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A newly proposed regulation due to go into effect in January 2022, 37 C.F.R. § 1.16(u), imposes a \$400 surcharge on a standard applicant for filing a patent application in PDF format. The PTO proposes to impose this \$400 fee, in effect a penalty, for any filing that doesn't conform to the PTO's preference for Microsoft Word DOCX. Implementation of this change will create an unbearable burden on the public and should not be allowed.

The PTO cannot apparently guarantee that the PDF they generate on their computers from the filed DOCX file will exactly match the text of the original DOCX file. This is because different computers convert DOCX files into PDF files differently. The resulting likelihood of error in filing of patent applications in DOCX will not only be unacceptably high, but will be carried by applicants due to applicants bearing the risk of the PTO conversion errors.

Moreover, the attorney cost for pre-filing error checking and post-filing error correction and costs associated with filing of DOCX application documents (including the risk of malpractice for not catching PTO conversion errors) will undoubtedly be well above the PTO's fee of \$400 per application. More than simply a penalty, a fee that applicants cannot reasonably avoid will effectively become a tax that applicants will unfairly bear--and especially those innovating in technology areas most adversely affected by the errors.

Public comment has already pointed out the incompatible and inconsistent ways that different computers treat DOCX files (see, for example, the following comments: https://www.uspto.gov/sites/default/files/documents/Comment_Seventy_Three_Patent_Practitioners_092719.pdf), and the PTO has not fairly and properly addressed those comments. Because of the unjustifiably large burden and the unjustifiable procedural shortcuts, the PTO's DOCX proposal should be disapproved.