

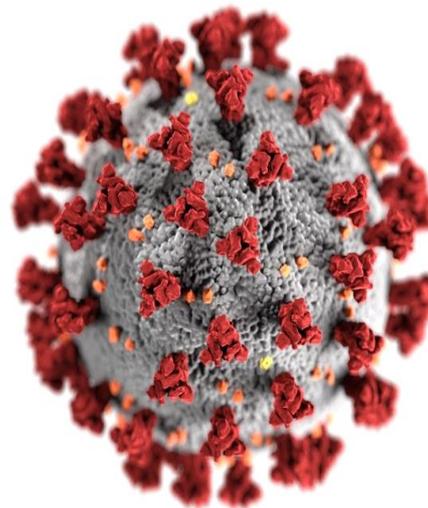
# COVID -19 LEGAL FAQ SERIES

FOX MANDAL & ASSOCIATES



## COVID-19 GLOBAL PANDEMIC

The sudden outbreak of the pandemic and the nation-wide lock-down has put a heavy constraint on individuals as well as the economy. To minimise the impact of the pandemic on the general public as well as business establishments and ensure minimum disruption in the supply chain, many amendments, advisories and announcements have been introduced which would ideally subsist during the containment period but could have long-term implications. Further, the nation-wide lockdown has been extended to May 03, 2020.



Considering the situation, IP Offices across the globe are either shut or are working remotely which has not only caused concern to IP owners about meeting the deadlines but also in delaying new activities resulting in unimaginable losses. Similarly, the Courts and other Govt. offices dealing with IP matters are either closed or, are taking up matters of urgency alone. Under these circumstances, it has become imperative to understand how the IP offices and Courts dealing in IP are currently sustaining during these extremely difficult circumstances.

Understanding the ramifications of these developments is essential for the smooth operation of enterprises. We decode the queries that have surfaced, appurtenant to the multitudinous notifications, that attorneys across our diverse practice domains have responded to.

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### *How is the Indian IPO (Intellectual Property Offices) handling the current COVID-19 situation?*

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In line with the order of the MHA, the Controller General of Patents, Designs & Trade Marks (CGPDTM) initially issued a [Public Notice](#) stating that all the Offices under their administrative control shall remain closed for a period of 21 days with effect from March 25, 2020, which is now further [extended](#) to May 03, 2020.

Unlike many other countries, the Indian IPOs (Patent, Designs, Trademarks and Copyrights) are not working remotely. Perhaps, due to confidentiality concerns the Indian IP Officers cannot access their respective records, hence the decision. However, as per the latest [order](#) starting April 20, 2020, all the Officers of Deputy Controllers and above in the Patent Office, New Delhi, have been required to work from their offices.

Nevertheless, the Indian IPOs were digitised a few years ago and filings were made online, these online filings are going on and so are other automated activities that do not require manual intervention. Other activities such as examination and issuance of any reports, documents, etc., are temporarily suspended and the same is expected to resume once the IPOs reopen and would be in accordance with the statutory requirements.

Similarly, the personal hearings scheduled before the IPOs have been [adjourned](#) till May 03, 2020 and the same would be rescheduled to a later date.

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### *What are the issues being faced by applicants while dealing with the IPO?*

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Inventors and IP applicants have a lot of apprehension about various deadlines and various documents that they require in order to move forward with certain actions in other countries. There are many activities that require manual intervention such as Foreign filing licence, issuance of certified copies etc., which are stuck and delaying the progress of their plan of action. There are various other issues that are expected to come up post this lockdown which would surely complicate the prosecution of the pending applications and other activities beyond measure.

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## *Can non-extendable statutory deadlines under the IP Laws be extended?*

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Though, there are no express provisions for suspension of the deadlines, however, the [public notice](#) issued by the CGPDTM on March 25, 2020, states that all due dates that fall within the 21 days period, for the completion of any acts, filing of documents or replies, payment of fees, etc. will be suspended and would automatically be moved to the day when the offices reopen, and in the current scenario, May 04, 2020.

Section 131 of the Trademarks Act, 1999 and Rules 109 & 110 of Trade Marks Rules, 2017, provides for an extension of time, if not expressly provided under any other provisions of the Act. The CGPDTM also issued a [notice](#) on March 23, 2020, pointing out that such a request for extension of time can be filed (either now or when the situation normalizes) and the Registrar would consider the same in accordance with the law.

Similarly, a [public notice](#) was also issued by the CGPDTM on March 19, 2020, which placed a reference to Sub-rule (6) of Rule 6 of the Patents Rules, stating that any delay in transmitting or resubmitting documents to the Patent Office would be condoned/extended by the Controller on a petition made no later than one month from the date when such COVID-19 outbreak ceases to exist.



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*What issues do you anticipate would arise for IP applicants in the near future?*

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Due to the closure of all the IPOs and non-availability of the office personnel (Except Deputy Controllers who are required to attend New Delhi office from April 20, 2020), only fresh applications, extension requests, renewal applications, and other deadline matters issued before lockdown, are being made through comprehensive e-filing. The prosecution of these new applications and pending applications, such as examination and hearing, are put on hold. If the situation persists, it will cause a huge financial loss to the applicants, also due to the heavy backlogs caused over the months.

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*What would your recommendations be for the Indian IPOs during these times?*

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It would be convenient if all the IPOs are permitted to work remotely, and the required infrastructure is provided for the seamless operation of these offices. We would further recommend acceptance of all the documents including Power of Attorney, Affidavit etc., signed and submitted, electronically and to do away with the manual filing of any original documents.

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*How are the Courts handling important /regular IP issues?*

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The Supreme Court of India took Suo Motu cognizance of the situation faced by litigants/lawyers in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation. Hence, through an [Order dated March 23, 2020](#), the Supreme Court held that the period of limitation in all such proceedings shall stand extended from March 15, 2020, until further orders are passed. The Supreme Court has further suggested that the Courts should adopt video conferencing and on April 6, 2020, in the exercise of the powers conferred by Article 142 of the Constitution of India, has issued such [guidelines](#) for the Courts.

Under the Supreme Court Order, all the Courts including the High Courts and the Lower Courts have passed orders to ensure that all the Court proceedings stand suspended till May 03, 2020, except for

matters of extreme urgency. Hearings of such urgent matters will be done through video conferencing on specific dates only.

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*Are you seeing any COVID related filings or do you foresee these in the period ahead?*

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Trademark offices around the world have seen a spate of applications for terms related to COVID-19 and the coronavirus, covering everything from medical equipment to clothing and games. These range from the straightforward COVID-19 to the more creative (albeit distasteful) KEEP CALM AND CORONAVIRUS ON.

In India as well, multiple trademark applications containing the term 'COVID' or 'corona' have been filed for a wide range of pharmaceutical, sanitary, cosmetic products, apparatus, and installations for sanitary purposes. Some of the trademarks applied for registration are COVID RELIEF, COVID FIGHTER, COVID SANJEEVINI, COVID-19, CORONA SANITIZER, CORONA SAFE under Class 05 for pharmaceutical and sanitary products and in Class 03 for cosmetic products; COVID shield in Class 11 for disinfectant equipment. We believe that majority of these applications containing the term 'COVID' or 'corona' would be refused since the terms are so widely used that the marks cannot indicate one source of origin and will be devoid of any distinctive character.

Several countries are conducting extensive research related to Anti COVID-19 drugs and Patent applications are being filed around the globe. In India, there are some applications that have been filed related to the COVID-19 virus drugs. We hope to see an influx in the number of patent applications related to COVID 19 in the near future.



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## *If a COVID drug is Patented in India, would India take a compulsory license approach or a Government take-over of the Patents?*

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If India faces a need for patented drugs to combat COVID 19, the provisions of compulsory license (section 84) present in the Patents Act, 1970, may not be very practical considering the compulsory license is granted only after three years from the grant of the patent. However, sections 92, 100 and 102 of the Indian Patent Act allows the government to use a patent or patent application immediately for public use. Detailed below is the brief descriptions of sections 92, 100 and 102 of the Indian Patent Act:

### **Section 92:**

Section 92 of the Indian Patent act allows the Central Government in case of a national emergency to allow compulsory license any time after the grant of the patent, without following the regular procedure of compulsory license. The reasonable royalty will be paid to the patentee by the Government.

### **Section 100:**

Section 100 of the Indian Patent act allows the Central Government or person authorized by the central government to use the invention for the purpose of the government. The reasonable royalty will be paid to the patentee by the Government.

### **Section 102:**

Section 102 of the Indian Patent act allows the Central Government to acquire any patent or patent application for the public purpose. The applicant of the invention will be paid by the central government.

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## *How can attorneys/applicants contact the IPOs during this situation?*

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Since all IPOs coming under the CGPDTM have been closed and not available for physical access to the public, the possibility of physical mode of communication is completely closed. Additionally, the helpdesk contact numbers are also not available to take queries from the public. Hence, the only mode of communication available for the applications at this time is through e-mails or perhaps through social media.

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