

SUPPORTING STATEMENT
United States Patent and Trademark Office
Fee Deficiency Submissions
OMB CONTROL NUMBER 0651-0070
September 2018

A. JUSTIFICATION

1. Necessity of Information Collection

The Leahy-Smith America Invents Act (“Act”) was enacted into law on September 16, 2011 (Pub. L. 112-29, 125 Stat. 283 (2011)). Under section 10(b) of the Act, eligible small entities shall receive a 50 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. The Act further provides that micro entities shall receive a 75 percent fee reduction from the undiscounted fees for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

It is possible for small or micro entity status to be established in good faith, and for a patent applicant or patentee to pay a fee as a small or micro entity in good faith, only to later discover that the entity status was established in error, or to later discover that, through error, the USPTO was not notified of a loss of status entitlement. The USPTO will excuse the error if a deficiency payment and other requirements are submitted in compliance with 37 CFR 1.28(c) or 1.29(k).

This information collection covers the submissions made by patent applicants and patentees to excuse small and micro entity fee payment errors, in accordance with the procedures set forth in 37 CFR 1.28(c) and 1.29(k). Specifically, 37 CFR 1.28(c) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the small entity amount. 37 CFR 1.29(k) provides a procedure by which patent applicants and patentees may be excused for erroneous payments of fees in the micro entity amount.

The information in this collection can be submitted electronically through EFS-Web, the USPTO’s Web-based electronic filing system, as well as on paper, by either mail or hand delivery. The USPTO is therefore accounting for both electronic and paper submissions in this collection.

Table 1 provides the statutes and regulations authorizing the USPTO to collect the information:

Table 1: Information Requirements for Fee Deficiency Submissions

| IC Number | Requirement | Statute | Rule |
|-----------|----------------------------------|-------------------|-------------|
| 1 | Submissions Under 37 CFR 1.28(c) | 35 U.S.C. § 41(h) | 37 CFR 1.28 |
| 2 | Submissions Under 37 CFR 1.29(k) | 35 U.S.C. § 123 | 37 CFR 1.29 |

2. Needs and Uses

This information collection is necessary so that patent applicants and patentees may pay the balance of fees due (i.e., make a fee deficiency payment) when a fee was previously paid in error in a micro or small entity amount. The USPTO needs the information to be able to process and properly record a fee deficiency payment to avoid questions arising later, either for the USPTO or for the applicant or patentee, as to whether the proper fees have been paid in the application or patent.

The information collected, maintained and used in this collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act (44 U.S.C. Chapter 35), in OMB Circular A-130, and in the OMB information quality guidelines.

Table 2 outlines how this collection of information is used by the public and the USPTO:

Table 2: Needs and Uses for Fee Deficiency Submissions

| IC Number | Form and Function | Form # | Needs and Uses |
|-----------|----------------------------------|---------|---|
| 1 | Submissions Under 37 CFR 1.28(c) | No Form | <ul style="list-style-type: none"> Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a small entity amount. Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent. |
| 2 | Submissions Under 37 CFR 1.29(k) | No Form | <ul style="list-style-type: none"> Used by patent applicants and patentees to pay the balance of fees due when a fee was previously paid in error in a micro entity amount. Used by the USPTO to process and properly record a fee deficiency payment to avoid questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in the application or patent. |

3. Use of Information Technology

The items in this collection may be submitted online using EFS-Web, the USPTO's Web-based electronic filing system.

EFS-Web allows customers to file patent applications and associated documents electronically through their standard Web browser without downloading special software, changing their document preparation tools, or altering their workflow processes. Typically, the customer will prepare the documents as standard PDF files and then upload them to the USPTO servers using the secure EFS-Web interface. EFS-Web offers many benefits to filers, including immediate notification that a submission has been received by the USPTO, automated processing of requests, and avoidance of postage or other paper delivery costs.

4. Efforts to Identify Duplication

The information collected is required to process and record a fee deficiency payment when a fee was previously paid in error in a micro or small entity amount. This information is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing the Burden to Small Entities

This collection of information will not impose a significant economic impact on a substantial number of small entities. Furthermore, there are no filing fees associated with this information collection.

6. Consequences of Less Frequent Collection

The information in this collection is collected only when a patent applicant or patentee previously paid a fee in error in a micro or small entity amount. Less frequent collection of this information would impact the USPTO's ability to: (i) process and properly record a fee deficiency payment; and (ii) answer questions arising later either for the USPTO or for the applicant or patentee as to whether the proper fees have been paid in an application or patent. Thus, this information could not be collected less frequently.

7. Special Circumstances in the Conduct of Information Collection

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

8. Consultations Outside the Agency

A 60-Day *Federal Register* Notice was published on July 23, 2018 (83 Fed. Reg. 34834). The comment period ended on September 21, 2018. No public comments were received.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, independent inventor groups, and users of our public facilities. Views expressed by these groups are considered in developing proposals for information collection requirements and during the renewal of an information collection. No views have been expressed impacting the present renewal.

9. Payment or Gifts to Respondents

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

10. Assurance of Confidentiality

Confidentiality of patent applications is governed by statute (35 U.S.C. § 122) and regulation (37 CFR 1.11 and 1.14). Upon publication of an application or issuance of a patent, the entire patent application file is made available to the public (subject to provisions for providing only a redacted copy of the file contents). Therefore, the information collected by this collection will necessarily be available to the public when it is either filed in a published application or issued patent, or when it is filed in an application that is later published or issued as a patent.

11. Justification of Sensitive Questions

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

12. Estimate of Hour and Cost Burden to Respondents

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

- **Respondent Calculation Factors**

The USPTO estimates that it will receive approximately 2,500 total responses per year for this collection. The respondents for this collection may be summarized as patent applicants and patentees who: (i) established their status as a small entity in error, or through error did not notify the USPTO of a loss of entitlement to small entity status; or (ii) established their status as a micro entity in error, or through error did not notify the USPTO of a loss of entitlement to micro entity status. Respondents (i) will necessarily be non-small entities. Respondents (ii) will either be non-small entities or small entities (the proposed rules require an applicant claiming micro entity status to certify that the applicant qualifies as a small entity). Therefore, a maximum of 625 (25%) of the responses collected annually will be filed by small entities.

Approximately 98% of the responses for this collection will be submitted electronically via EFS-Web.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public approximately 2 hours to submit the information in this collection, including the time to gather the necessary information, prepare the appropriate form or petition, and submit the completed request to the USPTO.

- **Cost Burden Calculation Factors**

The USPTO uses a professional rate of \$438 per hour for the respondent cost burden calculations, which is the mean rate for attorneys in private firms as shown in the 2017 *Report of the Economic Survey* published by the American Intellectual Property Law Association (AIPLA).

Table 3: Burden Hours/Burden Costs to Respondents for Fee Deficiency Submissions

| IC Number | Item | Hours (a) | Responses (yr) (b) | Burden (hrs/yr) (c) (a) x (b) | Rate (\$/hr) (d) | Total Cost (\$/yr) (e) (c) x (d) |
|-----------|----------------------------------|--------------|--------------------------|--|------------------------|---|
| 1 | Submissions Under 37 CFR 1.28(c) | 2.0 | 1,875 | 3,750 | \$438.00 | \$1,642,500.00 |
| 2 | Submissions Under 37 CFR 1.29(k) | 2.0 | 625 | 1,250 | \$438.00 | \$547,500.00 |
| | Totals | --- | 2,500 | 5,000 | --- | \$2,190,000.00 |

13. Total Annual (Non-hour) Cost Burden

There are no capital start-up, maintenance, or record keeping costs for this collection, nor does this collection have filing fees. There is, however, a non-hour cost burden in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail through the United States Postal Service. The USPTO estimates that the average first class postage cost for a mailed one-pound submission will be \$6.70 and approximately 50 submissions will be submitted to the USPTO requiring postage.

Table 4: Postage Costs for Fee Deficiency Submissions

| IC Number | Item | Estimated Mailed Responses (a) | Estimated Postage Rate (b) | Total Postage Cost (\$/yr) (a) x (b) = (c) |
|-----------|----------------------------------|-----------------------------------|-------------------------------|--|
| 1 | Submissions Under 37 CFR 1.28(c) | 38 | \$6.70 | \$254.60 |

| IC Number | Item | Estimated Mailed Responses (a) | Estimated Postage Rate (b) | Total Postage Cost (\$/yr) (a) x (b) = (c) |
|-----------|----------------------------------|--------------------------------|----------------------------|--|
| 2 | Submissions Under 37 CFR 1.29(k) | 12 | \$6.70 | \$80.40 |
| | Totals | 50 | --- | \$335.00 |

The estimated postage cost, and therefore the estimate annual (non-hour) cost burden for this collection, totals \$335.00.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 1, employee approximately 15 minutes (0.25 hours) on average to process the items in this collection.

The hourly rate for a GS-7, step 1, employee is currently \$22.03 according to the U.S. Office of Personnel Management's (OPM's) wage chart, including locality pay for the Washington, DC area. When 30% is added to account for a fully loaded hourly rate (benefits and overhead), the rate per hour for a GS-7, step 1, employee is \$28.64 (\$22.03 + \$6.61).

Table 5 calculates the burden hours and costs to the Federal Government for processing the items in this information collection:

Table 5: Burden Hours/Burden Costs to the Federal Government for Fee Deficiency Submissions

| IC Number | Item | Hours (a) | Responses (yr) (b) | Burden (hrs/yr) (c) (a x b) | Rate (\$/hr) (d) | Total Cost (\$/yr) (e) (c x d) |
|-----------|----------------------------------|------------|--------------------|-----------------------------|------------------|--------------------------------|
| 1 | Submissions Under 37 CFR 1.28(c) | 0.25 | 1,875 | 468.75 | \$28.64 | \$13,425.00 |
| 2 | Submissions Under 37 CFR 1.29(k) | 0.25 | 625 | 156.00 | \$28.64 | \$4,467.84 |
| | Totals | --- | 2,500 | 624.75 | --- | \$17,892.84 |

15. Reason for Changes in Annual Burden

A. Changes in Collection since previous OMB approval in 2015

OMB previously approved the renewal of this information collection in September 2015. The current collection contains:

- 3,000 responses
- 6,000 burden hours

- \$2,334,000.00 in respondent hourly cost burden
- \$517.50 in annual (non-hourly) costs

B. Changes proposed in this request to OMB

The proposed collection, as outlined in the tables above, seeks to modify the existing collection. The proposed collection contains an estimated:

- 2,500 responses
- 5,000 burden hours
- \$2,190,000.00 in respondent hourly cost burden
- \$335.00 in annual (non-hour) costs

Changes in Respondent Cost Burden

The total respondent cost burden for this collection has decreased by \$144,000.00 (from \$2,334,000.00 to \$2,190,000.00) from the previous renewal of this collection in September 2015:

- Decrease in estimated burden hours. The total estimated burden hours have declined from 6,000 to 5,000 for the current renewal due to changes in Agency estimates.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the annual responses will decrease by 500 (from 3,000 to 2,500) and the total burden hours will decrease by 1,000 (from 6,000 to 5,000) from the currently approved burden for this collection.

Changes in Annual (Non-hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs will decrease by \$182.50 (from \$517.50 to \$335.00), due to a decrease in the number of responses.

16. Project Schedule

The USPTO does not plan to publish this information for statistical use or any other purpose.

17. Display of Expiration Date of OMB Approval

There are no forms in this information collection. Therefore, the display of the OMB Control Number and the expiration date is not applicable.

18. Exceptions to the Certificate Statement

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

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.