

COVID-19 NEWS OF INTEREST

# Willkie IP COVID-19 Update: Procedural Restrictions at the Patent Office, PTAB, and Courts with Significant Patent Dockets as of March 30, 2020

March 30, 2020

## AUTHORS

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On March 18, 2020, Willkie circulated a [summary](#) of procedural restrictions made in response to the COVID-19 pandemic in significant patent dockets and the USPTO. Since then, courts and administrative offices across the country have instituted additional measures to address the ongoing COVID-19 outbreak. Below is an updated summary of the measures taken as of 2 PM EST March 30, 2020 by the Supreme Court, Federal Circuit, various District Courts across the country and the USPTO. Since the last update, District Courts across the country have closed courthouses after learning of recent visits by individuals subsequently diagnosed with COVID-19. Additionally, courts have continued to update procedures to address the unique challenges to efficiently managing their dockets during the COVID-19 outbreak, including the issuance of new guidance or orders relating to teleconferences. Some courts have issued additional guidance or orders regarding extensions. We will continue to monitor as the situation develops.

### **U.S. Supreme Court**

- The deadline to file any petition for a writ of certiorari due on or after March 19, 2020 is extended 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing.

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- Motions for extensions of time will ordinarily be granted by the Clerk as a matter of course if the grounds for the application are difficulties relating to COVID-19 and the length of the extension is reasonable.
- Motions to delay distribution of a petition for writ of certiorari will ordinarily be granted where the grounds for the motion are that the petitioner needs additional time to file a reply due to difficulties relating to COVID-19 and the length of the extension is reasonable.
- Oral arguments in the March session have been suspended.
- The building will continue to be open for official business, but it is closed to the public until further notice.
- Except as mentioned above, filing deadlines have not been extended.

### **US Court of Appeals for the Federal Circuit**

- The Federal Circuit issued guidance for serving documents outside of CM/ECF that emphasizes that the parties can consent to electronic service, such as through email.
- All requirements to provide paper copies of documents submitted electronically are suspended for all documents filed on or after March 20, 2020. The order notes that the Clerk's Office may direct parties or counsel to file paper copies in individual cases.
- Pro se parties are permitted to submit case-initiating documents by fax or email. Responsive deadlines will be calculated from the date when the Clerk of Court docketed and serves the document through the court's electronic filing system. Pro se parties can now consent to service by email.
- The Clerk's Office will continue to issue Notices to Advise of Scheduling Conflicts and to require a response from counsel. Counsel have been advised that travel restrictions due to COVID-19 are an insufficient basis for a scheduling conflict due to the availability of telephonic conferences for oral argument.
- The Federal Circuit has granted the Clerk's Office authorization to implement alternate methods for responding to public inquiries due to the high volume of telephone calls and limited staff resources.
- 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.

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### **California (Northern District)**

- The Oakland, San Jose, and Eureka/McKinleyville Courthouses have been closed entirely to the public, and essential courthouse operations will be consolidated and relocated to the San Francisco Courthouse until April 7.
- A person who visited the Robert F. Peckham Federal Building in San Jose three times was subsequently treated for COVID-19.
- Hearings held by teleconference will be conducted on a conference call line that will be available to members of the press and public free of charge, to the extent practicable. Dial-in information will be available on each case's docket on PACER. Members of the press and public are expected to mute their end of the line and to not disrupt proceedings in any way.
- 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**

- To reduce the handling of paper copies, the District Court has created and implemented an electronic civil summons form that can be completed without requiring the Clerk to print, sign, seal and handle the originals.
- 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.

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- 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.
- The J. Caleb Boggs U.S. Courthouse was closed on March 19, 2020 after the District of Delaware was informed that an attorney who recently appeared before the Court had tested positive for COVID-19. The J. Caleb Boggs U.S. Courthouse was reopened on March 23, 2020 after a “thorough deep-cleaning of the affected areas.”

### **Illinois (Northern District)**

- The District Court Clerk’s Offices at the Everett McKinley Dirksen U.S. Courthouse and the Stanley Roszkowski U.S. Courthouse are closed to public entry. No in-person deliveries of any kind may be made to a judge’s chambers or to the Clerk’s Office.
- All courtesy copy requirements have been suspended.
- On March 17, 2020, the Northern District of Illinois released a letter stating that an employee who works in the Dirksen Courthouse tested positive for the COVID-19 virus.
- As of March 17, 2020, all deadlines in all civil cases are extended by 21 days from their current deadline. 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. However, any party may still 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.

### **New Jersey**

- Several federal employees who work in courthouses in Newark have tested positive for COVID-19. The Martin Luther King and Frank R. Lautenberg U.S. Courthouses have been closed from March 26 to April 6.

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- All filing and discovery deadlines in civil matters that currently fall between March 25, 2020 and April 30, 2020 are extended by 45 days unless otherwise directed by the presiding judge in an individual case. Any applicable statute of limitations is not tolled or extended, and litigants can still seek emergency relief.
- The District of New Jersey released guidelines for remote teleconferences.
  - Use a landline whenever possible.
  - Use a handset rather than speakerphone.
  - Identify yourself each time you speak.
  - Be mindful that interruptions can render both speakers unintelligible.
  - Mute when not speaking. Avoid voice-activated systems.
  - Spell proper names.
  - Have judge confirm reporter is on the line.
- Access to the courthouse is restricted for visitors potentially exposed to COVID-19.
- All civil jury selections and jury trials scheduled to begin before April 30, 2020 are continued pending further order of the court.
- 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)**

- As of March 30, no SDNY staff will be on site at 40 Foley and no Southern District matters will be heard in the Marshall Courthouse with the exception of grand jury matters. The Moynihan Courthouse will be open to hear urgent criminal matters and matters in which immediate relief is sought pursuant to Rule 65(b) of the Federal Rules of Civil Procedure.

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- Parties who have civil matters requiring the immediate attention of a judge must bring the matter to the attention of the Clerk of Court by telephone between 8:30 AM and 4:00 PM, Monday through Friday, prior to filing the papers or bringing the papers to the courthouse.
- 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. Individual judges have posted their own orders relating to extensions of time in civil cases and adjourning conferences to their web pages.
- The requirement for in-person service has been suspended.
- No jury trials until June 1, 2020. Compliance with trial-specific deadlines in these cases is at the discretion of the presiding judge.
- 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)**

- An individual who visited the Plano Courthouse received a presumptive positive diagnosis for COVID-19. The Plano Courthouse was closed from March 18, 2020 to April 1, 2020.
- 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. The order expressly notes that it is intended to afford each presiding judge with maximum discretion to handle his or her respective dockets.
- The Eastern District of Texas has placed limitations on entry into courthouses for individuals potentially exposed to COVID-19.

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### **Texas (Western)**

- Courthouses in the Western District of Texas are closed except for pleas, sentencings, and criminal matters before Magistrate Judges.
- All settings in any civil matter currently scheduled before May 1, 2020 are cancelled pending further order of the court.
- All other deadlines in a scheduling order, other than a trial date, shall remain in effect unless modified by the assigned judge.

### **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.
- The 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.
- The USPTO has suspended any requirement for original, handwritten signatures for certain correspondence with the USPTO.

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Willkie has multidisciplinary teams working with clients to address coronavirus-related matters, including, for example, contractual analysis, litigation, restructuring, financing, employee benefits, SEC and other corporate-related matters. Please click [here](#) to access our publications addressing issues raised by the coronavirus. For advice regarding the coronavirus, please do not hesitate to reach out to your primary Willkie contacts.

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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