

Will the coronavirus pandemic affect your intellectual property litigation?



David B. Cupar | Wednesday, March 11, 2020

UPDATE: (March 13, 2020) By suspending oral arguments of multiple trials and ordering others to be conducted by phone, the Federal Circuit took action to slow the spread of COVID-19. The Federal Appeals Court handles all appealed patent cases regardless of jurisdiction. According to Law360.com reporter Ryan Davis, "by the close of business Thursday, the court had issued orders addressing the new plan in 30 patent cases, scheduling telephone arguments in 17 of them and canceling arguments completely in 13 others."

UPDATE: (March 12, 2020) The Cuyahoga County Court of Common Pleas has stayed all upcoming trials. According to Cleveland.com's Cory Shaffer, concerns over the coronavirus forced the decision to suspend most jury trials for four weeks.

Count the United States courts among the institutions taking precautions to curb the spread of coronavirus as confirmed cases of COVID-19 eclipsed 100,000 worldwide.

On March 6, a court in the Central District of California granted in part a joint request for a stay of litigation in UPL NA, Inc. v. Tide International (USA), Inc. as discovery efforts were being "severely impacted by the outbreak of coronavirus."

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According to the request, both parties had “sought materials and testimony from witnesses who are located outside of the United States, including in China, and given current travel restrictions and quarantine rules, obtaining the discovery sought at this time is impractical, if not impossible.”

While the court did not find basis to vacate an upcoming hearing in the case which is scheduled for a jury trial beginning on Sept. 29, it did find “good cause to vacate the other dates presented in the Request.”

It is good for people to know the parties and courts in litigation are taking precautions depending on the situation. There are questions to consider. Did anyone travel to a foreign country recently? Will any witnesses be coming in from a foreign country? Will there be a large group of people in a room for a significant amount for a significant amount of time? One person with the virus in a courtroom, a jury room, or during voir dire can infect 15 to 20 people very fast, and then all of a sudden there is another outbreak.

Since Lew’s decision, courts around the country have taken steps to reduce or restrict operations or access in response to the spread of COVID-19. On Monday, Pete Williams and Jonathan Dienst of NBC News [reported that all civil and criminal jury trials have been postponed](#) and grand juries are no longer meeting in Seattle and Tacoma. Federal courts in New York are restricting entry to anyone known to have traveled to China, South Korea, Japan, Italy or Iran in the last two weeks.

As [reported by Law.com on Monday](#), the U.S. Court of Appeals for the Fourth Circuit asked lawyers to notify the court if they have a fever, cough, shortness of breath or any other symptoms of the coronavirus before they appear for oral arguments between March 17-19. “This will enable the Court to reschedule an argument that might otherwise risk spreading the coronavirus,” the notice said.

Andrew Denney of the New York Post [also reported on Monday](#) that Brooklyn federal judge Roslynn Mauskopf has prohibited prisoners with fevers above 100.4 degrees to be brought to court for hearings.



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