

adjusting, by a corresponding amount, a few patent fee rates that track the affected fee amounts. The Director is authorized to adjust these fee amounts annually by the CPI to recover the higher costs associated with doing business.

The USPTO is adjusting the patent fee amounts under the Consolidated Appropriations Act, 2005 (Consolidated Appropriations Act), which revised certain patent fee rates, and provided for a search fee and examination fee separate from the filing fee, during fiscal years 2005 and 2006; and continued in fiscal year 2007 under the revised Continuing Appropriations Resolution, 2007 (Continuing Appropriations Resolution). Legislation has been introduced that would extend the fee rate revisions in the Consolidated Appropriations Act.

In the event legislation is not enacted to continue the patent fee amounts under the Consolidated Appropriations Act, the USPTO will be adjusting patent statutory fee rates that were in application prior to implementation of the Consolidated Appropriations Act. The prior fee rates, adjusted for CPI, will be effective for fiscal year 2008.

DATES: Effective September 30, 2007.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This final rule adjusts certain USPTO patent fee amounts in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act (Pub. L. 108-447). This final rule also adjusts, by a corresponding amount, a few patent fee rates (37 CFR 1.17(e), (r) and (s) that track statutory fee amounts (37 CFR 1.16(a)).

The USPTO is adjusting the patent fee amounts established under the Consolidated Appropriations Act, and extended under the revised Continuing Appropriations Resolution. Legislation has been introduced in the Congress that would extend the fee amount revisions in the Consolidated Appropriations Act, and the revised Continuing Appropriations Resolution. If the legislation is enacted, then this final rule will apply. If this legislation is not enacted, then the fee rate adjustments will apply to the former fee amounts in place on October 1, 2004, to December 7, 2004 (prior to the enactment of the Consolidated Appropriations Act).

A proposed rule notice was published at 71 FR 32285 on June 5, 2006, which

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 41

[Docket No. PTO-C-2006-0015]

RIN 0651-AB81

Revision of Patent Fees for Fiscal Year 2007

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) (referred to as "Office" in this notice) is adjusting certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, the Office is

requested comments by July 5, 2006. No comments were received. An incorrect reference to National stage fees was corrected. The USPTO delayed implementation of the CPI fee rates adjustment from October 1, 2006, to September 30, 2007. During this time, the Administration's projected CPI-U for the twelve-month period prior to enactment of the fee rates adjustment decreased from 3.5 percent to 2.8 percent. Based on the revised projected CPI-U, patent statutory fee amounts will be adjusted by 2.8 percent in this final rule.

Customers may wish to refer to the USPTO's official Web site at <http://www.uspto.gov> for the most current fee amounts.

Background

Statutory Provisions

Patent fee amounts are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fee amounts established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fee amounts for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Fee Adjustment Level

The patent statutory fee amounts established by 35 U.S.C. 41(a) and (b) will be adjusted on September 30, 2007, to reflect fluctuations occurring during the twelve-month period from October 1, 2006, through September 30, 2007, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised that in calculating these fluctuations, the USPTO should use CPI-U data as

determined by the Secretary of Labor. In accordance with previous fee-setting methodology, the Office bases this fee rate adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2007, which is 2.8 percent. Based on this projected CPI-U, patent statutory fee amounts will be adjusted by 2.8 percent.

Certain patent processing fee rates established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103-465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fee rates for other than a small entity of \$100 or more were rounded to the nearest \$10. Fee rates of less than \$100 were rounded to an even number so that any comparable small entity fee amount will be a whole number.

Discussion of Specific Rules

Legislation has been introduced in the Congress that would extend the fee revisions in the Consolidated Appropriations Act, and the revised Continuing Appropriations Resolution. If the legislation is enacted, then this final rule will apply. To ensure clarity in the implementation of the proposed new fee amounts, a discussion of specific revisions is set forth below.

37 CFR 1.16 National Application Filing, Search, and Examination Fees

Section 1.16, paragraphs (a) through (e), and (h) through (s), are revised to adjust fee rates established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (e), (l), (m), and (r) through (t), are revised to adjust fee rates established therein to reflect fluctuations in the CPI.

37 CFR 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), are revised to adjust fee rates established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (c)(3), (c)(4), and (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a), (b)(2) through (b)(4), (c)(2), (d) through (f), and

(j), are revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 41.20 Fees

Section 41.20, paragraphs (b)(1) through (b)(3), are revised to adjust fees established therein to reflect fluctuations in the CPI.

Other Considerations

Paperwork Reduction Act: This final rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The collections of information involved in this final rule have been reviewed and previously approved by the OMB under the following control numbers: 0651-0016, 0651-0021, 0651-0031, 0651-0032, and 0651-0033. The USPTO is not resubmitting information collection requests to the OMB for its review and approval because the changes in this final rule do not affect the information collection requirements associated with the information collections under these OMB control numbers.

Notwithstanding any other provisions of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Regulatory Flexibility Act: For the reasons set forth herein, The Deputy General Counsel for General Law of the USPTO has certified to the Chief Counsel for Advocacy, Small Business Administration, that the final rule change will not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

By statute, the USPTO's Director is expressly authorized to adjust fee amounts annually to reflect fluctuations in the CPI. See 35 U.S.C. 41(f) (certain fees "may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index as determined by the Secretary of Labor"). This final rule increases fee amounts to reflect the change in the CPI as

authorized by 35 U.S.C. 41(f). Legislation has been introduced in the Congress that would extend the fee amount revisions in the Consolidated Appropriations Act and the revised Continuing Appropriations Resolution. If the legislation is enacted, then this final rule will apply.

The fee amount increases will range from a minimum of \$0 to a maximum of \$110 under the final rule.

Under 35 U.S.C. 41(h)(1) small entities are accorded a fifty-percent reduction in most patent fee amounts. Consequently, the small entity fee increases will range from a minimum of \$0 to a maximum of \$55 under the final rule. The sole exception under this final rule is the fee set forth under 37 CFR 1.17(t), which does not qualify for a small entity fee reduction. The fee rate increase for 37 CFR 1.17(t) is \$40.

Accordingly, the final rule does not have a significant economic impact on a substantial number of small entities.

Lists of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

■ For the reasons set forth in the preamble, the USPTO is proposing to amend title 37 of the Code of Federal Regulations, parts 1 and 41, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.16 is amended by revising paragraphs (a) through (e), and (h) through (s) to read as follows:

§ 1.16 National application filing, search and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2)) \$75.00

By a small entity (§ 1.27(a)) \$155.00
By other than a small entity \$310.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) \$405.00
By other than a small entity \$810.00

(b) Basic fee for filing each application for an original design patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) \$105.00
By other than a small entity \$210.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) \$180.00
By other than a small entity \$360.00

(c) Basic fee for filing each application for an original plant patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) \$105.00
By other than a small entity \$210.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) \$285.00
By other than a small entity \$570.00

(d) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a)) \$105.00
By other than a small entity \$210.00

(e) Basic fee for filing each application for the reissue of a patent:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) \$155.00
By other than a small entity \$310.00

(2) For an application filed before December 8, 2004:

By a small entity (§ 1.27(a)) \$405.00
By other than a small entity \$810.00

* * * * *

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a)) \$105.00
By other than a small entity \$210.00

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) \$25.00
By other than a small entity \$50.00

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is

amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a)) \$185.00
By other than a small entity \$370.00

(k) Search fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a)) \$255.00
By other than a small entity \$510.00

(l) Search fee for each application filed on or after December 8, 2004, for an original design patent:

By a small entity (§ 1.27(a)) \$50.00
By other than a small entity \$100.00

(m) Search fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a)) \$155.00
By other than a small entity \$310.00

(n) Search fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a)) \$255.00
By other than a small entity \$510.00

(o) Examination fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a)) \$105.00
By other than a small entity \$210.00

(p) Examination fee for each application filed on or after December 8, 2004, for an original design patent:

By a small entity (§ 1.27(a)) \$65.00
By other than a small entity \$130.00

(q) Examination fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a)) \$80.00
By other than a small entity \$160.00

(r) Examination fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a)) \$310.00
By other than a small entity \$620.00

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a)) \$130.00
By other than a small entity \$260.00

■ 3. Section 1.17 is amended by revising paragraphs (a)(2) through (a)(5), (e), (l), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

- (a) * * *
- (2) For reply within second month:
 - By a small entity (§ 1.27(a)) \$230.00
 - By other than a small entity \$460.00
- (3) For reply within third month:
 - By a small entity (§ 1.27(a)) \$525.00
 - By other than a small entity \$1,050.00
- (4) For reply within fourth month:
 - By a small entity (§ 1.27(a)) \$815.00
 - By other than a small entity \$1,630.00
- (5) For reply within fifth month:
 - By a small entity (§ 1.27(a)) \$1,110.00
 - By other than a small entity \$2,220.00

- * * * * *
- (e) To request continued examination pursuant to § 1.114:
 - By a small entity (§ 1.27(a)) \$405.00
 - By other than a small entity \$810.00
- * * * * *

- (l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):
 - By a small entity (§ 1.27(a)) \$255.00
 - By other than a small entity \$510.00

- (m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):
 - By a small entity (§ 1.27(a)) \$770.00
 - By other than a small entity \$1,540.00
- * * * * *

- (r) For entry of a submission after final rejection under § 1.129(a):
 - By a small entity (§ 1.27(a)) \$405.00
 - By other than a small entity \$810.00

- (s) For each additional invention requested to be examined under § 1.129(b):
 - By a small entity (§ 1.27(a)) \$405.00
 - By other than a small entity \$810.00

- (t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c):
 - (§§ 1.55 and 1.78) \$1,410.00

■ 4. Section 1.18 is amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

- (a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a small entity (§ 1.27(a))	\$720.00
By other than a small entity	\$1,440.00

- (b) Issue fee for issuing an original design patent:
 - By a small entity (§ 1.27(a)) \$410.00
 - By other than a small entity \$820.00

- (c) Issue fee for issuing an original plant patent:

By a small entity (§ 1.27(a))	\$565.00
By other than a small entity	\$1,130.00

■ 5. Section 1.20 is amended by revising paragraphs (c)(3), (c)(4), and (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

- * * * * *
- (c) * * *
- (3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:
 - By a small entity (§ 1.27(a)) \$105.00
 - By other than a small entity \$210.00

- (4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
 - By a small entity (§ 1.27(a)) \$25.00
 - By other than a small entity \$50.00
- * * * * *

- (e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:
 - By a small entity (§ 1.27(a)) \$465.00
 - By other than a small entity \$930.00

- (f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:
 - By a small entity (§ 1.27(a)) \$1,180.00
 - By other than a small entity \$2,360.00

- (g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:
 - By a small entity (§ 1.27(a)) \$1,955.00

By other than a small entity	\$3,910.00
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■ 6. Section 1.492 is amended by revising paragraphs (a), (b)(2) through (b)(4), (c)(2), (d) through (f), and (j) to read as follows:

§ 1.492 National stage fees.

- * * * * *
- (a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:
 - By a small entity (§ 1.27(a)) \$155.00
 - By other than a small entity \$310.00

- (b) * * *
- (2) Where a search report on the international application has been prepared by the USPTO:
 - By a small entity (§ 1.27(a)) \$50.00
 - By other than a small entity \$100.00

- (3) Where a search report on the international application has been prepared and provided to the USPTO:
 - By a small entity (§ 1.27(a)) \$205.00
 - By other than a small entity \$410.00

- (4) In all situations not provided for in paragraph (b)(1) through (3) of this section:
 - By a small entity (§ 1.27(a)) \$255.00
 - By other than a small entity \$510.00

- (c) * * *
- (2) In all situations not provided for in paragraph (c)(1) of this section:
 - By a small entity (§ 1.27(a)) \$105.00
 - By other than a small entity \$210.00

- (d) In addition to the basic national fee, for filing or on a later presentation at any other time of each claim in independent form in excess of 3:
 - By a small entity (§ 1.27(a)) \$105.00
 - By other than a small entity \$210.00

- (e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):
 - By a small entity (§ 1.27(a)) \$25.00
 - By other than a small entity \$50.00

- (f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:
 - By a small entity (§ 1.27(a)) \$185.00
 - By other than a small entity \$370.00
- * * * * *

- (j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or

fraction thereof (see § 1.52(f) for applications submitted in whole or in part on an electronic medium):

By a small entity (§ 1.27(a))	\$130.00
By other than a small entity	\$260.00

PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

■ 1. The authority citation for 37 CFR part 41 would continue to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, unless otherwise noted.

■ 2. Section 41.20 is amended by revising paragraphs (b)(1) through (b)(3) to read as follows:

§ 41.20 Fees.

* * * * *

(b) * * *

(1) For filing a notice of appeal from the examiner to the Board:

By a small entity (§ 1.27(a) of this title)	\$255.00
By other than a small entity	\$510.00

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a) of this title)	\$255.00
By other than a small entity	\$510.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a) of this title)	\$515.00
By other than a small entity	\$1,030.00

Dated: August 1, 2007.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E7-16574 Filed 8-21-07; 8:45 am]

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