Insights: Publications

COVID-19-Related Delays in Filing Patent and Trademark Documents

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Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main COVID-19 Task Force page and/or your email for updates.

The European Patent Office (EPO), the European Union Intellectual Property Office (EUIPO) and the United State Patent and Trademark Office (USPTO) have each announced some relaxation of certain rules and procedures to accommodate 2019 novel coronavirus (COVID-19)-related delays and interruptions in filings.

The EPO will extend all deadlines accruing after March 15, 2020 until April 17, 2020, including deadlines for international applications under the PCT. The currently extended deadline of April 17 may be further extended by a future Notice.

However, to take advantage of the EPO deadline extensions, applicants or their representatives must offer "evidence that on any of the ten days preceding the day of expiry of a period, it was not possible to observe the time limit due to" a COVID-19 related disruption.

To obtain an extension of a PCT deadline, the interested party must offer "satisfactory evidence that a time limit under the PCT was not met due to natural calamity or other like reason [i.e., a delay caused by the COVID-19 outbreak] in the locality where the interested party resides." The full EPO Notice is available here.

The EUIPO extensions appear to be more generous. Trademark filings in the EU office with time limits expiring between March 9, 2020 and April 30, 2020 are currently being extended to May 1, 2020. The EUIPO Decision can be found here.

The USPTO will waive the petition fee normally required with any petition to revive an abandoned application or the termination or limitation of a reexamination proceeding. The USPTO Notice is here. A copy of the USPTO Notice that accompanies a petition (e.g., to revive), will be treated as a representation that the relevant delay in filing "was because the practitioner, applicant or at least one inventor was personally affected by the Coronavirus outbreak such that they were unable to timely reply." As with any representation of the Patent Office, the applicant, practitioner, or inventor would be well-advised to maintain evidence supporting the

representation.

According to the same USPTO Notice, Trademark petition fees will also be waived, at least under certain circumstance. Petitions to revive an abandoned application or reinstate a cancelled or expired registration “must include a statement explaining how the failure to respond to the Office communication was due to the effects of the Coronavirus outbreak.”

The USPTO Notice expressly does NOT grant any waivers or extension or deadlines set by statute, such as the deadline for non-provisional patent applications that claim priority to a foreign priority application, a provisional patent application, or a previously filed parent patent application, or the three-month deadline to pay an issue fee, among others.

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