

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this document) is adjusting certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are adjusting, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually in accordance with the CPI to recover the higher costs associated with doing business.

Legislation has also been introduced in the Congress that would alter our fees. If enacted, this legislation would supersede the fees identified in this final rule.

**EFFECTIVE DATE:** October 1, 2003.

**FOR FURTHER INFORMATION CONTACT:** Matthew Lee by e-mail at [matthew.lee@uspto.gov](mailto:matthew.lee@uspto.gov), by telephone at (703) 305-8051, or by fax at (703) 305-8007.

**SUPPLEMENTARY INFORMATION:** This final rule adjusts our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106-113). This final rule also adjusts, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

Legislation has been introduced in the Congress that would alter our fees. Customers should be aware that legislative changes to our fees would supersede this final rule. If such changes occur, we will make corresponding rule changes by publication in the **Federal Register**. Customers may wish to refer to our official website at [www.uspto.gov](http://www.uspto.gov) for the most current fee amounts. Official notices of any fee changes will appear in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

A proposed rule notice was published at 68 FR 23092 on April 30, 2003, which requested comments by May 30, 2003. No comments were received.

**Background***Statutory Provisions*

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the

requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

*Fee Adjustment Level*

The patent statutory fees established by 35 U.S.C. 41(a) and (b) will be adjusted on October 1, 2003, to reflect fluctuations occurring during the twelve-month period from October 1, 2002, through September 30, 2003, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2003, which is 2.08 percent. Based on this projected CPI-U, patent statutory fees will be adjusted by 2.08 percent.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103-465 (the Uruguay Round Agreements Act) will be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of \$100 or more were rounded to the nearest \$10. Fees of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number.

*General Procedures*

Any fee amount that is paid on or after the effective date of the fee adjustment will be subject to the new fees then in effect. The amount of the

fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the “date-in” on the “Express Mail” mailing label or other official USPS notation.

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

**Discussion of Specific Rules***37 CFR 1.16 National Application Filing Fees*

Section 1.16, paragraphs (a), (b), (d), and (f) through (i), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.17 Patent Application and Reexamination Processing Fees*

Section 1.17, paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.18 Patent Post Allowance (Including Issue) Fees*

Section 1.18, paragraphs (a) through (c), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.20 Post Issuance Fees*

Section 1.20, paragraphs (e) through (g), are revised to adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.492 National Stage Fees*

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d), are revised to adjust fees established therein to reflect fluctuations in the CPI.