Notice of Extended Waiver of Patent-Related Timing Deadlines under the Coronavirus Aid, Relief, and Economic Security Act and Other Relief Available to Patent Applicants and Patentees

In accordance with section 12004 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the United States Patent and Trademark Office (USPTO or Office) is further extending the time to file certain patent-related documents or fees that would otherwise have been due on or after March 27, 2020.

In addition, the USPTO is clarifying the relief available for patent applicants or patent owners who were unable to timely submit a filing or payment in reply to an Office communication due to the COVID-19 outbreak, which resulted in the application being held abandoned or the reexamination prosecution terminated or limited.

This notice supersedes the March 31, 2020, notice titled "Notice of Waiver of Patent-Related Timing Deadlines under the Coronavirus Aid, Relief, and Economic Security Act." This notice also supersedes the March 16, 2020, notice titled "Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by the Coronavirus Outbreak" to the extent discussed below.

I. CARES Act

Subsection 12004(a) of the CARES Act provides that the USPTO may toll, waive, adjust, or modify any timing deadline established by title 35, United States Code, the Trademark Act, section 18 of the Leahy-Smith America Invents Act (35 U.S.C. 321 note), or regulations promulgated thereunder, in effect during the emergency period described in subsection 12004(e) of the CARES Act, if the Director of the USPTO determines that the emergency related to such period: (1) materially affects the functioning of the Office; (2) prejudices the rights of applicants, registrants, patent and trademark owners, or others appearing before the Office; or (3) prevents applicants, registrants, patent and trademark owners, or others appearing before the Office from filing a document or fee with the Office.

On March 13, 2020, the President declared a national emergency under the National Emergencies Act as a result of the COVID-19 outbreak. The Director of the USPTO has determined that the emergency has prejudiced the rights of applicants, patent owners, or others appearing before the USPTO in patent matters and has prevented applicants, patent owners, or others appearing before the USPTO in patent matters from filing a document or fee with the Office. Among other things, the spread of the virus has significantly disrupted the operations of numerous businesses, law firms, and inventors. Small businesses and independent inventors, who frequently have less access to capital and for whom patent-related fees may constitute a more

significant expense, may face particular difficulties. Accordingly, a person who is unable to meet patent-related timing deadlines due to the COVID-19 outbreak may be eligible for a waiver of certain deadlines, as further described below.

(1) CARES Act Relief in Patent Applications and Reexamination and Other Proceedings

(a) Any:

i. reply to an Office notice issued during pre-examination processing[1] by a small or micro entity;
ii. reply to an Office notice or action issued during examination[2] or patent publication processing;[3]
iii. issue fee;
iv. notice of appeal under 35 U.S.C. § 134 and 37 C.F.R. § 41.31;
v. appeal brief under 37 C.F.R. § 41.37;
vi. reply brief under 37 C.F.R. § 41.41;
vii. appeal forwarding fee under 37 C.F.R. § 41.45;
viii. request for an oral hearing before the Patent Trial and Appeal Board (PTAB or Board) under 37 C.F.R. § 41.47;
ix. response to a substitute examiner's answer under 37 C.F.R. § 41.50(a)(2);
x. amendment when reopening prosecution in response to, or request for rehearing of, a PTAB decision designated as including a new ground of rejection under 37 C.F.R. § 41.50(b);
xi. maintenance fee, filed by a small or micro entity;
xii. request for rehearing of a PTAB decision under 37 C.F.R. § 41.52;
xiii. request for rehearing of a PTAB decision under 37 C.F.R. §§ 41.125(c) or 41.127(d); or
xiv. petition to the Chief Judge under 37 C.F.R. § 41.3

due between, and inclusive of both, March 27, 2020, and May 31, 2020, will be considered timely if filed on or before June 1, 2020, provided that the filing or payment is accompanied by a statement that the delay in filing or payment was due to the COVID-19 outbreak as defined in subsection (b) below.

(b) A delay in filing or payment is due to the COVID-19 outbreak for the purposes of this notice if a practitioner, applicant, patent owner, petitioner, third-party requester, inventor,

[1] This includes, for example, a Notice of Omitted Items, Notice to File Corrected Application Papers, Notice of Incomplete Application, Notice to Comply with Nucleotide Sequence Requirements, Notice to File Missing Parts of Application, and Notification of Missing Requirements.
[2] This includes, for example, an Office action (either final or non-final) and Notice of Non-Compliant Amendment.
[3] This includes, for example, a Notice to File Corrected Application Papers issued by the Office of Data Management.

or other person associated with the filing or fee was personally affected by the COVID-19 outbreak, including, without limitation, through office closures, cash flow interruptions, inaccessibility of files or other materials, travel delays, personal or family illness, or similar circumstances, such that the outbreak materially interfered with timely filing or payment.

(2) Additional Relief before the PTAB

(a) Upon a request to the USPTO affirming that a filing due between, and inclusive of, March 27, 2020, and April 30, 2020, was or may be delayed due to the COVID-19 outbreak as defined above in subsection (1)(b), the PTAB shall provide a 30-day extension of time for a patent owner preliminary response in a trial proceeding under 37 C.F.R. §§ 42.107 or 42.207, or any related responsive filings. Note that this relief applies through April 30, 2020, and relief sought after that date should be requested as described in subsection I.3, below.

(b) In the event that the USPTO extends a deadline for a patent owner preliminary response or any related responsive filings under subsection (2)(a), the PTAB may also extend the deadlines provided in 35 U.S.C. §§ 314(b) and 324(c).

(3) PTAB Situations Not Covered Above

For all other situations, a request for an extension of time where the COVID-19 outbreak has prevented or interfered with a filing before the Board can be made by contacting the PTAB at (571) 272-9797 or by email at Trials@uspto.gov (for AIA trials), PTAB_Appeals_Suggestions@uspto.gov (for PTAB appeals), or InterferenceTrialSection@uspto.gov (for interferences).

II. Other Relief Available to Patent Applicants and Patentees—Petitions to Revive

The following incorporates and supersedes the "Patent-Related Correspondence - Petitions to Revive" section of the March 16, 2020, notice titled "Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by the Coronavirus Outbreak" as described below. In this section, the USPTO continues to provide relief in the form of a waiver of the petition fee for the revival of applications (and reexamination proceedings), but limits the eligible applications and reexamination proceedings to those that became abandoned (or terminated or limited) on or before May 31, 2020, as a result of the COVID-19 outbreak. This section also harmonizes the statement that must be provided to take advantage of the revival fee relief with the statement that must be provided to take advantage of the above CARES Act relief, *i.e.*, the statement as defined in subsection I.1.b above.

The USPTO considers the effects of the COVID-19 outbreak to be an "extraordinary situation" within the meaning of 37 C.F.R. § 1.183 for affected patent applicants and patentees.

For patent applicants or patent owners who, because of the COVID-19 outbreak, were unable to timely submit a filing or payment in reply to an Office communication having a due date of May 31, 2020, or earlier (when taking into account all available extensions of time under 37 C.F.R. § 1.136(a)), such that the application became abandoned or the reexamination prosecution became terminated or limited, the USPTO will waive the petition fee in 37 C.F.R. § 1.17(m) when the patent applicant or patent owner files the reply with a petition under 37 C.F.R. § 1.137(a) and a statement that the delay in filing or payment was due to the COVID-19 outbreak as defined in subsection (1)(b) above. See 35 U.S.C. § 41(a)(7). The inclusion of the statement that the delay in filing or payment was due to the COVID-19 outbreak will be treated as a request for *sua sponte* waiver of the petition fee under 37 C.F.R. § 1.17(m).

The USPTO advises any patent applicant or patent owner who seeks to file a petition to revive under 37 C.F.R. § 1.137(a) with a request to waive the petition fee under 37 C.F.R. § 1.17(m) due to the effects of the COVID-19 outbreak, to promptly file the petition under 37 C.F.R. § 1.137(a) (including the required statement) accompanied by the required reply (but not the petition fee under 37 C.F.R. § 1.17(m)). A petition to revive under 37 C.F.R. § 1.137(a) due to the effects of the COVID-19 outbreak may be submitted via the USPTO patent electronic filing systems (EFS-Web or Patent Center) using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

III. The USPTO Remains Open for the Filing of Documents and Fees

The USPTO is open for the filing of patent documents and fees. Specifically, patent documents and fees may be submitted to the USPTO via: (1) the USPTO patent electronic filing systems (EFS-Web or Patent Center) (MPEP § 502.05); (2) the United States Postal Service (USPS) by Priority Mail Express® under 37 C.F.R. § 1.10 (MPEP § 513) or with a certificate of mailing under 37 C.F.R. § 1.8 (MPEP § 512); (3) hand-delivery to the Customer Service Window (MPEP § 501); and (4) facsimile transmission (MPEP § 502.01). AIA trial documents may be submitted to the USPTO via the PTAB E2E electronic filing system under 37 C.F.R. § 42.6, and interference documents may be submitted to the USPTO via the Interference Web Portal under 37 C.F.R. § 41.106(d)(2). As the USPTO remains open for the filing of documents and fees, the waiver set forth in this notice is available only if the delay was due to the COVID-19 outbreak as defined above. The USPTO will continue to evaluate the evolving situation around the COVID-19 outbreak and the impact on the USPTO's operations and stakeholders.

In addition to the relief provided herein, the USPTO has previously waived the requirements for an original handwritten signature for certain correspondence with the Office of Enrollment and Discipline and certain payments by credit card, as described in the Office's March 30, 2020, notice.

IV. Comments and Contact Information

Comments and patent-related inquiries concerning this notice may be sent by email to Covid19PatentsRelief@uspto.gov. If email submission of comments is not feasible due to lack of access to a computer and/or the internet, please call the Office of Patent Legal Administration at (571) 272-7704 ((571) 272-7703 for reexamination) for special instructions.

Date: APR 2 8 2020

Andrei Iancu

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