

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

USPTO announces relief to restore priority or benefit rights for patent applicants

The United States Patent and Trademark Office (USPTO) has announced additional relief to patent applicants in response to COVID-19, providing for an extension to the time period for petitioning for certain rights of priority or benefit in a patent application and waiving of the associated petition fee.

Ordinarily, after the expiration of the 12-month period from the filing of the prior-filed application (6 months in the case of design applications), an applicant loses the right to claim priority to or benefit of the prior-filed foreign or provisional application. However, an applicant can receive a two-month extension to file an application by restoring the priority or benefit to a prior-filed foreign or provisional application if applicant files a petition, along with the required fee, and provides a statement that the delay in filing the application seeking priority or benefit was unintentional.

Pursuant to Subsection 12004(a) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act and 37 C.F.R. § 1.183, the additional relief provided by the USPTO extends the two-month time period for restoring the right of priority to or benefit of a foreign or provisional application for any non-provisional application seeking priority under 35 U.S.C. §§ 119(a)/(e), any design application seeking priority under 35 U.S.C. § 172, and any international application seeking priority under 37 C.F.R. § 1.452.

For any non-provisional or design application filed on or after March 27, 2020, but on or before July 30, 2020, the two-month time period for applications seeking priority under 35 U.S.C. § 119(a) (and 35 U.S.C. § 172 for designs) or 35 U.S.C. § 119(e) runs until the later of July 31, 2020, or the expiration of the two-month period set forth in 35 U.S.C. §§ 119(a) or 119(e), as applicable, and the associated petition fee under 37 C.F.R. § 1.17(m) for a petition under 37 C.F.R. §§ 1.55(c) or 1.78(b), as applicable, is waived.

For international applications, the USPTO will waive the petition fee under 37 C.F.R. § 1.17(m) for a petition under 37 C.F.R. § 1.452 to restore the right of priority for which the time period for filing the international application ended between, and inclusive of, March 27, 2020 and July 30, 2020, provided that the application is filed within the two-month period set forth in 37 C.F.R. § 1.452 and includes a petition under 37 C.F.R. § 1.452.

In each instance above, in addition to the filing of a petition, applicant is required to provide a statement that the failure to timely file the application was due to the COVID-19 outbreak as defined under the USPTO's prior notice from [April 28, 2020](#). The USPTO has issued a form (PTO/SB/449) that applicants can use to provide the Statement of Delay Due to COVID-19.

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

[Tony Blum](#), [Wil Holtz](#), and [Thad Blenke](#) are members of Thompson Coburn's Intellectual Property practice group.

[Click here to subscribe](#) to News & Insights from Thompson Coburn related to our practices as well as the latest on COVID-19 issues.



authorsTest

anthony

Anthony F. Blum

william

William A. Holtz Ph.D.

thad

Thad J. Blenke