

USPTO Announces Further Extensions of Deadlines Under the Coronavirus Aid, Relief, and Economic Security Act

May 28, 2020

The United States Patent and Trademark Office (USPTO) has recently taken further steps to support innovation during the COVID-19 crisis to assist innovative companies, research centers, universities and individual inventors, and accommodate delays and interruptions incurred as a result of the pandemic. On May 27, 2020, the USPTO announced another extension of deadlines to file certain patent and trademark-related documents and fees. However, unlike prior extensions, the relief provided by the USPTO's recent actions do not apply broadly to all cases and clients. Careful attention should be paid to whether an applicant qualifies for an extension, and what steps should be taken to ensure that filings and fee payments are deemed to be timely filed.

This new extension, provided in accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), modifies prior extensions issued by the USPTO on March 31, 2020 and April 28, 2020. Those extensions effectively extended the time for applicants to file certain documents and pay certain fees, which otherwise would have been due between March 27 and May 31, to June 1, 2020.

For small and micro entities **only**, filings that would have been deemed timely, if filed by June 1, 2020 under the prior extensions, will now be deemed timely filed if filed by July 1, 2020. However, these extensions are not automatically applied or issued by the USPTO. Instead, extensions are available only if the delay was due to COVID-19. As a result, a statement verifying that any delay in filing or payment was due to the COVID-19 pandemic must be submitted with the filing or payment in order to qualify for the special extension of time. A delay is due to the COVID-19 outbreak if someone associated with the filing or payment, including applicants, inventors and attorneys, was personally affected by the outbreak through reasons such as office closures, cash flow interruptions, inaccessibility of files or other materials, travel delays, personal or family illness, or similar circumstances that materially interfered with timely filing or payment.

For large entities, after May 31, 2020, additional relief will be provided by the USPTO on a case-by-case basis. Such requests can be submitted through a petition for extension or a petition to revive.



For entities of all sizes, the USPTO will continue to waive the petition fee for filing a petition for revival of any application that became abandoned on or before June 30, 2020, if submitted with a statement that the delay in filing or payment was due to the COVID-19 outbreak.

For trademark matters, the prior extensions will still expire on May 31, 2020. However, the USPTO will provide additional relief to those who need it on a case-by-case basis. Specifically, applicants who were unable to submit a timely response or fee in response to an Office communication can file a petition to revive the application. Similarly, applicants and registrants who missed a statutory deadline, for example a Statement of Use or renewal, resulting in an abandoned application or a cancelled/expired registration, can file a "Petition to the Director" form. The USPTO will continue to waive petition fees to revive an application or reinstate a registration that became abandoned or cancelled/expired as a result of the COVID-19 outbreak, if submitted with a statement that the delay in filing or payment was due to the COVID-19 outbreak.

For proceedings before the TTAB, parties can make a request or motion for an extension or reopening of time, as appropriate, if the COVID-19 outbreak has prevented or interfered with any filing.

The USPTO's Official Notice for patent matters can be found here: <https://www.uspto.gov/sites/default/files/documents/Patents-Notice-CARES-Act-2020-05.pdf>.

The USPTO's Official Notice for trademark matters can be found here: <https://www.uspto.gov/sites/default/files/documents/TM-Notice-CARES-Act-2020-05.pdf>.

Lathrop GPM has been actively assisting clients with COVID-19-related patent and trademark matters. For more information, please contact Tucker Griffith or your regular Lathrop GPM contact.