**JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE**

**Rules for Patent Maintenance Fees**

**OMB Control Number 0651-0016**

Background

The United States Patent and Trademark Office (USPTO) administers the Leahy-Smith America Invents Act (AIA), 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 the patent and trademark processes. 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.

This request is to update the fees attached to collection 0651-0016 (Rules for Patent Maintenance Fees) that are affected by the rulemaking NPRM **Rulemaking Number**. There are seven fees being adjusted as a result of the 2019 Patent Biennial Fee Review.

**Table 1: Increases in Fee Amounts**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Current Fee Amount** | **Proposed Fee Amount** | **Change in Fee Amount** |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (large entity) | $1,600 | $2,000 | $400 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (small entity) | $800 | $1,000 | $200 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (micro entity) | $400 | $500 | $100 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (large entity) | $3,600 | $3,760 | $160 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (small entity) | $1,800 | $1,880 | $80 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (micro entity) | $900 | $940 | $40 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (large entity) | $7,400 | $7,700 | $300 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (small entity) | $3,700 | $3,850 | $150 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (micro entity) | $1,850 | $1,925 | $75 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (large entity) | $160 | $500 | $340 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (small entity) | $80 | $250 | $170 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (micro entity) | $40 | $125 | $85 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (large entity) | $160 | $500 | $340 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (small entity) | $80 | $250 | $170 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (micro entity)  | $40 | $125 | $85 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (large entity) | $160 | $500 | $340 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (small entity) | $80 | $250 | $170 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (micro entity) | $40 | $125 | $85 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (large entity) | $2,000 | $2,100 | $100 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (small entity) | $1,000 | $1,050 | $50 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (micro entity) | $500 | $525 | $25 |

**Table 2: Proposed Burden Change**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Responses** | **Proposed Fee** | **Proposed Cost** |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (large entity) | 188,800 | $2,000 | $377,600,000 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (small entity) | 40,800 | $1,000 | $40,800,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (micro entity) | 2,600 | $500 | $1,300,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (large entity) | 96,000 | $3,760 | $360,960,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (small entity) | 16,200 | $1,880 | $30,456,000.000 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (micro entity) | 900 | $940 | $846,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (large entity) | 61,700 | $7,700 | $475,090,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (small entity) | 9,800 | $3,850 | $37,730,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (micro entity) | 500 | $1,925 | $962,500.00 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (large entity) | 3,500 | $500 | $1,750,000 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (small entity) | 6,200 | $250 | $1,550,000 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (micro entity) | 700 | $125 | $87,500 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (large entity) | 2,000 | $500 | $1,000,000 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (small entity) | 2,500 | $250 | $625,000 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (micro entity)  | 300 | $125 | $37,500 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (large entity) | 2,200 | $500 | $1,100,000 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (small entity) | 1,700 | $250 | $425,000 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (micro entity) | 200 | $125 | $25,000 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (large entity) | 500 | $2,100 | $1,050,000 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (small entity) | 1,200 | $1,050 | $1,260,000.00 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (micro entity) | 100 | $525 | $52,500.00 |
|  | **Totals** | **438,400** |  | **$1,334,707,000** |

**Table 3: Changes in Burden**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Current Fee Cost** | **Proposed Fee Cost** | **Change in Fee Cost** |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (large entity) | $302,080,000.00 | $377,600,000 | $75,520,000 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (small entity) | $32,640,000.00 | $40,800,000.00 | $8,160,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 3.5 Years (micro entity) | $1,040,000.00 | $1,300,000.00 | $260,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (large entity) | $345,600,000.00 | $360,960,000.00 | $15,360,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (small entity) | $29,160,000.00 | $30,456,000.000 | $1,296,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 7.5 Years (micro entity) | $810,000.00 | $846,000.00 | $36,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (large entity) | $456,580,000.00 | $475,090,000.00 | $18,510,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (small entity) | $36,260,000.00 | $37,730,000.00 | $1,470,000.00 |
| 1 | For Maintaining an Original or Any Reissue Patent, Due at 11.5 Years (micro entity) | $925,000.00 | $962,500.00 | $37,500.00 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (large entity) | $560,000.00 | $1,750,000 | $1,190,000 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (small entity) | $496,000.00 | $1,550,000 | $1,054,000 |
| 1 | Surcharge – 3.5 year – Late Payment Within 6 Months (micro entity) | $28,000.00 | $87,500 | $59,500 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (large entity) | $320,000.00 | $1,000,000 | $680,000 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (small entity) | $200,000.00 | $625,000 | $425,000 |
| 1 | Surcharge –7.5 year – Late Payment Within 6 Months (micro entity)  | $12,000.00 | $37,500 | $25,500 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (large entity) | $352,000.00 | $1,100,000 | $748,000 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (small entity) | $136,000.00 | $425,000 | $289,000 |
| 1 | Surcharge – 11.5 year – Late Payment Within 6 Months (micro entity) | $8,000.00 | $25,000 | $17,000 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (large entity) | $1,000,000.00 | $1,050,000.000 | $50,000.000 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (small entity) | $1,200,000.00 | $1,260,000.00 | $60,000.00 |
| 3 | Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force (micro entity) | $50,000.00 | $52,500.00 | $2,500.00 |
|  | **Totals** | **$1,209,457,000.00** | **$1,334,707,000** | **$125,250,000.000** |

Summary of Changes

The Patent Fee Review results in seven fees being updated and an increase of $125,250,000.00 in non-hourly costs to collection 0651-0016.

Changes in Burden

|  |  |  |  |
| --- | --- | --- | --- |
| **Burden Type** | **Current Amount** | **Proposed Change** | **New Estimate** |
| Non-Hourly Costs | $1,209,457,960 | $125,250,000.00 | $1,334,707,957 |

0651-0016’s revised total burden is as follows:

* $1,334,707,959.5in annual (non-hourly) costs