

of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port security, safety or environmental safety.

Dated: August 6, 2004.

**Danny Ellis,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

[FR Doc. 04-19566 Filed 8-26-04; 8:45 am]

BILLING CODE 4910-15-P

## DEPARTMENT OF COMMERCE

### United States Patent and Trademark Office

#### 37 CFR Parts 1 and 41

[Docket No. 2003-C-027]

RIN 0651-AB70

#### Revision of Patent Fees for Fiscal Year 2005

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

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this notice) is adjusting certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

**DATE:** Effective October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:**

Tamara McClure by e-mail at [Tamara.McClure@uspto.gov](mailto:Tamara.McClure@uspto.gov), by telephone at (703) 308-5075, or by fax at (703) 308-5077.

**SUPPLEMENTARY INFORMATION:** This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106-113). This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

A proposed rule notice was published at 69 FR 25861 on May 10, 2004, which requested comments by June 9, 2004. No comments were received.

Legislation has been proposed and passed by the House of Representatives that would alter our fee amounts and procedures. The United States Patent and Trademark Fee Modernization Act of 2004 (H.R. 1561) passed the House of Representatives on March 3, 2004. Similar legislation is pending in the Senate as S. 1760. Customers should be aware that legislative changes to our fees would supersede certain patent fees in this final rule. If such legislative changes occur, we will need to make corresponding changes to the rules of practice to conform them to the fees as set forth in such legislation. Customers may wish to refer to our official Web site at <http://www.uspto.gov> for the most current fee amounts.

In addition, certain rules on fees associated with practices of the Board of Patent Appeals and Interferences are being consolidated in a new part 41 of 37 CFR. These changes were made in accordance with applicable provisions set forth in the final rule notice *Rules of Practice Before the Board of Patent Appeals and Interferences* published at 69 FR 49960 on August 12, 2004.

#### Background

##### *Statutory Provisions*

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

##### *Fee Adjustment Level*

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be

adjusted on October 1, 2004, to reflect fluctuations occurring during the twelve-month period from October 1, 2003, through September 30, 2004, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2004, which is 3.01 percent. Based on this projected CPI-U, patent statutory fees will be adjusted by 3.01 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Pub. L. 103-465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of \$100 or more were rounded to the nearest \$10. Fees of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number.

##### *General Procedures*

Any fee amount that is paid on or after the effective date of the fee adjustment will be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

### Discussion of Specific Rules

#### 37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f) through (i), are revised to adjust fees established therein to reflect fluctuations in the CPI.

#### 37 CFR 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t), are revised to adjust fees established therein to reflect fluctuations in the CPI.

#### 37 CFR 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), are revised to adjust fees established therein to reflect fluctuations in the CPI.

#### 37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

#### 37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b) and (d), are revised to adjust fees established therein to reflect fluctuations in the CPI.

#### 37 CFR 41.20 Fees

Section 41.20, paragraphs (b)(1) through (b)(3), are revised to adjust fees established therein to reflect fluctuations in the CPI.

### Other Considerations

This final rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The final rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has

already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees.

By statute, the USPTO's Director is expressly authorized to adjust fees annually to reflect fluctuations in the CPI. See 35 U.S.C. 41(f) (certain fees "may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor").

The final rule increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). The fee increases would range from a minimum of \$2 to a maximum of \$100 under the final rule.

Under 35 U.S.C. 41(h)(1) small entities are accorded a fifty-percent reduction in most patent fees. Consequently, the small entity fee increases range from a minimum of \$1 to a maximum of \$50 under the final rule. The sole exception under this final rule is the fee set forth under 37 CFR 1.17(t), which does not qualify for a small entity fee reduction. The fee increase for 37 CFR 1.17(t) is \$40.

Accordingly, the final rule does not have a significant economic impact on a substantial number of small entities.

### List of Subjects

#### 37 CFR Part 1

Administrative practice and procedure, Biologies, Courts, Freedom of Information, Invention and patents, Reporting and recordkeeping requirements, Small businesses.

#### 37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

■ For the reasons set forth in the preamble, we are amending title 37 of the Code of Federal Regulations, parts 1 and 41 as set forth below.

### PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2, unless otherwise noted.

■ 2. Section 1.16 is amended by revising paragraphs (a), (b), (d) and (f) through (i) to read as follows:

#### § 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:  
By a small entity (§ 1.27(a)): \$395.00

By other than a small entity: \$790.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a)): \$44.00

By other than a small entity: \$88.00

\* \* \* \* \*

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a)): \$150.00

By other than a small entity: \$300.00

\* \* \* \* \*

(f) Basic fee for filing each design application:

By a small entity (§ 1.27 (a)): \$175.00

By other than a small entity: \$350.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.27(a)): \$275.00

By other than a small entity: \$550.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.27(a)): \$395.00

By other than a small entity: \$790.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.27(a)): \$44.00

By other than a small entity: \$88.00

\* \* \* \* \*

■ 3. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (e), (m), and (r) through (t) to read as follows:

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

(a) \* \* \*

(2) For reply within second month:

By a small entity (§ 1.27(a)): \$215.00

By other than a small entity: \$430.00

(3) For reply within third month:

By a small entity (§ 1.27(a)): \$490.00

By other than a small entity: \$980.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a)): \$765.00

By other than a small entity: \$1,530.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a)): \$1,040.00

By other than a small entity: \$2,080.00

\* \* \* \* \*

(e) To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a)): \$395.00

By other than a small entity: \$790.00

\* \* \* \* \*

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a)): \$685.00
By other than a small entity: \$1,370.00
\* \* \* \* \*

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a)): \$395.00
By other than a small entity: \$790.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a)): \$395.00
By other than a small entity: \$790.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c):

(§§ 1.55 and 1.78): \$1,370.00

■ 4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.27(a)): \$685.00
By other than a small entity: \$1,370.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a)): \$245.00
By other than a small entity: \$490.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.27(a)): \$330.00
By other than a small entity: \$660.00
\* \* \* \* \*

■ 5. Section 1.20 is amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

\* \* \* \* \*

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.27(a)): \$470.00
By other than a small: \$940.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.27(a)): \$1,075.00
By other than a small entity: \$2,150.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a)): \$1,660.00
By other than a small entity: \$3,320.00
\* \* \* \* \*

■ 6. Section 1.492 is amended by revising paragraphs (a)(1) through (a)(3), (a)(5), (b) and (d) to read as follows:

§ 1.492 National stage fees.

\* \* \* \* \*

(a) \* \* \*

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a)): \$375.00
By other than a small entity: \$750.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a)): \$395.00
By other than a small entity: \$790.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a)): \$555.00
By other than a small entity: \$1,110.00
\* \* \* \* \*

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:

By a small entity (§ 1.27(a)): \$475.00
By other than a small entity: \$950.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a)): \$44.00
By other than a small entity: \$88.00
\* \* \* \* \*

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a)): \$150.00
By other than a small entity: \$300.00
\* \* \* \* \*

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 1. The authority citation for 37 CFR part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, unless otherwise noted.

■ 2. Section 41.20 is amended by revising paragraphs (b)(1) through (b)(3) to read as follows:

§ 41.20 Fees.

\* \* \* \* \*

(b) Appeal Fees.

(1) For filing a notice of appeal from the examiner to the Board:

By a small entity (§ 1.27(a) of this title): \$170.00

By other than a small entity: \$340.00

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a) of this title): \$170.00

By other than a small entity: \$340.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a) of this title): \$170.00

By other than a small entity: \$340.00

Dated: August 23, 2004.

Jon W. Dudas,

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

[FR Doc. 04-19562 Filed 8-26-04; 8:45 am]

BILLING CODE 3510-16-P

POSTAL SERVICE

39 CFR Part 912

Procedures To Adjudicate Claims for Personal Injury or Property Damage Arising Out of the Operation of the U.S. Postal Service

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service's regulations concerning tort claims to correct mailing addresses and to clarify ambiguous provisions.

DATES: Effective August 27, 2004.

FOR FURTHER INFORMATION CONTACT: Frank M. Bartholf, Managing Counsel, General Law Service Center, P.O. Box 66640, St. Louis, MO 63166-6640; telephone (314) 872-5120.

SUPPLEMENTARY INFORMATION:

Amendment of part 912 is necessary to reflect organizational changes that have occurred in the Postal Service since the