

USPTO Incentivizes Filing of COVID-19-Related Patent Applications

PUBLISHED ON
May 12, 2020

A new enticement for small businesses and individual inventors will expedite the patent process for innovations related to COVID-19 prevention or treatment.

The newly-released United States Patent and Trademark Office program waives an additional \$2,000 filing fee for prioritized examination if a "small entity", which includes individuals, businesses with less than 500 employees and nonprofit organizations, is filing a patent application related to COVID-19. The fee is also waived for a "micro entity," which is a particular type of smaller applicant that also falls under the "small entity" designation. The invention described in the patent application qualifies for the program if it covers a product or process related to COVID-19 and the product or process is subject to an applicable federal Food and Drug Administration approval for COVID-19 use. Exemplary products or processes that may be subject to FDA approval include drugs subject to an Investigational New Drug application or New Drug Application, devices subject to an Investigational Device Exemption and other potential approvals.

The average total pendency of a patent application at the USPTO, the time from the initial filing of the patent application to either issuance of a patent or abandonment of the application, is about two years. The office has long offered a prioritized examination option for those seeking a faster application process. Although the prioritized examination offers a significantly reduced total pendency of six-to-12 months, it typically costs the additional \$2,000 in filing fees for small entities.

The new USPTO program is aimed at accelerating COVID-19 prevention and treatment options and is directly targeted to benefit solo inventors and small businesses who are innovating to address these concerns. The individuals and organizations that capitalize on this program will receive the greater certainty and quicker path to a potential patent offered by prioritized examination without the obstacle of the typically required fee. The program will run until the USPTO receives 500 requests but may be extended.

If you have any questions about the COVID-19 patent application program or any other intellectual property questions, please [contact me](#) or another member of the [Barley Snyder Intellectual Property Practice Group](#).

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