

SUPPORTING STATEMENT
United States Patent and Trademark Office
Native American Tribal Insignia Database
OMB CONTROL NUMBER 0651-0048

A. JUSTIFICATION

1. Necessity of Information Collection

The Trademark Law Treaty Implementation Act (Pub. L. 105-330, § 302, 112 Stat. 3071 (1998)) required the United States Patent and Trademark Office (USPTO) to study issues surrounding the protection of the official insignia of federally- and state-recognized Native American tribes under trademark law. The USPTO conducted the study and presented a report to the House and Senate Judiciary Committees on November 30, 1999.

One of the recommendations made in the report was that the USPTO create and maintain an accurate and comprehensive database containing the official insignia of all federally- and state-recognized Native American tribes. In accordance with this recommendation, the Senate Committee on Appropriations directed the USPTO to create this database. The USPTO published the final procedures for establishing and maintaining the tribal insignia database in the *Federal Register* on August 24, 2001 (66 Fed. Reg. 44603).

The USPTO database of official tribal insignias assists trademark attorneys in their examination of applications for trademark registration. Additionally, the database provides evidence of what a federally- or state-recognized Native American tribe considers to be its official insignia. The database serves as a reference for examining attorneys when determining the registrability of a mark that may falsely suggest a connection to the official insignia of a Native American tribe. The database is also available to the public on the USPTO web site.

Tribes are not required to request that their official insignia be included in the database. The entry of an official insignia into the database does not confer any rights to the tribe that submitted the insignia, and entry is not the legal equivalent of registering the insignia as a trademark under 15 U.S.C. § 1051 *et seq.* The inclusion of an official tribal insignia in the database does not create any legal presumption of validity or priority, does not carry any of the benefits of federal trademark registration, and is not a determination as to whether a particular insignia would be refused registration as a trademark pursuant to 15 U.S.C. § 1051 *et seq.*

Requests from federally-recognized tribes to enter an official insignia into the database must be submitted in writing and include: (1) a depiction of the insignia, including the name of the tribe and the address for correspondence; (2) a copy of the tribal resolution adopting the insignia in question as the official insignia of the tribe; and (3) a statement, signed by an official with authority to bind the tribe, confirming that the insignia included with the request is identical to the official insignia adopted by the tribal resolution.

Requests from state-recognized tribes must also be in writing and include each of the three items described above that are submitted by federally-recognized tribes. Additionally, requests from state-recognized tribes must include either: (a) a document issued by a state official that evidences the state's determination that the entity is a Native American tribe; or (b) a citation to a state statute designating the entity as a Native American tribe.

The USPTO enters insignia that have been properly submitted by federally- or state-recognized Native American tribes into the database and does not investigate whether the insignia is actually the official insignia of the tribe making the request.

This collection includes the information needed by the USPTO to enter an official insignia for a federally- or state-recognized Native American tribe into a database of such insignia. No forms are associated with this collection.

2. Needs and Uses

The database of official insignia of Native American tribes is included within the USPTO's database of material that is not registered but is searched to determine the registrability of marks. Inclusion of official insignia in this database will ensure that an examining attorney will consider these insignia before making a final determination of the registrability of a mark that may be similar. The insignia database is available to the public on the USPTO web site.

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 1 outlines how this collection of information for the tribal insignia database is used by the public and the USPTO:

Table 1: Needs and Uses of Information Collected for the Native American Tribal Insignia Database

Information and Function	Form #	Needs and Uses
<p>Request to Record an Official Native American Tribal Insignia of a Federally-Recognized Tribe, including:</p> <ul style="list-style-type: none"> • Depiction of the insignia. • Copy of the tribal resolution adopting the insignia as the official insignia of the tribe. • Statement confirming that the insignia is identical to the official insignia adopted by tribal resolution. 	<p>No Form Associated</p>	<ul style="list-style-type: none"> • Used by the tribal government to request entry of their official insignia into the USPTO database of official tribal insignias. • Used by the USPTO to determine whether a trademark for which registration is sought may falsely suggest a connection to an official insignia of a Native American tribe. • Used by the USPTO as evidence of what a Native American tribe considers to be its official insignia and its official address for correspondence. • Used by the USPTO to maintain a public search database.
<p>Request to Record an Official Native American Tribal Insignia of a State-Recognized Tribe, including:</p> <ul style="list-style-type: none"> • Depiction of the insignia. • Copy of the tribal resolution adopting the insignia as the official insignia of the tribe. • Statement confirming that the insignia is identical to the official insignia adopted by tribal resolution. • Document issued by a state official that evidences the state's determination that the entity is a Native American tribe or a citation to a state statute that designates the entity as a Native American tribe. 	<p>No Form Associated</p>	<ul style="list-style-type: none"> • Used by the tribal government to request entry of their official insignia into the USPTO database of official tribal insignias. • Used by the USPTO to determine whether a trademark for which registration is sought may falsely suggest a connection to an official insignia of a Native American tribe. • Used by the USPTO as evidence of what a Native American tribe considers to be its official insignia and its official address for correspondence. • Used by the USPTO to maintain a public search database.

3. Use of Information Technology

The USPTO accepts submissions for the Native American tribal insignia database by mail or facsimile. The USPTO does not use automated, electronic, mechanical, or other technologies to collect these submissions.

However, the USPTO does use information technology to process these submissions. When the USPTO receives a request to record an official insignia for a Native American tribe, the image of the insignia, the tribe's name, and the correspondence address are electronically captured by a system that allows for the creation of flat files of textual data while also supporting the display of stored images. The images and associated information are either scanned or manually keyed into the system.

The data stored in this database is used to populate the automated trademark search system (X-Search), into which the database of tribal insignia is entered. This system uses sophisticated search functions to search the text and image data.

The USPTO also utilizes information technology by posting the insignia database on its web site. However, the USPTO currently does not plan on collecting this information electronically. The expected number of submissions is relatively small, and each submission includes only a small number of data elements. Therefore, the USPTO

believes that the development of an electronic form to collect the insignia information is impractical and not cost effective at this time.

4. Efforts to Identify Duplication

This information is collected only when a Native American tribe submits an official insignia to be entered into the USPTO database. It is not collected elsewhere and does not result in a duplication of effort.

5. Minimizing Burden

This collection does impact small entities, since the respondents are tribal governments. However, the USPTO does not believe that this collection will have a significant economic impact on small entities. The same information is required from every respondent, and this information is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only when a Native American tribe submits its official insignia for inclusion in the database of Native American tribal insignia. These submissions could not be collected less frequently. If the collection of information were not conducted, the USPTO could not comply with the Congressional directive to create a database containing the official insignia of federally- and state-recognized Native American tribes.

7. Special Circumstances in the Conduct of Information Collection

There are no special circumstances associated with this information collection.

8. Consultations Outside the Agency

The 60-Day Notice was published in the *Federal Register* on October 12, 2007 (72 Fed. Reg. 58060). The comment period ended on December 11, 2007. Two comments were received from the public. Both comments indicated that the estimated time for the public to submit a request to record an official tribal insignia was not sufficient. The USPTO will look into the issue and will increase the time estimate if it finds that 10 minutes is inadequate for most filers. The USPTO estimate is based on the filer having a copy of the tribal insignia and the necessary authorizations when making the request to include the insignia in the database.

One of the comments indicated that the usefulness of the database to tribes would be greatly increased if the USPTO were obligated to provide written notice to the tribe in the event a trademark application was received seeking to use all or a portion of a particular tribal insignia included in the database. There is no provision in the Trademark Act to provide such notice and it would place an unreasonable administrative burden on the

USPTO to do so. Notice to potential opposers is provided by publication in the *Official Gazette*, an online publication available through the USPTO website. Furthermore, because the prosecution of a trademark application is an *ex parte* proceeding, the USPTO does not discuss the merits of any particular application with a third party. (See TMEP §1806.) Therefore, the requested notification to the tribes would violate the policy prohibiting such communication with parties other than the applicant.

The USPTO has previously received input from several groups regarding the establishment of this database, including Native American tribal governments, associations, corporations, universities, trademark holders, and private citizens. Before the creation of the database, the USPTO conducted a seven-month study to consider how to better protect the official insignia of Native American tribes under trademark law. The USPTO also published notices in the *Federal Register* requesting public comments and held public hearings.

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 has 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. The appointments 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 to Respondents

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

10. Assurance of Confidentiality

Confidentiality is not required in the processing of official insignias for the USPTO database. The tribal insignia database is open to public inspection.

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 Burden

Table 2 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 approximately 15 responses will be received annually, 10 from federally-recognized tribes and 5 from state-recognized tribes.

- **Burden Hour Calculation Factors**

The USPTO estimates that a federally-recognized Native American tribe will require an average of 10 minutes (0.17 hours) to complete a request to record an official insignia and that a state-recognized Native American tribe will require an average of 12 minutes (0.20 hours) to complete a request to record an official insignia. These estimates include the time to prepare the appropriate documents and submit the completed request.

- **Cost Burden Calculation Factors**

The USPTO expects that the information in this collection will be prepared by both paraprofessionals and clerical staff. The estimated rate of \$53 per hour used in this submission is an average of the paraprofessional rate of \$90 per hour and the clerical rate of \$15 per hour.

Table 2: Burden Hour/Burden Cost to Respondents for the Native American Tribal Insignia Database

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
Request to Record an Official Insignia of a Federally-Recognized Tribe	0.17	10	2	\$53.00	\$106.00
Request to Record an Official Insignia of a State-Recognized Tribe	0.20	5	1	\$53.00	\$53.00
Totals	.....	15	3	.....	\$159.00

13. Total Annualized Cost Burden

There are no capital start-up, maintenance, or recordkeeping costs associated with this information collection. There are also no filing fees for submitting a tribal insignia for recording. However, this collection does have annual (non-hour) costs in the form of postage costs.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a submission mailed through the U.S. Postal Service will be 92 cents and that up to 15 submissions will be mailed to the USPTO per year. The total estimated postage cost for this collection is approximately \$14 per year.

The total annual (non-hour) cost burden for this collection in the form of postage costs is \$14 per year.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-12, step 2 employee approximately 10 minutes (0.17 hours) to process a request to record an official insignia of a federally- or state-recognized Native American tribe in the USPTO database. The hourly rate for a GS-12, step 2 is currently \$33.06. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the hourly rate for a GS-12, step 2 is \$33.06 + \$9.92, for a rate of \$42.98.

Table 3 calculates the burden hours and costs of this information collection to the Federal Government:

Table 3: Burden Hour/Cost to the Federal Government for the Native American Tribal Insignia Database

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
Request to Record an Official Insignia of a Federally-Recognized Tribe	0.17	10	2	\$42.98	\$86.00
Request to Record an Official Insignia of a State-Recognized Tribe	0.17	5	1	\$42.98	\$43.00
Totals	.....	15	3	.....	\$129.00

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

This information collection was previously approved by OMB in January 2005 with a total of 15 responses and 3 burden hours per year. For this renewal, the USPTO is maintaining these burden estimates for annual responses and hours.

The total annual (non-hour) cost burden for this renewal of \$14 is an increase of \$7 from the currently approved total of \$7 in annual costs for this collection. This increase is due to administrative adjustments.

Change in Respondent Cost Burden

When this collection was previously approved in January 2005, the estimated rate for the public respondents to this collection was \$48 per hour, which was an average of an estimated paraprofessional rate of \$81 per hour and an estimated clerical rate of \$15 per hour based on the level of effort being evenly split between paraprofessionals and clerical

staff. For this renewal, the USPTO still expects the level of effort to be evenly split between paraprofessionals and clerical staff, but the updated paraprofessional rate of \$90 per hour and the clerical rate of \$15 per hour yield an updated average rate of \$53 per hour for respondents, resulting in an increase in respondent cost burden from \$144 to \$159.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that there will be no change in the total responses and burden hours 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 increase by \$7, from \$7 to \$14 per year. This increase is due to revising the estimated postage costs for submitting the information in this collection to the USPTO by mail. **Therefore, this collection has an increase in annual (non-hour) cost burden of \$7 due to an administrative adjustment.**

[Note: Due to the limitations of the legacy system that preceded ROCIS, annual cost burdens were previously listed in the inventory as rounded to the nearest \$1,000. Therefore, the previously approved amount of \$7 in annual costs for this collection was listed as \$0 in the current inventory, and this rounded figure was carried over when the legacy data was migrated to ROCIS. Consequently, since the previously approved annual costs are listed in the inventory as \$0, the estimated increase to \$14 for this submission results in an apparent increase of \$14 as displayed in ROCIS.]

16. Project Schedule

The USPTO does not plan to publish this information for statistical use. The tribal insignia database is available to the public on the USPTO web site.

17. Display of Expiration Date of OMB Approval

There are no forms associated with this collection. Therefore, the display of 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.

REFERENCES

- A. Notice entitled “Establishment of a Database Containing the Official Insignia of Federally and State Recognized Native American Tribes” published in the *Federal Register* on August 24, 2001 (66 Fed. Reg. 44603)
- B. The USPTO Information Quality Guidelines
- C. 60-Day Notice published in the *Federal Register* on October 12, 2007 (72 Fed. Reg. 58060)
- D. Comments received from the public on the 60-Day Notice