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Understanding the USPTO's Final Rule on Fee Adjustments for Patent Applications and Appeals

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Introduction

The U.S. Patent and Trademark Office (USPTO) has issued a "final rule" to fee adjustments for patent applications and appeals, effective January 19, 2025. These changes represent some of the most significant changes to the fee structure since 2020, and may dictate new practice strategies. The fee adjustments are generally motivated by inflation adjustments, recovery of USPTO operational costs, and the promotion of efficient patent prosecution. Specifically, practices that burden USPTO examiners and staff, such as large information disclosure statements (IDS) submissions, excessive amounts of claims, requests for continued examinations (RCE), and nonparallel continuation filings, have been addressed by the new and increased fees.

Apart from fee adjustments, the final rule has set December 14, 2024, as the expiration date for the After Final Consideration Pilot Program 2.0 (AFCP 2.0). After this date, AFCP 2.0 will no longer be an option for after-final proceedings.

Recommendations:

In light of the following fee adjustments, we recommend the following actions and considerations:

- **Where possible, expedite in-progress applications and planned filings for submission before January 19, 2025.**

- **Monitor priority claims in important patent families to file continuation applications before the six- and nine-year enhanced fee timelines.**

- **Consider the relevance of citations in IDS submissions to limit the number of cumulative citations and avoid new fees.**

We are committed to providing you with timely and appropriate advice to help you navigate these changes. If you have any questions regarding the USPTO's fee adjustments and how they may impact your overall patent

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strategy, your Troutman Pepper contacts remain ready to provide counsel.

Fee Adjustments

The fee adjustments are grouped into three broad categories: across-the-board adjustments, front-end adjustments, and targeted adjustments.

Across-The-Board Adjustments

All patent and PTAB fees not covered by targeted adjustments will increase by ***7.5%***. For example, maintenance fees for 1st-3rd stage undiscounted utility patents are currently cumulatively $13,460, and will increase to $14,470 under the across-the-board adjustment.

Front-End Adjustments

Filing, search, and examination fees will increase by an additional ***2.5%*** on top of the ***7.5%*** adjustment (***10%*** *increase in total*). For example, filing, search, and examination fees for an undiscounted utility application are currently $1,820, and will increase to $2,000 under the front-end adjustment.

Targeted Adjustments

The following targeted adjustments are made separately from the across-the-board and front-end adjustments to change practice behavior and limit drawn-out prosecution.

Continuing Applications

New fees will be introduced for filing a continuation application or presenting a benefit claim more than six years after the earliest benefit date.

- Continuation application filed *six years* after the earliest priority date: ***$2,700***; and
- Continuation application filed *nine years* after the earliest priority date: ***$4,000***.

Excess Claims

Each claim in excess of 20 claims will be accompanied by a ***$200*** fee (increased from $100), and each independent claim in excess of three will be accompanied by a ***$600*** fee (increased from $480).

IDS Size

New fees will be introduced based on the cumulative number of applicant-cited references listed in an IDS:

- Exceeding 50 applicant-cited references but not exceeding 100: ***$200***;

- Exceeding 100 applicant-cited references but not exceeding 200: ***$500***, less any amount previously paid; and
- Exceeding 200 applicant-cited references: ***$800***, less any amount previously paid.

It is worth noting that the fees are for the number of cumulative references. For example, if a first IDS is filed in an application containing 51 references and the $200 fee is paid, and a second IDS in the same application is filed containing 51 new references, the cumulative number of references would be 102, and therefore an additional $300 fee will be owed with the second IDS to amount to the $500 fee under the targeted adjustment. Additionally, the count is tied to the application, and not the patent family, so a continuation application has a count initially reset to 0 regardless of the number of citations for the corresponding parent application.

RCE

The fee for a first RCE will increase ***10%*** (from $1,360 to $1,500). Second and subsequent RCEs will increase ***43%*** (from $2,000 to $2,860).

America Invents Act (AIA) Trial Fees

All AIA trial fees will increase ***25%***.

Director Review of a PTAB Decision

A new fee for parties requesting a review of a PTAB decision by a director will be ***$452***.

Patent Term Extension (PTE)

Applications for PTE will increase:

- Application for PTE: ***$2,500*** (112% increase);
- Initial application for interim extension: ***$1,320*** (200% increase);
- Subsequent application for interim extension: ***$680*** (196% increase); and
- Supplemental redetermination after final determination: ***$1,440*** (**new**).

Design Applications

Filing, search, examination, and issuance fees for design applications will increase. For example, fees for an undiscounted design application will be $2,600, increased from $1,760. The USPTO cites that the current rates do not recover the cost of examination for design patents, and are currently subsidized by other fee sources.

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- Basic Filing Fee – Design: ***$300*** (previously $220);
- Basic Filing Fee – Design CPA: ***$300*** (previously $220);
- Design or Design CPA Search Fee: ***$300*** (previously $160);
- Design or Design CPA examination fee: ***$700*** (previously $640);
- Design Issue Fee: ***$1,300*** (previously $740);
- International Design First Part U.S. Designation: ***$1,300*** (previously $1,020); and
- Part II Designation Fee: ***$1,300*** (previously $740).

Extension of Time (EOT) for Provisional Applications

EOT fees for provisional applications will significantly *decrease* by 75% – 86%.

Requests for Suspension of Action

Fees for suspension of action requests will be tiered such that subsequent requests are charged a higher rate.

- First request: ***$300*** (previously $220); and
- Subsequent request: ***$450*** (previously $220).

Unintentional Delay Petitions

Fees for unintentional delay petitions will increase to reflect the USPTO desire to prevent prolonged prosecution, with delays greater than two years increasing more significantly than delays less than or equal to two years.

- Less than or equal to two years: ***$2,260*** (previously $2,100); and
- Greater than two years: ***$3,000*** (previously $2,100).

For more information, you can reference the USPTO Patent Fees Table or Final Rule At-A-Glance from the USPTO website.

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