

**CHANGES TO UNITED STATES PATENT LAW FEES**  
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The Federal Government instituted sweeping changes to United States Patent Law this past fall with enactment of the “America Invents Act” (“The Act”). The ten aspects of The Act which will likely have the biggest impact upon small and startup businesses were listed in the January issue of Corporate Cranium. The first of these aspects is Fees.

The United States Patent and Trademark Office (USPTO) is a self-funded governmental entity, meaning it operates on the fees charged for its services without use of taxpayer dollars. Since 1992, the Federal Government has actually used the USPTO as a revenue source for the general fund by establishing an annual budget for the USPTO and transferring any fee revenue generated by the USPTO beyond that budget into the general fund. Since 1992, this has resulted in the transfer of nearly a billion dollars from the USPTO to the general fund. One of the consequences of this practice has been the USPTO’s inability to hire and train sufficient patent examiners to keep up with the ever growing number of patent applications being filed with the USPTO resulting in a dramatic increase in the average pendency period of a patent application from filing to issuance from about 2 years to about 3 years.

The Act begins the process of weaning the Federal Government off use of USPTO fees as a tax base by allowing the USPTO to keep more of the fees it generates to fund its operations. In addition, the Act allows the USPTO to adjust its own fees. A sampling of the USPTO’s proposed fee changes are provided below.

DESCRIPTION	CURRENT FEE		PROPOSED NEW FEE			% Change
	<i>Large</i>	<i>Small</i>	<i>Large</i>	<i>Small</i>	<i>Micro</i>	
Provisional Application Filing Fee	\$250	\$125	\$260	\$130	\$65	4%
Basic Filing Fee - Utility	\$380	\$190	\$400	\$200	\$100	5%
Patent Search Fee - Utility	\$620	\$310	\$660	\$330	\$165	6%
Examination Fee - Utility	\$250	\$125	\$780	\$390	\$195	212%
Request for Continued Examination (RCE)	\$930	\$465	\$1700	\$850	\$425	83%
Appeal	\$1240	\$620	\$1500	\$750	\$375	121%
Maintenance Fee Due at 3.5 years	\$1130	\$565	\$1600	\$800	\$400	42%
Maintenance Fee Due at 7.5 years	\$2850	\$1425	\$3600	\$1800	\$900	26%
Maintenance Fee Due at 11.5 years	\$4730	\$2365	\$7600	\$3800	\$1900	61%
Request for Inter Partes Reexamination	\$8800		\$27000			306%

*Small Entity*, a group that has long enjoyed a 50% discount in certain USPTO fees, is (i) an individual, (ii) a business concern with fewer than 500 employees, (iii) a university, or (iv) a 501(c)(3) non-profit organization. *Micro Entity*, a new group created under The Act, is (i) a Small Entity which has filed less than four patent applications and has a gross income of less than about \$148,000, (ii) an individual employed by an institution of higher learning, or (iii) an institution of higher learning.

As anticipated, fees will generally be increased across the board, with some fees increased dramatically. **BOTTOM LINE FOR SMALL BUSINESSES**, the cost to seek and obtain patent protection and the cost to maintain that patent protection through the payment of maintenance fees will suffer a noticeable increase unless the business can qualify as a Micro Entity, while the cost to challenge another's issued patent by asking the USPTO to reconsider patentability of the issued patent will skyrocket.