EPO Gets Rid of "10-Day Rule"

Rule 126(2) of the European Patent Convention (EPC) establishes the "10-Day Rule" of the European Patent Office (EPO). The Rule stipulates that official communications issued by registered mail from the EPO are considered to have been delivered 10 days after the date specified on the communication, known as the "notification date." This is important because, for some communications, the deadline for responding is calculated from this date. Uncertainty caused by this calculation has prompted the EPO to amend the Rule.

Calculating a deadline entails tallying the response starting on the 10th day after the date of the communication. For example, if the deadline for replying to a communication is four months, the deadline is determined as four months beginning 10 days after the date of communication.

One of the disadvantages of this 10-day Rule is the uncertainty it creates when communicating EPO deadlines to intellectual property (IP) counsel outside of Europe.

Given this ambiguity, the Administrative Council of the EPO voted on October 13, 2022, to amend Rule 126(2) of the EPC to create uniformity with the rest of the world. The change will result in the response period being computed from the date on which the communication was sent.

Applicants and IP practitioners outside of Europe will likely be relieved to see the end of this Rule, which prompted constant ambiguity regarding deadlines, especially considering that not all EPO communications were subject to the 10-Day Rule.

Since the amended Rule 126(2) goes into effect on November 1, 2023, there will be no immediate change. The EPO press statement suggests that additional information regarding changes to the Rule will be published in upcoming issues of the EPO's *Official Journal*.

In light of this amended Rule, applicants and practitioners representing applicants with European patent applications are advised to provide instructions earlier to ensure they are carried out in a timely manner.

If you have questions regarding how this affects current or future patent applications, please contact John Paul Kale or your Reinhart attorney.

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