

## **Meeting of International Authorities under the Patent Cooperation Treaty (PCT)**

**Twenty-Fifth Session  
Madrid, February 21 to 23, 2018**

### **SAFEGUARDS IN CASE OF OUTAGES AND CYBER-ATTACKS**

*Document prepared by the European Patent Office*

#### **BACKGROUND**

1. 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 web-form filing, online filing, new online filing (CMS), ePCT and PCT-SAFE.
2. The EPO recognizes that means of electronic communication are becoming increasingly important for the interaction with its users. These means of communication can, however, become unavailable at the users' end due to widespread cyber-attacks. Global hacking causing serious disruption to IT systems is becoming increasingly common and may affect users of patent systems.
3. Safeguards in case of unavailability of means of electronic communication due to a widespread cyber-attack are laid down in the PCT. However, according to the EPO, in particular when considering the growing importance of electronic means of communication, they are not yet covering every situation adequately. Therefore, the EPO suggests making some further improvements with the following proposal.

#### **I. UNAVAILABILITY OF MEANS OF ELECTRONIC COMMUNICATION FOR REASONS ATTRIBUTABLE TO THE OFFICES (PCT RULE 80.5)**

4. To improve the quality of online services offered to users, regular maintenance of electronic systems is necessary. In some exceptional situations, such maintenance may affect users' ability to use them 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. 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 to establish retroactively, whether on any specific day, specific electronic means of communication were unavailable at the EPO.

5. As regards EPC proceedings, 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.

6. In PCT proceedings, the EPO currently applies Rule 134(1) EPC in a supplementary manner (Art. 150(2) EPC) because there is no specific provision in the PCT. The same situation may apply to other International Authorities. It is therefore suggested to include a new subparagraph (iii) in PCT Rule 80.5 in order to cover these situations with the following wording: "*(iii) on which documents filed by one of the permitted electronic means of communication cannot be received, as determined by such Office or organization,*"..

## **II. UNAVAILABILITY OF MEANS OF ELECTRONIC COMMUNICATION AT THE USERS' END CAUSED BY A WIDESPREAD CYBER-ATTACK (PCT RULE 82QUATER.1)**

7. Under PCT Rule 82*quater*.1, where a party offers satisfactory evidence that a time limit under the PCT was not met due to a general unavailability of electronic communication services or other like reason in the locality where the party resides, has his place of business or is staying, and that the relevant action was taken as soon as reasonably possible (and no later than six months after expiry of the time limit in question), the delay in meeting the time limit is excused. This provision applies to international applications pending in the international phase but not to the period for claiming a priority.

8. Further details are laid down in paragraph 30 of the PCT Receiving Office Guidelines (PCT/GL/RO/16). The wording in the Guidelines limits the applicability of PCT Rule 82*quater*.1 where alternative communication means are available ("...there was no alternative communication means available to him..."). PCT Rule 82*quater*.1 itself does not set such a limitation ("...a time limit...was not met due to..., a general unavailability of electronic communication services or other like reasons...").

9. The EPO consulted informally some other Offices which confirmed that in general, their Office acting as receiving Office would excuse a delay in meeting time limits under PCT Rule 82*quater*.1 if there were a situation of a cyber-attack leading to unavailability of electronic communications services affecting and disrupting the applicant's IT systems. However, the practice might slightly differ from one Office to the other, as follows:

- (a) one Office was of the opinion that an applicant would even have to prove that no other means of communication were available to him (e.g. postal service), i.e. not only that all electronic communication services were unavailable;
- (b) another Office considered it necessary that the applicant proves that he was unable to access all electronic communication services offered by that Office, while
- (c) yet another Office (using only one electronic communication service) showed flexibility on this question ("...we intend to provide relief as far as legally possible when it is difficult for applicants to file the documents by paper").

10. The extension of periods for users of the European patent system is laid down in Rule 134(5) EPC which states that a document received late "...due to an exceptional occurrence such as a natural disaster, war, civil disorder, a general breakdown in any of the means of electronic communication permitted by the President of the European Patent Office..., or other like reasons..." shall be deemed to have been received in due time.

11. The EPO would like to invite all International Authorities to present their views on the applicability of PCT Rule 82*quater*.1 in a situation of a cyber-attack leading to unavailability of electronic communications services affecting and disrupting the applicant's IT systems, and whether the present wording under paragraph 30 of the PCT Receiving Office Guidelines seems in line with PCT Rule 82*quater*.1.

*12. The Meeting is invited to comment on the contents of the present document.*

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