

# USPTO Extends CARES Act Relief for Trademark Applicants, Owners, and Litigants Facing COVID-19 Related Business Disruptions

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## May 27, 2020 USPTO Notice

In recognition of the continued business disruptions occasioned by COVID-19, the United States Patent and Trademark Office (USPTO) expanded the timeframe within which trademark owners may petition for the revival or reinstatement of certain abandoned applications or cancelled registrations without incurring a fee.

On May 27, 2020, the USPTO confirmed that it is continuing to waive the fee for a petition to revive an abandoned application or to reinstate a cancelled/expired registration for trademark applicants and owners who, because of the COVID-19 outbreak, were unable to timely submit trademark filings or payments in reply to an Office communication.

The May 27 Notice expands eligibility for the fee waiver to trademarks abandoned, cancelled, or expired on or before June 30, 2020.

## April 28, 2020 USPTO Notice

While the offices of the United States Patent and Trademark Office (USPTO) are closed to the public due to the COVID-19 pandemic, the USPTO remains open for the filing of documents and fees relating to trademark prosecution and maintenance and proceedings before the Trademark Trial and Appeal Board (TTAB).

Nevertheless, the USPTO has extended the time to file certain trademark-related documents, waived certain fees, and provided other relief for trademark applicants, owners, and other stakeholders impacted by the COVID-19 outbreak pursuant to section 12004 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The relief extends to those prosecuting and maintaining trademark applications and registrations before the USPTO, as well as those litigating ex parte or inter partes proceedings before the TTAB.

The presently operative USPTO Notice pursuant to the CARES ACT issued on April 28, 2020 and supersedes all prior notices.

The relief provided by this Notice as outlined below is conditioned on the relevant delay in filing or

payment occurring “due to” the COVID-19 outbreak. According to the Notice, a delay is due to the COVID-19 outbreak “if a practitioner, applicant, registrant, or other person associated with the filing or fee was personally affected by the COVID-19 outbreak, including, without limitation, through 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.”

First, the Notice provides that any of the filings itemized below that are due between, and inclusive of, March 27, 2020 and May 31, 2020, will be considered timely if filed on or before June 1, 2020, provided that the filing is accompanied by a statement that the delay was “due to the COVID-19 outbreak” as defined above.

- Response to an Office action, including a notice of appeal from a final refusal, under 15 U.S.C. §1062(b) and 37 C.F.R. §§ 2.62(a) and 2.141(a);
- Statement of use or request for extension of time to file a statement of use under 15 U.S.C. § 1051(d) and 37 C.F.R. §§ 2.88(a) and 2.89(a);
- Notice of opposition or request for extension of time to file a notice of opposition under 15 U.S.C. § 1063(a) and 37 C.F.R. §§ 2.101(c) and § 2.102(a);
- Priority filing basis under 15 U.S.C. § 1126(d)(1) and 37 C.F.R. § 2.34(a)(4)(i);
- Priority filing basis under 15 U.S.C. § 1141g and 37 C.F.R. § 7.27(c);
- Transformation of an extension of protection to the United States into a U.S. application under 15 U.S.C. § 1141j(c) and 37 C.F.R. § 7.31(a);
- Affidavit of use or excusable nonuse under 15 U.S.C. § 1058(a) and 37 C.F.R. § 2.160(a);
- Renewal application under 15 U.S.C. § 1059(a) and 37 C.F.R. § 2.182; or
- Affidavit of use or excusable nonuse under 15 U.S.C. § 1141k(a) and 37 C.F.R. § 7.36(b).

Second, the Notice authorizes a request (in ex parte appeals) or motion (for inter partes proceedings) for an extension or reopening of time, if the COVID-19 outbreak has prevented or interfered with a filing in a proceeding before the TTAB. This covers TTAB filings outside of a notice of opposition or request for extension of time to file a notice of opposition addressed above.

Third, the Notice clarifies that the USPTO is continuing to waive the fee for a petition to revive an abandoned application or reinstate a canceled/expired registration for trademark applicants and owners who, because of the COVID-19 outbreak, were unable to timely submit trademark filings or payments in reply to an Office communication.

The Notice limits eligibility for the fee waiver to trademarks abandoned, cancelled, or expired on or before May 31, 2020. The petition must be filed within two (2) months of the issue date of the notice of abandonment or cancellation, and include a statement that the delay in filing or payment was due to the COVID-19 outbreak as defined above.