



## **EPO Update**

The IP Federation continually engages with the European Patent Office (EPO) to provide input on consultations relating to implementing regulations, ancillary regulations to the European Patent Convention (EPC) and procedures of the EPO. The Federation maintains ongoing working relationships with EPO representatives including holding meetings with the President and Directors throughout the year.

### ***Establishment of the Board of Appeal Committee and appointment of the president of the Boards of Appeal***

In June 2016 the Administrative Council of the European Patent Organisation decided to establish the Boards of Appeal Committee (BOAC) and appoint a president of the Boards of Appeal (CA/D 6/16 and CA/D 7/16). The BOAC is a subsidiary body of the Administrative Council for monitoring the independence, efficiency and performance of the Boards and for giving opinions on the Boards to the President of the Office, the Administrative Council and the president of the Boards.

Carl Josefsson was appointed president of the Boards in December 2016 and took up the post in March 2017. The Boards themselves relocate from the Isar building in Munich to the nearby town of Haar in the summer / autumn of 2017.

### ***EPO early certainty initiatives***

The EPO continued to expand its “early certainty” initiatives beyond the search and examination procedures to the opposition procedure. Since July 2016 the EPO has aimed to achieve an average duration of opposition proceedings of 15 months. This is achieved by reducing time limits for submissions, substantially precluding extensions of time and contracting the written procedure.

### ***Online XML filing format***

The EPO receives approximately 95% of all new patent application filings online, and almost all are filed in PDF format. In processing these cases the EPO employs optical character recognition (OCR) to create an XML working copy of an application. This process is considered inefficient and error-prone. Furthermore, the electronic Druckexemplar increasingly employed by the EPO in recent years is often based on such OCR documents and the burden of confirming the accuracy of every single character in such a Druckexemplar prior to grant falls on the applicant.

The EPO is now embarking on a wholesale shift towards electronic-only filing in an XML format, specifically, “Office Open XML” (ISO 29500:2008). Such a format can be generated by popular word processors such as Microsoft Word (.docx format). The EPO plans to accept electronic filings only in XML format from 1 April 2018.

### ***EPO fee payment improvements***

The EPO has implemented numerous improvements to electronic fee payments since November 2016. There is now earlier visibility of deposit account replenishments which can now be visible one day after receipt by the EPO (previously this took 2-3 working days). Also, debit orders can now be revoked only in part - e.g. per fee code - and not only in full. When debiting fees in the event of insufficient funds, partial debiting can now take place in ascending order of fee code as far as funds allow. Previously the EPO would only debit if funds were available for all fees relating to an application.

Additional changes are also being made to fee payments. In future the EPO will accept debit orders filed online only using the available online tools (EPO Online Filing, EPO CMS, EPO Online Fee Payment and ePCT). Debit orders filed on paper, fax or by web filing will not be accepted.

To address situations where electronic payment means fail, the EPO will accept credit card payments from December 2017. Payments must be made in Euros and can be made by MasterCard or Visa. Payments by credit card are limited to a single application - there can be no batching of applications into a single payment. Credit card payments will be made via a new "Payment Portal" accessible on the EPO website.

***Application of Rule 134 EPC for failure of electronic filing means***

Rule 134(1) EPC provides for an extension of a period in the event that documents filed by electronic means cannot be received. The EPO has confirmed that Rule 134(1) EPC also serves to extend periods expiring when the electronic filing means such as EPO CMS are not available. However, the EPO considers that Rule 134(1) EPC does not apply to situations where electronic filing means are unavailable for only a number of hours. There is also no discrimination of the time of day of the unavailability - such as the end of the day constituting a last opportunity to effect a filing on a given date.

Scott Roberts, 25 July 2017