

# The European Patent Reform – The prearranged affair

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*Office translation of the original German language document, the article reflects the personal opinion of the author.*

**Before and during the legislative procedure on the European patent reform, the proponents of the creation of a European unified patent judiciary have justified its necessity predominantly with a significant savings potential and a very favorable cost-benefit ratio. This was based on the results of a single scientific report, ordered and paid for by the European Commission, that, being criticized as methodically doubtful and incomplete, relied on assumptions and projections in central aspects, e. g. in relation to the costs of proceedings at the Unified Patent Court (“UPC”). Having regard to the actual design of the UPC, the economic advantages envisaged for it at that time can be assumed to be unfounded. The report and the mechanism in which it was used to push through an apparently desired legislative project against any opposition and at any cost will be examined in more detail afterwards.**

## I. The scientific basis of the EU patent reform

Before starting to legislate in a highly complex legal field like patent law, one would usually expect the legislator to have the impact of planned legislative changes profoundly and comprehensively assessed by respective scientific opinions and analyses. In respect of the creation of a unified patent judiciary in particular, due to the interference with the court systems of the participating countries and hence their constitutional framework, it would usually be assumed that the consequences are scientifically assessed and discussed in advance, in order to provide the countries interested in such system with a broad information basis for their decision on whether to participate or not. Surprisingly, this was not the case. There is only one single investigation on the patent judiciary, ordered by the European Commission: The report “Economic Cost-Benefit Analysis of a Unified and Integrated European Patent Litigation System”<sup>1</sup>, presented on 26/02/2009, by Prof. *Dietmar Harhoff*, who was working at Ludwig Maximilian University in Munich at that time and who is with Max Planck Institute for Innovation and Competition now.<sup>2</sup>

Although his assessment has been exerted to criticism<sup>3</sup> early for its limited approach, methodical mistakes and, consequently, a limited scientific value, it remained the only “official” scientific report commissioned by the in-

volved institutions prior to the signing of the Agreement on a Unified Patent Court (“UPCA”). Assessments that had been commissioned at the national level of EU Member States as the one prepared in Poland<sup>4</sup> – which due its negative results made the Polish government walk away from a participation in the UPCA – were not considered in the EU legislative proceedings.<sup>5</sup> Here, in their decision on the creation of a unified European patent judiciary, the political protagonists relied solely on the *Harhoff* report. The assumption used in this report and the results achieved on that basis will afterwards be looked at more closely.

## II. Harhoff, “Economic Cost-Benefit Analysis of a Unified and Integrated European Patent Litigation System” (2009)

The report by Prof. *Harhoff* had been requested by the European Commission’s DG Internal Market (“Tender No. MARKT/2008/06/D”), headed at that time by *Margot Fröhlinger*, and was intended to show the advantages that the creation of an integrated European patent litigation system would have over the status quo. Amongst others, it indicated a very favorable cost-benefit ratio for such a judiciary, with its economic benefit exceeding the costs of its creation and operation by the factor 5 to 10.

The report is based on two central hypotheses: The first is a wide understanding of a duplicated patent dispute, leading to the conclusion that between 16 and 31 percent of all examined patent cases are taking place in the courts of several countries (“duplication rate”). The second hypothesis is that the costs of proceedings before the UPC would be set at a level equivalent to the cheaper continental systems like the German one.

### 1. Content of the report

A basic premise of the patent reform had always been that, owing to the general necessity of enforcing the different designations of the traditional European “bundle patent” separately in the courts of each country, there was a high degree of duplicated court cases causing significant costs. The extent of that duplication is therefore one of the central parameters of the assessment.<sup>6</sup>

<sup>1</sup> Accessible at the EU Commission at [bit.ly/2oneD3l](http://bit.ly/2oneD3l).

<sup>2</sup> Profile accessible at [bit.ly/2CSxKa2](http://bit.ly/2CSxKa2). (German language).

<sup>3</sup> Cf. the report “The Unified Patent Court: help or hindrance?” of the UK House of Commons European Scrutiny Committee, accessible at [bit.ly/2CubQYV](http://bit.ly/2CubQYV), Ev2, r. col.; also *Xenos*, Scripted 2013, p. 246 ff., accessible at [bit.ly/2FKcqXe](http://bit.ly/2FKcqXe).

<sup>4</sup> Deloitte, “Analysis of the potential economic impact from the introduction of Unitary Patent Protection in Poland”, accessible at [bit.ly/2GX8ou4](http://bit.ly/2GX8ou4); cf. *Xenos* (fn. 3), p. 266 ff., section 4.2.2.

<sup>5</sup> Indicated by Commissioner *Barnier* on 23/02/2013 in his reply to a Parliamentary question posed by MEP *Nikolaos Chountis* on 10/12/2012, accessible at [bit.ly/2CT8mky](http://bit.ly/2CT8mky).

<sup>6</sup> *Harhoff* (fn. 1), p. 16, second para.

While under the common understanding a proceeding is duplicated if the same parties litigate the same patent in the courts of different countries, the *Harhoff* report used a broader concept of duplication:<sup>7</sup>

*“Duplication as referred to in this report does not require that exactly the same legal matter is brought by identical parties into different national courts. For the purpose of the computations below, we can speak of duplicated cases if the introduction of the unified Court would render one or several of the cases unnecessary, i.e. if the different national cases are substitutes in a legal and economic sense.”*

What constitutes proceedings to be “substitutes in a legal and economic sense” remained undefined.

Said description, however, appears to be relying on a circular conclusion by trying to determine the extent of duplication from the jurisdiction of the planned court, while, at the same time, said extent is intended to find out whether there is a necessity for such court at all. Since experienced patent practitioners assumed duplication to happen in no more than 5 to 8 percent of all patent disputes,<sup>8</sup> it would seem that a broader definition was needed from the Commission’s perspective already, as to avoid stripping the report of any use for convincing those affected of the necessity for creating a UPC from the outset.

Hence, based on the chosen duplication concept, the *Harhoff* report arrived at a duplication rate of – depending on the scenario – between 16 and 31 percent,<sup>9</sup> which was even considered to rise significantly in the near future.<sup>10</sup>

*“Currently, the parties to patent litigation are estimated to spend between EUR 89 and 189 million on duplication of litigation. Due to the increase in the stock of patents ‘at risk’, the private costs of duplication would range between EUR 148 and 289 million in 2013.”*

These costs could be saved by the creation of a unified European patent judiciary which, however, Prof. *Harhoff* made subject to an important condition: The costs of the proceedings at that judiciary would need to be set at a level equivalent to the comparatively affordable continental systems, in particular that in Germany, designated “low-cost litigation countries”.<sup>11</sup> Under that condition, the creation of a UPC would achieve savings due to avoided duplication as well as cost reductions for parties no longer having to use expensive court systems like the British.<sup>12</sup> He explained (emphasis added):<sup>13</sup>

*“The preceding considerations were based on the assumption that the unified [sic] Patent Court will allow parties to litigate at the relatively low cost levels which characterize the national systems in low-cost litigation countries such as Germany, France and the Netherlands. A close reading of the Presidency’s proposal shows that several cost-reducing measures are planned. As has been pointed out in the discussion already, the cost of litigation is a central parameter which affects not only the extent of litigation, but also settlement activities and the potential for strategic behavior in the patent system. To strive for a low-cost system is therefore important.”*

Without such modest procedural costs, the calculated advantages would become questionable.<sup>14</sup>

*“It is simple to see that these savings could be reduced substantially if the unified [sic] Patent Court system were to come with an increase in the cost of litigation beyond the level now present in Germany, France and the Netherlands.”*

In his assessment, Prof. *Harhoff* assumed average litigation costs per party of EUR 145,000 in said “low-cost litigation countries”.<sup>15</sup> An increase of this value by EUR 50,000 to EUR 195,000 already led to a significant reduction of the unified patent judiciary’s cost-benefit ratio.<sup>16</sup> In case of a 50 percent increase the calculated advantages were to disappear completely.<sup>17</sup>

*“It would take roughly a 50% increase in average litigation costs to dissipate the private benefits computed above completely.”*

The result of the assessment was summarized as follows:<sup>18</sup>

*“Avoiding duplication of infringement or revocation cases is likely to generate large benefits for the European economy. The results obtained here suggest that currently, between 146 and 311 infringement cases are being duplicated in the Member States. By 2013, this number is likely to increase to between 202 and 431 cases. Total private savings in 2013 would span the interval between EUR 148 and 289 million. Comparing the benefits to operating cost of EUR 27.5 million shows that the benefit-cost ratio ranges between 5.4 and 10.5 in 2013. Hence, the cost-benefit assessment focusing on avoided duplication leads to a highly positive evaluation of the proposal. (...) The results also show that the level of litigation costs at the new unified Patent Court will play a crucial role for access and for the monetary benefits from avoided duplication.”*

The Commission extensively used the results of this report and its maximum possible savings of EUR 289m in its marketing for the patent reform and the UPC.<sup>19</sup>

<sup>7</sup> *Harhoff* (fn. 1), p. 15, fn. 19.

<sup>8</sup> Cf. *Pagenberg*, GRUR 2012, 582 (585, l. col.).

<sup>9</sup> *Harhoff* (fn. 1), p. 40, table 6.2; 146 of 872 cases in the best scenario, 311 of 992 in the worst.

<sup>10</sup> *Harhoff* (fn. 1), p. 41, second para. and table 6.3.

<sup>11</sup> *Harhoff* (fn. 1), p. 21, last para.; p. 41, third para.; p. 43, third para.

<sup>12</sup> *Harhoff* (fn. 1), p. 22.

<sup>13</sup> *Harhoff* (fn. 1), p. 42, section 6.4.

<sup>14</sup> *Harhoff* (fn. 1), p. 42, section 6.4.

<sup>15</sup> *Harhoff* (fn. 1), S. 42, final para.

<sup>16</sup> *Harhoff* (fn. 1), p. 43, table 6.4.

<sup>17</sup> *Harhoff* (fn. 1), p. 43, first para.

<sup>18</sup> *Harhoff* (fn. 1), p. 53, second para.

## 2. The duplication rate

Already a duplication rate of 16 to 31 percent as assumed in the *Harhoff* report is obviously too high. It was abandoned even by the Commission in an own study while the EU legislative proceedings were still ongoing. After its completion, a further study was published, amongst others authored by Prof. *Harhoff*, which found a duplication rate of only around 8 percent.

### a) Commission, “Study on the Caseload and financing of the Unified Patent Court” (2011)

In November 2011, the Commission’s DG Internal Market published an own investigation<sup>20</sup> titled “Preliminary Findings of DG Internal Market and Services – Study on the Caseload and financing of the Unified Patent Court”. This, while relying on the wide duplication concept applied in the *Harhoff* report,<sup>21</sup> assumed a duplication rate of only 10 percent.<sup>22</sup> This emphasizes that the real amount of duplication is again lower, confirmed by a statement in said study that the Commission’s Expert Group<sup>23</sup> presumed a maximum of 8 percent.<sup>24</sup>

This significant reduction of the duplication rate as one of the *Harhoff* report’s two central parameters already caused the savings potential and the cost-benefit ration of a unified European patent judiciary to become much lower. It did, however, not initiate a reconsideration of the situation and the need for such judiciary, the legislative proceedings were instead continued with unwavering determination.

### b) ZEW, “Patent Litigation in Europe” (2013)

In September 2013, after the EU Parliament had adopted the two Regulations on unitary patent protection and after the UPCA had been signed, the Centre for European Economic Research (“Zentrum für Europäische Wirtschaftsforschung”, “ZEW”) published its study “Patent Litigation in Europe”<sup>25</sup>, one of its authors again being Prof. *Harhoff*. It compared patent litigation cases from Germany, France, the Netherlands and Great Britain during the years of 2000 to 2008.

The study contains revealing statements especially on the extent of duplicated patent cases. Based on the general understanding according to which a case is duplicated if the same parties are litigating the same patent in the courts

of different countries, the duplication rate was quantified as follows (emphasis added):<sup>26</sup>

*“Our analysis also offers evidence on the fragmentation of the European patent system. In UK and the Netherlands we find a relatively high number of cases that are litigated in several jurisdictions (26% and 15% of all cases litigated in the UK and the Netherlands respectively). These shares are a lot lower in Germany (2%) and France (6%). The lower shares are also explained by the fact that the overwhelming share of patents litigated in the UK and the Netherlands are national parts of EP patents (81% and 73% respectively) that have also been validated in Germany and France. The share of litigated EP patents is a lot lower in Germany and the Netherlands (42% and 39% respectively). If we restrict attention to EP patents only, overall the incidence of duplication is small: only 8.4% of all litigated EP patents are subject to litigation in more than one country. Of course, the patents affected by duplicated litigation are likely to be particularly important, and the cases will be more resource-intensive than those for other patents.”*

These figures are significantly lower than the 16 to 31 percent found in the *Harhoff* report of 2009.

The ZEW study also arrived at a conclusion much more careful than the *Harhoff* paper (emphasis added):<sup>27</sup>

*“We also obtain insights regarding one of the main motivations for the current reforms of the European patent system: fragmentation. We show that most EPO-granted patents that are litigated in a given jurisdiction have also been validated in all other jurisdictions (possibly with the exception of the Netherlands). This means that there is scope for parallel litigation of the same patent in multiple jurisdictions. However, our data reveals that the share of duplicated cases (cases that involve the same patent and litigating parties in multiple jurisdictions) is low in Germany (2%) and France (6%). Nevertheless, the share attains 26% in the UK and 15% in the Netherlands. This provides mixed evidence for fragmentation and the resulting need for parallel litigation in multiple jurisdictions. (...) However, we note that the vast majority of patents are litigation [sic] only once.”*

This finally confirms what patent practitioners had pointed out all along: The large majority of patent cases are litigated only once. Duplication happens but certainly not to an extent that would in itself justify the creation of a unified judiciary. After all that, the duplication rate calculated in the report is much too high.

## 3. The procedural costs at the UPC

Also the second assumption of the *Harhoff* report, that a unified patent judiciary would offer procedural costs at the

<sup>19</sup> Cf. the emphasis on the alleged duplication costs of EUR 289m in the articles “*EU plant neues Patentgericht*” (“EU is planning new patent court”), FAZ of 08/12/2009, accessible at [bit.ly/2CHnOW](http://bit.ly/2CHnOW) (German language); “*EU-Patent vor dem Aus*” (“EU patent on the brink of failure”), FAZ of 27/08/2010 or “*Durchbruch für das EU-Patent*” (“Breakthrough for the EU patent”), FAZ of 25/05/2011.

<sup>20</sup> Accessible at [bit.ly/2F2OMYk](http://bit.ly/2F2OMYk).

<sup>21</sup> Preliminary Findings (fn. 20), p. 14, fn. 36.

<sup>22</sup> Preliminary Findings (fn. 20), p. 15, first para.

<sup>23</sup> This seems to refer to the former Commission Expert group “Intellectual Property”.

<sup>24</sup> Preliminary Findings (fn. 20), p. 15, fn. 37.

<sup>25</sup> Accessible at [bit.ly/2F3gOUo](http://bit.ly/2F3gOUo).

<sup>26</sup> Patent Litigation (fn. 25), p. 5, second para.; p. 50, table 6.

<sup>27</sup> Patent Litigation (fn. 25), p. 60, second para.

low level of, for instance, Germany, has not become a reality. The complete opposite is the case.<sup>28</sup>

#### a) Court costs

The court costs are not problematic, being more or less equivalent to or cheaper than those in the German system.<sup>29</sup>

#### b) Maximum reimbursable representation costs at the UPC vs statutory German cost reimbursement

This is much different when it comes to the representation costs reimbursable at the UPC. Comparing the respective maximum amounts to the actual statutory cost reimbursement claim under the German Lawyer's Compensation Act ("Rechtsanwaltsvergütungsgesetz", "RVG") shows significant differences. Attached to this article are overview tables comparing the reimbursable representation costs

- in first instance,
- in first and second instance, and
- in first and second instance of the UPC with the first to third instances of a German proceeding.

These tables also display the factor by which each UPC maximum amount exceeds the corresponding RVG value. Not included in these amounts are expenses and other costs as well as the German VAT of currently 19 percent.<sup>30</sup> The third, naturally skewed comparison primarily serves demonstration purposes.

In summary, it can be said that in proceedings with a lower value in dispute of up to EUR 500,000 the maximum reimbursable representation costs at the UPC exceed the statutory German RVG reimbursement claim more than three-fold. At a value in dispute of up to EUR 1m, the UPC limit exceeds RVG by roughly the factor 4.75, at EUR 2m approximately five-fold. The maximum is reached at a value in dispute from EUR 4m with almost six times RVG, before the spread is again decreasing. From a value in dispute of EUR 8m, the UPC surcharge is roughly at the factor 4.7, from EUR 16m it is roughly three times the corresponding RVG amount.

The relation of the reimbursable amounts in second instance is very similar to those described above for the first instance, it is marginally better.

As a probably interesting side note, even the maximum representation costs reimbursable in two instances at the UPC are still roughly two-and-a-half to three times higher than the corresponding statutory reimbursement claim for a German proceeding covering all three instances.

In addition, it should be noted that "in limited situations" and upon request by one party, the UPC has the discretion to raise the applicable maximum value, for instance in case

<sup>28</sup> Cf. *Stjerna*, The European Patent Reform – A poisoned gift for SMEs, accessible at [www.stjerna.de/smes/?lang=en](http://www.stjerna.de/smes/?lang=en).

<sup>29</sup> *Stjerna* (fn. 28), p. 6, section V.2.b).

<sup>30</sup> The values listed in the article in fn. 28 on p. 6, section V.2.c)aa) for German proceedings include German VAT.

of "particular complexity" or the use of multiple languages.<sup>31</sup> Similar discretion exists in certain cases for a reduction upon request by one party.<sup>32</sup>

Further it needs to be taken into account that the underlying value in dispute is to be calculated based on the "objective interest" pursued by the claimant's complaint.<sup>33</sup> This is predominantly represented by the amount of license fees which the defendant would have to pay for a fictitious licensed use of the embodiment attacked as patent infringing from its market entry until the lapse of the patent in question.<sup>34</sup> Having regard to the geographical scope of its decisions and to the number of affected markets proceedings with a value in dispute between EUR 4m and 8m will likely not be an exception at the UPC.

If a proceeding involves more than one patent and/or is directed against more than one party, the applicable value in dispute is to be determined based on a combined license for all patents and all parties in all countries covered by the patents.<sup>35</sup> This means that the stipulation that the respective ceilings for reimbursable representation costs apply regardless of the number of parties, claims or patents concerned<sup>36</sup> is ultimately irrelevant since the increased value in dispute will usually entail an increase of the applicable reimbursement ceiling.

It also needs to be considered that when a counterclaim for revocation is filed – which will rather be the rule than an exception – the values in dispute of the infringement and nullity proceeding are added,<sup>37</sup> the court being allowed to determine that of the latter with up to 50 percent above the former.<sup>38</sup> Were a nullity action or a counterclaim for nullity concerns multiple patents the value in dispute is to be calculated for each patent separately, their sum constituting the applicable value in dispute.<sup>39</sup> The reimbursement of representation costs is to be calculated based on the respective overall value in dispute.<sup>40</sup>

Finally, it must not be forgotten that the ceilings only cover representation costs.<sup>41</sup> On top come expenses like, for instance, costs for party experts, for witnesses or translations,<sup>42</sup> which will often not be neglectable.

As a result, the costs of the proceedings at the UPC are not at all equivalent to the German "low cost" level, but are

<sup>31</sup> Document "Rules on Court fees and recoverable costs" of 16/06/2016, accessible at [bit.ly/2udTnS5](http://bit.ly/2udTnS5), Art. 2(1).

<sup>32</sup> Rules on Court fees etc. (fn. 31), Art. 2(2).

<sup>33</sup> Rule 370(6)1 of UPC Rules of Procedure of 15/03/2017 ("RoP"), accessible at [bit.ly/2vbYscY](http://bit.ly/2vbYscY).

<sup>34</sup> Document "Guidelines for the determination of Court fees and the ceiling of recoverable costs" of 26/02/2016, accessible at [bit.ly/1WS4B2I](http://bit.ly/1WS4B2I), sections I.1., II.1.a) and b).

<sup>35</sup> Guidelines (fn. 34), section II.1.a)(5).

<sup>36</sup> Rules on Court fees etc. (fn. 31), Art. 1(3).

<sup>37</sup> Guidelines (fn. 34), section II.2.b)(4).

<sup>38</sup> Guidelines (fn. 34), section II.2.b)(2)(ii).

<sup>39</sup> Guidelines (fn. 34), section II.2.b)(3).

<sup>40</sup> Guidelines (fn. 34), section II.2.b)(4).

<sup>41</sup> Rules on Court fees etc. (fn. 31), Art. 1(2).

<sup>42</sup> Cf. Rules 150(1)2, 151(d), 152 ff. RoP (fn. 33).

several times higher. This removes also the second pillar of the calculations in the *Harhoff* report and thus the favorable cost-benefit ratio of a unified European patent judiciary as calculated on its basis.

#### 4. Assessment

Already the reduction of a duplication rate of 16 to 31 percent assumed in the *Harhoff* report to a maximum of 10 percent causes a considerable decrease in the savings potential and the cost-benefit ratio of a unified patent judiciary. Both are further reduced by the lack of UPC procedural costs at the low German level. After Prof. *Harhoff* himself declared that an increase by 50 percent of the average party costs underlying his calculations would consume all of the established advantages, it is easy to imagine the effect resulting from the UPC cost framework and its possible increases of reimbursable representation costs of up to 600 percent vice versa the corresponding German RVG amounts. After all, it can be assumed that in reality neither the savings potential nor the cost-benefit ratio of the UPC will be anywhere near of what was concluded in the *Harhoff* report. Instead, it would not come as a surprise if repeating the calculations with the real parameters would arrive at out of question results.

It is not without reason that the British IP Federation firmly demanded the preparation and public discussion of an impact analysis for the British economy prior to the UPCA's signing in February 2013<sup>43</sup>

*“We are urging the Government to conduct a robust economic impact analysis based on the effect on the UK economy and publish the results for scrutiny before ratifying the Unified Patent Court Agreement.”*

The presentation of this “robust economic impact analysis” has not happened to date. Also, the IP Federation, the members of which are predominantly large corporations, has meanwhile taken the opposite position, now demanding the British UPCA ratification on every occasion.<sup>44</sup>

#### III. Outlook

In the end, a certain strategy for the successful enactment of controversial while desired legislative project becomes apparent. Before or during the legislative procedure a scientific report is commissioned in order to get a necessity for legislative action and its economic benefits confirmed. This report remains selective, relying in central parameters on unreasonable assumptions and predictions and certifying the planned legislative measures a very positive impact. Other and better founded scientific assessments are not requested, existing ones are simply ignored. The legislative procedure is driven forward based on this limited scientific basis. The report's parameters which were based on assumptions and predictions, cost aspects in particular,

are not regulated in the legislative procedure, this is postponed until after its completion.

These parameters are determined some time after the legislative procedure has ended and thus at a time when the motivation underlying the legislative changes and its alleged benefits have already faded in the conscience of those affected and the public. The specification of these parameters is carried out completely independent of the statements and promises made in the legislative procedure and of the assumptions in the scientific report, if necessary even in open contradiction to these. This leads to an enacted legislative package that does not only contradict the initially communicated political motivation and promises, but that is also lacking the envisaged advantages. If this is achieved, certain individual interests have obtained legislative authority, possibly even to the detriment of the general public and regardless of economic viability.

Following this pattern, the European patent reform has been adopted at EU level without defining the costs of unitary patent protection and of the proceedings at the UPC, both happened only well after the end of the legislative procedure. This means that, as to the creation of the UPC, the EU legislator adopted the reform based solely on their trust in the savings potential and the cost-benefit ratio promised in the *Harhoff* report, which has now turned out to be meaningless, and without the substance of these promises having ever been assessed or verified with real figures. In the determination of procedural costs at the UPC it was not deemed an obstacle that their volume would thwart completely the alleged advantages of the judiciary's creation.

A similar approach has been used for legal problems possibly endangering the enactment of the patent reform. These were and still are ignored or discussed away or, if this is not possible, a solution is postponed until some time in the indefinite future. The dispute on former articles 6 to 8 of the Regulation on unitary patent protection and the CJEU's competences in relation to material patent law, the UPCA's compatibility with Union law and constitutional law or, most recently, the possibility of a British UPCA membership after a withdrawal from the EU – in all these cases, it was or is tried to defer the obviously needed solutions until a later time and to first bring about *fait accompli* by enacting the reform.

The present situation is special insofar as now a court is in a position to assess in detail the UPCA's doubtful legal viability. By doing so, it can make up for what has been repeatedly and perhaps deliberately omitted in the European as well as in the national German legislative procedure, thus finally providing the badly needed legal certainty to the users.

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For possibilities to support my work on the European patent reform please visit [www.stjerna.de/contact/?lang=en](http://www.stjerna.de/contact/?lang=en). Many thanks!

<sup>43</sup> Cf. the IP Federation's request of 13/02/2013, accessible at [bit.ly/2tqZbbx](http://bit.ly/2tqZbbx).

<sup>44</sup> Cf. e. g. IP Federation communication of 26/02/2018, accessible at [bit.ly/2oStgMf](http://bit.ly/2oStgMf).

**Comparison of maximum reimbursable representation costs at the UPC  
 with the statutory cost reimbursement claim under current German law**

**First instance<sup>1</sup>**

Value in dispute up to	Reimbursable at the UPC <sup>2</sup>	Reimbursable in German proceedings (RVG) <sup>3</sup>	Factor
EUR 250,000	up to EUR 38,000	EUR 11,305	3.36
EUR 500,000	up to EUR 56,000	EUR 16,105	3.48
EUR 1,000,000	up to EUR 112,000	EUR 23,605	4.75
EUR 2,000,000	up to EUR 200,000	EUR 38,605	5.18
EUR 4,000,000	up to EUR 400,000	EUR 68,605	5.83
EUR 8,000,000	up to EUR 600,000	EUR 128,605	4.67
EUR 16,000,000	up to EUR 800,000	EUR 248,605	3.22
EUR 30,000,000 <sup>4</sup>	up to EUR 1,200,000	EUR 458,605	2.62
EUR 50,000,000	up to EUR 1,500,000	(EUR 758,605) <sup>5</sup>	1.98
über EUR 50,000,000	up to EUR 2,000,000	(subject to value in dispute)	
EUR 100,000,000	as before	(EUR 1,508,605) <sup>6</sup>	1.33

**First and second instance<sup>7</sup>**

Value in dispute up to	Reimbursable at the UPC <sup>8</sup>	Reimbursable in German proceedings (RVG) <sup>9</sup>	Factor
EUR 250,000	up to EUR 76,000	EUR 23,922	3.18
EUR 500,000	up to EUR 112,000	EUR 34,098	3.29
EUR 1,000,000	up to EUR 224,000	EUR 49,998	4.48
EUR 2,000,000	up to EUR 400,000	EUR 81,798	4.89
EUR 4,000,000	up to EUR 800,000	EUR 145,398	5.50
EUR 8,000,000	up to EUR 1,200,000	EUR 272,598	4.40
EUR 16,000,000	up to EUR 1,600,000	EUR 526,998	3.04
EUR 30,000,000 <sup>10</sup>	up to EUR 2,400,000	EUR 972,198	2.47
EUR 50,000,000	up to EUR 3,000,000	(EUR 1,608,198) <sup>11</sup>	1.87
über EUR 50,000,000	up to EUR 4,000,000	(subject to value in dispute)	
EUR 100,000,000	as before	(EUR 3,198,198) <sup>12</sup>	1.25

**First and second instance UPC and first to third instance DE<sup>13</sup>**

Value in dispute up to	Reimbursable at the UPC <sup>14</sup>	Reimbursable in German proceedings (RVG) <sup>15</sup>	Factor
EUR 250,000	up to EUR 76,000	EUR 41,045	1.85
EUR 500,000	up to EUR 112,000	EUR 58,517	1.91
EUR 1,000,000	up to EUR 224,000	EUR 85,817	2.61
EUR 2,000,000	up to EUR 400,000	EUR 140,417	2.85
EUR 4,000,000	up to EUR 800,000	EUR 249,617	3.21
EUR 8,000,000	up to EUR 1,200,000	EUR 468,017	2.56
EUR 16,000,000	up to EUR 1,600,000	EUR 904,817	1.77
EUR 30,000,000 <sup>16</sup>	up to EUR 2,400,000	EUR 1,669,217	1.44
EUR 50,000,000	up to EUR 3,000,000	(EUR 2,761,217) <sup>17</sup>	1.09
über EUR 50,000,000	up to EUR 4,000,000	(subject to value in dispute)	
EUR 100,000,000	as before	(EUR 5,491,217) <sup>18</sup>	0.73

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<sup>1</sup> Excluding expenses and other costs, excluding VAT.

<sup>2</sup> Standard values pursuant to the “Decision of the Administrative Committee of the Unified Patent Court on the scale of recoverable cost ceilings” of 16/06/2016 (accessible at [bit.ly/2udTnS5](http://bit.ly/2udTnS5)), an adjustment is possible under Art. 2 of said Decision.

<sup>3</sup> Statutory cost reimbursement claim of the winning party for representation by an attorney at law and a patent attorney in a German infringement or nullity action with the stated value in dispute in first instance based on the “Rechtsanwaltsvergütungsgesetz” (“Lawyer’s Compensation Act”, “RVG”), rounded to full Euro amounts.

<sup>4</sup> Maximum value in dispute per party under German law, in proceedings involving several complainants or defendants the maximum total value in dispute is EUR 100m (sec.s 22 (2) RVG, 39 (2) Court Costs Act (“GKG”).

<sup>5</sup> Cf. fn. 4, at least two opponents.

<sup>6</sup> Cf. fn. 4, at least two opponents.

<sup>7</sup> Excluding expenses and other costs, excluding VAT.

<sup>8</sup> Standard values pursuant to the “Decision of the Administrative Committee of the Unified Patent Court on the scale of recoverable cost ceilings” of 16/06/2016 (accessible at [bit.ly/2udTnS5](http://bit.ly/2udTnS5)), an adjustment is possible under Art. 2 of said Decision.

<sup>9</sup> Statutory cost reimbursement claim of the winning party for representation by an attorney at law and a patent attorney in a German infringement or nullity action with the stated value in dispute in first and second instance based on the “Rechtsanwaltsvergütungsgesetz” (“Lawyer’s Compensation Act”, “RVG”), rounded to full Euro amounts.

<sup>10</sup> Cf. fn. 4.

<sup>11</sup> Cf. fn. 4, at least two opponents.

<sup>12</sup> Cf. fn. 4, at least two opponents.

<sup>13</sup> Standard values pursuant to the “Decision of the Administrative Committee of the Unified Patent Court on the scale of recoverable cost ceilings” of 16/06/2016 (accessible at [bit.ly/2udTnS5](http://bit.ly/2udTnS5)), an adjustment is possible under Art. 2 of said Decision.

<sup>14</sup> Standard values pursuant to the “Decision of the Administrative Committee of the Unified Patent Court on the scale of recoverable cost ceilings” of 16/06/2016, an adjustment is possible under Art. 2 of said Decision.

<sup>15</sup> Statutory cost reimbursement claim of the winning party for representation by an attorney at law and a patent attorney in a German infringement or nullity action with the stated value in dispute in first, second and third instance based on the “Rechtsanwaltsvergütungsgesetz” (“Lawyer’s Compensation Act”, “RVG”), rounded to full Euro amounts.

<sup>16</sup> Cf. fn. 4.

<sup>17</sup> Cf. fn. 4, at least two opponents.

<sup>18</sup> Cf. fn. 4, at least two opponents.