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U.S. Patent and Trademark Office Fee Increases

By Allison Gifford

Effective on Jan. 2, 2021, the U.S. Patent and Trademark Office (USPTO) will increase fees for certain filings. Trademark filing fees have not increased since January 2017. Specifically, the trademark fee increases will affect five areas:

- Application filings;
- Petitions and Letters of Protest;
- Post Registration Maintenance filings;
- Deletion of Goods and Services following an audit or adverse decision; and
- Trademark Trial and Appeal Board (TTAB) filings.

By way of background, the USPTO is implementing the fee increases to support critical IT projects, which are necessary to address the impacts of increased filings and costs to support all trademark operations. Other considerations for the fee increases are improving the trademark register's accuracy, proof of use and addressing filing behavior change. The USPTO is also seeking to increase recovery of costs for the rising appeal and trial proceedings.

The new fees are also based on revenue and workload concerns. Fee collections have been lower than anticipated, in part due to the COVID-19 outbreak. In addition, the USPTO is handling record levels of new trademark application filings, with a higher percentage of use-based application filings as opposed to intent-to-use application filings. As a consequence, there are more "front-end" examination costs and there is less "back-end" revenue. The USPTO had earlier stated, in defending the fee increases, that "[w]ithout the proposed fee adjustments ... budgetary requirements would exceed revenues and available operating reserve balances beginning in FY 2022 through FY 2025."

The increased fees and trademark owner considerations are as follows:

1. Trademark Applications and Prosecution

- Online standard application fee increased from \$275 to \$350 per class.
- TEAS Plus application fee increased from \$225 to \$250 per class, and the processing fee for failing to meet TEAS Plus requirements will decrease from \$125 to \$100.

- **NEW** - \$50 fee for Letter of Protest filing against a third party application.

Considerations:

- File new applications if possible before the end of 2020, including foreign trademark owners seeking to benefit from a convention priority date.

2. Registration Maintenance

- Section 8/71 Declaration of Continued Use fee increased from \$125 to \$225.
- **NEW** - \$250 for deleting goods, services and/or classes from a registration after submitting a Section 8 or 71 Declaration (but before the declaration is accepted).

Considerations:

- File any response to a Post-Registration Audit before Jan. 2, 2021, as there is no fee now.
- Carefully review specimens of use and goods and services descriptions prior to filing a Section 8 Declaration to avoid a Post-Registration Audit and additional fees.



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3. TTAB Actions

- Extension of Time to Oppose increased from \$100 to \$200 for initial 90-day request or 60-day request following a 30-day request at no charge; \$200 to \$400 increase for an additional final 60-day request.
- Notice of Opposition or Petition to Cancel increased from \$400 to \$600 per class.
- **NEW** - \$200 per class ex parte appeal brief filing.
- **NEW** - \$500 per proceeding for oral hearing requests.
- **NEW** - Partial refund of the petition to cancel filing fee in a default judgment if cancellation involved only nonuse or abandonment claim, the defendant did not appear and there were no filings other than the petition to cancel.

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