

**SF-83 SUPPORTING STATEMENT
 UNITED STATES PATENT AND TRADEMARK OFFICE
 Patent Petitions Corresponding to the Fee under 37 CFR 1.17(f)
 OMB Control Number 0651-00xx**

A. JUSTIFICATION

1. Necessity of Information Collection

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. § 131 et seq. to examine an application for patent and, when appropriate, issue a patent. Also, the USPTO is required to publish patent applications, with certain exceptions, promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under Title 35, United States Code (“eighteen-month publication”). Certain situations may arise that require additional information to be supplied in order for the USPTO to further process the patent or application. The USPTO administers the statutes through various sections of the rules of practice in 37 CFR Part 1.

The USPTO is requesting the creation of a new collection which will transfer the two existing items below from the 0651-0031 inventory into a collection of information unto itself for Petitions Corresponding to the Fee under 37 CFR 1.17(f).

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

Table 1: Information Requirements for Patent Petitions

Requirement	Statute	Rule
<u>Petitions corresponding to the fee under 37 CFR 1.17(f) include:</u> Petition to Accord a Filing Date under 1.57(a) Petition to Accord a Filing Date under 1.53(e) Petition for Decision on a Question Not Specifically Provided For Petition to Suspend the Rules	35 U.S.C. §§ 131 and 132	37 CFR 1.17(f), 1.53(e), 1.57(a), 1.182 and 1.183
Petition Fee under 37 CFR 1.17(f), (g) and (h) Transmittal	35 U.S.C. § 2(b)(2)	37 CFR 1.17(f)

2. Needs and Uses

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 outlines how this information is used by the public and by the USPTO:

Table 2: Needs and Uses for Patent Petitions

Form and Function	Form #	Needs and Uses
<u>Petitions (corresponding to the fee under) 37 CFR 1.17(f) include:</u> Petition to Accord a Filing Date under 1.57(a) Petition to Accord a Filing Date under 1.53(e) Petition for Decision on a Question Not Specifically Provided For Petition to Suspend the Rules	No Form	<ul style="list-style-type: none"> • Used by the applicant to request agreement to a filing date. • Used by the applicant to request a decision on a question not specifically provided for. • Used by the applicant to ask for suspension of the rules. • Used by the USPTO to agree to a filing date. • Used by the USPTO to grant a decision on a question not specifically provided for. • Used by the USPTO to agree to a suspension of the rules.
Petition Fee under 37 CFR 1.17(f), (g) and (h) Transmittal (Ref. A)	PTO/SB/17P	<ul style="list-style-type: none"> • Used by the applicant to identify the proper fee, and thus reduce the potential for any additional work due to mistakes in payment. • Used by the USPTO to process the appropriate fees.

3. Use of Information Technology

Generally, the USPTO does not use automated, electronic, mechanical, or other technologies to collect information for this collection. The USPTO allows applicants to use an electronic signature, which is consistent with international standards for electronic signatures, for patent application and reexamination proceeding documents created with a word processor as well as the fillable forms that can be accessed through the USPTO website.

The USPTO’s new web-based electronic filing system, EFS-Web, became available to the public on March 17, 2006. EFS-Web allows customers to file applications and associated documents through their standard web browser and does not require any significant client-side components. EFS-Web permits most patent applications and other patent-related documents to be submitted in portable document file (PDF) format. Accordingly, EFS-Web enables users to streamline processing and filing of patent correspondence, and to better integrate electronic filing into their current computer systems. EFS-Web offers many potential benefits to filers, including form validation to ensure that all required information has been included, immediate notification that a submission has been received, automated processing of requests, and avoidance of postage or other paper delivery costs.

Correspondence officially submitted via EFS-Web is accorded a “receipt date,” which is the date the correspondence was received by the USPTO. After a successful submission, an acknowledgement receipt contains the receipt date, the time the correspondence was received at the USPTO, and a full listing of the correspondence submitted.

The USPTO provides restricted Internet access to patent application status for applicants and their designated representatives through the Patent Application Information Retrieval (PAIR) system, which is available at the USPTO website. PAIR provides USPTO customers with secure and immediate access to up-to-date application status and history information by the use of digital certificates, which maintain the confidentiality of the information transmitted electronically over the Internet. In addition to being sent to the customer, acknowledgement receipts for EFS-Web submissions will also be available in PAIR. The USPTO does not intend to disseminate any confidential application information to the general public electronically through PAIR or any other means. However, the general public may use PAIR to access non-private information regarding published applications and granted patents.

4. Efforts to Identify Duplication

This information is collected during the pendency of a patent application. It does not duplicate information or collection of data found elsewhere.

5. Minimizing the Burden to Small Entities

No significant impact is placed on small entities. Small entities simply need to identify themselves as such to obtain the benefits of small entity status.

Pursuant to 35 U.S.C. § 41(h)(1), the USPTO provides a fifty percent (50%) reduction in the fees charged under 35 U.S.C. § 41(a) and (b) for small entities. The USPTO's regulations concerning the payment of reduced patent fees by small entities are at 37 CFR 1.27 and 1.28, and reduced patent fees for small entity applicants are shown in 37 CFR 1.16, 1.17, 1.18 and 1.20.

6. Consequences of Less Frequent Collection

This information is collected only as required to process a patent application or enforceable patent, and is not collected elsewhere. Therefore, this collection of information could not be conducted less frequently. If this information were not collected, the USPTO would not be able to comply with the patent statute 35 U.S.C. § 131.

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 Federal Register Notice was published on May 30, 2006 (71 Fed Reg. 103). The comment period ended on July 31, 2006. 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.

10. Assurance of Confidentiality

Confidentiality of patent applications is governed by 35 U.S.C. § 122 and 37 CFR 1.14. Upon publication of an application or issuance of an application as a patent, the entire file contents of the application are available to the public (subject to the provisions for providing only a redacted copy of the filed contents). The disclosure of the invention in the application is the quid pro quo for the property right conferred by the patent grant, and the very means by which the patent statute achieves its constitutional objective of “promot[ing] the progress of science and useful arts.” The prosecution history contained in the application file is critical to determining the scope of the property right conferred by a patent grant.

To further define the boundaries of the confidentiality of patent applications in light of the eighteen-month publication of patent applications introduced under the American Inventors Protection Act of 1999, the USPTO amended 37 CFR 1.14 to maintain the confidentiality only of applications that have not been published as a U.S. patent application publication. 37 CFR 1.14 now provides that the public can obtain status information about the application, such as whether the application is pending, abandoned, or patented, whether the application has been published under 35 U.S.C. § 122(b), and the application “numerical identifier.” This information can be supplied to the public under certain conditions. The public can also receive copies of an application-as-filed and the file wrapper, as long as it meets certain criteria.

The confidentiality, security, integrity, authenticity, and non-repudiation of patent applications submitted electronically through EFS-Web is maintained using PKI technology and digital certificates for registered users. Applications electronically filed by non-registered users are protected using TLS or SSL protocols. The ePAVE submission software encrypts the electronic patent application package. The authorized filer electronically signs the application and then it is “digitally” signed using the digital certificates. Because ePAVE is also cryptographic software, it is subject to export and import restrictions of the United States. The license agreement informs those installing and using this software that they cannot export or import this software, nor can they be located in, under the control of, or a national or resident of countries that are under export or import restrictions.

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 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 20,600 responses to this information collection annually.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public an average of 5 minutes to complete the petition fee transmittal and 4 hours to complete the petitions (corresponding to the fee) under 37 CFR 1.17(f), depending on the nature of the information. This includes time to gather the necessary information, create the documents, and mail the completed request.

- **Cost Burden Calculation Factors**

The USPTO believes that attorneys will supply the information requested for this information collection. 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. This report summarized the results of a survey with data on hourly billing rates. These are fully loaded hourly rates.

Table 3: Burden Hour/Burden Cost to Respondents for Patent Petitions

Item	Hours (a)	Response s (yr) (b)	Burden (hrs/yr) (a) x (b) (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) (e)
<u>Petitions (corresponding to the fee) under 37 CFR 1.17(f) include:</u> Petition to Accord a Filing Date under 1.57(a) Petition to Accord a Filing Date under 1.53(e) Petition for Decision on a Question Not Specifically Provided For Petition to Suspend the Rules	4.00	3,300	13,200	\$304.00	\$4,012,800.00
Petition Fee Under 37 CFR 1.17(f), (g) and (h) Transmittal	0.08	17,300	1,384	\$304.00	\$420,736.00
Total	- - - - -	20,600	14,584	- - - - -	\$4,433,536.00

13. Total Annualized Cost Burden

There are no maintenance or capital start-up costs associated with this submission. There are, however, non-hour costs due to filing fees and mailing costs associated with this collection.

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

Table 4: Filing Fees – Non-hour cost burden for Patent Petitions

Item	Responses (a)	Filing Fees (b)	Total Cost (a) x (b) (c)
<u>Petitions (corresponding to the fee) under 37 CFR 1.17(f) include:</u> Petition to Accord a Filing Date under 1.57(a) Petition to Accord a Filing Date under 1.53(e) Petition for Decision on a Question Not Specifically Provided For Petition to Suspend the Rules	3,300	\$400.00	\$1,320,000.00
Processing Fee under 37 CFR 1.17(f), (g) and (h) Transmittal	17,300	None	\$0.00
Totals	20,600	- - - - -	\$1,320,000.00

There are mailing costs in the way of postage fees that will be transferred from the 0651-0031 collection into this new collection.

The public may submit the petitions in this collection to the USPTO by mail through the United States Postal Service. All correspondence may include a certificate of mailing for each piece of correspondence enclosed, stating the date of deposit or transmission to the USPTO in order to receive credit for timely filing.

The USPTO estimates that the average first-class postage for a mailed submission may amount to 58 cents. Postage for the certificates of mailing themselves are not calculated into this estimate as they are included with the individual pieces of correspondence that are being deposited with the United States Postal Service. The USPTO estimates that it will receive 20,600 responses per year subject to mailing costs, for a cost of \$11,948 annually in postage fees.

Therefore, the USPTO estimates that that the total annualized non-hour cost burden for this collection from filing fees (\$1,320,000), and mailing costs (\$11,948) amounts to \$1,331,948.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-5, step 1, 5 minutes (0.08 hours) to process the petition fee transmittals and 18 minutes (0.30 hours) to process the petitions (corresponding to the fee) under 37 CFR 1.17(f). The hourly rate for a GS-5, step 1, is currently \$14.56 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 and overhead), the rate per hour for a GS-5, step 1, is \$18.43 (\$14.56 + \$4.37).

Table 6 calculates the processing hours and costs of this information collection to the Federal Government:

Table 6: Burden Hour/Burden Cost to the Federal Government for Patent Petitions

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (a) x (b) (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) (e)
<u>Petitions (corresponding to the fee under) 37 CFR 1.17(f) include:</u> Petition to Accord a Filing Date under 1.57(a) Petition to Accord a Filing Date under 1.53(e) Petition for Decision on a Question Not Specifically Provided For Petition to Suspend the Rules	0.30	3,300	990	\$18.43	\$18,246.00
Petition Fee under 37 CFR 1.17(f), (g) and (h) Transmittal	0.08	17,300	1,384	\$18.43	\$25,507.00
Total	- - - - -	20,600	2,374	- - - - -	\$43,753.00

15. Reason for Change in Burden

This request does not increase or decrease the estimates of the current inventory, since it is a request simply to move two items from 0651-0031 into a new collection.

The creation of this new collection will reduce the estimates in 0651-0031 by transferring them into 0651-00xx Patent Petitions Corresponding to the Fee under 37 CFR 1.17(f).

Table 7 shows the burden changes associated with this action:

Table 7: Burden Changes Associated with Patent Petitions

Collection	Type of Burden	Change to Collection	Change to Overall 0651 Inventory
0651-0031	Annual Responses	Decrease of 20,600 responses	0
0651-00xx	Annual Responses	20,600 responses transferred	0
0651-0031	Annual Burden Hours	Decrease of 14,584 hours	0
0651-00xx	Annual Burden Hours	14,584 hours transferred	0
0651-0031	Annual Non-Hour Cost Burden	Decrease of \$1,331,948	0
0651-00xx	Annual Non-Hour Cost Burden	\$1,331,948 transferred	0

16. Project Schedule

There is no plan to publish this information for statistical use. No special publication of the items discussed in this justification statement is planned. However, plant and utility patents granted are published weekly in the *Official Gazette of the United States Patent and Trademark Office*.

17. Display of Expiration Date of OMB Approval

The form in this information collection will display the OMB Control Number and expiration date.

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. PTO/SB/17P Petition Fee under 37 CFR 1.17(f), (g) and (h) Transmittal