

Kluwer Patent Blog

New Swiss Federal Patent Court Gets Down to Work (English translation of Guidelines and Regulations Available)

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As per January 1, 2012 the Swiss Federal Patent Court became effective.

The Federal Patent Court is **exclusively competent** for:

- a. validity and infringement disputes and actions for issuing a license in respect of patents;
- b. ordering preliminary measures prior to the filing of a complaint as defined in letter a;
- c. the enforcement of decisions adopted in its exclusive competence.

In addition, the Court is **also competent** for other civil actions possessing a factual connection to patents, in particular concerning the right to patents or their assignment. However, the competence of the Federal Patent Court shall not preclude that of the cantonal courts. It will be up to the plaintiff to choose the right court.

As some readers might already know, it is possible that the parties use **English** in their briefs and oral hearings provided that the Court and all parties give their consent. However, the judgment and procedural rulings shall be drafted in one of the official languages in any event (German, French, Italian or Rhaeto-Romanic).

Just in time, the legal basics (Patent Court Act of March 20, 2009) and, in particular, the **English translation of the new regulations and guidelines** for the proceedings before the Federal Patent Court are available on the Court's website.

The management of the Federal Patent Court adopted four Regulations:

- [Regulations on the Federal Patent Court](#)
- [Information Regulations of the Federal Patent Court](#)
- [Regulations on Litigation Costs at the Federal Patent Court](#)
- [Regulations on the Administrative Fees of the Federal Patent Court](#)

Patent litigators might be particularly interested in knowing the possible **court fees** and the **compensation** the prevailing party is entitled to.

The court fees depend on the value in dispute. The following amounts shall serve as a guideline for

calculating court fees:

Value in dispute in Swiss Francs / Court fees in Swiss Francs

up to 50,000 / 1,000–12,000

50,000–100,000 / 8,000–16,000

100,000–200,000 / 12,000–24,000

200,000–1,000,000 / 20,000–66,000

1,000,000–3,000,000 / 60,000–120,000

3,000,000–5,000,000 / 80,000–150,000

over 5,000,000 / 100,000–150,000

The compensation for professional legal representation costs is also governed by the value in dispute. It is calculated within the following ranges according to the significance, difficulty and extent of the dispute and the attorney's time spent for services rendered.

Value in dispute in Swiss Francs / Compensation for professional legal representation costs in Swiss Francs

up to 50,000 / 2,000–16,000

50,000–100,000 / 10,000–24,000

100,000–200,000 / 12,000–32,000

200,000–1,000,000 / 24,000–70,000

1,000,000–3,000,000 / 40,000–110,000

3,000,000–5,000,000 / 70,000–150,000

over 5,000,000 / 100,000–300,000

In summary proceedings, the compensation for professional legal representation costs is generally reduced to 30–50 percent.

The two following Guidelines seem to be of particular importance for the legal practitioners.

- [Guidelines on Proceedings before the Federal Patent Court](#)
- [Guidelines on Independence](#)

The Guidelines on Proceedings before the Federal Patent Court sketch out the intended proceedings. However, it makes clear that the Federal Patent Court intends to conduct its proceedings in accordance with those Guidelines but that the decision on how to proceed in a

specific case shall be left to the discretion of the competent panel of judges.

Another interesting document is the Guidelines on Independence of the judges. Since most of the judges are part-time judges appointed on a case by case basis their independency will become crucial for the reputation of the new court.

As a general principle, a member of the Federal Patent Court shall be independent of the parties from the time the member is consulted for sitting on the panel until the proceeding is concluded. Acting as a part-time member of the Federal Patent Court while engaging in legal representation before the Court in another matter does not constitute a lack of independence or bias per se on the part of the part-time members of the Court.

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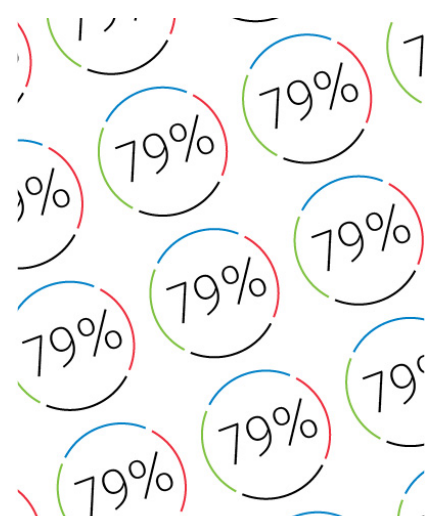
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