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Subject: NASA Comments to Proposed Fee Increase
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Comments by National Aeronautics and Space Administration (NASA) to: DEPARTMENT OF COMMERCE, Patent and Trademark Office, 37 CFR Parts 1, 41, and 42

[Docket No. PTO-P-2018-0046] Patent Public Advisory Committee Public Hearing on the Proposed Patent Fee Schedule

NASA strongly objects to this upward fee adjustment. As a Federal Research and Development Agency, authorized under 35 U.S.C. 207 to obtain patents on inventions in which the Federal Government has an interest, this upward fee adjustment will have a direct and negative impact on NASA's ability to apply for, obtain, and maintain, patents on its inventions. As we commented previously regarding the proposed fee structure for the current schedule, increases in fees are having a negative impact on NASA's ability to fully meet its statutory obligations regarding technology transfer.

NASA, like all federal R&D agencies, is subject to the Congressional appropriations process. That process has resulted in flat budgets over the last several years, and there is no anticipation of any increase in the foreseeable future. Currently, about one-half of NASA's budget for U.S. Patent and Trademark Office (USPTO) activity is spent on maintenance fees (despite meticulous culling of our portfolio of those patents which fail to meet NASA's patent strategy). Another 40% is spent on filing fees, and 10% on issue fees. Although the USPTO is characterizing the proposed fee adjustments as a slight increase, for a Federal agency with a flat budget, the increases will result in fewer patent applications filed, and fewer patents maintained.

NASA receives over 1,500 new invention disclosures per year. While not every disclosure should be patented, we could certainly file many more than the current 125 new patent applications per year we are doing. Thus the fee increase will exacerbate an already existing issue in determining which of these new invention disclosures should be patented. The agency's budget situation allows us to patent about 10% of these new disclosures. We understand the basis for the upward fee adjustments, but as a Federal Agency subjected to the Congressional Appropriations process, NASA wishes to point out the dichotomy of one Federal Agency's ability to generate fees at the expense of others. We suggest that payment of fees, and without any reduction as afforded small and micro entities, places Federal R&D agencies such as NASA, in a decidedly disadvantageous position. Quite simply, an increase in USPTO fees means less patenting activity by NASA. Since the new fee structure was effective in January 2018, NASA has filed substantially less patent applications. This is creating tension with NASA's Federal statutory technology transfer mandates. Without patents, NASA, and other Federal R&D agencies, lose the ability to attract commercial licensees who can exploit their inventions, and limits the ability "to use the patent system to promote the utilization of inventions arising from federally supported research or development" (see, 37 CFR 404.2).

We strongly object to this increase.

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