

SUPPORTING STATEMENT
United States Patent and Trademark Office
Practitioner Records Maintenance, Disclosure, and Discipline
Before the United States Patent and Trademark Office (USPTO)
OMB CONTROL NUMBER 0651-0017
(August 2010)

A. JUSTIFICATION

1. Necessity of Information Collection

The Director of the United States Patent and Trademark Office (USPTO) has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. 2 and 32-33). The USPTO Code of Professional Responsibility (37 CFR 10.20-10.112) describes how attorneys or practitioners should conduct themselves professionally and outlines their responsibilities for record keeping and reporting violations or complaints of misconduct to the USPTO, while the Investigations and Disciplinary Proceedings rules (37 CFR 11.19-11.61) dictate how the USPTO can discipline attorneys and practitioners.

The Code requires an attorney or agent to maintain complete records of all funds, securities, and other properties of clients coming into his or her possession, and to render appropriate accounts to the client regarding the funds, securities, and other properties of the client coming into the practitioner's possession (collectively "client property"). These record keeping requirements are necessary to maintain the integrity of client property. Each State Bar requires its attorneys to perform similar record keeping.

The Code also requires an attorney or agent to report knowledge of certain violations of the Code to the USPTO. If the complaint is found to have merit, the USPTO will investigate and possibly prosecute violations of the Code and provide the practitioner with the opportunity to respond to the complaint. The Director of the Office of Enrollment and Discipline (OED) may, after notice and opportunity for a hearing, suspend, exclude, or disqualify any practitioner from further practice before the USPTO based on noncompliance with the regulations. Practitioners who have been excluded or suspended from practice before the USPTO, practitioners transferred to disability inactive status, and practitioners who have resigned must keep and maintain records of their steps to comply with the suspension or exclusion order, transfer to disability inactive status, or resignation should they seek reinstatement. These records may serve as the practitioner's proof of compliance with the order, transfer, resignation and rules.

The information collected (reports of alleged violations of the Code) is used by the Director of OED to conduct investigations and prosecute violations as appropriate. If

this information is not collected, the Director of OED would have no knowledge of alleged violations and would be unable to enforce this provision of the Code.

Table 1 provides the specific rules and statutes that require the USPTO to collect the information discussed above:

Table 1: Information Requirements for Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

Requirement	Statute	Rule
Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements)	35 U.S.C. 2(b)(2)(D) and 32	37 CFR 10.112(c)(1)(2)(3)
Record Keeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO, Resigned Practitioners, and Practitioners Transferred to Disability Inactive Status	35 U.S.C. 2(b)(2)(D) and 32	37 CFR 10.158(b)(1) and (4); 11.58(d)
Complaint/Violation Reporting	35 U.S.C. 2(b)(2)(D) and 32	37 CFR 10.24

2. Needs and Uses

There are no forms associated with this collection of information.

Record keeping requirements are necessary to maintain the integrity of client property. An attorney or agent must maintain complete records of all client property coming into his or her possession, and render appropriate accounts to the client regarding the client property. Practitioners also use the collection of information in the day-to-day operation of their practice and practitioners who are attorneys keep the same records to comply with state ethics rules.

This information is used by the Director of OED to investigate and, where appropriate, prosecute for violations of the Code. Registered practitioners and attorneys practicing before the USPTO in trademark matters must maintain proper documentation regarding client property so that they can fully cooperate with an investigation in the event of a report of an alleged violation.

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 Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

Form and Function	Form #	Needs and Uses
Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements)	No Form Associated	<ul style="list-style-type: none"> • Used by the public to maintain complete records of all funds, securities, and other properties of clients (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements), and to render appropriate accounts to the client. • Used by the public to maintain client integrity in the day-to-day operation of their practice. • Used by the USPTO to comply with Federal regulations. • Used by the USPTO to establish regulations for the conduct of proceedings in the USPTO. • Used by the USPTO to impose regulations governing the conduct of attorneys, agents, and other persons representing applicants and other parties before the USPTO.
Record Keeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO, Resigned Practitioners, and Practitioners Transferred to Disability Inactive Status	No Form Associated	<ul style="list-style-type: none"> • Used by practitioners seeking reinstatement after a disciplinary removal, resignation or transfer to disability status to provide increased record keeping requirements in order to show compliance with the terms required for reinstatement. • Used by the public to provide evidence that a practitioner has or has not complied with the rules during suspension or exclusion, resignation or transfer to disability inactive status. • Used by the USPTO to determine whether a practitioner qualifies for reinstatement. • Used by the USPTO to monitor record keeping requirements of practitioners seeking reinstatement after a disciplinary removal, resignation or transfer to disability inactive status to ensure that compliance with the terms required for reinstatement are being met.
Complaint/Violation Reporting	No Form Associated	<ul style="list-style-type: none"> • Used by the public to report knowledge of certain violations of the Code of Professional Responsibility to the USPTO. • Used by the public to maintain proper documentation in order to fully cooperate with the USPTO in an investigation. • Used by the USPTO to investigate and, where appropriate, to prosecute for violations of the Code of Professional Responsibility.

3. Use of Information Technology

Each report of an alleged violation of the Code is unique. Accordingly, the use of information technology is not likely to reduce the burden in reporting a given violation.

Due to the sensitive nature of this information, the USPTO does not use automated, electronic, mechanical, or other technological collection techniques for the collection of this information.

4. Efforts to Identify Duplication

The data in this collection is not routinely collected or maintained elsewhere. Inasmuch as a report by an attorney, agent, or another party of an alleged violation of the USPTO Code of Professional Responsibility is made uniquely to the Director of the USPTO, there is no duplication of effort.

5. Minimizing Burden to Small Entities

The reporting and record keeping requirements are essentially the same for all attorneys and agents. Therefore, the collection of this information does not pose a significant economic impact on small entities or small businesses.

6. Consequences of Less Frequent Collection

This information is collected on an event-by-event basis; it is not time-driven. Therefore, this information could not be collected less frequently. An attorney or agent before the USPTO is obligated to make a report when a violation is discovered, while the other party may report the violation at any time. The USPTO has no control over when an alleged violation of the Code is likely to occur.

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 March 23, 2010 (75 Fed. Reg. 13728). The comment period ended on May 21, 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. Response to this information collection is necessary to enforce the Code, to register a report of knowledge of certain violations of the Code to the USPTO, and to investigate and possibly prosecute violations of the Code.

10. Assurance of Confidentiality

Confidentiality is governed by statute 35 U.S.C. 122 and regulations 37 CFR 11.59. This collection contains information of a confidential (personal) nature, which is subject to the Privacy Act. A System of Records Notice was published in the *Federal Register* on November 16, 2005 (70 Fed. Reg. 69522). Administrative controls are used to

safeguard this information as appropriate. As a matter of USPTO policy, reports of alleged violations of the Code of Professional Responsibility are maintained in confidence until such time as an attorney, agent, or other person representing an applicant or other party before the USPTO is suspended or excluded. Violation reporting activities may result in notices published in the *Official Gazette of the United States Patent and Trademark Office*. These may include notices of suspension, exclusion, or exclusion on consent. The USPTO has been successful in declining to make available investigatory material in response to a request under the Freedom of Information Act, based on 5 U.S.C. 552(b)(7)(C) (investigatory records) and 552(b)(6) (unwarranted invasion of personal privacy).

11. Justification for Sensitive Questions

None of the information collected is considered to be of a sensitive nature.

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 635 responses annually.
- Burden Hour Calculation Factors**
 The USPTO estimates that it will take the public between 2 and 40 hours, depending upon the complexity of the situation, to gather the necessary information, maintain the required records, prepare the complaint, and submit the various documents to the USPTO.
- Cost Burden Calculation Factors**
 The USPTO estimates that all record keeping maintenance will be provided by para-professional/clerical workers, at a rate of \$100 per hour. For complaint/violation reporting, the USPTO predicts that half of the complaints will be filed by practitioners and that the remaining complaints will be split evenly between non-legal professionals and semi-professionals or skilled trade persons. The USPTO estimates that it will cost practitioners \$325 per hour, non-legal professionals \$156 per hour, and semi-professionals or skilled trade persons \$60 per hour to submit a complaint, for a weighted average rate of \$217 per hour.

Table 3: Burden Hour/Burden Cost to Respondents for Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements)	26.0	445	11,570	\$100.00	\$1,157,000.00

Record Keeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO, Resigned Practitioners, and Practitioners Transferred to Disability Inactive Status	40.0	10	400	\$100.00	\$40,000.00
Complaint/Violation Reporting	2.0	180	360	\$217.00	\$78,120.00
TOTAL	- - - -	635	12,330	- - - -	\$1,275,120.00

The estimated annual hourly burden is 12,330 hours. This hour burden is based on a combination of 180 reports of complaints/violations, and the annual record keeping maintenance burden imposed on approximately 455 registered practitioners requiring record systems. The total of 455 also includes the 10 responses for record keeping maintenance required of registered practitioners under suspension or exclusion from the USPTO. The number of registered practitioners includes the factor that no additional burden is imposed on registered attorneys to maintain records of clients, since such record keeping is required of them in the performance of their profession. Records maintenance would have to be created (i.e., would not be previously in place) for approximately 1% of all registered practitioners, which includes both agents and attorneys. Accordingly, 1% of the approximately 44,500 registered practitioners would yield 445 respondents (those required to maintain record keeping systems).

The most likely populations to submit reports of violations of the Code to the USPTO are small entity inventors, large entity inventors, assignees and other interested parties of patent prosecutions, other offices in the USPTO (Examining Corps, Office of Petitions), patent agents or attorneys reporting on peers, patent agents or attorneys reporting themselves, referrals from assorted courts (mostly state), and referrals from assorted consumer protection organizations (Federal, state and private). For violation reporting, practitioners are *required* to report knowledge of certain violations as dictated by the Code of Professional Conduct for Practitioners. Fifty per cent (50%) of the complaints of violations received by the USPTO originate from practitioners. For everyone else, violation reporting is *voluntary*.

13. Total Annualized (Non-hour) Cost Burden

There are no capital start-up, maintenance, or record keeping costs, as well as no filing fees associated with this information collection. (The record keeping costs included with the record keeping-related responses are a burden hour/burden cost to respondents and are not part of the annualized cost burden for this collection.) There are, however, associated postage costs.

The public may submit the complaints in this collection to the USPTO by mail through the United States Postal Service. If these documents are sent by first-class mail, a certificate of mailing for each piece of correspondence, stating the date of deposit or transmission to the USPTO, may also be included. The USPTO expects that 180 complaints will be mailed to the USPTO with first-class postage, with 50% or 90 complaints weighing 2 ounces at an average cost of 61 cents for a total of \$55; and 50% or 90 complaints weighing 1 pound at an average cost of \$4.80 each, for a total of

\$432. Therefore, this collection has a total of \$487 in annual (non-hour) respondent cost burden.

14. Annual Cost to the Federal Government

There are no government costs associated with registered practitioners maintaining their record keeping systems.

Various levels of pay grades reflect the different actions involved in reaching the assumptions behind the time and burden to the government for collecting this information. The Director of the OED and a combination of six staff attorneys provide the professional effort to review the complaints/violations, generate inquiries as needed, review responses, and perform other follow-up activities. A clerk establishes and maintains the files and associated updates. A paralegal primarily tracks all case status and docket information. Administrator and analyst efforts generally represent coordination with other functional areas; this type of coordination would primarily track against the unit of work from which all other disciplinary efforts spring; i.e., the complaint/violation reports.

The USPTO estimates that it takes 40 hours to process the complaint/violation reports. The USPTO expects that the complaint/violation reports will be processed by OED staff in the GS-9, GS-12, GS-13 and GS-15 grades. The complaint/violation reports are processed by a combination of all of these staff members, and the processing time is broken down into the time it takes each staff member to complete their part of the process.

The USPTO expects that the complaint/violation reports will be processed by OED staff in the GS rates at the following Patent Examiner pay scale:

- Director, Administrator GS-15, step 10 at \$74.51. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-15, step 10 is $\$74.51 + \22.35 , for a rate of \$96.86.
- The six OED Staff Attorneys (based on their average salary) have an average hourly rate of a GS-15, step 7 at \$74.51. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-15, step 7 is $\$74.51 + \22.35 , for a rate of \$96.86.

The USPTO expects that the complaint/violation reports will be processed by OED staff in the GS rates at the following standard pay scale:

- Analyst GS-13, step 7 at \$51.19. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-13, step 7 is $\$51.19 + \15.36 , for a rate of \$66.55.

- Paralegal GS-12, step 4 at \$39.46. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-12, step 4 is \$39.46 + \$11.84, for a rate of \$51.30.
- Clerk (contractor) estimated GS equivalent GS-9, step 4 at \$27.21. When 30% is added to account for a fully-loaded hourly rate (benefits and overhead), the cost per hour for a GS-9, step 4 is \$27.21 + \$8.16, for a rate of \$35.37.

The burden hours for the items in this collection are broken out below (and rounded off to arrive at a total) to take into account the different efforts required of the USPTO for handling the files and related tasks, along with any required follow-up activities to process the various components of the complaint/violation reports.

Table 4 calculates the processing hours and costs to the Federal Government:

Table 5: Burden Hour/Burden Cost to the Federal Government for Practitioner Records Maintenance, Disclosure, and Discipline Before the United States Patent and Trademark Office (USPTO)

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Record Keeping Maintenance (including financial books and records such as trust accounts, fiduciary accounts, operating accounts, and advertisements)	0	445	0	\$0.00	\$0.00
Record Keeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO, Resigned Practitioners, and Practitioners Transferred to Disability Inactive Status	0	10	0	\$0.00	\$0.00
Complaint/Violation Reporting		180			
Director	6		1,080	\$96.86	\$104,609.00
Staff Attorneys	16		2,880	\$96.86	\$278,957.00
Paralegal	7		1,260	\$51.30	\$64,638.00
Administrator	2		360	\$96.86	\$34,870.00
Analyst	3		540	\$66.55	\$35,937.00
Clerk	6		1,080	\$35.37	\$38,200.00
TOTAL	- - - - -	635	7,200	- - - - -	\$557,211.00

15. Reason for Change in Burden

Summary of Changes Since the Previous Renewal

OMB previously approved the renewal of this collection in October 2007, with a total of 532 responses and 10,402 burden hours. With this renewal, the USPTO estimates that the annual responses will be 635 with annual burden hours of 12,330, which is an increase of 103 responses and 1,928 burden hours. This increase is attributable to administrative adjustments.

The total annualized (non-hour) cost burden for this renewal of \$487 in the way of postage costs is an increase of \$400 from the currently approved total of \$87. This increase in cost burden is an administrative adjustment.

Change in Respondent Cost Burden

When this collection was approved by OMB in October 2007, the estimated hourly rate for attorneys was \$304. Using that rate to calculate the weighted average for practitioners for the complaint/violation reporting and a rate of \$30 for the paraprofessional/clerical workers to provide the record keeping maintenance, the reported 10,402 burden hours yielded a respondent cost burden of \$364,860.

For this renewal, the USPTO is using the current professional hourly rate of \$325 and the record keeping maintenance paraprofessional/clerical rate of \$100. The 12,330 burden hours yield a respondent cost burden of \$1,275,120, which is an increase of \$910,260 from the currently approved respondent cost burden of \$364,860.

Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the total responses will increase by 103, from 532 to 635 per year and the burden hours by 1,928, from 10,402 to 12,330. This increase is 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 Record Keeping Maintenance will increase by 68, from 377 to 445. **Therefore, this collection takes a burden increase of 1,768 hours as an administrative adjustment.**
- The USPTO estimates that the annual responses for Record Keeping Maintenance Regarding Practitioners Under Suspension or Exclusion, Resigned Practitioners, and Practitioners Transferred to Disability Inactive Status from the USPTO will increase by 5, from 5 to 10. **Therefore, this collection takes a burden increase of 100 hours as an administrative adjustment.**
- The USPTO estimates that the annual responses for Complaint/Violation Reporting will increase by 30, from 150 to 180. **Therefore, this collection takes a burden increase of 60 hours as an administrative adjustment.**

A total of 1,928 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 \$400 for this renewal, from \$87 currently reported on the OMB inventory to the present \$487 per year. This increase is due to an increase in the estimated number of responses (from 150 to 180), an increase in postage rates, and a recalculation of the weight of the responses, with 50% now reported at 1 pound and 50% at 2 ounces. **Therefore, this collection has an increase in annual (non-hour) cost burden of \$400 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.