

English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.

Guidelines on Proceedings before the Federal Patent Court (as amended as of 28. November 2011)

The Federal Patent Court intends to conduct its proceedings in accordance with the following Guidelines. The decision on how to proceed in a specific case shall be left to the discretion of the competent panel.

Art. 1 Subject matter and general principles

¹ The purpose of these Guidelines is to ensure proceedings before the Federal Patent Court that are efficient and predictable for the parties with regard to scheduling.

² Under Art. 27 PatCA, proceedings before the Federal Patent Court are governed by the CCP and the procedural provisions of the PatCA.

³ The purpose of these Guidelines is to detail the procedural rules of the CCP and the PatCA.

Art. 2 Form of legal submissions

¹ The pages shall be numbered consecutively. The text shall be structured in short paragraphs and the paragraphs numbered consecutively.

² The individual exhibits shall be numbered consecutively and itemised in a list of exhibits. Where exhibits are submitted subsequently, each of the parties shall continue the consecutive numbering where it left off in the last submission filed by it.

³ Upon receiving a legal submission, the Federal Patent Court will examine it for compliance with the requirements of para. 1 and 2 above and Art. 3–5 of these Guidelines and, if necessary, set a deadline for correction. Where no correction is made or is insufficient, the submission may be considered to not have been made as provided for in Art. 132 para. 1 CCP.

⁴ Where a party does not file its submission electronically as defined in Art. 130 para. 2 CCP but rather in paper format, it shall additionally submit it electronically as a text-based PDF or MS-Word file. In so doing, the provisions of Art. 130 para. 2 CCP need not be respected.

⁵ Submissions in paper format shall be filed in quintuplicate, exhibits in duplicate.

⁶ Where a submission is filed electronically as defined in Art. 130 para. 2 CCP, it and the exhibits are to be subsequently submitted in paper format as provided for in Art. 130 para. 3 CCP.

Art. 3 Feature analysis and modified claims

¹ Where a party performs a feature analysis of the contested patent, the analysis shall also be submitted as an exhibit.

² Where a party files modified claims, they shall also be filed in the language of the patent's official grant procedure.

Art. 4 Requirements pertaining to nucleotide and amino acid sequence listings

¹ Where nucleotide and amino acid sequences are indicated in a legal submission or contested patent, they shall be rendered in accordance with WIPO standard ST.25 (standard for the representation of nucleotide and amino acid sequence listings in international patent applications, www.wipo.int/standards/en/pdf/03-25-01.pdf).

² The Court may demand, also upon the motion of one of the parties to the proceeding, that a standardised electronic version of the nucleotide or amino acid sequences indicated in the legal submission or contested patent be filed as provided for in para. 1. Any such standardised electronic version of nucleotide and amino acid sequences shall be submitted in accordance with WIPO standard ST.25 in electronic format as provided for in Art. 130 para. 2 CCP or on a commonly used electronic data carrier.

Art. 5 Referencing of case files

¹ The parties will be informed by the Court of the consecutive file numbering applied to the case documents maintained by it.

² When referencing case files, the file number, page number and, as applicable, the paragraph number shall be indicated.

Art. 6 Language of proceedings

¹ Upon receipt of the statement of claim, one of Switzerland's official languages will be established as the language of the proceeding as provided for in Art. 36 para. 1 PatCA. As a general rule, the language of the statement of claim is selected where it is one of Switzerland's official languages.

² In motions and oral hearings each of the parties may express itself in the official language of its choice, irrespective of the language of the proceeding. Where a party wishes to use another official language in a hearing than the language of the proceeding, it shall make notification thereof no later than three weeks prior to the hearing; in the event that it should fail to do so, it must abide by the language of the proceeding or English, the latter as agreed.

³ The parties may also use English provided they have agreed to this in writing. Also in this case the judgement and rulings on the conduct of the proceeding will be rendered in the official language established as the language of the proceeding.

⁴ Where a party submits a document that is not in one of the official languages or English, unless otherwise provided its content will not be considered unless and until a translation is available in an official language or English.

Art. 7 Advance payment to cover costs, service of the statement of claim, setting of time limits for submission of the statement of defence, other time limits

¹ As a general rule, upon an action being filed the Federal Patent Court requests payment of an advance on costs as defined in Art. 98 CCP. It simultaneously serves the statement of claim on the defendant party for its attention.

² Upon receiving payment of the advance on costs the Federal Patent Court will set a time limit for submission of the written statement of defence.

³ Unless provided for otherwise in the CCP, PatCA or these Guidelines, the Court will, as a general rule, set the following time limits for the parties:

- for payment of the advance on costs: 2 weeks;
- for submission of the statement of defence and of the reply/defence to counter-claim: 6 weeks;
- for submission of the rejoinder/reply to counter-claim and of the rejoinder to the counter-claim: 4 weeks.

⁴ Upon founded request prior to the lapse of the time limit as defined in Art. 144 para. 2 CCP, the time limit for payment of the advance on costs may be extended by one week, the time limit for filing submissions by two weeks. Other extensions are generally not possible unless the opposing party gives its consent.

Art. 8 Preparatory hearing

¹ Upon receiving the statement of defence, or, in the case of a counter-claim, upon receiving the reply and defence to counter-claim, a preparatory hearing generally takes place as provided for in Art. 226 CCP.

² In the summons the Federal Patent Court may, if possible and expedient, point to issues that it perceives to require discussion.

³ The court delegation taking part in the preparatory hearing consists of the President or the instructing judge appointed by him or her and the designated specialist judge.

⁴ The preparatory hearing typically consists of two parts:

- a) The court delegation discusses with the parties the matter at issue, asks questions where the party submissions are unclear, and provides substantiation advice. Evidence may also be accepted. This first part is transcribed.
- b) The court delegation explains its preliminary assessment of the matter in dispute off the record and attempts to bring about a settlement between the parties. The parties and the Court are prohibited from subsequently invoking

any submissions made during this second part of the hearing; it serves exclusively to bring about a settlement.

⁵ The parties are obligated to appear in person at the preparatory hearing even when they are represented by legal counsel. Legal entities shall appoint one or more management members to appear who are informed of the matter in dispute and are authorised to enter into a settlement. Where these obligations are disregarded the hearing may be discontinued, with costs and damages being charged to the offending party. Where one of the parties does not desire any settlement talks, it shall notify the Court to this effect upon receiving the summons at the latest.

⁶ No pleadings are presented during a preparatory hearing. Where no settlement comes about, a schedule is established for the further proceeding, followed by a continued exchange of briefs. The foregoing applies unless otherwise provided in the summons to the preparatory hearing.

Art. 9 Seat of the Court

¹ The Court's official seat is located in St. Gallen.

² The President may designate another sitting location upon reasoned request of the parties or where this appears expedient to the Court.

Art. 10 Transitional provisions

¹ The Federal Patent Court will, where it is competent, assume the adjudication of the cases that are pending before the cantonal courts upon the entry into force of this Act provided that the transferring cantonal court substantiates that the main proceedings have not yet been conducted.

² The proceedings so assumed will be conducted in accordance with the provisions of the CCP.

³ The parties will be given an opportunity to make submissions pertaining to any issues that they did not need or were not able to make under the terms of the cantonal codes of procedure.

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In the name of the Federal Patent Court

The President: Dieter Brändle
The Second Ordinary Judge: Tobias Bremi