

United States Patent and Trademark Office

Patent Fee Proposal



Patent Public Advisory Committee
Fee Setting Hearing

February 15, 2012 – Alexandria, VA

February 23, 2012 – Sunnyvale, CA

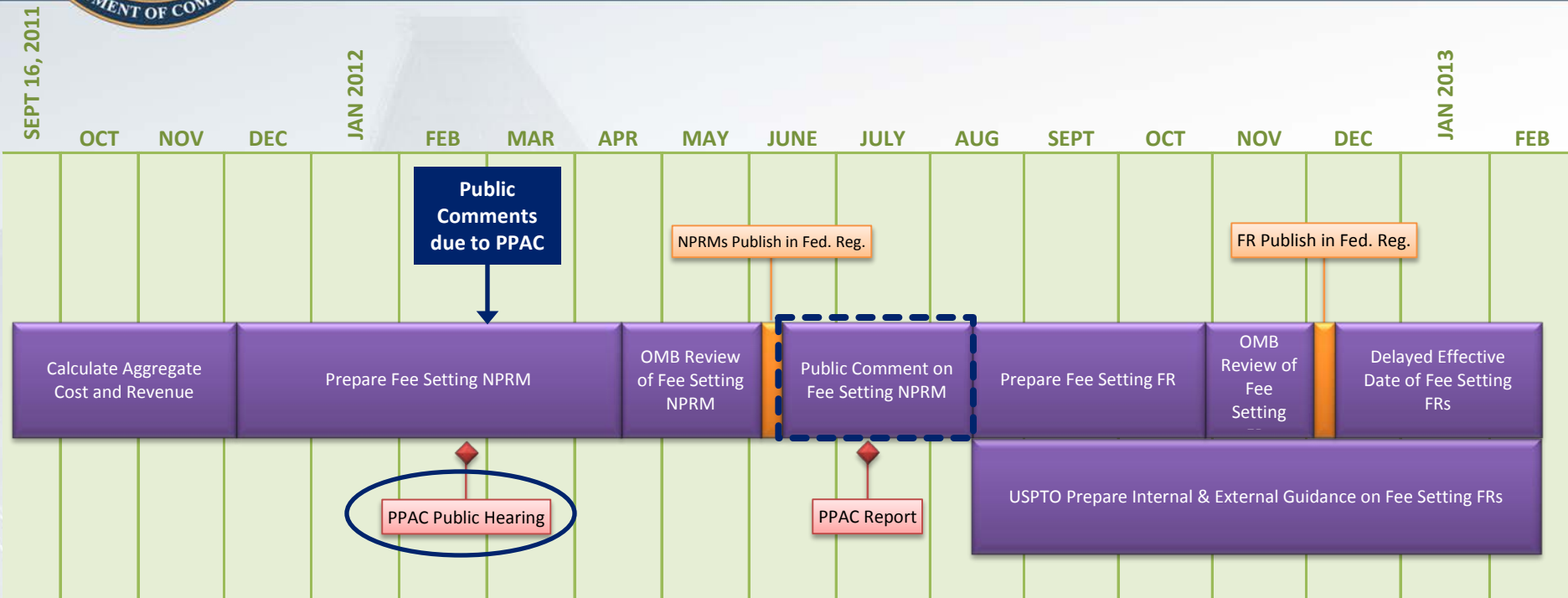


Discussion Topics

- Fee setting process
- Patent fee proposal
 - ↪ Patent backlog and pendency results under:
 - ⇒ Existing fee levels and
 - ⇒ Proposed fee levels.
 - ↪ Patent operating reserve
- Individual fee changes
- Conclusion and path forward



Fee Setting Process Overview



- Two opportunities for public comment:
 - ↪ Patent Public Advisory Committee (PPAC) Public Hearings; and
 - ↪ Notice of Proposed Rulemaking (NPRM) public comment period.
- The PPAC will issue their report on the proposed fee structure during the NPRM public comment period.

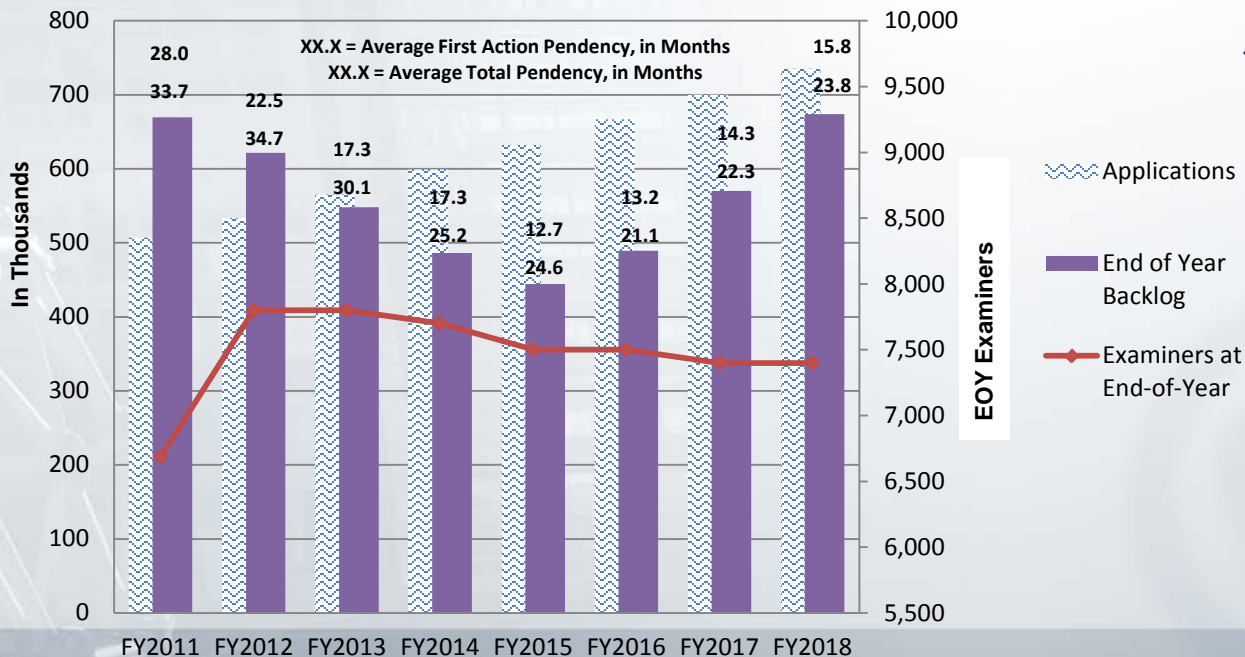


Proposed Fee Structure



Patent Application Backlog and Pendency with the Current 15% Surcharge Fees

- Assumes new micro entity fees.
- USPTO estimates receiving around \$2.4 billion in patent fees during FY 2013.
 - ↪ Only \$100 million more than it anticipates collecting in FY 2012.
 - ↪ These fees would pay for the estimated aggregate cost of \$2.4 billion of planned activities.
 - ↪ With this reduction comes less examination capacity – the Office would continue with its plans to hire 1,500 examiners in FY 2012, but would only replace attritions thereafter.



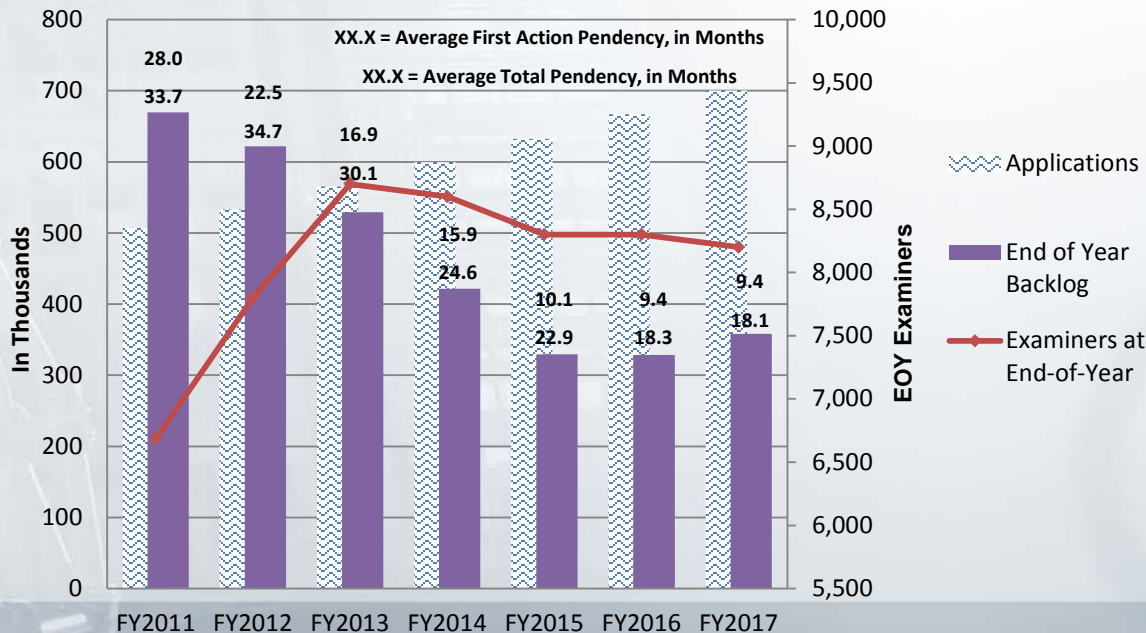
The backlog would be reduced from 669,625 applications at the end of FY 2011 to 444,200 at the end of FY 2015.

However, it would not keep pace with incoming applications and begin rising again in FY 2016.



Patent Application Backlog and Pendency with the Proposed Fee Schedule

- In FY 2013, the USPTO anticipates collecting \$2.686 billion in patent fee revenue.
 - ↪ \$137 million for long-term financial stability deposited in the operating reserve to pay for unexpected costs or offset revenue loss due to the fluctuation in demand for service.
- For FY 2013, the USPTO estimates that its aggregate patent operational costs, including administrative costs, would total \$2.549 billion and would:
 - ↪ reduce the backlog of patent applications from 669,625 applications at the end of FY 2011 to 329,500 at the end of FY 2015 and keep pace with incoming applications.



The benefits of the proposed fee structure become apparent when reviewing the change in patent applications filed, inventory in backlog, pendency, and number of patent examiners



Operating Reserve with the Proposed Fee Schedule

- Increases the USPTO's ability to absorb and respond to unanticipated shocks and temporary changes in its environment or circumstances.
- Fee-funded operations are typically at high risk for cash flow stress.
- Proposed fee structure mitigates these shocks and cash flow stress by continuing to build an operating reserve to three months of operating expenses, as follows:

Description	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
3 Months Operating Expense	\$562 M	\$637 M	\$675 M	\$702 M	\$712 M	\$736 M
Estimated End of Year Balance	\$121 M	\$277 M	\$459 M	\$756 M	\$712 M*	\$736 M*

- ↪ The Office reaches the three month target in 2015, when operating expenses begin to level off after reducing the patent application backlog.

* Once reaching the optimal level, the Office anticipates recalibrating the fee structure.



USPTO Funding Model

New Applications



Patent Application Inventory (Backlog)



Aggregate Cost (Budgetary Requirements)

Aggregate Revenue (Fees and Funding)

Capital Improvements and Other Strategic Initiatives

Increased Examination Capacity to Reduce Backlog and Pendency and New Contested Case Requirements

Current Examination Capacity with Support Costs

Fund Operating Reserve

Application Filing Fees - driven by # filed and economy

Issue Fees – driven by patent examination production and capacity

Maintenance Fees – driven by patents issued 3.5, 7.5, and 11.5 years earlier

Other Patent Fees

Strategic Goals, Objectives, and Performance Targets:
10/20 months by 2015/2016
Innovation,

Commercialization of New Technologies, and Job Creation

BALANCING MULTI-YEAR COST AND REVENUE

Operating Reserve





Proposed Fee Structure

Individual Fee Changes



Proposed Fee Structure Changes

- The USPTO proposes to set or adjust the fees contained in the *Table of Patent Fee Changes*.
- The more notable changes impact the following fee categories:
 - ↪ Basic filing, search, and examination
 - ↪ Prioritized examination (Track 1)
 - ↪ Excess claims, application size, and extensions of time
 - ↪ Request for continued examination (RCE)
 - ↪ Pre-grant publication and issue
 - ↪ Appeal, maintenance, and micro entity
 - ↪ Supplemental examination
 - ↪ Oath and declaration
- Plan for new fees to be effective February 2013, except for:
 - ↪ Reduction and consolidation of the pre-grant publication and issue fees, which will be effective January 2014 (decrease is delayed to ensure sufficient revenue during FY 2013).



Proposed Fee Structure Changes

Basic Filing, Search, and Exam Fees:

Fee Code	Description	Historical Cost (2010)	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1011/2011	Utility Basic Filing Fee	\$240	\$380	\$400	+ \$20	+5%
1111/2111	Utility Search Fee	\$1,690	\$620	\$660	+ \$40	+6%
1311/2311	Utility Examination Fee	\$1,970	\$250	\$780	+ \$530	+212%
Sub-Total	Utility – Basic Filing, Search Exam	\$3,900	\$1,250	\$1,840	+ \$590	+47%

Prioritized Examination Fees:

Fee Code	Description	Cost	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1817/2817	Request for Prioritized Examination	\$4,000	\$4,800	\$4,000	- \$800	-17%



Proposed Fee Structure Changes

Application Size Fees:

Fee Code	Description	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1081/2081	Utility Application Size Fee – for each additional 50 sheets that exceeds 100 sheets	\$310	\$400	+ \$90	+29%

Excess Claims Fees:

Fee Code	Description	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1201/2201	Independent Claims in Excess of 3	\$250	\$460	+ \$210	+84%
1202/2202	Total Claims in Excess of 20	\$60	\$100	+ \$40	+67%



Proposed Fee Structure Changes

Extension of Time Fees:

Fee Code	Description	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1251/2251	Extensions for Response within 1 st month	\$150	\$200	+ \$50	+33%
1252/2252	Extensions for Response within 2 nd month	\$560	\$600	+ \$40	+7%
1253/2253	Extensions for Response within 3 rd month	\$1,270	\$1,400	+ \$130	+10%
1254/2254	Extensions for Response within 4 th month	\$1,980	\$2,200	+ \$220	+11%
1255/2255	Extensions for Response within 5 th month	\$2,690	\$3,000	+ \$310	+12%

Request for Continued Examination Fees:

Fee Code	Description	Historical Cost (2010)	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1801/2801	Request for Continued Examination	\$1,696	\$930	\$1,700	+ \$770	+83%



Proposed Fee Structure Changes

Pre Grant Publication and Issue Fees:

Fee Code	Description	Historical Cost (2010)	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1501/2501	Utility Issue Fee	\$231	\$1,740	*	N/A	N/A
1504	Publication Fee for Early, Voluntary, or Normal Publication (PGPub)	\$158	\$300	*	N/A	N/A
Combined Total	PGPub and Issue Fee	\$389	\$2,040	\$960	-\$1,080	-53%

* Proposal combines the PGPub and Issue fees, and therefore, an individual fee amount is not proposed. Change effective 1/1/2014.

Appeals Fees:

Fee Code	Description	Historical Cost (2010)	Current Large Entity Fee	Proposed Large Entity Fee*	Dollar Change	Percent Change
1401/2401	Notice of Appeal (NOA)	\$4,960	\$620	\$1,500	\$880	142%
1402/2402	Filing a Brief in Support of an Appeal		\$620	\$0	-\$620	-100%
NEW	Appeal Fee		\$0	\$2,500	\$2,500	
Subtotal	Appeal Fee Changes - Subtotal	\$4,960	\$1,240	\$4,000	\$2,760	223%
1403/2403	Request for Oral Hearing	\$361	\$1,240	\$1,300	\$60	5%

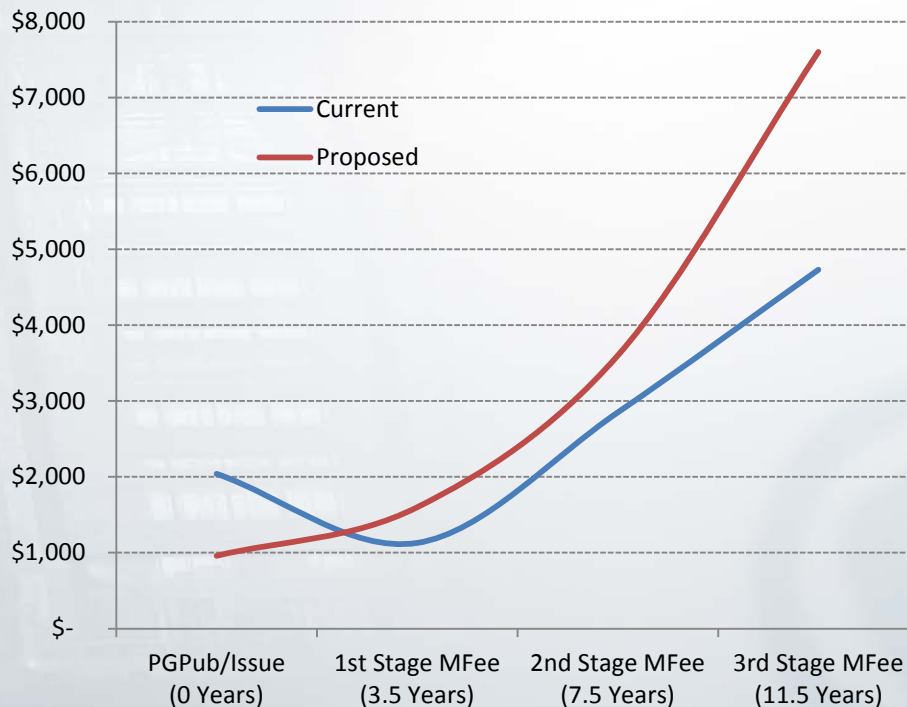
* The proposal includes the ability to pay a \$0 PGPub/Issue fee if an examiner withdraws a final rejection prior to filing for an appeal.



Proposed Fee Structure Changes

Maintenance Fees:

Fee Code	Description	Historical Cost (2010)	Current Large Entity Fee	Proposed Large Entity Fee	Dollar Change	Percent Change
1551/2551	Due at 3.5 years	\$1	\$1,130	\$1,600	\$470	42%
1552/2552	Due at 7.5 years	\$1	\$2,850	\$3,600	\$750	26%
1553/2553	Due at 11.5 years	\$1	\$4,730	\$7,600	\$2,870	61%





Proposed Fee Structure Changes

Supplemental Examination Fees:

Fee Code	Description	Cost	Fee Proposed in RIN 0651-AC69	Proposed Large Entity Fee	Dollar Change	Percent Change
New	Request for Supplemental Examination	\$5,180	\$5,180	\$7,000	+ \$1,820	+35%
New	Supplemental Examination	\$16,120	\$16,120	\$20,000	+ \$3,880	+24%

Oath and Declaration Fees:

Fee Code	Description	Current Fee	Proposed Large Entity Fee
New	File and oath/declaration up to the notice of allowance	N/A	\$3,000
New	Correct inventorship during examination where the oath/declaration was not provided before examination	N/A	\$1,700

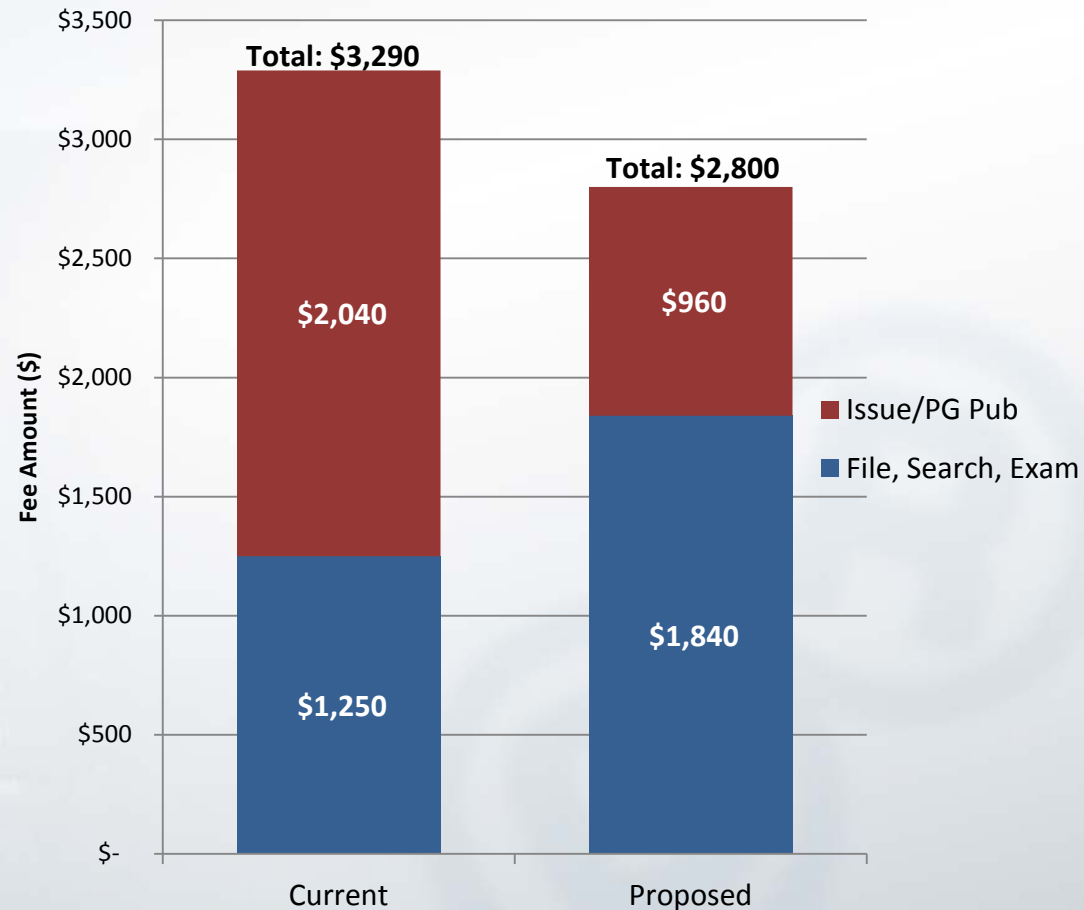


Summary

Proposed Fee Structure Changes

- Overall, when paying all fees under the proposed fee structure, the fees to obtain a basic patent (file/search/ exam and issue/publication) will decrease.
- This supports our strategy to encourage innovation and reduce the cost to applicants at a stage when the value of the innovation is least certain.

Current vs. Proposed - F/S/E & Issue/PG Pub



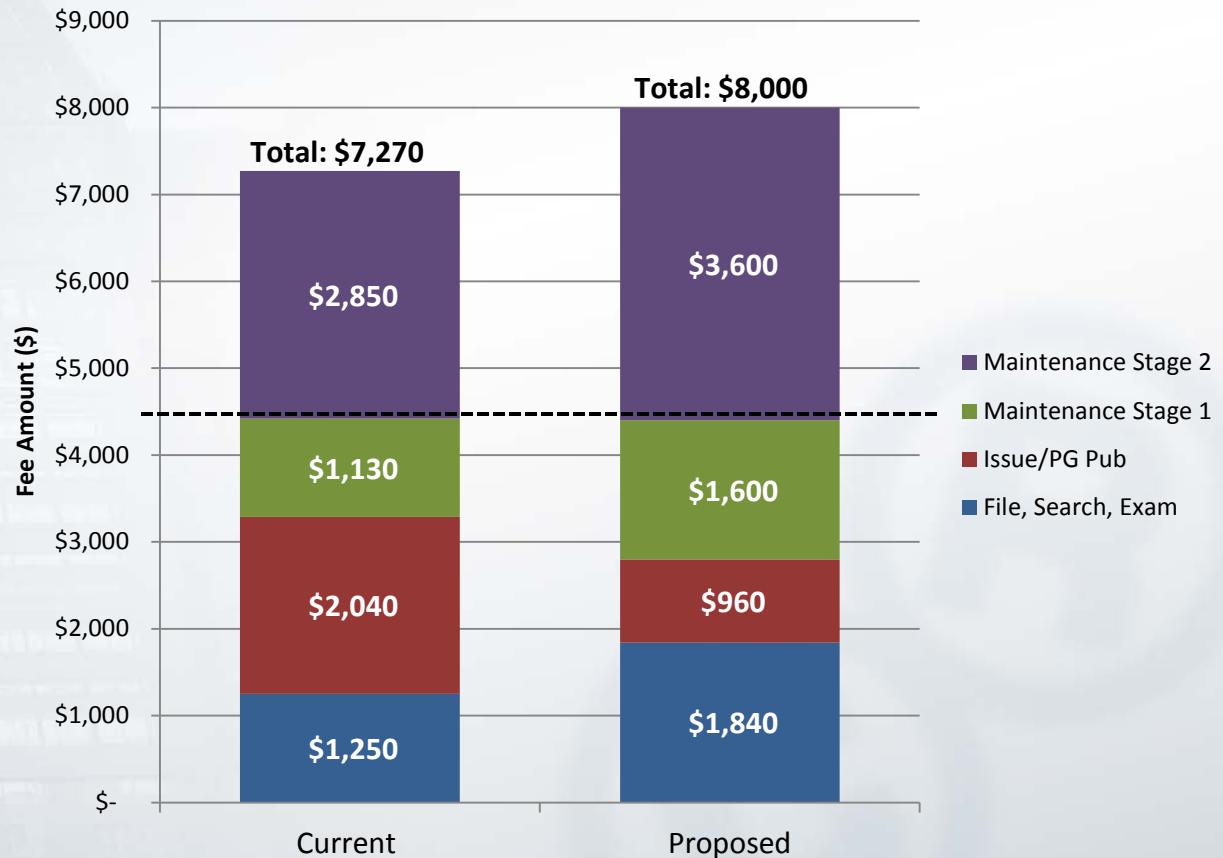


Summary

Proposed Fee Structure Changes

- The total fees for a basic patent (file/search/exam and issue/publication) through 1st stage maintenance remain nearly the same at around \$4,400.
- There will be a \$730 (10%) increase in total fees to reach the 2nd stage maintenance fee.
- However, this increase will occur over 7 years after patent issuance when a patentee will have had the opportunity to pursue commercialization and reap the financial benefits of the patent.
- A patent owner holding a patent through the 3rd stage maintenance fee*, will experience an additional \$2,870 increase to total fees.

Current vs. Proposed Fees – through Maintenance Stage 2



* Only 50% and 60% of patent owners renewed at the 3rd stage during FY 2010 and FY 2011, respectively. The FY 2011 renewal rates may be inflated due to a large number of patent holders who paid maintenance fees in advance of the 15% surcharge effective date on 9/26/2011.



Summary

- Achieving the goals outlined in the *USPTO FY 2010 – 2015 Strategic Plan* will cost money when:
 - ↪ The Agency currently faces 650,000 applications in the examination queue,
 - ↪ Will receive approximately 530,000 applications in FY 2012, a 5% increase over FY 2011, and
 - ↪ Has insufficient funds to ensure completion of the work.
- As pendency falls, we expect to face even greater demand for our services, thus further increasing application filings.
- The aggregate revenue for the proposed fee structure provides sufficient funds to accomplish the USPTO's goals in a financially prudent and stable manner.
- The proposed fees enable the USPTO to overcome the unfunded deficit and once the patent application backlog is reduced in FY 2015, eventually reduce fees.



Summary

- Once the USPTO fee proposal is implemented, the USPTO expects that the IP community will experience the following benefits:
 - ↪ More stable USPTO operations to deliver quality patent examinations and avoid future patent application backlogs, even in times of financial fluctuations;
 - ↪ Significantly decreased examination times to bring valuable patent assets to market faster;
 - ↪ More patent prosecution options to enhance applicant choice and Agency efficiency;
 - ↪ Modern IT systems at USPTO, to increase efficiencies by providing a uniform platform for conducting business with the Office, including registering, entering, and updating information, and paying fees.



Path Forward

- The proposed fee structure and the baseline scenario are intended to provide two different perspectives of information to the public to assist in considering our proposal.
- The proposal is far from final and we look forward to your insight, ideas, and suggestions for improvement that is beneficial for all – stakeholders, the Office, and our country.
- We look forward to receiving your input and a productive dialog.
- As you provide input, it is useful to frame it in goals, time periods, and which realignments and changes within the proposed fee structure are favorable and which are not.
 - ↳ Comments should be submitted by February 29, 2012 to fee.setting@uspto.gov.
- With this type of information, the Office would be armed to prepare a proposal for a notice of proposed rulemaking that achieves mutual objectives – targeted for release in June 2012.

Thank You!