

## **Introduction of the document CA/99/09 by the Central Staff Committee concerning changes in the fee system**

Chairman,  
Ladies and gentlemen

CA/100/09 submitted by the President of the Office is thin on details about the planned new fee structure. The staff representation considers this a good thing. We are of the opinion that the Office should exercise extreme caution when adjusting fees other than in response to inflation. The basic fee system that we have in the EPO, where the early stages of the life of a patent application are cross-subsidised through fees received for the later stages in the life of a patent is the same as that of all other patent offices in the world. This system has a long history and is well accepted by the users of the system.

Nowadays the idea of using fees as an incentive, or more often "disincentive", to steer applicant behaviour is becoming increasingly popular.

This is a dangerous game as we have already seen with change in claim fees that left the Office with more work and a 50 million Euros hole in its planned budget. It is also not appreciated by applicants and/or their representatives. The problem here is that – apart from the financial impact – fee changes and changes in the regulations that aim at steering applicant behaviour tend to see all applicants as **potential abusers** of the patent system.

This negative perception of the applicants – similar to the EPO administrations negative image of its staff – is counter-productive.

It damages the relationship, and leads to a hardening of the fronts.

Furthermore, due to the large information asymmetry in the applicant – EPO relations, such measures are often ineffective.

Applicants can avoid excess claims fees by filing more complex (e.g. "multiple choice") claims, or by putting spare claims in the description. Applicants can avoid the time limit on filing divisional applications by filing series of divisional applications each time just before the time limit. Such applicant avoidance strategies often mean more work for the Office, be it the patent examiners or the formalities staff.

**In the opinion of the Staff Representation this is not the way to go.**

In the view of the Staff Representation, rather than entering into an arms race with applicants, who are perceived as abusive, the Office should sit down with industry and the patent profession and try to understand the reasons behind such behaviour. Maybe what is perceived as abuse by the Office is in fact a necessity for the applicant.

Applicants have a vested interest in a well-functioning patent system. We are convinced that the vast majority of the applicants realizes this and is willing to cooperate with the Office and the examiners to make the system work.

If certain practices (or the finances of the Office) would necessitate changes in the fee system, such changes should only be implemented after **extensive consultation** of the interested parties: the applicants, their representatives and the experts from universities, ministries and the EU.

Any changes should not focus on the financial interests of the Office, but should consider the whole European patent system.

“Making the EPO fit for the future” means “making the European patent system fit for the future”. This cannot be done without the consent and the support of the users of the system. Only a patent system that has the broad support of all users and of the public can support the European economy through and after the current economic crisis.

We therefore ask the Organisation to abstain from fundamental changes in the fee systems that are not broadly supported by the users of the system and by the experts.

Ladies and gentlemen,

Thank you for your attention. This is all I want to say about CA/99/09.