**JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE**

**Patent Trial and Appeal Board (PTAB) Appeals**

**OMB Control Number 0651-0063**

Background

The Patent Trial and Appeal Board (PTAB or Board) is established by statute under 35 U.S.C. 6 (American Inventor Protection Act of 1999).[[1]](#footnote-3) This statute directs, in relevant part, that PTAB shall “on written appeal of an applicant, review adverse decisions of examiners upon applications for patents pursuant to section 134(a).” PTAB has the authority, under 35 U.S.C. 134 and 306 to decide appeals in applications and ex parte reexamination proceedings, and under pre-AIA sections of the Patent Act, i.e., 35 U.S.C. 134, 135 and 315, to decide appeals in inter partes reexamination proceedings and interferences. In addition, 35 U.S.C. 6 establishes the membership of PTAB as the Director, the Deputy Director, the Commissioner for Patents, the Commissioner for Trademarks, and the Administrative Patent Judges. Each appeal and interference is decided by a merits panel of at least three members of the Board.

The Board’s responsibilities under the statute include the review of ex parte appeals from adverse decisions of examiners in those situations where a written appeal is taken by a dissatisfied applicant or patent owner. In inter partes reexamination appeals, PTAB reviews an examiner’s decisions adverse to a patent owner or a third-party requester. PTAB’s opinions and decisions for publicly available files are published on the USPTO Web site. The Board also conducts interference proceedings.

The items associated with this information collection include appeals in applications and ex parte reexamination proceedings, and appeals in inter partes reexamination proceedings and interference proceedings that are governed by the regulations in 37 CFR 41. Failure to comply with the appropriate regulations may result in dismissal of the appeal or denial of entry of the submission.

In support of RIN 0651-AD64 (Setting and Adjusting Patent Fees During Fiscal Year 2025; 89 FRN 91898)[[2]](#footnote-4), the USPTO is changing 12 fees and adding three fees in this information collection.

**Table 1: Changes in Fee Amount**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item No.** | **Fee Code** | **Item** | **Current Fee** | **New Fee** | **Changes in Fee Amount** |
| **1** | 1401 | Notice of appeal (undiscounted) | $840 | $905 | +$65 |
| **1** | 2401 | Notice of appeal (small entity) | $336 | $362 | +$26 |
| **1** | 3401 | Notice of appeal (micro entity) | $168 | $181 | +$13 |
| **2** | 1404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (undiscounted) | $2,100 | $2,260 | +$160 |
| **2** | 2404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (small entity) | $840 | $904 | +$64 |
| **2** | 3404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (micro entity) | $420 | $452 | +$32 |
| **4** | 1413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (undiscounted) | $2,360 | $2,535 | +$175 |
| **4** | 2413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (small entity) | $944 | $1,014 | +$70 |
| **4** | 3413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (micro entity) | $472 | $507 | +$35 |
| **5** | 1405/2405/  3405 | Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3 (undiscounted) | Not previously included in 0651-0063 | $452 | +$452 |
| **7** | 1403 | Request for oral hearing (undiscounted) | $1,360 | $1,460 | +$100 |
| **7** | 2403 | Request for oral hearing (small entity) | $544 | $584 | +$40 |
| **7** | 3403 | Request for oral hearing (micro entity) | $272 | $292 | +$20 |

**Table 2: Proposed Burden**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item No.** | **Fee Code** | **Item** | **Reponses**  **(a)** | **New Fee**  **(b)** | **New Non-hour Cost Burden**  **(a) x (b) = (c)** |
| **1** | 1401 | Notice of appeal (undiscounted) | 8,737 | $905 | $7,906,985 |
| **1** | 2401 | Notice of appeal (small entity) | 3,230 | $362 | $1,169,260 |
| **1** | 3401 | Notice of appeal (micro entity) | 345 | $181 | $62,445 |
| **2** | 1404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (undiscounted) | 1 | $2,260 | $2,260 |
| **2** | 2404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (small entity) | 1 | $904 | $904 |
| **2** | 3404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (micro entity) | 1 | $452 | $452 |
| **4** | 1413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (undiscounted) | 3,131 | $2,535 | $7,937,085 |
| **4** | 2413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (small entity) | 797 | $1,014 | $808,158 |
| **4** | 3413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (micro entity) | 91 | $507 | $46,137 |
| **5** | 1405/2405/  3405 | Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3 (undiscounted) | 119 | $452 | $53,788 |
| **7** | 1403 | Request for oral hearing (undiscounted) | 319 | $1,460 | $465,740 |
| **7** | 2403 | Request for oral hearing (small entity) | 134 | $584 | $78,256 |
| **7** | 3403 | Request for oral hearing (micro entity) | 24 | $292 | $7,008 |
|  |  | **Totals** | **16,932** | **- - -** | **$18,538,478** |

**Table 3: Changes in Cost**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Item No.** | **Fee Code** | **Items** | **Current Cost**  **(a)** | **New Cost**  **(b)** | **Change in Non-hour Cost Burden**  **(b) – (a) = (c)** |
| **1** | 1401 | Notice of appeal (undiscounted) | $7,339,080 | $7,906,985 | +$567,905 |
| **1** | 2401 | Notice of appeal (small entity) | $1,085,280 | $1,169,260 | +$83,980 |
| **1** | 3401 | Notice of appeal (micro entity) | $57,960 | $62,445 | +$4,485 |
| **2** | 1404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (undiscounted) | $2,100 | $2,260 | +$160 |
| **2** | 2404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (small entity) | $840 | $904 | +$64 |
| **2** | 3404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding (micro entity) | $420 | $452 | +$32 |
| **4** | 1413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (undiscounted) | $7,389,160 | $7,937,085 | +$547,925 |
| **4** | 2413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (small entity) | $752,368 | $808,158 | +$55,790 |
| **4** | 3413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board (micro entity) | $42,952 | $46,137 | +$3,185 |
| **5** | 1405/2405/  3405 | Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3 (undiscounted) | Not previously included in 0651-0063 | $53,788 | +$53,788 |
| **7** | 1403 | Request for oral hearing (undiscounted) | $433,840 | $465,740 | +$31,900 |
| **7** | 2403 | Request for oral hearing (small entity) | $72,896 | $78,256 | +$5,360 |
| **7** | 3403 | Request for oral hearing (micro entity) | $6,528 | $7,008 | +$480 |
|  |  | **Totals** | **$17,183,424** | **$18,538,478** | **+$1,355,054** |

Summary of Changes

The aforementioned rulemaking results in the revision of 12 fees and the addition of three fees, with an increase of $1,355,054 in annual non-hourly costs to collection 0651-0063.

Changes in Burden

|  |  |  |  |
| --- | --- | --- | --- |
| **Burden Type** | **Currently Approved** | **Proposed Change** | **New Estimate** |
| Non-hourly Cost Burden | $17,185,623 | +$1,355,054 | $18,540,677 |

0651-0063’s revised burden is as follows:

* 22,149 annual responses (unchanged)
* 238,999 annual hourly burden (unchanged)
* $18,540,677 in annual non-hourly burden costs

1. <https://www.uspto.gov/patent/laws-and-regulations/american-inventors-protection-act-1999>. [↑](#footnote-ref-3)
2. <https://www.govinfo.gov/content/pkg/FR-2024-11-20/pdf/2024-26821.pdf> [↑](#footnote-ref-4)