

IP Law Daily, SUPREME COURT NEWS: High Court postpones March session's arguments, citing COVID-19 concerns, (Mar. 16, 2020)

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By Thomas Long, J.D.

Although the oral arguments have been postponed indefinitely, the Court plans to hold its regularly scheduled Conference on Friday, March 20, and to issue its regularly scheduled Order List on Monday, March 23.

The U.S. Supreme Court has announced that in keeping with public health precautions recommended in response to the COVID-19 pandemic, the Court is postponing oral arguments currently scheduled for the March [session](#) (March 23–25 and March 30–April 1). In a [media release](#), the Court said that it will examine the options for rescheduling those cases in due course in light of the developing circumstances.

Arguments in two closely watched IP cases—*USPTO v. Booking.com B.V.* ([No. 19-46](#)) and *Google LLC v. Oracle America Inc.* ([No. 18-956](#))—that were scheduled for argument on March 23 and 24, respectively, are among those postponed.

In *Booking.com*, the Court has been asked to decide whether the addition by an online business of a generic top-level domain (".com") to an otherwise generic term can create a protectable trademark. At issue is a [decision](#) of the U.S. Court of Appeals in Richmond, holding that the federal district court in Alexandria, Virginia, did not err in concluding that the trademark BOOKING.COM is registrable in connection with hotel reservation services because the term has acquired distinctiveness as a source of such services provided by Netherlands-based Booking.com B.V. One dissenting judge on the Fourth Circuit panel agreed with the USPTO that the combination of a generic term with a generic top level domain designator does not make the combined mark less generic.

The second case is a hotly contested copyright dispute between Google and Oracle that raises the issue of whether copyright protection extends to a software interface and whether Google's utilization of Oracle's Java Application Programming Interface (API) to develop the Android operating system was fair use. Under review is a Federal Circuit [decision](#) overturning a jury's finding that Google's use of Oracle's Java API packages constituted a fair use. The Federal Circuit had previously [held](#) that the API packages were entitled to copyright protection. More than 60 amicus briefs have been filed in the case, many by academics and public interest advocacy groups. In an amicus brief, the U.S. Department of Justice sided with Oracle, [urging](#) the Court to affirm the Federal Circuit's holding.

The Court said that it will hold its regularly scheduled Conference on Friday, March 20. Some Justices may participate remotely by telephone. The Court will issue its regularly scheduled Order List on Monday, March 23 at 9:30 a.m. The Supreme Court Building will continue to be open for official business, and filing deadlines have not been extended under Rule 30.1. The Court said that it is expanding remote working capabilities to reduce the number of employees in the building, consistent with public health guidance. The building will remain closed to the public until further notice.

"The Court's postponement of argument sessions in light of public health concerns is not unprecedented," according to the media release. "The Court postponed scheduled arguments for October 1918 in response to the Spanish flu epidemic. The Court also shortened its argument calendars in August 1793 and August 1798 in response to yellow fever outbreaks."

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