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SUBJECT: Package of fee-related measures (inflation-based biennial fee adjustment, simplification of fees, further alignment of the European and PCT fees, creation of incentives for applicants to enhance quality and efficiency, increase in the appeal fee and further refunds for withdrawals)

SUBMITTED BY: President of the European Patent Office

ADDRESSEES:

1. Budget and Finance Committee (for opinion)
2. Administrative Council (for decision)
3. Committee on Patent Law (for information)

SUMMARY

The present document deals with a number of fee-related measures aiming at the implementation of Goal 3, Key Initiative 5, of the Strategic Plan 2023. The document is divided into four parts dealing with the various proposals, namely:

In Part I, it is suggested to pursue the inflation-based biennial fee adjustment. As in past adjustments, it is proposed to freeze the fees for international search and international preliminary examination. Some adjustments in the administrative fees are also proposed.

Part II addresses the renewal of the reduction in the fee for the supplementary European search, applied where the international or supplementary international search report was drawn up by any of the International Searching Authorities in Europe, until the end of a new period of four years, i.e. 31 March 2024.

Part III concerns the adaptation of the scheme for the reduction in the fees for international search and international preliminary examination to extend its coverage to applicants (legal or natural persons) who are nationals of and residents in states where a validation agreement with the European Patent Organisation is in place.

Part IV deals with the proposal aiming at achieving a better cost coverage for appeals and setting further refunds in cases of withdrawals.

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I. STRATEGIC/OPERATIONAL

1. Operational.

II. RECOMMENDATION

2. The Administrative Council is requested to adopt the three draft decisions in Part V of the document.

III. MAJORITY NEEDED

3. Three-quarters.

IV. PART I – ADJUSTEMENT OF FEES AND PRICES FOR 2020

A. 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).
5. For 2020, it is proposed to apply again the inflation-based fee adjustment to secure a long-term balanced budget for the Organisation.
6. The purpose of the proposed inflation-based fee increase is to offset the inflation. The last decision taken in December 2017 to suspend the biennial inflation-based fee adjustment for 2018/2019 led to an annual loss in fee income of some EUR 20m (variance between June 2015 and June 2017). With the current proposal only the inflation variation between June 2017 and June 2019 will be compensated without a catch-up of the suspended variance for the previous period. This does not prejudice future changes in the fee structure.
7. The 2020 draft budget (CA/50/19) therefore includes a general fee increase, with the exceptions mentioned in this document, of 4% with effect from 1 April 2020. 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.

8. Within the general inflation adjustment of 4%, the Office is also proposing – in line with the consistent approach taken since 2014 to reduce the gap between the fee for a European search and the international search fee – to freeze the international search fee and the international preliminary examination fee at their current levels.

B. ARGUMENTS

a) General inflation-based fee adjustment

9. 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 4%, with effect from 1 April 2020, in accordance with the established practice of an inflation-based fee adjustment.
10. 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.
11. The HICP (Harmonized Index for Consumer Prices for the 28 EU countries) rose from 123.63 in June 2017 to 128.16 in June 2019, equivalent to a 3.7% increase. On this basis, it is proposed that the accumulated inflation over the two-year period be set at a rounded **4%**. In order to ensure that the total fee adjustment will not exceed the observed inflation, it is also proposed to freeze the two PCT fees. The additional income from rounding the inflation rate from 3.7% to 4% is estimated at some EUR 3m in 2020, whereas the loss of income from keeping the two PCT fees unchanged, instead of increasing them by 3.7%, amounts to some EUR 4m.
12. As is also customary, the Office is proposing to round up/down the amount of individual fees payable from 1 April 2020 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 first draft decision in Part V of this document.

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

14. For the biennial fee adjustment 2020, 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 and 2016. 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 1 350) would be reduced from EUR 475 to EUR 425. Since on average one claims fee (EUR 245) is paid for each EP application, the said gap would still amount to EUR 180. Approximately 80 800 search reports under Chapter I PCT were drawn up by the EPO in 2018.
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 1 700) amounts to EUR 130 (previously EUR 195). Approximately 7 700 preliminary examination reports under Chapter II PCT were drawn up by the EPO in 2018.
17. The Office estimates that this measure will lead to a loss in fee income of EUR 4.3m for 2020, compared to if inflation had been applied to the PCT fees, to be offset by the extra income generated by the rounding of the adjustment of the other fees to 4%.
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. 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.

c) Adjustment of other fees, expenses and prices

19. Under Article 3 RFees, certain fees, expenses and prices are laid down by the President (see the President's last decision dated 20 February 2019, OJ EPO 2019, A14). In order to simplify the existing structure of these administrative fees, the President has decided 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.
20. This 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 4% (amounts to be rounded to the nearest figure divisible by 5).
21. In order to continue the simplification of the administrative fees, the President intends to set only one single amount for these fees, using as a reference the modest amount of the fee for registration of transfers and licences (EUR 105) and aligning three additional fees with that amount: the fee for a certified copy (fee code 029), the fee for communication of information in the file of a European patent application (fee code 30) and the fee for an additional copy of the documents cited in the European search report (fee code 055).

d) Deletion of the surcharge in Article 7(3) RFees

22. Article 7(3) RFees provides for a safety net in case where a fee payment made by bank transfer is received at the Office's bank account after the due date.
23. To this end the party must prove that the transfer was given to a banking establishment located in one of the EPC Contracting States within the relevant period and pay a surcharge. In addition to the very few cases per year of the payment of this surcharge (150 cases), it is observed that payments via bank transfer are used in approx. 5% of cases.
24. In addition, in the SEPA zone bank transfers are now usually executed in two working days, and, in a foreseeable future, the transaction time will be further reduced. Thus the payment of a surcharge as introduced in 1990 no longer provides an adequate reflection of the current situation.

25. More importantly, a high number (nearly one third) of such surcharge payments are not due. Consequently, they need to be refunded either because the wrong fee was paid (mostly the fee for further processing) or because the fee was paid for precautionary reasons and needs to be refunded when the fee payment is in fact received in a timely manner. This represents an avoidable administrative burden for the Office.
26. It is therefore proposed to **delete this surcharge** by amending Article 7(3) and (4) RFees. To benefit from the safety net, parties would still have to show that the transfer was given within the relevant period.

Current version	Proposed amendment
<p style="text-align: center;">Article 7</p> <p style="text-align: center;">Date to be considered as the date on which payment is made</p> <p>(1) The date on which any payment shall be considered to have been made to the Office shall be the date on which the amount of the payment or of the transfer is actually entered in a bank account held by the Office.</p> <p>(2) Where the President of the Office allows, in accordance with the provisions of Article 5, paragraph 2, other methods of paying fees than those set out in Article 5, paragraph 1, he shall also lay down the date on which such payments shall be considered to have been made.</p> <p>(3) Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment</p> <p>(a) fulfilled one of the following conditions in a Contracting State within the period within which the payment should have been made:</p> <p>(i) he effected the payment through a banking establishment;</p> <p>(ii) he duly gave an order to a banking establishment to transfer the amount of the payment, and;</p>	<p style="text-align: center;">Article 7</p> <p style="text-align: center;">Date to be considered as the date on which payment is made</p> <p>(1) <i>unchanged</i></p> <p>(2) <i>unchanged</i></p> <p>(3) Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment (a) fulfilled one of the following conditions in a Contracting State within the period within which the payment should have been made:</p> <p>(i) he effected the payment through a banking establishment;</p> <p>(ii) he duly gave an order to a banking establishment to transfer the amount of the payment, and;</p>

Current version	Proposed amendment
<p>(b) paid a surcharge of 10% on the relevant fee or fees, but not exceeding EUR 150; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled not later than ten days before the expiry of the period for payment.</p> <p>(4) The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3(a) was fulfilled and, where required, pay the surcharge referred to in paragraph 3(b), within a period to be specified by it. If he fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.</p>	<p>(b) paid a surcharge of 10% on the relevant fee or fees, but not exceeding EUR 150; no surcharge is payable if a condition according to sub-paragraph (a) has been fulfilled not later than ten days before the expiry of the period for payment.</p> <p>(4) The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3(a) was fulfilled and, where required, pay the surcharge referred to in paragraph 3(b), within a period to be specified by it. If he fails to comply with this request or if the evidence is insufficient, or if the required surcharge is not paid in due time, the period for payment shall be considered not to have been observed.</p>

27. The expected financial impact of this revision amounts to a reduction of EUR 15 000 per year.

C. FINANCIAL IMPLICATIONS

28. The biennial fee adjustment of 4% in 2020 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. Under the assumption of unchanged applicant behaviour, the proposals have the following impact on the operating income of the EPO:

	2020	2021	2022	2023	2024
Impact in EURm	29.7	44.9	45.3	44.4	44.2

V. PART II – RENEWAL OF THE REDUCTION IN THE FEES FOR THE SUPPLEMENTARY EUROPEAN SEARCH WHERE THE INTERNATIONAL OR SUPPLEMENTARY INTERNATIONAL SEARCH REPORT WAS DRAWN UP BY A EUROPEAN ISA

A. CONTEXT

29. In 2007, the 1999 PCT Partnership Agreement between the EPO, Spain and Sweden was terminated and replaced by a new system of PCT co-operation in Europe. The main elements of that system were:
- adoption of special agreements with each ISA in Europe based on Section III of the Protocol on Centralisation, providing for harmonisation activities between the EPO and the other ISAs concerned, and
 - adoption of decisions under Article 153(7) EPC granting a sizeable reduction in the European supplementary search fee where the international search had been carried out by one of the other ISAs concerned.
30. The current Administrative Council decision (CA/D 8/15) reducing the fee for the supplementary European search under Article 153(7) EPC where the international (or supplementary international) search report (ISR or SISR) was drawn up by another ISA within Europe (at the time of the decision not including the Turkish Patent and Trademark Office) will expire on 31 March 2020.

31. Also, the current Administrative Council decision (CA/D 9/17) reducing the fee for the supplementary European search under Article 153(7) EPC where the international (or supplementary international) search report (ISR or SISR) was drawn up by the Turkish Patent and Trademark Office – which began operating as ISA and IPEA on 8 March 2017 – will expire on 31 March 2020.
32. While the co-operation activities mentioned in the special agreements are in principle of a permanent nature (termination according to the terms of the agreement), a five-year time limit was set on the Article 153(7) EPC decisions in order to allow the Administrative Council to monitor the financial impact of the fee reduction and to evaluate the operation of the new co-operation scheme in general and against the background of the development of the European patent network. In October 2012, the Administrative Council extended this period by three years as from 1 July 2013 (CA/D 14/12). In December 2015, the Council (CA/77/15 and CA/D 8/15, OJ EPO 2016, A2) extended that term by further three years and nine months (from 1 July 2016 until 31 March 2020). It is proposed to decide on a period of four years, ending in 2024.
33. PCT applicants using one of the other ISAs in Europe benefit from the current fee reduction scheme when their applications enter the regional phase before the EPO. While the regular fee for a supplementary European search is EUR 1 300, the reduction of EUR 1 110 means that the applicant pays EUR 190 for the search in these cases. Furthermore, the fee payable for the European examination in such cases is EUR 190 lower than the European examination fee payable if no supplementary European search is drawn up (i.e. if the EPO acted as ISA in the international phase). This ensures that there is equality of treatment in terms of official fees on entry into the European phase between applicants who have selected the EPO as ISA and those who have selected another ISA in Europe.

B. ARGUMENTS

34. The proposed fee adjustment for 2020 applicable as of 1 April 2020 comprises an increase to EUR 1 350 for a supplementary European search.
35. It is therefore proposed that the amount of the applicable reduction, for the supplementary European search, be adjusted correspondingly from EUR 1 110 to **EUR 1 150** (Article 3 of the first draft decision) such that applicants selecting one of the other European ISAs for the international search pay EUR 200 for their supplementary European search.

36. Article 3 of the first draft decision would apply to international applications where the fee for the supplementary European search is paid on or after 1 April 2020.
37. As regards the financial impact, it is to be noted that the number of cases involved is relatively small at around 1 900 per year; i.e. those applications which have been subject to an international search (or supplementary international search) by another ISA in Europe and subsequently enter the European phase. The annual cost of the current reduction scheme is in the order of EUR 2m. For details see Annex 1.
38. Having regard to the fact that the financial impact of the fee reduction granted to applicants using a European ISA has declined over the past years, the Office is of the view that it is justified to maintain the current scheme for a further period of four years (see Annex 1 and CA/77/15).

C. FINANCIAL IMPLICATIONS

39. The annual cost of the current reduction scheme is in the order of EUR 2m (for details see Annex 1). No changes are expected for the term 2020 to 2022.

VI. PART III – ADJUSTED SCHEME FOR THE REDUCTION IN THE FEES FOR THE INTERNATIONAL SEARCH AND THE INTERNATIONAL PRELIMINARY EXAMINATION IN FAVOUR OF NATIONALS OF CERTAIN STATES

A. CONTEXT

40. In 2008, the Administrative Council adopted a decision on a reduction of 75% in the fee for the international search and the international preliminary examination with the aim of supporting innovation in developing countries (CA/77/08, CA/D 7/08). According to that decision, the above-mentioned reduction applies to natural persons who are nationals of and residents in a state which is not an EPC Contracting State, and which, on the date of filing of the application or of the demand, is listed as a low-income or lower-middle-income economy by the World Bank (currently, there are 81 beneficiary states; the list is updated once per year; see Annex 2). This Administrative Council decision replaced earlier decisions of a similar nature.

41. It is noted that the scope of the EPO's fee reduction scheme is narrower than the one applied by WIPO, which provides for a reduction of 90% of the international filing fee for natural persons who are nationals of and residents in a state listed as being a state whose per capita gross domestic product is below USD 25 000 and all countries classified as "least developed countries" by the United Nations. At the same time, however, other International Searching Authorities, e.g. the Spanish Patent and Trademark Office, have followed the EPO's model.
42. It is herewith proposed to extend the coverage of the current fee reduction scheme to applicants (legal or natural persons) who, within the meaning of Rule 18 PCT, are nationals of and residents in countries where a validation agreement with the European Patent Organisation is in place. Currently, applicants from the following four states would benefit from this change: Morocco, the Republic of Moldova, Tunisia and Cambodia.
43. If this proposal is adopted, decision CA/D 7/08 should be replaced by a new one also covering the validation states.

B. ARGUMENTS

44. The inclusion of all applicants who are nationals of and residents in validation states in the reduction scheme is fully in line with and supportive of the Office's policy to prioritise validation agreements as the preferred and strategic form of co-operation with non-member States (Goal 4 of the Strategic Plan 2023). By extending the reduction scheme to those States, the Office will indeed provide a concrete financial incentive to (applicants in) validation states.
45. The validation system offers EPO applicants reliable and cost-effective patent protection in non-member states. The validation of European patents furthermore contributes to the strengthening of the national patent protection and further development of co-operation between the EPO and validation states. In particular, it enables national patent Offices to focus on their first national filings.
46. From an operational point of view, the new coverage would not entail complex processing of fee reductions as they would be granted to all applicants from any of the validation states, i.e. irrespective of whether this applicant is a natural or legal person. The only requirement would be that in the case of several applicants, all of them would have to be nationals of and residents in any of the said validation states.

47. Finally, another minor update is proposed, namely that the reduction scheme also applies to supplementary international searches which have not been referred to in the previous decision of 2008 since this work product was not yet available at the time. The EPO has offered this new product since 2010. As it is similar to an international search, it is sensible to include it in the reduction scheme as well. From an operational point of view, however, it is expected that this would have almost no financial and operational impact for the Office since volumes are very low with a total of only 54 requests for a supplementary international search selecting the EPO in 2018, and since such requests have to be submitted (and paid) to the International Bureau of WIPO.

C. FINANCIAL IMPLICATIONS

48. According to the statistics, over the period 2016-2018, the EPO as ISA received an average of 120 requests for international search and of 10 requests for international examination from applicants (natural persons) in developing non-European states listed as a low-income or lower middle-income economy by the World Bank. These numbers were reduced in 2018 to 80 reduced search fees and 4 international preliminary examination fees. This resulted in a loss of income of around EUR 120k.
49. As to the requests for international searches and demands for international preliminary examination filed with the EPO by legal persons who are nationals of and residents in a state where a validation agreement is in force, taking the same time frame into account (2016-2018), the number of requests amounts to around 28 per year (for international searches). The coverage of the four validation states would therefore have brought an additional cost of around EUR 40 000 per year in average over the last three years. It is noted that the requests submitted by natural persons from the validation states are already included in the calculation contained under point 34 since the four states with which the EPO currently has a validation agreement in force are also listed by the World Bank as a low-income or lower-middle-income economy.
50. It may therefore be derived from the figures above that the financial impact of this measure would be very limited. Further details are contained in Annex 3 below.

VII. PART IV – COST COVERAGE OF APPEALS AND FURTHER REFUNDS FOR WITHDRAWALS

51. Following the introduction of the possibility of a partial reimbursement of the appeal fee in the case of a withdrawal of the appeal in amended Rule 103 EPC (CA/D 16/13, OJ EPO 2014, A3) which entered into force on 1 April 2014, it is now proposed to extend and refine this reimbursement policy so as to provide for further incentives for applicants to withdraw their appeal.

52. It is in particular proposed to introduce some additional partial reimbursement possibilities and to extend the reimbursement policy to withdrawal of requests for oral proceedings. This is expected to have a positive impact on procedural efficiency and the workload of the Boards of Appeal and thus a positive impact on its cost coverage. Furthermore, it is proposed to increase the appeal fee in accordance with the Administrative Council's earlier decision to gradually increase the appeal fee.

A. CONTEXT

a) Increasing the cost coverage of the Boards of Appeal

53. The appeal fee is provided for in Article 108, second sentence, EPC. Its amount is set out in Article 2, item 11, of the Rules relating to Fees, and its reimbursement is regulated in Rule 103 EPC.

54. In 2014, the appeal fee was increased by 50% to EUR 1 860 (see CA/90/13 Rev. 1, para. 29 and CA/85/13 Rev. 1, para. 27).

55. In 2016, as part of the reform of the Boards of Appeal, the Administrative Council agreed on the aim of increasing the cost coverage of the Boards of Appeal within the following five years to 20-25% as well as on the means of achieving this. It was agreed that the first means of reaching this objective should be to increase the efficiency of the Boards of Appeal in order to reduce the unit costs, and that the second would be to gradually increase the amount of the appeal fee (see CA/43/16 Rev.1, paras 56-58).

56. In 2017, the appeal fee was increased by 20% to EUR 2 255 and at the same time a reduced appeal fee of EUR 1 880 was introduced for natural persons and for the entities referred to in Rule 6(4) and (5) EPC (SMEs, non-profit organisations, universities, public research organisations), see Article 2(1), item 11, of the Rules relating to Fees (CA/D 17/17 and CA/102/17, Part III – cost coverage of appeals).

b) Reimbursement of the appeal fee

57. Today, a full reimbursement of the appeal fee is available in the following situations:
- in the event of interlocutory revision by the department whose decision is impugned or where the Board of Appeal deems an appeal allowable, if such reimbursement is equitable by reason of a substantial procedural violation (Rule 103(1)(a) EPC);
 - as introduced under the EPC 2000, if the appeal is withdrawn before the (expiry of the period for) filing of the statement of grounds of appeal (Rule 103(1)(b) EPC).
58. The 50% reimbursement possibility was introduced in 2014 (see CA/D 16/13; CA/90/13 Rev. 1). It applies if the appeal is withdrawn
- (a) at least four weeks before a date scheduled for oral proceedings;
 - (b) before expiry of a period set by the Board in a communication; or
 - (c) in all other cases, before the decision is issued (Rule 103(2) EPC).
59. Since amended Rule 103 EPC entered into force on 1 April 2014, the rate of withdrawals has slightly increased.

B. ARGUMENTS

60. New possibilities for a partial reimbursement of the appeal fee should be directed to providing appellants at the different stages of the appeal proceedings with incentives to reconsider whether they still have an interest in pursuing the appeal and/or whether there is a need to re-assess or adjust their procedural strategy and requests.
61. Any change should also have a positive impact on the procedural efficiency and workload of the Boards of Appeal, and therefore on the pendency times of appeals and, ultimately, the cost coverage of the Boards of Appeal.
62. Any new reimbursement possibilities should rest upon objective and clearly defined criteria so that appellants know exactly at what stage(s) of the appeal proceedings they would be eligible for a reimbursement of the appeal fee, in whole or in part (see decisions J 25/10 and J 9/10).

63. The revised version of the Rules of Procedure of the Boards of Appeal, as adopted by the Boards of Appeal Committee, was approved by the Administrative Council on 26 June 2019 and will enter into force on 1 January 2020 (see CA/D 5/19 Corr. 1). Amendments to Rule 103 EPC should be framed in such a way as to take due account of the revised version of the Rules of Procedure of the Boards of Appeal. Moreover, further possibilities for reimbursement of the appeal fee should build on the changes introduced by the revised Rules of Procedure of the Boards of Appeal, in particular the changes relating to the newly introduced timescales and case management features.

a) Additional possibilities for partial reimbursement

64. The following refinements and new possibilities for partial reimbursement of the appeal fee are proposed in Rule 103 EPC:

(i) Withdrawal of the appeal in response to a communication from the Board indicating its intention to start substantive examination of the appeal (reimbursement at 75%)

65. The Boards of Appeal are currently working on reducing their backlog and have identified a five-year objective of settling 90% of cases within 30 months of receipt and reducing the number of pending cases to below 7 000 by 2023. However, until the backlog has been effectively reduced, appeal files will remain "dormant" for a considerable period, viz. in the phase from the receipt of the statement of grounds of appeal and any replies thereto until the start of the substantive examination.

66. As a specific measure to reduce the backlog, it is proposed that in long-pending appeal cases the Board of Appeal will as a rule issue a standard-form communication informing the parties of the intended start of the substantive examination of the appeal and drawing attention to the time-limited possibility of withdrawing the appeal and receiving a partial reimbursement of the appeal fee of 75%. A Board of Appeal may decide to dispense with such a standard-form communication because the appeal proceedings are progressing swiftly, in particular where they have been accelerated pursuant to Article 10(3) to (5) RPBA, revised version, or where the Board intends to issue the summons to oral proceedings or a substantive communication soon.

67. In order to benefit from this enhanced rate of reimbursement, the appellant will have to withdraw the appeal within a non-extendable statutory period of two months from notification of said standard-form communication.
68. The rate of 75% is justified because for the Boards of Appeal the withdrawal of any appeal during this inactive stage will be highly beneficial, given that the members of the Board, and in particular the rapporteur, will not yet have invested effort in the substantive examination of the appeal.
69. The 75% reimbursement option will be particularly effective for those cases which have been pending for a considerable period of time. Once the backlog is reduced, the period between receipt of the statement of grounds/replies and the start of the substantive examination will be significantly shorter. It is expected that this withdrawal option will then be used less frequently.
- (ii) Withdrawal of the appeal during the examination of the appeal (reimbursement at 50%)**
70. The examination phase of the appeal procedure begins when the rapporteur takes up the file and starts the substantive examination of the appeal. It includes the drafting of the internal votum on the appeal case and possibly the issuing of a communication under Rule 100(2) EPC (on substantive matters) or, where oral proceedings are scheduled, the issuing of the communication under Article 15(1) RPBA (which will be mandatory under Article 15(1) RPBA, revised version).
71. Reimbursement of the appeal fee during the examination phase is currently provided for in Rule 103(2)(a) and (b) EPC. Under current Rule 103(2)(a) EPC the appeal fee is reimbursed at 50% if the appeal is withdrawn after the period for filing the statement of grounds of appeal, provided that the withdrawal occurs at least four weeks before the date set for oral proceedings.
72. It is proposed that a new end point for a withdrawal in the examination phase be provided in new Rule 103(3)(a) EPC. The current four-week period is too short to allow the Board to use the oral proceedings room for a different case, as the minimum period for summoning the parties is two months (see Rule 115(1), second sentence, EPC).
73. Under Article 15(1) RPBA, revised version, the Board will be required to issue a communication in preparation for oral proceedings and will endeavour to issue this communication at least four months in advance of the date of the oral proceedings.

74. Therefore, it is proposed that the reimbursement possibility under new Rule 103(3)(a) EPC is available up to the expiry of a period triggered by notification of the mandatory communication under Article 15(1) RPBA, revised version. A period of one month would appear sufficient for an appellant to decide whether to withdraw the appeal at this stage of the proceedings, and the suggested timeline will allow a Board to take up another appeal case and send out the summons for this new case in due time to satisfy the requirement of Rule 115(1) EPC.
75. It is proposed that for withdrawals of appeals during the examination phase the appeal fee continues to be reimbursed at the rate of 50%.
76. Under current Rule 103(2)(b) EPC the appeal fee is also reimbursed at 50% where no date for oral proceedings has been set and the Board has issued a communication inviting the appellant to file observations, provided the appeal is withdrawn before expiry of the period set by the Board for filing observations. This possibility should be retained. The proposal to replace "*Bescheid*" with "*Mitteilung*" in the German version is purely editorial in nature and is intended merely to bring the wording into line with the standard terminology used elsewhere in the Implementing Regulations and the Rules of Procedure of the Boards of Appeal.
77. Furthermore, to cover the case of a direct decision, i.e. a case not necessitating a date for oral proceedings or a communication inviting the appellant to file observations, Rule 103(2)(c) EPC should also be retained.

(iii) Withdrawal of the appeal in the decision phase (reimbursement at 25%)

78. The decision phase begins immediately after the end of the examination phase. It includes the preparation and conduct of oral proceedings as well as the announcement of the decision on the appeal at the oral proceedings and/or the drafting and issuing of the written decision.
79. The proposed new reimbursement possibilities for the decision phase tie in with those set out for the examination phase, i.e. a distinction should be made between situation (a) in which oral proceedings are set to take place, and situation (b), in which no oral proceedings will take place but the Board has issued a communication under Rule 100(2) EPC.
80. It is therefore proposed that during the decision phase the appeal fee is reimbursed at a rate of 25%, if the appeal is withdrawn:

(a) after expiry of a period of one month from notification of the communication under Article 15(1) RPBA, revised version, but before the decision on the appeal is announced at oral proceedings (see Article 15(6) RPBA, revised version); or

(b) if no oral proceedings have been scheduled, after expiry of the period set in a communication under Rule 100(2) EPC (see current Rule 103(2)(b) EPC) but before the decision on the appeal is issued.

81. The proposed new reimbursement rate of 25% will give appellants an incentive to withdraw their appeal in the end phase of the appeal proceedings. This will contribute to reducing the backlog and increase efficiency and productivity, and thereby have a positive impact on the overall cost coverage of the Boards of Appeal.

(iv) Withdrawal of a request for oral proceedings (reimbursement at 25%)

82. If a request for oral proceedings is withdrawn in good time before the oral proceedings, the Board may be able to use this freed-up capacity to schedule oral proceedings in another appeal case. Such withdrawals will also allow interpretation to be cancelled in sufficient time to reduce or eliminate interpreting costs.

83. Furthermore, oral proceedings are often requested only as a safeguard to prevent the Board from handing down a written decision without prior notice. Such precautionary requests are usually submitted in a standard wording at the outset of the appeal proceedings, for instance together with the notice of appeal or the respondent's reply to the statement of grounds of appeal. Parties then tend to inform the Board only at short notice of their intention not to attend oral proceedings.

84. The point at which the appellant – as well as the other parties to appeal proceedings – should be incentivised to withdraw the request for oral proceedings is upon being notified of the Board's communication under Article 15(1) RPBA, revised version. A period of one month would appear sufficient for a party to decide whether to withdraw the request for oral proceedings.

85. Therefore, it is proposed that the appeal fee is reimbursed at a rate of 25% if, in spite of a prior request for oral proceedings, the decision is eventually issued without the oral proceedings taking place. This will happen if the Board does not consider oral proceedings expedient and, in *ex parte* cases, the applicant/appellant has withdrawn its request for oral proceedings or, in *inter partes* cases, if all parties have withdrawn their requests for oral proceedings.

86. If, in an *inter partes* appeal, only one party withdraws its request for oral proceedings and the oral proceedings take place anyway, no reimbursement should be available. Although it is acknowledged that, in such a situation, the Board may need to invest less time and effort in the case, since the party withdrawing its request can be considered to be relying on its written submissions, this lessened workload does not appear to be sufficient to warrant a partial reimbursement of the appeal fee.

(v) Non-cumulation clause

87. In order to avoid the possibility of an appellant cumulating reimbursements under different provisions of Rule 103 EPC as proposed to be amended (i.e. by withdrawing a request for oral proceedings and then withdrawing the appeal), and to keep the system as simple as possible, it is proposed that a clause is inserted which will stipulate that the appeal fee is reimbursed under only one of the provisions of Rule 103 EPC, and furthermore that, if more than one reimbursement rate applies, the appeal fee is reimbursed at the higher rate.

b) Increase in the amount of the appeal fee

88. In accordance with the Administrative Council's earlier decision to gradually increase the appeal fee (see CA/43/16 Rev.1, paras 56–58) and in order to mitigate the risk that a rise in the number of reimbursements reduces the overall cost coverage of the Boards of Appeal, an appropriate increase in the amount of the appeal fee is recommended.

89. More specifically, it is proposed that the appeal fee is increased by 20% to EUR 2 705 (current amount EUR 2 255) for appeals filed by a person other than a natural person or an entity referred to in Rule 6, paragraphs 4 and 5 EPC. For the latter two groups, the inflation-adjustment increase of 4% will apply, bringing the appeal fee to EUR 1 955 (current amount EUR 1 880) – see draft decision 1 in Part V.

c) Proposed changes to the Implementing Regulations

Present wording	Proposed wording
<p>Rule 103 Reimbursement of appeal fees</p> <p>(1) The appeal fee shall be reimbursed in full</p> <p>(a) in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, or</p> <p>(b) if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired.</p> <p>(2) The appeal fee shall be reimbursed at 50% if the appeal is withdrawn after expiry of the period under paragraph 1(b), provided withdrawal occurs:</p> <p>(a) if a date for oral proceedings has been set, at least four weeks before that date;</p> <p>b) if no date for oral proceedings has been set, and the Board of Appeal has issued a communication inviting the appellant to file observations, before expiry of the period set by the Board for filing observations;</p> <p>(c) in all other cases, before the decision is issued</p>	<p>Rule 103 Reimbursement of appeal fees</p> <p>(1) <i>unchanged</i></p> <p>(a) <i>unchanged</i></p> <p>(b) <i>unchanged</i></p> <p>(2) The appeal fee shall be reimbursed at 75% if, in response to a communication from the Board of Appeal indicating its intention to start substantive examination of the appeal, the appeal is withdrawn within two months of notification of that communication.</p> <p>(2) (3) The appeal fee shall be reimbursed at 50% if the appeal is withdrawn after expiry of the period under paragraph 1(b), provided withdrawal occurs:</p> <p>(a) if a date for oral proceedings has been set, at least four weeks before that date within one month of notification of a communication issued by the Board of Appeal in preparation for these oral proceedings;</p> <p>(b) <i>unchanged</i></p> <p>(c) <i>unchanged</i></p>

Present wording	Proposed wording
<p>(3) The department whose decision is impugned shall order the reimbursement if it revises its decision and considers reimbursement equitable by reason of a substantial procedural violation. In all other cases, matters of reimbursement shall be decided by the Board of Appeal.</p>	<p>(4) The appeal fee shall be reimbursed at 25%</p> <p>(a) if the appeal is withdrawn after expiry of the period under paragraph 3(a) but before the decision is announced at oral proceedings;</p> <p>(b) if the appeal is withdrawn after expiry of the period under paragraph 3(b) but before the decision is issued;</p> <p>(c) if any request for oral proceedings is withdrawn within one month of notification of the communication issued by the Board of Appeal in preparation for the oral proceedings, and no oral proceedings take place.</p> <p>(5) The appeal fee shall be reimbursed under only one of the above provisions. Where more than one rate of reimbursement applies, reimbursement shall be at the higher rate.</p> <p>(3) (6) <i>unchanged</i></p>

90. The envisaged date of entry into force of amended Rule 103 EPC is 1 April 2020 (see draft decision 3 in Part V).
91. It is proposed that the amended version of Rule 103 EPC also apply to appeal proceedings already pending at the date of entry into force.

C. FINANCIAL IMPLICATIONS

92. The creation of new reimbursement possibilities for the withdrawal of the appeal is expected to encourage more withdrawals of appeals in which the appellant no longer has an interest. The additional incentive provided by the introduction of a reimbursement in the event of withdrawal of a request for oral proceedings will also contribute to greater efficiency and productivity as a whole and with that have a positive impact on the overall cost coverage of the Boards of Appeal.
93. The expected financial impact of the proposed increase in the appeal fee amounts to additional income of EUR 1.2m per year under the assumption of no change in behaviour.

VIII. LEGAL BASIS

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

IX. DOCUMENTS CITED

95. 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)
96. CA/D 14/12 (CA/90/12), CA/D 8/15 (CA/77/15), CA/D 9/17 (CA/46/17)
97. CA/D 7/08 (CA/77/08)
98. CA/90/13 Rev. 1, CA/85/13 Rev. 1, CA/43/16 Rev. 1, CA/D 17/17, CA/102/17, CA/D 16/13; CA/90/13 Rev. 1, CA/D 5/19 Corr. 1, CA/3/19.

X. RECOMMENDATION FOR PUBLICATION

99. Yes

ANNEX 1 VOLUME OF CASES, FEE INCOME AND COST OF THE CURRENT REDUCTION SCHEME WHERE THE INTERNATIONAL OR SUPPLEMENTARY INTERNATIONAL SEARCH REPORT WAS DRAWN BY A EUROPEAN ISA

Figures relating to previous years are to be found in CA/90/12 (2008-2011) and in CA/77/15 (2012-2014).

Volume of cases: The table shows the number of PCT applications per European ISA for the years 2015-2018 which entered the European regional phase and for which the reduced fee for the European supplementary search was paid.

ISA	2015	2016	2017	2018
AT	39	51	60	56
ES	414	403	317	394
FI	484	328	292	323
SE	1103	889	703	842
TR	0	0	0	1
XN ¹	150	107	120	153
XV ²	0	0	0	39
Total	2 190	1 778	1 492	1 808

Fee income: The table shows, by ISA of origin and year of payment, the EPO's income from the reduced fees for European supplementary searches paid by applicants. All figures are given in euros.

ISA	2015	2016	2017	2018
AT	8 145	9 225	11 210	10 450
ES	81 960	88 797	67 080	77 958
FI	100 310	67 088	72 350	65 460
SE	225 313	180 083	153 675	161 440
TR	0	0	0	1 300
XN	34 379	30 900	27 583	31 480
XV	0	0	0	7 220
Total	450 106	376 092	331 898	355 308

¹ Nordic Patent Institute.

² Visegrad Patent Institute.

Cost of the current reduction scheme: The table shows the additional income that would have been generated for the EPO if the regular fee for the supplementary European search had been charged, and thus indicates the cost of the reduction scheme.

ISA	2015	2016	2017	2018
AT	42 900	56 610	66 600	62 160
ES	455 400	447 330	351 870	437 340
FI	532 400	364 080	324 120	358 530
SE	1 213 300	986 790	780 330	934 620
TR	0	0	0	1 110
XN	165 000	118 770	133 200	169 830
XV	0	0	0	43 290
Total	2 409 000	1 973 580	1 656 120	2 006 880

ANNEX 2

EPO AS ISA/IPEA APPLICABILITY OF THE 75% REDUCTION IN THE INTERNATIONAL SEARCH FEE AND INTERNATIONAL PRELIMINARY EXAMINATION FEE

(as from 1 July 2019)
(in bold: PCT Contracting States)¹

AF Afghanistan	GM Gambia	MR Mauritania	TN Tunisia
AO Angola	GN Guinea	MW Malawi	TZ United Rep. of
BD Bangladesh	GW Guinea-Bissau	MZ Mozambique	Tanzania
BF Burkina Faso	HN Honduras	NE Niger	UA Ukraine
BI Burundi	HT Haiti	NG Nigeria	UG Uganda
BJ Benin	ID Indonesia	NI Nicaragua	UZ Uzbekistan
BO Bolivia	IN India	NP Nepal	VN Vietnam
BT Bhutan	KE Kenya	PG Papua New Guinea	VU Vanuatu
CD Congo, Dem. Rep	KG Kyrgyzstan	PH Philippines	YE Yemen
CF Central African	KH Cambodia	PK Pakistan	ZM Zambia
Republic	KI Kiribati	RW Rwanda	ZW Zimbabwe
CG Congo	KM Comoros	SB Solomon Islands	
CI Côte d'Ivoire	KP DPR of Korea	SD Sudan	
CM Cameroon	LA Lao PDR	SL Sierra Leone	
CV Cape Verde	LR Liberia	SN Senegal	
DJ Djibouti	LS Lesotho	SO Somalia	
EG Egypt	MA Morocco	SS South Sudan	
ER Eritrea	MD Moldova	ST Sao Tomé & Principe	
ET Ethiopia	MG Madagascar	SV El Salvador	
FM Micronesia Fed.	MM Myanmar	SY Syrian Arab	
States	ML Mali	Republic	
GH Ghana	MN Mongolia	SZ Eswatini	
		TD Chad	
		TG Togo	
		TJ Tajikistan	
		TL Timor-Leste	

¹ If there are several applicants, at least one of them must be a national of, or a resident in, a PCT Contracting State to be entitled to file the international application (Article 9(1) PCT), and, provided that they are natural persons, in order to benefit from the 75% reduction of the international search and preliminary examination fees due to the EPO, all applicants must be nationals of, and residents in, a State that is listed in this table (see Article 1 of the Decision CA/D 7/08 of 21 October 2008).

ANNEX 3 FINANCIAL IMPACT OF THE 75% REDUCTION IN THE INTERNATIONAL SEARCH FEE AND INTERNATIONAL PRELIMINARY EXAMINATION FEE

**PCT fee reductions (75%) for low-income/lower-middle-income economies
EPO=ISA/IPEA**

		2016		2017		2018	
		SEARCH	EXAM	SEARCH	EXAM	SEARCH	EXAM
IN	India	76	7	49	9	22	3
UA	Ukraine	27		27		12	
EG	Egypt	6		23		11	
MA	Morocco	14		9		11	
TN	Tunisia	2		9		4	
GE	Georgia	4		7		0	
PH	Philippines	8	1	6		3	
LK	Sri Lanka	8	1	4	1	2	1
CI	Côte d'Ivoire			4		0	
ID	Indonesia	3		3		3	
MD	Rep of Moldova	3		3		1	
VN	Viet Nam	1	1	2	1	5	
CM	Cameroon			2		0	
SD	Sudan			2		1	
KH	Cambodia	0		1		0	
GH	Ghana	1		1		0	
SN	Senegal	1		1		1	
UZ	Uzbekistan	1		1		0	
GN	Guinea			1		0	
NG	Nigeria			1		0	
CG	Congo	1				0	
MZ	Mozambique	1				0	
ZW	Zimbabwe	1				0	
KE	Kenya					2	
RW	Rwanda					1	
TOTAL		158	10	156	11	79	4

Reduction volume in EUR	222 188	14 475	219 375	15 923	111 094	5 790
	236 663		235 298		116 884	

Proposed fee reductions (75%) for validation states – Legal persons EPO=ISA/IPEA

		2016		2017		2018	
		SEARCH	EXAM	SEARCH	EXAM	SEARCH	EXAM
MA	Morocco	20		36		26	
MD	Rep of Moldova	0		0		0	
TN	Tunisia	1		0		2	
KH	Cambodia	0		0		0	
TOTAL		21	0	36	0	28	0
Reduction volume in EUR		29 531		50 625		39 375	

XI. PART V – DRAFT DECISIONS

Draft decision 1

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
amending Articles 2 and 7 of the
Rules relating to Fees

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	95
(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,	125
(iii) in all other cases	260

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)

plus **EUR 16**
for the 36th and
each subsequent page

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	220
– fee for a divisional application of third generation	440
– fee for a divisional application of fourth generation	660
– fee for a divisional application of fifth or any subsequent generation	885

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)	1 350
– 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)	920
– an international search (Rule 16.1 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	610
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	490
– for the 4th year	610
– for the 5th year	855
– for the 6th year	1 090
– for the 7th year	1 210
– for the 8th year	1 330
– for the 9th year	1 450
– for the 10th and each subsequent year	1 640

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	1 900
– an application filed on or after 1 July 2005	1 700
– an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 153, paragraph 7)	1 900
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	860
(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]	960
– where the fee for grant is paid on or after [date to be set by the President of the Office]	1 065
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)	125

10. Opposition fee (Article 99, paragraph 1, Article 105, paragraph 2)	815
10a. Limitation or revocation fee (Article 105a, paragraph 1)	
– request for limitation	1 210
– request for revocation	545
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	1 955
– by any other entity	2 705
11a. Fee for petition for review (Article 112a, paragraph 4)	3 025
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	265
– other cases	265
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)	665
14. Conversion fee (Article 135, paragraph 3, Article 140)	80
14a. Fee for late furnishing of a sequence listing (Rule 30, paragraph 3)	240

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	245
– for the 51st and each subsequent claim	610
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	135
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)	4 055
21. Protest fee (Rule 158, paragraph 3, Rule 40.2(e) PCT, Rule 68.3(e) PCT)	910
22. Review fee (Rule 45 <i>bis</i> .6(c) PCT)	910

(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 **105**

3a. Joint designation fee for the Swiss Confederation and the Principality of Liechtenstein **105**

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 **860**

(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] **960**

– where the fee for grant is paid on or after [date to be set by the President of the Office] **1 065**

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) **245"**

Article 2

Article 7, paragraphs 3 and 4, of the Rules relating to Fees shall read as follows:

"(3) Where, under the provisions of paragraphs 1 and 2, payment of a fee is not considered to have been made until after the expiry of the period in which it should have been made, it shall be considered that this period has been observed if evidence is provided to the Office that the person who made the payment fulfilled one of the following conditions in a Contracting State within the period within which the payment should have been made:

- (i) he effected the payment through a banking establishment;
- (ii) he duly gave an order to a banking establishment to transfer the amount of the payment.

(4) The Office may request the person who made the payment to produce evidence as to the date on which a condition according to paragraph 3 was fulfilled within a period to be specified by it. If he fails to comply with this request or if the evidence is insufficient, the period for payment shall be considered not to have been observed."

Article 3

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 Patent and Registration Office, the Turkish Patent and Trademark Office, the Nordic Patent Institute or the Visegrad Patent Institute shall be reduced by **EUR 1 150**.
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 4

This decision shall enter into force on 1 April 2020.

Article 5

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 2020.
2. The new amount of the transmittal fee for an international application shall apply to applications filed on or after 1 April 2020.
3. Article 7, paragraphs 3 and 4, of the Rules relating to Fees, as amended by Article 2 of this decision, shall apply to payments made on or after 1 April 2020.
4. If within six months of 1 April 2020 a fee is paid in due time but only in the amount due before 1 April 2020, 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.
5. Article 3 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 Patent and Registration 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 2020.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Josef KRATOCHVÍL

Draft decision 2

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
concerning the reduction in the fees for the
international search and the international
preliminary examination carried out on international
applications filed by nationals of certain states

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention and in particular Article 33(2)(d) thereof,

Having regard to the Rules relating to Fees,

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

1. The fees for the international search, for the supplementary international search and for the international preliminary examination carried out on international applications under Article 2, paragraph 1, items 2 and 19, of the Rules relating to Fees shall be reduced by 75% if the international application, the request for supplementary international search or the demand for international preliminary examination is filed:

- (a) by a natural person who is a national of and resident in a state which is not a contracting state to the European Patent Convention, and which, on the date of filing of the application, or on the date of payment of the supplementary international search fee or of the international preliminary examination fee, is listed in a table published by the European Patent Office once a year as having been classed by the World Bank as a low-income or lower-middle-income economy; or
 - (b) by a natural or legal person who, within the meaning of Rule 18 of the Patent Cooperation Treaty, is a national of and resident in a state in which a validation agreement with the European Patent Organisation is in force.
2. If there are several applicants, each must satisfy the criteria set out in paragraph 1.

Article 2

1. This decision shall enter into force on 1 April 2020 and replaces decision CA/D 7/08 of 21 October 2008 (OJ EPO 2008, 521).
2. The reduction in the international search fee shall apply to all international applications filed on or after 1 April 2020.
3. The reduction in the supplementary international search fee or in the international preliminary examination fee shall apply in respect of payments made on or after 1 April 2020.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Josef KRATOCHVÍL

Draft decision 3

DECISION OF THE ADMINISTRATIVE COUNCIL
of [date of decision]
amending Rule 103
of the Implementing Regulations to the
European Patent Convention

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention (hereinafter referred to as "EPC") and in particular Article 33(1)(c) thereof,

On a proposal from the President of the European Patent Office,

Having regard to the opinion of the Committee on Patent Law and of the Budget and Finance Committee,

HAS DECIDED AS FOLLOWS:

Article 1

Rule 103 of the Implementing Regulations to the EPC shall read as follows:

**"Rule 103
Reimbursement of the appeal fee**

(1) The appeal fee shall be reimbursed in full

(a) in the event of interlocutory revision or where the Board of Appeal deems an appeal to be allowable, if such reimbursement is equitable by reason of a substantial procedural violation, or

(b) if the appeal is withdrawn before the filing of the statement of grounds of appeal and before the period for filing that statement has expired.

(2) The appeal fee shall be reimbursed at 75% if, in response to a communication from the Board of Appeal indicating its intention to start substantive examination of the appeal, the appeal is withdrawn within two months of notification of that communication.

(3) The appeal fee shall be reimbursed at 50% if the appeal is withdrawn after expiry of the period under paragraph 1(b), provided withdrawal occurs:

(a) if a date for oral proceedings has been set, within one month of notification of a communication issued by the Board of Appeal in preparation for these oral proceedings;

(b) if no date for oral proceedings has been set, and the Board of Appeal has issued a communication inviting the appellant to file observations, before expiry of the period set by the Board for filing observations;

(c) in all other cases, before the decision is issued.

(4) The appeal fee shall be reimbursed at 25%

(a) if the appeal is withdrawn after expiry of the period under paragraph 3(a) but before the decision is announced at oral proceedings;

(b) if the appeal is withdrawn after expiry of the period under paragraph 3(b) but before the decision is issued;

(c) if any request for oral proceedings is withdrawn within one month of notification of the communication issued by the Board of Appeal in preparation for the oral proceedings, and no oral proceedings take place.

(5) The appeal fee shall be reimbursed under only one of the above provisions. Where more than one rate of reimbursement applies, reimbursement shall be at the higher rate.

(6) The department whose decision is impugned shall order the reimbursement if it revises its decision and considers reimbursement equitable by reason of a substantial procedural violation. In all other cases, matters of reimbursement shall be decided by the Board of Appeal."

Article 2

1. Rule 103 EPC as amended under Article 1 of this decision shall enter into force on 1 April 2020.
2. Rule 103 EPC as amended under Article 1 of this decision shall apply to appeals pending at the date of entry into force and to appeals filed after that date.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Josef KRATOCHVÍL