

Patent Cooperation Treaty (PCT) Working Group

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SAFEGUARDS IN CASE OF OUTAGES AFFECTING OFFICES

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SUMMARY

1. This document proposes to amend the PCT Regulations by adding a subparagraph to Rule 80.5 to extend a time limit at an Office that falls on a day on which documents filed by one of the permitted electronic means of communication cannot be received, as determined by that Office.

BACKGROUND

2. Over the last decade, the European Patent Office (EPO) has increased the number of options available for the filing of applications in electronic form under PCT Rule 89*bis*, namely, at the moment, web-form filing, online filing, new online filing (CMS), ePCT and PCT-SAFE.

3. Means of electronic communication are becoming increasingly important for Offices in their interactions with users. These means of communication can, however, become unavailable at the Offices' end due to outages.

4. Safeguards in case of unavailability of means of electronic communication at the applicant's end in specific circumstances are laid down in Rule 82*quater*.1. However, cases of outages of electronic communication services for reasons attributable to patent Offices are not explicitly covered in the PCT. Therefore, the EPO suggests an amendment to Rule 80.5 to address this particular situation by providing the possibility to users getting an extension of periods in case of outages of electronic filing systems. The present proposal has been presented for comments at the twenty-fifth session of the Meeting of International Authorities

held in Madrid in February 2018 (see document PCT/MIA/25/12); comments by International Authorities on the proposal are summarized in paragraphs 29 to 34 of the Summary by the Chair of that session, reproduced in the Annex to document PCT/WG/11/2.

5. The unavailability of means of electronic communication may have various causes. For instance, Offices may be affected by cyber-attacks as global hacking is becoming increasingly common. Also, regular maintenance of electronic systems is often necessary to improve the quality of online services offered to users. In some exceptional situations, such maintenance may affect users' ability to use electronic filing tools in full. Maintenance is normally scheduled during the weekends in order to avoid any inconvenience for users. As a rule, the EPO publishes advance notice, on a dedicated page of its website, several days before any periods of unavailability due to such work in line with Section 709(c) of the PCT Administrative Instructions. It recommends that parties check the website regularly to avoid being taken by surprise by downtimes due to maintenance announced in advance. The publication of downtimes also allows establishing retroactively, whether on any particular day, specific electronic means of communication were unavailable at the EPO.

6. Rule 134(1) of the European Patent Convention (EPC) protects users in the event of unavailability of one of the electronic means of communication on the last day of a period for performing procedural acts. It does so by extending that period to the first working day on which all means of electronic communication are available. Such extensions are conditional on the unavailability being attributable to the EPO. In the absence of any corresponding provision in the PCT, the EPO currently applies Rule 134(1) EPC in a supplementary manner (Article 150(2) EPC) in PCT proceedings. The same situation may apply to other Offices.

PROPOSAL

7. In order to provide for a proper legal basis in the PCT framework to excuse delays in meeting time limits due to outages attributable to an Office, it is suggested to include a new subparagraph (iii) in Rule 80.5 as set out in the Annex to this document. Further information as to how Offices apply that provision, in particular, how Offices may decide on a case-by-case basis whether to extend a time limit or not, could be laid down in the PCT Receiving Office Guidelines if felt necessary by the International Bureau.

8. The Working Group is invited to consider the proposed amendments to the Regulations set out in the Annex to the present document.

[Annex follows]

PROPOSED AMENDMENTS TO THE PCT REGULATIONS¹

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¹ Proposed additions and deletions are indicated, respectively, by underlining and striking through the text concerned.

Rule 80

Computation of Time Limits

80.1 to 80.4 *[No change]*

80.5 *Expiration on a Non-Working Day or Official Holiday*

If the expiration of any period during which any document or fee must reach a national Office or intergovernmental organization falls on a day:

- (i) *[No change]* on which such Office or organization is not open to the public for the purposes of the transaction of official business;
- (ii) *[No change]* on which ordinary mail is not delivered in the locality in which such Office or organization is situated;
- (iii) on which documents filed by one of the permitted electronic means of communication cannot be received, as determined by such Office or organization;
- (iiiiv) which, where such Office or organization is situated in more than one locality, is an official holiday in at least one of the localities in which such Office or organization is situated, and in circumstances where the national law applicable by that Office or organization provides, in respect of national applications, that, in such a case, such period shall expire on a subsequent day; or
- (iv) which, where such Office is the government authority of a Contracting State entrusted with the granting of patents, is an official holiday in part of that Contracting State, and in circumstances where the national law applicable by that Office provides, in respect of national applications, that, in such a case, such period shall expire on a subsequent day;

the period shall expire on the next subsequent day on which none of the said ~~four~~ five circumstances exists.

80.6 and 80.7 *[No change]*

[End of Annex and of document]