CARES Act Authorizes the PTO to Extend Patent and Trademark Deadlines during Coronavirus Emergency

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Other Squire Patton Boggs articles on the SPB Coronavirus Hub have highlighted the many remedial provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. Intellectual Property owners were not left out. Section 12004 gives the Director of the Patent and Trademark Office (PTO) the authority to “toll, waive, adjust, or modify” statutory deadlines under the Patent Act and the Trademark Act during the Emergency Period, if the Director determines that the emergency “materially affects” the functioning of the PTO, prejudices the rights of trademark or patent applicants, registrants, owners or others appearing before the PTO, or prevents them from filing a document with the PTO or paying a PTO fee.

The Emergency Period, for this purpose, commenced with the passage of the CARES Act on March 27, 2020, extends for 60 days following the end of the Coronavirus National Emergency declared by the President. The PTO Director must publish a public notice of any determinations under this provision, along with his reasons; if the modifications will be in effect for more than 120 days, the Director must also submit an explanatory statement to Congress.
This is significant to trademark and patent owners because they face certain statutory deadlines when prosecuting trademark and patent applications, or renewing them, or making other filings or payments necessary to protect patent or trademark rights. Understandably, many patent and trademark owners are now grappling with efforts to address health issues, and to save their businesses and staffs, during this unprecedented crisis; they simply may not be able to focus on mandatory trademark or patent deadlines at this time. Without this action by Congress, the PTO would be unable to modify or extend any of these statutory deadlines, regardless of the reasons or hardship that triggered the inability to meet those deadlines.

The PTO acknowledged its inability to address this problem in its PTO’s March 16, 2020 Notice. That Notice waived certain fees for Petitions to Reinstate or Revive applications or registrations where patent or trademark owners and others missed certain renewal or other filing dates as a result of the Coronavirus Emergency (see our prior blog post). The Notice stated that the petition fee waivers were not extensions of the filing deadlines, as the Director lacked the statutory authority to modify or extend those deadlines. So while PTO Director Andrei Iancu ameliorated the situation as best as the PTO could, the Notice reflected the agency’s frustration with the limits on its ability to help patent and trademark owners during this crisis.

The CARES Act resolves that quandary and gives the PTO the needed flexibility to ensure that important trademark and patent rights are not lost due to the Coronavirus Chaos. It is a welcome acknowledgement that Congress also cares about intellectual property and shielding patent and trademark owners from the inadvertent and unintentional losses of their rights during the National Coronavirus Emergency.

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