

SUPPORTING STATEMENT
United States Patent and Trademark Office
Green Technology Pilot Program
OMB CONTROL NUMBER 0651-0062
May 2010

A. JUSTIFICATION

1. Necessity of Information Collection

The United States Patent and Trademark Office (USPTO) has implemented a pilot program in which an applicant may have an application advanced out of turn (accorded special status) for examination, for applications pertaining to green technologies including greenhouse gas reduction.

Specifically, the green technology pilot program permits patent applications pertaining to environmental quality, energy conservation, development of renewable energy resources or greenhouse gas emission reduction to be advanced out of turn without meeting all of the current requirements of the accelerated examination program covered under OMB Control Number 0651-0031. An application that is accorded special status under the green technology pilot program will be placed on an examiner's special docket prior to the first Office action, and will have special status in any appeal to the Board of Patent Appeals and Interferences (BPAI) and also in the patent publication process. An application accorded special status under the green technology pilot program, however, will be placed on the examiner's amended docket, rather than the examiner's special docket, after the first Office action (which may be an Office action containing only a restriction requirement).

This pilot will support national and international green technology initiatives and is expected to run for 12 months.

Several requirements must be met in order to participate in the pilot program. A summary of requirements is listed on page 2 of form PTO/SB/420. In general:

- The application must be a non-reissue, non-provisional utility application filed under 35 U.S.C. 111(a), or an international application that has entered the national stage in compliance with 35 U.S.C. 371(c). Reexamination proceedings are excluded from this pilot program.
- The application must contain three or fewer independent claims and 20 or fewer total claims. The application must not contain any multiple dependent claims. For an application that contains more than three independent claims or 20 total claims, or multiple dependent claims, applicants must file a preliminary amendment in compliance with 37 CFR 1.121 to cancel the excess claims and/or the multiple dependent claims at the time the request is filed.

- The claims must be directed to a single invention. If the USPTO determines that the claims are directed to multiple inventions (e.g., in a restriction requirement), the applicant must make an election without traverse or withdraw from the pilot program.

Two new items being introduced into the collection at this time are (1) protests by the public against pending applications under 37 CFR 1.291 and (2) third-party submissions in published applications under 37 CFR 1.99.

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

Table 1: Information Requirements for the Green Technology Pilot Program

Requirement	Statute	Rule
Request for Green Technology Pilot Program	35 U.S.C. 2(b)(2)	37 CFR 1.102
Protests by the public against pending applications under 37 CFR 1.291	35 U.S.C. 122(c), 131 and 151	37 CFR 1.291
Third-party submissions in published applications under 37 CFR 1.99	35 U.S.C. 122(c), 131 and 151	37 CFR 1.99

2. Needs and Uses

This information collection is necessary so that (i) patent applicants may participate in the new streamlined Examination Pilot Program for Green Technologies, (ii) the public may protest a pending application, and (iii) the public may make a submission in a published application. The USPTO provides a form to assist the public with submitting the required information for the program, Request for Green Technology Pilot, PTO/SB/420.

The Information Quality Guidelines from Section 515 of Public Law 106-554, Treasury and General Government Appropriations Act for Fiscal Year 2001, apply to this information collection and comply with all applicable information quality guidelines, i.e., OMB and specific operating unit guidelines.

This proposed collection of information will result in information that will be collected, maintained, and used in a way consistent with all applicable OMB and USPTO Information Quality Guidelines.

Table 2 outlines how this information is used by the public and by the USPTO:

Table 2: Needs and Uses for the Green Technology Pilot Program

Form and Function	Form #	Needs and Uses
Green Technology Pilot Program	PTO/SB/420	<ul style="list-style-type: none"> • Used by the public to request participation in the pilot program and to submit the required materials • Used by the public to request early publication. • Used by the USPTO to determine eligibility in the program and to advance the examination of eligible applications. • Used by the USPTO to grant early publication.

Protests by the public against pending applications under 37 CFR 1.291	No form associated	<ul style="list-style-type: none"> • Used by the public to call attention to any facts within protestor's knowledge that, in the protestor's opinion, would make the grant of a patent on an application pending in the USPTO improper. • Used by the USPTO to bring information to the attention of the USPTO and to avoid the issuance of an invalid patent.
Third-party submissions in published applications under 37 CFR 1.99	No form associated	<ul style="list-style-type: none"> • Used by the public to submit, without further comment or explanation, patents or publications relevant to a pending published application. • Used by the USPTO to enter patents or publications in the application file.

3. Use of Information Technology

The information in this collection must be timely filed electronically using the USPTO's electronic filing system, EFS-Web. EFS-Web allows customers to file information through their standard web browser and does not require any significant client-side components. Customers may create their requests using the tools and processes that they already use and then convert those documents into standard portable document format (PDF) files that are submitted through EFS-Web to the USPTO. Accordingly, EFS-Web enables users to streamline processing and filing of patent correspondence and to better integrate electronic filing into their current computer systems. EFS-Web offers many potential benefits to filers, including form validation to ensure that all required information has been included, immediate notification that a submission has been received, automated processing of requests, and avoidance of postage or other delivery costs.

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

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

4. Efforts to Identify Duplication

The information collected is required to process (i) requests to participate in the green technology pilot program and enable accelerated examination, (ii) protests by the public

against pending applications, and (iii) third-party submissions in published applications. This information is not collected elsewhere and does not result in a duplication of effort. For example, if any of the documents required for participation in the pilot program have already been filed in the U.S. application, the applicant will not need to resubmit those documents and may simply indicate in the request for participation when the documents were previously filed.

5. Minimizing the Burden to Small Entities

This collection of information does not impose a significant economic impact on small entities or small businesses. The information required by this collection provides the USPTO with the necessary materials for (i) expediting the examination of applications that are eligible for the pilot program, (ii) bringing information to the attention of the USPTO and avoiding the issuance of an invalid patent, and (iii) entering patents or publications in the application file. The same information is required from every applicant or member of the public and is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only when the public (i) submits a request to participate in the streamlined examination pilot program for patent applications pertaining to green technologies, including greenhouse gas reduction, (ii) a 37 CFR 1.291 protest, and (iii) a 37 CFR 1.99 third-party submission. If this information were not collected, the USPTO would not be able to (i) conduct the pilot program and provide the ensuing examination benefits to eligible applicants, and (ii) balance the mandate of 35 U.S.C. 122(c) and the USPTO's authority and responsibility under 35 U.S.C. 131 and 151 to issue a patent only if "it appears that the applicant is entitled to a patent under the law." 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. Consultation Outside the Agency

The 60-Day Notice was published in the *Federal Register* on January 12, 2010 (75 Fed. Reg. 1591). The public comment period ended on March 15, 2010. No public comments were received.

The USPTO has long-standing relationships with groups from who 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 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.

11. Justification for 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 anticipated burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**
The USPTO estimates that it will receive 5,225 responses per year for this collection and that 100% of these responses will be submitted electronically through EFS-Web.
- **Burden Hour Calculation Factors**
The USPTO estimates that it will take the public between 1 hour and 10 hours to gather the necessary information, prepare the appropriate form or 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 (AIPLA) 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. These are fully-loaded hourly rates.

Table 3: Burden Hour/Burden Cost to Respondents for the Green Technology Pilot Program

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (a) x (b) (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) (e)
Request for Green Technology Pilot Program (PTO/SB/420)	1.0	5,000	5,000	\$325.00	\$1,625,000.00
Protests by the public against pending applications under 37 CFR 1.291	10.0	65	650	\$325.00	\$211,250.00
Third-party submissions in published applications under 37 CFR 1.99	7.5	160	1,200	\$325.00	\$390,000.00
TOTAL	- - - - -	5,225	6,850	- - - - -	\$2,226,250.00

13. Total Annualized (Non-hour) Cost Burden

There are no capital start-up, maintenance or postage costs associated with this information collection. However, this collection does have record keeping costs and filing fees for the second or subsequent protest filed by the same real party in interest and for a third-party submission under 37 CFR 1.99.

When submitting the information in this collection to the USPTO electronically through EFS-Web, the applicant is strongly urged to retain a copy of the file submitted to the USPTO as evidence of authenticity in addition to keeping the acknowledgement receipt as clear evidence of the date the file was received by the USPTO. The USPTO estimates that it will take 2 minutes (0.03 hours) to print and retain a copy of the EFS-Web submissions and that approximately 5,225 submissions per year will be submitted electronically, for a total of approximately 157 hours per year for printing this receipt. Using the paraprofessional rate of \$100 per hour, the USPTO estimates that the record keeping cost associated with this collection will be approximately \$15,700 per year.

There is no fee for filing protests under 37 CFR 1.291 unless the filed protest is the second or subsequent protest by the same real party in interest, in which case the 1.17(l) fee of \$130 must be included (the USPTO estimates 7 of the 65 protests filed per year will trigger this fee). Third-party submissions under 37 CFR 1.99 must include the 1.17(p) fee of \$180. The USPTO estimates that the total fees associated with this collection will be approximately \$29,710 per year.

The total annualized (non-hour) cost burden for this collection in the form of record keeping costs (\$15,700) and filing fees (\$29,710) is \$45,410 per year.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-5, step 1 employee, 1 hour to process the request for participation in the Green Technology Pilot Program. The hourly rate for a GS-5, step 1, is currently \$16.33 according to the U.S. Office of Personnel Management's (OPM's) wage chart, including locality pay for the Washington, DC area.

When 30% is added to account for a fully- loaded hourly rate (benefits and overhead), the rate per hour for a GS-5, step 1 employee, is \$21.23 (\$16.33 + \$4.90).

The USPTO estimates that it takes a GS-7, step 1 employee, 30 minutes (0.5 hours) to process the protests under 37 CFR 1.291 and the third-party submissions under 37 CFR 1.99. The hourly rate for a GS-7, step 1, is currently \$20.22. When 30% is added to account for a fully- loaded hourly rate (benefits and overhead), the rate per hour for a GS-7, step 1 employee, is \$26.29 (\$20.22 + \$6.07).

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

Table 4: Burden Hour/Burden Cost to the Federal Government for the Green Technology Pilot Program

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (a) x (b) (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) (e)
Request for Green Technology Pilot Program	1.0	5,000	5,000	\$21.23	\$106,150.00
Protests by the public against pending applications under 37 CFR 1.291	0.5	65	33	\$26.29	\$868.00
Third-party submissions in published applications under 37 CFR 1.99	0.5	160	80	\$26.29	\$2,103.00
TOTAL	- - - -	5,225	5,113	- - - -	\$109,121.00

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

This information collection was previously approved in November of 2009 with a total of 5,000 responses and 5,500 burden hours per year.

For this renewal, the USPTO estimates that the total annual responses will be 5,225 and the total annual burden hours will be 6,850, which is an increase of 225 responses and 1,350 burden hours from the currently approved burden for this collection. This increase in responses and burden hours is due to program changes and an administrative adjustment.

There was no annualized (non-hour) cost burden associated with the previous approval. The total annualized (non-hour) cost burden for this renewal is \$45,410 attributed to program changes.

Change in Burden Estimates Since the 60-Day Federal Register Notice

There has been no change to the estimated responses and burden hours since the publication of the 60-Day Federal Register Notice.

The 60-Day Federal *Register Notice* reported total (non-hour) cost burden in the amount of \$30,210. (Non-hour) cost burden is being increased in this submission to \$45,410 due to an adjustment in the time for the record keeping requirement.

Change in Respondent Cost Burden

When this collection was approved by OMB in November 2009, the estimated hourly rate for attorneys was \$310. Using that rate, the reported 5,000 burden hours yielded a respondent cost burden of \$1,550,000.

For this renewal, the USPTO is using the current professional hourly rate of \$325. At this rate, the 6,850 burden hours for this renewal yield a respondent cost burden of \$2,226,250, which is an increase of \$676,250 over the currently approved burden at the previous hourly rate. This increase in respondent cost burden is due to the addition of two new requirements into the collection along with the increase in the estimated hourly professional rate.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the annual responses for this collection will increase by 225, from 5,000 to 5,225 responses per year. However in the previous submission, the annual burden hours were erroneously reported as 5,550 hours instead of the actual 5,000 hours. Based on this adjustment, the annual burden hours are increasing in this submission from what should have been the correctly reported hours of 5,000 to 6,850 hours. This increase in burden hours is due to an administrative adjustment and program changes, as follows:

- The USPTO is adjusting the previously reported annual burden hours from 5,500 to 5,000 hours due to the hours being erroneously reported to OMB in the previous submission. **Therefore, this submission takes a total burden decrease of 500 hours as an administrative adjustment.**
- The USPTO is adding the requirement Protests by the Public against Pending Applications under 37 CFR 1.291 into the collection. The USPTO estimates that it will take 10 hours to complete this requirement and that it will receive 65 responses per year. **Therefore, this submission takes a total burden increase of 650 hours as a program change.**
- The USPTO is adding the requirement Third Party Submissions in Published Applications under 37 CFR 1.99 into the collection. The USPTO estimates that it will take 7.5 hours to complete this requirement and that it will receive 160 responses per year. **Therefore, this submission takes a total burden increase of 1,200 hours as a program change.**

A total of 500 hours have been removed from this collection as a result of an administrative adjustment and 1,850 hours have been added to this collection as

a result of program changes. The reduction due to erroneously reported hours is offset by an increase due to two new requirements being added into this collection, for a net increase of 1,350 hours.

Changes in Annualized (Non-hour) Cost Burden

Annualized (non-hour) costs are being added to the burden of this collection in the form of recordkeeping costs and filing fees. These annualized (non-hour) costs are due to program changes as a result of the addition of record keeping costs and two new requirements being added into the collection. Record keeping costs were erroneously left out of the last submission but are being included in this submission.

In sum, this collection has an annualized (non-hour) cost burden of \$45,410, with \$15,700 in the form of record keeping costs and \$29,710 in the form of filing fees. **Therefore, there is annualized (non-hour) cost burden associated with this collection of \$45,410 due to program changes.**

16. Project Schedule

The USPTO does not plan to publish this information for statistical use or any other purpose.

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. Exception to the Certificate Statement

This collection of information does not include any exceptions to the certificate statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.

References

- A. The USPTO Information Quality Guidelines
- B. Request for Green Technology Pilot Program (PTO/SB/420)