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NOTE

from: General Secretariat of the Council
to: Working Party on Intellectual Property (Patents)

No. prev. doc.: 12462/09 PI 79
No. Cion prop.: 10786/00 PI 49

Subject: Revised proposal for a Council Regulation on the Community Patent
- Proposals by the Hungarian delegation

Delegations will find in Annex, for information, Hungary's comments on the revised Proposal for a Council Regulation on the Community Patent as contained in 11417/09.

**Hungary's Comments on the revised Proposal for a Council Regulation on the Community Patent
(Council document 11417/09 dated 25 June 2009)**

- (5a) The renewal fee for a Community patent ~~must not exceed the level of the corresponding renewal fees for an average European Patent and~~ will be progressive throughout the life of the Community patent.
- (5b) Renewal fees for Community patents will be payable to the EPO. The EPO shall retain from each renewal fee paid for a Community patent an amount not exceeding 50 percent. This proportion may be revised in accordance with ~~according to rules laid down in~~ the EPC. The remaining amount will be distributed among the national patent offices of the Member States in accordance with a distribution key.
- (5c) A Select Committee of the Administrative Council of the European Patent Organisation shall, once the Community patent Regulation enters into force, fix both the level of the renewal fees and the distribution key for their allocation. The Select Committee shall periodically review its decisions taking into account all relevant economic development and changes within the scope of the criteria for fixing the level of the renewal fees and the distribution key ~~in patent activity~~.
- (5d) When fixing the level of the renewal fees the Select Committee shall take into account that the renewal fees shall:
- facilitate innovation and its ~~the protection of innovation~~ in Europe;
 - foster the competitiveness of European business, especially SMEs, in the global economy;
 - together with the fees due to be paid during the application phase, cover the reasonable and justifiable costs associated with the granting and administration of the Community patent, thus contributing to the financial stability of the EPO; ~~and~~
 - allow for the harmonious co-existence between national, European and Community patents, ~~and~~
 - reflect the size of the market covered by the Community patent, ~~duly taking into account comparable patent systems.~~

(5e) When fixing the distribution key the Select Committee shall take into account that a basket of fair, equitable and relevant criteria shall be reflected. Amongst these criteria the following should be given particular importance:

- proportionality with regard to the level of patent activity;
- proportionality with regard to the size of the market;
- compensation for Member States with a limited duration of EPC membership;
- compensation for the lack of an official language in common with the EPO, and
- in cases of disproportionate low levels of patent activities, due account must be taken to the need to promote patent activity and facilitate innovation.
