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USPTO Extends Statutory Deadlines By 30-Days Pursuant To CARES Act Authority

April 1, 2020

Among the many provisions of the CARES Act, authority was given to the U.S. Patent and Trademark Office (USPTO) to temporarily modify statutory deadlines. The USPTO has acted quickly on this authority, temporarily extending deadlines by 30 days provided that the delay is attributable to COVID-19.

What Is Required To Attribute Delay To COVID-19

For both trademark and patent matters, attributing the delay to COVID-19 means the applicant, registrant, attorney, or other person associated with the filing was personally affected by the outbreak. Occurrences such as office closures, cash flow issues, inaccessibility of files or other materials, travel delays, personal or family illness, or the outbreak “materially interfered” with a timely filing are all qualifiers.

Trademark 30-Day Extension Details

On March 31, Andrei Iancu, the Director of the USPTO, issued [a notice extending the following trademark deadlines](#) falling between March 27 and April 30, 2020, by 30 days provided that the filing includes a statement the delay was due to the COVID-19 pandemic.

The trademark deadlines are related to all of the following:

- Response to an office action, including notice of appeal
- Statement of use or extension of time to file statements of use

- Notice of opposition or request for extension of time to file a notice of opposition
- Priority filing basis for applications under Section 44(d) or Section 67
- Transformation of an extension of protection to the U.S. into a U.S. application under Section 70(c)
- Section 8 declarations
- Section 9 renewals
- Affidavit of use or excusable nonuse under Section 71(a)

Where COVID-19 has interfered with other TTAB filings, a party can make a request or motion for an extension or reopening, as appropriate. Finally, the existing procedures to revive an abandoned application or reinstate a canceled or expired registration remain in place, with the fees previously waived by the USPTO.

Patent 30-day Extension Details

In addition, on the same day, Director Iancu issued a [similar notice for patent deadlines](#).

Deadlines for the following events that fall between March 27 and April 30, 2020 are extended 30 days provided the filing includes a statement the delay was due to the COVID-19 pandemic:

- Reply to office notice issued during pre-examination processing by a small or micro entity
- Reply to office notice or action issued during examination or patent publication processing
- Issue fee
- Notice of appeal
- Appeal or reply brief
- Appeal forwarding fee
- Request for oral hearing before the Patent Trial and Appeal Board
- Response to substitute examiner's answer
- Amendment when reopening prosecution in response to, or request for rehearing of, a PTAB decision designated as including a new ground of rejection
- Maintenance fee, filed by a small or micro entity
- Request for rehearing of a PTAB decision under 37 CFR §41.52

Upon a request affirming that a filing is delayed that was or is due

between March 27 and April 30, 2020 because of COVID-19, the PTAB will also provide a 30 day extension for:

- Request for rehearing of a PTAB decision under 37 CFR §§ 41.125(c), 41.127(d) or 42.71(d)
- Petition to the chief judge
- Preliminary response in a trial proceeding by patent owner under 37 CFR §§ 42.107 or 42.207 or any related responsive filings

For other PTAB matters where COVID-19 has delayed a filing, a request for an extension of time can be made.

For more information, please contact the Barnes & Thornburg attorney with whom you work, or Philip A. Jones at 312-338-5915 or pjones@btlaw.com.

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