

**SUPPORTING STATEMENT**  
**United States Patent and Trademark Office**  
**Rules for Patent Maintenance Fees**  
**OMB CONTROL NUMBER 0651-0016**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

Under 35 U.S.C. § 41 and 37 CFR 1.20(e)-(i) and 1.362-1.378, the United States Patent and Trademark Office (USPTO) charges fees for maintaining in force all utility patents based on applications filed on or after December 12, 1980. Payment of these maintenance fees is due at 3 1/2, 7 1/2, and 11 1/2 years after the date the patent was granted. If the USPTO does not receive payment of the appropriate maintenance fee and any applicable surcharge within a grace period of six months following each of the above due dates (at 4, 8, or 12 years after the date of grant), the patent will expire at that time. After a patent expires, it is no longer enforceable. Maintenance fees are not required for design or plant patents, or for reissue patents if the patent being reissued did not require maintenance fees.

The USPTO must maintain accurate payment records in order to provide the public with information as to which patents have expired and which patents remain in force. The USPTO may adjust patent maintenance fees annually. Fee schedules are published in the *Federal Register*, the *Official Gazette of the United States Patent and Trademark Office*, and on the USPTO Web site.

Payments of maintenance fees that are submitted during the six-month grace period before patent expiration must include the appropriate surcharge as indicated by 37 CFR 1.20(h). Submissions of maintenance fee payments and surcharges must include the relevant patent number and the corresponding United States application number in order to identify the correct patent and ensure proper crediting of the fee being paid.

If the USPTO refuses to accept and record a maintenance fee payment that was submitted prior to the expiration of a patent, the patentee may petition the Director to accept and record the maintenance fee under 37 CFR 1.377. This petition must be accompanied by the fee indicated in 37 CFR 1.17(g), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

If a patent has expired due to nonpayment of a maintenance fee, the patentee may petition the Director to accept a delayed payment of the maintenance fee under 37 CFR 1.378. The Director may accept the payment of a maintenance fee after the expiration of the patent if the petitioner shows to the satisfaction of the Director that the delay in payment was unavoidable or unintentional. Petitions to accept unavoidably or unintentionally delayed payment must also be accompanied by the required maintenance fee and appropriate surcharge under 37 CFR 1.20(i). If the Director accepts the maintenance fee

payment upon petition, then the patent is reinstated. If the USPTO denies a petition to accept delayed payment of a maintenance fee in an expired patent, the patentee may petition the Director to reconsider that decision under 37 CFR 1.378(e). This petition must be accompanied by the fee indicated in 37 CFR 1.17(f), which may be refunded if it is determined that the refusal to accept the maintenance fee was due to an error by the USPTO.

The rules of practice (37 CFR 1.33(d) and 1.363) permit applicants, patentees, assignees, or their representatives of record to specify a “fee address” for correspondence related to maintenance fees that is separate from the correspondence address associated with a patent or application. A fee address must be an address that is associated with a USPTO customer number. Customer numbers may be requested by using the Request for Customer Number form (PTO/SB/125), which is covered under OMB Control Number 0651-0035 “Representative and Address Provisions.” Maintaining a correct and updated address is necessary so that fee-related correspondence from the USPTO will be properly received by the applicant, patentee, assignee, or authorized representative. If a separate fee address is not specified for a patent or application, the USPTO will direct fee-related correspondence to the correspondence address of record.

The USPTO offers forms to assist the public with providing the information covered by this collection, including the information necessary to submit a patent maintenance fee payment (PTO/SB/45), to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment in an expired patent (PTO/SB/65 and PTO/SB/66), and to designate or change a fee address (PTO/SB/47). No forms are provided for the petitions under 37 CFR 1.377 and 1.378(e).

Customers may submit maintenance fee payments and surcharges incurred during the six-month grace period before patent expiration by using the Maintenance Fee Transmittal Form or by paying online through the USPTO Web site. However, to pay a maintenance fee after patent expiration, the maintenance fee payment and the appropriate surcharge must be filed together with a petition to accept unavoidably or unintentionally delayed payment. The USPTO accepts online maintenance fee payments by credit card, electronic funds transfer (EFT), or deposit account through the USPTO Web site. Otherwise, non-electronic payments may be made by check, credit card, or USPTO deposit account.

Customers may submit the other forms and petitions in this collection electronically through EFS-Web, the USPTO’s online filing system. The USPTO also offers a special EFS-Web version of Form PTO/SB/66, which is used for the automatic processing and immediate rendering of a decision on a petition to accept an unintentionally delayed maintenance fee payment.

Table 1 provides the statutes and regulations authorizing the USPTO to collect the information discussed above:

**Table 1: Information Requirements for Patent Maintenance Fees**

Requirement	Statute	Rule
Maintenance Fee Payment	35 U.S.C. § 41(b)	37 CFR 1.20(e)-(h), 1.362, and 1.366
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))	35 U.S.C. § 41(c)	37 CFR 1.20(e)-(g) and (i)(1), 1.362, 1.366, 1.378(a), (b) and (d)
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))	35 U.S.C. § 41(c)	37 CFR 1.20(e)-(g) and (i)(2), 1.362, 1.366, 1.378(a), (c) and (d)
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	35 U.S.C. § 41(b)	37 CFR 1.377, 37 CFR 1.17(g)
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	35 U.S.C. § 41(c)	37 CFR 1.378(e), 37 CFR 1.17(f)
"Fee Address" Indication	35 U.S.C. § 41	37 CFR 1.33(d) and 1.363

## 2. Needs and Uses

This information collection is necessary so that patent owners can maintain a utility patent in force and to ensure that the USPTO can properly credit maintenance fee payments. The USPTO offers forms to assist the public with providing the information covered by this collection, including maintenance fee payments, petitions to accept delayed maintenance fee payments, and fee address changes.

The public uses the Maintenance Fee Transmittal Form (PTO/SB/45) to determine and pay the correct amount due for a maintenance fee transaction. PTO/SB/45 may be mailed or faxed to the USPTO, but PTO/SB/45 may not be submitted electronically via EFS-Web. Customers may submit maintenance fees and six-month grace period surcharges paid before patent expiration electronically over the Internet using the USPTO's Office of Finance Online Shopping Page (hereinafter, the "Electronic Maintenance Fee Form") provided through the USPTO Web site. To pay a maintenance fee after patent expiration, customers must submit the maintenance fee payment and the appropriate delayed payment surcharge together with a Petition to Accept Unavoidably Delayed Payment or a Petition to Accept Unintentionally Delayed Payment. A petition to accept delayed payment of a maintenance fee under the unintentional standard may be filed online; a petition to accept delayed payment of a maintenance fee under the unavoidable standard may not be filed online.

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 collection of information is used by the public and the USPTO:

**Table 2: Needs and Uses of Information Collected for Patent Maintenance Fees**

Form and Function	Form #	Needs and Uses
Maintenance Fee Transmittal Form	PTO/SB/45	<ul style="list-style-type: none"> <li>Used by the public to pay the maintenance fee and the surcharge in order to keep one or more patents in force.</li> <li>Used by the USPTO to record the payment of the maintenance fees in order to keep the patent(s) in force.</li> <li>Used by the USPTO to determine whether a maintenance fee has been paid in response to an inquiry from the public.</li> </ul>
Electronic Maintenance Fee Form	No Form Number	<ul style="list-style-type: none"> <li>Used by the public to pay the maintenance fee and the surcharge online in order to keep one or more patents in force.</li> <li>Used by the USPTO to record the payment of the maintenance fees in order to keep the patent(s) in force.</li> <li>Used by the USPTO to determine whether a maintenance fee has been paid in response to an inquiry from the public.</li> </ul>
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))	PTO/SB/65	<ul style="list-style-type: none"> <li>Used by the petitioner to request that the patent be reinstated and to show that the delay in timely payment of the maintenance fee was unavoidable.</li> <li>Used by the petitioner to verify all of the identifying information, such as the patent number, patent date, application number, and filing date.</li> <li>Used by the USPTO to determine whether the required elements for the petition have been submitted.</li> <li>Used by the USPTO to consider reinstatement of a patent that has expired due to unavoidably delayed payment of a maintenance fee.</li> </ul>
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))	PTO/SB/66	<ul style="list-style-type: none"> <li>Used by the petitioner to request that the patent be reinstated and to show that the delay in timely payment of the maintenance fee was unintentional.</li> <li>Used by the petitioner to verify all of the identifying information, such as the patent number, patent date, application number, and filing date.</li> <li>Used by the USPTO to determine whether the required elements for the petition have been submitted.</li> <li>Used by the USPTO to consider reinstatement of a patent that has expired due to unintentionally delayed payment of a maintenance fee.</li> </ul>
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) – EFS-Web	PTO/SB/66	<ul style="list-style-type: none"> <li>Used by the petitioner to request that the patent be reinstated and to show that the delay in timely payment of the maintenance fee was unintentional.</li> <li>Used by the petitioner to verify all of the identifying information, such as the patent number, patent date, application number, and filing date.</li> <li>Used by the USPTO to determine whether the required elements for the petition have been submitted.</li> <li>Used by the USPTO to consider reinstatement of a patent that has expired due to unintentionally delayed payment of a maintenance fee.</li> </ul>

Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	No Form Associated	<ul style="list-style-type: none"> <li>Used by the petitioner to request that the Director accept and record a maintenance fee that was filed prior to the expiration of the patent but was refused by the USPTO and to request a refund of the petition fee if the refusal was due to an error by the USPTO.</li> <li>Used by the USPTO to consider a request to review a decision refusing to accept and record payment of a maintenance fee prior to the expiration of the patent and to refund the petition fee if the refusal is determined to be an error by the USPTO.</li> </ul>
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	No Form Associated	<ul style="list-style-type: none"> <li>Used by the petitioner to request that the Director reconsider a decision to refuse a petition to accept and record an unavoidably or unintentionally delayed maintenance fee payment after expiration of the patent so that the expired patent can be reinstated.</li> <li>Used by the USPTO to consider a request to review a decision refusing to accept and record an unavoidably or unintentionally delayed payment of a maintenance fee after patent expiration and to refund the petition fee if the refusal is determined to be an error by the USPTO.</li> </ul>
"Fee Address" Indication Form	PTO/SB/47	<ul style="list-style-type: none"> <li>Used by the applicant, patentee, assignee, or representative to establish an address other than the correspondence address as the maintenance fee address for a list of applications or patents.</li> <li>Used by the USPTO to ensure that fee-related correspondence for a patent or allowed application is sent to the correct address.</li> </ul>

### 3. Use of Information Technology

Maintenance fee payments and surcharges for payments made during the six-month grace period before patent expiration may be submitted using the Electronic Maintenance Fee Form available online through the USPTO's Office of Finance Online Shopping Page. The online payment system uses Secure Sockets Layer (SSL) technology in order to encrypt the payment data and transmit it securely over the Internet. The customer may choose to view a confirmation screen after the transaction is completed, which the customer may then print out as evidence of timely payment. In order to provide the public with accurate information as to which patents have expired, the USPTO maintains payment records in an electronic database. Customers may also use a voice response system to monitor the status of their maintenance fees.

Online payment of maintenance fees benefits the customer by eliminating potential mailing delays and offering fast and reliable payment confirmation. The USPTO accepts electronic payments by credit card, electronic funds transfer (EFT), or USPTO deposit account. Non-electronic payments may be made by check, credit card, or USPTO deposit account. The USPTO believes that the use of the electronic payment option for maintenance fee transactions will continue to increase as the public becomes more comfortable with making payments online.

The forms associated with this collection may be downloaded from the USPTO Web site in Portable Document Format (PDF), filled out electronically, and then either printed for mailing or submitted online. Other than PTO/SB/45, the forms and petitions in this collection may be submitted to the USPTO online through EFS-Web, the USPTO's web-based patent application and document submission system that allows customers to file

patent applications and associated documents electronically through their standard web browser. Typically, the customer will prepare the forms or documents as standard PDF files and then upload them to the USPTO servers using the secure EFS-Web interface. The USPTO has also developed specific EFS-Web versions of some forms, such as PTO/SB/66, that allow for more efficient processing of submissions. 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.

#### **4. Efforts to Identify Duplication**

The information collected is required to process and record patent maintenance fee payments and surcharges, to consider petitions related to maintenance fee payments, and to establish a separate address for fee-related correspondence. This information is not collected elsewhere and does not result in a duplication of effort. For maintenance fee transactions, the USPTO requires the customer to supply both the patent number and the corresponding application number in order to ensure the patent is accurately identified.

#### **5. Minimizing the Burden to Small Entities**

The information in this collection is necessary in order to complete a maintenance fee transaction, to consider an appropriate petition, or to process a fee address request. The information required by petitions to accept delayed payments, such as the showing or statement that the delayed payment was unavoidable or unintentional, provides the USPTO with documented evidence regarding the reason for the delay in payment of the required maintenance fees so that the Director may consider the request to reinstate the patent. The same information is required from every customer and is not available from any other source.

The information collection involves payment of maintenance fees by customers who may qualify as small entities. To reduce this cost burden for small entities, the USPTO offers reduced maintenance fees (by 50 per cent) and a reduced six-month grace period surcharge pursuant to 35 U.S.C. § 41(h) for persons, small business concerns, or nonprofit organizations that qualify as small entities under 37 CFR 1.27. No significant burden is placed on small entities, in that small entities are simply required to identify themselves as such in order to obtain these benefits. An assertion of small entity status only needs to be filed once in an application or patent.

#### **6. Consequences of Less Frequent Collection**

This information is collected only when the public submits a payment, petition, or other request related to patent maintenance fees. If this information were not collected, the USPTO would not be able to: (1) identify the patent for which a maintenance fee is being paid and properly record the payment; (2) determine whether a patentee is entitled to reinstatement of a patent after a delayed payment; (3) determine whether a maintenance

fee payment that was refused should have been accepted; or (4) send fee-related correspondence to the proper address. This information could not be collected less frequently.

## **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 October 30, 2008 (73 Fed. Reg. 64601). The comment period ended on December 29, 2008. 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, independent 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 statute (35 U.S.C. § 122) and regulation (37 CFR 1.11 and 1.14). Upon publication of an application or issuance of a patent, the entire patent application file is made available to the public, subject to provisions for providing only a redacted copy of the file 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 for determining the scope of the property right conferred by a patent grant.

In order to protect the confidentiality of credit card account information when making fee payments, customers should submit credit card payments on a separate credit card payment form provided by the USPTO for this purpose, which is covered under OMB Control Number 0651-0043. The USPTO will not include the credit card information submitted using the provided credit card payment forms among the patent records open to public inspection. If a customer supplies credit card information on a form or document

(e.g., in correspondence related to a patent) other than a credit card payment form provided by the USPTO, the USPTO will not be liable if the credit card information becomes public knowledge.

## 11. Justification of 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 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 470,397 total responses per year for this collection, as shown in Table 3 below.
- Burden Hour Calculation Factors**  
The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to 8 hours to complete this information, depending on the form or petition and the individual case. This includes time to gather the necessary information, prepare the form or petition, and submit the completed request.
- Cost Burden Calculation Factors**  
In 2007, the Committee on Economics of Legal Practice of the American Intellectual Property Law Association published a report that summarized the results of a survey with data on hourly billing rates. The professional rate of \$310 per hour is the median rate for attorneys in private firms as published in that report. The USPTO expects that the petitions included in this collection will be prepared by attorneys, while the other items in this collection will be prepared by paraprofessionals at an estimated rate of \$100 per hour. These are fully-loaded hourly rates.

**Table 3: Burden Hours/Burden Costs to Respondents for Patent Maintenance Fees**

Item/Form No.	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
Maintenance Fee Transmittal Transactions (PTO/SB/45)	0.08	204,005	16,320	\$100.00	\$1,632,000.00
Electronic Maintenance Fee Transactions	0.006	136,003	816	\$100.00	\$81,600.00
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/65)	8.0	172	1,376	\$310.00	\$426,560.00



Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66)	1.0	2,351	2,351	\$310.00	\$728,810.00
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66) – EFS-Web	1.0	800	800	\$310.00	\$248,000.00
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	4.0	54	216	\$310.00	\$66,960.00
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	8.0	175	1,400	\$310.00	\$434,000.00
“Fee Address” Indication Form (PTO/SB/47)	0.08	126,837	10,147	\$100.00	\$1,014,700.00
<b>Totals</b>	-----	<b>470,397</b>	<b>33,426</b>	-----	<b>\$4,632,630.00</b>

The USPTO estimates that approximately 46% of the total responses for this collection will be submitted electronically.

### 13. Total Annualized Cost Burden

There are no capital start-up costs or maintenance costs associated with this information collection. However, this collection does have annual (non-hour) costs in the form of fees, postage costs, and recordkeeping costs.

This collection has fees in the form of patent maintenance fees, surcharges for late payment of maintenance fees, and petition fees. Under 37 CFR 1.20(e)-(g), the patent maintenance fees due at 3 1/2 years, 7 1/2 years, and 11 1/2 years after the date of grant are \$980, \$2,480, and \$4,110, respectively (discounted to \$490, \$1,240, and \$2,055 for small entities). The surcharge under 37 CFR 1.20(h) for paying a maintenance fee during the six-month grace period following the above intervals is \$130 (\$65 for small entities). The surcharge under 37 CFR 1.20(i) for a petition to accept a maintenance fee after the six-month grace period for these intervals has expired is \$700 where the delayed payment is shown to be unavoidable and \$1,640 where the delayed payment is shown to be unintentional. The fee listed in 37 CFR 1.17(g) for a petition to review the refusal to accept the payment of a maintenance fee filed prior to the expiration of a patent is \$200. The fee listed in 37 CFR 1.17(f) for a petition for reconsideration of the decision on a petition refusing to accept the delayed payment of a maintenance fee in an expired patent is \$400.

The USPTO estimates that the total fees associated with this collection will be \$614,442,370 per year as calculated in Table 4 below:

**Table 4: Filing Costs to Respondents for Patent Maintenance Fees**

Item	Responses (a)	Fee or Surcharge (\$) (b)	Total Non-hour Cost Burden (c) (a) x (b)
Patent maintenance fee at 3 1/2 years	114,683	\$980.00	\$112,389,340.00
Patent maintenance fee at 3 1/2 years (small entity)	31,479	\$490.00	\$15,424,710.00
Patent maintenance fee at 7 1/2 years	95,973	\$2,480.00	\$238,013,040.00
Patent maintenance fee at 7 1/2 years (small entity)	23,940	\$1,240.00	\$29,685,600.00
Patent maintenance fee at 11 1/2 years	46,752	\$4,110.00	\$192,150,720.00
Patent maintenance fee at 11 1/2 years (small entity)	9,611	\$2,055.00	\$19,750,605.00
Surcharge for paying maintenance fee during the six-month grace period	7,961	\$130.00	\$1,034,930.00
Surcharge for paying maintenance fee during the six-month grace period (small entity)	9,609	\$65.00	\$624,585.00
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b))	172	\$700.00	\$120,400.00
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c))	3,151	\$1,640.00	\$5,167,640.00
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	54	\$200.00	\$10,800.00
Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	175	\$400.00	\$70,000.00
"Fee Address" Indication Form	126,837	\$0.00	\$0.00
<b>Totals</b>	<b>470,397</b>	<b>.....</b>	<b>\$614,442,370.00</b>

The recordkeeping costs for this collection are associated with submitting maintenance fee payments, forms, and petitions online through the USPTO Web site. It is recommended that customers who submit fee payments and documents online print and retain a copy of the acknowledgment receipt as evidence of the successful transaction. The USPTO estimates that it will take 5 seconds (0.001 hours) to print a copy of the acknowledgment receipt and that approximately 214,556 maintenance fee payments, forms, and petitions will be submitted online, for a total of 215 hours per year for printing this receipt. Using the paraprofessional rate of \$100 per hour, the USPTO estimates that the recordkeeping cost associated with this collection will be approximately \$21,500 per year.

The public may submit the forms and petitions in this collection to the USPTO by mail through the United States Postal Service. If the submission is sent by first-class mail, the public may also include a signed certification of the date of mailing in order to receive credit for timely filing. The USPTO estimates that the average first-class postage cost for a

mailed submission will be 42 cents, and that approximately 255,841 submissions per year may be mailed to the USPTO, for a total postage cost of approximately \$107,453 per year.

**The total annual (non-hour) cost burden for this collection in the form of fees (\$614,442,370), recordkeeping costs (\$21,500), and postage costs (\$107,453) is estimated to be \$614,571,323 per year.**

#### 14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 1 employee approximately 5 minutes (0.08 hours) on average to process a Maintenance Fee Transmittal or Fee Address Indication Form and approximately 30 minutes (0.5 hours) on average to process the petitions included in this collection. The hourly rate for a GS-7, step 1 is currently \$18.85. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the hourly rate for processing these items is \$24.51 (\$18.85 + \$5.66). When a customer makes a submission online using the Electronic Maintenance Fee Form or the EFS-Web version of Form PTO/SB/66, the transaction is processed and recorded automatically with no staff time required.

Table 5 calculates the burden hours and costs to the Federal Government for processing this information collection:

**Table 5: Burden Hours/Burden Costs to the Federal Government for Patent Maintenance Fees**

Item/Form No.	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
Maintenance Fee Transmittal Transactions (PTO/SB/45)	0.08	204,005	16,320	\$24.51	\$400,003.00
Electronic Maintenance Fee Transactions	0.0	136,003	0	N/A	\$0.00
Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/65)	0.5	172	86	\$24.51	\$2,108.00
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66)	0.5	2,351	1,176	\$24.51	\$28,824.00
Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66) – EFS-Web	0.0	800	0	N/A	\$0.00
Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377)	0.5	54	27	\$24.51	\$662.00

Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e))	0.5	175	88	\$24.51	\$2,157.00
"Fee Address" Indication Form (PTO/SB/47)	0.08	126,837	10,147	\$24.51	\$248,703.00
<b>Totals</b>	-----	<b>470,397</b>	<b>\$27,844.00</b>	-----	<b>\$682,457.00</b>

## 15. Reason for Changes in Annual Burden

### Summary of Changes Since the Previous Renewal

- April 2006: Renewal approved by OMB with a total of 374,706 responses and 30,362 burden hours per year.
- October 2006: OMB approved a change worksheet to add the EFS-Web version of Form PTO/SB/66 into this collection. The new form did not change the total responses or burden hours for the collection.
- Currently: Approved with a total of 374,706 responses and 30,362 burden hours per year.

For this renewal, the USPTO estimates that the total annual responses will be 470,397 and the total burden hours will be 33,426, which is an increase of 95,691 responses and 3,064 hours from the currently approved burden for this collection. This increase in burden hours is due to administrative adjustments.

The total annual (non-hour) cost burden for this renewal of \$614,571,323 is an increase of \$178,083,799 from the currently approved total of \$436,487,524 in annual costs for this collection. This increase in annual costs is due to both program changes and administrative adjustments.

### Changes in Respondent Cost Burden

This collection was approved by OMB in April 2006 with an estimated total respondent cost burden of \$3,369,522 per year. That submission used an estimated rate of \$286 per hour for attorneys preparing the petitions in this collection and an estimated rate of \$81 per hour for paraprofessionals preparing the remaining items. For this renewal, the USPTO has updated the estimated rates for respondents to \$310 for attorneys and \$100 for paraprofessionals. At these revised rates, the 33,426 burden hours for this renewal yield a respondent cost burden of \$4,632,630, which is an increase of \$1,263,108 from the total respondent cost burden reported in the April 2006 submission. This increase is due to the increase in the estimated hourly rates for respondents as well as the increased total burden hours for this collection.

## Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the annual responses for this collection will increase by 95,691, from 374,706 to 470,397 responses per year, and that the total burden hours for this collection will increase by 3,064, from 30,362 to 33,426 hours per year. This increase in burden hours is due to administrative adjustments, as follows:

- The USPTO is adjusting the estimated annual responses for Maintenance Fee Transmittal Transactions (PTO/SB/45) to 204,005, a decrease of 24,482 from the previous estimate of 228,487. **Therefore, this collection takes a burden decrease of 1,959 hours due to an administrative adjustment.**
- The USPTO is adjusting the estimated annual responses for Electronic Maintenance Fee Transactions to 136,003, an increase of 83,564 from the previous estimate of 52,439. **Therefore, this collection takes a burden increase of 501 hours due to an administrative adjustment.**
- The USPTO is adjusting the estimated annual responses for the Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/65) to 172, a decrease of 78 from the previous estimate of 250. **Therefore, this collection takes a burden decrease of 624 hours due to an administrative adjustment.**
- The USPTO is adjusting the estimated annual responses for the Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66) to 2,351, an increase of 2,051 from the previous estimate of 300. **Therefore, this collection takes a burden increase of 2,051 hours due to an administrative adjustment.**
- The USPTO is adjusting the estimated annual responses for the EFS-Web version of the Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66) to 800, a decrease of 700 from the previous estimate of 1,500. **Therefore, this collection takes a burden decrease of 700 hours due to an administrative adjustment.**
- The USPTO is adjusting the estimated annual responses for the Petition to Review Refusal to Accept Payment of Maintenance Fee Prior to Expiration of Patent (37 CFR 1.377) to 54, a decrease of 46 from the previous estimate of 100. **Therefore, this collection takes a burden decrease of 184 hours due to an administrative adjustment.**
- The USPTO is adjusting the estimated annual responses for the Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of

Maintenance Fee in an Expired Patent (37 CFR 1.378(e)) to 175, an increase of 145 from the previous estimate of 30. **Therefore, this collection takes a burden increase of 1,160 hours due to an administrative adjustment.**

- The USPTO is adjusting the estimated annual responses for “Fee Address” Indication Forms (PTO/SB/47) to 126,837, an increase of 35,237 from the previous estimate of 91,600. **Therefore, this collection takes a burden increase of 2,819 hours due to an administrative adjustment.**

**In sum, this information collection has a total net burden increase of 3,064 hours due to administrative adjustments.**

#### Changes in Annual (Non-hour) Costs

For this renewal, the USPTO estimates that the total annual (non-hour) costs for this collection will increase by \$178,083,799, from \$436,487,524 to \$614,571,323 per year. The increase in total annual (non-hour) costs is due to program changes and administrative adjustments, as follows:

- This collection is currently approved with a total of approximately \$4,860 in recordkeeping costs associated with the Electronic Maintenance Fee Form and the EFS-Web version of Form PTO/SB/66. For this renewal, the USPTO estimates that the recordkeeping costs for printing confirmations for online transactions will increase to \$21,500 due to increases in the estimated number of online transactions as well as the increase in the estimated hourly rate for paraprofessionals printing the receipts. **Therefore, this collection takes a burden increase of \$16,640 in recordkeeping costs as an administrative adjustment.**
- This collection is currently approved with a total of approximately \$126,969 in postage costs associated with submitting the forms and petitions in this collection to the USPTO by mail. For this renewal, the USPTO estimates that the total postage costs will decrease to \$107,453 per year due primarily to a decrease in the number of mailed submissions to the USPTO. This decrease is mitigated by an increase in the estimated postage per item from 39 cents to 42 cents. **Therefore, this collection takes a burden decrease of \$19,516 in postage costs as an administrative adjustment.**
- This collection is currently approved with a total of \$436,355,695 in fees in the form of patent maintenance fees, surcharges, and petition fees. For this renewal, the USPTO estimates that the total fees will increase to \$614,442,370 due to increases in the maintenance fee amount for each interval as well as adjustments in the number of expected responses. The USPTO estimates that the increases in maintenance fee amounts account for approximately \$45,846,365 of the increase in total fees, while approximately \$132,240,310 of the increase in total fees is due to

adjustments in the expected number of filings. **Therefore, this collection takes a burden increase of \$178,086,675 in fees, including an increase of \$45,846,365 as a program change and an increase of \$132,240,310 as an administrative adjustment.**

In sum, this collection has an annual (non-hour) cost burden of \$614,571,323, with \$21,500 in the form of recordkeeping costs, \$107,453 in the form of postage costs, and \$614,442,370 in the form of fees. **Therefore, this collection has a total increase in annual (non-hour) cost burden of \$178,083,799, with \$45,846,365 due to program changes and \$132,237,434 due to administrative adjustments.**

#### **16. Project Schedule**

The USPTO does not plan any special publication of patent numbers in which maintenance fees have been paid. However, the patent numbers, serial numbers, and issue dates of expired patents are published in the weekly *Official Gazette of the United States Patent and Trademark Office* and annually in a consolidated listing. The weekly *Official Gazette* also includes a listing of patent numbers, serial numbers, filing dates, issue dates, and grant dates for patents that have been reinstated due to the acceptance of a late maintenance fee. The *Official Gazette* is published in electronic format on the USPTO Web site.

#### **17. Display of Expiration Date of OMB Approval**

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

#### **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. The USPTO Information Quality Guidelines
- B. Maintenance Fee Transmittal Form (PTO/SB/45)
- C. Electronic Maintenance Fee Form
- D. Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(b)) (PTO/SB/65)
- E. Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66)
- F. Petition to Accept Unintentionally Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(c)) (PTO/SB/66) – EFS-Web
- G. “Fee Address” Indication Form (PTO/SB/47)
- H. 60-Day Notice published in the *Federal Register* on October 30, 2008 (73 Fed. Reg. 64601)