



CRISIS PRACTICE

# Coronavirus

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For more information,  
contact:

Steve Rizzi  
+1 212 556 2269  
[srizzi@kslaw.com](mailto:srizzi@kslaw.com)

## King & Spalding

New York  
1185 Avenue of the Americas  
New York, New York 10036-4003  
Tel: +1 212 556 2100

## An Update on COVID-19 Impacts on Intellectual Property Cases at the Federal Courts

New developments in the Court of Appeals for the Federal Circuit and various district courts; first remote patent trials scheduled in Southern District of New York and Eastern District of Virginia

As the ongoing COVID-19 pandemic continues to disrupt the judicial system throughout the country, courts are modifying and extending earlier coronavirus-related orders and issuing new orders that reflect judges' continuing efforts to adapt and manage their dockets.

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

The Federal Circuit issued a Notice on April 21 that, like the April session, oral arguments for the court's May session will be conducted telephonically, with live audio available to the public.

### ***Eastern District of Texas***

On April 22, 2020, the Eastern District of Texas issued a new General Order that extended several of its prior coronavirus-related orders until May 31, 2020,

On April 20, Judge Gilstrap issued a new Standing Order addressing pretrial procedures in civil cases in view of the coronavirus. The order notes that, "with the assistance of modern technology, civil cases can be litigated largely without travel or in-person contact between attorneys, witnesses, experts, Court personnel, and other case participants." The order includes several provisions of note:

- The court will consider, where warranted, multiple requests for extensions of time, but none that "effect a complete halt of case activities for a long period of time," and "invites parties to submit creative



scheduling proposals that sequence events in the interest of moving litigation forward fairly, efficiently and effectively given COVID-19 restrictions.”

- Absent good cause, no in-person hearings will be held in cases where one of the parties has lead counsel that is subject to a stay-at-home or similar order.
- The court set procedures for video and telephonic hearings.
- The court ordered all depositions to proceed remotely during the pandemic, either telephonically or by videoconference.
- With respect to source code review, the court ordered the parties to implement temporary procedures to allow for remote review during the pandemic.
- The court similarly ordered parties to produce documents and tangible things in a form that can be reviewed remotely.
- No in-person mediations will be held during the pandemic absent leave of the court

The court also indicated that to encourage parties to cooperate in reaching agreement on these temporary procedures, the “unconventional practices used during this health emergency . . . may not be cited as appropriate practices to follow once the health emergency has passed.”

#### ***Western District of Texas***

On April 15, the Western District of Texas issued a Supplemental Order concerning the coronavirus, and continued all civil and criminal jury selections and jury trials scheduled to begin before May 31, 2020. Following the Supplemental Order, Judge Pitman issued an Amended Emergency Order for all cases before him with specific instructions for remote court proceedings. His order encourages parties to work together to revise schedules to accommodate difficulties in meeting deadlines.

#### ***District of Delaware***

On April 17, the District of Delaware revised its Standing Order concerning the coronavirus, and continued all civil and criminal jury selections and jury trials scheduled to begin before May 31, 2020.

#### ***District of New Jersey***

On April 17, 2020, the District of New Jersey revised its Standing Order, extending the dates and time periods in prior orders concerning the coronavirus. In particular:

- All civil and criminal jury selections and jury trials scheduled to begin before May 31, 2020 are continued.
- All filing and discovery deadlines in civil matters that currently fall between May 1, 2020 and May 31, 2020, are extended by 30-days, unless the presiding judge in an individual case directs otherwise. The order does not apply to deadlines already extended by prior Standing Order 2020-04.

#### ***Southern District of New York***

In *Ferring B.V. v. Serenity Pharmaceuticals, LLC*, No. 17 Civ. 9922, a declaratory judgment action involving two pharmaceutical patents, Chief Judge McMahon issued a notice to counsel on April 23, indicating that, notwithstanding the pandemic, a bench trial would proceed in the case on May 26, or no later than a week or two after, apparently without the judge present in the courtroom. The notice indicates that Chief Judge McMahon will receive direct testimony in writing, and “listen to cross examinations conducted remotely.” She also indicated that “witnesses who are located in



other countries and cannot travel to court can have their depositions submitted instead.” The case was originally set to go to trial in March.

**Central District of California**

On April 13, the Central District of California revised its General Order 20-05 concerning the coronavirus and continued all civil and criminal jury selections and jury trials scheduled to begin before June 1, 2020.

On April 17, Judge Kronstadt issued a Minute Order pursuant to General Order 20-05 stating that no hearings in civil cases will go forward and stating all motions, status conferences, and Rule 26(f) conferences between May 1, 2020, and June 1, 2020, are taken off calendar and will be decided on the papers with no oral argument.

**Eastern District of Virginia**

In *Centripetal Networks, Inc. v. Cisco Systems, Inc.*, No. 2:18cv94, pending in the Norfolk Division of the Eastern District of Virginia, Judge Morgan in issued an order on April 23, 2020, denying Cisco’s request to continue a videoconference bench trial set to begin on May 6, 2020, via Zoom. The court previously issued a general order providing for the use of Zoomgov for remote proceedings. The court rejected Cisco’s objection based on the lack of security of the Zoom platform, given that a courtroom trial would be open to the public. Judge Morgan also rejected Cisco’s concerns regarding the ability to effectively cross-examine witnesses remotely, and the Rule of Sequestration of witnesses. Finally, because Cisco’s technology is used in “the national security context,” and the protection of intellectual property is “of paramount concern,” the court noted that it “seeks to resolve the matter with a sense of urgency.”

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