
Kluwer Patent Blog

No fee for opting out of the Unified Patent Court

Kluwer Patent blogger · Friday, February 26th, 2016

There will be no fee to opt out of the jurisdiction of the future Unified Patent Court (UPC). It had already been rumored for some time, but it has now been confirmed with the publication of the ‘Rules on UPC Court Fees and Recoverable Costs’.

The document was agreed on in a [meeting of the UPC Preparatory Committee](#), 24 and 25 February 2016 in Brussels. According to the Committee, the proposal provides ‘a delicate balance of Member States’ views, comments made in responses to the consultation over the summer and recommendations from the UPC Expert Panel’.

The decision to suppress the opt-out fee – [80 euros in an earlier proposal](#) – reflects ‘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’.

‘We now know much more detail as to how the proposed opt-out process will work and that the administration burden rests almost entirely with the applicant. We also know that any cost to the Court associated with the opt-out is related to processing the fee. There is no additional cost for the Case Management System to process opt-out requests if there is no fee. Requiring people to make payment generates costs for the court which would not be needed if there were no fee. So, removing the fee removes the cost.’

The new Rules also clarify in a new paragraph 7 of Rule 370 what fees will apply in situations of more than one party or patent. ‘ If an action has more than one claimant and/or more than one defendant or if an action concerns a plurality of patents only one fixed fee and, if applicable, one valuebased fee shall apply.’

According to the Explanatory Note, there was discussion in depth in the Expert Panel as to when to assess the case value and pay the value-based fee. ‘The Panel recommended that claimants make their own value assessment and pay the fee based on that at the same time as the fixed fee; that is when lodging the relevant application. If there is any contention over the assessment this will be rectified at the interim conference. The Fees Sub-Group agrees that this is the most simple and efficient process and so have accepted the recommendation.’

Two more values of action were added: up to and including EUR 50 million and more than EUR 50 million.



According to the UPC Preparatory Committee, ‘unsurprisingly’ there was no clear consensus from the consultation on SME support. ‘The compromise proposal suggested recognises the broad support for the reimbursements in cases of early settlement, withdrawal or use of a single judge along with the desire to see a simplified form of direct support for those in particular need. Micro and small enterprises will be entitled to a 40% reduction on all Court Fees (fixed and value-based) which are incurred at the Court of First Instance as well as at the Court of Appeal.’

The document, which is final though ‘subject to legal scrubbing’, can be found [here](#).

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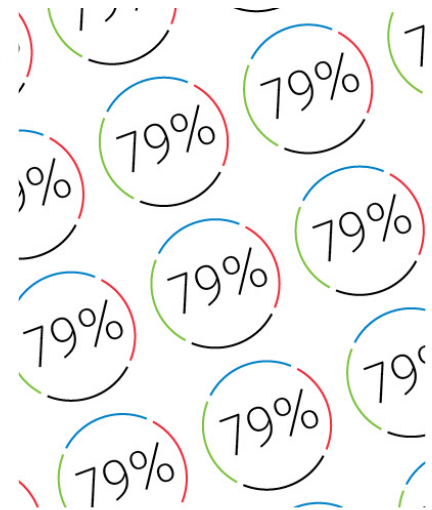
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