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Notice from the European Patent Office dated 26 January 2009 concerning the 2009 fee structure

1. Introduction

On 1 April 2009 a new fee structure enters into force in accordance with the following three decisions of the Administrative Council:

- CA/D 15/07 of 14 December 2007 amending the Rules relating to Fees ([OJ EPO 2008, 10](#))
- CA/D 4/08 of 21 October 2008 amending the Implementing Regulations to the European Patent Convention ([OJ EPO 2008, 513](#))
- CA/D 5/08 of 9 December 2008 amending the Rules relating to Fees ([OJ EPO 2009, 7](#))

The Arrangements for the automatic debiting procedure (Annex A.1 to the Arrangements for deposit accounts) and the Schedule of fees and expenses of the EPO are being revised accordingly with effect from 1 April 2009 (supplement to [OJ EPO 3/2009](#)).

2. Commencement; transitional arrangements

Those aspects of the new fee structure described under points 3.1 to 3.4 below (two-tier structure of claims fees, additional fee on filing, flat designation fee, flat fee for grant and publication) apply to **European patent applications**, including European divisional applications and new applications under Article 61(1)(b) EPC, filed 1 **on or after 1 April 2009** and to **international applications entering the regional phase on or after that date**.

European patent applications filed and international applications entering the regional phase **before 1 April 2009** remain subject to the old fee structure, and so for these applications the relevant provisions of the Implementing Regulations and the Rules relating to Fees as in force until 31 March 2009 will continue to apply. 2

The reduction in the period for advance payment of European renewal fees (point 3.5 below) applies to **all** applications from 1 April 2009.

For special transitional arrangements for international applications entering the regional phase, see point 4. below; for information on methods and date of payment, see point 5. below.

The fee amounts indicated below apply until further notice.

3. Changes introduced by the new fee structure

In recent years the EPO has noted a significant increase in the length and complexity of European patent applications and international applications entering the regional phase. A new two-tier system of claims fees, and an additional fee forming part of the filing fee for applications comprising more than thirty-five pages, are being introduced in order to shift more of the costs of processing and examining such applications to applicants and at the same time to give them an incentive to reduce the length of applications and the number of claims.

3.1 Two-tier system of claims fees

Since 1 April 2008, if a European patent application comprises more than 15 claims, a claims fee of EUR 200 has been payable for the 16th and each subsequent claim (Rules 45(1), 162(1), 71(6) EPC 3). This fee amount continues to apply on or after 1 April 2009 to European patent applications which are filed and to international applications which enter the regional phase before that date.

For European patent applications filed and international applications entering the regional phase on or after 1 April 2009, for claims fees the following amounts apply:

- for each claim from the **16th** to the **50th**: EUR **200**
- for the **51st** and **each subsequent** claim: EUR **500**

3.2 Additional fee as part of filing fee for applications with pages in excess of thirty-five

Under the new structure, the filing fee is composed of a "basic" fee (existing Article 2.1 RFees) and an additional fee of EUR **12** per page for the 36th and each subsequent page of the application (Article 2.1a RFees 4).

The following new fee codes have been introduced:

501 Additional fee for a European patent application

520 Additional fee for an international application entering the regional phase

European patent applications

The new additional fee is payable as part of the filing fee for European patent applications which are filed on or after 1 April 2009 and comprise more than thirty-five pages. Its amount is calculated according to the number of pages over thirty-five, on the basis of the pages of the description, claims, any drawings and one page for the abstract, in the language of filing. The language reduction under Rule 6(3) EPC applies. The pages of the request for grant (EPO Form 1001) do not count.

Pages forming part of a sequence listing within the meaning of Rule 30(1) EPC are not counted either, provided the listing in the description complies with WIPO Standard ST. 25 and is presented as a separate part of the description. ⁵ Nucleotide or amino acid sequences which are presented in "raw" form in an application, rather than in the format according to WIPO Standard ST. 25, do not fall under this exemption. If the above conditions are not met, the relevant pages of the description have to be counted for the calculation of the additional fee.

If the application is filed without claims, the additional fee takes account of the pages of the first set of claims filed.

If the application is filed by reference to a previously filed application, the pages of the certified copy, excluding those for the certification and for bibliographic data, are taken as the basis for the calculation.

The additional fee is payable within one month of the filing date of the application or of the date of receipt of a European divisional application or a European application according to Article 61(1)(b) EPC. If the application is filed without claims or by reference to a previously filed application, the additional fee is payable within one month of filing the first set of claims or one month of filing the certified copy of the application referred to in Rule 40(3) EPC, whichever period expires later.

International applications

For international applications entering the European phase on or after 1 April 2009, the additional fee for pages in excess of thirty-five is payable as part of the filing fee within the 31-month period of Rule 159(1) EPC.

Under the automatic debiting procedure the additional fee is debited as part of the filing fee on the last day of the 31-month period (point 6.1 AAD).

The additional fee is calculated on the basis of the international application as published, any amendments under Article 19 PCT and one page for the abstract. If there is more than one page of bibliographic data, the further pages are not counted. Form 1200 is disregarded for the calculation.

The pages of the latest set of any amended documents (Article 34 PCT, amendments filed upon entry) on which European phase processing is to be based (Rule 159(1)(b) EPC) will also be taken into account **where available to the EPO by the date of payment of the additional fee and on condition that the date of payment is within the 31-month period of Rule 159(1) EPC.**

If the applicant intends pages of the international publication or of previous amendments to be **replaced** by pages of the latest set of amendments, and therefore to be excluded from the calculation, he must also, at the latest by the date of payment, identify these replacement pages and clearly indicate the pages which they are to replace. This will be of advantage in cases in which the applicant can reduce the number of pages of the application compared with the international application as published or any pages of amendments previously filed. The necessary indications should preferably be given in the relevant section in the form for entry into the European phase (EPO Form 1200). In the absence of this information any new pages will be taken to be **additional** pages and will be counted for the calculation of the additional fee.

Example:

International application, published in English, containing 100 pages:

abstract	1
description	50
claims	20
drawings	20
claims Art. 19 PCT	9

On entry into the European phase, and by the date of payment of the additional fee within the 31-month period, 10 pages of amended claims are filed to replace previous pages of claims, as indicated by the applicant in EPO Form 1200:

-> number of pages on which calculation is based:
100 - 20 (original claims) - 9 (Art. 19) + 10 (EP entry) - 35 (fee-exempt)

-> number of pages to be paid for: 46

Pages of amendments filed after the date of payment of the additional fee, in particular during the one-month period under Rule 161 EPC, are not taken into account in the calculation. Consequently, if amendments are filed at this stage which reduce the number of pages already paid for, no refund of the additional fee will be made.

All applications

If the additional fee is not paid on time, the application is deemed to be withdrawn. The EPO will notify the applicant of the loss of rights according to Rule 112(1) EPC; the applicant can request further processing according to Article 121 and Rule 135 EPC. The amount of the fee for further processing (Article 2.12 RFees) is computed according to the number of pages on file at expiry of the relevant period for which the additional fee, calculated as set out above, has not been paid.

3.3 Flat designation fee

Under the EPC 2000, the designation system has been simplified so that all contracting states are deemed to be designated at the time of filing the European patent application.

For European patent applications filed and international applications entering the regional phase **on or after 1 April 2009, one flat designation fee** of EUR **500** covers the designation of **all** contracting states, unless individual designations are expressly withdrawn.

However, for European patent applications, including European divisional applications and applications under Article 61(1)(b) EPC, filed **before 1 April 2009**, and for international applications entering the regional phase before that date the system of individual designation fees for each contracting state designated, up to a maximum of seven times the amount of the designation fee to cover all states, continues to apply (Article 2.3 RFees, old version).

These two designation-fee systems will therefore exist in parallel for some time. For applications subject to the old system, care must be taken to pay the correct amount of individual designation fees, and above all the maximum of seven times the fee amount (currently EUR 595) to cover all contracting states, in order to prevent losses of rights or unnecessary refund actions.

3.4 Fee for grant

With the introduction of the additional fee as part of the filing fee for European patent applications filed and international applications entering the regional phase on or after 1 April 2009, a page fee ceases to be payable at the grant stage. Therefore for these applications a **flat fee** for grant and publication applies.

For European patent applications filed and international applications entering the regional phase before 1 April 2009 the old fee for grant, with a page fee for applications comprising more than 35 pages, continues to apply. This is indicated in the communication under Rule 71 (3) EPC (EPO Form 2004).

3.5 Three-month period for advance payment of renewal fees

Under Rule 51(1) EPC, renewal fees for European patent applications can be validly paid up to one year before their due date.

As from 1 April 2009, this period is being reduced to three months before the due date. This change applies to all applications, irrespective of the date of filing or date of entry into the regional phase. For practical reasons, renewal fees received up to one month before the start of the three-month period will be retained by the Office, but the payment will not take effect until the first day of the pre-payment period (see also Guidelines for Examination, A-XI, 5.2.4).

4. Transitional arrangements for international applications entering the regional phase

These arrangements apply to the fee changes described under points 3.1 to 3.4 above.

4.1 Applications for which the 31-month time limit of Rule 159(1) EPC expires before 1 April 2009:

These applications are subject to the old law. This means that there is no additional page fee as part of the filing fee, no flat designation fee and no flat fee for grant. If excess claims fees are paid within the period under Rule 162(2) EPC, all are payable in the amount of EUR 200, even if this period expires on or after 1 April 2009. This also applies if an automatic debit order has been filed for the application since excess claims fees are not be debited automatically until the last day of the period under Rule 162(2) EPC.

4.2 Applications for which the 30-month time limit of Article 22 PCT expires before 1 April 2009 and the 31-month time limit of Rule 159(1) EPC expires on or after that date (i.e. 1 April falls during the 31st month from the priority date):

For the **old** fee structure to apply, the regional phase must have been validly entered by payment of the filing fee (Article 2.1 RFees, old version) and, if applicable, filing of the translation required under Article 153(4) EPC, **before 1 April 2009**. For this purpose, the applicant must **not** file an automatic debit order for the filing fee, since it would be debited on the last day of the 31-month period, i.e. on or after 1 April 2009, but must use some other permitted means of payment (see point 5. below).

Failing this, the international application can only enter the regional phase subject to the new fee structure in force as from 1 April 2009.

4.3 Applications for which the 30-month time limit of Article 22 PCT expires on or after 1 April 2009:

Since the application will still be in the international phase on 1 April 2009, entry into the regional phase **before** this date is possible only if an express request for early processing (Article 23 or 40 PCT) has been made and the acts required under Rule 159(1) EPC have been completed before this date. The express request is not contained in the form for entry into the European phase (EPO Form 1200) but must be made separately.

Therefore, for the international application to enter the regional phase **before 1 April 2009** the applicant must:

file the request for early processing;

- supply, where applicable, the translation of the international application into German, English or French;
- specify the application documents on which the European grant procedure is to be based;
- pay the filing fee;
- pay the designation fees if the period under Rule 39(1) EPC has already expired;
- pay the search fee where a supplementary European search report is to be drawn up;
- file the request for examination and pay the examination fee if the period under Rule 70(1) EPC has already expired;
- file, where applicable, the certificate of exhibition (Article 55(2), Rule 25 EPC);
- pay, where appropriate, the renewal fee for the third year if the fee has already fallen due under Rule 51(1) EPC.

Note: Since these fees must be paid early, an automatic debit order must not be filed (see point 4.2 above).

For further information, see "[How to get a European patent Euro-PCT](#)" Guide for Applicants Part 2, 4th edition April 2008, especially points 292 to 295, 301.

Claims fees for any claims in excess of fifteen (Rule 162(1) EPC) need only be paid before expiry of the period under Rule 162(2) EPC, and their payment will therefore not be a requirement for valid early entry into the regional phase. Provided all the required steps as mentioned above are taken before 1 April 2009, all excess claims fees will be due in the amount of EUR 200, even if validly paid on or after 1 April 2009.

5. Methods of payment and date on which a payment is considered to be made (Article 7(1), (2) RFees)

- Payments by debit order from a deposit account held with the EPO: date of receipt of the debit order by the EPO (see points 6.3 to 6.7 ADA, supplement to OJ EPO 3/2009).

Holders of deposit accounts may also use the automatic debiting procedure - in which case responsibility for ensuring that payments are made correctly, in full and on time lies with the EPO (see Arrangements for the automatic debiting procedure, Annexes A.1. and A.2 to the ADA). See also, however, the transitional arrangements under points 4.2 and 4.3 above.

- Payments/transfers to an Office bank account: date on which the amount of the payment/transfer is actually entered in the bank account.

Applicants should note that the fail-safe provisions of Article 7(3) and (4) RFees and point 6.8 ADA apply only to the expiry of a time limit (see Guidelines for Examination, A-XI, [6.2.5](#)) and therefore not to the transition from the old to the new fee structure.

It should also be noted that fees may not be paid by cheque sent or delivered direct to the EPO (see [OJ EPO 2007, 626](#)).

1. For divisional applications and new European patent applications under Article 61(1)(b) EPC, the relevant date is that of receipt at the EPO rather than the filing date of the earlier application.

2. Rules 38, 39, 160, 17(3), 36(4), 71(8) and 159(1)(d) EPC, and Article 2 items 3, 3a, 7, 8 and 15 RFees as in force until 31 March 2009. The revised Schedule of fees and expenses applicable from 1 April 2009 (supplement to OJ EPO 2/2009) sets out the fees payable under both the new and the old fee structures.

3. See decision CA/D 2/08 of the Administrative Council of 6 March 2008 ([OJ EPO 2008, 124](#))

4. As inserted by Administrative Council decision CA/D 15/07 of 14 December 2007 ([OJ EPO 2008, 10](#)) and amended by Administrative Council decision CA/D 5/08 of 9 December 2008 ([OJ EPO 2009, 7](#)). The additional fee applies as part of the filing fee to both European patent applications filed and international applications entering the regional phase on or after 1 April 2009

5. See Article 1(1) of the decision of the President of the EPO dated 12 July 2007 concerning the filing of sequence listings and the annex to the decision ([OJ EPO 2007, Special edition No. 3, C.1 and C.1.1](#)).