

**Expert Evidence before the UPC –
Common, Continental Law Style or
the best of all Worlds?**

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I. Proceedings before the Court of 1st Instance

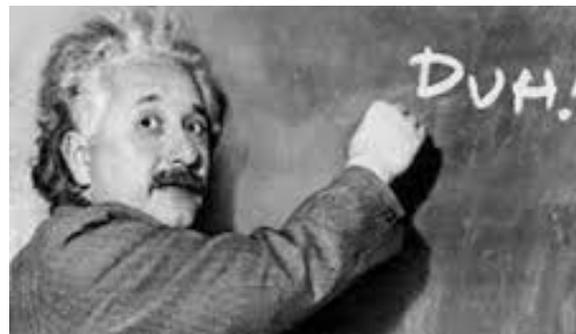
- **Written procedure**
 - **Front loading**
 - **written statements of the parties**
 - **fully fledged (no skeleton) arguments**
 - **all facts and all evidence relied on**
 - **reasons why the facts constitute or do not constitute an infringement, a defense to infringement or a ground for revocation**
- **Interim procedure**
 - **preparation of the oral hearing**
 - **orders regarding evidence**
- **Oral procedure**
 - **oral submissions of the parties**
 - **examination of witnesses and experts**

II. Party expert



- Parties are free to submit expert evidence that they consider necessary, r. 181 (1).
- The court may summon a party expert to be heard at the oral hearing, r. 177, 181 (2).
- A party expert
 - has a duty to assist the Court impartially and
 - is to be independent and objective and shall not act as an advocate for any party to the proceedings, r. 181 (2).

III. Court appointed expert



- Prerequisite
 - **“Where the Court must resolve technical or other questions (of fact) in relation to the action ...**
- Discretion
 - **... it may of its own motion (and after hearing the parties) appoint a court expert”, r. 185 (1).**
- How to exercise the discretion?
 - **Is the Court able to decide the technical questions without appointing an expert on the basis of ...**
 - **the written submissions of the parties, including technical literature, textbooks, lexica, etc.,**
 - **expert evidence provided by the parties and**
 - **the involvement of the technically qualified judge?**

– Appointment

- The Court shall appoint the court expert by **way of order**, r. 185 (4).

– Qualifications

- The expert shall possess **expertise, independence and impartiality**, r. 185 (3).
 - Art. 7 UPC-Statute dealing with the impartiality of the judges is by analogy applicable on court appointed experts, Art. 57 (3) UPCA.
- Parties may make **suggestions**, r. 185 (2).
- The registry shall maintain **an indicative list of experts**, r. 185 (9).

– Duties

- The expert shall present **a written report**, r. 186 (1)
 - which the **parties may comment on**, Art. 57 (4) UPCA; r. 187.
- The expert shall **attend the oral hearing and answer questions** of the Court and the parties, r. 186 (6).

IV. Order to preserve evidence and order for inspection



- Application
 - may be lodged before or during main infringement proceedings on the merits.
- Order to preserve evidence by
 - detailed description, with or without taking of samples,
 - physical seizure
 - preservation and disclosure of digital media and data
- Order of an inspection of
 - products, devices, methods, premises or local situations *in situ*,
 - *ex-parte* available
- Execution
 - by a professional person, **an expert** or a bailiff
 - who shall present **a written report.**

V. Oral hearing



- Schedule
 - Preliminary introduction (possibly)
 - Parties' oral submissions
 - Hearing of witnesses and experts under the control of the presiding judge
- Examination of any witness and expert by
 - the presiding judge and the judges and
 - the parties under the control of the presiding judge.
- Cross examination
 - Common law style or
 - Continental law style?
- Duration of oral hearing
 - Possibly one day.
 - Time limits for parties' oral submissions may be set in advance of the oral hearing.

VI. Result

Question:

Expert evidence before the UPC – Common or Continental law style or the best of all worlds?

Answer:

Expert evidence before the UPC will be half Common and half Continental law style.

Whether it will be the best of all worlds will be for you to decide in a few of years.



Thank you very much for your attention!