UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT PUBLIC ADVISORY COMMITTEE MEETING

FEE SETTING HEARING

Alexandria, Virginia

Thursday, May 18, 2023
PARTICIPANTS:

Patent Public Advisory Committee (PPAC) Members:

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STEVEN CALTRIDER
DANIEL BROWN
CHARLES DUAN
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Economist, Office of Planning & Budget

KATHLEEN DUDA, Union Representative,
President Patent Office Professional Association

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PROCEDINGS

(1:00 p.m.)

CHAIR HARRISON: Welcome everybody to the PPAC Fee Setting Hearing. My name is Suzanne Harrison, I'm the current Chair of PPAC; and we're here today to hear from the public, their thoughts and comments about the fee setting that has been proposed by the USPTO. I want to take a moment and I want to introduce everyone that's around the table, so that you understand who you'll be speaking to. So, we'll do PPAC first.

MS. NEBEL: My name is Heidi Nebel. This is my second year as a PPAC member and I am currently Vice Chair.

MR. CALTRIDER: Steve Caltrider, current member of PPAC.

MR. BROWN: Dan Brown, third year. I'm a member independent inventor designate.

MR. DUAN: Hi there. My name is Charles Duan. I am second year member of PPAC.

MS. TSAI: I'm Olivia Tsai and I'm a first term member of PPAC.
MS. DARDEN: Hi, I'm Loletta Darden. I am also a first term member of PPAC.

MR. HADAD: Good afternoon, Henry Hadad; also a first year member of PPAC.

JUDGE BRADEN: Retired Judge Susan Braden, third year member of PPAC.

MS. DUDA: Kathy Duda, President of POPA.

COMMISSIONER UDUPA: I'm Vaishalia Udupa, Commissioner for Patents.

MR. HOFFMAN: My name's Jay Hoffman. I'm the Chief Financial Officer here at the USPTO.

JUDGE BOALICK: I'm Scott Boalick, Chief Judge of PTAB.

JUDGE TIERNEY: Michael Tierney, Vice Chief Administrative Patent Judge PTAB.

MR. BAHR: Bob Bahr, Deputy Commissioner for Patents.

MS. PICARD: Michelle Picard, Senior Advisor for Financial Management.

MR. ROBERTS: Brian Roberts, Economist, Office of Planning & Budget.
MS. AILES: I'm Lauren Ailes. I'm an Economist in the Office of Planning & Budget.

CHAIR HARRISON: So, I want to take a moment and I want to talk a little bit about why we're having this very public fee setting hearing. First off, we're statutorily required as part of the creation of PPAC to make sure that the public is heard in efforts around fee setting to the USPTO. The process of fee setting takes about 20 to 24 months to come to completion and it has two opportunities for public engagement. The first is at this actual public fee setting hearing where you'll hear from the PTO on their proposal for fee setting, and you have an opportunity to provide your comments and thoughts for us to consider as part of that. After the fee setting hearing, PPAC is required to take what we hear at this hearing today, include our comments on the fee setting proposal, and provide those back to the USPTO for their further consideration into this process. They will then -- once they receive that report -- they will review it, analyze all the comments,
take that into consideration, and come back with
an adjusted set of proposed fees. They will then
publish that adjusted proposal through the Federal
Register Notice and Proposed Rulemaking -- NPRM --
and then again, the public will have another
chance to provide comments to the NPRM and engage
with the USPTO as part of that process. So, this
is the first opportunity, but not the only
opportunity that the public will have to be heard
in this process; and we at PPAC take this very
seriously and want to make sure that we do you
justice, and make sure that your thoughts and
comments are heard and reported back to the PTO.

Unfortunately, Kathi Vidal is traveling
today. She's in -- I think -- Asia actually, but
she has prepared some comments for this hearing;
and so, I want to take a minute to have you -- we
can roll the tape so you can hear her comments.

MS. VIDAL: Good afternoon and welcome
to today's hearing on setting new fees for our
patent business line. I'm Kathi Vidal, Under
Secretary of Commerce for Intellectual Property
and Director of the USPTO. Thank you so much to the members of our Patent Public Advisory Committee and to all of our attendees, both in-person and online, for joining us today. This hearing is part of our commitment to fiscal responsibility and our ability to provide the highest quality, most reliable, and robust patents granted by any IP office in the world.

The American intellectual property system plays a pivotal role in the perpetual renewal of our nation's economy. IP ownership spurs innovation. It creates new businesses, new jobs and new opportunities, and it improves the welfare of our citizens and communities. The USPTO is committed to helping every inventor protect and benefit from their intellectual property. As I toured the country and heard from stakeholders of all sizes, including under-resourced and individual inventors, there is much I learned. As I spoke to under-resourced and individual inventors, and the groups that represent them, they shared many ideas on how we
can better support them. We are in the process of delivering through our new No-Fee Expedited Examination Pilot Program for first time filers, to our commitment to expanding and doubling down on our pro bono offerings, to much more, which is in process or is to come. When I spoke to heavily-resourced companies, many said that they would rather pay more in USPTO fees to secure stronger patent rights. They also recognize that the USPTO needs to keep barriers low so that those who are under-resourced can also secure patent protection.

Thanks for Congress and the America Invents Acts, the USPTO has fee setting authority through 2026. Thanks for Congress and the Unleashing American Innovators Act, the USPTO was able to cut small and micro entity fees. The USPTO does not take fee setting and Congress' faith in us lightly. We have been good stewards of that authority. In fact, on April 17th the AGA notified me that the USPTO will receive its 21st consecutive certificate of excellence in
accountability reporting -- CEAR -- award at the
organization's annual awards dinner Wednesday, May
31st. Where we have identified spending that does
not provide the return we believe the country
deserves, we have cut costs. This includes
releasing approximately 1 million square feet of
office space in or around our Northern Virginia
campus. This decision was the result of a
multiyear study. It will save the office $40
million each year going forward, but we must keep
up with inflation, with updating our Legacy IT
systems and exploring IT solutions to provide
higher quality IP and better customer experience,
with initiatives that will improve the robustness
and reliability of the patents we issue, with
measures that will curb fraud and abuse. We must
continue to attract the best workforce in the
country and provide them with the resources they
need to perform their jobs to the best of their
ability.

To preserve a sustainable financing
model, we are proposing to both surgically target
fee adjustments to labor intensive services and increase fees so that our revenues are enough to cover our total costs. We have also worked to balance fee increases with fee reductions. For example, we suggest an average 81 percent decrease in extension of time fees for provisional applications. This discount will have a positive impact on micro entities. I'm confident that the proposed fee schedule will promote greater use of the patent system by more people. It should help right size the workload of patent examiners and will allow us to better serve our hundreds of thousands of stakeholders well into the future. Also, to the extent we have balance fees over the entire patent life cycle, those both reduce barriers to the IP ecosystem, as well as provide for a financial model that is more resilient and stable.

Finally, I would also note that the USPTO reviews our fees on at least a biannual basis and proposes adjustments as needed. The last adjustment to fees took place in early fiscal
year 2021. This current proposal would not take effect until fiscal year 2025. In a few moments you will hear a detailed outline of our proposal. Our hearing today is the first opportunity for you to share feedback on the proposal. This will be a comprehensive process and we look forward to your perspectives and your comments as we move through each step. I value your thoughts and your ideas. Our office is committed to serving you and all of America's innovators with honor, with the utmost respect, and with integrity. Thank you again for your time and participation. We look forward to your input.

CHAIR HARRISON: Great. Now, we'd like to hear from the Commissioner of Patents, Vaishali Udupa.

COMMISSIONER UDUPA: Hello. I'm Vaishali Udupa, Commissioner for Patents and yesterday marked my four-month anniversary here at this amazing agency; and when I started, one of the things that really stood out to me was the high level of activity that this agency engages in
on a regular basis to incentivize innovation through the issuance of robust and reliable patents that benefit America's economy and the nation's technological progress. One way that the USPTO ensures that it continues to issue robust and reliable patents is through its continued investments in our agency's examination infrastructure. For example, we recently worked to improve initial search and availability of prior art to examiners. Why does this matter? Well, one, it leads to a more efficient examination process; two, it puts a decrease in the likelihood of the information gap between the examination base and any potential later challenge or litigation phases through the life of the patent -- and my computer is telling me it shutoff -- and third, it increases confidence in the reliability of the patent grant overall.

Our investments have also enabled us to make great strides in IT modernization; and this includes updating our IT tools, not only for internal processes and employees, but also for our
external stakeholders. These updates include a more robust web-based patent search tool for the public, and this is better-known as a patent public search or PPUBS; and more recently, we launched our electronic patent grants or E-Grants, and E-Grants allow the patentee to view and print complete issued patents by the patent center immediately upon issue; and this process significantly decreases the USPTO's printing and mailing needs, and this saves the agency nearly $2 million a year.

But another thing that we really care about and we're keenly focused on is keeping our examiners up-to-date through training, and this is an ongoing and continuous area of emphasis for us. Through our patent examination technical training program, we are able to bring experts from industry and academia to participate as guest lecturers. They provide technical training and share their expertise with our patent examiners regarding the state of the art, and the USPTO also holds technology fairs; there are some going on
right now in the electrical space, we just had
some in the medical device and business method
areas, and we have some more coming up in the chem
and bio spaces; and what these tech fairs provide
are a series of lectures on topics of interest
specific to technologies handled by examiners in
the different TC's or the technology centers; and
the USPTO also sponsors patent examiner site
experience education initiatives, these are called
SEE trips, which enable examiners to visit
commercial, industrial and academic institutions
within the continental U.S. During these trips,
examiners interact directly with the innovators,
the scientists and the engineers at real world
sites. They learn about the new and evolving
technologies and experience how these technologies
are developed and operate in the field; and for
the host organizations, they have an opportunity
to communicate directly with the patent examiners
and gain an understanding of how our patent system
works. These efforts, and more, support patent
quality and able our system to work better for all
of our stakeholders.

By balancing our fees, we are able to sustainably develop and maintain programs like these. As Director Vidal mentioned, we continuously review our operations and evolve to ensure that our programs meet the needs of all of our stakeholders as much as possible. It is wonderful to see the level of interest that our stakeholders have in this process. I look forward to hearing your views and feedback on our proposed fee adjustments, and I thank you all for taking the time to speak with us today.

CHAIR HARRISON: Thank you, Vaishali. Before I turn it over to Jay to actually go through the proposal, I just want to clarify; the USPTO and PPAC will not be answering any questions, other than clarification questions; if there is something that you don't understand in the fee proposal. So, I just want to clear that up before we go forward. Jay, I'll turn it over to you.

MR. HOFFMAN: Great. Well, thank you,
Suzanne. Thank you, Vaishali, for kicking this off and thank you again everyone for joining us this afternoon. My name is Jay Hoffman and I'm the Chief Financial Officer here at the United States Patent and Trademark Office. The USPTO recently completed a comprehensive patent fee review and concluded that we must adjust fees to increase aggregate revenue and recover aggregate costs. Many of the people who diligently and thoughtfully formulated the proposals I'm about to go through in depth -- members of the PTAB, our patent business unit, and my team in OCFO -- are either in the auditorium with us or are watching virtually. I speak for them when I say, we appreciate both your time and feedback, which will help us shape a proposal that ultimately benefits the American innovation ecosystem.

Before I talk through each of the proposals, I'd like to note that several documents explaining our proposed fee adjustments are available on the fee setting and adjusting section of the USPTO website. These materials provide
more background on our fee setting methodology,
along with a detailed list of the current and
proposed fees for each of the proposals that I'll
talk through today. Thank you in advance for your
time and we look forward to hearing your comments
as we continue the fee setting process. Next
slide please.

I'd like to set the stage with our
agenda. I'll begin by providing you context on
our current financial outlook, then discussing our
fee setting objectives, and move to the detailed
fee proposals. We've characterized our fee
proposals into two types. The first is targeted
to specific fees or services and the second is
targeted to across-the-board proposals. The
targeted patent and PTAB proposals -- as Kathi
mentioned -- are geared toward labor intensive
services and improving efficiencies. The other
across-the-board proposals are aimed at balancing
aggregate revenue with aggregate costs. Next
slide please.

I'm going to begin with the financial
outlook and I'd like to direct your attention to
the slides that are on the screen here. The two
charts here on the left side of the page provide a
bird's eye view of our operating reserve balance.
They also convey our operating reserve guardrails.
Minimum balances are represented by the solid gray
lines and optimal balances by the solid blue
lines. The dotted green lines represent our
operating reserve forecast. Our operating reserve
is a result of a simple cumulative math equation
over time. It starts with a beginning balance, we
add to it during years when revenues exceed costs,
and we subtract from it during years when costs
exceed revenue. I'm using these charts as a
representation of our financial position at two
different points in time. The top chart presents
the operating reserve forecast included in the FY
2023 President's Budget; this dates back to March
of 2022, about a year ago. At that point in time
we forecasted that fee collections would outpace
our costs. Consequently, we anticipated adding to
the operating reserve with a goal of building it
to optimal levels to improve our financial sustainability; and we predicted that we'd reach that goal in fiscal year 2025. Now, the bottom chart presents the operating reserve forecast included in the FY 2024 President's Budget from March of this year, just a couple of months ago. This budget shows a change in our operating reserve forecast relative to last year. Rather than adding to the operating reserve each year, this forecast shows that we'll be subtracting from it, with a net difference of over $600 million. This trend reflects aggregate patent operating costs increasing through FY 2027 and exceeding aggregate revenue generated under the current fee schedule. As a result, we'll need to adjust our operating reserve to partially finance patent operations until we can adjust fees to recover costs, and also make process toward optimal operating reserve levels. There's no cause for concern as we work through this fee adjustment process and rely on the operating reserve; the bridge financing is one of the intended purposes
Now, there are two material changes to the USPTO's cost structure that require us to adjust fees. First, as we outlined in the FY 2024 President's Budget, inflationary pressures are increasing our costs. In fact, we estimate that patent costs will increase by at least $173 million through FY 2027 due to higher than expected inflation in personnel and contractor costs. Let's focus specifically on personnel costs. Patent examiners are at the heart of everything we do to deliver the mission. This year we'll employ about 8,300 patent examiners. Accordingly, salaries and benefits comprise 70 percent of all patent-related costs, totaling $2.5 billion this year. We project these personnel-related costs to rise faster than previously forecast, here is why. Recently, higher than anticipated inflation resulted in much needed higher employee pay raises that we previously budgeted. I should note that these higher than expected inflationary pay increases
occurred across all of government agencies and not just the USPTO. Second, the Unleashing American Innovators Act -- or UAIA -- of December 2022 increased discounts for small and micro entities. Small entity discounts increased from 50 percent to 60 percent and micro entity discounts increased from 75 percent to 80 percent. These deeper discounts help achieve important policy objectives aimed at making the intellectual property system more accessible. Now, while these percentage changes may sound modest, they've actually had a significant and material impact on patent revenue. Through FY 2027, we forecast that patent revenue will fall $449 million from our forecast that we put in the FY 2023 President's Budget, primarily driven by these new discounts. The revenue generated by the current fee schedule is incompatible with this unplanned revenue loss. The agency must adjust fees to sufficiently balance our aggregate revenue with aggregate costs. Next slide please.

Now, the total cumulative revenue
differences between the two points in time I showed on the previous slide was $449 million, but the revenue lost specifically to the UAIA discounts was $490 million. Our FY 2024 President's Budget forecasted an estimate of $41 million in increases from other fees to arrive at this net $449 million revenue loss. This is a visual representation of the lost revenue resulting only from the new UAIA discounts. This year, we estimate that the discounts will result in lost revenue of about $74 million. After that, the impact will increase to approximately $100 million per year or $490 million through the end of FY 2027. You can see annual implications in the chart on the right. The hashed area behind the burgundy solid area represents where our annual revenue forecasts were prior to the change in the fee discounts. The solid area represents our new forecast after implementing the discounts, and the difference between the hashed area and that solid area reflects the $490 million in lost revenue. Next slide.
This slide presents basic utility patent small entity fees at three points in time, okay. So, let's read this from left-to-right. The first bar displays file search and examination fees prior to the UAIA's new fee discounts. The middle bar displays our current fee rates after we implemented the discounts, and the bar on the far right displays our proposed file search and exam fees in this proposal. So, while we're proposing increasing fees slightly to rebalance revenue and costs, they're still lower than before the UAIA; so, this is deliberate and consistent with our policy of reducing barriers to entry to the intellectual property system. Now, with that financial context, I'm going to transition to our specific fee proposals. Next slide.

I'll start with our five broad goals for this round of fee setting. As I just discussed, one of the main priorities is to recover aggregate costs to finance the USPTO's mission, strategic goals and priorities. By statute, all patent operation costs must be offset by the fees we
collect. Our unique status as a fee-funded agency also means we must maintain and replenish our operating reserve to provide stable financing across variable business cycle. In addition, this proposal is framed to encourage applicants to make decisions in the services they consume that promote operational efficiency. It sets some fees below the cost of performing the work, while other fees are set closer to the cost of the services provided. The goal is to establish a balance where aggregate fees offset aggregate costs, while also maintaining the operating reserve at viable levels. Next slide please.

The fee setting effort will provide us the resources to work toward objectives that benefit all intellectual property stakeholders. A significant priority is our promotion of inclusive innovation through active engagement and widespread access to resources and tools. We believe these proposed fee adjustments will optimize patent application processes and enable efficiencies that incentivize and protect
innovation. As Director Vidal conveyed, these fees will resource initiatives to improve the reliability of the patents we issue; and as always, we continuously aim to deliver exceptional customer experiences during every interaction that we have with our stakeholders. Next slide please.

So, we'll go through each of these proposals in details. So, first, I want to reiterate that this information, and much more, is posted to the fee setting and adjusting section of the USPTO website; and I visited with some of you before the hearing and it sounds like you were able to find everything okay. Next slide please.

Okay. I'll discuss wider-reaching proposals toward the end of today's presentation. For now, I'll start with the changes that are targeted to individual fees or services. For simplicity, we've depicted fee rates for large or undiscounted entities. Small and micro entity discounts would still be available where allowed by statute at the updated 60 percent and 80 percent discount specified in the UAIA legislation; and I'll point
that out, where the discounts are and are notavailable, and we've also noted it on each of theslides that you'll see here. Next slide.

Our first proposal establishes a new fee for applicants participating in the existing After Final Consideration Program 2.0, commonly referred to as AFCP. This program allows applicants to submit certain documentation for consideration after a final action without filing a request for continued examination or RCE, or continued prosecution application or CPA. We currently offer this program free of charge and it's been successful and popular with more than 60,000 requests filed annually. While the process is free for applicants, there's a significant cost for the USPTO. We're proposing that some of that cost be incurred by the requestor, rather than subsidized by other users of the patent system. Our proposed fee of $500.00 per AFCP 2.0 request for undiscounted entities would help us recover the programs costs and ensure its continuity into the future. Small and micro entity discounts
would still be available. We'll go into more
detail on RCE and CPA fees later in the
presentation, but I'd like to mention them briefly
now. Our proposed undiscounted fee for a first
RCE is $1,500.00. Total proposed undiscounted
fees for a filing, search and examination CPA
amount to $1300.00. So, even with the new AFCP
2.0, applicants would still benefit financially
from not having to file an RCE or CPA. Next
slide.

Our next proposal reinstates a $40.00
fee for recording electronically submitted
assignments and related documents and increases
the paper submission fee. We previously
discontinued the electronic submission fee to
encourage patent holders to keep assignment
information up-to-date and to promote electronic
submissions. However, a no-cost option has led
to an increase in excessive submissions that
burden the assignment recordation process. We
believe that reintroducing a nominal fee now would
discourage unnecessary submissions while
increasing recording efficiency. We also propose increasing the paper submission fee from $50.00 to $60.00. We receive about 615,000 electronic submissions annually and only about 225 paper submissions. Our intent is to continue encouraging electronic submissions and we believe maintaining a lower electronic submission fee relative to paper would encourage and benefit those who choose electronic submission for recording. Unfortunately, small and micro entity discounts would not be available for either of these fees. Next slide.

Our next proposal creates a new tiered fee structure for filing continuing applications, either more than three years or more than seven years after the earliest benefit date. This fee would apply to all continuing applications, including continuations, divisionals and continuation in part applications filed during the defined time periods. It would also apply to applicants presenting delayed benefit claims that achieve the same effect. We designed the USPTO's
fee structure to charge filing search and examination fees below the cost of performing these services for two reasons. First, it is consistent with our policy to low barriers to entry to the intellectual property system. Second, we want to enable inventors to apply for patent protection early in their inventions life cycle. We recoup those costs through maintenance fees later in the granted patent life cycle and the rights ultimately maintained by the owner. An interesting situation arises with maintenance fees and issue fees. The patent maintenance fee schedule is based on the patent's issue date. However, patent terms are based on the earliest benefit date. Continuing applications filed years after the earliest benefit date have less term. In other words, these continued patents sometimes have insufficient term to reach all maintenance fee payments. In fact, in some cases, the patent may expire before one or more maintenance fees are due to be paid. As a result, we're at risk of not recovering all costs incurred during the search
and examination due to insufficient term to pay maintenance fees. To recover our cost of extended benefit claim practice, we've set proposed undiscounted fees of $1,500.00 for presentation of benefit claims more than three years and $3,000.00 more than seven years after the earliest benefit date. Continuing applications comprise about 35 percent of total applications annually; about half would fall under one of our two proposed tiers. Discounts would still be available for small and micro entities. About 30 percent of continuing applications subject to these proposed fees are filed by small and micro entities, in-line with their share of all continuing applications. Next slide.

Our next proposal increases fees for filing search and examination, and issue of design applications. Currently, design fees are set less than the cost of performing examination work, even for undiscounted entities. Unlike utility patentees, design patentees do not pay maintenance fees. Consequently, design patents are subsidized
by utility patent fee collections. Our design filing volume has increased over time, expanding the revenue shortfall, and placing more subsidization burden on unrelated elements of the patent system. In addition, the share of design patents filed by micro entities has rapidly increased and substantially impacted fee collections. During fiscal year 2014, only 10 percent of applicants paid the micro entity fee rate. That figure nearly tripled last year, when 28 percent of applicants paid micro entity fees. Foreign applicants comprised more than half of design applications and have driven the increase in micro entity filers. Since these filers receive an 80 percent reduction in fees, the result is more subsidization from utility filers. Next slide.

Under our proposal, undiscounted basic and CPA filing fees would increase from $220.00 to $300.00, the search fee would increase from $160.00 to $300.00, and the examination fee from $640 to $700.00. Lastly, the issue fee for design
patents would increase from $740 to $1,300.00. Combined, these increases would help recover the costs of design patent search and examination. Even with these proposed increases, the fees to file a design application remain below our application processing costs. Keep in mind, we do not charge a maintenance fee for design patents. Increasing these fees is the only method to recover most processing costs for design patent work. We also propose increasing fees for both part one and part two of the international design application to $1300.00 each, equal to the equivalent fees for direct filing. Small and micro entity discounts would still be available for these fees. Next slide.

Now, under this proposal, total basic fees to obtain a design patent would increase by 48 percent. Filing, search and examination fees would remain below the cost of performing the work, consistent with our objective to maintain lower barriers to entry. The majority of the fee increases would not be due until issue, after we
grant the patent. More than 62 percent of design
applications claim small or micro entity
discounts. The aggregate fee increase for a small
filer with an issued design is $272.00 and $136.00
for a micro entity filer, keeping total fees low.
As you can see in the graph, utility patent fee
payments would continue subsidizing some design
application processing costs. Next slide.

Our next proposal increases fees for
presenting claims in excess of statutory
thresholds. About 15 percent of applications
contain more than 20 total claims, only about 8
percent contain more than three independent
claims. Excess claims require more time to
examine, so this proposed increase recovers some
of the added costs of examining these
applications. We propose increasing the
undiscounted fee for each claim in excess of 20
from $100.00 to $200.00. The undiscounted fee for
each independent claim in excess of three would
increase from $480 to $600.00. Small and micro
entity discounts would continue to be available
for these fees. Next slide.

Our next proposal reduces fees for extension of time for provisional applications only. We propose reducing these fees by up to 86 percent to improve access to the intellectual property system. We receive about 350 extensions of time filings annually in provisional applications. These fees are disproportionately paid by micro entity applicants. Inventors typically file an extension of time if they're still determining whether to move forward with a non-provisional application. Given that there's not a significant cost to the USPTO during this phase, we propose reducing this fee and alleviating the financial burden on micro entity applicants. Next slide.

Under our proposal, the undiscounted fee for an extension for response within the first month would decrease from $220.00 to $50.00. Fees for the second, third and fourth months would decrease accordingly, and the undiscounted fee for extensions within the fifth month would fall from
$3,160.00 to $800.00. Small and micro entity discounts would still be available for these fees at the lower rate. Next slide.

Our next proposal changes the way we charge fees for Information Disclosure Statements, or IDS's. Our analysis found that a small percentage of applicants file a large number of IDS's. This increases the time required by examiners to consider the submitted information and in turn, increases our costs. This proposal recovers some of the costs incurred as a result of filing a large number of IDS's. We're proposing separate surcharges for applications that exceed certain predetermined thresholds on applicant provided cumulative citations. We believe this proposal would benefit applicants by encouraging them to cite only clearly relevant information and avoid unnecessary surcharges. When additional citations are needed, this proposal would also help recover our costs of processing and reviewing additional references in single applications. These surcharges would be due the first time an
applicant files an IDS that causes the cumulative number of applicant provided citations in the application to exceed the thresholds. Applicants currently cite more than 50 references in about 13 percent of applications, more than 100 in about 8 percent, and more than 200 in about 4 percent.

Next slide.

All right. So, we propose a surcharge of $200.00 for over 50 cumulative citations, $300.00 for over 100 cumulative citations, and another $300.00 surcharge for over 200 citations. Effectively, applicants who exceed all three thresholds would pay all three surcharges, for a total of $800.00. These fees would not be eligible for small and micro entity discounts.

Next slide.

All right. So, our next proposal increases the fee for patentees requesting reconsideration of their patent term adjustment -- or PTA -- from $210.00 to $300.00. We receive about 500 requests for PTA reconsideration annually. This fee better aligns our costs for
reconsidering a PTA and effects only those
applicants requesting the service. These fees
would not be eligible for small or micro entity
discounts. Next slide.

Our next proposal increases fees for
patentees seeking to extend their patent term in
conjunction with the FDA USDA approval process.
These term extensions are complex and time
consuming, and the costs of performing this work
is well above the fees charged. Consequently, we
propose increasing the fee for patent term
extension -- or PTE -- from $1,180 to $6,700.00.
The fee for an initial application interim
dependent would increase from $440 to $1,320.00.
The fee for a subsequent application would
increase from $230 to $680.00. This proposal
recovers the costs from only those applicants
requesting the service. We also propose
establishing a new supplemental redetermination
fee of $1,440.00 for patentees choosing to
disclaim their term after a notice of final
determination. We receive about 120 PTE
applications per year and only about 30 percent would be affected by this redetermination fee. Our intent is to encourage patentees to disclaim earlier in the process and increase our operational efficiency in the PTE review. These fees would not be eligible for small and micro entity discounts. Next slide.

Our next proposal pertains to requests for continued examination -- or RCE's -- which provide a path to allowance for some applicants needing an additional prosecution round. A small percentage of applicants file three or more RCE's, as opposed to appealing or abandoning. Our current fee for the first RCE is set below cost, even for undiscounted entities. Next slide. We propose increasing the undiscounted fee for the first RCE from $1,360 to $1,500.00, which remains below the historical cost of $3,059.00 to perform the work. We believe this proposal would enable efficient and effective final disposal by balancing RCE's as a path to allowance with other after final options. We also propose splitting
the current fee for second and subsequent RCE's into a separate fee for a second RCE and a new higher fee for third and subsequent RCE's. Our proposal increases the undiscounted fee for second RCE from $2,000 to $2500.00. It also sets the fee for third and subsequent requests at $3600.00. These proposed fees would allow us to directly recover the costs of continued examination from applicants requesting the service. In addition, the new three tier structure would enable applicants to avoid additional RCE's by weighing the added costs before considering multiple requests. Small and micro entity discounts would continue to be available for these fees. Next slide.

Our next proposal increases fees for suspension of action under 37 CFR 1.103(a) and creates a tiered system of higher fees for subsequent suspensions. Importantly, this proposal would not affect fees for suspensions of action requested at the time of filing a CPA or RCE. The new tiered system is intended to improve
our internal processing by reducing the number of sequential suspensions. Under this proposal, the undiscounted fee for a first request would increase from $220 to $300.00; subsequent requests would increase from $220 to $450.00. Of the approximately 2500 suspension requested filed annually, only about 20 percent are second or subsequent requests that would incur the higher fee. Small and micro entity discounts would continue to be available for these fees. Next slide.

Our next proposal separates terminal disclaimer fees from other disclaimer fees. More than 90 percent of terminal disclaimers are filed after the first action on the merits, but our costs increase significantly the further along an application is in the examination process. If applicants file earlier -- sorry -- my iPad wants to move faster than I do -- if applicants file earlier, it would reduce the time spent on double patenting analysis, improve our internal processing, and provide earlier public notice. To
encourage earlier filing, we propose a sliding scale of fees based on the stage of prosecution when the disclaimer is filed. Next slide. The current terminal disclaimer filing fee is $170.00 with no time restrictions. Our proposal increases the fee to $200.00 for filings prior to first action on the merits. Terminal disclaimers after the first action on the merits and prior to the final action would incur a fee of $500.00. Only about 21 percent of terminal disclaimers are filed after final action, on appeal, or after allowance. Our proposal sets the fee for filing a terminal disclaimer after final action or allowance at $800.00. Filing on or after an appeal would incur a fee of $1100.00. Finally, filing a patented case would incur a fee of $1400.00. These fees would not be eligible for small and micro entity discounts. Next slide.

Our final targets patent proposal increases the fee for unintentional delay petitions and establishes a higher tier for petitions with delays of more than two years. The
fee increase for unintentional delays of less than
or equal to two years is an inflationary
adjustment in-line with the 5 percent
across-the-board proposal I'll talk about later.
We must follow a more rigorous time consuming
review process for delays longer than two years.
As examination time increases, agency costs also
increase, as reflected in our proposed higher
tier. Next slide. Under this proposal, the
undiscounted fee for an unintentional delay of
less than or equal to two years would increase
from $2100 to $2200.00. The undiscounted fee for
petitions for an unintentional delay of more than
two years would increase from $2100 to $3,000.00.
Only about 10 percent of unintentional delay
petitions have a greater delay than two years.
Small and micro entity discounts would continue to
apply to these fees. Next slide.
All right. Our next set of proposals
target fees associated with petitions filed before
the Patent Trial and Appeal Board, or PTAB. Our
first PTAB proposal increases the fee levels for
America Invents Act -- or AIA -- trials. This proposal addresses the rising costs of conducting AIA trials caused by higher than budgeted inflationary pressures and new requirements from recent court decisions. Our proposed fee increases on the next slide would allow PTAB to continue conducting high-quality, timely and efficient proceedings. Next slide. All right. As you can see in the table, our unit cost to perform this service is currently higher than the fee imposed for each review request. We propose increasing fees by 25 percent to offset processing costs with the fees being charged. Under our proposal, the fee for an inter partes review -- or IPR -- request up to 20 claims would increase from $19,000.00 to $23,750.00. The IPR post institution fee would increase from $22,500 to $28,185.00; and while this dollar amount isn't trivial, these proposed fees remain lower than our costs of performing the service. We propose increasing the excess claims fee for the IPR request with more than 20 claims from $375 to
$470.00. We also propose increasing the IPR post institution excess claim fee for claims in excess of 20 from $750 to $940.00. Likewise, fees for post grant review -- or PGR -- and covered business method -- or CBM -- review requests up to 20 claims would increase from $20,000.00 to $25,000.00. The post institution fee for PGR's and CBM's would increase from $27,500 to $34,375.00. These proposed fees are also lower than our cost of performing the service. We also propose increasing the excess claims fee for PGR and CBM requests with more than 20 claims from $475 to $595.00. The post institution claim excess fee for PGR's and CBM's for claims in excess of 20 would increase from $1,050 to $1,315.00. Next slide.

Okay. The next proposal establishes new fees for IGR and PGR petitions that exceed proposed word limits. Currently, petitions may not exceed the word limit, which has led some petitions to file additional parallel petitions. The PTAB accepts these petitions if there's a
rationale for needing additional pages, such as alternative claim constructions are too many claims to address in one petition. One possible way we propose to solve the problem of parallel petitions is by allowing more words with fees commensurate to the time required to process longer petitions. Now, perhaps this measure could be considered when certain criteria are met. This idea is also set forth in the Advanced Notice of Proposed Rulemaking -- or ANPRM -- issued on April 21st. Should we move forward with some variant of this idea, we propose a 50 percent higher fee for 50 percent more words and a 100 percent higher free for 100 percent more words per defined limits. Providing the option to pay for more words in a single petition when certain criteria are met provides the agency and petitioners a more efficient communication method than parallel petitions; and in instances in which the Board currently allows parallel petitions, it should also reduce cost to the patent owners. The USPTO has not decided whether to move forward with this
idea and will review responses to both the ANPRM and this fee proposal before issuing further proposals. If the USPTO decides to move forward, we would shape any rules based on feedback to the ANPRM. As a reminder, feedback to the ANPRM is due on June 20th, so be sure to submit your comments on the ANPRM through its own Federal Register Notice and comments on this fee proposal through regulations.gov. Next slide. Should a rule go into effect under our proposal, the fee for 50 percent more words or an additional 7,000 words on an IPR request would be $11,875.00. For 100 percent more words or an additional 14,000 words, the fee would be $23,750.00. The fee for IPR post institution petitions would be $14,065.00 for an additional 7,000 words. The fee for an additional 14,000 words would be $28,125.00; and similarly, for PGR requests, we propose a fee of $12,500.00 for an extra 9,350 words and $25,000.00 for an extra 18,700 words. For PGR post institution petitions, we propose fees of $17,190.00 for an additional 9,350 words and
$34,375.00 for an additional 18,700 words. Next slide.

Finally, we propose creation of a new fee for parties requesting USPTO Director Review of PTAB decisions. This fee is for the review process established in response to the Supreme Court's Arthrex decision. We estimate fully burden cost for the Director Review process at around $15,000.00 each; well above our proposed fee of $440.00. The proposed fee matches the fee for petitions to the Chief Administrative Judge. Next slide.

Our next two proposals are broader in scope than the previous proposals and cover a range of patent fees. They're overarching purpose is to ensure aggregate revenue recovers aggregate costs and broadly respond to the higher than anticipated inflation and reduced fee collections resulting from new discounts. Next slide. The first of these proposals is an across-the-board inflationary adjustment that would increase all non-targeted fees by 5 percent. The additional
revenue generated by this proposal would help the USPTO recover aggregate projected operating costs, finance priorities that enhance the country's innovation ecosystem, and ensure robust and reliable patents. The agency last adjusted fees in October 2020. Now, assuming we move forward with a formal fee proposal, new fees would not be implemented until FY 2025, more than four years after the agency's last fee adjustment. A 5 percent across-the-board increase in 2025 would be equivalent to just a 1.2 percent annual increase, well below the prevailing inflation rate the last few years. To keep this fee schedule simple, the USPTO generally rounds fees to multiples of $5.00; therefore, some smaller fees would not change because a 5 percent increase would round down to the current fee. Other fees would change by slightly more or slightly less than 5 percent, depending on this rounding convention. Next slide.

Let's take a look at how this might work. So, here we have an example of this
across-the-board adjustment for patent maintenance fees. So, this graph illustrates the current undiscounted maintenance fee and our new proposed fee. As you can see, total maintenance fees at all three stages are paid would increase from $13,460.00 to $14,135.00 or 5 percent. Next slide.

Our final proposal establishes an additional 5 percent increase in filing, search and examination fees on top of the 5 percent across-the-board proposal, for a total of a 5 percent increase levied prior to issuance. As I previously discussed; filing, search and examination fees are set lower than the agency's cost in providing these services. We maintain lower fees at the beginning of the patent process to achieve lower barriers to entry to the intellectual property system. Consequently, we recover aggregate shortfalls through other fees collections, primarily maintenance fees, later in the patent life cycle. This proposal would marginally recover some additional filing, search
and examination costs earlier in the patent life cycle and incrementally reduce subsidization through maintenance fees. This additional 5 percent increase only applies to Bates file, search and examination fees. Next slide.

Okay. So, in this example; filing, search and examination fees for a utility patent would rise by an extra 5 percent, increasing the total undiscounted front-end fees from $1,820 to $2,000.00 or $180.00. Okay, next slide. This table illustrates the undiscounted fees for a basic patent life cycle and pulls these two proposals together. So, the row for filing fees shows the current fee at $320.00 and the proposed fee of $350.00, which includes both the 5 percent across-the-board increase and the 5 percent front-end proposal, rounding down to 9 percent. In the next row for search fees, our current fee is $700.00 and the proposed fee is $770.00. We also included two cumulative columns in this table. So, in the first; $1,120.00 is the cumulative amount of our current filing and search
fees, the second cumulative column contains our
proposed filing and search fees of $1,120.00 for a
cumulative increase of 10 percent; so, this
concept repeats in each row. I want to point out
that our across-the-board proposal increases
maintenance fees by only 5 percent and not the
additional 5 percent that we’re proposing for the
Bates file, search and exam fees. Therefore, when
you look at the cumulative increase through the
third stage maintenance fee, the increase is only
6 percent in total. All right, next slide.

So, that concludes our specific
proposals. This public hearing is only the first
in many required steps in the fee setting process.
I'd like to briefly talk about the path forward
and our tentative timeline for those steps. Next
slide. So, first and foremost, these proposals
are only proposals, not final recommendations. We
welcome your analysis, comments and suggestions.
Your feedback is incredibly important in helping
us shape our formal proposals to work best for the
patent system. As you provide input, please
directly associate your comments with specific
proposals under consideration. This step will
help make sure we're connecting your ideas to the
correct proposals. The PPAC will integrate these
comments into a public written report, indicating
the committee's advice and recommendations based
on today's oral testimony and written comments
received in the next week through regulations.gov.
Now, we have 18 people, ten here in-person and
eight joining us virtually, who have requested
time to testify today and provide us with their
thoughts and ideas. I'm delighted that you've
taken the time to review our proposal and I'm
eager to hear your impressions and suggestions,
and I enjoyed meeting several of you before the
meeting today. Those of you scheduled to testify
this afternoon should provide a written copy of
your testimony no later than May 25, 2023 for
inclusion in the record; and those of you who do
not speak also have an opportunity to provide
comments via the regulations.gov by May 25, 2023.
Do remember, we'll make comments available for
public inspection; so, please exclude private
information like telephone numbers, addresses,
things like that in your text; unless you want a
lot of new friends. All right. Next slide.

So, looking ahead, we intend to publish
a Notice of Proposed Rulemaking -- or NPRM -- in
the Federal Register early in calendar year 2024.
This notice will incorporate feedback we receive
from the PPAC report and formally outline our fee
proposals for another round of public comments
after the 60 day public comment period following
the NPRM and the time required to develop a final
rule. We anticipate publishing the final rule
from this fee setting effort in early FY 2025.
New fee rates would take effect perhaps in January
of 2025, about two years from now. So, there's
some uncertainty in these dates; although a
typical fee setting rulemaking takes about two
years from start to finish. We'll keep the public
updated on timelines as we move through the
process. Next slide.

All right. So, thank you all once again
for joining us today. We look forward to hearing your testimony and receiving your written comments. Thank you everyone for your attention.

CHAIR HARRISON: Great. Thank you so much, Jay. So, now we're going to switch to the public hearing part, where we actually get to hear from you, your thoughts about this proposed fee setting; and I'd like to just say that we will be going through the folks in the room first and then we will be moving to the virtual folks. So, for those in the room, when you come up to give your comments, you have a choice of standing behind the podium or sitting in the seat. There will be people that will be giving you time check cues on either side, depending on where you are, and it's really your choice. So, at this time I would like to invite up James Packard Love.

MR. LOVE: I got it. Okay. You can hear me. Thank you. The current fee structure of maintaining -- obtaining and maintaining patent protection has these distinctions based on the size of the entity -- micro, small, and the larger
entities -- but not on the way that the patents
are licensed or used. I will suggest four areas
where patent fees can provide incentives to make
the patent system work better for society and
conclude with a proposal for graduating fees based
on the value of patents.

The first thing I wanted to highlight
was that in Europe there's a number of countries
and not just -- not only Europe, that have license
of right endorsements that reduce the payments
that -- for patents by normally 50 percent. Now,
a lot of people think of the patent system as a
system of exclusive rights, but the non-exclusive
licensing of patents is actually sometimes better
for society.

In a license of rights system, the
patent holder gives up the right to have a -- to
use any kind of exclusive arrangement with the
patents. And everyone -- anyone has a right to
get a license from that patentee. And the terms
of the license are either negotiated voluntarily
between the patent owner and anyone that wants a
license, or the person making the endorsement agrees that a third party can set the thing. It could be, in some cases, the Patent Office could be the patent controller. It could be the patent register. It could be by an arbitration or by a court.

Another way that this could be implemented, in a smaller endorsement, would be just for research purposes. Now, the United States does not have a research exception, generally. And we rely, in some cases, on state sovereign immunity and work at the universities to sort of pick up some of the slack. You could have a differential fee, depending on whether a person would make an endorsement for voluntary endorsement for a research exception, using the fees associated with patents as a way of obtaining an incentive that would not only apply to government funded research, but would apply to anyone's research.

A third issue we wanted to raise is that the Patents for Humanity program has sometimes
focused on things, like the Medicines Patent Pool license from Gilead, for example, got a Patents for Humanity award. I will tell you, I spent about seven or eight years trying to get the Medicines Patent Pool created in the first place. So, I have a long background with that. They normally do patents that cover anywhere from around 90 to about 115 countries that have lower incomes with voluntary license, primarily for -- well, for medicines. It's a Medicines Patent Pool.

So, the proposal would be that there could be a discount to a firm or a patent holder in the United States that would license some type of acceptable social licensing thing. It could be limited to medicine or it could be a broader category.

An example of how it could be implemented, you could either have an agreement for a recommendation for the medicine's patent pool to be considered for the fee discount or waiver, or you could have an objective standard
that a patent holder could endorse when filing the 
patent applications or seeking renewal fees.

The fourth item I wanted to mention is 
that the World Health Organization in 2019 adopted 
a resolution on transparency. And there's a lot 
of things about the IP system which are not very 
transparent. But we've always thought it would be 
good to have a repository of patent licenses. And 
you could have either higher fees if you don't 
contribute and add your license to the repository. 
It could be a voluntary repository or a lower fee 
if you did.

And I will now switch to a different 
topic, which is if you could base the fees not on 
the size of the patent holder, but on the value of 
the inventions. What we recommended in the 
written testimony is one way is self- assessment. 
So, you could say whether or not your patent was 
worth a category, like 10 million, 100 million, 
500 million, or a billion dollars. And by making 
such an assessment, you would indicate that you'd 
be willing to sell the patent for that amount.
These would be kind of big categories.

And the self-evaluation system has been used in other areas, particularly in real estate, where people would make their own assessment of the value of the property, but also be willing to sell the property for how they assess it. It would just make it a self-executing way of doing it.

But right now, you've got patents that are worth, you know, maybe $50 billion and paying the same fees as any other patent. And so, we think it it'd be interesting to look at whether you have different fees, at least at some stage of the patent life, depending on what the value of the patent is. And I think you could rely very easily on a self-assessment system.

The last thing I wanted to mention is that these incentives -- some of these incentives will work much better in a coordinated international way, particularly like, for example, the social patent.

And that concludes my testimony. Thank
you very much.

CHAIR HARRISON: James, for the record, could you just state your organization, please?

MR. LOVE: I'm sorry?

CHAIR HARRISON: Could you state your organization?

MR. LOVE: Oh, the name of the organization?

CHAIR HARRISON: Yeah.

MR. LOVE: I'm sorry. I represent Knowledge Ecology International. So, this testimony is on our website, keionline.org. And we're a small -- we have an office in Geneva, Switzerland. We monitor the Geneva-based institutions pretty closely and here in Washington, DC. And we're -- I used to work for Ralph Nader. I mean, we're more or less a -- started out as sort of a consumer rights movement, I think. But we have basically a public interest orientation in our work.

CHAIR HARRISON: Okay. Thank you very much. I'd like to invite up Patricia Kelmar. And
if you could just state your organization, please.

MS. KELMAR: Sure. Thank you very much.

I'm Patricia Kelmar. I'm the Senior Director for U.S. PIRG, the Public Interest Research Group. We're a consumer advocacy organization.

The U.S. spends far more on prescription drugs than other countries, not because we use more drugs, but because we pay higher prices. High prices impact our personal budgets, increase our insurance health insurance premiums, and put a greater strain on important taxpayer health programs like Medicare and Medicaid.

The Patent Office plays a key role in whether or not patients have access to lower cost medications in the marketplace. We support proposed fee schedule changes that will give the PTO the resources it needs to improve the scrutiny of patent applications submitted, in particular, by the pharmaceutical industry. And I'll draw your attention to one change that may negatively impact the public's ability to challenge weak patents.
While brand-name drugs make up only 8 percent of prescriptions, they do account for 84 percent of all U.S. drug spending. But when generics and biosimilars enter the market, the competition drives prices down. Savings are dramatic, $10 to $20 billion every year. And that's the power of a competitive marketplace. Unfortunately, recent misuse of patents and the patent system by pharmaceutical companies is undermining price competition.

The Patent Office is the first agency in the drug approval process that can make a huge difference on whether lower cost alternatives are ever even offered to patients. Part of the PTO's mission is to provide high quality and timely examination of patent applications. The sheer volume of applications, 600,000 a year, puts the -- what -- 8,300 patent examiners under extreme time pressure, resulting in an average -- according to studies -- of about 19 hours for each application.

Studies by the Inspector General and the
GAO both show that examiners need significantly more time and resources, and we agree. They need time to uncover patent applications that are filed in an attempt to build a portfolio of questionably weak patents. This well documented business strategy, known as patent thicketing, is employed by drug companies to effectively deter or prevent generic and biosimilar competition.

Amassing excessive numbers of secondary patents on a single drug keeps competition at bay. It's a lengthy and expensive process to invalidate an approved patent in the court system. Better to fund more examiner time to ensure weak patents are never approved, rather than hoping litigation will right any wrongs.

I'll submit written details on these comments, but I just bring up these three points. We support the new proposed fees relating to continuing applications and urge you to consider raising the proposed amounts. Continuing applications are often used to build patent thickets -- and in the case of patenting post FDA
approval changes to formulations, delivery
mechanisms, and additional methods of use.

Of the top ten selling drugs, 66 percent
of patent applications were filed after the FDA
approved the drug. The PTO deserves to be fully
compensated for detailed work to uncover attempts
by applicants to build patent thickets through
continually -- continuing applications.

We oppose the fee increases for the
inter partes review, the only avenue that the
public has to challenge weak patents. Because the
public cannot prove standing in a federal district
court to challenge weak patents, IPR is our only
option. When IPR fees were lower, public interest
groups like the Electronic Frontier Foundation,
IMAC, and Consumer Watchdog petitioned for review.

The previous administration increases in
IPR fees put these proceedings financially out of
reach for public interest groups. And these
additional proposed fees of more than $10,000 will
shut out the public interest definitively. Under
the proposed schedule, it would cost us almost
$52,000 just to ask for review and get to the institution phase.

That's an insurmountable sum for most nonprofits. And that doesn't even include the money we would need to raise to hire attorneys, pay for experts, and all of the other costs associated with an IPR case. So, please consider lowering or even waiving IPR fees for low resource public entities.

Finally, we need more information to fully evaluate the proposed fee schedule, such as an explanation of how the costs per unit were derived and cost amounts that were for the unqualified -- unquantified tasks in the schedule that was published. Fees should be aligned to support the agency functions that utilize the most resources.

In conclusion, we support fee increases to fund excellence in patent examination while preserving other agency resources for examiner training and enforcement activity. And please lower or eliminate the IPR fees so consumers and
patients will not be financially blocked from using their rights to challenge weak patents in IPR. Thank you very much.

CHAIR HARRISON: Thank you. Laura?

MS. SHERIDAN: Hello. I'm Laura Sheridan from Google. Thank you to the Patent and Trademark Office and PPAC for allowing me to share these remarks today, as we consider the best fee structure to promote robust and reliable patent rights.

My remarks will focus on fees associated with the core mission of the Patent Office, which is to assess whether to grant a patent based on its compliance with the statutory requirements. It is a challenging job and one that we have an expert workforce of patent examiners in place to tackle. But examiners need to be given time and resources to bring about the best quality possible, while of course still being mindful of pendency. And that requires more funding.

The better we can do at the start of a patent's life, the less contentious things will be
down the line when that patent is enforced. The increased clarity and certainty that is brought about by a detailed patent examination process and a clear patent prosecution record is beneficial to both patent holders and the public. Having fees too closely tied to the maintenance of patent rights does not create predictable and a stable -- does not create a predictable and stable system for high-quality examination.

As we shared in a blog post last year, patent examiners should have the required resources upfront to conduct robust examination. This includes prior art searching, evaluating the patent application for compliance with Section 112, understanding what the claim terms mean, and applying the prior art to the claims. All of this is labor intensive and essential to reliable patent rights.

Last Congress, the Unleashing American Innovators Act included a requirement that the Patent Office conduct a study of its fee structure within two years of its enactment. The study is
to assess whether the fees for examination should
better match the costs for examination so that
there are more upfront resources available, and
ask what incentives are created by using
maintenance fees to cover the cost of examination.
This is a question that has gone unanswered for
too long. And we are confident that the result
will be that patent quality is best achieved when
resources are available upfront.

This can and must be accomplished in a
way that does not hinder the ability of our small
and micro-entities to pursue patent protection for
their innovations. In fact, as we said in our
blog post, this is something that large companies
can and should support for the overall health of
the patent system.

For this reason, we support the proposal
to increase the fees for filing, search, and
examination. We agree with the rationale to
recover more of these earlier in the patent
lifecycle. However, we would encourage the office
to raise these fees even more for large entities,
moving towards front end fees that match the costs at the beginning and do not wait until a maintenance fee is paid to do so.

    We appreciate the policy of promoting a low barrier to entry. However, that barrier to entry is much lower for large entities. In addition, large entities have factored in the overall cost for a patent when they pursue coverage. Any patents over and above this, like those that are pursued for numbers and with a low likelihood to maintain, are not the sort of patents that need to be incentivized.

    As the office conducts its study under the Unleashing Act, we encourage the following question to be explicitly answered. Would raising upfront fees for large entities so that the overall costs of examination are fully recovered have a meaningful impact on access for those entities?

    We also strongly support the new tiered fee structure for later file continuing applications. As the PTO points out, this will
encourage more efficient filing and prosecution behavior and takes into account that some of the maintenance fees will not be collected. Other jurisdictions already operate this way, and harmonization by the USPTO makes a lot of sense.

As we mentioned in our comment in response to the RUSPTO's request on robustness and reliability, there is a pronounced increase in likelihood of litigation for patents resulting from continuations across computer related technologies. This likelihood grows for continuations pursued five or more years after the original filing. We will reshare this data in our written remarks.

With this increased likelihood of litigation, it is even more important that adequate resources are in place to evaluate compliance with Section 112, among the other statutory requirements. We also strongly support the increases in fees for the first and second RCEs and an additional tier for third and subsequent RCEs. There is no reason for the
agency to not be made whole, if an applicant chooses to continue prosecution of a patent application instead of appealing the examiner's decision or abandoning the effort.

Finally, we support the additional fees for applicant-provided citations in the record, with surcharges for citations in an IDS exceeding certain thresholds. We agree it's good to incentivize, leaving out marginally pertinent and cumulative information, as the examiner's review of these materials takes time away from assessing the relevant citations.

So, to summarize, we believe the PTO will be in the best position to grant robust and reliable patent rights when the fees before the grant of a patent more closely match the costs, instead of relying upon the maintenance fee for that recovery. We thank the office for moving in this direction and encourage it to work towards full cost recovery, exploring what this would look like for large entities and how best to phase this. Thank you.
CHAIR HARRISON: Thank you, Josh?

MR. MALONE: I'm glad to see everyone sitting down, because I'm going to astound you. I agree with Google that large entities should pay full freight for their application. So, great idea. Otherwise, I'm Josh Malone. I'm the inventor of Bunch of Balloons. My invention was stolen, and the PTAB took away my patent. And it was very horrifying, very hurtful. And I appreciate the opportunity to share with you today.

Today's hearing is about patent fees. I'm going to testify about the related concept of value. How can we determine if the fees are too high or too low, Jay? Supply and demand. What is the right number? And the answer is tied to the value of the product. That is to say the reliability of the issued patent. A patent must be reliable. If it's reliable, then it's worth a lot. And if it's unreliable, it's worth very little.

A small entity can obtain a patent for
$1,206 in fees. Maintenance fees are an additional $5,384. But can an inventor get a reliable patent for $1,200? My friend, Tom Pierson, from Houston invented a high-efficiency turbine power plant, which he commercialized and built a company around. And after several IPRs of the PTAB, his patents were nothing more than a plaque that he hung on the wall. Reflecting on his useless patents and millions of dollars he had wasted, he commented, well, I guess it's better than having an empty wall.

Even at $1,200, that's an overpriced plaque. Of course, he paid much more than $1,200. It was thousands more in prosecution and maintenance fees, several million in attorney fees at the PTAB, all wasted. So, the PTO fees were much too high for these patents that were taken away by the Patent Office when he needed them. Had he received a reliable patent backed by the full faith and credit of the United States government, he would have had a good value. He likely would have gladly paid the increased fees
that are proposed here today for a reliable patent. We all would.

Molly, David, Jody, Roman, Glenn, Larry, Jean, Valerie, Ron, Stephen, Ray, Patrick, Susan, Mark, all these inventors that are on our website and in the PTAB docket would appreciate reliable patents. They were devastated when the USPTO took their patents back, that they had relied upon to build their businesses and bring their ideas to life.

The legal fees of defending a patent at the PTAB are a problem as well. The AIPLA reports that the median legal cost to defend a patent at the PTAB and appeal is $450,000 each. The PTAB was supposed to be a faster and cheaper alternative to district court, and that hasn't worked out. Instead it adds about three years of delay and more than a million dollars, while invalidating patents that are upheld in an Article III court.

This is what happened in my case. It's demoralizing. It's unfair. It's destructive.
The average value of these PTAB patents is negative because they end up costing the inventor much more than they can return. In ten years, the PTAB has issued final written decisions on 3,968 patents. And of those, only 629 have been upheld. That's an 84 percent invalidation rate. Some people have challenged the number 84 percent, arguing we should count patents that are settled or denied institution as well in the denominator. But that's not the case. Settlement usually means the inventor gave up their rights because they couldn't afford to go on. That's not a win. And there's no estoppel with denial of an institution. So, those patents are likely to be invalidated by the 2nd or 3rd or 6th or 25th try. And I've done the analysis. The more times a patent is challenged at the PTAB, the more likely it is to be invalidated.

The only patents that can be assessed are the ones that have made it through to a final decision. The others are of unknown validity. And Mr. Tierney and his friends of the PTAB have
told me that there is no presumption of validity at the PTAB. Others argue that a denominator should be upwards of 3 million, the number of unexpired patents in existence. On that basis, they say, the invalidation rate is less than 100th of 1 percent.

However, those patents are, on average, much weaker than the patents at the PTAB and would suffer a much higher invalidation rate if they were tested. These cannot be counted as valid patents in the analysis. And they certainly would not be presumed valid at the PTAB. Rather than spending more time debating the number, the office must reckon with the increasing belief of inventors that U.S. patents are unreliable and not worth their investment.

Increasing the fees will result in even more inventors boycotting the USPTO. This is especially true for millennials and under-resourced inventors. They are quick learners and are not surprised anymore when I explain to them that a patent costs millions of
dollars to defend, that large corporations will
steal their invention regardless of whether or not
it is patented, and that if they try to stop them
the USPTO will more likely than not take away
their patent.

There's a solution to this crisis. Congress gave the Director discretionary authority
on whether to institute a PTAB trial or not based
on "the effect on the economy or the integrity of
the patent system." It's in the statute in 2011.
The advanced notice of proposed rulemaking
published last month holds much promise. I really
hope that it will quickly mature into a robust
rule to exempt inventors from the PTAB. If and
when that happens, patents will become much more
reliable and inventors will enthusiastically pay
these fees.

Thank you for your time.

CHAIR HARRISON: Thank you. Courtney?

MS. BRINCKERHOFF: Good afternoon. I'm
Courtney Brinckerhoff from Foley and Lardner. And
today I'm speaking on behalf of IPO. Although my
remarks are preliminary, based on discussions with members of IPO committees, they're not official, haven't been approved by the IPO board, but IPO will be submitting comments by the deadline.

IPO understands the USPTO's need to adjust fees, but has concerns about those that may be designed to influence applicant behavior, but could have unintended detrimental consequences.

With regard to the escalating terminal disclaimer fees, filing a terminal disclaimer has significant substantive effect. An applicant should not be penalized for waiting to file a disclaimer until it is clear that doing so is appropriate, based on the final claim language. The escalating fee schedule could lead sole inventors and less sophisticated applicants to file unnecessary disclaimers, needlessly limiting their patent rights and undermining the value of their portfolios.

On the other hand, the escalating fee schedule could lead applicants to appeal more double patenting rejections, which would undermine
the stated goal of promoting efficient operations.
The stated justification for the escalating fee
schedule that the cost to process a terminal
disclaimer increases greatly after certain
milestones is not understood. The USPTO
encourages the use of e-terminal disclaimers,
which we understand are processed and accepted
nearly automatically.

With regard to the continuing
application surcharge, IPO understands they are
intended to make up for so-called loss maintenance
fee payments. But to applicants, it seems like
the Patent Office is asking applicants to pay
upfront for a patent term they won't enjoy, for a
patent that may not even be granted.

The Director's letter states that the
surcharge is intended to encourage more efficient
filing and prosecution behavior, but filing
continuations early is not efficient. Prosecuting
multiple related applications simultaneously can
make it complicated and costly to comply with duty
of disclosure requirements, especially if
different prior art is cited in different
applications, necessitating the need for cross
citing IDSs.

Most applicants wait to file
continuations so they can make informed decisions
over whether a further application is even needed
and also to spread out patent costs. The
surcharge could limit the ability of sole
inventors and others to protect the full scope of
their inventions, because prosecuting multiple
cases at the same time will strain patent budgets.
That, in turn, could undercut the value of their
patent portfolios and limit investment in the
technology.

If applied to a divisional applications,
the surcharge could be inconsistent with 35 USC
121. So, the USPTO should consider making an
exception for divisional applications. The
surcharge also would have a disparate impact on
U.S. national stage applications, which do not
even enter the U.S. until 30 months from their
priority date. The surcharge could lead to more
RCEs or appeals if applicants continue to challenge rejections, instead of a common practice now of letting allowed subject matter grant and pursuing other valuable subject matter in a continuation application.

With regard to the escalating RCE charges, IPO is concerned that the $3,600 3rd RCE fee reflects a presumption that multiple RCEs reflect dilatory applicant conduct. IPO addressed this issue in its comments to the robustness and reliability FRN and understands those will be taken into consideration. RCEs can be required to obtain consideration of an IDS. So, IPE -- IPO encourages considering an exception to at least the highest RCE fee, if the only submission being made with the RCE is an IDS. For similar reasons, IPO suggests that QPID RCEs be exempted from the higher fees.

With regard to consequences, the higher RCE fees could lead to more appeals if applicants decide to appeal rejections instead of continuing prosecution with the examiner, even if they
believe progress could be made and unnecessary
appeals are not efficient. The proposed $500 fee
for AFCP 2.0 would likely lead to a drastic drop
in use of that program, especially in view of the
fact that examiners have nearly complete
discretion in how to treat an AFCP 2.0 submission.

With regard to design patent fees, IPO
would like assurance that the USPTO is addressing
the reported problem of fraudulently claimed
micro-entity status so that others are not in
effect subsidizing this fraud. We would also
appreciate more explanation of the high historical
cost basis for the CPA fee, which seems out of
line with other fees.

And with regard to the PTAB trial fees,
IPO would appreciate more explanation of the
USPTO's costs, given that you've explained today
that the proposed increases still wouldn't cover
those costs.

CHAIR HARRISON: Thank you. Ashraf?

MR. FAWZY: Hi, I'm Ashraf Fawzy. I'm
Director and Managing Counsel at Unified Patents.
Unified Patents is a membership organization dedicated to improving patent quality and reducing the proliferation of low quality patents.

I'm here today to indicate support, generally for several of the proposed fee changes as part of an effort to ensure effective administration and issuance of patents while also improving patent quality.

First, as we all are aware, USPTO has plenary authority to set its own fees and drive behavior. And the proposed fees are generally reasonable offsets for increasing patent quality, which is essential. It's essential to our IP system that the USPTO not only be able to adequately finance its operations through collections and operating reserve. But also, to that end, the majority of proposed fee changes are modest.

For example, many of the fee changes appear to be about 5 percent increases, which is narrowly tailored and commensurate in scope with recent economic conditions. This is undoubtedly
true, in view of rising costs and inflation felt across all aspects of our economy.

Increased fees are also generally necessary to the extent they support rigorous -- more rigorous examination. While there are a number of fee increases greater than 5 percent, those are measured and affect a low number of annual applications relative to the total number of applications that are filed, as is evident from Mr. Hoffman's comments earlier.

The Inspector General and GAO reports show that examiners need more resources and time, particularly today -- in today's age where more patent applications are being filed than ever before. Effective examination is particularly necessary when considering that more patents are issuing, with data showing that, for example, utility patents issued annually are increasing.

Further, with the increased complexity and volume of patents being sought, new and more effective tools for examination should be explored, which will likely require even more
resources. Anything that can be done to efficiently reduce the number of issued patents that may be unpatentable is -- or may be found unpatentable later on is a positive step. As such, patents have been shown in repeated studies to have a negative economic impact, including with regard to increased litigation costs, transactional costs, barriers to market entry, and with regards to drug prices. And I'll cite -- we'll cite more detailed reports in our submission.

The USPTO's transparency in providing the information behind these proposals is welcome, for example, with unit costs. But further information related to the costs of examination and how the unit costs are derived would also be helpful in allowing the public to assess the budget. Transparency enables accountability for whether resources are being put into the right places for patent examination.

A few additional comments related to specific proposals. Fees for late filed
continuations promote efficient operation and filing behaviors. Research has shown that continuation patents are largely a tool for larger companies or companies with higher patent budgets to create thickets of patents around drugs, medical technologies, and other high value technologies. Companies don't seek large portfolios of continuation patents, unless the patents are especially valuable and worth investing additional resources for patent protection.

Those patent applications warrant additional examination that should be funded by increased fees. Indeed, the more continuations that exist, the more nuanced, complex and rigorous the examination should be. Further, to the extent there is gamesmanship occurring in the system, continuation applications are an area where -- particularly late filed continuation applications are an area where patentees may try to take advantage of the system; for example by duplicating scope or attempting to patent onto
competitor products.

The fees for late filed continuation --
sorry. It's important to note that these
continuation fees are properly assessed for late
filed continuations. This part of an efficient
patent system includes timing by both parties, the
USPTO, and the patentee. And the proposed fee
appropriately places the incentive on not delaying
to file a continuation on the patentee, which
improves efficiency in the system.

Fees for excess IDS references and
terminal disclaimers are also likely to promote
efficient operations and filing behaviors. These,
again, indicate that a patent is valuable and
worthy of the additional examination effort.

With regard to terminal disclaimers,
this is something where there is a partial onus on
the patentee to recognize that they are
potentially running afoul of a double patenting
issue, So, the incentive is appropriately
apportioned with regards to such fees. The same
indication of value and need for rigorous
examination is similarly present with regards to the excess claim fees, RCE fee increase, and after final consideration fees.

All of these fee -- these categories of patents and associated fees are where we have seen and data shows that the potential for gamesmanship exists. These patents end up being repeatedly asserted in litigation and scrutinized for validity. Under such scrutiny, courts are finding many patents to be invalid years after issuance. That can be prevented by examination that is even more rigorous, efficient, and that utilizes new tools and technology.

Finally, I'll end with an old adage that a mentor once told me, which is that it's possible to do something better, faster, or cheaper. You can have two out of three, but not all three. For our patent system, it's critical to improve patent quality and to further reduce pendency. That's two out of the three that we should be prioritizing.

Thank you.
CHAIR HARRISON: Thank you. Ann?

MS. MUETING: Good afternoon. My name is Ann Mueting of Mueting Ross Group. I am not here on behalf of my firm or our clients. I am here on behalf of the American Intellectual Property Law Association as its president elect.

My comments reflect AIPLA's current viewpoints on the fee proposal. As in the past, AIPLA believes that the USPTO should recover, in the aggregate, 100 percent of the cost needed to run the Office. We also maintain that the current balance between front-end and back-end fees should be maintained so that filing and examination fees remain low enough to maximize access to the patent system.

Nonetheless, we recognize the need for the office to increase fees to compensate for inflation. As such, we find that many of the proposed increases seem reasonable and appropriate. We do, however, have concerns with some of the aspects of the office's current fee proposal, as there are significant increases and
new fees for certain aspects of patent application process.

We believe that the office should conduct a thorough analysis and justify any significantly increased fee or new fee, showing that the fees are necessary and calculated to recover the actual costs associated with each targeted practice.

We note that the office's recent request for comments on USPTO initiatives to ensure the robustness and reliability of patent rights asked many questions about possible policy initiatives that would alter current examination practices and that are now targeted for significant fee increases or new fees. We have significant concerns regarding this approach.

Some areas of our members' specific concerns include the following. In continuation applications, the proposal would have fees starting as soon as three years after the earliest benefit date. In many technologies, examination does not typically start for two or three years
after filing. The fees will also
disproportionately affect independent inventors,
startups, and small businesses who are most
sensitive to even small fee increases.

Regarding terminal disclaimers, the
proposed fee increases are significant, ranging
from 18 percent to as much as 724 percent, even
though the cost of processing these documents is
considerably less. While the office might want to
courage early TD filing, it is difficult to
determine their necessity until substantive
prosecution takes place.

Regarding information disclosure
statements, the proposed fees for submitting
cumulative numbers of references are completely
new. Applicants should not be penalized for
complying with their obligation under Rule 56,
which imposes upon applicants a duty to disclose
to the Office all information material to
patentability.

The failure to fulfill this duty can be
devastating, with the issued patent potentially
being deemed unenforceable. Also, these fees are inconsistent with the policy goal of having applicants submit all material information which promotes robust and reliable patents.

Regarding requests for continuation -- continued examination, the office is proposing an 80 percent increase for a third or more RCE, which is likely to prematurely overwhelm the Patent Office's appeal system and/or inhibit applicants from continuing to try to work with the examiner to find patentable subject matter.

Regarding excess claim fees, the proposed fees are increased by 100 percent. Our members observe that many times applicants do not receive the benefits of the current excess claim fees due to the administrative practice, such as restriction, where claims are withdrawn from consideration but no refunds result. It is our position that excess claim fees should be based on claims actually examined.

Regarding patent term extensions, the increases of 196 percent to as much as 468 percent
are of significant concern. These are increases -- these fee increases target specific applicants seeking restoration of lost patent term for a limited category of technologies and products. The PTE program was designed to create new incentives for research and development, but these increases would run directly counter to these important policy goals.

Regarding design applications, we are concerned that for some applicants that depend on the crucial protection afforded by design patents, the proposed significant increases in the fees would now make crucial design patents financially inaccessible to some. It also seems entirely at cross purposes to the proposed new design patent bar being considered to create more diversity in the patent bar.

Finally, we note the time limitations preclude more extensive comments in this venue and urge the PPAC to consider our written comments that will follow, as well as our prior comments relating to our input on patent robustness and
Thank you for this opportunity.

CHAIR HARRISON: Thank you. Robert?

MR. KATZ: Good afternoon, everybody.

Thank you for the opportunity to speak. I've got a lot of comments, so I apologize for speaking quickly on this.

I'm here on behalf of FICPI, which is an international organization, International Federation of Intellectual Property Attorneys. It's the only international nonprofit organization whose membership consists entirely of IP attorneys in private practice.

The FICPI members represent a wide range of clients, from individuals to small and large companies, and it focuses on IP issues. It's organized by member regions. And I'm here representing the U.S. national section. And I'm the current president. I'm also an attorney at the firm of Banner and Witcoff. I've been there for 30 years, and I do focus quite a bit of my practice on design patents.
I will touch on utility patent fees, but I wanted to focus primarily on design patent fees. Obviously, we know there's a 48 percent increase from 1,760 to 2,600. But unlike utility patent procurement where the USPTO fee is a minority of the total costs, where like a utility patent application may cost 15,000 or even more to prepare, design patent fees are much less from an attorney standpoint. And the USPTO fees are a major portion of the total cost, and it will have a negative impact on the total filing.

A 48 percent increase will break the system, will cause a lot of applicants to file less cases, especially design driven applicants that can't afford that. And it will ultimately be a great benefit for some companies. But those companies are the companies that pedal in knockoffs and counterfeits. And we will see an increase of those in the marketplace due to this increase, undoubtedly.

This increase is also intertwined with the fact that pendency of a normal non-special
design patent is over two years now. That's one
of the worst in the world. And so, because
knockoffs and counterfeits appear in the
marketplace faster than a design patent will
grant, applicants are forced to pay for that
expediting fee of $1,600, which was recently
increased from $900.

So, recognizing that the problem of long
pendency and these increases, it will -- it's
effectively the 2,660 from a couple of years ago,
before that fee was increased. And these
proposals will bring that to 4,280 or a 61 percent
increase in design patent fees.

Also, the fact that a design patent is
only entitled to one claim under current practice,
it's not uncommon that four or five design patents
need to be covered to adequately protect a
commercial embodiment. So, USPTO fees can easily
exceed $20,000 alone. The cost for three design
patent claims in the U.S. far exceed the cost for
a utility patent application with three utility
patent claim.
So, against that, we do have some suggestions that might be helpful. One is eliminating the single-claim practice. There might be some way of having a way you can get three design claims in a particular application that might lower some overhead fees, and there might be a win-win there.

Examiners -- and we've worked hard to get there. But examiners can take steps to be more efficient, more cost efficient. They'll be able to get more applications done in a short -- in a shorter period of time. We do see a lot of improper office actions where it's based on either the examiner wanting preferred language in the spec or they're prying an improper microanalysis of the drawings. So, hopefully the PTO will do better training on that front.

Another area that can help Patent Office manage, Europe and the UK have a 25-year term for design rights. There's no reason -- I mean, obviously, you need to have a statutory change. But if you extended design rights in the U.S. to
25 years, you could have a maintenance fee at the 15-year point to get an additional 5 or 10 years there, and that can help recoup the fee. And that is effectively just found money for the Patent Office to help offset the other fees that they have.

And then as was previously mentioned, while we -- the micro-entity filing access was a great idea and there was -- you know, the fact that there -- 29 percent of the filings last year were micro entities, it only really was a small amount of people that it was -- from the targeted people. Many of those were fraudulent in nature, but yet it seems like those fees are already being absorbed by the large entities. So, those are the other ones.

And then I think some of the other areas we want to talk about is the terminal disclaimer fee and the continuation fee. Those step fees that are proposed, they should be limited to utility patent fees only, not designs. That's the behavior that's trying to be targeted for those.
Secondly, some of the big ticket items for the USPTO cost, we suspect, are being improperly passed to designs. Like Global Dossier, the new search system, DOCX, all this infrastructure we think is being passed down on a per application basis than on a per use or per essence basis.

And finally, for utility patent fees, we do agree with some of the comments that have come in earlier today about the AFCP program, that this will defeat it in its entirety. And that if you want it to exist, you should keep it without the increased fee. And that the continuation divisional application fee for three years is way too low of a threshold. Maybe the seven years more reasonable, but three years is right at the cusp where even SMEs are going to be at a disadvantage because they need to build a portfolio to attract investors.

So, again, please reconsider some of these fees, especially on the design side. It's important to keep knockoffs and counterfeits off
the market. So, thank you for your time.

CHAIR HARRISON: Thank you. Dirk and
Molly, you're up next. Molly, can you turn on
your camera please? You're on mute.

MS. METZ: Yeah, I'm sorry. That was
difficult to get that all going. Can you guys all
hear me?

MR. HOFFMAN: Yeah.

MS. METZ: Okay. My name is Molly Metz.
I'm a former competitive jump roper. I own a
company called JumpNrope. I'm the inventor of
what I consider the world's most precise jump rope
technology.

I was granted my patents in 2010 and
'12. I was able to enforce my patents for eight
years. I worked with the ITC. There was over 150
companies infringing on my technology. But
finally, in 2021 I sued my largest infringer, and
my patents were invalidated at the PTAB.

That was a confusing time for myself and
my husband. And I think, like anyone, they would
probably do the same thing. I've spent my free
time now educating myself on what happened and the
difficulties that other inventors are having
enforcing their patents, and then to be told
suddenly your patents have been no good all this
time.

So, today I'm here, I have $300,000 in
legal debts. I have one employee left at my
company, and it's just been devastating. So, my
point in being here today -- I have notes, but the
common theme that I've heard today is robust and
reliable patents. And that was sort of in my
notes as well. You know, as a patent owner, you
get a patent and you trust the USPTO when it says
we have a 97 percent, you know, reliability in our
patent examination.

And Kathi Vidal, during her introduction
today, saying she's proud that the U.S. provides
robust and reliable patents. So, as a user of the
system, you go into that and you build a business.
You hire employees, you put your money into molds
and inventory, and you go. And that's what the
point is for a patent.
But what I'm learning -- you know, I was just in D.C. the last few days and I was meeting with some attorneys and some ex-judges. And I said, what could I have done differently, you know, in my case? And they rambled off a few things and they said, well, you could have filed for continuations. You should have created a patent portfolio.

Which I asked, what does that mean? They said, well, you should have gotten more patents. And you should have paid more money and all these fees, and all these, you know -- and I said, why? And they said, well, when you go to litigation, if you have ten patents, it's better than one. You know, they'll knock out nine, and maybe you can keep one of them. And they say, you can -- you should have hired the right attorneys. You should have traded your business in a pro-patent state.

And I'm listening to all of this and I'm thinking, wow, I invented a really awesome technology. I got a patent, a robust and reliable
patent, and that failed me. And now I'm being
told, no, no, no, as a patent owner, you need more
patents. You need better attorneys. You need,
you know, to create your business in another
state. And so, I'm a little confused, as a patent
owner, hearing all of that.

So, that brought me here today to kind
of make my point. And I want to refer to two
other patent women -- two other women who own
patents I know now today, who have about 150,000
of them in their patent portfolio, the other one
with $300,000 in their fees for their patent
portfolio. And I asked them where they are today.

And their answer is, they are
devastated. They are broke. They're unable to
get counsel because they can't get injunctions.
They're being threatened with IPRs, and they're
just devastated. They're stuck in this game. And
so, when the topic of increasing fees come up,
they're mortified. You know, you tack on 10
percent of their 300,000, and what are they
getting from that? Where is the robust, the
reliable patents coming into play here?

So, I'm just checking my notes here if I have anything else I want to say with this. I guess my question is, how are we helping them? How are we going to trust that our patents are reliable and robust, you know, on the front end?

And that was the theme. You know, there was a speaker today from Google. There was Josh Malone, Unified Patents. You know, we're all kind of talking about reliable patents. And I don't know. And so, that was my point today. I know Dirk is standing there. And I think I'm giving him a little bit of time here to speak as well.

So, that's what I'll do. Go ahead, Dirk.

MR. TOMSIN: Good afternoon. Wait, can you guys hear me? Good afternoon. My name is Dirk Tomsin. I represent JumpNrope and my wife, an invalidated patent owner. Thank you for sharing, Molly.

With the perspective of an inventor that
went through an AIA trial, I would like to follow up with two more issues that I think need change. During an IPR, the petitioner gets part of the IPR fees returned when the petition does not get instituted. Not only does this seem like an incentive for a petitioner, it also seems wrong. I believe that this poses enormous bias on the APJs in their decision whether to institute or not. This has to change to prevent bias in future decisions for institutions.

The second issue I want to bring forward is that when a patent get canceled, it's considered as if it never should have been issued, which means that the PTO mistakenly issued a patent. In other words, the PTO made a mistake. Yet still the patent owner does not get any fees back.

There is so much more than PTO fees. I'm just talking about PTO fees. There's so much more. There's legal fees trying to defend an invalid, mistakenly awarded patent. There is whole life savings and loans from other people or
banks that go into building a business around a
mistake by the PTO. How is it okay that
petitioner gets their money back for filing a weak
petition, its own mistake, but the patent owner
does not while the PTO made the mistake?

Seeing fees go up across the board
indicate that these issues, which are known, are
not being considered. And I and many other
inventors, like me or like my wife, want to see
this changed and both solutions for these two
issues need to be worked into the new fee
settings.

Personally, I believe that it's nothing
but normal to return all the fees related to a
canceled, mistakenly awarded patent to the patent
owner. Thank you.

CHAIR HARRISON: Thank you. That is all
we have for the in-person speakers, and we'll now
move to the online speakers. And we're going to
start with Brian. I'd like to note for the online
speakers, you'll be getting queues for time
through the chat.
MR. KEARNS: Hey, thanks. Can everyone hear me? Okay. My name is Brian Kearns. And I lead the U.S.-based patent development team at Ericsson. So, Ericsson has more than 60,000 patents granted worldwide, a significant portion of which are in the United States. We regularly file several thousand applications, including several hundred continuations per year at the USPTO. As such, we have a strong interest in ensuring the U.S. patent system continues to operate efficiently and fairly for all applicants.

Fee changes may be necessary for a variety of reasons: to recover costs, for the USPTO to remain self-funded, and also influence certain applicant behaviors. However, we believe that changes should only be undertaken based on robust evidence that they're both financially necessary, that they won't unduly influence applicant behavior in a way that affects patent ownership rights.

We submit that additional data is needed before implementing many of the proposed fee
increases. But in the interest of time, I wanted
to highlight three particular targeted proposals:
continuing applications, terminal disclaimers, and
excess claim fees.

So, new tiered fees for continuing
applications are proposed to offset foregone
maintenance fee revenue, recover front end costs,
and encourage more efficient filing and
prosecution behavior. But Ericsson respectfully
requests reconsideration of these proposals.

First, the maintenance fee rationale
presumes, without detailed evidence, that
applicants generally abandon earlier filed
applications in favor of later filed
continuations. We want to challenge this
presumption. Applicants are guided by the value
and claim scope of their patents and not simply
minimizing the maintenance fees paid.

Ericsson typically keeps multiple
patents in a family alive, including an earliest
filed parent application or parent patent. Thus,
a robust continuation practice may actually
provide more maintenance fee revenue than a single application.

Second, the recovery of front-end cost presumes that these costs are the same across continuing applications, as they are for new applications. We want to challenge this as well. Continuations are generally handled by the same examiner who's already familiar with the content of the specification and the field of art.

Office actions and continuations often cite the same art as a parent application or provide obviousness type double patenting rejections. So, the front-end cost of examination may actually be lower in continuation applications.

And finally, we disagree with the assertion that continuation practice encourages inefficient applicant behavior. Applicants typically file applications covering various embodiments of an invention, but the current claim fee structure strongly encourages them to seek coverage for only a subset of those embodiments.
It may take years for the applicant to determine which embodiments are both commercially valuable and entitled to patent protection over the prior art. The current continuation practice allows applicants to track these developments efficiently and seek the full scope of patent protections to which they are entitled.

A new sliding scale of fees is proposed for terminal disclaimers, based on the argument that the cost to process terminal disclaimer increases greatly after certain milestones. The increase is proposed to allegedly reduce unnecessary examination costs and promote overall efficiency. We disagree with this as well.

First, no cost data is provided to show a significant financial or time cost in processing terminal disclaimer, and certainly not one that increases as time progresses. The USPTO has already promoted efficiency in this area with the introduction of e-terminal disclaimers in 2013, which are auto processed and approved almost immediately upon submission.
Second, it's unclear how a delayed filing would increase examination costs. Double patenting rejections are often presented in conjunction with other claim rejections. So, in these situations, filing a terminal disclaimer early in prosecution would not expedite prosecution, as other rejections would remain.

In practice, Ericsson receives double patenting rejections almost exclusively in our continuation applications. So, we respectfully submit that while terminal disclaimer practice now is generally superfluous for continuing patent applications, aside from patent term adjustment, continuing patent application will have the same term as its parent public will have sufficient notice of their relation with or without the filing of a terminal disclaimer.

Finally, the USPTO has proposed significantly increasing the fees for excess claim fees. This is for better alignment with the cost of examination and to encourage more efficient behavior in the number of claims filed. We submit
that the proposed increases are excessive.

First, no historical cost data is provided regarding these fees, so it's difficult to fully evaluate the necessity of such a large increase without more data. Furthermore, this increase in the motivation to encourage applicants to be more efficient in the number of claims filed is at odds with the concurrent proposal to add new fees for continuing applications.

The current excess claim fees already encourage applicants to be efficient in the number of claims they file, pursuing claims of differing scope or embodiments in continuing applications. Taken together, the increase in excess claim fees and the addition of new continuation fees would indicate that efficient filing would require an applicant to know exactly which embodiments are most commercially valuable and patentable over the prior art at the time of filing. This is simply unrealistic.

For at least these reasons, we would like to submit that the targeted fees are not
justified by the current evidence that we've seen,
and if implemented could negatively influence
applicant practices, resulting in a loss of patent
rights.

Thank you for your time and
consideration of our comments. We look forward to
continuing to work with the USPTO on this.

CHAIR HARRISON: Thank you. Andrew?

MR. SHERMAN: Thank you. I'm Andrew
Sherman. I am a serial entrepreneur and have over
100 patents that I have written and been part of,
and they've led to the starting of a dozen
companies.

And from my point of view, I am
concerned that increasing maintenance cost,
particularly when the Patent Office does not stand
by the patent and it can be invalidated at the
PTAB indefinitely -- the practical effect of this
is that we invented a magnesium product that
changed the way oil and gas is produced, saved 92
percent of the water and emissions for completion.

Within six months of actually
introducing that product, Chinese infringers were selling my product -- infringing product for less than it cost me to produce it. And I went to the largest user and his comment was, I don't believe patents are valid. He says, I will beat you at the PTAB. I had another infringer that basically held me hostage and said, you know, I can bankrupt you by filing a continuing number of IRBs. So, the practice of returning fees to the petitioner, when it cost me 50,000 plus in legal fees just to prepare a preliminary response, I would propose that before -- that the PTAB be denied if a maintenance fee, particularly the seven year fee is due, that at that point the patent has had enough time to be challenged, and that you shouldn't charge a maintenance fee if you don't stand behind the patent. We can't do that in business, if -- and the proof is the patents that are challenged are the valuable ones. In light of some of the other fees, I mean, charging for a mandatory disclosure and increasing those fees just when there's no
real cost to attach that is -- we have to do those, that's just -- that's wrong.

Excess claims and RCEs, increasing those fees 100 percent. In order to have a valid and enforceable patent, I've had to enforce them, we need to continue those. We need enough claims. Because when we file the patent, we're not -- we're doing that before we're commercializing and really know what -- which features are the actual important ones to the end users.

And, you know, it's three years down the road before we get issued a patent. And then we -- you know, we need to be able to adapt to what is actually in the market. And increasing those fees for small entities are -- the U.S. Patent Office has the highest maintenance fees in the world or among the highest today.

The practical impact, we're in a state of national -- declared national emergency for supply chains. And we're fighting the Chinese, and they are using our patent system and weaponizing it against us in the middle of a
national supply chain emergency. This is a problem.

The practice of returning the fee for discretionary denial seems against policy. It incentivize looking at those, if nothing else. If that is denied, that should be returned to the patent owner that had to go through the expense, or it should go into -- I support higher fees to get more robust, upfront patents because I've invested $15 million in building a business, 55 employees, and it is based on an enforceable patent.

If that patent is not enforceable, there is a court, there are venues to actually work out whether it was erroneous or not. The PTAB is not it, when it cost me half a million dollars to defend, and it's a 70 percent to 85 percent chance that I'll lose. Basically, there is no respect for patents. And I'm basically not writing patents. I'm keeping trade secrets and finding other ways of controlling my information.

The other is -- I would think that for
companies -- countries and entities and countries
that do not have an enforceable patent system
where we can access it, at the very least, we
should double or triple their fees. I don't know
if that's allowable. But, you know, certainly at
the PTAB, they should be barred, if we can't
access their court system, or their fees should
be, you know, exponentially higher for them to do
that. Thank you.

CHAIR HARRISON: Thank you. Shaina?

MS. CASPER: Hi. My name is Shaina
Casper. I'm a patient dependent on insulin living
with type 1 diabetes, also the U.S. policy manager
for T1 International.

T1 International is a global diabetes
advocacy organization led by people with diabetes,
for people with diabetes. And we believe in a
world where everyone with diabetes, no matter
where they live, has everything that they need to
survive and achieve their dreams. We accept no
funding from pharmaceutical companies and provide
advocacy, training, and support to insulin for all
advocates.

And in the U.S. we've got 41
volunteer-led Insulin For All chapters. And we've
got three working groups with a national
membership. Communities of Color working group,
Families United for Affordable Insulin, for those
who have lost loved ones due to insulin rationing,
and the Family -- Federal Working Group, which is
focused on addressing the insulin price crisis.

Patent review reform is a priority for
T1 International's Federal Working Group. Because
100 years ago, in January of 1923, the discoverers
of insulin sold the patent for $1, saying that
insulin does not belong to me, it belongs to the
world. And rather than this gift that it was
intended to be, their discovery has become the
poster child of pharmaceutical price gouging.

As we've heard here today, this problem
is not unique to insulin. Big pharma has created
thickets of patents around their products,
allowing them to maintain a monopoly for far
longer than initially intended. This patent
thicketing, along with pay for delay patent

dispute agreements and more, has hindered true

competition, and thus the lowering of prices of
drugs, drug device combinations, diagnostic
technologies, durable medical equipment, and other
medical devices and tools.

Patent evergreening has arrived then in

part because the USPTO has not provided the
adequate training or time needed for patent
examination, has cut the public out of the
process. Fees are needed to support rigorous
examination, invalid but issued patents prevent
generic and biosimilar entry, and keep prices for
patients high.

We also need transparency into the
USPTO's costs of examination and other activities
beyond the unit costs. This transparency would
enable accountability for whether resources are
being put into the right places for patent
examination. And additionally, continuation
patents are a common tool of this packet
thicketing that we've been hearing, late filed
continuation patents were an additional examination and should be funded by increased fees.

Thank you for your time.

CHAIR HARRISON: Thank you. Anna?

MS. BALL: Hi, everyone. My name is Anna Ball. I’m a first year graduate student. And my journey with chronic illness began at the age of 20, following my diagnosis of lupus and OCD and anxiety disorder.

I represent Generation Patient. We are the first class of health policy scholars that is led entirely by young adult patients. We work to increase health literacy, confidence and self-management skills, and public policy knowledge and advocacy strategies of young adult patients. Generation Patient does not accept funding from pharmaceutical, insurance, hospital, or related healthcare industries.

My story is just one of millions of stories that illuminates the need for public accountability in the patent system. The patent
system is not currently working for patients, with
case examples of Humira, Equilis (sic), and
Keytruda. We worry about other therapeutics will
be in the list of harmful patent practices.
Action is not taken. This is why we appreciate
the opportunity to address the USPTO on this
important hearing which would impact patients.
We will submit further written content
that reflects all of our viewpoints, but I wanted
to highlight a few. We believe in increased fees
for continuation patents. We recognize that
patent examiners need more resources and time to
accomplish thorough review and assure patents are
granted and not unfairly prohibit competition. A
paper titled "On the Appeal of Drug Patent
Challenges" by Charles Duan highlights that
invalid but issued patents prevent generic or
biosimilar entry and keep prices high.

Pharmaceutical companies, we believe, do
not seek large continuation patents, unless those
patents provide high profit margin. Continuation
patent applications warrant additional examination
that should be supported by increased fees. Fee increases could be larger than proposed to support a greater examination.

We are thrilled about the USPTO and FDA collaboration, and believe that increased time on patent examination can allow the patent examiners -- I'm sorry, I'm in finals week right now. Patent applications that warrant additional examination that should be subsidized by increased fees. Fee increases that could be larger than proposed to support a greater examination.

We are thrilled to be -- we are thrilled about the USPTO and FDA collaboration and believe that increased time on patent examination can allow for patent examiners to thoroughly compare decisions and actions taken by the FDA and those made by the USPTO. Continuation patent applications warrant additional examination that should be funded by increased fees.

A second point that we need to -- is that we need more transparency into the cost of examinations for patent review and other
activities. As patients, we want to ensure that
we have accountability to ensure that proper
resources are dedicated towards rigorous patent
examination.

We are currently aware of the unit costs
for agencies' actions that are given, but we are
not clear on how these costs are derived.
Specificity on this would allow for more public
accountability understanding. We also strongly
oppose fee increases for inner parties review. As
a patient group, we need public accountability
groups to have accessible opportunities to
challenge patents that are not benefiting
innovation to the public. These fee increases are
a threat to allowing more general public
distribution in the patent system.

In conclusion, we also wish to note that
the patent system is misused. Our demographic of
young people with chronic conditions is
disproportionately affected. We need novel
innovation fairly priced. We want to emphasize
that for us, as young adult patients, the need --
the access to prescription medication is a basic human need.

According to the Georgetown University McCourt School of Public Policy, 53 percent of people ages 18 to 34 use prescription drugs. More so, 21 percent of people ages 18 to 49 years old say they have difficulty affording medication. This share is likely even higher for younger adults living in the highest poverty rate in the United States that is between ages of 18 and 24.

But given that research is not sufficiently focused on young adult populations, there is no specificity of the site. We are grateful that this patent hearing includes adequate representation of young adult patients, with the opportunities to increase the affordable medication. We welcome elaborating on any of the above continuing -- and continue to partner to ensure patent fees reflecting the time and effort needed to thoroughly review.

Thank you for hearing my testimony.

CHAIR HARRISON: Thank you. David?
MR. BOUNDY: Hello. My name is David Boundy. Am I audible?

CHAIR HARRISON: Yes, we can hear you.


We've all seen the Roberts Court actively policing cases of agency overreach. The PTO is not permitted to play by the rules of a profit maximizing enterprise. And the PTO can't play by the rules of agencies that have policy making authority.

I hope that a book got on your desks, and I will walk it through -- walk through it with you tab by tab and give you an overview so that you can read it more carefully later.

Tab one is Section 41 of the Patent Act. It's the basic fee schedule that Congress enacted as part of the AIA. Henry, you probably remember when Section 41 was added as part of the compromise with the appropriators to end fee diversion. Legislative history refers to Section
41 as the reference point for future fees.

Tab two gives the end result of where I'm going to go over the next couple of minutes. PTO has authority to scale up fees of Section 41 in proportional lockstep for, you know, maybe -- I don't know what the number is. It might be 32 percent or something. The Patent Office can break out of that lockstep in two situations, either where Congress specifically authorized some reference point other than Section 41 or when the PTO shows us cost data to justify a higher fee. Unless the PTO can show us one of those two, part of the costs -- part of the check and balance of giving the PTO control over its own fees, ending fee diversion, and giving the PTO fee setting authority was that the PTO is locked into Section 41, unless it follows all of the laws that get it out.

Tab three introduces three important laws that govern most agency fee setting. First, the Constitution requires that taxes have to originate in Congress. Taxes cannot originate in
the executive branch. Case law has made very clear that any fee set to incentivize or to influence behavior is a tax. The PTO doesn't have the authority to tax. So, the PTO can't set fees to influence behavior.

Also, in tab 3 is the Independent Offices Appropriations Act of 1952. The IOAA sets ground rules for executive branch user fees, unless an agency has a carve out. The AII -- the AIA gave the Patent Office one carve out, but two provisions of the general fee setting statute remain operative. Tab three is the second most important -- no. Yeah, and third on tab three is the Patent Act.

Most important thing is the silences in the Patent Act. Section 2 lists the powers of the office. There are plenty of powers relating to foreign patent policy, but there's nothing that delegates the Patent Office any control over domestic patent policy. So, the frequent reliances on policy in the Patent Office's justification are simply unlawful. They're
outside the bounds of what the agency is allowed to think about.

Tab four is the second most important page in this book. It's a bit of the legislative history of the AIA. When the bill was introduced in January 2011, the PTO had asked for extremely broad fee setting authority and had asked to be made exempt from all the checks and balances that apply to all other agencies. And that's the way the statute was introduced.

However, as part of the compromise, the end fee diversion, and as part of the compromise that gave the Patent Office its segregated account and gave it a fee setting authority, the final language says that the PTO may only set fees to recover cost. Only is the key word here. The legislative history explains that the PTO may do no more than recover costs. Congress specifically denied the Patent Office the authority to use fees as a policy implementation tool.

Tab five is there for you to read on the plane. It explains some of the financial
incentives that might be causing some of the
problem.

Tab six shows a few of the fees, that
when I did this two days ago that I thought had
sound rationale. Listening today, I've revised
some of those opinions. But the important thing
is that some of the fees are well founded. And
also important, when the PTO has data that they
want you to see, they give it to you.

Tab seven lists a lot of fees that
aren't lawful. Patent Office may not set fees to
incentivize or disincentivize or to influence
behavior. That's not constitutional. Where the
PTO claims to set fees to implement policy, that's
in excess of the statutory authority that Section
2 or Section 3 give. Where the PTO hasn't given
us cost information, they don't have authority to
break out of lockstep of Section 41 or the IOAA.

Where the PTO data does show that costs
decrease over time, they don't have authority to
make the fees increase over time. Where the PTO
creates costs on applicants by improper
examination and raising rejections that can't stick -- that aren't robust and reliable is the keyword of the day -- the PTO shouldn't raise fees on the techniques we use to correct those examiner errors.

Tab eight is one of the public comment letters from 2019, and it's just a longer version of everything I've given you in more detail so you can get fully up to speed.

Tab nine is the most important part of this presentation. It starts with a brief primer on the law of rulemaking. And also, in tab nine is the PTO's response to the comments that were there in tab eight.

Please read tab nine the most carefully. If you are a lawyer, tab nine will leave you gravely concerned. There is not a law firm in the country that would tolerate the shenanigans that you see in tab nine. Tab nine will leave you gravely concerned. Even if you're not a lawyer, tab nine will prompt you to ask a lot of questions.
And tab ten is a paper by Ron Katznelson who went over this same material. Many of you know Ron, and it also makes good airplane reading. And that's the end of my talk. Thanks very much.

CHAIR HARRISON: Great. Thank you so much. Now, we're on to Matt.

MR. MOYERS: Hello. Thank you for letting me be here. My name is Matt Moyers. I am the founder of Peak Value IP. I have been operating at the crossroads of finance and intellectual property for 23 years, before I announced my retirement earlier this year.

With respect to the proposed patent fees, I agree with almost everyone else that the initial fees should provide a patent that is unassailable. That when it is issued, it is valid and it cannot be invalidated. And if it is to be invalidated, I propose that the PTAB process not be raised 25 percent, but rather be raised to 25 percent of the exposure that that entity that is petitioning the patent for invalidation pay. That would decentivize the process of invalidation,
which has turned this entire patent market system on its head.

The patent system as it stands right now is imploding upon itself, and small inventors are being left out in the cold. And I speak on this with great experience, representing a number of small entities that I have performed valuations for.

When I first started IP valuation, it was in the context of a post-Enron era. Sarbanes Oxley was the rule of law where we started putting the value of developed technology on accounting balance sheets. And that has gone on for many, many years. We account for it in a post-merger and acquisition setting, but we do not account for it prior to that.

There's a huge dislocation of information and purpose for how IP is viewed in this United States. There's tax purposes. There's the legal setting that you have here. There's transfer pricing issues. There's state and gift tax. All the valuation, all the pricing
does not come under one specific position, and it is undermining the system in a way that needs to be addressed. And this fee setting proposal that you guys are working on should continue.

But separate from that, we should create a system where people can receive a patent and it will be unassailable and it will be valid forever. And with that comes a whole myriad of change that you can have, because the patent will then morph from being a simple asset and a right to exclude to potentially a licensable equity or debt instrument. And if it is an equity or debt instrument, the U.S. Patent Office can start charging on the true value of intellectual property and specifically on patents, and all of your fee issues will go away.

But because the U.S. Patent Office is currently operating like a park and recs district, where we do permit stamping, issue a patent, and then pull it back when we decide that it shouldn't be because some petitioner institutes the patent, there's no value. So, you know, I think
ultimately, we could open up the entire U.S. patent system as well as the trademark system, as well as the copyright system to be an open market where there's actual secondary transactions and liquidity.

The S&P 500 right now is valued in excess of $25 trillion. But to develop the technology of that value, which includes patents, it's got to be in the 7 to 8 trillion. Yet patent transactions on an annualized basis is a very, very de minimis value compared to those other large groups.

So, in conclusion, I ask that you start to marry up what is happening with patent valuation and pricing and start taking fees that kind of relate to that and make the patent system unassailable. Thank you.

CHAIR HARRISON: Thank you. Dennis?

MR. CROUCH: Madam Chair, members of the public -- Patent Public Advisory Committee, esteemed guests, my name is Dennis Crouch. I'm a law professor here at the University of Missouri,
and I'm author of the Patently-O website.

I'm really grateful for this opportunity and that you're opening this up for discussion of the proposed structural fee changes. I want to note my remarks today that I'm in my personal capacity and not representative of the university or any other institution.

You know, at its core, a patent system is designed for the purpose of incentivizing innovation and incentivizing disclosure. Over the past 20 years, I've spent countless hours thinking and writing about these patent incentives. And in my view, the Patent Office fees are a really important aspect of the whole incentive analysis.

The recently proposed USPTO fee changes today and previously have stimulated a really lively debate. And amidst this complex disclosure, I'm hoping to share a few insights and basically underscore the necessity of a bigger picture examination of the impact of these fees beyond merely USPTO revenue and USPTO efficiency.

The proposed fee increases do, though,
aim to promote a more efficient filing and prosecution behavior. And that aspect of the PTO purposes, I think, deserve substantially more explanation from the office and attention in terms of what's going on.

Now, when I think of governmental fees, I think of them as serving several purposes, some of which require more justification than others. And I want to briefly touch upon three categories that I think directly relate to the proposals here, and at least two of which necessarily require more analysis from the USPTO.

First off, we all recognize that fees provide the USPTO with necessary revenue. So long as Congress refuses to subsidize the patent system, those fees need to be there in order to have an examination approach. Second, though, higher fees can create what we call a costly screen, right? A costly screen, now there's some benefits of that, having some kind of nominal fee, because it discourages trolling behavior. And it also can filter out weaker
arguments, right? If it's free to make an
argument, you'll get more. But if you place a
small fee on, you'll have some weeding out. But
at the same time, that kind of fee additional --
especially if it's as an additional fee down the
line, can discourage smaller businesses,
individual inventors, and many others from taking
advantage of their rights.

And that appears, you know -- so, you
know, a number of the fees that have been
proposed, including these increased design patent
fees, I think fall within this category of a
costly screen, right?

The third category, I just want to
mention, is a type of fee that simply is designed
to discourage actions, right, and discourage them
in a way that results in loss of rights for the
individual, right? And in these fees, that's
typically loss of rights for the patent holder.

Now, an important point here that's been
made by many of the prior speakers, the USPTO fees
serve as a lever in the patent system's incentive
structure, pushing folks to act one way or another. And any change to the fee structure needs to be carefully considered because it's going to have that kind of impact.

Well, economists have been forecasting the impact of price changes since the time of Adam Smith. Before any fee shifting occurs, in my view, it's essential that we send these proposals over to someone, such as the USPTO chief economist or other economic experts, to really analyze the potential impact of fee shifting, both on USPTO revenue, which I know that's already happening, but more important, on applicant behavior as well as the behavior of innovators and those investing in innovation.

Some of the changes here involve pressuring applicants to further towards what we might call compact prosecution, adding additional front-end fees; and on balance, shifting things away from maintenance fees. Of course, in my view, maintenance fees are actually quite important. They're a key feature of the patent
system because the PTO only gets paid for those if
the patent is valuable enough for applicants and
owners to keep paying.

Now, this analysis I think should also
consider the impact on innovators and investors,
including their ability to participate in the
patent system, potential impact on their
incentives. A careful economic analysis will help
identify potential unintended consequences. And
so far, it looks like that really hasn't -- that
really hasn't happened.

The last thing I want us to consider, or
at least recognize, is that today, in the U.S.
patent system, most non-provisional applications
are filed from folks coming from abroad, outside
of the U.S. This reality likely also changes the
calculus on several levels and should be expressly
considered by the office before moving forward.

Ultimately, we want a well-designed fee
system and it has the potential of incentivizing
responsible behavior among patentees. And the
reality, though, is the Patent Office should
really consider that impact and let us know,
right, as we consider that, how that has
influenced the decision making. Thanks so much.

CHAIR HARRISON: Thank you very much.

Ramzi?

THE REPORTER: Ramzi should be
connected. Ramzi, are you able to hear me?

MR. MAALOUF: Yes. Can you hear me?

Hello?

THE REPORTER: Yes, we can. Please go
ahead.

MR. MAALOUF: Thank you. Thank you.

Good afternoon all. My name is Ramzi Khalil
Maalouf. I'm an engineer and an independent
inventor.

I hold several U.S. patents, many of
which have had global commercial success. For
example, a device based on one of my patents sold
over 500 million units worldwide. Another is
currently in use in over a billion smartphones.
Despite this, I've not made any money for my
patents, quite the opposite in fact. In addition
to the monies I've spent building a business,
which I assume was protected by my IP, have
incurred enormous expenses fighting infringements.
Some strong armed me into settlements
after filing multiple, potentially ruinous IPRs.
While others successfully invalidated my patents
through IPR rulings issued by administrative
judges who are, in my opinion, illegally appointed
at the PFA.

Among others, I've had to fight against
an infringement by entity known as DJI, the drone
folks who are banned by the U.S. government; and
Xiaomi, who now rank higher than Apple in
smartphone sales. Still, fearful of my probably
superior skills as a pro se defendant, Chow Ming
enlisted Microsoft, their strategic AS partner, a
trillion dollar company and the second largest in
the world to file an IPR on their behalf against
me, even though Microsoft does not produce or sell
the patented product.

On February 23rd, the U.S. Court of
Appeal, of this month -- of this year, the U.S.
Court of Appeal to the Federal Circuit affirmed
the PTAB decision to invalidate my patent, and
under the ridiculous opinion that the commercial
success of my invention is sufficient motivation
to combine the prior art and implied proof that it
was obvious to invent it.

Well, how does this relate to the fee
setting? Well, every product is directly related
to the perceived value that the payer has for that
item. In my opinion, our broken system, and
especially the IPR process, is destroying our U.S.
Patent as an alarming 84 percent kill rate and
making the actual value of the patent equal to
zero.

Irrespective of the fees, whether they
remain the same or they're increased by 5 or 10
percent as proposed, I spent $800 to file my first
patent. Sadly, over the years, and on the advice
of qualified counsel, I repeated this process 37
more times. Some would argue that the first time
would be a shame on the PPAC, and the next 37
would be shame on me and my lawyers. But that
would not be the case here, because patents are issued by the U.S. government, the ultimate source of trust and security.

I love inventing and I love this country. I believe the independent U.S. inventor is responsible for our nation's competitive edge and has improved the value of well-being of our citizens. I realize, especially when I was wrong to assume that -- while I was fortunate to accurately predict the market in my invention, I was wrong to assume that the patents are real property rights that cannot be taken away, certainly not by an administrative process by the same government that issued it in the first place.

I thought that an official U.S. issued and signed patent, just like $100 bill, was backed by the full faith and credit of the U.S. government. I realize my comments may be harsh, but they're from the heart and well-intended, because my fellow inventors and I are deeply pained and want to make sure that our nation does not lose our valuable, innovative edge to others.
I have many suggestions to share. But in the interest of time, here's the most important. Offer the inventor an option to unconditionally -- an option to unconditionally guarantee the validity of a patent and charge ten times or even a hundred times a fee multiplier for that guarantee. That would give qualified examiners, who are implicitly accused of incompetence by judges for being wrong 84 percent of the time, more hours to review cases and wider access to prior databases.

Perhaps form a three to five person panel, a senior examiner to review each patent before it is issued or when it is challenged, as Japan does. I am willing to pay $8,000 or even $80,000 or more fee that comes with a validity guarantee, just like a title insurance policy on my home. That will give me the comfort of knowing that I can rely on my patent and invest in my business, and that the full force and resources of the U.S. government would step in and protect me against obvious challenges attempting to
invalidate my patents.

I have much more to say, but my time is up. Thank you for the opportunity. May God bless you, bless this country, and guide you in your decisions moving forward. Thank you. (applause)

CHAIR HARRISON: Thank you very much. I want to -- this concludes, actually, the public comment portion of this hearing. And I want to say on behalf of PPAC and the USPTO, that we thank you very much for your carefully considered and thoughtful and very passionate comments to help the USPTO, inform them of your beliefs and thoughts, so that they can go back and think about how this relates to the current fee proposals that they have.

As I said before, PPAC will take all of these comments, along with the written comments that we receive, and we'll be writing a report to give to the USPTO on what we have heard today and what we hear in the comments, with our own -- combined with our own PPAC thoughts on the fee proposals that will allow the USPTO to take all of
that under consideration and come back with a
revised -- a potentially revised fee proposal for,
again, one more round of comments by the public.

So, again, we thank you very, very much
for spending the time with us today to make your
voices heard. This concludes the hearing.

(Whereupon, at 3:38 p.m., the
PROCEEDINGS were adjourned.)

* * * * *
CERTIFICATE OF NOTARY PUBLIC

COMMONWEALTH OF VIRGINIA

I, Mark Mahoney, notary public in and for the Commonwealth of Virginia, do hereby certify that the forgoing PROCEEDING was duly recorded and thereafter reduced to print under my direction; that the witnesses were sworn to tell the truth under penalty of perjury; that said transcript is a true record of the testimony given by witnesses; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this proceeding was called; and, furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

(Signature and Seal on File)

Notary Public, in and for the Commonwealth of Virginia

My Commission Expires: August 31, 2025

Notary Public Number 122985