



Unified Patent Court (UPC) – Fees Update

- No opt-out fee (and no opt-back-in fee)
- Only one Court fee due in an action even if it involves more than one claimant and/or more than one defendant and/or more than one patent
- Criteria for Court fee reductions of 40% for “micro” and “small” enterprises indicated (reduction may be recovered if considered inappropriate; possibly a “fine” of 50% may be imposed if claim to “micro” or “small” status incorrect)
- Possibility of Court fee reimbursements of up to 60% confirmed if action heard by a single judge (25%) or if action withdrawn or settled early (20%, 40%, 60% depending upon how early)
- Court fee reimbursement of up to 100% possible if the fee amounts to a threat to the economic existence of a party (who is not a natural person)
- Value-based fees adjusted and fees for top-end values added (up to €50 million and above €50 million)
- Standard ceilings for value-based recoverable costs indicated (may be varied upwards or downwards)
- Guidelines provided for assessment of the “value” on which value-based fees are determined
- Appeal fees aligned with first instance fees

These are the key points of the recent proposal for what, subject to final legal checking, should be the official fees that will apply to the UPC when it begins operation.

Of most immediate interest is the decision that no opt-out fee will be applied. This will simplify the opt-out procedure for users and for the Court, but the procedure will still be an administrative burden.

For the actions set out in Table 1, the Court fee for the Court of First Instance will be made up of a fixed fee as indicated in that Table and, possibly, an additional “value-based” fee in accordance with Table 2.

Table 1

Procedures/actions	Fixed fee Euro - €
Infringement action [R15] (“R” refers to the (draft) Rules of Procedure of the UPC)	11000
Counterclaim for infringement [R53]	11000
Action for declaration of non-infringement [R68]	11000
Action for compensation for license of right [R80.3]	11000
Application to determine damages [R132]	3000

The guidelines provided suggest that the “value of action”, which determines the “value-based” fee to be applied, should be calculated on a licence fee (royalty) basis, for example a royalty as actually charged for the same invention, or as generally accepted in the relevant industry, or as determined by the Court.

Table 2

Value of action Euro - €	Additional value-based fee Euro - €
<= 500000	0
<= 750000	2500
<= 1000000	4000
<= 1500000	8000
<= 2000000	13000
<= 3000000	20000
<= 4000000	26000
<= 5000000	32000
<= 6000000	39000
<= 7000000	46000
<= 8000000	52000
<= 9000000	58000
<= 10000000	65000
<= 15000000	75000
<= 20000000	100000
<= 25000000	125000
<= 30000000	150000
<= 50000000	250000
> 50000000	325000

For the actions set out in Table 3, the Court fee for the Court of First Instance will consist only of a fixed fee as indicated in that Table. There is no additional “value-based” fee for these actions.

Table 3

Procedures/actions	Fixed Fee Euro - €
Revocation action [R47]	20000
Counterclaim for revocation [R26] - same fee as the infringement action	Up to a limit of 20000
Application for provisional measures [R206.5]	11000
Filing a protective letter [R207.3]	200
Application to prolong the period of a protective letter kept on the register [R207.8]	100
Action against a decision of the EPO [R88.3, 97.2]	1000
Application to preserve evidence [R192.5]	350
Application for an order for inspection [R199.2]	350
Application for an order to freeze assets [R200.2]	1000
Application to review a case management order [R333.3]	300
Application to set aside decision by default [R356.2]	1000

In proceedings before the Court of First Instance, and before the Court of Appeal, the “winning” party may be able to recover some costs from the “losing” party. Standard ceilings as shown in Table 4, based on the “value of the action”, have been set for these recoverable costs, which apply to representation costs. In some situations, these standard ceilings may be raised or lowered by the Court.

For the actions set out in Table 5, the Court of Appeal fee will be made up of a fixed fee as indicated in that Table and, possibly, an additional “value-based” fee in accordance with Table 2. For the actions set out in Table 6 the Court fee for the Court of Appeal will consist only of a fixed fee as indicated in the Table.

Table 4

Value of the proceeding Euro - €	Ceiling for recoverable costs Euro - €
<= 250000	<= 38000
<= 500000	<= 56000
<= 1000000	<= 112000
<= 2000000	<= 200000
<= 4000000	<= 400000
<= 8000000	<= 600000
<= 16000000	<= 800000
<= 30000000	<= 1200000
<= 50000000	<= 1500000
> 50000000	<= 2000000

Table 5

Appeals/applications	Fee Euro - €
Appeal pursuant to R220.1 (a) and (b) [R228] as to an infringement action [R15]	11000 + value-based fee
Appeal pursuant to R220.1 (a) and (b) [R228] as to a counterclaim for infringement [R53]	11000 + value-based fee
Appeal pursuant to R220.1 (a) and (b) [R228] as to an action for declaration of non-infringement [R68]	11000 + value-based fee
Appeal pursuant to R220.1 (a) and (b) [R228] as to an action for compensation for license of right [R80.3]	11000 + value-based fee
Appeal pursuant to R220.1 (a) and (b) [R228] as to an application to determine damages [R132]	[3000 + value-based fee]

Table 6

Appeals/applications	Fee Euro - €
Appeal pursuant to R220.1 (a) and (b) [R228] as to a revocation action [R47]	20000
Appeal pursuant to R220.1 (a) and (b) [R228] as to a counterclaim for revocation [R26]	fee paid in the first instance
Appeal pursuant to R220.1 (a) and (b) [R228] as to an application for provisional measures [R206.5]	11000
Application for rehearing [R250]	2500
Appeal pursuant to R220.1 (a) and (b) [R228] as to an action against a decision of the European Patent Office [R88.3, 97.2]	1000
Interlocutory appeals [R220.1(c.), 228]	3000
Application for leave to appeal against cost decisions [R221, 228]	1500
Request for discretionary review [R220.3, 228]	350
Application for re-establishment of rights [R320.2]	350
Application to review a case management order [R333.3]	300
Application to set aside decision by default [R356.2]	1000

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