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Intellectual Property Alert: Want to Expedite your COVID-Related Patent or Trademark Application?

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In an effort to help combat the COVID-19 pandemic, the United States Patent and Trademark Office (USPTO) has announced various programs to expedite certain patent and trademark applications specifically directed to COVID-19 treatments and prevention.

COVID-19 Prioritized Examination Pilot Program

On May 8, 2020, the USPTO announced that a selection of 500 patent applications will be advanced to the front of the patent examination queue upon proper request. The 500 applications must be directed to a product or process related to COVID-19, and subject to an applicable U.S. Food and Drug Administration (FDA) approval for COVID-19.

Businesses or individuals that have developed or are pursuing an Investigational New Drug (IND), and Investigational Device Exemption (IDE), a New Drug Application (NDA), a Biologics License Application (BLA), a Premarket Approval (PMA) or an Emergency Use Authorization (EUA) should consider participating in this pilot. If a Request for Continued Examination (RCE) application is already pending, applicants should act quickly, because a request for participation in the program must be received before the first Office Action.

To be eligible for the pilot program, applicants must qualify as a small or micro entity and request participation. The USPTO will endeavor to provide a final disposition of applications (e.g., approval or a final rejection) within six (6) months to particularly responsive applicants, and at least within one (1) year for all others.

Prioritized examination typically requires payment of additional fees (i.e., \$2,000 for small entities and \$1,000 for micro entities), but this pilot program is available fee-free for qualified applicants. The program may be expanded beyond the original 500 applications, depending on the program effectiveness and impact on USPTO resources.

COVID-19 Deferred-Fee Provisional Patent Application Pilot Program

On September 16, 2020, the USPTO announced another pilot program for provisional patent applications directed to COVID-19 products or processes that will require FDA approval. Those who wish to enter the program must agree that the technical subject matter disclosed in the provisional patent application will be available to the public on the USPTO's website. This helps foster dissemination and collaboration in the public fight against COVID-19 while protecting patent rights.

Entities of all sizes may avail themselves of the program, which defers payment of the provisional patent application fee until a corresponding non-provisional application is filed. The payment of the fee is statutorily mandated, therefore it has not been entirely eliminated. The USPTO provisional patent application fee is currently \$70 for micro entities, \$140 for small entities, and \$280 for all others, but will increase slightly effective October 2, 2020.

COVID-19 Prioritized Examination Program for Trademarks and Service Mark Applications

On June 15, 2020, the USPTO announced a prioritized examination program for trademark and service mark applications designed to get products that treat or prevent COVID-19 to market earlier. Under the program, fees will be waived for qualified applicants who seek coverage of a mark for products subject to FDA approval for the prevention and/or treatment of COVID-19, or a medical or medical research service for the prevention and/or treatment of COVID-19.

If you or your business has an application that might qualify for one of the above pilot programs, please reach out to the patent and trademark attorneys at Vorys with any questions or for assistance in applying for the programs.

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Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://www.vorys.com/coronavirus).