How Value-Based Patent Fees May Shape IP Strategies

By **Gregory Sobolski, Steven Peters and David Hlavka** (September 12, 2025)

Gregory Sobolski

Steven Peters

David Hlavka

The U.S. Department of Commerce and the U.S. Patent and Trademark Office are reportedly considering ways to correlate patent fees with patent value.

According to a report from the Wall Street Journal, the administration is **considering** charging patent holders 1% to 5% of their overall assessed patent value.

Speaking at a webinar hosted by the Licensing Executives Society, USPTO acting Director Coke Morgan Stewart recently commented that Commerce Secretary Howard Lutnick is concerned about a disconnect between the relatively low fees currently paid to obtain patents and the potentially significant commercial value of those patents.[1]

Stewart has downplayed "what you've read in the paper about specific models," but the possibility of a value-based fee model has attracted the attention of many across the patent and broader business communities.[2]

While there is no formal proposal yet, the administration has indicated that it wants a "dialogue with the stakeholder community" about how best to align fees with patent value.[3]

The Current USPTO Fee Framework

The USPTO is funded entirely by flat fees for services like filings, maintenance and post-grant proceedings, such as inter partes review and reexamination. Congress has authorized the agency to set rates that are designed to recover the costs of core services.[4]

As recently as January, the USPTO finalized a package of fee adjustments intended to align charges more closely with operating costs, encourage efficient prosecution and expand options for applicants.[5]

Maintenance fees, which patent holders pay to maintain their rights after issuance, play a significant role in the current U.S. system. Maintenance fees are due on a fixed schedule, at 3.5, 7.5 and 11.5 years after a patent issues.[6] The fee amount increases at each stage, with the final payment being the most expensive.

If the fee is not paid within the prescribed time, including any grace period, the patent expires. This staggered structure reflects an intentional policy choice: as time passes, the patent owner must repeatedly decide whether patent protection still warrants the rising cost of maintaining exclusivity.

From the USPTO's perspective, maintenance fees subsidize the agency's cost of prosecution.[7] From the patent owner's perspective, maintenance fees represent a decision point: Pay the fee if the perceived present or future value of the patent is worth the cost, or abandon the patent and dedicate the claimed invention to the public. This choice tends to encourage the culling of patents deemed to have lower value.

Moving to Value-Based Fees

Uncertainty surrounds the rumored move to a value-based fee system. Questions remain as to how, when and how often patent value could be assessed and fees levied.

The financial and strategic consequences of such a move depend largely on specifics, of which there are currently few. Nevertheless, some broad implications and potential strategies can be identified.

Assessing Patent Value

The methodology used to assess patent value is likely to be a critical driver of patent strategy.

If, for example, the USPTO were to publish specific factors used to assess value, stakeholders might adjust how they obtain patents and maintain patent portfolio compositions, or how they represent the value of their patent portfolio to potential investors or to the public.

For example, entities might artificially inflate or deflate the value of their patents based on the USPTO's criteria if they are not specific enough, potentially confusing investors or the public. As another example, companies facing infringement claims could claim that a patent alleged to be infringed is not valuable based on USPTO assessment.

Companies could also potentially structure deals to minimize the impact of a transaction on the assessed portfolio value through future, less quantifiable consideration, while others might attempt to structure transactions to obtain higher assessed valuations if they expect those assessments to bolster future damages claims or licensing rates.

If the approach is less transparent, uncertainty about how actions influence valuation could discourage transactions or diminish perceived asset value.

Valuation methodology could have further implications. For example, if the USPTO requires patent owners to self-report certain information to the USPTO, entities will need to be prepared to meet compliance obligations, particularly if value is assessed annually.

Self-reported valuations could also lead to disputes. For instance, the USPTO, counterparties to patent portfolio transactions, or opponents in litigation could seek to contest a patent owner's self-reported data.

If, conversely, the USPTO conducts its own valuations, disagreements over the agency's assumptions, data and methodology could lead to administrative disputes and added expense.

And regardless of who assesses patent value, if the estimated value is speculative, e.g., estimating future monetization, the USPTO may seek an end-of-life true-up payment to compensate for any past underestimates of value. In any case, the valuation could become an important benchmark shaping government fees, licensing negotiations and litigation positions.

Timing of Value-Based Fees

The timing of when value-based fees are assessed may also affect a patent owner's strategy. For example, increased costs early in a patent's life, or even before issuance, may discourage patenting at the outset because of uncertainty about whether the technology will achieve broad use.

But if, instead, value-based fees resemble maintenance fees by being spaced out over several years and increase over time, they will act as decision points similar to existing renewals, compounding the weeding-out function of the current system.

Patent holders may reduce uncertainty by delaying value-based fees.

One potential strategy to defer potential value-based fees until the commercial prospects of a patented invention are clearer is to make greater use of provisional or patent cooperation treaty, or PCT, applications.

A provisional application offers a relatively low-cost option that secures a filing date at the USPTO and provides 12 months to decide whether to pursue a nonprovisional application.

A PCT application, while more expensive to file, provides up to 30 months from the earliest priority date to file in the U.S. or other jurisdictions, i.e., to enter the national stage.

Applicants may choose to begin with a provisional application, securing an initial filing date and then, within 12 months, file a PCT application to extend the decision period by another 18 months before making national stage filings.

Alternatively, they may file only a PCT, which preserves international options, including the U.S., and provides up to 30 months to make strategic decisions about when and where to pursue patent protection.

Over time, if more applicants choose to delay or forgo U.S. filings while maintaining filings abroad, the relative weight of U.S. patents in multinational portfolios could shift and may influence cross-border licensing and technology transfer arrangements, where U.S. assets often serve as a central component.

Different Impacts on Different Stakeholders

The impact of value-based fees will likely differ based on the size, financial position and objectives of the patent owner.

For example, startups and other small enterprises, which sometimes depend on a limited number of patents to attract investors, may find those rights too expensive to maintain and instead opt for maintaining trade secrets in lieu of filing patent applications, complicating investment and financing.

Research institutions and universities may be forced to make an earlier decision whether to maintain or abandon patents on early-stage technologies that are more likely to take years to monetize.

In large enterprises where patents are vital business assets, including pharmaceuticals, telecommunications and semiconductors, companies could face significantly higher costs of patent ownership.

Companies primarily using patents for defensive purposes may instead prioritize publication over patenting. Nonpracticing entities, which depend on monetizing their patent portfolios, may face higher costs of ownership, even if the cost of initial acquisition decreases. Such entities may also try to alter patent ownership structures in unforeseen ways to minimize fees.

Value-based fees could also constrain access to credit or create new tradeoffs in patent valuation for companies that rely on patents as collateral to obtain financing.

A low valuation by the USPTO could make it harder for companies to obtain loans based on assertions of a strong portfolio value, constraining their financing options.

Conversely, companies advocating for a high valuation in loan applications may be met with correspondingly higher fees at the USPTO.

Inventor remuneration could also be affected. For instance, in jurisdictions such as Germany, France and the United Kingdom, inventors may receive additional compensation if their patents prove to have significant commercial value.

U.S. fee levels tied to reported value could become evidence of such value, potentially triggering remuneration obligations for multinational companies employing inventors in those jurisdictions.

Implications For Patent Transactions

Parties to patent transactions will also be attuned to the impact of value-based fees. For instance, patent portfolio valuations play a central role in diligence and negotiation for mergers and acquisitions.

If annual fees are tied to reported or assigned values, those figures could potentially influence purchase prices and risk allocation. Buyers may seek discounts or indemnities to cover ongoing fee exposure, while sellers may see valuations adjusted downward if portfolios carry significant fee obligations.

If new value-based fees apply to existing patents, licensing agreements that provide for payment of maintenance fees may require renegotiation or royalty adjustment to account for the additional costs.

In addition, because patents often serve as collateral in financing transactions, recurring fees based on annual valuations could directly affect the amount of credit that lenders are willing to extend to patent holders.

Lenders may view higher recurring obligations as reducing the stability and increasing uncertainty of the collateral, making them more cautious in extending credit backed by U.S. patents.

Conclusion

A value-based fee system could significantly reshape both strategic approaches to patent protection and the global market for U.S. patent assets.

The potential effects range from early-stage financing and portfolio strategy to the structuring of M&A deals, finance deals, and cross-border licensing.

At this early stage, entities across a wide range of industries can prepare by modeling potential exposures under different valuation scenarios, consider how higher recurring fees might alter protection and transaction strategies, and participate in the policymaking process.

Gregory Sobolski is a partner, and Steven W. Peters and David Hlavka are associates, at Cleary Gottlieb Steen & Hamilton LLP.

Cleary partners Daniel Ilan and Marcela Robledo contributed to this article.

[1] https://www.law360.com/articles/2352116/uspto-s-stewart-suggests-org-is-eyeing-patent-fee-changes.

[2] https://www.law360.com/articles/2352116/uspto-s-stewart-suggests-org-is-eyeing-patent-fee-changes.

[3] https://www.law360.com/articles/2352116/uspto-s-stewart-suggests-org-is-eyeing-patent-fee-changes.

[4] https://www.uspto.gov/about-us/performance-and-planning/fee-setting-and-adjusting.

[5] https://www.govinfo.gov/content/pkg/FR-2024-11-20/pdf/2024-26821.pdf.

[6] https://www.law.cornell.edu/uscode/text/35/41.

[7] https://www.federalregister.gov/documents/2024/11/20/2024-26821/setting-and-adjusting-patent-fees-during-fiscal-year-2025 ("Maintenance fee payments account for about half of all patent fee collections and subsidize the cost of filing, search, and examination activities.").