

**PROTOCOL ON THE STATUTE OF THE COMMON APPEAL COURT**

*Article 1*

The Common Appeal Court, hereinafter referred to as 'the Court', established by Article 2 of the Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents, hereinafter referred to as 'the Protocol on Litigation', shall be constituted and shall function in accordance with the provisions of the Protocol on Litigation and of this Protocol.

PART I

**Judges**

*Article 2*

Before taking up his duties each judge shall, in open court, take an oath to perform his duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Court.

*Article 3*

The judges may not hold any political or administrative office.

They may not engage in any occupation, whether gainful or not, unless exemption is exceptionally granted by the Administrative Committee.

When taking up their duties, they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by the Court of Justice of the European Communities.

*Article 4*

Apart from normal replacement, or death, the duties of a judge shall end when he resigns.

Where a judge resigns, his letter of resignation shall be addressed to the President of the Court for transmission to the Chairman of the Administrative Committee. Upon this notification a vacancy shall arise on the bench.

Save where Article 5 applies, a judge shall continue to hold office until his successor takes up his duties.

*Article 5*

A judge may be deprived of his office or of his right to a pension or other benefits in its stead only if, in the opinion of a three-quarters majority of the judges of the Court of Justice of the European Communities, he no longer fulfils the requisite conditions or meets the obligations arising from his office.

The initiative in respect of proceedings to that end shall lie as stipulated in the Rules of Procedure.

The President of the Court of Justice of the European Communities shall notify the decision of the Court to the Chairman of the Administrative Committee.

In the case of a decision depriving a judge of his office, a vacancy shall arise on the bench upon this notification.

*Article 6*

A judge who is to replace a member of the Court whose term of office has not expired shall be appointed for the remainder of his predecessor's term.

PART II

**Organization**

*Article 7*

Officials and other servants shall be attached to the Court to enable it to function. They shall be responsible to the President of the Court.

*Article 8*

The judges shall be required to reside at the place where the Court has its seat.

*Article 9*

The Court shall remain permanently in session. The duration of the judicial vacations shall be determined by the Court with due regard to the needs of its business.

*Article 10*

Decisions of the full Court as well as its chambers shall be valid only when an uneven number of its members is sitting in the deliberations.

Decisions of the full Court shall be valid if the lowest uneven number of members exceeding half of the number of members of the Court is sitting.

Decisions of the chambers shall be valid if three members are sitting; in the event of one of the judges of a chamber being prevented from attending, a judge of another chamber may be called upon to sit in accordance with the conditions laid down in the Rules of Procedure.

#### Article 11

No judge may take part in the disposal of any case in which he has previously taken part as adviser or has acted for one of the parties, or in which he has been called upon to pronounce as a member of a court or tribunal, of a commission of inquiry or in any other capacity.

If, for some special reason, any judge considers that he should not take part in the judgment or examination of a particular case, he shall so inform the President. If, for some special reason, the President considers that any judge should not sit in a particular case, he shall notify him accordingly.

A judge may be objected to by any party for one of the reasons mentioned in the first paragraph or if suspected of partiality.

A party may not apply for a change in the composition of the Court or of one of its chambers on the grounds of either the nationality of a judge or the absence from the Court or from the chamber of a judge of the nationality of that party.

Any difficulty arising as to the application of this Article shall be settled by decision of the Court.

#### Article 12

The parties must be represented before the Court by a lawyer entitled to practise before a court of a Contracting State.

The lawyer may be assisted by a technical adviser who is a professional representative whose name appears on the list maintained by the European Patent Office and who is entitled to act before the special departments of that Office pursuant to Article 62 of the Community Patent Convention, or by a technical adviser who is an authorized patent representative in a Contracting State. The technical adviser shall be allowed to speak at hearings under conditions laid down in the Rules of Procedure.

Such lawyers and technical advisers shall, when they appear before the Court, enjoy the rights and immunities necessary to the independent exercise of their duties, under conditions laid down in the Rules of Procedure.

As regards such lawyers and technical advisers who appear before it, the Court shall have the powers normally accorded to courts of law, under conditions laid down in the Rules of Procedure.

#### Article 13

The procedure before the Court shall consist of two parts: written and oral.

The written procedure shall consist of the communication to the persons involved in the proceedings of applications, statements of case, defences and observations and of replies, as well as of all papers and documents in support or of certified copies of them.

Communications shall be made by the Registry in the order and within the time laid down in the Rules of Procedure.

The oral procedure shall consist of the reading of the report presented by a judge as Rapporteur, the hearing by the Court of lawyers and technical advisers, as well as the hearing, if any, of witnesses and experts.

#### Article 14

The Court may require the parties to produce all documents and to supply all information which the Court considers desirable. Formal note shall be taken of any refusal.

#### Article 15

New evidence may be produced before the Court under conditions laid down in the Rules of Procedure.

#### Article 16

The Court may at any time entrust any individual, body, authority, committee or other organization it chooses with the task of giving an expert opinion.

#### Article 17

Witnesses may be heard under conditions laid down in the Rules of Procedure.

#### Article 18

With respect to defaulting witnesses and experts the Court shall have the powers generally granted to courts and tribunals and may impose pecuniary penalties under conditions laid down in the Rules of Procedure.

#### Article 19

Witnesses and experts may be heard on oath taken in the form laid down in the Rules of Procedure or in the manner laid down by the law of the country of the witness or expert.

*Article 20*

The Court may order that a witness or expert be heard by the judicial authority of his place of permanent residence.

The order shall be sent for implementation to the competent judicial authority under conditions laid down in the Rules of Procedure. The documents drawn up in compliance with the letters rogatory shall be returned to the Court under the same conditions.

The Court shall defray the expenses, without prejudice to the right to charge them, where appropriate, to the parties.

*Article 21*

A Contracting State shall treat any violation of an oath by a witness or expert in the same manner as if the offence had been committed before one of its courts with jurisdiction in civil proceedings. At the instance of the Court, the Contracting State concerned shall prosecute the offender before its competent court.

*Article 22*

A hearing in court shall be public, unless the Court, of its own motion or on application by the parties, decides otherwise for serious reasons.

*Article 23*

During a hearing the Court may examine the experts, the witnesses and the parties themselves. The latter, however, may address the Court only through their representatives.

*Article 24*

Minutes shall be made of each hearing and signed by the President and a member of the Registry.

*Article 25*

The cause list shall be established by the President.

*Article 26*

The deliberations of the Court shall be and shall remain secret.

*Article 27*

Judgments of the Court shall state the reasons on which they are based. They shall contain the names of the judges who took part in the deliberations.

*Article 28*

Judgments of the Court shall be signed by the President and a member of the Registry. They shall be delivered in open court.

*Article 29*

Where the Court is satisfied that any person has established an interest in the result of any case submitted to the Court, the Court may allow that person to intervene in the case.

Submissions made in an application to intervene shall be limited to supporting the submissions of one of the parties.

*Article 30*

Periods of grace based on considerations of distance shall be determined by the Rules of Procedure.

No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of force majeure.

*Article 31*

If the meaning or scope of a judgment rendered by the Court pursuant to Article 28 of the Protocol on Litigation is in doubt, the Court shall construe it on application by any party establishing an interest therein.

*Article 32*

The law of the Contracting State in which the Community patent court of second instance referring the case to the Court has its seat shall be applicable to the revision of a judgment rendered by the Court pursuant to Article 25 of the Protocol on Litigation. Article 23 of the Protocol on Litigation shall also be applicable to revision proceedings.

Article 62 (1) of the Community Patent Convention in conjunction with Article 125 of the European Patent Convention shall be applicable to the revision of a judgment rendered by the Court pursuant to Article 28 of the Protocol on Litigation.

*Article 33*

Unless otherwise provided in the Agreement relating to Community Patents or in national law, the Court and the courts or authorities of the Contracting States shall on request give assistance to each other by communicating information or opening files for inspection.

*Article 34*

The Rules of Procedure of the Court provided for in Article 12 of the Protocol on Litigation shall contain, apart from the provisions contemplated by this Protocol, any other provisions necessary for applying and, where required, supplementing it.