

ACT No. 173/2002 Coll.

of 9 April 2002 on Fees for Maintenance of Patents and Supplementary Protection Certificates for Medicaments and Plant Protection Products and on Amendment of some Acts

PART ONE

FEES FOR MAINTENANCE OF PATENTS AND SUPPLEMENTARY PROTECTION CERTIFICATES FOR MEDICAMENTS AND FOR PLANT PROTECTION PRODUCTS

Section 1

Subject matter of regulation

(1) This Act shall regulate assessment and collection of fees for maintenance of a patent in force (“maintenance fees for a patent”), fees for maintenance of a European patent with effects for the Czech Republic in force (“maintenance fees for a European patent”), fees for maintenance of a supplementary protection certificate for medicaments and for plant protection products in force (“maintenance fees for supplementary certificates”).¹

(2) Fees according to paragraph 1 shall be assessed and collected by the Industrial Property Office (“Office”).

Section 2

Rates

Rates of maintenance fees for a patent, maintenance fees for a European patent and maintenance fees for supplementary certificates are laid down in the tariff of maintenance fees, which is listed in the appendix to this Act.

Section 3

Payer

(1) The payer of maintenance fees for a patent shall be the patent holder.

(2) The payer of maintenance fees for a European patent shall be the holder of the European patent with effects for the Czech Republic (“European patent”).

(3) The payer of maintenance fees for supplementary certificates shall be the holder of the supplementary protection certificate for medicaments and for plant protection products (“supplementary certificate”).

¹ Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as amended by later regulations.

Section 4
Exemption from fees

The Czech Republic shall be exempted from payment of maintenance fees.

Section 5
Assessment and maturity of maintenance fees for a patent

(1) Maintenance fees for a patent shall be paid for individual years of duration of a patent, starting from the day of filing of an invention application.

(2) The first maintenance fee for a patent shall be assessed by the Office in amount corresponding to rates of maintenance fees for a patent for the period from the day of filing of an invention application until maturity of the assessed maintenance fee for a patent. This fee shall be payable no later than 3 months from coming into force of a decision about the grant of a patent.

(3) Maintenance fees for a patent relating to following years shall be payable, without assessment, no later than on the day, in which the previous annual period expires.

Section 6
Maturity of maintenance fees for a European patent

(1) Maintenance fees for a European patent shall be paid for individual years of duration of a European patent, starting from the day of filing of a European patent application with effects for the Czech Republic.

(2) The first maintenance fee for a European patent shall be paid without assessment only for years, which follow after the annual period, in which the grant of the European patent was published in the European Patent Bulletin.

(3) If the first maintenance fee for a European patent becomes due for payment within 2 months from the day of publication of the grant of the European patent in the European Patent Bulletin, such fee shall be duly paid if it is paid within 2 months from the day of such publication.

(4) Maintenance fees for a European patent relating to following years shall be payable without assessment no later than the day, in which the previous annual period expires.

Section 7
Maturity of maintenance fees for supplementary certificates

(1) Maintenance fees for supplementary certificates shall be paid for individual years of duration of validity of a supplementary certificate, starting from the day of filing of an invention application or filing of a European patent application with effects for the Czech Republic, which follow the last annual period of validity of a patent or validity of a European patent.

(2) The first maintenance fee for a supplementary certificate shall be payable before expiration of the last annual period of validity of a patent or a European patent or within 2 months from the day of coming into force of a decision about the grant of a supplementary protection certificate, whichever expires later.

(3) Maintenance fees for a supplementary certificate relating to the following year shall be payable without assessment no later than the day, in which the previous annual period expires.

Common provisions relating to payment of maintenance fees

Section 8

(1) In case of every payment of maintenance fees for a patent, maintenance fees for a European patent or maintenance fees for a supplementary certificate (“maintenance fees”), the payer shall be obliged to state the patent, the European patent or the supplementary certificate to which the maintenance fee payment relates. If it is impossible to determine the purpose of payment clearly, the Office shall invite the payer to communicate such purpose in writing within the stipulated period of time. If the payer fails to satisfy such invitation, the payment shall be deemed not made and the Office shall return it.

(2) Unless the due maintenance fee is paid in the required amount, the Office shall invite the payer to pay the remaining amount within 15 days from delivery of the invitation. After the lapse of time without any actions taken, the maintenance fee shall be deemed unpaid. The Office shall return the incomplete amount to the payer within 30 days from the day of such lapse of time. Provisions of paragraph 4 shall not be hereby affected.

(3) The maintenance fee can be duly paid no earlier than one year before its due date. The Office shall recognise the maintenance fee, which was paid prematurely in the required amount, as duly paid only on the basis of a written request of the payer provided that it is paid in amount stipulated by this Act.

(4) Unless the maintenance fee is paid within the required period of time or if it is deemed not paid according to paragraph 2, the payer can pay it additionally within 6 months from the due date. In this case the payer shall be obliged to pay, together with the due maintenance fee, also penalty in amount equal to the due maintenance fee.

Section 9

(1) The Office shall return the paid maintenance fee if the duty to pay did not arise; this is not the case if, based on the payer request according to Section 8 paragraph 3, the Office recognised the maintenance fee, which has not been due for payment yet, as duly paid.

(2) The Office shall return to the payer the amount paid in excess of the maintenance fee without request, if such amount exceeds 50 CZK.

(3) The Office shall not return the paid maintenance fee if a patent, a European patent or a supplementary certificate was terminated or cancelled after its payment, including the maintenance fee paid prematurely according to Section 8 paragraph 3.

Section 10
Manner of payment of maintenance fees

- (1) Maintenance fees shall be paid in the Czech currency
- a) by non-cash transfer from the account kept by a bank or by a branch of a foreign bank to the respective account of the Office,
 - b) in cash
 - 1. through a bank or through a branch of a foreign bank and/or through a postal licence holder to the respective account of the Office,
 - 2. by deposit at the cash desk of the Office; the Office is obliged to issue a receipt for the received payment,
 - c) by check.
- (2) The Office shall publish respective account numbers for payment of maintenance fees in the Bulletin of the Industrial Property Office.

Section 11
Proceedings

- (1) Unless otherwise stipulated by this Act, it shall not be possible with regard to a maintenance fee
- a) to waive the lapsed time for its payment,
 - b) to permit postponement of its payment, or
 - c) to permit its payment in instalments.

(2) Unless otherwise stipulated by this Act, proceedings concerning maintenance fees shall be subject to provisions of special legal rules regulating the tax and fees administration.²

Section 12
Budgetary determination of maintenance fees

Maintenance fees are an income of the state budget. The Office pays an adequate portion of incomes from maintenance fees for a European patent to the European Patent Organisation on behalf of the Czech Republic in the manner, in amount and within terms stipulated by the international convention which was approved by the Parliament, ratified and published and by which the Czech Republic is bound.³

² Act No. 337/1992 Coll., on Tax and Fees Administration, as amended by later regulations.

³ Convention on the Grant of European Patents (European Patent Convention) adopted in Munich on 5 October 1973, as amended by the Act revising the article 63 of the European Patent Convention of 17 December 1991, and decision of the administrative board of the European Patent Organization of 21 December 1978, 13 December 1994, 20 October 1995, 5 December 1996 and 10 December 1998, and the Act Revising the Convention on the Grant of European Patents adopted in Munich on 29 November 2000.

Section 13
Temporary provisions

(1) If the first administrative fee for maintenance of a patent in force was assessed before the day of coming into force of this Act, however it is payable after the day of coming into force of this Act, the existing rules shall apply.

(2) If the administrative fee for maintenance of a patent in force was payable and paid according to the existing rules before the day of coming into force of this Act, it shall be deemed as duly paid according to this Act for the whole period for which it was paid.

(3) If the administrative fee for maintenance of a patent in force, which is payable after the day of coming into force of this Act, was paid in advance, such administrative fee shall be deemed as the maintenance fee for a patent according to this Act provided that it fulfils conditions stipulated by this Act.

(4) Unless the administrative fee for maintenance of a patent in force, which was payable before the day of coming into force of this Act, was paid in the required amount, the payer shall be obliged to pay the remaining administrative fee according to the existing legal rules; as regards the invitation to pay the remaining administrative fee, the Office shall proceed according to this Act.

(5) If the time for payment of the administrative fee for maintenance of a patent in force according to existing legal rules lapsed before the day of coming into force of this Act and the administrative fee was paid according to existing legal rules within additional term of 6 months, such administrative fee shall be deemed as the maintenance fee for a patent according to this Act.

PART TWO

Amendment to the Act on Administrative Fees

Section 14

Act No. 368/1991 Coll., on Administrative Fees, as amended by Act No. 10/1993 Coll., Act No. 72/1994 Coll., Act No. 85/1994 Coll., Act No. 273/1994 Coll., Act No. 36/1995 Coll., Act No. 118/1995 Coll., Act No. 160/1995 Coll., Act No. 301/1995 Coll., Act No. 151/1997 Coll., Act No. 305/1997 Coll., Act No. 149/1998 Coll., Act No. 157/1998 Coll., Act No. 167/1998 Coll., Act No. 63/1999 Coll., Act No. 166/1999 Coll., Act No. 167/1999 Coll., Act No. 223/1999 Coll., Act No. 326/1999 Coll., Act No. 352/1999 Coll., Act No. 357/1999 Coll., Act No. 360/1999 Coll., Act No. 363/1999 Coll., Act No. 46/2000 Coll., Act No. 62/2000 Coll., Act No. 117/2000 Coll., Act No. 133/2000 Coll., Act No. 151/2000 Coll., Act No. 153/2000 Coll., Act No. 154/2000 Coll., Act No. 156/2000 Coll., Act No. 158/2000 Coll., Act No. 227/2000 Coll., Act No. 241/2000 Coll., Act No. 242/2000 Coll., Act No. 307/2000 Coll., Act No. 365/2000 Coll., Act No. 140/2001 Coll., Act No. 231/2001 Coll., Act No. 76/2002 Coll., Act No. 120/2002 Coll., Act No. 146/2002 Coll., and Act No. 149/2002 Coll., shall be amended as follows:

1. In notes to part VIII of the administrative fees tariff, the number “114” in point 1 shall be cancelled.

2. In the administrative fees tariff, item 114 including notes shall be cancelled.

PART THREE

Amendment to the Act on Inventions and Rationalisation Proposals

Section 15

Act No. 527/1990 Coll., on Inventions and Rationalisation Proposals, as amended by Act No. 519/1991 Coll., Act No. 116/2000 Coll., and Act No. 207/2000 Coll., shall be amended as follows:

1. Section 19 paragraph 4, including footnote no. 3a), shall read as follows:

“(4) Maintenance of validity of a patent, for which the holder offered a licence according to paragraph 1, shall be subject to fees according to special legal rules 3a) only in a half amount.

3a) Act No. 173/2002 Coll., on Fees for Maintenance of Patents and Supplementary Protection Certificates for Medicaments and Plant Protection Products and on Amendment of some Acts.”.

2. In Section 21 paragraph 2 the word “administrative” shall be cancelled, and the reference to footnote no. 4) shall be replaced by the reference to footnote no. 3a).

3. In Section 21, paragraph 3 shall read as follows:

“(3) Rights of third persons who, after the lapse of time for payment of the fee, started to use the subject matter of invention in good faith or performed serious and effective preparations for such use, shall not be affected by payment of this fee within additional period of time.”.

4. In Section 22 letter b), words “administrative fees 4) for maintenance of a patent in force” shall be replaced by words “fees for maintenance of a patent in force 3a)”.

5. Section 35g shall read as follows:

“Section 35g

(1) The holder shall be obliged to pay fees for maintenance of a European patent in force according to special legal rules. 3a)

(2) Rights of third persons who, after the lapse of time for payment of the fee, started to use the subject matter of invention in good faith or performed serious and effective preparations for such use, shall not be affected by payment of this fee within additional period of time.”.

6. In Section 35m paragraph 3, words “administrative fees according to special legal rules 4)” shall be replaced by words “fees according to special legal rules 3a)”.

7. In Section 35m paragraph 4, words “after the lapse of time for payment of the fee for maintenance of a certificate in force, started in good faith” shall be replaced by words “started in good faith after the lapse of time for payment of the fee for maintenance of a certificate in force,”.

8. In Section 35n paragraph 1 letter c), the word “administrative” shall be deleted.

9. In Section 88, the second sentence shall be deleted.

PART FOUR

Amendment to the Act, amending some Acts on the industrial property protection

Section 16

In article X of Act No. 116/2000 Coll., amending some Acts on the industrial property protection, words “on 1 July 2002” shall be replaced by words “on the day, in which the ratified and published Convention on the Grant of European Patents shall become binding for the Czech Republic”.

PART FIVE

ENTRY INTO FORCE

Section 17

This Act shall enter into force on the day, in which the ratified and published Convention on the Grant of European Patents shall become binding for the Czech Republic.

Tariff of maintenance fees

1. Tariff of fees for maintenance of patents in force

- a) for the first year from the day of filing of an invention application 1,000 CZK
- b) for the second year from the day of filing of an invention application 1,000 CZK
- c) for the third year from the day of filing of an invention application 1,000 CZK
- d) for the fourth year from the day of filing of an invention application 1,000 CZK
- e) for the fifth year from the day of filing of an invention application 2,000 CZK
- f) for the sixth year from the day of filing of an invention application 2,000 CZK
- g) for the seventh year from the day of filing of an invention application 2,000 CZK
- h) for the eighth year from the day of filing of an invention application 2,000 CZK
- i) for the ninth year from the day of filing of an invention application 3,000 CZK
- j) for the tenth year from the day of filing of an invention application 4,000 CZK
- k) for the eleventh year from the day of filing of an invention application 6,000 CZK
- l) for the twelfth year from the day of filing of an invention application 8,000 CZK
- m) for the thirteenth year from the day of filing of an invention application 10,000 CZK
- n) for the fourteenth year from the day of filing of an invention application 12,000 CZK
- o) for the fifteenth year from the day of filing of an invention application 14,000 CZK
- p) for the sixteenth year from the day of filing of an invention application 16,000 CZK
- q) for the seventeenth year from the day of filing of an invention application 18,000 CZK
- r) for the eighteenth year from the day of filing of an invention application 20,000 CZK
- s) for the nineteenth year from the day of filing of an invention application 22,000 CZK
- t) for the twentieth year from the day of filing of an invention application 24,000 CZK

2. Tariff of fees for maintenance of European patents in force

- a) for the first year from the day of filing of a European patent application 1,000 CZK
- b) for the second year from the day of filing of a European patent application 1,000 CZK
- c) for the third year from the day of filing of a European patent application 1,000 CZK
- d) for the fourth year from the day of filing of a European patent application 1,000 CZK
- e) for the fifth year from the day of filing of a European patent application 2,000 CZK
- f) for the sixth year from the day of filing of a European patent application 2,000 CZK
- g) for the seventh year from the day of filing of a European patent application 2,000 CZK
- h) for the eighth year from the day of filing of a European patent application 2,000 CZK
- i) for the ninth year from the day of filing of a European patent application 3,000 CZK
- j) for the tenth year from the day of filing of a European patent application 4,000 CZK
- k) for the eleventh year from the day of filing of a European patent application 6,000 CZK
- l) for the twelfth year from the day of filing of a European patent application 8,000 CZK
- m) for the thirteenth year from the day of filing of a European patent application 10,000 CZK
- n) for the fourteenth year from the day of filing of a European patent application 12,000 CZK
- o) for the fifteenth year from the day of filing of a European patent application 14,000 CZK
- p) for the sixteenth year from the day of filing of a European patent application 16,000 CZK

q) for the seventeenth year from the day of filing of a European patent application 18,000 CZK

r) for the eighteenth year from the day of filing of a European patent application 20,000 CZK

s) for the nineteenth year from the day of filing of a European patent application 22,000 CZK

t) for the twentieth year from the day of filing of a European patent application 24,000 CZK

3. Tariff of fees for maintenance of supplementary certificates in force

a) for the first year of validity of a supplementary certificate 26,000 CZK

b) for the second year of validity of a supplementary certificate 28,000 CZK

c) for the third year of validity of a supplementary certificate 30,000 CZK

d) for the fourth year of validity of a supplementary certificate 32,000 CZK

e) for the fifth year of validity of a supplementary certificate 34,000 CZK