

January 2014

Legal Working Group – Team 4

Rules on Court fees and recoverable costs

Draft Proposal for

A – an amendment of Rule 370 of the Rules of Procedure

B – a table of fees

C – a scale of ceilings for recoverable costs

D – guidelines for the evaluation of the case-value

A. Proposal for an amendment of PART 6 of the Rules of Procedure

Part 6 – FEES AND LEGAL AID

Court Fees

Rule 370 – Court fees

1. Court fees provided for in these Rules shall be levied in accordance with the provisions contained in this part and the table of fees adopted by the Administrative Committee in accordance with Art. 36(3) UPC.

2. The court fees shall be paid to the Court using a method of payment provided by the Court for that purpose.

3. A fixed fee shall be paid in accordance with section I (fixed fees) of the table of fees decided by the Administrative Committee for the following actions:

- (1.) Infringement action [R. 22.1]
- (2.) Counterclaim for revocation [R. 26]
- (3.) Revocation action [R. 47]
- (4.) Counterclaim for infringement [R. 53]
- (5.) Declaration of non-infringement [R. 68]
- (6.) Action for compensation for license of right [R. 80.3]
- (7.) Application to determine damages [R. 132]
- (8.) Application for provisional measures [R. 206.5]
- (9.) Appeal pursuant to Rule 220.1 [R 228]

4. In addition to the fixed fee a value-based fee shall be due in accordance with section II (value-based fees) of the table of fees for those actions of the preceding paragraph, which exceed a value of 500.000 €.

5. For the following procedures a fee shall be paid in accordance with section III (other procedures) of the table of fees decided by the Administrative Committee:

- (1.) Application for opt-out [Rule 5.3]
- (2.) Application for withdrawal of an out-out [Rule 5.6]
- (3.) Action against a decision of the European Patent Officer [R. 88.4]
- (4.) Application to preserve evidence [R. 192.5]
- (5.) Request of an order for inspection [Rule 199.2]
- (6.) Request of an order to freeze assets [Rule 200.2]
- (7.) Lodging a protective letter [R. 207.3]
- (8.) Prolong the period of a protective letter kept on the register [R.207.8]
- (9.) Application for leave of an appeal [R. 221]
- (10.) Appeal [R. 220.2] [R. 228]
- (11.) Application for rehearing [R. 250]
- (12.) Application for reestablishment of rights [R. 320.2]
- (13) Application to review a case management order [R. 333.3]
- (14.) Application to set aside decision by default [R. 356.2]

6. The assessment of the value of the relevant action (Rule 370.4) shall reflect the objective interest pursued by the filing party at the time of filing the action. In deciding on the value, the Court shall in particular take into account the criteria laid down in the decision of the Administrative Committee for this purpose.

7. If the amount of payable court fees threatens the economic existence of one party, the Court may on application by the party, reduce the value of the dispute regarding the fees to be paid by that party in order to align the payable court fees to its economic strength.

8. If the parties have concluded their action by way of settlement the court fees may be reduced by up to 50 %, reflecting the state of the proceedings.

B. Table of fees

DRAFT

The Administrative Committee of the Unified Patent Court

Decision

The Administrative Committee adopts pursuant to Article 36 (3) of the Agreement on a Unified Patent Court the following table of fees:

I. Fixed fees

Level	Value of action (Mio. €)	Court fee
Fixed fee	up to 0,50	<i>To be proposed by the Finance-Group</i>

II. Value based fees

Level	Value of action (Mio. €)	Court fee
1	0,50 – 0,75	<i>To be proposed by the Finance-Group</i>
2	0,75 – 1,00	<i>To be proposed by the Finance-Group</i>

3	1,- 1,5	<i>To be proposed by the Finance-Group</i>
4	1,5 – 2,0	<i>To be proposed by the Finance-Group</i>
5	2,0 – 3,0	<i>To be proposed by the Finance-Group</i>
6	3,0 – 4,0	<i>To be proposed by the Finance-Group</i>
7	Up to 10 million	<i>To be proposed by the Finance-Group</i>
8	Up to 20 million	<i>To be proposed by the Finance-Group</i>
9	Up to 30 million	<i>To be proposed by the Finance-Group</i>

III. Other procedures

No.	Procedure	Fee [EUR**]
1	Application for opt-out [R. 5.3]	<i>To be proposed by the Finance-Group</i>
2	Application for withdrawal of an out-out [R. 5.6]	<i>To be proposed by the Finance-Group</i>
3	Action against a decision of the European Patent Office [R. 88.4]	<i>To be proposed by the Finance-Group</i>
4	Application to preserve evidence [R. 192.5]	<i>To be proposed by the Finance-Group</i>
5	Request of an order for inspection [R. 199.2]	<i>To be proposed by the Finance-Group</i>

6	Request of a order to freeze assets [R. 200.2]	<i>To be proposed by the Finance-Group</i>
7	Lodging a protective letter [R. 207.3]	<i>To be proposed by the Finance-Group</i>
8	Prolong the period of a protective letter kept on the register [R. 207.8]	<i>To be proposed by the Finance-Group</i>
9	Application for leave of an appeal [R. 221]	<i>To be proposed by the Finance-Group</i>
10	Appeal pursuant to R. 220.2 [R. 228]	<i>To be proposed by the Finance-Group</i>
11	Application for rehearing [R. 250]	<i>To be proposed by the Finance-Group</i>
12	Application for reestablishment of rights [R. 320.2]	<i>To be proposed by the Finance-Group</i>
13	Application to review a case management order [R. 333.3]	<i>To be proposed by the Finance-Group</i>
14	Application to set aside decision by default [R. 356.2]	<i>To be proposed by the Finance-Group</i>

C. Scale of ceilings for recoverable costs

DRAFT

The Administrative Committee of the Unified Patent Court

Decision

The Administrative Committee adopts pursuant to Art. 69 of the Agreement on a Unified Patent Court and pursuant to Rule 152 (2) of the Rules of Procedure the following Scale of ceilings for recoverable costs:

Scale of ceilings for recoverable costs:

Alternative 1

Level	Value of the action from ... to (mio. €)	Court fees	Ceiling for recoverable costs of Representation per instance and maxi- mum for one lawyer and one patent-attorney, each
fixed fee	0 – 0,50	No value-based fee	Up to 12.000 €
1	0,50 – 0,75	<i>To be proposed by the Finance-Group</i>	Up to 14.500 €
2	0,751 – 1,00	<i>To be proposed by the Finance-Group</i>	Up to 18.000 €
3	1,01 – 1,5	<i>To be proposed by the Finance-Group</i>	Up to 24.000 €

4	1,51 – 2,0	<i>To be proposed by the Finance-Group</i>	Up to 30.000 €
5	2,01 – 3,0	<i>To be proposed by the Finance-Group</i>	Up to 36.000 €
6	3,1 – 4,0	<i>To be proposed by the Finance-Group</i>	Up to 42.000 €
7	Up to 10 million	<i>To be proposed by the Finance-Group</i>	For every additional million € of value: Addition of 4000 (=up to 66.000) €
8	Up to 20 million	<i>To be proposed by the Finance-Group</i>	For every 2 additional million € of value: Addition of 4000 (=up to 86.000) €
9	Up to 30 million	<i>To be proposed by the Finance-Group</i>	For every 2,5 additional million € of value: Addition of 4000 (=up to 110.000) €

Alternative 2

Level	Value of the action (million €)	Court fees	Ceiling for recoverable costs of representation per instance and party
1	0 – 0,5	<i>Fixed fees</i>	Up to 200 000 €
2	0,5 – 4,0	<i>Value-based fees to be proposed by the Finance-Group</i>	Up to 500 000 €
3	4,0 –	<i>Value-based fees to be proposed by the Finance-Group</i>	Up to 1 million €

D. Guidelines for the Evaluation of the Case-Value

DRAFT

The Administrative Committee of the Unified Patent Court

Decision

The Administrative Committee adopts pursuant to Article 36 (3) of the Agreement on a Unified Patent Court and to Rule 370 (6) of the Rules of Procedure the following criteria for the assessment of the value of actions:

1. Infringement action

a) Claim for an injunctive relief

For the assessment of the value of a claim for an injunctive relief, the plaintiff's economic interest to avoid further infringements should be taken into consideration. To this end, the remaining validity period of the patent, the sales figures of the plaintiff, the mode and the extent of the infringement, and the danger of a repetition of the infringement should be taken into account.

b) Claims for damages

As regards claims for damages the criteria laid down in Art. 68 (3) of the Agreement reflecting Article 13 of the Enforcement Directive 2004/48 should be applied. These criteria are (1.) the lost profit of the patentee, (2.) the profit of the infringer due to the infringement or (3.) a lump sum generated on the basis of the royalties or fees which a licensee would have paid to the patentee knowing the circumstances of the infringement.

aa) If the plaintiff claims specified damages (in an infringement proceeding under Rules 12 ff. or a proceeding for determination of damages under Rules 131 ff.) he must use one of the methods for calculating the amount of the damages. The amount so calculated shall represent the value of the damage-claim.

bb) If a plaintiff pursues a damage order for an infringement without specifying the amount of the damages (see Article 118 RoP), the court should assess the value of the damage-claim according to one of the three methods mentioned above on the basis of the information submitted by the parties. If the plaintiff follows up with a determination procedure the value of this proceedings should be reduced by 50 % .

c) Applications for order of the communication of information

If the claimant is seeking an order for communication of information according to Art. 67 UPC, the value of the application should be levied with one-third of the value of the action for which the information is desired.

d) Multiple remedies

If the plaintiff applies for several remedies simultaneously such as an injunction and a damage-claim the values of all requests should be added in order to calculate the value of the action as a whole.

2. Revocation action

The value of a claim for revocation should be estimated according to patentee's sales figures or license-fees from the time of filing the revocation action for the prospective term of the patent.

Where an infringement suit is pending the value of the infringement action against which in this specific scenario the revocation action is directed should in addition be taken into account.

3. Declaration of non-infringement

If a party seeks a declaration for non-infringement under Rules 60 ff. the value of this action should correspond to the value of an assumed infringement action against that party.

4. Provisional and protective measures

The value for proceedings concerning provisional and protective measures under Rules 206 ff. should be determined with two thirds of the value of the injunction claim for the decision on the merits of the case due to the fact that with interim measures no final decision is sought.