

# Kluwer Trademark Blog

## Austria – UPDATE to the update: Impact of COVID-19 on deadlines in trademark matters

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(Updated as of 21.05.2020 due to further changes in legislation and to provide clarifications)

Austria, as many other countries, adopted legal measures to extend deadlines with a view to the COVID-19 crisis. As the provisions are all but crystal clear, this is to give you an overview of which running deadlines in trademark (and other IP matters) matters are affected and how

### 1. The relevant legal provisions

The Federal Act on Accompanying Measures for COVID-19 of 21 March 2020 (**2<sup>nd</sup> COVID-19 Act**, official gazette BGBl I 2020/16, available [here](#)) foresees, inter alia, far reaching suspensions of deadlines in judicial and administrative proceedings, particularly relevant for appeal deadlines.

Additionally, the **4<sup>th</sup> COVID-19 Act** (Federal act of 4 April 2020, official gazette BGBl I 2020/24, available [here](#)), provides for the extensions of time limits foreseen in the **Federal Trademark Act** (and the Federal Patent Act, Act on Additional Protection Certificates Act, Semiconductor Protection Act, Utility Model Act, Patent Contract Introduction Act, and Design Protection Act). Additionally, the Regulation of the Austrian Patent Office (short “**AT PTO**”) of 26 March 2020 on measures to accompany COVID-19 regarding the filing and receipt of submissions and official deadlines (Patent Office COVID 19 Regulation, available [here](#)) extends deadlines in proceedings before the AT PTO.

### 2. How proceedings before the Austrian Patent Office are affected:

#### (a) Opposition deadlines

All time limits for filing a motion, making a declaration or certain action at the AT PTO, which had not expired by 16 March 2020 or started running after 16 March, are **suspended** during the period between 16 March 2020 and 30 April 2020. This means that the portion of the deadline falling within this period is added to the original time limit, the maximum extension being 46 days. This affects, in particular, opposition deadlines. For instance, an opposition period which started on 20 February 2020 and would normally expire on 20 May 2020, is extended by 46 days: It thus

expires (the 5<sup>th</sup> of May being a Sunday) on 6 May 2020. An opposition deadline which started on 20 March is extended by (46 – 4 =) 42 days and thus ends on 1 August 2020. Whoever wishes to avoid the calculating exercise is well advised to make its filings a few days in advance.

This suspension / extension of deadlines does not affect time limits arising directly from EU legislation (nor deadlines for appeals to the Courts, as noted in (c) below).

### **(b) Pending proceedings before the AT PTO**

All official time limits set by the AT PTO, for which the triggering event is on or after **16 March 2020**, and all official time limits which had not expired by 16 March 2020, are interrupted until 30 April 2020. They will start anew on 1 May 2020 and, in principle, run in full length from then on. However, the AT PTO may also set an appropriate new deadline starting on 1 May 2020. This suspension applies to all time limits for **filing responses** to Office resolutions, or time limits for the submission of a **response** in bilateral proceedings, such as opposition proceedings or trademark cancellation proceedings.

### **(c) Appeals to the Courts**

Under the 2<sup>nd</sup> COVID-19 Act, the time limits for **appeals** against AT PTO decisions are also interrupted until 30.4.2020. Notably, however, this only applies to appeal deadlines still running on **22 March** or starting on or after 22 March (not 16 March). They will begin to run anew on 1.5.2020 (from the beginning).

## **3. How deadlines in trademark infringement proceedings are affected:**

### **a) Extension of procedural deadlines**

In civil court proceedings – with a few exceptions – all *procedural deadlines* (e.g. deadlines for filing a response to law suits, an appeal, or response to an appeal) are interrupted from 22 March 2020 until the end of 30 April 2020. These deadlines will start anew from 1 May 2020 and then run **in full length**. This interruption applies to all deadlines that had not expired by 22.3.2020 or started after that day. A court may, by resolution, waive the suspension and instead fix a new reasonable deadline. In doing so, the court must carefully consider whether the continuation of the proceedings is as urgent as to outweigh the public interest in preventing and combating the dissemination of COVID-19.

### **b) Suspension of deadlines for bringing a law suit or other action**

Both limitation periods and deadlines for **bringing an action** are suspended from **22 March 2020 until the end of 30 April 2020**. They are therefore extended by this period (40 days). This concerns all deadlines within which one must bring an action or an application to court in order to preserve one's rights (e.g. to seek injunctive relief, to claim damages or an appropriate remuneration). This means that the period from 22.3.2020 to the end of 30.4.2020 is not included in the period in which an action or application is to be filed with a court.

As long as the current governmental measures against the spread of COVID-19 are in force, **oral**

hearings and/or other interpersonal contacts at the AT PTO or in any IP matters at Courts in Austria will not take place. Submissions to the AT PTO can now all be made electronically via e-filing (and otherwise by mail).

#### 4. ... and the Exceptions

Please note that other **time** limits, in particular the following, are **not extended**:

- **Renewal deadlines** for trademarks, deadlines for the payment of **annuity fees** for patents (as per a statement on the AT PTO's website, even though they are also provided for in the material IP laws)
- **Priority deadlines**
- „**Cooling-off**“ **periods** (maximum of 6 months in Austria)
- Deadlines under EU law, e.g. for taking action under the **EU Product Piracy Regulation**

While the governmental measures were not extended after 30 April 2020, the extension / suspension of deadlines as noted above will continue to impact pending deadlines for a while, in particular, but not limited to, opposition deadlines, response deadlines and appeal deadlines in pending proceedings before the Austrian PTO. If you have any questions, do not hesitate to get in touch. All the best and stay well!

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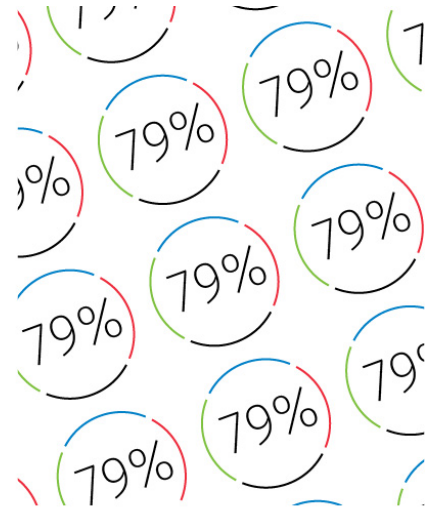
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