

## Global Overview of Notary Requirements

27 July 2020

In light of the COVID-19 pandemic, many firms find themselves subject to social distancing, stay-at-home, and other safety measures that make it difficult to meet the in-person needs of various notary and authentication methods. Some governments, in response, have altered certain requirements to allow parties to obtain notarization and authentication of documents even in these difficult time.

In the United States, for example, many states have responded by passing statutes or executive orders that allow for “Remote Online Notarization” (RON) which obviates the need to meet in person with a notary public. Before the COVID-19 pandemic, 23 states had had such laws in place (Arizona, Florida, Idaho, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington and Wisconsin). However, in light of the circumstances, many states, such as New York and Illinois, have passed temporary actions which allows for RON during the pandemic.

Further, given the international nature of many transactions in the modern world, many businesses still find themselves in need of cross-border authorization of documents. While the Hague Apostille Convention (<https://www.hcch.net/en/instruments/specialised-sections/apostille>), created in 1961, provided a means for such international verification, many states and countries have had to alter their processing of these Apostilles requests in response to COVID-19 and parties must keep such changes in mind while conducting their business.

Beyond general signature requirements, some patent offices have altered their own signature requirements to assist customers during the COVID-19 crisis. We have also provided a brief chart outlining these procedures

In order to ensure that our clients are able to stay up-to-date on current state/national practices in light of COVID-19, we have prepared the below chart which shows the altered procedures of various notary, Apostille, and patent offices throughout the world.

† - Operations temporarily altered due to COVID-19

\*- See Comment for further information

## Overview of Notary Requirements in Certain Contexts

Region/Country		Active Notaries	eSignature Allowed?	Remote Online Notarization (RON)	Accepting Apostille Requests	Comments
United States		Yes	Yes	-	<a href="#">Yes<sup>†*</sup></a>	Apostilles requests accepted by mail only
	<a href="#">California</a>	Yes	Yes	No*	<a href="#">Yes<sup>†*</sup></a>	RON: Accepted from other states Apostilles requests accepted: Everywhere by mail; Sacramento Office drop off; LA Office not available for drop off
	<a href="#">Colorado</a>	Yes	Yes	Yes <sup>†*</sup>	<a href="#">Yes</a>	RON: Until further notice
	<a href="#">Illinois</a>	Yes	Yes	Yes <sup>†</sup>	<a href="#">Yes</a>	
	<a href="#">New Jersey</a>	Yes	Yes	Yes <sup>†*</sup>	<a href="#">Yes</a>	RON: Authorized until Governor rescinds executive order
	<a href="#">New York</a>	Yes	Yes	Yes <sup>†*</sup>	<a href="#">Yes<sup>†*</sup></a>	RON: Through August 5 Apostilles requests accepted by mail only
	<a href="#">Pennsylvania</a>	Yes	Yes	Yes <sup>†*</sup>	<a href="#">Yes</a>	RON: Limited to POAs, wills, and guardianship
	<a href="#">Texas</a>	Yes	Yes	No	<a href="#">Yes</a>	RON: available for real-estate instruments, self-proved wills, durable or medical POA, directive to a physician, and certain oaths
	<a href="#">Virginia</a>	Yes	Yes	Yes	<a href="#">Yes<sup>†*</sup></a>	Apostilles requests accepted by mail only
	<a href="#">Washington, DC</a>	Yes*	Yes	No	<a href="#">No<sup>†</sup></a>	Contact (202) 727-3117 for notary assistance

US Embassies <sup>1</sup>						
Americas	<a href="#">Brazil</a>	No <sup>†</sup>	No	No	No	
	<a href="#">Canada</a>	Yes*	No	No	No	Select Offices are open for appointments, but many appointments are already filled,
	<a href="#">Mexico</a>	Yes <sup>†</sup> *	No	No	No	Those with appointments after March 18 may be asked to reschedule
Europe	<a href="#">France</a>	Yes*	No	No	No	Select offices are open, however appointments for notary services are limited.
	<a href="#">Germany</a>	No	No	No	No	
	<a href="#">Ireland</a>	No <sup>†</sup>	No	No	No	
	<a href="#">United Kingdom</a>	No <sup>†</sup>	No	No	No	
Asia	<a href="#">China</a>	Yes	No	No	No	
	<a href="#">India</a>	No <sup>†</sup>	No	No	No	
	<a href="#">Japan</a>	Yes* <sup>†</sup>	No	No	No	Notary services are available only in Osaka/Kobe, Fukuoka, and Naha Consulates are available by appointment only.
	<a href="#">Singapore</a>	Yes <sup>†</sup> *	No	No	No	Must have a confirmed appointment to enter the building
	<a href="#">South Korea</a>	Yes <sup>†</sup> *	No	No	No	Must have a confirmed appointment to enter the building
	<a href="#">Taiwan</a>	Yes <sup>†</sup> *	No	No	No	Must have a confirmed appointment and wear protective mask to enter the building
Oceania	<a href="#">Australia</a>	No <sup>†</sup>	No	No	No	

<sup>1</sup> Please note that Embassies and Consulates, even though closed for notarial appointments, can still provide emergency services. For more information, please visit the appropriate embassy website.

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Foreign Jurisdictions						
Americas	<a href="#">Brazil</a>	Yes	Yes <sup>†</sup>	Yes <sup>†</sup>	<a href="#">Yes</a>	
	<a href="#">Canada</a>	Yes	Yes*	No	No	See province websites for specific guidance
	Mexico	-	-	-	Yes	
Europe	<a href="#">France</a>	Yes	Yes <sup>†*</sup>	Yes	<a href="#">Yes</a>	Through August 10, 2020
	<a href="#">Germany</a>	Yes	No	No	<a href="#">Yes</a>	Apostilles requests: Prefer submission by mail
	<a href="#">Ireland</a>	Yes	No	No	<a href="#">Yes<sup>†*</sup></a>	Apostilles requests: Submission by mail only
	<a href="#">United Kingdom</a>	Yes	No	No	<a href="#">No<sup>†</sup></a>	
Asia	China	Yes	No	No	<a href="#">Yes</a>	
	<a href="#">India</a>	Yes	No	No	<a href="#">Yes</a>	
	<a href="#">Japan</a>	Yes	No	No	<a href="#">Yes<sup>†*</sup></a>	Apostilles request: Submission by mail only
	<a href="#">Singapore</a>	Yes	No	No	No	
	South Korea	-	-	-	Yes	
	<a href="#">Taiwan</a>	Yes	No	No	No	
Oceania	Australia	-	-	-	<a href="#">Yes</a>	

## Overview of Overview of Signature Requirements for Certain Patent Offices

The below chart is intended to provide a basic overview of current practices in some of the more commonly used patent offices in the world. Notary services are still operating in many regions, providing one possible means of obtaining secure, effective signatures. Our attorneys and staff are always available to answer any questions you might have and provide the services you require in order to prosecute patents in the U.S. and abroad. As we continue to practice in this area, we will supplement this table with additional practice notes that reflect current best practices and other information that can be helpful to those practicing in this area.

Region/Office		Documents Requiring a Handwritten Signature	Electronic Services (e.g. DocuSign) Accepted?	Types of Electronic Signatures Accepted <sup>2</sup>	Processes Apostilles Requests	Comments
Americas	USPTO	None <sup>†</sup>	Yes	All	No	
	CIPO (Canada)	None <sup>†</sup>	Yes	All	Yes	
Europe*	EPO	Assignments & POAs	Yes	Facsimile, S-Signature, EDS, and QES	Yes	Beyond traditional electronic signature, the EPO (and several European countries) has issued special “qualified electronic signature” smart card
	DPMA (Germany)	None	Yes*	QES	No	

<sup>2</sup> There are a variety of electronic signature types. For the purposes of this chart, we have considered several which appear to apply to most electronic signatures: Facsimile (e.g. image of handwritten signature submitted by fax); S-Signatures (e.g. /John Doe/); Font Type (e.g. *John Doe*); enhanced digital signatures (“EDS”) (e.g. DocuSign) and qualified electronic signatures (“QES”) (e.g. smart cards issued by the EPO).

						For filing of patent documents through the DPMA's online service, a QES through an issued smart card is required
	INPI (France)	None	Yes	All	No	
	UKIPO (UK)	Certain assignments*	Yes	All	No	The Office usually requires a handwritten signature on assignments of EP Applications
Asia	CNIPA (China)	None	Yes	All*	No	Under Chinese law, electronic signatures will be accepted in almost all circumstances when meeting a minimum standard of "reliability," which is met by most standard forms of electronic signatures, including DocuSign services
	JPO (Japan)	All*	No	-	No	The JPO requires original documents for submission, including assignment documents.
	KIPO (South Korea)	None	Yes	All	No	
Oceania	IP Australia	None	Yes	All	No	

## Supplemental Information

## *European Patent Office*

While the EPO does accept electronic signatures for *most* documents, the Office has not been accepting electronic signatures for all documents. Specifically, assignment documents pose a potential problem for applicants seeking patent protection in the EU. We have identified three situations in which assignments might be relevant to an application as well as the best practices to avoid encountering any issue with your applications.

- 1) New Application before the EPO – For new applications (i.e. those which do not claim priority to a foreign patent application or which are a national stage entry of a PCT application), the EPO requires the written signature of both parties to the assignment. The bare language of EPC Article 72 states that “An assignment of a European patent application shall be made in writing and shall require the signature of the parties to the contract.” Luckily for applicants, during the COVID-19 crisis, these assignments can be signed separately by the parties and scanned before being submitted. So, where it is unreasonable or impossible for the parties of an assignment to meet and sign a single document during COVID-19, the parties can instead each separately sign identical assignment documents and submit scanned versions to the EPO.
- 2) Application claiming priority to a foreign application – Where a European application claims priority to a foreign patent application (for example, a U.S. Provisional application or similar), the EPO generally will not question the right of the applicant to file the application. However, the EPO Guidelines for Examination A-III 6 require that an applicant for an EU patent may claim priority where “the applicant for the European patent was the applicant, or is the successor in title to the applicant, who made the previous application.” The applicant must have this right *before* filing the EU application and the transfer of rights have been valid *under relevant national provisions*. As such, foreign assignments of foreign applications are valid for the purpose of priority before the EPO and electronic signatures can be used, so long as the foreign assignment allows them. For example, where a U.S. Provisional application has been assigned using an electronic signature (as allowed by the USPTO), this assignment will be valid before the EPO and an applicant filing an EU application need not execute a new written assignment before the EPO (though they may need to provide a copy of the U.S. assignment upon request by the EPO).
- 3) PCT Applications – If an assignment becomes required while the application is still pending in WIPO, but has not yet entered the national phase in the EU, then an assignment using an electronic signature can be filed with WIPO, and no further assignment is needed before the EPO. However, if the EP application already exists (and the 31 month PTC entry date has passed) then, according to current EPO rules, a written assignment document is required to make an effective assignment.

While the safest course of action will depend heavily upon the particular circumstances of an application, we hope that these observations and suggestions can serve as a preliminary guide to ensuring that assignments and documents before the EPO are valid and accepted.

Please do not hesitate to reach out to us with further questions, though, and we will be happy to provide further guidance in light of your particular circumstances.

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