

**SF-83 SUPPORTING STATEMENT
PAPERWORK REDUCTION ACT – OMB CONTROL NUMBER 0651-0017
PRACTITIONER RECORDS MAINTENANCE,
DISCLOSURE, AND DISCIPLINE BEFORE THE
UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)**

A. JUSTIFICATION

1. Necessity of Information Collection

The Commissioner of the United States Patent and Trademark Office (USPTO), under the direction of the Department of Commerce, has the authority to establish regulations for the conduct of proceedings before the agency and to prescribe regulations governing the conduct and discipline of attorneys, agents, or other persons representing applicants and other parties before the USPTO (35 U.S.C. §§ 2, 32 and 33). The USPTO Code of Professional Responsibility (37 CFR 10.20 to 10.112) describes how attorneys or practitioners should conduct themselves professionally and outlines their responsibilities for record keeping and reporting violations of complaints of misconduct to the USPTO, while the Investigations and Disciplinary Proceedings rules (37 CFR 10.130 to 10.170) outline how the USPTO can discipline attorneys and practitioners.

The Code requires an attorney or agent to maintain complete records of all funds, securities, and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties. These record keeping requirements are necessary to maintain the integrity of client property. Each State Bar requires its attorneys to perform similar record keeping.

The Code also requires an attorney or agent to report knowledge of certain violations of the Code to the USPTO. If the complaint is found to have merit, the USPTO will investigate and possibly prosecute violations of the Code and provide the practitioner with the opportunity to respond to the complaint. The Commissioner may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on noncompliance with the regulations. Practitioners who have been excluded or suspended from practice before the USPTO must maintain records of their steps to comply with the suspension or exclusion order. These records serve as the practitioner's proof of compliance with the order.

The information collected (reports of alleged violations of the Code) is used by the Director of the Office of Enrollment and Discipline (OED) to conduct investigations and prosecute violations as appropriate. If this information is not collected, the Director of OED would have no knowledge of alleged violations and would be unable to enforce this provision of the USPTO Code.

Some existing information requirements that were added into the last renewal of this collection are now being deleted in compliance with the Terms of Clearance issued by the Office of Management and Budget (OMB) with the previous Notice of Action for this collection on July 2, 2004. The Terms of Clearance state that *“the agency is reminded of the statutory exemptions from the PRA in 44 U.S.C. § 3518(c)(2)(B)ii) for the conduct of administrative action or investigation involving an agency against specific individuals or entities.”* Therefore, the Responses to Requests/Requirements for Information, Requests for Extension of Time to Respond, Responses to Settlement Offers, and Responses to Show Cause are being deleted from this collection.

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

Table 1: Information Requirements for Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

| Requirement | Statute | Rule |
|---|--------------------------------|------------------------------------|
| Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements) | 35 U.S.C. §§ 2(b)(2)(D) and 32 | 37 CFR 10.112(c)(1)(2)(3) |
| Record Keeping Maintenance Under Suspension or Exclusion from the USPTO | 35 U.S.C. §§ 2(b)(2)(D) and 32 | 37 CFR 10.158(b)(1) and (4) |
| Complaint/Violation Reporting | 35 U.S.C. §§ 2(b)(2)(D) and 32 | 37 CFR 10.24 and 10.131(b) and (c) |

2. Needs and Uses

There are no forms associated with this collection of information.

Record keeping requirements are necessary to maintain the integrity of client property. An attorney or agent must maintain complete records of all funds, securities and other properties of clients coming into his or her possession, and render appropriate accounts to the client regarding the funds, securities and other properties. Practitioners also use the collection of information in the day-to-day operation of their practice.

This information is used by the Director of OED to investigate and, where appropriate, prosecute for violations of the Code. Registered practitioners are mandated to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation.

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 Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

| Form and Function | Form # | Needs and Uses |
|---|--------------------|--|
| Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements) | No Form Associated | <ul style="list-style-type: none"> • Used by the public to maintain complete records of all funds, securities, and other properties of clients (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements), and to render appropriate accounts to the client. • Used by the public to maintain client integrity in the day-to-day operation of their practice. • Used by the USPTO to comply with Federal regulations. • Used by the USPTO to establish regulations for the conduct of proceedings in the USPTO. • Used by the USPTO to impose regulations governing the conduct of attorneys, agents, and other persons representing applicants and other parties before the USPTO. |
| Record Keeping Maintenance Under Suspension or Exclusion from the USPTO | No Form Associated | <ul style="list-style-type: none"> • Used by practitioners seeking reinstatement after a disciplinary removal to provide increased record keeping requirements in order to show compliance with the terms required for reinstatement. • Used by the public to provide evidence that a practitioner has or has not complied with the rules during suspension or exclusion. • Used by the USPTO to determine whether a practitioner qualifies for reinstatement. • Used by the USPTO to monitor record keeping requirements of practitioners seeking reinstatement after a disciplinary removal to ensure that compliance with the terms required for reinstatement are being met. |
| Complaint/Violation Reporting | No Form Associated | <ul style="list-style-type: none"> • Used by the public to report knowledge of certain violations of the Code of Professional Responsibility to the USPTO. • Used by the public to maintain proper documentation in order to fully cooperate with the USPTO in an investigation. • Used by the USPTO to investigate and, where appropriate, to prosecute for violations of the Code of Professional Responsibility. |

3. Use of Information Technology

Each report of an alleged violation of the Code is unique. Accordingly, the use of information technology is not likely to reduce the burden in reporting a given violation.

Due to the sensitive nature of this information, the USPTO does not use automated, electronic, mechanical, or other technological collection techniques for the collection of this information. 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 associated with this collection electronically. New features and capabilities are being added to EFS-Web 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 this information 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

The data in this collection is not routinely collected or maintained elsewhere. Inasmuch as a report by an attorney or agent of an alleged violation of the USPTO Code of Professional Responsibility is made uniquely to the Director of the USPTO, there is no duplication of effort.

5. Minimizing Burden to Small Entities

The reporting and record keeping requirements are essentially the same for all attorneys and agents. Therefore, the collection of this information does not pose a significant economic impact on small entities or small businesses.

6. Consequences of Less Frequent Collection

The reporting and record keeping requirements are essentially the same for all attorneys and agents, or other persons representing applicants and other parties before the USPTO. This information is collected on an event-by-event basis; it is not time-driven. Therefore, this information could not be collected less frequently. An attorney, agent, or other person representing applicants and other parties before the USPTO is obligated to make a report when a violation is discovered. The USPTO has no control over when an alleged violation of the Code is likely to occur.

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 February 26, 2007 (72 Fed Reg. 8356). The comment period ended on April 27, 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 enforce the Code, to register a report of knowledge of certain violations of the Code to the USPTO, and to investigate and possibly prosecute violations of the Code.

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 (personal) nature, which is subject to the Privacy Act. Systems of Records Notices have been published in the *Federal Register* on November 16, 2005 (70 Fed Reg. 69522). Administrative controls are used to safeguard this information as appropriate. As a matter of USPTO policy, reports of alleged violations of the Code of Professional Responsibility are maintained in confidence until such time as an attorney, agent, or other person representing an applicant or other party before the USPTO is suspended or excluded. Violation reporting activities may result in notices published in the *Official Gazette of the United States Patent and Trademark Office*. These may include notices of suspension, exclusion, or exclusion on consent. The USPTO has been successful in declining to make available investigatory material upon a request under the Freedom of Information Act, 5 U.S.C. §§ 552(b)(7)(C) (investigatory records) and 552(b)(6) (unwarranted invasion of personal privacy).

11. Justification for Sensitive Questions

None of the information collected 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 532 responses annually.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public between 2 and 60 hours, depending upon the complexity of the situation, to gather the necessary information, maintain the required records, prepare the complaint, and submit the various documents in this information collection to the USPTO.

- **Cost Burden Calculation Factors**

The USPTO estimates that all record keeping maintenance will be provided by para-professional/clerical workers, at a rate of \$30 per hour. For complaint/violation reporting, the USPTO predicts that half of the complaints will be filed by practitioners and that the remaining complaints will be split evenly between non-legal professionals and semi-professionals or skilled trade persons. The USPTO estimates that it will cost practitioners \$304 per hour, non-legal professionals \$156 per hour, and semi-professionals or skilled trade persons \$60 per hour to submit a complaint, for a weighted average hourly rate of \$206.

Table 3: Burden Hour/Burden Cost to Respondents for Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

| Item | Hours (a) | Responses (yr) (b) | Burden (hrs/yr) (c) (a) x (b) | Rate (\$/hr) (d) | Total Cost (\$/hr) (e) (c) x (d) |
|---|--------------|--------------------------|--|------------------------|---|
| Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements) | 26.0 | 377 | 9,802 | \$30.00 | \$294,060.00 |
| Record Keeping Maintenance Under Suspension or Exclusion from the USPTO | 60.0 | 5 | 300 | \$30.00 | \$9,000.00 |
| Complaint/Violation Reporting | 2.0 | 150 | 300 | \$206.00 | \$61,800.00 |
| TOTAL | - - - - | 532 | 10,402 | - - - - | \$364,860.00 |

The estimated annual hourly burden is 10,402 hours. This hour burden is based on a combination of 150 reports of complaints/violations, and the annual record keeping maintenance burden imposed on approximately 382 registered practitioners requiring record systems. The total of 382 also includes the 5 responses for record keeping maintenance required of registered practitioners under suspension or exclusion from the USPTO. The number of registered practitioners includes the factor that no additional burden is imposed on registered attorneys to maintain records of clients, since such record keeping is required of them in the performance of their profession. Records maintenance would have to be created (i.e., would not be previously in place) for approximately 1.1 percent (1.1%) of all registered practitioners, which includes both agents and attorneys. Accordingly, 1.1 per cent of the approximately 34,235 registered practitioners would yield 377 respondents (those required to maintain record keeping systems).

The most likely populations to submit reports of violations of the Code to the USPTO are small entity inventors, large entity inventors, assignees and other interested parties of patent prosecutions, other offices in the USPTO (Examining Corps, Office of Petitions), patent agents or attorneys reporting on peers, patent agents or attorneys reporting themselves, referrals from assorted courts (mostly state), and referrals from assorted consumer protection organizations (Federal, state and private). For violation reporting, practitioners are *required* to report knowledge of certain violations as dictated by the Code of Professional Conduct for Practitioners. Fifty per cent (50%) of the complaints of violations received by the USPTO originate from practitioners. For everyone else, violation reporting is *voluntary*.

13. Total Annualized (Non-hour) Cost Burden

There are no capital start-up, maintenance, or record keeping costs, as well as no filing fees associated with this information collection. (The record keeping costs included with the record keeping-related responses are a burden hour/burden cost to respondents and are not part of the annualized cost burden for this collection.)

There are, however, associated postage costs. The public may submit the complaints, responses and requests in this collection to the USPTO by mail through the United States Postal Service. If these documents are sent by first-class mail, a certificate of mailing for each piece of correspondence, stating the date of deposit or transmission to the USPTO, may also be included. The USPTO expects that the complaints will be mailed to the USPTO by first-class postage, for an average of 58 cents. The USPTO estimates that up to 150 responses may be mailed by first-class mail, for a postage cost of \$87 per year.

Therefore, this information collection carries a total of \$87 in annual costs in the form of postage costs.

14. Annual Cost to the Federal Government

There are no government costs associated with registered practitioners maintaining their record keeping systems.

Various levels of pay grades reflect the different actions involved in reaching the assumptions behind the time and burden to the government for collecting this information. The Director of the OED and a combination of four staff Attorneys provide the professional effort to review the complaints/violations, generate inquiries as needed, review responses, and perform other follow-up activities. The clerk establishes and maintains the files and associated updates. The paralegal primarily tracks all case status and docket information. Administrator and analyst efforts generally represent coordination with other functional areas; this type of coordination would primarily track against the unit of work from which all other disciplinary efforts spring; i.e., the complaint/violation reports.

The USPTO estimates that it takes 34 hours and 18 minutes (34.3 hours) to process the complaint/violation reports. The USPTO believes that the complaint/violation reports will be processed by OED staff in the GS-9, GS-12, GS-13 and GS-15 grades. The complaint/violation reports are processed by a combination of all of these staff members, and the processing time is broken down into the time it takes each staff member to complete their part of the process.

The USPTO believes that the complaint/violation reports will be processed by OED staff in the GS rates at the following Patent Examiner pay scale:

- Director, Administrator GS-15, step 10 at \$69.90. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-15, step 10 is \$69.90 + \$20.97, for a rate of \$90.87.
- The four OED Staff Attorneys (based on their average salary) have an average hourly rate of a GS-15, step 7 at \$69.80. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-15, step 7 is \$69.80 + \$29.94, for a rate of \$90.74.

The USPTO believes that the complaint/violation reports will be processed by OED staff in the GS rates at the following standard pay scale:

- Analyst GS-13, step 7 at \$45.65. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-13, step 7 is \$45.65 + \$13.70, for a rate of \$59.35.
- Paralegal GS-12, step 4 at \$35.19. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-12, step 4 is \$35.19 + \$10.56, for a rate of \$45.75.
- Clerk (contractor) estimated GS equivalent GS-9, step 4 at \$24.27. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-9, step 4 is \$24.27 + \$7.28, for a rate of \$31.55.

The burden hours for the items in this collection are broken out below (and rounded off to arrive at a total) to take into account the different efforts required of the USPTO for handling the files and related tasks, along with any required follow-up activities to process the various components of the complaint/violation reports.

Table 4 calculates the processing hours and costs to the Federal Government:

Table 5: Burden Hour/Burden Cost to the Federal Government for Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

| Item | Hours (a) | Responses (yr) (b) | Burden (hrs/yr) (c) (a) x (b) | Rate (\$/hr) (d) | Total Cost (\$/hr) (e) (c) x (d) |
|---|--------------|--------------------------|--|------------------------|---|
| Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements) | 0 | 377 | 0 | \$0.00 | \$0.00 |
| Record Keeping Maintenance Under Suspension or Exclusion from the USPTO | 0 | 5 | 0 | \$0.00 | \$0.00 |

| | | | | | |
|-------------------------------|---------|------------|--------------|---------|---------------------|
| Complaint/Violation Reporting | | 150 | | | |
| Director | 4.2 | | 630 | \$90.87 | \$57,248.00 |
| Staff Attorneys | 12.5 | | 1,875 | \$90.74 | \$170,138.00 |
| Paralegal | 6.2 | | 930 | \$45.75 | \$42,548.00 |
| Administrator | 2.1 | | 315 | \$90.87 | \$28,624.00 |
| Analyst | 3.1 | | 465 | \$59.35 | \$27,598.00 |
| Clerk | 6.2 | | 930 | \$31.55 | \$29,342.00 |
| TOTAL | - - - - | 532 | 5,145 | - - - - | \$355,498.00 |

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

OMB previously approved the renewal of this collection in July 2004, with a total of 582 responses and 8,334 burden hours. With this renewal, the USPTO estimates that the annual responses will be 532 with annual burden hours of 10,402, which is a decrease of 50 responses and an increase of 2,068 burden hours over the previously approved burden for this collection. These changes are due to the four existing information requirements that were added into the previous renewal but are now being deleted in compliance with the Terms of Clearance issued by OMB with the last renewal and increases in responses for two of the existing requirements. These adjustments are attributable to a program change and administrative adjustments.

The total annualized (non-hour) cost burden for this renewal of \$87 in the way of postage fees is a decrease of \$574 from the currently approved total of \$661. The decrease in cost burden for the current renewal is due to the deletion of the four requirements and is a program change.

Change in Burden Estimates Since the 60-Day Notice

The 60-Day *Federal Register* Notice for this renewal reported an estimated burden of 485 responses and 9,180 hours. Since the 60-Day Notice was published in February of 2007, the USPTO has revised the estimated annual responses for the record keeping maintenance from 330 to 337. As a result, the total estimated burden has increased to the 10,402 hours now submitted with this renewal. The increase in burden hours has also increased the total respondent cost burden from \$328,200 to \$364,860.

The total (non-hour) costs of \$95 reported in the 60-Day Notice have decreased to \$87 due to new postage rates.

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 8,334 burden hours yielded a respondent cost burden of \$411,932.

For this renewal, the USPTO is using the current professional hourly rate of \$304. At this rate, the 10,402 burden hours yield a respondent cost burden of \$364,860, which is

a decrease of \$47,072 from the currently approved respondent cost burden. Even though the professional hourly rate increased, the deletion of the four existing requirements contributed to the decrease in respondent cost burden.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the total responses will decrease by 50, from 582 to 532 per year, while the burden hours will increase by 2,068, from 8,334 to 10,402 hours annually. This increase is due in part to a program change and in part to administrative adjustments. The changes in burden for the requirements in this collection, from the previously approved burden to the estimated burden for this submission, are as follows:

- The USPTO estimates that the annual responses for Record Keeping Maintenance will increase by 95, from 282 to 377. **Therefore, this collection takes a burden increase of 2,470 hours as an administrative adjustment.**
- The USPTO does not expect any changes in the estimated 5 responses for Record Keeping Maintenance Under Suspension or Exclusion from the USPTO.
- The USPTO estimates that the annual responses for Complaint/Violation Reporting will increase by 50, from 100 to 150. **Therefore, this collection takes a burden increase of 100 hours as an administrative adjustment.**
- The USPTO is proposing to delete four existing information requirements that were added into the previous renewal but are now being deleted in compliance with the Terms of Clearance issued by OMB with the last renewal. **Therefore, this collection takes a burden decrease of 502 hours as a program change.**

A total of 502 burden hours have been reduced from this collection as a result of a program change. This reduction is offset by an increase of 2,570 burden hours as a result of administrative adjustments. This results in a total net burden hour increase of 2,068 hours due to program and administrative adjustment changes.

Changes in Annualized (Non-hour) Cost Burden

The USPTO estimates that the total annual (non-hour) cost burden will decrease by \$574 for this renewal, from \$661 currently reported on the OMB inventory to the present \$87 per year. The decrease is due to the deletion of four requirements from the collection. **Therefore, this collection has a decrease in annual (non-hour) cost burden of \$574 due to a program change.**

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