

USPTO Further Extends Deadlines for Patent Filings for Small / Micro Entities

In accordance with the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), the United States Patent and Trademark Office (USPTO) previously provided two extensions of time to file certain patent-related documents and pay certain fees (outlined below) that otherwise would have been due on or after March 27, 2020. In a notice issued on May 27, 2020, the USPTO expanded that relief and further extended the time for filing. Under the latest notice, those patent-related documents and fees that otherwise would have been due between March 27 and May 31, 2020, will be considered timely if filed on or before **July 1, 2020**. However, this extension of time is generally limited to small entities[1] and micro-entities[2] only. After May 31, 2020, similar relief may be available to large entities (i.e., those who are not small entities) on a case-by-case basis only.

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 patent applicants, patent owners, or others appearing before the USPTO in patent-related matters and has prevented them from filing documents with and paying fees to 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 deadlines due to the COVID-19 outbreak may be eligible for a waiver, as further described below.

While the USPTO remains open for the filing of documents and the payment of fees, the deadlines for the following types of filings may be extended without penalty if the delays are attributable to COVID-19:

- reply to a USPTO notice issued during pre-examination processing* by a small or micro entity;
- reply to a USPTO notice or action issued during examination** or patent publication processing***;
- issue fee;
- notice of appeal;
- appeal brief;
- reply brief;
- appeal forwarding fee;
- request for an oral hearing before the Patent Trial and Appeal Board; and
- maintenance fee, filed by a small or micro entity.

The above list is limited to filings with due dates between March 27 and May 31, 2020. These filings will be considered timely if filed on or before **July 1, 2020**, provided that the filing is accompanied by a statement that the delay in filing or payment was due to the COVID-19 outbreak.

Additionally, for all entities, the USPTO is continuing to waive certain filing fees related to filing petitions to revive patent applications and related proceedings that have become abandoned or terminated on or before June 30, 2020, provided that such filing is accompanied with a statement that the delay in filing or payment was due to the COVID-19 outbreak.

If you have been adversely affected by COVID-19 and have a patent filing due between March 27 and May 31, 2020, please contact a member of the [Chambliss Intellectual Property section](#) to discuss your next steps.

*(**UPDATE: June 4, 2020** This post was originally published on April 2, 2020, and has been updated to reflect revised deadlines issued by the U.S. Patent and Trademark Office on May 27, 2020.)*

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[1] A "small entity" generally includes individuals, small businesses having fewer than 500 employees, universities, and 501(c)(3) non-profit organizations. See 37 CFR § 1.27.

[2] A "micro entity" is a small entity that, in general, also: (1) has been named as an inventor in no more than four (4) regular U.S. patent applications; (2) had a gross income in the previous year of less than three (3) times the medical household income. The most recent gross income limit is \$184,116. See micro entity requirements on U.S. Patent Office website, found [here](#).

*This includes, for example, a Notice of Omitted Items, a Notice to File Corrected Application Papers, a Notice of Incomplete Application, a Notice to Comply with Nucleotide Sequence Requirements, a Notice to File Missing Parts of Application, and a Notification of Missing Requirements.

**This includes, for example, an Office action (either final or non-final) and a Notice of Non-Compliant Amendment.

***This includes, for example, a Notice to File Corrected Application Papers issued by the Office of Data Management.

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