

Federal Court



Cour fédérale

ANNEX TO NOTICE TO THE PROFESSION
Electronic Filing in the Federal Court
Amended January 5, 2006

Contents

Scope of Electronic Filing

1. Date
2. Approved Service Provider
3. Legal Counsel
4. Intellectual Property Jurisdiction
5. Document Format
6. Paper Copies
7. Originating Documents

Notes about Scope of Electronic Filing

Additional Information

- Confidential documents
- “Signatures”
- Filing deadlines and Deemed date and time of filing
- Receipt of filing
- Court filing fees
- Transaction filing fees
- Service of documents by electronic means
- Public access to documents filed electronically
- Wrong document being filed, or a document filed in the wrong case

Scope of Electronic Filing

Electronic filing of a document in the Federal Court constitutes filing within the meaning of rules 2 and 72 of the *Federal Courts Rules* when consistent with the requirements set out below:

1. **Date:** the document is filed on or after October 3, 2005.
2. **Approved Service Provider:** the document is filed via a service provider approved by the Court. For the purposes of the pilot project, Lexis-Nexis Canada is an approved service provider.
3. **Legal Counsel:** the document is filed by legal counsel authorized to practice in the Federal Court pursuant to section 11 of the *Federal Courts Act*.
4. **Intellectual Property Jurisdiction:** the document is filed in connection with a proceeding that falls within the intellectual property jurisdiction of the Court.
5. **Document Format:** the document is filed in portable document format (PDF). Graphic file attachments (e.g., a scanned exhibit) may be in PDF or tagged image file format (TIFF).
6. **Paper Copies:** paper copies of the document are subsequently filed with the Registry, unless exempted by the Court:
 - (a) for “general sittings” motions, to be filed at the Registry office where the Court will hear the motion no later than 2 p.m. on the last business day preceding the hearing; or
 - (b) for “special sittings” motions, to be filed in accordance with the Court’s direction or order or, if none has issued, to be filed at the Registry office where the Court will hear the motion within 7 days of the electronic filing and no later than 2 p.m. on the last business day preceding the hearing; or
 - (c) for other matters, within 7 days of the electronic filing.

See below for a list of documents for which paper copies need be filed. Important: A print-out of the electronic filing confirmation message must be attached to the paper copies.

7. **Originating Documents:** an originating document may be filed electronically. However, the party must then attend at the Registry with paper copies which can then be issued by the Court for the purpose of service.

Notes about Scope of Electronic Filing

1. Date

Starting October 3, 2005, the project will allow for a six-month period of evaluation and enhancement, and it is anticipated that it will continue thereafter with expanded functionality, such as access for lay litigants and service of documents. Results from the project will be used to assist the Court and the Courts Administration Service in planning for full implementation.

2. Approved Service Provider

All documents filed electronically must be transmitted over the Internet via an approved, bilingual Electronic Filing Service Provider's web site. At the time of issuance of this *Notice*, Lexis-Nexis Canada has been approved as a service provider.

3. Legal Counsel

For the purposes of the pilot project, only those persons who are authorized to practice as a barrister, advocate, attorney or solicitor pursuant to section 11 of the *Federal Courts Act* – or their agent – may file a document electronically in the Federal Court.

A filing will be the sole responsibility of the user whose account was used to file the document. The filer's unique user ID and password will identify the filer and provide an electronic signature for electronically filed documents. User IDs and passwords are obtained from the service provider.

Litigation support staff may register as well. Once a law firm has registered for an account with LexisNexis Canada, the firm may enroll as many lawyers and support staff as required. Each of these individuals will be assigned a unique user ID associated with the firm. The firm has the ability to assign roles and change or rescind user IDs as required.

4. Intellectual Property Jurisdiction

Any document filed electronically must be for a proceeding that falls within the intellectual property jurisdiction of the Federal Court, including:

- Patent - Appeal of a Decision of Commissioner
- Patent Infringement

- Patent Impeachment
- Patent Conflict
- Patent - Correction of Register
- Trade Mark Infringement
- Trade Mark Expungement
- Trade Mark Opposition
- Trade Mark - Appeal of a decision of the Registrar
- Trade Mark - Correction of Register
- Trade Mark - Passing Off
- Copyright Infringement
- Copyright - Correction of Register
- Industrial Design Infringement
- Industrial Design - Correction of Register
- Integrated Circuit Topography - Infringement/Ownership/Rights
- Integrated Circuit Topography - Expungement/Amendment
- S. 18.1 Patented Medicines (Notice of Compliance) Regulations

Law firms with intellectual property litigation before the Federal Court are invited to contact the Electronic Filing Service Provider in order to register for the project.

5. Document Format

Following the proposed court filing standards recommended by the international standards-setting body (Legal XML), it is proposed that all lead documents be submitted in PDF. Attachments to these documents (e.g. exhibits to affidavits, such as scanned items like bills of lading, receipts, photos) may be filed in PDF or TIFF.

Colour documents (e.g. photographs, diagrams) will be accepted electronically. However, the filer must advise the Registry that materials are in colour for those documents which are printed by the Registry (see “Paper Copies” below).

PDF files should be created directly from a word processing program (e.g. Word Perfect). Only those documents which exist *only* in paper format should be scanned.

Filers must submit in PDF or TIFF all documents referenced as exhibits or attachments at the same time as filing the affidavit or other “lead” document.

Filers must not incorporate in their PDF documents any properties that might restrict

or prevent the Court and its staff from viewing, printing or searching the said documents. **Doing so may result in the Court ordering such a document to be struck from the record.**

6. Paper copies

For greater certainty, paper copies of the following documents must be provided to the Registry within the time frames and at the office as indicated above:

- Tribunal Material
- Trial Records
- Transcripts of Cross-Examination
- Factums and Memoranda of fact and law
- Application Records
- Respondent Records
- Appeal / Case Books
- Authorities
- Motion Records
- Affidavits

For documents not included in this list, no paper copy need be filed when the document is filed electronically.

The filer should refer to the rule which normally governs filing of these documents to determine the number of copies and the colour of the cover page required. The electronic filing software application will remind users if the document being filed requires subsequent paper copies to be filed with the Court.

Individual judges' or prothonotaries' specific directions should be followed with respect to filing of documents.

Important: A print-out of the electronic filing confirmation message must be attached to the paper copies.

7. Originating Documents

Originating documents may be filed electronically. However, the party must then attend at the Registry with paper copies which can then be issued by the Court for the purpose of service.

Electronic service of documents is not included within this e-filing pilot project.

Additional Information

Electronic filing of a document constitutes filing within the meaning of rules 2 and 72 of the *Federal Courts Rules* when consistent with the requirements set out above.

Without limiting the generality of the above, the following additional information is provided for greater certainty:

- **Confidential documents**

During the pilot project, documents placed under seal by law or documents for which the filer will be seeking a Court order for confidentiality should not be filed electronically.

- **“Signatures”**

Filers will confirm an onscreen signature attestation and undertaking that provides: “The document we are electronically submitting to the court is an electronic version of the paper document that has been signed by the solicitor of record / affiant. We have the signed document in our client file and will produce it in court if required to do so.”

A filer is not required to scan a document just to prove the presence of signatures - except in instances where a party wishes to demonstrate proof of service of a document which has been endorsed thereon. Electronically filed documents that require original signatures must be maintained in paper form by the filer until one year after all time periods for appeals expire. Upon request of the Court, the filer must provide original signed documents for review.

- **Filing deadlines and Deemed date and time of filing**

Missed filing deadlines caused by delay due to technical difficulties related to Internet access or the Electronic Filing Service Provider’s web site or its system availability will not be excused. Neither will delayed filings due to system or accessibility problems within the law firm’s own technical infrastructure be excused. Note, however, that the Service Provider plans to have its E-Filing web site available at all times, including when Registry offices are closed, other than minimal periods

of scheduled maintenance.

If the Electronic Filing Manager software at the Courts Administration Service is unavailable, the time stamp on the “envelope” submitted by the Electronic Filing Service Provider will be indicative of the applicable date and time of filing for the documents.

Filing a document electronically does not alter any filing deadline that may have been otherwise set for that document. A document that is accepted for filing shall be considered to have been filed at the time the document was submitted for filing, unless the Court orders otherwise. Documents submitted at or before 11:59:59 p.m. (Pacific Time) on a business day will be considered filed on that business day. Documents not submitted on a business day will be considered filed on the next business day.

- **Receipt of filing**

Onscreen acknowledgement of document receipt will be provided to the filer by the Electronic Filing Service Provider’s electronic filing system immediately after submission of the filing envelope and document(s). Filers will later receive an electronic filing confirmation “receipt” for each document submitted, once the Registry has in due course processed the filing and acknowledged whether a document was accepted, referred back to counsel, sent to the Court for directions, etc. For each document that has not been accepted, an electronic notice will be sent to the filer that includes the reason why. Some rejections may be caused by deficiencies such as incomplete transmissions, incorrect information (e.g. wrong court, wrong file number), internal errors within the document or unreadable information.

While the Court and CAS anticipate a timely review of an electronic document that is submitted, the actual filing and acknowledgement may not occur until internal processing, including indexing and docketing, is completed. The Registry will review onscreen each document submitted to ensure its correct handling, as it does with all paper documents that are submitted. When a document has been successfully processed, it will be considered filed as of the time stamp on the submission.

A web “url” link to a proxy of the Court’s copy of the e-filed document and any attachments will be provided to the filer in the filing acknowledgement message. This

allows users to review the Court's version on file to satisfy themselves that it conforms to the original.

- **Court filing fees**

Through Public Works and Government Services Canada, there will be an online payment method called the Receiver General Buy Button (RGSB) where filers will pay their Court filing fees via a credit card. Government of Canada departments are not allowed by Treasury Board regulations to use credit cards to transfer funds from one federal government entity to another, so Justice Department lawyers will have their filing fees charged to their individual offices, following the current practice.

- **Transaction filing fees**

For the initial portion of the pilot project, the service provider Lexis-Nexis Canada plans to waive any fees for counsel using its services for the electronic filing of documents.

- **Service of documents by electronic means**

Not available for the beginning of the project. Parties shall continue to be served with paper copies, or by fax as provided for in the Rules, of any electronically filed document.

- **Public access to documents filed electronically**

For the pilot project, only counsel and litigation support staff to a particular proceeding may view documents pertaining to that proceeding that are stored online at the Electronic Filing Service Provider. However, any person may, as always, review at any Registry office the paper copies of electronic filings that have not been sealed by the Court.

- **Wrong document being filed, or a document filed in the wrong case**

If a document is electronically filed in error, the filer shall immediately notify the Registry, and an officer shall seek further guidance from the Court.