



Institut der beim Europäischen Patentamt zugelassenen Vertreter
Institute of Professional Representatives before the European Patent Office
Institut des mandataires agréés près l'Office européen des brevets

European Patent Institute · Bayerstrasse 83 · 80335 Munich · Germany

Mr António Campinos
President
European Patent Office
Bob-van-Bentham-Platz 1
80469 Munich
Germany

6th March 2019

Dear Mr Campinos,

EPO Strategic Plan (2019-2023)

Electronic Communications: the EPO's User Interface

In my letter of 15th February 2019, I mentioned that “electronic communications” was a key area where users’ perspective, and particularly the views from **epi** members and their supporting staff, should be taken into account. The following are more detailed comments on this area.

Introduction

In recent years, much investment has been made to improve electronic systems for processing patent applications *within* the office, and in the information systems, such as Patent Translate and Global Dossier. The latter systems have been made available to the benefit of EPO users and the wider public. Examining divisions are committed to make more use of modern communication technologies such as videoconferencing, which is also welcome.

Over the same several years, however, **epi** has noticed rather slow progress in several larger projects relating to day-to-day communication between the EPO and its users (which means, in most cases, **epi** members and their supporting staff). While we know that, in truth, a lot of hard work has been done behind the scenes, and that delays arise from the complexity of the mission, **epi** would like to emphasize the importance of these projects, in view of the development of the Strategic Plan, by making the following

comments. **epi** also asks for attention to be given to new areas which are currently not prioritised from the EPO perspective.

Parties to EPO proceedings or their representatives use a variety of electronic systems to communicate with the EPO, both for sending and receiving documents. Users expect from these systems data security and integrity, legal certainty, minimization of accidental losses of rights, and ease of use. At present, several of these systems are out of step with modern computing and telecommunication practices. Replacement systems have been in development for many years but appear (from outside the EPO) to be stalled, in some cases half-implemented. We are told that established services will be withdrawn, without clarity as to what services will replace them. The need for new back-up (contingency) systems is only partially addressed.

In the following sections, we highlight five principal areas of concern, and provide some background. Some of these areas have already been a priority for EPO, and we simply urge that the work continue with high priority under the new Strategic Plan. In other areas, we feel the EPO up to now underestimates the difficulties and/or risks imposed on users in the current systems, and we believe new initiatives and urgency are required.

Inevitably, we can have only partial knowledge of constraints operating within the EPO, and the following comments are made on our best understanding. To improve understanding, we can only advocate deeper contact and collaboration. The following is based on observations from the membership generally, as well as the highly-valued collaboration between **epi**'s Online Communications Committee (OCC) and EPO personnel, and contacts such as the SACEPO Working Group on the Electronic Patent Process (SACEPO – EPP). The issues promoted here may also imply prioritisation of the “account management” infrastructure, which we do not mention as a separate item here.

1. Electronic notification from EPO to applicants (Mailbox, Myfiles, etc.)

- **epi** hopes that the Strategic Plan will promote rapid implementation of the vision which EPO has previously shared, as mentioned below.

Reliable notification from the EPO to users is critical to the safe processing of European patent applications and European patents. Many users have registered for use of the Mailbox service, as individuals, and as firms, but, unfortunately, the system falls into the “half implemented” category. Users and EPO staff alike must use a confusing mixture of different modes of communication, leading to inefficiency on both sides, training challenges and, in the worst case, loss of rights.

Accordingly, **epi** hopes that the Strategic Plan will promote rapid implementation of the vision which EPO has previously shared, i.e.:

- Communications can be notified electronically to all parties
 - Applicant, Proprietor, Opponent, Appellant
 - Professional Representative, Association
 - Legal Practitioner, Employee

- Communications can be notified electronically for all procedures
 - EP, Euro-PCT, UNIP
 - Opposition, Appeals
 - PCT-RO, PCT-ISA, PCT-IPEA
- Both companies and individuals can have several eNotification inboxes
- Customers can decide per application to receive eNotifications

The above and other items here may also imply prioritisation of the “account management” developments, within EPO systems, which we do not mention as a separate item here.

To realise the full potential of these developments, we also consider it important that the rather rigid smart card access system be at least supplemented by alternative means of authentication, as discussed below under item 5.

2. Online Filing – New Online Filing System

- For some years now, a “new online filing” system has been under development but has been delayed several times. The Strategic Plan process should please not be a cause of further delay.

The majority of representatives use the “old” eOLF for online filing. The eOLF platform is very stable, integrated with large users’ portfolio management systems (PMS), and can also be used for a wide range of EP, PCT *and national* filing procedures in many member states¹. A half-way “new” online filing system “CMS” has been tried and available for some years, and is liked by a proportion of users, but it does not provide all the procedures and steps that are currently done in eOLF². CMS users are stuck, using CMS for some functions and eOLF for others.

For some years now, a “new online filing” system has been under development but has been delayed several times and is now not likely to go live until late in 2019. The Strategic Plan process should please not be a cause of further delay. User testing by epi’s Online Communications Committee and others should preferably be included before launch, so that this new system is free of the usability issues such as affect CMS. Only by making the new system more attractive than the existing one can EPO achieve its aim of a rapid transition from the old systems to the new one.

Additionally, although the web-based format of CMS relieves *some* issues associated with smart card technology, it is important that the outmoded smart card access system be replaced or at least supplemented by alternative means of authentication, as discussed below under item 5.

¹ <https://www.epo.org/applying/online-services/online-filing/national.html>

² <https://www.epo.org/applying/online-services/online-filing.html> ([online filing options comparison table.pdf](#))

3. Online Filing – Closure of “old” eOLF

- EPO has stated that the established eOLF system will be turned off two years after the EPO judges that all EP and PCT functionality and one national filing function is provided in the new system. However, closing eOLF without ensuring that a new system offers the same existing national functionality is considered unacceptable by **epi**. We urge EPO to find a more satisfactory arrangement for transition.

The EPO has stated³ that the established eOLF system will be turned off two years after the EPO judges that all EP and PCT functionality and one national filing function is provided in the new system. However, eOLF is a very stable system, and is long-established as the most convenient, in some cases the only mechanism, for online filing of European and national applications and other deadline-critical submissions in prosecution, opposition and appeal, as well as national prosecution and validation of European patents. The member states, EPO users and their IT suppliers have invested in the present system on this basis.

We understand that the new system cannot simply “import” the national modules from eOLF. Therefore, implementing national modules in the new system will take time, and at the same time is at the discretion of each national office.

However, closing eOLF without ensuring that a new system offers the same existing national functionality is considered unacceptable by **epi**.

Even if further national procedures are added within the sunset period, the transition becomes a moving target. From the user’s perspective the transitional period becomes different (shorter) in different member states. For a multinational applicant or representative firm, the transition becomes fragmented between offices. While the EPO and the national offices have only their own IT systems to change, the number of IT systems associated with a transition to a new online filing system is multiplied across all the firms and offices of **epi** members, and training requirements include not only professional representatives but also differently qualified support staff, with different language abilities. In this context, two years is a reasonable period, but by no means a long time.

Therefore, **epi** urges EPO to find a more satisfactory transition so that users and their clients are not negatively affected by the changes. For example, it could be agreed that the two-year sunset period for eOLF begins when the last of the currently-available national procedures is implemented in the new online filing system, unless equivalent functionality has been provided directly by the member states concerned.

³ In SACEPO-EPP working group and confirmed at EPO-OCC meeting 2 October 2018

4. Rescue/emergency filing – fax filing and alternatives

- EPO does not yet offer adequate solutions as a backup to the normal online filing. The current safeguard is fax, but this is becoming inconvenient and may be unreliable due to the adoption of Internet telephony.
- New solutions are urgently required to avoid loss of rights in cases of urgency, and cases of local or general technical difficulty. Fax filing must be preserved until satisfactory alternatives are in place.
- Emergency filing solutions should not impose formal requirements. The obligation for patent offices to afford a filing date as a result of reasonable formal requirements, and the possibility for applicants to correct formal errors after filing, is a fundamental principle of the EPC.

It has long been the position of **epi** that fax filing should be maintained as an option, especially for “emergency” or “rescue” situations, in case of local computer/Internet failures. The need for an effective backup mechanism is illustrated by the recent prolonged outage of the online filing systems at USPTO⁴. US applicants had to switch to fax, and/or take advantage of the filing date rules which allow Priority Express certificates of posting to be used to establish a legal filing date.

Such legal safeguards are not available at the EPO, with the exception of fax. In the meantime, we understand that analogue fax lines are becoming difficult or impossible to maintain, and Internet-based telephony may bring hidden risks of corrupted transmission of fax messages. The International Bureau of WIPO has identified fax transmissions being corrupted under Internet telephony and is taking measures to close fax filing⁵, but the IB already offers a secure online filing system (ePCT) which is usable in emergencies, without pre-registered smart cards or additional hardware, and has committed to providing a *further* alternative mechanism for use in emergencies, before discontinuing fax⁴.

The EPO, likewise, is migrating to Internet-based telephony, but without (so far) providing information about the risks, and *without* providing satisfactory backup mechanisms to serve in emergencies when the online filing systems are unavailable due to problems at the EPO side, the user side, or in the network in-between. The EPO itself is still highly dependent on fax as the mechanism by which it communicates to users in cases of urgency, although we understand that efforts are being made to reduce this.

The Web-form Filing service is advertised as an emergency filing option, but is very limited in use. It does require only an Internet connection, but importantly it does not cover several time-critical procedures before the EPO, and imposes “Annex F” formal requirements on documents before they can be filed.

⁴ <https://www.uspto.gov/about-us/news-updates/august-15-palm-outage-updates>

⁵ <http://www.wipo.int/export/sites/www/pct/en/circulars/2018/1545.pdf>

According to EPO practice⁶, Rule 134(1) EPC, second sentence is applied to extend time limits when a planned outage of the online filing system lasts longer than four hours on one day. In other circumstances, however, users may have to rely upon re-establishment of rights under Article 122 EPC. This will not normally provide a user with legal certainty in their moment of crisis, and Article 122 cannot resolve loss of rights in case of a missed first filing date or a missed opposition deadline.

epi is extremely concerned that the EPO does not yet offer alternate solutions that could replace fax as a backup to the normal online filing, in a range of circumstances. We believe it is urgent for EPO to engage with users and develop satisfactory mechanisms to avoid loss of rights in cases of urgency, and cases of local or general technical difficulty.

5. Authentication and Access – Smart card limitations

- The dependence of EPO online systems on smart card infrastructure issue brings inconvenience to users and increasing risk of loss of rights. Additional means of authentication should be enabled as soon as possible.

epi considers there is a need of a new initiative regarding finding new means of authentication to supplement smart card authentication. The EPO's systems (apart from Web-form Filing) are useless without a working registered smart card and associated hardware. A user whose smart card becomes faulty or out-of-date or lost cannot access the system. A user without access to the smart card hardware (including smartphone/tablet users) cannot access the system. Users in a distributed computing or remote working environment have trouble using the system.

We know that EPO likes the security of the smart card system, but too-high security can easily become a barrier to legitimate operations. In any case, representatives often relinquish their smartcard and PIN to support staff, as the only practical way of working in a modern IT environment. The supposed security of the smart card becomes an illusion.

This issue brings increasing risk of loss of rights, when coupled with the lack of suitable contingency filing options (see item 4).

Other bodies, including notably WIPO, implement strong authentication without the need for smart card hardware and without obstruction by the registration processes, at the point of need.

6. OOXML (.docx) filing

- **epi** supports the aims of this project, subject to the lessons learned from the first pilot stage. The Strategic Plan should promote its early conclusion.

Patent applications can be large and complex documents. In addition to drawings in plain text, they frequently include exotic characters, equations, chemical formulae and so on. Current online filing systems involve the conversion from a source format (for example a

⁶ Notice from the EPO, OJ EPO 2018, A25,

Microsoft Word document) into a format accepted by EPO systems (Annex F-compliant PDF files). After filing, EPO performs optical character recognition (OCR) and other processing to obtain the application text.

Since the beginning of online filing, users have endured the fact that format conversions pose risks to applicants. Conversion tools (Amyuni) provided by EPO have been unsatisfactory or risky for many users, who find their own conversion tools at their own risk. The conversion tool has to be requested by almost clandestine means, while users have no way of knowing when an updated version of Amyuni has been released.

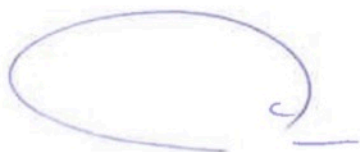
For several years already there has been an expectation that filing specifications and other documents will soon be possible in OOXML/DOCX format, compatible with Microsoft Word and open source word processing software. The possibility of filing electronically readable files is very favourable for both the EPO and its users and has the potential to strongly reduce risks (OCR, errors in Druckexemplar) while making some processes easier. A second phase of the pilot was due to start in 2017, or early 2018, but remains delayed⁷. However, **epi** supports the aims of this project, subject to the lessons learned from the first pilot stage, and urges you, through your Strategic Plan, to promote its early conclusion. We understand that there are technical challenges and legal steps to be made. **epi** remains keen to participate in solving these issues, but is kept somewhat in the dark.

Additionally, and in the interim, more active support around the existing PDF conversion tools would be appreciated.

Conclusion

Through its Online Communications Committee and other channels, **epi** seeks only positive collaboration with the EPO, to realise the aims of the organisation and its users. EPO members participate in other user groups, including the SACEPO Working Group on the Electronic Patent Process. We hope that our above comments are perceived as well-informed and useful and assure you of our commitment to collaboration between users and EPO systems developers to realise our common goals.

Yours sincerely,



Francis Leyder
epi President

⁷ <http://www.epo.org/service-support/updates/2018/20180327a.html>