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New USPTO Fee Rule for Continuing Applications: Key Changes and Strategic Considerations for Applicants

“Unfortunately, the additional fees may induce a chilling effect on filing continuing applications. [But] by understanding the new fee structure and adjusting their filing practices accordingly, applicants can better manage costs and avoid unexpected fees.”

On November 20, 2024, the U.S. Patent and Trademark Office (USPTO) published a final rule introducing a significant new fee structure for continuing patent applications. This rule, set to take effect on January 19, 2025, establishes additional fees for any continuing application filed at least six years after its earliest benefit date (EBD). The final rule identifies EBD as the earliest filing date for which benefit is claimed under 35 U.S.C. §§ 120, 121, 365(c), or 386(c) and § 1.78(d) and, therefore, cannot be the filing date of a foreign application or the filing date of a provisional application to which benefit is claimed under 35 U.S.C. § 119(e).

Patent owners and practitioners should consider the new rule and the published examples and discuss how to adjust their filing strategies to avoid unnecessary costs.

Overview of the New Fee Structure

The final rule introduces two levels of additional fees for continuing applications filed six or more years after their EBDs. These fees are in addition to the regular filing and examination fees, which—unsurprisingly—are also increased under the new rules. For undiscounted entities, the following changes will apply:

1. \$2,700 Fee: Continuing applications filed six or more years after their EBDs but less than nine years after will incur a one-time fee of \$2,700 (\$1,080 for small entities).
2. \$4,000 Fee: Continuing applications filed nine or more years after their EBDs will incur a higher, one-time fee of \$4,000 (\$1,600 for small entities).

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