

## **Cost Calculations for Supplemental Examination and Reexamination**

Fee Methodology. The Office uses an Activity Based Information (ABI) methodology to determine its historical costs on a per-process, per-service, or per-material basis, including the particular processes and services addressed in this rulemaking. The ABI methodology follows the full cost guidance outlined in OMB circular A-25 and the fee setting guidance outlined in the Government Accountability Office (GAO) report on Federal User Fees (Federal User Fees: A Design Guide, GAO-08-386SP (May 2008)). The ABI analysis involves compiling the Office costs for a specified activity, including the direct costs (e.g., direct personnel compensation and benefits, contract services, maintenance and repairs, communications, utilities, equipment, supplies, materials, training, rent, and program related information technology (IT) automation) and an appropriate allocation of indirect costs (e.g., general financial and human resource management, non-program specific IT automation, and general Office expenses). The direct costs for an activity plus the allocated indirect costs total the “fully burdened” cost for that activity. The “fully burdened” cost for an activity is then divided by production measures (number of that activity completed) to arrive at the fully burdened per-unit cost for that activity. The cost for a particular process is then determined by ascertaining which activities occur for the process, and how often each such activity occurs for the process. For reexamination proceedings, the fully burdened “examination-related” cost specifically includes, among the costs outlined above, the time spent by the examiner and the technical support staff to process and analyze the request for reexamination, and to conduct reexamination.

The ABI cost analysis and all historical expenses are based upon fiscal year 2010 data. The notice of proposed rulemaking to implement the supplemental examination provisions of the Leahy-Smith America Invents Act and to revise reexamination fees (supplemental examination notice of proposed rulemaking) sets out Office costs based upon fiscal year 2010 data. The Office now has fiscal year 2011 cost and production measure information. However, estimating fiscal year 2013 costs based upon fiscal year 2011 data rather than fiscal year 2010 data would result in higher estimated fiscal year 2013 costs, and thus higher supplemental examination and reexamination fees. Therefore, the Office is setting supplemental examination and reexamination fees based upon fiscal year 2010 data.

The Office is estimating the fiscal year 2013 cost by using the actual change in the Consumer Price Index for All Urban Consumers (CPI-U) during fiscal year 2011 and the projected change in the CPI-U during fiscal years 2012 and 2013 in the Office of Management and Budget (OMB) Fiscal Year 2012 Mid-Session Review (Fiscal Year 2012 MSR), as the CPI-U is a reasonable basis for determining the change in Office costs between the end of fiscal year 2010 and the beginning of fiscal year 2013. The individual CPI-U during each fiscal year is multiplied together to obtain a cumulative CPI-U from FY 2011 through FY 2013. The CPI-U increase for fiscal year 2011 was 2.8 percent. The CPI-U increase for fiscal year 2012 is forecasted in the Fiscal Year 2012 MSR to be 1.8, and the CPI-U increase for fiscal year 2013 is forecasted in the Fiscal Year 2012 MSR to be 1.9 percent. See <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/12msr.pdf>. Thus, the estimated fiscal year 2013 cost amounts are calculated by multiplying the cost amount for fiscal year 2010 by 1.066 (1.028 multiplied by 1.018 multiplied by 1.019 equals 1.066). The estimated

fiscal year 2013 cost amounts are then rounded to the nearest ten dollars by applying standard arithmetic rules so that the resulting fee amounts will be convenient to patent users.

The Office recently published a notice of proposed rulemaking to adjust patent fees under 35 U.S.C. 41(a) and (b) to reflect fluctuations in the Consumer Price Index over the previous twelve months in accordance with 35 U.S.C. 41(f). See CPI Adjustment of Patent Fees for Fiscal Year 2013, 77 FR 28331 (May 14, 2012). OMB has advised that in calculating CPI fluctuations for this purpose, the Office should use CPI-U data as determined by the Secretary of Labor, which indicates that the CPI-U increase from February 2011 to February 2012 was 2.9 percent. 77 FR at 28332-33. However, estimating fiscal year 2013 costs based upon a forecasted fiscal year 2012 CPI-U increase of 2.9 percent would result in higher estimated fiscal year 2013 costs, and thus higher supplemental examination and reexamination fees. Therefore, the Office is setting supplemental examination and reexamination fees based upon the forecasted fiscal year 2012 CPI-U increase of 1.8 percent as stated in the supplemental examination notice of proposed rulemaking.

Request for Ex Parte Reexamination: The amount of \$17,750 is the estimated average total cost (direct and indirect) in fiscal year 2013 of a “completed” ex parte reexamination (a “completed” reexamination being a reexamination that was terminated, by issuance of a certificate or otherwise, subsequent to being ordered). The figure is calculated by computing the average total cost (direct and indirect) in fiscal year 2010 of a completed ex parte reexamination, and using the CPI-U to adjust for an estimated cost for fiscal year 2013.

As a first step, the fiscal year 2010 fully burdened total cost (direct and indirect costs) for conducting ex parte reexamination proceedings is calculated. The Office established a Central Reexamination Unit (CRU) to conduct reexamination proceedings in July of 2005. See United States Patent and Trademark Office Performance and Accountability Report Fiscal Year 2005 at 19 (2005). The CRU currently conducts almost all reexamination proceedings (ex parte and inter partes) and concentrates solely on reexamination proceedings. The Office's fiscal year 2010 fully burdened examination-related cost for conducting reexamination proceedings (ex parte and inter partes) was \$19,988,049 (there are also publication costs, as discussed separately below), of which \$12,133,837 (60.7 percent) was for ex parte reexamination proceedings and \$7,854,212 (39.3 percent) was for inter partes reexamination proceedings. This allocation of cost between ex parte reexamination proceedings and inter partes reexamination proceedings is based upon reported examiner time spent on ex parte reexamination proceedings and inter partes reexamination proceedings. In sum, the fully burdened cost in fiscal year 2010 for conducting ex parte reexamination proceedings was \$12,133,837. This figure is a total cost that includes not only the cost of ex parte reexaminations proceedings for which the Office decided to institute ex parte reexamination (granted ex parte reexaminations proceedings), but also the costs for processing and treating petitions, and the cost of processing and analyzing requests in proceedings in which the Office decided not to institute ex parte reexamination (denied ex parte reexaminations).

An ex parte reexamination proceeding that has been completed has gone through the same initial processing and analysis of the request that was performed for denied ex parte reexaminations. However, in a completed ex parte reexamination proceeding, the order drafted by the examiner

grants the request and orders reexamination, rather than denies the request for reexamination.

For this reason, the total cost of a denied ex parte reexamination includes the cost for the initial processing and analysis of the request, only up to the decision denying reexamination. The total cost of a completed ex parte reexamination, which is a separate figure, includes the same costs for the initial processing and analysis of the request that are incurred for a denied ex parte reexamination, and in addition, includes the costs for conducting the reexamination.

In the second step, the Office determined the fiscal year 2010 examination-related total cost for granted ex parte reexamination proceedings. As discussed previously, the fully burdened total cost in fiscal year 2010 for conducting all activities involving ex parte reexamination proceedings, including the costs for processing and treating petitions, and the cost of processing and analyzing requests in proceedings in which the Office decided not to institute ex parte reexamination (denied ex parte reexaminations), was \$12,133,837. The Office calculated the total examination-related cost for granted ex parte reexamination proceedings in fiscal year 2010 by starting with the total cost for all activities involved in ex parte reexamination proceedings (\$12,133,837), and subtracting the fiscal year 2010 cost of processing petitions in ex parte reexamination proceedings and the total cost of processing and analyzing the request in proceedings for which the Office decided not to institute a reexamination proceeding (denied ex parte reexaminations).

The processing of a petition in a reexamination proceeding (ex parte or inter partes) involves (1) review and preparation of a decision for the petition, and (2) technical support staff processing of the petition and decision. The ABI analysis indicates that the average cost during

fiscal year 2010 of the (1) review and preparation of a decision for a petition in a reexamination proceeding (ex parte or inter partes) was \$1,687. In addition, the ABI analysis indicates that the average cost for the (2) technical support staff processing of a petition and decision in a reexamination proceeding was \$124. Thus, the average unit cost for the processing and review for a petition in a reexamination proceeding was \$1,812 (\$1,687 plus \$124 (difference due to rounding of amounts less than one dollar)). The Office decided 832 petitions in reexamination proceedings (ex parte and inter partes) in fiscal year 2010. Therefore, the total cost for processing petitions in reexamination proceedings was \$1,507,584 (\$1,812 multiplied by 832). This cost (\$1,507,584) was allocated between ex parte reexamination proceedings and inter partes reexamination proceedings on the basis of the percentage of examiner time spent on each of these proceedings (60.7 percent on ex parte reexamination proceedings and 39.3 percent on inter partes reexamination proceedings as discussed previously). On this basis, a total petitions cost of \$915,186 (60.7 percent of \$1,507,584) was allocated to ex parte reexamination proceedings. See Table 1A.

<b>Table 1A: Fiscal Year 2010 Total Cost for Treatment of Petitions Filed in Ex Parte Reexamination Proceedings</b>		
Fiscal Year 2010 Calculated Unit Cost	\$1,687	Treatment of petition (GS 15/8 employee)
	\$124	Processing cost (GS 9/5 employee)
	\$1,812	Unit cost per petition
Fiscal Year 2010 Total Cost	832	Multiplied by # of petitions decided
	\$1,507,584	Total cost of petitions decided ( <u>ex parte</u> and <u>inter partes</u> )
	60.7%	Multiplied by ratio of <u>ex parte</u> reexamination to total reexamination costs (from ABI Model)
	\$915,186	Fiscal Year 2010 total cost for treatment of petitions filed in <u>ex parte</u> reexamination proceedings

The other cost that needs to be identified is the total cost of denials for requests for reexamination. The processing of a request for ex parte reexamination up to the issuance of a decision denying the request for reexamination involves review of the request by the technical support staff and by the CRU examiner, preparation of a decision by a CRU examiner, and technical support staff processing of the request and decision. The Office’s ABI analysis indicates that the average CRU examiner cost during fiscal year 2010 of a decision (including the underlying analysis) denying a request for ex parte reexamination was \$3,621. This does **not** include the cost of treating any petition under 37 CFR 1.181 seeking review of the examiner’s decision to deny the request for reexamination. In addition, the Office’s ABI analysis indicates that the average cost for the technical support staff processing of such a request for reexamination was \$429. Thus, the unit cost to the Office for the processing and treatment of a denied request for ex parte reexamination was \$4,050. See Table 1B.

<b>Table 1B: Fiscal Year 2010 Unit Cost for Treatment of Denied Request for Ex Parte Reexamination</b>	
\$3,621	Treatment of request (GS 15/5 employee)
\$429	Processing cost (GS 9/5 employee)
\$4,050	Fiscal Year 2010 unit cost for treatment of denied request for <u>ex parte</u> reexamination

The number of denied requests for ex parte reexamination (54) multiplied by the unit cost of the processing of a request for ex parte reexamination up to the issuance of a decision denying a request for ex parte reexamination (\$4,050) yields the fiscal year 2010 total cost for proceedings in which the Office decided not to institute ex parte reexamination (denied reexaminations).

Thus, the Office’s total cost of processing and analyzing requests for ex parte reexamination for

which the Office decided not to institute a reexamination proceeding was \$218,700 (54 multiplied by \$4,050). See Table 1C.

<b>Table 1C: Fiscal Year 2010 Total Cost for Treatment of Denied Requests for Ex Parte Reexamination</b>	
\$4,050	Fiscal year 2010 unit cost per denied request (Table 1B)
54	Multiplied by # of <u>ex parte</u> reexamination requests denied
\$218,700	Fiscal year total cost of denied <u>ex parte</u> reexamination requests

As discussed previously, in order to determine the fiscal year 2010 examination-related total costs of granted ex parte reexamination proceedings, the total cost of petitions and the total cost of requests for ex parte reexaminations must be subtracted from the fiscal year 2010 cost for all activities involved in ex parte reexamination proceedings. Hence, the examination-related total cost of granted ex parte reexamination proceedings is the examination-related total cost allocated to all ex parte reexamination proceedings (\$12,133,837) minus the petition costs allocated to ex parte reexamination proceedings (\$915,186) (Table 1A) and minus the cost of processing and analyzing requests for ex parte reexamination for which the Office decided not to institute a reexamination proceeding (\$218,700) (Table 1C). Therefore, the Office’s fiscal year 2010 examination-related total cost of granted ex parte reexamination proceedings was \$10,999,951 (\$12,133,837 minus \$915,186 minus \$218,700).

As a third step, the fiscal year 2010 cost per Office action in granted ex parte reexamination proceedings is calculated. The Office issued a total of 2,638 Office actions in granted ex parte reexamination proceedings during fiscal year 2010. As a result, the fiscal year 2010 cost per Office action in granted ex parte reexamination proceedings was \$4,170 (\$10,999,951 divided by 2,638).

As a fourth step, the fiscal year 2010 examination-related unit cost of a completed ex parte reexamination is calculated. The Office issued an average of 3.92 Office actions in the ex parte reexamination proceedings that were completed in fiscal year 2010. Therefore, the cost per completed ex parte reexamination proceeding was \$16,346 (\$4,170 multiplied by 3.92).

As a fifth step, the fiscal year 2010 unit cost of a completed ex parte reexamination (including examination-related and publishing costs) is calculated. The Office's publication cost for reexamination proceeding paper or data capture and certificate publication cost was \$302 per reexamination proceeding. Therefore, the Office's fiscal year 2010 unit cost for a completed ex parte reexamination proceeding was \$16,648 (\$16,346 plus \$302).

As a final step, the fiscal year 2013 unit cost of a completed ex parte proceeding is estimated. Using the CPI-U increase for fiscal year 2011 and the estimated CPI-U increase for fiscal years 2012 and 2013, the estimated fiscal year 2013 cost to the Office for filing an ex parte reexamination request is \$17,747 (\$16,648 multiplied by 1.066), which, when rounded to the nearest ten dollars, is \$17,750. See Table 1D.

<b>Table 1D: Fiscal Year 2013 Estimated Unit Cost for Treatment of Completed Request for Ex Parte Reexamination</b>		
Fiscal Year 2010 Calculated Total Costs	\$19,988,049	Fiscal year 2010 total reexamination costs <u>ex parte</u> and <u>inter partes</u> (ABI cost model)
	\$12,133,837	Total cost for <u>ex parte</u> reexamination ( 60.7% of time spent on <u>ex parte</u> reexaminations)
	\$ 915,186	Minus cost for petitions filed in <u>ex parte</u> reexamination (Table 1A)
	\$218,700	Minus cost for denied request for <u>ex parte</u> reexamination (Table 1C)
	\$10,999,951	Fiscal year 2010 total exam-related cost for completed <u>ex parte</u> reexaminations
Fiscal Year 2010 Calculated Unit Costs	2,638	Divide by # of office actions in 2010
	\$4,170	Equals exam-related cost per Office action in <u>ex parte</u> reexamination
	3.92	Multiplied by the average # of Office actions in <u>ex parte</u> reexamination proceedings completed in 2010
	\$16,346	Equals exam-related cost per completed <u>ex parte</u> reexamination proceeding
	\$302	Plus publication and paper capture cost per proceeding
	\$16,648	Fiscal year 2010 calculated unit cost for completed <u>ex parte</u> reexamination proceeding
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$17,747	Fiscal year 2013 estimated cost for each completed <u>ex parte</u> reexamination proceeding
	\$17,750	Fiscal year 2013 estimated cost, rounded to nearest ten

Petition in Reexamination (Ex Parte or Inter Partes): As discussed previously, the ABI analysis indicates that the average fiscal year 2010 cost for the processing and treatment of a petition in a reexamination proceeding was \$1,812 (\$1,687 for review and preparation of a decision plus \$124 for processing costs). Using the CPI-U increase for fiscal year 2011 and the estimated CPI-U increase for fiscal years 2012 and 2013, and rounding to the nearest ten dollars, as discussed previously, the estimated fiscal year 2013 cost to the Office for the processing and treatment of a

petition in a reexamination proceeding is \$1,932 (\$1,812 multiplied by 1.066), which when rounded to the nearest ten dollars is \$1,930. See Tables 1A and 2.

<b>Table 2: Fiscal Year 2013 Estimated Unit Cost of Treatment of Petitions Filed in Ex Parte Reexamination Proceedings</b>		
Fiscal Year 2010 Calculated Unit Cost	\$1,687	Review of petition (GS 15/8 employee)
	\$124	Processing costs (GS 9/5 employee)
	\$1,812	Unit cost per petition
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$1,930	Fiscal year 2013 estimated unit cost of treatment of petitions, rounded to nearest ten

Denied Request for Ex Parte Reexamination: As discussed previously, the Office’s ABI analysis indicates that the average cost during fiscal year 2010 of the processing, review and treatment of a request for reexamination (including the underlying analysis) up to the issuance of a decision denying the request for reexamination was \$4,050. (Table 1B) Using the CPI-U increase for fiscal year 2011 and the estimated CPI-U increase for fiscal years 2012 and 2013, and rounding to the nearest ten dollars, the estimated fiscal year 2013 cost to the Office of processing a request for ex parte reexamination up to the issuance of a decision denying the request for reexamination, is \$4,317 (\$4,050 multiplied by 1.066), which, when rounded to the nearest ten dollars, is \$4,320. See Tables 1B and 3.

<b>Table 3: Fiscal Year 2013 Estimated Unit Cost of Processing and Analyzing a Request in a Denied Ex Parte Reexamination</b>		
Fiscal Year 2010 Calculated Unit Cost	\$3,621	CRU examiner cost (GS 15/5 employee)
	\$429	Processing cost (LIE & paralegal)
	\$4,050	Unit cost per denied request
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$4,320	Fiscal year 2013 estimated unit cost, rounded to nearest ten

Thus, if a request for ex parte reexamination is denied (not instituted), the previously discussed fee for filing an ex parte reexamination request (\$17,750), minus the previously discussed estimated fiscal year 2013 cost to the Office of processing a request for ex parte reexamination up to the issuance of a decision denying the request for reexamination, which is the fee (\$4,320) specified in this section, will be refunded. See § 1.26(c). The fee that would be refunded is \$17,750 minus \$4,320, or \$13,430.

Supplemental Examination: As discussed previously, the estimated average fiscal year 2013 cost to the Office for processing a request for ex parte reexamination up to the issuance of a decision denying the request for ex parte reexamination (a denied reexamination) is \$4,317.

There are several differences between ex parte reexamination and supplemental examination. First, an ex parte reexamination may be requested by either the patent owner or a third party, whereas a supplemental examination may be requested only by the patent owner. Second, ex parte reexamination is limited to patents and printed publications, whereas a supplemental examination proceeding may involve any “item” of information, such as affidavits, and

transcripts of video or audio recordings. Third, a supplemental examination may involve more issues of patentability.

The Office does not separately track the time by the examiners to process and analyze patent owner-requested ex parte reexaminations and third party-requested ex parte reexaminations. The Office consulted with the managers of the Central Reexamination Unit (CRU), who in turn consulted with their examiners, to see whether patent owner-requested ex parte reexaminations required more, less, or the same amount of examiner time as third party-requested ex parte reexaminations. While some CRU managers and examiners felt that patent owner-requested ex parte reexaminations required less examiner time than third party-requested ex parte reexaminations, most CRU managers and examiners believed that patent owner-requested ex parte reexaminations required the same amount of examiner time as third party-requested ex parte reexaminations. The reason given was that the third party submissions that drive up the examiner time required for inter partes reexaminations are not present in third party requested ex parte reexaminations and third party participation in ex parte reexaminations is limited and ends before the Office issues a first Office action. That being the case, the examiner time required for patent owner-requested and third party-requested ex parte reexaminations is about the same. Accordingly, the costs to the Office for a request for ex parte reexamination are about the same, whether the request is filed by the patent owner or by a third party requester.

In a supplemental examination proceeding, any “item” of information may be submitted with the request, such as affidavits, and transcripts of video or audio recordings. Because of the extensive variety of these “items of information” that may be submitted, and because the patent owner may

present an item of information that raises issues of patentability beyond those that may be raised in an ex parte reexamination (e.g., issues under 35 U.S.C. 101 and 112), the analysis necessary for a request for supplemental examination will on average require a greater level of effort as compared to the level of effort required to analyze a request for ex parte reexamination. It is expected that the level of effort necessary for a request for supplemental examination will, on average, be a percentage increase rather than a multiple of the level of effort relative to that required to analyze a request for ex parte reexamination. The Office estimates that supplemental examination requests will require on average twenty percent (20%) more time, on the part of both the technical staff and the examiner, to process and to analyze. For example, an estimate for the number of hours required for an examiner to review a supplemental examination request and draft the certificate is 24 hours. The supporting calculator starts with an estimate, provided by the CRU, of 20 hours for a GS-15 examiner to review an ex parte reexamination request and draft an order. This estimate, 20 hours, multiplied by 1.2, results in an estimated total of 24 hours to review a supplemental examination request and draft the certificate. Using this estimate, the fully burdened cost is adjusted by an additional twenty percent to recover the estimated additional time needed to process and to analyze supplemental examination requests. Therefore, the estimated cost of treating a supplemental examination request is \$5,180 (\$4,317 multiplied by 1.2). See Tables 1B, 3 and 4.

<b>Table 4: Fiscal Year 2013 Estimated Unit Cost of Processing and Treating a Request for Supplemental Examination</b>		
Fiscal Year 2010 Calculated Unit Cost	\$4,050	Unit cost per denied request for <u>ex parte</u> reexamination see Table 3
	1.2	20% estimated additional level of effort in supplemental examination
	\$4,860	Estimated unit cost of request for supplemental examination
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$5,180	Fiscal year 2013 estimated unit cost for request for supplemental examination
	\$5,180	Fiscal year 2013 estimated unit cost, rounded to nearest ten

Ex Parte Reexamination Resulting From Supplemental Examination: The fee for conducting reexamination ordered as a result of the supplemental examination proceeding starts with the Office’s estimated fiscal year 2010 average fully burdened cost of \$16,648 for a completed ex parte reexamination proceeding (which includes the cost for processing and analyzing an ex parte reexamination request up to and including the order granting reexamination) (Table 1D) and subtracts the Office’s fiscal year 2010 average fully burdened cost of \$4,050 for processing requests for ex parte reexamination for which the Office decided not to institute a reexamination proceeding (i.e., the cost for processing and analyzing the request up to and including the order denying reexamination). The result is \$12,598.

As stated above, however, an ex parte reexamination proceeding does not include the extensive variety of items of information permitted in a reexamination ordered as a result of a supplemental examination proceeding, such as transcripts of video or audio recordings. Because of the extensive variety of these “items of information” that may be submitted, and because the

patent owner may present an item of information that raises multiple issues of patentability in addition to those permitted to be raised in ex parte reexamination, such as issues under 35 U.S.C. 101, and issues under 35 U.S.C. 112 with respect to the original disclosure, the processing and consideration of the variety of issues raised in a supplemental examination proceeding are estimated to require on average 20 percent more time, on the part of both the technical staff and the examiner, as mentioned above. For example, taking the cost incurred by conducting reexamination in an ex parte reexamination proceeding and dividing it by the fully burdened hourly cost per GS-15 examiner yields the number of hours to conduct reexamination in an ex parte reexamination proceeding. Since it is estimated that an ex parte reexamination resulting from supplemental examination would require on average 20 percent more time, the hours per ex parte reexamination are then adjusted upward by 20 percent or 1.2. In order to determine the cost incurred by conducting reexamination in an ex parte reexamination proceeding, subtract the cost for processing and treating an ex parte reexamination request for which the Office decided not to institute reexamination (\$4,050), from the fiscal year 2010 total fully burdened cost for a completed ex parte reexamination (\$16,648) to arrive at \$12,598 (\$16,648 minus \$4,050). The fully burdened cost per hour for a GS-15 examiner is \$180 per hour. Dividing \$12,598 by \$180 per hour equals 70 hours (including the additional time required for the support staff) to conduct reexamination in an ex parte reexamination proceeding. As stated above, for reexamination ordered as a result of supplemental examination, 20 percent additional time is estimated to be required. Seventy (70) hours multiplied by 1.2 equals an estimated 84 hours for reexamination ordered upon review of a supplemental examination request. Thus, the fully burdened cost of a reexamination resulting from a supplemental examination is \$15,118 (\$12,598 multiplied by 1.2), using fiscal year 2010 amounts as a basis. Using the CPI-U increase for fiscal year 2011

and the estimated CPI-U increase for fiscal years 2012 and 2013, the estimated fiscal year 2013 cost to the Office of a reexamination resulting from a supplemental examination is \$16,116 (\$15,118 multiplied by 1.066) which, when rounded to the nearest ten dollars, is \$16,120. See Tables 1D, 3 and 5.

<b>Table 5: Fiscal Year 2010 Estimated Unit Cost of Reexamination Ordered as a Result of a Supplemental Examination Proceeding (35 USC 257)</b>		
Fiscal Year 2010 Calculated Unit Costs	\$16,648	Unit cost for completed <u>ex parte</u> reexamination (Table 1D)
	\$4,050	Minus unit cost of denied request (Table 3)
	\$12,598	Equals unit cost to conduct reexamination in <u>ex parte</u> reexamination proceeding
	1.2	Multiply by 20% estimated additional level of effort in supplemental examination
	\$15,118	Equals fiscal year 2010 unit cost of reexamination
Fiscal Year 2013 Estimated Unit Costs	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$16,116	Fiscal year 2013 estimated unit cost for reexamination ordered under 35 U.S.C. 257
	\$16,120	Fiscal year 2013 estimated unit cost, rounded to nearest ten

Supplemental Examination Document Size Fees: There are additional costs incurred by the Office to process and analyze, in a supplemental examination proceeding, certain documents submitted with the request that are over 20 pages in length. Examples of such documents include non-patent literature, court documents, transcripts of audio or video recordings, and affidavits/declarations. The basis for charging a surcharge for more than 20 pages is derived from a review of ex parte reexamination requests to determine the average number of documents, such as non-patent literature (NPL) and court documents submitted with (and relied upon in) the request, whose length was greater than 20 pages (the average was 0.7 of such documents per request, or less than 1 per request). This review indicated that 88 percent of the documents

submitted with ex parte reexamination requests were of a length that was less than 20 pages. The fees for processing and treating a request for supplemental examination, and for conducting a reexamination ordered as a result of a supplemental examination proceeding, include the costs incurred to analyze documents whose length is 20 pages or less. To recover the additional costs incurred to analyze lengthy documents, the Office is applying an additional fee for documents whose length is greater than 20 pages.

The document size fees are based on the fiscal year 2010 fully burdened hourly cost for a GS-15 examiner (\$180 per hour), and on the length of time for a GS-15 examiner to read a manuscript page. A manuscript page is defined as an average of 250 words per page, double-spaced, twelve-point font, Courier or Times New Roman font, 8 ½ x 11 paper. See, e.g., MLA Handbook for Writers of Research Papers, 4<sup>th</sup> ed., Modern Language Association of America (1995); Chicago Manual of Style, 14<sup>th</sup> ed. University of Chicago Press (1993). A manuscript page was chosen as a basis because, while magazine and journal articles generally contain more than 250 words per page, other documents that may be submitted, including court documents, are generally anticipated to be comprised of manuscript pages that contain, on average, 250 words per page. The computation of reading speed is based on the fact that most examiners are engineers and that data is available on the average reading speed of an engineer to read an engineering article, and on the average size of an engineering article. The average time spent by an engineer to read an engineering article, in minutes/engineering magazine article, has been reported to be 43 minutes. See Electronic Journals and Changes in Scholarly Article Seeking and Reading Patterns, Tenopir, King, Edwards and Wu, ASLIB Proceedings: New Information Perspectives, Vo. 61, No. 1, pp. 5-32 (2009). The average engineering magazine article has been reported to be

approximately 9.34 pages. See Communication Patterns of Engineers, Carol Tenopir and Donald W. King, Institute of Electrical and Electronics Engineers, p.115 (2004) (reporting that there are 2,625 article pages per year and 281 articles per year (2,625 divided by 281)). To compute average reading time per magazine article page, the reported average reading time for an article by an engineer (43 minutes) is divided by the reported average size of an engineering magazine article (9.34 pages). The result is an average reading speed of 4.6 minutes per magazine article page. To convert to words per minute, a conversion factor of 650 words per magazine article page, from the Web site [www.wolframalpha.com](http://www.wolframalpha.com), is divided by 4.6 minutes per magazine article page to equal 141.3 words per minute. To convert to manuscript pages per hour, 141.3 words per minute is divided by 250 words per manuscript page, and then multiplied by 60 minutes, to obtain 34 manuscript pages per hour.

Documents between 21 and 50 pages: The fiscal year 2010 fully burdened cost for a GS-15 examiner to read and analyze 30 manuscript pages at a reading speed of 34 pages per hour is \$159 (30 divided by 34, multiplied by \$180, the fiscal year 2010 fully burdened cost to the Office for one hour of time for a GS-15 examiner). Using the CPI-U increase for fiscal year 2011 and the estimated CPI-U increase for fiscal years 2012 and 2013, and rounding to the nearest ten dollars, as discussed previously, the estimated fiscal year 2013 cost for an examiner to read and analyze 30 manuscript pages at a reading speed of 34 pages per hour is \$166 (\$159 multiplied by 1.066), which, when rounded to the nearest ten dollars, is \$170.

Documents over 50 pages: The fiscal year 2010 fully burdened cost for a GS-15 examiner to read and analyze 50 manuscript pages at a reading speed of 34 pages per hour is \$265 (50

divided by 34, multiplied by \$180). Using the CPI-U increase for fiscal year 2011 and the estimated CPI-U increase for fiscal years 2012 and 2013, and rounding to the nearest ten dollars, as discussed previously, the estimated fiscal year 2013 cost to the Office for a GS-15 examiner to read and analyze 50 manuscript pages is \$282 (\$265 multiplied by 1.066) which, when rounded to the nearest ten dollars, is \$280.

Fiscal Year 2011 Calculated Ex Parte Reexamination Costs: The following Tables 6A through 6D set out the unit cost calculations for a completed ex parte reexamination proceeding based upon fiscal year 2011 cost and production measure information corresponding to Tables 1A through 1D. The Office's fiscal year 2011 unit cost for a completed ex parte reexamination proceeding was \$19,626. See Table 6D. Thus, using fiscal year 2011 unit cost information and the estimated CPI-U increase for fiscal years 2012 and 2013, the estimated fiscal year 2013 cost to the Office for filing an ex parte reexamination request would have been \$20,360. See Table 6D.

<b>Table 6A: Fiscal Year 2011 Total Cost for Treatment of Petitions Filed in Ex Parte Reexamination Proceedings</b>		
Fiscal Year 2011 Calculated Unit Cost	\$1,729	Treatment of petition (GS 15/8 employee)
	\$127	Processing cost (GS 9/5 employee)
	\$1,857	Unit cost per petition
Fiscal Year 2011 Total Cost	968	Multiplied by # of petitions decided
	\$1,797,576	Total cost of petitions decided ( <u>ex parte</u> and <u>inter partes</u> )
	59.2%	Multiplied by ratio of <u>ex parte</u> reexaminations to total reexamination costs (from ABI Model)
	\$1,063,414	Fiscal Year 2011 total cost for treatment of for petitions filed in <u>ex parte</u> reexamination proceedings

<b>Table 6B: Fiscal Year 2011 Unit Cost for Treatment of Denied Request for Ex Parte Reexamination</b>	
\$3,712	Treatment of request (GS 15/5 employee)
\$439	Processing cost (GS 9/5 employee)
\$4,151	Fiscal Year 2011 unit cost for treatment of denied request for <u>ex parte</u> reexamination

<b>Table 6C: Fiscal Year 2011 Total Cost for Treatment of Denied Requests for Ex Parte Reexamination</b>	
\$4,151	Fiscal year 2011 unit cost per denied request (Table 6B)
89	Multiplied by # of <u>ex parte</u> reexamination requests denied
\$369,439	Fiscal year total cost of denied <u>ex parte</u> reexamination requests

<b>Table 6D: Fiscal Year 2013 Estimated Unit Cost for Treatment of Completed Request for Ex Parte Reexamination Based Upon Fiscal Year 2011 Costs</b>		
Fiscal Year 2011 Calculated Total Costs	\$26,417,066	Fiscal year 2011 total reexamination costs <u>ex parte</u> and <u>inter partes</u> (ABI cost model)
	\$15,627,866	Total cost for <u>ex parte</u> reexamination (59.2% of time spent on <u>ex parte</u> reexaminations)
	\$ 1,063,414	Minus cost for petitions filed in <u>ex parte</u> reexamination (Table 6A)
	\$369,439	Minus cost for denied request for <u>ex parte</u> reexamination (Table 6C)
	\$14,195,013	Fiscal year 2011 total exam-related cost for completed <u>ex parte</u> reexaminations
Fiscal Year 2011 Calculated Unit Cost	2,867	Divide by # of office actions in 2011
	\$4,951	Equals exam-related cost per Office action in <u>ex parte</u> reexamination
	3.90	Multiplied by the average # of Office actions in <u>ex parte</u> reexamination proceedings completed in 2011
	\$19,297	Equals exam-related cost per completed <u>ex parte</u> reexamination proceeding
	\$328	Plus publication and paper capture cost per proceeding
	\$19,626	Fiscal year 2011 calculated unit cost for completed <u>ex parte</u> reexamination proceeding
Fiscal Year 2013 Estimated Unit Cost	1.037	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$20,358	Fiscal year 2013 estimated cost for each completed <u>ex parte</u> reexamination proceeding
	\$20,360	Fiscal year 2013 estimated cost, rounded to nearest ten

## Appendix of Tables

<b>Table 1A: Fiscal Year 2010 Total Cost for Treatment of Petitions Filed in Ex Parte Reexamination Proceedings</b>		
Fiscal Year 2010 Calculated Unit Cost	\$1,687	Treatment of petition (GS 15/8 employee)
	\$124	Processing cost (GS 9/5 employee)
	\$1,812	Unit cost per petition
Fiscal Year 2010 Total Cost	832	Multiplied by # of petitions decided
	\$1,507,584	Total cost of petitions decided ( <u>ex parte</u> and <u>inter partes</u> )
	60.7%	Multiplied by ratio of <u>ex parte</u> reexamination to total reexamination costs (from ABI Model)
	\$915,186	Fiscal Year 2010 total cost for treatment of petitions filed in <u>ex parte</u> reexamination proceedings

<b>Table 1B: Fiscal Year 2010 Unit Cost for Treatment of Denied Request for Ex Parte Reexamination</b>	
\$3,621	Treatment of request (GS 15/5 employee)
\$429	Processing cost (GS 9/5 employee)
\$4,050	Fiscal Year 2010 unit cost for treatment of denied request for <u>ex parte</u> reexamination

<b>Table 1C: Fiscal Year 2010 Total Cost for Treatment of Denied Requests for Ex Parte Reexamination</b>	
\$4,050	Fiscal year 2010 unit cost per denied request (Table 1B)
54	Multiplied by # of <u>ex parte</u> reexamination requests denied
\$218,700	Fiscal year total cost of denied <u>ex parte</u> reexamination requests

<b>Table 1D: Fiscal Year 2013 Estimated Unit Cost for Treatment of Completed Request for Ex Parte Reexamination</b>		
Fiscal Year 2010 Calculated Total Costs	\$19,988,049	Fiscal year 2010 total reexamination costs <u>ex parte</u> and <u>inter partes</u> (ABI cost model)
	\$12,133,837	Total cost for <u>ex parte</u> reexamination (60.7% of time spent on <u>ex parte</u> reexaminations)
	\$ 915,186	Minus cost for petitions filed in <u>ex parte</u> reexamination (Table 1A)
	\$218,700	Minus cost for denied request for <u>ex parte</u> reexamination (Table 1C)
	\$10,999,951	Fiscal year 2010 total exam-related cost for completed <u>ex parte</u> reexaminations
Fiscal Year 2010 Calculated Unit Costs	2,638	Divide by # of office actions in 2010
	\$4,170	Equals exam-related cost per Office action in <u>ex parte</u> reexamination
	3.92	Multiplied by the average # of Office actions in <u>ex parte</u> reexamination proceedings completed in 2010
	\$16,346	Equals exam-related cost per completed <u>ex parte</u> reexamination proceeding
	\$302	Plus publication and paper capture cost per proceeding
	\$16,648	Fiscal year 2010 calculated unit cost for completed <u>ex parte</u> reexamination proceeding
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$17,747	Fiscal year 2013 estimated cost for each completed <u>ex parte</u> reexamination proceeding
	\$17,750	Fiscal year 2013 estimated cost, rounded to nearest ten

<b>Table 2: Fiscal Year 2013 Estimated Unit Cost of Treatment of Petitions Filed in Ex Parte Reexamination Proceedings</b>		
Fiscal Year 2010 Calculated Unit Cost	\$1,687	Review of petition (GS 15/8 employee)
	\$124	Processing costs (GS 9/5 employee)
	\$1,812	Unit cost per petition
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$1,930	Fiscal year 2013 estimated unit cost of treatment of petitions, rounded to nearest ten

<b>Table 3: Fiscal Year 2013 Estimated Unit Cost of Processing and Analyzing a Request in a Denied Ex Parte Reexamination</b>		
Fiscal Year 2010 Calculated Unit Cost	\$3,621	CRU examiner cost (GS 15/5 employee)
	\$429	Processing cost (LIE & paralegal)
	\$4,050	Unit cost per denied request
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$4,320	Fiscal year 2013 estimated unit cost, rounded to nearest ten

<b>Table 4: Fiscal Year 2013 Estimated Unit Cost of Processing and Treating a Request for Supplemental Examination</b>		
Fiscal Year 2010 Estimated Unit Cost	\$4,050	Unit cost per denied request for <u>ex parte</u> reexamination
	1.2	20% estimated additional level of effort in supplemental examination
	\$4,860	Unit cost of request for supplemental examination
Fiscal Year 2013 Estimated Unit Cost	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$5,180	Fiscal year 2013 estimated unit cost for request for supplemental examination
	\$5,180	Fiscal year 2013 estimated unit cost, rounded to nearest ten

<b>Table 5: Fiscal Year 2010 Estimated Unit Cost of Reexamination Ordered as a Result of a Supplemental Examination Proceeding (35 USC 257)</b>		
Fiscal Year 2010 Calculated Unit Costs	\$16,648	Unit cost for completed <u>ex parte</u> reexamination (Table 1D)
	\$4,050	Minus unit cost of denied request (Table 3)
	\$12,598	Equals unit cost to conduct reexamination in <u>ex parte</u> reexamination proceeding
	1.2	Multiply by 20% estimated additional level of effort in supplemental examination
	\$15,118	Equals fiscal year 2010 unit cost of reexamination
Fiscal Year 2013 Estimated Unit Costs	1.066	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$16,116	Fiscal year 2013 estimated unit cost for reexamination ordered under 35 U.S.C. 257
	\$16,120	Fiscal year 2013 estimated unit cost, rounded to nearest ten

<b>Table 6A: Fiscal Year 2011 Total Cost for Treatment of Petitions Filed in Ex Parte Reexamination Proceedings</b>		
Fiscal Year 2011 Calculated Unit Cost	\$1,729	Treatment of petition (GS 15/8 employee)
	\$127	Processing cost (GS 9/5 employee)
	\$1,857	Unit cost per petition
Fiscal Year 2011 Total Cost	968	Multiplied by # of petitions decided
	\$1,797,576	Total cost of petitions decided ( <u>ex parte</u> and <u>inter partes</u> )
	59.2%	Multiplied by ratio of <u>ex parte</u> reexamination to total reexamination costs (from ABI Model)
	\$1,063,414	Fiscal Year 2011 total cost for treatment of petitions filed in <u>ex parte</u> reexamination proceedings

<b>Table 6B: Fiscal Year 2011 Unit Cost for Treatment of Denied Request for Ex Parte Reexamination</b>	
\$3,712	Treatment of request (GS 15/5 employee)
\$439	Processing cost (GS 9/5 employee)
\$4,151	Fiscal Year 2011 unit cost for treatment of denied request for <u>ex parte</u> reexamination

<b>Table 6C: Fiscal Year 2011 Total Cost for Treatment of Denied Requests for Ex Parte Reexamination</b>	
\$4,151	Fiscal year 2011 unit cost per denied request (Table 6B)
89	Multiplied by # of <u>ex parte</u> reexamination requests denied
\$369,439	Fiscal year total cost of denied <u>ex parte</u> reexamination requests

<b>Table 6D: Fiscal Year 2013 Estimated Unit Cost for Treatment of Completed Request for Ex Parte Reexamination Based Upon Fiscal Year 2011 Costs</b>		
Fiscal Year 2011 Calculated Total Costs	\$26,417,066	Fiscal year 2011 total reexamination costs <u>ex parte</u> and <u>inter partes</u> (ABI cost model)
	\$15,627,866	Total cost for <u>ex parte</u> reexamination (59.2% of time spent on <u>ex parte</u> reexaminations)
	\$ 1,063,414	Minus cost for petitions filed in <u>ex parte</u> reexamination (Table 6A)
	\$369,439	Minus cost for denied request for <u>ex parte</u> reexamination (Table 6C)
	\$14,195,013	Fiscal year 2011 total exam-related cost for completed <u>ex parte</u> reexaminations
Fiscal Year 2011 Calculated Unit Cost	2,867	Divide by # of office actions in 2011
	\$4,951	Equals exam-related cost per Office action in <u>ex parte</u> reexamination
	3.90	Multiplied by the average # of Office actions in <u>ex parte</u> reexamination proceedings completed in 2011
	\$19,297	Equals exam-related cost per completed <u>ex parte</u> reexamination proceeding
	\$328	Plus publication and paper capture cost per proceeding
	\$19,626	Fiscal year 2011 calculated unit cost for completed <u>ex parte</u> reexamination proceeding
Fiscal Year 2013 Estimated Unit Cost	1.037	Multiplied by Consumer Price Index for 2011 (2.8%) and projected CPI for Fiscal Year 2012 (1.8%) and Fiscal Year 2013 (1.9%) (2.8 X 1.8 X 1.9 = 6.6)
	\$20,358	Fiscal year 2013 estimated cost for each completed <u>ex parte</u> reexamination proceeding
	\$20,360	Fiscal year 2013 estimated cost, rounded to nearest ten