

material is processed in a comparable fabrication process that uses only virgin material or a combination of virgin and non-virgin material. For example, if new paper is fabricated entirely from re-pulped, non-virgin material, the recovery process ends immediately before the non-virgin material is processed in the same or substantially the same manner that virgin material is processed in the fabrication of paper made only with virgin material, or with a mixture of virgin and non-virgin material.

(3) *Refurbishing, repair, or similar activities.* Refurbishing, repair, or similar activities are not recovery processes.

(g) *Transformation process.* [Reserved].

(h) *Mixed-function facilities*—(1) *In general.* Except to the extent provided in paragraph (h)(2) of this section, if a facility is used to perform both a solid waste disposal function or a preliminary function and another function, then the costs of the facility allocable to the solid waste disposal function or the preliminary function are determined using any reasonable method, based on all the facts and circumstances. See § 1.103–8(a)(1) for rules relating to which amounts are used to provide an exempt facility.

(2) *Mixed inputs*—(i) *In general.* Except as provided in paragraph (h)(2)(ii) of this section, for each final disposal process, conversion process, recovery process, or transformation process, the percentage of costs of the property used to perform such process that are allocable to a solid waste disposal function equals the lowest percentage of solid waste processed in that process in any year while the issue is outstanding. The percentage of solid waste processed in such process for any year is the percentage, by weight or volume, of the total materials processed in that process that constitute solid waste for that year.

(ii) *Special rule for mixed-input processes if at least 80 percent of the materials processed are solid waste.* For each final disposal process, conversion process, recovery process, or transformation process, all of the costs of the property used to perform such process are allocable to a solid waste disposal function if, for each year while the issue is outstanding, solid waste constitutes at least 80 percent, by weight or volume, of the total materials processed in the process.

(i) *Examples.* The following examples illustrate the application of this section:

*Example 1. Final disposal process.* Garbage trucks collect solid material at curbside from

businesses and residences and dump the material in a landfill owned by Company A. The landfill is not subject to final permit requirements under subtitle C of title II of the Solid Waste Disposal Act (as in effect on the date of the enactment of the Tax Reform Act of 1986). The placement of material in the landfill is a final disposal process. The solid material placed in the landfill is solid waste under paragraph (c) of this section. Therefore, the landfill is a solid waste disposal facility.

*Example 2. Recovery process.* Company B re-pulps magazines and cleans the pulp. After cleaning, B mixes the pulp with virgin material and uses the mixed material to produce rolls of paper towels. Before the mixing, the re-pulped material is not processed in the same or substantially the same way that virgin material is processed to produce the paper towels. The process starting with the re-pulping of the magazines and ending immediately before the re-pulped material is mixed with the virgin material is a recovery process. The magazines introduced into the recovery process are solid waste. Therefore, the property that re-pulps the magazines and the property that cleans the re-pulped material are used to perform a solid waste disposal function.

*Example 3. Preliminary function.* Company C owns a paper mill. At the mill, logs from nearby timber operations are processed through a machine that removes bark. The stripped logs are used to manufacture paper. The stripped bark falls onto a conveyor belt that transports the bark to a storage bin used to briefly store the bark until C feeds the bark into a boiler. The conveyor belt and storage bin are used only for these purposes. The boiler is used only to create steam by burning the bark, and the steam is used to generate electricity. The creation of steam from the stripped bark is a conversion process that starts with the incineration of the stripped bark. The conversion process is a solid waste disposal function. The conveyor belt performs a collection activity that is preliminary and that is directly related to the solid waste disposal function. The storage bin performs a storage function that is preliminary and that is directly related to the solid waste disposal function. Thus, the conveyor belt and storage bin are solid waste disposal facilities. The removal of the bark does not have a sufficient nexus to the conversion process to be directly related to the conversion process; the process of removing the bark does not become directly related to the conversion process merely because it results in material that will be waste used in the conversion process.

*Example 4. Mixed-input facility.* Company D owns an incinerator financed by an issue and uses the incinerator exclusively to burn coal (a fossil fuel) and other solid material to create steam that is used to generate electricity. Each year while the issue is outstanding, 30 percent by volume and 40 percent by weight of the solid material that D processes in the conversion process is a fossil fuel. The remainder of the solid material processed is neither a fossil fuel nor material that was grown, harvested, produced, mined, or otherwise created for the principal purpose of converting the

material to heat, hot water, steam, or another useful form of energy. Seventy percent of the costs of the property used to perform the conversion process are allocable to a solid waste disposal function.

*Example 5. Mixed-function facility.* Company E owns and operates a facility financed by an issue and uses the facility exclusively to sort damaged bottles from bottles that may be re-filled. The damaged bottles are directly introduced into a process that melts them for use in the fabrication of an end product. The melting process is a recovery process. Each year while the issue is outstanding, more than 50 percent, by weight or volume, of all of the bottles that pass out of the sorting process are damaged bottles that are processed in a recovery process. The sorting facility performs a preliminary function, but it also performs another function. The costs of the sorting facility allocable to the preliminary function are determined using any reasonable method, based on all the facts and circumstances.

(j) *Effective date*—(1) *In general.* Except as provided in paragraph (j)(2) of this section, this section applies to bonds that are—

(i) Sold on or after the date that is 60 days after the date of publication of final regulations in the **Federal Register**; and

(ii) Subject to section 142.

(2) *Certain refunding bonds.* An issuer is not required to apply this section to bonds described in paragraph (j)(1) of this section that are issued to refund a bond to which this section does not apply if the weighted average maturity of the refunding bonds is not longer than the weighted average maturity of the refunded bonds.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. 04–10500 Filed 5–5–04; 2:45 pm]

BILLING CODE 4930–01–P

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Part 1

#### RIN 0651–AB70

### Revision of Patent Fees for Fiscal Year 2005

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

**ACTION:** Proposed rule.

**SUMMARY:** The United States Patent and Trademark Office (referred to as “we”, “us”, or “our” in this notice) is proposing to adjust certain patent fee amounts to reflect fluctuations in the Consumer Price Index (CPI). Also, we are proposing to adjust, by a corresponding amount, a few patent fees

that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

Legislation has been proposed and passed by the House of Representatives that would alter our fee amounts and procedures. The United States Patent and Trademark Fee Modernization Act of 2004 (H.R. 1561) passed the House of Representatives on March 3, 2004. Similar legislation is pending in the Senate as S. 1760. If enacted, this legislation would supersede certain patent fee amounts identified in this proposed rule.

**DATES:** Comments must be submitted on or before June 9, 2004.

**ADDRESSES:** You may submit comments, identified by RIN number 0651-AB70, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:*

*Tamara.McClure@uspto.gov*. Include RIN number 0651-AB70 in the subject line of the message.

- *Fax:* (703) 308-5077, marked to the attention of Tamara McClure.

- *Mail:* Mail Stop 16, Director of the U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450, marked to the attention of Tamara McClure.

**Instructions:** All submissions received must include the agency name and Regulatory Information Number (RIN) for this rule making. For additional information on the rule making process, see the heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:**

Tamara McClure by e-mail at *Tamara.McClure@uspto.gov*, by telephone at (703) 308-5075, or by fax at (703) 308-5077.

**SUPPLEMENTARY INFORMATION:** This proposed rule would adjust our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Pub. L. 106-113). This proposed rule would also adjust, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

Legislation has been proposed and passed by the House of Representatives that would alter our fee amounts and procedures. The United States Patent and Trademark Fee Modernization Act of 2004 (H.R. 1561) passed the House of

Representatives on March 3, 2004. Similar legislation is pending in the Senate as S. 1760. Customers should be aware that legislative changes to our fees would supersede certain patent fees in this proposed rule. If such legislative changes occur, we will need to make corresponding changes to the rules of practice to conform them to the fees as set forth in such legislation. Customers may wish to refer to our official Web site at <http://www.uspto.gov> for the most current fee amounts.

## Background

### Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b) and 132(b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for standard library service.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

### Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted on October 1, 2004, to reflect fluctuations occurring during the twelve-month period from October 1, 2003, through September 30, 2004, in the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI-U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this fee adjustment on the Administration's projected CPI-U for the twelve-month period ending September 30, 2004, which is 1.1 percent. Based on this projected CPI-U,

patent statutory fees are proposed to be adjusted by 1.1 percent. Before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI-U published by the Secretary of Labor.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103-465 (the Uruguay Round Agreements Act) are proposed to be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded will be convenient to the user. Fees for other than a small entity of \$100 or more were rounded to the nearest \$10. Fees of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number.

### General Procedures

Any fee amount that is paid on or after the effective date of the proposed fee adjustment would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. See 37 CFR 1.8(a)(2).

Patent-related correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. See 37 CFR 1.10(a)(1). The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

To ensure clarity in the implementation of the proposed new fees, a discussion of specific sections is set forth below.

## Discussion of Specific Rules

### 37 CFR 1.16 National application filing fees

Section 1.16, paragraphs (a), (g) and (h), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.17 Patent application and reexamination processing fees*

Section 1.17, paragraphs (a)(3) through (a)(5), (e), (m), and (r) through (t), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.18 Patent post allowance (including issue) fees*

Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.20 Post issuance fees*

Section 1.20, paragraphs (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

*37 CFR 1.492 National stage fees*

Section 1.492, paragraphs (a)(1) through (a)(3), and (a)(5) if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

**Other Considerations**

This proposed rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)).

By statute, the USPTO's Director is expressly authorized to adjust fees annually to reflect fluctuations in the CPI. See 35 U.S.C. 41(f) (certain fees "may be adjusted by the Director on October 1, 1992, and every year thereafter, to reflect any fluctuations occurring during the previous 12 months in the Consumer Price Index, as determined by the Secretary of Labor").

The proposed rule increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). The fee increases would range from a minimum of \$10 to a maximum of \$40 under the proposed rule.

Under 35 U.S.C. 41(h)(1) small entities are accorded a fifty-percent reduction in most patent fees. Consequently, the small entity fee increases would range from a minimum of \$5 to a maximum of \$20 under the

proposed rule. The sole exception under this proposed rule package is the fee set forth under 35 CFR 1.17(t), which does not qualify for a small entity fee reduction. The fee increase for 35 CFR 1.17(t) is only \$10.

Accordingly, the proposed rule does not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 37 CFR Part 1**

Administrative practice and procedure, Patents.

For the reasons set forth in the preamble, we are proposing to amend title 37 of the Code of Federal Regulations, Part 1, as set forth below.

**PART 1—RULES OF PRACTICE IN PATENT CASES**

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

**Authority:** 35 U.S.C. 2, unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (g), and (h) to read as follows:

**§ 1.16 National application filing fees.**

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:		
By a small entity		
(\$ 1.27(a)) .....	\$390.00	
By other than a small entity .....	\$780.00	
* * * * *		
(g) Basic fee for filing each plant application, except provisional applications:		
By a small entity		
(\$ 1.27(a)) .....	\$270.00	
By other than a small entity .....	\$540.00	
(h) Basic fee for filing each reissue application:		
By a small entity		
(\$ 1.27(a)) .....	\$390.00	
By other than a small entity .....	\$780.00	
* * * * *		

3. Section 1.17 is proposed to be amended by revising paragraphs (a)(3) through (a)(5), (e), (m), and (r) through (t) to read as follows:

**§ 1.17 Patent application and reexamination processing fees.**

(a) * * *		
(1) * * *		
(2) * * *		
(3) For reply within third month:		
By a small entity		
(\$ 1.27(a)) .....	\$480.00	
By other than a small entity .....	\$960.00	

(4) For reply within fourth month:		
By a small entity		
(\$ 1.27(a)) .....	\$750.00	
By other than a small entity .....	\$1,500.00	
(5) For reply within fifth month:		
By a small entity		
(\$ 1.27(a)) .....	\$1,020.00	
By other than a small entity .....	\$2,040.00	
* * * * *		
(e) To request continued examination pursuant to § 1.114:		
By a small entity		
(\$ 1.27(a)) .....	\$390.00	
By other than a small entity .....	\$780.00	
* * * * *		
(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):		
By a small entity		
(\$ 1.27(a)) .....	\$670.00	
By other than a small entity .....	\$1,340.00	
* * * * *		
(r) For entry of a submission after final rejection under § 1.129(a):		
By a small entity		
(\$ 1.27(a)) .....	\$390.00	
By other than a small entity .....	\$780.00	
(s) For each additional invention requested to be examined under § 1.129(b):		
By a small entity		
(\$ 1.27(a)) .....	\$390.00	
By other than a small entity .....	\$780.00	
(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c):		
(\$§ 1.55 and 1.78) .....	\$1,340.00	

4. Section 1.18 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

**§ 1.18 Patent post allowance (including issue) fees.**

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:		
By a small entity		
(\$ 1.27(a)) .....	\$670.00	
By other than a small entity .....	\$1,340.00	
(b) Issue fee for issuing a design patent:		

By a small entity (§ 1.27(a)) .....	\$245.00
By other than a small entity .....	\$490.00
(c) Issue fee for issuing a plant patent:	
By a small entity (§ 1.27(a)) .....	\$325.00
By other than a small entity .....	\$650.00
* * * * *	

5. Section 1.20 is proposed to be amended by revising paragraphs (e) through (g) to read as follows:

**§ 1.20 Post issuance fees.**

\* \* \* \* \*

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:	
By a small entity (§ 1.27(a)) .....	\$460.00
By other than a small entity .....	\$920.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:	
By a small entity (§ 1.27(a)) .....	\$1,055.00
By other than a small entity .....	\$2,110.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:	
By a small entity (§ 1.27(a)) .....	\$1,630.00
By other than a small entity .....	\$3,260.00
* * * * *	

6. Section 1.492 is proposed to be amended by revising paragraphs (a)(1) through (a)(3) and (a)(5) to read as follows:

**§ 1.492 National stage fees.**

\* \* \* \* \*

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.27(a)) .....	\$370.00
By other than a small entity .....	\$740.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:	
By a small entity (§ 1.27(a)) .....	\$390.00
By other than a small entity .....	\$780.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:	
By a small entity (§ 1.27(a)) .....	\$545.00
By other than a small entity .....	\$1,090.00

\* \* \* \* \*

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:	
By a small entity (§ 1.27(a)) .....	\$465.00
By other than a small entity .....	\$930.00
* * * * *	

Dated: May 4, 2004.

**Jon W. Dudas,**  
*Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.*

[FR Doc. 04-10572 Filed 5-7-04; 8:45 am]

**BILLING CODE 3510-16-P**

**POSTAL SERVICE**

**39 CFR Part 501**

**Authorization to Manufacture and Distribute Postage Meters**

**AGENCY:** Postal Service.  
**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule amends the regulations that define a postage meter and its components and a manufacturer and/or distributor of postage meters. The proposed rule also puts forth the responsibilities of any authorized person or entity to notify the Postal Service upon a change in ownership or control, or bankruptcy or insolvency, and identifies factors the Postal Service will consider in acting upon requests for changes of approval or ownership or control of an approved manufacturer or distributor.

**DATES:** Comments must be received on or before July 9, 2004.

**FOR FURTHER INFORMATION CONTACT:** Wayne Wilkerson, manager of Postage Technology Management, by fax at 703-292-4050.

**SUPPLEMENTARY INFORMATION:** Title 39, Code of Federal Regulations (CFR) Part 501, Authorization to Manufacture and Distribute Postage Meters, expands the definition of a postage meter and its components to include all postage evidencing systems that produce evidence of prepayment of postage by any method other than postage stamps or permit imprints. This part also expands the activities of persons or entities that must be approved by the Postal Service. These changes are required to address the evolution in postage evidencing technology in recent years. The events requiring notification to the Postal Service are hereby expanded to include changes in the financial condition of the authorized party, such as bankruptcy and insolvency as well as a change in ownership or control.

**List of Subjects in 39 CFR Part 501**

Administrative practice and procedure, Postal Service.

**The Amendment**

For the reasons set out in this document, the Postal Service is proposing to amend 39 CFR part 501 as follows:

**PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS**

1. The authority citation for part 501 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95-452, as amended), 5 U.S.C. App. 3.

2. Amend § 501.1 by replacing the title and all text to read as follows: