

47-03 P U D T
Scope and Calculation of the Costs in Connection with
Trial/Appeal

1. Scope of Costs for Trial and Appeal

A scope of costs for a trial/appeal is governed by the relevant provisions under Act on Costs of Civil Procedure (except provisions in Chapter 2, Section 1 and Section 3 of the Act) unless it is contrary to the nature (Patent Act Article 169(6), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4)).

Items to be calculated as costs for a trial/appeal is below.

- (1) Costs for preparation and submission of a written demand/request for trial/appeal and other documents
- (2) Translation fee
- (3) Handling fee for a trial/appeal
- (4) A fee for a patent attorney ordering representation under Patent Act Article 13 (Utility Model Act Article 2-5(2), Design Act Article 68(2), Trademark Act Articles 77(2))
- (5) A daily allowance, travel expenses, and an accommodation fee for a party and an agent who appears on the date
- (6) A daily allowance, travel expenses and an accommodation fee for a witness, an expert, an interpreter, and an explainer of a written expert opinion specified in Code of Civil Procedure Article 218(2).
- (7) A fee for an expert opinion, a fee for an interpreter
- (8) Travel expenses and an accommodation fee for an administrative judge and a trial clerk for an on-site verification.
- (9) Costs required for preservation of evidence
- (10) Others

Regarding (6), (7), (8), (9), a person who requests an examination of evidence shall pay an estimated amount in advance (Patent Act Article 169(6), Utility Model Act Article 41, Design Act Article 52, Trademark Act Articles 56(1), 68(4), Act on Cost of Civil Procedure Article 12).

2. Calculation of Costs for Trial/Appeal

A case in which there is a request for determination of an amount of costs of trial/appeal shall check and adjust a trial record, a statement of costs of a requester and a statement of opinion of the other party, and calculate an item within a scope of costs (→1.) according to the following procedural steps pursuant to the standards provided by Act on Costs of Civil Procedure and Rules of Costs of Civil Procedure. The valuation shows a valuation at the time of payment.

(1) Based on a trial record, research and calculate an individual cost item paid by a requester and the amount thereof.

(2) Cost items in a statement of costs submitted by a requester and the amount thereof is checked with the calculation of (1). If there is discrepancy in an item or calculation, an amendment shall be ordered.

(3) When a letter of demand is issued to the other party and a statement of opinion is filed, the statement of opinion is checked with a statement of costs submitted by a requester, and if matters that recognized having a reason, the statement of costs shall be corrected based on the statement of opinion of the other party.

(4) When each item and amount in the statement of costs submitted by a requester become appropriate by the above procedures, calculate total amount, and then an amount of costs shall be determined. However, this total amount may not be exceeded an amount requested by a requester.

3. Points to Consider

(1) Costs required for receiving documents from government offices are provided under the provision of Act on Costs of Civil Procedure Article 2(7). A fee for receiving a document from a government office for utilizing the document as documentary evidence (such as a certified copy of register evidencing the ownership, a family register evidencing inheritance, etc.) does not fall under the above provision and it is interpreted as not included in costs for litigation.

A certified copy of the patent registry issued by a government office is usually used as documentary evidence and a fee for issuance of the certified copy of the patent registry does not fall under the above provision and it is interpreted as not included in costs for trial/appeal.

(Reference: “MINJI JITSUMU KOUGIAN II (Lecture for Civil Procedure and Practice II) (3rd revised edition) p.137 (Chapter 3 Litigation Costs 5. Procedures for Determination of Amount of Litigation Costs 4(3)㉞(イ) d)”))

(2) The shortest distance in calculation of travel expenses for parties, etc. is to follow the provision of Act of Costs of Civil Procedure Article 2(4). When a place of appearance is the JPO, a reference point for calculation is Tokyo Summary Court and when a circuit trial, a reference point for calculation is a summary court under the jurisdiction of the place of circuit trial.

This applies to travel expenses for an agent.

(3) Costs for preparation and submission of a demand/request for trial/appeal and other documents shall be calculated by the following calculation method under Act on Costs of Civil Procedure.

{basic amount ① + (addition depending on the number of copies of a complaint and a preparatory document, etc. ②)+(addition depending on the number of copies of a copy of documentary evidence ③)} × the number obtained by dividing the number of the other parties to whom the documents should be sent by 5 ④

(See the attached table)

According to Act on Costs of Civil Procedure, costs are finally calculated adding an amount considering “the number of the other parties”, therefore, subject documents are basically considered to be sent to the other parties. Then, when calculating an amount of costs for preparation and submission of a written demand/request for trial/appeal and other documents to the JPO, subject documents shall be basically ones which are served or sent to the other parties.

Therefore, a complaint or a preparatory document, etc. provided in said Rules on Costs of Civil Procedure corresponds to a document to be served or sent to the other party such as a demand/request for trial/appeal or a written reply. Similarly, documentary evidence provided in said Rules on Costs of Civil Procedure corresponds to documentary evidence such as Exhibit A-1 attached to a document to be served or sent to the other party such as a demand/request for trial/appeal or a written reply as stated above (including all documentary evidence to be served or sent, even if they are reference materials).

In calculation of the number of the other parties, it is appropriate to add by one (for the JPO) to the number of the other parties since a duplicate copy for the proceedings shall be requested under Enforcement Regulations of the Patent Act Article 50-4.

Appendix

Basic amount①		1,500円
Written request, etc.②	When the number of copies of document exceeds 5, every 15 copies after exceeding the number	1,000円
Copy of documentary evidence③	When the number of copies of document exceeds 15, every 50 copies after exceeding the number	1,000円
Number of the other parties④	A number obtained by dividing the number of the other parties to whom the documents should be sent by 5 (If there is a fraction less than 1, round up to 1)	

(Specific example)

For example, when there are 4 copies of a written request and 20 copies of a copy of documentary evidence are submitted and the number of the other parties to whom the documents should be sent is 2, a calculation of the costs for preparation and submission of the documents shows below.

$$\begin{array}{ccccccc}
 & & & & * & (2+1) / 5 = 0.6 & \text{round up to 1} \\
 (1,500\text{円} & + & 0\text{円} & + & 1,000\text{円}) & \times & 1^* = 2,500\text{円} \\
 \uparrow & & \uparrow & & \uparrow & & \uparrow \\
 \text{Basic} & & \text{Addition of} & & \text{Addition of} & & \text{Number of} \\
 \text{amount}① & & \text{number of copies}② & & \text{number of copies}③ & & \text{the other parties}④
 \end{array}$$

(Revised Feb 2015)