The USPTO’s response to COVID-19

April-October 2020
Response Resource Center

- One page dedicated solely to COVID-19.
- Accessible via the USPTO homepage.
Response Resource Center

• A central hub:
  – Patent and licensing resources
  – Innovation incentives
  – Trademark counterfeiting and consumer fraud
  – International updates
  – Contact information for the USPTO
Response Resource Center

Trademarks, counterfeiting, and fraud:

- COVID-19 Prioritized Trademark Examination Program
- Federal government resources
- How to report fraud and counterfeiting
Response Resource Center

International updates:

• The World Intellectual Property Organization’s COVID-19 IP Policy Tracker
• Patent Cooperation Treaty updates
• Madrid Protocol updates
• Hague Agreement updates
• Links to other patent offices
Response Resource Center

Send recommendations or suggestions for us to consider.

COVIDcomments@uspto.gov.
Trademark Prioritized Examination Program

Trademark applications related to COVID-19:

• The USPTO will accept petitions to advance the initial examination of applications for marks used to identify qualifying COVID-19 medical-related products and services and waive the petition fee.

• The goal is to expedite the initial examination process by approximately two months if the petition is granted and applicants promptly respond to the examining attorney.

Trademark Prioritized Examination Program

- The USPTO launched a webpage that provides additional resources and information.
- The webpage details:
  - Criteria of the program
  - How to request participation
  - Frequently asked questions
Criteria of the program:

- There are no fees required to participate in the program.
- Applicants must first file the application and then file a Petition to the Director that includes the assigned serial number.
- The application must be for COVID-19 medical-related goods or services subject to FDA approval.
How to request participation:

- After filing the application, applicants must file a Petition to the Director using the USPTO Trademark Electronic Application System (TEAS).

- The petition must provide:
  - a statement of facts, supported by an affidavit or declaration setting forth the applicant’s COVID-19 medical-related goods or services; and
  - an explanation of why the goods or services are of a type that qualifies for prioritized examination, including the section of the Code of Federal Regulations under which the goods or services are regulated.

Trademark Prioritized Examination Program

- The USPTO will monitor the workload and resources needed to administer the program, feedback from the public, and the effectiveness of the program.

- Questions:
  - Members of the public may submit comments or questions regarding the program to TMPolicy@uspto.gov.
  - Questions regarding how to access or submit the TEAS Petition to Director form should be addressed to TEAS@uspto.gov.
  - To reach the Trademark Assistance Center, call 1-800-786-9199 or email TrademarkAssistanceCenter@uspto.gov.
Stakeholder support
Remote interviews and hearings

Interviews, oral hearings, and in-person meetings have all been conducted remotely by video or telephone since March 13:

• For interviews, applicants should contact the patent examiner or managing attorney directly.

• For Patent Trial and Appeal Board (PTAB) oral hearings, practitioners should contact PTABHearings@uspto.gov.
  – The PTAB has also given a Boardside Chat Webinar discussing everything practitioners need to know about appearing before the PTAB.

• For Trademark Trial and Appeal Board (TTAB) oral hearings, practitioners should contact TTABHearings@uspto.gov.
Remote hearings generally

- The PTAB addressed the logistics for virtual proceedings and public remote viewing of hearings on May 1, 2020 in their Boardside Chat Webinar.
- Oral hearings for appeals are by telephone.
- Oral hearings for AIA trials are by video or telephone.
- Parties will receive a Hearing Order with relevant instructions.
  - Appeals: a few days before oral hearing date
  - AIA trials: approximately three weeks before oral hearing date
- You can email questions or special requests to PTABHearings@uspto.gov.
- You can request public access to hearings at least three business days prior to the oral hearing date.
International unity

- A joint statement from the USPTO and the EPO about standing united in supporting the public during this crucial time was published on April 30, 2020.

- A joint statement from the USPTO and the JPO about standing united for the future of innovation was published on June 1, 2020.

CARES Act relief, FAQs

The USPTO has published FAQs: Extension of Deadlines under the CARES Act that provide further guidance on the relief provided for both Patents and Trademarks.

CARES Act relief, Trademarks

Under the CARES Act authority and the USPTO’s existing authority in Trademarks and TTAB matters:

- The USPTO will direct relief to those who need it on a case-by-case basis.
- The USPTO had previously extended its waiver of the petition fees for filing a petition for the revival of applications that became abandoned on or before June 30, 2020, if accompanied by a statement that the delay in filing or payment was due to the COVID-19 outbreak.

CARES Act relief, TTAB

• With regard to proceedings before the TTAB, if the COVID-19 outbreak has prevented or interfered with a filing, parties can make a request (in ex parte appeals) or motion (for trial cases) for an extension or reopening of time, as appropriate.

• You can send TTAB-related inquiries to TTABInfo@uspto.gov.

May 2020 Update Regarding Certain Trademark-Related Timing Deadlines under the Coronavirus Aid, Relief, and Economic Security Act and Other Relief Available to Applicants, Registrants, and Others

The United States Patent and Trademark Office (USPTO) recognizes that the COVID-19 pandemic has imposed significant hardships on many of our stakeholders. As a result, the USPTO has waived certain fees under existing authority, through the March 16, 2020 Notice, and has extended certain Trademark and Trademark Trial and Appeal Board (TTAB) deadlines twice under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), through the March 31, 2020 Notice and the April 28, 2020 Notice. This relief will expire on May 31, 2020.

As businesses begin to reopen or resume operations, some stakeholders will continue to require relief, particularly small businesses and individuals. By this notice, under the CARES Act authority and its existing authority in Trademark and TTAB matters, the USPTO will begin to direct relief as described below.

• Applicants who were unable to submit a timely response or fee in response to an Office communication should file a petition to revive the application. See 37 CFR §§ 2.66(a)(13), 2.66.

• Applicants who missed the 36-month statutory deadline for filing a Statement of Use, and therefore their application has been abandoned, should use the TEAS “Petition to the Director” form. See 37 CFR § 2.146.

• Registrants who missed a statutory deadline, resulting in a cancelled/expired registration, or who were unable to submit a timely response or fee in response to an Office communication regarding a registration, should use the TEAS “Petition to the Director” form. See 37 CFR § 2.146.

The USPTO will continue to waive the petition fee for petitions to revive applications or reinstate registrations that became abandoned or expired/cancelled as a result of the COVID-19 outbreak, with a statement that the delay in filing or payment was due to the COVID-19 outbreak. Thus, by this notice, the relief waiving the petition fee provided in the April 28, 2020 Notice will continue until June 30, 2020.

With regard to proceedings before the TTAB, if the COVID-19 outbreak has prevented or interfered with a filing, parties can make a request (in ex parte appeals) or motion (for trial cases) for an extension or reopening of time, as appropriate.
Accelerated Case Resolution ("ACR")
ACR

- Parties seeking a final determination of their opposition or cancellation proceeding quickly and without the time and expense of a full trial should consider the TTAB’s “Accelerated Case Resolution” (ACR) procedure. See TBMP § 702.04.

- ACR is a procedure akin to summary judgment in which parties can receive a determination of the claims and defenses in their case promptly, but without the uncertainty of result and delay typically presented by standard summary judgment practice.
ACR - background

• When either party to a Board case concludes that resolution of the opposition or cancellation proceeding without extensive discovery or trial periods may be desired, the party should notify the interlocutory attorney.

• Preferably such notice would be provided during the required settlement and discovery conference to be held within 30 days of the pleadings closing. Then, the possible use of ACR can be discussed during the conference.

• Parties may discuss telephone conference with interlocutory attorney to discuss use of ACR.
ACR – procedure to elect

- Even if the ACR option is not chosen during the discovery conference, the parties may agree to pursue ACR after some disclosures and discovery.

- In such cases, the interlocutory attorney should be notified no later than two months from the opening of the original discovery period.

- The further the parties proceed into discovery, the less likely it is that will resort to ACR, and will realize savings of time and resources.
ACR – typical case

• A typical ACR case is anticipated to be one in which the parties are able to stipulate to many facts, or in which each party expects to rely on the testimony of only one or two witnesses and the overall record is not extensive.

• Clearly worded stipulations are vital.
ACR – procedure of case

- In order to take advantage of ACR, the parties must stipulate that, in lieu of trial, the Board can resolve any issues of material fact.

- The parties may include evidence with their briefs, including written disclosures and disclosed documents, and stipulate to facts for the Board to consider. After the briefs are filed, the Board will issue a decision on the merits within fifty days, which will be judicially reviewable as set out in 37 CFR § 2.145.

- If the parties have already filed cross-motions for summary judgment, they may also stipulate that the Board may resolve any issues of material fact and consider the parties’ cross-motions as the parties’ final briefs in the case in lieu of a full trial.
Declaration testimony

• Under TTAB rules a party can elect to present testimony by affidavit or declaration, in lieu of testimony deposition. Adverse party can elect to cross-examine declarant. 37 CFR § 2.123(a)(1)

• Only evidence admissible under Rules of Evidence may be presented by affidavit or declaration; inadmissibility is a valid ground for objection. 37 CFR 2.122(a) and 2.123(l).
Declaration testimony

- Party electing to cross declarant bears expense of travel and court reporter. TBMP 703.01(b); USPS v. RPost Communication Ltd., 124 USPQ2d 1045, 1047 n.1 (TTAB 2017); and Barclays Capital Inc. v. Tiger Lily Ventures Ltd., 124 USPQ2d 1160, 1166-67 (TTAB 2017).

- **ATJ Tip**: parties often choose not to cross-examine declarants, but TTAB judges may find the cross helpful in fleshing out the issues.

- See TBMP § 703.01(d) and (e) for timing, procedures.

- Proffering party obligated to produce declarant. TBMP § 703.01(b).
ACR – typical stipulations

- Parties, however, may stipulate to ACR-type efficiencies at any stage of a proceeding in order to expedite the remainder of the trial schedule.

- Parties seeking to avail themselves of such efficiencies may stipulate to, for example:
  - abbreviating the length of the testimony period;
  - limiting the subject matter for testimony;
  - agreeing to limit the number of witnesses; or
  - agreeing to streamline the method of introduction of evidence, for example, by stipulating to facts and introduction of evidence by affidavit or declaration.