



UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF THE GENERAL COUNSEL

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Dear Mr. Fraser:

In response to certain issues you raised concerning Mr. Belzer's comment to the Office of Management and Budget dated November 11, 2010, regarding the 0651-0032 collection of information, please see the explanations, below.

1. **Credible basis for estimates of number of responses** (#1 on page 1)

The estimates provided in the Supporting Statement for 0651-0032 are arrived at from a combination of factors, including: internal data collected from the Patent Application Location Monitoring (PALM) and/or Image File Wrapper (IFW) systems; data from the biennial American Intellectual Property Law Association (AIPLA) economic survey report; data from previous iterations of the renewal process; and agency expertise in patent prosecution practice.

In general, estimates of the number of responses expected per year for any particular item in the collection are derived from the internal data collected from the PALM and/or IFW and the data from previous iterations of the renewal process. If data from PALM or IFW is available for a particular item in the collection, the data is examined to determine whether a trend exists that can be used to provide annual estimates for the item for the next three years. If data from PALM or IFW is not available for an item, e.g., if the item is a new item, response estimates are arrived at from an analysis of PALM or IFW data for a closely analogous item(s) in the same or another collection. Agency expertise in patent prosecution practice is relied upon to confirm a reasonable basis for any trend suggested by the data and to identify the most closely analogous item(s).

Mr. Belzer inaccurately asserts that the USPTO "refuses to estimate a rising number of responses over the proposed three year period." In reality, the estimated number of responses appearing in the supporting statement reflect the USPTO's data through FY09, which is what the Agency had access to at the time the supporting statement was prepared. At that time, the Office of Corporate Planning (OCP) forecasted

-0.6% growth for FY10, 0.0% growth for FY11, and 2.9% growth for FY12. In addition, the supporting statement from the 2007 renewal somewhat overstated the number of estimated responses, because a reduction in filings was not foreseen at the time it had been prepared.¹

Mr. Belzer asks OMB to deny the renewal of the 0032 collection “unless and until” USPTO discloses an “objectively supported basis for its estimates of the number of responses,” citing to 44 U.S.C. § 3506(c)(1)(A)(iv). Mr. Belzer misapprehends the statute. The USPTO has a process in place, as discussed in detail above, to support the estimates provided.

Section 3506(c)(1) requires agencies to establish a process within the Office of the Chief Information Officer (OCIO) “that is sufficiently independent of program responsibilities to evaluate fairly whether proposed collections of information should be approved[.]” 44 U.S.C. § 3506(c)(1). That subsection goes on to require the agency’s OCIO to review each collection of information before submission to OMB. 44 U.S.C. § 3506(c)(1)(A). That review process includes considering whether the information collection contains “a specific, objectively supported estimate of burden[.]” 44 U.S.C. § 3506(c)(1)(A)(iv). In other words, the “objectively supported” phrase that Mr. Belzer seizes upon is actually directed at the review process, rather than the requirements for the information collection itself. To be sure, the USPTO’s reading of the statute is consistent with the very next provision, which requires the process to “ensure that each information collection informs the person receiving the collection of information of an estimate, *to the extent practicable*, of the burden of the collection.” 44 U.S.C. §3506(c)(1)(B)(iii)(III) (emphasis added).

In any event, the USPTO has complied with the PRA by establishing a sufficient review process and has gone even further by providing well-supported estimates, as detailed in the supporting statement and in this document to OIRA.

2. **Credible basis for estimates of burden hours** (#2 on page 2)

See #1, above. Estimates of the hours per response for items in the collection are derived from data from the biennial AIPLA economic survey report, data from previous iterations of the renewal process, and agency expertise in patent prosecution practice.

To the extent that Office utilizes staff expertise in crafting estimates, the Office of Patent Legal Administration (OPLA) on its own has over 50 years of non-USPTO patent prosecution experience, and OPLA is but one of the offices involved in providing information contained in the supporting statement. This non-USPTO prosecution experience spans multiple technologies and provides views from various perspectives, including the perspectives of former patent agents, associate attorneys, and law firm partners, working with both small and non-small entity patent applicants.

¹ The fact that now, months after the supporting statement was prepared, the USPTO now has different projections of growth does not render the supporting statement invalid. According to the recent 2010 Performance and Accountability Report, projected growth for FY10 is 4.7%

In providing estimates of burden hours, the Office sometimes referenced the AIPLA economic survey report, as a benchmark for the estimates. The Office did not commission the report, has no input into the structure of the report and does not rely exclusively upon the results of the report to arrive at estimates.

3. **Bootleg collections** (#3 on page 2)

Mr. Belzer does not identify which specific collections allegedly do not have OMB approval. The USPTO is not aware of any particular collection of information without OMB approval. The Office already does what Mr. Belzer requests: reviews paperwork burdens imposed upon the public, publishes a notice in the Federal Register seeking public comments on each collection of information, responds to public comments, and obtains either a new or renewed control number from OMB for each collection. In stark contrast to maintaining bootleg collections, the USPTO goes out of the way to identify burdens at a more granular level in the 0032 supporting statement. *See, e.g.*, Support Statement 2, 35 (concerning papers filed under 37 C.F.R. §1.41, 1.48, and 1.53(c)(2)).

4. **Burden estimation project is destined to fail** (#4 on page 3)

On February 25, 2010, the USPTO published a notice in the Federal Register seeking comments on a draft methodology to assess patent-related collections of information under the PRA. 75 Fed. Reg. 8649 (Feb. 25, 2010). The three stated objectives for the study were: (1) develop an independent, publicly-vetted, objectively-based estimate of the total cost of paperwork for patent applicants; (2) develop recommendations for continued improvement in the accuracy of the burden estimates made by the USPTO in the future; and (3) identify opportunities to reduce applicant burdens. Mr. Belzer submitted comments through his nonprofit organization, Regulatory Checkbook, generally praising the effort but criticizing the methodology itself.

After receiving public comments, internally finalizing the draft methodology and coordinating review with OMB, the USPTO decided to abandon the effort. This was due to the cost of the project, estimated at an additional \$778,554, coupled with the USPTO's funding during the past year.

5. **Next Generation IT System** (page 6)

The USPTO is building a new patent examination information technology (IT) system from end to end. Called the "Patents End-to-End" (PE2E), this project involves the reengineering of the pre-exam, workflow, examination, and publication processes. Essentially, the IT infrastructure for patent examination and other patent business processes are being completely re-thought and redone, with new software and software systems, new and upgraded hardware and networks, and in support of new and improved patents business processes. The new system is being designed with input from the patent examiners, supervisory patent examiners, technical support staff, and other users, in the

best way possible to serve all patent employees and to support and achieve the mission and goals of the office.

On November 4, 2010, the USPTO announced that the procurement was competed under the General Services Administration (GSA) Alliant Large Business Government-wide Acquisition Contract (Alliant LB GWAC). Award notices for three task orders were made to SAIC (award amount \$797,705.00), CGI Federal (award amount \$963,814.70) and Stanley Associates (award amount \$758,787.60) on October 28, 2010.

The Office plans to utilize, to the extent practicable, information from the new system to provide enhanced data sets for PRA burden estimates. The Agency's OCIO is aware of this goal. Although the Agency expects to receive improved data, for PRA purposes, from PE2E, it should be noted that compliance with the PRA is not the driving force behind the project. Rather, the Office expects to leverage new data points for a multitude of purposes. Thus, there is no need for OMB to "intervene as necessary to ensure that it is designed and implemented to accurately estimate (and permit the Office to minimize) private sector paperwork burden[,]" as Mr. Belzer requests.

6. **Undisclosed methods for burden estimates** (page 7)

Mr. Belzer believes that the USPTO's burden estimates cannot be evaluated because the Office has not disclosed data, models and analyses used to estimate burden. As noted above, the basis for providing various estimates is explained in the supporting statement and further detailed in this document. That Mr. Belzer cannot "reproduce" the USPTO's estimates is of no consequence. Under the Information Quality Act (IQA), certain influential information must be reproducible under certain circumstances. By definition, the "estimates" of which Mr. Belzer complains is not "information" within the meaning of the IQA. Under the USPTO's IQA Guidelines, which parallel OMB's own guidelines, "information" is defined as "any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms." Section IV, A.5.

As noted above, at #2, Office staff does, in fact, have significant experience in patent prosecution. Estimates relying upon Office expertise are reasonable, especially in the absence of other evidence submitted by the public or otherwise available.

7. **Information Quality Act compliance** (pages 19-20)

Mr. Belzer asserts that the supporting statement is not transparent or reproducible. As noted above, at #6, estimates need not be reproducible under the IQA. The USPTO's IQA Guidelines do not define the term "transparent." Regardless, the supporting statement complies with the IQA Guidelines in that it embodies the three principles of quality: objectivity, utility and integrity. "Utility" is defined as "the usefulness of the information to the intended users, including the public." Section IV,6.b. Although Mr. Belzer disagrees with the Agency's estimates in some instances, that does not render

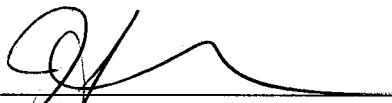
them noncompliant with the IQA. Except for Mr. Belzer and one other public commentor, the rest of the public raised no objections and voiced no concerns with the Agency's burden estimates or with the utility of those estimates in the 0032 collection.²

8. **Burden on small entities** (page 21)

The USPTO takes into account the burden imposed on all applicants, including small entities. As the supporting statement notes, the Office provides as much accommodation to small entities as allowed by statute. *See* Supporting Statement at 9.

Please let me know if you need anything further.

Respectfully,



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² On November 23, 2010, Ron Katznelson filed, under the IQA, a request for correction of the 0032 supporting statement.