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United States Patent and Trademark Office Expedites COVID-Related Trademark Applications

by Andrew L. Goldstein

A FREEBORN & PETERS LLP CLIENT ALERT

The United States Patent and Trademark Office ("USPTO") generally processes trademark applications in the order in which they are received, often taking up to three months for the initial examination of a trademark application. However, the USPTO announced that it will expedite the examination of trademark applications that cover medical products and services related to COVID-19 and that it will waive the fee to do so.

The USPTO stated that in response to the COVID-19 outbreak, the development of medical products and services to combat the COVID-19 virus, along with moving successful products to market as soon as possible, is critical. Therefore, the USPTO is accepting petitions to advance the initial examination of applications for marks used to identify qualifying COVID-19 medical products and services, and it is waiving the usual fee for such petitions. Applications seeking to be expedited can also include goods or services related to such COVID-19 medical products and services.

The following are what the USPTO considers to be qualifying COVID-19 medical-related goods and services:

- pharmaceutical products or medical devices such as diagnostic tests, ventilators, and personal protective equipment, including surgical masks, face shields, gowns, and gloves, that prevent, diagnose, treat, or cure COVID-19 and are subject to approval by the United States Food and Drug Administration; and
- medical services or medical research services for the prevention, diagnosis, treatment of, or cure for COVID-19.

The approvals referenced above for pharmaceutical products or medical devices may include, but are not limited to, an Investigational New Drug (IND) application, an Investigational Device Exemption (IDE), a New Drug Application (NDA), a Biologics License Application (BLA), a Premarket Approval (PMA), or an Emergency Use Authorization (EUA). Information on INDs, IDEs, NDAs, BLAs, PMAs, and EUAs is available at www.fda.gov.

The petition must include a statement of facts setting forth the applicant's COVID-19 medical goods or services and an explanation of why the goods or services are of a type that qualify for prioritized examination, including the section of the US Code of Federal Regulations (CFR) under which the goods are regulated.

The USPTO said that the goal of the prioritized examination is to expedite the initial examination process for qualifying applications. If a petition is granted, the application will immediately be assigned to a USPTO examining attorney for review, which the USPTO estimates will expedite examination process by approximately two months.

On June 30, the USPTO launched a webpage here providing resources and information about the program.

If you are interested in filing a trademark application for COVID-19 medical-related goods and services, or if you require assistance in doing so, please contact Andrew Goldstein or another member of Freeborn & Peters LLP's Intellectual Property Practice Group. Stay tuned for further developments on Freeborrn's COVID-19 webpage.

ABOUT THE AUTHOR

Andrew L. Goldstein
Senior Counsel

Chicago Office
(312) 360-6438

agoldstein@freeborn.com

Andrew focuses his practice in the area of Intellectual Property and Information Technology. He has extensive experience in the areas of intellectual property law, including trademark, copyright, trade dress; internet, website, cloud computing, technology, outsourcing, IoT and computer law in general; advertising, marketing, and promotion law; and entertainment law, including video production, theater and dance-related matters.

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CHICAGO
311 South Wacker Drive
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Chicago, IL 60606
(312) 360-6000
(312) 360-6520 fax

NEW YORK
230 Park Avenue
Suite 630
New York, NY 10169
(212) 218-8760
(212) 218-8761 fax

SPRINGFIELD
217 East Monroe Street
Suite 202
Springfield, IL 62701
(217) 535-1060
(217) 535-1069 fax

RICHMOND
901 East Byrd Street
Suite 950
Richmond, VA 23219
(804) 644-1300
(804) 644-1354 fax

TAMPA
1 Tampa City Center
201 North Franklin Street
Suite 3550
Tampa, FL 33602
(813) 488-2920