

# Missed the Deadline for Claiming Priority: New Grounds May Buy Additional Two Months



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Due to COVID-19, the U.S. Patent and Trademark Office (USPTO) added new grounds for requesting a restoration of the Right of Priority or Benefit of a Prior-Filed Application after the usual 12-month priority period. Under standard patent practice, a patent application claiming priority to a prior-filed foreign or provisional patent application must be filed within 12 months of the filing date of that earlier application or within six months in the case of a design patent application.



However, after this period, applicants are given an additional two months to file their patent application claiming the earlier priority date, but only if their delay in filing the application seeking

priority or benefit within the original 12-month period was “unintentional.”

While there are several situations that the USPTO may deem “unintentional,” which are outside the scope of this article, this new ground was established by the Director of the USPTO after President Trump’s declaration of a national emergency in the U.S. as a result of the COVID-19 outbreak expressly sets forth that if the failure to file the application claiming the earlier priority within the 12-month period was due to the COVID-19 pandemic, this constitutes an “unintentional” failure within the purview of the rules permitting a late filing within the additional 2-month period.

To take advantage of this extension of the rules, an applicant must file within two months, including a formal petition to restore the right of priority, and a statement that the failure to timely file the application within the standard 12-month period was due to the COVID-19 outbreak as defined in the USPTO’s notice of April 28, 2020.

Additionally, the USPTO waived the petition fee typically required with such a petition to restore the right of priority or claim of benefit from an earlier-filed application.

This new ground for restoring a right of priority was limited initially to applications having a 12-month deadline falling on or after March 27, 2020, but on or before July 30, 2020, which established September 30, 2020, as the last day of the additional 2-month period for filing the petition and the application seeking to claim priority from an earlier application. However, given that the COVID-19 pandemic is still ongoing after September 30, 2020, and as the USPTO continues to extend other types of relief given the continuing COVID-19 outbreak, there is a strong likelihood that the USPTO may extend this benefit to applications having a 12-month deadline falling after July 30, 2020. For the latest information about this new ground for restoring a claim of priority and to see if the USPTO has extended this benefit, please check back with us at [www.cclaw.com](http://www.cclaw.com).

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