

IP Protection During Covid-19 Pandemic – What do Businesses Need to Know?



We are currently being overwhelmed with all the information and news we receive on Covid-19. All the countries, businesses and industries are concerned. It is, therefore, not surprising that also some IP topics are discussed in this regard. These include, in particular, compulsory license provisions in response to public health emergencies, research and development co-operations and IP protection for suitable vaccines, effective medication and tracing apps. Of course, the ongoing IP rights management, new registrations and

pending litigations are affected as well. The respective reactions from some foreign and domestic IP offices and courts are briefly highlighted below.

1. IP Filings

Most of the countries have ordered quarantines, travel restrictions and physical distancing practices in order to get the COVID-19 pandemic under control. IP offices worldwide

have responded to these day-to-day changes in various ways. Although many IP offices have temporarily closed their physical offices to the public until further notice, most of their online services continue without interruption.

a. Singapore

Singapore has announced various relief measures during the Circuit Breaker period which has recently been prolonged until 1st of June 2020. Whereas the physical premises of the Intellectual Property Office of Singapore (IPOS) are closed, all e-filing services continue to operate and all filing deadlines have been extended. No face-to-face consultations take place until further notice and all e-appointments are conducted via telephone calls, emails and/or via tele-conferencing.

Singapore's e-filing services are highly efficient and most services can already be used remotely. However, some services are suspended: Currently, it is not possible to send facsimile and do manual submissions, send correspondence via post, obtain certified hard copies and have documents certified, use the Commissioner for Oath Services and book face-to-face consultations.

b. USA

On 15 March 2020, The United States Patent and Trademark Office (USPTO) announced that it will be closing their physical offices but all the USPTO services will continue to be available and deadlines are extended for certain trial and appeal board matters.

Fee waivers will be granted for petitions to revive a trademark or patent application or registration if the application or registration was abandoned or cancelled due to an inability to file a timely response to the IP right-related communications because of the coronavirus outbreak. Further, the USPTO has waived the requirement for an original handwritten signature for certain type of correspondence. Some facilitation measures are now available with regard to the copyright protection, such as, modified timing provisions, expanded electronic submission options and temporary relief for claims with physical deposits.

c. Europe

The European Patent Office (EPO) has announced that all patent-related deadlines set to expire are extended. Further, the timelines for filing documents in certain cases will be adjusted if a delay is caused by the coronavirus outbreak. After the World Health Organization (WHO) characterized the coronavirus outbreak as a pandemic, also the European Intellectual Property Office (EUIPO) decided to extend all time limits expiring in April.

d. WIPO

The World Intellectual Property Organization (WIPO) announced on 20 March that it will continue its regular operations under the Patent Cooperation Treaty, the Madrid System for the International Registration of Marks, the Hague System for the International Registration of Industrial Designs, the Lisbon System for the International Registration of Geographical Indications, and several other IP systems. The physical offices have been closed and only a limited number of persons are retained on-site at the headquarters of the WIPO in Geneva, Switzerland. Due to ongoing disruptions in global postal services, the WIPO announced that it would deliver its correspondence electronically for the time being.

2. IP Disputes

IP infringements will, of course, also take place during COVID-19 and it remains crucial to monitor these and act accordingly in order to protect your businesses' valuable assets. Even if most oral hearings are suspended or there are delays, it is still possible to send a warning letter or take other actions.

a. Singapore

During the Circuit Breaker period, the Supreme Court and other courts will only hear essential and urgent matters. These matters will be heard, as far as possible, by electronic means of communication without requiring physical attendance before the Courts. The Courts' Registries and other court services remain operational but parties should not be visiting the Courts to tender any hard copies of any documents; they may continue to file documents electronically using the Courts' online case management systems.

b. USA

Many courts, such as the US Court of Appeals for the Federal Circuit, have clarified that parties may electronically service documents outside of the court's electronic filing system by another electronic means if the recipient has consented to such service in writing.

c. Europe

Also the Court of Justice of the European Union announced the extension of certain time limits prescribed in ongoing proceedings with the exception of proceedings which are deemed urgent. All oral proceedings in examination and opposition proceedings scheduled until 30 April 2020 are postponed, but there is a pilot project for holding opposition proceedings by videoconference.

d. WIPO

WIPO's Arbitration and Mediation Center continues to receive and administer cases submitted under the WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules. All new requests shall be submitted electronically via email or the WIPO IP Portal form. The WIPO Rules offer considerable procedural flexibility which allows for the necessary procedural adjustments.

3. Outlook

Many IP authorities worldwide already offer highly effective remote services which allow for uninterrupted operations, but here are obviously some differences in the advancement of the remote services offered from office to office. Whereas some countries like Singapore already enable the possibility to apply for a trademark via a mobile phone app, other countries still require the submission of original documents but at the same time are extending the deadlines to cope

with this special situation. We can see, however, the tendency that many authorities currently improve their online services and soften their requirements to submit original documents. In some countries court hearings already take place by electronic means without physical presence. The pilot projects for conducting oral hearings by videoconference might as well bring significant changes in the way disputes will be managed also after the crisis.

Despite the difficulties in meeting certain deadlines and coping with other outbreak-related obstacles, businesses should continue monitoring their IP rights, file for IP protection to ensure priority, and enforce their IP rights whenever necessary to avoid that a significant asset of their business is lost or loses in value.

Lastly, the outbreak might show new opportunities to develop innovative health solutions targeting the new healthcare needs and point out research and development opportunities.

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