

TYPES NOT MAPPED YET March 19, 2020 | TTR not mapped yet | Anthony F. Blum, William A. Holtz Ph.D., Thad J. Blenke

U.S. Patent and Trademark Office's response to COVID-19

In these unprecedented times with the coronavirus (COVID-19) pandemic, the U.S. Patent and Trademark Office (USPTO) has taken a number of actions to help slow the spread of the virus. These actions [are being consolidated here](#), and include:

- All USPTO offices are closed to the public until further notice.
- All in-person USPTO events have been canceled or postponed. Some events will take place via teleconference.
- No examiner, examining attorney interviews, or other meetings will take place in-person until further notice. The USPTO is contacting affected parties and scheduling such meetings remotely by video or telephone.
- All hearings before the Patent and Trial Appeal Board (PTAB) and the Trademark Trial and Appeal Board (TTAB) will also take place remotely by video or telephone until further notice.

The USPTO has also taken a number of actions to assist patent and trademark applicants and owners who have been affected by the pandemic. As explained below, however, applicants and owners should not count on these actions applying to them without first confirming with their attorney. These efforts by the USPTO are set forth [in an official notice](#). In particular, they include:

- The USPTO has deemed the pandemic an "extraordinary situation" under 37 C.F.R. § 1.183 and 37 CFR § 2.146.
- The USPTO has further announced that it will waive the fees for petitions to revive patent applications that are held abandoned or the reexamination prosecution terminated or limited due to the effects of the coronavirus outbreak. Applications might be deemed abandoned, for example, if an office action is not responded to within the six-month statutory deadline. This fee typically can be as high as \$2,000.
- The USPTO similarly will waive the petition fees to revive trademark applications and registrations that were abandoned or canceled/expired due to COVID-19.

It is important to note that the USPTO is not actually waiving or extending any deadlines at this point. While the USPTO does appear to have the legal authority to extend non-statutory deadlines (e.g., under 37 C.F.R. § 1.183), it has not done so (yet). In addition, as the USPTO's notice explains, it does not have the legal authority to waive or extend statutory deadlines. For example, the USPTO cannot waive the statutory six-month deadline to respond to an office action, which explains why it is making the process easier to revive applications that are abandoned for failure to respond. But the USPTO is powerless to rectify other missed deadlines that may occur during this pandemic. As an example, it remains essential to file continuation applications during the pendency of the parent application, and to file non-provisional and foreign applications within a year of a provisional application. If those deadlines are missed, there is no fix.

For now, everyone should assume that all deadlines still apply and nothing has changed with respect to their patent and trademark business. Applications can and will continue to be filed, office actions responded to, and hearings held. The only difference now is that attorneys, examiners, and judges will be working remotely, with interviews and hearings held virtually.

For specific questions on your matters, please feel free to reach out to your attorney at Thompson Coburn.



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