

CLIENT ALERT

Willkie IP COVID-19 Update: Procedural Restrictions at the Patent Office, PTAB, and Courts with Significant Patent Dockets

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Courts and administrative offices across the country have instituted measures to address the ongoing COVID-19 outbreak. Below is a summary of the measures taken as of 4:00 PM EST March 18, 2020 by the USPTO, various District Courts across the country, the Federal Circuit, and the U.S. Supreme Court. Generally, courts have postponed upcoming jury trials, limited the general public's access to courthouses, and left scheduling issues to the discretion of their judges on a case-by-case basis. Of the courts included in this update, only the Northern District of Illinois has extended all deadlines for all cases.

U.S. Supreme Court

- Oral arguments in the March session have been suspended.
- The building will continue to be open for official business, and filing deadlines have not been extended.

U.S. Court of Appeals for the Federal Circuit

- For the April 2020 sitting, some cases previously scheduled for oral argument will be submitted on the briefs.
- For the April 2020 sitting, the remaining oral arguments will be conducted by telephonic conference.
- All members of the public are prohibited from entering the National Courts Building.

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California (Northern District)

- All courthouses within the Northern District of California are closed to the public until May 1, 2020.
- No civil jury trials will be held before at least May 1, 2020.
- Any trial dates currently scheduled are vacated.
- All civil matters will be decided on the papers, or if the assigned judge believes a hearing is necessary, the hearing will be by telephone or videoconference.
- The local rule requiring courtesy copies is suspended.

Delaware

- All civil jury selections and jury trials scheduled to begin before April 30, 2020 are continued pending further order of the court.
- All other deadlines remain in effect unless modified by court order.
- Aside from ordering a jury trial, individual judges presiding over civil proceedings may take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the substantial rights of the parties.
- All judicial officers may continue to hold hearings, conferences, and bench trials in the exercise of their sound discretion, but they are encouraged to conduct proceedings by teleconferencing or videoconferencing where practicable and permitted by law.
- Individuals potentially exposed to the COVID-19 virus or experiencing symptoms of respiratory illness are restricted from entering court locations.
- The local rule requiring furnishing of paper copies is suspended unless otherwise instructed.

Illinois (Northern District)

- Reported on March 17, 2020 that an employee who works in a Northern District of Illinois courthouse has tested positive for the COVID-19 virus.
- All deadlines in all civil cases are extended by 21 days from the current deadline as of March 17, 2020. This does not include deadlines concerning any appeal from the Northern District of Illinois.
- Civil case hearings, trials, and settlement conferences scheduled from March 17, 2020 to April 3, 2020 are stricken from the calendar, to be reset by the presiding judge on or after April 6, 2020.
- The general order notes that any party may seek emergency relief.
- All public gatherings are suspended at both the Everett McKinley Dirksen U.S. Courthouse in Chicago and the Stanley J. Roszkowski U.S. Courthouse in Rockford.

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New Jersey

- Access to the courthouse is restricted for visitors potentially exposed to coronavirus.
- All civil jury selections and jury trials scheduled to begin before April 30, 2020 are continued pending further order of the court.
- All other deadlines remain in effect unless modified by court order.
- Aside from ordering a jury trial, individual judges presiding over civil proceedings may take such actions as may be lawful and appropriate to ensure the fairness of the proceedings and preserve the substantial rights of the parties.
- All judicial officers may continue to hold hearings, conferences, and bench trials in the exercise of their sound discretion, but they are encouraged to conduct proceedings by teleconferencing or videoconferencing where practicable and permitted by law.

New York (Southern District)

- The requirement for in-person service has been suspended.
- All jury trials scheduled to begin before April 27, 2020 are continued pending further order of the Court. Compliance with trial-specific deadlines in these cases is at the discretion of the presiding judge.
- Individual judges may continue to hold hearings, conferences, and bench trials in the exercise of their discretion. However, judges have been strongly encouraged to conduct court proceedings by telephone or video conferencing where practicable.
- All non-case related events have been cancelled.
- Access to the court is limited to specific individuals.
- All individuals attempting to access a courthouse will be screened and must have a temperature of less than 100.4 degrees to enter.

Texas (Eastern and Western Districts)

- All jury trials scheduled to begin before May 1, 2020 are continued pending further order of the court. No other pending deadlines are continued in those cases, but the order directs attorneys to contact the presiding judges if they seek to modify other deadlines.
- Individual judges may continue to hold hearings, conferences, and bench trials in the exercise of their discretion.

U.S. Patent and Trademark Office and Patent Trial and Appeal Board

- All PTAB oral hearings and other in-person meetings are to be conducted remotely by video or telephone.
- USPTO offices have been closed to the public.

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- USPTO has declared the effects of the COVID-19 virus outbreak to be an “extraordinary situation” within the meaning of 37 CFR 1.183 and 37 CFR 2.146 for affected patent and trademark applicants, patentees, reexamination parties, and trademark owners. The USPTO has waived the petition fee for a petition to revive a patent or trademark application which was held abandoned due to the effects of the COVID-19 virus outbreak. The same notice, issued on March 16, 2020, stated that it did **not** grant waivers or extensions of dates or requirements set by statute.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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