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## 495/2008 Coll.

### ACT

of November 6, 2008

**on maintenance fee for the patent, maintenance fee for the European patent with effects for the Slovak Republic and the maintenance fee for the supplementary protection certificate for medicinal and plant protection products and on amendment of some acts**

Amended by: [600/2008 Coll.](#)

Amended by: [519/2010 Coll.](#)

The National Council of the Slovak Republic has adopted the following Act:

#### Title I

##### Article 1

###### **Subject-matter of the regulation**

This Act shall govern the amount and collecting the fee for the maintenance of the patent<sup>1)</sup> (hereinafter referred to as "maintenance fee for the patent"), the fee for maintenance of the European patent with effects for the Slovak Republic<sup>1)</sup> (hereinafter referred to as "maintenance fee for the European patent"), the fee for maintenance of the supplementary protection certificate for medicinal and plant protection products<sup>2)</sup> (hereinafter referred to as "maintenance fee for the supplementary protection certificate").

##### Article 2

###### **Payer**

- (1) The owner of the patent or a person authorised by the owner shall be the payer of the maintenance fee.
- (2) The owner of the European patent with effects for the Slovak Republic (hereinafter referred to as "European patent") or a person authorised by the owner shall be the payer of the maintenance fee.
- (3) The owner of the supplementary protection certificate for medicinal and plant protection products (hereinafter referred to as "supplementary protection certificate") or a person authorised by the owner shall be the payer of the maintenance fee.
- (4) If there are several payers, they are required to pay the maintenance fee for the patent, the maintenance fee for the European patent, maintenance fee for the supplementary protection certificate (hereinafter referred to as "maintenance fee"), they are obliged to pay it jointly and severally.

##### Article 3

###### **Collection and rates of maintenance fees**

- (1) The Industrial Property Office of the Slovak Republic (hereinafter referred to as "the Office") prescribes and collects the maintenance fees.
- (2) Rates of maintenance fees are laid down in the tariff of maintenance fees (the "Tariff"), as referred to in the Annex.

##### Article 4

###### **Payment of the maintenance fee**

Payment of the maintenance fee shall be made

- a) by transfer to the relevant bank account of the Office; or
- b) by money order to the relevant bank account of the Office.

##### Article 5

###### **Obligation to pay the fee and due date of the maintenance fee for the patent**

- (1) The maintenance fee for the patent shall be paid for the each year of the patent validity from the date of filing the patent application.

(2) The first maintenance fee for the patent shall be prescribed by the Office in the decision on granting the patent under the act applicable in the time of issuing this decision. The first maintenance fee for the patent shall be prescribed for the years from the date of filing the patent application by the due date of the prescribed maintenance fee for the patent including the year, in which the fee becomes payable. The first maintenance fee for the patent shall be paid within three months from the date of validity of the decision on granting the patent.

(3) Maintenance fee for patent for each subsequent year shall be paid without the invitation of the Office and shall be payable at the latest on the date of expiry of the previous year of validity of the patent.

#### Article 6

##### **Obligation to pay the fee and due date of the maintenance fee for the European patent**

(1) Maintenance fee for the European patent shall be paid for each year of validity of the European patent under the conditions laid down by international treaty.<sup>3)</sup> Each year of validity of the European patent shall begin on the date and the month of filing of the European patent application.<sup>4)</sup>

(2) The first maintenance fee for the European patent shall be paid without the invitation of the Office for the year following the year when the granting the European patent was announced in the European Patent Bulletin<sup>5)</sup> (hereinafter referred to as „European Bulletin“). This fee shall be payable at the latest on the date which is identical with the date and the month of filing of the European patent application in the year when the granting the European patent in the European Bulletin was announced or within two months of notification of granting the European patent in the European Bulletin according to which of these periods expires later.

(3) Maintenance fee for the European patent for each subsequent year shall be paid without the invitation of the Office and not later than the date of expiry of the previous year of validity of the European patent.

#### Article 7

##### **Obligation to pay the fee and due date of the maintenance fee for the supplementary protection certificate**

(1) Maintenance fee for the supplementary protection certificate shall be paid for each, even partial year of validity of the supplementary protection certificate.<sup>6)</sup>

(2) The first maintenance fee for the supplementary protection certificate shall be paid without the invitation of the Office and shall be payable by the end of the last year of validity of the patent or the European patent or within two months from the date of the decision on granting a supplementary protection certificate according to which of these periods expires later.

(3) Maintenance fee for the supplementary protection certificate for the subsequent year shall be paid without the invitation of the Office and shall be payable at the latest on the date of expiry of the previous year of validity of the supplementary protection certificate.

(4) Maintenance fee for the supplementary protection certification for an extended period<sup>7)</sup> shall be paid separately and shall be payable by the last day of the period of validity of the supplementary protection certificate.

#### Article 8

##### **Payment of the maintenance fee**

(1) Maintenance fee is duly paid, if it was paid at the earliest one year before the due date. If the maintenance fee is paid earlier than one year before the due date, the Office considers it properly paid only at the written request of the payer, provided that it was paid at the rates specified in the Tariff at the time of payment.

(2) The payer is required with each payment of the maintenance fee to indicate, what patent, European patent or supplementary protection certificate the payment relates to. If it is not possible to identify clearly the purpose of the payment, the Office shall invite the payer to identify the purpose of the payment within 15 days of the receipt of the invitation. If the payer fails to comply with this invitation, the payment shall be considered not to be made and the Office returns the amount received.

(3) If the maintenance fee is not paid in full, the Office shall invite the payer for additional payment within 15 days after its due date or 15 days from the date of receipt of the invitation according to which of these periods expires later. After vain expiry of this period, the maintenance fee shall be considered not to be paid. The Office shall return the amount received to the payer within 30 days from the date of the vain expiry of the period for the additional payment of the maintenance fee; provisions of the paragraph 4 shall not be affected.

(4) If the maintenance fee was not paid within the period referred to in paragraphs (1) to (3), the payer may pay it additionally within six months<sup>8)</sup> from the due date. In this case the payer is also required to pay maintenance fees with the additional payment in the amount of current maintenance fee. If the maintenance fee and additional payment were not paid in full or in additional period, the maintenance fee shall be considered not to be paid. The Office shall return the amount received to the payer within 30 days of vain expiry of the additional period for payment of the maintenance fee.

(5) If the owner of the patent, the European patent or the supplementary protection certificate filed with the Office a written statement that anyone can be granted the right to use the invention for an adequate compensation under the terms of a specific regulation<sup>9)</sup>, the maintenance fee shall be paid at 50 % of the amount specified in the Tariff.

#### Article 9

### **Maintenance fee refund**

- (1) The Office shall refund maintenance fee in full if it was paid unreasonably.
- (2) The Office shall refund the amount which exceeded the prescribed amount paid by the payer (hereinafter referred to as "overpayment"). The Office shall not refund the overpayment if the amount to be refunded does not exceed 1.65 euro.
- (3) The Office shall refund the maintenance fee under the paragraph (1) and overpayment under the paragraph (2) within 30 days from the day when the Office found that the maintenance fee or overpayment should be refund.
- (4) If the patent, the European patent or the supplementary protection certificate was revoked or cancelled after the payment of the maintenance fee, the Office shall not refund the maintenance fee for the years of validity of the patent, European patent or a supplementary protection certificate. The same also applies to the maintenance fee paid earlier under the Article 8(1).
- (5) A decision on the refund of the maintenance fee or overpayment may not be appealed. The decision shall enter into force on the day of delivery.
- (6) The claim for the refund of the maintenance fee or overpayment expires after three years from the end of the calendar year in which the maintenance fee was paid.

### **Article 10**

#### **Restitutio in integrum**

- (1) If the payer, despite the due care required by circumstances, failed to comply with time limit for the payment of the maintenance fee, he may request the restitutio in integrum (hereinafter referred to as "request") and to perform at the same time the omitted act within two months of the removal of the cause, for which the payer was not able to pay the maintenance fee, but at the latest 12 months after the expiry of the unobserved additional period under Article 8(4).
- (2) The payer is also required to justify the request within the period referred to in paragraph (1), especially to state the facts preventing payment of the maintenance fee and to indicate the date of the removal of the cause, for which he was not able to pay the maintenance fee.
- (3) If there are any doubts about the veracity of the statement referred to in paragraph (2), the Office shall invite the payer making the request to prove his statements.
- (4) The Office shall refuse the request, which fails to meet the conditions referred to in paragraphs (1) and (2), or if the payer making the request fails to prove his statements pursuant to paragraph (3); before the decision on the refusal the Office shall enable the payer making the request to respond to ascertained reasons on the basis of which the application shall be refused.
- (5) If the Office accepts the request, the consequences of having failed to observe the time limit shall be deemed not to have occurred.
- (6) The third person, who used in a good faith the invention covered by the patent, for which the maintenance fee has not been paid, or has made arrangements immediately directed towards the use of that invention in the territory of the Slovak Republic from the due date of the maintenance fee until the termination of the legal consequences of the non-payment of the fee under the paragraph (5), may continue to use the invention or begin to use the invention in the course of the business without the obligation to pay for the use of the invention.

### **Article 11**

#### **Recording and inspection of maintenance fees**

The Office is obliged to keep records of executed charged acts and procedures and the amounts of selected maintenance fees.

### **Article 12**

#### **Budgetary determination of the income of maintenance fees**

- (1) Revenues from maintenance fees and surcharges are the state budget revenue except the proportion of revenues from maintenance fees referred to in paragraph (2). The Office concentrates revenues from maintenance fees and surcharges and implements expenditures under paragraph (2) by means of a separate extrabudgetary account.
- (2) A proportion of revenue from maintenance fees for European patent the Office pays for the Slovak Republic to the European Patent Organisation in a way and within the time limits established by an international agreement.<sup>10)</sup>
- (3) Following the payment of a proportion of revenue from maintenance fees referred to in paragraph (2) the Office shall transfer the balance of separate extrabudgetary account to the revenue account of the Office.

### **Article 13**

#### **Common provision**

General regulation on administrative proceedings governs the counting periods, delivery, decision and remedies in cases of maintenance fees with the exception of the provisions of Article 9 (5).<sup>11)</sup>

#### Article 14

#### Transitional provisions

(1) If the first administrative fee for maintaining the patent was specified prior the date of entry of this Act into force, it shall be governed by existing regulations, even if the fee is payable after the entry of this Act into force.

(2) If the administrative fee for maintaining the patent, the European patent and the supplementary protection certificate was payable and paid under existing regulations before the entry of this Act into the force, it shall be considered duly paid under this Act for the entire period for which it was paid.

(3) If the administrative fee for maintaining the patent, the European patent and the supplementary protection certificate, which is payable after the entry of this Act into the force, was paid earlier, this administrative fee shall be considered to be the maintenance fee under this Act.

(4) If no administrative fee for maintaining the patent, the European patent and the supplementary protection certificate, which was payable before the entry of this Act into the force, was paid in the prescribed amount, the payer shall be obliged to pay an administrative fee in accordance with existing regulations; the invitation of the Office for additional payment of an administrative fee shall be proceeded under this Act.

(5) Where the time period for payment of an administrative fee for maintaining the patent, the European patent and the supplementary certificate under existing regulations had expired in vain before the date of entry of this Act into the force and the administrative fee was paid in accordance with existing regulations within a further period of six months, the administrative fee shall be considered to be the maintenance fee under this Act.

#### Title VIII

This Act shall enter into force on February 1, 2009.

Act No. [600/2008 Coll.](#) entered into the force on February 1, 2009, except the Article II, which entered into the force on January 1, 2009.

Act No. [519/2010 Coll.](#) entered into the force on January 1, 2011.

**Ivan Gašparovič v.r.**

**Pavol Paška v.r.**

**Robert Fico v.r.**

#### **Annex Tariff of the maintenance fees**

##### Item 1

Maintenance fees for patents, maintenance fees for European patents for

a) 3th year	66 €
b) 4th year	82,50 €
c) 5th year	99,50 €
d) 6th year	116 €
e) 7th year	132,50 €
f) 8th year	149 €
g) 9th year	165,50 €
h) 10th year	199 €
i) 11th year	232 €
j) 12th year	265,50 €
k) 13th year	298,50 €
l) 14th year	331,50 €
m) 15th year	365 €
n) 16th year	398 €
o) 17th year	464,50 €
p) 18th year	531 €
q) 19th year	597 €
r) 20th year	663,50 €

##### Item 2

Maintenance fees for supplementary protection certificates

a) 1th year . . . . .	.995,50 €
b) 2th year . . . . .	1 327,50 €
c) 3th year . . . . .	1 659,50 €
d) 4th year . . . . .	1 991,50 €
e) 5th year . . . . .	2 323,50 €

Item 3

Maintenance fees for supplementary protection certificates during extended period<sup>6)</sup> . . . . .829,50 €

- 1) Act No. [435/2001 Coll.](#) on Patents, Supplementary Protection Certificates and on Amendment of Some Acts (Patent Act).
- 2) Regulation (EC) No. 469/2009 of the European Parliament and of the Council of May 6, 2009 concerning the supplementary protection certificate for medicinal products (codified version). Regulation (EC) No. 1610/96 of the European Parliament and of the Council of July 23, 1996 concerning the creation of a supplementary protection certificate for plant protection products (Official Journal of the EU L 198, 08/08/1996, p. 30) in the valid version
- 3) Article 141(1) of the Convention on the Grant of European Patents (European Patent Convention) (Notification of the Ministry of Foreign Affairs of the Slovak Republic No. [47/2008 Coll.](#)).
- 4) Article 80 of the Convention on the Grant of European Patents (European Patent Convention).
- 5) Article 97(3) of the Convention on the Grant of European Patents (European Patent Convention).
- 6) Article 13(1) of the Regulation (EC) No. 469/2009 of the European Parliament and of the Council. Article 13(1) of the Regulation (EC) No. 1610/96 of the European Parliament and of the Council.
- 7) Article 13(3) of the Regulation (EC) No. 469/2009 of the European Parliament and of the Council.
- 8) Article 5bis(1) of the Paris Convention for the Protection of the Industrial Property (Decree of the Minister of Foreign Affairs No. [64/1975 Coll.](#) on the Paris Convention for the Protection of the Industrial Property of March 20, 1883 revised in Brussels on December 14, 1900, in Washington on June 2, 1911, in Hague on November 6 1925, in London on June 2, 1934, in Lisbon on October 31, 1958 and in Stockholm on July 14, 1967 as amended by the Decree of the Minister of Foreign Affairs No. [81/1985 Coll.](#)).
- 9) [Article 25 of the Act No. 435/2001 Coll.](#)
- 10) Convention on the Grant of European Patents (European Patent Convention).
- 11) Act No. [71/1967 Coll.](#) on Administrative Proceedings (Administrative Code) as amended.