

**CARES Act and the
U.S. Patent and
Trademark Office**

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief and Economic Security Act (CARES Act). The U.S. Patent and Trademark Office (USPTO) has extended certain deadlines for filings and fees in accordance with the CARES Act.

For certain patent-related matters due between March 27, 2020 and April 30, 2020, the USPTO is providing a thirty (30) day extension measured from the initial due date. Any filing that is submitted under this extension must contain a statement attesting to the delay in filing being related to COVID-19. An appropriate COVID-19 related delay exists “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, 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.”

Certain types of patent-related proceedings fall within the scope of the permissible extension. These include:

- 1) reply to an Office notice issued during pre-examination processing by a small or micro entity;
- 2) reply to an Office notice or action issued during examination or patent publication processing;
- 3) issue fee;
- 4) notice of appeal under 35 U.S.C. § 134 and 37 C.F.R. § 41.31;
- 5) appeal brief under 37 C.F.R. § 41.37;
- 6) reply brief under 37 C.F.R. § 41.41;
- 7) appeal forwarding fee under 37 C.F.R. § 41.45;
- 8) request for an oral hearing before the Patent Trial and Appeal Board (PTAB) under 37 C.F.R. § 41.47;
- 9) response to a substitute examiner's answer under 37 C.F.R. § 41.50(a)(2);
- 10) amendment when reopening prosecution in response to, or request for rehearing of, a PTAB decision designated as including a new ground of rejection under 37 C.F.R. § 41.50(b);
- 11) maintenance fee filed by a small or micro entity; or
- 12) request for rehearing of a PTAB decision under 37 C.F.R. § 41.52

Certain proceedings before the Patent Trial and Appeal Board (PTAB) are also subject to the extension period. These include:

- 1) a request for rehearing of a PTAB decision under 37 C.F.R. §§ 41.125(c), 41.127(d), or 42.71(d);
- 2) a petition to the Chief Judge under 37 C.F.R. § 41.3; or
- 3) a patent owner preliminary response in a trial proceeding under 37 C.F.R. §§ 42.107 or 42.207, or any related responsive filings.

The CARES Act also provides for similar extensions in the Trademark context. For certain proceedings due between March 27, 2020 and April 30, 2020, a thirty (30) day extension beyond the initial due date is available. Again, any filing made under an extension must have an accompanying attestation like the one required for patents. The proceedings which are included within the extension are:

- 1) 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);
- 2) 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);
- 3) 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);
- 4) priority filing basis under 15 U.S.C. § 1126(d)(1) and 37 C.F.R. § 2.34(a)(4)(i);
- 5) priority filing basis under 15 U.S.C. § 1141g and 37 C.F.R. § 7.27(c);
- 6) 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);
- 7) affidavit of use or excusable nonuse under 15 U.S.C. § 1058(a) and 37 C.F.R. § 2.160(a);
- 8) renewal application under 15 U.S.C. § 1059(a) and 37 C.F.R. § 2.182; or
- 9) affidavit of use or excusable nonuse under 15 U.S.C. § 1141k(a) and 37 C.F.R. § 7.36(b).

Middleton Reutlinger's Intellectual Property attorneys are available to discuss how the CARES Act may apply to your patent or trademark proceeding.