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# Client Alert

## PTAB Due Date Extensions Available Under CARES Act Amid COVID-19 Outbreak

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On Tuesday, March 31, 2020, the United States Patent and Trademark Office (USPTO) issued Notices of Waiver of certain USPTO deadlines, including deadlines in *inter partes* review (IPR), post grant review (PGR), and covered business method (CBM) review proceedings before the Patent Trial and Appeal Board (PTAB) deadlines. The Notice relating to these proceedings enumerates certain deadlines for which a 30-day extension “shall” be granted, and also provides a mechanism for requesting extension in situations not specifically enumerated.

The Notice states that, upon a request to the PTAB affirming that a filing due between and including March 27, 2020 and April 30, 2020 was or may be delayed due to the COVID-19 outbreak, the PTAB shall provide a 30-day extension of time. This provision applies to the following deadlines:

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 (POPR) in a trial proceeding under 37 C.F.R. §§ 42.107 or 42.207, or any related responsive filings.

The Notice further provides that, if the PTAB extends a deadline for a POPR or related responsive filing, the PTAB may also extend the deadlines for issuing its institution decision as provided in 35 U.S.C. §§ 314(b) and 324(c).

For PTAB situations not specifically enumerated, the Notice states that a request for an extension of time where the COVID-19 outbreak has prevented or interfered with a filing before the PTAB can still be made by contacting the PTAB at 571-272-9797 or by email at [Trials@uspto.gov](mailto:Trials@uspto.gov) (for AIA trials), [PTAB\\_Appeals\\_Suggestions@uspto.gov](mailto:PTAB_Appeals_Suggestions@uspto.gov) (for PTAB appeals) or [InterferenceTrialSection@uspto.gov](mailto:InterferenceTrialSection@uspto.gov) (for interferences).

For purposes of the Notice, a delay in filing is due to the COVID-19 outbreak if the patent owner, petitioner, practitioner, or other person associated with the filing 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.

In practice, the PTAB has already started acting on such requests. Our Firm’s PTAB practice has seen the PTAB grant in less than 24 hours a request to extend a POPR deadline made under this Notice. In that instance, the existing deadline was less than one week away. The PTAB did not seek input from the non-requesting party or require the parties to confer about the request. And while the Notice permits the Board – when extending a POPR deadline – to extend its own deadline to issue the institution decision, the Board did not take advantage of that provision,

but could do so in the future. It remains to be seen how the PTAB will handle extension requests for situations not specifically enumerated in the notice.

The Notices also included relief in patent application and reexamination proceedings, as well as for trademark applicants, registrants, and parties to TTAB proceedings. Our client alert related to those proceedings is located [here](#). The Office's Notice related to patent and PTAB matters can be found on the USPTO website [here](#) and the Notice related to trademark matters is posted [here](#).

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