

General principles

[Art. 68 (1) and (2) UPCA]

- The infringer shall have engaged the infringing activity knowingly
- Damages correspond to the harm actually suffered
- The patentee is placed back in the position they would have been in absence of infringement
- The infringer shall not benefit from the infringement
- Damages shall not be punitive

Scope of the damages

[R. 125]

- In addition to infringement, damages include compensation in case of:
- revocation of an order to preserve evidence [R. 198-2]
 - revocation of provisional measures [R. 213-2]
 - enforcement of a decision or an order subsequently revoked or varied [R. 354-2]

General principles

[Art. 68 (1) and (2) UPCA]

1st method:

- negative economic consequences, including lost profits suffered by the patentee
- unfair profits made by the infringer
- moral prejudice

2nd method: lump sum at least equal to the amount of a licence fee

Remark:

- If the infringer did not act knowingly:
- recovery of profits, or
 - payment of compensation

Procedure

Order of payment with the decision on the merits [R. 118-1]

Alternatively: separate proceedings [R. 125]

Possibility of an interim award of damages in the decision on the merits [R. 119] or in the decision on the damages [R. 150-2]

Determination of damages in separate proceedings

