**JUSTIFICATION FOR NONMATERIAL/NONSUBSTATNIVE CHANGE**

**Patent Processing**

**OMB Control Number 0651-0031**

Background

The United States Patent and Trademark Office (UPSTO) administers the Leahy-Smith America Invents Act (AIA), Section 10, which sets or adjusts patent fees established authorized, or charged under Title 35, United States Code (U.S.C.). Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials related to patent. Section 10 authorities also includes flexibility to set individual fees in a way that furthers key policies factors, while taking into account the cost of the respective services.

The request is to update the fees attached to this collection that are affected by the rulemaking NPRM 0651-AD02, and also to incorporate fees were not counted in pervious approvals. Respondent numbers are also changing due to agency discretion in conjunction with the rule.

There are four fees (broken down into large entities, small entities, and micro entities0 being adjusted as a result of the 2017 Patent Biennial Fee Review.

**Table 1: Increases in Fees**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Responses** | **Updated Fee** | **Updated Non-hour Burden ($)** |
| 7 | Notice of Appeal (large entity) | 22,500 | $1,000.00 | $22,500,000.00 |
| 7 | Notice of Appeal (small entity) | 6,000 | $500.00 | $3,000,000.00 |
| 7 | Notice of Appeal (micro entity) | 500 | $250.00 | $125,000.00 |
| 9 | Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding (large entity) | 150 | $2,000.00 | $300,000.00 |
| 9 | Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding (small entity) | 50 | $1,000.00 | $50,000.00 |
| 9 | Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding (micro entity) | 0 | $500.00 | $0.00 |
| 19 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) (large entity) | 78,400 | $1,300.00 | $101,920,000.00 |
| 19 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) (small entity) | 28,000 | $650.00 | $18,200,000.00 |
| 19 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) (micro entity) | 5,600 | $325.00 | $1,820,000.00 |
| 19 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) (large entity) | 40,600 | $1,900.00 | $77,140,000.00 |
| 19 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) (small entity) | 14,500 | $950.00 | $13,775,000.00 |
| 19 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) (micro entity) | 2,700 | $475.00 | $1,282,500.00 |
|  | **Totals** | **199,000** |  | **$240,112,500.00** |

**Table 2: Increases in Fee Amounts**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Current Fee** | **Proposed Fee** | **Fee Increase** |
| 7 | Notice of Appeal | $800 (large entity)  $400 (small entity)  $200 (micro entity) | $1,000 (large entity)  $500 (small entity) $250 (micro entity) | $200 (large entity)  $100 (small entity)  $50 (micro entity) |
| 9 | Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding | $1,700 (large entity)  $850 (small entity)  $850 (micro entity) | $2,000 (large entity)  $1,000 (small entity)  $500 (micro entity) | $300 (large entity)  $150 (small entity)  -$350 (micro entity) |
| 19 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) | $1,200 (large entity)  $600 (small entity)  $300 (micro entity) | $1,300 (large entity)  $650 (small entity)  $325 (micro entity) | $100 (large entity)  $50 (small entity)  $25 (micro entity) |
| 19 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) | $1,700 (large entity)  $850 (small entity)  $425 (micro entity) | $1,900 (large entity)  $950 (small entity)  $475 (micro entity) | $200 (large fee) $100 (small fee)  $50 (micro fee) |

**Table 3: Increases in Costs**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Current Cost** | **Proposed Cost** | **Cost Increase** |
| 7 | Notice of Appeal (large entity) | $18,000,000.00 | $22,500,000.00 | $4,500,000.00 |
| 7 | Notice of Appeal (small entity) | $2,400,000.00 | $3,000,000.00 | $600,000.00 |
| 7 | Notice of Appeal (micro entity) | $100,000.00 | $125,000.00 | $25,000.00 |
| 9 | Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding (large entity) | $255,000.00 | $300,000.00 | $45,000.00 |
| 9 | Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding (small entity) | $42,500.00 | $50,000.00 | $7,500.00 |
| 9 | Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding (micro entity) | $0.00 | $0.00 | $0.00 |
| 19 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) (large entity) | $94,080,000.00 | $101,920,000.00 | $7,840,000.00 |
| 19 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) (small entity) | $16,800,000.00 | $18,200,000.00 | $1,400,000.00 |
| 19 | Request for Continued Examination (RCE) - 1st Request (see 37 CFR 1.114) (micro entity) | $1,680,000.00 | $1,820,000.00 | $140,000.00 |
| 19 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) (large entity) | $69,020,000.00 | $77,140,000.00 | $8,120,000.00 |
| 19 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) (small entity) | $12,325,000.00 | $13,775,000.00 | $1,450,000.00 |
| 19 | Request for Continued Examination (RCE) - 2nd and Subsequent Request (see 37 CFR 1.114) (micro entity) | $1,232,500.00 | $1,282,500.00 | $145,000.00 |
|  | **Totals** | **$215,935,000.00** | **$240,112,500.00** | **$24,177,500.00** |

Summary of Changes

The revision of 4 fees (broken down into large entities, small entities, and micro entities) and the addition of $24,177,500 in non-hourly costs to collection 0651-0031 account for the changes following the rulemaking action NPRM 0651-AD02.

Changes in Burden

The 0651-0031 revised total burden is as follows:

* $444,086,838.96 in non-hourly costs