

USPTO to Fast Track COVID-19 Technology Patents for Small and Micro Entities, Without Additional Fees

by Jeffrey R. Cadwell, Nathaniel Longley, and Bridget Hayden

“Independent inventors and small businesses are often the difference makers when it comes to cutting-edge innovation and the growth of our economy... Accelerating examination of COVID-19-related patent applications, without additional fees, will permit such innovators to bring important and possibly life-saving treatments to market more quickly.”

– Andrei Iancu, Director of the USPTO

Having previously identified the COVID-19 outbreak as an “extraordinary situation” under 37 CFR 1.183, USPTO Director Andrei Iancu is exercising *sua sponte* authority to implement a COVID-19 prioritized examination pilot program for patent applications “that claim products or processes that are subject to an applicable FDA approval for COVID-19 use.” Under the COVID-19 Pilot, and in conjunction with the existing provisions for prioritized examination according to 35 USC 2(b)(2)(G), the USPTO will waive the prioritized examination fees for small entity and micro entity applicants, so that only customary patent application filing fees are due.

While the standard prioritized examination program targets final disposition of an application within 12 months, the Office believes it can handle applications under the COVID-19 Pilot even faster. The aggressive Office goal is to reach a final decision within 6 months, if applicants provide early responses to notices and actions from the USPTO.

The COVID-19 Pilot applies to original, non-provisional applications with no priority claim, and to applications with priority to one or more *provisional* or *foreign* applications. Applications with a *single* priority claim to a prior *non-provisional* or *international* (PCT) application are also eligible, allowing applicants to fast-track previously-filed disclosures of qualifying subject matter. Other requirements for prioritized examination remain in place, including limitations on number and type of claims, and the unavailability of extensions of time for reply. The First Action Interview (FAI) Pilot Program, however, falls

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outside of the COVID-19 Pilot scope.

While the COVID-19 Pilot will initially be limited to the first 500 qualified applications, the Office may extend the pilot depending on administrative burden, public feedback and program effectiveness. Examples of FDA approvals that may qualify for acceptance include, but are not limited to, approvals for an Investigational New Drug (IND) application, an Investigational Device Exemption (IDE), a New Drug Application (NDA), a Biologics License Application (BLA), a Premarket Approval (PMA), or an Emergency Use Authorization (EUA). Inventors with these or other COVID-19 related innovations are encouraged to reach out to the Dorsey patent team to determine whether they can take advantage of the significant time and cost-savings available under the pilot program, and for timely preparation and filing of qualifying patent applications.

See full USPTO COVID-19 Pilot announcement [here](#); Fed. Reg. Notice [here](#).

USPTO AND COPYRIGHT OFFICE FURTHER EXTEND FILING DEADLINES UNDER CARES ACT (COVID-19 EMERGENCY)

In view of the COVID-19 emergency, the USPTO is also further extending certain Patent and Trademark deadlines by an additional thirty days under the CARES Act. The additional extensions apply to the same categories of deadlines that were previously extended until April 30, 2020 (see our [prior eUpdate](#)). Under the new extensions, any such deadlines that fall between March 27, 2020 and May 31, 2020, inclusive, *and which are caused by the COVID-19 emergency*, are further extended until June 1, 2020.

Acting Copyright Office Register Maria Strong has also further extended deadlines through July 10, 2020 for *non-electronic* filings, and for applicants without internet access, if relief is necessary due to the COVID-19 emergency. In addition, the Copyright Office published an administrative rule on May 8, 2020, allowing eligibility for certain remotely administered tests under the secure test special registration procedures, and the Copyright Office is also exploring whether to allow examination of secure test applications via teleconference.

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

With the COVID-emergency continuing to impact business worldwide, other patent and trademark offices across the globe have also implemented their own COVID-19 relief provisions. Clients and patent applicants are encouraged to contact Dorsey & Whitney for details on any patent, trademark, and copyright deadlines that may be impacted by the COVID-19 emergency, in order to evaluate any extensions that may be available.