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**3510-16-P**

**DEPARTMENT OF COMMERCE**

**Patent and Trademark Office**

**37 CFR Parts 1, 41, and 42**

**[Docket No. PTO-P-2022-0033]**

**RIN 0651-AD64**

# Setting and Adjusting Patent Fees During Fiscal Year 2025

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

**ACTION:** Final rule; correction.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is correcting several minor typographical and other nonsubstantive inadvertent errors in the preamble and amendatory instructions to a final rule that appeared in the **Federal Register** on November 20, 2024. That final rule set or adjusted patent fees as authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). These corrections do not result in any substantive changes to the final rule.

**DATES:** The final rule correction is effective January 19, 2025.

**FOR FURTHER INFORMATION CONTACT:** C. Brett Lockard, Director, Forecasting and Analysis Division, at 571–272–0928 or Christopher.Lockard@uspto.gov.

**SUPPLEMENTARY INFORMATION:** On November 20, 2024, the USPTO published a final rule setting or adjusting patent fees as authorized by the AIA, as amended by the SUCCESS Act. See 89 FR 91898. Subsequent to the publication of that final rule, it was discovered that the preamble discussion and several amendatory instructions contained inadvertent errors requiring correction. For example, in the preamble, example 10, which provides guidance for “Adding timely benefit claims under 35 U.S.C. 120 after filing; multiple fees due,” contained an incorrect internal cross-reference to the subject

application. The subject application in the example should be “J” and not “I.” Also, in table 20, in the entry for § 1.17(m)(2), for a “Petition to excuse applicant’s failure to act within prescribed time limits in an international design application, delay less than or equal to two years,” the table reflected that the final rule fee applicable to a micro entity for this action was “$54,” which is incorrect. The correct fee should be “$452.” In addition, in the regulatory text at § 42.15(e), the description of the fee did not reflect changes made by an intervening final rule published on October 10, 2024, entitled “Expanding Opportunities To Appear Before the Patent Trial and Appeal Board” (89 FR 82172), which revised the terminology used to reference counsel recognized *pro hac vice* before the Patent Trial and Appeal Board. This correction updates the description of the fee in paragraph (e) to reflect the revision made by the October 10, 2024 final rule. No changes are being made to the fee amount that was published in the November 20, 2024, final rule. This final rule corrects these errors, as well as other minor typographical errors in the amendatory instructions. These changes are administrative in nature and are intended to provide clarification to impacted entities to avoid any potential confusion.

**Rulemaking Considerations**

*Administrative Procedure Act*

This final rule corrects typographical and format errors in a rulemaking setting and adjusting patent fees. The changes in this final rule involve rules of agency practice and procedure and/or interpretive rules and do not require notice-and-comment rulemaking. See *Perez v. Mortg. Bankers Ass’n*, 135 S.Ct. 1199, 1204 (2015) (explaining that interpretive rules “advise the public of the agency’s construction of the statutes and rules which it administers” and do not require notice-and-comment rulemaking when issued or amended); *Cooper Techs. Co. v. Dudas*, 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and comment rulemaking for “interpretative rules, general statements of policy, or rules of

agency organization, procedure, or practice"); and *JEM Broadcasting Co. v. F.C.C.*, 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not "foreclose effective opportunity to make one's case on the merits").

Moreover, the Director of the USPTO, pursuant to authority at 5 U.S.C. 553(b)(B) and (d)(1), finds good cause to adopt the changes in this final rule without prior notice and an opportunity for public comment or a 30-day delay in effectiveness, as such procedures would be unnecessary, impracticable, and contrary to the public interest. As discussed above, the changes in this rulemaking involve correcting minor typographical and other nonsubstantive errors in the final rule published on November 20, 2024, which itself underwent notice and comment and a delay in effective date. These changes are administrative in nature and are intended to provide clarification to impacted entities to avoid any potential confusion that could result if these errors are not corrected prior to the effective date of the November 20, 2024, final rule. Therefore, good cause exists to dispense with the requirement for prior notice and an opportunity for public comment and a 30-day delay in effectiveness.

**Correction**

In FR Doc. 2024-26821 appearing on page 91898 in the **Federal Register** of Wednesday, November 20, 2024, the following corrections are made:

1. On page 91913, in the first column, *Example 10: Adding timely benefit claims under 35 U.S.C. 120 after filing; multiple fees due* is corrected to read as follows:

> *Example 10: Adding timely benefit claims under 35 U.S.C. 120 after filing; multiple fees due.* Application J is a nonprovisional application filed on July 5, 2029. The ADS present upon J's filing contains a benefit claim under 35 U.S.C. 120 to nonprovisional application O filed on February 2, 2021, which is the only benefit claim in the application. J's EBD is February 2, 2021, which is more than six but not more than nine years, earlier than J's actual filing date of July 5, 2029. In this example, the §

1.17(w)(1) fee of $2,700 is due upon J's filing. The applicant pays the fee. Two months after J's filing, the applicant files a second ADS containing the previously added benefit claim to O and a new benefit claim under 35 U.S.C. 120 to nonprovisional application N filed on March 2, 2020. This newly added benefit claim causes J's EBD to become March 2, 2020, which is more than nine years earlier than J's actual filing date of July 5, 2029, and thus prompts the fee in § 1.17(w)(2). Because the fee in § 1.17(w)(1) was previously paid, the previous payment is subtracted from the amount now due under § 1.17(w)(2). Accordingly, the amount due upon filing of the second ADS is $1,300 (the current fee amount of $4,000 set forth in § 1.17(w)(2) less the $2,700 previously paid under § 1.17(w)(1)).

2. On page 91971, in table 20, in the third entry for "1.17(m)(2)" (fee code 3784), in the "Final rule fee" column, "$54" is corrected to read "$452".

**§ 1.17 [Corrected]**

3. On page 92004, in the second column:

a. In amendatory instruction 3.f for § 1.17, "table 21 and 22" is corrected to read "tables 21 and 22";

b. In amendatory instruction 3.h. for § 1.17, "Redesigning tables 19 through 21" is corrected to read "Redesignating tables 19 through 21".

4. On page 92004, in the third column, in § 1.17, in paragraph (f), in the first line in note 1 to table 10 to paragraph (f), add "§" before "1.36(a)".

5. On page 92005, at the top of the second column, in § 1.17, in paragraph (h), in note 3 to table 14 to paragraph (h), add "§" before "1.84".

**§ 1.492 [Corrected]**

6. On page 92010, in the second column, in amendatory instruction 15 for § 1.492, the instruction "Section 1.492 is amended by revising table 1 in paragraph (a),

tables 2 through 5 in paragraphs (b)(2) through (4)," is corrected to read "Section 1.492 is amended by revising table 1 in paragraph (a), tables 3 through 5 in paragraphs (b)(2) through (4),".

**§ 42.15 [Corrected]**

7. On page 92011, in the third column, in § 42.15, paragraph (e) is corrected to read as follows:

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(e) Fee for counsel who are not registered practitioners, and who are not seeking automatic recognition pursuant to § 42.10(c)(2), to appear *pro hac vice* before the Patent Trial and Appeal Board: $269.00.

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8. On page 92011, in the third column, in § 42.15, in paragraph (f), "$452" is corrected to read "$452.00".

**Derrick L. Brent,**
*Acting Under Secretary of Commerce for Intellectual Property and*
*Acting Director of the United States Patent and Trademark Office.*

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