

New Micro-Entity Fee Reduction Now Available at the European Patent Office

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With all the focus on the new European Unitary Patent System and Unified Patent Court, a recent development at the European Patent Office (EPO) has flown under the radar of many U.S. patent practitioners. Toby Hopkin, Partner and European/UK Patent Attorney for JA Kemp, with offices in London, Oxford, Cambridge, Paris, and Munich, visited Utah to ensure that the attorneys at Workman Nydegger are up to speed on the latest changes and strategies for our clients.

The U.S. Patent Office has offered a fee reduction scheme for micro-entities and small entities since 2011 and 2013, respectively. As of October 2024, the qualified fee reduction for small entities is 60%, while micro-entities receive an 80% reduction on qualified fees. Certain fees, like document supply fees, certificate of correction fees, statutory disclaimer fees, publication fees for republication, and miscellaneous fees and charges may not qualify for a fee reduction.

On April 1, 2024, the EPO began offering a 30% fee reduction for qualified micro-entity applicants, with fewer than five (5) European patent applications filed in the past five (5) years, upon submission of a signed declaration of micro-entity status, etc. A fee reduction is available for both EP direct and Euro-PCT applications for filing fees (including additional claim fees), as well as search, examination, designation, grant, and (pending European application) renewal (annuity) fees. Of note, if the EPO was designated as the International Search Authority (ISA) during the international phase of a PCT application, then the Euro-PCT (regional) phase examination fee can be further reduced by 30% of the search fee amount paid to the EPO in the international phase...in addition to the 30% micro-entity fee reduction. However, after a grant by the EPO, renewal fees paid to National (validation) offices or for unitary Patents do not qualify for fee reduction. Over time, this may save micro-entity applicants upwards of €2361 – (or about \$2,545) – over the course of a 5-year European prosecution.

To qualify for micro-entity status at the EPO, each applicant must be: (i) a natural person, (ii) a microenterprise (employing fewer than 10 full-time persons and with an annual turnover and/or annual balance sheet total that does not exceed €2 million, at the time of taking the fee reduction), or (iii) a non-profit organization, university, or public research organization. Evidence of micro-entity qualification is not necessary at the time of filing (paying the reduced fee), but the EPO may request evidence. A declaration of micro-entity status must be filed at the latest when the first reduced fee is paid. Currently, the declaration can be made by checking the appropriate box on the filing form. If, at any time, micro-entity status is no longer valid, then the applicant must inform the EPO – it is not permitted to pay fees at the reduced rate from the date on which the applicant is no longer a micro-entity. Similarly, if an application is transferred to an applicant who does not qualify as a micro-entity, or who has filed five (5) or more European patent applications filed in the past five (5) years, the new applicant must notify the EPO and is not permitted to pay the reduced fee. If, however, the application is transferred to an applicant who does qualify as a micro-entity, and who has filed five (5) or more European patent applications filed in the past five (5) years, a new declaration must be filed before paying any fee (even if the last applicant filed a declaration).

Calculating “the past five (5) years” correctly is also important. For all European direct applications,

whether current or past, the relevant date is the date of filing the European direct application. But, for Euro-PCT applications, the relevant date is the date of entry into the European (regional) phase – not the PCT filing date. For European divisional applications, the relevant date is the date of lodging the divisional. If you improperly pay the reduced fee amount, because you miscalculated the number of filed European applications in the past five (5) years, the EPO will graciously issue an invitation to pay the missing amount within a period of two months. FYI: the EPO will systematically check the cap on previous applications per applicant when eligibility is claimed.

However, if the applicant fails to file a declaration of micro-entity status...there is no two-month grace period, and no notice is provided by the EPO. The relevant fee will simply be considered as not having been validly paid, and the European patent application will be deemed withdrawn. The EPO's further processing mechanism may be available to allow applicants to recover the withdrawn application; however, errors related to micro-entity status are likely discovered too late to remedy. This is especially dangerous for improper payment of reduced fee renewal (annuities). Great care should be taken each and every time a reduced fee is to be paid, to confirm micro-entity status, as well as the total number of filed applications in the past five (5) years – for ALL applicants listed.

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