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## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### 37 CFR Parts 1 and 41

[PTO-C-2011-0007]

RIN 0651-AC55

#### CPI Adjustment of Patent Fees for Fiscal Year 2013

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

**ACTION:** Final rule.

**SUMMARY:** The United States Patent and Trademark Office (Office or USPTO) is adjusting certain patent fee amounts for fiscal year 2013 to reflect fluctuations in the Consumer Price Index (CPI). The patent statute provides for the annual CPI adjustment of patent fees set by statute to recover the higher costs associated with doing business as reflected by the CPI.

**DATES:** This final rule is effective on October 5, 2012.

**FOR FURTHER INFORMATION CONTACT:** Gilda Lee by email at [Gilda.Lee@uspto.gov](mailto:Gilda.Lee@uspto.gov), by telephone at (571) 272-8698, or by fax at (571) 273-8698.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

*Purpose:* Section 41(f) of Title 35 of the United States Code provides the USPTO with the authority to adjust certain statutory patent fees to reflect fluctuations during the preceding twelve months in the Consumer Price Index (CPI). The purpose of this provision is to allow the USPTO to recover higher costs of providing services as reflected by the CPI. This final rule sets forth which fees will be adjusted and how the adjustment is calculated based on the current fluctuation in the CPI over the twelve months preceding this notice.

*Summary of Major Provisions:* The USPTO is adjusting certain patent fees in accordance with 35 U.S.C. 41(f), as amended by the Consolidated Appropriations Act (Pub. L. 108-447, 118 Stat. 2809 (2004)) and the Leahy-Smith America Invents Act (Pub. L. 112-29). The fee increase helps the USPTO to meet its strategic goals and maintain effective and efficient operation of the patent system.

*Costs and Benefits:* This rulemaking is not economically significant as that term is defined in Executive Order 12866 (Sept. 30, 1993).

#### Background

*Statutory Provisions:* Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376, section 532(a)(2) of the Uruguay Round Agreements Act (URAA) (Pub. L. 103-465, § 532(a)(2), 108 Stat. 4809, 4985 (1994)), and section 4506 of the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106-113, 113 Stat. 1501, 1501A-565 (1999)). 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.

The USPTO published a notice proposing to adjust the patent fees charged under 35 U.S.C. 41(a) and (b) for fiscal year 2013 to reflect fluctuations in the CPI on May 14, 2012.

The fiscal year 2005 Consolidated Appropriations Act (section 801 of Division B) provided that 35 U.S.C. 41(a), (b), and (d) shall be administered in a manner that revises patent application fees (35 U.S.C. 41(a)) and patent maintenance fees (35 U.S.C. 41(b)), and provides for a separate filing fee (35 U.S.C. 41(a)), search fee (35 U.S.C. 41(d)(1)), and examination fee (35 U.S.C. 41(a)(3)) during fiscal years 2005 and 2006. See Public Law 108-447, 118 Stat. 2809, 2924-30 (2004). The Omnibus Appropriations Act, 2009, extended the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act through September 30, 2011. See Public Law 112-4, 125 Stat. 6 (2011); Public Law 111-322, 124 Stat. 3518 (2010); Public Law 111-317, 124 Stat. 3454 (2010); Public Law 111-290, 124 Stat. 3063 (2010); Public Law 111-242, 124 Stat. 2607 (2010); Public Law 111-224, 124 Stat. 2385 (2010); Public Law 111-117, 123 Stat. 3034 (2009); Public Law 111-8, 123 Stat. 524 (2009); Public Law 111-6, 123 Stat. 522 (2009); Public Law 111-5, 123 Stat. 115 (2009); Public Law 110-329, 122 Stat. 3574 (2008); Public Law 110-161, 121 Stat. 1844 (2007); Public Law 110-149, 121 Stat. 1819 (2007); Public Law 110-137, 121 Stat. 1454 (2007); Public Law 110-116, 121 Stat. 1295 (2007); Public Law 110-92, 121 Stat. 989 (2007); Public Law 110-5, 121 Stat. 8 (2007); Public Law 109-383, 120 Stat. 2678 (2006); Public Law 109-369, 120 Stat. 2642 (2006); and Public Law 109-289, 120 Stat. 1257 (2006). The Leahy-Smith America Invents Act,

enacted September 16, 2011, codified the patent and trademark fee provisions of the fiscal year 2005 Consolidated Appropriations Act.

Section 11 of the Leahy-Smith America Invents Act provides for a surcharge of fifteen 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 of the Act provides that this fifteen percent surcharge is effective ten days after the date of enactment (*i.e.*, September 26, 2011). Section 11 also provides that this fifteen percent surcharge shall terminate, with respect to a fee to which the surcharge applies, on the effective date of the setting or adjustment of that fee pursuant to the exercise of the authority under section 10 of the Act for the first time with respect to that fee. Section 10 fee-setting will be implemented in a future separate rulemaking.

As for this rulemaking, 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 Consumer Price Index over the previous twelve months. If the annual change in CPI is one percent or less, no fee adjustment for CPI fluctuations will be pursued.

This CPI increase will be implemented on October 1, 2012. This interim increase in fees is necessary to allow the USPTO to meet its strategic goals within the time frame outlined in the FY 2013 President's Budget. The interim fee increase is a bridge to provide resources until the USPTO exercises its fee-setting authority and develops a new fee structure that will provide sufficient financial resources in the long term. An adequately funded USPTO will optimize the administration of the U.S. intellectual property system, and thereby move innovation to the marketplace more quickly, creating and sustaining U.S. jobs and enhancing the health and living standards of Americans.

*Fee Adjustment Level:* The patent statutory fees established by 35 U.S.C. 41(a) and (b) are adjusted to reflect the most recent fluctuations occurring during the twelve-month period prior to publication of the final rule implementing this CPI adjustment, as measured by the Consumer Price Index for All Urban Consumers (CPI-U). The Office of Management and Budget (OMB) has advised that in calculating these fluctuations, the USPTO should use CPI-U data as determined by the Secretary of Labor, which is found at

“<http://www.bls.gov/cpi/>”. In accordance with the above description of the statutory fee adjustment, the USPTO is adjusting patent statutory fee amounts based on the Administration’s CPI-U for the twelve-month period ending June 30, 2012.

The fees other than small entity patent statutory fees have been adjusted based on the June 2011 to June 2012 annual CPI-U increase of 1.7%. These fee amounts were then rounded by applying standard arithmetic rules so that the resulting amounts will be consistent 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 the nearest even number so that any comparable small entity fee will be a whole number. The small entity fee amounts are 50% of the other than small entity fee amounts.

*General Procedures:* Any fee amount adjusted by the final rule that is paid on or after the effective date of the fee adjustment enacted by the final rule is subject to the new fees in effect. The amount of the fee to be paid for a given item will be determined by the time of filing of that item with the Office. The time of filing will be determined either according to the date of receipt in the Office (37 CFR 1.6) 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 37 CFR 1.8. Items for which a Certificate of Mailing or Transmission under 37 CFR 1.8 is not authorized include, for example, filing of 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 the USPTO 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 new fees, a discussion of specific sections is set forth below.

**Discussion of Specific Rules**

*37 CFR 1.16 National application filing, and examination fees:* Section 1.16, paragraphs (a) through (e), (h) through (j) and (o) through (s), is revised to adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

*37 CFR 1.17 Patent application and reexamination processing fees:* Section 1.17, paragraphs (a)(1) through (a)(5), (l), and (m), is revised to adjust fees

established therein to reflect fluctuations in the CPI-U. See Table 1.

*37 CFR 1.18 Patent post allowance (including issue) fees:* Section 1.18, paragraphs (a) through (c), is revised to adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

*37 CFR 1.20 Post issuance fees:* Section 1.20, paragraphs (c)(3)–(c)(4), and (d) through (g), is revised to adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

*37 CFR 1.492 National stage fees:* Section 1.492, paragraphs (a), (c)(2), (d) through (f) and (j), is revised to adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

*37 CFR 41.20 Fees:* Section 41.20, paragraphs (b)(1) through (b)(3), is revised to adjust fees established therein to reflect fluctuations in the CPI-U. See Table 1.

*Fee Amount Adjustments:* Table 1 shows the adjusted patent statutory fee amounts and fee adjustments based on the June 2011 to June 2012 annual CPI-U increase of 1.7%. The other than small entity fee amounts have been adjusted by 1.7%. These fee amounts were then rounded by applying standard arithmetic rules. 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 the nearest even number. The small entity fee amounts are 50% of the large entity fee amounts.

TABLE 1—FEE ADJUSTMENT CALCULATIONS BASED ON CPI-U ADJUSTMENT OF 1.7%

37 CFR	Fee title	Current fee amount	New fee amount	Fee adjustment
1.16(a)(1) ....	Filing of Utility Patent Application (on or after 12/8/2004) .....	\$380	\$390	\$10
		Small Entity	SE \$195	SE \$5
		(SE) \$190		
1.16(a)(1) ....	Filing of Utility Patent Application (electronic filing for small entities) (on or after 12/8/2004).	\$95	\$98	\$3
1.16(b)(1) ....	Filing of Design Patent Application (on or after 12/8/2004) .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.16(b)(1) ....	Filing of Design Patent Application (Continued Prosecution Application) (on or after 12/8/2004).	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.16(c)(1) .....	Filing of Plant Patent Application (on or after 12/8/2004) .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.16(d) .....	Provisional Application Filing .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.16(e)(1) ....	Filing of Reissue Patent Application (on or after 12/8/2004) .....	\$380	\$390	\$10
		SE \$190	SE \$195	SE \$5
1.16(e)(1) ....	Filing of Reissue Patent Application (CPA) (on or after 12/8/2004) .....	\$380	\$390	\$10
		SE \$190	SE \$195	SE \$5
1.16(h) .....	Independent Claims in Excess of Three .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.16(h) .....	Reissue Independent Claims in Excess of Three .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.16(i) .....	Claims in Excess of Twenty .....	\$60	\$62	\$2
		SE \$30	SE \$31	SE \$1
1.16(i) .....	Reissue Total Claims in Excess of Twenty .....	\$60	\$62	\$2
		SE \$30	SE \$31	SE \$1
1.16(j) .....	Multiple Dependent Claims .....	\$450	\$460	\$10
		SE \$225	SE \$230	SE \$5

TABLE 1—FEE ADJUSTMENT CALCULATIONS BASED ON CPI-U ADJUSTMENT OF 1.7%—Continued

37 CFR	Fee title	Current fee amount	New fee amount	Fee adjustment
1.16(o) .....	Utility Patent Examination .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.16(p) .....	Design Patent Examination .....	\$160	\$160	\$0
		SE \$80	SE \$80	SE \$0
1.16(q) .....	Plant Patent Examination .....	\$200	\$200	\$0
		SE \$100	SE \$100	SE \$0
1.16(r) .....	Reissue Patent Examination .....	\$750	\$760	\$10
		SE \$375	SE \$380	SE \$5
1.16(s) .....	Utility Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	\$310	\$320	\$10
		SE \$155	SE \$160	SE \$5
1.16(s) .....	Design Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	\$310	\$320	\$10
		SE \$155	SE \$160	SE \$5
1.16(s) .....	Plant Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	\$310	\$320	\$10
		SE \$155	SE \$160	SE \$5
1.16(s) .....	Reissue Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	\$310	\$320	\$10
		SE \$155	SE \$160	SE \$5
1.16(s) .....	Provisional Application Size Fee—For each additional 50 sheets that exceeds 100 sheets.	\$310	\$320	\$10
		SE \$155	SE \$160	SE \$5
1.17(a)(1) .....	Extension for Response within First Month .....	\$150	\$150	\$0
		SE \$75	SE \$75	SE \$0
1.17(a)(2) .....	Extension for Response within Second Month .....	\$560	\$570	\$10
		SE \$280	SE \$285	SE \$5
1.17(a)(3) .....	Extension for Response within Third Month .....	\$1,270	\$1,290	\$20
		SE \$635	SE \$645	\$10
1.17(a)(4) .....	Extension for Response within Fourth Month .....	\$1,980	\$2,010	\$30
		SE \$990	SE \$1,005	SE \$15
1.17(a)(5) .....	Extension for Resonse within Fifth Month .....	\$2,690	\$2,730	\$40
		SE \$1,345	SE \$1,365	SE \$20
1.17(l) .....	Petition to Revive Unavoidably Abandoned Application .....	\$620	\$630	\$10
		SE \$310	SE \$315	SE \$5
1.17(m) .....	Petition to Revive Unintentionally Abandoned Application .....	\$1,860	\$1,890	\$30
		SE \$930	SE \$945	SE \$15
1.18(a) .....	Utility Issue .....	\$1,740	\$1,770	\$30
		SE \$870	SE \$885	SE \$15
1.18(a) .....	Reissue Issue .....	\$1,740	\$1,770	\$30
		SE \$870	SE \$885	SE \$15
1.18(b) .....	Design Issue .....	\$990	\$1,010	\$20
		SE \$495	SE \$505	SE \$10
1.18(c) .....	Plant Issue .....	\$1,370	\$1,390	\$20
		SE \$685	SE \$695	SE \$10
1.20(c)(3) .....	Reexamination Independent Claims in Excess of Three .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.20(c)(4) .....	Reexamination Total Claims in Excess of Twenty .....	\$60	\$62	\$2
		SE \$30	SE \$31	SE \$1
1.20(d) .....	Statutory Disclaimer .....	\$160	\$160	\$0
		SE \$80	SE \$80	SE \$0
1.20(e) .....	First Stage Maintenance .....	\$1,130	\$1,150	\$20
		SE \$565	SE \$575	SE \$10
1.20(f) .....	Second Stage Maintenance .....	\$2,850	\$2,900	\$50
		SE \$1,425	SE \$1,450	SE \$25
1.20(g) .....	Third Stage Maintenance .....	\$4,730	\$4,810	\$80
		SE \$2,365	SE \$2,405	SE \$40
1.492(a) .....	Filing of PCT National Stage Application .....	\$380	\$390	\$10
		SE \$190	SE \$195	SE \$5
1.492(b)(3) .....	PCT National Stage Search Search Report Prepared and Provided to USPTO.	\$490	\$500	\$10
		SE \$245	SE \$250	SE \$5
1.492(b)(4) .....	PCT National Stage Search—All Other Situations .....	\$620	\$630	\$10
		SE \$310	SE \$315	SE \$5
1.492(c)(2) .....	PCT National Stage Examination—All Other Situations .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.492(d) .....	Independent Claims in Excess of Three .....	\$250	\$250	\$0
		SE \$125	SE \$125	SE \$0
1.492(e) .....	Total Claims in Excess of Twenty .....	\$60	\$62	\$2
		SE \$30	SE \$31	SE \$1
1.492(f) .....	Multiple Dependent Claims .....	\$450	\$460	\$10
		SE \$225	SE \$230	SE \$5
1.492(j) .....	PCT National Stage Application Size Fee .....	\$310	\$320	\$10
		SE \$155	SE \$160	SE \$5
41.20(b)(1) .....	Notice of Appeal .....	\$620	\$630	\$10
		SE \$310	SE \$315	SE \$5

TABLE 1—FEE ADJUSTMENT CALCULATIONS BASED ON CPI-U ADJUSTMENT OF 1.7%—Continued

37 CFR	Fee title	Current fee amount	New fee amount	Fee adjustment
41.20(b)(2) ..	Filing a Brief in Support of an Appeal .....	\$620 SE \$310	\$630 SE \$315	\$10 SE \$5
41.20(b)(3) ..	Request for Oral Hearing .....	\$1,240 SE \$620	\$1,260 SE \$630	\$20 SE \$10

*Comment and Response to Comment:* The USPTO published a notice proposing to adjust the patent fees charged under 35 U.S.C. 41(a) and (b) for fiscal year 2013 to reflect fluctuations in the CPI. The Office received one comment in response to the proposed rule. The commenter supports the proposed CPI adjustment of fees for FY 2013 as an interim fee increase until the USPTO exercises its fee-setting authority under Section 10 of the AIA. However, because of the significant administrative burdens on corporations and patent law firms to adjust their internal systems for paying fees and correctly advising clients of fee increases, it is suggested there should not be more than one fee adjustment per year. The commenter suggests that in future years, CPI adjustments and Section 10 adjustments should be timed so as to avoid having two separate adjustments in the same year. The Office's response is patent fees are being set under 35 U.S.C. 41(a) and (b) to ensure proper funding for effective operations. As previously discussed, this interim increase in fees is necessary to allow the USPTO to meet its strategic goals within the time frame outlined in the FY 2013 President's Budget. In the future, the USPTO does not anticipate routinely adjusting patent fees more than once per fiscal year.

**Rulemaking Considerations**

*Final Regulatory Flexibility Analysis*

The Office has prepared the following Final Regulatory Flexibility Analysis.

1. *Description of the reasons that action by the agency is being considered:* The USPTO is adjusting the patent fees set under 35 U.S.C. 41(a) and (b) to ensure proper funding for effective operations. The patent fee CPI adjustment under 35 U.S.C. 41(f) is a routine adjustment that has generally occurred on an annual basis when necessary to recover the higher costs of USPTO operations that occur due to the increase in the price of products and services.

2. *Statement of the objectives of, and legal basis for, the final rule:* Patent fees are set by or under the authority provided in 35 U.S.C. 41, 119, 120, 132(b), 156, 157(a), 255, 302, 311, 376,

section 532(a)(2) of the URAA, and 4506 of the AIPA. The objective of the change is to adjust patent fees set under 35 U.S.C. 41(a) and (b) as an annual, routine step in order to recover the higher costs of USPTO operations as reflected by the CPI. 35 U.S.C. 41(f) provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted every year to reflect fluctuations in the CPI over the previous twelve months.

3. *Statement of Significant Issues Raised by the Public Comments in Response to the IRFA and the Office's Response to Such Issues:* The Office received no comments concerning the Initial Regulatory Flexibility Act analysis.

4. *Description and estimate of the number of affected small entities:* The Small Business Administration (SBA) small business size standards applicable to most analyses conducted to comply with the Regulatory Flexibility Act are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with fewer than a maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. The USPTO, however, has formally adopted, with SBA approval, an alternate size standard as the size standard for the purpose of conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR 67109 (Nov. 20, 2006), 1313 *Off. Gaz. Pat. Office* 60 (Dec. 12, 2006). This alternate small business size standard is the previously established size standard that identifies the criteria entities must meet to be entitled to pay reduced patent fees. See 13 CFR 121.802. If patent applicants identify themselves on the patent application as qualifying for reduced patent fees, the USPTO captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the USPTO.

Unlike the general SBA small business size standards set forth in 13 CFR 121.201, USPTO's approved alternative size standard is not industry-specific. Specifically, the USPTO definition of small business concern for Regulatory Flexibility Act purposes is a business or other concern that: (1) Meets the SBA's definition of a "business concern or concern" set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern which would not qualify as a non-profit organization or a small business concern under this definition. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR at 67112 (November 20, 2006), 1313 *Off. Gaz. Pat. Office* at 63 (December 12, 2006).

The changes in this final rule will apply to any small entity that files a patent application, or has a pending patent application or unexpired patent. The changes in this final rule will specifically apply when an applicant or patentee pays an application filing or national stage entry fee, search fee, examination fee, extension of time fee, notice of appeal fee, appeal brief fee, request for an oral hearing fee, petition to revive fee, issue fee, or patent maintenance fee.

The USPTO has been advised that a number of small entity applicants and patentees do not claim small entity status for various reasons. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations*, 71 FR at 67110 (November 20, 2006), 1313 *Off. Gaz. Pat. Office* at 61 (December 12, 2006). Therefore, the USPTO is also considering all other entities paying patent fees to be small entities as well in an effort to capture the impact on all

small entity applicants whether they claim that status or not. While the USPTO does not record the number of small entity filers in a given year, the USPTO estimates that in FY 2011, of the patent fees where a small entity discount is available, 3,980,519 patent fees were paid, out of which 1,190,558 fees claimed the small entity discount.

5. *Description of the reporting, recordkeeping and other compliance requirements of the final rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record:* This final rule does not require any reporting or recordkeeping or incorporate other compliance requirements. This final rule only adjusts patent fees (as discussed previously) to reflect changes in the CPI.

6. *Description of any significant alternatives to the final rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the rule on small entities:* The alternative of not adjusting patent fees would have a lesser economic impact on small entities, but would not accomplish the stated objectives of the applicable statutes. The USPTO is making a small adjustment to patent fees, under 35 U.S.C. 41(f), to ensure proper funding for effective operations in light of changes in the CPI. The patent fee CPI adjustment is a routine adjustment that has generally occurred on an annual basis to recover the higher costs of USPTO operations that occur due to increases in the price of products and services. This CPI adjustment helps the Office maintain effective operations and decrease patent pendency levels.

7. *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the final rule:* The USPTO is the sole agency of the United States Government responsible for administering the provisions of Title 35, United States Code, pertaining to examination and granting patents. Therefore, no other Federal, state, or local entity shares jurisdiction over the examination and granting of patents and there are no duplicative, overlapping or conflicting rules.

Other countries, however, have their own patent laws, and an entity desiring a patent in a particular country must make an application for patent in that country, in accordance with the applicable law. Although the potential for overlap exists internationally, this cannot be avoided except by treaty (such as the Paris Convention for the Protection of Industrial Property, or the

Patent Cooperation Treaty (PCT)). Nevertheless, the USPTO believes that there are no other duplicative or overlapping rules.

#### *B. Executive Order 13132 (Federalism)*

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

#### *C. Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been determined to be significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002), and Executive Order 13422 (Jan. 18, 2007).

#### *D. Executive Order 13563 (Improving Regulation and Regulatory Review)*

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

#### *E. Executive Order 13175 (Tribal Consultation)*

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

#### *F. Executive Order 13211 (Energy Effects)*

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not

likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

#### *G. Executive Order 12988 (Civil Justice Reform)*

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

#### *H. Executive Order 13045 (Protection of Children)*

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

#### *I. Executive Order 12630 (Taking of Private Property)*

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

#### *J. Congressional Review Act*

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO has submitted a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the Government Accountability Office. The changes in this final rule will not result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule is not a "major rule" as defined in 5 U.S.C. 804(2).

#### *K. Unfunded Mandates Reform Act of 1995*

The changes in this final rule do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded

Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

*L. National Environmental Policy Act*

This rulemaking will not have any effect on the quality of environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

*M. National Technology Transfer and Advancement Act*

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable because this rulemaking does not contain provisions which involve the use of technical standards.

*N. Paperwork Reduction Act*

This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The collections of information involved in this final rule have been reviewed and approved by OMB. The Office is not resubmitting information collection requests to OMB for its review and approval at this time but will update the fee amounts for existing information collection requirements associated with the information collections under OMB control numbers 0651-0016, 0651-0021, 0651-0024, 0651-0031, 0651-0032, 0651-0033, 0651-0063, and 0651-0064. The USPTO will submit to OMB fee revision changes for OMB control numbers 0651-0016, 0651-0021, 0651-0024, 0651-0031, 0651-0032, 0651-0033, 0651-0063, and 0651-0064 at the time these collections are submitted to OMB for renewal.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*37 CFR Part 1*

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and record keeping requirements, Small businesses.

*37 CFR Part 41*

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons set forth in the preamble, 37 CFR parts 1 and 41 are to be amended as follows:

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

■ 1. The authority citation for 37 CFR Part 1 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2).

■ 2. Section 1.16 is amended by revising paragraphs (a) through (e), (h) through (j), and (o) through (s) to read as follows:

**§ 1.16 National application filing, search, and examination fees.**

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

(1) For an application filed on or after December 8, 2004:

By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2)):	\$98.00
By a small entity (§ 1.27(a)) .....	\$195.00
By other than a small entity .....	\$390.00

(b) Basic fee for filing each application for an original design patent:

(1) For an application filed on or after December 8, 2004:	
By a small entity (§ 1.27(a)) .....	\$125.00
By other than a small entity .....	\$250.00

(c) Basic fee for filing each application for an original plant patent:

(1) For an application filed on or after December 8, 2004:	
By a small entity (§ 1.27(a)) .....	\$125.00
By other than a small entity .....	\$250.00

(d) Basic fee for filing each provisional application:

By a small entity (§ 1.27(a)) .....	\$125.00
By other than a small entity .....	\$250.00

(e) Basic fee for filing each application for the reissue of a patent:

(1) For an application filed on or after December 8, 2004:	
By a small entity (§ 1.27(a)) .....	\$195.00
By other than a small entity .....	\$390.00

\* \* \* \* \*

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a)) .....	\$125.00
By other than a small entity .....	\$250.00

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that

§ 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) .....	\$31.00
By other than a small entity .....	\$62.00

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a)) .....	\$230.00
By other than a small entity .....	\$460.00

(o) Examination fee for each application filed under 35 U.S.C. 111 on or after December 8, 2004, for an original patent, except design, plant, or provisional applications:

By a small entity (§ 1.27(a)) .....	\$125.00
By other than a small entity .....	\$250.00

(p) Examination fee for each application filed on or after December 8, 2004, for an original design patent:

By a small entity (§ 1.27(a)) .....	\$80.00
By other than a small entity .....	\$160.00

(q) Examination fee for each application filed on or after December 8, 2004, for an original plant patent:

By a small entity (§ 1.27(a)) .....	\$100.00
By other than a small entity .....	\$200.00

(r) Examination fee for each application filed on or after December 8, 2004, for the reissue of a patent:

By a small entity (§ 1.27(a)) .....	\$380.00
By other than a small entity .....	\$760.00

(s) Application size fee for any application under 35 U.S.C. 111 filed on or after December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a small entity (§ 1.27(a)) .....	\$160.00
By other than a small entity .....	\$320.00

\* \* \* \* \*

■ 3. Section 1.17 is amended by revising paragraphs (a), (l), and (m) to read as follows:

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

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:	
By a small entity (§ 1.27(a)) .....	\$75.00
By other than a small entity .....	\$150.00

(2) For reply within second month:	
By a small entity (§ 1.27(a)) .....	\$285.00
By other than a small entity .....	\$570.00

(3) For reply within third month:	
By a small entity (§ 1.27(a)) .....	\$645.00
By other than a small entity .....	\$1,290.00

(4) For reply within fourth month:	
By a small entity (§ 1.27(a)) .....	\$1,005.00

By other than a small entity ..... \$2,010.00  
 (5) For reply within fifth month:  
 By a small entity (§ 1.27(a)) ..... \$1,365.00  
 By other than a small entity ..... \$2,730.00  
 \* \* \* \* \*

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.27(a)) ..... \$315.00  
 By other than a small entity ..... \$630.00

(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)) ..... \$945.00  
 By other than a small entity ..... \$1,890.00  
 \* \* \* \* \*

4. Section 1.18 is 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 patent, except a design or plant patent, or for issuing each reissue patent:

By a small entity (§ 1.27(a)) ..... \$885.00  
 By other than a small entity ..... \$1,770.00

(b) Issue fee for issuing an original design patent:

By a small entity (§ 1.27(a)) ..... \$505.00  
 By other than a small entity ..... \$1,010.00

(c) Issue fee for issuing an original plant patent:

By a small entity (§ 1.27(a)) ..... \$695.00  
 By other than a small entity ..... \$1,390.00  
 \* \* \* \* \*

■ 5. Section 1.20 is amended by revising paragraphs (c)(3), (c)(4), and (d) through (g) to read as follows:

**§ 1.20 Post issuance fees.**

\* \* \* \* \*

(c) \* \* \*

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:

By a small entity (§ 1.27(a)) ..... \$125.00  
 By other than a small entity ..... \$250.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether

dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) ..... \$31.00  
 By other than a small entity ..... \$62.00  
 \* \* \* \* \*

(d) For filing each statutory disclaimer (§ 1.321):

By a small entity (§ 1.27(a)) ..... \$80.00  
 By other than a small entity ..... \$160.00

(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 being due by three years and six months after the original grant:

By a small entity (§ 1.27(a)) ..... \$575.00  
 By other than a small entity ..... \$1,150.00

(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 being due by seven years and six months after the original grant:

By a small entity (§ 1.27(a)) ..... \$1,450.00  
 By other than a small entity ..... \$2,900.00

(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 being due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a)) ..... \$2,405.00  
 By other than a small entity ..... \$4,810.00  
 \* \* \* \* \*

6. Section 1.492 is amended by revising paragraphs (a), (b)(3), (b)(4), (c)(2), (d) through (f) and (j) to read as follows:

**§ 1.492 National stage fees.**

\* \* \* \* \*

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371 if the basic national fee was not paid before December 8, 2004:

By a small entity (§ 1.27(a)) ..... \$195.00  
 By other than a small entity ..... \$390.00

(b) \* \* \*

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a small entity (§ 1.27(a)) ..... \$250.00

By other than a small entity ..... \$500.00

(4) In all situations not provided for in paragraphs (b)(1), (b)(2), or (b)(3) of this section:

By a small entity (§ 1.27(a)) ..... \$315.00  
 By other than a small entity ..... \$630.00

(c) \* \* \*

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a small entity (§ 1.27(a)) ..... \$125.00  
 By other than a small entity ..... \$250.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

By a small entity (§ 1.27(a)) ..... \$125.00  
 By other than a small entity ..... \$250.00

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.27(a)) ..... \$31.00  
 By other than a small entity ..... \$62.00

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

By a small entity (§ 1.27(a)) ..... \$230.00  
 By other than a small entity ..... \$460.00

\* \* \* \* \*

(j) Application size fee for any international application for which the basic national fee was not paid before December 8, 2004, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a small entity (§ 1.27(a)) ..... \$160.00  
 By other than a small entity ..... \$320.00

**PART 41—PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

■ 7. The authority citation for 37 CFR part 41 continues to read as follows:

**Authority:** 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135.

■ 8. Section 41.20 is amended by revising paragraph (b) to read as follows:

**§ 41.20 Fees.**

\* \* \* \* \*

(b) *Appeal fees.* (1) For filing a notice of appeal from the Examiner to the Board:

By a small entity (§ 1.27(a) of this title) ..... \$315.00  
 By other than a small entity ..... \$630.00

(2) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a) of this title) ..... \$315.00

By other than a small entity ..... \$630.00  
 (3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:  
 By a small entity (§ 1.27(a)) ..... \$630.00  
 By other than a small entity ..... \$1,260.00

Dated: August 31, 2012.

**Deborah S. Cohn,**

*Commissioner for Trademarks, United States Patent and Trademark Office.*

[FR Doc. 2012-21974 Filed 9-4-12; 8:45 am]

**BILLING CODE 3510-16-P**

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 1

RIN 2900-AN95

#### Sharing Information Between the Department of Veterans Affairs and the Department of Defense

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as final, without change, the interim final rule published in the **Federal Register** on October 20, 2011. This final rule removes a Department of Veterans Affairs (VA) regulatory restriction on the sharing of certain medical information with the Department of Defense (DoD) that is not required by the applicable statute and is inconsistent with the intent and purpose of that statute.

**DATES:** *Effective Date:* September 5, 2012.

**FOR FURTHER INFORMATION CONTACT:** Stephania Griffin, Veterans Health Administration Privacy Officer (10P2C1), Health Information Governance, Office of Informatics and Analytics, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (704) 245-2492. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** Section 7332(a)(1) of title 38, United States Code, affords special protection against the disclosure of VA medical “[r]ecords of the identity, diagnosis, prognosis, or treatment of any patient or subject which are maintained in connection with the performance of any program or activity (including education, training, treatment, rehabilitation, or research) relating to drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia.” However, an exception in section 7332(e) states: “The prohibitions of this section shall not prevent any interchange of records—(1) within and

among those components of [VA] furnishing health care to veterans, or determining eligibility for benefits under this title; or (2) between such components furnishing health care to veterans and the Armed Forces.”

VA implemented section 7332(e) in 38 CFR 1.461(c)(1); however, in so doing, we imposed an additional restriction on the scope of information that may be exchanged between VA and DoD, limiting it to only “information pertaining to a person relating to a period when such person is or was subject to the Uniform Code of Military Justice.” This restriction was narrower than the statutory restriction, and it impeded VA’s ability to share with DoD important medical information pertaining to veterans and to coordinate their care and treatment. Further, the restriction impeded VA’s ability to fully engage in Presidential- and Congressional-supported interoperability initiatives with DoD, such as electronic health record initiatives. This regulatory limitation was not intended to have these negative results on VA’s ability to provide comprehensive high-quality health care to veterans and, where applicable, to support DoD in similarly caring for servicemembers and military retirees.

On October 20, 2011, VA published in the **Federal Register**, at 76 FR 65133, an interim final rule that amended 38 CFR 1.461(c)(1) to better conform to authority granted to VA by Congress. Interested persons were invited to submit comments on or before December 19, 2011, and we received a total of 3 comments. All of the issues raised by the commenters are addressed below.

Two commenters stated general concerns regarding access to electronic medical records by DoD and the security of those records from inappropriate disclosure or access. VA is committed to the appropriate protection, use, and disclosure of information maintained and exchanged by VA in the course of official business and to ensuring the security of that information. The amendment to 38 CFR 1.461(c)(1) allows VA to fulfill Congress’ clear intention that VA and DoD engage in the exchange of records, but does not affect the requirement of 38 U.S.C. 7332(e)(2) that limits VA disclosures to components of DoD that are “furnishing health care to veterans.” We do not make any changes based on these comments.

One commenter asserted that this regulation would create a breach of confidentiality by allowing DoD to access a veteran’s health information without authorization by the veteran.

However, the commenter also agreed that it is important that VA and DoD have access to veterans’ medical information to ensure continuity of care, safety, and for the provision of benefits. This regulation will ensure that this access is provided for those reasons by removing a specific restriction that was not required by the statutory authority. In addition, VA will continue to comply with all other applicable laws and regulations regarding access to medical records, including those that limit the use and disclosure of information to specifically authorized disclosures. We do not make any changes based on this comment.

One commenter suggested that additional language be included in the final rule to prevent the misuse of information “for unintended, alternative [sic] purposes beyond medical care.” Otherwise, disclosure of information for purposes other than medical care “may deter veterans from seeking care and/or disability compensation” from VA. The suggested language focuses on the intended use of the information accessed under the rule. As we noted above, the amendment to the rule complies with the section 7332 limitations on the nature and purpose of information to be disclosed. Health care professionals, such as those accessing information through this provision, are already duty-bound to access health information consistent with law and professional standards. This rule does not limit or otherwise affect the enforcement of those laws and professional standards. Because we believe the suggested language is redundant of existing protections and because other laws and regulations govern such use and disclosure, we decline to further amend the regulation. We do not make any changes based on this comment.

Based on the rationale set forth here, and in the interim final rule, we adopt the interim final rule as a final rule without any changes.

#### Effect of Rulemaking

The Code of Federal Regulations, as revised by this final rule, represents the exclusive legal authority on this subject. No contrary rules or procedures are authorized. All VA guidance will be read to conform with this rulemaking if possible or, if not possible, such guidance is superseded by this rulemaking.

#### Paperwork Reduction Act

This rule contains no collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).