

Costs of a lawsuit, in particular in the case of property right infringements

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Litigation risk

Before talking about the costs of a lawsuit, the litigation risk must be considered first. It arises from the uncertainty about

- the actual costs arising
- the outcome of the lawsuit

Litigation costs

The costs of a lawsuit arise from court fees, lawyers' fees and, if necessary, expert opinions, as well as other expenses such as copies, travel, etc.

The amount of **court fees** can be determined from the outset on the basis of the amount in dispute. The amount of the **expenses** should not be significant in the overall proceedings. The costs for an **expert opinion**, if required, depend on the complexity of the subject matter to be examined and the question to be answered.

The amount of the **lawyer's fees** is determined either according to the amount in dispute under the German Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz - RVG) or according to a remuneration agreement.

For the **billing according to the RVG**, the essential lawyers' fees are shown by way of example on the basis of two different amounts in dispute. The amounts listed represent an average amount which may fluctuate up or down according to the complexity of the case. The amounts shown are per lawyer, i.e. **for each lawyer and patent attorney on both sides**, i.e. four times if necessary. For out-of-court work (in the run-up to the court proceedings) a business fee in the order of magnitude of the procedural fee may be added, which will be partially offset in the event of a court dispute:

Amount in dispute 100.000 €

Work in the proceedings up to the court hearing (Procedural fee)	2.151,50 €
Participation in the court hearing (Appointment fee)	1.986,00 €
net amount	4.137,50 €

Amount in dispute 1.000.000 €

Work in the proceedings up to the court hearing (Procedural fee)	6.745,70 €
Participation in the court hearing (Appointment fee)	6.226,80 €
net amount	12.972,50 €

In addition, there is an absence allowance of 30 € (up to 4 hours) or 50 € (>4 to 8 hours), reimbursement of expenses (a flat rate of 20 € or according to actual costs) and, if applicable, reimbursement of travel expenses (travel, accommodation).

In the case of a **remuneration agreement**, the amount of the lawyer's fees results from the hourly rate times the number of hours worked. The number of hours essentially depends on the following factors:

- complexity of the underlying facts of the case
- evidence – considerable additional expenditure if experts and/or witnesses are required
- strategy of the other party
- manageability of the situation

In the case of an infringement of **technical protective rights**, the following specific factors must be added:

- number of protective rights on which the infringement lawsuit is based
- complexity of the subject matter
- clarity of wording of the relevant claims
- attackability of the protective right - a counter attack sets in motion parallel proceedings (objection, nullity, deletion)

In disputes involving protective rights, **patent attorneys** may be consulted, which is the rule for technical protective rights. This doubles the lawyers' fees. The costs of an assigned patent attorney must be borne by the losing party.

Outcome of the lawsuit

The proceedings may be terminated by recognition, settlement or by court decision. In the case of **recognition**, the decision about who will have to bear the costs will be taken at the expense of the recognising party. In the case of a **settlement**, the costs are negotiated, usually to the effect that each party bears its own costs and the court costs are shared. In the case of a **court decision**, the costs are imposed on the losing party or divided according to whether the party has been partially unsuccessful or successful.

Decision on costs

After the court's decision in the proceedings, which also determines the imposition or apportionment of the costs still to be determined, the determination of the costs must be applied for by the prevailing party – in the case of partial victory by both parties. In these proceedings for the fixing of costs the costs incurred are claimed by both sides and, insofar as they are recoverable, they shall be determined in an enforceable manner. This includes the lawyer's fees only at certain rates (the German Act on the Remuneration of Lawyers - RVG - is decisive), so that even a party who wins 100 % of the case is not exempt from all legal costs, as the fee rates usually do not cover the fees incurred. Likewise, privately issued expert opinions can usually not be reimbursed.

Cost estimation

It follows from the above that it is not possible to estimate the costs for one's own side in advance. It is only possible to assess which factors are present and to which extent. On this basis it is possible to estimate whether a case involves a rather higher or rather lower cost risk. Orders of magnitude can also be estimated, but this is subject to the reservation that unforeseeable developments of proceedings can occur, especially parallel proceedings and further instances.

The cost risk may have to be reviewed in the course of the proceedings, as new constellations may arise. For example, prior art subsequently found by the opposing party may have the effect that the case is lost, but the total costs of the proceedings are much lower because both the attack on the protective right and the infringement proceedings can be terminated quickly. In contrast, a further instance (appeal) will always roughly double the costs and the risk.

Very often, the courts suggest a **settlement**, indicating thereby how they assess the risk of litigation. A court settlement proposal based on this assessment is common. Such a settlement is often much cheaper than an often lengthy trial – with possible further instances – the outcome of which is uncertain, and it quickly creates a binding settlement.

If a court decision is chosen instead, the legal clarity to be gained should outweigh the possible material loss. If the outcome of the trial is highly uncertain, a settlement is preferable in any case.