

SUPPORTING STATEMENT
United States Patent and Trademark Office
Secrecy and License to Export
OMB CONTROL NUMBER 0651-0034
(August 2010)

A. JUSTIFICATION

1. Necessity of Information Collection

In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patents in foreign countries.

In particular, whenever the publication or disclosure of an invention by the publication of an application or by the granting of a patent is, in the opinion of the head of an interested Government agency, determined to be detrimental to national security, the Commissioner for Patents at the United States Patent and Trademark Office (USPTO) must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. A patent will not be issued on the application as long as the secrecy order is in force. If a secrecy order is applied to an international application, the application will not be forwarded to the International Bureau as long as the secrecy order is in effect.

Three types of secrecy orders, each of a different scope, can be issued. The first type, Secrecy Order and Permit for Foreign Filing in Certain Countries, is intended to permit the widest utilization of the technical data in the patent application while still controlling any publication or disclosure that would result in an unlawful exportation. The second type, the Secrecy Order and Permit for Disclosing Classified Information, is to treat classified technical data presented in a patent application in the same manner as any other classified material. The third type of secrecy order is used where the other types of orders do not apply, including orders issued by direction of agencies other than the Department of Defense.

Under the provision of 35 U.S.C. 181, a secrecy order remains in effect for a period of one year from its date of issuance. A secrecy order may be renewed for additional periods of not more than one year upon notice by a government agency that the national interest continues to so require. The applicant is notified of such renewal.

When the USPTO places a secrecy order on a patent application, the rules authorize the applicant to petition the USPTO for permits to allow disclosure, modification, or rescission of the secrecy order, or to obtain a general or group permit. In each of these circumstances, the petition is forwarded to the appropriate defense agency for decision. Also, the Commissioner for Patents at the USPTO may rescind any order upon notification by the heads of the departments and the chief officers of the agencies who

caused the order to be issued that the disclosure of the invention is no longer deemed detrimental to the national security.

Unless expressly ordered otherwise, action on the application and prosecution by the applicant will proceed during the time the application is under secrecy order to a specific point as indicated under 37 CFR 5.3. Applications under secrecy order that come to a final rejection must be appealed or otherwise prosecuted to avoid abandonment. Appeals in such cases must be completed by the applicant, but unless specifically indicated by the Commissioner of Patents at the USPTO, will not be set for hearing until the secrecy order is removed.

In addition to the issuance of secrecy orders, the USPTO is required to grant foreign filing licenses to applicants. The filing of a patent application is considered a request for a foreign filing license. However, in some instances an applicant may need a license for filing patent applications in foreign countries prior to a filing in the USPTO or sooner than the anticipated licensing of a pending patent application.

To file a patent application in a foreign country, the applicant can petition the USPTO for a foreign filing license either with or without a corresponding United States application. In addition, the applicant can petition to change the scope of a license and, when a patent application is filed through error in a foreign country without the appropriate filing license, an applicant can petition the USPTO for a retroactive license.

This collection includes the information needed by the USPTO to review and issue or revoke the various types of petitions contemplated herein.

The USPTO administers 35 U.S.C. 181-188 through 37 CFR 5.1-5.33. Table 1 provides the specific statutes and rules requiring the USPTO to collect the information discussed above:

Table 1: Information Requirements for Secrecy and License to Export

Requirement	Statute	Rule
Petitions relating to Secrecy Orders: <ul style="list-style-type: none"> • Petition for Rescission of Secrecy Order • Petition to Disclose or Modification of Secrecy Order • Petition for General and Group Permits 	35 U.S.C. 181-188 35 U.S.C. 181-182 35 U.S.C. 181 35 U.S.C. 181	37 CFR 5.1–5.33 37 CFR 5.4 37 CFR 5.5 37 CFR 5.5(e)
Petitions for Foreign Filing Licenses: <ul style="list-style-type: none"> • Petition for Expedited Handling of License (no corresponding application) • Petition for Expedited Handling of License (corresponding U.S. application) • Petition for Changing Scope of License • Petition for Retroactive License 	35 U.S.C. 184-186	37 CFR 5.11–5.33 37 CFR 5.12, 5.13; 37 CFR 1.17(g) 37 CFR 5.12, 5.14; 37 CFR 1.17(g) 37 CFR 5.15; 37 CFR 1.17(g) 37 CFR 5.25; 37 CFR 1.17(g)

2. Needs and Uses

This collection includes the information needed by the USPTO to review and issue or revoke the various types of petitions regarding secrecy orders and foreign filing

licenses. There are no forms associated with the petitions in this collection. Response to this information collection is necessary to obtain a permit to disclose, modify or rescind a secrecy order, to obtain general or group permits, to obtain foreign filing and retroactive licenses, or to change the scope of a license.

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 would 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 of Information Collected for Secrecy and License to Export

Form and Function	Form #	Needs and Uses
Petition for Rescission of Secrecy Order	No Form Associated	<ul style="list-style-type: none"> • Used by the public to present evidence to the USPTO that the patent application no longer requires a secrecy order. • Used by the USPTO to determine whether an invention remains subject to a secrecy order.
Petition to Disclose or Modification of Secrecy Order	No Form Associated	<ul style="list-style-type: none"> • Used by the public to petition the USPTO for a permit to disclose a patent application currently under a secrecy order. • Used by the public to petition the USPTO to modify a secrecy order. • Used by the USPTO to query a defense agency to determine whether a permit can be issued to allow disclosure of a patent application currently under a secrecy order. • Used by the USPTO to query a defense agency to determine whether a patent application currently under a secrecy order can be modified.
Petition for General and Group Permits	No Form Associated	<ul style="list-style-type: none"> • Used by organizations or individuals inside an organization to petition the USPTO for a permit allowing use of patent applications under secrecy orders. • Used by the USPTO to query a defense agency to determine whether an organization or individuals inside an organization qualify for permission to handle patent applications under secrecy orders.

<p>Petitions for Foreign Filing Licenses:</p> <ul style="list-style-type: none"> • Petition for Expedited Handling of License (no corresponding application) • Petition for Expedited Handling of License (corresponding U.S. application) • Petition for Changing Scope of License • Petition for Retroactive License 	<p>No Forms Associated</p>	<ul style="list-style-type: none"> • Used by the public to petition the USPTO for various licenses to file and/or export patent applications, technical data, and other information in a foreign country. • Used by the public to request a change in the scope of a license. • Used by the public to appeal the USPTO's denial of a retroactive license. • Used by the public to ensure that the appropriate fees have been submitted. • Used by the USPTO to examine and issue or revoke, as appropriate, various types of foreign filing licenses. • Used by the USPTO to determine whether an unlicensed filing violated any export regulations. • Used by the USPTO to ensure that the appropriate fees have been submitted.
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3. Use of Information Technology

The USPTO currently accepts the electronic filing of most patent applications and related documents through its Web-based patent application and document submission solution, EFS-Web. The USPTO's Legal Framework for EFS-Web, available at www.uspto.gov, provides more information about the types of patent applications and documents permitted to be filed via EFS-Web. With respect to the information associated with this collection, the USPTO at this time only accepts through EFS-Web petitions for foreign filing licenses for applications on file with the USPTO. The USPTO is not currently collecting through EFS-Web petitions for foreign filing licenses where there is not a U.S. patent application on file or any of the petitions under the secrecy order program.

Due to its extremely sensitive nature (national security interests) and low volume, information associated with this collection pertaining to applications under a secrecy order cannot be electronically collected in a feasible manner. In particular, information associated with this collection pertaining to applications under a secrecy order cannot be collected using the same electronic system that is used for the filing of papers pertaining to applications not under a secrecy order. An entirely separate electronic system would have to be designed and implemented, including separate, secure servers. On balance, the cost factor of designing and putting into operation such a system against the low volume of filings makes this alternative cost prohibitive and not a feasible option.

New features and capabilities are being added to EFS-Web as it undergoes further development, and customers will eventually be able to file all applications and related documents electronically through EFS-Web. As the USPTO expands the use of electronic filing, the USPTO will reevaluate whether it is feasible for the secrecy order program petitions to be filed electronically as well. If the security issues are resolved and the electronic collection of these items becomes feasible, the USPTO will submit the associated electronic forms to OMB for review, as necessary.

4. Efforts to Identify Duplication

This information is collected to issue permits to disclose, modify or rescind secrecy orders, to grant general or group permits, to obtain foreign filing and retroactive licenses, or to change the scope of a license. This information is not collected elsewhere.

5. Minimizing Burden to Small Entities

No significant economic impact is imposed on small entities or small businesses as a result of this information collection. The same information is required of every applicant and is not available from any other source.

6. Consequences of Less Frequent Collection

This information is collected only when the respondent petitions the USPTO for permits to disclose, modify or rescind secrecy orders, to grant general or group permits, to obtain foreign filing and retroactive licenses, and to change the scope of a license. It could not be conducted less frequently. If the collection of information were not collected, the USPTO could not comply with the requirements of 35 U.S.C. 181-188 and 37 CFR 5.1–5.33.

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 January 22, 2010 (75 Fed. Reg. 3704). The comment period ended on March 23, 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, 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 is governed by statutes 35 U.S.C. 122 and 181 and regulations 37 CFR 1.11, 1.14 and 5.1-5.3. This collection contains confidential information that is subject to the Privacy Act. Systems of Records Notices for Patent Application Secrecy Order Files (Commerce/PAT-TM-8) and Petitioners for License to File for Foreign Patents (Commerce/PAT-TM-13) have been published in the *Federal Register*. Records are maintained for referral to authorized government agencies under 35 U.S.C. 181 for determination of the requirement for a secrecy order, notification of the applicant or his duly appointed representative of such secrecy order, to prevent disclosure of information that might be detrimental to national security, and in accordance with agency rules.

Anyone wishing to view documents recorded under secrecy orders or view recorded documents in which the Federal government has an interest must submit authorization in writing before the USPTO will release the documents for inspection, according to 37 CFR 3.58. Records are stored in paper in file folders and on magnetic storage media. Documents under secrecy orders cannot be filed electronically due to national security concerns.

Administrative controls are used to safeguard this information as appropriate. Records are stored in a locked vault in areas accessible only to authorized personnel who are properly screened, cleared and trained. Where information is retrievable by terminal, all safeguards appropriate to secure the ADP telecommunications system (hardware and software) are utilized.

11. Justification for Sensitive Questions

None of the required information 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 receives approximately 1,794 responses annually.
- **Burden Hour Calculation Factors**
The USPTO estimates that it will take the public between 30 minutes (0.5 hours) to 4 hours to gather the necessary information, prepare the appropriate petition, and submit the petition to the USPTO, depending on the complexity of the situation.
- **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. This is a fully-loaded hourly rate.

Table 3: Burden Hour/Burden Cost to Respondents for Secrecy and License to Export

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Petition for Rescission of Secrecy Order	3.0	6	18	\$325.00	\$5,850.00
Petition to Disclose or Modification of Secrecy Order	2.0	3	6	\$325.00	\$1,950.00
Petition for General and Group Permits	1.0	1	1	\$325.00	\$325.00
Petition for Expedited Handling of License (no corresponding application)	0.5	1,347	674	\$325.00	\$219,050.00
Petition for Expedited Handling of License (corresponding U.S. application)	0.5	259	130	\$325.00	\$42,250.00
Petition for Changing Scope of License	0.5	1	1	\$325.00	\$325.00
Petition for Retroactive License	4.0	177	708	\$325.00	\$230,100.00
TOTAL	- - - - -	1,794	1,538	- - - - -	\$499,850.00

13. Total Annualized (Non-hour) Cost Burden

There are no capital start-up, maintenance, or record keeping costs associated with this information collection. There are, however, non-hour costs due to filing fees and postage costs for the foreign filing petitions. No fees are associated with the secrecy order petitions.

The total annual filing fee/non-hour cost burden to respondents is outlined in Table 4 below:

Table 4: Filing Fees/Non-hour Cost Burden to Respondents for Secrecy and License to Export

Item	Responses (a)	Filing fee (\$) (b)	Total Non-Hour Cost Burden (a) x (b) (c)
Petition for Rescission of Secrecy Order	6	\$0.00	\$0.00
Petition to Disclose or Modification of Secrecy Order	3	\$0.00	\$0.00
Petition for General and Group Permits	1	\$0.00	\$0.00
Petition for Expedited Handling of License (no corresponding application)	1,347	\$200.00	\$269,400.00
Petition for Expedited Handling of License (corresponding U.S. application)	259	\$200.00	\$51,800.00
Petition for Changing Scope of License	1	\$200.00	\$200.00

Petition for Retroactive License	177	\$200.00	\$35,400.00
Total	1,794	- - - - -	\$356,800.00

The USPTO estimates that 90 percent (90%) of the petitions in this collection are submitted by facsimile or hand carried because of the quick turnaround required. For the 10 percent (10%) of the public that chooses to submit the petitions to the USPTO by mail through the United States Postal Service, the USPTO estimates that the average first class postage cost for a mailed submission will be 44 cents. The USPTO estimates that up to 179 submissions per year may be mailed to the USPTO for a total estimated postage cost of \$79.

Therefore, the USPTO estimates that the total (non-hour) cost burden for this collection in the form of filing fees (\$356,800) and postage costs (\$79) is \$356,879.

14. Annual Cost to the Federal Government

The USPTO estimates that it takes a GS-7, step 5, approximately 1 hour each to process the petition for rescission of a secrecy order, the petition to disclose or modification of secrecy order, and the petition for general and group permits. The hourly rate for a GS-7, step 5, is currently \$22.92 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 plus overhead), the rate per hour for a GS-7, step 5, is \$29.80 (\$22.92 + \$6.88).

The USPTO estimates that it takes a GS-13, step 2, approximately 30 minutes (0.5 hours) each to process the petitions for expedited handling of license (no corresponding application and corresponding U.S. application), 1 hour to process the petition for changing the scope of a license, and 4 hours to process the petition for retroactive license. The hourly rate for a GS-13, step 2, is currently \$44.08. When 30% is added to account for a fully loaded hourly rate (benefits plus overhead), the rate per hour for a GS-13, step 2, is \$57.30 (\$44.08 + \$13.22).

Table 5 calculates the processing hours and costs to the Federal Government:

Table 5: Burden Hour/Burden Cost to the Federal Government for Secrecy and License to Export

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Petition for Rescission of Secrecy Order	1.0	6	6	\$29.80	\$179.00
Petition to Disclose or Modification of Secrecy Order	1.0	3	3	\$29.80	\$89.00
Petition for General and Group Permits	1.0	1	1	\$29.80	\$30.00
Petition for Expedited Handling of License (no corresponding application)	0.5	1,347	674	\$57.30	\$38,620.00

Petition for Expedited Handling of License (corresponding U.S. application)	0.5	259	130	\$57.30	\$7,449.00
Petition for Changing Scope of License	1.0	1	1	\$57.30	\$57.00
Petition for Retroactive License	4.0	177	708	\$57.30	\$40,568.00
TOTAL	- - - - -	1,794	1523	- - - - -	\$86,992.00

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

This information collection was previously approved by OMB on August 24, 2007, with a total of 1,669 responses and 1,310 burden hours. With this renewal, the USPTO estimates that the annual responses will be 1,794 with annual burden hours of 1,538, which is an increase of 125 responses and 228 burden hours. This increase is attributable to administrative adjustments.

The total annualized (non-hour) cost burden for this renewal of \$356,879 is an increase of \$25,014 from the currently approved total of \$331,865. The increase in costs for the current renewal is due to an increase in responses along with an increase in postage costs, as an administrative adjustment.

Change in Respondent Cost Burden

When this collection was approved by OMB in August 2007, the estimated hourly rate for attorneys was \$304. Using that rate, the reported 1,310 burden hours yielded a respondent cost burden of \$398,240.

For this renewal, the USPTO is using the current professional hourly rate of \$325. At this rate, the 1,538 burden hours yield a respondent cost burden of \$499,850, which is an increase of \$101,610 over the currently approved burden. This increase in respondent cost burden is due to the increase in responses and the estimated professional hourly rate.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the total responses will increase by 125 due to administrative adjustments. The changes in burden for the requirements in this collection, from the previously approved burden to the estimated burden for this submission, are as follows:

- The USPTO estimates that the annual responses for the Petition for Expedited Handling of License (no corresponding application) will decrease by 55, from 1,402 to 1,347. **Therefore, this collection takes a burden decrease of 27 hours as an administrative adjustment.**

- The USPTO estimates that the annual responses for Petition for Expedited Handling of License (corresponding U.S. application) will increase by 133, from 126 to 259. **Therefore, this collection takes a burden increase of 67 hours as an administrative adjustment.**
- The USPTO estimates that the annual responses for the Petition for Retroactive License will increase by 47, from 130 to 177. **Therefore, this collection takes a burden increase of 188 hours as an administrative adjustment.**
- There are no changes in annual responses or burden hours for the other requirements in this collection.

A total of 228 burden hours have been added to this collection as a result of administrative adjustments.

Changes in Annualized (Non-hour) Cost Burden

The USPTO estimates that the total annual (non-hour) cost burden will increase by \$25,014 for this renewal due to an increase in the estimated number of responses along with an increase in postage costs. **Therefore, this collection has an increase in annual (non-hour) cost burden of \$25,014 due to an administrative adjustment.**

16. Project Schedule

There is no plan to publish this information for statistical use.

17. Display of Expiration Date of OMB Approval

There are no forms in this information collection. Therefore, the display of the OMB Control Number and the expiration date is not applicable.

18. Exception to the Certificate Statement

No exceptions to the certificate statement are included in this collection of information.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

This collection of information does not employ statistical methods.