

Second phase of changes to EPO fees

The first phase of the changes to official EPO fees was introduced on 1st April 2008. The second phase took effect on 1st April 2009.

General Increases in Fees

There was no general increase in fees.

Designation Fees

From 1st April 2009, there is a single designation fee of €500, which provides for the designation of all contracting states, unless individual designations are expressly withdrawn. This fee does not cover any extension states.

Excess Claims Fees

No excess claims fees are payable for the first 15 claims. For the 16th and each subsequent claim, a fee of €200 is payable per claim. From 1st April 2009, the 51st and each subsequent claim attracts a fee of €500 per claim. This provides a very clear incentive to file European applications with 50 or fewer claims. For example, an application with over 60 claims might be filed more cost effectively as two applications, each containing 30 claims.

For many of our clients, the revised EPO fee structure encourages a change in drafting practice in order to avoid punitive excess claims fees when filing European applications. In order to minimise excess claims fees payable, dependent claims should be restricted to sub-features of particular commercial interest or that can be justified as being patentable above and beyond the independent claims. For all other limiting features, instead of dependent claims, statements of invention should be included in the description when the application is drafted to provide clear and unambiguous basis for any future amendments to the claims. PCT

applications entering the EPO regional phase should be reviewed to determine whether it is possible to reduce the number of claims to a manageable and affordable number, either by introducing multiple dependencies or by deleting claims that are unlikely to contribute inventive technical features.

Page Fee on Filing

Formerly, page fees were levied at the grant stage. From 1st April 2009, the EPO replaced those fees with page fees based on the specifications filed as direct

European applications and Euro-PCT applications. The page fee is €12 for the 36th and each subsequent page. The number of pages in the description, claims, any drawings and one page of abstract is included in the calculation. Sequence listings are not included.

For Euro-PCT applications, the fee is calculated on the basis of the international application as published, taking account of any amendments filed under Article 19 PCT. The pages of the latest set of any amended documents (amendments under Article 34 PCT or amendments filed upon entry) are also taken into account if available to the EPO by the date of payment of the additional fee, and within the 31-month period. Pages of the international publication or previous amendments which are replaced by amendments filed upon entry into the European regional phase are not counted. There is no refund of the additional fee if amendments are filed after the date of payment, e.g. during the one month period under Rule 161 EPC. The fee structure clearly encourages applicants to ensure that specifications are in a form which fully exploit the minimum requirements for text size and

line spacing set by the EPC, and that any superfluous material is removed from the specification.

Transitional Arrangements

The revised fee structure applies to all European patent applications, including divisional applications, filed on or after 1st April 2009 and to international applications entering the regional phase on or after that date.

Advance Payment of Renewal Fees

Formerly, renewal fees could be validly paid up to one year before their due date. From 1st April 2009, this period was reduced to three months before the due date. This change applied to all applications from 1st April 2009.

Need advice?

Some aspects of the revised fee structure pose challenging problems, particularly for applications drafted in the United States. Please do not hesitate to contact us for more detailed advice at: email@carpmaels.com.

Carpmaels & Ransford is a leading firm of European patent attorneys based in London. For more information about our firm and our practice, please visit our website.

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