

## MUELLER LAW, LLC

### EUROPEAN PATENT FILING INFORMATION

If you are interested in filing a patent application in a European country, there are two routes available. Regardless of the route taken, a U.S. or PCT application often serves as the basis for a European patent.

First, an application may be filed directly in each country for which patent protection is desired. Countries that do not include English as an official language require translation of the application into an official language. Government filing fees and legal fees will be incurred at the time the applicant files the application. The costs will vary per country, ranging from as little as \$2,000 to as much as \$8,000 or more, with the most expensive being those that require a translation.

Second, a centralized filing system known as the European Patent Convention (EPC) is available. Most European nations are members of the EPC. (<http://www.epo.org/about-us/organisation/member-states.html>) Using this system, an applicant can file a single EPC application, which secures an early filing date in all member countries. The cost to file an EPC application varies depending on the size of the application (e.g., length of specification, number of claims, number of sheets of drawings, etc.), but generally will be between \$5,000 and \$8,000. An EPC member searching patent office will conduct a search and issue a written search report on the invention. Thereafter, an EPC member examination patent office will examine the EPC patent application as to whether the invention meets the EPC requirements for patentability.

After prosecution of the EPC patent application and its allowance, the patent will be published for opposition, which starts a 9-month clock running for any party to oppose the issuance of the EPC patent. Validity of EPC patents relies mainly on patent oppositions with court challenges to EPC patent validity being seldomly used.

Once the opposition time period expires, the applicant may validate the EPC application in one or more of the member countries where patent protection is desired. At this stage, countries that do not include English as an official language will require translation of the application into an official language. Government filing fees and legal fees will be incurred at this time. As noted above, the cost varies per country, ranging from as little as \$100 to as much as \$8,000 or more. If no countries are confirmed, then the EPC application expires. With more than 25 countries, validating an EPC patent in all of the member EPC countries is very expensive.

Filing an EPC application delays the payment of individual country filing fees and reduces prosecution costs, since county-by-country prosecution is avoided. An EPC application also secures an early filing date, while enabling an applicant to defer the selection of individual countries. This procedure provides valuable time to develop strategic partnerships and test the market in individual countries.

Whether to utilize the EPC system will depend on the applicant's specific situation. When an applicant desires or may ultimately desire patent protection in a number of countries, the EPC system generally provides the most economical and efficient approach. We should mention that annual tax payments, called annuities, for all EPC validated patents would be due.