

JUSTIFICATION FOR NONMATERIAL/NONSUBSTANTIVE CHANGE

United States Patent and Trademark Office
Post Registration (Trademark Processing)
OMB Control Number 0651-0055

May 24, 2012

Background

Information collection 0651-0055 was approved by OMB on June 9, 2009. Since then, the USPTO proposed rulemaking changes impacting that collection through RIN 0651-AC49, "Changes in Requirements for Specimens and for Affidavits or Declarations of Continued Use or Excusable Nonuse in Trademark Cases." The USPTO submitted an Information Collection Request (ICR) associated with this proposed rule and on September 1, 2011 it was pre-approved by OMB. The Notice of Final Rulemaking for RIN 0651-AC49 was published in the *Federal Register* on May 22, 2012 (77 Fed. Reg. 30197), and OMB updated the pre-approval in their ROCIS system so the changes since the NPRM could be entered.

Three non-substantive changes to the collection were 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:

- Adjust the burden estimates for Response to Office Action for Post-Registration Pilot

Two changes associated with administrative adjustments:

- Update the hourly rate for attorneys from \$325 to \$340
- Adjust the postage cost to reflect the new postage rates in effect January 22, 2012

Summary of Changes

Burden estimates for Response to Office Action for Post Registration Matters

Two changes were made to address comments received in response to the Notice of Proposed Rulemaking (NPRM). Regarding a comment that the amount of time required to comply under the pilot may be greater than for a typical post registration response, the USPTO has increased the estimated burden time for submissions under the pilot to one hour. As an additional means of alleviating the potential burden to trademark owners, only approximately 500 registrations will be selected for the pilot to assess the accuracy and integrity of the register instead of the original 3,165 registrations proposed in the NPRM. With the reduction in the number of responses and the increase in estimated burden time for submissions, the Office estimates that the Final Rule will reduce the paperwork burden from 1,120 hours to 485 hours due to a program change.

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).

The respondent cost burden based on the \$325 professional hourly rate was previously calculated at \$364,000 during the proposed rulemaking, but is now being adjusted to reflect the current estimate from the AIPLA *Report*. The respondent cost burden is now \$164,900, reflecting a decrease of \$199,100 from the previous \$364,000.

Item	Hours (a)	Responses (yr) (b)	Burden (hrs/yr) (c) (a) x (b)	Rate (\$/hr) (d)	Total Cost (\$/hr) (e) (c) x (d)
Response to Office Action for Post-Registration Pilot (TEAS Global)	0.95	300	285	\$340.00	\$96,900.00
Response to Office Action for Post-Registration Pilot (Paper)	1 hour	200	200	\$340.00	\$68,000.00
Total	- - - -	500	485	- - - -	\$164,900.00

Update of Postage Costs

Postage was previously calculated at \$557 in the NPRM, but is now being adjusted to reflect the reduction in submissions in addition to an increase in the United States Postal Service rates as of January 22, 2012, from 44 cents for first-class mail to 45 cents, for a total estimated (non-hour) cost burden of \$90, as noted in the Final Rulemaking.

Change in Annual Cost to the Federal Government

Since only approximately 500 registrations will be selected for the pilot to assess the accuracy and integrity of the register instead of the original 3,165 registrations proposed in the NPRM, the responses have been reduced accordingly by 2,665 in the Annual Cost to the Federal Government Section, for a total cost to the Federal Government of \$3,278 instead of \$20,771.

Summary of Changes in Burden

The changes in responses, hourly rate for attorneys, and postage costs will result in the following burden changes for this information collection since the NPRM.

Burden Type	Currently Approved	Impact of NPRM	Proposed Change	Impact of Final Rule	New Estimates
Responses	130,301	3,165	(2,665)	500	127,636
Hours	18,586	1,120	(635)	485	17,951
Annual (non-hour) Costs	41,794,314	557	(467)	90	41,793,847

Therefore, this collection would have the following revised total burden:

- 127,636 responses
- 17,951 burden hours
- \$41,793,847 in annual (non-hour) costs