



# WINTERFELDT

## IP GROUP

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CLIENT ADVISORY

## USPTO Trademark Fee Changes Coming in January 2021

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*Trademark owners should note the upcoming changes to the United States Patent and Trademark Office's fee schedule, which will go into effect on January 2, 2021. The Office is increasing many fees and instituting new penalties. We encourage trademark owners to consider whether to move forward with any outstanding trademark prosecution, maintenance or litigation submissions before these fee adjustments are implemented. These changes may also be reason to reevaluate filing practices going forward.*

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### **General Fee Increases for Most Fee Paid Submissions**

The Office is generally increasing its filing fees for most paid submissions. A summary of the changes is below, with the most significant changes highlighted in red:

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Submission	Old Fee	New Fee
TEAS Standard Application (per Class)	\$275	\$350
TEAS Plus Application (per Class)	\$225	\$250
Sec. 8 or 71 Declaration of Use (per Class)	\$125	\$225
<b>Amendment to Application after Declaration of Use (per Class)</b>	<b>\$0</b>	<b>\$250</b>
Petition to Revive Abandoned Application	\$100	\$150
Ex Parte Appeal (per Class)	\$200	\$225
<b>Appeal Brief in Ex Parte Appeal (per Class)</b>	<b>\$0</b>	<b>\$200</b>
<b>Second and Subsequent Extension of Time for Appeal Brief (per Class)</b>	<b>\$0</b>	<b>\$100</b>
<b>Petition to the Director</b>	<b>\$100</b>	<b>\$250</b>
<b>Letter of Protest</b>	<b>\$0</b>	<b>\$50</b>
Petition to Cancel (per Class)	\$400	\$600
Notice of Opposition (per Class)	\$400	\$600
Extension of Time to Oppose to 90 Days	\$100	\$200
Extension of Time to Oppose to 150 Days	\$200	\$400
<b>Request for Oral Hearing</b>	<b>\$0</b>	<b>\$500</b>

## New Penalty for Overbroad Maintenance Filings

The Office is instituting a new penalty to create more accountability for Section 8 and 71 Declarations of Use. Once a declaration has been filed, owners will be assessed an additional \$250 per Class fee to remove categories of goods or services. This fee remains applicable until the declaration has been reviewed and accepted. The fee is clearly intended to apply to amendments made in response to the Office’s ongoing audits in those instances where the owner cannot provide additional required specimens of use. It should incentivize many trademark owners and attorneys to be more diligent in complying with the Trademark Act’s use requirements while recouping some of the Office’s costs associated with recent efforts to better police the veracity of maintenance filings.

## New Letter of Protest Filing Fee

The Office is implementing a \$50 fee for Letters of Protest to pending applications. There is currently no fee associated with this “informal” proceeding that allows third parties to offer evidence demonstrating why an application should not be approved for publication. [We have written extensively about the strategy in making these submissions.](#) Even the modest fee might be a factor that potential protestors weigh in

deciding whether a letter is worthwhile. Meanwhile, this inexpensive means of addressing potentially problematic trademarks at an early stage appears to be growing more popular. The Office is taking steps to further articulate its procedure for letters and they may soon be further formalized if the Trademark Modernization Act is passed by Congress. These fees should help offset the Office's growing costs associated with the program.

### **New, Significantly Increased *Ex Parte* Appeal and Petition Fees**

The Office is implementing several substantial new fees that could vastly increase the cost to appeal an Examining Attorney's final decision to the Trademark Trial and Appeal Board or to otherwise petition the Director for relief from that decision. Whereas currently, the only necessary fee to appeal is the initial \$200 per Class fee required to institute the proceeding, a fully briefed and decided appeal under the new schedule will more than double to at least \$425 per Class, including both the increased \$225 fee to appeal and the new \$200 per Class fee to file an appeal brief. Furthermore, the second and subsequent extension of time to file those briefs will incur an additional \$100 fee. Meanwhile, the fee to file a Petition to the Director, which is often appropriate on grounds that are not within the Board's remit, will similarly more than double from \$100 to \$250. These changes will likely limit the ability of some trademark owners to access these mechanisms.

### **New Fee for Oral Hearings on Board Disputes**

The Office is implementing a new \$500 fee for the optional oral hearing for either *ex parte* or *inter partes* disputes before the Trademark Trial and Appeal Board. These proceedings are arguably used more often than even benefits the parties and do come at some very real cost to the Board. This new fee might help trademark owners better calibrate their decision to request a hearing.

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For further information regarding the content of this article, or to discuss this or other intellectual property matters, please contact any of the following Winterfeldt IP Group team members:

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Brian Winterfeldt, [brian@winterfeldt.law](mailto:brian@winterfeldt.law), +1 202 903 4422

David Rome, [david@winterfeldt.law](mailto:david@winterfeldt.law), +1 202 759 5833

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