

## MEMORANDUM

**TO: PPAC Fee Setting Hearing Attendees**  
**FROM: USPTO Patent Public Advisory Committee**  
**DATE: February 7, 2012**  
**RE: PPAC Questions for Fee Setting Hearings**

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The PPAC is holding two public hearings about the USPTO's proposed patent fee schedule posted on the USPTO AIA micro-site today (see [www.uspto.gov/americaninventsact](http://www.uspto.gov/americaninventsact)). The first hearing is on Wednesday, February 15 at the USPTO in Alexandria, Virginia, and the second hearing is on Thursday, February 23 in Sunnyvale, California. Details such as location, agenda, and parking information for the two hearings are also available on the USPTO's AIA microsite.

The PPAC presents the following questions about the USPTO's proposed patent fees to suggest some areas about which you may wish to present testimony during the hearings and/or submit written comments thereafter. The questions are not intended to be comprehensive, and if you wish to make remarks addressing other matters, please do so. To pre-schedule hearing testimony, please notify Jennifer Lo at [Jennifer.Lo@uspto.gov](mailto:Jennifer.Lo@uspto.gov). Unscheduled hearing testimony may also be possible if time permits. Written comments are due by February 29, 2012.

### **Questions Presented**

1. The proposed patent fee structure will provide resources to begin funding a patent operating reserve.
  - a. Should the USPTO maintain an operating reserve?
  - b. If "yes," do you believe it is reasonable for applicants to pay fees above and beyond the fees needed to cover aggregate costs to fund the operating reserve?
  - c. What is an acceptable size (in months, dollars, or percent of total USPTO expenses) for the patent operating reserve?
  - d. How long should it take to fund the operating reserve?
  - e. Should some or all of the fee increases sunset once the fund has been established?
  - f. If so, which fees should sunset?

2. Several of the current patent fees are subsidized, meaning the fees do not recover the full costs that the USPTO incurs when performing those services. For example, an applicant may pay \$100 for a service, but the USPTO's costs may actually total to \$180.
  - a. Do you agree with the premise that the USPTO should take into account specific policy goals to set or adjust fees to have some fees higher and some fees lower than total expected costs to achieve those goals?
  - b. Please share your opinions on which fees (if any) should be subsidized.
  - c. Please share your opinion on which fees (if any) should be set to recover more than full cost and provide the subsidy.
3. The proposed fees are set in the aggregate to achieve certain patent application pendencies (i.e., 10 months to first action and 22.9 months total pendency) by 2015.
  - a. Are these the correct goals?
  - b. If no, what would be correct goals?
  - c. If you believe the goals in question (a) to be correct, do you agree with setting the fees at the proposed levels to achieve these goals by 2015?
4. Please provide feedback on proposed patent issue and maintenance fee structure.
  - a. Do you agree with the concept of the fees starting at a moderate level and increasing substantially as time passes?
  - b. Do you believe the fees reflect an appropriate balance between up-front revenue and later payments (e.g., maintenance fees)?
5. In setting fees, the USPTO estimates how applicants will respond to fee changes by applying an economic concept known as elasticity. Elasticity is a measurement of how sensitive patentees are to fee amounts or changes. If elasticity is low enough (demand is *inelastic*) then when fees increase, the decrease in patenting activity is minor enough that overall revenues still go up. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity more and will result in less revenue.
  - a. Do the proposed elasticity assumptions appear reasonable?
  - b. Will these fees have an impact on your ability to file, prosecute, or maintain patent applications/patents?
  - c. What is that impact? Will you file or prosecute fewer or greater applications?
  - d. Will you be willing to file proceedings post-grant?
  - e. How do the proposed fees affect your decision on whether or not to file these proceedings?

- f. Do you believe the fees accurately provide the necessary benefits to applicants/patent owners/opposers to justify the fees set?
  - g. At what level increase do they fees require changes in your practice?
  - h. What things would you stop first: filing new applications, paying maintenance fees, or something else?
6. In the proposed fees, the USPTO estimates that straightforward prosecution (including Initial Filing Fee, Examination Fee, Issuance Fee and other associated fees) will go down as measured against current fees. But RCE and Notice of Appeal fees may go up.
- a. How do you see the effect of these fees on the prosecution of actual cases before the USPTO?
  - b. In practice, are you or your clients required to file RCE or Notices of Appeal to continue prosecution and thereby, do you believe the proposed fees will increase the costs on average to you for prosecuting the average case before the USPTO?
  - c. How substantial do you estimate those costs on average to be?

We encourage you to provide any other comments you wish about the proposed fee schedule.