

**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), 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 0651-0031 (Patent Processing) that are affected by the rulemaking NPRM **RIN 0651-AD31 (July 31, 2019)**. There are fifteen fees being adjusted as a result of the 2019 Patent Biennial Fee Review. In addition to the fee changes, USPTO is changing the estimates for some respondent numbers and the hourly burden associated with those responses, to reflect current usages and account for expected changes in filing volume. The proposed changes to this collection involve an increase of \$42,732,661 in annual non-hourly costs, an increase in 69,459 respondents, and an increase of 97,047 burden hours.

**Table 1: Increases in Fee Amount**

<b>IC #</b>	<b>Item</b>	<b>Current Fee</b>	<b>Proposed Fee</b>	<b>Changes in Fee Amount</b>
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p)	\$240 (large entity) \$120 (small entity) \$60 (micro entity)	\$260 (large entity) \$130 (small entity) \$65 (micro entity)	\$20 (large entity) \$10 (small entity) \$5 (micro entity)
3	One-month Extension of Time under 37 CFR 1.136(a)	\$200 (large entity) \$100 (small entity) \$50 (micro entity)	\$220 (large entity) \$110 (small entity) \$55 (micro entity)	\$20 (large entity) \$10 (small entity) \$5 (micro entity)
3	Two-month Extension of Time under 37 CFR 1.136(a)	\$600 (large entity) \$300 (small entity) \$150 (micro entity)	\$640 (large entity) \$320 (small entity) \$160 (micro entity)	\$40 (large entity) \$20 (small entity) \$10 (micro entity)
3	Three-month Extension of Time under 37 CFR 1.136(a)	\$1,400 (large entity) \$700 (small entity) \$350 (micro entity)	\$1,480 (large entity) \$740 (small entity) \$370 (micro entity)	\$80 (large entity) \$40 (small entity) \$20 (micro entity)
3	Four-month Extension of Time under 37 CFR 1.136(a)	\$2,200 (large entity) \$1,100 (small entity) \$550 (micro entity)	\$2,320 (large entity) \$1,160 (small entity) \$580 (micro entity)	\$120 (large entity) \$60 (small entity) \$30 (micro entity)
3	Five-month Extension of Time under 37 CFR 1.136(a)	\$3,000 (large entity) \$1,500 (small entity) \$750 (micro entity)	\$3,160 (large entity) \$1,580 (small entity) \$790 (micro entity)	\$160 (large entity) \$80 (small entity) \$40 (micro entity)
5	Statutory Disclaimer	\$160	\$170	\$10

	(including terminal disclaimer)			
6	Notice of Appeal	\$800 (large entity) \$400 (small entity) \$200 (micro entity)	\$840 (large entity) \$420 (small entity) \$210 (micro entity)	\$40 (large entity) \$20 (small entity) \$10 (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	\$2,000 (large entity) \$1,000 (small entity) \$500 (micro entity)	\$2,100 (large entity) \$1,050 (small entity) \$525 (micro entity)	\$100 (large entity) \$50 (small entity) \$25 (micro entity)
19	Request for Continued Examination (RCE) Transmittal	\$1,300 (large entity) \$650 (small entity) \$325 (micro entity)	\$1,360 (large entity) \$680 (small entity) \$340 (micro entity)	\$60 (large entity) \$30 (small entity) \$15 (micro entity)
19	Request for Continued Examination (RCE) Transmittal (Second and Subsequent Requests)	\$1,900 (large entity) \$950 (small entity) \$475 (micro entity)	\$2,000 (large entity) \$1,000 (small entity) \$500 (micro entity)	\$100 (large entity) \$50 (small entity) \$25 (micro entity)
20	Request for Oral Hearing Before the Patent Trial and Appeal Board	\$1,300 (large entity) \$650 (small entity) \$325 (micro entity)	\$1,360 (large entity) \$680 (small entity) \$340 (micro entity)	\$60 (large entity) \$30 (small entity) \$15 (micro entity)
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	\$130	\$140	\$10
32	Filing a submission after final rejection (see 37 CFR 1.129(a))	\$840 (large entity) \$420 (small entity) \$210 (micro entity)	\$880 (large entity) \$440 (small entity) \$220 (micro entity)	\$40 (large entity) \$20 (small entity) \$10 (micro entity)
33	Correction of inventorship after first office action on the merits	\$600 (large entity) \$300 (small entity) \$150 (micro entity)	\$640 (large entity) \$320 (small entity) \$160 (micro entity)	\$40 (large entity) \$20 (small entity) \$10 (micro entity)

**Table 2: Proposed Cost**

IC #	Item	Responses	Proposed Fee	Proposed Cost
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p) (large entity)	37,500	\$260.00	\$9,750,000
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p) (small entity)	11,460	\$130.00	\$1,489,800
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR	1,040	\$65.00	\$67,600

	1.17(p) (micro entity)			
3	One-month Extension of Time under 37 CFR 1.136(a) (large entity)	102,500	\$220.00	\$22,550,000.00
3	One-month Extension of Time under 37 CFR 1.136(a) (small entity)	38,000	\$110.00	\$4,180,000.00
3	One-month Extension of Time under 37 CFR 1.136(a) (micro entity)	4,000	\$55.00	\$220,000.00
3	Two-month Extension of Time under 37 CFR 1.136(a) (large entity)	43,600	\$640.00	\$27,904,000.00
3	Two-month Extension of Time under 37 CFR 1.136(a) (small entity)	22,000	\$320.00	\$7,040,000.00
3	Two-month Extension of Time under 37 CFR 1.136(a) (micro entity)	2,100	\$160.00	\$336,000.00
3	Three-month Extension of Time under 37 CFR 1.136(a) (large entity)	40,000	\$1,480.00	\$59,200,000.00
3	Three-month Extension of Time under 37 CFR 1.136(a) (small entity)	32,000	\$740.00	\$23,680,000.00
3	Three-month Extension of Time under 37 CFR 1.136(a) (micro entity)	3,000	\$370.00	\$1,110,000.00
3	Four-month Extension of Time under 37 CFR 1.136(a) (large entity)	2,500	\$2,320.00	\$5,800,000.00
3	Four-month Extension of Time under 37 CFR 1.136(a) (small entity)	2,500	\$1,160.00	\$2,900,000.00
3	Four-month Extension of Time under 37 CFR 1.136(a) (micro entity)	350	\$580.00	\$203,000.00
3	Five-month Extension of Time under 37 CFR 1.136(a) (large entity)	3,500	\$3,160.00	\$11,060,000.00
3	Five-month Extension of Time under 37 CFR 1.136(a) (small entity)	3,700	\$1,580.00	\$5,846,000.00
3	Five-month Extension of Time under 37 CFR 1.136(a) (micro entity)	250	\$790.00	\$197,500.00
5	Statutory Disclaimer (including terminal disclaimer)	66,289	\$170.00	\$11,269,130.00
6	Notice of Appeal (large entity)	22,500	\$840.00	\$18,900,000.00
6	Notice of Appeal (small entity)	6,000	\$420.00	\$2,520,000.00
6	Notice of Appeal (micro entity)	500	\$210.00	\$105,000.00
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	\$2,100.00	\$315,000.00
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	50	\$1,050.00	\$52,500.00

	(small 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 (micro entity)	0	\$525.00	\$0.00
19	Request for Continued Examination (RCE) Transmittal (large entity)	78,400	\$1,360.00	\$106,624,000.00
19	Request for Continued Examination (RCE) Transmittal (small entity)	28,000	\$680.00	\$19,040,000.00
19	Request for Continued Examination (RCE) Transmittal (micro entity)	5,600	\$340.00	\$1,904,000.00
19	Request for Continued Examination (RCE) Transmittal (Second and Subsequent Requests) (large entity)	40,600	\$2,000.00	\$81,200,000.00
19	Request for Continued Examination (RCE) Transmittal (Second and Subsequent Requests) (small entity)	14,500	\$1,000.00	\$14,500,000.00
19	Request for Continued Examination (RCE) Transmittal (Second and Subsequent Requests) (micro entity)	2,900	\$500.00	\$1,450,000.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board (large entity)	700	\$1,360.00	\$952,000.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board (small entity)	240	\$680.00	\$163,200.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board (micro entity)	10	\$340.00	\$3,400.00
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	340	\$140.00	\$47,600.00
32	Filing a submission after final rejection (see 37 CFR 1.129(a)) (large entity)	60	\$880.00	\$52,800.00
32	Filing a submission after final rejection (see 37 CFR 1.129(a)) (small entity)	50	\$440.00	\$22,000.00
32	Filing a submission after final rejection (see 37 CFR 1.129(a)) (micro entity)	10	\$220.00	\$2,200.00
33	Correction of inventorship after first office action on the merits (large entity)	2,100	\$640.00	\$1,344,000.00
33	Correction of inventorship after first office action on the merits (small entity)	750	\$320.00	\$240,000.00
33	Correction of inventorship after first office action on the merits (micro entity)	150	\$160.00	\$24,000.00
	<b>Totals</b>	<b>689,899</b>		<b>\$460,094,830</b>

**Table 3: Changes in Cost**

	Item	Current Cost	Proposed Cost	Changes in
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IC #				Cost
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p)	\$758,300	\$11,307,400	\$10,549,100
3	Extension of Time under 37 CFR 1.136(a)	\$154,998,725	\$172,226,500	\$17,227,775
5	Statutory Disclaimer (including terminal disclaimer)	\$10,288,053	\$11,269,130.00	\$981,077
6	Notice of Appeal	\$24,856,250	\$21,525,000.00	\$3,331,250
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	\$332,500	\$367,500.00	\$35,000
19	Request for Continued Examination (RCE) Transmittal	\$207,713,375	\$224,718,000.00	\$17,004,625
20	Request for Oral Hearing Before the Patent Trial and Appeal Board	\$1,015,788	\$1,118,600.00	\$102,812
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	\$37,830	\$47,600.00	\$9,770
32	Filing a submission after final rejection (see 37 CFR 1.129(a))	\$68,973	\$77,000.00	\$8,027
33	Correction of inventorship after first office action on the merits	\$1,462,275	\$1,608,000.00	\$145,725
	<b>Totals</b>	<b>\$401,532,069</b>	<b>\$444,264,730.00</b>	<b>\$42,732,661</b>

Related to the fee adjustments, the Patent Office is estimating that certain respondent numbers associated with existing forms will change. These numbers and their respective burden hour estimates are described in the following tables.

**Table 4: Increases in Respondents**

IC #	Item	Current Annual Responses	Proposed Annual Responses	Increases in Responses
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p)	5,000	50,000	45,000
3	Extension of Time under 37 CFR 1.136(a)	290,000	300,000	10,000
5	Statutory Disclaimer (including terminal disclaimer)	58,000	66,289	8,289
6	Notice of Appeal	28,000	29,000	1,000
9	Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent,	190	200	10

	or for the Delayed Response by the Patent Owner in any Reexamination Proceeding			
19	Request for Continued Examination (RCE) Transmittal	165,000	170,000	5,000
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	290	340	50
32	Filing a submission after final rejection (see 37 CFR 1.129(a))	110	120	10
33	Correction of inventorship after first office action on the merits	2900	3000	100
	<b>Totals</b>	<b>549,490</b>	<b>618,839</b>	<b>69,459</b>

**Table 5: Increases in Time Burden (Hours)**

IC #	Item	Current Annual Time Burden	Proposed Annual Time Burden	Increases in Time Burden
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p)	10,000	100,000	90,000
3	Extension of Time under 37 CFR 1.136(a)	87,000	90,000	3,000
5	Statutory Disclaimer (including terminal disclaimer)	14,500	16,572	2,072
6	Notice of Appeal	8,400	8,700	300
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	190	200	10
19	Request for Continued Examination (RCE) Transmittal	49,500	51,000	1,500
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	58	68	10
32	Filing a submission after final rejection (see 37 CFR 1.129(a))	880	960	80
33	Correction of inventorship after first office action on the merits	2,175	2,250	75
	<b>Totals</b>	<b>172,703</b>	<b>269,750</b>	<b>97,047</b>

#### Summary of Changes

The Patent Fee Review results in the revision of fifteen fees and an increase of \$42,732,661 in annual 52(non-hourly) costs, an increase of 69,459 respondents, and an increase of 97,047 burden hours .

#### Changes in Burden

<b>Burden Type</b>	<b>Currently Approved</b>	<b>Proposed Change</b>	<b>New Estimate</b>
Number of Responses	3,542,082	69,459	3,611,541
Time Burden (Hours)	3,736,708	97,047	3,833,755
Non-hourly Cost	\$444,088,311	\$42,732,661	486,820,972

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0651-0031's revised burden is as follows:

- 3,611,541 in annual number of responses
- 3,833,755 hours in annual time burden
- \$486,820,972 in annual (non-hourly) costs