USPTO Implements COVID-19 Prioritized Examination Program for Trademarks and Service Marks

June 16, 2020

On June 15, 2020, the United States Patent and Trademark Office (USPTO) announced a new program to provide prioritized examination for certain trademark and service mark applications that cover qualifying COVID-19 medical-related goods and services.

Throughout the COVID-19 pandemic, the USPTO has developed initiatives to accelerate innovation and promote new technologies. In Monday's announcement, the USPTO identified "the critical need to develop medical products and services to combat the COVID-19 virus and move successful products to market as soon as possible." To that end, Andrei Iancu, Under Secretary of Commerce for Intellectual Property and Director of the USPTO, has designated the COVID-19 outbreak to be an "extraordinary situation" under 37 C.F.R. § 2.148, and has extended prioritized examination to applications that cover goods and services critical to the prevention, diagnosis, treatment or cure of COVID-19.

To be eligible for prioritized examination, an application must include one or more of the designated qualifying COVID-19 medical-related goods or services. Additional goods and services may also be included without affecting an application's eligibility. After filing such an application, the Applicant must submit a Petition to the Director pursuant to 37 C.F.R. § 2.146(a) with a statement of facts, supported by affidavit or declaration, identifying the qualifying goods or services. The statement must further include a supporting explanation of why the goods or services are of a type that qualify for prioritized examination and a citation to the section of the CFR under which the identified goods are regulated. Pursuant to the new program, the USPTO will waive all petition fees.

If the Applicant's Petition is granted, the application will be advanced out of turn and immediately assigned to an Examining Attorney for review, which can speed up the examination process by approximately two months.

Under the new program, qualifying medical-related goods and services cover pharmaceutical products and medical devices, such as diagnostic tests, ventilators, and personal protective equipment, that are subject to FDA approval for the use in the prevention and/or treatment of COVID-19, or medical services and medical research services for the prevention and/or treatment of COVID-19. Such FDA approvals 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).

The USPTO will begin accepting petitions for prioritized examination on June 16, 2020. The USPTO has indicated that the program may be modified or ended depending on a number of factors, including effectiveness of the program and feedback from the public.

In announcing the COVID-19 Prioritize Examination Program, Director Iancu stated that "[a]ccelerating initial examination of COVID-19-related trademark applications … will help to bring important and possibly life-saving treatments to market more quickly." Additionally, in such times of uncertainty, strong trademark protection can help combat fraudulent activity relating to the sale and advertising of counterfeit pharmaceutical products, medical devices and healthcare products.

Lathrop GPM has been actively assisting clients with COVID-19-related patent and trademark matters. Lathrop GPM's IP and IP Litigation Practice Groups can help navigate through the USPTO's resources to ensure that your rights are properly secured and fully protected. For more information, please contact Tucker Griffith or your Lathrop GPM contact.