

Relief Available to Trademark and Service Mark Applicants in View of the COVID-19 Outbreak: Petitions to Prioritize the Initial Examination of Certain Applications

While the United States Patent and Trademark Office (USPTO) generally examines applications in the order in which they are received, there are procedures under which an applicant may request that the initial examination of an application be advanced out of turn when very special circumstances exist. The applicant must file a Petition to the Director under 37 CFR § 2.146(a)(3) seeking to have the Director exercise supervisory authority to advance the initial examination of the application out of its regular order. See Trademark Manual of Examining Procedure (TMEP) §1710 *et seq.*

In response to the COVID-19 outbreak, and in view of the critical need to develop medical products and services to combat the COVID-19 virus and move successful products to market as soon as possible, the Director will accept petitions to advance the initial examination of applications for marks used to identify qualifying COVID-19 medical products and services. Additionally, the USPTO will waive the fee for such petitions, as the USPTO considers the effects of the COVID-19 outbreak to be an “extraordinary situation” within the meaning of 37 CFR § 2.148 for affected trademark applicants.

To be eligible for prioritized examination under this procedure, an applicant must seek registration for one or more of the qualifying COVID-19 medical goods or services described below. The application may also include additional goods or services related thereto. The following are qualifying COVID-19 medical-related goods and services:

- pharmaceutical products or medical devices such as diagnostic tests, ventilators, and personal protective equipment, including surgical masks, face shields, gowns, and gloves, that prevent, diagnose, treat, or cure COVID-19 and are subject to approval by the United States Food and Drug Administration; and
- medical services or medical research services for the prevention, diagnosis, treatment of, or cure for COVID-19.

The approvals referenced above for pharmaceutical products or medical devices may include, but are not limited to, an Investigational New Drug (IND) application, an Investigational Device Exemption (IDE), a New Drug Application (NDA), a Biologics License Application (BLA), a Premarket Approval (PMA), or an Emergency Use Authorization (EUA). Information on INDs, IDEs, NDAs, BLAs, PMAs, and EUAs is available at www.fda.gov.

The goal of prioritized examination is to expedite the initial examination process for qualifying applications. If a petition is granted, the application will immediately be assigned to an examining attorney for review, which will expedite examination by approximately two months. The applicant can further expedite the process by responding promptly to any Office action,

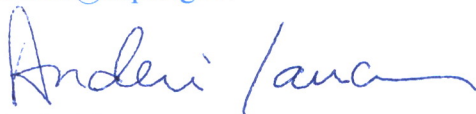
phone call, or email from the examining attorney. However, following examination, all approved trademark applications are published for opposition in the Trademark Official Gazette. Following publication, there is a 30-day period during which the public may file oppositions or extensions of time to oppose. 37 CFR §§ 2.101(c), 2.102(a)(1).

Applicants who wish to file a petition to advance the initial examination of an application for a qualifying COVID-19 medical product or service must first file the application and then file a Petition to the Director that includes the newly assigned serial number for the application. The application and petition must be submitted electronically through the Trademark Electronic Application System (TEAS) at <http://www.uspto.gov>. The appropriate form can be accessed in TEAS by clicking on “Petition Forms” and then selecting the “Petition to Director” form. Do not use the “Petition to Make Special” form, which is reserved for other situations in which expedited initial examination may be requested.

The petition must include a statement of facts, supported by an affidavit or declaration under 37 CFR § 2.20, setting forth the applicant’s COVID-19 medical goods or services and an explanation of why the goods or services are of a type that qualify for prioritized examination, including the section of the Code of Federal Regulations (CFR) under which the goods are regulated. Because the petition fee is being waived, filers should check the radio button that the petition requests prioritized examination for COVID-19 medical-related goods or services to avoid being charged the fee upon submission of the petition.

The USPTO will accept petitions to advance the initial examination of applications for marks used on qualifying COVID-19 medical goods and services pursuant to this notice beginning June 16, 2020. The USPTO will monitor the workload and resources needed to administer the procedure, feedback from the public, and the effectiveness of the procedure. Members of the public may submit comments or questions regarding the procedure to TMPolicy@uspto.gov. If the USPTO determines that modifications to the procedure are necessary or that it will no longer grant petitions to prioritize the examination of applications for qualifying COVID-19 medical-related products and services, the USPTO will notify the public before modifying or ending this program.

Inquiries concerning this notice may be addressed to TMPolicy@uspto.gov. Questions regarding how to access or submit the TEAS “Petition to Director” form should be addressed to TEAS@uspto.gov.

A handwritten signature in blue ink that reads "Andrei Iancu". The signature is fluid and cursive, with a long horizontal stroke at the end.

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