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Analysing developments impacting business

EFFECT OF COVID-19 ON TIME-BOUND IP FILINGS

13 May 2020

In the matter of *Intellectual Property Attorneys Association and Anr v Controller General of Patents, Designs and Trade Marks and Anr*, W.P.(C) No 3059/2020 (Writ Petition), the Delhi High Court (Court) passed an order dated 11 May 2020 (Order) extending the limitation period for various acts, proceedings, filing of any reply/document, payment of fees, etc. relating to any intellectual property matter (IP Filings) due on or after 15 March 2020 until further directions to be passed by the Hon'ble Supreme Court.

Background

In light of the prevailing COVID-19 pandemic, the Hon'ble Supreme Court in a *Suo Moto Writ Petition (Civil) No 3/2020* exercised its jurisdiction under Articles 141 and 142 of the Constitution of India and passed an order dated 23 March 2020 (SC Order) directing extension of period of limitation in all legal proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not, with effect from 15 March 2020 until further orders. On the same day i.e. 23 March 2020, the Controller General of Patents, Designs and Trade Marks (Respondent) issued a Public Notice to the effect that the stakeholders can file requests for extension of time (then or after situation becomes normal) and such requests shall be considered in accordance with law.

Later, in view of the national lockdown, on 25 March 2020, the Respondent issued another Public Notice informing about the closure of all IP offices for 21 days and directed that the due date for IP filings shall be the date of re-opening of the IP offices. As the national lockdown extended further, the Respondent issued another Public Notice dated 15 April 2020 whereby the Respondent fixed the due date for all the time-bound IP filings as 4 May 2020.

The above Public Notices were challenged in the Writ Petition *inter alia* on the ground that the same are not in conformity with the SC Order and also that such short deadline which was immediately on the day of lifting of the national lockdown would cause undue hardships to various stakeholders.

Before the Writ Petition could be taken up for hearing on 6 May 2020, the national lockdown was further extended until 17 May 2020, and thus, the Respondent issued another Public Notice dated 4 May 2020 fixing the due date for IP filings as 18 May 2020. During the hearing, the Respondent's only contention was that the clarification qua the SC Order can be obtained by moving the Hon'ble Supreme Court.

Findings

After going through the proceedings, the Court observed that no court/tribunal/authority can act contrary to the SC Order which was passed under Articles 141 and 142 of the Constitution of India. The Court further observed that as per Article 144 of the Constitution of India, all authorities are required to act in aid of the orders passed by the Hon'ble Supreme Court.

Since the Public Notice dated 4 May 2020 was not a part of record of the Writ Petition, the Court exercising its residuary powers, reproduced the contents thereof and ordered suspension of the same. The Court directed the Respondent to act in accordance with the SC Order. In view of the same, the Writ Petition was disposed off.

Comments

In view of the Order, the deadline for IP filings due on or after 15 March 2020 stands extended until further orders of the Hon'ble Supreme Court. The Order is a much-needed respite in this time of crisis as it would have been extremely difficult for various stakeholders from India and abroad to meet the due date of 18 May 2020 for IP filings, which would have impacted the brand protection efforts of the stakeholders.

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