

欧州単一効特許及び統一特許裁判所

1. 統一特許裁判所(UPC)の費用

(1)概要

統一特許裁判所(UPC)準備委員会(Preparatory Committee)は、2016年2月25日に、UPCの裁判費用(Court fees)と回収可能費用(recoverable costs)の規則を承認した。この規則は、今後、法的練磨(legal scrubbing)に晒されることになるが、透明性を担保し、また委員会の最新情報を提供する目的から、議長により公開が決定された。

<https://www.unified-patent-court.org/news/upc-court-fees-and-recoverable-costs>

(2)費用

公開されたのは、Preparatory Committee for the Unified Patent Court, Rules on Court fees and recoverable costs (February 25th, 2016)であり、

https://www.unified-patent-court.org/sites/default/files/agreed_and_final_r370_subject_to_legal_scrubbing_to_secretariat.pdf

これには、section I(fixed fees), section II(value-based fees), section III(other procedures and actions), section IV(Court of Appeal)に分けて費用が示されている。

Section I~IVの表を以下に示す。

I. Fixed fees (Court of First Instance)

Procedures/actions	Fixed fee
Infringement action [R. 15]	11.000 €
Counterclaim for infringement [R. 53]	11.000 €
Action for 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]	3.000 €

II. Value-based fees (Court of First Instance and Court of Appeal)

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 €	4.000 €
Up to and including 1.500.000 €	8.000 €
Up to and including 2.000.000 €	13.000 €
Up to and including 3.000.000 €	20.000 €
Up to and including 4.000.000 €	26.000 €
Up to and including 5.000.000 €	32.000 €
Up to and including 6.000.000 €	39.000 €
Up to and including 7.000.000 €	46.000 €
Up to and including 8.000.000 €	52.000 €
Up to and including 9.000.000 €	58.000 €
Up to and including 10.000.000 €	65.000 €
Up to and including 15.000.000 €	75.000 €
Up to and including 20.000.000 €	100.000 €
Up to and including 25.000.000 €	125.000 €
Up to and including 30.000.000 €	150.000 €
Up to and including 50.000.000 €	250.000 €
more than 50.000.000 €	325.000 €

III. Other procedures and actions (Court of First Instance)

Procedures/actions	Fixed Fee
Revocation action [R. 47]	20.000 €
Counterclaim for revocation [R. 26]	same fee as the infringement action subject to a fee limit of 20.000 €
Application for provisional measures [R. 206.5]	11.000 €
Action against a decision of the European Patent Office [R. 88.3, 97.2]	1.000 €
Application to preserve evidence [R. 192.5]	350 €
Application for an order for inspection [R. 199.2]	350 €
Application for an order to freeze assets [R. 200.2]	1.000 €
Filing 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 to review a case management order [R. 333.3]	300 €
Application to set aside decision by default [R. 356.2]	1.000 €

IV. Court of Appeal

Appeals/applications	Fee
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to an application for provisional measures [R. 206.5]	11.000 €
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to an infringement action [R. 15]	11.000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to a counterclaim for infringement [R. 53]	11.000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to a revocation action [R. 47]	20.000 €
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to a counterclaim for revocation [R. 26]	fee paid in the first instance
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to an action for declaration of non-infringement [R. 68]	11.000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to an action for compensation for license of right [R. 80.3]	11.000 € + additional value-based fee according to table II
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to an application to determine damages [R. 132]	[3.000 € + additional value-based fee according to table II]
Application for rehearing [R. 250]	2.500 €
Appeal pursuant to Rule 220.1 (a) and (b) [R 228] as to an action against a decision of the European Patent Office [R. 88.3, 97.2]	1.000 €
Interlocutory appeals [R. 220.1(c.), 228]	3.000 €
Application for leave to appeal against cost decisions [R. 221, 228]	1.500 €
Request for discretionary review [R. 220.3, 228]	350 €
Application for re-establishment of rights [R. 320.2]	350 €

(2) オプトアウト(適用除外)の申請及び取下げの費用

管轄を統一特許裁判所ではなく各国裁判所とするためのオプトアウト(適用除外)の費用としては、80ユーロが提案されていたが、2016年2月25日の統一特許裁判所準備委員会において、オプトアウトの申請及び取下げの費用は無料とするとの決定を行った。

これに関し、Preparatory Committee for the Unified Patent Court, Rules on Court fees and recoverable costs (February 25th, 2016)の「Explanatory Note」において、「One of the few areas of clear consensus in consultation responses was that the opt-out fee should be removed or lowered to reflect the commitment made by the Preparatory Committee that the fees for both the opt-out and its withdrawal are set to reclaim administrative costs only and that the Court would not profit from either of these.」と言及されている。

https://www.unified-patent-court.org/sites/default/files/agreed_and_final_r370_subject_to_legal_scrubbing_to_secretariat.pdf

2. 英国の動向

英国では、EU 離脱の国民投票が 2016 年 6 月 23 日に予定されている。英国が EU から脱離すると、統一特許裁判所の枠組み(UPC Agreement)からも外れることを意味する。これに関し 2016 年 3 月付の EPO の資料「Unitary patent protection and Unified Patent Court」によれば、以下のとおり説明されている。

「英国における UPC Agreement の批准作業の現状」

- 英国は、本年夏前に、UPC Agreement の批准作業に入り、国民投票の結果が出るまでは待つことはない
と表明しているが、批准は国民投票の前に完了することはないと思われる。

「英国の脱 EU(Brexit)の UPC Agreement への影響」

- 今後生じる可能性のある英国の脱 EU(Brexit)は、即座に法律上の効力を生じることはないだろうし、むしろネゴシエーションの対象となり、それには数年が必要となるだろう。
- 英国が UPC に留まることを許し、英国に批准作業を完了させるように誘導する解決法が見出される必要があるだろう。

以上