

Locke Lord QuickStudy: USPTO Fee Changes Taking Effect January 19, 2025?

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On November 20, 2024, the USPTO published its [Final Rule](#) regarding fee changes to take effect on January 19, 2025 in the Federal Register.

While the USPTO will be instituting fee increases for various types of fees, the summary below outlines the most significant fee increases, those most likely to affect daily practice, and those likely to affect filing strategies. The full list of fee changes can be found in this [Table](#).

General Increase on Utility Patent Applications

The Final Rule institutes a global 7.5% increase on all patent related fees, where there is not a targeted increase. The targeted increases will be discussed further below.

The Final Rule also implements an additional 2.5% fee increase for filing, search, and examination fees, in addition to the global 7.5% increase. This brings the total filing fees for an undiscounted entity to \$2,000, up from \$1,820. Note also any processing fees for the late filing of documents (e.g. declarations or translations), or filing in non-docx format will also increase at the 7.5% rate, which could further increase the upfront filing costs.

Targeted Fee Increases

Continuing Application – New Fees

The USPTO will now require additional fees for continuing applications claiming priority to a parent application having a filing date six years or more prior to the filing date of the continuing application. ***This calculation must take into consideration priority claims claiming the benefit of provisional applications.*** This fee is in addition to the already required filing, search, and examination fees.

Where a continuing application is filed more than six years after its earliest priority, a large entity will pay \$2,700 in addition to filing fees. Where a continuing application is filed more than 9 years after its earliest priority, a large entity will pay \$4,000 in addition to filing fees. Note the conventional discounts for small and micro entities are still available for these new fees.

The rule makes clear that an applicant will not be charged more than one fee if more than one benefit claims is presented that qualifies the application for the fee. Instead, they will be charged only the fee that applies for the earliest benefit claim. If during prosecution the benefit claim qualifies the application for the fee, the fee will be paid once for having a benefit claim more than six years prior, and once for having a claim more than nine years prior, less the six-year fee already paid. The Final Rule outlines examples in which these new fees would or would not be incurred.

IDS – New Fees

The Final Rule will now impose fees for information disclosures statements that cause the cumulative number of references cited in the application to exceed a certain threshold. This fee is paid on the IDS that causes the total number of references to exceed the stated threshold.

Where the total number of references in the file wrapper exceeds 50 but is less than 100, a fee of \$200 is incurred. Total references between 100 and 200, the fee is \$500, less any amount already paid. For greater than 200 references, the fee is \$800, less any amount already paid.

RCE – Fee Increase

The cost for a first RCE request will increase by 10%, moving the cost from \$1,360 to \$1,500 for a large entity, and the cost of any second or subsequent request will increase by 43%, moving from \$2,000 to \$2,860 for a large entity.

Terminal Disclaimers

The Final Rule will not impose any additional targeted increase on terminal disclaimers and will not implement the tiered payment structure. Instead, the fee for filing a terminal disclaimer will only increase with the 7.5% across the board hike.

****Note additionally, on December 4, 2024, the USPTO [withdrew](#) the NPRM regarding the proposed additional requirements for an acceptable terminal disclaimer filed to obviate nonstatutory double patenting.****

Unintentional Delay Petitions – Increase

These petitions cover various circumstances, though the most common are petition for delayed payment of maintenance fees, petition to revive an unintentionally abandoned application, and petition to accept a delayed priority claim.

For petitions of this kind filed two years or less from the failed action, the petition fees will increase by 8%, while petitions filed more than two years from the failed action will see an increase of 43% in associated costs. For a large entity, this 43% increase moves the current petition fees from \$2,100 to \$3,000.

Excess Claims Fees – Increase

For new non-provisional applications, the excess claims fees for each independent claim over 3 will increase by 25% (from \$480 to \$600) and the excess claims fee for each claim over 20 will increase by 100% (from \$100 to \$200).

Extensions of Time

The fees for extensions of time taken in non-provisional applications will increase with the global 7.5% increase, and will not have any additional targeted increase.

However, for extensions of time taken in provisional applications, the fees will decrease significantly. For provisionals, a first month extension will now cost \$50, a second month \$100, third month \$200, fourth month, \$400, and fifth month \$800.

Design Patents

The Final Rule indicates that the USPTO is increasing the fees for design patent applications to account for inflationary cost increases and recover a larger portion of design costs from design applicants.

The design fee increases will affect national design application filings including CPAs, and international design application filings that designate the United States under the Geneva Act of the Hague Agreement.

For direct US filings, the design filing fees will increase 36%, search fees will increase by 88%, examination fees will increase by 9%, and issue fees will increase by 76%. For a large entity, filing and issuance currently costs \$1,840. This will increase to \$1,960 when the new fees take effect.

International designs through the Hague will see in an increase in 27% for the first part designation fee, and an increase of 76% for the second part issuance fee.

Trials

All fees associated with filing and initiating an AIA trial (IPR, PGR, CBM) will increase by 25%.

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