DEPARTMENT OF COMMERCE
Patent and Trademark Office

37 CFR Part 1
RIN 0651–AB60

Revision of Patent Fees for Fiscal Year 2004


ACTION: Proposed rule.

SUMMARY: The United States Patent and Trademark Office (referred to as we, our, us, or this Office) is proposing to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are proposing to adjust, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

Legislation has also been introduced in Congress that would alter our fees. If enacted, this legislation would supersede the fees identified in this proposed rule.

DATES: Comments must be submitted on or before May 30, 2003.

ADDRESSES: Comments may be submitted by e-mail addressed to matthew.lee@uspto.gov. Comments may also be submitted by mail addressed to:
Office of Finance, Crystal Park One, Suite 802, Washington, DC 20231, or by fax to (703) 305–8007, marked to the attention of Matthew Lee.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at matthew.lee@uspto.gov, by telephone at (703) 305–8051, or by fax at (703) 305–8007.

SUPPLEMENTARY INFORMATION: This proposed rule would adjust our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106–113). This proposed rule would also adjust, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (f), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

Legislation has been introduced in Congress that would alter our fees. Customers should be aware that legislative changes to our fees would supersede this proposed rule. When such changes occur, we will make corresponding rule changes by publication in the Federal Register. Customers may wish to refer to our official web site at www.uspto.gov for the most current fee amounts. Official notices of any fee changes will appear in the Federal Register and the Official Gazette of the United States Patent and Trademark Office.

Background
Statutory Provisions
Patent fees are authorized by 35 U.S.C. 41, 119, 120, 123(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 123(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the Federal Register and the Official Gazette of the United States Patent and Trademark Office.

Fee Adjustment Level
The patent statutory fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted on October 1, 2003, to reflect fluctuations occurring during the twelve-month period from October 1, 2002, through September 30, 2003, in the Consumer Price Index for All Urban Consumers (CPI–U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration’s projected CPI–U for the twelve-month period ending September 30, 2003, which is 2.17 percent. Based on this projected CPI–U, patent statutory fees are proposed to be adjusted by 2.17 percent. Before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI–U published by the Secretary of Labor.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) are proposed to be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of $100 or more were rounded to the nearest $10. Fees less than $100 were rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures
Any fee amount that is paid on or after the effective date of the proposed fee adjustment would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of §1.8. Items for which a Certificate of Mailing or Transmission under §1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under §1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules
37 CFR 1.16 National Application Filing Fees
Section 1.16, paragraphs (a), (b), (d), and (f) through (l), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application and Reexamination Processing Fees
Section 1.17, paragraphs (a)(2) through (a)(5), (b) through (e), (m), and
For the reasons set forth in the preamble, we are proposing to amend title 37 of the Code of Federal Regulations, part 1, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (b), (d), and (f) through (l) to read as follows:

§ 1.16 National application filing fees.
(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:
By a small entity ($1.27(a)) $385.00
By other than a small entity $770.00
(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:
By a small entity ($1.27(a)) $43.00
By other than a small entity $86.00
(c) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:
By a small entity ($1.27(a)) $145.00
By other than a small entity $290.00
(d) Basic fee for filing each reissue application:
By a small entity ($1.27(a)) $170.00
By other than a small entity $340.00
(e) Basic fee for filing each plant application, except provisional applications:
By a small entity ($1.27(a)) $265.00
By other than a small entity $530.00
(f) Basic fee for filing each reissue application:
By a small entity ($1.27(a)) $385.00
By other than a small entity $770.00
(g) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:
By a small entity ($1.27(a)) $43.00
By other than a small entity $86.00

3. Section 1.17 is proposed to be amended by revising paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (l) to read as follows:

§ 1.17 Patent application and reexamination processing fees.
(a) $ * * * *
(2) For reply within second month:
By a small entity ($1.27(a)) $210.00
By other than a small entity $420.00
(3) For reply within third month:
By a small entity ($1.27(a)) $475.00

4. Section 1.18 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.
(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:
By a small entity ($1.27(a)) $665.00
By other than a small entity $1,330.00
(b) Issue fee for issuing a design patent:
By a small entity ($1.27(a)) $385.00
By other than a small entity $770.00
(c) Fee for each additional invention requested to be examined under § 1.129(b):
By a small entity ($1.27(a)) $385.00
By other than a small entity $770.00
(d) Fee for the acceptance of a unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 366(a) or (c) (§§ 1.135 and 1.78)...

5. Section 1.20 is proposed to be amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.
* * * * *
§ 1.492 National stage fees.

(a) The basic national fee:

<table>
<thead>
<tr>
<th>Type</th>
<th>Fee</th>
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<tbody>
<tr>
<td>By a small entity (§ 1.27(a))</td>
<td>$455.00</td>
</tr>
<tr>
<td>By other than a small entity</td>
<td>$910.00</td>
</tr>
</tbody>
</table>

(b) In addition to the basic national fee, the applicant may request an examination fee as set forth in § 1.27(a) for any of the following, per application:

<table>
<thead>
<tr>
<th>Type</th>
<th>Fee</th>
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<td>By a small entity (§ 1.27(a))</td>
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<tr>
<td>By other than a small entity</td>
<td>$2,090.00</td>
</tr>
</tbody>
</table>

(c) If the applicant requests a search report on the international application:

<table>
<thead>
<tr>
<th>Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>By a small entity (§ 1.27(a))</td>
<td>$910.00</td>
</tr>
<tr>
<td>By other than a small entity</td>
<td>$1,080.00</td>
</tr>
</tbody>
</table>

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

<table>
<thead>
<tr>
<th>Type</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>By a small entity (§ 1.27(a))</td>
<td>$145.00</td>
</tr>
<tr>
<td>By other than a small entity</td>
<td>$290.00</td>
</tr>
</tbody>
</table>

§ 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office, and then key Docket ID No. SFUND–2003–0009.

By E-Mail: Comments regarding any of these proposed listings must be submitted (postmarked) on or before June 30, 2003. ADDRESSES: By electronic access:

SUPPLEMENTARY INFORMATION: For further details on their contents, see section II, “Public Review/Public Comment,” of the SUPPLEMENTARY INFORMATION portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or the Superfund Hotline (Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.)