

Subject : Notice to the attention of patent attorneys and users of the Belgian patent system - Implementation of the provisions of the Law of 29 June 2016 laying down various economic provisions in relation with the filing of European patent applications and international applications.

your message of

Dear Madam or Sir,

your reference

The Belgian Intellectual Property Office (OPRI) wishes to inform you about the new rules regarding the filing of European patent applications and international (PCT) applications by the users of the Belgian patent system. These rules will enter into force on 1 April 2018.

our reference
E3.PIIE/OEB.21/BDT

E3-SJPI-2018-002459

enclosures

Articles 21 and 24 of the Law of 29 June 2016 laying down various economic provisions modify the relevant provisions in respectively Articles XI.82 and XI.91 of the Belgian Code of Economic Law (CEL), which lay down the options available in Belgium for filing European patent applications and international applications. By virtue of Article 95 of the aforementioned Law, Articles 21 and 24 will enter into force by Royal Decree on 1 April 2018.

The following two sections present the consequences of the modifications to Belgian patent legislation in more detail.

1. Filing of European patent applications

On 1 April 2018 the modified Article XI.82, § 1, of the CEL will enter into force, thus excluding from that date the option to file European patent applications with the OPRI. Hence, as from 1 April 2018, any European patent application will have to be filed directly with the European Patent Office (EPO) in accordance with Article 75(1)(a) of the European Patent Convention (EPC).

Nevertheless, the principle of direct filing with the EPO will remain subject to one exception. Any European patent application where the applicant has Belgian

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Monday to Friday: 9.00am – 4.00pm. Tuesdays & Fridays: by appointment until 8.00pm.

nationality or has its residence or its seat in Belgium and which could be of interest to the defence of the Belgian territory or the State's security will still be subject to compulsory filing with the OPRI instead of the EPO in accordance with Article 75(2)(a) of the EPC and Article XI.82, § 2, of the CEL. It is the applicant's responsibility to determine whether his application could be of interest to Belgian defence or security within the meaning of Article XI.82, § 2, of the CEL and, if so, to file his application with the OPRI.

In application of Article 75(1)(b) of the EPC, the date on which the OPRI receives the European patent application shall be acknowledged as the date of receipt by the EPO.

2. Filing of international applications

On 1 April 2018 the modified Article XI.91, § 1, of the CEL will enter into force by which, as from the same date, the OPRI will cease to act as a receiving Office within the meaning of Articles 2(xv) and 10 of the Patent Cooperation Treaty (PCT). To this end and in accordance with Rule 19.1(b) of the PCT, the Belgian Federal Public Service of Economy, SMEs, Self-Employed and Energy has, on behalf of Belgium, agreed with the EPO that the latter will, for all purposes, act instead of the OPRI as receiving Office for applicants having Belgian nationality and for applicants having their residence or their seat in Belgium, for all international applications filed on or after 1 April 2018. Hence, as from that date, only the EPO and the International Bureau of WIPO will act as receiving Office under the PCT for applicants having Belgian nationality or having their residence or their seat in Belgium in accordance respectively with Article 151 of the EPC and Rule 19.1(a)(iii) of the PCT.

Despite the delegation of the OPRI's duties as receiving Office under the PCT to the EPO, the principle of filing with the EPO or with the International Bureau of WIPO will remain subject to one exception. Any international application where the applicant has Belgian nationality or has its residence or its seat in Belgium and which could be of interest to the defence of the Belgian territory or the State's security will still be subject to compulsory filing with the OPRI instead of the EPO or the International Bureau of WIPO in accordance with Article 27(8) of the PCT, Articles 151 and 75(2)(a) of the EPC as well as Article XI.91, § 2, of the CEL. It is the applicant's responsibility to determine whether his application could be of interest to Belgian defence or security within the meaning of Article XI.91, § 2, of the CEL and, if so, to file his application with the OPRI.

It should be mentioned that, even where the application has been filed with the OPRI under the filing exception with regard to the defence of the Belgian territory or the State's security, the OPRI shall not act as receiving Office within the meaning of Articles 2(xv) and 10 of the PCT, with the EPO acting as receiving

Office instead. The OPRI will receive these applications on behalf of the EPO in application of Articles 151 and 75(2)(a) of the EPC and therefore the date on which the OPRI receives such applications shall be acknowledged as the date of receipt by the EPO.

It is important to stress three specific aspects with regard to the filing of international applications in Dutch: filing with the EPO, filing with the OPRI under the Belgian defence or security exception and the languages that are accepted by the EPO as an International Searching Authority (ISA).

Firstly, the EPO as receiving Office only accepts international applications filed in English, French or German, in accordance with Rule 157(2) of the EPC. Therefore, applicants having Belgian nationality or having their residence or their seat in Belgium wishing to file an international application in Dutch are advised to file it directly with the International Bureau of WIPO under Rule 19.1(a)(iii) of the PCT. If an international application is nonetheless filed in Dutch with the EPO, it will be promptly transmitted by the EPO to the International Bureau of WIPO under Rule 19.4(b) of the PCT and shall be considered to have been received by the EPO on behalf of the International Bureau of WIPO as receiving Office under Rule 19.1(a)(iii) of the PCT in accordance with Rule 19.4(a) of the PCT. The date on which the EPO receives such application shall be acknowledged as the date of receipt by the International Bureau of WIPO in accordance with Rule 19.4(b) of the PCT.

Secondly, in light of the aforementioned language requirement applied by the EPO, an international application filed in Dutch which is forwarded by the OPRI to the EPO after having been screened on its interest to the defence of the Belgian territory or the State's security, will be promptly transmitted by the EPO to the International Bureau of WIPO under Rule 19.4(b) of the PCT and shall be considered to have been received by the EPO on behalf of the International Bureau of WIPO as receiving Office under Rule 19.1(a)(iii) of the PCT in accordance with Rule 19.4(a) of the PCT. The date on which the EPO receives such application shall be acknowledged as the date of receipt by the International Bureau of WIPO in accordance with Rule 19.4(b) of the PCT. As the OPRI received the said application on behalf of the EPO in application of Articles 151 and 75(2)(a) of the EPC, the date on which the OPRI received this application shall be acknowledged as the date of receipt by the EPO and henceforth as the date of receipt by the International Bureau of WIPO.

Thirdly, as the OPRI will no longer act as receiving Office within the meaning of Articles 2(xv) and 10 of the PCT, having delegated all its duties as receiving Office under the PCT to the EPO, the latter will, in its function as ISA, not accept international applications which have been filed in Dutch on or after 1 April 2018 by applicants having Belgian nationality or having their residence or their seat in

Belgium. Where the international application is filed in Dutch by such applicants, a translation into English, French or German has to be filed within one month of the date of receipt of the international application with the receiving Office or, where the application is still undergoing verification of its interest to Belgian defence or security, with the OPRI in accordance with Article 27(8) as well as Rule 12.3 of the PCT.

Yours faithfully,



Jérôme DEBRULLE,
Advisor-General