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37 C.F.R. § 1.16(u), to go into effect in January 2022, imposes a \$400 surcharge for filing the text of a patent application in PDF form (today, application text is filed as PDF documents). The USPTO proposes to impose that \$400 penalty for any filing that is not submitted in DOCX format, specifically the USPTO's preferred version of the DOCX format promoted by Microsoft Word. This requirement and penalty for non-compliance will create immense unwarranted burden on the public, and should not be approved.

There is no uniform, reproducible way to render a DOCX into a final document. Every computer and word processing program operating on the computer produces a slightly different DOCX document. The USPTO proposal asserts applicants will file a DOCX patent application, and the USPTO will then convert the DOCX file to PDF on the USPTO's computers. But there is no way that the USPTO can guarantee that the PDF they generate on their computers will be identical to a PDF that I would generate on my own computer using the word processing software on my computer. The USPTO proposal specifically rejects having applicants provide their own PDF file for comparison with the DOCX file.

Further, the USPTO proposal would require applicants to review and compare the USPTO-generated PDF file with the applicant's documents, to identify potential discrepancies at the time of filing, but with no way of correcting any discrepancies. Further, for application texts in excess of thirty pages, the time needed for such pre-filing review (most likely over an hour) is likely to result in a system time out by the USPTO system, requiring applicants to start the filing process all over again. Based on a billing rate of \$400 per hour, pre-filing review would incur an estimated additional cost of \$400 for every patent application.

Post-filing error correction would involve review of the original document and the erroneous USPTO-generated document, and written submissions or, in a worst case, the need to file a supplemental continuation application. Applicants could incur additional costs in an estimated range of \$500 to \$1500 per application.

The likelihood of error in filing of patent applications in DOCX is unacceptably high, and the attorney cost for pre-filing error checking and post-filing error correction (and malpractice insurance costs) will be well above the PTO's fee of \$400 per application.

Public comment letters were submitted to the USPTO, which letters pointed out the incompatible and inconsistent ways that different computers and different word processing programs treat DOCX files. The USPTO did not fairly answer the public comments during notice-and-comment process. Rather, the USPTO inaccurately paraphrased the comments, and answered only the inaccurate paraphrasing, without actually addressing the problems and burdens that the DOCX requirement will create.

For both reasons of unjustifiably large burden and for reasons of unjustifiable procedural shortcuts, the USPTO's DOCX proposal should be disapproved.