

CLIENT ALERT

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TRADEMARK APPLICATIONS COVERING COVID-19 RELATED GOODS AND SERVICES CAN SKIP THE LINE

by *Flavia Campbell*

Following last month's launch of a program to expedite examination of patent applications related to prevention or treatment of COVID-19, as of June 16, 2020, the U.S. Patent and Trademark Office started also prioritizing the examination of trademark applications that cover goods and services that help prevent, diagnose, treat, or cure COVID-19.

To qualify for this benefit, the application must cover one or more of the following qualifying COVID-19 medical goods or services:

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

The FDA approvals referred to above may include, without limitation, applications for Investigational New Drug (IND), Investigational Device Exemption (IDE), New Drug Application (NDA), Biologics License Application (BLA), Premarket Approval (PMA), or an Emergency Use Authorization (EUA).

In order to request prioritized treatment, applicants must first file the application and then file a petition to the Director requesting that the initial examination of the application be advanced. The petition must include a statement of facts, supported by an affidavit or declaration under 37 CFR§ 2.20, listing the applicant's COVID-19 related goods and services and an explanation of why they qualify for prioritized examination, and they must identify the section of the Code of Federal Regulations (CFR) that regulates the goods and services. As an additional bonus, the USPTO is waiving the fee it normally charges for such petitions.

If the petition to the Director is granted, the application will be immediately assigned to an examining attorney for review, which, according to the USPTO, expedites examination by approximately two months. Following examination, approved applications are published for opposition purposes and third parties still have the usual 30-day window to file oppositions or extensions of time to oppose.

If you have developed a product or service that is related to the prevention, diagnosis, or treatment of COVID-19, our trademark lawyers will be happy to assist you with the application process for a trademark registration and expedited examination. The Dickinson Wright team is also able to guide you through the registration process with the FDA and advise on whether patent protection is also available for your product.

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