

Kluwer Patent Blog

‘Real discussion on Unitary Patent renewal fees has not started yet’

Kluwer Patent blogger · Thursday, October 23rd, 2014

‘The unitary patent (UP) package is a strange animal.’ Margot Fröhlinger has no problem admitting that. As Principal Director Patent Law and Multilateral Affairs of the EPO she is closely involved in implementing the new patent system, which is expected to become operational in 2016. It is a complicated political compromise, based on both EPC rules and EU and national law. Although there are concerns about costs and the quality of the future Unified Patent Court (UPC), she is confident it is an important step forward for the European business sector. Kluwer IP Law spoke with Fröhlinger at a UP Congress on Friday 17 October in Brussels.

What can we expect from the EPO Select Committee, which is in charge of preparing the UP, in the upcoming months?

‘The renewal fees are of course an important issue. We have ongoing discussions with the Member States on the different levels under consideration. We hope to take a decision on the renewal fees by the summer of 2015.

We have also prepared the implementing rules, since the details of the procedure for applying for unitary effect were not laid down in the EU Regulation. How will requests for unitary effect need to be filed, how are they going to be examined and processed, etc. There will be a new register for UP protection, for instance. The rules are currently under discussion at the Select Committee and are supposed to be adopted before the end of the year.’

Is the EPO involved in setting up the UPC as well?

‘We are only observers in the Preparatory Committee for the UPC. But we are providing support and help where we can. The Preparatory Committee, for instance, has suggested we could register the opt-outs during the preparatory phase [a short period preceding the beginning of the UPC’s functioning, in which some activities of the UPC will be set up, ed.] We have also made a proposal to help train the judges. Apart from that, we are at arm’s length in setting up the court and that is totally right. The UPC should be independent.’

The Draft Rules of Procedure for the UPC have been published by the Preparatory Committee and have been open for consultation. Will the Select Committee follow a

similar route for the renewal fees?

‘In the Select Committee user associations – both the industry (Business Europe) and the patent professionals, the European patent attorneys, the European Patent Institute – are observers. They are directly participating in the debate. So the level of the renewal fees won’t be open for public consultation, but it will be open for informal contributions, discussions etc. This is the way the EPO and its Administrative Council, of which the Select Committee is a subgroup, have always worked. We involve the users directly in the process. After all, it’s not the EPO that decides, it’s up to our Member States in the Administrative Council.’

Last week, EurActiv reported (<http://www.euractiv.com/sections/innovation-enterprise/business-warns-single-patent-too-expensive-309062>) that a high level of renewal fees was advocated by representatives of some member states in discussions in the Select Committee, a level equivalent to eight renewal fees in the current system. Is this correct?

‘Well, there has been no such formal request. Perhaps some Member States are thinking about it, but we are not yet discussing the right level. We are just studying the data and economic and financial implications of several fee levels for the users on the one hand and the Member States and the EPO on the other hand. We have not yet entered into a real discussion on what the right level is.’

During your presentation at the Congress in Brussels, you made a distinction between lawyers and other people with regard to their opinion on the UP system. Why?

‘Most companies are interested in a single jurisdiction system, where they do not have to file lawsuits in several countries or defend themselves in several countries. For lawyers of course it’s good business to have to file lawsuits in a number of different countries. It is one reason, many think, behind the criticism of lawyers regarding the UP system. It’s not only that, of course. But we have to understand that in a number of member states professionals – not only lawyers, but also patent attorneys – may lose business.’

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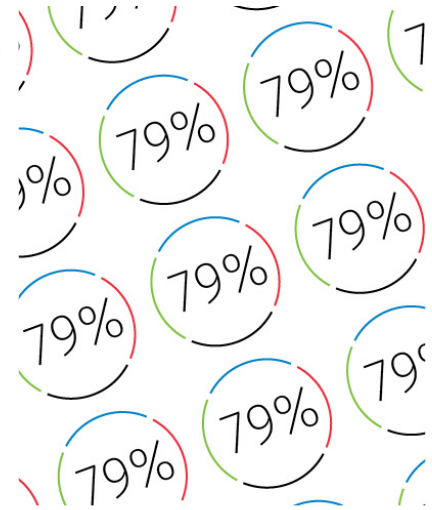
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