

Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by the Coronavirus Outbreak

The United States Patent and Trademark Office (USPTO) considers the effects of the Coronavirus outbreak that began in approximately January 2020 to be an “extraordinary situation” within the meaning of 37 CFR 1.183 and 37 CFR 2.146 for affected patent and trademark applicants, patentees, reexamination parties, and trademark owners.

Patent-Related Correspondence – Petitions to Revive

For patent applicants or patent owners who were unable to timely reply to an Office communication due to the effects of the coronavirus outbreak, which resulted in the application being held abandoned or the reexamination prosecution terminated or limited, the USPTO will waive the petition fee in 37 CFR 1.17(m) when the patent applicant or patent owner files the reply with a petition under 37 CFR 1.137(a). *See* 35 U.S.C. § 41(a)(7). The inclusion of a copy of this notice with the reply required to the outstanding Office communication will be treated as a representation that the delay in filing the reply was due to the effects of the Coronavirus outbreak, and as a request for *sua sponte* waiver of the petition fee under 37 CFR 1.17(m). In addition, the petition under 37 CFR 1.137(a) must include a statement that the delay in filing the reply required to the outstanding Office communication was because the practitioner, applicant, or at least one inventor, was personally affected by the Coronavirus outbreak such that they were unable to file a timely reply. The USPTO advises any patent applicant or patent owner who seeks to file a petition to revive under 37 CFR 1.137(a) with a request to waive the petition fee under 37 CFR 1.17(m) due to the effects of the Coronavirus outbreak, to promptly file the petition under 37 CFR 1.137(a) (including the required statement) accompanied by the required reply (but not the petition fee under 37 CFR 1.17(m)) and a copy of this notice. The petition under 37 CFR 1.137(a) must be filed not later than two months of the issue date of the notice of abandonment or the notification that reexamination prosecution has been terminated under 37 CFR 1.550(d) or 37 CFR 1.957(b) or limited under 37 CFR 1.957(c) in order to be entitled to a waiver of the petition fee under 37 CFR 1.17(m). If the patent applicant or patent owner did not receive a notice of abandonment or notification that reexamination prosecution has been terminated under 37 CFR 1.550(d) or 37 CFR 1.957(b) or limited under 37 CFR 1.957(c), the petition must be filed not later than six months after the date the application became abandoned or the reexamination prosecution was terminated or limited in order to be entitled to a waiver of the petition fee under 37 CFR 1.17(m). A petition to revive under 37 CFR 1.137(a) due to the effects of the Coronavirus outbreak may be submitted via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If the provisions set forth in the notice do not apply, relief may be available on petition to the USPTO. The specific type of petition would depend on the facts of the situation and the relief sought.

Patent-Related Correspondence – Contact Information

Patent-related inquiries concerning this notice may be directed to the Office of Patent Legal Administration at (571) 272-7704 ((571) 272-7703 for reexamination), or by e-mail to PatentPractice@uspto.gov.

Trademark-Related Correspondence

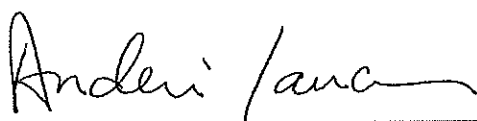
For trademark applications and registrations that were abandoned or canceled/expired due to inability to timely respond to a trademark-related Office communication as a result of the effects of the Coronavirus outbreak, the USPTO will waive the petition fee (set by regulation, rather than statute) to revive the abandoned application or reinstate the canceled/expired registration. For abandoned applications, the Trademark Electronic Application System (TEAS) “Petition to Revive Abandoned Application” form should be used. For canceled/expired registrations, the TEAS “Petition to the Director” form should be used. In all cases, the petition must include a statement explaining how the failure to respond to the Office communication was due to the effects of the Coronavirus outbreak. The petition must be filed not later than two months of the issue date of the notice of abandonment or cancellation. 37 CFR 2.66(a)(1), 2.146(d)(1). If the applicant or registrant did not receive a notice of abandonment or cancellation, the petition must be filed not later than six months after the date the trademark electronic records system indicates that the application is abandoned or the registration is canceled/expired. 37 CFR 2.66(a)(2), 2.146(d)(2).

Trademark-related inquiries concerning this notice may be directed to the Trademark Office of Petitions by telephone at (571) 272-8950, or by e-mail at TMPolicy@uspto.gov.

General Information Regarding Patent-Related and Trademark-Related Statutory Time Periods and Requirements

This notice does not grant waivers or extensions of dates or requirements set by statute. Note, the following patent-related time periods are not extendable by petition: (1) the period set forth in 35 U.S.C. § 119(a)-(d) to file a nonprovisional patent application claiming the benefit of a prior-filed foreign application; (2) the period set forth in 35 U.S.C. § 119(e) during which a nonprovisional application claiming the benefit of a prior filed provisional application must be filed in order to obtain benefit of the provisional application’s filing date; (3) the copendency requirement of 35 U.S.C. § 120 between a parent application which issues as a patent and a later filed child application, which requires that the child application be filed prior to issuance of the

parent application; (4) the three-month time period to pay the issue fee set forth in 35 U.S.C. § 151; and (5) the 35 U.S.C. § 304 two-month time period from the date of patentee service, for a requester to file, in an *ex parte* reexamination, a reply to a statement filed by the patentee. The following statutory trademark-related time periods are not extended and statutory fees are not waived: (1) the 36-month period set forth in 15 U.S.C. § 1051(d) within which a statement of use must be filed and the associated fee(s); (2) the periods set forth in 15 U.S.C. §§ 1058, 1141(k) for filing affidavits of continued use or excusable nonuse and the associated fee(s); (3) the period set forth in 15 U.S.C. § 1059 for filing a renewal and the associated fee(s); and (4) the periods set forth in 15 U.S.C. §§ 1063 and 1064 for filing an opposition or cancellation proceeding at the Trademark Trial and Appeal Board.

Date: 3/16/2020 

Andrei Iancu

Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office