



ERGO

Analysing developments impacting business

CLOCK STARTS TICKING FOR THE TIME-BOUND IP FILINGS IN INDIA

1 October 2021

The Hon'ble Supreme Court of India (Supreme Court) has recently passed an order dated 23 September 2021 (SC Order) in Suo Moto Writ Petition (Civil) No 3/2020 (SC Matter) issuing comprehensive directions for resuming the limitation period under various laws which were lying suspended since 15 March 2020 on account of Covid-19 pandemic. As a consequence, thereof, the deadlines for various acts / proceedings, filing of any reply / document, payment of fees, etc. relating to any intellectual property matter (IP Filings) have resumed w.e.f. 3 October 2021, although with a further reprieve of 90 days.

Background

In light of the COVID-19 pandemic, in March 2020, Supreme Court had exercised its jurisdiction under Articles 141 and 142 of the Constitution of India and had passed an order dated 23 March 2020 ([Earlier SC Order](#)) directing extension of period of limitation in all legal proceedings. The Earlier SC Order was extended from time to time. After some initial resistance, eventually the Controller General of Patents, Designs and Trade Marks (IP Office) also had suspended deadlines for IP Filings.

On 8 March 2021 as the Covid-19 pandemic appeared to be gradually receding, Supreme Court had passed an order for resuming the limitation period w.e.f. 15 March 2021. However, owing to the devastating second wave of the Covid-19 pandemic, the Supreme Court vide order dated 27 April 2021 restored the Earlier SC Order. These developments were covered in our previous Ergo dated [13 May 2020](#), [27 May 2020](#), [25 June 2020](#), [23 March 2021](#) and [3 May 2021](#)

Latest development

On 23 September 2021, Supreme Court took up the SC Matter and observed that in spite of uncertainties around another wave of the Covid-19 pandemic, the situation is near normal and as such, the limitation period should be restored. Accordingly, Supreme Court issued following directions:

- (i) The period from 15 March 2020 to 3 October 2021 shall stand excluded in computation of limitation period for all filings; and
- (ii) In cases wherein the limitation period expired during the period between 15 March 2020 to 3 October 2021, irrespective of the actual balance period of limitation, there would be an extension of 90 days w.e.f. 3 October 2021.

However, for cases in which the balance limitation period is more than 90 days, such longer period would be available.

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

Comment

It is expected that IP Office will soon issue a formal notification in line with the SC Order. Considering that the deadlines for various IP Filings are non-extendable, it is important that the stakeholders take note of the SC Order and comply with IP Filings within the extended period.

- *Smriti Yadav (Partner) and Shwetank Tripathi (Senior Associate)*

For any queries please contact: editors@khaitanco.com

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