



[3510-16-P]

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No.: PTO-P-2018-0054]

Filing Patent Applications Electronically During Designated Significant Outages of the United States Patent and Trademark Office Electronic Business Systems

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) encourages applicants to file their patent applications via its electronic filing system (EFS-Web). The USPTO experiences occasional unplanned electronic business system outages, including unplanned system outages that preclude patent applicants and patentees from filing patent documents and fees via the electronic filing system for a significant period of time. This notice prescribes a procedure for filing patent applications by alternative electronic means during a significant unplanned electronic business system outage, as designated by the Director of the USPTO. An application filed by the alternative electronic means prescribed in this notice during a designated significant unplanned electronic business system outage

will be considered to have been filed by the USPTO's electronic filing system, and thus will not incur the fee required by section 10(h) of the Leahy-Smith America Invents Act for a patent application not filed by the USPTO's electronic filing system.

DATES: *Applicability date:* The alternative electronic filing procedures prescribed in this notice apply to patent applications filed from August 15, 2018 through and including August 23, 2018.

FOR FURTHER INFORMATION CONTACT: Eugenia A. Jones, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7727, or Erin M. Harriman, Senior Legal Advisor, Office of Patent Legal Administration, at 571-272-7747.

SUPPLEMENTARY INFORMATION: The USPTO encourages applicants to file their patent applications via its electronic filing system (EFS-Web) and collects a fee as required by section 10(h) of the Leahy-Smith America Invents act for patent applications not filed by electronic means as prescribed by the Director. Information concerning electronic filing via EFS-Web is available from the EFS-Web landing page on the USPTO's Internet Web site (<https://www.uspto.gov/patents-application-process/applying-online/about-efs-web>) and is discussed in section 502.05 of the Manual of Patent Examining Procedure (MPEP).

The USPTO periodically takes various electronic business systems off line (during non-business hours) to perform routine maintenance. The USPTO, however, also experiences occasional unplanned electronic business system outages. While the USPTO is typically able

to restore its electronic business systems with sufficient time remaining in a day to permit patent applicants and patentees to file patent documents and fees via the electronic filing system on that day, the USPTO also experiences significant unplanned electronic business system outages that preclude patent applicants and patentees from filing patent documents and fees via the electronic filing system for a significant period of time. The USPTO experienced such a significant unplanned electronic business systems outage beginning on August 15, 2018. This notice prescribes a procedure for filing patent applications by electronic means during a designated significant unplanned electronic business system outage.

The alternative electronic filing means prescribed in this notice is available only when there is a significant unplanned electronic business system outage that precludes patent applicants and patentees from filing patent documents and fees via the electronic filing system for a significant period of time, as designated by the Director of the USPTO (a “designated significant unplanned electronic business system outage”). The unplanned electronic business systems outage beginning August 15, 2018 is designated as a significant unplanned electronic business system outage, and the alternative electronic filing means prescribed in this notice is available for patent applications filed from August 15, 2018 through and including August 23, 2018. The USPTO will post a notice on its Internet website in the event of a future designated significant unplanned electronic business system outage, and indicate the dates during which the alternative electronic filing means prescribed in this notice are available due to such designated significant unplanned electronic business system outage.

37 CFR 1.16(t) and 1.445(a)(1)(ii) implement section 10(h) of the Leahy-Smith America Invents Act, which requires an additional fee for each application for an original (*i.e.*, nonreissue) patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director of the USPTO. An application filed by the alternative electronic filing means prescribed by this notice during a designated significant unplanned electronic business system outage will be treated as an application filed by electronic means for purposes of section 10(h) of the Leahy-Smith America Invents Act (and by the USPTO's electronic filing system for purposes of 37 CFR 1.16(t) and 1.445(a)(1)(ii)). Thus, the non-electronic filing fee set forth in 37 CFR 1.16(t) and 1.445(a)(1)(ii) is not required for an application filed by the alternative electronic filing means prescribed by this notice during a designated significant unplanned electronic business system outage. The application will also be treated as being filed by the USPTO's electronic filing system for purposes of calculation of the application size fee set forth in 37 CFR 1.52(f)(2) and the reduced basic filing fee for small entities who file in compliance with the USPTO's electronic filing system (37 CFR 1.16(a)). The application, however, will **not** be treated as being filed by the USPTO's electronic filing system for purposes of the electronic filing discount in the international filing fee (PCT Rule 15 and 37 CFR 1.445(b)).¹

The alternative electronic filing means during designated significant unplanned electronic business system outages is as follows: The applicant must file the patent application during a

¹ The USPTO has no authority to treat an international application filed by the alternative electronic filing means prescribed by this notice as having been filed in the electronic format prescribed by the Administrative Instructions under the PCT for the electronic filing discount in the international filing fee or to waive the international filing fee.

designated significant unplanned electronic business system outage by an alternative filing method permitted by 37 CFR 1.6, such as by the Priority Mail Express[®] service of the U.S. Postal Service under 37 CFR 1.10 or hand delivery² to the USPTO. *See* MPEP § 502.05; *see also* *Legal Framework for Electronic Filing System—Web (EFS-Web)*, 74 FR 55200, 55204 (Oct. 27, 2009).³ Applicants are reminded that unless an application is filed by the Priority Mail Express[®] service of the U.S. Postal Service in accordance with 37 CFR 1.10, the filing date of the application will be the date on which the application is received at the USPTO headquarters in Alexandria, Virginia. *See* 37 CFR 1.6. In addition, a copy of the application must be filed via EFS-Web (or Patent Center⁴) no later than: (1) one month from the date a filing receipt⁵ is first issued for the application, and be accompanied by a request for refund, if the non-electronic filing fee has been paid; or (2) the expiration of the period for reply to a notice requiring payment of the non-electronic filing fee (*e.g.*, a notice to file missing parts under 37 CFR 1.53(f)) if the non-electronic filing fee has not been paid.

² New patent applications hand carried to the USPTO must be delivered to the Customer Service Window in the Randolph Building, 401 Dulany Street, Alexandria, Virginia, 22314 (MPEP section 501).

³ Applicants are reminded that applications filed under 37 CFR 1.53 (except a design continued prosecution application (CPA) under 37 CFR 1.53(d)), PCT international applications, and international design applications cannot be submitted by facsimile transmission. *See* 37 CFR 1.6(d).

⁴ Patent Center is a new patent electronic filing and management system that is in development, and which will replace EFS-Web and the Patent Application Information and Retrieval (PAIR) system. Further information concerning Patent Center is available on the USPTO's Internet Web site at <https://www.uspto.gov/patent/initiatives/about-patent-center>.

⁵ The term “filing receipt” as used in this notice also includes a Notification of the International Application Number and of the International Filing Date (PCT/RO/105) in a PCT application.

The copy of the application filed via EFS-Web (or Patent Center) must be accompanied by a statement that it is a true copy of the original application as filed by the alternative filing method during the designated significant unplanned electronic business system outage. The copy of the application also must be filed via EFS-Web (or Patent Center) as a follow-on paper in the application, and **not** as a new application. If the copy of the application is filed via EFS-Web (or Patent Center) as a new application, the copy will be treated as a new application, and the application filed by an alternative filing method will **not** be treated as an application filed by the prescribed alternative electronic filing means. The copy of the application should **not** be filed until applicant has received either a filing receipt or other USPTO notice identifying the application number assigned to the application.

Dated: August 27, 2018.

Andrei Iancu

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office

[FR Doc. 2018-18897 Filed: 8/29/2018 8:45 am; Publication Date: 8/30/2018]