

## ERGO

*Analysing developments impacting business*

### DELHI HIGH COURT STAYS NOTICE ISSUED BY THE INDIAN IP AUTHORITY IN RELATION TO TIME BOUND IP FILINGS

27 May 2020

On 18 May 2020, the Controller General of Patents, Designs and Trade Marks (Respondent) issued another Public Notice (New Notice) whereby the deadlines for various acts, proceedings, filing of any reply/document, payment of fees, etc relating to any intellectual property matter (IP Filings) falling due between 15 March 2020 to 17 May 2020 was fixed as 1 June 2020 and no extension was permitted for the deadlines falling beyond 17 May 2020. This New Notice was contested by Intellectual Property Attorneys Association & Anr (Petitioners), by filing an application in their writ petition bearing WP(C) No 3059/2020 (Writ Petition) before the Delhi High Court (Court). The Court passed a further order dated 21 May 2020 (Further Order) staying the operation of New Notice.

#### Background

In light of the prevailing COVID-19 pandemic, relying on the Supreme Court of India (Supreme Court) order dated 23 March 2020 passed in a *Suo Moto Writ Petition (Civil) No 3/2020 (SC Order)*, the Court had passed an order dated 11 May 2020 (Earlier HC Order) suspending the Public Notice dated 4 May 2020 passed by the Respondent by virtue of which the deadline for time-bound IP Filings was fixed as 18 May 2020. In the Earlier HC Order, the Court also observed that the Respondent shall act in accordance with the SC Order. This was covered in our previous [Ergo](#) published on 13 May 2020.

Subsequent to the Earlier HC Order, the Respondent issued the New Notice and fixed the deadlines for time-bound IP Filings due from 15 March 2020 to 17 May 2020 as 1 June 2020. Furthermore, the New Notice did not deal with the deadlines falling beyond 17 May 2020 which impliedly meant that no extension would be granted for such IP Filings despite the fact that the national lockdown has been extended in India.

Consequently, in the Writ Petition, the Petitioners filed an application for quashing of the New Notice *inter alia* on the ground that the same is in complete violation of the SC Order and Earlier HC Order and it would cause undue hardship to the stakeholders.

During the hearing, the Respondent relied upon a subsequent order dated 6 May 2020 passed by the Supreme Court in relation to extension of the period of limitation in all matters under the Arbitration and Conciliation Act, 1996 and matters under the Negotiable Instruments Act, 1881. The Respondent also placed on record another Public Notice dated 20 May 2020 issued by it whereby the stakeholders were permitted to file petitions for extension/condonation of delay in patent matters within one month of the situation becoming normal.

## Decision

The Respondent's reliance on the Supreme Court's subsequent order dated 6 May 2020 which *inter alia* clarified issues relating to arbitration and negotiable instruments disputes was not considered at this stage. After going through the rival submissions, the Court once again reiterated that the SC Order dated 23 March 2020 was binding on the Respondent as on any other Court or Tribunal. The Court was also skeptical about the Respondent's conduct mainly as to what prompted the Respondent to issue the New Notice in spite of the SC Order and Earlier HC Order and directed the Respondent to file an affidavit within two weeks. The matter is next directed to be listed on 17 June 2020. The Court as an interim measure, stayed the operation of the New Notice as well as the Public Notice dated 20 May 2020.

## Comment

The Further Order of the Court has ensured that status quo in relation to extension of deadlines for IP Filings due on or after 15 March 2020 is maintained until further orders of the Supreme Court.

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