

# USPTO Publishes Final Fees for 2025

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The USPTO has published its final rule setting patent fees that will take effect January 19, 2025. The final rule steps back from some of the new fee structures proposed in April 2024, but still could have a significant impact on design patent practice, continuing application practice, and Information Disclosure Statement practice, among other areas.

## Final Fee Adjustments

Detailed information on the proposed fee adjustments are available on the USPTO's [Fee-Setting web page](#) and in the November 20, 2024 [Federal Register Notice](#).

The following summary lists fees at the undiscounted (large entity) rate.

## Significantly Higher Fees

Examples of significantly higher fees include:

- The aggregate of filing, search, examination, and issue fees for design patents will increase by about 48%
- Excess claim fees will double to \$200 for each claim over 20 and increase 25% to \$600 for each independent claim over 3
- RCE fees will increase, but instead of adopting a new higher tier for third and subsequent RCEs, the USPTO decided to increase the fee for 2<sup>nd</sup> and subsequent RCE by 43%.
  - 1<sup>st</sup> RCE: \$1500 (+10% over current fee)
  - 2<sup>nd</sup> and subsequent RCE: \$2860 (+43% over current fee)
- Petitions associated with unintentional delay of > 2 years: \$3000
- The fee for a Patent Term Extension application (e.g., based on FDA review of a regulated product) will more than double to \$2500, but this is less than the proposed 468% increase to \$6700. The USPTO also will impose a new \$1440 fee for requesting a supplemental redetermination of patent term extension after a notice of final determination has been issued (e.g., based on the filing of a terminal disclaimer).

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## New Fees That Could Change Applicant Behavior—Continuing Application Surcharge

The USPTO moved forward with its proposal to impose a surcharge for filing continuing applications “late” in their twenty-year term, but adjusted the timing at which each surcharge will be incurred:

- Continuing Application Surcharge, filed ? 6 years after earliest benefit date: \$2700
- Continuing Application Surcharge, filed ? 9 years after earliest benefit date: \$4000

The Federal Register Notice defines “earliest benefit date” as the earliest priority date claimed under 35 USC § 120, 121, 365(c) or 386(c) and 37 CFR § 1.78(d), also known as the “patent term filing date” (e.g., the date from which the 20-year patent term is calculated), and not including priority claims to provisional applications.

The Federal Register Notice ***expressly includes divisional applications*** in the category of “continuing” applications that could be encompassed by these fees.

The Federal Register Notice estimates from current data that about 20% of continuing applications (about 6.5% of all applications) would incur a continuing application fee, with about 11% incurring the first surcharge and about 9% incurring the second surcharge.

## New Fees That Will Complicate Examination—IDS Size Fees

The USPTO moved forward with its proposal to impose new IDS size fees based on the cumulative number of references cited and to impose a related IDS certification requirement.

- > 50 items: \$200
- > 100 items: \$500 (less any amount previously paid)
- > 200 items: \$800 (less any amount previously paid)

Each IDS must “contain a clear written assertion” that the IDS is accompanied by the appropriate IDS size fee or that no IDS size fee is required. The Federal Register Notice states that “[t]here is no specific language required for the written assertion, but it should be readily identifiable on the IDS and clearly convey the applicable IDS size fee by specifying the particular paragraph in § 1.17(v) that applies (e.g., “the fee due under 1.17(v)(2)”), if any.” The Federal Register Notice warns that authorization to charge fees to a deposit account is ***not a compliant written assertion*** under the new requirement unless it specifically refers to the particular IDS fee that should be charged.

## PTAB Trial Fees

- Petition fees for PTAB trials will increase by about 25%
- There will be a new **\$452** fee for a Request for Director review of a PTAB decision

## How Can Stakeholders Prepare For The New Fees?

The new fees will take effect in less than two months, so stakeholders may want to review their portfolios and determine whether action can be taken now to avoid higher fees that will be due on or after January 19, 2025. For example, stakeholders with pending final Office Actions could consider filing any planned RCEs early, especially if it will be a second or subsequent RCE. Stakeholders with pending Issue Fee deadlines may want to pay them early, and could avoid higher application fees—and possibly the new continuing application surcharges—by filing continuing applications before

January 19, 2025. Stakeholders planning to file new design applications could save 48% in filing, search, examination, and issue fees if they can be filed before the new fees take effect. Patent practitioners will want to consider how they will ensure compliance with the new IDS size fees and related IDS certification requirement.

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