



**Europäische
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Verwaltungsrat

**European
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Organisation**

Administrative Council

**Organisation
européenne des
brevets**

Conseil d'administration

CA/61/21

Orig.: en

Munich, 08.10.2021

SUBJECT: Amendment of Article 2 of the Rules relating to Fees: adjustment of fees and prices for 2022

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: 1. Budget and Finance Committee (for opinion)
2. Administrative Council (for decision)

SUMMARY

This document proposes that the implementation of the policy of inflation-based biennial fee adjustments be continued in 2022. Biennial inflation-based fee adjustments form part of the bundle of measures (measure No 11) approved by the Council in June 2020 in order to ensure the long-term financial sustainability of the Organisation in accordance with Goal 5 of the Strategic Plan 2023.

In line therewith, the Office proposes a general fee increase of 3%, with effect from 1 April 2022, and coupled with a freeze of the international search fee and the fee for international preliminary examination.

Furthermore, a corresponding adjustment of the reduction in the fee for the supplementary European search is also proposed, where the international or supplementary international search report was drawn up by any of the European ISAs.

The Administrative Council is requested to approve the draft decision set out in Part II of the document.

This document has been issued in electronic form only.

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PART I

I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to adopt the draft decision in Part II of the document.

III. MAJORITY NEEDED

3. Three-quarters.

IV. CONTEXT

4. The system of inflation-based biennial fee adjustments was first introduced in 2006 (CA/D 4/05), followed by successive biennial adjustments in 2008 (CA/D 16/07), 2010 (CA/D 19/09), 2012 (CA/D 6/11), 2014 (CA/D 14/13), 2016 (CA/D 12/15). For 2018, it was decided to freeze the inflation-based biennial fee adjustment due to the low variation of the reference index for inflation and review some specific EPO fees (CA/D 17/17). The latest inflation-based biennial adjustment was decided for 2020 (CA/D 12/19)
5. As regards the follow-up of the Financial Study performed in 2019, the Office finds itself today in the implementation phase of the measures adopted with CA/18/20. Biennial inflation-based fee adjustments of procedural fees form part of the bundle of measures (measure No 11) approved by the Council in June 2020 in order to ensure the long-term financial sustainability of the Organisation in accordance with Goal 5 of the Strategic Plan 2023. In addition, it is proposed to apply the biennial fee adjustment to the renewal fees for patent applications, too, as it has been done in all previous biennial cycles. On the other hand, the levels of the international search fee and the international preliminary examination fee would remain unchanged in order to close the gap with the fees paid for the corresponding products for Euro-Direct applications.
6. The purpose of the proposed inflation-based fee increase is to offset the inflation which has occurred since the last inflation-based fee increase decision was taken in December 2019. This does not prejudice future changes in the fee structure.

7. The 2022 draft budget (CA/50/21) includes this general fee increase, with the exceptions mentioned in this document, of 3% with effect from 1 April 2022. In the context of past discussions on the financing of the Organisation, the principle of inflation-indexed fee adjustments was generally acknowledged. Therefore, it is not advisable to deviate from this general and recognised principle and it is requested to proceed with the biennial fee adjustment.

V. ARGUMENTS

A. PROPOSED ADJUSTMENT OF FEES TO BE ADOPTED BY THE ADMINISTRATIVE COUNCIL

a) General inflation-based fee adjustment

8. In order to safeguard the Office's long-term financial equilibrium, it is proposed to proceed with a biennial fee adjustment, as has been done since 2006. The Office proposes a general fee increase of 3%, with effect from 1 April 2022, in accordance with the established practice of an inflation-based fee adjustment.
9. Regular minor adjustments, simply compensating for inflation, are regarded as acceptable to users, since such measures are also often applied and accepted in the private and public sectors in Europe.
10. The HICP (Harmonized Index for Consumer Prices for the 27 EU countries¹) rose from 105.57 in June 2019 to 108.65 in June 2021, equivalent to a 2.92% increase. On this basis, it is proposed that the accumulated inflation over the two-year period be set at a rounded **3%**.
11. The full year loss of income from keeping the two PCT fees unchanged, instead of increasing them by 3%, amounts to some EUR 3.5m.
12. As is also customary, the Office is proposing to round up/down the amount of individual fees payable from 1 April 2022 to the nearest figure divisible by 5.
13. The new amounts, i.e. the proposed changes to Article 2(1) and (2) of the Rules relating to Fees (RFees), are specified in Article 1 of the draft decision in Part II of this document.

¹ The Eurostat HICP now covers the 27 EU Members States, whereas it used to cover 28 states in the preceding biennial fee adjustment.

b) Exempting the international search fee and the international preliminary examination fee from the application of the inflation-based adjustment

14. For the biennial fee adjustment 2022, the EPO is proposing, in deviation from the concept of an across-the-board fee adjustment, to keep the level of the international search fee unchanged at EUR 1 775, as was already the case for the fee adjustment exercise 2014, 2016 and 2020. It was even reduced by EUR 100 in 2018.
15. With the proposed changes of fees, the gap between the search fees charged by the EPO during the international phase (EUR 1 775) and the European phase (EUR 1 390) would be reduced from EUR 425 to EUR 385. Since on average one claims fee (EUR 250) is paid for each EP application, the said gap would still amount to EUR 135. Approximately 85 000 search reports under Chapter I PCT were drawn up by the EPO in 2020.
16. Furthermore, it is also suggested to freeze the fee for international preliminary examination at the EPO at its current level. With the proposed changes of fees, the gap between the international preliminary examination fee charged by the EPO (EUR 1 830) and the European examination fee where a European Search Opinion (ESOP) is available (EUR 1 750) amounts to EUR 80 (previously EUR 130). Approximately 5 600 preliminary examination reports under Chapter II PCT were drawn up by the EPO in 2020.
17. By keeping the two PCT fees unchanged, instead of increasing them by 3% and considering the yearly income of approximately EUR 110m from the international search and EUR 10m from the international preliminary examination lead to a full annual loss of income of approximately EUR 3.5m.
18. The reduction in the gap was implemented in a consistent manner in the last biennial adjustments in view of the fact that an international search generally corresponds to a Euro-direct search in terms of scope and quality (see CA/F 27/20, §55-56).
19. This measure is supportive to European industry since over two-thirds of the current volume of PCT searches and preliminary examinations carried out by the EPO as an International Searching Authority (ISA) and International Preliminary Examining Authority (IPEA) is for European-based entities. They will thus largely benefit from the freezing of the PCT fees.

B. ADJUSTMENT OF OTHER FEES, EXPENSES AND PRICES

20. Under Article 3 RFees, certain fees, expenses and prices are laid down by the President (see the President's last decision dated 29 January 2020, OJ EPO 2020, A6). In order to simplify the existing structure of these administrative fees, the President has decided in 2019 to group some of them together under the same fee code and to abolish those which have become obsolete. The administrative fees have then been reduced from 19 fees to 8 fees and 5 of them have been set to only one single amount. All administrative fees will be subject to the fee adjustment.
21. The fee adjustment applies, in particular, to the fees for international-type searches (i.e. searches similar to an international search carried out by the EPO at an applicant's request on (certain) national patent applications), which apply unless different terms have been agreed between the EPO and the national patent authorities of the contracting states concerned. These fees, expenses and prices should also be adjusted by 3% (amounts to be rounded to the nearest figure divisible by 5).

C. ADJUSTMENT OF THE REDUCTION IN THE FEE FOR THE SUPPLEMENTARY EUROPEAN SEARCH WHERE THE INTERNATIONAL OR SUPPLEMENTARY INTERNATIONAL SEARCH REPORT WAS DRAWN UP BY A EUROPEAN ISA

22. In the context of the 2008 fee adjustment, the Administrative Council agreed that the reduction in the supplementary European search fee where the international search report was drawn up by a European ISA should be adjusted in line with any changes to the supplementary European search fee.
23. It is therefore proposed that the amount of the applicable reduction be adjusted correspondingly from EUR 1 150 to **EUR 1 185** (Article 2 of the draft decision). Thus, applicants selecting one of the other European ISAs for the international search will pay EUR 205 for their supplementary European search.
24. It has already been agreed to grant the reduction for the supplementary European search fee for a four-year period ending on 31 March 2024 (see CA/80/19 and CA/D 12/19 Article 3 and Article 5 (5)).
25. The annual cost of the current reduction scheme is in the order of EUR 1.9m. No changes are expected for the term 2022 to 2024.
26. The aforementioned reduction in the supplementary European search fee equally applies in cases where a European ISA has drawn up a supplementary international search report (SISR). This is reflected in Article 2(1) and (2) of the draft decision.

VI. FINANCIAL IMPLICATIONS

27. The biennial fee adjustment of 3% in 2022 and the exemption of the international search and preliminary examination fee from the inflation-based adjustment will have a significant impact on the cash income in the Office's authorisation budget.
28. Under the assumption of unchanged applicant behaviour, the proposals have the following impact on the operating income of the EPO:

Impact in EURm	2022	2023	2024	2025	2026
Fee adjustments 2022	19	32	33	34	34

29. Concerning the financial impact of the adjustment of the reduction in the fee for the supplementary European search where the international or supplementary international search report was drawn up by a European ISA, with an overall volume of ca. 1700 cases per year, the financial impact for the period 1st April 2022 – 31 March 2024 should correspond to an increased reduction of EUR 120.000 if the volume of cases per year remain stable.

VII. LEGAL BASIS

30. Article 33(2)(d) EPC, Article 153(7) EPC.

VIII. DOCUMENTS CITED

31. CA/D 4/05 (CA/125/05 Rev. 1), CA/D 16/07 (CA/100/07 Rev. 1), CA/D 19/09 (CA/151/09), CA/D 6/11 (CA/63/11), CA/D 14/13 (CA/85/13 Rev. 1), CA/D 12/15 (CA/76/15), CA/D 17/17 (CA/102/17), CA/D 12/19 (CA/80/19), CA/18/20, CA/D 14/12 (CA/90/12), CA/D 8/15 (CA/77/15), CA/D 9/17 (CA/46/17), CA/D 12/19 (CA/80/19).

IX. RECOMMENDATION FOR PUBLICATION

32. Yes

PART II

Draft

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
amending Article 2 of the Rules relating to Fees
and adjusting the amount of the reduction in the fee for
the supplementary European search where the
international or supplementary international search
report was drawn up by one of the European
International Searching Authorities

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,
Having regard to the European Patent Convention and in particular Article 33(2)(d) thereof,
On a proposal from the President of the European Patent Office,
Having regard to the opinion of the Budget and Finance Committee,
HAS DECIDED AS FOLLOWS:

Article 1

Article 2, paragraphs 1 and 2, of the Rules relating to Fees shall read as follows:

"(1) The fees due to be paid to the Office under Article 1, unless otherwise provided in paragraph 2, shall be as follows:

1. Filing fee (Article 78, paragraph 2)

(i) where the European patent application or, if required, its translation (Article 14, paragraph 2) is filed online in character-coded format, or, in the case of an international application, if within the 31-month period (Rule 159, paragraph 1) the form for entry into the European phase (EPO Form 1200) and the international application or, if required, its translation (Rule 159, paragraph 1(a)), and any amendments for processing in the European phase (Rule 159, paragraph 1(b)), are all filed online in character-coded format	100
(ii) where all documents referred to in item 1(i) are filed online, but any one of them is filed in a format other than character-coded format	130
(iii) in all other cases	270
1a. Additional fee for a European patent application comprising more than 35 pages (not counting pages forming part of a sequence listing) (Rule 38, paragraph 2)	<p>plus EUR 16 for the 36th and each subsequent page</p>
1b. Additional fee in the case of a divisional application filed in respect of any earlier application which is itself a divisional application (Rule 38, paragraph 4)	
– fee for a divisional application of second generation	225
– fee for a divisional application of third generation	455
– fee for a divisional application of fourth generation	680
– fee for a divisional application of fifth or any subsequent generation	910

2. Search fee in respect of	
– a European or supplementary European search on an application filed on or after 1 July 2005 (Article 78, paragraph 2, Rule 62, Rule 64, paragraph 1, Article 153, paragraph 7, Rule 164, paragraphs 1 and 2)	1 390
– a European or supplementary European search on an application filed before 1 July 2005 (Article 78, paragraph 2, Rule 64, paragraph 1, Article 153, paragraph 7)	950
– an international search (Rule 16.1 PCT, Rule 40 <i>bis</i> PCT in conjunction with Rule 20.5 <i>bis</i> PCT, and Rule 158, paragraph 1)	1 775
– a supplementary international search (Rule 45 <i>bis</i> .3(a) PCT)	1 775
3. Designation fee for one or more Contracting States (Article 79, paragraph 2) in respect of an application filed on or after 1 April 2009	630
4. Renewal fees for the European patent application (Article 86, paragraph 1), calculated in each case from the date of filing of the application	
– for the 3rd year	505
– for the 4th year	630
– for the 5th year	880
– for the 6th year	1 125
– for the 7th year	1 245
– for the 8th year	1 370
– for the 9th year	1 495
– for the 10th and each subsequent year	1 690

5. Additional fee for belated payment of a renewal fee for the European patent application (Rule 51, paragraph 2)	50% of the belated renewal fee
6. Examination fee (Article 94, paragraph 1) in respect of	
– an application filed before 1 July 2005	1 955
– an application filed on or after 1 July 2005	1 750
– an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 153, paragraph 7)	1 955
7. Fee for grant including fee for publication of the European patent specification (Rule 71, paragraph 3), in respect of an application filed on or after 1 April 2009	
(i) where on or after 1 April 2018 all amendments and corrections of the application, if any, and the translation of the claims are filed online in character-coded format	885
(ii) in all other cases	
– where the fee for grant is paid between 1 April 2018 and [date to be set by the President of the Office]	990
– where the fee for grant is paid on or after [date to be set by the President of the Office]	1 095
8. Fee for publishing a new specification of the European patent (Rule 82, paragraph 2, Rule 95, paragraph 3)	80
9. Surcharge for late performance of the acts required to maintain the European patent in amended form (Rule 82, paragraph 3, Rule 95, paragraph 3)	130

10. Opposition fee (Article 99, paragraph 1, Article 105, paragraph 2)	840
10a. Limitation or revocation fee (Article 105a, paragraph 1)	
– request for limitation	1 245
– request for revocation	560
11. Fee for appeal (Article 108) for an appeal filed	
– by a natural person or an entity referred to in Rule 6, paragraphs 4 and 5	2 015
– by any other entity	2 785
11a. Fee for petition for review (Article 112a, paragraph 4)	3 115
12. Fee for further processing (Rule 135, paragraph 1)	
– in the event of late payment of a fee	50% of the relevant fee
– in the event of late performance of the acts required under Rule 71, paragraph 3	275
– other cases	275
13. Fee for re-establishment of rights/fee for requesting restoration/fee for reinstatement of rights (Rule 136, paragraph 1, Rule 26 <i>bis</i> .3(d) PCT, Rule 49 <i>ter</i> .2(d) PCT, Rule 49.6(d)(i) PCT)	685
14. Conversion fee (Article 135, paragraph 3, Article 140)	80
14a. Fee for late furnishing of a sequence listing (Rule 30, paragraph 3)	245

15. Claims fee (Rule 45, paragraph 1, Rule 71, paragraph 4, Rule 162, paragraph 1) in respect of an application filed on or after 1 April 2009	
– for the 16th and each subsequent claim up to the limit of 50	250
– for the 51st and each subsequent claim	630
16. Fee for the awarding of costs (Rule 88, paragraph 3)	80
17. Fee for the conservation of evidence (Rule 123, paragraph 3)	80
18. Transmittal fee for an international application (Rule 157, paragraph 4)	
– where the PCT request (PCT/RO/101) and the international application are filed with the Office as receiving Office online in character-coded format	0
– in all other cases	140
19. Fee for the preliminary examination of an international application (Rule 58 PCT and Rule 158, paragraph 2)	1 830
20. Fee for a technical opinion (Article 25)	4 175
21. Protest fee (Rule 158, paragraph 3, Rule 40.2(e) PCT, Rule 68.3(e) PCT)	935
22. Review fee (Rule 45 <i>bis</i> .6(c) PCT)	935

(2) For European patent applications filed before 1 April 2009 and international applications which entered the regional phase before that date, the amount of the fees specified in Article 2, item 3, item 3a, item 7 and item 15 of the Rules relating to Fees as in force until 31 March 2009 shall be as follows:

3. Designation fee for each contracting state designated (Article 79, paragraph 2), designation fees being deemed paid for all contracting states upon payment of seven times the amount of this fee **110**

3a. Joint designation fee for the Swiss Confederation and the Principality of Liechtenstein **110**

7. Fee for grant including fee for printing the European patent specification (Rule 71, paragraph 3), where the application documents to be printed comprise:

7.1 not more than 35 pages and

(i) on or after 1 April 2018 all amendments and corrections of the application, if any, and the translation of the claims are filed online in character-coded format **885**

(ii) in all other cases

– where the fee for grant is paid between 1 April 2018 and [date to be set by the President of the Office] **990**

– where the fee for grant is paid on or after [date to be set by the President of the Office] **1 095**

7.2 more than 35 pages

The relevant amount
of item 7.1
plus **EUR 16**
for the 36th and
each subsequent page

15. Claims fee for the sixteenth and each subsequent claim (Rule 45, paragraph 1, Rule 71, paragraph 4, Rule 162, paragraph 1) **250"**

Article 2

1. The fee for a supplementary European search on an international application for which the international search report or a supplementary international search report was drawn up by the Austrian Patent Office, or, in accordance with the Protocol on Centralisation, by the Finnish Patent and Registration Office, the Spanish Patent and Trademark Office, the Swedish Intellectual Property Office, the Turkish Patent and Trademark Office, the Nordic Patent Institute or the Visegrad Patent Institute shall be reduced by **EUR 1 185**.
2. If a reduction is granted as provided in the first paragraph, the maximum amount of the reduction in the fee for a supplementary European search shall be equal to the reduction granted on the basis of a single international search report or supplementary international search report drawn up by one of the authorities mentioned in the first paragraph.

Article 3

This decision shall enter into force on 1 April 2022.

Article 4

1. Without prejudice to paragraph 2, the new amounts of the fees specified in Article 1 of this decision shall apply to payments made on or after 1 April 2022.
2. The new amount of the transmittal fee for an international application shall apply to applications filed on or after 1 April 2022.
3. If within six months of 1 April 2022 a fee is paid in due time but only in the amount due before 1 April 2022, that fee shall be deemed to have been validly paid if the deficit is made good within two months of an invitation to that effect from the European Patent Office.
4. Article 2 of this decision shall apply to international applications filed up to and including 31 March 2024 for which the international search report or supplementary international search report was drawn up by the Austrian Patent Office, the Finnish Patent and Registration Office, the Spanish Patent and Trademark Office, the Swedish Intellectual Property Office, the Turkish Patent and Trademark Office, the Nordic Patent Institute or the Visegrad Patent Institute and for which the fee for the supplementary European search is paid on or after 1 April 2022.

Article 5

Article 3 of decision CA/D 12/19 of 12 December 2019 (OJ EPO 2020, A3) shall be rescinded with effect from 1 April 2022 and replaced by Article 2 of this decision.

Done at Munich, [date of decision]

For the Administrative Council
The Chairperson

Josef KRATOCHVÍL