

Kluwer Patent Blog

European criticism on high renewal fees as proposed for Unitary Patent

Kluwer Patent blogger · Thursday, March 26th, 2015

The European business sector and the European Commission have voiced concern about the level of the renewal fees for the Unitary Patent, as proposed by the European Patent Office (EPO).

The two EPO proposals for the fee level, often designated as the ‘Top 4 model’ and ‘Top 5 model’ have been discussed on the Kluwer Patent Blog [here](#).



Earlier this month, a group of large European companies sent a joint letter to Ministers and Heads of Government of European countries. In the letter, which is in the possession of Kluwer IP Law, the companies (Philips, Scania, Ericsson, Nokia, Alfa Laval, Air Liquide, Danfoss, Storaenso and NXP) state:

‘The level of the renewal fees is crucial for industry’s use of the UPP, which in turn is important for innovation, growth and jobs in the EU. (...) The use of the UPP [Unitary Patent Package, ed.] can be expected to be limited, if the fee level is set higher than a real “top 4”, corresponding to today’s cost of paying national renewal fees in the 4 Member States where European patents are most frequently validated.

The two alternatives now proposed by the European Patent Office (...) are unfortunately above the uniform real “top 4” level, and would likely raise costs as compared to those currently paid in the classical EP system.

If, as a result of unitary renewal fees that are higher than what companies currently pay (i.e. on average not more than the sum of 3-4 national renewal fees), use of the unitary patent will be rather limited. The unitary patent would clearly fail to meet its objectives as laid down in recital 4 of the unitary patent regulation, viz. to foster scientific and technological advances and the functioning of the internal market by making access to the patent system easier, less costly and legally secure, and

to improve the level of patent protection by making it possible to obtain uniform patent protection in the participating Member States and eliminate costs and complexity for undertakings throughout the EU.’

In another development, [Business Europe](#) voiced ‘serious’ concerns about the fee levels in a letter to Jérôme Debrulle, Chairman of the EPO Select Committee.

Business Europe – with 39 members in 33 countries, makes clear that the proposals of the Select Committee, though often presented as ‘top 4’ or ‘top 5’ fee level models, are in fact much more expensive: adjusted, higher fees apply for the first ten years after a patent application has been filed.

Business Europe shows in two tables that the fees as proposed by the EPO, amount to the equivalent of the top 10 countries for the years 2 to 4, ‘top 9’ in year 5, ‘top 8’ in year 6, close to ‘top 6’ (year 7), close to ‘top 5’ (year 8) and around ‘top 4’ in the years 9 and 10.

In percentages: the Unitary Patent renewal fee as compared with the renewal fee for an average traditional European patent (average = validated in four countries) is 230% higher in year two, 340% (year 3), 297% (4), 162% (5), 82% (6), 45% (7), 20% (8) and 4% higher in year 9.

As Business Europe writes: ‘The break-even point is reached when the grant [of a patent, ed.] occurs at Ordinal Year 10. Any applicant who manages to get his patent granted in a more reasonable timeframe is disadvantaged by the proposed schedule of fees. The greater his efforts to shorten the granting process, the more disadvantaged he would be if he chose the Unitary Patent. Considering that about 85% of the European Patents are granted before Ordinal Year 10, the proposed schedule is clearly unbalanced and would have a strong negative impact on the taking off of the Unitary Patent.’

[Eurochambres](#), which represents over 20 million businesses in Europe, mostly SMEs, wrote to the Select Committee as well. The fee proposal ‘will fail to ensure SMEs access to the new title,’ it told Jérôme Debrulle of the Committee. Moreover, the proposal ‘does not respect the political objective endorsed in article 12 of the Regulation 1257/2012 [which]...foresees that (...) “renewal fees shall be” (...) “equivalent to the level of the renewal fee to be paid for the average geographical coverage of current European patents”. Renewal fees based on a real TOP4 would adequately meet these requirements,’ according to Eurochambres. It argues a fee reduction for SMEs on the real TOP4 level is needed to stimulate innovation among SMEs.



Perhaps most remarkably, even the European Commission deemed it necessary to react on the fee proposal. According to a spokeswoman, cited by Reuters press agency, the Commission told the Select Committee of the European Patent Office ‘in no uncertain terms’ that, as to the UP renewal fees, the EU’s competitiveness should be the main concern, over and above revenue considerations. The Commission warned young start-up companies could end up as the victims of high fee levels.

Last week, the EPO Select Committee [met in Munich](#). No new developments were announced, nor did the Committee react to the industry letters.

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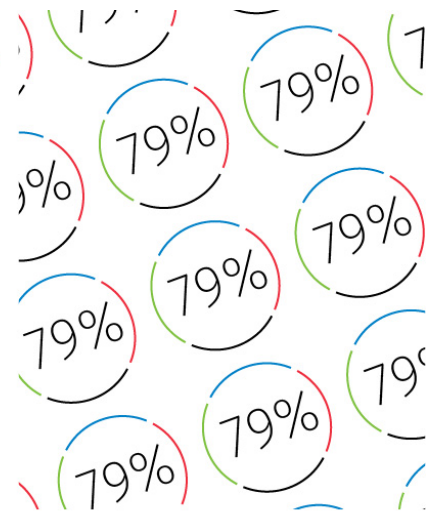
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This entry was posted on Thursday, March 26th, 2015 at 5:00 pm and is filed under [European Union, Unitary Patent, UPC](#)

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