Guidelines for the determination of the court fees and the ceiling of recoverable costs

As adopted by decision of the Administrative Committee on 24 April 2023

entry into force: 24 April 2023;

amended by decision of the Administrative Committee on 4 November 2025

entry into force: 1 January 2026

The purpose of these Guidelines is to provide UPC judges for both, the Court of First Instance and the Court Appeal with a method for establishing the value of actions for the determination of Court fees and the ceilings for the recoverable costs for the representatives of the successful party. The Guidelines do not interfere with the liberty of judges to apply in a given case other methods which may be required by the circumstances of the case.

I. Principles

1. The method of determining a value-based fee should be as simple as practically possible. The assessment of the value of the relevant action shall reflect the objective interest pursued by the filing party at the time of filing the action. The most practicable method, in most cases, will be a valuation based on an appropriate licence fee (infra II). A valuation based on the claimant's loss of profits or the defendant's profits gained may also be applied, where appropriate, but will normally be too complex to be determined at the beginning of proceedings resulting in a mini-trial.
2. The valuation should relate to the summed up values of the main remedies claimed (injunction for the future, damages for the past), not excluding, where appropriate, the value of other remedies claimed.
3. Where the parties agree on a valuation the Court should in principle base its valuation on their estimate. However, the Court is not bound by the valuation agreed by the parties. When it considers the valuation not to be adequate, the Court should request the parties to further substantiate their estimate.
4. References in these Guidelines to a patent shall include a supplementary protection certificate.

II. Suggested Approaches

1. Infringement action

a) Determining the value for applying the Rules on Court fees:

The calculation of the value of the injunction claim and for the damage claim should be based on a royalty calculation as follows:

(1) The defendant's turnover in the alleged infringing product for the future up to the expiry of the patent (injunction claim) and for the past (damage claim) should be calculated based upon the known existing turnover of the defendant or, if not known or not yet existent, the market share the defendant has taken and/or may reasonably be assumed to take.

(2) A royalty rate should be applied to (1) based upon:

(i) the existing royalty rate for the same invention charged by the claimant, or

(ii) the generally accepted industry rate for the type of invention in question, or

(iii) a royalty rate determined by the Court after hearing the parties.

(3) Where a damage claim

(i) is limited to awarding damages in principle, the value of that claim (pursuant (1)) should be reduced by 50%;

(ii) specifies the amount of damages, the value should correspond to the amount claimed.

(4) The value of an Application for the Determination of Damages including any Request to lay open books should correspond to the amount of damages specified in the Application or if no such sum is specified the value as calculated in accordance with (1) and (2).

(5) If the action is based on more than one patent and/or if the action is directed against more than one party the value should be calculated in accordance with (1) and (2) on the basis of a combined licence for all patents and all defendants across all territories covered by the patents.

b) Determining the value for applying the Rules on recoverable costs:

The calculation should be the same as according to II.1.a).

2. Counterclaim for revocation and revocation actions

a) Determining the value for applying the Rules on Court fees:

There is no need to determine the value of revocation counterclaims or revocation actions since for both actions there is only a fixed fee to be paid.

b) Determining the value for applying the Rules on recoverable costs:

(1) The value of a counterclaim for revocation or of a revocation action should be determined having regard to the value of the patent to be revoked.

(2) In the absence of relevant information

(i) the value of a revocation action may be assumed to be equal to the value of an appropriate licence fee calculated on the basis of the turnover of the parties for the remaining lifetime of the patent,

(ii) the value of the revocation counterclaim may be assumed as being equal to the value of the infringement action (II.1. a), above) plus up to 50%.

(3) If the action concerns more than one patent, the value of each patent should be calculated separately and the values determined should be added together to become the value of the action.

(4) The value of the infringement action and the value of the revocation counterclaim pending before the same division should be added together for determining the level of recoverable costs.

3. Actions for Declaration of non-infringement

Determining the value for applying the Rules on Court fees and the Rules on recoverable costs:

The value of an action for a Declaration of non-infringement should be calculated in accordance with II.1. a) and b) above (infringement action).

4. Actions for compensation for license of right

Determining the value for applying the Rules on Court fees and the Rules on recoverable costs:

The value of an action for compensation for license of right should be calculated in accordance with II.1. a) and b) above.

5. Application for interim relief pursuant to Article 62 of the UPC Agreement

a) Determining the value for applying the Rules on Court fees:

The calculation of the value of the injunction requested should be based on the approach outlined under II.1.a) (1) and (2). As a general rule, the value of the preliminary injunction requested may be considered to be 2/3 of the value of the actual or anticipated permanent injunction.

b) Determining the value for the Rules on recoverable costs:

In case of the application for interim relief which is not followed by an infringement action on the merits the value of an application for interim relief for determining the level of the recoverable costs should be calculated at 66% of the value calculated in accordance with II.1. b) above.

6. Application for freezing orders pursuant to Article 61 of the UPC Agreement

a) Determining the value for applying the Rules on Court fees:

The calculation of the value of the application for a freezing order should be based on the economic interest of the applicant. As a general rule, the value of the application for a freezing order may be considered to be 1/5 of the value of the actual or anticipated claim for damages considering also the value of the assets subject of the freezing order.

b) Determining the value for applying the Rules on recoverable costs:
In case of the application for freezing order which is not followed by an infringement action on the merits the value of an application for freezing order for determining the level of the recoverable costs should be calculated at 20% of the value calculated in accordance with II.1. b) above.

7. Application to preserve evidence and to inspect premises pursuant to Article 60 of the UPC Agreement

a) Determining the value for applying the Rules on Court fees:

The calculation of the value of the application to preserve evidence or to inspect premises should be based on the economic interest of the applicant. As a general rule, the value of the applications to preserve evidence and to inspect premises may be considered to be 1/5 of the value of the actual or anticipated action for which the evidence is to be preserved or the inspection is to be carried out.

b) Determining the value for applying the Rules on recoverable costs:
In case of the application for preserving of evidence or to inspect premises which is not followed by an infringement action on the merits the value of an application for preserving of evidence or to inspect premises for determining the level of the recoverable costs should be calculated at 20% of the value calculated in accordance with II.1. b) above.