

U.S. Secretary of Commerce Is Considering Overhaul of Patent Fee System

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The Acting Director of the U.S. Patent and Trademark Office (USPTO) has confirmed that the Trump Administration is considering an overhaul of the U.S. patent fee system based on a perceived “disconnect” between the potentially high value of patents and the cost of obtaining them. To date, there are no formal proposals. Such policy changes could have significant implications for entities that seek patent protection and parties to patent transactions.

Background. The USPTO is entirely funded by fees. The current system uses a series of flat-fees:

Front-End Fees, which include filing, search, and examination fees paid when initially applying for a patent.

Maintenance Fees, which are paid throughout the life of a utility patent. If maintenance fees are not paid, a utility patent becomes abandoned and its claimed inventions become part of the public domain.

Post-Grant Fees, including for amendments, appeals, and other post-grant proceedings.

If you have any questions concerning this memorandum, please reach out to your regular firm contact or to the Cleary authors below.

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I. The Current Fee System. The USPTO is fully funded by user fees and is authorized to set its own fees.¹ In January 2025, the USPTO finalized a package of fee adjustments aimed at “aligning fees with the full costs of products and services,” promoting “efficient patent prosecution,” and “offering application processing options.”² These changes reflect the USPTO’s “continued commitment to fiscal responsibility, financial prudence, and operational efficiency.”³

II. Proposed “Value-Based” Fees. Reports indicate that Commerce Secretary Howard Lutnick and the Trump Administration have identified patent rights as a source of additional government revenue beyond funding the USPTO. For instance, the Wall Street Journal reports that the administration is considering a new value-based maintenance fee that could apply an annual charge of 1–5% of a patent’s estimated value in addition to the current fees.⁴

Although USPTO officials have acknowledged internal discussions and stakeholder outreach, no formal proposal or rulemaking has been announced.⁵ Acting USPTO Director Coke Morgan Stewart stated that Secretary Lutnick “feels that there is a disconnect between paying \$2,000 to the U.S. government for an invention that could be worth, for that company, hundreds of millions, or billions, of dollars.” Nevertheless, Acting Secretary Stewart stressed that the stakeholder community should not “focus too much on what [they have] read in the paper about specific [fee] models” because the Administration

“wants to have a dialogue with the stakeholder community and what the values of their IP rights are, and what the fees are, and how can we improve the system.”⁶

II. Implications. It is too early to tell what changes the Commerce Department and USPTO will implement. The reported goal of fixing a “disconnect between the low costs of obtaining patents and their huge worth” raises important questions, such as how to modify patent portfolio valuations, and how an amended fee system could increase the effective cost of obtaining and/or maintaining U.S. patents. Such reforms have implications for strategic approaches to building US and global patent portfolios, as well as balancing other IP rights, including copyrights, trademarks, know-how, and trade secrets. Companies whose business plans include patent protection should monitor these potential changes in USPTO fee structures.

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¹<https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

²<https://www.govinfo.gov/content/pkg/FR-2024-11-20/pdf/2024-26821.pdf>.

³<https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting>.

⁴Richard Vanderford & Alex Leary, Exclusive: Trump Administration Weighs Charging Patent Holders New Fee to

Raise Revenue, Wall St. J. (July 28, 2025, 12:01 AM ET), <https://www.wsj.com/politics/policy/patent-system-overhaul-18e0f06f>.

⁵ Theresa Schliep, *USPTO's Stewart Suggests Org. Is Eyeing Patent Fee Changes*, Law360 (Aug. 6, 2025, 8:58 PM EDT), <https://www.law360.com/articles/2352116/uspto-s-stewart-suggests-org-is-eyeing-patent-fee-changes>.

⁶ *Id.*