

C. PCT 1433

November 27, 2014

Madam,  
Sir,

This Circular is addressed to your Office in its capacity as a receiving Office, an International Searching and Preliminary Examining Authority and/or a designated and elected Office under the Patent Cooperation Treaty (PCT). It is also being sent to certain non-governmental organizations representing users of the PCT system. It concerns the provisions of the PCT dealing with extending time limits or excusing delays and their potential extension to include non-availability of electronic communications services.

*Background*

The PCT Working Group, at its seventh session in June 2014, discussed a proposal to extend the provisions in the PCT Regulations dealing with extending time limits or excusing delays in the arrival of mailing in the event of non-delivery of mail or other irregularities in postal services to cover non-availability of electronic communications services (document PCT/WG/7/24). Specifically, the document proposed amendments to the Regulations as follows:

- (a) to extend the time limit to the following day if electronic systems of an Office or organization for submitting a document or fee electronically were not available to users for a significant period of a day (Rule 80.5);
- (b) to add widespread and unexpected loss of access to electronic communications services as a situation where an interested party could apply to an Office for excuse of delay in meeting a time limit (Rule 82*quater*.1).

/...



## QUESTIONNAIRE

Your Office is kindly requested to fill in this questionnaire. Please note the following additional information:

- *Deadline for reply : **January 31, 2015***
- *When answering, please provide a detailed reasoning and examples if possible.*

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RESPONSE FROM:

Name of responsible official: .....

On behalf of [*State, Office or Organization*]: .....

### **Extension of a Time Limit due to Non-Availability of Electronic Communications Systems at an Office**

Q1. Does your Office, in its national or regional legislation, explicitly provide for an extension of a time limit to the following day when electronic communication systems of your Office for receipt of electronic communications are not available to users? If so, please provide examples of legislation, guidelines and previous situations where the provisions have been applied to extend a time limit.

Q2. If the national or regional legislation of your Office does not explicitly provide for an extension of a time limit when electronic communication systems of your Office for the receipt of electronic communications are not available to users, how would your Office proceed if users were prevented from submitting documents by electronic means to your Office for a significant period of a working day? In particular, would your Office be able to extend a time limit to all users affected by the situation, as opposed to an applicant needing to request an excuse of delay in meeting a time limit on a case-by-case basis?

Q3. Does your Office believe that there is a need for the PCT Regulations to include a provision to extend a time limit expiring on a date when systems within the Office for receiving electronic communications are unexpectedly not available to users for a significant period of time on that date (as applies under Rule 80.5(ii) when ordinary mail is not delivered in the locality of an Office on a given day)? If so, to what extent during the day should the systems not be available for a time limit to be extended to the following day?

Q4. If your Office does not believe there is a need for the PCT Regulations to provide for an extension to a time limit when systems are not available for receiving electronic communications, how should an Office proceed in such an event? For example, should an Office extend a time limit through the provisions of Rule 80.5(i) and declare itself not open to the public for the purposes of the transaction of official businesses even if other services in the Office were available? Alternatively, when systems for receiving electronic communications are not available in an Office, should time limits remain unchanged, leaving users not meeting a time limit to be excused on a case-by-case basis?

Q5. Does your Office have any other comments on the automatic extension of time limits in the event of electronic communications not being available to users?

**Excuse of Delay in Meeting Time Limits**

Q6. Does your Office, in its national or regional legislation, explicitly provide for loss of access to electronic communications services as a situation when a party may offer evidence to request an excuse of delay in meeting a time limit? If so, please provide examples of legislation, guidelines and cases showing how the provisions have been applied.

Q7. If your answer to question 6 is negative, how is the loss of access to electronic communications services considered compared to other situations of *force majeure* beyond the control of the concerned party that could lead to failure to meet a time limit?

Q8. Does your Office believe there is a need for the PCT Regulations to add loss of access to electronic communication services to the events in Rule 82<sup>quater</sup>.1(a) where an interested party can offer evidence to be excused from meeting a time limit (i.e. “war, revolution, civil disorder, strike, natural calamity or other like reason in the locality where the interested party resides, has his place of business or is staying ...”)? If so, do you have any comments on how this provision should be worded?

Q9. Does your Office have any other comments on the legal provisions or practices applied by an Office when considering whether to excuse a delay in meeting a time limit in the event of electronic communications unexpectedly not being available to users?

Q10. Can you think of any other circumstances associated with electronic filing, other than those referred to in questions 1 to 9, above, where it could be appropriate to offer additional legal safeguards (of whatever type)? If so, do you have examples of national legislation to cover such circumstances?

[End of Annex]