

C. PCT 1545

September 18, 2018

Madam,
Sir,

Use of fax for communication with the International Bureau in relation to international applications under the PCT

This Circular is addressed to your Office in its capacity as a receiving Office (RO), an International Searching and Preliminary Examining Authority (ISA/IPEA), and/or a designated or elected Office (DO/EO) under the Patent Cooperation Treaty (PCT). It is also addressed to certain non-governmental organizations representing users of the PCT System.

The purpose of this Circular is to consult interested parties on the proposed decommissioning of the International Bureau's fax servers as a means of communication between applicants/offices and the International Bureau, including in its capacity as a receiving Office, with effect from December 31, 2018, provided that required alternative systems are in place and sufficiently tested.

Background

The International Bureau has become aware that faxes may be lost or corrupted without warning to the sender where any part of the chain of connection has moved to fax over Internet Protocol (FoIP). This has become an increasing problem as more individual companies or national telecoms providers have switched off analogue fax services. Since January 1, 2018, the International Bureau's Swiss telecoms provider has ceased to provide analogue services. A warning in relation to this matter was in the December 2017 *PCT Newsletter*.

The fax protocol as used over traditional analogue telephone lines meant that, if a sender received a successful delivery receipt, there was a strong assurance that the transmission had been completed successfully (albeit with a small possibility that the data would not subsequently finish printing or be transferred successfully from a fax server). However, this is not the case with FoIP services.

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Where any stage of the fax transmission goes over an IP connection (this could be as a result of the user's own office systems, the national service provider's connection to other service providers or the end point systems), there is the possibility of partial or total loss of the transmission while still indicating success to the sender. The likelihood of such loss increases significantly with the length of transmission, meaning that fax filing of patent applications is at a particularly high risk of failure. This had been an occasional issue for some applicants for several years, but with the withdrawal of analogue services by the International Bureau's telecoms supplier with effect from January 1, 2018, the risk now applies to all fax communications to and from the International Bureau.

Consequently, while the International Bureau's fax services remain available for the moment, the International Bureau strongly recommends that applicants should no longer use them. It is recalled that, according to PCT Rule 92.4(c), the risk of a failed or incomplete transmission by fax always remains with the applicant. The International Bureau has already ceased to accept faxes for the purposes of the Madrid System from April 1, 2018. Moreover, the seventh session of the Hague Working Group recommended that Section 203 of the Hague Administrative Instructions be deleted with effect from January 1, 2019 (see documents H/LD/WG/7/3 and H/LD/WG/7/10). Consequently, the use of fax for communication with the International Bureau in the Hague System will no longer be possible from that date.

The International Bureau gives priority to communicating with PCT applicants via ePCT and telephone calls, and currently sends faxes to applicants/offices in very limited circumstances and only when the prioritized means are not available, for example: as a response to a request for information on dates of publication; sending copies of Form PCT/IB/307 (confirming withdrawal of an application) in cases close to the intended publication date where the applicant has selected "paper only" for transmission purposes; or in cases where an urgent reminder appears necessary. Fewer than 800 such faxes were sent in 2017. It is not clear whether any such transmissions were lost without notification of the failure.

The International Bureau has worked with its telecoms supplier to minimize the risks for the fax services currently offered, at least for the final segment of transmission. However, the nature of FoIP is such that the risk cannot be entirely eliminated and issues arising in the segments of transmission outside of Switzerland are entirely beyond the control of the International Bureau. Consequently, the International Bureau recommends that applicants submit both international applications and subsequently filed documents electronically. This allows high quality documents to be received automatically into the correct application file for processing, provides certainty of receipt and, where ePCT is used, gives transparency on the status of subsequent processing.

The International Bureau has investigated the introduction of an online fax server independent of the Swiss telecoms system. However, in addition to issues of security and cost of integration into existing systems, it would still allow the possibility that transmissions from some users might be directed using FoIP. While the risks might be reduced for some users, it would not overcome the risk that some communications would be lost without warning. Consequently, this suggestion will not be implemented.

Other options, such as secure email services or other document transfer systems, have also been considered, but are not seen to offer the sufficiently reliable level of service and ease of use required for a diverse population of users around the world.

Proposals

The International Bureau proposes to cease accepting PCT-related documents submitted by fax after December 31, 2018, as had been indicated in the December 2017 edition of the *PCT Newsletter*. This date will, however, be conditional on the availability of a new system (see below) for upload of documents by December 1, 2018, failing which, the fax service would continue to be maintained until at least one month after the new upload service becomes available.

The International Bureau also proposes to cease sending messages by fax. In urgent cases, the International Bureau will seek to contact the applicant/office by telephone, ePCT or email (though the latter is also not a preferred method of communication in view of its lack of security and certainty of delivery).

In order to address concerns regarding the use of electronic systems, either due to their unavailability or their accessibility to first-time users who have not yet registered and may need to make “last minute filings”, the International Bureau has made the following recent improvements to its electronic filing systems and further ones are on the way:

(i) PCT Online filing systems used to require the applicant to obtain a digital certificate, the process for which involved manual approval by the International Bureau (or by a national Office offering its own certificates compatible with the relevant systems). With such an arrangement, applicants could not go straight to an electronic filing system and use it immediately. While this remains the case for some systems using local client software, such as PCT-SAFE, ePCT now allows the use of several alternative strong authentication means, including one-time passwords sent by SMS or generated by standard security apps. Consequently, it is possible to go from having no WIPO Account to preparing a new application to file using ePCT in a matter of minutes, with no need for any approval steps to be taken by the International Bureau or other agencies.

(ii) A new solution is being developed in parallel with ePCT which will allow basic upload of a PDF document, including a new international application or post-filing documents, without sign-in using a WIPO Account. This solution is intended primarily as a contingency measure in the event that login to ePCT is not possible or where the applicant does not yet use ePCT. The system is expected to be available early in the fourth quarter of 2018. Unlike fax services, it would provide secure transmission of documents, though without many of the additional benefits offered by ePCT.

Responses to this Circular

The International Bureau invites feedback on this proposal, including with respect to the timing of its implementation, suggestions as to alternative technical means for submitting documents and any further legal steps which should be considered to offer safeguards to applicants in situations where communications are interrupted.

You are invited to provide comments by October 31, 2018, preferably by e-mail to: pct.doc@wipo.int.

Yours sincerely,



John Sandage
Deputy Director General