

Covid-19: Effects on UK IP litigation

Key features of the new guidance for IP litigation

Unlike many European jurisdictions, the civil courts in the UK remain operational through telephone and videolink hearings. In-person hearings, with the necessary safety measures to prevent covid-19 transmission, are still available where absolutely necessary.

UK IP claims are still progressing

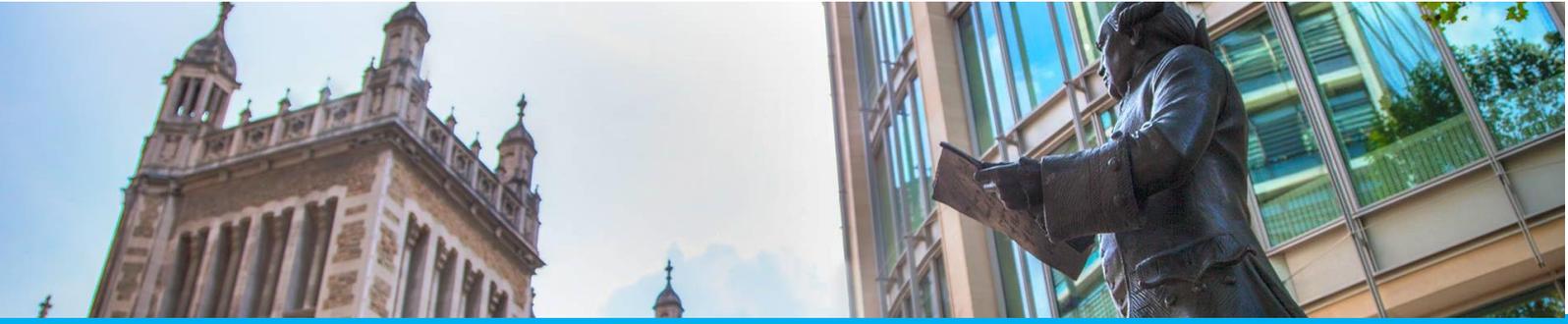
Issued IP claims are still progressing (subject to some adjournments) and new IP claims can be issued and will be progressed. The High Court and IPEC – the usual IP courts – will give priority to “urgent business” (work that, in normal times, would warrant an out of hours application to a judge) but non-urgent business will still be dealt with, and indeed both types of business have already been heard remotely. Similarly, the Court of Appeal is prioritising “urgent work” which is “applications where it is essential, in the interests of justice, that there should be a substantive decision within the next seven days”; it is accepting non-urgent work which will be dealt with when the Court has increased its judicial capacity.

The UK Courts have largely kept the wheels moving by conducting all appropriate hearings and trials remotely via telephone and video link software, using a range of familiar software such as BT MeetMe, Skype for Business or Zoom.

Reports from hearings so far have been positive

As of Friday 27th March 2020, Her Majesty’s Courts and Tribunals Service (HMCTS) said that, across all UK courts, “nearly 500 audio hearings [had been] completed” including “a 5 day trial in the court of protection.” IP judges in the UK in particular have embraced remote hearings, although there is still a reluctance to order full trials to take place remotely. In March, the IP judges heard the following matters:

- Birss J heard a Case Management Conference in *Martin v Kogan* (an IPEC copyright case)
- HHJ Hacon heard a remote two-day Pre-Trial Review in the ongoing *Conversant v Huawei & ZTE* High Court FRAND case. Notably, HHJ Hacon adjourned the planned three-week trial on the basis that it was not appropriate for a remote hearing; this was despite a “creative” proposal from the claimant that the trial could be largely conducted via written submissions.
- LJJ Floyd, Arnold and Davies in the Court of Appeal heard a remote full day appeal in *Genentech v MDC* (SPC case).



The hearing in *Conversant v Huawei & ZTE* illustrates the approach the UK courts will take to upcoming trials. The Court will offer the parties one of three alternatives: an in person hearing (but rarely, and only if absolutely necessary; a remote hearing; or an adjournment. If a remote hearing is not appropriate (because, for example, the hearing involves oral evidence from several witnesses), then the usual course of action will be for the Court to adjourn the hearing to a later date. As the Court improves its cloud video platform (CVP) technology, we expect more full trials to proceed remotely.

Parties can now agree litigation deadline extensions of up to 56 days without formally notifying the court (rather than the usual 28 days), so long as that does not put a hearing date at risk.

CJEU and General Court

On 3 April 2020, the Court of Justice of the European Union (CJEU) and General Court of the European Union (General Court) announced temporary changes to their working arrangements.

Judicial activity is continuing, but with priority given to urgent cases such as urgent proceedings, expedited proceedings and interim proceedings. All previously listed CJEU hearings up to 30 April 2020 have been postponed, as have all previously listed General Court hearings up to 15 May 2020. The registries of the two courts have contacted affected parties with information about how proceedings will continue.

Procedural time limits for instituting proceedings and lodging appeals are unaffected. However time limits prescribed in on-going proceedings (except for urgent proceedings) have been extended by one month in CJEU cases, and have been “adapted to the context of the unprecedented health crisis” in General Court cases.

Authors & Experts: Aled Richards-Jones and Ian Kirby

Need advice?

Carpmaels & Ransford is a leading European IP firm based in London. For more information about our firm and our practice, please visit our website at: www.carpmaels.com.

This information provides a summary of the subject matter only. It should not be acted on without first seeking professional advice.

Carpmaels & Ransford LLP is regulated by the Intellectual Property Regulation Board (IPREG).

Copyright © Carpmaels & Ransford LLP 2020