

4 February 2004

Mr Ingo Kober
President
European Patent Office
Erhardstrasse 27

D – 80331 Munich

THE SECRETARY GENERAL

Dear President,

Cher ami

UNICE has followed closely the recent decision from the EPO regarding its new fee policy as of 1 January 2004 in relation to the introduction of the PCT International Search Opinion.

UNICE would like to voice its strong concerns regarding the effects of the new system on the cost of patenting in Europe via the PCT route and the overall competitiveness of European companies.

If Europe wants to recoup its R&D investments, innovative European companies should be stimulated to patent their inventions, not only in Europe but also outside Europe. Enhanced use of the PCT system provides, in UNICE's view, the best means to encourage innovative European companies to obtain worldwide patent protection.

In this context, UNICE is of the strong opinion that it is necessary to reconsider any measures that have a discouraging effect to the use of the PCT system, such as the strongly increased PCT search fee not combined with a significantly decreased national phase examination fee.

You will find, at annex, a detailed assessment of the new fee system and its implications for European industry.

We remain at your disposal for any further clarification.

Yours sincerely,

Gordalement

Philippe de Buck

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Annex:

**UNICE'S ASSESSMENT OF THE EPO DECISION REGARDING THE
PCT SEARCH FEE INCREASE**

- Applicants find it difficult to reconcile why the route of obtaining a European Patent via the PCT is some 40% more expensive than a direct European application for Search Report and Examination: (1,550€ for the PCT search + 1,430€ for the examination = 2980€ for Euro-PCT vs. 690€ for the search + 1,430€ for the examination = 2120€ for direct EP).
- The main argument for the 70% increase in the PCT search fee is that the PCT International Search Opinion (ISO) would provide the applicant with a sound basis for his decision as to whether or not to enter the national phase and thus the use of Chapter II PCT is expected to decrease in the future.
- There is no doubt that the PCT ISO increases the work to be done by the examiner and thus the costs of the EPO in this regard. To the same extent, however, the workload during examination in the national phase should decrease and thus it would appear logical and justified to reduce the examination fee in the later stage to reflect this decrease in workload. By doing so, this would also immediately end the "discrimination" of the Euro-PCT vs. the direct European application.
- Using international preliminary examination during the international phase has the significant advantage of providing the applicant with a positive International Preliminary Examination Report (IPER) after discussion with the examiner, even if the first Office Action was negative (Scenario C). Entering the national phase with a positive IPER facilitates the processing in the national phase. With the PCT ISO the possibility to exchange arguments with the examiner is not there and the discussions to overcome a negative ISO have to be carried out on a country-by-country basis with the national examiner. This is not only time-consuming but also expensive. In view of the increased importance of the ISO compared with the previous search report, it will become more important to overcome a negative opinion. Therefore, UNICE does not share the view that this will lead to a large decrease in EPO income from PCT-II fees.

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