**USPTO Setting and Adjusting Patent Fees during FY 2017 –**

**Activity Based Information and**

**Patent Fee Unit Expense Methodology**

This document provides additional detail on the cost methodologies used to derive the historical fee unit expenses outlined in the *Table of Patent Fees – Current, Proposed and Unit Costs*. Five sections are included:

1. **Background:** Provides background information on the Activity Based Information (ABI) program at the United States Patent and Trademark Office (USPTO).
2. **Objective:** Outlines the detailed objective(s) of the ABI program in calculating historical expenses by activity using ABI expense models.
3. **Foundational Elements**: Discusses the key components of the ABI expense methodology.
4. **Fully Burdened Expense**: Explains the approach for calculating the full expense of Patent processes and activities.
5. **Fee Unit Expense Calculation**: Outlines the five major approaches for developing a fee unit expense calculation based on the fully burdened expense of Patent processes and activities. Also provides historical fee unit expense information for the previous three fiscal years.

Questions related to the ABI program or methodologies discussed in the narrative are welcome. For further information contact Brendan Hourigan, Office of Planning and Budget (OPB), by telephone at (571) 272-8966.

# SECTION 1: BACKGROUND

While there are numerous regulations that require agencies to track and report the expense of program delivery, the Federal Accounting Standards Advisory Board (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4, *Managerial Cost Accounting Concepts and Standards for the Federal Government,* issued July 1995, outlines the key federal managerial cost accounting (MCA) requirements. In 1997, the United States Patent and Trademark Office (USPTO or Office) instituted the Activity Based Information (ABI) program to comply with prevailing federal managerial cost accounting standards, and inform decisions based on sound business principles. The USPTO ABI program uses standard Activity-Based Costing (ABC) methodologies to determine total USPTO expenses relating to the processing of patent and trademark applications including the share of administrative costs for financial reporting. The ABI program is examined each year as part of the financial statement audit and no internal control weaknesses concerning the ABI methodology or data have been reported. An independent verification and validation study conducted on the ABI program in 2009 identified the USPTO ABI program as a best practice in federal government. In 2015, the Department of Commerce Office of Inspector General conducted an audit of Trademark’s Activity-Based Information System and issued Final Report No. OIG-16-020-A. The objectives of this audit were to review allocation algorithms and controls of the ABI system and determine whether use of ABI justifies and supports fee changes. Although the primary focus of the audit was Trademark related, much of the review was conducted on the support organization cost models which also impact the Patent cost model. The IG determined that cost allocation algorithms were implemented consistent with supporting documentation and the internal control over the execution of ABI methodologies was operating effectively. Since the inception of the program, ABI methodologies have continuously improved and are consistently used to inform fee setting, budgeting, performance reporting, financial statement (Statement of Net Costs) preparation, business decision-making, and ad-hoc expense analyses and studies.

The USPTO ABI program maintains an expense model for each business organization to capture and determine historical expenses on a per-process or per-service basis, and to determine the expenses associated with the specific fees included in the rulemaking for setting and adjusting Patent fees. The ABI fee expense analysis methodology follows the full cost guidance outlined in Office of Management and Budget (OMB) circular A-25 (Subject: “User Charges) 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)). To ensure the ABI expense models keep pace with the changing environment, improvements are made to the models and allocation methodologies each year.

To facilitate agency-wide collaboration and transparency in the ABI program, the ABI Steering Committee was established in 2007 and is the official oversight body for all topics related to the USPTO ABI program and ABC data. This committee is chaired by the Deputy Chief Financial Officer with representatives from the various USPTO business organizations. The governance of the ABI program and all changes to the expense assignment and allocation methodologies are managed and approved by the Steering Committee. Prior to 2007, a Cost Management Committee made up of business unit liaisons from across the agency met regularly to review and validate quarterly ABI results.

The Office finds reviewing the trend of ABI historical expense information the most useful way to inform fee setting in the absence of a significant future change of related activities and processes. Therefore, the past three years of data is provided in this document (Fiscal Year (FY) 2013, FY 2014 and FY 2015). The ABI expense information should be reviewed within the context of its surrounding fiscal environment and the “mathematical” result of these financial and operational circumstances should, where appropriate, be reviewed over a multiple year period. As noted above, the Office provides the three-year historical trend. However, the latest fiscal year data available is calculated using the expense model most representative of current operations.

# SECTION 2: OBJECTIVE

The ABI expense models and supporting fee expense analyses provide the full expense of activities within the various business units. To provide such information, the ABI program analyzes direct expenses across different processes and activities and appropriately assigns or allocates support and business sustaining expenses from within and outside the business unit organization. Expense information is analyzed and reported at different organizational and process levels for management use, such as informing budget formulation, monitoring budget execution, performance reporting, development of the Statement of Net Cost, determining the use of patent and trademark fee revenues, and supporting the USPTO fee-setting process.

The ABI fee expense analysis referenced in this document is based on FY 2013, FY 2014 and FY 2015 data. The term ‘model’ in this document refers to the ABI expense model for the various business units. The ABI program provides historical expense data of total USPTO expenses to assign a cost associated with the delivery of every product or service. It should be noted that ABI expense information is not the equivalent of the USPTO budget. Budgetary data represents an estimate of the time period prospective costs will be funded (obligations and commitments) and is forward-looking, while ABI expense data is historical expense information, regardless of the year in which the expense was funded. For this reason, “costs” are referred to as “expenses” throughout the ABI analysis.

# SECTION 3: FOUNDATIONAL ELEMENTS

***Program, Project, and Activity (PPA) Codes***

In accordance with the Common Government-wide Accounting Classification (CGAC) structure, the USPTO uses codes to categorize labor and non-labor financial transactions against programs, projects, and activities. Programs, Projects, and Activities (PPAs) are a set of three individual codes used in combination to form an accounting string that provides business information, including hours worked and expenses incurred. Each code provides unique information and allows employees, analysts, and decision-makers to establish relationships between expenses and the work performed. Each PPA combination appears as one string in the USPTO financial management and time reporting systems.

* A **Program** is a group of activities directed towards a high-level process or system. Programs are often strategic in nature, relate to budget decisions, or have long-term outcomes.
* A **Project** is a planned undertaking in support of a program. Projects always have a beginning and end date. However, a project code is optional and not always used.
* An **Activity** is a group of tasks performed to produce or deliver products and services. Activities are always in support of projects and programs.

A program code and activity code are required and used to track all labor and non-labor expenses at the USPTO. For example, Patent examination hours are recorded to a program code titled, “Patent Examination and Application Management” and an activity code titled “Prepare All Examiner Actions”, with no specific project code because it is an ongoing operational activity with no planned end date. However, many information technology (IT) programs and activities maintain project codes, such as the Cooperative Patent Classification project, to accumulate specific expense based on planned beginning and end dates of the initiative.

Similarly, non-Patent organizations also capture expenses against PPA combinations that define the type of work performed by the support organization. These expenses are then allocated in each support organization business model to activities based on drivers. Allocation of expenses from outside the Patent organization is a crucial step in the development of the fully burdened expense of Patent processes and activities (see Section 4: Fully Burdened Expense).

The cost driver selection for assigning expenses follows the guidance set forth by the FASAB Managerial Cost Accounting Standard #4. The hierarchy of driver selection is based upon the following, in order of preference:

1. **Direct Trace (Code-Driven)**: At the USPTO, the majority of expenses are driven based on the PPAs which are reported by employees in the time reporting system (compensation) as well as on requisitions (non-compensation). The tasks identified by the PPA for labor or on requisitions are in support of a particular activity and program. An example of a PPA direct trace driver is Budget Formulation and Justification for the Patent business unit. This expense is incurred in the Office of the Chief Financial Officer based on time spent in support of the Patent business unit charged to the PPA code and is directly assigned to the Patent organization through the model.
2. **Cause and Effect**: Expenses are also assigned on a cause and effect basis if direct trace is not readily available. Examples of cause and effect drivers are workloads such as:
   1. *Usage Based Drivers: # of transactions, # of vouchers, # of servers by business unit, etc.*
   2. *Resource Based Drivers: Full-time Equivalents (FTEs) by business area, FTE + Contractor, Revenue,* etc. For example, helpdesk expenses (accumulated using PPA codes) from the Office of the Chief Information Officer are allocated to benefitting business units, including Patents, based on the“# of help desk tickets by business unit.”
3. **Reasonable and Consistent basis**: The final method of allocating expenses is spreading them on a reasonable and consistent basis. Business sustaining expenses that cannot be attributable to any core business function should be assigned globally based on a simple, visible, and non‐controversial method. An example of this assignment is the Office of Chief Administrative Officer (CAO) “provide personnel suitability investigative security clearance” activity which is allocated to the business units based on the "number of FTEs".

Finally, the cost drivers are reviewed, approved, and recorded by the ABI Steering Committee.

Within the various organizations, PPA codes reflect the type of activity performed. For example, the PPA code for the activity “processing a new utility application” within the program “Patent Examination and Application Management”, is PPEAAM-0000-112521. For the examination activity, the examiners charge a single PPA code, PPEAAM-0000-112012, for any work associated with the primary examination activities. This activity code averaged 45% of Patent direct expense during the past three fiscal years. In order to break out the expense of this PPA code into the discrete activities that constitute the examination process, an annual survey is conducted to determine the percentage of time spent performing each activity. The survey results are then used to drive the total expenses charged (for this PPA code) by each technology center to the individual activities. The survey allocates each technology center’s examination time to the following activities:

1. *analyzing a new application;*
2. *conducting an initial search for a new application;*
3. *preparing the first Office action on the merits for a new application (does not include the first Office action after the filing of a request for continued examination (RCE));*
4. *conducting a subsequent search for the application (includes after the filing of a RCE);*
5. *preparing a subsequent Office action for the application (includes the first Office action after the filing of a RCE);*
6. *considering an information disclosure statement;*
7. *preparing responses to after-final submissions;*
8. *preparing correspondence to the Patent Trial and Appeal Board (PTAB); and*
9. *Patent Cooperation Treaty (PCT) Chapter IIs (Form PCT/IPEA/409).*

The survey is conducted using a random sample of Patent Examiners that have two (2) plus years of experience, are General Schedule (GS) 9 and above, and are not in a supervisory position. A random pool of participants is derived by the Office of Patent Quality Assurance. From that selected pool, the Office of Patent Quality Assurance then calculates the appropriate sample size for each technology center. Across Federal agencies, surveys are widely used as an established process to allocate expense to a lower level of detail. Selected reports from the GAO study on Managerial Cost Accounting practices at major Federal agencies (GAO-06-1002R, Sep 21 and 2006 and GAO-06-599R, Apr 18, 2006) highlight the use of surveys to allocate expense.

# SECTION 4: FULLY BURDENED EXPENSE

The USPTO’s ABI fee expense analysis identifies the “fully burdened” expense of all Patent and PTAB activities. Approximately 170 Patent and PTAB activities based on PPA codes are captured in the Patent ABC model and are rolled up into the following eleven processes:

1. *Pre-examination*
2. *Examination*
3. *Post-examination*
4. *Maintenance Fees*
5. *Patent Cooperation Treaty*
6. *Classification (Reallocated)*
7. *Patent Trial and Appeal Board (PTAB)*
8. *Examination - Secondary – Management, Training, Leave, etc. (Reallocated)*
9. *Pre-Grant Publication*
10. *Patent Trial and Appeal Board – Secondary - Management, Training, Leave, etc. (Reallocated)*
11. *Dissemination Activities*

The activity expenses include all technology center expenses but can be analyzed to include or exclude expenses from particular technology center(s). For example, for a design fee code, the model can provide design technology center examination expenses only. In addition, please note that the PTAB is considered part of the Patent expense model and cost for the PTAB organization includes direct expense in addition to indirect expenses, similar to the Patent organizations.

***DIRECT AND INDIRECT EXPENSES***

The expense model compiles expenses for each specified activity, including the direct expense and an appropriate allocation of indirect expense. Direct expenses are those expenses that are budgeted, managed, and charged directly within the Patents organization (e.g., personnel compensation, contractual services, supplies and materials, property and equipment, etc.). Some direct expenses are allocated to the Patent organization using a cost driver as they are budgeted and managed within another organization (e.g., rent, Patent specific information technology (IT) system expenses, etc.), but benefit the Patent process directly. Indirect expenses, originating in support organizations, facilitate Patent services or contribute to Patent products indirectly (i.e. IT infrastructure and support, human resources, financial management, legal, and other administrative expenses, etc.) and are assigned to the Patent organization through various allocation cost drivers.

Direct expenses that originate within the Patent and PTAB organizations are generally assigned to processes and activities based on PPA codes. There are two types of activities within the Patent expense model – Primary and Secondary activities. Primary Activities are activities that represent functions and processes essential to the mission of the division such as *Perform Initial Search* and *Prepare Initial First Office Action on the Merits* as two examples. The non-primary duties of an organization are classified as secondary activities in the expense model. These activities represent expenses such as annual leave, training, and management and supervision. Secondary activity expenses are reallocated to the primary activity expenses. In the Patent expense model, several processes are reallocated to primary processes to obtain fully burdened expense.

Direct and Indirect expenses from outside the Patent and PTAB organizations are assigned to the Patent activities based on the type of expense. For example, the *Application Image Retrieval System’s (AIRS)* expense from the Office of the Chief Information Officer (OCIO) expense model is assigned to initial search and subsequent search activities and represents a direct expense in the Patent model. On the other hand, indirect expenses such as housekeeping expenses are first assigned to the Patent organization (model) based on the "number of FTEs + contractors," and then allocated to all Patent activities based on the relative direct expense of activities. During the past five fiscal years (i.e., FY 2011 through FY 2015), on average, direct expense accounted for 83% of the Patent business operating expenses while the remaining 17% were indirect expense. The direct expenses for an activity plus the indirect expenses constitute the “fully burdened” expense for that activity.

***PROCESS AND ACTIVITY EXPENSES***

The processes and activities identified in **Table 1** below are all Patent related activities, including those activities from the PTAB. Reallocated processes (Process 6, 8 and 10) are excluded from the table since those secondary expenses such as leave, training and management and supervision are included in the total expense of the processes shown below. The expenses include the fully burdened costs allocated to Patent and PTAB activities.

**Table 1. FY 2013, FY 2014 and FY 2015 Fully Burdened Activity Expenses[[1]](#footnote-1)**

| **Patent Activity** | **FY 2013** | **FY 2014** | **FY 2015** |
| --- | --- | --- | --- |
| **Process 1 - Pre-Examination** | **$73,310,332** | **$68,869,917** | **$73,112,046** |
| 1.01 - Process Incoming Paper | $1,229,177 | $1,076,914 | $724,147 |
| 1.02 - Process Application Fees | $509,488 | $607,724 | $725,668 |
| 1.03 - Application Indexing/Scanning | $44,988,239 | $46,366,269 | $45,722,309 |
| 1.04 - Routing Classification/Security Screening | $2,032,051 | $2,433,703 | $3,881,867 |
| 1.05 - Second-level Security Screening and L&R Processing | $725,335 | $558,199 | $727,244 |
| 1.06 - Conduct Formalities Review | $21,221,631 | $14,505,997 | $16,468,508 |
| 1.07 - Customer Service (Pre- and Post-Examination) | $2,604,409 | $3,321,111 | $4,862,303 |
| **Process 2 – Examination** | **$1,965,943,104** | **$2,115,742,792** | **$2,292,291,130** |
| 2.01 - Tech Support Application Process | $39,053,457 | $41,588,602 | $48,577,609 |
| 2.02 - Classification and Assignment by Art Unit | $8,134,555 | $7,687,994 | $6,106,389 |
| 2.03 - Analyze New Application\* | $214,875,019 | $231,487,691 | $258,031,862 |
| 2.04 - Analyze New Application - Restrictions/Unity of Invention | $14,635,303 | $12,849,324 | $15,184,761 |
| 2.05 - Perform Initial Search\* | $579,274,833 | $660,442,446 | $675,252,211 |
| 2.06 - Prepare Initial FAOM (excluding RCEs)\* | $342,870,395 | $349,617,118 | $403,965,851 |
| 2.07 - Consider IDS (Information Disclosure Statement)\* | $86,134,129 | $87,478,678 | $95,884,626 |
| 2.08 - Prepare All Subsequent Actions\* | $311,999,757 | $315,602,979 | $347,212,813 |
| 2.09 - Perform Subsequent Search\* | $212,686,135 | $245,738,331 | $265,790,607 |
| 2.10 - Prepare After Final Response\* | $46,171,323 | $46,653,158 | $56,903,930 |
| 2.11 - Applicant Interviews | $27,696,057 | $33,208,237 | $37,182,991 |
| 2.12 - Internal Conferences | $3,067,629 | $3,333,417 | $3,140,922 |
| 2.13 - Communications to the Board of Appeals\* | $11,550,740 | $10,369,341 | $12,857,961 |
| 2.16 - Quality Review of Tech Support Staff | $759,023 | $500,138 | $483,726 |
| 2.19 - Paralegal PCT Review (Patent Legal Research Center) | $949,945 | $904,498 | $1,162,591 |
| 2.20 - Prepare PCT Search Report and Written Opinion (Contractor Effort) | $28,577,230 | $35,532,097 | $41,922,315 |
| 2.21 - Prepare PCT Search Report (Contractor Quality Review Effort/Contract Oversight) | $1,288,156 | $1,281,197 | $1,305,157 |
| 2.23 - Processing Re-Examinations | $31,954,543 | $26,908,904 | $16,737,878 |
| 2.24 – Petitions | $4,264,876 | $4,558,643 | $4,586,928 |
| **Process 3 - Post-Examination** | **$86,691,798** | **$96,268,846** | **$108,632,967** |
| 3.01 - Initial Data Capture | $57,831,938 | $62,552,061 | $71,451,661 |
| 3.02 - Final Data Capture | $19,993,450 | $22,015,620 | $22,462,009 |
| 3.03 - Quality Control and Tracking Activities | $2,710,395 | $4,151,169 | $6,651,773 |
| 3.04 - Print and Assembly Patent for Publication | $2,912,522 | $3,532,170 | $3,123,526 |
| 3.05 - Quality Assurance - Database Inspection | $1,531,629 | $2,139,141 | $2,642,134 |
| 3.06 - Quality Assurance - Certificates of Correction | $1,711,864 | $1,878,686 | $2,301,865 |
| **Process 4 - Maintenance Fees** | **$23,398,546** | **$23,962,938** | **$25,909,465** |
| 4.01 - Support Patent Maintenance System | $23,398,546 | $23,962,938 | $25,909,465 |
| **Process 5 - Patent Cooperation Treaty** | **$16,721,910** | **$17,661,274** | **$16,278,141** |
| 5.01 - Initial Bibliographic Data Entry | $2,179,377 | $2,409,043 | $2,403,090 |
| 5.02 - Chapter I Formalities Review | $4,480,299 | $5,452,813 | $4,629,428 |
| 5.03 - Copy and Mailings | $1,406,380 | $713,655 | $700,024 |
| 5.04 - Chapter II Formalities Review | $71,973 | $74,413 | $57,525 |
| 5.06 - Perform Processing Section Functions | $306,555 | $389,205 | $401,495 |
| 5.07 - Process US National Stage Application | $6,482,013 | $6,899,236 | $6,848,473 |
| 5.09 - Perform PCT File Maintenance | $149 | $0 | $0 |
| 5.10 - Petitions (International and 371) - PCT Legal | $1,795,163 | $1,722,910 | $1,238,107 |
| **Process 7 - Patent Trial and Appeals Board (PTAB)** | **$61,338,648** | **$76,404,102** | **$104,648,534** |
| 7.01 - Prepare Appeals for Decision | $5,248,160 | n/a | n/a |
| 7.02 - Processing Interferences | $95,577 | n/a | n/a |
| 7.03 - Prepare Appeals for Oral Hearing Docket and Preparation | $290,872 | n/a | n/a |
| 7.04 - Prepare Interferences for Oral Hearing and Preparation | $105,374 | n/a | n/a |
| 7.05 - Declaration of Interference | $81,976 | n/a | n/a |
| 7.06 - Prepare Decision on Appeal | $51,618,437 | n/a | n/a |
| 7.07 - Prepare Decision on Interference Interlocutory Matters | $471,241 | n/a | n/a |
| 7.08 - Prepare Opinions on the Merits for Substantive Motions including Interference Priority Motions | $517,280 | n/a | n/a |
| 7.11 - Inter Parte Review | $2,691,976 | n/a | n/a |
| 7.12 - Post Grant Review | $1,432 | n/a | n/a |
| 7.13 - Covered Business Method | $216,323 | n/a | n/a |
| Ex Parte Appeals Proceedings | n/a | $44,530,823 | $58,624,779 |
| Interferences Proceedings | n/a | $1,154,456 | $1,517,141 |
| Ex Parte Reexam Appeals Proceedings | n/a | $977,523 | $1,430,008 |
| Inter Partes Reexam Appeals Proceedings | n/a | $4,088,170 | $4,646,060 |
| AIA: Inter Partes Review Proceedings | n/a | $20,495,799 | $31,724,905 |
| AIA: Post Grant Review Proceedings | n/a | $177,821 | $126,082 |
| AIA: Covered Business Method Proceedings | n/a | $1,910,538 | $2,913,659 |
| AIA: Derivations Proceedings | n/a | $34,690 | $6,908 |
| Oral Hearings Activities | n/a | $1,426,444 | $1,726,126 |
| Petitions Activities (Non-AIA, Non- Oral Hearing) | n/a | $780,098 | $876,715 |
| Paneling | n/a | $524,288 | $735,051 |
| Fee processing Activity | n/a | $303,453 | $321,099 |
| **Process 9 - Pre-Grant Publication** | **$69,082,932** | **$75,710,567** | **$79,474,219** |
| 9.01 - Perform Early Data Capture (EDC) | $0 | $0 | $0 |
| 9.02 - PG Pub and Initial Classification | $18,172,365 | $16,281,680 | $20,556,980 |
| 9.03 - PG Pub Monitoring/Tracking/Publishing of PG Pub Activities | $50,910,567 | $59,428,887 | $58,917,240 |
| **Process 11 - Office of Chief Information Officer Automated Information Systems and Office of Patent Systems Support** | **$14,579,136** | **$17,495,398** | **$19,491,750** |
| **Total** | **$2,249,727,758** | **$2,415,711,732** | **$2,615,189,719** |

# SECTION 5: FEE UNIT EXPENSE CALCULATION

For the fee unit expense calculation analysis, there are multiple approaches utilized in the ABI fee expense analyses, depending on the nature of work performed for the service provided and the level of detail captured in the ABI expense model. The various methodologies used to develop fee unit expenses include:

1. **Total Activity Unit Expense**
2. **Total Activity Unit Expense Adjusted for Frequency of Occurrence**
3. **Expense Build-up**
4. **Similar Work Estimation**
5. **Hybrid - Expense Build-up and Activity Unit Expense**
6. **Incremental Expense**

The approaches are discussed in the subsequent sub-sections followed by a comprehensive table that identifies the final fee unit expenses for FY 2013, FY 2014, and FY 2015 using each respective approach.

The 1000 series fee codes identifying an associated expense in the *Table of Patent Fees – Current, Proposed and Unit Costs* are included in this document. The 2000 series fee codes are the same description and expense but for small entity. The 3000 series codes are the same description and expense but for micro entity.

## Total Activity Unit Expense

As discussed previously, the ABI model captures all direct and indirect expenses for the Patent business. The model displays the expenses in the form of activities or work performed within the Patent organization. In this fee expense approach, ABI model activities are mapped to each fee code based on the relevant work performed for each fee. When a fee is collected, certain activities are performed. As described in Section 4, the fully burdened expense of each activity is identified in the ABI expense model. For each activity, there is a volume driver representing the workload as a measure of how many activities are performed relative to the particular expense. Workload volume data originates in various operational systems, but a majority of the workload information comes from the *Patent Application Locating and Monitoring* system, or *PALM*. An example of an activity and associated driver is “Prepare Initial First Office Action on the Merits (FAOM),” with an activity driver of “number of initial FAOMs.” If the fee code is Design-related, the workload volume for first actions will be associated with Design applications and will therefore differ from the workload volume associated with Utility application fees. The full expense of the activity is divided by the relevant workload volume to determine an average unit expense by activity. This occurs for each activity associated with a fee code. Finally, to obtain a final full unit expense for the fee, all activity unit expenses for the activities associated with that fee code are summed together and a final fully burdened fee unit expense is calculated. This calculation ultimately yields the full unit expense to perform the work related to the fee one time. The majority of fee unit expenses are calculated using this approach.

Fee code calculations using this approach are identified in **Table 2**. *Note: FY 2013 and 2014 are included for comparison purposes.*

## Total Activity Unit Expense Adjusted for Frequency of Occurrence

This approach builds upon the total activity unit expense approach discussed in the previous section. For each fee, activity expenses are identified for the relevant activities, the activity expense is divided by the driver volume, and the activity unit expense is calculated. However, in some cases, for a given fee code, there may be an activity that is typically performed multiple times for every application rather than just once. Similarly, there may be other activities that are not always performed for every application. This is termed “frequency of occurrence” in the ABI fee expense analyses. In such cases, to adjust for the frequency of occurrence, the activity driver volume as it relates to the total applications completed in the fiscal year is analyzed for the particular activity in question to determine a percentage factor. This factor identifies how often that activity occurs and is then applied to the average unit expense for each activity to determine the final activity unit expense. The relevant activity unit expenses are then summed to determine an adjusted full unit expense for the fee.

Fee code calculations using this approach are identified in

**Table *2***. *Note: FY 2013 and 2014 are included for comparison purposes.*

## Expense Build-up

When ABI does not have sufficient PPA and workload volume data to use the Total Activity Unit Expense method for a new process or if the expense model activities do not align directly with fees, ABI uses the expense build-up approach to develop a unit expense for a fee. This calculation is composed of compensation for representative positions, burden rates derived from the latest expense model, and an estimation of hours of work performed to determine the full expense of work associated with a given fee. First, the compensation amount for the given position per the Office of Personnel Management (OPM) GS pay tables and special pay tables, as applicable, is burdened with associated benefits using a benefit rate for the specific organization provided by the Office of Planning and Budget. The sum of the compensation and benefits is then burdened with internal secondary expense such as training and leave using the ABI model data. The sum of the compensation, benefits and secondary expense is then burdened with allocated expense from the USPTO’s internal shared service organizations based on the ABI model results for the respective organization. Once a final fully burdened total expense is calculated, the total is divided by 2080 hours to determine a fully burdened hourly rate for the position. Finally, the fully burdened hourly rate is multiplied by the number of hours the position performs work associated with the given fee to obtain a full expense related to the fee. If there are multiple positions performing various types of work, the sum totals of the expense per position are added together to determine a final fee expense.

Surveys are a common method of determining the hours necessary to perform a given task. In PTAB, for example, there were too few Covered Business Methods (CBM) cases to provide ABI with the model activity expense data and workload output necessary to follow the Total Activity Unit Expenses method. For that reason, ABI surveyed the administrative patent judges (APJs) and paralegals working on CBM proceedings and used the estimated hours of work performed combined with their average compensation and burdening for support expenses from within PTAB and throughout USPTO to determine the fully burdened unit expense of certain fees.

Depending on the fee code, it is also necessary in some expense build-ups to apply an adjustment factor to the overall expense build up result to account for cases or applications that do not follow the given process from start to finish and terminate at an earlier stage in the process. As these cases require less effort measured in staff time, the total expense must be reduced to represent the actual expenses incurred by the agency. As an example, for the CBM proceedings within the PTAB, an adjustment is made by using an estimated weighted average of hours spent on cases settled before final written decision and those that reach a final written decision.

Fee code calculations using this approach are identified in

**Table *2***. *Note: FY 2013 and 2014 are included for comparison purposes.*

## Similar Work Estimation

ABI uses this method when very little historical data is available and a fee unit expense is required. For example, in the case of Derivations, PTAB did not receive any cases that completed the process through termination, which means sufficient PPA expense data was not available and APJs and paralegals did not work on enough cases to estimate a level of effort. For these situations, ABI works with organizational subject matter experts (SMEs) to determine other similar activities with available expense data to estimate the fee expense. After consulting with PTAB SMEs, Interference and CBM fee unit expenses were used to estimate the unit expense of Derivations proceedings and Post Grant Review (PGR), respectively.

Fee code calculations using this approach are identified in

**Table *2***. *Note: FY 2013 and 2014 are included for comparison purposes.*

## Hybrid - Expense Build-up and Activity Unit Expense

In some cases, the ABI expense model captures the overall expenses for activities associated with certain fees, but the expense data is at too high of a level to use the Total Activity Unit Expense method to determine the fee unit expense. In these situations, ABI uses initial activity expense from the model but also requires additional calculations to determine the fee unit expense of the service provided. This approach uses a hybrid methodology leveraging ABI model activity expense data in addition to external expense calculations to determine a final fee unit expense, utilizing a combined method of what is discussed in methodologies I and III. For example, many expenses associated with the reexamination process are captured collectively in one Patent model activity and cannot easily be mapped to multiple fees. For this reason, the expense of a certain part of the reexam process (e.g., denials and petitions) is determined using the expense build up method to calculate a full expense for a denial and for a petition. The sum of this expense is then subtracted from the total reexamination model activity expense, leaving the expense associated only with the reexamination fee code. The unit expense for the reexamination fee code is finally determined based on the number of actions in reexamined applications based on PALM data.

Fee code calculations using this approach are identified in

**Table *2***. *Note: FY 2013 and 2014 are included for comparison purposes.*

## Incremental Expense

The incremental expense approach builds further upon the Total Activity Unit Expense Adjusted for Frequency of Occurrence methodology. For the Request for Continued Examination (RCE) fee, there is an additional incremental expense calculation step required to obtain the final expense of an RCE. All relevant activity expenses, driver volumes, and adjusted activity unit expenses related to the RCE are calculated using the Total Activity Unit Expense Adjusted for Frequency of Occurrence approach. However, this approach is applied to two scenarios: (1) the expense of a single application with no request for continued examination, and (2) the expense of a single application with one request for continued examination. For some activities, different frequency factors are applied for each scenario depending on workloads associated with the activity, resulting in different adjusted unit expenses for the activity. A unit expense is then calculated for both the single application with no RCE, and the single application with one RCE. Finally, in order to identify the incremental expense of an RCE, the difference between the final unit expense of the single application with no RCE and the single application with one RCE is calculated.

Similarly, the same incremental approach is used to determine the expense of the second and subsequent RCE. The two scenarios presented to determine incremental expense for the second RCE are slightly different than for the first RCE, but the same basic method applies. The scenarios are: (1) the expense of a single application that has already performed one RCE and (2) the expense of a single application that has completed a second RCE. All other calculations methods remain the same. Fee code calculations using this approach are identified in

**Table *2***. *Note: FY 2013 and 2014 are included for comparison purposes.*

**Table 2. Fee Unit Expense Trend and Calculation Methodology[[2]](#footnote-2)**

| **Fee Code** | **Fee Description** | **Fee Unit Expense** | | | **Fee Calculation Methodology** |
| --- | --- | --- | --- | --- | --- |
|  |  | **FY 2013** | **FY 2014** | **FY 2015** |  |
| **Patent Application Filing Fees** |  |  |  |  |  |
| 1011/2011/3011 | Basic Filing fee - Utility (Paper Filing – Also Requires Non-Electronic Filing Fee under 1.16(t)) | $262 | $257 | $277 | I |
| 4011 | Basic Filing Fee - Utility (Electronic Filing) | $262 | $257 | $277 | I |
| 1012/2012/3012 | Basic Filing Fee - Design | $262 | $257 | $277 | I |
| 1017/2017/3017 | Basic Filing Fee - Design (CPA) | $707 | $772 | $884 | I |
| 1013/2013/3013 | Basic Filing Fee - Plant | $262 | $257 | $277 | I |
| 1005/2005/3005 | Provisional Application Filing Fee | $152 | $144 | $154 | I |
| 1014/2014/3014 | Basic Filing Fee - Reissue | $260 | $256 | $277 | I |
| 1019/2019/3019 | Basic Filing Fee - Reissue (CPA) | $707 | $772 | $884 | I |
| **Patent Search Fees** |  |  |  |  |  |
| 1111/2111/3111 | Utility Search Fee | $1,603 | $2,020 | $1,773 | II |
| 1112/2112/3112 | Design Search Fee | $354 | $425 | $397 | II |
| 1113/2113/3113 | Plant Search Fee | $1,603 | $2,020 | $1,773 | II |
| 1114/2114/3114 | Reissue Search Fee | $1,603 | $2,020 | $1,773 | II |
| **Patent Examination Fees** |  |  |  |  |  |
| 1311/2311/3311 | Utility Examination Fee | $1,981 | $2,195 | $2,205 | II |
| 1312/2312/3312 | Design Examination Fee | $560 | $566 | $608 | II |
| 1313/2313/3313 | Plant Examination Fee | $1,981 | $2,195 | $2,205 | II |
| 1314/2314/3314 | Reissue Examination Fee | $1,981 | $2,195 | $2,205 | II |
| **Patent Post-Allowance Fees** |  |  |  |  |  |
| 1501/2501/3501 | Utility Issue Fee | $270 | $280 | $314 | I |
| 1511/2511/3511 | Reissue Issue Fee | $270 | $280 | $314 | I |
| 1502/2502/3502 | Design Issue Fee | $270 | $280 | $314 | I |
| 1503/2503/3503 | Plant Issue Fee | $270 | $280 | $314 | I |
| n/a | Publication fee for early, voluntary, or normal publication | $195 | $196 | $213 | I |
| 1505 | Publication fee for republication | $150 | $156 | $163 | I |
| 1557/2557/3557 | Surcharge After Expiration - Late Payment is Unavoidable | $115 | $113 | $121 | I |
| 1558/2558 | Surcharge After Expiration - Late Payment is Unintentional | $115 | $113 | $121 | I |
| **Miscellaneous Patent Fees** |  |  |  |  |  |
| 1801/2801/3801 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) | $1,864 | $1,776 | $2,187 | VI |
| 1820/2820/3820 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) | $1,322 | $1,310 | $1,540 | VI |
| 1808 | Other Publication Processing Fee | $39 | $27 | $31 | I |
| 1803 | Request for Voluntary Publication or Republication | $115 | $113 | $121 | I |
| 1802/2802/3802 | Request for Expedited Examination of a Design Application | $115 | $113 | $121 | I |
| 1807 | Processing Fee for Provisional Applications | $39 | $27 | $31 | I |
| 1809/2809/3809 | Filing a Submission After Final Rejection (see 37 CFR 1.129(a)) | $1,864 | $1,776 | $2,187 | VI |
| 1810/2810/3810 | For Each Additional Invention to be Examined (see 37 CFR 1.129(b)) | $1,864 | $1,776 | $2,187 | VI |
| **Post Issuance Fees** |  |  |  |  |  |
| 1811 | Certificate of Correction | $69 | $74 | $93 | I |
| 1812/2812/3812 | Request for ex parte reexamination | $26,046 | $28,503 | $23,288 | V |
| 1826/2826/3826 | Request for Supplemental Examination | $5,490 | $5,445 | $6,224 | V |
| 1827/2827/3827 | Reexamination Ordered as a Result of Supplemental Examination | $26,338 | $29,140 | $22,347 | V |
| **Patent Trial and Appeal Fees** |  |  |  |  |  |
| 1405 | Petitions to the Chief Administrative Patent Judge Under 37 CFR 41.3 | n/a | $4,762 | $4,596 | I |
| 1401/2401/3401 | Notice of appeal **(Ex Parte Appeal)** | n/a | $33 | $45 | I |
| 1401/2401/3401 | Notice of appeal **(Ex Parte Reexamination Appeal)** | n/a | $171 | $118 | I |
| 1404/2404/3404 | Filing a Brief in Support of an Appeal in an Inter Partes Reexamination Proceeding | n/a | $16,545 | $20,874 | I |
| 1403/2403/3403 | Request for Oral Hearing | n/a | $1,657 | $1,483 | I |
| 1413/2413/3413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board **(Ex Parte Appeal)** | n/a | $4,736 | $4,815 | I |
| 1413/2413/3413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board **(Ex Parte Reexamination Appeal)** | n/a | $8,005 | $16,577 | I |
| 1406 | Inter Partes Review Request Fee - Up to 20 Claims | n/a | $20,467 | $22,165 | I |
| 1414 | Inter Partes Review Post-Institution Fee - Up to 15 Claims | n/a | $15,263 | $12,674 | I |
| 1408 | Post-Grant or Covered Business Method Review Request Fee - Up to 20 Claims **(Covered Business Method)** | n/a | $23,589 | $16,213 | III |
| 1408 | Post-Grant or Covered Business Method Review Request Fee - Up to 20 Claims **(Post Grant Review**) | n/a | $23,589 | $16,213 | IV |
| 1416 | Post-Grant or Covered Business Method Review Post-Institution Fee - Up to 15 Claims **(Covered Business Method)** | n/a | $34,721 | $23,060 | III |
| 1416 | Post-Grant or Covered Business Method Review Post-Institution Fee - Up to 15 Claims **(Post Grant Review)** | n/a | $34,721 | $23,060 | IV |
| 1412 | Petition for a Derivation Proceeding | n/a | $24,193 | $51,949 | IV |
| **Patent Petition Fees** |  |  |  |  |  |
| 1462/2462/3462 | Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(f) (Group I) | $307 | $211 | $244 | I |
| 1463/2463/3463 | Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(g) (Group II) | $307 | $211 | $244 | I |
| 1464/2464/3464 | Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(h) (Group III) | $115 | $113 | $121 | I |
| 1453/2453 | 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 | $307 | $211 | $244 | I |
| 1454/2454/3454 | Petition for the Delayed Submission of a Priority or Benefit Claim, or to Restore the Right of Priority or Benefit | $307 | $211 | $244 | I |
| 1455 | Filing an Application for Patent Term Adjustment | $115 | $113 | $121 | I |
| 1456 | Request for Reinstatement of Term Reduced | $115 | $113 | $121 | I |
| 1457 | Extension of Term of Patent | $115 | $113 | $121 | I |
| 1458 | Initial Application for Interim Extension (see 37 CFR 1.790) | $115 | $113 | $121 | I |
| 1459 | Subsequent Application for Interim Extension (see 37 CFR 1.790) | $115 | $113 | $121 | I |
| **PCT Fees - National Stage** |  |  |  |  |  |
| 1631/2631/3631 | Basic National Stage Fee | $338 | $350 | $343 | I |
| 1641/2641/3641 | National Stage Search Fee - U.S. Was the ISA | $272 | $300 | $324 | II |
| 1642/2642/3642 | National Stage Search Fee - Search Report Prepared and Provided to USPTO | $1,603 | $2,020 | $1,773 | II |
| 1632/2632/3632 | National Stage Search Fee - All Other Situations | $1,603 | $2,020 | $1,773 | II |
| 1633/2633/3633 | National Stage Examination Fee - All Other Situations | $1,981 | $2,195 | $2,205 | II |
| n/a | National Stage Search Fee - U.S. was ISA or IPEA and all claims satisfy PCT Article 33(1)-(4) | $272 | $300 | $324 | II |
| n/a | National Stage Examination Fee - U.S. was ISA or IPEA and, all claims satisfy PCT Article 33(1)-(4) | $1,981 | $2,195 | $2,205 | II |
| **PCT Fees - International Stage** |  |  |  |  |  |
| 1601/2601/3601 | Transmittal Fee | $328 | $310 | $302 | I |
| 1602/2602/3602 | Search Fee - Regardless of Whether There is a Corresponding Application (see 35 U.S.C. 361(d) and PCT Rule 16) | $1,979 | $1,839 | $1,911 | I |
| 1604/2604/3604 | Supplemental Search Fee When Required, per Additional Invention | $1,979 | $1,839 | $1,911 | I |
| 1621/2621/3621 | Transmitting Application to Intl. Bureau to Act as Receiving Office | $11 | $5 | $5 | I |
| 1605/2605/3605 | Preliminary Examination Fee - U.S. Was the ISA | $824 | $827 | $866 | I |
| 1606/2606/3606 | Preliminary Examination Fee - U.S. Was Not the ISA | $824 | $827 | $866 | I |
| 1607/2607/3607 | Supplemental Examination Fee per Additional Invention | $824 | $827 | $866 | I |
| **Patent Enrollment Fees** |  |  |  |  |  |
| 9001 | Application Fee (Non-Refundable) | n/a | $194 | $225 | III |
| 9003 | Registration to Practice or Grant of Limited Recognition Under §11.9(b) or (c) | n/a | $427 | $493 | III |
| 9005 | Certificate of Good Standing as an Attorney or Agent | n/a | $34 | $39 | III |
| 9006 | Certificate of Good Standing as an Attorney or Agent, Suitable for Framing | n/a | $42 | $49 | III |
| 9010 | For Test Administration by Commercial Entity | n/a | $410 | $476 | III |
| 9011 | For Test Administration by the USPTO | n/a | $584 | $676 | III |
| 9012 | Review of Decision by the Director of Enrollment and Discipline Under §11.2(c) | n/a | $1,769 | $2,044 | III |
| 9013 | Review of Decision of the Director of Enrollment and Discipline Under §11.2(d) | n/a | $1,581 | $1,827 | III |
| 9014 | Application Fee for Person Disciplined, Convicted of a Felony or Certain Misdemeanors Under §11.7(h) | n/a | $2,845 | $3,297 | III |
| 9004 | Administrative Reinstatement Fee | n/a | $813 | $940 | III |
| 9020 | Delinquency Fee | n/a | $150 | $173 | III |
| 9024 | Unspecified Other Services, Excluding Labor | n/a | $65 | $75 | III |
| 9025 | Registration to Practice for Change of Practitioner Type | n/a | $69 | $80 | III |
| New Fee Code | Registration Examination Review Session | n/a | $445 | $515 | III |

1. Those activities with an asterisk in the table above are examination activities captured in the annual examiner survey. PCT Chapter IIs are rolled up under 2.08. N/A identifies Process 7 - PTAB model activities that changed in FY 2014. There is no direct mapping from prior activities to new activities. Therefore, the new set of activities is shown separately. [↑](#footnote-ref-1)
2. The fee unit expense calculation methodologies include:

   1. Total Activity Unit Expense
   2. Total Activity Unit Expense Adjusted for Frequency of Occurrence
   3. Expense Build-up
   4. Similar Work Estimation
   5. Hybrid - Expense Build-up and Activity Unit Expense
   6. Incremental Expense

   If a fee code is not listed in the above table, there is either no associated expense, or an expense has not been developed for the particular fee. n/a identifies those fee codes for which there is no calculated expense in the given fiscal year. [↑](#footnote-ref-2)