

Relief Available to Patent and Trademark Applicants, Patentees and Trademark Owners Affected by Hurricane Irma

The United States Patent and Trademark Office (USPTO) has issued a notice designating the interruption in service of the United States Postal Service (USPS) in the areas affected by Hurricane Irma in Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina, which began on Wednesday, September 6, 2017, as a postal service interruption and emergency within the meaning of 35 U.S.C. § 21(a). *See* <https://www.uspto.gov/learning-and-resources/operating-status>. The instant notice sets forth additional relief available in certain situations as detailed below. The USPTO considers the effects of Hurricane Irma in Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina that began on September 6, 2017, to be an "extraordinary situation" within the meaning of 37 CFR 1.183 and 37 CFR 2.146 for affected patent and trademark applicants, patentees, reexamination parties, and trademark owners.

Patent-Related Correspondence – Time Periods for Reply in Affected Areas

For patent applications and reexamination proceedings pending in the USPTO as of September 6, 2017, having a correspondence address in the areas of Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina affected by Hurricane Irma that the USPTO has identified as being in affected areas based on the zip code of the correspondence address, in which a reply to an Office action (final, non-final, or other), a notice of allowance, or other Office notice (hereinafter collectively referred to as "Office communication") is outstanding, and for which the statutory or non-statutory time period set for reply has not yet expired, the USPTO is withdrawing the Office communication, and re-issuing the Office communication with a new time period for reply. *See* MPEP § 710.06 (Situations When Reply Period Is Reset or Restarted). Note that the USPTO will not restart any time period for reply once the statutory or non-statutory time period has expired. Additional information regarding the restarting of time periods for reply in these patent applications and reexamination proceedings, including the zip codes identified by the USPTO, will be published in a separate notice.

The USPTO recognizes that there are other areas in Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina in addition to the areas identified by zip code that were affected by Hurricane Irma. For patent applications and reexamination proceedings pending in the USPTO as of September 6, 2017, having one or more inventors, an applicant, an assignee, or a correspondence address in the areas of Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina affected by Hurricane Irma, in which a reply to an Office communication is outstanding, and for which the statutory or non-statutory time period set for reply has not yet expired, and for which the USPTO has not restarted the time period, the USPTO will, on applicant's request, or a reexamination party's request, withdraw the Office communication and

reissue it. The Office communication must have been outstanding on September 6, 2017. The request must be made prior to expiration of the statutory or non-statutory time period set for reply and within sufficient time so that withdrawal and reissuance of the Office communication occur prior to expiration of the statutory or non-statutory time period (as permitted to be extended under 37 CFR 1.136(a), or as extended under 37 CFR 1.550(c) or 37 CFR 1.956). The request must be accompanied by a copy of this notice in order to permit the Office to quickly identify it as a request for relief and facilitate timely processing. The inclusion of a copy of this notice will be treated as a representation that the need for the reissuance of the Office communication was due to the effects of Hurricane Irma. The request should be sent via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450. If necessary, updates to the correspondence address of record should be provided to ensure receipt of subsequent Office communications.

Patent-Related Correspondence – Petitions to Revive

For patent applicants or patent owners who, beginning on September 6, 2017, were unable to timely reply to an Office communication due to the effects of Hurricane Irma, which resulted in the application being held abandoned or the reexamination prosecution terminated or limited, the USPTO will waive the 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). The inclusion of a copy of this notice with the reply required to the outstanding Office communication will be treated as a representation that the delay in filing the reply was due to the effects of Hurricane Irma that began on September 6, 2017, and as a request for *sua sponte* waiver of the petition fee under 37 CFR 1.17(m). The USPTO advises any patent applicant or patent owner who seeks to file a petition to revive under 37 CFR 1.137(a) with a request to waive the petition fee under 37 CFR 1.17(m) due to the effects of Hurricane Irma, to promptly file the petition under 37 CFR 1.137(a) accompanied by the required reply (but not the petition fee under 37 CFR 1.17(m)) and a copy of this notice. The petition under 37 CFR 1.137(a) must be filed by March 7, 2018, in order to be entitled to a waiver of the petition fee under 37 CFR 1.17(m). A petition to revive under 37 CFR 1.137(a) due to the effects of Hurricane Irma may be submitted via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Patent-Related Correspondence – Payment of Maintenance Fees

For patentees who, beginning on September 6, 2017, were unable to timely pay a patent maintenance fee due to the effects of Hurricane Irma, the USPTO will waive (i) the surcharge in 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the window to pay the maintenance fee and (ii) the petition fee in 37 CFR 1.17(m) for accepting a delayed maintenance fee payment when the patentee files the maintenance fee payment with a petition to accept a delayed maintenance fee under 37 CFR 1.378(b). *See* 37 CFR 1.183.

Patentees who seek to pay a maintenance fee during the six-month grace period following the window to pay the maintenance fee with a request to waive the surcharge in 37 CFR 1.20(h), must mail the payment and request to: Director of the United States Patent and Trademark Office, Attn: Maintenance Fee, 2051 Jamieson Avenue, Suite 300, Alexandria, VA 22314; or via facsimile to: 571-273-6500.

The request must be accompanied by a copy of this notice in order to permit the Office to quickly identify it as a request for relief and facilitate timely processing. The inclusion of a copy of this notice with the payment of the maintenance fee during the grace period will be treated as a representation that the late payment of the fee was due to the effects of Hurricane Irma that began on September 6, 2017, and as a request for *sua sponte* waiver of the surcharge under 37 CFR 1.20(h). This waiver may only be appropriately requested where the original window of time to pay the maintenance fee without the surcharge required by 37 CFR 1.20(h) expired on or after September 6, 2017, and the delay in paying the fee was due to the effects of Hurricane Irma.

The USPTO advises patentees who need to file a petition to accept a delayed maintenance fee payment due to the effects of Hurricane Irma, where the maintenance fee payment was required to have been paid after September 5, 2017, to promptly file a petition under 37 CFR 1.378(b) (using USPTO form PTO/SB/66 - **Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))**) accompanied by the applicable maintenance fee payment (but not the petition fee under 37 CFR 1.17(m)) and a copy of this notice. The inclusion of a copy of this notice will be treated as a representation that the delay in payment of the maintenance fee was due to the effects of Hurricane Irma that began on September 6, 2017, and as a request for *sua sponte* waiver of the petition fee under 37 CFR 1.17(m). The petition must be filed by September 7, 2018, in order to be entitled to a waiver of the petition fee under 37 CFR 1.17(m). A petition to accept a delayed maintenance fee payment under 37 CFR 1.378(b) due to the effects of Hurricane Irma may be submitted via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Patent-Related Correspondence – Late Submission of Inventor’s Oath or Declaration or Filing Fees

For applicants who filed a nonprovisional application on or after September 6, 2017, and prior to October 10, 2017, without an executed inventor’s oath or declaration or payment of the basic filing fee, search fee, and/or examination fee due to the effects of Hurricane Irma, the USPTO will waive the surcharge set forth in 37 CFR 1.16(f) for the late filing of the inventor’s oath or declaration or basic filing fee, search fee, and/or examination fee. Patent applicants seeking waiver of the surcharge must include a copy of this notice, along with the executed inventor’s oath or declaration or the basic filing fee, search fee, or examination fee, in order to permit the Office to quickly identify it as a request for relief and facilitate timely processing. The inclusion

of a copy of this notice will be treated as a representation that the late filing of the inventor's oath or declaration or the basic filing fee, search fee, or examination fee was due to the effects of Hurricane Irma that began on September 6, 2017, and as a request for *sua sponte* waiver of the surcharge under 37 CFR 1.16(f). A reply to a Notice to File Missing Parts requiring the inventor's oath or declaration or the filing fees (or other notice stating that the executed inventor's oath or declaration has not been received) may be submitted via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Missing Parts, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Patent-Related Correspondence – Petitions for Unintentionally Delayed Domestic Benefit and Foreign Priority Claims

For applicants who, beginning on September 6, 2017, were unable to timely file a benefit claim under 37 CFR 1.78(a) or (d) due to the effects of Hurricane Irma, the USPTO will waive the petition fee in 37 CFR 1.17(m) when the patent applicant submits the benefit claim with the appropriate petition under 37 CFR 1.78(c) or (e). See 35 U.S.C. § 41(a)(7). Similarly, for applicants who, beginning on September 6, 2017, were unable to timely file a priority claim under 37 CFR 1.55 due to the effects of Hurricane Irma, the USPTO will waive the petition fee in 37 CFR 1.17(m) when the patent applicant submits the priority claim with the appropriate petition under 37 CFR 1.55(e). The inclusion of a copy of this notice with a petition under 37 CFR 1.78(c), 1.78(e), or 1.55(e) will be treated as a representation that the delay in filing the benefit or priority claim and the need to file the petition was due to the effects of Hurricane Irma, and as a request for *sua sponte* waiver of the petition fee under 37 CFR 1.17(m). The USPTO advises any patent applicant who seeks to file a petition under 37 CFR 1.78(c), 1.78(e), or 1.55(e) with a request to waive the petition fee under 37 CFR 1.17(m) due to the effects of Hurricane Irma, to promptly file the petition under 37 CFR 1.78(c), 1.78(e), or 1.55(e) (but not the petition fee under 37 CFR 1.17(m)) and a copy of this notice. The petition under 37 CFR 1.78(c), 1.78(e), or 1.55(e) must be filed by March 7, 2018, in order to be entitled to a waiver of the petition fee under 37 CFR 1.17(m). A petition under 37 CFR 1.78(c), 1.78(e), or 1.55(e) due to the effects of Hurricane Irma may be submitted via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Patent-Related Correspondence – Petitions for Restoration of Domestic Benefit and Foreign Priority Claims

For applicants who are filing or have filed a nonprovisional application on or after September 6, 2017, who meet the requirements for restoration of the right to claim benefit of a provisional application and who missed the twelve-month time period under 35 U.S.C. § 119(e) due to the effects of Hurricane Irma, the USPTO will waive the petition fee in 37 CFR 1.17(m) when the patent applicant files a petition under 37 CFR 1.78(b) to restore benefit of a provisional application. See 35 U.S.C. § 41(a)(7). Note that the nonprovisional application must have been

filed within two months from the expiration of the twelve-month time period. Similarly, for applicants who are filing or have filed a nonprovisional application on or after September 6, 2017, who meet the requirements for restoration of the right of priority and who missed the twelve-month time period under 35 U.S.C. § 119(a) (or the six-month time period under 35 U.S.C. § 172 in a design application) due to the effects of Hurricane Irma, the USPTO will waive the petition fee in 37 CFR 1.17(m) when the patent applicant files a petition under 37 CFR 1.55(c) to restore the right of priority. Note that the nonprovisional application must have been filed within two months from the expiration of the twelve-month time period (or six-month time period in a design application). The inclusion of a copy of this notice with a petition under 37 CFR 1.78(b) or 1.55(c) will be treated as a representation that the delay in filing the nonprovisional application and the need to file the petition was due to the effects of Hurricane Irma, and as a request for *sua sponte* waiver of the petition fee under 37 CFR 1.17(m). The USPTO advises any patent applicant who seeks to file a petition under 37 CFR 1.78(b) or 1.55(c) with a request to waive the petition fee under 37 CFR 1.17(m) due to the effects of Hurricane Irma, to promptly file the petition under 37 CFR 1.78(b) or 1.55(c) (but not the petition fee under 37 CFR 1.17(m)) and a copy of this notice. The petition under 37 CFR 1.78(b) or 1.55(c) must be filed by March 7, 2018, in order to be entitled to a waiver of the petition fee under 37 CFR 1.17(m). A petition under 37 CFR 1.78(b) or 1.55(c) due to the effects of Hurricane Irma may be submitted via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Patent-Related Correspondence – Petitions for Restoration in International Applications

For applicants who are filing or have filed an international application on or after September 6, 2017, who meet the requirements for restoration of the right of priority under PCT Rule 26 *bis*.3 to a foreign application and who missed the twelve-month priority period due to the effects of Hurricane Irma, the USPTO will waive the petition fee in 37 CFR 1.17(m) when the patent applicant files a petition under 37 CFR 1.452 to restore the right of priority. Note that the international application must have been filed within two months from the expiration of the twelve-month priority period. The inclusion of a copy of this notice with a petition under 37 CFR 1.452 will be treated as a representation that the delay in filing the international application and the need to file the petition was due to the effects of Hurricane Irma, and as a request for *sua sponte* waiver of the petition fee under 37 CFR 1.17(m). The USPTO advises any patent applicant who seeks to file a petition under 37 CFR 1.452 with a request to waive the petition fee under 37 CFR 1.17(m) due to the effects of Hurricane Irma, to promptly file the petition under 37 CFR 1.452 (but not the petition fee under 37 CFR 1.17(m)) and a copy of this notice. The petition under 37 CFR 1.452 must be filed by March 7, 2018, in order to be entitled to a waiver of the petition fee under 37 CFR 1.17(m). A petition under 37 CFR 1.452 due to the effects of Hurricane Irma may be submitted via EFS-Web using document code PET.RELIEF or by mail directed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Patent-Related Correspondence – Contact Information

Patent-related inquiries concerning this notice may be directed to the Office of Patent Legal Administration at (571) 272-7704 ((571) 272-7703 for reexamination), or by e-mail to PatentPractice@uspto.gov.

Trademark-Related Correspondence

For trademark applications and registrations with a correspondence or owner address in the areas of Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina affected by Hurricane Irma as of September 6, 2017, in which an Office action (final, non-final, post-registration, or other), a notice of allowance, or other Office notice requiring a response (hereinafter collectively referred to as "Office communication") is outstanding, the USPTO will, upon written request, withdraw the Office communication and reissue it with a new response period. The request must be made prior to the deadline for responding to the Office communication, and indicate that the need for the reissuance of the Office communication is due to the effects of Hurricane Irma that began on September 6, 2017. The request should be sent via e-mail to TMPolicy@uspto.gov with "IRMA" in the subject line, or by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, and include the serial number or registration number. If necessary, updates to the correspondence address of record should be provided to ensure receipt of subsequent Office communications.

For trademark applications and registrations with a correspondence or owner address in the areas of Puerto Rico, the U.S. Virgin Islands, Florida, Georgia, and South Carolina affected by Hurricane Irma as of September 6, 2017, that were abandoned or cancelled due to inability to timely respond to a trademark-related Office communication due to the effects of Hurricane Irma that began on September 6, 2017, the USPTO will waive the petition fee (set by regulation, rather than statute) to revive the abandoned application or cancelled registration. Either a petition by regular mail to the address set forth in the preceding paragraph, or the Trademark Electronic Application System (TEAS) "Petition to Revive Abandoned Application" or "Petition to the Director Under Trademark Rule 2.146" forms should be used, and must include a statement that the failure to respond to the Office communication was due to the effects of Hurricane Irma.

Trademark-related inquiries concerning this notice may be directed to the Trademark Office of Petitions by telephone at (571) 272-8950, by facsimile at (571) 273-8950, or by e-mail at TMPolicy@uspto.gov.

General Information Regarding Patent-Related and Trademark-Related Statutory Time Periods and Requirements

This notice does not grant waivers or extensions of dates or requirements set by statute. For example, the following patent-related time periods are not extended: (1) the period set forth in 35 U.S.C. § 119(a)-(d) to file a nonprovisional patent application claiming the benefit of a prior-

filed foreign application; (2) the period set forth in 35 U.S.C. § 119(e) during which a nonprovisional application claiming the benefit of a prior filed provisional application must be filed in order to obtain benefit of the provisional application's filing date; (3) the copendency requirement of 35 U.S.C. § 120 between a parent application which issues as a patent and a later filed child application, which requires that the child application be filed prior to issuance of the parent application; (4) the three-month time period to pay the issue fee set forth in 35 U.S.C. § 151; and (5) the 35 U.S.C. § 304 two-month time period from the date of patentee service, for a requester to file, in an *ex parte* reexamination, a reply to a statement filed by the patentee. The following statutory trademark-related time periods are not extended and statutory fees are not waived: (1) the 36-month period set forth in 15 U.S.C. § 1051(d) within which a statement of use must be filed and the associated fee(s); (2) the periods set forth in 15 U.S.C. §§ 1058, 1141(k) for filing affidavits of continued use or excusable nonuse and the associated fee(s); (3) the period set forth in 15 U.S.C. § 1059 for filing a renewal and the associated fee(s); and (4) the periods set forth in 15 U.S.C. §§ 1063 and 1064 for filing an opposition or cancellation proceeding at the Trademark Trial and Appeal Board.

Dated: 10.10.17 Joseph Matal
Joseph Matal
Performing the Functions and Duties of the
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office