New Fee Structure for the European Patent Office Begins April 1

April 1, 2009

On April 1, 2009, the European Patent Office will introduce a new fee structure that represents the second of a two-phase fee restructuring effort. All fees to be paid in connection with filing and prosecuting European patents applications must obey this new fee structure beginning on April 1, 2009. This includes new applications and applications entering the European regional phase on or after April 1, 2009.

The old fee structure may apply for EP applications, divisional applications, and EP-PCT applications that were filed at the EPO on or after April 1, 2009 where either (1) the 30-month time limit of Art. 22 PCT expires before April 1, 2009 and the 31-month time limit of Rule 159(1) EPC expires on or after that date, provided that the regional phase is validly entered before April 1, 2009; or (2) the 30-month time limit of Art. 22 PCT expires on or after April 1, 2009, but a request for early processing according to Art. 23 or 40 PCT is filed separately and all procedural steps for entering the regional phase in Europe, including the early payment of all necessary fees, is completed before April 1, 2009.

Pertinent Changes to the EPO Fee Structure

The most pertinent changes to the EPO fee structure that will be going into effect on April 1, 2009 relate to: (1) excess claims fees; (2) the introduction of an excess page fee; and (3) a flat-rate designation fee. Additionally, the EPO is implementing a new rule that renewal fees may be validly paid no earlier than three months before their due date. The new renewal rule applies to all applications regardless of their filing dates.

Excess Claims Fees

Beginning on April 1, 2009, the excess claims fees still will be calculated on the basis of a two-tier system, but with a new fee of 500 € payable for the 51st and each subsequent claim. The claim fees applied to the 16th claim and each subsequent claim up to and including the 50th claim will remain at 200 €. Claims 1-15 will remain free of claim fees. Applicants wishing to pursue applications with over fifty (50) claims may consider early filing of divisional applications to help reduce costs. Applicants may wish to reduce the number of claims by introducing multiple dependencies, where possible, and formulating alternatives within one claim rather than claiming the alternatives in separate claims.

Excess Page Fees

Also beginning on April 1, 2009, the EPO will impose an additional fee of 12 € to the basic filing fee for each page of an application, as filed, that exceeds a total of 35 pages. This excess page fee will be calculated on the basis of the description, the first claim set (filed on or after the filing date of the application), the drawings, and one page for the abstract. If the application is filed by reference to a previously filed application, the pages of the certified copy thereof also will be the basis for the excess page fee calculation. The request for grant and sequence listings will not be considered.

The basis for calculating the number of pages in an EP-PCT application will be the number of pages of the International application, as published by WIPO, plus one (1) page for the abstract. Changes in the number of pages due to amendments under Art. 19 and/or Art. 34 of the PCT will be taken into account, as long as they are filed at the EPO within the 31-month term for entering into the regional phase. Applicants may consider reducing the number of pages in an application by using the minimal character size (Arial narrow, 11 pt), using the minimal margins and line spacing rules as defined in Rule 49(5) and (8) EPC, and grouping several drawings on one page.

Flat-Rate Designation Fee

Lastly, beginning on April 1, 2009, the EPO will introduce a new flat-rate designation fee of 500 € for up to a maximum of seven (7) EPC contracting states. This new designation fee will replace the

current regime of a separate designation fee for each contracting state. The new regime will slightly reduce costs for those Applicants that designate six (6) or more contracting states, but will increase the costs for Applicants that designate five (5) or less contracting states. The new designation fee will apply to all applications filed at the EPO on or after April 1, 2009.

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