



United States Patent and Trademark Office

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

VIA ELECTRONIC TRANSMISSION

May 8, 2023

Trademark Public Advisory Committee
ATTN: David J. Cho Esq., Chairperson
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Via email to: dc6715@att.com

Dear Members of the Trademark Public Advisory Committee (TPAC):

As a fee-funded agency, the United States Patent and Trademark Office (USPTO) must periodically assess and adjust fees to ensure our fee collections finance the aggregate costs necessary to register and maintain accurate and reliable trademarks. We recently completed a comprehensive trademark fee review, with the conclusion that we should adjust fees to increase aggregate revenue and refine certain fees to efficiently finance ongoing operations. The first steps in the fee adjustment process are to deliver our trademark fee proposal to the TPAC and engage the public. Given the statutory and regulatory timeline for setting and adjusting fees, we anticipate any fee changes will be implemented on or around November 2024.

Financial Outlook

Our trademark fee review included an evaluation of the financial outlook under the existing fee schedule, as well as significant research on and analysis of proposed revisions to certain fees. The financial outlook has two principal themes. First, forecasts for aggregate revenue using current demand estimates are lower than prior forecasts. Lower-than-expected demand is coinciding with changes to trademark filing and renewal patterns, resulting in some imbalances in the overall fee structure. Second, the broader U.S. economy has experienced higher-than-expected inflation the last two years, and this, in turn, has increased USPTO operating costs relative to baseline estimates. Consequently, aggregate operating costs will exceed aggregate fee revenue for our trademarks business line beginning this fiscal year. We will finance this operating shortfall using existing operating reserve balances until the implementation of a new fee schedule that increases fee collections.

Trademark Fee Proposal

This trademark fee proposal finances agency operating costs going forward and ensures we can accomplish our mission and deliver on the commitments contained in our forthcoming 2022-2026 Strategic Plan. It promotes efficient operations, better aligns fees with the costs of services provided, provides resources to reduce application pendency, and sufficiently finances ongoing and planned

strategic initiatives to promote access to the trademark system. The attached documents outline in detail all proposed fee changes.

Application filing fees

The USPTO timed this fee proposal to coincide with the transition to our new single-application filing system, which will sunset the Trademark Electronic Application System Standard and Plus filing options and associated fees. The new filing system consists of a basic application filing option and corresponding fee with various premium surcharges for applicants selecting costly attributes, including:

- Submissions of incomplete applications (other than applications denied a filing date for failure to satisfy the requirements under 37 CFR § 2.21);
- Custom descriptions of goods and services in the free-form field instead of using the preapproved drop-down fields containing acceptable identifications of goods and services from the Trademark Next Generation ID Manual; or
- When using the free-form field, providing excessively long identifications of goods or services.

These surcharges will incentivize the submission of complete applications, thereby improving efficiency and reducing pendency times, and will also help recover higher costs incurred from excessively and unnecessarily long identifications.

Financial sustainability

The USPTO proposes to adjust fees paid throughout the trademark life cycle to collect sufficient aggregate revenue to recover recent increases in aggregate costs, due in part to higher-than-expected inflation and other requirements. Our proposal also increases aggregate revenue through fees designed to improve processing efficiencies and rebalance the fee structure to recover aggregate costs.

To facilitate low barriers to entry into the trademark system, application filing fees are lower than the USPTO's costs incurred in delivering these services. We recover aggregate shortfalls through other fees, primarily maintenance filings with fees collected later in the trademark life cycle and intent-to-use (ITU) extension fees. The percentage of registrations filing for maintenance is declining while ITU processing costs are increasing, resulting in insufficient revenue generation to offset examination costs.

This proposal recovers some additional examination costs earlier in the trademark life cycle, but not all, thus remaining consistent with a low barrier to entry policy for underresourced and underrepresented brand owners. Accordingly, we propose to increase fees for maintenance and ITU filings to increase fee collections and rebalance the fee structure. Our proposal also adjusts certain fees for resource-intensive tasks to reduce subsidization for those tasks, including for petitions and letters of protest.

Next Steps

Attached to this letter are two documents. The first provides a summary of the proposal; the second provides a detailed listing of proposed fee adjustments. In addition, [the fee setting and adjusting section of our website](#) contains further background material to assist your analysis.

As the USPTO is proposing to use our fee setting authority under section 10 of the Leahy-Smith America Invents Act (AIA), the TPAC is required to hold a public hearing within the 30-day period following receipt of this proposal. The AIA also requires the TPAC to make available to the public a written report setting forth, in detail, the committee's comments, advice, and recommendations following the hearing. We will reach out soon to answer questions and assist with logistics and required materials.

I look forward to your comments and recommendations, and I am confident our collaboration will strengthen the nation's innovation ecosystem.

Sincerely,



Kathi Vidal
Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent
and Trademark Office

Attachments

Attachment I - Executive Summary of Trademark Fee Proposal
Attachment II - Table of Proposed Trademark Fee Adjustments

cc:

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