

**From:** Sabino, Michael  
**To:** Fee.Setting  
**Subject:** Comments on Proposed Rule "Setting and Adjusting Patent Fees During Fiscal Year 2020"  
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**The following comments pertain specifically to section (2) New Fees (C) Annual Active Practitioner Fee.**

1. In determining a proper fee amount for projected number of registered practitioners expected to pay each type of fee, did the OED attempt to take into consideration factors such as the historical trends of active practitioner populations by registration year, including both estimated new practitioner registration trends (generally declining over past 10 – 15 years) as well as likely attrition rates from older subsets (e.g., 20+ years)? Various analyses I have seen reported (e.g., refer to <https://blog.specif.io/2019/07/05/what-a-maturing-patent-bar-means-for-the-industry/> and <https://patentlyo.com/patent/2016/07/practitioner-retirement-practitioners.html>) suggest that at some point in the not-to-distant future, perhaps within the next 5 or 10 years at most, the total population of active practitioners will be entering a period of significant decline. So, while the near-term implementation of proposed practitioner fees may provide sufficient funding for a few years, the mid- to long-term picture (5+ years) does not appear to be easily sustainable in the face of declining ranks.
  
2. Regarding the Continuing Legal Education (CLE) proposal, I have several comments and/or questions:
  - a. As a general principle, I am supportive of the notion to incentivize active practitioners to enhance/maintain their ongoing legal education awareness and skills by providing a \$100 discount for registered practitioners who certify completion of CLE. However, I do have concerns over the details of how this proposal will be administered/implemented and affirmed or enforced on practitioners.
  - b. The proposed rule states "*The USPTO **intends (emphasis added)** to coordinate the delivery of CLE programs, assess whether third party CLE programs are adequate, and make the completion of CLE—whether offered by the USPTO or third parties—as convenient as possible for practitioners to complete, while ensuring that practitioners receive the training necessary to stay up to date with current ethics and patent law and practice.*" It has been my understanding that currently CLE's really only apply and are approved/certified for attorneys through their state bars, but there currently has been no mechanism for CLE's to be recorded for non-attorney patent agents. For instance, I have attended several conferences or training workshops (including a USPTO-led STEPP program in Alexandria, VA in September 2018 and some USPTO VILT sessions) since becoming a patent agent that could have qualified me for CLE credits in patent law or ethics, but since I am an agent and not an attorney there has been no mechanism for me to receive official credit for these CLE's. Furthermore, some states (such as my state of residence Maryland) currently have no mandatory CLE requirement for lawyers in general, so this may further compound the effort of securing "adequate" credits where a practitioner resides or works. In light of these observations:
    - i. For the initial implementation or first year of paying an Active Patent Practitioner fee, I don't see how patent agents in particular will be able to avoid paying the full fee (i.e., without certifying CLE completion) without procedures or a mechanism established well

- in advance for patent agents to secure qualifying CLE credits. Would someone be able to retroactively reference a training/workshop they attended even if they were not able to “officially” receive CLE credits at the time of participation?
- ii. Furthermore, again for patent agents in particular, unless the USPTO in advance **actively commits resources (emphasis added)** to providing regular/frequent and free qualifying CLE’s in the required areas (patent law, ethics), the USPTO should also realize that for some practitioners there will be an additional financial burden or cost of doing business. Namely, a sizeable portion of practitioners may need to begin the practice of setting aside a specific travel and training budget to pay for participation to secure CLE’s. This potentially could impact the future fee-setting or cost of doing business for clients of independent/solo patent agents especially, who do not receive the benefit of either a corporate or law firm funded travel and training budget for professional development. In the alternative, such independent/solo patent agents will simply forego the higher financial burden of a travel/training budget (a few hundred to few thousand dollars) to secure CLE’s in favor of choosing a slightly higher Annual Active Practitioner fee, thus undermining the stated intent of the USPTO to incentivize practitioners to enhance their legal skills.
  - iii. How will practitioners be able to determine in advance what third party CLE programs will be found acceptable/adequate for meeting the CLE requirement?
  - iv. Will the OED be planning to require practitioners to submit formal documentation of the practitioner’s CLE training on an annual basis, or will it simply be a matter of each practitioner maintaining their own CLE documentation records to support their claim if ever audited in the future?

Thank you for your thoughtful consideration of these comments.

Michael C. Sabino  
Reg. No 77,051

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