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USPTO ISSUES FINAL RULE ON TRADEMARK FEE INCREASES

On November 17, 2020, the United States Patent and Trademark Office (“PTO”) issued a rule making final certain adjustments to trademark-related fees, including applications, post-registration maintenance, and Trademark Trial and Appeal Board (“TTAB”) proceedings. The new rules go into effect on January 2, 2021. Some highlights include:

- Increasing the basic application fee from \$275 to \$350.
- New fee for deleting goods or services after filing a post-registration Declaration of Use.
- New fees and procedures for Letters of Protests.
- New TTAB fees for filing appeal briefs and requesting oral hearings.

Application and Prosecution-Related Fees

The final rule increases the standard fee for filing an application using the online TEAS system from \$275 to \$350 per class.

In addition, the final rule introduces a fee of \$50 for filing a letter of protest, which allows a third party to introduce evidence with respect to the registrability of a mark in a pending trademark application. Previously, filing a letter of protest could be done without any government fee. The newly added fee reflects the PTO’s increased operating costs associated with reviewing and processing such letters, the filing of which has increased in recent years. The Final Rule also formalizes the Letter of Protest procedures, including requiring an itemization of evidence and limiting submission to 10 items of evidence.

Fees for petitions to the director will also increase sharply, jumping from \$100 to \$250, which reflects a recent increase in petitions that have created a backlog at the PTO. The fee for a petition to revive an abandoned application will increase from \$100 to \$150.

In a bit of good news, the PTO decided against implementing a previously proposed \$400 fee for filing a Request for Reconsideration at least three months after issuance of the Final Office Action. The proposed fee was included in the Notice of Proposed Rulemaking that issued earlier this summer, but the PTO received significant negative feedback from the trademark community on that particular proposal.

Post-Registration Maintenance Filing Fees

Importantly, the new rule introduces a fee of \$250 per class if goods and services are deleted from a registration after the Section 8 or Section 71 filing has been filed, but before they are accepted. The fee would apply when goods and services are deleted in certain post-registration filings, including Section 7 requests, responses to post-registration Office Actions, and voluntary amendments. In effect, it is anticipated that these fees and fee increases will encourage registrants to take stock with increased accuracy before filing renewals and Declarations of Use. The fee for deleting goods in this context is part of a broad effort from the PTO and newly appointed Commissioner Gooder to protect the integrity of the Register, which is a common theme in PTO policy making of late.

For Declarations of Use filed under Section 8 and Section 71, the final rule increases the fee from \$125 to \$225.

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Trademark Trial and Appeal Board Fees

The final rule sets or adjusts several fees related to TTAB filings:

- Notices of Opposition and Petitions to Cancel will increase from \$400 per class to \$600 per class; however, the Office has discretion to refund \$200 of the petition fee in cases of default judgment where a defendant has not appeared and the only filing made has been the petition to cancel.
- The tiered fee structure for extensions of time to file an opposition will be adjusted as follows:
 - No change to the initial 30-day extension for no fee;
 - A subsequent 60-day extension or initial 90-day extension will increase from \$100 to \$200; and
 - A final 60-day extension will increase from \$200 to \$400.
- Filing an appeal brief will carry a new fee of \$200 per class. The fee to file a Notice of Appeal will increase from \$200 per class to \$225 per class.
- A second and/or subsequent extension of time to file an appeal brief will carry a new fee of \$100 per application. A first extension of time to file an appeal brief remains available for no fee.
- An oral hearing before the TTAB will carry a new fee of \$500 per proceeding.

The fee changes for TTAB proceedings are geared towards allowing the USPTO to keep pace with its operating costs, as well as encouraging the efficient processing of filings.

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