

Fighting COVID-19 by Accelerating the Patent and Trademark Examination Process

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Two exciting new programs launched by the U.S. Patent and Trademark Office (USPTO) are poised to accelerate IP protection for COVID-19 related products. Due to medical device shortages and the constant question of when (and if) a vaccine will make it to market, the pace of innovation has been on the forefront of people's minds throughout this global pandemic. In late March 2020, some even theorized that suspending patents altogether was a radical but necessary step to accelerate innovation and save lives. Supporters of this extraordinary move argued that temporarily allowing companies willing to step up and produce products when the patent-holders could not meet the unprecedented demand for their vitally important products, such as valves for ventilators, would not cause patent-holders to lose money since they clearly were unable to meet demand on their own. The USPTO has not gone quite that far, but it has made two important steps to accelerate the process of granting protective rights for products or processes that could aid in the fight against the novel coronavirus.

First, the USPTO announced in May that it would be fast-tracking patent examinations for COVID-19 related applications from small and micro entities. This Prioritized Examination Pilot Program will take up to 500 qualifying applications for products or processes that are subject to an FDA approval for COVID-19 use.

Second, on June 15th the USPTO announced that it would also offer a prioritized examination program for trademark and service mark applications for certain COVID-19 medical products and services, defined as pharmaceutical products or medical devices used to prevent, diagnose, treat, or cure COVID-19, if they are subject to FDA approval,

and medical services or medical research services that are aimed at fighting COVID-19.

Given the well-documented shortages in Personal Protective Equipment (PPEs) and other necessary medical supplies, along with the global race to produce a vaccine, these priority track processes could prove critical in getting new, potentially life-saving products onto the market quickly. Standard prioritized examination fees will not be charged under either program, and the USPTO has announced a goal of making final dispositions of these applications within less than a year. Both programs began accepting applications as of June 16, 2020, meaning applicants can immediately take advantage of these unique procedures to try to get their products onto the market in time to assist in the world's fight against COVID-19.