

§10 AIA: Fee Setting Authority

(a) FEE SETTING.—

(1) IN GENERAL.—The Director may set or adjust by rule any fee established, authorized, or charged under title 35, United States Code, or the Trademark Act of 1946 (15 U.S.C. 1051 et seq.), for any services performed by or materials furnished by, the Office, subject to paragraph (2).

(2) FEES TO RECOVER COSTS.—Fees may be set or adjusted under paragraph (1) only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents (in the case of patent fees) and trademarks (in the case of trademark fees), including administrative costs of the Office with respect to such patent or trademark fees (as the case may be).

(b) SMALL AND MICRO ENTITIES.—The fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent with respect to the application of such fees to any small entity that qualifies for reduced fees under section 41(h)(1) of title 35, United States Code, and shall be reduced by 75 percent with respect to the application of such fees to any micro entity as defined in section 123 of that title (as added by subsection (g) of this section).

(c) REDUCTION OF FEES IN CERTAIN FISCAL YEARS.—In each fiscal year, the Director—

(1) shall consult with the Patent Public Advisory Committee and the Trademark Public Advisory Committee on the advisability of reducing any fees described in subsection (a); and

(2) after the consultation required under paragraph (1), may reduce such fees.

(d) ROLE OF THE PUBLIC ADVISORY COMMITTEE.—The Director shall—

(1) not less than 45 days before publishing any proposed fee under subsection (a) in the Federal Register, submit the proposed fee to the Patent Public Advisory Committee or the Trademark Public Advisory Committee, or both, as appropriate;

(2)(A) provide the relevant advisory committee described in paragraph (1) a 30-day period following the submission of any proposed fee, in which to deliberate, consider, and comment on such proposal;

(B) require that, during that 30-day period, the relevant advisory committee hold a public hearing relating to such proposal; and

(C) assist the relevant advisory committee in carrying out that public hearing, including by offering the use of the resources of the Office to notify and promote the hearing to the public and interested stakeholders;

(3) require the relevant advisory committee to make available to the public a written report setting forth in detail the comments, advice, and recommendations of the committee regarding the proposed fee; and

(4) consider and analyze any comments, advice, or recommendations received from the relevant advisory committee before setting or adjusting (as the case may be) the fee.

(e) PUBLICATION IN THE FEDERAL REGISTER.—

(1) PUBLICATION AND RATIONALE.—The Director shall—

(A) publish any proposed fee change under this section in the Federal Register;

(B) include, in such publication, the specific rationale and purpose for the proposal, including the possible expectations or benefits resulting from the proposed change; and

(C) notify, through the Chair and Ranking Member of the Committees on the Judiciary of the Senate and the House of Representatives, the Congress of the proposed change not later than the date on which the proposed change is published under subparagraph (A).

(2) PUBLIC COMMENT PERIOD.—The Director shall, in the publication under paragraph (1), provide the public a period of not less than 45 days in which to submit comments on the proposed change in fees.

(3) PUBLICATION OF FINAL RULE.—The final rule setting or adjusting a fee under this section shall be published in the Federal Register and in the Official Gazette of the Patent and Trademark Office.

(4) CONGRESSIONAL COMMENT PERIOD.—A fee set or adjusted under subsection (a) may not become effective—

(A) before the end of the 45-day period beginning on the day after the date on which the Director publishes the final rule adjusting or setting the fee under paragraph (3); or

(B) if a law is enacted disapproving such fee.

(5) RULE OF CONSTRUCTION.—Rules prescribed under this section shall not diminish—

(A) the rights of an applicant for a patent under title 35, United States Code, or for a mark under the Trademark Act of 1946; or

(B) any rights under a ratified treaty.

(f) RETENTION OF AUTHORITY.—The Director retains the authority under subsection (a) to set or adjust fees only during such period as the Patent and Trademark Office remains an agency within the Department of Commerce.

(g) MICRO ENTITY DEFINED.—

(1) IN GENERAL.—Chapter 11 of title 35, United States Code, is amended by adding at the end the following new section: * * *