



MAR. 20

INTELLECTUAL PROPERTY

Coronavirus: Impact on intellectual property

In some areas, intellectual property will experience a period of slowdown in activity, at least in the near future. We look at this in more detail below. However, this does not mean mandatory registration of industrial property will come to a halt because, with many bodies, including the Portuguese INPI (National Institute of Industrial Property), registration is done online.

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These are certainly animated times for the patenting of inventions relating to vaccines and drugs in general used in fighting this unprecedented pandemic. As a consequence, there is an intense activity involving a variety of contractual models such as patent pooling and licensing in general. Although these must be times of absolute solidarity, some litigation involving these inventions is unfortunately inevitable in the near future.

The race to register trademarks including “Coronavirus” or “COVID-19” with the national IP institutes in various European countries is inevitable. Indeed, it has already started. This is the case in Spain, where someone tried to register a trademark for beer: Yo sobreviví al coronavirus. These trademarks will be refused or will be null and void, because they infringe the prohibition on the use of expressions contrary to law, morals, public order, or good customs. In this case, for example, the trademark may be considered to offend good customs because it includes a frivolous reference to a pandemic that has already killed thousands of people around the world. When it comes to drugs, the refusal to register trademarks will be based on the fact they are generic expressions with no distinctive character, which means they cannot be appropriated by anyone.

Below, we set out some useful information on the functioning of registries, courts and arbitration centres in this area while the constraints decreed by the various national governments and supranational authorities remain in place. In addition, we will, of course, look at the exceptional measures applicable to most acts.

Registrations

The National Institute of Industrial Property (INPI)

In-person services are only available if you first make an appointment and when the service you require cannot be provided by any other means. Preference is given to online, email or telephone assistance;

However, most procedures involving industrial property rights are already done online. This will continue to be the case for trademarks, design, and patents regarding applications, revocations and other acts.

To simplify things in the current situation, the INPI has suspended the requirement for a digital signature for certain acts to be done in the areas of patents, trademarks, and design.

We highly recommend that you consult the INPI website for any new developments, including the possible application of article 7 of Law 1-A/2020, of 19 March to the operation of the INPI.

For more information, see the INPI website (partially available in English) [here](#).

For any clarification regarding the procedures, contact service.publico@inpi.pt

European Union Intellectual Property Office (EUIPO)

The EUIPO has its headquarters in Alicante, Spain. Following the declaration of a “state of alert” by the Spanish Government due to the spread of COVID-19 in the country, the executive director of the EUIPO authorised the activation of the office’s business continuity protocol and introduced home working for all its employees. As a result, the work of the EUIPO will continue as normal. The Institute will continue to receive, examine and publish applications for trademarks and designs, and its bulletins will continue to be published as usual. The Centre for Information and Second Line Support will continue to accept enquiries by phone or email. The executive director has also published a decision that extends all time limits to 1 May 2020 (in practice, until 4 May, as 1 May is a public holiday).

For more information, see [here](#).

"To adjourn until further notice all oral hearings in examination and opposition proceedings scheduled until 17 April 2020."

The European Patent Office (EPO)

Due to the pandemic caused by COVID-19, the European Patent Office (EPO) has decided:

- To adjourn until further notice all oral hearings in examination and opposition proceedings scheduled until 17 April 2020, unless they have already been confirmed to take place by videoconference;
- That no oral hearings will be held at the premises of the Boards of Appeal until 17 April 2020;
- That all time limits that fall on or after 15 March 2020 are extended until 17 April 2020. With regard to the time limits that expire before 15 March 2020, the EPO has provided access to legal means for those who are in areas directly affected by the disruptions caused by COVID-19. If the disruptions continue beyond 17 April 2020, that the EPO will communicate in good time further extensions and solutions in relation to the time limits;
- To cancel the pre-examination and main examination papers of the European Qualifying Examination (EQE);
- To postpone all events organised by the EPO for March and April;

For more information, see [here](#).

World Intellectual Property Organization (WIPO)

The World Intellectual Property Organization (WIPO) has been following the evolution of the COVID-19 pandemic very closely. As a result, it has followed the recommendations of the World Health Organization (WHO) and the Swiss authorities in order to mitigate the effects of the spread of the COVID-19 virus. It has, therefore:

- Postponed (or cancelled where postponement is not possible) all events and meetings organised or coordinated by the WIPO held in Geneva or in any other place during the months of March and April;
- Closed its premises to everyone and moved to an almost entirely virtual work presence, with only a small pool of personnel retaining access to its offices;
- Introduced working from home for most WIPO employees.

For more information, see [here](#).

Inspectorate-General of Cultural Activities (IGAC)

The Inspectorate-General of Cultural Activities (IGAC) is responsible for the registration of literary and artistic works in Portugal. It has decided to close its front-office services for the public based on the recommendations of the Portuguese health authorities. As a result, telephone and email should be used to contact the IGAC.

For more information, see [here](#).

The courts

Intellectual Property Court (TPI)

Decree-Law 10-A/2020 of 13 March 2020 establishes exceptional and temporary measures relating to the new Coronavirus (COVID-19) pandemic. This Decree-Law provides that the need for a period of isolation due to a possible risk of COVID-19 infection is a justified impediment not to attend, or to adjourn, steps in judicial and administrative proceedings. This situation of isolation must be certified as necessary by a health authority and it applies to subjects of the proceedings, parties and their representatives or lawyers, and other persons involved in the proceedings, even if merely incidentally. The above Decree-Law applies to the judicial courts (which include the Intellectual Property Court), the administrative and tax courts, arbitral tribunals, the Public Prosecutor's Office, justices of the peace, alternative dispute resolution bodies, and notarial and registry offices.

Law 1-A/2020 of 19 March was also approved and it ratifies the effects of Decree-Law referred to above (DL 10-A/2020). In article 7, the Law provides that *"the procedural acts that must be done in cases and procedures before the courts of law, administrative and tax courts, the Constitutional Court, the Court of Auditors and other courts, arbitral tribunals, the Public Prosecutor's Office, justices of the peace, alternative dispute resolution bodies and tax enforcement bodies, are subject to the rules on court holidays until the end of the exceptional situation of prevention, containment, mitigation and treatment of epidemiological infection by SARS-CoV-2 and the disease COVID-19 as determined by the national authority for public health."* It also provides that the exceptional situation stops limitation periods and expiry periods in all types of processes and procedures from running.

"The need for a period of isolation due to a possible risk of COVID-19 infection is a justified impediment not to attend, or to postpone, steps in judicial and administrative proceedings."

Arbitration Centre for Industrial Property, Domain Names, Trade Names and Corporate Names (ARBITRARE)

Decree-Law 10-A/2020 of 13 March 2020 establishes exceptional and temporary measures relating to the new Coronavirus (COVID-19) pandemic. This Decree-Law provides that the need for a period of isolation due to a possible risk of COVID-19 infection is a justified impediment not to attend, or to postpone, steps in judicial and administrative proceedings. This situation of isolation must be certified as necessary by a health authority and it applies to subjects of the proceedings, parties and their representatives or lawyers, and other persons involved in the proceedings, even if merely incidentally. The above Decree-Law applies to the judicial courts, the administrative and tax courts, arbitral tribunals (including ARBITRARE), the administrative and tax courts, arbitral tribunals, the Public Prosecutor's Office, justices of the peace, alternative dispute resolution bodies, and notarial and registry offices.

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On 12 March, ARBITRARE also approved a Contingency Plan to cope with the constraints caused by COVID-19 (the Contingency Plan is available through the link below). In the meantime, ARBITRARE has also issued a notice that is has suspended all in-person services until further developments and information relating to the current state of emergency in the field of public health and the need to prevent COVID-19 infection. However, it is committed to ensuring all its services are provided by its staff who are working from home.

For more information, see [here](#).

The European Court of Justice (ECJ)

Owing to the unprecedented health crisis that we are currently experiencing as a result of COVID-19, the European Court of Justice (ECJ) has decided that, even though judicial activity will continue, it will give priority to those cases that are particularly urgent (urgent proceedings, expedited proceedings and interim proceedings). Procedural time limits for instituting proceedings and lodging appeals continue to run and parties are required to comply with those time limits, without prejudice to the possible application of the second paragraph of Article 45 of the Protocol on the Statute of the Court of Justice of the European Union. Article 45 provides that “No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.” The time limits prescribed in on-going proceedings – with the exception of the abovementioned proceedings that are particularly urgent – are extended by one month with effect from 19 March 2020. With effect from 19 March 2020, the procedural time limits that are to be fixed by the registry are also increased by one month. Hearings that are listed between now and 3 April 2020 are adjourned until a later date.

For more information, see [here](#).

"Even though judicial activity will continue, it will give priority to those cases that are particularly urgent."

The General Court of the European Union

Owing to the unprecedented health crisis that we are currently experiencing as a result of COVID-19, the General Court has decided the hearings listed until 3 April 2020 are adjourned and only those cases that are particularly urgent (expedited proceedings, proceedings receiving priority treatment and interim proceedings) will be dealt with. Time limits, including time limits for instituting proceedings, shall continue to run and the parties are required to comply with those time limits, without prejudice to the possibility of invoking the second paragraph of Article 45 of Protocol on the Statute of the Court of Justice. Article 45 states that “No right shall be prejudiced in consequence of the expiry of a time limit if the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.” The procedural time limits that will be fixed by the registry, with effect from 19 March, shall be adapted to the context of the unprecedented health crisis that we are currently experiencing.

For more information, see [here](#).

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Domain names

DNS.PT (*Domain Name System*)

On 13 March 2020, DNS.PT published a statement that, as a contingency measure due to the public health crisis in Portugal, it has decided it employees will work from home, with effect from 16 March. Employees were advised to cancel face-to-face meetings and to reduce close professional and social contacts to those strictly necessary. However, its operations and workflow will continue as normal.

For more information, see [here](#).

EURid

On 13 March 2020, EURid reported that, in the face of rapid and global spread of COVID-19, it has enforced a business continuity scenario to protect staff and their families, and ensure that staff can work in security and tranquillity while continuing to deliver on our mandate of registry manager of the .eu, .europa and .europa top-level domains. It also announced that its support services will continue to operate as usual. All business travel and any participation in events/meetings have been temporarily suspended.

For more information, see [here](#). ■