



## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 2 and 7

[Docket No. PTO-T-2022-0034]

RIN 0651-AD65

### Setting and Adjusting Trademark Fees During Fiscal Year 2025

**AGENCY:** United States Patent and Trademark Office, Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) sets or adjusts trademark fees, as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). The fee adjustments will provide the USPTO sufficient aggregate revenue to recover the aggregate costs of trademark operations in future years (based on assumptions and estimates found in the agency's Fiscal Year 2025 Congressional Justification (FY 2025 Budget)), including implementing the USPTO 2022–2026 Strategic Plan (Strategic Plan).

**DATES:** This rule is effective on January 18, 2025.

**FOR FURTHER INFORMATION CONTACT:** Brendan Hourigan, Director, Office of Planning and Budget, at 571–272–8966 or [Brendan.Hourigan@uspto.gov](mailto:Brendan.Hourigan@uspto.gov); or C. Brett Lockard, Director, Forecasting and Analysis Division, at 571–272–0928 or [Christopher.Lockard@uspto.gov](mailto:Christopher.Lockard@uspto.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

##### A. Introduction

The USPTO publishes this final rule under section 10 of the AIA (section 10), Public Law 112-29, 125 Stat. 284, available at <https://www.congress.gov/112/plaws/publ29/PLAW-112publ29.pdf>, as amended by the SUCCESS Act, Public Law 115-273, 132 Stat. 4158, available at <https://www.congress.gov/115/plaws/publ273/PLAW-115publ273.pdf>, which authorizes the Under Secretary of Commerce for Intellectual Property and Director of the USPTO (Director) to set or adjust by rule any trademark fee established, authorized, or charged under the Trademark Act of 1946 (the Trademark Act), 15 U.S.C. 1051 et seq., as amended, for any services performed or materials furnished by the agency. 35 U.S.C. 41 note. Section 10 prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs of the agency with respect to such trademark fees. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while considering 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), a public comment period, and congressional oversight.

## **B. Purpose of This Action**

Based on a biennial review of fees, costs, and revenues that began in fiscal year (FY) 2021, the USPTO concluded that fee adjustments are necessary to provide the agency with sufficient financial resources to facilitate the effective administration of the U.S. trademark system, including implementing the Strategic Plan, available on the agency website at <https://www.uspto.gov/StrategicPlan>.

The individual fees set or adjusted in this rule align with the USPTO's fee structure philosophy, including the agency's four key fee setting policy factors: (1) promote innovation strategies, (2) align fees with the full cost of trademark services, (3)

set fees to facilitate the effective administration of the trademark system, and (4) offer application processing options. The fee adjustments will enable the USPTO to accomplish its mission to drive U.S. innovation, inclusive capitalism, and global competitiveness by delivering high-quality and timely trademark examination and review proceedings that produce accurate and reliable trademark rights for domestic and international stakeholders.

### **C. Summary of Provisions Impacted by This Action**

The USPTO sets or adjusts 28 trademark fees, including the introduction of seven new fees in this rule. The agency is also discontinuing four fees.

Under the fee schedule in this rule, the routine fees to obtain and maintain a trademark registration (e.g., application filings, intent-to-use/use (ITU) filings, and post-registration maintenance fees) will increase relative to the current fee schedule, in order to ensure financial sustainability and provide for improvements needed relative to trademark filings and registration. Additional information describing the fee adjustments is included in Part V: Individual Fee Rationale in this rulemaking and in the “Table of Trademark Fees: Current, Final Trademark Fee Schedule, and Unit Cost” (Table of Trademark Fees), available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

## **II. Background**

Section 10(a) of the AIA, available at <https://www.congress.gov/112/plaws/publ29/PLAW-112publ29.pdf>, authorizes the Director to set or adjust by rule any fee established, authorized, or charged under the Trademark Act for any services performed or materials furnished by the agency. Section 10 provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs of the agency with respect to such trademark

fees. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. Section 10(e) requires the Director to publish the final fee rule in the *Federal Register* and the USPTO's *Official Gazette* at least 45 days before the final fees become effective.

Section 4 of the SUCCESS Act, available at <https://www.congress.gov/115/plaws/publ273/PLAW-115publ273.pdf>, amended section 10(i)(2) to provide that the Director's authority to set or adjust any fee under section 10 will end on September 16, 2026. While the fees established by this rule will remain in effect in perpetuity or until adjusted by a future rulemaking, the Director's authority to initiate new rulemakings to set or adjust fees will expire on that date.

When adopting fees under section 10 of the AIA, the Director must provide the proposed fees to TPAC, which advises the Director on the management, policies, goals, performance, budget, and user fees of trademark operations, at least 45 days prior to publishing the proposed fees in the *Federal Register*. TPAC then has 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing on the proposed fees. Then, TPAC must publish a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the proposed fees. The USPTO must consider and analyze any comments, advice, or recommendations received from TPAC before setting or adjusting fees.

Accordingly, on May 8, 2023, the Director notified TPAC of the USPTO's intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>.

TPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given an opportunity to provide oral testimony. Transcripts of the hearing are available for review on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf>. Members of the public were also given an opportunity to submit written comments for TPAC to consider, and these comments are available on Regulations.gov at <https://www.regulations.gov/docket/PTO-T-2023-0016>. On August 14, 2023, TPAC issued a written report setting forth their comments, advice, and recommendations regarding the preliminary proposed fees. The report is available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx>.

The USPTO considered and analyzed all comments, advice, and recommendations received from the TPAC before publishing the notice of proposed rulemaking (NPRM), "Setting and Adjusting Trademark Fees during Fiscal Year 2025," in the *Federal Register* on March 26, 2024, at 89 FR 20897. The NPRM and associated materials are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. Likewise, before issuing this final rule, the agency considered and analyzed all comments, advice, and recommendations received from the public during the 60-day comment period on the NPRM that closed on May 28, 2024. The agency's response to comments received is available in Part VI: Discussion of Comments.

### **III. Estimating Aggregate Costs and Revenue**

Section 10 of the AIA provides that trademark fees may be set or adjusted only to recover the aggregate estimated costs to the USPTO for processing, activities, services, and materials relating to trademarks, including administrative costs with respect to such

trademark fees. The following is a description of how the agency estimates aggregate costs and revenue.

### **Step 1: Estimating Aggregate Costs**

Estimating prospective aggregate costs is accomplished primarily through the annual budget formulation process. The annual budget is a five-year plan for carrying out base programs and new initiatives to deliver on the USPTO's statutory mission and implement the agency's strategic goals and objectives.

First, the USPTO projects the level of demand for trademark services, which depends on many factors that are subject to change, including domestic and global economic activity. The agency also considers non-US trademark-related activities, policies, and legislation, and known process efficiencies. The number of trademark application filings (i.e., incoming work to the USPTO) drives examination costs, which make up the largest share of trademark operating costs. The USPTO looks at indicators including the expected growth in real gross domestic product (RGDP), a leading indicator of incoming trademark applications, to estimate prospective workloads. The RGDP is reported quarterly by the Bureau of Economic Analysis and forecasted each February by the Office of Management and Budget (OMB) in the Economic and Budget Analyses section of the Analytical Perspectives, and twice annually by the Congressional Budget Office in the Budget and Economic Outlook.

The expected workload is then compared to the current examination capacity to determine any required staffing and operating costs (e.g., salaries, workload processing contracts, and publication) adjustments. The agency uses a trademark pendency model that estimates trademark production output based on actual historical data and input assumptions, such as incoming trademark applications, number of examining attorneys on board, and overtime hours. Key statistics regarding pendency, application filings, and

current inventory used to inform the model can be viewed on the data visualization center section of the USPTO website at <https://www.uspto.gov/dashboard/trademarks>.

Next, the USPTO calculates budgetary spending requirements based on the prospective aggregate costs of trademark operations. First, the agency estimates the costs of status quo operations (base requirements), then adjusts that figure for anticipated pay increases and inflationary increases for the budget year and four out years. The USPTO then estimates the prospective costs for expected changes in production workload and new initiatives over the same period. The agency then reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon. A detailed description of budgetary requirements, aggregate costs, and related assumptions for the Trademarks program is available in the FY 2025 Budget.

The USPTO estimates that trademark operations will cost \$594 million in FY 2025, including \$293 million for trademark examining; \$24 million for trademark trials and appeals; \$50 million for trademark information resources; \$22 million for activities related to intellectual property (IP) protection, policy, and enforcement; and \$204 million for general support costs necessary for trademark operations (e.g., the trademark share of rent, utilities, legal, financial, human resources, other administrative services, and agency-wide information technology (IT) infrastructure and support costs). See Appendix II of the FY 2025 Budget. In addition, the agency will transfer \$280 thousand to the Department of Commerce, Inspector General, for audit support for the Trademarks program.

Table 1 below provides key underlying production workload projections and assumptions from the FY 2025 Budget used to calculate aggregate costs. Table 2 (see Step 2) presents the total budgetary requirements (prospective aggregate costs) for FY 2025 through FY 2029 and the estimated collections and operating reserve balances that would result from the adjustments contained in this final rule. These projections are based

on point-in-time estimates and assumptions that are subject to change. There is considerable uncertainty in outyear budgetary requirements. There are risks that could materialize over the next several years (e.g., adjustments to examination capacity, time allotted to examining attorneys and other personnel to perform their work, higher contracting costs, changes in workload, and other inflationary increases, etc.) that could increase the USPTO’s budgetary requirements. These estimates are refreshed annually during the formulation of USPTO’s budget.

Table 1: Trademark Production Workload Projections, FY 2025–2029

<b>Production measures</b>	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
Applications	774,000	817,000	863,000	912,000	964,000
Application growth rate	4.6%	5.5%	5.6%	5.7%	5.7%
Balanced disposals	1,552,600	1,680,000	1,740,000	1,850,000	1,930,000
Unexamined trademark application inventory	463,756	442,627	418,438	402,622	401,645
Examination capacity*	806	841	876	913	948
<b>Performance measures</b>					
Avg. first action pendency (months)	7.5	6.3	5.9	5.5	4.9
Avg. total pendency (months)	13.5	11.3	10.9	9.5	8.9

\* In this table, examination capacity is the number of examining attorneys on board at end of year, as described in the FY 2025 Budget.

## Step 2: Estimating Prospective Aggregate Revenue

As described above in Step 1, the USPTO’s prospective aggregate costs (as presented in the FY 2025 Budget) include budgetary requirements related to planned production, anticipated initiatives, and a contribution to the trademark operating reserve required for the agency to maintain trademark operations and realize its strategic goals



and objectives for the next five years. Prospective aggregate costs become the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. To estimate aggregate revenue, the USPTO uses the same production models used to estimate aggregate costs and also analyzes relevant factors and indicators to calculate prospective fee workloads (i.e., number of times each fee for a service or product will be paid).

The same economic indicators used to forecast incoming workloads also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-registration decisions to maintain trademark protection. When developing fee workload forecasts, the USPTO also considers other factors including fraud and scams impacting trademark filings, overseas activity, policies and legislation, court decisions, process efficiencies, and anticipated applicant behavior.

As required by law, the USPTO collects fees for trademark-related services and products at different points in time within the application examination process and over the life of the pending trademark application and resulting registration to finance the associated work for providing those services. Trademark application filings are a key driver of trademark fee collections, as initial filing fees account for more than half of total trademark fee collections. Changes in application filing levels immediately impact current year fee collections. Fewer application filings mean the USPTO collects fewer fees to devote to production-related costs in the current pipeline. The resulting reductions also create an outyear revenue impact because less output in one year leads to fewer ITUs and maintenance fee payments in future years. Historically, fee collections from ITUs and maintenance fees account for about one third of total trademark fee collections, which the agency uses to subsidize costs for filing and examination activities not fully covered by initial filing fees.

The USPTO's five-year estimated aggregate trademark fee revenue (see table 2) is based on, for each fiscal year, the number of trademark applications it expects to receive, work it expects to process (an indicator of the ITU fee workloads), expected examination and process requests, and the expected number of post-registration filings to maintain trademark registrations. The USPTO forecasts the same number of future year applications filed under the final fee schedule compared to the current fee schedule because outside research suggests that demand for trademark applications is inelastic. See Gaétan De Rassenfosse, "On the Price Elasticity of Demand for Trademarks," Social Science Research Network, Jan. 28, 2018, <https://doi.org/10.2139/ssrn.2628646>; Benedikt Herz and Malwina Mejer, "On the Fee Elasticity of the Demand for Trademarks in Europe," Oxford Economic Papers, Jul. 3, 2016, <https://doi.org/10.1093/oep/gpw035>. The USPTO does anticipate a larger share of filers will take measures to avoid the surcharges compared to the share of filers that take advantage of the Trademark Electronic Application System (TEAS) Plus option under the current fee schedule. The USPTO's Office of the Chief Economist periodically conducts economic studies and may, in the future, develop trademark fee price elasticity estimates for use in rulemakings.

Within the iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on cost and policy decisions, estimates the effective dates of new fee rates, and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee. Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (see table 2). The aggregate revenue estimate also includes collecting \$10 million annually in other income associated with recoveries and reimbursements from other Federal agencies (offsets to spending). The aggregate revenue estimates presented below are based on assumptions and data found in the FY 2025

Budget including assuming that all final rule fee rates would take effect on November 15, 2024. The effective date of the final rule fee rates has since been changed from that original assumption to January 18, 2025, except the increased fee for Madrid applications will be owed on applications with a receipt date on or after February 18, 2025, and the increased fee for renewing an international registration at the World Intellectual Property Organization (WIPO) will be owed on requests made on or after February 18, 2025, as well.

Table 2: Trademark Financial Outlook, FY 2025–2029

	<b>Dollars in millions</b>				
	<b>FY 2025</b>	<b>FY 2026</b>	<b>FY 2027</b>	<b>FY 2028</b>	<b>FY 2029</b>
Projected fee collections	583	642	668	697	725
Other income	10	10	10	10	10
Total projected fee collections and other income	593	652	678	707	735
Budgetary requirements	594	611	635	664	690
Funding to (+) and from (-) operating reserve	(1)	41	43	43	45
End-of-year operating reserve balance	85	126	169	213	258
Over/(under) minimum level	(51)	(14)	23	60	99
Over/(under) optimal level	(212)	(179)	(148)	(119)	(87)

#### **IV. Rulemaking Goals and Strategies**

##### **A. Fee Setting Strategy**

The strategy of this final rule is to establish a fee schedule that generates sufficient multiyear revenue to recover the aggregate costs of maintaining USPTO trademark operations as required by law. The overriding principles behind this strategy are to operate within a sustainable funding model that supports the USPTO’s strategic goals and objectives, such as optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to the trademark system for all stakeholders.

The USPTO assessed this final rule's alignment with four key fee setting policy factors that promote important aspects of the U.S. trademark system: (1) promoting innovation strategies seeks to ensure barriers to entry into the U.S. trademark system remain low, encourage high-growth and innovation-based entrepreneurship, and incentivize innovation and entrepreneurship by issuing registrations to stimulate additional entrepreneurial activity; (2) aligning fees with the full costs of products and services recognizes that some applicants may use particular services in a more costly manner than other applicants (e.g., trademark applications cost more and take longer to examine when identifications of goods and services include thousands of characters) and charges those applicants appropriately rather than sharing the costs among all applicants; (3) facilitating the effective administration of the trademark system seeks to encourage efficient prosecution of trademark applications, reducing the time it takes to obtain a registration; and (4) offering application processing options provides multiple paths, where feasible, in recognition that trademark applications and their prosecution are not a one-size-fits-all process. The reasoning for setting and adjusting individual fees is described in Part V: Individual Fee Rationale.

In the event any provision is invalidated or held to be impermissible as a result of a legal challenge, the "remainder of the regulation could function sensibly without the stricken provision." *Belmont Mun. Light Dep't v. FERC*, 38 F.4th 173, 187 (D.C. Cir. 2022) (quoting *MD/DC/DE Broad. Ass'n v. FCC*, 236 F.3d 13, 22 (D.C. Cir. 2001)). The USPTO views each fee in this final rule as able to stand on its own and to "function sensibly" without the others. This means that in the event that a reviewing court were to find that any one fee setting or fee adjustment was invalid, that finding would not affect the fees or adjustments enacted elsewhere in the rule. Therefore, in the event that any portion of this final rule is held to be invalid or impermissible, the USPTO intends that

the remaining aspects of the regulatory provisions, and fees set and adjusted therein, remain valid.

## **B. Fee Setting Considerations**

The balance of this subsection presents the specific fee setting considerations the USPTO reviewed in developing the final trademark fee schedule: (1) historical cost of providing individual services; (2) the balance between projected costs and revenue to meet the USPTO's operational needs and strategic goals; (3) ensuring sustainable funding; and (4) the comments, advice, and recommendations offered by TPAC on the agency's initial fee setting proposal and the public comments received in response to the March 2024 NPRM. The USPTO carefully considered the comments, advice, and recommendations offered by TPAC and the public. Collectively, these considerations informed the agency's chosen rulemaking strategy.

### **1. Historical Cost of Providing Individual Services**

The USPTO sets individual fee rates to ensure recovery of aggregate costs and to further key policy considerations while considering the cost of a particular service. For instance, the USPTO has a longstanding practice of setting application filing fees below the actual cost of processing and examining applications to encourage brand owners to take advantage of the protections and rights offered by trademark registration; these costs are subsidized by aggregate trademark revenues elsewhere.

The USPTO considers unit cost accounting data provided by its Activity Based Information (ABI) program to evaluate the cost to provide specific services and then decide how to best align fees for particular services to recover the aggregate costs of all products and services. Using historical cost data, the USPTO can align fees to the costs of specific trademark products and services. When the USPTO implements a new process or service, historical activity-based information data is typically not available. However, the

USPTO will use the historical cost of a similar process or procedure as a starting point to estimate the full cost of a new activity or service.

The document titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025: Activity Based Information and Trademark Fee Unit Expense Methodology,” available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, provides additional information on the agency’s costing methodology in addition to the last three years of historical cost data. Part V: Individual Fee Rationale of this final rule describes the reasoning and anticipated benefits for setting some individual fees at cost, below cost, or above cost such that the USPTO recovers the aggregate cost of providing services through fees.

## **2. Balancing Projected Costs and Revenue**

In developing the final trademark fee schedule, the USPTO considered its current estimates of future year workload demands, fee collections, and costs to maintain core USPTO operations and meet its strategic goals, as found in the FY 2025 Budget and the Strategic Plan. The USPTO’s strategic goals include driving inclusive U.S. innovation and global competitiveness, promoting the efficient delivery of reliable IP rights, promoting the protection of IP against new and persistent threats, bringing innovation to impact, and generating impactful employee and customer experiences by maximizing agency operations. The following subsections provide details regarding updated revenue and cost estimates, cost saving efforts taken by the USPTO, and planned strategic improvements.

### **a. Updated Revenue and Cost Estimates**

Projected revenue from the current fee schedule is expected to fall below future budgetary requirements (costs) due largely to lower-than-expected demand for trademark services compared to prior forecasts and higher-than-expected inflation in the broader U.S. economy in recent years that has increased the USPTO’s operating costs.

Consequently, aggregate operating costs will exceed aggregate revenue for the Trademarks program under the current fee schedule. The USPTO is required by law to finance operations by recovering fees for the services offered by the agency. Not implementing the final rule would result in insufficient fee collections to process the anticipated work volumes, impacting stakeholders and failing to deliver on the USPTO mission.

Forecasts for aggregate revenue using current demand estimates are lower than prior forecasts. This lower-than-expected demand has coincided with changes to trademark owners' filing and renewal patterns, resulting in imbalances in the overall fee structure. The USPTO sets application filing fees below its examination costs to maintain a low barrier to entry into the trademark registration system and relies on fees collected for post-registration maintenance and ITU extensions to subsidize the agency's losses on each application examined. However, changes in the mix of filers and their preferences have upset the traditional balance of the trademark fee structure. The share of applicants filing ITU applications is declining. Also, the percentage of registrants that choose to maintain their trademark registration is declining as a larger share of filers are groups that are historically less likely to renew their registrations at a rate that would be sufficient to recover examination costs. The USPTO believes these changes in the mix of filers are systemic and will continue.

Following an unprecedented application surge in FY 2021, trademark application filings declined and began returning to historic filing levels in FY 2022, in line with the USPTO's expectations. Application filings were largely unchanged in FY 2023. Given the current economic outlook for the broader economy and filing activity over the past two years, the USPTO projects trademark application filings to decline slightly in FY 2024 and increase in line with historic growth rates in FY 2025.

Higher-than-expected inflation in the broader U.S. economy starting in 2021 increased the USPTO's operating costs above previous estimates for labor and nonlabor activities such as benefits, service contracts, and equipment. Salaries and benefits comprise about two-thirds of all trademark-related costs, and employee pay raises enacted across all U.S. government agencies in FY 2023–24—including the USPTO—were much larger than previously budgeted. Federal General Schedule (GS) pay was raised by 4.6% in 2023 and 5.2% in 2024; before 2023 the last time GS pay was raised by at least 4.0% was in 2004. The FY 2025 Budget includes an estimated 2.0% civilian pay raise planned in calendar year (CY) 2025 and assumed 3.0% civilian pay raises in CY 2026–29, as well as inflationary increases for other labor and nonlabor activities.

**b. Cost-Saving Measures**

The USPTO recognizes that fees cannot simply increase for every improvement deemed desirable. The agency has a responsibility to stakeholders to pursue strategic opportunities for improvement in an efficient, cost-conscious manner. Likewise, the USPTO recognizes its obligation to reduce spending when appropriate.

The USPTO's FY 2025 Budget submission includes cost reducing measures such as giving up leased space in Northern Virginia. In FY 2025, the USPTO estimates \$4,569 million in total spending for patent and trademark operations. This is a \$122 million net increase from the agency's FY 2024 estimated spending level of \$4,447 million. The net increase includes a \$224 million upward adjustment for prescribed inflation and other adjustments and a \$102 million downward adjustment in program spending and other realized efficiencies. This estimate builds on the \$40 million in annual real estate savings assumed in the FY 2024 Budget submission to include additional annual cost savings of \$12 million through releasing more leased space in Northern Virginia. The combined reduction in real estate space amounts to almost 1 million square feet and an estimated annual cost savings of approximately \$52 million. Also, the USPTO is actively pursuing



IT cost containment. The FY 2025 budget includes a relatively flat IT spending profile despite upward pressure from inflation, supply chain disruptions, and government-wide pay raises; ongoing IT improvements that offer business value to fee-paying customers; and data storage costs increasing proportionally with the USPTO's forecasted growth in patent and trademark applications.

**c. Efficient Delivery of Reliable IP Rights: Quality, Unexamined Inventory, and Pendency**

The USPTO's strategic goal to "promote the efficient delivery of reliable IP rights" recognizes the importance of innovation as the foundation of American economic growth and global competitiveness. Toward this end, the USPTO is committed to continuously improving trademark quality, as well as the accuracy and reliability of the trademark register. The agency will continue equipping trademark examining attorneys with updated tools, procedures, and clarifying guidance to effectively examine all applications. The USPTO will also retire legacy systems and integrate the use of emerging technologies to streamline work processes for greater efficiencies, adjust staffing levels, and refine core duties to ensure its ability to meet significant changes in filing volumes and a variety of improper filing behaviors.

Also, the USPTO is committed to improving trademark application pendency. The agency recognizes that applying for trademark registration is a key step for creators, entrepreneurs, and established brand owners as they move from generating ideas for new products and services to commercializing the resulting innovations in the marketplace. The USPTO is focused on incentivizing creativity and product innovation by removing unnecessary impediments or delays in securing IP rights, thereby bringing goods and services to impact for the public good more quickly.

The agency's recent trademark pendency challenge is the result of several years of sustained increases in trademark application filings punctuated by an unprecedented,

year-long influx during FY 2021 that created a significant increase in unexamined inventory. In addressing these challenges, the USPTO will continue to reevaluate its operating posture to maximize efficiency, set data-driven pendency goals, realign the trademark workforce to maintain stability during workload fluctuations and optimize pendency goals, and use available technology solutions to streamline and automate trademark work processes.

The agency is working diligently to balance timely examination with trademark quality. Improvements include the deployment of a new browser-based, end-to-end examination system (TM Exam) designed to improve examination quality and efficiency and establishment of a dedicated Trademark Academy to improve the training experience for new examiners.

Also, the USPTO is developing and implementing several strategies to combat trademark scams, address fraudulent filings, and protect the trademark register. For example, the agency is implementing robotic process automation to validate trademark application addresses against the U.S. Postal Service's database, mitigating a key fraud risk. In addition, the USPTO recently formed the Register Protection Office (RPO), a new organization within the Office of the Deputy Commissioner for Trademark Examination Policy dedicated to register protection and fraud risk management through efforts like scam education and prevention.

The USPTO is also leveraging the Trademark Modernization Act (TMA) cancellation provisions to help clear the trademark register of registrations not in use. See Public Law 116–260, available at <https://www.congress.gov/116/plaws/publ260/PLAW-116publ260.pdf>. The agency implemented the TMA nonuse cancellation provisions in December 2021 and in December 2022 implemented additional provisions that shortened the applicant response period for Office actions from six to three months. See “Changes

To Implement Provisions of the Trademark Modernization Act of 2020,” 86 FR 64300 (Nov. 17, 2021).

### **3. Sustainable Funding**

The USPTO’s five-year forecasts of aggregate trademark costs, aggregate trademark revenue, and the trademark operating reserve are inherently uncertain. The Government Accountability Office (GAO) recommends operating reserves as a best practice for fee-funded agencies like the USPTO, and the trademark operating reserve allows the agency to align long-term fees and costs and manage fluctuations in actual fee collections and spending.

The USPTO manages the trademark operating reserve within a range of acceptable balances and assesses options when projected balances fall either below or above the range. The agency develops minimum planning targets to address immediate, unplanned changes in the economic or operating environment as the reserve builds toward the optimal level. The USPTO reviews both its minimum and optimal planning targets every three years to ensure the reserve’s operating range mitigates an array of financial risks. Based on the current risk environment, including various factors such as economic and funding uncertainty and the Trademarks program’s high percentage of fixed costs, the agency recently established a minimum operating reserve planning level at 23% of total spending—about three months’ operating expenses (estimated at \$137 million and \$159 million from FY 2025 through FY 2029)—and an optimal long-range target of 50% of total spending—about six months’ operating expenses (estimated at \$297 million and \$345 million from FY 2025 through FY 2029).

Based on cost and revenue assumptions in the FY 2025 Budget, the USPTO forecasts that aggregate trademark costs will exceed aggregate trademark revenue during FY 2024. The agency will finance the shortfall in trademark operations via the trademark

operating reserve. The USPTO projects that the fee adjustments contained in this final rule will increase trademark fee collections to sufficiently recover budgeted spending requirements; modest fee collections above budgeted spending requirements will replenish and grow the operating reserve each year from FY 2025 to FY 2029.

These projections are point-in-time estimates and subject to change. For example, the FY 2025 Budget includes assumptions regarding filing levels, renewal rates, federally mandated employee pay raises, workforce productivity, and many other factors. A change in any one of these variables could have a significant cumulative impact on the trademark operating reserve balance. As shown in table 2, presented in Part III: Estimating Aggregate Costs and Revenue, the operating reserve balance can change significantly over a five-year planning horizon. This variation highlights the agency's financial vulnerability to various risk factors and the importance of its fee setting authority.

The USPTO will continue assessing the trademark operating reserve balance against its target balance annually, and at least every three years, the agency will evaluate whether the minimum and optimal target balances remain sufficient to provide stable funding. Per USPTO policy, the agency will consider fee reductions if projections show the operating reserve balance will exceed its optimal level by 25% for two consecutive years. In addition, the USPTO will continue to regularly review its operating budgets and long-range plans to ensure the prudent use of trademark fees.

#### **4. Comments, Advice, and Recommendations from TPAC and the Public**

As detailed in the NPRM, in the report prepared in accordance with AIA fee setting authority, TPAC conveyed overall support for the USPTO's efforts to secure adequate revenue to recover the aggregate estimated costs of trademark operations, stating "[w]e have no doubt that overall increases are needed to ensure that the USPTO complies with its statutory mandate to set fees at a level commensurate with anticipated

aggregate costs.” TPAC Report at 3. The agency considered and analyzed the comments, advice, and recommendations received from TPAC before publishing this final rule.

Likewise, the USPTO considered and analyzed the comments, advice, and recommendations received from the public during the 60-day comment period before publishing this final rule. The agency’s response to comments received is available in Part VI: Discussion of Comments.

### **C. Summary of Rulemaking Goals and Strategies**

The USPTO estimates that the final trademark fee schedule will produce sufficient aggregate revenue to recover the aggregate costs of trademark operations and ensure financial sustainability for effective administration of the trademark system. This final rule aligns with the USPTO’s four key fee setting policy factors and supports the agency’s mission-focused strategic goals.

### **V. Individual Fee Rationale**

Where data is available, the USPTO sets some fees at, above, or below unit cost to balance the agency’s four key fee setting policy factors as described in Part IV: Rulemaking Goals and Strategies. The USPTO does not maintain individual historical cost data for all fees; therefore, it sets some fees based solely on policy factors. For example, the USPTO sets initial filing fees below unit cost to promote innovation strategies by reducing barriers to entry for applicants. To balance the aggregate revenue loss of fees set below cost, the USPTO must set other fees above unit cost in areas less likely to impact entrepreneurship (e.g., renewal fees). By setting fees at particular levels to facilitate effective administration of the trademark system, the USPTO aims to foster an environment where examining attorneys can provide, and applicants can receive, prompt, high-quality examination decisions while the agency recovers costs for workload-intensive activities.

This final rule maintains existing cost differentials for all paper filings; their processing is generally more costly than electronic submissions, and current fees do not recover these costs.

## 1. Trademark Application Filing Fees

Table 3: Trademark Application Filing Fees

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Application (paper), per class	\$750	\$850	\$100	13	\$1,457
Base application (electronic), per class	n/a	\$350	n/a	n/a	n/a
Application (TEAS Plus), per class	\$250	Discontinue	n/a	n/a	\$402
Application (TEAS Standard), per class	\$350	Discontinue	n/a	n/a	\$532
Fee for failing to meet TEAS Plus requirements, per class	\$100	Discontinue	n/a	n/a	\$4
Application fee filed with WIPO (section 66(a)), per class	\$500	\$600	\$100	20	\$890
Subsequent designation fee filed with WIPO (section 66(a)), per class	\$500	\$600	\$100	20	\$863

The USPTO is changing application filing fees to incentivize more complete and timely filings and improve prosecution. Trademark applicants currently have two filing options via the Trademark Electronic Application System (TEAS): TEAS Plus and TEAS

Standard. TEAS Plus is the lowest-cost filing option currently provided by the USPTO but comes with more stringent initial filing requirements. These applications reduce manual processing and potential for data entry errors, making them more efficient and complete for both the filer and the agency. The USPTO incurs fewer costs and impediments during their examination, thereby expediting processing and reducing pendency. About half of all trademark applications are filed using TEAS Plus. Fees for TEAS Standard are higher than those for TEAS Plus and offer applicants more options during filing; the higher fees relate to the USPTO's higher processing and examination costs.

The USPTO is implementing a single electronic application filing option that will discontinue both TEAS Plus and TEAS Standard filing options, as well as the processing fee for failing to meet the requirements of a TEAS Plus application. This final rule will replace TEAS Plus and TEAS Standard fees with a single electronic filing option and corresponding base application fee plus new surcharges based on application attributes. Similar to TEAS, applicants choosing to comply with the requirements detailed in this final rule in their initial filing (comparable to TEAS Plus) will pay the lowest fees under the final fee schedule, compared to applicants who choose not to comply with all requirements (comparable to TEAS Standard). The USPTO does not anticipate the total number of applications filed each year to change under the final schedule compared to the current schedule. The agency does anticipate that a larger share of applicants will take measures to avoid the surcharges in this rule as compared to the share of applicants who use the TEAS Plus option under the current fee schedule. Applications that do not meet all requirements for the lowest cost electronic filing option are discussed below.

The final fee schedule sets the fee for a base application filed electronically at \$350, \$100 more than a TEAS Plus application, to help the agency recover its costs. The USPTO anticipates a base application will have a unit cost similar to a TEAS Plus

application for the agency. The USPTO is increasing the paper application fee by \$100 to maintain the existing cost differential between a paper filing and the lowest cost electronic application.

As part of the final fee schedule, the USPTO is discontinuing the processing fee for failing to meet the requirements of a TEAS Plus application on the effective date of the final rule. Therefore, on or after that date, any pending TEAS Plus applications that would have been subject to the TEAS Plus processing fee will be subject to the insufficient information surcharge fee if the application fails to satisfy any of the requirements for a base application in paragraphs (a)(1) through (19) of § 2.22. These requirements are the same as the requirements for a valid TEAS Plus application under the current TEAS system, and the fee rate for the insufficient information surcharge is identical to the processing fee for failing to meet the requirements of a TEAS Plus application, i.e., \$100 per class.

The USPTO is making revisions to the regulatory text in 37 CFR to incorporate the base application fee and discontinuation of TEAS application fees. These revisions include replacing references to “TEAS” and “ESTTA” with “electronically” in sections 2.6 and 7.6 to reflect the discontinuation of TEAS fees under this final rule. These generalized references for electronic filings are more dynamic and will more easily accommodate any future changes to the USPTO’s electronic filing system.

In the NPRM, the USPTO also proposed using this system for filing an application under section 66(a) (Madrid Protocol) of the Trademark Act. However, this final rule alters that proposal. Article 8(2) of the Madrid Protocol and rule 10 of the Madrid regulations require the payment of all application fees before the International Bureau may record an international registration or subsequent designation. Due to technological and administrative limitations, WIPO is currently unable to collect



surcharges prior to recordation and has requested delayed implementation of any surcharges for Madrid filers.

In this final rule, the USPTO is dropping the proposed structure for 66(a) filings and instead adjusting the existing flat application fee for Madrid applications to \$600 per class, as paid in Swiss francs to WIPO. Article 8(7) of the Madrid Protocol permits individual countries to establish their own fee for Madrid applications, subject to the Protocol’s requirement that the fee for Madrid filers does not exceed that for domestic filers. The \$600 fee is commensurate with what Madrid applicants would expect to pay, on average, if filing directly under the base application and surcharge system.

The approach enacted in this final rule conforms with feedback received from WIPO and other commenters. The USPTO will reconsider a base filing and surcharge system for Madrid applications in the future after WIPO develops the capacity to implement surcharges.

The increased fee will be owed on Madrid applications with a receipt date on or after February 18, 2025, because the Madrid Agreement Concerning the International Registration of Marks requires three months’ advance notice to WIPO before an increase in the amount of the international application or subsequent designation fee may enter into force.

## 2. Trademark Application Filing Surcharge Fees

Table 4: Trademark Application Filing Surcharge Fees

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Fee for insufficient information (sections 1 and 44), per class	n/a	\$100	n/a	n/a	n/a

Fee for using the free-form text box to enter the identification of goods/services (sections 1 and 44), per class	n/a	\$200	n/a	n/a	n/a
For each additional group of 1,000 characters beyond the first 1,000 (sections 1 and 44), per class	n/a	\$200	n/a	n/a	n/a

The USPTO is implementing surcharges to the base application filing fee in this final rule to enhance the quality of incoming applications, encourage efficient application processing, ensure additional examination costs are paid by those submitting more time-consuming applications, and reduce pendency. Only those applicants submitting applications that do not comply with the base filing requirements would pay the surcharges. The system set by this final rule would impose individual surcharges for unmet application requirements, as compared to the current TEAS Standard fee and TEAS Plus processing fee for applications with one or more unmet TEAS Plus requirements. As discussed above, applications filed under section 66(a) (Madrid Protocol) will not be subject to these surcharges and will instead be assessed a higher flat fee commensurate with what Madrid applicants would expect to pay, on average, if filing directly under the base application and surcharge system.

**(i) Insufficient Information Fee**

Trademark applications that include the information listed below allow for more efficient prosecution. Accordingly, applicants who submit more complete applications benefit from the final fee schedule by avoiding this surcharge, as the USPTO and its stakeholders benefit from efficient delivery of reliable IP rights. This final rule sets a \$100 fee per class, in addition to the base fee, on applications under sections 1 and 44 that do not include required information at the time of filing. As discussed above,

applications filed under section 66(a) (Madrid Protocol) will not be subjected to this surcharge.

The information required for a base application is the same as current TEAS Plus requirements; therefore, applicants are not expected to expend more than a de minimis amount of additional resources compared to the current system. The USPTO is reordering and retitling these requirements as “Requirements for a base application,” as provided in § 2.22(1) through (20):

- The applicant’s name and domicile address;
- The applicant’s legal entity;
- The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;
- If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;
- If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;
- One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;
- If the application contains goods and/or services in more than one class, compliance with § 2.86;
- A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);
- A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

- If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;
- If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the application;
- If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;
- If the mark is not in standard characters, a description of the mark;
- If the mark includes non-English wording, an English translation of that wording;
- If the mark includes non-Latin characters, a transliteration of those characters;
- If the mark includes an individual's name or likeness, either (1) a statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual, or (2) a statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);
- If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;
- If the application is a concurrent use application, compliance with § 2.42;
- An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative,

pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information; and

- Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual within the electronic form.

The insufficient information surcharge will apply if an application fails to satisfy any of the first 19 requirements in this list. See Part VII: Discussion of Specific Rules for more information.

The agency will not impose this fee on applications denied a filing date for failure to satisfy the requirements under § 2.21.

As discussed above, any previously filed TEAS Plus applications that remain pending on or after the effective date of this final rule will be subject to the insufficient information surcharge fee if the application fails to satisfy any of the above requirements because the requirements for a base application under the final rule are the same as the requirements for a TEAS Plus application. Under either system, TEAS or base plus surcharges, affected applications would be subject to a fee of \$100 per class for failing to meet the requirements.

**(ii) Entering Identifications of Goods and/or Services in the Free-form Text Box Fee**

Section 2.22(a)(20) requires applicants to identify goods and/or services using identifications from the agency's Acceptable Identification of Goods and Services Manual (ID Manual) within the electronic form. Applicants may choose goods and/or services identifications by selecting directly from the ID Manual in the electronic application or entering manually in a free-form text box. The USPTO is setting a new \$200 fee per class for applicants who choose to enter descriptions of goods and services in the free-form text box. To avoid the surcharge, applicants may use the ID Manual

within the electronic application, which includes thousands of identifications. As discussed above, applications filed under section 66(a) (Madrid Protocol) will not be subject to this surcharge.

Generally, examining attorneys do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application form. Conversely, examining attorneys must carefully consider identifications entered in a free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. Examining attorneys must review each entry to determine its acceptability, even in situations where an applicant types or pastes the ID Manual identification, because they do not know if wording in the free-form text box came from the ID Manual.

Identifying an applicant's goods and/or services with sufficient specificity is necessary to provide adequate notice to third parties regarding the goods and/or services in connection with which the applicant intends to use, or is using, the mark. It also ensures the applicant pays the corresponding fee for each class of goods and/or services. Examining attorneys often spend substantial time reviewing identifications provided in the free-form text box and may initiate multiple communications with the applicant before determining an acceptable identification and collecting appropriate fees. This surcharge will help recover the additional costs associated with these more extensive reviews.

**(iii) Each Additional 1,000 Characters Beyond the First 1,000 Fee**

When entering identifications in the free-form text box, some applicants submit extensive lists of goods and/or services. In more egregious cases, a list may comprise multiple pages and include goods and/or services in multiple classes. To ensure that applicants who submit lengthy identifications pay the costs of their review, the USPTO is setting a new fee of \$200 for each additional group of 1,000 characters beyond the first

1,000 characters in the free-form text box, including punctuation and spaces. Currently, less than 5% of directly filed applications contain custom identifications of goods and/or services that exceed 1,000 characters per class. Applicants who enter identifications directly from the ID Manual within the electronic application will not incur this fee, even if the identification exceeds 1,000 characters. As discussed above, applications filed under section 66(a) (Madrid Protocol) will not be subject to this surcharge for now.

The USPTO selected a character-based limit for operational efficiency, as the electronic application system can perform character counts in real time and alert the applicant when they exceed the limit. A limit based on other criteria, such as a count of separate goods and/or services, would require examiner review, as automating such counts is not technologically feasible. Such reviews by an examining attorney would increase the cost of examination and counteract the purpose of the fee, which is to ensure that applicants who submit lengthy identifications pay the costs of reviewing them.

After review and consideration of the comments, the USPTO will not apply this fee to amended identifications that exceed the character limit in a response to an Office action.

### **3. Amendment to Allege Use (AAU) and Statement of Use (SOU) Fees**

Table 5: AAU and SOU Fees

<b>Description</b>	<b>Current fee</b>	<b>Final rule fee</b>	<b>Dollar change</b>	<b>Percent change</b>	<b>FY 2023 unit cost</b>
Amendment to allege use (AAU), per class (paper)	\$200	\$250	\$50	25	n/a
Statement of use (SOU), per class (paper)	\$200	\$250	\$50	25	n/a

Amendment to allege use (AAU), per class (electronic)	\$100	\$150	\$50	50	\$152
Statement of use (SOU), per class (electronic)	\$100	\$150	\$50	50	\$129

The USPTO is increasing fees for the AAUs and SOUs to \$150 per class for electronic filings and \$250 per class for paper filings. The agency has not adjusted the AAU and SOU fees since 2002, even as processing costs increased during the subsequent two decades. The examination time for the AAUs and SOUs has grown due to the increased submission of questionable specimens, resulting in the issuance of more Office actions. These final fees will improve cost recovery and help rebalance the fee structure.

#### 4. Post-Registration Maintenance Fees

Table 6: Post-Registration Maintenance Fees

Description	Current fee	Final rule fee	Dollar change	Percent change	FY 2023 unit cost
Section 9 registration renewal application, per class (paper)	\$500	\$525	\$25	5	n/a
Section 8 declaration, per class (paper)	\$325	\$425	\$100	31	\$95
Section 15 declaration, per class (paper)	\$300	\$350	\$50	17	n/a
Section 71 declaration, per class (paper)	\$325	\$425	\$100	31	n/a
Section 9 registration renewal application, per class (electronic)	\$300	\$325	\$25	8	\$24



Section 8 declaration, per class (electronic)	\$225	\$325	\$100	44	\$48
Section 15 declaration, per class (electronic)	\$200	\$250	\$50	25	\$11
Section 71 declaration, per class (electronic)	\$225	\$325	\$100	44	\$48
Renewal fee filed at WIPO	\$300	\$325	\$25	8	n/a

In the NPRM, the USPTO proposed increasing the section 9 registration renewal fee to \$350 per class and the section 8 and 71 declaration fees to \$300 per class. After further consideration in light of public comments and the USPTO’s financial outlook, the agency is reallocating some of the section 9 renewal fee increase to section 8 and 71 declaration fees. This final rule aligns these fees at \$325 per class for electronic filings.

The percentage of trademark registrants choosing to maintain their registrations has declined, as the share of applications from groups that have been historically less likely to maintain their registrations has increased. The USPTO expects these trends to continue. Additionally, costs to process maintenance filings have increased due to higher inflationary costs, post-registration audits, and elevated legal review to address potential fraud or improper filing behaviors.

The USPTO has an obligation to recover the aggregate costs of trademark operations through user fees. The above-cost post-registration maintenance fees recover costs incurred by the USPTO during examination. Given changes in demand and filing behaviors, the agency is rebalancing aggregate revenue derived from renewals and post-registration maintenance fees to keep barriers to entry low for new applicants.

The increased fee for renewing an international registration at WIPO will be owed on requests made on or after February 18, 2025, because the Madrid Agreement Concerning the International Registration of Marks requires three months' advance notice to WIPO before an increase in the amount of the international renewal fee may enter into force.

**5. Letter of Protest Fee**

Table 7: Letter of Protest Fee

<b>Description</b>	<b>Current fee</b>	<b>Final rule fee</b>	<b>Dollar change</b>	<b>Percent change</b>	<b>FY 2023 unit cost</b>
Letter of protest	\$50	\$150	\$100	200	\$893

The USPTO is increasing the fee for filing a letter of protest from \$50 to \$150. The cost to process a letter of protest exceeds the adjusted fee, and the agency will continue subsidizing this service from aggregate trademark fee collections, setting the fee rate to encourage the filing of relevant, well-supported letters of protest and discourage frivolous filings. Letters of protest allow a third party to bring evidence to the USPTO on the registrability of a mark in a pending application without filing an opposition with the Trademark Trial and Appeal Board (TTAB). The letter of protest procedure is not a substitute for the statutory opposition and cancellation procedures available to third parties who believe they would be damaged by registration of the involved mark. Instead, it is intended to assist examination without causing undue delay or compromising the integrity and objectivity of the ex parte examination process, which involves only the applicant and the USPTO.

The USPTO's estimated FY 2023 costs for reviewing and processing each letter of protest were \$893, \$843 more than the current \$50 fee. The agency's costs are high because of the specialized staff who review letters of protest and the time required to

determine whether: (1) the letters comply with submission requirements and (2) should be forwarded to an examining attorney. In addition, under the TMA, the USPTO is required to review and act on letters of protest within 60 days of receipt. The total subsidy for performing this service has grown due to a substantial increase in letters of protest forwarded to the USPTO each year. Letters of protest have risen from about 2,300 in FY 2016 to nearly 4,000 in FY 2023. The agency estimates this volume will grow to more than 5,000 letters annually by FY 2029, resulting in more cost to the USPTO.

When viewed in the context of USPTO actions due to letters of protest, the agency's costs are considerable, while the letters have a minor impact on examination outcomes. During FY 2022, the USPTO decided 4,557 letters of protest, of which 1,433 (31%) were not in compliance with § 2.149 and therefore not included in the record of examination. Of the letters entered into the record, examining attorneys issued a refusal based on the asserted ground(s) in 1,213 cases (27% of letters decided). Examining attorneys likely would have issued a refusal in these cases even without a letter of protest. The USPTO identified only 27 (0.59%) letters in FY 2022 that corresponded to an error in publishing a mark for opposition, similar to historical shares of letters decided each year.

Table 8: Letters of Protest Filed and Letters Corresponding to Situations Where the USPTO Published a Mark for Opposition in Error, by Fiscal Year

<b>Fiscal year</b>	<b>Letters of protest decided</b>	<b>Letters corresponding to a mark published in error</b>	<b>Share of total letters decided</b>
2016	2,258	17	<b>0.75%</b>
2017	2,726	13	<b>0.48%</b>
2018	3,386	28	<b>0.83%</b>
2019	4,106	43	<b>1.05%</b>
2020	3,534	22	<b>0.62%</b>
2021	3,756	39	<b>1.04%</b>
2022	4,557	27	<b>0.59%</b>

In accordance with the USPTO’s fee setting policy factors, this adjustment recovers more of the costs associated with letters of protest, although the agency’s full costs for this service will continue to be subsidized by aggregate trademark revenues.

**6. Other Petition Fees**

Table 9: Other Petition Fees

<b>Description</b>	<b>Current fee</b>	<b>Final rule fee</b>	<b>Dollar change</b>	<b>Percent change</b>	<b>FY 2023 unit cost</b>
Petition to the Director (paper)	\$350	\$500	\$150	43	n/a
Petition to revive an application (paper)	\$250	\$350	\$100	40	n/a
Petition to the Director (electronic)	\$250	\$400	\$150	60	\$3,300
Petition to revive an application (electronic)	\$150	\$250	\$100	67	\$61

Optional petitions are a valuable, though costly, part of the trademark registration process, and other trademark fees subsidize the optional petition processing costs. The new fee amounts would recover more costs associated with the extensive and lengthy review these services require.

**VI. Discussion of Comments**

In response to the March 26, 2024, NPRM, the USPTO received comments from 27 associations and individuals including intellectual property organizations, law firms, attorneys, and others. These comments are available on Regulations.gov at <https://www.regulations.gov/docket/PTO-T-2022-0034>.

The summaries of comments and the agency's responses to the written comments follow.

### **General Fee Setting Approach**

*Comment 1:* Commenters recognized the need for the USPTO to set fees at a level necessary to recover aggregate costs and ensure financial sustainability.

*Response:* The USPTO appreciates the commenters' feedback.

*Comment 2:* In principle, commenters supported fee increases needed to maintain effective and efficient operations, including efforts to lower pendency, combat fraud, and ensure the accuracy and reliability of the trademark register.

*Response:* The USPTO appreciates the commenters' feedback and is committed to pursuing the goals and objectives in the Strategic Plan in a fiscally responsible manner.

*Comment 3:* Commenters expressed appreciation for the USPTO's receptivity to feedback given during the public hearing and making adjustments to the fee proposals in response to that feedback.

*Response:* The USPTO appreciates the commenters' feedback and remains committed to analyzing, considering, and incorporating feedback from our stakeholder community.

*Comment 4:* One commenter noted that it was important for the USPTO to strike a balance between financial sustainability and accessibility to the trademark system in setting fees.

*Response:* The USPTO agrees that financial sustainability and stakeholder accessibility are crucial fee setting considerations. The overriding principle behind this rulemaking is to provide the agency with a sustainable funding model that supports the USPTO's

strategic goals and objectives, including providing affordable access to the trademark system for all stakeholders.

*Comment 5:* Commenters emphasized that the fee schedule should be clear and transparent.

*Response:* The USPTO strives to ensure that the costs associated with obtaining a federal trademark registration are clear and that examination is consistent for all applicants.

Similar to a TEAS Plus application, the base application established by this final rule will indicate what information is required for a complete application, as well as the addition of indicators meant to alert applicants of additional surcharges based on information provided on the application at the time of filing. The USPTO expects that, in most cases, any incurred surcharges will be assessed and known to the applicant upon submission of the initial application.

*Comment 6:* Commenters noted there should be greater agency transparency surrounding the budget, particularly around increased IT costs. Commenters asserted that the public is entitled to know more details about scheduled and upcoming IT improvements and why costs and delays have escalated over previous projections.

*Response:* The USPTO is committed to providing stakeholders with financial and performance data that are complete, reliable, accurate, and consistent. The USPTO posts congressional budget justifications, agency financial reports, and annual performance plan and annual performance reports on the financial and performance section of the USPTO website at <https://www.uspto.gov/about-us/financial-and-performance>. Also, the General Services Administration's ITDashboard.gov enables stakeholders to understand the health of IT investments, the impact of IT portfolios, and other key IT indicators. Finally, the TPAC holds quarterly public meetings to review USPTO policies, goals,

performance, budget, and user fees. During these meetings the USPTO presents the latest plans and updates regarding IT improvements and other administrative matters.

Although the USPTO strives to provide the most accurate cost and revenue estimates in the five-year forecast summary of each congressional budget submission, these forecasts reflect point-in-time planning assumptions and budget priorities. The agency routinely updates forecasts, tracks operational and financial performance, and monitors changes in the economy to mitigate uncertainty. The USPTO has earned 31 consecutive years of unmodified (clean) audit opinions on its annual financial statements.

*Comment 7:* Commenters asserted that it was too soon to raise trademark fees because fees were raised in 2021, and new fees were also introduced as part of the Trademark Modernization Act. One commenter suggested these actions raise concerns about the ability of the USPTO to establish effective budgetary frameworks, project future operational outcomes, and maintain efficient operations.

*Response:* The USPTO decided to adjust trademark fees at this time after conducting a deliberate and thorough review of fees, costs, and revenues. Based on this review, the agency concluded that fee adjustments are necessary to generate sufficient financial resources to facilitate the effective administration of the U.S. trademark system.

The USPTO's budget projections reflect point-in-time estimates and assumptions that are subject to change, with considerable uncertainty in outyear forecasts and risks that could materialize. Fee collections and operational costs are affected by internal factors, including changes in examination processes and procedures, and also by external factors outside the USPTO's control, such as legislation, court decisions, and changes to the broader economy. As detailed in the Updated Revenue and Cost Estimates section of this rule, the USPTO has experienced a number of unanticipated circumstances since the current fee schedule took effect in January 2021. These factors include higher-than-

expected inflation in the broader U.S. economy leading to higher costs for supplies and contract services and employee pay raises enacted across all U.S. government agencies in FY 2023–24—including the USPTO—that were larger than previously planned for during the January 2021 fee change.

*Comment 8:* One commenter asserted that previous fee increases have not improved operations, as processing times for applications have risen sharply since the last time fees were increased in 2021; therefore, the USPTO should not increase fees, as a fee increase is unlikely to improve agency efficiency.

*Response:* The USPTO acknowledges that processing times and pendency have increased for trademark applications. These delays are the result of several years of sustained increases in trademark application filings, punctuated by an unprecedented year-long influx during FY 2021 that created a significant unexamined application inventory. The cost of processing and examining applications is subsidized by other fees, so this surge has further stressed the USPTO's finances. Addressing this unexamined inventory has required and will continue to require significant investments in time and agency resources, making fee increases necessary to effectively administer the trademark system.

*Comment 9:* One commenter stated that trademark registration costs have historically disproportionately affected minority-owned small businesses and the proposed increases will make matters worse. The commenter urged the USPTO to petition Congress to appropriate taxpayer funding rather than raising fees paid by small businesses and innovators.

*Response:* The USPTO acknowledges that a growing body of research has revealed unequal innovation participation rates for women, people of color, veterans, and other underserved individuals. Working to address these concerns, the agency is developing its



own equity initiatives and programs and is also partnering with organizations in both the public and private sectors to collectively advance inclusion in innovation. For more information on the USPTO's inclusive innovation initiatives, visit <https://www.uspto.gov/Equity>.

*Comment 10:* One commenter asserted that the Initial Regulatory Flexibility Act (IRFA) analysis did not sufficiently describe or estimate the number of small entities the rule would affect and every small business in the United States is impacted by the proposed fee changes.

*Response:* The USPTO disagrees that this rulemaking would impact every small business in the United States. Many small businesses do not hold any trademarks or may choose not to register their trademarks with the USPTO for reasons unrelated to the agency's fees.

The USPTO does not collect or maintain statistics in trademark cases on small-versus large-entity applicants, and this information would be required to determine the number of small entities affected by this rule. However, the agency does not anticipate that the final rule will have a disproportionate impact on any particular class of small or large entities. The USPTO chose the fee schedule in the final rule because it will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate.

*Comment 11:* Commenters recommended that the USPTO include an exception or reduce fees for small and micro businesses, similar to the small and micro entity discounts offered for patent applicants and holders.

*Response:* Section 10(a) of the AIA authorizes the Director to set or adjust any fee established, authorized, or charged under the Trademark Act, but it does not include the authority to provide entity discounts for trademark fees.

*Comment 12:* The Office of Advocacy for the Small Business Administration (SBA) recommended that the USPTO create more clear and accessible guidance for small businesses seeking to apply for or renew a trademark.

*Response:* The USPTO is committed to improving the resources offered to small businesses and entrepreneurs, including expanding our partner pro bono services and IP law school clinic programs. Resources for inventors and entrepreneurs are available on the USPTO website at <https://www.uspto.gov/Inventors>. The USPTO's Trademark Assistance Center (TAC), <https://www.uspto.gov/TrademarkAssistance> can answer questions on a variety of trademark topics for first-time filers.

*Comment 13:* The SBA commented that the unit cost recovery or across-the-board adjustment alternatives analyzed in the IRFA were better options than the proposed fee structure.

*Response:* The USPTO is adopting the fee schedule detailed in this rulemaking because it will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate.

The unit cost recovery alternative would produce a structure in which application and processing fees would increase significantly for all applicants, and post-registration maintenance filing fees would decrease dramatically when compared with current fees. The USPTO rejected this alternative because it does not reflect improvements in fee design to accomplish the agency's stated objectives of encouraging broader use of IP rights-protection mechanisms and participation by more trademark owners, as well as

practices that improve process efficiency. In contrast, the fee schedule in the final rule sets application filing fees below the unit cost of those services to encourage broader use of IP rights-protection mechanisms and participation by more trademark owners, including small businesses and individual filers.

The USPTO also considered a 27% across-the-board increase for all fees. This fee schedule would have continued to promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants pay maintenance fees above cost to subsidize the below-cost front-end fees. However, the agency ultimately rejected this proposal because, unlike the fee schedule outlined in the final rule, it would not enhance the efficiency of trademark processing and offers no new incentives for users to file more efficient and complete applications.

*Comment 14:* One commenter suggested that before raising fees, the USPTO should assess the impact of recent agency measures like the U.S. counsel rule, the requirement for filers to log in with myUSPTO.gov, the TTAB's expedited cancellation program, the Trademark Modernization Act, and the three-month response deadline for Office actions.

*Response:* The agency implemented the measures identified in the comment to improve the quality of both trademark applications and the trademark register and to reduce trademark pendency. In developing the most judicious fee adjustments possible, the USPTO followed its fee setting process that includes a comprehensive review that identifies, assesses, and integrates fraud risk controls, recent initiatives and measures (including those identified in the comment), and trends. Thus, the USPTO incorporated the impact of these initiatives into the new fee structure by considering filing patterns, capacity, and financial implications.

*Comment 15:* Commenters expressed opposition to the fee proposals and claimed any problems the USPTO faces are the result of “bad trademark applications being filed by the incompetent automated trademark service ‘mills’ and the unethical trademark attorneys.” In lieu of the proposed fee changes, commenters stated the USPTO should require comprehensive legal research before filing.

*Response:* The USPTO enforces compliance with the Trademark Act’s requirements for applications through a number of methods. Both the Trademark Act and the rules of practice require a verified statement alleging that “to the best of the signatory's knowledge and belief, the facts recited in the application are accurate.” 15 U.S.C. 1051(a)(3), (b)(3), and 1126; 37 CFR 2.33 and 2.34. If the filing basis is section 1(b), section 44(d), or section 44(e), the statement must also assert that the verifier believes the applicant is entitled to, and has a bona fide intent to, use the mark in commerce on or in connection with the goods or services specified in the application, and that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, used on or in connection with the goods or services of such other person, to cause confusion or mistake, or to deceive. If the filing basis is section 1(a), the verification must also state that the applicant believes it is the owner of the mark and that it is in use in commerce.

In addition, the USPTO is currently working to combat fraudulent applications through the recently created Register Protection Office (RPO). For example, in FY 2024, the RPO increased its capacity and improved its workflow to monitor and shutter USPTO.gov accounts for user agreement violations.

*Comment 16:* One commenter stated the best course of action the USPTO can take to promote efficiency and reduce pendency is to better train examining attorneys. The commenter suggested that the USPTO instruct their examining attorneys that the ID

Manual is not binding, and there is no need for conformity if an identification is acceptable as written. The commenter also stated that the USPTO should teach its examining attorneys not to issue unnecessary refusals.

*Response:* The USPTO agrees that custom identifications may be acceptable as written, and that the agency should not issue unnecessary refusals. The new surcharge for entering identifications manually in a free-form text box is not an indication that custom identifications are unacceptable but reflects the extra work required by examining attorneys (and costs to the USPTO) to review each entry to determine its acceptability.

As part of objective 2.2 in the 2022–2026 Strategic Plan, issuing and maintaining accurate and reliable trademark registrations, the agency is continuously enhancing training programs to keep pace with changing filing demands and with emerging issues and challenges.

*Comment 17:* Commenters requested clarification on whether the proposed application and filing surcharge fees would apply to existing applications or only to applications filed after the effective date of the final rule.

*Response:* In general, the proposed fees would apply only to applications filed after the effective date of the final rule. However, as discussed in Part IV: Individual Fee Rationale of this rule, any previously filed TEAS Plus applications that remain pending on or after the effective date of this final rule will be subject to the insufficient information surcharge fee if the application fails to satisfy any of the above requirements because the requirements for a base application are the same as the requirements for a TEAS Plus application. Under either system (TEAS or base plus surcharges), affected applications would be subject to a fee of \$100 per class for failing to meet the requirements.

*Comment 18:* One commenter noted the fee proposal would require a significant learning curve for legal and non-legal parties involved in the trademark registration process and will likely lead to more applicants seeking out legal assistance at law clinics. The commenter suggested that the USPTO establish clinical relationships with more Historically Black Colleges and Universities (HBCUs).

*Response:* As part of objective 1.2 in the 2022–2026 Strategic Plan, the agency is continuing to expand its partner pro bono services and IP law school clinic programs to ensure greater access to counsel and to assist in procuring IP protection. Currently, about one third of law schools accredited by the American Bar Association (ABA), including three of six of HBCU law schools, participate in the USPTO’s Law School Clinic Certification Program. All three HBCU law schools participating have both patent and trademark clinics. Participating clinics provide legal services pro bono to the public, including to inventors, entrepreneurs, and small businesses. More information on the program is available on the USPTO’s website at <https://www.uspto.gov/LawSchoolClinic>.

Regarding the learning curve, the required information for a base application is the same as required for TEAS Plus applications. The new base filing plus surcharge filing solution will flag all information required for filing, much like the TEAS Plus application today.

*Comment 19:* Commenters expressed concern that the fee increases will disproportionately affect lower-income filers such as small businesses, startups, and pro se filers, many of whom may be sensitive to cost changes and lack the means to secure legal counsel. One commenter suggested that the proposed free-form text box surcharge, in particular, will negatively impact small businesses.

*Response:* The agency strives to keep front-end initial filing fees below cost to encourage broader participation and open access to the trademark system. The new fees reflect higher inflationary costs but will remain below the net cost of examination and further minimize undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs due to lengthy or less clear identifications of goods and services or missing information. The USPTO expects that a majority of filers will avoid the surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit for each class.

*Comment 20:* One commenter expressed concern that higher fees may push more applicants to file pro se and cause applicants to unknowingly give up their rights or to file in a manner that does not reflect their actual use, thereby damaging the accuracy of the trademark register.

*Response:* As noted in response to comment 12, the USPTO provides resources for applicants and registrants that explain trademark rights on the agency's website at <https://www.uspto.gov/Inventors>. Applicants and registrants may find these resources helpful in understanding their rights and how to file in a manner that best reflects their actual use. In addition, although the USPTO cannot provide legal advice, the TAC, <https://www.uspto.gov/TrademarkAssistance>, can answer questions on a variety of trademark topics.

The USPTO's Law School Clinic Certification Program, <https://www.uspto.gov/LawSchoolClinic>, includes over 60 participating law school clinics that provide patent or trademark legal services pro bono to qualified members of the public who are accepted as a client of a clinic. Each participating law school has requirements for accepting new clients and accepts new clients at their discretion. The

agency is continuing to expand its partner pro bono services and IP law school clinic programs to ensure greater access to counsel and to assist in procuring IP protection.

*Comment 21:* The SBA suggested that the introduction of surcharges will make it harder for applicants and legal counsel to accurately predict the overall cost associated with trademark applications. The SBA asserted that surcharges will negatively impact small businesses, which may lack resources for legal counsel or the ability to absorb unexpected costs.

*Response:* The agency expects that the majority of filers will avoid surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit for each class. The USPTO further believes that applicants and legal counsel should be able to anticipate which applications will require custom identifications or excess characters based on their knowledge of the complexity of the application and the covered classes. Prior to submitting their application, applicants will be presented with the entire application cost—including surcharges—and have the opportunity to provide complete information and identifications from the ID manual or custom identifications that are 1,000 characters or fewer in length, thus avoiding the surcharges.

As discussed above, the USPTO endeavors to keep front-end initial filing fees below cost to encourage broader participation and open access to the trademark system. The new fees reflect higher costs but will remain below the net cost of examination and further minimize undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs due to lengthy or less clear identifications of goods and services or missing information.

The USPTO's Law School Clinic Certification Program, <https://www.uspto.gov/LawSchoolClinic>, includes over 60 participating law school



clinics that provide patent or trademark legal services pro bono to qualified members of the public who are accepted as a client of a clinic. Each participating law school has requirements for accepting new clients and accepts new clients at their discretion. The agency is continuing to expand its partner pro bono services and IP law school clinic programs to ensure greater access to counsel and to assist in procuring IP protection.

## **Targeted Fee Adjustments**

### **Trademark Application Filing Fees**

*Comment 22:* One commenter suggested that any increase to basic filing fees should be limited to budgetary changes for inflation and cost of living.

*Response:* Projected revenue from the current fee schedule is insufficient to meet future budgetary requirements (costs), due largely to higher-than-expected inflation in the broader U.S. economy that has increased the agency operating costs. Consequently, the USPTO's aggregate operating costs will exceed aggregate revenue for the Trademarks program under the current schedule.

The USPTO chose the adjustments established in this final rule, including application filing fees, because they will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. If the USPTO were to set the fee rate for a base application lower than prescribed in the final rule, the lower application filing fee would need to be offset by raising other fees, reducing spending on core mission and strategic priorities, or depleting the operating reserves, thereby significantly increasing agency financial risk.

*Comment 23:* Commenters expressed concern that higher application fees may deter many potential applicants from filing for trademarks, reducing the overall number of applications and registrations.

*Response:* The USPTO raised trademark fees in 2017 and 2021, with effective dates of January 14, 2017, and January 2, 2021, respectively. From FY 2016 to FY 2017, filings increased by about 60,000. During the fourth quarter of FY 2020 and the first quarter of FY 2021, the agency experienced a surge in filings in advance of the fee increase.

Outside of that surge, the USPTO notes that filings in each of the last three quarters of FY 2021 (after the new fees took effect) were higher than filings in the third quarter of FY 2020 or any prior quarter. Therefore, the data indicate that fee increases have not impacted the long-term trend of growth in trademark filings.

As noted in the NPRM, outside research also suggests that demand for trademark applications is inelastic. See Gaétan De Rassenfosse, “On the Price Elasticity of Demand for Trademarks,” Social Science Research Network, Jan. 28, 2018, <https://doi.org/10.2139/ssrn.2628646>; Benedikt Herz and Malwina Mejer, “On the Fee Elasticity of the Demand for Trademarks in Europe,” Oxford Economic Papers, Jul. 3, 2016, <https://doi.org/10.1093/oenp/gpw035>.

*Comment 24:* One commenter expressed concern that increases to the base application fee, as compared to TEAS Plus and TEAS Standard fees, were too high and would be a significant burden for stakeholders, especially small businesses. The commenter noted that the effective fee increases range from 40% (base application fee compared to TEAS Plus application fee) to 114% (base application fee plus all three surcharge fees compared to TEAS Standard application fee), depending on whether the applicant incurs any additional surcharges.

*Response:* The new fees reflect higher costs that have accumulated over the years and will remain below the net cost of examination, further minimizing undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs.

Individuals and small businesses comprise the majority of trademark filers, and many are one-time filers. The USPTO expects that the majority of these filers will avoid the surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit for each class.

*Comment 25:* Commenters disagreed with the USPTO's decision to move away from the two-tiered TEAS system. These commenters suggested that the TEAS system allows customers to explore various options with different prices based on their needs and financial capacity. In contrast, commenters suggested that the proposed fees act as a barrier to entry by increasing application costs, removing other cost options from the process, and losing the advantage of an earlier filing date strategy because of the time required to comply.

*Response:* The new system will allow customers to explore various options with different prices based on their needs and financial capacity. In addition, it is designed to make application fees more equitable by aligning filing costs with the work required for examination. It is similar to the existing system in that applicants who comply with the base requirements in their initial filing (comparable to TEAS Plus) will pay the lowest fees, as compared to applicants who fail to meet all requirements (comparable to TEAS Standard). The USPTO does not anticipate the total number of applications filed each year will change under the schedule enacted herein. The agency does anticipate that a larger share of applicants will seek to avoid the proposed surcharges, as compared to the share of applicants who used the TEAS Plus option under the existing fee schedule.

*Comment 26:* Commenters expressed concern about the potential complexity and unpredictability of the new system, as it appears to create new procedures and requirements to apply for and obtain registration.

*Response:* Although the new system introduces changes, as noted above it is similar to the prior system in that applicants complying with the base requirements in their initial filing (comparable to TEAS Plus) will pay the lowest fees under the new fee schedule, as compared to applicants who fail to meet all requirements (comparable to TEAS Standard). Prior to submitting their application, applicants will be presented with the entire cost, including surcharges. Applicants can avoid some or all of these surcharges by providing complete information and identifications from the ID Manual or custom identifications of 1,000 characters or less per class. The information required to avoid the insufficient information surcharge fee is the same as that required for the TEAS Plus application.

*Comment 27:* One commenter believed the fee for a base application is too high and should be set at the current rate for a TEAS Plus application (\$250) because it has essentially the same requirements.

*Response:* Maintaining the initial filing fee at \$250 would not accommodate cost increases and would likely undermine the timeliness and the quality of the examination and registration processes. When the agency introduced the TEAS Plus option in 2005, the fee was \$275, and that costs for examination have risen significantly since that time.

In addition, the USPTO is setting the fee for the base application at a rate greater than the current TEAS Plus fee to recover some additional examination costs earlier in the trademark life cycle. The new base application fee remains below the net cost of

examination, and the new surcharges will further minimize undue burdens by shifting higher fee requirements to applicants who trigger higher examination costs.

*Comment 28:* Commenters questioned why the USPTO did not include a greater increase to fees for paper applications, given the larger costs associated with these types of filings.

*Response:* Under § 2.23, the USPTO requires electronic filing of all trademark correspondence, including applications. Filers may petition for special circumstances, but paper applications make up fewer than 1% of current filings. In addition to a higher filing fee, paper filers also incur an additional petition fee for requesting acceptance of a paper submission. Because the vast majority of filings are electronic, the higher cost of processing paper applications has little marginal impact on the USPTO's overall costs.

*Comment 29:* One commenter suggested that if the USPTO's intent is to generate publication-ready applications to improve pendency, it should evaluate why pendency has increased rather than raise fees.

*Response:* The USPTO is working diligently to balance timely examination with trademark quality.

As discussed in the NPRM and in Part IV: Rulemaking Goals and Strategies of this rule, the agency's recent trademark pendency challenge is the result of several years of sustained increases in trademark application filings punctuated by an unprecedented, year-long influx during FY 2021 that created a significant unexamined application inventory. In addressing these challenges, the USPTO will continue to reevaluate its operating posture to maximize efficiency, set data-driven pendency goals, realign the trademark workforce to maintain stability during workload fluctuations and optimize pendency goals, and use available technology solutions to streamline and automate trademark work processes. Although new trademark application filings have since

softened and inventory is stabilizing, unexamined inventory remains high and will take several years to address.

Promoting efficient delivery of reliable IP rights is just one of the USPTO's goals; another is to recover the aggregate costs of trademark operations through user fees.

Without raising fees, the agency projects that the trademark operating reserve will fall below minimum levels in the next few years with a consequent impact on timeliness, application quality, and the integrity of the trademark register. The USPTO designed the new fee structure to enhance application quality and streamline the examination process, resulting in lower pendency and greater cost recovery.

### **Trademark Application Filing Surcharge Fees**

*Comment 30:* Commenters expressed concern that the new surcharges could make it difficult for attorneys to provide clients with an accurate estimate of costs.

*Response:* The USPTO expects that the majority of filers will avoid surcharges and pay only the base application fee because they will provide all required information, select their identifications from the ID Manual, and not exceed the 1,000-character limit per class. The USPTO further believes that applicants and legal counsel should be able to anticipate which applications will require custom identifications or excess characters based on their knowledge of the complexity of the application and the covered classes. Prior to submitting their application, applicants will be presented with the entire cost, including surcharges, and have the opportunity to update before filing to potentially avoid the surcharges. The electronic application system will clearly indicate the fields required to avoid the incomplete information surcharge, and there will be no surcharge for IDs selected from the ID Manual within the application. Attorneys should be aware that IDs entered within the free-form text box will generate a surcharge, as will those that exceed the 1,000-character limit if entered in that box, and advise their clients accordingly.

*Comment 31:* Commenters sought clarification on whether use of the free-form text box will subject applicants to both the insufficient information surcharge and the free-form text surcharge.

*Response:* Use of the free-form text box will not trigger the insufficient information surcharge. As detailed in Part VII: Discussion of Specific Rules, the insufficient information surcharge will apply if an application fails to satisfy any of the requirements in paragraphs (a)(1) through (19) in the list of requirements for a base application under § 2.22. Applicants will incur the free-form text surcharge when they enter identifications of goods and/or services in the free-form text box (paragraph (a)(20) under § 2.22), and there will be no surcharge for IDs selected from the ID Manual within the application.

*Comment 32:* Commenters sought clarification on when the insufficient information surcharge would be assessed: at filing, when applications are acted upon by the USPTO, or when amended.

*Response:* The USPTO expects that if the insufficient information surcharge is assessed, the vast majority of applicants will be assessed the surcharge at filing, and the electronic filing system will display total filing cost prior to submission. Some filers could be assessed the surcharge after filing if the examining attorney determines that required information was missing on the original application.

*Comment 33:* One commenter requested clarification on whether the insufficient information surcharge will be assessed per class or on each piece of missing information per class.

*Response:* The insufficient information surcharge is a per-class fee that applies to applications that do not include required information at the time of filing. The surcharge

is not per requirement; it is \$100 per class, regardless of the number of requirements an applicant fails to satisfy.

*Comment 34:* One commenter requested clarification regarding whether an applicant who uses the ID Manual that requires a fill-in (e.g., software) will be charged the insufficient information fee if the examining attorney does not approve the language used to describe the nature and function of the goods and/or services.

*Response:* As with TEAS Plus, the agency will not require an additional fee if the identification of goods or services has a fill-in-the-blank element and the applicant inserts information that reasonably attempts to satisfy requirements in accordance with the instructions but requires amendment because the inserted information: (1) sets forth goods and/or services in another class (e.g., headwear, namely, football helmets); (2) is indefinite (e.g., maternity clothing, namely, sportswear); (3) includes indefinite wording from the parenthetical guidance provided for instructional purposes (e.g., "specify," "indicate," "etc."); or (4) is inaccurate.

Applicants will incur the free-form text surcharge if they leave the fill-in-the-blank element empty, insert information that is clearly inappropriate for the selected identification, or insert additional goods and/or services unrelated to the selected identification. For example, applicants also will incur the additional fee if they identify the goods and/or services in the original application as “processed meat, namely, laptop computers”; “bicycle parts, namely, bicycle parts”; or “sound recordings featuring music, and sunglasses.” In these situations, the applicant has, in effect, failed to submit an identification from the ID Manual, and the additional fee will apply even if the applicant deletes the unacceptable terminology.

*Comment 35:* One commenter requested clarification regarding whether applicants will be assessed the insufficient information surcharge for not satisfying “all of the



requirements of § 2.34” in an application filing basis if the specimen of use is deemed unacceptable in a use-based application.

*Response:* Similar to the guidance for TEAS Plus applications, as long as the specimen depicts the mark, the applicant will not incur an additional fee for registrations refused because the specimen is unacceptable. The insufficient information surcharge will apply if the mark on the specimen is materially different from the mark on the drawing. If the mark on the specimen and the drawing are materially different, the applicant has, in effect, failed to submit a specimen showing use of the mark sought to be registered. The surcharge will not apply if the difference between the mark on the specimen and the mark on the drawing is not material.

*Comment 36:* Commenters, including the SBA, expressed concern regarding the difficulty of anticipating whether the insufficient information fee will apply for an applicant, given that many of the requirements are subjective to the examining attorney’s opinions and discretion, rather than objective factual standards. Commenters included color claim, description of a mark, identification of form of applicant, and translation of a mark as examples of subjective determinations where a fee could be imposed later in examination. Commenters suggested these questions will lead to accounting disputes, thus inhibiting the quality and timeliness of prosecution progress.

*Response:* The USPTO acknowledges the commenters’ concerns and offers assurance that the agency strives to ensure consistent examination. An applicant may request that the USPTO review situations where, in their opinion, the agency has acted inconsistently in its treatment of their pending application(s) or recent registration(s). Applicants also may submit a request for review when a substantive or procedural issue has been addressed in a significantly different manner in different cases, subject to requirements on the Consistency Initiative page on the USPTO website at

<https://www.uspto.gov/trademarks/trademark-updates-and-announcements/consistency-initiative>. If the applicant believes that the agency incorrectly imposed an insufficient information fee and has discussed the issue with the examining attorney, they may also contact the managing or senior attorney in the examining attorney's law office.

*Comment 37:* One commenter expressed concern that the list of criteria that would impose an insufficient information surcharge fee is not in line with the Trademark Manual of Examining Procedure.

*Response:* The current Trademark Manual of Examining Procedure (May 2024) provides guidance regarding TEAS Plus and TEAS Standard applications, including guidance regarding the processing fee for applications that do not meet the requirements for a TEAS Plus application under § 2.22(a). The information required to avoid the insufficient information surcharge fee is the same as that required for the TEAS Plus application. After implementation of this final rule, the agency will update the manual in accordance with the requirements enacted herein.

*Comment 38:* Commenters questioned why the insufficient information fee will be imposed on a per class basis when most basic information requirements are not class-based.

*Response:* The USPTO has a longstanding practice of charging trademark fees on a per-class basis. The insufficient information surcharge mirrors the per-class processing fee for TEAS Plus applications that do not meet filing requirements. Any unmet requirements in a submitted application complicate the examination of every class claimed in the application.

*Comment 39:* One commenter expressed concern regarding the insufficient information surcharge, given what they assert are the current application system's limitations.

*Response:* The new TM Center electronic filing system is capable of meeting the demands of the new fee structure and will clearly indicate the fields required to avoid the incomplete information surcharge. The agency also notes that prior to submitting their application, applicants will be presented with the entire cost, including surcharges, and have the opportunity to update their application before filing to potentially avoid the surcharges.

*Comment 40:* One commenter suggested that the USPTO consider whether the insufficient information fee is appropriate in instances where an applicant makes a good-faith effort to supply required information, such as when they have no knowledge of a term's non-English meaning.

*Response:* Requiring the fee is appropriate in the situation described in the comment because § 2.32(a)(9) requires an applicant to research a mark that is comprised of or includes non-English wording to determine whether there is a transliteration or translation of the wording. If there is, and the applicant omits the translation or transliteration, the examining attorney will issue an Office action requiring the insufficient information surcharge and submission of the translation and/or transliteration, as appropriate. If the initial application includes a translation or transliteration, the surcharge will not apply for later amendment of the translation or transliteration. The surcharge will apply if the translation or transliteration comprises or contains inappropriate material.

*Comment 41:* Commenters noted that it is often in an applicant's best interests to submit an application without signing the supporting verified statements or providing every

piece of information in order to get the earliest possible filing date. They suggested that if the information is provided after filing but before examination, there has been no inconvenience to the USPTO, and therefore the insufficient information fee will be strategically restrictive and needlessly burdensome to applicants.

*Response:* To qualify for the reduced base application fee, applicants must include all required information at filing, as with TEAS Plus and TEAS Standard. Applicants also must individually assess when to file their applications and what information they wish to provide at filing beyond the requirements for receipt of a filing date in § 2.21.

*Comment 42:* One commenter expressed concern that there is no avenue to appeal or refund the insufficient information surcharge fee in cases where an applicant could prove their provided information was, in fact, sufficient.

*Response:* If an examining attorney issues an Office action requiring payment of the surcharge for insufficient information, the applicant may respond with arguments and proof that the information was sufficient or that no information was required in that particular field. In such cases, the agency would not have collected the surcharge at filing. Therefore, no refund would be necessary for applicants who successfully overcome the surcharge requirement.

*Comment 43:* Commenters requested clarification regarding when applicants will be assessed the free-form text surcharge: at filing, when the USPTO acts upon an application, or when amended.

*Response:* The agency will assess the free-form text surcharge at any of the following points: at filing, when the application is amended to add a class(es) that was included in the free-form text box and not paid for, or when it is determined upon examination that

the applicant has, in effect, failed to submit an identification from the ID Manual. See the response to comment 34 and Part V: Individual Fee Rationale for more information.

*Comment 44:* One commenter requested clarification regarding how the USPTO will address amendments to descriptions selected from the ID Manual that are later modified to incorporate exclusionary language to differentiate from the goods or services of third parties, including prior registrants, whether in the context of agency refusals for an alleged likelihood of confusion under section 2(d), or opposition, cancellation, litigation, or other inter partes proceedings.

*Response:* If the applicant originally selected the identification from the ID Manual within the electronic application, the addition of exclusionary language will not trigger the insufficient information or character count surcharges.

*Comment 45:* One commenter requested clarification on whether use of the ID Manual drop-downs will result in the character limit surcharge.

*Response:* Items selected from the ID Manual will not be subject to the character limit surcharge.

*Comment 46:* One commenter requested clarification on the difference in substance between the agency's Acceptable Identification of Goods and Services Manual and the Trademark Next Generation ID Manual.

*Response:* There is no difference in substance between the two versions of the ID Manual.

*Comment 47:* One commenter acknowledged that additional work is involved in examining free-form text identifications but questioned whether the fee is proportionate to the work performed by the USPTO.

*Response:* The USPTO appreciates the commenter's acknowledgement that examining free-form text identifications requires additional work. Examining attorneys often spend substantial time reviewing identifications provided in the free-form text box and may initiate multiple communications with the applicant before determining an acceptable identification. The USPTO believes this surcharge is proportionate to the additional costs associated with these more extensive reviews.

*Comment 48:* Commenters, including the SBA, expressed concern that the free-form text surcharge may result in lower quality applications, as the ID Manual options for many industries are insufficient or too inaccurate to define their goods or services. Commenters asserted that this issue may cause some applicants to mistakenly narrow their goods and/or services identifications, choose the wrong goods and/or services identifications, or abandon their applications and rely on common law protections. They suggest that a review and cleanup of the ID Manual would make it more useful.

*Response:* The USPTO currently has no plans for a comprehensive review of the ID Manual, but if it does not contain options relevant to applicants, they may submit new entries as described on the USPTO website at <https://www.uspto.gov/trademarks/guides-and-manuals/trademark-identification-goods-and-services-manual-suggestions>. As noted on the website, after the agency receives a proposed identification or recitation, it is reviewed by the Administrator for Trademark Classification Policy and Practice. The Administrator will determine whether to include the proposed identification or recitation, or a modified version, in the ID Manual. In addition, the Administrator will inform the submitting party whether the suggestion is accepted, rejected, or accepted in a modified

form, typically within one to two business days. If accepted, the ID generally will appear in the next available weekly update.

*Comment 49:* Commenters expressed concern regarding the process for updating the ID Manual. Specifically, they note that the free-form text box surcharge will likely cause an influx of requests and expressed concern that the USPTO may not have the capacity to address the requests in a timely manner. Additionally, these commenters believed the process to update the ID manual is slow and lacks transparency. The commenters expressed concern that the surcharge will negatively impact innovation and originality, while imposing a burden on applicants whose goods and services cannot accurately be described through standardized descriptions.

*Response:* The USPTO is committed to timely and transparent updates to the ID manual. The Administrator for Trademark Classification Policy and Practice will, typically within one to two business days, inform the submitting party whether the suggestion is accepted, rejected, or accepted in a modified form. If accepted, the ID generally will appear in the next available weekly update. Should an influx of requests occur, the USPTO will monitor the requests to ensure that responses remain timely.

*Comment 50:* One commenter suggested that it is more efficient for an applicant to copy and paste an ID Manual entry into the free-form text box than to individually search each entry from the drop-down menu. The commenter believed the surcharge will increase the time and legal costs charged to clients.

*Response:* As discussed in the NPRM and in Part V: Individual Fee Rationale of this rule, examining attorneys generally do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application form. Conversely, examining attorneys must carefully consider identifications entered in the

free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services.

Applicants will still have the option to copy and paste into the free-form text box rather than select from the ID Manual, but those who do so will pay the surcharge to help offset the increased costs of examination, similar to applicants who chose not to file via TEAS Plus in the legacy system. Applicants may conduct an advanced search of the ID Manual to narrow results by following instructions provided on the USPTO website at <https://www.uspto.gov/trademarks/guides-and-manuals/searching-trademark-id-manual>.

*Comment 51:* One commenter questioned the rationale for the free-form text box surcharge since examining attorneys use a feature that color codes free-text identifications that are identical to the ID Manual.

*Response:* As discussed in the NPRM and in Part V: Individual Fee Rationale of this rule, examining attorneys must carefully consider identifications entered in the free-form text box to determine whether the descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. This applies even in situations where an applicant types or pastes the ID Manual identification. The USPTO believes this surcharge is proportionate to the additional costs associated with these more extensive reviews.

*Comment 52:* One commenter disagreed with the free-form text box surcharge on the basis that applicants have historically had the ability to identify goods and/or services in the TEAS Standard application.

*Response:* The USPTO acknowledges that applicants may identify goods and services in the TEAS Standard application. In order to do so, these applicants have paid a higher filing fee than for a TEAS Plus application, in which the goods and/or services must be



chosen from the ID Manual within the form. Therefore, the additional surcharge for listing goods and/or services in the free-form text box of the base application versus selecting from the ID Manual is consistent with the higher TEAS Standard filing fee.

*Comment 53:* Commenters requested clarification regarding when the character count surcharge will apply: at filing, when applications are acted upon by the agency, or when amended. Other commenters asked specifically about a USPTO-imposed requirement to further specify goods and/or services and the addition of exclusionary language to differentiate from the goods and/or services of third parties whose registrations or applications are cited during examination or asserted in an inter partes proceeding.

*Response:* As discussed in Part V: Individual Fee Rationale of this rule, the character count surcharge will apply only at filing. A requirement to amend the identification to ensure it is sufficiently specific to provide adequate notice to third parties regarding the goods and/or services in connection with which the applicant intends to use or is using the mark will not trigger the surcharge, even if the amended identification exceeds 1,000 characters. The amendment of an identification to add exclusionary language also will not trigger the character count surcharge.

*Comment 54:* Commenters requested clarification whether the character count surcharge will apply only to free-form descriptions or also to pre-approved descriptions from the ID Manual.

*Response:* The character count surcharge will apply to free-form descriptions only. It will not apply to items selected from the ID Manual within the electronic application, including fill-ins.

*Comment 55:* One commenter suggested that the surcharge for exceeding the 1,000-character limit, per class, would shift the burden of application examination from the examining attorney to the applicant at the preliminary filing stage.

*Response:* As discussed in the NPRM, some identifications comprise many pages and include goods and/or services in multiple classes. In some cases, the applicant has paid the fee for only one class, although the listed goods and/or services are classified in multiple classes. Even when the goods and/or services are separated into classes, the examining attorney must carefully review the entire identification to ensure each item is sufficiently definite and properly classified. The surcharge does not shift any burden of proper examination from the examining attorney; rather, it ensures that applicants who submit lengthy identifications pay the costs of their review.

*Comment 56:* Commenters, including the SBA, expressed concern that the character count surcharge may create inequities between applicants in different industries, with certain industries having easy-to-describe goods or services that will not trigger the character count surcharge, while applicants in newer, more innovative industries may claim only two to three goods or services before incurring the surcharge.

*Response:* As discussed above, applications with descriptions of goods and/or services comprising thousands of characters generate additional work for examining attorneys to determine whether the descriptions are acceptable as written or require amendment for sufficient specification. The increased costs of this additional work have historically been borne by all trademark owners, and the tiered system is designed to make application fees more equitable by aligning them with the required work.

To avoid incurring the character count surcharge, applicants may submit new entries for inclusion in the ID Manual as described on the USPTO website at <https://www.uspto.gov/trademarks/guides-and-manuals/trademark-identification-goods->

and-services-manual-suggestions. As noted in responses to comments 48 and 49, the Administrator for Trademark Classification Policy and Practice will, typically within one to two business days, inform the submitting party whether the suggestion is accepted, rejected, or accepted in a modified form. If accepted, the ID generally will appear in the next available weekly update. If the entry is included in the ID Manual, the applicant may then choose it directly without incurring the character count surcharge, even if it exceeds 1,000 characters.

*Comment 57:* The SBA noted that since goods and/or services cannot be added after submission of an application, it is common practice to file with a broader list and then refine it later. Therefore, the character count surcharge could be strategically restrictive to applicants.

*Response:* Under this final rule, applicants may still submit broad lists by selecting items from the ID Manual. Identifications chosen from the ID Manual within the electronic application are not subject to the character count surcharge even if they exceed 1,000 characters. Applicants may also submit broad lists in the free-form text box but must pay the associated surcharge plus the character count surcharge for lists exceeding 1,000 characters to compensate for the additional time spent on those applications. To avoid these surcharges, applicants should make every effort to use the ID Manual within the electronic application, which includes thousands of identifications, or submit their custom identification for inclusion in the manual.

*Comment 58:* One commenter suggested that the character limit surcharge may lead to more applications with less thorough descriptions, which could then result in more challenges related to the searching and clearing of marks.

*Response:* The USPTO agrees that submitting indefinite or broad identifications could result in more Office actions that require sufficiently definite identifications and, in some cases, more likelihood-of-confusion refusals. Therefore, the agency encourages applicants to use identifications in clear, concise terms that the general public will easily understand and that accurately and completely describe the goods or services. Further, the USPTO notes that applicants may use the ID Manual within the electronic application, which includes thousands of identifications, to avoid the surcharge or submit their custom identification for inclusion in the manual.

*Comment 59:* Commenters offered several alternatives for the USPTO to consider in place of the 1,000-character limit. The alternatives offered include a 2,000-character limit, a 3,000-character limit, and a limit on the number of goods and/or services separated by semicolons.

*Response:* Based on an internal analysis, the USPTO determined that the 1,000-character limit strikes the balance of assessing a surcharge on applications that require more resources to examine without impacting a majority of applicants. As noted in Part V: Individual Fee Rationale, less than 5% of trademark applications contain custom identifications of goods and/or services that exceed 1,000 characters per class.

*Comment 60:* One commenter suggested that if the USPTO institutes the free-form text box surcharge, then the character count surcharge is unnecessary.

*Response:* Each surcharge serves a different purpose. As discussed in the NPRM and Part V: Individual Fee Rationale of this rule, examining attorneys generally do not need to review identifications of goods and/or services selected directly from the ID Manual within the electronic application. Conversely, examining attorneys must carefully consider identifications entered in the free-form text box to determine whether the

descriptions are acceptable as written or require amendment to sufficiently specify the nature of the goods and/or services. In several cases, the identification comprised multiple pages and included goods and/or services in multiple classes. The character count surcharge ensures that applicants who submit lengthy identifications pay the costs of their review.

*Comment 61:* One commenter expressed concern with spacing and punctuation being included in the character limit, suggesting that a word count would be a more equitable metric.

*Response:* The USPTO considered both options and found that character counts are straightforward and predictable, and clearly reflect the customer's actions. Word counts are more complex and variable.

### **Madrid Application Filing Fees**

*Comment 62:* One commenter argued that it is not possible to implement the necessary operational, financial, and IT changes in a timely manner that would allow WIPO to determine if an international applicant should be charged the custom ID/free-form text surcharge.

*Response:* Of the comments on various aspects of the Madrid Application Filing Fee system proposed in the NPRM, perhaps the most notable was regarding the inability of WIPO to institute a system to collect surcharges prior to recordation of the international registration or subsequent designation in the proposed timeframe. As a result, as discussed in Part V: Individual Fee Rationale, the USPTO will continue charging a flat application fee for Madrid applications. To align Madrid fees with domestic fees, per treaty obligations, the USPTO is adjusting the flat application fee to \$600, which is commensurate with what applicants would expect to pay, on average, if filing directly

under the base application and surcharge system. The USPTO will reconsider a base filing and surcharge system for Madrid applications when WIPO develops the capacity to implement surcharges.

*Comment 63:* One commenter suggested an alternative way to implement the proposed application fee structure for Madrid applications, with applicants charged a flat application filing fee (that does not exceed the amount applicants would have paid to the USPTO) until WIPO is able to implement the necessary operational, financial, and IT changes required for the proposed fee structure. At that time, Madrid applicants would be charged a base application fee and the relevant surcharges, but the commenter suggested that the insufficient information surcharge is incompatible with the Madrid Protocol, and therefore applicants would not be charged this fee at any point.

*Response:* The USPTO is implementing these suggestions in this final rule as discussed in the response to comment 62 and in Part V: Individual Fee Rationale. The USPTO will reconsider a base filing and surcharge system for Madrid applications in the future when WIPO develops the capacity to implement surcharges. If so, the agency will ensure it complies with all treaty obligations when developing such a system.

*Comment 64:* Commenters disagreed with charging Madrid applicants the insufficient information surcharge, claiming there is no legal basis for demanding any information beyond what is foreseen under Article 2 of the Madrid Protocol or for requiring additional payments for missing information.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. If so,

the USPTO will ensure it complies with all treaty obligations when developing such a system.

*Comment 65:* Commenters disagreed with the surcharge system on the basis that there are no provisions in the Madrid System legal framework that would allow either WIPO or the USPTO to require additional fees after the international registration or subsequent designation has been recorded.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. If so, the USPTO will ensure it complies with all treaty obligations when developing such a system.

*Comment 66:* Commenters expressed concern about the burden application surcharges will place on foreign filers, asserting that the proposal could lead to unexpected charges for Madrid applicants who are unaware of USPTO guidelines. Commenters also suggested the surcharges could lead to unreasonable delays due to Office actions required to collect surcharge fees.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. Thus, there will be no delay in prosecuting Madrid applications because an Office action will not be needed to collect any surcharges after application submission. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

*Comment 67:* One commenter asserted that the character count surcharge is prejudiced against foreign applicants and will price them out of registering marks in the United States.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. Further, for applicants who file directly with the agency rather than using the Madrid Protocol, the character count surcharge will be applied to both foreign and domestic applicants.

*Comment 68:* One commenter suggested that Madrid applicants should be given a clear and satisfactory method to satisfy the requirements of the proposed application system to avoid incurring any surcharges.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the USPTO is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

*Comment 69:* Some commenters expressed concern that Madrid filers may be given an advantage over domestic filers with the proposed application system because it is unclear how and when the proposed fees will be collected from Madrid applicants.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. In accordance with the Madrid Protocol's requirement that the fee for Madrid filers does not exceed that for domestic filers, the USPTO set this flat application fee



commensurate with what applicants would expect to pay, on average, if filing directly with the USPTO under the base application and surcharge system. The agency may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

*Comment 70:* Commenters expressed support for higher fees for Madrid applications.

One commenter suggested that a flat fee priced at or above the estimated unit cost is the best option in the interests of American innovators and that strong arguments exist for pricing fees higher across the board for foreign filers, regardless of filing basis. Another commenter based their support on their belief that Madrid applications are more complex and have historically had higher processing costs than domestic applications.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the USPTO is maintaining a flat application fee for Madrid applications at this time. The agency may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

The agency notes that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) requires that, with very limited exceptions, World Trade Organization (WTO) members provide national and most-favored-nation treatment to the nationals of other WTO members with regard to the protection and enforcement of IP rights. Higher fees for international filers from WTO member countries may conflict with this obligation.

Finally, while the adjusted fee for Madrid applications remains below the estimated unit cost, the USPTO believes the new fees will be a step toward addressing the higher costs for such applications. The agency expects that ongoing collaboration with WIPO and other stakeholders will help harmonize applications and better align fees with costs.

*Comment 71:* One commenter offered suggestions to improve implementation of the proposed application fee structure, assuming the proposed fees are in compliance with the Madrid Protocol. They suggested amending the WIPO designation forms to include explicit notices that failure to provide the required information will incur additional fees. They also suggested allowing Madrid applicants an additional three months from time of filing to find and appoint a U.S. attorney to amend, supplement, or otherwise provide any additional information to avoid incurring the surcharges.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the USPTO is maintaining a flat application fee for Madrid applications at this time. The agency may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges. The USPTO cannot make changes to forms submitted to WIPO but looks forward to ongoing collaboration with WIPO and other stakeholders to help harmonize applications.

*Comment 72:* One commenter argued that, regarding the free-form text and character count surcharges, brand owners who hold marks in multiple countries should continue to have freedom to choose how to draft a description of goods and services, including the degree of comprehensiveness.

*Response:* As discussed in response to comment 62 and in Part V: Individual Fee Rationale, the agency is maintaining a flat application fee for Madrid applications at this time. The USPTO may reconsider a base filing and surcharge system for Madrid applications in the future if WIPO develops the capacity to implement surcharges.

Applicants filing directly with the USPTO will continue to have freedom to choose how to draft a description of goods and/or services, but the free-form text box and

character count surcharges will help recover the additional costs associated with more extensive reviews.

*Comment 73:* One commenter noted that the ID Manual is not integrated with either the Madrid Goods and Services Database (MGS) administered by WIPO or the Harmonized Database available via the European Union Intellectual Property Office's (EUIPO) TMClass tool. The commenter asserted that it would be beneficial if these issues were addressed in the framework of global collaborative initiatives on classification.

*Response:* This suggestion is outside the scope of this rulemaking.

#### **Amendment to Allege Use and Statement of Use Fees**

*Comment 74:* Commenters supported charging identical fees for filing an amendment to allege use (AAU) or a statement of use (SOU).

*Response:* The USPTO appreciates the commenters' support for this change.

*Comment 75:* One commenter disagreed with the USPTO's decision to charge identical fee rates for filing an AAU or SOU, arguing that these fees should be set closer to their individual processing costs. The commenter also asserted that the agency should charge less for an AAU to incentivize applicants, because the AAUs create a stronger application since they are filed before initial examination.

*Response:* Fees for the AAUs and SOUs remain aligned under this rulemaking to continue longstanding practice and because the ABI data suggest the agency's costs of examining the AAUs and SOUs are similar. The agency disagrees with the commenter's statement that the AAUs create a stronger application prior to examination. Although, in some cases, an AAU may be filed prior to initial examination, it is generally filed during the examination process or in response to an Office action. An SOU is filed during a

defined statutory period after publication. Further, it is not clear that a lower fee for the AAUs will incentivize their filing versus the SOUs. In many cases, applicants are not prepared to show use of their mark in commerce prior to publication and will not benefit from lower fees for filing an allegation of use during that time.

*Comment 76:* Commenters supported the USPTO's decision to not move forward with a proposal to increase the fees for a fourth or fifth request for an extension of time to file an SOU.

*Response:* The USPTO appreciates the commenters' support for this decision.

*Comment 77:* Commenters asserted that the increase to fees for filing an AAU or SOU are too high, with one commenter suggesting any increases should be limited to an inflationary adjustment because the work involved in processing them has not changed.

*Response:* The USPTO appreciates the commenters' feedback. Examination time for the AAUs and SOUs has grown due to the increased submission of questionable specimens, resulting in the issuance of more Office actions. Further, the USPTO has not adjusted the AAU and SOU fees since 2002, and unit costs for these items continue to increase; the unit costs for FY 2023 are already close to or exceeding the adjusted rates.

*Comment 78:* One commenter expressed concern that increasing the AAU and SOU fees may cause applicants to prematurely abandon their applications prior to registration, which would further decrease maintenance filings in the future.

*Response:* The \$50 increase in AAU and SOU fees is relatively small compared to both the overall costs of pursuing trademark registration and the value of a registered trademark. Therefore, this fee increase should have little impact on the number of applicants who abandon their applications prior to registration.

*Comment 79:* One commenter stated that fee increases for applications filed under section 1(b) of the Trademark Act were inappropriate and asserted that such applications save time during the initial examination compared to applications filed under section 1(a).

*Response:* Applications filed under section 1(b) do not save time during the initial examination, as an AAU filed during the prosecution of a section 1(b) application (i.e., prior to publication) requires the examining attorney to, in essence, perform a second initial examination to ensure that the specimen of use submitted with the AAU shows use in commerce for the mark and goods and/or services identified in the application and that the dates of use and other required elements are acceptable. Similarly, an SOU filed after an issued notice of allowance requires the examining attorney to perform a similar review for acceptability.

### **Post-Registration Maintenance Fees**

*Comment 80:* Commenters stated that the increases to maintenance fees are too high, and any increases should be more aligned with the cost of providing these services.

*Response:* The agency has an obligation to recover the aggregate costs of trademark operations through user fees, and above-cost post-registration maintenance fees recover costs incurred by the USPTO during examination. If the agency were to set fee rates for maintenance fees lower than prescribed in this final rule, the change would need to be offset by raising other fees such as base application fees, reducing spending on core mission and strategic priorities, or depleting the operating reserves, significantly increasing financial risk to the agency.

The share of applications from groups that have been historically less likely to maintain their registrations has increased. This shift in registration patterns generates less revenue. Therefore, the USPTO must adjust the balance between aggregate revenue derived from application fees and post-registration maintenance fees to sustain low

barriers to filing new applications. Also, costs to process maintenance filings have increased due to higher inflationary costs, post-registration audits, and elevated legal review to address potential fraud or improper filing behaviors.

*Comment 81:* Commenters suggested that the increases to application fees, including the new surcharges, should be sufficient to address the higher costs of processing applications without increasing maintenance fees.

*Response:* The USPTO has purposefully maintained initial fees below cost to reduce barriers to entry, resulting in a shortfall. Fees for post-registration activities help recover that shortfall. The agency reviews fees on a biennial basis, allowing the agency to balance costs associated with the services it provides stakeholders.

The USPTO is increasing the fees for section 8 and section 71 declarations of use because of the elevated level of effort and expertise involved in their examination, which includes determining acceptability of their proof of use and whether the registration should be subject to audit. However, in light of comments raised by the public, the agency has reallocated some of the proposed fee increase from section 9 renewal applications to section 8 and section 71 declarations by lowering the proposed section 9 renewal fee and aligning it with section 8 and section 71 declarations, setting all of these fees at \$325 per class when filed electronically.

*Comment 82:* One commenter suggested that lowering maintenance fees could increase the number of maintained registrations, potentially lowering the number of incoming applications and reducing overall costs to the USPTO.

*Response:* While the agency has not conducted a full elasticity study, experience indicates that long-term maintenance trends are not due to fee rate changes. Maintenance trends vary from year to year, but when the USPTO lowered section 9 renewal fees in FY

2015, renewal rates decreased rather than increased. When the agency increased section 8 declaration of use fees in FY 2017 and FY 2021, there was not a noticeable impact on maintenance rates.

*Comment 83:* Commenters expressed concern that increases to maintenance fees will result in fewer trademark owners maintaining their registrations, making the register less reliable and leading to more owners relying on their common law rights, which could be problematic.

*Response:* As noted in response to comment 82, registration renewal rates did not appreciably change in response to previous changes to post-registration maintenance fees.

*Comment 84:* One commenter suggested that the increases to section 8 and section 9 fees could lead to registrants filing new applications, rather than maintaining their existing registrations.

*Response:* Although this result could happen, the registrant would bear the risks of losing their registration and the legal presumptions that accompany registration. Further, as noted in response to comment 82, registration renewal rates did not appreciably change in response to the agency's previous changes to post-registration maintenance fees.

*Comment 85:* One commenter asserted that the USPTO provided no data in the NPRM to support the assertion that setting renewal fees above unit cost is "less likely to impact entrepreneurship."

*Response:* As noted in response to comment 82, registration renewal rates did not appreciably change in response to previous changes to post-registration maintenance fees. These fees are due at a time when the registrant has experienced several years of the benefits of registration. Further, fee collections from post-registration maintenance fees

help the USPTO set initial filing fees below cost to encourage broader participation and open access to the trademark system. If the agency were to set fee rates for maintenance fees lower than prescribed in this final rule, the change would need to be offset by raising other fees such as base application fees, reducing spending on core mission and strategic priorities, or depleting the operating reserves, significantly increasing financial risk to the agency. The USPTO expects no negative impact on entrepreneurship from this rule.

### **Letter of Protest Fee**

*Comment 86:* One commenter expressed support for the \$150 fee for letters of protest proposed in the NPRM, and the USPTO's responsiveness to the feedback from the public hearing after initially submitting to TPAC a fee of \$250. The commenter suggested that the proposed smaller fee increase reflects the USPTO welcoming the public's support of and enthusiasm for the agency and its work.

*Response:* The USPTO appreciates the commenter's support of its adjustment to the proposed fee.

*Comment 87:* One commenter supported the proposed fee increase for letters of protest because they rarely alter an application's outcome.

*Response:* The USPTO appreciates the commenter's support for the increased fee for letters of protest.

*Comment 88:* Commenters suggested that the letters of protest fee should be either partially or fully refunded if the USPTO forwards the letter to an examining attorney.

*Response:* The fee structure is designed to encourage the filing of relevant, well-supported letters of protest instead of frivolous filings. A relevant, well-supported letter of protest provides objective evidence bearing on the registrability of a mark. The unit costs for letters of protest are high because they are reviewed by specialized staff who



must determine whether they comply with the requirements for submission and should be forwarded to the examining attorney. In addition, under the TMA, the USPTO must review and act on letters of protest within 60 days of receipt. The agency bears the costs of processing these letters regardless of whether they are forwarded to an examining attorney. In addition, the USPTO's refund authority is generally limited to fees paid by mistake or in excess of requirements.

*Comment 89:* Commenters, including the SBA, asserted that the proposed increase to the letter of protest fee is too high and will discourage valuable submissions. They noted that letters of protest are valuable for filers and the USPTO because they provide industry expertise to examining attorneys and preserve the integrity of the trademark register. Some commenters suggested that well-founded letters of protest are a useful tool to avoid additional costs to the USPTO and can result in fewer challenges to registrability decisions.

*Response:* As noted in the response to comment 88, the fee increase reflects the resources required to consider letters of protest. Specialized staff must determine if a letter of protest complies with submission requirements and whether to forward the letter to an examining attorney. In addition, under the TMA, the agency must review and act on letters of protest within 60 days of receipt.

On the other hand, the commenters' statements regarding the value of letters of protest are not easily quantified. Many issues identified in letters of protest such as likelihood of confusion, descriptiveness, and non-use may have been identified independently without submission of the letter. Moreover, although examining attorneys may take into account evidence submitted in a letter of protest, they must still perform a complete examination of the relevant application. Finally, although the USPTO has not

performed an elasticity analysis related to letters of protest, it notes that the number of letters decided has increased since it first introduced a letter of protest fee in 2021.

*Comment 90:* One commenter stated the USPTO should create more detail positions for current USPTO employees to assist with the review of letters of protest and further automate the procedure for acceptance of these letters. The commenter asserted that this approach would reduce the overall processing costs for letters of protest.

*Response:* Specialized staff must review and determine whether a letter of protest complies with submission requirements and whether to forward the letter of protest to the examining attorney, limiting opportunities for details or automation.

### **Other Petition Fees**

*Comment 91:* One commenter expressed concern that the increase to the fee for petitions to the Director is unduly burdensome, because some petitions may be unavoidable due to actions outside of an applicant's control or needed to correct an error made by the USPTO. The commenter noted that some filers use petitions to protect themselves from scams, such as keeping a home address off the public record or requesting the withdrawal of an unauthorized filing. The commenter suggested that the USPTO provide separate forms at no or reduced cost for correcting errors made by third parties that are outside of the applicant's control.

*Response:* If the need to file a petition is caused by the actions of a third party, such as a petition to withdraw an unauthorized filing, the agency does not require a petition fee, as long as the petitioner selects the appropriate option on the electronic form. If the petitioner pays the fee up front by mistake, the agency will refund it when the petition is granted.

The fee is required for petitions to waive the domicile address requirement based on an extraordinary situation. However, if entered in the proper field, the domicile

address is not part of the public record, and no petition would be required. Applicants and registrants may then designate a separate correspondence email address to receive information from the USPTO relating to their trademark. Applicants and registrants must always be cautious of communications regarding their application or registration.

Scammers and private companies often use publicly viewable trademark information to call, mail, or email applicants and registrants with solicitations and scams, including posing as the USPTO.

*Comment 92:* One commenter stated the increase to the fee for petitions to revive is too high because it is not proportional to the work being done, asserting that these petitions are automatically processed (i.e. processed without review) by the USPTO. The commenter further suggested that the USPTO should provide a refund in situations where the petition was required to correct an error made by the USPTO.

*Response:* Only some petitions to revive an abandoned application under § 2.66 are automatically processed. Also, in the case of agency error resulting in an abandoned application or a canceled or expired registration, the applicant or registrant may file a request to reinstate the application or registration under § 2.64. There is no fee for a request for reinstatement. In addition, the USPTO's refund authority is generally limited to fees paid by mistake or in excess of what is required.

## **VII. Discussion of Specific Rules**

The following section describes the changes to the CFR for all fees set or adjusted in this final rule, including all fee amendments, fee discontinuations, and changes to the regulatory text.

### **Section 2.6**

Section 2.6 is amended by revising paragraph (a) to set forth trademark process fees as authorized under section 10 of the AIA. The changes to the fee amounts indicated in § 2.6 are shown in table 10.

To clarify fees paid for filling applications under section 66(a) (Madrid Protocol) and renewing international registrations at WIPO, the USPTO adds paragraphs (a)(1)(ii)(A) and (B) and (a)(5)(iii).

The USPTO amends paragraph (a)(1)(iii) to provide for filing “an application electronically” rather than filing “a TEAS Standard application.”

The USPTO amends paragraph (a)(1)(iv) to add the surcharge for insufficient information.

The USPTO amends paragraph (a)(1)(v) to add the surcharge for adding goods and/or services in the free-form text box.

The USPTO adds paragraph (a)(1)(vi) to add the surcharge for each additional 1,000 characters.

The USPTO amends paragraphs (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(ii), (a)(10)(ii), (a)(11)(ii), (a)(12)(ii) and (iv), (a)(13)(ii), (a)(14)(ii), (a)(15)(ii) and (iv), (a)(16)(ii), (a)(17)(ii), (a)(18)(ii), (v), and (vii), (a)(19)(ii), (a)(20)(ii), (a)(21)(ii), (a)(22)(ii), (a)(23)(ii), (a)(27), and (a)(28)(ii) by replacing references to “TEAS” or “ESTTA” with “electronically.”

To clarify fees paid for services provided by the TTAB, the USPTO amends paragraphs (a)(18)(i) and (ii) by removing references to the TTAB and adding references to the TTAB to paragraphs (a)(16) through (18).

Table 10: § 2.6 Fee Changes

<b>CFR section</b>	<b>Fee code</b>	<b>Description</b>	<b>Paper or electronic</b>	<b>Current fee</b>	<b>Final rule fee</b>
2.6(a)(1)(i)	6001	Application (paper), per class	Paper	\$750	\$850

2.6(a)(1)(ii)(A)	7931	Application fee filed with WIPO (section 66(a)), per class	Electronic	\$500	\$600
2.6(a)(1)(ii)(A)	7933	Subsequent designation fee filed with WIPO (section 66(a)), per class	Electronic	\$500	\$600
2.6(a)(1)(iii)	7009	Application (TEAS Standard), per class	Electronic	\$350	Discontinue
2.6(a)(1)(iii)	New	Base application, per class	Electronic	n/a	\$350
2.6(a)(1)(iv)	7007	Application (TEAS Plus), per class	Electronic	\$250	Discontinue
2.6(a)(1)(iv)	New	Fee for insufficient information (sections 1 and 44), per class	Paper	n/a	\$100
2.6(a)(1)(iv)	New	Fee for insufficient information (sections 1 and 44), per class	Electronic	n/a	\$100
2.6(a)(1)(v)	6008	Fee for failing to meet TEAS Plus requirements, per class	Paper	\$100	Discontinue
2.6(a)(1)(v)	7008	Fee for failing to meet TEAS Plus requirements, per class	Electronic	\$100	Discontinue
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (sections 1 and 44), per class	Paper	n/a	\$200
2.6(a)(1)(v)	New	Fee for using the free-form text box to enter the identification of goods/services (sections 1 and 44), per class	Electronic	n/a	\$200
2.6(a)(1)(vi)	New	For each additional group of 1,000 characters beyond the first 1,000 (sections 1 and 44), per class (paper)	Paper	n/a	\$200
2.6(a)(1)(vi)	New	For each additional group of 1,000	Electronic	n/a	\$200

		characters beyond the first 1,000 (sections 1 and 44), per class			
2.6(a)(2)(i)	6002	Amendment to allege use (AAU), per class	Paper	\$200	\$250
2.6(a)(2)(ii)	7002	Amendment to allege use (AAU), per class	Electronic	\$100	\$150
2.6(a)(3)(i)	6003	Statement of use (SOU), per class	Paper	\$200	\$250
2.6(a)(3)(ii)	7003	Statement of use (SOU), per class	Electronic	\$100	\$150
2.6(a)(5)(i)	6201	Section 9 registration renewal application, per class	Paper	\$500	\$525
2.6(a)(5)(ii)	7201	Section 9 registration renewal application, per class	Electronic	\$300	\$325
2.6(a)(5)(iii)(A)	7932	Renewal fee filed at WIPO	Electronic	\$300	\$325
2.6(a)(12)(i)	6205	Section 8 declaration, per class	Paper	\$325	\$425
2.6(a)(12)(ii)	7205	Section 8 declaration, per class	Electronic	\$225	\$325
2.6(a)(13)(i)	6208	Section 15 declaration, per class	Paper	\$300	\$350
2.6(a)(13)(ii)	7208	Section 15 declaration, per class	Electronic	\$200	\$250
2.6(a)(15)(i)	6005	Petition to the Director	Paper	\$350	\$500
2.6(a)(15)(ii)	7005	Petition to the Director	Electronic	\$250	\$400
2.6(a)(15)(iii)	6010	Petition to revive an application	Paper	\$250	\$350
2.6(a)(15)(iv)	7010	Petition to revive an application	Electronic	\$150	\$250
2.6(a)(25)	7011	Letter of protest	Electronic	\$50	\$150

## Section 2.22

Section 2.22 is amended by revising the section heading and paragraph (a) to set forth the requirements for a base application fee.

The USPTO is amending the section heading to read “Requirements for a base application.”

The USPTO is amending the introductory text to paragraph (a) to reflect the requirements for an application for registration under section 1 or section 44 of the Act that meet the requirements for a filing date under § 2.21 to pay the base application fee.

The USPTO removes paragraph (a)(7) and redesignates paragraphs (a)(8) through (20) as paragraphs (a)(7) through (19).

The USPTO amends redesignated paragraph (a)(11) by replacing the reference to “TEAS Plus form” with “application.”

The USPTO amends paragraph (a)(17) by replacing references to “portrait” with “likeness” to maintain consistency within the paragraph.

The USPTO adds paragraph (a)(20) which establishes the requirement of using correctly classified goods and/or services from the ID Manual.

The USPTO amends paragraph (b) to provide that an applicant must pay the fee for insufficient information, per class, if the application fails to satisfy any of the requirements in paragraphs (a)(1) through (19).

The USPTO amends paragraph (c) to provide that an applicant must pay the fee for using the free-form text box to enter the identification of goods/services, per class, if the application fails to satisfy the requirements of paragraph (a)(20).

The USPTO amends paragraph (d) to provide that an applicant must pay the fee for each additional group of 1,000 characters beyond the first 1,000, per class, if the application fails to satisfy the requirements of paragraph (a)(20) and the identification of goods and/or services in any class exceeds 1,000 characters.

## **Section 7.6**

Section 7.6 is amended by revising paragraph (a) to set forth the schedule of U.S. process fees as authorized under section 10 of the AIA. The changes to the fee amounts in § 7.6 are shown in table 11.

The USPTO amends paragraph (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), and (a)(6)(ii) and (iv) by replacing references to “TEAS” or “ESTTA” with “electronically.”

Table 11: § 7.6 Fee Changes

<b>CFR section</b>	<b>Fee code</b>	<b>Description</b>	<b>Paper or electronic</b>	<b>Current fee</b>	<b>Final rule fee</b>
7.6(a)(6)(i)	6905	Section 71 declaration, per class	Paper	\$325	\$425
7.6(a)(6)(ii)	7905	Section 71 declaration, per class	Electronic	\$225	\$325

## **VIII. Rulemaking Considerations**

### **A. America Invents Act:**

This final rule seeks to set and adjust fees under section 10(a) of the AIA as amended by the SUCCESS Act. Section 10(a) 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 USPTO (see section 10 of the AIA, Pub. L. 112-29, 125 Stat. 284, 316-17, as amended by Pub. L. 115-273, 132 Stat. 4158). Section 10 authority includes flexibility to set individual fees in a way that furthers key policy factors, while taking into account the cost of the respective services.

Section 10(e) 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 USPTO provide a public comment period of not less than 45 days.

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 TPAC with the proposed fees at least 45 days prior to publishing them in the *Federal Register*. TPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as hold a public hearing(s) on the proposed fees. 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 USPTO issues any final fees. The USPTO is required to consider and analyze any comments, advice, or recommendations received from TPAC before finally setting or adjusting fees.

Consistent with this framework, on May 8, 2023, the Director notified TPAC of the USPTO's intent to set and adjust trademark fees and submitted a preliminary trademark fee proposal with supporting materials. The preliminary trademark fee proposal and associated materials are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. TPAC held a public hearing at the USPTO's headquarters in Alexandria, Virginia, on June 5, 2023, and members of the public were given the opportunity to provide oral testimony. A transcript of the hearing is available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Fee-Setting-Hearing-Transcript-20230605.pdf>. Members of the public were also given the opportunity to submit written comments for TPAC to consider, and these comments are available on Regulations.gov at <https://www.regulations.gov/docket/PTO-T-2023-0016>. On August 14, 2023, TPAC issued a written report setting forth in detail its comments, advice, and recommendations regarding the preliminary proposed fees. The TPAC Report is available on the USPTO website at <https://www.uspto.gov/sites/default/files/documents/TPAC-Report-on-2023-Fee-Proposal.docx>. The USPTO considered and analyzed all comments, advice, and recommendations received from TPAC before publishing the NPRM on

March 26, 2024 (89 FR 20897). The NPRM comment period closed on May 28, 2024. Section 10(e) of the Act requires the Director to publish the final fee rule in the *Federal Register* and the *Official Gazette* of the USPTO at least 45 days before the final fees become effective. Pursuant to this requirement, this rule is effective on January 18, 2025.

**B. Regulatory Flexibility Act (RFA):**

The USPTO publishes this Final Regulatory Flexibility Analysis (FRFA) as required by the RFA (5 U.S.C. 601 et seq.) to examine the impact of the USPTO's changes to trademark fees on small entities. Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish an NPRM, the agency must prepare and make available for public comment an initial regulatory flexibility analysis (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 (see 5 U.S.C. 603, 605).

The agency published an IRFA, along with the NPRM, on March 26, 2024 (89 FR 20897). Given that the final trademark fee schedule, based on the assumptions found in the FY 2025 Budget, is projected to result in \$696.8 million in additional aggregate revenue over the current fee schedule (baseline) for the period including FY 2025 to FY 2029, the USPTO acknowledges that the fee adjustments will impact all entities seeking or maintaining a trademark registration. The \$696.8 million in additional aggregate revenue results from an additional \$102.5 million in FY 2025, \$146.0 million in FY 2026, \$143.2 million in FY 2027, \$149.5 million in FY 2028, and \$155.7 million in FY 2029. This implies annualized effects of \$138.9 million using a 3% discount rate and \$138.0 million using a 7% discount rate.

Items 1–6 below discuss the six items specified in 5 U.S.C. 604(a)(1)-(6) to be addressed in an FRFA. Item 6 below discusses alternatives to this final rule that the agency considered.

**1. A statement of the need for, and objectives of, the rule.**

Section 10 of the AIA authorizes the Director of the USPTO to set or adjust by rule any trademark fee established, authorized, or charged under title 35 U.S.C., for any services performed, or materials furnished, by the USPTO. Section 10 prescribes that trademark fees may be set or adjusted only to recover the aggregate estimated costs for processing, activities, services, and materials relating to trademarks, including USPTO administrative costs with respect to such trademark fees. The final rule will recover the aggregate costs of trademark operations while enabling the USPTO to predictably finance the agency's daily operations and mitigate financial risks.

**2. A statement of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a statement of the assessment of the agency of such issues, and a statement of any changes made in the final rule as a result of such comments**

The USPTO received two public comments in response to the IRFA. Details of those comments and the USPTO's responses are discussed and analyzed above in Part VI: Discussion of Comments, specifically comments 10 and 13. No changes were made in the final rule as a result of these comments.

**3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments.**

The Office of Advocacy for the Small Business Administration submitted a comment on the proposed rule on May 28, 2024, and it is available on Regulations.gov at <https://www.regulations.gov/comment/PTO-T-2022-0034-0025>. Summaries of the SBA's comments and the USPTO's responses are detailed above in Part VI: Discussion of

Comments, specifically comments 12, 13, 21, 36, 48, 56, 57, and 89. No changes were made in the final rule as a result of these comments.

**4. A description of and, where feasible, an estimate of the number of small Entities to which the rule will apply or an explanation of why no such estimate is available.**

The USPTO does not collect or maintain statistics in trademark cases on small-versus large-entity applicants, and this information would be required to determine the number of small entities affected by this final rule.

This final rule applies to any entity filing trademark documents with the USPTO. The USPTO estimates, based on the assumptions in the FY 2025 Budget, that during the first full fiscal year under the fees as proposed (FY 2026), the USPTO would collect approximately \$146 million more in trademark processing and TTAB fees compared to projected fee collections under the current fee schedule. The USPTO would receive an additional \$100 million in application filing fees, including applications filed through the Madrid Protocol and application surcharges; \$4 million more from petitions, letters of protest, and requests for reconsideration; \$7 million more from SOU and AAU fees; and \$35 million more for post-registration maintenance fees, including sections 9 and 66 renewals and sections 8, 71, and 15 declarations.

The USPTO collects fees for trademark-related services at different points in the trademark application examination process and over the registration life cycle. In FY 2023, application filing fees made up about 54% of all trademark fee collections. Fees for proceedings and appeals before the TTAB comprised 3% of revenues. Fees from other trademark activities, petitions, assignments and certifications, and Madrid processing totaled approximately 5% of revenues. Fees for post-registration and intent-to-use filings, which subsidize the costs of filing, search, examination, and the TTAB, comprised 38%.

The USPTO bases its five-year estimated aggregate trademark fee revenue on the number of trademark applications and other fee-related filings it expects for a given fiscal year, work it expects to process in a given fiscal year (an indicator of fees paid after the agency performs work, such as SOU fees), expected examination and process requests in a given fiscal year, and the expected number of post-grant decisions to maintain trademark protection in a given fiscal year. Within its iterative process for estimating aggregate revenue, the USPTO adjusts individual fee rates up or down based on policy and cost considerations and then multiplies the resulting fee rates by appropriate workload volumes to calculate a revenue estimate for each fee, which is then used to calculate aggregate revenue. Additional details about the USPTO's aggregate revenue, including projected workloads by fee, are available on the fee setting section of the USPTO website at <https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

**5. A description of the projected reporting, recordkeeping, and other compliance requirements of the 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.**

This final rule imposes no new reporting or recordkeeping requirements. The main purpose of this final rule is to set and adjust trademark fees.

**6. A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.**

The USPTO considered several alternative approaches to this final rule based on the assumptions found in the FY 2025 Budget. These alternatives are: (1) a description of the fee schedule adopted in this final rule; (2) fees set at the unit cost of providing individual services based on FY 2022 costs; (3) an across-the-board fee adjustment of 27%; and (4) no change to the baseline of current fees. The four alternatives are explained here with additional information regarding the development of each proposal and aggregate revenue estimate. A description of the Aggregate Revenue Estimating Methodology is available on the fee setting section of the USPTO website at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

**a. Alternative 1: Final Trademark Fee Schedule—Setting and Adjusting Trademark Fees During Fiscal Year 2025**

The USPTO is setting or adjusting trademark fees codified in 37 CFR parts 2 and 7. Fees are adjusted for all application filing types (i.e., paper applications, electronic applications, and requests for extension of protection under section 66(a) of the Trademark Act (15 U.S.C. 1141f)), including new surcharge fees. The USPTO also is increasing other trademark fees to promote effective administration of the trademark system, including fees for post-registration maintenance under sections 8, 9, and 71, certain petitions to the Director, and filing a letter of protest.

The USPTO chose the adjustments established in this final rule because they will enable the agency to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative established here finances the USPTO's objectives for meeting its goals outlined in the Strategic Plan. These goals include optimizing trademark application pendency through the promotion of efficient operations and filing behaviors, issuing accurate and reliable trademark registrations, and encouraging access to the trademark system for all stakeholders. All applicants and registrants will benefit under this final rule

because it will allow the agency to grant registrations sooner and more efficiently. All trademark applicants should benefit from the efficiencies realized under the final rule.

The USPTO anticipates that the impact of an increased fee on letter of protest filers would be small. The fee of \$150 is set at a level low enough to enable the filing of relevant, well-supported letters, but high enough to recover some additional processing costs. The USPTO enacted the current fee for letters of protest on November 17, 2020, (85 FR 73197) and implemented it on January 2, 2021. Despite this fee, the USPTO received almost 4,000 letters in each of the last two fiscal years and expects the volume will grow to more than 5,000 letters per year by FY 2029.

The fee schedule under this final rule is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables.”

**b. Other Alternatives Considered**

In addition to the final fee schedule set forth in Alternative 1, the USPTO considered three other alternative approaches. The agency calculated proposed fees and the resulting revenue derived from each alternative scenario. The proposed fees and their corresponding revenue tables are available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>. Please note, only the fees outlined in Alternative 1 are set or adjusted in this final rule; other alternative scenarios are shown only to demonstrate the analysis of other options.

**Alternative 2: Unit Cost Recovery**

The USPTO considered an alternative that would set all trademark fees to recover 100% of unit costs associated with each service, based on historical unit costs. The USPTO uses the ABI to determine the unit costs of activities that contribute to the services and processes associated with individual fees. It is common practice in the

Federal Government to set a particular fee at a level that recovers the cost of a given good or service. OMB Circular A-25, User Charges, 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. Under the USPTO's unit cost recovery alternative, fees are generally set in line with the FY 2022 costs of providing the service. The agency recognizes that this approach does not account for changes in the fee structure or inflationary factors that could likely increase the costs of certain trademark services and necessitate higher fees in the outyears. However, the USPTO contends that FY 2022 data is the best available to inform this analysis.

This alternative does not align well with the strategic and policy goals of this final rule. It would produce a structure in which application and processing fees would increase significantly for all applicants, and post-registration maintenance filing fees would decrease dramatically when compared with current fees. The USPTO rejected this alternative because it does not address improvements in fee design to accomplish the agency's stated objectives of encouraging broader usage of IP rights-protection mechanisms and participation by more trademark owners, as well as practices that improve process efficiency.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled "Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables."

### **Alternative 3: Across-the-Board Adjustment**

The USPTO considered a 27% across-the-board increase for all fees. This alternative would maintain the status quo structure of cost recovery, where processing and examination costs are subsidized by fees for ITU extensions and post-registration



maintenance filings (which exceed the cost of performing these services), given that all fees would be adjusted by the same escalation factor. This fee schedule would continue to promote innovation strategies and allow applicants to gain access to the trademark system through fees set below cost, while registrants pay maintenance fees above cost to subsidize the below-cost front-end fees. This alternative would also generate sufficient aggregate revenue to recover aggregate operating costs.

The USPTO ultimately rejected this proposal. Unlike the final fee schedule, it would not enhance the efficiency of trademark processing and offer no new incentives for users to file more efficient and complete applications.

The proposed fee schedule for this alternative is available in the document titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables” at <http://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

#### **Alternative 4: Baseline (Current Fee Schedule)**

The final alternative the USPTO considered would leave all trademark fees as currently set. The USPTO rejected this alternative because, due to changes in demand for certain services and rising costs, a fee increase is necessary to meet future budgetary requirements as described in the FY 2025 Budget. Under this alternative, the USPTO would expect to collect sufficient revenue to continue executing only some, but not all, trademark priorities. This approach would not provide sufficient aggregate revenue to accomplish the USPTO’s rulemaking goals as stated in Part IV: Rulemaking Goals and Strategies. Improvement activities, including better protecting the trademark register, enhanced IT, and tactical management programs would continue, but at a significantly slower rate as increases in core trademark examination costs crowd out funding for other improvements. Likewise, without a fee increase, the USPTO would deplete its trademark operating reserve, leaving the agency vulnerable to fiscal and economic events. This

alternative would expose core operations to unacceptable levels of financial risk and position the USPTO to return to making inefficient, short-term funding decisions.

The fee schedule for this alternative is available on the fee setting section of the USPTO website at <https://www.uspto.gov/FeeSettingAndAdjusting>, in the document titled “Setting and Adjusting Trademark Fees During Fiscal Year 2025: Final Regulatory Flexibility Act Tables.”

**C. Executive Order 12866 (Regulatory Planning and Review):**

This rulemaking has been determined to be significant for purposes of Executive Order (E.O.) 12866 (Sept. 30, 1993), as amended by E.O. 14094 (April 6, 2023), Modernizing Regulatory Review.

**D. Executive Order 13563 (Improving Regulation and Regulatory Review):**

The USPTO has complied with E.O. 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 this final rule; (2) tailored this final 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) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, 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.

**E. Executive Order 13132 (Federalism):**

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

**F. Executive Order 13175 (Tribal Consultation):**

This rulemaking will not: (1) have substantial direct effects on one or more Indian Tribes; (2) impose substantial direct compliance costs on Indian Tribal governments; or (3) preempt Tribal law. Therefore, a Tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

**G. Executive Order 13211 (Energy Effects):**

This rulemaking is not a significant energy action under E.O. 13211 because this final rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

**H. Executive Order 12988 (Civil Justice Reform):**

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

**I. Executive Order 13045 (Protection of Children):**

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

**J. Executive Order 12630 (Taking of Private Property):**

This rulemaking will not affect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

**K. 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.), the USPTO will submit a report containing the rule and other required information to the United States Senate, the United

States House of Representatives, and the Comptroller General of the GAO. The changes in this final rule are expected to result in an annual effect on the economy of \$100 million 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 final rule meets the criteria in 5 U.S.C. 804(2).

**L. 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 (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 (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.

**M. National Environmental Policy Act:**

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 et seq.

**N. National Technology Transfer and Advancement Act:**

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

**O. Paperwork Reduction Act:**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) requires that the USPTO consider the impact of paperwork and other information collection burdens imposed on the public. The collection of information involved in this final rule has been

reviewed and previously approved by OMB under control numbers 0651-0009, 0651-0050, 0651-0051, 0651-0054, 0651-0055, and 0651-0061. In addition, updates to the aforementioned information collections as a result of this final rule will be submitted to the OMB as non-substantive change requests.

Notwithstanding any other provision of law, no person is required to respond to nor shall any 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.

**P. E-Government Act Compliance:**

The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to government information and services, and for other purposes.

**List of Subjects**

**37 CFR Part 2**

Administrative practice and procedure, Courts, Lawyers, Trademarks.

**37 CFR Part 7**

Administrative practice and procedure, Trademarks.

For the reasons set forth in the preamble, and under the authority contained in section 10(a) of the AIA, 15 U.S.C. 1113, 1123, and 35 U.S.C. 2, as amended, 37 CFR parts 2 and 7 are amended as follows:

**PART 2—RULES OF PRACTICE IN TRADEMARK CASES**

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

**Authority:** 15 U.S.C. 1113, 1123; 35 U.S.C. 2; sec. 10, Pub. L. 112-29, 125 Stat. 284; Pub. L. 116-260, 134 Stat. 1182, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

2. Section 2.6 is amended by revising paragraphs (a)(1), (2), and (3), (a)(4)(ii), (a)(5), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), (a)(9)(ii), (a)(10)(ii), (a)(11)(ii), (a)(12)(i), (ii), and (iv), (a)(13), (a)(14)(ii), (a)(15), (a)(16) heading, (a)(16)(ii), (a)(17) heading, (a)(17)(ii), (a)(18) heading, (a)(18)(i), (ii), (v), and (vii), (a)(19)(ii), (a)(20)(ii), (a)(21)(ii), (a)(22)(ii), (a)(23)(ii), (a)(25) and (27), and (a)(28)(ii) to read as follows:

**§ 2.6 Trademark fees.**

(a) \* \* \*

(1) *Application filing fees.* (i) For filing an application on paper, per class—  
\$850.00

(ii) For filing an application under section 66(a) of the Act, per class:

(A) For an international application having a receipt date that is on or after  
February 18, 2025—\$600

(B) For an international application having a receipt date that is before February  
18, 2025—\$500.00

(iii) For filing an application electronically, per class—\$350.00

(iv) Additional fee under § 2.22(b), per class—\$100.00

(v) Additional fee under § 2.22(c), per class—\$200.00

(vi) Additional fee under § 2.22(d) for each additional 1,000 characters in  
identifications of goods/services beyond the first 1,000 characters, per class—\$200.00

(2) *Amendment to allege use.* (i) For filing an amendment to allege use under  
section 1(c) of the Act on paper, per class—\$250.00

(ii) For filing an amendment to allege use under section 1(c) of the Act  
electronically, per class—\$150.00

(3) *Statement of use.* (i) For filing a statement of use under section 1(d)(1) of the  
Act on paper, per class—\$250.00

(ii) For filing a statement of use under section 1(d)(1) of the Act electronically, per class—\$150.00

(4) \* \* \*

(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 electronically, per class—\$125.00

(5) *Application for renewal of a registration fees.* (i) For filing an application for renewal of a registration on paper, per class—\$525.00

(ii) For filing an application for renewal of a registration electronically, per class—\$325.00

(iii) For filing an application for renewal of a registration electronically, pursuant to § 7.41 of this chapter:

(A) On or after February 18, 2025, per class—\$325.00

(B) Before February 18, 2025, per class—\$300.00

(6) \* \* \*

(ii) Additional fee for filing a renewal application during the grace period electronically, per class—\$100.00

(7) \* \* \*

(ii) For filing to publish a mark under section 12(c), per class electronically—\$100.00

(8) \* \* \*

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

(9) \* \* \*

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

(10) \* \* \*

(ii) For filing a disclaimer to a registration electronically—\$100.00

(11) \* \* \*

(ii) For filing an amendment to a registration electronically—\$100.00

\* \* \* \* \*

(12) \* \* \*

(i) For filing an affidavit under section 8 of the Act on paper, per class—\$425.00

(ii) For filing an affidavit under section 8 of the Act electronically, per class—

\$325.00

\* \* \* \* \*

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 8 of the Act electronically, per class—\$250.00

(13) *Affidavit under section 15.* (i) For filing an affidavit under section 15 of the Act on paper, per class—\$350.00

(ii) For filing an affidavit under section 15 of the Act electronically, per class—\$250.00

(14) \* \* \*

(ii) Additional fee for filing a section 8 affidavit during the grace period electronically, per class—\$100.00

(15) *Petitions to the Director.* (i) For filing a petition under § 2.146 or § 2.147 on paper—\$500.00

(ii) For filing a petition under § 2.146 or § 2.147 electronically—\$400.00

(iii) For filing a petition under § 2.66 on paper—\$350.00

(iv) For filing a petition under § 2.66 electronically—\$250.00

(16) *Petition to cancel to the Trademark Trial and Appeal Board.* \* \* \*

(ii) For filing a petition to cancel electronically, per class—\$600.00



(17) *Notice of opposition to the Trademark Trial and Appeal Board.* \* \* \*

(ii) For filing a notice of opposition electronically, per class—\$600.00

(18) *Ex parte appeal to the Trademark Trial and Appeal Board.* (i) For filing an ex parte appeal on paper, per class—\$325.00

(ii) For filing an ex parte appeal electronically, per class—\$225.00

\* \* \* \* \*

(v) For filing a second or subsequent request for an extension of time to file an appeal brief electronically, per application—\$100.00

\* \* \* \* \*

(vii) For filing an appeal brief electronically, per class—\$200.00

(19) \* \* \*

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

(20) \* \* \*

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

(21) \* \* \*

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

(22) \* \* \*

(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) electronically—\$200.00

(23) \* \* \*

(ii) For filing a request for an extension of time to file a notice of opposition under § 2.102(c)(3) electronically—\$400.00

\* \* \* \* \*

(25) *Letter of protest*. For filing a letter of protest, per subject application—  
\$150.00

\* \* \* \* \*

(27) *Extension of time for filing a response to a non-final Office action under § 2.93(b)(1)*. For filing a request for extension of time for filing a response to a non-final Office action under § 2.93(b)(1) electronically—\$125.00

(28) \* \* \*

(ii) For filing a request for an extension of time for filing a response to an Office action under § 2.62(a)(2) electronically—\$125.00

\* \* \* \* \*

3. Section 2.22 is revised and republished to read as follows:

**§ 2.22 Requirements for a base application.**

(a) An application for registration under section 1 and/or section 44 of the Act that meets the requirements for a filing date under § 2.21 will be subject only to the filing fee under § 2.6(a)(1)(iii) if it includes:

- (1) The applicant's name and domicile address;
- (2) The applicant's legal entity;
- (3) The citizenship of each individual applicant, or the state or country of incorporation or organization of each juristic applicant;
- (4) If the applicant is a domestic partnership, the names and citizenship of the general partners, or if the applicant is a domestic joint venture, the names and citizenship of the active members of the joint venture;
- (5) If the applicant is a sole proprietorship, the state of organization of the sole proprietorship and the name and citizenship of the sole proprietor;

(6) One or more bases for filing that satisfy all the requirements of § 2.34. If more than one basis is set forth, the applicant must comply with the requirements of § 2.34 for each asserted basis;

(7) If the application contains goods and/or services in more than one class, compliance with § 2.86;

(8) A filing fee for each class of goods and/or services, as required by § 2.6(a)(1)(ii) or (iii);

(9) A verified statement that meets the requirements of § 2.33, dated and signed by a person properly authorized to sign on behalf of the owner pursuant to § 2.193(e)(1);

(10) If the applicant does not claim standard characters, the applicant must attach a digitized image of the mark. If the mark includes color, the drawing must show the mark in color;

(11) If the mark is in standard characters, a mark comprised only of characters in the Office's standard character set, typed in the appropriate field of the application;

(12) If the mark includes color, a statement naming the color(s) and describing where the color(s) appears on the mark, and a claim that the color(s) is a feature of the mark;

(13) If the mark is not in standard characters, a description of the mark;

(14) If the mark includes non-English wording, an English translation of that wording;

(15) If the mark includes non-Latin characters, a transliteration of those characters;

(16) If the mark includes an individual's name or likeness, either:

(i) A statement that identifies the living individual whose name or likeness the mark comprises and written consent of the individual; or

(ii) A statement that the name or likeness does not identify a living individual (see section 2(c) of the Act);

(17) If the applicant owns one or more registrations for the same mark, and the owner(s) last listed in Office records of the prior registration(s) for the same mark differs from the owner(s) listed in the application, a claim of ownership of the registration(s) identified by the registration number(s), pursuant to § 2.36;

(18) If the application is a concurrent use application, compliance with § 2.42;

(19) An applicant whose domicile is not located within the United States or its territories must designate an attorney as the applicant's representative, pursuant to § 2.11(a), and include the attorney's name, postal address, email address, and bar information; and

(20) Correctly classified goods and/or services, with an identification of goods and/or services from the Office's Acceptable Identification of Goods and Services Manual within the electronic form.

(b) If an application fails to satisfy any of the requirements of paragraphs (a)(1) through (19) of this section, the applicant must pay the fee required by § 2.6(a)(1)(iv).

(c) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, the applicant must pay the fee required by § 2.6(a)(1)(v).

(d) If an application fails to satisfy the requirements of paragraph (a)(20) of this section, and the identification of goods and/or services in any class exceeds 1,000 characters, the applicant must pay the fee required by § 2.6(a)(1)(vi) for each affected class.

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

4. The authority citation for part 7 continues to read as follows:

**Authority:** 15 U.S.C. 1123, 35 U.S.C. 2, Pub. L. 116-260, 134 Stat. 1182, unless otherwise noted.

5. Section 7.6 is amended by revising paragraphs (a)(1)(ii), (a)(2)(ii), (a)(3)(ii), (a)(4)(ii), (a)(5)(ii), (a)(6)(i), (ii), and (iv), (a)(7)(ii), and (a)(8)(ii) to read as follows:

**§ 7.6 Schedule of U.S. process fees.**

(a) \* \* \*

(1) \* \* \*

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

(2) \* \* \*

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

(3) \* \* \*

(ii) For transmitting a subsequent designation under § 7.21, filed electronically—\$100.00

(4) \* \* \*

(ii) For transmitting a request to record an assignment or restriction, or release of a restriction, under § 7.23 or § 7.24 filed electronically—\$100.00

(5) \* \* \*

(ii) For filing a notice of replacement under § 7.28 electronically, per class—\$100.00

(6) \* \* \*

(i) For filing an affidavit under section 71 of the Act on paper, per class—\$425.00

(ii) For filing an affidavit under section 71 of the Act electronically, per class—\$325.00

\* \* \* \* \*

(iv) For deleting goods, services, and/or classes after submission and prior to acceptance of an affidavit under section 71 of the Act electronically, per class—\$250.00

(7) \* \* \*

(ii) Surcharge for filing an affidavit under section 71 of the Act during the grace period electronically, per class—\$100.00

(8) \* \* \*

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

\* \* \* \* \*

**Katherine K. Vidal,**

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

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