

The United States Patent & Trademark Office (USPTO) issued and published final rules for patent fees. While some fees increase slightly to obtain a patent including filing, search, examination, and issue fees, other fees, particularly those associated with AIA trials, under the Leahy-Smith America Invents Act (AIA), increase significantly.

The new fees are effective on January 16, 2018.

These new fees were set by the USPTO under the authority of the AIA, and these latest fees mark the second patent fee setting rule since January 2013. The fees were arrived at after a biennial review of fees, costs, and revenues by the USPTO, and the fee increases are considered necessary to continue to fund patent operations at the USPTO, with particular emphasis on supporting the Patent Trial and Appeal Board (PTAB).

Applicants who meet the definition for small (50%) or micro entity (75%) discounts will continue to pay a reduced fee for the new patent fees.

A copy of the Final Rule can be found [here](#).

In the following remarks are some highlights of the new patent fees including rationales provided by the USPTO for the fee increases. All fees are in USD and stated under large entity fees.

Basic Utility Patent Application Fees

Fee Description	Current Fees	Final Rule Fees	Percent Change
Provisional Application Filing Fee	\$260	\$280	8%
Utility Filing Fee	\$280	\$300	7%
Utility Search Fee	\$600	\$660	10%
Utility Examination Fee	\$720	\$760	6%
Utility Issue Fee	\$960	\$1,000	4%
Independent Claims in Excess of Three	\$420	\$460	10%
Claims in Excess of 20	\$80	\$100	25%

Overall, the basic utility filing fees adjust slightly and the increases are justified by the USPTO as helping the USPTO to recover higher costs of performing such services due to increases in the cost of doing business.

Basic Design Patent Application Fees

Fee description	Current Fees		Final Rule fees	Percent Change
Design Search Fee	\$120		\$160	33%
Design Examination Fee	\$460		\$600	30%
Design Issue Fee	\$560		\$700	25%

The USPTO justified these fee increases for design applications due to there being no maintenance fees for design patents. The full cost of examination of a design application is not considered to be covered by the search, examination, and issue fees for design patents. Rather, other application types, such as utility applications, subsidize design applications. The fee increases are made to better align the fee with the costs for examining design applications and to balance the subsidization.

Request for Continued Examination (RCE) – First and Second and Subsequent Request

Fee description	Current Fees	Final Rule Fees	Percent Change
Request for Continued Examination (RCE) - 1st Request	\$1,200	\$1,300	8%
Request for Continued Examination (RCE) - 2nd and Subsequent Request	\$1,700	\$1,900	12%

The moderate increases in RCE fees are made to align the fees with the costs of processing RCEs. The USPTO indicates that RCEs only collect 62.5% percent of their examination costs. The USPTO reminds regarding RCE fees that it is committed to reducing the need for RCEs by providing the [Quick Path Information Disclosure Statement \(QPIDS\) pilot program](#), the [After Final Consideration Pilot 2.0 \(AFCP 2.0\)](#), and other quality initiatives to improve the patent process.

Information Disclosure Statements (IDS)

Fee description	Current Fees	Final Rule fees	Percent Change
Submission of Information Disclosure Statement	\$180	\$240	33%

The rationale for the IDS fee increase is to balance the need to encourage early submission of an IDS while keeping the fee low enough to allow for timely IDS filings within given periods.

Request for Ex Parte Reexamination (streamlined)

Fee description	Current Fees	Final Rule fees	Percent Change
Ex Parte Reexamination (streamlined)	New	\$6,000	n/a

This is a new fee for a smaller, streamlined reexamination. A normal Ex Parte Reexamination has a fee of \$12,000, which remains unchanged, and therefore this streamlined Ex Parte Reexamination is a significant discount. To qualify, the request must be (i) 40 pages or less, including claim charts; (ii) lines must be double-spaced or one-and-a-half spaced; (iii) text written in a non-script type font such as Arial, Times New Roman, or Courier; (iv) a font no smaller than 12 point; (v) margins conforming to requirements; (vi) sufficient clarity and contrast to permit electronic capture. Copies of patents or printed publications relied upon in the request are not included in the page count, as is a copy of the patent for which Ex Parte Reexamination is requested.

Micro entity status is only available to patent owner requestors.

AIA Trials

Fee description	Current Fees	Final Rule fees	Percent Change
Inter Partes Review Request Fee - up to 20 claims	\$9,000	\$15,500	72%
Inter Partes Review Post-Institution Fee- up to 15 claims	\$14,000	\$15,000	7%

Fee description	Current Fees	Final Rule fees	Percent Change
Inter Partes Review Request of each claim in excess of 20	\$200	\$300	50%
Inter Partes Review Post-Institution Fee of each claim in excess of 15	\$400	\$600	50%
Post-Grant or Covered Business Method Review Request Fee - up to 20 claims	\$12,000	\$16,000	33%
Post-Grant or Covered Business Method Review Post-Institution Fee - up to 15 claims	\$18,000	\$22,000	22%
Post-Grant or Covered Business Method Review Request Fee of each claim in excess of 20	\$250	\$375	50%
Post-Grant or Covered Business Method Review Post-Institution of each claim in excess of 15	\$550	\$825	50%

The USPTO has increased the fees for AIA trials in view of the anticipated rise in the number of AIA trial filings. As the AIA trial filings are relatively new, the USPTO initially set the AIA trial filings without historical cost information. The USPTO justifies the new fee increases to keep up with the demand of the AIA trial filings.

It was found that costs for Inter Partes Review requests have outpaced costs for Inter Partes Reviews post-institution. Likewise, Post-Grant or Covered Business Method Review requests see a greater rise than in Post-Grant or Covered Business Method Reviews post-institution.

It should be remembered that there are no small or micro entity discounts for AIA trials.

Other Fee Increases

The final rule sets or adjusts a total of 202 fees, inclusive of 14 discontinued fees, and 42 new fees. Some of the increases relate to certificates of correction, U.S. national stage filings, and sequence listings. The above summary is not exhaustive of the fee increases, and close consideration of the fee increases should be made according to the fee descriptions.

Consideration should be made concerning decisions on proceedings significantly impacted by the fee increases by January 16, 2018, to avoid the fee increases. This particularly applies to

USPTO Fees on the Rise
by Justin Cassell

AIA trials.