

CA/113/06

Orig. : fr

Munich, 24.10.2006

SUBJECT: EPC 2000 - Amendment of the Rules relating to Fees (RFees)

DRAWN UP BY: President of the European Patent Office

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

SUMMARY

Part I of this document contains the draft Rules relating to Fees (RFees) as revised in the light of the EPC 2000, together with some remarks explaining the amendments. The document was submitted as CA/F 13/06 to the Committee on Patent Law at its 30th meeting and to the Budget and Finance Committee at its 89th meeting and was unanimously approved by both committees.

Part II contains a draft decision of the Council adopting the revised Rules relating to Fees.

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PART I

I. INTRODUCTION

1. On 13 December 2005, the Hellenic Republic became the 15th state to deposit its instrument of ratification of the Act of 29 November 2000 revising the European Patent Convention (Revision Act). The revised European Patent Convention (EPC 2000) will therefore enter into force on 13 December 2007 at the latest.
2. The EPC 2000 makes a number of changes to existing procedures but also introduces some new procedures such as the limitation procedure and petition for review. The current fees system set out in the Rules relating to Fees (RFees) must therefore be amended accordingly.
3. The chief changes concern the deletion, amendment or introduction of the amounts of certain fees provided for in the EPC and its Implementing Regulations. Moreover, some minor changes have been made to the wording to make the provisions clearer.
4. The references to the Articles and Rules of the EPC have been revised to take account of the new numbering of the Implementing Regulations.
5. In order to take account of the deletion of certain articles of the RFees rendered necessary in the course of the revision (Article 2, point 3b; Article 2, point 3c; Article 2, point 7; Article 6; Article 10d and Article 13), the RFees have been renumbered so that there are no "missing" articles.
6. A document setting out the main amendments to the RFees was submitted to SACEPO, which examined the changes at its meeting on 22 and 23 June 2006. This document takes account of those suggestions made during SACEPO's discussion which have been adopted.
7. These RFees, as revised in the light of the EPC 2000, were discussed as CA/F 13/06 by the Committee on Patent Law at its 30th meeting and by the Budget and Finance Committee at its 89th meeting and were unanimously approved by both committees. The content of this document is largely identical to that of CA/F 13/06. However, it should be noted that, following the Committee on Patent Law's discussion of the draft Implementing Regulations, a slight amendment had to be made in this document to new Article 14. Article 14(1) now makes clear that the 20% reduction under Rule 6 also applies to the limitation or revocation fee and the fee for petition for review.

8. The revised RFees will enter into force on the same date as the revised EPC. The revised RFees will apply to fee payments made from the entry into force of the EPC 2000. Article 2 of the draft decision has been worded more clearly than in CA/F 13/06. New paragraph 3 clearly states that, in the case of payments made before that date, the Rules relating to Fees in force at that time continue to apply.

II. PROPOSED AMENDMENTS TO THE RULES RELATING TO FEES

Current version	Revised version
THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION, HAVING REGARD to the European Patent Convention and in particular Article 33, paragraph 2(d), thereof, HAS ADOPTED THE FOLLOWING RULES RELATING TO FEES:	<i>unchanged</i>
Article 1 General	Article 1 General
The following shall be levied in accordance with the provisions contained in these Rules:	The following shall be levied in accordance with the provisions contained in these Rules:
(a) fees due to be paid to the European Patent Office (hereinafter referred to as the Office) as provided for in the Convention and in the Implementing Regulations and the fees and costs which the President of the Office lays down pursuant to Article 3, paragraph 1;	(a) fees due to be paid to the European Patent Office (hereinafter referred to as the Office) as provided for in the Convention and in the Implementing Regulations and the fees and expenses which the President of the Office lays down pursuant to Article 3, paragraph 1;
(b) fees and costs pursuant to the Patent Cooperation Treaty (hereinafter referred to as the PCT), the amounts of which may be fixed by the Office.	(b) fees and expenses pursuant to the Patent Cooperation Treaty (hereinafter referred to as the PCT), the amounts of which may be fixed by the Office.

Current version

Article 2

Fees provided for in the Convention and in the Implementing Regulations

The fees due to be paid to the Office under Article 1 shall be as follows:

	EUR
1. Filing fee (Article 78, paragraph 2); national basic fee (Rule 106(a)) where	
- the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed online	95
- the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed on paper	170
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 44a, Rule 46, paragraph 1, and Rule 112, Article 157, paragraph 2(b))	1 000
- a supplementary European search on an application filed before 1 July 2005 (Article 157, paragraph 2(b))	720
- an international search (Rule 16.1 PCT and Rule 105, paragraph 1)	1 615

Revised version

Article 2

Fees provided for in the Convention and in the Implementing Regulations

The fees due to be paid to the Office under Article 1 shall be as follows:

	EUR
1. Filing fee (Article 78, paragraph 2) [...] where	
- the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed online	95
- the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is not filed online	170
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)	1 000
- 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)	720
- an international search (Rule 16.1 PCT and Rule 158 , paragraph 1)	1 615

Current version

Revised version

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	80	3.	unchanged
3a.	Joint designation fee for the Swiss Confederation and the Principality of Liechtenstein	80	3a.	unchanged
3b.	Surcharge for late payment of the filing fee, the search fee or the designation fee (Rule 85a)	50% of the relevant fee or fees, but not to exceed a total of EUR 680		deleted
3c.	Surcharge for late filing of either the translation of the international application or the request for examination, or for late payment of the national basic fee, the search fee or the designation fees (Rule 108(3) and (4))	50% of the relevant fees, but at least EUR 520 for late filing of the translation up to a maximum of EUR 1 820		deleted

Current version

Revised version

4.	Renewal fees for the European patent applications (Article 86, paragraph 1), calculated in each case from the date of filing of the application		4.	unchanged	
	- for the 3rd year	400			
	- for the 4th year	425			
	- for the 5th year	450			
	- for the 6th year	745			
	- for the 7th year	770			
	- for the 8th year	800			
	- for the 9th year	1 010			
	- for the 10th and each subsequent year	1 065			
5.	Additional fee for belated payment of a renewal fee for the European patent application (Article 86, paragraph 2)	10% of the belated renewal fee	5.	Additional fee for belated payment of a renewal fee for the European patent application (Rule 51 , paragraph 2)	10 % of the belated renewal fee
6.	Examination fee (Article 94, paragraph 2) in respect of		6.	Examination fee (Article 94, paragraph 1)	
	- an application filed before 1 July 2005	1 490		- an application filed before 1 July 2005	1 490
	- an application filed on or after 1 July 2005	1 335		- an application filed on or after 1 July 2005	1 335
	- an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 157, paragraph 3(a))	1 490		- an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 153, paragraph 7)	1 490
7.	Surcharge for late filing of the request for examination (Rule 85b)	50% of the examination fee		deleted	

Current version

8.	Fee for grant, including fee for printing the European patent specification (Article 97, paragraph 2(b)), where the application documents to be printed comprise:	
8.1	not more than 35 pages	750
8.2	more than 35 pages	750
		plus EUR 11 for the 36th and each subsequent page
9.	Fee for printing a new specification of the European patent (Article 102, paragraph 3(b))	
	- flat-rate fee	55
10.	Opposition fee (Article 99, paragraph 1, and Article 105, paragraph 2)	635
11.	Fee for appeal (Article 108)	1 065
12.	Fee for further processing (Article 121, paragraph 2)	210

Revised version

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	750
7.2	more than 35 pages	750
		plus EUR 11 for the 36th and each subsequent page
8.	Fee for printing a new specification of the European patent (Rule 82, paragraph 2, Rule 95, paragraph 3)	
	- flat-rate fee	55
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)	
	- flat-rate fee	100
10.	unchanged	635
10a.	Limitation or revocation fee (Article 105a, paragraph 1)	
	- request for limitation	1000
	- request for revocation	450
11.	unchanged	1 065
11a.	Fee for petition for review (Article 112a, paragraph 4)	2500
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	210
	- other cases	210

Current version

Revised version

13.	Fee for re-establishment of rights (Article 122, paragraph 3)	365	13.	Fee for re-establishment of rights / fee for request for re-establishment of rights (Rule 136, paragraph 1, Rule 26 <i>bis</i> .3(d) PCT, Rule 49 <i>ter</i> .2(d) PCT)	550
14.	Conversion fee (Article 136, paragraph 1, and Article 140)	55	14.	Conversion fee (Article 135 , paragraph 3 , and Article 140)	55
			14a.	Fee for late furnishing of a sequence listing (Rule 30, paragraph 3)	200
15.	Claims fee for the eleventh and each subsequent claim (Rule 31, paragraph 1, Rule 51, paragraph 7, and Rule 110, paragraph 1)	45	15.	Claims fee for the eleventh and each subsequent claim (Rule 45 , paragraph 1, Rule 71 , paragraph 7, and Rule 162 , paragraph 1)	45
16.	Fee for the awarding of costs (Rule 63, paragraph 3)	55	16.	Fee for the awarding of costs (Rule 88 , paragraph 3)	55
17.	Fee for the conservation of evidence (Rule 75, paragraph 3)	55	17.	Fee for the conservation of evidence (Rule 123 , paragraph 3)	55
18.	Transmittal fee for an international application (Article 152, paragraph 3)	105	18.	Transmittal fee for an international application (Rule 157 , paragraph 4)	105
19.	Fee for the preliminary examination of an international application (Rule 58 PCT and Rule 105, paragraph 2)	1 595	19.	Fee for the preliminary examination of an international application (Rule 58 PCT and Rule 158 , paragraph 2)	1 595
20.	Fee for a technical opinion (Article 25)	3 185	20.	unchanged	
21.	Protest fee (Rules 40.2(e) and 68.3(e) PCT, Rule 105, paragraph 3)	1 065	21.	Protest fee (Rules 40.2(e) and 68.3(e) PCT)	
				- for international applications still pending on [date of entry into force of the EPC 2000]	1 065
				- for international applications filed on or after [date of entry into force of the EPC 2000] (Rule 158, paragraph 3)	750

Current version

Article 3

Fees, costs and prices laid down by the President of the Office

(1) The President of the Office shall lay down the amount of the administrative fees provided for in the Implementing Regulations and, where appropriate, the amount of the fees and costs for any services rendered by the Office other than those specified in Article 2.

(2) He shall also lay down the prices of the publications referred to in Articles 93, 98, 103 and 129 of the Convention.

(3) The amounts of the fees provided for in Article 2 and of the fees and costs laid down in accordance with paragraph 1 shall be published in the Official Journal of the European Patent Office.

Revised version

Article 3

Fees, **expenses** and prices laid down by the President of the Office

(1) The President of the Office shall lay down the amount of the administrative fees provided for in the Implementing Regulations and, where appropriate, the amount of the fees and **expenses** for any services rendered by the Office other than those specified in Article 2.

(2) He shall also lay down the prices of the publications referred to in Articles 93, 98, 103 and 129 of the Convention.

(3) The amounts of the fees provided for in Article 2 and of the fees and **expenses** laid down in accordance with paragraph 1 shall be published in the Official Journal **and on the website** of the European Patent Office.

Current version

Article 4

Due date for fees

(1) Fees in respect of which the due date is not specified in the provisions of the Convention or of the PCT or of the Implementing Regulations thereto shall be due on the date of receipt of the request for the service incurring the fee concerned.

(2) The President of the Office may decide not to make services within the meaning of paragraph 1 dependent upon the advance payment of the corresponding fee.

Article 5

Payment of fees

(1) The fees due to the Office shall be paid in euro:

(a) by payment or transfer to a bank account held by the Office,

(b) by payment or transfer to a Giro account held by the Office, or

(c) by delivery or remittance of cheques made payable to the Office.

(2) The President of the Office may allow other methods of paying fees than those set out in paragraph 1.

Article 6

(deleted)

Revised version

Article 4

Due date for fees

unchanged

Article 5

Payment of fees

unchanged

deleted

Current version

Article 7

Particulars concerning payments

(1) Every payment must indicate the name of the person making the payment and must contain the necessary particulars to enable the Office to establish immediately the purpose of the payment.

(2) If the purpose of the payment cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If he does not comply with this request in due time the payment shall be considered not to have been made.

Article 8

Date to be considered as the date on which payment is made

(1) The date on which any payment shall be considered to have been made to the Office shall be as follows:

(a) in the cases referred to in Article 5, paragraph 1(a) and (b): the date on which the amount of the payment or of the transfer is actually entered in a bank account or a Giro account held by the Office;

(b) in the case referred to in Article 5, paragraph 1(c): the date of receipt of the cheque at the Office, provided that the cheque is met.

Revised version

Article 6

Particulars concerning payments

unchanged

Article 7

Date to be considered as the date on which payment is made

unchanged

(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.

(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:

(i) he effected the payment through a banking establishment or a post office;

(ii) he duly gave an order to a banking establishment or a post office to transfer the amount of the payment;

(iii) he despatched at a post office a letter bearing the address of the Office and containing a cheque within the meaning of Article 5, paragraph 1(c), provided that the cheque is met, and

(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.

(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.

Current version

Article 9

Insufficiency of the amount paid

(1) A time limit for payment shall in principle be deemed to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired. The Office may, however, in so far as this is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking. It may also, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

(2) Where the request for grant of a European patent designates more than one Contracting State in accordance with Article 79, paragraph 1, of the Convention, and the amount paid is insufficient to cover all the designation fees, the amount paid shall be applied according to the specifications made by the applicant at the time of payment. If the applicant makes no such specifications at the time of payment, these fees shall be deemed to be paid only for as many designations as are covered by the amount paid and in the order in which the Contracting States are designated in the request.

Revised version

Article 8

Insufficiency of the amount paid

(1) *unchanged*

(2) Where [...] the amount paid **in designation fees** is insufficient to cover [...] the designation fees **payable for all the Contracting States**, the amount paid shall be applied according to the specifications **to be made by the applicant by** the time of payment **at the latest**. If the applicant makes no such specifications [...], **the** fees shall be deemed to be paid only for as many designations as are covered by the amount paid and in the order in which the Contracting States are **listed** in the request **for grant**.

Current version

Article 10

Refund of search fees

(1) The search fee paid for a European or supplementary European search shall be fully refunded if the European patent application is withdrawn or refused or deemed to be withdrawn at a time when the Office has not yet begun to draw up the search report.

(2) Where the European search report is based on an earlier search report prepared by the Office on an application whose priority is claimed or an earlier application within the meaning of Article 76 of the Convention or an original application within the meaning of Rule 15 of the Convention, the Office shall refund to the applicant, in accordance with a decision of its President, an amount which shall depend on the type of earlier search and the extent to which the Office benefits from the earlier search report when carrying out the subsequent search.

Article 10a

Refund of the fee for a technical opinion

An amount of 75% of the fee for a technical opinion under Article 25 of the Convention shall be refunded if the request for a technical opinion is withdrawn at a time when the Office has not yet begun to draw up the technical opinion.

Revised version

Article 9

Refund of search fees

(1) *unchanged*

(2) Where the European search report is based on an earlier search report prepared by the Office on an application whose priority is claimed or an earlier application within the meaning of Article 76 of the Convention or [...] of Rule 17 of the Convention, the Office shall refund to the applicant, in accordance with a decision of its President, an amount which shall depend on the type of earlier search and the extent to which the Office benefits from the earlier search report when carrying out the subsequent search.

Article 10

Refund of the fee for a technical opinion

unchanged

Current version

Article 10b

Refund of examination fee

The examination fee provided for in Article 94, paragraph 2, of the Convention shall be refunded:

- (a) in full if the European patent application is withdrawn, refused or deemed to be withdrawn before the Examining Divisions have assumed responsibility;
- (b) at a rate of 75% if the European patent application is withdrawn, refused or deemed to be withdrawn after the Examining Divisions have assumed responsibility but before substantive examination has begun.

Article 10c

Refund of insignificant amounts

Where too large a sum is paid to cover a fee, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. The President of the Office shall determine what constitutes an insignificant amount.

Revised version

Article 11

Refund of examination fee

The examination fee provided for in Article 94, paragraph 1, of the Convention shall be refunded:

- (a) *unchanged*
- (b) *unchanged*

Article 12

Refund of insignificant amounts

unchanged

Article 10d

Refund of fee for international preliminary examination

If the applicant, during international preliminary examination, has not asked for a detailed preliminary examination or has not filed any amendments under Article 19 or 34(2) PCT or any other arguments, two thirds of the fee paid for international preliminary examination shall be refunded. The details of the refund shall be determined by the President of the Office.

Article 11

Decisions fixing costs which are subject to appeal

In accordance with Article 106, paragraph 5, of the Convention, decisions fixing the amount of costs of opposition proceedings may be appealed if the amount is in excess of the fee for appeal.

Article 12

Reduction of fees

(1) The reduction laid down in Rule 6, paragraph 3, of the Convention shall be 20% of the filing fee, examination fee, opposition fee and fee for appeal.

deleted

Article 13

Decisions fixing costs which are subject to appeal

In accordance with **Rule 97, paragraph 2**, of the Convention, decisions fixing the amount of costs of opposition proceedings may be appealed if the amount is in excess of the fee for appeal.

Article 14

Reduction of fees

(1) The reduction laid down in Rule 6, paragraph 3, of the Convention shall be 20% of the filing fee, examination fee, opposition fee [..], **appeal fee, fee for the petition for review or the limitation or revocation fee.**

Current version

Revised version

(2) The reduction laid down in Rule 107, paragraph 2, of the Convention shall be 50% of the examination fee. The reduction shall not be granted if the Office as an International Preliminary Examining Authority has refunded the fee paid for preliminary examination under Article 10d.

Article 13 Notification

The President of the European Patent Office shall forward a certified copy of these Rules to all the signatory States to the Convention and to the States which accede thereto.

Article 14 Entry into force

These Rules shall enter into force on 20 October 1977.

DONE at Munich, 20 October 1977
for the Administrative Council
The Chairman

(2) **Where the European Patent Office has drawn up an international preliminary examination report, the examination fee shall be reduced by 50%. If the report was established on certain parts of the international application in accordance with Article 34, paragraph 3(c), PCT, the fee shall not be reduced if subject-matter not covered by the report is to be examined.**

deleted

Article 15 Entry into force

These Rules shall enter into force on 20 October 1977. *

DONE at Munich, 20 October 1977
for the Administrative Council
The Chairman

*** Amended by decision of the Administrative Council of ... (CA/D .../06)**

III. EXPLANATORY REMARKS

9. Article 1 and Article 3 RFees

The French word "frais" and the English word "costs" have been replaced by "redevances" and "expenses" respectively in order to make clear that certain services are charged at the cost price of the service. In German, that idea is already expressed by the existing word "Auslagen".

10. Article 2 RFees

Point 1 no longer refers to the national basic fee because Rule 106 has been deleted. Rule 159(c) now refers to the filing fee payable on entry into the European phase. The wording at the end of the second paragraph has been amended to make clear that the higher amount applies where the application is not filed online, thus excluding cases in which the request might be submitted on electronic media but sent by post.

Points 3b, 3c and 7 have been deleted because there are no longer specific surcharges for the belated payment of certain fees, those cases now being covered by the rules on further processing.

Point 9 introduces the new surcharge under Rule 82(3) for belated performance of the acts required to maintain a European patent in amended form.

Point 10a fixes the amount of the new limitation and revocation fees.

Le point 11a fixes the amount of the new fee for petitions for review.

Point 12 amends the rules on the fee for further processing. The amount of the fee remains the same in cases of a general failure to observe a time limit or a loss of rights but, in the event of belated payment of a fee, the fee for further processing amounts to 50% of the belatedly paid fee. The idea of fixing a fee at a proportion of the relevant fee has already been incorporated in the EPC 1973, in particular in the form of the surcharge for belated payment of the filing, search and designation fees and of that for belated submission of the examination request. However, the new rules do not set any minimum or maximum amount.

In most cases in which further processing is requested, the applicant must supply a procedural document or pay a fee. In some cases, both those acts may be required, meaning that the fee for further processing would have to be paid twice.

The most notable instance of such a case of accumulated requirements is that of the formal requirements to be met for the grant of a European patent under Rule 71(3). In order to prevent the applicant from having to pay several fees, it is proposed, in the second indent of Point 12, to charge a flat-rate fee of EUR 210 for further processing in the case of belated performance of the acts required under Rule 71(3). This specific measure will mean that the applicant will pay the same amount as under the previous rules.

Point 13 amends the amount of the fee for re-establishment of rights. The scope of the rules on the re-establishment of rights has been significantly limited on account of the new rules extending the application of those on further processing. Under the EPC 2000, re-establishment of rights now also concerns the priority period under Article 87(1) EPC. Re-establishment is an exceptional case. The relevant fee has therefore been raised to reflect its exceptional nature.

The re-establishment of the priority right applies to Euro-direct applications but, in some cases, also to PCT applications entering the European regional phase under Rule 49*ter*.2 PCT. A request for the re-establishment of rights may also be made for an international application under Rule 26*bis*.3 PCT for which the EPO is the receiving Office.

Point 14a introduces a new fee for the belated submission of a sequence listing. It is thus proposed to apply the fee for late performance already charged for international applications under the PCT. This is intended to cover the additional administrative costs entailed and to encourage applicants to supply a listing conforming to the relevant standard as quickly as possible.

Point 21 relates to the amount of the protest fee referred to in Rule 40.2.e and Rule 68.3(c) PCT. As a result of the deletion of Articles 154(3) and 155(3) EPC 1973, the boards of appeal will no longer act as the body responsible for deciding on protests made in procedures before the EPO in its capacity as ISA or IPEA. For a transitional period, the existing rules will continue to apply to international applications pending at the time of the revised EPC's entry into force and the existing fee will be maintained.

A new protest procedure consisting of just one step will be introduced for applications filed from the date of the revised EPC's entry into force and a new protest fee is introduced accordingly.

Thus, two different protest procedures will apply simultaneously for a certain period.

11. Article 3 RFees

According to Article 3(3), the fee amounts will be published not only in the Official Journal but also on the Office's website. Over the last few years, publication on the website has proved to be an effective way of informing the public and applicants quickly of various procedural changes. Publication in this form means that information can be made available to the public two to three weeks earlier than in the Official Journal, the paper and electronic publication of which requires a fixed amount of time which cannot be reduced.

12. Article 8 RFees

From 1997, all the states were, as a general rule, expressly designated by way of a pre-checked box and any specifications made by the applicant in relation to certain states had to be regarded as an intention to pay the corresponding designation fees. Where it was unclear which designation fees an applicant intended to pay, Articles 7 and 9(2) RFees were applicable. The Office allocated the fees paid: (1) in the order given in the instructions from the applicant on payment, or (2), in the absence of such instructions, according to any specifications made in the request for grant (Form 1001), or (3), as a final fallback position in the absence of both instructions and specifications, in the alphabetical order of the contracting states listed on the form.

Article 79(1) EPC 2000 makes the rules on designation of contracting states more flexible in that the applicant is deemed to have designated all the contracting states to the EPC at the time of filing. Article 8 RFees has therefore been amended in the light of that change. Where the applicant pays designation fees for a smaller number of states (as a result of a waiver), either he must clearly specify, on payment at the latest, the states in respect of which he wishes to pay the fees or, in the absence of such express specifications, the Office will allocate the fees to the contracting states listed in the request for grant.

13. Former Article 10d RFees

The above article was introduced as part of the rationalisation of the international preliminary examination procedure at the EPO. Since the international search report is now accompanied by a written opinion of the authority responsible for the international search in respect of international applications filed from 1 January 2004, the EPO no longer applies that rationalised international preliminary examination procedure.

The rationalised procedure continued to apply to international applications filed before the 1 January 2004. Since all of those applications have now left the international phase, Article 10d RFees has become devoid of purpose and has therefore been deleted.

14. Article 14 RFees

Article 14(1) states that the 20% reduction provided for in Rule 6 also applies to the limitation or revocation fee and the fee for petition for review. Article 14(2) provides for a reduction in the amount of the examination fee where the EPO has already drawn up an international preliminary examination report. Its wording is similar to that of Rule 107 EPC 1973 and states clearly that the fee will not be reduced if the examination relates to subject-matter not covered by the report.

15. Former Article 13 RFees

This article, which provided for notifications to the signatory states or states acceding to the Convention, has been deleted. All the member states of the Organisation and all the states invited to join the Organisation now have access to the documents of the Administrative Council via MICADO, so that notification by certified copies has been rendered obsolete.

16. Article 15 RFees

The Rules relating to Fees as revised in the light of the EPC 2000 must enter into force on the same day as the revised version of the EPC. However, according to Article 164 EPC, the Rules relating to Fees are not an integral part of the EPC. Article 15 RFees therefore states in a footnote that the Rules have been revised by decision of the Administrative Council. In that decision, it is stated that the revised Rules relating to Fees will enter into force on the same day as the revised version of the EPC and apply to all payments of fees made from that date.

This form of presenting the revision and date of entry into force has already been used for the Financial Regulations of the European Patent Organisation (CA/D 7/91), which are likewise not part of the EPC.

That the revised Rules relating to Fees will enter into force on the same day as the revised version of the Convention is stated in the decision of the Administrative Council (see Part II). The revised Rules will replace the previous version as last amended on 15 December 2005. The revised Rules will apply to payments of fees made from their entry into force.

In Article 2(2) of the decision, provision is also made for the repeal of all previous decisions of the Administrative Council amending the Rules relating to Fees, including their transitional provisions. This measure is intended to simplify the fees system and is in the interests of both users and the Office because the situation

created by the amendments made successively over the last few years is excessively complicated.

It follows that the revised RFees apply to all payments of fees made from the entry into force of the EPC 2000. However, in the case of payments made before that date, the Rules relating to Fees in force at that time continue to apply.

PART II

Draft

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

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the Act revising the Convention on the Grant of European Patents of 29 November 2000 (Revision Act, MR/3/00 Rev. 1) and the decision of the Administrative Council of 28 June 2001 adopting the new text of the European Patent Convention (EPC 2000),

Having regard to the decision of the Administrative Council of [date of decision] adopting the Implementing Regulations to the EPC 2000,

Having regard to the European Patent Convention (EPC), 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 Committee on Patent Law,

Having regard to the opinion of the Budget and Finance Committee,

HAS DECIDED AS FOLLOWS:

Article 1

The Rules relating to Fees as revised in the light of the EPC 2000 shall be worded as set out in the annex to this decision.

Article 2

1. The revised Rules relating to Fees shall enter into force on the same date as the revised text of the European Patent Convention.
2. The Rules relating to Fees of 20 October 1977 and the previous decisions of the Administrative Council amending the Rules relating to Fees of 20 October 1977, including their transitional provisions, shall be repealed from the date of the entry into force of the revised Rules relating to Fees.
3. The revised Rules relating to Fees shall apply to payments of fees made from the date of their entry into force. However, in the case of payments made before that date, the Rules relating to Fees in force at that time continue to apply.

Done at Munich, [date of decision]

For the Administrative Council
The Chairman

Roland GROSSENBACHER

ANNEX 1

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

HAVING REGARD to the European Patent Convention and in particular Article 33,
paragraph 2(d), thereof,

HAS ADOPTED THE FOLLOWING RULES RELATING TO FEES:

Article 1

General

The following shall be levied in accordance with the provisions contained in these Rules:

(a) fees due to be paid to the European Patent Office (hereinafter referred to as the Office) as provided for in the Convention and in the Implementing Regulations and the fees and expenses which the President of the Office lays down pursuant to Article 3, paragraph 1;

(b) fees and expenses pursuant to the Patent Cooperation Treaty (hereinafter referred to as the PCT), the amounts of which may be fixed by the Office.

Article 2

Fees provided for in the Convention and in the Implementing Regulations

The fees due to be paid to the Office under Article 1 shall be as follows:

EUR

1. Filing fee (Article 78, paragraph 2) where

- | | |
|---|-----|
| - the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is filed online | 95 |
| - the European patent application or, in the case of an international application, the form for entry into the European phase (EPO Form 1200) is not filed online | 170 |

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)	1 000
	- 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)	720
	- an international search (Rule 16.1 PCT and Rule 158, paragraph 1)	1 615
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	80
3a.	Joint designation fee for the Swiss Confederation and the Principality of Liechtenstein	80
4.	Renewal fees for the European patent applications (Article 86, paragraph 1), calculated in each case from the date of filing of the application	
	- for the 3rd year	400
	- for the 4th year	425
	- for the 5th year	450
	- for the 6th year	745
	- for the 7th year	770
	- for the 8th year	800
	- for the 9th year	1 010
	- for the 10th and each subsequent year	1 065
5.	Additional fee for belated payment of a renewal fee for the European patent application (Rule 51, paragraph 2)	10 % of the belated renewal fee

6.	Examination fee (Article 94, paragraph 1)	
	- an application filed before 1 July 2005	1 490
	- an application filed on or after 1 July 2005	1 335
	- an international application filed on or after 1 July 2005 for which no supplementary European search report is drawn up (Article 153, paragraph 7)	1 490
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	750
7.2	more than 35 pages	750
		plus EUR 11 for the 36th and each subsequent page
8.	Fee for printing a new specification of the European patent (Rule 82, paragraph 2, Rule 95, paragraph 3)	
	- flat-rate fee	55
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)	
	- flat-rate fee	100
10.	Opposition fee (Article 99, paragraph 1, and Article 105, paragraph 2)	635
10a.	Limitation or revocation fee (Article 105a, paragraph 1)	
	- request for limitation	1000
	- request for revocation	450
11.	Fee for appeal (article 108)	1 065

11a. Fee for petition for review (Article 112a, paragraph 4)	2500
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	210
- other cases	210
13. Fee for re-establishment of rights / fee for request for re-establishment of rights (Rule 136, paragraph 1, Rule 26bis.3(d) PCT, Rule 49ter.2(d) PCT)	550
14. Conversion fee (Article 135, paragraph 3, and Article 140)	55
14a. Fee for late furnishing of a sequence listing (Rule 30, paragraph 3)	200
15. Claims fee for the eleventh and each subsequent claim (Rule 45, paragraph 1, Rule 71, paragraph 7, and Rule 162, paragraph 1)	45
16. Fee for the awarding of costs (Rule 88, paragraph 3)	55
17. Fee for the conservation of evidence (Rule 123, paragraph 3)	55
18. Transmittal fee for an international application (Rule 157, paragraph 4)	105
19. Fee for the preliminary examination of an international application (Rule 58 PCT and Rule 158, paragraph 2)	1 595
20. Fee for a technical opinion (Article 25)	3 185
21. Protest fee (Rules 40.2(e) and 68.3(e) PCT)	
- for international applications still pending on [date of entry into force of the EPC 2000]	1 065
- for international applications filed on or after [date of entry into force of the EPC 2000] (Rule 158, paragraph 3)	750

Article 3

Fees, expenses and prices laid down by the President of the Office

- (1) The President of the Office shall lay down the amount of the administrative fees provided for in the Implementing Regulations and, where appropriate, the amount of the fees and expenses for any services rendered by the Office other than those specified in Article 2.
- (2) He shall also lay down the prices of the publications referred to in Articles 93, 98, 103 and 129 of the Convention.
- (3) The amounts of the fees provided for in Article 2 and of the fees and expenses laid down in accordance with paragraph 1 shall be published in the Official Journal and on the website of the European Patent Office.

Article 4

Due date for fees

- (1) Fees in respect of which the due date is not specified in the provisions of the Convention or of the PCT or of the Implementing Regulations thereto shall be due on the date of receipt of the request for the service incurring the fee concerned.
- (2) The President of the Office may decide not to make services within the meaning of paragraph 1 dependent upon the advance payment of the corresponding fee.

Article 5

Payment of fees

- (1) The fees due to the Office shall be paid in euro:
 - (a) by payment or transfer to a bank account held by the Office,
 - (b) by payment or transfer to a Giro account held by the Office, or
 - (c) by delivery or remittance of cheques made payable to the Office.
- (2) The President of the Office may allow other methods of paying fees than those set out in paragraph 1.

Article 6

Particulars concerning payments

- (1) Every payment must indicate the name of the person making the payment and must contain the necessary particulars to enable the Office to establish immediately the purpose of the payment.
- (2) If the purpose of the payment cannot immediately be established, the Office shall require the person making the payment to notify it in writing of this purpose within such period as it may specify. If he does not comply with this request in due time the payment shall be considered not to have been made.

Article 7

Date to be considered as the date on which payment is made

(1) The date on which any payment shall be considered to have been made to the Office shall be as follows:

(a) in the cases referred to in Article 5, paragraph 1(a) and (b): the date on which the amount of the payment or of the transfer is actually entered in a bank account or a Giro account held by the Office;

(b) in the case referred to in Article 5, paragraph 1(c): the date of receipt of the cheque at the Office, provided that the cheque is met.

(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.

(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:

(i) he effected the payment through a banking establishment or a post office;

(ii) he duly gave an order to a banking establishment or a post office to transfer the amount of the payment;

(iii) he despatched at a post office a letter bearing the address of the Office and containing a cheque within the meaning of Article 5, paragraph 1(c), provided that the cheque is met, and

(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.

(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.

Article 8

Insufficiency of the amount paid

(1) A time limit for payment shall in principle be deemed to have been observed only if the full amount of the fee has been paid in due time. If the fee is not paid in full, the amount which has been paid shall be refunded after the period for payment has expired. The Office may, however, in so far as this is possible within the time remaining before the end of the period, give the person making the payment the opportunity to pay the amount lacking. It may also, where this is considered justified, overlook any small amounts lacking without prejudice to the rights of the person making the payment.

(2) Where the amount paid in designation fees is insufficient to cover the designation fees payable for all the Contracting States, the amount paid shall be applied according to the specifications to be made by the applicant by the time of payment at the latest. If the applicant makes no such specifications, the fees shall be deemed to be paid only for as many designations as are covered by the amount paid and in the order in which the Contracting States are listed in the request for grant.

Article 9

Refund of search fees

(1) The search fee paid for a European or supplementary European search shall be fully refunded if the European patent application is withdrawn or refused or deemed to be withdrawn at a time when the Office has not yet begun to draw up the search report.

(2) Where the European search report is based on an earlier search report prepared by the Office on an application whose priority is claimed or an earlier application within the meaning of Article 76 of the Convention or of Rule 17 of the Convention, the Office shall refund to the applicant, in accordance with a decision of its President, an amount which shall depend on the type of earlier search and the extent to which the Office benefits from the earlier search report when carrying out the subsequent search.

Article 10

Refund of the fee for a technical opinion

An amount of 75% of the fee for a technical opinion under Article 25 of the Convention shall be refunded if the request for a technical opinion is withdrawn at a time when the Office has not yet begun to draw up the technical opinion.

Article 11

Refund of examination fee

The examination fee provided for in Article 94, paragraph 1, of the Convention shall be refunded:

- (a) in full if the European patent application is withdrawn, refused or deemed to be withdrawn before the Examining Divisions have assumed responsibility;
- (b) at a rate of 75% if the European patent application is withdrawn, refused or deemed to be withdrawn after the Examining Divisions have assumed responsibility but before substantive examination has begun.

Article 12

Refund of insignificant amounts

Where too large a sum is paid to cover a fee, the excess shall not be refunded if the amount is insignificant and the party concerned has not expressly requested a refund. The President of the Office shall determine what constitutes an insignificant amount.

Article 13

Decisions fixing costs which are subject to appeal

In accordance with Rule 97, paragraph 2, of the Convention, decisions fixing the amount of costs of opposition proceedings may be appealed if the amount is in excess of the fee for appeal.

Article 14

Reduction of fees

- (1) The reduction laid down in Rule 6, paragraph 3, of the Convention shall be 20% of the filing fee, examination fee, opposition fee, appeal fee, fee for the petition for review or the limitation or revocation fee.
- (2) Where the European Patent Office has drawn up an international preliminary examination report, the examination fee shall be reduced by 50%. If the report was established on certain parts of the international application in accordance with Article 34, paragraph 3(c), PCT, the fee shall not be reduced if subject-matter not covered by the report is to be examined.

Article 15
Entry into force

These Rules shall enter into force on 20 October 1977. *

DONE at Munich, 20 October 1977
for the Administrative Council
The Chairman

* Amended by decision of the Administrative Council of ... (CA/D .../06)