

SUPPORTING STATEMENT
United States Patent and Trademark Office
Proposed Addition to
Electronic Response to Office Action and Preliminary Amendment Forms
OMB CONTROL NUMBER 0651-0050

A. JUSTIFICATION

1. Necessity of Information Collection

This collection of information is required by the Trademark Act, 15 U.S.C. § 1051 et seq., which provides for the Federal registration of trademarks, service marks, collective trademarks and service marks, collective membership marks, and certification marks. Individuals and businesses that use or intend to use such marks in commerce may file an application to register their marks with the United States Patent and Trademark Office (USPTO). In some cases, the USPTO may issue an Office Action to an applicant in order to request additional information that is required before a mark can be registered. The USPTO may also issue an Office Action to advise an applicant that a mark cannot be registered due to one or more provisions of the Trademark Act. Applicants may reply to these Office Actions by providing the required information or by putting forth legal arguments as to why the refusal of registration should be withdrawn.

Applicants may also supplement their applications by providing additional information voluntarily. When such information is provided before the USPTO has reviewed the application, the applicant may submit the additional information in the form of a Preliminary Amendment.

The forms in this collection are available in electronic format through the Trademark Electronic Application System (TEAS), which may be accessed on the USPTO web site. The USPTO is proposing to add two forms to this information collection, Post Publication Amendment (PTO-1771) and Response to Suspension Inquiry or Letter of Suspension (PTO-1822). Applicants may file a Post Publication Amendment in order to submit a proposed amendment to an application that has already been approved for publication by the examining attorney. If an applicant receives a Suspension Inquiry or Letter of Suspension from the USPTO, the applicant may use the proposed response form to file a reply. Applicants may submit the two proposed new forms to the USPTO electronically through TEAS or submit the required information for the amendment or response to the USPTO on paper. The USPTO does not provide official forms for these paper submissions.

Table 1 identifies the statutory and regulatory provisions that require the USPTO to collect the information discussed above:

Table 1: Information Requirements for Electronic Response to Office Action and Preliminary Amendment Forms

Requirement	Statute	Rule
Post Publication Amendment	15 U.S.C. § 1051	37 CFR 2.84, 2.146
Response to Suspension Inquiry or Letter of Suspension	15 U.S.C. § 1051 and § 1062	37 CFR 2.62

2. Needs and Uses

The information in this collection is a matter of public record and is used by the public for a variety of private business purposes related to establishing and enforcing trademark rights. The information is available at USPTO facilities and can also be accessed at the USPTO's web site. Additionally, the USPTO provides the information to other entities, including Patent and Trademark Depository Libraries (PTDLs). The PTDLs maintain the information for use by the public.

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 will result in information that will be collected, maintained, and used in a way consistent with all applicable OMB and USPTO Information Quality Guidelines.

Table 2 lists the information identified in this collection and explains how this information is used by the public and by the USPTO:

Table 2: Needs and Uses of Information Collected for Electronic Response to Office Action and Preliminary Amendment Forms

Form and Function	Form #	Needs and Uses
Post Publication Amendment	PTO-1771	<ul style="list-style-type: none"> Used by the public to submit a proposed amendment to an application that has already been approved for publication by the examining attorney. Used by the USPTO to determine whether a proposed amendment is acceptable and whether republication of the mark is required.
Response to Suspension Inquiry or Letter of Suspension	PTO-1822	<ul style="list-style-type: none"> Used by the public to submit a response to a Suspension Inquiry or Letter of Suspension received from the USPTO. Used by the USPTO to consider responses from applicants to actions related to suspended applications.

3. Use of Information Technology

The USPTO provides electronic forms for filing a Post Publication Amendment and a Response to Suspension Inquiry or Letter of Suspension through the Trademark Electronic Application System (TEAS), which is accessible via the USPTO web site.

TEAS provides a useful service for all trademark filers. TEAS forms are completed online and transmitted to the USPTO electronically via the Internet. The TEAS forms include “help” instructions, as well as a “Form Wizard” that tailors the form to the particular characteristics of the application and the mark in question, based on responses provided by the user to questions posed by the “Wizard.” The forms filed are received within seconds after transmission, and a confirmation of filing is immediately sent to the user by email.

Users do not affix digital signatures to the TEAS forms. Instead, these forms are signed using a combination of alphanumeric characters that the user selects and types between two forward slashes. TEAS forms can be signed in this manner, or the text form of the application can be emailed to a second party who can then electronically sign the application. The forms can also be signed by hand by printing the signature page of the form, signing it in ink, scanning the signed page, and then transmitting the entire form and scanned signature page to the USPTO.

Please note that electronic forms can only be submitted via TEAS; filers may not email their own forms to the USPTO.

The USPTO also maintains an online database called Trademark Document Retrieval (TDR), which features images of each document that makes up the “electronic file wrapper” of a particular trademark application or registration. Currently, images of virtually all pending trademark applications are present in TDR, and TDR also features images of many trademark registration files. Over time, the USPTO will upload images of the files of all live trademark registrations into TDR. Another online record system provided by the USPTO is the Trademark Application and Registration Retrieval (TARR) system, which provides users with information regarding the status of trademark applications and registrations. The data in the TARR system is updated daily.

In addition to providing a system that allows the electronic transmission of trademark submissions, the USPTO also provides the public with online access to various trademark records. One such online product is the Trademark Electronic Search System (TESS), a web-based record of registered marks and marks for which applications for registration have been submitted. TESS can be used by potential applicants for trademark registration to assist in the determination of whether or not a particular mark may be available. The data in TESS is identical to the data reviewed by examining attorneys at the USPTO in their determination of whether marks for which registration is sought are confusingly similar to marks in existing registrations or to marks in pending applications for registration. TESS allows the user to choose from four different search tools, is updated daily, and is easy to use.

These systems are all accessible through the Trademark Electronic Business Center (TEBC) on the USPTO web site. The TEBC provides descriptions of these systems, and the systems feature online “help” programs. Thus, the USPTO offers a single

source for a variety of systems useful both for making submissions to the USPTO and for tracking the status of these submissions.

4. Efforts to Identify Duplication

This information is collected only when an applicant submits a Post Publication Amendment or responds to a Suspension Inquiry or Letter of Suspension. This collection does not solicit any data already available at the USPTO and does not create a duplication of effort.

5. Minimizing the Burden to Small Entities

The USPTO believes that the submission of the information provided places no undue burden on small businesses or other small entities. The same information is required from every customer and is not available from any other source.

6. Consequences of Less Frequent Collection

This information collection could not be conducted less frequently. If the information were not collected, the public would not be able to submit amendments after an application has been approved for publication or to respond to actions related to suspensions.

7. Special Circumstances in the Conduct of Information Collection

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

8. Consultation Outside the Agency

The 60-Day Notice was published in the *Federal Register* on September 20, 2007 (72 Fed. Reg. 53753). The comment period ended on November 19, 2007. No public comments were received.

Large and well-organized bar associations frequently communicate their views to the USPTO. Also, the Trademark Public Advisory Committee (T-PAC) was created by the American Inventors Protection Act of 1999 to advise the Director of the USPTO on the agency's operations, including its goals, performance, budget, and user fees. The T-PAC includes nine voting members who are appointed by and serve at the pleasure of the Secretary of Commerce. The statute also provides non-voting membership on the Committee for the agency's three recognized unions. Members include inventors, lawyers, corporate executives, entrepreneurs, and academicians with significant experience in management, finance, science, technology, labor relations, and intellectual property issues. The members of the T-PAC reflect the broad array of USPTO's stakeholders and embrace the USPTO's e-government initiative. This diversity of interests is an effective tool in helping the USPTO nurture and protect the intellectual property that is the underpinning of America's strong economy.

9. Payment or Gifts to Respondents

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

10. Assurance of Confidentiality

The initial application for registration of a trademark is open to public inspection. The information collected from the applicant in response to Office Actions is also available for inspection by the public. Confidentiality is not required in the processing of this information.

Apart from the substantive components and burden statements, the TEAS forms also include a link to the USPTO's Web Privacy Policy. The "Privacy Policy Statement" link is located above the PRA Burden Statement found at the end of the "Wizard" and at the end of the forms themselves. The Web Privacy Policy Statement explains how the USPTO handles any personal information collected from the public through the web site, and how it handles emails. Additionally, the statement also explains what information is collected through the USPTO's Kids Pages, and whether and why the USPTO uses cookies to collect information.

11. Justification for Sensitive Questions

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

12. Estimate of Hour and Cost Burden to Respondents

Table 3 calculates the estimated 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 124,800 responses per year for this collection, including 1,800 responses per year for Post Publication Amendments and 5,600 responses per year for the Response to Suspension Inquiry or Letter of Suspension.
- **Burden Hour Calculation Factors**
The USPTO estimates that the public will require approximately 10 to 18 minutes (0.17 to 0.30 hours) to supply the information required in this collection. Completion times may vary, depending upon the nature and amount of information requested in a particular Office Action.
- **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 firms 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. This is a fully-loaded hourly rate.

The USPTO expects that the information in this collection will primarily be prepared by attorneys, though some submissions may be prepared by *pro se* applicants.

Table 3: Burden Hour/Burden Cost to Respondents for Electronic Response to Office Action and Preliminary Amendment Forms

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Post Publication Amendment (TEAS)	0.25	900	225	\$304.00	\$68,400.00
Post Publication Amendment (paper)	0.30	900	270	\$304.00	\$82,080.00
Response to Suspension Inquiry or Letter of Suspension (TEAS)	0.17	2,800	476	\$304.00	\$144,704.00
Response to Suspension Inquiry or Letter of Suspension (paper)	0.22	2,800	616	\$304.00	\$187,264.00
Totals	- - - -	7,400	1,587	- - - -	\$482,448.00

The proposed addition to this information collection, plus the approved burden in the current inventory, will result in the total burden estimates shown below:

Current inventory responses = 117,400
 Current inventory burden hours = 19,958
 Current inventory burden hour costs = \$5,707,988

Impact on responses due to the proposed addition = increase of 7,400
 Impact on burden hours due to the proposed addition = increase of 1,587
 Impact on burden hour costs due to the proposed addition = increase of \$482,448

Total estimated responses after the proposed addition = 124,800
 Total estimated burden hours after the proposed addition = 21,545
 Total estimated burden hour costs after the proposed addition = \$6,190,436

13. Total Annualized Cost Burden

There are no capital start-up costs, maintenance costs, or filing fees associated with this information collection. However, customers may incur postage costs when submitting a Post Publication Amendment or Response to Suspension Inquiry or Letter of Suspension to the USPTO by mail. The USPTO estimates that it may receive up to 3,700 mailed submissions per year for these items with an estimated postage cost of 41 cents per response. Therefore, this collection has an annual (non-hour) cost of approximately \$1,517 per year in the form of postage costs.

Currently approved annual (non-hour) costs = \$0
 Impact due to the proposed addition = increase of \$1,517
 Total estimated annual (non-hour) costs after the proposed addition = \$1,517

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-12, step 5 employee approximately 12 minutes (0.20 hours) to process a Post Publication Amendment submitted via TEAS and 14 minutes (0.23 hours) to process a paper submission. The hourly rate for a GS-12, step 5 is currently \$36.26. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the hourly rate for processing these items is \$47.14 (\$36.26 + \$10.88).

The USPTO estimates that it takes a GS-7, step 5 employee approximately 6 minutes (0.10 hours) to process a Response to Suspension Inquiry or Letter of Suspension submitted via TEAS and 8 minutes (0.13 hours) to process a paper submission. The hourly rate for a GS-7, step 5 is currently \$20.44. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the hourly rate for processing these items is \$26.57 (\$20.44 + \$6.13).

Table 4 calculates the processing hours and costs of this information collection to the Federal Government:

Table 4: Burden Hour/Burden Cost to the Federal Government for Electronic Response to Office Action and Preliminary Amendment Forms

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Post Publication Amendment (TEAS)	0.20	900	180	\$47.14	\$8,485.00
Post Publication Amendment (paper)	0.23	900	207	\$47.14	\$9,758.00
Response to Suspension Inquiry or Letter of Suspension (TEAS)	0.10	2,800	280	\$26.57	\$7,440.00
Response to Suspension Inquiry or Letter of Suspension (paper)	0.13	2,800	364	\$26.57	\$9,671.00
Totals	- - - - -	7,400	1,031	- - - - -	\$35,354.00

Current government cost burden = \$224,173
 Impact due to the proposed addition = increase of \$35,354
 Total estimated government cost burden after the proposed addition = \$259,527

15. Reason for Change in Burden

This information collection is currently approved by OMB with a total inventory of 117,400 responses and 19,958 burden hours per year. Due to the proposed addition of the Post Publication Amendment (PTO-1771) and the Response to Suspension Inquiry

or Letter of Suspension (PTO-1822), the USPTO estimates that the annual responses will be 124,800 and the annual burden hours will be 21,545, which is an increase of 7,400 responses and 1,587 burden hours from the currently approved burden for this collection. This burden increase is due to a program change resulting from the addition of these new forms. There is no change for the remaining items in this collection. **Therefore, this information collection would have a total burden increase of 1,587 hours due to program changes.**

This collection is currently approved with an estimated 19,958 burden hours and a respondent cost burden of \$5,707,988. The proposed additions to this collection would increase the respondent cost burden by \$482,448, up to \$6,190,436, due to the increase of 1,587 burden hours from the new forms and the increase in the estimated hourly rate for attorneys from \$286 to \$304.

Currently, there are no annualized (non-hour) costs attributed to this collection. The proposed addition includes \$1,517 in postage costs due to the option of mailing paper submissions to the USPTO. **Therefore, this collection has \$1,517 in annual (non-hour) cost burden as a program change.**

Changes from the Burden Reported in the 60-Day and 30-Day Notices

The USPTO previously submitted a proposed rulemaking to OMB entitled “Changes in the Requirements for Filing Requests for Reconsideration of Final Office Actions in Trademark Cases” (RIN 0651-AC05), and the associated information collection request was pre-approved by OMB on June 25, 2007. The 60-Day and 30-Day *Federal Register* Notices for the present proposed addition included the burden from that rulemaking in their summary burden calculations. However, as of the present submission, the burden associated with that rulemaking has not officially been added to the USPTO’s inventory for 0651-0050 because the final rulemaking has not yet been issued.

Therefore, the total burden reported in this supporting statement has been revised based on the current burden inventory for this information collection and the burden represented by the proposed addition. The burden from the pre-approved proposed rulemaking has been omitted because it is not yet reflected in the USPTO’s inventory. This revision does not affect the net change in burden from the proposed addition that is covered in the present submission.

16. Project Schedule

The USPTO does not intend to publish this information for statistical use.

17. Display of Expiration Date of OMB Approval

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

18. Exception to the Certificate Statement

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

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.

REFERENCES

- A. USPTO Information Quality Guidelines
- B. Form PTO-1771 Post Publication Amendment (TEAS)
- C. Form PTO-1822 Response to Suspension Inquiry or Letter of Suspension (TEAS)
- D. USPTO Web Privacy Policy
- E. 60-Day Notice published in the *Federal Register* on September 20, 2007 (72 Fed. Reg. 53753)