

*Collegio Italiano dei
Consulenti in Proprietà Industriale*

The UPC proceedings

Antonio Mario Pizzoli

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FÉDÉRATION INTERNATIONALE DES CONSEILS
EN PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL FEDERATION OF
INTELLECTUAL PROPERTY ATTORNEYS

INTERNATIONALE FEDERATION
VON PATENTANWÄLTEN

Disclaimer

This presentation is based on the **last drafts** of the Rules of Procedure of the Unified Patent Court (18th version - 2015) and of the Rules on Court fees and recoverable costs (2016)



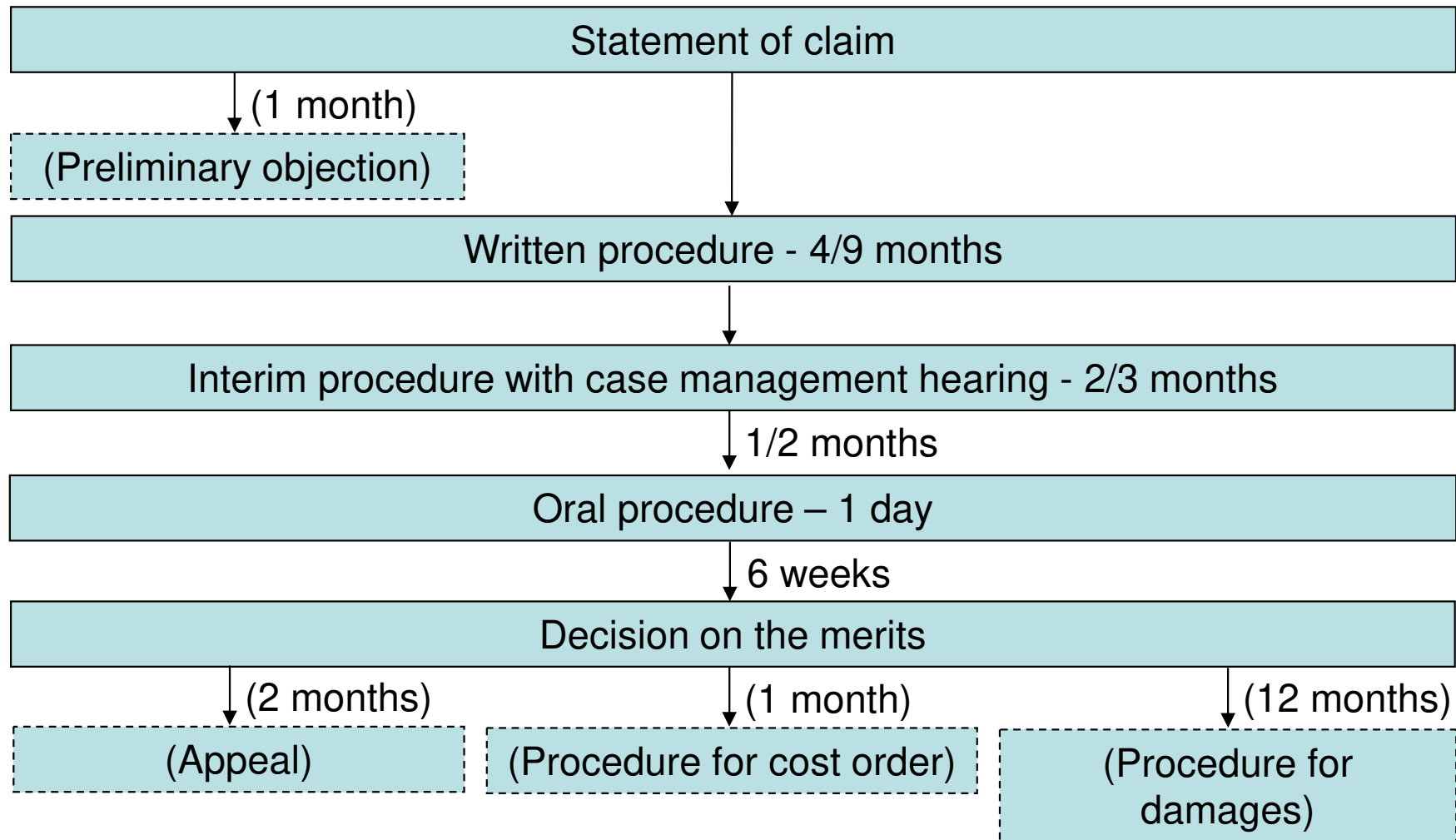
General principles

Art. 41(3) UPCA: The Rules of Procedure shall guarantee that the decisions of the Court are of the **highest quality** and that proceedings are organised in the most **efficient** and **cost effective** manner. They shall ensure a **fair balance** between the legitimate interests of all parties. They shall provide for the required level of **discretion of judges** without impairing the predictability of proceedings for the parties.

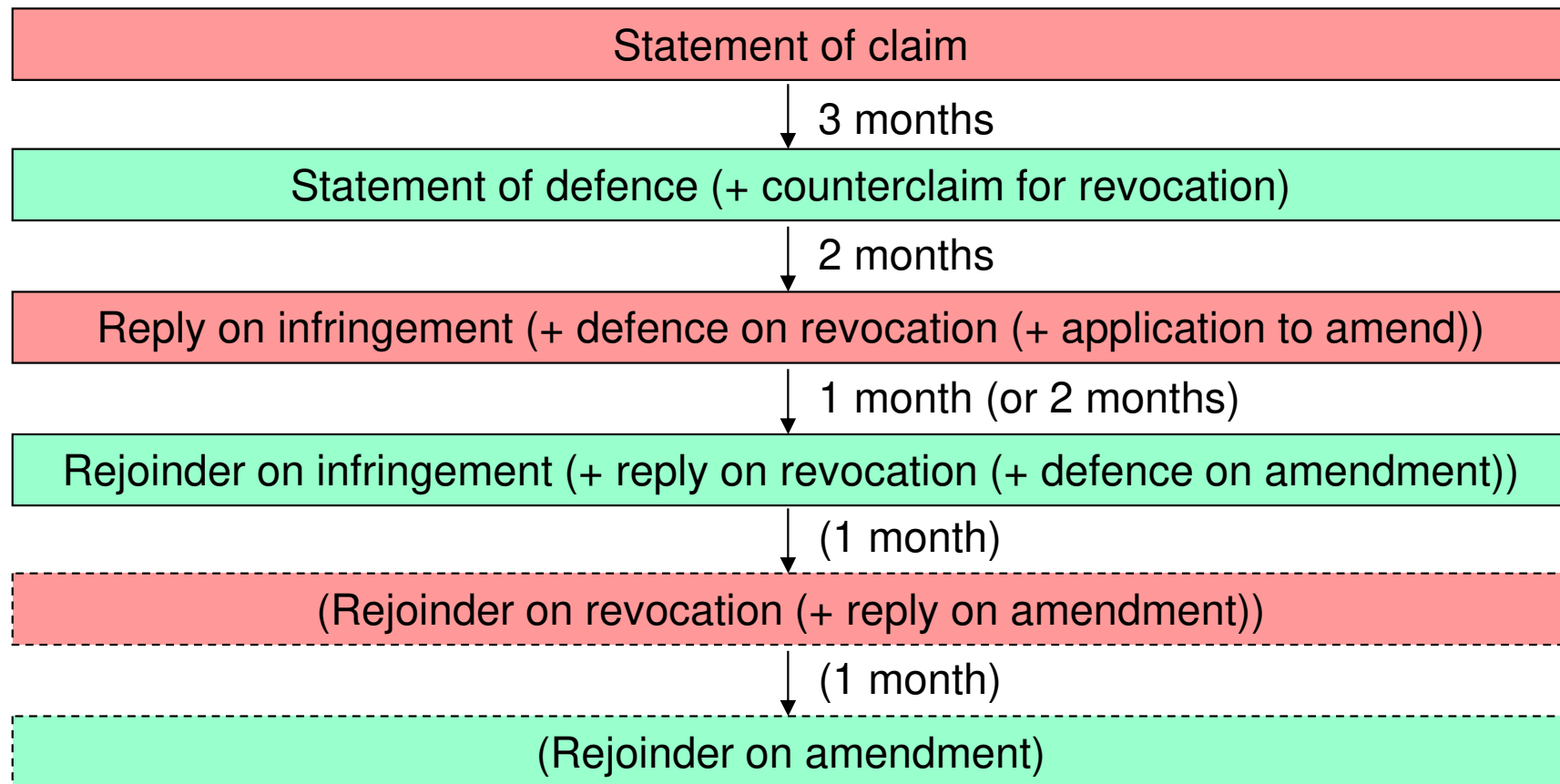
Art. 43 UPCA (Case management): The Court shall **actively manage** the cases before it in accordance with the Rules of Procedure without impairing the **freedom** of the parties to determine the subject-matter of, and the supporting evidence for, their case.



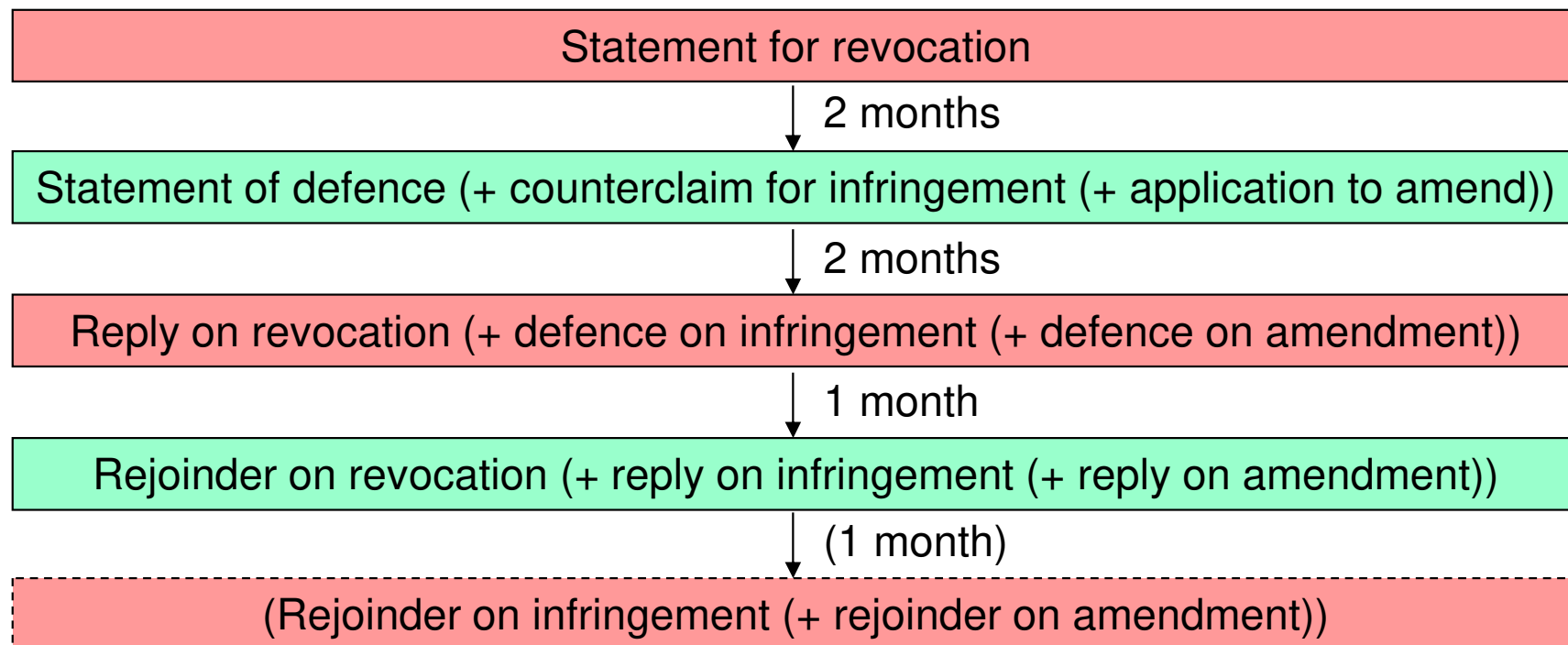
General scheme (Art 52 UPCA)



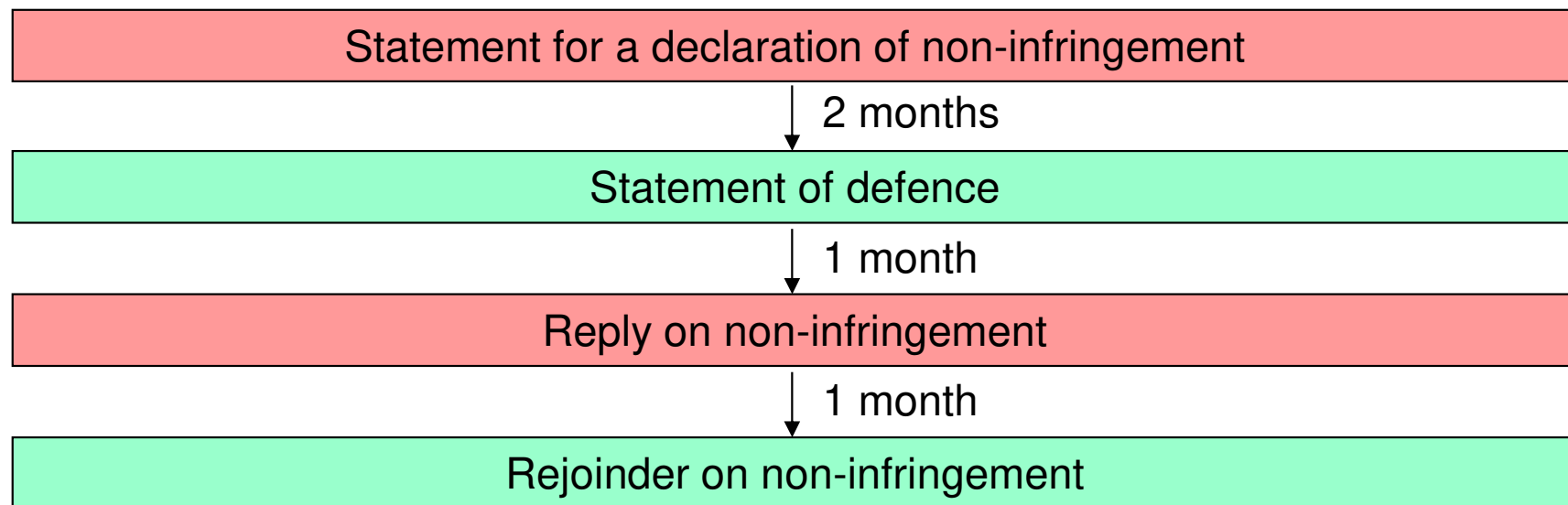
Infringement (local/regional divisions)



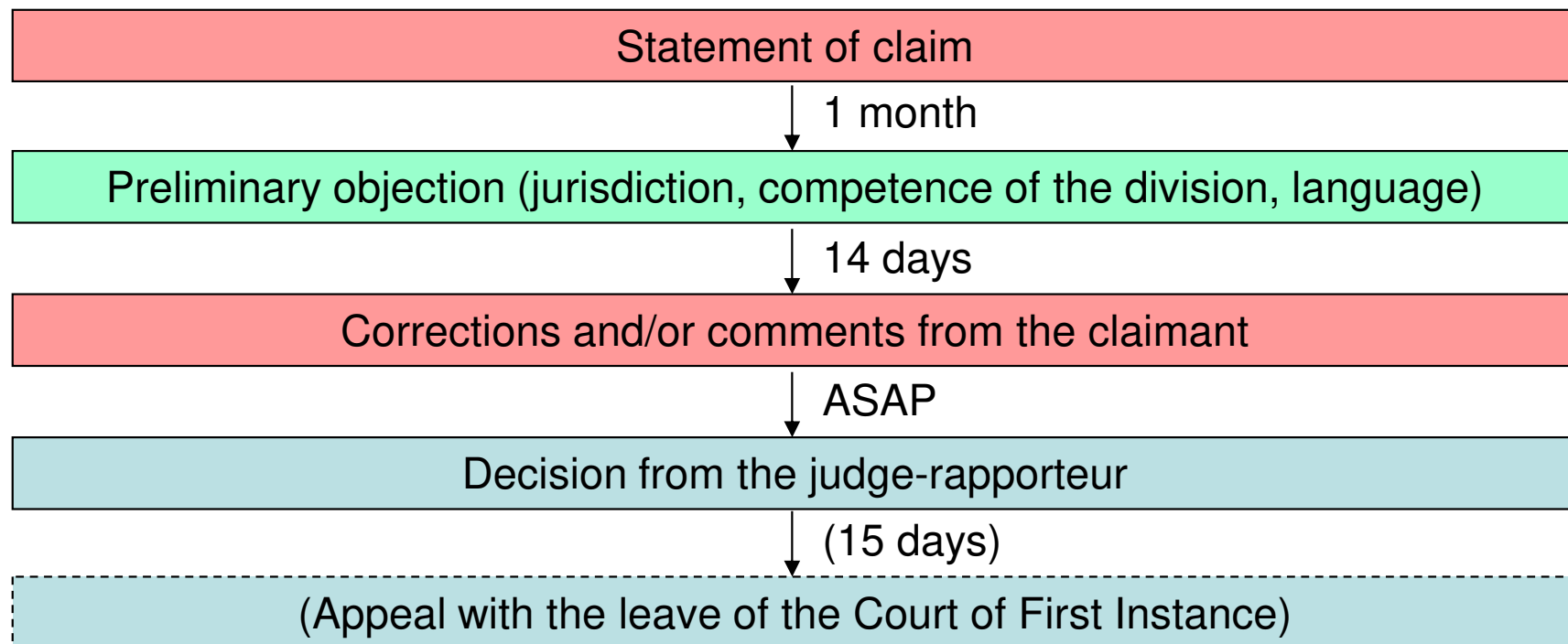
Revocation (central division)



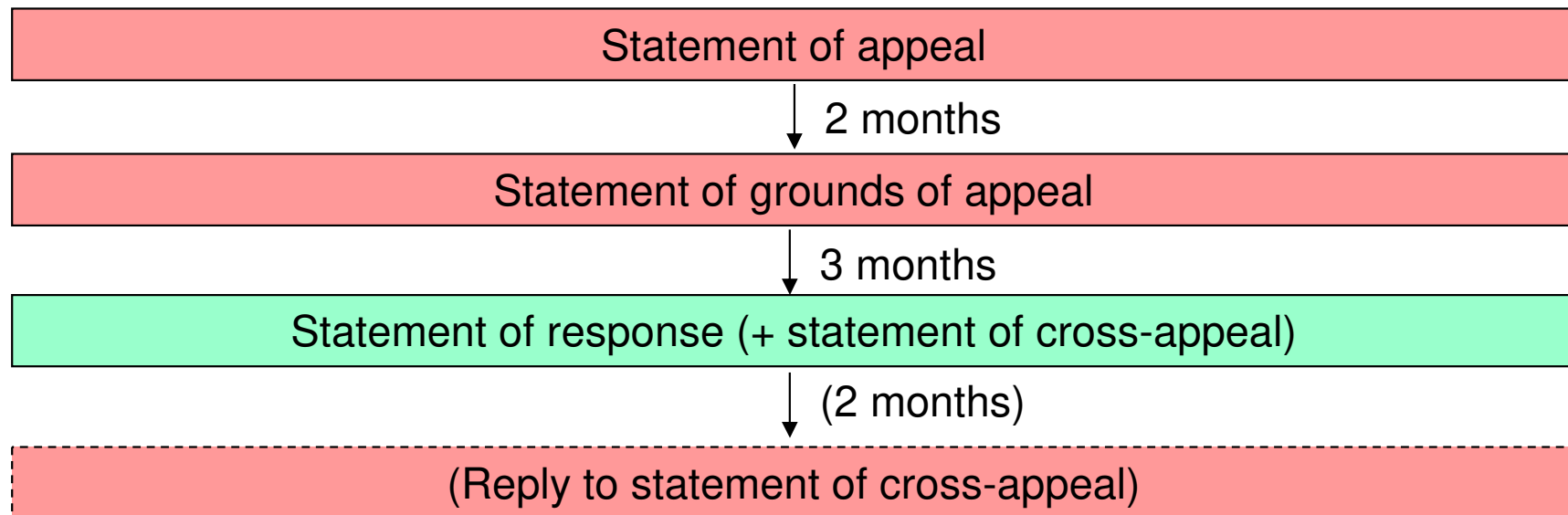
Declaration of non-infringement (central division)



Preliminary objection



Appeal (Court of Appeal)



Provisional measures (local division)

Art. 59 UPCA: Order to produce evidence

Art. 60 UPCA: Order to preserve evidence and to inspect premises (description, taking samples and/or physical seizure) with a person appointed by the UPC and a representative of the applicant, also without previous notice

Art. 61 UPCA: Freezing orders (also assets outside the jurisdiction)

Art. 62 UPCA: Provisional and protective measures (injunction, penalty, guarantee, seizure, delivery)



Protective letter

Rule 207 RoP UPC: - If a person [...] considers it likely that an Application for provisional measures against him as a defendant may be lodged before the Court in the **near future**, he may file a Protective letter containing [...] the **name** of the presumed applicant [...], where available, the **number** of the patent concerned and, where applicable, **information** about any prior or pending proceedings.

A **fee** for filing a Protective letter must be paid. The Protective letter lapses after 6 months unless **extension fees** for further term(s) of 6 months are paid.



Examination of the application

Rule 209 RoP UPC: the Court shall have the discretion to:

- (a) inform the defendant about the Application and invite him to lodge, within a time period to be specified, an Objection to the Application for provisional measures
- (b) summon the parties to an oral hearing;
- (c) summon the applicant to an oral hearing without the presence of the defendant.

The Court shall in particular consider summoning parties to an oral hearing if a relevant **Protective letter** has been filed by the defendant.



UPC fees

(Non-) infringement and counterclaim: 11.000-336.000 €

Application to determine damages: 3.000-325.000 €

Revocation: 20.000 €

Counterclaim for revocation: 11.000-20.000 €

Application for provisional measures: 11.000 €

Application to preserve evidence/order for inspection: 350 €

Application for an order to freeze assets: 1.000 €

Filing a protective letter: 200 €

Application to prolong the period of a protective letter: 100 €

Appeals: as in the first instance



Conclusions

- **Short** time limits for the parties and the **judges**
- **Flexible** procedural steps
- Written procedure with **replies** and **rejoinders**
- Interim procedure with **case management hearing**
- Relatively **short** final hearing
- **High** fees for each step of the proceedings
- **Wide** range of provisional measures
- Availability of **defensive letters**



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Thank you for your attention

Antonio Mario Pizzoli
Notarbartolo & Gervasi S.p.A.
a.pizzoli@ngpatent.it



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