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Trademarks & Copyrights

USPTO to Change Trademark Fees: What You Need to Know

Legal Update

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Effective January 2, 2021, the USPTO is changing *some* of its trademark fees. The most notable changes are shown below, for electronic filings.

Trademark Processing Fees

- Increase in the standard online trademark application fee from \$275 to \$350 per class;
- Increase in the Section 8/71 Declaration of Continued Use filing fee from \$125 to \$225 per class;
- **New fee** of \$50 for filing a Letter of Protest against a third-party application; and
- **New fee** for deleting goods, services and/or classes from a registration after submitting a Section 8 or 71 Declaration (but before the declaration is accepted) of \$250 per class.

Trademark Trial and Appeal Board Fees

- Increase in fees to seek an Extension of Time to Oppose from \$100 to \$200 for the initial 90-day request or 60-day request following a 30-day request at no charge; and from \$200 to \$400 for a final 60-day request;
- Increase in fees to file a Notice of Opposition or Petition to Cancel from \$400 to \$600 per class;
- **New fee** for filing an appeal brief in an ex parte appeal of \$200 per class;
- **New fee** for requests for oral hearings of \$500 per proceeding; and
- Partial refund of the fee for a petition to cancel may be made in a default judgment if the cancellation involved only a nonuse or abandonment claim, the defendant did not appear and there were no filings other than the petition to cancel.

How to Prepare

Fredrikson's Advertising, Marketing & Trademark Department is here to help trademark owners prepare and strategize.

For brand owners, consider filing new applications for proposed brands before calendar year-end. For trademark lawyers outside the U.S., review upcoming convention priority deadlines and seek instructions now on whether to file in the U.S.

For a brand owner with a response to a Post-Registration Audit coming due, gather your information now, and consider having our firm file your response before January 2 even if the response deadline falls in 2021. As mentioned above, there is a **new fee** for deleting goods, services, and/or classes from a registration after submitting a Section 8 or 71 Declaration, but before the Declaration is accepted (\$250 per class if filed electronically). There is no fee now, and after January 2 there still will be no fee to delete goods/services/classes *within* a Section 8 or 71 Declaration. Beginning January 2, there will be no fee to electronically file a Section 7 request to amend a registration before submitting a Section 8 or 71 Declaration if in the section 7 request the filer *only* requests deletion of goods, services and/or classes (otherwise, the *current* fee for filing a Section 7 request electronically is \$100).

Why Now?

You may be asking why the USPTO is raising *any* fees during a global pandemic.

Admittedly, the USPTO's trademark fees have not changed in four years. The last trademark fee increases were implemented in January 2017. Also, implementation of the fee rule originally was slated for August 2020. Due to the pandemic and stakeholder feedback, the USPTO paused development of the fee rule over the summer.

Another reason for the increases is that the USPTO also is in the middle of a multi-year project to upgrade IT systems and infrastructure and make other business improvements.

Further, the Final "Trademark Fee Adjustment" Rule issued on November 17, 2020, also mentioned that "the latest economic data point to continued recovery in many sectors of the economy."

The Final Rule also explained that the "USPTO is receiving record levels of new trademark application filings," many of which are use-based applications, "carrying with them larger front-end examination costs, while the percentage of intent-to-use and maintenance filings are decreasing, resulting in less back-end revenue. With larger net costs that are not being offset by back-end revenue, the USPTO would be unable to maintain an operating reserve, which puts the Office on an unsustainable funding model".

If you have any questions on fee changes, or need assistance with any U.S. trademark filings, please do not hesitate to contact an attorney in our Advertising, Marketing & Trademark Group.