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Hearing: Renewal of USPTO Fee Setting Authority: Giving Full Effect to the America Invents Act

Introduction

Chairman Issa, Ranking Member Johnson, and Members of the Subcommittee: Thank you for the opportunity to testify about renewal of the United States Patent and Trademark Office's fee-setting authority.

I am the Charles Tilford McCormick Professor of Law and Associate Dean for Research at the University of Texas School of Law. For more than fifteen years, my research has examined the institutional design of the Patent Office, including how its funding structure, examiner incentives, time constraints, and adjudicatory systems affect patent quality.

On balance, I believe Congress should renew the Patent Office's fee-setting authority, but for a shorter period—roughly three to four years—and with continued oversight. Fee-setting authority has materially improved the Office's ability to maintain the financial resources necessary for high-quality examination. My recommendation is qualified, however, because the current fee schedule continues to rely heavily on revenue associated with patent allowance and issuance. That structure can create a potential incentive toward granting when the Office becomes financially constrained.

That assessment should also be understood in the broader context of the AIA's effort to improve patent quality. The AIA did not rely on examination alone; it also established inter partes review and other post-grant proceedings so that the Office could reconsider issued patents and cancel claims that should not have issued. Fee-setting authority and post-grant review therefore address patent quality at different stages: financial stability can support rigorous examination before issuance, while PTAB can provide a corrective mechanism afterward. Recent changes in discretionary-denial practice have substantially narrowed the number of petitions receiving merits review. The present renewal provides an appropriate occasion to consider how those complementary patent-quality mechanisms are functioning, while evaluating fee-setting authority on its own institutional merits.¹

My testimony proceeds in that order. I first explain why financial health matters to examination quality, then turn to the current fee schedule, my empirical work with Professor Michael Frakes, the post-AIA financial framework, the 2024 fee study, and PTAB's complementary role in the AIA's patent-quality framework.

¹ See H.R. Rep. No. 112-98, pt. 1, at 39-40, 48 (2011) (describing post-grant proceedings as a more efficient system for challenging patents that should not have issued and as a mechanism to improve patent quality and restore confidence in validity).

I. Why Financial Health Matters to Patent Quality

The Patent Office is overwhelmingly funded by user fees. Fees are therefore not incidental to the agency's work; they finance it. That remains true today. In fiscal year 2025, the USPTO collected approximately \$4.521 billion in patent and trademark fees, of which approximately \$3.929 billion—about 87 percent—came from patent fees.²

A fee-funded model has important advantages, but it also creates financial risk because examination demands and fee collections do not necessarily move together. Application volume can increase unexpectedly. A growing backlog can require additional examination capacity. An economic downturn can reduce maintenance-fee payments as owners allow more patents to lapse. Allowance rates and issue-fee collections can differ from forecast. Labor or technology costs can rise. Any of these developments can leave the Office with fewer resources than expected relative to the work it must perform.

That possibility matters directly to patent quality. Examination is labor intensive. The Office must hire and retain enough examiners, give them adequate time and search resources, invest in information technology, and expand examination capacity when filings or technological complexity increase. When revenues fall short of operating needs, those functions can come under pressure.

The 2008–2009 recession provides a useful illustration. Declining fee collections led the Office to curtail hiring and overtime and postpone information-technology investments; the Patent Public Advisory Committee reported that examiner hiring fell below planned levels, and Director David Kappos later described the Office as operating on a “bare-bones budget.” The institutional lesson is straightforward: financial health is one condition for sustaining the resources necessary for timely and rigorous examination.³

Before the AIA, the Office had substantially less flexibility to respond when fee collections and examination demands diverged because principal patent fees were largely established by statute. Fee-setting authority gave a fee-funded agency a more direct way to align revenue with changing costs and workload.

II. The AIA's Financial Safeguards

A. Fee-setting authority

Section 10 of the AIA authorized the Director to set or adjust patent fees by rule, subject to an aggregate-cost limitation. Individual fees need not equal the cost of the particular service with

² U.S. Patent & Trademark Office, Fiscal Year 2027 Congressional Justification, app. IV (reporting FY2025 actual total USPTO fee collections of \$4.521 billion and patent fee collections of \$3.929 billion).

³ Statement of David J. Kappos, Under Secretary of Commerce for Intellectual Property and Director, USPTO, before the Subcommittee on Commerce, Justice, Science, and Related Agencies, U.S. House Committee on Appropriations (Mar. 25, 2010) (explaining that lower user-fee collections forced reduced examiner hiring, limits on overtime, and postponed IT upgrades); Patent Public Advisory Committee, 2009 Annual Report 18, 22–23 (2009) (describing approximately \$200 million in FY2009 reductions, suspension of most hiring and overtime, and examiner-hiring shortfalls caused by declining fee revenues).

which they are associated, but aggregate patent-fee revenue may recover only the aggregate estimated cost of patent operations. That authority was later extended through September 2026.⁴

That authority materially improves the financial position of the Office. If filing patterns change, labor costs rise, maintenance-fee collections decline, or other conditions create a projected mismatch between revenue and operating needs, the Office can rebalance its fee schedule. That flexibility can protect examiner hiring, examination capacity, search tools, and information-technology investments. Fee-setting authority therefore supports patent quality indirectly but importantly: it helps sustain the institutional resources on which high-quality examination depends.

B. Operating reserves and the PTFRF

The post-AIA financial architecture includes additional safeguards. The Office maintains operating reserves from unobligated fee balances to cushion temporary differences between collections and spending requirements. The Office itself treats reserve levels as an indicator of financial risk because reserves can preserve day-to-day operations when actual collections depart from forecast.⁵

The AIA also established the Patent and Trademark Fee Reserve Fund, or PTFRF. Under 35 U.S.C. § 42(c)(2), certain collections above the amount appropriated to the Office are deposited in the Fund and remain dedicated to Patent Office purposes, subject to the appropriations process. The PTFRF provides another source of financial protection when previously accumulated collections are available.⁶

These mechanisms make the post-AIA Patent Office more financially resilient than the institution Professor Michael D. Frakes, who is the A. Kenneth Pye Distinguished Professor of Law and Professor of Economics at Duke University, and I studied during much of the earlier period. That improvement is central to my support for renewal. The remaining question is what happens when the Office nevertheless becomes financially constrained.

III. The Current Fee Schedule: Public Benefits and Agency Incentives

A. How examination is financed

The overwhelming majority of Patent Office costs are associated with reviewing and examining patent applications. Applicants pay filing, search, and examination fees, but the Office deliberately does not recover the full cost of examination at the front end. The 2024 fee study describes the

⁴ Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 10, 125 Stat. 284, 316-20 (2011); Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018, Pub. L. No. 115-273, § 4, 132 Stat. 4158 (extending fee-setting authority through Sept. 16, 2026); U.S. Patent & Trademark Office, Fee Setting and Adjusting.

⁵ U.S. Patent & Trademark Office, FY 2025 Agency Financial Report 14-15 (2025) (describing the role of operating reserves in mitigating financial risk and maintaining daily operations).

⁶ 35 U.S.C. § 42(c)(2); U.S. Patent & Trademark Office, Fees and Budgetary Issues (explaining the AIA's establishment and operation of the Patent and Trademark Fee Reserve Fund).

current schedule as deferring about half of examination costs to maintenance fees paid later in the patent lifecycle.⁷

The Office therefore relies heavily on fees associated with allowed or issued patents. An issue fee is paid after an application is allowed and before the patent issues. Maintenance fees are paid at 3.5, 7.5, and 11.5 years after issuance to keep most utility patents in force. In fiscal year 2025, the Office collected approximately \$369 million in post-allowance fees and \$2.062 billion in maintenance fees. Together, those categories represented approximately 62 percent of the \$3.929 billion in patent-fee collections.⁸

B. Why the back-ended structure serves legitimate public-policy goals

That back-ended structure is not simply a defect in the fee system. It serves legitimate public-policy goals. Requiring applicants to pay the entire cost of examination at the front end could make access to the patent system more difficult, particularly for smaller applicants and for inventions whose commercial value remains uncertain at filing. Current law also provides substantial reductions for qualifying small and micro entities.

Maintenance fees serve a separate public function. They require patent owners periodically to decide whether a patent remains valuable enough to justify another payment. If the owner does not pay, the patent expires and the invention enters the public domain sooner than it would if every patent automatically remained in force for its maximum term.⁹

For that reason, I do not think the fee schedule should be evaluated by asking whether every individual fee equals the cost of the associated service. Fee design must account for both sides of the equation: the incentives fees create for applicants and the public, and the incentives those same fees create for the agency that depends on them for revenue.

C. The Office May Act on the Incentive When Financially Constrained

The theory is not that the Patent Office is constantly trying to maximize fee revenue or that every grant decision is influenced by the fee schedule. Rather, the Office may act on the incentive created by the fee structure when unexpected events leave it financially constrained.

Those events can take several forms. Application volume or repeat filings can grow faster than anticipated, increasing examination costs and backlog pressure. An economic downturn can reduce maintenance-fee payments. Fewer applications may be allowed than forecast, reducing issue-fee collections. Costs may rise unexpectedly. In each case, the relevant condition is the same: expected fee collections become insufficient relative to the resources needed to process the Office's workload.

Under those conditions, the back-ended structure creates a financial asymmetry. A rejected application produces no issue fee and no future maintenance fees. A granted application produces

⁷ Gaétan de Rassenfosse & Adam B. Jaffe, Framework for Analysis of U.S. Patent Fee Structure Options (Dec. 2024), commissioned by the U.S. Patent & Trademark Office; U.S. Patent & Trademark Office, UAIA Fee Study Summary Report (Dec. 27, 2024) (describing the current schedule as deferring about half of examination costs to maintenance-fee payments).

⁸ U.S. Patent & Trademark Office, Fiscal Year 2027 Congressional Justification, app. IV (FY2025 actual patent collections: \$3.929 billion total; \$369 million post-allowance; \$2.062 billion maintenance). Post-allowance plus maintenance collections equal approximately 61.9% of patent-fee collections.

⁹ U.S. Patent & Trademark Office, FY 2025 Agency Financial Report (2025) (explaining that initial fees are set below full examination cost and that maintenance fees permit an owner to allow a patent with little commercial value to expire); 35 U.S.C. § 41(b).

an issue fee immediately and may generate maintenance-fee revenue for years. A financially constrained Office can therefore obtain more revenue from additional grants than from additional rejections.¹⁰

IV. Empirical Work with Professor Michael Frakes

Professor Frakes and I examined approximately 4.7 million patent applications filed over roughly twenty years and asked whether the Office's financial condition affected granting patterns in the direction predicted by the fee schedule. We expected any effect to emerge when the Office was financially constrained and to be strongest for applications expected to generate greater fee revenue.¹¹

That distinction shaped the research design. Overall grant rates can change for many reasons unrelated to agency finances, including changes in application quality, technology, doctrine, and applicant composition. We therefore compared categories of applications associated with different expected revenue rather than simply comparing overall grant rates in financially strong and financially weak years.

One comparison focused on technologies with historically high versus low maintenance-payment rates. A patent in a high-maintenance technology is more likely to generate future maintenance fees and is therefore more valuable to a financially constrained Office. A second comparison focused on large entities versus applicants entitled to fee reductions because large entities paid higher fees and generated more revenue from the same procedural events.

The results were consistent with that prediction. When the Office experienced insufficient fee revenue, it became relatively more likely to grant patents to large entities and in technologies with historically high maintenance rates—the categories expected to generate more revenue. Importantly, the effect appeared during periods of financial strain rather than as a constant revenue-maximizing bias.¹²

Those findings do not establish that the same magnitude of effect persists under the post-AIA regime. They establish a narrower point relevant here: when a fee-funded adjudicatory agency becomes resource constrained, the structure of its revenue can affect substantive outcomes.

V. Why Financial Constraint Remains Possible After the AIA

The key question after the AIA is whether the Office can still become financially constrained in circumstances where the revenue asymmetry matters. The current safeguards greatly reduce that risk, but they do not guarantee that it will never arise.

A. Fee-setting authority can restore balance, but it operates with a lag

Fee-setting authority gives the Office a direct way to respond to a projected mismatch between revenue and operating needs. But fee setting is deliberately not instantaneous. The AIA process

¹⁰ Michael D. Frakes & Melissa F. Wasserman, *Does Agency Funding Affect Decisionmaking?: An Empirical Assessment of the PTO's Granting Patterns*, 66 VAND. L. REV. 67, 79–85 (2013).

¹¹ *Id.* at 88–100.

¹² *Id.* at 102–09, 118–19.

includes advisory-committee review, public hearings, notice and comment, and publication before new fees become effective. The Office's own financial reporting describes the AIA fee-setting process as taking approximately two years. Those procedures serve important transparency and participation values, but they also mean that a shortfall can develop before a revised schedule takes effect.¹³

The most recent major patent-fee adjustment illustrates the timing issue. The Director submitted the preliminary proposal to the Patent Public Advisory Committee on April 20, 2023; the Office issued a proposed rule in April 2024, published the final rule in November 2024, and made the new fees effective January 19, 2025—roughly twenty-one months after the preliminary proposal. Fee-setting authority therefore materially improves the Office's capacity to restore financial balance, but it cannot provide an immediate response to every unexpected shock.¹⁴

B. Operating reserves cushion temporary shocks, but they are finite

Operating reserves provide a second line of protection. They can preserve operations when collections temporarily fall below planned expenses, which is particularly valuable for an agency whose principal costs are personnel and whose examination capacity cannot be rebuilt instantly after a disruption.

But a reserve is a stock of accumulated funds rather than a recurring source of revenue. It can bridge a temporary mismatch; it cannot indefinitely finance a persistent one. For fiscal year 2025, the Office's minimum patent operating-reserve target was approximately one month of planned operating expenses, while its optimal target was approximately three months. Those are meaningful cushions, but their purpose is to buy time, not to make persistent revenue-cost mismatches impossible.¹⁵

C. The PTFRF provides another safeguard, but its capacity depends on accumulated funds

The PTFRF provides another layer of protection by preserving certain excess collections for PTO purposes. Its ability to cushion a future shortfall, however, necessarily depends on whether sufficient funds have previously accumulated and are available.¹⁶

The Office's experience in fiscal year 2016 illustrates both the value and the limitation. Fee collections were approximately \$209 million below the amount the Office was authorized to spend. Previously accumulated PTFRF funds—approximately \$148.2 million that had been transferred into the Office's operating reserve—helped cushion that shortfall. Those funds materially improved the Office's financial position but did not eliminate the underlying revenue gap.¹⁷

¹³ U.S. Patent & Trademark Office, FY 2025 Agency Financial Report 14 (2025) (depicting the AIA fee-setting process and stating that it takes approximately two years).

¹⁴ U.S. Patent & Trademark Office, Fee Setting and Adjusting (Apr. 20, 2023 preliminary patent fee proposal; Apr. 3, 2024 notice of proposed rulemaking; Nov. 20, 2024 final rule); Setting and Adjusting Patent Fees During Fiscal Year 2025, 89 Fed. Reg. 91,898 (Nov. 20, 2024) (effective Jan. 19, 2025).

¹⁵ U.S. Patent & Trademark Office, FY 2025 Agency Financial Report 14-15 (2025) (setting the FY2025 patent operating-reserve minimum at 8% of planned spending, or about one month of operating expenses, and the optimal level at 22%, or about three months).

¹⁶ 35 U.S.C. § 42(c)(2).

¹⁷ U.S. PAT. & TRADEMARK OFF., 2016 PERFORMANCE AND ACCOUNTABILITY REPORT 48 (2016) (reporting \$3.272 billion in FY2016 appropriation authority and \$3.0632 billion in fee collections, and explaining that \$148.2 million previously deposited in the Patent and Trademark Fee Reserve Fund had been transferred to the operating reserve and used in FY2016).

D. The underlying revenue asymmetry remains

Most importantly, these safeguards operate around rather than eliminate the underlying fee structure. The Office continues to recover a substantial share of examination costs through issue and maintenance revenue. The fiscal year 2025 figures—approximately 62 percent of patent-fee collections from post-allowance and maintenance categories—show that back-ended revenue remains central to patent financing.

Taken together, these safeguards make financial constraint less likely and less severe, but not impossible. Because back-ended revenue remains central to patent financing, the grant-versus-reject revenue asymmetry can still matter if constraint arises.

VI. The 2024 Fee Study

The Unleashing American Innovators Act of 2022 required the USPTO to study whether fees inhibit participation by small and micro entities, whether examination fees should more closely approximate examination costs, and the incentive effects of using maintenance-fee revenue to recover examination costs. The commissioned study was transmitted in December 2024.¹⁸

The study is important evidence and should be taken seriously. It concludes that the current schedule, which defers about half of examination costs to maintenance fees, does not distort examination or patenting decisions. It also concludes that the present structure, including temporary fee-setting authority, may be superior to the alternatives considered because it provides benefits to applicants and patentees while allowing the Office to maintain aggregate financial balance.¹⁹

I agree with an important part of that analysis: today's Patent Office has materially greater financial flexibility than the agency Professor Frakes and I studied during much of our sample period. That is good reason to expect financial constraint to occur less often. But the empirical question raised by our earlier work is narrower: when the Office nevertheless becomes financially constrained, do examination outcomes remain unaffected by the revenue consequences of granting patents?

The 2024 study does not conduct that application-level post-AIA test. It explains why the current framework should reduce the importance of the earlier incentive mechanism, but it does not test granting outcomes during post-AIA periods of financial strain. That distinction matters because an institutional reason to expect a smaller problem is not the same as empirical evidence that the problem no longer appears when financial pressure arises.²⁰

¹⁸ U.S. Patent & Trademark Office, Fee Setting and Adjusting, Unleashing American Innovators Act Fee Study (explaining the study mandate and that the report was transmitted to Congress on Dec. 27, 2024).

¹⁹ U.S. Patent & Trademark Office, UAIA Fee Study Summary Report (Dec. 27, 2024); U.S. Patent & Trademark Office, USPTO Releases Fee Study Report to Congress (Jan. 16, 2025) (reporting findings that the current structure does not incentivize examination decisions and is potentially superior to alternatives considered).

²⁰ See de Rassenfosse & Jaffe, Framework for Analysis of U.S. Patent Fee Structure Options, *supra* note 7. The report analyzes the institutional and economic tradeoffs of alternative fee structures; it does not replicate the kind of application-level post-AIA empirical test of granting outcomes conducted in Frakes & Wasserman, *supra* note 10.

VII. PTAB and the AIA's Complementary Patent-Quality Mechanism

The AIA's concern with patent quality did not end with initial examination. The statute reflects the premise that no examination system can identify every error before a patent issues, and it established inter partes review and post-grant review as administrative mechanisms for challenging issued patents. The House Judiciary Committee described the post-grant system as designed to "improve patent quality and restore confidence in the presumption of validity."²¹

The relationship between fee-setting authority and PTAB is best understood through that broader patent-quality objective. Fee-setting authority can support patent quality before issuance by helping the Office maintain the financial resources necessary for rigorous examination. PTAB can support patent quality after issuance by providing a mechanism to revisit some errors that survive examination. The two mechanisms operate at different stages, but both form part of the AIA's institutional framework for improving the quality of issued patents.

Recent changes to the institution process warrant attention because they affect how often that second mechanism reaches the merits. In February 2025, the Office rescinded its 2022 guidance concerning discretionary denials in cases involving parallel district-court litigation. In March 2025, it adopted a bifurcated institution process under which discretionary considerations are resolved separately from merits and other non-discretionary considerations.²²

The fiscal year 2026 statistics show a substantial change in institution outcomes. Through July 2026, the institution rate by petition was 39 percent, compared with 67 percent in fiscal year 2023 and 68 percent in fiscal year 2024. Of 728 matters subjected to Director discretionary consideration, 425—58 percent—were denied on discretionary grounds and 303 were referred onward. By contrast, among 449 matters resolved on merits or other non-discretionary considerations, 343—76 percent—were instituted.²³

Those figures should be interpreted carefully. They do not establish that every petition denied on discretionary grounds would have satisfied the statutory institution standard, and institution itself is not a final validity determination. Nor do I suggest that discretionary considerations can never serve legitimate institutional objectives. The narrower point is that when a petition is denied without merits review, PTAB cannot use that proceeding to test whether the challenged claims satisfy the patentability standards.²⁴

To the extent discretionary-denial practices substantially narrow access to merits review, they reduce the availability of an important ex post mechanism established by the AIA to correct erroneous patent grants. That broader development is relevant to assessing whether the AIA's patent-quality architecture is functioning as intended, even though the question whether to renew fee-setting authority ultimately rests on the value and operation of that authority itself.

²¹ H.R. Rep. No. 112-98, pt. 1, at 39-40, 48 (2011); see also 35 U.S.C. §§ 311-319.

²² U.S. Patent & Trademark Office, USPTO Rescinds Memorandum Addressing Discretionary Denial Procedures (Feb. 28, 2025); U.S. Patent & Trademark Office, Interim Process for Patent Trial and Appeal Board Workload Management (Mar. 26, 2025) (bifurcating discretionary considerations from merits and other non-discretionary considerations).

²³ U.S. Patent & Trademark Office, Patent Trial and Appeal Board, Trial Statistics—July 2026, at 7-8 (reporting FY2026-through-July disposition and institution statistics).

²⁴ See 35 U.S.C. § 314(a) (providing that IPR may not be instituted unless the information presented shows a reasonable likelihood that the petitioner would prevail with respect to at least one challenged claim).

VIII. Recommendations

My recommendation is therefore to renew the Patent Office's fee-setting authority, but for a shorter period and with continued oversight. Fee-setting authority strengthens the Office's financial resilience and supports the resources necessary for high-quality review. The qualification reflects the remaining uncertainty about how the current fee schedule operates when the Office is financially strained. Separately, the Committee should continue to assess whether the AIA's complementary patent-quality mechanisms, including meaningful post-grant merits review, are operating as intended.

First, I would favor a renewal on the order of three to four years. That period would preserve continuity for financial planning while allowing another review of the post-AIA evidence before a longer extension. A shorter renewal should be understood as structured oversight, not as doubt that a fee-funded Patent Office benefits from fee-setting flexibility.

Second, I recommend focused reporting capable of identifying periods of financial constraint and evaluating the Office's response. Useful information would include projected and actual collections by stage of the patent lifecycle; application volume and backlog changes; maintenance- and issue-fee receipts; the share of examination costs recovered through front-end and post-allowance fees; operating-reserve balances and significant drawdowns; PTFRF balances and uses; forecast errors; and the timing of fee-setting proceedings.

Third, I recommend that the Government Accountability Office conduct an empirical post-AIA evaluation of the core question: when the Office experiences financial strain under the current regime, do examination outcomes change in ways associated with the revenue consequences of patent issuance? The Office's 2024 study offers a thoughtful institutional and economic analysis of why the relationship found in my earlier work should be weaker today. A GAO study would complement that work by testing the proposition against actual post-AIA examination data and would provide this Committee with an independent empirical assessment for the next renewal decision.

Fourth, I recommend continued review of whether current discretionary-denial practices preserve a meaningful role for PTAB merits review. I do not suggest that every petition should be instituted or that discretionary denial must be prohibited. The narrower question is whether inter partes review remains able to perform the patent-quality function assigned to it by the AIA.

Finally, more structural fee reforms should remain available if post-AIA evidence shows that financial pressure continues to affect examination outcomes. Options include reducing or eliminating issue fees, recovering a larger share of examination costs through examination-related fees, or otherwise reducing the Office's dependence on post-allowance revenue.²⁵

Those options can also be designed to preserve access to the patent system. If a more structural adjustment to the fee schedule is warranted, my preferred approach would be to recover a greater share of examination costs from large entities while retaining existing subsidies for qualifying small and micro entities. My earlier work noted that the vast majority of patent applications are filed by large entities and that Patent Office examination fees are only a fraction of the overall cost of securing a patent, which also includes substantial attorney fees. Increasing examination fees for

²⁵ Frakes & Wasserman, *supra* note 10, at 121–24.

large entities could therefore reduce the Office's reliance on grant-contingent revenue while preserving reduced fees for individual inventors and smaller firms.²⁶

Issue fees present a different structural option. Because an issue fee is collected only after an application has been allowed, reducing or eliminating that fee would weaken the most immediate connection between a grant decision and additional agency revenue. Maintenance fees raise different considerations because they serve an independent public-policy function: they encourage owners to allow patents that no longer justify their cost to expire. For that reason, my earlier work proposed retaining maintenance fees while reducing the Office's immediate dependence on that revenue stream.²⁷

Conclusion

The AIA sought to improve patent quality at both ends of the patent process. Fee-setting authority helps sustain the resources necessary for rigorous examination, while post-grant review provides a mechanism for correcting errors that examination does not catch. The Office is materially more financially resilient today, but it continues to rely substantially on revenue associated with allowed and issued patents, and financial constraint remains possible.

For those reasons, I recommend renewing fee-setting authority for a shorter period—roughly three to four years—with continued oversight. That approach would preserve a valuable financial tool while allowing further assessment of the fee structure. In the broader AIA context, the Committee should also continue to assess whether meaningful post-grant merits review remains available as the complementary patent-quality mechanism established by the statute.

Thank you. I look forward to your questions.

²⁶ Michael D. Frakes & Melissa F. Wasserman, *Decreasing the Patent Office's Incentives to Grant Invalid Patents* 13, 16 & nn.14, 19 (The Hamilton Project, Brookings Inst., Policy Proposal 2017-17, Dec. 2017) (explaining that Patent Office examination fees are only a fraction of the overall cost of securing a patent, which also includes attorney fees, and identifying as a possible minimum reform aligning examination fees more closely with costs for large entities while preserving reduced fees for small and micro entities).

²⁷ Frakes & Wasserman, *supra* note 10, at 88, 123–24.