

**JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE**  
**United States Patent and Trademark Office**  
**Board of Patent Appeals and Interferences (BPAI) Actions**  
**OMB Control Number 0651-0063**  
**November 30, 2011**

**Overview**

Information collection 0651-0063 was approved by OMB on December 22, 2009 and was limited to the current rule. Since then the USPTO proposed rulemaking changes impacting that collection through RIN 0651-AC37, "Rules of Practice Before the Board of Patent Appeals and Interferences in *Ex Parte* Appeals." The USPTO submitted an Information Collection Request (ICR) associated with this proposed rule and on January 4, 2011 it was pre-approved. The Notice of Final Rulemaking for RIN 0651-AC37 was published on November 22, 2011 and the pre-approval was activated.

There were three non-substantive changes to the collection made between the proposed rule stage and the final rule stage. This request for an interim change is made to update the inventory with those changes.

One change associated with the rulemaking:

- Update the burden estimates for appeal briefs

Two changes not associated with the rulemaking:

- Update the hourly rate of attorneys from \$325 to \$340
- Update Appeal Brief filing fees to reflect the new 15% surcharge imposed by the Leahy-Smith America Invents Act (Public Law 112-29)

**Details**

**Burden estimates for Appeal Briefs**

Several changes have been made to the rule as proposed in the Notice of Proposed Rule Making (NPRM). The NPRM proposed a change to the current rule that would cause some appellants to add subheadings to their appeal briefs, but proposed other changes that eliminated several of the current briefing requirements. Originally, the USPTO estimated that the changes proposed in the NPRM would reduce an applicant's paperwork burden for the appeal briefs from 34 to 31 hours. But based on comments received in response to the NPRM, the USPTO reestimated this reduction from 34 to 32 hours for the Final Rule.

Based on this reestimate, the USPTO now estimates that the Final Rule will increase the burden for this collection by 26,741 hours, from 828,871 to 855,712 hours per year as a program change.

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)	Impact of Final Rulemaking	Non- Rulemaking Impact
Appeal Brief Current Inventory	31	26,741	828,871	\$325.00	\$269,415,575.00		
Appeal Brief Proposed (includes EFS-Web)	32	26,741	855,712	\$340.00	\$290,942,080.00	Increase of 26,741 hours per year.	Increase of \$21,526,505 per year.

## Update of Hourly Rate for Attorneys

The USPTO is updating the professional hourly rate (which was previously calculated at \$325) to \$340 per hour for respondent cost burden calculations. This is the median rate for attorneys in private firms as shown in the *2011 Report of the Economic Survey*, published by the Committee on Economics of Legal Practice of the American Intellectual Property Law Association (AIPLA).

This was previously calculated at \$282,647,625.00 during the proposed rulemaking, but is now being adjusted to \$304,784,840 per year to reflect the current estimate from the *AIPLA Report*, for an increase of \$22,137,215 per year.

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Amendment	2 hours	19	38	\$340.00	\$12,920.00
Amendment (EFS-Web)	2 hours	248	496	\$340.00	\$168,640.00
Appeal Brief	32 hours	1,872	59,904	\$340.00	\$20,367,360.00
Appeal Brief (EFS-Web)	32 hours	24,869	795,808	\$340.00	\$270,574,720.00
Reply Brief	5 hours	536	2,680	\$340.00	\$911,200.00
Reply Brief (EFS-Web)	5 hours	7,122	35,610	\$340.00	\$12,107,400.00
Request for Rehearing Before the BPAI	5 hours	26	130	\$340.00	\$44,200.00
Request for Rehearing Before the BPAI (EFS-Web)	5 hours	352	1,760	\$340.00	\$598,400.00
<b>Total</b>	- - - -	<b>35,044</b>	<b>896,426</b>	- - - -	<b>\$304,784,840.00</b>

## Update Appeal Brief Filing Fees

The Leahy-Smith America Invents Act (Public Law 112-29) imposes a 15% surcharge on the appeal brief filing fees. This surcharge went into effect September 16, 2011, after the submission of the NPRM ICR. The USPTO is taking this opportunity to adjust these fees and estimates to account for this surcharge.

Based on this surcharge, the USPTO estimates that the filing fees for this collection will increase by \$1,925,360, from \$12,996,180 to \$14,921,540 per year due to a program change.

Item	Responses (yr) (a)	Filing Fees (b)	Total Cost (yr) (a x b)
Appeal Brief – Other Entity	1,498	\$620.00	\$928,760.00
Appeal Brief – Small Entity	374	\$310.00	\$115,940.00
Appeal Brief (EFS-Web) – Other Entity	19,895	\$620.00	\$12,334,900.00
Appeal Brief (EFS-Web) – Small Entity	4,974	\$310.00	\$1,541,940.00
<b>Totals</b>	<b>26,741</b>	-----	<b>\$14,921,540.00</b>