

ATTACHMENT 1

Petition to OMB under 44 U.S.C. § 3517(b), August 1, 2013

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August 1, 2013

The Honorable Sylvia Mathews Burwell
Director, Office of Management and Budget
Washington, DC 20503

Sent by Express Mail and Fax: (202) 395-3888

Dear Director Burwell:

Section 3517(b) of the Paperwork Reduction Act (PRA) contains specific language through which any person may request a formal determination from the Office of Management and Budget (OMB) concerning the applicability of a specific collection of information:

Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this subchapter, a person shall maintain, provide, or disclose the information to or for the agency.

The information collection requirements of interest are those contained in 37 C.F.R. §§ 1.111, 1.115, and 1.116 promulgated by the U.S. Patent and Trademark Office (USPTO).

Specifically, I ask OMB to make the following three determinations:

1. Persons who otherwise would have been covered by Rule 111 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 because there was no valid OMB control number.
2. Persons who otherwise would have been covered by Rule 115 were not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 because there was no valid OMB control number.
3. Persons who otherwise would have been covered by Rule 116 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 because there was no valid OMB control number.

According to Section 3517(b), OMB is required to provide a timely response:

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Director, Office of Management and Budget
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Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

- (1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and
- (2) take appropriate remedial action, if necessary.

I have enclosed a copy of a detailed analysis that sets forth the factual basis for these determinations. It also can be found online at <http://www.rbbelzer.com/working-papers.html>. Although these information collection requirements are contained in regulations that were promulgated decades ago, the analysis shows that the USPTO first sought OMB approval in January 2013. My request is especially timely because OMB has not yet acted on this ICR. See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201301-0651-002.

Furthermore, the analysis shows that in its January 2013 Information Collection Request (ICR) to OMB, the USPTO incorrectly characterized these information collection requirements as “program changes” when it is self-evident that they are changes due to longstanding violations of the Paperwork Reduction Act.

The effect of the USPTO’s mischaracterization is substantial. The Patent Office estimates that the information collection requirements in these three Rules involve 960,000 responses per year, requiring 7,680,000 burden-hours per year to complete, and these burden-hours have a monetized value exceeding \$2.8 billion per year.

In accordance with Section 3517(b)(1), please provide your response by October 1, 2013.

Respectfully submitted,

Gilbert P. Hyatt
Enclosure

ATTACHMENT 2

Working Paper, July 21, 2013

Paperwork Reduction Act:

**Does the U.S. Patent and Trademark Office Have
Valid OMB Control Numbers for the
Information Collection Requirements in Rules 111, 115, and 116?**

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July 21, 2013

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Does the U.S. Patent and Trademark Office Have Valid OMB Control Numbers for the Information Collection Requirements in Rules 111, 115, and 116?

I. Background

A. The Paperwork Reduction Act Process

The Paperwork Reduction Act (“PRA”, 44 U.S.C. § 3501 *et seq.*) provides a comprehensive scheme to “minimize the paperwork burden for individuals, small businesses, educational and nonprofit institutions, Federal contractors, State, local and tribal governments, and other persons resulting from the collection of information by or for the Federal Government.” 44 U.S.C. § 3501(1). Agencies are required to “establish a process within the office headed by the Chief Information Officer,” one “that is sufficiently independent of program responsibility to evaluate fairly whether proposed collections of information should be approved” by the Office of Management and Budget (“OMB”). 44 U.S.C. § 3506(c)(1). Procedurally, agencies submit Information Collection Requests (“ICRs”) to OMB for review (5 C.F.R. §§ 1320.10-12) after conducting certain tasks prescribed by statute (44 U.S.C. § 3506(c) and OMB (5 C.F.R. §§ 1320.7-12)).

More specifically, prior to the submission of each ICR to OMB for review, this agency office must conduct a review, as set forth in 44 U.S.C. § 3506(c)(1)(A), and ensure that each collection of information adheres to certain enumerated requirements, as set forth in 44 U.S.C. § 3506(c)(1)(B), including the display of a valid OMB control number. An agency shall not conduct or sponsor a collection of information unless, in advance, it has conducted the § 3506(c)(1) review, evaluated public comments received under § 3506(c)(2), submitted to OMB the certifications required by § 3506(c)(3) along with records supporting such certifications, and published the notice required under § 3507(a)(1)(D). These procedures were first established in 1981 (Pub. L. 96-511) and were amended in 1995 (Pub. L. 104-13).

B. The PRA’s “Public Protection Provisions”

OMB is charged by statute with implementing the PRA; its decisions to approve or disapprove agency information collection requests are absolute and not judicially reviewable. 44 U.S.C. § 3507(d)(6). The PRA also contains certain “Public Protection Provisions” that can be invoked when agencies seek to enforce information collection requirements that were disapproved by OMB, never submitted for OMB approval, or lapsed. The PRA would have quickly failed without these provisions; agencies likely would not bother to seek and obtain prior OMB approval before imposing information collection requirements.

The Public Protection Provisions work by relieving the public of any obligation to comply with unapproved information collections. If an agency imposes a penalty on any person for failure to comply, 44 U.S.C. § 3512(a) requires that such penalty be vacated:

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Notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information that is subject to this subchapter if—

(1) the collection of information does not display a valid control number assigned by the Director in accordance with this subchapter; or

(2) the agency fails to inform the person who is to respond to the collection of information that such person is not required to respond to the collection of information unless it displays a valid control number.

Though the statute does not say so explicitly, the Public Protection Provisions also apply in the case where an agency displays an *invalid* OMB control number or falsely represents an information collection requirement as approved.

The PRA also provides, in 44 U.S.C. § 3512(b), a way to enforce this right:

The protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.

Enforcement is not limited to certain venues, such as Executive branch agencies, nor is it time-limited such that it expires if not exercised within a specified period. Persons may invoke this defense in their dealings with the agency that conducted or sponsored the unapproved collection of information, a sister agency charged with enforcing such requirements, or in an Article III court.

C. Requesting Formal Determinations by OMB under 44 U.S.C. § 3517(b)

In cases where the penalty consists of an enforcement action or arises after a final agency administrative action, the mechanism for exercising this right is straightforward: appeal via the agency's administrative process and, if such appeals are exhausted without relief, to an Article III court.

How to proceed is not obvious, however, when the agency conducting or sponsoring the unapproved collection of information requires compliance as a condition for obtaining a benefit to which a member of the public is otherwise entitled. Typically in such cases, the agency declines to complete its administrative action unless and until the person complies. Persons are effectively penalized simply by agency inaction, yet establishing standing absent final agency action can be problematic.

The PRA provides a little-known procedure that may offer a pathway for relief in such cases:

Any person may request the Director to review any collection of information conducted by or for an agency to determine, if, under this subchapter, a

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person shall maintain, provide, or disclose the information to or for the agency.

OMB is required to respond to all such requests; the PRA does not permit OMB to leave a request unanswered:

Unless the request is frivolous, the Director shall, in coordination with the agency responsible for the collection of information—

- (1) respond to the request within 60 days after receiving the request, unless such period is extended by the Director to a specified date and the person making the request is given notice of such extension; and
- (2) take appropriate remedial action, if necessary.

44 U.S.C. § 3512(b).

D. Determinations An Applicant Should Seek From OMB

During the examination of a patent application, the USPTO on numerous occasions may demand that an applicant produce and submit certain information (“Amendments and Responses”) pursuant to 37 C.F.R. §§ 1.111, 1.115, or 1.116 (“Rules 111, 115, or 116”). Failing to produce and submit this information within the stated time period may result in involuntary abandonment of the patent application. Involuntary abandonment is within the definition of “penalty” set forth in 44 U.S.C. § 3502(14) and 5 C.F.R. § 1320.3(j).

Any person (including an applicant who has been required to submit an Amendment or Response) may ask OMB to issue a formal determination pursuant to 44 U.S.C. § 3517(b) whether he is required to “maintain, provide, or disclose the information to or for the agency.” In particular, a person asking OMB for a formal opinion on the information collection requirements contained in Rules 111, 115, or 116 would ask OMB to issue the following determinations:

1. Persons who otherwise would have been covered by Rule 111 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 [or other date] because there was no valid OMB control number.
2. Persons who otherwise would have been covered by Rule 115 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 [or other date] because there was no valid OMB control number.
3. Persons who otherwise would have been covered by Rule 116 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 [or other date] because there was no valid OMB control number.

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II. Applying 44 U.S.C. § 3517(b) to USPTO Rules 111, 115, and 116

The USPTO does not now have, and apparently has never had, a valid OMB control number for Amendments and Responses under Rules 111, 115, or 116. Subsection A summarizes the information collection requirements contained in these Rules. Subsection B shows that, on every instance in which the USPTO promulgated or amended one or more of these Rules, the Office falsely claimed that these information collection requirements had already been approved by OMB when in fact it had never submitted a contemporaneous request for approval. Subsection C recounts the history of OMB control number 0651-0031 (“Patent Processing (Updating)”), showing that at no time prior to January 2013 did the USPTO ever seek OMB approval of these information collection requirements. Finally, it is shown that the USPTO’s January 2013 Information Collection Request was misleading and deceptive. Having recognized that the Office had for decades failed to seek and obtain OMB approval, the Patent Office tried to cover up its error by misrepresenting the January 2013 request as a mere “program change.”

A. Rule Texts

For convenience, the information collection provisions in each of these Rules is summarized below.

1. Rule 111 (“Reply by applicant or patent owner to a non-final Office action”)

Rule 111 establishes information collection requirements for patent applicants or owners who have received nonfinal Office actions on their applications that are “adverse in any respect.” Generally, an adverse action consists of the rejection of one or more claims. Rule 111 says such patent applicant or owner “must reply and request reconsideration or further examination, with or without amendment ... reduced to a writing which distinctly and specifically points out the supposed errors in the examiner’s action...” Rule 111(a)(1). Rule 111(a)(2) also includes certain provisions governing “supplemental replies.”

2. Rule 115 (“Preliminary amendments”)

Rule 115 establishes information collection requirements for preliminary amendments filed with the Patent Office on or before the mailing date of the first Office action. An applicant typically files a Preliminary amendment when some of the information necessary for an issuable patent is not available on the original filing date, and so is supplied shortly thereafter, before the examiner first examines the application. Rule 115 sets deadlines for when a Preliminary Amendment may be filed, and Rule 121 sets requirements for content and form.

3. Rule 116 (“Amendments and affidavits or other evidence after final action and prior to appeal”)

Rule 116 establishes information collection requirements for amendments, affidavits, or other evidence that a patent applicant or owner may provide after a final

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Office action. These amendments may, for example, cancel claims or comply with any requirement of form expressly set forth in a previous Office action (Rule 116(b)(1)), present rejected claims in better form for consideration on appeal (Rule 116(b)(2)), or touch the merits of the application provided that the applicant makes a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented (Rule 116(c)).

B. The USPTO's Noncompliance with the Paperwork Reduction Act

In this section, the Patent Office's systematic noncompliance with the Paperwork Reduction Act is documented for each of the three Rules in question. Electronic access to the Federal Register begins with 1994, so the review below does not include the 1981 and 1987 actions.¹

1. Rule 111

Rule 111 was promulgated on May 29, 1981 (46 Fed. Reg. 29182) and amended on October 10, 1997 (62 Fed. Reg. 53192), September 8, 2000 (65 Fed. Reg. 54672), September 21, 2004 (69 Fed. Reg. 56542), and January 27, 2005 (70 Fed. Reg. 3891).

a) October 10, 1997, final rule²

This final rule amended Paragraph (a) to clarify the usage of certain terms, and amended Paragraph (b) to explicitly recognize that a reply must be reduced to a writing that points out the specific distinctions believed to render the claims, including any newly presented claims, patentable. The extent to which this final rule altered the information collection requirements contained in Rule 111 is not clear. The preamble clearly stated, however, that applicants have a duty to respond to be entitled to reconsideration or further examination. This duty translates into an information collection requirement.

The Paperwork Reduction Act section of the preamble identifies 10 different OMB control numbers affected by this final rule. 62 Fed. Reg. 53178-53180. These control numbers are listed in Table A below. The preamble indicates that the USPTO did not contemporaneously submit ICRs for any of these 10 OMB control numbers, stating that the "collections of information involved in this Final Rule have been reviewed and approved by OMB." 62 Fed. Reg. 53178/2.

A review of these OMB Control Numbers confirms that the USPTO did not seek approval of any information collection requirements related to Rule 111 in this final rule.

¹ OMB's electronic docket also is incomplete for ICRs predating the most recent update of reginfo.gov. For example, it does not include pre-update Supporting Statements, public comments, and similar documents.

² U.S. Patent and Trademark Office. 1997. Changes to Patent Practice and Procedure. 62 Fed. Reg. 53132-53204, <http://www.gpo.gov/fdsys/pkg/FR-1997-10-10/pdf/97-26339.pdf>.

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That includes the most plausible OMB control number among them—0651-0031 (“Patent Processing (Updating)”)—which is shown in Table A highlighted in *italics* and shaded in yellow. Without an ICR requesting the approval of information collections related to these amendments to Rule 111, changes in information collection requirements made via this final rule cannot have been approved by OMB.

b) September 8, 2000, final rule³

This final rule revised the business goals for the organizations reporting to the Commissioner for Patents for the stated purpose of “increase[ing] the level of service to the public by raising the efficiency and effectiveness of the Office’s business processes.” The rule “chang[ed] the rules of practice to eliminate unnecessary formal requirements, streamline the patent application process, and simplify and clarify the provisions of the rules of practice.”

The Paperwork Reduction Act section of the preamble identifies 11 different OMB control numbers that were affected by this final rule. 65 Fed. Reg. 54654-54656. These control numbers are listed in Table B below. The preamble indicates that the USPTO did not contemporaneously submit ICRs for these 11 OMB control numbers, stating that the “collections of information involved in this notice of proposed rulemaking [sic] have been reviewed and previously approved by OMB.” 65 Fed. Reg. 54654/3.⁴

A review of the schedule of ICRs submitted for these OMB control numbers confirms that the USPTO did not contemporaneously seek approval of any information collection requirements related to Rule 111 in this final rule. This includes the most plausible OMB control number among them—0651-0031 (“Patent Processing (Updating)”)—which is shown in Table B highlighted in *italics* and shaded in yellow. Without an ICR requesting the approval of information collections related to these amendments to Rule 111, changes in information collection requirements made via this final rule cannot have been approved by OMB.

³ U.S. Patent and Trademark Office. 2000. Changes To Implement the Patent Business Goals; Final Rule. 65 Fed. Reg. 54604-54683, <http://www.gpo.gov/fdsys/pkg/FR-2000-09-08/pdf/00-22392.pdf>.

⁴ Notice the erroneous reference to a *notice of proposed rulemaking* even though this was a final rule. In the preamble to the actual notice of proposed rulemaking, the USPTO stated that the “collections of information involved in this notice have been reviewed and previously approved by OMB.” 64 Fed. Reg. 53817/1 (October 4, 2009). That is, both preambles state that the new information collection requirements contained in the proposed and final revisions to Rule 111, respectively, had already been approved by OMB. Neither preamble states *when* OMB issued this approval.

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c) September 21, 2004, final rule⁵

The stated purpose of this final rule was to “transform the Office into a quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system.” It made changes to numerous information collection requirements, including Rule 111. 69 Fed. Reg. 56482-56547.

The Paperwork Reduction Act section of the preamble identifies seven different OMB control numbers that were affected by this final rule. 69 Fed. Reg. 56533-56535. They are listed in Table C below. The preamble indicates that the USPTO did not submit ICRs related to these seven OMB control numbers, stating that the “collections of information involved in this final rule have been reviewed and previously approved by OMB.” 65 Fed. Reg. 54533/2.⁶

A review of these OMB Control Numbers confirms that the USPTO did not seek approval of any information collection requirements related to Rule 111 in this final rule. That includes the most plausible OMB control number among them—0651-0031 (“Patent Processing (Updating)”)—which is shown in Table C highlighted in *italics* and shaded in yellow. Without an ICR requesting the approval of information collections related to these amendments to Rule 111, changes in information collection requirements made via this final rule cannot have been approved by OMB.

d) January 27, 2005, final rule⁷

This final rule revised the patent fees set forth in the rules of practice to conform them to the patent fees set forth in the Consolidated Appropriations Act of 2005. Rule 111 was affected by this rule only because a typographical error in subsection (a)(2)(i) related to supplemental replies was corrected. No significant changes in information collection requirements would be expected due to the correction of a typographical error.

⁵ U.S. Patent and Trademark Office. 2004. Changes To Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan; Final Rule. 69 Fed. Reg. 56482-56547. <http://www.gpo.gov/fdsys/pkg/FR-2004-09-21/pdf/04-20936.pdf>.

⁶ In the preamble to the notice of proposed rulemaking, the USPTO used identical stated that the “collections of information involved in this final rule [sic] have been reviewed and previously approved by OMB.” 68 Fed. Reg. 53844/3 (September 12, 2003). Notice the erroneous reference to a *final rule* even though this was a notice of proposed rulemaking. In any case, the USPTO asserted that neither the notice of proposed rulemaking nor the final rule materially altered the information collection requirements contained in Rule 111 beyond what had already been approved by OMB. The USPTO did not identify when that OMB approval was said to have occurred.

⁷ U.S. Patent and Trademark Office. 2005. Changes To Implement the Patent Fee Related Provisions of the Consolidated Appropriations Act, 2005; Final Rule. 70 Fed. Reg. 3880-3892, <http://www.gpo.gov/fdsys/pkg/FR-2005-01-27/pdf/05-1377.pdf>.

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Table A: OMB Control Numbers Affected by October 10, 17 Final Rule⁸

OMB Control Number	ICR Title	Form Number(s)	Contemporaneous ICR Submissions? [5 CFR 1320.11(h)]
0651-0016	Rules for Patent Maintenance Fees	PTO/SB/45, 47, 65, 66	No
0651-0021	Patent Cooperation Treaty	PCT/RO/101; ANNEX/134/144; PTO-1382; PCT/IPEA/401; PCT/IB/32	No
0651-0022	Deposit of Biological Materials for Patent Purposes.	None	No; ICR Ref No 1 710-0651-001 submitted 10/31/17 as an extension without change
0651-0027	Changes in Patent and Trademark Assignment Practices	PTO-1618, 161 ; PTO/SB/15, 41	No
0651-0031	Patent Processing (Updating)	PTO/SB/08/21-27, 31, 42, 43, 61, 62, 63, 64, 67, 68, 91, 92, 96, 97	No
0651-0032	Initial Patent Application	PTO/SB/01-07, 13; PCT/17-1, 2, 101-110	No
0651-0033	Allowance and Refiling	PTO/SB/13, 14, 44, 50-57; PTOL-85b	No
0651-0034	Secrecy/License to Export	None	No
0651-0035	Address-Affecting Provisions	PTO/SB/81-84, 121-125	No
0651-0037	Provisional Applications	PTO/SB/16	No

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Table B: OMB Control Numbers Affected by September 8, 2000 Final Rule⁹

OMB Control Number	ICR Title	Form Number(s)	Contemporaneous ICR Submissions? [5 CFR 1320.11(h)]
0651-0016	Rules for Patent Maintenance Fees	PTO/SB/45, 47, 65, 66	No
0651-0020	Patent Term Extension	None	No
0651-0021	Patent Cooperation Treaty	PCT/RO/101; ANNEX/134/144; PTO-1382 PCT/IPEA/401; PCT/IB/32	No; ICR Ref No 200008-0651-001 submitted 8/21/2000 as a revision; no ICs relevant to Rule 111 in the collection
0651-0022	Deposit of Biological Materials for Patent Purposes	None	No; ICR Ref No 200010-0651-001 submitted 10/17/2000 as an extension without change
0651-0024	Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures	None	No
0651-0027	Changes in Patent and Trademark Assignment Practices	PTO-1618, 161 ; PTO/SB/15/41	No; ICR Ref No 200008-0651-005 submitted 8/11/2000 with no material or nonsubstantive changes only
0651-0031	Patent Processing (Updating)	PTO/SB/08/21-27, 31, 42, 43, 61, 62, 63, 64, 67, 68, 91, 92, 96, 97	No
0651-0032	Initial Patent Application	PTO/SB/01-07, 13; PCT/17-1 , 2 , 101-110	No
0651-0033	Allowance and Refiling	PTO/SB/13, 14, 44, 50-57; PTOL-85b	No; ICR Ref No. 200010-0651-002 submitted 10/26/2000 as a revision; no ICs relevant to Rule 111
0651-0034	Secrecy/License to Export	None	No
0651-0035	Address-Affecting Provisions	PTO/SB/81-84, 121-125	No

⁹ Data obtained from reginfo.gov.

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Table C: OMB Control Numbers Affected by September 21, 2004 Final Rule¹⁰

OMB Control Number	ICR Title	Form Number(s)	Contemporaneous ICR Submissions? [5 CFR 1320.11(h)]
0651-0016	Rules for Patent Maintenance Fees	PTO/SB/45, 47, 65, 66	No
0651-0020	Patent Term Extension	None	No; ICR Ref No 200408-0651-001 submitted 8/6/2004 as an extension without change
0651-0031	Patent Processing (Updating)	PTO/SB/08A, 08B, 17i, 17P, 21-27, 30-37, 42-43, 61-64, 67-68, 91-92, 96-97, 2053-A/B, 2054-A/B, 2055-A/B; PTOL-413A	No; ICR Ref No 200407-0651-002 submitted 7/15/2004 as a revision; no ICs relevant to Rule 111
0651-0032	Initial Patent Application	PTO/SB/01-07, 13PCT, 16-1, 2, 2 A, 101-110	No
06510-0033	Allowance and Refiling	PTO/SB/44, 50-51, 51S, 52-53, 56-58; PTOL-85B	No
0651-0034	Secrecy/License to Export	None	No
0651-0036	Statutory Invention Registration.	PTO/SB/ 4	No

¹⁰ Data obtained from reginfo.gov.

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1. Rule 115

The September 8, 2000 final rule cited above in the discussion of Rule 111 (65 Fed. Reg. 54604), also amended Rule 115 to set timing deadlines. Rule 115 was further amended in the September 21, 2004 final rule cited above in the discussion of Rule 111 (6 Fed. Reg. 56543), largely to expressly state legal effects of Preliminary Amendments that had previously been assumed.

As noted above in the discussions of the final rules dated September 8, 2000 and September 21, 2004, the Paperwork Reduction Act sections of the preambles identify 11 and seven different OMB control numbers, respectively, which are listed in Table B and Table C. Also as previously noted, both preambles state that the USPTO did not submit an ICR for any changes in information collection requirements related to these OMB control numbers as a result of this rulemaking. Without an ICR requesting the approval of information collections related to these amendments to Rule 115, changes in information collection requirements made via this final rule cannot have been approved by OMB.

2. Rule 11

Rule 116 was amended on August 12, 2004, as part of a larger rulemaking that revised the Rules of Practice before the Board of Patent Appeals and Interferences.¹¹ The Paperwork Reduction Act section of the preamble states as follows (5 Fed. Reg. 4 6/3):

Paperwork Reduction Act: This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1 5 (44 U.S.C. 3501et seq.).

Currently approved forms include PTO/SB/31 (Notice of appeal) and PTO/ SB/32 (Request for hearing), both of which were cleared under the OMB 0651-0031 collection, which will expire at the end of July 2006.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

¹¹ U.S. Patent and Trademark Office. 2004. Rules of Practice Before the Board of Patent Appeals and Interferences; Final Rule. 6 Fed. Reg. 4 60-50020. The America Invents Act of 2011 renamed the Board of Patent Appeals and Interferences to the Patent Trial and Appeal Board.

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This text does not indicate that the USPTO submitted an ICR to seek approval of the information collection requirements contained in amendments to Rule 116. The online docket shows no submission of any contemporaneous ICR for any OMB control number, including 0651-0031.¹² Without an ICR requesting the approval of information collections related to 2004 amendments to Rule 116, changes in information collection requirements made via this final rule cannot have been approved by OMB. The two forms mentioned are merely administrative notices estimated by the USPTO to require only a few minutes to prepare. Neither of them are related in any way to Rule 116.

C. OMB Control Number 0651-0031 (“Patent Processing (Updating)”

A review of the history of this OMB control number indicates that the USPTO never sought approval of Amendments and Responses related to Rules 111, 115, or 116 until January 29, 2013.¹³ In the January 2013 ICR submission, which is still under review at OMB, there are two rows for Amendments and Responses in the IC list.¹⁴ Unlike most other information collection items, which include within their titles a reference to the specific rule(s) to which they apply, these information collection items include no such references. Thus, it is not obvious to the casual reader (or perhaps to the harried OMB desk officer) what these items entail. Nonetheless, they should attract attention because the USPTO sought approval of 960,000 new responses estimated to impose 7,680,000 new burden-hours at a monetized cost exceeding \$2.8 billion per year. U.S. Patent and Trademark Office, 2013. *Supporting Statement; Patent Processing (Updating); OMB Control Number 0651-0031; January 28, 2013*, Table 3.¹⁵

Clicking on the internal links for these two information collection items on [reginfo.gov](http://www.reginfo.gov) reveals tables that are supposed to disclose information concerning the

¹² All but one contemporaneous ICR submission is designated either “no material or nonsubstantive change” or “emergency extension.” The single contemporaneous ICR submission designated “revision of collection” (200407-0651-002) relates to an unrelated rulemaking.

¹³ ICR Reference No. 201301-0651-002,
http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201301-0651-002.

¹⁴ http://www.reginfo.gov/public/do/PRAICList?ref_nbr=201301-0651-002. This section convincingly shows that the January 2013 ICR was highly misleading in numerous ways. The delay in issuing an approval suggests that OMB is well aware of this fact, either due to its own review or because it was revealed by public comments on the 30-day Notice. (Any such public comments are not publicly available on the [reginfo.gov](http://www.reginfo.gov) website OMB uses as its electronic docket. See http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201301-0651-002, which includes only public comments on the 60-day Notice.)

¹⁵

<http://www.reginfo.gov/public/do/DownloadDocument?documentID=375112&version=0>.

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nature of these new information collection burdens. These tables are reproduced below as

Table D and Table E.

Furthermore, unless and until OMB approves the pending ICR, there will be no valid OMB control number for Amendments and Responses contained in Rules 111, 115, or 116. If or when such an approval is issued, all Amendments and Responses related to Rules 111, 115, or 116 submitted by patent applicants and owners prior to the date of approval will have been unapproved collections of information.

These tables confirm that OMB had never previously approved these information collection items; the numbers of previously approved responses and burden-hours are reported as zeroes. This is consistent with the analysis reported above, showing that the USPTO had not previously sought OMB approval for Amendments and Responses related to Rules 111, 115, or 116.

However, these tables also state that the new burdens associated with Amendments and Responses are attributable to a “program change due to administrative discretion.” To understand how this could be so, one must review the explanation in the Supporting Statement. But the explanation in the Supporting Statement includes two demonstrably false claims.

1. Rule 111, 115, and 116 Amendments and Responses Are Not “Program Changes,” as the Supporting Statement Claims

On page 28 of the Supporting Statement, the USPTO claims that Amendments and Responses contained in Rules 111, 115, and 116 are program changes due to the exercise of administrative discretion (boldface in the original):

Program Changes:

...

- The USPTO is separately accounting for the requirement Amendments and Responses that was separated out from the Transmittal Form. The USPTO estimates that it will take 8 hours to complete this item and it will receive 960,000 responses per year. **Therefore, this submission takes a burden increase of 7,6 0,000 hours as a program change.**

The assertion that Amendments and Responses contained in Rules 111, 115, and 116 are merely “program changes” is not corroborated anywhere in the Supporting Statement. Further, a “program change” of this magnitude would have

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been part of a major rulemaking, and there has not been *any* relevant rulemaking for several years.

2. Rule 111, 115, and 116 Amendments and Responses Are Not a Subset of Transmittal Forms, as the Supporting Statement Claims

On page 22 of the Supporting Statement, the USPTO claims that Amendments and Responses previously were a subset of another IC—the Transmittal Form (italics in the original):

1 One requirement has been separated into two items

Two items being separately accounted for in this collection are (i) Rule 1.130, 1.131, and 1.132 Affidavits or Declarations; and (ii) Amendments and Responses. (p. 22.)

and at page 28:

Program Changes:

...

- The USPTO is separately accounting for the requirement Amendments and Responses that was **separated out from the Transmittal Form**. The USPTO estimates that it will take 8 hours to complete this item and it will receive 960,000 responses per year. Therefore, this submission takes a burden increase of 7,680,000 hours as a program change.

These statements are false.

Rule 111, 115, and 116 Amendments and Responses, estimated by the USPTO to entail 960,000 responses and 7,680,000 burden-hours per year, cannot have been “separated out from the Transmittal Form.” The subset is about four times larger than its alleged superset. Similarly, each Transmittal Form is estimated by the USPTO to require on average two hours to prepare, but the USPTO estimates that each Amendment or Response takes an average of eight hours to prepare. It is impossible to “separate out” an 8-hour task from a 2-hour task.

Further proof that the explanation in the Supporting Statement is false can be gleaned from comparing the burden estimates for Transmittal Forms in the January 2013 Supporting Statement and its most recent predecessor, dated April 2008. This comparison is provided in

Table F. Notice that burden-hours per response are unchanged, and that the estimates differ only because USPTO’s projection of the number of Transmittal Forms expected to be submitted per year increased by 61,500 (5.9%).

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D. The Information Collection Items Described by the USPTO as “Amendments and Responses” in the January 2013 ICR Are Unapproved Collections of Information

The USPTO’s characterizations of paperwork burdens related to “Amendments and Responses” in the January 2013 Supporting Statement are incorrect and deceptive. The most recent regulatory actions taken by the USPTO that include information collection requirements contained to Rules 111, 115, or 116 occurred in 2004 and 2005. The USPTO did not seek approval of the incremental burdens associated with these rulemakings. There appears to be no evidence that the USPTO has ever sought OMB approval of information collection requirements contained in these Rules. The numbers of respondents, burden-hours, and non-burden hour costs in

Table D and Table E belong in the column labeled “Change Due to Potential Violation of the PRA.” The adjective “Potential” is superfluous.

Table D: IC Detail for Amendments and Responses in ICR Reference No. 201301-0651-002 (January 2 , 2013)¹⁶

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	67,000	0	67,000	0	0	0
Annual IC Time Burden (Hours)	536,000	0	536,000	0	0	0
Annual IC Cost Burden (Dollars)	87,100	0	87,100	0	0	0

¹⁶ http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201301-0651-002&icID=205524.

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Table E: IC Detail for Electronic Amendments and Responses in ICR Reference No. 201301-0651-002 (January 2 , 2013)¹⁷

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses for this IC	893,000	0	893,000	0	0	0
Annual IC Time Burden (Hours)	7,144,000	0	7,144,000	0	0	0
Annual IC Cost Burden (Dollars)	0	0	0	0	0	0

Table F: Comparative Burden Estimates for the Transmittal Form, April 200 vs. January 2013

ICR Estimates	April 200 Supporting Statement*	January 2013 Supporting Statement**
Responses/Year	1,038,500	1,100,000
Burden-hours/Response	2	2
Burden-hours/Year	2,079,000	2,200,000
<p>* U.S. Patent and Trademark Office, <i>SF-83 Supporting Statement; Patent Processing (Updating)</i>; OMB Control Number 0651-0031; April 24, 2008, Table 3. ** U.S. Patent and Trademark Office. 2013. <i>Supporting Statement; Patent Processing (Updating)</i>; OMB Control Number 0651-0031; January 28, 2013. Table 3.</p>		

¹⁷ http://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201301-0651-002&icID=205523.

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Furthermore, unless and until OMB approves the pending ICR, there will be no valid OMB control number for Amendments and Responses contained in Rules 111, 115, or 116. If or when such an approval is issued, all Amendments and Responses related to Rules 111, 115, or 116 submitted by patent applicants and owners prior to the date of approval will have been unapproved collections of information.

III. Specific Requests for Formal OMB Opinions that Affected Applicants Might Make

Based on the analysis provided here, and pursuant to 44 U.S.C. § 3517(b), affected persons can request that OMB make the following three determinations:

1. Persons who otherwise would have been covered by Rule 111 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 [or other date] because there was no valid OMB control number.
2. Persons who otherwise would have been covered by Rule 115 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 [or other date] because there was no valid OMB control number.
3. Persons who otherwise would have been covered by Rule 116 are not required to have maintained, provided, or disclosed the collections of information contained therein at any time since January 1, 1994 [or other date] because there was no valid OMB control number.

In accordance with 44 U.S.C. § 3517(b), affected persons making such a request should ask OMB to respond within 60 days. If OMB believes that the answers to any of these questions is negative, they should ask that OMB include in its response the specific ICR Reference Number(s) through which OMB approval was granted, along with copies of (or URLs linking to) the relevant 60- and 30-day Notices, ICR submissions, Notices of OMB Action, and Supporting Statements showing where Rules 111, 115, or 116 collections of information are explicitly identified as having been approved.

ATTACHMENT 3

OMB Denial of Petition, September 13, 2013

WORK PRODUCT CONFIDENTIAL

From: Hunt, Alex [<mailto:Alexander.T.Hunt@omb.eop.gov>]
Sent: Friday, September 13, 2013 3:20 PM
To: Gil Hyatt
Subject: Letter Concerning the Paperwork Reduction Act

Dear Mr. Hyatt,

On behalf of Director Burwell, I am responding to your letter dated August 1, 2013, which was received by this office on August 12, 2013. In your letter, you request that the Office of Management and Budget (OMB) make a determination on the applicability of the Paperwork Reduction Act (PRA) to three information collections conducted by the United States Patent and Trademark Office (USPTO). We offer the following response.

The issue you raised in your letter was recently addressed by OMB on July 31, 2013, when OMB took action on the USPTO's request for OMB approval of an information collection assigned OMB Control Number 3060-0031. OMB's Notice of Action is available online here: <http://www.reginfo.gov/public/do/DownloadNOA?requestID=247972> This Notice of Action included the following Terms of Clearance: "Updated supporting statement to account for items not subject to the Paperwork Reduction Act in Rule 1.130, 1.131, 1.132, and Amendments and Responses."

The "Amendments and Responses" requirement, as described in the supporting statement submitted by the USPTO, consists of the requirements stemming from 37 CFR 1.111, 1.115, 1.116 and 1.312. OMB's Terms of Clearance indicated that these collections are not subject to the PRA because what is collected is not considered "information," pursuant to the following exemptions in OMB's PRA implementing regulation: affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments (5 CFR 1320.3(h)(1)); a request for facts or opinions addressed to a single person (5 CFR 1320.3(h)(6)); and facts or opinions obtained or solicited through non-standardized follow-up questions designed to clarify responses to approved collections of information (5 CFR 1320.3(h)(9)).

Thank you for your interest in this matter.

Sincerely,

Alex Hunt

Alex Hunt

Branch Chief | Information Policy

Office of Management and Budget | Office of Information and Regulatory Affairs

☎: 202.395.7860 | ✉: ahunt@omb.eop.gov

ATTACHMENT 4

**OMB Notice of Action in ICR Reference No. 201301-0651-002,
July 31, 2013**

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 07/31/2013

Department of Commerce
Patent and Trademark Office

FOR CERTIFYING OFFICIAL: John Owens
FOR CLEARANCE OFFICER: Jennifer Jessup

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 01/29/2013

ACTION REQUESTED: Revision of a currently approved collection

TYPE OF REVIEW REQUESTED: Regular

ICR REFERENCE NUMBER: 201301-0651-002

AGENCY ICR TRACKING NUMBER:

TITLE: Patent Processing (Updating)

LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved with change

OMB CONTROL NUMBER: 0651-0031

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 07/31/2016

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	2,444,305	2,869,625	145,375,747
New	3,817,580	3,792,191	370,573,375
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	-1,787	-2,966	21,147,288
Change due to Agency Adjustment	1,375,062	925,532	204,050,340
Change due to PRA Violation	0	0	0

TERMS OF CLEARANCE: Updated supporting statement to account for items not subject to the Paperwork Reduction Act in Rule 1.130, 1.131, 1.132, and Amendments and Responses.

OMB Authorizing Official: Dominic J. Mancini
Acting Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
Information Disclosure Statements that do not require the fee set forth in 37 CFR 1.17(p)	PTO/SB/0008b, PTO/SB/08a	Information Disclosure Statement by Applicant, Information Disclosure Statement by Applicant	37 CFR 1.98, 37 CFR 1.56, 37 CFR 1.97
EFS-Web IDS (Information Disclosure Statements) that do not require the fee set forth in 37 CFR 1.17(p)	PTO/SB/08a	Information Disclosure Statement by Applicant (Not for submission under 37 CFR 1.99)	37 CFR 1.97, 37 CFR 1.56, 37 CFR 1.98
Electronic Transmittal Form	PTO/SB/21	Transmittal Form	37 CFR 1.4, 37 CFR 1.48, 37 CFR 1.111, 37 CFR 1.116, 37 CFR 1.291, 37 CFR 1.121, 37 CFR 1.125, 37 CFR 1.133, 37 CFR 1.5
Electronic Petition for Extension of Time under 37 CFR 1.136(a)	PTO/AIA/22	Petition for Extension of Time Under 37 CFR 1.136(a)	37 CFR 1.136(a)
Electronic Express Abandonment under 37 CFR 1.138	PTO/AIA/24	Express Abandonment Under 37 CFR 1.138	37 CFR 1.138
Electronic Disclaimers	PTO/SB/43, PTO/SB/63, PTO/SB/26, PTO/SB/25	Disclaimer in Patent Under 37 CFR 1.321(a), Terminal Disclaimer to Accompany Petition, Terminal Disclaimer to Obviate a Double Patenting Rejection over a "Prior" Patent, Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application	37 CFR 1.321
Electronic Request for Expedited Examination of a Design Application	PTO/SB/27	Request for Expedited Examination of a Design Application (37 CFR 1.155)	37 CFR 1.155
Electronic Notice of Appeal	PTO/AIA/31	Notice of Appeal from the Examiner to the Patent Trial and Appeal Board	37 CFR 1.191
Electronic Petition for Revival of an Application for Patent Abandoned Unavoidably	PTO/SB/61	Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a)	37 CFR 1.137
Electronic Petition for Revival of an Application for Patent Abandoned Unintentionally	PTO/SB/64	Petition for Revival of an Application for Patent Abandoned Inintentionally under 37 CFR 1.137(b)	37 CFR 1.137(b)
Electronic Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing	PTO/SB/64a	Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing (37 CFR 1.137(f))	37 CFR 1.213, 37 CFR 1.137
Electronic Requests to Access, Inspect and Copy	PTO/SB/67, PTO/SB/68	Power to Inspect/Copy, Request for Access to an Abandoned Application under 37 CFR 1.14	37 CFR 1.14
Electronic Deposit Account Order Form	PTO/SB/91	Deposit Account Order Form	37 CFR 1.25
Electronic Certificates of Mailing/Transmission	PTO/SB/92, PTO/SB/97	Certificate of Mailing under 37 CFR 1.8, Certificate of Transmission under 37 CFR 1.8	37 CFR 1.8
Electronic Statement Under 37 CFR 3.73(b)	PTO/SB/96, PTO/AIA/96	Statement Under 37 CFR 3.73(b), Statement Under 37 CFR 3.73(c)	37 CFR 3.73(c), 37 CFR 3.73(b)
Electronic Non-publication Request	PTO/SB/35	Nonpublication Request Under 35 U.S.C. 122(b)(2)(B)(i)	37 CFR 1.213(a)

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
Electronic Rescission of Previous Non-publication Request (35 U.S.C. 122(b)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. 122(b)(2)(B)(iii))	PTO/SB/36	Rescission of Previous Nonpublication Request (35 U.S.C. 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. 122(b)(2)(B)(iii))	37 CFR 1.213(b)
Electronic Filing System (EFS) Copy of Application for Publication			37 CFR 1.215, 37 CFR 1.221, 37 CFR 1.217, 37 CFR 1.219
Copy of File Content Showing Redactions			37 CFR 1.217(d)
Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	PTO-2054-A/B, PTO/2055-A/B, PTO-2053-A/B	Notice Under 37 CFR 1.251 - Abandoned Application, Notice Under 37 CFR 1.251 - Patent, Notice Under 37 CFR 1.251 - Pending Application	37 CFR 1.251
EFS-Web Request for Continued Examination (RCE) Transmittal	PTO/SB/30EFS	Request for Continued Examination (RCE) Transmittal (Submitted Only via EFS-Web)	37 CFR 1.114
Electronic Request for Oral Hearing Before the Patent Trial and Appeal Board	PTO/AIA/32	Request for Oral Hearing Before the Patent Trial and Appeal Board	37 CFR 1.194(b)
Electronic Request for Deferral of Examination 37 CFR 1.103(d)	PTO/SB/37	Request for Deferral of Examination 37 CFR 1.103(d)	37 CFR 1.103(d)
EFS-Web Request for Voluntary Publication or Republication (includes publication fee for republication)			37 CFR 1.221
Electronic Applicant Initiated Interview Request Form	PTOL-413A	Applicant Initiated Interview Request Form and Instruction Sheet	37 CFR 1.133
Electronic Processing Fee Under 37 CFR 1.17(i) Transmittal	PTO/SB/17i	Processing Fee Under 37 CFR 1.17(i) Transmittal	37 CFR 1.17(i)
Electronic Request to Retrieve Electronic Priority Application(s) Under 37 CFR	PTO/SB/38	Request to Retrieve Electronic Priority Application(s)	37 CFR 1.155(d)
Electronic Authorization To Permit Access to Application by Participating Offices Under 37 CFR 1.14(h)	PTO/SB/39	Authorization to Permit Access to Application by Participating Offices	37 CFR 1.14(h)
Electronic Petition for Express Abandonment to Obtain a Refund	PTO/AIA/24B	Petition for Express Abandonment to Obtain a Refund	37 CFR 1.138(d)
Electronic Pre-Appeal Brief Request for Review	PTO/AIA/33	Pre-Appeal Brief Request for Review	37 CFR 41.32
EFS-Web Request for Corrected Filing Receipt			37 CFR 1.76(a), 37 CFR 1.48(a) and (c), 37 CFR 1.54
Request for Corrected Filing Receipt			37 CFR 1.54, 37 CFR 1.48(a) and (c), 37 CFR 1.76(a)
Request for First-Action Interview (Pilot Program)(Electronic only)	PTO/SB/413C	Request for First Action Interview (Full Pilot Program)	37 CFR 1.133
EFS-Web Petition to Make Special Based on Age for Advancement of Examination under 37 CFR 1.102(c)(1)	PTO/SB/130	Petition to Make Special Based on Age for Advancement of Examination Under 37 CFR 1.102(c)(1)	37 CFR 1.102(c)(1)
Request for Continued Examination (RCE) Transmittal	PTO/SB/30	Request for Continued Examination (RCE) Transmittal	37 CFR 1.114

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
EFS-Web IDS (Information Disclosure Statements) that require the fee set forth in 37 CFR 1.17(p)	PTO/SB/08a	Information Disclosure Statement by Applicant	37 CFR 1.97, 37 CFR 156, 37 CFR 1.98
Information Disclosure Statements that require the fee set forth in 37 CFR 1.17(p)	PTO/SB/08a, PTO/SB/08b	Information Disclosure Statement by Applicant, Information Disclosure Statement by Applicant	37 CFR 1.56, 37 CFR 1.97, 37 CFR 1.98
Transmittal Form	PTO/SB/21	Transmittal Form	37 CFR 1.4, 37 CFR 1.5, 37 CFR 1.48, 37 CFR 1.111, 37 CFR 1.116, 37 CFR 1.121, 37 CFR 1.125, 37 CFR 1.133, 37 CFR 1.201
Petition for Extension of Time under 37 CFR 1.136(a)	PTO/SB/22	Petition for Extension of Time under 37 CFR 1.136(a)	37 CFR 1.136(a)
Express Abandonment under 37 CFR 1.138	PTO/SB024	Express Abandonment under 37 CFR 1.138	37 CFR 1.138
Disclaimers	PTO/SB/43, PTO/SB/63, PTO/SB/25, PTO/SB/26	Disclaimer in Patent Under 37 CFR 1.321(a), Terminal Disclaimer to Accompany Petition, Terminal Disclaimer to Obviate a Provisional Double Patenting Rejection over a Pending "Reference" Application, Terminal Disclaimer to Obviate a Double Patenting Rejection over a "Prior" Patent	37 CFR 1.321
Request for Expedited Examination of a Design Application	PTO/SB/27	Request for Expedited Examination of a Design Application (37 CFR 1.155)	37 CFR 1.155
Notice of Appeal	PTO/SB/31	Notice of Appeal from the Examiner to the Patent Trial and Appeal Board	37 CFR 1.191
Petition for Revival of an Application for Patent Abandoned Unavoidably	PTO/SB/61	Petition for Revival of an Application for Patent Abandoned Unavoidably under 37 CFR 1.137(a)	37 CFR 1.137
Petition for Revival of an Application for Patent Abandoned Inintentionally	PTO/SB/64	Petition for Revival of an Application for Patent abandoned Unintentionally Under 37 CFR 1.137(b)	37 CFR 1.137(b)
Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing	PTO/SB/64a	Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing (37 CFR 1.137(f))	37 CFR 1.137, 37 CFR 1.213
Requests to Access, Inspect and Copy	PTO/SB/68, PTO/SB/67	Request for Access to an Abandoned Application Under 37 CFR 1.14, Power to Inspect/Copy	37 CFR 1.14
Deposit Account Order Form	PTO/SB/91	Deposit Account Order Form	37 CFR 1.25
Certificates of Mailing/Transmission	PTO/SB/92, PTO/SB/97	Certificate of Mailing under 37 CFR 1.8, Certificate of Transmission under 37 CFR 1.8	37 CFR 1.8
Statement Under 37 CFR 3.73(b)			37 CFR 3.73(b), 37 CFR 3.73(c)
Non-publication Request	PTO/SB/0035	Nonpublication Request Under 35 U.S.C. 122(b)(2)(B)(i)	37 CFR 1.213(a)

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
Rescission of Previous Nonpublication Request (35 U.S.C. 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. 122(b)(2)(B)(iii))	PTO/SB/36	Rescission of Previous Nonpublication Request (35 U.S.C. 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. 122(b)(2)(B)(iii))	37 CFR 1.213(b)
Request for Oral Hearing Before the Patent Trial and Appeal Board	PTO/SB/32	Request for Oral Hearing Before the Patent Trial and Appeal Board	37 CFR 1.194(b)
Request for Deferral of Examination 37 CFR 1.103(d)	PTO/SB/37	Request for Deferral of Examination 37 CFR 1.103(d)	37 CFR 1.103(d)
Applicant Initiated Interview Request Form	PTOL-413A	Applicant Initiated Interview Request Form	37 CFR 1.133
Processing Fee Under 37 CFR 1.17(i) Transmittal	PTO/SB/17i	Processing Fee Under 37 CFR 1.17(i) Transmittal	37 CFR 1.17(i)
Request to Retrieve Electronic Priority Applications(s) Under 37 CFR 1.55(d)	PTO/SB/38	Request to Retrieve Electronic Priority Application(s)	37 CFR 1.55(d)
Request for Voluntary Publication or Republication (includes publication fee for republication)			37 CFR 1.221
Authorization to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h)	PTO/SB/39	Authorization to Permit Access to Application by Participating Offices	37 CFR 1.14(h)
Petition for Express Abandonment to Obtain a Refund	PTO/SB/24B	Petition for Express Abandonment to Obtain a Refund	37 CFR 1.138(d)
Pre-Appeal Brief Request for Review	PTO/SB/33	Pre-Appeal Brief Request for Review	37 CFR 41.32
Electronic Filing a submission after final rejection (see 37 CFR 1.129(a))			37 CFR 1.129(a)
Filing a submission after final rejection (see 37 CFR 1.129(a))			37 CFR 1.129(a)

ATTACHMENT 5

**Supporting Statement for ICR Reference No: 201301-0651-002,
January 29, 2013.**

SUPPORTING STATEMENT
United States Patent and Trademark Office
Patent Processing (Updating)
OMB CONTROL NUMBER 0651-0031
January 28, 2013

A. JUSTIFICATION

1. Necessity of Information Collection

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. § 131 to examine an application for patent and, when appropriate, issue a patent. Also, the USPTO is required to publish patent applications, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code (“eighteen-month publication”). Certain situations may arise which require that additional information be supplied in order for the USPTO to further process the patent or application. The USPTO administers the statutes through various sections of the rules of practice in 37 CFR Part 1.

The information in this collection can be used by the USPTO to continue the processing of the patent or application to ensure that applicants are complying with the patent regulations and to aid in the prosecution of the application.

Table 1 provides the specific statutes and rules requiring the USPTO to collect the information discussed above:

Table 1: Information Requirements for Patent Processing (Updating)

	Requirement	Statute	Rule
1	Information disclosure statements and eIDS	35 U.S.C. § 2(b)(2)	37 CFR 1.56, 1.97 and 1.98
2	Transmittal form	35 U.S.C. § 2(b)(2)	37 CFR 1.4, 1.5, 1.48, 1.111, 1.116, 1.121, 1.125, 1.133 and 1.291
3	Petitions for extension of time under 37 CFR 1.136(a)	35 U.S.C. § 2(b)(2), 41(a)(8), 131 and 132	37 CFR 1.136
4	Express abandonment under 37 CFR 1.138	35 U.S.C. § 2(b)(2), 131 and 132	37 CFR 1.138
5	Disclaimers	35 U.S.C. § 253	37 CFR 1.321
6	Request for expedited examination of a design application	35 U.S.C. § 2(b)(2)	37 CFR 1.155
7	Notice of appeal	35 U.S.C. § 134	37 CFR 1.191
8	Petitions to revive unavoidably or unintentionally abandoned applications	35 U.S.C. §§ 41(a)(7), 111, 133, 151 and 371(d)	37 CFR 1.137
9	Petition for revival of an application for patent abandoned for failure to notify the office of a foreign or international filing	35 U.S.C. § 2(b)(2)	37 CFR 1.137 and 1.213

	Requirement	Statute	Rule
10	Requests to access, inspect and copy	35 U.S.C. § 122	37 CFR 1.14
11	Deposit account order form	35 U.S.C. § 2(b)(2)	37 CFR 1.25
12	Certificates of mailing/transmission	35 U.S.C. §§ 2(b)(2) and 21(a)	37 CFR 1.8
13	Statement under 37 CFR 3.73(b)	35 U.S.C. § 2(b)(2)	37 CFR 3.73(b)
14	Non-publication request	35 U.S.C. § 122(b)(2)(B)(i)	37 CFR 1.213(a)
15	Rescission of previous non-publication request (35 U.S.C. § 122(b)(2)(B)(ii) and, if applicable, notice of foreign filing (35 U.S.C. § 122(b)(2)(B)(iii))	35 U.S.C. §§ 122(b)(2)(B)(ii) and 122(b)(2)(B)(iii)	37 CFR 1.213(b)
16	Electronic filing system (EFS) copy of application for publication	35 U.S.C. §§ 122(b) and 122(b)(2)(B)(v)	37 CFR 1.215, 1.217, 1.219 and 1.221
17	Copy of file content showing redactions	35 U.S.C. § 122(b)	37 CFR 1.217(d)
18	Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	35 U.S.C. § 2(b)(2)	37 CFR 1.251
19	Request for continued examination (RCE) transmittal	35 U.S.C. § 132(b)	37 CFR 1.114
20	Request for oral hearing before the Patent Trial and Appeal Board	35 U.S.C. § 134	37 CFR 1.194(b)
21	Request for suspension of action or deferral of examination under 37 CFR 1.103(b) or (d)	35 U.S.C. §§ 2(b)(2) and 131	37 CFR 1.103(b) or (d)
22	Request for voluntary publication or republication (includes publication fee for republication)	35 U.S.C. § 2(b)(2)	37 CFR 1.221
23	Applicant initiated interview request form	35 U.S.C. § 2(b)(2)	37 CFR 1.133
24	Processing fee under 37 CFR 1.17(i) transmittal	35 U.S.C. § 2(b)(2)	37 CFR 1.17(i)
25	Request to retrieve electronic priority application(s) under 37 CFR 1.55(d)	35 U.S.C. § 2(b)(2)	37 CFR 1.55(d)
26	Authorization for permit access to application by participating offices under 37 CFR 1.14(h)	35 U.S.C. § 2(b)(2)	37 CFR 1.14(h)
27	Petition for express abandonment to obtain a refund	35 U.S.C. § 4(d)(1)(D)	37 CFR 1.138(d)
28	Pre-appeal brief request for review	35 U.S.C. §§ 2(b)(2) and 134	37 CFR 41.32
29	Request for corrected filing receipt	35 U.S.C. § 2(b)(2)	37 CFR 1.54, 1.76(a), 1.48(a) and (c)
30	Request for first-action interview (pilot program)	35 U.S.C. § 2(b)(2)	37 CFR 1.133
31	Petition to make special based on age for advancement of examination under 37 CFR 1.102(c)(1)	35 U.S.C. § 2(b)	37 CFR 1.105(c)(1)

	Requirement	Statute	Rule
32	Rule 1.130, 1.131 and 1.132 affidavits or declarations	35 U.S.C. §§ 2(b)(2), 102, and 103	37 CFR 1.130, 1.131, and 1.132
33	Amendments and responses	35 U.S.C. §§ 2(b)(2), 102, 103, and 132	37 CFR 1.111, 1.115, 1.116 and 1.312
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	35 U.S.C. §§ 2(b)(2), 102, 103, and 132	37 CFR 1.129

2. Needs and Uses

The Information Quality Guidelines from Section 515 of Public Law 106-554, Treasury and General Government Appropriations Act for fiscal year 2001, apply to this information collection, and this information collection and its supporting statement comply with all applicable information quality guidelines, *i.e.*, OMB and specific operating unit guidelines.

Table 2 outlines how the information for Patent Processing (Updating) is used by the public and by the USPTO:

Table 2: Needs and Uses of Information Collected for Patent Processing (Updating)

	Form and Function	Form #	Needs and Uses
1	Information Disclosure Statements and eIDS	PTO/SB/08a/08b and EFS-Web	<ul style="list-style-type: none"> Used by the applicant to meet the applicant's duty of disclosure under 37 CFR 1.56. Used by the USPTO when printing the patent document.
2	Transmittal Form	PTO/SB/21	<ul style="list-style-type: none"> Used by the applicant to indicate what type of correspondence is being submitted. Used by the USPTO to determine the specific contents of the communication. Used by the USPTO to facilitate the routing of papers to the most appropriate USPTO locations.
3	Petition for Extension of Time under 37 CFR 1.136(a)	PTO/SB/22, PTO/AIA/22	<ul style="list-style-type: none"> Used by the applicant to request an extension of time. Used by the USPTO to determine whether the reason for requesting an extension is sufficient for granting it. Used by the USPTO to decide the correct fee, based upon the number of months of extension requested, and whether or not the applicant is entitled to small entity status.
4	Express Abandonment	PTO/SB/24, PTO/AIA/24	<ul style="list-style-type: none"> Used by the applicant to expressly abandon an application. Used by the USPTO to determine whether the application is expressly abandoned. Used by the USPTO to determine whether an application has been expressly abandoned in favor of a continuation or divisional application.

	Form and Function	Form #	Needs and Uses
5	Disclaimers	PTO/SB/25/26/ 43/63	<ul style="list-style-type: none"> Used by the applicant or assignee to disclaim the entire term or part of a term of a patent or a patent to be granted. Used by the USPTO to determine whether all owners have provided the required terminal disclaimer and to determine the length of the patent term to which the patentee is entitled. Used by the Certificate of Corrections branch of the USPTO for determining whether regulatory compliance has been met, for recording the disclaimer, and for providing the disclaimer data for printing.
6	Request for Expedited Examination of a Design Application	PTO/SB/27	<ul style="list-style-type: none"> Used by the applicant to request expedited examination of a design application. Used by the USPTO to ensure that all of the required information to expedite examination is provided and to process the request.
7	Notice of Appeal	PTO/SB/31, PTO/AIA/31	<ul style="list-style-type: none"> Used by the applicant to file a Notice of Appeal. Used by the USPTO to ensure that applicants comply with regulations when filing a Notice of Appeal.
8	Petitions to Revive Unintentionally or Unavoidably Abandoned Applications	PTO/SB/61/64	<ul style="list-style-type: none"> Used by the applicant to request that applications that were unintentionally or unavoidably abandoned be revived. Used by the USPTO to ensure that applicants have included all the proper documentation and fees necessary to revive an unintentionally or unavoidably abandoned application.
9	Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing	PTO/SB/64a	<ul style="list-style-type: none"> Used by the applicant to revive an application for patent abandoned for failure to timely notify the office of a foreign or international filing. Used by the USPTO to revive an application for patent abandoned for failure to timely notify the office of a foreign or international filing.
10	Requests to Access, Inspect and Copy	PTO/SB/67/68	<ul style="list-style-type: none"> Used by the public to request permission to inspect and/or make copies in accordance with regulations. Ensures that applications are maintained in confidence in accordance with regulations. Used by the USPTO to determine that the persons requesting permission to inspect and/or make copies are authorized to do so. Used by the USPTO to verify that the application requested is abandoned and that it has been referred to in the referenced U.S. patent.
11	Deposit Account Order Form	PTO/SB/91	<ul style="list-style-type: none"> Used by the public to order goods or services using an established deposit account. Used by the USPTO to process orders for articles or services, and to identify the deposit account to which an order should be charged.
12	Certificate of Mailing/Transmission	PTO/SB/92/97	<ul style="list-style-type: none"> Used by the applicant as evidence of the date for replies to actions by the USPTO. Used by the USPTO to determine the timeliness of replies by an applicant to actions by the USPTO.
13	Statement under 37 CFR 3.73(b)	PTO/SB/96, PTO/AIA/96	<ul style="list-style-type: none"> Used by the applicant to show that this person has their authority to take actions on their behalf. Used by the USPTO to determine that the person signing has authority to take action on behalf of an assignee.

	Form and Function	Form #	Needs and Uses
14	Non-publication Request	PTO/SB/35	<ul style="list-style-type: none"> Used by the applicant to request that the USPTO not publish the application under 37 U.S.C. § 122(b). Used by the USPTO to determine whether the application should be published under 37 U.S.C. § 122(b).
15	Notice of rescission of previous Non-publication request (35 U.S.C. § 122(b)(2)(B)(ii)) and, if applicable, notice of foreign filing (35 U.S.C. § 122(b)(2)(B)(iii))	PTO/SB/36	<ul style="list-style-type: none"> Used by the applicant to rescind a previously filed request that the USPTO not publish the application under 35 U.S.C. § 122(b)(2)(B)(ii). Used by the applicant to provide notice of a foreign or international filing required by 35 U.S.C. § 122(b)(2)(B)(iii). Used by the USPTO to determine that the application is subject to eighteen-month publication.
16	Electronic Filing System (EFS) copy of application for publication	No Form	<ul style="list-style-type: none"> Used by the applicant to obtain publication of a version of the application different from the application as initially submitted to the USPTO. Used by the applicant to request publication of an application earlier than as provided for by eighteen-month publication or of an application that is not subject to eighteen-month publication. Used by the USPTO to create a publication document as part of the USPTO's publication of the application.
17	Copy of file content showing redactions	No Form	<ul style="list-style-type: none"> Used by the applicant to show redactions to USPTO actions/notices and the applicant's replies. Used by the USPTO to confirm what redactions are made to the copy of application file content that is provided to the public.
18	Copy of applicant or patentee's record of the application (including copies of the correspondence, and statements verifying whether the record is complete or not) Notice under 37 CFR 1.251 – Pending application Notice under 37 CFR 1.251 – Abandoned application Notice under 37 CFR 1.251 – Patent	PTO-2053-A/B PTO-2054-A/B PTO-2055-A/B	<ul style="list-style-type: none"> Used by the applicant to assist the USPTO in reconstructing a current copy of a missing patent or application file. Used by the USPTO to notify the applicant that the application or patent file is unlocatable and to request a copy of the applicant's or patentee's record of the application or patent file (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not) in order to reconstruct the file of an unlocatable application or patent.
19	Request for continued examination transmittal (RCE)	EFS-Web and PTO/SB/30	<ul style="list-style-type: none"> Used by the applicant to request continued examination of a previously submitted application. Used by the USPTO to process and initiate continued examination of a previously submitted application.
20	Request for oral hearing before the Patent Trial and Appeal Board	PTO/SB/32, PTO/AIA/32	<ul style="list-style-type: none"> Used by the applicant to file a written request in a separate paper for an oral hearing before the Board. Used by the USPTO to process and consider the request for an oral appeal hearing.
21	Request for suspension of action or deferral of examination under 37 CFR 1.103(b) or (d)	PTO/SB/37	<ul style="list-style-type: none"> Used by the applicant to request deferred examination of a patent application for up to three years from the earliest filing date for which a benefit is claimed. Used by the USPTO to process and consider this request for deferral of examination.

	Form and Function	Form #	Needs and Uses
22	Request for voluntary publication or republication (includes publication fee for republication)	EFS-Web	<ul style="list-style-type: none"> • Voluntary Publication: Used by the applicant to request publication of an application filed prior to November 29, 2000. • Republication: Used by the applicant to correct prior application publications containing material errors caused by the USPTO or to correct other data, such as claims that previously published as part of an application publication. • Used by the USPTO to publish an application filed prior to November 29, 2000, or to correct prior application publication errors.
23	Applicant initiated interview request form	PTOL/413A	<ul style="list-style-type: none"> • Used by the applicant to request an interview. • Used by the applicant to assist in the preparation of a written record of the interview. • Used by the USPTO to allow the examiner to prepare in advance for an applicant initiated interview. • Used by the USPTO to allow the examiner to focus on the issue to be discussed in the applicant initiated interview. • Used by the USPTO to identify whether agreement has been reached.
24	Processing fee under 37 CFR 1.17(i) transmittal	PTO/SB/17i	<ul style="list-style-type: none"> • Used by the applicant to identify the proper fee and thus reduce the potential for any additional work due to mistakes in payment. • Used by the USPTO to process the appropriate fees.
25	Request to retrieve electronic priority application(s) under 37 CFR 1.55(d)	PTO/SB/38	<ul style="list-style-type: none"> • Used by the applicant to request that the USPTO retrieve priority documents from the other participating intellectual property offices. • Used by the USPTO to retrieve priority documents from the other participating intellectual property offices.
26	Authorization for permit access to application by participating offices under 37 CFR 1.14(h)	PTO/SB/39	<ul style="list-style-type: none"> • Used by the applicant to authorize the USPTO to release confidential documents to other participating intellectual property offices that are important to the prosecution of the patent application. • Used by the USPTO to properly release confidential documents to other participating intellectual offices that are important to the prosecution of the patent application.
27	Petition for express abandonment to obtain a refund	PTO/SB/24B, PTO/AIA/24B	<ul style="list-style-type: none"> • Used by the applicant to expressly abandon the application for a refund of the search fee if recognized by an appropriate USPTO official prior to examination of the application. • Used by the USPTO to expressly abandon the application and to refund the search fee to the applicant if recognized by an appropriate USPTO official prior to examination of the application.
28	Pre-appeal brief request for review	PTO/SB/33, PTO/AIA/33	<ul style="list-style-type: none"> • Used by the applicant to request that a panel of examiners formally review the basis of the rejections in their application prior to filing an appeal brief. • Used by the USPTO to determine whether an appeal should be maintained.
29	Request for corrected filing receipt	No Form	<ul style="list-style-type: none"> • Used by the applicant to request a corrected filing receipt. • Used by the USPTO to correct errors in application data.

	Form and Function	Form #	Needs and Uses
30	Request for first-action interview (pilot program)	PTOL-413C EFS-Web only	<ul style="list-style-type: none"> Used by the applicant to request a first-action interview prior to the first Office action on the merits to advance prosecution of the application. Used by the USPTO to grant advancement of examination for the first Office action on the merits.
31	Petition to make special based on age for advancement of examination under 37 CFR 1.102(c)(1)	PTO/SB/130 EFS-Web only	<ul style="list-style-type: none"> Used by the applicant to petition that an application be made special for advancement of examination by showing that the applicant is 65 years of age, or more. Used by the USPTO to assist in the expeditious processing of the petition to make special based on age.
32	Rule 1.130, 1.131 and 1.132 affidavits or declarations	No Form	<ul style="list-style-type: none"> Used by patent applicants and patent owners to show that a disclosure was by the inventor or joint inventor, or was by a party who obtained the subject matter from the inventor or joint inventor, or that there was a prior public disclosure by the inventor or joint inventor, or by a party who obtained the subject matter from the inventor or joint inventor. Used by patent applicants and patent owners to submit evidence by way of an oath or declaration to traverse a rejection or objection on the basis not otherwise provided for, when any claim of an application or a patent under reexamination is rejected or objected to. Used by the USPTO to determine whether the disclosure qualifies as prior art under 35 U.S.C. § 102(a)(1) or (a)(2). Used by the USPTO to determine whether to maintain a rejection or objection of a claim of an application or a patent under reexamination.
33	Amendments and responses	No Form	<ul style="list-style-type: none"> Used by the applicant to change the file record of the application. Used by the applicant to request reconsideration or further examination, with or without amendment. Used by the USPTO to change the file record of the application. Used by the USPTO to determine whether to maintain a rejection or objection of a claim of an application.
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	No Form	<ul style="list-style-type: none"> Used by the applicant to have a first or second submission entered and considered on the merits after final rejection under the circumstances identified in 37 CFR 1.129. Used by the USPTO to determine whether to maintain a rejection or objection of a claim of an application.

3. Use of Information Technology

The forms associated with this collection may be downloaded from the USPTO Web site in Portable Document Format (PDF), filled out electronically, and then either printed for mailing or submitted to the USPTO online through EFS-Web. The "EFS-Web only" items in this collection may be submitted to the USPTO online through EFS-Web.

EFS-Web is the USPTO's web-based patent application and document submission system that allows customers to file patent applications and associated documents electronically through their standard web browser without downloading special software,

changing their document preparation tools, or altering their workflow processes. Typically, the customer will prepare the forms or documents as standard PDF files and then upload them to the USPTO servers using the secure EFS-Web interface. EFS-Web offers many benefits to filers, including immediate notification that a submission has been received by the USPTO, automated processing of requests, and avoidance of postage or other paper delivery costs.

To protect the confidentiality, authenticity, and integrity of electronic submissions, the USPTO employs Public Key Infrastructure (PKI) technology for secure electronic communications with its customers. All electronic submissions are automatically encrypted prior to transmission to ensure confidentiality of the submission contents. After the electronic package has been received by the USPTO, the EFS server uses digital signature technology to verify that the package contents have not been altered and generates an electronic acknowledgment receipt that is immediately returned to the customer.

Customers must have a Customer Number that is associated with the correspondence address for a patent application in order to access private information about the application using the Patent Application Information Retrieval (PAIR) system, which is available through the USPTO Web site. PAIR allows authorized individuals secure and immediate online access to up-to-date patent application status and history information, but only for patent applications that are linked to a Customer Number. PAIR also offers public access to non-private information about issued patents and published applications.

4. Efforts to Identify Duplication

This information is collected during the pendency of a patent application. It does not duplicate information or collection of data found elsewhere.

5. Minimizing the Burden to Small Entities

No significant impact is placed on small entities. Small entities simply need to identify themselves as such to obtain the benefits of small entity status.

Pursuant to 35 U.S.C. § 41(h)(1), the USPTO provides a fifty percent (50%) reduction in the fees charged under 35 U.S.C. § 41(a) and (b) for small entities. The USPTO's regulations concerning the payment of reduced patent fees by small entities are at 37 CFR 1.27 and 1.28, and reduced patent fees for small entity applicants are shown in 37 CFR 1.16, 1.17, 1.18 and 1.20.

6. Consequences of Less Frequent Collection

This information is collected only as required to process a patent application or enforceable patent, and is not collected elsewhere. Therefore, this collection of information could not be conducted less frequently. If the information were not

collected, the USPTO would not be able to comply with the patent statute 35 U.S.C. § 131.

7. Special Circumstances in the Conduct of Information Collection

There are no special circumstances associated with this collection of information.

8. Consultation Outside the Agency

The 60-Day Notice was published in the *Federal Register* on March 22, 2012 (77 Fed. Reg. 16813). The public comment period ended on May 21, 2012. Seven public comments were received.

Several comments suggested generally that the USPTO's time calculations under estimated the actual amount of time needed by respondents for completion. The USPTO regularly reviews its time burden estimates, using available historical data, Agency expertise, and stakeholder feedback. Moreover, these comments did not provide a basis for or propose any other alternative time estimate burden.

Other comments suggested that certain time estimates did not include consideration of other factors beyond the time needed to complete certain responses. These comments cited factors such as time needed to evaluate options, consulting clients, or making other informed decisions. Although the USPTO appreciates that respondents utilize time and effort for many matters related to and during the course of the patent examination process, these estimates necessarily focus on the estimated time to complete the specific information collection responses.

Several of the comments were directed to specific regulatory requirements. It was suggested that the underlying regulations themselves should be revised and that doing so could reduce unnecessary additional paperwork burdens. An additional comment suggested that the USPTO make other changes, such as to employ compensation practices and to edit the Manual of Patent Examining Procedure, as ways of reducing respondent burdens. Although these go beyond the scope of the instant ICR clearance, the USPTO appreciates these comments and will review those identified requirements to determine whether separate revisions are appropriate.

Finally, two commenters claimed that the 60-day notice did not comply with the Information Quality Act and implied that the estimates required correction. These comments, however, did not provide any alternative basis or a proposed corrected time estimate. As indicated above, the USPTO respondent time burdens are estimates. The total estimated burdens are comprised of the expected number of filings and responses with the expected time needed to complete such responses. It is USPTO's experience with these or similar responses and the Agency's expertise in estimating the actual time to complete the applicable response that informs these total estimates. Accordingly, and based on the comments received, the USPTO is not correcting provided estimates.

The USPTO has, however, provided as an attachment to this supporting statement background information on quantities of filings that were used to prepare response estimates for this collection.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, independent inventor groups, and users of our public facilities. Their views are expressed in regularly scheduled meetings and considered in developing proposals for information collection requirements.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent.

10. Assurance of Confidentiality

Confidentiality of patent applications is governed by statute (35 U.S.C. § 122) and regulation (37 CFR 1.11 and 1.14). The USPTO has a legal obligation to maintain the confidentiality of the contents of unpublished patent applications and related documents. For secure electronic access to PAIR, the USPTO employs digital certificates and PKI technology to permit only authorized individuals to access private patent application information and to maintain the confidentiality and integrity of the information as it is transmitted over the Internet. Upon publication of an application or issuance of a patent, the patent application file is made available to the public, subject to the provisions for providing only a redacted copy of the file contents. The entire file of a reexamination proceeding is available to the public.

11. Justification for Sensitive Questions

None of the required information in this collection is considered to be sensitive.

12. Estimate of Hour and Cost Burden to Respondents

Table 3 calculates the anticipated burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**

The USPTO estimates that it will receive approximately 4,827,580 responses per year for this collection, with approximately 26% of these responses submitted by small entities.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public an average of 1 minute, 48 seconds (0.03 hours) to 10 hours to complete either the paper or the electronic versions of information described in this submission, depending on the nature of the information.

This includes time to gather the necessary information, create the documents, and submit to the USPTO.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.

- **Cost Burden Calculation Factors**

The USPTO expects that patent attorneys and paraprofessionals will complete and submit this information.

The USPTO uses a professional rate of \$371 per hour for the attorney respondent cost burden calculations, which is the mean rate for attorneys in private firms as shown in the 2011 *Report of the Economic Survey* published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA).

Based on the Agency's long-standing institutional knowledge of and experience with the type of information collected, the Agency estimates \$371 is an accurate estimate of the cost per hour to collect this information.

The USPTO uses a paraprofessional rate of \$122 per hour for respondent cost burden calculations, which is the mean billing rate for paraprofessionals as shown in the 2010 *National Utilization and Compensation Survey* Report published by the National Association of Legal Assistants (NALA) in October 2010.

Table 3: Burden Hour/Burden Cost to Respondents for Patent Processing (Updating)

	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
1	EFS-Web IDS (Information Disclosure Statements) that do not require the fee set forth in 37 CFR 1.17(p)	2.00	495,933	991,866	\$371.00	\$367,982,286.00
1	Information Disclosure Statements that do not require the fee set forth in 37 CFR 1.17(p)	2.00	37,328	74,656	\$371.00	\$27,697,376.00
1	EFS-Web IDS (Information Disclosure Statements) that require the fee set forth in 37 CFR 1.17(p)	2.00	108,567	217,134	\$371.00	\$80,556,714.00
1	Information Disclosure Statements that require the fee set forth in 37 CFR 1.17(p)	2.00	8,172	16,344	\$371.00	\$6,063,624.00
2	Electronic Transmittal Form	2.00	1,023,000	2,046,000	\$122.00	\$249,612,000.00
2	Transmittal Form	2.00	77,000	154,000	\$122.00	\$18,788,000.00
3	Electronic Petition for Extension of Time under 37 CFR 1.136(a)	0.10	311,208	31,121	\$122.00	\$3,796,762.00
3	Petition for Extension of Time under 37 CFR 1.136(a)	0.10	23,424	2,342	\$122.00	\$285,724.00
4	Electronic Express Abandonment under 37 CFR 1.138	0.20	6,500	1,300	\$122.00	\$158,600.00

	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
4	Express Abandonment under 37 CFR 1.138	0.20	500	100	\$122.00	\$12,200.00
5	Electronic Disclaimers	0.20	70,190	14,038	\$371.00	\$5,208,098.00
5	Disclaimers	0.20	5,283	1,057	\$371.00	\$392,147.00
6	Electronic Request for Expedited Examination of a Design Application	0.10	207	21	\$371.00	\$7,791.00
6	Request for Expedited Examination of a Design Application	0.10	16	2	\$371.00	\$742.00
7	Electronic Notice of Appeal	0.20	37,414	7,483	\$371.00	\$2,776,193.00
7	Notice of Appeal	0.20	2,816	563	\$371.00	\$208,873.00
8	Electronic Petition for Revival of an Application for Patent Abandoned Unavoidably	8.00	307	2,456	\$371.00	\$911,176.00
8	Petition for Revival of an Application for Patent Abandoned Unavoidably	8.00	23	184	\$371.00	\$68,264.00
8	Electronic Petition for Revival of an Application for Patent Abandoned Unintentionally	1.00	8,192	8,192	\$371.00	\$3,039,232.00
8	Petition for Revival of an Application for Patent Abandoned Unintentionally	1.00	617	617	\$371.00	\$228,907.00
9	Electronic Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing	1.00	230	230	\$371.00	\$85,330.00
9	Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing	1.00	20	20	\$371.00	\$7,420.00
10	Electronic Requests to Access, Inspect and Copy	0.20	121,000	24,200	\$122.00	\$2,952,400.00
10	Requests to Access, Inspect and Copy	0.20	9,000	1,800	\$122.00	\$219,600.00
11	Electronic Deposit Account Order Form	0.20	90	18	\$122.00	\$2,196.00
11	Deposit Account Order Form	0.20	10	2	\$122.00	\$244.00
12	Electronic Certificates of Mailing, Transmission	0.03	930,000	27,900	\$122.00	\$3,403,800.00
12	Certificates of Mailing, Transmission	0.03	70,000	2,100	\$122.00	\$256,200.00
13	Electronic Statement Under 37 CFR 3.73(b)	0.20	140,000	28,000	\$371.00	\$10,388,000.00
13	Statement Under 37 CFR 3.73(b)	0.20	10,000	2,000	\$371.00	\$742,000.00
14	Electronic Non-publication Request	0.10	21,500	2,150	\$371.00	\$797,650.00
14	Non-publication Request	0.10	1,500	150	\$371.00	\$55,650.00

	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
15	Electronic Rescission of Previous Non-publication Request (35 U.S.C. § 122(b)(2)(B)(ii) and, if applicable, Notice of Foreign Filing (35 U.S.C. § 122(b)(2)(B)(iii))	0.10	1,000	100	\$371.00	\$37,100.00
15	Rescission of Previous Non-publication Request (35 U.S.C. § 122(b)(2)(B)(ii) and, if applicable, Notice of Foreign Filing (35 U.S.C. § 122(b)(2)(B)(iii))	0.10	100	10	\$371.00	\$3,710.00
16	Electronic Filing System (EFS) Copy of Application for Publication	2.50	1	3	\$122.00	\$366.00
17	Copy of File Content Showing Redactions	4.00	1	4	\$371.00	\$1,484.00
18	Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	2.00	20	40	\$122.00	\$4,880.00
19	EFS-Web Request for Continued Examination (RCE) Transmittal	0.20	146,163	29,233	\$371.00	\$10,845,443.00
19	Request for Continued Examination (RCE) Transmittal	0.20	11,001	2,200	\$371.00	\$816,200.00
20	Electronic Request for Oral Hearing Before the Patent Trial and Appeal Board	0.20	1,415	283	\$371.00	\$104,993.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board	0.20	106	21	\$371.00	\$7,791.00
21	Electronic Request for Suspension of Action or Deferral of Examination Under 37 CFR 1.103(b), (c), or (d)	0.20	560	112	\$371.00	\$41,552.00
21	Request for Suspension of Action or Deferral of Examination Under 37 CFR 1.103(b), (c), or (d)	0.20	40	8	\$371.00	\$2,968.00
22	EFS-Web Request for Voluntary Publication or Republication (includes publication fee for republication)	0.20	775	155	\$122.00	\$18,910.00
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	0.20	58	12	\$122.00	\$1,464.00
23	Electronic Applicant Initiated Interview Request Form	0.40	1,900	760	\$371.00	\$281,960.00
23	Applicant Initiated Interview Request Form	0.40	100	40	\$371.00	\$14,840.00
24	Electronic Processing Fee Under 37 CFR 1.17(i) Transmittal	0.08	3,300	264	\$371.00	\$97,944.00
24	Processing Fee Under 37 CFR 1.17(i) Transmittal	0.08	200	16	\$371.00	\$5,936.00
25	Electronic Request to Retrieve Electronic Priority Application (s) Under 37 CFR 1.55(d)	0.13	60,000	7,800	\$371.00	\$2,893,800.00

	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
25	Request to Retrieve Electronic Priority Application (s) Under 37 CFR 1.55(d)	0.13	5,000	650	\$371.00	\$241,150.00
26	Electronic Authorization to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h)	0.10	19,000	1,900	\$371.00	\$704,900.00
26	Authorization to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h)	0.10	1,000	100	\$371.00	\$37,100.00
27	Electronic Petition for Express Abandonment to Obtain a Refund	0.20	2,000	400	\$371.00	\$148,400.00
27	Petition for Express Abandonment to Obtain a Refund	0.20	100	20	\$371.00	\$7,420.00
28	Electronic Pre-Appeal Brief Request for Review	5.00	14,700	73,500	\$371.00	\$27,268,500.00
28	Pre-Appeal Brief Request for Review	5.00	1,100	5,500	\$371.00	\$2,040,500.00
29	EFS-Web Request for Corrected Filing Receipt	0.08	22,000	1,760	\$122.00	\$214,720.00
29	Request for Corrected Filing Receipt	0.08	2,000	160	\$122.00	\$19,520.00
30	Request for First Action Interview (Pilot Program) (Electronic only)	2.50	1,500	3,750	\$371.00	\$1,391,250.00
31	Petition to Make Special Based on Age for Advancement of Examination under 37 CFR 1.102(c)(1) (EFS-Web only)	2.00	2,300	4,600	\$371.00	\$1,706,600.00
32	Electronic Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10.00	46,500	465,000	\$371.00	\$172,515,000.00
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10.00	3,500	35,000	\$371.00	\$12,985,000.00
33	Electronic Amendments and Responses	8.00	893,000	7,144,000	\$371.00	\$2,650,424,000.00
33	Amendments and Responses	8.00	67,000	536,000	\$371.00	\$198,856,000.00
34	Electronic Filing a submission after final rejection (see 37 CFR 1.129(a))	8.00	86	688	\$371.00	\$255,248.00
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	8.00	7	56	\$371.00	\$20,776.00
	Total	- - - -	4,827,580	11,972,191	- - - -	\$3,870,722,624.00

13. Total Annual (Non-hour) Cost Burden

The total annual (non-hour) respondent cost burden for this collection is estimated to be \$370,725,475 per year, which includes \$370,317,890 in filing fees and \$407,585 in postage costs.

This collection is currently approved with a total of \$6,930 in recordkeeping costs associated with printing and retaining a copy of the acknowledgment receipt. The USPTO is removing these recordkeeping costs from this collection because keeping a copy of the acknowledgment receipt is a suggestion and not a requirement.

Table 4: Filing Fees (Non-hour) Cost Burden for Patent Processing (Updating)

	Item	Responses (yr) (a)	Filing Fee (\$/hr) (b)	Total Cost (\$/hr) (c) (a) x (b)
1	Information Disclosure Statements (IDS) that require the fee set forth in 37 CFR 1.17(p)	94,209	\$180.00	\$16,957,620.00
1	Information Disclosure Statements that require the fee set forth in 37 CFR 1.17(p) (small entity)	22,530	\$180.00	\$4,055,400.00
2	Transmittal Forms	1,100,000	None	\$0.00
3	One-month extension of time under 37 CFR 1.136(a)	120,749	\$150.00	\$18,112,350.00
3	One-Month extension of time under 37 CFR 1.136(a) (small entity)	43,628	\$75.00	\$3,272,100.00
3	Two-month extension of time under 37 CFR 1.136(a)	49,886	\$570.00	\$28,435,020.00
3	Two-month extension of time under 37 CFR 1.136(a) (small entity)	23,823	\$285.00	\$6,789,555.00
3	Three-month extension of time under 37 CFR 1.136(a)	48,302	\$1,290.00	\$62,309,580.00
3	Three-month extension of time under 37 CFR 1.136(a) (small entity)	34,417	\$645.00	\$22,198,965.00
3	Four-month extension of time under 37 CFR 1.136(a)	3,184	\$2,010.00	\$6,399,840.00
3	Four-month extension of time under 37 CFR 1.136(a) (small entity)	2,697	\$1,005.00	\$2,710,485.00
3	Five-month extension of time under 37 CFR 1.136(a)	4,004	\$2,730.00	\$10,930,920.00
3	Five-month extension of time under 37 CFR 1.136(a) (small entity)	3,942	\$1,365.00	\$5,380,830.00
4	Express Abandonment under 37 CFR 1.138	7,000	None	\$0.00
5	Statutory Disclaimer	69,184	\$160.00	\$11,069,440.00
5	Statutory Disclaimer (small entity)	6,289	\$80.00	\$503,120.00
6	Request for Expedited Examination of a Design Application	180	\$900.00	\$162,000.00
6	Request for Expedited Examination of a Design Application (small entity)	43	\$900.00	\$38,700.00
7	Notice of Appeal	32,277	\$630.00	\$20,334,510.00
7	Notice of Appeal (small entity)	7,953	\$315.00	\$2,505,195.00

	Item	Responses (yr) (a)	Filing Fee (\$/hr) (b)	Total Cost (\$/hr) (c) (a) x (b)
8	Petition to Revive Unavoidably Abandoned Application	103	\$630.00	\$64,890.00
8	Petition to Revive Unavoidably Abandoned Application (small entity)	227	\$315.00	\$71,505.00
8	Petition to Revive Unintentionally Abandoned Application	4,204	\$1,890.00	\$7,945,560.00
8	Petition to Revive Unintentionally Abandoned Application (small entity)	4,605	\$945.00	\$4,351,725.00
9	Petition for revival of an application for patent abandoned for failure to notify the office of a foreign or international filing	200	\$1,860.00	\$372,000.00
9	Petition for revival of an application for patent abandoned for failure to notify the office of a foreign or international filing (small entity)	50	\$930.00	\$46,500.00
10	Requests to Access, Inspect and Copy	130,000	None	\$0.00
11	Deposit Account Order Form	100	None	\$0.00
12	Certificates of Mailing, Transmission	1,000,000	None	\$0.00
13	Statement Under 37 CFR 3.73(b)	150,000	None	\$0.00
14	Non-publication Request	23,000	None	\$0.00
15	Rescission of Previous Non-publication Request (35 U.S.C. § 122(b)(2)(B)(ii) and, if applicable, Notice of Foreign Filing (35 U.S.C. § 122(b)(2)(B)(iii))	1,100	None	\$0.00
16	EFS copy of application for publication	1	None	\$0.00
17	Copy of File Content Showing Redactions	1	\$130.00	\$130.00
18	Copy of the applicant or patentee's record of the application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	20	None	\$0.00
19	Request for Continued Examination (RCE) Transmittal	128,089	\$930.00	\$119,122,770.00
19	Request for Continued Examination (RCE) Transmittal (small entity)	29,075	\$465.00	\$13,519,875.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board	1,214	\$1,260.00	\$1,529,640.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board (small entity)	307	\$630.00	\$193,410.00
21	Processing fee for requests for suspension of action or deferrals of examination under 37 CFR 1.103(b), (c), or (d)	600	\$130.00	\$78,000.00

	Item	Responses (yr) (a)	Filing Fee (\$/hr) (b)	Total Cost (\$/hr) (c) (a) x (b)
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	833	\$430.00	\$358,190.00
23	Applicant initiated interview request form	2,000	None	\$0.00
24	Processing fee under 37 CFR 1.17(i) transmittal	3,311	\$130.00	\$430,430.00
25	Request to retrieve electronic priority application(s) under 37 CFR 1.55(d)	65,000	None	\$0.00
26	Authorization to permit access to application by participating offices under 37 CFR 1.14(h)	20,000	None	\$0.00
27	Petition for express abandonment to obtain a refund	2,100	None	\$0.00
28	Electronic Pre-Appeal Brief Request for Review	11,700	None	\$0.00
28	Electronic Pre-Appeal Brief Request for Review (small entity)	3,000	None	\$0.00
28	Pre-Appeal Brief Request for Review	900	None	\$0.00
28	Pre-Appeal Brief Request for Review (small entity)	200	None	\$0.00
29	EFS-Web Request for Corrected Filing Receipt	22,000	None	\$0.00
29	Request for Corrected Filing Receipt	2,000	None	\$0.00
30	Electronic Request for First Action Interview (Pilot Program)	1,500	None	\$0.00
31	Petition to Make Special Based on Age for Advancement of Examination under 37 CFR 1.102(c)(1) (EFS-Web only)	2,300	None	\$0.00
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	50,000	None	\$0.00
33	Electronic Amendments and Responses	893,000	None	\$0.00
33	Amendments and Responses	67,000	None	\$0.00
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	74	\$810.00	\$59,940.00
34	Filing a submission after final rejection (see 37 CFR 1.129(a)) (small entity)	19	\$405.00	\$7,695.00
	Total	4,294,130	- - - -	\$370,317,890

The public may submit the paper forms and petitions in this collection to the USPTO by mail through the United States Postal Service. The public may also include a signed certification of the date of mailing in order to receive credit for timely filing. Therefore, the USPTO estimates that the average first-class postage for a standard 3 ounce manila envelope is \$1.30.

Table 5: Postage Costs (Non-hour) Cost Burden for Patent Processing (Updating)

	Item	Responses (a)	Postage Cost (\$) (b)	Total (Non-hour) Cost Burden (c) (a) x (b)
1	Information Disclosure Statements that do not require the fee set forth in 37 CFR 1.17(p)	37,328	\$1.30	\$48,526.00
1	Information Disclosure Statements that require the fee set forth in 37 CFR 1.17(p)	8,172	\$1.30	\$10,624.00
2	Transmittal Form	77,000	\$1.30	\$100,100.00
3	Petition for Extension of Time under 37 CFR 1.136(a)	23,424	\$1.30	\$30,451.00
4	Express Abandonment under 37 CFR 1.138	500	\$1.30	\$650.00
5	Disclaimers	5,283	\$1.30	\$6,868.00
6	Request for Expedited Examination of a Design Application	16	\$1.30	\$21.00
7	Notice of Appeal	2,816	\$1.30	\$3,661.00
8	Petition for Revival of an Application for Patent Abandoned Unavoidably	23	\$1.30	\$30.00
8	Petition for Revival of an Application for Patent Abandoned Unintentionally	617	\$1.30	\$802.00
9	Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing	20	\$1.30	\$26.00
10	Requests to Access, Inspect and Copy	9,000	\$1.30	\$11,700.00
11	Deposit Account Order Form	10	\$1.30	\$13.00
13	Statement Under 37 CFR 3.73(b)	10,000	\$1.30	\$13,000.00
14	Non-publication Request	1,500	\$1.30	\$1,950.00
15	Rescission of Previous Non-publication Request (35 U.S.C. § 122(b)(2)(B)(ii) and, if applicable, Notice of Foreign Filing (35 U.S.C. § 122(b)(2)(B)(iii))	100	\$1.30	\$130.00
16	Electronic Filing System (EFS) Copy of Application for Publication	-	-	-
17	Copy of File Content Showing Redactions	1	\$1.30	\$1.00
18	Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	20	\$1.30	\$26.00
19	Request for Continued Examination (REC) Transmittal	11,001	\$1.30	\$14,301.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board	106	\$1.30	\$138.00
21	Request for Suspension of Action or Deferral of Examination Under 37 CFR 1.103(b), (c), or (d)	40	\$1.30	\$52.00
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	43	\$1.30	\$56.00

	Item	Responses (a)	Postage Cost (\$) (b)	Total (Non-hour) Cost Burden (c) (a) x (b)
23	Applicant Initiated Interview Request Form	100	\$1.30	\$130.00
24	Processing Fee Under 37 CFR 1.17(i) Transmittal	200	\$1.30	\$260.00
25	Request to Retrieve Electronic Priority Application (s) Under 37 CFR 1.55(d)	5,000	\$1.30	\$6,500.00
26	Authorization to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h)	1,000	\$1.30	\$1,300.00
27	Petition for Express Abandonment to Obtain a Refund	100	\$1.30	\$130.00
28	Pre-Appeal Brief Request for Review	1,100	\$1.30	\$1,430.00
29	Request for Corrected Filing Receipt	2,000	\$1.30	\$2,600.00
30	Request for First Action Interview (Pilot Program)	-	-	-
31	Petition to Make Special Based on Age for Advancement of Examination under 37 CFR 1.102(c)(1) (EFS-Web only)	-	-	-
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	50,000	\$1.30	\$65,000.00
33	Amendments and Responses	67,000	\$1.30	\$87,100.00
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	7	\$1.30	\$9.00
	Total	383,542	- - - -	\$407,585

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 1 employee between 1 minute 48 seconds (0.03 hours) and 4 hours to process the items in this collection. The USPTO estimates that the cost of a GS-7, step 1 employee is currently \$26.29 (GS hourly rate of \$20.22 with 30% (\$6.07) added for benefits and overhead).

Table 6 calculates the processing hours and costs of this information collection to the Federal Government:

Table 6: Burden Hour/Burden Cost to the Federal Government for Patent Processing (Updating)

	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
1	Information Disclosure Statements and eIDS	0.30	650,000	195,000	\$26.29	\$5,126,550.00
2	Transmittal Form	0.10	1,100,000	110,000	\$26.29	\$2,891,900.00
3	Petition for Extension of Time under 37 CFR 1.136(a)	0.10	334,632	33,463	\$26.29	\$879,742.00
4	Express Abandonment under 37 CFR 1.138	0.10	7,000	700	\$26.29	\$18,403.00
5	Disclaimers	0.20	75,473	15,095	\$26.29	\$396,848.00

	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
6	Request for Expedited Examination of a Design Application	0.10	223	22	\$26.29	\$578.00
7	Notice of Appeal	0.10	40,230	4,023	\$26.29	\$105,765.00
8	Petition for Revival of an Application for Patent Abandoned Unavoidably or Unintentionally	0.30	9,139	2,742	\$26.29	\$72,087.00
9	Petition for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing	0.30	250	75	\$26.29	\$1,972.00
10	Requests to Access, Inspect and Copy	0.10	130,000	13,000	\$26.29	\$341,770.00
11	Deposit Account Order Form	0.20	100	20	\$26.29	\$526.00
12	Certificates of Mailing/Transmission	0.10	1,000,000	100,000	\$26.29	\$2,629,000.00
13	Statement under 37 CFR 3.37(b)	0.10	150,000	15,000	\$26.29	\$394,350.00
14	Non-publication Request	0.50	23,000	11,500	\$26.29	\$302,335.00
15	Rescission of Previous Non-publication Request (35 U.S.C. § 122(b)(2)(B)(ii)) and, if applicable, Notice of Foreign Filing (35 U.S.C. § 122(b)(2)(B)(iii))	0.50	1,100	550	\$26.29	\$14,460.00
16	Electronic Filing System (EFS) Copy of Application for Publication	0.25	1	1	\$26.29	\$26.00
17	Copy of File Content Showing Redactions	4.00	1	4	\$26.29	\$105.00
18	Copy of the Applicant or Patentee's Record of the Application (including copies of the correspondence, list of the correspondence, and statements verifying whether the record is complete or not)	1.00	20	20	\$26.29	\$526.00
19	Request for Continued Examination (RCE) Transmittal	0.60	157,164	94,298	\$26.29	\$2,479,094.00
20	Request for Oral Hearing Before the Patent Trial and Appeal Board	0.10	1,521	152	\$26.29	\$3,996.00
21	Request for Suspension of Action or Deferral of Examination under 37 CFR 1.103(b), (c) or (d)	0.30	600	180	\$26.29	\$4,732.00
22	Request for Voluntary Publication or Republication (includes publication fee for republication)	0.03	612	18	\$26.29	\$473.00
23	Applicant Initiated Interview Request Form	0.10	2,000	200	\$26.29	\$5,258.00
24	Processing Fee under 37 CFR 1.17(i) Transmittal	0.08	3,500	280	\$26.29	\$7,361.00
25	Request to Retrieve Electronic Priority Application(s) under 37 CFR 1.55(d)	0.05	65,000	3,250	\$26.29	\$85,443.00

	Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
26	Authorization to Permit Access to Application by Participating Offices under 37 CFR 1.14(h)	0.05	20,000	1,000	\$26.29	\$26,290.00
27	Petition for Express Abandonment to Obtain a Refund	0.10	2,100	210	\$26.29	\$5,521.00
28	Pre-Appeal Brief Request for Review	0.10	15,800	1,580	\$26.29	\$41,538.00
29	Request for Corrected Filing Receipt	0.08	24,000	1,920	\$26.29	\$50,477.00
30	Request for First Action Interview (Pilot Program)	0.30	1,500	450	\$26.29	\$11,831.00
31	Petition to Make Special Based on Age for Advancement of Examination under 37 CFR 1.102(c)(1)	0.10	2,300	230	\$26.29	\$6,047.00
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	0.50	50,000	25,000	\$26.29	\$657,250.00
33	Amendments and Responses	0.50	960,000	480,000	\$26.29	\$12,619,200.00
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	0.50	93	47	\$26.29	\$1,236.00
	Total	- - - - -	4,827,359	1,110,030	- - - - -	\$29,182,690.00

15. Summary of Changes in Burden Since Previous Renewal

Summary of Changes Since the Previous Renewal

OMB previously approved the renewal of this information collection on July 1, 2009 with 2,459,409 responses, 2,893,322 burden hours, and \$147,592,807 in annual (non-hour) costs.

The currently approved collection has been updated with four requests for nonsubstantive change since the previous renewal, and the currently approved collection has an estimated 2,444,305 responses, 2,869,625 burden hours, and \$145,375,747 in annual (non-hour) costs per year.

The 60-Day *Federal Register* Notice associated with this renewal published on March 22, 2012 (77 Fed. Reg. 16813). At that time the USPTO estimated that this collection would have 4,777,532 responses, 11,972,777 burden hours, and \$357,380,557 in annual (non-hour) costs.

This request for renewal adjusts the numbers published in the March 2012 Notice. The USPTO now estimates this collection will have 4,827,580 responses, 11,972,191, burden hours, and \$370,725,475 in annual (non-hour) costs per year. This increase of 2,383,275 responses, 9,102,566 burden hours, and \$225,349,728 in annual (non-hour) costs is due to both program changes and administrative adjustments.

This request includes eight areas of change, outlined as follows:

- 1) One requirement has been separated into two items
- 2) One item has been deleted from the inventory
- 3) Electronic equivalents for the majority of paper forms have been added
- 4) One item is being removed from this collection and is covered by a new collection
- 5) Adding an item associated with a fee under RIN 0651-AC54
- 6) Fees are adjusted to reflect fee updates from CPI adjustments
- 7) Updates to Postage Fees
- 8) New Fee for the Request for Voluntary Publication or Republication (includes publication fee for republication)

1 One requirement has been separated into two items

Two items being separately accounted for in this collection are (i) Rule 1.130, 1.131, and 1.132 Affidavits or Declarations; and (ii) Amendments and Responses.

2 One item has been deleted from the inventory

One item is being deleted from the collection, Request for Processing of Replacement Drawings in Any Patent Application Publication. The USPTO phased out these requests over the last several years due to IT upgrades.

3 Electronic equivalents for the majority of paper forms have been added

Table 3 includes burden hour and cost to respondents to account for new electronic forms and methods of collection in non-paper format.

4 One item is being removed from this collection and is covered by a new collection

The item Information Disclosure Citation in a Patent (PTO/SB/42) was moved out of this collection into a separate new collection, 0651-0067 Post Patent Public Submissions, when the USPTO published a notice of proposed rulemaking titled "Changes to Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act" (RIN 0651-AC66) in the *Federal Register*. The new collection was approved by OMB in July of 2012.

5 Adding an item associated with a fee under RIN 0651-AC54

Another item, Filing a Submission After Final Rejection (see 37 CFR 1.129(a)) is being added to this collection in connection with the Leahy-Smith America Invents Act (AIA) Final Rule entitled "Setting and Adjusting Patent Fees"(RIN 0651-AC54).

6 *Fees are adjusted to reflect fee updates from CPI adjustments*

Fees for several items were adjusted to reflect the current Consumer Price Index (CPI) increases in the fees. This adjustment results in an increase of \$13,202,570 from the filing fee costs reported in the 60-Day Federal Register Notice

7 *Updated Postage Fees*

Postage rates have increased and the agency has updated the cost burden to reflect those increases. Applicants may mail requests for voluntary publication or republication (includes publication fee for republication) to the USPTO in addition to electronically submitting them to the agency. Postage costs for this item have now been added to this collection.

8 *New Fee for the Request for Voluntary Publication or Republication (includes publication fee for republication)*

In the 2007 submission, the fee for this item was \$130. Since this item also covers the publication fee for republication, which carries a fee of \$300, the USPTO has increased the fee for this item to \$430.

Specific Changes since the 60-Day Federal Register Notice

In the 60-Day *Federal Register* Notice published on March 22, 2012 (77 Fed. Reg. 16813), the USPTO estimated that this collection would have 4,777,532 responses, 11,972,777 burden hours, and \$357,380,557 in annual (non-hour) costs. The USPTO also estimated \$3,573,910,186 in respondent costs.

Overall, the USPTO estimates that the responses for this renewal submission will increase by 50,048 over those reported in the 60-Day Federal Register Notice due to the addition of a new requirement (Filing a Submission After Final Rejection (See 37 CFR 1.129(a)) from the Leahy-Smith America Invents Act (AIA) Final Rule entitled "Setting and Adjusting Patent Fees"(RIN 0651-AC54)) and adjustments to response estimates.

The changes discussed above for the response estimates and the deletion of an information requirement, Information Disclosure Citation in a Patent affect the burden hours originally reported for this collection.

This item has been moved to a new collection, 0651-0067 in conjunction with a rulemaking titled "Changes to Implement Miscellaneous Post Patent Provisions of the Leahy-Smith America Invents Act" (RIN 0651-AC66). As such, the USPTO is removing this item from the 0651-0031 inventory. This decreases the responses and burden hours reported in the 60-Day Federal Register Notice by 1,830 responses and 3,660 hours respectively.

Non-hour annual costs have also been adjusted since the publication of the 60-Day Federal Register Notice. Postage costs and Consumer Price Index (CPI) increases in the filing fees have been adjusted and are reflected in this renewal request. The estimated postage cost for mailing these submissions to the USPTO increased from \$1.28 to \$1.30 and several fees now reflect recent CPI adjustments. Based on these changes, the USPTO estimates that the annual (non-hour) costs will increase by \$13,344,918 over those reported in the 60-Day Notice.

The estimated respondent costs reported in the 60-Day Notice are also revised due to a new estimated hourly rate. Since the publication of the 60-Day Notice, the USPTO has decided to use the mean rate (\$371) instead of the median rate (\$340) to calculate the attorney respondent costs. The USPTO estimates that the respondent costs will increase by \$296,812,438 over those reported in the 60-Day Notice.

It is estimated that this renewal will have 4,827,580 responses, 11,972,191 burden hours, \$370,725,475 in annual (non-hour) costs, and \$3,870,722,624 in respondent costs.

Change in Respondent Cost Burden

The total estimated respondent cost burden for this collection has increased from \$417,069,016 to \$3,870,722,624. Estimated hourly rates in the 2009 renewal and associated non-substantive changes were \$304 for attorneys and \$90 for paraprofessionals, based on a median rate. The USPTO now estimates attorney respondent costs using a mean rate of \$371. Estimates for this renewal are updated to reflect hourly rates of \$371 for attorneys. The paraprofessional rate is estimated now at \$122. See Section 12 for additional information.

Changes in Response and Burden Hours

With this renewal, the number of responses increased by 2,383,275, from 2,444,305 to 4,827,580, and the burden hours increased by 9,102,566, from 2,869,625 to the present 11,972,191 per year. This increase is due to both program changes and administrative adjustments, as follows:

Administrative adjustments:

- The USPTO estimates that the number of Information Disclosure Statements (IDSs) submitted per year will increase by 308,250 responses, from 341,750 to 650,000. **Therefore, this submission takes a burden increase of 616,500 hours as an administrative adjustment.**
- The USPTO estimates that the number of Transmittal Forms submitted per year will increase by 60,500 responses, from 1,039,500 to 1,100,000. **Therefore, this submission takes a burden increase of 121,000 hours as an administrative adjustment.**

- The USPTO estimates that the number of Petitions for Extension of Time Under 37 CFR 1.136(a) submitted per year will increase by 145,632 responses, from 189,000 to 334,632. **Therefore, this submission takes a burden increase of 14,563 hours as an administrative adjustment.**
- The USPTO estimates that the number of Petitions for Express Abandonment to Avoid Publication Under 37 CFR 1.138 submitted per year will decrease by 6,825 responses, from 13,825 to 7,000. **Therefore, this submission takes a burden decrease of 1,365 hours as an administrative adjustment.**
- The USPTO estimates that the number of Disclaimers submitted per year will increase by 60,473, from 15,000 to 75,473. **Therefore, this submission takes a burden increase of 12,095 hours as an administrative adjustment.**
- The USPTO estimates that the number of Requests for Expedited Examination of a Design Application submitted per year will increase by 93 responses, from 130 to 223. **Therefore, this submission takes a burden increase of 10 hours as an administrative adjustment.**
- The USPTO estimates that the number of Notices of Appeal submitted per year will increase by 27,730 responses, from 16,500 to 40,230. **Therefore, this submission takes a burden increase of 4,746 hours as an administrative adjustment.**
- The USPTO estimates that the number of Petitions for Revival of an Application for Patent Abandoned Unavoidably submitted per year will decrease by 255 responses, from 585 to 330. **Therefore, this submission takes a burden decrease of 2,040 hours as an administrative adjustment.**
- The USPTO estimates that the number of Petitions for Revival of an Application for Patent Abandoned Unintentionally submitted per year will increase by 1,859 responses, from 6,950 to 8,809. **Therefore, this submission takes a burden increase of 1,859 hours as an administrative adjustment.**
- The USPTO estimates that the number of Petitions for Revival of an Application for Patent Abandoned for Failure to Notify the Office of a Foreign or International Filing submitted per year will decrease by 2,150 responses, from 2,400 to 250. **Therefore, this submission takes a burden decrease of 2,150 hours as an administrative adjustment.**
- The USPTO estimates that the number of Requests to Access, Copy and Inspect submitted per year will increase by 111,350 responses, from 18,650 to 130,000. **Therefore, this submission takes a burden increase of 22,270 hours as an administrative adjustment.**

- The USPTO estimates that the number of Deposit Account Order Forms submitted per year will decrease by 1,060 responses, from 1,160 to 100. **Therefore, this submission takes a burden decrease of 212 hours as an administrative adjustment.**
- The USPTO estimates that the number of Certificates of Mailing/Transmission submitted per year will increase by 410,000 responses, from 590,000 to 1,000,000. **Therefore, this submission takes a burden increase of 12,300 hours as an administrative adjustment.**
- The USPTO estimates that the number of Statements under 37 CFR 3.73(b) submitted per year will increase by 130,550 responses, from 19,450 to 150,000. **Therefore, this submission takes a burden increase of 26,110 hours as an administrative adjustment.**
- The USPTO estimates that the number of Non-Publication Requests submitted per year will decrease by 8,500 responses, from 31,500 to 23,000. **Therefore, this submission takes a burden decrease of 850 hours as an administrative adjustment.**
- The USPTO estimates that the number of Recissions of Previous Non-publication Requests (35 U.S.C. § 122(b)(2)(B)(ii) and, if applicable, Notice of Foreign Filing (35 U.S.C. § 122(b)(2)(B)(iii) submitted per year will increase by 575 responses, from 525 to 1,100. **Therefore, this submission takes a burden increase of 57 hours as an administrative adjustment.**
- The USPTO estimates that the number of Electronic Filing System (EFS) Copies of Application for Publication submitted per year will decrease by 999 responses, from 1,000 to 1. **Therefore, this submission takes a burden decrease of 2,497 hours as an administrative adjustment.**
- The USPTO estimates that the number of Copies of File Content Showing Redactions submitted per year will decrease by 11 responses, from 12 to 1. **Therefore, this submission takes a burden decrease of 44 hours as an administrative adjustment.**
- The USPTO estimates that the number of Copies of Applicant or Patentee's Record of the Application submitted per year will decrease by 215 responses, from 235 to 20. **Therefore, this submission takes a burden decrease of 195 hours as an administrative adjustment.**
- The USPTO estimates that the number of Requests for Continued Examination (RCE) Transmittals submitted per year will increase by 101,164 responses, from 56,000 to 157,164. **Therefore, this submission takes a burden increase of 20,233 hours as an administrative adjustment.**

- The USPTO estimates that the number of Requests for Oral Hearing Before the Patent Trial and Appeal Board submitted per year will increase by 771 responses, from 750 to 1,521. **Therefore, this submission takes a burden increase of 154 hours as an administrative adjustment.**
- The USPTO estimates that the number of Requests for Suspension of Action or Deferral of Examination Under 37 CFR 1.103(b), (c), or (d) submitted per year will increase by 547 responses, from 53 to 600. **Therefore, this submission takes a burden increase of 109 hours as an administrative adjustment.**
- The USPTO estimates that the number of Requests for Voluntary Publication or Republication (includes publication fee for republication) submitted per year will decrease by 567 responses, from 1,400 to 833. **Therefore, this submission takes a burden decrease of 113 hours as an administrative adjustment.**
- The USPTO estimates that the number of Applicant Initiated Interview Request Forms submitted per year will increase by 400 responses, from 1,600 to 2,000. **Therefore, this submission takes a burden increase of 160 hours as an administrative adjustment.**
- The USPTO estimates that the number of Processing Fee Under 37 CFR 1.17(i) requests submitted per year will increase by 3,000 responses, from 500 to 3,500. **Therefore, this submission takes a burden increase of 240 hours as an administrative adjustment.**
- The USPTO estimates that the number of Requests to Retrieve Electronic Priority Application(s) Under 37 CFR 1.55(d) submitted per year will increase by 28,200 responses, from 36,800 to 65,000. **Therefore, this submission takes a burden increase of 3,666 hours as an administrative adjustment.**
- The USPTO estimates that the number of Authorizations to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h) submitted per year will decrease by 1,000 responses, from 21,000 to 20,000. **Therefore, this submission takes a burden decrease of 100 hours as an administrative adjustment.**
- The USPTO estimates that the number of Petitions for Express Abandonment submitted per year will decrease by 900 responses, from 3,000 to 2,100. **Therefore, this submission takes a burden decrease of 180 hours as an administrative adjustment.**
- The USPTO estimates that the number of Pre-Appeal Brief Requests for Review submitted per year will increase by 12,600 responses, from 3,200 to 15,800. Also, the time it takes to complete this requirement has increased from 30 minutes (0.50 hours) to 5 hours. **Therefore, this submission takes a burden increase of 77,400 hours as an administrative adjustment.**

- The USPTO estimates that the number of Requests for Corrected Filing Receipts submitted per year will decrease by 3,050 responses, from 27,050 to 24,000. **Therefore, this submission takes a burden decrease of 244 hours as an administrative adjustment.**
- The USPTO estimates that the number of Requests for First Action Interview Forms submitted per year will increase by 500 responses, from 1,000 to 1,500. **Therefore, this submission takes a burden increase of 1,250 hours as an administrative adjustment.**
- The USPTO estimates that the number of Petitions to Make Special Based on Age for Advancement of Examination under 37 CFR 1.102(c)(1) submitted per year will increase by 400 responses, from 1,900 to 2,300. **Therefore, this submission takes a burden increase of 800 hours as an administrative adjustment.**

Program changes:

- The Information Disclosure Citation in a Patent has been moved out of this collection into a separate new collection. **Therefore, this submission takes a burden decrease of 3,660 hours as a program change.**
- The Request for Processing of Replacement Drawings to Include the Drawings in any Patent Application Publication is being deleted from this collection. The USPTO phased out these requests over the last several years due to IT upgrades. **Therefore, this submission takes a burden decrease of 50 hours as a program change.**
- The USPTO is separately accounting for the requirement Rule 1.130, 1.131, and 1.132 Affidavits or Declarations that was separated out from the Transmittal Form. The USPTO estimates that it will take 10 hours to complete this item and it will receive 50,000 responses per year. **Therefore, this submission takes a burden increase of 500,000 hours as a program change.**
- The USPTO is separately accounting for the requirement Amendments and Responses that was separated out from the Transmittal Form. The USPTO estimates that it will take 8 hours to complete this item and it will receive 960,000 responses per year. **Therefore, this submission takes a burden increase of 7,680,000 hours as a program change.**
- A new requirement is being added into the collection entitled "Filing a Submission After Final Rejection (See 37 CFR 1.129(a))" in connection with the Leahy-Smith America Invents Act (AIA) Section 10 Patent Fee Adjustments Rule, RIN 0651-0054. The USPTO estimates that it will take 8 hours to complete this requirement and that it will receive 93 responses per year. **Therefore, this submission takes a burden increase of 744 hours as a program change.**

Administrative adjustments: increase of 925,532 burden hours
Program changes: increase of 8,177,034 burden hours

Total net burden hour increase: 9,102,566 hours

Changes in Annual (non-hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will increase by \$225,349,728, from \$145,375,747 currently on the OMB inventory to the present \$370,725,475 for the renewal. The increase in costs is due to adjustments in responses and response times, the addition of new requirements into the collection, and an adjustment for the current postage fees and filing fees. The USPTO has also eliminated the recordkeeping costs. **Therefore, the cost burden increase of \$204,050,340 due to administrative adjustments and \$21,299,388 due to program changes yield a total increase in annual (non-hour) cost burden of \$225,349,728 for the collection.**

16. Project Schedule

There is no plan to publish this information for statistical use.

17. Display of Expiration Date of OMB Approval

The forms in this information collection will display the OMB Control Number and the expiration date of OMB approval.

18. Exception to the Certificate Statement

This collection of information does not include any exceptions to the certificate statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.