

Client Alert

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Certain COVID-19 Related Patent Applications Are Eligible For Fee-Free Prioritized Examination

On May 14, 2020, the United States Patent and Trademark Office (USPTO) began the COVID-19 Prioritized Examination Pilot Program to grant requests for prioritized examination of certain patent applications—without payment of prioritized examination fees.¹

The new program allows for up to 500 COVID-19 related patent applications filed by small entities or micro entities to receive prioritized examination without paying the standard prioritized examination fees (\$2,070 for a small entity and \$1,035 for a micro entity).

To qualify, the applicant must be either a small entity or micro entity under the applicable rules. Generally, small entities are businesses with less than 500 employees, while micro entities are individuals or businesses with a gross annual income of less than \$189,537. The applicant must also certify that the application contains one or more claims to a product or process related to COVID-19 that is subject to Food and Drug Administration (FDA) approval. Such FDA approvals include those pertaining to devices and drugs. Exemplary FDA approvals include those relating to an Investigational New Drug Application, an Investigational Device Exemption, a New Drug Application, a Biologics License Application, a Premarket Approval, and an Emergency Use Authorization.

The small and micro entity COVID-19 pilot program generally pertains to all new nonprovisional utility patent applications with the exception of those that claim priority to two or more previously filed nonprovisional applications. In addition, the program may be used with respect to a pending application by filing a request for continued examination (RCE) along with the certifications described above. One caveat is that the RCE must be the first for prioritized examination status.

As of May 15, ten COVID-19 applications had already been filed under the program. Therefore, qualifying applicants are well-served to file as soon as reasonably possible because the program is limited to 500 applications in total.

For qualifying applicants, the program may be very advantageous, as a stated goal is to complete the patent application process within one year or less on average, and six months for applicants who provide earlier responses to notices and actions from the USPTO than required by prioritized examination.

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¹ On May 18, 2020 the USPTO clarified that the effective date of the program is May 14, as opposed to July 13 as reported in the Federal Register. See <https://www.uspto.gov/about-us/news-updates/uspto-releases-additional-information-covid-19-prioritized-examination-pilot> (May 18, 2020) and 85 Fed. Reg. 28932 (May 14, 2020).