

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

RIN 0651-AB60

Revision of Patent Fees for Fiscal Year 2004

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Proposed rule.

SUMMARY: The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this notice) is proposing to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are proposing to adjust, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

Legislation has also been introduced in the Congress that would alter our fees. If enacted, this legislation would supersede the fees identified in this proposed rule.

DATES: Comments must be submitted on or before May 30, 2003.

ADDRESSES: Comments may be submitted by e-mail addressed to matthew.lee@uspto.gov. Comments may also be submitted by mail addressed to:

Office of Finance, Crystal Park One, Suite 802, Washington, DC 20231, or by fax to (703) 305-8007, marked to the attention of Matthew Lee.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at matthew.lee@uspto.gov, by telephone at (703) 305-8051, or by fax at (703) 305-8007.

SUPPLEMENTARY INFORMATION: This proposed rule would adjust our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106-113). This proposed rule would also adjust, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

Legislation has been introduced in the Congress that would alter our fees. Customers should be aware that legislative changes to our fees would supersede this proposed rule. When such changes occur, we will make corresponding rule changes by

publication in the **Federal Register**. Customers may wish to refer to our official web site at www.uspto.gov for the most current fee amounts. Official notices of any fee changes will appear in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Background

Statutory Provisions

Patent fees 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 fees 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 fees 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 fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted on October 1, 2003, to reflect fluctuations occurring during the twelve-month period from October 1, 2002, through September 30, 2003, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2003, which is 2.17 percent. Based on this projected CPI-U, patent statutory fees are proposed to be adjusted by 2.17 percent. Before the final fee amounts are published, the fee amounts may be adjusted based on

actual fluctuations in the CPI-U published by the Secretary of Labor.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103-465 (the Uruguay Round Agreements Act) are proposed to 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. Fees for other than a small entity of \$100 or more were rounded to the nearest \$10. Fees of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the proposed fee adjustment would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f) through (i), if revised as proposed, would adjust fees 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), (b) through (e), (m), and

(r) through (t), if revised as proposed, would adjust fees 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), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

Other Considerations

This proposed rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The proposed rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees. We received roughly 111,000 patent applications (approximately 33 percent of total patent applications) last year from small entities. Since the average small entity fee would increase by less than \$10, with a minimum increase of \$1 and a maximum increase of \$35, there would not be a significant economic impact on a substantial number of small entities due to this proposed rule change.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Patents.

For the reasons set forth in the preamble, we are proposing to amend title 37 of the Code of Federal Regulations, part 1, 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, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (b), (d), and (f) through (i) to read as follows:

§ 1.16 National application filing fees.

- (a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$385.00 |
| By other than a small entity | \$770.00 |
- (b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:
- | | |
|-------------------------------------|---------|
| By a small entity (§ 1.27(a)) | \$43.00 |
| By other than a small entity | \$86.00 |

- (d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$145.00 |
| By other than a small entity | \$290.00 |

- (f) Basic fee for filing each design application:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$170.00 |
| By other than a small entity | \$340.00 |
- (g) Basic fee for filing each plant application, except provisional applications:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$265.00 |
| By other than a small entity | \$530.00 |
- (h) Basic fee for filing each reissue application:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$385.00 |
| By other than a small entity | \$770.00 |

- (i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:
- | | |
|-------------------------------------|---------|
| By a small entity (§ 1.27(a)) | \$43.00 |
| By other than a small entity | \$86.00 |

3. Section 1.17 is proposed to be amended by revising paragraphs (a)(2) through (a)(5), (b) through (e), (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)) | \$210.00 |
| By other than a small entity | \$420.00 |
- (3) For reply within third month:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$475.00 |
|-------------------------------------|----------|

- | | |
|------------------------------------|----------|
| By other than a small entity | \$950.00 |
|------------------------------------|----------|
- (4) For reply within fourth month:
- | | |
|-------------------------------------|------------|
| By a small entity (§ 1.27(a)) | \$740.00 |
| By other than a small entity | \$1,480.00 |
- (5) For reply within fifth month:
- | | |
|-------------------------------------|------------|
| By a small entity (§ 1.27(a)) | \$1,005.00 |
| By other than a small entity | \$2,010.00 |
- (b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$165.00 |
| By other than a small entity | \$330.00 |
- (c) 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)) | \$165.00 |
| By other than a small entity | \$330.00 |
- (d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$145.00 |
| By other than a small entity | \$290.00 |
- (e) To request continued examination pursuant to § 1.114:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$385.00 |
| By other than a small entity | \$770.00 |

- | | |
|-----------|--|
| * * * * * | |
|-----------|--|
- (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)) | \$665.00 |
| By other than a small entity | \$1,330.00 |

- | | |
|-----------|--|
| * * * * * | |
|-----------|--|
- (r) For entry of a submission after final rejection under § 1.129(a):
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$385.00 |
| By other than a small entity | \$770.00 |
- (s) For each additional invention requested to be examined under § 1.129(b):
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$385.00 |
| By other than a small entity | \$770.00 |
- (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)
 \$1,330.00 |

4. Section 1.18 is proposed to be 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 or reissue patent, except a design or plant patent:
- | | |
|-------------------------------------|------------|
| By a small entity (§ 1.27(a)) | \$665.00 |
| By other than a small entity | \$1,330.00 |
- (b) Issue fee for issuing a design patent:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$240.00 |
| By other than a small entity | \$480.00 |
- (c) Issue fee for issuing a plant patent:
- | | |
|-------------------------------------|----------|
| By a small entity (§ 1.27(a)) | \$320.00 |
| By other than a small entity | \$640.00 |

5. Section 1.20 is proposed to be amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or re-issue 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 is due by three years and six months after the original grant:	
By a small entity (§ 1.27(a))	\$455.00
By other than a small entity	\$910.00
(f) For maintaining an original or re-issue 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 is due by seven years and six months after the original grant:	
By a small entity (§ 1.27(a))	\$1,045.00
By other than a small entity	\$2,090.00
(g) For maintaining an original or re-issue 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 is due by eleven years and six months after the original grant:	
By a small entity (§ 1.27(a))	\$1,610.00
By other than a small entity	\$3,220.00

6. Section 1.492 is proposed to be amended by revising paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d) to read as follows:

§ 1.492 National stage fees.

(a) The basic national fee:	
(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.27(a))	\$370.00
By other than a small entity	\$740.00
(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:	
By a small entity (§ 1.27(a))	\$385.00
By other than a small entity	\$770.00
(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.27(a))	\$540.00
By other than a small entity	\$1,080.00
(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:	
By a small entity (§ 1.27(a))	\$460.00
By other than a small entity	\$920.00
(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:	
By a small entity (§ 1.27(a))	\$43.00
By other than a small entity	\$86.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:	
By a small entity (§ 1.27(a))	\$145.00
By other than a small entity	\$290.00

Dated: April 24, 2003.

James E. Rogan,

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

[FR Doc. 03-10583 Filed 4-29-03; 8:45 am]

BILLING CODE 3510-16-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-7490-4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 39

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 14 new sites to the NPL; all to the General Superfund Section of the NPL. (Please note that one of the sites is being repropose to the NPL.)

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before June 30, 2003.

ADDRESSES: *By electronic access:* Go directly to EPA Dockets at <http://www.epa.gov/edocket> and follow the online instructions for submitting comments. Once in the system, select "search", and then key Docket ID No.

SFUND-2003-0009. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5305T); 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, Attention Docket ID No. SFUND-2003-0009.

By Express Mail or Courier: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, Attention Docket ID No. SFUND-2003-0009. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday excluding Federal holidays).

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. Cite the Docket ID No. SFUND-2003-0009 in your electronic file. Please note that EPA's e-mail system automatically captures your e-mail address and is included as part of the comment that is placed in the public dockets, and made available in EPA's electronic public docket.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603-8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; or the Superfund Hotline, Phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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