

CORONAVIRUS INFORMATION & UPDATES

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Inventive Asia: U.S. IP Courts/USPTO Issue New Guidelines in Response to COVID-19

In response to the current COVID-19 crisis and public health guidance, courts and agencies around the country have implemented new procedures. In the intellectual property world, the United States Patent and Trademark Office (USPTO), district courts, the Federal Circuit (CAFC), and the International Trade Commission (ITC) have all taken measures aimed at reducing the potential transmission of the virus.

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USPTO

On March 31, 2020, the USPTO issued guidance permitting 30-day extensions to the time allowed to file certain patent-related documents and to pay certain required fees. These actions are an exercise of temporary authority provided to the USPTO by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), which went into effect on March 27.

The guidance applies to certain filing deadlines falling between March 27, 2020 and April 30, 2020, inclusive. The 30-day extensions are available upon request to parties and practitioners affected by the COVID-19 outbreak. The guidance simply requires a statement that the party or practitioner was personally affected by the outbreak, but quite generously defines those potentially affected.

Certain PTAB deadlines may be extended, including patent owner preliminary responses (POPRs). These extensions may delay institution decisions as the PTAB has discretion to further extend institution decisions. The guidance does not provide automatic extensions of PTAB trial schedules, as parties are always free to stipulate to new dates, but specific requests might be made to extend trial schedules beyond 12 months in limited circumstances. Many patent prosecution and reexamination deadlines, including replies to office actions, are also eligible for 30-day extensions. Notably, however, application filing deadlines are not identified as eligible for extension under this guidance.

The PTO's earlier guidance issued on March 16, 2020 (prior to passage of the CARES Act) remains in effect. That guidance waived fees for petitions to revive patent and trademark applications that had lapsed due to the COVID-19 outbreak, but without Congressional authorization, the PTO could not extend statutory deadlines. The PTO's new guidance, authorized by the CARES Act, fills that gap.

The PTO also issued guidance permitting similar extensions for filing trademark-related documents and fees.

District Courts

District Courts that commonly deal with intellectual property cases have taken a wide range of actions to respond to COVID-19. Generally, these courts have delayed imminent jury trials, while allowing electronic filing and other activity to continue.

On March 16, the Eastern District of Texas issued an order continuing all jury trials scheduled to begin between March 16, 2020 and May 1, 2020 to a date to be set by each presiding judge. The order does not continue any pending deadlines other than trial dates. On March 18, 2020, the District of Delaware ordered the continuation of all jury trials in the district

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scheduled to begin before April 30, 2020. Electronic case filing was not affected by the closure. In California, the Northern District issued an order stating that courthouses are closed to the public until May 1, 2020 and no jury trials will be commenced before that date. Similarly, the Central District of California continued all jury trials until April 16, 2020, with judges maintaining discretion to schedule and hold proceedings, hearings, and conferences by telephone or video.

CAFC

For the April sitting, the Federal Circuit is removing some cases from the oral argument calendar, to be submitted on the briefs. For the cases that remain, if either party is located outside of the National Capital area, arguments will take place by videoconference. Additionally, the court issued guidance regarding electronic service of process, and suspending all requirements to provide paper copies of documents that are submitted electronically.

ITC

On March 12, the ITC postponed all section 337 in-person hearings scheduled to take place before May 12, 2020. The Commission is scheduled to reassess this schedule on April 24, 2020 for the possibility of additional postponements. Effective March 17, the ITC building is closed with all employees working remotely. The ITC is only accepting electronic filings at this time.