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Sent: 15 November 2017 23:13
To: industrialstrategy
Subject: Re: Industrial Policy

Background

International (PCT) patent applications from UK applicants have been static over the last 10 years, when applications from others are growing.

French applicants file more EP and PCT applications than UK applicants. This is no accident. They have their national applications searched by the EPO and the French office subsidise the search fee such that the applicant only pays €500 [\$250 for SMEs]^[1] for what INPI is billed over €2300. This subsidy to French applicants comes from renewal fees on European patents, and at a rough calculation, with about 14,000 applicants by French nationals each year^[2] this comes to over €25m.

In a subsequent PCT application claiming priority of such a French national application, the PCT search fee of €1875 is refunded in part or in full by the EPO depending on the extent to which the search is used by the EPO.

In effect therefore:

- the French applicant has paid €500 at the national filing stage, and may need to pay no more for search at the PCT stage, in comparison with the €1875 a UK applicant has to pay when filing a PCT application with UK priority [the French applicant wins]
- EPO has received over €2300 – more than if the applicant had filed an EP first filing and more than if the applicant had filed a PCT first filing [the EPO wins short term – but is searching on applications that are less likely to mature as an EP patent, and so loses long term]
- INPI has paid out a substantial sum at the national filing stage, regardless of whether the invention has any merit [INPI loses], and mostly to the benefit of the EPO
- Non-French applicants further suffer, because the EPO is occupied with searching French national applications rather than European applications leading to delays in prosecution.

It is no wonder that French applicants file many more PCT applications than UK applicants.

In summary, one of the reasons UK applicants, and particularly SMEs file relatively few PCT applications is that they are forced to pay the full price to the most expensive provider in the market and with no government assistance. This is a particular deterrent to SMEs, and hinders their entry onto the world stage.

Support for UK applicants

An alternative, that might at least go some way to placing the UK on a par with France, would involve some support for UK applicants filing PCT applications.

The UKIPO does a good search. The UKIPO could usefully have confidence in the quality of its search by paying, say, 75% of the search fee on any PCT application:-

1. filed at the IPO as receiving office;
2. naming a UK resident or national as applicant for all designated states;
3. claiming priority of a UK application;
4. which has been searched by the IPO; and
5. where the PCT comprises claims corresponding to claims against which no X or Y citations are made in the IPO search; or which have been found to be new and inventive in an examination report.

Item 1 makes administration easier than for applications filed at any receiving office, although if means could be found to deal with the administrative issues of filing with different receiving offices, item 1 could be dispensed with.

Item 2 reduces the risk of non-UK applicants "gaming" the system.

Items 3 -5 limit the number of applications to those where there is an objective assessment by the IPO that there is patentable matter.

Based on the 5497 PCT application filed by UK applicants in 2016, and on the assuredly pessimistic assumption that all of them would have met the criteria above, the cost of such a subsidy would have been less than €7m in 2012. Even if filings ballooned to the French level in 2012 (8208) the cost would be less than €11m. In practice the cost is likely to be much lower, only IPO is in possession of statistics that might give a clearer indication of likely cost.

In any event, this would be a significantly lower cost of support than the French are paying, as it would be focussed on PCT applications for ideas that have been tested for patentability, rather than on all national applications.

Such support would assist many companies to protect their IP in world markets rather than just keeping to the UK.

I mention that the concentration on the French above does not imply that other countries do not have even more generous systems of support, France just provides a convenient benchmark as being a country of comparable size and GDP as the UK.

[1] http://www.inpi.fr/fileadmin/mediatheque/pdf/INPI_Tarifs_procedures.pdf

[2] http://www.inpi.fr/fileadmin/mediatheque/pdf/statistiques/Brevets_CC_2011.pdf