

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 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, 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	\$2,100	\$2,260	+\$160

¹ <https://www.uspto.gov/patent/laws-and-regulations/american-inventors-protection-act-1999>.

² <https://www.govinfo.gov/content/pkg/FR-2024-11-20/pdf/2024-26821.pdf>

		inter partes reexamination proceeding (undiscounted)			
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