

Economic Perspectives on the unitary patent protection in Europe

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'There are some things in our strategy that you will have heard before. We make no apology for that. They would not be here if they had been done properly in the last ten years. To give some examples: it is not acceptable that because we do not have a Community patent,

European companies face translation costs of around €3000 on each patent. It is thirteen times more expensive in the EU than in the US and eleven times more expensive than in Japan' (Barroso, 2010).

In December 4th, 2009, EU industry ministers meeting in the Competitiveness Council claimed to have, at last, overcome problems that have prevented the EU patent from becoming a reality

Main conclusions

- **EU patent is key for Europe, for more reasons than mere costs of patenting....**
- **Suppress two of the three layers (National patents and European patents)**
- **Radically change the governance of the system**
- **Need SME-based fees**

Lost property: The European patent system and why it doesn't work

BY BRUNO VAN POTTELSBERGHE



bruegelpolicy**brief**

EUROPE SHOULD STOP TAXING INNOVATION

by Bruno van Pottelsberghe

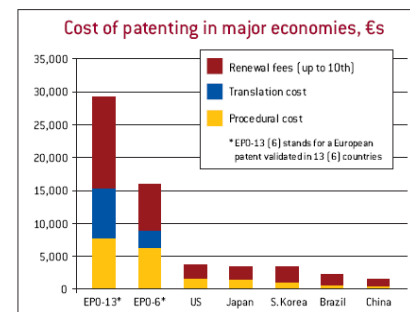
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SUMMARY The European Union failed to achieve its Lisbon agenda target of spending three percent of GDP on research and development, and so, in the EU2020 strategy, has given itself another decade to meet this goal. Meanwhile, the EU has been leapfrogged by China in terms of business R&D spend. One key element to stimulate innovation and ultimately drive European growth would be to create the long-awaited single EU patent. Today's fragmented European patent system is poor value for money and overly complex, not least because national patent systems still have the last word over all European patents on their territory. After nearly 50 years of failure to create the EU patent, language issues and the design of a centralised patent litigation court remain unresolved. The recent EU Council deal on an 'enhanced' European patent system is potentially a step forward, though many problems remain unresolved.

POLICY CHALLENGE

The risk for Europe is that current moves result in a patent agreement that does not cure the system of its major ills, and thus does not bring about any significant improvement for those who need it most: entrepreneurs and innovative companies starting out on the innovation process. The creation

of an effective single European patent requires i) English-only post-grant translation, ii) the end of nationally granted patents, iii) phasing-out of the current 'European patent', iv) lower fees for young innovative companies, and v) a radical shake-up of the governance of the European Patent Office.



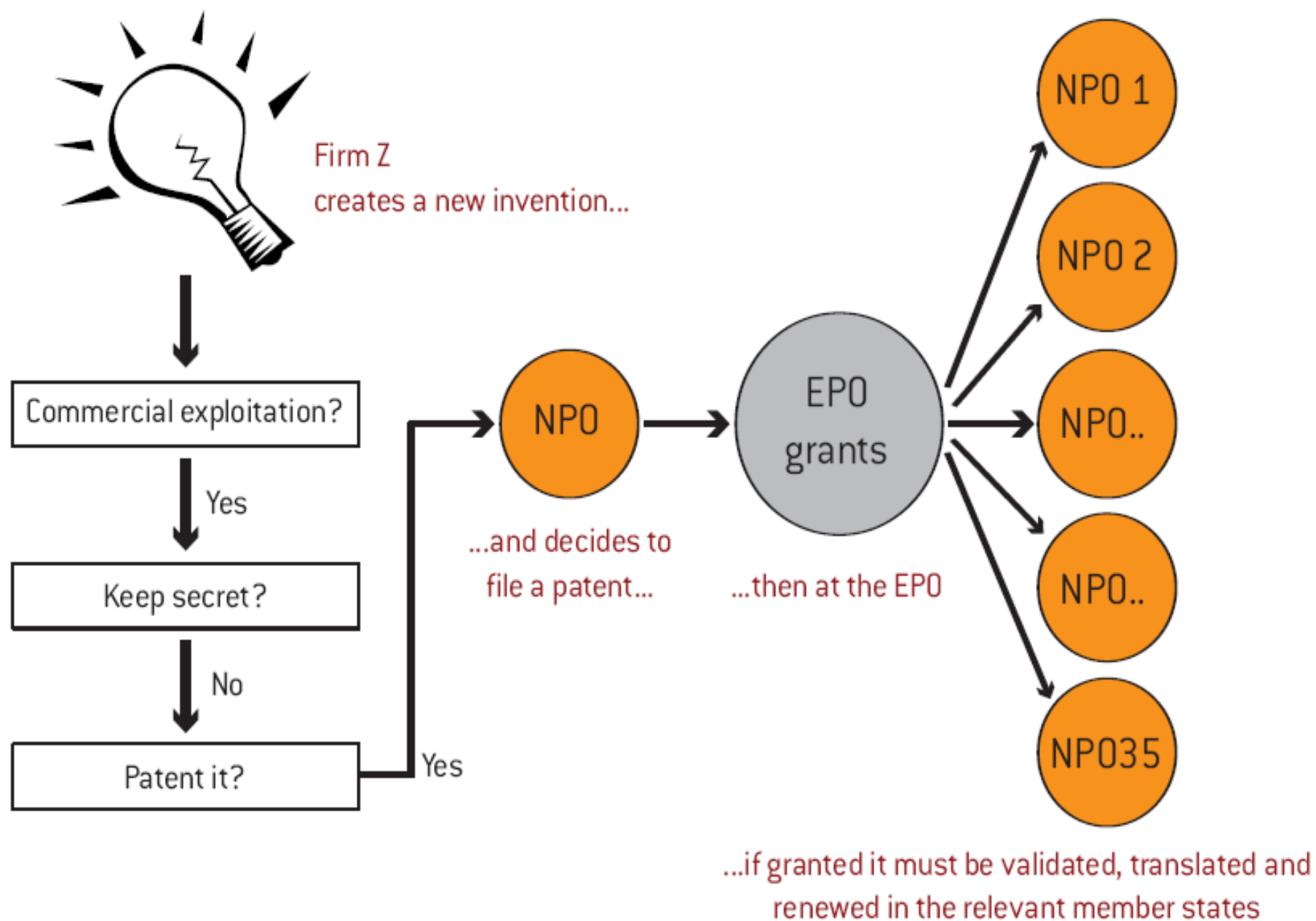
Source: Bruegel based on van Pottelsberghe and Mejer (2008) and van Pottelsberghe and François (2009). Figures refer to 2008.

Today's' menu

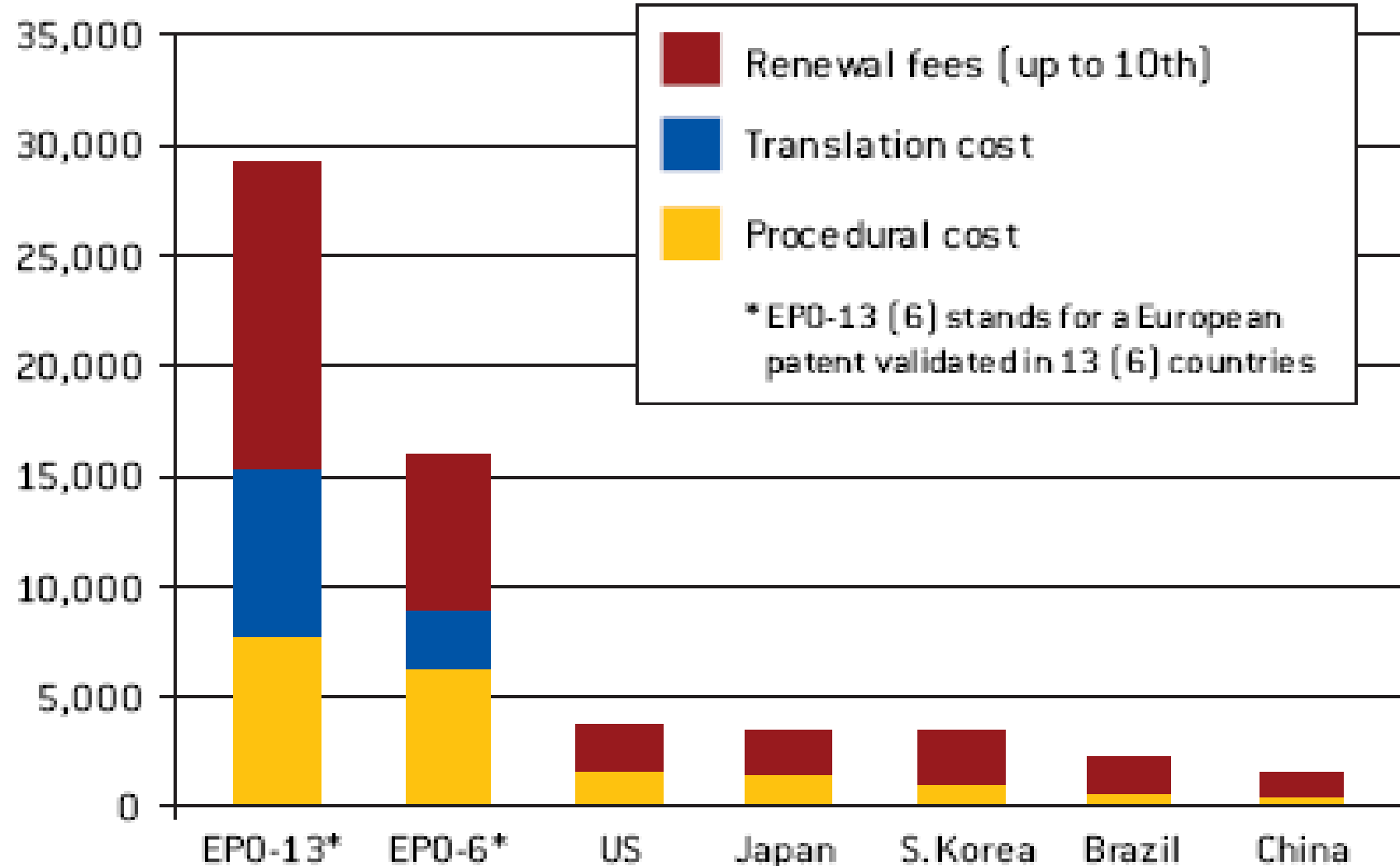


- **A necessary reform**
- **Why no EU patent for 50 years?**
- **Strengths and weaknesses of the proposed agreement**
- **Policy recommendations**

Figure 1: A simplified picture of the European patent system



Cost of patenting in major economies, €s




Source: Bruegel based on van Pottelsberghe and Mejer (2008) and van Pottelsberghe and François (2009). Figures refer to 2008.

THE SEVEN DEADLY SINS OF EUROPE'S FRAGMENTED PATENT SYSTEM

- **Affordability (high absolute and relative costs)**
- **Low quality:** NPOs grant patents independently of the EPO, inducing heterogeneous quality standards
- **Complexity**
- **Uncertainty:** parallel litigations with divergent outcomes
- **Lack of coherence:** *'parallel imports' and 'time paradoxes'*,
- **No coordination at EU level**
- **Weakness in global negotiations:** PPHs

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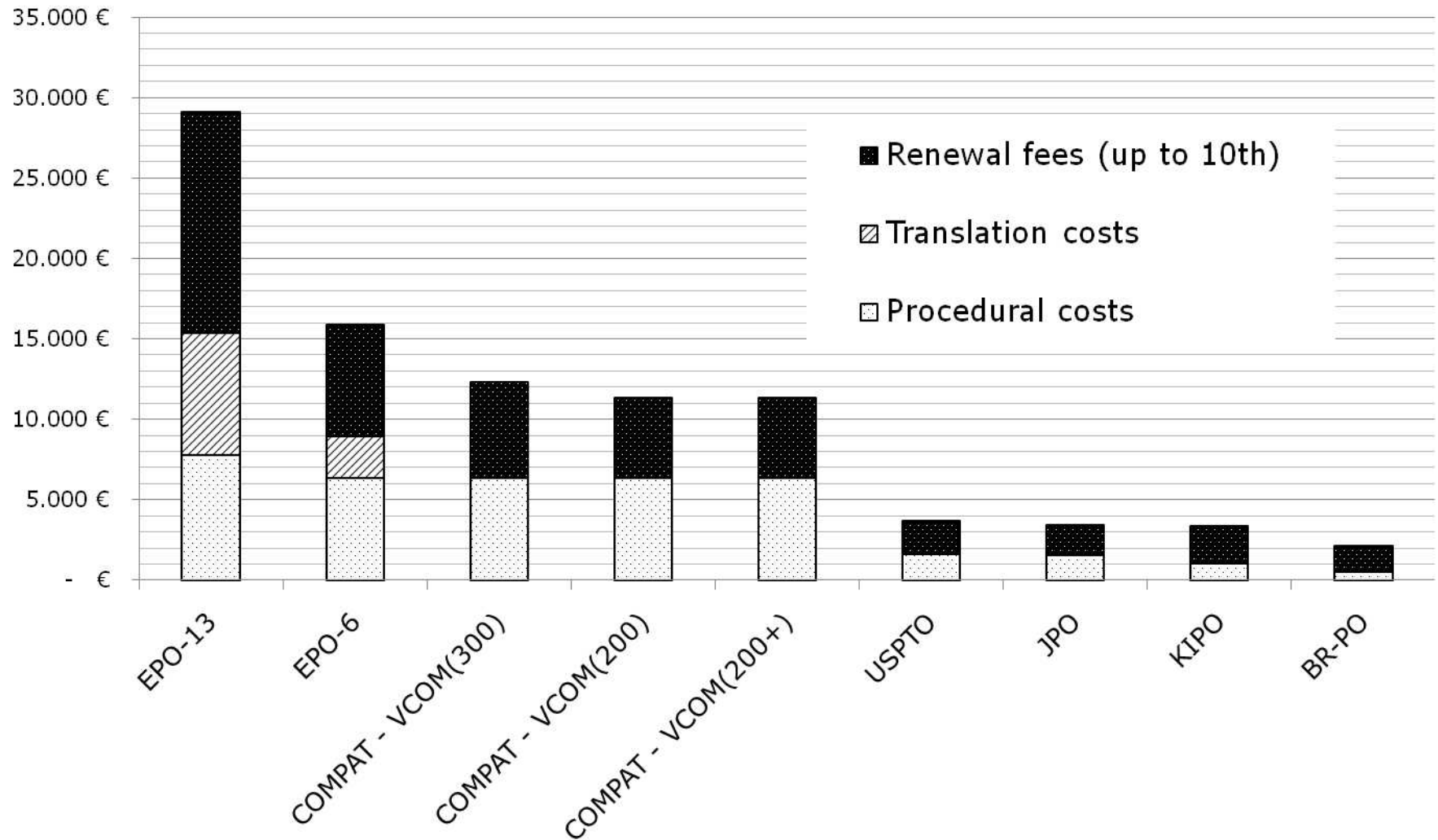
Two official fig-leaves...

- **Language regime**
- **Centralized patent litigation system**
 - 50 years to ask advice to ECJ...

... And additional factors

- **Control loss (POs)**
- **Financial losses (or fear of...)**

Implications for patenting costs



<div> <div>ULB</div> <div>Switching money flows: by actor, with 50,000 patents under COMPAT, (€ MILLIONS)</div> </div>					
	EPO	NPOs	Business sector	Attorn. & transl.	Lawyers
Designation fees EPO ^{α, β}	-25		+40	-15	
Validation fees NPOs ^γ		-10	+10		
Translation costs ^{δ, ε}	-20		+129	-129	
Filing patent translation ^α			+60	-60	
Taking over representation ^α			+46	-46	
Renewal fees ^ε	+88	+88	-176		
Intermediary cost for maintenance ^α			+20	-20	
Drop in parallel litigation (Harhoff, 2009) ^φ			+121		-121
Total	+43	+78	+250	-270	-121

Who resists the COMPAT (million Euro)?

With VCOM(200+)....

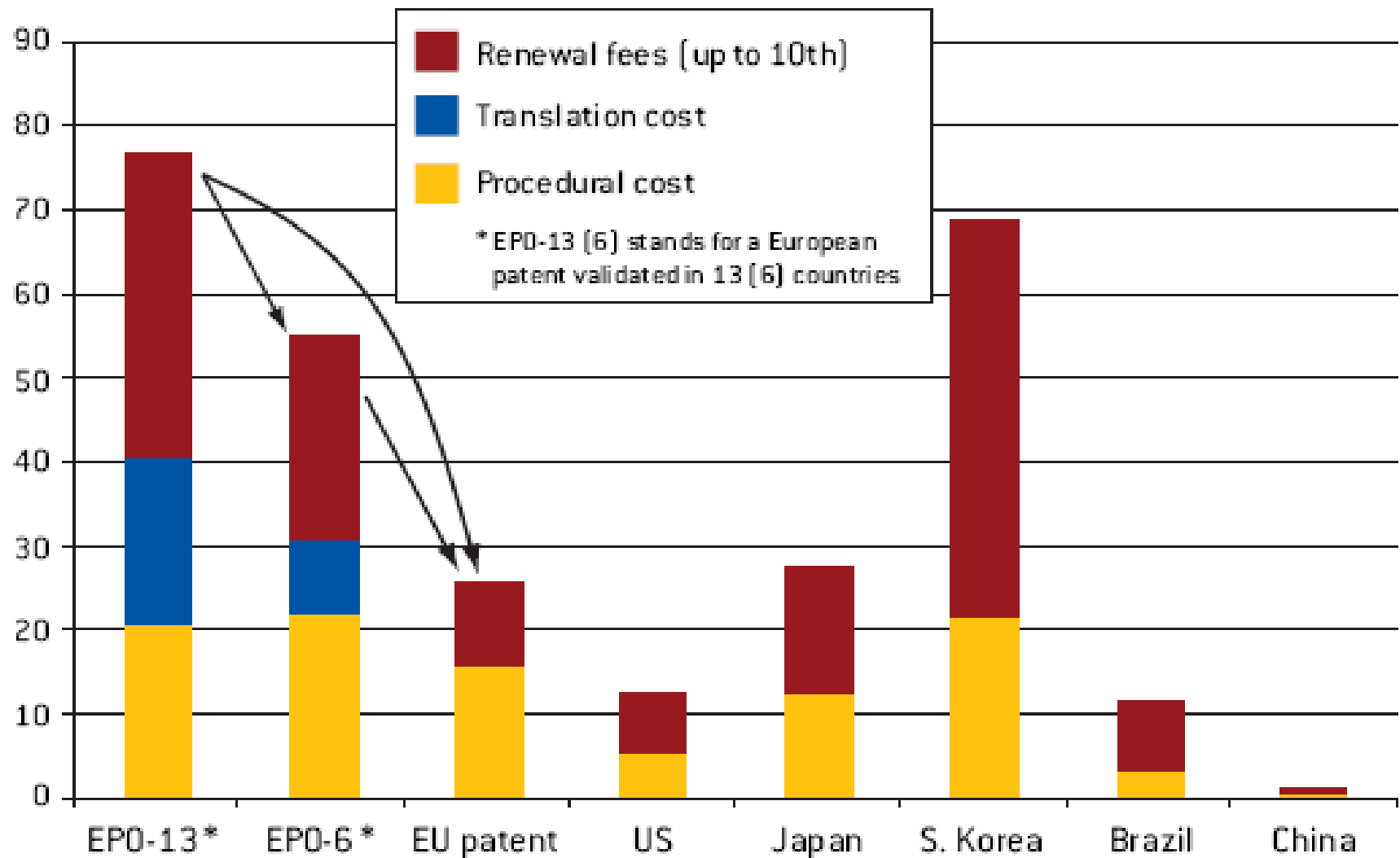
- **Business sector**: +250 but....
- **National Patent offices**: +78 (Germany ---) but...
- **EPO**: +43 but....
- **Patent attorneys & translators**: -270
- **Lawyers**: -121 (DH)

***Relative costs** would drop drastically, and we would eventually have a **coherent and attractive** market for technology*

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Figure 3: Relative patent costs
(cumulated cost per million capita, €s)



Source: Bruegel based on van Pottelsberghe and Mejer (2008) and Danguy and van Pottelsberghe (2009). Figures refer to 2008.

... and weaknesses

- **Fragile** agreement, very cautious, conditional
- Only solid agreement is about **EPN/fee split**
- **three languages** agreement only under enhanced cooperation
- An **additional layer**: National; European; EU
- **Financial sustainability** (fears from start) of EEUPC
- **Governance failure**: NPOs control
- **No regime for SMEs** or YICs

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Thank You For Your Attention



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