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Implications on Intellectual Property matters
derived from the health crisis situation
caused by COVID-19

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1. SPANISH PATENT AND TRADEMARK OFFICE

On 16 March 2020 the Director of the Spanish Patent and Trademark Office (the “SPTO”) issued the Resolution on the execution of RD 463/2020 relating to time limits in administrative proceedings (the “Resolution”), by virtue of which administrative proceedings managed by the SPTO, as well as the periods of prescription and limitation regarding any actions and rights that can be exercised before the SPTO, are suspended and interrupted, under the terms of RD 463/2020. In this respect, the Resolution clarifies that those automatic communications or notifications issued by the SPTO that refer to time limits will not be applicable, as the provisions set out in RD 463/2020 and the aforementioned Resolution shall prevail.

However, without prejudice to the suspension of the terms and the interruption of the calculation of time limits mentioned, the Resolution clarifies that the SPTO will continue to provide electronic services as usual through its website (sede electrónica). Consequently, trademark, design, utility model and patents applications will continue to be received through this channel, as well as any other proceeding necessary (e.g. renewals, service of digital access to priority documents in the case of patents, etc.)

Finally, the Resolution clarifies that the SPTO is considering adopting exceptional measures for the organisation and direction of certain procedures within industrial property proceedings so that they can continue, provided that these (i) prevent serious damage to the rights and interests of the interested parties, and (ii) can be agreed upon. In the event that cases fulfilling these requirements are identified, these procedures may be carried out so long as, public-interest factors, as well as the continuity of public services provided by the SPTO, are taken into account. Information on the adoption of these procedures will be provided through the publication of the corresponding Resolution of the Director of the SPTO.

2. PROCEEDINGS BEFORE THE EUROPEAN UNION INTELLECTUAL PROPERTY OFFICE

The Executive Director of the European Union Intellectual Property Office (the “EUIPO”) issued on 16 March 2020 its Decision No. EX-20-3. (the “Decision”). By virtue of this Decision, all time limits expiring between 9 March 2020 and 30 April 2020 (inclusive) that affect parties in proceedings before the EUIPO relating to trademark and design matters are extended until 4 May 2020 (the first working day after 1 May 2020).

It should also be noted that the Decision has been subject to clarification by the EUIPO itself, warning, among other matters, that the extension of time limits granted has immediate effect, since it derives directly from the Decision – consequently, affected parties are not required to file a request to the EUIPO for the extension of the time limit to take effect. Hence, the immediate effect of the extension also implies that users whose time limits are affected will not be informed about the extension by means of individual communications. However, in the event that a communication from the EUIPO does not adhere to the given extension, the EUIPO will immediately issue a rectification either ex officio or following a written request from the user indicating the file number concerned.

In any case, it is also highlighted that in the event the parties are in a position to meet either the original or extended deadline, and choose to discharge their procedural obligations during that period, the proceeding will follow its usual course and any documents filed will be examined in the regular manner.

Finally, it should also be noted that the Decision exclusively affects proceedings before the EUIPO, therefore those time limits which relate to proceedings before other authorities are not covered by the extension (e.g. time limits related to bringing an action before the General Court against decisions of the EUIPO’s Boards of Appeal). Likewise, measures have been implemented to ensure an uninterrupted service for users. Trademark and design applications will continue to be received, examined and published, and the EUIPO will continue to send communications and set deadlines. Bulletins will continue to be published as usual.

3. LEADING LAWYERS



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