

[IP Law Daily, TRADEMARK NEWS: After pause to allow for economic rebound from COVID-19, USPTO adjusts user fees, \(Nov. 17, 2020\)](#)

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Trademark fee changes based on FY 2021 budget projections will take effect January 2, 2021, after the agency delayed implementation due to economic concerns caused by the pandemic.

Citing economic data pointing to continued recovery in many sectors of the economy, the USPTO has decided to go forward with setting or adjusting certain trademark user fees, with the goal of recovering the strategic, operational, and administrative costs of the projected FY 2021 workload of the Trademark Trial and Appeal Board and the Office's trademark-related work. Detailed in a [final rule](#) published in the *Federal Register*, the changes are authorized by the Leahy-Smith America Invents Act (AIA), as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act). According to the Office, the changes also will further USPTO strategic objectives by better aligning fees with costs, protecting the integrity of the trademark register, improving the efficiency of agency processes, and ensuring financial sustainability to facilitate effective trademark operations. The USPTO had paused development of the fee rule because of uncertainty about the economy earlier this year resulting from the COVID-19 pandemic, but it has decided to finalize the fee rule for implementation on January 2, 2021.

The fee changes stemmed from a fee review in FY 2019. Although trademark-related costs of operations have risen, the Office said, trademark fees have not changed since January 2017. The revenue and workload assumptions in the new final rule are based on the assumptions found in the FY 2021 Congressional Justification (the USPTO's FY 2021 budget submission to Congress). However, some fee collections since that time have been lower than anticipated, due to lower than expected post-registration and Madrid filings. Nonetheless, the USPTO decided that the FY 2021 budget remained the most appropriate starting point for developing the new final rule because the budget assumptions are the most recent complete evaluation of the USPTO's budget expectations and requirements, and they provide assumptions for stakeholders to use when formulating their comments.

Those projections were developed prior to the COVID-19 outbreak, the USPTO noted, and they assumed continuing stable economic growth, not the sharp economic downturn seen in 2020. In formulating this rule, the USPTO considered the state of the U.S. economy, as well as the operational needs of the agency. The USPTO said it has weighed carefully current economic conditions and the potential hardship that the fee increase could create for businesses and individuals, but chose to go forward with the fee changes after the latest economic data have pointed to continued recovery in many sectors of the economy.

"The current economic conditions illustrate the need for the increases set forth in this rule," the USPTO said. "The majority of USPTO's trademark revenue comes from new applications, but the initial costs to examine applications exceed the revenues from those applications. These examination costs have been increasing over the years while the USPTO has kept filing fees low enough to encourage broad public participation in the trademark system."

Among the changes, the USPTO is increasing fees for all application filing types—paper applications, applications filed via the Trademark Electronic Application System (TEAS), and requests for extension of protection under section 66(a) of the Trademark Act. The per-class fee increases range from \$25 for a TEAS Plus application to \$150 for a paper application. In addition, fees for filing affidavits or declarations of use or excusable non-use under section 8 or section 71 are increasing by \$100 per class. The USPTO is also setting

a new \$50 fee for filing a letter of protest. Sixteen fees related to TTAB filings are established or adjusted by the new rule.

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