

SUPPORTING STATEMENT
United States Patent and Trademark Office
Proposed Addition to
Post Registration (Trademark Processing)
OMB CONTROL NUMBER 0651-0055

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).

Such individuals and businesses may also submit various communications to the USPTO, including requests to correct or amend their registrations. Registered marks remain on the register for ten years and can be renewed, but will be canceled unless the owner files with the USPTO a declaration attesting to the continued use (or excusable non-use) of the mark in commerce within specific deadlines. Applicants may also surrender a registration and in limited situations petition the Director to reinstate a registration that has been cancelled or expired.

The rules implementing the Trademark Act are set forth in 37 CFR Part 2. These rules require that each certificate of registration include a reproduction of the mark, the particular goods and/or services for which it is registered, ownership information, dates of use, the number and date of the registration, and certain other information. The USPTO provides similar information concerning pending applications. The information set forth in the register, and information provided in pending applications, can be accessed through the USPTO web site by individuals and businesses to determine the availability of a mark. By searching the USPTO's database, parties may lessen the likelihood of initiating use of a mark that was previously adopted by another party. Additionally, the trademark registration process may lessen litigation between parties.

The forms in this information 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 one form to this collection for Section 7 Requests (PTO-1597). Registrants may use a Section 7 Request to request a correction or amendment to the information appearing on the certificate of registration. Requests for changes that would result in a material alteration of the registration are not permitted under Section 7. Registrants may submit the proposed new form to the USPTO electronically through TEAS or submit the required information for the Section 7 Request to the USPTO on paper. The USPTO does not provide official forms for 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 Section 7 Requests

Requirement	Statute	Rule
Section 7 Request	15 U.S.C. § 1057	37 CFR Part 2

2. Needs and Uses

The USPTO uses the information described in this collection to process post registration submissions. 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 also can be accessed at the USPTO 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 set forth in 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 Section 7 Requests

Form and Function	Form #	Needs and Uses
Section 7 Request	PTO-1597	<ul style="list-style-type: none"> Used by the public to request a correction or amendment to the information on a certificate of registration. Used by the USPTO to review requests for corrections or amendments and determine whether the change is acceptable or would result in a material alteration of the registration.

3. Use of Information Technology

The USPTO currently offers four IT systems in support of this collection that are accessible through the online Trademark Electronic Business Center (TEBC). The TEBC provides descriptions of the systems, and the systems feature online “help” programs. Thus, the USPTO offers the public a single source for a variety of IT systems useful both for making submissions to the USPTO and for tracking the status of these submissions.

The USPTO provides online electronic forms, including that for filing a Section 7 Request, through the web-accessible Trademark Electronic Application System (TEAS). Once completed, TEAS forms are transmitted to the USPTO 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 or registration 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 e-mailed to the user.

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 e-mailed to a second party who can then electronically sign the application. The forms can also be signed 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 e-mail their own forms to the USPTO. Additionally, filers who submit drawings of marks that are not “standard character” drawings must attach digitized images of these drawings to their submissions.

The USPTO maintains an online image database of the electronic trademark application or registration file wrapper entitled the Trademark Document Retrieval (TDR) system. The USPTO also maintains an online system called 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.

The USPTO provides a web-based record of registered marks, and marks for which applications for registration have been submitted, called the Trademark Electronic Search System (TESS). 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 for the user to choose from four different search tools, is updated daily, and is easy to use.

4. Efforts to Identify Duplication

This information is collected only when an applicant submits a Section 7 Request. 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, since the information is collected only when voluntarily submitted by the public. If the information were not collected, the public would not be able to submit Section 7 Requests for a correction or amendment to the information appearing on the certificate of registration.

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 November 1, 2007 (72 Fed. Reg. 61868). The public comment period ended on December 31, 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. 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 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

Trademark applications and registrations are open to public inspection. Confidentiality is not required in the processing of trademark applications.

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 e-mails. 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 anticipated 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 133,587 responses per year for this collection, including 3,800 responses per year for Section 7 Requests.
- Burden Hour Calculation Factors**
The USPTO estimates that the public will require approximately 20 to 23 minutes (0.33 to 0.38 hours) to supply the information required for a Section 7 Request, depending upon the amount and type of information requested in a particular case.
- Cost Burden Calculation Factors**
The professional rate of \$304 per hour used in this submission to calculate 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. This is a full-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* registrants.

Table 3: Burden Hour/Burden Cost to Respondents for Section 7 Requests

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Section 7 Request (TEAS)	0.33	1,900	627	\$304.00	\$190,608.00
Section 7 Request (paper)	0.38	1,900	722	\$304.00	\$219,488.00
Total	- - - -	3,800	1,349	- - - -	\$410,096.00

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 = 129,787

Current inventory burden hours = 19,748

Current inventory burden hour costs (at current \$304 hourly rate) = \$6,003,392

Impact on responses due to the proposed addition = increase of 3,800

Impact on burden hours due to the proposed addition = increase of 1,349

Impact on burden hour costs due to the proposed addition = increase of \$410,096

Total estimated responses after the proposed addition = 133,587

Total estimated burden hours after the proposed addition = 21,097

Total estimated burden hour costs after the proposed addition = \$6,413,488

13. Total Annualized Cost Burden

There are no capital start-up or maintenance costs associated with this information collection. However, there are additional filing fees and postage costs associated with the Section 7 Requests being added to this collection.

There is a \$100 filing fee for Section 7 Requests unless the correction is due to a USPTO error, in which case there is no fee. The USPTO estimates that approximately 2,533 of the 3,800 expected Section 7 Requests would require the fee, for a total of \$253,300 in filing fees being added to this collection due to these requests.

Customers may incur postage costs when submitting a Section 7 Request to the USPTO by mail. The USPTO estimates that it may receive up to 1,900 mailed submissions per year with an estimated postage cost of 41 cents per response, for a total of \$779 in postage costs being added to this collection due to these requests.

The Section 7 Requests being added to this collection have an annual (non-hour) cost of \$254,079 in the form of filing fees and postage costs. When added to the previously approved burden for this collection, the total annual (non-hour) costs for this collection would be \$38,432,104.

Currently approved annual (non-hour) costs = \$38,178,025

Impact due to the proposed addition = increase of \$254,079

Total estimated annual (non-hour) costs after the proposed addition = \$38,432,104

14. Annual Cost to the Federal Government

The USPTO estimates that it takes the combined efforts of a GS-9, step 5 and a GS-11, step 5 employee approximately 30 minutes (0.50 hours) to process a Section 7 Request submitted online via TEAS and 40 minutes (0.67 hours) to process a paper submission. The hourly rate for a GS-9, step 5 is currently \$26.13 and for a GS-11, step 5 is currently \$31.61, for an average hourly rate of \$28.87. When 30% is added to account

for a fully-loaded hourly rate (benefits and overhead), the estimated hourly rate for processing these items is \$37.53 (\$28.87 + \$8.66).

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 Section 7 Requests

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Section 7 Request (TEAS)	0.50	1,900	950	\$37.53	\$35,654.00
Section 7 Request (paper)	0.67	1,900	1,273	\$37.53	\$47,776.00
Total	- - - -	3,800	2,223	- - - -	\$83,430.00

Current government cost burden = \$237,984

Impact due to the proposed addition = increase of \$83,430

Total estimated government cost burden after the proposed addition = \$321,414

15. Reason for Change in Burden

This information collection is currently approved by OMB with a total of 129,787 responses and 19,748 burden hours per year. Due to the proposed addition of the Section 7 Request (PTO-1597), the USPTO estimates that the annual responses will be 133,587 and the annual burden hours will be 21,097, which is an increase of 3,800 responses and 1,349 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 1,349 hours due to program changes.**

This collection is currently approved with an estimated 19,748 burden hours, which results in a respondent cost burden of \$6,003,392 when calculated at the revised hourly rate for attorneys of \$304. The proposed additions to this collection would increase the respondent cost burden by \$410,096, up to \$6,413,488, due to the increase of 1,349 burden hours from the new forms and the increase in the estimated hourly rate for attorneys from \$286 to \$304.

For this proposed addition, the USPTO estimates that the total annual (non-hour) costs will increase by \$254,079, from \$38,178,025 to \$38,432,104 per year. This increase is due to the addition of filing fees and postage costs for Section 7 Requests. **Therefore, this collection has an increase in annual (non-hour) cost burden of \$254,079 as a program change.**

[Note: The previously approved estimate of \$38,178,025 in annual costs for this collection is listed as \$38,178,000 in the current inventory. The \$25 difference is due to rounding the estimate to the nearest thousand dollars in order to accommodate the

legacy inventory system. This rounded figure was carried over when the legacy data was migrated to the current inventory system. Consequently, the estimated increase of \$254,079 in annual cost burden for this submission results in a new total annual cost burden of \$38,432,079, as explained above.]

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. The USPTO Information Quality Guidelines
- B. Section 7 Request (Form PTO-1597)
- C. 60-Day Notice published in the *Federal Register* on November 1, 2007 (72 Fed. Reg. 61868)
- D. The USPTO Web Privacy Policy