**USPTO Setting and Adjusting Patent Fees During Fiscal Year 2025—Activity Based Information and Patent[[1]](#footnote-2) Fee Unit Expense Methodology**

This document provides additional details on the cost methodologies used to derive the historical fee unit expenses outlined in the Table of Patent Fees–Current, Proposed, and Unit Cost. Five sections are included:

1. **Background:** Provides background information on the Activity Based Information (ABI) program (managerial cost accounting) at the United States Patent and Trademark Office (USPTO).
2. **Objective:** Outlines the detailed objective(s) of the ABI program in calculating historical expenses by activity using ABI expense models.
3. **Foundational Elements:** Discusses the key components of the ABI expense methodology.
4. **Fully Burdened Expense:** Explains the approach for calculating the full expense of patent processes and activities.
5. **Fee Unit Expense Calculation:** Outlines the five major approaches for developing a fee unit expense calculation based on the fully burdened expense of patent processes and activities and provides historical fee unit expense information for the previous three fiscal years.

Questions related to the ABI program or methodologies discussed in the narrative are welcome. For further information contact Brendan Hourigan, Director, Office of Planning and Budget, at 571–272–8966, or at Brendan.Hourigan@uspto.gov.

# **SECTION 1: BACKGROUND**

While there are numerous regulations that require agencies to track and report the expense of program delivery, the Federal Accounting Standards Advisory Board’s (FASAB) Statement of Federal Financial Accounting Standards (SFFAS) No. 4, Managerial Cost Accounting Concepts and Standards for the Federal Government,issued July 1995, outlines the key federal managerial cost accounting (MCA) requirements. In 1997, the USPTO instituted the ABI program to comply with prevailing federal MCA standards and inform decisions based on sound business principles. The USPTO’s ABI program uses standard Activity Based Costing (ABC) methodologies to determine total USPTO expenses relating to the processing of patent and trademark applications, including the share of administrative costs, for financial reporting.

The ABI program is examined each year as part of the financial statement audit, and no internal control weaknesses concerning the ABI methodology or data have been reported. An independent verification and validation study conducted on the ABI program in 2009 identified the USPTO’s ABI program as a best practice in the federal government. In 2015, the Department of Commerce’s Office of Inspector General (OIG) conducted an audit of Trademark’s controls and use of the USPTO’s ABI system and issued Final Report No. OIG-16-020-A. The objectives of this audit were to review allocation algorithms and controls of the ABI system and determine whether use of ABI justifies and supports fee changes. Although the primary focus of the audit was trademark-related, much of the review was conducted on the support organization expense models, which also impact the patent expense model. The OIG determined that cost allocation algorithms were implemented in a way that was consistent with supporting documentation and the internal control over the execution of ABI methodologies was operating effectively.

Since the inception of the program, ABI methodologies have continuously improved and are consistently used to inform fee setting, budgeting, performance reporting, financial statement (Statement of Net Costs) preparation, business decision-making, and ad-hoc expense analyses and studies.

The USPTO’s ABI program maintains an expense model for each USPTO business unit to capture and determine historical expenses on a per-process or per-service basis and to determine the expenses associated with the specific fees included in the proposed rule (Setting and Adjusting Patent Fees During Fiscal Year 2025). The ABI fee expense analysis methodology follows the full cost guidance outlined in the Office of Management and Budget (OMB) circular A-25, User Charges, and the fee setting guidance outlined in the Government Accountability Office (GAO) report on Federal User Fees (Federal User Fees: A Design Guide, GAO-08-386SP (May 2008)). To ensure the ABI expense models keep pace with the changing environment, improvements are made to the models and allocation methodologies each year.

To facilitate agency-wide collaboration and transparency in the ABI program, the ABI steering committee was established in 2007 and is the official oversight body for all topics related to the USPTO’s ABI program and ABC data. This committee is chaired by the Director of Finance or his/her designee, with representatives from the various USPTO business organizations. The governance of the ABI program and all changes to the expense assignment and allocation methodologies are managed and recommended by the steering committee, and ultimately approved by the steering committee chair.

The USPTO finds that reviewing the trend of ABI historical expense information is an important way to inform fee setting in the absence of a significant future change of related activities and processes. Therefore, the past three years of data is provided in this document (fiscal year (FY) 2020, FY 2021, FY2022). The ABI expense information should be reviewed in the context of its surrounding fiscal environment, and the mathematical result of these financial and operational circumstances should, where appropriate, be reviewed over a multi-year period. The latest fiscal-year data included is calculated using the expense model most representative of current operations.

# **SECTION 2: OBJECTIVE**

The ABI expense models and supporting fee expense analyses provide the full expense of activities within the various business units. To provide such information, the ABI program analyzes direct expenses across processes and activities and appropriately assigns or allocates support and business-sustaining expenses from inside and outside the business unit. Expense information is analyzed and reported at different organizational and process levels for management use, such as when informing budget formulation, monitoring budget execution, reporting on performance, developing the Statement of Net Cost, determining the use of patent and trademark fee revenues, and supporting the USPTO fee setting process.

The term “model” in this document refers to the ABI expense model for the various individual business units. The models incorporate historical total USPTO expense data. All expenses are associated with the delivery of products and services. It should be noted that ABI expense information is not the equivalent of the USPTO budget. Budgetary data represents an estimate for the time period in which prospective costs will be funded (obligations and commitments) and is forward-looking, while ABI expense data is historical expense information representing the actual cost of services provided or work performed, regardless of the year in which the expense was funded. For this reason, “costs” are referred to as “expenses” throughout the ABI analysis.

# **SECTION 3: FOUNDATIONAL ELEMENTS**

**Program, Project, and Activity (PPA) Codes**

In accordance with the Common Government-wide Accounting Classification structure, the USPTO uses codes to categorize labor-related and non-labor-related financial transactions against programs, projects, and activities (PPA). PPAs are a set of three individual codes used in combination to form a part of an accounting string that provides business information, including hours worked and expenses incurred. Each code provides unique information and allows employees, analysts, and decision-makers to establish relationships between expenses and the work performed. Each PPA combination appears as one string in the USPTO’s financial management and time reporting systems.

* A **Program** is a group of activities directed towards a high-level process or system. Programs are often strategic in nature, relate to budget decisions, or have long-term outcomes.
* A **Project** is a planned undertaking in support of a program. Projects always have a beginning and end date. However, a project code is optional and not always used.
* An **Activity** is a group of tasks performed to produce or deliver products and services. Activities are always in support of projects and programs.

A program code and activity code are required and used to track all labor and non-labor expenses at the USPTO. For example, patent examination hours are recorded to a PPA program code titled “Patent Examination and Application Management” and a PPA activity code titled “Prepare All Examiner Actions,” with no specific project code because it is an ongoing operational activity with no planned end date. Similarly, non-patent business units also capture expenses against PPA combinations that define the type of work performed by the support organization. For example, a pilot program uses project codes to accumulate specific expenses based on planned beginning and end dates of the pilot program. These expenses are then allocated in each support organization business model to activities based on cost drivers. In addition to cost driver allocations, ABI uses “investor-specific” project codes, when applicable, that are directly assigned to the benefiting business unit. For example, within the ABI OCFO model, there is an “Execute Budget” activity for each Business unit. The “Execute Budget – Trademark” activity is assigned directly to Trademarks while the “Execute Budget – Patents” activity is assigned directly to Patents. Allocation of expenses from outside Patents is a crucial step in the development of the fully burdened expense of patent processes and activities (see Section 4: Fully Burdened Expense).

The cost driver selection for assigning expenses follows the guidance set forth by the FASAB Managerial Cost Accounting Standard #4. The hierarchy of driver selection is based on the following, in order of preference:

1. **Direct Trace (Code-Driven):** At the USPTO, the majority of expenses are driven based on the PPAs that are reported by employees in the time-reporting system (compensation) as well as on contracts or other purchase documents (non-compensation). The tasks identified by the PPA for labor or on purchase documents are in support of a particular activity and program. An example of an investor specific PPA direct trace driver is Formulate and Justify Budget for Patents. This expense is charged to the Formulate and Justify Budget PPA code based on the time the Office of the Chief Financial Officer spends in support of the Patents business unit and is directly assigned to Patents through the model.
2. **Cause-and-Effect:** Expenses are also assigned on a cause-and-effect basis if direct trace is not readily available. Examples of cause-and-effect drivers are workloads such as:
	1. Usage Based Drivers: # of transactions, # of vouchers, # of servers by business unit, etc.
	2. Resource Based Drivers: Onboard employees by business unit, FTE contractor, revenue, etc.

For example, IT service desk expenses (accumulated using PPA codes) from the Office of the Chief Information Officer are allocated to benefitting business units, including Patents, based on the“# of PTONET (USPTO’s network) user IDs by business unit.”

1. **Reasonable and Consistent Basis:** The final method of allocating expenses is assigning them on a reasonable and consistent basis. Business-sustaining expenses that cannot be attributed to any core business function should be assigned globally based on a simple, visible, and non‐controversial method. An example of this assignment is the “provide personnel suitability investigative security clearance” expense model activity performed by the Office of the Chief Administrative Officer, which is allocated to the business units based on the number of onboard employees working in that business unit.

Finally, all existing cost drivers were reviewed and recommended by the ABI steering committee to the committee chair before they were recorded in the expense models. New cost drivers are also reviewed, recommended, and approved before they are recorded in expense models.

Across the agency, PPA codes reflect the type of tasks and activities performed. Some of these PPA codes equate directly to ABI activities in the model. For example, in the Patent Trial and Appeal Board (PTAB or Board), the tasks associated with deciding *ex parte* appeals cases are assigned a specific PPA code: LPAPAI-0000-L00044. This PPA code is then associated directly with the “Prepare Ex Parte Appeals Decision” activity in the expense model. For other activities, the PPA code represents an overall summary level of expenses that must be assigned to more detailed activities in the patent expense model. For instance, 44 percent of patent direct expenses over the last four years have been attributable to an overall activity for patent examination. Patent examiners charge a single PPA code, PPEAAM-0000-112012, for work associated with the patent examination activities. The overall patent examination activity in the cost model is comprised of a number of distinct activities; however, requiring patent examiners to consistently record the exact time they worked on each discrete activity would be highly inefficient. To distribute the expense of this PPA code into the discrete activities that constitute the examination process within the model, an annual survey is conducted to determine the percentage of time spent performing each activity. The survey results are used to allocate each patent technology center’s overall examination time to the following discrete activities:

1. analyzing a new application
2. conducting an initial search for a new application
3. preparing the first office action on the merits (FAOM) of a new application (does not include the first office action after the filing of a request for continued examination (RCE))
4. conducting a subsequent search for the application (includes actions after the filing of an RCE)
5. preparing a subsequent office action for the application (includes the first office action after the filing of an RCE)
6. considering an information disclosure statement (IDS)
7. preparing responses to after-final submissions
8. preparing correspondence to the PTAB
9. Patent Cooperation Treaty (PCT) Chapter IIs (World Intellectual Property Organization Form 409)

The survey is conducted using a random sample of patent examiners that is generated by the Office of Patent Quality Assurance. The sample is comprised of examiners that have two or more years of experience, are generally General Schedule (GS) 9 and above, and are not in a supervisory position. From that selected pool, the Office of Patent Quality Assurance calculates the appropriate sample size for each technology center.

# **SECTION 4: FULLY BURDENED EXPENSE**

The USPTO’s ABI fee expense analysis identifies the “fully burdened” expense of all patent and PTAB activities. Approximately 170 patent activities (based on PPA codes) are captured in the patent expense model and are rolled up into the following eleven processes:

1. Pre-examination
2. Examination
3. Post-examination
4. Maintenance fees
5. Patent Cooperation Treaty
6. Classification (reallocated)
7. Patent Trial and Appeal Board
8. Examination—Secondary—Management, Training, Leave, etc. (reallocated)
9. Pre-grant publication
10. Patent Trial and Appeal Board—Secondary—Management, Training, Leave, etc. (reallocated)
11. Dissemination activities

The activity expenses include all technology center expenses but can be analyzed to include or exclude expenses from a particular technology center(s). This is crucial for determining the unit expense associated with design fee codes; the model can isolate design technology center examination expenses.

**DIRECT AND INDIRECT EXPENSES**

The expense model compiles both direct and an allocation of indirect expenses to obtain a total expense for each specified activity. Direct expenses include those that are executed directly within Patents (e.g., personnel compensation, contractual services, supplies and materials, property and equipment, etc.). Other direct expenses are allocated to the Patents business unit using a cost driver, as they are budgeted and managed in another organization (e.g., rent, patent-specific IT system expenses, etc.) but benefit the patent process directly. Indirect expenses, generally originating in support organizations, are work performed to enable patent services or contribute to patent products indirectly (e.g., IT infrastructure and support, human resources, financial management, legal, other administrative expenses, etc.) and are allocated to the Patents business unit through the most appropriate cost drivers.

Direct expenses that originate in the Patent business unit are generally assigned to processes and model activities based on PPA codes. There are two types of activities in the patent expense model—primary and secondary activities. Primary activities are activities that represent functions and processes essential to the mission of the division, such as “Perform Initial Search” and “Prepare Initial First Office Action on the Merits.” The non-primary duties of an organization are classified as secondary activities in the expense model. These activities represent expenses such as annual leave, training, and management and supervision. Secondary activity expenses are reallocated to the primary activity expenses. In the patent expense model, several processes are reallocated to primary processes to obtain the fully burdened expense.

Direct and indirect expenses from outside the Patents business unit are assigned to patent activities based on the type of expense. For example, the One Patent Service Gateway System (OPSG) expense from the Office of the Chief Information Officer’s expense model is assigned to Patent Examination activities and represents a direct expense in the patent model. On the other hand, indirect expenses, such as housekeeping expenses, are first assigned to the patent expense model based on the square footage of space used in USPTO buildings and then allocated to all patent activities based on the relative direct expense of activities. During the past ten fiscal years (i.e., FY 2014 through FY 2023), on average, direct expenses accounted for 82 percent of the Patents program operating expenses while the remaining 18 percent were indirect expenses. The direct expenses for an activity plus the indirect expenses constitute the “fully burdened” expense for that activity.

**PROCESS AND ACTIVITY EXPENSES**

The processes and activities identified in Table 1 are all patent-related activities, including those from the PTAB. PTAB activities have been further expanded into Table 2. Reallocated processes (processes 6, 8, and 10) are excluded from the table, since those secondary expenses (such as leave, training, and management and supervision) are included in the total expense of the processes shown below. The expenses include the fully burdened expenses allocated to patent activities (i.e., includes both direct and indirect costs).

**Table 1. FY 2021, FY 2022, and FY 2023 Fully Burdened Activity Expenses[[2]](#footnote-3)**

| **Patent activity** | **FY 2021** | **FY 2022** | **FY 2023** |
| --- | --- | --- | --- |
| **Process 1 - Pre-Examination** | **$69,648,425** | **$58,801,849** | **$51,662,510** |
| 1.01 - Process Incoming Paper | $472,662 | $433,741 | $579,331 |
| 1.02 - Process Application Fees | $816,519 | $1,073,247 | $1,961,908 |
| 1.03 - Application Indexing/Scanning | $43,472,886 | $37,590,863 | $25,306,231 |
| 1.04 - Routing Classification/Security Screening | $4,108,176 | $4,127,330 | $4,343,085 |
| 1.05 - Second-level Security Screening and L&R Processing | $1,000,670 | $641,461 | $697,234 |
| 1.06 - Conduct Formalities Review | $19,294,682 | $14,912,959 | $18,576,264 |
| 1.07 - Customer Service (Pre- and Post-Examination) | $482,830 | $22,248 | $198,457 |
| **Process 2 - Examination** | **$2,716,076,905** | **$2,742,126,557** | **$2,959,766,016** |
| 2.01 - Tech Support Application Process | $43,190,063 | $40,685,801 | $42,098,251 |
| 2.02 - Classification and Assignment by Art Unit | $7,997,426 | $13,727,316 | $12,722,138 |
| 2.03 - Analyze New Application\* | $321,272,906 | $320,979,295 | $363,223,682 |
| 2.04 - Analyze New Application - Restrictions/Unity of Invention | $15,822,681 | $16,577,239 | $16,393,258 |
| 2.05 - Perform Initial Search\* | $784,410,718 | $804,972,251 | $888,656,826 |
| 2.06 - Prepare Initial FAOM (excluding RCEs)\* | $499,253,464 | $511,853,432 | $551,354,288 |
| 2.07 - Consider IDS (Information Disclosure Statement)\* | $136,040,160 | $131,543,327 | $144,687,569 |
| 2.08 - Prepare All Subsequent Actions\* | $398,315,826 | $404,465,635 | $431,940,256 |
| 2.09 - Perform Subsequent Search\* | $305,367,062 | $304,842,581 | $316,969,417 |
| 2.10 - Prepare After Final Response\* | $76,343,953 | $71,216,091 | $62,853,761 |
| 2.11 - Applicant Interviews | $46,492,577 | $44,363,132 | $44,779,560 |
| 2.12 - Internal Deliberations | $4,937,637 | $3,949,254 | $4,294,163 |
| 2.13 - Communications to the Board of Appeals\* | $12,879,881 | $9,817,005 | $9,025,049 |
| 2.16 - Quality Review of Tech Support Staff | $17,305 | $15,272 | $35,303 |
| 2.19 - Paralegal PCT Review (Patent Legal Research Center) | $1,865,273 | $2,073,768 | $2,728,083 |
| 2.20 - Prepare PCT Search Report and Written Opinion (Contractor Effort) | $43,769,835 | $40,037,134 | $43,458,716 |
| 2.21 - Prepare PCT Search Report (Contractor QR Effort/Contract Oversight) | $1,554,144 | $1,624,136 | $2,402,581 |
| 2.23 - Processing Re-Examinations | $12,167,723 | $13,013,552 | $14,780,567 |
| 2.24 - Petitions | $4,256,320 | $6,057,783 | $7,059,528 |
| 2.25 - Patent Term Extension | $110,174 | $263,263 | $295,011 |
| 2.26 - Interim Patent Term Extension | $11,778 | $49,291 | $8,010 |
| **Process 3 - Post-Examination** | **$164,261,119** | **$213,511,809** | **$201,054,921** |
| 3.01 - Initial Data Capture | $113,623,277 | $141,261,830 | $126,020,705 |
| 3.02 - Final Data Capture | $33,875,937 | $53,595,405 | $54,104,340 |
| 3.03 - Quality Control and Tracking Activities | $7,044,522 | $8,899,210 | $11,533,246 |
| 3.04 - Print and Assembly Patent for Publication | $4,300,869 | $4,754,187 | $3,991,431 |
| 3.05 - Quality Assurance - Database Inspection | $2,311,534 | $1,838,327 | $2,094,065 |
| 3.06 - Quality Assurance - Certificates of Correction | $3,104,981 | $3,162,850 | $3,311,135 |
| **Process 4 - Maintenance Fees** | **$33,058,564** | **$38,358,967** | **$57,107,548** |
| 4.01 - Support Patent Maintenance System | $33,058,564 | $38,358,967 | $57,107,548 |
| **Process 5 - Patent Cooperation Treaty** | **$19,387,649** | **$20,681,096** | **$24,571,480** |
| 5.01 - Application Initiation | $1,751,194 | $1,860,380 | $2,313,377 |
| 5.02 - Chapter I Formalities Review | $4,984,400 | $4,687,539 | $5,759,168 |
| 5.03 - Copy and Mailings | $840,633 | $473,825 | $508,981 |
| 5.04 - Chapter II Formalities Review | $33,640 | $39,312 | $42,116 |
| 5.06 - Perform Processing Section Functions | $521,539 | $295,108 | $315,578 |
| 5.07 - Process US National Stage Application | $9,797,306 | $11,740,130 | $13,697,312 |
| 5.10 - Petitions (International and 371) - PCT Legal | $1,458,937 | $1,584,801 | $1,934,948 |
| **Process 7 - Patent Trial and Appeals Board** | **$120,070,601** | **$110,677,121** | **$117,234,596** |
| **Process 9 - Pre-Grant Publication** | **$97,042,972** | **$102,711,207** | **$112,059,476** |
| 9.02 - PG Pub and Initial Classification | $19,083,031 | $20,569,865 | $19,441,199 |
| 9.03 - PG Pub Monitoring/Tracking/Publishing of PG Pub Activities | $77,959,942 | $82,141,341 | $92,618,277 |
| **Process 11 - OCIO AIS & OPS Support** | **$16,346,769** | **$18,952,852** | **$19,318,302** |
| **Total** | **$3,235,893,004** | **$3,305,821,458** | **$3,542,774,849** |

**Table 2. FY 2021, FY 2022, and FY 2023 Fully Burdened Activity PTAB Expense Detail**

| **PTAB activity** | **FY 2021** | **FY 2022** | **FY 2023** |
| --- | --- | --- | --- |
| **Process 7 - Patent Trial and Appeals Board** | **$120,070,601** | **$110,677,121** | **$117,234,596** |
| **7.01 Ex Parte Appeals Proceedings**  | **$59,362,320** | **$52,134,792** | **$51,310,763** |
| Review Ex Parte Appeal Briefs | $196,295 | $198,918 | $184,258 |
| Process EWF and Docket Ex Parte Appeals | $1,074,462 | $723,670 | $596,761 |
| Process Ex Parte Appeals Decision for Final Disposition | $4,770,251 | $4,598,219 | $4,254,917 |
| Prepare Ex Parte Appeals Decision | $53,321,313 | $46,613,986 | $46,274,827 |
| **7.02 Interferences Proceedings**  | **$639,996** | **$665,711** | **$316,138** |
| Declaration of Interference | $40,308 | $(4,565) | $21,647 |
| Process Interferences | $25,434 | $24,730 | $25,837 |
| Decide Motions in Interferences | $574,254 | $645,546 | $268,654 |
| **7.03 Ex Parte Reexam Appeals Proceedings**  | **$424,043** | **$556,204** | **$746,673** |
| Review Ex Parte Reexam Appeal Briefs | $948 | $1,586 | $- |
| Process EWF and Docket Ex Parte Reexam Appeal | $- | $- | $- |
| Process Ex Parte Reexam Decision for Final Disposition | $35,778 | $15,609 | $40,287 |
| Prepare Ex Parte Reexam Decision | $387,317 | $539,009 | $706,386 |
| **7.04 Inter Partes Reexam Appeals Proceedings**  | **$332,408** | **$313,444** | **$42,156** |
| Review Inter Partes Reexam Briefs | $- | $- | $- |
| Process EWF and Docket Inter Partes Reexam Appeal | $183 | $407 | $7,282 |
| Prepare Inter Partes Re-exam Decision | $312,345 | $310,031 | $32,497 |
| Process Inter Partes Reexam Decision for Final Disposition | $6,864 | $3,006 | $2,377 |
| Prepare decision in Inter Partes Re-Exam Appeals Request for Re-prosecution | $13,016 | $- | $- |
| **7.05 AIA: Inter Partes Review Proceedings**  | **$52,826,230** | **$52,055,947** | **$58,646,964** |
| IPR: Reconcile Petitions | $293,954 | $252,637 | $339,773 |
| IPR: All Pre-institution Activities Except Disc. Disputes | $28,615,575 | $25,228,059 | $28,689,322 |
| IPR: All Post-institution Activities Except Disc. Disputes | $19,949,134 | $22,523,546 | $24,992,379 |
| IPR: Process Pre-Institution Documents | $2,598,368 | $2,453,275 | $2,672,415 |
| IPR: Process Post-Institution Documents | $1,369,199 | $1,598,430 | $1,953,076 |
| **7.06 AIA: Post Grant Review Proceedings**  | **$2,321,676** | **$1,551,404** | **$1,829,309** |
| PGR: Reconcile Petitions | $3,997 | $7,442 | $1,015 |
| PGR: All Pre-institution Activities Except Disc. Disputes | $1,412,272 | $789,664 | $735,721 |
| PGR: All Post-institution Activities Except Disc. Disputes | $785,556 | $693,679 | $1,003,699 |
| PGR: Process Pre-Institution Documents | $69,447 | $22,326 | $25,033 |
| PGR: Process Post-Institution Documents | $50,404 | $38,293 | $63,842 |
| **7.07 AIA: Covered Business Method Proceedings**  | **$565,687** | **$179,240** | **$69,157** |
| CBM: Reconcile Petitions | $11,955 | $1,131 | $8,094 |
| CBM: All Pre-institution Activities Except Disc. Disputes | $414,510 | $39,550 | $48,580 |
| CBM: All Post-institution Activities Except Disc. Disputes | $87,849 | $140,266 | $9,556 |
| CBM: Process Pre-Institution Documents | $51,373 | $(1,708) | $2,926 |
| CBM: Process Post-Institution Documents | $- | $- | $- |
| **7.08 AIA: Derivations Proceedings**  | **$194,170** | **$212,098** | **$195,070** |
| DER: Reconcile Petitions | $290 | $202 | $(45) |
| DER: All Pre-institution Activities Except Disc. Disputes | $190,340 | $159,782 | $101,048 |
| DER: All Post-institution Activities Except Disc. Disputes | $2,636 | $51,089 | $93,413 |
| DER: Process Pre-Institution Documents | $903 | $1,025 | $227 |
| DER: Process Post-Institution Documents | $- | $- | $426 |
| **7.09 Oral Hearings Activities**  | **$1,530,426** | **$1,411,343** | **$2,407,006** |
| Oral Hearings: Administer and Manage | $333,525 | $336,484 | $582,103 |
| Oral hearings: Support Tasks | $1,196,901 | $1,074,858 | $1,824,903 |
| **7.10 Petitions Activities (Non-AIA, Non- Oral Hearing)**  | **$233,679** | **$133,062** | **$141,779** |
| Process Petitions | $9,009 | $13,419 | $272 |
| Prepare and Review Petitions Decisions | $224,670 | $119,643 | $141,506 |
| **7.11 Paneling Activities**  | **$1,464,166** | **$1,318,081** | **$1,528,499** |
| Administer Paneling Non-AIA | $(6,958) | $- | $- |
|  Process Paneling Non-AIA | $644,039 | $555,142 | $637,933 |
|  Administer Paneling AIA | $15,740 | $13,261 | $4,729 |
|  Process Paneling AIA | $811,345 | $749,678 | $885,836 |
| **7.12 Fee processing Activity**  | **$175,800** | **$145,796** | **$1,082** |

# **SECTION 5: FEE UNIT EXPENSE CALCULATION**

There are multiple approaches used during the ABI fee expense analyses to calculate the fee unit expense. The approach selected depends on the nature of work performed for the service provided and the level of detail captured in the patent expense model. The approaches used to develop fee unit expenses include:

1. **Total Activity Unit Expense**
2. **Total Activity Unit Expense Adjusted for Frequency of Occurrence**
3. **Expense Build-up**
4. **Similar Work Estimation**
5. **Hybrid—Expense Build-up and Activity Unit Expense**
6. **Incremental Expense**

The approaches are discussed in the subsequent sub-sections, followed by a comprehensive table that identifies the fee calculation methodology and the final fee unit expenses for FY 2021, FY 2022, and FY 2023.

The 1000 series fee codes that identify an associated expense in the Table of Patent Fees—Current, Final Patent Fee Schedule, and Unit Cost are included in this document. The 2000 series fee codes are for the same service, but paid by those with an established small entity status (37 CFR 1.27). The 3000 series codes are again for the same service, for those with an established micro entity status (37 CFR 1.29). As the service provided is the same regardless of the entity status, the fee unit expense is the same across all fee code series.

1. **Total Activity Unit Expense**

In this fee unit expense approach, patent expense model activities are mapped to each fee code based on the relevant work performed for each fee, then unitized based on workload. As described in Section 4, the fully burdened expense of each activity is identified in the patent expense model. For each activity, there is a volume driver representing the workload as a measure of how many activities are performed relative to the particular expense. Workload volume data originates in various operational systems, but a majority of the workload information comes from the Patent Application and Location Monitoring (PALM) system. An example of an activity and associated driver is “Prepare Initial First Office Action on the Merits,” with an activity driver of “number of initial FAOMs.” [[3]](#footnote-4) If the fee code is design-related, the workload volume for first actions will be associated with design applications and will, therefore, differ from the workload volume associated with utility, plant, and reissue application fees. The full expense of the activity is divided by the relevant workload volume to determine an average unit expense by activity. This occurs for each activity associated with a fee code. To obtain a final full unit expense for the fee, all activity unit expenses for the activities associated with that fee code are summed together and a final fully burdened fee unit expense is calculated. This calculation ultimately yields the full unit expense to perform the work related to the fee one time. The majority of fee unit expenses are calculated using this approach. Fee code calculations using this approach are identified in Table 2.

1. **Total Activity Unit Expense Adjusted for Frequency of Occurrence**

This approach builds on the Total Activity Unit Expense approach discussed in the previous section. For each fee, activity expenses are identified for the relevant activities, the activity expense is divided by the driver volume, and the activity unit expense is calculated. However, in some cases, for a given fee code, there may be an activity that is typically performed multiple times for every application rather than just once. Similarly, there may be other activities that are not always performed for every application. This is termed “frequency of occurrence” in the ABI fee expense analyses. In such cases, to adjust for the frequency of occurrence, the activity driver volume as it relates to the total applications completed in the fiscal year is analyzed for the particular activity in question to determine a percentage factor. This factor identifies how often that activity occurs and is then applied to the average unit expense for each activity to determine the final activity unit expense. The relevant activity unit expenses are then summed to determine an adjusted full unit expense for the fee. Fee code calculations using this approach are identified in Table 2.

1. **Expense Build-up**

When a new process does not have sufficient PPA and workload volume data to use the Total Activity Unit Expense approach, or if the patent expense model activities do not align directly with fees, the USPTO uses the Expense Build-up approach to develop a unit expense for a fee. This calculation is composed of compensation for representative positions, burden rates derived from the latest patent expense model, and an estimation of hours of work performed to determine the full expense of work associated with a given fee. First, the compensation amount for the given position per the Office of Personnel Management’s GS pay tables and special pay tables, as applicable, is burdened with associated benefits using a benefit rate for the specific organization. The sum of the compensation and benefits is then burdened with internal secondary expenses, such as training and leave, using the patent model data. The sum of the compensation, benefits, and secondary expenses is then burdened with allocated expenses from support service organizations in the USPTO based on the patent model results for those respective organizations. Once a final fully burdened total expense is calculated, the total is divided by 2080 hours to determine a fully burdened hourly rate for the position. Finally, the fully burdened hourly rate is multiplied by the number of hours the position performs work associated with the given fee to obtain a full expense related to the fee. If there are multiple positions performing various types of work, the sum totals of the expenses per position are added together to determine a total final fee expense.

Surveys are a common method of determining the hours necessary to perform a given task. In the PTAB, for example, there were too few post grant review (PGR) proceedings to provide the model activity expense data and workload output necessary to follow the Total Activity Unit Expenses method. For that reason, the USPTO surveyed the administrative patent judges (APJs) and paralegals working on PGR proceedings and used the estimated hours of work performed combined with their average compensation and burdening for support expenses from within the PTAB and throughout the USPTO to determine the fully burdened unit expense of PGR fees.

Depending on the fee code, it is also necessary in some expense build-ups to apply an adjustment factor to the overall expense build-up result to account for cases or applications that do not follow the given process from start to finish and terminate at an earlier stage in the process. As these cases require less effort measured in staff time, the total expense must be reduced to represent the actual expenses incurred by the agency. As an example, for the PGR proceedings in the PTAB, an adjustment is made by using an estimated weighted average of hours spent on cases settled before final written decision and those that reach a final written decision. The fee unit expenses for the Office of Enrollment and Discipline are also based on this calculation method. Fee code calculations using this approach are identified in Table 2.

1. **Similar Work Estimation**

The USPTO uses this method when very little historical data is available and a fee unit expense is required. For these situations, organizational subject matter experts (SMEs) determine other similar activities with available expense data to estimate the fee expense. Fee code calculations using this approach are identified in Table 2.

1. **Hybrid—Expense Build-up and Activity Unit Expense**

In some cases, the ABI patent expense model captures the overall expenses for activities associated with certain fees, but the expense data is at too high of a level to use the Total Activity Unit Expense method to determine the fee unit expense. In these situations, the USPTO uses initial activity expenses from the model but also requires additional calculations to determine the fee unit expense of the service provided. This approach uses a hybrid methodology leveraging patent model activity expense data in addition to external expense calculations to determine a final fee unit expense, utilizing a combination of what is discussed in methodologies I and III.

For example, many expenses associated with the reexamination process are captured collectively in one patent expense model activity and cannot be easily mapped to multiple fees. For this reason, the expense of a certain part of the reexamination process (e.g., denials and petitions) is determined using the Expense Build-up method to calculate a full expense for a denial and for a petition. The sum of this expense is then subtracted from the total reexamination model activity expense, leaving the expense associated only with the reexamination fee code. The unit expense for the reexamination fee code is finally determined based on the number of actions in reexamined applications based on PALM data. Fee code calculations using this approach are identified in Table 2.

1. **Incremental Expense**

The Incremental Expense approach builds further on the Total Activity Unit Expense Adjusted for Frequency of Occurrence methodology. For the RCE fees, there is an additional incremental expense calculation step required to obtain the final expense of an RCE. All relevant activity expenses, driver volumes, and adjusted activity unit expenses related to the RCE are calculated using the Total Activity Unit Expense Adjusted for Frequency of Occurrence approach. However, this approach is applied to two scenarios: (1) the expense of a single application with no RCE, and (2) the expense of a single application with one RCE. For some activities, different frequency factors are applied for each scenario depending on workloads associated with the activity, resulting in different adjusted unit expenses for the activity. A unit expense is then calculated for both the single application with no RCE and the single application with one RCE. Finally, to identify the incremental expense of an RCE, the difference between the final unit expense of the single application with no RCE and the single application with one RCE is calculated.

Similarly, the same incremental approach is used to determine the expense of the second and subsequent RCE. The two scenarios presented to determine incremental expense for the second RCE are slightly different than for the first RCE, but the same basic method applies. The scenarios are: (1) the expense of a single application that has already performed one RCE, and (2) the expense of a single application that has completed a second RCE. All other calculation methods remain the same. Fee code calculations using this approach are identified in Table 3.

**Table 3. Fee Unit Expense Trend and Calculation Methodology[[4]](#footnote-5)**

Note: FY 2021 and FY 2022 are included for comparison purposes.

| **Fee code** | **Description** | **Fee unit expense** | **Fee calculation methodology**  |
| --- | --- | --- | --- |
|  |  | **FY 2021** | **FY 2022** | **FY 2023** |
| **Patent application filing fees** |  |  |  |  |
| 1011/2011/3011 | Basic filing fee - Utility (paper filing also requires non-electronic filing fee under 1.16(t)) | $253 | $250 | $269 | I |
| 4011 | Basic filing fee - Utility (electronic filing for small entities) | $253 | $250 | $269 | I |
| 1012/2012/3012 | Basic filing fee - Design | $253 | $250 | $269 | I |
| 1017/2017/3017 | Basic filing fee - Design CPA | $741 | $930 | $964 | II |
| 1013/2013/3013 | Basic filing fee - Plant | $253 | $250 | $269 | I |
| 1005/2005/3005 | Provisional application filing fee | $151 | $142 | $159 | I |
| 1014/2014/3014 | Basic filing fee - Reissue | $252 | $249 | $268 | I |
| 1019/2019/3019 | Basic filing fee - Reissue (Design CPA) | $741 | $930 | $964 | II |
| **Patent search fees** |
| 1111/2111/3111 | Utility search fee | $2,457 | $2,430 | $2,604 | II |
| 1112/2112/3112 | Design search fee  | $532 | $574 | $587 | II |
| 1113/2113/3113 | Plant search fee | $2,457 | $2,430 | $2,604 | II |
| 1114/2114/3114 | Reissue search fee  | $2,457 | $2,430 | $2,604 | II |
| **Patent examination fees** |
| 1311/2311/3311 | Utility examination fee | $3,144 | $3,100 | $3,292 | II |
| 1312/2312/3312 | Design examination fee  | $782 | $835 | $857 | II |
| 1313/2313/3313 | Plant examination fee | $3,144 | $3,100 | $3,292 | II |
| 1314/2314/3314 | Reissue examination fee | $3,144 | $3,100 | $3,292 | II |
| **Patent post allowance fees** |  |  |  |  |
| 1501/2501/3501 | Utility issue fee | $431 | $574 | $539 | I |
| 1511/2511/3511 | Reissue issue fee | $431 | $574 | $539 | I |
| 1502/2502/3502 | Design issue fee | $431 | $574 | $539 | I |
| 1503/2503/3503 | Plant issue fee | $431 | $574 | $539 | I |
| N/A | Publication fee for early, voluntary, or normal publication | $230 | $243 | $266 | I |
| 1505/2505/3505 | Publication fee for republication | $188 | $198 | $224 | I |
| 1558/2558/3558 | Petition for the delayed payment of the fee for maintaining a patent in force | $94 | $161 | $133 | I |
| **Miscellaneous patent fees** |  |  |  |  |
| 1801/2801/3801 | Request for continued examination (RCE) - 1st request (see 37 CFR 1.114) | $2,846 | $3,059 | $3,110 | VI |
| 1820/2820/3820 | Request for continued examination (RCE) - 2nd and subsequent request (see 37 CFR 1.114) | $2,130 | $2,191 | $2,258 | VI |
| 1808 | Other publication processing fee | $35 | $27 | $33 | I |
| 1803 | Request for voluntary publication or republication | $94 | $161 | $133 | I |
| 1802/2802/3802 | Request for expedited examination of a design application | $94 | $161 | $133 | I |
| 1807 | Processing fee for provisional applications | $35 | $27 | $33 | I |
| 1809/2809/3809 | Filing a submission after final rejection (see 37 CFR 1.129(a)) | $2,846 | $3,059 | $3,110 | VI |
| 1810/2810/3810 | For each additional invention to be examined (see 37 CFR 1.129(b)) | $2,846 | $3,059 | $3,110 | VI |
| **Post-issuance sees**  |
| 1811 | Certificate of correction | $158 | $181 | $187 | I |
| 1812/2812/3812 | Ex parte reexamination (§1.510(a)) non-streamlined | $47,454 | $40,554 | $39,662 | V |
| 1826/2826/3826 | Request for supplemental examination | $9,980 | $9,703 | $10,629 | V |
| 1827/2827/3827 | Reexamination ordered as a result of supplemental examination | $45,378 | $35,956 | $34,641 | V |
| 1831/2831/3831 | Ex parte reexamination (§1.510(a)) streamlined | N/A | N/A | N/A | N/A |
| **Patent trial and appeals fees** |  |  |  |  |
| 1405 | Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3 | $1,068 | $832 | $1,143 | I |
| 1401/2401/3401 | Notice of appeal **(Ex parte appeal)** | $26 | $28 | $23 | I |
| 1401/2401/3401 | Notice of appeal **(Ex parte reexamination appeal)** | $27 | $53 | N/A | I |
| 1404/2404/3404 | Filing a brief in support of an appeal in an inter partes reexamination proceeding | $30,353 | $24,256 | N/A | I |
| 1403/2403/3403 | Request for oral hearing **(Ex parte appeal)** | $2,259 | $2,254 | $3,395 | V |
| 1413/2413/3413 | Forwarding an Appeal in an Application or Ex Parte Reexamination Proceeding to the Board **(Ex parte appeal)** | $8,169 | $8,770 | $11,043 | V |
| 1413/2413/3413 | Forwarding an appeal in an application or ex parte reexamination proceeding to the Board **(Ex Parte Reexamination Appeal)** | $15,231 | $16,430 | $14,787 | I |
| 1406 | Inter partes review request fee - Up to 20 claims | $23,052 | $21,980 | $26,308 | I |
| 1414 | Inter partes review post-institution fee - Up to 20 claims | $34,245 | $37,563 | $36,371 | I |
| 1408 | Post-grant or covered business method review request fee - Up to 20 claims **(Covered business method)** | $34,287 | $37,683 | $40,100 | IV |
| 1408 | Post-grant or covered business method review request fee - Up to 20 claims **(Post grant review**) | $34,287 | $37,683 | $40,100 | III |
| 1416 | Post-grant or covered business method review post-institution fee - Up to 20 claims **(Covered business method)** | $46,998 | $49,198 | $51,832 | IV |
| 1416 | Post-grant or covered business method review post-institution fee - Up to 20 claims **(Post grant review)** | $46,998 | $49,198 | $51,832 | III |
| 1412 | Petition for a derivation proceeding | N/A | N/A | N/A | N/A |
| **Patent petition fees**  |
| 1453/2453/3453 | Petition for revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, or for the delayed response by the patent owner in any reexamination proceeding | $281 | $376 | $372 | I |
| 1454/2454/3454 | Petition for the delayed submission of a priority or benefit claim | $281 | $376 | $372 | I |
| 1462/2462/3462 | Petitions requiring the petition fee set forth in 37 CFR 1.17(f) (Group I) | $281 | $376 | $372 | I |
| 1463/2463/3463 | Petitions requiring the petition fee set forth in 37 CFR 1.17(g) (Group II) | $281 | $376 | $372 | I |
| 1464/2464/3464 | Petitions requiring the petition fee set forth in 37 CFR 1.17(h) (Group III) | $94 | $161 | $133 | I |
| 1455 | Filing an application for patent term adjustment | $94 | $745 | $812 | III |
| 1456 | Request for reinstatement of term reduced | $94 | $161 | $133 | I |
| 1457 | Application for extension of term of patent | $926 | $2,581 | $2,078 | I |
| 1458 | Initial application for interim extension (see 37 CFR 1.790) | $512 | $2,347 | $364 | I |
| 1459 | Subsequent application for interim extension (see 37 CFR 1.790) | $512 | $2,347 | $364 | I |
| **PCT fees - national stage** |  |  |  |  |
| 1631/2631/3631 | Basic national stage fee | $325 | $343 | $374 | I |
| 1641/2641/3641 | National stage search fee - U.S. was the ISA | $440 | $449 | $457 | II |
| 1642/2642/3642 | National stage search fee - search report prepared and provided to USPTO | $2,457 | $2,430 | $2,604 | II |
| 1632/2632/3632 | National stage search fee - all other situations | $2,457 | $2,430 | $2,604 | II |
| 1633/2633/3633 | National stage examination fee - all other situations | $3,144 | $3,100 | $3,292 | II |
| **PCT fees - international stage** |  |  |  |  |
| 1601/2601/3601 | Transmittal fee | $328 | $320 | $390 | I |
| 1602/2602/3602 | Search fee - regardless of whether there is a corresponding application (see 35 U.S.C. 361(d) and PCT Rule 16) | $1,944 | $1,731 | $1,950 | I |
| 1604/2604/3604 | Supplemental search fee when required, per additional invention | $1,944 | $1,731 | $1,950 | I |
| 1621/2621/3621 | Transmitting application to Intl. Bureau to act as receiving office | $5 | $3 | $3 | I |
| 1605/2605/3605 | Preliminary examination fee - U.S. was the ISA | $1,144 | $1,222 | $1,299 | I |
| 1606/2606/3606 | Preliminary examination fee - U.S. was not the ISA | $1,144 | $1,222 | $1,299 | I |
| 1607/2607/3607 | Supplemental examination fee per additional invention | $1,144 | $1,222 | $1,299 | I |
| **Patent enrollment fees** |
| 9001 | Application fee (non-refundable) | $341 | $362 | $369 | III |
| 9003 | On registration to practice under §11.6 | $622 | $652 | $665 | III |
| 9005 | Certificate of good standing as an attorney or agent, standard | $56 | $60 | $62 | III |
| 9006 | Certificate of good standing as an attorney or agent, suitable for framing | $67 | $71 | $73 | III |
| 9010 | For test administration by commercial entity | $649 | $718 | $738 | III |
| 9012 | Review of decision by the Director of Enrollment and Discipline under §11.2(c) | $2,500 | $2,608 | $2,651 | III |
| 9013 | Review of decision of the Director of Enrollment and Discipline under §11.2(d) | $2,398 | $2,510 | $2,548 | III |
| 9014 | On petition for reinstatement by a person excluded or suspended on ethical grounds, or excluded on consent from practice before the Office | $4,357 | $4,599 | $4,677 | III |
| 9004 | Administrative reinstatement fee | $1,161 | $1,212 | $1,234 | III |
| 9020 | Delinquency fee | $333 | $353 | $360 | III |
| 9024 | Unspecified other services, excluding labor | N/A | $114 | $118 | III |
| 9026 | On grant of limited recognition under §11.9(b) | $1,263 | $1,338 | $1,368 | III |
| 9028 | For USPTO-assisted change of address within the Office of Enrollment and Discipline Information System | $19 | $20 | $21 | III |
| 9029 | For USPTO-administered review of registration examination | $703 | $777 | $799 | III |
| 9030 | Request for extension of time in which to schedule examination for registration to practice (non-refundable) | $108 | $120 | $123 | III |

1. In this document, when Patents or the Patents business unit is mentioned, both Patents and the Patent Trial and Appeal Board (PTAB) are included. [↑](#footnote-ref-2)
2. Those activities with an asterisk in the table are examination activities captured in the annual examiner survey. PCT Chapter IIs are rolled up under 2.08. The activities with two asterisks in the table are new as of FY 2021.

Process 7 - Patent Trial and Appeals Board activities have been expanded into Table 2. [↑](#footnote-ref-3)
3. In FY2021, the Patent Examiners began recording their time for the activities “Classification and Assignment by Art Unit”, “Analyze New Application - Restrictions/Unity of Invention”, and “Applicant Interviews” as an examination attribute. The attribute values are assigned when an initial First Action on the Merits (FAOM) is approved for credit for an application. [↑](#footnote-ref-4)
4. Fee calculation methodology column identifies the approach used in the most recent calculation listed*.* The fee unit expense calculation methodologies include:

	1. Total Activity Unit Expense
	2. Total Activity Unit Expense Adjusted for Frequency of Occurrence
	3. Expense Build-up
	4. Similar Work Estimation
	5. Hybrid—Expense Build-up and Activity Unit Expense
	6. Incremental Expense*Note:* *“n/a” identifies those fee codes for which ABI does not calculate a specific unit expense since they may be: 1) a new fee code with no historical cost data, 2) a fee code with zero or very low workload/usage, and/or 3) a fee code which does not lend itself to unit costing as related costs are not easily severable from larger activity costs.* [↑](#footnote-ref-5)