

JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE
Patent Processing
OMB Control Number 0651-0031

Background

The United States Patent and Trademark Office (USPTO) 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 previous 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 entities) 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