

PUBLICATION

File Your Patents & Trademarks NOW!

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As businesses and offices prepare to reopen, the United States Patent and Trademark Office (USPTO) shows its ongoing support for innovation and entrepreneurship during the novel coronavirus outbreak.

Silver linings for trademark owners and patent applicants are highlighted below.

Patents

The USPTO recently announced a new COVID-19 Prioritized Examination Pilot Program (Pilot Program).

To summarize, this new Pilot Program will allow patent applicants that qualify for small or micro entity status to seek prioritized examination without payment of the fees associated with other prioritized examination. To qualify, the claims of a patent application must be directed to a product or process "for use in the prevention and/or treatment of COVID-19," which would be further subject to FDA approval. As an additional benefit to patent applicants, the USPTO aims to provide a final disposition within six months if applicants timely respond to communications/office actions from the USPTO.

Trademarks Extensions

Acknowledging the significant disruption to the operations of businesses, and determining the COVID-19 outbreak is an emergency that has "prejudiced the rights of applicants, registrants, trademark owners, or others appearing before the Office in trademark matters and has prevented...filing a document or fee," the Trademark Office has issued a second extension for trademark owners impacted by the COVID-19 outbreak who are unable to meet filing deadlines and fees due between March 27, 2020, and May 31, 2020, if filed on or before June 1, 2020, together with "a statement that the delay in filing or payment was due to the COVID-19 outbreak,...such that the outbreak materially interfered with timely filing or payment," as defined in the [Notice](#). For a high-level overview, the Trademark Office and the Trademark Trial and Appeal Board (TTAB) granted extensions for:

- response to an office action, including a notice of appeal from a final refusal;
- statement of use or request for extension of time to file a statement of use;
- notice of opposition or request for extension of time to file a notice of opposition;
- priority filing;
- transformation of an extension of protection to an application;
- affidavit of use or excusable nonuse;
- renewal application;
- affidavit of use or excusable nonuse;
- requests in ex parte appeals;
- motions for trial cases

See the [Notice](#) for additional inclusions, exclusions and requirements for filings.

New Filings

In the recently released Notice, the USPTO also confirms that it is open for the filing of documents and fees submitted to the Trademark Office and to the TTAB. However, new applications for marks appear to be significantly reduced since the outbreak of COVID-19. It also appears that many applications are reaching examination and proceeding toward registration in less than three months, which is less than half of the time mark owners are usually advised to expect from the Trademark Office.

Takeaways

Takeaways for Patent Applicants

If your business and/or research is focused on COVID-19-related innovations and the requirements outlined by the Pilot Program are satisfied, prioritized examination could be an avenue to pursue to protect your discoveries in this quick-moving space.

Takeaways for Trademark Owners and Applicants

Trademark owners with filing deadlines and fees that are facing challenges during the COVID-19 outbreak should keep in mind the extensions offered by the Trademark Office, and also keep in mind the extended deadlines and requirements to ensure compliance.

Additionally, it is an excellent time for trademark owners to file new applications. As noted, the downturn in the number of new applications filed has increased the processing times for marks to reach examination and proceed toward registration. Marks also appear to be moving through the examination process with fewer objections than we would typically expect, which is also speeding up the process for marks to reach registration.

The COVID-19 outbreak is presenting many challenges, but for those who are able, pursuing registration and federal protection for IP and the advantages currently available are some of the few silver linings coming out of the pandemic.

For more information, or if you have questions about this alert, the changing landscape of the USPTO, or for legal guidance and information about the novel coronavirus outbreak, COVID-19, please contact [Paula Estrada de Martin, Ph.D.](#) or any member of our [Intellectual Property Group](#).