

**SC/18/15**

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SUBJECT: Adjusted proposals for the level of renewal fees for European patents with unitary effect

SUBMITTED BY: President of the European Patent Office

ADDRESSEES: Select Committee of the Administrative Council (for opinion)

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#### SUMMARY

At the 13th meeting of the Select Committee, in March 2015, the Office presented two proposals on renewal fee levels for European patents with unitary effect (SC/4/15). The main constraints for these proposals were the different parameters laid down in EU Regulation No. 1257/2012 of 17 December 2012, the twofold aim being to arrive at renewal fees low enough to be attractive to users and high enough to ensure a balanced budget for the EPO and resources for the national offices.

At the end of this initial discussion, the general approach in the Office's two proposals was supported by a large number of the delegations which took the floor, albeit with requests that some elements – notably the level of the renewal fees payable during the first few years of a unitary patent's life – be adjusted.

In the light of the oral and written comments made on its proposals for renewal fee levels, the Office now presents an adjusted version of those proposals, basing the fees for the first ten years on the sum of the national renewal fees payable in the countries in which European patents are most frequently validated.

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## TABLE OF CONTENTS

| <b>Subject</b>   | <b>Page</b> |
|--|-------------|
| I. INTRODUCTION  | 1           |
| II. ADJUSTED PROPOSALS FOR THE LEVEL OF RENEWAL FEES   | 2           |
| A. ADJUSTED FEE LEVEL PROPOSAL NO. 1                   | 3           |
| B. ADJUSTED FEE LEVEL PROPOSAL NO. 2                   | 4           |
| III. CONFIRMATION OF THE SPECIFIC REDUCTIONS           | 5           |
| IV. REQUEST TO THE SELECT COMMITTEE                    | 5           |
| ANNEX 1       EXTRACT FROM EU REGULATION NO. 1257/2012 | 6           |
| ANNEX 2       PROPOSAL FOR THE LEVEL OF RENEWAL FEES   | 7           |
| ANNEX 3       SUMMARY OF FINANCIAL SIMULATIONS         | 8           |
| ANNEX 4       SUMMARY OF PENETRATION RATES             | 9           |

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## I. INTRODUCTION

1. At the Select Committee's 13th meeting, in March 2015, the Office presented two proposals on renewal fee levels for European patents with unitary effect. The proposals reflected the twofold aim of arriving at renewal fees low enough to be attractive to users and high enough to ensure a balanced budget for the EPO and resources for the national offices.
2. In SC/4/15, the Office proposed the following structure for setting unitary patent renewal fees:
  - years 3 to 5: the level of the EPO's internal renewal fees (IRF)
  - years 6 to 9: a transitional level between the IRF level and the year 10 level
  - from year 10, a level equivalent to the sum total of the national renewal fees payable in the states in which European patents are most frequently validated.
3. On the basis of this structure, the Office's first proposal was to take the **TOP 4 level**, i.e. the sum for the four most frequently validated countries (DE, FR, GB, NL) from year 10 while maintaining the EPO IRF level for years 3 to 5, with a steady progression until year 10.
4. The second proposal was to take the **TOP 5 level**, i.e. the sum for the five most frequently validated countries (DE, FR, GB, NL, SE) from year 10 while keeping the EPO IRF level for years 3 to 5, with a steady progression until year 10. In addition, a 25% fee reduction, for the first ten years, for certain categories of patentees, namely SMEs, natural persons, non-profit organisations, universities and public research organisations, was proposed.
5. During the discussion at the committee's 13th meeting, whilst the response to the general approach in the Office's two proposals was basically favourable, the idea of using the IRF for the first few years was not supported. This position has since been confirmed by written comments received from delegations.
6. Taking into account the various oral and written comments made with on its proposals presented in SC/4/15, the Office now submits an adjusted version of its two proposals on renewal fee levels for the unitary patent.

## II. ADJUSTED PROPOSALS FOR THE LEVEL OF RENEWAL FEES

7. The two proposals initially presented by the Office (SC/4/15), taking the EPO IRF level for years 3 to 5, were designed primarily to ensure consistency in the fee scales applicable in the pre-grant phase (EPO fees covering 38 states) and the post-grant phase (unitary patent fees for 25 states). On the one hand, the large majority of applications are still pending during this period. On the other, the unitary patent is a European patent already granted, for which post-grant income has to recoup a substantial part of the total unit costs of the search and examination work performed prior to grant.
8. However, during the discussion on the proposals presented in SC/4/15, a large number of delegations taking the floor expressed fears that charging the IRF level in the initial years would discourage applicants from opting for unitary patents rather than for traditional European patents validated in just a few states.
9. Several delegations also called for new simulations based on an additional penetration rate to those (lower, base and upper) initially presented by the Office. This new rate (called "upper+", see Annex 4) assumes a far greater take-up of the unitary patent for patents currently validated in one or two countries, while reducing the percentage for patents validated in a greater number of countries (> 6) to the same level as in the baseline penetration rate.
10. As requested by BUSINESSSEUROPE, a user organisation with observer status on the committee, other penetration rates have also been taken into account, by re-evaluating the take-up rates for patents validated in two or three countries at a fee level of TOP 4 or TOP 5 and reducing the take-up rates for patents validated in six countries or more (see Annex 4).
11. Consequently, the Office now presents to the Select Committee **two adjusted fee proposals, replacing the previous proposals in SC/4/15**. On that basis, and taking the two new penetration rates into account, the Office has also run new simulations, the results of which are set out in detail in SC/17/15.

## A. ADJUSTED FEE LEVEL PROPOSAL NO. 1

12. The Office proposes a renewal fee scale based on a "true" TOP 4 level, i.e. on the sum of the renewal fees paid today for the four most frequently validated countries, from year 2 onwards until year 20. In line with standard EPO fee policy, the amounts have been rounded up or down to the nearest EUR 5. The amounts also reflect national renewal fees as updated with effect from 1 January 2015, and euro exchange rates as at 11 December 2014 (see Annex III of CA/D 1/14).

13. Under this proposal, the renewal fee scale would be as follows:

|            |           |            |           |
|------------|-----------|------------|-----------|
| 2nd year:  | 35 EUR    | 11th year: | 1 460 EUR |
| 3rd year:  | 105 EUR   | 12th year: | 1 775 EUR |
| 4th year:  | 145 EUR   | 13th year: | 2 105 EUR |
| 5th year:  | 315 EUR   | 14th year: | 2 455 EUR |
| 6th year:  | 475 EUR   | 15th year: | 2 830 EUR |
| 7th year:  | 630 EUR   | 16th year: | 3 240 EUR |
| 8th year:  | 815 EUR   | 17th year: | 3 640 EUR |
| 9th year:  | 990 EUR   | 18th year: | 4 055 EUR |
| 10th year: | 1 175 EUR | 19th year: | 4 455 EUR |
|            |           | 20th year: | 4 855 EUR |

14. Over 20 years, the sum total of the fees would be **EUR 35 555**, as shown by the table in Annex 2.

15. Annex 3 shows the financial results for various fee levels. For true TOP 4, taking the five penetration rates described above, the results at steady state would remain negative compared to the baseline, amounting to EUR -26m, EUR -14m and EUR -10m for the lower, base and upper penetration rates respectively. They become positive, at EUR +12m and EUR +31m, at the "upper+" and BUSINESSSEUROPE's assumed penetration rates respectively. At steady state, these results show little deviation from the baseline, in a range between -5% and -2% for the initially assumed penetration rates and between +2% and +6% for the newly considered penetration rates.

## B. ADJUSTED FEE LEVEL PROPOSAL NO. 2

16. The Office's second adjusted proposal is based on a **true TOP 5** level, i.e. the sum of renewal fees paid today for the five most frequently validated countries, from year 2 until year 20. **In addition, a 25% fee reduction from years 2 to 10 for certain categories of patentees**, namely SMEs, natural persons, non-profit organisations, universities and public research organisations, is proposed.
17. The fee reductions for these entities would be subject to the same definition, administrative and verification arrangements as the compensation scheme for translation costs (see SC/35/13 Rev. 1) or the fee-reduction scheme under Article 14 and Rule 6 EPC as in force since 1 April 2014 (see CA/97/13 Rev. 1). However, the reductions would be available to all such entities, whether domiciled in or outside Europe. Introducing them would mean inserting new provisions into the rules relating to unitary patent protection, modelled for example on Rules 8 to 11 governing the compensation scheme (see SC/30/14).
18. Under this proposal, the renewal-fee scale would be as follows (the amounts after the 25% reduction for SMEs and other entities are shown in brackets, in italics):

|            |                                   |            |           |
|------------|-----------------------------------|------------|-----------|
| 2nd year:  | 85 EUR ( <i>63.75 EUR</i> )       | 11th year: | 1 790 EUR |
| 3rd year:  | 165 EUR ( <i>123.75 EUR</i> )     | 12th year: | 2 140 EUR |
| 4th year:  | 255 EUR ( <i>191.25 EUR</i> )     | 13th year: | 2 510 EUR |
| 5th year:  | 455 EUR ( <i>341.25 EUR</i> )     | 14th year: | 2 895 EUR |
| 6th year:  | 645 EUR ( <i>483.75 EUR</i> )     | 15th year: | 3 300 EUR |
| 7th year:  | 825 EUR ( <i>618.75 EUR</i> )     | 16th year: | 3 740 EUR |
| 8th year:  | 1 050 EUR ( <i>787.50 EUR</i> )   | 17th year: | 4 175 EUR |
| 9th year:  | 1 255 EUR ( <i>941.25 EUR</i> )   | 18th year: | 4 630 EUR |
| 10th year: | 1 475 EUR ( <i>1 106.25 EUR</i> ) | 19th year: | 5 065 EUR |
|            |                                   | 20th year: | 5 500 EUR |

19. Over 20 years, the sum total of the fees would be **EUR 41 955** and **EUR 40 403** for the **normal** and **reduced** levels respectively, as shown by the table in Annex 2.
20. Annex 3 shows the financial results for the Office's previous and new fee-level proposals. For true TOP 5, with the reduction for SMEs etc. and varying penetration levels, the deviation from baseline in the steady state would be EUR -7m, EUR +22m and EUR +35m for lower, base and upper UP penetration rates respectively. At upper+ and BUSINESSEUROPE's assumed penetration rates, the results (EUR +62m and EUR +73m respectively) become very positive. The percentage deviation from the baseline would be within a range of -1% to +15%, or +11% to +15% with the newly added penetration rates.

### **III. CONFIRMATION OF THE SPECIFIC REDUCTIONS**

21. Irrespective of the reduction for certain categories of applicants referred to above, Article 11(3) of EU Regulation No. 1257/2012 stipulates that "*Renewal fees which fall due after receipt of the statement referred to in Article 8(1) shall be reduced*". This concerns **licences of right**, i.e. when the proprietor of a European patent with unitary effect files a statement (published in the Register) that he is prepared to allow any person to use the invention under licence in return for appropriate consideration.
22. In the light of the positive feedback received (SC/4/15, points 45 to 52), the Office confirms its proposal for a **15% reduction**, under Article 11(3) of EU Regulation No. 1257/2012, in the renewal fees payable throughout a unitary patent's term. This percentage would be attractive enough to help SMEs or universities looking for licensing partners, without creating a purely financial instrument for firms already engaged wholly or partly in licensing activities.

### **IV. REQUEST TO THE SELECT COMMITTEE**

23. The Select Committee is requested to give its opinion on which of the two adjusted proposals for renewal-fee levels, as set out by the Office above, should be chosen.
24. Once that choice is made, the Office will then be able to incorporate the appropriate fee scale into the text of the rules relating to fees for European patents with unitary effect.

## **ANNEX 1      EXTRACT FROM EU REGULATION NO. 1257/2012**

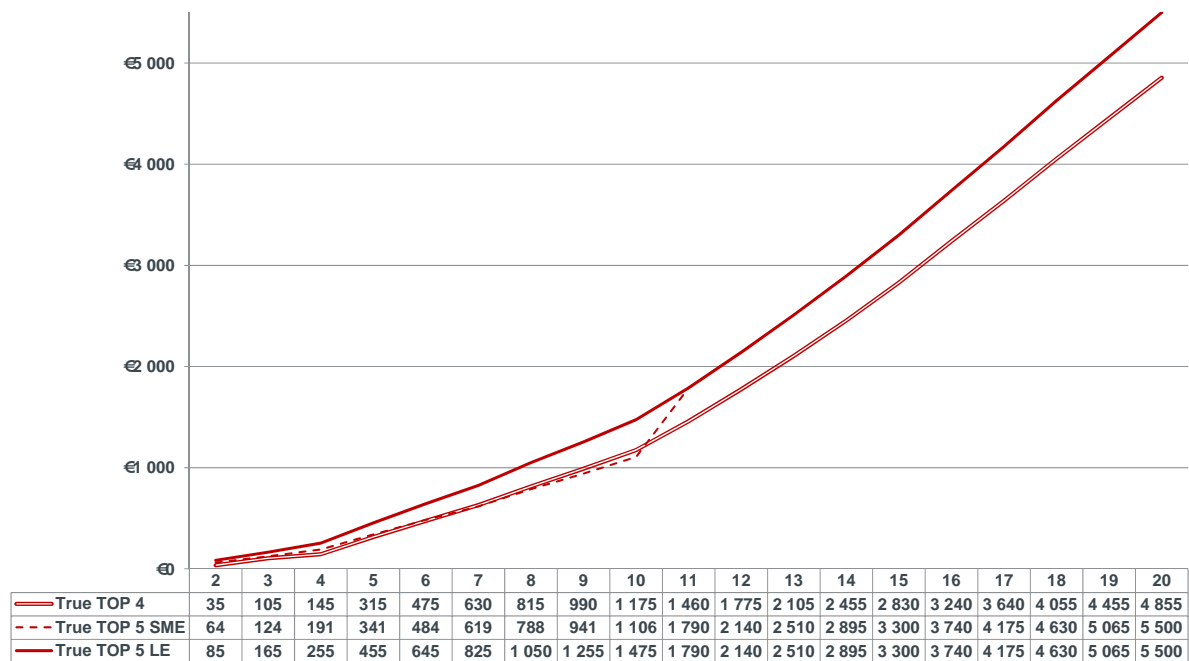
### *Article 12*

#### **Level of renewal fees**

1. Renewal fees for European patents with unitary effect shall be:
  - (a) progressive throughout the term of the unitary patent protection;
  - (b) sufficient to cover all costs associated with the grant of the European patent and the administration of the unitary patent protection; and
  - (c) sufficient, together with the fees to be paid to the European Patent Organisation during the pre-grant stage, to ensure a balanced budget of the European Patent Organisation.
  
2. The level of the renewal fees shall be set, taking into account, among others, the situation of specific entities such as small and medium-sized enterprises, with the aim of:
  - (a) facilitating innovation and fostering the competitiveness of European businesses;
  - (b) reflecting the size of the market covered by the patent; and
  - (c) being similar to the level of the national renewal fees for an average European patent taking effect in the participating Member States at the time the level of the renewal fees is first set.
  
3. In order to attain the objectives set out in this Chapter, the level of renewal fees shall be set at a level that:
  - (a) is equivalent to the level of the renewal fee to be paid for the average geographical coverage of current European patents;
  - (b) reflects the renewal rate of current European patents; and
  - (c) reflects the number of requests for unitary effect.



## ANNEX 2 PROPOSAL FOR THE LEVEL OF RENEWAL FEES



| in €per OY   | True TOP 4    | True TOP 5    | SME           |
|--------------|---------------|---------------|---------------|
| 2            | 35            | 85            | 63,75         |
| 3            | 105           | 165           | 123,75        |
| 4            | 145           | 255           | 191,25        |
| 5            | 315           | 455           | 341,25        |
| 6            | 475           | 645           | 483,75        |
| 7            | 630           | 825           | 618,75        |
| 8            | 815           | 1 050         | 787,50        |
| 9            | 990           | 1 255         | 941,25        |
| 10           | 1 175         | 1 475         | 1 106,25      |
| 11           | 1 460         | 1 790         | 1 790         |
| 12           | 1 775         | 2 140         | 2 140         |
| 13           | 2 105         | 2 510         | 2 510         |
| 14           | 2 455         | 2 895         | 2 895         |
| 15           | 2 830         | 3 300         | 3 300         |
| 16           | 3 240         | 3 740         | 3 740         |
| 17           | 3 640         | 4 175         | 4 175         |
| 18           | 4 055         | 4 630         | 4 630         |
| 19           | 4 455         | 5 065         | 5 065         |
| 20           | 4 855         | 5 500         | 5 500         |
| <b>Total</b> | <b>35 555</b> | <b>41 955</b> | <b>40 403</b> |

## ANNEX 3 SUMMARY OF FINANCIAL SIMULATIONS

| Income in million €                   | Lower UP Penetration |      |            |                 | Base UP Penetration |      |            |                 | Upper UP Penetration |      |            |                 | Upper+ UP Penetration |      |            |                 | UP Penetration assumed by BusinessEurope |      |            |                 |
|---------------------------------------|----------------------|------|------------|-----------------|---------------------|------|------------|-----------------|----------------------|------|------------|-----------------|-----------------------|------|------------|-----------------|--|------|------------|-----------------|
|                                       | UP                   | EP   | Total      | UP Market Share | UP                  | EP   | Total      | UP Market Share | UP                   | EP   | Total      | UP Market Share | UP                    | EP   | Total      | UP Market Share | UP                                       | EP   | Total      | UP Market Share |
| <b>Baseline (No UP)</b>               | 0                    | 501  | <b>501</b> | <b>0%</b>       | 0                   | 501  | <b>501</b> | <b>0%</b>       | 0                    | 501  | <b>501</b> | <b>0%</b>       | 0                     | 501  | <b>501</b> | <b>0%</b>       | 0  | 501  | <b>501</b> | <b>0%</b>       |
| <b>True TOP 4</b>                     | 112                  | 363  | <b>475</b> | <b>20%</b>      | 208                 | 279  | <b>487</b> | <b>37%</b>      | 259                  | 232  | <b>491</b> | <b>46%</b>      | 284                   | 229  | <b>513</b> | <b>50%</b>      | 241                                      | 290  | <b>532</b> | <b>43%</b>      |
| Deviation to Baseline                 | 112                  | -138 | <b>-26</b> | <b>20%</b>      | 208                 | -222 | <b>-14</b> | <b>37%</b>      | 259                  | -269 | <b>-10</b> | <b>46%</b>      | 284                   | -272 | <b>12</b>  | <b>50%</b>      | 241                                      | -211 | <b>31</b>  | <b>43%</b>      |
| <b>TOP 4</b>                          | 118                  | 363  | <b>481</b> | <b>20%</b>      | 220                 | 279  | <b>498</b> | <b>37%</b>      | 273                  | 232  | <b>505</b> | <b>46%</b>      | 300                   | 229  | <b>529</b> | <b>50%</b>      | 255                                      | 290  | <b>545</b> | <b>43%</b>      |
| Deviation to Baseline                 | 118                  | -138 | <b>-20</b> | <b>20%</b>      | 220                 | -222 | <b>-3</b>  | <b>37%</b>      | 273                  | -269 | <b>4</b>   | <b>46%</b>      | 300                   | -272 | <b>28</b>  | <b>50%</b>      | 255                                      | -211 | <b>44</b>  | <b>43%</b>      |
| <b>True TOP 5 incl. SME reduction</b> | 126                  | 368  | <b>494</b> | <b>19%</b>      | 240                 | 283  | <b>523</b> | <b>36%</b>      | 300                  | 236  | <b>536</b> | <b>45%</b>      | 333                   | 229  | <b>563</b> | <b>50%</b>      | 284                                      | 290  | <b>574</b> | <b>43%</b>      |
| Deviation to Baseline                 | 126                  | -133 | <b>-7</b>  | <b>19%</b>      | 240                 | -218 | <b>22</b>  | <b>36%</b>      | 300                  | -265 | <b>35</b>  | <b>45%</b>      | 333                   | -272 | <b>62</b>  | <b>50%</b>      | 284                                      | -211 | <b>73</b>  | <b>43%</b>      |
| <b>True TOP 5</b>                     | 128                  | 368  | <b>496</b> | <b>19%</b>      | 244                 | 283  | <b>527</b> | <b>36%</b>      | 305                  | 236  | <b>541</b> | <b>45%</b>      | 339                   | 229  | <b>568</b> | <b>50%</b>      | 288                                      | 290  | <b>579</b> | <b>43%</b>      |
| Deviation to Baseline                 | 128                  | -133 | <b>-5</b>  | <b>19%</b>      | 244                 | -218 | <b>26</b>  | <b>36%</b>      | 305                  | -265 | <b>40</b>  | <b>45%</b>      | 339                   | -272 | <b>67</b>  | <b>50%</b>      | 288                                      | -211 | <b>78</b>  | <b>43%</b>      |
| <b>TOP 5 incl. SME reduction</b>      | 130                  | 368  | <b>498</b> | <b>19%</b>      | 247                 | 283  | <b>529</b> | <b>36%</b>      | 308                  | 236  | <b>544</b> | <b>45%</b>      | 342                   | 229  | <b>571</b> | <b>50%</b>      | 291                                      | 290  | <b>581</b> | <b>43%</b>      |
| Deviation to Baseline                 | 130                  | -133 | <b>-3</b>  | <b>19%</b>      | 247                 | -218 | <b>28</b>  | <b>36%</b>      | 308                  | -265 | <b>43</b>  | <b>45%</b>      | 342                   | -272 | <b>70</b>  | <b>50%</b>      | 291                                      | -211 | <b>80</b>  | <b>43%</b>      |
| <b>TOP 5</b>                          | 132                  | 368  | <b>500</b> | <b>19%</b>      | 251                 | 283  | <b>534</b> | <b>36%</b>      | 313                  | 236  | <b>550</b> | <b>45%</b>      | 348                   | 229  | <b>578</b> | <b>50%</b>      | 296                                      | 290  | <b>587</b> | <b>43%</b>      |
| Deviation to Baseline                 | 132                  | -133 | <b>-1</b>  | <b>19%</b>      | 251                 | -218 | <b>33</b>  | <b>36%</b>      | 313                  | -265 | <b>49</b>  | <b>45%</b>      | 348                   | -272 | <b>77</b>  | <b>50%</b>      | 296                                      | -211 | <b>86</b>  | <b>43%</b>      |

**ANNEX 4 SUMMARY OF PENETRATION RATES**

| UP Fee level             | TOP 4, True TOP 4     |       |      |       |        | <i>Cost deviation<br/>UP vs. EP</i> |       | TOP 5, True TOP 5 |       |      |       |        | <i>Cost deviation<br/>UP vs. EP</i> |       |            |
|--------------------------|-----------------------|-------|------|-------|--------|-------------------------------------|-------|-------------------|-------|------|-------|--------|-------------------------------------|-------|------------|
|                          | UP Market Assumptions | Lower | Base | Upper | Upper+ | Business-europe                     | TOP 4 | True TOP 4        | Lower | Base | Upper | Upper+ | Business-europe                     | TOP 5 | True TOP 5 |
| <b>Penetration rates</b> |                       |       |      |       |        |                                     |       |                   |       |      |       |        |                                     |       |            |
| 1 Validation             |                       | 2%    | 5%   | 7%    | 10%    | 0%                                  | 228%  | 213%              | 2%    | 5%   | 7%    | 10%    | 0%                                  | 277%  | 269%       |
| 2 Validations            |                       | 5%    | 15%  | 20%   | 30%    | 25%                                 | 103%  | 94%               | 5%    | 15%  | 20%   | 30%    | 25%                                 | 134%  | 129%       |
| 3 Validations            |                       | 10%   | 30%  | 40%   | 50%    | 50%                                 | 51%   | 45%               | 10%   | 30%  | 40%   | 50%    | 50%                                 | 74%   | 70%        |
| 4 Validations            |                       | 30%   | 50%  | 60%   | 60%    | 60%                                 | -22%  | -25%              | 30%   | 50%  | 60%   | 60%    | 60%                                 | -10%  | -12%       |
| 5 Validations            |                       | 30%   | 50%  | 60%   | 60%    | 50%                                 | -38%  | -40%              | 30%   | 50%  | 60%   | 60%    | 50%                                 | -28%  | -30%       |
| 6 Validations            |                       | 50%   | 65%  | 75%   | 65%    | 35%                                 | -48%  | -50%              | 30%   | 50%  | 60%   | 65%    | 35%                                 | -41%  | -42%       |
| 7 Validations            |                       | 50%   | 65%  | 75%   | 65%    | 35%                                 | -56%  | -58%              | 50%   | 65%  | 75%   | 65%    | 35%                                 | -49%  | -50%       |
| 8 Validations            |                       | 50%   | 65%  | 75%   | 65%    | 35%                                 | -61%  | -63%              | 50%   | 65%  | 75%   | 65%    | 35%                                 | -55%  | -56%       |
| 9 Validations            |                       | 50%   | 65%  | 75%   | 65%    | 35%                                 | -65%  | -67%              | 50%   | 65%  | 75%   | 65%    | 35%                                 | -60%  | -61%       |
| ≥ 10 Validations         |                       | 50%   | 65%  | 75%   | 65%    | 35%                                 | -87%  | -87%              | 50%   | 65%  | 75%   | 65%    | 35%                                 | -85%  | -85%       |