

European Patent Office

Introduction

Being an Office of PCT Contracting States the EPO has taken several measures that will be applied in case of a flu pandemic to ensure the continuity of essential PCT services, to safeguard the rights of PCT applicants and to assure the welfare and well-being of the Office staff and their families.

The first paragraph outlines the Office's pandemic flu preparedness plan and its approach to emergency situations. The second paragraph concerns *force majeure* provisions to be taken in the event of exceptional circumstances.

1. Outline of the EPO Pandemic Flu Preparedness Plan

There are growing and widely publicised international concerns that the currently spreading H5N1 avian flu epidemic might result in a human flu pandemic.

An EPO contingency plan has been created to ensure preparedness of the EPO in the event of an influenza pandemic which could affect EPO staff and their dependants.

The purpose is to ensure that the EPO can maintain, in so far as possible, business continuity and ensure that, at least, its legal obligations can be fulfilled in a time of crisis caused by a flu pandemic. Further, the plan foresees measures to assure the welfare and well being of the Office staff and their families as is appropriate for such a situation.

The plan is based on the phases defined by the WHO. It foresees that the EPO will take several measures progressively according to the evolution of the situation. Each measure to be implemented is based on the actual risks posed by the situation as viewed from the perspective of the Office.

A Crisis Management Team will be responsible for initiating actions at various stages of the plan and monitoring implementation of these actions.

In order to ensure the continuity of the Office, essential functions have been identified. Staff in essential functions will be working during the crisis and, when possible, they will be working from home. Those staff members will be supplied with protective equipment and prophylactic antiviral medication as necessary. The Office has stocked antiviral medication for treatment for 30% of its staff and relatives. Should a vaccine be available, Office staff will have priority.

Exceptional measures, such as special leave instructions and specific adaptations to the regulation of the EPO staff, will be decided. Cancellation of official travel and visits to or from affected areas will have to be considered.

Internal and external communication will have a key role and needs to be prepared. Communication channels are defined at the different alert stages. Information will also be very important to ensure a safe return to normal functions after the pandemic.

2. Force majeure provisions in the procedures before the EPO

- (1) The EPO previously provided the International Bureau with information on the entry into force of Rule 85(5) EPC with effect from 11.9.2001. That provision was created by decision of the Administrative Council of the EPO in order to handle interruptions in the mail consequent to the terrorist attacks in New York on 11.9.2001. This provision, which corresponds to PCT Rule 82.2, was also applied in respect of applications which suffered from the effects of hurricane Katrina and the terrorist attacks in London on 7.7.2005.
- (2) Since the adoption of Rule 85(5) EPC, no new legal provisions have been created concerning “force majeure circumstances”.
- (3) A further provision which may be used in the event of exceptional circumstances, including a pandemic requiring the EPO to limit its services, is provided for in Rule 85(4) EPC. Pursuant to that provision an extension of time limits can be granted for the purpose of avoiding losses of rights consequent to missed time limits if – following interruption or dislocation of the proper functioning of the EPO – communications to be issued by the EPO were delayed. In these circumstances any act that should have been completed during the period of interruption or dislocation, which period will be fixed by the President of the EPO, may be still validly completed within one month after the end of the period of such interruption or dislocation.
- (4) The President of the European Patent Office may take further measures to ensure the functioning of the EPO (Art. 10(2)(a) EPC). This general competence explicitly includes the adoption of internal administrative instructions. On this basis it was announced in a Notice from the President of the EPO, published in response to the terrorist attacks in New York (OJ EPO 2001, 564) that the normal communications issued where a time limit was missed triggering a certain grace period as from receipt of the communication would not be issued. This had for effect that the start (and the end) of these grace periods was postponed until a later date, thereby providing extra time for the applicant to settle things.
- (5) Finally, it is mentioned that depending on the number of applications concerned, the general provisions on restoration provided under the EPC may also be an effective means of redress in exceptional circumstances. For example, reference is made to Art. 122 EPC (re-establishment of rights), Art. 121 EPC (further processing) and Rule 69(2) EPC (inaccurate finding of loss of rights by the EPO).

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