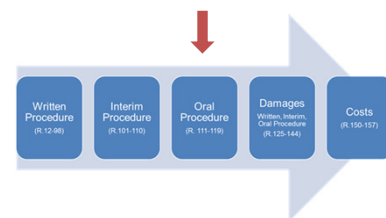
Interim Conference

- Identify main issues and relevant facts in dispute;
- Clarify the positions of the parties;
- Establish a schedule;
- Issue orders regarding:
 - further pleadings,
 - documents,
 - experts (including court experts),
 - experiments,
 - inspections,
 - further written evidence,
 - the matters to be the subject of oral evidence, and
 - scope of questions to be put to the witnesses.
- The judge-rapporteur he may order the parties to:
 - (a) provide further clarification on specific points; and
 - (b) answer specific questions.



Oral Hearing

- The oral hearing consists of:
 - (a) the hearing of the parties' oral submissions; and
 - (b) the hearing of witnesses and experts under the control of the presiding judge, if ordered during the interim procedure.
- The judges of the panel may:
 - provide a preliminary introduction to the action, and
 - put questions to the parties, to the parties' representatives and to any witness or expert.
- The parties may put questions to the witness or expert, under the control of the presiding judge.



Testimony

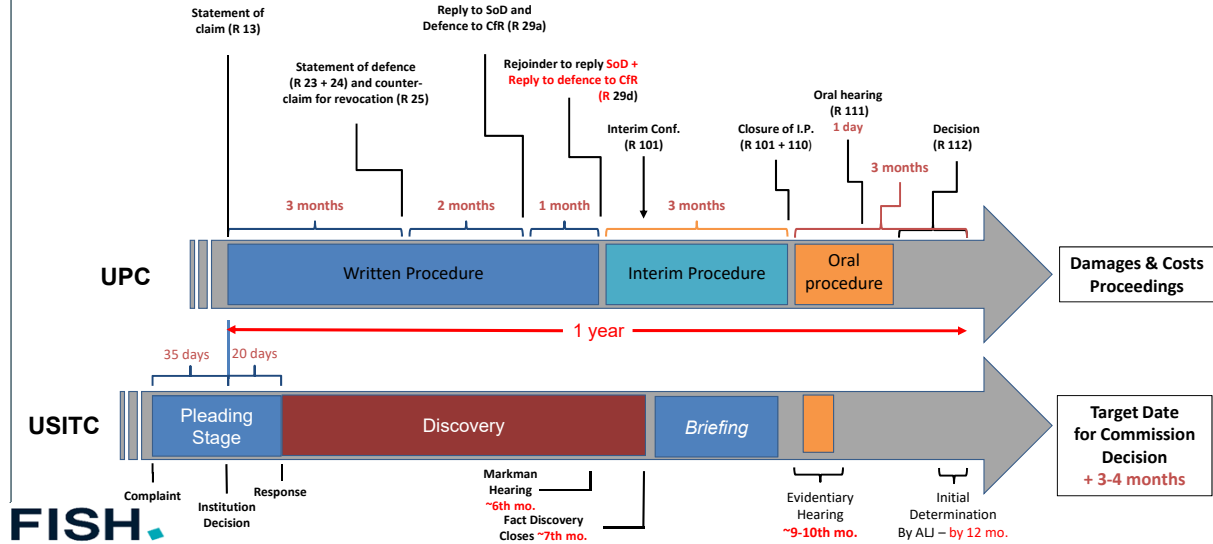
- Testimony of witnesses is submitted as a signed, written witness statement or a written summary of the evidence
- The Court may order that a witness be heard in person:
 - (a) of its own motion;
 - (b) where a written witness statement is challenged by the other party; or
 - (c) on an Application for the hearing of a witness in person, stating:
 - (1) the reasons why the witness should be heard in person;
 - (2) the facts which the party expects the witness to confirm; and
 - (3) the language in which the witness shall give evidence.

Inspection of Documents, Books & Records

- Request to lay open books and defenses:
 - a description of the information sought, in particular:
 - turnover and profits generated by the infringing products,
 - accounts and bank documents,
 - extent of use of the infringing process, and
 - any related document concerning the infringement;
 - the reasons why the applicant needs access to this information;
- Useful for damages stage discovery.

Comparing Typical UPC & USITC Timelines

Infringement proceedings with a counterclaim for revocation



Disclaimer

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The opinions, views and other statements expressed by the presenter are solely those of the presenter, and do not necessarily represent those of his employer, clients or the organizers of any meeting at which they are presented.

The End



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