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The Impact of COVID-19 on IP Contracts

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In an article for IPWatchdog, which published on April 13, Benjamin Hodges and Kelly Mennemeier discuss the impact of the global coronavirus (COVID-19) pandemic on contracts. According to Hodges and Mennemeier, licensees and licensors both have options under common licenses to either enforce, or excuse, provisions due to COVID-19.

Whether a party wants to be excused from its obligations or wants to enforce those obligations even in light of changed circumstances caused by the COVID-19 outbreak, Hodges and Mennemeier state the first place to look is the contract. Specifically, search for any provisions relating to performance obligations (such as minimum sales, production or royalty requirements, or timing requirements for things like royalty payments), cancellation or termination provisions, and force majeure.

Beyond these contractual issues, COVID-19 poses other issues for IP licenses, particularly potential bankruptcy and pledges of non-enforcement of IP rights. It is forecasted that the economic complications of COVID-19 may cause bankruptcies in the U.S., which could include licensees or licensors of IP rights.

Another consideration for IP licenses, is whether any company chooses to enforce IP rights during the pandemic, to the extent they are related to needed products to treat the COVID-19 pandemic. Hodges and Mennemeier state that if you or your company owns IP that could be implicated, this is an important consideration to weigh during this time.

For the full article, click here.

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