

## **(Update): COVID-19 Is Impacting IP Filings, Litigation and License Agreements**

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COVID-19's impact has extended to intellectual property cases in the courts, US Patent and Trademark Office (USPTO) and patent and trademark offices abroad. In the IP licensing context, it has brought to the fore certain key issues in agreements that may need to be considered in the near term.

The purpose of this Alert is to provide a quick summary of what you need to know and the current status in the courts, as well as patent and trademark offices both in the US and abroad. Because things are changing quickly, we will continue to monitor and update these developments.

### **The USPTO**

- *Fully Operational:* The USPTO remains fully operational, but subject to the following limitations:
  - USPTO offices were closed to the public beginning Monday, March 16, 2020 until further notice. Only employees who have been told to report to work will be at the office. Otherwise USPTO employees are continuing to work remotely.
  - *No In-Person Interviews:* Examiner and examining attorney interviews, Patent Trial and Appeal Board (PTAB) and Trademark Trial and Appeal Board (TTAB) oral hearings, and other similar in-person meetings with parties and stakeholders scheduled to take place at USPTO offices on or after Friday, March 13, 2020 will be conducted remotely by video or telephone. Parties will receive further instructions on how to participate by video or telephone in advance of the interview, hearing, or meeting.
  - *Certain Filing Deadlines Extended by 30 Days:* Originally, USPTO filing deadlines were not waived and the United States Patent and Trademark Office (USPTO) indicated that it would instead consider the effects of the coronavirus to be an "extraordinary situation" within the meaning of 37 CFR 1.183 and 37 CFR 2.146 for

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affected patent and trademark applicants, patentees, reexamination parties, and trademark owners, and therefore, waiving petition fees in certain situations for customers impacted by the coronavirus who may have missed a deadline. However, after the passage of the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, which authorized the USPTO to extend deadlines, the USPTO announced that it would be extending certain patent filing deadlines which otherwise would have been between March 27, 2020 and April 30, 2020 by 30 days. These include deadlines to file responses to Office Actions, issue fees, notices of appeal, appeal briefs, and maintenance fee payments due for small or micro-entities, provided that the delayed filing or payment is accompanied by a statement that the delay is due to the COVID-19 outbreak (i.e., that the outbreak materially interfered with timely payment or filing). [See here](#).

- *No Original Signatures Required*: No documents will require original handwritten signatures.

## Patent Filings on COVID-19 Technology

- We have seen and others have reported on new inventions being filed on ventilators, treatments and other new inventions aimed at COVID-19. [See here](#). Generally speaking, the USPTO awards a patent to the “first to file” so delaying the filing of patent applications until the restrictions are lifted may jeopardize your ability to obtain patent protection.

## Non-U.S. Patent Offices

- [European Patent Office](#)
  - Currently, Vienna employees work from home.
  - Pending further notice, the EPO has decided to postpone all oral proceedings in examination and opposition proceedings scheduled until April 17, 2020 unless they have already been confirmed to take place by means of videoconferencing.
  - No oral hearings at the Board of Appeals until April 17, 2020.
  - All time limits expiring on or after 15 March 2020 have been extended until 17 April 2020. As regards time limits expiring before 15 March 2020, the EPO has facilitated the use of legal remedies for users located in areas directly affected by disruptions due to the COVID-19 outbreak.
- Japanese and Korean Patent Offices:
  - No apparent changes.
- Israeli Patent Office:

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- The Israeli Patent Office is not accepting visitors until further notice. Hearings are canceled until after Passover (April 20). [See here](#).

- Other significant closures were recently summarized [here](#).

## U.S. Courts

Several U.S. courts have issued restrictions:

- There are no jury trials being currently conducted in most Federal Courts in civil cases, including Delaware, Northern District of California, Southern District of New York and Connecticut. The Eastern District of Texas requires disclosure if the proceedings will involve anyone potentially exposed or infected by coronavirus.
- Once restrictions are lifted, affected courts will undoubtedly be backlogged.
- The Federal Circuit is not having live oral argument and is not requiring paper copies of filings made after March 2.
- New York State Courts are not accepting new contract or trade secret cases, limiting activities to criminal matters and urgent civil matters (e.g., appointment of a guardian).

## Licensing and Contracts

If the requirements of a license become burdensome due to the change in business as a result of the pandemic, a licensee should review the contract for relief clauses or a force majeure clause. “Catch-all” language that may be included with regard to defined “force majeure “events (e.g., “any other event beyond a party’s reasonable control” and the like) may not afford protection in some states, at least where a particular risk is foreseeable. Surely, virus outbreaks and pandemics should be added to force majeure clauses when drafting new licenses or contracts.

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