

UNITED STATES PATENT AND TRADEMARK OFFICE  
 REAUTHORIZATION ACT, FISCAL YEAR 1999

MAY 12, 1998.—Committed to the Committee of the Whole House on the State of  
 the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary,  
 submitted the following

R E P O R T

[To accompany H.R. 3723]

The Committee on the Judiciary, to whom was referred the bill  
 (H.R. 3723) to authorize funds for the payment of salaries and ex-  
 penses of the Patent and Trademark Office, and for other purposes,  
 having considered the same, reports favorably thereon with an  
 amendment and recommends that the bill as amended do pass.

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The amendment is as follows:  
 Strike out all after the enacting clause and insert in lieu there-  
 of the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999”.

**SEC. 2. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be made available for the payment of salaries and necessary expenses of the Patent and Trademark Office in fiscal year 1999, \$66,000,000 from fees collected in fiscal year 1998 and such fees as are collected in fiscal year 1999, pursuant to title 35, United States Code, and the Trademark Act of 1946 (15 U.S.C. 1051 et seq.). Amounts made available pursuant to this section shall remain available until expended.

**SEC. 3. LEVEL OF FEES FOR PATENT SERVICES.**

(a) GENERAL PATENT FEES.—Section 41 of title 35, United States Code, is amended by striking subsection (a) and inserting the following:

“(a) The Commissioner shall charge the following fees:

“(1)(A) On filing each application for an original patent, except in design or plant cases, \$760.

“(B) In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of 3, \$18 for each claim (whether independent or dependent) which is in excess of 20, and \$260 for each application containing a multiple dependent claim.

“(C) On filing each provisional application for an original patent, \$150.

“(2) For issuing each original or reissue patent, except in design or plant cases, \$1,210.

“(3) In design and plant cases—

“(A) on filing each design application, \$310;

“(B) on filing each plant application, \$480;

“(C) on issuing each design patent, \$430; and

“(D) on issuing each plant patent, \$580.

“(4)(A) On filing each application for the reissue of a patent, \$760.

“(B) In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$18 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

“(5) On filing each disclaimer, \$110.

“(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$300.

“(B) In addition, on filing a brief in support of the appeal, \$300, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$260.

“(7) On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$1,210, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110.

“(8) For petitions for 1-month extensions of time to take actions required by the Commissioner in an application—

“(A) on filing a first petition, \$110;

“(B) on filing a second petition, \$270; and

“(C) on filing a third petition or subsequent petition, \$490.

“(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, \$670.

“(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, \$760.

“(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, \$970.

“(12) Basic national fee for an international application where the international preliminary examination fee has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33 (2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, \$96.

“(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, \$78.

“(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, \$18.

“(15) For each national stage of an international application containing a multiple dependent claim, \$260.

For the purpose of computing fees, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.”

(b) PATENT MAINTENANCE FEES.—Section 41 of title 35, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) The Commissioner shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

“(1) 3 years and 6 months after grant, \$940.

“(2) 7 years and 6 months after grant, \$1,900.

“(3) 11 years and 6 months after grant, \$2,910.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.”

#### SEC. 4. AUTHORIZATION OF EXPENDITURE.

Section 42(c) of title 35, United States Code, is amended by striking the first sentence and inserting the following: “To the extent and in the amounts provided in advance in appropriations Acts, fees authorized in this title or any other Act to be charged or established by the Commissioner shall be available to the Commissioner to carry out the activities of the Patent and Trademark Office.”

#### SEC. 5. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect on October 1, 1998.

### PURPOSE AND SUMMARY

The purpose of H.R. 3723, the “United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999,” is to authorize necessary appropriations for the Patent and Trademark Office (PTO) by adjusting the patent fee structure set forth in 35 U.S.C. § 41, and to prevent the diversion of agency revenues for activities unrelated to PTO operations.

#### BACKGROUND AND NEED FOR THE LEGISLATION

##### AGENCY OPERATIONS AND THE OBRA SURCHARGE

The Administration announced that, in light of the expiration of Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (OBRA), the patent fees established under subsections 41 (a) and (b) of title 35 to the U.S. Code would revert to their pre-OBRA level. It was stated that, unless adjusted, the fees would fall \$131,526,000 short of the amount the PTO needs to execute the program recommended by the President in his Fiscal Year 1999 (FY99) budget. To compensate for this reduction in fee revenues, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks Bruce Lehman stated that an increase was needed in the base patent fees in an amount equal to the reduction in revenue which would result from the lapsing of the surcharge authority.

While all Members of the Committee are very supportive of policies to ensure that the PTO is adequately funded to provide the

services requested by patent and trademark applicants, the Administration request received by the Subcommittee would actually raise \$50 million more than the amount the President stated in his budget the PTO will need in FY99. Commissioner Lehman explained that this revenue, along with \$66 million from FY98, would be used to fund other government agencies and programs. This continuing diversion of PTO fee revenues was strongly opposed by inventors and the trademark community, who pay for patent and trademark applications to fund only the services they receive from the PTO.

The PTO is 100%-funded through the payment of application and user fees. Taxpayer support for the operations of the Office was eliminated in 1990 with the passage of OBRA. OBRA imposed a massive fee increase (referred to as a "surcharge") on American inventors and industry in order to replace taxpayer support the Office was then receiving. The revenues generated by this surcharge were placed into a surcharge account. The PTO was required to solicit permission from the Committee on Appropriations to use the revenues in the surcharge account to support that portion of its operations these revenues represented. It was anticipated in 1990 that Congress would routinely grant the PTO permission to use the surcharge revenue since it was generated originally from fees paid by users of the patent and trademark systems to support only the cost of those systems.

Unfortunately, the user fees paid into the surcharge account became a target of opportunity to fund other, unrelated, taxpayer-supported government programs. The temptation to use the surcharge, and thus a significant portion of the operating budget of the PTO, was proven to be increasingly irresistible, to the detriment and sound functioning of the patent and trademark systems. Beginning with a diversion of \$8 million in 1992, Congress increasingly redirected a larger share of the surcharge revenue, reaching a record level of \$54 million in FY97. In total, over the past seven fiscal years, more than \$142 million has been diverted from the PTO to other agencies and programs.

#### ADMINISTRATION REQUEST FOR FY99

In its budget submission for FY99, the Administration noted that ". . . legislation will be proposed to set the [PTO] base fee structure for 1999."<sup>1</sup> The General Counsel of the Department of Commerce has since forwarded the Administration recommendations to adjust the fee structure to compensate for the expiration of the surcharge. Were Congress to adopt the Administration plan, PTO resources for FY99 would total roughly \$902 million, which includes \$654 million in fee collections exclusive of the expired surcharge, \$182 million to compensate for the expiration of the surcharge, and \$66 million in carryover funds.

As previously noted, the Administration request also assumes that \$116 million will be diverted for deficit reduction purposes. The diversion is comprised of the \$66 million in carryover funds, and an additional \$50 million in FY99 revenues.

<sup>1</sup> *Budget of the United States Government, Fiscal Year 1999 (Appendix)* at 210.

Importantly, the President concedes in his budget request that “[i]f the PTO legislative proposal to revise patent fees is not enacted into law, then the Administration will need to reduce the proposed rescission.”<sup>2</sup>

#### HEARINGS

The Committee’s Subcommittee on Courts and Intellectual Property conducted an oversight hearing on PTO operations on March 19, 1998. Testimony was received from seven witnesses representing seven organizations.

#### COMMITTEE CONSIDERATION

On April 30, 1998, the Subcommittee on Courts and Intellectual Property met in open session and ordered favorably reported the bill H.R. 3723, as amended, by voice vote, a quorum being present. On May 6, 1998, the Committee met in open session and ordered favorably reported the bill H.R. 3723 with an amendment in the nature of a substitute by voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### COMMITTEE COST ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill H.R. 3723 will have no budget effect for Fiscal Year 1999.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, clause 8, section 8 of the Constitution.

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<sup>2</sup>*Id.*

## SECTION-BY-SECTION ANALYSIS

## SECTION ONE

Section One sets forth the short title of the bill, the "United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999."

## SECTION TWO

Section Two authorizes the PTO to pay FY99 salaries and necessary expenses in the following amounts from the following sources: \$66 million in carryover funds from the preceding fiscal year; and "such fees as are collected" in FY99 from patent and trademark applicants and owners.

Section Two also specifies that the PTO shall retain all of its funds generated from these sources until they are expended; in other words, this provision will prevent Congress from accessing carryover funds for non-agency purposes.

## SECTION THREE

Section Three prescribes the dollar amounts for certain corresponding "general" patent and patent application fees set forth in 35 U.S.C. §41.

Under §41(a)(1)(A), the filing fee for an original patent, except in design or plant cases, is \$760. In addition, §41(a)(1)(B) states that upon filing or upon presentation at any other time, \$78 is due for each claim in independent form which is in excess of three; \$18 is due for each claim (whether independent or dependent) which is in excess of 20; and \$260 is due for each application containing a multiple dependent claim. Section 41(a)(1)(C) states that \$150 is due upon filing each provision application for an original patent.

Section 41(a)(2) establishes a \$1,210 fee for issuing each original or reissue patent, except in design or plant cases. For design patent cases, the filing fee would be \$310 and the issue fee would be \$430. For plant cases, the filing fee is \$480 and the issue fee is \$580.

Section 41(1)(4)(A) relates to fees in reissue case and establishes a fee of \$760 for filing each application for the reissue of a patent. In addition, upon filing or upon presentation at any other time, \$78 is due for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$18 is due for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

Under §41(a)(5), a fee of \$110 would be established for filing each in a patent or a patent application.

Section 41(a)(6)(A) establishes a \$300 fee due upon filing an appeal from the examiner to the Board of Patent Appeals and Interferences. In addition, a fee of \$300 is due upon filing a brief in support of the appeal, and a fee of \$260 is due for requesting an oral hearing before the Board of a Patent Appeals and Interferences.

Section 41(a)(7) establishes a fee of \$1,210 for filing each petition for revival or acceptance of the delayed payment of an issue fee where the abandonment or the failure to pay the issue fee is unintentional. The section establishes a fee of \$110 for filing a petition

under §§ 133 or 151 of title 35 in accordance with standards presently in effect requiring that the delay resulting in the abandonment, or the delay in payment of the issue fee, be unavoidable. Under this section, a petition accompanied by either a fee of \$1,210 or \$110 would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable.

Section 41(a)(8) establishes fees for the filing of petitions for extensions of time. Various time periods are prescribed by the Office for taking actions on matters relating to patent applications. These time periods are set pursuant to statute or regulatory authority of the Commissioner. This section establishes fees for filing petitions to extend the time periods for taking action within any statutory limitations.

A fee of \$110 is established for filing a request for a first one-month extension; an additional fee of \$270 for filing a second one-month extension request which would expire two months after the end of the time period set for taking action; and a third fee of \$490 for filing a request for a third one-month extension which would expire three months after the end of the time period set for taking the action. A subsequent or fourth extension could be requested if additional time was available under the statute. In no case could a period be extended beyond the maximum time set by statute.

Section 41(a)(9) establishes a \$670 fee for the filing of an international application under the Patent Cooperation Treaty where the PTO was the International Preliminary Examining Authority and the International Searching Authority. Section 41(a)(10) establishes a \$760 fee for the filing of an international application when the PTO is the International Searching Authority but not the International Preliminary Examining Authority. Section 41(a)(11) establishes a \$970 fee for an international application when PTO is neither Authority.

Section 41(a)(12) establishes a fee of \$96 for the filing of an international application where the international preliminary examination fee has been paid to the PTO and the international preliminary examination report states that the provisions of Article 33 (2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national state. For filing of each independent claim in excess of three in the national stage application, § 41(a)(13) establishes a \$78 fee; and for filing each claim (independent or dependent) in excess of 20 in a national stage application, the fee is \$18. Finally, § 41(a)(15) establishes a \$260 fee for filing each national state application continuing a multiple dependent claim. A multiple dependent claim, for purposes of computing fees, shall be considered as separate dependent claims in accordance with the number of claims to which reference is made.

Section 41(b) provides that the Commissioner charge the following fees for maintaining a patent, other than a design or plant patent, in force: at three years and six months after grant, \$940; at seven years and six months after grant, \$1,900; and at 11 years and six months after grant, \$2,910.

Section Three also states that, unless the agency receives the payment of an applicable maintenance fee on or before the due

date, the affected patent owner will be granted a six-month grace period to pay the fee, after which the patent will expire. The PTO Commissioner is empowered under this section to impose a surcharge for accepting a late payment during the grace period.

Finally, Section Three prohibits the PTO from establishing a maintenance fee for a design or plant patent in force.

#### SECTION FOUR

Section Four authorizes the availability of fee revenue to the PTO Commissioner to carry out the activities of the agency, to the extent and in the amounts provided in corresponding appropriations acts.

#### SECTION FIVE

Section Five sets forth the effective date of H.R. 3723: October 1, 1998.

#### DISCUSSION

House Resolution 3723 makes a policy statement that Congress must stop diverting the fees of inventors and trademark applicants to fund other taxpayer-funded government programs. Accordingly, the bill prescribes a schedule of fees that would recover only the amount of money which the Administration has stated it needs to execute the program recommended by the President for the PTO in FY99. In other words, the fee structure reflects the Administration request *less \$50 million, or the amount of FY99 fee collections which would be diverted pursuant to the President's budget*. It will still allow the appropriators to divert, at the President's request, the \$66 million in carryover funds from the preceding fiscal year. This legislation not only fully funds the stated needs of the PTO, it will provide a real decrease in fees paid by patent applicants—the first actual decrease in fees in at least the last fifty years; indeed, perhaps since the patent system was established in 1790.

The decrease in fees provided by this legislation will provide tangible assistance to American inventors, while ensuring that they get their monies worth, especially since their creativity and ingenuity are so crucial to the welfare of our nation.

#### AGENCY VIEWS

DEPARTMENT OF COMMERCE  
GENERAL COUNSEL

*Washington, DC, May 6, 1998.*

Hon. HENRY J. HYDE, *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to set forth the Administration's views on H.R. 3723, the "United States Patent and Trademark Office Authorization Act, FY 1999." The bill amends section 41 of title 5, United States Code, regarding the patent fees collected by the United States Patent and Trademark Office (PTO).

While we appreciate Chairman Coble's fine work and personal efforts in helping to solve the funding issues for the PTO created by the expiration of Section 10101 of the Omnibus Budget Reconcili-

ation Act of 1990, the bill differs from the Administration's proposed legislation with regard to the patent fee levels. The President's FY 1999 Budget assumes that total funds are available for the PTO program operations in FY 1999, and that \$50 million from the FY 1999 PTO fee collections would contribute toward a balanced budget. This can be accomplished by setting patent user fee levels at their current level. The new fee amounts provided for in H.R. 3723 would not provide sufficient income to achieve these goals.

This fee level jeopardizes our long-term strategic planning efforts by introducing greater revenue uncertainty. If we are going to achieve our long-term goals of reducing patent cycle time, implementing new automated systems, and achieving customer quality improvements critical to the future of the patent system, patent fee levels need to be relatively stable over a significant time period and in an amount sufficient to deliver the strategic goals. The Administration's April 1 legislative proposal to reset the patent user fee levels to the current FY 1998 fee levels achieves this purpose.

The Administration's legislative proposal also ensures that the Appropriations Committee receives credit for patent fee collections. The Subcommittee failed to adopt this proposal, putting in jeopardy the scoring of new receipts to the Appropriations Committee.

The Department looks forward to working with you to resolve these issues so that the Administration can support passage of the bill. OMB advises that it has no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely,

ANDREW J. PINCUS.

cc: Hon. John Conyers, Jr.  
Hon. Howard Coble.  
Hon. Barney Frank.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

**TITLE 35, UNITED STATES CODE**

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**PART I—PATENT AND TRADEMARK OFFICE**

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**CHAPTER 4—PATENT FEES; FUNDING; SEARCH SYSTEMS**

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**§ 41. Patent fees; patent and trademark search systems**

[(a) The Commissioner shall charge the following fees:

[(1)(A) On filing each application for an original patent, except in design or plant cases, \$500.

[(B) In addition, on filing or on presentation at any other time, \$52 for each claim in independent form which is in excess of 3, \$14 for each claim (whether independent or dependent) which is in excess of 20, and \$160 for each application containing a multiple dependent claim.

[(C) On filing each provisional application for an original patent, \$150.

[(2) For issuing each original or reissue patent, except in design or plant cases, \$820.

[(3) In design and plant cases—

[(A) on filing each design application, \$200;

[(B) on filing each plant application, \$330;

[(C) on issuing each design patent, \$290; and

[(D) on issuing each plant patent, \$410.

[(4)(A) On filing each application for the reissue of a patent, \$500.

[(B) In addition, on filing or on presentation at any other time, \$52 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$14 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

[(5) On filing each disclaimer, \$78.

[(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$190.

[(B) In addition, on filing a brief in support of the appeal, \$190, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$160.

[(7) On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$820, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$78.

[(8) For petitions for 1-month extensions of time to take actions required by the Commissioner in an application—

[(A) On filing a first petition, \$78;

[(B) on filing a second petition, \$172; and

[(C) on filing a third petition or subsequent petition, \$340.

[(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, \$450.

[(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, \$500.

[(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, \$670.

[(12) Basic national fee for an international application where the international preliminary examination has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33(2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, \$66.

[(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, \$52.

[(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, \$14.

[(15) For each national stage of an international application containing a multiple dependent claim, \$160.

For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.

[(b) The Commissioner shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:

[(1) 3 years and 6 months after grant, \$650.

[(2) 7 years and 6 months after grant, \$1,310.

[(3) 11 years and 6 months after grant, \$1,980.

Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such six-month grace period the late payment of an applicable maintenance fee. No fee will be established for maintaining a design or plant patent in force.]

(a) *The Commissioner shall charge the following fees:*

(1)(A) *On filing each application for an original patent, except in design or plant cases, \$760.*

(B) *In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of 3, \$18 for each claim (whether independent or dependent) which is in excess of 20, and \$260 for each application containing a multiple dependent claim.*

(C) *On filing each provisional application for an original patent, \$150.*

(2) *For issuing each original or reissue patent, except in design or plant cases, \$1,210.*

(3) *In design and plant cases—*

(A) *on filing each design application, \$310;*

(B) *on filing each plant application, \$480;*

(C) *on issuing each design patent, \$430; and*

(D) *on issuing each plant patent, \$580.*

(4)(A) *On filing each application for the reissue of a patent, \$760.*

(B) In addition, on filing or on presentation at any other time, \$78 for each claim in independent form which is in excess of the number of independent claims of the original patent, and \$18 for each claim (whether independent or dependent) which is in excess of 20 and also in excess of the number of claims of the original patent.

(5) On filing each disclaimer, \$110.

(6)(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$300.

(B) In addition, on filing a brief in support of the appeal, \$300, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$260.

(7) On filing each petition for the revival of an unintentionally abandoned application for a patent or for the unintentionally delayed payment of the fee for issuing each patent, \$1,210, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110.

(8) For petitions for 1-month extensions of time to take actions required by the Commissioner in an application—

(A) on filing a first petition, \$110;

(B) on filing a second petition, \$270; and

(C) on filing a third petition or subsequent petition, \$490.

(9) Basic national fee for an international application where the Patent and Trademark Office was the International Preliminary Examining Authority and the International Searching Authority, \$670.

(10) Basic national fee for an international application where the Patent and Trademark Office was the International Searching Authority but not the International Preliminary Examining Authority, \$760.

(11) Basic national fee for an international application where the Patent and Trademark Office was neither the International Searching Authority nor the International Preliminary Examining Authority, \$970.

(12) Basic national fee for an international application where the international preliminary examination fee has been paid to the Patent and Trademark Office, and the international preliminary examination report states that the provisions of Article 33 (2), (3), and (4) of the Patent Cooperation Treaty have been satisfied for all claims in the application entering the national stage, \$96.

(13) For filing or later presentation of each independent claim in the national stage of an international application in excess of 3, \$78.

(14) For filing or later presentation of each claim (whether independent or dependent) in a national stage of an international application in excess of 20, \$18.

(15) For each national stage of an international application containing a multiple dependent claim, \$260.

For the purpose of computing fees, a multiple dependent claim referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made. Errors

*in payment of the additional fees may be rectified in accordance with regulations of the Commissioner.*

*(b) The Commissioner shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980:*

- (1) 3 years and 6 months after grant, \$940.*
- (2) 7 years and 6 months after grant, \$1,900.*
- (3) 11 years and 6 months after grant, \$2,910.*

*Unless payment of the applicable maintenance fee is received in the Patent and Trademark Office on or before the date the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period. The Commissioner may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.*

\* \* \* \* \*

**§ 42. Patent and Trademark Office funding**

(a) \* \* \*

\* \* \* \* \*

(c) **[Revenues from fees shall be available to the Commissioner to carry out, to the extent provided in appropriation Acts, the activities of the Patent and Trademark Office.]** *To the extent and in the amounts provided in advance in appropriations Acts, fees authorized in this title or any other Act to be charged or established by the Commissioner shall be available to the Commissioner to carry out the activities of the Patent and Trademark Office. Fees available to the Commissioner under section 31 of the Trademark Act of 1946 may be used only for the processing of trademark registrations and for other activities, services, and materials relating to trademarks and to cover a proportionate share of the administrative costs of the Patent and Trademark Office.*

\* \* \* \* \*