

Licences of right

Patent renewal fees can be expensive. They are an ongoing yearly cost that adds up over the life of a patent and can make you think twice about whether it's worth keeping a patent alive at all - especially one that's nearing the end of its life, when renewal fees are particularly pricey.

If these sentiments resonate, then advertising your patent as being available for licences of right could be for you.

What is a licence of right?

Many Patent Offices in Europe and a small number of offices outside of Europe operate a system that allows a patent owner to mark his patent as being available for 'licences of right'. This means that the patent owner has to grant any third party that asks a licence on 'reasonable terms'. In return for advertising his patent as being available for licence, the Patent Office will grant the patent owner a 50% reduction in annual renewal fees. This can be a huge saving if you have a large number of patents spread across Europe, and if you're on a budget it could make the difference between being able to keep your patent in force or being forced to let it lapse.

What are the drawbacks?

The most obvious drawback is that if a party asks for a licence, you have to grant one - there is no option to refuse.

Of course, this might not be a bad thing if you are not using the invention yourself, or if you are looking to commercialise your invention - granting a licence to a third party can be an excellent way to gain some revenue from your patent. However, if the invention is integral to your core business, then being forced to grant a licence to a competitor would likely be a major problem.

Other potential drawbacks include:

- If you and the potential licensee cannot agree on terms that you both believe are 'reasonable', then the Patent Office will decide what is. It is thus possible that you might be forced to grant a licence on terms you are not happy with

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- If you have existing licencees with licence terms that are less favourable than those agreed in a licence of right, then those existing licencees would have the right to take a licencee under the new, more favourable terms
- In the event that there is an infringement, then the infringer will have the option to take a licence, and the total amount of damages recoverable may be limited (depending on the licence terms)

In reality, there is little evidence to suggest that licences of right are requested often. However, this might simply be a reflection on the fact that few patentees seem to take advantage of the system at the moment.

Can I change my mind?

The short answer is yes. However, if you do choose to remove the licence of right advertisement, then the balance of any reduced renewal fees must be paid. In addition, any existing licencees need to consent to the removal.

Summary

Licences of right are not for everyone, and they are not for every patent. But if you have a large portfolio that includes some underused inventions, or if you are actively seeking licencees, then they may well be for you.

European countries that operate licence of right schemes include UK, Germany, Italy, Spain, Ireland, Luxembourg, Turkey, Bulgaria, San Marino, Czech Republic, Lithuania, Latvia, and Slovakia. Countries outside of Europe include Brazil.

What next?

If you would like more information, then please get in touch. You can email us info@barkerbrettell.co.uk or call us on **+44 (0)121 456 0000**.