



LEGAL UPDATES

USPTO Announces Patent Fee Hikes for 2025

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The United States Patent and Trademark Office (USPTO) announced on Wednesday that patent-related fees will be raised starting January 19, 2025 to offset forecasted increases in operating cost.

While many of the increases are not as high as the USPTO's initial proposal, there are still some notable changes of which patent practitioners and clients should be aware.

The USPTO's final ruling adjusts 433 patent fees while introducing 52 new fees. Described below are fees most commonly encountered during patent prosecution (listed for undiscounted entities).

Current Fee Changes in Patent Application Filings and Prosecution

"Front-end fees" such as application filing, search and examination fees will be raised by 10% while "across-the-board" fees will be raised by 7.5%.

Notably, fees for filing and issuing a design patent application increased from \$1,760 to \$2,600. The Office has justified the increase in design fees by asserting that current design fees are 55% below the actual cost to examine design applications and issue design patents.

Other notable changes include the Patent Term Extension (PTE) application fee, which is currently set at \$1,180. The USPTO had previously proposed raising this fee to \$6,700, however, this fee will now only be raised to \$2,500 in response to public feedback.

Excess claim fees have similarly increased, with the fee for excess independent claims having increased from \$480 to \$600 and the fee for each claim in excess of twenty doubling from \$100 to \$200 per claim. Similar increases have been made for excess reissue and reexamination claims.

The Office had proposed a three-tiered system for the Request for Continued Examination (RCE) fee. However, due to public response, the Office eliminated the

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third tier. Instead, the Request for Continued Examination (RCE) fee has increased to \$1,500 for the first RCE, and to \$2,860 for all subsequent RCEs.

Similarly, the Office had proposed a tiered system for terminal disclaimer (TD) fees starting at \$200 for the first tier and increasing by \$300 for each subsequent tier, up to \$1,400. In response to comments during the public comment period, the Office abandoned the tiered system and simply raised the TD fee from \$170 to \$183.

New Fees in Patent Application Filings and Prosecution

New fees include specific fees for filing a continuing application (continuation, divisional and continuation-in-part) more than six years and nine years after the earliest benefit date. This new fee for filing six years post-effective filing date is \$2,700, while the fee for filing nine years post-effective filing date is \$4,000. The Office rationalized this new fee structure by asserting that the "volume and rapid increase of continuing applications negatively impacts the USPTO's workload and docketing practices."

Additional new fees have been added for the number of references included in an Information Disclosure Statement (IDS). An IDS with 50-100 references will incur a charge of \$200; an IDS with 101-200 references will cost \$500, and an IDS with an excess of 201 references will cost \$800.

Finally, while not fee-related, the USPTO is allowing the After Final Consideration Pilot Program 2.0 to expire on December 14, 2024, after having previously proposed adding a fee to this free program.

What This Means For You

While some of these fees, such as the "front-end fees," are unavoidable, many of these fees can be minimized through strategic claim drafting and strategic filings of continuation applications early in the patenting process. For example, patent practitioners can and should draft claims to reduce claim count while also provoking a Restriction Requirement to avoid having to file TDs in later applications (e.g., composition of matter, method of treatment, and kit claims in a single claim set). In another example, an Examiner interview can move an application toward allowance while avoiding an RCE and the associated fee. Lastly, continuation applications can be encouraged and formulated prior to the six or nine-year deadline.

Therefore, it is as important as ever for inventors and in-house counsel to work closely with patent practitioners to clearly outline their goals for each patent application filing and patent family in order to allow for smooth prosecution and to mitigate costs.

If you have any questions regarding changes to patent-related fees, please contact the authors listed above or your regular Lathrop GPM attorney.