

Intellectual Property

Patent Offices Across the World Address Disruptions Due to COVID-19 Pandemic

In the wake of the ongoing COVID-19 pandemic, companies have encountered an unprecedented array of legal and commercial challenges, including in the patent space. Recognizing that some patent applicants may face insurmountable difficulties in meeting filing deadlines, many patent offices have adopted measures to minimize the need for additional steps and arguments. The table below summarizes the measures (including extending filing deadlines and modifications to revival procedures) enacted by various patent offices to assist applicants who are unable to meet ongoing deadlines due to the COVID-19 outbreak. Despite these accommodations, it is advisable for applicants to not rely on them unless necessary, to avoid additional cost and uncertainty, and to proceed as if those measures are not in place. Your IP team at Baker McKenzie remains on the job and will continue to provide the top-notch legal service and advice you have come to expect.

Patent Office	Extension of Deadlines Available Due to COVID-19 Outbreak	Revival Procedures if Application Goes Abandoned Due to COVID-19 Outbreak
United States (USPTO)	<p>Yes (see here)</p> <p>"The due date for any...reply to an Office notice or action issued during examination; issue fee; notice of appeal ... that was due between, and inclusive of, both March 27, 2020 and April 30, 2020, will be extended 30 days from the initial date it was due, provided that the filing is accompanied by a statement that the delay in filing or payment was due to the COVID-19 outbreak.</p> <p>A delay in filing or payment is due to the COVID-19 outbreak ... if a practitioner, applicant, patent owner ... 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."</p> <p>The USPTO's notice does not address application filing deadlines, e.g., non-provisional "conversion" deadlines, continuation application deadlines, national stage filing deadlines, etc.</p>	<p>Yes (see here)</p> <p>"For patent applicants or patent owners who were unable to timely reply to an Office communication due to the effects of the coronavirus outbreak, which resulted in the application being held abandoned, ... the USPTO will waive the [revival] petition fee in 37 CFR 1.17(m) when the patent applicant or patent owner files the reply with a petition under 37 CFR 1.137(a). See 35 U.S.C. § 41(a)(7)."</p>
Europe (EPO)	<p>Yes (see here and here)</p> <p>"All time limits expiring on or after 15 March 2020 are thus extended until 17 April 2020."</p> <p>"The due date for renewal fees falling due on 31 March 2020 is deferred to 20 April 2020"</p>	N/A
Australia (IP Australia)	<p>Yes (see here)</p> <p>"Where an applicant cannot carry out an action within time due to the COVID-19 outbreak an extension of time may be available. Requests for extensions of time will need to be made in the normal way, accompanied where required by a declaration setting out how the COVID-19 outbreak interfered with responding in time. Requests for waiver or refund of the fee for the extension of time will be considered on a case by case basis as per our current practice."</p>	N/A
Canada (CIPO)	<p>Yes (see here)</p> <p>"On account of the continuing unforeseen disruption caused by the COVID-19 outbreak, and being satisfied that it is in the public interest to do so, the Commissioner of Patents... the Registrar of Trademarks... and the Minister ... have designated ... all days in the period of time beginning on April 1, 2020 and ending on April 30, 2020. This designation is in addition to the previous designation of the days in the period beginning March 16, 2020 and ending March 31, 2020 [extending time limits to April 1, 2020].</p> <p>The result of designating these days is that if a time period fixed under the <i>Patent Act</i>, <i>Trademarks Act</i> and <i>Industrial Design Act</i> in respect of any business before the Canadian Intellectual Property Office for doing anything ends on any of these designated days, that time period is extended to the next day that is not either a designated day or a day that has been prescribed under section 5 of the <i>Patent Rules</i>, section 15 of the <i>Trademarks Regulations</i> and section 36 of the <i>Industrial Design Regulations</i>, which means that all such time limits ending on any of these designated days will now be extended until May 1, 2020."</p>	N/A
China (CNIPA)	N/A	<p>Yes (see here)</p> <p>"If a party delays the time limit stipulated in the Patent Law and its Implementing Rules or the time limit specified by the State Intellectual Property Office due to epidemic-related reasons, resulting in the loss of its rights, the provisions of Article 6.1, of the Implementing Rules of the Patent Law shall apply. The parties may request the restoration of their rights within 2 months from the date of removal of the obstacle and at the latest within 2 years from the date of expiry of the period. If you request to restore the right, you do not need to pay the restoration right request fee, but you need to submit a request for restoration of the right, explain the reason, attach the corresponding certification materials, and go through the corresponding formalities before the loss of rights."</p>
Mexico	<p>Yes (see here)</p> <p>On March 23, 2020, an Agreement was published in the Gazette of the Mexican Institute of Industrial Property (IMPI) suspending the deadlines and terms IMPI due to force majeure.</p> <p>According to the Agreement, deadlines are suspended and there will be no legal terms in the IMPI from March 24 to April 19, 2020.</p> <p>Any type of diligence that is necessary to control the mitigation of the effects of the pandemic, or, where appropriate, lifting provisional measures imposed within an infringement procedure, are exempt from the suspension of terms.</p>	N/A
Korea	<p>Yes (see here and here)</p> <p>"Joining a nationwide effort to limit the spread and impact of the Covid-19, the Korean Intellectual Property Office (KIPO) announced measures to support its applicants and users in South Korea affected by Covid-19. According to the announcement, the measures include a grant of deadline extension for applicants who have failed to comply with the statutory time limits for submitting documents or paying fees to KIPO, for any reasons relating to the coronavirus. Affected applicants will be asked to submit a relief measure request or a statement of payment, together with an explanatory statement and evidentiary materials."</p> <p>"Official Notice of ex-officio extension for designated periods due to the effects of the COVID-19 ... As such, if the designated periods, enumerated in the appendix, end on a date between March 31, 2020 – April 29, 2020, the deadline of such periods according to Article 15(2) of the Patent Act, Article 3 of the Utility Model Act(Article 15(2) of the Patent Act shall apply mutatis mutandis), Article 17(2) of the Design Protection Act and Article 17(2) of the Trademark Act will be ex-officio extended until April 30, 2020."</p>	N/A
Gulf Cooperation Council	<p>Yes (see here)</p> <p>"Extension of time-limits connecting to patent applications set out in the GCC patent law and its implementing bylaw, which expire during the work suspension period, and such extension is deemed void on the first working day following the work suspension period"</p>	N/A
Singapore	<p>Case by Case (see here)</p> <p>"If you need more time beyond existing deadlines due to the circumstances of the COVID-19 situation, please file the relevant form to request for an extension of time. If you are unable to file for an extension of time, please write to us at ipos_enquiry@ipos.gov.sg and we will look to address the issue accordingly."</p>	N/A
Hong Kong	<p>Yes (see here, here, and here)</p> <p>"Under— (a) rule 96(2) of the Trade Marks Rules; (b) rule 100A(2) of the Patents (General) Rules; and (c) rule 73A(2) of the Registered Designs Rules; where any period of time specified in the Trade Marks Ordinance (Chapter 559), the Patents Ordinance (Chapter 514), the Registered Designs Ordinance (Chapter 522), the Trade Marks Rules, the Patents (General) Rules or the Registered Designs Rules, or as extended under those rules, for the filing of any document or other thing with the Registrar expires on a day notified under the Rules, the period shall be extended to the first day next following that is not so notified (not being a day that is not a business day of the Registries). Accordingly, if the time for filing any document or other thing with the Registrar expired on 23, 24, 25, 26 or 27 March 2020, the period shall be extended to 30 March 2020."</p> <p>"Under: (i) rule 100A(2) of the Patents (General) Rules, (ii) rule 73A(2) of the Registered Designs Rules; and (iii) rule 96(2) of the Trade Marks Rules, where any period of time specified in the Patents Ordinance (Chapter 514), the Registered Designs Ordinance (Chapter 522), the Trade Marks Ordinance (Chapter 559), the Patents (General) Rules (Chapter 514 sub. leg.), the Registered Designs Rules (Chapter 522 sub. leg.), or the Trade Marks Rules (Chapter 559 sub. leg.), or as extended under those rules, for the filing of any document or other thing with the Registrar expires on a day notified under the Rules, the period shall be extended to the first day next following that is not so notified (not being a day that is not a business day of the Registries). Accordingly, if the time for filing any document or other thing with the Registrar expired on 30 or 31 March or 1, 2 or 3 April 2020, the period shall be extended to 6 April 2020."</p>	N/A
India	<p>Yes (see here)</p> <p>Due dates falling between March 25 and April 14, 2020 for carrying out activities or payment of fees have been extended to April 15 2020.</p> <p>"[A]ll the Offices under administrative control of O/o CGPDTM will remain close for a period of 21 days with effect from 25.03.2020.</p> <p>In view the above, due dates falling due during the above said period in the matter of timelines/periods prescribed under the IP Acts and Rules administered by the O/o CGPDTM with respect to completion of various acts/proceedings, filing of any reply/document, payment of fees, etc. regarding any IP applications filed with the offices under the administrative control of the O/o CGPDTM, for computation of time, shall be the date of next day on which the offices re-open as per Section 10 of the General Clauses Act, 1897."</p>	N/A

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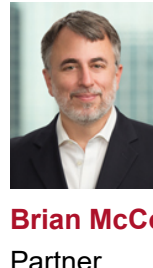
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