

## ERGO

*Analysing developments impacting business*

### COVID-19 THIRD WAVE UPSHOT: IP FILINGS' TIMELINE EXTENDED AGAIN

14 January 2022

The Hon'ble Supreme Court of India (Supreme Court) has recently passed an order dated 10 January 2022 (SC Order) in *Suo Moto Writ Petition (Civil) No 3/2020* (SC Matter) restoring its earlier order dated 23 March 2020 ([Earlier SC Order](#)) till 28 February 2022. The SC Order has also granted additional 90 days for such deadlines which expires between 15 March 2020 and 28 February 2022. Consequently, the deadlines for various acts/proceedings, filing of any reply/document, payment of fees, etc. relating to any intellectual property matter (IP Filings) which were lying suspended since 15 March 2020 and resumed recently, have been further extended until 28 February 2022, with an additional 90 days.

#### **Background**

At the onset 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 the Earlier SC Order directing extension of period of limitation in all legal proceedings. The Earlier SC Order was extended from time to time. Certain proceedings were filed by the IP stakeholders and eventually the Controller General of Patents, Designs and Trade Marks (IP Office) also had suspended deadlines for IP Filings from time to time, in line with the Earlier SC Order and other subsequent orders passed by Supreme Court.

Last year, as the situation was improving, Supreme Court passed an order dated 23 September 2021 resuming the deadlines for IP Filings with effect from 3 October 2021 with an additional time of 90 days. These developments were covered in our previous Ergos dated [13 May 2020](#), [27 May 2020](#), [25 June 2020](#), [23 March 2021](#), [3 May 2021](#) and [1 October 2021](#).

#### **Latest development**

Recently, the Supreme Court Advocates on Record Association (SCAORA) filed an application in the SC Matter praying for restoration of the Earlier SC Order in view of the recent surge in the number of COVID-19 cases in the country. The Supreme Court, taking into consideration the impact of the virus on public health and the difficulties faced by the litigants, issued following directions:

- The Earlier SC Order is restored until 28 February 2022 and the period from 15 March 2020 to 28 February 2022 shall stand excluded in computation of limitation period for all filings.

- The balance period of limitation, if any, remaining as on 3 October 2021 shall become available with effect from 1 March 2022.
- In cases wherein the limitation period expired during the period between 15 March 2020 and 28 February 2022, irrespective of the actual balance period of limitation, there would be an extension of 90 days with effect from 1 March 2022. However, for cases in which the balance limitation period is more than 90 days, such longer period would be available.

## Comment

It is expected that IP Office will soon issue a formal notification in line with the SC Order, extending the deadlines till 28 February 2022. It is pertinent to note that at this time, Supreme Court has not suspended the deadlines indefinitely like the earlier occasions, and therefore, the present extension has been made available for a limited duration i.e., till 28 February 2022. It is not certain if the deadlines will be further extended. The interested parties should accordingly plan their compliance.

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