

# USPTO Extends Certain Reliefs under CARES Act for Small and Micro Entities

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As an ongoing response to the COVID-19 pandemic, the United States Patent and Trademark Office (USPTO) has provided relief for certain patent-related timing deadlines and fees under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). As of Monday, June 29, 2020, the USPTO is extending or otherwise beginning to direct relief as described below. Although some relief provided in previous notices is ending, other extensions of time and other relief remain available to those who need it on a case-by-case basis.

## 1. CARES Act Relief for Certain Fee Payments by Small and Micro Entities:

For small and micro entities only, any of the following fees due between (and inclusive of both) March 27, 2020 and September 29, 2020 will be considered timely if paid on or before September 30, 2020, if the payment is accompanied by a statement stating that the delay in payment was due to the COVID-19 outbreak.

These fees include:

- a. basic filing fee, search fee, examination fee, and late filing surcharge (37 CFR § 1.16(f), 1.16(g), or 1.492(h)) due in reply to an Office notice issued during pre-examination processing;
- b. basic national fee;
- c. issue fee; or
- d. maintenance fee.

For purposes of relief, the delay in filing or payment is considered to be due to the COVID-19 outbreak if:

- a. the practitioner;
- b. the applicant;
- c. the patent owner;
- d. the petitioner;
- e. the third-party requester;

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- f. the inventor; or
  - g. other person associated with the filing or fee
- was personally affected by the COVID-19 outbreak including, without limitation, through:
- a. office closures;
  - b. cash flow interruptions;
  - c. inaccessibility of files or other materials;
  - d. travel delays;
  - e. personal or family illness; or
  - f. similar circumstances.

For small and micro entities, this can be helpful to prevent abandoning an application due to late payments of fees. Additionally, the June 2020 update extended the previous deadline of July 1, 2020 to September 30, 2020, which will be helpful for those who have been affected by the COVID-19 outbreak.

## **2. Relief by Petitions for an Extension of Time, Petitions to Revive, and Petitions to Accept Delayed Maintenance Fees**

For all patent applicants or patent owners, in addition to the relief in Section 1 above, the following extensions of time and other relief when accompanied by any required fees remain available to any patent applicants or patent owners who need it on a case-by-case basis.

- a. extensions of time under 37 CFR § 1.136 remain available for filing replies to Office actions and notices issued during patent application processing or examination;
- b. petitions under 37 CFR § 1.137 to revive an application remain available if:
  - i. an ability to file or pay patent-related documents or fees by their due date has resulted in the abandonment of an application; or
  - ii. termination or limiting of prosecution in a reexamination proceeding; and
- c. petitions under 37 CFR § 1.378 to accept a delayed maintenance payment remain available if a maintenance fee has not been paid by its due date.

Typically, these petitions have been around for quite a while. The inclusion here is likely to be a reminder that these types of petitions are available.

## **3. Waiver of the Petition to Revive Fee**

For all patent applicants or patent owners, the USPTO has waived the fee for petitions to revive who, because of the COVID-19 pandemic, were unable to submit a timely filing or payment, which resulted in the application becoming abandoned or the reexamination prosecution terminated or limited.

Although there was no time limit specified in the May 2020 update, the June 2020 update requires that Petitions to Revive under 37 CFR § 1.137(a) must be filed by July 31, 2020 to be eligible for the waiver of the Petition to Revive fee in 37 CFR § 1.17(m).

This waiver of the Petition to Revive fee will be incredibly helpful for patent applicants and patent owners who have had an application become abandoned. By submitting a statement that the delay in filing or payment was due to the COVID-19 outbreak (as outlined above in Section 1) and providing

the filing or payment, a patent applicant or patent owner can have the entire Petition to Revoke fee waived.

#### 4. PTAB Proceedings

For proceedings before the Patent Trial and Appeal Board (PTAB), if the COVID-19 outbreak has prevented or interfered with a filing before the PTAB, a request for an extension of time can be made by contacting the PTAB at (571) 272-9797 or by email at [Trials@uspto.gov](mailto:Trials@uspto.gov) for AIA trials, [PTAB\\_Appeals\\_Suggestions@uspto.gov](mailto:PTAB_Appeals_Suggestions@uspto.gov) for PTAB appeals, or [InterferenceTrialSection@uspto.gov](mailto:InterferenceTrialSection@uspto.gov) for interferences.

Although this form of relief is by request only, this may be helpful to those who have been impacted by the COVID-19 outbreak and need more time to file before the PTAB.

The June 2020 Update Regarding Certain Patent-Related Timing Deadlines under the CARES Act is available at the following link: [June 29, 2020 Notice](#). The previous notices are available at the following links: [May 27, 2020 Notice](#) and [April 28, 2020 Notice](#).

As the situation around the COVID-19 pandemic unfolds, the USPTO is continuing to evaluate and update its responses. Although at this time, the USPTO does not anticipate any further blanket extensions beyond those articulated here.

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