

BarentsKrans

Indicative fees for patent cases in the Netherlands

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Indicative fees for patent cases in NL

- Art 14 Enforcement Directive:

Member States shall ensure that reasonable and proportionate legal costs and other expenses incurred by the successful party shall, as a general rule, be borne by the unsuccessful party, unless equity does not allow this

- CoJ EU 28 juli 2016, C-57/15 (United Video Properties):

A flat-rate scheme for the reimbursement of costs for the assistance of a lawyer is allowable, as long as the maximum amounts are not so low that they do no longer ensure compensation of a significant and appropriate part of the reasonable costs

- The Netherlands:

- Introduction of flat rate scheme for Soft IP litigation in 2008
- Introduction of a flat rate scheme for Patent litigation: August 2020

Indicative fees for patent cases in NL: The numbers

First Instance		Appeal	
<i>Preliminary injunction proceedings</i>			
a. simple:	max. € 10,000		
b. normal:	max. € 40,000		
c. complex:	max. € 80,000		
d. highly complex:	max. € 120,000		
<i>Final relief proceedings</i>			
a. simple:	max. € 30,000	a. simple:	max. € 30,000
b. normal:	max. € 75,000	b. normal:	max. € 75,000
c. complex:	max. € 150,000	c. complex:	max. € 150,000
d. highly complex:	max. € 250,000	d. highly complex:	max. € 250,000

Indicative fees for patent cases in NL: The numbers

Supreme Court

a. simple:	plaintiff	max. € 15,000
	defendant	max. € 10,000
b. normal:	plaintiff	max. € 50,000
	defendant	max. € 40,000
c. complex:	plaintiff	max. € 100,000
	defendant	max. € 80,000
d. highly complex:	plaintiff	max. € 180,000
	defendant	max. € 150,000

Indicative fees for patent cases in NL: Relevant factors

- Category of complexity will depend on:
 - scope and size of the necessary factual investigation and the relevant set of facts;
 - bases of the legal claims (including possible increase or change of claim);
 - scope of the defense;
 - number of acts in procedure (i.e. briefs, hearings) and relevant exhibits;
 - the financial value of the case, insofar as known.
 - Conclusion: applicable category can only be decided **in hindsight**.
- Simple: If estimated financial value < € 100.000,-
- Normal: mechanical engineering
- Complex: Pharma
- Very complex: Telecom case with FRAND issue

Indicative fees for patent cases in NL: How much?

- Legal uncertainty:
 - The aim is cost transparency, lower threshold for small and medium-sized enterprises to enforce patents.
 - But watch out for wars of attrition and snow jobs
 - How strictly applied?
 - Court: fee caps
 - Supreme Court in soft-IP case (Spirits v. FKP, ECLI:NL:HR:2020:112): flat rate scheme is a non-binding guideline.
 - Category of complexity \neq known in advance and will not be determined in advance by the court
 - For pending proceedings: change in the middle of proceedings flat rate scheme will be applied for all cases currently unless the court has already formally set a date (for after the 1st of September) for its decision

Indicative fees for patent cases in NL: Licensing

- Full cost compensation only for enforcement of patents: No nullity, no pure licensing disputes
- Possibility of agreement on specific costs for enforcement: Patentee may agree to pay max of indication rate for agreed complexity, licensee pays the rest
- Indemnification against patent rights for third parties: use indicative fees to determine financial level of indemnification
- Financial threshold for licensee to start proceedings may change dynamics between patentee and licensee and may change allocation of risks

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Thank you for your attention!

Questions?



Claudia Zeri
BarentsKrans, The Hague
T +31 70 376 0621
Claudia.zeri@barentskrans.nl