

## FEE LEGISLATION

### SEC. 1. SHORT TITLE.

This Act may be cited as the United States Patent and Trademark Office Reauthorization Act, Fiscal Year 2003.

### SEC. 2. FEES FOR PATENT SERVICES.

(a) GENERAL PATENT FEES.—Section 41 of title 35, United States Code, is amended by striking subsection (a) and inserting the following:

“(a) The Director shall charge the following fees and surcharges—

“(1) FILING AND BASIC NATIONAL FEES.—

“(A) On filing each application for an original patent, except for design, plant, or provisional applications, \$300.

“(B) On filing each application for an original design patent, \$130.

“(C) On filing each application for an original plant patent, \$200.

“(D) On filing each provisional application for an original patent, \$160.

“(E) On filing each application for the reissue of a patent, \$300.

“(F) The basic national fee for an international application entering the national stage under section 371 of this title, \$300.

“(G) In addition, the surcharge as prescribed by the Director for any application the specification and drawings of which exceed 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium).

“(2) EXCESS CLAIMS FEES.—

“(A) INDEPENDENT CLAIMS.—On filing in an application or on presentation at any other time of a claim in independent form in excess of 3—

“(i) For a 4<sup>th</sup> claim in independent form, \$160;

“(ii) For a 5<sup>th</sup> claim in independent form, \$320;

“(iii) For a 6<sup>th</sup> claim in independent form, \$640; and

“(iv) For each claim in independent form in excess of 6, 125 percent of the fee specified in this subparagraph for the previous claim in independent form.

“(B) TOTAL CLAIMS.—On filing in an application or on presentation at any other time of a claim (whether dependent or independent) in excess of 20—

“(i) For each claim in excess of 20 but not in excess of 25, \$80;

“(ii) For each claim in excess of 25 but not in excess of 30, \$160;

“(iii) For each claim in excess of 30 but not in excess of 35, \$320;

“(iv) For each claim in excess of 35 but not in excess of 40, \$640; and

“(v) For each claim in excess of 40, by groups of 5 claims, 125 percent of the fee specified in this subparagraph for each claim in the previous group of 5 claims.

“(C) For each application containing a multiple dependent claim, \$280. For purpose of computing fees, a multiple dependent claim as referred to in section 112 of this title or any claim depending therefrom shall be considered as separate dependent claims in accordance with the number of claims to which reference is made.

“(D) The Director may, by regulation, provide for a refund of the fee specified in subparagraphs (A) or (B) for any claim or claims that are cancelled as the result of a requirement for restriction under section 121 of this title.

“(E) Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

“(3) RELATED APPLICATION SURCHARGE.—

“(A) The surcharge as prescribed by the Director for filing an application that contains or is amended to contain a specific reference to an earlier filed application or applications under section 120, 121, or 365(c) of this title.

“(B) The surcharge as prescribed by the Director for an application that contains or is amended to contain 1 or more claims that are not patentably distinct from 1 or more claims in another pending application or patent.

“(C) Errors in payment of the additional fees under this paragraph may be rectified in accordance with regulations prescribed by the Director.

“(4) EXAMINATION FEES.—

“(A) On filing a request for examination of an application for an original patent, except for a design or plant application, or of an application for the reissue of a patent, \$1250.

“(B) On filing a request for examination of an application for an original design patent, \$560.

“(C) On filing a request for examination of an application for an original plant patent, \$860.

“Upon payment of the fee required by this paragraph in an application for a patent, except for provisional applications, the application shall be examined in accordance with chapter 12 of this title, but if the fee required by this paragraph is not paid within such period and under such conditions as may be prescribed by the Director, the application shall be regarded as abandoned. The Director may, by regulation, reduce the fee specified in this paragraph for independent inventors who meet the conditions prescribed by the Director, and for applicants who provide a search report that meets the conditions prescribed by the Director.

“(5) ISSUE FEES.—

“(A) For issuing each original patent, except for design or plant patents, or each reissue patent, \$1660.

“(B) For issuing each original design patent, \$600.

“(C) For issuing each original plant patent, \$810.

“(6) DISCLAIMER FEE.—On filing each disclaimer, \$110.

“(7) APPEAL FEES.—

“(A) On filing an appeal from the examiner to the Board of Patent Appeals and Interferences, \$520.

“(B) In addition, on filing a brief in support of the appeal, \$1730, and on requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences, \$460.

“(8) REVIVAL FEES.—On filing each petition for the revival of an unintentionally abandoned application for a patent, for the unintentionally delayed payment of the fee for issuing each patent, or for unintentionally delayed response by the patent owner in any reexamination proceeding, \$1280, unless the petition is filed under section 133 or 151 of this title, in which case the fee shall be \$110.

“(9) EXTENSION FEES.—For petitions for 1-month extensions of time to take actions required by the Director in an application—

“(A) On filing a first petition, \$140;

“(B) On filing a second petition, \$520;

“(C) On filing a third or subsequent petition, \$1200.”.

(b) PATENT MAINTENANCE FEES.—Section 41 of title 35, United States Code, is amended by striking subsection (b) and inserting the following:

“(b) The Director shall charge the following fees for maintaining in force all patents based on applications filed on or after December 12, 1980—

“(1) 3 years and 6 months after grant, \$900.

“(2) 7 years and 6 months after grant, \$3000.

“(3) 11 years and 6 months after grant, \$5000.

“Unless payment of the applicable maintenance fee is received in the U.S. Patent and Trademark Office on or before the date the fee is due or within a grace period of six months thereafter, the patent will expire as of the end of such grace period. The Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee. No fee may be established for maintaining a design or plant patent in force.”

(c) APPLICATION OF SMALL ENTITY FEE REDUCTION.—

Section 41(h)(1) of title 35, United States Code, is amended by adding at the end thereof the following sentence:

“The provisions of this paragraph shall not apply to the fees charged under subsection (a)(4).”

### **SEC. 3. EFFECT ON PATENT TERM ADJUSTMENT.**

The 14-month period specified in section 154(b)(1)(A) and the 3-year period specified in section 154(b)(1)(B) of title 35, United States Code, shall be measured from the date on which the examination fee specified in section 41(a)(4) of title 35, United States Code, was paid.

### **SEC. 4. EFFECTIVE DATE, APPLICABILITY, AND TRANSITION.**

(a) EFFECTIVE DATE AND APPLICABILITY.—

(1) The amendments made by section 2 shall take effect on October 1, 2002, and shall apply to all patents, whenever granted, and to all applications pending on or filed after October 1, 2002, except that the fees specified in sections 41(a)(1) and 41(a)(4) of title 35, United States Code, shall apply only to all applications for patent filed under section 111 of title 35, United States Code, on or after October 1, 2002, and to all international applications entering the national stage after compliance with section 371 of title 35, United States Code, on or after October 1, 2002.

(2) Section 3 shall take effect on October 1, 2002 and, except for design patent applications filed under chapter 16 of title 35, United States Code, shall apply to all applications for patent filed under section 111(a) of title 35, United States Code, and to all international applications in which the national stage is commenced under section 371(b) or (f) of title 35, United States Code, on or after October 1, 2002.

(3) The surcharges provided for in sections 41(a)(1)(G) and 41(a)(3) of title 35, United States Code, shall not take effect until at least 30 days after the date on which notice of the surcharge is published in the Federal Register.

(4) The time period and conditions prescribed by the Director under section 41(a)(4) of title 35 United States Code, shall take effect on the day following the date on which notice of such time period and conditions is published in the Federal Register.

(b) TRANSITIONAL PROVISIONS.—

(1) Between October 1, 2002 and the effective date of the surcharge provided for in section 41(a)(3)(A) of title 35, United States Code, the Director shall charge—

(A) For each application that contains or is amended to contain a specific reference to 3 earlier filed applications under section 120, 121, or 365(c) of title 35, United States Code, \$1000;

(B) For each application that contains or is amended to contain a specific reference to 4 earlier filed applications under section 120, 121, or 365(c) of title 35, United States Code, \$2000;

(C) For each application that contains or is amended to contain a specific reference to 5 earlier filed applications under section 120, 121, or 365(c) of title 35, United States Code, \$4000;

(D) For each application that contains or is amended to contain a specific reference to 6 or more earlier filed applications under section 120, 121, or 365(c) of title 35, United States Code, \$8000 for each application in excess of 5 to which the application contains or is amended to contain a specific reference under section 120, 121, or 365(c) of title 35, United States Code.

(2) Between October 1, 2002 and the effective date of the surcharge provided for in section 41(a)(3)(B) of title 35, United States Code, the Director shall charge—

(A) For each application that contains or is amended to contain 1 or more claims that are not patentably distinct from 1 or more claims in 1 other pending application or patent, \$10,680;

(B) For each application that contains or is amended to contain 1 or more claims that are not patentably distinct from 1 or more claims in 2 other pending applications or patents, \$13,350;

(C) For each application that contains or is amended to contain 1 or more claims that are not patentably distinct from 1 or more claims in 3 other pending applications or patents, \$16,690; and

(D) For each application that contains or is amended to contain 1 or more claims that are not patentably distinct from 1 or more claims in 4 or more other pending applications or patents, 125 percent of the fee set forth in this paragraph for an application that contains or is amended to contain 1 or more claims that are not patentably distinct from 1 or more claims in 1 fewer other pending applications or patents.

(3)(A) Between October 1, 2002 and the effective date of the time period and conditions prescribed by the Director under section 41(a)(4) of title 35, United States Code, the examination fee specified in section 41(a)(4) shall be accompanied by a request in writing for examination of the application and, except as provided in subparagraphs (B) through (D), shall be paid within 18 months from the date on which the application was filed in the United States, or if the application contains a specific reference to an earlier filed application or applications under section 119(e), 120, 121, or 365(c) of title 35, United States Code, 18 months from the date on which the earliest such application was filed.

(B) In any original application filed under section 111(a) of title 35, United States Code, except for a design patent application filed under chapter 16, of title 35, United States Code, that contains a specific reference to an earlier filed application or applications under section 119(e), 120, 121, or 365(c) of title 35, United States Code, the examination fee specified in section 41(a)(4) shall be paid either within the period specified in subparagraph (A) or within the period and under the conditions prescribed by the Director under section 111(a)(3) of title 35, United States Code, for payment of the fee for filing the application.

(C) In any application for the reissue of a patent filed under section 251 of title 35, United States Code, and in any original design patent application filed under chapter 16 of title 35, United States Code, the examination fee specified in section 41(a)(4) shall be paid within the period and under the conditions prescribed by the Director under section 111(a)(3) of title 35, United States Code, for payment of the fee for filing the application.

(D) In any international application, the examination fee specified in section 41(a)(4) shall be paid by the date on which the national stage commenced under section 371(b) or (f) of title 35, United States Code.

**SEC. 5. ADJUSTMENT OF TRADEMARK FEES**

For fiscal year 2003, the Director may adjust fees established under section 31 of the Trademark Act of 1946 by amounts in excess of fluctuations during the preceding 12 months in the Consumer Price Index, as determined by the Secretary of Labor, without regard to any other provision of law.

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## SECTION-BY-SECTION ANALYSIS

### SECTION ONE

Section One sets forth the short title of the bill, the “United States Patent and Trademark Office Reauthorization Act, Fiscal Year 2003.”

### SECTION TWO.

Section Two prescribes the dollar amounts for certain corresponding “general” patent and patent application fees set forth in 35 U.S.C. § 41(a) and (b) and authorizes the Director to require payment of a surcharge in certain situations. Section 41(a) now specifies an examination fee (paragraph 4) that is separate from the filing fee (paragraph 1). Under § 41(a), the applicant in an original application (other than a provisional or design application) would pay the filing fee on filing (or shortly thereafter), but may delay requesting examination and paying the examination fee for eighteen months from the application’s earliest effective United States filing date (or a period specified in the USPTO’s regulations). Separate fees for filing and examination will give the applicant time to determine whether the invention claimed in the application has sufficient commercial viability to make it worthwhile to pay the fee to proceed with examination, and will obviate the need for the USPTO to examine applications where the applicant has determined that the invention does not have sufficient commercial viability to pay the fee to proceed with examination of the patent application.

Section 41(a)(1) sets out the filing fees for applications filed under § 111 of the patent law (original or reissue) and the basic national fee for Patent Cooperation Treaty (PCT) international applications entering the national stage under § 371 of the patent law.

Under § 41(a)(1), the filing fees for applications filed under § 111 are as follows: The filing fee for an application for an original patent, except for design, plant, or provisional applications, is \$300. The filing fee for an application for an original design patent is \$130. The filing fee for an application for an original plant patent is \$200. The filing fee for a provisional application is \$160. And, the filing fee for an application for the reissue of a patent is \$300.

Under § 41(a)(1), the basic national fee for any PCT international application entering the national stage under § 371 is \$300.

Under § 41(a)(1), the Director is also authorized to prescribe a surcharge for any application whose specification and drawings exceed 50 sheets of paper (or equivalent as prescribed by the Director if filed in an electronic medium). It is to be recalled that the Senate Report Language for the USPTO’s fiscal year 2002 appropriation:

"The Committee further directs that the "electronic file wrapper" be fully implemented by the end of fiscal year 2004." Senate CJS Sub-C 7-19-01.

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Section 41(a)(2) sets out excess claims fees each independent claim in excess of 3 and for each claim (whether dependent or independent) in excess of 20. The excess claims fees increase progressively as the number of claims increases to encourage applicants to file excess claims only when necessary for adequate protection of the invention.

Under § 41(a)(2)(A), the excess claims fee for a 4<sup>th</sup> claim in independent form is \$160, the additional excess claims fee for a 5<sup>th</sup> claim in independent form is \$320, and the additional excess claims fee for a 6<sup>th</sup> claim in independent form is \$640. Under § 41(a)(2), the additional excess claims fee for each claim in independent form in excess of 6 is 125 percent of the excess claims fee for the previous claim in independent form. For example, the additional excess claims fee for a 7<sup>th</sup> claim in independent form is \$800, the additional excess claims fee for an 8<sup>th</sup> claim in independent form is \$1,000, and the additional excess claims fee for a 9<sup>th</sup> claim in independent form is \$1,250.

Under § 41(a)(2)(B), the excess claims fee for each claim (whether dependent or independent) in excess of 20 but not in excess of 25 is \$80, the additional excess claims fee for each claim in excess of 25 but not in excess of 30 is \$160, the additional excess claims fee for each claim in excess of 30 but not in excess of 35 is \$320, and the additional excess claims fee for each claim in excess of 35 but not in excess of 40 is \$640. Under § 41(a)(2)(B), the additional excess claims fee for each claim in excess of 40, by groups of 5 claims, is 125 percent of the excess claims fee for each claim in the previous group of 5 claims. For example, the additional excess claims fee for each claim in excess of 40 but not in excess of 45 is \$800, the additional excess claims fee for each claim in excess of 45 but not in excess of 50 is \$1,000, and the additional excess claims fee for each claim in excess of 50 but not in excess of 55 is \$1,250.

Under § 41(a)(2)(C), the fee for each application containing a multiple dependent claim is \$280. For the purpose of computing fees, a multiple dependent claim as referred to in section 112 of the patent code or any claim depending therefrom is considered as separate dependent claim in accordance with the number of claims to which reference is made.

Under § 41(a)(2)(D), the Director may, by regulation, provide for a refund of the excess claims fee for any claim or claims that are canceled as the result of a requirement for restriction under section 121 of the patent code.

The Director may prescribe the time when the excess claims fees required by § 41(a)(2) must be paid. For example, the Director may require that the excess claims fees required by § 41(a)(2) be paid with the filing or basic national fee under § 41(a)(1), or may permit the excess claims fees to be paid with the examination fee under § 41(a)(4). In addition, errors in payment of the additional fees under § 41(a)(2) may be rectified in accordance with regulations prescribed by the Director.

Section 41(a)(3) authorizes the Director to charge the following surcharges: The Director may require a surcharge for filing an application that contains or is amended to contain a specific reference to an earlier filed application or applications under §§ 120, 121, or 365(c) of the patent law. The Director may also require a surcharge for an application that contains or is amended to contain one or more claims that are not patentably distinct from one or more claims in another pending application or patent. The phrase “not

patentably distinct” has the same connotation as it has in the context of obviousness-type double patenting, namely the surcharge is required if the application at issue contains one or more claims that would be subject to an obviousness-type double patenting rejection over one or more claims in another pending application or patent. *See, e.g., In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998), *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985), *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982), and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970). The surcharges required under this authority are expected to be established at a level that modifies applicant behavior and not at levels to just generate revenue for the USPTO. Specifically, the surcharge required under § 41(a)(3)(A) is expected to motivate the vast majority of applicants to conclude prosecution of an application in fewer than three continuing applications, and the surcharge required under § 41(a)(3)(B) is expected to motivate the vast majority of applicants to include all patentably indistinct claims in a single application despite the excess claims fees provided for in § 41(a)(2). Finally, errors in payment of the surcharges under § 41(a)(3) may be rectified in accordance with regulations prescribed by the Director.

Section 41(a)(4) sets out the examination fees for all applications (except for provisional applications), including PCT international applications entering the national stage under § 371. The examination fee for an application for an original patent, except for a design or plant application, and for any reissue application, is \$1,250. The examination fee for an original design patent is \$560. And, the examination fee for an original plant patent is \$860. The examination fee does not apply to provisional applications because a provisional application is not examined as provided in § 131 *et seq.* of the patent law. If the examination fee required by § 41(a)(4) is paid in an application (other than a provisional application), the application will be examined under § 131 *et seq.* The application, however, will become abandoned if the examination fee is not paid within such period and under such conditions as may be prescribed by the Director. The Director may require that the request for examination and fee be accompanied by a search report (as prescribed by the Director).

Under § 41(a)(4), the Director may reduce the examination fee for certain applicants. First, the Director may reduce the examination fee for independent inventors who meet certain conditions as prescribed by the Director (*e.g.*, have an income level below an amount specified in the regulations). Second, the Director may reduce the examination fee for applicants who provide a search report that meets the conditions prescribed by the Director and thus reduces the USPTO’s cost of examining the application. This provision does not authorize the Director to reduce the examination fee for applicants on an ad hoc basis, but only authorizes the Director to reduce the examination fee for applicants who meet the conditions specified in the regulations for the fee reduction.

Section 41(a)(5) sets out the fees for issuing a patent. Under § 41(a)(5), the fee for issuing each original patent, except for design or plant patents, and each reissue patent is \$1,660; the fee for issuing each original design patent is \$600; and the fee for issuing each original plant patent is \$810.

Section 41(a)(6) sets out the fee due upon filing a disclaimer under section 253 of the patent law in a patent or a patent application, which is \$110.

Section 41(a)(7) sets out the appeal fees. Under § 41(a)(7), the fee due upon filing an appeal from the examiner to the Board of Patent Appeals and Interferences is \$520; the fee due upon filing a brief in support of the appeal is an additional \$1,730; and the fee due for requesting an oral hearing in the appeal before the Board of Patent Appeals and Interferences is an additional \$460.

Section 41(a)(8) sets out the fees due upon filing a petition to revive an abandoned application or to accept a delayed response by the patent owner in a reexamination proceeding, which is \$1,280, unless the petition is filed under § 133 or § 151 of the patent law, in which case the fee is \$110.

Section 41(a)(9) sets out the fees due upon filing a petition for one-month extensions of time. Under § 41(a)(9), the fee for filing the first petition is \$140, the additional fee for filing the second petition is \$520, and the additional fee for filing the third or subsequent petition is \$1,200.

Section 41(b) sets out the fee for maintaining in force a patent based on applications filed on or after December 12, 1980. Under § 41(b), the maintenance fee due at 3 years and 6 months after grant is \$900; the maintenance fee due 7 years and 6 months after grant is \$3000; and the maintenance fee due 11 years and 6 months after grant is \$5000. Section 41(b) also provides that unless payment of the applicable maintenance fee is received in the USPTO on or before the date on which the fee is due or within a grace period of 6 months thereafter, the patent will expire as of the end of such grace period, that the Director may require the payment of a surcharge as a condition of accepting within such 6-month grace period the payment of an applicable maintenance fee, and that no fee may be established for maintaining a design or plant patent in force.

Section 41(h)(1) is amended to provide that the 50 percent small entity fee discount does not apply to the examination fee provided for in § 41(a)(4).

### **SECTION THREE**

Section Three provides that the 14-month period specified in § 154(b)(1)(A)(i) of the patent law, and that the 3-year period specified in § 154(b)(1)(B) of the patent law, shall be measured from the date on which the examination fee specified in § 41(a)(4) was paid. Since the USPTO will not examine an application unless and until the examination fee has been paid, the above time frames of § 154(b) are measured from the date on which the examination fee specified in § 41(a)(4) was paid.

### **SECTION FOUR**

Section Four sets forth the effective date of this bill: October 1, 2002. Section Four also provides that the amendments made by Section Two take effect on October 1, 2002, and shall apply to all patents, whenever granted, and to all applications pending on or filed after October 1, 2002. Since applications pending before October 1, 2002 paid filing or

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basic national fees based upon former § 41(a), Section Four also provides that the filing and examination fees specified in §§ 41(a)(1) and 41(a)(4) apply only to all applications for patent filed under § 111 on or after October 1, 2002, and to all PCT international applications entering the national stage after compliance with § 371 on or after October 1, 2002. Section Four also provides that Section Three takes effect on October 1, 2002, and applies to all applications for patent filed under § 111(a) on or after October 1, 2002 (except for design applications), and to all PCT international applications in which the national stage commenced under § 371(b) or (f) on or after October 1, 2002. Section Four also provides that the surcharges provided for in §§ 41(a)(1)(G) and 41(a)(3) shall not take effect until at least 30 days after notice of the surcharge has been published in the Federal Register, and that the time period and conditions prescribed by the Director under § 41(a)(4) shall not take effect until notice of such time period and conditions has been published in the Federal Register.

Section Four also provides transitional provisions. Section Four specifically provides that between October 1, 2002 and the effective date of the surcharge provided for in § 41(a)(3)(A), the Director shall charge: (1) \$1,000 for each application that contains or is amended to contain a specific reference to 3 earlier filed applications under §§ 120, 121, or 365(c); (2) \$2,000 for each application that contains or is amended to contain a specific reference to 4 earlier filed applications under §§ 120, 121, or 365(c); (3) \$4,000 for each application that contains or is amended to contain a specific reference to 5 earlier filed applications under §§ 120, 121, or 365(c); and (4) for each application that contains or is amended to contain a specific reference to 6 or more earlier filed applications under §§ 120, 121, or 365(c), \$8000 for each such earlier filed application referenced in excess of 5. Section Four also provides that between October 1, 2002 and the effective date of the surcharge provided for in § 41(a)(3)(B), the Director shall charge: (1) \$10,680 for each pending application that contains or is amended to contain one or more claims that are not patentably distinct from one or more claims in 1 other pending application or patent; (2) \$13,350 for each pending application that contains or is amended to contain one or more claims that are not patentably distinct from one or more claims in 2 other pending applications or patents; and (3) \$16,690 for each pending application that contains or is amended to contain one or more claims that are not patentably distinct from one or more claims in 3 other pending applications or patents. This surcharge for an application increases by 125 percent for each additional other pending application or patent that contains one or more claims that are not patentably distinct from one or more claims in the application. For example, the Director shall charge \$20,860 for each pending application that contains or is amended to contain one or more claims that are not patentably distinct from one or more claims in 4 other pending applications or patents, and shall charge \$26,080 for each pending application that contains or is amended to contain one or more claims that are not patentably distinct from one or more claims in 5 other pending applications or patents.

Section Four also provides that between October 1, 2002 and the effective date of the time period and conditions prescribed by the Director under § 41(a)(4), the examination fee must be accompanied by a request in writing for examination of the application and must (except as otherwise provided) be paid within 18 months from the date on which the application was filed in the United States, or if the application contains a specific

reference to an earlier filed application or applications under §§ 119(e), 120, 121, or 365(c), 18 months from the date on which the earliest such application was filed. The examination fee must be paid either within the period specified above or within the period and under the conditions prescribed by the Director under § 111(a)(3) for payment of the filing fee for any original application filed under § 111(a), except for a design patent application filed under chapter 6 of title 35, that contains a specific reference to an application or applications under §§ 119(e), 120, 121, or 365(c). The examination fee must be paid either within the period and under the conditions prescribed by the Director under § 111(a)(3) for payment of the filing fee in any reissue application and in any design patent application. And, the examination fee must be paid by the date on which the national stage commenced under § 371(b) or (f) in any PCT international application.

#### SECTION FIVE

Section 5 authorizes the Director of the USPTO to adjust trademark fees for fiscal year 2003 in amounts that exceed the fluctuations of the Consumer Price Index for the preceding 12 months, without regard to any other provision of law.