

# United States Court of Appeals for the Federal Circuit

Before RADER, Chief Judge, and NEWMAN, LOURIE, BRYSON, LINN, DYK, PROST, MOORE, O'MALLEY, REYNA, and WALLACH, Circuit Judges.

Per Curiam.

## **ADMINISTRATIVE ORDER REGARDING ELECTRONIC CASE FILING**

Pursuant to Federal Rules of Appellate Procedure 25(a)(2)(D) and 25(c), and Federal Circuit Rule 25(a), the United States Court of Appeals for the Federal Circuit has authorized the filing and service of documents by electronic means. To implement the Case Management/Electronic Case Files (CM/ECF) system, the court hereby adopts the following provisions that will govern the conduct of parties in filing documents electronically with the court, effective on the date established by the court. These provisions may be amended from time to time, as necessary, by further order of the court.

If the provisions of this order conflict with the court's local rules of practice (for example, when a local rule requires a specific number of copies of briefs or other documents to be filed or served), this order shall supersede the requirement of the local rule. If the provisions of this order are silent as to requirements in the local rules of practice, the local rules shall govern.

### **ECF-1. Scope of Electronic Filing System**

Except as otherwise prescribed by Circuit rule or order of the court, cases designated by the court will be assigned to the court's CM/ECF system. Case initiating documents, including petitions for permission to appeal, petitions for review or notices of appeal from agency action, and petitions for writ of mandamus and other original proceedings in this court, must be filed in paper form. Except as otherwise prescribed by Circuit rule or court order, all briefs, appendices, motions, petitions for rehearing, and other documents filed in cases assigned to the CM/ECF system, must be filed electronically using the CM/ECF system by a filer registered in accordance with ECF-2.

## **ECF-2. Registration as an ECF Filer; Passwords; Consent to Service**

(A) Attorneys who appear before this court must register for the court's CM/ECF system. Registration requirements will be posted on the court's web site. Registration for ECF is not a substitute for counsel's entry of appearance in a case. All counsel representing parties in cases must individually enter their appearance in each case pursuant to Federal Circuit Rule 47.3.

(B) A party to a pending case who is not represented by an attorney will not be permitted to register as an ECF filer.

(C) ECF filers agree to protect the security of their passwords and to notify the PACER Service Center and the clerk immediately if they learn that their password has been compromised. ECF filers may be sanctioned for failure to comply with this provision.

(D) Registration as an ECF filer constitutes consent to electronic service of all documents as provided in the Federal Rules of Appellate Procedure and the rules of this court. See Federal Circuit Rule 25(c).

(E) An ECF filer whose e-mail address, mailing address, telephone number, or fax number has changed from that disclosed in the original Registration shall update all information with the Pacer Service Center and shall file a notice of such change with the court and serve the notice on all parties in all cases in which the attorney has entered an appearance.

## **ECF-3. Electronic Signatures**

(A) **The ECF Filer.** The filer log-in and password required to submit documents to the CM/ECF system shall serve as the filer's signature for all purposes under the Federal Rules of Appellate Procedure and the rules of this court. The name of the filer under whose log-in and password a document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear, followed by the signer's firm name, if any, and the mailing address, telephone number, facsimile number, and e-mail address. Graphic and other electronic signatures are discouraged.

No ECF filer or other person may knowingly permit or cause to permit a filer's log-in and password to be used by anyone other than an authorized agent of the ECF filer.

ECF filers may only file documents on behalf of the party(ies) they represent in a case.

(B) **Other Signatures.** Documents requiring signatures of more than one party must be electronically filed by: (1) submitting a scanned document containing all necessary signatures; (2) representing the consent of the other parties on the document; or (3) in any other manner approved by the court. Electronically represented signatures of all parties and ECF filers as described above are presumed to be valid signatures. If any party, counsel of record, or ECF filer objects to the representation of his or her signature on an electronic document as described above, he or she must, within 14 days of the filing, file a notice setting forth the basis of the objection.

#### **ECF-4. CM/ECF Retention Requirements**

**Retention of Documents.** Documents that are electronically filed and require original signatures other than that of the ECF filer (such as an affidavit signed by a person other than the ECF filer) must be maintained in paper form by the ECF filer until the case is terminated with finality with no right of appeal or until such later date as the court prescribes. On request of the court, the ECF filer must provide original documents for review.

#### **ECF-5. Consequences of Electronic Filing**

(A) **The Docket.** Documents shall be deemed filed under the Federal Rules of Appellate Procedure and the Federal Circuit Rules of Practice and shall be deemed entered on the docket maintained by the clerk under Federal Rules of Appellate Procedure 36 and 45(b) when the document is filed with the CM/ECF system in accordance with this order and the court has transmitted back to the ECF filer a Notice of Docket Activity (NDA).

If the court requires a party to file a motion for leave to file, both the motion and the document at issue should be submitted electronically. If leave is granted, the underlying document will remain on the docket; if leave is denied, the court will strike the underlying document.

When a document has been filed electronically, the official record is the electronic document stored by the court, and the filing party is bound by the document as filed. An electronically filed document includes such documents as may be originally filed in paper form and converted into electronic form by the clerk for purposes of the electronic docket.

The electronic version of filed documents, whether filed electronically in the first instance or received by the clerk in paper format and subsequently scanned into electronic format, constitutes the official record in the case. Later modification of a filed document or docket entry is not permitted except as authorized by the court. A document submitted electronically is deemed to have been filed on the date and at the time indicated in the system-generated NDA.

The court will discard paper documents once they have been scanned and made a part of the official record unless the electronic file thereby produced is incomplete or of questionable quality in accordance with judiciary records management policies.

**(B) Time of Filing.** A document filed electronically is deemed filed on the date and at the time stated on the Notice of Docket Activity from the court. Unless a time for filing is specified by court order, filing must be completed before midnight Eastern Time to be considered timely filed that day. Where a specific time of day deadline is set by court order or stipulation, the electronic filing must be completed by that time.

When documents are filed and served electronically on non-business days, timeliness of filing and calculation of responsive deadlines, if any, will begin on the next business day. See Federal Rule of Appellate Procedure 26 and Federal Circuit Rule 26.

**(C) Technical or System Failures.** An ECF filer whose filing is made untimely as the result of a technical or system failure may seek appropriate relief from the court. Delayed filings resulting from a technical or system failure must be accompanied by a declaration or affidavit attesting to the filer's failed attempts to file electronically.

(D) **Rejection or Correction by the Clerk.** The clerk may reject any electronic filing for failure to comply with the Federal Rules of Appellate Procedure, the Federal Circuit Rules, this order, or the court's ECF guidelines (see the ECF User Manual). The clerk may edit an ECF filer's docket entry or the clerk's own entry to correct or supplement the text. Entries edited or corrected by the clerk will be so identified.

## **ECF-6. Service of Documents by Electronic Means**

(A) **Notice of Docket Activity.** The Notice of Docket Activity that is generated by the court's CM/ECF system constitutes service of the filed document on all parties represented by attorneys who have registered for the CM/ECF system. Independent service, either by paper or otherwise, need not be made on any registered ECF filer.

(B) **Certificate of Service.** A certificate of service is required for all documents, and registered ECF filers must comply with Federal Rule of Appellate Procedure 25 and Federal Circuit Rule 25 when filing electronically. The Notice of Docket Activity does not replace the certificate of service required by the rules.

(C) **Parties Not Represented.** Parties not represented by counsel and other parties who are not registered for electronic service through CM/ECF must be served with a paper copy of any document filed electronically through alternate means of service set forth in Rule 25.

(D) **Confidential Documents.** If a document (such as a sealed document or a confidential version of document filed in both public and confidential versions) cannot be served electronically, the filer must serve the document by alternate method in accordance with the Federal Rules of Appellate Procedure and the court's local rules. Also see ECF-8 and ECF-9.

(E) **Electronic Filing on Non-Business Days.** When documents are filed and served electronically on non-business days, timeliness of filing and calculation of responsive deadlines, if any, will begin on the next business day. See Federal Rule of Appellate Procedure 26 and Federal Circuit Rule 26.

(F) **Undeliverable Emails.** Service of a filing to an invalid email address constitutes valid service if the individual has failed to timely provide a current address.

All ECF users must maintain accurate contact information through the PACER Service Center which in turn updates the court. In situations where the attorney is not registered or is exempt from electronic filing, contact information should be provided to the clerk's office pursuant to Federal Circuit Rule 46.

### **ECF-7. Size and Format of Electronic Files**

(A) **File Size.** Documents filed electronically must comply with the file size limits established by the court. Electronic documents which exceed the maximum size limit may not be filed without leave of court. ECF filers should refer to the court's ECF User Manual for file size requirements and limits.

(B) **Format.** Documents filed electronically must comply with the format requirements set forth in the Federal Rules of Appellate Procedure, the Federal Circuit Rules of Practice and this order, and any other requirements established by the court or required by the CM/ECF system.

Before filing a document with the court, an ECF filer must verify its legibility and completeness.

Documents filed electronically must be in Portable Document Format (PDF) which is generated from an original word processing file and is text searchable. PDF images created by scanning paper documents do not comply with this requirement. Appendix items and attachments to an electronically-filed document may be scanned if a word-processing version is not available.

ECF filers should refer to the court's ECF User Manual for document formatting requirements.

## **ECF-8. Exceptions to Requirements for Electronic Filing and Service**

Except for documents listed below, or unless the court directs otherwise, documents filed by an ECF filer in accordance with this order are not to be submitted to the court in paper form.

Unless specifically noted, when paper copies are filed in accordance with this rule, a Notice of Paper Filing filed electronically is not required.

(A) **Pro Se Parties.** A party proceeding pro se must file documents with the court in paper form pursuant to the Federal Rules of Appellate Procedure, the Federal Circuit Rules of Practice, and the Federal Circuit's Guide for Pro Se Petitioners and Appellants. The clerk will convert paper filings into PDF and file them in the ECF system. The version scanned or converted by the clerk will constitute the appeal record of the court as reflected on its docket.

A party proceeding pro se must serve documents in paper form on opposing parties unless the parties have agreed in writing to electronic service between themselves.

Counsel must serve all documents to pro se parties in paper form unless the parties have agreed in writing to electronic service between themselves.

The court will serve all court-issued documents to pro se parties in paper form using conventional methods.

(B) **Petitions for Review and Notices of Appeal.** Petitions for review and notices of appeal filed pursuant to Federal Rule of Appellate Procedure 15 shall be submitted to the court in paper form. All other subsequent filings in the case shall be made using ECF.

(C) **Writs and Other Original Proceedings.** Petitions for permission to appeal and petitions for writ of mandamus or prohibition filed pursuant to Federal Rules of Appellate Procedure 5 and 21, respectively, including any accompanying documents, shall be submitted to the court in paper form. An original and three copies shall be submitted, along with an electronic version on CD-ROM. All other subsequent filings in the case shall be made using ECF.

(D) **Motions.**

1) **Motions Pursuant to Rules 8 and 18.** Motions for stay and emergency relief pursuant to Federal Rules of Appellate Procedure 8 and 18, including any accompanying documents, shall be submitted to the court in paper form only for cases which are not yet opened in ECF. An original and three copies shall be submitted, along with an electronic version on CD-ROM. All other subsequent filings in the case shall be made using ECF.

2) A motion to file documents under seal or to seal an entire case file may be filed electronically unless prohibited by law, local rule, or court order. If the court grants the motion, the order authorizing the filing of documents under seal may be filed electronically unless prohibited by law.

3) A motion for exemption from the court's ECF requirements may be submitted in paper form in original and three copies.

(E) **Sealed Cases.** For a case in which the entire docket is sealed from public view, counsel shall serve paper copies of all documents and file with the court an original and three copies in paper. Documents in sealed cases shall be submitted to the court in a sealed envelope containing on its face a conspicuous notation that it contains "DOCUMENTS UNDER SEAL," or substantially similar language, and shall have attached to the envelope a paper copy of the order authorizing the filing of the documents under seal.

(F) **Sealed Documents.** For individual sealed documents in cases which are not sealed, counsel shall serve paper copies of the sealed documents and file with the court an original and three copies in paper. Sealed documents shall be submitted to the court in a sealed envelope containing on its face a conspicuous notation that it contains "DOCUMENTS UNDER SEAL," or substantially similar language, and shall have attached to the envelope a paper copy of the order authorizing the filing of the documents under seal.

Also see ECF-9 for electronic filing and service of documents prepared in nonconfidential and confidential versions.

(G) **Complaints of Attorney Misconduct.** Documents relating to complaints of attorney misconduct shall be filed in paper form in the manner prescribed by the court's rules and procedures.

(H) **Other Documents.** Exhibits, attachments, or appendices that are not in a format that readily permits electronic filing such as those which are illegible when scanned or which, because of their odd shape, are unable to be scanned into electronic format, may be filed in paper form without leave of court.

Documents filed pursuant to this section must be served by an alternate method of service authorized by Rule 25.

If such documents are submitted with a brief or appendix, an original and six copies must be filed. For all other filings under this section, an original and three copies must be filed. Two copies shall be served on other parties. The service and filing of all documents must occur within the time permitted by the rules.

In addition to service and filing of paper copies under this section, counsel must file electronically a Notice of Paper Filing. The notice must specify why the document qualifies for an exception under this rule. The Notice of Paper Filing must be filed in ECF simultaneously with the transmittal of the paper documents by alternate method.

(I) **Exceptions to Electronic Filing.** These exceptions to electronic filing do not apply to documents exceeding the allowable electronic file size authorized by the court. Documents exceeding file size limits may not be filed in alternate form except by leave of court. See ECF-7.

#### **ECF-9. Confidential and Nonconfidential Versions of Filings**

A) **Confidential and Nonconfidential Versions.** When confidential and nonconfidential versions of documents are filed pursuant to the Federal Circuit Rules of Practice, the nonconfidential version must be filed in ECF using the standard ECF entry and the confidential material must be filed in ECF using a separate entry designated by the court specifically for non-public documents (such as, for example, BRIEF/APPENDIX TENDERED CONFIDENTIAL for briefs and appendices or CONFIDENTIAL DOCUMENT SUBMITTED for all other documents). This separate entry for confidential briefs and documents automatically limits access to the electronic document to the court only.

**B) Service of Confidential Documents.** Confidential versions of documents filed using the required ECF entry will not be electronically served on other parties by the CM/ECF system. Electronic versions of confidential documents must be served by alternate method in accordance with the Federal Rules of Appellate Procedure and the Federal Circuit Rules.

**C) Electronic Access to Confidential Versions.** Electronic access to confidential versions of documents is restricted to the court only.

#### **ECF-10. Paper Copies of Electronic Filings**

**(A) In General.** When a document is filed electronically using ECF, paper copies are not required to be submitted to the court with the exception of the documents identified in this section or otherwise directed by the court.

Paper copies of electronically filed documents must be identical to the electronic version.

Paper copies of electronically filed documents are for the court's use only and are not available to the public through the clerk's office. Paper copies submitted under this rule do not need to be served on other parties.

When paper copies are filed in accordance with this rule, a Notice of Paper Filing filed electronically is not required.

**(B) Briefs.** In addition to filing electronically, counsel shall submit to the court six paper copies of each formal principal brief, response or reply brief, supplemental brief, or amicus brief permitted or ordered by the court. Paper copies of briefs shall be in the format specified by the Federal Rules of Appellate Procedure and the Federal Circuit Rules and shall be filed within five days of the court's acceptance of the brief in ECF unless another time is specified by the court.

If confidential and nonconfidential versions of the brief are filed in ECF, paper copies of only the confidential version are required to be submitted to the court.

(C) **Appendix.** In addition to filing electronically, counsel shall submit to the court six paper copies of the joint appendix and any supplemental appendix permitted or ordered by the court. Paper copies of appendices shall be in the format specified by the Federal Rules of Appellate Procedure and Federal Circuit Rules and shall be filed within five days of the court's acceptance of the appendix in ECF unless another time is specified by the court.

If confidential and nonconfidential versions of the appendix are filed in ECF, paper copies of only the confidential version are required to be submitted to the court.

(D) **Petitions for Rehearing or En Banc Hearing or Rehearing.** In addition to filing electronically, counsel shall submit to the court the following paper copies of the petition and any related response, reply, or amicus brief permitted or ordered by the court:

- 1) Petition for panel rehearing: 3 paper copies
- 2) Petition for en banc hearing or rehearing: 16 paper copies
- 3) Combined petition for panel and en banc rehearing:  
16 paper copies

Paper copies of the petition and any response, reply, or amicus brief shall be in the format specified by the Federal Rules of Appellate Procedure and the Federal Circuit Rules and shall be filed within two business days of the filing of the petition, response, reply, or amicus brief in ECF unless another time is specified by the court.

If the petition, response, reply, or amicus brief is accompanied by a motion for leave to file, paper copies of the motion shall also be submitted in the quantity required by this provision.

If confidential and nonconfidential versions of the document(s) are filed in ECF, paper copies of only the confidential version(s) are required to be submitted to the court.

(E) **Briefs in En Banc Cases.** Unless otherwise ordered by the court, if an appeal is to be heard or reheard by the court en banc, in addition to filing electronically, counsel shall submit to the court the following paper copies of the briefs and any related response, reply, appendix, supplemental brief, or amicus brief permitted or ordered by the court:

1) **Briefs and Appendices.** Briefs and appendices (for initial hearing en banc): 28 paper copies shall be filed within five days of the court's acceptance of the brief in ECF unless another time is specified by the court.

2) **Original Briefs and Appendices.** Original briefs and appendices (in cases where briefs were filed in ECF prior to the court's order granting an en banc hearing or rehearing): 28 paper copies shall be filed within seven days of the court's order granting en banc hearing or rehearing unless another time is specified by the court.

3) **Supplemental Briefs or Appendices and Amicus Briefs.** Supplemental briefs or appendices and amicus briefs ordered or permitted by the court: 28 paper copies shall be filed within five days of the court's acceptance of the supplemental brief or appendix or amicus brief filed in ECF unless another time is specified by the court.

Paper copies shall be in the format specified by the Federal Rules of Appellate Procedure and the Federal Circuit Rules, or as specified in the court's order.

If a brief is accompanied by a motion for leave to file, paper copies of the motion shall also be submitted in the quantity required by this provision.

If confidential and nonconfidential versions of the document(s) are filed in ECF, paper copies of only the confidential version(s) are required to be submitted to the court.

(F) **Other Documents.** The court may direct counsel to provide paper copies of any other document filed in ECF not specified in this rule.

Except as provided in this rule and ECF-8, no other documents may be submitted by counsel to the court in paper form except by leave of court.

## **ECF-11. Entry of Court-Issued Documents**

(A) Except as otherwise provided by local rule or Court order, all orders, opinions, judgments, and other court-issued documents in cases filed and maintained in the CM/ECF system will be released electronically in accordance with these rules. Such release will constitute entry on the docket kept by the clerk under Federal Rules of Appellate Procedure 36 and 45(b). Electronic transmission of the Notice of Docket Activity to registered ECF users constitutes the notice and service required by the Federal Rules of Appellate Procedure.

(B) Any order, opinion, judgment or other court-issued document released electronically without the original signature of a judge, clerk, or authorized court representative shall have the same force and effect as if signed.

(C) The clerk must give notice in paper form to a person who has not consented to electronic service in accordance with the Federal Rules of Appellate Procedure.

## **ECF-12. Privacy Protection**

(A) Unless the court orders otherwise, all parties, including those not represented by counsel, must refrain from including or must redact the following personal data identifiers from documents filed with the court to the extent required by Federal Rule of Appellate Procedure 25:

- **Social Security numbers.** If an individual's Social Security number must be included, use the last four digits only.

- **Financial account numbers.** If financial account numbers are relevant, use the last four digits only.

- **Names of minors.** If the involvement of an individual known to be a minor must be mentioned, use the minor's initials only.

- **Dates of birth.** If an individual's date of birth must be included, use the year only.

- **Home addresses.** If a home address must be included, use the city and state only.

(B) **Internet Publication.** If a party refers in appendices to materials containing security, privacy or other sensitive information that such party determines for good reason and in compliance with court rules should not be made available to the public on the Internet through Pacer, two versions of the appendices must be filed: a nonconfidential, public version with the sensitive materials redacted, and an unredacted confidential version of the full document. See ECF-9.

1) **Responsibility for Redactions.** The responsibility for redacting restricted materials from the appendices and for assuring that all materials contained in the nonconfidential, public versions of the appendices are freely available for publication on the Internet through Pacer rests solely with the parties and their counsel. The clerk will not review documents filed for compliance with this rule.

(C) **Filer Responsibility.** The filer bears sole responsibility for ensuring a document complies with these requirements. The clerk will not review each pleading for compliance with this rule.

### **ECF-13. Exemption from Electronic Filing**

Upon motion and a showing of good cause, the court may exempt a party from the electronic filing requirements and authorize filing by means other than use of the CM/ECF system.

SO ORDERED.

Dated: May 17, 2012

FOR THE COURT:

/s/ Jan Horbaly  
Jan Horbaly, Clerk