

U.S. Patent and Trademark Office Set to Increase Patent Fees in 2025

November 22, 2024

The United States Patent and Trademark Office (USPTO) has issued its Final Rule with adjusted filing fees at all stages of patent and trademark application filings through maintenance fees. The fee increases will take effect on **January 19, 2025**.

Combined with 52 new fees not previously assessed, these changes amount to an average increase of 7.5% to the current fees. This is the first increase for patent fees since October 2, 2020, except for the surcharge for non-DOCX filings, which went into effect on April 3, 2023.

Patent Office Backs off from Terminal Disclaimer Fee

The USPTO had proposed a tiered fee schedule based on the time of filing a terminal disclaimer, with increases of up to 724%. However, in view of public concern regarding the ability to make informed decisions about filing a terminal disclaimer, the USPTO did not proceed with the proposal, instead opting to apply a nominal fee increase from \$170 to \$183.

New Fees for Continuing Applications

A new fee is coming for filing a continuing application (inclusive of divisional applications) based on the number of years the continuing application is filed after the earliest benefit date. There is no fee if the continuation is filed less than six years after the earliest benefit date.

Changes to After Final Practice

The fees to file a request for continued examination ("RCE") have also increased. In particular, fees for the first RCE request were increased by 10%, while second and subsequent requests were increased by 48%.

These increases follow the USPTO's decision to **sunset** the After Final Consideration Pilot ("AFCP"). Although the RCE fees are increasing, applicants are likely to file more RCEs in 2025 with the end of AFCP. Interestingly, a new fee of \$500 for filing a request to participate in the AFCP had been proposed by the USPTO to offset the costs associated with the 60,000+ annual requests made on average in the program. The USPTO stated that if there was sufficient public support for the proposed fee, it would favor continuing AFCP into 2025. However, comments from the public expressed concerns about the program and the proposed fee, which led to the USPTO's decision to end the AFCP program.

Design Application Fees Increase

Because design patents are not subject to maintenance fees, the USPTO has applied increases to the application fee to cover the cost of examination. The fees for an undiscounted entity are outlined in the table below.

Graduated Fees for Information Disclosure Statements

To account for the cost of increased review by examiners when an Information Disclosure Statement ("IDS") contains more than 50 references, the USPTO is instituting an additional fee on a graduated basis depending on the number of references cited.

Continued

Other Notable Fee Increases

Takeaways

- Keeping patent families alive using continuing applications will be costly for patent owners with the institution of the additional graduated fee.
- With the loss of the After Final Consideration Pilot Program and the increased fees to file a Request for Continued Examination, applicants may consider more narrowing amendments after a non-final rejection as there are fewer options to avoid fees after a final rejection.
- If an applicant is within six years of the earliest priority date, it may be more economical to file a continuation rather than an RCE.

If you have any questions about the impact of these changes, please contact your Miller Canfield attorney or the authors of this alert.