

Text of the draft Rules of Procedure for the UPC:

Rule 287 - Attorney-client privilege

- 1 Where a client seeks advice from a lawyer he has instructed in a professional capacity, whether in connection with proceedings before the Court or otherwise, then any confidential communication (whether written or oral) between them relating to the seeking or the provision of that advice is privileged from disclosure, whilst it remains confidential, in any proceedings before the Court or in arbitration or mediation proceedings before the Centre.
- 2 This privilege applies also to communications between a client and a lawyer employed by the client and instructed to act in a professional capacity and a client and a patent attorney (including a patent attorney employed by the client) who is instructed in his professional capacity to advise on patent matters.
- 3 This privilege extends to the work product of the lawyer or patent attorney (including communications between lawyers and/or patent attorneys employed in the same firm or entity or between lawyers and/or patent attorneys employed by the same client) and to any record of a privileged communication.
- 4 This privilege prevents the lawyer or patent attorney and his client from being questioned or examined about the contents or nature of their communications;
- 5 This privilege may be expressly waived by the client.
- 6 The expressions "lawyer" shall mean a person who is qualified to practice as a lawyer and to give legal advice under the law of the state where he practises and who is professionally instructed to give such advice. This shall include persons possessing a law degree (jurist) who are authorised by the Swedish Patent Attorneys Board or equivalent body in a Contracting Member State and the expression "patent attorney" shall mean a person who is recognised as eligible to give advice under the law of the state where he practices in relation to the protection of any invention or to the prosecution or litigation of any patent or patent application and is professionally consulted to give such advice.
- 7 The expression "patent attorney" shall also include a professional representative before the European Patent Office pursuant to Article 134(1) European Patent Convention

Relation to Agreement: Article 48(4)

Rule 288 - Litigation privilege

Where a client, or a lawyer or patent attorney as specified in Rules 287.1, 287.2, 287.6 and 287.7 instructed by a client in a professional capacity, communicates confidentially with a third party for the purposes of obtaining information or evidence of any nature for the purpose of or for use in any proceedings, including proceedings before the European Patent Office, such communications shall be privileged from disclosure in the same way and to the same extent as provided for in Rule 287.

Relation to Agreement: Article 48(5)

Rule 289-Privileges, immunities and facilities

- 1 Representatives appearing before the Court or before any judicial authority to which it has addressed letters rogatory [Rule 202] shall enjoy immunity in respect of words spoken or written by them concerning the action or the parties.
- 2 Representatives shall enjoy the following further privileges and facilities:
 - (a) papers and documents relating to the proceedings shall be exempt from both search and seizure;
 - (b) any allegedly infringing product or device relating to the proceedings shall be exempt from both search and seizure when brought to the Court for the purposes of the proceedings.

In the event of a dispute, customs officials or police may seal those papers, documents or allegedly infringing products or devices. They shall then be immediately forwarded to the Court for inspection in the presence of the Registrar and of the person concerned.

- 3 Representatives shall be entitled to travel in the course of duty without hindrance.
- 4 The privileges, immunities and facilities specified in paragraphs 1 to 3 are granted exclusively in the interests of the proper conduct of proceedings.
- 5 The Court may waive the immunity where it considers that a representative is guilty of conduct which is contrary to the proper conduct of proceedings.
