

October 11, 2012

TO: Mail Stop - Office of the Chief Financial Officer  
Director of the United States Patent and Trademark Office  
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Alexandria, VA 22313-1450

FROM: Kent D. Murphy  
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COMMENTS

on

Federal Register Docket No. PTO-C-2011-0008  
Setting and Adjusting Patent Fees

With a background in accounting at GWU and decades of interest in inventing, I present herein an analysis of the contents of the above referenced docket, as well as what has happened at the USPTO in the last decade, this analysis focusing on the most important thing - the cost of filing a patent application - which has intentionally been obscured by the USPTO's reinvention of the "Filing Fee" that grossly understates the cost of filing a patent application. When an organization presents a financial document, in this case the USPTO's Fee Schedule, and the first and most important item on the document is changed, in violation of rules, so as to mislead the reader - a fee that goes up 27% is made to appear to go down 62% - you know there is a big problem.

LET'S READ, AND THEN SEE WHAT WE HAVE

On page 55076, under the heading Exemption for Small Entities, we read: "The Office considered exempting small and micro entities from paying patent fees, but determined that the USPTO would lack statutory authority for this approach....Neither the AIA nor any other statute authorizes the USPTO simply to exempt small or micro entities, as a class of applicants, from paying patent fees."

So, there we have it: the USPTO has so much money and love for inventors that they don't want to burden them with fees, but it's those terrible people in Congress that make them charge fees.

On page 55073, under the heading Alternative 1, we read: "The USPTO chose the alternative proposed herein because it will enable the Office to achieve its goals effectively and without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate....However, the fees are not as high as those initially proposed to PPAC (Alternative 4),..." and,

On page 55075, under the heading Alternative 4: Initial Proposal to the PPAC, Alternative 4 is described as "The fee structure initially delivered to the PPAC on February 7, 2012..."

So, there we have it: although the USPTO got a 15% increase in the "Filing Fee", i.e. fees "due on filing", effective September 26, 2011, only a few months later, on February 7, 2012, they used a common negotiating tactic of requesting a ridiculous fee increase

- even for the USPTO - which, by comparison, makes their number 1 Alternative looks quite reasonable, although it amounts to a 28% increase only a year after they got a 15% increase, effective September 26, 2011, in The Americans Can't Afford To Invent Act.

On page 55075, under the heading Alternative 5, we read: "The Office considered a no-action alternative. This alternative would...not...provide micro entities with the 75 percent fee reduction Congress provided in section 10 of the Act."

So, there we have it: in 2011, the USPTO tricked Congress into voting for The Americans Can't Afford To Invent Act by promising to give a 75 percent fee reduction to micro entities, but it turns out that they didn't do it, and now, less than a year later, they are saying that they still are not going to give the 75 percent fee reduction to micro entities, which they promised to do in exchange for a 15% increase in the "Filing Fee", i.e. fees "due on filing", in 2011, unless they are now given a 28% increase in the "Filing Fee", i.e. fees "due on filing", in 2012.

On page 55074, under the heading Alternative 3, we read: "In some past years,...the USPTO used its authority to adjust statutory fees annually according to changes in the consumer price index (CPI), which is a commonly used measure of inflation."

So, there we have it: that explains why, in the good old, simple-minded pre-December 8, 2004, days, the "Filing Fee" seemed to go

up a little bit each year, such as from \$355 to \$365 (for a small entity), but, with inflation now being very low, the CPI is no longer of use to the USPTO, so, on September 26, 2011, the USPTO used the micro entity trick to get a 15% increase in the "Filing Fee" - which, effective December 8, 2004, has been separately categorized into three different fees to trick Congress, all of which, nevertheless, are "due on filing" - and now, in 2012, the USPTO is again using the micro entity trick to try to get a 28% increase in the "Filing Fee", i.e. fees "due on filing", and dare we speculate how big an increase the USPTO will want in 2013?

On page 55053, near the top of the first column, we read: "In setting fees due after completing prosecution at a level higher than cost, front-end fees can be maintained below cost, thereby fostering innovation" [underlined in lieu of italicization], and,

on page 55033, under the heading Fostering Innovation, we read: "To encourage innovators to take advantage of patent protection, the Office proposes to set basic 'front-end' fees (e.g., filing, search, and examination) below the actual cost of carrying out these activities."

So, there we have it: although the USPTO proposes a 28% increase in the "Filing Fee", i.e. fees "due on filing", which will mean that the "Filing Fee", i.e. fees "due on filing", will have more than doubled since December 7, 2004, from \$790/\$395 to \$1,600/\$800, it could be much, much worse, which it will be, as soon as they have time to dream up some new tricks.

## QUESTIONS

Do you get the impression that the USPTO has more people dreaming up tricks to get fee increases than they have brainstorming on ways to clear the backlog?

Do you think that, if the USPTO was really interested in clearing the backlog that seems invaluable in justifying more fee money as it grows, they would retrain their huge administrative staff - whose work seems to be solely to raise money by tricking Congress into allowing inventors to be charged fees - into operational staff, i.e. patent examiners, assuming all those administrative tricksters can be trained to think logically?

Are you aware of the suspicion that some charities devote increasing amounts of their contributions to fundraising, while dwindling amounts are devoted to their cause, and do you think it possible that the USPTO may be following the same model, particularly when you consider that Docket No. PTO-C-2011-0008 is liberally sprinkled with the words "foster(ing) innovation" [underlined in lieu of italicization in text], which is the USPTO's cause, just as babies, puppies, and kittens are the causes for those other seemingly primarily fundraising though ostensibly charitable organizations, which liberally sprinkle their promotional material with pictures of babies, puppies, and kittens?

At the USPTO, do fee increases foster anything except trickery (malicious innovation) they can use to get more fee increases?

## WHAT IS THE USPTO?

The USPTO is one of two intellectual property agencies, the other being the Library of Congress. Like the USPTO, the Library of Congress receives filings from the public, but the Library of Congress also has the responsibility to maintain the nation's copyrighted heritage, which includes maintaining old books, which means they have more work than the USPTO, which disposed of patent models years ago. The Library of Congress is right across the street from the Capitol, in a magnificent but old building, and it serves, and, thus, is of great interest to Congress. The USPTO is across the Potomac, in a lavish new building in posh Old Town Alexandria, and the USPTO likes to deceive Congress and dismiss Congressional inquiries by telling Congress that they receive no tax money, and that Congress approved their fees. The USPTO knows that inventors are a tiny constituency for any member of Congress or the Senate, and no pressure will be brought to bear. Fees are voluntary, taxes are not, and the USPTO knows and exploits this.

The USPTO might also accurately be called a quasi-government organization, much like the United States Postal Service (USPS). Both charge fees and are subject to Congressional oversight, but the USPS serves the entire nation, which means that everything the USPS does puts great constituent pressure on Congress.

Now, let's look at some numbers:

USPTO - From 1977-2011, the "filing fee", or fees "due on filing", for a patent application went up 7% annually: in 1977 it

was \$65, and in 2011 it was \$625 (for a small entity).

Library of Congress - In 2011, the Librarian of Congress requested a budget increase of 3.4%.

USPS - In 1977, a first class postage stamp cost 13 cents, and in 2011 it was 44 cents. Of course, the USPS is subsidized, primarily because private delivery services, such as UPS, FedEx, Purolator, and others, have deprived the USPS of profitable parcel delivery business, leaving the USPS with the burden and responsibility for unprofitable but necessary services. When considering the USPS deficit, one must look at the profits of UPS, FedEx, Purolator, and others.

So, what is going on at the USPTO?

#### RESTRUCTURING

When discussing the fee increases in Docket No. PTO-C-2011-0008, a Congressional contact said that "they're restructuring".

Of course, one "restructuring" took place when, in 2003-2004, the USPTO moved from functional offices in pedestrian Crystal City to a new, purpose-built multi-structure complex, complete with atrium, that they call a "campus" in posh Old Town Alexandria, where the Commissioner presides from an office that a media visitor thought was unusually large for a government official, and so unusually large that he initiated the talk about it.

The USPTO's move to their posh "campus" was discussed on pages 30-31 in the Summer-Fall 2000 issue of their "USPTO Today"

publication, and here are some quotes:

- on page 30, it quotes then-Under Secretary Dickinson as saying:  
"The relocation into 21st century offices will enable USPTO to provide even more efficient, high-quality protection to the innovations in technology that are fueling U.S. economic growth."
- on page 31, it says: "Indeed, both USPTO and its customers will benefit from lower costs and improved operations."

These quotes are accurate. What's wrong is the USPTO's culture.

And, about the time of this move other "restructuring" began, if you consider "restructuring" to be a bureaucratic euphemism for the old-fashioned nefarious word "juggling" [quotation marks signify movement], as in "juggling the books". Both words suggest that things are being moved around, which brings to mind the old "shell game" [quotation marks signify movement], where three shells that hide a sought object are moved around to create confusion, and make money, and, in the USPTO's "shell game", the true cost of filing a patent application is hidden under three separately categorized fees that get moved around and "juggled" up and down, while the amount of the three combined fees - the "Filing Fee", or fees "due on filing" - goes up and up and up.

#### THE "RESTRUCTURED" USPTO FEE SCHEDULE

The USPTO "restructured" their Fee Schedule December 8, 2004, and revised it October 14, 2006, to include these instructions: "The filing fee (or national fee), search fee, and examination fee are due on filing", as shown on the USPTO's FY 2007 Fee Schedule.





United States Patent and Trademark Office

FEES

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USPTO Fee Information > FY 2007 Fee Schedule (14OCT2006)

*Received 11/16/06*

**UNITED STATES PATENT AND TRADEMARK OFFICE  
FY 2007 FEE SCHEDULE**  
Effective December 8, 2004\* (*revisions effective October 14, 2006*)

**3**

The filing fee (or national fee), search fee, and examination fee are due on filing.

The fees subject to reduction for small entities that have established status (37 CFR 1.27) are shown in a separate column. For additional information, please call the USPTO Contact Center at (571) 272-1000 or (800) 786-9199. Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required.

Patent	Patent Cooperation Treaty	Trademark
Patent Application Filing Fees	PCT Fees - National Stage	Trademark Processing Fees
Patent Search Fees	PCT Fees - International Stage	Trademark Madrid Protocol Fees
Patent Examination Fees	PCT Fees to Foreign Offices	Trademark International Application Fees
Patent Post-Allowance Fees		Trademark Service Fees
Patent Maintenance Fees	General	Fastener Quality Act Fees
Miscellaneous Patent Fees	Finance Service Fees	
Post Issuance Fees	Computer Service Fees	
Patent Extension of Time Fees		
Patent Appeals/Interference Fees		
Patent Petition Fees		
Patent Service Fees		
Patent Enrollment Fees		

**USPTO Fee Schedule, effective December 8, 2004**

Fee Code	37 CFR	Description	Fee	Small Entity Fee (if applicable)
<b>Patent Application Filing Fees</b>				
1011/2011	1.16(a)(1)	Basic filing fee - Utility <i>filed on or after December 8, 2004</i>	300.00	150.00
4011†	1.16(a)(1)	Basic filing fee - Utility (electronic filing for small entities) <i>filed on or after December 8, 2004</i>	n/a	75.00
1001/2001	1.16(a)(2)	Basic filing fee - Utility <i>filed before December 8, 2004</i>	790.00	395.00
1201/2201	1.16(h)	Independent claims in excess of three	200.00	100.00
1202/2202	1.16(i)	Claims in excess of twenty	50.00	25.00
1203/2203	1.16(j)	Multiple dependent claim	360.00	180.00
1051/2051	1.16(f)	Surcharge - Late filing fee, search fee, examination fee or oath or declaration	130.00	65.00

1081/2081	1.16(s)	Utility Application Size Fee - for each additional 50 sheets that exceeds 100 sheets	250.00	125.00
1012/2012	1.16(b)(1)	Basic filing fee - Design <i>filed on or after December 8, 2004</i>	200.00	100.00
1002/2002	1.16(b)(2)	Basic filing fee - Design <i>filed before December 8, 2004</i>	350.00	175.00
1017/2017	1.16(b)(1)	Basic filing fee - Design (CPA) <i>filed on or after December 8, 2004</i>	200.00	100.00
1007/2007	1.16(b)(2)	Basic filing fee - Design (CPA) <i>filed before December 8, 2004</i>	350.00	175.00
1082/2082	1.16(s)	Design Application Size Fee - for each additional 50 sheets that exceeds 100 sheets	250.00	125.00
1013/2013	1.16(c)(1)	Basic filing fee - Plant <i>filed on or after December 8, 2004</i>	200.00	100.00
1003/2003	1.16(c)(2)	Basic filing fee - Plant <i>filed before December 8, 2004</i>	550.00	275.00
1083/2083	1.16(s)	Plant Application Size Fee - for each additional 50 sheets that exceeds 100 sheets	250.00	125.00
1014/2014	1.16(e)(1)	Basic filing fee - Reissue <i>filed on or after December 8, 2004</i>	300.00	150.00
1004/2004	1.16(e)(2)	Basic filing fee - Reissue <i>filed before December 8, 2004</i>	790.00	395.00
1019/2019	1.16(e)(1)	Basic filing fee - Design Reissue (CPA) <i>filed on or after December 8, 2004</i>	300.00	150.00
1009/2009	1.16(e)(2)	Basic filing fee - Design Reissue (CPA) <i>filed before December 8, 2004</i>	790.00	395.00
1204/2204	1.16(h)	Reissue independent claims in excess of three	200.00	100.00
1205/2205	1.16(i)	Reissue claims in excess of twenty	50.00	25.00
1084/2084	1.16(s)	Reissue Application Size Fee - for each additional 50 sheets that exceeds 100 sheets	250.00	125.00
1005/2005	1.16(d)	Provisional application filing fee	200.00	100.00
1085/2085	1.16(s)	Provisional Application Size Fee - for each additional 50 sheets that exceeds 100 sheets	250.00	125.00
1052/2052	1.16(g)	Surcharge - Late provisional filing fee or cover sheet	50.00	25.00
1053	1.17(i)	Non-English specification	130.00	

† The 4000 series fee code may be used via EFS at <http://www.uspto.gov/ebs/efs/index.html>

**Patent Search Fees**

Back to Top

1111/2111	1.16(k)	Utility Search Fee	500.00	250.00
1112/2112	1.16(l)	Design Search Fee	100.00	50.00
1113/2113	1.16(m)	Plant Search Fee	300.00	150.00
1114/2114	1.16(n)	Reissue Search Fee	500.00	250.00

**Patent Examination Fees**

Back to Top

1311/2311	1.16(o)	Utility Examination Fee	200.00	100.00
1312/2312	1.16(p)	Design Examination Fee	130.00	65.00
1313/2313	1.16(q)	Plant Examination Fee	160.00	80.00
1314/2314	1.16(r)	Reissue Examination Fee	600.00	300.00

**Patent Post-Allowance Fees**

Back to Top

Referring to the USPTO's FY 2007 on the preceding two pages, if you follow the circled numbers you will see that:

- 1) the "Basic filing fee - Utility filed before December 8, 2004" was \$790/\$395, but
- 2) the "Basic filing fee - Utility filed on or after December 8, 2004" was only \$300/\$150, but
- 3) at the top of the Fee Schedule are the words "The filing fee (or national fee), search fee, and examination fee are due on filing," so, in addition to the "filing fee" of \$300/\$150, you must pay
- 4) the "Utility Search Fee" of \$500/\$250, and
- 5) the "Utility Examination Fee" of \$200/\$100.

Yes, by using semantic trickery - the search and examination fees, which were aggregated into the "filing fee" before December 8, 2004, became separately identified and categorized on December 8, 2004, but, nevertheless, all three fees were "due on filing" - the USPTO achieved a 27% (\$790/\$395 to \$1,000/\$500) increase in the "filing fee", i.e. fees "due on filing", by lowering the "filing fee" by 62% (\$790/\$395 to \$300/\$150).

And, the USPTO didn't want anybody to know about it, because the instructions that "The filing fee (or national fee), search fee, and examination fee are due on filing", which were added October 14, 2006 - perhaps because this commentator wrote to Commissioner Doll on July 12, 2006 - disappeared from subsequent USPTO Fee Schedules. This may explain why Politico and the Congressional Research Service misled their readers, as follows.

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← WRONG

Eolas' 906 patent could be ruled invalid

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[www.geek.com/articles/news/eolas-906-patent-could-be-ruled-invalid-20031113](http://www.geek.com/articles/news/eolas-906-patent-could-be-ruled-invalid-20031113)

It is/was \$545

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## USPTO Fee-Setting Authority and Funding

The USPTO enjoys certain rulemaking authority provided by law. The USPTO may establish regulations that “govern the conduct of proceedings” before it, for example, as well as regulations that “govern the recognition and conduct” of patent attorneys.<sup>74</sup> However, the fees charged by the USPTO currently were determined by Congress.

The America Invents Act grants the USPTO additional authority “to set or adjust by rule any fee established or charged by the Office” under certain provisions of the patent and trademark laws.<sup>75</sup> This appears to provide the USPTO with greater flexibility to adjust its fee schedule absent congressional intervention. The new law requires that “patent and trademark fee amounts are in the aggregate set to recover the estimated cost to the Office for processing, activities, services and materials relating to patents and trademarks, respectively, including proportionate shares of the administrative costs of the Office.”

The America Invents Act additionally stipulates fees for patent services provided by the USPTO.<sup>76</sup> In general, the new law raises the fees slightly. For example, the fees for filing a patent application and for the issuance of an approved application were \$300 and \$1,400 respectively; the new fees are \$330 and \$1,510. As previously discussed, each of these fees would then presumably be subject to adjustment by the USPTO.

← WRONG

The new statute creates within the Treasury a “Patent and Trademark Fee Reserve Fund” into which fee collections above that “appropriated by the Office for that fiscal year” will be placed. These funds will be available to the USPTO “to the extent and in the amounts provided in appropriations Acts” and may only be used for the work of the Office.<sup>77</sup>

They were  
\$1,000

The America Invents Act also establishes a new “micro entity” category of applicants.<sup>78</sup> A micro entity must make a certification that it qualifies as a small entity, has not been named on five previously filed patent applications, does not have a gross income exceeding three times the average gross income, and has not conveyed an interest in the application to another entity with an income exceeding that threshold. Micro entities would be entitled to a 75% discount on many USPTO fees. The USPTO Director is given authority to limit those who qualify as a micro entity if such limitations “are reasonably necessary to avoid an undue impact on other patent applicants or owners and are otherwise reasonably necessary and appropriate.” The USPTO must inform Congress at least three months in advance of imposing such limitations.

\$ 300  
500  
200  
\$ 1,000

## Supplemental Examination

The America Invents Act establishes a new post-issuance administrative proceeding termed “supplemental examination.”<sup>79</sup> This proceeding appears to be based upon a need to address

<sup>74</sup> 35 U.S.C. § 2(b)(2). It should be appreciated that “Congress has not vested the [USPTO] with any general substantive rulemaking power....” *Cybor Corp. v. FAS Techs, Inc.*, 138 F.3d 1448, 1479 (Fed. Cir. 1998) (en banc) (Newman, J., additional views).

<sup>75</sup> P.L. 112-29 at § 10.

<sup>76</sup> P.L. 112-29 at § 11.

<sup>77</sup> P.L. 112-29 at § 22.

<sup>78</sup> P.L. 112-29 at § 10(g).

<sup>79</sup> P.L. 112-29 at § 12.

WHAT CONGRESS WAS TOLD IN 2011 ABOUT  
THE COST OF FILING A PATENT APPLICATION

The writers at Politico and the Congressional Research Service (CRS) aren't stupid, and they know a "filing fee" represents the cost of filing something, and in their reporting they looked at the USPTO's Fee Schedule, saw the "Filing Fee", and that is why:

- Politico reported that "At the current fee schedule, the cost of filing for an independent inventor [small entity] is just \$165", but, in actuality, it is/was \$545 ("filing fee" of \$165 + search fee of \$270 + examination fee of \$110 = \$545); and,
- the CRS reported that "the fees for filing a patent application [large entity]...were \$300", but, in actuality, they were \$1,000 ("filing fee" of \$300 + search fee of \$500 + examination fee of \$200 = \$1,000).

This commentator has spoken to the authors of both of these reports, and the USPTO never contacted them to tell them their reports were misleading, so, obviously, it makes the USPTO happy, since surely somebody at the USPTO reads their own press.

In 2011, as Congress was preparing to vote on The Americans Can't Afford To Invent Act, these Politico and CRS reports would have been available to them, and may have influenced them. Would you blame members of Congress if they were misled into thinking "Wow, the USPTO is doing a great job. The cost of filing a patent application is cheap. I don't mind voting for that."? They wouldn't expect Politico and the CRS to be so drastically wrong, or the USPTO to be engaging in semantic trickery to deceive them.

## HOW TO PREPARE A FEE SCHEDULE

There is absolutely no justifiable accounting reason for what the USPTO did. A fee that is "due on filing" is a "filing fee", and must be categorized as a "filing fee", and the proper way to show the "filing fee" and fees "due on filing" is as follows (using fees effective September 26, 2011):

Fee Code	37CFR	Description	Fee	Small Entity Fee
<u>Patent Application Filing Fees</u>				
1011/2011	1.16(a)(1)	Basic filing fee-Utility	380.00	190.00
1111/2111	1.16(k)	Utility Search Fee	620.00	310.00
1311/2311	1.16(o)	Utility Examination fee	250.00	125.00
		Total due upon filing	1,250.00	625.00

Anthony Scardino, the Chief Financial Officer at the USPTO, is aware of this commentator's concern about this issue, and, through intermediaries, this commentator was told that Mr. Scardino said "I can't do anything about it." However, Table 37, on page 55058 in Docket No. PTO-C-2011-0008, proves that the USPTO knows these three fees should be combined and shown as one single fee. Mr. Scardino, unless he is incompetent, can do something about it, so he must have been told to do nothing.

The USPTO simply refuses to prepare an accurate Fee Schedule, because they want to mislead Congress about the true cost of filing a patent application, which they know any intelligent person knows is - must be - the "filing fee".

THE USPTO'S TRICKERY IN  
THE AMERICANS CAN'T AFFORD TO INVENT ACT

We know that, as they prepared to vote, Congress could easily have been misled about the cost of filing a patent application, and now let's look at some other trickery that was incorporated into the Act itself, Public Law 112-29 - Sept. 16, 2011.

Of course, there is the matter that the "micro entity" feature of the Act was not implemented, as discussed in detail near the beginning of this commentary, but you should know that the USPTO did not delay in implementing what they call an "Electronic Filing Incentive", which is really 1) a malicious way for the USPTO to gouge another \$200 out of independent inventors, and 2) punishment for the tens of millions of Americans who don't have access to the internet, due to infrastructure reasons or financial reasons or personal preference.

Congress might have thought "Wait a minute, \$200 is a lot of money, but I guess those unfortunate folks will benefit from the 'micro entity', so I guess it evens out, and they still get a little savings, and, if it makes things better for the USPTO and their backlog, well, okay, I guess I'll vote for that."

So you see, the USPTO got Congress to vote for it, and the USPTO has gotten their \$200 from everybody that has filed a patent application using paper, but nobody has gotten the "micro entity" discount. ("Well, maybe now, if we get our 28%", the USPTO says.)



And, can anybody explain why the USPTO, which has hundreds of fees, went to the trouble to incorporate into the Act the cost of a photocopy as being \$.25 per page, and the cost of each black and white copy of a patent as being \$3.00, when the costs for these services have been the same for years? Putting these fees in the Act is another example of trickery, done so because the USPTO knows that, in the mind of the reader of the Act, these low costs will subconsciously counterbalance any doubts and concerns they may have about the high fees elsewhere in the Act.

And, consider this: how many requests for \$3 copies of patents do you think the USPTO gets, and how many \$200 non-electronic patent filings do you think they get? The USPTO will print out a patent copy, address and stuff an envelope, and send it, postage paid, for \$3, but, if you send them a paper patent application, which they will simply scan into their computer system, they will charge you \$200.

\$1,425 TO FILE A 37-PAGE\* PRO SE PATENT APPLICATION

\*24 pages of single-side, double-spaced text (by USPTO rule), and 13 sheets of drawings

This commentator has been an independent pro se inventor for many years, and can very competently prepare informal drawings, and the Gulf of Mexico oil leak crisis naturally inspired him to solve the problem, and he came up with a mechanism to plug subsea leaks. During the crisis, President Obama said "put a plug in it." Does President Obama want anybody who tries to have to pay \$1,425 to file a 37-page pro se patent application?

He filed two provisional patent applications that enabled him to contact industry and universities, and he got some positive feedback, and some indications of interest, including from Halliburton, so he proceeded into the non-provisional phase, knowing that the "Filing Fee", or fees "due on filing", would be \$625, which he paid when he filed his application.

Imagine his surprise when the USPTO informed him he must pay \$200 because he filed using paper, and that he must provide formal drawings, even before the application is examined and allowed, and imagine his anger that his 37-page application - it's a very simple invention, but patent applications require a lot of verbiage and drawings - cost him \$1,425, as follows:

"Filing Fee", i.e. fees "due on filing"	\$ 625
Punishment for filing using paper	200
Unnecessary formal drawings	<u>600</u>
Total	\$1,425

This \$1,425, 37-page application was published on the USPTO website on September 20, 2012, and the publication number is US-2012-0234553-A1, where it can be examined to see how the USPTO is gouging independent inventors. To see the perfectly acceptable informal drawings that were filed, but that the USPTO rejected, even before examination, ask the USPTO to be allowed to examine them, using this commentary as authorization from the inventor.

received 4/4/11

## PROPOSED NEW PROGRAM: "TRACK ONE" ACCELERATED PATENT EXAMINATION:

On February 4, 2011, the USPTO published in the Federal Register a notice of proposed rulemaking, titled "Changes to Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures." The "Three-Track" program is designed to enable applicants to choose the speed with which their patent application is processed. Track I will give applicants the opportunity for prioritized examination of a patent application within 12 months of its filing date for a fee. The Federal Register notice requests comments from the public on a number of different proposed requirements for participation in Track I, including (a) a prioritized examination fee, which is in addition to the current filing fees, the publication fee, and a processing fee; (b) limits on the number of claims to four independent claims and 30 total claims; (c) application filing through the USPTO's electronic filing system (EFS-Web); and other such requirements. The comment period closed 30 days after February 4, 2011. For complete information see the notice at 76 Fed. Reg. 6371.

In preparation for this initiative, look for further announcements including a final notice.

Other available programs which allow prioritized examination include:

**PATENT PROSECUTION HIGHWAY PILOT PROGRAM:** An applicant receiving a ruling from the Office of First Filing (OFF) that at least one claim in an application filed in the OFF is patentable may request that the Office of Second Filing (OSF) fast track the examination of corresponding claims in a corresponding application in the OSF. For further information, see [http://www.uspto.gov/patents/init\\_events/pph/index.jsp](http://www.uspto.gov/patents/init_events/pph/index.jsp) and the Federal Register notice of May 25, 2010, (75 Fed. Reg. 29312).

**GREEN TECHNOLOGY PILOT PROGRAM:** An application pertaining to green technologies including greenhouse gas reduction (applications pertaining to environmental quality, energy conservation, development of renewable energy resources or greenhouse gas emission reduction) may be advanced out of turn for examination. The USPTO has expanded the eligibility for the pilot program to include applications irrespective of filing date and classification, and extended the program until December 31, 2011. For complete information see [http://www.uspto.gov/patents/init\\_events/green\\_tech.jsp](http://www.uspto.gov/patents/init_events/green_tech.jsp)

**PROJECT EXCHANGE:** An application will be advanced out of turn for examination if the applicant files a petition to make special with the appropriate showing. Special status for examination is accorded if the applicant is able to satisfy (i) the requirements set forth in the June 24, 2010 Federal Register notice titled "Expansion and Extension of the Patent Application Backlog Reduction Stimulus Plan" and (ii) the conditions set forth in the November 27, 2009 Federal Register notice titled "Patent Application Backlog Reduction Stimulus Plan," other than the small entity requirement, which was eliminated. This procedure allows applicants having multiple applications currently pending before the USPTO to have greater control over the priority with which their applications are examined. The program has been extended to December 31, 2011. For full details visit [http://www.uspto.gov/patents/init\\_events/PatentStimulusPlan.jsp#heading-1](http://www.uspto.gov/patents/init_events/PatentStimulusPlan.jsp#heading-1)

**ACCELERATED EXAMINATION:** The USPTO will prioritize an application for examination if the applicant files a grantable petition to make special under the accelerated examination program. Under this program applicant can expect examination before the examiner to be disposed of within 12 months of filing of the application. Requirements include a complete application upon filing and a petition filed on the same day. The petition must include, *inter alia*, documentation of a prior art search and a discussion of the most relevant references and the patentability of the claims over those references. For complete details see MPEP § 708.02(a) and <http://www.uspto.gov/patents/process/file/accelerated/index.jsp>

**PEER REVIEW PILOT PROGRAM FY 2011:** A notice titled "A New Pilot Program Concerning Public Submission of Peer Reviewed Prior Art" published in the *Official Gazette* on December 28, 2010. The notice provides details about the viability of using Internet technologies and the power of crowdsourcing to uncover potentially useful prior art for consideration by patent examiners during the examination process. For more information on the pilot and how to participate, visit [http://www.uspto.gov/patents/init\\_events/peerpriorartpilotindex.jsp](http://www.uspto.gov/patents/init_events/peerpriorartpilotindex.jsp)

## IS IT CORRUPTION?

Is it corruption for the USPTO to allow an applicant to submit their own search and patentability report about the findings of that search, if the applicant pays \$4,800, as shown on the Proposed New Program: "Track One" Accelerated Patent Examination on the preceding page? Isn't that like a defendant in a court case being allowed to pay for and conduct the forensic lab work, in exchange for a payment to the Court to expedite the case, which, of course, will be skewed in favor of the defendant, who did the lab work, and left out anything that is incriminating?

Is it corruption for David Kappos, a former IP executive at IBM, the company that receives the most patents annually from the USPTO, to be the Commissioner for Patents?

Is it corruption for Mr. Kappos, having an obvious interest in the computer industry, to use his position as Commissioner for Patents to try to force inventors to use computers with the USPTO's "Electronic Filing Incentive" punishment?

Is is corruption for Bernard Knight to be the General Counsel at the USPTO, Mr. Knight having been formerly employed at the USPTO, but having taken a job at the Treasury Department, only to return to the USPTO as General Counsel at the request of Mr. Kappos? Mr. Knight bragged to Gene Quinn, on his ipwatchdog.com website, about his cosy relationship with Mr. Kappos. What did Mr. Knight do for Mr. Kappos when Mr. Knight was at the USPTO the first time and when Mr. Kappos was an IP executive at IBM?

THE USPTO SAYS IT COSTS THEM \$1,860 TO DO A PATENT SEARCH

When this commentator became aware of the "Filing Fee", i.e. fees "due on filing", trickery that the USPTO pulled off December 8, 2004, he noted that the patent search fee at that time increased to \$250 (small entity), which rang a bell with him, and later, in his fight with the USPTO, he found that, indeed, a business called Patent Search International was also charging \$250.

While researching the USPTO, this commentator has had several conversations with Ron Brown, the seemingly sole proprietor of Patent Search International (patentsearchinternational.com), and, in the course of the first discussion, Mr. Brown made the statement "the Patent Office seems to be trying to get as much money as it can."

In a subsequent conversation, Mr. Brown said that he has been doing patent searches for 42 years, and for about 35 years he went to Crystal City to do searches, but the USPTO no longer has any patents, and he now does his searches by computer, and that he pays several thousand dollars a year for access to a database.

In 2004, Mr. Brown charged \$250, and, in 2012, Mr. Brown still charges \$250, for the following services:

- a patent search
- a patentability report from a patent attorney
- copies of prior art, which means he prints out, collates, and staples who-knows-how-many patents of who-knows-how-many pages
- in about two (2) weeks, he mails it, postage paid

The USPTO, which in 2004 charged \$500/\$250 for a patent search, now charges \$620/\$310 in 2012, although, with all their "juggling", they apparently now want to lower that to \$600/\$300.

Here is the "juggling" and "shell game" discussed earlier. Referring to Table 42, the USPTO proposes to lower both the filing fee (\$380/\$190 to \$280/\$140) and search fee (\$620/\$310 to \$600/\$300), but drastically increase the examination fee (\$250/\$125 to \$720/\$360), with the result that the "filing fee", i.e. fees "due on filing", go up from \$1,250/\$625 to \$1,600/\$800. Keep you eye on the ball, i.e. the total cost, and not the three "shells", i.e. the three separately identified and categorized fees that are really one fee, the "Filing Fee". The USPTO claims this "juggling" is a cost accounting procedure, but don't tell me that, after 200(?) years of operation, the USPTO is still trying to understand these costs. It's a "juggling" "shell game", and it belongs in either the circus or prison, but not the USPTO.

Anyway, the USPTO charges \$620/\$310 for a search, and, unlike Mr. Brown, they don't send patent copies and a patentability opinion, which might be considered as approximating a patent examination, for which the USPTO currently charges \$250/\$125, but plans to charge \$720/\$360. They're really "juggling" that fee.

We know the USPTO's proposed fee for a patent search, but what does it cost them to do the search? On page 55044, the USPTO says that "Currently, the large entity basic filing, search, and examination fees for a utility patent recover slightly more than

one-third of the average unit cost for prosecuting a patent application, while a small entity application recovers around 17% of the average unit cost." So, let's do some (approximate) math:

$$3 \times \$620 \text{ (large entity search fee)} = \underline{\$1,860}$$

$$6 \times \$310 \text{ (small entity search fee)} = \underline{\$1,860}$$

Now, let's analyze Mr. Brown's \$250 charge for doing a search:

- How much does the patent lawyer get? Surely at least \$50.
- How much does copying and mailing prior art cost? If there are 10 prior arts having 10 pages each, that's 100 pages. Let's just estimate that the prior art copies and postage is \$14.
- That means Mr. Brown does the search for \$186 (10% of \$1,860).

The USPTO says it costs them approximately \$1,860 to do a patent search, even after the move to their lavish new efficiency-creating and cost-lowering HQ in posh Old Town Alexandria, and even after full computerization of the patent search process. Just how much overhead is there at the USPTO? How many people are involved in producing garbage like Docket No. PTO-C-2011-0008, that is full of gibberish and tables of "juggled" numbers that could be eliminated by one number - the CPI - as was done pre-December 8, 2004? Exactly what is the USPTO 2010-2015 Strategic Plan? It sure as hell isn't to make the USPTO a functional and efficient organization.

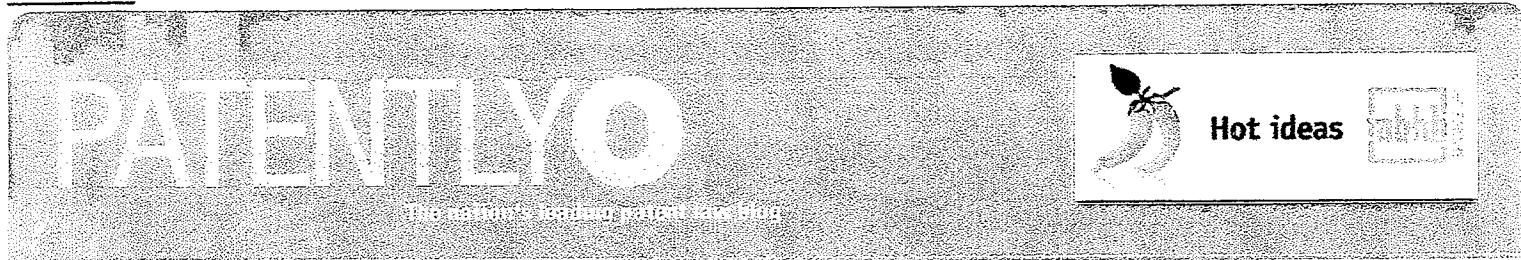
The USPTO's overhead must be slashed, with administrative staff being forced to retrain as examiners, and Docket No. PTO-C-2011-0008 must be rejected. No more fee increases for the USPTO.

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## Patent Law Blog (Patently-O)

Patent Law Analysis by Dennis Crouch

Aug 06, 2009

### Patent Office Keeps Check, Lets Patent Go Abandoned For Being \$10 Short

Guest Post by *Stephen R. Albainy-Jenei*, Partner at Frost Brown Todd and Author of the [Patent Baristas Bio/Pharma blog](#).

Dealing with the Patent Office is a lot like standing in front of the airline ticket counter where the agent keeps typing in endless strings of random numbers and letters and politely explains that you can't possibly make a change in your reservation because your ticket is a A389X-27-Purple ticket and not the B347L-Triple-Lindy ticket.

- Although nonprecedential, the U.S. Court of Appeals for the Federal Circuit laid into the Patent Office this week for behaving in what it said was an "arbitrary and capricious" manner after it cashed a payment that was \$10 short and then promptly let the patent expire. See [Taylor v. USPTO \(CAFC 09-1133\)](#).

Jorge Taylor had a patent for a chemical sealant device for repairing flat tires ([U.S. Pat. No. 5,178,701](#)) and had to pay the seven-and-a-half-year maintenance fee of \$1040. But, Mr. Taylor sent a check for \$1030, rather than \$1040, in the mail and used the wrong form for transmitting his payment, and sent it to the Applications Branch rather than the Maintenance Fee branch – sort of a hat trick of errors.

Mr. Taylor marked in capital letters at the top of his transmittal form:

“NOTE: IF THIS IS NOT THE CORRECT FORM, PLEASE MAIL THE CORRECT FORM TO THE RETURN ADDRESS ON THE CHECK.”

The PTO employee who processed the form may not have recognized this filing as an attempt to pay a maintenance fee, and may have just processed it as a regular application filing fee. Whatever the thinking, the PTO deposited the check in its account.

Fast forward several years later when Mr. Taylor called the Office in preparation for paying the required eleven-and-a-half-year maintenance fee and the PTO says "Oops, your patent went abandoned for failure to pay the seven-and-a-half-year maintenance fee."



Taylor asked the PTO for reinstatement of his patent saying that he was "not an attorney but a pauper disabled living on a fixed income (SSI) who cannot pay \$200 to petition your office."

The PTO dismissed the case (for not including \$200) also helpfully pointed out that Mr. Taylor's original payment had not included a certificate of mailing. Thus, because the Office received the payment on January 17, 2001, five days had passed beyond the window for accepting maintenance payments with a surcharge.

Taylor then sued in district court, alleging that the PTO had "misappropriated" his \$1030, and sought \$1 billion in damages, his estimation of the worth of his intellectual property "in the U.S. and world market."

The district court dismissed the complaint saying that PTO regulations do not provide a waiver of petition filing fees for indigent applicants and that Taylor had not shown that the PTO's actions were "arbitrary and capricious" for purposes of making out a claim under the Administrative Procedure Act.

Mr. Taylor appealed to Federal Circuit, which seemed perturbed that the case had to go all the way to the appellate level and was not happy that that the PTO cashed Mr. Taylor's check and still proceeded to consider his patent expired.

The court said that the PTO's actions were arbitrary and capricious in accepting Mr. Taylor's deficient payment on the one hand, while on the other hand expiring his patent without notifying him under MPEP § 2531 (Notice of Non-Acceptance of Patent Maintenance Fee) that his payment was inadequate.

The PTO tried to weasel out of the suit saying it would refund the \$1030 and said that Taylor could still file a petition -- along with \$200, of course -- to have his patent reinstated for unavoidable delay. But, the USPTO then mused that even if the failure to properly pay the 7.5-year maintenance fee could be overlooked, Mr. Taylor has now also failed to pay the 11.5 year maintenance fee, and has also missed the deadline for reinstatement based on "unintentional delay" of that payment. Nice.

In the end, the Federal Circuit said that it wasn't fair for the PTO to take Mr. Taylor's payment without notifying him of the \$10 shortfall and demanded an equitable remedy:

In this case, equity would counsel that the PTO should reinstate Mr. Taylor's patent upon receipt of his payment for all outstanding maintenance fees. This relief will remedy, to this court's best estimation, the PTO's arbitrary and capricious actions.

While I feel bad for Mr. Taylor, the real issue here is why doesn't the Patent Office put more procedures in place that make the application process more of a mutual partnership? Yes, Mr. Taylor paid the wrong amount. Yes, he used the wrong form. But, even very experienced attorneys make these kinds of mistakes. The present case illustrated that the Patent Office needs to adopt more equitable rules and procedures for helping inventors correct mistakes in the first place so that valid patents issue. Shouldn't the Patent Office be on the inventor's side?

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## Comments

YES!



THE USPTO HATES INDEPENDENT INVENTORS, EXCEPT THEIR FEES

In the article on the preceding two pages entitled "Patent Office Keeps Check,...", the important words to look for are:

"nonprecedential", "'arbitrary and capricious'", and "Shouldn't the Patent Office be on the inventor's side?"

When this commentator, who knows what a "filing fee" is, first encountered the USPTO's "filing fee" trickery, he, naturally, did not even consider the possibility that the USPTO would engage in trickery, and he thought they liked inventors, and were "staging" - a word the USPTO likes to use in Docket No. PTO-C-2011-0008 - their fees, since the search and examination occur many months after the application is filed. He thought they were doing this to alleviate the "front-end" "burden" - other words the USPTO likes to use in said Docket - of a 27% fee increase. The USPTO subsequently informed him of their trickery by their actions, and he demanded a refund, and the fight was, and still is, on.

The USPTO sent him incorrect instructions and forms, but told him to read the Federal Register. The USPTO lied to him and both his Senators, and a staffer for one Senator said to get a lawyer, and a staffer for the other Senator said contact the GAO. And, an inventor hater in the Office of the Commissioner for Patents told him "even if what we told you was wrong", and said he would investigate "how we handled it", but never did anything.

He was repeatedly told that the USPTO can only make refunds if a payment is "paid by mistake", but the USPTO refuses to understand

the concept that a payment made in the mistaken belief that 1) the USPTO would not engage in trickery, and 2) the USPTO's forms and instructions are accurate, is, in fact, "paid by mistake", since, if the truth had been provided by the USPTO, the application would not have been filed: he was willing to pay \$150, but not \$500. Believing the USPTO is a MISTAKE.

And, Anthony Scardino, the Chief Financial Officer at the USPTO, who is responsible for the "juggling" "shell game" that is Docket No. PTO-C-2011-0008, threatened him with Homeland Security.

In 2011, he discovered that the USPTO's "filing fee" trickery had misled Politico and the Congressional Research Service, which exactly proves his argument. And, on 6/12/2012, he found the Sep 3, 2008, report by Gene Quinn, of ipwatchdog.com, shown in the following three pages, that discusses the December 8, 2004, fee schedule changes and uses the word "mistake" in a context that exactly proves his argument.

When the USPTO insulted him by telling him to read the Federal Register, he wrote back saying the USPTO should send out the Federal Register, instead of incorrect instructions and forms, and now this commentator has this piece of "juggling" "shell game" garbage that is Docket No. PTO-C-2011-0008, and now, in addition to a refund, he wants 1) heads to roll at the USPTO, 2) no fee increases at the USPTO, 3) the repeal of both The Americans Can't Afford To Invent Act and the December 8, 2004, law, and 4) a complete reorganization at the USPTO.

**MORE LIVE LOCATIONS:**

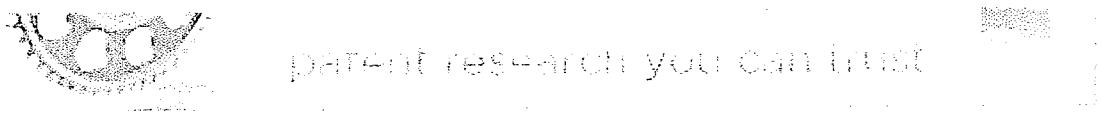
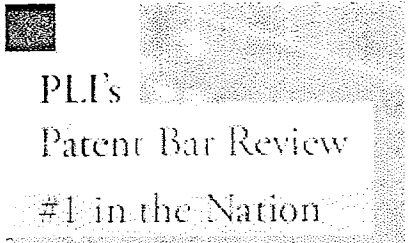
Houston, TX ~ June 6 - 10, 2012

San Francisco, CA ~ June 19 - 23, 2012

Boston, MA ~ July 11 - 15, 2012

Chicago, IL ~ August 7 - 11, 2012

New York, NY ~ Sept. 19 - 23, 2012



# New US Patent Office Fees



Written by Gene Quinn  
President & Founder of IPWatchdog, Inc.  
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Zies, Widerman & Malek

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Posted: Sep 3, 2008 @ 3:49 pm

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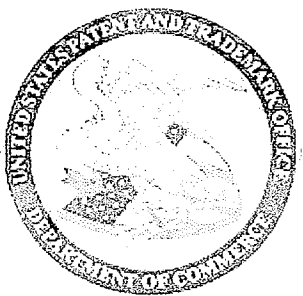
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*Buying Patents by the Pound*



0



Effective October 2, 2008, the United States Patent Office fees will once again be changed, which is a yearly or bi-yearly event. The filing fee to the Patent Office for an individual inventor or a small company that qualifies for small entity status (i.e., companies with fewer than 500 employees) is now \$165.00. For those who are familiar with the fee structure prior to December 8, 2004, you will remember that the filing fee for small entities was formerly \$395.00. It would,



There's the word: MISTAKE



however, be a mistake to believe that the Patent Office has decreased its fees in such a significant way. The Patent Office has always like to charge a la carte fees, and now they have taken that tendency to new heights. In addition to the basic filing fee the patent fee legislation enacted on December 8, 2004, requires payment of a Search Fee (\$270 for small entities) and an Examination Fee (\$110 for small entities). Therefore, the total fee due to the Patent Office for a small entity to successfully launch a non-provisional utility patent application is \$540.00. It is also important to realize that this initial fee covers 3 independent claims and 17 dependent claims. If you have more claims it costs more.



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In addition to the various filing fees there will also be an issue fee due before any patent will be granted by the Patent Office. The current issue fee for a small entity is \$755.00. So even without any attorney fees the absolute lowest you could pay for a single patent is \$1,295.00. In reality what happens is that during prosecution many times the examiner will allow some claims but not all claims. If that happens you may decide to let the allowed claims issue, at which point the issue fee would become due. Then you may decide to continue fighting over the rejected claims in hopes of getting some of them through the office. That would require another patent application, which would lead to additional filing fees. You can, of course, always decide to drop the rejected claims and incur no additional fees with respect to them, or you could also decide to appeal, which means additional attorney time preparing the appeal and payment of additional Patent Office fees of \$540.00 (for an appeal without an oral hearing) or \$1,080.00 (for an appeal if you want to have an oral hearing). The lesson here is that fees can add up quickly. It is true, however, that once you file an application it will likely be many months (or perhaps years) before the patent office will get back to you so you can usually stagger these additional fees.

Another cost associated with filing and/or issuance is the preparation of formal drawings. You will either need to be able to create patent drawings that are acceptable to the Patent Office or hire someone who can. Informal drawings are allowed to start, but formal drawings must be made before the patent can issue. Filing formal patent drawings initially, however, does create a broader initial disclosure, which can be most helpful. If you need to obtain professional patent drawings for something relatively simple may only cost in the range of \$100 to \$125 per drawing sheet, with each drawing sheet typically containing several figures per sheet. Given the complexity of the drawing rules and the comparatively small charge for professional drawings, it is usually better to hire someone who specializes in patent drawings.

Additional things to know and remember regarding the cost of obtaining a patent include (these assume you are a small entity, which means an individual or business with 500 or fewer employees):

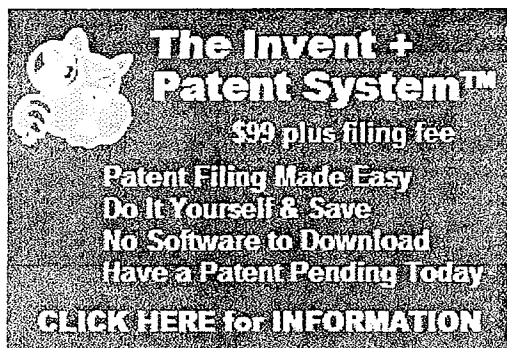
- (1) Currently the initial fees for a non-provisional application are approximately \$540.00 (there are actually 3 different fees which add up to this total, all of which are due at the time of filing. This fee covers the cost of 20

29 of 32

\* This article is from 2008.  
Formal drawings now required to start. See page 18. 6/12/2012

claims, but typically we file an application with about 10 claims so that claims can be added later during prosecution without the need to pay additional claims fees.

(2) Currently it costs approximately \$755.00 to get a patent issued. Which means that once the Patent Examiner tells you that you have allowable material you must pay \$755 to the Patent Office. If you do not make this payment no patent will issue.



(3) Maintenance fees are required to keep the exclusivity of the patent in tact for the full patent term. Maintenance fees are due 3.5, 7.5 and 11.5 years after issuance. Currently the cost of these maintenance fees for an individual inventor or small entity approximately \$490.00, \$1,240.00 and \$2,055.00, respectively.

(4) During patent prosecution it is common to need to pay the Patent Office additional fees. As a general rule of law you have 6 months to respond to virtually anything the examiner sends. The examiner will ALWAYS shorten this period to between 1 month to 3 months. If you want the full 6 months to respond no problem, but there is an additional fee. When you work with the Patent Office you quickly realize just how capitalist the Office really is. You can do and fix just about anything, but there will be a fee. Currently, extensions of time, for an individual inventor or small entity, cost approximately \$65.00 for a 1 month extension, \$245.00 for a 2 month extension, \$555.00 for a 3 month extension, \$865.00 for a 4 month extension, and \$1,175.00 for a 5 month extension.

(5) If it becomes necessary or desirable to file a continuation (to keep the application alive to continue to fight for broad claims) there is another fee of between \$405.00 and \$540.00. If you want to make amendments after a final rejection that will also be another \$405.00. Amendments after final are extremely common. This is true because one of the reasons you can file an amendment after final rejection is to accept an examiner suggestion. Examiners will frequently tell you in a final rejection that they would allow something if you made a specific change. Most will want to make the change, obtain a patent, and then consider filing a continuation to continue to fight for broader claims. What this means is that, at the very least, the additional \$405.00 for filing amendments after final rejection should be considered to be a likely necessary expense.

(6) Each patent that issues will also have their own separate filing, issue and maintenance fees, as discussed in the previous paragraphs.

## HOW MUCH DOES IT COST TO FILE A PATENT APPLICATION?

This is a very important question. It is surely what most inventors want to know, and Politico and The Congressional Research Service focused on this specific question, and Congress probably has this question at the top of their list, as well, so, to make everybody happy, the wonderful USPTO keeps lowering the "filing fee", as follows:

- on December 8, 2004, the USPTO lowered the "filing fee" to \$300/\$150, which raised the "filing fee", or fees "due on filing", from \$790/\$395 to \$1,000/\$500 (27% increase); and,
  - now, the USPTO wants to lower the "filing fee" even more, to \$280/\$140, which will raise the "filing fee", or fees "due on filing" from \$1,250/\$625 to \$1,600/\$800 (28% increase);
- so, this commentator just can't wait until the "filing fee" is zero, and he's saving up now, hoping he will have the \$100,000 that will be required for the fees "due on filing".

Does the USPTO have a patent - business process, isn't it? - on the "filing fee" trick, or is there some prior art? Has it been published in criminal law books under the heading "Fraud"?

Just like their Fee Schedule, the USPTO's Docket No. PTO-C-2011-0008 is "juggled" garbage, and must be rejected, and both The Americans Can't Afford to Invent Act and the December 8, 2004, law must be repealed, and David Kappos, Anthony Scardino, Bernard Knight, Wade Norman, and Dana Robert Colarulli must be fired, and the USPTO must be reorganized: the huge administrative staff must be retrained to be examiners.

**USER PASS** No. 33476

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Name: Kent D. Murphy  
By: [Signature] Date: 12-2-80

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This commentator was born in Washington and lived in Virginia and Maryland. He was good at accounting, but not at completing the curriculum, and, living in a city where degrees dominate, he decided to pursue inventing, and taught himself the process.

**THE GEORGE WASHINGTON UNIVERSITY**  
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STAT.	51	3	C	6	INT BUS & EC STAT	