

Written Testimony
Teresa Stanek Rea
Former Acting Undersecretary of Commerce for Intellectual Property and Acting
Director, United States Patent and Trademark Office

BEFORE THE

**House Judiciary Committee, Subcommittee on Courts,
Intellectual Property, Artificial Intelligence, and the Internet**

September 2, 2026

Chairman, Ranking Member, and Members of the Subcommittee:

Good morning, Chairman Jordan, Ranking Member Raskin, Subcommittee Chair Issa, and Ranking Member Subcommittee Chair Johnson:

Thank you for the opportunity to provide my views on the scope of the USPTO's fee-setting authority under Section 10 of the AIA, which is set to expire this winter absent additional reauthorization, and whether Congress should now revisit any guardrails surrounding that authority. I testify today solely on my own behalf.

The USPTO is a creature of Congress, an administrative agency tasked with the granting and maintaining of U.S. Patents, the registering and maintaining of Trademarks, and other various executive and public functions. As such, its power to promulgate procedures and rules flow from Congressional authority.

The USPTO has long had some fee-setting authority under 35 U.S.C. § 41. Specifically, Section 41 states that the Director by rule "shall establish fees for all other processing, services, or materials relating to patents not specified in this section..." 35 U.S.C. § 41(d)(2)(A).

Congress also granted the Office broader fee-setting authority in the America Invents Act. Section 10, which authorized the Director to "set or adjust by rule any fee established, authorized, or charged under title 35," but only insofar as to recover the "aggregate estimated costs" of activities related to patents and trademarks, separately. AIA § 10(a)(1). When they granted that authority, Congress did so in an era of broad judicial deference to agency expertise.

It was against that backdrop that the agency exercised fee-setting when I was at the Office. At the time under *Chevron*, courts routinely upheld an agency's reasonable interpretation of ambiguous statutory grants. Congress, too, often reasonably assumed a level of deference to agencies, particularly expert ones like the USPTO.

Loper Bright Enterprises v. Raimondo, among other things, challenged some of those assumptions. Courts now exercise far more independent judgment on the meaning of statutes,

without deferring to an agency's technical explanation for why a particular fee structure, surcharge, or classification falls within its delegated authority. And many are increasingly interested with oversight and review of administrative action.

The legal and regulatory landscape are always changing. Fee-setting decisions that might once have survived judicial review on the strength of agency expertise must now stand or fall on the plain terms of the statute itself—and on whatever guardrails Congress has written into the statute.

That has direct consequences for fee-setting policy. The statute's operative language — that fees be set to "recover the aggregate estimated costs" of patent "processing, activities, services, and materials" — is broad enough that reasonable people can disagree about what it permits, such as variable changes to fees meant to influence user behavior or enforce policy goals.

Under Section 10 that ambiguity has been substantially the Agency's to resolve, with little oversight. Under *Loper Bright*, it is at least potentially the courts' — and Congress has a duty to ensure that the agency's fees, policies, and actions are kept within their proper scope and power, and that the agency is enforcing the will and direction Congress intended.

The USPTO's current fee-setting authority under Section 10 of the AIA was set to expire on September 16, absent further Congressional action. I understand that the Senate passed a continuing resolution for a short extension to December 11, 2026. The Office has requested that that authority be extended further.

To be sure, the diligent public servants at the USPTO have long worked to engage with the public, thoughtfully implement new fees, and faithfully execute all the duties their service imposes on the agency. The Office is set to collect more than \$5 billion in fees in FY 2027, which will be spent to run its operations, with a net appropriation of \$0.

The Office's work is commendable, and I have no doubts that the agency is always working to listen to stakeholders and Congress, incorporate feedback, and move forward with new fees in fair and equitable ways.

That said, with so much at stake, fee-setting authority and accountability are critical, and Congress has in the past considered and implemented structural guardrails that can help provide that accountability and drive positive outcomes for stakeholders. Such guardrails give Congress the opportunity to reconsider their authority already granted, and the ability to propose further changes that could impact the exercise of their authority in the future.

With the foregoing in mind, I offer a few suggestions to the Subcommittee concerning potential changes as it works to reauthorize this authority:

- **Clearer statutory boundaries.** Congress could consider revising Section 10 so that "aggregate costs" and the use of fee-setting authority are defined with enough clarity to implement with less subjectivity. Congress could also consider other limits, such as

limiting fee increases beyond a clear inflation index without additional congressional reporting.

- **Requiring written reasoned decision-making.** The Office has recently stopped issuing written decisions in certain Congressionally mandated functions—namely, Patent Trial and Appeal Board institution decisions. Reasoned written decision-making helps agencies stay accountable to the public when it makes important decisions tied to Congressional mandates like the AIA. In my opinion, doing so worked well for over a decade. Reauthorization could be tied to a requirement that the Office issue written reasoned decisions for all types of proceedings—or alternatively, it could require the agency to regularly report to Congress on their use of their limited discretion.
- **Further structured public and Congressional check-ins.** The public advisory committees required by statute each have a statutory total of nine voting members, with longstanding guidance establishing that five members constitute a quorum to hold a valid meeting. It is my understanding that the committees currently lack a quorum and full membership. Congress could reiterate that fee-setting authority requires a full sitting TPAC and PPAC to review fee-setting. Congress could also require further Agency deference to their recommendations or otherwise empower public review of fee-setting.

Additionally, I would recommend continuing the practice of a sunset or reauthorization mechanism. Periodic re-authorization (every two years, for instance) would give Congress the ability to oversee the correct course based on actual fee-setting experience. This would encourage and demonstrate Office accountability to Congress and the public and would encourage the agency to continue to vigorously implement, rather than restrain, the authority granted them.

The Office's professional staff do this hard, difficult work carefully. Their ongoing efforts should be commended, and I have no doubt that, just as they did when I was there, the agency will work to the utmost to be responsive to the public and Congress, and address any ongoing concerns they might have.

My comments here today reflect the reality that the legal and political environment in which that work will be reviewed has changed. Previous requirements written into the USPTO's authorizing statutes were built for a different judicial and regulatory posture than the one that exists today. Modernizing them now, before the Office develops the next generation of fee rules, is far preferable to doing so after a rule is struck down mid-cycle.

I appreciate the Subcommittee's attention to this issue and am glad to answer any questions.