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Washington, DC 20548

B-329591

November 29, 2017

The Honorable Chuck Grassley
Chairman
The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate

The Honorable Bob Goodlatte
Chairman
The Honorable Jerrold Nadler
Interim Ranking Member
Committee on the Judiciary
House of Representatives

Subject: *Department of Commerce, Patent and Trademark Office: Setting and Adjusting Patent Fees During Fiscal Year 2017*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Commerce, U.S. Patent and Trademark Office (USPTO) entitled "Setting and Adjusting Patent Fees During Fiscal Year 2017" (RIN: 0651-AD02). We received the rule on November 6, 2017. It was published in the *Federal Register* as a final rule on November 14, 2017, with an effective date of January 16, 2018. 82 Fed. Reg. 52,780.

The final rule sets or adjusts patent fees as authorized by the Leahy-Smith America Invents Act. USPTO stated that the fees will provide USPTO with a sufficient amount of aggregate revenue to recover its aggregate cost of patent operations (based on current operations), while maintaining momentum towards achieving strategic goals.

Enclosed is our assessment of USPTO's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that USPTO complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Nicolas Oettinger
Federal Liaison Officer
Patent and Trade Office
Department of Commerce

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
PATENT AND TRADEMARK OFFICE,
DEPARTMENT OF COMMERCE
ENTITLED
“SETTING AND ADJUSTING PATENT FEES DURING FISCAL YEAR 2017”
(RIN: 0651-AD02)

(i) Cost-benefit analysis

The Department of Commerce, U.S. Patent and Trademark Office (USPTO) summarized the costs and benefits of this final rule. USPTO stated that it prepared a Regulatory Impact Analysis (RIA) to analyze the costs, benefits, and transfer payments of the final rule over a 5-year period. USPTO highlighted that the Office of Management and Budget (OMB) determined that this rule involves a transfer payment from one group to another that does not affect the total resources available to society. OMB also did not identify any monetized costs and benefits of the rulemaking but found that the final rule has significant qualitative benefits with no identified costs.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

USPTO did not certify that this rule, if implemented, would not have a significant impact on a substantial number of small entities. USPTO published a Final Regulatory Flexibility Analysis (FRFA) in the final rule.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

USPTO determined that the changes in this rule do not involve a federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of \$100 million (as adjusted) or more in any one year, or a federal private sector mandate that will result in the expenditure by the private sector of \$100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

USPTO published a proposed rule on October 3, 2016. USPTO received comments from 5 intellectual property organizations, 1 federal agency, and 19 individual commenters representing law firms, corporations, or themselves. USPTO responded to comments in the final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

USPTO found that this rule involves information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Act. USPTO stated that the collection of information involved in this rulemaking has been reviewed and previously approved

by OMB under control numbers 0651-0016, 0651-0024, 0651-0031, 0651-0032, 0651-0033, 0651-0059, 0651-0064, and 0651-0069.

Statutory authorization for the rule

USPTO stated that it promulgated this rule pursuant to 35 U.S.C. §§ 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321-326.

Executive Order No. 12,866 (Regulatory Planning and Review)

USPTO stated that this rule has been determined to be significant for purposes of the Order. USPTO also stated that it developed a Regulatory Impact Analysis as required for rulemakings deemed to be significant.

Executive Order No. 13,132 (Federalism)

USPTO stated that this rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under the Order.