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IP-related measures adopted due to COVID-19

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ABOGADOS

Intellectual Property, Spain

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Introduction

The health crisis caused by the rapid spread of COVID-19 led to the approval and entry into force in Spain of Royal Decree 463/2020 on 14 March 2020, which declared a state of alarm.

This has led to the adoption of diverse judicial and administrative measures which are being adapted to changes during the COVID-19 crisis and have a direct impact on IP proceedings.

Among other measures, the Royal Decree and the General Council of the Spanish Judiciary (insofar as their scope is concerned) have provided for the urgent suspension and official interruption of deadlines and actions at both the judicial and administrative levels, with the exceptions and subsequent changes described below.

Judicial scope

Terms and deadlines established by procedural laws have been interrupted by all jurisdictional orders (which include IP orders). They will be restarted once the state of alarm is over (in accordance with Royal Decree 16/2020).

However, urgent judicial actions have not been suspended. Among them, the General Council of the Spanish Judiciary has expressly included legal actions which, if not carried out, could cause irreparable damage and the adoption of interim injunctions which cannot be postponed (including IP interim injunctions).

The European Court of Justice (ECJ) and the General Court have suspended oral hearings. Although both courts have decided to give priority to the handling of cases which are particularly urgent, the handling of the other cases is still ongoing, although with some allowances made for the current situation with regards to deadlines.

Both courts have announced their willingness to restart the oral hearings from 25 May 2020 if current circumstances allow. For its part, the ECJ has replaced some oral hearings with written questions addressed by the court to the parties.

Administrative scope

On 16 March 2020 the Patent and Trademark Office agreed on the suspension and interruption of administrative procedures and limitation and expiry periods of any action until the end of the state of alarm.

In appeals of administrative proceedings or in proceedings from which unfavourable effects or damages may arise for the interested party, the calculation of the periods will be understood to have been interrupted and therefore calculated from the working day following the end of the state of alarm (in accordance with that established by Royal Decree 11/2020).

Notwithstanding the above, the Patent and Trademark Office will continue to allow the filing of any kind of applications and will take any administrative action to continue their processing if the interested party gives its consent.

Preparations for resumption of judicial activity

In anticipation of the end of the state of alarm, on 2 April 2020 the Permanent Commission of the General Council of the Spanish Judiciary agreed to develop an action plan for the resumption of ordinary judicial activity, with the aim of adopting measures to speed up the resolution of cases and facilitate economic recovery.

As a first measure, the commission and the Ministry of Justice have agreed that as of 15 April 2020, restrictions will be lifted with regard to the electronic submission of writs, although deadlines and scheduled judicial actions will remain suspended.

On 28 April 2020 Royal Decree 16/2020 adopted some measures to accelerate the processing of suspended procedures once the state of alarm ends, including the decision to make most of August a working month, the extension of working days into mornings and afternoons for all services and courts, and other measures to speed up the functioning of the commercial courts (which are the competent courts in IP matters).

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