

Important USPTO Trademark Fee Increases for 2021 and Key Strategies to Consider

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On January 2, 2021, the United States Patent and Trademark Office (USPTO) will implement new trademark fees across a wide range of filings, from trademark applications to renewals and opposition filings in the USPTO. Consult the [Summary of FY 2021 Final Trademark Fee Rule](#) for more information.

While the fee increases vary per submission, some notable increases may impact strategy considerations for new filings, maintenance submissions and enforcement strategies. To assist in preparation for the 2021 fee changes, we highlight here some of the most relevant fee increases and provide strategies to consider to maximize the allocation of resources in maintenance and enforcement of trademark rights.

New Trademark/Service Mark Application Fees

Effective January 2, 2021, the Trademark Electronic Application System Standard (TEAS Standard) Application cost will increase by **75 USD (275 USD to 350 USD) per class**, whereas the TEAS Plus Application cost will increase only by **25 USD (225 USD to 250 USD) per class**.

The larger increase for TEAS Standard Application filings is likely intended to persuade new applicants to abide by the [USPTO Identification Manual](#) when drafting Identifications of Goods and Services, and not go “off script,” as there is inherently more flexibility in the TEAS Standard Application content. If applicants use Identification language that already has been vetted and approved by the USPTO for inclusion in the USPTO Identification Manual, less time will be needed for Examining Attorneys to decipher vague Identifications and provide the applicant with alternate proposed Identification language that is sufficiently definite under USPTO requirements. The net result will be faster examination and potentially shorter application pendency.

Nonetheless, the USPTO recognizes the importance of accuracy in Identifications, and hence it has adjusted the processing fee for failing to meet TEAS Plus requirements *downward* from **125 USD to 100 USD per class**.

Note: The applicant’s TEAS Plus Application fee per class of **250 USD** combined with the TEAS Plus penalty fee of **100 USD** per class equals the new TEAS Standard Application filing fee of **350 USD**.

Accordingly, even if the applicant goes out of bounds with its TEAS Plus filing, the applicant's cost will be no different than the newly minted TEAS Standard Application fee, and hence there is an incentive to aim for the TEAS Plus Application if possible.

Trademark Trial and Appeal Board (TTAB) Fees

There are some big increases across the board in TTAB proceedings, with increases signaling the USPTO's encouragement to parties to resolve *ex parte* issues and *inter partes* conflicts as quickly as possible without intervention by the TTAB. For example:

- A Notice of Opposition filed against a published application has a **200 USD** price increase from **400 USD to 600 USD per class**.
- A Petition to Cancel filed against an existing registration also has a **200 USD** price increase from **400 USD to 600 USD per class**.
- The first 30-day extension of time to file an opposition still has no fee, but the second extension (60 days) has a 100 percent increase (**200 USD** instead of **100 USD per application**), and the final 60-day extension (with consent of the applicant) goes up from **200 USD to 400 USD per application**.
- The initial 90-day extension (in lieu of the automatic 30-day extension combined with the second extension of 60 days) mirrors the second extension fee of **200 USD per application** (up from **100 USD**).

The USPTO also is introducing entirely **new fees** for requests for oral hearings (**500 USD per proceeding**) as well as appeal briefs in *ex parte* appeals (**200 USD per class**).

TTAB and Enforcement Strategy Considerations

An increase of **200 USD** per class in fees in opposition and cancellation proceedings is a significant jump. For example, if a potentially infringing mark is filed in three classes, the current opposition fee to oppose ALL classes in the application is **1,200 USD**. On or after January 2, 2021, an opposition against the same three-class application increases in cost to **1,800 USD**. Similarly, petitioning to cancel a three-class registration currently costs **1,200 USD**, but effective January 2, 2021, petitioning to cancel ALL classes in the three-class registration will cost **1,800 USD**.

The potential ramifications of these TTAB fee changes are numerous:

- **Applicants and registrants may wish to weigh whether to oppose or petition to cancel ALL classes in lieu of opposing or petitioning to cancel only the classes deemed most in conflict.** Naturally, the inclination for a pure and strong enforcement effort still will be to wipe out the entire application or registration covering the conflicting mark, but the dramatic cost change in 2021 should give applicants and registrants pause prior to proceeding with an ALL-class enforcement strategy.
- **A new applicant may consider filing single-class rather than multi-class applications.** Potential opposers in 2021 will have a greater cost incentive to let single-class

applications in nonessential classes proceed without opposing so that resources can be directed to only the most critical classes. Additionally, an applicant may elect to withdraw applications that are opposed (or that have an extension of time to oppose filed) in lieu of defending the opposition, if they will be able to still achieve registration in other single-class applications. The winner in either scenario is the TTAB, as the TTAB may see fewer *inter partes* filings as a result.

- **Watch service strategies should be revisited and potentially recalibrated based on the increases in USPTO fees.** Domestic watch services can cover new application watches as well as new publication watches for a nominal amount. By converting domestic watches to cover *new* applications as well as *newly published* applications (with the 30-day publication period), the true value gained is time. Instead of just 30 days to consider the enforcement strategy and method of outreach to the applicant before the TTAB deadline to oppose or file the first extension of time to oppose, the potential opposer gains the following:
 - With the typical pendency to first examination in the USPTO currently set for three months, the potential opposer now has three (plus) months (instead of 30 days) to investigate the infringement and contact the applicant before the application has even undergone its first round of examination.
 - At the first stages of filing, the applicant may not have invested significant resources in the proposed mark, and hence the applicant may be more inclined to cooperate with the opposer regarding the opposer's enforcement efforts. At the publication stage (even assuming no office actions during the course of examination), the applicant likely has had three to six months to work on its plans for use of the applied-for mark, and hence may be more inclined to fight for its investment in the challenged mark.
 - The opposition extension fees also are increasing in 2021, thereby increasing the cost for the investigation and negotiation time that a new application watch would automatically give.
 - A new application watch also could reduce the numbers of oppositions filed simply to preserve the opposition deadline. With the **200 USD per class** increase in opposition fees, the USPTO is providing an incentive to resolve any potential conflicts well before the opposition deadline has been reached.

Trademark Registration Maintenance Fees

Trademark Registration Maintenance Fees also are seeing an increase on January 2, 2021. For example, the Section 8 or 71 Declaration is increasing **100 USD per class (125 USD to 225 USD)**. *The takeaway here is straightforward:* if trademark registrations are within the one-year window to file the Section 8 or 71 Declarations and sufficient specimens of use are available, it is less costly to file before January 2, 2021. The USPTO also has implemented a *new fee* for deleting goods or services or classes after the Section 8 or 71 Declaration has been filed: **250 USD per class**. This new fee is presumably intended to deter late amendments and encourage registrants to consider any changes to the registrations *before* the Section 8 or 71 Declarations have been submitted.

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