

**DEPARTMENT OF COMMERCE****Patent and Trademark Office****37 CFR Parts 1, 41, and 42**

[Docket No. PTO-P-2022-0033]

RIN 0651-AD64

**Setting and Adjusting Patent Fees During Fiscal Year 2025**

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) proposes to set or adjust patent fees as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The proposed fee adjustments are needed to provide the USPTO with sufficient aggregate revenue to recover the aggregate costs of patent operations in future years (based on assumptions and estimates found in the agency's Fiscal Year 2025 Congressional Justification (FY 2025 Budget)), including implementing the USPTO 2022–2026 Strategic Plan (Strategic Plan).

**DATES:** The USPTO solicits comments from the public on this proposed rule. Written comments must be received on or before June 3, 2024 to ensure consideration.

**ADDRESSES:** Written comments on proposed patent fees must be submitted through the Federal eRulemaking Portal at <https://www.regulations.gov>. To submit comments via the portal, commenters should go to <https://www.regulations.gov/docket/PTO-P-2022-0033> or enter docket number PTO-P-2022-0033 on the <https://www.regulations.gov> homepage and select the “Search” button. The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this document and select the “Comment” button, complete the required fields, and enter or attach their comments. Attachments to electronic comments will be accepted in Adobe portable document format (PDF) or Microsoft Word format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic

submission of comments is not possible, please contact the USPTO using the contact information below in the **FOR FURTHER INFORMATION CONTACT** section of this document for special instructions.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Executive Summary***A. Introduction*

The USPTO publishes this notice of proposed rulemaking (NPRM or proposed rule) under section 10 of the AIA (section 10), Public Law 112–29, 125 Stat. 284, as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158, which authorizes the Under Secretary of Commerce for Intellectual Property and Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the agency. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to patents, including administrative costs with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while considering the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee (PPAC) and congressional oversight. PPAC held a public hearing on the USPTO's preliminary patent fee proposals on May 18, 2023, and released a report (PPAC Report) on August 14, 2023, containing its comments, advice, and recommendations on the preliminary fee proposals. The USPTO considered and analyzed the PPAC Report before publishing the fee proposals in this NPRM.

*B. Purpose of This Action*

Based on a biennial review of fees, costs, and revenues that began in fiscal year (FY) 2021, the USPTO concluded that fee adjustments are necessary to provide the agency with sufficient financial resources to facilitate the effective administration of the U.S. patent system, including implementing the USPTO 2022–2026 Strategic Plan, available on the agency website at

<https://www.uspto.gov/StrategicPlan>. The USPTO reviewed and analyzed the overall balance between the agency's estimated revenue and costs over the next five years (based on current projections) under this proposed rule. The proposed fees will help stabilize the USPTO's finances by offsetting the forecasted increase in aggregate costs and maintaining the patent operating reserve in the desired operating range. The patent operating reserve mitigates financing risk and enables the agency to deliver reliable and predictable service levels, while positioning it to undertake initiatives that encourage participation in the innovation ecosystem.

The individual fee proposals align with the USPTO's strategic goals and its fee structure philosophy, including the agency's four key fee setting policy factors: (1) promote innovation strategies; (2) align fees with the full costs of products and services; (3) facilitate effective administration of the U.S. patent system; and (4) offer application processing options as discussed in detail in Part IV: Rulemaking Goals and Strategies. The proposed fee adjustments will enable the USPTO to accomplish its mission to drive U.S. innovation, inclusive capitalism, and global competitiveness. The USPTO's goal is to drive innovation, entrepreneurship, and creativity for the benefit of all Americans and people around the world.

*C. Summary of Provisions Impacted by This Action*

The USPTO proposes to set or adjust 455 patent fees for undiscounted, small, and micro entities (any reference herein to “undiscounted entity” includes all entities other than those with established entitlement to either a small or micro entity fee discount, see Part II: Legal Framework for more information), including the introduction of 73 new fees.

Overall, the routine fees to obtain a patent (*i.e.*, filing, search, examination, and issue fees) will increase under this NPRM relative to the current fee schedule to ensure financial sustainability and accommodate increases needed to improve the predictability and reliability of patent intellectual property (IP) protection (discussed in detail below). Applicants who meet the eligibility criteria for small or micro entity discounts will continue to pay a reduced fee for the fees eligible for discount under AIA section 10(b). Additional information describing the proposed fee adjustments is included in Part V: Individual Fee Rationale in this rulemaking and in the

“Table of Patent Fees—Current, Proposed, and Unit Cost” (Table of Patent Fees) available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

*D. Summary of Costs and Benefits of This Action*

This proposed rule is economically significant and requires a Regulatory Impact Analysis (RIA) under Executive Order 12866 Regulatory Planning and Review, (Sept. 30, 1993). The USPTO prepared an RIA to analyze the costs and benefits of the NPRM over a five-year period, FY 2025–2029. The RIA includes an analysis of how well the four alternatives align with the rulemaking strategies and goals, which are comprised of strategic priorities (goals, objectives, and key performance strategies) from the Strategic Plan; and fee setting policy factors. From this conceptual framework, the USPTO assessed the absolute and relative qualitative costs and benefits of each alternative. Consistent with OMB Circular A–4, “Regulatory Analysis,” this proposed rule involves a transfer payment from one group to another. The USPTO recognizes that it is very difficult to precisely monetize and quantify social costs and benefits resulting from deadweight loss of a transfer rule such as this proposed rule. The costs and benefits identified and analyzed in the RIA are strictly qualitative. Qualitative costs and benefits have effects that are difficult to express in either dollar or numerical values. Monetized costs and benefits, on the other hand, have effects that can be expressed in dollar values. The USPTO did not identify any monetized costs and benefits of this proposed rule, but found this proposed rule has significant qualitative benefits and only minimal costs.

The qualitative costs and benefits that the RIA assesses are: (1) fee schedule design—a measure of how well the fee schedule aligns to the key fee setting policy factors; and (2) securing aggregate revenue to recover aggregate cost—a measure of whether the alternative provides adequate revenue to support the core mission and strategic priorities described in the NPRM, Strategic Plan, and FY 2025 Budget. Based on the costs and benefits identified and analyzed in the RIA, the fee schedule proposed in this NPRM offers the highest net benefits. As described throughout this document, the proposed fee schedule maintains the existing balance of below cost entry fees (e.g., filing, search, and examination) and above cost maintenance fees as one approach to

foster innovation. Further, as detailed in Part V: Individual Fee Rationale, the proposed fee changes are targeted in support of one or more fee setting policy factors. Lastly, this proposed rule secures the aggregate revenue needed to maintain patent operations and achieve the strategic priorities encompassed in the rulemaking goals and strategies (see Part IV: Rulemaking Goals and Strategies). The proposed fee schedule produces sufficient aggregate revenue to fund the strategic objectives to issue and maintain robust and reliable patents; improve patent application pendency; optimize the patent application process to enable efficiencies for applicants and other stakeholders; and enhance internal processes to prevent fraudulent and abusive behaviors that do not embody the USPTO’s mission. Table 1 summarizes the RIA results. Additional details describing the costs and benefits can be found in the RIA, available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

**TABLE 1—PROPOSED PATENT FEE SCHEDULE COSTS AND BENEFITS, CUMULATIVE FY 2025–2029**

Qualitative costs and benefits	
<i>Costs:</i>	
Fee Schedule Design .....	Minimal.
<i>Benefits:</i>	
Secure Aggregate Revenue to Recover Aggregate Costs.	Significant.
Fee Schedule Design .....	Significant.
<i>Net Benefit</i> .....	Significant benefit.

**II. Legal Framework**

*A. Leahy-Smith America Invents Act—Section 10*

The AIA was enacted into law on September 16, 2011. Public Law 112–29, 125 Stat. 284. Section 10(a) of the AIA authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under 35 U.S.C. for any services performed or materials furnished by the agency. Fees under 35 U.S.C. may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials related to patents, including administrative costs to the agency with respect to such patent operations. See 125 Stat. at 316. Provided that fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) requires the Director to publish the final fee rule in the **Federal Register** and the USPTO’s *Official*

*Gazette* at least 45 days before the final fees become effective.

Section 10 authorized the USPTO to set or adjust patent fees within the regulatory process. The USPTO has used the AIA’s fee setting authority to achieve its key fee setting policy factors and to generate the aggregate revenue needed to recover the aggregate costs of operations and strategic patent priorities in final rules published in FY 2013 (Setting and Adjusting Patent Fees, 78 FR 4212 (Jan. 18, 2013)), FY 2018 (Setting and Adjusting Patent Fees During Fiscal Year 2017, 82 FR 52780 (Nov. 14, 2017)), and FY 2020 (Setting and Adjusting Patent Fees During Fiscal Year 2020, 85 FR 46932 (Aug. 3, 2020) (FY 2020 Final Rule)).

*B. The Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018*

The SUCCESS Act was enacted into law on October 31, 2018. See Public Law 115–273, 132 Stat. 4158. Section 4 of the SUCCESS Act amended section 10(i)(2) of the AIA by striking “7-year” and inserting “15-year” in reference to the expiration of fee setting authority. Therefore, updated section 10(i) terminates the Director’s authority to set or adjust any fee under section 10(a) upon expiration of the 15-year period that began on September 16, 2011, and ends on September 16, 2026.

*C. Unleashing American Innovators Act of 2022*

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023, which included the Unleashing American Innovators Act (UAIA). The UAIA increased fee discounts for small entities from 50% to 60% and fee discounts for micro entities from 75% to 80% for fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The UAIA also increased fee discounts for small entities from 75% to 80% for filing a basic, nonprovisional utility application electronically. See Consolidated Appropriations Act, 2023, Public Law 117–328; Reducing Patent Fees for Small Entities and Micro Entities Under the Unleashing American Innovators Act of 2022, 88 FR 17147 (Mar. 22, 2023).

*D. Small Entity Fee Reduction*

Section 10(b) of the AIA, as amended by the UAIA, requires the USPTO to reduce by 60% the fees for small entities that are set or adjusted under section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

### E. Micro Entity Fee Reduction

Section 10(g) of the AIA amended 35 U.S.C. chapter 11, by adding section 123 concerning micro entities. The AIA, as amended by the UAIA, provides that the USPTO must reduce by 80% the fees for micro entities for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

### F. Patent Public Advisory Committee Role

The Secretary of Commerce established PPAC under the American Inventors Protection Act of 1999. See 35 U.S.C. 5. PPAC advises the Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations.

When adopting fees under section 10, the Director must provide PPAC the proposed fees at least 45 days prior to publishing in the **Federal Register**. PPAC then has 30 days to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. Then, before the USPTO issues any final fees, PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees. The USPTO must consider and analyze any comments, advice, or recommendations received from PPAC before finally setting or adjusting fees.

Consistent with this framework, on April 20, 2023, the Director notified PPAC of the USPTO's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. PPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on May 18, 2023, where members of the public were given an opportunity to provide oral testimony. Transcripts of the hearing are available for review on the USPTO website at [https://www.uspto.gov/sites/default/files/documents/PPAC\\_Hearing\\_Transcript-20230518.pdf](https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript-20230518.pdf). Members of the public were also given an opportunity to submit written comments for PPAC to consider, and these comments are available on *Regulations.gov* at <https://www.regulations.gov/document/PTO-P-2023-0017-0001>. On August 14, 2023, PPAC issued a written report setting forth in detail their comments, advice, and recommendations regarding the preliminary proposed fees. The report is

available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/PPAC-Report-on-2023-Fee-Proposal.docx>. The USPTO considered and analyzed all comments, advice, and recommendations received from PPAC before publishing this NPRM. Further discussion of the PPAC Report can be found in Part IV: Rulemaking Goals and Strategies and Part V: Individual Fee Rationale.

### III. Estimating Aggregate Costs and Revenues

Section 10 prescribes that patent fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to patents, including administrative costs with respect to such patent fees. The following is a description of how the USPTO calculates aggregate costs and revenue.

#### Step 1: Estimating Prospective Aggregate Costs

Estimating prospective aggregate costs is accomplished primarily through the annual USPTO budget formulation process. The annual budget is a five-year plan for carrying out base programs and new initiatives to deliver on the USPTO's statutory mission and implement strategic goals and objectives. First, the USPTO projects the level of demand for patent products and services. Demand for products and services depends on many factors that are subject to change, including domestic and global economic activity. The USPTO also considers overseas patenting activities, policies and legislation, and known process efficiencies. Because filing, search, and examination costs are the largest share of the total patent operating costs, a primary production workload driver is the number of patent application filings (*i.e.*, incoming work to the USPTO). The USPTO looks at indicators such as the expected growth in Real Gross Domestic Product (RGDP), a leading indicator of incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis ([www.bea.gov](http://www.bea.gov)) and is forecasted each February by the OMB ([www.omb.gov](http://www.omb.gov)) in the Economic and Budget Analyses section of the Analytical Perspectives and twice annually by the Congressional Budget Office (CBO) ([www.cbo.gov](http://www.cbo.gov)) in the Budget and Economic Outlook.

The expected production workload must then be compared to the current examination production capacity to determine any required staffing and operating cost (*e.g.*, salaries, workload

processing contracts, and publication) adjustments. The USPTO uses a patent pendency model to estimate patent production output based on actual historical data and input assumptions, such as incoming patent applications and overtime hours. An overview of the model, including a description of inputs, outputs, key data relationships, and a simulation tool is available at <https://www.uspto.gov/learning-and-resources/statistics/patent-pendency-model>.

Next, the USPTO calculates budgetary spending requirements based on the prospective aggregate costs of patent operations. First, the USPTO estimates the prospective costs of status quo operations (base requirements). Then, the base requirements are adjusted for anticipated pay increases and inflationary increases for the budget year and four outyears. The USPTO then estimates the prospective costs for expected changes in production workload and new initiatives over the same period. The USPTO reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. A detailed description of the budgetary requirements, aggregate costs, and related assumptions for the Patents program is available in the FY 2025 Budget.

The USPTO estimates that the Patents program will cost \$3.973 billion in FY 2025, including \$2.835 billion for patent examining; \$90 million for patent trial and appeals; \$159 million for patent information resources; \$24 million for activities related to IP protection, policy, and enforcement; and \$866 million for general support costs necessary for patent operations (*e.g.*, the patent share of rent, utilities, legal, financial, human resources, other administrative services, and Office-wide information technology (IT) infrastructure and IT support costs). See Appendix II of the FY 2025 Budget. In addition, the USPTO will transfer \$2 million to the Department of Commerce Inspector General for audit support.

Table 2 below provides key underlying production workload projections and assumptions from the FY 2025 Budget used to calculate aggregate costs. Table 3 (see Step 2) presents the total budgetary requirements (prospective aggregate costs) for FY 2025 through FY 2029 and the estimated collections and operating reserve balances that would result from the proposed adjustments contained in this NPRM. These projections are based on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in

out-year budgetary requirements. There are risks that could materialize over the next several years (e.g., adjustments to examination capacity, recompetition of

contracts, changes in workload, inflationary increases, etc.) that could increase the USPTO’s budgetary requirements in the short- to medium-

term. These estimates are refreshed annually in the production of the USPTO’s budget.

TABLE 2—PATENT PRODUCTION WORKLOAD PROJECTIONS, FY 2025–2029

Utility, plant, and reissue (UPR)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Applications *	609,400	615,400	623,600	629,600	642,200
Application growth rate	2.1%	1.0%	1.3%	1.0%	2.0%
Production units **	557,000	577,300	602,300	621,100	639,000
Unexamined patent application backlog	817,900	820,200	811,600	789,400	780,000
Examination capacity ***	8,833	9,276	9,589	9,867	10,135
Performance measures (UPR):					
Average first action pendency (Months)	20.7	20.7	21.0	20.6	21.3
Average total pendency (months)	26.1	27.2	26.6	26.4	25.7

\* In this table, the patent application filing data includes requests for continued examination.

\*\* Each serial new (i.e., non-request for continued examination) application carries 1 production unit or 2.0 counts, a fraction of which is awarded for each major Office action type. In most but not all cases, requests for continued examination carry a fraction of a production unit (e.g., 1.75 counts) and the credit for a first action is reduced by a corresponding amount.

\*\*\* In this table, Examination Capacity is the UPR examiners onboard at end-of-year, as described in the FY 2025 Budget.

Step 2: Estimating Prospective Aggregate Revenue

As described above in Step 1, the USPTO’s prospective aggregate costs (as presented in the FY 2025 Budget) include budgetary requirements related to planned production, anticipated new initiatives, and a contribution to the patent operating reserve required for the USPTO to maintain patent operations and realize its strategic goals and objectives for the next five years. The prospective aggregate costs become the target aggregate revenue level that the new fee schedule must generate in a given year over the five-year planning horizon. To estimate aggregate revenue, the USPTO references the production models used to estimate aggregate costs and analyzes relevant factors and indicators to calculate or determine prospective fee workloads (e.g., number of applications and requests for services and products).

Economic activity is an important consideration when developing workload and revenue forecasts for patent products and services because economic conditions affect patenting activity. Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. These indicators correlate with patent application filings, which are a key driver of patent fees. Economic indicators also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the USPTO

considers other influential factors including overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity, which for the purpose of this proposal measures how sensitive applicants and patentees are to changes in fee amounts. The higher the elasticity measure (in absolute value), the greater the applicant response to the relevant fee change. If elasticity is low enough (i.e., demand is *inelastic* or the elasticity measure is less than one in absolute value), a fee increase will lead to only a relatively small decrease in patent activities, and overall revenues will still increase. Conversely, if elasticity is high enough (i.e., demand is *elastic* or the elasticity measure is greater than one in absolute value), a fee increase will lead to a relatively large decrease in patenting activities such that overall revenues will decrease. When developing fee forecasts, the USPTO accounts for how applicant behavior will change at different fee amounts projected for the various patent services. The USPTO previously analyzed elasticity for nine broad patent fee categories: filing/search/examination fees, excess independent claims fees, excess total claims fees, application size (excess page) fees, issue fees, request for continued examination (RCE) fees, appeal fees, AIA trial fees, and maintenance fees, including distinctions by entity size where applicable. Additional information about how the USPTO estimates elasticity is provided in “Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of

Elasticity Estimates,” available on the USPTO website at [https://www.uspto.gov/sites/default/files/documents/Elasticity\\_Appendix.docx](https://www.uspto.gov/sites/default/files/documents/Elasticity_Appendix.docx).

Patent fees are collected for patent-related services and products at different points in time within the patent application examination process and over the life of the pending patent application and granted patent. Maintenance fee payments account for about half of all patent fee collections and subsidize the cost of filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections, because fewer patent application filings mean the USPTO collects fewer fees. The resulting reduction in production activities also creates an out-year revenue impact because less production output in one year results in fewer issue and maintenance fee payments in future years.

The USPTO’s five-year estimated aggregate patent fee revenue (see table 3) is based on the number of patent applications it expects to receive for a given fiscal year, work it expects to process in a given fiscal year (an indicator of patent issue fee workloads), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on cost and policy decisions, estimates the effective dates of new fee rates, and then multiplies the resulting fee rates by workload volumes (including elasticity adjustments) to calculate a revenue estimate for each fee. For the aggregate

revenue estimates shown below, the USPTO assumes that all proposed fee rates will become effective on January 18, 2025. Using these figures, the USPTO sums the individual fee revenue

estimates, and the result is a total aggregate revenue estimate for a given year (see table 3). The aggregate revenue estimate also includes collecting \$50 million annually in other income

associated with recoveries and reimbursable agreements (offsets to spending).

TABLE 3—PATENT FINANCIAL OUTLOOK, FY 2025–2029

	Dollars in millions				
	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Projected fee collections .....	3,972	4,238	4,338	4,305	4,314
Other income .....	50	50	50	50	50
Total projected fee collections and other income .....	4,022	4,288	4,388	4,355	4,364
Budgetary requirements .....	3,975	4,102	4,268	4,431	4,600
Funding to (+) and from (–) operating reserve .....	47	186	120	(76)	(236)
End-of-year operating reserve balance .....	840	1,028	1,148	1,074	837
Over/(under) minimum level .....	522	700	807	720	469
Over/(under) optimal level .....	(35)	126	209	99	(175)

**IV. Rulemaking Goals and Strategies**

**A. Fee Setting Strategy**

The strategy of this proposed rule is to establish a fee schedule that generates sufficient multi-year revenue to recover the aggregate costs of maintaining USPTO patent operations. The overriding principles behind this strategy are to operate within a sustainable funding model that supports the USPTO’s strategic goals and objectives, such as optimizing patent application pendency through the promotion of efficient operations and filing behaviors, issuing robust and reliable patents, and encouraging access to the patent system for all stakeholders.

The USPTO assessed this proposed rule for alignment with four key fee setting policy factors that promote a particular aspect of the U.S. patent system: (1) Promoting innovation strategies seeks to ensure barriers to entry into the U.S. patent system remain low, and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity; (2) Aligning fees with the full costs of products and services recognizes that some applicants may use particular services in a more costly manner than other applicants (e.g., patent applications cost more to process when more claims are filed); (3) Facilitating the effective administration of the U.S. patent system seeks to encourage patent prosecution strategies that promote efficient patent prosecution, resulting in compact prosecution and reduction in the time it takes to obtain a patent; and (4) Recognizing that patent prosecution is not a one-size-fits-all process and, where feasible, offering application processing options. Part V: Individual Fee Rationale describes the reasoning for setting and adjusting individual fees,

including the design benefits of the proposed fee schedule. The RIA, available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, also discusses fee schedule design benefits.

**B. Fee Setting Considerations**

The balance of this sub-section presents the specific fee setting considerations the USPTO reviewed in developing the proposed patent fee schedule: (1) historical cost of providing individual services; (2) the balance between projected costs and revenue to meet the USPTO’s operational needs and strategic goals; (3) ensuring sustainable funding; and (4) PPAC’s comments, advice, and recommendations on the USPTO’s initial fee setting proposal. Collectively, these considerations inform USPTO’s chosen rulemaking strategy.

**1. Historical Cost of Providing Individual Services**

The USPTO sets individual fee rates to further key policy considerations while considering the cost of a particular service. For instance, the USPTO has a longstanding practice of setting basic filing, search, and examination (“front-end”) fees below the actual cost of processing and examining applications to encourage innovators to take advantage of patent rights and protections.

The USPTO considers unit cost data provided by its Activity Based Information (ABI) program to decide how to best align fees with the full cost of products and services. Using historical cost data and forecasted application demands, the USPTO can align fees to the costs of specific patent products and services. Additional information on the USPTO’s costing

methodology in addition to the last three years of historical cost data is provided in the document titled “Setting and Adjusting Patent Fees during Fiscal Year 2025—Activity Based Information and Patent Fee Unit Expense Methodology,” available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. Part V: Individual Fee Rationale describes the reasoning and anticipated benefits for setting some individual fees at cost, below cost, or above cost such that the USPTO recovers the aggregate costs of providing services through aggregate fee collections.

**2. Balancing Projected Costs and Revenue**

In developing this proposed patent fee schedule, the USPTO considered its current estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet its strategic goals, as found in the FY 2025 Budget and the Strategic Plan. The USPTO’s strategic goals include: (1) driving inclusive U.S. innovation and global competitiveness, (2) promoting the efficient delivery of reliable IP rights, (3) promoting the protection of IP against new and persistent threats, (4) bringing innovation to impact, and (5) generating impactful employee and customer experiences by maximizing agency operations. The following subsections provide details regarding updated revenue and cost estimates, cost-saving efforts taken by the USPTO, and planned strategic improvements.

**a. Updated Revenue and Cost Estimates**

Projected revenue from the current fee schedule is insufficient to meet future budgetary requirements (costs) due largely to unforeseen economic and

policy factors since the USPTO last exercised its rulemaking authority to set patent fees in the FY 2020 Final Rule. As further discussed below, increased fee discounts for small and micro entities under the UAIA have reduced revenue estimates. Higher-than-expected inflation in the broader U.S. economy and government-wide pay raises have increased the USPTO's forecasted operating costs. Also, the USPTO has undertaken efforts to increase special pay rates and offer other incentives to recruit and retain examiners and other employees in patent specific job series in order to remain competitive in the job market for science, technology, engineering, and mathematics (STEM) workers. Absent the proposed increase in fees, the USPTO will be unable to collect sufficient fees at current fee rates to recover aggregate operating costs necessary to finance ongoing operations.

On December 29, 2022, the President signed into law the Consolidated Appropriations Act, 2023, which included the UAIA. The law reduced barriers to entry into the patent system by increasing small entity discounts from 50% to 60% and micro entity discounts from 75% to 80%. The USPTO estimated as part of its Fiscal Year 2024 Congressional Justification (FY 2024 Budget) that these discounts would reduce projected fee collections by \$74 million in FY 2023 (partial year impact) and at least \$100 million per year beginning in FY 2024 (full year impact). In addition to increased entity discounts, the UAIA increases costs through its provision that requires that the USPTO establish a new Southeast Regional Office and four new community outreach offices—including one in northern New England. The USPTO must also conduct a study to determine whether additional offices are required to achieve AIA mandates and to increase participation of underrepresented inventors in the patent system.

Higher-than-expected inflation in 2021 and 2022 in the broader U.S. economy increased the USPTO's operating costs above previous estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Salaries and benefits comprise 70% of all patent-related costs, and employee pay raises enacted across all U.S. government agencies—including the USPTO—in 2023 and 2024 were much larger than previously budgeted. Federal General Schedule (GS) pay was raised by 4.6% in 2023 and 5.2% in 2024; before 2023 the last time GS pay was raised by at least 4% was in 2004. The FY 2025 Budget

includes an estimated 2.0% civilian pay raise planned in calendar year (CY) 2025 and assumed 3.0% civilian pay raises in CY 2026–29, as well as inflationary increases for other labor and nonlabor activities.

Similarly, the USPTO seeks to adjust the patent special rate table (pay) for the first time since 2007. In 2007 the special rate table was set 11.4% to 31.4% above the GS pay table for the Washington, DC area because patent-related job fields require a highly educated and technical STEM workforce. This specialization has historically posed recruitment challenges for the agency, and the increased pay rates kept the USPTO competitive with private sector compensation opportunities. The differential above the general schedule has diminished over the years—to 0.0% to 20.5% in 2023 because of cost-of-living-adjustments to the GS pay scale that were not similarly applied to the special rate table—reducing the USPTO's competitive edge amongst both private and other Federal agencies. The objective of the special rate table change is to provide competitive compensation to patent employees, thereby reducing attrition and enhancing recruitment of qualified talent.

The USPTO's recruitment and retention efforts go beyond adjustments to examiner pay. In support of its strategic goal of generating impactful employee and customer experiences by maximizing agency operations, the USPTO strives to be a model employer through its diversity, equity, inclusion, and accessibility (DEIA) practices. The agency will build upon its existing diversity and foster greater inclusion to empower the USPTO workforce to serve the IP community successfully. The USPTO will research and implement leading-edge practices related to hiring, development, advancement, accessibility, and retention, based on behavioral science research and data, to better integrate DEIA practices throughout the agency.

#### b. Cost-Saving Measures

The USPTO recognizes that fees cannot simply increase for every improvement deemed desirable. The USPTO has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. Likewise, the USPTO recognizes its obligation to gain operational efficiency and reduce spending when appropriate.

The USPTO's FY 2025 Budget submission includes cost reducing measures such as releasing leased space in Northern Virginia and a moderate

reduction in overall IT spending. In FY 2025, the USPTO estimates \$4,569 million in total spending for patent and trademark operations. This is a \$122 million net increase from the agency's FY 2024 estimated spending level of \$4,447 million. The net increase includes a \$224 million upward adjustment for prescribed inflation and other adjustments, and a \$102 million downward adjustment in program spending and other realized efficiencies. This estimate builds on the \$40 million in annual real estate savings assumed in the FY 2024 Budget submission to include additional annual cost savings of \$12 million through releasing more leased space in Northern Virginia. The combined reduction in real estate space amounts to almost 1 million square feet and an estimated annual cost savings of approximately \$52 million. Also, the USPTO is actively pursuing IT cost containment. The FY 2025 budget includes a relatively flat IT spending profile despite upward pressure from inflation, supply chain disruptions, and government-wide pay raises; ongoing IT improvements that offer business value to fee-paying customers; and data storage costs increasing proportionally with the USPTO's forecasted growth in patent and trademark applications. The USPTO will achieve this cost containment goal via modern equipment in a new data center that will cost less to maintain and by retiring legacy IT systems. Both of these cost containment measures will further improve the USPTO's cybersecurity posture and increase system resiliency.

#### c. Efficient Delivery of Reliable IP Rights: Quality, Backlog, and Pendency

The USPTO continuously works to improve patent quality, particularly the predictability, reliability, and robustness of issued patents. See the USPTO's Quality Metrics web page, <https://www.uspto.gov/patents/quality-metrics>, for more information on patent quality including (1) statutory compliance measures, (2) process measures, and (3) perception measures. The USPTO's strategic goal to "promote the efficient delivery of reliable IP rights" recognizes the importance of innovation as the foundation of American economic growth and global competitiveness as well as the role the USPTO plays in encouraging these principles. The USPTO is committed to improving pendency to deliver timely, efficient services that help innovators bring their ideas and products to impact more quickly and efficiently. The USPTO diligently works to balance timely examination with improvements in patent quality; particularly, the

robustness and reliability of issued patents while remaining mindful that patent applications are becoming increasingly more complex and that technologies are converging. To address these challenges, the USPTO must continue to develop and equip examiners with additional guidance, training, tools, advanced technology, and procedural resources.

The USPTO is pursuing initiatives to enhance patent quality and the clarity and completeness of the official record during prosecution of an application, including encouraging applicants to begin filing patent applications in DOCX format, automating pre-examination procedures, expanding examiner training, and working on additional guidance for examiners and the PTAB. Current guidance initiatives include refresher guidance on obviousness under 35 U.S.C. 103 and enablement under 35 U.S.C. 112, and new guidance on how examiners should analyze inventorship issues for artificial intelligence (AI)-assisted inventions. See Updated Guidance for Making a Proper Determination of Obviousness, 89 FR 14449 (February 27, 2024); Guidelines for Assessing Enablement in Utility Applications and Patents in View of the Supreme Court Decision in *Amgen Inc. et al. v. Sanofi et al.*, 89 FR 1563 (December 21, 2023); Inventorship Guidance for AI-Assisted Inventions, 89 FR 10043 (February 13, 2024). The USPTO is also increasing patent examination quality and efficiency via initiatives such as the Global Dossier Initiative (see <https://www.uspto.gov/patents/basics/international-protection/global-dossier-initiative>), and by providing examiners with advanced technologies and tools for identifying prior art, such as the artificial intelligence (AI)-based “More Like This” and “Similarity Search” features in the Patents End-to-End (PE2E) search suite (see 1494 Off. Gaz. Pat. Office 251 (January 11, 2022) and 1504 Off. Gaz. Pat. Office 359 (November 15, 2022)). More information on the USPTO’s AI initiatives, including the Artificial Intelligence (AI) and Emerging Technologies Partnership, is available at <https://www.uspto.gov/initiatives/artificial-intelligence>.

The USPTO recognizes that optimal pendency helps inventors and investors bring innovation to impact. The growing demand for patent services requires that the USPTO embrace new ways of delivering these critical IP services. Therefore, the USPTO is also working to identify policies, process changes, and technologies to improve patent pendency. Some of these efforts will focus on operational improvements to

the patent examination process, including aligning the patent workforce with the incoming workload in the most efficient manner. Other efforts will target improvements to how applicants and other customers engage with the USPTO and navigate the prosecution process. For example, the USPTO has enhanced its website to increase access to our resources and enhance customer service for inventors and practitioners, including modernizing and updating the Patent Basics and Patents Petitions pages, adding a Virtual Assistant on select pages, and providing an updated and modern general website search tool. The USPTO has also upgraded its computer systems, including transitioning from legacy systems to Patent Center for the electronic filing and management of patent applications in November 2023. Patent Center, a web-based platform that allows users to file and manage patent applications and requests, provides improved system performance and a more intuitive user interface for an enhanced user experience. The USPTO is committed to continuously improving the customer experience on our websites to enhance and modernize accessibility, design, and overall satisfaction in our digital space. For information on additional enhancements to our online services, visit our web improvements page at <https://www.uspto.gov/about-us/web-site-improvements>. Effecting the changes in the examination process needed to ensure the issuance of reliable patents, while also issuing those patents in a timely manner, means recognizing a potential increase in the core operating costs for future years.

Another major component of the overall patent process that has seen an increase in operating costs is the work carried out by the Patent Trial and Appeal Board (PTAB) and the Central Reexamination Unit (CRU). These units play a key role in providing an efficient system for amending or voiding any patent claims that overreach and stunt innovation, inclusive capitalism, and global competitiveness. To ensure that post-issuance challenges to patent rights through the PTAB and the CRU help protect innovation and investments to commercialize innovation, the USPTO will invest in new tools and resources that increase communication, knowledge sharing, and collective problem solving. These strategic investments will enable the USPTO to identify and continue to implement guidelines and best practices to serve the patent system.

### 3. Sustainable Funding

All aspects of estimating the five-year forecast for aggregate cost, aggregate revenue, and the patent operating reserve are inherently uncertain because they are based on numerous, multifaceted planning assumptions predicated on external indicators of economic IP activity to forecast demand, as well as internal workload drivers derived from production models. Maintaining a viable operating reserve is a key consideration as the USPTO sets patent fees. To mitigate the risk of uncertain demand, the USPTO maintains a patent operating reserve. The U.S. Government Accountability Office (GAO) considers operating reserves a best practice for user fee-funded government agencies like the USPTO. The patent operating reserve enables the USPTO to align fees and costs over a longer horizon and to improve its preparation for, and adjustment to, fluctuations in actual fee collections and spending.

The USPTO manages the operating reserve within a range of acceptable balances and assesses its options when projected balances fall either below or above that range. Minimum planning targets are intended to address immediate, unplanned changes in the economic or operating environments as the reserve builds to the optimal level. The minimum and optimal planning targets are reviewed every three years to ensure the reserve operating range (between minimum and optimal targets) mitigates the severity of an array of financial risks. Based on the current risk environment, including various risk factors such as economic and funding uncertainty and the high percentage of fixed costs in the Patents program, the USPTO established a minimum planning level of 8% of total spending—about one month’s operating expenses (estimated at \$318 million and \$368 million between FY 2025 through FY 2029)—and an optimal long-range target of 22% of total spending—about three months’ operating expenses (estimated at \$875 million and \$1,012 million between FY 2025 through FY 2029).

Based on current cost and revenue assumptions in the FY 2025 Budget, the USPTO forecast that in FY 2024 estimated aggregate costs will exceed aggregate revenue and the operating reserve will be used to maintain operations. The fee proposals contained in this NPRM are projected to increase patent fee collections to the point that they exceed spending requirements, and forecasted excess fee collections will replenish the patent operating reserve each year from FY 2025 through FY



2027. Based on this forecast, the USPTO will achieve its optimal level of three months operating requirements for the patent operating reserve in FY 2026. The USPTO then expects to use the patent operating reserve to fund operating expenses in FY 2028 and FY 2029 as the current projection for fee collection growth slows but projected patent spending requirements continue to increase.

These projections are based on point-in-time estimates and assumptions that are subject to change. For instance, the budget includes assumptions about filing levels, renewal rates, whether the President will authorize or Congress will mandate employee pay raises, the productivity of the workforce, and many other factors. A change in any of these factors could have a significant cumulative impact on reserve balances. As seen in table 3, set forth in Part III: Estimating Aggregate Costs and Revenue, the operating reserve balance can change significantly over a five-year planning horizon, underscoring the USPTO's financial vulnerability to varying risk factors and the importance of fee setting authority.

The USPTO will continue to evaluate long-term planning assumptions to determine the appropriate course of action beyond FY 2027 to ensure the Patents program is not vulnerable to changes in the economy that reduce annual revenue, unexpected cost increases, and other financial risks. The USPTO will also continue to assess the patent operating reserve balance against its target balance annually, and at least every three years, the USPTO will evaluate whether the minimum and optimal target balance remain sufficient to provide the stable funding the USPTO needs. Per the USPTO's operating reserve policy, if the operating reserve balance is projected to exceed the optimal level by 10% for two consecutive years, the USPTO will consider fee reductions. The USPTO will continue to regularly review its operating budgets and long-range plans to ensure the prudent use of patent fees.

#### 4. Comments, Advice, and Recommendations From PPAC

In the report prepared in accordance with the AIA fee setting authority (available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/PPAC-Report-on-2023-Fee-Proposal.docx>) PPAC supports the USPTO in seeking adequate revenue to recover the costs for the USPTO fulfill its role in supporting the country's innovation ecosystem. In addition, PPAC recognizes that "the USPTO is in the best position to assess its own needs

and balance the tradeoffs in setting individual fees." PPAC Report at 6. PPAC expressed general support for the increase in patent fees, noting that timely, high-quality search and examination requires an appropriately compensated work force with adequate time to complete the search and examination process, as well as reliable, state of the art IT infrastructure. However, PPAC expressed concerns over some of the individual proposed fee adjustments and their potential impacts on patent applicants and holders. In general, PPAC urged the USPTO to provide more detail and justification on how additional revenue will be used to increase patent quality and reliability. The USPTO has included additional information in this NPRM to further address some of the concerns of PPAC and the public. See Part V: Individual Fee Rationale.

Regarding the proposed changes to fees for excess claims, PPAC expressed support for the proposed fee increases. However, they also emphasized their belief that the public wants more certainty that the revenue generated from an increased fee will go toward examination and giving examiners additional time to evaluate such cases. The USPTO appreciates this concern and the current patent examination production time approach provides examiners with additional time to review excess claims. The proposed fees would contribute to recovering the costs to the USPTO for this additional examination time.

PPAC expressed support for the proposed decreases to fees for extensions of time for provisional applications. PPAC also expressed support for the proposals to increase suspension of action fees and fees for unintentional delay petitions. Part V: Individual Fee Rationale provides more details on these proposals.

In general, PPAC expressed support for the USPTO's proposal to implement a tiered fee structure for information disclosure statements (IDSs). PPAC recommended a legislative proposal to clarify inequitable conduct rules, which may have a significant impact on applicant behavior. They noted that under the current inequitable conduct case law, there is increased pressure on practitioners to cite every possible reference if they do not want to risk the practitioner's right to practice or the enforceability of the patent. The USPTO appreciates this suggestion and will give it further consideration. PPAC also recommended that if any additional fees are paid, the additional money should go to allowing examiners more time to consider the additional references. The

USPTO notes that it is current USPTO policy to provide examiners with additional time to review large IDSs and the proposed fees would pay for this additional time. Only 13% of applications contain 50 or more applicant-provided citations, and thus would incur one of these proposed fees. The proposal would place the service costs of large IDSs on those applicants who file them.

PPAC supports the proposal to create a third tier for requests for continued examination (RCEs). PPAC notes that the proposed increases would "allow the costs of continued examinations to be recovered directly from those applicants requesting multiple RCEs, instead of relying on other fees to subsidize the costs." PPAC Report at 4.

The report noted opposition to the proposed fee for electronically submitted assignments. PPAC argues that transparency of patent ownership is key to patent data integrity and a fee for assignment recordation would be an impediment to keeping assignment data up to date. The USPTO's initial fee proposal was designed to reduce the number of frivolous assignment submissions. However, the USPTO agrees with PPAC's assessment that keeping up-to-date assignment data outweighs the processing efficiency gains the USPTO expects from the proposal. Therefore, the USPTO is dropping its proposal to raise the recordation fee for an electronically submitted assignment. PPAC expressed conditional support for the continuing applications proposal if the USPTO drops the year three provision and only requires the proposed fee for year seven or after. PPAC's rationale for this modification is that three years is too short of a period, as there may not be an Office action at this point in prosecution, particularly if the application is in the national stage of an international application filed under the Patent Cooperation Treaty (PCT) or is classified in an art area with significant backlog. In response to these concerns the USPTO notes that as of April 2023, traditional total pendency is 2.1 years, which is below the three-year threshold for the first tier of the proposal. However, in view of PPAC's concerns about pendency, and the admittedly longer pendency for PCT applications, the USPTO proposes to modify the tiers to slide the threshold dates later in time. This NPRM therefore proposes the first tier at five years and the second tier at eight years. See Parts V: Individual Fee Rationale and VI: Discussion of Specific Rules for further details regarding the modification of this proposal.



Regarding the proposed fee for the After Final Consideration Pilot Program (AFCP 2.0), PPAC expressed the view that this proposal is problematic as it requires paying a fee with no guarantee of an interview. PPAC offered support for an AFCP 2.0 fee if: (1) the program is changed such that the applicant is guaranteed an interview; or (2) under the current program, a fee is assessed only if the interview is granted. The USPTO recognizes PPAC's concern but notes that the AFCP 2.0 program is costly to the agency and is heavily used by applicants; more than half of after-final responses come via this program. The costs of this program are currently subsidized by other fees. While the USPTO appreciates that some applicants may be unwilling to pay for a program that may not result in a favorable outcome or an interview with the examiner, the USPTO must make its patentability decisions in accordance with the appropriate legal standards that govern the USPTO and incurs costs to provide the service regardless of the outcome. The USPTO notes that a significant portion of the cost for AFCP 2.0 comes from the initial consideration of the request by the patent examiner. If the USPTO is unable to recover the cost of the AFCP 2.0 program from participants, it will need to consider terminating the program due to its cost. See Part V: Individual Fee Rationale for additional details regarding this proposal.

PPAC expressed a lack of support for the proposal to increase fees for design applications, recommending the USPTO prioritize addressing pendency issues before applying increased fees, as many design applicants are already paying expedited fees beyond the basic filing, search, and examination fees, given the current pendency. PPAC also suggests that the USPTO's concerns about recovering its costs in the design area could be addressed by a change in the law that allows for the implementation of maintenance fees for design patents. The USPTO acknowledges PPAC's concern regarding design application pendency and recognizes that some design applicants are paying expedited fees. Recovering more of the design costs from design applicants better aligns fees to the cost of services performed by the USPTO, and it also incents design applicants to make more appropriate economic decisions. With respect to PPAC's concern about expedited fees, in FY 2022 about 19% of design applicants requested expedited handling. See Part V: Individual Fee Rationale for additional

details regarding the rationale for increasing design patent fees.

Regarding the patent term adjustment (PTA) proposal, PPAC offered support for increasing the fee if the proposal is modified such that no fee is assessed by the USPTO if a PTA adjustment is made due to a USPTO calculation error. The USPTO notes that a fee for this applicant-requested service has been in place since calendar year 2000 and has only increased \$10 since enacted. Moreover, this fee helps recover a portion of the costs for applicant-requested manual redeterminations of PTA under 35 U.S.C. 154(b). While there are about 500 service requests each year, many concern the IDS safe harbor under 37 Code of Federal Regulations (CFR) 1.704(d)(1) and thus could have been avoided if the applicant had used the USPTO-provided form (PTO/SB/133) to invoke the safe harbor. With respect to PPAC's suggestion of adding a refund component to the proposal, the USPTO's rationale for this fee increase is to recover a greater percentage of the costs associated with the service that are incurred regardless of the outcome.

PPAC expressed general support for the patent term extension (PTE) proposal but suggested the USPTO consider if such a large increase in the fees is optimal, particularly the initial fee given start-up companies may be resource constrained. By law, this service is only available to owners of patents on certain human drugs, food or color additives, medical devices, animal drugs, and veterinary biological products, and is designed to restore some patent term that was lost while awaiting premarket government approval from a regulatory agency. Because such development and premarketing activities are extremely expensive, it is unlikely that any resource-constrained companies would qualify for PTE services.

PPAC expressed a lack of support for the terminal disclaimer proposal, noting disagreement with the USPTO's justification and suggesting that the fee will place an unfair burden on filers with limited resources who may be tempted to give up patent term in exchange for a less expensive and more compact prosecution. While the USPTO appreciates PPAC's concerns, the agency believes that under-resourced applicants are unlikely to be affected by these fees, as a double patenting rejection necessitating a terminal disclaimer would not be made unless they had sufficient resources to file multiple applications with closely-related subject matter. This presumption is supported by data collected by the

USPTO that shows only about 1% of terminal disclaimers are filed by micro entities.

PPAC expressed a lack of support for the proposed fee for requesting additional words in an inter partes or post-grant petition, noting that it may favor well-resourced petitioners given the added expense to prepare longer papers. After careful consideration of the comments and recommendations provided in the PPAC Report and in testimony at the public hearing, the USPTO has decided to withdraw this proposal.

PPAC expressed a lack of support for the proposal to establish a new fee for parties requesting a review of a PTAB decision by the Director. PPAC felt a fee was not warranted because a review by the Director ensures the PTAB decisions are consistent. PPAC also expressed concern that adding a fee for this previously free service may adversely affect individual inventors and small company applicants. In response to these concerns, the USPTO has provided additional justification and data. Part V: Individual Fee Rationale offers this additional information.

In summary, the USPTO appreciates the general support by PPAC and its stakeholders for an increase in patent fees sufficient for aggregate fees to recover aggregate costs. After careful consideration of the comments, concerns, and suggestions provided in the report, and keeping in mind the goals of this proposed rule, the USPTO elected to make changes to three of the fee proposals initially presented to PPAC. The fee structure proposed herein will ultimately allow the USPTO to maintain patent operations and continue its path towards achieving the goals and objectives laid out in the Strategic Plan. The USPTO looks forward to receiving additional comments on this revised proposal during the public comment period.

### *C. Summary of Rationale and Purpose of the Proposed Rule*

The USPTO estimates that the proposed patent fee schedule will produce sufficient aggregate revenues to recover the aggregate costs of patent operations and ensure financial sustainability for effective administration of the patent system. This proposed rule aligns with the USPTO's four key fee setting policy factors and supports the USPTO's mission-focused strategic goals.

### **V. Individual Fee Rationale**

The USPTO projects that aggregate revenue generated from the proposed patent fees will recover the prospective

aggregate costs of patent operations as laid out in the FY 2025 Budget. As detailed previously, PPAC recognizes the importance of ensuring the USPTO's financial sustainability, stating that, "[t]o support its role in the country's innovation system, the USPTO requires adequate funding." PPAC Report at 5. PPAC also acknowledges the need to fund additional strategic investments, commenting that "[t]imely, high-quality search and examination require an appropriately compensated work force with adequate time to complete the same, supported by state of the art and reliable IT infrastructure." PPAC Report at 5–6.

The USPTO did not set each individual proposed fee necessarily equal to the estimated costs of performing activities related to the fee. Instead, as described in Part IV: Rulemaking Goals and Strategies, some proposed fees are set at, above, or below their unit costs to balance four key fee setting policy factors: (1) promoting innovation strategies; (2) aligning fees with the full costs of products and services; (3) facilitating effective administration of the U.S. patent system; and (4) offering application processing options. For example, the agency sets many initial filing fees below unit cost to promote innovation strategies by removing barriers to entry to the patent system. To balance the aggregate revenue loss of fees set below cost, the USPTO must set other fees above cost in areas less likely to reduce inventorship (e.g., maintenance).

For some fees proposed in this NPRM, such as extension of time fees, the USPTO does not maintain individual historical cost data for services provided; instead, the agency considers the policy factors described in Part IV: Rulemaking Goals and Strategies to inform fee setting. For example, facilitating effective administration of the U.S. patent system enables the USPTO to: (1) foster an environment where USPTO personnel can provide and applicants can receive prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and faster dissemination of patented information; and (3) help recover costs for activities that strain the patent system.

The proposed fee changes are grouped into three categories: (A) an across-the-board-adjustment to patent fees; (B) an adjustment to front-end fees; and (C) targeted fees. Part VI: Discussion of Specific Rules contains a complete listing of fees set or adjusted in the proposed patent fee schedule, including small and micro entity fees. This

information is also listed in the Table of Patent Fees available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

This proposed rule includes one procedural amendment (D) expanding the applicability of the rule allowing applicants to obtain a refund of search and excess claims fees paid in an application through express abandonment.

#### *A. Across-the-Board Adjustment to Patent Fees*

The broader U.S. economy has experienced higher-than-expected inflation the last two years and, in turn, increased USPTO operating costs relative to baseline estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Also, the agency's estimates of future costs in the FY 2025 Budget include a 2.0% civilian pay raise planned in CY 2025 and an assumption of 3.0% civilian pay raises in CY 2026–29, as well as inflationary increases for other labor and nonlabor activities. To keep the USPTO on a stable financial track sufficient to recover the aggregate costs of patent operations and to support the agency's strategic objectives, the USPTO proposes adjusting, by approximately 5%, all patent fees not covered by the targeted adjustments discussed in section C. The USPTO estimates that new fees would not be implemented until FY 2025, more than four years after the agency's last fee adjustment in October 2020. A 5% across-the-board increase in 2025 would be equivalent to just a 1.2% annual increase, well below the prevailing inflation rate the last few years. The agency is not proposing a larger across-the-board increase in line with inflation because the across-the-board adjustment is intended to supplement the additional revenue collected from the targeted adjustments. Also, the USPTO will continue its ongoing efforts to improve operational efficiency and reduce spending when appropriate.

The 5% across-the-board adjustment strikes an appropriate balance between projected aggregate revenue and aggregate costs based on the assumptions used to develop the point-in-time estimates that support this NPRM. If changes to the assumptions underlying the USPTO's cost and revenue estimates result in significant changes to the financial outlook, the agency will refine the size of the across-the-board adjustment, either upward or downward, such that fees are set at a level that secures aggregate cost recovery and ensures a reasonable pace

for operating reserve growth to the optimal level.

For patent fees with small and micro entity fee reductions, the proposed undiscounted fee is rounded up or down to the nearest \$5 by applying standard arithmetic rules. The resulting proposed fee amounts are more convenient to patent users and permit the USPTO to set small and micro entity fees at whole dollar amounts when applying applicable fee reductions. Therefore, some smaller fees will not change since a 5% increase would round down to the current fee, while other fees would change by slightly more or less than 5%, depending on rounding. For patent fees that do not have small and micro entity fee reductions, the proposed fees are rounded to the nearest dollar by applying standard arithmetic rules. The proposed fee adjustments in this category are listed in the Table of Patent Fees available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

#### *B. Adjustment to Front-End Patent Fees*

The USPTO proposes to adjust all filing, search, and examination fees not covered by the targeted adjustments as discussed in section C by an additional 5% on top of the 5% across-the-board adjustment, for a total front-end increase of 10%. The current fee schedule, implemented by the FY 2020 Final Rule, set filing, search, and examination fees below the costs of performing these services to achieve low barriers to entry into the innovation ecosystem. These front-end fees are subsidized by other fee collections, primarily maintenance fees. This proposal will marginally recover some, but not all, additional filing, search, and examination costs earlier in the patent life cycle, thus mitigating the risk of potentially lower maintenance fee payments in the future while remaining consistent with a low barrier to entry policy.

Similar to the across-the-board adjustment, for fees that have small and micro entity fee reductions, the undiscounted fee is rounded up or down to the nearest \$5 by applying standard arithmetic rules. Therefore, the proposed fee rates may not be precisely 10% higher than the current fee rates. The proposed fee adjustments in this category are listed in the Table of Patent Fees available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

C. Targeted Adjustments to Patent Fees

The USPTO proposes the following fee adjustments for the reasons stated below. The proposed fees are based on changes in undiscounted fee amounts;

the percentage changes for small and micro entity fees would be the same as the percentage change for the undiscounted fee rate, and the dollar change would be 40% or 20% of the undiscounted change. A discussion of

the rationale for each fee is divided into 14 categories according to function, as follows:

1. After Final Consideration Pilot Program 2.0

TABLE 4—AFTER FINAL CONSIDERATION PILOT PROGRAM 2.0 FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Consideration of AFCP 2.0 request .....	Undiscounted ...	New .....	\$500	n/a	n/a	n/a
Consideration of AFCP 2.0 request .....	Small .....	New .....	200	n/a	n/a	n/a
Consideration of AFCP 2.0 request .....	Micro .....	New .....	100	n/a	n/a	n/a

The USPTO proposes a new fee for participation in the AFCP 2.0. The agency created this program in May 2013 and has renewed it repeatedly. There is currently no fee for participation in this program. See After Final Consideration Pilot Program 2.0, 78 FR 29117 (May 17, 2013), and the program’s section of the USPTO website at <https://www.uspto.gov/patents/initiatives/after-final-consideration-pilot-20>.

Under customary examination practice, after the close of prosecution, amendments that will place the application either in condition for allowance or in better form for appeal may be entered, and the applicant may also hold an interview with the examiner. See 37 CFR 1.116(b) and section 714.12 of Manual of Patent Examining Procedure (MPEP) (9th ed., Rev. 07.2022, February 2023), which may be viewed on or downloaded from the USPTO website at <https://www.uspto.gov/MPEP> or <https://mpep.uspto.gov>. The AFCP 2.0 was designed to encourage continued collaboration between examiners and applicants after close of prosecution and reduce pendency by avoiding RCEs and continued prosecution applications (CPA). The program requires that applicants submit a response with a nonbroadening amendment to at least one independent claim, and in return, affords the examiner additional time to consider the response. See Guidelines for Consideration of Responses After Final Rejection under 37 CFR 1.116(b) under the AFCP 2.0, available on the USPTO website at [https://www.uspto.gov/sites/default/files/patents/init\\_events/afcp\\_guidelines.pdf](https://www.uspto.gov/sites/default/files/patents/init_events/afcp_guidelines.pdf). If the response will require further search and/or consideration that would take longer than the allotted time, the examiner will not admit the request under the program. Otherwise, if the response meets the program requirements, the examiner will consider the response, and will either:

(1) mail a notice of allowance if the application is in condition for allowance or (2) contact the applicant to schedule an interview to discuss the amendment if the application is not in condition for allowance.

The AFCP 2.0 program offers several benefits to participating applicants. Under customary practice, after a final rejection, applicants have no right to unrestricted further prosecution. The AFCP 2.0 provides a participating applicant an opportunity to potentially have the examiner consider an amendment that would otherwise not be considered at this stage, possibly precluding the need to file an RCE or a CPA. This consideration saves applicants the higher fees associated with those filings and, in the case of the RCEs, saves applicants from patent term adjustment consequences. See MPEP section 2731 for more information on patent term adjustment. Moreover, participation in the program is not necessary to hold an interview after final rejection, or to have an amendment filed and entered after close of prosecution, see MPEP sections 713.09 and 714.13. An AFCP 2.0 request should be filed only when an applicant would like to file a substantive amendment after close of prosecution that may require additional time for an examiner to consider and/or search.

The AFCP 2.0 is a popular program; since 2016, applicants have filed more than 60,000 requests annually. These requests make up over half of the USPTO’s after-final responses during this time. Due to its popularity, costs to administer the AFCP 2.0 are significant. In FY 2022, the USPTO estimates more than \$15 million in incurred costs associated with examiners considering the AFCP 2.0 submissions. This cost is in addition to the cost for examiners to initially consider the AFCP 2.0 request and any consultation costs with supervisors and primary examiners. These examination costs represent time

that could otherwise be used to examine new applications.

The USPTO is reconsidering the policy choice of continuing to offer the AFCP 2.0 program for free without recouping costs from applicants utilizing it. As noted by the Government Accountability Office (GAO) in Federal User Fees: A Design Guide, Report No. GAO–08–386SP (May 2008), available at <https://www.gao.gov/products/gao-08-386sp>:

If those benefiting from a service do not bear the full social cost of the service, they may seek to have the government provide more of the service than is economically efficient. User fees may also foster production efficiency by increasing awareness of the costs of publicly provided services and therefore increasing incentives to reduce costs where possible.

Thus, without a fee to recover the cost of the program, the agency is considering not renewing (*i.e.*, terminating) the program. A large part of the AFCP 2.0’s popularity is due to economic inefficiencies where participants receive program benefits for only a fraction of the program’s costs (because applicants pay only indirectly via future maintenance fees). That said, the USPTO also recognizes that the program has some indirect benefits to the patent system by reducing overall pendency. If there is sufficient public support for the proposed fees, the improved economic efficiencies of aligning fees with direct beneficiaries (program participants), together with indirect benefits, would favor continuing the program. Accordingly, the USPTO is proposing to charge fees for filing a request for consideration under the AFCP 2.0: \$500 for undiscounted applications, \$200 for applications receiving a small entity discount, and \$100 for applications receiving a micro entity discount.

At this time, the USPTO is not proposing any further changes to the AFCP 2.0. For example, the agency will not change the program to guarantee an

examiner interview if an AFCP 2.0 request is admitted under the program. The USPTO appreciates that some applicants may be unwilling to pay for a program that might not result in a favorable outcome or guarantee an examiner interview. Regardless of the outcome, the agency incurs costs to provide the service and must make its patentability decisions in accordance with appropriate legal standards. A significant portion of the AFCP 2.0's cost is initial consideration of the

request by the patent examiner. Moreover, as noted previously, applicants may file amendments and participate in interviews after a final rejection without filing an AFCP 2.0 request. Further, a majority of the AFCP 2.0 requests (60% for utility and 80% for design) meet program requirements, meaning that either the application is allowed or an interview is granted.

The USPTO expects the percentage of compliant AFCP 2.0 requests to increase as applicants become more selective

with the amendments filed, due to the fee. Accordingly, the agency does not expect a significant percentage of applicants to pay the fee without an opportunity for either allowance of the application or an interview with an examiner. Also, since undiscounted entities have historically filed 83% of all AFCP 2.0 requests, the USPTO does not anticipate the proposed fees having a disproportionate impact on small or micro entities.

2. Continuing Application Fees

TABLE 5—CONTINUING APPLICATION FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Filing an application or presentation of benefit claim more than five years after earliest benefit date.	Undiscounted ...	New .....	\$2,200	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than five years after earliest benefit date.	Small .....	New .....	880	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than five years after earliest benefit date.	Micro .....	New .....	440	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than eight years after earliest benefit date.	Undiscounted ...	New .....	3,500	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than eight years after earliest benefit date.	Small .....	New .....	1,400	n/a	n/a	n/a
Filing an application or presentation of benefit claim more than eight years after earliest benefit date.	Micro .....	New .....	700	n/a	n/a	n/a

The USPTO is proposing new fees in § 1.17(w) for presenting certain benefit claims in nonprovisional applications. These new fees would apply to nonprovisional applications (“later-filed” applications) that have an actual filing date more than five years, or more than eight years, later than the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c), and § 1.78(d) (the “Earliest Benefit Date” (EBD)). When the later-filed application is a utility or plant patent application, the EBD is also the date from which the 20-year patent term is calculated under 35 U.S.C. 154(a)(2). The EBD is also known as the “patent term filing date.” For more information about benefit claims, see MPEP 210 and 211 *et seq.*, for more information about the patent term filing date see MPEP 804 subsection I.B.1(a), and for more information about patent term, see MPEP 2701.

The proposed fee set forth in § 1.17(w)(1) would be due when the later-filed application's EBD is more than five years, and no more than eight years, earlier than its actual filing date, and would be \$2,200 for undiscounted applications, \$880 for applications receiving a small entity discount, and \$440 for applications receiving a micro entity discount. The proposed fee set forth in § 1.17(w)(2) would be due when the later-filed application's EBD is more

than eight years earlier than its actual filing date, and would be \$3,500 for undiscounted applications, \$1,400 for applications receiving a small entity discount, and \$700 for applications receiving a micro entity discount.

Payment of these fees would be required at the time a prompting benefit claim (*i.e.*, a benefit claim that causes the EBD of the later-filed application to be more than five or eight years earlier than its actual filing date) is presented in the later-filed application. If the prompting benefit claim is presented at the time of filing the later-filed application, the applicable § 1.17(w) fee would be due at filing. If the prompting benefit claim is presented at a later time, the applicable § 1.17(w) fee would be due concurrently with the presentation of the prompting benefit claim. If the later presentation of the prompting benefit claim is by way of a petition for acceptance of an unintentionally delayed benefit claim under § 1.78(e), the applicable § 1.17(w) fee would be due in addition to the petition fee under § 1.17(m).

Because the proposed fees in § 1.17(w) are based on the application's EBD, presenting multiple benefit claims at the same time will not incur multiple fees. However, if benefit claims are presented at multiple times during an application's pendency, a second fee may be due if the later-presented benefit

claim changes the application's EBD to be more than eight years earlier than the actual filing date. In this situation, the amount due under § 1.17(w)(2) for the later presentation will reflect any prior payment under § 1.17(w)(1) for the earlier presentation. For instance, if the fee under § 1.17(w)(1) was paid at the time of filing, and a prompting benefit claim requiring payment of the § 1.17(w)(2) fee is presented at a later time, the additional amount owed is the difference between the current fee amount stated in § 1.17(w)(2) and the amount of the previous payment under § 1.17(w)(1).

The following examples illustrate the most common situations anticipated to require payment of the proposed fees under § 1.17(w). For purposes of these examples, the agency assumes that all requirements for claiming benefit under 35 U.S.C. 119, 120, 121, 365(c), or 386(c), and § 1.78 are satisfied, and that all fees are paid at the undiscounted rates listed in table 5, *supra*.

*Example 1:* Application A is a nonprovisional application filed on July 7, 2025. The Application Data Sheet (ADS) present upon A's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application N filed on February 3, 2020, which is the only benefit claim in the application. A's EBD is February 3, 2020, which is more than five years, and no more than eight

years, earlier than A's actual filing date of July 7, 2025. In this example, the § 1.17(w)(1) fee of \$2,200 is due upon A's filing.

*Example 2:* Application B is a nonprovisional application filed on July 8, 2025. The ADS present upon B's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 4, 2021, and a benefit claim under 35 U.S.C. 119(e) to provisional application P filed on March 11, 2020. The USPTO's records indicate that O also contains a benefit claim under 35 U.S.C. 119(e) to provisional application P. In this situation, P's filing date is not the EBD, because § 1.17(w) does not encompass benefit claims under 35 U.S.C. 119(e). Instead, B's EBD is February 4, 2021, which is less than five years earlier than B's actual filing date of July 8, 2025. In this example, no fee would be due under § 1.17(w).

*Example 3:* Application C is a nonprovisional application filed on July 9, 2025. The ADS present upon C's filing contains benefit claims under 35 U.S.C. 120 to nonprovisional application Q filed on February 5, 2020, and to nonprovisional application R filed on March 12, 2019. C's EBD is March 12, 2019, which is more than five years, and no more than eight years, earlier than C's actual filing date of July 9, 2025. In this example, the § 1.17(w)(1) fee of \$2,200 is due upon C's filing.

*Example 4:* Application D is a nonprovisional application filed on August 10, 2028. The ADS present upon D's filing does not contain any benefit claims. Two months after D's filing, the applicant files a second ADS containing a benefit claim under 35 U.S.C. 120 to nonprovisional application S filed on February 6, 2020, which is the only benefit claim in the application. Because this newly added benefit claim causes D's EBD to become February 6, 2020, which is more than eight years earlier than D's actual filing date of August 10, 2028, the § 1.17(w)(2) fee of \$3,500 is due upon filing of the second ADS.

*Example 5:* Application E is a nonprovisional application filed on August 11, 2028. The ADS present upon E's filing does not contain any benefit claims. Eighteen months after E's filing, the applicant files a second ADS containing a benefit claim under 35 U.S.C. 120 to nonprovisional application T filed on February 7, 2020, which is the only benefit claim in the application. Because this newly added benefit claim causes E's EBD to become February 7, 2020, which is more than eight years earlier than E's actual filing date of August 11, 2028, the § 1.17(w)(2)

fee of \$3,500 is due upon filing of the second ADS. In addition, because this benefit claim is delayed (not submitted within the required time period in § 1.78(d)), a petition for acceptance of an unintentionally delayed benefit claim under § 1.78(e) and the petition fee under § 1.17(m) are also required.

*Example 6:* Application F is a nonprovisional application filed on August 14, 2028. The ADS present upon F's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application U filed on April 18, 2023, which is the only benefit claim in the application. F's EBD is April 18, 2023, which is more than five years, and no more than eight years, earlier than F's actual filing date of August 14, 2028. Accordingly, the § 1.17(w)(1) fee of \$2,200 is due upon F's filing. Two months after F's filing, the applicant files a second ADS containing a benefit claim under 35 U.S.C. 120 nonprovisional application V filed on February 10, 2020. This newly added benefit claim causes F's EBD to become February 10, 2020, which is more than eight years earlier than F's actual filing date of August 14, 2028, and thus prompts the fee in § 1.17(w)(2). Because the fee in § 1.17(w)(1) was previously paid, the previous payment is subtracted from the amount now due under § 1.17(w)(2). Accordingly, the amount due upon filing of the second ADS is \$1,300 (the current fee amount of \$3,500 set forth in § 1.17(w)(2) less the \$2,200 previously paid under § 1.17(w)(1)).

The proposed fees will recover more costs related to continuing applications from filers of such applications, encourage more efficient filing and prosecution behaviors, and partially offset foregone maintenance fee revenue resulting from later-filed continuing applications.

Continuing applications, which include continuation, divisional, and continuation-in-part applications filed under the conditions specified in 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78, represent a large and increasing share of patent applications. From FY 2010 to FY 2022, total serialized filings rose about 44%, including a moderate increase in noncontinuing applications (about 25%) and a large increase in continuing applications (about 100%), due almost entirely to increased continuation filings. Since FY 2010, divisional and continuation-in-part applications remained flat at annual levels of about 22,000 and 19,000, respectively. However, continuation applications have tripled, from about 40,000 in FY 2010 to about 122,800 in

FY 2022, and now represent about 34% of serialized filings.

The volume and rapid increase of continuing applications negatively impacts the USPTO's workload and docketing practices. For example, it is difficult for the agency to balance patent resources between the examination of "new" (*i.e.*, noncontinuing) applications disclosing new technology and innovations, and continuing applications, which, in some cases, are a repetition of previously examined applications either issued as patents or that have become abandoned. See *e.g.*, FY 2021 pendency statistics review presented at the PPAC quarterly meeting on Nov. 18, 2021, available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/20211115-PPAC-FY21-pendency-stats-review.pdf> (note that about 80% of continuations have a patented parent).

Continuing applications filed long after their EBD are less likely to have a patent term long enough for the USPTO to recover the costs of its search and examination. The patent fee structure is designed to encourage innovation by maintaining low barriers to entry, which the agency accomplishes by keeping initial filing fees for utility, plant, and design applications below the costs for preexamination, search, and examination. The USPTO recovers the remaining cost of performing the work from maintenance fee payments made after issuance of a utility patent. See *e.g.*, the FY 2022 Agency Financial Report at 45–46, available on the USPTO website at <https://www.uspto.gov/AnnualReport>. Maintenance fees are due 3.5 years, 7.5 years, and 11.5 years from the issue date of a utility patent. See 35 U.S.C. 41(b)(1). During FY 2022, maintenance fees collected from utility patentees represented 53.8% of patent revenue, about one-third of which derived from payment of the 11.5-year fee. This revenue is vital to providing the necessary aggregate financing to fund patent operations. Thus, the fees proposed in this NPRM help compensate the USPTO for foregone maintenance fee revenue from continuing applications filed long enough after their EBD for their term to be less than 11.5 years.

If future workloads for continuing applications were to remain steady at FY 2022 levels, about 16% of continuing applications (approximately 22,000) would pay the proposed § 1.17(w)(1) fee, and an additional 11% of continuing applications (approximately 15,000) would pay the proposed § 1.17(w)(2) fee. Based on FY

2022 data, of the applications that would be affected by this proposal, about 69% are undiscounted, about 30% receive a small entity discount, and about 1% receive a micro entity discount. The USPTO also anticipates

that the proposed fees will be relatively technology-neutral, with the most affected area being Technology Center 3700 (which examines technologies including mechanical engineering, manufacturing, gaming, and medical

devices/processes) because it receives a much higher proportion of late-filed continuing applications than other areas.

3. Design Application Fees

TABLE 6—DESIGN APPLICATION FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Basic filing fee—Design	Undiscounted	\$220	\$300	\$80	36	\$250
Basic filing fee—Design	Small	88	120	32	36	250
Basic filing fee—Design	Micro	44	60	16	36	250
Basic filing fee—Design CPA	Undiscounted	220	300	80	36	930
Basic filing fee—Design CPA	Small	88	120	32	36	930
Basic filing fee—Design CPA	Micro	44	60	16	36	930
Design search fee or Design CPA search fee	Undiscounted	160	300	140	88	574
Design search fee or Design CPA search fee	Small	64	120	56	88	574
Design search fee or Design CPA search fee	Micro	32	60	28	88	574
Design examination fee or Design CPA examination fee.	Undiscounted	640	700	60	9	835
Design examination fee or Design CPA examination fee.	Small	256	280	24	9	835
Design examination fee or Design CPA examination fee.	Micro	128	140	12	9	835
Design issue fee	Undiscounted	740	1,300	560	76	574
Design issue fee	Small	296	520	224	76	574
Design issue fee	Micro	148	260	112	76	574
Hague design issue fee	Undiscounted	740	1,300	560	76	n/a
Hague design issue fee	Small	296	520	224	76	n/a
Hague design issue fee	Micro	148	260	112	76	n/a
International Design Application First Part U.S. Designation Fee.	Undiscounted	1,020	1,300	280	27	n/a
International Design Application First Part U.S. Designation Fee.	Small	408	520	112	27	n/a
International Design Application First Part U.S. Designation Fee.	Micro	204	260	56	27	n/a
(Part II Designation Fee) Issue Fee Paid Through the International Bureau in an International Design Application.	Undiscounted	740	1,300	560	76	n/a
(Part II Designation Fee) Issue Fee Paid Through the International Bureau in an International Design Application.	Small	296	520	224	76	n/a
(Part II Designation Fee) Issue Fee Paid Through the International Bureau in an International Design Application.	Micro	148	260	112	76	n/a

The USPTO is proposing increases in the fees for filing, search, examination, and issuance of design patent applications. These proposals adjust the fees to account for inflationary cost increases, and to recover a larger portion of design costs from design applicants.

The proposed design fee increases will affect national design application filings and international design application filings that designate the United States under the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs, July 2, 1999 (“Hague Agreement”).

As shown in the table above, the combined total of filing, search, examination, and issue fees for a design application that proceeds to issuance would increase from \$1,760 to \$2,600 for undiscounted applications, from

\$704 to \$1,040 for applications receiving a small entity discount, and from \$352 to \$520 for applications receiving a micro entity discount. Note that under the Hague Agreement and its implementing regulations in the United States, including § 1.1031, the required fees (known as “designation fees”) for international design application filings that designate the United States are set by reference to the national fees. Thus, the first part of the designation fee corresponds to the sum of the filing fee, search fee, and examination fee, and the second part of the designation fee corresponds to the issue fee. See MPEP 2910 for more information about international design application fees.

Despite these increases, the proposed fees will not achieve full recovery of design costs. On an individual basis, the proposed fees including the issue fee do

not fully recover the cost of examining and issuing a design application even when the applicant paid the undiscounted rate. On an aggregate basis, design fee payments will not fully recover design costs because most design applications qualify for discounted fees. For example, of the design applications filed in FY 2023, 28% paid the micro entity fee amount, 38% paid the small entity fee amount, and only 34% paid the undiscounted fee amounts. The USPTO is required by law to reduce most patent fees by 60% for small entities and by 80% for micro entities. See Part II: Legal Framework, supra. As a result of the heavy use of these discounts by design applicants, the USPTO’s collections from design fees have been significantly below design costs for more than 10 years. For example, based on the most recently

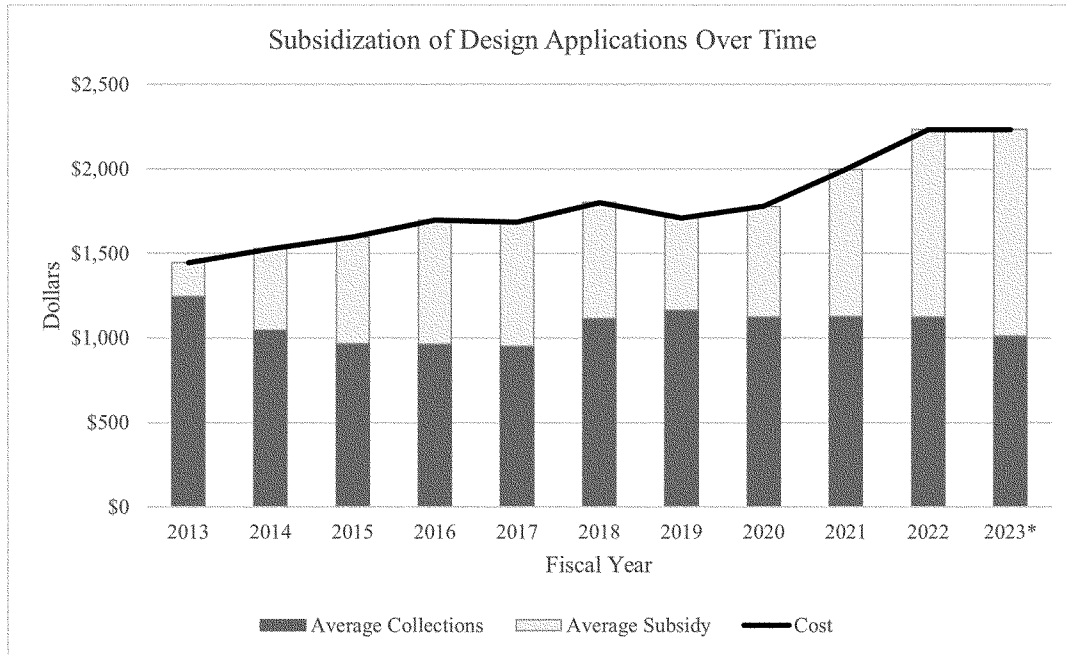
available cost data (FY 2022), the unit cost for a design application was \$2,233, and for a design Continued Prosecution Application, \$2,913. The collections (in the same year) from design fees averaged only \$1,125 per application, resulting in an average shortfall of about \$1,108 per application. Assuming the unit cost remains the same in FY 2023, the average shortfall would increase to about \$1,220 per application based on FY 2023 collections from design fees,

which averaged only \$1,013 per application.

Because USPTO operations are financed solely by user fees, the agency must make up the shortfall in the design area through fees set in other patent areas. While the USPTO has raised design fees twice in the last 10 years, those increases were not large enough to eliminate the shortfall over the long term. Thus, design costs continue to be subsidized by other fees, primarily utility patent maintenance fees. This

subsidy has grown in recent years, as shown in figure 1. The graph depicts average fee collections per design application (“average collections”) in dark gray, and the average shortfall or subsidy per design application (“average subsidy”) in light gray. The average subsidy in FY 2022 was \$1,108, and in FY 2023 was \$1,220 (estimated based on FY 2022 unit cost).

**Figure 1: Subsidization of Design Applications Over Time**



\* FY 2022 cost is assumed for FY 2023 because the FY 2023 data is not yet available.

The patent fee structure is designed to encourage innovation by maintaining low barriers to entry into the patent system. The USPTO accomplishes this goal by keeping initial filing fees for utility, plant, and design applications below the agency’s costs for preexamination, search, and examination, and by recovering remaining costs of performing the work from maintenance fee payments made after issuance of a utility patent. See e.g., the FY 2022 Agency Financial Report at 45–46, available on the USPTO website at <https://www.uspto.gov/AnnualReport>. Although the USPTO is not permitted to establish maintenance fees for design or plant patents (see 35 U.S.C. 41(b)(3)), the maintenance fees it collects from utility patentees represented 53.8% of patent revenue in FY 2022. This revenue is vital to providing the

necessary aggregate revenue to recover the aggregate cost of patent operations. Because design fee payors do not bear the full costs of design services, a disconnect between fees and costs, as currently exists in the design patent area, can lead to overuse of discounted services. See e.g., Federal User Fees: A Design Guide, Report No. GAO–08–386SP (May 2008), available at <https://www.gao.gov/products/gao-08-386sp>, and the Patent and Trademark Office: New User Fee Design Presents Opportunities to Build on Transparency and Communication Success, Report No. GAO–12–514R (April 2012), available at <https://www.gao.gov/products/gao-12-514r>. Historically, this difference between design fees and design costs did not result in a significant subsidy because the annual volume of design applications was much lower than the annual volume of issued utility patents. Since 2014, however, the number of

design applications has surged 50% (from 36,254 in FY 2014 to 54,476 in FY 2022) while the number of issued utility patents (and thus the volume of potential future maintenance fees) has increased only 7% (from 303,930 in FY 2014 to 325,455 in FY 2022). See e.g., FY 2022 Workload Table 1, available on the USPTO website at <https://www.uspto.gov/AnnualReport>. Moreover, virtually all growth in design application filings is attributable to applications in which discounted fees are paid. From FY 2014 to FY 2022, the number of undiscounted design applications filed did not increase, but the number of small entity applications increased 24%, and the number of micro entity applications increased 313%. As a result, the entity spread for design applications changed dramatically. For example, in FY 2014, the entity spread for design applications was 50% undiscounted, 40% small



entity, and 10% micro entity; during FY 2022, the entity spread for design applications was 35% undiscounted, 35% small entity, and 30% micro entity. In contrast, the entity spread in utility application filings has remained the same from FY 2014 to FY 2022, at about 72% undiscounted, 24% small entity, and 4% micro entity.

The combination of these factors makes it challenging for the USPTO to balance the setting of design fees that

appropriately encourage innovation while also incenting design applicants to make appropriate economic decisions and not overuse design services. For example, based on the FY 2022 unit cost and assuming that filing volume and entity spread remain stable, recovering the full cost of design services from design applicants would require total fees of about \$4,000 for undiscounted applications. Abruptly raising fees to

these levels could discourage innovation, so the USPTO is proposing a more moderate increase to \$2,600 for undiscounted applications. After considering all relevant factors, the agency believes the proposed design fee increases strike a balance that still encourages innovation while bringing in increased revenue to recover more design costs.

4. Excess Claims Fees

TABLE 7—EXCESS CLAIMS FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Each independent claim in excess of three .....	Undiscounted ...	\$480	\$600	\$120	25	n/a
Each independent claim in excess of three .....	Small .....	192	240	48	25	n/a
Each independent claim in excess of three .....	Micro .....	96	120	24	25	n/a
Each reissue independent claim in excess of three	Undiscounted ...	480	600	120	25	n/a
Each reissue independent claim in excess of three	Small .....	192	240	48	25	n/a
Each reissue independent claim in excess of three	Micro .....	96	120	24	25	n/a
Each claim in excess of 20 .....	Undiscounted ...	100	200	100	100	n/a
Each claim in excess of 20 .....	Small .....	40	80	40	100	n/a
Each claim in excess of 20 .....	Micro .....	20	40	20	100	n/a
Each reissue claim in excess of 20 .....	Undiscounted ...	100	200	100	100	n/a
Each reissue claim in excess of 20 .....	Small .....	40	80	40	100	n/a
Each reissue claim in excess of 20 .....	Micro .....	20	40	20	100	n/a
Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination.	Undiscounted ...	480	600	120	25	n/a
Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination.	Small .....	192	240	48	25	n/a
Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination.	Micro .....	96	120	24	25	n/a
Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination.	Undiscounted ...	100	200	100	100	n/a
Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination.	Small .....	40	80	40	100	n/a
Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination.	Micro .....	20	40	20	100	n/a

Under § 1.16(h) and (i), the USPTO charges a fee for filing, or later presenting at any other time, each independent claim in excess of three, as well as each claim (whether dependent or independent) in excess of 20. The agency proposes to increase the § 1.16(h) and (i) excess claims fees. The § 1.16(j) multiple dependent claim fee is part of the across-the-board adjustment and not included in this targeted proposal as well as the counterpart excess claims fees applicable to reexamination proceedings and applications that are the national stage of an international application filed under the Patent Cooperation Treaty. These changes would provide more revenue to help recover the additional search and examination costs associated with excess claims, as well as

prosecution costs not covered by front-end fees. These changes would also promote compact prosecution, and the USPTO believes applicants motivated by costs would be incentivized to not file excess claims. In FY 2021, only about 15% of applications contained more than 20 total claims, and about 8% of applications contained more than three independent claims.

The USPTO has increased excess claim fees several times during the last 20 years, which has been very effective at reducing excess claims from their peak in the early 2000s. A high frequency of applications filed with exactly 20 claims and a very low frequency of applications with claim counts exceeding 20 to help promote compact prosecution. In absence of the agency's proposed increases to excess claims fees, it anticipates that excess

claims numbers would increase in response to proposed fees for certain continuing applications discussed previously in this proposal.

Continuing application and excess claim fees are naturally linked and likely to have counterbalancing effects. For example, an increase in continuing applications could result from raising only excess claims fees, and an increase in excess claims could result from raising only the fee for continuing applications (even in specific, lesser-occurring situations). The proposed increases in excess claims fees are intended to avert the latter scenario.

An applicant who files a nonprovisional utility application having three independent claims and 40 claims total—double the § 1.16(i) total claim-count threshold—is required to pay the § 1.16(i) fee for 20 excess claims.

Under the USPTO’s proposed fee rates, an application with double the 20 total claim-count threshold would require an excess claims fee payment that equals the combined proposed fee amounts for

filing, search, and examination. In other words, a double-sized application (three independent claims and 40 claims total) would require double the combined

total in applicable fees for filing, search, and examination.

5. Extension of Time for Provisional Application Fees

TABLE 8—EXTENSION OF TIME FOR PROVISIONAL APPLICATION FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Extension for response within first month, provisional application.	Undiscounted ...	\$220	\$50	− \$170	− 77	n/a
Extension for response within first month, provisional application.	Small .....	88	20	− 68	− 77	n/a
Extension for response within first month, provisional application.	Micro .....	44	10	− 34	− 77	n/a
Extension for response within second month, provisional application.	Undiscounted ...	640	100	− 540	− 84	n/a
Extension for response within second month, provisional application.	Small .....	256	40	− 216	− 84	n/a
Extension for response within second month, provisional application.	Micro .....	128	20	− 108	− 84	n/a
Extension for response within third month, provisional application.	Undiscounted ....	1,480	200	− 1,280	− 86	n/a
Extension for response within third month, provisional application.	Small .....	592	80	− 512	− 86	n/a
Extension for response within third month, provisional application.	Micro .....	296	40	− 256	− 86	n/a
Extension for response within fourth month, provisional application.	Undiscounted ...	2,320	400	− 1,920	− 83	n/a
Extension for response within fourth month, provisional application.	Small .....	928	160	− 768	− 83	n/a
Extension for response within fourth month, provisional application.	Micro .....	464	80	− 384	− 83	n/a
Extension for response within fifth month, provisional application.	Undiscounted ...	3,160	800	− 2,360	− 75	n/a
Extension for response within fifth month, provisional application.	Small .....	1,264	320	− 944	− 75	n/a
Extension for response within fifth month, provisional application.	Micro .....	632	160	− 472	− 75	n/a

The USPTO proposes a separate extension of time (EOT) fee structure for provisional applications in which fees would be decreased from current amounts by an average of 81%. Under EOT practice, if an applicant is required to reply within a nonstatutory or shortened statutory time period, the applicant may normally petition to extend the time period for reply with the requisite fee. The time extension may be up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an EOT under § 1.136(a), including the EOT fee set in § 1.17(a), is filed.

Currently, the EOT fees specified in § 1.17(a) apply equally to both provisional and nonprovisional applications. The USPTO proposes an

average 81% EOT fee decrease in provisional applications under a new paragraph (u) of § 1.17, with an additional proposal that § 1.136(a) be amended to refer to EOT fees under both § 1.17(a) and new § 1.17(u). For patent applications other than provisional applications, the EOT fee structure retained under § 1.17(a) would be increased by 5%, in accordance with the across-the-board proposal.

With fees reduced by 81% on average, the proposed separate EOT fee structure for provisional applications would benefit filers in all entity status categories. The agency envisions that micro entity provisional application filers would benefit most. As explained in the Director’s April 20, 2023, letter to PPAC:

“The USPTO’s fee review concluded that applicants who have certified micro entity status in provisional applications are more than twice as likely to request EOT as compared to other applicants. Thus, we are proposing reduced EOT fees for provisional applications by an average of 81% to reduce financial and entry barriers and further foster inclusive innovation.”

Some micro entity applicants need time extensions to accommodate attempts to meet additional formality requirements associated with establishing micro entity status. Another consideration favoring this proposal is that provisional applications are not examined; therefore, there is less urgency to expedite processing.

6. Information Disclosure Statement Size Fees

TABLE 9—INFORMATION DISCLOSURE STATEMENT SIZE FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided items of information to exceed 50 but not exceed 100.	Undiscounted ....	New .....	\$200 .....	n/a	n/a	n/a
Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided items of information to exceed 100 but not exceed 200.	Undiscounted ...	New .....	\$500, less any amount previously paid.	n/a	n/a	n/a
Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided items of information to exceed 200.	Undiscounted ...	New .....	\$800, less any amounts previously paid.	n/a	n/a	n/a

Sections 1.97 and 1.555 provide applicants and patent owners the opportunity to submit an information disclosure statement (IDS) containing items of information for consideration by the examiner. In a patent application, to be considered, the IDS must meet the timing requirements of § 1.97 and the content requirements of § 1.98. In a reexamination proceeding, the IDS must meet the content requirements of § 1.98(a). There are no specific regulatory limits to the number of items of information that may be included in an IDS. Most applications contain relatively few items of information submitted by applicants for consideration. Approximately 77% of applications have fewer than 25 applicant-cited items of information submitted during prosecution.

The USPTO receives large IDS submissions in a small percentage of applications. Based on the agency's most recent data, in approximately 13% of applications applicants submit over 50 total items of information and in 8% of applications applicants submit over 100 items of information. In an even smaller subset of applications, the number of applicant-submitted items can be quite large, sometimes in the thousands or even tens of thousands.

In many instances, these large IDS submissions contain clearly irrelevant, marginally relevant, or cumulative information. It is onerous for examiners and hinders the USPTO's statutory obligation to timely examine applications under 35 U.S.C. 154 to consider large numbers of clearly irrelevant, marginally relevant, or cumulative information. Additionally, large IDS submissions are costly for the agency to consider. Therefore, the USPTO suggests, as a best practice, that applicants and patent owners avoid filing large IDS submissions by eliminating clearly irrelevant, marginally relevant, or cumulative information. See MPEP 2004, item 13.

In 2006, the USPTO attempted to address large IDS submissions by proposing new requirements, including that IDSs with more than twenty citations be accompanied by an explanation of relevance. See Changes To Information Disclosure Statement Requirements and Other Related Matters, 71 FR 38808 (July 10, 2006). The proposal was not adopted; instead, to provide some relief for examiners burdened with large IDS submissions, the agency began providing examiners additional time to consider large IDS submissions in applications.

On average, the USPTO provides examiners approximately 80,000 additional hours each year to consider large IDS submissions in applications, costing the agency \$10 million annually. As there is currently no fee for large IDS submissions, this cost is subsidized generally by patent fees, primarily maintenance fees collected for patents that resulted from applications that did not contain large IDS submissions.

Accordingly, to have applicants and patent owners filing large IDS submissions cover more of the associated costs, the USPTO proposes to amend § 1.17 to implement a new IDS size fee based on the cumulative number of items of information submitted by an applicant or patent owner during the pendency of the application or reexamination proceeding. The proposed IDS size fee sets forth: (1) a first amount (\$200) for a cumulative number of applicant-provided or patent-owner provided items of information in excess of 50; (2) a second amount (\$500) for a cumulative number of applicant-provided or patent-owner provided items of information in excess of 100 but not exceeding 200, less any amount previously paid; and (3) a third amount (\$800) for a cumulative number of applicant-provided or patent owner provided items of information in excess

of 200, less any amounts previously paid.

For example, if an applicant submits a single IDS during prosecution with 101 items of information, the applicant would pay \$500 under the proposed new § 1.17(v)(2) for exceeding 100 items of information, but not exceeding 200. In another example, if an applicant files a first IDS with 51 items of information, they would pay \$200 under proposed new § 1.17(v)(1) for exceeding 50 items of information, but not exceeding 100. Subsequently, in that same application, if the applicant files a second IDS with 50 items of information, the cumulative number of items of information in the application would be 101. The applicant would then pay \$500 under proposed new § 1.17(v)(2) for exceeding 100 items of information, but not exceeding 200, less the \$200 previously paid under proposed new § 1.17(v)(1), for a total of \$300.

Further, in that same application, if the applicant files a third IDS with 100 items of information, the cumulative number of items of information in the application would be 201. The applicant would then pay \$800 under proposed new § 1.17(v)(3) for exceeding 200 items of information, less the \$200 previously paid under proposed new § 1.17(v)(1) and less the \$300 previously paid under proposed new § 1.17(v)(2), for a total of \$300. Thus, in this example, the applicant would pay a combined IDS size fee of \$800 for the three IDSs filed during the pendency of the application.

Additionally, the USPTO is proposing to amend § 1.98(a) to include a new content requirement for an IDS that will facilitate implementation of the proposed IDS size fee. Specifically, the USPTO is proposing to require that an IDS contain a clear written assertion by applicant and patent owner that the IDS is accompanied by the appropriate IDS size fee, or that no IDS size fee is required. This assertion is necessary because it ensures the record is clear as

to which fee the applicant or patent owner believes may be due (or that no fee may be due), with the IDS so the examiner can promptly ascertain whether the IDS is compliant. There would be no specific language required for the written assertion, but it should be readily identifiable on the IDS and clearly convey the applicable IDS size fee.

The agency envisions modifying USPTO Form PTO/SB/08 to include the requisite written assertion stylized as a set of check boxes corresponding to each potential IDS size fee, along with an additional box indicating that no IDS size fee is due. Since the form must be signed in accordance with § 1.33(b), certifications under §§ 1.4 and 11.18 apply. Applicants and patent owners would be strongly advised to use the PTO/SB/08 form, but it will not be required. The USPTO does not foresee general authorizations to charge fees or a specific authorization to charge any applicable IDS size fee as a compliant written assertion under the proposed requirement. It would be the applicant's and patent owner's responsibility to track the cumulative number of items of information submitted in the application and provide a written assertion of any applicable IDS size fee due. In accordance with § 1.97(i), an IDS filed in an application without the written assertion or the necessary IDS

size fee will be placed in the file, but not considered by the agency. The applicant may then file a new IDS accompanied by the written assertion or necessary IDS size fee, but the date the new IDS is filed will be the date of the IDS for purposes of determining compliance with § 1.97. See MPEP 609.05(a). An IDS filed in a reexamination proceeding without the written assertion or the necessary IDS size fee will be placed in the file and will remain of record, but the IDS will not be considered.

Applicants are reminded that the duty of disclosure under §§ 1.56 and 1.555 only requires the submission of information material to patentability to the USPTO. Material information is described in §§ 1.56(b) and 1.555(b) as information that is not cumulative to information already of record and (1) establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or (2) it refutes, or is inconsistent with, a position the applicant takes in: (i) opposing an argument of unpatentability relied on by the USPTO, or (ii) asserting an argument of patentability. The United States Court of Appeals for the Federal Circuit uses an even higher standard for materiality than the § 1.56(b) and 1.555(b) standards by requiring "but-for" materiality, such that the USPTO would not have allowed a claim had it been aware of the

undisclosed information. Neither the § 1.56(b) and 1.555(b) standards nor the Federal Circuit's "but-for" standard require the submission of clearly irrelevant or marginally relevant information.

The USPTO does not believe the proposed IDS size fee will have a large impact on patent applicants or owners. As stated previously, a majority of applicants do not submit large amounts of information for consideration. Based on current IDS filing volume, only 13% of applications will require the first-tier IDS size fee for submitting over 50 items of information. Even fewer applications will be subject to the succeeding two tiers, as only approximately 8% of applications contain over 100 items of information, and about 4% contain over 200 items of information. Additionally, the fee should not disproportionately impact small and micro entities. During FY 2022, small entities accounted for only 25% of applications that would incur a fee, while micro entities made up less than 1%. By placing more of the service costs for considering IDS submissions totaling over 50 items of information on the applicants who file such IDS submissions, less costs will be borne across the patent system.

7. Patent Term Adjustment Fees

TABLE 10—PATENT TERM ADJUSTMENT FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Filing an application for patent term adjustment .....	Undiscounted ...	\$210	\$300	\$90	43	\$745

The USPTO is proposing a fee increase from \$210 to \$300 for filing an application for patent term adjustment under § 1.705(b), which allows patentees of utility and plant patents to request reconsideration of the patent term adjustment indicated on the face of the patent. This proposal adjusts the fee for inflation and supports the USPTO's fee setting policy of aligning fees with costs.

This service and fee were introduced in September 2000 as part of a rule package implementing the patent term adjustment provisions of 35 U.S.C. 154(b), which were created by the Uruguay Round Agreements Act (Pub. L. 103-465, 108 Stat. 4809 (1994)) and amended by the American Inventors Protection Act of 1999 (Pub. L. 106-113, 113 Stat. 1501, 1501A-552 through 1501A-591 (1999)). See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term, 65 FR

56366 (Sept. 18, 2000). Under 35 U.S.C. 154(b), patent term adjustment is a complex statutory scheme that compensates utility and plant patent owners for certain application processing delays that would otherwise reduce a patent's term. See MPEP 2730 through 2732 for more information regarding grounds for adjustment, the adjustment period, and reductions in the adjustment period due to applicant failures to engage in reasonable efforts to conclude prosecution of an application.

In accordance with these laws and their implementing regulations, the USPTO determines applicable patent term adjustment at the time of issuing each utility and plant patent and indicates such adjustment on the face of the patent. These determinations are performed using a computer program that relies upon information in the agency's patent application data

repository—formerly Patent Application Locating and Monitoring, now the One Patent Service Gateway (OPSG). This information includes the type of document (e.g., an amendment or a notice of allowance) and the relevant date (e.g., for an amendment, the date of receipt in the USPTO). Applicants may use Patent Center to check the accuracy of the data entered in the OPSG throughout the examination process and are encouraged to notify the agency of any detected errors prior to allowance. See e.g., MPEP 2733 for guidance about checking records and reporting errors (note, Patent Center replaced the Patent Application Information Retrieval system discussed in the MPEP).

If the patentee disagrees with the adjustment indicated on the patent, they may file a request for reconsideration of patent term adjustment under § 1.705(b) which must be filed within two months of the date the patent was granted. The

request (also called an application) must include the patentee’s requested patent term adjustment and a supporting statement of facts and be accompanied by the fee specified in § 1.18(e). In response to a request, the USPTO will conduct a manual redetermination of the patent term adjustment, which may result in (1) an amount of patent term adjustment that is the amount of patent term adjustment requested by the applicant; (2) the same amount of patent term adjustment as indicated in the patent (*i.e.*, no change); or (3) a different amount of patent term adjustment that may be higher or lower than the patent term adjustment indicated on the patent. More information regarding determination and reconsideration of patent term adjustment is available in MPEP 2733 and 2734.

When introduced in 2000, the agency set the fee for requests for reconsideration of patent term adjustment at \$200, and since then has increased this fee only \$10. See Changes To Implement Patent Term Adjustment Under Twenty-Year Patent Term, 65 FR

56366 (Sep. 18, 2000); FY 2020 Final Rule. If the agency had adjusted the fee for inflation as measured by the Consumer Price Index since the fee’s introduction, it would be \$351 as of June 2023. The USPTO’s proposed increase to \$300 is 15% below the inflation-adjusted original fee. Thus, the proposed fee represents a partial recovery of the inflation-adjusted original fee. Moreover, the proposed fee will remain significantly less than the unit cost of this service (\$745 in FY 2022). While this fee does not qualify for entity discounts, the proposed increase will not disproportionately impact small and micro entities. Based on data from FY 2021 and FY 2022, small entities file about 19% of PTA reconsideration requests, and micro entities only 1%.

This service has a low volume of about 500 requests each year, meaning that patentees are requesting reconsideration of patent term adjustment in only 0.15% of issued patents (since FY 2019, the USPTO has issued over 325,000 utility and plant

patents annually). This low volume is due partly to the USPTO’s improvements to its computer program over the years, and partly to applicant diligence when submitting and reviewing papers. For example, as described previously, applicants are encouraged to bring any detected errors in OPSG data to the agency’s attention before allowance. In addition, applicants can improve the accuracy of the USPTO’s records (which, in turn, improves the accuracy of the computer program’s determinations) by using the proper document codes when filing papers. See *e.g.*, Standardization of the Patent Term Adjustment Statement Regarding Information Disclosure Statements, 88 FR 39172 (Jun. 15, 2023), which explains how using the agency’s form and document code when filing a “safe harbor” statement for an IDS enhances the accuracy of the USPTO’s automated process for calculating patent term adjustment when the “safe harbor” provisions of § 1.704(d) are involved.

8. Patent Term Extension Fees

TABLE 11—PATENT TERM EXTENSION FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Application for extension of term of patent .....	Undiscounted ...	\$1,180	\$6,700	\$5,520	468	\$2,581
Initial application for interim extension (see 37 CFR 1.790).	Undiscounted ...	440	1,320	880	200	2,347
Subsequent application for interim extension (see 37 CFR 1.790).	Undiscounted ...	230	680	450	196	2,347
Supplemental redetermination after notice of final determination.	Undiscounted ...	New	1,440	n/a	n/a	n/a

The USPTO is proposing fee increases for filing applications for patent term extension and applications for interim extensions under 35 U.S.C. 156, and is also proposing a new fee for requesting a supplemental redetermination of the patent term extension in a pending application for patent term extension. These proposals adjust fees for inflation and reflect the full cost of these services and also supports the agency’s fee setting policy of aligning fees with costs.

The patent term extension service and fee were introduced in October 1984 as part of initial operating guidelines established after enactment of the patent term extension provisions of 35 U.S.C. 156 in the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417, 98 Stat. 1585 (1984)) (Hatch-Waxman Act). See Guidelines for Extension of Patent Term under 35 U.S.C. 156, 1047 OG 16 (Oct. 9, 1984). In brief, patent term extensions under 35 U.S.C. 156 enable owners of patents claiming certain products subject to

premarket regulatory review to restore to the terms of those patents some of the time lost while awaiting premarket government approval for the products from a regulatory agency. The products eligible for patent term extension services under 35 U.S.C. 156 include human drug products, medical devices, animal drugs, and food or color additive products, all of which are regulated by the FDA, and veterinary biological products, which are regulated by the United States Department of Agriculture (USDA). See MPEP 2750 for more information regarding the legislative history and scope of the Hatch-Waxman Act with respect to patent term extensions.

In accordance with this law and its implementing regulations, the patent owner must file an application for patent term extension with the USPTO within a short time after the product receives permission for commercial marketing or use from the applicable regulatory agency (the FDA or USDA).

See MPEP 2754 *et seq.* Upon receipt, the USPTO reviews the application, the applicant, the patent, and the claimed product or process and then works with the applicable regulatory agency to evaluate compliance with the statutory requirements for a patent term extension under 35 U.S.C. 156. While it is the USPTO’s responsibility to decide whether an applicant has satisfied statutory requirements and whether the patent qualifies for patent term extension, the applicable regulatory agency possesses expertise and records regarding some statutory requirements and has certain direct responsibilities under 35 U.S.C. 156 for determining length of the regulatory review period. See MPEP 2756 for a more detailed explanation of how the USPTO works with these regulatory agencies to determine a patent’s eligibility for patent term extension under 35 U.S.C. 156. Once the USPTO has received the necessary information from the regulatory agency, it determines the

applicable patent term extension (if any) and formulates a Notice of Final Determination or determination of ineligibility, reviews any responses or reconsideration requests received from the patent owner, and then prepares a Final Determination or certificate as appropriate. See MPEP 2755 through 2759 for an explanation of this process. Because of the coordination and communication required between the USPTO and the appropriate regulatory agency, and the complexity of the legal determinations involved, it often takes two or more years to reach a Final Determination or determination of ineligibility. The time required varies greatly depending on the individual circumstances of each application.

When introduced in 1984, the fee for this service was set at \$750 and since then has increased to only \$1,180. See *e.g.*, Guidelines for Extension of Patent Term Under 35 U.S.C. 156, 1047 OG 16 (Oct. 9, 1984), Rules for Extension of Patent Term, 52 FR 9386 (Mar. 24, 1987), and FY 2020 Final Rule. If the original fee were adjusted for inflation as measured by the CPI, it would be \$2,173 as of June 2023. Moreover, the complexity and cost of this service has increased over time due to the subject matter and legal expertise required to evaluate the statutory requirements. Thus, the USPTO is proposing to raise the fee for this service from \$1,180 to \$6,700.

While the proposed fee is greater than the reported unit cost, the USPTO did not begin formally tracking the unit cost of this service (as a separate service through the ABI program) until midway through FY 2021. Prior to FY 2018 the service volume was quite low at about 42 applications each year. Since then, volume has averaged 100-plus applications each year. Accordingly, because the ABI for patent term extension is based on limited data, the currently reported unit cost is believed to be significantly lower than the actual cost of providing the service. As the amount of service information increases with time, the USPTO expects that the unit cost determined by the ABI program will more closely align with the actual cost.

The USPTO is also proposing a new service fee that would apply to the approximate one-third of applications for patent term extension in which the user files a response that includes a terminal disclaimer after receiving the Notice of Final Determination. The submission of terminal disclaimers at this late stage in the review process affects the patent term, requiring the USPTO to engage in a substantial amount of rework to recalculate the

applicable patent term extension and make a supplemental redetermination of the appropriate extension in view of the disclaimer. These submissions became more common after the Federal Circuit's decision in *Gilead Sciences, Inc. v. Natco Pharma Ltd.*, 753 F.3d 1208 (Fed. Cir. 2014), which made it clear that the extended term of a patent can be affected by a terminal disclaimer filed against a later-issued but earlier-expiring reference patent, and after a 2015 presentation by USPTO personnel at a public meeting discussing the *Gilead* decision. See Safekeeping of 35 U.S.C. 156 Extensions presentation from the USPTO Biotechnology/Chemical/Pharmaceutical Customer Partnership Meeting on April 7, 2015, available at [https://www.aipla.org/docs/default-source/committee-documents/bcp-files/pte-for-4-7-15-bcp.pdf?sfvrsn=868807b4\\_2](https://www.aipla.org/docs/default-source/committee-documents/bcp-files/pte-for-4-7-15-bcp.pdf?sfvrsn=868807b4_2). These submissions are expected to become more common in the future, because of *In re Collect*, 81 F.4th 1216, 2023 U.S.P.Q.2d 1011 (Fed. Cir. 2023), in which the Federal Circuit explained that patent term adjustment and patent term extension are treated differently with respect to nonstatutory double patenting and terminal disclaimers. Currently, beneficiaries of this rework receive this additional service for free because the cost is subsidized by other users (*e.g.*, by unrelated fee collections from other patent applicants and owners). In accordance with user fee design principles, the USPTO is proposing a new fee of \$1,440 to cover the costs of this service, to be paid by users who benefit from it.

The USPTO is also proposing to increase the fees for filing applications for interim patent term extensions under § 1.790. This service and fees were introduced in 1994 in response to an amendment of the Hatch-Waxman Act that added 35 U.S.C. 156(d)(5). See MPEP 2750 and Guidelines for Interim Extension Under 35 U.S.C. 156(d)(5) of a Patent Term Prior To Regulatory Approval of a Product for Commercial Marketing or Use—Public Law 103–179 (Dec. 3, 1993), 1159 OG 12 (Feb. 1, 1994). Interim patent extension under 35 U.S.C. 156(d)(5) is available for a patent claiming a product which is undergoing the approval phase of regulatory review as defined in 35 U.S.C. 156(g), if the patent is expected to expire before approval is granted. The application of an interim patent extension is very similar to an application for patent term extension, with a similar evaluation process, except the USPTO is not required to seek the advice of the regulatory agency.

See MPEP 2755.02 for more information regarding this service.

The interim extension service has a very low volume of about 20 or fewer applications each year, but it is costly and requires special handling due to the subject matter and legal expertise required to evaluate the statutory requirements. The USPTO is proposing to raise the fees from \$440 to \$1,320 for the initial (first) application for an interim extension of patent term, and from \$230 to \$680 for each subsequent application. This fee increase will help recover the agency's costs of performing this service. Upon its introduction in 1993, the fees for this service were set at \$400 for an initial application and \$200 for subsequent applications, and have increased by only \$40 and \$30, respectively, since. See FY 2020 Final Rule. The proposed fee amounts remain significantly less than the agency's costs of providing the service; as of FY 2022, the unit cost was \$2,347.

No patent term extension-related fees are eligible for entity discounts. The users of these services are typically large pharmaceutical and medical device companies due to the expense required to develop and obtain marketing approval for such inventions, in addition to limits on service availability set forth in 35 U.S.C. 156. For example, over the last 40 years, 81% of applications for patent term extension concerned human drug products, 15% concerned medical devices, 3% concerned animal drugs, and about 1% concerned food or color additive products or veterinary biological products. See *e.g.*, the USPTO website at <https://www.uspto.gov/patents/laws/patent-term-extension/patent-terms-extended-under-35-usc-156>, which provides a list of patents that have been extended via this service. Additionally, the costs for regulatory approval of these products are extremely high. For example, as reported by the CBO, three recent studies estimated the average research and development costs per new drug to range from \$0.8 billion to \$2.3 billion. See Congressional Budget Office, Research and Development in the Pharmaceutical Industry, Report No. 57126 pp. 15 and 16 (April 2021), available at <https://www.cbo.gov/publication/57126>. It is not clear whether the figures reported in these studies included FDA user fees, which are currently between \$1.6 million and \$3.2 million as a one-time sum, with an additional annual program fee of \$393,933. See *e.g.*, the FDA's user fee page for prescription drugs at <https://www.fda.gov/industry/fda-user-fee-programs/prescription-drug-user-fee-amendments>. Thus, when compared to

either FDA user fees or the research and development costs required to develop a new drug and obtain marketing approval, the proposed fees to obtain a

patent term extension for the patent covering such a new drug are quite small.

9. Request for Continued Examination Fees

TABLE 12—REQUEST FOR CONTINUED EXAMINATION FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Request for continued examination (RCE)—1st request (see 37 CFR 1.114).	Undiscounted ...	\$1,360	\$1,500	\$140	10	\$3,059
Request for continued examination (RCE)—1st request (see 37 CFR 1.114).	Small .....	544	600	56	10	3,059
Request for continued examination (RCE)—1st request (see 37 CFR 1.114).	Micro .....	272	300	28	10	3,059
Request for continued examination (RCE)—2nd request (see 37 CFR 1.114).	Undiscounted ....	2,000	2,500	500	25	2,191
Request for continued examination (RCE)—2nd request (see 37 CFR 1.114).	Small .....	800	1,000	200	25	2,191
Request for continued examination (RCE)—2nd request (see 37 CFR 1.114).	Micro .....	400	500	100	25	2,191
Request for continued examination (RCE)—3rd and subsequent request (see 37 CFR 1.114).	Undiscounted ....	2,000	3,600	1,600	80	2,169
Request for continued examination (RCE)—3rd and subsequent request (see 37 CFR 1.114).	Small .....	800	1,440	640	80	2,169
Request for continued examination (RCE)—3rd and subsequent request (see 37 CFR 1.114).	Micro .....	400	720	320	80	2,169

For utility and plant applications where prosecution is closed (e.g., a final rejection has been mailed), the applicant may file an RCE and pay a specified fee within the requisite time period. Applicants typically file an RCE when they choose to continue prosecution before an examiner, rather than appeal a rejection or abandon the application. Prior to application abandonment, applicants may also file a continuing application to extend prosecution rather than file an RCE. The USPTO’s proposal would split the existing RCE fees into three parts—a fee for a first RCE, a higher fee for a second RCE, and a still higher fee for third and subsequent RCEs filed in a single patent application.

Since FY 2013, the USPTO has split RCE fees into two parts: (1) a fee for a first RCE; and (2) a second, higher fee for a second or subsequent RCE. See Setting and Adjusting Patent Fees, 78 FR 4212 (Jan. 18, 2013). The USPTO’s FY 2017 fee setting rulemaking maintained the undiscounted fee for a first RCE well below cost but set the undiscounted fee for second and subsequent RCEs at 19% above cost. See Setting and Adjusting Patent Fees During Fiscal Year 2017, 82 FR 52780 (Nov. 14, 2017). The initial RCE fee from FY 2017 would have required an applicant without any entity status discount to file four RCEs to mostly recover the USPTO’s costs for treating all RCE filings.

These costs have increased annually since FY 2017. In fact, the current

undiscounted fee for second and subsequent RCEs is set so far below cost that no amount of RCE filings would recapture the USPTO’s costs of providing the service. Under this proposal to trifurcate the RCE fee structure, the undiscounted fee for a first RCE would be more than 50% below cost, and the undiscounted fee for a second RCE would be just above cost. The undiscounted fee for third and subsequent RCEs would be enough above cost that a third RCE from an applicant with no entity status discount, combined with the fees for filing the first two RCEs, would cover agency costs for treating all three RCEs.

Of course, applicants do not file multiple RCEs all at once, and the USPTO’s costs typically rise over time due to inflationary factors. Under the proposed new trifurcated fee structure, by the time an applicant pays the third and subsequent RCE fee, it—when combined with the first two RCE fees—would likely not cover the USPTO’s costs for treating all three RCEs. In addition, RCEs filed by applicants with an established entitlement to an entity status discount would never approach covering the agency’s costs, regardless of the number of RCEs filed.

During FY 2011, when the agency’s fee schedule set only one RCE fee, RCE filings comprised about 30% of all RCE and utility patent application filings collectively. In FY 2018, RCE filings comprised 29% of the total despite the bifurcated fee structure introduced in FY 2013. The RCE filing percentage

declined to 25% in FY 2021 and 23% in FY 2022. It is unlikely these recent decreases resulted from the bifurcated fee structure, as the RCE filing percentage was hardly affected in the years immediately following FY 2013.

By reducing RCE filings in favor of appeal or reaching agreement with an examiner, the proposed higher fee for RCEs filed subsequent to the first RCE should help promote more compact prosecutions. Higher fees for successively filed RCEs also address the inequities of providing further subsidies to those who make greater use of the patent system. As explained in the USPTO’s FY 2013 rulemaking at 78 FR 4212, 4245 (Jan. 18, 2013), because the USPTO set the fee for the first RCE below the cost to process it, the agency must recoup that cost elsewhere. Since most applicants resolve their issues with the first RCE, the agency determined that applicants that file more than one RCE are using the patent system more extensively than those who file zero or only one RCE. Therefore, the USPTO determined that the cost to review applications with multiple RCEs should not be subsidized with other back-end fees to the same extent as applications with a first RCE, newly filed applications, or other continuing applications. This proposal would promote compact prosecution and more appropriately dispense the low barrier to entry feature of below cost front end fees.

In FY 2011, around 70% of RCE applications were for first RCEs, with



the remaining 30% for a second or subsequent RCE. Based on FY 2021 and FY 2022 data, approximately 72% of current RCE filings are first RCEs, 19% are second RCEs, and the remaining 9% are third or subsequent RCEs. If this proposal has its intended effect, less than 9% of RCE filings would qualify for the highest fee tier for third and subsequent RCEs.

As previously described, the undiscounted fee for a first RCE would be more than 50% below cost, and the undiscounted fee for a second RCE would be above cost. Accordingly, undiscounted fees paid for two RCEs would be 24% below cost for treating

two RCEs. Under this proposal, it is not until the third and subsequent undiscounted RCEs, combined with fees for the first two RCEs, that the USPTO would recover its costs.

An applicant in a position to file a third RCE likely has undergone years of patent prosecution, and they could avoid the higher fee by appealing the examiner’s rejection(s) should no agreement be reached to put the application in condition for allowance. Prolonged, years-long prosecution could result in patent expiration prior to maintenance fee payment, especially the third scheduled maintenance fee—

another factor in the USPTO’s proposal to limit excessive RCE filings.

That said, some applicants may see value in prolonged prosecution. Whereas the scope of an issued patent is fixed and avoiding patent infringement can be assessed by competitors, a patent that may result in the future from a pending application is harder to assess in that regard. Accordingly, the USPTO does not expect to eliminate third and subsequent RCE filings but envisions that the higher fee will help reduce their number.

10. Suspension of Action Fees

TABLE 13—SUSPENSION OF ACTION FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
First request for suspension of action .....	Undiscounted ...	\$220	\$300	\$80	36	n/a
First request for suspension of action .....	Small .....	88	120	32	36	n/a
First request for suspension of action .....	Micro .....	44	60	16	36	n/a
Subsequent request for suspension of action .....	Undiscounted ...	220	450	230	105	n/a
Subsequent request for suspension of action .....	Small .....	88	180	92	105	n/a
Subsequent request for suspension of action .....	Micro .....	44	90	46	105	n/a

The USPTO proposes to create a new tiered fee structure for requests for suspension of action under § 1.103(a). Specifically, the agency seeks to increase the undiscounted fee for a first suspension request to \$300 and establish a new fee of \$450 (undiscounted) for the second or subsequent requests in the same application. The fee increase for the first request is targeted at shifting the cost of the service to those applicants requesting suspensions, thereby reducing subsidization from other fees. This increase will not affect fees for

suspensions of action requested at the time of filing CPA under § 1.103(b) or an RCE under § 1.103(c).

Currently, § 1.103(a) permits applicants to request a suspension of action for a period not exceeding six months for good and sufficient cause. The patent examiner typically decides the first request for suspension. Second and subsequent requests require Technology Center director approval. Due to the heightened approval level, these requests cost the USPTO more to process. As such, in order to recoup the additional cost of the second and subsequent requests, the agency is

proposing to charge a higher fee for these requests. Additionally, as more requests for suspension are requested and granted, the longer the pendency of the application.

The USPTO receives approximately 2,500 requests for suspension under § 1.103(a) each year. Of those requests, 86% are filed by undiscounted entities, 12% by small entities, and 2% by micro entities. Given the availability of entity discounts, the USPTO believes this fee increase will generally have a negligible impact on small and micro entities.

11. Terminal Disclaimer Fees

TABLE 14—TERMINAL DISCLAIMER FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Terminal disclaimer, filed prior to the first action on the merits.	Undiscounted ....	\$170	\$200	\$30	18	n/a
Terminal disclaimer, filed prior to a final action or allowance.	Undiscounted ....	170	500	330	194	n/a
Terminal disclaimer, filed after final or allowance ....	Undiscounted ...	170	800	630	371	n/a
Terminal disclaimer, filed on or after a notice of appeal.	Undiscounted ...	170	1,100	930	547	n/a
Terminal disclaimer, filed in a patented case or in an application for reissue.	Undiscounted ...	170	1,400	1,230	724	n/a

The USPTO proposes to create a new tiered fee structure for terminal disclaimers, specifically splitting § 1.20(d) into two parts.

The first part, in proposed § 1.20(d)(1), would apply only to

statutory disclaimers under 35 U.S.C. 253(a) and § 1.321(a). As explained in MPEP 1490, a statutory disclaimer is a statement in which a patent owner relinquishes legal rights to one or more claims of a patent. The proposed fee for

filing such a statutory disclaimer would be increased slightly (from \$170 to \$179) as part of the across-the-board fee increase.

The second part, in proposed § 1.20(d)(2), would apply only to

terminal disclaimers under 35 U.S.C. 253(b) and § 1.321. As explained in MPEP 1490, a terminal disclaimer is a statement in which a patentee or applicant disclaims or dedicates to the public the entire term or any terminal part of the term of a patent, or of a patent to be granted when filed in an application. The proposed fees for filing such terminal disclaimers would be increased as described in this section and would vary depending on the stage of examination of the application in which the terminal disclaimer is filed. In particular, proposed § 1.20(d)(2) would create five tiers of fees for filing terminal disclaimers, beginning at \$200 for the first tier and increasing by \$300 for each subsequent tier.

1. The first-tier fee of \$200 is set forth in proposed § 1.20(d)(2)(i), and would be required upon the filing of a terminal disclaimer in a non-reissue application before the mailing of a first Office action on the merits.

2. The second-tier fee of \$500 is set forth in proposed § 1.20(d)(2)(ii) and would be required upon the filing of a terminal disclaimer in a non-reissue application after the period specified in § 1.20(d)(2)(i) and before the mailing date of any final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application.

3. The third-tier fee of \$800 is set forth in proposed § 1.20(d)(2)(iii) and would be required upon the filing of a terminal disclaimer in a non-reissue application after the period specified in § 1.20(d)(2)(ii) and before any submission of a notice of appeal under § 41.31.

4. The fourth-tier fee of \$1,100 is set forth in proposed § 1.20(d)(2)(iv) and would be required upon the filing of a terminal disclaimer in a non-reissue application on or after the submission of a notice of appeal under § 41.31.

5. The fifth-tier fee of \$1,400 is set forth in proposed § 1.20(d)(2)(v) and would be required upon the filing of a terminal disclaimer in a patent, or in an application for reissue of a patent.

These fee increases and the tiered structure in proposed § 1.20(d)(2) are focused on encouraging applicants to promptly address double patenting issues that arise during prosecution, which will then promote more efficient patent examination by reducing unnecessary costs. The proposals will also foster greater public certainty by providing earlier notice of when the patent term will end.

Patent applications and patents are subject to the doctrine of nonstatutory double patenting to prevent both the unjust timewise extension of the right to

exclude and multiple infringement suits by different parties. These situations may arise from the granting of multiple patents with patentably indistinct claims where the patents have a common owner, applicant, or inventor, or where the patents are not commonly owned but are subject to a joint research agreement. See MPEP 804 for a more extensive discussion of the doctrine of nonstatutory double patenting. An applicant may avoid or overcome a nonstatutory double patenting rejection by filing a terminal disclaimer in the application or proceeding in which the rejection is anticipated or actually made. As explained in MPEP 804.02, the use of a terminal disclaimer in overcoming a nonstatutory double patenting rejection is in the public interest because it encourages the disclosure of additional developments, the earlier filing of applications, and the earlier expiration of patents whereby the inventions covered become freely available to the public.

Filing terminal disclaimers early in prosecution reduces the amount of time examiners must spend on nonstatutory double patenting analyses. Because double patenting rejections are made on a claim-by-claim basis, an examiner must compare each claim of the application being examined against each claim of the reference patent or application. As explained in MPEP 804 subsection II.B, this comparison includes construing the reference claims and determining whether an anticipation analysis or obviousness analysis is appropriate for each examined claim. Examiners may spend a substantial amount of time on these analyses and must repeat the process for each reference patent or application used in a double patenting rejection. If an applicant files terminal disclaimers prior to the first action on the merits, the examiner can avoid the time-intensive double patenting analyses that would otherwise be required. Further, if an applicant does not file a terminal disclaimer after a rejection has been made, the examiner will often have to repeat the analysis one or more times. Double patenting rejections may need to be modified throughout prosecution based on amendments to the claims under examination and, in the case of a provisional rejection, amendments to the claims of the reference application. If a terminal disclaimer is not promptly filed, the examiner may have to repeat the analysis in a final rejection and at appeal, and the time spent repeating this analysis detracts from the total time available to review the application for other issues such as patentability over

the art and compliance with 35 U.S.C. 112.

Terminal disclaimers filed in patents and applications for reissue are subject to the highest fee tier in proposed § 1.20(d)(2)(v) to more strongly encourage the earlier filing of such disclaimers given the public interest in knowing exactly when the term will end, particularly as disclaimer filings during this time period are often motivated by the patent owner's plans to assert the patent. Relatively few disclaimers are filed during this time period (approximately 40 to 80 a year, or about 1% of all terminal disclaimers). Moreover, terminal disclaimers in patented cases require additional processing such as printing the terminal disclaimer data in the *Official Gazette*; and incorporating the notice of the terminal disclaimer published in the *Official Gazette* into the specification of the patent as required by § 1.321(a). See MPEP 1490(IV) for more information about this additional processing by the USPTO's Certificates of Correction Branch.

Other than requiring payment of the fifth-tier fee in § 1.20(d)(2)(v), this proposed rule will not change the processing of terminal disclaimers after issuance or the conditions under which a terminal disclaimer may be filed in a patent when the patent is involved in a post-grant proceeding at the USPTO such as a reexamination or a proceeding before the Patent Trial and Appeal Board under part 42 of 37 CFR (*e.g.*, *inter partes* review). See MPEP 1490(III) for more information about filing a disclaimer in a patent or reexamination proceeding.

Based on workload numbers from the last five full fiscal years (FY 2018 through FY 2022), about 63,000 terminal disclaimers are filed annually. Of these, about 6% would incur the first-tier fee in § 1.20(d)(2)(i), about 65% would incur the second-tier fee in § 1.20(d)(2)(ii), about 28% would incur the third-tier fee in § 1.20(d)(2)(iii), slightly less than 1% would incur the fourth-tier fee in § 1.20(d)(2)(iv), and approximately 0.1% would incur the fifth-tier fee in proposed § 1.20(d)(2)(v). After implementation of the proposed fees, the USPTO anticipates that applicants will file earlier terminal disclaimers, particularly those currently filed in the time periods that fall into the third and fourth tiers.

While these fees do not qualify for entity discounts, the proposed fees are not expected to disproportionately impact small and micro entities based on current trends in filing continuation applications and terminal disclaimers. For instance, because about 80% of

continuation applications have a patented parent, in general they may be more likely than non-continuing applications to raise double patenting issues requiring filing of a terminal disclaimer. Thus, it is reasonable to expect that terminal disclaimer filings would be somewhat proportional to continuation filings (the correlation is not exact, because double patenting may also arise in noncontinuing applications, as explained in MPEP 804). This expectation is supported by

the USPTO's workload data for FY 2021 and FY 2022, which indicate that small entities file about 25% of continuation applications and about 26% of terminal disclaimers each year. Micro entities are much less affected, in that they file about 8% of continuation applications but only about 1% of terminal disclaimers each year. Thus, the anticipated impact of the proposed terminal disclaimer fees on small entities is the same as what would be expected based on their respective share

of continuation application filings, and micro entities are much less likely to be impacted.

The USPTO also anticipates that the proposed fees will be relatively technology-neutral. Slightly higher impacts may occur in technology areas examined in Technology Center 1600 (biotechnology and organic chemistry) and Technology Center 2400 (computer networks, multiplex, cable, and cryptography/security).

12. Unintentional Delay Petition Fees

TABLE 15—UNINTENTIONAL DELAY PETITION FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years.	Undiscounted ...	\$2,100	\$2,200	\$100	5	\$161
Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years.	Small .....	840	880	40	5	161
Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years.	Micro .....	420	440	20	5	161
Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years.	Undiscounted ...	2,100	3,000	900	43	n/a
Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years.	Small .....	840	1,200	360	43	n/a
Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years.	Micro .....	420	600	180	43	n/a
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years.	Undiscounted ...	2,100	2,200	100	5	376
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years.	Small .....	840	880	40	5	376
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years.	Micro .....	420	440	20	5	376
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years.	Undiscounted ...	2,100	3,000	900	43	n/a
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years.	Small .....	840	1,200	360	43	n/a
Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years.	Micro .....	420	600	180	43	n/a
Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years.	Undiscounted ...	2,100	2,200	100	5	376
Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years.	Small .....	840	880	40	5	376

TABLE 15—UNINTENTIONAL DELAY PETITION FEES—Continued

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years.	Micro .....	420	440	20	5	376
Petition for the delayed submission of a priority or benefit claim, delay greater than two years.	Undiscounted ...	2,100	3,000	900	43	n/a
Petition for the delayed submission of a priority or benefit claim, delay greater than two years.	Small .....	840	1,200	360	43	n/a
Petition for the delayed submission of a priority or benefit claim, delay greater than two years.	Micro .....	420	600	180	43	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years.	Undiscounted ...	2,100	2,200	100	5	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years.	Small .....	840	880	40	5	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years.	Micro .....	420	440	20	5	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years.	Undiscounted ....	2,100	3,000	900	43	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years.	Small .....	840	1,200	360	43	n/a
Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years.	Micro .....	420	600	180	43	n/a

During FY 2020, the USPTO issued a notice to clarify when additional information is required to support a petition for unintentional delay. See Clarification of the Practice for Requiring Additional Information in Petitions Filed in Patent Applications and Patents Based on Unintentional Delay, 85 FR 12222 (March 2, 2020) (2020 Notice). Petitions based on unintentional delay include petitions seeking revival of an abandoned application, acceptance of a delayed maintenance fee payment, and acceptance of a delayed priority or benefit claim. The 2020 Notice clarified that “any applicant filing a petition to revive an abandoned application under § 1.137 more than two years after the date of abandonment, any patentee filing a petition to accept a delayed maintenance fee under § 1.378 more than two years after the date of expiration for nonpayment of a maintenance fee, and any applicant or patent owner filing a petition to accept a delayed priority or benefit claim under

§ 1.55(e) or § 1.78(c) and (e) more than two years after the due date of the priority or benefit claim should expect to be required to provide an additional explanation of the circumstances surrounding the delay that establishes that the entire delay was unintentional.” *Id* at 12223.

As the evidentiary requirements for these petitions have increased, the costs to review and treat these petitions have also increased due to the higher level of review needed to consider the additional explanation. Accordingly, the USPTO seeks to create a new higher fee for petitions based on unintentional delay over two years to recover their additional associated costs. The higher fee should encourage timely petition filings and avoid delays in the examination process. The new higher fee would apply to petitions under § 1.78(c) and (e) to accept a delayed benefit claim submitted more than two years after the date the benefit claim was due; under § 1.55(e) to accept a delayed priority claim more than two years after the date the foreign priority

claim was due; under § 1.137 to revive an abandoned application or reexamination proceeding more than two years after the date of abandonment; under § 1.378 to seek reinstatement of an expired patent more than two years after the date of expiration for nonpayment of a maintenance fee; and under § 1.1051 to excuse an applicant's failure to act within prescribed time limits in an international design application.

The USPTO receives approximately 12,000 petitions each year based upon the unintentional standard (FY 2021, 12,752 petitions; FY 2022, 11,755 petitions). About 10% of these petitions (1,200) have a delay of more than two years. Therefore, the higher cost for petitions having a delay of greater than two years should not have a significant impact on patent applicants overall. The increased fee will help ensure those applicants requesting the service pay its costs, thereby reducing subsidization from other patent applicants.

13. America Invents Act Trial Fees

TABLE 16—AIA TRIAL FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Inter partes review request fee—Up to 20 claims ....	Undiscounted ...	\$19,000	\$23,750	\$4,750	25	\$21,980
Inter partes review post-institution fee—Up to 20 claims.	Undiscounted ...	22,500	28,125	5,625	25	37,563

TABLE 16—AIA TRIAL FEES—Continued

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Inter partes review request of each claim in excess of 20.	Undiscounted ...	375	470	95	25	n/a
Inter partes post-institution request of each claim in excess of 20.	Undiscounted ....	750	940	190	25	n/a
Post-grant or covered business method review request fee—Up to 20 claims.	Undiscounted ...	20,000	25,000	5,000	25	37,683
Post-grant or covered business method review post-institution fee—Up to 20 claims.	Undiscounted ....	27,500	34,375	6,875	25	49,198
Post-grant or covered business method review request of each claim in excess of 20.	Undiscounted ....	475	595	120	25	n/a
Post-grant or covered business method review post-institution request of each claim in excess of 20.	Undiscounted ....	1,050	1,315	265	25	n/a

The USPTO proposes increasing existing fees for AIA trial proceedings by 25%. Under 35 U.S.C. 311(a) and 321(a), the USPTO Director must establish reasonable fees for inter partes and post-grant review in relation to their

aggregate costs. The proposed fee increases will better align the fee rates charged to petitioners with the actual costs borne by the USPTO in providing these proceedings. This proposed change will help the PTAB maintain the

appropriate level of judicial and administrative resources to continue providing high-quality and timely decisions for AIA trials.

14. Request for Review of a PTAB Decision by the Director

TABLE 17—REQUEST FOR REVIEW OF A PTAB DECISION BY THE DIRECTOR FEES

Description	Entity type	Current fee	Proposed fee	Dollar change	Percent change	FY 2022 unit cost
Request for review of a PTAB decision by the Director.	Undiscounted ...	New	\$440	n/a	n/a	n/a

The USPTO proposes to charge a new fee in AIA trial proceedings under part 42 to parties requesting Director Review of the PTAB’s: (1) decision whether to institute a trial; (2) final written decision; or (3) decision granting a request for rehearing from either the Board’s decision whether to institute trial or the Board’s final written decision. The proposed fee is set at the same rate as a petition to the Chief Judge in ex parte appeals and is designed to partially recover the USPTO’s costs for conducting Director Reviews. The proposed fee is part of the agency’s ongoing efforts to formalize the Director Review process developed in response to the Supreme Court’s decision in *United States v. Arthrex, Inc.* and furthers the USPTO’s goals of promoting innovation through consistent, transparent decision-making and the issuance and maintenance of reliable patents.

More specifically, the Director of the USPTO is a statutory member of the PTAB. See 35 U.S.C. 6(a). On June 21, 2021, the Supreme Court issued a decision in *United States v. Arthrex, Inc.*, and explained that “constitutional principles chart a clear course: Decisions by [administrative patent judges (APJs)] must be subject to review by the Director.” See 141 S. Ct. 1970,

1986 (2021). Following the statutory authority provided to the Director by Congress and the constitutional principles explained by the Supreme Court, the USPTO set forth an interim process for Director Review, which has been updated periodically. The agency sought public feedback on the interim process and is using feedback to promulgate rules.

As a part of the interim process, when the USPTO receives a Director Review request from a party to an AIA proceeding, the request is processed and routed to an advisory committee that assists with Director Review. The committee includes at least 11 representatives from various USPTO business units who serve at the Director’s discretion. Members independently review each request and associated case materials, and the committee meets regularly to recommend which requests for review should be granted. The Director considers each request, its case materials, and the committee’s recommendation in determining whether to grant or deny review. When the Director determines to grant review, personnel from various USPTO business units assist in case processing and in issuing and publicizing the Director Review decision.

Given the number of agency personnel involved in Director Review, the USPTO expects its costs to be significantly higher than the proposed fee. The agency plans to formally capture and evaluate these costs in the future.

*D. Amendment to Obtaining a Refund Through Express Abandonment*

The USPTO proposes amending paragraph (d) of § 1.138, which permits an applicant to obtain a refund of the search and excess claims fees that were paid in an application by submitting a petition and declaration of express abandonment before an examination has been made of the application. The current rule permits such refunds only in nonprovisional applications filed under 35 U.S.C. 111(a) and § 1.53(b). The proposed amendment would expand the applicability of the rule to permit such refunds in national stage applications filed under 35 U.S.C. 371.

The amendment would also clarify that refunds of search and excess claim fee payments under these provisions are limited to the search and excess claim fees set forth in § 1.16 (which apply to applications filed under 35 U.S.C. 111(a) and § 1.53(b)) and search and excess claim fees set forth in § 1.492 (which apply to national stage

applications filed under 35 U.S.C. 371). No refunds would be permitted of any search fees paid under § 1.445 during the international stage of an application filed under the PCT, even if such an application later enters the national stage under 35 U.S.C. 371.

The petition process and the conditions under which a refund will be granted will not otherwise change. See MPEP 711.01 subsection III for more information. The proposed amendment would put national stage applications

on the same footing as applications filed under 35 U.S.C. 111(a) when an application is expressly abandoned prior to examination.

**VI. Discussion of Specific Rules**

The following part shows the Code of Federal Regulations proposed fee amendments. The discussion below includes all proposed fee amendments and all proposed changes to the CFR text.

Title 37 of the CFR, parts 1, 41, and 42, are proposed to be amended as follows:

*Section 1.16*

Section 1.16 is proposed to be amended by revising paragraphs (a) through (s) and (u) to set forth national application filing, search, examination, and related fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 1.16 are shown in table 18.

TABLE 18—SECTION 1.16 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.16(a)	1011	Basic filing fee—Utility (paper filing also requires non-electronic filing fee under 1.16(t)).	Undiscounted ....	\$320	\$350
1.16(a)	2011	Basic filing fee—Utility (paper filing also requires non-electronic filing fee under 1.16(t)).	Small .....	128	140
1.16(a)	3011	Basic filing fee—Utility (paper filing also requires non-electronic filing fee under 1.16(t)).	Micro .....	64	70
1.16(a)	4011	Basic filing fee—Utility (electronic filing for small entities) .....	Small .....	64	70
1.16(b)	1012	Basic filing fee—Design .....	Undiscounted ...	220	300
1.16(b)	2012	Basic filing fee—Design .....	Small .....	88	120
1.16(b)	3012	Basic filing fee—Design .....	Micro .....	44	60
1.16(b)	1017	Basic filing fee—Design CPA .....	Undiscounted ...	220	300
1.16(b)	2017	Basic filing fee—Design CPA .....	Small .....	88	120
1.16(b)	3017	Basic filing fee—Design CPA .....	Micro .....	44	60
1.16(c)	1013	Basic filing fee—Plant .....	Undiscounted ...	220	240
1.16(c)	2013	Basic filing fee—Plant .....	Small .....	88	96
1.16(c)	3013	Basic filing fee—Plant .....	Micro .....	44	48
1.16(d)	1005	Provisional application filing fee .....	Undiscounted ...	300	315
1.16(d)	2005	Provisional application filing fee .....	Small .....	120	126
1.16(d)	3005	Provisional application filing fee .....	Micro .....	60	63
1.16(e)	1014	Basic filing fee—Reissue .....	Undiscounted ...	320	350
1.16(e)	2014	Basic filing fee—Reissue .....	Small .....	128	140
1.16(e)	3014	Basic filing fee—Reissue .....	Micro .....	64	70
1.16(e)	1019	Basic filing fee—Reissue (Design CPA) .....	Undiscounted ...	320	350
1.16(e)	2019	Basic filing fee—Reissue (Design CPA) .....	Small .....	128	140
1.16(e)	3019	Basic filing fee—Reissue (Design CPA) .....	Micro .....	64	70
1.16(f)	1051	Surcharge—Late filing fee, search fee, examination fee, inventor's oath or declaration, or application filed without at least one claim or by reference.	Undiscounted ...	160	170
1.16(f)	2051	Surcharge—Late filing fee, search fee, examination fee, inventor's oath or declaration, or application filed without at least one claim or by reference.	Small .....	64	68
1.16(f)	3051	Surcharge—Late filing fee, search fee, examination fee, inventor's oath or declaration, or application filed without at least one claim or by reference.	Micro .....	32	34
1.16(g)	1052	Surcharge—Late provisional filing fee or cover sheet .....	Undiscounted ...	60	65
1.16(g)	2052	Surcharge—Late provisional filing fee or cover sheet .....	Small .....	24	26
1.16(g)	3052	Surcharge—Late provisional filing fee or cover sheet .....	Micro .....	12	13
1.16(h)	1201	Each independent claim in excess of three .....	Undiscounted ...	480	600
1.16(h)	2201	Each independent claim in excess of three .....	Small .....	192	240
1.16(h)	3201	Each independent claim in excess of three .....	Micro .....	96	120
1.16(h)	1204	Each reissue independent claim in excess of three .....	Undiscounted ...	480	600
1.16(h)	2204	Each reissue independent claim in excess of three .....	Small .....	192	240
1.16(h)	3204	Each reissue independent claim in excess of three .....	Micro .....	96	120
1.16(i)	1202	Each claim in excess of 20 .....	Undiscounted ...	100	200
1.16(i)	2202	Each claim in excess of 20 .....	Small .....	40	80
1.16(i)	3202	Each claim in excess of 20 .....	Micro .....	20	40
1.16(i)	1205	Each reissue claim in excess of 20 .....	Undiscounted ...	100	200
1.16(i)	2205	Each reissue claim in excess of 20 .....	Small .....	40	80
1.16(i)	3205	Each reissue claim in excess of 20 .....	Micro .....	20	40
1.16(j)	1203	Multiple dependent claim .....	Undiscounted ...	860	905
1.16(j)	2203	Multiple dependent claim .....	Small .....	344	362
1.16(j)	3203	Multiple dependent claim .....	Micro .....	172	181
1.16(k)	1111	Utility search fee .....	Undiscounted ...	700	770
1.16(k)	2111	Utility search fee .....	Small .....	280	308
1.16(k)	3111	Utility search fee .....	Micro .....	140	154
1.16(l)	1112	Design search fee or Design CPA search fee .....	Undiscounted ...	160	300

TABLE 18—SECTION 1.16 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.16(l) .....	2112	Design search fee or Design CPA search fee .....	Small .....	64	120
1.16(l) .....	3112	Design search fee or Design CPA search fee .....	Micro .....	32	60
1.16(m) .....	1113	Plant search fee .....	Undiscounted ...	440	485
1.16(m) .....	2113	Plant search fee .....	Small .....	176	194
1.16(m) .....	3113	Plant search fee .....	Micro .....	88	97
1.16(n) .....	1114	Reissue search fee or Reissue (Design CPA) search fee .....	Undiscounted ...	700	770
1.16(n) .....	2114	Reissue search fee or Reissue (Design CPA) search fee .....	Small .....	280	308
1.16(n) .....	3114	Reissue search fee or Reissue (Design CPA) search fee .....	Micro .....	140	154
1.16(o) .....	1311	Utility examination fee .....	Undiscounted ...	800	880
1.16(o) .....	2311	Utility examination fee .....	Small .....	320	352
1.16(o) .....	3311	Utility examination fee .....	Micro .....	160	176
1.16(p) .....	1312	Design examination fee or Design CPA examination fee .....	Undiscounted ...	640	700
1.16(p) .....	2312	Design examination fee or Design CPA examination fee .....	Small .....	256	280
1.16(p) .....	3312	Design examination fee or Design CPA examination fee .....	Micro .....	128	140
1.16(q) .....	1313	Plant examination fee .....	Undiscounted ...	660	725
1.16(q) .....	2313	Plant examination fee .....	Small .....	264	290
1.16(q) .....	3313	Plant examination fee .....	Micro .....	132	145
1.16(r) .....	1314	Reissue examination fee or Reissue (Design CPA) examination fee.	Undiscounted ...	2,320	2,550
1.16(r) .....	2314	Reissue examination fee or Reissue (Design CPA) examination fee.	Small .....	928	1,020
1.16(r) .....	3314	Reissue examination fee or Reissue (Design CPA) examination fee.	Micro .....	464	510
1.16(s) .....	1082	Design application size fee—for each additional 50 sheets that exceeds 100 sheets.	Undiscounted ...	420	440
1.16(s) .....	2082	Design application size fee—for each additional 50 sheets that exceeds 100 sheets.	Small .....	168	176
1.16(s) .....	3082	Design application size fee—for each additional 50 sheets that exceeds 100 sheets.	Micro .....	84	88
1.16(s) .....	1083	Plant application size fee—for each additional 50 sheets that exceeds 100 sheets.	Undiscounted ...	420	440
1.16(s) .....	2083	Plant application size fee—for each additional 50 sheets that exceeds 100 sheets.	Small .....	168	176
1.16(s) .....	3083	Plant application size fee—for each additional 50 sheets that exceeds 100 sheets.	Micro .....	84	88
1.16(s) .....	1085	Provisional application size fee—for each additional 50 sheets that exceeds 100 sheets.	Undiscounted ...	420	440
1.16(s) .....	2085	Provisional application size fee—for each additional 50 sheets that exceeds 100 sheets.	Small .....	168	176
1.16(s) .....	3085	Provisional application size fee—for each additional 50 sheets that exceeds 100 sheets.	Micro .....	84	88
1.16(s) .....	1084	Reissue application size fee—for each additional 50 sheets that exceeds 100 sheets.	Undiscounted ...	420	440
1.16(s) .....	2084	Reissue application size fee—for each additional 50 sheets that exceeds 100 sheets.	Small .....	168	176
1.16(s) .....	3084	Reissue application size fee—for each additional 50 sheets that exceeds 100 sheets.	Micro .....	84	88
1.16(s) .....	1081	Utility application size fee—for each additional 50 sheets that exceeds 100 sheets.	Undiscounted ...	420	440
1.16(s) .....	2081	Utility application size fee—for each additional 50 sheets that exceeds 100 sheets.	Small .....	168	176
1.16(s) .....	3081	Utility application size fee—for each additional 50 sheets that exceeds 100 sheets.	Micro .....	84	88
1.16(u) .....	1054	Non-DOCX Filing Surcharge Fee .....	Undiscounted ...	400	420
1.16(u) .....	2054	Non-DOCX Filing Surcharge Fee .....	Small .....	160	168
1.16(u) .....	3054	Non-DOCX Filing Surcharge Fee .....	Micro .....	80	84

Section 1.17

Section 1.17 is proposed to be amended by revising paragraphs (a), (c) through (i), (k), (m), and (o) through (t); and adding paragraphs (u), (v), (w), and (x) to set forth application processing fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 1.17 are shown in table 19.

The USPTO proposes to revise the introductory text of paragraph (a) to exclude provisional applications filed under 1.53(c).

The USPTO proposes to revise paragraph (e)(2) to include only the second request for continued examination and adding paragraph (e)(3) to create a fee for third and subsequent requests for continued examination. The USPTO proposes to

revise paragraph (g) by splitting it into two paragraphs (g)(1) and (2). Proposed paragraph (g)(1) would be the same as existing paragraph (g) except for the removal of § 1.103(a) from its coverage. Proposed new paragraphs (g)(2)(i) and (ii) would specify the fees for filing a first request pursuant to § 1.103(a) respectively. The USPTO proposes to add paragraphs (m)(1) through (3) to



create tiered fees for unintentionally delayed petitions based on the length of the delay.

The USPTO proposes to add paragraphs (u) through (x). Paragraph (u) creates a lower fee for extension fees

pursuant to § 1.136(a) in provisional applications filed under § 1.53(c). Paragraph (v) creates fees for information disclosure statements filed under § 1.97. Paragraph (w) creates fees for presenting a benefit claim in a

nonprovisional application under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d). Paragraph (x) creates a fee for the After Final Consideration Pilot Program 2.0.

TABLE 19—SECTION 1.17 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.17(a)(1) .....	1251	Extension for response within first month, except provisional applications.	Undiscounted ....	\$220	\$230
1.17(a)(1) .....	2251	Extension for response within first month, except provisional applications.	Small .....	88	92
1.17(a)(1) .....	3251	Extension for response within first month, except provisional applications.	Micro .....	44	46
1.17(a)(2) .....	1252	Extension for response within second month, except provisional applications.	Undiscounted ...	640	670
1.17(a)(2) .....	2252	Extension for response within second month, except provisional applications.	Small .....	256	268
1.17(a)(2) .....	3252	Extension for response within second month, except provisional applications.	Micro .....	128	134
1.17(a)(3) .....	1253	Extension for response within third month, except provisional applications.	Undiscounted ...	1,480	1,555
1.17(a)(3) .....	2253	Extension for response within third month, except provisional applications.	Small .....	592	622
1.17(a)(3) .....	3253	Extension for response within third month, except provisional applications.	Micro .....	296	311
1.17(a)(4) .....	1254	Extension for response within fourth month, except provisional applications.	Undiscounted ...	2,320	2,435
1.17(a)(4) .....	2254	Extension for response within fourth month, except provisional applications.	Small .....	928	974
1.17(a)(4) .....	3254	Extension for response within fourth month, except provisional applications.	Micro .....	464	487
1.17(a)(5) .....	1255	Extension for response within fifth month, except provisional applications.	Undiscounted ...	3,160	3,320
1.17(a)(5) .....	2255	Extension for response within fifth month, except provisional applications.	Small .....	1,264	1,328
1.17(a)(5) .....	3255	Extension for response within fifth month, except provisional applications.	Micro .....	632	664
1.17(c) .....	1817	Request for prioritized examination .....	Undiscounted ...	4,200	4,410
1.17(c) .....	2817	Request for prioritized examination .....	Small .....	1,680	1,764
1.17(c) .....	3817	Request for prioritized examination .....	Micro .....	840	882
1.17(d) .....	1819	Correction of inventorship after first action on merits .....	Undiscounted ...	640	670
1.17(d) .....	2819	Correction of inventorship after first action on merits .....	Small .....	256	268
1.17(d) .....	3819	Correction of inventorship after first action on merits .....	Micro .....	128	134
1.17(e)(1) .....	1801	Request for continued examination (RCE)—1st request (see 37 CFR 1.114).	Undiscounted ...	1,360	1,500
1.17(e)(1) .....	2801	Request for continued examination (RCE)—1st request (see 37 CFR 1.114).	Small .....	544	600
1.17(e)(1) .....	3801	Request for continued examination (RCE)—1st request (see 37 CFR 1.114).	Micro .....	272	300
1.17(e)(2) .....	1820	Request for continued examination (RCE)—2nd request (see 37 CFR 1.114).	Undiscounted ....	2,000	2,500
1.17(e)(2) .....	2820	Request for continued examination (RCE)—2nd request (see 37 CFR 1.114).	Small .....	800	1,000
1.17(e)(2) .....	3820	Request for continued examination (RCE)—2nd request (see 37 CFR 1.114).	Micro .....	400	500
1.17(e)(3) .....	New	Request for continued examination (RCE)—3rd and subsequent request (see 37 CFR 1.114).	Undiscounted ....	2,000	3,600
1.17(e)(3) .....	New	Request for continued examination (RCE)—3rd and subsequent request (see 37 CFR 1.114).	Small .....	800	1,440
1.17(e)(3) .....	New	Request for continued examination (RCE)—3rd and subsequent request (see 37 CFR 1.114).	Micro .....	400	720
1.17(f) .....	1462	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I).	Undiscounted ...	420	440
1.17(f) .....	2462	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I).	Small .....	168	176
1.17(f) .....	3462	Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I).	Micro .....	84	88
1.17(g)(1) .....	1463	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II), except suspension of action.	Undiscounted ...	220	230

TABLE 19—SECTION 1.17 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.17(g)(1) .....	2463	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II), except suspension of action.	Small .....	88	92
1.17(g)(1) .....	3463	Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II), except suspension of action.	Micro .....	44	46
1.17(g)(2)(i) .....	New	First request for suspension of action .....	Undiscounted ...	220	300
1.17(g)(2)(i) .....	New	First request for suspension of action .....	Small .....	88	120
1.17(g)(2)(i) .....	New	First request for suspension of action .....	Micro .....	44	60
1.17(g)(2)(ii) .....	New	Subsequent request for suspension of action .....	Undiscounted ...	220	450
1.17(g)(2)(ii) .....	New	Subsequent request for suspension of action .....	Small .....	88	180
1.17(g)(2)(ii) .....	New	Subsequent request for suspension of action .....	Micro .....	44	90
1.17(h) .....	1464	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III).	Undiscounted ...	140	145
1.17(h) .....	2464	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III).	Small .....	56	58
1.17(h) .....	3464	Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III).	Micro .....	28	29
1.17(i)(1) .....	1053	Non-English translation .....	Undiscounted ...	140	145
1.17(i)(1) .....	2053	Non-English translation .....	Small .....	56	58
1.17(i)(1) .....	3053	Non-English translation .....	Micro .....	28	29
1.17(i)(1) .....	1830	Processing fee, except in provisional applications .....	Undiscounted ...	140	145
1.17(i)(1) .....	2830	Processing fee, except in provisional applications .....	Small .....	56	58
1.17(i)(1) .....	3830	Processing fee, except in provisional applications .....	Micro .....	28	29
1.17(i)(2) .....	1808	Other publication processing fee .....	Undiscounted ...	140	147
1.17(i)(2) .....	2808	Other publication processing fee .....	Small .....	140	147
1.17(i)(2) .....	3808	Other publication processing fee .....	Micro .....	140	147
1.17(i)(2) .....	1803	Request for voluntary publication or republication .....	Undiscounted ...	140	147
1.17(i)(2) .....	2803	Request for voluntary publication or republication .....	Small .....	140	147
1.17(i)(2) .....	3803	Request for voluntary publication or republication .....	Micro .....	140	147
1.17(k) .....	1802	Request for expedited examination of a design application .....	Undiscounted ...	1,600	1,680
1.17(k) .....	2802	Request for expedited examination of a design application .....	Small .....	640	672
1.17(k) .....	3802	Request for expedited examination of a design application .....	Micro .....	320	336
1.17(m)(1) .....	New	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years.	Undiscounted ...	2,100	3,000
1.17(m)(1) .....	New	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years.	Small .....	840	1,200
1.17(m)(1) .....	New	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years.	Micro .....	420	600
1.17(m)(2) .....	1558	Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years.	Undiscounted ...	2,100	2,200
1.17(m)(2) .....	2558	Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years.	Small .....	840	880
1.17(m)(2) .....	3558	Petition for the delayed payment of the fee for maintaining a patent in force, delay less than or equal to two years.	Micro .....	420	440
1.17(m)(1) .....	New	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years.	Undiscounted ...	2,100	3,000
1.17(m)(1) .....	New	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years.	Small .....	840	1,200
1.17(m)(1) .....	New	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay greater than two years.	Micro .....	420	600
1.17(m)(2) .....	1453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years.	Undiscounted ....	2,100	2,200
1.17(m)(2) .....	2453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years.	Small .....	840	880
1.17(m)(2) .....	3453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding, delay less than or equal to two years.	Micro .....	420	440
1.17(m)(1) .....	New	Petition for the delayed submission of a priority or benefit claim, delay greater than two years.	Undiscounted ...	2,100	3,000
1.17(m)(1) .....	New	Petition for the delayed submission of a priority or benefit claim, delay greater than two years.	Small .....	840	1,200

TABLE 19—SECTION 1.17 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.17(m)(1) .....	New	Petition for the delayed submission of a priority or benefit claim, delay greater than two years.	Micro .....	420	600
1.17(m)(2) .....	1454	Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years.	Undiscounted ....	2,100	2,200
1.17(m)(2) .....	2454	Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years.	Small .....	840	880
1.17(m)(2) .....	3454	Petition for the delayed submission of a priority or benefit claim, delay less than or equal to two years.	Micro .....	420	440
1.17(m)(1) .....	New	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years.	Undiscounted ....	2,100	3,000
1.17(m)(1) .....	New	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years.	Small .....	840	1,200
1.17(m)(1) .....	New	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay greater than two years.	Micro .....	420	600
1.17(m)(2) .....	1784	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years.	Undiscounted ...	2,100	2,200
1.17(m)(2) .....	2784	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years.	Small .....	840	880
1.17(m)(2) .....	3784	Petition to excuse applicant's failure to act within prescribed time limits in an international design application, delay less than or equal to two years.	Micro .....	420	440
1.17(m)(3) .....	1628	Petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application.	Undiscounted ....	2,100	2,200
1.17(m)(3) .....	2628	Petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application.	Small .....	840	880
1.17(m)(3) .....	3628	Petition for the extension of the twelve-month (six-month for designs) period for filing a subsequent application.	Micro .....	420	440
1.17(o) .....	1818	Document fee for third-party submissions (see 37 CFR 1.290(f))	Undiscounted ....	180	190
1.17(o) .....	2818	Document fee for third-party submissions (see 37 CFR 1.290(f))	Small .....	72	76
1.17(p) .....	1806	Submission of an Information Disclosure Statement .....	Undiscounted ....	260	275
1.17(p) .....	2806	Submission of an Information Disclosure Statement .....	Small .....	104	110
1.17(p) .....	3806	Submission of an Information Disclosure Statement .....	Micro .....	52	55
1.17(q) .....	1807	Processing fee for provisional applications .....	Undiscounted ...	50	53
1.17(q) .....	2807	Processing fee for provisional applications .....	Small .....	50	53
1.17(q) .....	3807	Processing fee for provisional applications .....	Micro .....	50	53
1.17(r) .....	1809	Filing a submission after final rejection (see 37 CFR 1.129(a)) ..	Undiscounted ....	880	925
1.17(r) .....	2809	Filing a submission after final rejection (see 37 CFR 1.129(a)) ..	Small .....	352	370
1.17(r) .....	3809	Filing a submission after final rejection (see 37 CFR 1.129(a)) ..	Micro .....	176	185
1.17(s) .....	1810	For each additional invention to be examined (see 37 CFR 1.129(b)).	Undiscounted ....	880	925
1.17(s) .....	2810	For each additional invention to be examined (see 37 CFR 1.129(b)).	Small .....	352	370
1.17(s) .....	3810	For each additional invention to be examined (see 37 CFR 1.129(b)).	Micro .....	176	185
1.17(t) .....	1783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16.	Undiscounted ....	180	190
1.17(t) .....	2783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16.	Small .....	72	76
1.17(t) .....	3783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16.	Micro .....	36	38
1.17(u)(1) .....	New	Extension for response within first month, provisional application.	Undiscounted ...	220	50
1.17(u)(1) .....	New	Extension for response within first month, provisional application.	Small .....	88	20
1.17(u)(1) .....	New	Extension for response within first month, provisional application.	Micro .....	44	10
1.17(u)(2) .....	New	Extension for response within second month, provisional application.	Undiscounted ...	640	100
1.17(u)(2) .....	New	Extension for response within second month, provisional application.	Small .....	256	40
1.17(u)(2) .....	New	Extension for response within second month, provisional application.	Micro .....	128	20
1.17(u)(3) .....	New	Extension for response within third month, provisional application.	Undiscounted ....	1,480	200
1.17(u)(3) .....	New	Extension for response within third month, provisional application.	Small .....	592	80

TABLE 19—SECTION 1.17 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.17(u)(3) .....	New	Extension for response within third month, provisional application.	Micro .....	296	40
1.17(u)(4) .....	New	Extension for response within fourth month, provisional application.	Undiscounted ...	2,320	400
1.17(u)(4) .....	New	Extension for response within fourth month, provisional application.	Small .....	928	160
1.17(u)(4) .....	New	Extension for response within fourth month, provisional application.	Micro .....	464	80
1.17(u)(5) .....	New	Extension for response within fifth month, provisional application.	Undiscounted ...	3,160	800
1.17(u)(5) .....	New	Extension for response within fifth month, provisional application.	Small .....	1,264	320
1.17(u)(5) .....	New	Extension for response within fifth month, provisional application.	Micro .....	632	160
1.17(v)(1) .....	New	First time filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 50.	Undiscounted ...	n/a	200
1.17(v)(1) .....	New	First time filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 50.	Small .....	n/a	200
1.17(v)(1) .....	New	First time filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 50.	Micro .....	n/a	200
1.17(v)(2) .....	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 100.	Undiscounted ....	n/a	300
1.17(v)(2) .....	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 100.	Small .....	n/a	300
1.17(v)(2) .....	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 100.	Micro .....	n/a	300
1.17(v)(3) .....	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 200.	Undiscounted ....	n/a	300
1.17(v)(3) .....	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 200.	Small .....	n/a	300
1.17(v)(3) .....	New	Filing an Information Disclosure Statement that causes the cumulative number of applicant-provided citations to exceed 200.	Micro .....	n/a	300
1.17(w)(1) .....	New	Filing an application or presentation of benefit claim more than five years after earliest benefit date.	Undiscounted ...	n/a	2,200
1.17(w)(1) .....	New	Filing an application or presentation of benefit claim more than five years after earliest benefit date.	Small .....	n/a	880
1.17(w)(1) .....	New	Filing an application or presentation of benefit claim more than five years after earliest benefit date.	Micro .....	n/a	440
1.17(w)(2) .....	New	Filing an application or presentation of benefit claim more than eight years after earliest benefit date.	Undiscounted ...	n/a	3,500
1.17(w)(2) .....	New	Filing an application or presentation of benefit claim more than eight years after earliest benefit date.	Small .....	n/a	1,400
1.17(w)(2) .....	New	Filing an application or presentation of benefit claim more than eight years after earliest benefit date.	Micro .....	n/a	700
1.17(x) .....	New	Consideration of AFCP 2.0 request .....	Undiscounted ...	n/a	500
1.17(x) .....	New	Consideration of AFCP 2.0 request .....	Small .....	n/a	200
1.17(x) .....	New	Consideration of AFCP 2.0 request .....	Micro .....	n/a	100

Section 1.18

Section 1.18 is proposed to be amended by revising paragraphs (a)

through (f) to set forth patent issue fees as authorized under section 10 of the AIA. The changes to the fee amounts

indicated in § 1.18 are shown in table 20.

TABLE 20—SECTION 1.18 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.18(a) .....	1511	Reissue issue fee .....	Undiscounted ...	\$1,200	\$1,260
1.18(a) .....	2511	Reissue issue fee .....	Small .....	480	504

TABLE 20—SECTION 1.18 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.18(a)	3511	Reissue issue fee	Micro	240	252
1.18(a)	1501	Utility issue fee	Undiscounted	1,200	1,260
1.18(a)	2501	Utility issue fee	Small	480	504
1.18(a)	3501	Utility issue fee	Micro	240	252
1.18(b)(1)	1502	Design issue fee	Undiscounted	740	1,300
1.18(b)(1)	2502	Design issue fee	Small	296	520
1.18(b)(1)	3502	Design issue fee	Micro	148	260
1.18(b)(1)	1509	Hague design issue fee	Undiscounted	740	1,300
1.18(b)(1)	2509	Hague design issue fee	Small	296	520
1.18(b)(1)	3509	Hague design issue fee	Micro	148	260
1.18(c)	1503	Plant issue fee	Undiscounted	840	880
1.18(c)	2503	Plant issue fee	Small	336	352
1.18(c)	3503	Plant issue fee	Micro	168	176
1.18(d)(3)	1505	Publication fee for republication	Undiscounted	320	336
1.18(d)(3)	2505	Publication fee for republication	Small	320	336
1.18(d)(3)	3505	Publication fee for republication	Micro	320	336
1.18(e)	1455	Filing an application for patent term adjustment	Undiscounted	210	300
1.18(e)	2455	Filing an application for patent term adjustment	Small	210	300
1.18(e)	3455	Filing an application for patent term adjustment	Micro	210	300
1.18(f)	1456	Request for reinstatement of term reduced	Undiscounted	420	440
1.18(f)	2456	Request for reinstatement of term reduced	Small	420	440
1.18(f)	3456	Request for reinstatement of term reduced	Micro	420	440

Section 1.19

Section 1.19 is proposed to be amended by revising paragraphs (a), (b),

and (f) to set forth document supply fees as authorized under section 10 of the AIA. The changes to the fee amounts

indicated in § 1.19 are shown in table 21.

TABLE 21—SECTION 1.19 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.19(a)(2)	8003	Printed copy of plant patent in color	Undiscounted	\$15	\$16
1.19(b)(1)(i)(A) and (ii)(A).	8007	Copy of patent application as filed	Undiscounted	35	37
1.19(b)(1)(i)(B)	8051	Copy patent file wrapper, paper medium, any number of sheets.	Undiscounted	290	305
1.19(b)(1)(i)(D)	8010	Individual application documents, other than application as filed, per document.	Undiscounted	25	26
1.19(b)(1)(ii)(B)	8052	Copy patent file wrapper, electronic medium, any size or provided electronically.	Undiscounted	60	63
1.19(b)(3)	8013	Copy of office records, except copies of applications as filed	Undiscounted	25	26
1.19(b)(4)	8014	For assignment records, abstract of title and certification, per patent.	Undiscounted	35	37
1.19(f)	8017	Copy of non-U.S. document	Undiscounted	25	26

Section 1.20

Section 1.20 is proposed to be amended by revising paragraphs (a) through (h), (j), and (k) to set forth post issuance fees as authorized under section 10 of the AIA. The changes to

the fee amounts indicated in § 1.20 are shown in table 22.

The USPTO proposes to revise the introductory text to paragraph (d) and to add paragraphs (d)(1) and (d)(2)(i) through (v) to create separate tiered fees for terminal disclaimers under § 1.321.

The USPTO proposes to add paragraph (j)(4) to create a fee for requesting supplemental redetermination after Notice of Final Determination.

TABLE 22—SECTION 1.20 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.20(a)	1811	Certificate of correction	Undiscounted	\$160	\$168
1.20(a)	2811	Certificate of correction	Small	160	168
1.20(a)	3811	Certificate of correction	Micro	160	168
1.20(b)	1816	Processing fee for correcting inventorship in a patent	Undiscounted	160	168
1.20(b)	2816	Processing fee for correcting inventorship in a patent	Small	160	168
1.20(b)	3816	Processing fee for correcting inventorship in a patent	Micro	160	168
1.20(c)(1)(i)	1831	Ex parte reexamination (§ 1.510(a)) streamlined	Undiscounted	6,300	6,615

TABLE 22—SECTION 1.20 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.20(c)(1)(i)	2831	Ex parte reexamination (§ 1.510(a)) streamlined	Small	2,520	2,646
1.20(c)(1)(i)	3831	Ex parte reexamination (§ 1.510(a)) streamlined	Micro	1,260	1,323
1.20(c)(2)	1812	Ex parte reexamination (§ 1.510(a)) non-streamlined	Undiscounted	12,600	13,230
1.20(c)(2)	2812	Ex parte reexamination (§ 1.510(a)) non-streamlined	Small	5,040	5,292
1.20(c)(2)	3812	Ex parte reexamination (§ 1.510(a)) non-streamlined	Micro	2,520	2,646
1.20(c)(3)	1821	Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination.	Undiscounted	480	600
1.20(c)(3)	2821	Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination.	Small	192	240
1.20(c)(3)	3821	Each reexamination independent claim in excess of three and also in excess of the number of such claims in the patent under reexamination.	Micro	96	120
1.20(c)(4)	1822	Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination.	Undiscounted	100	200
1.20(c)(4)	2822	Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination.	Small	40	80
1.20(c)(4)	3822	Each reexamination claim in excess of 20 and also in excess of the number of claims in the patent under reexamination.	Micro	20	40
1.20(c)(6)	1824	Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d).	Undiscounted	2,040	2,140
1.20(c)(6)	2824	Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d).	Small	816	856
1.20(c)(6)	3824	Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d).	Micro	408	428
1.20(d)(1)	1814	Statutory disclaimer, excluding terminal disclaimer	Undiscounted	170	179
1.20(d)(1)	2814	Statutory disclaimer, excluding terminal disclaimer	Small	170	179
1.20(d)(1)	3814	Statutory disclaimer, excluding terminal disclaimer	Micro	170	179
1.20(d)(2)(i)	New	Terminal disclaimer, filed prior to the first action on the merits	Undiscounted	170	200
1.20(d)(2)(i)	New	Terminal disclaimer, filed prior to the first action on the merits	Small	170	200
1.20(d)(2)(i)	New	Terminal disclaimer, filed prior to the first action on the merits	Micro	170	200
1.20(d)(2)(ii)	New	Terminal disclaimer, filed prior to a final action or allowance	Undiscounted	170	500
1.20(d)(2)(ii)	New	Terminal disclaimer, filed prior to a final action or allowance	Small	170	500
1.20(d)(2)(ii)	New	Terminal disclaimer, filed prior to a final action or allowance	Micro	170	500
1.20(d)(2)(iii)	New	Terminal disclaimer, filed after final or allowance	Undiscounted	170	800
1.20(d)(2)(iii)	New	Terminal disclaimer, filed after final or allowance	Small	170	800
1.20(d)(2)(iii)	New	Terminal disclaimer, filed after final or allowance	Micro	170	800
1.20(d)(2)(iv)	New	Terminal disclaimer, filed on or after a notice of appeal	Undiscounted	170	1,100
1.20(d)(2)(iv)	New	Terminal disclaimer, filed on or after a notice of appeal	Small	170	1,100
1.20(d)(2)(iv)	New	Terminal disclaimer, filed on or after a notice of appeal	Micro	170	1,100
1.20(d)(2)(v)	New	Terminal disclaimer, filed in a patented case or in an application for reissue.	Undiscounted	170	1,400
1.20(d)(2)(v)	New	Terminal disclaimer, filed in a patented case or in an application for reissue.	Small	170	1,400
1.20(d)(2)(v)	New	Terminal disclaimer, filed in a patented case or in an application for reissue.	Micro	170	1,400
1.20(e)	1551	For maintaining an original or any reissue patent, due at 3.5 years.	Undiscounted	2,000	2,100
1.20(e)	2551	For maintaining an original or any reissue patent, due at 3.5 years.	Small	800	840
1.20(e)	3551	For maintaining an original or any reissue patent, due at 3.5 years.	Micro	400	420
1.20(f)	1552	For maintaining an original or any reissue patent, due at 7.5 years.	Undiscounted	3,760	3,950
1.20(f)	2552	For maintaining an original or any reissue patent, due at 7.5 years.	Small	1,504	1,580
1.20(f)	3552	For maintaining an original or any reissue patent, due at 7.5 years.	Micro	752	790
1.20(g)	1553	For maintaining an original or any reissue patent, due at 11.5 years.	Undiscounted	7,700	8,085
1.20(g)	2553	For maintaining an original or any reissue patent, due at 11.5 years.	Small	3,080	3,234
1.20(g)	3553	For maintaining an original or any reissue patent, due at 11.5 years.	Micro	1,540	1,617
1.20(h)	1554	Surcharge—3.5 year—late payment within 6 months	Undiscounted	500	525
1.20(h)	2554	Surcharge—3.5 year—late payment within 6 months	Small	200	210
1.20(h)	3554	Surcharge—3.5 year—late payment within 6 months	Micro	100	105
1.20(h)	1555	Surcharge—7.5 year—late payment within 6 months	Undiscounted	500	525
1.20(h)	2555	Surcharge—7.5 year—late payment within 6 months	Small	200	210
1.20(h)	3555	Surcharge—7.5 year—late payment within 6 months	Micro	100	105

TABLE 22—SECTION 1.20 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.20(h)	1556	Surcharge—11.5 year—late payment within 6 months	Undiscounted	500	525
1.20(h)	2556	Surcharge—11.5 year—late payment within 6 months	Small	200	210
1.20(h)	3556	Surcharge—11.5 year—late payment within 6 months	Micro	100	105
1.20(j)(1)	1457	Application for extension of term of patent	Undiscounted	1,180	6,700
1.20(j)(1)	2457	Application for extension of term of patent	Small	1,180	6,700
1.20(j)(1)	3457	Application for extension of term of patent	Micro	1,180	6,700
1.20(j)(2)	1458	Initial application for interim extension (see 37 CFR 1.790)	Undiscounted	440	1,320
1.20(j)(2)	2458	Initial application for interim extension (see 37 CFR 1.790)	Small	440	1,320
1.20(j)(2)	3458	Initial application for interim extension (see 37 CFR 1.790)	Micro	440	1,320
1.20(j)(3)	1459	Subsequent application for interim extension (see 37 CFR 1.790).	Undiscounted	230	680
1.20(j)(3)	2459	Subsequent application for interim extension (see 37 CFR 1.790).	Small	230	680
1.20(j)(3)	3459	Subsequent application for interim extension (see 37 CFR 1.790).	Micro	230	680
1.20(j)(4)	New	Supplemental redetermination after notice of final determination	Undiscounted	n/a	1,440
1.20(j)(4)	New	Supplemental redetermination after notice of final determination	Small	n/a	1,440
1.20(j)(4)	New	Supplemental redetermination after notice of final determination	Micro	n/a	1,440
1.20(k)(1)	1826	Request for supplemental examination	Undiscounted	4,620	4,850
1.20(k)(1)	2826	Request for supplemental examination	Small	1,848	1,940
1.20(k)(1)	3826	Request for supplemental examination	Micro	924	970
1.20(k)(2)	1827	Reexamination ordered as a result of supplemental examination	Undiscounted	12,700	13,335
1.20(k)(2)	2827	Reexamination ordered as a result of supplemental examination	Small	5,080	5,334
1.20(k)(2)	3827	Reexamination ordered as a result of supplemental examination	Micro	2,540	2,667
1.20(k)(3)(i)	1828	Supplemental examination document size fee—for nonpatent document having between 21 and 50 sheets.	Undiscounted	180	190
1.20(k)(3)(i)	2828	Supplemental examination document size fee—for nonpatent document having between 21 and 50 sheets.	Small	72	76
1.20(k)(3)(i)	3828	Supplemental examination document size fee—for nonpatent document having between 21 and 50 sheets.	Micro	36	38
1.20(k)(3)(ii)	1829	Supplemental examination document size fee—for each additional 50 sheets or a fraction thereof in a nonpatent document.	Undiscounted	300	315
1.20(k)(3)(ii)	2829	Supplemental examination document size fee—for each additional 50 sheets or a fraction thereof in a nonpatent document.	Small	120	126
1.20(k)(3)(ii)	3829	Supplemental examination document size fee—for each additional 50 sheets or a fraction thereof in a nonpatent document.	Micro	60	63

Section 1.21

Section 1.21 is proposed to be amended by revising paragraphs (a), (e),

(h), (i), and (n) through (q) to set forth miscellaneous fees and charges as authorized under section 10 of the AIA.

The changes to the fee amounts indicated in § 1.21 are shown in table 23.

TABLE 23—SECTION 1.21 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.21(a)(1)(i)	9001	Application fee (non-refundable)	Undiscounted	\$110	\$116
1.21(a)(1)(ii)(A)	9010	For test administration by commercial entity	Undiscounted	210	221
1.21(a)(1)(iii)	9029	For USPTO-administered review of registration examination	Undiscounted	470	494
1.21(a)(1)(iv)	9030	Request for extension of time in which to schedule examination for registration to practice (non-refundable).	Undiscounted	115	121
1.21(a)(2)(i)	9003	On registration to practice under § 11.6	Undiscounted	210	221
1.21(a)(2)(ii)	9026	On grant of limited recognition under § 11.9(b)	Undiscounted	210	221
1.21(a)(4)(i)	9005	Certificate of good standing as an attorney or agent, standard	Undiscounted	40	42
1.21(a)(4)(ii)	9006	Certificate of good standing as an attorney or agent, suitable for framing.	Undiscounted	50	53
1.21(a)(5)(i)	9012	Review of decision by the Director of Enrollment and Discipline under § 11.2(c).	Undiscounted	420	440
1.21(a)(5)(ii)	9013	Review of decision of the Director of Enrollment and Discipline under § 11.2(d).	Undiscounted	420	440
1.21(a)(6)(ii)	9028	For USPTO-assisted change of address within the Office of Enrollment and Discipline Information System.	Undiscounted	70	74
1.21(a)(9)(i)	9020	Delinquency fee	Undiscounted	50	53
1.21(a)(9)(ii)	9004	Administrative reinstatement fee	Undiscounted	210	221



TABLE 23—SECTION 1.21 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.21(a)(10) .....	9014	On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office.	Undiscounted ....	1,680	1,764
1.21(e) .....	8020	International type search report .....	Undiscounted ...	40	42
1.21(h)(2) .....	8021	Recording each patent assignment, agreement or other paper, per property—if not submitted electronically.	Undiscounted ....	50	53
1.21(i) .....	8022	Publication in Official Gazette .....	Undiscounted ...	25	26
1.21(n) .....	8026	Handling fee for incomplete or improper application .....	Undiscounted ...	140	147
1.21(o)(1) .....	1091	Submission of sequence listings of 300MB to 800MB .....	Undiscounted ....	1,060	1,115
1.21(o)(1) .....	2091	Submission of sequence listings of 300MB to 800MB .....	Small .....	424	446
1.21(o)(1) .....	3091	Submission of sequence listings of 300MB to 800MB .....	Micro .....	212	223
1.21(o)(2) .....	1092	Submission of sequence listings of more than 800MB .....	Undiscounted ....	10,500	11,025
1.21(o)(2) .....	2092	Submission of sequence listings of more than 800MB .....	Small .....	4,200	4,410
1.21(o)(2) .....	3092	Submission of sequence listings of more than 800MB .....	Micro .....	2,100	2,205
1.21(p) .....	8053	Additional fee for overnight delivery .....	Undiscounted ...	40	42
1.21(q) .....	8054	Additional fee for expedited service .....	Undiscounted ....	170	179

Section 1.78

Section 1.78 is proposed to be amended by revising paragraph (d)(3)(i) to include the fee cited in § 1.17(w) as one of the requirements that must be submitted during the pendency of the later-filed application.

The USPTO proposes to revise paragraph (e)(2) to add the applicable fee in § 1.17(w) to the list of required items that must accompany a petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, 365(c), or 386(c) for the benefit of a prior-filed application.

Section 1.97

Section 1.97 is proposed to be amended by revising paragraph (a) to require the proposed information disclosure statement size fee under § 1.17(v) for an information disclosure statement in compliance with § 1.98 to be considered by the USPTO during the pendency of the application.

Section 1.98

Section 1.98 is proposed to be amended by revising the introductory text in paragraph (a) to include paragraph (a)(4) in the items that shall be included with any information disclosure statement.

The USPTO proposes to add paragraph (a)(4), which will require a clear written assertion that the

information disclosure statement is accompanied by the applicable information disclosure statement size fee under § 1.17(v) or a clear written assertion that no information disclosure statement size fee under § 1.17(v) is required.

Section 1.136

Section 1.136 is proposed to be amended by revising paragraph (a)(1) to include the addition of the fee set in § 1.17(u) in extensions of time.

Section 1.138

Section 1.138 is proposed to be amended by revising paragraph (d) to expand the applicability of the express abandonment rule to permit such refunds in national stage applications filed under 35 U.S.C. 371. The current rule permits such refunds only in nonprovisional applications filed under 35 U.S.C. 111(a) and § 1.53(b). Paragraph (d) is also proposed to be amended to clarify that refunds of search and excess claim fee payments under these provisions are limited to the search and excess claim fees set forth in § 1.16 (which apply to applications filed under 35 U.S.C. 111(a) and § 1.53(b)) and search and excess claim fees set forth in § 1.492 (which apply to national stage applications filed under 35 U.S.C. 371). Paragraph (d) is also proposed to be amended to clarify that refunds of

search and excess claim fee payments under these provisions are limited to the search and excess claim fees set forth in § 1.16 (which apply to applications filed under 35 U.S.C. 111(a) and § 1.53(b)) and search and excess claim fees set forth in § 1.492 (which apply to national stage applications filed under 35 U.S.C. 371).

Section 1.445

Section 1.445 is proposed to be amended by revising and republishing paragraph (a) to set forth international filing, processing, and search fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 1.445 are shown in table 24. The proposed fees are for or an international application having a receipt date that is on or after the effective date of the final rule. Fees previously provided for in paragraphs (a)(1)(i)(A), (a)(2)(i), and (a)(3)(i) for international applications having a receipt date that is on or after December 29, 2023 will be redesignated as (a)(1)(i)(B), (a)(2)(ii), and (a)(3)(ii) and will apply to international applications having a receipt date that is on or after December 29, 2022 and before the effective date of the final rule. Other paragraphs under paragraphs (a)(1) through (3) are proposed to be redesignated to accommodate these proposed changes.

TABLE 24—SECTION 1.445 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.445(a)(1)(i)(A) .....	1601	Transmittal fee .....	Undiscounted ...	\$260	\$285
1.445(a)(1)(i)(A) .....	2601	Transmittal fee .....	Small .....	104	114
1.445(a)(1)(i)(A) .....	3601	Transmittal fee .....	Micro .....	52	57
1.445(a)(2)(i) .....	1602	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16).	Undiscounted ...	2,180	2,400

TABLE 24—SECTION 1.445 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.445(a)(2)(i) .....	2602	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16).	Small .....	872	960
1.445(a)(2)(i) .....	3602	Search fee—regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16).	Micro .....	436	480
1.445(a)(3)(i) .....	1604	Supplemental search fee when required, per additional invention.	Undiscounted ...	2,180	2,400
1.445(a)(3)(i) .....	2604	Supplemental search fee when required, per additional invention.	Small .....	872	960
1.445(a)(3)(i) .....	3604	Supplemental search fee when required, per additional invention.	Micro .....	436	480
1.445(a)(4) .....	1621	Transmitting application to Intl. Bureau to act as receiving office.	Undiscounted ...	260	285
1.445(a)(4) .....	2621	Transmitting application to Intl. Bureau to act as receiving office.	Small .....	104	114
1.445(a)(4) .....	3621	Transmitting application to Intl. Bureau to act as receiving office.	Micro .....	52	57
1.445(a)(5) .....	1627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter.	Undiscounted ...	320	335
1.445(a)(5) .....	2627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter.	Small .....	128	134
1.445(a)(5) .....	3627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter.	Micro .....	64	67

Section 1.482

Section 1.482 is proposed to be amended by revising paragraphs (a) and

(c) to set forth international preliminary examination and processing fees for international patent applications entering the international stage as

authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 1.482 are shown in table 25.

TABLE 25—SECTION 1.482 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.482(a)(1)(i) .....	1605	Preliminary examination fee—U.S. was the ISA .....	Undiscounted ...	\$640	\$705
1.482(a)(1)(i) .....	2605	Preliminary examination fee—U.S. was the ISA .....	Small .....	256	282
1.482(a)(1)(i) .....	3605	Preliminary examination fee—U.S. was the ISA .....	Micro .....	128	141
1.482(a)(1)(ii) .....	1606	Preliminary examination fee—U.S. was not the ISA .....	Undiscounted ...	800	880
1.482(a)(1)(ii) .....	2606	Preliminary examination fee—U.S. was not the ISA .....	Small .....	320	352
1.482(a)(1)(ii) .....	3606	Preliminary examination fee—U.S. was not the ISA .....	Micro .....	160	176
1.482(a)(2) .....	1607	Supplemental examination fee per additional invention .....	Undiscounted ...	640	705
1.482(a)(2) .....	2607	Supplemental examination fee per additional invention .....	Small .....	256	282
1.482(a)(2) .....	3607	Supplemental examination fee per additional invention .....	Micro .....	128	141
1.482(c) .....	1627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter.	Undiscounted ...	320	335
1.482(c) .....	2627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter.	Small .....	128	134
1.482(c) .....	3627	Late furnishing fee for providing a sequence listing in response to an invitation under PCT rule 13ter.	Micro .....	64	67

Section 1.492

Section 1.492 is proposed to be amended by revising paragraphs (a)

through (f) and (h) through (j) to set forth national stage fees for international patent applications as authorized under

section 10 of the AIA. The changes to the fee amounts indicated in § 1.492 are shown in table 26.

TABLE 26—SECTION 1.492 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.492(a) .....	1631	Basic national stage fee .....	Undiscounted ...	\$320	\$350
1.492(a) .....	2631	Basic national stage fee .....	Small .....	128	140
1.492(a) .....	3631	Basic national stage fee .....	Micro .....	64	70
1.492(b)(2) .....	1641	National stage search fee—U.S. was the ISA .....	Undiscounted ...	140	145
1.492(b)(2) .....	2641	National stage search fee—U.S. was the ISA .....	Small .....	56	58
1.492(b)(2) .....	3641	National stage search fee—U.S. was the ISA .....	Micro .....	28	29
1.492(b)(3) .....	1642	National stage search fee—search report prepared and provided to USPTO.	Undiscounted ...	540	565

TABLE 26—SECTION 1.492 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.492(b)(3)	2642	National stage search fee—search report prepared and provided to USPTO.	Small	216	226
1.492(b)(3)	3642	National stage search fee—search report prepared and provided to USPTO.	Micro	108	113
1.492(b)(4)	1632	National stage search fee—all other situations	Undiscounted	700	770
1.492(b)(4)	2632	National stage search fee—all other situations	Small	280	308
1.492(b)(4)	3632	National stage search fee—all other situations	Micro	140	154
1.492(c)(2)	1633	National stage examination fee—all other situations	Undiscounted	800	880
1.492(c)(2)	2633	National stage examination fee—all other situations	Small	320	352
1.492(c)(2)	3633	National stage examination fee—all other situations	Micro	160	176
1.492(d)	1614	Each independent claim in excess of three	Undiscounted	480	600
1.492(d)	2614	Each independent claim in excess of three	Small	192	240
1.492(d)	3614	Each independent claim in excess of three	Micro	96	120
1.492(e)	1615	Each claim in excess of 20	Undiscounted	100	200
1.492(e)	2615	Each claim in excess of 20	Small	40	80
1.492(e)	3615	Each claim in excess of 20	Micro	20	40
1.492(f)	1616	Multiple dependent claim	Undiscounted	860	905
1.492(f)	2616	Multiple dependent claim	Small	344	362
1.492(f)	3616	Multiple dependent claim	Micro	172	181
1.492(h)	1617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage.	Undiscounted	160	170
1.492(h)	2617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage.	Small	64	68
1.492(h)	3617	Search fee, examination fee or oath or declaration after the date of commencement of the national stage.	Micro	32	34
1.492(i)	1618	English translation after thirty months from priority date	Undiscounted	140	145
1.492(i)	2618	English translation after thirty months from priority date	Small	56	58
1.492(i)	3618	English translation after thirty months from priority date	Micro	28	29
1.492(j)	1681	National stage application size fee—for each additional 50 sheets that exceeds 100 sheets.	Undiscounted	420	440
1.492(j)	2681	National stage application size fee—for each additional 50 sheets that exceeds 100 sheets.	Small	168	176
1.492(j)	3681	National stage application size fee—for each additional 50 sheets that exceeds 100 sheets.	Micro	84	88

Section 1.555

Section 1.555 is proposed to be amended by revising paragraph (a) to require the proposed information disclosure statement size fee under § 1.17(v) for an information disclosure statement in compliance with § 1.98 to

be considered by the USPTO during the pendency of the reexamination proceeding.

Section 1.1031

Section 1.1031 is proposed to be amended by revising paragraph (a) to set

forth international design application fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 1.1031 are shown in table 27.

TABLE 27—SECTION 1.1031 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
1.1031(a)	1781	Hague international design application—transmittal fee	Undiscounted	\$120	\$125
1.1031(a)	2781	Hague international design application—transmittal fee	Small	48	50
1.1031(a)	3781	Hague international design application—transmittal fee	Micro	24	25

Section 41.20

Section 41.20 is proposed to be amended by revising paragraphs (a) and

(b) to set forth petition and appeal fees as authorized under section 10 of the AIA. The changes to the fee amounts

indicated in § 41.20 are shown in table 28.

TABLE 28—SECTION 41.20 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
41.20(a)	1405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3.	Undiscounted	\$420	\$440
41.20(a)	2405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3.	Small	420	440

TABLE 28—SECTION 41.20 FEE CHANGES—Continued

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
41.20(a)	3405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3.	Micro	420	440
41.20(b)(1)	1401	Notice of appeal	Undiscounted	840	880
41.20(b)(1)	2401	Notice of appeal	Small	336	352
41.20(b)(1)	3401	Notice of appeal	Micro	168	176
41.20(b)(2)(ii)	1404	Filing a brief in support of an appeal in an inter partes reexamination proceeding.	Undiscounted	2,100	2,200
41.20(b)(2)(ii)	2404	Filing a brief in support of an appeal in an inter partes reexamination proceeding.	Small	840	880
41.20(b)(2)(ii)	3404	Filing a brief in support of an appeal in an inter partes reexamination proceeding.	Micro	420	440
41.20(b)(3)	1403	Request for oral hearing	Undiscounted	1,360	1,430
41.20(b)(3)	2403	Request for oral hearing	Small	544	572
41.20(b)(3)	3403	Request for oral hearing	Micro	272	286
41.20(b)(4)	1413	Forwarding an appeal in an application or ex parte reexamination proceeding to the Board.	Undiscounted	2,360	2,480
41.20(b)(4)	2413	Forwarding an appeal in an application or ex parte reexamination proceeding to the Board.	Small	944	992
41.20(b)(4)	3413	Forwarding an appeal in an application or ex parte reexamination proceeding to the Board.	Micro	472	496

Section 42.15

Section 42.15 is proposed to be amended by revising paragraphs (a)

through (e) and adding paragraph (f) to set forth inter partes review and post-grant review or covered business method patent review of a patent fees as

authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 42.15 are shown in table 29.

TABLE 29—SECTION 42.15 FEE CHANGES

CFR section	Fee code	Description	Entity type	Current fee	Proposed fee
42.15(a)(1)	1406	Inter partes review request fee—Up to 20 claims	Undiscounted	\$19,000	\$23,750
42.15(a)(2)	1414	Inter partes review post-institution fee—Up to 20 claims	Undiscounted	22,500	28,125
42.15(a)(3)	1407	Inter partes review request of each claim in excess of 20	Undiscounted	375	470
42.15(a)(4)	1415	Inter partes post-institution request of each claim in excess of 20.	Undiscounted	750	940
42.15(b)(1)	1408	Post-grant or covered business method review request fee—Up to 20 claims.	Undiscounted	20,000	25,000
42.15(b)(2)	1416	Post-grant or covered business method review post-institution fee—Up to 20 claims.	Undiscounted	27,500	34,375
42.15(b)(3)	1409	Post-grant or covered business method review request of each claim in excess of 20.	Undiscounted	475	595
42.15(b)(4)	1417	Post-grant or covered business method review post-institution request of each claim in excess of 20.	Undiscounted	1,050	1,315
42.15(c)(1)	1412	Petition for a derivation proceeding	Undiscounted	420	440
42.15(d)	1411	Request to make a settlement agreement available and other requests filed in a patent trial proceeding.	Undiscounted	420	440
42.15(e)	1418	Pro hac vice admission fee	Undiscounted	250	263
42.15(f)	New	Request for review of a PTAB decision by the Director	Undiscounted	n/a	440

VII. Rulemaking Considerations

A. America Invents Act

This proposed rule seeks to set or adjust fees under section 10(a) of the AIA as amended by the SUCCESS Act, Public Law 115–273, 132 Stat. 4158. Section 10(a) of the AIA authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under 35 U.S.C. for any services performed, or materials furnished, by the USPTO. The SUCCESS Act extends the USPTO fee setting authority until September 2026.

Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated cost to the USPTO for processing, activities, services, and materials relating to patents, including administrative costs of the agency with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section

10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under section 10 and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the USPTO provide a public comment period of not less than 45 days.

PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of

patent operations. When proposing fees under section 10 of the AIA, the Director must provide PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. PPAC must provide a written report to the public detailing the committee's comments, advice, and recommendations regarding the proposed fees before the USPTO issues a final rule. The USPTO must consider and analyze any comments, advice, or recommendations received from PPAC before setting or adjusting fees.

Consistent with this framework, on April 20, 2023, the Director notified PPAC of the USPTO's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. PPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on May 18, 2023, where members of the public were given the opportunity to provide oral testimony. Transcripts of the hearing are available for review on the USPTO website at [https://www.uspto.gov/sites/default/files/documents/PPAC\\_Hearing\\_Transcript-20230518.pdf](https://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript-20230518.pdf). Members of the public were also given the opportunity to submit written comments for PPAC to consider and these comments are available on *Regulations.gov* at <https://www.regulations.gov/document/PTO-P-2023-0017-0001>. On August 14, 2023, PPAC released a written report setting forth in detail their comments, advice, and recommendations regarding the preliminary proposed fees. The PPAC Report is available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/PPAC-Report-on-2023-Fee-Proposal.docx>. The USPTO considered and analyzed all comments, advice, and recommendations received from PPAC before publishing this NPRM.

### B. Regulatory Flexibility Act (RFA)

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the RFA (5 U.S.C. 601 *et seq.*) to examine the impact of this proposed rule on small entities. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an IRFA, unless the

agency certifies under 5 U.S.C. 605(b) that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. Given that this proposed fee schedule is projected to result in \$2,050 million in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2025 to FY 2029, the USPTO acknowledges that the fee adjustments proposed will impact all entities seeking patent protection and could have a significant impact on small and micro entities. The \$2,050 million in additional aggregate revenue results from an additional \$301 million in FY 2025, \$434 million in FY 2026, \$437 million in FY 2027, \$437 million in FY 2028, and \$441 million in FY 2029.

While the USPTO welcomes all comments on this IRFA, it particularly seeks comments describing the type and extent of the impact of the proposed patent fees on commenters' specific businesses. In describing the impact, the USPTO requests biographic detail about the impacted businesses or concerns, including the size, average annual revenue, past patent activity (*e.g.*, applications submitted, contested cases pursued, maintenance fees paid, patents abandoned, etc.), and planned patent activity of the impacted business or concern, where feasible. The USPTO will use this information to further assess the impact of this proposed rule on small entities. Where possible, comments should also describe any recommended alternative methods of setting and adjusting patent fees that would further reduce the impact on small entities.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 6 below discusses the alternatives to this proposal that were considered.

#### 1. A description of the reasons why the action by the agency is being considered.

Section 10 of the AIA authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under 35 U.S.C. for any services performed, or materials furnished, by the USPTO. Section 10 prescribes that patent fees may be set or adjusted only to recover the aggregate estimated costs for processing, activities, services, and materials relating to patents, including USPTO administrative costs with respect to such patent fees. This proposed fee schedule will recover the aggregate costs of patent operations while enabling the USPTO to predictably finance the agency's daily operations and mitigate financial risks.

#### 2. The objectives of, and legal basis for, the proposed rule.

Since its inception, the AIA strengthened the patent system by affording the USPTO the "resources it requires to clear the still sizeable backlog of patent applications and move forward to deliver to all American inventors the first rate service they deserve." H.R. Rep. No. 112–98(I), at 163 (2011). The objective of this proposed rule is to set or adjust patent fees under section 10 of the AIA to recover the aggregate costs of patent operations and secure sufficient revenue to deliver efficient and reliable services to the USPTO's stakeholders. The fee revenue would help to promote clear, enforceable patents that are essential to economic growth, global competitiveness, and promoting innovation. Additional information on the USPTO's goals and operating requirements may be found in the "USPTO FY 2025 President's Budget Request," available on the USPTO website at <https://www.uspto.gov/about-us/performance-and-planning/budget-and-financial-information>.

#### 3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

##### a. SBA Size Standard

The Small Business Act (SBA) size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the Small Business Administration, the USPTO formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006). The USPTO's alternate small business size standard consists of the SBA's previously established size standard for entities entitled to pay reduced patent fees. See 13 CFR 121.802.

Unlike the SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The USPTO's definition of a small business concern for RFA

purposes is a business or other concern that: (1) meets the SBA’s definition of a “business concern or concern” set forth in § 121.105, and (2) meets the size standards set forth in § 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) whose number of employees, including affiliates, does not exceed 500 persons, and (b) that has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. See 71 FR at 67109, 1313 Off. Gaz. Pat. Office 60.

A patent applicant can self-identify on a patent application as qualifying as a small entity or may provide certification of micro entity status for reduced patent fees under the USPTO’s alternative size standard. The data is captured and tracked for each patent application submitted.

**b. Small Entity Defined**

The AIA, as amended by the UAIA, provides that fees set or adjusted under section 10(a) “for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 60 percent” with respect to the application of such fees to any “small entity” (as defined in § 1.27) that qualifies for reduced fees under 35 U.S.C. 41(h)(1). In turn, 125 Stat. at 316–17. 35 U.S.C. 41(h)(1) provides that certain patent fees “shall be reduced by 60 percent” for a small business concern as defined by section

3 of the SBA, and to any independent inventor or nonprofit organization as defined in regulations described by the Director.

**c. Micro Entity Defined**

Section 10(g) of the AIA created a new category of entity called a “micro entity.” 35 U.S.C. 123; see also 125 Stat. at 318–19. Section 10(b) of the AIA, as amended by the UAIA, provides that the fees set or adjusted under section 10(a) “for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 80 percent with respect to the application of such fees to any micro entity as defined by 35 U.S. Code 123.” 125 Stat. at 315–17. 35 U.S.C. 123(a) defines a “micro entity” as an applicant who makes a certification that the applicant: (1) qualifies as a small entity as defined in § 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), 35 U.S.C. 111(b), or Patent Cooperation Treaty (PCT) applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or

law, to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity exceeding the income limit set forth in (3) above. See 125 Stat. at 318; see also <https://www.uspto.gov/PatentMicroEntity>. 35 U.S.C. 123(d) also defines a “micro” as an applicant who certifies that: (1) The applicant’s employer, from which the applicant obtains the majority of the applicant’s income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

**d. Estimate of Number of Small Entities Affected**

The changes in this proposed rule will apply to any entity, including small and micro entities, that pays any patent fee set forth in the NPRM. The reduced fee rates (60% for small entities and 80% for micro entities) will continue to apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The USPTO reviews historical data to estimate the percentages of application filings asserting small entity status. Table 30 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

**TABLE 30—NUMBER OF PATENT APPLICATIONS FILED IN THE LAST FIVE YEARS \***

	FY2020	FY2021	FY2022	FY2023**	Average
<b>Utility:</b>					
All .....	607,496	594,078	590,086	594,858	596,630
Small .....	139,064	142,488	140,131	142,646	141,082
% Small .....	22.9%	24.0%	23.7%	24.0%	23.6%
Micro .....	19,408	19,927	18,467	17,559	18,840
% Micro .....	3.2%	3.4%	3.1%	3.0%	3.2%
<b>Reissue:</b>					
All .....	1,204	1,195	1,245	1,115	1,190
Small .....	363	381	394	381	380
% Small .....	30.1%	31.9%	31.6%	34.2%	31.9%
Micro .....	31	19	33	14	24
% Micro .....	2.6%	1.6%	2.7%	1.3%	2.0%
<b>Plant:</b>					
All .....	1,043	945	933	865	947
Small .....	504	424	444	415	447
% Small .....	48.3%	44.9%	47.6%	48.0%	47.2%
Micro .....	7	6	10	5	7
% Micro .....	0.7%	0.6%	1.1%	0.6%	0.7%
<b>Design:</b>					
All .....	50,002	56,086	55,670	54,659	54,104
Small .....	19,035	19,892	18,935	20,354	19,554
% Small .....	38.1%	35.5%	34.0%	37.2%	36.1%
Micro .....	9,042	15,154	14,466	14,239	13,225

TABLE 30—NUMBER OF PATENT APPLICATIONS FILED IN THE LAST FIVE YEARS \*—Continued

	FY2020	FY2021	FY2022	FY2023 **	Average
% Micro .....	18.1%	27.0%	26.0%	26.1%	24.4%

\* The patent application filing data in this table includes RCEs.

\*\* FY 2023 application filing data are preliminary and will be finalized in the FY 2024 Annual Financial Report (AFR) and Annual Performance Plan and Annual Performance Report (APPR).

Because the percentage of small entity filings varies widely between application types, the USPTO has averaged the small entity filing rates over the past five years for those application types to estimate future filing rates by small and micro entities. Those average rates appear in the last column of table 30. The USPTO estimates that small entity filing rates will continue for the next five years at these average historic rates.

The USPTO forecasts the number of projected patent applications (*i.e.*, workload) for the next five years using a combination of historical data, economic analysis, and subject matter expertise. The USPTO estimates that UPR patent application filings will grow by 0.4% in FY 2024 and about 1.5% per year on average from FY 2025 through

FY 2029. Design patent applications are forecast independently of UPR applications because they exhibit different filing behaviors.

Using the estimated filings for the next five years, and the average historic rates of small entity filings, table 31 presents the USPTO’s estimates of the number of patent application filings by all applicants, including small and micro entities, over the next five fiscal years by application type.

The USPTO has previously undertaken an elasticity analysis to examine if fee adjustments may impact small entities and whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive demand for services by patent applicants and patentees is to fee changes. If elasticity

is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The USPTO analyzed elasticity at the overall filing level across all patent applicants with regard to entity size and estimated the potential impact to patent application filings across entities. Additional information about how the USPTO estimates elasticity is provided in “Setting and Adjusting Patent Fees during Fiscal Year 2020—Description of Elasticity Estimates,” available on the USPTO website at [https://www.uspto.gov/sites/default/files/documents/Elasticity\\_Appendix.docx](https://www.uspto.gov/sites/default/files/documents/Elasticity_Appendix.docx).

TABLE 31—ESTIMATED NUMBERS OF PATENT APPLICATIONS, FY 2024–2029

	FY 2024 (current)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Utility—All .....	595,315	607,897	613,902	622,038	628,036	641,784
Reissue—All .....	640	660	680	700	700	700
Plant—All .....	860	860	860	860	860	860
Design—All .....	54,986	57,185	59,472	62,446	65,568	68,847
Total—All .....	651,801	666,602	674,914	686,044	695,164	712,191

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and type of professional skills necessary for preparation of the report or record.

If implemented, this proposed rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small and micro entities will continue to apply. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under this proposal. This action proposes only to adjust patent fees and not to set procedures for asserting small entity status or certifying micro entity status, as previously discussed.

The full proposed fee schedule (see Part VI: Discussion of Specific Rules) is set forth in the NPRM. The proposed fee

schedule sets or adjusts 455 patent fees in total. This includes 73 new fees.

5. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rules.

The USPTO is the sole agency of the U.S. Government responsible for administering the provisions of 35 U.S.C. pertaining to examining and granting patents. It is solely responsible for issuing rules to comply with section 10 of the AIA. No other Federal, State, or local entity has jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the PCT). Nevertheless, the USPTO believes

that there are no other duplicative or overlapping rules.

6. A description of any significant alternatives to the proposed rules which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rules on small entities.

The USPTO considered several alternative approaches to this proposed rule, discussed below, including full cost recovery for individual services, an across-the-board adjustment to fees, and a baseline (current fee rates). The discussion here begins with a description of the fee schedule adopted for this proposed rule.

a. Alternative 1: Proposed Alternative—Set and Adjust Patent Fees

The alternative proposed herein secures the USPTO’s required revenue to facilitate the effective administration of the U.S. patent system, including implementing the Strategic Plan. The revenue will allow the USPTO to

continue to balance timely examination—to help innovators bring their ideas and products to impact more quickly and efficiently—with improvements in patent quality—particularly, the robustness and reliability of issued patents—and ensure the USPTO can resource mission success. This will benefit all applicants, including small and micro entities, without undue burden to patent applicants and holders, barriers to entry, or reduced incentives to innovate. This alternative maintains small and micro entity discounts. Compared to the current fee schedule, there are no new small or micro entity fee codes being extended to existing undiscounted fee rates and none are being eliminated.

As discussed throughout this document, the fee changes proposed in this alternative are moderate compared to other alternatives. Given that the proposed fee schedule will result in increased aggregate revenue under this alternative, small and micro entities would pay higher fees when compared to the current fee schedule (Alternative 4).

In summary, the fees to obtain a patent will increase. All fees are subject to the 5% across-the-board increase. In addition to the across-the-board increase, some fees will be subject to a larger increase. For example, the fee rate for a first RCE will increase by 10%, the second RCE by 25%, and third and subsequent RCEs by 80%, respectively. Also, AIA trial fees will increase 25% to better align the fee rates charged with the actual costs borne by the USPTO to provide these proceedings and so PTAB can continue to maintain the appropriate level of judicial and administrative resources to continue to provide high-quality and timely decisions for AIA trials.

Adjusting the patent fee schedule as proposed in this NPRM allows the USPTO to implement the patent-related strategic goals and objectives documented in the Strategic Plan and to carry out requirements as described in the FY 2025 Budget. Specifically, the revenue from this alternative is sufficient to recover the aggregate costs of patent operations and to support the strategic objectives to issue and maintain robust and reliable patents; improve patent application pendency; optimize the patent application process to enable efficiencies for applicants and other stakeholders; and enhance internal processes to prevent fraudulent and abusive behaviors that do not embody the USPTO's mission. Alternative 1 focuses on building resiliency against financial shocks by maintaining the minimum operating

reserve balance (approximately one month of operating expenses) while building the operating reserve balance to the optimal reserve target (approximately three months of operating expenses). While the other alternatives discussed facilitate progress toward some of the USPTO's goals, the proposed alternative is the only one that does so in a way that does not impose undue costs on patent applicants and holders.

The fee schedule for Alternative 1: Proposed Alternative—Set and Adjust Patent Fees is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled “Setting and Adjusting Patent Fees During Fiscal Year 2025—IRFA Tables.” For the comparison between proposed fees under Alternative 1 and current fees, the “current fees” column displays the fees that are in effect as of the publication of this NPRM. This column is used to calculate dollar and percent fee change compared to proposed fees.

#### b. Other Alternatives Considered

In addition to the proposed fee schedule set forth in Alternative 1 above, several other alternative approaches were considered. For each alternative considered, the USPTO calculated proposed fees and the resulting revenue derived by each alternative scenario. The proposed fees and their corresponding revenue tables are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. Please note, only the fees outlined in Alternative 1 are proposed in this NPRM; other scenarios are shown only to demonstrate the analysis of other options.

#### Alternative 2: Unit Cost Recovery

It is common practice in the Federal Government to set individual fees at a level sufficient to recover the cost of that single service. In fact, official guidance on user fees, as cited in OMB Circular A–25, “User Charges,” states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the government is acting in its capacity as sovereign.

As such, the USPTO considered setting most individual undiscounted fees at the historical cost of performing the activities related to the particular service in FY 2022. The USPTO recognizes that using FY 2022 costs to set fee rates beginning in FY 2025 does

not account for inflationary factors that would likely increase costs and necessitate higher fees in the out-years. However, the USPTO contends that the FY 2022 data is the best unit cost data available to inform this analysis.

There are several complexities in achieving individual fee unit cost recovery for the patent fee schedule. The most significant is the AIA requirement to provide a 60% discount on fees to small entities and an 80% discount on fees to micro entities. To account for this requirement, this alternative retains existing small and micro entity discounts where eligible under AIA authority. To provide these discounts and still generate sufficient revenue to recover the anticipated budgetary requirements over the five-year period, maintenance fees must be set significantly above unit cost under this alternative. Note that the USPTO no longer collects activity-based information for maintenance fees, and previous year unit costs were negligible.

Except for maintenance fees, this alternative sets fees for which there is no FY 2022 cost data at current rates. For the small number of services that have a variable fee, the aggregate revenue table does not list a fee. Instead, for those services with an estimated workload, the workload is listed in dollars rather than units to develop revenue estimates. Fees without either a fixed fee rate or a workload estimate are assumed to provide zero revenue.

Alternative 2 does not align well with the strategic and policy goals of this proposed rule. Front-end services (*i.e.*, filing, search, and examination) are costlier for the USPTO to perform than back-end services (*i.e.*, issuance and maintenance), but both the current (the Baseline) and proposed fee schedule (Alternative 1) are structured to collect fees at filing below the cost and more fees further along in the process, when the patent owner has better information about a patent's value, rather than at the time of filing, when applicants are less certain about the value of their invention. Setting fees at the cost of the service under Alternative 2 would reverse the long-established policy to set front-end fees below cost to foster innovation and would create a barrier for entry into the patent system.

The USPTO has estimated the potential quantitative elasticity impacts for application filings (*e.g.*, filing, search, and examination fees), maintenance renewals (all three stages), and other major fee categories. Results of this analysis indicate that a high cost of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative



activities among all entities, especially for small and micro entities. Under the current fee schedule, maintenance fees subsidize all applications. By setting fees to recover the cost of each service at each point in the application process, the USPTO is effectively charging high fees for every patent application, meaning those applicants who have less information about the patentability of their claims or the market value of their invention may be less likely to pursue patent prosecution. The ultimate effect of these changes in behavior is likely to stifle innovation. While the loss of the front-end subsidy designed to promote innovation strategies is the most obvious cost of this alternative, the impacts of much costlier patent processing options (e.g., RCEs and appeals) are also noticeable.

Similarly, the USPTO suspects that patent renewal rates could change as well, given fee reductions for maintenance fees at each of the three stages. While some innovators and firms may choose to file fewer applications given the higher front-end costs, others, whose claims are allowed or upheld, may seek to fully maximize the benefits of obtaining a patent by keeping those patents in force for longer than they would have previously (i.e., under the baseline). In the aggregate, patents that are maintained beyond their useful life weaken the IP system by slowing the rate of public accessibility and follow-on inventions, which is contrary to the USPTO's policy factor of promoting innovation strategies. In sum, this alternative is inadequate to accomplish the goals as stated in Part IV: Rulemaking Goals and Strategies.

The fee schedule for Alternative 2: Unit Cost Recovery is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled "Setting and Adjusting Patent Fees During Fiscal Year 2025—IRFA Tables." For the comparison between proposed (unit cost recovery) fees and current fees, the "current fees" column displays the fees that are in effect as of the publication of this NPRM. This column is used to calculate dollar and percent fee change compared to proposed fees.

#### Alternative 3: Across-the-Board Adjustment

In years past, the USPTO used its authority to adjust statutory fees annually according to increases in the consumer price index (CPI), which is a commonly used measure of inflation. Building on this prior approach and incorporating the additional authority under the AIA to set small and micro entity fees, Alternative 3 would set fees

by applying a one-time 12.5%, across-the-board inflationary increase to the baseline (current fees) beginning in FY 2025. A 12.5% increase represents the change in revenue needed to achieve the aggregate revenue necessary to recover the aggregate costs laid out in the FY 2025 Budget.

Under this alternative, nearly every existing fee would be increased, no new fees would be introduced, and no fees would be discontinued or reduced. This alternative maintains the status quo ratio of front-end and back-end fees, given that all fees would be adjusted by the same escalation factor, thereby promoting innovation strategies and allowing applicants to gain access to the patent system through fees set below cost while patent holders pay issue and maintenance fees above cost to subsidize the below-cost front-end fees. Alternative 3 nevertheless fails to implement policy factors and deliver benefits beyond what exists in the Baseline fee schedule (e.g., no fee adjustments to offer new patent prosecution options or facilitate more effective administration of the patent system).

The fee schedule for Alternative 3: Across-the-Board Adjustment is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled "Setting and Adjusting Patent Fees During Fiscal Year 2025—IRFA Tables." For the comparison between proposed (across-the-board adjustment) fees and current fees, the "current fees" column displays the fees that are in effect as of the publication of this NPRM. This column is used to calculate dollar and percent fee change compared to proposed fees.

#### Alternative 4: Baseline (Current Fee Schedule)

The USPTO considered a no-action alternative. This alternative would retain the status quo, meaning that the USPTO would continue the small and micro entity discounts that the Congress provided in section 10 of the AIA, as amended by the UAIA, and maintain the fees that became effective on December 29, 2022.

Alternative 4 would not secure aggregate revenue to recover the aggregate costs laid out in the FY 2025 Budget. Under this alternative, the USPTO only expects to collect sufficient revenue to continue executing some, not all, of the patent priorities. For example, the USPTO plans to hire approximately 800 to 850 patent examiners in FY 2024 through FY 2025, and between 700 and 900 patent examiners in FY 2026

through FY 2029 (averaging 350 over estimated attrition levels) during the five-year planning horizon. This additional examination capacity will allow the agency to improve patent reliability and maintain patent term adjustment (PTA) compliance rates. Alternative 4 provides neither sufficient resources to hire the same number of examiners nor sufficient resources to continue building the patent operating reserve to its optimal level in the five-year planning horizon. In fact, current estimates project that under the Baseline fee schedule, the USPTO would withdraw funds from the patent operating reserve in every year, until the reserve is exhausted during FY 2027. This approach would not provide sufficient aggregate revenue to accomplish the USPTO's rulemaking goals as stated in Part IV: Rulemaking Goals and Strategies. IT improvements, progress on timely processing and quality, and other improvement activities would continue, but at a significantly slower rate as increases in core patent examination costs crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its operating reserves, leaving the USPTO vulnerable to fiscal and economic events. This would expose core operations to unacceptable levels of financial risk and would position the USPTO to have to return to making inefficient, short-term funding decisions.

#### Alternatives Specified by the RFA

The RFA provides that an agency also consider four specified "alternatives" or approaches, namely: (i) establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of the rule, or any part thereof. 5 U.S.C. 604(c). The USPTO discusses each of these specified alternatives or approaches below and describes how this NPRM is adopting these approaches.

##### i. Differing Requirements

As discussed above, the changes proposed in this proposed rule would continue existing fee discounts for small and micro entities that take into account the reduced resources available to them as well as offer new discounts when applicable under AIA authority. Specifically, micro entities would continue to receive an 80% reduction in

most patent fees under this proposal and small entities that do not qualify as micro entities would continue to receive a 60% reduction in most patent fees.

This proposed rule sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. To pay reduced patent fees, small entities must merely assert small entity status to pay reduced patent fees. The small entity may make this assertion by either checking a box on the transmittal form, "Applicant claims small entity status," or by paying the basic filing or basic national small entity fee exactly. The process to claim micro entity status is similar in that eligible entities need only submit a written certification of their status prior to or at the time a reduced fee is paid. This proposed rule does not change any reporting requirements for any small or micro entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification) and the benefit of the fee reductions (60% for small entities and 80% for micro entities) is significant.

This proposed rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

#### ii. Clarification, Consolidation, or Simplification of Requirements

This proposed rule pertains to setting or adjusting patent fees. Any compliance or reporting requirements proposed in this rule are de minimis and necessary to implement lower proposed fees. Therefore, any clarifications, consolidations, or simplifications to compliance and reporting requirements for small entities are not applicable or would not achieve the objectives of this rulemaking.

#### iii. Performance Standards

Performance standards do not apply to the current proposed rule.

#### iv. Exemption for Small and Micro Entities

The proposed changes here maintain a 60% reduction in fees for small entities and an 80% reduction in fees for micro entities. The USPTO considered exempting small and micro entities from paying increased patent fees but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the AIA, as amended by the UAIA, provides that "fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be

reduced by 60 percent [for small entities] and shall be reduced by 80 percent [for micro entities]" (emphasis added). Neither the AIA, UAIA, nor any other statute authorizes the USPTO simply to exempt small or micro entities, as a class of applicants, from paying increased patent fees.

#### C. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule has been determined to be economically significant for purposes of Executive Order (E.O.) 12866 (Sept. 30, 1993), as amended by E.O. 14094 (April 6, 2023), Modernizing Regulatory Review. The USPTO has developed an RIA as required for rulemakings deemed to be economically significant. The complete RIA is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

#### D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The USPTO has complied with E.O. 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the proposed rule; (2) tailored the proposed rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

#### E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

#### F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) have substantial direct effects on one or more

Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

#### G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under E.O. 13211 because this proposed rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

#### H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

#### I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

#### J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

#### K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this proposed rule are expected to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this proposed rule is a "major rule" as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The proposed changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 et seq.

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 et seq.

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. This proposed rule involves information collection requirements which are subject to review by the OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this proposed rule has been reviewed and previously approved by OMB under control numbers 0651–0012, 0651–0016, 0651–0017, 0651–0020, 0651–0021, 0651–0022, 0651–0024, 0651–0027, 0651–0031, 0651–0032, 0651–0033, 0651–0034, 0651–0035, 0651–0059, 0651–0062, 0651–0063, 0651–0064, 0651–0069, 0651–0073, and 0651–0075.

Notwithstanding any other provision of law, no person is required to respond to nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

P. E-Government Act Compliance

The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to government

information and services, and for other purposes.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

37 CFR Part 42

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1, 41, and 42 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.16 is amended by revising the tables in paragraphs (a) through (s) and (u) to read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) \* \* \*

TABLE 1 TO PARAGRAPH (a)

Table with 2 columns: Fee description and Amount. Rows include: By a micro entity (\$ 1.29) \$70.00, By a small entity (\$ 1.27(a)) 140.00, By a small entity (\$ 1.27(a)) if the application is submitted in compliance with the USPTO electronic filing system (\$ 1.27(b)(2)) 70.00, By other than a small or micro entity 350.00

(b) \* \* \*

TABLE 2 TO PARAGRAPH (b)

Table with 2 columns: Fee description and Amount. Rows include: By a micro entity (\$ 1.29) \$60.00, By a small entity (\$ 1.27(a)) 120.00, By other than a small or micro entity 300.00

(c) \* \* \*

TABLE 3 TO PARAGRAPH (c)

Table with 2 columns: Fee description and Amount. Rows include: By a micro entity (\$ 1.29) \$48.00, By a small entity (\$ 1.27(a)) 96.00, By other than a small or micro entity 240.00

(d) \* \* \*

TABLE 4 TO PARAGRAPH (d)

By a micro entity (§ 1.29) .....	\$63.00
By a small entity (§ 1.27(a)) .....	126.00
By other than a small or micro entity .....	315.00

(e) \* \* \*

TABLE 5 TO PARAGRAPH (e)

By a micro entity (§ 1.29) .....	\$70.00
By a small entity (§ 1.27(a)) .....	140.00
By other than a small or micro entity .....	350.00

(f) \* \* \*

TABLE 6 TO PARAGRAPH (f)

By a micro entity (§ 1.29) .....	\$34.00
By a small entity (§ 1.27(a)) .....	68.00
By other than a small or micro entity .....	170.00

(g) \* \* \*

TABLE 7 TO PARAGRAPH (g)

By a micro entity (§ 1.29) .....	\$13.00
By a small entity (§ 1.27(a)) .....	26.00
By other than a small or micro entity .....	65.00

(h) \* \* \*

TABLE 8 TO PARAGRAPH (h)

By a micro entity (§ 1.29) .....	\$120.00
By a small entity (§ 1.27(a)) .....	240.00
By other than a small or micro entity .....	600.00

(i) \* \* \*

TABLE 9 TO PARAGRAPH (i)

By a micro entity (§ 1.29) .....	\$40.00
By a small entity (§ 1.27(a)) .....	80.00
By other than a small or micro entity .....	200.00

(j) \* \* \*

TABLE 10 TO PARAGRAPH (j)

By a micro entity (§ 1.29) .....	\$181.00
By a small entity (§ 1.27(a)) .....	362.00
By other than a small or micro entity .....	905.00

(k) \* \* \*

TABLE 11 TO PARAGRAPH (k)

By a micro entity (§ 1.29) .....	\$154.00
By a small entity (§ 1.27(a)) .....	308.00

TABLE 11 TO PARAGRAPH (k)—Continued

By other than a small or micro entity .....	770.00
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(l) \* \* \*

TABLE 12 TO PARAGRAPH (l)

By a micro entity (§ 1.29) .....	\$60.00
By a small entity (§ 1.27(a)) .....	120.00
By other than a small or micro entity .....	300.00

(m) \* \* \*

TABLE 13 TO PARAGRAPH (m)

By a micro entity (§ 1.29) .....	\$97.00
By a small entity (§ 1.27(a)) .....	194.00
By other than a small or micro entity .....	485.00

(n) \* \* \*

TABLE 14 TO PARAGRAPH (n)

By a micro entity (§ 1.29) .....	\$154.00
By a small entity (§ 1.27(a)) .....	308.00
By other than a small or micro entity .....	770.00

(o) \* \* \*

TABLE 15 TO PARAGRAPH (o)

By a micro entity (§ 1.29) .....	\$176.00
By a small entity (§ 1.27(a)) .....	352.00
By other than a small or micro entity .....	880.00

(p) \* \* \*

TABLE 16 TO PARAGRAPH (p)

By a micro entity (§ 1.29) .....	\$140.00
By a small entity (§ 1.27(a)) .....	280.00
By other than a small or micro entity .....	700.00

(q) \* \* \*

TABLE 17 TO PARAGRAPH (q)

By a micro entity (§ 1.29) .....	\$145.00
By a small entity (§ 1.27(a)) .....	290.00
By other than a small or micro entity .....	725.00

(r) \* \* \*

TABLE 18 TO PARAGRAPH (r)

By a micro entity (§ 1.29) .....	\$510.00
By a small entity (§ 1.27(a)) .....	1,020.00
By other than a small or micro entity .....	2,550.00

(s) \* \* \*

TABLE 19 TO PARAGRAPH (s)

By a micro entity (§ 1.29) .....	\$88.00
By a small entity (§ 1.27(a)) .....	176.00
By other than a small or micro entity .....	440.00

\* \* \* \* \*

(u) \* \* \*

TABLE 21 TO PARAGRAPH (u)

By a micro entity (§ 1.29) .....	\$84.00
By a small entity (§ 1.27(a)) .....	168.00
By other than a small or micro entity .....	420.00

- 3. Section 1.17 is amended by:
- a. Revising paragraph (a) introductory text;
- b. Revising the tables in paragraphs (a)(1) through (5), (c), (d), (e)(1);
- c. Revising paragraph (e)(2);
- d. Adding paragraph (e)(3);
- e. Revising the table in paragraph (f);
- f. Revising paragraph (g);

- g. Revising the tables in paragraphs (h), (i)(1) and (2), and (k);
- h. Revising paragraph (m);
- i. Revising the tables in paragraphs (o) and (p);
- j. Revising paragraph (q);
- k. Revising the tables in paragraphs (r) through (t); and
- l. Adding paragraphs (u) through (x).

The revisions and additions read as follows:

**§ 1.17 Patent application and reexamination processing fees.**

- (a) Extension fees pursuant to § 1.136(a), except in provisional applications filed under § 1.53(c):
- (1) \* \* \*

TABLE 1 TO PARAGRAPH (a)(1)

By a micro entity (§ 1.29) .....	\$46.00
By a small entity (§ 1.27(a)) .....	92.00
By other than a small or micro entity .....	230.00

(2) \* \* \*

TABLE 2 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29) .....	\$134.00
By a small entity (§ 1.27(a)) .....	268.00
By other than a small or micro entity .....	670.00

(3) \* \* \*

TABLE 3 TO PARAGRAPH (a)(3)

By a micro entity (§ 1.29) .....	\$311.00
By a small entity (§ 1.27(a)) .....	622.00
By other than a small or micro entity .....	1,555.00

(4) \* \* \*

TABLE 4 TO PARAGRAPH (a)(4)

By a micro entity (§ 1.29) .....	\$487.00
By a small entity (§ 1.27(a)) .....	974.00
By other than a small or micro entity .....	2,435.00

(5) \* \* \*

TABLE 5 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29) .....	\$664.00
By a small entity (§ 1.27(a)) .....	1,328.00
By other than a small or micro entity .....	3,320.00

\* \* \* \* \*

(c) \* \* \*

TABLE 6 TO PARAGRAPH (c)

By a micro entity (§ 1.29) .....	\$882.00
By a small entity (§ 1.27(a)) .....	1,764.00
By other than a small or micro entity .....	4,410.00

(d) \* \* \*

TABLE 7 TO PARAGRAPH (d)

By a micro entity (§ 1.29) .....	\$134.00
By a small entity (§ 1.27(a)) .....	268.00
By other than a small or micro entity .....	670.00

(e) \* \* \*

(1) \* \* \*

TABLE 8 TO PARAGRAPH (e)(1)

By a micro entity (§ 1.29) .....	\$300.00
By a small entity (§ 1.27(a)) .....	600.00
By other than a small or micro entity .....	1,500.00

(2) For filing a second request for continued examination pursuant to § 1.114 in an application:

TABLE 9 TO PARAGRAPH (e)(2)

By a micro entity (§ 1.29) .....	\$500.00
By a small entity (§ 1.27(a)) .....	1,000.00
By other than a small or micro entity .....	2,500.00

(3) For filing a third or subsequent request for continued examination pursuant to § 1.114 in an application:

TABLE 10 TO PARAGRAPH (e)(3)

By a micro entity (§ 1.29) .....	\$720.00
By a small entity (§ 1.27(a)) .....	1,440.00
By other than a small or micro entity .....	3,600.00

(f) \* \* \*

TABLE 11 TO PARAGRAPH (f)

By a micro entity (§ 1.29) .....	\$88.00
By a small entity (§ 1.27(a)) .....	176.00
By other than a small or micro entity .....	440.00

**Note 1 to table 11 to paragraph (f):**

- § 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.
- § 1.53(e)—to accord a filing date.
- § 1.182—for decision on a question not specifically provided for in an application for patent.

- § 1.183—to suspend the rules in an application for patent.
- § 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.
- § 1.1023—to review the filing date of an international design application.

(g)(1) For filing a petition under one of the following sections which refers to this paragraph (g):

TABLE 12 TO PARAGRAPH (g)(1)

By a micro entity (§ 1.29) .....	\$46.00
By a small entity (§ 1.27(a)) .....	92.00
By other than a small or micro entity .....	230.00

**Note 2 to table 12 to paragraph (g)(1):**

- § 1.12—for access to an assignment record.
- § 1.14—for access to an application.
- § 1.46—for filing an application on behalf of an inventor by a person who otherwise shows sufficient proprietary interest in the matter.
- § 1.55(f)—for filing a belated certified copy of a foreign application.
- § 1.55(g)—for filing a belated certified copy of a foreign application.
- § 1.57(a)—for filing a belated certified copy of a foreign application.
- § 1.59—for expungement of information.
- § 1.136(b)—for review of a request for extension of time when the provisions of § 1.136(a) are not available.
- § 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.
- § 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.
- § 5.12 of this chapter—for expedited handling of a foreign filing license.
- § 5.15 of this chapter—for changing the scope of a license.
- § 5.25 of this chapter—for retroactive license.

(2) For filing a petition to suspend action in an application under § 1.103(a):

(i) For filing a first request for suspension pursuant to § 1.103(a) in an application:

TABLE 13 TO PARAGRAPH (g)(2)(i)

By a micro entity (§ 1.29) .....	\$60.00
By a small entity (§ 1.27(a)) .....	120.00
By other than a small or micro entity .....	300.00

(ii) For filing a second or subsequent request for suspension pursuant to § 1.103(a) in an application:

TABLE 14 TO PARAGRAPH (g)(2)(ii)

By a micro entity (§ 1.29) .....	\$90.00
By a small entity (§ 1.27(a)) .....	180.00
By other than a small or micro entity .....	450.00

(h) \* \* \*

TABLE 15 TO PARAGRAPH (h)

By a micro entity (§ 1.29) .....	\$29.00
By a small entity (§ 1.27(a)) .....	58.00
By other than a small or micro entity .....	145.00

**Note 3 to table 15 to paragraph (h):**

- § 1.84—for accepting color drawings or photographs.
- § 1.91—for entry of a model or exhibit.
- § 1.102(d)—to make an application special.
- § 1.138(c)—to expressly abandon an application to avoid publication.
- § 1.313—to withdraw an application from issue.
- § 1.314—to defer issuance of a patent.

(i) \* \* \*

(1) \* \* \*



TABLE 16 TO PARAGRAPH (i)(1)

By a micro entity (§ 1.29) .....	\$29.00
By a small entity (§ 1.27(a)) .....	58.00
By other than a small or micro entity .....	145.00

**Note 4 to table 16 to paragraph (i)(1):**

- § 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.
- § 1.29(k)(3)—for processing a non-itemized fee deficiency based on an error in micro entity status.
- § 1.41—for supplying the name or names of the inventor or joint inventors in an application without either an application data sheet or the inventor's oath or declaration, except in provisional applications.
- § 1.48—for correcting inventorship, except in provisional applications.
- § 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.
- § 1.53(c)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).
- § 1.71(g)(2)—for processing a belated amendment under § 1.71(g).
- § 1.102(e)—for requesting prioritized examination of an application.
- § 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).
- § 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).
- § 1.103(d)—for requesting deferred examination of an application.
- § 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.
- § 3.81 of this chapter—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

(2) \* \* \*

TABLE 17 TO PARAGRAPH (i)(2)

By a micro entity (§ 1.29) .....	\$147.00
By a small entity (§ 1.27(a)) .....	147.00
By other than a small or micro entity .....	147.00

**Note 5 to table 17 to paragraph (i)(2):**

- § 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.
- § 1.221—for requesting voluntary publication or republication of an application.

\* \* \* \* \*

(k) \* \* \*

TABLE 18 TO PARAGRAPH (k)

By a micro entity (§ 1.29) .....	\$336.00
By a small entity (§ 1.27(a)) .....	672.00
By other than a small or micro entity .....	1,680.00

\* \* \* \* \*

(m)(1) For filing a petition under one of the following sections which refers to

this paragraph (m), when the petition is filed more than two years after the date when the required action was due:

TABLE 19 TO PARAGRAPH (m)(1)

By a micro entity (§ 1.29) .....	\$600.00
By a small entity (§ 1.27(a)) .....	1,200.00
By other than a small or micro entity .....	3,000.00

**Note 6 to table 19 to paragraph (m)(1):**

- § 1.55(e)—for the delayed submission of a priority claim, when the petition is filed more than two years after the date when the priority claim was due.
- § 1.78(c) or (e)—for the delayed submission of a benefit claim, when the petition is filed more than two years after the date when the benefit claim was due.
- § 1.137—for filing a petition for the revival of an abandoned application for a patent, or for the delayed payment of the fee for issuing each patent, when the petition is filed more than two years after the abandonment of the application.
- § 1.137—for filing a petition for the revival of a reexamination proceeding that was terminated or limited due to a delayed response by the patent owner, when the petition is filed more than two years after the termination or limitation of the reexamination proceeding.
- § 1.378—for filing a petition to accept a delayed payment of the fee for maintaining a patent in force, when the petition is filed more than two years after the patent expiration date.
- § 1.1051—for filing a petition to excuse an applicant's failure to act within prescribed time limits in an international design application, when the petition is filed more than two years after the abandonment of the application.

(2) For filing a petition under § 1.55(e), § 1.78(c), § 1.78(e), § 1.137, § 1.1051, or § 1.378, when the petition is

filed before the time period specified in paragraph (m)(1) of this section:

TABLE 20 TO PARAGRAPH (m)(2)

By a micro entity (§ 1.29) .....	\$440.00
By a small entity (§ 1.27(a)) .....	880.00
By other than a small or micro entity .....	2,200.00

(3) For filing a petition under § 1.55(c), § 1.78(b), or § 1.452 for the extension of the 12-month (six-month for designs) period for filing a subsequent application:

TABLE 21 TO PARAGRAPH (m)(3)

By a micro entity (§ 1.29) .....	\$440.00
By a small entity (§ 1.27(a)) .....	880.00
By other than a small or micro entity .....	2,200.00

\* \* \* \* \* (o) \* \* \*

TABLE 22 TO PARAGRAPH (o)

By a small entity (§ 1.27(a)) or micro entity (§ 1.29) .....	\$76.00
By other than a small or micro entity .....	190.00

(p) \* \* \*

TABLE 23 TO PARAGRAPH (p)

By a micro entity (§ 1.29) .....	\$55.00
By a small entity (§ 1.27(a)) .....	110.00
By other than a small or micro entity .....	275.00

(q) Processing fee for taking action under one of the following sections which refers to this paragraph (q):  
 \$53.00.  
 (1) Section 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.  
 (2) Section 1.48—for correction of inventorship in a provisional application.  
 (3) Section 1.53(c)(2)—to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).  
 (r) \* \* \*

TABLE 24 TO PARAGRAPH (r)

By a micro entity (§ 1.29) .....	\$185.00
By a small entity (§ 1.27(a)) .....	370.00
By other than a small or micro entity .....	925.00

(s) \* \* \*

TABLE 25 TO PARAGRAPH (s)

By a micro entity (§ 1.29) .....	\$185.00
By a small entity (§ 1.27(a)) .....	370.00
By other than a small or micro entity .....	925.00

(t) \* \* \*

TABLE 26 TO PARAGRAPH (t)

By a micro entity (§ 1.29) .....	\$38.00
By a small entity (§ 1.27(a)) .....	76.00
By other than a small or micro entity .....	190.00

(u) Extension fees pursuant to § 1.136(a) in provisional applications filed under § 1.53(c):

(1) For reply within first month:

TABLE 27 TO PARAGRAPH (u)(1)

By a micro entity (§ 1.29) .....	\$10.00
By a small entity (§ 1.27(a)) .....	20.00
By other than a small or micro entity .....	50.00

(2) For reply within second month:

TABLE 28 TO PARAGRAPH (u)(2)

By a micro entity (§ 1.29) .....	\$20.00
By a small entity (§ 1.27(a)) .....	40.00
By other than a small or micro entity .....	100.00

(3) For reply within third month:

TABLE 29 TO PARAGRAPH (u)(3)

By a micro entity (§ 1.29) .....	\$40.00
By a small entity (§ 1.27(a)) .....	80.00
By other than a small or micro entity .....	200.00

(4) For reply within fourth month:

TABLE 30 TO PARAGRAPH (u)(4)

By a micro entity (§ 1.29) .....	\$80.00
By a small entity (§ 1.27(a)) .....	160.00
By other than a small or micro entity .....	400.00

(5) For reply within fifth month:

TABLE 31 TO PARAGRAPH (u)(5)

By a micro entity (§ 1.29) .....	\$160.00
By a small entity (§ 1.27(a)) .....	320.00
By other than a small or micro entity .....	800.00

(v) Information disclosure statement size fee for an information disclosure statement filed under § 1.97 that, inclusive of the number of applicant-provided or patent owner-provided items of information listed under § 1.98(a)(1) on the information disclosure statement, causes the cumulative number of applicant-provided or patent owner-provided items of information under § 1.98(a)(1)

during the pendency of the application or reexamination proceeding to:

- (1) Exceed 50 but not exceed 100. . . . \$200;
- (2) Exceed 100 but not exceed 200. . . . \$500, less any amount previously paid under paragraph (v)(1) of this section; and
- (3) Exceed 200. . . . \$800, less any amounts previously paid under paragraphs (v)(1) and/or (2) of this section.

(w) Additional fee for presenting a benefit claim in a nonprovisional application under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d):

- (1) When the actual filing date of the nonprovisional application in which the benefit claim is presented is more than 5 years and no more than 8 years from the earliest filing date for which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) and § 1.78(d):

TABLE 32 TO PARAGRAPH (w)(1)

By a micro entity (§ 1.29) .....	\$440.00
By a small entity (§ 1.27(a)) .....	880.00
By other than a small or micro entity .....	2,200.00

(2) When the actual filing date of the nonprovisional application in which the

benefit claim is presented is more than 8 years from the earliest filing date for

which benefit is claimed under 35 U.S.C. 120, 121, 365(c), or 386(c) and

§ 1.78(d), the amount shown in this paragraph is due, less any amount previously paid under paragraph (w)(1) of this section:

TABLE 33 TO PARAGRAPH (w)(2)

By a micro entity (§ 1.29) .....	\$700.00
By a small entity (§ 1.27(a)) .....	1,400.00
By other than a small or micro entity .....	3,500.00

(x) For submission of a request for consideration under the After Final Consideration Pilot Program 2.0:

TABLE 34 TO PARAGRAPH (x)

By a micro entity (§ 1.29) .....	\$100.00
By a small entity (§ 1.27(a)) .....	200.00
By other than a small or micro entity .....	500.00

■ 4. Section 1.18 is amended by:  
 ■ a. Revising the tables in paragraphs (a), (b)(1), and (c); and

■ b. Revising paragraphs (d)(2) and (3), (e), and (f).  
 The revisions read as follows:

**§ 1.18 Patent post allowance (including issue) fees.**  
 (a) \* \* \*

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29) .....	\$252.00
By a small entity (§ 1.27(a)) .....	504.00
By other than a small or micro entity .....	1,260.00

(b)(1) \* \* \*

TABLE 2 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29) .....	260.00
By a small entity (§ 1.27(a)) .....	520.00
By other than a small or micro entity .....	1,300.00

\* \* \* \* \*

(c) \* \* \*

TABLE 3 TO PARAGRAPH (c)

By a micro entity (§ 1.29) .....	\$176.00
By a small entity (§ 1.27(a)) .....	352.00
By other than a small or micro entity .....	880.00

(d)(1) \* \* \*  
 (2) Publication fee before January 1, 2014: \$320.00  
 (3) Republication fee (§ 1.221(a)): \$336.00  
 (e) For filing an application for patent term adjustment under § 1.705: \$300.00  
 (f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for patent term adjustment under § 1.705: \$440.00

(a) \* \* \*  
 (2) Printed copy of a plant patent in color: \$16.00  
 \* \* \* \* \*  
 (b) \* \* \*  
 (1) \* \* \*  
 (i) \* \* \*  
 (A) Application as filed: \$37.00  
 (B) Copy Patent File Wrapper, Paper Medium, Any Number of Sheets: \$305.00  
 \* \* \* \* \*  
 (D) Individual application documents, other than application as filed, per document: \$26.00  
 (ii) \* \* \*  
 (A) Application as filed: \$37.00

(B) Copy Patent File Wrapper, Electronic, Any Medium, Any Size: \$63.00  
 \* \* \* \* \*  
 (3) Copy of Office records, except copies available under paragraph (b)(1) or (2) of this section: \$26.00  
 (4) For assignment records, abstract of title and certification, per patent: \$37.00  
 \* \* \* \* \*  
 (f) Uncertified copy of a non-United States patent document, per document: \$26.00  
 \* \* \* \* \*

■ 5. Section 1.19 is amended by revising paragraphs (a)(2), (b)(1)(i)(A), (B), and (D), (b)(1)(ii)(A) and (B), (b)(3) and (4), and (f) to read as follows:

**§ 1.19 Document supply fees.**  
 \* \* \* \* \*

■ 6. Section 1.20 is amended by:  
 ■ a. Revising paragraphs (a) and (b);  
 ■ b. Revising the tables in (c)(1)(i) through (c)(4) and (c)(6);

- c. Revising paragraph (d);
- d. Revising the tables in paragraphs (e) through (h);
- e. Revising paragraph (j); and
- f. Revising the tables in (k)(1) and (2) and (k)(3)(i) and (ii).

The revisions read as follows:  
**§ 1.20 Post-issuance fees.**  
 (a) For providing a certificate of correction for an applicant’s mistake (§ 1.323): \$168.00.

(b) Processing fee for correcting inventorship in a patent (§ 1.324): \$168.00.  
 (c) \* \* \*  
 (1)(i) \* \* \*

TABLE 1 TO PARAGRAPH (c)(1)(i)

By a micro entity (§ 1.29) .....	\$1,323.00
By a small entity (§ 1.27(a)) .....	2,646.00
By other than a small or micro entity .....	6,615.00

\* \* \* \* \* (2) \* \* \*

TABLE 2 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29) .....	\$2,646.00
By a small entity (§ 1.27(a)) .....	5,292.00
By other than a small or micro entity .....	13,320.00

(3) \* \* \*

TABLE 3 TO PARAGRAPH (c)(3)

By a micro entity (§ 1.29) .....	\$120.00
By a small entity (§ 1.27(a)) .....	240.00
By other than a small or micro entity .....	600.00

(4) \* \* \*

TABLE 4 TO PARAGRAPH (c)(4)

By a micro entity (§ 1.29) .....	\$40.00
By a small entity (§ 1.27(a)) .....	80.00
By other than a small or micro entity .....	200.00

\* \* \* \* \* (6) \* \* \*

TABLE 5 TO PARAGRAPH (c)(6)

By a micro entity (§ 1.29) .....	\$428.00
By a small entity (§ 1.27(a)) .....	856.00
By other than a small or micro entity .....	2,140.00

- (d) For filing statutory and terminal disclaimers.
- (1) For filing each statutory disclaimer under § 1.321(a), other than a terminal disclaimer: \$179.00.
- (2) For filing each terminal disclaimer under § 1.321:
- (i) In a non-reissue application before the mailing of a first Office action on the merits \$200.00;

(ii) In a non-reissue application after the period specified in paragraph (d)(2)(i) of this section and before the mailing date of any of a final action under § 1.113, a notice of allowance under § 1.311, or an action that otherwise closes prosecution in the application \$500.00;

(iii) In a non-reissue application after the period specified in paragraph

(d)(2)(ii) of this section, and before any submission of a notice of appeal under § 41.31 \$800.00;

(iv) In a non-reissue application on or after the submission of a notice of appeal under § 41.31 \$1,100.00; and

(v) In a patent or application for reissue \$1,400.00.

(e) \* \* \*

TABLE 7 TO PARAGRAPH (e)

By a micro entity (§ 1.29) .....	\$420.00
By a small entity (§ 1.27(a)) .....	840.00
By other than a small or micro entity .....	2,100.00

(f) \* \* \*

TABLE 8 TO PARAGRAPH (f)

By a micro entity (§ 1.29) .....	\$790.00
By a small entity (§ 1.27(a)) .....	1,580.00
By other than a small or micro entity .....	3,950.00

(g) \* \* \*

TABLE 9 TO PARAGRAPH (g)

By a micro entity (§ 1.29) .....	\$1,617.00
By a small entity (§ 1.27(a)) .....	3,234.00
By other than a small or micro entity .....	8,805.00

(h) \* \* \*

TABLE 10 TO PARAGRAPH (h)

By a micro entity (§ 1.29) .....	\$105.00
By a small entity (§ 1.27(a)) .....	210.00
By other than a small or micro entity .....	525.00

\* \* \* \* \*

(j) For filing an application for extension of the term of a patent:  
 (1) Application for extension under § 1.740: \$6,700.00

(2) Initial application for interim extension under § 1.790: \$1,320.00  
 (3) Subsequent application for interim extension under § 1.790: \$680.00

(4) Requesting supplemental redetermination after notice of final determination: \$1,440.00  
 (k) \* \* \*  
 (1) \* \* \*

TABLE 11 TO PARAGRAPH (k)(1)

By a micro entity (§ 1.29) .....	\$970.00
By a small entity (§ 1.27(a)) .....	1,940.00
By other than a small or micro entity .....	4,850.00

(2) \* \* \*

TABLE 12 TO PARAGRAPH (k)(2)

By a micro entity (§ 1.29) .....	\$2,667.00
By a small entity (§ 1.27(a)) .....	5,334.00
By other than a small or micro entity .....	13,335.00

(3) \* \* \*

(i) \* \* \*

TABLE 13 TO PARAGRAPH (k)(3)(i)

By a micro entity (§ 1.29) .....	\$38.00
By a small entity (§ 1.27(a)) .....	76.00
By other than a small or micro entity .....	190.00

(ii) \* \* \*

TABLE 15 TO PARAGRAPH (k)(3)(ii)

By a micro entity (§ 1.29) .....	\$63.00
By a small entity (§ 1.27(a)) .....	126.00
By other than a small or micro entity .....	315.00

- 7. Section 1.21 is amended by:
  - a. Revising paragraphs (a)(1)(i), and (ii), (a)(4)(i) and (ii), (a)(5)(i) and (a)(1)(ii)(A), (a)(1)(iii) and (iv), (a)(2)(i)

- (ii), (a)(6)(ii), (a)(9)(i) and (ii), (a)(10), (e), (h)(2), (i), and (n);
- b. Revising the tables in paragraphs (o)(1) and (2); and
- c. Revising paragraphs (p) and (q).  
The revisions read as follows:

**§ 1.21 Miscellaneous fees and charges.**

- \* \* \* \* \*
- (a) \* \* \*
- (1) \* \* \*
- (i) Application Fee (non-refundable): \$116.00.
- (ii) \* \* \*
- (A) For test administration by commercial entity: \$221.00.
- \* \* \* \* \*
- (iii) For USPTO-administered review of registration examination: \$494.00.
- (iv) Request for extension of time in which to schedule examination for registration to practice (non-refundable): \$121.00
- (2) \* \* \*
- (i) On registration to practice under § 11.6 of this chapter: \$221.00.
- (ii) On grant of limited recognition under § 11.9(b) of this chapter: \$221.00.
- \* \* \* \* \*
- (4) \* \* \*
- (i) Standard: \$42.00

- (ii) Suitable for framing: \$53.00
- (5) \* \* \*
- (i) By the Director of Enrollment and Discipline under § 11.2(c) of this chapter: \$440.00
- (ii) Of the Director of Enrollment and Discipline under § 11.2(d) of this chapter: \$440.00
- (6) \* \* \*
- (i) \* \* \*
- (ii) For USPTO-assisted change of address: \$74.00
- \* \* \* \* \*
- (9) \* \* \*
- (i) Delinquency fee: \$53.00
- (ii) Administrative reinstatement fee: \$221.00
- (10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; on application by a person for recognition or registration after being convicted of a felony or crime involving moral

- turpitude or breach of fiduciary duty; and on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office: \$1,764.00
- \* \* \* \* \*
- (e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application: \$42.00
- \* \* \* \* \*
- (h) \* \* \*
- (1) \* \* \*
- (2) If not submitted electronically: \$53.00
- (i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale: Each application or patent: \$26.00
- \* \* \* \* \*
- (n) For handling an application in which proceedings are terminated pursuant to § 1.53(e): \$147.00
- (o) \* \* \*
- (1) \* \* \*

TABLE 1 TO PARAGRAPH (o)(1)

By a micro entity (§ 1.29) .....	\$223.00
By a small entity (§ 1.27(a)) .....	446.00
By other than a small or micro entity .....	1,115.00

(2) \* \* \*

TABLE 2 TO PARAGRAPH (o)(2)

By a micro entity (§ 1.29) .....	\$2,205.00
By a small entity (§ 1.27(a)) .....	4,410.00
By other than a small or micro entity .....	11,025.00

- (p) Additional Fee for Overnight Delivery: \$42.00
- (q) Additional fee for expedited service: \$179.00
- 8. Section 1.78 is amended by revising paragraphs (d)(3)(i) and (e)(2) to read as follows:
- § 1.78 Claiming benefit of earlier filing date and cross-references to other applications.**
- \* \* \* \* \*
- (d) \* \* \*
- (3)(i) The reference required by 35 U.S.C. 120 and paragraph (d)(2) of this section, and the applicable fee set forth in § 1.17(w), must be submitted during the pendency of the later-filed application.
- \* \* \* \* \*
- (e) \* \* \*

- (2) The petition fee as set forth in § 1.17(m), and the applicable fee set forth in § 1.17(w); and
- \* \* \* \* \*
- 9. Section 1.97 is amended by revising paragraph (a) to read as follows:
- § 1.97 Filing of information disclosure statement.**
- (a) In order for an applicant for a patent or for a reissue of a patent to have an information disclosure statement in compliance with § 1.98 considered by the Office during the pendency of the application, the information disclosure statement must satisfy one of paragraphs (b), (c), or (d) of this section and be accompanied by any applicable information disclosure statement size fee under § 1.17(v).
- \* \* \* \* \*

- 10. Section 1.98 is amended by revising paragraph (a) introductory text and adding paragraph (a)(4) to read as follows:
- § 1.98 Content of information disclosure statement.**
- (a) Any information disclosure statement filed under § 1.97 shall include the items listed in paragraphs (a)(1) through (4) of this section.
- \* \* \* \* \*
- (4) A clear written assertion that the information disclosure statement is accompanied by the applicable information disclosure statement size fee under § 1.17(v) or a clear written assertion that no information disclosure statement size fee under § 1.17(v) is required.
- \* \* \* \* \*

■ 11. Section 1.136 is amended by revising paragraph (a)(1) introductory text to read as follows:

**§ 1.136 Extensions of time.**

(a)(1) If an applicant is required to reply within a nonstatutory or shortened statutory time period, applicant may extend the time period for reply up to the earlier of the expiration of any maximum period set by statute or five months after the time period set for reply, if a petition for an extension of time and the fee set in § 1.17(a) or (u) are filed, unless:

\* \* \* \* \*

■ 12. Section 1.138 is amended by revising paragraph (d) to read as follows:

**§ 1.138 Express abandonment.**

\* \* \* \* \*

(d) An applicant seeking to abandon an application filed under 35 U.S.C. 111(a) and § 1.53(b) on or after December 8, 2004, or a national stage application under 35 U.S.C. 371 in

which the basic national fee was paid on or after December 8, 2004 to obtain a refund of the search fee and excess claims fee paid in the application, must submit a declaration of express abandonment by way of a petition under this paragraph before an examination has been made of the application. The date indicated on any certificate of mailing or transmission under § 1.8 will not be taken into account in determining whether a petition under § 1.138(d) was filed before an examination has been made of the application. Refunds under this paragraph are limited to the search fees and excess claim fees set forth in §§ 1.16 and 1.492. If a request for refund of the search fee and excess claims fee paid in the application is not filed with the declaration of express abandonment under this paragraph or within two months from the date on which the declaration of express abandonment under this paragraph was filed, the Office may retain the entire search fee

and excess claims fee paid in the application. This two-month period is not extendable. If a petition and declaration of express abandonment under this paragraph are not filed before an examination has been made of the application, the Office will not refund any part of the search fee and excess claims fee paid in the application except as provided in § 1.26.

■ 13. Section 1.445 is amended by revising and republishing paragraph (a) to read as follows:

**§ 1.445 International application filing, processing and search fees.**

(a) The following fees and charges for international applications are established by law or by the director under the authority of 35 U.S.C. 376:

(1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14) consisting of:

(i) A basic portion:  
(A) For an international application having a receipt date that is on or after [EFFECTIVE DATE OF FINAL RULE]:

TABLE 1 TO PARAGRAPH (a)(1)(i)(A)

By a micro entity (§ 1.29) .....	\$57.00
By a small entity (§ 1.27(a)) .....	114.00
By other than a small or micro entity .....	285.00

(B) For an international application having a receipt date that is on or after

December 29, 2022, and before [EFFECTIVE DATE OF FINAL RULE]:

TABLE 2 TO PARAGRAPH (a)(1)(i)(B)

By a micro entity (§ 1.29) .....	\$52.00
By a small entity (§ 1.27(a)) .....	104.00
By other than a small or micro entity .....	260.00

(C) For an international application having a receipt date that is on or after

October 2, 2020, and before December 29, 2022:

TABLE 3 TO PARAGRAPH (a)(1)(i)(C)

By a micro entity (§ 1.29) .....	\$65.00
By a small entity (§ 1.27(a)) .....	130.00
By other than a small or micro entity .....	260.00

(D) For an international application having a receipt date that is on or after

January 1, 2014, and before October 2, 2020:

TABLE 4 TO PARAGRAPH (a)(1)(i)(D)

By a micro entity (§ 1.29) .....	\$60.00
By a small entity (§ 1.27(a)) .....	120.00
By other than a small or micro entity .....	240.00

(E) For an international application having a receipt date that is before January 1, 2014: \$240.00

(ii) A non-electronic filing fee portion for any international application designating the United States of America that is filed on or after

November 15, 2011, other than by the USPTO patent electronic filing system, except for a plant application:



TABLE 5 TO PARAGRAPH (a)(1)(ii)

By a small entity (§ 1.27(a)) .....	200.00
By other than a small or micro entity .....	400.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16):

(i) For an international application having a receipt date that is on or after [EFFECTIVE DATE OF FINAL RULE]:

TABLE 6 TO PARAGRAPH (a)(2)(i)

By a micro entity (§ 1.29) .....	\$480.00
By a small entity (§ 1.27(a)) .....	960.00
By other than a small or micro entity .....	2,400.00

(ii) For an international application having a receipt date that is on or after

April 1, 2023, and before [EFFECTIVE DATE OF FINAL RULE]:

TABLE 7 TO PARAGRAPH (a)(2)(ii)

By a micro entity (§ 1.29) .....	\$436.00
By a small entity (§ 1.27(a)) .....	872.00
By other than a small or micro entity .....	2,180.00

(iii) For an international application having a receipt date that is on or after

October 2, 2020, and before April 1, 2023:

TABLE 8 TO PARAGRAPH (a)(2)(iii)

By a micro entity (§ 1.29) .....	\$545.00
By a small entity (§ 1.27(a)) .....	1,090.00
By other than a small or micro entity .....	2,180.00

(iv) For an international application having a receipt date that is on or after

January 1, 2014, and before October 2, 2020:

TABLE 9 TO PARAGRAPH (a)(2)(iv)

By a micro entity (§ 1.29) .....	\$520.00
By a small entity (§ 1.27(a)) .....	1,040.00
By other than a small or micro entity .....	2,080.00

(v) For an international application having a receipt date that is before January 1, 2014: \$2,080.00

(3) A supplemental search fee when required, per additional invention:

(i) For an international application having a receipt date that is on or after [EFFECTIVE DATE OF FINAL RULE]:

TABLE 10 TO PARAGRAPH (a)(3)(i)

By a micro entity (§ 1.29) .....	\$480.00
By a small entity (§ 1.27(a)) .....	960.00
By other than a small or micro entity .....	2,400.00

(ii) For an international application having a receipt date that is on or after

April 1, 2023, and before [EFFECTIVE DATE OF FINAL RULE]:

TABLE 11 TO PARAGRAPH (a)(3)(ii)

By a micro entity (§ 1.29) .....	\$436.00
By a small entity (§ 1.27(a)) .....	872.00
By other than a small or micro entity .....	2,180.00

(iii) For an international application having a receipt date that is on or after October 2, 2020, and before April 1, 2023:

TABLE 12 TO PARAGRAPH (a)(3)(iii)

By a micro entity (§ 1.29) .....	\$545.00
By a small entity (§ 1.27(a)) .....	1,090.00
By other than a small or micro entity .....	2,180.00

(iv) For an international application having a receipt date that is on or after January 1, 2014, and before October 2, 2020:

TABLE 13 TO PARAGRAPH (a)(3)(iv)

By a micro entity (§ 1.29) .....	\$520.00
By a small entity (§ 1.27(a)) .....	1,040.00
By other than a small or micro entity .....	2,080.00

(v) For an international application having a receipt date that is before January 1, 2014: \$2,080.00  
 (4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section that would apply if the USPTO was the Receiving Office for transmittal of an international application to the International Bureau for processing in

its capacity as a Receiving Office (PCT Rule 19.4).  
 (5) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13ter:

TABLE 14 TO PARAGRAPH (a)(5)

By a micro entity (§ 1.29) .....	\$67.00
By a small entity (§ 1.27(a)) .....	134.00
By other than a small or micro entity .....	335.00

(6) Late payment fee pursuant to PCT Rule 16bis.2.  
 \* \* \* \* \*

■ 14. Section 1.482 is amended by revising the tables in paragraphs (a)(1)(i) and (ii), (a)(2), and (c) to read as follows:

**§ 1.482 International preliminary examination and processing fees.**  
 (a) \* \* \*  
 (1) \* \* \*  
 (i) \* \* \*

TABLE 1 TO PARAGRAPH (a)(1)(i)

By a micro entity (§ 1.29) .....	\$141.00
By a small entity (§ 1.27(a)) .....	282.00
By other than a small or micro entity .....	705.00

(ii) \* \* \*

TABLE 2 TO PARAGRAPH (a)(1)(ii)

By a micro entity (§ 1.29) .....	\$176.00
By a small entity (§ 1.27(a)) .....	352.00
By other than a small or micro entity .....	880.00

(2) \* \* \*

TABLE 3 TO PARAGRAPH (a)(2)

By a micro entity (§ 1.29) .....	\$141.00
By a small entity (§ 1.27(a)) .....	282.00
By other than a small or micro entity .....	705.00

\* \* \* \* \*

(c) \* \* \*

TABLE 4 TO PARAGRAPH (c)

By a micro entity (§ 1.29) .....	\$67.00
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TABLE 4 TO PARAGRAPH (c)—Continued

By a small entity (§ 1.27(a)) .....	134.00
By other than a small or micro entity .....	335.00

■ 15. Section 1.492 is amended by revising the tables in paragraphs (a),

(b)(2) through (4), (c)(2), (d) through (f), and (h) through (j) to read as follows.

§ 1.492 National stage fees.

\* \* \* \* \*

(a) \* \* \*

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29) .....	\$70.00
By a small entity (§ 1.27(a)) .....	140.00
By other than a small or micro entity .....	350.00

(b) \* \* \*

(2) \* \* \*

TABLE 3 TO PARAGRAPH (b)(2)

By a micro entity (§ 1.29) .....	\$29.00
By a small entity (§ 1.27(a)) .....	58.00
By other than a small or micro entity .....	145.00

(3) \* \* \*

TABLE 4 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29) .....	\$113.00
By a small entity (§ 1.27(a)) .....	226.00
By other than a small or micro entity .....	565.00

(4) \* \* \*

TABLE 5 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29) .....	\$154.00
By a small entity (§ 1.27(a)) .....	308.00
By other than a small or micro entity .....	770.00

(c) \* \* \*

(2) \* \* \*

TABLE 7 TO PARAGRAPH (c)(2)

By a micro entity (§ 1.29) .....	\$176.00
By a small entity (§ 1.27(a)) .....	352.00
By other than a small or micro entity .....	880.00

(d) \* \* \*

TABLE 8 TO PARAGRAPH (d)

By a micro entity (§ 1.29) .....	\$120.00
By a small entity (§ 1.27(a)) .....	240.00
By other than a small or micro entity .....	600.00

(e) \* \* \*

TABLE 9 TO PARAGRAPH (e)

By a micro entity (§ 1.29) .....	\$40.00
By a small entity (§ 1.27(a)) .....	80.00

TABLE 9 TO PARAGRAPH (e)—Continued

By other than a small or micro entity .....	200.00
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(f) \* \* \*

TABLE 10 TO PARAGRAPH (f)

By a micro entity (§ 1.29) .....	\$181.00
By a small entity (§ 1.27(a)) .....	362.00
By other than a small or micro entity .....	905.00

\* \* \* \* \*

(h) \* \* \*

TABLE 11 TO PARAGRAPH (h)

By a micro entity (§ 1.29) .....	\$34.00
By a small entity (§ 1.27(a)) .....	68.00
By other than a small or micro entity .....	170.00

(i) \* \* \*

TABLE 12 TO PARAGRAPH (i)

By a micro entity (§ 1.29) .....	\$29.00
By a small entity (§ 1.27(a)) .....	58.00
By other than a small or micro entity .....	145.00

(j) \* \* \*

TABLE 13 TO PARAGRAPH (j)

By a micro entity (§ 1.29) .....	\$88.00
By a small entity (§ 1.27(a)) .....	176.00
By other than a small or micro entity .....	440.00

■ 16. Section 1.555 is amended by revising paragraph (a) to read as follows:

**§ 1.555 Information material to patentability in *ex parte* reexamination and *inter partes* reexamination proceedings.**

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective reexamination occurs when, at the time a reexamination proceeding is being conducted, the Office is aware of and evaluates the teachings of all information material to patentability in a reexamination proceeding. Each individual associated with the patent owner in a reexamination proceeding has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability in a reexamination proceeding. The individuals who have a duty to disclose to the Office all information known to them to be

material to patentability in a reexamination proceeding are the patent owner, each attorney or agent who represents the patent owner, and every other individual who is substantively involved on behalf of the patent owner in a reexamination proceeding. The duty to disclose the information exists with respect to each claim pending in the reexamination proceeding until the claim is cancelled. Information material to the patentability of a cancelled claim need not be submitted if the information is not material to patentability of any claim remaining under consideration in the reexamination proceeding. The duty to disclose all information known to be material to patentability in a reexamination proceeding is deemed to be satisfied if all information known to be material to patentability of any claim in the patent after issuance of the reexamination certificate was cited by the Office or submitted to the Office in an information disclosure statement. However, the duties of candor, good

faith, and disclosure have not been complied with if any fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct by, or on behalf of, the patent owner in the reexamination proceeding. Any information disclosure statement must be filed with the items listed in § 1.98(a) as applied to individuals associated with the patent owner in a reexamination proceeding, should be filed within two months of the date of the order for reexamination, or as soon thereafter as possible, and be accompanied by any applicable information disclosure statement size fee under § 1.17(v).

\* \* \* \* \*

■ 16. Section 1.1031 is amended by revising the table in paragraph (a) to read as follows:

**§ 1.1031 International design application fees.**

(a) \* \* \*

TABLE 1 TO PARAGRAPH (a)

By a micro entity (§ 1.29) .....	\$25.00
By a small entity (§ 1.27(a)) .....	50.00
By other than a small or micro entity .....	125.00

\* \* \* \* \*

**PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD**

■ 17. The authority citation for part 41 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Public Law 112–29.

- 18. Section 41.20 is amended by:
  - a. Revising paragraph (a); and
  - b. Revising the tables in paragraphs (b)(1), (b)(2)(ii), and (b)(3) and (4).  
The revisions read as follows:

**§ 41.20 Fees.**

- (a) *Petition fee.* The fee for filing petitions to the Chief Administrative Patent Judge under § 41.3 is: \$440.00
- (b) \* \* \*
- (1) \* \* \*

TABLE 1 TO PARAGRAPH (b)(1)

By a micro entity (§ 1.29) .....	\$176.00
By a small entity (§ 1.27(a)) .....	352.00
By other than a small or micro entity .....	880.00

(2) \* \* \*

(ii) \* \* \*

TABLE 2 TO PARAGRAPH (b)(2)(ii)

By a micro entity (§ 1.29) .....	\$440.00
By a small entity (§ 1.27(a)) .....	880.00
By other than a small or micro entity .....	2,200.00

(3) \* \* \*

TABLE 3 TO PARAGRAPH (b)(3)

By a micro entity (§ 1.29) .....	\$286.00
By a small entity (§ 1.27(a)) .....	572.00
By other than a small or micro entity .....	1,430.00

(4) \* \* \*

TABLE 4 TO PARAGRAPH (b)(4)

By a micro entity (§ 1.29) .....	\$496.00
By a small entity (§ 1.27(a)) .....	992.00
By other than a small or micro entity .....	2,480.00

**PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD**

■ 19. The authority citation for part 42 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

- 20. Section 42.15 is amended by:
  - a. Revising paragraphs (a)(1) through (4), (b)(1) through (4), (c)(1), (d), and (e); and

- b. Adding paragraph (f).  
The revisions and addition read as follows:

**§ 42.15 Fees.**

- (a) \* \* \*
  - (1) *Inter Partes* Review request fee—up to 20 claims: \$23,750.00
  - (2) *Inter Partes* Review Post-Institution fee—up to 20 claims: \$28,125.00
  - (3) In addition to the *Inter Partes* Review request fee, for requesting a

review of each claim in excess of 20: \$470.00

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting a review of each claim in excess of 20: \$940.00

- (b) \* \* \*
  - (1) Post-Grant or Covered Business Method Patent Review request fee—up to 20 claims: \$25,000.00
  - (2) Post-Grant or Covered Business Method Patent Review Post-Institution fee—up to 20 claims: \$34,375.00

(3) In addition to the Post-Grant or Covered Business Method Patent Review request fee, for requesting a review of each claim in excess of 20: \$595.00

(4) In addition to the Post-Grant or Covered Business Method Patent Review Post-Institution fee, for requesting a review of each claim in excess of 20: \$1,315.00

(c) \* \* \*

(1) Derivation petition fee: \$440.00

\* \* \* \* \*

(d) Any request requiring payment of a fee under this part, including a written request to make a settlement agreement available: \$440.00

(e) Fee for non-registered practitioners to appear *pro hac vice* before the Patent Trial and Appeal Board: \$263.00

(f) Fee for requesting a review of a Patent Trial and Appeal Board decision by the Director: \$440.

**Katherine Kelly Vidal,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 2024-06250 Filed 4-2-24; 8:45 am]

**BILLING CODE 3510-16-P**