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EPO to offer new refund rates for appeal fee

Laurence Lai (Simmons & Simmons LLP) · Thursday, March 12th, 2020

The EPO's biennial fee increases come into force on 1 April 2020 and include a 20% hike of the appeal fee. At the same time, new appeal fee refund provisions are being introduced through an amendment to Rule 103 EPC. These are intended to encourage appellants to continuously review whether to continue or withdraw their appeal. The EPO hopes that these measures will help clear the growing backlog of appeals to reduce processing times for pending appeals.

The new refund rates and when they apply

Under new Rule 103(2) EPC, a 75% reimbursement of the paid appeal fee will be given if an appeal is withdrawn in a two-month period triggered by a communication from a Board of Appeal indicating its intention to review the appeal. However, Boards are not required to issue such a communication which is primarily aimed at long-pending appeals. As such, not every appeal will be given the opportunity to receive the 75% refund if withdrawn.

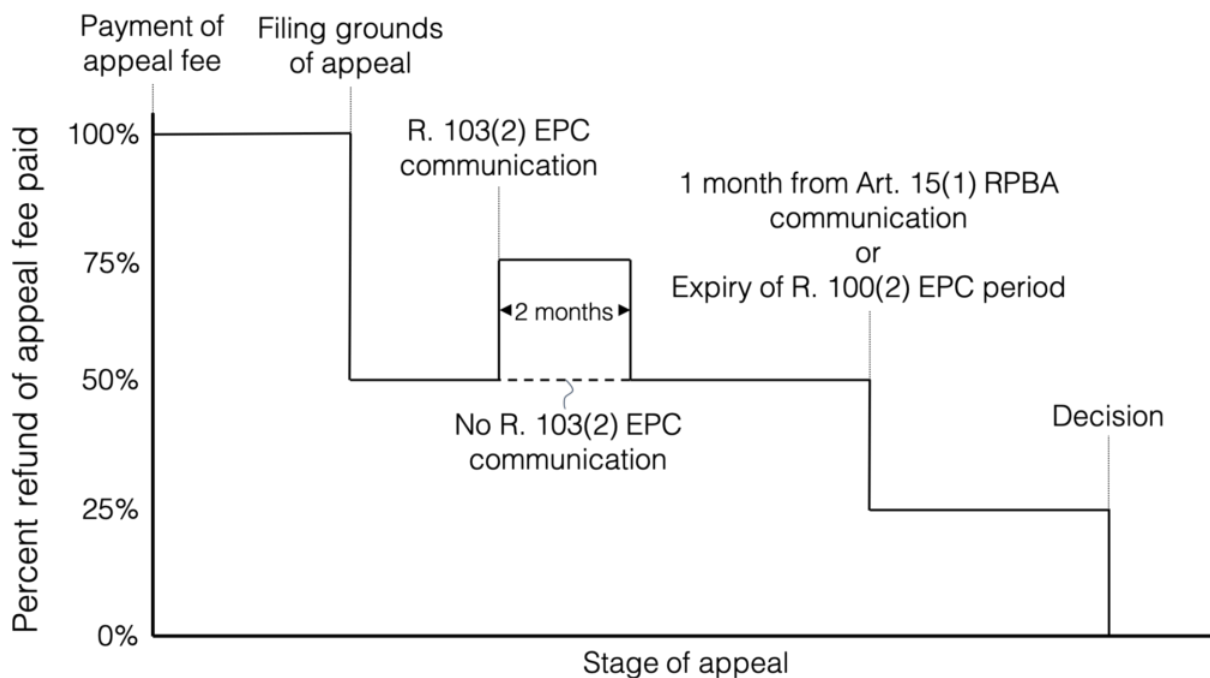
Ironically, the new communication under Rule 103(2) EPC is coming in after the recent axing of the similar communication of expected start of examination of an application. These communications have been sent out over the last three years but the EPO admits that few applicants have been prompted to withdraw their applications to receive a full exam fee refund.

As the 75% appeal fee refund rate is tied to being in response to the Rule 103(2) EPC communication, the existing 50% refund is applicable before this communication is issued.

After expiry of the two-month period, the 50% refund rate applies up to one month from a communication from the Board drawing attention to matters of significance to be discussed at oral proceedings, referred to in Article 15(1) of the revised RPBA. In most cases, this communication would accompany the summons to oral proceedings. This brings forward the cut off for receiving a 50% refund from the current provision of four weeks before the date of oral proceedings.

If, instead of a summons, a Board invites observations to be filed under Rule 100(2) EPC, then the cut off for receiving a 50% refund is before expiry of the period set for filing observations. This is an unchanged part of the existing refund provisions. The amended refund provisions go further to offer a 25% refund if the appeal is withdrawn after the observations period has expired but before a decision is issued.

Additionally, a 25% refund is given if the appeal is withdrawn up until a decision is announced at oral proceedings.



Refund on withdrawal of the request for oral proceedings

At any time after filing of the grounds of appeal, the request for oral proceedings can be withdrawn to benefit from a 25% refund of the appeal fee if no oral proceedings take place. This would usually only happen in examination appeals but has the troubling consequence of effectively imposing a fee for oral proceedings.

The appeal fee refunds are not cumulative. If an appeal and the request for oral proceedings are withdrawn, only the higher refund rate applies.

No more surcharges for bank transfers?

Along with the appeal fee refund changes, the surcharge under the “ten-day fail-safe” provision for fee payments made by bank transfer is being scrapped through an amendment to Article 7(3) RFees.

Currently, a surcharge of 10% of the relevant fee, up to a maximum of €150, must be added to payments made by bank transfer instructed within 10 days before the end of the period for paying the fee, but received in the EPO’s account after expiry of the period.

From 1 April 2020, any such bank transfers instructed on time but received late will not be subject to any surcharge.

As most users of the EPO make payments via a deposit account, this is not envisaged to affect many fee payments. However, it is unclear whether the ten-day fail-safe arrangement still applies to payments replenishing a deposit account as the reference to the ten-day fail-safe provision in the Arrangements for Deposit Accounts has not been updated to reflect the amendment to Article 7(3) RFees.

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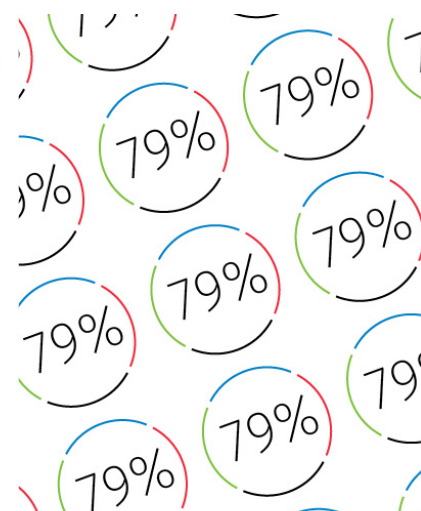
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