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December 5, 2024

The Honorable Richard J. Durbin
Chairman
The Honorable Lindsey Graham
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Jim Jordan
Chairman
The Honorable Jerrold Nadler
Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Commerce, United States Patent and Trademark Office: Setting and Adjusting Patent Fees During Fiscal Year 2025*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Commerce, United States Patent and Trademark Office (USPTO) entitled "Setting and Adjusting Patent Fees During Fiscal Year 2025" (RIN: 0651-AD64). We received the rule on November 19, 2024. It was published in the *Federal Register* on November 20, 2024. 89 Fed. Reg. 91898. The effective date of the rule is January 19, 2025.

According to USPTO, this rule sets or adjusts patent fees as authorized by the Leahy-Smith America Invents Act, as amended by the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018. USPTO stated that the fees the rule establishes will help stabilize USPTO's finances by offsetting a forecasted increase in aggregate costs and maintaining the patent operating reserve in the desired range.

Enclosed is our assessment of USPTO's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones".

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Juliana Lee
Agency Representative
United States Patent and Trademark Office

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF COMMERCE,
UNITED STATES PATENT AND TRADEMARK OFFICE
ENTITLED
“SETTING AND ADJUSTING PATENT FEES DURING FISCAL YEAR 2025”
(RIN: 0651-AD64)

(i) Cost-benefit analysis

The Department of Commerce, United States Patent and Trademark Office (USPTO), prepared a regulatory impact analysis (RIA) to analyze this rule’s costs and benefits over a 5-year period, from fiscal years 2025 through 2029. 89 Fed. Reg. 91898 (Nov. 20, 2024). This analysis assessed four patent fee schedule alternatives and their absolute and relative qualitative costs and benefits. *Id.* USPTO stated that based on the costs and benefits identified and analyzed in the RIA, the fee schedule detailed in the rule offers the highest net benefits. *Id.* at 91899. USPTO further stated that it did not identify any monetized costs and benefits of the rule but found it has significant qualitative benefits and only minimal costs. *Id.*

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

USPTO prepared a final regulatory flexibility analysis. This analysis stated: (1) the need for and objectives of this rule; (2) that USPTO received no comments regarding the initial regulatory flexibility analysis but received comments about general and particular fees and their impact on small entities; (3) that USPTO did not receive any comments from the Small Business Administration’s Chief Counsel for Advocacy; (4) that the rule’s changes will apply to any entity, including small and “micro” entities, that pays any patent fee the rule sets forth; (5) that the rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees; and (6) that USPTO considered several alternative approaches to the rule. See 89 Fed. Reg. at 91996–92002.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

USPTO determined that this rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. See 89 Fed. Reg. at 92002.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: “the Act does not apply to this rule because it does not increase direct spending; the Act does not

apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

USPTO did not discuss the Act in this rule. In its submission to us, USPTO indicated the Act is not applicable to the rule.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On April 3, 2024, USPTO published a proposed rule. 84 Fed. Reg. 23226. USPTO received comments from 28 associations and individuals including intellectual property organizations, law firms, corporations, attorneys, and others. 89 Fed. Reg. at 91937. USPTO responded to comments in this rule. *Id.* at 91937–91958.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

In its submission to us, USPTO stated that this rule does not contain a collection of information requiring OMB approval under the Act. USPTO further stated that the collection of information involved in this rulemaking has been reviewed and previously approved by OMB under control numbers 0651-0012, 0651-0016, 0651-0017, 0651-0020, 0651-0021, 0651-0024, 0651-0027, 0651-0031, 0651-0032, 0651-0033, 0651-0034, 0651-0035, 0651-0059, 0651-0062, 0651-0063, 0651-0064, 0651-0069, 0651-0075, and 0651-0089. 89 Fed. Reg. at 92003. According to USPTO, updates to the above information collections as a result of the rule will be submitted to OMB as non-substantive change requests. *Id.*

Statutory authorization for the rule

USPTO promulgated this rule pursuant to sections 2(b)(2), 3(a)(2)(A), 6, 21, 23, 32, 41, 134, 135, 311, 312, 316, and 321–326 of title 35, United States Code, and Public Laws 112-29 and 112-274. See 89 Fed. Reg. at 92003, 92011.

Executive Order No. 12866 (Regulatory Planning and Review)

USPTO stated that this rule is significant under the Order and that it developed an RIA. 89 Fed. Reg. at 92002.

Executive Order No. 13132 (Federalism)

USPTO determined that this rule does not have federalism implications sufficient to warrant preparing a federalism assessment. 89 Fed. Reg. at 92002.