

PTAAARMIGAN

PATENT AND TRADEMARK ATTORNEYS, AGENTS AND APPLICANTS FOR RESTORATION AND
MAINTENANCE OF INTEGRITY IN GOVERNMENT

MAILING: P.O. Box 590372, NEWTON MA 02459
E-MAIL: PTAAARMIGAN@PTAAARMIGAN.ORG

May 23, 2022

Via Email FOIARequests@uspto.gov; efoia@uspto.gov

General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Re: **Freedom of Information Act request F-22-00072 (adopted guidance relating to rulemaking and information collection clearance)—Appeal for search fees**

Dear General Counsel:

This is an appeal under 5 U.S.C. § 552(a)(6)(A) from an adverse determination in FOIA request F-21-00072. PTAAARMIGAN's initial request of January 28, 2022 fully explained and supported three requests for a fee waiver. The USPTO's "interim agency response" letter of April 24, 2022 requests search fees, but offers not a word of explanation to deny any of the three.

By its silence, the PTO's letter of April 24, 2022 concedes all facts and legal bases for a fee waiver. Those grounds are explained again in this appeal.

Background

PTAAARMIGAN is an association of patent and trademark attorneys, agents, and applicants for restoration and maintenance of integrity in government. PTAAARMIGAN is organized as a nonprofit limited liability company, and operates as a nonprofit public benefit organization under IRC § 501(c)(4). See Exhibit A.

On January 28, 2022, PTAAARMIGAN filed its Freedom of Information Act request (see Exhibit B), tracking number F-21-00072. As filed on January 28, the request satisfied all written regulations and requirements for a valid FOIA request, including a description in enough detail to enable USPTO personnel to locate the records with a reasonable amount of effort, and a full explanation of three grounds for eligibility for a fee waiver.

On March 9, 2022, the PTO sent a letter requesting "clarification" of the request. PTAAARMIGAN replied on March 24, 2022, pointing out that all but one of the requests for "clarification" reflected misreading by the PTO's FOIA office—the FOIA office had repeatedly extracted isolated words of the request out of context. PTAAARMIGAN's March 24 letter clarified the one identifiable ambiguity, and pointed out the specific words of the original request that had been overlooked by the FOIA office's extraction. The March 24, 2022 letter also elaborated on several aspects of PTAAARMIGAN's fee waiver request (at pages 7-11).

On April 21, 2022, the PTO sent an "Interim Agency Response" requesting search fees of \$ 783.97 (Exhibit C). The April 21 fee request letter contains not a single word responsive to the

multiple grounds for a fee waiver presented in the original January 28 request, or the elaboration in PTAAARMIGAN’s letter of March 24.

This appeal challenges the denial of fee waiver in that April 21 letter.

Argument

The PTO has been playing fast and loose with this request. The gamesmanship began with ill-formed requests for “clarification” of March 24, manufactured out of plain misreading of the request by taking individual words out of context. The April 21 “Interim Agency Response” letter continues the pattern, entirely ignoring a clearly-stated request for a fee waiver. This *identical* issue was appealed in F-21-00169 in August 2021. The decision on that appeal, September 21, 2021, by Acting Deputy General Counsel Stacy Long, notes “I agree with you that a fee waiver request was properly made in your initial request. I also agree that the FOIA Officer should have responded to that request in her response.” The three letters (two in this application, plus the fee letter in F-21-00169), all reflecting avoidance of plain words on a page, and requiring a second appeal of a nearly-identical fee waiver issue decided less than a year ago, creates unnecessary delay, needless increase in cost, and arbitrary and capricious delay and withholding.

I. The PTO erred by denying PTAAARMIGAN’s request for a fee waiver

A. Fee waivers and standard of review

Waivers of search fees are provided for by statute, § 552(a)(4)(A)(ii)(II) and (iii)¹, in the following circumstances:

Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

[F]ees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by ... a representative of the news media

Requests for fee waivers are to be liberally construed. *Bartko v. Dept. of Justice*, 898 F.3d 51, 75 (D.C. Cir. 2018).

B. By silence, the April 21 fee request letter concedes three showings of eligibility for waiver of fees

PTAAARMIGAN made two showings that the requested records will “significantly contribute to the public’s understanding of operations or activities of the government” in the initial request of January 21, 2022 (see Exhibit B at pages 4-6), and one showing of eligibility for the “news media” fee waiver (see Exhibit B at page 6).

¹ The PTO’s implementing regulations at 37 C.F.R. § 102.11(k) provide a framework for discussion, but cannot attenuate a statutory right.

FOIA requests are subject to the Administrative Procedure Act, particularly the requirement of 5 U.S.C. § 555(e), “Prompt notice shall be given of the denial in whole or in part of a written ... request.... [T]he notice shall be accompanied by a brief statement of the grounds for denial.” *See also Motor Vehicle Mfrs. Ass’n v. State Farm Mutual Ins. Co.*, 463 U.S. 29, 46, 48, 49 (1983) (“The first and most obvious reason for finding the [the agency’s action to be] arbitrary and capricious is that [the agency] apparently gave no consideration whatever... We have frequently reiterated that an agency must cogently explain why it has exercised its discretion in a given manner.”).

Because the PTO’s April 21 fee request “interim agency response” letter is entirely silent on showings fairly made in the initial January 28 request, it concedes all relevant facts and law.

C. PTAAARMIGAN has no commercial interest

PTAAARMIGAN LLC is a nonprofit LLC, and has applied for § 501(c)(4) nonprofit status. See Exhibit A. PTAAARMIGAN has no commercial interest.

PTAAARMIGAN seeks the records in support of its public benefit activities. PTAAARMIGAN seeks to advance the public interest, by two general classes of activities.

- PTAAARMIGAN’s primary activity is disseminating information to inform the public about actual or alleged Federal government activity. PTAAARMIGAN disseminates information via PTAAARMIGAN’s web site, www.ptaaarmigan.org/resources, and via publications in periodicals and intellectual property web blogs.
- PTAAARMIGAN advocates on behalf of intellectual property attorneys, agents and owners, and on behalf of IP-owning parties in the private sector.

The PTO’s April 21 letter concedes the point by silence.

D. The records sought will likely contribute to public understanding

The records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” 37 C.F.R. § 102.11(k)(2)(iii).² Upon receipt, PTAAARMIGAN will make these records or their analysis publicly available on its website for use by journalists, scholars, students, and interested members of the public at no charge, and use the information in advocacy, reports, newsletters, and other public disseminations to advance our educational mission. PTAAARMIGAN members have published multiple articles in magazines published by the American Bar Association and American Intellectual Property Law Association, and articles on www.patentlyo.com and

² The PTO’s regulations specify a “reasonably broad audience.” 37 C.F.R. § 102.11(k)(2)(iii). Merrick Garland, while a D.C. Circuit Judge, invalidated a similar provision in the FTC’s FOIA regulations. Judge Garland noted that agency regulations may not impose non-statutory limitations or burdens, so “proof of the ability to disseminate the released information to a broad cross-section of the public is not required.” *Cause of Action v. FTC*, 799 F.3d 1108, 1115-16 (D.C. Cir. 2015). If any such non-statutory “broad audience” test is viable, that test provides that dissemination that is targeted at a relatively small group, where that small group will benefit the public at large, qualifies for a public interest fee waiver. *Carney v. Dept of Justice*, 19 F.3d 807, 814-15 (2d Cir. 1994). PTAAARMIGAN’s constituency, patent and trademark applicants, attorneys, agents and owners, is such a group.

www.ipwatchdog.com and <https://www.patentdocs.org> (the three most-read blogs among intellectual property lawyers). Publications by PTAAARMIGAN members and articles based on records previously obtained by PTAAARMIGAN's FOIA requests are listed on PTAAARMIGAN's web site, <http://ptaarmigan.org/resources>.³

The PTO's April 21 offers no reason to question this showing. The point is conceded.

E. The records sought will likely “significantly contribute to the public's understanding of operations or activities of the government”

PTAAARMIGAN requests a public interest fee waiver because the requested records directly concern and bear upon the government's operations and activities, will be highly informative to the public regarding the USPTO's policies, including on matters directly affecting thousands of patent and trademark holders and applicants.

The records are “likely to contribute ‘significantly’ to public understanding of Government operations or activities.” § 102.11(k)(2)(iv). These records illuminate the USPTO's processes for rulemaking, issuing guidance, and obtaining Paperwork Reduction Act clearance, which are important government functions. To PTAAARMIGAN's knowledge, the records sought are not otherwise available to the public.

A request that meets a three-part test set forth in *Center for Medicare Advocacy, Inc. v. U.S. Dept. of Health & Human Svcs.*, 577 F.Supp.2d 221 (D. D.C. 2008), is “likely to contribute significantly to public understanding of the operations or activities of the government” and, therefore, be eligible for a fee waiver:

- the request requests materials underlying an agency decision, supplementary to the materials made public by the agency;
- the request is made by an advocacy organization whose public interest activities include producing written materials to be distributed to inform and train members of its relevant public, and advocating on legislative and regulatory affairs;
- the requester proposes to make information accessible to members of the public who cannot otherwise readily locate a particular law or interpretive document.

Center for Medicare Advocacy, 577 F.Supp.2d at 241-42. PTAAARMIGAN is such an entity, requesting records for such purposes, and the request requests records underlying an agency decision.

In addition, PTAAARMIGAN requests a public interest fee waiver because the requested records directly concern and bear upon the government's operations and activities, and will be highly informative to the public regarding the USPTO's policies, including on matters directly affecting thousands of patent and trademark holders and applicants. The public has a right to

³ The statutory standard is “*likely* to contribute significantly to public understanding.” A requester need not show “actual[] disseminat[ion] to a large cross-section of the public.” *Carney*, 19 F.3d at 814. Nonetheless, PTAAARMIGAN's past practice should reassure that the records will be posted to PTAAARMIGAN's web site, and therefore disseminated to the entire world, promptly after disclosure. Articles and public comment letters based on FOIA information that further dissemination the FOIA information are listed at the web link shown above.

know significant details of an agency's financial arrangements, especially when the requested records might illuminate potential motivations and influences. *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1180-81 (11th Cir. 2005). Because the USPTO has fee-setting authority, and exercises that fee-setting authority for the USPTO's own financial interest, and does so as guided by the rulemaking documents requested, the requested records may disclose potential motivations and influences over the USPTO's fee setting.

A fee waiver is appropriate when the requested records may explain how an agency sidestepped important procedural protections, and the requested records may reveal how an agency "functions in reality compared to how the system was intended to function." *Bartko*, 898 F.3d at 75. The requested records may explain sidestepping of requirements under the Administrative Procedure Act, Paperwork Reduction Act, Regulatory Flexibility Act, and Executive Orders 12866 and 13771.

By silence, the PTO's April 21 letter concedes that PTAAARMIGAN is entitled to a fee waiver.

F. PTAAARMIGAN is eligible for a "news media" fee waiver

PTAAARMIGAN is likewise eligible for the "news media" fee waiver of search fees. § 552(a)(4)(A)(ii)(II). PTAAARMIGAN makes such materials available to the public via its web site, <http://ptaaarmigan.org/resources>.

The "news" exception does not require identification of a specific publication venue, only a "solid basis for expecting publication" which, in turn, may be based on "past publication record." § 552(a)(4)(A)(ii); § 102.11(b)(6). Members of the public use PTAAARMIGAN materials to develop and publish articles for publication in the publications of the ABA, AIPLA, and the blogs Patently-O, IP Watchdog, and Patent Docs to explain recent developments in agency practice and administrative law to the patent and trademark bar (see Exhibit D).

The PTO's April 21 letter offers no reason to disagree.

II. Conclusion

In light of the forgoing:

(1) The PTO's failure to even acknowledge a request for a fee waiver, let alone offer any response, was unlawful;

(2) PTAAARMIGAN's request is eligible for a fee waiver.

The requested records should be produced promptly, with no search fee.

Very truly yours,

PTAAARMIGAN

Attachments:

Exhibit A Tax exempt correspondence from IRS

Exhibit B January 28, 2022 FOIA request (exhibits removed)

Exhibit C April 21, 2022, letter from FOIA office to PTAAARMIGAN, requesting estimated fees of \$ 783.97

Exhibit D Articles published by PTAAARMIGAN members and/or with benefit of PTAAARMIGAN FOIA documents

Exhibit A

Tax exempt correspondence from IRS

Date of this notice: 06-22-2021

Number of this notice: CP 575 E

PTAARMIGAN LLC
PO BOX 590372
NEWTON, MA 02459

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

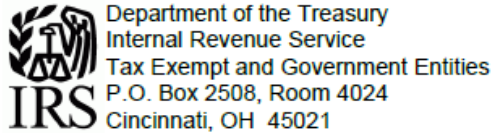
Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN [REDACTED]. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When you submitted your application for an EIN, you checked the box indicating you are a non-profit organization. Assigning an EIN does not grant tax-exempt status to non-profit organizations. Publication 557, Tax-Exempt Status for Your Organization, has details on the application process, as well as information on returns you may need to file. To apply for recognition of tax-exempt status under Internal Revenue Code Section 501(c)(3), organizations must complete a Form 1023-series application for recognition. All other entities should file Form 1024 if they want to request recognition under Section 501(a).

Nearly all organizations claiming tax-exempt status must file a Form 990-series annual information return (Form 990, 990-EZ, or 990-PF) or notice (Form 990-N) beginning with the year they legally form, even if they have not yet applied for or received recognition of tax-exempt status.

Unless a filing exception applies to you (search www.irs.gov for Annual Exempt Organization Return: Who Must File), you will lose your tax-exempt status if you fail to file a required return or notice for three consecutive years. We start calculating this three-year period from the tax year we assigned the EIN to you. If that first tax year isn't a full twelve months, you're still responsible for submitting a return for that year. If you didn't legally form in the same tax year in which you obtained your EIN, contact us at the phone number or address listed at the top of this letter.

For the most current information on your filing requirements and other important information, visit www.irs.gov/charities.



Date: July 06, 2021
Person to Contact: Customer Services
Contact telephone number: 877-829-5500

PTAAARMIGAN LLC
Po Box 590372
Newton, Massachusetts 02459

We received your Form 8976, *Notice of Intent to Operate Under 501(c)(4)*, you filed on June 22, 2021. This acknowledgement is not a determination by the IRS that you qualify as tax-exempt under Internal Revenue Code (Code) Section 501(a) as an organization described in Code Section 501(c)(4).

For important information about your responsibilities, including recordkeeping, reporting, and disclosure requirements, go to www.irs.gov/charities.

If you have questions, you can call Customer Services at 1-877-829-5500.

Exhibit B

January 28, 2022 FOIA request

PTAAARMIGAN

PATENT AND TRADEMARK ATTORNEYS, AGENTS AND APPLICANTS FOR RESTORATION AND
MAINTENANCE OF INTEGRITY IN GOVERNMENT

MAILING: P.O. Box 590372, NEWTON MA 02459
E-MAIL: PTAAARMIGAN@PTAAARMIGAN.ORG

January 28, 2022

Via Email FOIARequests@uspto.gov; efoia@uspto.gov

USPTO FOIA Officer
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Re: **Freedom of Information Act request for adopted internal guidance relating to
rulemaking and information collection clearances**

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a), PTAAARMIGAN hereby requests the following records from the U.S. Patent & Trademark Office (USPTO). PTAAARMIGAN LLC has a nonprofit mission to represent Patent and Trademark Attorneys, Agents and Applicants for Restoration and Maintenance of Integrity in Government. PTAAARMIGAN requests a fee waiver, as discussed starting on page 4 of this letter.

REQUEST

Please provide all documents, records, administrative staff manuals, instructions to staff, and statements of policy or interpretation that have been adopted by the agency, issued, adopted, or in effect at any time from August 1, 2004 to present, to govern or guide:

1. USPTO's rulemaking, or making or issuance of any rule (as those two terms are defined in 5 U.S.C. § 551), regulation, guidance, regulatory action (as that term is defined in Executive Order 12866 § 3(e)), or sponsorship of any collection of information (as that term is defined in 5 C.F.R. § 1320.3(c)).
2. USPTO's economic analysis, regulatory analysis, cost-benefit analysis, regulatory impact analysis, or regulatory flexibility analysis of any rule, regulation, guidance, regulatory action, or collection of information, or burden or economic impact on small entities thereof.
3. USPTO's deciding whether or not to seek review of any matter from the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), or the Small Business Administration (SBA).

Freedom of Information Act request for adopted internal guidance relating to rulemaking and information collection clearances

4. USPTO decisions to implement or to not implement, and policies and procedures implementing, governing, or guiding USPTO compliance with, any of:
 - a. The rulemaking procedures of the Administrative Procedure Act (5 U.S.C. §§ 552(a)(1) and (a)(2), and 553), the Paperwork Reduction Act (44 U.S.C. §§ 3506 and 3507), the Regulatory Flexibility Act (5 U.S.C. § 603 and 604), the Independent Offices Appropriations Act (31 U.S.C. § 9701), the Congressional Review Act (5 U.S.C. § 801), and OMB's information collection regulations (5 C.F.R. Part 1320).
 - b. Executive Orders 12866, 13258, 13422, 13563, 13771, 13777, 13891, and 13992, OMB Memoranda M-09-13, and M-11-28, and OMB Bulletin 07-02, and 15 C.F.R. Part 29.
 - c. OFFICE OF MGMT. & BUDGET, FINAL BULLETIN FOR AGENCY GOOD GUIDANCE PRACTICES, OMB BULLETIN 07-02 (Jan. 18, 2007), *reprinted in* 72 Fed. Reg. 3432-40, 3436 (Jan. 25, 2007).
 - d. ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, RECOMMENDATION 2020-1, *reprinted in Adoption of Recommendations*, 86 Fed. Reg. 6612 (Jan 22, 2021).
5. USPTO policies, procedures, practices, or standards, issued, adopted, or in effect at any time between August 1, 2004 to present, for preparing any submission to OMB, OIRA or SBA.
6. Policies and procedures for making available to the public any written communication between OIRA and USPTO or any person not employed by the federal government concerning a proposed collection of information under the Paperwork Reduction Act.

Each of topics 1-6 above include records (a) authored by USPTO, or (b) authored by the Department of Commerce, OMB, OIRA, SBA, or any other government or private-sector entity, and adopted or observed by the USPTO.

The request includes records relating to any of the following (this list is by way of example, and does not limit the request):

- Implementation of, interpretation of, or USPTO policy with respect to any of the laws and directives listed in topic 4, above.
- Any record produced by USPTO or Department of Commerce, that was adopted as policy or procedure by the USPTO, in response to the USPTO's request for comment on its regulations and regulatory processes, Patent and Trademark Office, *Improving Regulation and Regulatory Review* (Docket No.: PTO-C-2011-0017), 76 Fed. Reg. 15891 (March 22, 2011).

Freedom of Information Act request for adopted internal guidance relating to rulemaking and information collection clearances

- In 2011, the USPTO published a web page announcing a comprehensive regulatory review.¹ The “preliminary plan for the review of its existing significant regulations” announced on that web page is nominally within the request, but because it is already public, it need not be produced. However, the “results of previous regulatory reviews,” “current regulatory review” and finalized “plan” mentioned on this web page are not indexed on this page, and apparently are not public anywhere else either. They are within the scope of this request, and should be produced.
- In 2017, the USPTO announced a “Working Group on Regulatory Reform” to implement Executive Order 13771 to review and improve USPTO regulations.² Any product of that working group and adopted by the USPTO is within the scope of this request, and should be produced.
- Any comment letters that were received in relation to that 2011 request for comment, 2011 regulatory review, or 2017 regulatory working group, and not posted on the web page <https://www.uspto.gov/patents/laws/comments-public/comments-improving-regulation-and-regulatory-review>.³

INITIAL SEARCH POINTERS

Likely locations of responsive records include, but are not limited to, the Counsel for Regulatory Affairs in the Office of General Counsel, and the Records Management Office. Particular individuals who may be custodians include, but are not limited to, Nicholas Oettinger, Kyu Lee, Marcie Lovett, Raul Tamayo, Dahlia George, Rafael Baceres, Susan Fawcett, and Kimberly Hardy.

DEFINITIONS

“Records” are defined at 44 U.S.C. § 3301, and per 5 U.S.C. § 552(f)(2) include “any information that would be an agency record subject to the requirements of [FOIA] when maintained by an agency in any format, including an electronic format” and any such information “that is maintained for an agency by an entity under Government contract, for the purposes of records management.”

¹ <https://www.uspto.gov/learning-and-resources/ip-policy/rulemaking/look-back-plan-plan-retrospective-analysis-existing>

² Working Group on Regulatory Reform, <https://www.uspto.gov/about-us/uspto-working-group-regulatory-reform>

³ The letters themselves that are already made public on this page need not be produced. Any letter that was received and not made public on this page should be produced.

Freedom of Information Act request for adopted internal guidance relating to rulemaking and information collection clearances

The terms “and” and “or” as used herein shall be construed both conjunctively and disjunctively in order to bring within the scope of this request any record that would otherwise not be so included.

DELIVERY

PTAAARMIGAN requests that records be produced in the *native* original electronic form or format in which USPTO maintains records for its own use in ordinary course, with no change or conversion. If the USPTO maintains its records as XLS or XLSX spreadsheets, DOCX, or high-resolution text-searchable PDFs, PTAAARMIGAN requests that the records be produced in that native electronic form. For example, a PDF printout of a scanned spreadsheet is *not* a native original form of an electronic spreadsheet—the electronic XLS or XLSX file is. If the USPTO maintains records for its own use as high-resolution or text-searchable PDFs, low-resolution or bitmap PDFs are not “native original electronic form.” Folder structure within directories should be preserved as well. Combining into an enclosing .zip or .rar archive form for emailing, or for physical mail or courier on a CD-ROM or USB drive is appropriate and appreciated.

PTAAARMIGAN prefers to receive the records (a) by email at ptaaarmigan@ptaaarmigan.org (three “a”s), (b) by a file delivery service such as DropBox or KiteWorks, or (c) if the records will exceed 10Mb, via a CD ROM or USB memory to P.O. Box 590372, Newton MA 02459, with a confirmation email that a physical delivery is on its way.

FEE WAIVER

PTAAARMIGAN requests a fee waiver for the following reasons. Requests for fee waivers are to be liberally construed. *Bartko v. Dept. of Justice*, 898 F.3d 51, 75 (D.C. Cir. 2018).

Public interest. Disclosure of the requested information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 37 C.F.R. § 102.11(k)(1).

PTAAARMIGAN has no commercial, trade or profit interest. PTAAARMIGAN LLC is a nonprofit LLC organized under the laws of Missouri, and has applied to the IRS for recognition as a § 501(c)(4) social welfare nonprofit, see Attachment A.

PTAAARMIGAN seeks the records in support of its public benefit activities. PTAAARMIGAN seeks to advance the public interest, by two general classes of activities.

- PTAAARMIGAN’s primary activity is disseminating information to inform the public about actual or alleged Federal government activity. PTAAARMIGAN disseminates information via PTAAARMIGAN’s web site, www.ptaaarmigan.org, and via publications in periodicals and intellectual property web blogs.

Freedom of Information Act request for adopted internal guidance relating to rulemaking and information collection clearances

- PTAAARMIGAN advocates on behalf of intellectual property attorneys, agents and owners, and on behalf of IP-owning parties in the private sector.

The records will “contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester.” 37 C.F.R. § 102.11(k)(2)(iii). Upon receipt, PTAAARMIGAN will make these records or their analysis publicly available on its website for use by journalists, scholars, students, and interested members of the public at no charge, and use the information in advocacy, reports, newsletters, and other public disseminations to advance our educational mission. PTAAARMIGAN members have published multiple articles in magazines published by the American Bar Association and American Intellectual Property Law Association, and articles on www.patentlyo.com and www.ipwatchdog.com and <https://www.patentdocs.org> (the three most-read blogs among intellectual property lawyers). Publications by PTAAARMIGAN members and articles based on records previously obtained by PTAAARMIGAN’s FOIA requests are listed on PTAAARMIGAN’s web site, <http://ptaaarmigan.org/resources>.

The records are “likely to contribute ‘significantly’ to public understanding of Government operations or activities.” § 102.11(k)(2)(iv). These records illuminate the USPTO’s processes for rulemaking, issuing guidance, and obtaining Paperwork Reduction Act clearance, an important government function. To PTAAARMIGAN’s knowledge, the records sought are not otherwise available to the public.

The records requested are “likely to contribute significantly to public understanding of the operations or activities of the government,” § 552(a)(4)(A)(iii), 37 C.F.R. § 102.11(k)(1), and, therefore, be eligible for a fee waiver:

- the request seeks materials underlying an agency decision, supplementary to the materials made public by the agency;
- the request is made by an advocacy organization whose public interest activities include producing written materials to be distributed to inform and train members of its relevant public, and advocating on legislative and regulatory affairs;
- the requester proposes to make information accessible to members of the public who cannot otherwise readily locate a particular law or interpretive document.

PTAAARMIGAN is such an entity, requesting records for such purposes, and the request seeks records underlying the USPTO’s regulatory decisions.

Government operations. In addition, PTAAARMIGAN requests a public interest fee waiver because the requested records directly concern and bear upon the government’s operations and activities, will be highly informative to the public regarding the USPTO’s policies, including on matters directly affecting thousands of patent and trademark holders and applicants. The public has a right to know significant details of an agency’s financial arrangements, especially when the requested records might illuminate potential motivations and influences. Because the USPTO has fee-setting authority, and that fee-setting authority involves

Exhibit C

**April 21, 2022, letter from FOIA office to
PTAAARMIGAN, requesting estimated fees
of \$ 783.97**



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

April 21, 2022

Mr. Richard Neifeld
PTAAARMIGAN
PTAAARMIGAN@PTAAARMIGAN.ORG

RE: *Freedom of Information Act (FOIA) Request No. F-22-00072*

Dear PTAAARMIGAN:

This is in response to your letter dated January 28, 2022, in which you requested, pursuant to the FOIA, 5 U.S.C. § 552 a copy of:

All documents, records, administrative staff manuals, instructions to staff, and statements of policy or interpretation that have been adopted by the agency, issued, adopted, or in effect at any time from August 1, 2004 to present, to govern or guide various regulatory policies and procedures.¹

Preliminary estimates indicate that the approximate processing cost of this FOIA request is \$ **783.97**. Associated copying charges cannot be estimated until a final determination regarding releasability is made.

This estimate does not necessarily represent the final cost. Estimates are inherently imprecise, and the final cost could be higher or lower than the amount provided here. However, the estimate provided herein is reasonably calculated to represent search costs required to adequately respond to your request.

As a non-commercial use FOIA requester, you are responsible for a search (excluding the first two hours) and for duplication (excluding the first 100 pages). See 37 C.F.R. § 102.11(c)(1)(iv).

Please note that a search fee is chargeable even when no responsive records are found, or when the records requested are determined to be totally exempt from disclosure. See 37 C.F.R. § 102.11(c)(3)(i).

Since the estimate exceeds \$250.00, you are required to pay the entire amount estimated before a search can begin. See 37 C.F.R. § 102.1(i)(2).

Please remit, within 30 calendar days of the date of this letter, a check made payable to the "Department of Treasury" in the amount of \$ **783.97**. The payment may be sent to:

¹ The FOIA Office is in receipt of your response to the Clarification Request.

United States Patent and Trademark Office
Freedom of Information Act Officer
Office of the General Counsel
P.O. Box 1450
Alexandria, VA 22313-1450

If payment in full is not received by **May 23, 2022**, this request will be considered withdrawn and closed. Please contact us before that date, however, if you would like to discuss your request in order to reformulate it to meet your needs at a reduced cost.

Sincerely,

A handwritten signature in black ink, appearing to read 'Traci Alexander', with a stylized flourish at the end.

Traci Alexander
FOIA Specialist
Office of General Law

Exhibit D

**Articles published by PTAAARMIGAN
members and/or with benefit of
PTAAARMIGAN FOIA documents**

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