

2025 Patent And TM Policy At USPTO: What We Know So Far

By **Lauren Katzenellenbogen and Rosaleen Chou** (January 1, 2025)

As we start the new year, we expect it to be another busy one for intellectual property practitioners.

This article takes a look at the most notable developments at the U.S. Patent and Trademark Office and how they will continue to affect policies and initiatives in 2025.

Patents

With Donald Trump's election for a second term, USPTO Director Kathleen Vidal has stepped down. The next director will determine the direction of any shift in policy in the patent office.

Following the U.S. Supreme Court's decision in *U.S. v. Arthrex* in 2021, giving the USPTO director discretion to review decisions of the Patent Trial and Appeal Board, Vidal had more power to review PTAB decisions than previous directors.

In September, the USPTO issued a rule formalizing the director review process that, in addition to allowing a party to request director review, also provides that the director may initiate a review of such decisions on the director's own initiative. This power to review PTAB decisions gives the director a greater influence on policy relating to patent invalidity. Some have speculated that a new director under the incoming presidential administration will be more pro-inventor.[1]

As the use of artificial intelligence continues to grow, we expect to see more guidance and updates from the USPTO related to artificial intelligence in 2025. In 2024, the USPTO issued guidance for artificial intelligence assisted inventions. The guidance states that "[w]hile AI systems and other non-natural persons cannot be listed as inventors on patent applications or patents, the use of an AI system by a natural person(s) does not preclude a natural person(s) from qualifying as an inventor (or joint inventors) if the natural person(s) significantly contributed to the claimed invention."

The USPTO further issued guidance on determining whether artificial intelligence assisted inventions meet the patent subject matter eligibility requirements, an area of law where patent lawyers have continually sought more clarity. Additionally, the USPTO issued guidance on the use of artificial intelligence by patent practitioners, as many are increasing their use of artificial intelligence in drafting patent applications.

With the use of artificial intelligence continuing to evolve, it is likely that in the upcoming year, the USPTO will continue to refine and update its policies and guidance, particularly on the continually evolving issue of subject matter eligibility.

Finally, on Jan. 19, recent patent office fee increases will take effect. The amount of the increases varies. One notably large increase is the undiscounted issue fee for a design patent application, which will increase dramatically from \$740 to \$1,300. Fees for PTAB review are similarly increasing.



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Trademarks

On Nov. 18, the USPTO announced a final trademark fee rule that will set or adjust 28 trademark fees, with the changes to the fees becoming effective on Jan. 18. Some of the most important changes are discussed below.[2]

The first major change announced will see the removal of the Trademark Electronic Application System Plus application and TEAS Standard application. A new application, called the Base application, will be introduced, and the fee will be \$350 per class. The Base application will include new surcharges in an attempt to increase the efficiency of application processing. However, these surcharges will only apply to applicants who provide insufficient information in their application, such as failing to provide a filing basis.

The USPTO also announced an increase in fees for filing either a statement of use or an amendment to alleged use. The fees for both of these filings will increase from \$100 to \$150 per class.

Fees for post registration maintenance will also increase. Specifically, the fee for declaration of use under Section 8 or 71 will increase from \$225 to \$325 per class. The fee for declaration of incontestability under Section 15 will increase from \$200 to \$250. Finally, the fee for the application for renewal under Section 9 will increase from \$300 to \$325 per class.

In addition to the announced fee changes, the USPTO will be implementing a brand-new Trademark Center, currently available in a beta format, which the agency promises will offer users a more streamlined and user-friendly experience in the filing of trademark applications. Starting on Jan. 18, the Trademark Center will be the only way to apply for new trademark registrations. The USPTO is offering biweekly webinars in order to help practitioners become familiar with the new interface.

The USPTO also announced the development of several new strategies aimed at combating trademark scams and fraudulent filings. For example, the USPTO will implement "robotic process automation," which will compare the address of a trademark application against the U.S. Postal Service's database in order to mitigate the potential for fraud. The USPTO also recently formed the Register Protection Office, which is dedicated to reducing fraud through efforts such as scam education and prevention.

Finally, the USPTO has stated that it will continue to refine internal procedures in order to increase the office's efficiency in examining trademark applications. In addition to phasing out outdated systems, the office has announced the deployment of a new browser-based, end-to-end examination system — TM EXAM — which is designed to improve examination quality and efficiency.

The USPTO is raising trademark filing fees not only to increase revenue, but also to increase the efficiency of evaluating incoming applications by incentivizing higher quality applications. As a result, it is imperative that trademark practitioners take active measures to ensure their client's applications include all of the necessary information in order to avoid unnecessary fees and increase the speed at which their client's applications can be reviewed.

Conclusion

This upcoming year at the USPTO promises a continued focus on AI-related policies, as well as initiatives to drive efficiency and modernize standard processes. Patent and trademark practitioners alike should plan to stay abreast of the latest developments, particularly any priorities set forth by new agency leadership.

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[1] See e.g. Iancu, Trump and Vance will make America competitive again, former patent office director says | Fortune, October 30, 2024.

[2] A complete list of all of the fee changes: <https://www.federalregister.gov/documents/2024/11/18/2024-26644/setting-and-adjusting-trademark-fees-during-fiscal-year-2025>.