



[3510-16]

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO-T-2016-0005]

RIN 0651-AD08

Trademark Fee Adjustment

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) proposes to set or increase certain trademark fees, as authorized by the Leahy-Smith America Invents Act (AIA). The proposed fees will allow the Office to recover the aggregate estimated cost of Trademark and Trademark Trial and Appeal Board (TTAB) operations and USPTO administrative services that support Trademark operations. The proposals will further USPTO strategic objectives by: better aligning fees with the full cost of products and services; protecting the integrity of the register by incentivizing more timely filing or examination of applications and other filings and more efficient resolution of appeals and trials; and promoting the efficiency of the process, in large part through lower-cost electronic filing options.

DATES: Written comments must be received on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to TMFRNotices@uspto.gov. Written comments also may be submitted by mail to the Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, attention Jennifer Chicoski; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA 22314, attention Jennifer Chicoski; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (<http://www.regulations.gov>) for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2016-0005).

The comments will be available for public inspection on the USPTO's Web site at <http://www.uspto.gov>, on the Federal eRulemaking Portal, and at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, VA 22314. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Jennifer Chicoski, Office of the Deputy Commissioner for Trademark Examination Policy, by e-mail at TMPolicy@uspto.gov, or by telephone at (571) 272-8943.

SUPPLEMENTARY INFORMATION:

Purpose: Section 10 of the AIA (Section 10) authorizes the Director of the USPTO (Director) to set or adjust by rule any fee established, authorized, or charged under the Trademark Act of 1946, 15 U.S.C. 1051 et seq., as amended (the Trademark Act or the Act) for any services performed by, or materials furnished by, the Office. See section 10 of the AIA, Public Law 112-29, 125 Stat. 284, 316-17. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to trademarks, including administrative costs to the Office with respect to such Trademark and TTAB operations. The Director may set individual fees at, below, or above their respective cost. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy considerations, while taking into account the cost of the respective services. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Trademark Public Advisory Committee (TPAC) and oversight by Congress. Accordingly, on October 14, 2015, the Director notified the TPAC of the Office's intent to set or adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The fee proposal had three objectives to achieve the goals of recovering prospective aggregate costs of operation while furthering key policy considerations: (1) to better align fees with full costs; (2) to protect the integrity of the register; and (3) to promote the efficiency of the trademark process.

The TPAC held a public hearing in Alexandria, Virginia on November 3, 2015. Transcripts of this hearing and comments submitted to the TPAC in writing are available for review at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The TPAC released its report regarding the preliminary proposed fees on November 30, 2015. The report can be found online at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The Office has considered the comments, advice, and recommendations received from the TPAC and the public in setting the fees proposed herein.

In the report, the TPAC expressed general support for an increase in fees in order to recover full costs and maintain a sufficient operating reserve. The TPAC also expressed concerns over some of the fee increases and the potential impact on customers and included alternative fee proposals. The USPTO has reviewed the report and has amended the initial fee proposal to address some of the concerns, where possible, so as to remain consistent with the rulemaking goals and objectives.

The TPAC expressed general support for the stated goals of full cost recovery with an increase in certain trademark fees and, in particular, for the goal of recovering more of the costs for TTAB operations. The report specifically expressed uniform support for the proposal to increase paper filing fees to encourage applicants to commit to complete electronic processing, due to the additional costs of processing paper filings as well as the availability of lower-cost electronic filing options. However, the TPAC report did recommend that the USPTO provide a mechanism to enable applicants to request a waiver of the surcharge incurred for paper filings in the event of system outages or if the nature of the submission renders the use of electronic systems impossible. Although this

comment refers to a matter that is outside the scope of this proposed rulemaking, which is intended to set or increase certain trademark fees, the USPTO notes that the appropriate mechanism for requesting a waiver of a rule is to file a petition to the Director under 37 CFR 2.146. The report noted no opposition to the proposed increases in paper and electronic fees for filing a Petition to the Director. The TPAC also suggested increasing the fee for filing a regular Trademark Electronic Application System (TEAS) application in order to further encourage complete electronic filing.

A general lack of support was expressed for the proposal to increase the fees for electronically filing a request for extension of time for filing a statement of use. The TPAC, as well as comments made by the public, noted that the current fee adequately covers the USPTO's costs for processing these filings, that the increased fees would raise the fee burden placed on U.S.-based filers, who are not able to utilize either the Paris Convention or the Madrid Protocol, placing them at a disadvantage compared to filers from other countries, and that the increased fee could negatively impact pro se and small-business applicants in particular by making it more expensive to maintain a trademark application while preparing to bring a new product or service to the market as reasons for not increasing this pre-registration fee that only impacts filers under the intent-to-use filing basis. Concerns were also expressed regarding the proposed increases to the fees for requests to divide applications and notices of ex parte appeal, as well as the proposed new fees for filing a request for an extension of time to oppose a published trademark application. The report states that the increase to the fee for a request to divide adds costs to intent-to-use filers and will discourage them from filing a statement of use sooner for the goods/services in use, where possible, and could thereby deprive third parties

searching the Register from gaining information about actual use of the relevant mark. The TPAC recommended establishing a fee increase that will have a more even impact on all filers. Regarding the proposed increased fee for filing a notice of appeal, the TPAC proposed that rather than increasing the current fee, a new fee for submission of an appeal brief be added. As to the proposed new fees for filing a request for an extension of time to oppose a published mark, the TPAC report noted that although some members raised concerns over the proposed fees, the TPAC held the majority view that such fees would be beneficial, as attaching a reasonable fee to obtaining extensions of time to oppose after the initial 30-day extension should both encourage potential opposers to engage more quickly in an analysis of the potential dispute and to seek resolution earlier in the process.

The USPTO appreciates the overall support for an increase in fees to meet sufficient funding levels. After careful consideration of the comments and suggestions provided in the report, and keeping in mind the goals of this rulemaking, the USPTO has made some changes to the initial fee proposal, which are reflected in this proposed rulemaking. For example, in furtherance of the goal to encourage applicants to commit to complete electronic processing, the suggested increase in the fee for the regular TEAS application has been added. In addition, the increase would also apply to TEAS requests for transformation of an extension of protection to the United States into a U.S. application, filed pursuant to 37 CFR 7.31. Additionally, due to the concerns expressed by the TPAC, the proposed fees for a request to divide and a request for an extension of time to file a statement of use have been increased for such requests filed on paper, but will remain at the current fee levels for those filed electronically. In addition, the USPTO

proposes to increase the fees for affidavits under sections 8 and 71 of the Act. This increase will help recover increasing costs to review these filings. Furthermore, increasing this fee will affect all filers post registration, which should address some of the concerns expressed by the TPAC regarding a possible increased burden placed predominantly on U.S. filers of applications. Detailed explanations for these and the other proposed fee increases can be found in the “Rulemaking Goals and Strategies” and “Individual Fee Rationale” sections of this rulemaking.

The fee schedule proposed in this rulemaking will recover the aggregate estimated costs to the Office while achieving strategic and operational goals, such as maintaining an operating reserve, implementing measures to maintain trademark pendency and high quality, modernizing the trademark information technology (IT) systems, continuing programs for stakeholder and public outreach, and enhancing operations of the TTAB.

The USPTO protects consumers and provides benefits to businesses by effectively and efficiently carrying out the trademark laws of the United States. The Office estimates that the additional aggregate revenue derived from the proposed fee schedule will achieve sustainable funding, mitigate the risk of immediate unplanned financial disruptions, and fund necessary upgrades to IT systems. The proposed rule will also advance key policy considerations, while taking into account the cost of individual services. For example, the proposal includes increased fees for paper filings, which aims to better align the required fees with the cost of processing paper filings and incentivize electronic filings to promote efficiency of the registration process. Other trademark fees were increased to encourage timely filings and notices to further promote the efficiency of the process.

Summary of Major Provisions: The Office proposes to set or adjust 44 trademark processing fees. The proposed fee structure would increase the per-class fee for an initial application filed on paper by \$225 to \$600, and would increase the fees for 31 other paper filings by between \$100 and \$200 (per class, where applicable). The per-class fee for an initial application filed using the regular TEAS option would increase by \$75 to \$400. This increase would also apply to requests for extension of protection and subsequent designations filed under the Madrid Protocol. 15 U.S.C. 1141e; Madrid Protocol Article 8(7)(a). The proposed rule increases the fee for filing affidavits under sections 8 and 71 of the Act for both paper and electronic filings. In addition, ten TTAB-related fees are established or revised in the proposed rule, six of which would increase the fees for initiating a proceeding filed electronically or on paper, and four that would establish electronic and paper filing fees for requests to extend time to file a notice of opposition in certain circumstances. A full list of current and proposed fees including the unit cost by fee from fiscal years 2013, 2014, and 2015 is available in the Table of Trademark Fees – Current Proposed and Unit Cost at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Rulemaking Goals and Strategies: Consistent with the Office's goals and obligations under the AIA, the overall objective of this rulemaking is to ensure the fee schedule generates sufficient revenue to recover the prospective aggregate costs of Trademark and TTAB operations and the associated administrative costs. Fees must be set at levels projected to cover future budgetary requirements and maintain an operating reserve. A record number of over 500,000 classes were filed in fiscal year (FY) 2015, and the Office projects this trend of increased filings to continue for the foreseeable

future. Additionally, to maintain trademark pendency and quality goals with the increased filings, the Office must ensure it has adequate resources and systems to support future requirements. The Office is in the midst of a multi-year IT systems and infrastructure upgrade, which is critical to the future of the U.S. trademark registration system.

Maintaining the current fee schedule is unlikely to meet future budgetary requirements, including expenses resulting from the projected increases in filings; the full costs necessary to support Trademark and TTAB operations, necessary investments in IT systems, intellectual property (IP) policy, and USPTO programs; and the cost of maintaining sufficient operating reserves. Under the current fee schedule, these costs will exceed available revenues and operating reserve optimal balances through 2021. The USPTO FY 2017 President's Budget includes two revenue estimates: (1) the current fee schedule; and (2) the initial fee proposal as submitted to the TPAC and discussed in their public hearing and report. Additional information on estimated cost may be found in the USPTO FY 2017 President's Budget (Figure #4 page 23) at <http://www.uspto.gov/sites/default/files/documents/fy17pbr.pdf>. Managing without an adequate operating reserve would put the USPTO in jeopardy of being unable to respond to emergency situations—such as unexpected economic downturns—thereby increasing the risk for dire short-term financial actions, such as halting investment in IT development projects that are crucial to operations and customer support. An adequate operating reserve also allows the USPTO to continue serving its users in the event of a short-term lapse in Congressional appropriations.

The Office notes that because the FY 2017 President's Budget was submitted prior to the USPTO making final decisions on the proposed fee adjustments, the operating reserve amounts for FY 2017-FY 2021 included in that document differ from what would be generated by this NPRM. Given that the Office reduced several fees from the initial proposal in response to comments from the TPAC and the public, the aggregate revenue collected under the proposed fee schedule in this rule, and subsequently the amount expected to be allocated to the operating reserve, is lower than what appears in the President's Budget. With the proposed fee schedule, optimal operating reserves are projected by FY 2019. The USPTO would use its existing authority going forward to adjust fees to cover budgetary requirements and to maintain the optimal operating reserve balance. If the projected operating reserve exceeds the estimated optimal level by 15 percent for two consecutive years, the USPTO would consider lowering fees.

Another goal of this rulemaking is to set individual fees to further key IP protection policy considerations while taking into account the cost of the particular service. The Office seeks to enhance trademark protection for IP rights holders by offering application processing options and promoting Administration innovation strategies.

The proposal has three objectives to achieve the goals of recovering prospective aggregate costs of operation while furthering key policy considerations: (1) to better align fees with full costs; (2) to protect the integrity of the register; and (3) to promote the efficiency of the trademark process. Aggregate costs are estimated through the USPTO budget-formulation process with the annual preparation of a five-year performance-based

budget request. Revenues are estimated based on the projected demand for trademark products and services and fee rates.

These fee-schedule objectives are consistent with strategic goals and objectives detailed in the USPTO 2014-2018 Strategic Plan (Strategic Plan) that is available at http://www.uspto.gov/sites/default/files/documents/USPTO_2014-2018_Strategic_Plan.pdf. The Strategic Plan defines the USPTO's mission and long-term goals and presents the actions the Office will take to realize those goals. The significant actions the Office describes in the Strategic Plan that are specifically related to the goals of this rulemaking are ensuring optimal IT service to all users, maintaining trademark pendency and high quality, continuing and enhancing stakeholder and public outreach, and enhancing operations of the TTAB.

Better Align Fees with Cost: The first fee-setting objective is to set and adjust trademark fees to better align those fees with the full costs of providing the relevant services. The overall goal is to achieve aggregate cost recovery. In determining which fees to set or adjust, the fee proposal targets changes to fees where the gap between the cost of the service and the current fee rate is the greatest. Paper filings are generally more expensive to process than electronic filings. Currently, however, most fees for paper filings are not set at full cost; instead they are subsidized by electronic filers. Because of this, across-the-board increases in fees for paper filings are proposed to bring the respective fees closer to the actual cost of processing paper filings and incentivize lower-cost electronic options. Additionally, adjustments to TTAB fees, which have not been adjusted, depending on the fee, for 15-25 years, have been proposed to bring the

fees closer to current processing costs, and new fees for extensions of time to file a notice of opposition will allow recovery of some of the cost of processing these filings.

Improve the Accuracy of the Trademark Register: The second fee-setting objective is to set or adjust fees to further the policy objective of improving the accuracy of the trademark register by incentivizing timely filings, examination, and efficient trial and appeal resolutions. These fees are used to encourage actions that help to facilitate efficient processing and encourage the prompt conclusion of application prosecution. An accurate register allows the public to rely on the register to determine potential trademark rights. Filings that may result in a less-accurate register, including those to maintain registrations that may include goods or services no longer in use, are among those filings targeted under this objective.

Improve the Efficiency of the Trademark Process: The third fee-setting objective pertains to furthering key policy objectives by improving the efficiency of the trademark process, primarily by incentivizing electronic filings. To reach this objective, the fee proposal targets changes to fees that could administratively improve application processing by encouraging more electronic filing. Electronic filing expedites processing, shortens pendency, minimizes manual processing and the potential for data-entry errors, and is more efficient for both the filer and the USPTO. The Office believes that the proposed increase in fees for paper filings, in conjunction with such prior rulemakings as the TEAS Reduced Fee (TEAS RF) rulemaking that took effect in January, 2015 (79 FR 74633 (Dec. 16, 2014)) and increased electronic filing options at lower rates, will continue to result in a greater percentage of electronic filings that will improve the efficiency of the trademark process.

The trademark fee schedule proposed here will achieve the goals of recovering prospective aggregate costs of operation while furthering the key policy considerations of better aligning fees with full costs, protecting the integrity of the register, and promoting the efficiency of the trademark process in FY 2017 and beyond. It will also create a better and fairer cost-recovery system that balances subsidizing costs to encourage broader usage of IP rights protection mechanisms and participation by more trademark owners.

Fees for Paper Filings					
37 CFR	Fee Code	Description	Current Fee	Proposed Fee	Change
2.6(a)(1)(i)	6001	Filing an Application on Paper, per Class	\$375	\$600	\$225
2.6(a)(19)(i)	6006	Request to Divide an Application Filed on Paper, per New Application Created	\$100	\$200	\$100
2.6(a)(1)(v)	6008	Additional Processing Fee under §2.22(c) or §2.23(c), per Class	\$50	\$125	\$75
2.6(a)(5)(i)	6201	Filing an Application for Renewal of a Registration on Paper, per Class	\$400	\$500	\$100
2.6(a)(6)(i)	6203	Additional Fee for Filing a Renewal Application During the Grace Period on Paper, per Class	\$100	\$200	\$100
2.6(a)(21)(i)	6204	Correcting a Deficiency in a Renewal Application via Paper Filing	\$100	\$200	\$100
2.6(a)(12)(i)	6205	Filing an Affidavit under sec. 8 of the Act on Paper, per Class	\$100	\$250	\$150
2.6(a)(14)(i)	6206	Additional Fee for Filing a sec. 8 Affidavit During the Grace Period on Paper, per Class	\$100	\$200	\$100
2.6(a)(20)(i)	6207	Correcting a Deficiency in a sec. 8 Affidavit via Paper Filing	\$100	\$200	\$100
2.6(a)(13)(i)	6208	Filing an Affidavit under sec. 15 of the Act on Paper, per Class	\$200	\$300	\$100
2.6(a)(7)(i)	6210	Filing to Publish a Mark under sec. 12(c) of the Act on Paper, per Class	\$100	\$200	\$100
2.6(a)(8)(i)	6211	Issuing New Certificate of Registration upon Request of Registrant, Request Filed on Paper	\$100	\$200	\$100
2.6(a)(9)(i)	6212	Certificate of Correction of Registrant's Error, Request Filed on Paper	\$100	\$200	\$100
2.6(a)(10)(i)	6213	Filing a Disclaimer to a Registration, on Paper	\$100	\$200	\$100
2.6(a)(11)(i)	6214	Filing an Amendment to a Registration, on Paper	\$100	\$200	\$100
2.6(a)(2)(i)	6002	Filing an Amendment to Allege Use under sec. 1(c) of the Act on Paper, per Class	\$100	\$200	\$100

2.6(a)(3)(i)	6003	Filing a Statement of Use under sec. 1(d)(1) of the Act on Paper, per Class	\$100	\$200	\$100
2.6(a)(4)(i)	6004	Filing a Request under sec. 1(d)(2) of the Act for a Six-Month Extension of Time for Filing a Statement of Use under sec. 1(d)(1) of the Act on Paper, per Class	\$150	\$250	\$100
7.6(a)(1)(i)	6901	Certifying an International Application Based on a Single Application or Registration, Filed on Paper, per Class	\$100	\$200	\$100
7.6(a)(2)(i)	6902	Certifying an International Application Based on More Than One Basic Application or Registration Filed on Paper, per Class	\$150	\$250	\$100
7.6(a)(4)(i)	6903	Transmitting a Request to Record an Assignment or Restriction, or Release of a Restriction, under § 7.23 or § 7.24 Filed on Paper	\$100	\$200	\$100
7.6(a)(5)(i)	6904	Filing a Notice of Replacement under § 7.28 on Paper, per Class	\$100	\$200	\$100
7.6(a)(6)(i)	6905	Filing an Affidavit under sec. 71 of the Act on Paper, per Class	\$100	\$250	\$150
7.6(a)(7)(i)	6906	Surcharge for Filing an Affidavit under sec. 71 of the Act During Grace Period on Paper, per Class	\$100	\$200	\$100
7.6(a)(3)(i)	6907	Transmitting a Subsequent Designation under § 7.21, Filed on Paper	\$100	\$200	\$100
7.6(a)(8)(i)	6908	Correcting a Deficiency in a sec. 71 Affidavit Filed on Paper	\$100	\$200	\$100
2.6(a)(16)(i)	6401	Filing a Petition to Cancel on Paper, per Class	\$300	\$500	\$200
2.6(a)(17)(i)	6402	Filing a Notice of Opposition on Paper, per Class	\$300	\$500	\$200
2.6(a)(18)(i)	6403	Ex Parte Appeal to the Trademark Trial and Appeal Board Filed on Paper, per Class	\$100	\$300	\$200
2.6(a)(22)(i)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(3) on Paper		\$200	n/a
2.6(a)(23)(i)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(1)(ii) or (c)(2) on Paper		\$300	n/a
2.6(a)(15)(i)	6005	Petitions to the Director Filed on Paper	\$100	\$200	\$100

Individual Fee Rationale: The Office projects the aggregate revenue generated from current and proposed trademark fees will recover the prospective aggregate cost,

including the operating reserve of its Trademark and TTAB operations. In addition, as described above, some of the proposed fees are set to balance several key policy factors, and executing these policy factors in the trademark fee schedule is consistent with the goals and objectives outlined in the Strategic Plan. Once the key policy factors are considered, fees are set at, above, or below individual cost-recovery levels for the service provided. For more information regarding the cost methodologies used to derive the historical fee unit expenses, please refer to USPTO Fee Setting – Activity Based Information and Trademark Fee Unit Expense Methodology available at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Fees for Paper Filings: The proposed rulemaking increases the fees for paper filings in order to meet two objectives: better aligning fees with costs and improve the efficiency of the trademark process. The fee for filing a trademark application for registration on paper would rise by \$225, from \$375 per International Class to \$600 per International Class. Additionally, all trademark processing fees for paper filings would increase by \$100 to \$200 more than current fees (per class, when applicable).

The costs of processing paper filings are generally higher than electronic filings and higher than current fee schedules. A full list of current and proposed fees including the unit cost by fee from fiscal years 2013, 2014, and 2015 is available in the Table of Trademark Fees – Current Proposed and Unit Cost at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. An increase in the fees for these filings will help to offset the higher processing costs and come closer to recovering the total processing costs. Furthermore, setting a higher fee for paper filings incentivizes electronic filings, which are more cost efficient for the Office to process and which

reduce the possibility of data-entry errors. As a result, adjustments of 5-10% in the estimated number of paper filings have been made in projecting filings and estimating revenue considering the impact of the fee increase on the behavior of applicants and resulting revenues. The rationale behind this fee increase is consistent with prior fee reductions for electronic filings.

A majority of comments received from the TPAC expressed support for increasing all paper filing fees, acknowledging the additional cost of processing paper filings and the fairly small impact on the overall system given the availability of lower-fee, more-efficient electronic alternatives. At present, the vast majority of filings are electronic. For example, in FY 2015, only 0.4% of initial applications for registration were filed on paper. With two exceptions, more than 95% of all fee-paid requests were filed electronically in FY 2015. Thus, an increase in all paper filing fees would have virtually no impact on the vast majority of applicants and registrants who file documents electronically.

Other Trademark-Processing Fees: The Office also proposes to increase certain other trademark processing fees in order to further key policy considerations, as discussed below. The proposed rulemaking increases the per-class fee for an initial application filed through TEAS from \$325 to \$400. This fee increase would apply to both U.S. and foreign filers as well as to applications submitted under the Madrid Protocol as requests for extension of protection and subsequent designation. The proposal also increases the processing fee for failure to meet the requirements for a TEAS Plus or TEAS RF filing from \$50 to \$125 per International Class to better align the resulting total charge with the fee for filing a regular TEAS application. The proposed

rule sets out increases to the fees for affidavits under sections 8 and 71 of the Act in the amount of \$50 per class for electronic filings and \$150 per class for paper filings.

Initial Application Filed Through TEAS: The proposed rule increases the fee for an initial application filed through TEAS as a regular TEAS application in order to better align the fee with the costs and to incentivize subsequent electronic filing and communications. The fee is increased from \$325 to \$400 to bring the fee closer to the full processing cost. Unlike the TEAS Plus and TEAS RF application options, the regular TEAS application does not require the applicant to commit to communicating electronically with the Office throughout the course of prosecution of the application. Increasing the fee for this application option will encourage applicants to commit to complete electronic processing using one of the lower-cost application options. Corresponding increases to the individual fee for requests for protection of an International Registration through the Madrid Protocol would also be affected by invoking the relevant provisions under the Protocol and its Common Regulations to adjust fees at the request of a contracting party.

Other Trademark-Processing Fees					
Initial Application Filed Through TEAS					
37 CFR	Fee Code	Description	Current Fee	Proposed Fee	Change
2.6(a)(1)(ii)	7001	Filing and Application through TEAS, per Class	\$325	\$400	\$75

(1) Processing Fee for Failure to Meet Requirements for TEAS Plus or TEAS RF: The proposed rule increases the fee for failure to meet TEAS Plus or TEAS RF filing requirements in order to promote the efficiency of the trademark application process by incentivizing electronic filings and communication. Both TEAS Plus and TEAS RF feature reduced filing fees in exchange for meeting certain requirements,

including a requirement to file certain documents electronically. Applicants who fail to meet the requirements are charged a per-class processing fee. This fee is proposed to be increased from \$50 to \$125 to address the difference between the filing fees for these applications and the proposed filing fee for a regular TEAS application, and to further encourage applicants to maintain the discounted application status by meeting all TEAS Plus and TEAS RF requirements to avoid being assessed the additional processing fee. Thus, the Office will continue to promote use of electronic filings, which are more efficient and cost-effective to review.

Other Trademark-Processing Fees					
Processing Fee for Failure to Meet Requirements for TEAS Plus or TEAS RF					
37 CFR	Fee Code	Description	Current Fee	Proposed Fee	Change
2.6(a)(1)(v)	6008	Additional Processing Fee under § 2.22(c) or § 2.23(c), per Class (paper)	\$50	\$125	\$75
2.6(a)(1)(v)	7008	Additional Processing Fee under § 2.22(c) or § 2.23(c), per Class (electronic)	\$50	\$125	\$75

(2) Affidavits under sections 8 and 71 of the Act: In addition to aligning the fees with full costs, the increase in fees for submitting affidavits under sections 8 and 71 will help to ensure the accuracy and integrity of the trademark register. Costs are set to increase for these filings as a result of the need for increased legal examination. In 2012, the USPTO began the Post Registration Proof of Use Pilot Program, during which 500 registrations (for which section 8 or 71 Declarations of Use were filed) were reviewed to assess the accuracy and integrity of the trademark register as to the actual use of the mark with the goods and/or services identified in the registration. The findings of the pilot program demonstrated a need for ongoing measures for additional review of these filings on a permanent basis. Such additional measures, which are currently under development in a separate rulemaking, will help identify and remove registrations with insufficient

maintenance filings, thereby reducing the number of invalid registrations, and resulting in a more accurate trademark register. Increased fees will be required to support the additional review.

Other Trademark-Processing Fees					
Affidavits Under §8 and §71 of the Act					
37 CFR	Fee Code	Description	Current Fee	Proposed Fee	Change
2.6(a)(12)(i)	6205	Filing an Affidavit under sec. 8 of the Act on Paper, per Class	\$100	\$250	\$150
2.6(a)(12)(ii)	7205	Filing an Affidavit under sec. 8 of the Act through TEAS, per Class	\$100	\$150	\$50
7.6(a)(6)(i)	6905	Filing an Affidavit under sec. 71 of the Act on Paper, per Class	\$100	\$250	\$150
7.6(a)(6)(ii)	7905	Filing an Affidavit under sec. 71 of the Act through TEAS, per Class	\$100	\$150	\$50

Trademark Service Fees: The proposed rule discontinues two trademark service fees and replaces two “at-cost” service fees with a set fee. The proposal discontinues the deposit account set-up fee because the process will be handled electronically, thus reducing the cost to process. The proposed rule also discontinues the self-service copy fees because the service will be provided by a third-party vendor. Finally, the unspecified labor fees are being replaced with a set fee of \$160 for expedited service and \$40 for overnight delivery. The proposed fees are based on an average hourly cost of \$40 per hour and the additional time estimated to fulfill the type of request.

Trademark Service Fees					
37 CFR	Fee Code	Description	Current Fee	Proposed Fee	Change
2.6(b)(11)	8524	Unspecified Other Services, Excluding Labor	At cost	n/a	n/a
2.6(b)(8)	New	Marginal Cost, Paid in Advance, For Each Hour of Terminal Session Time, Including Print Time, Using X-Search Capabilities, Prorated for the Actual Time Used. The Director May Waive the Payment by an Individual for Access		\$40	n/a

		to X-Search upon a Showing of Need or Hardship, and if Such Waiver is in the Public Interest			
2.6(b)(13)(i)	9201	Establish Deposit Account	\$10	n/a	n/a
2.6(b)(9)	8902	Self-Service Copy Charge, per Page Copishare Card	\$0.25	n/a	n/a
2.6(b)(10)	8523	Labor Charges for Services, per Hour or Fraction Thereof	\$40	n/a	n/a
2.6(b)(10)	New	Additional Fee for Expedited Service		\$160	n/a
2.6(b)(9)	New	Additional Fee for Overnight Delivery		\$40	n/a

Existing Fees at the TTAB: This proposed rule also increases ex parte (i.e., appeal) fees, which have not been adjusted in more than 25 years, and inter partes (i.e., trial) fees, which have not been adjusted in 15 years. The proposal includes a \$100 per-class increase in fees for electronic filings for petitions for cancellation, notices of opposition, and ex parte appeals. A \$200 increase, per class, is proposed for paper filings for the same requests. Currently, the cost of TTAB operations is heavily subsidized by revenue from other trademark processing fees. The proposed increases will not recover the full costs of TTAB operations, but will bring the fees closer to the full costs in order to bring better alignment between costs and fees. Furthermore, the increased fees for paper filings will incentivize lower-cost electronic filing in order to improve the efficiency of processing and reduce total costs. In general, TPAC commenters supported these fee increases because of the recognized costs for processing.

Existing Fees at the TTAB					
37 CFR	Fee Code	Description	Current Fee	Proposed Fee	Change

2.6(a)(16)(i)	6401	Filing a Petition to Cancel on Paper, per Class	\$300	\$500	\$200
2.6(a)(16)(ii)	7401	Filing a Petition to Cancel through ESTTA, per Class	\$300	\$400	\$100
2.6(a)(17)(i)	6402	Filing a Notice of Opposition on Paper, per Class	\$300	\$500	\$200
2.6(a)(17)(ii)	7402	Filing a Notice of Opposition through ESTTA, per Class	\$300	\$400	\$100
2.6(a)(18)(i)	6403	Ex Parte Appeal to the Trademark Trial and Appeal Board Filed on Paper, per Class	\$100	\$300	\$200
2.6(a)(18)(ii)	7403	Ex Parte Appeal to the Trademark Trial and Appeal Board Filed through ESTTA, per Class	\$100	\$200	\$100

Establish Fees for Extensions of Time at the TTAB: New fees are proposed for requests for extensions of time to file a notice of opposition in order to better align the fees with the processing costs as well as to protect the integrity of the trademark register. The public has 30 days from the date of publication of an application to file a notice of opposition with the TTAB. However, a potential opposer has available to it several types of extensions, which currently have no fee, that allows the opposer to delay an application or delay making a decision regarding whether to file an opposition. Currently, there is no fee associated with extensions of time to file a notice of opposition. The rulemaking proposes a tiered fee structure for these filings. Under the proposed structure, applicants may request: (1) an initial 30-day extension for no fee; (2) a subsequent 60-day extension for a fee of \$100 for electronic filings and \$200 for paper

filings; and (3) a final 60-day extension for a fee of \$200 for electronic filings and \$300 for paper filings.

Establish Fees for Extensions of Time at the TTAB					
37 CFR	Fee Code	Description	Current Fee	Proposed Fee	Change
2.6(a)(22)(i)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(3) on Paper		\$200	n/a
2.6(a)(22)(ii)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(3) through ESTTA		\$100	n/a
2.6(a)(23)(i)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(1)(ii) or (c)(2) on Paper		\$300	n/a
2.6(a)(23)(ii)	New	Filing a Request for an Extension of Time to File a Notice of Opposition under § 2.102(c)(1)(ii) or (c)(2) through ESTTA		\$200	n/a

These fees would yield efficiencies by encouraging potential opposers to make decisions regarding filing an opposition sooner, thus reducing delays to applicants. Additionally, for those that file the notice of opposition, the fee will result in faster conclusion of TTAB cases by encouraging earlier decisions to initiate proceedings. This should also help to protect the integrity of the trademark register by encouraging timely decisions and filings to ensure that the rights of other applicants and the public are not adversely affected.

The TPAC commenters expressed some concern over the establishment of these fees, noting that it may result in a higher number of oppositions being filed because the decision is rushed. Given that the fee for the notice of opposition has also been increased, the Office believes that the fees should encourage earlier calculated decisions based on all of the available information and fees. Furthermore, implementing a tiered-fee structure will reduce the number of potential opposers that use the extensions merely to delay applications.

Finally, these fees will help offset the processing costs. In FY 2015, the Office received 17,000 requests for extensions of time to file a notice of opposition, but there has been no fee to cover the costs to process these filings. It is customary for requests that delay processing of records, such as extensions, to require a fee to contribute to the cost of processing the filing as well as the overall cost of processing of appeals and trials. These fees are necessary to help attain primary Office goals of recovering the aggregate cost of operations, along with key policy considerations such as encouraging efficient processing.

Costs and Benefits: This rulemaking is not considered to be economically significant under Executive Order 12866 (Sept. 30, 1993).

Discussion of Proposed Regulatory Changes

The USPTO proposes to amend §§ 2.6 and 7.6 to establish new or increase certain existing trademark fees, and to make other conforming changes, as described in the section-by-section analysis below.

The USPTO proposes to revise § 2.6(a)(1)(i) to increase the fee for an initial application filed on paper from \$375 to \$600 per class, and § 2.6(a)(1)(ii) to increase the fee for an initial application filed using the regular TEAS option from \$325 to \$400 per class. This increase would also apply to requests for extension of protection filed under the Madrid Protocol.

The USPTO proposes to revise § 2.6(a)(1)(v) to increase the fee for failure to meet TEAS Plus or TEAS RF requirements from \$50 to \$125 per class.

The USPTO proposes to revise § 2.6(a)(2) to read “Amendment to allege use” and to add §§ 2.6(a)(2)(i) and (ii) to set out the fees for filing an amendment to allege use on

paper and through TEAS, respectively. The proposed § 2.6(a)(2)(i) increases the paper filing fee, per class, from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(3) to read “Statement of use” and to add § 2.6(a)(3)(i) and (ii) to set out the fees for filing a statement of use on paper and through TEAS, respectively. The proposed § 2.6(a)(3)(i) increases the paper filing fee, per class, from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(4) to read “Extension of time for filing statement of use” and to add § 2.6(a)(4)(i) and (ii) to set out the fees for filing an extension of time to file a statement of use on paper and through TEAS, respectively. The proposed § 2.6(a)(4)(i) increases the paper filing fee, per class, from \$150 to \$250.

The USPTO proposes to revise § 2.6(a)(5)(i) to increase the fee for filing an application for renewal of a registration on paper from \$400 to \$500 per class.

The USPTO proposes to revise § 2.6(a)(6) to read “Renewal during grace period” and to add § 2.6(a)(6)(i) and (ii) to set out the fees for filing a renewal application during the grace period on paper and through TEAS, respectively. The proposed § 2.6(a)(6)(i) increases the paper filing fee, per class, from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(7) to read “Publishing mark under section 12(c)” and to add § 2.6(a)(7)(i) and (ii) to set out the fees for filing a request to publish a mark under section 12(c) on paper and through TEAS, respectively. The proposed § 2.6(a)(7)(i) increases the paper filing fee, per class, from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(8) to read “New certificate of registration” and to add § 2.6(a)(8)(i) and (ii) to set out the fees for a filing a request to

issue a new certificate of registration on paper and through TEAS, respectively. The proposed § 2.6(a)(8)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(9) to read “Certificate of correction of registrant’s error” and to add § 2.6(a)(9)(i) and (ii) to set out the fees for filing a request to issue a certification of correction of a registrant’s error on paper and through TEAS, respectively. The proposed § 2.6(a)(9)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(10) to read “Disclaimer to a registration” and to add § 2.6(a)(10)(i) and (ii) to set out the fees for submitting a disclaimer to a registration on paper and through TEAS or the Electronic System for Trademark Trials and Appeals (ESTTA), respectively. The proposed § 2.6(a)(10)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(11) to read “Amendment of registration” and to add § 2.6(a)(11)(i) and (ii) to set out the fees for filing an amendment to a registration on paper and through TEAS or ESTTA, respectively. The proposed § 2.6(a)(11)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(12) to read “Affidavit under section 8” and to add § 2.6(a)(12)(i) and (ii) to set out the fees for filing an affidavit under section 8 of the Act on paper and through TEAS. The proposed § 2.6(a)(12)(i) increases the paper filing fee, per class, from \$100 to \$250, and the proposed § 2.6(a)(12)(ii) increases the electronic filing fee, per class, from \$100 to \$150.

The USPTO proposes to revise § 2.6(a)(13) to read “Affidavit under section 15” and to add § 2.6(a)(13)(i) and (ii) to set out the fees for filing an affidavit under section

15 of the Act on paper and through TEAS, respectively. The proposed § 2.6(a)(13)(i) increases the paper filing fee, per class, from \$200 to \$300.

The USPTO proposes to revise § 2.6(a)(14) to read “Filing section 8 affidavit during grace period” and to add § 2.6(a)(14)(i) and (ii) to set out the fees for filing an affidavit under section 8 of the Act during the grace period on paper and through TEAS, respectively. The proposed § 2.6(a)(14)(i) increases the paper filing fee, per class, from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(15) to read “Petitions to the Director” and to add § 2.6(a)(15)(i) and (ii) to set out the fees for filing a petition to the Director on paper and through TEAS. The proposed § 2.6(a)(15)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(16) to read “Petition to cancel” and to add § 2.6(a)(16)(i) and (ii) to set out the fees for filing a petition to cancel on paper and through ESTTA. The proposed § 2.6(a)(16)(i) increases the paper filing fee, per class, from \$300 to \$500 and § 2.6(a)(16)(ii) increases the electronic filing fee, per class, from \$300 to \$400.

The USPTO proposes to revise § 2.6(a)(17) to read “Notice of opposition” and to add § 2.6(a)(17)(i) and (ii) to set out the fees for filing a notice of opposition on paper and through ESTTA. The proposed § 2.6(a)(17)(i) increases the paper filing fee, per class, from \$300 to \$500 and § 2.6(a)(17)(ii) increases the electronic filing fee, per class, from \$300 to \$400.

The USPTO proposes to revise § 2.6(a)(18) to read “Ex parte appeal” and to add § 2.6(a)(18)(i) and (ii) to set out the fees for filing an ex parte appeal on paper and

through ESTTA. The proposed § 2.6(a)(18)(i) increases the paper filing fee, per class, from \$100 to \$300 and § 2.6(a)(18)(ii) increases the electronic filing fee, per class, from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(19) to read “Dividing an application” and to add § 2.6(a)(19)(i) and (ii) to set out the fees for filing a request to divide an application on paper and through TEAS, respectively. The proposed § 2.6(a)(19)(i) increases the paper filing fee from \$100 to \$200 per new application created.

The USPTO proposes to revise § 2.6(a)(20) to read “Correcting deficiency in section 8 affidavit” and to add § 2.6(a)(20)(i) and (ii) to set out the fees for filing a correction in a section 8 affidavit on paper and through TEAS, respectively. The proposed § 2.6(a)(20)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 2.6(a)(21) to read “Correcting deficiency in renewal application” and to add § 2.6(a)(21)(i) and (ii) to set out the fees for filing a correction in a renewal application on paper and through TEAS, respectively. The proposed § 2.6(a)(21)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to add § 2.6(a)(22) to read “Extension of time for filing notice of opposition under § 2.102(c)(1)(ii) or (c)(2)” and § 2.6(a)(22)(i) and (ii) to set out the fees for filing a request for an extension of time to file a notice of opposition pursuant to § 2.102(c)(1)(ii) or (c)(2) on paper and through ESTTA. The proposed § 2.6(a)(22)(i) sets the paper filing fee at \$200 and § 2.6(a)(22)(ii) sets the electronic filing fee at \$100.

The USPTO proposes to add § 2.6(a)(23) to read “Extension of time for filing notice of opposition under § 2.102(c)(3)” and § 2.6(a)(23)(i) and (ii) to set out the fees for

filing a request for an extension of time to file a notice of opposition pursuant to § 2.102(c)(3) on paper and through ESTTA. The proposed § 2.6(a)(23)(i) sets the paper filing fee at \$300 and § 2.6(a)(23)(ii) sets the electronic filing fee at \$200.

The USPTO proposes to revise § 2.6(b)(9) to delete the current fee for self-service copies and replace it with a fee of \$40 for overnight delivery.

The USPTO proposes to revise § 2.6(b)(10) to delete the current fee for labor charges and replace it with a fee of \$160 for expedited service.

The USPTO proposes to delete the current § 2.6(b)(11) and to redesignate the current § 2.6(b)(12) as § 2.6(b)(11).

The USPTO proposes to delete the current § 2.6(b)(13) and (b)(13)(i), to redesignate the current § 2.6(b)(13)(ii) as § 2.6(b)(12), and to add the wording “Deposit account” at the beginning of the paragraph.

The USPTO proposes to revise § 2.200(b) to delete the reference to the extra charge in § 2.6(b)(10), pursuant to the proposed change to § 2.6(b)(10) set forth above.

The USPTO proposes to revise § 2.208(a) to delete the reference to the fee for establishing a deposit account and amend the reference regarding the service charge to § 2.6(b)(12), pursuant to the proposed changes to §§ 2.6(b)(13) through (13)(ii) set forth above.

The USPTO proposes to revise § 7.6(a)(1) to read “Certification of international application based on single application or registration” and to add § 7.6(a)(1)(i) and (ii) to set out the fees for certifying an international application based on a single basic application or registration on paper and through TEAS, respectively. The proposed § 7.6(a)(1)(i) increases the paper filing fee, per class, from \$100 to \$200.

The USPTO proposes to revise § 7.6(a)(2) to read “Certification of international application based on more than one application or registration” and to add § 7.6(a)(2)(i) and (ii) to set out the fees for certifying an international application based on a more than one application or registration on paper and through TEAS, respectively. The proposed § 7.6(a)(2)(i) increases the paper filing fee, per class, from \$150 to \$250.

The USPTO proposes to revise § 7.6(a)(3) to read “Transmission of subsequent designation” and to add § 7.6(a)(3)(i) and (ii) to set out the fees for transmitting a subsequent designation under § 7.21 on paper and through TEAS, respectively. The proposed § 7.6(a)(3)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 7.6(a)(4) to read “Transmission of request to record an assignment or restriction” and to add § 7.6(a)(4)(i) and (ii) to set out the fees for transmitting a request to record an assignment or restriction under § 7.23 or § 7.24 on paper and through TEAS, respectively. The proposed § 7.6(a)(4)(i) increases the paper filing fee from \$100 to \$200.

The USPTO proposes to revise § 7.6(a)(5) to read “Notice of replacement” and to add § 7.6(a)(5)(i) and (ii) to set out the fees for filing a notice of replacement under § 7.28 on paper and through TEAS, respectively. The proposed § 7.6(a)(5)(i) increases the fee, per class, for filing a notice of replacement on paper from \$100 to \$200.

The USPTO proposes to revise § 7.6(a)(6) to read “Affidavit under section 71” and to add § 7.6(a)(6)(i) and (ii) to set out the fees for filing an affidavit under section 71 of the Act on paper and through TEAS, respectively. The proposed § 7.6(a)(6)(i) increases the paper filing fee, per class, from \$100 to \$250, and the proposed § 7.6(a)(6)(ii) increases the electronic filing fee, per class, from \$100 to \$150.

The USPTO proposes to revise § 7.6(a)(7) to read “Filing affidavit under section 71 during grace period” and to add § 7.6(a)(7)(i) and (ii) to set out the surcharge for filing an affidavit under section 71 of the Act during the grace period on paper and through TEAS, respectively. The proposed § 7.6(a)(7)(i) increases the surcharge, per class, for filing an affidavit during the grace period on paper from \$100 to \$200.

The USPTO proposes to revise § 7.6(a)(8) to read “Correcting deficiency in section 71 affidavit” and to add §§ 7.6(a)(8)(i) and (ii) to set out the fees for correcting a deficiency in a section 71 affidavit on paper and through TEAS, respectively. The proposed § 7.6(a)(8)(i) increases the fee for filing the correction on paper from \$100 to \$200.

Rulemaking Requirements

America Invents Act:

This rulemaking proposes to set and adjust fees under section 10(a) of the AIA. Section 10(a) of the AIA authorizes the Director to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act for any services performed by, or materials furnished by the Office. See section 10 of the AIA, Public Law 112-29, 125 Stat. 284, 316-17. Section 10(e) of the AIA sets forth the general requirements for rulemakings that set or adjust fees under this authority. In particular, section 10(e)(1) requires the Director to publish in the Federal Register any proposed fee change under section 10, and include in such publication the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change. For such rulemakings, the AIA requires that the Office provide a public comment period of not less than 45 days.

The TPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of Trademark operations. When adopting fees under section 10, the AIA requires the Director to provide the TPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the Federal Register. The TPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold public hearing(s) on the proposed fees. The TPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the TPAC before finally setting or adjusting fees.

Consistent with the requirements of the AIA, on October 14, 2015, the Director notified the TPAC of the Office's intent to set or adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The revenue estimate for the fee proposal considered by the TPAC was included in the USPTO FY 2017 President's Budget request. The fee schedule associated with the original proposal is presented as Alternative 4 – Original Proposal to TPAC.

The TPAC held a public hearing in Alexandria, Virginia on November 3, 2015. Transcripts of this hearing and comments submitted to the TPAC in writing are available for review at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The TPAC released its report regarding the preliminary proposed fees on

November 30, 2015. The report can be found online at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Initial Regulatory Flexibility Analysis:

The USPTO publishes this Initial Regulatory Flexibility Analysis (IRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) to examine the impact of the Office's proposed changes to trademark fees on small entities and to seek the public's views. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare and make available for public comment an IRFA, unless the agency certifies under 5 U.S.C. 605(b) that the proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605.

Items 1–5 below discuss the five items specified in 5 U.S.C. 603(b)(1) through (5) to be addressed in an IRFA. Item 6 below discusses alternatives to this proposal that the Office considered.

1. Description of the reasons that action by the USPTO is being considered:

The USPTO proposes setting and adjusting certain trademark fees as authorized by section 10 of the AIA. The fee schedule proposed under section 10 in this rulemaking will recover the aggregate estimated trademark costs of the Office while achieving strategic and operational goals, such as maintaining an operating reserve, implementing measures to maintain trademark pendency and high trademark quality, modernizing the trademark IT systems, continuing programs for stakeholder and public outreach, and enhancing operations of the TTAB. Aggregate costs are estimated through the USPTO budget-formulation process with the annual preparation of a five-year performance-based

budget request. Revenues are estimated based on the projected demand for trademark products and services and fee rates.

2. Succinct statement of the objectives of, and legal basis for, the proposed rule:

The policy objectives of the proposed rules are to: (1) better align fees with full costs; (2) protect the integrity of the register; and (3) promote the efficiency of the trademark process. As to the legal basis for the proposed rules, Section 10 of the AIA provides the authority for the Director to set or adjust by rule any fee established, authorized, or charged under the Trademark Act of 1946, 15 U.S.C. 1051 et seq., as amended. See also section 31 of the Trademark Act, 15 U.S.C. 1113.

3. Description of and, where feasible, estimate of the number of affected small entities:

The USPTO does not collect or maintain statistics in trademark cases on small - versus large-entity applicants, and this information would be required in order to determine the number of small entities that would be affected by the proposed rules. The USPTO believes that the overall impact of the proposed fee structure on applicants and registrants will be positive, because it promotes the more cost-effective electronic filing system. There will be little or no impact for the majority of applicants and registrants that file electronically and communicate on a timely basis.

The proposed rules could apply to any entity filing with USPTO. The USPTO estimates that during the first fiscal year under the rules as proposed, assuming an expected implementation date of January 2017, the USPTO would expect to collect approximately \$18.4 million more in trademark processing, service, and TTAB fees. The USPTO would receive an additional \$0.7 million in fees from paper-filed applications

and \$17.7 million more from electronically filed applications, including \$3 million from TEAS applications for the registration of a mark, \$3.2 million from requests for extension of protection and subsequent designations, \$0.3 million for additional fees for applications failing to meet the TEAS Plus or TEAS RF requirements, and \$7.8 million for affidavits of use under sections 8 and 71. TTAB fees would increase by \$3.6 million, of which \$2.1 million is expected from the newly established fees for filing extensions of time to file an opposition after the initial request.

Trademark Fee Category	Estimated Collections with Current Fees	Estimated Collections with Proposed Fees	Change
Total Trademark Fees	\$307,468,600	\$325,869,200	\$18,400,600
Paper-Filed Applications	\$1,752,750	\$2,467,350	\$714,600
Electronically Filed Applications	\$294,063,575	\$311,739,100	\$17,675,500
TEAS Applications for the Registration of a Mark	\$17,787,900	\$20,763,600	\$2,975,700
Request for Extension of Protection and Subsequent Designations	\$19,384,950	\$22,567,950	\$3,183,000
Failing to Meet the TEAS Plus or TEAS RF Requirements	\$320,800	\$663,200	\$342,400
Affidavit under §8 and §71 of the Act	\$21,654,300	\$29,456,400	\$7,802,100
TTAB Fees	\$4,742,000	\$8,310,700	\$3,568,700
New TTAB Fees	\$0	\$2,142,300	\$2,142,300
Trademark Service Fees	\$11,652,240	\$11,663,440	\$11,200

4. Description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:

The proposed rule imposes no new reporting or recordkeeping requirements.

The proposed rule sets and adjusts trademark fees. The USPTO does not anticipate that the proposed rule would have a disproportionate impact upon any particular class of small or large entities.

5. Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities:

The USPTO considered a total of five alternatives for setting fee rates before recommending this proposal. A full list of current and proposed fees for each of the alternatives is available in the IRFA Tables and the Trademark Fee Aggregate Revenue Tables at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The alternatives are explained here with additional information regarding how each proposal was developed and the aggregate revenue was estimated. A description of the Aggregate Revenue Estimating Methodologies is available at:

<http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

The USPTO chose the alternative proposed herein because it will enable the Office to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative proposed here secures the Office's required revenue to meet its aggregate costs, while meeting the strategic goals of better aligning fees with full costs, protecting the integrity of the register, and promoting the efficiency of the trademark process. The increased efficiencies realized through the proposed rule will benefit all applicants and registrants by allowing registrations to be granted sooner and more efficiently removing unused marks from the register, thus allowing mark owners to more quickly and assuredly register their marks. All trademark applicants should benefit from the reduced pendency that will be realized under the proposed alternative. The proposed fee schedule for this

alternative (labeled NPRM Proposal) is available at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

One alternative to setting and increasing the proposed fees would be to take no action at this time regarding trademark fees and to leave all trademark fees as currently set. This alternative was rejected because, due to rising personnel and IT costs, the Office has determined that a fee increase is needed to accomplish the stated objective of better aligning fees with the full cost of products and services. In addition, increasing the trademark fees will assist in protecting the integrity of the register by incentivizing more timely filing of applications and other filings and more efficient resolution of appeals and trials and will promote the efficiency of the process by, in part, increasing the affordability of electronic filing options relative to paper filings. The proposed fee schedule for this alternative (labeled Alternative 1 – No Change) is available at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Another alternative to setting and increasing the proposed fees that was considered was to tie all trademark fees to the Consumer Price Index (CPI), applying a 9.956%, multi-year, across-the-board inflationary increase to all trademark fees. The 9.956% represents the estimated cumulative inflationary adjustment from FY 2017 through FY 2021. As estimated by the Congressional Budget Office, projected inflationary rates by fiscal year are: 2.17% in FY 2017, 2.39% in FY 2018, 2.38% in FY 2019, 2.42% in FY 2020, and 2.42% in FY 2021. This alternative was rejected because, unlike the proposed fee structure, there would be no improvements in fee design to accomplish the stated objectives of protecting the integrity of the register by incentivizing more timely filing of applications and other filings and more efficient resolution of

appeals and trials. In addition, it was determined that adjusting trademark fees in accordance with increases or decreases in the CPI would likely lead to user confusion as fees would be adjusted by what could be viewed as non-traditional or unpredictable increments. The proposed fee schedule for this alternative (labeled Alternative 2 – CPI Increase) is available at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

Another alternative that was considered was full cost recovery per fee. This would require USPTO to set each trademark fee at 100% of unit cost to allow the USPTO to recover full cost per fee based on the most recent fee unit cost trends. The USPTO uses Activity Based Information to determine the historical costs of activities related to each fee. Additional information about the methodology is available at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

It is common practice in the Federal Government to set a particular fee at a level to recover the cost of a given good or service. In OMB Circular A-25: User Charges, the OMB states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the government is acting in its capacity as sovereign. This alternative was rejected because it was determined that the costs for any given product or service can vary from year to year, such that a yearly review of all, and adjustment to many, trademark fees would be required, and could also lead to consumer confusion regarding what any given trademark fee was currently set at and what the relevant fee would be in the future. This alternative would have increased revenue by more than the current proposal in part because workloads are expected to increase. In addition, it was determined that setting the

trademark fees to recover 100% of all costs associated with each product or service would not properly promote the efficiency of the process. The proposed fee schedule for this alternative (labeled Alternative 3 – Individual Cost Recovery) is available at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

For purposes of this discussion, the preliminary trademark fee proposal presented to the TPAC is identified as alternative 4 in the Trademark Fee Aggregate Revenue Tables available at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>. The revenue estimate for the preliminary proposal considered by the TPAC was included in the USPTO FY 2017 President’s Budget request. That proposal, as previously addressed in this notice, has been modified based on the feedback from the TPAC report received November 30, 2015 and feedback received from public comments. The preliminary proposal included an increase in the fee to file a request for an extension of time to file a statement of use that would apply only to U.S.-based applicants that filed an application based on a future intention to use the mark. The current proposal no longer includes an increase to that fee unless it is filed on paper, consistent with the increase in all paper-filed requests. Instead, the current proposal includes an increase in the fee for filing an affidavit under section 8 and 71 that would apply to the continued maintenance of a registration. The current proposal also increases the fee for filing a TEAS application. The proposed fee schedule for this alternative (labeled Alternative 4 – Original Proposal to TPAC (FY 17 PB)) is available at: <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

6. Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule:

The proposed rules would not duplicate, overlap, or conflict with any other Federal rules.

Executive Order 12866 (Regulatory Planning and Review): This proposed rule has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes, to the extent applicable.

Executive Order 13132 (Federalism): This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this notice are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this action is not expected to result in a “major rule” as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 et seq.

Paperwork Reduction Act: This proposed rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The collection of information involved in this rule has been reviewed and previously approved by OMB

under control numbers 0651-0009, 0651-0040, 0651-0050, 0651-0051, 0651-0054, and 0651-0055.

You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to the Commissioner for Trademarks, by mail to P.O. Box 1451, Alexandria, VA 22313-1451, attention Catherine Cain; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, VA 22314, attention Catherine Cain; or by electronic mail message via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO-T-2016-0005).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, International registration, Trademarks.

For the reasons stated in the preamble and under the authority contained in section 10(a) of the AIA, 15 U.S.C. 1113, 15 U.S.C. 1123, and 35 U.S.C. 2, as amended, the USPTO proposes to amend parts 2 and 7 of title 37 as follows:

PART 2 - RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1113, 15 U.S.C. 1123, 35 U.S.C. 2, Section 10 of Pub. L. 112–29, unless otherwise noted.

2. Revise § 2.6 to read as follows:

§ 2.6 Trademark fees.

(a) Trademark process fees.

(1) Application filing fees.

(i) For filing an application on paper, per class—\$600.00

(ii) For filing an application through TEAS, per class —\$400.00

(iii) For filing a TEAS Reduced Fee (RF) application through TEAS under § 2.23, per class—\$275.00

(iv) For filing a TEAS Plus application through TEAS under § 2.22, per class—\$225.00

(v) Additional processing fee under § 2.22(c) or 2.23(c), per class—\$125.00

(2) Amendment to allege use.

(i) For filing an amendment to allege use under section 1(c) of the Act on paper, per class—\$200.00

(ii) For filing an amendment to allege use under section 1(c) of the Act through TEAS, per class—\$100.00

(3) Statement of use.

(i) For filing a statement of use under section 1(d)(1) of the Act on paper, per class—\$200.00

- (ii) For filing a statement of use under section 1(d)(1) of the Act through TEAS, per class—\$100.00
- (4) Extension of time for filing statement of use.
 - (i) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act on paper, per class—\$250.00
 - (ii) For filing a request under section 1(d)(2) of the Act for a six-month extension of time for filing a statement of use under section 1(d)(1) of the Act through TEAS, per class—\$150.00
- (5) Application for renewal of a registration fees.
 - (i) For filing an application for renewal of a registration on paper, per class—\$500.00
 - (ii) For filing an application for renewal of a registration through TEAS, per class—\$300.00
- (6) Renewal during grace period.
 - (i) Additional fee for filing a renewal application during the grace period on paper, per class—\$200.00
 - (ii) Additional fee for filing a renewal application during the grace period through TEAS, per class—\$100.00
- (7) Publishing mark under section 12(c) of the Act.
 - (i) For filing to publish a mark under section 12(c) of the Act on paper, per class—\$200.00

(ii) For filing to publish a mark under section 12(c) of the Act through TEAS, per class—\$100.00

(8) New certificate of registration.

(i) For issuing a new certificate of registration upon request of registrant, request filed on paper—\$200.00

(ii) For issuing a new certificate of registration upon request of registrant, request filed through TEAS—\$100.00

(9) Certificate of correction of registrant's error.

(i) For a certificate of correction of registrant's error, request filed on paper—\$200.00

(ii) For a certificate of correction of registrant's error, request filed through TEAS—\$100.00

(10) Disclaimer to a registration.

(i) For filing a disclaimer to a registration, on paper—\$200.00

(ii) For filing a disclaimer to a registration, through TEAS or ESTTA—\$100.00

(11) Amendment of registration.

(i) For filing an amendment to a registration, on paper—\$200.00

(ii) For filing an amendment to a registration, through TEAS or ESTTA—\$100.00

(12) Affidavit under section 8 of the Act.

(i) For filing an affidavit under section 8 of the Act on paper, per class—\$250.00

(ii) For filing an affidavit under section 8 of the Act through TEAS, per class—\$150.00

(13) Affidavit under section 15 of the Act.

- (i) For filing an affidavit under section 15 of the Act on paper, per class—\$300.00
- (ii) For filing an affidavit under section 15 of the Act through TEAS, per class—
\$200.00
- (14) Filing section 8 affidavit during grace period.
 - (i) Additional fee for filing a section 8 affidavit during the grace period on paper,
per class—\$200.00
 - (ii) Additional fee for filing a section 8 affidavit during the grace period through
TEAS, per class—\$100.00
- (15) Petitions to the Director.
 - (i) For petitions to the Director filed on paper—\$200.00
 - (ii) For petitions to the Director filed through TEAS—\$100.00
- (16) Petition to cancel.
 - (i) For filing a petition to cancel on paper, per class—\$500.00
 - (ii) For filing a petition to cancel through ESTTA, per class—\$400.00
- (17) Notice of opposition.
 - (i) For filing a notice of opposition on paper, per class—\$500.00
 - (ii) For filing a notice of opposition through ESTTA, per class—\$400.00
- (18) Ex parte appeal.
 - (i) For ex parte appeal to the Trademark Trial and Appeal Board filed on paper, per
class—\$300.00
 - (ii) For ex parte appeal to the Trademark Trial and Appeal Board filed through
ESTTA, per class—\$200.00
- (19) Dividing an application.

(i) Request to divide an application filed on paper, per new application created—
\$200.00

(ii) Request to divide an application filed through TEAS, per new application
created—\$100.00

(20) Correcting deficiency in section 8 affidavit.

(i) For correcting a deficiency in a section 8 affidavit via paper filing—\$200.00

(ii) For correcting a deficiency in a section 8 affidavit via TEAS filing—\$100.00

(21) Correcting deficiency in renewal application.

(i) For correcting a deficiency in a renewal application via paper filing—\$200.00

(ii) For correcting a deficiency in a renewal application via TEAS filing—\$100.00

(22) Extension of time for filing notice of opposition under § 2.102(c)(1)(ii) or
(c)(2).

(i) For filing a request for an extension of time to file a notice of opposition under
§ 2.102(c)(1)(ii) or (c)(2) on paper—\$200.00

(ii) For filing a request for an extension of time to file a notice of opposition under
§ 2.102(c)(1)(ii) or (c)(2) through ESTTA—\$100.00

(23) Extension of time for filing notice of opposition under § 2.102(c)(3).

(i) For filing a request for an extension of time to file a notice of opposition under
§ 2.102(c)(3) on paper—\$300.00

(ii) For filing a request for an extension of time to file a notice of opposition under
§ 2.102(c)(3) through ESTTA—\$200.00

(b) Trademark service fees.

(1) For printed copy of registered mark, copy only. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (e.g., facsimile, electronic mail)—\$3.00

(2) Certified or uncertified copy of trademark application as filed processed within seven calendar days—\$15.00

(3) Certified or uncertified copy of a trademark-related official record—\$50.00

(4) Certified copy of a registered mark, showing title and/or status:

(i) Regular service—\$15.00

(ii) Expedited local service—\$30.00

(5) Certified or uncertified copy of trademark records, per document except as otherwise provided in this section—\$25.00

(6) For recording each trademark assignment, agreement or other document relating to the property in a registration or application

(i) First property in a document—\$40.00

(ii) For each additional property in the same document—\$25.00

(7) For assignment records, abstract of title and certification, per registration—\$25.00

(8) Marginal cost, paid in advance, for each hour of terminal session time, including print time, using X-Search capabilities, prorated for the actual time used. The Director may waive the payment by an individual for access to X-Search upon a showing of need or hardship, and if such waiver is in the public interest—\$40.00

(9) Additional Fee for Overnight Delivery—\$40.00

(10) Additional Fee for Expedited Service—\$160.00

(11) For processing each payment refused (including a check returned “unpaid”) or charged back by a financial institution—\$50.00

(12) Deposit account service charge for each month when the balance at the end of the month is below \$1,000—\$25.00

3. Amend § 2.200 by revising paragraph (b) to read as follows:

§ 2.200 Assignment records open to public inspection.

* * * * *

(b) An order for a copy of an assignment or other document should identify the reel and frame number where the assignment or document is recorded.

4. Amend § 2.208 by revising paragraph (a) to read as follows:

§ 2.208 Deposit accounts.

(a) For the convenience of attorneys, and the general public in paying any fees due, in ordering copies of records, or services offered by the Office, deposit accounts may be established in the Office. A minimum deposit of \$1,000 is required for paying any fees due or in ordering any services offered by the Office. The Office will issue a deposit account statement at the end of each month. A remittance must be made promptly upon receipt of the statement to cover the value of items or services charged to the account and thus restore the account to its established normal deposit. An amount sufficient to cover all fees, copies, or services requested must always be on deposit. Charges to accounts with insufficient funds will not be accepted. A service charge (§ 2.6(b)(12)) will be assessed for each month that the balance at the end of the month is below \$1,000.

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**PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL
RELATING TO THE MADRID AGREEMENT CONCERNING THE
INTERNATIONAL REGISTRATION OF MARKS**

5. The authority citation for 37 CFR part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

6. Revise § 7.6 to read as follows:

§ 7.6 Schedule of U.S. process fees.

(a) The Office requires the following process fees:

(1) Certification of international application based on single application or registration.

(i) For certifying an international application based on a single basic application or registration, filed on paper, per class—\$200.00

(ii) For certifying an international application based on a single basic application or registration, filed through TEAS, per class—\$100.00

(2) Certification of international application based on more than one application or registration.

(i) For certifying an international application based on more than one basic application or registration filed on paper, per class—\$250.00

(ii) For certifying an international application based on more than one basic application or registration filed through TEAS, per class—\$150.00

(3) Transmission of subsequent designation.

(i) For transmitting a subsequent designation under § 7.21, filed on paper—
\$200.00

- (ii) For transmitting a subsequent designation under § 7.21, filed through TEAS—\$100.00
- (4) Transmission of request to record an assignment or restriction.
 - (i) For transmitting a request to record an assignment or restriction, or release of a restriction, under § 7.23 or § 7.24 filed on paper—\$200.00
 - (ii) For transmitting a request to record an assignment or restriction, or release of a restriction, under § 7.23 or § 7.24 filed through TEAS—\$100.00
- (5) Notice of replacement.
 - (i) For filing a notice of replacement under § 7.28 on paper, per class—\$200.00
 - (ii) For filing a notice of replacement under § 7.28 through TEAS, per class—\$100.00
- (6) Affidavit under section 71 of the Act.
 - (i) For filing an affidavit under section 71 of the Act on paper, per class—\$250.00
 - (ii) For filing an affidavit under section 71 of the Act through TEAS, per class—\$150.00
- (7) Filing affidavit under section 71 of the Act during grace period.
 - (i) Surcharge for filing an affidavit under section 71 of the Act during the grace period on paper, per class—\$200.00
 - (ii) Surcharge for filing an affidavit under section 71 of the Act during the grace period through TEAS, per class—\$100.00
- (8) Correcting deficiency in section 71 affidavit.
 - (i) For correcting a deficiency in a section 71 affidavit filed on paper—\$200.00

(ii) For correcting a deficiency in a section 71 affidavit filed through TEAS—
\$100.00

(b) The fees required in paragraph (a) of this section must be paid in U.S. dollars at the time of submission of the requested action. See § 2.207 of this chapter for acceptable forms of payment and § 2.208 of this chapter for payments using a deposit account established in the Office.

Dated: May 23, 2016.

Michelle K. Lee
Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
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