

## **Notice of Patent Fee Changes under the Leahy-Smith America Invents Act**

**SUMMARY:** The USPTO is publishing this notice to specify the patent fee amounts that are in effect on **September 26, 2011**, by operation of the fifteen percent surcharge provided for in section 11(i) and the prioritized examination fee provided for in section 11(h) of the Leahy-Smith America Invents Act (Pub. L. 112-29). This notice also specifies the additional fee for applications not filed by the USPTO's electronic filing system (EFS-Web) that is in effect on **November 15, 2011**, by operation of section 10(h) of the Leahy-Smith America Invents Act.

**DISCUSSION:** Sections 11(a) through (e) of the Leahy-Smith America Invents Act generally codify the patent fee provisions of the fiscal year 2005 Consolidated Appropriations Act (Pub. L. 108-447), with the patent fee amounts in effect on the date of enactment of the Leahy-Smith America Invents Act. Sections 11(a) through (e) of the Leahy-Smith America Invents Act also delete provisions pertaining to applicant-provided search reports and search reports acquired from a qualified search authority, and reorganize a few of the patent fee provisions of the fiscal year 2005 Consolidated Appropriations Act. The Leahy-Smith America Invents Act includes the following additional changes to patent fees:

First, section 11(i) of the Leahy-Smith America Invents Act provides that there shall be a surcharge of 15 percent, rounded by standard arithmetic rules, on all fees charged or authorized by 35 U.S.C. 41(a), (b) and (d)(1), as well as by 35 U.S.C. 132(b). Section

11(i) also provides that this 15 percent surcharge is effective ten days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.*, September 26, 2011).

Second, section 11(h) of the Leahy-Smith America Invents Act includes provisions for prioritized examination, which include a fee of \$4,800 (\$2,400 for small entities).

Section 11(h) also provides that the prioritized examination provisions are effective ten days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.*, September 26, 2011). The prioritized examination provisions of section 11(h) of the Leahy-Smith America Invents Act are being implemented in a separate final rule making.

Third, section 10(h) of the Leahy-Smith America Invents Act provides that an additional fee of \$400 shall be established for each application for an original (*i.e.*, non-reissue) patent, except for a design, plant, or provisional application, that is not filed by electronic means as prescribed by the Director of the United States Patent and Trademark Office (USPTO). Section 10(h) also provides that this fee is reduced by 50 percent for small entities under 35 U.S.C. 41(h)(1). Additionally, section 10(h) provides that this new fee is effective sixty days after the date of enactment of the Leahy-Smith America Invents Act (*i.e.*, November 15, 2011).

The USPTO is publishing this notice to specify the patent fee amounts that are in effect ten days after the date of enactment of the Leahy-Smith America Invents Act by operation of the fifteen percent surcharge provided for in section 11(i) and the prioritized examination fee provided for in Section 11(h). This notice also specifies the additional

fee for applications not filed by electronic means in effect sixty days after the date of enactment of the Leahy-Smith America Invents Act by operation of section 10(h).

The fees for the new programs provided for in the Leahy-Smith America Invents Act (e.g., post-grant review, *inter partes* review, supplemental examination) and other fee changes authorized by the Leahy-Smith America Invents Act will be implemented in separate rule makings.

*I. Fee Rounding:* As provided for in section 11(i) of the Leahy-Smith America Invents Act, the adjusted patent fee amounts were rounded by applying standard arithmetic rules. For years, the USPTO has utilized a method of rounding whereby fees for other than a small entity of \$100 or more were rounded to the nearest \$10, and fees for other than a small entity of less than \$100 were rounded to an even number so that any comparable small entity fee will be a whole number. *See, e.g., Patent Fees*, 55 FR 49040 (Nov. 26, 1990) (interim rule) (implementing identical surcharge language pursuant to the Omnibus Budget Reconciliation Act of 1990); *see also Revision of Patent Fees for Fiscal Year 2005*, 69 FR 52604 (Aug. 27, 2004) (final rule) (adjusting certain patent fee amounts to reflect fluctuations in the Consumer Price Index); *Revision of Patent Fees for Fiscal Year 2007*, 72 FR 46899 (Aug. 22, 2007) (final rule); *Revision of Patent Fees for Fiscal Year 2009*, 73 FR 47534 (Aug. 14, 2008) (final rule).

*II. Applicable Fee Amount:* The applicable fee amount is the fee amount in effect on the day the fee is paid in full. The day a fee is paid is the date of receipt of the fee payment in the USPTO under 37 CFR 1.6, or the date reflected on a proper certificate of mailing or

transmission for the fee payment, 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 37 CFR 1.8, *e.g.*, the filing of a national or international application for a patent. *See* 37 CFR 1.8(a)(2). The date of receipt under 37 CFR 1.6 of patent-related correspondence delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) is the date of deposit of the correspondence with the USPS. *See* 37 CFR 1.6(a)(2) and 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. *See* 37 CFR 1.10(a)(2).

Applicants are encouraged to provide authorization in the application file to charge fees to a specified Deposit Account to avoid insufficient payment of fees due to inadvertent payment of fee amounts that are in effect on September 25, 2011, instead of the fee amounts effective September 26, 2011. Authorization to charge patent fees by reference to Code of Federal Regulations (CFR) section will be treated as authority to charge the applicable patent fee amount in effect by operation of the Leahy-Smith America Invents Act.

*III. Micro Entity Reduction:* The micro entity reduction provided for in section 10(b) of the Leahy-Smith America Invents Act for micro entities as defined by new 35 U.S.C. 123 applies only to the fees set or adjusted by the USPTO under section 10(a) of the Leahy-Smith America Invents Act. Thus, the micro entity reduction is **not** applicable to any of the fees shown in Tables 1-6 or any fee currently in effect.

*IV. Table of Fees:* The changes to the fee amounts currently indicated in 37 CFR 1.16 are shown in table 1. Note that the fees effective September 26, 2011, are listed in the right columns of Tables 1-6 and are fifteen percent higher than the fees listed in the column to the left due to the fifteen percent surcharge provided for in the Leahy-Smith America Invents Act. The column to the left titled “October 1, 2010 Amount” shows the fees in effect from October 1, 2010 - September 25, 2011. The small entity reductions in fees under 35 U.S.C. 41(h) are available under the conditions specified in 37 CFR 1.27.

Tables 1-6 in this notice do not comprise the entire USPTO fee schedule because only fees affected by the fifteen percent surcharge are listed. The entire USPTO fee schedule in effect as of September 26, 2011, is available on the USPTO’s Web site (Revised USPTO Fee Schedule effective September 26, 2011).

**Table 1:**

<b>CFR section</b>	<b>Fee Code</b>	<b>Description</b>	<b>October 1, 2010 Amount (i.e., pre-enactment)</b>	<b>September 26, 2011 Amount (i.e., post-enactment)</b>
1.16(a)(1)	1011	Filing of Utility Patent Application	\$330.00	\$380.00
1.16(a)(1)	2011	Filing of Utility Patent Application	\$165.00	\$190.00
1.16(a)(1)	4011	Electronic Filing of Utility Patent Application	\$82.00	\$95.00
1.16(b)(1)	1012	Filing of Design Patent Application	\$220.00	\$250.00
1.16(b)(1)	2012	Filing of Design Patent Application	\$110.00	\$125.00
1.16(b)(1)	1017	CPA - Design Filing	\$220.00	\$250.00

1.16(b)(1)	2017	CPA - Design Filing	\$110.00	\$125.00
1.16(c)(1)	1013	Filing of Plant Patent Application	\$220.00	\$250.00
1.16(c)(1)	2013	Filing of Plant Patent Application	\$110.00	\$125.00
1.16(d)	1005	Provisional Application Filing	\$220.00	\$250.00
1.16(d)	2005	Provisional Application Filing	\$110.00	\$125.00
1.16(e)(1)	1014	Filing of Reissue Patent Application	\$330.00	\$380.00
1.16(e)(1)	2014	Filing of Reissue Patent Application	\$165.00	\$190.00
1.16(e)(1)	1019	CPA - Reissue Filing	\$330.00	\$380.00
1.16(e)(1)	2019	CPA - Reissue Filing	\$165.00	\$190.00
1.16(h)	1201	Independent Claims in Excess of Three	\$220.00	\$250.00
1.16(h)	2201	Independent Claims in Excess of Three	\$110.00	\$125.00
1.16(h)	1204	Reissue Independent Claims in Excess of Three	\$220.00	\$250.00
1.16(h)	2204	Reissue Independent Claims in Excess of Three	\$110.00	\$125.00
1.16(i)	1202	Total Claims in Excess of Twenty	\$52.00	\$60.00
1.16(i)	2202	Total Claims in Excess of Twenty	\$26.00	\$30.00
1.16(i)	1205	Reissue Total Claims in Excess of Twenty	\$52.00	\$60.00
1.16(i)	2205	Reissue Total Claims in Excess of Twenty	\$26.00	\$30.00
1.16(j)	1203	Multiple Dependent Claims	\$390.00	\$450.00
1.16(j)	2203	Multiple Dependent Claims	\$195.00	\$225.00
1.16(k)	1111	Search of Utility Patent Application	\$540.00	\$620.00
1.16(k)	2111	Search of Utility Patent Application	\$270.00	\$310.00
1.16(l)	1112	Search of Design Patent Application	\$100.00	\$120.00
1.16(l)	2112	Search of Design Patent Application	\$50.00	\$60.00

1.16(m)	1113	Search of Plant Patent Application	\$330.00	\$380.00
1.16(m)	2113	Search of Plant Patent Application	\$165.00	\$190.00
1.16(n)	1114	Search of Reissue Patent Application	\$540.00	\$620.00
1.16(n)	2114	Search of Reissue Patent Application	\$270.00	\$310.00
1.16(o)	1311	Examination of Utility Patent Application	\$220.00	\$250.00
1.16(o)	2311	Examination of Utility Patent Application	\$110.00	\$125.00
1.16(p)	1312	Examination of Design Patent Application	\$140.00	\$160.00
1.16(p)	2312	Examination of Design Patent Application	\$70.00	\$80.00
1.16(q)	1313	Examination of Plant Patent Application	\$170.00	\$200.00
1.16(q)	2313	Examination of Plant Patent Application	\$85.00	\$100.00
1.16(r)	1314	Examination of Reissue Patent Application	\$650.00	\$750.00
1.16(r)	2314	Examination of Reissue Patent Application	\$325.00	\$375.00
1.16(s)	1081	Utility Application Size	\$270.00	\$310.00
1.16(s)	2081	Utility Application Size	\$135.00	\$155.00
1.16(s)	1082	Design Application Size	\$270.00	\$310.00
1.16(s)	2082	Design Application Size	\$135.00	\$155.00
1.16(s)	1083	Plant Application Size	\$270.00	\$310.00
1.16(s)	2083	Plant Application Size	\$135.00	\$155.00
1.16(s)	1084	Reissue Application Size	\$270.00	\$310.00
1.16(s)	2084	Reissue Application Size	\$135.00	\$155.00
1.16(s)	1085	Provisional Application Size	\$270.00	\$310.00
1.16(s)	2085	Provisional Application Size	\$135.00	\$155.00

The changes to the fee amounts currently indicated in 37 CFR 1.17 are shown in table 2.

**Table 2:**

<b>CFR section</b>	<b>Fee Code</b>	<b>Description</b>	<b>October 1, 2010 Amount (i.e., pre-enactment)</b>	<b>September 26, 2011 Amount (i.e., post-enactment)</b>
1.17(a)(1)	1251	Extension for Response within First Month	\$130.00	\$150.00
1.17(a)(1)	2251	Extension for Response within First Month	\$65.00	\$75.00
1.17(a)(2)	1252	Extension for Response within Second Month	\$490.00	\$560.00
1.17(a)(2)	2252	Extension for Response within Second Month	\$245.00	\$280.00
1.17(a)(3)	1253	Extension for Response within Third Month	\$1,110.00	\$1,270.00
1.17(a)(3)	2253	Extension for Response within Third Month	\$555.00	\$635.00
1.17(a)(4)	1254	Extension for Response within Fourth Month	\$1,730.00	\$1,980.00
1.17(a)(4)	2254	Extension for Response within Fourth Month	\$865.00	\$990.00
1.17(a)(5)	1255	Extension for Response within Fifth Month	\$2,350.00	\$2,690.00
1.17(a)(5)	2255	Extension for Response within Fifth Month	\$1,175.00	\$1,345.00
1.17(c)	1817	Request for Prioritized Examination	N/A	\$4,800.00
1.17(c)	2817	Request for Prioritized Examination	N/A	\$2,400.00
1.17(e)	1801	Request for Continued Examination	\$810.00	\$930.00
1.17(e)	2801	Request for Continued Examination	\$405.00	\$465.00
1.17(l)	1452	Petition to Revive Unavoidably Abandoned Application	\$540.00	\$620.00
1.17(l)	2452	Petition to Revive Unavoidably Abandoned Application	\$270.00	\$310.00



1.17(m)	1453	Petition to Revive Unintentionally Abandoned Application	\$1,620.00	\$1,860.00
1.17(m)	2453	Petition to Revive Unintentionally Abandoned Application	\$810.00	\$930.00

The changes to the fee amounts currently indicated in 37 CFR 1.18 are shown in table 3.

**Table 3:**

<b>CFR section</b>	<b>Fee Code</b>	<b>Description</b>	<b>October 1, 2010 Amount (i.e., pre-enactment)</b>	<b>September 26, 2011 Amount (i.e., post-enactment)</b>
1.18(a)	1501	Utility Issue	\$1,510.00	\$1,740.00
1.18(a)	2501	Utility Issue	\$755.00	\$870.00
1.18(a)	1511	Reissue Issue	\$1,510.00	\$1,740.00
1.18(a)	2511	Reissue Issue	\$755.00	\$870.00
1.18(b)	1502	Design Issue	\$860.00	\$990.00
1.18(b)	2502	Design Issue	\$430.00	\$495.00
1.18(c)	1503	Plant Issue	\$1,190.00	\$1,370.00
1.18(c)	2503	Plant Issue	\$595.00	\$685.00

The changes to the fee amounts currently indicated in 37 CFR 1.20 are shown in table 4.

**Table 4:**

<b>CFR section</b>	<b>Fee Code</b>	<b>Description</b>	<b>October 1, 2010 Amount (i.e., pre-enactment)</b>	<b>September 26, 2011 Amount (i.e., post-enactment)</b>
1.20(c)(3)	1821	Reexamination Independent Claims in Excess of Three	\$220.00	\$250.00
1.20(c)(3)	2821	Reexamination Independent Claims in Excess of Three	\$110.00	\$125.00

1.20(c)(4)	1822	Reexamination Total Claims in Excess of Twenty	\$52.00	\$60.00
1.20(c)(4)	2822	Reexamination Total Claims in Excess of Twenty	\$26.00	\$30.00
1.20(d)	1814	Statutory disclaimer	\$140.00	\$160.00
1.20(d)	2814	Statutory disclaimer	\$70.00	\$80.00
1.20(e)	1551	First Stage Maintenance	\$980.00	\$1,130.00
1.20(e)	2551	First Stage Maintenance	\$490.00	\$565.00
1.20(f)	1552	Second Stage Maintenance	\$2,480.00	\$2,850.00
1.20(f)	2552	Second Stage Maintenance	\$1,240.00	\$1,425.00
1.20(g)	1553	Third Stage Maintenance	\$4,110.00	\$4,730.00
1.20(g)	2553	Third Stage Maintenance	\$2,055.00	\$2,365.00
1.20(h)	1554	First Stage Maintenance Grace Period Surcharge	\$130.00	\$150.00
1.20(h)	2554	First Stage Maintenance Grace Period Surcharge	\$65.00	\$75.00
1.20(h)	1555	Second Stage Maintenance Grace Period Surcharge	\$130.00	\$150.00
1.20(h)	2555	Second Stage Maintenance Grace Period Surcharge	\$65.00	\$75.00
1.20(h)	1556	Third Stage Maintenance Grace Period Surcharge	\$130.00	\$150.00
1.20(h)	2556	Third Stage Maintenance Grace Period Surcharge	\$65.00	\$75.00

The changes to the fee amounts currently indicated in 37 CFR 1.492 are shown in table 5.

**Table 5:**

<b>CFR section</b>	<b>Fee Code</b>	<b>Description</b>	<b>October 1, 2010 Amount (i.e., pre-enactment)</b>	<b>September 26, 2011 Amount (i.e., post-enactment)</b>
1.492(a)	1631	Filing of PCT National Stage Application	\$330.00	\$380.00
1.492(a)	2631	Filing of PCT National Stage Application	\$165.00	\$190.00
1.492(b)(1)	1640	PCT National Stage Search - US was ISA or IPEA and All Claims Satisfy PCT Article	\$0.00	\$0.00

1.492(b)(1)	2640	PCT National Stage Search - USPTO was ISA or IPEA and All Claims Satisfy PCT Article	\$0.00	\$0.00
1.492(b)(2)	1641	PCT National Stage Search - US was the ISA	\$100.00	\$120.00
1.492(b)(2)	2641	PCT National Stage Search - US was the ISA	\$50.00	\$60.00
1.492(b)(3)	1642	PCT National Stage Search - Search Report Prepared and Provided to USPTO	\$430.00	\$490.00
1.492(b)(3)	2642	PCT National Stage Search - Search Report Prepared and Provided to USPTO	\$215.00	\$245.00
1.492(b)(4)	1632	PCT National Stage Search - All Other Situations	\$540.00	\$620.00
1.492(b)(4)	2632	PCT National Stage Search - All Other Situations	\$270.00	\$310.00
1.492(c)(1)	1643	PCT National Stage Examination - US was IPEA and All Claims Satisfy PCT Article 33(1)-(4)	\$0.00	\$0.00
1.492(c)(1)	2643	National Stage Examination - US was IPEA and All Claims Satisfy PCT Article 33(1)-(4)	\$0.00	\$0.00
1.492(c)(2)	1633	PCT National Stage Examination - All Other Situations	\$220.00	\$250.00
1.492(c)(2)	2633	PCT National Stage Examination - All Other Situations	\$110.00	\$125.00
1.492(d)	1614	Independent Claims in Excess of Three	\$220.00	\$250.00
1.492(d)	2614	Independent Claims in Excess of Three	\$110.00	\$125.00
1.492(e)	1615	Total Claims in Excess of Twenty	\$52.00	\$60.00
1.492(e)	2615	Total Claims in Excess of Twenty	\$26.00	\$30.00
1.492(f)	1616	Multiple Dependent Claims	\$390.00	\$450.00
1.492(f)	2616	Multiple Dependent Claims	\$195.00	\$225.00
1.492(j)	1681	PCT National Stage Application Size	\$270.00	\$310.00
1.492(j)	2681	PCT National Stage Application Size	\$135.00	\$155.00

The changes to the fee amounts currently indicated in 37 CFR 41.20 are shown in table 6.

**Table 6:**

<b>CFR section</b>	<b>Fee Code</b>	<b>Description</b>	<b>October 1, 2010 Amount (i.e., pre-enactment)</b>	<b>September 26, 2011 Amount (i.e., post-enactment)</b>
41.20(b)(1)	1401	Notice of Appeal to Board of Appeals	\$540.00	\$620.00
41.20(b)(1)	2401	Notice of Appeal to Board of Appeals	\$270.00	\$310.00
41.20(b)(2)	1402	Filing a Brief in Support of an Appeal	\$540.00	\$620.00
41.20(b)(2)	2402	Filing a Brief in Support of an Appeal	\$270.00	\$310.00
41.20(b)(3)	1403	Request for an Oral Hearing	\$1,080.00	\$1,240.00
41.20(b)(3)	2403	Request for an Oral Hearing	\$540.00	\$620.00

Finally, a fee of \$400.00 (\$200.00 for small entity) will be required for any application, except for a reissue, design, plant, or provisional application, that is filed on or after November 15, 2011, other than by the USPTO's electronic filing system (EFS-Web).

For further information concerning patent fees contact James J. Engel at (571) 272-7725, or Susy Tsang-Foster, at 571-272-7711.