

**SUPPORTING STATEMENT**  
**United States Patent and Trademark Office**  
**Patent Reexaminations**  
**OMB CONTROL NUMBER 0651-00XX**  
**(December 2009)**

**A. Justification**

**1. Necessity of Information Collection**

The United States Patent and Trademark Office (USPTO) is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. Chapter 30 of Title 35 U.S.C. provides that any person at any time may file a request for reexamination by the USPTO of any claim of a patent on the basis of prior art patents or printed publications. Once initiated, the reexamination proceedings under Chapter 30 are substantially *ex parte* and do not permit input from third parties. Chapter 31 of Title 35 U.S.C. provides for *inter partes* reexamination allowing third parties to participate throughout the reexamination proceeding. If a request for *ex parte* or *inter partes* reexamination is denied, the requester may petition the Director to review the examiner's refusal of reexamination. The rules outlining *ex parte* and *inter partes* reexaminations are found at 37 CFR 1.510-1.570 and 1.902-1.997.

Information requirements related to patent reexaminations are currently covered under OMB Control Number 0651-0033, along with other requirements related to patent issue fees and reissue applications. The USPTO is proposing to move the following items that are under 0651-0033 into a new information collection for Patent Reexaminations: Request for *Ex Parte* Reexamination Transmittal Form; Request for *Inter Partes* Reexamination Transmittal Form; Petition to Review the Refusal to Grant *Ex Parte* Reexamination; Petition to Review the Refusal to Grant *Inter Partes* Reexamination; and Petition to Request Extension of Time in *Ex Parte* or *Inter Partes* Reexamination.

The USPTO is also proposing to include additional items related to patent reexaminations in this new information collection: Request for *Ex Parte* Reexamination; Request for *Inter Partes* Reexamination; Patent Owner's 37 CFR 1.530 Statement; Third Party Requester's 37 CFR 1.535 Reply; Amendment in *Ex Parte* or *Inter Partes* Reexamination; Third Party Requester's 37 CFR 1.947 Comments in *Inter Partes* Reexamination; Response to Final Rejection in *Ex Parte* Reexamination; Patent Owner's 37 CFR 1.951 Response in *Inter Partes* Reexamination; and Third Party Requester's 37 CFR 1.951 Comments in *Inter Partes* Reexamination. These additional items are existing information requirements that previously were not fully covered by an information collection and are now being included in order to more accurately reflect the burden on the public for submitting requests related to patent reexaminations.

The Requests for *Ex Parte* and *Inter Partes* Reexamination are distinct collections from the Request for *Ex Parte* Reexamination Transmittal Form and the Request for *Inter Partes*

Reexamination Transmittal Form, respectively. Whereas the transmittal forms are used by a requester (patent owner or third party) as a checklist to ensure compliance with the requirements of the statutes and rules for *ex parte* and *inter partes* reexaminations, the newly added collections represent the substantive analysis undertaken by a requester of reexamination. Thus, the Requests for *Ex Parte* and *Inter Partes* Reexamination are not new requirements. The other items being included in this new collection cover additional information that may be submitted by patent owners and third-party requesters in relation to a reexamination proceeding. Likewise, these items are existing requirements that previously were not fully covered by an information collection, and are now being covered in an effort to more accurately gauge the burden on the public.

The Patent Owner's 37 CFR 1.530 Statement allows patent owners to respond to an order for *ex parte* reexamination with a statement pointing out why the patent claims are believed to be patentable, considering the cited prior art patents or printed publications alone or in any reasonable combination. The Statement also allows patent owners to propose narrowing amendments to the patent claims in response to an order for *ex parte* reexamination. The Third Party Requester's 37 CFR 1.535 Reply allows third-party requesters to respond to the Patent Owner's 37 CFR 1.530 Statement. The Reply may include additional prior art patents and printed publications and may raise any issue appropriate for *ex parte* reexamination.

Amendments in *Ex Parte* or *Inter Partes* Reexaminations allow patent owners to respond to Office actions by pointing out why the patent claims are believed to be patentable. Amendments also allow patent owners to propose narrowing amendments to the patent claims. The Third Party Requester's 37 CFR 1.947 Comments in *Inter Partes* Reexamination allow third-party requesters during the examination stage of an *inter partes* reexamination to file written comments on any patent owner response to an Office action. The Comments must be directed to points and issues covered by the Office action and/or the patent owner's response.

Responses to Final Rejections in *Ex Parte* Reexaminations allow patent owners to respond to final rejections in *ex parte* reexaminations by pointing out why the patent claims are believed to be patentable. Responses also allow patent owners to propose narrowing amendments to the patent claims.

The Patent Owner's 37 CFR 1.951 Response in *Inter Partes* Reexaminations allows patent owners to respond to Actions Closing Prosecution in *inter partes* reexaminations by pointing out why the patent claims are believed to be patentable. Responses also allow patent owners to propose narrowing amendments to the patent claims. The Third Party Requester's 37 CFR 1.951 Comments in *Inter Partes* Reexamination allow third-party requesters in an *inter partes* reexaminations to file written comments on any patent owner response to an Action Closing Prosecution. The Comments must be directed to the patent owner's response to an Action Closing Prosecution and/or the issues raised in the Action Closing Prosecution.

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

**Table 1: Information Requirements for Patent Reexaminations**

Requirement	Statute	Rule
Request for <i>Ex Parte</i> Reexamination	35 U.S.C. 302	37 CFR 1.510-1.570
Request for <i>Inter Partes</i> Reexamination	35 U.S.C. 311	37 CFR 1.902-1.997
Petition to Review Refusal to Grant <i>Ex Parte</i> Reexamination	35 U.S.C. 303	37 CFR 1.181 and 1.515(c)
Petition to Review Refusal to Grant <i>Inter Partes</i> Reexamination	35 U.S.C. 312	37 CFR 1.181 and 1.927
Patent Owner's 37 CFR 1.530 Statement	35 U.S.C. 304	37 CFR 1.530
Third Party Requester's 37 CFR 1.535 Reply	35 U.S.C. 304	37 CFR 1.535
Amendment in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	35 U.S.C. 132, 305, and 314	37 CFR 1.111, 1.530, 1.941, and 1.943
Third Party Requester's 37 CFR 1.947 Comments in <i>Inter Partes</i> Reexamination	35 U.S.C. 314	37 CFR 1.947
Response to Final Rejection in <i>Ex Parte</i> Reexamination	35 U.S.C. 132 and 305	37 CFR 1.116 and 1.530
Patent Owner's 37 CFR 1.951 Response in <i>Inter Partes</i> Reexamination	35 U.S.C. 132 and 314	37 CFR 1.116 and 1.951
Third Party Requester's 37 CFR 1.951 Comments in <i>Inter Partes</i> Reexamination	35 U.S.C. 314	37 CFR 1.951
Petition to Request Extension of Time in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	35 U.S.C. 304-305 and 314	37 CFR 1.550(c) and 1.956

## 2. Needs and Uses

The public uses this information collection to request reexamination proceedings and to ensure that the associated fees and documentation are submitted to the USPTO.

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 Reexaminations**

Form and Function	Form #	Needs and Uses
Request for <i>Ex Parte</i> Reexamination Transmittal Form	PTO/SB/57	<ul style="list-style-type: none"> <li>Used by the requester (patent owner or third-party) of an <i>ex parte</i> reexamination as a checklist to ensure compliance with the requirements of the statutes and rules for <i>ex parte</i> reexaminations.</li> <li>Used by the USPTO to ensure compliance by the requester (patent owner or third-party) with the requirements of the statutes and rules for <i>ex parte</i> reexaminations.</li> </ul>
Request for <i>Ex Parte</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the requester (patent owner or third-party) to provide a statement identifying each substantial new question of patentability.</li> <li>Used by the requester (patent owner or third-party) to provide an identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited art to every claim for which reexamination is requested.</li> <li>Used by the USPTO to evaluate whether a substantial new question of patentability has been raised by the requester (patent owner or third-party).</li> <li>Used by the USPTO to determine how and whether the patent claims are to be confirmed, amended, or canceled.</li> </ul>
Request for <i>Inter Partes</i> Reexamination Transmittal Form	PTO/SB/58	<ul style="list-style-type: none"> <li>Used by a third-party requester of an <i>inter partes</i> reexamination as a checklist to ensure compliance with the requirements of the statutes and rules for <i>inter partes</i> reexamination.</li> <li>Used by the USPTO to ensure compliance by the third-party requester with the requirements of the statutes and rules for <i>inter partes</i> reexamination.</li> </ul>
Request for <i>Inter Partes</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the third-party requester to provide a statement identifying each substantial new question of patentability.</li> <li>Used by the third-party requester to provide an identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited art to every claim for which reexamination is requested.</li> <li>Used by the USPTO to evaluate whether a substantial new question of patentability has been raised by the third-party requester.</li> <li>Used by the USPTO to determine how and whether the patent claims are to be confirmed, amended, or canceled.</li> </ul>
Petition to Review Refusal to Grant <i>Ex Parte</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the requester (patent owner or third-party) to request review by the Director of a decision refusing <i>ex parte</i> reexamination.</li> <li>Used by the USPTO to determine whether the decision to refuse <i>ex parte</i> reexamination should be upheld.</li> </ul>
Petition to Review Refusal to Grant <i>Inter Partes</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the third-party to request review by the Director of a decision refusing <i>inter partes</i> reexamination.</li> <li>Used by the USPTO to determine whether the decision to refuse <i>inter partes</i> reexamination should be upheld.</li> </ul>
Patent Owner's 37 CFR 1.530 Statement	No form	<ul style="list-style-type: none"> <li>Used by the patent owner in response to an order granting <i>ex parte</i> reexamination to point out why the patent claims are believed to be patentable.</li> <li>Used by the patent owner in response to an order granting <i>ex parte</i> reexamination to propose that specified changes be made to the patent specification, including the claims, or to the drawings.</li> <li>Used by the USPTO to determine whether the patent claims are patentable.</li> <li>Used by the USPTO to enter, if in compliance with the rules, the specified changes for purposes of examination.</li> </ul>
Third Party Requester's 37 CFR 1.535 Reply	No form	<ul style="list-style-type: none"> <li>Used by the third-party requester to comment on Patent Owner's 37 CFR 1.530 Statement.</li> <li>Used by the third-party requester to raise any issue appropriate for reexamination.</li> <li>Used by the third-party requester to identify additional prior art patents and printed publications.</li> <li>Used by the USPTO to determine whether the patent claims are patentable.</li> </ul>

Amendment in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the patent owner in response to an Office action to point out why the patent claims are believed to be patentable.</li> <li>Used by the patent owner in response to an Office action to propose that specified changes be made to the patent specification, including the claims, or to the drawings.</li> <li>Used by the USPTO to determine whether the patent claims are patentable.</li> <li>Used by the USPTO to enter, if in compliance with the rules, the specified changes for purposes of examination.</li> </ul>
Third Party Requester's 37 CFR 1.947 Comments in <i>Inter Partes</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the third-party requester to comment on issues raised by an Office action or by patent owner's response to the Office action.</li> <li>Used by the USPTO to determine whether the patent claims are patentable.</li> </ul>
Response to Final Rejection in <i>Ex Parte</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the patent owner in response to a final Office action to point out why the patent claims are believed to be patentable.</li> <li>Used by the patent owner in response to a final Office action to propose that specified changes be made to the patent specification, including the claims, or to the drawings.</li> <li>Used by the USPTO to determine whether the patent claims are patentable.</li> <li>Used by the USPTO to determine whether the specified changes will be entered for purposes of examination.</li> </ul>
Patent Owner's 37 CFR 1.951 Response in <i>Inter Partes</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the patent owner in response to an Action Closing Prosecution to point out why the patent claims are believed to be patentable.</li> <li>Used by the patent owner in response to an Action Closing Prosecution to propose that specified changes be made to the patent specification, including the claims, or to the drawings.</li> <li>Used by the USPTO to determine whether the patent claims are patentable.</li> <li>Used by the USPTO to determine whether the specified changes will be entered for purposes of examination.</li> </ul>
Third Party Requester's 37 CFR 1.951 Comments in <i>Inter Partes</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the third-party requester to comment on issues raised by an Action Closing Prosecution or by patent owner's response to the Action Closing Prosecution.</li> <li>Used by the USPTO to determine whether the patent claims are patentable.</li> </ul>
Petition to Request Extension of Time in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	No form	<ul style="list-style-type: none"> <li>Used by the public to request additional time to take action in a reexamination proceeding.</li> <li>Used by the USPTO to determine whether the cause is sufficient to grant additional time to act in a reexamination proceeding.</li> </ul>

### 3. Use of Information Technology

EFS-Web is a web-based document submission system that allows customers to file requests for reexamination and associated documents through their standard web browser without downloading special software, changing their documentation preparation tools, or altering their workflow processes. Customers may create their requests for reexamination requests and associated documents using the tools and processes that they already use and then convert those documents into standard PDF files that are submitted through EFS-Web to the USPTO. The fillable PDF forms that can be submitted through EFS-Web may be downloaded from the USPTO Web site and do not require special PDF creation software.

Registered and unregistered users can file documents securely through EFS-Web, which is hosted on secure servers. The documents of registered users are protected using a Public Key Infrastructure (PKI) system and digital certificates which provide authentication and

encryption security. For filers who are not registered, the documents are submitted to EFS-Web using Transport Layer Security (TLS) or Secure Socket Layer (SSL) protocol.

EFS-Web offers many benefits to filers, including immediate notification that a submission has been received by the USPTO, automated processing of requests, and avoidance of postage and other paper delivery costs. After the document has been successfully submitted through EFS-Web, customers will receive an acknowledgement receipt that lists the time and date stamp stating when the document was submitted to the USPTO, an application number, a confirmation number, and other critical information, such as the EFS ID, a listing of the files and documents associated with the submission, and page counts for the files and documents. This receipt is the legal equivalent of a postcard in the postcard receipt practice used for patent application documents that are filed in paper. The USPTO recommends that customers print the electronic acknowledgement receipt to keep with their records.

There are many additional benefits to filing through EFS-Web that were not available previously. Users can access EFS-Web from any computer with an Internet connection. Since EFS-Web is hosted on the USPTO's secure servers and not on the individual's personal computer, USPTO staff can update EFS-Web without requiring any action from the user. Customers can submit fee payments and other requests in real time. The PDF forms can be passed around to multiple users for collaboration.

EFS-Web integrates with the Patent Application Information Retrieval (PAIR) system, the USPTO's online database that provides trusted filers with controlled access to non-published patent application information. PAIR uses digital certificates to permit only authorized individuals to access information about pending patent applications and to maintain the confidentiality and integrity of the information as it is transmitted over the Internet. Information for granted patents, published applications, and reexamination proceedings is available to the general public. PAIR is available through the USPTO Web site.

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

This information is collected only when a respondent files a request related to patent reexamination. This information is not collected elsewhere and does not result in a duplication of effort.

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

The information in this collection is necessary in order to process requests related to patent reexaminations. The same information is required from every requester and is not available from any other source.

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

This information is collected only when the public submits an item related to a request for reexamination and is not found elsewhere. If the information were not collected, the USPTO would not be able to comply with the statutes and regulations governing reexaminations. 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 August 10, 2009 (74 Fed. Reg. 39916). The comment period ended on October 9, 2009. One commenter responded to the August 10, 2009 60-Day Notice. The USPTO's response to the commenter follows:

*Comment:* The commenter indicated that the USPTO has underestimated both the time required to prepare the forms for requesting *ex parte* and *inter partes* reexamination (forms PTO/SB/57 and PTO/SB/58, respectively), as well as the time required to prepare the actual requests for *ex parte* and *inter partes* reexamination.

*Response:* Subsequent to publication of the 60-Day Notice on August 10, 2009, the USPTO was able to analyze survey data reported in Report of the Economic Survey 2009, Law Practice Management Committee, American Intellectual Property Law Association, 241 18th Street South, Suite 700, Arlington, Virginia 22202 ("the 2009 Report"). Based on the 2009 Report, the USPTO revised its estimates for the amount of time required to complete many of the information requirements covered by the present information collection, including the time required to prepare the actual requests for *ex parte* and *inter partes* reexamination, as shown in greater detail at Table 3 below.

In contrast to the requests for *ex parte* and *inter partes* reexamination, which contain the reexamination requester's substantive analysis, forms PTO/SB/57 and PTO/SB/58 play the role of a checklist for the requester to ensure compliance with the requirements of the statutes and rules for *ex parte* and *inter partes* reexaminations. Accordingly, the USPTO believes that its original estimate of 0.3 hours fairly represents the time required to complete either form PTO/SB/57 or PTO/SB/58.

The USPTO has long-standing relationships with groups from whom reexamination 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 meetings and considered in developing proposals for information collection requirements.

## **9. Payment or Gifts to Respondents**

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

## **10. Assurance of Confidentiality**

The confidentiality of patent applications is governed by statute (35 U.S.C. 122) and regulation (37 CFR 1.11 and 1.14). The USPTO has a legal obligation to maintain the confidentiality of the contents of unpublished patent applications and related documents. Upon publication of an application or issuance of a patent, the patent application file is made available to the public, subject to the provisions for providing only a redacted copy of the file contents. The entire file of an *ex parte* or *inter partes* reexamination proceeding is available to the public.

## **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 5,124 responses per year as outlined in the table below.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public from 18 minutes (0.30 hours) to 148 hours to gather the necessary information, prepare the appropriate form or other documents, and submit the information to the USPTO.

- **Cost Burden Calculation Factors**

In 2009 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 \$325 per hour used in this submission is the median rate for attorneys in private firms as published in that report. The USPTO expects that the information in this collection will be prepared by attorneys. This is a fully-loaded hourly rate.



**Table 3: Burden Hour/Burden Cost to Respondents for Patent Reexaminations**

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
Request for <i>Ex Parte</i> Reexamination Transmittal Form (PTO/SB/57)	0.30	845	254	\$325.00	\$82,550.00
Request for <i>Ex Parte</i> Reexamination	44.00	845	37,180	\$325.00	\$12,083,500.00
Request for <i>Inter Partes</i> Reexamination Transmittal Form (PTO/SB/58)	0.30	380	114	\$325.00	\$37,050.00
Request for <i>Inter Partes</i> Reexamination	148.00	380	56,240	\$325.00	\$18,278,000.00
Petition to Review Refusal to Grant <i>Ex Parte</i> Reexamination	16.50	25	413	\$325.00	\$134,225.00
Petition to Review Refusal to Grant <i>Inter Partes</i> Reexamination	41.00	9	369	\$325.00	\$119,925.00
Patent Owner's 37 CFR 1.530 Statement	8.00	105	840	\$325.00	\$273,000.00
Third Party Requester's 37 CFR 1.535 Reply	8.00	60	480	\$325.00	\$156,000.00
Amendment in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	33.00	1,165	38,445	\$325.00	\$12,494,625.00
Third Party Requester's 37 CFR 1.947 Comments in <i>Inter Partes</i> Reexamination	41.00	300	12,300	\$325.00	\$3,997,500.00
Response to Final Rejection in <i>Ex Parte</i> Reexamination	17.00	320	5,440	\$325.00	\$1,768,000.00
Patent Owner's 37 CFR 1.951 Response in <i>Inter Partes</i> Reexamination	41.00	120	4,920	\$325.00	\$1,599,000.00
Third Party Requester's 37 CFR 1.951 Comments in <i>Inter Partes</i> Reexamination	41.00	95	3,895	\$325.00	\$1,265,875.00
Petition to Request Extension of Time in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	0.50	475	238	\$325.00	\$77,350.00
<b>Totals</b>	-----	<b>5,124</b>	<b>161,128</b>	-----	<b>\$52,366,600.00</b>

The USPTO estimates that approximately 50% of the total responses for this collection will be submitted electronically via EFS-Web.

### 13. Total Annualized (Non-hour) Cost Burden

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

There are filing fees associated with requests for reexamination and for the petition to request an extension of time in a reexamination. The USPTO estimates that the total fees associated with this collection will be approximately \$5,568,400 per year, as calculated in Table 4 below.

**Table 4: Filing Fees for Respondents for Patent Reexaminations**

Item	Estimated annual responses	Fee Amount	Estimated annual filing costs
Request for <i>Ex Parte</i> Reexamination Transmittal Form (PTO/SB/57)	845	\$2,520.00	\$2,129,400.00
Request for <i>Ex Parte</i> Reexamination	845	\$0.00	\$0.00
Request for <i>Inter Partes</i> Reexamination Transmittal Form (PTO/SB/58)	380	\$8,800.00	\$3,344,000.00
Request for <i>Inter Partes</i> Reexamination	380	\$0.00	\$0.00
Petition to Review Refusal to Grant <i>Ex Parte</i> Reexamination	25	\$0.00	\$0.00
Petition to Review Refusal to Grant <i>Inter Partes</i> Reexamination	9	\$0.00	\$0.00
Patent Owner's 37 CFR 1.530 Statement	105	\$0.00	\$0.00
Third Party Requester's 37 CFR 1.535 Reply	60	\$0.00	\$0.00
Amendment in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	1,165	\$0.00	\$0.00
Third Party Requester's 37 CFR 1.947 Comments in <i>Inter Partes</i> Reexamination	300	\$0.00	\$0.00
Response to Final Rejection in <i>Ex Parte</i> Reexamination	320	\$0.00	\$0.00
Patent Owner's 37 CFR 1.951 Response in <i>Inter Partes</i> Reexamination	120	\$0.00	\$0.00
Third Party Requester's 37 CFR 1.951 Comments in <i>Inter Partes</i> Reexamination	95	\$0.00	\$0.00
Petition to Request Extension of Time in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	475	\$200.00	\$95,000.00
<b>Totals</b>	<b>5,124</b>	<b>.....</b>	<b>\$5,568,400.00</b>

There may also be postage costs and recordkeeping costs associated with this collection. The USPTO expects that approximately 50 percent of the responses for this collection will be submitted by mail and 50 percent will be submitted electronically. The USPTO estimates that the average postage cost for a mailed submission will be 44 cents for Petitions to Request Extension of Time and \$4.95 for all other mailed submissions. (The documentation for requests for *ex parte* or *inter partes* reexamination will typically be mailed to the USPTO with the appropriate transmittal form.) The USPTO estimates that the total postage cost associated with this collection will be approximately \$8,565 per year, as calculated in Table 5 below.

**Table 5: Postage Costs for Respondents for Patent Reexaminations**

Item	Estimated annual mailed responses	Estimated postage amount	Estimated annual postage costs
Request for <i>Ex Parte</i> Reexamination Transmittal Form (PTO/SB/57)	422	\$4.95	\$2,089.00
Request for <i>Ex Parte</i> Reexamination (submitted with transmittal form above)	422	\$0.00	\$0.00
Request for <i>Inter Partes</i> Reexamination Transmittal Form (PTO/SB/58)	190	\$4.95	\$941.00
Request for <i>Inter Partes</i> Reexamination (submitted with transmittal form above)	190	\$0.00	\$0.00
Petition to Review Refusal to Grant <i>Ex Parte</i> Reexamination	12	\$4.95	\$59.00
Petition to Review Refusal to Grant <i>Inter Partes</i> Reexamination	4	\$4.95	\$20.00
Patent Owner's 37 CFR 1.530 Statement	52	\$4.95	\$257.00
Third Party Requester's 37 CFR 1.535 Reply	30	\$4.95	\$149.00
Amendment in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	582	\$4.95	\$2,881.00
Third Party Requester's 37 CFR 1.947 Comments in <i>Inter Partes</i> Reexamination	150	\$4.95	\$743.00
Response to Final Rejection in <i>Ex Parte</i> Reexamination	160	\$4.95	\$792.00
Patent Owner's 37 CFR 1.951 Response in <i>Inter Partes</i> Reexamination	60	\$4.95	\$297.00
Third Party Requester's 37 CFR 1.951 Comments in <i>Inter Partes</i> Reexamination	47	\$4.95	\$233.00
Petition to Request Extension of Time in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	237	\$0.44	\$104.00
<b>Totals</b>	<b>2,558</b>	<b>.....</b>	<b>\$8,565.00</b>

When submitting the information in this collection to the USPTO electronically, the customer is strongly urged to retain a copy of the acknowledgment receipt as evidence that the submission was received by the USPTO on the date noted. The USPTO estimates that it will take 5 seconds (0.001 hours) to print and retain a copy of the acknowledgment receipt and that approximately 2,566 responses per year will be submitted electronically, for a total of approximately 3 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 \$300 per year.

**The total annual (non-hour) respondent cost burden for this collection in the form of filing fees (\$5,568,400), postage costs (\$8,565), and recordkeeping costs (\$300) is approximately \$5,577,265 per year.**

#### 14. Annual Cost to Federal Government

The USPTO estimates that it takes USPTO staff approximately 15 minutes (0.25 hours) to 4 hours to process the information in this collection, depending on the type and amount of information submitted. The information in this collection is processed by GS-7, step 1 and GS-11, step 1 employees at the hourly rates of \$19.75 and \$29.22. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the hourly rate for information processed by GS-7 employees is \$25.68 (\$19.75 + \$5.93) and by GS-11 employees is \$37.99 (\$29.22 + \$8.77).

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

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

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a x b)	Rate (\$/hr) (d)	Total Cost (\$/yr) (e) (c x d)
Request for <i>Ex Parte</i> Reexamination Transmittal Form (PTO/SB/57)	1.00	845	845	\$25.68	\$21,700.00
Request for <i>Ex Parte</i> Reexamination	4.00	845	3,380	\$37.99	\$128,406.00
Request for <i>Inter Partes</i> Reexamination Transmittal Form (PTO/SB/58)	1.00	380	380	\$25.68	\$9,758.00
Request for <i>Inter Partes</i> Reexamination	4.00	380	1,520	\$37.99	\$57,745.00
Petition to Review Refusal to Grant <i>Ex Parte</i> Reexamination	0.50	25	13	\$25.68	\$334.00
Petition to Review Refusal to Grant <i>Inter Partes</i> Reexamination	0.50	9	5	\$25.68	\$128.00
Patent Owner's 37 CFR 1.530 Statement	0.25	105	26	\$37.99	\$988.00
Third Party Requester's 37 CFR 1.535 Reply	0.25	60	15	\$37.99	\$570.00
Amendment in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	0.33	1,165	384	\$37.99	\$14,588.00
Third Party Requester's 37 CFR 1.947 Comments in <i>Inter Partes</i> Reexamination	0.33	300	99	\$37.99	\$3,761.00
Response to Final Rejection in <i>Ex Parte</i> Reexamination	0.33	320	106	\$37.99	\$4,027.00
Patent Owner's 37 CFR 1.951 Response in <i>Inter Partes</i> Reexamination	0.33	120	40	\$37.99	\$1,520.00
Third Party Requester's 37 CFR 1.951 Comments in <i>Inter Partes</i> Reexamination	0.33	95	31	\$37.99	\$1,178.00

Petition to Request Extension of Time in <i>Ex Parte</i> or <i>Inter Partes</i> Reexamination	0.25	475	119	\$25.68	\$3,056.00
<b>Totals</b>	-----	<b>5,124</b>	<b>6,963</b>	-----	<b>\$247,759.00</b>

## 15. Reason for Changes in the Annual Burden

### Summary of the New Collection

The USPTO is proposing to move the following items that are under OMB Control Number 0651-0033 into this new information collection for Patent Reexaminations: Request for *Ex Parte* Reexamination Transmittal Form; Request for *Inter Partes* Reexamination Transmittal Form; Petition to Review the Refusal to Grant *Ex Parte* Reexamination; Petition to Review the Refusal to Grant *Inter Partes* Reexamination; and Petition to Request Extension of Time in *Ex Parte* or *Inter Partes* Reexamination. The USPTO is also proposing to include additional items related to patent reexaminations in this new information collection. These additional items are existing information requirements that previously were not fully covered by an information collection and are now being included in order to more accurately reflect the burden on the public for submitting requests related to patent reexaminations.

### Changes from the 60-Day Notice

Since the 60-Day Notice was published, the USPTO has decided to revise the time estimates for several items in this collection. The estimated time per response has been increased for all items except for the reexamination transmittal forms (PTO/SB/57 and PTO/SB/58) and the petition to request extension of time. These revised time estimates have increased the total burden hours for this collection from the 111,336 hours reported in the 60-Day Notice to the 161,128 hours set forth in this Supporting Statement.

The USPTO has also updated the estimated hourly rate for attorneys preparing the information in this collection from \$310 to \$325. As a result of the increase in total burden hours and the updated hourly rate for attorneys, the total respondent cost burden for this collection has increased from \$34,514,160 as reported in the 60-Day Notice to \$52,366,600 as set forth in this Supporting Statement.

### Changes in Burden

For this new collection, the USPTO estimates that the total annual responses will be 5,124 and the total annual burden hours will be 161,128. **Therefore, this collection has a total burden of 161,128 hours as a program change.**

The USPTO estimates that this new information collection will also have an annual (non-hour) cost burden of \$5,577,265 in the form of filing fees, postage costs, and recordkeeping costs. **Therefore, this collection has \$5,577,265 in annual (non-hour) cost burden as a program change.**

**16. Published Collections of Information**

No special publication of the items in this collection is planned. However, information regarding requests for reexamination filed is published weekly in the *Official Gazette of the United States Patent and Trademark Office*. 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 of OMB approval.

**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. Form PTO/SB/57 Request for *Ex Parte* Reexamination Transmittal Form
- C. Form PTO/SB/58 Request for *Inter Partes* Reexamination Transmittal Form