



Administrative Committee

Scale of ceilings for recoverable costs

24 April 2023

Explanatory Note

The Administrative Committee (AC), according to Rule 152.2 Rules of Procedure of the Unified Patent Court (“RoP”), is adopting a scale of ceilings for recoverable costs.

The draft decision submitted in this document contains a proposal for such ceilings.

The proposal has been prepared by the Legal Working Group with the involvement of participating Member States. The scale of ceilings has been presented to and discussed by the Preparatory Committee of the UPC on various occasions and were finally approved at its 14th meeting on 25 February 2016 on the basis of document PC/09/Feb2016. The outcome of these discussions had been included in the final document.

The submitted draft is subject only to editorial amendments and remains in substance otherwise unchanged.

DECISION OF THE ADMINISTRATIVE COMMITTEE OF 24 APRIL 2023 ON THE SCALE OF RECOVERABLE COST CEILINGS

THE ADMINISTRATIVE COMMITTEE

HAVING REGARD to Article 69 para. 1 of the Agreement on a Unified Patent Court (hereinafter: Agreement) and pursuant to Rule 152.2 of the Rules of Procedure of the Unified Patent Court (hereinafter: RoP),

CONSIDERING that:

- (1) Article 69 of the Agreement qualifies the general rule that the unsuccessful party shall bear the successful party's costs by a number of principles, which serve as important safeguards when the Court makes its decision on costs, by allowing for exceptions from the general rule or limiting its application. The ceiling on the recoverable representation costs is only one of the safeguards against undue cost recovery, and the last one to apply when the Court makes its decision on costs. Firstly, only reasonable and proportionate legal costs and other expenses incurred by the successful party may be recovered from the unsuccessful party. Moreover, equity may also serve as a self-standing ground for rendering the general rule inapplicable. Furthermore, in case of partial success or in exceptional circumstances, the Court may order the parties to bear their own costs, or apply a different apportionment of cost, based on equity. Unnecessary costs caused to the Court or the other party shall be borne by the party incurring them, which means that even the successful party has to reimburse costs caused that are deemed unnecessary by the Court. Only the recoverable costs established in compliance with these principles is measured against the ceilings set forth in this Decision. There is a large margin of appreciation for the Court when applying the safeguarding principles before making a cost decision, and thus, the ceilings are only to be regarded as a safety net, i.e. an absolute cap on recoverable representation costs applicable in every case.
- (2) In limited situations, such as the particular complexity of the case or multiple languages used in the proceedings having an impact on the representation costs, upon request by one party, the ceiling laid down in the Annex, having regard to the financial capability of all the parties in the light of the principle of fair access to justice may be raised up to a certain extent.
- (3) Upon request by one of the parties, the Court may lower the ceiling applicable in the Annex with regard to that party if, in the event that the requesting party is unsuccessful, the recoverable costs of representation to be awarded to the successful party would threaten the economic existence of the requesting party, especially if the latter is an SME, non-profit organisation, university, public research organisation or natural person. For this purpose the Court shall take into consideration all available information on the parties, including, where possible, the procedural behaviour of the parties, the applicable level of the ceiling for recoverable costs in comparison with the annual turnover of both parties, the type of economic activity of both parties, as well as the impact the lowering of the ceiling would have on the other party.

- (4) The Rules of Procedure shall apply mutatis mutandis when the Court decides on a request to raise or to lower the ceiling laid down in the Annex.
- (5) Apart from the regular adjustment pursuant to Rule 152.2, an early review of the scale of ceilings for recoverable costs is called for, with a view of possible amendments, in the light of the practice of how judges apply the cost recovery rules.

HAS ADOPTED THIS DECISION:

Article 1

- (1) The scale of ceilings for recoverable costs shall be set forth in the Annex.
- (2) The ceilings of recoverable costs shall apply to representation costs.
- (3) The ceiling shall be applied to each instance of the Court proceedings regardless of the number of parties, claims or patents concerned.
- (4) In case of partial success, the ceiling applicable in the case shall correspond to the proportion of success of the party seeking cost recovery.

Article 2

- (1) In limited situations, such as the particular complexity of the case or multiple languages used in the proceeding, the Court may upon request by one party, having regard to the financial capability of all the parties in the light of the principle of fair access to justice, raise the ceiling laid down in the Annex:
 - a) by up to 50 % of the applicable level in the scale corresponding to a value of the proceeding up to and including EUR 1 million;
 - b) by up to 25 % of the applicable level in the scale corresponding to a value of the proceeding of more than EUR 1 million and up to and including EUR 50 million;
 - c) up to EUR 5 million in cases with a value of the proceeding of more than EUR 50 million.
- (2) Upon request of one of the parties, the Court may lower the ceiling applicable with regard to that party if, in the event that the requesting party is unsuccessful, the amount of recoverable costs of representation to be awarded to the successful party would threaten the economic existence of the requesting party, in particular if the latter is an SME, non-profit organisation, university, public research organisation or natural person.
- (3) When deciding upon a request to lower the ceiling, the Court shall take into consideration the circumstances of the case and all available information on the parties, including, where possible, the procedural behaviour of the parties, the applicable level of the ceiling for recoverable costs in comparison with the annual turnover of both parties, the type of economic activity of both parties, as well as the impact the lowering of the ceiling would have on the other party.
- (4) A request to raise or lower the ceiling shall be made as soon as possible and practicable in the proceeding. This may be with the Statement of claim by the plaintiff, or with the Statement of defence by the defendant but shall be lodged in sufficient time to enable the Court

to make a decision before closure of the interim procedure. The request shall include all reasonably available evidence.

- (5) The request to raise or lower the ceiling shall be dealt with by the Court without delay after having heard the parties and at the latest before closure of the interim procedure.

Article 3

The Administrative Committee shall review this Decision within two years after the entry into force of the Agreement, and thereafter every three years.

Article 4

This Decision shall enter into force on 25 April 2023.

Done on 24 April 2023 (online meeting)

For the Administrative Committee

signed Johannes Karcher

The Chairperson

ANNEXScale of ceilings for recoverable costs

Value of the proceeding	Ceiling for recoverable costs
Up to and including 250.000 €	Up to 38.000 €
Up to and including 500.000 €	Up to 56.000 €
Up to and including 1.000.000 €	Up to 112.000 €
Up to and including 2.000.000 €	Up to 200.000 €
Up to and including 4.000.000 €	Up to 400.000 €
Up to and including 8.000.000 €	Up to 600.000 €
Up to and including 16.000.000 €	Up to 800.000 €
Up to and including 30.000.000 €	Up to 1.200.000 €
Up to and including 50.000.000 €	Up to 1.500.000 €
More than 50.000.000 €	Up to 2.000.000 €