

Decision of the President of the European Patent Office dated 7 December 2000 on the electronic filing of European patent applications and subsequent documents

The President of the European Patent Office (EPO), having regard to Rules 24(1), 27a, 35(2), 36(5), 77(2)(d) and 101 EPC,

having regard to the basic requirements to be fulfilled by any electronic record, namely

(a) authenticity – ie confirmation that a document is what it purports to be, and was authored by the person who purports to have done so,

(b) integrity – ie consistency of the data and, in particular, detecting and preventing its unauthorised alteration or destruction,

(c) confidentiality – ie ensuring that a document's existence or content is not disclosed to unauthorised persons, and

(d) non-repudiation – ie ensuring that the sender (with the recipient's co-operation) has reliable evidence that the data has been delivered, and that the recipient has reliable evidence of the identity of the sender, so that neither party can successfully deny sending or receiving the data and a third party can verify its integrity and origin,

having regard to the basic standards of electronic records management, namely that

(1) all documents filed electronically must be capable of being printed as paper and transferred to archival media without loss of content or material alteration;

(2) information that is routinely collected by the automated systems concerning the record, often called meta-data, is to be considered part of the electronic records and maintained by the automated systems;

(3) electronic documents must be submitted in an Office-designated electronic file format; archive copies must also be retained in the electronic format in which they are submitted;

(4) all electronic submissions must generate a positive acknowledgment to the submitter indicating that the Office has received the submission. The positive acknowledgment must include the identity of the Office, the date and time of the submission's receipt (which is the Office's receipt date/time) and any Office-assigned reference or application number;

(5) every Office that accepts electronic filing must also provide for the submission of paper documents. These paper documents may be imaged to facilitate the creation of a single electronic case file;

(6) a mechanism must be provided to ensure the authenticity and integrity of the electronically filed document. This requires the ability to verify the identity of the submitter (the applicant or authorised representative) as well as the ability to verify that a document has not been altered without authorisation since it was filed;

(7) electronic filing systems must provide backup and recovery mechanisms to protect electronic filings against system failures;

(8) the electronic records must be maintained for long-term access and retention;

(9) electronic files must be scanned for computer viruses and other forms of malicious logic prior to processing, with appropriate action being taken in order to preserve the filing date, if possible;

(10) access to computers used for electronic filing must not jeopardise the security of other Office networks and applications;

(11) electronic records management systems must provide mechanisms for quality assurance and quality control of the submitted documents;

(12) the electronic records management systems must maintain an audit trail of all additions to or alterations of the electronic records, recording the receipt information or other information about the generation of each record and of all changes to the records;

(13) if access to confidential data by electronic means is allowed, this access must be secure and available to authorised viewers only. Measures to assure the protection of these files from alteration must be taken. Such access by applicants, representatives or authorised members of the public by electronic means must be documented as to the identity of the party, the date (and optionally time) of the transaction, and the details of any submissions. Such documentation should be maintained as confidential data;

(14) to the extent provided for in the EPC, adequate public access to the published European patent applications and patents must be provided; and

(15) all electronic submissions should upon receipt be copied to a read-only medium,

has decided as follows:

Article 1

Filing of European patent applications

European patent applications may be filed with the EPO in electronic form as follows:

(a) online, at the European Patent Office's computer servers at the following address:
<https://secure.epoline.org> or

(b) on CD-R.

European Patent applications may also be filed in electronic form with the competent national authorities of those contracting states which so permit. The national provisions of the contracting states prescribing initial filing with the national authority or prior authorisation before filing with another authority (Article 75(2) EPC) are unaffected.

Article 2

Standard on electronic filing

The Technical Standard for Electronic Filing, annexed to this decision (referred to thereafter as "the Standard"), shall form an integral part of it. Any future amended version of this standard or any future standard recommended by the World Intellectual Property Organisation for the online filing of national patent applications shall become applicable after the publication of a corresponding decision of the President of the European Patent Office.

Article 3*Preparation of documents*

Documents filed in accordance with Article 1 shall be prepared using software either provided free of charge by the EPO or certified by the EPO as conforming to the Standard.

Article 4*Presentation of documents*

The documents making up the European patent application, including any drawings, filed in accordance with Article 1 shall be in the format specified in the Standard. Any sequence listing contained in applications filed in accordance with Article 1(a) need not be submitted on a separate data carrier.

Article 5*Request for grant*

Any request for grant of a European patent filed in accordance with Article 1 shall comprise, in addition to the information pursuant to Rule 26(2) EPC, the electronic address of the applicant and of any representative appointed.

Article 6*Legibility
Infected files*

(1) Promptly upon receipt, the EPO shall check European patent applications filed in accordance with Article 1 for

- (a) legibility and
- (b) computer viruses and other forms of malicious logic.

(2) In so far as the European patent application is illegible in whole or in part, the EPO shall regard that part of the document which is illegible as not having been received and shall, if possible, promptly notify the applicant accordingly.

(3) If the European patent application is found to be infected with a computer virus or malicious logic, the EPO shall regard it as illegible and need not open or process it. The EPO shall use all means reasonably available to it to read the submission for the purposes of according a filing date and shall, if possible, promptly notify the applicant accordingly.

(4) Where the European patent application is found to be deficient under paragraphs 2 or 3, so that no filing date can be accorded, the EPO shall, if possible, invite the applicant to correct the deficiencies within a time limit to be set by it. The filing date shall be the date on which the deficiencies are remedied. If the deficiencies are not remedied in due time, the application shall not be dealt with as a European patent application.

Article 7*Examination for certain physical requirements*

If the European patent application is filed in a format not complying with Article 4, the EPO shall make reasonable efforts to read the submission for the purpose of according it a filing date. If unsuccessful, Article 6(4) shall apply. If successful, the EPO shall set the applicant a time limit for re-submitting the application in a format complying with Article 4. If the application is not re-submitted in the prescribed format in due time, it shall be refused in accordance with Article 91(3) EPC.

Article 8*Filing of other documents*

Where the European patent application is filed in accordance with Article 1, any authorisation or designation of inventor may also be filed in accordance with Article 1. Articles 3, 4 and 6 shall apply. If these documents are filed in a format not complying with Article 4, the applicant shall be invited to re-submit them in a format complying with Article 4 within a time limit to be set by the EPO. If an authorisation is not re-submitted in the prescribed format in due time, Rule 101(4) EPC shall apply. If a designation of inventor is not re-submitted in the prescribed format in due time, Article 91(5) EPC shall apply.

Article 9*Original documents – Number of copies
Authentic version*

(1) Any documents filed in accordance with Articles 1 and 8 shall be the original documents for the purposes of all subsequent proceedings before the EPO. They shall be filed in one copy.

(2) Where documents have been filed on CD-R in accordance with Article 1 or 8, the electronic version obtained by the EPO from the CD-R and kept in the electronic file of the European patent application shall be deemed to be the authentic version of the document. In the event of any dispute, verification may be effected by comparison with the originally filed CD-R, which shall be kept for the period prescribed in Rule 95a EPC.

Article 10*Paper confirmation*

(1) No confirmation on paper is required for documents filed in accordance with Articles 1 and 8.

(2) The EPO shall take no action in respect of any paper confirmation nonetheless filed, unless clearly instructed by the applicant to do so. Such action may result in a new filing date being accorded.

(3) Any paper confirmation filed must be clearly marked as such and must contain the information necessary for the EPO to be able to attribute it to the electronic submission concerned.

Article 11*Signatures*

(1) When the European patent application is filed in accordance with Article 1, the signature required in the request for grant of a European patent shall be provided in one of the following forms:

(a) as a facsimile image of the signer's handwritten signature;

(b) as an electronic signature, ie data in electronic form which is attached to or logically associated with other electronic data (data message) and which serves as a method of authenticating the signatory in relation to the data message and indicates his or her approval of the information contained in the data message; or

(c) as an advanced electronic signature, ie an electronic signature which meets the following requirements:

- (i) it is uniquely linked to the signatory;
- (ii) it is created using means that the signatory can maintain under his or her sole control; and

(iii) it is linked to the data to which it relates in such a manner that any subsequent change of the data is detectable.

(2) An electronic signature within the meaning of paragraph 1(b) is a series of characters chosen by the signatory to express his or her identity and intent to sign the data message in question, and is preceded and followed by the forward slash (/).

(3) An advanced electronic signature within the meaning of paragraph 1(c) is a digital signature produced using a Public Key Infrastructure-generated certificate and the corresponding private key.

(4) In all other cases where a signature is required under the EPC, an advanced electronic signature within the meaning of paragraphs 1(c) and 3 must be produced in respect of the packaged submission. Individual documents within the package may be signed also in accordance with paragraph 1(a) or paragraphs 1(b) and 2.

(5) If the request for grant of a European patent or any other submission relating to a European patent application and filed in accordance with Article 1(a) is not signed, or the signature furnished does not comply with paragraphs 1 to 4 as appropriate, the EPO shall set the applicant a time limit for correcting the deficiency. If the deficiency is not corrected in due time, the submission shall be deemed not to have been received.

(6) European patent applications and other submissions filed on CD-R must be accompanied by a paper document bearing a handwritten signature, identifying the applicant and the applicant's representative, indicating an address for correspondence and listing the files contained in the CD-R.

Article 12

Acknowledgment of receipt

(1) The receipt of submissions filed in accordance with Article 1(a) shall be acknowledged electronically within the submission session. Where it becomes apparent that such acknowledgment was not successfully transmitted, the EPO shall promptly transmit the acknowledgment by other means where the necessary indications furnished to the EPO so permit.

(2) The acknowledgment shall include the identity of the Office, the date and time of the document's receipt, an Office-assigned reference or application number and a list of the files transferred. The acknowledgment shall also contain a message digest of the submission.

(3) Acknowledgment of receipt shall not imply the accordance of a filing date.

Article 13

Fee payments

The arrangements for fee payments shall remain unaffected by this decision.

Article 14

EPO communications

The EPO shall specify which communications may be notified online. Applicants shall indicate, upon filing the European patent application, which communications, if any, they wish to be notified online. Communications shall otherwise continue until further notice to be notified in paper form.

Article 15

Notifications

(1) If communications are notified on paper, Rules 78 to 80 EPC shall apply.

(2) If communications are notified online, the EPO shall inform the applicant that a communication is awaiting collection by the applicant. Such information shall be in the form of an e-mail containing a link to the applicant's mailbox at the EPO server. If a communication is not collected within five days from dispatch of the e-mail information, a paper copy shall be notified in accordance with paragraph 1.

(3) Communications notified in accordance with paragraph 2 shall be deemed to have been received on the tenth day following the date of dispatch of the e-mail information.

(4) Rules 81 and 82 EPC shall remain unaffected.

Article 16

Time limits

Rules 83 to 85 EPC shall apply. Only applicants who have agreed to receive notifications online may also request time-limit extensions online.

Article 17

Entry into force

This decision shall enter into force on 8 December 2000.

Done at Munich, 7 December 2000.

Ingo KOBER

President