Von: Karcher, Johannes
Gesendet: Samstag, 17. Januar 2015 07:11
An: Thomaschewski, Isolde
Betreff: WG: UPC - fee structure for the UPC
Anlagen: UPC Court Fees and Recoverable Costs Consultation Document Legal and Fin....docx; Court fees assumptions (expert panel).doc

Bitte GG

Danke und Gruß

Karcher

-----Ursprüngliche Nachricht-----
Von: Eileen Tottle [mailto:
Gesendet: Freitag, 16. Januar 2015 15:50
An: 'tim.frain ; 'hoyngw ; 'pierre.veron ; 'P.H.M.vanBeukering ; 'alexander.ramsay ; 'Kevin.Mooney ; 'po ; 'winfried.tilmann ; 'MrJustice.Birss ; 'grabinski-klaus ; 'marinaanna.tavassi ; 'pv ; 'Keussen ; 'LordJustice.Floyd ; 'udo.meyer ; 'rjacob ; 'marie.courboulay
Cc: Neil Feinson; 'Várhelyi Olivér - BEU'; Karcher, Johannes; 'Anne Goedert'; 'magana ; 'TURCEY Valery'; 'Max.brunner
Betreff: UPC - fee structure for the UPC

Dear Expert Panel Members

Further to our recent exchanges, I now attach the relevant fee structure documents for your perusal and comments. There are two documents attached, the first is a draft revised Rule 370 and Explanatory Note which will, when agreed, be put out for public consultation this spring. This document has been prepared by both the Legal Frameworks and Financial Aspects Working Groups. On some issues it gives more than one option and these are discussed in the Explanatory Note.

As the intention of the UPC is to be self-financing eventually, the court fees need to be set at a level to achieve this. The second document was therefore produced by the Finance Working Group to assist in their calculations when setting the fee levels. The document outlines a number of assumptions made on usage of the court and your thoughts on these would also be much appreciated.

Timetable

Could you please send me your written comments by close on 23 January. This would enable discussion within both Working Groups before any changes are made to the documents prior to its journey to the Preparatory Committee. Having your written comments ahead of the Expert Panel meeting on 4 February would help structure the discussion. It is likely there will be more on the agenda than just fees (the agenda will follow shortly).

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Handling

The document has not yet gone to Preparatory Committee members and so has not been seen by all Signatory States, therefore grateful if it could be treated as confidential. Both papers are marked accordingly.

Finally, on behalf of the Chairman, I would like to welcome Marie Courboulay to the Expert Panel.

kind regards

Eileen

Head of Secretariat

UPC Preparatory Committee

Tel +44 (0) 1633

From: Eileen Tottle
Sent: 12 January 2015 13:56
To: 'tim.frain'; 'hoyngw'; 'pierre.veron'; 'P.H.M.vanBeukering'; 'alexander.ramsay'; 'Kevin.Mooney'; 'po'; 'winfried.tilmann'; 'MrJustice.Birss'; 'grabinski-klaus'; 'marinaanna.tavassi'; 'pv'; 'Keussen'; 'LordJustice.Floyd'; 'udo.meyer'; 'rjacob'
Cc: Neil Feinson; 'Várhelyi Olivér - BEU'; 'karcher-jo'; 'Anne Goedert'; 'magana'; 'TURCEY Valery'; 'Max.brunner'
Subject: UPC - fee structure for the UPC

Dear Expert Panel members

Happy New Year.

I wanted to give you all advance warning that in the next few days the Expert Panel will be asked to provide written views on the draft fee structure for the UPC and, most importantly, the various assumptions used to develop this.

Much work is underway within the Financial Aspects and Legal Frameworks Working Groups to prepare a consultation on the fee structure which the Preparatory Committee wish to issue in the Spring (around April 2015). This is a tight and ambitious timetable, but necessary if we are to have an agreed fee structure in place for the Court to be ready in 2016. In-keeping with this timetable, a draft of the consultation must be discussed at the next Preparatory Committee meeting on 27 February.

I anticipate issuing the consultation document to you by close this week – 16 January - with a deadline for comments of close on 23 January. All comments would need to be received by 23 January to allow the Working Groups time to consider them.

ACTION: in light of the above timetable could you let me know whether you still wish to meet on 4 February. I know a number of you want to secure your travel arrangements (the venue will be London again). However, if you believe your time would be better spent submitting your comments through a written procedure I will make arrangements to cancel the meeting in February and find an alternative date in a few months.

kind regards

Eileen

Head of Secretariat

UPC Preparatory Committee

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CONFIDENTIAL (not to be cascaded) **January 2015**

Proposed court fees, detailed case load and distribution estimates, and assumptions made

Scope and limitations of this document

The aim of this document is to lay out the current working assumptions that have been made to inform the UPC fees schedule. In making assumptions we have considered the 2011 study by DG Markt. However, we have not used these assumptions in favour of using more up to date data. In the absence of reliable data on applicant behaviour, estimates of case load were taken from the UPC indicative costs model (based on current German experience and our earlier group discussion), where available, or were decided by the Court fees sub group, which comprises representatives from the Legal and Financial Aspects working groups.

Given the difficulty in arriving at estimates, which will be influenced by things like the opt out, Court fees and confidence in the Court, these estimates may not be reflective of the UPC once it is up and running. In particular, there is no reliable evidence of caseloads at the UPC, how many actions will be filed as part of these cases, or the form they will take. Assumptions have also been made relating to the value of cases and the distribution of this value. Again, in the absence of evidence, assumptions have been made based on data from Germany, which has a value based fee system. However, there is no guarantee that the UPC will follow the trends displayed in the German system, although it is by far the most significant forum for European patent litigation.

It is intended that fee reimbursements will also be available in certain circumstances at the UPC. As there is no data on reimbursements, working assumptions have been made based on limited experience and prediction. As a consequence the estimates and assumptions made and detailed in this document cannot be robust. As a result, the outputs from this exercise and the estimated revenues in particular are illustrative only and a significant margin of error may be required. However, they provide an indication of the possible levels of revenue for the Court. The fees will need to be revised in the light of the functioning of the Court and later evidence.

Sections

1. Caseload estimates

1.1. General estimates

- General case load estimates are taken from the costs model as follows:

Table 1 - Costs model case load estimates

Type of Action	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Infringement	120	240	360	480	600	720	840	960
Revocation	45	90	135	180	225	270	315	360
Appeal	15	30	45	60	75	90	105	120
Total	180	360	540	720	900	1,080	1,260	1,440

- It has been assumed that "Revocation" relates to the number of revocations and counterclaims for revocation
- It has been assumed that "Appeal" relates to the number of appeals as per r220.1(a) and r220.1(b)

1.2. Detailed case load estimates

Table 2 - Occurrences of actions eligible for a fixed and value based fee

Action eligible for fixed and value based fees	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	Yr 6	Yr 7	Yr 8
Infringement action	120	240	360	480	600	720	840	960
Revocation	36	72	108	144	180	216	315	288
Counterclaim for infringement	10	15	20	25	30	35	40	45
Declaration of non infringement	10	20	30	40	50	60	70	80
Action for compensation for license of right	5	10	15	20	25	30	35	40
Application to determine damages	10	20	30	40	50	60	70	3
Appeal pursuant to r 220.1	15	30	45	60	75	90	105	120
Total	206	407	608	809	1,010	1,211	1,475	1,613

Table 3 - Occurrences of actions incurring a fixed fee only

Action incurring a fixed fee only	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8
Counterclaim for revocation	9	18	27	36	45	54	63	72
Application for provisional measures	24	48	72	96	120	144	168	192
Application for opt out	50,000	14,000	14,000	14,000	14,000	14,000	14,000	14,000
Application for withdrawal of opt out	0	140	1,400	2,800	2,800	2,800	2,800	2,800
Action against a decision of the EPO	30	60	90	120	150	180	210	240
Application to preserve evidence	72	144	216	288	360	432	504	576
Application for an order for inspection	5	5	10	15	20	25	30	35
Application for an order to freeze assets	5	5	10	15	20	25	30	35
Lodging a protective letter	5	10	15	20	25	30	35	40
Prolong a period a letter is kept on the register	5	10	15	20	25	30	35	40
Application for leave of an appeal r221	10	20	30	40	50	60	70	80
Discretionary review r220.2	5	10	15	20	25	30	35	40
Interlocutory appeals (r220.1(c))	5	10	15	20	25	30	35	40
Application for a rehearing	5	10	15	20	25	30	35	40
Application for re-establishment of rights	5	10	15	20	25	30	35	40
Application to review a case management order	5	10	15	20	25	30	35	40
Application to set aside a decision by default	5	10	15	20	25	30	35	40
Total load case estimates	50,312	14,454	15,876	17,438	17,600	17,762	17,924	18,086
Minus opt out	312	454	1,876	3,438	3,600	3,762	3,924	4,086

1.3. Case load assumptions

- The number or "occurrences" of all actions are estimates. In particular:
  - It has been assumed that 7.5% of infringement actions will have counterclaims for revocation
  - 20% of infringement actions will have provisional measures filed

- 60% of infringement actions will also have applications to preserve evidence filed.
- 50,000 opt outs will be filed in year 1
- For other years, 14,000 opt outs will be filed yearly, which is approximately 10% of the number of EP applications filed in 2013.

1.4. Distribution of value based fee actions

Table 4 - Percentage distribution of value based fee actions

Value (€)	Percentage distribution	Year 1 Number of actions (to 1 decimal place)	Year 8 Number of actions (to 1 decimal place)
Up to and including 500,000	25%	51.5	403.3
Up to and including 750,000	20%	41.2	322.6
Up to and including 1 million	15%	30.9	242.0
Up to and including 1,5 million	10%	20.6	161.3
Up to and including 2 million	10%	20.6	161.3
Up to and including 3 million	5%	10.3	80.7
Up to and including 4 million	5%	10.3	80.7
Up to and including 5 million	2%	4.1	32.3
Up to and including 6 million	2%	4.1	32.3
Up to and including 7 million	1%	2.1	16.1
Up to and including 8 million	1%	2.1	16.1
Up to and including 9 million	1%	2.1	16.1
Up to and including 10 million	1%	2.1	16.1
Up to and including 15 million	0.5%	1.0	8.1
Up to and including 20 million	0.5%	1.0	8.1
Up to and including 25 million	0.5%	1.0	8.1
Up to and including 30 million	0.25%	0.5	4.0
Over 30 million	0.25%	0.5	4.0

1.5. Assumptions regarding the distribution of value based fees

- Value based fees are only payable on actions valued above 500,000 €
- Of the actions which incur a fixed and value based fee, in 75% of occurrences a value based fee will be payable alongside the fixed fee. In 25% of cases only a fixed fee will be paid
- DE Figures show that 7% of cases are valued above 4 million. To reflect the high value of the UPP, 10% of actions have been valued above € 4,000,000.

2. Revenues

2.1. *Fixed fees*

Table 5 – Proposed fixed fee schedule

Action	Fixed fee (€)
Infringement action	11,000
Revocation	11,000
Counterclaim for Infringement	11,000
Declaration of non infringement	11,000
Action for compensation for license of right	11,000
Application to determine damages	11,000
Appeal pursuant to r 220.1	21,000
Other counterclaims pursuant to Article 32(1)(a) UPCA	11,000
Counterclaim for revocation	11,000
Application for provisional measures	11,000
Application for opt out	0 or 80
Application for withdrawal of opt out	0
Action against a decision of the EPO	1,000
Application to preserve evidence	350
Application for an order for inspection	350
Application for an order to freeze assets	3,000
Lodging a protective letter	200
Prolong a period a letter is kept on the register	100
Application for leave of an appeal r221	3,000
Request for discretionary review (r220.2, 228)	1,500
Interlocutory appeal (r220.1(c))	3,000
Application for a rehearing	2,500
Application for re-establishment of rights	350
Application to review a case management order	300
Application to set aside a decision by default	1,000

- Revenues from the action "other counterclaims pursuant to Article 32(1)(a)" have not been modelled and are not included in total revenues for the Court. It is assumed that such counterclaims will be infrequent.
- There are two options for the fee for the opt out: 0 € or 80 €.
- We have assumed that any fee for the opt out will be set at a level that allows for cost recovery only, and should not result in any additional income or loss for the court.
- As any opt out fee should effectively pay for itself and have no other effect on the revenue, we have modelled a fee of 0 €.

2.2. *Value based fees*

Table 6 - Proposed value based fee schedule

Value (€)	Cost (€)
Up to and including 500,000	0
Up to and including 750,000	2,500
Up to and including 1 million	5,000
Up to and including 1,5 million	10,000
Up to and including 2 million	15,000
Up to and including 3 million	20,000
Up to and including 4 million	25,000
Up to and including 5 million	30,000
Up to and including 6 million	35,000
Up to and including 7 million	40,000
Up to and including 8 million	45,000
Up to and including 9 million	50,000
Up to and including 10 million	55,000
Up to and including 15 million	70,000
Up to and including 20 million	85,000
Up to and including 25 million	115,000
Up to and including 30 million	150,000
Over 30 million	220,000

2.3. *Estimated revenues based on proposed fixed and value based fees*

Table 7 - Estimated revenues in € (no reimbursements and where revenue from the opt out fee is not included) Revenues are rounded to the nearest 100,000 €

	Year 1	Year 2	Year 3	Year 4
Total Revenues	5,300,000	10,400,000	15,500,000	20,700,000
	Year 5	Year 6	Year 7	Year 8
	25,800,000	30,900,000	37,500,000	41,200,000

3. Reimbursements

- Reimbursements will be offered when:

  (a) Parties agree to have a case heard by a single judge
  (b) Parties settle or withdraw their actions, or a decision by default is given by the Court.

- The court fees consultation document states that, where a party is entitled to more than one reimbursement, only one reimbursement will be applied and that it will be the largest of the applicable reimbursements.

3.1. Estimated revenues after a single judge reimbursement (table 8) and a reimbursement for settlement, withdrawal or decision by default (table 9)

Table 8 - Estimated revenues in € after reimbursements for the "single judge" option. Revenues are rounded to the nearest 100,000 €

Total Revenues after single judge reimbursement	Year 1	Year 2	Year 3	Year 4
	5,100,000	10,000,000	15,000,000	19,900,000
	Year 5	Year 6	Year 7	Year 8
	24,800,000	29,600,000	36,000,000	39,500,000

Table 9 - Estimated revenues in € after reimbursements for settlement, withdrawal or decision by default, revenues are rounded to the nearest 100,000 €

Total Revenues after reimbursement for settlement, withdrawal or decision by default	Year 1	Year 2	Year 3	Year 4
	5,000,000	9,900,000	14,700,000	19,600,000
	Year 5	Year 6	Year 7	Year 8
	24,500,000	29,400,000	35,600,000	39,100,000

- The cost of the reimbursements to the court is as follows. As the figures have been rounded to the nearest 100,000 €, the costs and revenues may not total the revenues listed in table 7.

Table 10 - Cost of single judge reimbursement in €, rounded to the nearest 100,000 €

Cost of the single judge reimbursement	Year 1	Year 2	Year 3	Year 4
	200,000	300,000	600,000	800,000
	Year 5	Year 6	Year 7	Year 8

[redacted]	1,000,000	1,200,000	1,500,000	1,700,000

Table 11 - Cost of reimbursements for settlement, withdrawal or decision by default, rounded to the nearest 100,000 €

Cost of the reimbursements for settlement, withdrawal or decision by default	Year 1	Year 2	Year 3	Year 4
	300,000	500,000	800,000	1,000,000
	Year 5	Year 6	Year 7	Year 8
	1,300,000	1,600,000	1,900,000	2,100,000

3.2. Assumptions relating to the type, occurrence and amount of reimbursement

- There will not be a scenario where both types of reimbursement are applied together.
- **Single judge:** 15% of cases will be heard by a single judge. A discount of 30% will be applied. The court fees model currently only models the reimbursement for actions that are eligible for fixed and value based fees.
- **Settlement/withdrawal/decision by default:** 40% of cases will settle, withdraw or be subject to a decision by default before the end of the oral hearing. The level of fee reimbursement is dependent on where a settlement/withdrawal/decision occurs. The court fees model currently only models the reimbursement for actions that are eligible for fixed and value based fees.

Table 12 – Reimbursement (settlement/withdrawal/decision by default) level and frequency

Reimbursement	When	Occurrence (of the 40%)
65%	If the decision is handed down within the written procedure	20%
45%	If the decision is handed down within the interim procedure	50%
25%	If the decision is handed down within the oral procedure	30%

3.3. *How the reimbursements were calculated*

- **Single judge:** When calculating the distribution of the reimbursement, the proportion of reimbursements for a given fixed fee action reflected the occurrence of the action. When calculating the reimbursements for value based fees, there was a general assumption that there were fewer high value cases than lower value cases, and therefore fewer reimbursements of high value cases than reimbursements of lower value cases, as follows:

Table 13 - Distribution of actions with a value based fee for single judge reimbursement

Value of action (€)	*Occurrences of actions with a value based fee*							
	Year 1	*Year 2*	*Year 3*	*Year 4*	*Year 5*	*Year 6*	*Year 7*	*Year 8*
[0,5-0,75)	8	14	18	25	30	35	40	50
[0,75-1,00)	2	9	17	20	25	30	35	40
[1-1,5)	3	5	6	9	9	20	25	25
[1.5-2,0)	3	5	5	7	8	9	10	8
[2,0-3,0)	2	4	5	5	7	8	9	8
[3,0-4,0)	2	2	4	5	6	6	8	7
[4,0-5,0)	1	2	3	4	6	5	6	7
[5,0-6,0)	1	1	2	3	5	4	6	6
[6,0-7,0)		1	2	3	4	3	5	4
[7,0-8,0)			2	2	3	3	4	4
[8,0-9,0)			1	2	2	2	3	3
[9,0-10,0)				1	2	1	2	3
up to 15 million					1	1	1	2
up to 20 million						1	1	2
up to 25 million						1	1	1
up to 30 million							1	1
30 million and over								1

- **Settlement/withdrawal/decision by default:** When calculating the distribution of the reimbursement, the proportion of reimbursements for a given fixed fee action reflected the occurrence of the action. Similarly, when calculating the reimbursements for value based fees, the distribution of the value reflected the distribution laid out in table 4 of this document.

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January 14th 2014
version 19 clean

Consultation Document

Legal and Financial Working Group

Rules on Court fees and recoverable costs

I. 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

II. Explanatory Note

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) UPCA.

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 adopted by the Administrative Committee for the following actions:

(1.) Infringement action [R. 15]
[(2.) Counterclaim for revocation [R. 26]][1]
(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.) Appeal pursuant to Rule 220.1 (a) and (b) [R 228]
(9.) Other counterclaims pursuant to Article 32 (1) (a) UPCA

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 and actions a fee shall be paid in accordance with section III (other procedures and actions) of the table of fees adopted by the Administrative Committee:

[1] see "3. Counterclaim for revocation" on page 13 of the Explanatory Note

[(1.) Counterclaim for revocation [R. 26]][2]

(2.) Application for provisional measures [R. 206.5]

(3.) Application for opt-out [R. 5.5]

(4.) Application for withdrawal of an opt-out [R. 5.8]

(5.) Action against a decision of the European Patent Office [R. 88.3]

(6.) Application to preserve evidence [R. 192.5]

(7.) Application of an order for inspection [R.199.2]

(8.) Application of an order to freeze assets [R. 200.2]

(9.) Lodging a protective letter [R. 207.3]

(10.) Prolong the period of a protective letter kept on the register [R.207.8]

(11.) Application for leave to appeal [R. 221]

(12.) Interlocutory appeals [R. 220.1 (c)]

(13.) Request for discretionary review [R. 220.2, R. 228]

(14.) Application for rehearing [R. 250]

(15.) Application for re-establishment of rights [R. 320.2]

(16) Application to review a case management order [R. 333.3]

(17.) 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. Reimbursements of fixed and value-based fees

(a) If the action is heard by a single judge (Rule 345.6.) the debtor of the Court fees will be reimbursed by 30 %.

(b) In case of a decision by default (Rules 355-357) the debtor of the Court fees will be reimbursed by

65 %	if the decision is handed down before the conclusion of the written procedure
45 %	if the decision is handed down before the conclusion of the interim procedure
25 %	if the decision is handed down before the conclusion of the oral procedure

(c) In case of the withdrawal of an action (Rule 265) the debtor of the Court fees will be reimbursed by

[2] see "3. Counterclaim for revocation" on page 13 of the Explanatory Note

65 %	if the action is withdrawn before the conclusion of the written procedure
45 %	if the action is withdrawn before the conclusion of the interim procedure
25 %	if the action is withdrawn before the conclusion of the oral procedure

(d) If the parties have concluded their action by way of settlement the debtor of the Court fees will be reimbursed by

65 %	if the action is settled before the conclusion of the written procedure
45 %	if the action is settled before the conclusion of the interim procedure
25 %	if the action is settled before the conclusion of the oral procedure

(e) Only one of the reimbursements referred to in subsection (a), (b), (c) and (d) will apply per action and party. Where more than one reimbursement is applicable, the larger will be applied for each party.

(f) In exceptional cases, having regard, in particular, to the stage of the proceedings and the conduct of the party, the Court may decide to deny or decrease the reimbursement according to subsection (b), (c) and (d) of the aforementioned provisions.

8. If the amount of payable Court fees threatens the economic existence of a party, who is not a natural person, and has presented reasonably available and plausible evidence to support that the amount of Court fees threatens its economic existence, the Court may upon request by that party, reimburse the fixed fee and reduce the value-based fee to be paid. The request shall be decided by the Court without delay. In reaching a decision the Court shall reflect on all circumstances of the case and shall take into account the conduct of the party.

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

Actions	Fixed fee
Infringement action [R. 15]	11.000 €
[Counterclaim for revocation [R. 26]][3]	[11.000 €]
Revocation action [R. 47]	11.000 €
Counterclaim for infringement [R. 53]	11.000 €

[3] see "3. Counterclaim for revocation" on page 13 of the Explanatory Note

Declaration of non-infringement [R. 68]	11.000 €
Action for compensation for license of right [R. 80.3]	11.000 €
Application to determine damages [R. 132]	11.000 €
Appeal pursuant to Rule 220.1 (a) and (b) [R 228]	21.000 €
Other counterclaims pursuant to Article 32 (1) (a) UPCA	11.000 €

II. Value-based fees

Value of action	additional value-based fee
Up to and including 500.000 €	0 €
Up to and including 750.000 €	2.500 €
Up to and including 1.000.000 €	5.000 €
Up to and including 1.500.000 €	10.000 €
Up to and including 2.000.000 €	15.000 €
Up to and including 3.000.000 €	20.000 €
Up to and including 4.000.000 €	25.000 €

Up to and including 5.000.000 €	30.000 €
Up to and including 6.000.000 €	35.000 €
Up to and including 7.000.000 €	40.000 €
Up to and including 8.000.000 €	45.000 €
Up to and including 9.000.000 €	50.000 €
Up to and including 10.000.000 €	55.000 €
Up to and including 15.000.000 €	70.000 €
Up to and including 20.000.000 €	85.000 €
Up to and including 25.000.000 €	115.000 €
Up to and including 30.000.000 €	150.000 €
more than 30.000.000 €	220.000 €

III. Other procedures and actions

Procedures/actions	**Fixed Fee**
[Counterclaim for revocation [R. 26]][4]	[11.000 €]
Application for provisional measures [R. 206.5]	**11.000 €**

[4] see "3. Counterclaim for revocation" on page 13 of the Explanatory Note

Application for opt-out [R. 5.5]	[80 €] [0 €]
Application for withdrawal of an opt-out [R. 5.8]	0 €
Action against a decision of the European Patent Office [R. 88.3]	1.000 €
Application to preserve evidence [R. 192.5]	350 €
Application of an order for inspection [R. 199.2]	350 €
Application of an order to freeze assets [R. 200.2]	3.000 €
Lodging a protective letter [R. 207.3]	200 €
Application to prolong the period of a protective letter kept on the register [R. 207.8]	100 €
Application for leave to appeal [R. 221]	3.000 €
Interlocutory appeals [R. 220.1(c.)]	3.000 €
Request for discretionary review [R. 220.2, 228]	1.500 €
Application for rehearing [R. 250]	2.500 €
Application for re-establishment of rights [R. 320.2]	350 €
Application to review a case management order [R. 333.3]	300 €
Application to set aside decision by default [R. 356.2]	1.000 €

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:

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Value of the dispute (million €)	Ceiling for recoverable costs of representation per instance and party
0 – 0,5	Up to 100.000 €
0,5 – 4,0	Up to 250.000 €
4,0 –	Up to 500.000 €

II. Explanatory Note

A. Rule 370 RoP

The Unified Patent Court Agreement (in the following "the Court" and "the Agreement") contains a set of principles on which the structure and the level of Court fees have to be built.

Article 36 (1) of the Agreement contains the principle, that the budget of the Court shall be financed by the Court's own financial revenues, namely Court fees (Article 36 (2) of the Agreement) paid by the parties (Article 70 of the Agreement), and, at least in the transitional period referred to in Article 83 of the Agreement as necessary, by contributions from the Contracting Member States. Where the Court is unable to balance its budget out of its own resources, the Contracting Member States shall remit special financial contributions (Article 36 (4) of the Agreement).

As to the structure of Court fees the Agreement provides in Article 36 (3) that the Court fees shall consist of a fixed fee, combined with a value-based fee above a predefined ceiling. In this context the "Declaration of the Contracting Member States concerning the preparations for the coming into operation of the Unified Patent Court" specifies that the Signatory States consider that the fee system of the Court should be straightforward and predictable for the users. Accordingly, the Court should apply a mixed system of fixed and value-based fees. To this end the Legal Working Group has presented its draft proposal to the Preparatory Committee PC/08/180314 setting out – on the basis of the draft Rules of Procedure – the individual procedures for which fixed fees and value-based fees should be paid.

On this basis the Legal and Financial Working Groups suggest an appropriate level of Court fees. The basis is an estimation of the expected volume of activity, staff and operating costs. These estimates served as point of reference for the calculation of the Court fees which at the end of the transitional period will need to ensure a self-financing state.

Fee-reimbursements and reductions

Rule 370 (7) provides for fee-reimbursements

- if the action is heard by a single judge,
- in case of a decision by default,
- in case of the withdrawal of action and
- if the parties have concluded their action by way of settlement.

It is assumed, that in all these cases the Court has to work less. Therefore, a reduced fee seems reasonable. In order to prevent misuse the Court is allowed to deny or to decrease the level of reimbursement depending on all circumstances.

According to Rule 370 (8), the Court may upon request by a party, who is not a natural person, reimburse the fixed fee and reduce the value-based fee to be paid if the payment of those fees threatens the economic existence of that party. Such a request shall be administered by the Court without delay.

SME Support

Article 36 (3) of the Agreement states that "The Court fees shall be fixed at such a level as to ensure a right balance between the principle of fair access to justice, in particular for small and medium-sized enterprises, micro-entities, natural persons, non-profit organizations, universities and public research organizations and an adequate contribution of the parties for the costs incurred by the Court, recognising the economic benefits to the parties involved, and the objective of a self-financing Court with balanced finances. (...) Targeted support measures for small and medium-sized enterprises and micro entities may be considered". The Declaration attached to the Agreement develops this point further and suggests that "The Court should be accessible for parties with limited resources. (...) The fee system should provide adequate and specific tools to ensure proper access for small and medium-sized enterprises, micro entities, natural persons, non-profit organizations, universities and public research organizations to the Unified Patent Court, especially in relation to cases of high economic value".

Any support measures need to be looked at from a legal and a financial angle. A differentiation of Court fees according to nature and size of a party may raise legal questions about the principle of equality of arms of parties before a court. Financially any such differentiation of fees for one group would have to be compensated by

higher fees from other users. The resulting additional administration would also drive up associated costs and therefore increase the amount that needs to be recouped in order to deliver a self sustaining Court by the end of the transition period. For these reasons, amongst others, we have not provided distinct fee reductions for SMEs or others, but instead created an accessible fee structure for all that balances fair access to justice with the need for a sustainable Court.

The fee levels suggested are the lowest that will enable sustainability of the Court. In addition, a number of measures will be provided that, whilst available to all, are understood to be generally preferred by SMEs and the other entities listed above. These include Legal Aid for natural persons under the Agreement, rebates for early settlement [R. 370 (7) (d)], for withdrawal [R. 370 (7) (c)], for use of a single judge [R. 370 (7) (a)] and a rebate/reduction, where the amount of Court fees threatens a party`s economic existence [R. 370 (8)], and detailed guidance on how to use the Court.

B. Schedule for fixed and value-based fees

I. Structure

1. Fixed fee

It is assumed that 25% of actions filed at the Court will fall below a threshold of 500.000 €. The experience in Germany, one of the few Member States who operate a value based system, has shown that nearly one quarter of the cases has a value of up to 250.000 €. As the EU-wide scope of UPC judgments will increase the value, we have doubled this amount to reach our proposed threshold for the value-based fee.

2. Value-based fee

The consideration that users with more significant economic interests should provide a corresponding contribution to the Court is reflected in Table II.

Again using experience in Germany as a guide, we estimate that 90 % of all actions will have a value of up to 4.000.000 €.

3. Counterclaims for revocation

Views as to the treatment of counterclaims for revocation are split; therefore the current proposal as to counterclaims for revocation is bracketed. Two differing opinions on the fee for a counterclaim for revocation have arisen during the discussions of the Legal and Financial Working Groups:

One group is of the opinion that a defendant who files a counterclaim for revocation should only pay a fixed Court fee for that action while a fixed and a value-based fee is due for direct revocation actions. The reason for this view is that a counterclaim for revocation is seen as a defence action against the action for infringement and according to this view it does not seem justifiable to also charge a value-based Court fee. Charging of a value-based Court fee could deprive the defendant of an infringement action the right for a defence.

According to the other group the revocation action and the counterclaim for revocation should be treated equally (fixed and value-based fee) for the following reasons: Both, a revocation action and a counterclaim for revocation are actions in which the Court is asked to revoke the patent with erga omnes effect. In that sense, a counterclaim for revocation is not just a pure defence, it is a counter attack with a much wider impact. This would be different if a simple "plea for invalidity" by the defendant of the infringement action would be possible leaving the validity of the patent otherwise untouched. However, this possibility was deliberately not considered in the Agreement. Even if one would want to view a counterclaim for revocation as a defence measure one would, however, need to also view a direct action for revocation as a measure of defence: Companies hardly ever start direct revocation actions without a concern that they would want to prevent becoming a defendant of an infringement action. Different pricing of direct revocation action and counter claim for revocation should not influence the party in which way it would best pursue its interest. Finally, different pricing of both remedies would, at the level of the fees, upset the delicate balance of the bifurcation compromise which the Member States after so a long debate have reached in the UPC Agreement.

II. Level

The proposed Court fees are based on estimates of costs and volumes. It is clear from the Agreement that contracting Member States will have to subsidise the Court through its early life and through the provision of facilities and, during the transitional period, of administrative support staff.

Costs are estimated to be around 30.000.000 € in year 8. As these costs can only be fairly roughly estimated until the Court is established, it will be essential that the Court regularly reviews fees and costs based on its work load.

C Scale of ceilings for recoverable costs

According to Article 69 (1) of the Agreement the unsuccessful party shall bear reasonable and proportionate costs and other expenses incurred by the successful party up to a ceiling set in accordance with the Rules of Procedure. The issue of recoverable costs consists of two parts: (1.) the specification of which costs shall be recoverable and (2.) the determination of a ceiling for the recoverable costs.

1) Recoverable costs

According to R. 150 RoP the costs incurred in the proceedings by the Court as well as the costs of the successful party are recoverable costs [e.g. costs for simultaneous interpretation, witnesses (R. 180 RoP), court experts (R. 185.7 RoP), experiments (R. 201 RoP), letters rogatory (R. 202 RoP) representation (R. 152 RoP) and Court fees].

2) Ceiling for recoverable costs

As regards the ceiling for the recoverable costs the first question is, whether all those costs should be subject to a ceiling. It follows from R. 152.1 that the successful party shall be entitled to recover reasonable and proportionate costs for representation. In R 152.2 the Administrative Committee shall adopt a scale of recoverable costs which shall set ceilings for such costs by reference to the value of the dispute. This scale may be adjusted from time to time.

The aim of a cost-ceiling is to safeguard the losing party against excessive cost burdens. The threat of such cost burdens does not emanate from costs incurred by the Court, but rather from the expenses incurred by the other party, especially the costs for representatives. The Court fees will not be an unreasonable and unpredictable cost factor. Against this background it is appropriate that representation costs should be subject to a ceiling. Furthermore, R.153 and 155 refer to which rates of payment experts, interpreters and translators should be compensated with.

Having determined the costs for which a ceiling has to be adopted it is necessary to propose an appropriate structure for a scale of these recoverable costs. It is possible to establish only one ceiling for all recoverable costs. However, such an approach would not seem to adequately take into account the fact that costs incurred may differ according to the value of the dispute. Therefore, it seems preferable that the extent of

recoverable costs depends on the value of the dispute, which is in conformity with R. 152 (2) RoP.

Due to the fact that there is no common legal basis within the 25 Member States as to the question what reasonable representation costs are and when they become excessive, a wide range of ceilings has been discussed. For example, for a case with value up to 500.000 € the discussed ceilings ranged from 24.000 € to 200.000 € per instance, i.e. differing almost by a factor of 10. In this context, the proposed ceilings are steering a middle course and are the result of a compromise reached after thorough discussions. In the light of practice of the Agreement the ceilings may in the future be adjusted according Article 69 (1) of the Agreement and R. 152.2.

It is proposed that each ceiling for recoverable costs of representation is applicable per instance and party.

D. Assessment of the value of the action

Whether a value-based fee has to be paid depends in principal on two requirements: the specific action and the value of the action. Only if the value of the action exceeds a certain amount, which is covered by the fixed fee, the consequence of a value-based fee is activated.

R. 370.6 RoP states that:

"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."

Usually, the objective interest differs from action to action. The Legal and Financial Working Groups are therefore considering providing guidelines for parties to facilitate the assessment of the value of the actions. As only the German system has experience with court fees based on the case value, the guidelines for the evaluation may be derived from the German caselaw. On the one hand, such guidelines are suitable to facilitate the work of the Court in its first years, until case law of the Court has been developed. On the other hand, such guidelines would limit the discretion of the Court and the chance to build up a new system. The question regarding the need

for and the more precise format and content of guidelines will be dealt with after the consultation and taken up with the Expert Panel.