

**SF-83 SUPPORTING STATEMENT
PAPERWORK REDUCTION ACT – OMB CONTROL NUMBER 0651-0034
SECURITY AND LICENSE TO EXPORT**

A. JUSTIFICATION

1. Necessity of Information Collection

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries. When an invention is determined to be detrimental to national security, the Commissioner for Patents at the United States Patent and Trademark Office (USPTO) must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. A patent will not be issued on the application as long as the secrecy order is in force.

Three types of secrecy orders, each of a different scope, can be issued. The first type, Secrecy Order and Permit for Foreign Filing in Certain Countries, is intended to permit the widest utilization of the technical data in the patent application while still controlling any publication or disclosure that would result in an unlawful exportation. The second type, the Secrecy Order and Permit for Disclosing Classified Information, is to treat classified technical data presented as a patent application in the same manner as any other classified material. The third type of secrecy order is used where the other types of orders do not apply, including orders issued by direction of agencies other than the Department of Defense.

Under the provision of 35 U.S.C. § 181, a secrecy order remains in effect for a period of one year from its date of issuance. A secrecy order may be renewed for additional periods of not more than one year upon notice by a government agency that the national interest continues to so require. The applicant is notified of such renewal. The Commissioner for Patents at the USPTO may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who caused the order to be issued that the disclosure of the invention is no longer deemed detrimental to the national security.

Foreign filing licenses are also required to be granted by the USPTO in certain circumstances to applicants filing patent applications in foreign countries. If a secrecy order is applied to an international application, the application will not be forwarded to the International Bureau as long as the secrecy order remains in effect.

The USPTO administers 35 U.S.C. §§ 181-188 through 37 CFR 5.1-5.33. When the USPTO places a secrecy order on a patent application, the rules authorize the applicant to petition the USPTO for permits to allow disclosure, modification, or rescission of the secrecy order, or to obtain a general or group permit. To file a patent application in a foreign country, the applicant can petition the USPTO for a foreign filing license either

with or without a corresponding United States application. In addition, the applicant can petition to change the scope of a license and, when a patent application is filed through error in a foreign country without the appropriate filing license, an applicant can petition the USPTO for a retroactive license.

Unless expressly ordered otherwise, action on the application and prosecution by the applicant will proceed during the time the application is under secrecy order to a specific point as indicated under 37 CFR 5.3. Applications under secrecy order that come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Appeals in such cases must be completed by the applicant, but unless specifically indicated by the Commissioner for Patents at the USPTO, will not be set for hearing until the secrecy order is removed.

This collection includes the information needed by the USPTO to review and issue or revoke the various types of petitions. No forms are associated with this collection.

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

Table 1: Information Requirements for Secrecy and License to Export

Requirement	Statute	Rule
Petitions relating to Secrecy Orders: <ul style="list-style-type: none"> • Petition for Rescission of Secrecy Order • Petition to Disclosure to Modification of Secrecy Order • Petition for General and Group Permits 	35 U.S.C. §§ 181-188 35 U.S.C. §§ 181-182 35 U.S.C. § 181 35 U.S.C. § 181	37 CFR 5.1–5.33 37 CFR 5.4 37 CFR 5.5 37 CFR 5.5(e)
Petitions for Foreign Filing Licenses: <ul style="list-style-type: none"> • Petition for Expedited Handling of License (no corresponding application) • Petition for Expedited Handling of License (corresponding U.S. application) • Petition for Changing Scope of License • Petition for Retroactive License 	35 U.S.C. §§ 184-186	37 CFR 5.11–5.33 37 CFR 5.12, 5.13; 37 CFR 1.17(g) 37 CFR 5.12, 5.14; 37 CFR 1.17(g) 37 CFR 5.15; 37 CFR 1.17(g) 37 CFR 5.25; 37 CFR 1.17(g)

2. Needs and Uses

This collection includes the information needed by the USPTO to review and issue or revoke the various types of petitions regarding secrecy orders and foreign filing licenses. There are no forms associated with the petitions in this collection. Response to this information collection is necessary to obtain a permit to disclose, modify or rescind a secrecy order, to obtain general or group permits, to obtain foreign filing and retroactive licenses, or to change the scope of a license.

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

This proposed collection of information would result in information that will be collected, maintained, and used in a way consistent with all applicable OMB and USPTO Information Quality Guidelines. (See Attachment A, the USPTO Information Quality Guidelines)

Table 2 outlines how this information is used by the public and by the USPTO.

Table 2: Needs and Uses of Information Collected for Secrecy and License to Export

Form and Function	Form #	Needs and Uses
Petition for Rescission of Secrecy Order	No Form Associated	<ul style="list-style-type: none"> • Used by the public to present evidence to the USPTO that the patent application no longer requires a secrecy order. • Used by the USPTO to determine whether an invention remains subject to a secrecy order. • Used by the USPTO to grant a patent if the secrecy order is no longer required.
Petition to Disclose or Modification of Secrecy Order	No Form Associated	<ul style="list-style-type: none"> • Used by the public to petition the USPTO for a permit to disclose a patent application currently under a secrecy order. • Used by the public to petition the USPTO to modify a secrecy order. • Used by the USPTO to determine if a permit can be issued to allow disclosure of a patent application currently under a secrecy order. • Used by the USPTO to determine if a patent application currently under a secrecy order can be modified.
Petition for General and Group Permits	No Form Associated	<ul style="list-style-type: none"> • Used by organizations or individuals inside an organization to petition the USPTO for a permit allowing use of patent applications under secrecy orders. • Used by the USPTO to determine if an organization or individuals inside an organization qualify for permission to handle patent applications under secrecy orders.
Petitions for Foreign Filing Licenses: <ul style="list-style-type: none"> • Petition for Expedited Handling to License (no corresponding application) • Petition for Expedited Handling to License (corresponding U.S. application) • Petition for Changing Scope of License • Petition for Retroactive License 	No Forms Associated	<ul style="list-style-type: none"> • Used by the public to petition the USPTO for various licenses to file and/or export patent applications, technical data, and other information in a foreign country. • Used by the public to request a change in the scope of a license. • Used by the public to appeal USPTO's denial of a retroactive license. • Used by the public to ensure that the appropriate fees have been submitted. • Used by the USPTO to examine and issue or revoke, as appropriate, various types of foreign filing licenses. • Used by the USPTO to determine if an unlicensed filing violated any export regulations. • Used by the USPTO to ensure that the appropriate fees have been submitted.

3. Use of Information Technology

Currently, the USPTO does not plan to use automated, electronic, mechanical, or other technological collection techniques for this collection. Due to the extremely sensitive nature of some of the information associated with this collection (national security interests) and the low volume of filings, electronic collection of this information is not feasible. Because some of the information associated with this collection is secret, it cannot be collected using the same electronic system that is used for the filing of papers

pertaining to applications not under a secrecy order. An entirely separate electronic system would have to be designed and implemented, including separate, secure servers. Balancing this cost factor against the low volume of filings, designing and putting into operation such a system makes this alternative cost prohibitive and not a feasible option.

The USPTO currently accepts the electronic filing of some patent applications and certain related documents through the Electronic Filing System (EFS-Web). At this time, the USPTO is not collecting the petitions under the Secrecy and License to Export Program electronically. New features and capabilities are being added to EFS as it undergoes further development, and customers will eventually be able to file all applications and related documents electronically through EFS-Web. As the USPTO expands the use of electronic filing, the USPTO will reevaluate whether it is feasible for the secrecy order petitions to be filed electronically as well. If the security issues are resolved and the electronic collection of these items does become feasible, the USPTO will submit the associated electronic forms to the Office of Management and Budget (OMB) for review, as necessary.

4. Efforts to Identify Duplication

Every effort has been made to identify and eliminate duplication of information. This information is collected to issue permits to disclose, modify or rescind secrecy orders, to grant general or group permits, to obtain foreign filing and retroactive licenses, or to change the scope of a license. This information is not collected elsewhere.

5. Minimizing Burden to Small Entities

No significant economic impact is imposed on small entities or small businesses as a result of this information collection. The same information is required of every applicant and is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only when the respondent petitions the USPTO for permits to disclose, modify or rescind secrecy orders, to grant general or group permits, to obtain foreign filing and retroactive licenses, and to change the scope of a license. It could not be conducted less frequently. If the collection of information were not collected, the USPTO could not comply with the requirements of 35 U.S.C. §§ 181-188 and 37 CFR 5.1–5.33.

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

The 60-Day Notice was published in the *Federal Register* on January 12, 2007 (72 Fed Reg. 1492). The comment period ended on March 13, 2007. 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, inventor groups, and users of our public facilities. Their views are expressed in regularly scheduled meetings and considered in developing proposals for information collection requirements. There have been no comments or concerns expressed by these or similar organizations concerning the time required to provide the information required under this program.

9. Payment or Gifts to Respondents

This information collection does not involve a payment or gift to any respondent. Response to this information collection is necessary to obtain permits to disclose, modify or rescind secrecy orders, to obtain general or group permits, to obtain foreign filing and retroactive licenses, and to change the scope of a license.

10. Assurance of Confidentiality

Confidentiality is governed by statute 35 U.S.C. § 122 and regulations 37 CFR 1.11 and 1.14. This collection contains information of a confidential nature, which is subject to the Privacy Act. Systems of Records Notices for Patent Application Secrecy Order Files (Commerce/PAT-TM-8) and Petitioners for License to File for Foreign Patents (Commerce/PAT-TM-13) have been published in the *Federal Register*. Records are maintained for referral to authorized Government agencies under 35 U.S.C. § 181 for determination of the requirement for a secrecy order, notification of the applicant or his duly appointed representative of such secrecy order, to prevent disclosure of information that might be detrimental to national security, and in accordance with agency rules.

Anyone wishing to view documents recorded under secrecy orders or view recorded documents in which the Federal government has an interest must submit authorization in writing before the USPTO will release the documents for inspection, according to 37 CFR 3.58. Records are stored in paper in file folders and on magnetic storage media. Documents sealed under secrecy orders cannot be filed electronically due to national security concerns.

Administrative controls are used to safeguard this information as appropriate. Due to the extremely sensitive nature of some of the information associated with this collection (national security interests), electronic collection of this information is not feasible. Because some of the information is secret, it cannot be collected using the same electronic system that is used for the filing of papers pertaining to applications not under

a secrecy order. An entirely separate electronic system would have to be designed and implemented, including separate, secure servers. Records are stored in a locked vault in areas accessible only to authorized personnel who are properly screened, cleared and trained. Where information is retrievable by terminal, all safeguards appropriate to secure the ADP telecommunications system (hardware and software) are utilized.

11. Justification for Sensitive Questions

None of the required information is considered to be of a sensitive nature.

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 receives approximately 1,669 responses annually.
- Burden Hour Calculation Factors**
 The USPTO estimates that it will take the public between 30 minutes (0.5 hours) to 4 hours to gather the necessary information, prepare, and submit a petition, depending on the complexity of the situation.
- Cost Burden Calculation Factors**
 The professional rate of \$304 per hour used in this submission to calculate the respondent cost burden is the median rate for associate attorneys in private forms as published in the 2005 report of the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA). This report summarized the results of a survey with data on hourly billing rates. The USPTO believes that an associate attorney would prepare this information. This is a fully loaded hourly rate.

Table 3: Burden Hour/Burden Cost to Respondents for Secrecy and License to Export

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Petition for Rescission of Secrecy Order	3.0	6	18	\$304.00	\$5,472.00
Petition to Disclose or Modification of Secrecy Order	2.0	3	6	\$304.00	\$1,824.00
Petition for General and Group Permits	1.0	1	1	\$304.00	\$304.00
Petition for Expedited Handling of License (no corresponding application)	0.5	1,402	701	\$304.00	\$213,104.00
Petition for Expedited Handling of License (corresponding U.S. application)	0.5	126	63	\$304.00	\$19,152.00
Petition for Changing Scope of License	0.5	1	1	\$304.00	\$304.00
Petition for Retroactive License	4.0	130	520	\$304.00	\$158,080.00
TOTAL	- - - -	1,669	1,310	- - - -	\$398,240.00

13. Total Annualized (Non-hour) Cost Burden

There are no capital start-up, maintenance, or record keeping costs associated with this information collection. There are, however, non-hour costs due to filing fees and postage costs for the foreign filing petitions. No fees are associated with the secrecy order petitions.

The total annual filing fee/non-hour cost burden to respondents is outlined in Table 4 below:

Table 4: Filing Fees/Non-hour Cost Burden to Respondents for Secrecy and License to Export

Item	Responses (a)	Filing fee (\$) (b)	Total Non-Hour Cost Burden (a) x (b) (c)
Petition for Rescission of Secrecy Order	6	\$0	\$0.00
Petition to Disclose or Modification of Secrecy Order	3	\$0	\$0.00
Petition for General and Group Permits	1	\$0	\$0.00
Petition for Expedited Handling of License (no corresponding application)	1,402	\$200.00	\$280,400.00
Petition for Expedited Handling of License (corresponding U.S. application)	126	\$200.00	\$25,200.00
Petition for Changing Scope of License	1	\$200.00	\$200.00
Petition for Retroactive License	130	\$200.00	26,000.00
Total	1,669	- - - - -	\$331,800.00

The USPTO estimates that 90 percent (90%) of the petitions in this collection are submitted by facsimile or hand carried because of the quick turnaround required. For the 10 percent (10%) of the public that chooses to submit the petitions to the USPTO by mail through the United States Postal Service, the USPTO estimates that the average first class postage cost for a mailed submission will be 39 cents. The USPTO estimates that up to 167 submissions per year may be mailed to the USPTO at an average first class postage cost of \$65.

Therefore, the USPTO estimates that the total (non-hour) cost burden for this collection in the form of filing fees (\$331,800) and postage costs (\$65) is \$331,865.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 5, approximately 1 hour each to process the petition for rescission of a secrecy order, the petition to disclose or modification of secrecy order, and the petition for general and group permits. The hourly rate for a GS-7, step 5, is currently \$20.44 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 plus overhead), the rate per hour for a GS-7, step 5, is \$26.57 (\$20.44+ \$6.13).

The USPTO estimates that it takes a GS-13, step 2, approximately 1 hour each to process the petitions for expedited handling of license (no corresponding application and corresponding U.S. application), the petition for changing the scope of a license, and the petition for retroactive license. The hourly rate for a GS-13, step 2, is currently \$39.31. When 30% is added to account for a fully loaded hourly rate (benefits plus overhead), the rate per hour for a GS-13, step 2, is \$51.10 (\$39.31 + \$11.79).

Table 5 calculates the processing hours and costs to the Federal Government:

Table 5: Burden Hour/Burden Cost to the Federal Government for Secrecy and License to Export

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Petition for Rescission of Secrecy Order	1.0	6	6	\$26.57	\$159.00
Petition to Disclose or Modification of Secrecy Order	1.0	3	3	\$26.57	\$80.00
Petition for General and Group Permits	1.0	1	1	\$26.57	\$27.00
Petition for Expedited Handling of License (no corresponding application)	1.0	1,402	1,402	\$51.10	\$71,642.00
Petition for Expedited Handling of License (corresponding U.S. application)	1.0	126	126	\$51.10	\$6,439.00
Petition for Changing Scope of License	1.0	1	1	\$51.10	\$51.00
Petition for Retroactive License	1.0	130	130	\$51.10	\$6,643.00
TOTAL	- - - - -	1,669	1,669	- - - - -	\$85,041.00

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

This information collection was previously approved by OMB on May 18, 2004, with a total of 1,669 responses and 1,310 burden hours. With this renewal, the USPTO estimates that the annual responses and burden hours will remain the same.

The total annualized (non-hour) cost burden for this renewal of \$331,865 is an increase of \$65 from the currently approved total of \$331,800. The increase in costs for the current renewal is due to an increase in postage costs, as an administrative adjustment.

Change in Respondent Cost Burden

When this collection was approved by OMB in May 2004, the estimated hourly rate for attorneys was \$286. Using that rate, the reported 1,310 burden hours yielded a respondent cost burden of \$374,660.

For this renewal, the USPTO is using the current professional hourly rate of \$304. At this rate, the 1,310 burden hours yield a respondent cost burden of \$398,240, which is an increase of \$23,580 over the currently approved burden at the previous hourly rate. This increase in respondent cost burden is due to the increase in the estimated hourly professional rate.

Changes in Annualized (Non-hour) Cost Burden

The USPTO estimates that the total annual (non-hour) cost burden will increase by \$65 for this renewal, from \$331,800 currently reported on the OMB inventory to the present \$331,865 per year. The increase is due to an increase in postage costs. **Therefore, this collection has an increase in annual (non-hour) cost burden of \$65 due to an administrative adjustment.**

16. Project Schedule

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

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. Exception to the Certificate Statement

No exceptions to the certificate statement are included in this collection of information.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.

LIST OF ATTACHMENTS

- A. USPTO Information Quality Guidelines