

Congress Hikes Patent Fees

By Colin S. Wright.¹

On December 8, 2004, President Bush signed the Consolidated Appropriations Act of 2005. Among other fiscal changes, the omnibus spending bill raised many of the regulatory fees at the U.S. Patent & Trademark Office (USPTO). While many fees saw a gradual rise, several saw significant increases. Notably, fees for excess patent claims more than doubled, and new fees were instituted for the search and examination of utility patents and for excess pages in lengthy applications. While these changes raise the cost of filing and prosecuting a patent application in the United States, a savvy applicant may be able to avoid the brunt of the increases.

In the not-so-distant past, the cost of filing a patent application was set at \$790. This single filing fee covered an application of unlimited length, including up to twenty claims, of which three could be independent claims. Claims in excess of twenty were previously subject to an \$18 per claim fee, and independent claims in excess of three cost \$88 each. Those fees have now more than doubled with excess claims running \$50 and excess independent claims running \$200 a piece.

The single basic filing fee has now been split into three separate fees payable at the time of application: (1) the basic filing fee is now \$300, (2) a new search fee is set at \$500, and (3) a new examination fee is set at \$200. Although all three fees are payable up front, according to the USPTO's Office of Patent Legal Administration, applications which are withdrawn before entering the search and examination phases may be eligible for a refund of those fees.

Previously, utility patent applications were not subject to page count restrictions. Occasionally, applications reached hundreds of pages in length leading to excessive examination time. In order to discourage lengthy specifications, the patent office now charges a utility application size fee of \$250 for each additional 50 pages in excess of 100 pages. Such a fee may possibly be avoided by adjusting the formatting of pages. In the case of nucleotide or amino acid sequence listings, submitting lengthy listings electronically along with the application prevents the assessment of the size fee.

As the new fees stand, an average application should only see an increase of about \$210 under the new regime. By being aware of the new fee structure and making efficient use of claims and specification pages, applicants should be able to avoid the higher cost of submitting a utility patent application in the U.S..

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Below is a listing of selected fees at the U.S. Patent and Trademark Office. For a full listing of current fees, visit <http://www.uspto.gov/web/offices/ac/qs/ope/fee2004dec08.htm>.

ITEM	OLD	NEW
Utility Application		
Basic Filing Fee	790	\$ 300
Search Fee		500
Examination Fee		200
Utility Fixed Fee Subtotal	790	1,000
Excess Total Claims (>20)	18	50
Excess Independent Claims (>3)	88	200
Excess Pages (>100, per 50)		250
Utility Issue Fee	1,370	1,400
Design Application		
Basic Filing Fee	350	200
Search Fee		100
Examination Fee		130
Design Fixed Fee Subtotal	350	430
Design Issue Fee	490	800
Other Filings		
Provisional Application	160	200
Reissue (B, S, & E)	790	1,400
Plant Application (B, S, & E)	550	660
Statutory Disclaimer	110	130
1 Month Extension	110	120
2 Month Extension	430	450
3 Month Extension	980	1,020
4 Month Extension	1,530	1,590
5 Month Extension	2,080	2,160
RCE	790	790
Appeals		
Filing an Appeal	340	500
Brief Submission Fee	340	500
Oral Hearing Request Fee	300	1,000
Maintenance Fees		
3 1/2 Years	880	900
7 1/2 Years	2,020	2,300
11 1/2 Years	3,100	3,800