

USPTO Extends Trademark-Related Timing Deadlines under the CARES Act, as Other National Trademark Offices Extend their Timing Deadlines or Provide Notice of Delays

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On March 31, 2020, in response to the [Coronavirus Aid, Relief, and Economic Security \(“CARES”\) Act](#), the United States Patent and Trademark Office (“USPTO”) extended the time to file certain trademark-related documents and fees. In its [announcement](#), the Director of the USPTO determined that the outbreak prejudices the rights of trademark applicants, registrants, and owners, and provided that persons who are unable to meet trademark-related deadlines due to the COVID-19 outbreak would be granted a 30-day extension for certain deadlines falling between March 27 and April 30, 2020.

The 30-day extension will be provided to any filing accompanied by a “statement that the delay in filing or payment was due to the COVID-19 outbreak” This provision applies to practitioners, applicants, registrants, or other persons associated with the filing who were personally affected by the outbreak. The USPTO broadly defines such personal reasons to include any “circumstances” that interfered with timely filing or payment, including office closures, inability to access files or other materials, cash flow interruptions, personal or family illnesses, and travel delays. Any extension of time fees would still be due at the time of filing, but the extension may be requested without payment of any additional fee.

The 30-day extension applies to all of the following:

- i. response to an Office action, including a notice of appeal from a final refusal, under 15 U.S.C. §1062(b) and 37 C.F.R. §§ 2.62(a) and 2.141(a);
- ii. statement of use or request for extension of time to file a statement of use under 15 U.S.C. § 1051(d) and 37 C.F.R. §§ 2.88(a) and 2.89(a);
- iii. notice of opposition or request for extension of time to file a notice of opposition under 15 U.S.C. § 1063(a) and 37 C.F.R. §§ 2.101(c) and § 2.102(a);
- iv. priority filing basis under 15 U.S.C. § 1126(d)(1) and 37 C.F.R. § 2.34(a)(4)(i);
- v. priority filing basis under 15 U.S.C. § 1141g and 37 C.F.R. § 7.27(c);

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- vi. transformation of an extension of protection to the United States into a U.S. application under 15 U.S.C. § 1141j(c) and 37 C.F.R. § 7.31(a);
 - vii. affidavit of use or excusable nonuse under 15 U.S.C. § 1058(a) and 37 C.F.R. § 2.160(a);
 - viii. renewal application under 15 U.S.C. § 1059(a) and 37 C.F.R. § 2.182; and
 - ix. affidavit of use or excusable nonuse under 15 U.S.C. § 1141k(a) and 37 C.F.R. § 7.36(b)

The USPTO also stated that for situations not covered in the list above, a request (in ex parte appeals) or motion (for trial cases) for an extension or reopening of time, may be made if the COVID-19 outbreak has prevented or interfered with the filing. Furthermore, the USPTO clarified that existing procedures that are generally available to revive an abandoned application or reinstate a canceled or expired registration are still available to those whose applications and registrations were abandoned, canceled, or expired due to the individual's inability to timely respond to a USPTO communication as a result of the COVID-19 outbreak.

Other national trademark offices have been taking similar measures in an attempt to provide relief to applicants, registrants, and owners in response to COVID-19-related events. For example, the [European Intellectual Property Office](#) ("EUIPO") announced that all time limits expiring between March 9 and April 30, 2020, would be extended until May 4, 2020. Similarly, the [French IP Office](#) ("INPI") extended its deadlines from March 12 to at least "one month after the end of the state of health emergency." Implementation of varying procedures across national offices, however, is proving to be uncertain and fraught with delays.

Numerous national offices have been warning applicants, registrants, and owners that they should expect disruptions and delays. The [World IP Organisation](#) ("WIPO") alerted its users that due to ongoing disruptions in worldwide postal services, the International Bureau of WIPO will be delivering electronic PDF versions of various documents for the foreseeable future, and that paper documents will be sent "as soon as possible." Similarly, the [Canadian Intellectual Property Office](#) ("CIPO") announced that applicants, registrants, and owners should expect significant delays in all services.

Other national trademark and intellectual property offices are working to implement new policies and technologies, such as video conferencing, to avoid significant delays and to address the uncertain duration of COVID-19-related events. For example, the [Australian IP Office](#), in an attempt to prevent disruptions while ensuring the safety of their staff, issued that all required hearings will now be conducted by video conferencing, telephone, or by written submission.

As the COVID-19 situation is rapidly evolving, trademark owners and practitioners should regularly check their respective trademark office's policies, procedures, and updates. Trademark applicants should continue to work toward meeting all original deadlines while preserving any documentation that could help their case in the event that statements, such as the one required by the USPTO, and possibly further evidence of the outbreak's impact, are necessary.

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