

Patent costs

There are several types of costs associated with registering IP. For patents, costs include administrative fees such as filing, search, examination, country designation and grant/publication fees; process costs associated with drafting of rather complex applications, monitoring, which can be in-house or outsourced; translation costs where applications are made abroad; and maintenance costs including renewal fees. For registered industrial design, PVP and utility models – all of which are awarded based on novelty requirements – several of these fees also arise since the novelty requirement also imposes an examination process. The application process is, however, much lighter for utility models. The case of trademarks differs since the award is based on “uniqueness”.

Those costs have impacts on would-be users of the IP system. Fees also finance the processing costs and, thus, the functioning of the IP-granting system. In the context of OECD countries, the major costs are process and enforcement costs, as well as translation costs for patents targeting more than one market. A main policy concern is that certain would-be inventors – namely small entities – face substantial costs and may be discouraged from using the system. Filing and search fees have less of an impact on applicants from advanced countries compared to processing and maintenance costs (EPO, 2010). In the case of developing and emerging countries, however, filing and search fees can be a barrier for some applicants as financial constraints are commonly higher. It is also worth noting that the geographical distance to the IP office can impose an additional cost on inventors if IP cannot be applied for online. The fee system should not exclude inventors whose contributions can be substantial. For that reason, discount fees have been introduced where those costs might represent a barrier, such as for small firms and universities. At the same time, institutions in charge of innovation, which provide IP support policies that substantially reduce the costs involved in seeking patents, need to consider whether some of these policies support patent applications that add to backlogs, but do not necessarily “add value”. This can notably be the case if the “quantity” rather than “quality” of IP applications is rewarded where “quality” can be defined as the probability that the invention will be granted an IP title and, moreover, that it will be successfully commercialised. Such policies might also increase the performance costs of the IP system.

A major challenge regarding procedures is delays in processing IP applications. The surge in patent applications in many jurisdictions has led to substantial delays in decisions on IP applications. Delays create uncertainty that can be detrimental to contributions towards innovation. Inventors may not proceed with efforts aimed at commercialising their inventions and competitors may be deterred from engaging in related research until patent decisions are made. Moreover if inventors expect long delays in decisions, this will reduce their incentives to engage in investments in the first place. This applies particularly to industries where inventions quickly become obsolete due to rapid technological change. If IP systems are to offer incentives for inventions as well as support innovation, they should ensure a reasonable duration for processing patents. Furthermore, it is critical that the quality of the examination process is not compromised. Raising fees is an option, but one that can only be used to a limited extent, as the IP system should not exclude groups of inventors by imposing unaffordable high fees.

A common approach adopted by many IP offices is to reduce procedural fees to avoid excluding certain kinds of innovators, while at the same time increasing renewal fees. IP offices can thus finance examination costs for unsuccessful applications by cross-subsidising low procedural fees that enable their access (EPO, 2010). Possible opportunities for improved pricing for specific types of procedural fees, include filing, search and examination fees, and can create a more efficient system. Some applicants strategically seek to delay the patent granting process in order to distort investment decisions by competitors. Delays impose a negative externality by contributing to uncertainties. Hence, mandatory fees for further processing request applicants, who fail to comply with set time limits, could be increased to reduce delays and avoid such abuse.

The fees charged by IP offices relate to the IP registration costs they have to incur. The patent system has to preserve “legal quality”, which renders simple approaches towards speeding up procedures and lowering their cost more complex. Patent examiners have to maintain quality of the examination process to ensure that only a low share of IP titles are rejected in courts. Otherwise the

value of IP titles would be diluted because owners of patents, if challenged, could never be sure that their rights would be upheld in courts. Moreover if many patents were wrongly granted, this would mean that competition would be blocked where it should not be. This could increase incentives to those seeking additional IP only to block competitors, even in cases where applications should have a low probability of actually receiving patents. This distortion of the process could lead to an even higher rate of patent applications, which increases backlogs. Satisfying the “legal quality” requirements for IP operations and procedures at reasonable cost is, therefore, challenging and requires investment in opportunities for raising productivity. Improvements can be made by taking advantage of ICT systems to automate processes and speed up the retrieval of relevant information for the examination process. Some IP offices have experimented with outsourcing some examination procedures. They have to ensure competitive criteria for selection, including pricing and quality of the service provided by the external parties. Some IP offices share examination results obtained for patents that were deposited previously in the other offices. Moreover, innovations in processing IP in other offices can prove helpful adding to the pay-offs from co-operation.

Source: OECD (forthcoming), National Intellectual Property Systems, Innovation and Economic Development with Perspectives on Colombia and Indonesia, OECD, Paris.

References:

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