

## Renewal fees for Unitary Patent

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For some time the big question regarding the unitary patent has been "how much will it cost?" A large proportion of the cost will of course be down to the renewal fees, but until now we have had very little indication of how much these fees will be.

The Unitary Patent Regulation (Article 12) only provides vague guidelines on what the fees should be, which try to balance various factors such as the need for sufficient revenue for the EPO and the need to make the system affordable, especially for SMEs. It also stipulates that the fees should be roughly equivalent to the national renewal fees that would be due for an average validated European patent. The only concrete guideline given is that the fee should be "progressive" - i.e. it should increase throughout the term of the patent.

### The new proposal

The EPO has revealed a proposal for the amount and structure of the renewal fees for unitary patents. The administrative council, which controls the EPO, is now considering the proposal.

The proposal can be summarised as:

- **Years 3 to 5:** the fees will be at the same level as the EPO's internal renewal fees (IRF), payable to the EPO for pending European patent applications currently.
- **Years 6 to 9:** the fees will be transitional between the IRF level and the year 10 level.
- **Years 10 to 20,** the fees will be at a level equivalent to the total sum of the national renewal fees payable in the states in which European patents are most frequently validated (TOP level).

Years are calculated from the filing date.

The proposal is complicated, which is no doubt due to the difficulties in satisfying each of the, sometimes conflicting, requirements set out in the regulation.

For years 3 to 5 though, it is fairly straightforward - the current internal renewal fee for years 3 to 5 are €465, €580, and €810 respectively.

For years 6 to 9 the fee increases from the year 5 level by progressively larger increments up to the year 10 level. As we don't know yet what that the year 10 level is, we can't put a figure on the fees for each of years 6 to 9.

There are currently two proposals for years 10 to 20.: The first is based on a "TOP 4" model, the second on a "TOP 5" model, i.e. the cost of validating in the 4 or 5 most popular countries.

The TOP 5 model also includes a 25% discount for SMEs, natural persons, non-profit organisations, universities, and public research organisations, but would still be more expensive than the TOP 4 model.

So what would be the answer to the question "how much will it cost?" Well, based on each model the total costs over 20 years would be:

**TOP 4 model - €37,995**

**TOP 5 model (normal) - €43,625**

**TOP 5 model (with 25% discount) - €41,655**

### **A good proposal?**

European patent attorneys differ as to whether the proposed fee levels are fair.

Really, it comes down to how many countries you want protection in. For those who want protection in less than 4 European countries, the unitary patent will not be an attractive option, but this was to be expected.

If you desire wider protection, the fee levels are in fact cheaper than the current system - at least for year 6 onwards - especially when you consider the additional administrative costs of monitoring and paying fees in several countries vs paying one fee to a single body.

In the first two years however, the unitary patent fees may be higher than the corresponding national fees for a traditional European patent. This is because many national patent offices have reduced fee levels in the first two years to account for the fact that the patent may still be pending. However, again, this would depend on which specific countries are validated.

Finally, Spain and Italy, two popular countries for validation, are not included in the Unitary Patent, so renewal fees for these countries will be due in addition to the Unitary Patent renewal fees.

We will be closely monitoring the Administrative Council's decision on these proposals.