

September 13, 2018

Via Electronic Delivery
fee.setting@uspto.gov.

United States Patent and Trademark Office
Mail Stop CFO
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Brendan Hourigan, Director, Office of Planning and Budget, Office of the Chief Financial Officer, USPTO

RE: Fee Setting, Comments Concerning Proposed Fee Increases

Dear Mr. Hourigan:

Schwegman Lundberg & Woessner, P.A. ("SLW") thanks the United States Patent and Trademark Office ("the Office") for the opportunity to comment on its proposed patent fee schedule. We request that the Office consider the following:

I. Negative Impact on Fee Collections

The Office finished FY 2017 below the minimum level for the patent operating reserve and doesn't expect to surpass the minimum level until FY 2021.¹ Patent filings decreased in FY 2017 over FY 2016, and in FY 2015 over FY 2014. Utility Patent Applications of U.S. Origin have been stagnant since 2013.² The Office continues to project increases in patent filings. However, given recent changes in the law and application of those changes by the Office in technology areas exhibiting growth in the United States, such projected increases are not certain. Additional burdens to patenting in those technology may further inhibit innovation, subverting a primary purpose of patents.

¹ See PPAC Executive Summary, August 2018, https://www.uspto.gov/sites/default/files/documents/PPAC_Executive_Summary.pptx.

² See U.S. Patent Statistics Report 2015, https://www.uspto.gov/web/offices/ac/ido/oeip/taf/us_stat.htm.

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Where services require additional costs, fee increases are warranted. However, across-the-board increases may not serve this purpose. Specifically, the proposed 20% and 25% increases in Utility and Reissue Issue Fees and the 3.5-year Maintenance Fee unduly burden applicant good behavior. Increasing fees for all assets, at this point, may provide additional motivation for domestic patent filers to further trim patent assets, resulting in a cumulative loss in collections for the USPTO.

We desire a strong and healthy USPTO, but question the timing, breadth, and targets of the proposed fee increases.

Respectfully submitted,

/Steven W Lundberg/

Steven W Lundberg
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