**JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE**

**Patent Reexamination and Supplemental Examinations**

**OMB Control Number 0651-0064**

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.

The request is to update the fees attached to this collection that are affected by the rulemaking NPRM 0651-AD02. There are seven fees being adjusted as a result of the 2019 Patent Biennial Fee Review.

**Table 1: Proposed Fees**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Current Fees** | **Proposed Fees** | **Changes in Fees** |
| 2 | Supplemental Examination Request | $4,400 (large entity)  $2,200 (small entity)  $1,100 (micro entity) | $4,620 (large entity)  $2,310 (small entity)  $1,155 (micro entity) | $220 (large entity)  $110 (small entity)  $55 (micro entity) |
| 2 | Supplemental Examination Reexamination | $12,100 (large entity)  $6,050 (small entity)  $3,025 (micro entity) | $12,700 (large entity)  $6,350 (small entity)  $3,175 (micro entity) | $600 (large entity)  $300 (small entity)  $150 (micro entity) |
| 2 | Supplemental Examination document size fees, 21-50 documents | $180 (large entity)  $90 (small entity)  $45 (micro entity) | No change | No change |
| 2 | Supplemental examination document size fees, each additional 50 documents | $280 (large entity)  $140 (small entity)  $70 (micro entity) | $300 (large entity)  $150 (small entity)  $75 (micro entity) | $20 (large entity)  $10 (small entity)  $5 (micro entity) |
| 2 | Reexamination independent claims in excess of three and also in excess of the number of such claims in the patent under reexamination | $460 (large entity)  $230 (small entity)  $115 (micro entity) | $480 (large entity)  $240 (small entity)  $120 (micro entity) | $20 (large entity)  $10 (small entity)  $5 (micro entity) |
| 2 | Reexamination claims in excess of 20 and also in excess of the number of claims in the patent under reexamination | $100 (large entity)  $50 (small entity)  $25 (micro entity) | No change | No change |
| 4 | Ex Parte Reexamination (§1.510(a)) Streamlined | $6,000 (large entity)  $3,000 (small entity)  $1,500 (micro entity) | $6,300 (large entity)  $3,150 (small entity)  $1,575 (micro entity) | $300 (large entity)  $150 (small entity)  $75 (micro entity) |
| 4 | Ex Parte Reexamination (§1.510(a)) Non-Streamlined | $12,000 (large entity)  $6,000 (small entity)  $3,000 (micro entity) | $12,600 (large entity)  $6,300 (small entity)  $3,150 (micro entity) | $600 (large entity)  $300 (small entity)  $150 (micro entity) |
| 5 | Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d) | $1,940 (large entity)  $970 (small entity)  $485 (micro entity) | $2,040 (large entity)  $1,020 (small entity)  $510 (micro entity) | $100 (large entity)  $50 (small entity)  $25 (micro entity) |

**Table 2: Proposed Burden**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Responses** | **Proposed Fee** | **Proposed Cost** |
| 2 | Supplemental Examination Request (large entity) | 55 | $4,620.00 | $254,100.00 |
| 2 | Supplemental Examination Request (small entity) | 15 | $2,310.00 | $34,650.00 |
| 2 | Supplemental Examination Request (micro entity) | 5 | $1,155.00 | $5,775.00 |
| 2 | Supplemental Examination Reexamination (large entity) | 35 | $12,700.00 | $444,500.00 |
| 2 | Supplemental Examination Reexamination (small entity) | 10 | $6,350.00 | $63,500.00 |
| 2 | Supplemental Examination Reexamination (micro entity) | 1 | $3,175.00 | $3,175.00 |
| 2 | Supplemental examination document size fees, each additional 50 documents (large entity) | 10 | $300.00 | $3,000.00 |
| 2 | Supplemental examination document size fees, each additional 50 documents (small entity) | 1 | $150.00 | $150.00 |
| 2 | Supplemental examination document size fees, each additional 50 documents (micro entity) | 1 | $75.00 | $75.00 |
| 2 | Reexamination independent claims in excess of three and also in excess of the number of such claims in the patent under reexamination (large entity) | 35 | $480.00 | $16,800.00 |
| 2 | Reexamination independent claims in excess of three and also in excess of the number of such claims in the patent under reexamination (small entity) | 10 | $240.00 | $2,400.00 |
| 2 | Reexamination independent claims in excess of three and also in excess of the number of such claims in the patent under reexamination (micro entity) | 5 | $120.00 | $600.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Streamlined (large entity) | 42 | $6,300.00 | $264,600.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Streamlined (small entity) | 27 | $3,150.00 | $85,050.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Streamlined (micro entity) | 1 | $1,575.00 | $1,575.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Non-Streamlined (large entity) | 78 | $12,600.00 | $982,800.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Non-Streamlined (small entity) | 51 | $6,300.00 | $321,300.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Non-Streamlined (micro entity) | 1 | $3,150.00 | $3,150.00 |
| 5 | Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d) (large entity) | 180 | $2,040.00 | $367,200.00 |
| 5 | Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d) (small entity) | 20 | $1,020.00 | $20,400.00 |
| 5 | Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d) (micro entity) | 1 | $510.00 | $510.00 |
|  | **Totals** | **422** |  | **$2,544,830.00** |

**Table 3: Change in Cost**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **IC #** | **Item** | **Current Cost** | **Proposed Cost** | **Change in Cost** |
| 2 | Supplemental Examination Request (large entity) | $242,000.00 | $254,100.00 | $12,100.00 |
| 2 | Supplemental Examination Request (small entity) | $33,000.00 | $34,650.00 | $1,650.00 |
| 2 | Supplemental Examination Request (micro entity) | $5,500.00 | $5,775.00 | $275.00 |
| 2 | Supplemental Examination Reexamination (large entity) | $423,500.00 | $444,500.00 | $21,000.00 |
| 2 | Supplemental Examination Reexamination (small entity) | $60,500.00 | $63,500.00 | $3,000.00 |
| 2 | Supplemental Examination Reexamination (micro entity) | $3,025.00 | $3,175.00 | $150.00 |
| 2 | Supplemental examination document size fees, each additional 50 documents (large entity) | $2,800.00 | $3,000.00 | $200.00 |
| 2 | Supplemental examination document size fees, each additional 50 documents (small entity) | $140.00 | $150.00 | $10.00 |
| 2 | Supplemental examination document size fees, each additional 50 documents (micro entity) | $70.00 | $75.00 | $5.00 |
| 2 | Reexamination independent claims in excess of three and also in excess of the number of such claims in the patent under reexamination (large entity) | $16,100.00 | $16,800.00 | $700.00 |
| 2 | Reexamination independent claims in excess of three and also in excess of the number of such claims in the patent under reexamination (small entity) | $2,300.00 | $2,400.00 | $100.00 |
| 2 | Reexamination independent claims in excess of three and also in excess of the number of such claims in the patent under reexamination (micro entity) | $575.00 | $600.00 | $25.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Streamlined (large entity) | $252,000.00 | $264,600.00 | $12,600.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Streamlined (small entity) | $81,000.00 | $85,050.00 | $4,050.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Streamlined (micro entity) | $1,500.00 | $1,575.00 | $75.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Non-Streamlined (large entity) | $936,000.00 | $982,800.00 | $46,800.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Non-Streamlined (small entity) | $306,000.00 | $321,300.00 | $15,300.00 |
| 4 | Ex Parte Reexamination (§1.510(a)) Non-Streamlined (micro entity) | $3,000.00 | $3,150.00 | $150.00 |
| 5 | Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d) (large entity) | $349,200.00 | $367,200.00 | $18,000.00 |
| 5 | Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d) (small entity) | $19,400.00 | $20,400.00 | $1,000.00 |
| 5 | Petitions in a reexamination proceeding, except for those specifically enumerated in 37 CFR 1.550(i) and 1.937(d) (micro entity) | $485.00 | $510.00 | $25.00 |
|  | **Totals** | **$2,738,095.00** | **$2,875,310.00** | **$137,215.00** |

Summary of Changes

The Patent Fee Review resulted in a revision of seven fees and an increase of $137,215 in annual (non-hourly) costs.

Changes in Burden

|  |  |  |  |
| --- | --- | --- | --- |
| **Burden Type** | **Currently Approved** | **Proposed Change** | **New Estimate** |
| Non-hourly Costs | $2,747,178 | $137,215 | $2,884,393 |

0651-0064’s revised burden is as follows:

* $2,884,393 in annual (non-hourly) costs