USPTO Expands CARES Act Relief to Non-Provisional Application Filings Deadlines

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The United States Patent and Trademark Office (USPTO) has expanded the type of relief available under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). Now, priority claims can be made in certain non-provisional applications filed more than 12 months after the priority application’s filing date (more than six months for a design application) but by July 31, 2020, as long as the delay in filing “was due to the COVID-19 outbreak” as defined in the USPTO’s April 28, 2020 notice.

Obtaining a Priority Claim under the CARES Act

As reported in this article, Section 12004 of the CARES Act granted the USPTO temporary authority to extend statutory deadlines. As explained in this article, the USPTO previously exercised that authority by providing relief for certain patent prosecution and maintenance fee deadlines. The USPTO’s June 11, 2020 notice announces a different type of relief available now through July 31, 2020—the ability to file a non-provisional application more than 12 months after a priority application’s filing date (or more than 6 months for a design application) and still
make a priority claim, as long as the original priority period expired between March 27, 2020 and July 30, 2020 (inclusive), the delay in filing “was due to the COVID-19 outbreak,” and other formal requirements are met.

This relief applies only to U.S. applications. For international (PCT) applications, the USPTO only is able to waive the petition fee in 37 CFR § 1.17(m) for a petition under 37 CFR § 1.452 to restore the right of priority for an international application that was filed within the two-month period set forth in 37 CFR § 1.452 (within two months of the expiration of the priority period).

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