Impact of COVID-19 on the UK judiciary, EUIPO and national Intellectual Property Offices

By: Ben Hitchens and Paul Sweeden

The Covid-19 pandemic has obliged all of us to become acquainted with the concept of 'social distancing'. The requirement for social distance has also now extended to most judiciaries and intellectual property offices across the European Union. However, there remains a degree of uncertainty and inconsistency concerning the conduct of registry and court proceedings, with the approach of some national court and tribunal services differing internally from one court division / registry to another.

European Intellectual Property Office

On 16 March 2020 the Executive Director of the EUIPO issued a decision1 to extend all time limits expiring between 9 March 2020 and 30 April 2020, to 1 May 20202 in respect of trade mark and design matters. The extension applies to all procedural time limits, whether set by the Office or by statutory provision3. It is important to note that the extension of time limits applies to the EUIPO and Boards of Appeal, but not to the General Court.

Whilst the pandemic does present some logistical difficulties, particularly relating to the formal document filing requirements before the Office, the EUIPO does provide a relatively advanced and user-friendly electronic drafting and filing system. Those who have signed up to the EUIPO user area are able to draft and file many standard forms and documents electronically, thereby greatly facilitating one’s ability to work from home. That said, the IT infrastructure (and home broadband speeds) that govern our ability to work remotely cannot compete with the systems we are accustomed to in the Office. Inevitably, therefore, there will be times when the online drafting, filing or uploading of documents through the EUIPO online system will not be possible, at least in a timeous fashion. The EUIPO’s blanket extension of deadlines is consequently a welcome decision for those with deadlines falling imminently.

It is, however, prudent to avoid simply leaving present deadlines until the end of the current extension, particularly for clients with large trade mark portfolios. Of course, the 1 May 2020 extension may indeed be extended further given the current position of Covid-19, particularly in Spain in which the EUIPO is based

UK Intellectual Property Office

The UKIPO took the decision on 24 March 2020 to declare interruption days from 24 March 2020, essentially suspending all current deadlines before the Office in respect of trade marks, designs, patents and supplementary protection certificates4. The UKIPO, unlike the EUIPO will keep its position under more regular review, and will consider the position once again on 17 April 2020. The Office will either continue with the interruption days or announce that the interruption days will continue for a further two weeks, giving parties two weeks’ notice to 1 May 2020 to meet those extended deadlines.

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1 Article 1 of Decision No EX-20-3 of the Executive Director and Article 101(4) EUTMR
2 Time limits are extended until Monday 4 May 2020 - Friday 1 May is a public holiday. https://euipo.europa.eu/ohimportal/en/news/-/action/view/5657728
3 EUTMR, EUTMIR, EUTMDR, CDR and CDIR including those originating from Paris Convention or other International Treaties.
The interruption days apply to all time periods set out in the relevant UK Acts and Rules, and to all non-statutory periods that have been specified by UKIPO staff. Therefore, should there be any uncertainty as to whether a non-statutory deadline is included within the interruption days, the Office will provide clarity over the phone or via email. This move has been widely welcomed, particularly in light of the limited user functionality of the UKIPO website. Indeed, we have heard of a number of problems with the drafting of documents for filing. These relatively basic administrative tasks have proven challenging for many. This has included the logistical problems in completing a TM7 (Notice of Opposition) such as the inserting of data, and the attaching of referenced documentation and the subsequent conversion into a format for filing.

The approach of national IPOs
The approach of national IPOs differs greatly with some Offices continuing their business without interruption to existing deadlines. It is therefore important for brand owners with wide jurisdictional trade mark and design portfolios to consult with their local counsel as to whether deadlines have been extended, and if not, whether there is scope for any other flexibility, i.e. discretionary extensions. Indeed, normally simple tasks such as the execution of power of attorneys may be significantly harder to complete; early engagement with local agents is advised so that contingencies can be implemented if required.

The UK court system and its impact on Intellectual Property cases
With most day to day court business typically conducted in judicial premises, the coronavirus has inevitably caused some disruption to court procedure and practice. Whilst the technological framework regulating video and audio conferencing facilities differs greatly from court to court, the government – by virtue of the Coronavirus Act 2020 – has sought to provide the judiciary and parties to proceedings with greater flexibility, thereby allowing court business to continue, despite the physical lockdown.

In the County Court the judiciary has sought to agree types of work that must be done and work that could be done. The work that must be done includes injunction hearings, applications listed for trial or substantive hearings up to 1 July 2020 – therefore, it appears on the whole that Intellectual Property matters before the County Court will continue as a priority5.

On 25 March 2020, Practice Direction PD51Y came into force, giving the courts wider discretion to hold hearings remotely via video and audio communications in private, including outside of the court room as the court sees fit, putting in place a number of solutions to ensure that recordings of such hearings are made available, if not in real time, then at a later date6. Whilst many court buildings remain open, with hearings within Courts still possible, judges now have the power to consider all relevant factors in determining whether it is possible to conduct such hearings remotely and outside of Court. Indeed, with technology such as BT conference call, Skype for Business, BT MeetMe, Zoom and normal telephone calls all available, the Courts and parties to proceedings have already shown a willingness and ability to dispose of a broad selection of hearings, including default judgments and case management conferences, including without the need to conduct hearings in person.

To further assist the court during this period, on 2 April 2020 Practice Direction PD51ZA came into force, extending the period by which parties can agree extensions to Directions without requiring the Court’s permission from 28 to 56 days. This direction should free up court and administrative time, thereby enabling greater attention to be devoted to those cases that require more immediate attention7.

The High Court and particularly the Rolls Building in London in which the Chancery Division sits are relatively well equipped to conduct hearings via video conferencing. Clearly there will be County Courts within the UK who may not have the means to function effectively at this time, but from an Intellectual Property perspective, it appears that the majority of cases will be able to continue as result of the measures put in place without unduly impacting on trial dates.

With the Covid19 situation changing day by day, this article is intended only to address the headline points. We will continue to report developments as they occur.

For more information on the matters discussed in this Locke Lord QuickStudy, please contact the authors.

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