Cooley

USPTO Extends Deadlines Under CARES Act

May 29, 2020

Further to our recent Cooley alerts on April 2 and April 30, the US Patent and Trademark Office (USPTO) issued updated patent and trademark notices on May 27 regarding certain patent and trademark timing deadlines under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

For patent matters, the USPTO has indicated that, for small and micro entities, any filings or payments that would have been timely if filed by June 1, 2020 in accordance with the April 28 CARES Act notice will now be considered timely if filed by July 1, 2020. However, after May 31, 2020, large entities should now seek relief on a case-by-case basis by filing a petition for an extension of time or a petition to revive.

For trademark matters, the USPTO has indicated that the following options will be available to stakeholders who continue to require relief due to the COVID-19 outbreak.

- Applicants who were unable to timely file a response or pay a fee in response to a USPTO communication should file a petition to revive the application
- Applicants who missed the 36-month statutory deadline for filing a Statement of Use should use the TEAS "Petition to the Director" form
- Registrants who missed a statutory deadline, resulting in a cancelled/expired trademark registration, or who were unable to submit a timely response or fee in response to a USPTO communication regarding a registration should use the TEAS "Petition to the Director" form

With respect to proceedings before the Trademark Trial and Appeal Board, if certain filings were delayed or otherwise impacted due to COVID-19, the trademark notice indicates that parties can file requests (in *ex parte* appeals) or motions (in trial cases) for an extension or reopening of time.

Finally, both updated notices confirm that the USPTO continues to provide relief in the form of a waiver of the petition fee for petitions for the revival of abandoned patent and trademark applications, abandoned patent reexamination proceedings and cancelled/expired trademark registrations that became abandoned, terminated, limited or cancelled/expired on or before June 30, 2020, provided that such petitions include a statement that the delay in filing or payment was due to the COVID-19 outbreak.

As a reminder, Cooley's patent and trademark practitioners continue to work remotely, and our intention is to meet deadlines as originally scheduled whenever possible. However, in light of the widespread uncertainty surrounding the COVID-19 situation, we understand that there may be circumstances where we, or our clients, will not be able to meet these deadlines. Accordingly, when necessary, we will take advantage of these further patent and trademark extensions where available.

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