

JUSTIFICATION FOR EMERGENCY CLEARANCE
United States Patent and Trademark Office
Patent Term Extension

OMB CONTROL NUMBER 0651-0020

*January 2010 Request for Recalculation of Patent Term Adjustment
in View of WYETH Update*

Background

The United States Patent and Trademark Office (USPTO) may in some cases extend the term of an original patent due to certain delays in the prosecution of the patent application, including delays caused by interference proceedings, secrecy orders, or appellate review by the Board of Patent Appeals and Interferences or a Federal court in which the patent is issued pursuant to a decision reversing an adverse determination of patentability. The patent term provisions of 35 U.S.C. § 154(b), as amended by Title IV, Subtitle D of the Intellectual Property and Communications Omnibus Reform Act of 1999, require the USPTO to notify the applicant of the patent term adjustment in the notice of allowance and give the applicant an opportunity to request reconsideration of the USPTO's patent term adjustment determination.

The USPTO requests emergency review of an information collection request associated with 0651-0020 Patent Term Extension. A recent Federal Circuit Court decision has impacted the information collection activities. The USPTO is implementing a new procedure for patentees to seek a revised patent term adjustment in a patent if the patentee's sole basis for requesting recalculation of the patent term adjustment in the patent is the USPTO's pre-Wyeth interpretation of 35 U.S.C. § 154(b)(2)(A).

The new procedure permits eligible patentees to request a recalculation of their patent term adjustment in lieu of the petition and fee required by 37 CFR 1.705(d). It is only applicable to patents issued before March 2, 2010.

The recalculation requests can be either be submitted on paper or electronically. The USPTO estimates that 93% of the requests will be submitted electronically.

Summary of Changes

The USPTO is proposing to add a new form for patentees to request recalculation of their patent term adjustments in light of Wyeth: Request for Recalculation of Patent Term Adjustment in View of *Wyeth*, Form PTO/SB/131. The USPTO expects to use this form for 18 months.

Changes in Burden

The addition of the form requesting recalculation of the patent term adjustment based on *Wyeth* will result in the following burden changes for this information collection:

JUSTIFICATION FOR EMERGENCY CLEARANCE FOR 0651-0020 (continued)

Burden Type	Currently approved	Proposed addition	New estimates
Responses	26,859	12,000	38,859
Hours	30,905	2,040	32,945
Fees	\$5,977,040	\$0	\$5,977,040
Postage costs	\$11,012	\$370	\$11,382
Recordkeeping costs	\$0	\$1,100	\$1,100
Annual (non-hour) costs	\$5,988,052	\$1,470	\$5,989,522

The USPTO estimates that it will receive 12,000 recalculation requests per year, and that it will take the public approximately 10 minutes (0.17 hours) to prepare and submit the information for each request. Therefore, this collection would take an increase of 12,000 responses and 2,040 hours as a program change.

There are annual (non-hour) costs in the form of postage and recordkeeping costs associated with the items being added to this collection. Out of the estimated 12,000 requests, the USPTO estimates that 840 requests will be mailed, at a postal rate of 44 cents. Based on the estimated 840 mailed submissions, a total of \$370 in postage costs will be added to this collection as a program change.

There are also recordkeeping costs associated with submitting the new recalculation request forms being added into this collection electronically through the USPTO's web-based electronic filing system, EFS-Web. The USPTO recommends that customers print and retain a copy of the acknowledgment receipt as evidence of the successful submission. The USPTO estimates that 93% or 11,160 submissions will be filed online and estimates that it will take 5 seconds (0.001 hours) to print a copy of the acknowledgment receipt, for a total of approximately 11 hours per year. The USPTO expects that these receipts will be printed by paraprofessionals at an estimated rate of \$100 per hour, for a recordkeeping cost of \$1,100. The addition of this new recalculation request form will add \$1,100 in recordkeeping costs to the collection's current inventory as a program change.

The USPTO estimates that the proposed changes for this collection will result in a total burden increase of:

- 12,000 responses
- 2,040 hours
- \$1,470 in annual (non-hour) costs as a program change

Therefore, this collection would have a revised total burden of:

- 38,859 responses
- 32,945 hours
- \$5,989,522 in annual (non-hour) costs