

USPTO and Copyright Office Extend Filing Deadlines Under Cares Act (COVID-19 Emergency)

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“Inventors and entrepreneurs are the lifeblood of our economy”

– Andrei Iancu, Director of the USPTO

USPTO Director Andrei Iancu has exercised temporary authority under the CARES Act to extend certain Patent and Trademark filing deadlines by thirty days due to the COVID-19 emergency. The extensions apply to selected Patent, Trademark, and Patent/Trademark Trial and Appeal Board (PTAB/TTAB) deadlines between March 27, 2020 and April 30, 2020, inclusive, and related fees, *if the delay is due to the COVID-19 emergency*. Acting Copyright Office Register Maria Strong has also extended deadlines for *non-electronic* filings, and for applicants without internet access.

Full notices: [Patent](#), [Trademark](#), [Copyright](#); other USPTO COVID-19 updates [here](#).
Dorsey & Whitney Practical Guide to CARES Act [here](#).

The CARES Act substantially extends the statutory authority of the Director of the USPTO for extraordinary situations under 35 USC § 21, and for the Acting Register under (new) Section 710 of the Copyright Act. These provisions are based on a determination that the COVID-19 emergency has prejudiced the rights of applicants, or prevented the filing of a document or fee payment. The current extension is only for thirty days (or up to sixty for copyrights), and *late filings must be accompanied by a statement that the delay was due to the COVID-19 emergency*. The emergency definitions are fairly broad, but it is also possible that an extension could be challenged after the fact, on either substantive or procedural grounds. Based on this, *applicants should continue to meet USPTO deadlines when possible*, and consult an attorney before relying on an extension for any delay due to the COVID-19 emergency.

Patents: Extended patent deadlines include responses to Office actions, issue fee payments, notices of appeal and other appeal filings, and PTAB deadlines including requests for oral hearing and rehearing. Requests can also be made for other PTAB deadlines not included in the notice, and small and micro-entities (only) get additional

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relief for pre-examination notices and maintenance fees. *The extension does not apply to filing dates for new patent applications*, deadlines for PCT or national stage applications, deadlines for filing a non-provisional application from a provisional filing, or the deadline for filing an *inter partes* review petition.

Trademarks: Extended Trademark deadlines also include responses to Office actions, as well as notices of appeal, statements of use, affidavits of use or excusable nonuse, notices of opposition, priority filing basis, transformation and renewal applications, and related requests for extension. Requests can be made for other TTAB deadlines.

Timing: Currently, the relevant patent or trademark deadlines must fall between March 27, 2020 and April 30, 2020, inclusive. The current extension is only for thirty days, and late filings must be accompanied by a statement that the delay was due to the COVID-19 emergency. (Petition fees to revive patent applications that were abandoned for failure to file a timely reply were already waived under the Director's pre-CARES authority.)

The USPTO remains open for filings and payment of fees. Waivers are only available for delays due to the COVID-19 emergency. Delays, however, are defined relatively broadly, and allowable "if a practitioner, applicant, patent owner, petitioner, third party requester, inventor, or other person associated with the filing or fee was personally affected by the COVID-19 outbreak." The definition includes "office closures, cash flow interruptions, inaccessibility of files or other materials, travel delays, personal or family illness, or similar circumstances, such that the outbreak materially interfered with timely filing or payment."

Copyrights: Acting Register Maria Strong is also temporarily adjusting timing provisions under Section 710 of the Copyright Act, which was added by the CARES Act. The initial extension is for a period of sixty days, or until the disruption due to the COVID-19 emergency is ended. *Currently, timing provisions are unchanged for copyright applications that can be submitted in electronic form*, but relief may be available for applicants unable to submit an electronic application or required physical deposit. There are also provisions for serving and recording notices of termination, to the extent the parties are impacted by the COVID-19 emergency. Examples of how timing may be impacted are found in the Copyright Office notice linked above.

Perhaps the most important impact relates to Section 412 of the Copyright Act, which requires that a registration be obtained within three months of publication of a work or prior to infringement for the copyright owner to be eligible for statutory damages and attorney's fees. If an applicant can submit an application and deposit materials electronically, there is no change. If an applicant can submit an application electronically, but cannot send required physical deposit materials, the applicant should submit with the electronic application a declaration (under penalty of perjury) certifying that the physical deposit would have been timely mailed but for the COVID-19 emergency. If an applicant is unable to submit an application electronically or physically, the applicant may do so up until a short period after the Acting Registrar has announced the end of the disruption, but must include a declaration (again, under penalty of perjury) that the application would have been timely filed but for the COVID-19 emergency. Once

issued, the registration record will be annotated to reflect any impact by the COVID-19 emergency.