



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

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

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]

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 **Decision on damages** [Art. 68 UPCA] Assessment of the amount of damages by the patentee [R. 131-2] Examination of Refusal the communicated data Order to open books Decision on the Rejoinder to the Reply request to lay open books [R. 139] [R. 144] 1 month Rejoinder to the Reply [R. 142-3] Reply to the Defence 14 days [R. 139] Reply to the Defence [R. 142-3] 1 month 14 days Acceptation Defence Acceptation Defence [R. 142-1] [R. 142-2] [R. 137-1] [R. 137-2; R. 138] 2 months 2 months Application for the determination of damages Application for the determination of damages with request to lay open books with assessment of the amount of damages [R. 131, R. 141] [R. 131] < 1 year Decision on the merits