
Hughes Hubbard & Reed

UPDATE - COVID-19 Impact on IP Owners and Litigants in France and the EU – Deadlines, Extensions and Operations of Courts and IP Offices - Update as of June 12, 2020

Client Advisories

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June 12, 2020 - In France, the government declared a national state of public health emergency for a period starting March 24, and ending on May 24. This period has now been extended up to and including July 10. The measures taken by the French government include an Order of March 25 that extended many legal deadlines from March 12 to May 12 and an Order of May 13 that extended many deadlines from May 12 to June 23.

These measures do not apply to European Union, or international Intellectual Property Offices (EUIPO, EPO, WIPO) nor to the EU Court of Justice (CJEU), which have each provided their own directions.

Even though Courts and IP Offices have granted extensions, suspensions and postponements, IP owners and litigants should when possible proceed diligently with any necessary steps and legal action that they would ordinarily take in order to avoid likely procedural bottlenecks after the pandemic and state of public health emergency(-ies) end.

France

In France, the postponement mechanism provides that any act or formality required by law or regulations under penalty of invalidity, sanction, lapse, foreclosure, time-bar, non-enforceability or inadmissibility that should have been carried out between March 12 and June 23 inclusive in France shall be deemed to have been effected in time if the act or formality is carried out within a deadline not exceeding, from the end of the state of emergency, the time legally allowed to carry out the act or formality, up to a maximum of two months (if the period in which to carry out the act or formality exceeds 2 months).

Legal deadlines, acts and formalities that expired or were due before March 12, or will expire or become due after June 23 remain unchanged.

- **French Courts**

Proceedings for summary hearings are managed by the central registry and the procedure for proceedings without a hearing applies without the parties being able to object. Summary hearings that had already been scheduled have been cancelled since March 16, and decisions postponed. Only absolute civil emergencies will be heard by the courts within a framework that prevents the spread of the virus. In IP matters, judges have not processed requests for patent, trademark or copyright infringement seizures, or for preliminary injunction procedures. Before the Paris First Level Court and Paris Court of Appeals, cases can be heard by a single judge. The court may impose a Judge Rapporteur for oral arguments scheduled up to June 23.

— **Paris First Level Court:** The Paris courts have significantly reduced their activities. Proceedings for summary hearings are managed by the central registry and the procedure without a hearing applies without the parties being able to object.

Cases on the merits, for which written submissions have been closed and trial dates had been scheduled between March 16 and July 10 and will be dealt with under a procedure without a hearing for oral arguments. A period of 15 days from the closing of submissions is set to allow lawyers to object to a procedure without a hearing for oral arguments. Absent an objection from any of the parties, the case will be decided without oral arguments.

The Paris First Level Court published detailed guidance on how it would resume full operations on with the following information concerning the 3rd chamber of the court specialized in intellectual property matters:

- **summary hearings** scheduled from March 16 to May 11 will be decided by judges using the procedure without a hearing for oral arguments. The court will notify the parties' representatives before the hearing. Priority will be given to the electronic transmission of documents and briefs via a specific platform;
- **infringement seizure requests** have resumed from May 11, but it will only be possible to make written submission until the summer. Requests must be filed at the reception desk and must include the e-mail address and telephone number of the party's representative to allow the judge to request additional information; and
- **requests for authorizations to fast track preliminary injunction procedures or requests for hearings by appointment** are being examined by the specialized magistrates two days a week, except for emergency situations as from May 11.

The 3rd chamber of the court, specialized in intellectual property, issued a statement on its strategy after resuming operations after May 11, stating its priorities are (i) to hand down 90 judgments that have been pending during the confinement, which are to be readied and formatted by the court clerk in order to be delivered and (ii) to reschedule procedural hearings that were to be held since March 17 and which have been postponed due to the confinement. Pre-hearing status conferences will use electronic communications only at least until mid-June and it is the responsibility of counsel to move cases forward among themselves as much as possible. Judges can ask attorneys to communicate documents to them via a specific platform. As noted above, infringements seizures are examined by a judge on duty without oral arguments.

— **Paris Court of Appeals:** Cases with scheduled oral arguments up to April 30 were suspended with status conferences scheduled as from September 28 to set new hearing dates.

With the exception of motions, all cases scheduled between March 16 and May 24 will be decided without hearings for oral arguments under the following conditions:

- cases scheduled for oral argument hearings between March 16 and May 10 are subject to the express agreement of all the parties, failing which the case shall be remitted for determination; and
- for cases scheduled for oral argument between May 11 and 24, parties may object within 15 days of the notice of receipt from the presiding judge notifying them that the case will be decided without oral arguments, unless the court had already rescheduled a status conference in the fall to set a new procedural calendar.

— **French Supreme Court:** proceedings before the French Supreme Court have been suspended until further notice. Any appeal and procedural act that should have been filed between March 12 and June 23 must be filed within a period of two months from the original deadline.

- **French Patent and Trademark Office (INPI)**

The INPI's offices are closed to the public. Since April 1, 2020, trademark cancellations and patent oppositions before the INPI are going forward and proceedings can be filed by electronic submissions. The INPI further issued a specific notification that provides that deadlines (i) that had not expired as of March 16 were extended for 4 months, except for deadlines to file trademark oppositions (ii) that fall between March 12 and June 23 are all postponed to July 23 if the original period to file was one month, and to August 23 if the original period to file was two months or more.

European Union

- **Court of Justice of the European Union (CJEU) and EU General Court**

The CJEU and EU General Court are processing non-urgent pending cases.

Deadlines to be set by the Court Registry as from that date onwards have been extended one month. Oral argument before the CJEU and the TPUE may resume from May 25. The parties' representatives are informed accordingly.

Time limits for appeals continue to run and the parties are bound by them, statutes of limitations and the time limits set by the CJEU and EU General Court in proceedings under way, with the exception that urgent proceedings, expedited proceedings and proceedings for interim measures are extended by one month. For newly scheduled hearings, the representatives of the parties to the cases concerned will be informed by the Registry. Where it is possible for time limits to be extended, it is for the party seeking an extension to make a timely request, so that the Court may give a ruling on that request. Oral hearings before the CJEU and EU General Court scheduled between March 16 and, respectively, April 30 and May 15 have been postponed, but resumed progressively since May 25.

- **European Union Intellectual Property Office (EUIPO)**

All deadlines relating in particular to rights of priority, opposition periods, requests for renewal, appeals and conversions (with the exception of deadlines for appeals to the EU General Court against decisions of the EUIPO Boards of Appeal) expiring between May 1 and May 17, that affect all parties in proceedings before the EUIPO are extended until May 19. In the event parties to proceedings choose to discharge their procedural obligations before the expiry of this extended time limit by submitting observations and documents, or performing any other procedural act, the relevant time limit will be considered exhausted and the proceedings will continue without extensions.

After May 18, extensions come to an end and compliance with time limits is required. However, time limits can be extended using the following submissions:

— **reasoned extensions request** before the time limit in question expired in (i) *ex parte* proceedings (the extension cannot exceed 6 months and the first request will be granted without further justification) (ii) *inter partes* proceedings (extensions cannot exceed 6 months each and the first request will be granted without further justification while subsequent ones require a showing of exceptional circumstances (such as illness of the party and/or of his/her representative) that prevented the party requesting the extension from observing the time limit, and the Office may subject the extension to the agreement of the other party.

— **reasoned suspension request** in *inter partes* proceedings (i) at the request of one party or (ii) by joint request of the parties in trademark proceedings (suspensions cannot exceed 6 months each and cannot exceed a total of 2 years) and in design invalidity proceedings (suspensions cannot exceed 6 months each). Financial difficulties preventing a party from obtaining professional representation before the Office due to the pandemic constitute a proper reason to grant a suspension.

— in trademark proceedings (and not in design proceedings) and for certain time limits, the party that has missed a time limit can submit a **request for continuation of proceedings** if it carries out the omitted act by the time the request is made, within two months of the expiry of the unobserved time limit, and pays a fee of 400 euros.

— The party that has missed certain time limits to perform a procedural act despite taking all due care required under the circumstances can submit a **request for restitutio in integrum** if the non-observance of the time limit causes the party a loss of a right or means of redress, subject in particular to submitting the request within 2 months of the non-observance of the time limit, no later than one year after expiry of the missed time limit, and payment of a fee of 200 euros.

International IP Office

- **European Patent Office (EPO)**

All deadlines expiring on or after March 15 were extended to May 4. This also applies to international applications filed under the Patent Cooperation Treaty (PCT).

Oral proceedings before the Examining and Opposition divisions scheduled for hearings up to September 14 have been postponed, unless they have been confirmed to take place by means of videoconferencing with the applicant's consent. Other activities of the Examining and Opposition divisions continue but are slowed. The Boards of appeal have resumed hearings for oral arguments, to a limited extent, at the premises in Haar (Germany), and the EPO will contact parties to confirm whether they must attend in person or not.

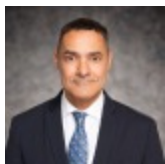
Additional fees for late payments of renewal fees due on or after March 15 are waived as from June 1.

- **World Intellectual Property Office (WIPO)**

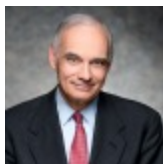
Services are maintained including online filing of applications (WIPO, PCT, Madrid and Hague systems), as well as administration of intellectual property and related systems, including the WIPO Arbitration and Mediation Center. The WIPO encourages communications by electronic means and reminds users that handwritten signatures are not mandatory.

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