

C. PCT 1442

January 26, 2015

Madam,
Sir,

PCT FEE INCOME: PROCESS TO ESTABLISH NEW EQUIVALENT AMOUNTS OF CERTAIN PCT FEES

1. This Circular is addressed to your Office in its capacity as a receiving Office (“RO”) or International Searching and Preliminary Examining Authority (ISA) under the Patent Cooperation Treaty (PCT). It is also being sent to Geneva-based missions and foreign ministries of PCT Contracting States, as well as to certain organizations that are invited to attend meetings of the PCT Working Group as observers.
2. As you no doubt will be aware, following the decision by the Swiss National Bank on January 15, 2015, to discontinue its policy of maintaining a minimum exchange rate floor of 1.20 Swiss francs per euro, the Swiss franc soared in value by between 15 to 20 per cent against many other currencies. Noting that certain fees payable under the PCT, notably those which are to the benefit of the International Bureau (IB), are fixed in Swiss francs, and that PCT fee income constitutes WIPO’s largest source of revenue (in 2013, PCT fee income amounted to 257.5 million Swiss francs, which represented 73.2 per cent of total revenue), this surge of the Swiss franc might have a significant impact on the overall income of WIPO in the next few months, as further set out in the following paragraphs.
3. Among the fees to be paid by the applicant, and of particular importance in the present context, is the “international filing fee”, which is for the benefit of the IB. While the international filing fee is fixed in Swiss francs, it is usually paid in the local currency of the RO with which the international application is filed. In this case, the Director General of WIPO establishes official “equivalent amounts” of the international filing fee in the local RO currency

/...

and the applicant pays the equivalent amount of the international filing fee, as applicable on the date of filing, in the local currency to the RO; the RO then transfers that equivalent amount in the local currency to the IB, which converts that amount received at its end into Swiss francs.¹

4. The amount of the international filing fee resulting from the conversion by the IB from the RO currency into Swiss francs may be different from the amount of the international filing fee as set out in the PCT Schedule of Fees, mainly due to fluctuations in exchange rates between the date on which the equivalent amounts of the international filing fee have been set and the date on which that fee is transferred to the IB by the RO. Pursuant to the “Directives of the PCT Assembly Relating to the Establishment of Equivalent Amounts of Certain Fees” (see http://www.wipo.int/pct/en/fees/equivalent_amounts.html), where such exchange rate fluctuations remain under the threshold of +/- 5 per cent during a period covering four consecutive Fridays, the equivalent amounts of the international filing fee remain unchanged, and the IB will have to bear any losses or will benefit from any gains resulting from such exchange rate fluctuations.

5. Where, however, the exchange rate between the Swiss franc and the local RO currency changes by more than +/- 5 per cent during a period covering four consecutive Fridays, a process to establish new equivalent amounts is triggered, under which:

- the Director General of WIPO consults with all receiving Offices which prescribe payment of the international filing fee in the currency concerned on a proposed new equivalent amount of the international filing fee according to the exchange rate prevailing on the first Monday following the expiration of “four consecutive Fridays” period;
- following that consultation procedure, the Director General establishes new equivalent amounts of the international filing fee, which will become applicable two months after the date of its publication in the PCT Gazette, unless the receiving Offices concerned and the Director General agree on an earlier date of entry into force falling within the said two-month period.

6. This process of establishing a new equivalent amount of the international filing fee is relatively slow, notably taking into account the time needed to update the IB’s and the RO’s e-filing software, forms and procedures and to inform applicants about the new amounts of the international filing fee payable. It usually takes about four months from the first Friday (of the period of four “consecutive Fridays”) on which the exchange rate between the Swiss franc and the RO currency concerned had changed by more than +/- 5 per cent until the date of entry into force of the new equivalent amount two months after publication of that new amount in the PCT Gazette.

7. While the process as set out above has, by and large, worked fairly well in the recent past, it raises certain issues and concerns. Firstly, where the international filing fee is paid in a local RO currency, all the financial risks associated with the transfer of the international

/...

¹ Some of the issues set out in the present Circular also arise in the context of fees other than the international filing fee which are fixed in Swiss francs (such as the handling fee and supplementary search handling fee, which are also for the benefit of the IB) or which are paid in Swiss francs (such as the search fee, which is for the benefit of the International Searching Authority (ISA), and the supplementary international search fee, which is for the benefit of the Supplementary ISA). However, so as to not overcomplicate the issues set out in the present Circular, this Circular does not cover those fees. New equivalent amounts of all fees affected by the surge in the Swiss franc will be established at the same time in accordance with the proposal set out in the present Circular, should that proposal find support in general.

filing fee by the RO in the local RO currency and its subsequent conversion into Swiss francs are solely born by the IB. While the current procedure can, of course, result in both gains and losses, it exposes the PCT fee income of the IB and thus the income of the entire Organization to a major risk of fluctuating currency exchange rates. In the view of the IB, there is a need to take action to reduce those risks of exposure to PCT fee income to movements in currency exchange rates so as to provide greater predictability to the budgetary process and thereby add to the financial stability of the Organization. Circular C. PCT 1440, dated January 19, 2015, which has been sent to all Member States and other PCT stakeholders, sets out possible measures that could be taken to reduce those risks.

8. Secondly, the recent sudden and very strong surge of the Swiss franc against many major currencies has made it very clear that the relatively slow (four-month) process to establish new equivalent amounts as described above further aggravates those risks. Every day on which the currently applicable equivalent amounts of the international filing fee have not yet been adjusted to reflect the current strength of the Swiss franc will add to the mounting losses in PCT fee income, should exchange rates between the Swiss franc and the major local RO currencies remain at current levels.

9. Thus, should exchange rates between the Swiss franc and local RO currencies remain at current levels during the entire "four consecutive Fridays" period which will trigger the process to adjust the equivalent amounts of the international filing fee in such local RO currencies, it is my intention to seek the agreement by all receiving Offices concerned, in accordance with the last sentence of paragraph 5 of the Directives, to have new equivalent amounts of the international filing fee enter into force on a date earlier than two months after the date of publication of such new equivalent amounts in the PCT Gazette. The "four consecutive Fridays" period will end on February 6, 2015.

10. At present, noting the considerable impact of the current situation on PCT fee income, it is envisaged to do the utmost to compress the process with a view to bringing new equivalent amounts into force by mid-March at the latest. Assuming that it will be possible to publish the newly established equivalent amounts in the PCT Gazette by mid-February at the latest, this would leave Offices and users about one month to adjust to the new amounts. It is hoped this be found to be acceptable, given the extraordinary circumstances.

11. I already today would like to ask for your support and agreement in principle to proceed as outlined above to address this extraordinary situation, should the need arise and exchange rates between the Swiss franc and the major local RO currencies indeed remain at current levels. Should that be the case, I will address all receiving Offices concerned again by way of a PCT Circular in early February with concrete proposals as to new applicable equivalent amounts and a concrete proposal as to their proposed date of entry into force.

12. Any comments on this Circular should be sent to Mr. Claus Matthes, Director, PCT Business Development Division (email: pctbdd@wipo.int) by February 4, 2015.

Yours sincerely,



Francis Gurry
Director General