



ERGO

Analysing developments impacting business

INDEFINITE TIME EXTENSION COMES TO AN END FOR TIME BOUND IP FILINGS IN INDIA

23 March 2021

The Hon'ble Supreme Court of India (Supreme Court) has recently passed an order dated 8 March 2021 (SC Order) in *Suo Moto Writ Petition (Civil) No 3/2020 (SC Matter)*, ending the indefinite extension of limitation period which was granted by the Supreme Court last year vide an earlier order dated 23 March 2020 ([Earlier SC Order](#)).

The Controller General of Patents, Designs and Trade Marks (IP Office) had issued a Public Notice dated 19 June 2020 (Public Notice) to the effect that 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 after 15 March 2020 shall be the date as decided/ordered by Delhi High Court (High Court).

Background

In light of the COVID-19 pandemic, Supreme Court had exercised its jurisdiction under Articles 141 and 142 of the Constitution of India and had passed the Earlier 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. The Earlier SC Order was extended from time to time.

Subsequently, IP Office had issued various public notices fixing the deadline for IP Filings on various dates, which notices were not compliant to the Earlier SC Order. These public notices were challenged before the High Court in the matter of Intellectual Property Attorneys Association & Anr v Controller General of Patents, Designs and Trade Marks and Anr(*Ref: W.P.(C) No 3059/2020*) (Writ Petition) *inter alia* on the ground that the same were in violation of the Earlier SC Order. The High Court had passed orders suspending these public notices.

In view thereof, the IP Office had issued Public Notice suspending the deadlines for IP Filings until further directions from the High Court. These developments were covered in our previous Ergo dated [13 May 2020](#), [27 May 2020](#) and [25 June 2020](#).

Latest development

On 8 March 2021, Supreme Court took up the SC Matter and observed that although the pandemic is yet to be over, considering the lockdown has been lifted and the country is returning to normalcy, the Earlier SC Order granting indefinite extension of limitation can come to an end. Accordingly, Supreme Court issued following directions:

- (i) The period from 15 March 2020 to 14 March 2021 shall stand excluded from computation of limitation period for all filings; and
- (ii) In cases wherein the limitation period expired during the period between 15 March 2020 to 14 March 2021, there would be an extension of 90 days with effect from 15 March 2020. However, for cases in which the balance limitation period is more than 90 days, then a longer period would be available.

Supreme Court further directed Government of India to amend the containment zones' guidelines to permit regulated movement for time bound applications and legal purposes.

Comment

While the IP Office is yet to issue a formal notice, from the reading of Public Notice coupled with the SC Order, it is clear that the deadlines for time-bound IP Filings, which were lying suspended for long, have now resumed. Accordingly, the stakeholders will need to re-organize their IP portfolio and comply with the deadlines for IP Filings, as prescribed.

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