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U.S. Patent and Trademark Office (USPTO) Provides Applicants Affected by COVID-19 Relief from Patent and Trademark Deadlines

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Download Client Alert: U.S. Patent and Trademark Office (USPTO) Provides Applicants Affected by COVID-19 Relief from Patent and Trademark Deadlines

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) passed by the United States Congress was signed into law by President Donald J. Trump on March 27, 2020. The CARES Act granted temporary authority to a number of government agencies including the United States Patent and Trademark Office (USPTO). Acting under this temporary authority, USPTO Director Andrei Iancu published notices providing waivers of statutory deadlines applicable to both patent prosecution and trademark prosecution.

Prior to Director Iancu's actions pursuant to the CARES Act, on March 16, 2020, the USPTO had only been able to provide relief from requirements set by regulation rather than by statute. The Director had power to provide for waiver of petition fees for Petitions to Revive filed by patent applicants who were unable to timely reply to deadlines due to the effects of the coronavirus outbreak. Similarly, for trademark applications and registrations, the USPTO was able to waive the petition fee to revive abandoned applications and expired registrations because of an inability to timely respond to an Office communication. Such relief mechanisms found support in the federal regulations by identification of the coronavirus pandemic as an "extraordinary situation". See 37 CFR 1.183 and 37 CFR 2.146. Petitions to revive due to the coronavirus are relatively simple to submit using the USPTO's electronic filing system, but must be submitted within six months of the date the patent or trademark application became abandoned or the trademark registration was cancelled or expired.

The USPTO's latest notices, enabled by the CARES Act, discussed the prejudice of rights of applicants, patent owners, and trademark registrants preventing them from filing a required document or fee with the USPTO. The notices acknowledged that "the spread of the virus has significantly disrupted the operations of numerous businesses, law firms, and inventors. Small businesses and independent inventors…may face particular difficulties."

For patent applicants, the USPTO is providing an extension of 30 days from the initial due date for certain deadlines including a reply to an Office notice or action, issue fee, notice of appeal, appeal brief, reply brief, a maintenance fee filed by a small or micro entity, and others that were due between March 27, 2020 and April 30, 2020, inclusive. For trademark applicants, the USPTO is providing an extension of 30 days from the initial due date for certain deadlines related to a response to an Office action, a statement of use, notice of opposition, priority filing, and others that were due between March 27, 2020 and April 30, 2020, inclusive. For either patent applicants or trademark applicants to receive the extension, the filing or fee must be "accompanied by a statement that the delay in filing or payment was due to the COVID-19 outbreak."

A delay is "due to the COVID-19 outbreak … if a practitioner, applicant, [registrant,] or other person associated with the filing or fee was personally affected by the COVID-19 outbreak [such as] through office closures, cash flow interruptions, inaccessibility of files or other materials, travel delays, personal or family illness, or similar circumstances, such that the outbreak materially interfered with timely filing or payment."

If you – as an applicant, your patent practitioner, or your trademark attorney were affected by the COVID-19 outbreak, then you may be eligible for the USPTO's extension relief for a presently pending or unintentionally overdue patent application deadline or trademark application deadline. Please reach out now to your Shumaker Intellectual Property lawyers to discuss the status of your pending prosecution and prospective applications. We will continue to keep you updated, and we stand ready to assist in all your intellectual property needs.

Please do not hesitate to contact Patrick B. Horne at phorne@shumaker.com or 704.945.2902, if you have any questions.

For the most up-to-date legal and legislative information related to the coronavirus pandemic, please visit our Shumaker COVID-19 Client Resource Center at shumaker.com. We have also established a 24/7 Legal & Legislative Helpline at 1.800.427.1493 monitored by Shumaker lawyers around the clock.

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