

Publication

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USPTO Deadline Extensions Under the CARES Act

Throughout March 2020, the United States Patent and Trademark Office (USPTO) responded to the COVID-19 outbreak by offering various forms of relief to stakeholders. The widest ranging of these relief efforts were issued under the CARES Act and pertained to how the USPTO would handle certain patent and trademark deadlines. Included in this CARES Act relief effort was a 30-day extension for certain patent, patent application, and Patent Trial and Appeal Board (PTAB) related deadlines due from March 27, 2020 through April 30, 2020.

A summary of the permitted patent-related deadlines extensions by the USPTO is detailed below:

Which deadlines falling from March 27, 2020 to April 30, 2020 are extendable with filing a qualifying COVID-19 statement?

For all applicants, payment and filing of the following fees/replies to the following actions are extendable:

- Replies to office notices, non-final office actions, and final office actions during examination or patent publication processing;
- Issue fees;
- Appeal-related filings, including:

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- notices of appeal,
- appeal briefs,
- reply briefs,
- appeal forwarding fees,
- requests for an oral hearing before the PTAB, responses to a substitute examiner's answer,
- amendments in connection with a new ground of rejection by the PTAB, and
- requests for rehearing of a PTAB appeal decision);
- Various PTAB filings, including:
 - requests for rehearing of a PTAB decision in an AIA trial or interference proceeding,
 - petitions to the Chief Judge, and
 - patent owner preliminary responses in a trial proceeding, or any related responsive filings

For applicants qualifying as Micro or Small Entities, payment and filing of the following fees/replies to the following actions are extendable:

- Maintenance fees;
- Replies to office notices during pre-examination processing, including:
 - replies to notices of omitted items,
 - replies to notices to file corrected application papers,
 - replies to notices of incomplete application,
 - replies to notices to comply with nucleotide sequences requirements,

- replies to notices to file missing parts of application (including, without limitation, the payment of the filing fees), and
- replies to notifications of missing requirements

Which deadlines falling from March 27, 2020 to April 30, 2020 are not extendable?

- The deadline to file a non-provisional patent application claiming the benefit of a previously-filed foreign patent application;
- The deadline to file a non-provisional application that obtains the benefit of a provisional application's priority date;
- Any co-pendency requirements between the parent application and a later-filed child application.

To be considered for this 30-day extension, filings must include a statement that the delay in filing or payment was due to office closures, cash flow interruptions, inaccessibility of files or other materials, travel delays, personal or family illness, or similar circumstances caused by the COVID-19 outbreak. The form issued by the USPTO to make such a statement can be found [here](#).

The USPTO continues to evaluate the changing circumstances surrounding COVID-19. As of April 24, 2020, the USPTO has not formally indicated whether it will grant any further extensions.

If you have any questions regarding USPTO deadline extensions or other intellectual property issues, please do not hesitate to contact Holby Abern, Adam Masia and Kenneth Matuszewski or your Neal Gerber Eisenberg attorney.

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