NON-RESPONSIVE [redacted]

From: Fraser, Nicholas A.
Sent: Thursday, May 09, 2013 3:57 PM
To: Fawcett, Susan
Subject: RE: I forgot to ask you

Ok, thanks for checking.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, May 08, 2013 1:23 PM
To: Fraser, Nicholas A.
Subject: RE: I forgot to ask you

I've checked, and we have no documentation of the decision either.

In my recollection, (b) (5) [redacted] I don't recollect that the decision was specifically addressed by OMB (only perhaps by general acknowledgement of the inventory, through NOAs).

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, May 02, 2013 10:16 AM
To: Fawcett, Susan
Subject: RE: I forgot to ask you

Sure.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV] <mailto:[mailto:Susan.Fawcet@USPTO.GOV]>
Sent: Thursday, May 02, 2013 8:49 AM
To: Fraser, Nicholas A.
Subject: RE: I forgot to ask you

I will look and see, can I get back to you next week?

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, April 30, 2013 4:31 PM
To: Fawcett, Susan
Subject: RE: I forgot to ask you

Hi Susan,

Regarding 0031. I think we are about ready to conclude. I had one follow-up question. On the call we had earlier (b) (5) [redacted] Do you guys have anything? Thanks.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV] <mailto:[mailto:Susan.Fawcet@USPTO.GOV]>
Sent: Monday, April 29, 2013 3:29 PM
To: Fraser, Nicholas A.
Subject: RE: I forgot to ask you

The modified version is now in the docket.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Friday, April 26, 2013 2:23 PM
To: Fawcett, Susan
Subject: RE: I forgot to ask you

Ok. Please upload a clean version to the docket. I will open it for amendment.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV] <mailto:[mailto:Susan.Fawcet@USPTO.GOV]>
Sent: Friday, April 12, 2013 2:16 PM
To: Fraser, Nicholas A.
Subject: RE: I forgot to ask you

Sorry for the delay, see attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Friday, April 12, 2013 2:15 PM
To: Fawcett, Susan
Subject: I forgot to ask you

How is the modified supporting statement for 0031 coming along?

NON-RESPONSIVE

[redacted]

From: Fawcett, Susan [Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, March 26, 2013 11:17 AM
To: Fraser, Nicholas A.
Subject: RE: 0031

http://www.uspto.gov/web/forms/sb0021.pdf

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, March 26, 2013 11:00 AM
To: Fawcett, Susan
Subject: RE: 0031

Hi Susan, I seem to have misplaced your number. I am here though so feel free to call whenever you are ready. 202-395-5887

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV] <mailto:[mailto:Susan.Fawcet@USPTO.GOV]>
Sent: Monday, March 25, 2013 11:04 AM
To: Fraser, Nicholas A.
Subject: RE: 0031

Yes, thanks.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]

Sent: Monday, March 25, 2013 10:57 AM
To: Fawcett, Susan
Subject: RE: 0031

Tomorrow at 11 work?

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV] <mailto:[mailto:Susan.Fawcet@USPTO.GOV]>
Sent: Friday, March 22, 2013 8:04 AM
To: Fraser, Nicholas A.
Subject: RE: 0031

Early next week would be better for me. Thanks.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, March 21, 2013 5:01 PM
To: Fawcett, Susan
Subject: RE: 0031

I'm still not quite clear on this. Let's have a chat. Tomorrow is rather flexible for me in the afternoon. Or we can try for next week.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV] <mailto:[mailto:Susan.Fawcet@USPTO.GOV]>
Sent: Thursday, March 21, 2013 12:45 PM
To: Fraser, Nicholas A.
Subject: RE: 0031

They are neither new nor moved from another collection. (b) (5) [redacted]

The Transmittal form is a form that is sent along with the submission for several papers/items: Affidavits/Declarations, Amendments/Replies, Extensions of Time, etc.

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, March 20, 2013 2:49 PM
To: Fawcett, Susan
Subject: 0031

Hi Susan,

Can you elaborate more on what these (b) (5) [redacted] It isn't clear. Thanks. -Nick

(b) (5) [redacted]

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	Recission 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 Uner 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
Recission 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	Recission 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)

Document ID: 0.7.991.5197

From: Richard Belzer <regcheck@mac.com>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Bcc:
Subject: ICR 0651-0031
Date: Sat Feb 23 2013 18:06:55 EST
Attachments:

Dear Nick,

ICR 0651-0031 is under review with a nominal deadline of ~ February 28. I intend to file extensive comments.

However, I am hard-pressed to complete them by February 28 because of the March 16th deadline for filing patent applications under the pre-AIA rules. As I'm sure you know, every inventor and patent lawyer in America is crashing to get their applications in before this deadline. While my clients care a lot about the ICR, it necessarily must take a back seat for now.

Therefore, I would very much appreciate the courtesy of postponing action for a few weeks. A continuation of the current approval should be sufficient for the PTO's legitimate needs. Nothing in this ICR is AIA-related, so there is nothing that the PTO must have in order to enforce AIA-related rules that come into effect after March 16.

Once the dust settles and I am able to submit my comments, I will want to follow up with a formal meeting with you and Alex.

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

Document ID: 0.7.991.5196

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc:
Bcc:
Subject: RE: ICR 0651-0031
Date: Thu Feb 28 2013 14:44:48 EST
Attachments:

Im (b) (5) [redacted]

[redacted]

[redacted]

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Saturday, February 23, 2013 6:07 PM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: ICR 0651-0031

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Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5198

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc:
Bcc:
Subject: RE: ICR 0651-0031
Date: Thu Feb 28 2013 15:05:48 EST
Attachments:

Let's chat.

From: Fraser, Nicholas A.
Sent: Thursday, February 28, 2013 2:45 PM
To: Hunt, Alex; Mancini, Dominic J.
Subject: RE: ICR 0651-0031

Im (b) (5) [redacted]

[redacted]

[redacted]

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Saturday, February 23, 2013 6:07 PM
To: Fraser, Nicholas A.

Cc: Hunt, Alex; Mancini, Dominic J.
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Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5199

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc:
Bcc:
Subject: FW: ICR 0651-0031
Date: Fri Mar 01 2013 09:36:50 EST
Attachments:

Dom – Any issue with (b) (5) [redacted]

Thanks.

From: Fraser, Nicholas A.
Sent: Thursday, February 28, 2013 2:45 PM
To: Hunt, Alex; Mancini, Dominic J.
Subject: RE: ICR 0651-0031

Im (b) (5) [redacted]

[redacted]

[redacted]

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Saturday, February 23, 2013 6:07 PM
To: Fraser, Nicholas A.

Cc: Hunt, Alex; Mancini, Dominic J.
Subject: ICR 0651-0031

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Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5201

From: Kevin Greenleaf <kgreenleaf@slwip.com>
To: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc: McEwen, James SIK <james.mcewen@sikorsky.com>
Bcc:
Subject: RE: Are you willing to send an email of this form?
Date: Mon Mar 04 2013 11:12:02 EST
Attachments:

Dear Mr. Mancini –

James McEwen and I are the co-chairs of the American Bar Association's committee on Patent System Planning Policy.

We (writing today in our individual capacities, not for the ABA) would like the opportunity to comment on the PTO's currently-pending request for clearance of control number 0651-0031, Patent Processing (Updating), ICR reference number 201301-0651-002. Last Friday (March 1) was the last day of the public's 30-day comment period, and OMB's decision is not required before the end of March. However, because of a change in the patent law that goes into effect on March 16, our members are fully engaged in meeting deadlines to get patent rights under the old law. We request that you not render an early decision on the PTO's request, to give us time to evaluate the PTO's request and submit our comments.

The Patent Office has requested comments on two related aspects of patent procedure, with comment periods ending throughout March. We expect to be able to retune those comments to address Paperwork Reduction Act issues by the end of March, perhaps the ABA approval process may push us into early April.

Best regards,

Kevin Greenleaf and James McEwen

Kevin Greenleaf
Patent Attorney

Schwegman, Lundberg & Woessner, P.A.
1600 TCF Tower ■ 121 South Eighth Street ■ Minneapolis, MN 55402
tel (612) 349-9591 ■ cell (916) 838-0291

website | bio | vCard | My LinkedIn | map | email | Facebook | Twitter | RSS

Document ID: 0.7.991.5200

From: Kevin Greenleaf <kgreenleaf@slwip.com>
To: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc: McEwen, James SIK <james.mcewen@sikorsky.com>
Bcc:
Subject: Clearance of Control Number 0651-0031 - Patent Processing (Updating)
Date: Mon Mar 04 2013 11:24:21 EST
Attachments:

Dear Mr. Mancini –

James McEwen and I are the co-chairs of the American Bar Association's committee on Patent System Planning Policy.

We (writing today in our individual capacities, not for the ABA) would like the opportunity to comment on the PTO's currently-pending request for clearance of control number 0651-0031, Patent Processing (Updating), ICR reference number 201301-0651-002. Last Friday (March 1) was the last day of the public's 30-day comment period, and OMB's decision is not required before the end of March. However, because of a change in the patent law that goes into effect on March 16, our members are fully engaged in meeting deadlines to get patent rights under the old law. We request that you not render an early decision on the PTO's request, to give us time to evaluate the PTO's request and submit our comments.

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tel (612) 349-9591 ■ cell (916) 838-0291

website | bio | vCard | My LinkedIn | map | email | Facebook | Twitter | RSS

Document ID: 0.7.991.5202

From: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: FW: Clearance of Control Number 0651-0031 - Patent Processing (Updating)
Date: Mon Mar 04 2013 11:25:48 EST
Attachments:

From: Kevin Greenleaf [mailto:KGreenleaf@slwip.com]
Sent: Monday, March 04, 2013 11:24 AM
To: Mancini, Dominic J.
Cc: McEwen, James SIK
Subject: Clearance of Control Number 0651-0031 - Patent Processing (Updating)
Importance: Low

Dear Mr. Mancini –

James McEwen and I are the co-chairs of the American Bar Association's committee on Patent System Planning Policy.

We (writing today in our individual capacities, not for the ABA) would like the opportunity to comment on the PTO's currently-pending request for clearance of control number 0651-0031, Patent Processing (Updating), ICR reference number 201301-0651-002. Last Friday (March 1) was the last day of the public's 30-day comment period, and OMB's decision is not required before the end of March. However, because of a change in the patent law that goes into effect on March 16, our members are fully engaged in meeting deadlines to get patent rights under the old law. We request that you not render an early decision on the PTO's request, to give us time to evaluate the PTO's request and submit our comments.

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Best regards,

Kevin Greenleaf and James McEwen

Kevin Greenleaf
Patent Attorney

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1600 TCF Tower ■ 121 South Eighth Street ■ Minneapolis, MN 55402
tel (612) 349-9591 ■ cell (916) 838-0291

---

website | bio | vCard | My LinkedIn | map | email | Facebook | Twitter | RSS

Document ID: 0.7.991.5203

From: Richard Belzer <regcheck@mac.com>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Bcc:
Subject: ICR 0651-0031
Date: Wed Mar 13 2013 10:13:38 EDT
Attachments:

Nick,

I'd like to schedule an appointment to discus this ICR and its supporting statement prior to the submission of my comments. Please let me know what would be a convenient day and time.

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

Document ID: 0.7.991.5206

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Richard Belzer <regcheck@mac.com>
Cc:
Bcc:
Subject: RE: ICR 0651-0031
Date: Fri Mar 15 2013 13:39:18 EDT
Attachments:

Hi Rich,

Next Wednesday afternoon is relatively free for me. Sometime from 2-4pm.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Wednesday, March 13, 2013 10:14 AM
To: Fraser, Nicholas A.
Cc: Hunt, Alex
Subject: ICR 0651-0031

Nick,

I'd like to schedule an appointment to discus this ICR and its supporting statement prior to the submission of my comments. Please let me know what would be a convenient day and time.

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5207

From: Richard Belzer <regcheck@mac.com>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: Re: ICR 0651-0031
Date: Fri Mar 15 2013 14:40:59 EDT
Attachments:

Wednesday at 2:00 pm is fine. Is your office still in the NW corner of the rabbit warren?

DOB (b) (6)
SSN (b) (6)

RBB

On Mar 15, 2013, at 1:39 PM, "Fraser, Nicholas A." <Nicholas_A._Fraser@omb.eop.gov> wrote:

Hi Rich,

Next Wednesday afternoon is relatively free for me. Sometime from 2-4pm.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Wednesday, March 13, 2013 10:14 AM
To: Fraser, Nicholas A.
Cc: Hunt, Alex
Subject: ICR 0651-0031

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Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

Document ID: 0.7.991.5208

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Richard Belzer <regcheck@mac.com>
Cc:
Bcc:
Subject: RE: ICR 0651-0031
Date: Mon Mar 18 2013 13:58:37 EDT
Attachments: WAVES clearance template.xls

Slight process improvement.. Please fill out the attached excel so we can clear you in. I'll figure a room.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 15, 2013 2:41 PM
To: Fraser, Nicholas A.
Subject: Re: ICR 0651-0031

Wednesday at 2:00 pm is fine. Is your office still in the NW corner of the rabbit warren?

DOB (b) (6)

SSN (b) (6)

RBB

On Mar 15, 2013, at 1:39 PM, "Fraser, Nicholas A." <Nicholas_A._Fraser@omb.eop.gov> wrote:

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Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Last_Name	First_Name	Middle_Name	DOB	SSN	Citizen	Country	Gender	City	State

Note: 250 visitor's is the maximum allowed.

WavesRequest System (WRS) Excel Template
Version:**1.8.9**
Last Updated: 19 March 2011

WRSInstructions:
1. The WRS Excel template must be saved as **Excel 97-2003 Workbook**
2. The WRS Excel template file must end with **.xls** (not .xlsx)
3. **The header row must remain in place and unchanged**
4. The **Visitors worksheet name must remain unchanged** (do not rename the worksheet)
5. The maximum number of visitors per appointment is **250**
6. Do not use any periods, apostrophes or other special characters

Tips:
Pasting data from other spreadsheets may cause errors. Be sure to check that your data has been pasted into the correct columns and that numbers are not missing (example: pasting an SSN starting with a zero may result in the zero being dropped which would result in an error). Use the Format Cells feature to fix any problem data cells prior to loading the file into WRS (example: set the SSN column to 'TEXT' to ensure you keep any leading zeros in the SSN)

Data Fields
1. **Last_Name:** Use letters only (no numbers or special characters). Max characters is 20
2. **First_Name:** User letters only (no numbers or special characters). Max characters is 20

3. **Middle_Name:** Provide the full middle name. Use letters only (no numbers or special characters). Max characters is 20
4. **DOB:** DOB format is MM/DD/YYYY (no letters)
5. **SSN:** SSN is required for all U.S. Citizens over the age of 18. Foreign Nationals may leave the SSN blank. (no letters or special characters) Do not use any dashes in the SSN
6. **Citizen:** Select Y for YES or N for NO to indicate if the visitor is or is not a U.S. Citizen
7. **Country:** Country of Birth. Use the **Countries** worksheet to find the Country Code for the Country of Birth for the visitor. You must use the country codes provided in the 'Countries' worksheet. Select the code from the drop-down list.
8. **Gender:** Select M for Male or F for Female
9. **City:** City of Residence - For visitors who reside in the United States enter the primary city of residence. For visitors who reside outside of the United States enter the city where they are residing during their visit. (no numbers or special characters)
10. **State:** State of Residence - For visitors who reside in the United States enter the primary state of residence. For visitors who reside outside of the United States enter the state where they are residing during their visit. Use the **States** worksheet to locate the appropriate two-letter State Code. Select the code from the drop-down list.

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 41 (Attachment 1 of 1)

AL	AF	AFGHANISTAN
AK	AL	ALBANIA
AM	DZ	ALGERIA
AZ	YY	ALL OTHERS
AR	AS	AMERICAN SAMOA
BK	AD	ANDORRA
CA	AO	ANGOLA
CZ	AI	ANGUILLA
CG	AQ	ANTARCTICA
CO	AG	ANTIGUA AND BARBUDA
CT	AR	ARGENTINA
DE	AM	ARMENIA
DC	AW	ARUBA
FL	AU	AUSTRALIA
GA	AT	AUSTRIA
GM	AZ	AZERBAIJAN
HI	BS	BAHAMAS
HO	BH	BAHRAIN
ID	BD	BANGLADESH
IL	BB	BARBADOS
IN	BY	BELARUS
IA	BE	BELGIUM
JR	BZ	BELIZE
JI	BJ	BENIN
KS	BM	BERMUDA
KY	BT	BHUTAN
KI	BO	BOLIVIA
LA	BA	BOSNIA AND HERZEGOWINA
ME	BW	BOTSWANA
MK	BV	BOUVET ISLAND
MH	BR	BRAZIL
MD	IO	BRITISH INDIAN OCEAN TERRITORY
MA	BN	BRUNEI DARUSSALAM
MI	BG	BULGARIA
MW	BF	BURKINA FASO
MN	BI	BURUNDI
MS	KH	CAMBODIA
MO	CM	CAMEROON
MT	CA	CANADA
VL	CV	CAPE VERDE
NB	KY	CAYMAN ISLANDS
NV	CF	CENTRAL AFRICAN REPUBLIC
NH	TD	CHAD
NJ	CL	CHILE
NM	CN	CHINA
NY	CX	CHRISTMAS ISLAND
NC	CC	COCOS (KEELING) ISLANDS
ND	CO	COLOMBIA
MK	KM	COMOROS
OH	CG	CONGO

OK	CD	CONGO, THE DRC
OR	CK	COOK ISLANDS
PL	CR	COSTA RICA
PA	CI	COTE D'IVOIRE
PR	HR	CROATIA (local name: Hrvatska)
RI	CU	CUBA
SC	CY	CYPRUS
SD	CZ	CZECH REPUBLIC
TN	DK	DENMARK
TX	DJ	DJIBOUTI
UT	DM	DOMINICA
VT	DO	DOMINICAN REPUBLIC
VI	TP	EAST TIMOR
VA	EC	ECUADOR
WK	EG	EGYPT
WA	SV	EL SALVADOR
WV	GQ	EQUATORIAL GUINEA
WI	ER	ERITREA
WY	EE	ESTONIA
	ET	ETHIOPIA
	FK	FALKLAND ISLANDS (MALVINAS)
	FO	FAROE ISLANDS
	FJ	FIJI
	FI	FINLAND
	FR	FRANCE
	FX	FRANCE, METROPOLITAN
	GF	FRENCH GUIANA
	PF	FRENCH POLYNESIA
	TF	FRENCH SOUTHERN TERRITORIES
	GA	GABON
	GM	GAMBIA
	GE	GEORGIA
	DE	GERMANY
	GH	GHANA
	GI	GIBRALTAR
	GR	GREECE
	GL	GREENLAND
	GD	GRENADA
	GP	GUADELOUPE
	GU	GUAM
	GT	GUATEMALA
	GN	GUINEA
	GW	GUINEA-BISSAU
	GY	GUYANA
	HT	HAITI
	HM	HEARD AND MC DONALD ISLANDS
	VA	HOLY SEE (VATICAN CITY STATE)
	HN	HONDURAS
	HK	HONG KONG
	HU	HUNGARY

IS	ICELAND
IN	INDIA
ID	INDONESIA
IR	IRAN (ISLAMIC REPUBLIC OF)
IQ	IRAQ
IE	IRELAND
IL	ISRAEL
IT	ITALY
JM	JAMAICA
JP	JAPAN
JO	JORDAN
KZ	KAZAKHSTAN
KE	KENYA
KI	KIRIBATI
KP	KOREA, D.P.R.O.
KR	KOREA, REPUBLIC OF
KW	KUWAIT
KG	KYRGYZSTAN
LA	LAOS
LV	LATVIA
LB	LEBANON
LS	LESOTHO
LR	LIBERIA
LY	LIBYAN ARAB JAMAHIRIYA
LI	LIECHTENSTEIN
LT	LITHUANIA
LU	LUXEMBOURG
MO	MACAU
MK	MACEDONIA
MG	MADAGASCAR
MW	MALAWI
MY	MALAYSIA
MV	MALDIVES
ML	MALI
MT	MALTA
MH	MARSHALL ISLANDS
MQ	MARTINIQUE
MR	MAURITANIA
MU	MAURITIUS
YT	MAYOTTE
MX	MEXICO
FM	MICRONESIA, FEDERATED STATES OF
MD	MOLDOVA, REPUBLIC OF
MC	MONACO
MN	MONGOLIA
MS	MONTSERRAT
MA	MOROCCO
MZ	MOZAMBIQUE
MM	MYANMAR (Burma)
NA	NAMIBIA

NR	NAURU
NP	NEPAL
NL	NETHERLANDS
AN	NETHERLANDS ANTILLES
NC	NEW CALEDONIA
NZ	NEW ZEALAND
NI	NICARAGUA
NE	NIGER
NG	NIGERIA
NU	NIUE
NF	NORFOLK ISLAND
MP	NORTHERN MARIANA ISLANDS
NO	NORWAY
OM	OMAN
PK	PAKISTAN
PW	PALAU
PA	PANAMA
PG	PAPUA NEW GUINEA
PY	PARAGUAY
PE	PERU
PH	PHILIPPINES
PN	PITCAIRN
PL	POLAND
PT	PORTUGAL
PR	PUERTO RICO
QA	QATAR
RE	REUNION
RO	ROMANIA
RU	RUSSIAN FEDERATION
RW	RWANDA
KN	SAINT KITTS AND NEVIS
LC	SAINT LUCIA
VC	SAINT VINCENT AND THE GRENADINES
WS	SAMOA
SM	SAN MARINO
ST	SAO TOME AND PRINCIPE
SA	SAUDI ARABIA
SN	SENEGAL
SC	SEYCHELLES
SL	SIERRA LEONE
SG	SINGAPORE
SK	SLOVAKIA (Slovak Republic)
SI	SLOVENIA
SB	SOLOMON ISLANDS
SO	SOMALIA
ZA	SOUTH AFRICA
GS	SOUTH GEORGIA AND SOUTH S.S.
ES	SPAIN
LK	SRI LANKA
SH	ST. HELENA

PM	ST. PIERRE AND MIQUELON
SD	SUDAN
SR	SURINAME
SJ	SVALBARD AND JAN MAYEN ISLANDS
SZ	SWAZILAND
SE	SWEDEN
CH	SWITZERLAND
SY	SYRIAN ARAB REPUBLIC
TW	TAIWAN, PROVINCE OF CHINA
TJ	TAJIKISTAN
TZ	TANZANIA, UNITED REPUBLIC OF
TH	THAILAND
TG	TOGO
TK	TOKELAU
TO	TONGA
TT	TRINIDAD AND TOBAGO
TN	TUNISIA
TR	TURKEY
TM	TURKMENISTAN
TC	TURKS AND CAICOS ISLANDS
TV	TUVALU
UG	UGANDA
UA	UKRAINE
AE	UNITED ARAB EMIRATES
GB	UNITED KINGDOM
US	UNITED STATES
UM	U.S. MINOR ISLANDS
UY	URUGUAY
XX	UNKNOWN PLACE OF BIRTH
UZ	UZBEKISTAN
VU	VANUATU
VE	VENEZUELA
VN	VIET NAM
VG	VIRGIN ISLANDS (BRITISH)
VI	VIRGIN ISLANDS (U.S.)
WF	WALLIS AND FUTUNA ISLANDS
EH	WESTERN SAHARA
YE	YEMEN
YU	YUGOSLAVIA (Serbia and Montenegro)
ZM	ZAMBIA
ZW	ZIMBABWE

US	UNITED STATES OF AMERICA
AA	ALBANIA
AD	ANDORRA
AE	ANGUILLA (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
AF	AFGHANISTAN
AH	ASHMORE & CARTIER ISLANDS, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)
AI	ANTIGUA AND BARBUDA
AJ	ARUBA
AN	ALGERIA
AO	ANGOLA
AP	ARMENIA
AQ	AZORES ISLANDS
AS	AUSTRALIA
AT	ARGENTINA
AU	AUSTRIA
AV	AZERBAIJAN
AW	SAINT KITTS-NEVIS-ANGUILLA
BB	BARBADOS
BD	BAHAMAS
BE	BAHRAIN/BAHREIN
BF	BASSAS DA INDIA (FRENCH POSSESSION)
BG	BELGIUM
BH	BELIZE
BI	BURUNDI
BL	BANGLADESH
BM	BERMUDA, DEPENDENT TERRITORY OF
BN	BHUTAN
BO	BRITISH INDIAN OCEAN TERRITORY (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
BP	BOSNIA AND HERZEGOVINA
BQ	BOUVET ISLAND (NORWEGIAN TERRITORY)
BR	BURMA
BS	SOLOMON ISLANDS
BT	BOTSWANA
BU	BULGARIA
BV	BOLIVIA
BX	BRUNEI
BY	BYELARUS
BZ	BRAZIL
CB	COLOMBIA, REPUBLIC OF
CC	CUBA, REPUBLIC OF
CD	CANADA
CF	CHAD
CG	CAROLINE ISLANDS (Federated States of Micronesia)
CJ	CAMBODIA
CM	CAMEROON
CP	CAYMAN ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
CQ	CHILE, REPUBLIC OF
CR	COSTA RICA, REPUBLIC OF
CS	CYPRUS, REPUBLIC OF
CV	CAPE VERDE ISLANDS
CW	CENTRAL AFRICAN REPUBLIC
CY	SRI LANKA

CZ	CANAL ZONE
DB	CLIPPERTON ISLAND (FRENCH POSSESSION)
DD	COCOS (KEELING) ISLANDS, TERRITORY OF (AUSTRLIAN TERRITORY)
DG	COMOROS, FEDERAL ISLAMIC REPUBLIC OF THE
DH	BENIN
DI	COOK ISLANDS
DJ	CORAL SEA ISLANDS, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)
DK	DENMARK, KINGDOM OF
DM	DOMINICA
DN	DJIBOUTI, REPUBLIC OF
DR	DOMINICAN REPUBLIC
EK	EQUATORIAL GUINEA
EL	EL SALVADOR
EN	ENGLAND (UNITED KINGDOM)
EO	ETHIOPIA
ER	EUROPA ISLAND (FRENCH POSSESSION)
ES	ESTONIA
ET	ERITREA
EU	ECUADOR
EY	EGYPT
EZ	CZECH REPUBLIC
FA	FALKLAND ISLANDS, COLONY OF THE (ISLAS MALVINAS)
FD	FINLAND
FG	FRENCH GUIANA (DEPARTMENT OF GUIANA)
FJ	FIJI
FN	FRANCE
FO	FAROE ISLANDS
FP	FRENCH POLYNESIA, TERRITORY OF (FRENCH OVERSEAS TERRITORY)
FR	FRENCH SOUTHERN AND ANTARTIC ISLANDS, TERRITORY OF THE (FRENCH OVERSEAS TERRITORY)
FS	FEDERATED STATES OF MICRONESIA (FORMERLY KNOWN AS CAROLINE ISLANDS)
GB	GABON
GC	GREECE
GD	GEORGIA (FORMERLY GRUZINSKAYA)
GE	GERMANY
GF	GUERNSEY, BAILIWICK OF (BRITISH CROWN DEPENDENCY)
GG	GHANA
GI	GUINEA
GJ	GRENADA
GK	GAMBIA, THE
GN	GREENLAND
GO	GLORIOSO ISLANDS (FRENCH POSSESSION)
GP	GUADELOUPE, DEPARTMENT OF
GS	SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS
GT	GUATEMALA
GY	GUYANA
GZ	GAZA
HD	HONDURAS
HE	HEARD ISLAND AND MCDONALD ISLANDS, TERRITORY OF (AUSTRALIAN ESTERNAL TERRITORY)
HK	HONG KONG
HN	VANUATU, REPUBLIC OF
HR	CHRISTMAS ISLAND, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)

HS	SAINT HELENA (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
HT	HAITI
HU	HUNGARY
IB	ISLE OF MAN
IC	ICELAND
IE	IRELAND (DOES NOT INCLUDE NORTHERN IRELAND)
II	INDIA (SIKKIM)
IM	MADEIRA ISLANDS
IO	INDONESIA (NOW INCLUDES PORTUGUESE TIMOR)
IQ	IRAQ
IR	IRAN
IS	ISRAEL
IT	ITALY (INCLUDES SICILY AND SARDINIA)
IU	NIUE
IY	COTE D'IVOIRE (IVORY COAST)
JA	JAPAN
JE	JERSEY, BAILIWICK OF (BRITISH CROWN DEPENDENCY)
JM	JAMAICA
JN	JAN MAYEN (NORWEGIAN TERRITORY)
JO	JORDAN
JU	JUAN DE NOVA ISLAND
KB	KIRIBATI
KC	CROATIA
KE	KENYA
KH	MANAHIKI ISLAND
KN	NORTH KOREA
KO	SOUTH KOREA
KT	KAZAKHSTAN
KU	KUWAIT
KZ	KYRGYZSTAN
LB	LIBERIA
LD	MOLDOVA
LE	LESOTHO
LF	SLOVAKIA
LH	LITHUANIA
LI	LIECHTENSTEIN
LN	LEBANON
LO	SLOVENIA
LS	LAOS
LT	LATVIA
LU	SAINT LUCIA
LX	LUXEMBOURG
LY	LIBYA
MB	MANITOBA
MF	MALAWI
MG	MONGOLIA
MJ	MONACO
ML	MALI
MM	MEXICO
MP	MALAGASY REPUBLIC
MQ	MOROCCO
MU	MAURITANIA
MV	MALDIVES

MY	MALTA
MZ	MALAYSIA
NE	NETHERLANDS (HOLLAND)
NG	NIGERIA
NI	NORTHERN IRELAND (UNITED KINGDOM)
NN	NIGER
NO	PAPUA NEW GUINEA
NP	NEPAL
NQ	NEW CALEDONIA AND DEPENDENCIES, TERRITORY OF (FRENCH OVERSEAS TERRITORY)
NR	NAURU
NU	NICARAGUA
NW	NORWAY
NX	NETHERLANDS ANTILLES
NZ	NEW ZEALAND
OC	MACAU
OF	NORFOLD ISLAND, TERRITORY OF (AUSTRAILIAN EXTERNAL TERRITORY)
OI	OKINAWA (JAPAN)
OM	OMAN
PC	PITCAIRN, HENDERSON, DUCIE, AND OENO ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
PD	PALAU, REPUBLIC OF
PF	PARACEL ISLANDS
PG	GUINEA-BISSAU
PI	PHILIPINES
PK	PAKISTAN
PM	PANAMA
PO	POLAND
PS	SAINT PIERRE AND MIQUELON, TERRITORIAL COLLECTIVITY OF
PT	PORTUGAL
PU	PERU
PV	PARAGUAY
QA	QATAR
RA	RUSSIA
RB	REPUBLIC OF CONGO, BRAZZAVILLE
RC	PEOPLE'S REPUBLIC OF CHINA
RE	REUNION, DEPARTMENT OF
RF	RUSSIAN FEDERATION
RG	GIBRALTAR (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
RH	ZIMBABWE, REPUBLIC OF
RR	MONTSERRAT (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
RS	WESTERN SAHARA, INDEPENDENT STATE OF
RU	ROMANIA/RUMANIA
RV	SOCIALIST REPUBLIC OF VIETNAM
RW	RWANDA
RY	REPUBLIC OF YEMEN
SA	SIERRA LEONE/SIERRE LEONE
SB	SAUDI ARABIA
SE	SEYCHELLES
SF	SOUTH AFRICA
SG	SENEGAL
SH	SAN MARINO
SJ	NAMIBIA (SOUTH-WEST AFRICA)
SM	SOMALIA

SP	SPAIN
SQ	SWEDEN
SR	SINGAPORE
SS	SCOTLAND
SU	SUDAN
SW	SWAZILAND
SY	SYRIA
SZ	SWITZERLAND
TC	UNITED ARAB EMIRATES
TD	TRUST TERRITORY OF THE PACIFIC ISLANDS
TE	SPRATLY ISLANDS
TF	TUAMOTU ARCHIPELAGO
TG	TONGA
TH	THAILAND
TJ	TAJIKSTAN
TO	TOGO
TP	SAO TOME AND PRINCIPE
TQ	TONGAREVA
TR	TURKS AND CALCOS ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
TS	NEVIS AND SAINT CHRISTOPHER (SAINT KITTS)
TT	TRINIDAD AND TOBAGO
TU	TUNISIA
TV	TUVALU
TW	TAIWAN, REPUBLIC OF CHINA
TY	TURKEY
TZ	TANZANIA, UNITED REPUBLIC OF
UG	UGANDA
UK	UKRAINE
UM	MAURITIUS
UR	TURKMENSTAN
UV	BURKINA FASO
UY	URUGUAY
UZ	UZBEKISTAN, REPUBLIC OF
VB	BRITISH VIRGIN ISLANDS
VV	SAINT VINCENT AND THE GRENADINES
VY	VATICAN CITY
VZ	VENEZUELA, REPUBLIC OF
WB	WEST BANK
WF	WALLIS AND FUTUNA, TERRITORY OF THE (FRENCH OVERSEAS TERRITORY)
WL	WALES
WN	WEST INDIES (FOR WEST INDIES ISLANDS NOT FOUND IN THIS LISTING)
WS	WESTERN SAMOA
YG	YUGOSLAVIA
YO	MAYOTTE, TERRITORIAL COLLECTIVITY OF
YY	ANY COUNTRY NOT LISTED
ZB	MARTINIQUE
ZC	SURINAME
ZD	MACEDONIA
ZI	CANARY ISLANDS
ZM	ZAMBIA, REPUBLIC OF
ZO	MOZAMBIQUE
ZR	ZAIRE, REPUBLIC OF

AL	Alabama
AK	Alaska
AM	American Samoa
AZ	Arizona
AR	Arkansas
BK	Baker Island
CA	California
CZ	Canal Zone
CG	Caroline Islands
CO	Colorado
CT	Connecticut
DE	Delaware
DC	District of Columbia
FL	Florida
GA	Georgia
GM	Guam
HI	Hawaii
HO	Howland Island
ID	Idaho
IL	Illinois
IN	Indiana
IA	Iowa
JR	Jarvis Island
JI	Johnston Island
KS	Kansas
KY	Kentucky
KI	Kingman Reef
LA	Louisiana
ME	Maine
MK	Mariana Islands
MH	MarshallIslands
MD	Maryland
MA	Massachusetts
MI	Michigan
MW	Midway Islands
MN	Minnesota
MS	Mississippi
MO	Missouri
MT	Montana
VL	Navassa Island
NB	Nebraska
NV	Nevada
NH	New Hampshire
NJ	New Jersey
NM	New Mexico
NY	New York
NC	North Carolina
ND	North Dakota
OH	Ohio
OK	Oklahoma
OR	Oregon
PL	Palmyra Atoll
PA	Pennsylvania

PR	Puerto Rico
RI	Rhode Island
SC	South Carolina
SD	South Dakota
TN	Tennessee
TX	Texas
UT	Utah
VT	Vermont
VI	U.S. Virgin Islands
VA	Virginia
WK	Wake Island
WA	Washington
WV	West Virginia
WI	Wisconsin
WY	Wyoming

Document ID: 0.7.991.5211

From: Richard Belzer <regcheck@mac.com>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Bcc:
Subject: ICR 0651-0031 comments
Date: Fri Mar 29 2013 10:03:53 EDT
Attachments:

Nick,

I expect to be sending my comments to you by noon today. I have been delayed a few days because I believe I have found a third IC in the collection that is an undisclosed prospective correction of a longstanding bootleg. I am running it to ground before I file.

Once these comments are in and you have had time to digest them, I would like to schedule a meeting with the three of you. My schedule next week is generally flexible except for Tuesday, when I am unavailable all day.

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

Document ID: 0.7.991.5213

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc:
Bcc:
Subject: FW: ICR 0651-0031 comments
Date: Fri Mar 29 2013 10:35:59 EDT
Attachments:

In my opinion (b) (5) [redacted]

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 10:04 AM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: ICR 0651-0031 comments

Nick,

I expect to be sending my comments to you by noon today. I have been delayed a few days because I believe I have found a third IC in the collection that is an undisclosed prospective correction of a longstanding bootleg. I am running it to ground before I file.

Once these comments are in and you have had time to digest them, I would like to schedule a meeting with the three of you. My schedule next week is generally flexible except for Tuesday, when I am unavailable all day.

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

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(b) (6) v

(b) (6) f

Document ID: 0.7.991.5214

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc:
Bcc:
Subject: RE: ICR 0651-0031 comments
Date: Fri Mar 29 2013 10:40:10 EDT
Attachments:

Agree.

From: Fraser, Nicholas A.
Sent: Friday, March 29, 2013 10:36 AM
To: Hunt, Alex; Mancini, Dominic J.
Subject: FW: ICR 0651-0031 comments

In my opinion I don't think we need a meeting with all of us and Belzer. I met with him once, understand his concern, and will take his comments into consideration.

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 10:04 AM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: ICR 0651-0031 comments

Nick,

I expect to be sending my comments to you by noon today. I have been delayed a few days because I believe I have found a third IC in the collection that is an undisclosed prospective correction of a longstanding bootleg. I am running it to ground before I file.

Once these comments are in and you have had time to digest them, I would like to schedule a meeting with the three of you. My schedule next week is generally flexible except for Tuesday, when I am unavailable all day.

Regards,

Richard B. Belzer, Ph.D.

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(b) (6) v

(b) (6) f

Document ID: 0.7.991.5215

From: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: ICR 0651-0031 comments
Date: Fri Mar 29 2013 11:25:12 EDT
Attachments:

Agree strongly: I would not take such a meeting.

From: Hunt, Alex
Sent: Friday, March 29, 2013 10:40 AM
To: Fraser, Nicholas A.; Mancini, Dominic J.
Subject: RE: ICR 0651-0031 comments

Agree.

From: Fraser, Nicholas A.
Sent: Friday, March 29, 2013 10:36 AM
To: Hunt, Alex; Mancini, Dominic J.
Subject: FW: ICR 0651-0031 comments

In my opinion I don't think we need a meeting with all of us and Belzer. I met with him once, understand his concern, and will take his comments into consideration.

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 10:04 AM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: ICR 0651-0031 comments

Nick,

I expect to be sending my comments to you by noon today. I have been delayed a few days because I believe I have found a third IC in the collection that is an undisclosed prospective correction of a longstanding bootleg. I am running it to ground before I file.

Once these comments are in and you have had time to digest them, I would like to schedule a meeting with the three of you. My schedule next week is generally flexible except for Tuesday, when I am unavailable all day.

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5217

From: Richard Belzer <regcheck@mac.com>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Bcc:
Subject: Belzer comments on ICR 0651-0031
Date: Fri Mar 29 2013 13:34:19 EDT
Attachments: 130329 Belzer Comments on 0651-0031.pdf

Nick et al,

Please see the attached PDF for my comments on the latest edition of ICR 0651-0031. I look forward to meeting with y'all to discuss them. As I indicated earlier today, my schedule is generally flexible.

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
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(b) (6) v
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RICHARD BURTON BELZER, PHD

(b) (6)

rbbelzer@post.harvard.edu

29 March 2013

Mr. Nicholas Fraser
Desk Officer, U.S. Patent and Trademark Office
Office of information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Subject: Comments to OIRA on ICR 0651-0031 ("Patent Processing (Updating)")

Dear Mr. Fraser,

This Information Collection Request (ICR) consists of 67 listed information collection items (ICs) with an agency estimated $370,725,475 non-burden hour costs and 11,972,191 burden-hours, the latter of which the agency says have a monetized value of $4,441,682,861. To put in perspective its magnitude, approved unchanged this ICR would comprise 29% of the total responses and 44% of the burden-hours for the entire U.S. Patent and Trademark Office (UPSTO), including trademarks. Among all the agencies within the U.S. Department of Commerce, the USPTO is currently responsible for 55% of its 18.3 million burden-hours and 99% of its acknowledged $5,300,000,000 in non-burden hour costs.[1]

Despite these extraordinary burdens, the Office of Information and Regulatory Affairs (OIRA) has historically devoted little staff time to USPTO oversight. This has persisted even though the public has devoted considerable time and effort to providing comments on a succession of 60-day Notices and 30-day Notices.[2]

In Section I, I show that the USPTO has committed multiple *procedural* violations of the Paperwork Reduction Act (PRA, 44 U.S.C. § 3506) and OMB's Information Collection Rule (5 C.F.R. §§ 1320.5-1320.12). Because these violations have been systematic and persistent, they are prima facie evidence of bad faith.

In Section II, I show that the USPTO has committed multiple *substantive* violations of the PRA and OMB's Information Collection Rule. Commenters have identified a number of paperwork burdens in this ICR that appear to be unreasonably duplicative or lack practical utility to the Office. Agencies are required to provide OIRA with "[a] summary of the public comments received…, including actions taken by the agency in response." 5 C.F.R. § 1320.5(a)(1)(iii)(F). The Supporting Statement

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[1] All calculations were derived by the author from data at www.reginfo.gov.

[2] The May 2012 public comment to USPTO from IEEE-USA, referenced in footnote 3, provides a helpful list (in footnote 32) of previous public comments on PRA notices and related matters.

accompanying the USPTO's submission is beneath pro forma. It summarizes comments incompletely, inaccurately characterizes the comments it mentions, dismisses these comments as irrelevant, and identifies no actions it has taken in response.

In Section III, I show that the USPTO has serially violated applicable Information Quality Guidelines. The Office has refused to even acknowledge, much less respond to, multiple error correction requests submitted on the 60-day Notice for this ICR. It responded in bad faith to a 2010 error correction request on ICR 0651-0032. Congress created OIRA to implement the PRA and delegated to it the primary responsibility of enforcing agency compliance. OIRA is responsible for upholding the law.

In Section IV, I show that this ICR submission includes, in well disguised form, prospective cures for several decades-long, unapproved information collections. At least two of these prospective cures are quite large. In particular, the USPTO proposes to add 50,000 annual responses and 500,000 annual burden-hours for affidavits and declarations that applicants have for decades submitted to comply with Rules 1.130, 1.131, and 1.132; plus 960,000 annual responses and 7,680,000 annual burden-hours for amendments and responses that patent applicants have for decades submitted to comply with Rules 1.111, 1.115, 1.116 and 1.312. According to the Supporting Statement, these new burden-hours entail annual financial costs of $3,034,780,000. This is about 70% of the total burden in the ICR.

This ICR also includes an IC that was omitted from the 60-day Notice. The Supporting Statement mischaracterize it as "added to this collection in connection with the Leahy-Smith America Invents Act (AIA) Final Rule entitled "Setting and Adjusting Patent Fees." This IC pertains to the filing of submissions after final rejection under Rule 1.129(a). However, Rule 1.129(a) has nothing to do with the AIA; it was promulgated in April 1995, and it concerns only patent applications submitted before June 8, 1995. The thin connection this IC has to the AIA is that the AIA authorized the USPTO to charge fees for Rule 1.129(a) filings. OIRA has already approved a new ICR that authorizes the collection of these fees. What the USPTO is doing is disguising under cover of the AIA its need to obtain—18 years late—an OMB control number for Rule 1.129(a) filings.

An undisclosed fraction of the burdens in these new ICs, possibly 100%, result from regulations promulgated as long ago as May 29, 1981. That's two months after OIRA was established. There is no institutional memory explaining why the USPTO was allowed to promulgate regulations without complying with the Paperwork Reduction Act of 1980. Every member of the OIRA staff on that date has retired, died, or both.

It is impossible for the public (but easy for the USPTO) to know how many responses to these information collections have been submitted despite the USPTO's legal inability to require compliance. It is likely that there are millions of such responses. For each one in which the USPTO issued an adverse action, the applicant suffered a penalty as defined by 44 U.S.C. § 3502(14) and/or 5 C.F.R. § 1320.3(j). For each such penalty, the applicant has the statutory right under 44 U.S.C. § 3512(b) to demand that the USPTO action resulting in the penalty be reversed.

In Section V, I list eight specific actions that OIRA should take before clearing this ICR:

1. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule.
2. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility.
3. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations.
4. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act.
5. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA.
6. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA.
7. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO.
8. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored.

I. THIS ICR SUBMISSION REFLECTS MULTIPLE PROCEDURAL VIOLATIONS OF THE PRA

The USPTO published the required 60-day Notice for this ICR on March 22, 2012 (77 Fed. Reg. 16813). The Notice states that the USPTO would be seeking from OIRA the approval of 4,777,532 annual responses entailing 11,972,777 burden-hours that it valued at $3,573,910,186. This valuation assumed average hourly costs of $340 for patent attorneys and $122 for paraprofessionals.

As required by the Information Collection Rule, the USPTO invited comment on "(a) [w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents…" The 60-day Notice neglected to invite comments on "the validity of the methodology and assumptions used" to estimate burden," as required by 5 C.F.R. § 1320.8(d)(1(ii).

Characteristic of the USPTO's 60-day Notices, this one provided hardly any useful information concerning the matters about which public comment was invited. For example, the Notice provided no useful information concerning how the USPTO had derived its estimates of the numbers of responses and burden-hours per response. This information normally is essential for the public to provide informed comment.

Despite the USPTO's lack of transparency, seven public comments were submitted.[3]

A. The USPTO disclosed too little information to allow the public to comment on "[w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility"

The 60-day Notice sought comment from the public about the practical utility of these ICs, but it provided almost nothing on which to comment. Members of the public unfamiliar with this term of art in the PRA and Information Collection Rule had no basis for submitting comments. It is likely that they had no clue what the 60-day Notice was about.

Despite this handicap, a few commenters did provide responses germane to this request. Instead of addressing these comments, however, the USPTO simply disregarded them.

B. The USPTO disclosed too little information to allow the public to comment on "the accuracy of the agency's estimate of the burden (including hours and cost)"

In my first comment on the 60-day Notice, I reported that the absence of any objective basis for the USPTO's burden estimates—most notably, its estimates of the average burden-hours to respond—rendered them not reproducible. IEEE-USA made a similar point, saying it was "generally unable to comment on the accuracy of the PTO's

[3] Public comments listed in the order in which they are memorialized on www.reginfo.gov:

1. Trzyna, Peter
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375116&version=0
2. Belzer, Richard (#1)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375118&version=0
3. Grzelak, Keith (for IEEE-USA)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375119&version=0
4. Belzer, Richard (#2)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375123&version=0
5. Brinckerhoff, Courtenay (for Foley & Lardner LLP)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375124&version=0
6. Green, Reza (for Novo Nordisk)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375125&version=0
7. Werking, Kipman
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375126&version=0

burden estimates or the validity of methodology and assumptions because the PTO has failed to disclose sufficient information to make informed comment possible." Foley & Lardner faulted the Notice for "fall[ing] short of the requirements of the statute and regulations at issue":

> Because the Federal Register Notice does not reveal the "methodology" used to arrive at the stated time and cost estimates, the USPTO has not provided the public with a meaningful opportunity to comment on the methodology used.

OIRA should be concerned when experienced patent prosecutors are unable to provide informed responses to a PRA notice published by the USPTO.

C. The USPTO disclosed too little information to allow the public to comment on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden"

The 60-day Notice may have invited comment on these margins, but the USPTO provided no information on which to base these comments. Commenters were left to their own devices.

Despite this agency-imposed handicap, several commenters did provide responses germane to these questions, including very specific recommendations on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden." Instead of addressing these comments, as the PRA and Information Collection Rule require, the USPTO deemed them "beyond the scope" of the ICR.

OIRA should be concerned when an agency dutifully invites comments exactly as the Information Collection Rule requires, the public submits highly germane comments despite the agency's best efforts to deter them from doing so, and the agency dismisses highly germane comments as irrelevant. It cannot be consistent with OIRA's mission to allow an agency to treat the PRA and Information Collection Rule as dead letters.

II. THIS ICR SUBMISSION REFLECTS MULTIPLE SUBSTANTIVE VIOLATIONS OF THE PRA

Several of the public comments identified regulatory provisions and Office practices that result in unreasonably duplicative paperwork burdens and lack practical utility.

A. Comments on Information collection requirements that are not "necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility "

IEEE-USA identified numerous paperwork requirements that lack practical utility because they are inconsistent with "the proper performance of the agency's functions to comply with legal requirements." Several examples were provided of duplicative burdens that deter the advancement of applications toward conclusion. In addition, IEEE-USA described internal management practices and supervisor compensation metrics that reward low-quality examiner performance (e.g., Office actions and rejection letters lacking sufficient content to enable effective reply), delay (e.g., examiners who decline to act on fully sufficient information in order to obtain additional compensation), and the imposition of duplicative burdens on applicants (e.g., forcing the submission of unnecessary RCEs). Each results in the imposition of burdens that are not necessary for the proper performance of the functions of the agency.

In a similar vein, Foley & Lardner specifically noted that requiring the submission of redundant Information Disclosure Statements "is ***not*** necessary for the proper performance of the functions of the agency, because the agency already has that information" (emphasis in the original). These views were specifically collaborated by Novo Nordisk, which also cited approvingly a relevant blog post by Foley & Lardner's Courtenay Brinckerhoff.[4]

According to Kipman Werking, procedural unreliability and financial conflicts of interest have rendered USPTO's procedures for addressing petitionable errors so lacking in practical utility that, whenever they have a choice, patent attorneys file appeals rather than petitions even though appeals are more burdensome for everyone concerned. A petitions process that is unreliable, or so ineffective that it increases burdens elsewhere in the system, is inherently incompatible with the proper performance of the functions of the agency.

B. Comments on "the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information"

Several of the public comments identified inaccuracies in the USPTO's burden estimates.

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[4] Brinckerhoff, Courtenay, "Help The USPTO Reduce The Paperwork Burdens Of Patent Prosecution," PharmaPatents (Foley & Lardner), May 1, 2012. http://www.pharmapatentsblog.com/2012/05/01/help-the-uspto-reduce-the-paperwork-burdens-of-patent-prosecution/.

1. The USPTO discloses no objectively supported basis for its burden estimates.

In my comments, I noted that the absence of any objectively supported basis for the USPTO's burden estimates, as required by 44 U.S.C. § 3506(c)(1)(A)(iv) and 5 C.F.R. § 1320.8(a)(4), render the USPTO's estimates non-reproducible. The USPTO has a credible basis for expertise with respect to estimating the numbers of responses, at least for information collections where there is an historical record. However, there is no obvious reason why the USPTO deserves even minimal deference with respect to its estimates of the average number of burden-hours per response. The USPTO examines patent applications; it does not prosecute them. Moreover, it has not conducted or sponsored surveys or experiments to obtain accurate unit burden estimates. Moreover, the USPTO has a substantial bureaucratic interest in understating burdens on the public, particularly given their magnitude.

Several other commenters made similar observations about the lack of objective basis for the USPTO's burden estimates and the Office's systematic understatement of burden per response.

2. The USPTO estimates only a subset of total burden.

In my second comment, I specifically noted that the USPTO's burden estimation "method" (such as it is) consists of counting only a subset of actual burdens—i.e., burdens borne by patent counsel. This clearly violates both the PRA and OMB's Information Collection Rule: the definition of burden includes the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency." 5 C.F.R. § 1320.3(b)(1), emphasis added. The USPTO does not even make an effort to estimate burdens on anyone else, such as inventors themselves. The USPTO's methodology can be described as follows: it assumes that inventors' unique knowledge and insight is transmitted magically to patent counsel. A patent on this technology would be extremely valuable.

In its comments, IEEE-USA made similar observations, noting the Office's persistent failure to include all burdens: "[T]he PTO continues to count only attorneys' billable hour burden and ignores hourly burden imposed on their clients (*i.e.*, patent applicants themselves)." Foley & Lardner also observed that the USPTO's estimates "do not appear to take into account the time that may be required to investigate underlying facts or confer with the applicant or inventor(s)."

This apparent discrepancy might be resolved if most USPTO burden estimates are interpreted as including just the *transmittal forms* and not the substance of these submissions. Foley & Lardner observed in comments that "as a general matter … the time estimates set forth in the Federal Register Notice underestimate the time required to submit the information at issue, particularly where the information is substantive." They suggested that perhaps "the estimates may reflect the time required to type up the documents at issue, [but] they do not appear to take into account the full time required 'to gather the necessary information, create the documents, and mail the completed

request,' as indicated." Several examples were provided in the previously cited blog post in support of the allegation that the USPTO's figures are "gross underestimate[s]".[5]

Novo Nordisk commented on the USPTO's burden estimates for terminal disclaimers and RCEs (ICs #6 and #19 in the Supporting Statement). With respect to terminal disclaimers, Novo Nordisk wrote that the "research, including the propriety of any double patenting rejection, analysis of claim scope between the reference application and any application/patent in the rejection, investigating facts, evaluating options, consulting with client, making the decision, filling out the disclaimer form, and filing, **take much longer than 12 minutes**" (emphasis in the original). Novo Nordisk objected to the USPTO's 12-minute average burden estimate for filing RCEs, taking into account "all research, including responding to of any rejection, analysis of claims in relation to the prior art, investigating facts, evaluating options, consulting with client, making the decision, filling out the RCE form, and filing, in concert with any amendment and/or response should be considered in the estimation of the time the applicant takes to prepare and complete an RCE." The USPTO's estimate is 12 minutes.

If these commenters are correct, it is not clear whether the USPTO actually holds valid OMB control numbers for many of these information collections, or would do so if OIRA approved this ICR. In 2009, the USPTO acknowledged that although it held a valid clearance for filing Notices of Appeal—analogous to an RCE transmittal form—it lacked

[5] Courtenay Brinckerhoff, *op cit.* footnote 4:

"The USPTO estimates ***5 minutes*** for a Request for a Corrected Filing Receipt. I find it hard to believe that someone could carefully review the filing date, title, inventor information and priority information listed on a filing receipt, determine the source of any discrepancies, and prepare a request in 5 minutes or less.

"The USPTO estimates ***12 minutes*** for an Express Abandonment. While it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming the Applicant's intention and explaining the irrevocability of an express abandonment.

"The USPTO estimates ***12 minutes*** for a Disclaimer. Again, while it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming that a disclaimer is necessary and appropriate and that the Applicant understands its consequences.

"The USPTO estimates ***1 hour*** for a Petition to Revive an unintentionally abandoned application. While there might be some cases where the underlying facts can be ascertained and confirmed in under an hour, I would imagine that for most applications it could take at least one hour just to determine how/why the application became abandoned, as required to support the averment that the abandonment was unintentional.

"The USPTO estimates ***8 hours*** for an Amendment/Response, ***10 hours*** for a Declaration, and ***5 hours*** for a Request for Pre-Appeal Brief Review. These estimates are not completely out of line, but it is difficult to believe that they are true averages, i.e., that enough Responses take only a few hours to balance the Responses that take many more hours. While I could accept that the average response takes 8 hours or less to write, I would think that the time required to "gather the necessary information"—to review the Office Action, study the cited references, consider response strategies, prepare claim amendments and formulate arguments—will take more than 8 hours on average."

a valid OMB control number for appeal briefs and reply briefs submitted by applicants to the Board of Patent Appeals and Interferences.[6] No valid OMB control number ever existed for appeal and reply briefs until December 22, 2009, when OMB approved new ICR 0651-0063.[7]

The absence of a valid OMB control number for applicant submissions of appeal and reply briefs prior to December 22, 2009, means that the USPTO lacked any legal authority to impose a penalty for an applicant's failure to supply information via these papers. The rejection of a patent application, in whole or in part, constitutes a penalty, and 44 U.S.C. § 3512 and 5 C.F.R. §1320.6 forbid an agency from imposing penalties. If the trivial burdens that the USPTO has estimated for numerous ICs in this ICR merely cover transmittal forms, then the USPTO faces a potential disaster in the event that applicants raise and win PRA challenges in Federal court.

3. The USPTO's "estimates" are biased, arbitrary assumptions with no objective basis.

In my comments, I noted that the USPTO's burden estimates were substantively unreliable. Patent counsel and inventors have submitted comments on previous ICRs characterizing many of the Office's estimates as substantial underestimates. The USPTO declined to respond in good faith to these past comments, and because OIRA has tolerated this in the past, the Office continues this practice in the January 2013 Supporting Statement.

This is not to say that the USPTO has made no changes in its burden estimation methods. IEEE-USA raised "concern[] that the PTO has amended its historic practice of basing burden estimates on the non-transparent, non-reproducible, and subjective 'beliefs' of undisclosed PTO staff by choosing to withhold any explanation for how it derived them." The USPTO appears to be responding to complaints about its failure to be sufficiently transparent by being even less transparent.

Figure A presents a histogram of the USPTO's estimated burden-hours per response for the 67 ICs in this ICR. Forty-two (63%) are said to have unit burdens of less than one hour per response; five have unit burdens of five minutes or less. IEEE-USA cited, with obvious incredulity, several of the 22 information collection activities that the USPTO estimated to require, on average, exactly 0.2 hour (12 minutes) to complete.[8]

Among the 42 ICs estimated by the USPTO to require less than one hour, 0.1 and 0.2 hour (6 and 12 minutes, respectively) are the predominant values. Of the 25 ICs estimated by the USPTO to require one hour or more, two figures dominate: 2 hours (i.e., ¼ work day) and 8 hours (i.e., 1 work day). These are not "estimates"; they are merely arbitrary round numbers.

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[6] The AIA renamed this body the Patent Trial and Appeal Board.

[7] ICR Reference No. 200809-0651-003, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003.

[8] The unit burden-hour estimate is 12 minutes for 23 of the 67 (34%) ICs in this ICR.

By their very nature, estimates are uncertain. While OMB could direct agencies to report these uncertainties, it does not do so. Instead, the Information Collection Rule directs agencies to report "objective" (i.e., unbiased) estimates of average or mean burden. Unbiased estimates of the mean have specific statistical properties. In nontechnical terms, a reasonable way to understand an unbiased estimate is that the true but unknown value is equally likely to be more or less than the estimate.

The USPTO's estimates do not conform to this principle. They are neither objectively supported nor unbiased. They are arbitrary values derived from an undisclosed procedure that appears to have as its goal the systematic understatement of actual burden.

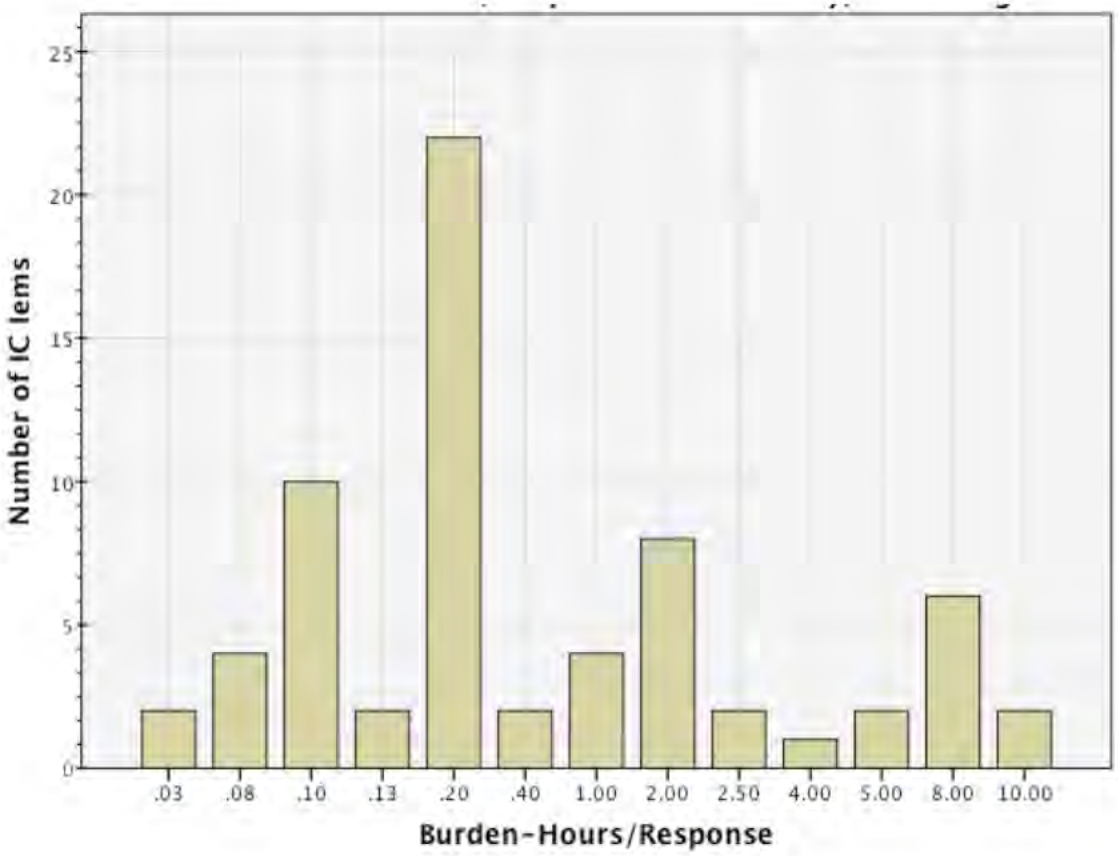
This inference is reasonable and appropriate for at four reasons. First, commenters have repeatedly noted that the USPTO's estimates include only burdens imposed on patent counsel and not burdens imposed on inventors. The USPTO willfully refuses to correct this error. Second, commenters have repeatedly noted that the USPTO's estimates substantially understate actual burdens on patent counsel. The USPTO willfully refuses to correct this error, too. Third, despite repeated requests from the public that it disclose its burden estimation methodology, the USPTO willfully refuses to do so. Finally, the USPTO apparently has abandoned a study launched several years ago that was supposed to provide a credible, independent review of its burden estimation methods.[9] The Office presumably concluded that credible burden estimation were contrary to its bureaucratic interests.

For these reasons, a reasonable default assumption is that the USPTO's figures understate actual burden by a factor of three. What the USPTO claims to be 12 million burden-hours valued at $3.9 billion per year are more like 30 million burden-hours valued at $10 billion per year.[10]

[9] ICF International. 2010. *Methodology for Conducting an Independent Study of the Burden of Patents-Related Paperwork*, Submitted to United States Patent and Trademark Office, Contract No. Gs23f8182h/Doc44papt0809009.

[10] This default relies on a method that estimates uncertain values based on orders of magnitude and their square roots. Thus, because 12 million burden-hours per year is clearly too low, the question is whether 100 million (10 x 10 million) or 30 million (3 x 10 million) burden-hours per year is more plausible. Using 3x yields 30 million. Similarly, because $3.9 billion per year is clearly too low, the question is whether $100 billion (10 x $10 billion) or $30 billion (3 x $10 billion) is more plausible. Using 3x yields $30 billion per year. Given the USPTO's burden estimation methods, any greater precision is imaginary.

Figure A: Burden-Hours per Response Are Arbitrary Numbers with No Objective Support



C. *Unreasonably duplicative paperwork burdens*

Public commenters identified numerous examples of unreasonably duplicative paperwork burden. Peter Trzyna identified such burdens in Rules 1.52(e) and 1.96, plus at least one other provision that lacks practical utility to the Office because it impedes effective patent examination. IEEE-USA identified several phenomena that cause unreasonably duplicative paperwork burdens, including examination procedures and reward metrics that incentivize low-quality work, management failure to properly and effectively supervise examiners, the USPTO's routine noncompliance with the Administrative Procedure Act (APA), and the 2009 redocketing of Requests for Continued Examination (RCEs). Foley & Lardner said (and Novo Nordisk explicitly concurred) that existing Information Disclosure Statement rules impose unreasonably duplicative paperwork burdens, including a requirement that applicants provide the same documents at least three times. Werking focused on the unreliability of the USPTO's procedures for addressing petitionable errors financial conflicts of interest among those to whom the USPTO Director has delegated the authority to respond to Rule 1.181 petitions, thus resulting in unreasonably duplicative paperwork burdens.

There are tens of thousands of registered patent attorneys and agents, in addition to the handful who devoted the time and effort to provide comments on this 60-day Notice. If the USPTO were seriously interested in discovering unreasonably duplicative paperwork burdens, it could conduct or sponsor an inexpensive survey that would reveal a much longer list.

D. *Comments on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden of the collection of information on respondents"*

Commenters proposed specific, constructive remedies that would reduce or eliminate paperwork burdens that are unreasonably duplicative or lack practical utility, answers to the very questions set forth by the USPTO in its 60-day Notice.

Trzyna suggested eliminating the requirement in Rule 1.52(e) that all computer files be in ASCII format, and numerous other "pointless" requirements that add unreasonably duplicative burden. As Trzyna noted, limiting the submission of computer data to ASCII files (i.e., forbidding the submission of graphic files, acoustic files, and the like) has the perverse effect of undermining the USPTO's ability to examine applications because it disables the very inventions that are subject to examination. "A Rule that requires disabling an otherwise enabling disclosure is ridiculous."

Trzyna also recommended the rescission of other regulatory requirements that are unreasonably burdensome or otherwise have no practical utility. This includes (1) the requirement to list all file names, sizes in bytes, and dates of creation; (2) the requirement that tables provided in landscape orientation be elsewhere identified as being in landscape orientation; and (3) the requirement to require disclosure of operating system compatibility. He characterized the USPTO's fixation on ASCII as "Byzantine." He noted that while these particular burdens might seem trivial, applicants who stray face suspension of examination. Trzyna also noted that the USPTO

does not impose this burden on international parties who file under the Patent Cooperation Treaty (PCT)l the burden is confined to applicants who file directly in the United States. As Trzyna reasonably noted, that which is permitted for foreign applicants under PCT rules should be sufficient for American applicants as well.

IEEE-USA recommended that the USPTO reform its internal compensation metrics. Even though the USPTO imposes higher fees on complex applications, examiners are rewarded the same credit ("counts") for reviewing a complex application as they are for a simple one. This incentivizes examiners to avoid complex applications and delay the conclusion of examination in order to generate more counts, both of which inevitably result in unreasonably duplicative paperwork burdens. Supervisors also are rewarded the same when the examiners under their control perform poorly as when they perform well. IEEE-USA recommended the seemingly obvious (and presumably uncontroversial) remedy of scaling examiner rewards by application complexity.

To solve the problem that unreasonably duplicative paperwork burdens result from how examiners and supervisors are compensated, IEEE-USA recommended that compensation should be heavily weighted on the conclusion of an examination, whether by allowance, appeal decision by the Board, or abandonment, and that compensation be based less on the achievement of minor milestones that do not lead to the conclusion of examination. It should be obvious that the USPTO ought to be compensating supervisors based on outcomes, not repeatedly circling the same intermediate milestones. "It is essential to break the chain that now rewards examiners for producing low quality and supervisors for tolerating it."

Werking noted that petitions practice is unreliable in large part because Technology Center directors, who have been delegated the authority to supervise examiners through the petition process, have a financial interest in denying petitions. Whereas the administrative patent judges who serve on the Patent Trial and Appeal Board earn the same reward for affirming or reversing an examiner, TC director compensation is aligned with the examiners they supervise. Thus, the same perverse incentives that examiners have to avoid complex applications, not to correct errors, and to generally produce low-quality Office actions also apply to their supervisors.

Having identified the 2009 redocketing of RCEs as a source of unreasonably duplicative paperwork burdens, it should not be surprising that IEEE-USA recommended that this "reform" be rescinded. By shortening the deadlines for examiners to take intermediate actions, this change incentivized examiners to generate intermediate actions of lower quality. Low-quality actions that do not take full account of the information that applicants submit cannot help but produce unreasonably duplicative paperwork burdens. Indeed, when examiners fail to take account of information provided to them, the practical utility of the requirement to supply the information is undermined.

Foley & Lardner recommended several regulatory changes that would simultaneously reduce unreasonably duplicative paperwork burdens and improve USPTO performance. These included extending Rules 1.97 and 1.98 and MPEP § 2001.06(b) to co-pending U.S. applications, using the new Common Citation Document

Application (CCD) tool, modifying IDS rules by extending MPEP § 2001.06(b) to all information available on the CCD, and eliminating requirements that applicants submit copies of documents freely available online. Novo Nordisk concurred with Foley & Lardner's recommendations.

Werking recommended that the USPTO reduce unreasonably duplicative paperwork burden by reforming its petition practices based on practices already established for appeals. Among other things, this includes imposing reasonable deadlines for the Office to respond to petitions and tolling examination of applications while petitions are pending. "A ten month wait period for deciding petitions is simply too long to reliably enforce PTO regulations—regulations that ensure information quality and minimize paperwork burden."

E. The Supporting Statement is unresponsive to public comments

In the Supporting Statement, the USPTO summarized few of these comments, dismissed all substantive comments without reason, and made no changes in response.

- In response to commenters objecting to its specific burden estimates, the USPTO sought to shift to the public the Office's statutory responsibility for burden estimation, rather than comply with the law: "[T]hese comments did not provide a basis for or propose any other alternative time estimate burden."
- In response to commenters objecting to its failure to account for burdens on inventors, the USPTO implicitly acknowledged the error but refused to make corrections: "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."
- In response to commenters who identified unreasonably duplicative paperwork burdens resulting from regulatory requirements that lack practical utility, the USPTO replied that these comments "go beyond the scope of the instant ICR clearance." In fact, these comments were not "beyond the scope" of the public comment request; they were squarely in the middle of it.

Previous public comments to OIRA have raised the same concern: the USPTO does not take seriously its obligations under the PRA and Information Collection Rule. With respect to one ICR submitted in October 2008,[11] OIRA did hold the USPTO accountable. It should do so again, this time by disapproving and continuing the existing OMB control number and, among other things, directing the USPTO to initiate

[11] ICR Reference No: 200809-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003, approved in part Dec. 22, 2009). Although OIRA's December 2009 approval prospectively cured a longstanding PRA violation discovered in 2008, OIRA did not list it as such in its 2008, 2009, or 2010 reports to Congress.

rulemaking to eliminate regulatory requirements that impose paperwork burdens that are unreasonably duplicative or otherwise lack practical utility.

III. THIS ICR SUBMISSION VIOLATES THE INFORMATION QUALITY ACT

The Supporting Statement certifies that the information contained in the submission is covered by the Information Quality Act (IQA) and that the ICR adheres to OMB's and USPTO's Information Quality Guidelines. This certification is knowingly false. The ICR's lack of transparency and reproducibility alone is sufficient to conclude that it does not comply. The USPTO's response to a different IQA error correction request, discussed below, is sufficient to infer that its violations are willful.

A. Procedural violations

My pair of public comments on the 60-day Notice were expressly styled as IQA error correction requests. To ensure that the USPTO did not inadvertently miss this, I submitted them as error correction requests as well as public comments on the 60-day Notice. The USPTO is obligated to have responded to these error correction requests no later than via the Supporting Statement accompanying the ICR submission.

The Supporting Statement includes no such response. Therefore, the USPTO is unambiguously in violation of the IQA's procedural requirements and the USPTO's certification to the contrary is knowingly false.

B. Substantive violations

Having failed to respond to error correction requests in the Supporting Statement as required, it should go without saying that the USPTO also failed to address the substantive errors I identified in my second comment and error correction request.

The USPTO's conduct is not an isolated phenomenon. The Office responded to a 2010 error correction request in bad faith. That request identified a series of technical errors in ICR 0651-0032 ("Initial Patent Applications").[12] I found similar errors.

In its astoundingly cynical response to this 2010 error correction request,[13] the USPTO said that burden estimates are not "information," and therefore they are not covered by the IQA:

> Under the IQA, certain influential information must be reproducible under certain circumstances. The burden "estimates" of which you complain do not

[12] Katznelson, Ron D. 2010. "Request for Correction under the Information Quality Act [ICR 0651-0032]." Available at: http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009471.pdf.

[13] U.S. Patent and Trademark Office. 2011. Response to Katznelson 2010 Request for Correction (Ticket No. 1-178950 16). Available at http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009511.pdf.

> qualify as "information" within the meaning of the IQA. "Information" is defined as "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms." By definition, estimates do not represent knowledge such as facts or data. "Information," not estimation, is subject to certain reproducibility requirements. No correction is warranted for matters not involving "information" (internal references omitted).

The PRA and the Information Collection Rule do not exempt "estimates" from the definition of "information." Indeed, if estimates were exempt, every statistical product of the Department of Commerce would also be exempt—and not just from the IQA, but from OIRA review. OIRA's Statistical & Science Policy Branch, which devotes most of its resources to the oversight of statistical agencies such as the Commerce Department's Census Bureau, would have no statutory authority for its operations. It could be summarily disbanded.

Finally, the timing of the USPTO response and OIRA's approval of ICR 0651-0032—the subject of the 2010 error correction request—is more than curious. OIRA approved the ICR on January 18, 2011, exactly three days before the date of the USPTO response to the error correction request. The best spin that can be conjured is that OIRA insisted that the USPTO respond before concluding review but paid no attention at all to the contents of the response. That also would mean that OIRA paid no attention to the public comments it received on ICR 0651-0032.

IV. THIS ICR SEEKS TO SURREPTITIOUSLY CURE SEVERAL DECADES-LONG UNAPPROVED COLLECTIONS OF INFORMATION, AT LEAST TWO OF WHICH ARE TRULY MASSIVE

At the time I and others commented on the 60-day Notice, it was not clear what the large new ICs were about. Since then, and particularly after a careful reading of the Supporting Statement, it has become obvious that through this submission the USPTO seeks to surreptitiously cure unapproved information collections that have persisted for decades.

A. In the 60-day Notice, the USPTO withheld crucial information about certain elements of the ICR and did not even mention others

The 60-day Notice identifies at least six new ICs for which the USPTO does not appear to have ever obtained an OMB control number. They are listed in Table 1 below. Taking at face value the USPTO's burden estimates, these new collections total over 1 million new responses and more than 8 million new burden-hours valued by the USPTO at more than $3 billion per year.

The 60-day Notice describes these ICs obscurely so that few affected parties would have had a clue what they were about:

Table 1: Previously Unapproved ICs in the January 2013 ICR Submission and Supporting Statement in the January 2013 Supporting Statement

IC No.	*IC Title*	*Burden-Hours/ Response*	*Responses/ Year*	*Burden-Hours/ Year*	*Annual Value of Burden/Hours*
32	Electronic Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	46,500	465,000	$172,515,000
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	3,500	35,000	$12,985,000
33	Electronic Amendments and Responses	8	893,000	7,144,000	$2,650,424,000
33	Amendments and Responses	8	67,000	536,000	$198,856,000
34	Electronic Filing a submission after final rejection (see 37 CFR 1.129(a))	8	86	688	$255,248
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	8	7	56	$20,776
	Totals		*1,010,093*	*8,180,744*	*$3,035,056,024*

The 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.

Further research made possible only by the limited new information in the Supporting Statement indicates that the USPTO is surreptitiously attempting to prospectively cure multiple, longstanding violations of the PRA.

B. After expiration of the public comment period on the 60-day Notice, the USPTO proposed changes to Rules 1.30 and 1.31, denied that these changes caused new paperwork burden, and falsely characterized the relevant information collections as previously approved by OIRA

Subsequent to both publication of the 60-day Notice on Mar. 22, 2012, and the conclusion of the public comment period on May 21, 2012, the USPTO proposed changes to Rules 1.130 and 1.131 (77 Fed. Reg. 43742, Jul. 26, 2012). The PRA section of the Final Rule Notice claims that Rule 1.131-1.132 affidavits and declarations were "previously approved and currently being reviewed under OMB control number 0651–0031."

This statement was false, and almost certainly knowingly so. ICR 0651-0031 was not under review by OIRA on Jul. 26, 2012, and OIRA had never previously approved information collections related to Rule 1.130, 1.131, or 1.132 affidavits and declarations. OIRA had concluded its most recent substantive review of this ICR on Jul. 1, 2009.[14] When ICR Reference No. 200707-0651-005 was approved on that date, the collection did not include information related to these Rules.[15]

According to the eCFR (current as of Mar. 25, 2013), these Rules were first promulgated as long ago as September 20, 2000. Thus, for the collections of information contained in these Rules, the USPTO has lacked a valid OMB control number for as much as 23 years.

C. Public commenters specifically inquired about these new collections of information, and the USPTO declined to respond

In my first public comment and error correction request, I observed that the 60-day Notice lacked transparency and reproducibility on virtually every front. In my second public comment and error correction request, I highlighted several of the paperwork burdens listed in Table 1 above: "Given the multi-billion dollar scale of the burdens" involved, "one would expect the USPTO to describe them with considerably greater cogency and detail." One would be wrong to have harbored such expectations.

I was not alone. IEEE-USA also said it could not discern from the 60-day Notice what the USPTO intended the scope of these line items to include, "not[ing] with foreboding that the [US]PTO reports that it expects 50,000 (!) 'Rule 1.130, 1.131, and 1.132 Affidavits or Declarations' and 960,000 (!) 'Amendments and Responses.'" IEEE-USA estimated the financial cost of these information collections at about $3.7 billion per year. "Obviously, an information collection imposing several billions of dollars in burden deserves far more explanation than this," IEEE-USA wrote. "There is no

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[14] See http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0651-0031.

[15] See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200707-0651-005.

question that the public cannot provide informed comment on such an empty disclosure."

D. The ICR submission includes an information collection not included in the 60-day Notice that is falsely described as related to the Leahy-Smith America Invents Act

The Supporting Statement identifies changes made since the publication of the 60-day Notice, none of which were in response to public comment. These changes add an estimated 50,048 more burden-hours per year, and they are dominated by new IC #34, defined by the USPTO as "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))."

IC #34 has nothing to do with the AIA. According to the eCFR (current as of Mar. 25, 2013), Rule 1.129(a) was last revised on April 25, 1995 (60 Fed. Reg. 20226). It concerns applications filed on or before June 8, 1995, prior to the effective date of the Uruguay Round Agreements Act.[16] Nothing in the AIA altered the rights of those who submitted applications before that date, so it cannot be the case that the USPTO needs an OMB control number for this information collection in order to implement the AIA.

In the PRA section of the preamble to the 1995 Final Rule (60 Fed. Reg. 20195), the USPTO asserted that the rule "does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act." This is impossible, for Rule 1.129(a) is chock full of information collection requirements. Rather, when it promulgated Rule 1.129(a) the USPTO simply ignored the PRA. In the process of upwardly revising its fees, the Office apparently discovered this longstanding PRA violation and decided to prospectively cure it without the public or OIRA noticing. (The Supporting Statement characterizes it as a "program change," not a prospective cure for a PRA violation.)

Still, showing that the USPTO misrepresented a new information collection covering Rule 1.129(a) filings does not explain <u>why</u> it would be motivated to do so. After all, the only applications that are covered by Rule 1.129(a) were submitted prior to June 8, 1995.

The most plausible answer is both straightforward and shocking: <u>there are patent applications 18 or more years old still pending at the USPTO</u>. Data submitted by the USPTO along with the ICR suggest that there may be quite a few of them, too. In FY 2012 there were 11 submissions covered by Rule 1.129(a).[17] The Supporting Statement estimates that the USPTO will receive 93 filings per year during the 3-year period for

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[16] The Uruguay Round Agreements Act of 1995 changed patent term from 17 yeas after *allowance* to 17 years after *filing*. Similar to what happened prior to the March 16, 2013 effective date of the AIA's first-to-file rule, the USPTO received a huge bolus of applications prior to June 8, 1995, in order to take advantage of the pre-GATT law governing patent term.

[17] "0031 Filings Attachment," http://www.reginfo.gov/public/do/DownloadDocument?documentID=375113&version=0.

which it seeks OIRA approval, a nearly tenfold increase. There may be hundreds of patent applications that were submitted before June 8, 1995, and languishing in examination purgatory. OIRA might want to find out just how many of these ancient applications the USPTO has squirreled away and investigate why the USPTO has failed to complete their examination almost two decades later.

The public cannot know why the USPTO waited until now to seek approval of this information collection. The most charitable explanation is that, in mid-2012 when it prepared new ICR 0651-0072 ("America Invents Act Section 10 Patent Fee Adjustments"),[18] USPTO personnel discovered that Rule 1.129(a) filings lacked an OMB control number. The new ICR would be sufficient to authorize the collection of fees on Rule 1.129(a) filings, but it would not be enough to allow the Office to require them to be filed in the first place.

E. The USPTO has had numerous opportunities to prospectively cure these unlawful information collections, but not done so until now

Table 2 lists when each of the rules containing an unlawful information collection in this ICR was first promulgated. It also lists when each rule was amended. (Rule 1.130 used to be numbered 1.131.)

The USPTO could have prospectively cured the absence of a valid OMB control number at any of the times it revised or renewed ICR 0651-0031. There are 33 such revisions and renewals since the ICR was first established in 1993. On none of these occasions did the USPTO revise the ICR to include any of these information collections.

[18] This new ICR contains 127 separate ICs, each of which involves a fee that the AIA authorized the USPTO to reset. *See* ICR Reference No. 201205-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201205-0651-001#, pre-approved October 25, 2012, expiration date Oct. 31, 2015); ICR Reference No. 201212-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212-0651-001, pre-approved Jan. 11, 2013, expiration date Jan. 31, 2016); and ICR Reference No: 201301-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201301-0651-003#section0_anchor, approved Jan. 18, 2013, expiration date Jan. 31, 2016).

Table 2: Regulatory Actions for Information Collections in this ICR Lacking OMB Control Numbers

IC#	*Rule*	*Title*	*Date*	*FR Citation*
32	Rule 1.130, 1.131, and 1.132 Affidavits and Declarations			
	Rule 1.130	Affidavit or declaration of attribution or prior public disclosure under the Leahy-Smith America Invents Act	Feb. 14, 2013	78 FR 11058
	Old 1.131	*Affidavit or declaration of prior invention*	*June 23, 1988* *May 1, 1995;,* *Aug. 19, 1996* *Sept. 8, 2000* *Sept. 20, 2000* *Aug. 12, 2004* *Sept. 21, 2004*	*53 FR 23734* *60 FR 21044* *61 FR 42806* *65 FR 54673* *65 FR 57057* *69 FR 49999* *69 FR 56543*
	Rule 1.131	Affidavit or declaration of prior invention or to disqualify commonly owned patent or published application as prior art	Feb. 14, 2013	78 FR 11058
	old 1.130		*Aug. 19, 1996* *Sept. 20, 2000* *Jan. 11, 2005*	*61 FR 42805* *65 FR 57056* *70 FR 1824*
	Rule 1.132	Affidavits or declarations traversing rejections or objections	Sept. 20, 2000	65 FR 57057
33	Amendments and Responses			
	Rule 1.111	Reply by applicant or patent owner to a non-final Office action	May 29, 1981 Oct. 10, 1997 Sept. 8, 2000 Sept. 21, 2004 Jan. 27, 2005	46 FR 29182 62 FR 53192 65 FR 54672 69 FR 56542 70 FR 3891
	Rule 1.115	Preliminary amendments	Sept. 21, 2004	69 FR 56543
	Rule 1.116	Amendments and affidavits or other evidence after final action and prior to appeal	Aug. 12, 2004	69 FR 49999
34	Filing a Submission After Final Rejection			
	Rule 1.129(a)	Transitional procedures for limited examination after final rejection and restriction practice	Apr. 25, 1995	60 FR 20226

V. SPECIFIC REQUESTS FOR ACTION BY OIRA

The list below represents my best effort to provide constructive suggestions to OIRA.

The purposes of the PRA cannot be achieved if agencies refuse to comply and OIRA looks the other way. Allowing the USPTO to continue along its present path will have adverse effects throughout the government. Systematic, serial violations show contempt for both the PRA and OIRA, and it makes fools of agencies that comply in good faith. Whenever OIRA tolerates this, it lowers the bar for other agencies and encourages a perverse race to the bottom.

Since its founding in 1981, OIRA has had to balance its statutory mission to implement the PRA with important and growing executive responsibilities, most notably regulatory review under Executive Orders 12291, 12498, 12866, and 13563. It is therefore easy to imagine that OIRA now perceives executive regulatory review to be more important than statutory implementation and enforcement of the PRA. Yet there are important co-benefits to regulatory review that OIRA can obtain by taking seriously its PRA responsibilities. Frequently, problems identified during regulatory review could have been reduced or prevented had OIRA and the agency been more diligent at the information collection stage of the regulatory development process. From my own OIRA experience, I know of many instances in which draft regulations lacked cost-effectiveness because the information needed to regulate intelligently had not been obtained when there was still time to do so. Similarly, many draft regulations that OIRA reviews consist of little more than the addition of more sedimentary layers of new regulatory language to overcome errors and defects in previous rounds of regulation.

Yet another reason OIRA should take seriously its PRA responsibilities in this case is that it has been unable to improve the quality of USPTO regulation through regulatory oversight. When the USPTO writes regulations, it systematically misclassifies them as "significant" or "nonsignificant" in order to evade the requirement to prepare a Regulatory Impact Analysis. In 2012, OIRA reviewed 17 draft proposed or final USPTO rules, each of which by any reasonably reckoning had paperwork burdens alone that were "likely to result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, [or] jobs…" Executive Order 12866, § 3(f)(1). Only one of these rules—0651-AC54, "Setting and Adjusting Patent Fees"—was designated economically significant, and the Regulatory Impact Analysis accompanying it was predictably substandard.[19]

[19] In 2012, the USPTO also promulgated six regulations that it deemed "not significant," which presumably were not reviewed by OIRA. The USPTO has in the past designated regulations as "not significant" and not submitted them to OIRA for review even though they had paperwork

Enforcing the PRA and the Information Collection Rule provide a useful pathway to effective regulatory oversight. OIRA should work with the public to identify regulations that impose unreasonably duplicative burdens, or lack practical utility for other reasons. This would enable OIRA to achieve important regulatory reforms in ways that end-of-process regulatory review cannot. Though comments on this ICR were few, they reveal systematic regulatory problems that suppress America's technological innovation and economic growth. One can only imagine what a concerted effort to obtain information from the public would reveal.

A. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule

OIRA should disapprove and continue the existing OMB control number, and direct the USPTO to embark on a crash program to end its systematic procedural and substantive violations. Procedural violations consist primarily of insufficient information disclosure, making it difficult for even the most informed members of the public to provide useful comments, and impossible for the vast majority to do so. Substantive violations consist primarily of burden estimates that are unreliable and generally believed by the public to be gross underestimates, and the absence of evidence of actual practical utility.

OIRA should direct the USPTO to prepare a revised 60-day Notice that procedurally and substantively complies with the PRA and the Information Collection Rule. Specifically, OIRA should direct the USPTO to:

1. disclose an objectively supported, reproducible methodology for estimating the number of responses that can be used for all patent-related ICRs;
2. promptly compile a comprehensive inventory of every collection of information contained in its rules and guidance;
3. sponsor a rigorously designed and independently conducted survey of registered patent attorneys, agents, and patent applicants to obtain objectively supported burden-hour estimates;
4. publish all work products for public comment, and respond in good faith to the comments received.

It would cause no meaningful hardship to the USPTO to undertake these tasks. The President's FY 2013 budget for the USPTO was $2,822,000,000. Reforming paperwork burdens would easily reduce its operating costs by more than 1% ($28,220,000). Even if the analyses I propose were to cost $1 million, they would provide a return on investment to the USPTO of more than $28 for every dollar spent. Undertaking these tasks also would improve the USPTO's ability to effectively and efficiently implement the AIA.

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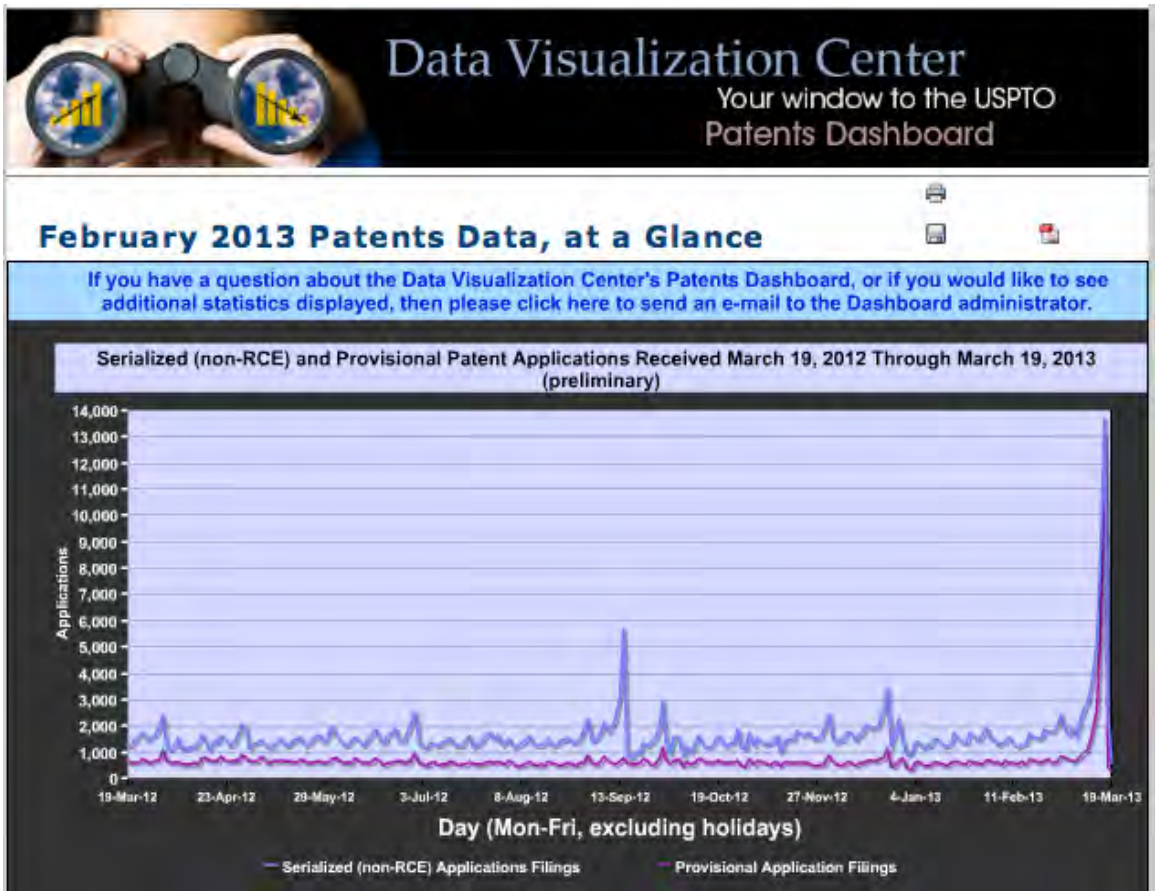
burdens alone well in excess of the $100 million threshold. Unsurprisingly, the Office's practice has been to deny that these paperwork burdens exist.

The USPTO might balk, claiming that some provisions in this ICR must be approved to implement the AIA. We can easily dismiss this line of argument by noting that the paperwork burdens associated with patent prosecution (as opposed to application) under the AIA will not arise for many months at the earliest, and possibly for years. Inventors responded predictably to the March 16, 2013 effective date for first-to-file by swamping the Patent Office with applications that must be examined under pre-AIA rules and procedures. This is shown in Figure B, which is a screenshot of the USPTO's Patent Dashboard taken on March 25, 2013, showing the spike that occurred in mid-March.

Figure B: A Rush to File Under the Old Patent Law to Beat the March 16, 2013 Deadline



B. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility

Several commenters on the 60-day Notice identified specific regulatory requirements that they said were unreasonably duplicative or otherwise lacked practical utility to the USPTO. In the Supporting Statement accompanying the ICR submission, the USPTO declined to rebut commenters' claims or even treat their comments respectfully. The Office went so far as to incorrectly assert that comments identifying unreasonably duplicative paperwork burdens "go beyond the scope" of the comment request. If OIRA does nothing in response, it rewards an agency for acting in bad faith and brings disrespect upon itself.

Fortunately, OIRA has explicit authority to do the right thing. Pursuant to 5 C.F.R. § 1320.12(f), it can direct the USPTO to undertake rulemaking sufficient to eliminate the unreasonably duplicative burdens commenters identified. While a comprehensive list of such regulations should be obtained, as I recommend in subsection A above, OIRA can ensure a good start by directing the USPTO to address the specific examples of unreasonably duplicative and burdensome regulations identified by commenters on the 60-day Notice for this ICR.

C. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations

This ICR is a mysterious stew. Many of the ICs are simply renewals of OIRA's 2009 approval, with updated estimates of the numbers of responses only, and a few are revised to account for AIA-related changes. But the largest ICs are not mere renewals but prospective cures for longstanding PRA violations. They comprise 70% of the paperwork burden.

Before approving this ICR, OIRA should direct the USPTO to develop and publicly disclose how the burdens of this ICR are allocated across these three types of information collection.

D. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act

For the new items are prospective cures for longstanding PRA violations, and which comprise 70% of the total paperwork burden, OIRA should direct the USPTO to explain in detail what paperwork the Office intends to be included and a credible, transparent, and reproducible estimate for the burden of each item. This ICR gives no detail at all. In contrast, the USPTO itemizes five ICs with estimated total burdens across all respondents under 10 hours per year. Half of all ICs in this ICR have total

burden-hours below 1,000 per year. Postage costs are estimated to the nearest penny. Meanwhile, "Amendments and Responses" stands out at 7,680,000 total burden-hours per year, differentiated only by whether the information, whatever it is, is provided electronically or on paper.

Gross ambiguity about "Amendments and Responses" inexorably leads to a reasonable concern that the aggregate burdens of this ICR have been grossly underestimated. Commenters with patent prosecution experience have said that the USPTO's unit burden estimates are unrealistically low, often because the Office counts only the burden of transmitting information to the USPTO, not the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information," as 5 C.F.R. § 1320.3(b)(1) requires. It is not difficult to imagine that the USPTO's unit burden estimate—exactly 8 hours, or conveniently, exactly 1 work-day—understates average unit burden by, say, a factor of three. In that case, "Amendments and Responses" alone would be 23 million burden-hours per year—about as large as ICs usually found in Internal Revenue Service, Medicare, and Medicaid ICRs. Few of these comparable information collections have burden-hour rates on the order of $400 per hour.

Before approving this ICR, OIRA should direct the USPTO to provide details concerning exactly what paperwork submissions are covered within these new, amorphously defined ICs. The USPTO also should produce objectively supported, detailed estimates for each type of submission, and a transparent, reproducible methodology showing how these burden estimates were derived.

E. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA

As I noted earlier, the 60-day Notice was particularly unrevealing with respect to Rule 1.130, 1.131 and 1.132 affidavits or declarations (50,000 responses totaling 500,000 burden-hours valued by the USPTO in 2012 at $170,000,000) and unspecified "Amendments and Responses" (960,000 responses totaling 7,680,000 burden-hours valued by the USPTO in 2012 at $2,611,200,000).

In my comments, I asked the USPTO to clarify what these new ICs were about. In response, the Supporting Statement says almost nothing. Yet it did provide enough information to conclude that the USPTO is seeking to prospectively cure longstanding PRA violations, but doing so as surreptitiously as possible. Indeed, the USPTO's desire to avoid acknowledging these PRA violations has led it to make even more false statements. For example, the Supporting Statement mischaracterizes prospective cures for these PRA violations as mere "program changes."

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual. n particular, the changes listed in Table 3 below are required and should be separately grouped under a new second-order subhead titled "Corrections of Violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 3: Necessary Changes to the Supporting Statement to Correctly Identify Past PRA Violations (~~deletions~~, additions)

IC No.	*Corrected Text*
32	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**
33	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**

F. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA

The major new information collection item added to the submission but not disclosed for public review and comment in the 60-day Notice concerns Rule 1.129(a) filings. The USPTO describes it as made necessary by the AIA. This explanation is false. Rule 1.129 has been on the books since April 1995 and it only concerns applications filed before June 8, 1995. According to data submitted by the USPTO along with the submission, there were 11 responses submitted in FY 2012 governed by Rule 1.129(a).

Based on my review of the USPTO ICR inventory, it appears that the USPTO has never before obtained an OMB control number for Rule 1.129(a) filings made after final rejection. That is, the USPTO is seeking to prospectively cure an unapproved collection of information that has languished for almost 18 years.

That means the Supporting Statement needs be revised along the lines of Table 4 below. This would acknowledge that the purpose of adding this new information collection is to prospectively cure a longstanding violation of the PRA.

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual, including the change listed in

Table 4. This change should be added to the new second order subhead titled "Corrections of violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 4: Necessary Changes to the Supporting Statement to Correctly Identify Information Collection Elements Added After Publication of the 60-day Notice (~~deletions~~, <u>additions</u>)

IC No.	*Corrected Text*
34	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~~ <u>correction for a violation of the Paperwork Reduction Act.</u>**

G. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO

Improving government management is a long neglected part of OMB's mission. Under the direction of OMB's Office of Performance and Personnel Management (OPPM), the USPTO has established three strategic goals, one of which is to optimize patent quality and timeliness.[20] Several performance measures have been chosen, but most of them concern inputs (e.g., patent applications filed electronically) and intermediate outputs (e.g., average first action pendency). These performance measures are poor proxies for patent quality.

The USPTO's 2012 Performance and Accountability Report (PAR) specifically mentions a program called Clearing Our Oldest Patent Applications 2.0 (COPA 2.0). What the USPTO apparently means by "old" does not, however reach back to the pre-1995 applications covered by Rule 1.129. Rather, "old" means something that is actually quite young by comparison, and the program's goal is much more modest than either completing examination (an output measure) or patent quality (an outcome measure):

[20] U.S. Patent and Trademark Office. 2012. Performance and Accountability Report, Fiscal Year 2012. Alexandria, Va. http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf.

> For COPA 2.0, the "tail" is applications that were 13 months and older as of October 1, 2011, and had not received a first office action.

The USPTO compliments itself for meeting its goal of completing first office actions on 260,000 applications. But pre-1995 application have languished for least 198 months, not 13. To characterize the mere issuance of first Office actions as "clearing our oldest patent applications" is equivalent to establishing a goal of providing effective elder care by improving middle school education.

A management truism is that one cares about that which one measures. This suggests that the USPTO cares more about issuing first office actions than it does about completing their examination. If it had a more worthy goal—e.g., completing the examination of old applications—OPPM would have a better guide to the USPTO's actual mission performance.

Similarly, we do not know how widespread and deep is the USPTO's PRA noncompliance problem. Every time an ICR comes up for renewal we discover yet more unapproved information collections with thousands or millions of unapproved burden-hours. OIRA should seek OPPM's assistance by defining PRA compliance as a specific performance goal. This would at least (and at last) raise the visibility of the PRA with the USPTO's senior management and its new director.

H. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored

OIRA is responsible for enforcing the Information Quality Act. It was OIRA that authored government-wide information quality guidelines and pre-reviewed each agency's implementing guidelines in 2002. It was OIRA that decided to issue guidelines instead of binding regulations, presumably on the ground that guidelines would be more flexible. Had OIRA promulgated regulations, there would be little doubt that affected parties dissatisfied with agency responses could, as the statute says, "seek and obtain correction of information maintained and disseminated by the agency that does not comply" (emphasis added). Because OIRA issued guidelines instead, it is OIRA's responsibility to ensure that agencies comply.

To date, the USPTO has adhered to neither OIRA's nor its own information quality guidelines. Its response to the 2010 request for correction, which concerned ICR 0651-0032, was particularly disturbing to any fair-minded observer. Not only did this response make a hash of the IQA, it grossly distorted the text and meaning of the PRA and Information Collection Rule. If OIRA will not defend the PRA, who will?

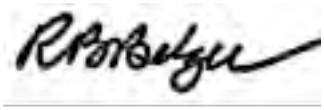
Before approving this ICR, OIRA should direct the USPTO to respond in good faith to all previously submitted requests for correction that concern this ICR. OIRA also should review the USPTO's response to the 2012 Katznelson request for correction and direct the USPTO to correct the errors of law and logic that it contains.

VI. FINAL COMMENTS

As I indicated in my email to you dated Feb. 23, 2013, I wish to meet with you and Messrs. Hunt and Mancini to discuss this ICR and ensure that OIRA staff fully understand the issues involved and why they are important, both to the public and to OIRA. As this letter makes clear, I remain concerned about the USPTO's serial and persistent noncompliance with the PRA and Information Collection Rule.

Perhaps more importantly, it also should be obvious that, through this ICR, the USPTO is continuing its longstanding pattern of misleading OIRA concerning the substance of its regulatory and paperwork actions. The USPTO's conduct on both margins will not improve until OIRA supervises it with appropriate intensity.

Respectfully submitted,



Richard Burton Belzer, PhD

cc: Alex Hunt, Branch Chief
Dominic Mancini, Deputy Administrator

Document ID: 0.7.991.5216

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Richard B Belzer <rbbelzer@post.harvard.edu>
Cc: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Bcc:
Subject: RE: Belzer comments on ICR 0651-0031
Date: Fri Mar 29 2013 14:44:44 EDT
Attachments:

Thanks for the comments Rich. We think that between our previous meeting and the comments you provided here, we have a good understanding of the issue and no need for an additional meeting at the moment. We will let you know if we have any questions.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 1:34 PM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: Belzer comments on ICR 0651-0031
Importance: High

Nick et al,

Please see the attached PDF for my comments on the latest edition of ICR 0651-0031. I look forward to meeting with y'all to discuss them. As I indicated earlier today, my schedule is generally flexible.

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

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(b) (6) v

(b) (6) f

Document ID: 0.7.991.5222

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan (Susan.Fawcet@USPTO.GOV) <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: 0031
Date: Mon Apr 01 2013 11:25:51 EDT
Attachments: 130329 Belzer Comments on 0651-0031.pdf

Hi Susan,

Just an FYI on some rather late comments that came in.

-Nick

RICHARD BURTON BELZER, PHD

(b) (6)

rbbelzer@post.harvard.edu

29 March 2013

Mr. Nicholas Fraser
Desk Officer, U.S. Patent and Trademark Office
Office of information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Subject: Comments to OIRA on ICR 0651-0031 ("Patent Processing (Updating)")

Dear Mr. Fraser,

This Information Collection Request (ICR) consists of 67 listed information collection items (ICs) with an agency estimated $370,725,475 non-burden hour costs and 11,972,191 burden-hours, the latter of which the agency says have a monetized value of $4,441,682,861. To put in perspective its magnitude, approved unchanged this ICR would comprise 29% of the total responses and 44% of the burden-hours for the entire U.S. Patent and Trademark Office (UPSTO), including trademarks. Among all the agencies within the U.S. Department of Commerce, the USPTO is currently responsible for 55% of its 18.3 million burden-hours and 99% of its acknowledged $5,300,000,000 in non-burden hour costs.[1]

Despite these extraordinary burdens, the Office of Information and Regulatory Affairs (OIRA) has historically devoted little staff time to USPTO oversight. This has persisted even though the public has devoted considerable time and effort to providing comments on a succession of 60-day Notices and 30-day Notices.[2]

In Section I, I show that the USPTO has committed multiple *procedural* violations of the Paperwork Reduction Act (PRA, 44 U.S.C. § 3506) and OMB's Information Collection Rule (5 C.F.R. §§ 1320.5-1320.12). Because these violations have been systematic and persistent, they are prima facie evidence of bad faith.

In Section II, I show that the USPTO has committed multiple *substantive* violations of the PRA and OMB's Information Collection Rule. Commenters have identified a number of paperwork burdens in this ICR that appear to be unreasonably duplicative or lack practical utility to the Office. Agencies are required to provide OIRA with "[a] summary of the public comments received…, including actions taken by the agency in response." 5 C.F.R. § 1320.5(a)(1)(iii)(F). The Supporting Statement

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[1] All calculations were derived by the author from data at www.reginfo.gov.

[2] The May 2012 public comment to USPTO from IEEE-USA, referenced in footnote 3, provides a helpful list (in footnote 32) of previous public comments on PRA notices and related matters.

accompanying the USPTO's submission is beneath pro forma. It summarizes comments incompletely, inaccurately characterizes the comments it mentions, dismisses these comments as irrelevant, and identifies no actions it has taken in response.

In Section III, I show that the USPTO has serially violated applicable Information Quality Guidelines. The Office has refused to even acknowledge, much less respond to, multiple error correction requests submitted on the 60-day Notice for this ICR. It responded in bad faith to a 2010 error correction request on ICR 0651-0032. Congress created OIRA to implement the PRA and delegated to it the primary responsibility of enforcing agency compliance. OIRA is responsible for upholding the law.

In Section IV, I show that this ICR submission includes, in well disguised form, prospective cures for several decades-long, unapproved information collections. At least two of these prospective cures are quite large. In particular, the USPTO proposes to add 50,000 annual responses and 500,000 annual burden-hours for affidavits and declarations that applicants have for decades submitted to comply with Rules 1.130, 1.131, and 1.132; plus 960,000 annual responses and 7,680,000 annual burden-hours for amendments and responses that patent applicants have for decades submitted to comply with Rules 1.111, 1.115, 1.116 and 1.312. According to the Supporting Statement, these new burden-hours entail annual financial costs of $3,034,780,000. This is about 70% of the total burden in the ICR.

This ICR also includes an IC that was omitted from the 60-day Notice. The Supporting Statement mischaracterize it as "added to this collection in connection with the Leahy-Smith America Invents Act (AIA) Final Rule entitled "Setting and Adjusting Patent Fees." This IC pertains to the filing of submissions after final rejection under Rule 1.129(a). However, Rule 1.129(a) has nothing to do with the AIA; it was promulgated in April 1995, and it concerns only patent applications submitted before June 8, 1995. The thin connection this IC has to the AIA is that the AIA authorized the USPTO to charge fees for Rule 1.129(a) filings. OIRA has already approved a new ICR that authorizes the collection of these fees. What the USPTO is doing is disguising under cover of the AIA its need to obtain—18 years late—an OMB control number for Rule 1.129(a) filings.

An undisclosed fraction of the burdens in these new ICs, possibly 100%, result from regulations promulgated as long ago as May 29, 1981. That's two months after OIRA was established. There is no institutional memory explaining why the USPTO was allowed to promulgate regulations without complying with the Paperwork Reduction Act of 1980. Every member of the OIRA staff on that date has retired, died, or both.

It is impossible for the public (but easy for the USPTO) to know how many responses to these information collections have been submitted despite the USPTO's legal inability to require compliance. It is likely that there are millions of such responses. For each one in which the USPTO issued an adverse action, the applicant suffered a penalty as defined by 44 U.S.C. § 3502(14) and/or 5 C.F.R. § 1320.3(j). For each such penalty, the applicant has the statutory right under 44 U.S.C. § 3512(b) to demand that the USPTO action resulting in the penalty be reversed.

In Section V, I list eight specific actions that OIRA should take before clearing this ICR:

1. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule.
2. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility.
3. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations.
4. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act.
5. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA.
6. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA.
7. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO.
8. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored.

I. THIS ICR SUBMISSION REFLECTS MULTIPLE PROCEDURAL VIOLATIONS OF THE PRA

The USPTO published the required 60-day Notice for this ICR on March 22, 2012 (77 Fed. Reg. 16813). The Notice states that the USPTO would be seeking from OIRA the approval of 4,777,532 annual responses entailing 11,972,777 burden-hours that it valued at $3,573,910,186. This valuation assumed average hourly costs of $340 for patent attorneys and $122 for paraprofessionals.

As required by the Information Collection Rule, the USPTO invited comment on "(a) [w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents…" The 60-day Notice neglected to invite comments on "the validity of the methodology and assumptions used" to estimate burden," as required by 5 C.F.R. § 1320.8(d)(1(ii).

Characteristic of the USPTO's 60-day Notices, this one provided hardly any useful information concerning the matters about which public comment was invited. For example, the Notice provided no useful information concerning how the USPTO had derived its estimates of the numbers of responses and burden-hours per response. This information normally is essential for the public to provide informed comment.

Despite the USPTO's lack of transparency, seven public comments were submitted.[3]

A. The USPTO disclosed too little information to allow the public to comment on "[w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility"

The 60-day Notice sought comment from the public about the practical utility of these ICs, but it provided almost nothing on which to comment. Members of the public unfamiliar with this term of art in the PRA and Information Collection Rule had no basis for submitting comments. It is likely that they had no clue what the 60-day Notice was about.

Despite this handicap, a few commenters did provide responses germane to this request. Instead of addressing these comments, however, the USPTO simply disregarded them.

B. The USPTO disclosed too little information to allow the public to comment on "the accuracy of the agency's estimate of the burden (including hours and cost)"

In my first comment on the 60-day Notice, I reported that the absence of any objective basis for the USPTO's burden estimates—most notably, its estimates of the average burden-hours to respond—rendered them not reproducible. IEEE-USA made a similar point, saying it was "generally unable to comment on the accuracy of the PTO's

[3] Public comments listed in the order in which they are memorialized on www.reginfo.gov:

1. Trzyna, Peter
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375116&version=0
2. Belzer, Richard (#1)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375118&version=0
3. Grzelak, Keith (for IEEE-USA)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375119&version=0
4. Belzer, Richard (#2)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375123&version=0
5. Brinckerhoff, Courtenay (for Foley & Lardner LLP)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375124&version=0
6. Green, Reza (for Novo Nordisk)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375125&version=0
7. Werking, Kipman
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375126&version=0

burden estimates or the validity of methodology and assumptions because the PTO has failed to disclose sufficient information to make informed comment possible." Foley & Lardner faulted the Notice for "fall[ing] short of the requirements of the statute and regulations at issue":

> Because the Federal Register Notice does not reveal the "methodology" used to arrive at the stated time and cost estimates, the USPTO has not provided the public with a meaningful opportunity to comment on the methodology used.

OIRA should be concerned when experienced patent prosecutors are unable to provide informed responses to a PRA notice published by the USPTO.

C. The USPTO disclosed too little information to allow the public to comment on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden"

The 60-day Notice may have invited comment on these margins, but the USPTO provided no information on which to base these comments. Commenters were left to their own devices.

Despite this agency-imposed handicap, several commenters did provide responses germane to these questions, including very specific recommendations on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden." Instead of addressing these comments, as the PRA and Information Collection Rule require, the USPTO deemed them "beyond the scope" of the ICR.

OIRA should be concerned when an agency dutifully invites comments exactly as the Information Collection Rule requires, the public submits highly germane comments despite the agency's best efforts to deter them from doing so, and the agency dismisses highly germane comments as irrelevant. It cannot be consistent with OIRA's mission to allow an agency to treat the PRA and Information Collection Rule as dead letters.

II. THIS ICR SUBMISSION REFLECTS MULTIPLE SUBSTANTIVE VIOLATIONS OF THE PRA

Several of the public comments identified regulatory provisions and Office practices that result in unreasonably duplicative paperwork burdens and lack practical utility.

A. Comments on Information collection requirements that are not "necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility "

IEEE-USA identified numerous paperwork requirements that lack practical utility because they are inconsistent with "the proper performance of the agency's functions to comply with legal requirements." Several examples were provided of duplicative burdens that deter the advancement of applications toward conclusion. In addition, IEEE-USA described internal management practices and supervisor compensation metrics that reward low-quality examiner performance (e.g., Office actions and rejection letters lacking sufficient content to enable effective reply), delay (e.g., examiners who decline to act on fully sufficient information in order to obtain additional compensation), and the imposition of duplicative burdens on applicants (e.g., forcing the submission of unnecessary RCEs). Each results in the imposition of burdens that are not necessary for the proper performance of the functions of the agency.

In a similar vein, Foley & Lardner specifically noted that requiring the submission of redundant Information Disclosure Statements "is ***not*** necessary for the proper performance of the functions of the agency, because the agency already has that information" (emphasis in the original). These views were specifically collaborated by Novo Nordisk, which also cited approvingly a relevant blog post by Foley & Lardner's Courtenay Brinckerhoff.[4]

According to Kipman Werking, procedural unreliability and financial conflicts of interest have rendered USPTO's procedures for addressing petitionable errors so lacking in practical utility that, whenever they have a choice, patent attorneys file appeals rather than petitions even though appeals are more burdensome for everyone concerned. A petitions process that is unreliable, or so ineffective that it increases burdens elsewhere in the system, is inherently incompatible with the proper performance of the functions of the agency.

B. Comments on "the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information"

Several of the public comments identified inaccuracies in the USPTO's burden estimates.

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[4] Brinckerhoff, Courtenay, "Help The USPTO Reduce The Paperwork Burdens Of Patent Prosecution," PharmaPatents (Foley & Lardner), May 1, 2012. http://www.pharmapatentsblog.com/2012/05/01/help-the-uspto-reduce-the-paperwork-burdens-of-patent-prosecution/.

1. The USPTO discloses no objectively supported basis for its burden estimates.

In my comments, I noted that the absence of any objectively supported basis for the USPTO's burden estimates, as required by 44 U.S.C. § 3506(c)(1)(A)(iv) and 5 C.F.R. § 1320.8(a)(4), render the USPTO's estimates non-reproducible. The USPTO has a credible basis for expertise with respect to estimating the numbers of responses, at least for information collections where there is an historical record. However, there is no obvious reason why the USPTO deserves even minimal deference with respect to its estimates of the average number of burden-hours per response. The USPTO examines patent applications; it does not prosecute them. Moreover, it has not conducted or sponsored surveys or experiments to obtain accurate unit burden estimates. Moreover, the USPTO has a substantial bureaucratic interest in understating burdens on the public, particularly given their magnitude.

Several other commenters made similar observations about the lack of objective basis for the USPTO's burden estimates and the Office's systematic understatement of burden per response.

2. The USPTO estimates only a subset of total burden.

In my second comment, I specifically noted that the USPTO's burden estimation "method" (such as it is) consists of counting only a subset of actual burdens—i.e., burdens borne by patent counsel. This clearly violates both the PRA and OMB's Information Collection Rule: the definition of burden includes the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency." 5 C.F.R. § 1320.3(b)(1), emphasis added. The USPTO does not even make an effort to estimate burdens on anyone else, such as inventors themselves. The USPTO's methodology can be described as follows: it assumes that inventors' unique knowledge and insight is transmitted magically to patent counsel. A patent on this technology would be extremely valuable.

In its comments, IEEE-USA made similar observations, noting the Office's persistent failure to include all burdens: "[T]he PTO continues to count only attorneys' billable hour burden and ignores hourly burden imposed on their clients (*i.e.*, patent applicants themselves)." Foley & Lardner also observed that the USPTO's estimates "do not appear to take into account the time that may be required to investigate underlying facts or confer with the applicant or inventor(s)."

This apparent discrepancy might be resolved if most USPTO burden estimates are interpreted as including just the *transmittal forms* and not the substance of these submissions. Foley & Lardner observed in comments that "as a general matter … the time estimates set forth in the Federal Register Notice underestimate the time required to submit the information at issue, particularly where the information is substantive." They suggested that perhaps "the estimates may reflect the time required to type up the documents at issue, [but] they do not appear to take into account the full time required 'to gather the necessary information, create the documents, and mail the completed

request,' as indicated." Several examples were provided in the previously cited blog post in support of the allegation that the USPTO's figures are "gross underestimate[s]".[5]

Novo Nordisk commented on the USPTO's burden estimates for terminal disclaimers and RCEs (ICs #6 and #19 in the Supporting Statement). With respect to terminal disclaimers, Novo Nordisk wrote that the "research, including the propriety of any double patenting rejection, analysis of claim scope between the reference application and any application/patent in the rejection, investigating facts, evaluating options, consulting with client, making the decision, filling out the disclaimer form, and filing, **take much longer than 12 minutes**" (emphasis in the original). Novo Nordisk objected to the USPTO's 12-minute average burden estimate for filing RCEs, taking into account "all research, including responding to of any rejection, analysis of claims in relation to the prior art, investigating facts, evaluating options, consulting with client, making the decision, filling out the RCE form, and filing, in concert with any amendment and/or response should be considered in the estimation of the time the applicant takes to prepare and complete an RCE." The USPTO's estimate is 12 minutes.

If these commenters are correct, it is not clear whether the USPTO actually holds valid OMB control numbers for many of these information collections, or would do so if OIRA approved this ICR. In 2009, the USPTO acknowledged that although it held a valid clearance for filing Notices of Appeal—analogous to an RCE transmittal form—it lacked

[5] Courtenay Brinckerhoff, *op cit.* footnote 4:

"The USPTO estimates ***5 minutes*** for a Request for a Corrected Filing Receipt. I find it hard to believe that someone could carefully review the filing date, title, inventor information and priority information listed on a filing receipt, determine the source of any discrepancies, and prepare a request in 5 minutes or less.

"The USPTO estimates ***12 minutes*** for an Express Abandonment. While it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming the Applicant's intention and explaining the irrevocability of an express abandonment.

"The USPTO estimates ***12 minutes*** for a Disclaimer. Again, while it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming that a disclaimer is necessary and appropriate and that the Applicant understands its consequences.

"The USPTO estimates ***1 hour*** for a Petition to Revive an unintentionally abandoned application. While there might be some cases where the underlying facts can be ascertained and confirmed in under an hour, I would imagine that for most applications it could take at least one hour just to determine how/why the application became abandoned, as required to support the averment that the abandonment was unintentional.

"The USPTO estimates ***8 hours*** for an Amendment/Response, ***10 hours*** for a Declaration, and ***5 hours*** for a Request for Pre-Appeal Brief Review. These estimates are not completely out of line, but it is difficult to believe that they are true averages, i.e., that enough Responses take only a few hours to balance the Responses that take many more hours. While I could accept that the average response takes 8 hours or less to write, I would think that the time required to "gather the necessary information"—to review the Office Action, study the cited references, consider response strategies, prepare claim amendments and formulate arguments—will take more than 8 hours on average."

a valid OMB control number for appeal briefs and reply briefs submitted by applicants to the Board of Patent Appeals and Interferences.[6] No valid OMB control number ever existed for appeal and reply briefs until December 22, 2009, when OMB approved new ICR 0651-0063.[7]

The absence of a valid OMB control number for applicant submissions of appeal and reply briefs prior to December 22, 2009, means that the USPTO lacked any legal authority to impose a penalty for an applicant's failure to supply information via these papers. The rejection of a patent application, in whole or in part, constitutes a penalty, and 44 U.S.C. § 3512 and 5 C.F.R. §1320.6 forbid an agency from imposing penalties. If the trivial burdens that the USPTO has estimated for numerous ICs in this ICR merely cover transmittal forms, then the USPTO faces a potential disaster in the event that applicants raise and win PRA challenges in Federal court.

3. The USPTO's "estimates" are biased, arbitrary assumptions with no objective basis.

In my comments, I noted that the USPTO's burden estimates were substantively unreliable. Patent counsel and inventors have submitted comments on previous ICRs characterizing many of the Office's estimates as substantial underestimates. The USPTO declined to respond in good faith to these past comments, and because OIRA has tolerated this in the past, the Office continues this practice in the January 2013 Supporting Statement.

This is not to say that the USPTO has made no changes in its burden estimation methods. IEEE-USA raised "concern[] that the PTO has amended its historic practice of basing burden estimates on the non-transparent, non-reproducible, and subjective 'beliefs' of undisclosed PTO staff by choosing to withhold any explanation for how it derived them." The USPTO appears to be responding to complaints about its failure to be sufficiently transparent by being even less transparent.

Figure A presents a histogram of the USPTO's estimated burden-hours per response for the 67 ICs in this ICR. Forty-two (63%) are said to have unit burdens of less than one hour per response; five have unit burdens of five minutes or less. IEEE-USA cited, with obvious incredulity, several of the 22 information collection activities that the USPTO estimated to require, on average, exactly 0.2 hour (12 minutes) to complete.[8]

Among the 42 ICs estimated by the USPTO to require less than one hour, 0.1 and 0.2 hour (6 and 12 minutes, respectively) are the predominant values. Of the 25 ICs estimated by the USPTO to require one hour or more, two figures dominate: 2 hours (i.e., ¼ work day) and 8 hours (i.e., 1 work day). These are not "estimates"; they are merely arbitrary round numbers.

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[6] The AIA renamed this body the Patent Trial and Appeal Board.

[7] ICR Reference No. 200809-0651-003, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003.

[8] The unit burden-hour estimate is 12 minutes for 23 of the 67 (34%) ICs in this ICR.

By their very nature, estimates are uncertain. While OMB could direct agencies to report these uncertainties, it does not do so. Instead, the Information Collection Rule directs agencies to report "objective" (i.e., unbiased) estimates of average or mean burden. Unbiased estimates of the mean have specific statistical properties. In nontechnical terms, a reasonable way to understand an unbiased estimate is that the true but unknown value is equally likely to be more or less than the estimate.

The USPTO's estimates do not conform to this principle. They are neither objectively supported nor unbiased. They are arbitrary values derived from an undisclosed procedure that appears to have as its goal the systematic understatement of actual burden.

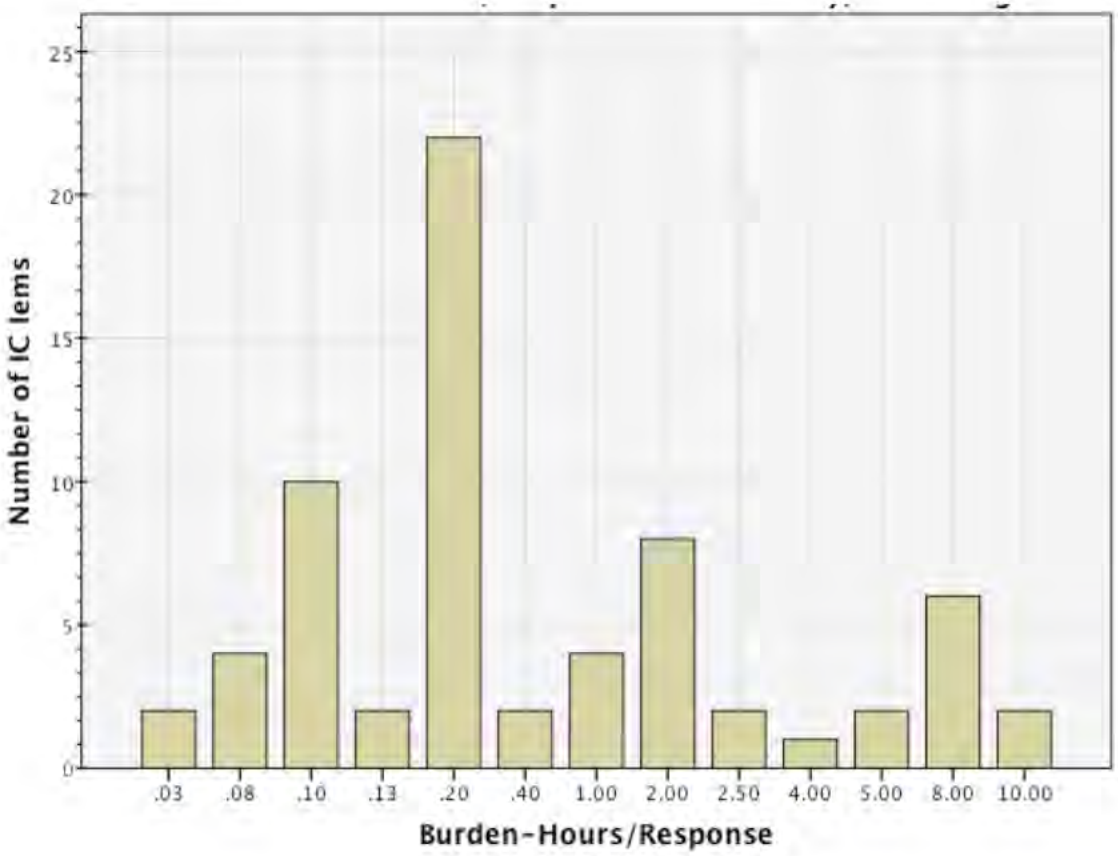
This inference is reasonable and appropriate for at four reasons. First, commenters have repeatedly noted that the USPTO's estimates include only burdens imposed on patent counsel and not burdens imposed on inventors. The USPTO willfully refuses to correct this error. Second, commenters have repeatedly noted that the USPTO's estimates substantially understate actual burdens on patent counsel. The USPTO willfully refuses to correct this error, too. Third, despite repeated requests from the public that it disclose its burden estimation methodology, the USPTO willfully refuses to do so. Finally, the USPTO apparently has abandoned a study launched several years ago that was supposed to provide a credible, independent review of its burden estimation methods.[9] The Office presumably concluded that credible burden estimation were contrary to its bureaucratic interests.

For these reasons, a reasonable default assumption is that the USPTO's figures understate actual burden by a factor of three. What the USPTO claims to be 12 million burden-hours valued at $3.9 billion per year are more like 30 million burden-hours valued at $10 billion per year.[10]

[9] ICF International. 2010. *Methodology for Conducting an Independent Study of the Burden of Patents-Related Paperwork*, Submitted to United States Patent and Trademark Office, Contract No. Gs23f8182h/Doc44papt0809009.

[10] This default relies on a method that estimates uncertain values based on orders of magnitude and their square roots. Thus, because 12 million burden-hours per year is clearly too low, the question is whether 100 million (10 x 10 million) or 30 million (3 x 10 million) burden-hours per year is more plausible. Using 3x yields 30 million. Similarly, because $3.9 billion per year is clearly too low, the question is whether $100 billion (10 x $10 billion) or $30 billion (3 x $10 billion) is more plausible. Using 3x yields $30 billion per year. Given the USPTO's burden estimation methods, any greater precision is imaginary.

Figure A: Burden-Hours per Response Are Arbitrary Numbers with No Objective Support



C. Unreasonably duplicative paperwork burdens

Public commenters identified numerous examples of unreasonably duplicative paperwork burden. Peter Trzyna identified such burdens in Rules 1.52(e) and 1.96, plus at least one other provision that lacks practical utility to the Office because it impedes effective patent examination. IEEE-USA identified several phenomena that cause unreasonably duplicative paperwork burdens, including examination procedures and reward metrics that incentivize low-quality work, management failure to properly and effectively supervise examiners, the USPTO's routine noncompliance with the Administrative Procedure Act (APA), and the 2009 redocketing of Requests for Continued Examination (RCEs). Foley & Lardner said (and Novo Nordisk explicitly concurred) that existing Information Disclosure Statement rules impose unreasonably duplicative paperwork burdens, including a requirement that applicants provide the same documents at least three times. Werking focused on the unreliability of the USPTO's procedures for addressing petitionable errors financial conflicts of interest among those to whom the USPTO Director has delegated the authority to respond to Rule 1.181 petitions, thus resulting in unreasonably duplicative paperwork burdens.

There are tens of thousands of registered patent attorneys and agents, in addition to the handful who devoted the time and effort to provide comments on this 60-day Notice. If the USPTO were seriously interested in discovering unreasonably duplicative paperwork burdens, it could conduct or sponsor an inexpensive survey that would reveal a much longer list.

D. Comments on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden of the collection of information on respondents"

Commenters proposed specific, constructive remedies that would reduce or eliminate paperwork burdens that are unreasonably duplicative or lack practical utility, answers to the very questions set forth by the USPTO in its 60-day Notice.

Trzyna suggested eliminating the requirement in Rule 1.52(e) that all computer files be in ASCII format, and numerous other "pointless" requirements that add unreasonably duplicative burden. As Trzyna noted, limiting the submission of computer data to ASCII files (i.e., forbidding the submission of graphic files, acoustic files, and the like) has the perverse effect of undermining the USPTO's ability to examine applications because it disables the very inventions that are subject to examination. "A Rule that requires disabling an otherwise enabling disclosure is ridiculous."

Trzyna also recommended the rescission of other regulatory requirements that are unreasonably burdensome or otherwise have no practical utility. This includes (1) the requirement to list all file names, sizes in bytes, and dates of creation; (2) the requirement that tables provided in landscape orientation be elsewhere identified as being in landscape orientation; and (3) the requirement to require disclosure of operating system compatibility. He characterized the USPTO's fixation on ASCII as "Byzantine." He noted that while these particular burdens might seem trivial, applicants who stray face suspension of examination. Trzyna also noted that the USPTO

does not impose this burden on international parties who file under the Patent Cooperation Treaty (PCT)l the burden is confined to applicants who file directly in the United States. As Trzyna reasonably noted, that which is permitted for foreign applicants under PCT rules should be sufficient for American applicants as well.

IEEE-USA recommended that the USPTO reform its internal compensation metrics. Even though the USPTO imposes higher fees on complex applications, examiners are rewarded the same credit ("counts") for reviewing a complex application as they are for a simple one. This incentivizes examiners to avoid complex applications and delay the conclusion of examination in order to generate more counts, both of which inevitably result in unreasonably duplicative paperwork burdens. Supervisors also are rewarded the same when the examiners under their control perform poorly as when they perform well. IEEE-USA recommended the seemingly obvious (and presumably uncontroversial) remedy of scaling examiner rewards by application complexity.

To solve the problem that unreasonably duplicative paperwork burdens result from how examiners and supervisors are compensated, IEEE-USA recommended that compensation should be heavily weighted on the conclusion of an examination, whether by allowance, appeal decision by the Board, or abandonment, and that compensation be based less on the achievement of minor milestones that do not lead to the conclusion of examination. It should be obvious that the USPTO ought to be compensating supervisors based on outcomes, not repeatedly circling the same intermediate milestones. "It is essential to break the chain that now rewards examiners for producing low quality and supervisors for tolerating it."

Werking noted that petitions practice is unreliable in large part because Technology Center directors, who have been delegated the authority to supervise examiners through the petition process, have a financial interest in denying petitions. Whereas the administrative patent judges who serve on the Patent Trial and Appeal Board earn the same reward for affirming or reversing an examiner, TC director compensation is aligned with the examiners they supervise. Thus, the same perverse incentives that examiners have to avoid complex applications, not to correct errors, and to generally produce low-quality Office actions also apply to their supervisors.

Having identified the 2009 redocketing of RCEs as a source of unreasonably duplicative paperwork burdens, it should not be surprising that IEEE-USA recommended that this "reform" be rescinded. By shortening the deadlines for examiners to take intermediate actions, this change incentivized examiners to generate intermediate actions of lower quality. Low-quality actions that do not take full account of the information that applicants submit cannot help but produce unreasonably duplicative paperwork burdens. Indeed, when examiners fail to take account of information provided to them, the practical utility of the requirement to supply the information is undermined.

Foley & Lardner recommended several regulatory changes that would simultaneously reduce unreasonably duplicative paperwork burdens and improve USPTO performance. These included extending Rules 1.97 and 1.98 and MPEP § 2001.06(b) to co-pending U.S. applications, using the new Common Citation Document

Application (CCD) tool, modifying IDS rules by extending MPEP § 2001.06(b) to all information available on the CCD, and eliminating requirements that applicants submit copies of documents freely available online. Novo Nordisk concurred with Foley & Lardner's recommendations.

Werking recommended that the USPTO reduce unreasonably duplicative paperwork burden by reforming its petition practices based on practices already established for appeals. Among other things, this includes imposing reasonable deadlines for the Office to respond to petitions and tolling examination of applications while petitions are pending. "A ten month wait period for deciding petitions is simply too long to reliably enforce PTO regulations—regulations that ensure information quality and minimize paperwork burden."

E. The Supporting Statement is unresponsive to public comments

In the Supporting Statement, the USPTO summarized few of these comments, dismissed all substantive comments without reason, and made no changes in response.

- In response to commenters objecting to its specific burden estimates, the USPTO sought to shift to the public the Office's statutory responsibility for burden estimation, rather than comply with the law: "[T]hese comments did not provide a basis for or propose any other alternative time estimate burden."
- In response to commenters objecting to its failure to account for burdens on inventors, the USPTO implicitly acknowledged the error but refused to make corrections: "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."
- In response to commenters who identified unreasonably duplicative paperwork burdens resulting from regulatory requirements that lack practical utility, the USPTO replied that these comments "go beyond the scope of the instant ICR clearance." In fact, these comments were not "beyond the scope" of the public comment request; they were squarely in the middle of it.

Previous public comments to OIRA have raised the same concern: the USPTO does not take seriously its obligations under the PRA and Information Collection Rule. With respect to one ICR submitted in October 2008,[11] OIRA did hold the USPTO accountable. It should do so again, this time by disapproving and continuing the existing OMB control number and, among other things, directing the USPTO to initiate

[11] ICR Reference No: 200809-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003, approved in part Dec. 22, 2009). Although OIRA's December 2009 approval prospectively cured a longstanding PRA violation discovered in 2008, OIRA did not list it as such in its 2008, 2009, or 2010 reports to Congress.

rulemaking to eliminate regulatory requirements that impose paperwork burdens that are unreasonably duplicative or otherwise lack practical utility.

III. THIS ICR SUBMISSION VIOLATES THE INFORMATION QUALITY ACT

The Supporting Statement certifies that the information contained in the submission is covered by the Information Quality Act (IQA) and that the ICR adheres to OMB's and USPTO's Information Quality Guidelines. This certification is knowingly false. The ICR's lack of transparency and reproducibility alone is sufficient to conclude that it does not comply. The USPTO's response to a different IQA error correction request, discussed below, is sufficient to infer that its violations are willful.

A. Procedural violations

My pair of public comments on the 60-day Notice were expressly styled as IQA error correction requests. To ensure that the USPTO did not inadvertently miss this, I submitted them as error correction requests as well as public comments on the 60-day Notice. The USPTO is obligated to have responded to these error correction requests no later than via the Supporting Statement accompanying the ICR submission.

The Supporting Statement includes no such response. Therefore, the USPTO is unambiguously in violation of the IQA's procedural requirements and the USPTO's certification to the contrary is knowingly false.

B. Substantive violations

Having failed to respond to error correction requests in the Supporting Statement as required, it should go without saying that the USPTO also failed to address the substantive errors I identified in my second comment and error correction request.

The USPTO's conduct is not an isolated phenomenon. The Office responded to a 2010 error correction request in bad faith. That request identified a series of technical errors in ICR 0651-0032 ("Initial Patent Applications").[12] I found similar errors.

In its astoundingly cynical response to this 2010 error correction request,[13] the USPTO said that burden estimates are not "information," and therefore they are not covered by the IQA:

> Under the IQA, certain influential information must be reproducible under certain circumstances. The burden "estimates" of which you complain do not

[12] Katznelson, Ron D. 2010. "Request for Correction under the Information Quality Act [ICR 0651-0032]." Available at: http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009471.pdf.

[13] U.S. Patent and Trademark Office. 2011. Response to Katznelson 2010 Request for Correction (Ticket No. 1-178950 16). Available at http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009511.pdf.

> qualify as "information" within the meaning of the IQA. "Information" is defined as "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms." By definition, estimates do not represent knowledge such as facts or data. "Information," not estimation, is subject to certain reproducibility requirements. No correction is warranted for matters not involving "information" (internal references omitted).

The PRA and the Information Collection Rule do not exempt "estimates" from the definition of "information." Indeed, if estimates were exempt, every statistical product of the Department of Commerce would also be exempt—and not just from the IQA, but from OIRA review. OIRA's Statistical & Science Policy Branch, which devotes most of its resources to the oversight of statistical agencies such as the Commerce Department's Census Bureau, would have no statutory authority for its operations. It could be summarily disbanded.

Finally, the timing of the USPTO response and OIRA's approval of ICR 0651-0032—the subject of the 2010 error correction request—is more than curious. OIRA approved the ICR on January 18, 2011, exactly three days before the date of the USPTO response to the error correction request. The best spin that can be conjured is that OIRA insisted that the USPTO respond before concluding review but paid no attention at all to the contents of the response. That also would mean that OIRA paid no attention to the public comments it received on ICR 0651-0032.

IV. THIS ICR SEEKS TO SURREPTITIOUSLY CURE SEVERAL DECADES-LONG UNAPPROVED COLLECTIONS OF INFORMATION, AT LEAST TWO OF WHICH ARE TRULY MASSIVE

At the time I and others commented on the 60-day Notice, it was not clear what the large new ICs were about. Since then, and particularly after a careful reading of the Supporting Statement, it has become obvious that through this submission the USPTO seeks to surreptitiously cure unapproved information collections that have persisted for decades.

A. In the 60-day Notice, the USPTO withheld crucial information about certain elements of the ICR and did not even mention others

The 60-day Notice identifies at least six new ICs for which the USPTO does not appear to have ever obtained an OMB control number. They are listed in Table 1 below. Taking at face value the USPTO's burden estimates, these new collections total over 1 million new responses and more than 8 million new burden-hours valued by the USPTO at more than $3 billion per year.

The 60-day Notice describes these ICs obscurely so that few affected parties would have had a clue what they were about:

Table 1: Previously Unapproved ICs in the January 2013 ICR Submission and Supporting Statement in the January 2013 Supporting Statement

IC No.	*IC Title*	*Burden-Hours/ Response*	*Responses/ Year*	*Burden-Hours/ Year*	*Annual Value of Burden/Hours*
32	Electronic Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	46,500	465,000	$172,515,000
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	3,500	35,000	$12,985,000
33	Electronic Amendments and Responses	8	893,000	7,144,000	$2,650,424,000
33	Amendments and Responses	8	67,000	536,000	$198,856,000
34	Electronic Filing a submission after final rejection (see 37 CFR 1.129(a))	8	86	688	$255,248
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	8	7	56	$20,776
	Totals		*1,010,093*	*8,180,744*	*$3,035,056,024*

The 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.

Further research made possible only by the limited new information in the Supporting Statement indicates that the USPTO is surreptitiously attempting to prospectively cure multiple, longstanding violations of the PRA.

B. After expiration of the public comment period on the 60-day Notice, the USPTO proposed changes to Rules 1.30 and 1.31, denied that these changes caused new paperwork burden, and falsely characterized the relevant information collections as previously approved by OIRA

Subsequent to both publication of the 60-day Notice on Mar. 22, 2012, and the conclusion of the public comment period on May 21, 2012, the USPTO proposed changes to Rules 1.130 and 1.131 (77 Fed. Reg. 43742, Jul. 26, 2012). The PRA section of the Final Rule Notice claims that Rule 1.131-1.132 affidavits and declarations were "previously approved and currently being reviewed under OMB control number 0651–0031."

This statement was false, and almost certainly knowingly so. ICR 0651-0031 was not under review by OIRA on Jul. 26, 2012, and OIRA had never previously approved information collections related to Rule 1.130, 1.131, or 1.132 affidavits and declarations. OIRA had concluded its most recent substantive review of this ICR on Jul. 1, 2009.[14] When ICR Reference No. 200707-0651-005 was approved on that date, the collection did not include information related to these Rules.[15]

According to the eCFR (current as of Mar. 25, 2013), these Rules were first promulgated as long ago as September 20, 2000. Thus, for the collections of information contained in these Rules, the USPTO has lacked a valid OMB control number for as much as 23 years.

C. Public commenters specifically inquired about these new collections of information, and the USPTO declined to respond

In my first public comment and error correction request, I observed that the 60-day Notice lacked transparency and reproducibility on virtually every front. In my second public comment and error correction request, I highlighted several of the paperwork burdens listed in Table 1 above: "Given the multi-billion dollar scale of the burdens" involved, "one would expect the USPTO to describe them with considerably greater cogency and detail." One would be wrong to have harbored such expectations.

I was not alone. IEEE-USA also said it could not discern from the 60-day Notice what the USPTO intended the scope of these line items to include, "not[ing] with foreboding that the [US]PTO reports that it expects 50,000 (!) 'Rule 1.130, 1.131, and 1.132 Affidavits or Declarations' and 960,000 (!) 'Amendments and Responses.'" IEEE-USA estimated the financial cost of these information collections at about $3.7 billion per year. "Obviously, an information collection imposing several billions of dollars in burden deserves far more explanation than this," IEEE-USA wrote. "There is no

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[14] See http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0651-0031.

[15] See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200707-0651-005.

question that the public cannot provide informed comment on such an empty disclosure."

D. The ICR submission includes an information collection not included in the 60-day Notice that is falsely described as related to the Leahy-Smith America Invents Act

The Supporting Statement identifies changes made since the publication of the 60-day Notice, none of which were in response to public comment. These changes add an estimated 50,048 more burden-hours per year, and they are dominated by new IC #34, defined by the USPTO as "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))."

IC #34 has nothing to do with the AIA. According to the eCFR (current as of Mar. 25, 2013), Rule 1.129(a) was last revised on April 25, 1995 (60 Fed. Reg. 20226). It concerns applications filed on or before June 8, 1995, prior to the effective date of the Uruguay Round Agreements Act.[16] Nothing in the AIA altered the rights of those who submitted applications before that date, so it cannot be the case that the USPTO needs an OMB control number for this information collection in order to implement the AIA.

In the PRA section of the preamble to the 1995 Final Rule (60 Fed. Reg. 20195), the USPTO asserted that the rule "does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act." This is impossible, for Rule 1.129(a) is chock full of information collection requirements. Rather, when it promulgated Rule 1.129(a) the USPTO simply ignored the PRA. In the process of upwardly revising its fees, the Office apparently discovered this longstanding PRA violation and decided to prospectively cure it without the public or OIRA noticing. (The Supporting Statement characterizes it as a "program change," not a prospective cure for a PRA violation.)

Still, showing that the USPTO misrepresented a new information collection covering Rule 1.129(a) filings does not explain <u>why</u> it would be motivated to do so. After all, the only applications that are covered by Rule 1.129(a) were submitted prior to June 8, 1995.

The most plausible answer is both straightforward and shocking: <u>there are patent applications 18 or more years old still pending at the USPTO</u>. Data submitted by the USPTO along with the ICR suggest that there may be quite a few of them, too. In FY 2012 there were 11 submissions covered by Rule 1.129(a).[17] The Supporting Statement estimates that the USPTO will receive 93 filings per year during the 3-year period for

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[16] The Uruguay Round Agreements Act of 1995 changed patent term from 17 yeas after *allowance* to 17 years after *filing*. Similar to what happened prior to the March 16, 2013 effective date of the AIA's first-to-file rule, the USPTO received a huge bolus of applications prior to June 8, 1995, in order to take advantage of the pre-GATT law governing patent term.

[17] "0031 Filings Attachment," http://www.reginfo.gov/public/do/DownloadDocument?documentID=375113&version=0.

which it seeks OIRA approval, a nearly tenfold increase. There may be hundreds of patent applications that were submitted before June 8, 1995, and languishing in examination purgatory. OIRA might want to find out just how many of these ancient applications the USPTO has squirreled away and investigate why the USPTO has failed to complete their examination almost two decades later.

The public cannot know why the USPTO waited until now to seek approval of this information collection. The most charitable explanation is that, in mid-2012 when it prepared new ICR 0651-0072 ("America Invents Act Section 10 Patent Fee Adjustments"),[18] USPTO personnel discovered that Rule 1.129(a) filings lacked an OMB control number. The new ICR would be sufficient to authorize the collection of fees on Rule 1.129(a) filings, but it would not be enough to allow the Office to require them to be filed in the first place.

E. The USPTO has had numerous opportunities to prospectively cure these unlawful information collections, but not done so until now

Table 2 lists when each of the rules containing an unlawful information collection in this ICR was first promulgated. It also lists when each rule was amended. (Rule 1.130 used to be numbered 1.131.)

The USPTO could have prospectively cured the absence of a valid OMB control number at any of the times it revised or renewed ICR 0651-0031. There are 33 such revisions and renewals since the ICR was first established in 1993. On none of these occasions did the USPTO revise the ICR to include any of these information collections.

[18] This new ICR contains 127 separate ICs, each of which involves a fee that the AIA authorized the USPTO to reset. *See* ICR Reference No. 201205-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201205-0651-001#, pre-approved October 25, 2012, expiration date Oct. 31, 2015); ICR Reference No. 201212-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212-0651-001, pre-approved Jan. 11, 2013, expiration date Jan. 31, 2016); and ICR Reference No: 201301-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201301-0651-003#section0_anchor, approved Jan. 18, 2013, expiration date Jan. 31, 2016).

Table 2: Regulatory Actions for Information Collections in this ICR Lacking OMB Control Numbers

IC#	*Rule*	*Title*	*Date*	*FR Citation*
32	Rule 1.130, 1.131, and 1.132 Affidavits and Declarations			
	Rule 1.130	Affidavit or declaration of attribution or prior public disclosure under the Leahy-Smith America Invents Act	Feb. 14, 2013	78 FR 11058
	Old 1.131	*Affidavit or declaration of prior invention*	*June 23, 1988* *May 1, 1995;,* *Aug. 19, 1996* *Sept. 8, 2000* *Sept. 20, 2000* *Aug. 12, 2004* *Sept. 21, 2004*	*53 FR 23734* *60 FR 21044* *61 FR 42806* *65 FR 54673* *65 FR 57057* *69 FR 49999* *69 FR 56543*
	Rule 1.131	Affidavit or declaration of prior invention or to disqualify commonly owned patent or published application as prior art	Feb. 14, 2013	78 FR 11058
	old 1.130		*Aug. 19, 1996* *Sept. 20, 2000* *Jan. 11, 2005*	*61 FR 42805* *65 FR 57056* *70 FR 1824*
	Rule 1.132	Affidavits or declarations traversing rejections or objections	Sept. 20, 2000	65 FR 57057
33	Amendments and Responses			
	Rule 1.111	Reply by applicant or patent owner to a non-final Office action	May 29, 1981 Oct. 10, 1997 Sept. 8, 2000 Sept. 21, 2004 Jan. 27, 2005	46 FR 29182 62 FR 53192 65 FR 54672 69 FR 56542 70 FR 3891
	Rule 1.115	Preliminary amendments	Sept. 21, 2004	69 FR 56543
	Rule 1.116	Amendments and affidavits or other evidence after final action and prior to appeal	Aug. 12, 2004	69 FR 49999
34	Filing a Submission After Final Rejection			
	Rule 1.129(a)	Transitional procedures for limited examination after final rejection and restriction practice	Apr. 25, 1995	60 FR 20226

V. SPECIFIC REQUESTS FOR ACTION BY OIRA

The list below represents my best effort to provide constructive suggestions to OIRA.

The purposes of the PRA cannot be achieved if agencies refuse to comply and OIRA looks the other way. Allowing the USPTO to continue along its present path will have adverse effects throughout the government. Systematic, serial violations show contempt for both the PRA and OIRA, and it makes fools of agencies that comply in good faith. Whenever OIRA tolerates this, it lowers the bar for other agencies and encourages a perverse race to the bottom.

Since its founding in 1981, OIRA has had to balance its statutory mission to implement the PRA with important and growing executive responsibilities, most notably regulatory review under Executive Orders 12291, 12498, 12866, and 13563. It is therefore easy to imagine that OIRA now perceives executive regulatory review to be more important than statutory implementation and enforcement of the PRA. Yet there are important co-benefits to regulatory review that OIRA can obtain by taking seriously its PRA responsibilities. Frequently, problems identified during regulatory review could have been reduced or prevented had OIRA and the agency been more diligent at the information collection stage of the regulatory development process. From my own OIRA experience, I know of many instances in which draft regulations lacked cost-effectiveness because the information needed to regulate intelligently had not been obtained when there was still time to do so. Similarly, many draft regulations that OIRA reviews consist of little more than the addition of more sedimentary layers of new regulatory language to overcome errors and defects in previous rounds of regulation.

Yet another reason OIRA should take seriously its PRA responsibilities in this case is that it has been unable to improve the quality of USPTO regulation through regulatory oversight. When the USPTO writes regulations, it systematically misclassifies them as "significant" or "nonsignificant" in order to evade the requirement to prepare a Regulatory Impact Analysis. In 2012, OIRA reviewed 17 draft proposed or final USPTO rules, each of which by any reasonably reckoning had paperwork burdens alone that were "likely to result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, [or] jobs…" Executive Order 12866, § 3(f)(1). Only one of these rules—0651-AC54, "Setting and Adjusting Patent Fees"—was designated economically significant, and the Regulatory Impact Analysis accompanying it was predictably substandard.[19]

[19] In 2012, the USPTO also promulgated six regulations that it deemed "not significant," which presumably were not reviewed by OIRA. The USPTO has in the past designated regulations as "not significant" and not submitted them to OIRA for review even though they had paperwork

Enforcing the PRA and the Information Collection Rule provide a useful pathway to effective regulatory oversight. OIRA should work with the public to identify regulations that impose unreasonably duplicative burdens, or lack practical utility for other reasons. This would enable OIRA to achieve important regulatory reforms in ways that end-of-process regulatory review cannot. Though comments on this ICR were few, they reveal systematic regulatory problems that suppress America's technological innovation and economic growth. One can only imagine what a concerted effort to obtain information from the public would reveal.

A. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule

OIRA should disapprove and continue the existing OMB control number, and direct the USPTO to embark on a crash program to end its systematic procedural and substantive violations. Procedural violations consist primarily of insufficient information disclosure, making it difficult for even the most informed members of the public to provide useful comments, and impossible for the vast majority to do so. Substantive violations consist primarily of burden estimates that are unreliable and generally believed by the public to be gross underestimates, and the absence of evidence of actual practical utility.

OIRA should direct the USPTO to prepare a revised 60-day Notice that procedurally and substantively complies with the PRA and the Information Collection Rule. Specifically, OIRA should direct the USPTO to:

1. disclose an objectively supported, reproducible methodology for estimating the number of responses that can be used for all patent-related ICRs;
2. promptly compile a comprehensive inventory of every collection of information contained in its rules and guidance;
3. sponsor a rigorously designed and independently conducted survey of registered patent attorneys, agents, and patent applicants to obtain objectively supported burden-hour estimates;
4. publish all work products for public comment, and respond in good faith to the comments received.

It would cause no meaningful hardship to the USPTO to undertake these tasks. The President's FY 2013 budget for the USPTO was $2,822,000,000. Reforming paperwork burdens would easily reduce its operating costs by more than 1% ($28,220,000). Even if the analyses I propose were to cost $1 million, they would provide a return on investment to the USPTO of more than $28 for every dollar spent. Undertaking these tasks also would improve the USPTO's ability to effectively and efficiently implement the AIA.

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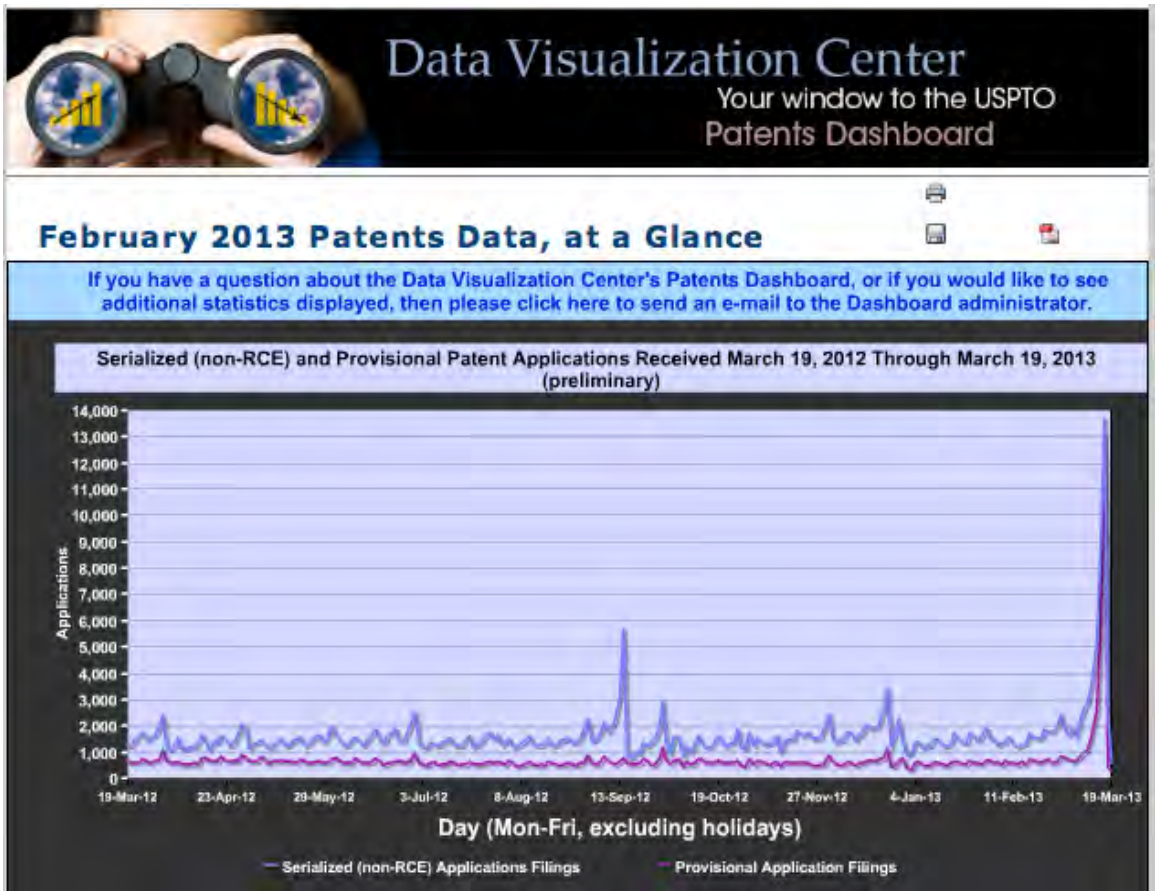
burdens alone well in excess of the $100 million threshold. Unsurprisingly, the Office's practice has been to deny that these paperwork burdens exist.

The USPTO might balk, claiming that some provisions in this ICR must be approved to implement the AIA. We can easily dismiss this line of argument by noting that the paperwork burdens associated with patent prosecution (as opposed to application) under the AIA will not arise for many months at the earliest, and possibly for years. Inventors responded predictably to the March 16, 2013 effective date for first-to-file by swamping the Patent Office with applications that must be examined under pre-AIA rules and procedures. This is shown in Figure B, which is a screenshot of the USPTO's Patent Dashboard taken on March 25, 2013, showing the spike that occurred in mid-March.

Figure B: A Rush to File Under the Old Patent Law to Beat the March 16, 2013 Deadline



B. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility

Several commenters on the 60-day Notice identified specific regulatory requirements that they said were unreasonably duplicative or otherwise lacked practical utility to the USPTO. In the Supporting Statement accompanying the ICR submission, the USPTO declined to rebut commenters' claims or even treat their comments respectfully. The Office went so far as to incorrectly assert that comments identifying unreasonably duplicative paperwork burdens "go beyond the scope" of the comment request. If OIRA does nothing in response, it rewards an agency for acting in bad faith and brings disrespect upon itself.

Fortunately, OIRA has explicit authority to do the right thing. Pursuant to 5 C.F.R. § 1320.12(f), it can direct the USPTO to undertake rulemaking sufficient to eliminate the unreasonably duplicative burdens commenters identified. While a comprehensive list of such regulations should be obtained, as I recommend in subsection A above, OIRA can ensure a good start by directing the USPTO to address the specific examples of unreasonably duplicative and burdensome regulations identified by commenters on the 60-day Notice for this ICR.

C. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations

This ICR is a mysterious stew. Many of the ICs are simply renewals of OIRA's 2009 approval, with updated estimates of the numbers of responses only, and a few are revised to account for AIA-related changes. But the largest ICs are not mere renewals but prospective cures for longstanding PRA violations. They comprise 70% of the paperwork burden.

Before approving this ICR, OIRA should direct the USPTO to develop and publicly disclose how the burdens of this ICR are allocated across these three types of information collection.

D. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act

For the new items are prospective cures for longstanding PRA violations, and which comprise 70% of the total paperwork burden, OIRA should direct the USPTO to explain in detail what paperwork the Office intends to be included and a credible, transparent, and reproducible estimate for the burden of each item. This ICR gives no detail at all. In contrast, the USPTO itemizes five ICs with estimated total burdens across all respondents under 10 hours per year. Half of all ICs in this ICR have total

burden-hours below 1,000 per year. Postage costs are estimated to the nearest penny. Meanwhile, "Amendments and Responses" stands out at 7,680,000 total burden-hours per year, differentiated only by whether the information, whatever it is, is provided electronically or on paper.

Gross ambiguity about "Amendments and Responses" inexorably leads to a reasonable concern that the aggregate burdens of this ICR have been grossly underestimated. Commenters with patent prosecution experience have said that the USPTO's unit burden estimates are unrealistically low, often because the Office counts only the burden of transmitting information to the USPTO, not the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information," as 5 C.F.R. § 1320.3(b)(1) requires. It is not difficult to imagine that the USPTO's unit burden estimate—exactly 8 hours, or conveniently, exactly 1 work-day—understates average unit burden by, say, a factor of three. In that case, "Amendments and Responses" alone would be 23 million burden-hours per year—about as large as ICs usually found in Internal Revenue Service, Medicare, and Medicaid ICRs. Few of these comparable information collections have burden-hour rates on the order of $400 per hour.

Before approving this ICR, OIRA should direct the USPTO to provide details concerning exactly what paperwork submissions are covered within these new, amorphously defined ICs. The USPTO also should produce objectively supported, detailed estimates for each type of submission, and a transparent, reproducible methodology showing how these burden estimates were derived.

E. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA

As I noted earlier, the 60-day Notice was particularly unrevealing with respect to Rule 1.130, 1.131 and 1.132 affidavits or declarations (50,000 responses totaling 500,000 burden-hours valued by the USPTO in 2012 at $170,000,000) and unspecified "Amendments and Responses" (960,000 responses totaling 7,680,000 burden-hours valued by the USPTO in 2012 at $2,611,200,000).

In my comments, I asked the USPTO to clarify what these new ICs were about. In response, the Supporting Statement says almost nothing. Yet it did provide enough information to conclude that the USPTO is seeking to prospectively cure longstanding PRA violations, but doing so as surreptitiously as possible. Indeed, the USPTO's desire to avoid acknowledging these PRA violations has led it to make even more false statements. For example, the Supporting Statement mischaracterizes prospective cures for these PRA violations as mere "program changes."

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual. n particular, the changes listed in Table 3 below are required and should be separately grouped under a new second-order subhead titled "Corrections of Violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 3: Necessary Changes to the Supporting Statement to Correctly Identify Past PRA Violations (~~deletions~~, additions)

IC No.	*Corrected Text*
32	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**
33	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**

F. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA

The major new information collection item added to the submission but not disclosed for public review and comment in the 60-day Notice concerns Rule 1.129(a) filings. The USPTO describes it as made necessary by the AIA. This explanation is false. Rule 1.129 has been on the books since April 1995 and it only concerns applications filed before June 8, 1995. According to data submitted by the USPTO along with the submission, there were 11 responses submitted in FY 2012 governed by Rule 1.129(a).

Based on my review of the USPTO ICR inventory, it appears that the USPTO has never before obtained an OMB control number for Rule 1.129(a) filings made after final rejection. That is, the USPTO is seeking to prospectively cure an unapproved collection of information that has languished for almost 18 years.

That means the Supporting Statement needs be revised along the lines of Table 4 below. This would acknowledge that the purpose of adding this new information collection is to prospectively cure a longstanding violation of the PRA.

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual, including the change listed in

Table 4. This change should be added to the new second order subhead titled "Corrections of violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 4: Necessary Changes to the Supporting Statement to Correctly Identify Information Collection Elements Added After Publication of the 60-day Notice (~~deletions~~, additions)

IC No.	*Corrected Text*
34	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~~ correction for a violation of the Paperwork Reduction Act.**

G. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO

Improving government management is a long neglected part of OMB's mission. Under the direction of OMB's Office of Performance and Personnel Management (OPPM), the USPTO has established three strategic goals, one of which is to optimize patent quality and timeliness.[20] Several performance measures have been chosen, but most of them concern inputs (e.g., patent applications filed electronically) and intermediate outputs (e.g., average first action pendency). These performance measures are poor proxies for patent quality.

The USPTO's 2012 Performance and Accountability Report (PAR) specifically mentions a program called Clearing Our Oldest Patent Applications 2.0 (COPA 2.0). What the USPTO apparently means by "old" does not, however reach back to the pre-1995 applications covered by Rule 1.129. Rather, "old" means something that is actually quite young by comparison, and the program's goal is much more modest than either completing examination (an output measure) or patent quality (an outcome measure):

[20] U.S. Patent and Trademark Office. 2012. Performance and Accountability Report, Fiscal Year 2012. Alexandria, Va. http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf.

> For COPA 2.0, the "tail" is applications that were 13 months and older as of October 1, 2011, and had not received a first office action.

The USPTO compliments itself for meeting its goal of completing first office actions on 260,000 applications. But pre-1995 application have languished for least 198 months, not 13. To characterize the mere issuance of first Office actions as "clearing our oldest patent applications" is equivalent to establishing a goal of providing effective elder care by improving middle school education.

A management truism is that one cares about that which one measures. This suggests that the USPTO cares more about issuing first office actions than it does about completing their examination. If it had a more worthy goal—e.g., completing the examination of old applications—OPPM would have a better guide to the USPTO's actual mission performance.

Similarly, we do not know how widespread and deep is the USPTO's PRA noncompliance problem. Every time an ICR comes up for renewal we discover yet more unapproved information collections with thousands or millions of unapproved burden-hours. OIRA should seek OPPM's assistance by defining PRA compliance as a specific performance goal. This would at least (and at last) raise the visibility of the PRA with the USPTO's senior management and its new director.

H. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored

OIRA is responsible for enforcing the Information Quality Act. It was OIRA that authored government-wide information quality guidelines and pre-reviewed each agency's implementing guidelines in 2002. It was OIRA that decided to issue guidelines instead of binding regulations, presumably on the ground that guidelines would be more flexible. Had OIRA promulgated regulations, there would be little doubt that affected parties dissatisfied with agency responses could, as the statute says, "seek and obtain correction of information maintained and disseminated by the agency that does not comply" (emphasis added). Because OIRA issued guidelines instead, it is OIRA's responsibility to ensure that agencies comply.

To date, the USPTO has adhered to neither OIRA's nor its own information quality guidelines. Its response to the 2010 request for correction, which concerned ICR 0651-0032, was particularly disturbing to any fair-minded observer. Not only did this response make a hash of the IQA, it grossly distorted the text and meaning of the PRA and Information Collection Rule. If OIRA will not defend the PRA, who will?

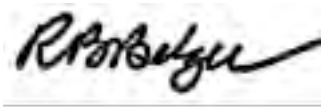
Before approving this ICR, OIRA should direct the USPTO to respond in good faith to all previously submitted requests for correction that concern this ICR. OIRA also should review the USPTO's response to the 2012 Katznelson request for correction and direct the USPTO to correct the errors of law and logic that it contains.

VI. FINAL COMMENTS

As I indicated in my email to you dated Feb. 23, 2013, I wish to meet with you and Messrs. Hunt and Mancini to discuss this ICR and ensure that OIRA staff fully understand the issues involved and why they are important, both to the public and to OIRA. As this letter makes clear, I remain concerned about the USPTO's serial and persistent noncompliance with the PRA and Information Collection Rule.

Perhaps more importantly, it also should be obvious that, through this ICR, the USPTO is continuing its longstanding pattern of misleading OIRA concerning the substance of its regulatory and paperwork actions. The USPTO's conduct on both margins will not improve until OIRA supervises it with appropriate intensity.

Respectfully submitted,



Richard Burton Belzer, PhD

cc: Alex Hunt, Branch Chief
Dominic Mancini, Deputy Administrator

Document ID: 0.7.991.5223

From: Richard Belzer <regcheck@mac.com>
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Cc: Richard B Belzer <rbbelzer@post.harvard.edu>; Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Bcc:
Subject: Re: Belzer comments on ICR 0651-0031
Date: Wed Apr 03 2013 09:48:28 EDT
Attachments:

Nick,

I am pleased to learn that since our meeting on March 20 you have had time to read the Supporting Statement and the comments filed in 2012 on the 60-day Notice. I trust that my comments on the ICR submission will fill in some of the gaps, particularly with respect to what appear to be significant bootlegs in this ICR that the Supporting Statement does not confess.

Now that the March 15 deadline for avoiding first-to-file has passed, patent lawyers I know seem to have more time to focus on these matters. What I am learning suggests that there may be a **lot** more ongoing information collections that should be in 0651-003, but aren't. That, of course, would mean that the three bootlegs I believe I have found are just the tip of the iceberg.

The most important question I have, and to which I would appreciate an answer from you, is whether I have made a mistake: Are there valid OMB control numbers for any of the three items I have flagged as quiet attempts to obtain prospective cures for bootlegs?

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

On Mar 29, 2013, at 2:44 PM, "Fraser, Nicholas A." <Nicholas_A._Fraser@omb.eop.gov> wrote:

Thanks for the comments Rich. We think that between our previous meeting and the comments you provided here, we have a good understanding of the issue and no need for an additional meeting at the moment. We will let you know if we have any questions.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 1:34 PM

To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: Belzer comments on ICR 0651-0031
Importance: High

Nick et al,

Please see the attached PDF for my comments on the latest edition of ICR 0651-0031. I look forward to meeting with y'all to discuss them. As I indicated earlier today, my schedule is generally flexible.

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

Document ID: 0.7.991.5225

From: Richard Belzer <regcheck@mac.com>
To: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc:
Bcc:
Subject: Re: Belzer comments on ICR 0651-0031
Date: Wed Apr 03 2013 10:01:08 EDT
Attachments:

Dom,

You are getting copied on these exchanges, but I have reason to doubt that you have been adequately briefed. Because the patent world is so much more complicated than, say, the Clean Air Act, there are some important implications for OIRA that you will miss if all you have available is written comments and staff reports.

Regards,

Rick

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(b) (6) v
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rbbelzer@post.harvard.edu
http://www.rbbelzer.com
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(b) (6) f

Document ID: 0.7.991.5226

From: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>; Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: FW: Belzer comments on ICR 0651-0031
Date: Wed Apr 03 2013 11:53:32 EDT
Attachments:

FYI

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Wednesday, April 03, 2013 10:01 AM
To: Mancini, Dominic J.
Subject: Re: Belzer comments on ICR 0651-0031

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Subject: Belzer comments on ICR 0651-0031
Importance: High

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Regards,

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(b) (6) v

(b) (6) f

Document ID: 0.7.991.5232

From: Richard Belzer <regcheck@mac.com>
To: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc:
Bcc:
Subject: ICR 0651-0031 comments (Cliff Notes)
Date: Fri Apr 12 2013 14:07:14 EDT
Attachments: 130411 summary of comments on 0651-0031 (Jan 2103).pdf

Dom,

I know you're busy doing two jobs. Here is a 1-page summary.

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
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(b) (6) f

Executive Summary of
Comments Submitted 3/29/13 to the Office of Management and Budget Concerning OMB Control Number 0651-0031 ("Patent Processing (Updating)")

Background on the Paperwork Reduction Act ("PRA," 44 USC 3501 *et seq.*)

- Before conducting or sponsoring a *collection of information. t*he PRA requires federal agencies to file an Information Collection Request (ICR) to obtain an *OMB control number*. OMB approvals last no more than 3 years before they must be renewed.
- There are 9,107 active OMB control numbers; 27 belong to the patent side of the Patent & Trademark Office (PTO). These 27 OMB control numbers impose 10.3 times their proportionate share of burden-hours and 413 times their proportionate share of non-burden hour costs. Cost per PTO burden-hour is about 20 times higher than OMB's figure for the government-wide average.
- PRA says no person shall be subject to any *penalty* for failure to comply with a collection of information that lacks a valid, displayed OMB control number.
- *Penalty* includes the denial of a public benefit, such as a patent allowance.
- OMB control number 0651-0031 covers all collections of information related to patent prosecution. (Applications are in OMB control number 0651-0032.)

PTO's Jan. 2013 request for renewal of OMB control number 0651-0031

- PTO request included 3 new collections of information, without explanation:
  - Affidavits or declarations required by Rules 130-132 (50k responses/yr costing > $185 million/yr).
  - Amendments and responses required by Rules 111, 115, 116 & 312 (960k responses/yr costing > $2,848 million/yr).
  - Submissions filed after final rejection by Rule 129(a) (trivial burdens).
- New items would prospectively cure statutory violations dating back as far as 1981. Millions of applications are affected; some were filed before June 8, 1995 and still await final Office action.
- Any applicant denied a claim or an allowance for failure to comply with an unapproved collection has legal recourse, which right "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." 44 USC 3512(b).

PTO noncompliance exposes entire US patent system to devastation

- Blockbuster legal challenges asserting PRA public protections are inevitable. No judicial precedent exists for how courts would rule on lawsuits alleging patent denial is an impermissible penalty.
- Similar "bootleg" collections of information are appear to be endemic in PTO rules, the MPEP, and in unpublished guidance to patent examiners.
- To minimize the damage, OMB must immediately establish effective management control over PTO, force legal compliance and cultural reform.
- The PRA provides OMB all the statutory authority and tools it needs.

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Document ID: 0.7.991.5234

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: I forgot to ask you
Date: Fri Apr 12 2013 14:16:23 EDT
Attachments: Update Apr12, 2013 to 0651-0031 SupStmt Jan2013.doc

Sorry for the delay, see attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Friday, April 12, 2013 2:15 PM
To: Fawcett, Susan
Subject: I forgot to ask you

How is the modified supporting statement for 0031 coming along?

Document ID: 0.7.991.5254

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Echols, Mabel E. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mabele.echols27652434>
Cc:
Bcc:
Subject: FW: Belzer comments on ICR 0651-0031
Date: Tue May 07 2013 15:28:55 EDT
Attachments: 130329 Belzer Comments on 0651-0031.pdf

Hi Mabel can you please add this comment to the docket for 0651-0031. Thanks.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 1:34 PM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: Belzer comments on ICR 0651-0031
Importance: High

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RICHARD BURTON BELZER, PHD

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rbbelzer@post.harvard.edu

29 March 2013

Mr. Nicholas Fraser
Desk Officer, U.S. Patent and Trademark Office
Office of information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Subject: Comments to OIRA on ICR 0651-0031 ("Patent Processing (Updating)")

Dear Mr. Fraser,

This Information Collection Request (ICR) consists of 67 listed information collection items (ICs) with an agency estimated $370,725,475 non-burden hour costs and 11,972,191 burden-hours, the latter of which the agency says have a monetized value of $4,441,682,861. To put in perspective its magnitude, approved unchanged this ICR would comprise 29% of the total responses and 44% of the burden-hours for the entire U.S. Patent and Trademark Office (UPSTO), including trademarks. Among all the agencies within the U.S. Department of Commerce, the USPTO is currently responsible for 55% of its 18.3 million burden-hours and 99% of its acknowledged $5,300,000,000 in non-burden hour costs.[1]

Despite these extraordinary burdens, the Office of Information and Regulatory Affairs (OIRA) has historically devoted little staff time to USPTO oversight. This has persisted even though the public has devoted considerable time and effort to providing comments on a succession of 60-day Notices and 30-day Notices.[2]

In Section I, I show that the USPTO has committed multiple *procedural* violations of the Paperwork Reduction Act (PRA, 44 U.S.C. § 3506) and OMB's Information Collection Rule (5 C.F.R. §§ 1320.5-1320.12). Because these violations have been systematic and persistent, they are prima facie evidence of bad faith.

In Section II, I show that the USPTO has committed multiple *substantive* violations of the PRA and OMB's Information Collection Rule. Commenters have identified a number of paperwork burdens in this ICR that appear to be unreasonably duplicative or lack practical utility to the Office. Agencies are required to provide OIRA with "[a] summary of the public comments received…, including actions taken by the agency in response." 5 C.F.R. § 1320.5(a)(1)(iii)(F). The Supporting Statement

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[1] All calculations were derived by the author from data at www.reginfo.gov.

[2] The May 2012 public comment to USPTO from IEEE-USA, referenced in footnote 3, provides a helpful list (in footnote 32) of previous public comments on PRA notices and related matters.

accompanying the USPTO's submission is beneath pro forma. It summarizes comments incompletely, inaccurately characterizes the comments it mentions, dismisses these comments as irrelevant, and identifies no actions it has taken in response.

In Section III, I show that the USPTO has serially violated applicable Information Quality Guidelines. The Office has refused to even acknowledge, much less respond to, multiple error correction requests submitted on the 60-day Notice for this ICR. It responded in bad faith to a 2010 error correction request on ICR 0651-0032. Congress created OIRA to implement the PRA and delegated to it the primary responsibility of enforcing agency compliance. OIRA is responsible for upholding the law.

In Section IV, I show that this ICR submission includes, in well disguised form, prospective cures for several decades-long, unapproved information collections. At least two of these prospective cures are quite large. In particular, the USPTO proposes to add 50,000 annual responses and 500,000 annual burden-hours for affidavits and declarations that applicants have for decades submitted to comply with Rules 1.130, 1.131, and 1.132; plus 960,000 annual responses and 7,680,000 annual burden-hours for amendments and responses that patent applicants have for decades submitted to comply with Rules 1.111, 1.115, 1.116 and 1.312. According to the Supporting Statement, these new burden-hours entail annual financial costs of $3,034,780,000. This is about 70% of the total burden in the ICR.

This ICR also includes an IC that was omitted from the 60-day Notice. The Supporting Statement mischaracterize it as "added to this collection in connection with the Leahy-Smith America Invents Act (AIA) Final Rule entitled "Setting and Adjusting Patent Fees." This IC pertains to the filing of submissions after final rejection under Rule 1.129(a). However, Rule 1.129(a) has nothing to do with the AIA; it was promulgated in April 1995, and it concerns only patent applications submitted before June 8, 1995. The thin connection this IC has to the AIA is that the AIA authorized the USPTO to charge fees for Rule 1.129(a) filings. OIRA has already approved a new ICR that authorizes the collection of these fees. What the USPTO is doing is disguising under cover of the AIA its need to obtain—18 years late—an OMB control number for Rule 1.129(a) filings.

An undisclosed fraction of the burdens in these new ICs, possibly 100%, result from regulations promulgated as long ago as May 29, 1981. That's two months after OIRA was established. There is no institutional memory explaining why the USPTO was allowed to promulgate regulations without complying with the Paperwork Reduction Act of 1980. Every member of the OIRA staff on that date has retired, died, or both.

It is impossible for the public (but easy for the USPTO) to know how many responses to these information collections have been submitted despite the USPTO's legal inability to require compliance. It is likely that there are millions of such responses. For each one in which the USPTO issued an adverse action, the applicant suffered a penalty as defined by 44 U.S.C. § 3502(14) and/or 5 C.F.R. § 1320.3(j). For each such penalty, the applicant has the statutory right under 44 U.S.C. § 3512(b) to demand that the USPTO action resulting in the penalty be reversed.

In Section V, I list eight specific actions that OIRA should take before clearing this ICR:

1. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule.
2. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility.
3. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations.
4. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act.
5. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA.
6. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA.
7. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO.
8. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored.

I. THIS ICR SUBMISSION REFLECTS MULTIPLE PROCEDURAL VIOLATIONS OF THE PRA

The USPTO published the required 60-day Notice for this ICR on March 22, 2012 (77 Fed. Reg. 16813). The Notice states that the USPTO would be seeking from OIRA the approval of 4,777,532 annual responses entailing 11,972,777 burden-hours that it valued at $3,573,910,186. This valuation assumed average hourly costs of $340 for patent attorneys and $122 for paraprofessionals.

As required by the Information Collection Rule, the USPTO invited comment on "(a) [w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents…" The 60-day Notice neglected to invite comments on "the validity of the methodology and assumptions used" to estimate burden," as required by 5 C.F.R. § 1320.8(d)(1(ii).

Characteristic of the USPTO's 60-day Notices, this one provided hardly any useful information concerning the matters about which public comment was invited. For example, the Notice provided no useful information concerning how the USPTO had derived its estimates of the numbers of responses and burden-hours per response. This information normally is essential for the public to provide informed comment.

Despite the USPTO's lack of transparency, seven public comments were submitted.[3]

A. The USPTO disclosed too little information to allow the public to comment on "[w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility"

The 60-day Notice sought comment from the public about the practical utility of these ICs, but it provided almost nothing on which to comment. Members of the public unfamiliar with this term of art in the PRA and Information Collection Rule had no basis for submitting comments. It is likely that they had no clue what the 60-day Notice was about.

Despite this handicap, a few commenters did provide responses germane to this request. Instead of addressing these comments, however, the USPTO simply disregarded them.

B. The USPTO disclosed too little information to allow the public to comment on "the accuracy of the agency's estimate of the burden (including hours and cost)"

In my first comment on the 60-day Notice, I reported that the absence of any objective basis for the USPTO's burden estimates—most notably, its estimates of the average burden-hours to respond—rendered them not reproducible. IEEE-USA made a similar point, saying it was "generally unable to comment on the accuracy of the PTO's

[3] Public comments listed in the order in which they are memorialized on www.reginfo.gov:

1. Trzyna, Peter
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375116&version=0
2. Belzer, Richard (#1)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375118&version=0
3. Grzelak, Keith (for IEEE-USA)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375119&version=0
4. Belzer, Richard (#2)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375123&version=0
5. Brinckerhoff, Courtenay (for Foley & Lardner LLP)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375124&version=0
6. Green, Reza (for Novo Nordisk)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375125&version=0
7. Werking, Kipman
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375126&version=0

burden estimates or the validity of methodology and assumptions because the PTO has failed to disclose sufficient information to make informed comment possible." Foley & Lardner faulted the Notice for "fall[ing] short of the requirements of the statute and regulations at issue":

> Because the Federal Register Notice does not reveal the "methodology" used to arrive at the stated time and cost estimates, the USPTO has not provided the public with a meaningful opportunity to comment on the methodology used.

OIRA should be concerned when experienced patent prosecutors are unable to provide informed responses to a PRA notice published by the USPTO.

C. The USPTO disclosed too little information to allow the public to comment on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden"

The 60-day Notice may have invited comment on these margins, but the USPTO provided no information on which to base these comments. Commenters were left to their own devices.

Despite this agency-imposed handicap, several commenters did provide responses germane to these questions, including very specific recommendations on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden." Instead of addressing these comments, as the PRA and Information Collection Rule require, the USPTO deemed them "beyond the scope" of the ICR.

OIRA should be concerned when an agency dutifully invites comments exactly as the Information Collection Rule requires, the public submits highly germane comments despite the agency's best efforts to deter them from doing so, and the agency dismisses highly germane comments as irrelevant. It cannot be consistent with OIRA's mission to allow an agency to treat the PRA and Information Collection Rule as dead letters.

II. THIS ICR SUBMISSION REFLECTS MULTIPLE SUBSTANTIVE VIOLATIONS OF THE PRA

Several of the public comments identified regulatory provisions and Office practices that result in unreasonably duplicative paperwork burdens and lack practical utility.

A. Comments on Information collection requirements that are not "necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility "

IEEE-USA identified numerous paperwork requirements that lack practical utility because they are inconsistent with "the proper performance of the agency's functions to comply with legal requirements." Several examples were provided of duplicative burdens that deter the advancement of applications toward conclusion. In addition, IEEE-USA described internal management practices and supervisor compensation metrics that reward low-quality examiner performance (e.g., Office actions and rejection letters lacking sufficient content to enable effective reply), delay (e.g., examiners who decline to act on fully sufficient information in order to obtain additional compensation), and the imposition of duplicative burdens on applicants (e.g., forcing the submission of unnecessary RCEs). Each results in the imposition of burdens that are not necessary for the proper performance of the functions of the agency.

In a similar vein, Foley & Lardner specifically noted that requiring the submission of redundant Information Disclosure Statements "is ***not*** necessary for the proper performance of the functions of the agency, because the agency already has that information" (emphasis in the original). These views were specifically collaborated by Novo Nordisk, which also cited approvingly a relevant blog post by Foley & Lardner's Courtenay Brinckerhoff.[4]

According to Kipman Werking, procedural unreliability and financial conflicts of interest have rendered USPTO's procedures for addressing petitionable errors so lacking in practical utility that, whenever they have a choice, patent attorneys file appeals rather than petitions even though appeals are more burdensome for everyone concerned. A petitions process that is unreliable, or so ineffective that it increases burdens elsewhere in the system, is inherently incompatible with the proper performance of the functions of the agency.

B. Comments on "the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information"

Several of the public comments identified inaccuracies in the USPTO's burden estimates.

---

[4] Brinckerhoff, Courtenay, "Help The USPTO Reduce The Paperwork Burdens Of Patent Prosecution," PharmaPatents (Foley & Lardner), May 1, 2012. http://www.pharmapatentsblog.com/2012/05/01/help-the-uspto-reduce-the-paperwork-burdens-of-patent-prosecution/.

1. The USPTO discloses no objectively supported basis for its burden estimates.

In my comments, I noted that the absence of any objectively supported basis for the USPTO's burden estimates, as required by 44 U.S.C. § 3506(c)(1)(A)(iv) and 5 C.F.R. § 1320.8(a)(4), render the USPTO's estimates non-reproducible. The USPTO has a credible basis for expertise with respect to estimating the numbers of responses, at least for information collections where there is an historical record. However, there is no obvious reason why the USPTO deserves even minimal deference with respect to its estimates of the average number of burden-hours per response. The USPTO examines patent applications; it does not prosecute them. Moreover, it has not conducted or sponsored surveys or experiments to obtain accurate unit burden estimates. Moreover, the USPTO has a substantial bureaucratic interest in understating burdens on the public, particularly given their magnitude.

Several other commenters made similar observations about the lack of objective basis for the USPTO's burden estimates and the Office's systematic understatement of burden per response.

2. The USPTO estimates only a subset of total burden.

In my second comment, I specifically noted that the USPTO's burden estimation "method" (such as it is) consists of counting only a subset of actual burdens—i.e., burdens borne by patent counsel. This clearly violates both the PRA and OMB's Information Collection Rule: the definition of burden includes the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency." 5 C.F.R. § 1320.3(b)(1), emphasis added. The USPTO does not even make an effort to estimate burdens on anyone else, such as inventors themselves. The USPTO's methodology can be described as follows: it assumes that inventors' unique knowledge and insight is transmitted magically to patent counsel. A patent on this technology would be extremely valuable.

In its comments, IEEE-USA made similar observations, noting the Office's persistent failure to include all burdens: "[T]he PTO continues to count only attorneys' billable hour burden and ignores hourly burden imposed on their clients (*i.e.*, patent applicants themselves)." Foley & Lardner also observed that the USPTO's estimates "do not appear to take into account the time that may be required to investigate underlying facts or confer with the applicant or inventor(s)."

This apparent discrepancy might be resolved if most USPTO burden estimates are interpreted as including just the *transmittal forms* and not the substance of these submissions. Foley & Lardner observed in comments that "as a general matter … the time estimates set forth in the Federal Register Notice underestimate the time required to submit the information at issue, particularly where the information is substantive." They suggested that perhaps "the estimates may reflect the time required to type up the documents at issue, [but] they do not appear to take into account the full time required 'to gather the necessary information, create the documents, and mail the completed

request,' as indicated." Several examples were provided in the previously cited blog post in support of the allegation that the USPTO's figures are "gross underestimate[s]".[5]

Novo Nordisk commented on the USPTO's burden estimates for terminal disclaimers and RCEs (ICs #6 and #19 in the Supporting Statement). With respect to terminal disclaimers, Novo Nordisk wrote that the "research, including the propriety of any double patenting rejection, analysis of claim scope between the reference application and any application/patent in the rejection, investigating facts, evaluating options, consulting with client, making the decision, filling out the disclaimer form, and filing, **take much longer than 12 minutes**" (emphasis in the original). Novo Nordisk objected to the USPTO's 12-minute average burden estimate for filing RCEs, taking into account "all research, including responding to of any rejection, analysis of claims in relation to the prior art, investigating facts, evaluating options, consulting with client, making the decision, filling out the RCE form, and filing, in concert with any amendment and/or response should be considered in the estimation of the time the applicant takes to prepare and complete an RCE." The USPTO's estimate is 12 minutes.

If these commenters are correct, it is not clear whether the USPTO actually holds valid OMB control numbers for many of these information collections, or would do so if OIRA approved this ICR. In 2009, the USPTO acknowledged that although it held a valid clearance for filing Notices of Appeal—analogous to an RCE transmittal form—it lacked

[5] Courtenay Brinckerhoff, *op cit.* footnote 4:

"The USPTO estimates ***5 minutes*** for a Request for a Corrected Filing Receipt. I find it hard to believe that someone could carefully review the filing date, title, inventor information and priority information listed on a filing receipt, determine the source of any discrepancies, and prepare a request in 5 minutes or less.

"The USPTO estimates ***12 minutes*** for an Express Abandonment. While it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming the Applicant's intention and explaining the irrevocability of an express abandonment.

"The USPTO estimates ***12 minutes*** for a Disclaimer. Again, while it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming that a disclaimer is necessary and appropriate and that the Applicant understands its consequences.

"The USPTO estimates ***1 hour*** for a Petition to Revive an unintentionally abandoned application. While there might be some cases where the underlying facts can be ascertained and confirmed in under an hour, I would imagine that for most applications it could take at least one hour just to determine how/why the application became abandoned, as required to support the averment that the abandonment was unintentional.

"The USPTO estimates ***8 hours*** for an Amendment/Response, ***10 hours*** for a Declaration, and ***5 hours*** for a Request for Pre-Appeal Brief Review. These estimates are not completely out of line, but it is difficult to believe that they are true averages, i.e., that enough Responses take only a few hours to balance the Responses that take many more hours. While I could accept that the average response takes 8 hours or less to write, I would think that the time required to "gather the necessary information"—to review the Office Action, study the cited references, consider response strategies, prepare claim amendments and formulate arguments—will take more than 8 hours on average."

a valid OMB control number for appeal briefs and reply briefs submitted by applicants to the Board of Patent Appeals and Interferences.[6] No valid OMB control number ever existed for appeal and reply briefs until December 22, 2009, when OMB approved new ICR 0651-0063.[7]

The absence of a valid OMB control number for applicant submissions of appeal and reply briefs prior to December 22, 2009, means that the USPTO lacked any legal authority to impose a penalty for an applicant's failure to supply information via these papers. The rejection of a patent application, in whole or in part, constitutes a penalty, and 44 U.S.C. § 3512 and 5 C.F.R. §1320.6 forbid an agency from imposing penalties. If the trivial burdens that the USPTO has estimated for numerous ICs in this ICR merely cover transmittal forms, then the USPTO faces a potential disaster in the event that applicants raise and win PRA challenges in Federal court.

3. The USPTO's "estimates" are biased, arbitrary assumptions with no objective basis.

In my comments, I noted that the USPTO's burden estimates were substantively unreliable. Patent counsel and inventors have submitted comments on previous ICRs characterizing many of the Office's estimates as substantial underestimates. The USPTO declined to respond in good faith to these past comments, and because OIRA has tolerated this in the past, the Office continues this practice in the January 2013 Supporting Statement.

This is not to say that the USPTO has made no changes in its burden estimation methods. IEEE-USA raised "concern[] that the PTO has amended its historic practice of basing burden estimates on the non-transparent, non-reproducible, and subjective 'beliefs' of undisclosed PTO staff by choosing to withhold any explanation for how it derived them." The USPTO appears to be responding to complaints about its failure to be sufficiently transparent by being even less transparent.

Figure A presents a histogram of the USPTO's estimated burden-hours per response for the 67 ICs in this ICR. Forty-two (63%) are said to have unit burdens of less than one hour per response; five have unit burdens of five minutes or less. IEEE-USA cited, with obvious incredulity, several of the 22 information collection activities that the USPTO estimated to require, on average, exactly 0.2 hour (12 minutes) to complete.[8]

Among the 42 ICs estimated by the USPTO to require less than one hour, 0.1 and 0.2 hour (6 and 12 minutes, respectively) are the predominant values. Of the 25 ICs estimated by the USPTO to require one hour or more, two figures dominate: 2 hours (i.e., ¼ work day) and 8 hours (i.e., 1 work day). These are not "estimates"; they are merely arbitrary round numbers.

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[6] The AIA renamed this body the Patent Trial and Appeal Board.

[7] ICR Reference No. 200809-0651-003, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003.

[8] The unit burden-hour estimate is 12 minutes for 23 of the 67 (34%) ICs in this ICR.

By their very nature, estimates are uncertain. While OMB could direct agencies to report these uncertainties, it does not do so. Instead, the Information Collection Rule directs agencies to report "objective" (i.e., unbiased) estimates of average or mean burden. Unbiased estimates of the mean have specific statistical properties. In nontechnical terms, a reasonable way to understand an unbiased estimate is that the true but unknown value is equally likely to be more or less than the estimate.

The USPTO's estimates do not conform to this principle. They are neither objectively supported nor unbiased. They are arbitrary values derived from an undisclosed procedure that appears to have as its goal the systematic understatement of actual burden.

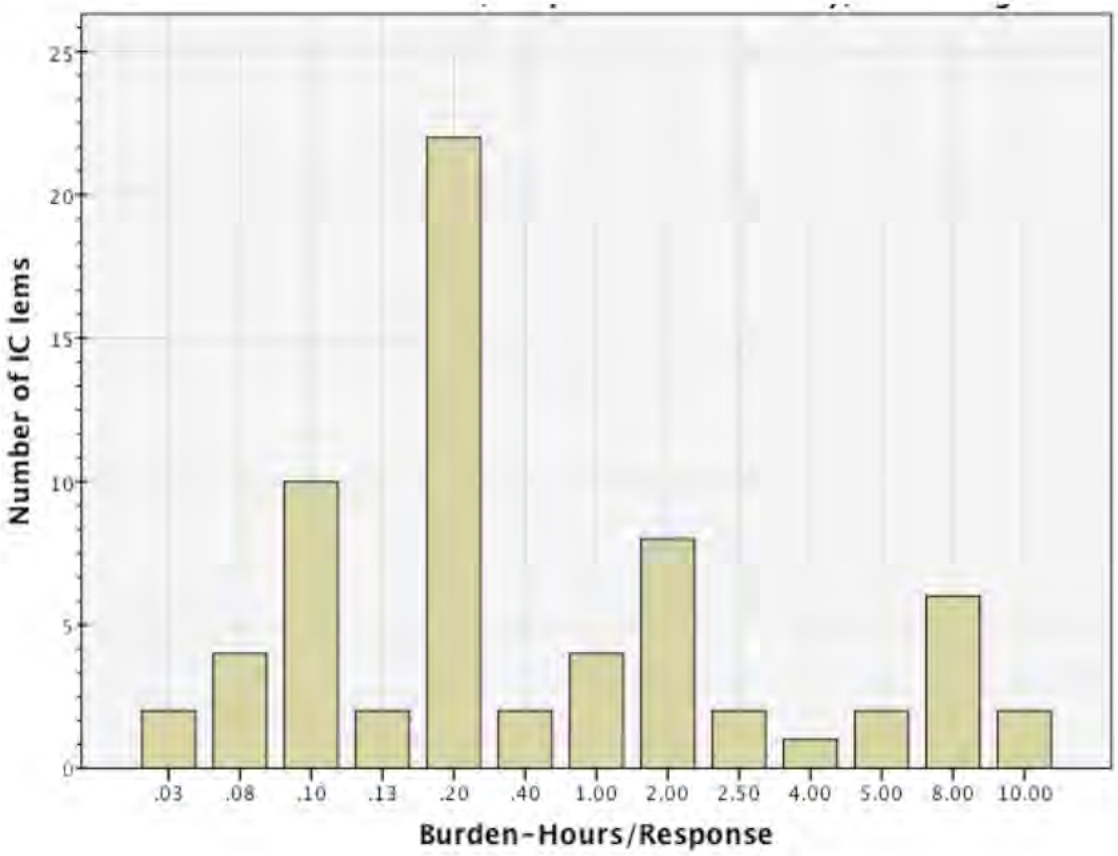
This inference is reasonable and appropriate for at four reasons. First, commenters have repeatedly noted that the USPTO's estimates include only burdens imposed on patent counsel and not burdens imposed on inventors. The USPTO willfully refuses to correct this error. Second, commenters have repeatedly noted that the USPTO's estimates substantially understate actual burdens on patent counsel. The USPTO willfully refuses to correct this error, too. Third, despite repeated requests from the public that it disclose its burden estimation methodology, the USPTO willfully refuses to do so. Finally, the USPTO apparently has abandoned a study launched several years ago that was supposed to provide a credible, independent review of its burden estimation methods.[9] The Office presumably concluded that credible burden estimation were contrary to its bureaucratic interests.

For these reasons, a reasonable default assumption is that the USPTO's figures understate actual burden by a factor of three. What the USPTO claims to be 12 million burden-hours valued at $3.9 billion per year are more like 30 million burden-hours valued at $10 billion per year.[10]

[9] ICF International. 2010. *Methodology for Conducting an Independent Study of the Burden of Patents-Related Paperwork*, Submitted to United States Patent and Trademark Office, Contract No. Gs23f8182h/Doc44papt0809009.

[10] This default relies on a method that estimates uncertain values based on orders of magnitude and their square roots. Thus, because 12 million burden-hours per year is clearly too low, the question is whether 100 million (10 x 10 million) or 30 million (3 x 10 million) burden-hours per year is more plausible. Using 3x yields 30 million. Similarly, because $3.9 billion per year is clearly too low, the question is whether $100 billion (10 x $10 billion) or $30 billion (3 x $10 billion) is more plausible. Using 3x yields $30 billion per year. Given the USPTO's burden estimation methods, any greater precision is imaginary.

Figure A: Burden-Hours per Response Are Arbitrary Numbers with No Objective Support



C. Unreasonably duplicative paperwork burdens

Public commenters identified numerous examples of unreasonably duplicative paperwork burden. Peter Trzyna identified such burdens in Rules 1.52(e) and 1.96, plus at least one other provision that lacks practical utility to the Office because it impedes effective patent examination. IEEE-USA identified several phenomena that cause unreasonably duplicative paperwork burdens, including examination procedures and reward metrics that incentivize low-quality work, management failure to properly and effectively supervise examiners, the USPTO's routine noncompliance with the Administrative Procedure Act (APA), and the 2009 redocketing of Requests for Continued Examination (RCEs). Foley & Lardner said (and Novo Nordisk explicitly concurred) that existing Information Disclosure Statement rules impose unreasonably duplicative paperwork burdens, including a requirement that applicants provide the same documents at least three times. Werking focused on the unreliability of the USPTO's procedures for addressing petitionable errors financial conflicts of interest among those to whom the USPTO Director has delegated the authority to respond to Rule 1.181 petitions, thus resulting in unreasonably duplicative paperwork burdens.

There are tens of thousands of registered patent attorneys and agents, in addition to the handful who devoted the time and effort to provide comments on this 60-day Notice. If the USPTO were seriously interested in discovering unreasonably duplicative paperwork burdens, it could conduct or sponsor an inexpensive survey that would reveal a much longer list.

D. Comments on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden of the collection of information on respondents"

Commenters proposed specific, constructive remedies that would reduce or eliminate paperwork burdens that are unreasonably duplicative or lack practical utility, answers to the very questions set forth by the USPTO in its 60-day Notice.

Trzyna suggested eliminating the requirement in Rule 1.52(e) that all computer files be in ASCII format, and numerous other "pointless" requirements that add unreasonably duplicative burden. As Trzyna noted, limiting the submission of computer data to ASCII files (i.e., forbidding the submission of graphic files, acoustic files, and the like) has the perverse effect of undermining the USPTO's ability to examine applications because it disables the very inventions that are subject to examination. "A Rule that requires disabling an otherwise enabling disclosure is ridiculous."

Trzyna also recommended the rescission of other regulatory requirements that are unreasonably burdensome or otherwise have no practical utility. This includes (1) the requirement to list all file names, sizes in bytes, and dates of creation; (2) the requirement that tables provided in landscape orientation be elsewhere identified as being in landscape orientation; and (3) the requirement to require disclosure of operating system compatibility. He characterized the USPTO's fixation on ASCII as "Byzantine." He noted that while these particular burdens might seem trivial, applicants who stray face suspension of examination. Trzyna also noted that the USPTO

does not impose this burden on international parties who file under the Patent Cooperation Treaty (PCT)l the burden is confined to applicants who file directly in the United States. As Trzyna reasonably noted, that which is permitted for foreign applicants under PCT rules should be sufficient for American applicants as well.

IEEE-USA recommended that the USPTO reform its internal compensation metrics. Even though the USPTO imposes higher fees on complex applications, examiners are rewarded the same credit ("counts") for reviewing a complex application as they are for a simple one. This incentivizes examiners to avoid complex applications and delay the conclusion of examination in order to generate more counts, both of which inevitably result in unreasonably duplicative paperwork burdens. Supervisors also are rewarded the same when the examiners under their control perform poorly as when they perform well. IEEE-USA recommended the seemingly obvious (and presumably uncontroversial) remedy of scaling examiner rewards by application complexity.

To solve the problem that unreasonably duplicative paperwork burdens result from how examiners and supervisors are compensated, IEEE-USA recommended that compensation should be heavily weighted on the conclusion of an examination, whether by allowance, appeal decision by the Board, or abandonment, and that compensation be based less on the achievement of minor milestones that do not lead to the conclusion of examination. It should be obvious that the USPTO ought to be compensating supervisors based on outcomes, not repeatedly circling the same intermediate milestones. "It is essential to break the chain that now rewards examiners for producing low quality and supervisors for tolerating it."

Werking noted that petitions practice is unreliable in large part because Technology Center directors, who have been delegated the authority to supervise examiners through the petition process, have a financial interest in denying petitions. Whereas the administrative patent judges who serve on the Patent Trial and Appeal Board earn the same reward for affirming or reversing an examiner, TC director compensation is aligned with the examiners they supervise. Thus, the same perverse incentives that examiners have to avoid complex applications, not to correct errors, and to generally produce low-quality Office actions also apply to their supervisors.

Having identified the 2009 redocketing of RCEs as a source of unreasonably duplicative paperwork burdens, it should not be surprising that IEEE-USA recommended that this "reform" be rescinded. By shortening the deadlines for examiners to take intermediate actions, this change incentivized examiners to generate intermediate actions of lower quality. Low-quality actions that do not take full account of the information that applicants submit cannot help but produce unreasonably duplicative paperwork burdens. Indeed, when examiners fail to take account of information provided to them, the practical utility of the requirement to supply the information is undermined.

Foley & Lardner recommended several regulatory changes that would simultaneously reduce unreasonably duplicative paperwork burdens and improve USPTO performance. These included extending Rules 1.97 and 1.98 and MPEP § 2001.06(b) to co-pending U.S. applications, using the new Common Citation Document

Application (CCD) tool, modifying IDS rules by extending MPEP § 2001.06(b) to all information available on the CCD, and eliminating requirements that applicants submit copies of documents freely available online. Novo Nordisk concurred with Foley & Lardner's recommendations.

Werking recommended that the USPTO reduce unreasonably duplicative paperwork burden by reforming its petition practices based on practices already established for appeals. Among other things, this includes imposing reasonable deadlines for the Office to respond to petitions and tolling examination of applications while petitions are pending. "A ten month wait period for deciding petitions is simply too long to reliably enforce PTO regulations—regulations that ensure information quality and minimize paperwork burden."

E. The Supporting Statement is unresponsive to public comments

In the Supporting Statement, the USPTO summarized few of these comments, dismissed all substantive comments without reason, and made no changes in response.

- In response to commenters objecting to its specific burden estimates, the USPTO sought to shift to the public the Office's statutory responsibility for burden estimation, rather than comply with the law: "[T]hese comments did not provide a basis for or propose any other alternative time estimate burden."
- In response to commenters objecting to its failure to account for burdens on inventors, the USPTO implicitly acknowledged the error but refused to make corrections: "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."
- In response to commenters who identified unreasonably duplicative paperwork burdens resulting from regulatory requirements that lack practical utility, the USPTO replied that these comments "go beyond the scope of the instant ICR clearance." In fact, these comments were not "beyond the scope" of the public comment request; they were squarely in the middle of it.

Previous public comments to OIRA have raised the same concern: the USPTO does not take seriously its obligations under the PRA and Information Collection Rule. With respect to one ICR submitted in October 2008,[11] OIRA did hold the USPTO accountable. It should do so again, this time by disapproving and continuing the existing OMB control number and, among other things, directing the USPTO to initiate

[11] ICR Reference No: 200809-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003, approved in part Dec. 22, 2009). Although OIRA's December 2009 approval prospectively cured a longstanding PRA violation discovered in 2008, OIRA did not list it as such in its 2008, 2009, or 2010 reports to Congress.

rulemaking to eliminate regulatory requirements that impose paperwork burdens that are unreasonably duplicative or otherwise lack practical utility.

III. THIS ICR SUBMISSION VIOLATES THE INFORMATION QUALITY ACT

The Supporting Statement certifies that the information contained in the submission is covered by the Information Quality Act (IQA) and that the ICR adheres to OMB's and USPTO's Information Quality Guidelines. This certification is knowingly false. The ICR's lack of transparency and reproducibility alone is sufficient to conclude that it does not comply. The USPTO's response to a different IQA error correction request, discussed below, is sufficient to infer that its violations are willful.

A. Procedural violations

My pair of public comments on the 60-day Notice were expressly styled as IQA error correction requests. To ensure that the USPTO did not inadvertently miss this, I submitted them as error correction requests as well as public comments on the 60-day Notice. The USPTO is obligated to have responded to these error correction requests no later than via the Supporting Statement accompanying the ICR submission.

The Supporting Statement includes no such response. Therefore, the USPTO is unambiguously in violation of the IQA's procedural requirements and the USPTO's certification to the contrary is knowingly false.

B. Substantive violations

Having failed to respond to error correction requests in the Supporting Statement as required, it should go without saying that the USPTO also failed to address the substantive errors I identified in my second comment and error correction request.

The USPTO's conduct is not an isolated phenomenon. The Office responded to a 2010 error correction request in bad faith. That request identified a series of technical errors in ICR 0651-0032 ("Initial Patent Applications").[12] I found similar errors.

In its astoundingly cynical response to this 2010 error correction request,[13] the USPTO said that burden estimates are not "information," and therefore they are not covered by the IQA:

> Under the IQA, certain influential information must be reproducible under certain circumstances. The burden "estimates" of which you complain do not

[12] Katznelson, Ron D. 2010. "Request for Correction under the Information Quality Act [ICR 0651-0032]." Available at: http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009471.pdf.

[13] U.S. Patent and Trademark Office. 2011. Response to Katznelson 2010 Request for Correction (Ticket No. 1-178950 16). Available at http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009511.pdf.

> qualify as "information" within the meaning of the IQA. "Information" is defined as "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms." By definition, estimates do not represent knowledge such as facts or data. "Information," not estimation, is subject to certain reproducibility requirements. No correction is warranted for matters not involving "information" (internal references omitted).

The PRA and the Information Collection Rule do not exempt "estimates" from the definition of "information." Indeed, if estimates were exempt, every statistical product of the Department of Commerce would also be exempt—and not just from the IQA, but from OIRA review. OIRA's Statistical & Science Policy Branch, which devotes most of its resources to the oversight of statistical agencies such as the Commerce Department's Census Bureau, would have no statutory authority for its operations. It could be summarily disbanded.

Finally, the timing of the USPTO response and OIRA's approval of ICR 0651-0032—the subject of the 2010 error correction request—is more than curious. OIRA approved the ICR on January 18, 2011, exactly three days before the date of the USPTO response to the error correction request. The best spin that can be conjured is that OIRA insisted that the USPTO respond before concluding review but paid no attention at all to the contents of the response. That also would mean that OIRA paid no attention to the public comments it received on ICR 0651-0032.

IV. THIS ICR SEEKS TO SURREPTITIOUSLY CURE SEVERAL DECADES-LONG UNAPPROVED COLLECTIONS OF INFORMATION, AT LEAST TWO OF WHICH ARE TRULY MASSIVE

At the time I and others commented on the 60-day Notice, it was not clear what the large new ICs were about. Since then, and particularly after a careful reading of the Supporting Statement, it has become obvious that through this submission the USPTO seeks to surreptitiously cure unapproved information collections that have persisted for decades.

A. In the 60-day Notice, the USPTO withheld crucial information about certain elements of the ICR and did not even mention others

The 60-day Notice identifies at least six new ICs for which the USPTO does not appear to have ever obtained an OMB control number. They are listed in Table 1 below. Taking at face value the USPTO's burden estimates, these new collections total over 1 million new responses and more than 8 million new burden-hours valued by the USPTO at more than $3 billion per year.

The 60-day Notice describes these ICs obscurely so that few affected parties would have had a clue what they were about:

Table 1: Previously Unapproved ICs in the January 2013 ICR Submission and Supporting Statement in the January 2013 Supporting Statement

IC No.	*IC Title*	*Burden-Hours/ Response*	*Responses/ Year*	*Burden-Hours/ Year*	*Annual Value of Burden/Hours*
32	Electronic Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	46,500	465,000	$172,515,000
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	3,500	35,000	$12,985,000
33	Electronic Amendments and Responses	8	893,000	7,144,000	$2,650,424,000
33	Amendments and Responses	8	67,000	536,000	$198,856,000
34	Electronic Filing a submission after final rejection (see 37 CFR 1.129(a))	8	86	688	$255,248
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	8	7	56	$20,776
	Totals		*1,010,093*	*8,180,744*	*$3,035,056,024*

The 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.

Further research made possible only by the limited new information in the Supporting Statement indicates that the USPTO is surreptitiously attempting to prospectively cure multiple, longstanding violations of the PRA.

B. After expiration of the public comment period on the 60-day Notice, the USPTO proposed changes to Rules 1.30 and 1.31, denied that these changes caused new paperwork burden, and falsely characterized the relevant information collections as previously approved by OIRA

Subsequent to both publication of the 60-day Notice on Mar. 22, 2012, and the conclusion of the public comment period on May 21, 2012, the USPTO proposed changes to Rules 1.130 and 1.131 (77 Fed. Reg. 43742, Jul. 26, 2012). The PRA section of the Final Rule Notice claims that Rule 1.131-1.132 affidavits and declarations were "previously approved and currently being reviewed under OMB control number 0651–0031."

This statement was false, and almost certainly knowingly so. ICR 0651-0031 was not under review by OIRA on Jul. 26, 2012, and OIRA had never previously approved information collections related to Rule 1.130, 1.131, or 1.132 affidavits and declarations. OIRA had concluded its most recent substantive review of this ICR on Jul. 1, 2009.[14] When ICR Reference No. 200707-0651-005 was approved on that date, the collection did not include information related to these Rules.[15]

According to the eCFR (current as of Mar. 25, 2013), these Rules were first promulgated as long ago as September 20, 2000. Thus, for the collections of information contained in these Rules, the USPTO has lacked a valid OMB control number for as much as 23 years.

C. Public commenters specifically inquired about these new collections of information, and the USPTO declined to respond

In my first public comment and error correction request, I observed that the 60-day Notice lacked transparency and reproducibility on virtually every front. In my second public comment and error correction request, I highlighted several of the paperwork burdens listed in Table 1 above: "Given the multi-billion dollar scale of the burdens" involved, "one would expect the USPTO to describe them with considerably greater cogency and detail." One would be wrong to have harbored such expectations.

I was not alone. IEEE-USA also said it could not discern from the 60-day Notice what the USPTO intended the scope of these line items to include, "not[ing] with foreboding that the [US]PTO reports that it expects 50,000 (!) 'Rule 1.130, 1.131, and 1.132 Affidavits or Declarations' and 960,000 (!) 'Amendments and Responses.'" IEEE-USA estimated the financial cost of these information collections at about $3.7 billion per year. "Obviously, an information collection imposing several billions of dollars in burden deserves far more explanation than this," IEEE-USA wrote. "There is no

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[14] See http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0651-0031.

[15] See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200707-0651-005.

question that the public cannot provide informed comment on such an empty disclosure."

D. The ICR submission includes an information collection not included in the 60-day Notice that is falsely described as related to the Leahy-Smith America Invents Act

The Supporting Statement identifies changes made since the publication of the 60-day Notice, none of which were in response to public comment. These changes add an estimated 50,048 more burden-hours per year, and they are dominated by new IC #34, defined by the USPTO as "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))."

IC #34 has nothing to do with the AIA. According to the eCFR (current as of Mar. 25, 2013), Rule 1.129(a) was last revised on April 25, 1995 (60 Fed. Reg. 20226). It concerns applications filed on or before June 8, 1995, prior to the effective date of the Uruguay Round Agreements Act.[16] Nothing in the AIA altered the rights of those who submitted applications before that date, so it cannot be the case that the USPTO needs an OMB control number for this information collection in order to implement the AIA.

In the PRA section of the preamble to the 1995 Final Rule (60 Fed. Reg. 20195), the USPTO asserted that the rule "does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act." This is impossible, for Rule 1.129(a) is chock full of information collection requirements. Rather, when it promulgated Rule 1.129(a) the USPTO simply ignored the PRA. In the process of upwardly revising its fees, the Office apparently discovered this longstanding PRA violation and decided to prospectively cure it without the public or OIRA noticing. (The Supporting Statement characterizes it as a "program change," not a prospective cure for a PRA violation.)

Still, showing that the USPTO misrepresented a new information collection covering Rule 1.129(a) filings does not explain <u>why</u> it would be motivated to do so. After all, the only applications that are covered by Rule 1.129(a) were submitted prior to June 8, 1995.

The most plausible answer is both straightforward and shocking: <u>there are patent applications 18 or more years old still pending at the USPTO</u>. Data submitted by the USPTO along with the ICR suggest that there may be quite a few of them, too. In FY 2012 there were 11 submissions covered by Rule 1.129(a).[17] The Supporting Statement estimates that the USPTO will receive 93 filings per year during the 3-year period for

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[16] The Uruguay Round Agreements Act of 1995 changed patent term from 17 yeas after *allowance* to 17 years after *filing*. Similar to what happened prior to the March 16, 2013 effective date of the AIA's first-to-file rule, the USPTO received a huge bolus of applications prior to June 8, 1995, in order to take advantage of the pre-GATT law governing patent term.

[17] "0031 Filings Attachment," http://www.reginfo.gov/public/do/DownloadDocument?documentID=375113&version=0.

which it seeks OIRA approval, a nearly tenfold increase. There may be hundreds of patent applications that were submitted before June 8, 1995, and languishing in examination purgatory. OIRA might want to find out just how many of these ancient applications the USPTO has squirreled away and investigate why the USPTO has failed to complete their examination almost two decades later.

The public cannot know why the USPTO waited until now to seek approval of this information collection. The most charitable explanation is that, in mid-2012 when it prepared new ICR 0651-0072 ("America Invents Act Section 10 Patent Fee Adjustments"),[18] USPTO personnel discovered that Rule 1.129(a) filings lacked an OMB control number. The new ICR would be sufficient to authorize the collection of fees on Rule 1.129(a) filings, but it would not be enough to allow the Office to require them to be filed in the first place.

E. The USPTO has had numerous opportunities to prospectively cure these unlawful information collections, but not done so until now

Table 2 lists when each of the rules containing an unlawful information collection in this ICR was first promulgated. It also lists when each rule was amended. (Rule 1.130 used to be numbered 1.131.)

The USPTO could have prospectively cured the absence of a valid OMB control number at any of the times it revised or renewed ICR 0651-0031. There are 33 such revisions and renewals since the ICR was first established in 1993. On none of these occasions did the USPTO revise the ICR to include any of these information collections.

[18] This new ICR contains 127 separate ICs, each of which involves a fee that the AIA authorized the USPTO to reset. *See* ICR Reference No. 201205-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201205-0651-001#, pre-approved October 25, 2012, expiration date Oct. 31, 2015); ICR Reference No. 201212-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212-0651-001, pre-approved Jan. 11, 2013, expiration date Jan. 31, 2016); and ICR Reference No: 201301-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201301-0651-003#section0_anchor, approved Jan. 18, 2013, expiration date Jan. 31, 2016).

Table 2: Regulatory Actions for Information Collections in this ICR Lacking OMB Control Numbers

IC#	*Rule*	*Title*	*Date*	*FR Citation*
32	Rule 1.130, 1.131, and 1.132 Affidavits and Declarations			
	Rule 1.130	Affidavit or declaration of attribution or prior public disclosure under the Leahy-Smith America Invents Act	Feb. 14, 2013	78 FR 11058
	Old 1.131	*Affidavit or declaration of prior invention*	*June 23, 1988* *May 1, 1995;,* *Aug. 19, 1996* *Sept. 8, 2000* *Sept. 20, 2000* *Aug. 12, 2004* *Sept. 21, 2004*	*53 FR 23734* *60 FR 21044* *61 FR 42806* *65 FR 54673* *65 FR 57057* *69 FR 49999* *69 FR 56543*
	Rule 1.131	Affidavit or declaration of prior invention or to disqualify commonly owned patent or published application as prior art	Feb. 14, 2013	78 FR 11058
	old 1.130		*Aug. 19, 1996* *Sept. 20, 2000* *Jan. 11, 2005*	*61 FR 42805* *65 FR 57056* *70 FR 1824*
	Rule 1.132	Affidavits or declarations traversing rejections or objections	Sept. 20, 2000	65 FR 57057
33	Amendments and Responses			
	Rule 1.111	Reply by applicant or patent owner to a non-final Office action	May 29, 1981 Oct. 10, 1997 Sept. 8, 2000 Sept. 21, 2004 Jan. 27, 2005	46 FR 29182 62 FR 53192 65 FR 54672 69 FR 56542 70 FR 3891
	Rule 1.115	Preliminary amendments	Sept. 21, 2004	69 FR 56543
	Rule 1.116	Amendments and affidavits or other evidence after final action and prior to appeal	Aug. 12, 2004	69 FR 49999
34	Filing a Submission After Final Rejection			
	Rule 1.129(a)	Transitional procedures for limited examination after final rejection and restriction practice	Apr. 25, 1995	60 FR 20226

V. SPECIFIC REQUESTS FOR ACTION BY OIRA

The list below represents my best effort to provide constructive suggestions to OIRA.

The purposes of the PRA cannot be achieved if agencies refuse to comply and OIRA looks the other way. Allowing the USPTO to continue along its present path will have adverse effects throughout the government. Systematic, serial violations show contempt for both the PRA and OIRA, and it makes fools of agencies that comply in good faith. Whenever OIRA tolerates this, it lowers the bar for other agencies and encourages a perverse race to the bottom.

Since its founding in 1981, OIRA has had to balance its statutory mission to implement the PRA with important and growing executive responsibilities, most notably regulatory review under Executive Orders 12291, 12498, 12866, and 13563. It is therefore easy to imagine that OIRA now perceives executive regulatory review to be more important than statutory implementation and enforcement of the PRA. Yet there are important co-benefits to regulatory review that OIRA can obtain by taking seriously its PRA responsibilities. Frequently, problems identified during regulatory review could have been reduced or prevented had OIRA and the agency been more diligent at the information collection stage of the regulatory development process. From my own OIRA experience, I know of many instances in which draft regulations lacked cost-effectiveness because the information needed to regulate intelligently had not been obtained when there was still time to do so. Similarly, many draft regulations that OIRA reviews consist of little more than the addition of more sedimentary layers of new regulatory language to overcome errors and defects in previous rounds of regulation.

Yet another reason OIRA should take seriously its PRA responsibilities in this case is that it has been unable to improve the quality of USPTO regulation through regulatory oversight. When the USPTO writes regulations, it systematically misclassifies them as "significant" or "nonsignificant" in order to evade the requirement to prepare a Regulatory Impact Analysis. In 2012, OIRA reviewed 17 draft proposed or final USPTO rules, each of which by any reasonably reckoning had paperwork burdens alone that were "likely to result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, [or] jobs…" Executive Order 12866, § 3(f)(1). Only one of these rules—0651-AC54, "Setting and Adjusting Patent Fees"—was designated economically significant, and the Regulatory Impact Analysis accompanying it was predictably substandard.[19]

[19] In 2012, the USPTO also promulgated six regulations that it deemed "not significant," which presumably were not reviewed by OIRA. The USPTO has in the past designated regulations as "not significant" and not submitted them to OIRA for review even though they had paperwork

Enforcing the PRA and the Information Collection Rule provide a useful pathway to effective regulatory oversight. OIRA should work with the public to identify regulations that impose unreasonably duplicative burdens, or lack practical utility for other reasons. This would enable OIRA to achieve important regulatory reforms in ways that end-of-process regulatory review cannot. Though comments on this ICR were few, they reveal systematic regulatory problems that suppress America's technological innovation and economic growth. One can only imagine what a concerted effort to obtain information from the public would reveal.

A. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule

OIRA should disapprove and continue the existing OMB control number, and direct the USPTO to embark on a crash program to end its systematic procedural and substantive violations. Procedural violations consist primarily of insufficient information disclosure, making it difficult for even the most informed members of the public to provide useful comments, and impossible for the vast majority to do so. Substantive violations consist primarily of burden estimates that are unreliable and generally believed by the public to be gross underestimates, and the absence of evidence of actual practical utility.

OIRA should direct the USPTO to prepare a revised 60-day Notice that procedurally and substantively complies with the PRA and the Information Collection Rule. Specifically, OIRA should direct the USPTO to:

1. disclose an objectively supported, reproducible methodology for estimating the number of responses that can be used for all patent-related ICRs;
2. promptly compile a comprehensive inventory of every collection of information contained in its rules and guidance;
3. sponsor a rigorously designed and independently conducted survey of registered patent attorneys, agents, and patent applicants to obtain objectively supported burden-hour estimates;
4. publish all work products for public comment, and respond in good faith to the comments received.

It would cause no meaningful hardship to the USPTO to undertake these tasks. The President's FY 2013 budget for the USPTO was $2,822,000,000. Reforming paperwork burdens would easily reduce its operating costs by more than 1% ($28,220,000). Even if the analyses I propose were to cost $1 million, they would provide a return on investment to the USPTO of more than $28 for every dollar spent. Undertaking these tasks also would improve the USPTO's ability to effectively and efficiently implement the AIA.

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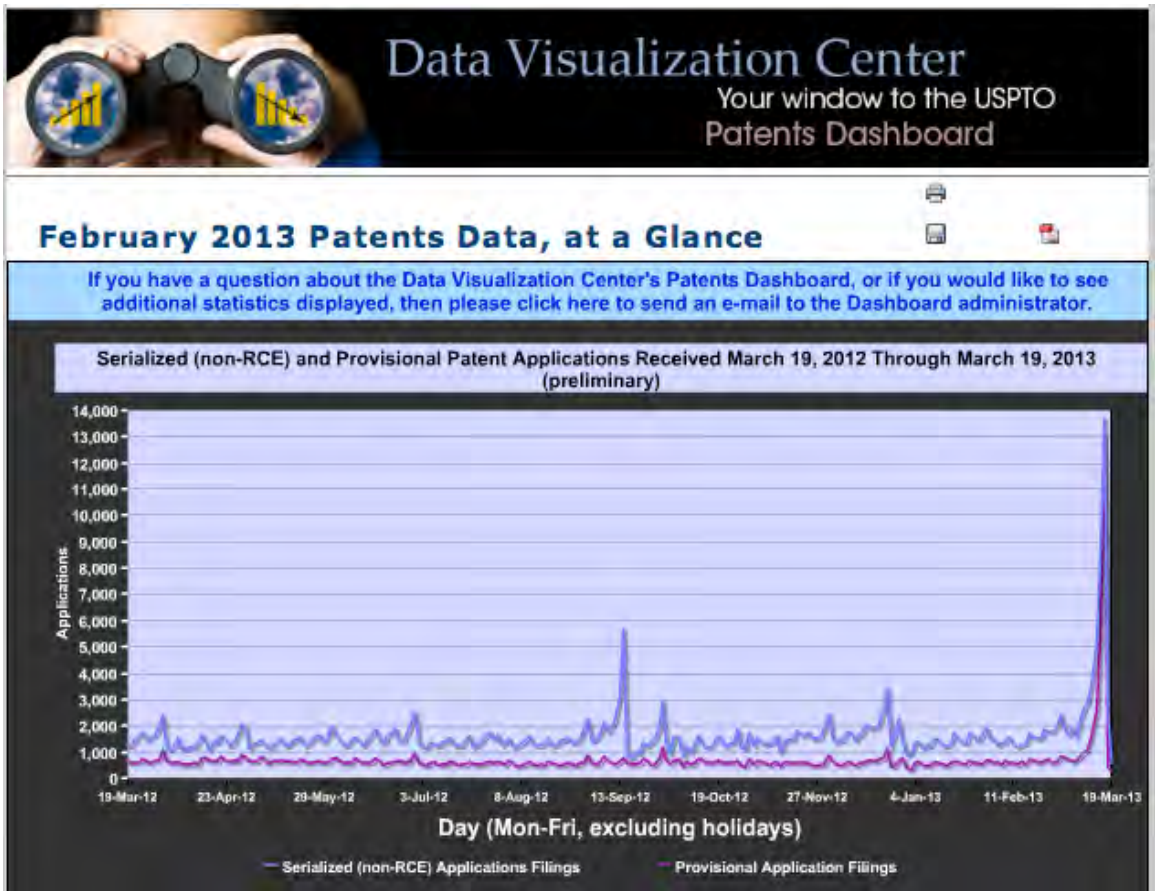
burdens alone well in excess of the $100 million threshold. Unsurprisingly, the Office's practice has been to deny that these paperwork burdens exist.

The USPTO might balk, claiming that some provisions in this ICR must be approved to implement the AIA. We can easily dismiss this line of argument by noting that the paperwork burdens associated with patent prosecution (as opposed to application) under the AIA will not arise for many months at the earliest, and possibly for years. Inventors responded predictably to the March 16, 2013 effective date for first-to-file by swamping the Patent Office with applications that must be examined under pre-AIA rules and procedures. This is shown in Figure B, which is a screenshot of the USPTO's Patent Dashboard taken on March 25, 2013, showing the spike that occurred in mid-March.

Figure B: A Rush to File Under the Old Patent Law to Beat the March 16, 2013 Deadline



B. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility

Several commenters on the 60-day Notice identified specific regulatory requirements that they said were unreasonably duplicative or otherwise lacked practical utility to the USPTO. In the Supporting Statement accompanying the ICR submission, the USPTO declined to rebut commenters' claims or even treat their comments respectfully. The Office went so far as to incorrectly assert that comments identifying unreasonably duplicative paperwork burdens "go beyond the scope" of the comment request. If OIRA does nothing in response, it rewards an agency for acting in bad faith and brings disrespect upon itself.

Fortunately, OIRA has explicit authority to do the right thing. Pursuant to 5 C.F.R. § 1320.12(f), it can direct the USPTO to undertake rulemaking sufficient to eliminate the unreasonably duplicative burdens commenters identified. While a comprehensive list of such regulations should be obtained, as I recommend in subsection A above, OIRA can ensure a good start by directing the USPTO to address the specific examples of unreasonably duplicative and burdensome regulations identified by commenters on the 60-day Notice for this ICR.

C. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations

This ICR is a mysterious stew. Many of the ICs are simply renewals of OIRA's 2009 approval, with updated estimates of the numbers of responses only, and a few are revised to account for AIA-related changes. But the largest ICs are not mere renewals but prospective cures for longstanding PRA violations. They comprise 70% of the paperwork burden.

Before approving this ICR, OIRA should direct the USPTO to develop and publicly disclose how the burdens of this ICR are allocated across these three types of information collection.

D. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act

For the new items are prospective cures for longstanding PRA violations, and which comprise 70% of the total paperwork burden, OIRA should direct the USPTO to explain in detail what paperwork the Office intends to be included and a credible, transparent, and reproducible estimate for the burden of each item. This ICR gives no detail at all. In contrast, the USPTO itemizes five ICs with estimated total burdens across all respondents under 10 hours per year. Half of all ICs in this ICR have total

burden-hours below 1,000 per year. Postage costs are estimated to the nearest penny. Meanwhile, "Amendments and Responses" stands out at 7,680,000 total burden-hours per year, differentiated only by whether the information, whatever it is, is provided electronically or on paper.

Gross ambiguity about "Amendments and Responses" inexorably leads to a reasonable concern that the aggregate burdens of this ICR have been grossly underestimated. Commenters with patent prosecution experience have said that the USPTO's unit burden estimates are unrealistically low, often because the Office counts only the burden of transmitting information to the USPTO, not the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information," as 5 C.F.R. § 1320.3(b)(1) requires. It is not difficult to imagine that the USPTO's unit burden estimate—exactly 8 hours, or conveniently, exactly 1 work-day—understates average unit burden by, say, a factor of three. In that case, "Amendments and Responses" alone would be 23 million burden-hours per year—about as large as ICs usually found in Internal Revenue Service, Medicare, and Medicaid ICRs. Few of these comparable information collections have burden-hour rates on the order of $400 per hour.

Before approving this ICR, OIRA should direct the USPTO to provide details concerning exactly what paperwork submissions are covered within these new, amorphously defined ICs. The USPTO also should produce objectively supported, detailed estimates for each type of submission, and a transparent, reproducible methodology showing how these burden estimates were derived.

E. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA

As I noted earlier, the 60-day Notice was particularly unrevealing with respect to Rule 1.130, 1.131 and 1.132 affidavits or declarations (50,000 responses totaling 500,000 burden-hours valued by the USPTO in 2012 at $170,000,000) and unspecified "Amendments and Responses" (960,000 responses totaling 7,680,000 burden-hours valued by the USPTO in 2012 at $2,611,200,000).

In my comments, I asked the USPTO to clarify what these new ICs were about. In response, the Supporting Statement says almost nothing. Yet it did provide enough information to conclude that the USPTO is seeking to prospectively cure longstanding PRA violations, but doing so as surreptitiously as possible. Indeed, the USPTO's desire to avoid acknowledging these PRA violations has led it to make even more false statements. For example, the Supporting Statement mischaracterizes prospective cures for these PRA violations as mere "program changes."

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual. n particular, the changes listed in Table 3 below are required and should be separately grouped under a new second-order subhead titled "Corrections of Violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 3: Necessary Changes to the Supporting Statement to Correctly Identify Past PRA Violations (~~deletions~~, additions)

IC No.	*Corrected Text*
32	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**
33	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**

F. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA

The major new information collection item added to the submission but not disclosed for public review and comment in the 60-day Notice concerns Rule 1.129(a) filings. The USPTO describes it as made necessary by the AIA. This explanation is false. Rule 1.129 has been on the books since April 1995 and it only concerns applications filed before June 8, 1995. According to data submitted by the USPTO along with the submission, there were 11 responses submitted in FY 2012 governed by Rule 1.129(a).

Based on my review of the USPTO ICR inventory, it appears that the USPTO has never before obtained an OMB control number for Rule 1.129(a) filings made after final rejection. That is, the USPTO is seeking to prospectively cure an unapproved collection of information that has languished for almost 18 years.

That means the Supporting Statement needs be revised along the lines of Table 4 below. This would acknowledge that the purpose of adding this new information collection is to prospectively cure a longstanding violation of the PRA.

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual, including the change listed in

Table 4. This change should be added to the new second order subhead titled "Corrections of violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 4: Necessary Changes to the Supporting Statement to Correctly Identify Information Collection Elements Added After Publication of the 60-day Notice (~~deletions~~, <u>additions</u>)

IC No.	*Corrected Text*
34	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~~ <u>correction for a violation of the Paperwork Reduction Act.</u>**

G. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO

Improving government management is a long neglected part of OMB's mission. Under the direction of OMB's Office of Performance and Personnel Management (OPPM), the USPTO has established three strategic goals, one of which is to optimize patent quality and timeliness.[20] Several performance measures have been chosen, but most of them concern inputs (e.g., patent applications filed electronically) and intermediate outputs (e.g., average first action pendency). These performance measures are poor proxies for patent quality.

The USPTO's 2012 Performance and Accountability Report (PAR) specifically mentions a program called Clearing Our Oldest Patent Applications 2.0 (COPA 2.0). What the USPTO apparently means by "old" does not, however reach back to the pre-1995 applications covered by Rule 1.129. Rather, "old" means something that is actually quite young by comparison, and the program's goal is much more modest than either completing examination (an output measure) or patent quality (an outcome measure):

[20] U.S. Patent and Trademark Office. 2012. Performance and Accountability Report, Fiscal Year 2012. Alexandria, Va. http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf.

> For COPA 2.0, the "tail" is applications that were 13 months and older as of October 1, 2011, and had not received a first office action.

The USPTO compliments itself for meeting its goal of completing first office actions on 260,000 applications. But pre-1995 application have languished for least 198 months, not 13. To characterize the mere issuance of first Office actions as "clearing our oldest patent applications" is equivalent to establishing a goal of providing effective elder care by improving middle school education.

A management truism is that one cares about that which one measures. This suggests that the USPTO cares more about issuing first office actions than it does about completing their examination. If it had a more worthy goal—e.g., completing the examination of old applications—OPPM would have a better guide to the USPTO's actual mission performance.

Similarly, we do not know how widespread and deep is the USPTO's PRA noncompliance problem. Every time an ICR comes up for renewal we discover yet more unapproved information collections with thousands or millions of unapproved burden-hours. OIRA should seek OPPM's assistance by defining PRA compliance as a specific performance goal. This would at least (and at last) raise the visibility of the PRA with the USPTO's senior management and its new director.

H. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored

OIRA is responsible for enforcing the Information Quality Act. It was OIRA that authored government-wide information quality guidelines and pre-reviewed each agency's implementing guidelines in 2002. It was OIRA that decided to issue guidelines instead of binding regulations, presumably on the ground that guidelines would be more flexible. Had OIRA promulgated regulations, there would be little doubt that affected parties dissatisfied with agency responses could, as the statute says, "seek and obtain correction of information maintained and disseminated by the agency that does not comply" (emphasis added). Because OIRA issued guidelines instead, it is OIRA's responsibility to ensure that agencies comply.

To date, the USPTO has adhered to neither OIRA's nor its own information quality guidelines. Its response to the 2010 request for correction, which concerned ICR 0651-0032, was particularly disturbing to any fair-minded observer. Not only did this response make a hash of the IQA, it grossly distorted the text and meaning of the PRA and Information Collection Rule. If OIRA will not defend the PRA, who will?

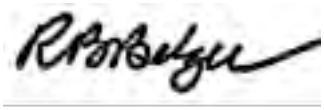
Before approving this ICR, OIRA should direct the USPTO to respond in good faith to all previously submitted requests for correction that concern this ICR. OIRA also should review the USPTO's response to the 2012 Katznelson request for correction and direct the USPTO to correct the errors of law and logic that it contains.

VI. FINAL COMMENTS

As I indicated in my email to you dated Feb. 23, 2013, I wish to meet with you and Messrs. Hunt and Mancini to discuss this ICR and ensure that OIRA staff fully understand the issues involved and why they are important, both to the public and to OIRA. As this letter makes clear, I remain concerned about the USPTO's serial and persistent noncompliance with the PRA and Information Collection Rule.

Perhaps more importantly, it also should be obvious that, through this ICR, the USPTO is continuing its longstanding pattern of misleading OIRA concerning the substance of its regulatory and paperwork actions. The USPTO's conduct on both margins will not improve until OIRA supervises it with appropriate intensity.

Respectfully submitted,



Richard Burton Belzer, PhD

cc: Alex Hunt, Branch Chief
Dominic Mancini, Deputy Administrator

Document ID: 0.7.991.5272

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Echols, Mabel E. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mabele.echols27652434>
Cc:
Bcc:
Subject: FW: Belzer comments on ICR 0651-0031
Date: Wed May 15 2013 14:03:01 EDT
Attachments: 130329 Belzer Comments on 0651-0031.pdf

Just following up on this.

From: Fraser, Nicholas A.
Sent: Tuesday, May 07, 2013 3:29 PM
To: Echols, Mabel E.
Subject: FW: Belzer comments on ICR 0651-0031
Importance: High

Hi Mabel can you please add this comment to the docket for 0651-0031. Thanks.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 1:34 PM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: Belzer comments on ICR 0651-0031
Importance: High

Nick et al,

Please see the attached PDF for my comments on the latest edition of ICR 0651-0031. I look forward to meeting with y'all to discuss them. As I indicated earlier today, my schedule is generally flexible.

Regards,

Richard B. Belzer, Ph.D.

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(b) (6) v

(b) (6) f

RICHARD BURTON BELZER, PHD

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rbbelzer@post.harvard.edu

29 March 2013

Mr. Nicholas Fraser
Desk Officer, U.S. Patent and Trademark Office
Office of information and Regulatory Affairs
Office of Management and Budget
Washington, DC 20503

Subject: Comments to OIRA on ICR 0651-0031 ("Patent Processing (Updating)")

Dear Mr. Fraser,

This Information Collection Request (ICR) consists of 67 listed information collection items (ICs) with an agency estimated $370,725,475 non-burden hour costs and 11,972,191 burden-hours, the latter of which the agency says have a monetized value of $4,441,682,861. To put in perspective its magnitude, approved unchanged this ICR would comprise 29% of the total responses and 44% of the burden-hours for the entire U.S. Patent and Trademark Office (UPSTO), including trademarks. Among all the agencies within the U.S. Department of Commerce, the USPTO is currently responsible for 55% of its 18.3 million burden-hours and 99% of its acknowledged $5,300,000,000 in non-burden hour costs.[1]

Despite these extraordinary burdens, the Office of Information and Regulatory Affairs (OIRA) has historically devoted little staff time to USPTO oversight. This has persisted even though the public has devoted considerable time and effort to providing comments on a succession of 60-day Notices and 30-day Notices.[2]

In Section I, I show that the USPTO has committed multiple *procedural* violations of the Paperwork Reduction Act (PRA, 44 U.S.C. § 3506) and OMB's Information Collection Rule (5 C.F.R. §§ 1320.5-1320.12). Because these violations have been systematic and persistent, they are prima facie evidence of bad faith.

In Section II, I show that the USPTO has committed multiple *substantive* violations of the PRA and OMB's Information Collection Rule. Commenters have identified a number of paperwork burdens in this ICR that appear to be unreasonably duplicative or lack practical utility to the Office. Agencies are required to provide OIRA with "[a] summary of the public comments received…, including actions taken by the agency in response." 5 C.F.R. § 1320.5(a)(1)(iii)(F). The Supporting Statement

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[1] All calculations were derived by the author from data at www.reginfo.gov.

[2] The May 2012 public comment to USPTO from IEEE-USA, referenced in footnote 3, provides a helpful list (in footnote 32) of previous public comments on PRA notices and related matters.

accompanying the USPTO's submission is beneath pro forma. It summarizes comments incompletely, inaccurately characterizes the comments it mentions, dismisses these comments as irrelevant, and identifies no actions it has taken in response.

In Section III, I show that the USPTO has serially violated applicable Information Quality Guidelines. The Office has refused to even acknowledge, much less respond to, multiple error correction requests submitted on the 60-day Notice for this ICR. It responded in bad faith to a 2010 error correction request on ICR 0651-0032. Congress created OIRA to implement the PRA and delegated to it the primary responsibility of enforcing agency compliance. OIRA is responsible for upholding the law.

In Section IV, I show that this ICR submission includes, in well disguised form, prospective cures for several decades-long, unapproved information collections. At least two of these prospective cures are quite large. In particular, the USPTO proposes to add 50,000 annual responses and 500,000 annual burden-hours for affidavits and declarations that applicants have for decades submitted to comply with Rules 1.130, 1.131, and 1.132; plus 960,000 annual responses and 7,680,000 annual burden-hours for amendments and responses that patent applicants have for decades submitted to comply with Rules 1.111, 1.115, 1.116 and 1.312. According to the Supporting Statement, these new burden-hours entail annual financial costs of $3,034,780,000. This is about 70% of the total burden in the ICR.

This ICR also includes an IC that was omitted from the 60-day Notice. The Supporting Statement mischaracterize it as "added to this collection in connection with the Leahy-Smith America Invents Act (AIA) Final Rule entitled "Setting and Adjusting Patent Fees." This IC pertains to the filing of submissions after final rejection under Rule 1.129(a). However, Rule 1.129(a) has nothing to do with the AIA; it was promulgated in April 1995, and it concerns only patent applications submitted before June 8, 1995. The thin connection this IC has to the AIA is that the AIA authorized the USPTO to charge fees for Rule 1.129(a) filings. OIRA has already approved a new ICR that authorizes the collection of these fees. What the USPTO is doing is disguising under cover of the AIA its need to obtain—18 years late—an OMB control number for Rule 1.129(a) filings.

An undisclosed fraction of the burdens in these new ICs, possibly 100%, result from regulations promulgated as long ago as May 29, 1981. That's two months after OIRA was established. There is no institutional memory explaining why the USPTO was allowed to promulgate regulations without complying with the Paperwork Reduction Act of 1980. Every member of the OIRA staff on that date has retired, died, or both.

It is impossible for the public (but easy for the USPTO) to know how many responses to these information collections have been submitted despite the USPTO's legal inability to require compliance. It is likely that there are millions of such responses. For each one in which the USPTO issued an adverse action, the applicant suffered a penalty as defined by 44 U.S.C. § 3502(14) and/or 5 C.F.R. § 1320.3(j). For each such penalty, the applicant has the statutory right under 44 U.S.C. § 3512(b) to demand that the USPTO action resulting in the penalty be reversed.

In Section V, I list eight specific actions that OIRA should take before clearing this ICR:

1. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule.
2. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility.
3. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations.
4. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act.
5. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA.
6. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA.
7. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO.
8. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored.

I. THIS ICR SUBMISSION REFLECTS MULTIPLE PROCEDURAL VIOLATIONS OF THE PRA

The USPTO published the required 60-day Notice for this ICR on March 22, 2012 (77 Fed. Reg. 16813). The Notice states that the USPTO would be seeking from OIRA the approval of 4,777,532 annual responses entailing 11,972,777 burden-hours that it valued at $3,573,910,186. This valuation assumed average hourly costs of $340 for patent attorneys and $122 for paraprofessionals.

As required by the Information Collection Rule, the USPTO invited comment on "(a) [w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents…" The 60-day Notice neglected to invite comments on "the validity of the methodology and assumptions used" to estimate burden," as required by 5 C.F.R. § 1320.8(d)(1(ii).

Characteristic of the USPTO's 60-day Notices, this one provided hardly any useful information concerning the matters about which public comment was invited. For example, the Notice provided no useful information concerning how the USPTO had derived its estimates of the numbers of responses and burden-hours per response. This information normally is essential for the public to provide informed comment.

Despite the USPTO's lack of transparency, seven public comments were submitted.[3]

A. The USPTO disclosed too little information to allow the public to comment on "[w]hether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility"

The 60-day Notice sought comment from the public about the practical utility of these ICs, but it provided almost nothing on which to comment. Members of the public unfamiliar with this term of art in the PRA and Information Collection Rule had no basis for submitting comments. It is likely that they had no clue what the 60-day Notice was about.

Despite this handicap, a few commenters did provide responses germane to this request. Instead of addressing these comments, however, the USPTO simply disregarded them.

B. The USPTO disclosed too little information to allow the public to comment on "the accuracy of the agency's estimate of the burden (including hours and cost)"

In my first comment on the 60-day Notice, I reported that the absence of any objective basis for the USPTO's burden estimates—most notably, its estimates of the average burden-hours to respond—rendered them not reproducible. IEEE-USA made a similar point, saying it was "generally unable to comment on the accuracy of the PTO's

[3] Public comments listed in the order in which they are memorialized on www.reginfo.gov:

1. Trzyna, Peter
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375116&version=0
2. Belzer, Richard (#1)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375118&version=0
3. Grzelak, Keith (for IEEE-USA)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375119&version=0
4. Belzer, Richard (#2)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375123&version=0
5. Brinckerhoff, Courtenay (for Foley & Lardner LLP)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375124&version=0
6. Green, Reza (for Novo Nordisk)
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375125&version=0
7. Werking, Kipman
   http://www.reginfo.gov/public/do/DownloadDocument?documentID=375126&version=0

burden estimates or the validity of methodology and assumptions because the PTO has failed to disclose sufficient information to make informed comment possible." Foley & Lardner faulted the Notice for "fall[ing] short of the requirements of the statute and regulations at issue":

> Because the Federal Register Notice does not reveal the "methodology" used to arrive at the stated time and cost estimates, the USPTO has not provided the public with a meaningful opportunity to comment on the methodology used.

OIRA should be concerned when experienced patent prosecutors are unable to provide informed responses to a PRA notice published by the USPTO.

C. The USPTO disclosed too little information to allow the public to comment on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden"

The 60-day Notice may have invited comment on these margins, but the USPTO provided no information on which to base these comments. Commenters were left to their own devices.

Despite this agency-imposed handicap, several commenters did provide responses germane to these questions, including very specific recommendations on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden." Instead of addressing these comments, as the PRA and Information Collection Rule require, the USPTO deemed them "beyond the scope" of the ICR.

OIRA should be concerned when an agency dutifully invites comments exactly as the Information Collection Rule requires, the public submits highly germane comments despite the agency's best efforts to deter them from doing so, and the agency dismisses highly germane comments as irrelevant. It cannot be consistent with OIRA's mission to allow an agency to treat the PRA and Information Collection Rule as dead letters.

II. THIS ICR SUBMISSION REFLECTS MULTIPLE SUBSTANTIVE VIOLATIONS OF THE PRA

Several of the public comments identified regulatory provisions and Office practices that result in unreasonably duplicative paperwork burdens and lack practical utility.

A. Comments on Information collection requirements that are not "necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility "

IEEE-USA identified numerous paperwork requirements that lack practical utility because they are inconsistent with "the proper performance of the agency's functions to comply with legal requirements." Several examples were provided of duplicative burdens that deter the advancement of applications toward conclusion. In addition, IEEE-USA described internal management practices and supervisor compensation metrics that reward low-quality examiner performance (e.g., Office actions and rejection letters lacking sufficient content to enable effective reply), delay (e.g., examiners who decline to act on fully sufficient information in order to obtain additional compensation), and the imposition of duplicative burdens on applicants (e.g., forcing the submission of unnecessary RCEs). Each results in the imposition of burdens that are not necessary for the proper performance of the functions of the agency.

In a similar vein, Foley & Lardner specifically noted that requiring the submission of redundant Information Disclosure Statements "is ***not*** necessary for the proper performance of the functions of the agency, because the agency already has that information" (emphasis in the original). These views were specifically collaborated by Novo Nordisk, which also cited approvingly a relevant blog post by Foley & Lardner's Courtenay Brinckerhoff.[4]

According to Kipman Werking, procedural unreliability and financial conflicts of interest have rendered USPTO's procedures for addressing petitionable errors so lacking in practical utility that, whenever they have a choice, patent attorneys file appeals rather than petitions even though appeals are more burdensome for everyone concerned. A petitions process that is unreliable, or so ineffective that it increases burdens elsewhere in the system, is inherently incompatible with the proper performance of the functions of the agency.

B. Comments on "the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information"

Several of the public comments identified inaccuracies in the USPTO's burden estimates.

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[4] Brinckerhoff, Courtenay, "Help The USPTO Reduce The Paperwork Burdens Of Patent Prosecution," PharmaPatents (Foley & Lardner), May 1, 2012. http://www.pharmapatentsblog.com/2012/05/01/help-the-uspto-reduce-the-paperwork-burdens-of-patent-prosecution/.

1. The USPTO discloses no objectively supported basis for its burden estimates.

In my comments, I noted that the absence of any objectively supported basis for the USPTO's burden estimates, as required by 44 U.S.C. § 3506(c)(1)(A)(iv) and 5 C.F.R. § 1320.8(a)(4), render the USPTO's estimates non-reproducible. The USPTO has a credible basis for expertise with respect to estimating the numbers of responses, at least for information collections where there is an historical record. However, there is no obvious reason why the USPTO deserves even minimal deference with respect to its estimates of the average number of burden-hours per response. The USPTO examines patent applications; it does not prosecute them. Moreover, it has not conducted or sponsored surveys or experiments to obtain accurate unit burden estimates. Moreover, the USPTO has a substantial bureaucratic interest in understating burdens on the public, particularly given their magnitude.

Several other commenters made similar observations about the lack of objective basis for the USPTO's burden estimates and the Office's systematic understatement of burden per response.

2. The USPTO estimates only a subset of total burden.

In my second comment, I specifically noted that the USPTO's burden estimation "method" (such as it is) consists of counting only a subset of actual burdens—i.e., burdens borne by patent counsel. This clearly violates both the PRA and OMB's Information Collection Rule: the definition of burden includes the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency." 5 C.F.R. § 1320.3(b)(1), emphasis added. The USPTO does not even make an effort to estimate burdens on anyone else, such as inventors themselves. The USPTO's methodology can be described as follows: it assumes that inventors' unique knowledge and insight is transmitted magically to patent counsel. A patent on this technology would be extremely valuable.

In its comments, IEEE-USA made similar observations, noting the Office's persistent failure to include all burdens: "[T]he PTO continues to count only attorneys' billable hour burden and ignores hourly burden imposed on their clients (*i.e.*, patent applicants themselves)." Foley & Lardner also observed that the USPTO's estimates "do not appear to take into account the time that may be required to investigate underlying facts or confer with the applicant or inventor(s)."

This apparent discrepancy might be resolved if most USPTO burden estimates are interpreted as including just the *transmittal forms* and not the substance of these submissions. Foley & Lardner observed in comments that "as a general matter … the time estimates set forth in the Federal Register Notice underestimate the time required to submit the information at issue, particularly where the information is substantive." They suggested that perhaps "the estimates may reflect the time required to type up the documents at issue, [but] they do not appear to take into account the full time required 'to gather the necessary information, create the documents, and mail the completed

request,' as indicated." Several examples were provided in the previously cited blog post in support of the allegation that the USPTO's figures are "gross underestimate[s]".[5]

Novo Nordisk commented on the USPTO's burden estimates for terminal disclaimers and RCEs (ICs #6 and #19 in the Supporting Statement). With respect to terminal disclaimers, Novo Nordisk wrote that the "research, including the propriety of any double patenting rejection, analysis of claim scope between the reference application and any application/patent in the rejection, investigating facts, evaluating options, consulting with client, making the decision, filling out the disclaimer form, and filing, **take much longer than 12 minutes**" (emphasis in the original). Novo Nordisk objected to the USPTO's 12-minute average burden estimate for filing RCEs, taking into account "all research, including responding to of any rejection, analysis of claims in relation to the prior art, investigating facts, evaluating options, consulting with client, making the decision, filling out the RCE form, and filing, in concert with any amendment and/or response should be considered in the estimation of the time the applicant takes to prepare and complete an RCE." The USPTO's estimate is 12 minutes.

If these commenters are correct, it is not clear whether the USPTO actually holds valid OMB control numbers for many of these information collections, or would do so if OIRA approved this ICR. In 2009, the USPTO acknowledged that although it held a valid clearance for filing Notices of Appeal—analogous to an RCE transmittal form—it lacked

[5] Courtenay Brinckerhoff, *op cit.* footnote 4:

"The USPTO estimates ***5 minutes*** for a Request for a Corrected Filing Receipt. I find it hard to believe that someone could carefully review the filing date, title, inventor information and priority information listed on a filing receipt, determine the source of any discrepancies, and prepare a request in 5 minutes or less.

"The USPTO estimates ***12 minutes*** for an Express Abandonment. While it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming the Applicant's intention and explaining the irrevocability of an express abandonment.

"The USPTO estimates ***12 minutes*** for a Disclaimer. Again, while it might be possible to prepare the paperwork that quickly, it certainly would take more time gathering the necessary information, such as confirming that a disclaimer is necessary and appropriate and that the Applicant understands its consequences.

"The USPTO estimates ***1 hour*** for a Petition to Revive an unintentionally abandoned application. While there might be some cases where the underlying facts can be ascertained and confirmed in under an hour, I would imagine that for most applications it could take at least one hour just to determine how/why the application became abandoned, as required to support the averment that the abandonment was unintentional.

"The USPTO estimates ***8 hours*** for an Amendment/Response, ***10 hours*** for a Declaration, and ***5 hours*** for a Request for Pre-Appeal Brief Review. These estimates are not completely out of line, but it is difficult to believe that they are true averages, i.e., that enough Responses take only a few hours to balance the Responses that take many more hours. While I could accept that the average response takes 8 hours or less to write, I would think that the time required to "gather the necessary information"—to review the Office Action, study the cited references, consider response strategies, prepare claim amendments and formulate arguments—will take more than 8 hours on average."

a valid OMB control number for appeal briefs and reply briefs submitted by applicants to the Board of Patent Appeals and Interferences.[6] No valid OMB control number ever existed for appeal and reply briefs until December 22, 2009, when OMB approved new ICR 0651-0063.[7]

The absence of a valid OMB control number for applicant submissions of appeal and reply briefs prior to December 22, 2009, means that the USPTO lacked any legal authority to impose a penalty for an applicant's failure to supply information via these papers. The rejection of a patent application, in whole or in part, constitutes a penalty, and 44 U.S.C. § 3512 and 5 C.F.R. §1320.6 forbid an agency from imposing penalties. If the trivial burdens that the USPTO has estimated for numerous ICs in this ICR merely cover transmittal forms, then the USPTO faces a potential disaster in the event that applicants raise and win PRA challenges in Federal court.

3. The USPTO's "estimates" are biased, arbitrary assumptions with no objective basis.

In my comments, I noted that the USPTO's burden estimates were substantively unreliable. Patent counsel and inventors have submitted comments on previous ICRs characterizing many of the Office's estimates as substantial underestimates. The USPTO declined to respond in good faith to these past comments, and because OIRA has tolerated this in the past, the Office continues this practice in the January 2013 Supporting Statement.

This is not to say that the USPTO has made no changes in its burden estimation methods. IEEE-USA raised "concern[] that the PTO has amended its historic practice of basing burden estimates on the non-transparent, non-reproducible, and subjective 'beliefs' of undisclosed PTO staff by choosing to withhold any explanation for how it derived them." The USPTO appears to be responding to complaints about its failure to be sufficiently transparent by being even less transparent.

Figure A presents a histogram of the USPTO's estimated burden-hours per response for the 67 ICs in this ICR. Forty-two (63%) are said to have unit burdens of less than one hour per response; five have unit burdens of five minutes or less. IEEE-USA cited, with obvious incredulity, several of the 22 information collection activities that the USPTO estimated to require, on average, exactly 0.2 hour (12 minutes) to complete.[8]

Among the 42 ICs estimated by the USPTO to require less than one hour, 0.1 and 0.2 hour (6 and 12 minutes, respectively) are the predominant values. Of the 25 ICs estimated by the USPTO to require one hour or more, two figures dominate: 2 hours (i.e., ¼ work day) and 8 hours (i.e., 1 work day). These are not "estimates"; they are merely arbitrary round numbers.

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[6] The AIA renamed this body the Patent Trial and Appeal Board.

[7] ICR Reference No. 200809-0651-003, http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003.

[8] The unit burden-hour estimate is 12 minutes for 23 of the 67 (34%) ICs in this ICR.

By their very nature, estimates are uncertain. While OMB could direct agencies to report these uncertainties, it does not do so. Instead, the Information Collection Rule directs agencies to report "objective" (i.e., unbiased) estimates of average or mean burden. Unbiased estimates of the mean have specific statistical properties. In nontechnical terms, a reasonable way to understand an unbiased estimate is that the true but unknown value is equally likely to be more or less than the estimate.

The USPTO's estimates do not conform to this principle. They are neither objectively supported nor unbiased. They are arbitrary values derived from an undisclosed procedure that appears to have as its goal the systematic understatement of actual burden.

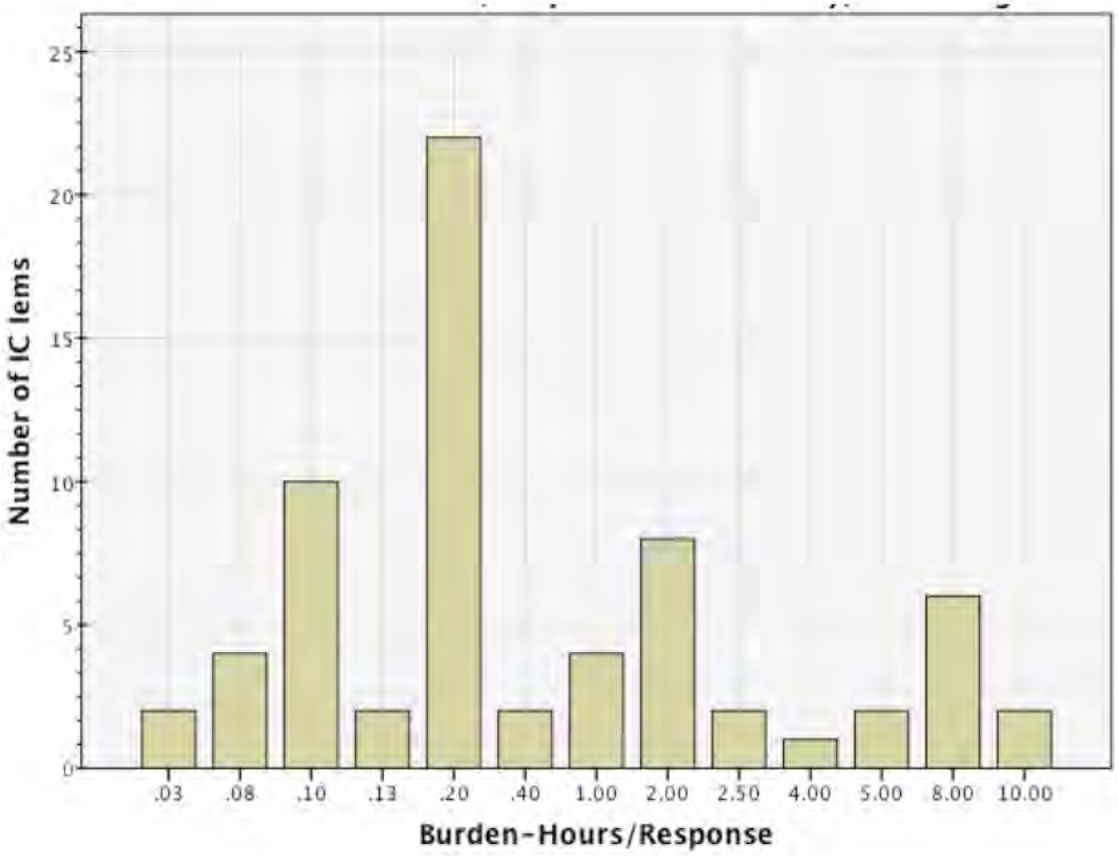
This inference is reasonable and appropriate for at four reasons. First, commenters have repeatedly noted that the USPTO's estimates include only burdens imposed on patent counsel and not burdens imposed on inventors. The USPTO willfully refuses to correct this error. Second, commenters have repeatedly noted that the USPTO's estimates substantially understate actual burdens on patent counsel. The USPTO willfully refuses to correct this error, too. Third, despite repeated requests from the public that it disclose its burden estimation methodology, the USPTO willfully refuses to do so. Finally, the USPTO apparently has abandoned a study launched several years ago that was supposed to provide a credible, independent review of its burden estimation methods.[9] The Office presumably concluded that credible burden estimation were contrary to its bureaucratic interests.

For these reasons, a reasonable default assumption is that the USPTO's figures understate actual burden by a factor of three. What the USPTO claims to be 12 million burden-hours valued at $3.9 billion per year are more like 30 million burden-hours valued at $10 billion per year.[10]

[9] ICF International. 2010. *Methodology for Conducting an Independent Study of the Burden of Patents-Related Paperwork*, Submitted to United States Patent and Trademark Office, Contract No. Gs23f8182h/Doc44papt0809009.

[10] This default relies on a method that estimates uncertain values based on orders of magnitude and their square roots. Thus, because 12 million burden-hours per year is clearly too low, the question is whether 100 million (10 x 10 million) or 30 million (3 x 10 million) burden-hours per year is more plausible. Using 3x yields 30 million. Similarly, because $3.9 billion per year is clearly too low, the question is whether $100 billion (10 x $10 billion) or $30 billion (3 x $10 billion) is more plausible. Using 3x yields $30 billion per year. Given the USPTO's burden estimation methods, any greater precision is imaginary.

Figure A: Burden-Hours per Response Are Arbitrary Numbers with No Objective Support



C. Unreasonably duplicative paperwork burdens

Public commenters identified numerous examples of unreasonably duplicative paperwork burden. Peter Trzyna identified such burdens in Rules 1.52(e) and 1.96, plus at least one other provision that lacks practical utility to the Office because it impedes effective patent examination. IEEE-USA identified several phenomena that cause unreasonably duplicative paperwork burdens, including examination procedures and reward metrics that incentivize low-quality work, management failure to properly and effectively supervise examiners, the USPTO's routine noncompliance with the Administrative Procedure Act (APA), and the 2009 redocketing of Requests for Continued Examination (RCEs). Foley & Lardner said (and Novo Nordisk explicitly concurred) that existing Information Disclosure Statement rules impose unreasonably duplicative paperwork burdens, including a requirement that applicants provide the same documents at least three times. Werking focused on the unreliability of the USPTO's procedures for addressing petitionable errors financial conflicts of interest among those to whom the USPTO Director has delegated the authority to respond to Rule 1.181 petitions, thus resulting in unreasonably duplicative paperwork burdens.

There are tens of thousands of registered patent attorneys and agents, in addition to the handful who devoted the time and effort to provide comments on this 60-day Notice. If the USPTO were seriously interested in discovering unreasonably duplicative paperwork burdens, it could conduct or sponsor an inexpensive survey that would reveal a much longer list.

D. Comments on "ways to enhance the quality, utility, and clarity of the information to be collected" and "ways to minimize the burden of the collection of information on respondents"

Commenters proposed specific, constructive remedies that would reduce or eliminate paperwork burdens that are unreasonably duplicative or lack practical utility, answers to the very questions set forth by the USPTO in its 60-day Notice.

Trzyna suggested eliminating the requirement in Rule 1.52(e) that all computer files be in ASCII format, and numerous other "pointless" requirements that add unreasonably duplicative burden. As Trzyna noted, limiting the submission of computer data to ASCII files (i.e., forbidding the submission of graphic files, acoustic files, and the like) has the perverse effect of undermining the USPTO's ability to examine applications because it disables the very inventions that are subject to examination. "A Rule that requires disabling an otherwise enabling disclosure is ridiculous."

Trzyna also recommended the rescission of other regulatory requirements that are unreasonably burdensome or otherwise have no practical utility. This includes (1) the requirement to list all file names, sizes in bytes, and dates of creation; (2) the requirement that tables provided in landscape orientation be elsewhere identified as being in landscape orientation; and (3) the requirement to require disclosure of operating system compatibility. He characterized the USPTO's fixation on ASCII as "Byzantine." He noted that while these particular burdens might seem trivial, applicants who stray face suspension of examination. Trzyna also noted that the USPTO

does not impose this burden on international parties who file under the Patent Cooperation Treaty (PCT)l the burden is confined to applicants who file directly in the United States. As Trzyna reasonably noted, that which is permitted for foreign applicants under PCT rules should be sufficient for American applicants as well.

IEEE-USA recommended that the USPTO reform its internal compensation metrics. Even though the USPTO imposes higher fees on complex applications, examiners are rewarded the same credit ("counts") for reviewing a complex application as they are for a simple one. This incentivizes examiners to avoid complex applications and delay the conclusion of examination in order to generate more counts, both of which inevitably result in unreasonably duplicative paperwork burdens. Supervisors also are rewarded the same when the examiners under their control perform poorly as when they perform well. IEEE-USA recommended the seemingly obvious (and presumably uncontroversial) remedy of scaling examiner rewards by application complexity.

To solve the problem that unreasonably duplicative paperwork burdens result from how examiners and supervisors are compensated, IEEE-USA recommended that compensation should be heavily weighted on the conclusion of an examination, whether by allowance, appeal decision by the Board, or abandonment, and that compensation be based less on the achievement of minor milestones that do not lead to the conclusion of examination. It should be obvious that the USPTO ought to be compensating supervisors based on outcomes, not repeatedly circling the same intermediate milestones. "It is essential to break the chain that now rewards examiners for producing low quality and supervisors for tolerating it."

Werking noted that petitions practice is unreliable in large part because Technology Center directors, who have been delegated the authority to supervise examiners through the petition process, have a financial interest in denying petitions. Whereas the administrative patent judges who serve on the Patent Trial and Appeal Board earn the same reward for affirming or reversing an examiner, TC director compensation is aligned with the examiners they supervise. Thus, the same perverse incentives that examiners have to avoid complex applications, not to correct errors, and to generally produce low-quality Office actions also apply to their supervisors.

Having identified the 2009 redocketing of RCEs as a source of unreasonably duplicative paperwork burdens, it should not be surprising that IEEE-USA recommended that this "reform" be rescinded. By shortening the deadlines for examiners to take intermediate actions, this change incentivized examiners to generate intermediate actions of lower quality. Low-quality actions that do not take full account of the information that applicants submit cannot help but produce unreasonably duplicative paperwork burdens. Indeed, when examiners fail to take account of information provided to them, the practical utility of the requirement to supply the information is undermined.

Foley & Lardner recommended several regulatory changes that would simultaneously reduce unreasonably duplicative paperwork burdens and improve USPTO performance. These included extending Rules 1.97 and 1.98 and MPEP § 2001.06(b) to co-pending U.S. applications, using the new Common Citation Document

Application (CCD) tool, modifying IDS rules by extending MPEP § 2001.06(b) to all information available on the CCD, and eliminating requirements that applicants submit copies of documents freely available online. Novo Nordisk concurred with Foley & Lardner's recommendations.

Werking recommended that the USPTO reduce unreasonably duplicative paperwork burden by reforming its petition practices based on practices already established for appeals. Among other things, this includes imposing reasonable deadlines for the Office to respond to petitions and tolling examination of applications while petitions are pending. "A ten month wait period for deciding petitions is simply too long to reliably enforce PTO regulations—regulations that ensure information quality and minimize paperwork burden."

E. The Supporting Statement is unresponsive to public comments

In the Supporting Statement, the USPTO summarized few of these comments, dismissed all substantive comments without reason, and made no changes in response.

- In response to commenters objecting to its specific burden estimates, the USPTO sought to shift to the public the Office's statutory responsibility for burden estimation, rather than comply with the law: "[T]hese comments did not provide a basis for or propose any other alternative time estimate burden."
- In response to commenters objecting to its failure to account for burdens on inventors, the USPTO implicitly acknowledged the error but refused to make corrections: "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."
- In response to commenters who identified unreasonably duplicative paperwork burdens resulting from regulatory requirements that lack practical utility, the USPTO replied that these comments "go beyond the scope of the instant ICR clearance." In fact, these comments were not "beyond the scope" of the public comment request; they were squarely in the middle of it.

Previous public comments to OIRA have raised the same concern: the USPTO does not take seriously its obligations under the PRA and Information Collection Rule. With respect to one ICR submitted in October 2008,[11] OIRA did hold the USPTO accountable. It should do so again, this time by disapproving and continuing the existing OMB control number and, among other things, directing the USPTO to initiate

[11] ICR Reference No: 200809-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200809-0651-003, approved in part Dec. 22, 2009). Although OIRA's December 2009 approval prospectively cured a longstanding PRA violation discovered in 2008, OIRA did not list it as such in its 2008, 2009, or 2010 reports to Congress.

rulemaking to eliminate regulatory requirements that impose paperwork burdens that are unreasonably duplicative or otherwise lack practical utility.

III. THIS ICR SUBMISSION VIOLATES THE INFORMATION QUALITY ACT

The Supporting Statement certifies that the information contained in the submission is covered by the Information Quality Act (IQA) and that the ICR adheres to OMB's and USPTO's Information Quality Guidelines. This certification is knowingly false. The ICR's lack of transparency and reproducibility alone is sufficient to conclude that it does not comply. The USPTO's response to a different IQA error correction request, discussed below, is sufficient to infer that its violations are willful.

A. Procedural violations

My pair of public comments on the 60-day Notice were expressly styled as IQA error correction requests. To ensure that the USPTO did not inadvertently miss this, I submitted them as error correction requests as well as public comments on the 60-day Notice. The USPTO is obligated to have responded to these error correction requests no later than via the Supporting Statement accompanying the ICR submission.

The Supporting Statement includes no such response. Therefore, the USPTO is unambiguously in violation of the IQA's procedural requirements and the USPTO's certification to the contrary is knowingly false.

B. Substantive violations

Having failed to respond to error correction requests in the Supporting Statement as required, it should go without saying that the USPTO also failed to address the substantive errors I identified in my second comment and error correction request.

The USPTO's conduct is not an isolated phenomenon. The Office responded to a 2010 error correction request in bad faith. That request identified a series of technical errors in ICR 0651-0032 ("Initial Patent Applications").[12] I found similar errors.

In its astoundingly cynical response to this 2010 error correction request,[13] the USPTO said that burden estimates are not "information," and therefore they are not covered by the IQA:

> Under the IQA, certain influential information must be reproducible under certain circumstances. The burden "estimates" of which you complain do not

[12] Katznelson, Ron D. 2010. "Request for Correction under the Information Quality Act [ICR 0651-0032]." Available at: http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009471.pdf.

[13] U.S. Patent and Trademark Office. 2011. Response to Katznelson 2010 Request for Correction (Ticket No. 1-178950 16). Available at http://ocio.os.doc.gov/s/groups/public/@doc/@os/@ocio/@oitpp/documents/content/prod01_009511.pdf.

> qualify as "information" within the meaning of the IQA. "Information" is defined as "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms." By definition, estimates do not represent knowledge such as facts or data. "Information," not estimation, is subject to certain reproducibility requirements. No correction is warranted for matters not involving "information" (internal references omitted).

The PRA and the Information Collection Rule do not exempt "estimates" from the definition of "information." Indeed, if estimates were exempt, every statistical product of the Department of Commerce would also be exempt—and not just from the IQA, but from OIRA review. OIRA's Statistical & Science Policy Branch, which devotes most of its resources to the oversight of statistical agencies such as the Commerce Department's Census Bureau, would have no statutory authority for its operations. It could be summarily disbanded.

Finally, the timing of the USPTO response and OIRA's approval of ICR 0651-0032—the subject of the 2010 error correction request—is more than curious. OIRA approved the ICR on January 18, 2011, exactly three days before the date of the USPTO response to the error correction request. The best spin that can be conjured is that OIRA insisted that the USPTO respond before concluding review but paid no attention at all to the contents of the response. That also would mean that OIRA paid no attention to the public comments it received on ICR 0651-0032.

IV. THIS ICR SEEKS TO SURREPTITIOUSLY CURE SEVERAL DECADES-LONG UNAPPROVED COLLECTIONS OF INFORMATION, AT LEAST TWO OF WHICH ARE TRULY MASSIVE

At the time I and others commented on the 60-day Notice, it was not clear what the large new ICs were about. Since then, and particularly after a careful reading of the Supporting Statement, it has become obvious that through this submission the USPTO seeks to surreptitiously cure unapproved information collections that have persisted for decades.

A. In the 60-day Notice, the USPTO withheld crucial information about certain elements of the ICR and did not even mention others

The 60-day Notice identifies at least six new ICs for which the USPTO does not appear to have ever obtained an OMB control number. They are listed in Table 1 below. Taking at face value the USPTO's burden estimates, these new collections total over 1 million new responses and more than 8 million new burden-hours valued by the USPTO at more than $3 billion per year.

The 60-day Notice describes these ICs obscurely so that few affected parties would have had a clue what they were about:

Table 1: Previously Unapproved ICs in the January 2013 ICR Submission and Supporting Statement in the January 2013 Supporting Statement

IC No.	*IC Title*	*Burden-Hours/ Response*	*Responses/ Year*	*Burden-Hours/ Year*	*Annual Value of Burden/Hours*
32	Electronic Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	46,500	465,000	$172,515,000
32	Rule 1.130, 1.131 and 1.132 Affidavits or Declarations	10	3,500	35,000	$12,985,000
33	Electronic Amendments and Responses	8	893,000	7,144,000	$2,650,424,000
33	Amendments and Responses	8	67,000	536,000	$198,856,000
34	Electronic Filing a submission after final rejection (see 37 CFR 1.129(a))	8	86	688	$255,248
34	Filing a submission after final rejection (see 37 CFR 1.129(a))	8	7	56	$20,776
	Totals		*1,010,093*	*8,180,744*	*$3,035,056,024*

The 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.

Further research made possible only by the limited new information in the Supporting Statement indicates that the USPTO is surreptitiously attempting to prospectively cure multiple, longstanding violations of the PRA.

B. After expiration of the public comment period on the 60-day Notice, the USPTO proposed changes to Rules 1.30 and 1.31, denied that these changes caused new paperwork burden, and falsely characterized the relevant information collections as previously approved by OIRA

Subsequent to both publication of the 60-day Notice on Mar. 22, 2012, and the conclusion of the public comment period on May 21, 2012, the USPTO proposed changes to Rules 1.130 and 1.131 (77 Fed. Reg. 43742, Jul. 26, 2012). The PRA section of the Final Rule Notice claims that Rule 1.131-1.132 affidavits and declarations were "previously approved and currently being reviewed under OMB control number 0651–0031."

This statement was false, and almost certainly knowingly so. ICR 0651-0031 was not under review by OIRA on Jul. 26, 2012, and OIRA had never previously approved information collections related to Rule 1.130, 1.131, or 1.132 affidavits and declarations. OIRA had concluded its most recent substantive review of this ICR on Jul. 1, 2009.[14] When ICR Reference No. 200707-0651-005 was approved on that date, the collection did not include information related to these Rules.[15]

According to the eCFR (current as of Mar. 25, 2013), these Rules were first promulgated as long ago as September 20, 2000. Thus, for the collections of information contained in these Rules, the USPTO has lacked a valid OMB control number for as much as 23 years.

C. Public commenters specifically inquired about these new collections of information, and the USPTO declined to respond

In my first public comment and error correction request, I observed that the 60-day Notice lacked transparency and reproducibility on virtually every front. In my second public comment and error correction request, I highlighted several of the paperwork burdens listed in Table 1 above: "Given the multi-billion dollar scale of the burdens" involved, "one would expect the USPTO to describe them with considerably greater cogency and detail." One would be wrong to have harbored such expectations.

I was not alone. IEEE-USA also said it could not discern from the 60-day Notice what the USPTO intended the scope of these line items to include, "not[ing] with foreboding that the [US]PTO reports that it expects 50,000 (!) 'Rule 1.130, 1.131, and 1.132 Affidavits or Declarations' and 960,000 (!) 'Amendments and Responses.'" IEEE-USA estimated the financial cost of these information collections at about $3.7 billion per year. "Obviously, an information collection imposing several billions of dollars in burden deserves far more explanation than this," IEEE-USA wrote. "There is no

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[14] See http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=0651-0031.

[15] See http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200707-0651-005.

question that the public cannot provide informed comment on such an empty disclosure."

D. The ICR submission includes an information collection not included in the 60-day Notice that is falsely described as related to the Leahy-Smith America Invents Act

The Supporting Statement identifies changes made since the publication of the 60-day Notice, none of which were in response to public comment. These changes add an estimated 50,048 more burden-hours per year, and they are dominated by new IC #34, defined by the USPTO as "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))."

IC #34 has nothing to do with the AIA. According to the eCFR (current as of Mar. 25, 2013), Rule 1.129(a) was last revised on April 25, 1995 (60 Fed. Reg. 20226). It concerns applications filed on or before June 8, 1995, prior to the effective date of the Uruguay Round Agreements Act.[16] Nothing in the AIA altered the rights of those who submitted applications before that date, so it cannot be the case that the USPTO needs an OMB control number for this information collection in order to implement the AIA.

In the PRA section of the preamble to the 1995 Final Rule (60 Fed. Reg. 20195), the USPTO asserted that the rule "does not contain any information collection requirements that require approval by OMB under the Paperwork Reduction Act." This is impossible, for Rule 1.129(a) is chock full of information collection requirements. Rather, when it promulgated Rule 1.129(a) the USPTO simply ignored the PRA. In the process of upwardly revising its fees, the Office apparently discovered this longstanding PRA violation and decided to prospectively cure it without the public or OIRA noticing. (The Supporting Statement characterizes it as a "program change," not a prospective cure for a PRA violation.)

Still, showing that the USPTO misrepresented a new information collection covering Rule 1.129(a) filings does not explain <u>why</u> it would be motivated to do so. After all, the only applications that are covered by Rule 1.129(a) were submitted prior to June 8, 1995.

The most plausible answer is both straightforward and shocking: <u>there are patent applications 18 or more years old still pending at the USPTO</u>. Data submitted by the USPTO along with the ICR suggest that there may be quite a few of them, too. In FY 2012 there were 11 submissions covered by Rule 1.129(a).[17] The Supporting Statement estimates that the USPTO will receive 93 filings per year during the 3-year period for

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[16] The Uruguay Round Agreements Act of 1995 changed patent term from 17 yeas after *allowance* to 17 years after *filing*. Similar to what happened prior to the March 16, 2013 effective date of the AIA's first-to-file rule, the USPTO received a huge bolus of applications prior to June 8, 1995, in order to take advantage of the pre-GATT law governing patent term.

[17] "0031 Filings Attachment," http://www.reginfo.gov/public/do/DownloadDocument?documentID=375113&version=0.

which it seeks OIRA approval, a nearly tenfold increase. There may be hundreds of patent applications that were submitted before June 8, 1995, and languishing in examination purgatory. OIRA might want to find out just how many of these ancient applications the USPTO has squirreled away and investigate why the USPTO has failed to complete their examination almost two decades later.

The public cannot know why the USPTO waited until now to seek approval of this information collection. The most charitable explanation is that, in mid-2012 when it prepared new ICR 0651-0072 ("America Invents Act Section 10 Patent Fee Adjustments"),[18] USPTO personnel discovered that Rule 1.129(a) filings lacked an OMB control number. The new ICR would be sufficient to authorize the collection of fees on Rule 1.129(a) filings, but it would not be enough to allow the Office to require them to be filed in the first place.

E. The USPTO has had numerous opportunities to prospectively cure these unlawful information collections, but not done so until now

Table 2 lists when each of the rules containing an unlawful information collection in this ICR was first promulgated. It also lists when each rule was amended. (Rule 1.130 used to be numbered 1.131.)

The USPTO could have prospectively cured the absence of a valid OMB control number at any of the times it revised or renewed ICR 0651-0031. There are 33 such revisions and renewals since the ICR was first established in 1993. On none of these occasions did the USPTO revise the ICR to include any of these information collections.

[18] This new ICR contains 127 separate ICs, each of which involves a fee that the AIA authorized the USPTO to reset. *See* ICR Reference No. 201205-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201205-0651-001#, pre-approved October 25, 2012, expiration date Oct. 31, 2015); ICR Reference No. 201212-0651-001 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201212-0651-001, pre-approved Jan. 11, 2013, expiration date Jan. 31, 2016); and ICR Reference No: 201301-0651-003 (http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201301-0651-003#section0_anchor, approved Jan. 18, 2013, expiration date Jan. 31, 2016).

Table 2: Regulatory Actions for Information Collections in this ICR Lacking OMB Control Numbers

IC#	*Rule*	*Title*	*Date*	*FR Citation*
32	Rule 1.130, 1.131, and 1.132 Affidavits and Declarations			
	Rule 1.130	Affidavit or declaration of attribution or prior public disclosure under the Leahy-Smith America Invents Act	Feb. 14, 2013	78 FR 11058
	Old 1.131	*Affidavit or declaration of prior invention*	*June 23, 1988* *May 1, 1995;,* *Aug. 19, 1996* *Sept. 8, 2000* *Sept. 20, 2000* *Aug. 12, 2004* *Sept. 21, 2004*	*53 FR 23734* *60 FR 21044* *61 FR 42806* *65 FR 54673* *65 FR 57057* *69 FR 49999* *69 FR 56543*
	Rule 1.131	Affidavit or declaration of prior invention or to disqualify commonly owned patent or published application as prior art	Feb. 14, 2013	78 FR 11058
	old 1.130		*Aug. 19, 1996* *Sept. 20, 2000* *Jan. 11, 2005*	*61 FR 42805* *65 FR 57056* *70 FR 1824*
	Rule 1.132	Affidavits or declarations traversing rejections or objections	Sept. 20, 2000	65 FR 57057
33	Amendments and Responses			
	Rule 1.111	Reply by applicant or patent owner to a non-final Office action	May 29, 1981 Oct. 10, 1997 Sept. 8, 2000 Sept. 21, 2004 Jan. 27, 2005	46 FR 29182 62 FR 53192 65 FR 54672 69 FR 56542 70 FR 3891
	Rule 1.115	Preliminary amendments	Sept. 21, 2004	69 FR 56543
	Rule 1.116	Amendments and affidavits or other evidence after final action and prior to appeal	Aug. 12, 2004	69 FR 49999
34	Filing a Submission After Final Rejection			
	Rule 1.129(a)	Transitional procedures for limited examination after final rejection and restriction practice	Apr. 25, 1995	60 FR 20226

V. SPECIFIC REQUESTS FOR ACTION BY OIRA

The list below represents my best effort to provide constructive suggestions to OIRA.

The purposes of the PRA cannot be achieved if agencies refuse to comply and OIRA looks the other way. Allowing the USPTO to continue along its present path will have adverse effects throughout the government. Systematic, serial violations show contempt for both the PRA and OIRA, and it makes fools of agencies that comply in good faith. Whenever OIRA tolerates this, it lowers the bar for other agencies and encourages a perverse race to the bottom.

Since its founding in 1981, OIRA has had to balance its statutory mission to implement the PRA with important and growing executive responsibilities, most notably regulatory review under Executive Orders 12291, 12498, 12866, and 13563. It is therefore easy to imagine that OIRA now perceives executive regulatory review to be more important than statutory implementation and enforcement of the PRA. Yet there are important co-benefits to regulatory review that OIRA can obtain by taking seriously its PRA responsibilities. Frequently, problems identified during regulatory review could have been reduced or prevented had OIRA and the agency been more diligent at the information collection stage of the regulatory development process. From my own OIRA experience, I know of many instances in which draft regulations lacked cost-effectiveness because the information needed to regulate intelligently had not been obtained when there was still time to do so. Similarly, many draft regulations that OIRA reviews consist of little more than the addition of more sedimentary layers of new regulatory language to overcome errors and defects in previous rounds of regulation.

Yet another reason OIRA should take seriously its PRA responsibilities in this case is that it has been unable to improve the quality of USPTO regulation through regulatory oversight. When the USPTO writes regulations, it systematically misclassifies them as "significant" or "nonsignificant" in order to evade the requirement to prepare a Regulatory Impact Analysis. In 2012, OIRA reviewed 17 draft proposed or final USPTO rules, each of which by any reasonably reckoning had paperwork burdens alone that were "likely to result in an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, [or] jobs…" Executive Order 12866, § 3(f)(1). Only one of these rules—0651-AC54, "Setting and Adjusting Patent Fees"—was designated economically significant, and the Regulatory Impact Analysis accompanying it was predictably substandard.[19]

[19] In 2012, the USPTO also promulgated six regulations that it deemed "not significant," which presumably were not reviewed by OIRA. The USPTO has in the past designated regulations as "not significant" and not submitted them to OIRA for review even though they had paperwork

Enforcing the PRA and the Information Collection Rule provide a useful pathway to effective regulatory oversight. OIRA should work with the public to identify regulations that impose unreasonably duplicative burdens, or lack practical utility for other reasons. This would enable OIRA to achieve important regulatory reforms in ways that end-of-process regulatory review cannot. Though comments on this ICR were few, they reveal systematic regulatory problems that suppress America's technological innovation and economic growth. One can only imagine what a concerted effort to obtain information from the public would reveal.

A. OIRA should direct the USPTO to comply with the procedural and substantive requirements of the PRA and the Information Collection Rule

OIRA should disapprove and continue the existing OMB control number, and direct the USPTO to embark on a crash program to end its systematic procedural and substantive violations. Procedural violations consist primarily of insufficient information disclosure, making it difficult for even the most informed members of the public to provide useful comments, and impossible for the vast majority to do so. Substantive violations consist primarily of burden estimates that are unreliable and generally believed by the public to be gross underestimates, and the absence of evidence of actual practical utility.

OIRA should direct the USPTO to prepare a revised 60-day Notice that procedurally and substantively complies with the PRA and the Information Collection Rule. Specifically, OIRA should direct the USPTO to:

1. disclose an objectively supported, reproducible methodology for estimating the number of responses that can be used for all patent-related ICRs;
2. promptly compile a comprehensive inventory of every collection of information contained in its rules and guidance;
3. sponsor a rigorously designed and independently conducted survey of registered patent attorneys, agents, and patent applicants to obtain objectively supported burden-hour estimates;
4. publish all work products for public comment, and respond in good faith to the comments received.

It would cause no meaningful hardship to the USPTO to undertake these tasks. The President's FY 2013 budget for the USPTO was $2,822,000,000. Reforming paperwork burdens would easily reduce its operating costs by more than 1% ($28,220,000). Even if the analyses I propose were to cost $1 million, they would provide a return on investment to the USPTO of more than $28 for every dollar spent. Undertaking these tasks also would improve the USPTO's ability to effectively and efficiently implement the AIA.

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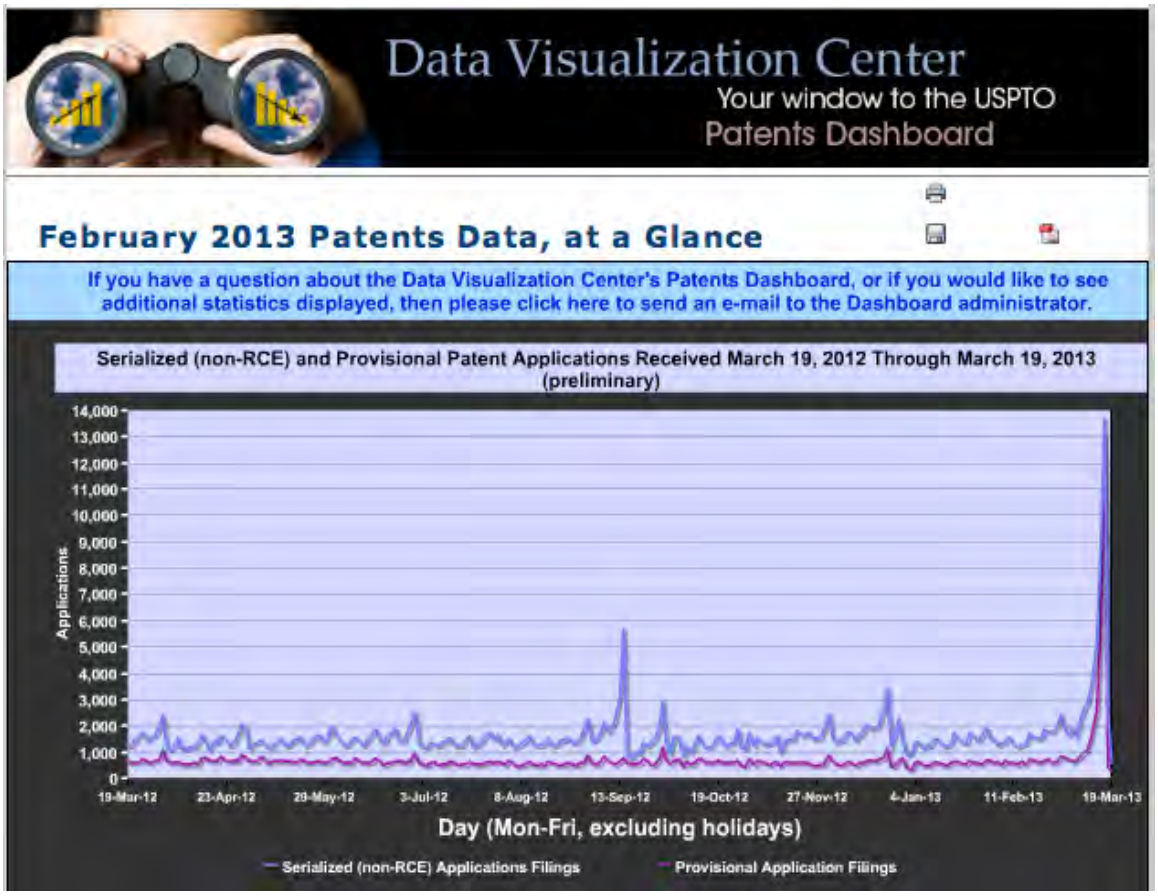
burdens alone well in excess of the $100 million threshold. Unsurprisingly, the Office's practice has been to deny that these paperwork burdens exist.

The USPTO might balk, claiming that some provisions in this ICR must be approved to implement the AIA. We can easily dismiss this line of argument by noting that the paperwork burdens associated with patent prosecution (as opposed to application) under the AIA will not arise for many months at the earliest, and possibly for years. Inventors responded predictably to the March 16, 2013 effective date for first-to-file by swamping the Patent Office with applications that must be examined under pre-AIA rules and procedures. This is shown in Figure B, which is a screenshot of the USPTO's Patent Dashboard taken on March 25, 2013, showing the spike that occurred in mid-March.

Figure B: A Rush to File Under the Old Patent Law to Beat the March 16, 2013 Deadline



B. OIRA should direct the USPTO to undertake a rulemaking to eliminate regulatory requirements identified by commenters that are unreasonably duplicative or otherwise lack practical utility

Several commenters on the 60-day Notice identified specific regulatory requirements that they said were unreasonably duplicative or otherwise lacked practical utility to the USPTO. In the Supporting Statement accompanying the ICR submission, the USPTO declined to rebut commenters' claims or even treat their comments respectfully. The Office went so far as to incorrectly assert that comments identifying unreasonably duplicative paperwork burdens "go beyond the scope" of the comment request. If OIRA does nothing in response, it rewards an agency for acting in bad faith and brings disrespect upon itself.

Fortunately, OIRA has explicit authority to do the right thing. Pursuant to 5 C.F.R. § 1320.12(f), it can direct the USPTO to undertake rulemaking sufficient to eliminate the unreasonably duplicative burdens commenters identified. While a comprehensive list of such regulations should be obtained, as I recommend in subsection A above, OIRA can ensure a good start by directing the USPTO to address the specific examples of unreasonably duplicative and burdensome regulations identified by commenters on the 60-day Notice for this ICR.

C. OIRA should direct the USPTO to accurately distinguish among information collections that are (1) renewals, (2) new information collections resulting from regulations promulgated to implement the Leahy-Smith America Invents Act, and (3) new ICs that are prospective cures for PRA violations

This ICR is a mysterious stew. Many of the ICs are simply renewals of OIRA's 2009 approval, with updated estimates of the numbers of responses only, and a few are revised to account for AIA-related changes. But the largest ICs are not mere renewals but prospective cures for longstanding PRA violations. They comprise 70% of the paperwork burden.

Before approving this ICR, OIRA should direct the USPTO to develop and publicly disclose how the burdens of this ICR are allocated across these three types of information collection.

D. OIRA should direct the USPTO to disclose details about the composition of the new ICs that are corrections of violations of the Paperwork Reduction Act

For the new items are prospective cures for longstanding PRA violations, and which comprise 70% of the total paperwork burden, OIRA should direct the USPTO to explain in detail what paperwork the Office intends to be included and a credible, transparent, and reproducible estimate for the burden of each item. This ICR gives no detail at all. In contrast, the USPTO itemizes five ICs with estimated total burdens across all respondents under 10 hours per year. Half of all ICs in this ICR have total

burden-hours below 1,000 per year. Postage costs are estimated to the nearest penny. Meanwhile, "Amendments and Responses" stands out at 7,680,000 total burden-hours per year, differentiated only by whether the information, whatever it is, is provided electronically or on paper.

Gross ambiguity about "Amendments and Responses" inexorably leads to a reasonable concern that the aggregate burdens of this ICR have been grossly underestimated. Commenters with patent prosecution experience have said that the USPTO's unit burden estimates are unrealistically low, often because the Office counts only the burden of transmitting information to the USPTO, not the "total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information," as 5 C.F.R. § 1320.3(b)(1) requires. It is not difficult to imagine that the USPTO's unit burden estimate—exactly 8 hours, or conveniently, exactly 1 work-day—understates average unit burden by, say, a factor of three. In that case, "Amendments and Responses" alone would be 23 million burden-hours per year—about as large as ICs usually found in Internal Revenue Service, Medicare, and Medicaid ICRs. Few of these comparable information collections have burden-hour rates on the order of $400 per hour.

Before approving this ICR, OIRA should direct the USPTO to provide details concerning exactly what paperwork submissions are covered within these new, amorphously defined ICs. The USPTO also should produce objectively supported, detailed estimates for each type of submission, and a transparent, reproducible methodology showing how these burden estimates were derived.

E. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR included in the 60-day Notice that are prospective cures for past violations of the PRA

As I noted earlier, the 60-day Notice was particularly unrevealing with respect to Rule 1.130, 1.131 and 1.132 affidavits or declarations (50,000 responses totaling 500,000 burden-hours valued by the USPTO in 2012 at $170,000,000) and unspecified "Amendments and Responses" (960,000 responses totaling 7,680,000 burden-hours valued by the USPTO in 2012 at $2,611,200,000).

In my comments, I asked the USPTO to clarify what these new ICs were about. In response, the Supporting Statement says almost nothing. Yet it did provide enough information to conclude that the USPTO is seeking to prospectively cure longstanding PRA violations, but doing so as surreptitiously as possible. Indeed, the USPTO's desire to avoid acknowledging these PRA violations has led it to make even more false statements. For example, the Supporting Statement mischaracterizes prospective cures for these PRA violations as mere "program changes."

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual. n particular, the changes listed in Table 3 below are required and should be separately grouped under a new second-order subhead titled "Corrections of Violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 3: Necessary Changes to the Supporting Statement to Correctly Identify Past PRA Violations (~~deletions~~, additions)

IC No.	*Corrected Text*
32	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**
33	The USPTO is ~~separately~~ for the first time 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~~ correction for a violation of the Paperwork Reduction Act.**

F. OIRA should direct the USPTO to revise its Supporting Statement to clearly identify the new items in this ICR not included in the 60-day Notice that are prospective cures for past violations of the PRA

The major new information collection item added to the submission but not disclosed for public review and comment in the 60-day Notice concerns Rule 1.129(a) filings. The USPTO describes it as made necessary by the AIA. This explanation is false. Rule 1.129 has been on the books since April 1995 and it only concerns applications filed before June 8, 1995. According to data submitted by the USPTO along with the submission, there were 11 responses submitted in FY 2012 governed by Rule 1.129(a).

Based on my review of the USPTO ICR inventory, it appears that the USPTO has never before obtained an OMB control number for Rule 1.129(a) filings made after final rejection. That is, the USPTO is seeking to prospectively cure an unapproved collection of information that has languished for almost 18 years.

That means the Supporting Statement needs be revised along the lines of Table 4 below. This would acknowledge that the purpose of adding this new information collection is to prospectively cure a longstanding violation of the PRA.

Section 15 of the Supporting Statement ("Summary of Changes in Burden Since Previous Renewal") should be rewritten to be factual, including the change listed in

Table 4. This change should be added to the new second order subhead titled "Corrections of violations of the Paperwork Reduction Act," placed within the subhead "Changes in Response and Burden Hours."

Table 4: Necessary Changes to the Supporting Statement to Correctly Identify Information Collection Elements Added After Publication of the 60-day Notice (~~deletions~~, additions)

IC No.	*Corrected Text*
34	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~~ correction for a violation of the Paperwork Reduction Act.**

G. OIRA should ask OMB's Office of Performance and Personnel Management to establish full compliance with the Paperwork Reduction Act as a new performance goal for the USPTO

Improving government management is a long neglected part of OMB's mission. Under the direction of OMB's Office of Performance and Personnel Management (OPPM), the USPTO has established three strategic goals, one of which is to optimize patent quality and timeliness.[20] Several performance measures have been chosen, but most of them concern inputs (e.g., patent applications filed electronically) and intermediate outputs (e.g., average first action pendency). These performance measures are poor proxies for patent quality.

The USPTO's 2012 Performance and Accountability Report (PAR) specifically mentions a program called Clearing Our Oldest Patent Applications 2.0 (COPA 2.0). What the USPTO apparently means by "old" does not, however reach back to the pre-1995 applications covered by Rule 1.129. Rather, "old" means something that is actually quite young by comparison, and the program's goal is much more modest than either completing examination (an output measure) or patent quality (an outcome measure):

[20] U.S. Patent and Trademark Office. 2012. Performance and Accountability Report, Fiscal Year 2012. Alexandria, Va. http://www.uspto.gov/about/stratplan/ar/USPTOFY2012PAR.pdf.

> For COPA 2.0, the "tail" is applications that were 13 months and older as of October 1, 2011, and had not received a first office action.

The USPTO compliments itself for meeting its goal of completing first office actions on 260,000 applications. But pre-1995 application have languished for least 198 months, not 13. To characterize the mere issuance of first Office actions as "clearing our oldest patent applications" is equivalent to establishing a goal of providing effective elder care by improving middle school education.

A management truism is that one cares about that which one measures. This suggests that the USPTO cares more about issuing first office actions than it does about completing their examination. If it had a more worthy goal—e.g., completing the examination of old applications—OPPM would have a better guide to the USPTO's actual mission performance.

Similarly, we do not know how widespread and deep is the USPTO's PRA noncompliance problem. Every time an ICR comes up for renewal we discover yet more unapproved information collections with thousands or millions of unapproved burden-hours. OIRA should seek OPPM's assistance by defining PRA compliance as a specific performance goal. This would at least (and at last) raise the visibility of the PRA with the USPTO's senior management and its new director.

H. OIRA should direct the USPTO to fully and completely respond to the IQA error correction requests related to this ICR, which to date it has ignored

OIRA is responsible for enforcing the Information Quality Act. It was OIRA that authored government-wide information quality guidelines and pre-reviewed each agency's implementing guidelines in 2002. It was OIRA that decided to issue guidelines instead of binding regulations, presumably on the ground that guidelines would be more flexible. Had OIRA promulgated regulations, there would be little doubt that affected parties dissatisfied with agency responses could, as the statute says, "seek and obtain correction of information maintained and disseminated by the agency that does not comply" (emphasis added). Because OIRA issued guidelines instead, it is OIRA's responsibility to ensure that agencies comply.

To date, the USPTO has adhered to neither OIRA's nor its own information quality guidelines. Its response to the 2010 request for correction, which concerned ICR 0651-0032, was particularly disturbing to any fair-minded observer. Not only did this response make a hash of the IQA, it grossly distorted the text and meaning of the PRA and Information Collection Rule. If OIRA will not defend the PRA, who will?

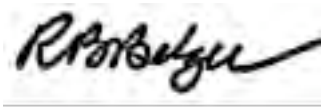
Before approving this ICR, OIRA should direct the USPTO to respond in good faith to all previously submitted requests for correction that concern this ICR. OIRA also should review the USPTO's response to the 2012 Katznelson request for correction and direct the USPTO to correct the errors of law and logic that it contains.

VI. FINAL COMMENTS

As I indicated in my email to you dated Feb. 23, 2013, I wish to meet with you and Messrs. Hunt and Mancini to discuss this ICR and ensure that OIRA staff fully understand the issues involved and why they are important, both to the public and to OIRA. As this letter makes clear, I remain concerned about the USPTO's serial and persistent noncompliance with the PRA and Information Collection Rule.

Perhaps more importantly, it also should be obvious that, through this ICR, the USPTO is continuing its longstanding pattern of misleading OIRA concerning the substance of its regulatory and paperwork actions. The USPTO's conduct on both margins will not improve until OIRA supervises it with appropriate intensity.

Respectfully submitted,



Richard Burton Belzer, PhD

cc: Alex Hunt, Branch Chief
Dominic Mancini, Deputy Administrator

Document ID: 0.7.991.5271

From: Echols, Mabel E. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mabele.echols27652434>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: Belzer comments on ICR 0651-0031
Date: Wed May 15 2013 14:22:46 EDT
Attachments:

Done.

From: Fraser, Nicholas A.
Sent: Wednesday, May 15, 2013 2:03 PM
To: Echols, Mabel E.
Subject: FW: Belzer comments on ICR 0651-0031
Importance: High

Just following up on this.

From: Fraser, Nicholas A.
Sent: Tuesday, May 07, 2013 3:29 PM
To: Echols, Mabel E.
Subject: FW: Belzer comments on ICR 0651-0031
Importance: High

Hi Mabel can you please add this comment to the docket for 0651-0031. Thanks.

-Nick

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Friday, March 29, 2013 1:34 PM
To: Fraser, Nicholas A.
Cc: Hunt, Alex; Mancini, Dominic J.
Subject: Belzer comments on ICR 0651-0031
Importance: High

Nick et al,

Please see the attached PDF for my comments on the latest edition of ICR 0651-0031. I look forward to meeting with y'all to discuss them. As I indicated earlier today, my schedule is generally flexible.

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5274

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: PTO ICR for conclusion
Date: Wed May 15 2013 14:46:50 EDT
Attachments: Update Apr12, 2013 to 0651-0031 SupStmt Jan2013.doc

Would you mind giving a second opinion on this one? (b) (5) [redacted] Thanks.

-Nick

01/29/2013

106

03/30/2013

0651-0031

05/31/2013

201301-0651-002

DOC/PTO

Patent Processing (Updating)

ICR Rev

No

No

Hunt, Alex

05/15/2013

Approved with change

No

Document ID: 0.7.991.5273

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: PTO ICR for conclusion
Date: Thu May 16 2013 10:45:15 EDT
Attachments:

I would prefer that (b) (5) [redacted]

Let's chat if there is more to discuss.

Thanks.

From: Fraser, Nicholas A.
Sent: Wednesday, May 15, 2013 2:47 PM
To: Hunt, Alex
Subject: PTO ICR for conclusion

Would you mind giving a second opinion on this one? (b) (5) [redacted] Thanks.

-Nick

01/29/2013

106

03/30/2013

0651-0031

05/31/2013

201301-0651-002

DOC/PTO

Patent Processing (Updating)

ICR Rev

No

No

Hunt, Alex

05/15/2013

Approved with change

No

Document ID: 0.7.991.5291

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan (Susan.Fawcet@USPTO.GOV) <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: 0651-0031
Date: Tue Jun 04 2013 13:17:41 EDT
Attachments:

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5295

From: Seehra, Jasmeet </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=jasmeetk.seehra42245837>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: this collection is signed of in rocis to you -- just fyi
Date: Thu Jun 06 2013 08:58:02 EDT
Attachments:

01/29/2013

128

03/30/2013

0651-0031

06/30/2013

201301-0651-002

DOC/PTO

Patent Processing (Updating)

ICR Rev

No

No

No

Open for Amendment

Fraser, Nicholas

Hunt, Alex

Approved with change

Document ID: 0.7.991.5294

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Seehra, Jasmeet </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=jasmeetk.seehra42245837>
Cc:
Bcc:
Subject: RE: this collection is signed of in rocis to you -- just fyi
Date: Thu Jun 06 2013 09:00:58 EDT
Attachments:

I spoke with Nick about this one. He's still working on it.

From: Seehra, Jasmeet
Sent: Thursday, June 06, 2013 8:58 AM
To: Hunt, Alex
Subject: this collection is signed of in rocis to you -- just fyi

01/29/2013

128

03/30/2013

0651-0031

06/30/2013

201301-0651-002

DOC/PTO

Patent Processing (Updating)

ICR Rev

No

No

No

Open for Amendment

Fraser, Nicholas

Hunt, Alex

Approved with change

Document ID: 0.7.991.5296

From: Seehra, Jasmeet </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=jasmeetk.seehra42245837>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: RE: this collection is signed of in rocis to you -- just fyi
Date: Thu Jun 06 2013 09:01:31 EDT
Attachments:

Ok – just re-assigning some things to the interns

From: Hunt, Alex
Sent: Thursday, June 06, 2013 9:01 AM
To: Seehra, Jasmeet
Subject: RE: this collection is signed of in rocis to you -- just fyi

I spoke with Nick about this one. He's still working on it.

From: Seehra, Jasmeet
Sent: Thursday, June 06, 2013 8:58 AM
To: Hunt, Alex
Subject: this collection is signed of in rocis to you -- just fyi

01/29/2013

128

03/30/2013

0651-0031

06/30/2013

201301-0651-002

DOC/PTO

Patent Processing (Updating)

ICR Rev

No

No

No

Open for Amendment

Fraser, Nicholas

Hunt, Alex

Approved with change

Document ID: 0.7.991.5298

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Thu Jun 06 2013 11:48:00 EDT
Attachments: 0651-0031_SupStmt_June2013.doc

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5306

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Thu Jun 13 2013 14:14:53 EDT
Attachments:

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5307

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Fri Jun 14 2013 09:03:40 EDT
Attachments:

Sure, I will provide that to you, thanks.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, June 13, 2013 2:15 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5313

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Tue Jun 18 2013 15:40:39 EDT
Attachments: 0651-0031 SupStmt Jan-Jun2013-combo.doc

We did the combine – merge function. Let me know if it is what you need.

Thank you,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, June 13, 2013 2:15 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5311

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Tue Jun 18 2013 16:43:47 EDT
Attachments:

Thanks. I have a question on this first sentence which I don't quite understand:

(b) (5) [redacted]

[redacted]

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, June 18, 2013 3:41 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We did the combine – merge function. Let me know if it is what you need.

Thank you,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, June 13, 2013 2:15 PM

To: Fawcett, Susan
Subject: RE: 0651-0031

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5331

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Tue Jul 09 2013 13:11:35 EDT
Attachments:

Just following up on this.

From: Fraser, Nicholas A.
Sent: Tuesday, June 18, 2013 4:44 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Thanks. I have a question on this first sentence which I don't quite understand:

(b) (5) [redacted]

[redacted]

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, June 18, 2013 3:41 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We did the combine – merge function. Let me know if it is what you need.

Thank you,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, June 13, 2013 2:15 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5332

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Thu Jul 11 2013 10:13:32 EDT
Attachments:

True, (b) (5) [redacted]

[redacted]

[redacted]

I will be out of the office this afternoon, and the first part of next week, in case you have you have any additional questions.

Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, July 09, 2013 1:12 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Just following up on this.

From: Fraser, Nicholas A.
Sent: Tuesday, June 18, 2013 4:44 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Thanks. I have a question on this first sentence which I don't quite understand:

(b) (5) [redacted]

(b) (5) [redacted]

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, June 18, 2013 3:41 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We did the combine – merge function. Let me know if it is what you need.

Thank you,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, June 13, 2013 2:15 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5339

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Tue Jul 16 2013 11:16:52 EDT
Attachments:

It is fine to (b) (5) [redacted]

Given how long this one has been here lets try to get this wrapped up soon.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, July 11, 2013 10:14 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

True, (b) (5) [redacted]

(b) (5) [redacted]

[redacted]

I will be out of the office this afternoon, and the first part of next week, in case you have you have any additional questions.

Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, July 09, 2013 1:12 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Just following up on this.

From: Fraser, Nicholas A.
Sent: Tuesday, June 18, 2013 4:44 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Thanks. I have a question on this first sentence which I don't quite understand:

(b) (5) [redacted]

[redacted]

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, June 18, 2013 3:41 PM

To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We did the combine – merge function. Let me know if it is what you need.

Thank you,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, June 13, 2013 2:15 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5340

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Mon Jul 22 2013 08:41:14 EDT
Attachments:

I should have something ready today. I will send you an email when the updates are ready.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, July 16, 2013 11:17 AM
To: Fawcett, Susan
Subject: RE: 0651-0031

It is fine to (b) (5) [redacted]

Given how long this one has been here lets try to get this wrapped up soon.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, July 11, 2013 10:14 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

True, (b) (5) [redacted]

[redacted]

(b) (5) [redacted]

I will be out of the office this afternoon, and the first part of next week, in case you have you have any additional questions.

Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, July 09, 2013 1:12 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Just following up on this.

From: Fraser, Nicholas A.
Sent: Tuesday, June 18, 2013 4:44 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Thanks. I have a question on this first sentence which I don't quite understand:

(b) (5) [redacted]

[redacted]

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, June 18, 2013 3:41 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We did the combine – merge function. Let me know if it is what you need.

Thank you,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, June 13, 2013 2:15 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Hi Susan it is a little difficult for me to tell what has changed from the original, and the original in ROCIS is PDF so I cant do a combine and merge. Can you do that on your end and provide? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Thursday, June 06, 2013 11:48 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

We have just finished it up; the draft updated version is attached. Thank you.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, June 04, 2013 1:18 PM
To: Fawcett, Susan
Subject: 0651-0031

Just following up how the revised supporting statement is coming along.

Document ID: 0.7.991.5344

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: 0651-0031 update
Date: Mon Jul 22 2013 15:32:11 EDT
Attachments:

The newest copy of our supporting statement for 0651-0031 is loaded in ROCIS. My apologies because we loaded it twice. My contractor did not realize she could not rename the file once it was loaded, and so loaded the document twice.

Thank you,

Susan

Susan Fawcett

Records Officer, U.S. Patent & Trademark Office

Department of Commerce

571-272-2799

Document ID: 0.7.991.5347

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031 update
Date: Wed Jul 24 2013 10:37:03 EDT
Attachments:

Ok. I thought you were going to send me an email of it first.

Can you please provide me a redline that shows changes between the latest version and the original that was uploaded into ROCIS? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Monday, July 22, 2013 3:32 PM
To: Fraser, Nicholas A.
Subject: 0651-0031 update

The newest copy of our supporting statement for 0651-0031 is loaded in ROCIS. My apologies because we loaded it twice. My contractor did not realize she could not rename the file once it was loaded, and so loaded the document twice.

Thank you,

Susan

Susan Fawcett

Records Officer, U.S. Patent & Trademark Office

Department of Commerce

571-272-2799

Document ID: 0.7.991.5349

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031 update
Date: Wed Jul 24 2013 14:49:11 EDT
Attachments: 0651-0031_SupStmt_july2013_final redline.doc

Sorry, that was my fault.

I took the opportunity to (b) (5) [redacted]

(b) (5) [redacted]

I will be on leave next week, but will be back August 5th. If you need anything after Friday please contact my supervisor (our Certifier) Diane Park.

Thanks,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, July 24, 2013 10:37 AM
To: Fawcett, Susan
Subject: RE: 0651-0031 update

Ok. I thought you were going to send me an email of it first.

Can you please provide me a redline that shows changes between the latest version and the original that was uploaded into ROCIS? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Monday, July 22, 2013 3:32 PM
To: Fraser, Nicholas A.
Subject: 0651-0031 update

The newest copy of our supporting statement for 0651-0031 is loaded in ROCIS. My apologies because we loaded it twice. My contractor did not realize she could not rename the file once it was loaded, and so loaded the document twice.

Thank you,

Susan

Susan Fawcett

Records Officer, U.S. Patent & Trademark Office

Department of Commerce

571-272-2799

Document ID: 0.7.991.5348

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031 update
Date: Wed Jul 24 2013 16:34:21 EDT
Attachments:

Thanks. To clarify the last version uploaded into ROCIS, the 5.0 one is the same one as this right? But the clean version of course.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, July 24, 2013 2:49 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031 update

Sorry, that was my fault.

I took the opportunity to (b) (5) [redacted]

(b) (5) [redacted]

I will be on leave next week, but will be back August 5th. If you need anything after Friday please contact my supervisor (our Certifier) Diane Park.

Thanks,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, July 24, 2013 10:37 AM
To: Fawcett, Susan
Subject: RE: 0651-0031 update

Ok. I thought you were going to send me an email of it first.

Can you please provide me a redline that shows changes between the latest version and the original that was uploaded into ROCIS? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Monday, July 22, 2013 3:32 PM
To: Fraser, Nicholas A.
Subject: 0651-0031 update

The newest copy of our supporting statement for 0651-0031 is loaded in ROCIS. My apologies because we loaded it twice. My contractor did not realize she could not rename the file once it was loaded, and so loaded the document twice.

Thank you,

Susan

Susan Fawcett

Records Officer, U.S. Patent & Trademark Office

Department of Commerce

571-272-2799

Document ID: 0.7.991.5350

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031 update
Date: Thu Jul 25 2013 07:22:36 EDT
Attachments:

Yes.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, July 24, 2013 4:34 PM
To: Fawcett, Susan
Subject: RE: 0651-0031 update

Thanks. To clarify the last version uploaded into ROCIS, the 5.0 one is the same one as this right? But the clean version of course.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, July 24, 2013 2:49 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031 update

Sorry, that was my fault.

I took the opportunity to (b) (5) [redacted]

[redacted]

I will be on leave next week, but will be back August 5th. If you need anything after Friday please

contact my supervisor (our Certifier) Diane Park.

Thanks,

Susan

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, July 24, 2013 10:37 AM
To: Fawcett, Susan
Subject: RE: 0651-0031 update

Ok. I thought you were going to send me an email of it first.

Can you please provide me a redline that shows changes between the latest version and the original that was uploaded into ROCIS? Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Monday, July 22, 2013 3:32 PM
To: Fraser, Nicholas A.
Subject: 0651-0031 update

The newest copy of our supporting statement for 0651-0031 is loaded in ROCIS. My apologies because we loaded it twice. My contractor did not realize she could not rename the file once it was loaded, and so loaded the document twice.

Thank you,

Susan

Susan Fawcett

Records Officer, U.S. Patent & Trademark Office

Department of Commerce

571-272-2799

Document ID: 0.7.991.5355

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Johnson, Michael D. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=michaeld.johnson87220616>
Cc:
Bcc:
Subject: 0651-0031
Date: Wed Jul 31 2013 14:17:59 EDT
Attachments:

Hi Mike,

Can you delete some excess supporting statements on this collection? The agency got a little carried away every time they had an update. Can you please delete version 2, 3, and 4. Version 1.0 and 5.0 should stay. Thanks.

-Nick

Document ID: 0.7.991.5359

From: Johnson, Michael D. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=michaeld.johnson87220616>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Wed Jul 31 2013 14:20:35 EDT
Attachments:

I see that, done

From: Fraser, Nicholas A.
Sent: Wednesday, July 31, 2013 2:18 PM
To: Johnson, Michael D.
Subject: 0651-0031

Hi Mike,

Can you delete some excess supporting statements on this collection? The agency got a little carried away every time they had an update. Can you please delete version 2, 3, and 4. Version 1.0 and 5.0 should stay. Thanks.

-Nick

Document ID: 0.7.991.5358

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Johnson, Michael D. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=michaeld.johnson87220616>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Wed Jul 31 2013 14:24:51 EDT
Attachments:

Thanks.

From: Johnson, Michael D.
Sent: Wednesday, July 31, 2013 2:21 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

I see that, done

From: Fraser, Nicholas A.
Sent: Wednesday, July 31, 2013 2:18 PM
To: Johnson, Michael D.
Subject: 0651-0031

Hi Mike,

Can you delete some excess supporting statements on this collection? The agency got a little carried away every time they had an update. Can you please delete version 2, 3, and 4. Version 1.0 and 5.0 should stay. Thanks.

-Nick

Document ID: 0.7.991.5360

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Johnson, Michael D. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=michaeld.johnson87220616>
Cc:
Bcc:
Subject: 0651-0031
Date: Thu Aug 01 2013 14:20:38 EDT
Attachments:

Hey we just concluded on this collection yesterday but I accidentally added a comment to it that wasn't part of it. Can you please delete this comment from it and have the changes reflected on reginfo?

Thanks.

Belzer, Richard

130612 2nd Comments on Grace Period Study.pdf

Email

Simple

06/12/2013

06/12/2013

Document ID: 0.7.991.5361

From: Johnson, Michael D. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=michaeld.johnson87220616>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Thu Aug 01 2013 14:28:39 EDT
Attachments:

Deleted the document changes should be made my morning to reginfo.gov

From: Fraser, Nicholas A.
Sent: Thursday, August 01, 2013 2:21 PM
To: Johnson, Michael D.
Subject: 0651-0031

Hey we just concluded on this collection yesterday but I accidentally added a comment to it that wasn't part of it. Can you please delete this comment from it and have the changes reflected on reginfo?

Thanks.

Belzer, Richard

130612 2nd Comments on Grace Period Study.pdf

Email

Simple

06/12/2013

06/12/2013

Document ID: 0.7.991.5362

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Johnson, Michael D. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=michaeld.johnson87220616>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Thu Aug 01 2013 14:29:08 EDT
Attachments:

Great thanks.

From: Johnson, Michael D.
Sent: Thursday, August 01, 2013 2:29 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

Deleted the document changes should be made my morning to reginfo.gov

From: Fraser, Nicholas A.
Sent: Thursday, August 01, 2013 2:21 PM
To: Johnson, Michael D.
Subject: 0651-0031

Hey we just concluded on this collection yesterday but I accidentally added a comment to it that wasn't part of it. Can you please delete this comment from it and have the changes reflected on reginfo?

Thanks.

Belzer, Richard

130612 2nd Comments on Grace Period Study.pdf

Email

Simple

06/12/2013

06/12/2013

Document ID: 0.7.991.5363

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: Belzer and friend request invoking section 3517(b) of the PRA
Date: Fri Aug 16 2013 13:25:25 EDT
Attachments: Hyatt original letter.pdf
Hyatt response letter.docx

Let me know if you need anything more.

-Nick

Gilbert P. Hyatt
P.O. Box 81230
Las Vegas, NV 89180

Phone: 702-871-9899
Email address: gh@ghnv.com

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 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.
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.

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

Document ID: 0.7.991.5364

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: Belzer and friend request invoking section 3517(b) of the PRA
Date: Fri Aug 23 2013 19:33:52 EDT
Attachments: Hyatt response letter alex.docx

I thought I had sent you these edits, but I guess I didn't.

From: Fraser, Nicholas A.
Sent: Friday, August 16, 2013 1:25 PM
To: Hunt, Alex
Subject: Belzer and friend request invoking section 3517(b) of the PRA

Let me know if you need anything more.

-Nick

Document ID: 0.7.991.5365

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: RE: Belzer and friend request invoking section 3517(b) of the PRA
Date: Tue Aug 27 2013 14:28:58 EDT
Attachments: Hyatt response letter alex.docx

Made some additional edits and added one question for you on the date. Let me know if you are fine with this and I can send you a clean version. Thanks.

-Nick

From: Hunt, Alex
Sent: Friday, August 23, 2013 7:34 PM
To: Fraser, Nicholas A.
Subject: RE: Belzer and friend request invoking section 3517(b) of the PRA

I thought I had sent you these edits, but I guess I didn't.

From: Fraser, Nicholas A.
Sent: Friday, August 16, 2013 1:25 PM
To: Hunt, Alex
Subject: Belzer and friend request invoking section 3517(b) of the PRA

Let me know if you need anything more.

-Nick

Document ID: 0.7.991.5366

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: Belzer and friend request invoking section 3517(b) of the PRA
Date: Tue Aug 27 2013 15:22:36 EDT
Attachments: Hyatt response letter alex 2.docx

I made a few more edits. Were we going to send this to Dom to figure out who signs? I think we were going to suggest that I send an email.

From: Fraser, Nicholas A.
Sent: Tuesday, August 27, 2013 2:29 PM
To: Hunt, Alex
Subject: RE: Belzer and friend request invoking section 3517(b) of the PRA

Made some additional edits and added one question for you on the date. Let me know if you are fine with this and I can send you a clean version. Thanks.

-Nick

From: Hunt, Alex
Sent: Friday, August 23, 2013 7:34 PM
To: Fraser, Nicholas A.
Subject: RE: Belzer and friend request invoking section 3517(b) of the PRA

I thought I had sent you these edits, but I guess I didn't.

From: Fraser, Nicholas A.
Sent: Friday, August 16, 2013 1:25 PM
To: Hunt, Alex
Subject: Belzer and friend request invoking section 3517(b) of the PRA

Let me know if you need anything more.

-Nick

Document ID: 0.7.991.5367

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Cc: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Bcc:
Subject: Belzer and friend request invoking section 3517(b) of the PRA
Date: Tue Aug 27 2013 16:04:48 EDT
Attachments: Hyatt original letter.pdf
Hyatt response letter draft.docx

Dom,

A (b) (5) [redacted]

[redacted] Attached is his original letter and our draft response.

Given this isn't a common process, we recommend that Alex respond back via email to him with the response.

Let me know if you have any questions. Thanks.

-Nick

Gilbert P. Hyatt
P.O. Box 81230
Las Vegas, NV 89180

Phone: 702-871-9899
Email address: gh@ghnv.com

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 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.
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.

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

Document ID: 0.7.991.5368

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Shelanski, Howard </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=shelanski, howard a.d69>
Cc: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>; Mancini, Dominic J. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=dominicj.mancini46525741>
Bcc:
Subject: letter to Director invoking section 3517(b) of the PRA
Date: Mon Sep 09 2013 16:37:59 EDT
Attachments: Hyatt original letter.pdf
Hyatt response letter draft.docx

Per our chat at staff – FYI.

I will follow-up with Alex when he returns to send it. Thanks.

-Nick

Gilbert P. Hyatt
P.O. Box 81230
Las Vegas, NV 89180

Phone: 702-871-9899
Email address: gh@ghnv.com

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:

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> 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).

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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.

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(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

Document ID: 0.7.991.5370

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: gh@ghnv.com <gh@ghnv.com>
Cc:
Bcc:
Subject: Letter Concerning the Paperwork Reduction Act
Date: Fri Sep 13 2013 18:20:19 EDT
Attachments:

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

Document ID: 0.7.991.5372

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: RE: Letter Concerning the Paperwork Reduction Act
Date: Mon Sep 30 2013 11:50:45 EDT
Attachments:

Just curious any response to this?

From: Hunt, Alex
Sent: Friday, September 13, 2013 6:20 PM
To: gh@ghnv.com
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."

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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

Document ID: 0.7.991.5373

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: Letter Concerning the Paperwork Reduction Act
Date: Mon Sep 30 2013 11:52:56 EDT
Attachments:

Crickets.

From: Fraser, Nicholas A.
Sent: Monday, September 30, 2013 11:51 AM
To: Hunt, Alex
Subject: RE: Letter Concerning the Paperwork Reduction Act

Just curious any response to this?

From: Hunt, Alex
Sent: Friday, September 13, 2013 6:20 PM
To: gh@ghnv.com
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.

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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

Document ID: 0.7.991.5374

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan (Susan.Fawcet@USPTO.GOV) <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: 0651-0032
Date: Mon Nov 25 2013 11:16:55 EST
Attachments:

Hi Susan,

I got your voicemail. (b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5375

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Tue Nov 26 2013 10:33:05 EST
Attachments:

If it isn't too much trouble, (b) (5) [redacted]

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5377

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Tue Dec 03 2013 10:28:38 EST
Attachments:

Ok I requested them yesterday since our docket library staff who handles this was out last week. Will let you know when they come in.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5) [redacted]

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

(b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5379

From: Richard Belzer <regcheck@mac.com>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: ICR 0651-0031 OMB NOA July 31 2013
Date: Thu Dec 05 2013 10:38:07 EST
Attachments:

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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.

As you know, there were four new ICs in the January 2013 ICR. I commented on them — twice — pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

It appears that OMB has not done this, but instead deemed them exempt from the PRA. I cannot be sure because neither OMB's NOA nor PTO's revised Supporting Statement provides any information. And if OMB has in fact exempted them, nothing in the NOA or Supporting Statement explains why.

Please point me to a document that explains what OMB decided and the rationale for its decision. I am familiar with the various exemptions in 1320.3(h), but based on my knowledge of the nature of the submissions covered by the relevant rules, none of the exemptions in 1320.3(h) applies. What gives?

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

Document ID: 0.7.991.5380

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: FW: ICR 0651-0031 OMB NOA July 31 2013
Date: Thu Dec 05 2013 11:28:28 EST
Attachments:

Let's chat on Monday about how to respond.

-----Original Message-----
From: Richard Belzer [regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM Eastern Standard Time
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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As you know, there were four new ICs in the January 2013 ICR. I commented on them — twice — pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

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Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com

(b) (6)
(b) (6)

v
f

Document ID: 0.7.991.5382

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: RE: ICR 0651-0031 OMB NOA July 31 2013
Date: Thu Dec 05 2013 11:30:59 EST
Attachments:

Sure. It's that same issue as the guy in Las Vegas asked us about.

From: Hunt, Alex
Sent: Thursday, December 05, 2013 11:28 AM
To: Fraser, Nicholas A.
Subject: FW: ICR 0651-0031 OMB NOA July 31 2013

Let's chat on Monday about how to respond.

-----Original Message-----
From: Richard Belzer [regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM Eastern Standard Time
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

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Please point me to a document that explains what OMB decided and the rationale for its decision. I am familiar with the various exemptions in 1320.3(h), but based on my knowledge of the nature of the submissions covered by the relevant rules, none of the exemptions in 1320.3(h) applies. What gives?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5381

From: Echols, Mabel E. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mabele.echols27652434>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: File 0651-0032
Date: Fri Dec 06 2013 10:33:06 EST
Attachments:

I have the file on my desk when you're ready for it.

Document ID: 0.7.991.5383

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Echols, Mabel E. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mabele.echols27652434>
Cc:
Bcc:
Subject: RE: File 0651-0032
Date: Fri Dec 06 2013 11:14:50 EST
Attachments:

Thanks, will stop by Monday and get it.

From: Echols, Mabel E.
Sent: Friday, December 06, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: File 0651-0032

I have the file on my desk when you're ready for it.

Document ID: 0.7.991.5385

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: RE: ICR 0651-0031 OMB NOA July 31 2013
Date: Wed Dec 11 2013 11:51:29 EST
Attachments: Hyatt response letter draft.docx

Alex, this draft note below (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

[redacted]

Alex if you want to double check them, links are below. Otherwise let me know if you have any questions. -Nick

(b) (5) [redacted]

From: Hunt, Alex
Sent: Thursday, December 05, 2013 11:28 AM
To: Fraser, Nicholas A.
Subject: FW: ICR 0651-0031 OMB NOA July 31 2013

Let's chat on Monday about how to respond.

-----Original Message-----
From: Richard Belzer [regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM Eastern Standard Time
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious

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Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5384

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Wed Dec 11 2013 14:51:27 EST
Attachments:

Hi Susan we have the boxes in now. (b) (5) [redacted] If you want these you may have to have someone come up here, look through the files, then use our copier on the documents you want. Let me know.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5) [redacted]

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

(b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5386

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Wed Dec 11 2013 15:30:31 EST
Attachments:

(b) (5) Thanks so much for ordering that up. I hope to get back to you before the end of the week.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 11, 2013 2:51 PM
To: Fawcett, Susan
Subject: RE: 0651-0032

Hi Susan we have the boxes in now. (b) (5) If you want these you may have to have someone come up here, look through the files, then use our copier on the documents you want. Let me know.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5)

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]

Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5388

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Dr Richard B Belzer <rbbelzer@post.harvard.edu>
Cc:
Bcc:
Subject: RE: ICR 0651-0031 OMB NOA July 31 2013
Date: Thu Dec 12 2013 19:19:46 EST
Attachments:

Hi Rick – Sorry for the delayed response. Too much work and snow…

I think you are correct that we didn't cite the specific provisions of 5 CFR 1320 to explain why we deemed those ICs to be exempt.

As a general matter, agencies do occasionally include an IC in their request to OMB that is exempt from the PRA. In these cases, the exempt item should not be part of the information collection request, although we appreciate it when agencies are forthcoming in accounting for all their burden and collections. With regard to 0651-0031, the four items that PTO included in its ICR and that you mention below (Rule 1.130, 1.131, 1.132, and Amendments and Responses), were determined during our review to be exempt from the PRA.

37 CFR 1.130, 1.131, and 1.132 all consist of affidavits, oaths, and/or declarations that fall under the exemption in 5 CFR 1320.3(h)(1), which exempts affidavits, oaths and affirmations, among other things from the definition of "information."

With regard to the "Amendments and Responses," that consists of 37 CFR 1.111, 1.115, and 1.116. 37 CFR 1.111 consists of replies by applicants or patent owners, provided after a non-final PTO action, to indicate they would like further reconsideration or examination. In these replies, the applicants are clarifying and pointing out why they believe the PTO's decision is in error. We believe that these replies are exempt per 5 CFR 1320(h)(9), which exempts information that clarifies responses to already approved collections. Similarly, 37 CFR 1.115 and 1.116 consist of provisions that allows applicants to amend already submitted applications.

Thanks,

Alex

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5389

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Fri Dec 13 2013 08:02:33 EST
Attachments:

(b) (5)
I think for my schedule the best day in the next couple of weeks is on Monday the 23rd. If that date works, perhaps I can come over around 10:00 a.m.?

Thanks,

Susan

From: Fawcett, Susan
Sent: Wednesday, December 11, 2013 3:31 PM
To: 'Fraser, Nicholas A.'
Subject: RE: 0651-0032

(b) (5) Thanks so much for ordering that up. I hope to get back to you before the end of the week.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 11, 2013 2:51 PM
To: Fawcett, Susan
Subject: RE: 0651-0032

Hi Susan we have the boxes in now. (b) (5) If you want these you may have to have someone come up here, look through the files, then use our copier on the documents you want. Let me know.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5) [redacted]

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5391

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Fri Dec 13 2013 11:20:27 EST
Attachments:

That should work. Lets touch base middle of next week to confirm and ill get your clearance info then too.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Friday, December 13, 2013 8:03 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

(b) (5) .
I think for my schedule the best day in the next couple of weeks is on Monday the 23rd. If that date works, perhaps I can come over around 10:00 a.m.?

Thanks,

Susan

From: Fawcett, Susan
Sent: Wednesday, December 11, 2013 3:31 PM
To: 'Fraser, Nicholas A.'
Subject: RE: 0651-0032

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Sent: Wednesday, December 11, 2013 2:51 PM

To: Fawcett, Susan
Subject: RE: 0651-0032

Hi Susan we have the boxes in now. (b) (5) [redacted] If you want these you may have to have someone come up here, look through the files, then use our copier on the documents you want. Let me know.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5) [redacted]

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Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

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Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5390

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Echols, Mabel E. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mabele.echols27652434>
Cc:
Bcc:
Subject: RE: File 0651-0032
Date: Fri Dec 13 2013 11:21:49 EST
Attachments:

I need to keep these files to review until probably the 24th of December.

Do I need do to fill out any forms or sign anything for them?

From: Echols, Mabel E.
Sent: Friday, December 06, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: File 0651-0032

I have the file on my desk when you're ready for it.

Document ID: 0.7.991.5392

From: Echols, Mabel E. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=mabele.echols27652434>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: File 0651-0032
Date: Fri Dec 13 2013 11:25:07 EST
Attachments:

That's fine, I will be on vacation that week so you can take your time. I have it noted so no worries.

From: Fraser, Nicholas A.
Sent: Friday, December 13, 2013 11:22 AM
To: Echols, Mabel E.
Subject: RE: File 0651-0032

I need to keep these files to review until probably the 24th of December.

Do I need do to fill out any forms or sign anything for them?

From: Echols, Mabel E.
Sent: Friday, December 06, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: File 0651-0032

I have the file on my desk when you're ready for it.

Document ID: 0.7.991.5393

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc: Johnson, Kim I. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=kimi.johnson78171417>
Bcc:
Subject: RE: 0651-0032
Date: Tue Dec 17 2013 11:36:05 EST
Attachments: WAVES clearance template.xls

Hi Susan,

For Monday, please fill out the attached template and return to Kim Johnson who is cc'd. Our address is 725 17th St. NW, The New Executive Office building. You can come up to my office at room 10236 when you get here.

Kim this is for Monday the 23rd, 10am, NEOB 10236. Thanks.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Friday, December 13, 2013 8:03 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

(b) (5) .
I think for my schedule the best day in the next couple of weeks is on Monday the 23rd. If that date works, perhaps I can come over around 10:00 a.m.?

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From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
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To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Last_Name	First_Name	Middle_Name	DOB	SSN	Citizen	Country	Gender	City	State

Note: 250 visitor's is the maximum allowed.

WavesRequest System (WRS) Excel Template
Version:**1.8.9**
Last Updated: 19 March 2011

WRSInstructions:
1. The WRS Excel template must be saved as **Excel 97-2003 Workbook**
2. The WRS Excel template file must end with **.xls** (not .xlsx)
3. **The header row must remain in place and unchanged**
4. The **Visitors worksheet name must remain unchanged** (do not rename the worksheet)
5. The maximum number of visitors per appointment is **250**
6. Do not use any periods, apostrophes or other special characters

Tips:
Pasting data from other spreadsheets may cause errors. Be sure to check that your data has been pasted into the correct columns and that numbers are not missing (example: pasting an SSN starting with a zero may result in the zero being dropped which would result in an error). Use the Format Cells feature to fix any problem data cells prior to loading the file into WRS (example: set the SSN column to 'TEXT' to ensure you keep any leading zeros in the SSN)

Data Fields
1. **Last_Name:** Use letters only (no numbers or special characters). Max characters is 20
2. **First_Name:** User letters only (no numbers or special characters). Max characters is 20

3. **Middle_Name:** Provide the full middle name. Use letters only (no numbers or special characters). Max characters is 20
4. **DOB:** DOB format is MM/DD/YYYY (no letters)
5. **SSN:** SSN is required for all U.S. Citizens over the age of 18. Foreign Nationals may leave the SSN blank. (no letters or special characters) Do not use any dashes in the SSN
6. **Citizen:** Select Y for YES or N for NO to indicate if the visitor is or is not a U.S. Citizen
7. **Country:** Country of Birth. Use the **Countries** worksheet to find the Country Code for the Country of Birth for the visitor. You must use the country codes provided in the 'Countries' worksheet. Select the code from the drop-down list.
8. **Gender:** Select M for Male or F for Female
9. **City:** City of Residence - For visitors who reside in the United States enter the primary city of residence. For visitors who reside outside of the United States enter the city where they are residing during their visit. (no numbers or special characters)
10. **State:** State of Residence - For visitors who reside in the United States enter the primary state of residence. For visitors who reside outside of the United States enter the state where they are residing during their visit. Use the **States** worksheet to locate the appropriate two-letter State Code. Select the code from the drop-down list.

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 129 (Attachment 1 of 1)

AL	AF	AFGHANISTAN
AK	AL	ALBANIA
AM	DZ	ALGERIA
AZ	YY	ALL OTHERS
AR	AS	AMERICAN SAMOA
BK	AD	ANDORRA
CA	AO	ANGOLA
CZ	AI	ANGUILLA
CG	AQ	ANTARCTICA
CO	AG	ANTIGUA AND BARBUDA
CT	AR	ARGENTINA
DE	AM	ARMENIA
DC	AW	ARUBA
FL	AU	AUSTRALIA
GA	AT	AUSTRIA
GM	AZ	AZERBAIJAN
HI	BS	BAHAMAS
HO	BH	BAHRAIN
ID	BD	BANGLADESH
IL	BB	BARBADOS
IN	BY	BELARUS
IA	BE	BELGIUM
JR	BZ	BELIZE
JI	BJ	BENIN
KS	BM	BERMUDA
KY	BT	BHUTAN
KI	BO	BOLIVIA
LA	BA	BOSNIA AND HERZEGOWINA
ME	BW	BOTSWANA
MK	BV	BOUVET ISLAND
MH	BR	BRAZIL
MD	IO	BRITISH INDIAN OCEAN TERRITORY
MA	BN	BRUNEI DARUSSALAM
MI	BG	BULGARIA
MW	BF	BURKINA FASO
MN	BI	BURUNDI
MS	KH	CAMBODIA
MO	CM	CAMEROON
MT	CA	CANADA
VL	CV	CAPE VERDE
NB	KY	CAYMAN ISLANDS
NV	CF	CENTRAL AFRICAN REPUBLIC
NH	TD	CHAD
NJ	CL	CHILE
NM	CN	CHINA
NY	CX	CHRISTMAS ISLAND
NC	CC	COCOS (KEELING) ISLANDS
ND	CO	COLOMBIA
MK	KM	COMOROS
OH	CG	CONGO

OK	CD	CONGO, THE DRC
OR	CK	COOK ISLANDS
PL	CR	COSTA RICA
PA	CI	COTE D'IVOIRE
PR	HR	CROATIA (local name: Hrvatska)
RI	CU	CUBA
SC	CY	CYPRUS
SD	CZ	CZECH REPUBLIC
TN	DK	DENMARK
TX	DJ	DJIBOUTI
UT	DM	DOMINICA
VT	DO	DOMINICAN REPUBLIC
VI	TP	EAST TIMOR
VA	EC	ECUADOR
WK	EG	EGYPT
WA	SV	EL SALVADOR
WV	GQ	EQUATORIAL GUINEA
WI	ER	ERITREA
WY	EE	ESTONIA
	ET	ETHIOPIA
	FK	FALKLAND ISLANDS (MALVINAS)
	FO	FAROE ISLANDS
	FJ	FIJI
	FI	FINLAND
	FR	FRANCE
	FX	FRANCE, METROPOLITAN
	GF	FRENCH GUIANA
	PF	FRENCH POLYNESIA
	TF	FRENCH SOUTHERN TERRITORIES
	GA	GABON
	GM	GAMBIA
	GE	GEORGIA
	DE	GERMANY
	GH	GHANA
	GI	GIBRALTAR
	GR	GREECE
	GL	GREENLAND
	GD	GRENADA
	GP	GUADELOUPE
	GU	GUAM
	GT	GUATEMALA
	GN	GUINEA
	GW	GUINEA-BISSAU
	GY	GUYANA
	HT	HAITI
	HM	HEARD AND MC DONALD ISLANDS
	VA	HOLY SEE (VATICAN CITY STATE)
	HN	HONDURAS
	HK	HONG KONG
	HU	HUNGARY

IS	ICELAND
IN	INDIA
ID	INDONESIA
IR	IRAN (ISLAMIC REPUBLIC OF)
IQ	IRAQ
IE	IRELAND
IL	ISRAEL
IT	ITALY
JM	JAMAICA
JP	JAPAN
JO	JORDAN
KZ	KAZAKHSTAN
KE	KENYA
KI	KIRIBATI
KP	KOREA, D.P.R.O.
KR	KOREA, REPUBLIC OF
KW	KUWAIT
KG	KYRGYZSTAN
LA	LAOS
LV	LATVIA
LB	LEBANON
LS	LESOTHO
LR	LIBERIA
LY	LIBYAN ARAB JAMAHIRIYA
LI	LIECHTENSTEIN
LT	LITHUANIA
LU	LUXEMBOURG
MO	MACAU
MK	MACEDONIA
MG	MADAGASCAR
MW	MALAWI
MY	MALAYSIA
MV	MALDIVES
ML	MALI
MT	MALTA
MH	MARSHALL ISLANDS
MQ	MARTINIQUE
MR	MAURITANIA
MU	MAURITIUS
YT	MAYOTTE
MX	MEXICO
FM	MICRONESIA, FEDERATED STATES OF
MD	MOLDOVA, REPUBLIC OF
MC	MONACO
MN	MONGOLIA
MS	MONTSERRAT
MA	MOROCCO
MZ	MOZAMBIQUE
MM	MYANMAR (Burma)
NA	NAMIBIA

NR	NAURU
NP	NEPAL
NL	NETHERLANDS
AN	NETHERLANDS ANTILLES
NC	NEW CALEDONIA
NZ	NEW ZEALAND
NI	NICARAGUA
NE	NIGER
NG	NIGERIA
NU	NIUE
NF	NORFOLK ISLAND
MP	NORTHERN MARIANA ISLANDS
NO	NORWAY
OM	OMAN
PK	PAKISTAN
PW	PALAU
PA	PANAMA
PG	PAPUA NEW GUINEA
PY	PARAGUAY
PE	PERU
PH	PHILIPPINES
PN	PITCAIRN
PL	POLAND
PT	PORTUGAL
PR	PUERTO RICO
QA	QATAR
RE	REUNION
RO	ROMANIA
RU	RUSSIAN FEDERATION
RW	RWANDA
KN	SAINT KITTS AND NEVIS
LC	SAINT LUCIA
VC	SAINT VINCENT AND THE GRENADINES
WS	SAMOA
SM	SAN MARINO
ST	SAO TOME AND PRINCIPE
SA	SAUDI ARABIA
SN	SENEGAL
SC	SEYCHELLES
SL	SIERRA LEONE
SG	SINGAPORE
SK	SLOVAKIA (Slovak Republic)
SI	SLOVENIA
SB	SOLOMON ISLANDS
SO	SOMALIA
ZA	SOUTH AFRICA
GS	SOUTH GEORGIA AND SOUTH S.S.
ES	SPAIN
LK	SRI LANKA
SH	ST. HELENA

PM	ST. PIERRE AND MIQUELON
SD	SUDAN
SR	SURINAME
SJ	SVALBARD AND JAN MAYEN ISLANDS
SZ	SWAZILAND
SE	SWEDEN
CH	SWITZERLAND
SY	SYRIAN ARAB REPUBLIC
TW	TAIWAN, PROVINCE OF CHINA
TJ	TAJIKISTAN
TZ	TANZANIA, UNITED REPUBLIC OF
TH	THAILAND
TG	TOGO
TK	TOKELAU
TO	TONGA
TT	TRINIDAD AND TOBAGO
TN	TUNISIA
TR	TURKEY
TM	TURKMENISTAN
TC	TURKS AND CAICOS ISLANDS
TV	TUVALU
UG	UGANDA
UA	UKRAINE
AE	UNITED ARAB EMIRATES
GB	UNITED KINGDOM
US	UNITED STATES
UM	U.S. MINOR ISLANDS
UY	URUGUAY
XX	UNKNOWN PLACE OF BIRTH
UZ	UZBEKISTAN
VU	VANUATU
VE	VENEZUELA
VN	VIET NAM
VG	VIRGIN ISLANDS (BRITISH)
VI	VIRGIN ISLANDS (U.S.)
WF	WALLIS AND FUTUNA ISLANDS
EH	WESTERN SAHARA
YE	YEMEN
YU	YUGOSLAVIA (Serbia and Montenegro)
ZM	ZAMBIA
ZW	ZIMBABWE

US	UNITED STATES OF AMERICA
AA	ALBANIA
AD	ANDORRA
AE	ANGUILLA (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
AF	AFGHANISTAN
AH	ASHMORE & CARTIER ISLANDS, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)
AI	ANTIGUA AND BARBUDA
AJ	ARUBA
AN	ALGERIA
AO	ANGOLA
AP	ARMENIA
AQ	AZORES ISLANDS
AS	AUSTRALIA
AT	ARGENTINA
AU	AUSTRIA
AV	AZERBAIJAN
AW	SAINT KITTS-NEVIS-ANGUILLA
BB	BARBADOS
BD	BAHAMAS
BE	BAHRAIN/BAHREIN
BF	BASSAS DA INDIA (FRENCH POSSESSION)
BG	BELGIUM
BH	BELIZE
BI	BURUNDI
BL	BANGLADESH
BM	BERMUDA, DEPENDENT TERRITORY OF
BN	BHUTAN
BO	BRITISH INDIAN OCEAN TERRITORY (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
BP	BOSNIA AND HERZEGOVINA
BQ	BOUVET ISLAND (NORWEGIAN TERRITORY)
BR	BURMA
BS	SOLOMON ISLANDS
BT	BOTSWANA
BU	BULGARIA
BV	BOLIVIA
BX	BRUNEI
BY	BYELARUS
BZ	BRAZIL
CB	COLOMBIA, REPUBLIC OF
CC	CUBA, REPUBLIC OF
CD	CANADA
CF	CHAD
CG	CAROLINE ISLANDS (Federated States of Micronesia)
CJ	CAMBODIA
CM	CAMEROON
CP	CAYMAN ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
CQ	CHILE, REPUBLIC OF
CR	COSTA RICA, REPUBLIC OF
CS	CYPRUS, REPUBLIC OF
CV	CAPE VERDE ISLANDS
CW	CENTRAL AFRICAN REPUBLIC
CY	SRI LANKA

CZ	CANAL ZONE
DB	CLIPPERTON ISLAND (FRENCH POSSESSION)
DD	COCOS (KEELING) ISLANDS, TERRITORY OF (AUSTRLIAN TERRITORY)
DG	COMOROS, FEDERAL ISLAMIC REPUBLIC OF THE
DH	BENIN
DI	COOK ISLANDS
DJ	CORAL SEA ISLANDS, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)
DK	DENMARK, KINGDOM OF
DM	DOMINICA
DN	DJIBOUTI, REPUBLIC OF
DR	DOMINICAN REPUBLIC
EK	EQUATORIAL GUINEA
EL	EL SALVADOR
EN	ENGLAND (UNITED KINGDOM)
EO	ETHIOPIA
ER	EUROPA ISLAND (FRENCH POSSESSION)
ES	ESTONIA
ET	ERITREA
EU	ECUADOR
EY	EGYPT
EZ	CZECH REPUBLIC
FA	FALKLAND ISLANDS, COLONY OF THE (ISLAS MALVINAS)
FD	FINLAND
FG	FRENCH GUIANA (DEPARTMENT OF GUIANA)
FJ	FIJI
FN	FRANCE
FO	FAROE ISLANDS
FP	FRENCH POLYNESIA, TERRITORY OF (FRENCH OVERSEAS TERRITORY)
FR	FRENCH SOUTHERN AND ANTARTIC ISLANDS, TERRITORY OF THE (FRENCH OVERSEAS TERRITORY)
FS	FEDERATED STATES OF MICRONESIA (FORMERLY KNOWN AS CAROLINE ISLANDS)
GB	GABON
GC	GREECE
GD	GEORGIA (FORMERLY GRUZINSKAYA)
GE	GERMANY
GF	GUERNSEY, BAILIWICK OF (BRITISH CROWN DEPENDENCY)
GG	GHANA
GI	GUINEA
GJ	GRENADA
GK	GAMBIA, THE
GN	GREENLAND
GO	GLORIOSO ISLANDS (FRENCH POSSESSION)
GP	GUADELOUPE, DEPARTMENT OF
GS	SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS
GT	GUATEMALA
GY	GUYANA
GZ	GAZA
HD	HONDURAS
HE	HEARD ISLAND AND MCDONALD ISLANDS, TERRITORY OF (AUSTRALIAN ESTERNAL TERRITORY)
HK	HONG KONG
HN	VANUATU, REPUBLIC OF
HR	CHRISTMAS ISLAND, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)

HS	SAINT HELENA (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
HT	HAITI
HU	HUNGARY
IB	ISLE OF MAN
IC	ICELAND
IE	IRELAND (DOES NOT INCLUDE NORTHERN IRELAND)
II	INDIA (SIKKIM)
IM	MADEIRA ISLANDS
IO	INDONESIA (NOW INCLUDES PORTUGUESE TIMOR)
IQ	IRAQ
IR	IRAN
IS	ISRAEL
IT	ITALY (INCLUDES SICILY AND SARDINIA)
IU	NIUE
IY	COTE D'IVOIRE (IVORY COAST)
JA	JAPAN
JE	JERSEY, BAILIWICK OF (BRITISH CROWN DEPENDENCY)
JM	JAMAICA
JN	JAN MAYEN (NORWEGIAN TERRITORY)
JO	JORDAN
JU	JUAN DE NOVA ISLAND
KB	KIRIBATI
KC	CROATIA
KE	KENYA
KH	MANAHIKI ISLAND
KN	NORTH KOREA
KO	SOUTH KOREA
KT	KAZAKHSTAN
KU	KUWAIT
KZ	KYRGYZSTAN
LB	LIBERIA
LD	MOLDOVA
LE	LESOTHO
LF	SLOVAKIA
LH	LITHUANIA
LI	LIECHTENSTEIN
LN	LEBANON
LO	SLOVENIA
LS	LAOS
LT	LATVIA
LU	SAINT LUCIA
LX	LUXEMBOURG
LY	LIBYA
MB	MANITOBA
MF	MALAWI
MG	MONGOLIA
MJ	MONACO
ML	MALI
MM	MEXICO
MP	MALAGASY REPUBLIC
MQ	MOROCCO
MU	MAURITANIA
MV	MALDIVES

MY	MALTA
MZ	MALAYSIA
NE	NETHERLANDS (HOLLAND)
NG	NIGERIA
NI	NORTHERN IRELAND (UNITED KINGDOM)
NN	NIGER
NO	PAPUA NEW GUINEA
NP	NEPAL
NQ	NEW CALEDONIA AND DEPENDENCIES, TERRITORY OF (FRENCH OVERSEAS TERRITORY)
NR	NAURU
NU	NICARAGUA
NW	NORWAY
NX	NETHERLANDS ANTILLES
NZ	NEW ZEALAND
OC	MACAU
OF	NORFOLD ISLAND, TERRITORY OF (AUSTRAILIAN EXTERNAL TERRITORY)
OI	OKINAWA (JAPAN)
OM	OMAN
PC	PITCAIRN, HENDERSON, DUCIE, AND OENO ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
PD	PALAU, REPUBLIC OF
PF	PARACEL ISLANDS
PG	GUINEA-BISSAU
PI	PHILIPINES
PK	PAKISTAN
PM	PANAMA
PO	POLAND
PS	SAINT PIERRE AND MIQUELON, TERRITORIAL COLLECTIVITY OF
PT	PORTUGAL
PU	PERU
PV	PARAGUAY
QA	QATAR
RA	RUSSIA
RB	REPUBLIC OF CONGO, BRAZZAVILLE
RC	PEOPLE'S REPUBLIC OF CHINA
RE	REUNION, DEPARTMENT OF
RF	RUSSIAN FEDERATION
RG	GIBRALTAR (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
RH	ZIMBABWE, REPUBLIC OF
RR	MONTSERRAT (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
RS	WESTERN SAHARA, INDEPENDENT STATE OF
RU	ROMANIA/RUMANIA
RV	SOCIALIST REPUBLIC OF VIETNAM
RW	RWANDA
RY	REPUBLIC OF YEMEN
SA	SIERRA LEONE/SIERRE LEONE
SB	SAUDI ARABIA
SE	SEYCHELLES
SF	SOUTH AFRICA
SG	SENEGAL
SH	SAN MARINO
SJ	NAMIBIA (SOUTH-WEST AFRICA)
SM	SOMALIA

SP	SPAIN
SQ	SWEDEN
SR	SINGAPORE
SS	SCOTLAND
SU	SUDAN
SW	SWAZILAND
SY	SYRIA
SZ	SWITZERLAND
TC	UNITED ARAB EMIRATES
TD	TRUST TERRITORY OF THE PACIFIC ISLANDS
TE	SPRATLY ISLANDS
TF	TUAMOTU ARCHIPELAGO
TG	TONGA
TH	THAILAND
TJ	TAJIKSTAN
TO	TOGO
TP	SAO TOME AND PRINCIPE
TQ	TONGAREVA
TR	TURKS AND CALCOS ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
TS	NEVIS AND SAINT CHRISTOPHER (SAINT KITTS)
TT	TRINIDAD AND TOBAGO
TU	TUNISIA
TV	TUVALU
TW	TAIWAN, REPUBLIC OF CHINA
TY	TURKEY
TZ	TANZANIA, UNITED REPUBLIC OF
UG	UGANDA
UK	UKRAINE
UM	MAURITIUS
UR	TURKMENSTAN
UV	BURKINA FASO
UY	URUGUAY
UZ	UZBEKISTAN, REPUBLIC OF
VB	BRITISH VIRGIN ISLANDS
VV	SAINT VINCENT AND THE GRENADINES
VY	VATICAN CITY
VZ	VENEZUELA, REPUBLIC OF
WB	WEST BANK
WF	WALLIS AND FUTUNA, TERRITORY OF THE (FRENCH OVERSEAS TERRITORY)
WL	WALES
WN	WEST INDIES (FOR WEST INDIES ISLANDS NOT FOUND IN THIS LISTING)
WS	WESTERN SAMOA
YG	YUGOSLAVIA
YO	MAYOTTE, TERRITORIAL COLLECTIVITY OF
YY	ANY COUNTRY NOT LISTED
ZB	MARTINIQUE
ZC	SURINAME
ZD	MACEDONIA
ZI	CANARY ISLANDS
ZM	ZAMBIA, REPUBLIC OF
ZO	MOZAMBIQUE
ZR	ZAIRE, REPUBLIC OF

AL	Alabama
AK	Alaska
AM	American Samoa
AZ	Arizona
AR	Arkansas
BK	Baker Island
CA	California
CZ	Canal Zone
CG	Caroline Islands
CO	Colorado
CT	Connecticut
DE	Delaware
DC	District of Columbia
FL	Florida
GA	Georgia
GM	Guam
HI	Hawaii
HO	Howland Island
ID	Idaho
IL	Illinois
IN	Indiana
IA	Iowa
JR	Jarvis Island
JI	Johnston Island
KS	Kansas
KY	Kentucky
KI	Kingman Reef
LA	Louisiana
ME	Maine
MK	Mariana Islands
MH	MarshallIslands
MD	Maryland
MA	Massachusetts
MI	Michigan
MW	Midway Islands
MN	Minnesota
MS	Mississippi
MO	Missouri
MT	Montana
VL	Navassa Island
NB	Nebraska
NV	Nevada
NH	New Hampshire
NJ	New Jersey
NM	New Mexico
NY	New York
NC	North Carolina
ND	North Dakota
OH	Ohio
OK	Oklahoma
OR	Oregon
PL	Palmyra Atoll
PA	Pennsylvania

PR	Puerto Rico
RI	Rhode Island
SC	South Carolina
SD	South Dakota
TN	Tennessee
TX	Texas
UT	Utah
VT	Vermont
VI	U.S. Virgin Islands
VA	Virginia
WK	Wake Island
WA	Washington
WV	West Virginia
WI	Wisconsin
WY	Wyoming

Document ID: 0.7.991.5748

From: Richard Belzer <regcheck@mac.com>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc: Dr Richard B Belzer <rbbelzer@post.harvard.edu>
Bcc:
Subject: Re: ICR 0651-0031 OMB NOA July 31 2013
Date: Tue Dec 17 2013 16:59:44 EST
Attachments:

Alex,

Thanks for your explanation of the July 31 Notice of Action. It's certainly interesting, though I guess I should say surprising. I understand that agencies sometimes include requests for approval of items that are exempt from the PRA. I'm not sure this is one of those cases, however.

Let's consider Rule 130/131/132 affidavits and declarations. You are correct that 1320.3(h)(1) exempts certain affidavits and responses from the definition of information. But the text of the exemption is actually quite narrow:

Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument …

If you take a look at the January 2013 supporting statement, you will see that the PTO said that Rule 130/131/132 affidavits and declarations entailed an average of 10 burden-hours each at a cost of $371 per hour of patent lawyer time.

How do you reconcile 10 burden-hours at $371 per hour per affidavit or declaration with the regulatory text in 1320.3(h)(1), which might exempt them if they entailed only trivial, nonsubstantive burdens — basically name , rank, and serial number?

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

On Dec 12, 2013, at 7:19 PM, Hunt, Alex <Alexander_T._Hunt@omb.eop.gov> wrote:

Hi Rick – Sorry for the delayed response. Too much work and snow…

I think you are correct that we didn't cite the specific provisions of 5 CFR 1320 to explain why we

deemed those ICs to be exempt.

As a general matter, agencies do occasionally include an IC in their request to OMB that is exempt from the PRA. In these cases, the exempt item should not be part of the information collection request, although we appreciate it when agencies are forthcoming in accounting for all their burden and collections. With regard to 0651-0031, the four items that PTO included in its ICR and that you mention below (Rule 1.130, 1.131, 1.132, and Amendments and Responses), were determined during our review to be exempt from the PRA.

37 CFR 1.130, 1.131, and 1.132 all consist of affidavits, oaths, and/or declarations that fall under the exemption in 5 CFR 1320.3(h)(1), which exempts affidavits, oaths and affirmations, among other things from the definition of "information."

With regard to the "Amendments and Responses," that consists of 37 CFR 1.111, 1.115, and 1.116. 37 CFR 1.111 consists of replies by applicants or patent owners, provided after a non-final PTO action, to indicate they would like further reconsideration or examination. In these replies, the applicants are clarifying and pointing out why they believe the PTO's decision is in error. We believe that these replies are exempt per 5 CFR 1320(h)(9), which exempts information that clarifies responses to already approved collections. Similarly, 37 CFR 1.115 and 1.116 consist of provisions that allows applicants to amend already submitted applications.

Thanks,

Alex

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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.

As you know, there were four new ICs in the January 2013 ICR. I commented on them — twice — pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

It appears that OMB has not done this, but instead deemed them exempt from the PRA. I cannot be sure because neither OMB's NOA nor PTO's revised Supporting Statement provides any information. And if OMB has in fact exempted them, nothing in the NOA or Supporting Statement explains why.

Please point me to a document that explains what OMB decided and the rationale for its decision. I am familiar with the various exemptions in 1320.3(h), but based on my knowledge of the nature of the submissions covered by the relevant rules, none of the exemptions in 1320.3(h) applies. What gives?

Regards,

Richard B. Belzer, Ph.D.
rbbelzer@post.harvard.edu
http://www.rbbelzer.com
(b) (6) v
(b) (6) f

Document ID: 0.7.991.5747

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: FW: ICR 0651-0031 OMB NOA July 31 2013
Date: Tue Dec 17 2013 20:07:53 EST
Attachments:

Do you or PTO have a response to his question below? Thanks.

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Tuesday, December 17, 2013 5:00 PM
To: Hunt, Alex
Cc: Dr Richard B Belzer
Subject: Re: ICR 0651-0031 OMB NOA July 31 2013

Alex,

Thanks for your explanation of the July 31 Notice of Action. It's certainly interesting, though I guess I should say surprising. I understand that agencies sometimes include requests for approval of items that are exempt from the PRA. I'm not sure this is one of those cases, however.

Let's consider Rule 130/131/132 affidavits and declarations. You are correct that 1320.3(h)(1) exempts certain affidavits and responses from the definition of information. But the text of the exemption is actually quite narrow:

Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument …

If you take a look at the January 2013 supporting statement, you will see that the PTO said that Rule 130/131/132 affidavits and declarations entailed an average of 10 burden-hours each at a cost of $371 per hour of patent lawyer time.

How do you reconcile 10 burden-hours at $371 per hour per affidavit or declaration with the regulatory text in 1320.3(h)(1), which might exempt them if they entailed only trivial, nonsubstantive burdens — basically name , rank, and serial number?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

On Dec 12, 2013, at 7:19 PM, Hunt, Alex <Alexander_T._Hunt@omb.eop.gov> wrote:

Hi Rick – Sorry for the delayed response. Too much work and snow…

I think you are correct that we didn't cite the specific provisions of 5 CFR 1320 to explain why we deemed those ICs to be exempt.

As a general matter, agencies do occasionally include an IC in their request to OMB that is exempt from the PRA. In these cases, the exempt item should not be part of the information collection request, although we appreciate it when agencies are forthcoming in accounting for all their burden and collections. With regard to 0651-0031, the four items that PTO included in its ICR and that you mention below (Rule 1.130, 1.131, 1.132, and Amendments and Responses), were determined during our review to be exempt from the PRA.

37 CFR 1.130, 1.131, and 1.132 all consist of affidavits, oaths, and/or declarations that fall under the exemption in 5 CFR 1320.3(h)(1), which exempts affidavits, oaths and affirmations, among other things from the definition of "information."

With regard to the "Amendments and Responses," that consists of 37 CFR 1.111, 1.115, and 1.116. 37 CFR 1.111 consists of replies by applicants or patent owners, provided after a non-final PTO action, to indicate they would like further reconsideration or examination. In these replies, the applicants are clarifying and pointing out why they believe the PTO's decision is in error. We believe that these replies are exempt per 5 CFR 1320(h)(9), which exempts information that clarifies responses to already approved collections. Similarly, 37 CFR 1.115 and 1.116 consist of provisions that allows applicants to amend already submitted applications.

Thanks,

Alex

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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.

As you know, there were four new ICs in the January 2013 ICR. I commented on them — twice — pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

It appears that OMB has not done this, but instead deemed them exempt from the PRA. I cannot be sure because neither OMB's NOA nor PTO's revised Supporting Statement provides any information. And if OMB has in fact exempted them, nothing in the NOA or Supporting Statement explains why.

Please point me to a document that explains what OMB decided and the rationale for its decision. I am familiar with the various exemptions in 1320.3(h), but based on my knowledge of the nature of the submissions covered by the relevant rules, none of the exemptions in 1320.3(h) applies. What gives?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5751

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Johnson, Kim I. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=kimi.johnson78171417>
Cc: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Bcc:
Subject: RE: 0651-0032
Date: Wed Dec 18 2013 07:10:08 EST
Attachments: WAVES clearance template.xls

If you have any questions, or need to get in touch with me, my cell is (b) (6) [redacted]

Thank you very much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, December 17, 2013 11:36 AM
To: Fawcett, Susan
Cc: Johnson, Kim I.
Subject: RE: 0651-0032

Hi Susan,

For Monday, please fill out the attached template and return to Kim Johnson who is cc'd. Our address is 725 17th St. NW, The New Executive Office building. You can come up to my office at room 10236 when you get here.

Kim this is for Monday the 23rd, 10am, NEOB 10236. Thanks.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Friday, December 13, 2013 8:03 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

(b) (5)
I think for my schedule the best day in the next couple of weeks is on Monday the 23rd. If that date works, perhaps I can come over around 10:00 a.m.?

Thanks,

Susan

From: Fawcett, Susan
Sent: Wednesday, December 11, 2013 3:31 PM
To: 'Fraser, Nicholas A.'
Subject: RE: 0651-0032

(b) (5) Thanks so much for ordering that up. I hope to get back to you before the end of the week.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 11, 2013 2:51 PM
To: Fawcett, Susan
Subject: RE: 0651-0032

Hi Susan we have the boxes in now. (b) (5)
If you want these you may have to have someone come up here, look through the files, then use our copier on the documents you want. Let me know.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5) [redacted]

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Last_Name	First_Name	Middle_Name	DOB	SSN	Citizen	Country	Gender	City	State
Fawcett	Susan	Karen	(b) (6)	(b) (6)	[redacted]	[redacted]	[redacted]	(b) (6)	[redacted]

Note: 250visitor's is the maximum allowed.

WavesRequest System (WRS) Excel Template
Version:**1.8.9**
Last Updated: 19 March 2011

WRSInstructions:
1. The WRS Excel template must be saved as **Excel 97-2003 Workbook**
2. The WRS Excel template file must end with **.xls** (not .xlsx)
3. **The header row must remain in place and unchanged**
4. **TheVisitors worksheet name must remain unchanged** (do not rename the worksheet)
5. The maximum number of visitors per appointment is **250**
6. Do not use any periods, apostrophes or other special characters

Tips:
Pasting data from other spreadsheets may cause errors. Be sure to check that your data has been pasted into the correct columns and that numbers are not missing (example: pasting an SSN starting with a zero may result in the zero being dropped which would result in an error). Use the Format Cells feature to fix any problem data cells prior to loading the file into WRS (example: set the SSN column to 'TEXT' to ensure you keep any leading zeros in the SSN)

Data Fields
1. **Last_Name:**Use letters only (no numbers or special characters). Max characters is 20
2. **First_Name:**User letters only (no numbers or special characters). Max characters is 20

3. **Middle_Name:** Provide the full middle name. Use letters only (no numbers or special characters). Max characters is 20
4. **DOB:** DOB format is MM/DD/YYYY (no letters)
5. **SSN:** SSN is required for all U.S. Citizens over the age of 18. Foreign Nationals may leave the SSN blank. (no letters or special characters) Do not use any dashes in the SSN
6. **Citizen:** Select Y for YES or N for NO to indicate if the visitor is or is not a U.S. Citizen
7. **Country:** Country of Birth. Use the **Countries** worksheet to find the Country Code for the Country of Birth for the visitor. You must use the country codes provided in the 'Countries' worksheet. Select the code from the drop-down list.
8. **Gender:** Select M for Male or F for Female
9. **City:** City of Residence - For visitors who reside in the United States enter the primary city of residence. For visitors who reside outside of the United States enter the city where they are residing during their visit. (no numbers or special characters)
10. **State:** State of Residence - For visitors who reside in the United States enter the primary state of residence. For visitors who reside outside of the United States enter the state where they are residing during their visit. Use the **States** worksheet to locate the appropriate two-letter State Code. Select the code from the drop-down list.

WAVES clearance template.xls for Printed Item: 133 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 133 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 133 (Attachment 1 of 1)

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WAVES clearance template.xls for Printed Item: 133 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 133 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 133 (Attachment 1 of 1)

WAVES clearance template.xls for Printed Item: 133 (Attachment 1 of 1)

AL	AF	AFGHANISTAN
AK	AL	ALBANIA
AM	DZ	ALGERIA
AZ	YY	ALL OTHERS
AR	AS	AMERICAN SAMOA
BK	AD	ANDORRA
CA	AO	ANGOLA
CZ	AI	ANGUILLA
CG	AQ	ANTARCTICA
CO	AG	ANTIGUA AND BARBUDA
CT	AR	ARGENTINA
DE	AM	ARMENIA
DC	AW	ARUBA
FL	AU	AUSTRALIA
GA	AT	AUSTRIA
GM	AZ	AZERBAIJAN
HI	BS	BAHAMAS
HO	BH	BAHRAIN
ID	BD	BANGLADESH
IL	BB	BARBADOS
IN	BY	BELARUS
IA	BE	BELGIUM
JR	BZ	BELIZE
JI	BJ	BENIN
KS	BM	BERMUDA
KY	BT	BHUTAN
KI	BO	BOLIVIA
LA	BA	BOSNIA AND HERZEGOWINA
ME	BW	BOTSWANA
MK	BV	BOUVET ISLAND
MH	BR	BRAZIL
MD	IO	BRITISH INDIAN OCEAN TERRITORY
MA	BN	BRUNEI DARUSSALAM
MI	BG	BULGARIA
MW	BF	BURKINA FASO
MN	BI	BURUNDI
MS	KH	CAMBODIA
MO	CM	CAMEROON
MT	CA	CANADA
VL	CV	CAPE VERDE
NB	KY	CAYMAN ISLANDS
NV	CF	CENTRAL AFRICAN REPUBLIC
NH	TD	CHAD
NJ	CL	CHILE
NM	CN	CHINA
NY	CX	CHRISTMAS ISLAND
NC	CC	COCOS (KEELING) ISLANDS
ND	CO	COLOMBIA
MK	KM	COMOROS

OH	
OK	
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TN	
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WV	
WI	
WY	

CG	CONGO
CD	CONGO, THE DRC
CK	COOK ISLANDS
CR	COSTA RICA
CI	COTE D'IVOIRE
HR	CROATIA (local name: Hrvatska)
CU	CUBA
CY	CYPRUS
CZ	CZECH REPUBLIC
DK	DENMARK
DJ	DJIBOUTI
DM	DOMINICA
DO	DOMINICAN REPUBLIC
TP	EAST TIMOR
EC	ECUADOR
EG	EGYPT
SV	EL SALVADOR
GQ	EQUATORIAL GUINEA
ER	ERITREA
EE	ESTONIA
ET	ETHIOPIA
FK	FALKLAND ISLANDS (MALVINAS)
FO	FAROE ISLANDS
FJ	FIJI
FI	FINLAND
FR	FRANCE
FX	FRANCE, METROPOLITAN
GF	FRENCH GUIANA
PF	FRENCH POLYNESIA
TF	FRENCH SOUTHERN TERRITORIES
GA	GABON
GM	GAMBIA
GE	GEORGIA
DE	GERMANY
GH	GHANA
GI	GIBRALTAR
GR	GREECE
GL	GREENLAND
GD	GRENADA
GP	GUADELOUPE
GU	GUAM
GT	GUATEMALA
GN	GUINEA
GW	GUINEA-BISSAU
GY	GUYANA
HT	HAITI
HM	HEARD AND MC DONALD ISLANDS
VA	HOLY SEE (VATICAN CITY STATE)
HN	HONDURAS

HK	HONG KONG
HU	HUNGARY
IS	ICELAND
IN	INDIA
ID	INDONESIA
IR	IRAN (ISLAMIC REPUBLIC OF)
IQ	IRAQ
IE	IRELAND
IL	ISRAEL
IT	ITALY
JM	JAMAICA
JP	JAPAN
JO	JORDAN
KZ	KAZAKHSTAN
KE	KENYA
KI	KIRIBATI
KP	KOREA, D.P.R.O.
KR	KOREA, REPUBLIC OF
KW	KUWAIT
KG	KYRGYZSTAN
LA	LAOS
LV	LATVIA
LB	LEBANON
LS	LESOTHO
LR	LIBERIA
LY	LIBYAN ARAB JAMAHIRIYA
LI	LIECHTENSTEIN
LT	LITHUANIA
LU	LUXEMBOURG
MO	MACAU
MK	MACEDONIA
MG	MADAGASCAR
MW	MALAWI
MY	MALAYSIA
MV	MALDIVES
ML	MALI
MT	MALTA
MH	MARSHALL ISLANDS
MQ	MARTINIQUE
MR	MAURITANIA
MU	MAURITIUS
YT	MAYOTTE
MX	MEXICO
FM	MICRONESIA, FEDERATED STATES OF
MD	MOLDOVA, REPUBLIC OF
MC	MONACO
MN	MONGOLIA
MS	MONTSERRAT
MA	MOROCCO

MZ	MOZAMBIQUE
MM	MYANMAR (Burma)
NA	NAMIBIA
NR	NAURU
NP	NEPAL
NL	NETHERLANDS
AN	NETHERLANDS ANTILLES
NC	NEW CALEDONIA
NZ	NEW ZEALAND
NI	NICARAGUA
NE	NIGER
NG	NIGERIA
NU	NIUE
NF	NORFOLK ISLAND
MP	NORTHERN MARIANA ISLANDS
NO	NORWAY
OM	OMAN
PK	PAKISTAN
PW	PALAU
PA	PANAMA
PG	PAPUA NEW GUINEA
PY	PARAGUAY
PE	PERU
PH	PHILIPPINES
PN	PITCAIRN
PL	POLAND
PT	PORTUGAL
PR	PUERTO RICO
QA	QATAR
RE	REUNION
RO	ROMANIA
RU	RUSSIAN FEDERATION
RW	RWANDA
KN	SAINT KITTS AND NEVIS
LC	SAINT LUCIA
VC	SAINT VINCENT AND THE GRENADINES
WS	SAMOA
SM	SAN MARINO
ST	SAO TOME AND PRINCIPE
SA	SAUDI ARABIA
SN	SENEGAL
SC	SEYCHELLES
SL	SIERRA LEONE
SG	SINGAPORE
SK	SLOVAKIA (Slovak Republic)
SI	SLOVENIA
SB	SOLOMON ISLANDS
SO	SOMALIA
ZA	SOUTH AFRICA

GS	SOUTH GEORGIA AND SOUTH S.S.
ES	SPAIN
LK	SRI LANKA
SH	ST. HELENA
PM	ST. PIERRE AND MIQUELON
SD	SUDAN
SR	SURINAME
SJ	SVALBARD AND JAN MAYEN ISLANDS
SZ	SWAZILAND
SE	SWEDEN
CH	SWITZERLAND
SY	SYRIAN ARAB REPUBLIC
TW	TAIWAN, PROVINCE OF CHINA
TJ	TAJIKISTAN
TZ	TANZANIA, UNITED REPUBLIC OF
TH	THAILAND
TG	TOGO
TK	TOKELAU
TO	TONGA
TT	TRINIDAD AND TOBAGO
TN	TUNISIA
TR	TURKEY
TM	TURKMENISTAN
TC	TURKS AND CAICOS ISLANDS
TV	TUVALU
UG	UGANDA
UA	UKRAINE
AE	UNITED ARAB EMIRATES
GB	UNITED KINGDOM
US	UNITED STATES
UM	U.S. MINOR ISLANDS
UY	URUGUAY
XX	UNKNOWN PLACE OF BIRTH
UZ	UZBEKISTAN
VU	VANUATU
VE	VENEZUELA
VN	VIET NAM
VG	VIRGIN ISLANDS (BRITISH)
VI	VIRGIN ISLANDS (U.S.)
WF	WALLIS AND FUTUNA ISLANDS
EH	WESTERN SAHARA
YE	YEMEN
YU	YUGOSLAVIA (Serbia and Montenegro)
ZM	ZAMBIA
ZW	ZIMBABWE

US	UNITED STATES OF AMERICA
AA	ALBANIA
AD	ANDORRA
AE	ANGUILLA (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
AF	AFGHANISTAN
AH	ASHMORE & CARTIER ISLANDS, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)
AI	ANTIGUA AND BARBUDA
AJ	ARUBA
AN	ALGERIA
AO	ANGOLA
AP	ARMENIA
AQ	AZORES ISLANDS
AS	AUSTRALIA
AT	ARGENTINA
AU	AUSTRIA
AV	AZERBAIJAN
AW	SAINT KITTS-NEVIS-ANGUILLA
BB	BARBADOS
BD	BAHAMAS
BE	BAHRAIN/BAHREIN
BF	BASSAS DA INDIA (FRENCH POSSESSION)
BG	BELGIUM
BH	BELIZE
BI	BURUNDI
BL	BANGLADESH
BM	BERMUDA, DEPENDENT TERRITORY OF
BN	BHUTAN
BO	BRITISH INDIAN OCEAN TERRITORY (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
BP	BOSNIA AND HERZEGOVINA
BQ	BOUVET ISLAND (NORWEGIAN TERRITORY)
BR	BURMA
BS	SOLOMON ISLANDS
BT	BOTSWANA
BU	BULGARIA
BV	BOLIVIA
BX	BRUNEI
BY	BYELARUS
BZ	BRAZIL
CB	COLOMBIA, REPUBLIC OF
CC	CUBA, REPUBLIC OF
CD	CANADA
CF	CHAD
CG	CAROLINE ISLANDS (Federated States of Micronesia)
CJ	CAMBODIA
CM	CAMEROON
CP	CAYMAN ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
CQ	CHILE, REPUBLIC OF
CR	COSTA RICA, REPUBLIC OF
CS	CYPRUS, REPUBLIC OF
CV	CAPE VERDE ISLANDS

CW	CENTRAL AFRICAN REPUBLIC
CY	SRI LANKA
CZ	CANAL ZONE
DB	CLIPPERTON ISLAND (FRENCH POSSESSION)
DD	COCOS (KEELING) ISLANDS, TERRITORY OF (AUSTRLIAN TERRITORY)
DG	COMOROS, FEDERAL ISLAMIC REPUBLIC OF THE
DH	BENIN
DI	COOK ISLANDS
DJ	CORAL SEA ISLANDS, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)
DK	DENMARK, KINGDOM OF
DM	DOMINICA
DN	DJIBOUTI, REPUBLIC OF
DR	DOMINICAN REPUBLIC
EK	EQUATORIAL GUINEA
EL	EL SALVADOR
EN	ENGLAND (UNITED KINGDOM)
EO	ETHIOPIA
ER	EUROPA ISLAND (FRENCH POSSESSION)
ES	ESTONIA
ET	ERITREA
EU	ECUADOR
EY	EGYPT
EZ	CZECH REPUBLIC
FA	FALKLAND ISLANDS, COLONY OF THE (ISLAS MALVINAS)
FD	FINLAND
FG	FRENCH GUIANA (DEPARTMENT OF GUIANA)
FJ	FIJI
FN	FRANCE
FO	FAROE ISLANDS
FP	FRENCH POLYNESIA, TERRITORY OF (FRENCH OVERSEAS TERRITORY)
FR	FRENCH SOUTHERN AND ANTARTIC ISLANDS, TERRITORY OF THE (FRENCH OVERSEAS TERRITORY)
FS	FEDERATED STATES OF MICRONESIA ("ORMERLY KNO"N AS CAROLINE ISLANDS)
GB	GABON
GC	GREECE
GD	GEORGIA (FORMERLY GRUZINSKAYA)
GE	GERMANY
GF	GUERNSEY, BAILIWICK OF (BRITISH CROWN DEPENDENCY)
GG	GHANA
GI	GUINEA
GJ	GRENADA
GK	GAMBIA, THE
GN	GREENLAND
GO	GLORIOSO ISLANDS (FRENCH POSSESSION)
GP	GUADELOUPE, DEPARTMENT OF
GS	SOUTH GEORGIA AND THE SOUTH SANDWICH ISLANDS
GT	GUATEMALA
GY	GUYANA
GZ	GAZA
HD	HONDURAS
HE	HEARD ISLAND AND MCDONALD ISLANDS, TERRITORY OF (AUSTRALIAN ESTERNAL TERRITORY)

HK	HONG KONG
HN	VANUATU, REPUBLIC OF
HR	CHRISTMAS ISLAND, TERRITORY OF (AUSTRALIAN EXTERNAL TERRITORY)
HS	SAINT HELENA (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
HT	HAITI
HU	HUNGARY
IB	ISLE OF MAN
IC	ICELAND
IE	IRELAND (DOES NOT INCLUDE NORTHERN IRELAND)
II	INDIA (SIKKIM)
IM	MADEIRA ISLANDS
IO	INDONESIA (NOW INCLUDES PORTUGUESE TIMOR)
IQ	IRAQ
IR	IRAN
IS	ISRAEL
IT	ITALY (INCLUDES SICILY AND SARDINIA)
IU	NIUE
IY	COTE D'IVOIRE (IVORY COAST)
JA	JAPAN
JE	JERSEY, BAILIWICK OF (BRITISH CROWN DEPENDENCY)
JM	JAMAICA
JN	JAN MAYEN (NORWEGIAN TERRITORY)
JO	JORDAN
JU	JUAN DE NOVA ISLAND
KB	KIRIBATI
KC	CROATIA
KE	KENYA
KH	MANAHIKI ISLAND
KN	NORTH KOREA
KO	SOUTH KOREA
KT	KAZAKHSTAN
KU	KUWAIT
KZ	KYRGYZSTAN
LB	LIBERIA
LD	MOLDOVA
LE	LESOTHO
LF	SLOVAKIA
LH	LITHUANIA
LI	LIECHTENSTEIN
LN	LEBANON
LO	SLOVENIA
LS	LAOS
LT	LATVIA
LU	SAINT LUCIA
LX	LUXEMBOURG
LY	LIBYA
MB	MANITOBA
MF	MALAWI
MG	MONGOLIA
MJ	MONACO
ML	MALI

MM	MEXICO
MP	MALAGASY REPUBLIC
MQ	MOROCCO
MU	MAURITANIA
MV	MALDIVES
MY	MALTA
MZ	MALAYSIA
NE	NETHERLANDS (HOLLAND)
NG	NIGERIA
NI	NORTHERN IRELAND (UNITED KINGDOM)
NN	NIGER
NO	PAPUA NEW GUINEA
NP	NEPAL
NQ	NEW CALEDONIA AND DEPENDENCIES, TERRITORY OF (FRENCH OVERSEAS TERRITORY)
NR	NAURU
NU	NICARAGUA
NW	NORWAY
NX	NETHERLANDS ANTILLES
NZ	NEW ZEALAND
OC	MACAU
OF	NORFOLD ISLAND, TERRITORY OF (AUSTRAILIAN EXTERNAL TERRITORY)
OI	OKINAWA (JAPAN)
OM	OMAN
PC	PITCAIRN, HENDERSON, DUCIE, AND OENO ISLANDS (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
PD	PALAU, REPUBLIC OF
PF	PARACEL ISLANDS
PG	GUINEA-BISSAU
PI	PHILIPINES
PK	PAKISTAN
PM	PANAMA
PO	POLAND
PS	SAINT PIERRE AND MIQUELON, TERRITORIAL COLLECTIVITY OF
PT	PORTUGAL
PU	PERU
PV	PARAGUAY
QA	QATAR
RA	RUSSIA
RB	REPUBLIC OF CONGO, BRAZZAVILLE
RC	PEOPLE'S REPUBLIC OF CHINA
RE	REUNION, DEPARTMENT OF
RF	RUSSIAN FEDERATION
RG	GIBRALTAR (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
RH	ZIMBABWE, REPUBLIC OF
RR	MONTSERRAT (DEPENDENT TERRITORY OF THE UNITED KINGDOM)
RS	WESTERN SAHARA, INDEPENDENT STATE OF
RU	ROMANIA/RUMANIA
RV	SOCIALIST REPUBLIC OF VIETNAM
RW	RWANDA
RY	REPUBLIC OF YEMEN
SA	SIERRA LEONE/SIERRE LEONE

SB	SAUDI ARABIA
SE	SEYCHELLES
SF	SOUTH AFRICA
SG	SENEGAL
SH	SAN MARINO
SJ	NAMIBIA (SOUTH-WEST AFRICA)
SM	SOMALIA
SP	SPAIN
SQ	SWEDEN
SR	SINGAPORE
SS	SCOTLAND
SU	SUDAN
SW	SWAZILAND
SY	SYRIA
SZ	SWITZERLAND
TC	UNITED ARAB EMIRATES
TD	TRUST TERRITORY OF THE PACIFIC ISLANDS
TE	SPRATLY ISLANDS
TF	TUAMOTU ARCHIPELAGO
TG	TONGA
TH	THAILAND
TJ	TAJIKSTAN
TO	TOGO
TP	SAO TOME AND PRINCIPE
TQ	TONGAREVA
TR	TURKS AND CALCOS ISLANDS (DEPENDENCY OF THE UNITED KINGDOM)
TS	NEVIS AND SAINT CHRISTOPHER (SAINT KITTS)
TT	TRINIDAD AND TOBAGO
TU	TUNISIA
TV	TUVALU
TW	TAIWAN, REPUBLIC OF CHINA
TY	TURKEY
TZ	TANZANIA, UNITED REPUBLIC OF
UG	UGANDA
UK	UKRAINE
UM	MAURITIUS
UR	TURKMENSTAN
UV	BURKINA FASO
UY	URUGUAY
UZ	UZBEKISTAN, REPUBLIC OF
VB	BRITISH VIRGIN ISLANDS
VV	SAINT VINCENT AND THE GRENADINES
VY	VATICAN CITY
VZ	VENEZUELA, REPUBLIC OF
WB	WEST BANK
WF	WALLIS AND FUTUNA, TERRITORY OF THE (FRENCH OVERSEAS TERRITORY)
WL	WALES
WN	WEST INDIES (FOR WEST INDIES ISLANDS NOT FOUND IN THIS LISTING)
WS	WESTERN SAMOA
YG	YUGOSLAVIA
YO	MAYOTTE, TERRITORIAL COLLECTIVITY OF

YY	ANY COUNTRY NOT LISTED
ZB	MARTINIQUE
ZC	SURINAME
ZD	MACEDONIA
ZI	CANARY ISLANDS
ZM	ZAMBIA, REPUBLIC OF
ZO	MOZAMBIQUE
ZR	ZAIRE, REPUBLIC OF

AL	Alabama
AK	Alaska
AM	American Samoa
AZ	Arizona
AR	Arkansas
BK	Baker Island
CA	California
CZ	Canal Zone
CG	Caroline Islands
CO	Colorado
CT	Connecticut
DE	Delaware
DC	District of Columbia
FL	Florida
GA	Georgia
GM	Guam
HI	Hawaii
HO	Howland Island
ID	Idaho
IL	Illinois
IN	Indiana
IA	Iowa
JR	Jarvis Island
JI	Johnston Island
KS	Kansas
KY	Kentucky
KI	Kingman Reef
LA	Louisiana
ME	Maine
MK	Mariana Islands
MH	MarshallIslands
MD	Maryland
MA	Massachusetts
MI	Michigan
MW	Midway Islands
MN	Minnesota
MS	Mississippi
MO	Missouri
MT	Montana
VL	Navassa Island
NB	Nebraska
NV	Nevada
NH	New Hampshire
NJ	New Jersey
NM	New Mexico
NY	New York
NC	North Carolina
ND	North Dakota
OH	Ohio
OK	Oklahoma
OR	Oregon

PL	Palmyra Atoll
PA	Pennsylvania
PR	Puerto Rico
RI	Rhode Island
SC	South Carolina
SD	South Dakota
TN	Tennessee
TX	Texas
UT	Utah
VT	Vermont
VI	U.S. Virgin Islands
VA	Virginia
WK	Wake Island
WA	Washington
WV	West Virginia
WI	Wisconsin
WY	Wyoming

Document ID: 0.7.991.5749

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan (Susan.Fawcet@USPTO.GOV) <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: 0651-0031
Date: Wed Dec 18 2013 10:38:27 EST
Attachments:

Hi Susan,

0031 isn't under review but there is a process under the PRA where members of the public can request an already approved collection they feel is out of compliance. We've now gotten some questions on this one.

Would someone from the program office knowledgeable on this collection be free to chat this afternoon, Thursday or Friday briefly? Thanks.

-Nick

Document ID: 0.7.991.5750

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Wed Dec 18 2013 15:27:07 EST
Attachments:

Would tomorrow (Thursday) around 12:30 or 1:00 work? If not let me know, and I can see what other times are good. Thanks.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 18, 2013 10:38 AM
To: Fawcett, Susan
Subject: 0651-0031

Hi Susan,

0031 isn't under review but there is a process under the PRA where members of the public can request an already approved collection they feel is out of compliance. We've now gotten some questions on this one.

Would someone from the program office knowledgeable on this collection be free to chat this afternoon, Thursday or Friday briefly? Thanks.

-Nick

Document ID: 0.7.991.5752

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Wed Dec 18 2013 15:32:08 EST
Attachments:

Sure how about 1pm. Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, December 18, 2013 3:27 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

Would tomorrow (Thursday) around 12:30 or 1:00 work? If not let me know, and I can see what other times are good. Thanks.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 18, 2013 10:38 AM
To: Fawcett, Susan
Subject: 0651-0031

Hi Susan,

0031 isn't under review but there is a process under the PRA where members of the public can request an already approved collection they feel is out of compliance. We've now gotten some questions on this one.

Would someone from the program office knowledgeable on this collection be free to chat this afternoon, Thursday or Friday briefly? Thanks.

-Nick

Document ID: 0.7.991.5753

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Wed Dec 18 2013 15:34:08 EST
Attachments:

That sounds good. We can call give you a call at your desk at that time. I've asked Raul Tamayo to attend (our Patents lead for PRA).

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 18, 2013 3:32 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Sure how about 1pm. Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, December 18, 2013 3:27 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

Would tomorrow (Thursday) around 12:30 or 1:00 work? If not let me know, and I can see what other times are good. Thanks.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 18, 2013 10:38 AM
To: Fawcett, Susan
Subject: 0651-0031

Hi Susan,

0031 isn't under review but there is a process under the PRA where members of the public can request an already approved collection they feel is out of compliance. We've now gotten some questions on this one.

Would someone from the program office knowledgeable on this collection be free to chat this afternoon, Thursday or Friday briefly? Thanks.

-Nick

Document ID: 0.7.991.5754

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0031
Date: Wed Dec 18 2013 15:38:02 EST
Attachments:

Thanks. It should be brief. If it helps to know, I mainly wanted to chat on the process for rules 1.130, 1.131, 1.132 associated with this collection. I would like to know a little more about what is involved with them.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, December 18, 2013 3:34 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

That sounds good. We can call give you a call at your desk at that time. I've asked Raul Tamayo to attend (our Patents lead for PRA).

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 18, 2013 3:32 PM
To: Fawcett, Susan
Subject: RE: 0651-0031

Sure how about 1pm. Thanks.

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, December 18, 2013 3:27 PM
To: Fraser, Nicholas A.
Subject: RE: 0651-0031

Would tomorrow (Thursday) around 12:30 or 1:00 work? If not let me know, and I can see what other times are good. Thanks.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]

Sent: Wednesday, December 18, 2013 10:38 AM
To: Fawcett, Susan
Subject: 0651-0031

Hi Susan,

0031 isn't under review but there is a process under the PRA where members of the public can request an already approved collection they feel is out of compliance. We've now gotten some questions on this one.

Would someone from the program office knowledgeable on this collection be free to chat this afternoon, Thursday or Friday briefly? Thanks.

-Nick

Document ID: 0.7.991.5755

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Thu Dec 19 2013 10:46:36 EST
Attachments:

You are all cleared in for Monday. Keep my office number on hand in the event you have problems getting in. 202-395-5887

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, December 18, 2013 7:10 AM
To: Johnson, Kim I.
Cc: Fraser, Nicholas A.
Subject: RE: 0651-0032

If you have any questions, or need to get in touch with me, my cell is (b) (6)

Thank you very much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, December 17, 2013 11:36 AM
To: Fawcett, Susan
Cc: Johnson, Kim I.
Subject: RE: 0651-0032

Hi Susan,

For Monday, please fill out the attached template and return to Kim Johnson who is cc'd. Our address is 725 17th St. NW, The New Executive Office building. You can come up to my office at room 10236 when you get here.

Kim this is for Monday the 23rd, 10am, NEOB 10236. Thanks.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Friday, December 13, 2013 8:03 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

(b) (5)
I think for my schedule the best day in the next couple of weeks is on Monday the 23rd. If that date works, perhaps I can come over around 10:00 a.m.?

Thanks,

Susan

From: Fawcett, Susan
Sent: Wednesday, December 11, 2013 3:31 PM
To: 'Fraser, Nicholas A.'
Subject: RE: 0651-0032

(b) (5) Thanks so much for ordering that up. I hope to get back to you before the end of the week.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 11, 2013 2:51 PM
To: Fawcett, Susan
Subject: RE: 0651-0032

Hi Susan we have the boxes in now. (b) (5)
t

(b) (5) If you want these you may have to have someone come up here, look through the files, then use our copier on the documents you want. Let me know.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5)

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5)

Let me know what you think. (b) (5)

-Nick

Document ID: 0.7.991.5756

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Thu Dec 19 2013 11:43:43 EST
Attachments:

Thanks very much, see you then.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Thursday, December 19, 2013 10:47 AM
To: Fawcett, Susan
Subject: RE: 0651-0032

You are all cleared in for Monday. Keep my office number on hand in the event you have problems getting in. 202-395-5887

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Wednesday, December 18, 2013 7:10 AM
To: Johnson, Kim I.
Cc: Fraser, Nicholas A.
Subject: RE: 0651-0032

If you have any questions, or need to get in touch with me, my cell is (b) (6) [redacted]

Thank you very much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Tuesday, December 17, 2013 11:36 AM
To: Fawcett, Susan
Cc: Johnson, Kim I.

Subject: RE: 0651-0032

Hi Susan,

For Monday, please fill out the attached template and return to Kim Johnson who is cc'd. Our address is 725 17th St. NW, The New Executive Office building. You can come up to my office at room 10236 when you get here.

Kim this is for Monday the 23rd, 10am, NEOB 10236. Thanks.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Friday, December 13, 2013 8:03 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

(b) (5) [redacted]
I think for my schedule the best day in the next couple of weeks is on Monday the 23rd. If that date works, perhaps I can come over around 10:00 a.m.?

Thanks,

Susan

From: Fawcett, Susan
Sent: Wednesday, December 11, 2013 3:31 PM
To: 'Fraser, Nicholas A.'
Subject: RE: 0651-0032

(b) (5) [redacted]. Thanks so much for ordering that up. I hope to get back to you before the end of the week.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, December 11, 2013 2:51 PM
To: Fawcett, Susan
Subject: RE: 0651-0032

Hi Susan we have the boxes in now. (b) (5) [redacted] If you want these you may have to have someone come up here, look through the files, then use our copier on the documents you want. Let me know.

-Nick

From: Fawcett, Susan [mailto:Susan.Fawcet@USPTO.GOV]
Sent: Tuesday, November 26, 2013 10:33 AM
To: Fraser, Nicholas A.
Subject: RE: 0651-0032

If it isn't too much trouble, (b) (5) [redacted]

Thanks so much.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, November 25, 2013 11:17 AM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

I got your voicemail. (b) (5) [redacted]

Let me know what you think. (b) (5) [redacted]

-Nick

Document ID: 0.7.991.5757

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
Cc:
Bcc:
Subject: RE: ICR 0651-0031 OMB NOA July 31 2013
Date: Thu Dec 19 2013 14:42:28 EST
Attachments:

So those (b) (5) [redacted]

[redacted]

Here is a draft response note below, feel free to modify. –Nick

(b) (5) [redacted]

[redacted]

(b) (5) [redacted]

[redacted]

From: Hunt, Alex
Sent: Tuesday, December 17, 2013 8:08 PM
To: Fraser, Nicholas A.
Subject: FW: ICR 0651-0031 OMB NOA July 31 2013

Do you or PTO have a response to his question below? Thanks.

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Tuesday, December 17, 2013 5:00 PM
To: Hunt, Alex
Cc: Dr Richard B Belzer
Subject: Re: ICR 0651-0031 OMB NOA July 31 2013

Alex,

Thanks for your explanation of the July 31 Notice of Action. It's certainly interesting, though I guess I should say surprising. I understand that agencies sometimes include requests for approval of items that are exempt from the PRA. I'm not sure this is one of those cases, however.

Let’s consider Rule 130/131/132 affidavits and declarations. You are correct that 1320.3(h)(1) exempts certain affidavits and responses from the definition of information. But the text of the exemption is actually quite narrow:

Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument …

If you take a look at the January 2013 supporting statement, you will see that the PTO said that Rule 130/131/132 affidavits and declarations entailed an average of 10 burden-hours each at a cost of $371 per hour of patent lawyer time.

How do you reconcile 10 burden-hours at $371 per hour per affidavit or declaration with the regulatory text in 1320.3(h)(1), which might exempt them if they entailed only trivial, nonsubstantive burdens — basically name , rank, and serial number?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

On Dec 12, 2013, at 7:19 PM, Hunt, Alex <Alexander_T._Hunt@omb.eop.gov> wrote:

Hi Rick – Sorry for the delayed response. Too much work and snow…

I think you are correct that we didn’t cite the specific provisions of 5 CFR 1320 to explain why we deemed those ICs to be exempt.

As a general matter, agencies do occasionally include an IC in their request to OMB that is exempt from the PRA. In these cases, the exempt item should not be part of the information collection request,

although we appreciate it when agencies are forthcoming in accounting for all their burden and collections. With regard to 0651-0031, the four items that PTO included in its ICR and that you mention below (Rule 1.130, 1.131, 1.132, and Amendments and Responses), were determined during our review to be exempt from the PRA.

37 CFR 1.130, 1.131, and 1.132 all consist of affidavits, oaths, and/or declarations that fall under the exemption in 5 CFR 1320.3(h)(1), which exempts affidavits, oaths and affirmations, among other things from the definition of "information."

With regard to the "Amendments and Responses," that consists of 37 CFR 1.111, 1.115, and 1.116. 37 CFR 1.111 consists of replies by applicants or patent owners, provided after a non-final PTO action, to indicate they would like further reconsideration or examination. In these replies, the applicants are clarifying and pointing out why they believe the PTO's decision is in error. We believe that these replies are exempt per 5 CFR 1320(h)(9), which exempts information that clarifies responses to already approved collections. Similarly, 37 CFR 1.115 and 1.116 consist of provisions that allows applicants to amend already submitted applications.

Thanks,

Alex

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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.

As you know, there were four new ICs in the January 2013 ICR. I commented on them — twice — pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-

hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

It appears that OMB has not done this, but instead deemed them exempt from the PRA. I cannot be sure because neither OMB's NOA nor PTO's revised Supporting Statement provides any information. And if OMB has in fact exempted them, nothing in the NOA or Supporting Statement explains why.

Please point me to a document that explains what OMB decided and the rationale for its decision. I am familiar with the various exemptions in 1320.3(h), but based on my knowledge of the nature of the submissions covered by the relevant rules, none of the exemptions in 1320.3(h) applies. What gives?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5758

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: ICR 0651-0031 OMB NOA July 31 2013
Date: Thu Dec 19 2013 16:06:44 EST
Attachments:

Good. Thanks.

From: Fraser, Nicholas A.
Sent: Thursday, December 19, 2013 2:42 PM
To: Hunt, Alex
Subject: RE: ICR 0651-0031 OMB NOA July 31 2013

So those (b) (5) [redacted]

[redacted]

Here is a draft response note below, feel free to modify. –Nick

(b) (5) [redacted]

(b) (5)

[redacted]

[redacted]

[redacted]

From: Hunt, Alex
Sent: Tuesday, December 17, 2013 8:08 PM
To: Fraser, Nicholas A.
Subject: FW: ICR 0651-0031 OMB NOA July 31 2013

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From: Richard Belzer [mailto:regcheck@mac.com]
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To: Hunt, Alex
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Alex,

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Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

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Hi Rick – Sorry for the delayed response. Too much work and snow…

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37 CFR 1.130, 1.131, and 1.132 all consist of affidavits, oaths, and/or declarations that fall under the exemption in 5 CFR 1320.3(h)(1), which exempts affidavits, oaths and affirmations, among other things from the definition of "information."

With regard to the "Amendments and Responses," that consists of 37 CFR 1.111, 1.115, and 1.116. 37 CFR 1.111 consists of replies by applicants or patent owners, provided after a non-final PTO action, to indicate they would like further reconsideration or examination. In these replies, the applicants are clarifying and pointing out why they believe the PTO's decision is in error. We believe that these replies are exempt per 5 CFR 1320(h)(9), which exempts information that clarifies responses to already approved collections. Similarly, 37 CFR 1.115 and 1.116 consist of provisions that allows applicants to amend already submitted applications.

Thanks,

Alex

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Sent: Thursday, December 05, 2013 10:38 AM
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an

approval on July 31. The terms of clearance read as follows:

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.

As you know, there were four new ICs in the January 2013 ICR. I commented on them — twice — pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

It appears that OMB has not done this, but instead deemed them exempt from the PRA. I cannot be sure because neither OMB's NOA nor PTO's revised Supporting Statement provides any information. And if OMB has in fact exempted them, nothing in the NOA or Supporting Statement explains why.

Please point me to a document that explains what OMB decided and the rationale for its decision. I am familiar with the various exemptions in 1320.3(h), but based on my knowledge of the nature of the submissions covered by the relevant rules, none of the exemptions in 1320.3(h) applies. What gives?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5759

From: Hunt, Alex </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=alexandert.hunt10287446>
To: Richard Belzer <regcheck@mac.com>
Cc: Dr Richard B Belzer <rbbelzer@post.harvard.edu>
Bcc:
Subject: RE: ICR 0651-0031 OMB NOA July 31 2013
Date: Thu Dec 19 2013 17:46:40 EST
Attachments:

Hi Rick – Those rule provisions are used when a patent applicant wants to provide additional testimony regarding their case, usually in response to an adverse PTO action on their application. The affidavits are just that, allowing applicants to swear that the new information they provide is truthful. The actual information they present would be exempt under 5 CFR 1320.3(h)(6) (facts or opinions addressed to a single person) and/or 5 CFR 1320.3 (h)(9) (facts or opinions obtained or solicited through non-standardized follow-up questions designed to clarify responses to approved collections of information).

It wasn't clear how PTO arrived at their initial estimate for the burden for those sections, or if they were attempting to estimate the burden for just the affidavit or the affidavit plus the additional testimony. Either way, their estimate seemed inaccurate to us and the substance of those collections were covered by the applicable exemptions in 5 CFR 1320.3(h).

Thanks,

Alex

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Tuesday, December 17, 2013 5:00 PM
To: Hunt, Alex
Cc: Dr Richard B Belzer
Subject: Re: ICR 0651-0031 OMB NOA July 31 2013

Alex,

Thanks for your explanation of the July 31 Notice of Action. It's certainly interesting, though I guess I should say surprising. I understand that agencies sometimes include requests for approval of items that are exempt from the PRA. I'm not sure this is one of those cases, however.

Let's consider Rule 130/131/132 affidavits and declarations. You are correct that 1320.3(h)(1) exempts certain affidavits and responses from the definition of information. But the text of the exemption is actually quite narrow:

Affidavits, oaths, affirmations, certifications, receipts, changes of address, consents, or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument …

If you take a look at the January 2013 supporting statement, you will see that the PTO said that Rule 130/131/132 affidavits and declarations entailed an average of 10 burden-hours each at a cost of $371 per hour of patent lawyer time.

How do you reconcile 10 burden-hours at $371 per hour per affidavit or declaration with the regulatory text in 1320.3(h)(1), which might exempt them if they entailed only trivial, nonsubstantive burdens — basically name , rank, and serial number?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

On Dec 12, 2013, at 7:19 PM, Hunt, Alex <Alexander_T._Hunt@omb.eop.gov> wrote:

Hi Rick – Sorry for the delayed response. Too much work and snow…

I think you are correct that we didn't cite the specific provisions of 5 CFR 1320 to explain why we deemed those ICs to be exempt.

As a general matter, agencies do occasionally include an IC in their request to OMB that is exempt from the PRA. In these cases, the exempt item should not be part of the information collection request, although we appreciate it when agencies are forthcoming in accounting for all their burden and collections. With regard to 0651-0031, the four items that PTO included in its ICR and that you mention

below (Rule 1.130, 1.131, 1.132, and Amendments and Responses), were determined during our review to be exempt from the PRA.

37 CFR 1.130, 1.131, and 1.132 all consist of affidavits, oaths, and/or declarations that fall under the exemption in 5 CFR 1320.3(h)(1), which exempts affidavits, oaths and affirmations, among other things from the definition of “information.”

With regard to the “Amendments and Responses,” that consists of 37 CFR 1.111, 1.115, and 1.116. 37 CFR 1.111 consists of replies by applicants or patent owners, provided after a non-final PTO action, to indicate they would like further reconsideration or examination. In these replies, the applicants are clarifying and pointing out why they believe the PTO’s decision is in error. We believe that these replies are exempt per 5 CFR 1320(h)(9), which exempts information that clarifies responses to already approved collections. Similarly, 37 CFR 1.115 and 1.116 consist of provisions that allows applicants to amend already submitted applications.

Thanks,

Alex

From: Richard Belzer [mailto:regcheck@mac.com]
Sent: Thursday, December 05, 2013 10:38 AM
To: Hunt, Alex
Subject: ICR 0651-0031 OMB NOA July 31 2013

Alex,

While preparing comments on a new PTO 60-day notice for 0651-0032 (http://www.gpo.gov/fdsys/pkg/FR-2013-10-01/pdf/2013-23790.pdf; deadline extended to December 16), I was curious about the disposition of 0651-0031, on which I commented last winter. I see that OMB issued an approval on July 31. The terms of clearance read as follows:

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.

As you know, there were four new ICs in the January 2013 ICR. I commented on them — twice — pointing out that they were attempts to rectify longstanding bootlegs totaling millions of annual burden-hours valued at billions of dollars per year. I expected OMB to issue a prospective approval, but correctly designate them as corrections of PRA violations.

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Please point me to a document that explains what OMB decided and the rationale for its decision. I am familiar with the various exemptions in 1320.3(h), but based on my knowledge of the nature of the submissions covered by the relevant rules, none of the exemptions in 1320.3(h) applies. What gives?

Regards,

Richard B. Belzer, Ph.D.

rbbelzer@post.harvard.edu

http://www.rbbelzer.com

(b) (6) v

(b) (6) f

Document ID: 0.7.991.5760

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: FW: Letter Concerning the Paperwork Reduction Act
Date: Mon Dec 30 2013 16:51:03 EST
Attachments:

From: Hunt, Alex
Sent: Friday, September 13, 2013 6:20 PM
To: gh@ghnv.com
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

Document ID: 0.7.991.5764

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Fawcett, Susan (Susan.Fawcet@USPTO.GOV) <susan.fawcet@uspto.gov>
Cc:
Bcc:
Subject: 0651-0032
Date: Mon Mar 24 2014 13:25:50 EDT
Attachments:

Hi Susan,

Can you confirm were any comments received by you during the 30 day period? Thanks.

-Nick

Document ID: 0.7.991.5765

From: Fawcett, Susan <susan.fawcet@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
Cc:
Bcc:
Subject: RE: 0651-0032
Date: Wed Mar 26 2014 08:02:36 EDT
Attachments:

We did not receive any comments during the 30-day period.

From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Monday, March 24, 2014 1:26 PM
To: Fawcett, Susan
Subject: 0651-0032

Hi Susan,

Can you confirm were any comments received by you during the 30 day period? Thanks.

-Nick

Document ID: 0.7.991.5772

From: Isaac, Justin (AMBIT) <justin.isaac@uspto.gov>
To: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>; Lovett, Marcie <marcie.lovett@uspto.gov>
Cc: Witherspoon, Judy <judy.witherspoon@uspto.gov>; Spinella, Kevin (AMBIT) <kevin.spinella@uspto.gov>
Bcc:
Subject: FW: 0032
Date: Tue Sep 08 2015 14:01:17 EDT
Attachments: winmail.dat

Nick,

We uploaded the requested documents and double checked everything in ROCIS. Let us know if there is anything further that you need from us in order to process the Change Worksheet for collection 0651-0032.

Thanks,

Justin

-----Original Message-----
From: Lovett, Marcie
Sent: Wednesday, September 02, 2015 4:34 PM
To: Isaac, Justin (AMBIT); Witherspoon, Judy
Subject: FW: 0032
Importance: High

Hi Justin and Judy,

Please see the email thread below and advise accordingly. Thanks!

-----Original Message-----
From: Fraser, Nicholas A. [mailto:Nicholas_A._Fraser@omb.eop.gov]
Sent: Wednesday, September 02, 2015 3:43 PM
To: Lovett, Marcie
Subject: FW: 0032

Marcie just wanted to follow-up on this.

From: Fraser, Nicholas A.
Sent: Friday, August 07, 2015 4:35 PM
To: Lovett, Marcie <Marcie.Lovett@USPTO.GOV>
Subject: 0032

Hi Marcie,

For the change request for this one, we still need you to upload the regular supporting statements. I've opened it for amendment. Please add those and let me know when you do. Thanks.

-Nick

Marcie just wanted to follow-up on this.

From: Fraser, Nicholas A.
Sent: Friday, August 07, 2015 4:35 PM
To: Lovett, Marcie <Marcie.Lovett@USPTO.GOV>
Subject: 0032

Hi Marcie,

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-Nick

Document ID: 0.7.991.5773

From: Fraser, Nicholas A. </o=eop/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=nicholasa.fraser53032372>
To: Isaac, Justin (AMBIT) <justin.isaac@uspto.gov>; Lovett, Marcie <marcie.lovett@uspto.gov>
Cc: Witherspoon, Judy <judy.witherspoon@uspto.gov>; Spinella, Kevin (AMBIT) <kevin.spinella@uspto.gov>
Bcc:
Subject: RE: 0032
Date: Wed Sep 09 2015 11:12:08 EDT
Attachments:

Its now been concluded. Thanks.

-----Original Message-----
From: Isaac, Justin (AMBIT) [mailto:Justin.Isaac@USPTO.GOV]
Sent: Tuesday, September 08, 2015 2:01 PM
To: Fraser, Nicholas A. <Nicholas_A._Fraser@omb.eop.gov>; Lovett, Marcie <Marcie.Lovett@USPTO.GOV>
Cc: Witherspoon, Judy <Judy.Witherspoon@USPTO.gov>; Spinella, Kevin (AMBIT) <Kevin.Spinella@USPTO.GOV>
Subject: FW: 0032
Importance: High

Nick,

We uploaded the requested documents and double checked everything in ROCIS. Let us know if there is anything further that you need from us in order to process the Change Worksheet for collection 0651-0032.

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