DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 41, and 42

[Docket No. PTO–P–2015–0056]

RIN 0651–AD02

Setting and Adjusting Patent Fees During Fiscal Year 2017

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to set or adjust patent fees as authorized by the Leahy-Smith America Invents Act (Act or AIA). The USPTO is a business-like operation where external factors affect the productivity of the workforce and the demand for patent products and services. The proposed fee adjustments are needed to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of patent operations (based on current projections), while maintaining momentum towards achieving strategic goals. This rulemaking represents the second iteration of patent fee rulemaking by the USPTO to set fees under the authority of the AIA; the first AIA patent fee setting rule was published in January 2013. This current rulemaking is a result of the USPTO assessing its costs and fees, as is consistent with federal fee setting standards. Following a biennial review of fees, costs, and revenues that began in 2015, the Office concluded that further targeted fee adjustments were necessary to continue funding patent operations, enhance patent quality, and continue to work toward patent pendency goals, strengthen the Office's information technology (IT) capability and infrastructure, and achieve operating reserve targets. Further, in several instances, the fee change proposals offered during the biennial fee review process were enhanced by the availability of cost and workload data (*e.g.,* the number of requests for a service) that was not available in 2013. As a result, the 205 proposed fee adjustments outlined in this proposed rule align directly with the Office's strategic goals and four key fee setting policy factors, discussed in detail in Part V.

DATES: The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before December 2, 2016 to ensure consideration.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *fee.setting@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop—Office of the Chief Financial Officer, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Brendan Hourigan.'' Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal at *http://www.regulations.gov.* See the Federal eRulemaking Portal Web site for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet, which allows the Office to more easily share comments with the public. Electronic comments are preferred to be submitted in plain text, but also may be submitted in portable document format or a word processing format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into portable document format.

The comments will be available for public inspection via the Office's Internet Web site (*http://www.uspto.gov*) and at *http://www.regulations.gov.* Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Brendan Hourigan, Director of the Office of the Planning and Budget, by telephone at (571) 272–8966; or Dianne Buie, Office of Planning and Budget, by telephone at (571) 272–6301.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of This Action

The Office proposes this rule under section 10 of the AIA (Section 10), which authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee (PPAC) and Congressional oversight.

Parallel Rulemaking. In tandem with this notice of proposed rulemaking (NPRM) for patent related fees, the Office is undertaking a separate fee rulemaking action that proposes to adjust trademark related fees titled Trademark Adjustment Fees (RIN: 0651–AD08), published on May 27, 2016 (81 FR 33619) and available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

B. Summary of Provisions Impacted by This Action

The fee schedule in this rulemaking will recover the aggregate estimated costs of patent operations while achieving the Office's strategic goals as detailed in the *USPTO 2014–2018 Strategic Plan* (Strategic Plan) that is available at *http://www.uspto.gov/about/stratplan/USPTO_2014-2018_Strategic_Plan.pdf,* as amended by Appendix III of the Budget, available at *http://www.uspto.gov/sites/default/files/documents/fy17pbr.pdf.* The Strategic Plan defines the USPTO's mission, vision, and long-term goals and presents the actions the Office will take to realize those goals. This fee setting rule supports the patent-related strategic goals to optimize patent quality and timeliness, which includes improving patent quality, reducing the backlog of unexamined applications and decreasing patent application pendency, and facilitating processing at the Patent Trial and Appeal Board (PTAB); and increasing international efforts to improve intellectual property policy, protection and enforcement. This proposed rule also supports the management goal to achieve organizational excellence, which includes leveraging IT investments and securing sustainable funding. The Office intends to issue a final rule on fee changes in FY 2017 after receipt and analysis of public comments.

During a formal process closely tied to the annual budget process, the USPTO management and leadership teams reviewed and analyzed individual fee changes and new fee proposals to assess their alignment with the Office's strategic goals and fee structure philosophy, both of which aim to

provide sufficient financial resources to facilitate the effective administration of the USPTO. Specifically, the Office assessed how well each proposal aligned with four key fee setting policy factors: Foster innovation, align fees with the full cost of products and services, set fees to facilitate the effective administration of the patent and trademark systems, and offer application processing options for applicants.

In this rulemaking, the Office proposes to set or adjust 205 patent fees for large, small and micro entities (any reference herein to ''large entity'' includes all entities other than those that have established entitlement to either a small or micro entity fee discount). The fees for small and micro entity rates are tiered with small entities at a 50 percent discount and micro entities at a 75 percent discount. Small entity fee eligibility is based on the size or certain non-profit status of the applicant's business. Micro entity fee eligibility is described in Section 10(g) of the Act. There are also 42 new fees being introduced or replacing one of the 14 fees that are being discontinued.

In summary, the routine fees to obtain a patent (*i.e.,* filing, search, examination, and issue fees) will increase slightly under this NPRM relative to the current fee schedule. Applicants who meet the definition for small or micro entity discounts will continue to pay a reduced fee for the fees eligible for a discount under Section 10(b). Additional information describing the proposed fee adjustments is included in Part V: Individual Fee Rationale section of Supplementary Information in this rulemaking and in the ''*Table of Patent Fees—Current, Proposed and Unit Cost*'' (hereinafter ''*Table of Patent Fees*'') available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

It is important to recognize the progress the Office has made since the first Section 10 patent fee setting effort in order to better understand the fee adjustments the Office is proposing in this iteration. The USPTO first used the authority provided in Section 10 to set and adjust patent fees based on the market factors at the time. That initial effort, which began in September 2011, aimed to provide sufficient revenue to recover the cost of patent operations, including improving patent quality, reducing the patent application backlog, decreasing patent application pendency, upgrading the patent business IT capability and infrastructure, and implementing a sustainable funding model. After two public hearings and a public comment period, the final rule was published in the **Federal Register** on January 18, 2013 (78 FR 4212), with most fee changes effective on March 18, 2013, and the remainder effective on January 1, 2014.

The Office has made considerable progress in reducing backlog and pendency: First action pendency went from 21.9 months in FY 2012 to 17.3 months in FY 2015; total average pendency was reduced from 32.4 months in FY 2012 to 26.6 months in FY 2015; and the patent application backlog was reduced from 608,283 in FY 2012 to 553,221 at the end of FY 2015. The USPTO was also able to complete the opening of three additional regional offices in Denver, Colorado; San Jose (Silicon Valley), California; and Dallas, Texas. With a regional office already in Detroit, and USPTO headquarters in the Washington DC metro area, the Office is better equipped to build and maintain a flexible, diverse, and engaged workforce that is prepared to support backlog reduction and pendency goals while better serving the intellectual property community across the nation.

Similarly, the Office continues its efforts toward enhancing patent quality. As a result of the increased revenue from the inaugural AIA patent fee setting, the Office is better positioned to increase its quality focus because of significant reductions in the patent application backlog and pendency, improved patent operations and procedures, and more secure funding. High-quality patents enable certainty and clarity of rights, which fuels innovation and reduces needless litigation. The Office's commitment to a renewed and enhanced focus on patent quality centers on three pillars: (1) Excellence in work products; (2) excellence in measuring patent quality; and (3) excellence in customer service. The three quality pillars are high priorities throughout the Office, in addition to the existing quality initiatives set forth by the USPTO-led White House Executive Actions on High-Tech Patent Issues (*http://www.uspto.gov/patent/initiatives/uspto-led-executive-actions-high-tech-patent-issues*). The Office is strengthening work products, processes, services, and how it measures patent quality at all stages of the patent process. The recently implemented Enhanced Patent Quality Initiative (EPQI) aims to ensure that the Office continues issuing high-quality patents well into the future.

Stakeholder engagement is a critical component of the EPQI. Following a request for public comments on a set of potential quality proposals, the Office hosted a ''Quality Summit'' with the public to discuss the outlined proposals. By engaging the public on this topic, the Office received more than 1,200 comments on a wide array of possible patent quality initiatives and received even more feedback from both patent examiners and external stakeholders during the summit. Already the Office has created 11 programs under the umbrella of the EPQI in areas including pre-examination and search enhancement, prosecution enhancement, and evaluation enhancement. The Office held a patent quality community symposium in April 2016 featuring interactive segments and implementation updates on the EPQI. The goal of the symposium was to update the public on the USPTO's progress on the 11 programs to improve clarity of the prosecution record, enhance examiner training, improve applicant-examiner interactions, and redefine ways to capture and measure data about quality. The symposium featured lectures on these topics, an interactive workshop demonstration on how the Master Review Form will be applied (*see http://www.uspto.gov/blog/director/entry/improvements_in_measuring_patent_quality*), and a panel discussion with experienced patent practitioners about ways applicants can contribute to the Agency's efforts. The proposed fees will provide sufficient resources to permit the Office to maintain momentum for developing a new paradigm of patent quality at the USPTO.

Likewise, since the last patent fee setting effort, the USPTO has made significant progress on IT tools, like the Patents End-to-End (PE2E) suite, a solution that will enable a new way of processing patent applications using a single software platform to manage examination activities and integrate with existing systems via user-oriented tools that help examiners process applications and support analytics and automated processing. See Part III of this rulemaking for more information on how PE2E will transform the Office. Other IT efforts are also underway to repair or replace the USPTO's aging infrastructure. The Office is also working to ensure optimal IT service delivery to all users in PTAB, including continued development and deployment of the PTAB-End-to-End (PTAB E2E) IT capabilities, which will expand the use of intelligent data to support appeal decisions and process *inter partes* review (IPR) proceedings, post-grant review (PGR) proceedings, covered business method review

(CBMR) proceedings, and derivation (DER) proceedings.

The PTAB will benefit greatly from enhanced system tools even as the organization has significantly strengthened capacity in recent years. A major component of the overall patent process is the work carried out by the PTAB. The PTAB received more than 4,700 petitions for AIA trial proceedings since 2012 and has met every deadline set by Congress for such trials. In the last iteration of patent fee setting, the Office had to estimate both demand (*e.g.,* workload) and cost with little data available for the IPRs, PGRs, and CBMRs. Now, with three years of historical cost data, the Office has better insights into the full cost of services and can better estimate demand, which enables the USPTO to align fees more appropriately. This proposed rulemaking will help the PTAB continue to maintain the appropriate level of judicial and administrative resources to continue to provide high quality and timely decisions for AIA trials, reexamination appeals, and *ex parte* appeals. The USPTO's goal is to meet the statutory timeliness requirements for decisions in AIA proceedings and in appeals from re-examination proceedings. While no statutory timeliness requirement exists for appeals in regular *ex parte* applications, the Office is committed to reducing the inventory of appeals by hiring to the extent possible, clearing the oldest cases, and reassigning judges according to greatest need. The proposal includes an increase to the major PTAB fees including Filing a Notice of Appeal, Forwarding an Appeal to the Board, IPR, PGR, and CBMR fees.

Lastly, the USPTO has made significant progress towards financial sustainability as a result of the initial AIA fee setting effort, including building towards a three-month optimal operating reserve for patents. As initially presented in the 2013 patent fee setting rule, funding an operating reserve as a part of the Office's regular budgetary requirements aligns with the USPTO's strategic priority to sustain long-term operational goals and prevent the USPTO from having to make short-term crisis-based spending changes that affect the delivery of the USPTO's performance commitments. For instance, the USPTO was able to continue operations during the October 2013 government-wide shut down by using available operating reserves carried over from FY 2013. More recently, the operating reserve allowed the Office to maintain progress on IT investments when patent filings (and subsequently revenue) decreased in FY 2015. In order to continue to provide effective service, the Office must proactively manage fiscal risks. The Office acutely recognizes that fees cannot simply increase for every improvement the Office deems desirable. Instead, for this rulemaking effort, the Office focused on prioritizing spending and gradually building the operating reserve in order to build resiliency against financial shocks. At optimal levels, the reserve will allow the Office to operate for three months in the event of interruptions in the ability to access collected fees such as during a government shutdown or during a period of unanticipated reductions in revenue or increases in operating expenses, such as during a domestic or global economic crisis, or major departures from the estimated number of patent applications received.

In conclusion, the USPTO has made significant strides in realizing the goals set forth in 2011, in part due to the AIA authority to set fees. In order to continue building on the progress made over the last several years, and consistent with the USPTO's biennial fee review policy, the USPTO proposes the fee schedule detailed herein to continue quality initiatives, maintain progress toward backlog and pendency reduction, continue IT improvements for both Patents and PTAB, and promote the sound fiscal management of the Office while answering stakeholder calls to continue to improve service. The fees proposed in this rulemaking intend to make the Office well positioned to deliver on known commitments, and address unknown risks in the future.

C. Summary of Costs and Benefits of This Action

The proposed rule is significant and results in a need for a Regulatory Impact Analysis (RIA) under Executive Order 12866 Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). The Office prepared an RIA to analyze the costs and benefits of the NPRM over a five-year period, FY 2017–FY 2021. The RIA includes a comparison of the proposed fee schedule to the current fee schedule (baseline) and to two other alternatives. The costs and benefits that the Office identifies and analyzes in the RIA are strictly qualitative. Qualitative costs and benefits have effects that are difficult to express in either dollar or numerical values. Monetized costs and benefits, on the other hand, have effects that can be expressed in dollar values. The Office did not identify any monetized costs and benefits of the proposed rulemaking, but found that the proposed rulemaking had qualitative benefits exceeding its qualitative costs.

The qualitative costs and benefits that the RIA assesses are: (1) Fee schedule design—a measure of how well the fee schedule aligns to the Office key fee setting policy factors; (2) securing aggregate revenue to cover aggregate cost—a measure of whether the alternative provides adequate revenue to support the core mission and strategic priorities described in the NPRM and FY 2017 Budget; and (3) aggregate increased user fee payments—a measure of the opportunity cost associated with paying additional fees to the Office. For these three costs and benefits, the fee schedule proposed in this NPRM offers the highest net benefits. As described throughout this document, the proposed fee schedule maintains the existing balance of below-cost entry fees (*e.g.,* filing, search, and examination) and above cost maintenance fees as one approach to foster innovation. Further, as detailed in Part V, the proposed fee changes are targeted in support of one or more fee setting policy factors. Lastly, the proposed rule secures the aggregate revenue needed to achieve the strategic priorities encompassed in the rulemaking goals and strategies (*see* Part III). In summary, the benefits of the proposed alternative clearly outweigh those of the baseline and the other alternatives considered in the RIA. Table 1 summarizes the RIA results.

TABLE 1—PROPOSED PATENT FEE SCHEDULE COSTS AND BENEFITS, CUMULATIVE FY 2017–FY 2021

Qualitative Costs and Benefits	
Costs	
Aggregate Increase in User Fee Payments.	Moderate.
Benefits	Total.
Secure Aggregate Revenue to Cover Aggregate Costs.	Significant.
Fee Schedule Design	Significant.
Net Benefit	Significant.

Additional details describing the costs and benefits are available in the RIA at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

II. Legal Framework

A. Leahy-Smith America Invents Act—Section 10

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284. Section 10(a) of the Act authorizes the Director of the Office to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed by, or materials furnished by, the Office. Fees

under 35 U.S.C. may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials related to patents, including administrative costs to the Office with respect to such patent operations. *See* 125 Stat. at 316. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under Section 10 at, below, or above their respective cost. Section 10(e) of the Act requires the Director to publish the final fee rule in the **Federal Register** and the Official Gazette of the Patent and Trademark Office at least 45 days before the final fees become effective. Section 10(i) terminates the Director's authority to set or adjust any fee under Section 10(a) upon the expiration of the seven-year period that began on September 16, 2011.

B. Small Entity Fee Reduction

Section 10(b) of the AIA requires the Office to reduce by 50 percent the fees for small entities that are set or adjusted under Section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

C. Micro Entity Fee Reduction

Section 10(g) of the AIA amended chapter 11 of title 35, U.S.C., to add section 123 concerning micro entities. The Act provides that the Office must reduce by 75 percent the fees for micro entities for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. Micro entity fees were implemented through the previous patent fee rule, and the Office will maintain this 75 percent micro entity discount for the appropriate fees and proposes to implement micro entity fees for additional services as appropriate.

D. Patent Public Advisory Committee Role

The Secretary of Commerce established the PPAC under the American Inventors Protection Act of 1999. 35 U.S.C. 5. The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations.

When adopting fees under Section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on October 20, 2015, the Director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC held a public hearing in Alexandria, Virginia, on November 19, 2015. Transcripts of the hearing are available for review at *http://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20151119.pdf.* Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from this hearing and made all comments available to the public via the Fee Setting Web site, *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on February 29, 2016, and can be found online at *http://www.uspto.gov/sites/default/files/documents/PPAC_Fee%20_Setting_Report_2016%20%28Final%29.pdf.* The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing this NPRM. Before the final rule is issued, the public will have a 60-day period during which to provide comments to be considered by the USPTO.

III. Rulemaking Goals and Strategies

A. Fee Setting Strategy

The overall strategy of this proposed rulemaking is to establish a fee schedule that generates sufficient multi-year revenue to recover the aggregate cost to maintain USPTO operations and accomplish the USPTO's strategic goals in accordance with the authority granted to the USPTO by AIA Section 10. A similar strategy guided the initial AIA patent fee setting in 2013. The overriding principles behind this strategy are to operate within a sustainable funding model to avoid disruptions caused by fluctuations in financial operations, and to continue making strategic improvements, such as progress on patent quality initiatives, continued reduction of the patent application backlog and pendency, and modernization of IT systems.

In addition to the overriding principles outlined above, as discussed earlier in this document, the Office also assesses alignment with the key fee setting policy factors. Each factor promotes a particular aspect of the U.S. patent system. Fostering innovation is an important policy factor to ensure that access to the U.S. patent system is without significant barriers to entry, and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity. Aligning fees with the full cost of products and services recognizes that as a fully fee-funded entity, the Office must account for all of its costs even as it elects to set some fees below, at, or above cost. This factor also recognizes that some applicants may use particular services in a much more costly manner than other applicants (*e.g.,* patent applications cost more to process when more claims are filed). Facilitating effective administration of the patent system is important to influence efficient patent prosecution, resulting in compact prosecution and reduction in the time it takes to obtain a patent. Finally, the Office recognizes that patent prosecution is not a one-size-fits-all process and therefore, where feasible, the Office endeavors to fulfill its fourth policy factor of offering patent processing options to applicants.

B. Fee Setting Considerations

The balance of this sub-section presents the specific fee setting considerations the Office reviewed in developing the proposed patent fee schedule. Specific considerations are: (1) Historical costs of patent operations and investments to date in meeting the Office's strategic goals; (2) projected costs to meet the Office's operational needs and strategic goals; and (3) sustainable funding. Additionally, the Office carefully considered the comments, advice, and recommendations offered by the PPAC on the Office's initial fee setting proposal. Collectively, these considerations inform the Office's chosen rulemaking strategy.

(1) *Historical Cost.* To ascertain how to best align fees with the full cost of products and services, the Office considers Activity Based Information.

Using historical cost data and forecasted application demands, the Office can align fees to the costs of specific patent products and services. The Office has made significant progress towards its strategic goals for patent quality, backlog, pendency, and IT system modernization for several years now. For more information about the Office's performance record and progress towards its strategic goals, see the *FY 2015 Performance and Accountability Report,* available at *http://www.uspto.gov/sites/default/files/documents/USPTOFY15PAR.pdf.* Each of the Office's goals is directly aligned to the cost of delivering patent services. The document entitled *USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Activity Based Information and Patent Fee Unit Expense Methodology,* available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* provides detail on the Office's costing methodology in addition to the last three years of historical cost data. Part IV of this rulemaking details the Office's methodology for establishing fees. Finally, Part V describes the reasoning for setting some fees at cost, below cost, or above cost such that the Office recovers the aggregate cost of providing services through fees.

(2) *Projected Costs.* The costs projected to meet the Office's strategic goals can be found in the FY 2017 President's Budget, which provides additional detail about the following performance and modernization efforts, among others: (a) Quality, backlog, and pendency and (b) modernized IT systems.

(a) Quality, Backlog, and Pendency. The Office developed the strategic goal of optimizing patent quality and timeliness in response to feedback from the intellectual property community and in recognition that a sound, efficient, and effective intellectual property system is essential for technological innovation and for patent holders to reap the benefits of patent protection. In addition to timeliness of patent protection, the quality of application review is critical to the value of an issued patent. Issuance of quality patents provides certainty in the market and allows businesses and innovators to make informed and timely decisions on product and service development. Under the proposed action, the Office will continue to improve patent quality through the three quality pillars identified in Part I.

In addition to quality, the USPTO continues to focus on backlog and pendency reduction. First action pendency went from 21.9 months in FY 2012 to 17.3 months in FY 2015, total average pendency was reduced from 32.4 months in FY 2012 to 26.6 months in FY 2015, and the patent application backlog was reduced from 608,283 in FY 2012 to 553,221 at the end of FY 2015. This proposed rulemaking will produce revenues adequate to continue the USPTO's progress towards attaining its strategic goals for patent backlog and pendency.

Similarly, the PTAB manages pendency and inventory for appeals and trials. This proposed rulemaking will help the PTAB to maintain the appropriate level of judicial, legal, and administrative staff needed to provide high quality and timely decisions for AIA trials, reexamination appeals, and *ex parte* appeals.

(b) Information Technology. Revenue generated from the proposed fee structure will enable the USPTO to continue modernizing its IT architecture and systems. Some current systems remain obsolete and difficult to maintain, leaving the USPTO vulnerable to potential disruptions in patent operations. However, the Office's efforts on PE2E, the large-scale patent IT improvement program, have already delivered value to examiners and customers alike. One of the PE2E releases included an automated method to convert millions of image-based patent application papers into a fully automated extensible markup language (XML), so that images can be tagged with keywords to facilitate searching during the patent examination process. PE2E relies on flexible, scalable, modern technology that is optimized to eliminate repetitive tasks and support analytics and automated processing. Likewise, eCommerce Modernization (''eMod'') will improve the electronic patent application process by improving user interfaces, increasing functionality, and updating infrastructure—all aimed at enriching the user experience via more efficient system integration and expanding system usefulness. Modern IT tools benefit both USPTO employees and stakeholders by facilitating the effective administration of the patent system through effective application processing, better examination quality, and the ability to provide greater services via a nationwide workforce.

(3) *Sustainable Funding.* A major component of sustainable funding is the creation of a viable patent operating reserve that allows for effective management of the U.S. patent system and responsiveness to changes in the economy, unanticipated production workload, and revenue changes. As a fee-funded agency, spending levels and revenue streams create volatility in patent operations and threaten the Office's ability to meet its designated performance levels (*e.g.,* quality, backlog, and pendency).

The USPTO's annual budget delineates prospective spending levels (aggregate costs) to execute core mission activities and strategic initiatives. In the FY 2017 President's Budget, the USPTO estimated that its aggregate patent operating costs for FY 2017, including administrative costs, would be $2.930 billion. After evaluating relevant risk factors, the Office determined that a minimum balance of $300 million in the operating reserve was adequate for FY 2016 and FY 2017, which is below the optimal balance of three months operating expenses, or about $730 million. Based on the proposed fee increase contained in the FY 2017 President's Budget, the spending requirement would be offset by projected fee collections and other income of $3.005 billion and a deposit of $75 million to the patent operating reserve, leaving a $385 million balance in the patent operating reserve, or $85 million more than the desired minimum of $300 million for FY 2017. Because the FY 2017 President's Budget was submitted prior to the USPTO making final decisions on the proposed fee adjustments, the operating reserve estimate in this NPRM differs from the estimate included in the Budget. Given that the Office reduced several fees from the initial proposal in response to comments from the PPAC and the public, the aggregate revenue collected from the proposed fee schedule is lower. In FY 2017, the proposed fees and other income are projected to collect $2.969 billion, with $39 million deposited in the operating reserve, resulting in a balance of $349 million at the end of the fiscal year, which is slightly more than the minimal level of $300 million for FY 2017. An optimal reserve balance of three months of operating expenses is projected to be $789 million in FY 2019. With the proposed fee increases, the Office projects the actual balance will reach $639 million at the end of FY 2019. Without the proposed fee changes, the Office projects that end of year FY 2019 operating reserve balance would fall below the minimum threshold of $300 million to approximately $264 million. With the proposed fee schedule, the Office projects to first reach the optimal operating reserve balance by the end of FY 2020, and FY 2021 would be the first year in which the optimal operating reserve balance would be in place at the beginning of the fiscal year. The FY 2021 optimal reserve balance is projected to be $818

million, and the projected reserve level entering the fiscal year is $861 million.

The USPTO will continue to assess the patent operating reserve balance against its target balance annually, and at least every two years, the Office will evaluate whether the target balance continues to be sufficient to provide the funding stability needed by the Office. Per the Office's operating reserve policy, if the operating reserve balance is projected to exceed the optimal level by 10 percent for two consecutive years, the Office will consider fee reductions. Under the new fee structure, as in the past, the Office will continue to regularly review its operating budgets and long-range plans to ensure the USPTO uses patent fees prudently.

(4) *Comments, Advice, and Recommendations from the Patent Public Advisory Committee.* In the report prepared in accordance with AIA fee setting authority, the PPAC expressed general support for an increase in fees to sustain quality and fund a sufficient operating reserve for the Office. Specifically, the report stated, ''The PPAC agrees that the Office should set fees to establish an adequate revenue stream over a sustained period to fund the people and infrastructure essential for a high quality, low pendency examination process, and to fund its operating reserve.'' However, the PPAC expressed concerns over some of the individual fee adjustments and their potential impacts on patent applicants and holders. To address these concerns and still generate the necessary aggregate revenue to meet the Office's goals, the PPAC suggested several alternative fee adjustment approaches. The USPTO has reviewed the report and has amended the initial fee proposal in an effort to address these concerns, where possible, so as to remain consistent with the rulemaking goals. The USPTO has also included additional information in this NPRM to further address some of the PPAC's concerns.

The PPAC expressed general support for the stated goals and an increase in patent fees but proposed alternative approaches for certain fee adjustments. The report suggested that the USPTO could save money by improving quality and processes to maximize efficiency, thereby offsetting some fee increases. In general, the PPAC urged the Office to provide more detail and justification for some of the fee adjustments, including greater transparency in the allocation of costs and historical aspects of costs, better explanations for why certain fees increased and to what purposes the additional revenue would be used, and any practical implications of not changing the current fee structure. This Part and Part V: Individual Fee Rationale offer this additional information.

The PPAC expressed a lack of support for the proposal to increase Request for Continued Examination (RCE) fees. The advisory body questioned whether the fees are warranted and suggests instead that the USPTO consider ways to reduce the need for RCEs. In response to this concern, the USPTO proposes a reduction to the fee increases for both a first RCE and a second and subsequent RCE. The revised proposals include moderate increases that bring the fee rates closer to the cost of processing an RCE, as calculated using the most recently available cost data (FY 2015). Specifically, the first RCE fee rate is now proposed to increase from $1,200 to $1,300 for large entities, a $100 increase (8 percent). The initial proposal included a $300 increase for this fee. The FY 2015 full cost to examine a first RCE was $2,187. When factoring small and micro entity rates, first RCE fees collected 48.8 percent of the examination cost in FY 2015. The second and subsequent RCE fee rate is now proposed to increase from $1,700 to $1,900 for large entities, a $200 increase (12 percent). The initial proposal included a $300 increase for this fee. The FY 2015 full cost to examine a second and subsequent RCE was $1,540. When factoring small and micro entity rates, second and subsequent RCE fees collected 100 percent of the examination cost in FY 2015. At an aggregate level, first and second and subsequent RCE fees collected 62.5 percent of the examination costs for FY 2015. In order to approach cost recovery and limit the increase to the first RCE fee rate, the Office proposes a slightly larger increase for the second and subsequent RCE fee rate. Had this fee structure been in place in FY 2015, the Office would have recovered 68.6 percent of RCE costs as opposed to the 62.5 percent that was experienced. While this proposed fee structure will not achieve full cost recovery for RCEs, it will bring collections closer to cost and therefore reduce the subsidy for RCE filings currently provided by other patent fees. In addition to the proposed fee adjustments, the USPTO is committed to focusing on initiatives that will reduce the need for RCEs. Examples of initiatives the Office has already implemented to reduce the need for RCEs include the Quick Path Information Disclosure Statement (QPIDS) pilot program (*http://www.uspto.gov/patent/initiatives/quick-path-information-disclosure-statement-qpids*) and the After Final Consideration Pilot Program 2.0 (AFCP 2.0) (*http://www.uspto.gov/patent/initiatives/after-final-consideration-pilot-20*). Additionally, the Enhanced Patent Quality Initiative (*http://www.uspto.gov/patent/initiatives/enhanced-patent-quality-initiative-0*) will be evaluating and strengthening work products, processes, and services at all stages of the patent process and may contribute to reducing the need for RCEs.

The report noted opposition to the proposed increases for excess claim fees. The PPAC recommends a refund system in which excess claim fees are returned when claims are cancelled in response to a restriction requirement. Under this proposal, an applicant would only incur fees for the claims that are actually examined, not just filed. The USPTO appreciates the PPAC's suggestion and has committed to undertaking a study to determine the feasibility of such a refund program, and at present the Office is proposing the increase for excess claim fees.

Regarding the proposed change to the Information Disclosure Statement (IDS) model, the PPAC expressed concern about the negative effects of eliminating the certification requirement (under 37 CFR 1.97 (e)) and noted that the fee increase may discourage applicants from filing promptly when new prior art is discovered. In response to PPAC and public comments, the USPTO eliminated the proposed changes to IDS practice and instead is proposing a moderate increase to the IDS submission fee rate.

The report stated that the substantial increase to the notice of appeal and appeal forwarding fees would likely result in discouraging patent holders' invocation of appeal procedures, which are frequently used out of necessity rather than choice. In response, the Office notes that even with the proposed increases to the fees, the true cost of *ex parte* appeals is being significantly subsidized. That is, in FY 2015, *ex parte* appeal fees covered approximately 58 percent of the cost per appeal. The proposed fee increase will bring *ex parte* appeal fees up to cover approximately 72 percent of the cost per appeal. Since the implementation of the January 2013 Setting and Adjusting Patent Fees Final Rule, the increased *ex parte* appeal fees have enabled the PTAB to hire more judges. The PTAB has made great strides in reducing its appeals inventory, which reached over 27,000 (in 2012), to under 19,000 (in April 2016). The proposed increase in fees will help the Board further reduce

the appeals inventory and improve pendency for appeals and trials. The PTAB is also working to reduce inventory with the implementation of the following two pilot programs: (i) Expedited Patent Appeal Pilot (EPAP) (*see http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/expedited-patent-appeal-pilot*) and (ii) Small Entity Pilot Program (*see http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/uspto-announces-streamlined-expedited*).

The PPAC report specifically expressed support for proposed fee adjustments for the IPR, PGR, and CBMR so that the PTAB has adequate resources to accomplish the mission of the AIA. However, the PPAC questioned the distribution of the fees between pre- and post-institution. The Office appreciates the observation and is currently assessing the matter.

The PPAC suggested that it would be sensible for the USPTO to subdivide the AIA trial fees more finely (''pay as you go''). As the AIA review processes mature and become more certain, it may be appropriate to study the impact and feasibility of this proposal. Developing an understanding of the reasons driving settlements at various times in these proceedings will inform decision makers as to how and when to best structure fees. Because fees are intended to recapture aggregate agency patent costs over time, structuring of the fees will still require recapture of all costs unless the costs of the review proceedings are subsidized by other patent related revenue. The Office agrees with the PPAC's characterization that the proceedings still contain significant uncertainties. Once the USPTO has had further experience with the proceedings to derive conclusions about settlement and other behaviors, the USPTO will reexamine the appropriateness of this proposal.

Additionally, the PPAC suggested that the Office consider adopting a scaled petition fee schedule based on the petitioner's annual revenue. However, the authority to discount fees or to charge additional fees for certain petitioners under the USPTO's rulemaking authority is limited by the AIA to providing discounts to the six categories under section 10(b). As the administrative trial fees are outside of the six categories, the trial fees are not eligible for discounts.

The report proposed a refund system for disciplinary proceeding fees associated with the Office of Enrollment and Discipline (OED). While the PPAC recognizes the importance of having an effective process for ensuring compliance with the rules governing the Patent Bar, the advisory body also recognizes that some practitioners may be fully exonerated upon final determination. The Office would like to clarify that pursuant to 37 CFR 11.60(d)(2), the OED Director is currently authorized to recover expenses from a disciplined practitioner who seeks reinstatement. The purpose of listing this fee in 37 CFR 1.21 is simply to establish a new fee code by which to account for the receipt of these reimbursements. The fee is only imposed on practitioners who seek reinstatement after having been suspended or excluded. Thus, there should be no concern that a practitioner would be subject to this fee if he or she has been investigated and cleared or has been disciplined but not suspended or excluded.

The PPAC also suggested that the proposed increases to design fees were excessive. In response, the USPTO has reduced the proposed increase to the design issue fee by $200 for large entities from the level that the Office initially proposed. The proposed large entity design issue fee rate is now $800 as opposed to $1,000. The minimum required fees to obtain a design patent (file/search/examination and issue) are proposed to increase slightly beyond cost recovery for large entities ($1,760 versus $1,596) to subsidize the substantial number (almost half in FY 2015) of small and micro entity applicants who pay lower fees despite similar costs to the Office. Further, design patentees do not pay maintenance fees, so there is no back-end subsidy to support below-cost front-end fees. Overall, design fees are still proposed at rates that are below the Office's aggregate processing costs even if the large entity design fee rates are slightly above cost. Therefore, even with the proposed fee increases, design application processing costs will continue to be subsidized by non-design specific fee revenues. The Office believes these proposed moderate fee increases in filing, search, examination, and issue are appropriately aligned to costs and the policy consideration to foster innovation.

In the case of sequence listing fees, the report sought more information on the proposed fees to clarify the need for the increase. The level of effort associated with the handling of extremely lengthy sequence listings (hereafter referred to as mega-sequence listings) is significant because the Office's systems require extra storage and special handling for sequence listing files beyond 300 Megabytes (MB). Actual cost data is not available since these are newly proposed fees. However, based on historical data, on average, less than 10 applications per year contained sequence data that reached the 300 MB file levels of the proposed new fees. Based on previously filed applications with lengthy sequence listings, the Office determined that some applications disclosed sequence data that met the length thresholds for being included in the sequence listing, but that was neither invented by the applicants nor claimed. These sequence listings often included sequences that were available in the prior art, were not essential material, and could have been described instead, for example, by name and a publication or accession reference. Claims in such applications were frequently directed to the manipulation of sequence data rather than the substance of the sequences themselves. Submission of a mega-sequence listing in these applications would not have been necessary to complete the application if applicants limited the number of sequences that were described in such a way as to be required in a sequence listing. The proposed fee should encourage applicants to draft their specifications such that sequence data that is not essential material is not required to be included in a sequence listing, which should reduce the need for mega-sequence listings. A reduced number of mega-sequence listings will benefit the Office and the public by reducing large submissions of unnecessary sequences and, consequently, the search system load. The PPAC also requested additional information regarding the proposed fee for the late filing of sequence listings in international applications. This fee is being established pursuant to PCT Rule 13ter.1(c) and is similar in nature and proposed fee rate to fees charged by other international IP offices. Additional information regarding the authority and purpose of this rulemaking is available at *http://www.wipo.int/pct/en/texts/rules/r13ter.htm.*

The PPAC also requested additional information regarding copy fees, in particular those that appeared to be ''very high charges.'' Currently the fee schedule includes a catch-all fee of ''Computer Records'' priced ''at cost.'' The Office proposes to replace this fee code with five fees that encompass work currently performed and charged to this code. The five fee codes proposed to replace the ''Computer Records'' fee are: Copy of Patent Grant Single-Page TIFF Images (52 week subscription); Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication

Single-Page TIFF Images, or Patent Application Publication Full-Text W/ Embedded Images (52 week subscription); Copy of Patent Technology Monitoring Team (PTMT) Patent Bibliographic Extract and Other DVD (Optical Disc) Products; Copy of U.S. Patent Custom Data Extracts; and Copy of Selected Technology Reports, Miscellaneous Technology Areas. The proposed fee codes explicitly state the service and fee to provide customers with clearer information to aid decision making.

These specific fees recover the USPTO's aggregate costs for processing, validating, packaging, and shipment of these products to customers worldwide. For the copy of Patent Grant Single-Page TIFF Images (52 week subscription) (which the Office proposes to set at $10,400), for example if a customer orders this service, each week the Office will expedite to him or her a package that contains, at a minimum, one Blu-ray and one DVD optical disc bearing the patent grant data for each Tuesday in the calendar year via United Parcel Service. The fee rate covers the cost of producing and delivering these items for each of the 52 weeks of the year. For the other three services proposed at $5,200, the expedited weekly packages (one for each Tuesday or Thursday in the calendar year) typically contain either a single Blu-ray or DVD optical disc. As an alternative to requesting and paying for these weekly services, the USPTO has provided customers the ability to download this information at no cost since June 2010. This information is currently provided in the following locations: Bulk Data Storage System (BDSS) available at *https://bulkdata.uspto.gov* since October 2015 and Reed Tech Public Data Dissemination (PDD) available at *http://patents.reedtech.com* since June 2013.

The USPTO left maintenance fees untouched in the initial proposal. The PPAC report noted that this was an ''attractive feature to many stakeholders given their already high level, especially at the third stage.'' The PPAC also commented that there may be an opportunity to decrease the third stage fee and raise the maintenance fees at the first two stages or second maintenance fee only as a means to increase revenue. The USPTO appreciated the input and will continue to closely monitor renewal rates to determine if and when a change to the maintenance fee rates is warranted.

In summary, the USPTO appreciates the PPAC's overall support for an increase in patent fees to meet sufficient funding levels. After careful consideration of the comments, concerns, and suggestions provided in the report, and keeping in mind the goals of this rulemaking, the USPTO elected to reduce several of the fee increases initially proposed to the PPAC. The newly proposed fee structure will result in lower aggregate revenue than that initially proposed to the PPAC. Nevertheless, the fee structure proposed herein will ultimately allow the USPTO to continue on its path towards achieving the goals and objectives laid out in the Strategic Plan. The Office looks forward to receiving additional comments on this revised proposal during the public comment period.

C. Summary of Rationale and Purpose of the Proposed Rulemaking

The Office estimates that the proposed patent fee schedule will produce aggregate revenues to recover the aggregate costs of the USPTO, including for the implementation of its strategic and management goals, objectives, and initiatives in FY 2017 and beyond. Using the strategic goals (optimizing patent quality and timeliness and providing domestic and global leadership to improve intellectual property policy, protection, and enforcement worldwide) and the management goal of organizational excellence as a foundation, the proposed rule would provide sufficient aggregate revenue to recover the aggregate cost of patent operations, including improving patent quality, reducing the patent application backlog, decreasing patent application pendency, upgrading the patent business IT capability and infrastructure, and implementing a sustainable funding model.

IV. Fee Setting Methodology

The Office carried out three primary steps in developing the proposed fees:

Step 1: Determine the prospective aggregate costs of patent operations over the five-year period, including the cost of implementing new initiatives to achieve strategic goals and objectives.

Step 2: Calculate the prospective revenue streams derived from the individual fee amounts (from Step 3) that will collectively recover the prospective aggregate cost over the five-year period.

Step 3: Set or adjust individual fee amounts to collectively (through executing Step 2) recover projected aggregate cost over the five-year period, while furthering key policy factors.

These three steps are iterative and interrelated. The following is a description of how the USPTO carries out these three steps.

Step 1: Determine Prospective Aggregate Costs

Calculating prospective aggregate costs is accomplished primarily through the annual USPTO budget formulation process. The Budget is a five-year plan (that the Office prepares annually) for carrying out base programs and new initiatives to implement the strategic goals and objectives.

The first activity performed to determine prospective aggregate cost is to project the level of demand for patent products and services. Demand for products and services depend on many factors, including domestic and global economic activity. The USPTO also takes into account overseas patenting activities, policies and legislation, and known process efficiencies. Because filing, search, and examination costs are the largest share of the total patent operating cost, a primary production workload driver is the number of patent application filings (*i.e.,* incoming work to the Office). The Office looks at indicators such as the expected growth in Real Gross Domestic Product (RGDP), the leading indicator to incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis (*www.bea.gov*) and is forecasted each February by the Office of Management and Budget (OMB) (*www.omb.gov*) in the Economic and Budget Analyses section of the Analytical Perspectives and each January by the Congressional Budget Office (CBO) (*www.cbo.gov*) in the Budget and Economic Outlook. A description of the Office's methodology for using RGDP can be found at pages 143 and 144 of the FY 2017 President's Budget (Congressional Justification). The expected change in the required production workload must then be compared to the current examination production capacity to determine any required staffing and operating cost (*e.g.,* salaries, workload processing contracts, and publication) adjustments. The Office uses a patent pendency model that estimates patent production output based on actual historical data and input assumptions, such as incoming patent applications and overtime hours. An overview of the model, including a description of inputs, outputs, key data relationships, and a simulation tool is available at *http://www.uspto.gov/patents/stats/patent_pend_model.jsp.*

The second activity is to calculate the aggregate costs to execute the requirements. In developing its Budget, the Office first looks at the cost of status quo operations (the base requirements). The base requirements are adjusted for

anticipated pay raises and inflationary increases for the budget year and four out years (detailed calculations and assumptions for this adjustment can be found in the FY 2017 President's Budget). The Office then estimates the prospective cost for expected changes in production workload and new initiatives over the same period of time (refer to ''Program Changes by Sub-Program'' sections of the Budget). The Office reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. Finally, the Office estimates its three-month target operating reserve level based on this aggregate cost calculation for the year to determine if operating reserve adjustments are necessary.

The FY 2017 President's Budget identifies that, during FY 2017, patent operations will cost $2.928 billion (*see* page 146 of the Budget), including $2.009 billion for patent examination activities; $162 million for IT systems, support, and infrastructure contributing to patent operations; $93 million for activities related to patent appeals and the AIA *inter partes* dispute actions; $27 million for activities related to intellectual property protection, policy, and enforcement; and $637 million for general support costs necessary for patent operations (*e.g.,* rent, utilities, legal, financial, human resources, other administrative services, and Office-wide IT infrastructure and IT support costs). In addition, the Office transfers $2 million to the DOC Inspector General for audit support. The Office also estimates collecting $28 million in other income associated with recoveries and reimbursable agreements (offsets to spending) and depositing $75 million during FY 2017 toward the cost of building the patent operating reserve to sustain operations.

Because the FY 2017 President's Budget was submitted prior to the USPTO making final decisions on the proposed fee adjustments, the operating reserve estimate in this NPRM is therefore different than the estimate included in the Budget. A detailed description of the operating requirements and related aggregate cost is located in the Budget. Table 2 below provides key underlying production workload projections and assumptions from the Budget used to calculate aggregate cost. Table 3 presents the total budgetary requirements (prospective aggregate cost) for FY 2017 through FY 2021 and the estimated collections and operating reserve balances that would result from the proposed adjustments contained in this NPRM.

TABLE 2—PATENT PRODUCTION WORKLOAD PROJECTIONS—FY 2017–FY 2021

Utility, plant, and reissue (UPR)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Applications*	594,900	606,800	625,000	650,000	676,000
Growth Rate	1.5%	2.0%	3.0%	4.0%	4.0%
Production Units	616,200	624,900	628,700	629,300	628,500
Unexamined Patent Application Backlog	434,700	397,400	374,000	374,700	401,600
Examination Capacity**	8,087	8,022	7,937	7,832	7,777
Performance Measures (UPR)					
Avg. First Action Pendency (Months)	13.7	12.2	10.9	10.3	10.2
Avg. Total Pendency (Months)	22.9	22.1	20.6	19.5	19.1

* In this table, the patent application filing data includes requests for continued examination (RCEs).
** In this table, Examination Capacity is the UPR Examiners On-Board at End-of-Year, as described in the FY 2017 President's Budget.

TABLE 3—PLANNED OPERATING REQUIREMENTS—FY 2017–FY 2021

Patent aggregate cost estimate	Dollars in millions				
	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
Patent Planned Operating Requirements	2,930	3,114	3,157	3,208	3,272
Less: Planned Patent Fee Collections	2,951	3,260	3,265	3,412	3,599
Less: Other Income	18	18	18	18	18
To (−)/From (+) Operating Reserve	39	164	127	222	344
EOY Operating Reserve Balance	349	513	639	861	1,206

Step 2: Calculate Prospective Aggregate Revenue

As described in ''*Step 1,*'' the USPTO's FY 2017 requirements in the FY 2017 President's Budget include the aggregate prospective cost of planned production, anticipated new initiatives, and a contribution to the patent operating reserve required for the Office to realize its strategic goals and objectives for the next five years. The aggregate prospective cost becomes the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To calculate the aggregate revenue estimates, the Office first analyzes relevant factors and indicators to calculate or determine prospective fee workload (*e.g.,* number of applications and requests for services and products), growth, and resulting fee workload volumes (quantities) for the five-year planning horizon. Economic activity is an important consideration when developing workload and revenue forecasts for the USPTO's products and services because economic conditions affect patenting activity, as most recently exhibited in the recession of 2009 when incoming workloads and renewal rates declined.

The Office considers economic activity when developing fee workloads and aggregate revenue forecasts for its products and services. Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. The most relevant economic indicator that the Office uses is the RGDP, which is the broadest measure of economic activity and is anticipated to grow approximately two percent for FY 2017 based on OMB and CBO estimates.

These indicators correlate with patent application filings, which are a key driver of patent fees. Economic indicators also provide insight into market conditions and the management of intellectual property portfolios,

which influence application processing requests and post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the Office considers other influential factors including overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity, which for the purpose of this action measures how sensitive applicants and patentees are to changes in fee amounts. The higher the elasticity measure (in absolute value), the greater the applicant response to the relevant fee change. If elasticity is low enough (*i.e.,* demand is *inelastic* or the elasticity measure is less than one in absolute value), a fees increase will lead to only a relatively small decrease in patent activities, and overall revenues will still increase. Conversely, if elasticity is high enough (*i.e.,* demand is *elastic* or the elasticity measure is greater than one in absolute value), a fee increase will lead to a relatively large decrease in patenting activities such that overall revenues will decrease. When developing fee forecasts, the Office accounts for how applicant behavior will change at different fee amounts projected for the various patent services. Additional detail about the Office's elasticity estimates is available in ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Description of Elasticity Estimates,*'' available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

Aggregate Revenue Estimate Ranges

When estimating aggregate revenue, the USPTO prepares a high and a low range of fee collection estimates. This range accounts for the inherent uncertainty, sensitivity, and volatility of predicting fluctuations in the economy and market environment; interpreting policy and process efficiencies; and developing fee workload and fee collection estimates from assumptions. The Office estimates a range for all its major workload categories including application filings, extensions of time, PTAB fees, maintenance fees, PCT filings, and trademark filings. Additional detail about the Office's aggregate revenue, including projected workloads by fee, is available in ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Aggregate Revenue Estimates Alternative 1: Proposed Alternative*'' available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

Summary

Patent fees are collected for patent-related services and products at different points in time within the patent application examination process and over the life of the pending patent application and granted patent. Approximately half of all patent fee collections are from maintenance fees, which subsidize the cost of filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections, because fewer patent application filings means the Office collects fewer fees to devote to production-related costs, such as additional examining staff and overtime. The resulting reduction in production activities creates an out-year revenue impact because less production output in one year results in fewer issue and maintenance fee payments in future years.

The USPTO's five-year estimated aggregate patent fee revenue (*see* Table 3) is based on the number of patent applications it expects to receive for a given fiscal year, work it expects to process in a given fiscal year (an indicator for workload of patent issue fees), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the Office adjusts individual fees up or down based on cost and policy decisions (*see Step 3: Set Specific Fee Amounts*), estimates the effective dates of new fee rates, and then multiplies the resulting fees by appropriate workload volumes to calculate a revenue estimate for each fee. To calculate the aggregate revenue, the Office assumes that all proposed fee rates will become effective on April 1, 2017. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (*see* Table 3).

Step 3: Set Specific Fee Amounts

Once the Office finalizes the annual requirements and aggregate prospective costs for a given year during the budget formulation process, the Office sets specific fee amounts that, together, will derive the aggregate revenue required to recover the estimated aggregate prospective costs during that time frame. Calculating individual fees is an iterative process that encompasses many variables. One variable that the USPTO considers to inform fee setting is the historical cost estimates associated with individual fees. The Office's Activity-Based Information (ABI) provides historical cost for an organization's activities and outputs by individual fee using the activity-based costing (ABC) methodology. ABC is commonly used for fee setting throughout the Federal Government. Additional information about the methodology, including the cost components related to respective fees, is available in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Activity-Based Information and Patent Fee Unit Expense Methodology*'' available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The USPTO provides data for FY 2013–FY 2015 because the Office finds that reviewing the trend of ABI historical cost information is the most useful way to inform fee setting. The underlying ABI data are available for public inspection at the USPTO.

When the Office implements a new process or service, historical ABI data is typically not available. However, the Office will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

V. Individual Fee Rationale

The Office projects that the aggregate revenue generated from the proposed patent fees will recover the prospective aggregate cost of its patent operations including contributions to the operating reserve per the strategic goal of implementing a sustainable funding model. As detailed previously, the PPAC supports this approach, stating that it ''agrees that the Office should set its fees to establish an adequate revenue stream over a sustained period to fund the people and infrastructure essential for a high quality, low pendency examination process, and to fund its operating reserve.'' It is important to recognize that each individual proposed fee is not necessarily set equal to the estimated cost of performing the activities related to the fee. Instead, as described in Part III: Rulemaking Goals and Strategies, some of the proposed fees are set at, above, and below their unit costs to balance several key fee setting policy factors: *Fostering innovation, facilitating effective administration of the patent system,* and *offering patent processing options to applicants.* For example, many of the initial filing fees are intentionally set below unit cost in order to foster innovation by removing barriers to entry for innovators. To balance the aggregate

revenue loss of fees set *below cost,* other fees must be set *above cost* in areas where it is less likely to reduce inventorship (*e.g.,* maintenance). The Office applied a similar rationale to set and adjust patent fees in the 2013 final rule, the initial patent fee setting rulemaking using AIA authority. 78 FR 4212 (January 18, 2013).

For some fees proposed in this NPRM, the USPTO does not typically maintain individual historical cost data for the service provided, such as maintenance fees. Instead, the Office evaluates the policy factors described in Part III to inform fee setting. By setting fees at particular levels, the USPTO aims to: (1) Foster an environment where examiners can provide and applicants can receive prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and the faster dissemination of patented information; and (3) help recover costs for activities that strain the patent system.

The rationale for the proposed changes are grouped into three major categories, discussed below: (A) Fees where large entity amounts stayed the same or did *not* change by greater than plus or minus 10 percent or 20 dollars; (B) fees where large entity amounts changed from the current amount by greater than plus or minus 10 percent and 20 dollars; and (C) fees that are discontinued or replaced. The purpose of the categorization is to identify large fee changes for the reader and provide an individual fee rationale for such changes. The categorization is based on changes in large entity fee amounts because percentage changes for small and micro entity fees that are in place today would be the same as the percentage change for the large entity, and the dollar change would be half or one quarter of the large entity change. Therefore, the only time there will be a small or micro entity fee change that meets the greater than plus or minus 10 percent or 20 dollars criteria without a similar change for the large entity fee will be for those instances when the Office is introducing new small and micro entity fees where there was previously only a large entity fee. These types of changes are discussed separately.

The *Table of Patent Fees* includes the current and proposed fees for large, small, and micro entities as well as unit costs for the last three fiscal years. Part IV: Discussion of Specific Rules contains a complete listing of fees that are set or adjusted in the proposed patent fee schedule.

A. Fees With Proposed Changes Less Than Plus or Minus 10 Percent or 20 Dollars

The Office proposes to adjust slightly (*i.e.,* less than plus or minus 10 percent or 20 dollars) several fees not discussed in sections B or C below. The *Table of Patent Fees* demarcates which fees meet the dollar change and percent change thresholds and are included for discussion in Part V. Proposed fees are rounded to the nearest five dollars by applying standard arithmetic rules. For fees that have small and micro entity fee reductions, the large entity fee will be rounded to the nearest 20 dollars by applying standard arithmetic rules. The resulting proposed fee amounts will be convenient to patent users and permit the Office to set small and micro entity fees at whole dollar amounts when applying the applicable fee reduction. The slight increase in these fees helps the Office to recover higher costs of performing such services due to increased aggregate cost of doing business. The proposed fee adjustments in this category are listed in the *Table of Patent Fees.*

B. Fees With Proposed Changes of Greater Than Plus or Minus 10 Percent and 20 Dollars

For those fees that are proposed to change by greater than plus or minus 10 percent and 20 dollars, the individual fee rationale discussion is divided into three categories, including: (1) New and significant fees; (2) patent enrollment fees; and (3) fees adjusted and amended to include discounts for small and micro entities.

New and significant fees are further divided into subcategories according to the function of the fees, including: (a) Mega-sequence listing filing; (b) design and plant search, examination, and issue; (c) request for continued examination (RCE); (d) information disclosure statements; (e) certificate of correction; (f) request for *ex parte* reexamination; (g) appeals; (h) AIA trials; (i) PCT- International Stage; and (j) reissue patent maintenance rules.

As discussed above, for purposes of comparing amounts in the individual fee rationale discussion, the Office has included the current fees as the baseline to calculate the dollar change and percent change for proposed fees.

(1) New and Significant Fees

The following fees fall under the category of new and significant. A discussion of the rationale for each fee follows.

(a) Mega-Sequence Listing Filing

TABLE 4—MEGA-SEQUENCE LISTING FILING—FEE CHANGES AND UNIT COST

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Submission of sequence listings of 300MB to 800MB	new	$1,000 ($500) [$250]	+$1,000 (+$500) [+$250]	n/a (n/a) [n/a]	n/a
Submission of sequence listings of more than 800 MB	new	$10,000 ($5,000) [$2,500]	+$10,000 (+$5,000) [+$2,500]	n/a (n/a) [n/a]	n/a

The Office proposes two new fees to manage handling of sequence listings of 300 MB or more. Pricing for this fee is divided into two tiers with Tier 1 for file sizes 300MB to 800MB and Tier 2 for file sizes greater than 800MB.

The level of effort associated with the handling of mega-sequence listings is significant, because the Office's systems require extra storage and special handling for files beyond 300 MB. The Office has not yet collected actual cost data for sequence listings with file sizes of 300 MB or greater. However, based on

historical data, on average, less than 10 applications per year contained sequence listing files greater than 300MB. Based on previously filed applications with lengthy sequence listings, the Office determined that some applications disclosed sequence data that met the length thresholds for being included in the sequence listing but that was neither invented by the applicants nor claimed. Mega-sequence listings, in particular, often included sequences that were available in the prior art, were not essential material, and could have been described instead, for example, by name and a publication or accession reference. Further, claims accompanying such applications were frequently directed to the manipulation of sequence data rather than the substance of the sequences themselves. Submission of a mega-sequence listing in these applications would not have been necessary to complete the application if applicants limited the number of sequences that were described in such a way as to be required in a sequence listing. The proposed fee should encourage applicants to draft their specifications such that sequence data that is not essential material is not required to be included in a sequence listing. A reduced number of mega-sequence listings will benefit the Office and the public by reducing the strain on Office resources, thus facilitating the effective administration of the patent system.

(b) Design and Plant Search, Examination, and Issue

TABLE 5—DESIGN AND PLANT SEARCH, EXAMINATION, AND ISSUE FEES—FEE CHANGES

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Design Search Fee	$120	$160	+$40	+33%	$397
	($60)	($80)	(+$20)	(+33%)	
	[$30]	[$40]	[+$10]	[+33%]	
Plant Search Fee	$380	$420	+$40	+11%	$1,773
	($190)	($210)	(+$20)	(+11%)	
	[$95]	[$105]	[+$10]	[+11%]	
Design Examination Fee	$460	$600	+$140	+30%	$608
	($230)	($300)	(+$70)	(+30%)	
	[$115]	[$150]	[+$35]	[+30%]	
Design Issue Fee	$560	$800	+$240	+43%	$314
	($280)	($400)	(+$120)	(+43%)	
	[$140]	[$200]	[+$60]	[+43%]	
Plant Issue Fee	$760	$1,000	+$240	+32%	$314
	($380)	($500)	(+$120)	(+32%)	
	[$190]	[$250]	[+$60]	[+32%]	

Design and plant patents are unlike utility patents in that they do not pay maintenance fees after the patent has been granted. Under the current utility fee structure, entry costs (filing, search, and examination fees) are intentionally set below the full cost of performing this service as a means to foster innovation. Then, the full cost of examination is recovered through the payment of issue and maintenance fees. Given the lack of maintenance fees and the fact that the majority of design applicants are small and micro entities who are eligible to pay reduced fees, the Office currently does not recover the costs to examine design and plant patent applications solely from design and plant application fees. Instead, these costs are being subsidized by other application types (*e.g.,* utility) and processes. The proposed fees would better align the fees with costs by bringing both application types closer to aggregate cost recovery while maintaining some subsidization. In an effort to limit cost-based entry barriers for these application types, the Office proposes the largest increase, in terms of dollars, for the issue fee.

(c) Request for Continued Examination (RCE)—First and Second and Subsequent Request

TABLE 6—REQUEST FOR CONTINUED EXAMINATION (RCE) FEE CHANGES

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Request for Continued Examination (RCE)—1st Request (*see* 37 CFR 1.114)	$1,200	$1,300	+$100	+8%	$2,187
	($600)	($650)	(+$50)	(+8%)	
	[$300]	[$325]	[+$25]	[+8%]	
Request for Continued Examination (RCE)—2nd and Subsequent Request (*see* 37 CFR 1.114)	$1,700	$1,900	+$200	+12%	$1,540
	($850)	($950)	(+$100)	(+12%)	
	[$425]	[$475]	[+$50]	[+12%]	

The proposed moderate increases to RCE fees directly support the fee setting policy factor to align fees with costs. The Office's proposed increase would more closely align the fee rates with the cost of processing RCEs, as calculated using the most recently available cost data (FY 2015). Specifically, the Office proposes to increase the first RCE fee rate from $1,200 to $1,300 for large entities, a $100 increase (8 percent). The FY 2015 cost to examine a first RCE was $2,187. When factoring in filings by small and micro entities, first RCE fees collected 48.8 percent of their aggregate examination costs in FY 2015. When discussing RCEs, it is helpful to recognize the impact of small entity discounts on the Office's costs. Specifically, while small and micro entity fee rates are reduced by 50 percent and 75 percent respectively, the cost of processing these actions is not reduced accordingly.

The Office proposes to increase the second and subsequent RCE fee rate from $1,700 to $1,900 for large entities, a $200 increase (12 percent). The FY 2015 cost to examine a second and subsequent RCE was $1,540. When factoring filings by small and micro entities, second and subsequent RCE fees fully collected the complete examination cost in FY 2015. When combined, first and second and subsequent RCE fees collected 62.5 percent of the examination costs. In order to approach cost recovery and limit the increase to the first RCE fee rate, the Office proposes a slightly larger increase for the second and subsequent RCE fee rate. Had this fee structure been in place in FY 2015, the Office would have recovered 68.6 percent of RCE costs as opposed to the 62.5 percent that was realized. In FY 2015, the Office collected fees for 112,634 first RCEs and for 57,931 second and subsequent RCEs.

While this fee structure will not achieve full cost recovery for RCEs, it will bring collections closer to cost and therefore reduce the subsidy for RCE filings currently provided by other patent fees. In addition to the fee adjustments, the USPTO is committed to focusing on initiatives that will reduce the need for RCEs. Examples of initiatives the Office has already implemented to reduce the need for RCEs include the QPIDS pilot program (*http://www.uspto.gov/patent/initiatives/quick-path-information-disclosure-statement-qpids*) and the AFCP 2.0 (*http://www.uspto.gov/patent/initiatives/after-final-consideration-pilot-20*). Additionally, the recently announced Enhanced Patent Quality Initiative (*http://www.uspto.gov/patent/initiatives/enhanced-patent-quality-initiative-0*) will be evaluating and strengthening work products, processes, and services at all stages of the patent process.

(d) Information Disclosure Statements (IDS)

TABLE 7—IDS—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Submission of an Information Disclosure Statement	$180 ($90) [$45]	$240 ($120) [$60]	+$60 (+$30) [+$15]	+33% (+33%) [+33%]	n/a

The Office proposed new procedural rules and fee rates for the Information Disclosure Statement practices in its initial proposal to PPAC. Based on the feedback received, the Office determined not to move forward with the changes to the IDS procedural rules. Instead, the Office proposes to increase the submission fee from $180 to $240. The Office proposes the adjustment in an effort to optimally set the fee to encourage early submission of an IDS when possible. However, based on stakeholder feedback offered in response to the Office's initial patent fee setting proposal, the Office aims to keep the fee rate low enough to encourage timely filings during the time period (and under the conditions) when the fee would be required.

(e) Certificate of Correction Fees

TABLE 8—CERTIFICATE OF CORRECTION FEES—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Certificate of Correction	$100	$150	+$50	+50%	$93

The Office proposes to increase the fee for a certificate of correction by $50 to $150. The Office proposes the adjustment in an effort to encourage applicants to submit accurate information initially, while at the same time not increasing the rate too much above unit cost recovery to discourage disclosure of needed corrections when an error has been identified. Whenever a mistake of a clerical or typographical nature, or of minor character, which was not the fault of the USPTO, appears in a patent and a showing has been made that such mistake occurred in good faith, the Director may, upon payment of this fee, issue a certificate of correction, if the correction does not involve such changes in the patent as would constitute new matter or would require reexamination.

(f) Request for Ex Parte Reexamination Fees

TABLE 9—REQUEST FOR EX PARTE REEXAMINATION FEES—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Ex Parte Reexamination (§ 1.510(a)) Streamlined	new	$6,000 ($3,000) [$1,500]	+$6,000 (+$3,000) [+$1,500]	n/a	n/a

The Office proposes to establish a new fee for smaller, streamlined reexamination filings. The streamlined filings would reduce the cost to the USPTO, allowing the Office to pass on the cost savings to applicants. The proposed fee would apply to *ex parte* reexamination requests having: (i) 40 Pages or less; (ii) lines that are double-spaced or one-and-a-half spaced; (iii) text written in a non-script type font such as Arial, Times New Roman, or Courier; (iv) a font size no smaller than 12 point; (v) margins which conform to the requirements of 37 CFR 1.52(a)(1)(ii); and (vi) sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition. The following parts of an *ex parte* reexamination request are excluded from (i) through (v) above: (a) The copies of every patent or printed publication relied upon in the request pursuant to 37 CFR 1.510(b)(3); (b) the copy of the entire patent for which reexamination is requested pursuant to 37 CFR 1.510(b)(4); and (c) the certifications required pursuant to 37 CFR 1.510(b)(5) and (6). Completed forms such as the Request for *Ex Parte* Reexamination Transmittal Form (PTO/SB/57) or the information disclosure statement form (PTO/SB/08), or their equivalents, will also be excluded from (i) through (v). Claim charts will be considered part of the request and will be included in the page limit. Any paper containing argument directed to the patentability or unpatentability of the claims, such as an affidavit or declaration, will be included in the page limit and subject to the above requirements. If only a portion of the paper contains argument, the entire paper will be included in the page limit. The Office deems conclusions and/or definitions to be argumentative. For example, a request that includes 40 pages of argument and a 41st page that includes conclusions or definitions would be deemed to be a request having greater than 40 pages. A page that consists solely of a signature will not be included in the page limit. The determination of whether a paper contains argument will be within the sole discretion of the Office.

Note that micro entity status is only available to patent owner requesters, not to third party requesters. The change is consistent with the USPTO's fee setting policy factors to align fees to costs, offer additional processing options, and facilitate the effective administration of the patent system, and is also consistent with the requirements of 35 U.S.C. 123.

(g) Appeal Fees

TABLE 10—APPEAL—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Notice of Appeal	$800 ($400) [$200]	$1,000 ($500) [$250]	+$200 (+$100) [+$50]	+25% (+25%) [+25%]	$45
Forwarding an Appeal in an Application or *Ex parte* Reexamination Proceeding to the Board	$2,000 ($1000) [$500]	$2,500 ($1,250) [$625]	+$500 (+$250) [+$125]	+25% (+25%) [+25%]	$4,815

At the current fee rate, the fee paid for an *ex parte* appeal only covers 58 percent of the Office's cost for an appeal. The proposed fee increase will result in *ex parte* appeal fees covering 72 percent of the Office's cost to conduct an *ex parte* appeal.

In the past few years, the Office has made great strides in reducing the backlog and pendency for *ex parte* appeals. Appeal inventory reached over 27,000 (in 2012) and has now fallen to under 19,000 (in April 2016). As of the end of fiscal year 2015, the average pendency for decided *ex parte* appeals was 30 months. The Office aspires to reach an appeals pendency goal of 12 months by the end of FY 2018 and to further reduce the existing inventory. As mentioned in Part III, the PTAB is working to reduce inventory via two pilot programs, EPAP and the Small Entity Pilot Program. The proposal would allow the Office to better align fees to costs by reducing the gap between the amount paid by an appellant and the fully burdened cost of reviewing appeals by the Board. The additional revenue supports continued improvements to pendency and inventory via enhanced technology.

(h) AIA Trials

TABLE 11—AIA TRIALS—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Inter Partes Review Request Fee—Up to 20 Claims	$9,000	$14,000	+$5,000	+56	$22,165
Inter Partes Review Post-Institution Fee—Up to 15 Claims	$14,000	$16,500	+$2,500	+18	$12,674
Inter Partes Review Request of Each Claim in Excess of 20	$200	$300	+$100	+50	n/a
Inter Partes Post-Institution Request of Each Claim in Excess of 15	$400	$600	+$200	+50	n/a
Post-Grant or Covered Business Method Review Request Fee—Up to 20 Claims	$12,000	$16,000	+$4,000	+33	$16,213
Post-Grant or Covered Business Method Review Post-Institution Fee—Up to 15 Claims	$18,000	$22,000	+$4,000	+22	$23,060
Post-Grant or Covered Business Method Review Request of Each Claim in Excess of 20	$250	$375	+$125	+50	n/a
Post-Grant or Covered Business Method Review Post-Institution Request of Each Claim in Excess of 15	$550	$825	+$275	+50	n/a

The AIA established two new trial proceedings: *Inter partes* review and post-grant review. *Inter partes* review is a trial proceeding created by the AIA that allows the Office to review the patentability of one or more claims in a patent only on a ground that could be raised under 35 U.S.C. 102 or 103, and only on the basis of prior art consisting of patents or printed publications. The *inter partes* review process begins with a third party filing a petition. An *inter partes* review may be instituted upon a showing that there is a reasonable likelihood that the petitioner would prevail with respect to at least one claim challenged. If the proceeding is instituted and not dismissed, a final determination by the Board will be issued within one year (extendable for good cause by six months). The Office proposes to increase all four separate fees for *inter partes* review, which are due upon the filing of a petition. The USPTO will refund the post-institution fee if the IPR proceeding is not instituted by the PTAB.

Post-grant review is a trial proceeding created by the AIA that allows the Office to review the patentability of one or more claims in a patent on any ground that could be raised under 35 U.S.C. 282(b)(2) and (b)(3) in effect on September 16, 2012. The post-grant review process begins when a third party files a petition within nine months of the grant of the patent. A post-grant review may be instituted upon a showing that it is more likely than not that at least one challenged claim is unpatentable or that the petition raises an unsettled legal question that is important to other patents or patent applications. If the trial is instituted and not dismissed, the Board will issue a final determination within one year of institution. This period can be extended for good cause for up to six months from the date of one year after instituting the review.

In FY 2015, the PTAB received over 1,900 AIA trial filings and the Office expects that number to grow in the coming fiscal years. In order to keep up with demand and continue to provide high quality decisions within the statutory time limits, the Office needs to close the gap between the cost and the fees for performing these services. When the fees for these services were initially set, the Office had to estimate what the costs would be without the benefit of historical cost information. Now that the trials have been in place for three fiscal years, the Office has actual historical cost data available to more accurately set these fees and recover costs.

(i) Patent Cooperation Treaty (PCT)—International Stage

TABLE 12—PATENT COOPERATION TREATY (PCT)—INTERNATIONAL STAGE—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Late Furnishing Fee for Providing a Sequence Listing in Response to an Invitation Under PCT Rule 13*ter*.	new	$300 ($150) [$75]	+$300 (+$150) [+$75]	n/a	n/a

The Office proposes a new fee to encourage timely filing of sequence listings in international applications as another way to facilitate the effective administration of the patent system. When an applicant does not provide a sequence listing in searchable format with the international application or provides a defective sequence listing, the United States, acting as International Searching Authority (ISA/US) or as International Preliminary Examining Authority (IPEA/US), must issue an invitation to the applicant to provide the missing or corrected sequence listing. This additional process creates a delay in the issuance of the International Search Report (ISR) or

International Preliminary Report on Patentability (Chapter II). The most recent data shows that the ISA/US issues ISRs within 16 months of the priority date for 75 percent of all international applications searched by the ISA/US. However, when the ISA/US issues an invitation to provide a sequence listing, the ISA/US issues ISRs within 16 months in only 28 percent of those international applications. The time limit for issuance of the ISR under PCT Rule 42 in most circumstances is 16 months from the priority date. This new fee will help compensate the Office for the extra work associated with issuing the invitation and handling the response, while better positioning the Office to meet applicable treaty timeframes. The fee is similar in size and scope to fees charged by other international intellectual property offices.

(j) Maintenance Fee Payments—Reissue Patent Rules

For each issued patent, the Office may grant one or more reissue patents. However, current practice dictates that only one maintenance fee is required for all of the possible reissue patents granted from a single patent. This proposed change of practice would require payment of maintenance fees for each reissue patent, instead of a single maintenance fee payment for the group of reissue patents. The large majority of reissue patents are granted after the first stage maintenance fee payment has already been paid on the initial patent. Over the last six years, approximately 150 reissue patents per year would have been subject to additional fees due to this proposed rule change. This is a significantly higher level than the Office experienced prior to FY 2010. For example, between FY 2003 and FY 2009, the average was 27 per year. The Office expects this change in practice to encourage patent owners to prioritize which reissue patents they want to maintain. If an owner wishes to maintain all reissue patents in force, he or she may do so by paying the appropriate maintenance fees. For reissue patents that are not maintained, subject matter previously covered by the patent would become available in the public domain to improve upon and further foster innovation.

(2) Office of Enrollment and Discipline Fees and Patent Enrollment Fees

The following proposed fee adjustments are comprised of Office of Enrollment and Discipline (OED) fees and other patent enrollment fees. In addition to the proposed fee rate changes, there are five new fees being proposed in this section. The purpose of amending the fees in this section is to better align fees with actual costs. During the previous patent fee setting effort, historical cost information for these activities was not available. Since then, the Office has developed cost information to more appropriately propose fee adjustments. No enrollment or disciplinary fees have been increased since 2008, and only two fees were adjusted that year. All other enrollment and disciplinary fees were last changed much earlier, specifically, between 1991 and 2004. In fact, one OED fee has been unchanged since 1982. As time passes, the difference between the fee charged by the Office and the cost to the Office to perform the service increases, resulting in greater subsidies by other patent fees. The increases to these fees will help to close the gap between the fee charged and the cost to perform the service. A discussion of the rationale for each fee change follows.

TABLE 13—OED AND PATENT ENROLLMENT—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Application Fee (Non-Refundable)	$40	$100	+$60	+150%	$225
On Registration to Practice Under § 11.6	$100	$200	+$100	+100%	$493
Certificate of Good Standing as an Attorney or Agent, Standard	$10	$40	+$30	+300%	$39
Certificate of Good Standing as an Attorney or Agent, Suitable for Framing	$20	$50	+$30	+150%	$49
Review of Decision by the Director of Enrollment and Discipline Under § 11.2(c)	$130	$400	+$270	+208%	$2,044
Review of Decision of the Director of Enrollment and Discipline Under § 11.2(d)	$130	$400	+$270	+208%	$1,827
Administrative Reinstatement Fee	$100	$200	+$100	+100%	$940
On Grant of Limited Recognition Under § 11.9(b)	$100	$200	+$100	+100%	$493
For USPTO-Assisted Recovery of ID or Reset of Password for the Office of Enrollment and Discipline Information System	new	$70	+$70	n/a	n/a
For USPTO-Assisted Change of Address Within the Office of Enrollment and Discipline Information System	new	$70	+$70	n/a	n/a
For USPTO-Administered Review of Registration Examination	new	$450	+$450	n/a	$515

The Office proposes to increase the application fee for admission to the examination for registration to practice from $40 to $100, about half of the historical cost of this service.

The fee for registration to practice or for a grant of limited recognition under § 11.9(b) or (c) is currently set at $100, and both transactions have the same fee code. The Office proposes to separate the fee for Registration to Practice from the fee for Grant of Limited Recognition and increase the fee for each to $200, which is still below the historical cost of performing these services. The Office proposes eliminating the reference to § 11.9(c) in the current provision. The Office does not presently impose a fee for an unregistered individual to

prosecute an international patent application in the manner described in § 11.9(c). The Office proposes to use the existing fee code for Registration to Practice fees and create a new fee code for Grant of Limited Registration.

The Office is proposing an increase to the fee for the delivery of a certificate of good standing. A practitioner may also request a certificate of good standing as an attorney or agent that has been authentically signed by the Director of OED and crafted for framing. The Office proposes to increase the fee for both of these services to cost recovery, $40 and $50, respectively.

The Office proposes to increase the fees for petitions to the OED Director regarding enrollment or recognition. However, the proposed fees are still significantly below cost recovery. Any petition from any action or requirement of the staff of OED reporting to the OED Director shall be taken to the OED Director accompanied by payment of the fee, proposed at $400.

The Office proposes to adjust the fees for a review of OED Director's decision regarding enrollment or recognition. A party dissatisfied with a final decision of the OED Director regarding enrollment or recognition may seek review of the decision upon petition to the USPTO Director accompanied by payment of the fee, proposed at $400. This fee is being increased, but is still set significantly below cost recovery.

The Office proposes to set the fee for administrative reinstatement at $200. Reinstatement fees are imposed on practitioners seeking to be reinstated to active status. Raising the fee, while still set far below cost recovery, will help close the gap between the fee and the cost for performing this service.

The Office proposes to create and set the fee for USPTO-assisted reset of user IDs and passwords for an OED Information System—Customer Interface (OEDIS–CI) account at $70. The enhancement of the OEDIS–CI was implemented in FY 2015. With this enhancement, customers are now able to perform this process on-line as a self-service option free of charge. The proposed fee would only be charged if it was requested that the USPTO perform this task instead of the self-service option.

The Office proposes to create and set the fee for USPTO-assisted roster maintenance (change of address) in an OEDIS–CI account at $70. With the OEDIS–CI enhancement, customers are now able to perform this process on-line as a self-service method free of charge. The proposed fee would only be charged if it was requested that the USPTO perform this task instead of the self-service option.

The Office proposes to set the fee for a registration examination review session at $450. Setting this fee at cost recovery relieves the administrative and cost burden of providing the review sessions. A private commercial entity currently provides this service to the public at a lower cost than the USPTO. The availability of the private-sector option has reduced demand for the USPTO-provided sessions and therefore increased the cost per registrant of USPTO-provided sessions.

The Office proposes to set the fee for changing a practitioner's registration status from agent to attorney. The Office currently charges $100 for this service. As proposed, the fee would remain unchanged; however, 37 CFR 1.21(a)(2)(iii) would specifically provide for this fee.

(3) Fees Amended To Include Discounts for Small and Micro Entities

Within this section, where new micro entity fees are proposed, it is expected that an applicant or patent holder would have paid the current small entity fee (or large entity in the event there is not a small entity fee) and dollar and percent changes are calculated from the current small entity fee amount (or large entity fee, where applicable). The following table lists fees where new small and/or micro entities are provided. Providing these fee reductions for small and micro entity innovators will continue the Office's efforts to foster innovation across all patent system users.

TABLE 14—AMENDED FEES TO INCLUDE DISCOUNTS FOR SMALL AND MICRO ENTITIES—FEE CHANGES AND UNIT COSTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	$121
Petition for Revival of an Abandoned Application for a Patent, for the Delayed Payment of the Fee for Issuing Each Patent, or for the Delayed Response by the Patent Owner in any Reexamination Proceeding	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	$244
Petition for the Delayed Submission of a Priority or Benefit Claim	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	$244
Petition to Excuse Applicant's Failure to Act Within Prescribed Time Limits in an International Design Application	$1,700 ($850) [$850]	$2,000 ($1,000) [$500]	+$300 (+$150) [−$350]	+18% (+18%) [−41%]	n/a
Petition to Convert an International Design Application to a Design Application Under 35 U.S.C. Chapter 16	$180 ($180) [$180]	$180 ($90) [$45]	$0 (−$90) [−$135]	0% (−50%) [−75%]	n/a

TABLE 14—AMENDED FEES TO INCLUDE DISCOUNTS FOR SMALL AND MICRO ENTITIES—FEE CHANGES AND UNIT COSTS—Continued

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Hague International Design Application Fees—Transmittal Fee	$120 ($120) [$120]	$120 ($60) [$30]	$0 (−$60) [−$90]	0% −50% −75%	n/a

C. Discontinued or Replaced Fees

This section describes fees that are being discontinued and replaced with new fees. The purpose of this action is to simplify the fee schedule, more clearly inform customers of costs upfront, and align with the Office's new financial software for which fixed fee rates, not variable (*e.g.,* at cost) are preferred. This section also includes fees that are being discontinued because of disuse. The Office does not capture historical cost information for these proposed discontinued or new fees.

(a) Discontinued and Replaced

TABLE 15—DISCONTINUED FEES WITH NEW FEE REPLACEMENTS

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Copy of Patent-Related File Wrapper and Contents of 400 or Fewer Pages, if Provided on Paper	$200	discontinue	−$200	n/a	n/a
Additional Fee for Each Additional 100 Pages of Patent-Related File Wrapper and (Paper) Contents, or Portion Thereof	$40	discontinue	−$40	n/a	n/a
Copy Patent File Wrapper, Paper Medium, Any Number of Sheets	new	$280	+$280	n/a	n/a
Copy of Patent-Related File Wrapper and Contents if Provided on a Physical Electronic Medium as Specified in 1.19(b)(1)(ii)	$55	discontinue	−$55	n/a	n/a
Copy of Patent-Related File Wrapper and Contents if Provided Electronically	$55	discontinue	−$55	n/a	n/a
Additional Fee for Each Continuing Physical Electronic Medium in Single Order of 1.19(b)(1)(ii)(B)	$15	discontinue	−$15	n/a	n/a
Copy Patent File Wrapper, Electronic Medium, Any Size or Provided Electronically	new	$55	+$55	n/a	n/a
Computer Records	at cost	discontinue	at cost	n/a	n/a
Copy of Patent Grant Single-Page TIFF Images (52 week subscription)	new	$10,400	+$10,400	n/a	n/a
Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription)	new	$5,200	+$5,200	n/a	n/a
Copy of PTMT Patent Bibliographic Extract and Other DVD (Optical Disc) Products	new	$50	+$50	n/a	n/a
Copy of U.S. Patent Custom Data Extracts	new	$100	+$100	n/a	n/a
Copy of Selected Technology Reports, Miscellaneous Technology Areas	new	$30	+$30	n/a	n/a
Labor Charges for Services, per Hour or Fraction Thereof	$40	discontinue	−$40	n/a	n/a
Additional Fee for Overnight Delivery	new	$40	+$40	n/a	n/a
Additional Fee for Expedited Service	new	$160	+$160	n/a	n/a

There are currently pairs of fees for copying patent-related file wrappers: A base fee and an excess fee. For both paper copies and electronic copies, these pairs are replaced with a single fee irrespective of size. A single fee will allow customers to more easily budget and plan expenses for this service.

The catch-all fee of ''Computer Records'' currently priced ''at cost'' is being replaced by five fees that encompass the work currently performed using this code: Copy of Patent Grant Single-Page TIFF Images (52 week subscription); Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription); Copy of

Patent Technology Monitoring Team (PTMT) Patent Bibliographic Extract and Other DVD (Optical Disc); Copy of U.S. Patent Custom Data Extracts; and Copy of Selected Technology Reports, Miscellaneous Technology Areas. Explicitly stating the service and fee at the start will provide customers clearer information to aid decision making.

These specific fees recover the USPTO's costs for processing, validating, packaging, and shipping of these products to customers worldwide. For the copy of Patent Grant Single-Page TIFF Images, when a customer orders this service, the customer is sent expedited weekly packages (one for each Tuesday in the Calendar Year) via United Parcel Service. Each package contains at a minimum one Blu-ray and one DVD optical disc. For the other three services listed for $5,200, the expedited weekly packages (one for each Tuesday or Thursday in the Calendar Year) typically contain either a single Blu-ray or DVD optical disc. As an alternative to requesting and paying for these services, the USPTO has provided customers the ability to download this information at no cost since June 2010. This information is currently provided in the two locations referenced earlier, BDSS and PDD since October 2015 and June 2013 respectively.

Similar to the single fee for copying Patent-Related File Wrappers, the ''Labor Charge'' per hour with its variable charges is replaced with a single fee for ''Expedited Service.'' Following the same theme, shorter than standard shipping is currently billed under a catch-all code but will now be replaced with a set fee for ''Overnight Delivery.''

(b) Discontinued

TABLE 16—DISCONTINUED FEES

Fee description	Current fees	Proposed fees	Dollar change	Percent change	FY 2015 Unit cost
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	
Self-Service Copy Charge, per Page	$0.25	discontinue	−$0.25	n/a	n/a
Establish Deposit Account	$10	discontinue	−$10	n/a	n/a
Uncertified Statement Re: Status of Maintenance Fee Payments	$10	discontinue	−$10	n/a	n/a
Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits.	at cost	discontinue	at cost	n/a	n/a
Copy of Patent-Related File Wrapper Contents That Were Submitted and are Stored on Compact Disk or Other Electronic Form (*e.g.,* Compact Disks Stored in Artifact Folder), Other Than as Available in 1.19(b)(1); First Physical Electronic Medium in a Single Order	$55	discontinue	−$55	n/a	n/a
Additional Fee for Each Continuing Copy of Patent-Related File Wrapper Contents as Specified in 1.19(b)(2)(i)(A)	$15	discontinue	−$15	n/a	n/a
Copy of Patent-Related File Wrapper Contents That Were Submitted and are Stored on Compact Disk, or Other Electronic Form, Other Than as Available in 1.19(b)(1); if Provided Electronically Other Than on a Physical Electronic Medium, per Order	$55	discontinue	−$55	n/a	n/a

To comply with Presidential Executive Order 13681, Improving the Security of Consumer Financial Transactions, current self-service copiers will be discontinued and the USPTO will enter into a ''No Cost'' contract with a vendor who will keep all payments collected in exchange for providing this service.

The USPTO's new Financial Manager system allows users to create their own deposit accounts so the Office proposes to retire the ''Establish Deposit Account'' fee. The fee associated with ''Uncertified Statement Re Status of Maintenance Fee Payments'' is discontinued due to lack of use. Customers have had the ability to do this online for more than 10 years. The fee associated with ''Petitions for documents in form other than that provided by this part, or in form other than that generally provided by Director, to be decided in accordance with merits'' is also discontinued due to lack of use.

The remaining fees pertaining to Patent-Related File Wrapper copies have never been used since their inception many years ago and therefore are being discontinued.

VI. Discussion of Specific Rules

The following section shows the CFR proposed fee amendments. The List of Subjects includes all proposed fee amendments, all proposed fee discontinuations, and all proposed changes to the CFR text.

Title 37 of the Code of Federal Regulations, Parts 1 and 41, are proposed to be amended as follows:

Section 1.16: Section 1.16 is amended by revising paragraphs (a) through (f) and (h) through (r) to set forth the application filing, excess claims, search, and examination fees for patent applications filed as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.16 are shown in Table 17.

TABLE 17—CFR SECTION 1.16 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.16(a)	1011/2011/3011	Basic Filing Fee—Utility	280	140	70	300	150	75
1.16(a)	4011	Basic Filing Fee—Utility (electronic filing for small entities).	n/a	70	n/a	n/a	75	n/a
1.16(b)	1012/2012/3012	Basic Filing Fee—Design	180	90	45	200	100	50
1.16(b)	1017/2017/3017	Basic Filing Fee—Design (CPA)	180	90	45	200	100	50
1.16(c)	1013/2013/3013	Basic Filing Fee—Plant	180	90	45	200	100	50
1.16(d)	1005/2005/3005	Provisional Application Filing Fee	260	130	65	280	140	70
1.16(e)	1014/2014/3014	Basic Filing Fee—Reissue	280	140	70	300	150	75
1.16(e)	1019/2019/3019	Basic Filing Fee—Reissue (CPA)	280	140	70	300	150	75
1.16(f)	1051/2051/3051	Surcharge—Late Filing Fee, Search Fee, Examination Fee, Inventor's Oath or Declaration, or Application Filed Without at Least One Claim or by Reference.	140	70	35	160	80	40
1.16(h)	1201/2201/3201	Independent Claims in Excess of Three.	420	210	105	460	230	115
1.16(h)	1204/2204/3204	Reissue Independent Claims in Excess of Three.	420	210	105	460	230	115
1.16(i)	1202/2202/3202	Claims in Excess of 20	80	40	20	100	50	25
1.16(i)	1205/2205/3205	Reissue Claims in Excess of 20	80	40	20	100	50	25
1.16(j)	1203/2203/3203	Multiple Dependent Claim	780	390	195	820	410	205
1.16(k)	1111/2111/3111	Utility Search Fee	600	300	150	660	330	165
1.16(l)	1112/2112/3112	Design Search Fee	120	60	30	160	80	40
1.16(m)	1113/2113/3113	Plant Search Fee	380	190	95	420	210	105
1.16(n)	1114/2114/3114	Reissue Search Fee	600	300	150	660	330	165
1.16(o)	1311/2311/3311	Utility Examination Fee	720	360	180	760	380	190
1.16(p)	1312/2312/3312	Design Examination Fee	460	230	115	600	300	150
1.16(q)	1313/2313/3313	Plant Examination Fee	580	290	145	620	310	155
1.16(r)	1314/2314/3314	Reissue Examination Fee	2,160	1,080	540	2,200	1,100	550

Section 1.17: Section 1.17 is amended by revising paragraphs (e), (m), (p), and (t) to set forth the application processing fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.17 are shown in Table 18.

TABLE 18—CFR SECTION 1.17 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.17(e)	1801/2801/3801	Request for Continued Examination (RCE) (1st request) (*see* 37 CFR 1.114).	1,200	600	300	1,300	650	325
1.17(e)	1820/2820/3820	Request for Continued Examination (RCE) (2nd and subsequent request).	1,700	850	425	1,900	950	475
1.17(m)	1453/2453/3453	Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding.	1,700	850	850	2,000	1,000	500
1.17(m)	1454/2454/3454	Petition for the Delayed Submission of a Priority or Benefit Claim.	1,700	850	850	2,000	1,000	500
1.17(m)	1784/2784/3784	Petition to Excuse Applicant's Failure to Act Within Prescribed Time Limits in an International Design Application.	1,700	850	850	2,000	1,000	500
1.17(m)	1558/2558/3558	Petition for the Delayed Payment of the Fee for Maintaining a Patent in Force.	1,700	850	850	2,000	1,000	500
1.17(p)	1806/2806/3806	Submission of an Information Disclosure Statement.	180	90	45	240	120	60
1.17(t)	1783/2783/3783	Petition to convert an international design application to a design application under 35 U.S.C. chapter 16.	180	180	180	180	90	45

Section 1.18: Section 1.18 is amended by revising paragraphs (a)(1), (b)(1), and (c)(1) to set forth the patent issue fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.18 are shown in Table 19.

Section 1.18(b)(3) is proposed to be amended to provide that the issue fee for issuing an international design application designating the United States, where the issue fee is paid through the International Bureau, is the amount established in Swiss currency pursuant to Hague Agreement Rule 28 as of the date of mailing of the notice of allowance (§ 1.311). The proposed amendment would facilitate processing of the issue fee by the International Bureau and would maintain parity in the treatment of the amount of the issue fee due whether paid directly to the USPTO or through the International Bureau in the event the issue fee changes after the mailing of the notice of allowance.

TABLE 19—CFR SECTION 1.18 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.18(a)(1)	1501/2501/3501	Utility Issue Fee	960	480	240	1,000	500	250
1.18(a)(1)	1511/2511/3511	Reissue Issue Fee	960	480	240	1,000	500	250
1.18(b)(1)	1502/2502/3502	Design Issue Fee	560	280	140	800	400	200
1.18(c)(1)	1503/2503/3503	Plant Issue Fee	760	380	190	1,000	500	250

Section 1.19: Section 1.19 is amended by revising paragraphs (b)(1), (b)(2), and (b)(4); removing and reserving (b)(2), (e), and (g); and adding (i) through (m) to set forth the patent document supply fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.19 are shown in Table 20.

TABLE 20—CFR SECTION 1.19 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.19(b)(1)(i)(A) and (ii)(A).	8007	Copy of Patent Application as Filed	20	20	20	35	35	35
1.19(b)(1)(i)(B)		Copy of Patent File Wrapper, Paper Medium, Any Number of Sheets.	n/a	n/a	n/a	280	280	280
1.19(b)(1)(ii)(B)		Copy Patent File Wrapper, Electronic Medium, Any Size or Provided Electronically.	n/a	n/a	n/a	55	55	55
1.19(b)(4)	8014	For Assignment Records, Abstract of Title and Certification, per Patent.	25	25	25	35	35	35
1.19(i)		Copy of Patent Grant Single-Page TIFF Images (52 week subscription).	n/a	n/a	n/a	10,400	10,400	10,400
1.19(j)		Copy of Patent Grant Full-Text W/Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription).	n/a	n/a	n/a	5,200	5,200	5,200
1.19(k)		Copy of PTMT Patent Bibliographic Extract and Other DVD (Optical Disc) Products.	n/a	n/a	n/a	50	50	50
1.19(l)		Copy of U.S. Patent Custom Data Extracts.	n/a	n/a	n/a	100	100	100
1.19(m)		Copy of Selected Technology Reports, Miscellaneous Technology Areas.	n/a	n/a	n/a	30	30	30

Section 1.20: Section 1.20 is amended by revising paragraphs (a), (b), (c)(1) through (4), and (e) through (g) to set forth the reexamination excess claims fees, disclaimer fees, and maintenance fees as authorized under Section 10 of the Act and to provide a new fee for streamlined requests for reexamination. The changes to the fee amounts indicated in § 1.20 are shown in Table 21.

TABLE 21—CFR SECTION 1.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.20(a)	1811	Certificate of Correction	100	100	100	150	150	150
1.20(b)	1816	Processing Fee for Correcting Inventorship in a Patent.	130	130	130	150	150	150
1.20(c)(1)		*Ex Parte* Reexamination (§ 1.510(a)) Streamlined.	n/a	n/a	n/a	6,000	3,000	1,500

TABLE 21—CFR SECTION 1.20 FEE CHANGES—Continued

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.20(c)(2)	1812/2812/3812	*Ex Parte* Reexamination (§ 1.510(a)) Non-Streamlined.	12,000	6,000	3,000	12,000	6,000	3,000
1.20(c)(3)	1821/2821/3821	Reexamination Independent Claims in Excess of Three and also in Excess of the Number of Such Claims in the Patent Under Reexamination.	420	210	105	460	230	115
1.20(c)(4)	1822/2822/3822	Reexamination Claims in Excess of 20 and Also in Excess of the Number of Claims in the Patent Under Reexamination.	80	40	20	100	50	25

Section 1.21: Section 1.21 is amended by revising paragraphs (a), (h)(2), and (i); removing and reserving paragraphs (g) and (j); and adding paragraphs (o), (p), and (q) to set forth miscellaneous fees and charges as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.21 are shown in Table 22.

TABLE 22—CFR SECTION 1.21 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.21(a)(1)(i)	9001	Application Fee (non-refundable)	40	40	40	100	100	100
1.21(a)(1)(ii)(A)	9010	For Test Administration by Commercial Entity.	200	200	200	200	200	200
1.21(a)(1)(ii)(B)	9011	For Test Administration by the USPTO.	450	450	450	450	450	450
1.21(a)(1)(iii)		For USPTO-Administered Review of Registration Examination.	n/a	n/a	n/a	450	450	450
1.21(a)(2)(i)	9003	On Registration to Practice Under § 11.6.	100	100	100	200	200	200
1.21(a)(2)(ii)		On Grant of Limited Recognition under § 11.9(b).	n/a	n/a	n/a	200	200	200
1.21(a)(2)(iii)	9025	On change of registration from agent to attorney.	100	100	100	100	100	100
1.21(a)(4)(i)	9005	Certificate of Good Standing as an Attorney or Agent, Standard.	10	10	10	40	40	40
1.21(a)(4)(ii)	9006	Certificate of Good Standing as an Attorney or Agent, Suitable for Framing.	20	20	20	50	50	50
1.21(a)(5)(i)	9012	Review of Decision by the Director of Enrollment and Discipline under § 11.2(c).	130	130	130	400	400	400
1.21(a)(5)(ii)	9013	Review of Decision of the Director of Enrollment and Discipline under § 11.2(d).	130	130	130	400	400	400
1.21(a)(6)(i)		For USPTO-Assisted Recovery of ID or Reset of Password for the Office of Enrollment and Discipline Information System.	n/a	n/a	n/a	70	70	70
1.21(a)(6)(ii)		For USPTO-Assisted Change of Address Within the Office of Enrollment and Discipline Information System.	n/a	n/a	n/a	70	70	70
1.21(a)(9)(ii)	9004	Administrative Reinstatement Fee	100	100	100	200	200	200
1.21(a)(10)	9014	On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office.	1,600	1,600	1,600	1,600	1,600	1,600
1.21(h)(2)	8021	Recording Each Patent Assignment, Agreement or Other Paper, per Property if not Submitted Electronically.	40	40	40	50	50	50
1.21(o)(1)		Submission of sequence listings ranging in size of 300MB to 800MB.	n/a	n/a	n/a	1,000	1,000	1,000
1.21(o)(2)		Submission of sequence listings exceeding 800MB.	n/a	n/a	n/a	10,000	10,000	10,000
1.21(p)		Additional Fee for Overnight Delivery.	n/a	n/a	n/a	40	40	40
1.21(q)		Additional Fee for Expedited Service.	n/a	n/a	n/a	160	160	160

Section 1.445: Section 1.445 is amended by adding paragraph (a)(5) to set a processing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.* The changes to the fee amounts indicated in § 1.445 are shown in Table 23.

TABLE 23—CFR SECTION 1.445(a)(5) FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.445(a)(5)	.....	Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.*	n/a	n/a	n/a	300	150	75

Section 1.482: Section 1.482 is revised by changing the title and adding paragraph (c) to set a processing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.* The changes to the fee amounts indicated in § 1.482 are shown in Table 24.

TABLE 24—CFR SECTION 1.482(c) FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.482(c)	.....	Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter.*	n/a	n/a	n/a	300	150	75

Section 1.492: Section 1.492 is amended by revising (a) through (f) to set forth the application filing, excess claims, search, and examination fees for international patent applications entering the national stage as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.492 are shown in Table 25.

TABLE 25—CFR SECTION 1.492 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.492(a)	1631/2631/3631	Basic PCT National Stage Fee	280	140	70	300	150	75
1.492(b)(2)	1641/2641/3641	PCT National Stage Search Fee—U.S. was the ISA.	120	60	30	140	70	35
1.492(b)(3)	1642/2642/3642	PCT National Stage Search Fee—Search Report Prepared and Provided to USPTO.	480	240	120	520	260	130
1.492(b)(4)	1632/2632/3632	PCT National Stage Search Fee—All Other Situations.	600	300	150	660	330	165
1.492(c)(2)	1633/2633/3633	National Stage Examination Fee—All Other Situations.	720	360	180	760	380	190
1.492(d)	1614/2614/3614	PCT National Stage Claims—Extra Independent (over three).	420	210	105	460	230	115
1.492(e)	1615/2615/3615	PCT National Stage Claims—Extra Total (over 20).	80	40	20	100	50	25
1.492(f)	1616/2616/3616	PCT National Stage Claims—Multiple Dependent.	780	390	195	820	410	205

Section 1.1031: Section 1.1031 is amended by revising paragraph (a) to set forth the international design application transmittal fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 1.031 are shown in Table 26.

Section 1.1031 is also proposed to be amended by adding paragraph (f) concerning the designation fee for the United States. As § 1.1031 concerns international design application fees, the Office believes it appropriate to include a provision therein regarding the U.S. designation fee. The proposed amendment is consistent with the U.S. designation fee currently in effect. See ''Individual Fees under the Hague Agreement,'' available on the WIPO Web site at *http://www.wipo.int/hague/en/fees/individ-fee.html,* and § 1.18(b).

TABLE 26—CFR SECTION 1.1031(a) FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
1.1031(a)	1781/2781/3781	International Design Application Transmittal Fee.	120	120	120	120	60	30

Section 41.20: Section 41.20 is amended by revising paragraph (b)(1) and (b)(4) to set forth the appeal fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 41.20 are shown in Table 27.

TABLE 27—CFR SECTION 41.20 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
41.20(b)(1)	1401/2401/3401	Notice of Appeal	800	400	200	1,000	500	250
41.20(b)(4)	1413/2413/3413	Forwarding an Appeal in an Application or *Ex Parte* Reexamination Proceeding to the Board.	2,000	1,000	500	2,500	1,250	625

Section 42.15: Section 42.15 is amended by revising paragraphs (a) and (b) to set forth the *inter partes* review and post-grant review or covered business method patent review of patent fees as authorized under Section 10 of the Act. The changes to the fee amounts indicated in § 42.15 are shown in Table 28.

TABLE 28—CFR SECTION 42.15 FEE CHANGES

CFR section	Fee code	Description	Current fees (dollars)			Proposed fees (dollars)		
			Large	Small	Micro	Large	Small	Micro
42.15(a)(1)	1406	*Inter Partes* Review Request Fee	9,000	9,000	9,000	14,000	14,000	14,000
42.15(a)(2)	1414	*Inter Partes* Review Post-Institution Fee.	14,000	14,000	14,000	16,500	16,500	16,500
42.15(a)(3)	1407	In Addition to the *Inter Partes* Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	200	200	200	300	300	300
42.15(a) (4)	1415	In addition to the *Inter Partes* Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	400	400	400	600	600	600
42.15(b)(1)	1408	Post-Grant or Covered Business Method Patent Review Request Fee.	12,000	12,000	12,000	16,000	16,000	16,000
42.15(b)(2)	1416	Post-Grant or Covered Business Method Patent Review Post-Institution Fee.	18,000	18,000	18,000	22,000	22,000	22,000
42.15(b)(3)	1409	In Addition to the Post-Grant or Covered Business Method Patent Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	250	250	250	375	375	375
42.15(b)(4)	1417	In Addition to the Post-Grant or Covered Business Method Patent Review Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	550	550	550	825	825	825

VII. Rulemaking Considerations

A. America Invents Act

This rulemaking proposes to set and adjust fees under section 10(a) of the AIA. Section 10(a) of the AIA authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under Title 35 of the United States Code (U.S.C.) for any services performed, or materials furnished, by the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs of the Office with respect to such patent fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services. Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the **Federal Register** any proposed fee change under section 10, and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits

resulting from the proposed change. For such rulemakings, the AIA requires that the Office provide a public comment period of not less than 45 days.

The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations. When proposing fees under Section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on October 20, 2015, the Director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC held a public hearing in Alexandria, Virginia, on November 19, 2015. Transcripts of the hearing are available for review at *http://www.uspto.gov/sites/default/files/documents/PPAC_Hearing_Transcript_20151119.pdf.* Members of the public were invited to the hearing and given the opportunity to submit written and/or oral testimony for the PPAC to consider. The PPAC considered such public comments from this hearing and made all comments available to the public via the Fee Setting Web site, *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* The PPAC also provided a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the preliminary proposed fees. The report regarding the preliminary proposed fees was released on February 29, 2016, and can be found online at *http://www.uspto.gov/sites/default/files/documents/PPAC_Fee%20_Setting_Report_2016%20%28Final%29.pdf.* The Office considered and analyzed all comments, advice, and recommendations received from the PPAC before publishing this NPRM. Before the final rule is issued, the public will have at least a 45-day period during which to provide comments to be considered by the USPTO.

B. Regulatory Flexibility Act

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) to examine the impact on small entities of the Office's proposed rule implementing changes to patent fees. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant impact on a substantial number of small entities. 5 U.S.C. 603, 605. Given that the proposed fee schedule is projected to result in $710.8 million in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2017 to FY 2021, the Office acknowledges that the fee adjustments proposed will impact all entities seeking patent protection and could have a significant impact on small and micro entities. The $710.8 million in additional aggregate revenue results from an additional $73.2 million in FY 2017, $150.0 million in FY 2018, $155.7 million in FY 2019, $162.4 million in FY 2020, and $169.5 million in FY 2021.

While the Office welcomes all comments on this IRFA, it particularly seeks comments describing the type and extent of the impact of the proposed patent fees on commenters' specific businesses. In describing the impact, the Office requests biographic detail about the impacted businesses or concerns, including the size, average annual revenue, past patent activity (*e.g.,* applications submitted, contested cases pursued, maintenance fees paid, patents abandoned, etc.), and planned patent activity of the impacted business or concern, where feasible. The Office will use this information to further assess the impact of the proposed rule on small entities. Where possible, comments should also describe any recommended alternative methods of setting and adjusting patent fees that would further reduce the impact on small entities.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1)–(5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. A Description of the Reasons Why the Action by the Agency Is Being Considered

Section 10 of the Act authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under title 35, U.S.C., for any services performed, or materials furnished, by the Office. Section 10 prescribes that patent fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs to the Office with respect to such patent fees. The proposed fee schedule will recover the aggregate cost of patent operations while facilitating the effective administration of the U.S. patent system. The reasons why the rulemaking is being considered are further discussed in section 6.i below and elsewhere in this IRFA and the NPRM.

2. The Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to implement the fee setting provisions of Section 10 of the Act by setting or adjusting patent fees to recover the aggregate cost of patent operations, including administrative costs, while facilitating the effective administration of the U.S. patent system. Since its inception, the Act strengthened the patent system by affording the USPTO the ''resources it requires to clear the still sizeable backlog of patent applications and move forward to deliver to all American inventors the first rate service they deserve.'' H.R. Rep. No. 112–98(I), at 163 (2011). In setting and adjusting fees under the Act, the Office seeks to secure a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including revenue needed to achieve strategic and operational goals. Additional information on the Office's strategic goals may be found in the Strategic Plan available at *http://www.uspto.gov/sites/default/files/documents/USPTO_2014-2018_Strategic_Plan.pdf.* Additional information on the Office's goals and operating requirements may be found in the ''*USPTO FY 2017 President's Budget,''* available at *http://www.uspto.gov/sites/default/files/documents/fy17pbr.pdf.* The legal basis for the proposed rule is Section 10 of the Act.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

SBA Size Standard

The Small Business Act (SBA) size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the Small Business Administration, the Office formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006). The Office's alternate small business size standard consists of SBA's previously established size standard for entities entitled to pay reduced patent fees. *See* 13 CFR 121.802.

Unlike SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The Office's definition of a small business concern for RFA purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105 and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109, 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 37, 60 (Dec. 12, 2006).

If a patent applicant self-identifies on a patent application as qualifying as a small entity, or provides certification of micro entity status for reduced patent fees under the Office's alternative size standard, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Estimate of Number of Small Entities Affected

The changes in the proposed rule will apply to any entity, including small and micro entities, which pays any patent fee set forth in the NPRM. The reduced fee rates (50 percent for small entities and 75 percent for micro entities) will continue to apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The Office reviews historical data to estimate the percentages of application filings asserting small entity status. Table 29 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

TABLE 29—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS *

	FY 2015 **	FY 2014	FY 2013	FY 2012	FY 2011	Average ***
Utility						
All	578,321	579,782	564,007	530,915	504,663	551,538
Small	142,845	133,930	136,490	132,198	127,175	134,528
% Small	24.7	23.1	24.2	24.9	25.2	24.4
Micro	28,916	18,553	7,896	N/A	N/A	18,455
% Micro	5.0	3.2	1.4	N/A	N/A	3.2
Reissue						
All	887	1,208	1,074	1,212	1,158	1,108
Small	200	280	229	278	240	245
% Small	22.6	23.2	21.3	22.9	20.7	22.1
Micro	10	24	9	N/A	N/A	14
% Micro	1.1	2.0	0.8	N/A	N/A	1.3
Plant						
All	1,119	1,124	1,318	1,181	1,103	1,169
Small	673	581	655	576	257	548
% Small	60.1	51.7	49.7	48.8	23.3	46.7
Micro	4	22	3	N/A	N/A	10
% Micro	0.4	2.0	0.2	N/A	N/A	0.9
Design						
All	36,889	36,216	35,065	32,258	30,247	34,135
Small	14,645	14,740	15,814	15,806	14,700	15,141
% Small	39.7	40.7	45.1	49.0	48.6	44.6
Micro	3,910	3,622	1,683	N/A	N/A	3,072
% Micro	10.6	10.0	4.8	N/A	N/A	8.5

* The patent application filing data in this table includes RCEs.
** FY 2015 application filing data are preliminary and will be finalized in the FY 2016 Performance and Accountability Report (PAR).
*** The micro entity average is from FY 2013 to FY 2015. All other averages are for all time periods shown.

Because the percentage of small entity filings varies widely between application types, the Office has averaged the small entity filing rates over the past five years for those application types in order to estimate future filing rates by small and micro entities. Those average rates appear in the last column of Table 29. The Office estimates that small entity filing rates will continue for the next five years at these average historic rates.

The Office forecasts the number of projected patent applications (*i.e.,* workload) for the next five years using

a combination of historical data, economic analysis, and subject matter expertise. The Office estimates that utility, plant, and reissue (UPR) patent application filings will grow by 1.5 percent in FY 2017, 2.0 percent in FY 2018, 3.0 percent in FY 2019, and 4.0 percent in FY 2020 and FY 2021. The Office forecasts design patent applications independently of UPR applications because they exhibit different behavior.

Using the estimated filings for the next five years, and the average historic rates of small entity filings, Table 30 presents the Office's estimates of the number of patent application filings by all applicants, including small and micro entities, over the next five fiscal years by application type.

The Office has undertaken an elasticity analysis to examine if fee adjustments may impact small entities and, in particular, whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive patent applicants and patentees are to fee changes. If elasticity is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The Office analyzed elasticity at the overall filing level across all patent applicants regardless of entity size and determined that, as none of the proposed fee changes are large enough to create a sizable change in demand for products and services, elasticity impacts are negligible and therefore not included in this iteration of fee adjustments. Additional information about elasticity estimates is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting* in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—Description of Elasticity Estimates.*''

TABLE 30—ESTIMATED NUMBERS OF PATENT APPLICATIONS IN FY 2017–FY 2021

	FY 2017 (Current)	FY 2018	FY 2019	FY 2020	FY 2021
Utility: All	592,844	604,711	622,874	647,833	673,788
Reissue: All	1,048	1,105	1,166	1,229	1,296
Plant: All	1,008	984	960	938	915
Design: All	41,191	43,614	46,183	48,905	51,791
Total: All	636,091	650,414	671,183	698,905	727,791

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and Type of Professional Skills Necessary for Preparation of the Report or Record

If implemented, this rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small and micro entities will continue to apply. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under this proposal. This action proposes only to adjust patent fees and not to set procedures for asserting small entity status or certifying micro entity status, as previously discussed.

The full proposed fee schedule (*see* Part VI: Discussion of Specific Rules) is set forth in this NPRM. The proposed fee schedule sets or adjusts 205 patent fees in total. This includes 14 fees that will be discontinued and 42 new fees.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Proposed Rules

The USPTO is the sole agency of the United States Government responsible for administering the provisions of title 35, United States Code, pertaining to examining and granting patents. It is solely responsible for issuing rules to comply with Section 10 of the AIA. No other Federal, state, or local entity has jurisdiction over the examination and granting of patents.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the PCT). Nevertheless, the USPTO believes that there are no other duplicative or overlapping rules.

6. Description of Any Significant Alternatives to the Proposed Rules Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rules on Small Entities

The USPTO considered several alternative approaches to the proposal, discussed below, including full cost recovery for individual services, an across the board adjustment to fees, and the baseline (status quo). The discussion here begins with a description of the proposal selected for this rulemaking.

i. Alternative 1: Proposed Alternative—Set and Adjust Patent Fees

The alternative proposed herein secures the Office's required revenue to cover its aggregate costs, while progressing towards the strategic goals of quality enhancements and patent application backlog and pendency optimization that will benefit all applicants, including small and micro entities, without undue burden to patent applicants and holders, barriers to entry, or reduced incentives to innovate. This alternative maintains small and micro entity discounts and adds new discounts where applicable. Compared to the current patent fee schedule, small entities will benefit from the establishment of two new small entity fee rates, while micro entities will benefit from the establishment of six new micro entity fee rates for existing services. Given that most micro entities would have paid large or small entity fee rates (depending on what was available), the establishment of micro entity fee rates represents significant savings to these entities. Further, all entities will benefit from the Office's proposal to discontinue 14 fees related to goods and services found to be of limited value based on the ability to obtain these services at zero cost or more efficiently from non-Office sources.

As discussed throughout this document, the fee changes proposed in

this alternative are moderate compared to other alternatives. Given that the proposed fee schedule will result in increased aggregate revenue under this alternative, small and micro entities would pay some higher fees when compared to the current fee schedule (Alternative 4). However, the fees are not as high as those initially proposed to PPAC. In the current fee proposal, the Office decided to slow the growth of the operating reserve and lower key fee amounts in response to comments and feedback the PPAC received from intellectual property stakeholders and other interested members of the public during and following the PPAC fee setting hearings during Fall 2015.

In summary, the fees to obtain a patent will increase slightly. For example, fees for both tiers of RCEs will increase slightly, but still less than those initially proposed to PPAC. Maintenance fee rates will remain unchanged at all three stages; however, all reissue patents will now be subject to maintenance fee payments if the patent owner wishes to maintain them. In an effort to continue reducing the inventory of *ex parte* appeals and help recapture a portion of the cost of providing these services, fees will increase for both Notice of Appeal and Appeal Forwarding. Fees will also increase for *inter partes* reviews based on updated cost data and the need to provide adequate resources to support the Office's ongoing compliance with AIA deadlines for these actions. Similarly, fees for both post-grant reviews and covered-business-method reviews will increase based on FY 2015 cost data and resources needed to sustain compliance with AIA deadlines. Finally, in response to feedback from the PPAC and members of the public, the proposed fee increase for design issues is $240, from $560 to $800. Under the original proposal to the PPAC, the fee would have increased by $440 to $1,000.

Adjusting the patent fee schedule as proposed in this NPRM allows the Office to implement the patent-related strategic goals and objectives documented in the Strategic Plan. Specifically, this fee setting rule supports the patent-related strategic goals to optimize patent quality and timeliness, which includes improving patent quality, reducing the backlog of unexamined applications and decreasing patent application pendency, and facilitating processing at the Patent Trial and Appeal Board (PTAB); and increasing international efforts to improve intellectual property policy, protection, and enforcement. This proposed rule also supports the Strategic Plan's management goal to achieve organizational excellence, which includes leveraging IT investments to better support compact prosecution and securing sustainable funding via a sufficient operating reserve. While all of the other alternatives discussed facilitate progress toward some of the Office's goals, the proposed alternative is the only one that does so in a way that does not impose undue costs on patent applicants and holders.

The proposed fee schedule for this rulemaking, as compared to existing fees (labeled Alternative 1—Proposed Alternative—Set and Adjust Patent Fees) is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* in the document entitled ''USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—IRFA Tables.'' Fee changes for small and micro entities are included in the tables. For the comparison between proposed fees and current fees, as noted above, the ''current fees'' column displays the fees that were in effect as of June 2016.

ii. Other Alternatives Considered

In addition to the proposed fee schedule set forth in Alternative 1, above, the Office considered several other alternative approaches. For each alternative considered, the Office calculated proposed fees and proposed revenue derived by each alternative scenario. The proposed fees and their corresponding revenue tables are available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.* Please note, only the fees outlined in Alternative 1 are proposed in this rulemaking; other scenarios are shown only to demonstrate the Office's analysis of other options.

a. Alternative 2: Unit Cost Recovery

The USPTO considered setting most individual large entity fees at the historical cost of performing the activities related to the particular service in FY 2015. This alternative continues existing and offers new small and micro entity discounts where eligible under AIA authority. Aside from maintenance fees, fees for which there is no FY 2015 cost data would be set at current rates under this alternative. The Office no longer collects activity-based information for maintenance fees, and previous year unit costs were negligible. Thus, for this alternative, maintenance fees are set at levels sufficient to generate enough revenue to cover the Office's anticipated budgetary requirements over the five-year period. For the small number of services that have a variable fee, the aggregate revenue table does not list a fee. Instead, for those services with an estimated workload, the workload is listed in dollars rather than units to develop revenue estimates. Fees without either a fixed fee rate or a workload estimate are assumed to provide zero revenue to the Office. Note, this alternative bases fee rates for FY 2017 through FY 2021 on FY 2015 historical costs. The Office recognizes that this approach does not account for inflationary factors that would likely increase costs and necessitate higher fees in the out-years.

It is common practice in the Federal Government to set individual fees at a level sufficient to recover the cost of that single service. In fact, official guidance on user fees, as cited in OMB Circular A–25: *User Charges,* states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the government is acting in its capacity as sovereign.

However, the Office asserts that Alternative 2 does not align well with the strategic and policy goals of this rulemaking. Both the current and proposed fee schedules are structured to collect more fees at the back-end (*i.e.* issue fees and maintenance fees), where the patent owner has the best information about a patent's value, rather than at the front-end (*i.e.* filing fees, search fees, and examination fees), when applicants are most uncertain about the value of their art, even though the front-end services are costlier to the Office. This alternative presents significant barriers to those seeking patent protection, because if the Office were to immediately shift from the current front-end/back-end balance to a unit cost recovery structure, front-end fees would increase significantly, nearly tripling in some cases (*e.g.,* search fees), even with small and micro entity fee reductions.

The Office has not attempted to estimate the quantitative elasticity impacts for application filings (*e.g.,* filing, search, and examination fees) or maintenance renewals (all stages) due to a lack of historical data that could inform such a significant shift in the Office's fee setting methodology. However, the Office suspects that the high costs of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative activities among all entities and especially for small and micro entities. Under the current fee schedule, maintenance fees subsidize all

applications, including those applications for which no claims are allowed. By insisting on unit cost payment at each point in the application process, the Office is effectively charging high fees for every attempted patent, meaning those applicants who have less information about the patentability of their claims may be less likely to pursue initial prosecution (*e.g.,* filing, search, and examination) or subsequent actions to continue prosecution (*e.g.,* RCE). The ultimate effect of these changes in behavior are likely to stifle innovation.

Similarly, the Office suspects that renewal rates could change as well, given significant fee reductions for maintenance fees at each of the three stages. While some innovators and firms may choose to file fewer applications given the higher front-end costs, others, whose claims are allowed or upheld, may seek to fully maximize the benefits of obtaining a patent by keeping those patents in force for longer than they would have previously (*i.e.,* under the status quo). In the aggregate, patents that are maintained beyond their useful life weaken the intellectual property system by slowing the rate of public accessibility and follow-on inventions, which is contrary to the Office's policy factor of fostering innovation. In sum, this alternative is inadequate to accomplish the goals and strategies as stated in Part III of this rulemaking.

The fee schedule for Alternative 2: Unit Cost Recovery is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—IRFA Tables.*'' For the comparison between proposed (unit cost recovery) fees and current fees, the ''current fees'' column displays the fees that are in effect as of June 2016. This column is used to calculate dollar and percent fee change compared to proposed fees.

b. Alternative 3: Across the Board Adjustment

In years past, the USPTO used its authority to adjust statutory fees annually according to increases in the consumer price index (CPI), which is a commonly used measure of inflation. Building on this prior approach and incorporating the additional authority under the AIA to set small and micro entity fees, Alternative 3 would set fees by applying a one-time 5.0 percent, across the board inflationary increase to the baseline (status quo) beginning in FY 2017. Five percent represents the change in revenue needed to achieve the aggregate revenue needed to cover budgetary requirements.

As estimated by the Congressional Budget Office, projected CPI rates by fiscal year are: 2.17 percent in FY 2017, 2.39 percent in FY 2018, 2.38 percent in FY 2019, and 2.42 percent in both FY 2020 and FY 2021. The Office elected not to apply the estimated cumulative inflationary adjustment (9.96 percent), from FY 2017 through FY 2021, because doing so would result in significantly more fee revenue than needed to meet the Office's core mission and strategic priorities. Under this alternative, nearly every existing fee would be increased and no fees would be discontinued or reduced. Given that all entities (large, small, and micro) would pay unilaterally higher fees, this alternative does not adequately support the Office's policy factor to foster innovation for all.

The fee schedule for Alternative 3: Across the Board Adjustment is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting,* in the document entitled ''*USPTO Setting and Adjusting Patent Fees during Fiscal Year 2017—IRFA Tables.*'' For the comparison between proposed (across the board) fees and current fees, the ''current fees'' column displays the fees that are in effect as of June 2016.

c. Alternative 4: Baseline (Current Fee Schedule)

The Office considered a no-action alternative. This alternative would retain the status quo, meaning that the Office would continue the small and micro entity discounts that Congress provided in Section 10 of the Act and maintain fees as of June 2016.

This approach would not provide sufficient aggregate revenue to accomplish the Office's rulemaking goals, as set forth in Part III of this NPRM or the Strategic Plan. IT improvement, progress on backlog and pendency, and other strategic improvement activities would continue, but at a slower rate due to funding limitations. Likewise, without a fee increase, the USPTO would meet slightly less than the minimal operating reserve in FY 2017 through FY 2019 and only slightly more in FY 2020, with an increase in FY 2021.

iii. Alternatives Specified by the RFA

The RFA provides that an agency also consider four specified ''alternatives'' or approaches, namely: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of the rule, or any part thereof. 5 U.S.C. 604(c). The USPTO discusses each of these specified alternatives or approaches below and describes how this NPRM is adopting these approaches.

Differing Requirements

As discussed above, the changes proposed in this rulemaking would continue existing fee discounts for small and micro entities that take into account the reduced resources available to them as well as offer new discounts when applicable under AIA authority. Specifically, micro entities would continue to pay a 75 percent reduction in patent fees under this proposal and non-micro, small entities would continue to pay 50 percent of the fee.

This rulemaking sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. To pay reduced patent fees, small entities must merely assert small entity status to pay reduced patent fees. The small entity may make this assertion by either checking a box on the transmittal form, ''Applicant claims small entity status,'' or by paying the small entity fee exactly. The process to claim micro entity status is similar in that eligible entities need only submit a written certification of their status prior to or at the time a reduced fee is paid. This proposed rule does not change any reporting requirements for any small or micro entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification) and the benefit of the fee reductions (50 percent for small entities and 75 percent for micro entities) is significant.

This proposed rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

Clarification, Consolidation, or Simplification of Requirements

This rulemaking does not take any actions beyond setting or adjusting patent fees; therefore, there are no clarifications, consolidations, or simplifications subject to discussion here.

Performance Standards

Performance standards do not apply to the current rulemaking.

Exemption for Small and Micro Entities

The proposed changes here maintain a 50 percent reduction in fees for small entities and a 75 percent reduction in fees for micro entities. The Office considered exempting small and micro entities from paying patent fees, but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the Act provides that ''fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents *shall* be reduced by 50 percent [for small entities] and *shall* be reduced by 75 percent [for micro entities]'' (emphasis added). Neither the AIA nor any other statute authorizes the USPTO simply to exempt small or micro entities, as a class of applicants, from paying patent fees.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007). The Office has developed a RIA as required for rulemakings deemed to be significant. The complete RIA is available at *http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.*

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this proposed rule are expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this proposed rule is expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

G. Unfunded Mandates Reform Act of 1995

The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

H. Paperwork Reduction Act

This proposed 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 collection of information involved in this rulemaking has been reviewed and previously approved by OMB under control numbers 0651–0016, 0651–0024, 0651–0031, 0651–0032, 0651–0033, 0651–0059, 0651–0064, and 0651–0069.

You may send comments regarding the collection of information associated with this rulemaking, including suggestions for reducing the burden, to the Commissioner for Patents, by mail to P.O. Box 1451, Alexandria, VA 22313–1451, attention Dianne Buie; or by electronic mail message via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (RIN 0651–AD02).

Notwithstanding any other provision 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.

List of Subjects

37 CFR Part 1

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

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

37 CFR Part 42

Trial practice before the Patent Trial and Appeal Board.

For the reasons set forth in the preamble, 37 CFR parts 1, 41, and 42 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for part 1 continues 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 (f) and (h) through (r) 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:

By a micro entity (§ 1.29(a))	$75.00
By a small entity (§ 1.27(a))	150.00
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 other than a small or micro entity	300.00

(b) Basic fee for filing each application under 35 U.S.C. 111 for an original design patent:

By a micro entity (§ 1.29(a))	$50.00
By a small entity (§ 1.27(a))	100.00
By other than a small or micro entity	200.00

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

By a micro entity (§ 1.29(a))	$50.00
By a small entity (§ 1.27(a))	100.00
By other than a small or micro entity	200.00

(d) Basic fee for filing each provisional application:

By a micro entity (§ 1.29(a))	$70.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity	280.00

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

By a micro entity (§ 1.29(a))	$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity	300.00

(f) Surcharge for filing the basic filing fee, search fee, examination fee, or the inventor's oath or declaration on a date later than the filing date of the application, an application that does not contain at least one claim on the filing date of the application, or an application filed by reference to a previously filed application under § 1.57(a), except provisional applications:

By a micro entity (§ 1.29(a))	$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity	160.00

* * * * *

(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 micro entity (§ 1.29(a))	$115.00
By a small entity (§ 1.27(a))	230.00
By other than a small or micro entity	460.00

(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 micro entity (§ 1.29(a))	$25.00
By a small entity (§ 1.27(a))	50.00
By other than a small or micro entity	100.00

(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 micro entity (§ 1.29(a))	$205.00
By a small entity (§ 1.27(a))	410.00
By other than a small or micro entity	820.00

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

By a micro entity (§ 1.29(a))	$165.00
By a small entity (§ 1.27(a))	330.00
By other than a small or micro entity	660.00

(l) Search fee for each application under 35 U.S.C. 111 for an original design patent:

By a micro entity (§ 1.29(a))	$40.00
By a small entity (§ 1.27(a))	80.00
By other than a small or micro entity	160.00

(m) Search fee for each application for an original plant patent:

By a micro entity (§ 1.29(a))	$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity	420.00

(n) Search fee for each application for the reissue of a patent:

By a micro entity (§ 1.29(a))	$165.00
By a small entity (§ 1.27(a))	330.00
By other than a small or micro entity	660.00

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

By a micro entity (§ 1.29(a))	$190.00
By a small entity (§ 1.27(a))	380.00
By other than a small or micro entity	760.00

(p) Examination fee for each application under 35 U.S.C. 111 for an original design patent:

By a micro entity (§ 1.29(a))	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(q) Examination fee for each application for an original plant patent:

By a micro entity (§ 1.29(a))	$155.00
By a small entity (§ 1.27(a))	310.00
By other than a small or micro entity	620.00

(r) Examination fee for each application for the reissue of a patent:

By a micro entity (§ 1.29(a))	$550.00
By a small entity (§ 1.27(a))	1,100.00
By other than a small or micro entity	2,200.00

* * * * *

■ 3. Section 1.17 is amended by revising paragraphs (e), (m), (p) and (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(e) To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

By a micro entity	$325.00
By a small entity (§ 1.27(a)	650.00
By other than a small or micro entity	1,300.00

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

By a micro entity	$475.00
By a small entity (§ 1.27(a)	950.00
By other than a small or micro entity	1,900.00

* * * * *

(m) For filing a petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, or the extension of the twelve-month (six-month for designs) period for filing a subsequent application (§§ 1.55(c), 1.55(e), 1.78(b), 1.78(c), 1.78(e), 1.137, 1.378, and 1.452)), or for filing a petition to excuse applicant's failure to act within prescribed time limits in an international design application (§ 1.1051):

By a micro entity (§ 1.29(a))	$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity	2,000.00

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d):

By a micro entity (§ 1.29(a))	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	240.00

* * * * *

(t) For filing a petition to convert an international design application to a design application under 35 U.S.C. chapter 16 (§ 1.1052):

By a micro entity (§ 1.29(a))	$45.00
By a small entity (§ 1.27(a))	90.00

By other than a small or micro entity	180.00

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

§ 1.18 Patent post allowance (including issue) fees.

(a)(1) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

By a micro entity (§ 1.29(a))	$250.00
By a small entity (§ 1.27(a))	500.00
By other than a small or micro entity	1,000.00

(2) [Reserved]

(b)(1) Issue fee for issuing an original design patent:

By a micro entity (§ 1.29(a))	$200.00
By a small entity (§ 1.27(a))	400.00
By other than a small or micro entity	800.00

(2) [Reserved]

(3) Issue fee for issuing an international design application designating the United States, where the issue fee is paid through the International Bureau (Hague Agreement Rule 12(3)(c)) as an alternative to paying the issue fee under paragraph (b)(1) of this section: The amount established in Swiss currency pursuant to Hague Agreement Rule 28 as of the date of mailing of the notice of allowance (§ 1.311).

(c)(1) Issue fee for issuing an original plant patent:

By a micro entity (§ 1.29(a))	$250.00
By a small entity (§ 1.27(a))	500.00
By other than a small or micro entity	1,000.00

(2) [Reserved]

* * * * *

■ 5. Section 1.19 is amended by revising paragraphs (b)(1), (2), and (4); removing and reserving paragraphs (e) and (g); and adding paragraphs (h) through (l) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(1) Copy of a patent application as filed, or a patent-related file wrapper and contents, stored in paper in a paper file wrapper, in an image format in an image file wrapper, or if color documents, stored in paper in an Artifact Folder:

(i) If provided on paper:

(A) Application as filed: $35.00

(B) File wrapper and contents: $280.00

(C) [Reserved]

(D) Individual application documents, other than application as filed, per document: $25.00

(ii) If provided on compact disc or other physical electronic medium in single order or if provided electronically (*e.g.,* by electronic transmission) other than on a physical electronic medium:

(A) Application as filed: $35.00

(B) File wrapper and contents: $55.00

(C) [Reserved]

(iii) [Reserved]

(iv) If provided to a foreign intellectual property office pursuant to a bilateral or multilateral agreement (see § 1.14(h)): $0.00.

(2) [Reserved]

* * * * *

(4) For assignment records, abstract of title and certification, per patent: $35.00

* * * * *

(h) Copy of Patent Grant Single-Page TIFF Images (52 week subscription): $10,400.00

(i) Copy of Patent Grant Full-Text W/ Embedded Images, Patent Application Publication Single-Page TIFF Images, or Patent Application Publication Full-Text W/Embedded Images (52 week subscription): $5,200.00

(j) Copy of Patent Technology Monitoring Team (PTMT) Patent Bibliographic Extract and Other DVD (Optical Disc) Products: $50.00

(k) Copy of U.S. Patent Custom Data Extracts: $100.00

(l) Copy of Selected Technology Reports, Miscellaneous Technology Areas: $30.00

■ 6. Section 1.20 is amended by revising paragraphs (a) through (c) and (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake (§ 1.323)	$150.00
(b) Processing fee for correcting inventorship in a patent (§ 1.324)	150.00

(c) In reexamination proceedings:

(1)(A) For filing a request for *ex parte* reexamination (§ 1.510(a)) having:

(i) Forty (40) or fewer pages;

(ii) Lines that are double-spaced or one-and-a-half spaced;

(iii) Text written in a non-script type font such as Arial, Times New Roman, or Courier;

(iv) A font size no smaller than 12 point;

(v) Margins which conform to the requirements of § 1.52(a)(1)(ii); and

(vi) Sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition.

By a micro entity (§ 1.29(a))	$1,500.00
By a small entity (§ 1.27(a))	3,000.00
By other than a small or micro entity	6,000.00

(B) The following parts of an *ex parte* reexamination request are excluded from paragraphs (c)(1)(A)(i) through (v) of this section:

(i) The copies of every patent or printed publication relied upon in the request pursuant to § 1.510(b)(3);

(ii) The copy of the entire patent for which reexamination is requested pursuant to § 1.510(b)(4); and

(iii) The certifications required pursuant to § 1.510(b)(5) and (6).

(2) For filing a request for ex parte reexamination (§ 1.510(b)) which has sufficient clarity and contrast to permit direct reproduction and electronic capture by use of digital imaging and optical character recognition, and which otherwise does not comply with the provisions of paragraph (c)(1) of this section::

By a micro entity (§ 1.29)	$3,000.00
By a small entity (§ 1.27(a))	6,000.00
By other than a small or micro entity	12,000.00

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of three and also in excess of the number of claims in independent form in the patent under reexamination:

By a micro entity (§ 1.29(a))	$115.00
By a small entity (§ 1.27(a))	230.00
By other than a small or micro entity	460.00

(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 micro entity (§ 1.29(a))	$25.00
By a small entity (§ 1.27(a))	50.00
By other than a small or micro entity	100.00

* * * * *

(e) For maintaining an original or any 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 micro entity (§ 1.29(a))	$400.00
By a small entity (§ 1.27(a))	800.00

By other than a small or micro entity	1,600.00

(f) For maintaining an original or any 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 micro entity (§ 1.29(a))	$900.00
By a small entity (§ 1.27(a))	1,800.00
By other than a small or micro entity	3,600.00

(g) For maintaining an original or any 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 micro entity (§ 1.29(a))	$1,850.00
By a small entity (§ 1.27(a))	3,700.00
By other than a small or micro entity	7,400.00

* * * * *

■ 7. Amend § 1.21 by:

■ a. Revising paragraph (a);

■ b. Removing and reserving paragraph (g);

■ c. Revising paragraph (h) introductory text and paragraphs (h)(2) and (i);

■ d. Removing and reserving paragraph (j); and

■ e. Adding paragraphs (o) through (q).

The revisions and additions read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) Registration of attorneys and agents:

(l) For admission to examination for registration to practice:

(i) Application Fee (non-refundable): $100.00

(ii) Registration examination fee.

(A) For test administration by commercial entity: $200.00

(B) For test administration by the USPTO: $450.00

(iii) For USPTO-administered review of registration examination: $450.00

(2) On registration to practice or grant of limited recognition:

(i) On registration to practice under § 11.6 of this chapter: $200.00

(ii) On grant of limited recognition under § 11.9(b) of this chapter: $200.00

(iii) On change of registration from agent to attorney: $100.00

(3) [Reserved]

(4) For certificate of good standing as an attorney or agent:

(i) Standard: $40.00

(ii) Suitable for framing: $50.00

(5) For review of decision:

(i) By the Director of Enrollment and Discipline under § 11.2(c) of this chapter: $400.00

(ii) Of the Director of Enrollment and Discipline under § 11.2(d) of this chapter: $400.00

(6) Recovery/Retrieval of OED Information System Customer Interface account by USPTO:

(i) For USPTO-assisted recovery of ID or reset of password: $70.00

(ii) For USPTO-assisted change of address: $70.00

(7) and (8) Reserved

(9)(i) Delinquency fee: $50.00

(ii) Administrative reinstatement fee: $200.00

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; on petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office: $1,600.00

* * * * *

(h) For recording each assignment, agreement, or other paper relating to the property in a patent or application, per property:

* * * * *

(2) If not submitted electronically: $50.00

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale: Each application or patent: $25.00

* * * * *

(o) The submission of very lengthy sequence listings (mega-sequence listings) are subject to the following fees:

(1) Submission of sequence listings ranging in size from 300MB to 800MB: $1,000.00

(2) Submission of sequence listings exceeding 800MB in size: $10,000.00

(p) Additional Fee for Overnight Delivery: $40.00

(q) Additional Fee for Expedited Service: $160.00

■ 8. Section 1.362 is amended by revising paragraph (b) to read as follows:

§ 1.362 Time for payment of maintenance fees.

* * * * *

(b) Maintenance fees are not required for any plant patents or for any design patents.

* * * * *

■ 9. Section 1.445 is amended by adding paragraph (a)(5) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) * * *

(5) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter:*

By a micro entity (§ 1.29(a))	$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity	300.00

* * * * *

■ 10. Section 1.482 is amended by revising the section heading and adding paragraph (c) to read as follows:

§ 1.482 International preliminary examination and processing fees.

* * * * *

(c) Late furnishing fee for providing a sequence listing in response to an invitation under PCT Rule 13*ter:*

By a micro entity (§ 1.29(a))	$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity	300.00

■ 11. Section 1.492 is amended by revising paragraphs (a), (b)(2) through (4), (c)(2), and (d) through (f) 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:

By a micro entity (§ 1.29(a))	$75.00
By a small entity (§ 1.27(a))	150.00
By other than a small or micro entity	300.00

(b) * * *

(2) If the 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 micro entity (§ 1.29(a))	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a micro entity (§ 1.29(a))	$130.00

By a small entity (§ 1.27(a))	260.00
By other than a small or micro entity	520.00

(4) In all situations not provided for in paragraph (b)(1), (2), or (3) of this section:

By a micro entity (§ 1.29(a))	$165.00
By a small entity (§ 1.27(a))	330.00
By other than a small or micro entity	660.00

(c) * * *

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a micro entity (§ 1.29(a))	$190.00
By a small entity (§ 1.27(a))	380.00
By other than a small or micro entity	760.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

By a micro entity (§ 1.29(a))	$115.00
By a small entity (§ 1.27(a))	230.00
By other than a small or micro entity	460.00

(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 micro entity (§ 1.29(a))	$25.00
By a small entity (§ 1.27(a))	50.00
By other than a small or micro entity	100.00

(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 micro entity (§ 1.29(a))	$205.00
By a small entity (§ 1.27(a))	410.00
By other than a small or micro entity	820.00

■ 12. Section 1.1031 is amended by revising paragraph (a) and adding paragraph (f) to read as follows:

§ 1.1031 International design application fees.

(a) International design applications filed through the Office as an office of indirect filing are subject to payment of a transmittal fee (35 U.S.C. 382(b) and article 4(2)) in the amount of

By a micro entity (§ 1.29(a))	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	120.00

* * * * *

(f) The designation fee for the United States shall consist of:

(1) A first part established in Swiss currency pursuant to Hague Rule 28 based on the combined amounts of the basic filing fee (§ 1.16(b)), search fee (§ 1.16(l)), and examination fee (§ 1.16(p)) for a design application. The first part is payable at the time of filing the international design application; and

(2) A second part (issue fee) as provided in § 1.18(b). The second part is payable within the period specified in a notice of allowance (§ 1.311).

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 13. The authority citation for part 41 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Public Law 112–29.

■ 14. Section 41.20 is amended by revising paragraphs (b)(1) and (4) to read as follows:

§ 41.20 Fees.

* * * * *

(b) * * *

(1) For filing a notice of appeal from the examiner to the Patent Trial and Appeal Board:

By a micro entity (§ 1.29 of this chapter)	$250.00
By a small entity (§ 1.27(a) of this chapter)	500.00
By other than a small or micro entity	1,000.00

* * * * *

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

By a micro entity (§ 1.29(a) of this chapter)	$625.00
By a small entity (§ 1.27(a) of this chapter)	1,250.00
By other than a small or micro entity	2,500.00

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 15. The authority citation for part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326; Pub. L. 112–29, 125 Stat. 284; and Pub. L. 112–274, 126 Stat. 2456.

■ 16. Section 42.15 is amended by revising paragraphs (a) and (b) to read as follows:

§ 42.15 Fees

(a) On filing a petition for *inter partes* review of a patent, payment of the following fees are due:

(1) *Inter Partes* Review request fee: $14,000.00

(2) *Inter Partes* Review Post-Institution fee: $16,500.00

(3) In addition to the *Inter Partes* Review request fee, for requesting review of each claim in excess of 20: $300.00

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting review of each claim in excess of 15: $600.00

(b) On filing a petition for post-grant review or covered business method patent review of a patent, payment of the following fees are due:

(1) Post-Grant or Covered Business Method Patent Review request fee: $16,000.00

(2) Post-Grant or Covered Business Method Patent Review Post-Institution fee: $22,000.00

(3) In addition to the Post-Grant or Covered Business Method Patent Review request fee, for requesting review of each claim in excess of 20: $375.00

(4) In addition to the Post-Grant or Covered Business Method Patent Review Post-Institution fee, for requesting review of each claim in excess of 15: $825.00

* * * * *

Dated: September 20, 2016.

Michelle K. Lee,

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

[FR Doc. 2016–23093 Filed 9–30–16; 8:45 am]

BILLING CODE 3510–16–P