

EIP

Farewell to the 10 day rule

From **1 November 2023**, time limits that run from the notification of a communication by the EPO no longer will run from the date of the communication plus 10 days, but from the date that the communication bears. Such time limits for response are indicated by the communication itself, and are typically four months (but sometimes other periods, such as two months).

This “10 day” rule has caused much confusion, both as to precisely which deadlines it applies to, and to its method of calculation. It is also now out of date with respect to current technology, since it assumes notifications will be sent by post, whereas nowadays most European patent attorneys receive EPO correspondence electronically. The crossover period will cause some confusion, but once that is past, EPO deadlines will become significantly easier to understand.

The rule of calculation of deadlines from the date of the communication itself will apply to communications bearing the date of 1 November 2023 or later. Thus, the determinative thing is the communication date, not the deadline date.

There continues to be a safeguard in case a communication is actually not received by its intended recipient, but this has been modified. As before, if receipt of a document is contested by the addressee, the burden of proving that a document has been delivered, and its date of delivery, lies and remains with the EPO. If the EPO cannot prove that a document has been delivered at all, then the document must be reissued and any related deadline is calculated from the new document date.

The modified safeguard relates to late receipt. From 1 November, if the EPO can prove that a document was delivered within 7 days of the date it bears, then the deadline is calculated from the document date and no adjustment is made for the time taken for delivery. If it was delivered more than 7 days after the date it bears, then the deadline is extended by an amount corresponding to the delivery date minus the document date,

minus 7 days. So, for example, if an addressee receives a document 12 days after the date it bears, the response period will be extended by five days.

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Ironically, just as the EPO is abolishing the 10 day rule, the UPC has implemented it for notifications by post (for example postal service of a claim on a defendant).