

JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE
Rules for Patent Maintenance Fees
0651-00016

Background

Under 35 U.S.C. § 41 and 37 CFR 1.20(e)-(h), 1.362, 1.366, 1.377, and 1.378, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all patents based on applications filed on or after December 12, 1980, except for plant and design patents. Furthermore, maintenance fees are required for a reissue patent unless the patent being reissued did not require maintenance fees. Payment of these maintenance fees is due at 3-1/2, 7-1/2, and 11-1/2 years after the date the patent was granted. See section 2504 of the Manual of Patent Examining Procedure (MPEP) (9th Edition, Rev. 07.2022, February 2023) for more information.

If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of 6 months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time. After a patent expires, it is no longer enforceable.

In support of RIN 0651-AD64 (Setting and Adjusting Patent Fees During Fiscal Year 2025; 89 FRN 91898)¹, the USPTO is changing 6 fees and adding three fees in this information collection.

Additionally, one form, PTO/SB/66 (Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))), is being revised to reflect changes made by the rulemaking.

Table 1: Changes in Fee Amount

Item No.	Fee Code	Item	Current Fee	New Fee	Changes in Fee Amount
1	1558	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (undiscounted entity)	\$2,100	\$2,260	+\$160
1	2558	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (small entity)	\$840	\$904	+\$64
1	3558	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (micro entity)	\$420	\$452	+\$32
1	155	Petition for the delayed payment of the fee for	Not previously	\$3,000	+\$3,000

¹ <https://www.govinfo.gov/content/pkg/FR-2024-11-20/pdf/2024-26821.pdf>

	D	maintaining a patent in force, delay greater than two years (undiscounted entity)	included in 0651-0016 ²		
1	255 D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (small entity)	Not previously included in 0651-0016	\$1,200	+\$1,200
1	355 D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (micro entity)	Not previously included in 0651-0016	\$600	+\$600
2	146 3	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (undiscounted entity)	\$220	\$235	+\$15
2	246 3	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (small entity)	\$88	\$94	+\$6
2	346 3	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (micro entity)	\$44	\$47	+\$3

Table 2: Proposed Burden

Item No.	Fee Code	Item	Responses (a)	New Fee (b)	New Non-hour Cost Burden (a) x (b) = (c)
1	155 8	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (undiscounted entity)	530	\$2,260	\$1,197,800
1	255 8	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (small entity)	1,515	\$904	\$1,369,560
1	355 8	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (micro entity)	455	\$452	\$205,660
1	155 D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (undiscounted entity)	25	\$3,000	\$75,000
1	255 D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (small entity)	77	\$1,200	\$92,400
1	355 D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (micro entity)	17	\$600	\$10,200
2	146 3	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (undiscounted entity)	1	\$235	\$235
2	246 3	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (small entity)	1	\$94	\$94
2	346 3	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of	1	\$47	\$47

		Patent (37 CFR 1.377) (micro entity)			
		Totals	2,622	- - -	\$2,950,996

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	1558	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (undiscounted entity)	\$1,113,000	\$1,197,800	+\$84,800
1	2558	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (small entity)	\$1,272,600	\$1,369,560	+\$96,960
1	3558	Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) - delay less than or equal to two years (micro entity)	\$191,100	\$205,660	+\$14,560
1	155D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (undiscounted entity)	Not previously included in 0651-0016	\$75,000	+\$75,000
1	255D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (small entity)	Not previously included in 0651-0016	\$92,400	+\$92,400
1	355D	Petition for the delayed payment of the fee for maintaining a patent in force, delay greater than two years (micro entity)	Not previously included in 0651-0016	\$10,200	\$10,200
2	1463	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (undiscounted entity)	\$220	\$235	+\$15
2	2463	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (small entity)	\$88	\$94	+\$6
2	3463	Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) (micro entity)	\$44	\$47	+\$3
		Totals	\$2,577,052	\$2,950,996	+\$373,944

Summary of Changes

The aforementioned rulemaking and agency actions result in the revision of three fees and the addition of three fees, with an increase of \$373,944 in annual non-hourly costs to collection 0651-0016.

Changes in Burden

Burden Type	Currently Approved	Proposed Change	New Estimate
Non-hourly Cost Burden	\$2,577,316	+\$373,944	\$2,951,260

0651-0016's revised burden is as follows:

- 2,616 annual responses (unchanged)
- 3,424 annual hourly burden (unchanged)
- \$2,591,260 in annual non-hourly burden costs