

PUBLICATION

Coronavirus: USPTO and U.S. Copyright Office Extend Deadlines due to Covid-19 Pandemic

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On March 31, 2020, the U.S. Patent and Trademark Office (USPTO) and the U.S. Copyright Office both announced grace periods for certain fees and deadlines during the coronavirus (COVID-19) public health emergency. Leaders of both offices cited the Coronavirus Aid, Relief, and Economic Security (CARES) Act, the \$2 trillion relief bill signed by the President on March 27.

Most deadlines for patent and trademark filings and/or fees that would ordinarily be due between March 27 and April 30, 2020 will be extended for one month if the delayed submission includes a statement that the delay was caused by COVID-19. The USPTO will accept a statement that a person associated with the filing or fee, which could include the patent or trademark applicant, owner, or inventor(s), was personally affected by the COVID-19 outbreak, including by office closures, inaccessibility of files, travel delays, cash flow interruptions, or personal or family illness.

The USPTO's statement on Tuesday specifically noted the outsized impact of COVID-19 on small businesses and independent inventors. Relief for certain patent prosecution and maintenance deadlines is not available to large businesses with 500 or more employees. Specifically, large businesses are not eligible to delay payment of patent maintenance fees, or their responses to pre-examination formalities notices, such as a Notice to File Missing Parts of a patent application.

Subject to the exclusion of large businesses in the limited instances as noted, eligible patent deadlines include those to respond to Office actions, file a notice of appeal or appeal brief, or pay issue or maintenance fees. Eligible trademark deadlines include those to respond to Office actions, file a statement of use or request for extension of time for same, file a notice of opposition, and make certain trademark maintenance filings.

Although not subject to the numerous prosecution deadlines applicable before the USPTO, copyright applicants are also seeing relief under the CARES Act. In particular, if a copyright applicant is delayed in submitting an application electronically, because of inability to access the internet or required physical materials, the Copyright Office will so annotate the resulting copyright registration. This will be critical to applicants who need to enforce their copyright through an infringement action. Generally, statutory damages for infringement claims are only available if the copyrighted work is registered with the Copyright Office prior to the infringement or within three months of the work's first publication. The temporary relaxation of these timing requirements, as reflected in the Copyright Office's annotation of impacted registrations, is designed to compensate for an applicant's inability to register a copyright within this statutory timeframe. The Copyright Office has also relaxed timing requirements for the filing of Notices of Termination of copyright for impacted persons.

Both the USPTO and the Copyright Office continue to accept electronic filings, but have altered their mail or in-person operations to prevent the spread of COVID-19. The Copyright Office is closed to the public, and the USPTO has shifted all in-person meetings and hearings to phone or video conferences until further notice.

For more information on how this issue may affect your business or related matters, please contact [Emily R. Billig](#) or any member of [Baker Donelson's Intellectual Property group](#). Also, for more information visit the [Coronavirus \(COVID-19\): What You Need to Know information page](#) on our website.