

SUPPORTING STATEMENT
United States Patent and Trademark Office
Invention Promoters/Promotion Firms Complaints
OMB CONTROL NUMBER 0651-0044

A. JUSTIFICATION

1. Necessity of Information Collection

Under the Inventors' Rights Act of 1999 (Public Law 106-113, sec. 4101 *et seq.*), as found in 35 U.S.C. 297 and implemented by 37 CFR Part 4, the United States Patent and Trademark Office (USPTO) is required to provide a forum for the publication of complaints concerning invention promoters and responses from the invention promoters to these complaints. An individual may submit a complaint concerning an invention promoter to the USPTO, which will forward the complaint to the invention promoter for response. The complaints and responses will be published and made available to the public on the USPTO Web site. The USPTO does not investigate these complaints or participate in any legal proceedings against invention promoters or promotion firms.

Congress enacted the Inventors' Rights Act to protect independent inventors from being defrauded by invention promoters and promotion firms. Invention promoters assist inventors, particularly independent inventors, with developing, financing, manufacturing, and marketing their inventions. However, some independent inventors were paying large sums of money to these firms but not receiving comparable services from them. The Inventors' Rights Act requires invention promoters to disclose certain information about their invention promotion services before entering into a contract with a customer.

Complaints submitted to the USPTO must identify the name and address of the complainant and the invention promoter or promotion firm, explain the basis for the complaint, and include the signature of the complainant. The identifying information is necessary so that the USPTO can forward the complaint to the invention promoter or promotion firm and also notify the complainant that the complaint has been forwarded. Complainants should understand that the complaints will be forwarded to the invention promoter for response and that the complaint and response will be made available to the public as required by the Inventors' Rights Act. If the USPTO does not receive a response from the invention promoter, the complaint will still be published without the response. The USPTO does not accept complaints under this program if the complainant requests confidentiality.

This information collection includes one form, Complaint Regarding Invention Promoter (PTO/SB/2048), which is used by the public to submit a complaint under this program. This form is available for download from the USPTO Web site. Use of this form is not mandatory as long as the complaint includes the necessary information and is clearly marked as a complaint filed under the Inventors' Rights Act. There is no associated form for submitting responses to the complaints.

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

Table 1: Information Requirements for Invention Promoter Complaints

Requirement	Statute	Rule
Complaints Concerning Invention Promoters/Promotion Firms	Inventors' Rights Act of 1999 (Public Law 106-113, sec. 4101 <i>et seq.</i>), 35 U.S.C. 297	37 CFR Part 4
Responses to the Complaints	Inventors' Rights Act of 1999 (Public Law 106-113, sec. 4101 <i>et seq.</i>), 35 U.S.C. 297	37 CFR Part 4

2. Needs and Uses

The public uses this information collection to submit a complaint to the USPTO regarding an invention promoter or promotion firm. The USPTO requests responses from the subjects of the complaints as required by the Inventors' Rights Act of 1999 and then publishes the complaints and responses. To ensure that the public provides the minimum information necessary to process the complaint under this program, the USPTO provides a form that the public may use to submit a complaint. However, the USPTO is not required to enforce the provisions of the Inventors' Rights Act, investigate the complaints, or participate in any legal proceedings against the invention promoter.

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 Invention Promoter Complaints

Form and Function	Form #	Needs and Uses
Complaint Regarding Invention Promoter	PTO/SB/2048	<ul style="list-style-type: none"> Used by the public to submit a complaint to the USPTO regarding an invention promoter or promotion firm. Used by the USPTO to ensure that all of the necessary information is provided for the complaint. Used by the USPTO to make the complaint publicly available and to forward complaints for response by the invention promoter or promotion firm named in the complaint.
Responses to the Complaints	No Form Associated	<ul style="list-style-type: none"> Used by the invention promoter or promotion firm to respond to a complaint. Used by the USPTO to make the response to the complaint publicly available.

3. Use of Information Technology

Currently, the USPTO does not use automated, electronic, mechanical, or other technologies to collect the complaints or responses to the complaints. The USPTO does offer a form for complaints that customers may download from the USPTO Web site. The complaint form may be filled out on the computer, printed, then mailed or faxed to the USPTO. Additionally, the complaints and responses to the complaints are published on the USPTO Web site.

The USPTO does not expect to receive a large number of complaints under this program. To help ensure the authenticity of complaints and responses to the complaints, the USPTO requires the signature of the person submitting the complaint or response. As the USPTO expands its electronic filing initiatives, if it becomes feasible to collect the complaint information electronically, the USPTO will submit the associated electronic forms to OMB for review as necessary.

4. Efforts to Identify Duplication

This information is collected only when a customer is dissatisfied with the services received from an invention promoter or promotion firm and voluntarily decides to file a complaint with the USPTO. It is not collected elsewhere. These rules do not cover complaints against registered attorneys or agents. Customers who have such complaints should file them under the existing USPTO guidelines for complaints concerning registered attorneys and agents, which are covered under OMB Control Number 0651-0017 Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office. Therefore, this collection does not result in a duplication of effort or collection of data.

5. Minimizing Burden to Small Entities

The USPTO believes that the complaints covered by this collection will primarily be submitted by independent inventors since they are the primary customers of invention promotion firms. Therefore, the USPTO developed the minimum information requirements and the complaint form with this fact in mind. The USPTO believes that this collection of information does not impose a significant economic impact on small entities or small businesses. There is no fee for submitting or responding to a complaint, and all submissions are voluntary. The same information is required of every customer and is not available from any other source.

6. Consequences of Less Frequent Collection

Congress has directed the USPTO to collect and publish complaints regarding invention promoters and promotion firms, and the USPTO has implemented rules for this complaint program accordingly. Failure to collect and publish the voluntarily submitted information would put the USPTO in violation of a statutory duty. This information is collected only when a customer of an invention promoter or promotion firm files a complaint against them

with the USPTO and when the invention promoter responds to the complaint. This collection of information could not be conducted less frequently. If this information were not collected, the USPTO would not be able to publish complaints concerning invention promoters and their responses to the complaints as required by the Inventors' Rights Act of 1999.

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 June 26, 2009 (74 Fed. Reg. 30528). The comment period ended on August 25, 2009.

The USPTO received one public comment in response to the 60-Day Notice. The commenter suggested that the USPTO employ automated collection techniques in order to reduce the burden on complainants, respondents, and the USPTO. The USPTO is considering these comments and forwarding them to the appropriate Office.

The USPTO has previously solicited and considered comments from the public in the process of drafting the rules of practice for accepting and publishing complaints under the Inventors' Rights Act of 1999. The USPTO publishes the complaints and responses on the USPTO Web site in order to make the information searchable and available to the public as quickly as possible.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association, 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 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

The Inventors' Rights Act of 1999 requires the USPTO to accept complaints against invention promoters and promotion firms and make them available to the public. In addition, the Act requires the USPTO to forward copies of the complaints to the invention promoters so that they can submit responses to the complaints, which are also published. Due to these requirements to forward and publish the complaints, the USPTO will not

accept any complaints submitted under this Act that request that the complaint be kept confidential.

In order to publish the complaint, the USPTO must collect personal information from the complainant. If the complainant fails to provide all of the necessary information, the USPTO may not be able to publish the complaint and may even return the submission to the complainant. To process the complaint, the USPTO requests the complainant's name, address, and telephone number. These records may be retrieved by a personal identifier and include personal information that is subject to the Privacy Act of 1974. The complaint form includes a Privacy Act statement, and a system of records notice for this collection entitled "PAT/TM-15 System for Maintenance of Invention Promoter Complaints" was published in the *Federal Register* on April 25, 2000 (65 Fed. Reg. 24177).

The USPTO stores the records in file folders as well as on electronic storage media. The buildings where the information is kept are protected by security systems, and the records are stored in areas that only authorized personnel can access. These personnel are properly screened, cleared, and trained in security procedures. Systems allowing electronic access to the information utilize appropriate safeguards.

11. Justification for Sensitive Questions

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

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 50 complaints and a corresponding 50 responses to the complaints per year.
- **Burden Hour Calculation Factors**
The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to gather the necessary information, prepare the form, and submit a complaint to the USPTO and approximately 30 minutes (0.5 hours) for an invention promoter or promotion firm to prepare and submit a response to a complaint.
- **Cost Burden Calculation Factors**
The USPTO expects that complaints will be prepared by paraprofessionals or independent inventors. Using the average of the paraprofessional rate of \$100 per hour and the estimated rate of \$30 per hour for independent inventors, the USPTO estimates that the average rate for preparing the complaints will be approximately \$65 per hour.

The USPTO expects that the responses to the complaints will be prepared by attorneys or invention promoters. 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. Using the average of the professional rate of \$310 per hour for attorneys and the estimated rate of \$100 per hour for invention promoters, the USPTO estimates that the average rate for preparing the responses to the complaints will be \$205 per hour. These are fully-loaded hourly rates.

Table 3: Burden Hour/Burden Cost to Respondents for Invention Promoter Complaints

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) X (d)
Complaints Regarding Invention Promoter	0.25	50	13	\$65.00	\$845.00
Responses to the Complaints	0.50	50	25	\$205.00	\$5,125.00
Totals	-----	100	38	-----	\$5,970.00

13. Total Annualized Cost Burden

There are no capital start-up costs, maintenance costs, recordkeeping costs, or filing fees associated with this information collection. However, the public may incur postage costs when submitting a complaint or a response to a complaint by mail to the USPTO. The USPTO estimates that the first-class postage cost for a mailed complaint will be 44 cents. Promotion firms may choose to send responses to complaints using overnight mail service at an estimated cost of \$17.50 per response.

$$\begin{aligned}
 &50 \text{ complaints} \times \$0.44 \text{ postage} = \$22 \\
 &50 \text{ responses to the complaints} \times \$17.50 \text{ postage} = \$875 \\
 &\text{Total postage costs} = \$22 + \$875 = \$897
 \end{aligned}$$

Therefore, the total annual (non-hour) respondent cost burden for this collection in the form of postage costs is estimated to be \$897 per year.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-12, step 4 employee approximately 15 minutes (0.25 hours) to review a complaint regarding an invention promoter or a response to the complaint. The hourly rate for a GS-12, step 4 employee is currently \$38.53. Preparing a complaint or a response for publication on the USPTO Web site takes approximately 1 hour, including converting the submission into the proper formats (text/HTML and PDF) and proofreading the file for accuracy. Complaints are converted and published by an employee with an hourly rate of \$32.40.

The total processing time is 1 hour and 15 minutes (1.25 hours) per submission, at an average rate of \$33.62 per hour. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the hourly rate for processing these items is \$43.71 (\$33.62 + \$10.09).

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

Table 4: Burden Hour/Burden Cost to the Federal Government for Invention Promoter Complaints

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c) x (d)
Complaints Regarding Invention Promoters	1.25	50	63	\$43.71	\$2,754.00
Responses to the Complaints	1.25	50	63	\$43.71	\$2,754.00
Totals	-----	100	126	-----	\$5,508.00

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

This information collection was previously approved by OMB in December 2006 with a total of 100 responses and 38 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 \$897 is an increase of \$157 from the currently approved total of \$740 in annual costs for this collection. This increase is due to administrative adjustments.

Change in Respondent Cost Burden

This collection was previously approved in December 2006 with an estimated total respondent cost burden of \$5,830 per year. That submission used the average estimated rates of \$60 per hour for paraprofessionals and independent inventors preparing the complaints and \$202 per hour for attorneys and invention promoters preparing the responses to the complaints. For this renewal, the USPTO has revised the estimated average rate for preparing the complaints to \$65 per hour, based in part on a revised rate of \$100 per hour for paraprofessionals. The USPTO has also revised the estimated average rate for preparing the responses to the complaints to \$205 per hour, based in part on a revised rate of \$310 per hour for attorneys. Due to these revised hourly rates, the 38 burden hours for this collection result in a respondent cost burden of \$5,970, which is an increase of \$140 from the respondent cost burden reported in the October 2006 submission.

Changes in Responses and Burden Hours

The USPTO does not expect any changes in the estimated annual responses or burden hours for this renewal.

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 \$157, from \$740 to \$897 per year. This increase is due to revising the estimated postage costs for submitting the complaints and responses to the complaints to the USPTO by mail. **Therefore, this collection has a total increase in annual (non-hour) cost burden of \$157 due to administrative adjustments.**

16. Project Schedule

The USPTO does not plan to publish this information for statistical use. The USPTO is required by the Inventors' Rights Act of 1999 to make any complaints received concerning invention promoters or promotion firms and their responses to these complaints publicly available. The complaints and the responses to the complaints are published on the USPTO Inventor Resources Web page. If no response to a complaint is submitted, the complaint will still be published without a response.

17. Display of Expiration Date of OMB Approval

The form 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. Complaint Regarding Invention Promoter (PTO/SB/2048)