



European Patent Organisation: The revised concept for assessing the amounts of renewal fees for the unitary patent as of June 24, 2015

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After entry into force of the Agreement on a Unified Patent Court (UPCA), applicants will have the choice between the unitary patent and the traditional European bundle patent. For a relevant cost-benefit analysis, two main elements are relevant: the possible savings for translations and the level of renewal fees. For the latter, the EPO has revised its original proposal (SC/4/15 of March 3, 2015) and submitted a new document SC/18/15 of May 7, 2015 to the Select Committee of the Administrative Council, which was adopted on June 24, 2015.

A. The legal criteria for the proposal

In accordance with Article 12 of the Unitary Patent Regulation, the renewal fees have to be *inter alia*:

- progressive throughout the term of the patent;
- sufficient to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection;
- reflecting the size of the market covered by the unitary patent;
- similar to the level of the national renewal fees for an average European patent taking effect in the participating member states.

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B. The structure of the proposal

The original proposal differentiated between three stages for assessing the fees. Only for the third stage from year 10 on, the fees for the unitary patent corresponded to the total sum of national renewal fees payable in the states in which European are most frequently validated (TOP level). For the first stage, the fees corresponded to the fees for a pending European application, and for the second stage, they were set at an intermediate level.

This original proposal met with the criticism that the amounts based on the reference to the EPO's renewal fees during the first two stages were much higher than the fees to be paid for national patents in the first nine years and might discourage applicants from choosing the unitary patent. As a reaction, the approach of the different stages has been abandoned and in the proposal of May 7, 2015 the new scales called "true" TOP level 4 and 5 corresponded from the outset to the renewal fees for the chosen member states.

The fact that renewal fees have to be paid for the second year has remained unchanged. Considering the length of examination proceedings, this seems to be a theoretical case.

On this basis, the proposal of May 7, 2015 contained two alternative fee schedules. The first proposal was based on current renewal fees for the four most frequently validated countries (DE, FR, GB, NL - TOP 4 level); the second one was based on current renewal fees for the five most frequently validated countries (in addition: SE - TOP 5 level). On June 24, 2015, the Select Committee adopted the True Top 4 proposal.

At present, many applicants validate the patent in three member states. Therefore, the table below compares the True Top 4 proposal and the total of renewal fees to be paid for granted patents in all 25 participating member states as stated in the document, as well as the total of renewal fees to be paid in France, Germany and the United Kingdom.

C. Comparative schedule of renewal fees

Year	TRUE TOP4	DE/FR/UK	25 MS ²
2	35	36	0
3	105	106	1 298
4	145	106	1 874
5	315	226	2 545
6	475	327	3 271
7	630	427	3 886
8	815	550	4 625
9	990	670	5 513
10	1 175	800	6 416
11	1 460	985	7 424
12	1 775	1 205	8 473
13	2 105	1 440	9 594
14	2 455	1 695	10 741
15	2 830	1 980	11 917
16	3 240	2 295	13 369
17	3 640	2 605	14 753
18	4 055	2 925	16 065
19	4 455	3 235	17 660
20	4 855	3 540	19 197
Total	35 555	25 153	158 621

² The amounts for DE/FR/UK are taken from the EPO brochure "National Law relating to the EPC", GBP calculated at 1,4 Euro and rounded up or down at intervals of 5 EURO. In the UK, no renewal fees have to be paid for the 3rd and 4th year. The amounts in the third column are taken from SC/4/15 (apparently neglecting the renewal for the second year in FR), the other amounts are taken from SC/18/15.

Assuming that a European patent is granted at the statistical average in the course of year 4, a typical applicant has to pay renewal fees for the pending European application for years 3 and 4. After grant, if he requests a unitary patent, the values given in column TRUE TOP4 are applicable. However, if he proceeds with the European bundle patent, he switches for year 5 and the following years to the national renewal fees in column DE/FR/UK.

For a patent granted in the course of year 4, the renewal fees for the application and the patent sum up over the 20 years' full term of the patent, as follows:

Unitary patent TRUE TOP 4	European bundle patent for DE/FR/UK	Difference
35 555	25 865	37,5 %

D. Comments

For a typical patent granted in the course of year 4, the reduction achieved in comparison to the first proposal results from the lower renewal fees for years 5 to 9.

For a relevant comparison, it has to be kept in mind that the proposal does not differentiate between different stages of implementation of the unitary patent system. Therefore, the full amount of the renewal fees has to be paid even if the unitary patents registered in the starting period cover for their full term only the 13 participating states necessary for entering into force of the UPCA. As an isolated factor, the envisaged level of the renewal fees will be very attractive for users of the European patent system validating at present in four or more participating member states. In respect of the “average applicants”, the decisive question will be to which extent they are prepared to pay some 40% more for a considerably larger number of states in which they enjoy protection.

For other factors relevant for the choice between unitary patent and European bundle patent, see [BARDEHLE PAGENBERG's brochure “Unitary Patent and Unified Patent Court”](#), sections 5 and 6.