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An: Poststelle (BMJV)
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Axel Jacobi
Referent

Referat III B 4 (Patent- und Erfinderrecht; Gebührenrecht auf dem Gebiet des gewerblichen Rechtsschutzes)

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-----Ursprüngliche Nachricht-----
Von: [redacted]
Gesendet: Montag, 11. August 2014 13:07
An: [redacted] Karcher, Johannes; [redacted] Jacobi, Axel
Cc: [redacted]
Betreff: UPC Support for SMEs - action required by 3 September

Dear all

At the last meeting of the Financial Aspects Working Group back in June, I promised to send round a discussion document on the types of support we could consider for SMEs. With apologies for the delay, I now attach the document which includes some prompts as to the questions we should now be considering. I would be grateful if you could consider these questions and provide email responses.

It is probable that support measures for SMEs will be included in the Fees consultation we plan to launch next year. We hope to start planning the content of the consultation early in September and as initial views of the Group on SME support will be needed to do tha, can I please have all responses by Wednesday 3 September? We will provide an update on the consultation and its likely content at the next WG which I think is likely to be in late September/October.

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Wishing you all an enjoyable summer (what is left of it!)

Kind regards

[redacted]

[redacted]

UPC Taskforce - Finance Policy

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Please note I work part-time - Monday to Thursday and finish at 3pm on a Tuesday and 2pm on a Thursday.

V1 - 8 August 2014

UPC - SME support measures
Discussion Paper

Introduction

The fee team within the Financial Aspects Working Group agreed to consider the issue of support for SMEs in the context of the Declaration to the Agreement which states:

> *"The fee system should provide adequate and specific tools to ensure proper access for small and medium-sized enterprises, micro entities, natural persons, non profit organisations, universities and public research organisations to the UPC especially in relation to cases of high economic value."*

As part of these considerations the UK IPO sought suggestions from other providers of SME services and from potential users of the UPC. During these discussions some requested tools that go beyond the fee system in preference above reduced court fees. One reason given for this preference was that SMEs often try to avoid going to court if at all possible though it is often the only way to defend their IP rights. This paper therefore includes policy options for discussion that go further than the fee remit. Some of these options have the added benefit of reaching others as well as SMEs; many also have the advantage of having minimal or no adverse impact on the budget of the UPC.

It is important to note that this document is just a first step to identify and discuss measures that could be provided. The public consultation on fees that we plan to launch next year will be particularly useful to check for new ideas and users' opinions before selecting the SME measures to be implemented. Experience shows SMEs opinions are extremely varied. This reflects both how large this category of company is and its diversity across and within economic sectors.

While the paper is mainly centred on SMEs, measures designed for independent inventors or public research organisations should be given full consideration as well.

Suggestion	Detail	Questions for the WG to consider
Easy access to justice	• Ensure all aspects of the court are simple and open and implications for SMEs are considered throughout.	• Are all Working Groups considering this principle?
Reduced Fees	• Options might be reduced fixed fee(s) or, as these are intended to be cost recovery, reductions could be limited to Value-based fees (VBF) only. • VBF could be reduced according company size or value of case – i.e. not just one threshold.	• Eligibility criteria & proof? • What definition? EU definition (EU recommendation 2003/361)? • All SMEs? Just micros? Just small? • What about research bodies etc? • Should all types of fees be reduced or just fees for certain actions ? • Reduction only for VBF or fixed fee or both? • Risk of involuntarily supporting patent trolls?
Upper cap on value based fee	• Maximum threshold for VBF	• Level for threshold? • Available to all or just SMEs?
Small claims track procedure	• Expedited process similar to the UK's Intellectual Property Enterprise Court (IPEC) which hears cases up to £500,000. • Could use existing processes within the RoPs such as interim conference and mediation plus and/or additional measures such as a single judge. • Favoured by stakeholders.	• Was this raised during negotiations? • Is there an appetite for further change to the RoPs? • Could something be done without RoP changes?
Guidance (not legal advice)	• Research undertaken for UK recommends a free guide for SMEs (preferred over reduced fees). • Would explain how to bring about a case in detail and be available to all.	• Who would lead on this?

Suggestion	Detail	Questions for the WG to consider
Support for / encouragement of mediation & arbitration	• Encourage/aid early settlement. • Meets SME desire to avoid court procedures.	• Where can mediation take place? • How can it be made easily accessible and affordable to SMEs? • How to encourage all parties to take part?
Split fees / pay as you go	• Pay a separate fee if case goes to court. • Also encourages early settlement.	• When would this be payable? • Would it complicate the fee structure further / add administrative costs?