

Mr Jérôme Debrulle  
Chairman of the Select Committee of the  
European Patent Organisation

11 March 2015

Dear Mr Debrulle,

It took nearly 40 years for Europe to create a Unitary Patent. If the Commission, Member States and the European Parliament finally succeeded at the end of 2012, it was because competitiveness, growth and job creation in Europe were their common goal.

We are now at a crucial time when Member States will decide on the cost of the Unitary Patent.

The cost of intellectual property protection has been identified as one of the main hindrances to the EU's capacity to innovate. It is now that we will see whether the Unitary Patent will have the ability to boost EU's innovation and the competitiveness of European businesses.

BUSINESSEUROPE has taken note of the recently published proposals by the European Patent Office on the renewal fees for the Unitary Patent.

BUSINESSEUROPE is seriously concerned about the current proposals because of the following reasons<sup>1</sup>.

- The cost attractiveness of the Unitary Patent is put into question by much higher renewal fees in the early years than anticipated by the European legislators when it was adopted. The TOP4 presented in the proposals is not a real TOP4 as our calculations in the annex indicate.
- Incentives for SMEs are always welcome but it is key for the success of the Unitary Patent that the overall level of fees remains attractive for all companies.
- We fully acknowledge and support the need to ensure that the balance of the EPO budget will not be disrupted by the uptake of the Unitary Patent as a source of renewal fee revenue. At the same time, the cost of the Unitary Patent must be set at a level, which will preserve its competitiveness objective.

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<sup>1</sup> This is not supported by CEOE, the Confederation of Employers and Industries of Spain.

- BUSINESSEUROPE has presented a proposal for a level of fees based on a true TOP4 at the time the level is first set combined with a modified progressivity in the late years. This proposal constitutes what companies would consider appropriate for the Unitary Patent to be attractive.
- The early years of the system should be used to assess the true financial effect of reasonably attractive renewal fees for the Unitary Patent. A revision clause would enable potential adjustments, e.g. five years after the entry into force of the system. It will always be more difficult to decrease high fees than the opposite.

European business believes it is now that the right political decisions have to be made to ensure that the original objective of enhancing the competitiveness of Europe is not lost. We urge you to defend the interests of the users of the system. No other considerations should be allowed today to jeopardise this major contribution to the industrial renaissance of Europe.

A similar letter is being sent to Commission Vice-President Katainen and Commissioner Bienkowska.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "J. Chauvin", with a long horizontal flourish extending to the right.

Jérôme P. Chauvin  
Deputy Director General

**ANNEX**  
**COMPARISON TABLE FOR RENEWAL FEES FOR OY 2 TO 10**  
**(EPO PROPOSAL 1)**

Year of grant (from priority)	Renewal fees for average EP <sup>1</sup> (TOP4)	Renewal fees for UP as proposed by EPO <sup>2</sup>	Percentage increase over average EP	EP equivalent
2	106	350	230%	TOP10
3	106	465	340%	TOP10
4	146	580	297%	TOP10
5	309	810	162%	TOP9
6	469	855	82%	TOP8
7	623	900	45%	Close to TOP6
8	805	970	20%	Close to TOP5
9	978	1020	4%	> TOP4
10	1162	1175	0%	TOP4

**COMPARISON TABLE FOR RENEWAL FEES FOR OY 2 TO 10**  
**(EPO PROPOSAL 2)**

Year of grant (from priority)	Renewal fees for average EP <sup>3</sup>	Standard UP renewal fees as proposed by EPO <sup>4</sup>	Percentage increase over average EP	Reduced fee schedule as proposed by EPO	Percentage increase over average EP
2	106	350	230%	262.50	148%
3	106	465	340%	348.75	230%
4	146	580	297%	435.00	200%
5	309	810	162%	607.50	97%
6	469	880	88%	660.00	40%
7	623	950	53%	712.50	14%
8	805	1110	40%	832.50	3%
9	978	1260	30%	945.00	- 3%
10	1162	1475	27%	1106.25	- 5%

<sup>1</sup> The average European Patent is validated in four Member States, assumed here to be Germany, France, The Netherlands and United Kingdom; figures taken from SC/19/14, Annex 1, page 13

<sup>2</sup> As per SC/4/15, page 7

<sup>3</sup> The average European Patent is validated in four Member States, assumed here to be Germany, France, The Netherlands and United Kingdom; figures taken from SC/19/14, Annex 1, page 13

<sup>4</sup> As per SC/4/15, page 9

**Comments**

The break-even point is reached when the grant occurs at Ordinal Year 10. Any applicant who manages to get his patent granted in a more reasonable timeframe is disadvantaged by the proposed schedule of fees. The greater his efforts to shorten the granting process, the more disadvantaged he would be if he chose the Unitary Patent. Considering that about 85% of the European Patents are granted before Ordinal Year 10, the proposed schedule is clearly unbalanced and would have a strong negative impact on the taking off of the Unitary Patent.

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