

The United States Patent and Trademark Office Finally Weighs in on the CARES Act Allowing Waiver of Patent-Related and Trademark-Related Timing Deadlines

Article
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The United States Patent and Trademark Office (USPTO) announced a temporary waiver of certain timing deadlines in view of the current COVID-19 outbreak. Section 12004(a) of the CARES Act provides the USPTO with the ability to toll, waive, adjust, or modify any deadline under the America Invents Act for the duration of the emergency period, provided that the Director of the USPTO determines that the emergency period does any of the following:

- Materially affects the function of the USPTO;
- Prejudices the rights of applicants, registrants, patent and trademark owners, or others appearing before the USPTO;
- Prevents applicants, registrants, patents and trademark owners, or others appearing before the USPTO from filing a document or a fee.

The Director of the USPTO has determined that, although the USPTO remains functional, the rights of applicants and their representatives and the ability to file documents and fees have been materially affected, particularly with respect to small businesses and independent inventors. As a result, the USPTO has announced that a number of patent deadline-specific communications, including, but not limited to, patent Office Action responses, payment of issue fees, and Notices of Appeal, that were due between March 27 and April 30 (inclusive of both dates) may have the deadline extended for up to thirty days from the original due date. In order to have the deadline extended, the filing must be accompanied by a statement that the delay was due to the COVID-19 outbreak.

In addition, upon notification to the USPTO that filing with a due date between March 27 and April 30 (inclusive of both dates) will or could be delayed due to COVID-19, the Patent Trial and Appeal Board (PTAB) will provide a thirty-day extension for a request for rehearing, a petition to the Chief Judge, or a

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preliminary response, or any other responsive filing, in a trial proceeding. The PTAB has also been given discretion to extend other deadlines that fall outside the April 30 deadline in the event that a responsive filing deadline is extended.

Similar trademark deadline-specific communications, including responses to trademark Office Actions, notices of appeal, notices of opposition, and renewal applications due during the dates referenced above will likewise be extended, provided that a statement that the delay was due to the COVID-19 outbreak is included. However, certain situations where the COVID-19 outbreak has prevented or interfered with a filing with the Trademark Trial and Appeal Board (TTAB) will not be covered. In all other respects, the USPTO is open for the filing of trademark and TTAB documents and fees.

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