**Position of the Chamber of Patent Attorneys of the Czech Republic to the draft Rules on Court Fees and recoverable costs for UPC of 8 May 2015**

For a long period of time the Chamber of Patent Attorneys of the Czech Republic monitors a European development in the field of industrial property protection and continuously expresses its concern of an impact of this development on SMEs it represents for a long time through its members.

Europe today heads toward an agreement on a unitary patent and to a complementing agreement on a Unitary Patent Court (UPC). The agreement on a unitary patent introduces new type of patents valid on the Czech territory, the legally binding wording of which will be in English or German or French, which will make it harder for SMEs to decide, whether or not their products or services infringe or do not infringe somebody´s patent rights. Not only for that reason, but due to a rapid increase of a number of patents valid on Czech territory, the big majority of which will be blocking patents, we can expect an explosive increase of litigation against Czech enterprises through foreign patent owners.

SMEs in Europe can be with respect to the draft UPC fees divided into three categories:

a) medium-sized enterprises which employ less than 250 persons and their annual turnover is up to 50 M EUR.

b) small enterprises which employ less than 50 persons and their annual turnover is up to 10 M EUR.

c) micro-enterprises which employ less than 10 persons and their annual turnover is up to 2 M EUR.

A market share of SMEs is given in a following table:



According to this table, micro-enterprises employ approximately one third of all employees and produce more than one fifth of added value. An average micro-enterprise with an annual turnover 1 M EUR with a 10% profit rate (average in industry) may have 100.000,- EUR annual profit. According to official sources, one instance UPC proceedings would cost far more than EUR 150,000, and in the case of the usual two instances incl. revocation, the procedural costs may start from EUR 600,000. In case the unsuccessful party is obliged to pay costs of the successful party as well, the costs will be doubled and could start at 1,2 M EUR. An average micro-enterprise would thus consume for one litigation proceedings its whole profit gained during six or twelve years. This is unimaginable, it is not realistic, it actually means that such micro-enterprise just will not start such an infringement proceedings and rather will give in even to unjust and blackmailing requirements of a big enterprise. For a small enterprise category with an annual turnover up to 10 M EUR it is slightly better, it would spend for the usual two instances incl. revocation its whole profit gained during one or two years. Considering such level of costs, an average Czech enterprise owning a unitary patent or accused of an infringement of a patent of another subject would not be able (due to foreseen financial implications) to take part in a proceeding at UPC and actively defend its rights either as a plaintiff or as a defendant. Though such enterprise has a formal right to an effective legal protection, financial inaccessibility of this legal protection guaranteed to it by the Charter of Fundamental Rights would actually deprive this enterprise of such right. And what could be the results? A legal environment set up in such a way would enable the big enterprises to liquidate through unjustly incited litigation proceedings the most innovative small and micro enterprises to easily acquire their innovations. This factual inaccessibility of legal protection concerns a big segment of the market, namely 98,8 % of all enterprises with 49,7 % of all employees creating 39,8 % of added value (see the table).

Article 47 of the Charter of Fundamental Rights of the EU imposes on member states of EU an obligation to guarantee to everybody a right on effective legal protection and a just process, i.e. a right to approach a court and to gain a remedy, to be represented and to obtain an advice (the so called right to an access to the justice). These principles are similarly anchored in a right to a just proceeding according to Article 6 of the European Agreement on Protection of Human Rights.

A right to effective legal protection must include a financial accessibility of legal protection, what the draft Rules on Court Fees and recoverable costs for UPC unfortunately do not contain, as was demonstrated above. Just for a comparison, a court fee for an initiation of a patent litigation in CZ together with exercising a dilatory claim amounts to 2.000,- CZK (approximately 74,- EUR).

Expected increased number of litigations after introducing a unitary patent into the Czech legal system due to a big increase of numbers of patents valid on the Czech territory in connection with a lower understandability of these patents that will be available in English, German or French only (machine translations into Czech are very poor and very unreliable) and due to financial inaccessibility of the legal protection for prevailing majority of SMEs in CZ could seriously damage Czech economy. Every patent litigation at the UPC would become for prevailing majority of SMEs a question of an existence or non-existence and every such Czech subject would in case of only a slight possibility of losing the litigation give up instead of letting the court to decide, what is the truth and what is just. This could not be considered as an fulfillment of right to an efficient legal protection and a just proceeding, but rather a facilitation of arbitrariness executed by the stronger ones with respect to the weaker ones.

For these reasons the **Chamber of Patent Attorneys of the Czech Republic does not agree with the draft Rules on Court Fees and recoverable costs for UPC** as its provision concerning fees knowingly favors the stronger ones, as multinational companies, and harms the weaker ones, especially SMEs. The Chamber therefore **requires a radical lowering of said fees and recoverable costs.**