

Questions and Answers: Relief for Patent Customers Affected by Hurricane Harvey, Hurricane Irma, or Hurricane Maria

The following Hurricane Relief (HR) questions and answers are related to the Official Gazette (OG) notices that are posted on our [Disaster Guidance for Patent Customers page](#).

Question HR1: What areas are considered to be “areas affected by Hurricane Harvey,” “areas affected by Hurricane Irma,” and “areas affected by Hurricane Maria”? For example, for Hurricane Harvey, if one of the joint inventors or the correspondence address is located in Houston, can the applicant request a reissuance of an Office communication?

The U.S. Patent and Trademark Office (USPTO) did not specify in the Hurricane Harvey notice which areas of Texas and Louisiana are affected because the USPTO did not want to exclude anyone who may have been affected by the hurricane. However, the need for the relief being requested must be due to the effects of Hurricane Harvey. Whether someone in Houston would qualify for relief would depend on whether the need for the relief was due to Hurricane Harvey.

Similarly, the USPTO did not specify which areas of Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina are affected by Hurricane Irma or which areas of Puerto Rico and the U.S. Virgin Islands are affected by Hurricane Maria. However, the need for the relief being requested must be due to the effects of Hurricane Irma or Hurricane Maria, as applicable.

Question HR2: If an applicant is filing a request for reissuance of an Office communication due to the effects of Hurricane Harvey, Hurricane Irma, or Hurricane Maria, that was outstanding on the applicable date, does the applicant need to pay any extension of time fees due at that point based on the original mailing date of the Office communication?

No, the applicant does not need to pay any extension of time fees when filing a request for reissuance of an Office communication.

Note the following applicable dates for requesting reissuance of an Office communication:

- For Hurricane Harvey: August 25, 2017
- For Hurricane Irma: September 6, 2017
- For Hurricane Maria: September 19, 2017

Question HR3: In order to request reissuance of an Office communication pursuant to the relevant OG notice does the Office communication need to have been outstanding on the applicable date?

Yes. Note the following applicable dates for requesting reissuance of an Office communication:

For Hurricane Harvey: August 25, 2017

For Hurricane Irma: September 6, 2017

For Hurricane Maria: September 19, 2017

Question HR4: What time period will be provided when the USPTO grants applicant's request for reissuance of an Office communication? Is the time period that will be provided different from what is set forth in MPEP 710.06?

The time period that was set in the Office communication will be restarted from the date of the reissuance of that Office communication. For example, if an Office action was mailed that set a three-month shortened statutory period for reply, and the USPTO grants a request for reissuance of that Office action, the three-month time period running against the application will begin as of the date of the reissuance (e.g., the remailing date). This is different from some of the situations set forth in MPEP 710.06 in which an applicant may not be given a new time period equivalent to the previous time period.

Question HR5: Does the applicant need to provide any explanation when filing a request for relief pursuant to the relevant OG notice?

No. An applicant should simply submit a copy of the relevant OG notice, with an indication as to the relief being requested (if it is not clear from the record). Applicants do not need to provide any explanation regarding how or why they are entitled to the requested relief. Applicants should note, however, that any request for relief is considered a representation that the need for the requested relief is due to the effects of Hurricane Harvey, Hurricane Irma, or Hurricane Maria, as applicable. Applicants are reminded that any paper being filed in the USPTO is considered a certification under 37 CFR 11.18(b) (see MPEP 410 for more information). Therefore, applicants must ensure that they are entitled to the relief being requested. The need for the relief being requested must be due to the effects of Hurricane Harvey, Hurricane Irma, or Hurricane Maria, as applicable.

Question HR6: Will the USPTO conduct any investigation regarding whether an applicant requesting the relief is actually entitled to the relief?

The USPTO does not plan to investigate whether a particular applicant qualifies for the requested relief beyond making sure that the request can be granted. Thus,

for a request for reissuance of an Office communication, the USPTO will make sure that a reply or response to the Office communication was outstanding on the applicable date, and the time period (as permitted to be extended under 37 CFR 1.136(a)) has not yet expired. The USPTO does not plan to investigate whether the need for the requested relief was due to the effects of Hurricane Harvey, Hurricane Irma, or Hurricane Maria. If there is some evidence in the record that an applicant may not be entitled to the requested relief, the USPTO does have the authority to require additional information. Applicants should also keep in mind that the request for relief is considered a certification under 37 CFR 11.18(b) (see MPEP 410 for more information).

Question HR7: Can an applicant submit a request for reissuance of an Office action on the last day of the six-month statutory time period for reply to the Office action?

No. If an applicant submits a request for reissuance on the last day of the six-month statutory time period for reply to the Office action, the USPTO would not be able to reissue (e.g., re-mail) the Office action on that same day. Applicants must submit any request for reissuance of an Office action in sufficient time for the USPTO to withdraw and reissue the Office action prior to expiration of the statutory time period (as permitted to be extended under 37 CFR 1.136(a)). If the USPTO does not reissue the Office action prior to the expiration of the six-month statutory time period, the application would be abandoned by operation of law.

Question HR8: If an applicant previously filed a reply to a final Office action, but the USPTO has not yet mailed an advisory action (or other action in response to the after-final reply), can the applicant request a reissuance of the final Office action provided that the six-month statutory time period has not yet expired?

Applicant should wait until the USPTO responds to the after-final reply. If an applicant is close to the expiration of the six-month statutory time period for reply, then the applicant may request that the final Office action be reissued. If the final Office action is reissued, prosecution will remain closed. The previously filed reply will still be considered an after-final reply and will not be entered as a matter of right. The USPTO would simply be restarting the time period for the applicant to take appropriate action in response to the final Office action.

Question HR9: If an applicant previously filed a reply to a final Office action and the USPTO has mailed an advisory action in response to the after-final reply, can the applicant request a reissuance of the final Office action provided that the six-month statutory time period has not yet expired?

Yes. If the final Office action is reissued, prosecution will remain closed and the previously filed reply will still be considered an after-final reply. The status of the

after-final reply will remain as set forth in the advisory action. The USPTO would simply be restarting the time period for the applicant to take appropriate action in response to the final Office action.

Question HR10: Can an applicant request reissuance of a pre-examination notice such as a Notice to File Missing Parts or a Notice to File Corrected Application Papers?

Yes, if the Notice to File Missing Parts or the Notice to File Corrected Application Papers is outstanding on the applicable date and the need for the requested relief is due to the effects of Hurricane Harvey, Hurricane Irma, or Hurricane Maria, as applicable. Note the following applicable dates for requesting reissuance of an Office communication:

For Hurricane Harvey: August 25, 2017

For Hurricane Irma: September 6, 2017

For Hurricane Maria: September 19, 2017

Question HR11: Can an applicant request reissuance of an examiner's answer so that the applicant would have additional time to file a reply brief?

Yes. A request for reissuance of an examiner's answer must be made within two months of the mailing date of the examiner's answer and the USPTO must reissue (e.g., remail) the examiner's answer within the two month time period.

Question HR12: Can an applicant request a resetting of the time period for filing an appeal brief if a notice of appeal has already been filed?

The time period for filing an appeal brief is based upon the date a notice of appeal is filed, and not on the date an Office action or other communication is mailed. Therefore, there is no outstanding Office communication for which the time period for reply can be restarted. An applicant may file a petition under 37 CFR 1.136(b) (accompanied by the petition fee set forth in 37 CFR 1.17(g)) if the applicant has already filed a five month extension of time under 37 CFR 1.136(a), the time period for filing the appeal brief has not yet expired, and additional time to file an appeal brief is needed due to the effects of Hurricane Harvey, Hurricane Irma, or Hurricane Maria, as applicable. Note that the petition procedure under 37 CFR 1.136(b) is only available when the provisions of 37 CFR 1.136(a) are not available.

Question HR13: What if an applicant needs additional time to take action after a decision by the Patent Trial and Appeal Board (PTAB) due to the effects of Hurricane Harvey, Hurricane Irma, or Hurricane Maria?

An applicant may file a request under 37 CFR 90.3 to extend the time for filing an appeal or commencing a civil action.

Question HR14: Can an applicant request that an Office action (or Office communication) in an application under the Accelerated Examination program be reissued?

Yes, as long as the applicant meets the requirements set forth in the relevant OG notice.

Question HR15: What are the patent term adjustment (PTA) implications of the OG notices?

The USPTO will consider that it met the requirements of 35 U.S.C. 154(b)(1)(A)(i)-(iv) and implementing rules, 37 CFR 1.702(a)(1)-(4) when the USPTO mails the first rejection, objection, or other notice that is later reissued (e.g., remailed) because of Hurricane Harvey, Hurricane Irma, or Hurricane Maria. The USPTO will consider an applicant to have failed to engage in reasonable efforts to conclude prosecution of the application under 37 CFR 1.704(b) if the applicant does not respond within three months to any notice or any action by the USPTO making any rejection, objection, argument, or other request, measuring the three-month period from the mail date of the reissued action. The shortened statutory period continues to have no effect on the three-month period. See 37 CFR 1.704(b). In addition, the USPTO will continue to not consider the certificate of mailing or certificate of transmission date under 37 CFR 1.8 in calculating the patent term adjustment. See 37 CFR 1.703(f).

For example: An application is filed on January 27, 2016, and the USPTO mails a first non-final Office action on March 27, 2017. One of the inventors is in an area of Texas affected by Hurricane Harvey on August 25, 2017. On September 22, 2017, the applicant files a request for reissuance of an Office communication including a copy of the relevant OG notice requesting that the Office action mailed on March 27, 2017 be reissued pursuant to the OG notice. The need for the reissuance of the Office action is due to the effects of Hurricane Harvey. On September 26, 2017, the USPTO reissues (e.g., remails) the non-final Office action and restarts the three-month period for reply.

The USPTO will consider that the non-final Office action mailed on March 27, 2017 will meet the requirement of 35 U.S.C. 154(b)(1)(A)(i) and 37 CFR 1.702(a)(1), and the USPTO will not grant any patent term adjustment as it relates to those provisions.

The USPTO will consider that applicant met the requirement of 37 CFR 1.704(b) if applicant files a reply within three months of September 26, 2017.

