

GERMANY



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when implementing these new provisions are a further argument in favour of filing a European rather than a German national patent application.

Simplified filing fee not so simple

On October 1 2009, the Law on Simplification and Modernisation of the German Patent Law entered into force.

One of the amendments affects the filing fee for a German national patent application filed on or after October 1 2009. It is now calculated based on the number of claims: the basic filing fee (€60 for filing in paper form) is supplemented by an additional fee (€30) for every claim exceeding 10 claims. For example, the filing fee for a patent application filed in paper form including 11 claims amounts to €90 (€60 basic fee plus €30 for claim 11), for an application having 30 claims to €660 (€60 basic fee plus 20 times €30 for claims 11 to 30). If the amount paid within the three months term after the filing date is insufficient, the German patent application will be deemed to be withdrawn. In order to avoid this legal effect, care must be taken in the future to pay the proper filing fee.

In addition, if the number of claims increases during the prosecution of the patent application, a potentially resulting fee difference must be paid. Non-payment results in a submitted amended set of claims being ignored by the Patent Office. This may lead to refusal of the patent application.

The revised Law also includes provisions regarding the calculation of the filing fee when auxiliary claim requests are submitted. According to these, for calculating the fee, an auxiliary request is added to the main request, once a decision is made on the auxiliary request. Since in this scenario, the increased filing fee is only due after the decision has issued, it is questionable how the Patent Office will handle the legal consequences of non-payment. Further, the respective provision requires that if the main and auxiliary requests relate to the “same subject matter”, the fee is calculated based only on the request resulting in the higher fee. It remains to be seen how the Patent Office will construe the term “same subject matter” in this regard.

The complications that may arise