

Notice of the United States Patent and Trademark Office's COVID-19 Outbreak Relief Relating to Restoring the Right of Priority or Benefit to Patent Applicants

On March 13, 2020, the President declared a national emergency under the National Emergencies Act as a result of the COVID-19 outbreak. Subsequently, the Director of the United States Patent and Trademark Office (USPTO) determined that the emergency prejudiced the rights of applicants, patent owners, or others appearing before the USPTO in patent matters and may have prevented them from filing documents or fees with the Office. The Director also determined that the effects of the COVID-19 outbreak have created an extraordinary situation for affected patent applicants and patentees. Therefore, pursuant to subsection 12004(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and 37 CFR § 1.183, the USPTO is extending the time period for petitioning for certain rights of priority or benefit and waiving the associated petition fee.

Restoration of the Right of Priority to or Benefit of a Prior-Filed Application

Ordinarily, if an applicant seeks to claim priority to or benefit of a prior-filed foreign or provisional application, the application seeking priority or benefit must be filed within 12 months (or 6 months in the case of a design application claiming foreign priority) of the prior-filed application. After this period expires, the patent laws permit an applicant two more months to file an application seeking priority or benefit in order to be able to petition for restoration of the right to claim priority to or benefit of a prior-filed foreign or provisional application under 37 CFR § 1.55(c) or 1.78(b), if the delay in filing the application seeking priority or benefit was unintentional. See Manual of Patent Examining Procedure 211.01(a) and 213.03. The petition fee under 37 CFR § 1.17(m) is required for a petition under 37 CFR § 1.55(c) or 1.78(b).

Pursuant to subsection 12004(a) of the CARES Act and 37 CFR § 1.183, the USPTO provides the following additional relief:

Nonprovisional Applications and 35 U.S.C. §§ 119(a) and 172

For any nonprovisional application seeking priority of a prior-filed foreign application for which the 12-month time period under 35 U.S.C. § 119(a) (or 6-month time period under 35 U.S.C. § 172) ended between, and inclusive of both, March 27, 2020, and July 30, 2020, the USPTO will:

- 1) Permit the two-month time period under 35 U.S.C. § 119(a) for restoring the right of priority to a foreign application to run until the later of:
 - a) July 31, 2020; or
 - b) the expiration of the two-month period set forth in 35 U.S.C. § 119(a); and
- 2) Waive the petition fee in 37 CFR § 1.17(m) for a petition under 37 CFR § 1.55(c);

provided that the application seeking priority of a prior-filed foreign application is accompanied by a petition under 37 CFR § 1.55(c) and a statement that the failure to timely file the application was due to the COVID-19 outbreak as defined in the USPTO's notice of April 28, 2020.

Nonprovisional Applications and 35 U.S.C. § 119(e)

For any nonprovisional application seeking benefit of a prior-filed provisional application for which the 12-month time period under 35 U.S.C. § 119(e) ended between, and inclusive of both, March 27, 2020, and July 30, 2020, the USPTO will:

- 1) Permit the two-month time period under 35 U.S.C. § 119(e) for restoring the benefit of a provisional application to run until the later of:
 - a) July 31, 2020; or
 - b) the expiration of the two-month period set forth in 35 U.S.C. § 119(e); and
- 2) Waive the petition fee in 37 CFR § 1.17(m) for a petition under 37 CFR § 1.78(b);

provided that the application seeking benefit of a prior-filed provisional application is accompanied by a petition under 37 CFR § 1.78(b) and a statement that the failure to timely file the application was due to the COVID-19 outbreak as defined in the USPTO's notice of April 28, 2020.

International Applications

The USPTO will waive the petition fee in 37 CFR § 1.17(m) for a petition under 37 CFR § 1.452 to restore the right of priority for which the time period for filing the international application ended between, and inclusive of both, March 27, 2020, and July 30, 2020, provided that the application:

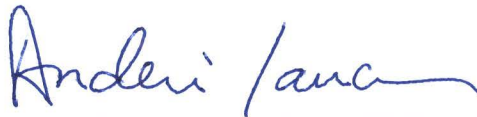
- 1) is filed within the two-month period set forth in 37 CFR § 1.452; and
- 2) is accompanied by a petition under 37 CFR § 1.452 and a statement that failure to timely file the international application was due to the COVID-19 outbreak as defined in the USPTO's notice of April 28, 2020.

The USPTO strongly encourages patent applicants to file documents and fees via the USPTO patent electronic filing systems (EFS-Web or Patent Center). Patent applicants who file a petition under 37 CFR § 1.55(c), 1.78(b), or 1.452 in accordance with this notice and use the USPTO patent electronic filing systems (EFS-Web or Patent Center) should use document code PET.RELIEF for the petition. In addition, the USPTO highly recommends using form PTO/SB/449 titled "Statement of Delay Due to COVID-19 Outbreak" to make the required statement that the delay in filing was due to the COVID-19 outbreak. Form PTO/SB/449 is available at <https://www.uspto.gov/patent/forms/forms-patent-applications-filed-or-after-september-16-2012>.

Comments and Contact Information

Comments and patent-related inquiries concerning this notice may be sent by email to Covid19PatentsRelief@uspto.gov. If email submission of comments is not feasible due to a lack of access to a computer and/or the internet, please call the Office of Patent Legal Administration at 571-272-7704 for special instructions.

Date: JUN 11 2020



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