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## What will be the cost of obtaining Unitary Patent protection?

Unitary Patent renewal fee proposals are discussed by Select Committee.

With progress being made across EU member states towards the implementation of the Unitary Patent system, one significant question remains: what will be the cost of obtaining Unitary Patent protection? The European Patent Office (EPO) has recently given an indication of the fee proposals which are currently under discussion, and in particular the level of renewal fees being considered.

The Unitary Patent is an attractive proposition for applicants, since it will provide a single patent covering most EU member states, compared with a traditional European patent, which needs to be validated and renewed separately in the individual countries in which it is to have effect.

However, take up of the Unitary Patent system by applicants is likely to be highly sensitive to the level at which renewal fees are set, particularly for applicants who presently maintain their European patents in only a few countries.

It is understood that the EPO's current proposals for renewal fees are as follows:

- For years 3 to 5, renewal fees would be set at the same level as the fees payable to the EPO for pending European patent applications;
- For years 6 to 9, the fees would be set at a transitional level between the level set for pending applications and the year 10 level;
- For year 10 onwards, the fees would be set to a level equivalent to the sum of the national renewal fees

payable in the four states in which European patents are most frequently validated (the so-called 'TOP 4' level).

In an alternative proposal, the fees for year 10 onwards would be based on the sum of renewal fees in the five most frequently validated states ('TOP 5'), but the fees would be reduced by 25% in the earlier years for certain categories of patentees, including SMEs and universities.

The level of fees under these proposals is higher than many had hoped, particularly in view of the expectation that Spain and Italy will not be covered by the Unitary Patent<sup>1</sup>. Furthermore, patentees will need to consider that even where their required geographical coverage might initially be less costly under a Unitary Patent than a traditional European patent, the latter system preserves the option of reducing costs in later years by abandoning the patent in individual countries and maintaining coverage only in core countries.

The EPO's fee proposals were discussed at the 13<sup>th</sup> meeting of the Select Committee of EU Participating Member States on 23 and 24 March 2015. The Select Committee subsequently reported that most member states were not yet able to take a concrete position on the proposals, but confirmed its commitment to take 'the appropriate decisions on the financial and budgetary

<sup>1</sup> Italy signed the UPC agreement but not the Unitary Patent Regulation - accepting the Unified Patent Court but not the Unitary Patent. A classical European patent can be obtained for Italy, Spain and European Patent Convention signatory states that are not EU members such as Norway, Switzerland, Turkey, Iceland, etc.

aspects of the implementation of the Unitary Patent Protection' by the end of June 2015.

It remains to be seen whether renewal fees for the Unitary Patent can be set at a level which covers the costs of maintaining the system while remaining low enough to be attractive to users, and further announcements are keenly anticipated.

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