

TYPES NOT MAPPED YET April 02, 2020 | TTR not mapped yet | Anthony F. Blum, Thomas A. Polcyn, Jennifer A. Visintine, William A. Holtz Ph.D., Thad J. Blenke

USPTO: Extensions under the CARES Act during COVID-19

Update 1: After publication, the extensions discussed below were further extended. The USPTO is now providing for extensions of deadlines that have been affected by COVID-19 that otherwise would have been due between March 27 and May 31, 2020. These deadlines are now extended to June 1, 2020. The USPTO posted [an update](#) detailing this further extension. As always, please discuss with your Thompson Coburn attorney before relying on this or any other extension.

Update 2: The USPTO has provided further extensions and relief measures since the publication of the Note above. The USPTO is now providing for further extensions of certain patent-related deadlines for small and micro entities that have been affected by COVID-19. For deadlines that otherwise would have been due by June 1, 2020, these deadlines are now extended to July 1, 2020. For large entities and for trademark stakeholders, after May 31, 2020, certain relief will be available on a case-by-case basis. The USPTO posted a [patent-related update](#) and a [trademark-related update](#) detailing these further extensions and relief measures. The USPTO has also released a [COVID-19 Response Resource Center](#), serving as a central hub for information about the USPTO's initiatives, programs, and other efforts in response to COVID-19. As always, please discuss with your Thompson Coburn attorney before relying on this or any other patent/trademark information.

The U.S. Patent and Trademark Office (USPTO), in accordance with the recently enacted CARES Act, has taken further steps to address the impact of the national coronavirus (COVID-19) emergency on the nation's intellectual property system and to ease the burden on stakeholders in patent and trademark matters.

As discussed in a previous article - "[Patents, trademarks and the COVID-19 stimulus bill](#)" - the CARES Act, enacted on March 27, 2020, provided the Director with additional discretion to grant extensions. On March 31, 2020, the Director exercised that discretion, and the USPTO [announced](#) extensions to the time allowed to file certain patent and trademark related documents and to pay certain required fees, under the authority granted to the USPTO by Subsection 12004(a) of the CARES Act.

Subsection 12004(a) provides that the Director may toll, waive, adjust or modify any timing deadline established by the patent or trademark acts (or regulations promulgated thereunder) in effect during the COVID-19 emergency period. The Director determined that the national COVID-19 emergency has caused massive disruptions to the ordinary operations of numerous businesses, law firms, inventors and trademark owners, and as such has prejudiced the rights and/or abilities of stakeholders to file a document or fee with the USPTO in patent and trademark-related matters.

Accordingly, for certain documents and/or fees due between, and inclusive of both March 27, 2020 and April 30, 2020, the USPTO has provided for an extension of 30 days from the initial due date. This extension of time applies to certain documents and/or fees during both normal examination of a patent application and before the Patent Trial and Appeal Board (PTAB), including, for example, extensions for a reply to an Office notice or action issued during examination, issue fees, maintenance fees and a request for rehearing of a PTAB decision. The USPTO has [posted a notice](#) that includes a full list of the provided relief.

The extension also applies to certain documents and/or fees during the registration of a trademark application and before the Trademark Trial and Appeal Board (TTAB), including, for example, extensions for responses to an Office action, statements of use, notices of opposition and renewal applications. The USPTO has also [posted a notice](#) that includes a full list of this provided relief.

In order to take advantage of this extension of time, stakeholders must file, along with such document or fee, a statement that the delay in filing or payment was due to the COVID-19 outbreak. The USPTO has provided a broad



list of situations that satisfy the required delay statement, including office closures, cash flow interruptions, inaccessibility of files or other materials, travel delays, personal or family illness, or similar circumstances, so long as there was a material interference with timely filing or payment.

Stakeholders should still attempt to meet original deadlines if possible, and should not rely on any extension without first confirming with their legal counsel that one is available for their particular circumstances. Generally, COVID-19 extensions are not believed to be available for any deadlines for applications, documents or fees that are not explicitly listed in the respective USPTO notices (except that the notices contemplate requests for extensions in other situations in PTAB and TTAB proceedings).

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

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