

From: [Dave Cadoff](#)
To: [Fee.Setting](#); [TM.FR Notices](#); [Cain, Catherine](#)
Subject: Comments on setting and adjusting trademark fees
Date: Monday, September 30, 2019 3:13:59 PM

September 30, 2019

To Whom It May Concern:

As a small business owner affected by frivolous trademark filings - particularly in International Classes 025, 016, 018, 009 - I'm very concerned about the recently proposed letter of protest (LOP) fee.

I believe you will effectively kill the Letter of Protest program by implementing the proposed \$100 fee. Losing the ability to protest frivolous trademarks will, in turn, allow many more frivolous trademarks to get registered affecting many, many small businesses, their employees and curb competition.

Filers of Letters of Protest already face an uphill battle. We have a very limited scope of protest as a 3rd party to the trademark application process. Outside of outright fraud, we only have one proactive legal basis - that of widespread use - to prove that commonly used phrases should not be registered as trademarks. We simply go out, find the evidence of widespread use, and submit it. It takes work but it's worth it.

Adding a \$100 fee for all the voluntary work provided adds insult to injury. It will prevent most 3rd parties from even attempting to file a Letter of Protest regardless of how much evidence they can find to support their claim. In turn, many more frivolous trademarks will make their way through to registration hurting business that operate across many International Classes.

Also, adding this fee effectively tilts the playing field back to large companies with deep pockets. Currently, even a small business person like myself can provide evidence that will stop or even turn back an examined application regardless of the size of the trademark applicant company. It's a David vs. Goliath struggle sometimes. Add this roadblock and Goliath will win almost every time.

It's not like the LOP program just adds operating cost to the USPTO. I'd argue that it can save the USPTO money in the short and long term.

How?

I'd urge you to look at the overall savings provided by the LOP program. How much is an hour of Examining Attorney time worth? Letters of Protest simply

supply evidence for the Examining Attorney - saving them the time of searching for evidence themselves. That difference favors the USPTO bottom line.

I'd also urge you to look at the acceptance rate of LOPs over the last 12 months. As a member of a large group of businesses interested in protecting ourselves from trademark "bullies", we've been keeping track of our members LOP submissions and found that ~80% are accepted. That's a lot of evidence provided to you for free.

Charging us for the privilege of submitting evidence which was gathered voluntarily seems punitive next to that success rate.

Finally, I'd urge you to look at the success rate of post publication Letters of Protest. These LOPs help turn back applications that are on their way to being registered but shouldn't be. Take Mama Bear (86923714) for example. This application would've been registered by now had it not been for a post publication LOP. The applicant was simply trying to corner the market for that commonly used phrase - and almost got away with it. This happens all the time particularly in the Print on Demand industry. It will happen a lot more if you implement the proposed fee. There will be nothing stopping them.

All these things will come to pass without free and easy access to protest frivolous trademark applications.

For all the reasons above, I urge you to please reconsider your proposed fee.

Sincerely,
Dave Cadoff
Print on Demand Business Owner